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OFFICE OF THE ZONING HEARING EXAMINER
FOR PRINCE GEORGE'S COUNTY

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WORD POWER TABERNACLE BAPTIST	:	Case No. SE/VSE-4694
CHURCH	:	AC 20017
	:	
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A hearing in the above-entitled matter was held on June 9, 2021, at the Prince George's County Office of Zoning, County Administration Building, Room 2174, Upper Marlboro, Maryland 20772 before:

Maurene McNeil
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Applicant:

Traci Scudder, Esq.

On Behalf of People's Zoning:

Stan Brown

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P R O C E E D I N G S

1
2 AUTOMATED RECORDING: This conference will now be
3 recorded.

4 MS. MCNEIL: Okay. Good morning everyone, I'm
5 Maurene Epps McNeil, I'm going to be the Examiner today.
6 And before we start, let's note that anyone not speaking to
7 turn their mics off because we get feedback. Okay. It's
8 June 9, 2021, we are holding a virtual hearing for Special
9 Exception Variance Request 4694 and Alternative Compliance
10 Request 20017 and this is to add additional square footage
11 to an existing church located on less than an acre, a
12 request for a variance to certain setback requirements, and
13 a request for alternative compliance to the Landscape
14 Manual.

15 Before we start, a couple of rules, the main one
16 is keep your mic off if you're not speaking. All
17 participants should have signed up as a person of record
18 already, but if you have not, please go into the chat
19 section and add your name, your address and your e-mail
20 address.

21 All exhibits should have been submitted by now but
22 if we're going to have new exhibits, please let me know and
23 we'll have a chance to discuss adding them to the record.
24 And if you get pushed out of the hearing for any reason, you
25 should be able to get back in with the link that was sent to

1 you.

2 Okay, if counsel would identify themselves for the
3 record.

4 MS. SCUDDER: Good morning, Madam Examiner and Mr.
5 Brown, Traci Scudder, for the record.

6 MR. BROWN: Good morning, Stan Brown, People's
7 Zoning Council.

8 MS. MCNEIL: Ms. Scudder, I --

9 PASTOR MCLAUGHLIN: Good morning.

10 MS. MCNEIL: Oh.

11 PASTOR MCLAUGHLIN: David McLaughlin, Towson
12 McLaughlin, we're probably about to settle that.

13 MS. MCNEIL: Good morning, Pastor. I'm looking
14 and it doesn't appear that there's anyone here in opposition
15 to this request. Because I'm assuming that Mr. Ferguson is
16 here as your witness?

17 MS. SCUDDER: Yes, ma'am.

18 MS. MCNEIL: Okay. Then you may proceed.

19 MS. SCUDDER: Thank you. First, I just wanted to
20 take up a couple of preliminarily matters, I'm trying to
21 work from both of my screens here, one second. We have a
22 sign posting affidavit to submit this morning as well as the
23 photo. So I would like to e-mail that to you right now,
24 Madam Examiner. I just hit the send button, so that should
25 be coming through. I copied your staff and Mr. Brown.

1 MS. MCNEIL: Does anyone know what number that
2 will be? I think we stopped at 10 exhibits, but I'm not
3 sure.

4 THE CLERK: It will be Exhibit 11.

5 MS. MCNEIL: Okay. You're going to make it A and
6 B?

7 THE CLERK: Yes.

8 MS. MCNEIL: Okay.

9 THE CLERK: I can make it A and B.

10 (Hearing Exhibit Nos. 11A-11B
11 were marked for
12 identification.)

13 MS. SCUDDER: Madam Examiner, with regard to the
14 exhibit list, did you start a brand new one, because I have
15 one that has 22 exhibits on it.

16 MS. MCNEIL: Okay. That was going to a
17 preliminarily matter for me as well. This case started in
18 approximately 2013 and then it sort of got derailed in the
19 middle of the hearing because it became apparent that a
20 variance was required and after that unfortunately at some
21 point the former attorney passed away, and there have been
22 some delay. And so I requested that the matter be dismissed
23 because it had been pending too long, the Council disagreed
24 with me, so the case continues. If you want those 22
25 exhibits to be part of this record, that's fine. I just

1 wasn't sure if you as new counsel wanted or needed all of
2 them. So if you're saying you do --

3 MS. SCUDDER: Yes.

4 MS. MCNEIL: -- then Ms. Bah, you're going to have
5 to pick up with our first exhibit in this case as Exhibit 23
6 and continue numbering and then we're going to have to go in
7 and make sure that the original file is digitized.

8 MS. SCUDDER: Yes, that's fine.

9 MS. MCNEIL: And so if that is your request, we
10 will do that. That's your request, oops somebody.

11 MS. SCUDDER: Yes, I would like to request that
12 that prior record become a part of the new record, so yes, I
13 agree that about starting the exhibits at 23.

14 MS. MCNEIL: Okay. So you'll have to give us a
15 moment to change the numbers in this one, but we will do
16 that. We'll make sure the entire record is appropriate.
17 Anything further preliminarily?

18 MS. SCUDDER: No, I just have a very brief opening
19 statement. Okay. Then I'll proceed.

20 So this morning I have the pleasure of
21 representing Pastor David McLaughlin and Word Power
22 Tabernacle Baptist Church, which is located at 5715 Marlboro
23 Pike in District Heights, Maryland. Special Exception 4694,
24 which is before the Examiner this morning, is a request for
25 Special Exception approval of a church located on

1 residentially zoned property less than one acre in size and
2 to validate existing site conditions.

3 This case was originally accepted on July 15,
4 2013. Three prior hearings were held on July 23, 2016,
5 August 15, 2016 and September 28, 2016. During the last
6 hearing, this case was left open because it needed a
7 variance and alternative compliance, as you just mentioned,
8 Madam Examiner.

9 Fast forward several years and I entered my
10 appearance in this case in September of 2019 to appeal an
11 order of dismissal. As you mentioned, that matter went to
12 the Council which approved reinstatement of the case and
13 remanded it back to the Zoning Hearing Examiner.

14 So hopefully we can take this case across the
15 finish line today. This Special Exception application now
16 includes an alternative compliance application, AC-20017 to
17 address a Landscape Manual requirement along the eastern
18 property line. The AC was submitted to comply with
19 Condition 3C of the original 2016 Technical Staff Report,
20 and the AC has received a recommendation of approval from
21 the Planning Director and it's now a part of this record, I
22 believe.

