

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION
4694
VARIANCE
4694
ALTERNATIVE COMPLIANCE
20017**

DECISION

Application: Church and Variance
Applicant: Word Power Baptist Tabernacle, Inc.
Opposition: None
Hearing Dates: June 23, 2016 and June 9, 2021
Examiner: Maurene Epps McNeil
Disposition: Approval of S.E. 4694, Variance 4694 and AC-20017
with Conditions

Nature of Proceedings

- (1) Special Exception 4694 is a request for permission to use approximately 0.65- acre of R-18 (Multifamily Medium Density Residential) zoned land, located on the southern side of Marlboro Pike, approximately 2,000 feet east of its intersection with Penn Crossing Drive, District Heights, Maryland, for a 128-seat, 2,540-square-foot church. Variance 4694 is a request to reduce the minimum setback requirements for a church, set forth in Sections 27-341.02(a)(1) and 442-(e) of the Zoning Ordinance. Alternative Compliance (AC- 20017) is requested from Section 4.7 (c)(4) of the Landscape Manual concerning the requirement of a Type B Bufferyard to buffer the Church from the multifamily dwelling development abutting its eastern property line.
- (2) Staff and the Planning Board originally recommended approval of the Special Exception, with conditions. (Exhibit 13) Staff submitted a revised Staff Report in 2021 that recommended approval of all three requests. (Exhibit 29)
- (3) No one appeared in opposition at either hearing held by this Examiner.¹

¹ The Special Exception application was originally heard on June 23, 2016. At that time Applicant realized it would also need a variance. The case was ultimately recommended for dismissal by this Examiner due to the length of time that had expired, but the District Council found good cause to allow it to continue. The variance application was filed and the matter was set in for rehearing in 2021. Accordingly, the original hearing record is adopted and incorporated herein.

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(4) At the close of the 2021 hearing the record was left open to allow submission of additional evidence. The last of these Exhibits was submitted on August 26, 2021, and the record was closed at that time. (Exhibits 32-34)

FINDINGS OF FACT

Subject Property and Surrounding Uses

(1) The subject property is an unusually shaped parcel which consists of approximately 0.65 acre located on the southern side of Marlboro Pike, approximately 2,000 feet east of its intersection with Penn Crossing Drive. (Exhibit 13, aerial map attachment and Exhibit 29, p. 1) The property is improved with a building approximately 2540.5 square feet in size which is used as a church, and an associated 32-space parking area. Applicant submitted photos from various vantage points throughout the site. (Attachment to Exhibit 13 and Exhibit 31)

(2) The Technical Staff provided an excellent recitation of the zoning history for the subject property (Exhibits 13 and 29) A 1,993-square-foot, one- half story building was constructed on the site in 1925, and the existing church has been in operation since 1997. At some point between 2000 and 2005, two building additions were added to the site without benefit of the appropriate building permits, thereby increasing the building to 2,540-square-feet. The site is exempt from the requirement to file a preliminary plan of subdivision since the total proposed development constructed after 1991 is less than 5,000 square feet. (Attachment to Exhibit 13)

(3) The neighborhood is bounded by Marlboro Pike to the north; Pennsylvania Avenue (MD 4) to the south; Silver Hill Road to the east; and Penn Crossing Drive to the west.

(4) The subject property is surrounded by the following uses:

North- Marlboro Pike, and across, American Legion Post Suitland 196 in the R-55 Zone

South- Undeveloped property in the R-18 Zone

East- The Dunhill Village Apartments in the R-18 Zone

West- Kopper's Fabricators Inc. (a metal fabrication business) in the R-18 Zone

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General Plan/ Master Plan/Sectional Map Amendment

(5) The subject property is located within an area governed by the 2009 Marlboro Pike Sector Plan and Sectional Map Amendment (“SMA”). This SMA rezoned the property from the C-S-C Zone to the R-18 Zone. The 2010 Subregion 4 Master Plan and SMA retained that zoning but included a recommendation (not aimed at the subject property specifically) that churches be steered to residential or institutional zones “to keep from losing additional tax base.” (2010 Subregion 4 Master Plan, p. 83)

(6) The 2014 General Plan (“Plan 2035”) places the property within the Established Communities. (Plan 2035, p. 18) The Plan notes that “established communities are most appropriate for context-sensitive infill and low-to medium-density development. (Plan 2035, p. 20)

Applicant’s request

(7) Applicant is seeking the requested approvals for a 128-seat church and associated 32-space parking area that has been in operation since approximately 1997. 2 Applicant requests that a variance from the requirement in Section 27-442 (e) of the Zoning Ordinance of a 30-foot setback from the street line or ultimate right-of-way (as shown on a Master Plan) in the R-18 Zone. Finally, Applicant seeks alternative compliance (AC-20017) to the provisions of the Landscape Manual pertaining to buffering along its eastern property line.

(8) Pastor David McLaughlin testified in support of the Application. In particular, he explained why the church did not have permits for the additions that were constructed:

We contracted a company [to obtain the building permits to validate some construction] ... only to discover that the company did not do their due diligence ... in obtaining the permits. We went as far as filing a complaint once we [were] made aware that this company was not legit....

[Our current Site Plan shows a proposed addition because] I hope to be able to do something in the future. It won’t be now, but somewhere in the future....

(Exhibit 3; June 9, 2021 T. 16-17)

(9) Mr. Mark Ferguson, accepted as an expert in the area of land use planning, testified in support of the Special Exception application at both hearings. He also submitted a land planning analysis detailing his reasoning. (Exhibit 19) At the first hearing, he provided the following support for his opinion that the Special Exception should be approved:

² The Pastor explained that his congregation originally rented the property at that time, and purchased it in 2007. (June 9, 2021, T. 19)

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[At one time the subject property] had been occupied by a single family dwelling, and at some time between 2000 and 2005 additions were placed onto that dwelling. At that time, the property was located in the C-S-C Zone.

There was milling space down for parking to the side of the building and to the rear. The applicant became aware that they needed to obtain a use and occupancy permit so they began that process, but they began that really after the property had been rezoned to the R-18 Zone. In the R-18 Zone and in fact all residential zones that are smaller than the R-A, you're required to obtain a special exception to approve the use of a church on a site of less than one acre.

The subject site is 0.6650 acres. I would note that the original application had a different area. In doing my preparation for the case, I found that the area was a couple of hundredths larger. So 0.6550 is the correct answer....

What I would say ... is that there are several conditions on this property which lower the impact, compared to other uses to other churches in the R-18 Zone. This property is sited on a collector roadway, it's not back in a residential neighborhood. As such, its aspect is not as disruptive as it might be in another residential zone and there are fewer traffic concerns as you don't have traffic on an interior residential street. So from a use perspective, I find this to have very, very low impact and I would argue that given the size of the property at less than 1 acre, [and] it's situation next to an industrial use [, it's] probably far more suited for use as a church than it would be for a multifamily building....

(June 23, 2016 T. 10-13)

(10) Mr. Ferguson opined in his land planning analysis that the application should be approved since:

- The Church is situated on a small lot within "a neighborhood characterized by an eclectic mix of uses." The use at this location should not result in excessive traffic delays or parking spillover or excessive lot cover; accordingly, it should not impair the public health, safety, comfort, convenience, morals or welfare. (Exhibit 13, p. 5)
- This existing use, which predates the current General Plan/Master Plan/Functional Plans, does not require the expansion of any public facilities. (Exhibit 13, pp. 5-6)
- The site was developed years ago so there will be no impact to the natural features in the County. No woodland exists on the site and "[n]o steep slopes or scenic vistas will be affected." Moreover, there are no regulated environmental features on the site. (Exhibit 13, pp. 8 and 10)
- Upon approval of the variance and alternative compliance the use "will be in

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conformance with all of the applicable requirements and regulations of the Zoning Ordinance.” (Exhibit 13, p. 9)

- The witness pointed out that churches on lots between 1-2 acres in size are subject to a 50% maximum lot coverage requirement while other allowed uses are subject to a maximum of 60% lot coverage. The site (approximately 28,968 square feet) is less than an acre in size and subject to the 60% lot coverage maximum. Applicant proposes 15,747 square feet of lot coverage which, equates to 54.4% of lot coverage. (Exhibit 13, p. 11)

(11) At the most recent hearing, Mr. Ferguson provided the following additional support for his belief that all three applications should be approved:

[Since 2016] the special exception criteria have ... [remained] the same. The neighborhood is the same and it's not really had substantive change. I believe there was a gas station approved within the neighborhood limits on the other side of Marlboro Pike, some couple of blocks away. But really, everything remains substantively the same that it was five years ago. The applicable Master Plan remains the Marlboro Pike Sector Plan, the General Plan remains the General Plan. While the Green Infrastructure Plan has been updated in the intervening time, its application to this subject site doesn't change because there are no regulated natural features on it. You know, the transportation is the same, and the provision [in] the ordinance regarding the general criteria for approval and the particular criteria for approval of a church on parcels of less than an acre remain the same.... [M]y 2016 report remains my testimony today and I think that's probably the fair summary of that....

[T]he only thing in this case that really is new from my perspective, the alternative compliance and the variance application aside, is the new Staff Report. There are only a couple of things that I would like to highlight in that, and that would be the discussion on page 4 regarding the description of the existing building. The 2016 Staff Report referred to a building of one and a half stories, approximately 1,993 square feet as being the original 1925 improvements on the subject property. The 2021 Staff Report on page 4 amended that to state that the site was originally approved in 1925 with a one and a half story approximately 1056.25 square foot building....

So the 2016 Staff Report is in my, as near as I can gather from my observations of the property[,] accurate as to the ... gross floor area. Both are consistent with regard to the footprint but the accuracy of the area is in fact what was in the 2016 Staff Report....

The other thing that I would mention related to the Site Plan and actually Pastor McLaughlin's testimony about the number of parking spaces. If you refer to the Site Plan you'll see that in the southwest corner of the building it actually indicates an area of new parking to be added, ... approximately 60 by 50 feet in area. So you know it indicates the note on the Site Plan is new parking area, relocated millings from eastern end and southern property lines to create dust free parking with three inch painted striping. So in fact there are... 12 new spaces that are proposed by this Site Plan. And they are in fact, at least I have in my recent site visit was not able to get to the back of the property but a

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recent aerial photograph does show that those millings are not in fact in place today, or at least as of the date of those recent aerial photographs....