23 A variation request was also submitted to Park and
24 Planning on October 31, 2020, and both of these matters will
25 be presented later in the case by our land planner, Mark

1 Ferguson.

2 Since it has been some time since this case was
3 presented to you, Madam Examiner, I would just note that you
4 know nothing has really changed since the 2016 hearings.
5 You can still rely on the statement of justification that is
6 in the record, which was prepared by Mr. Mike Nagy (phonetic
7 sp.) and I have reviewed it and it's still accurate, it just
8 lacks the variance request and the AC, but again, you have
9 those in the record now. Additionally, the Site Plan that
10 is currently in the record is still accurate and our land
11 planner, Mark Ferguson, will discuss the Site Plan in more
12 detail later in his upcoming testimony.

13 And finally I would just note that you know this
14 church has been operating at this location since 1997.
15 There is no use and occupancy permit on record for the
16 church, so you know this case is really about, at least from
17 my perspective, it's about, you know, validating existing
18 site conditions and helping the church get legally situated.
19 The congregation has been there for nearly 25 years and it's
20 hard to believe they started this process eight years ago
21 and they're still not there yet, but there's been a lot that
22 has happened. I think they also had some, you know, very
23 large expenses that they had to pay down and I think that
24 was part of what delayed the case after the last hearing.
25 And then of course that delay got their case dismissed and

1 then the pandemic hit. So hopefully now we can move this
2 case forward and maybe Pastor McLaughlin can pray for a
3 blessing that he receives a favorable outcome, and there
4 will be no appeal or call up prayerfully.

5 And with that, Madam Examiner, we are ready to
6 proceed unless you or Mr. Brown have any questions for me at
7 this point.

8 MS. MCNEIL: Mr. Brown?

9 MR. BROWN: (No audible response.)

10 MS. MCNEIL: You're muted.

11 MR. BROWN: Yes, before we ask Pastor McLaughlin
12 some of the questions, there's one issue we need to resolve.
13 I just looked at the State Department of Assessment and
14 Taxation website and there is no entity by the name of Word
15 Power Baptist Tabernacle, Incorporated. There is a Word
16 Power Baptist Tabernacle and it was forfeited on October 11,
17 2019. It has the same address, that 5715 Marlboro Pike, so
18 Ms. Scudder, clearly the case is going to have to be held
19 open regardless of what evidence you put in today because
20 the trade name Word Power Baptist Tabernacle is forfeited
21 and the incorporated is not the formal name of this entity
22 that was created in 2006. So do you have something that you
23 want to say that that issue has already been resolved, but
24 according to the state website as of today, it's a forfeited
25 entity.

1 MS. SCUDDER: Thank you for bringing that up, Mr.
2 Brown. We were actually going to address that in Pastor
3 McLaughlin's testimony. I just sent you some documentation,
4 I had recommended that the Pastor hire a business attorney
5 several months ago, which he did follow my advice and he
6 hired a business attorney that was going, it was basically a
7 matter of, you know, filing some annual returns over a span
8 of time. So the attorney did that and he has now submitted
9 some, I thought this was resolved and the attorney had
10 already, I was surprised when I logged on the other day to
11 check for the certificate, that the entity was still in a
12 forfeited status. So I reached out to the business attorney
13 and he got on it and he sent in the Articles of Revival. I
14 just sent you that documentation. He says that it will be
15 probably a few days before the corporation will go into good
16 standing and at that point I'll be able to submit it into
17 the record, if that's okay.

18 MR. BROWN: Well, of course I haven't reviewed
19 whatever you just e-mailed me, but again there's a
20 discrepancy between the name incorporated and just the trade
21 name. I mean is the formal name according to the state does
22 not include incorporated in the name.

23 MS. SCUDDER: I didn't hear that last part. The
24 formal name that --

25 MR. BROWN: The formal name of the entity under

1 the state's registration is Word Power Baptist Tabernacle,
2 there is no incorporated. And so I mean again for formality
3 purposes going forward, the church needs to understand that
4 incorporated is not part of its name.

5 MS. SCUDDER: Okay. Got it. Okay. So I'll make
6 sure that we address that as well, Mr. Brown, when we submit
7 the certificate of good standing. I'll need to look into
8 that and talk to the Pastor, but I hear what you're saying.
9 Okay.

10 MS. MCNEIL: Okay. Your first witness?

11 MS. SCUDDER: Yes, I would like to call Pastor
12 David McLaughlin.

13 MS. MCNEIL: Pastor McLaughlin --

14 PASTOR MCLAUGHLIN: Good morning.

15 MS. MCNEIL: -- good morning. Do you swear or
16 affirm under the penalties of perjury that the testimony you
17 shall give will be the truth and nothing but the truth?

18 PASTOR MCLAUGHLIN: I do.

19 MS. SCUDDER: Okay. Did I pronounce your name
20 correctly, Pastor? Is it McLaughlin or McLaughlin?

21 PASTOR MCLAUGHLIN: It's all where you're from,
22 but that's, that's correct.

23 MS. SCUDDER: McLaughlin?

24 PASTOR MCLAUGHLIN: Some say McLaughlin some say
25 McLaughlin, but good enough.

1 MS. SCUDDER: Okay.

2 PASTOR MCLAUGHLIN: First name, David.

3 MS. SCUDDER: All right. And you're the pastor of
4 Word Power Baptist Tabernacle Church, which is the applicant
5 in this case, is that correct?

6 PASTOR MCLAUGHLIN: That is correct.

7 MS. SCUDDER: And you also testified before the
8 Examiner in this case on June 23rd, August 15th, September
9 28, 2016, is that correct?

10 PASTOR MCLAUGHLIN: That is also correct.

11 MS. SCUDDER: Okay. And Word Power Baptist
12 Tabernacle is still the technical owner of the property,
13 right?

14 PASTOR MCLAUGHLIN: Yes.

15 MS. SCUDDER: And we just addressed the issue of
16 the status of the corporation, so I'm not going to get into
17 those questions. But we'll get that taken care of.

18 PASTOR MCLAUGHLIN: Okay.

19 MS. SCUDDER: I know it's been several years, but
20 do you recall the prior hearings in this matter?

21 PASTOR MCLAUGHLIN: I do.

22 MS. SCUDDER: And have you had a chance to review
23 the new Technical Staff Report in this case?

24 PASTOR MCLAUGHLIN: Yes, I have.

25 MS. SCUDDER: And you're in agreement with the

1 findings and recommendations that are in that report?

2 PASTOR MCLAUGHLIN: Yes, I am. I am in agreement
3 with --

4 MS. SCUDDER: And then there's some conditions,
5 I'm sorry to cut you off, but are you in agreement with all
6 the conditions?