(June 9, 2021 T. 23-27)

Alternative Compliance

(12) The instant request is subject to several provisions of the Landscape Manual. (Exhibit 29, pp. 10-11) Compliance with all will be addressed in the revised site plan. However, Applicant seeks alternative compliance to the provisions of Section 4.7(c)(4) of the Landscape Manual. This provision requires a Type 'B' Bufferyard – consisting of a 30-foot building setback and a 20-foot landscaped yard – to buffer the Church from the multifamily dwelling development to the east. Applicant proposes a 46-foot building set back and a 0- to 20- foot-wide landscape yard, with an average width of 6-8 feet over the full width of the landscape yard, 89 plant units within this area, and a 6-foot-high opaque fence. Mr. Ferguson offered the following analysis in support of this request:

The proposed use of the property is for the validation of the existing improvements on the site, though some of the existing parking area will need to be removed to accommodate the proposed landscaping.

Thirty-two parking spaces are required to serve the capacity of the church. These spaces will be provided in the existing paved area on the east side of the church and in an expansion of that paving directly behind the church. Certain portions of the existing paved area will be removed along the southern and eastern property lines to provide landscaping, including in the area for which Alternative Compliance is requested....

In order to provide sufficient parking for the church, it is proposed to provide parking areas along the eastern edge of the subject property. The width of this area is constrained by the location of the existing structure (constructed c. 1925) in which the church is located, and by the grade separation between the site area and Marlboro Pike on the other side of the existing structure; as such, the proposed parking will extend closer to the property lines than the required B Bufferyard would typically allow.

The existing building setback of 46', however, substantially exceeds the required building setback requirement of 30'.

Accordingly, it is proposed to provide to provide a variable, reduced depth of bufferyard to allow sufficient space to provide the minimum number of parking spaces required. The depth of buffer will vary from as small as zero near the front of the property to the full 20-foot depth at the rear of the property; it is proposed to average 6.8'in depth.

After subtracting for the ultimate right-of-way width of Marlboro Pike and the depth of the 10' landscaped buffer along Historic Roads, 186' of bufferyard length remains; this corresponds to a requirement for 149 plant units. One shade tree, 16 evergreen trees and 9 shrubs of planting are proposed for a total of 99 plant units....

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Section 1.3 a of the Landscape Manual [allows alternative compliance if one or more of five listed conditions are satisfied].... Section 1.3b further provides that, “A *proposed alternative compliance measure must be equally effective than normal compliance in terms of quality, durability, hardiness, and ability to fulfill the design criteria....*”

This request is made pursuant to conditions (1), (2) and (5) in Section 1.3a. The topography of the lot adjacent to Marlboro Pike required the entrance and the parking area to be located on the east side of the existing structure, adjacent to the apartments, rather than on the west side (which is a nonresidential use). The proximity of the existing structure which the church occupies is a constraint which limits the depth of land available for the bufferyard; even if a Departure from Parking and Loading Standards were to be requested and approved and the ten parking spaces which occupy the bufferyard area were to be eliminated, there would not even be enough space to construct the driveway alone and still provide the full depth of planted yard.

Finally, the area of the subject property is an older community in which most of the surrounding development preceded the adoption of the Landscape Manual: the existing building on the subject property was constructed c. 1925, the adjoining apartments were constructed in 1965, and the abutting metal fabricator was built c. 1955. Most of the eclectic development on the north side of Marlboro Pike in the vicinity of the subject property is visible in the 1965 aerial photos. Modern landscaped buffers are rare in the surrounding vicinity....

[If the proposed condition of providing a 6’ opaque fence is approved, it] will involve the removal of existing paved areas, beginning at the norther end of the three proposed parallel spaces, and extending back to the rear of the subject property. This will be an improvement over the existing situation....

Because the proposed conditions for which Alternative Compliance is requested will provide at least equal effectiveness to normal compliance, the applicant respectfully requests that the subject application be approved.

(Exhibit 29, Backup pp. 7-10)

Variance

(13) Applicant seeks a variance to the requisite front yard setback of 30 feet from the ultimate right-of-way line. (Prince George’s County Code, Section 27-442(e)) The addition to the front of the building is 25 feet from the lot line but is only 18.6 feet from the ultimate right-of-way line. Thus, applicant seeks an 11.4-foot variance from this requirement. The Statement of Justification in support of Applicant’s variance request notes, in pertinent part, as follows:

The Applicant has filed this variance to address a Zoning Ordinance requirement in the R-18 Zone that requires a 30-foot setback from the front street line, or the ultimate right-of-way as shown on a Master Plan ... which the [site]does not meet.

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Approval of the requested variance will validate existing conditions, including a building extension that has been constructed outside of the 30-foot setback. The existing corner of the existing structure is 25.1 [feet] from the front lot line which would normally not present a compliance issue; however, a number of years after the church was constructed, the underlying property was rezoned ... to the R-18 ... Zone. The [prior zone] only required a 10-foot front yard setback....[T]he R-18 Zone has a Zoning Ordinance requirement that the setback for front yards be 30 feet. The Applicant is therefore requesting an 11.4-foot variance....