7 PASTOR MCLAUGHLIN: There are a couple of things
8 about landscaping that I think need to be looked at, but for
9 the most, yes.

10 MS. SCUDDER: Okay. And Mr. Ferguson will address
11 these when he testifies later.

12 PASTOR MCLAUGHLIN: Okay. All right, yes.

13 MS. SCUDDER: Okay. Madam Examiner, there are a
14 couple of conditions that Mr. Ferguson, that's what Pastor
15 McLaughlin is talking about, there are a couple of
16 conditions that we would like to possibly have removed
17 amended, but we'll have Mr. Ferguson address those later.
18 Pastor McLaughlin, the church currently has 128 seats, is
19 that correct?

20 PASTOR MCLAUGHLIN: That is correct.

21 MS. SCUDDER: Okay. And how many parking spaces
22 do you all have?

23 PASTOR MCLAUGHLIN: There's 27.

24 MS. SCUDDER: Or is it 32?

25 PASTOR MCLAUGHLIN: 27 and, well, that, that would

1 make 32, yes, but there's a one, there's a couple that the
2 line I think is somewhat faded but there is, there was
3 originally 32, correct. That is correct.

4 MS. SCUDDER: Do you find that the parking that
5 currently exists at the church is adequate to support your
6 congregation?

7 PASTOR MCLAUGHLIN: It's more than enough. Our
8 congregation is a very small congregation, it's more than
9 enough even with visitors we still have sometimes parking
10 spaces left over.

11 MS. SCUDDER: Okay. That's good. And you all
12 have an existing sign, is that correct?

13 PASTOR MCLAUGHLIN: That is correct.

14 MS. SCUDDER: Where is that sign located?

15 PASTOR MCLAUGHLIN: It's in the front of the
16 building facing the building it'd be right to the left of
17 the entrance, front entrance.

18 MS. SCUDDER: And that sign is shown on your Site
19 Plan, correct?

20 PASTOR MCLAUGHLIN: Correct. That is correct.

21 MS. SCUDDER: Okay. In your opinion, do you think
22 if this application were to be approved, would there be any
23 kind of negative impact on, well, let me ask this. What's
24 on each side of you?

25 PASTOR MCLAUGHLIN: Okay. Again facing the front

1 door, to the left there is an apartment building, I think
2 it's Dunhill Village Apartments (phonetic sp.) and on the
3 right side there is an industrial company, I think it's
4 Copeland, Copeland's or Kaplan's Fabrication Company.
5 Across the street there is an American Legion. Behind our
6 building there is other apartments, we are, I guess grafted
7 into the community housing to the far right I think that's
8 Penn Street (phonetic sp.). There's another church, Capital
9 Church of God, it sits across the street from us and then
10 there's another church that sits at the corner of Marlboro
11 Pike and Sylvia Road (phonetic sp.) and I think that's a
12 church called The Church on the Pike, Lighthouse Church on
13 the Pike. So we are in the community there.

14 MS. SCUDDER: Now do you think approval of this
15 application would have any kind of adverse impact on any of
16 those neighboring properties?

17 PASTOR MCLAUGHLIN: Oh no, not at all. We have a
18 very good --

19 MS. SCUDDER: Is there anything else --

20 PASTOR MCLAUGHLIN: -- work relationship with
21 them, with our, our community.

22 MS. SCUDDER: Good. Is there anything else that
23 you would like to testify about this morning or relay to the
24 Examiner or Mr. Brown?

25 PASTOR MCLAUGHLIN: Well, I want to say first,

1 thank you all for taking the time to look at this matter.
2 It's been a long matter, a long drawn out situation, things
3 that we believe that we were doing that was in line with
4 regulations, based upon what was told of us to do. Some
5 things we've done out of ignorance and so forth, but we
6 tried to make it right and of course I appreciate you all
7 assisting now to help us as a church and a part of the
8 community to make sure that we are in right standing with
9 the government as well a church should be. So I just want
10 to cross the line and get this part behind us. Mr. Nagy,
11 who I relied upon greatly, I think he done a lot, we didn't
12 always come in on the same page but for the most part we,
13 we're very thankful for Mike Nagy for what he did do and now
14 we're thankful for our Attorney Scudder, who is working with
15 us and hopefully we will be able to complete this task.

16 MS. SCUDDER: This reminds me, so you all had
17 applied for a building permit previously, is that correct?

18 PASTOR MCLAUGHLIN: That is correct, yes.

19 MS. SCUDDER: And that building permit was to
20 validate some construction, there was some additions that
21 were made that did not have the proper permits, right?

22 PASTOR MCLAUGHLIN: Yes. We contracted a company
23 and of course for the permits, for that part, only to
24 discover that the company did not do their due diligence as
25 in obtaining the permits. We went as far as filing a

1 complaint once we noticed, was made aware that this company
2 was not legit, we reported it to the State of Maryland, I
3 think Ethics Committee up in Baltimore and so forth. But we
4 did apply for a building permit, yes.

5 MS. SCUDDER: Okay. And that building permit is
6 probably expired by now and we talked about the fact that
7 you'll probably have to either get it reopened or apply for
8 a new one, if this approval is granted for the Special
9 Exception.

10 PASTOR MCLAUGHLIN: Yes.

11 MS. SCUDDER: Yes. Okay. And one more question.
12 I believe your current Site Plan also shows a proposed
13 addition, is that correct? Something that you may do in the
14 future?

15 PASTOR MCLAUGHLIN: In the future, yes. I
16 recognize the fact that I am no longer 16 and I, I hope to
17 be able to do something in the future. It won't be now, but
18 somewhere in the future, yes.

19 MS. SCUDDER: Okay. I have no further questions
20 for the pastor, Madam Examiner and Mr. Brown and if you all
21 do.

22 MS. MCNEIL: Mr. Ferguson is going to talk about
23 everything on the Site Plan, that proposed addition, et
24 cetera?

25 MS. SCUDDER: Yes, ma'am.

1 MS. MCNEIL: Okay. And I'm happy to hear about
2 the building permit application because I had a concern that
3 how do you validate something and not know that it's safe.
4 So if this were approved, you all don't have any objection
5 to getting a building permit for those existing additions
6 that were made without a permit, is that correct?

7 PASTOR MCLAUGHLIN: That's correct.

8 MS. MCNEIL: Okay. And the last thing, throughout
9 the record it says this church has been there since, what
10 was it 1996?

11 MS. SCUDDER: 1997.

12 MS. MCNEIL: But you weren't there then so how do
13 you all know, I mean how do you know how long the church has
14 been there, if there was no U&O?

15 PASTOR MCLAUGHLIN: Is that for me?

16 MS. MCNEIL: Yes, sir.

17 PASTOR MCLAUGHLIN: We are the, we are the
18 founders, we went there on day one.

19 MS. MCNEIL: You were there in 1996, okay. That
20 explains it.

21 PASTOR MCLAUGHLIN: Yes. Yes, ma'am.

22 MS. MCNEIL: I just thought I heard your attorney
23 say that you purchased it in 2000.

24 MS. SCUDDER: No, I think I said 1997 and they've
25 been there almost 25 years.

1 MS. MCNEIL: Okay. Thank you. Mr. Brown, do you
2 have any questions?

3 MR. BROWN: Yes, I mean just a couple of follow up
4 on what you, yes, I'm looking at the State Department of
5 Assessment and Taxation documentation for ownership of the
6 property and Word Power Baptist Tabernacle, Incorporated
7 purchased this property on May 17, 2007, not 1969 or 1967 or
8 whatever was reference a moment ago. So explain to me, if
9 you could Pastor, you indicated a moment ago that the church
10 purchased this property when?

11 PASTOR MCLAUGHLIN: We started out as a rental of
12 that property when we first went there and then we purchased
13 it.

14 MR. BROWN: All right. So you were renting the
15 property prior to May 17, 2007 and the church purchased it
16 in 2007, that's accurate, correct?

17 PASTOR MCLAUGHLIN: I do believe that's correct.

18 MR. BROWN: All right.

19 PASTOR MCLAUGHLIN: Yes.

20 MR. BROWN: And also the ownership of the land is
21 Word Power Baptist Tabernacle, Incorporated, which your
22 Articles of Incorporation filed with the State of Maryland
23 back in 2007, again is not incorporated and it raises this
24 issue that you may have a problem in the future. First, you
25 have a D.C./New Jersey address for the church, a mailing

1 address, correct?

2 PASTOR MCLAUGHLIN: That was our registered agent.

3 MR. BROWN: That's the registered agent. All
4 right.

5 PASTOR MCLAUGHLIN: At that time it was.

6 MR. BROWN: All right. So who is the resident
7 agent now?

8 PASTOR MCLAUGHLIN: I am, sir, as the registered
9 agent.

10 MR. BROWN: All right. And again, we're talking
11 about when we're looking at this documentation that Ms.
12 Scudder just sent us I don't know why you guys hired a New
13 York law firm to file all --

14 MS. SCUDDER: Mr. Brown, you know, it's a virtual
15 firm. I think you've met Mr. Hefner (phonetic sp.) before.
16 I think I brought him to your office one day and introduced
17 him, but he's local. It's just that he's joined a firm and
18 you know these days, you know --

19 MR. BROWN: All right. Well that's not my --

20 MS. SCUDDER: -- he's virtual.

21 MR. BROWN: -- of my business, I just found it
22 curious. But the other issue that you're going to have to
23 straighten out when the case is held open is that even
24 though he filed the Articles of Revival, the reason the
25 company is still forfeited is because you have not filed

1 some personal property taxes for 2021, even though it is a
2 nonprofit religious organization, you're still required to
3 file personal property taxes every year. In September of
4 last year, one of your lawyers filed some personal property
5 returns for the last 15 years for you and it's brought it
6 back almost into compliance. So you still need to file what
7 was due on April 15th of this year for 2021 and until that
8 personal property return is filed, the Articles of Revival
9 are not going to put you back in good standing and get rid
10 of the forfeiture. So just so you know you need to do that.

11 PASTOR MCLAUGHLIN: All right. Thank you. Yes.

12 MS. SCUDDER: Thank you, Mr. Brown.

13 MR. BROWN: All right. No other questions.

14 MS. MCNEIL: Thank you, Pastor. The next witness?

15 MS. SCUDDER: Madam Examiner, I would like to call
16 Mark Ferguson as my next witness.

17 MS. MCNEIL: Okay. Good morning, Mr. Ferguson.

18 MR. FERGUSON: Good morning, Madam Examiner. How
19 are you today?

20 MS. MCNEIL: Good, thank you.

21 MR. FERGUSON: Good.

22 MS. MCNEIL: Do you swear or affirm under the
23 penalties of perjury that the testimony you shall give will
24 be the truth and nothing but the truth?

25 MR. FERGUSON: I do.

1 MS. SCUDDER: Good morning, Mr. Ferguson.

2 MR. FERGUSON: Good morning, Madam Scudder.

3 MS. SCUDDER: Okay. You've stated your name for
4 the record and your occupation, please?

5 MR. FERGUSON: Yes, my name is Mark Ferguson, my
6 business address has changed from the previous record, it's
7 now 9500 Medical Center Drive, Suite 480, I'm sorry, Largo,
8 Maryland 20774 and I am a land planner.

9 MS. SCUDDER: Madam Examiner, as you know Mr.
10 Ferguson has qualified previously on many, many occasions as
11 an expert in the area of land planning before the Hearing
12 Examiner and I would like to tender him as an expert at this
13 time in the area of land planning.

14 MS. MCNEIL: Absent any opposition, which I doubt,
15 you'll be accepted as an expert in the area of land use
16 planning.

17 MR. FERGUSON: Thank you, Madam Examiner.

18 MS. SCUDDER: Mark, let me ask, or Mr. Ferguson,
19 has your resume changed? I think Madam Examiner does have
20 one in the record, has that resume changed since 2016?

21 MR. FERGUSON: I'm sure it's gotten longer in the
22 last five years.

23 MS. SCUDDER: Okay. Well I'm going to make a note
24 to shoot over Mark's updated resume, Madam Examiner.

25 MS. MCNEIL: All right.

1 MS. SCUDDER: Actually, I can do that right now.
2 I can do that right now, one second, please.

3 MS. MCNEIL: Ms. Bah, I'm thinking it might up end
4 being Exhibit 34, but we will definitely clarify that after
5 the hearing.

6 THE CLERK: Okay.

7 MS. SCUDDER: Okay. Give me one more second here.
8 Almost got it. Okay. Thank you, Madam Examiner, I just
9 sent that to you.

10 MS. MCNEIL: Thank you.

11 MS. SCUDDER: Okay. Mr. Ferguson, have you had an
12 opportunity to perform a recent site inspection?

13 MR. FERGUSON: I have.

14 MS. SCUDDER: And have you had an opportunity to
15 review the latest Technical Staff Report in this case?

16 MR. FERGUSON: I have.

17 MS. SCUDDER: And are you aware of anything that
18 has changed since 2016 in terms of any Master Plan updates
19 or policy documents that may have changed since the last
20 hearings?