The site was originally improved in 1925 with a one and one-half story building that was approximately 1,993 square feet....The subject property has been utilized for church purposes since 1997....

[T]he Applicant purchased the subject property ... in April 2006. The Applicant requested Special Exception 4694 for the parcel for Church use and to validate all of the existing uses on site. The Church is on a site that is less than an acre Additions totaling 1,942 square feet were constructed without a building permit. The Applicant must now validate the additions through the County permit process.

The requested variance of 11.4 feet is the minimum necessary to afford relief to the Applicant.... The church building on this parcel ... presents an extraordinary situation that can be addressed through approval of a variance. After the church was legally established upon the property, the underlying zoning of the property changed to the R-18 Zone, which is, more or less, a zone for apartments. This zone comes with a special exception requirement that is specific to this zone. Typically, buildings only have to be set back 25 feet from property lines. In this instance, however, the R-18 Zone requires that the building be set back 30 feet from the front property line. This creates an extraordinary situation for the church, as the church is not an apartment complex for which this regulation was intended.... An approved special exception will allow the church to continue to ... operate as a church in the R-18 zone.

The structure on the property has additions which were constructed years ago. The Applicant was issued a Zoning Violation and will need to [be issued] a building permit to validate the construction. Without approval of the 11.4 foot variance, the church would have to tear down a portion of the church which is currently serving the congregation and is not posing any problems to the community or surrounding neighborhood. This presents an extraordinary situation for the Church, which has operated for nearly 25 years, should they have to close their doors due to a set back requirement that did not exist at the time the church was originally constructed....

Strict application of [Section] 27-230 would result in the Applicant experiencing a peculiar and unusual practical difficulty should the variance not be granted. The requested variance would not deviate from the existing character or development of varying lots within the neighborhood but failure to grant the requested relief would result in the Applicant experiencing unusual practical difficulties and exceptional hardship. On the other hand, approval of the requested variance will allow the Church ... to continue to serve the community and provide charitable goods and services.... The newly constructed

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additions on the original structure add to the aesthetic appeal and are consistent with the existing character of the community. Tearing down the front side of the church building just so that the building will not intrude by 11.4 feet into the required front yard setback ... is a requirement that did not exist at the time the church was built....

[T]he church will have to apply for a building permit to validate the existing building.... Without approval of this variance, the church would be required to tear down a portion of the church which will wreak havoc on the financial condition of this church and jeopardize its ability to serve its congregation and the community....

The requested variance will not substantially impair the intent, purpose and integrity of the Prince George's Plan 2035 or the Marlboro Pike Sector Plan and Sectional Map Amendment because residential land uses and uses compatible with them are recommended and permissible at the subject location. Since the property has been used for church purposes since 1997, and has operated in the community without issue, the continued use of the property for the same purpose would not likely result in any negative impacts to the surrounding community as has been the case for decades. Thus ... granting the proposed use would not impair the integrity of any approved ... Master Plan or General Plan. Conversely, denying the request would result in ... peculiar and unusual practical difficulties for the Church....

(Exhibit 29, Backup pp. 12-15)

(14) Mr. Ferguson added supporting testimony for the variance at the most recent hearing:³

When the additions were constructed the zoning district was commercial, and the front set back in that case would have been only 10 feet. So at the time those additions were constructed, they were constructed to a setback line which would have been legal....

So the first [variance] requirement is that there is ... in this case extraordinary circumstances which is to say the rezoning of the subject property in 2009 ... by the Marlboro Pike Sector Plan and Sectional Map Amendment which basically took ... the validity or the proposed validity ... of the setback out from underneath the building.

The second criterion of the ordinance is that strict application would result in ... exceptional or undue hardship upon the owner of the property, which would be to say to comply they would have to demolish that front addition to the building.

And then finally, that the variance will not substantially impair the intent , purpose or integrity of the General Plan or Master Plan. You know, really I think the staff has actually done as good a job in laying out the conformance to that provision as I could. They cite the urban design recommendations of the Sector Plan which actually prefer pushing buildings closer to the sidewalk rather than setting them back. As so, ... because the use is one that would otherwise, would ordinarily be permissible, ... would be permitted by

³ Additionally, the witness adopted the content of the Statement of Justification for the variance prepared by Applicant's counsel. (June 9,2021 T. 38)

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right were the parcel large enough, the property to either side is compatible with the physical situation of the existing building. So I don't find that the grant of this variance would substantially impair the Master Plan at all....

[W]hile the applicant certainly created the hardship of the building being there, it was the rezoning that created the need for the variance, not the applicant's action....