21 MR. FERGUSON: Yes. That's, I think the essence
22 of my testimony, is really that the circumstances of the
23 core of the case, which is to say the special exception
24 criteria have, do remain the same. The neighborhood is the
25 same and it's not really had substantive change. I believe

1 there was a gas station approved within the neighborhood
2 limits on the other side of Marlboro Pike, some couple of
3 blocks away. But really, everything remains substantively
4 the same that it was five years ago. The applicable Master
5 Plan remains the Marlboro Pike Sector Plan, the General Plan
6 remains the General Plan. While the Green Infrastructure
7 Plan has been updated in that intervening time, its
8 application to this subject site doesn't change because
9 there are no regulated natural features on it. You know,
10 the transportation is the same, and the provision that the
11 ordinance regarding the general criteria for approval and
12 the particular criteria for approval of a church on parcels
13 of less than an acre remain the same. So my 2016 report
14 remains my testimony today and I think that's probably the
15 fair summary of that. I think --

16 MS. MCNEIL: Excuse me one second, Ms. Scudder.

17 MS. SCUDDER: Yes.

18 MS. MCNEIL: Mr. Ferguson, did the Landscape
19 Manual change or is it still predating the 2014 General
20 Plan, because I was going to ask why they keep talking about
21 the developed tier.

22 MR. FERGUSON: Well the developed tier is still a
23 part of the Landscape Manual that's in force now. So even
24 though the General Plan that contained those tiers went away
25 in 2014, the Landscape Manual and I believe that the

1 updated, I'm going to check now of the Landscape Manual, no
2 that of course even that predated this case as well. So
3 even that does remain the same and continued even in the
4 current iteration still refers back to those, the older
5 General Plan tiers in the applicability.

6 MS. MCNEIL: Thank you. Thank you. Sorry, Ms.
7 Scudder.

8 MS. SCUDDER: No problem.

9 MR. FERGUSON: So the, I'm sorry, I was going to
10 mention, the only thing in this case that really is new from
11 my perspective, the alternative compliance and the variance
12 application aside, is the new Staff Report. There are only
13 a couple of things that I would like to highlight in that,
14 and that would be the discussion on page 4 regarding the
15 description of the existing building. The 2016 Staff Report
16 referred to a building of one and a half stories,
17 approximately 1,993 square feet as being the original 1925
18 improvements on the subject property. The 2021 Staff Report
19 on page 4 amended that to state that the site was originally
20 approved in 1925 with a one and a half story approximately
21 1,056.25 square foot building.

22 Now, the 2012 report does then indicate that
23 that's according to the footprint, but a footprint of a one
24 and a half story building is necessarily going to be smaller
25 than its gross floor area. So the 2016 Staff Report is in

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

6 I do note, just perhaps academically, both Staff
7 Reports actually refer to Marlboro Pike as Maryland Route
8 725. At one time in the past Marlboro Pike was Route 725
9 but hasn't been for a very long time. That wasn't the case
10 in 2016 and it's still not the case today. Marlboro Pike is
11 simply a county road, not a state road.

12 MS. MCNEIL: Okay. I guess I'll be interrupting
13 on this one. So the Site Plan seems to say it's 408, is
14 that incorrect as well? Maryland Route 408.

15 MR. FERGUSON: So originally at the time of the
16 state, Marlboro Pike is a very old road and the original
17 improvements to it were done as Route 408. So certainly
18 Marlboro Pike by the way in Upper Marlboro today is 725.
19 But that's only the portion down to I believe Water Street
20 is where it transitions to non-state jurisdiction and then
21 from Water Street out to Route 4 it's 725. But at one time
22 that used to be the state road all the way from D.C. to
23 Upper Marlboro.

24 So that's the cleanup of the Staff Reports
25 findings, I guess. The other thing that I would mention

1 related to the Site Plan and actually Pastor McLaughlin's
2 testimony about the number of parking spaces. If you refer
3 to the Site Plan you'll see that in the southwest corner of
4 the building it actually indicates an area of new parking to
5 be added, you know, approximately 60 by 50 feet in area. So
6 you know it indicates the note on the Site Plan is new
7 parking area, relocated millings from eastern end and
8 southern property lines to create dust free parking with
9 three inch painted striping. So in fact there are five,
10 six, seven, eight, nine, 10, 11, 12 new spaces that are
11 proposed by this Site Plan. And they are in fact, at least
12 I have in my recent site visit was not able to get to the
13 back of the property but a recent aerial photograph does
14 show that those millings are not in fact in place today, or
15 at least as of the date of those recent aerial photographs.

16 MS. SCUDDER: Okay.

17 MR. FERGUSON: So I think those, yes, those are
18 the conditions of the property my report in the planning
19 context.

20 MS. SCUDDER: Okay. So let's get into testimony
21 with respect to the items that are new, which are you know
22 the AC, the Alternative Compliance application and the
23 variance request. Let's start with the alternative
24 compliance application. Mr. Ferguson, you prepared that
25 application, is that correct?

1 MR. FERGUSON: I did. I did. So the statement of
2 justification with that, that accompanied that alternative
3 compliance application was prepared by me. It addressed the
4 required findings and I certainly adopt that as my testimony
5 here, to which the Planning Director is recommending
6 approval.

7 MS. SCUDDER: And specifically what was the
8 request under the alternative compliance application?

9 MR. FERGUSON: There was a request for a reduction
10 in the width of the buffer yard against the Dunhill Village
11 Apartments, it's a variable width existing condition between
12 the edge of the existing parking lot and those apartments.
13 And so there is a proposal to add really a greater number of
14 landscape materials to offset the lesser width along the
15 property line and staff agreed that that would constitute
16 equal conformance.

17 MS. SCUDDER: Let's see, okay. With regard to the
18 variance, Madam Examiner, did you have any questions with
19 regard to the AC request? Or Mr. Brown?

20 MS. MCNEIL: Mr. Ferguson, the Staff Report
21 requested certain revisions, have they been done?

22 MR. FERGUSON: They have not.

23 MS. MCNEIL: To the Site Plan? Okay.

24 MR. FERGUSON: They're not --

25 MS. MCNEIL: And do you agree with those?

1 MR. FERGUSON: I do. I do. With regard to the
2 conditions, let me scroll --

3 MS. MCNEIL: I mean as to the landscape portion.

4 MR. FERGUSON: To the landscape ones, yes. Sure,
5 we can return to the one specifically after we discuss the
6 variance, I guess, but yes I do.