(June 9, 2021 T. 30-35)

(15) Applicant also wishes to expand the building in the future but "doesn't know when" and has no "specific plans at this time." (June 9, 2021 T. 40) However, Mr. Ferguson testified that it was his understanding that the additional square footage would be "to accommodate a fellowship hall". (June 9, 2021 T. 42)

(16) Applicant concurred with most of the conditions of approval recommended by the Technical Staff but requested that a few be revised/deleted. In particular, Applicant requests that proposed conditions 1(d)(1) and (3) (regarding elevations for the proposed addition) and Condition 2(a) (requiring submission of a photometric plan) be deleted. The Site Plan in the record has not been revised to address any conditions raised by the Technical Staff. (Exhibit 20; June 9, 2021 T.28)

Agency Comment

(17) The Department of Permitting, Inspections and Enforcement ("DPIE") noted "no objection" to the instant request. (Exhibit 13 - August 9, 2013 letter from Abraham to Thompson) DPIE also issued a Stormwater Management Concept Approval letter for the use. (Attachment to Exhibit 13)

(18) Applicant was issued a Natural Resource Inventory Equivalency Letter and a Letter of Exemption from the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance for the site. (Attachment to Exhibit 13) The latter expired on October 15, 2017 and the former on October 15, 2020. (Attachment to Exhibit 13)

(19) The Technical Staff recommended approval (with conditions) of the original request as well as the revised request. (Exhibits 13 and 29) Staff proffered the following reasons in support of its conclusion that the Special Exception should be granted:

The site was originally improved in 1925 with a one and one-half-story, approximately 1,993-square-foot building. The existing church has been in operation since 1997. During that time, two building additions were added to the existing structure without the appropriate building permits. The 2010 *Approved Subregion 4 Master Plan and Adopted Sectional Map Amendment* (Subregion 4 Master Plan and SMA) rezoned the subject property from the Commercial Shopping Center (C-S-C) Zone to the R-18 Zone....

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The subject property is located in a designated Growth Boundary Area. The vision for these areas is to maintain a network of sustainable transit supporting, mixed-use, pedestrian-oriented, medium- to high-density neighborhoods, distinct commercial centers, and employment areas that are increasingly transit-serviceable. This application is consistent with the *Plan Prince George's 2035 Approved General Plan* development pattern policies. This subject property is within the Subregion 4 Master Plan and SMA. This application does not conform to the land use recommendations of the 2009 *Approved Marlboro Pike Sector Plan and Sectional Map Amendment* (Marlboro Pike Sector Plan and SMA) for residential use; however, the proposed use is permitted by special exception....

Ingress and egress to the property is via Marlboro Pike which is appropriate....

All property is internal to the subject site and will not adversely affect adjacent residential neighborhoods....

Most of the parking is located at the side and rear of the subject property. There are two parking spaces in what is considered the "front yard" of the subject site and will not negatively impact the aesthetic along Marlboro Pike, because parking spaces are located on the side of the building....

The purposes of Subtitle 27, as set forth in Section 27-102 of the Zoning Ordinance are generally to protect the health, safety, and welfare of the public and promote compatible relationships between various land uses. The subject property was originally used for single-family residential purposes before converting to a religious use. This is an existing development and is in harmony with the purposes of this Subtitle. Therefore, staff finds that the proposed use, with the recommended conditions, and accompanying site plan are in harmony with the purposes of this Subtitle...

The Marlboro Pike Sector Plan and SMA recommends a residential land use. Although the church use is not considered a residential use, it is a permissible use when a special exception is granted. The church has operated at this location since 1997. The purpose of the subject application is to validate the existing structure and use of the property on residentially-zoned property less than one acre. The proposed use also appears to be compatible with the neighboring uses; the property serves as a buffer use between the metal fabricators west of the property and the multifamily residential use (Dunhill Apartments) to the east. Therefore, the proposed use will not substantially impair the integrity of any validly approved master plan or functional master plan, or in the absence of a master plan or functional map plan, the General Plan....

There are no adverse impacts associated with this proposal. As previously stated, the church has operated at this site since 1997 and is well established within the neighborhood. The proposal with recommended conditions, will meet all regulations of the Zoning Ordinance and will not have a negative impact on the health, safety, or welfare of nearby residents or workers in the area. None of the responses from any referrals received by staff indicate that the proposed use will adversely affect the health, safety, or welfare of residence or workers in the area. The proposed addition would have a negligible

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impact on the adjacent transportation network and, therefore, no safety issues are anticipated....

The validation of the existing use, development, and future expansion of the church will not be detrimental to the use or development of adjacent properties or the general neighborhood. There is no vehicular access from internal streets or adjacent properties. The parking for the church is limited to on-site parking, such that they use should not be detrimental to the use or development of adjacent properties or the general neighborhood. The surrounding properties have existing who has identical, commercial, and industrial development. The industrial use and the church use are designated as incompatible uses. The two primary ways that compatibility between uses can be achieved is through the provisions of the landscape manual and ... the required setbacks prescribed therein. It is recommended that the applicant seek alternative compliance and a variance from these requirements, respectively.... The changes to the building (church) have not impeded development that has come to the area within or proximate to the neighborhood. There are numerous revisions [however] that are necessary in order for the site plan to be in compliance which are addressed as recommended conditions....

(Exhibit 13, pp. 4-5 and 7-8)

(20) In its most recent report the Technical Staff explained why it believed the variance should be approved:

The applicant is requesting a variance to the front yard requirement and has provided a statement of justification ... addressing the required findings for approval of a variance It is noted that the structure is 25 feet from the lot line, but the ultimate right-of-way line encroaches into the site, and ...the structure is approximately 18.6 feet from the ultimate right-of-way line.... As such, the applicant is requesting a 11.4-foot variance to the 30-foot front yard requirement....

At the time the additions were constructed, staff finds that the prior zone was C-S-C. Staff is not of the opinion that a variance is justified Based on constructing an unpermitted addition in the time frame of the prior zoning. However, the applicant provides further justification indicating that the current owner did not construct the additions, but nonetheless, is attempting to validate the conditions as they had purchased the property (2006) intending to use and expand the building further based on the existing footprint.

The applicant further justifies fat feet are 18 zone set back requirement is generally applicable to multifamily development and not specific to a church use. The use table requires the 30 foot setback for all other uses," in accordance with the multifamily requirements. The applicant provides that the existing development and use do not pose any problems to the surrounding neighborhood, and that denial of the variance would require demolition of the building and cease of use of the church, which has been operating for many years. The area sector plan ... also recommends buildings be constructed to the street frontage with limited setbacks. In consideration of all of these factors, an extraordinary situation exists for this property....

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The applicant provides that the existing building construction adds to the aesthetic and is in keeping with the character of the neighborhood, and that the church provides charitable needs and goods for the community. The applicant provides that demolition of the building would be an unusual and practical difficulty and exceptional hardship, as it would jeopardize the existing aesthetic and ability of the church to serve the community to its full potential. Given the recommendations of this sector plan regarding building set back and the justification given by the applicant staff finds [the criteria in Section 27-230 (a)(2)] is met....

The variance will not substantially impair the intent, purpose, or integrity of the Approved Marlboro Pike Sector Plan and SMA. Per the Marlboro Pike Sector Plan, the Marlboro Pike Corridor is envisioned as a safe, attractive, walkable, and vibrant community where people live, work, shop, dine, and recreate. The Marlboro Pike Sector Plan recommends the following guidelines for development:

- Encourage new buildings to be built up to the sidewalk without setbacks, with entrances and windows along the street frontage;
- building height should range from two to four stories;
- Building facades should provide pedestrian scale architectural features; and
- New buildings should be built with an orientation facing [Marlboro Pike] and with limited setback.

The front of the existing church building, including the proposed addition, is set back 25 feet from the front property line (approximately 18.6 feet from the ultimate right-of-way) with a building height up 18 feet and faces [Marlboro Pike]. This is consistent with the general recommendations of the Marlboro Pike Sector Plan.

A church has been operating on the site since 1997 and the [applicant indicates] that the church intends on sustaining its strong presence to the neighboring community for many more years. Since they use as a church is permitted by special exception ..., and since the applicant's proposal to retain an addition to the existing building has a minimal impact on the surrounding uses, the granting of the requested variance will not impair the integrity of the 2014 *Plan Prince George's 2035 Approved General Plan* or Master Plan....

(Exhibit 29, pp. 13-15)

(21) Finally, the Planning Director and the Alternative Compliance Committee recommended approval of AC-20017, noting:

- The alternative compliance is requested for the eastern bufferyard only, leaving the site layout unchanged; and
- Applicant will provide a six-foot-high opaque fence adjacent to the residential use as well as a variable width bufferyard (varying from 0 to 20 feet), and 89 planting units within said bufferyard; while this will be less than the minimum width and number of plant units required (20 feet and 148, respectively), inclusion of the

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fence will ensure that any adverse impact upon the multifamily development will be significantly minimized.

(Exhibit 29, Backup pp. 11-15)

APPLICABLE LAW

Special Exception

(1) A special exception for a church in the R-18 Zone, on a lot of less than one (1) acre in size, is permitted by grant of a special exception, in accordance with Sections 27-317 and 27-341.02 of the Zoning Ordinance.

(2) Section 27-317 states:

(a) A Special Exception may be approved if:

- (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
- (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
- (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
- (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
- (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
- (6) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and
- (7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130(b)(5).

(b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:

- (1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or
- (2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

(3) Section 27-341.02(a) provides as follows:

Sec. 27-341.02. Church or similar place of worship.

(a) A church or similar place of worship may be permitted, subject to the following:

- (1) The minimum setback for all buildings shall be twenty-five (25) feet from each lot line;
- (2) When possible, ingress and egress should be located so as to direct traffic away from streets that are internal to a residential subdivision;

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- (3) The applicant shall satisfactorily demonstrate that parking and traffic will not adversely affect adjacent residential neighborhoods;
- (4) When possible, there should be no parking spaces or loading areas located in the front yard; and
- (5) The maximum allowable lot coverage for the zone in which the use is proposed shall not be increased.

(4) Section 27-442(c) of the Zoning Ordinance provides that lot coverage for “Other Allowed Uses” (which would include churches on less than one (1) acre) is limited to 60%. Section 27-442 (e) of the Zoning Ordinance requires a 30-foot front yard setback from the ultimate right-of-way of Marlboro Pike.

(5) Section 27-436 (a) of the Zoning Ordinance set forth the purposes of the R-18 Zone:

(a) Purposes.