7 MS. MCNEIL: Okay. Mr. Brown?

8 MR. BROWN: (No audible response.)

9 MS. SCUDDER: Okay. All right. Moving along to
10 the variance request, Mr. Ferguson, are you familiar with
11 the variance request that was submitted by the applicant in
12 this matter?

13 MR. FERGUSON: I am.

14 MS. SCUDDER: And what did that variance request
15 relate to?

16 MR. FERGUSON: The variance request is to the
17 setback from the front street line along Marlboro Pike and
18 bear with me, I'm sorry, I'm catching up on my computer.
19 Excuse me for one moment. All right, I am caught up. Thank
20 you. The existing building is, the ultimate right-of-way of
21 Marlboro Pike does extend into the property, and so the
22 required setback from a zoning perspective is required to
23 extend from the, you know, the furthest of the existing
24 right-of-way and any planned Master Plan extensions. So
25 currently, the right-of-way is 40 feet from the center line

1 of Marlboro Pike, but the ultimate right-of-way is indicated
2 as being slightly farther back on the Site Plan. The
3 existing building is 18.4, I believe is the distance, or
4 18.6 feet from that ultimate right-of-way line. While the
5 special provisions for a special exception for a church on
6 residential property of less than an acre in size only
7 requires 25 feet of separation from the street line. The
8 provisions of the R-18 Zone require a 30 foot setback, and
9 so therefore a variance of I believe 11.4 feet has been
10 requested. I may be off by a few tenths but I'm speaking
11 from memory.

12 MS. SCUDDER: At one point in time though the
13 church, the property was in compliance with that setback,
14 isn't that correct?

15 MR. FERGUSON: Well, there's of course the
16 technical consideration. When the additions were
17 constructed the zoning district was commercial, and the
18 front set back in that case would have been only 10 feet.
19 So at the time those additions were constructed, they were
20 constructed to a setback line which would have been legal
21 had they been permitted, so.

22 MS. SCUDDER: And it wasn't until the property got
23 rezoned to R-18 and R-18 has the special criteria for
24 churches --

25 MR. FERGUSON: Correct.

1 MS. SCUDDER: -- that requires that additional
2 setback length and that's when you know --

3 MR. FERGUSON: That's when the need for the
4 variance arose, correct.

5 MS. SCUDDER: Yes. Okay. And if you could just
6 talk a little bit about how this variance meets the legal
7 requirements for a variance, which is you know actually
8 outlined in the statement of justification that was
9 submitted with the variance application, but if you could
10 just quickly maybe go through those.

11 MR. FERGUSON: I do. So the first requirement is
12 that there is, you know, in this case extraordinary
13 circumstances which is to say the rezoning of the subject
14 property in 2009, 2009 by the Marlboro Pike Site Plan and
15 Sectional Map Amendment, which basically took, you know, the
16 validity or the proposed validity, if you will, of the
17 setback out from underneath the building.

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

23 And then finally, that the variance will not
24 substantially impair the intent, purpose or integrity of the
25 General Plan or Master Plan. You know, really I think the

1 staff has actually done as good a job in laying out the
2 conformance to that provision as I could. They cite the
3 urban design recommendations of the Sector Plan which
4 actually prefer pushing buildings closer to the sidewalk
5 rather than setting them back. And so, you know, because
6 the use is one that would otherwise, would ordinarily be
7 permissible, particular would be permitted by right were the
8 parcel large enough, the property to either side is
9 compatible with the physical situation of the existing
10 building. So I don't find that the grant of this variance
11 would substantially impair the Master Plan at all.

12 MS. SCUDDER: Okay. Thank you, Mr. Ferguson.
13 Unless Madam Examiner or Mr. Brown has any questions for you
14 regarding the variance, I will move on to the conditions of
15 the Technical Staff Report.

16 MS. MCNEIL: I have a little bit about the
17 variance, and that is and it's hard for me to see the copy
18 that I have of this Site Plan, so Ms. Bah, could you put up
19 the Site Plan that is incorrectly numbered? I don't know if
20 it's 9 or 10 at this point, I think it's the last thing in
21 our pile, but, and Mr. Ferguson, once it's up
22 (indiscernible) somebody --

23 UNIDENTIFIED PERSON: (Indiscernible).

24 MS. MCNEIL: -- once it's up could you tell me
25 where the ultimate right-of-way is on the property? Because

1 my question centers around if the addition was not built
2 legally --

3 MR. FERGUSON: Yes.

4 MS. MCNEIL: -- and if the only problem is the
5 addition, what makes that the extraordinary circumstance?

6 MR. FERGUSON: Well the --

7 MS. MCNEIL: Oh there it is.

8 MR. FERGUSON: -- while --

9 MS. MCNEIL: So if you want to give him because he
10 loves doing this, if you want to give him control, could you
11 show me, it's sort of hard to see on this Site Plan, where
12 that ultimate --

13 MR. FERGUSON: It is. Mr. Nagy was, so let's see,
14 oh lag, all right, okay. Now this is curious because the
15 Site Plan, all right, so right in here, do you see the words
16 ultimate right-of-way line?

17 MS. MCNEIL: Yes, that made a difference, yes.
18 Okay.

19 MR. FERGUSON: Okay. And then it's --

20 MS. MCNEIL: So it's not --

21 MR. FERGUSON: -- that line --

22 MS. MCNEIL: Got you.

23 MR. FERGUSON: -- and the pause in my testimony is
24 this, so the center line of Marlboro Pike is where the plus
25 of the cursor is. Let me change that back to an arrow.

1 Okay. Because where in the picture you get a cross is up
2 here and it indicates a 40 foot separation, but that 40 foot
3 separation is not coincident with the ultimate right-of-way
4 line, which is why I paused.

5 MS. MCNEIL: Yes.

6 MR. FERGUSON: I do believe and the Staff Report
7 indicates that the Master Plan indicates an ultimate right-
8 of-way of 40 feet to 100, so 40 feet is the correct ultimate
9 right-of-way. Why there's a divergence between that line
10 and the dimension, I'm not certain. I do remember
11 calculating the requirement for the setback and that was a
12 calculated number, not a scale, they're measured numbers, so
13 I'm confident that the appropriate setback is correct, but I
14 do remain a little bit confused about the graphic indication
15 of the difference between that line and the 40 foot
16 dimension.