(1) The purposes of the R-18 Zone are:

- (A) To make available suitable sites for multifamily developments of low and moderate density and building bulk;
- (B) To provide for this type of development at locations recommended in a Master Plan, or at other locations which are found suitable by the District Council;
- (C) To provide for this type of development at locations in the immediate vicinity of the moderate-sized commercial centers of the County; and
- (D) To permit the development of moderately tall multifamily buildings, provided they are surrounded by sufficient open space in order to prevent detrimental effects on the use or development of other properties in the general vicinity.

Variance

(6) Applicant’s request for a variance must satisfy the criteria set forth in Section 27-230 (a) of the Zoning Ordinance. This Section provides as follows:

A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:

- (1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;
- (2) The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and
- (3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

(7) An area variance (such as the one requested herein) need only satisfy the “practical difficulties” standard. (See, Richard Roeser Professional Builders, Inc. v. Anne Arundel County, 368 Md. 294, 793 A.2d 545 (2001)) “Practical difficulties” has been defined in Carney v. Baltimore, 201 Md.130,137 (1952), as follows:

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The expression “practical difficulties or unnecessary hardship” means difficulties or hardships which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant. Exceptions on the ground of practical difficulties or unnecessary hardships should not be made except where the burden of the general rule upon the individual property would not, because of its unique circumstances, serve the essential legislative policy, and so would constitute an entirely unnecessary and unwanted invasion of the basic right of private property.

(8) Finally, the hardship may not be self-created. As noted by the Court of Appeals in Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC., 439 Md.588, 623-624 (2013):

[T]he critical issue in determining whether a hardship is self-created is whether the property owner could have avoided the need for a variance. In other words, if a property owner has a hand in creating the ‘peculiar circumstances’ that cause his need for a variance, the owner’s hardship is self-created. But when the ‘peculiar circumstances’ arise from the zoning restrictions themselves, the owner’s hardship is not self-created....

Special Exception

(9) The Court of Appeals provided the standard to be applied in the review of a Special Exception application in Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981):

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

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CONCLUSIONS OF LAW

(1) Section 27-102 sets forth the general purposes of the Zoning Ordinance. One of the most important purposes is

(2) To implement the General Plan, Area Master Plans, and Functional Master Plans

This purpose is satisfied as this is a use that predated the current zoning, located adjacent to a collector roadway in an existing neighborhood. The use implements the Established Communities goal of appropriate infill development, the Master Plan's suggestion that churches be located in residential communities, limited impact upon public facilities, and no impact on woodland or environmental features.

The requested use will be in conformance with the following applicable purposes in Section 27-102 since it provides a place of community worship within an existing structure, in a manner that will not negatively impact its surroundings:

- (1) To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County
- (4) To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business
- (12) To insure the social ... stability of all parts of the County

The request will further the following purposes of the Zoning Ordinance because the small church will utilize an existing structure that covers less than 54.4% of the lot, will provide landscaping and fencing in accordance with applicable provisions of the Landscape Manual and the recommendation of the Alternative Compliance Committee, will not change the residential character of the neighborhood since parking is onsite and to the rear of the property, nor lead to increased traffic congestion:

- (5) To provide adequate light, air, and privacy
- (6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development
- (10) To prevent the overcrowding of land

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- (11) To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions

The use must satisfy the purposes of the R-18 Zone, *supra*. The District Council has predetermined that churches are compatible with said purposes by allowing the use in the zone upon approval of a special exception. Otherwise, all purposes in Section 27-436 solely address multifamily development.

(Section 27-317(a)(1))

- (2) If the Variance and Alternative Compliance are approved the request is in compliance with all applicable requirements and regulations of the Zoning Ordinance. (Section 27-317(a)(2))

- (3) For reasons noted above, the Application will not substantially impair the integrity of the Marlboro Pike Sector Plan, the Subregion 4 Master Plan, nor any applicable Functional Master Plan. (Section 27-317 (a)(3))

- (4) It has been held that a zoning authority may not reject a zoning application based on alleged prior zoning violations. (Klein v. Colonial Pipeline Co., 55 Md. App. 324, 462 A.2d 546 (1982)) I believe the holding in *Klein* would also apply to this Application. Additionally, this use has existed at this location for over two decades with no indication in the record that it has adversely impacted the surrounding uses, and every indication that it has benefited those who attend (since the church has thrived). I cannot find that the requested Church would adversely affect the health, safety or welfare of residents/workers in the area, or that it would be detrimental to the use or development of adjacent properties or the general neighborhood. (Sections 27-317 (a)(4) and (5))

- (5) The property has been issued a Standard Letter of Exemption from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance. It has expired; a condition of approval addresses the need to provide a current letter. (Section 27-317 (a)(6))

- (6) The Applicant has been issued a Natural Resources Inventory Exemption Letter because there are no regulated environmental features on site. However, it too has expired, and a condition of approval will require that a current letter be submitted. (Section 27-317 (a)(7))

- (7) The property does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317 (b))

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(8) The church satisfies the criteria that it be located at least 25 feet from all lot lines. (Section 27-341.02(a)(1)) The site is accessed solely from Marlboro Pike and there will be no direct traffic coming from streets internal to a subdivision. (Section 27-341.02(a)(2)) The request is for a very small existing church, limited to 128 seats at a maximum, so resulting parking and traffic will be minimal and should not adversely affect adjacent residential neighborhoods. (Section 27-341.02(a)(3)) No parking or loading spaces will be provided in the front yard. (Section 27-341.02(a)(4)) Finally, the maximum allowable lot coverage for a church located on less than 1 acre in the R-18 Zone is 60%; the proposed lot coverage is approximately 54.4%. (Section 27-341.02(a)(5))

(9) Applicant has requested approval of AC-20017 which will allow an alternative design to conform with the requirements of Section 4.7 of the Landscape Manual, pertaining to the buffering to lessen any impact on the multifamily development to the east of the site. The topography of the site and the width of the area to the east of the site (which is constrained by the location of the initial structure constructed circa 1925) mandates that some of the parking spaces be located closer to the abutting Dunhill Village Apartments. Applicant's alternative compliance will include plantings, 186' of bufferyard length, and a 6-foot-high opaque fence, resulting in an equally effective buffering.

(10) The application requires the grant of a variance from the requirement in Section 27-442(e) that the building be thirty (30) feet from the front street line or ultimate right-of-way of Marlboro Pike. Applicant seeks an 11.4' variance from this requirement. In order to grant the variance, I must first find something unique about the property or an extraordinary situation. The property is oddly and differently shaped from those which it abuts. However, Applicant primarily argues that it has also been subjected to the extraordinary situation of having to meet a setback requirement that was imposed as a result of the rezoning of the property that occurred years after the church was constructed and began operating on the site. From the late 90s until the property was rezoned the use was legal and met all setback requirements. Upon the rezoning, it did not. This predicament was not created by Applicant, and the change in setback requirement is the proximate cause of Applicant's hardship. Accordingly, I find that an extraordinary condition exists that would support the grant of a variance. (Section 27-230(a)) If the request is not granted it will result in the practical difficulty of Applicant having to tear down the front entry to this relatively small church. (Section 27-230(a)(2)) As noted by Applicant's expert witness and the Technical Staff, *supra*, the variance will not substantially impair the intent, purpose or integrity of the General Plan or Master Plans. It is the type of infill development lauded in the Plans since it has not had (and is not anticipated to have) any adverse impact upon public facilities and there is no express language in the Plans concerning this site. (Section 27-230(a)(3))

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(11) Finally, I must address Applicant's request that a "future" addition be approved at this time. A special exception may be granted where the use at the subject site will have no more of an adverse impact there than it would elsewhere in the R-18 Zone. The first step in reaching this finding is knowing exactly what the use will be. Applicant has submitted insufficient information to reach that finding and the pictures it submitted raise some concern about the effect that the lighting would have on some of the multifamily dwelling units located to the east. Accordingly, it must provide dimensions, elevations, a photometric plan, and some indication of what the additional square footage will house, or Applicant must remove that "future" addition from the Site Plan.

DISPOSITION

Special Exception 4694, Variance 4694 and AC -20017 are Approved, subject to the following conditions:

- (1) Prior to signature approval of this request and the issuance of any building permits, Applicant shall revise the Special Exception Site Plan and Landscape Plan as follows:
 - a. Provide a Schedule 4.7-1 on the site plan showing a Type 'B' Landscape Bufferyard, in accordance with Section 4.7 of the 2010 *Prince George's County Landscape Manual*, along the southern property line (vacant residential site).
 - b. Update the site plan to show a 60 percent maximum allowable lot coverage for the site.
 - c. Label the number of stories of the building and clarify the gross floor area, for the 1925 building and each addition.
 - d. Regarding the future building addition shown on the plans, either remove the from the plans, or provide the following:
 - (1) Colored, detailed architectural elevations of all sides of the proposed building addition, including identification of construction materials and how it relates to the existing building.
- (2) Clarify the proposed square footage and number of stories.
- (3) Building-mounted lighting shall be shown on architectural elevations.
- (4) Revise the proposed lot coverage calculation to account for the building expansion and update the total proposed square footage in the general notes.

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- (5) Include a Note that the addition will not provide additional church seating; if that is desired in the future Applicant must request a revision to its Special Exception.
 - e. Update the landscape schedule to clearly identify each species as native or nonnative.
 - f. Revise the proposed landscaping and landscape schedule for compliance with Section 4.3-2 of the 2010 *Prince George's County Landscape Manual*, demonstrating a minimum of one shade tree for each 300 square feet of interior planting area and fraction thereof is required and provided.
 - g. Clearly dimension the front building setback from the ultimate right-of-way line.
 - h. Identify the subject property's existing Parcel designation in the general notes.
- (2) Prior to signature approval of the special exception, the following items shall be submitted:
 - a. A photometric plan demonstrating conformance to Section 27-562 of the Prince George's County Zoning Ordinance.
 - b. A valid approved standard letter of exemption from the Prince George's County Woodland and Wildlife Habitat Conservation Ordinance.
 - c. A valid approved Natural Resources Inventory (NRI) Equivalency Letter.

[Note: The revised Special Exception Site Plan and Landscape Plan is Exhibit 31]