17 MS. MCNEIL: Okay. And so the 18 feet is just for
18 that portion of the site where the addition that was not
19 constructed --

20 MR. FERGUSON: Correct.

21 MS. MCNEIL: -- pursuant, okay.

22 MR. FERGUSON: So this is the short distance, so
23 this corner is the most, you know, the most impingent and
24 yes, Fatima, you can take this back, watching that cursor
25 move around is now making me nervous. I can probably do

1 damage. So excuse me, let me shut my door so you don't get
2 background noise.

3 MS. MCNEIL: So anybody jump in and remind me, I
4 know it's in here, when was the addition? The addition was
5 there when the church purchased it?

6 MS. SCUDDER: I --

7 MS. MCNEIL: Pastor, or maybe --

8 MR. BROWN: No.

9 MS. MCNEIL: -- mister --

10 MR. BROWN: On page 2 of the --

11 MS. MCNEIL: Staff Report?

12 MR. BROWN: -- page 4 of the Staff Report it says
13 existing church addition were added in 2000 and 2005.

14 MS. MCNEIL: Oh, okay. Okay.

15 MR. FERGUSON: But Madam Examiner, I would state
16 that you know the extraordinary condition is the rezoning,
17 you know, so --

18 MS. MCNEIL: Okay.

19 MR. FERGUSON: -- while the applicant certainly
20 created the hardship of the building being there, it was the
21 rezoning that created the need for the variance, not the
22 applicant's action.

23 MS. MCNEIL: Okay. Thank you.

24 MR. BROWN: I don't think --

25 MS. MCNEIL: Oh, go ahead, Mr. Brown.

1 MR. BROWN: -- I don't think a rezoning can be the
2 extraordinary condition related to a variance.

3 MR. FERGUSON: Mr. Brown, I'm sorry, Mr. Brown,
4 that's certainly a legal conclusion that I can't gain say
5 one way or the other.

6 MS. SCUDDER: Well, I'm just going to, so I mean
7 I'm going back to the statement of justification that I
8 prepared for this variance request. I'm just going to read
9 from the statement.

10 So strict application of subtitle 27-230 would
11 result in the applicant experiencing a peculiar or unusual
12 practical difficulty should the variance not be granted.
13 The requested variance would not deviate from the existing
14 character or development of varying lots within the
15 neighborhood, but failure to grant the requested relief
16 would result in the applicant experiencing unusual practical
17 difficulties and exceptional hardship. On the other hand
18 approval of the requested variances will allow the church
19 that has been operating on the property since 1997 to
20 continue to serve the community and provide charitable goods
21 and services, especially during a time when this is needed
22 more than ever. The newly constructed additions on the
23 original structure add to the aesthetic appeal and are
24 consistent with the existing character of the community.
25 Tearing down the front side of the church building just so

1 that the building will not intrude by 11.4 feet into the
2 required front yard setback which again is a requirement
3 that did not exist at the time the church was built. It
4 would be an extraordinary circumstance and moreover it
5 strikes me that the R-18 Zone is a zone for apartments and a
6 church is not an apartment building. And thus it would
7 follow that a church may not meet certain requirements which
8 were intended to address the construction of apartments. So
9 that's --

10 MR. BROWN: I mean Ms. Scudder, I'm not going to,
11 you know, beat the dead horse, but you're basically quoting
12 yourself by reading the statement of justification. That
13 doesn't add anything.

14 MS. SCUDDER: Well, I --

15 MR. BROWN: But this is the problem which the
16 Examiner, you know, sort of stated a moment ago, I mean I'm
17 not deciding it one way the other, but because the additions
18 were illegal in 2000 and 2005, you cannot rely upon the
19 church's existence as a renter prior to that time to justify
20 a variance now based upon illegal activity. You know,
21 that's just going to be problematic for you, you know, as
22 you know basic variance law you may not create a self-
23 imposed hardship. In addition, you need to look at the
24 county, I believe, they enacted a new variance law, I think
25 it was adopted recently, I'm not sure, but --

1 MS. MCNEIL: No, it hasn't been adopted yet, but
2 you will want to look at that Ms. Scudder.

3 MR. BROWN: You've got to look at it but --

4 MS. MCNEIL: I forget the bill number, I'm sorry.

5 MR. BROWN: -- an impact on your case, so I mean
6 that's all I'll say for the moment.

7 MS. MCNEIL: And I just want to clarify one thing,
8 your witness said that it's primarily his work, you agree
9 with that, right? Because then you said your statement of
10 justification for the variance, so who did it?

11 MS. SCUDDER: I prepared the statement of
12 justification on behalf of the applicant.

13 MR. BROWN: But to help you out, Mr. Ferguson, you
14 are adopting the content of her statement of justification
15 as part of your testimony, is that correct?

16 MR. FERGUSON: I do. I do.

17 MS. MCNEIL: Okay. Thank you, all. Okay.

18 MS. SCUDDER: Thank you, Mr. Brown.

19 MS. MCNEIL: So we were finished with the variance
20 and going to the conditions. Go ahead.

21 MS. SCUDDER: Yes. Mr. Ferguson, I would like to
22 turn your attention to page, let's see, 16 and 17 of the
23 Technical Staff Report, where the conditions of approval are
24 listed. And Madam Examiner, there are two conditions that
25 we would ask you to strike here after reviewing the

1 transcript in this matter, these items came up in the last
2 hearing. I think there was a question about the elevations
3 and I believe where that ended up was that you had agreed to
4 maybe put a condition on the approval that any new
5 construction would have to be consistent with the existing,
6 you know, building façade and so we would like to have this
7 Condition 1 on page 17 removed, since it's asking for
8 detailed architectural elevations.

9 MR. FERGUSON: That would be 1D, specifically.
10 And I'm sorry, yes.

11 MS. SCUDDER: 1D1.

12 MS. MCNEIL: 1D1. Can I back up one second? I
13 may have stated that, but I didn't issue a decision,
14 correct?

15 MR. FERGUSON: Correct.

16 MS. SCUDDER: That's correct.

17 MS. MCNEIL: (Sound.)

18 MS. SCUDDER: I just wanted to bring it to your
19 attention that there was some discussion on this, you know,
20 in the record and that's kind of where things left off back
21 then and after we took another look at it, you know, we kind
22 of agree that that was where, you know, we were kind of in
23 agreement where things ended up and so we would ask if you
24 would be willing to remove that condition. We don't really
25 think, I mean, Pastor McLaughlin testified earlier that he,

1 you know, may do this new addition in the future if this
2 application is approved. But he doesn't know when and I
3 don't think he has any specific plans at this time.

4 MS. MCNEIL: Okay. What did you think about 1D?
5 I do want to say that if this application were last heard in
6 2016 and we're now in 2021, at some point, Pastor, with all
7 due respect, you have to put something before me that you're
8 actually going to construct, that we could actually approve.
9 Not just we're hoping to do this at some point.

10 MR. FERGUSON: Well, if I could --

11 MS. MCNEIL: Because and if I may, because for at
12 least this reason, what is going to be in there? If it's
13 expanding the seats or whatever it's doing would it change
14 the parking? Would it change any other requirements? That
15 was sort of my confusion with this that I was going to get
16 to, but I'm glad I'm putting it out now while you all can
17 answer.

18 MR. FERGUSON: Yes. I was going to get to that.
19 And so perhaps it would be useful actually just to go
20 through the conditions one by one and address them seriatim
21 and then we'll get to 1D1. So the first Condition 1A, was a
22 discrepancy in interpretation of the Landscape Manual
23 between 2016 and 2021. So this is a new recommended
24 condition which is saying no you need to provide a buffer to
25 a vacant site, you can't just defer that to the future. So

1 there is room to do that, it'll add a few trees, we agree.

2 The second, 1B, is technical. The 50 percent lot
3 coverage requirement only applies to churches on tracks
4 between one and two acres. The lot coverage requirement is
5 in fact 60 percent for the subject, so that is correct. We
6 discussed --

7 MS. SCUDDER: And staff did note, I'm sorry to
8 interrupt you Mark, but staff did note with regard to that,
9 that even with what the new, the proposed addition that's
10 shown on the Site Plan that even if that was constructed,
11 they would still be under the maximum lot coverage.

12 MR. FERGUSON: Right.

13 MS. MCNEIL: Yes, I read that. Okay.

14 MR. FERGUSON: And so in the number of stories of
15 the building is in fact labeled but clarify the gross floor
16 area we had discussed that before, and we can put clarifying
17 notes on the Site Plan so that that condition is fine.

18 So as to 1D, and this is regarding the future
19 building addition. It seems to me that from a planning
20 standpoint the purpose of the special exception is to
21 determine what the impact would be, the adversity of the
22 impact would be on the surrounding neighborhood. So the
23 proposed footprint or the footprint of the proposed
24 addition, as indicated on the Special Exception Site Plan
25 would in fact meet all of the dimensional requirements of

1 the additional conditions for special exception as well as
2 the requirements of the Zoning Ordinance, as in fact, Ms.
3 Scudder just pointed out with regard to lot coverage. So my
4 contention, it was certainly the intent of Pastor McLaughlin
5 and Mr. Nagy five years ago was that as long as Mr.
6 McLaughlin is proposing at some point in the future to
7 provide this addition, this special exception approval, if
8 it contained this proposed footprint would acceptably
9 constrain the limits of that addition. That having been
10 said, Madam Examiner, the only issue that would remain is to
11 your point is what would the specific use be within that
12 addition. So that you are absolutely right, if seats were
13 added then that would invalidate what we have found now
14 because the parking would change and therefore other aspects
15 of the site would change.

16 However, if the additional area, and it was my
17 understanding, Pastor McLaughlin can confirm, but it was my
18 understanding from five years ago that the addition was
19 intended to accommodate a fellowship hall, which as long as
20 it were not used at the same time as the sanctuary, would
21 not generate an additional parking requirement. So I think
22 it would be in my opinion it would be appropriate from a
23 planning perspective to approve a plan with a limit of
24 expansion that would not require him to come back for an
25 amendment in the future. Now the question specifically

1 remains with regard to 1D1, Condition 1D1 about whether now
2 is the appropriate time to review the architectural design
3 of that building. And certainly, unlike let's say a gas
4 station, where there is a statutory requirement for
5 architectural compatibility in the ordinance, there isn't
6 for a church. So you do not ordinarily require architecture
7 in the review of a special exception unless it's statutorily
8 required and that, you know, that would continue to be the
9 case here, right? And there was discussion to that affect
10 in the transcript from five years ago. So as Ms. Scudder
11 pointed out there was discussion in the end that I believe
12 Mr. Brown had suggested that a condition could refer the
13 architecture to the planning staff, as a designee of the
14 Planning Board, to give them the opportunity for an
15 architectural review at such time as the addition were
16 proposed given that as long as the use and extent of that
17 condition were constrained in accordance with the provisions
18 of this Site Plan of record, then I think from a planning
19 perspective, you would be covered. Such as my opinion, and
20 of course it's left to you to make that finding and
21 decision.

22 MS. MCNEIL: Let me ask you one thing. What
23 percentage increase would this be if it were approved later?

24 MR. FERGUSON: In lot coverage?

25 MS. MCNEIL: Yes.

1 MR. FERGUSON: Let me refer to the plan, I think
2 the staff was correct in their analysis it would increase it
3 from --

4 MS. SCUDDER: (Indiscernible) 58 percent.

5 MS. MCNEIL: From what, I'm sorry?

6 MS. SCUDDER: I thought the Staff Report said 58
7 percent --

8 MR. FERGUSON: I thought it said --

9 MS. SCUDDER: -- is what it would be.

10 MS. MCNEIL: No. No, what I'm trying to get at is
11 it's a minor revision to the Site Plan if you're only
12 increasing it by 15 percent. So what would this be?

13 MR. FERGUSON: Yes, so the lot coverage that is
14 proposed now does not seem to include the proposed addition,
15 it's 48.8 percent.

16 MS. MCNEIL: And you'll go up to 58?

17 MR. FERGUSON: Okay. My computer has failed me
18 again, one moment. And I'm going to reopen, I am relying on
19 staff for their calculation.

20 MS. MCNEIL: Don't worry about it. Don't worry
21 about it, Mr. Ferguson. I guess I'm getting to this point,
22 no one ever --

23 MR. FERGUSON: (Indiscernible).

24 MS. MCNEIL: -- follows this requirement, but
25 there's a requirement that a special exception be

1 constructed in use within two years of approval. Now I know
2 that there haven't been any DPIE cases where they come in
3 and revoke because people haven't constructed in that time
4 period. But I don't know, I think that also negates the
5 ability to put a condition that, and perhaps at some time at
6 some point, somehow, there will be an expansion.

7 MR. FERGUSON: Yes.

8 MS. MCNEIL: How is that going to meet the two
9 year requirement. So I'm going to leave this record open
10 anyway and you all can put in an argument, if you'd like, to
11 protect the record, but I personally think that if you're
12 not ready to go forward, it should be what's there today,
13 especially since you have a provision in Section 27-325 to
14 do the minor change. It does not require that it come back
15 to me for up to 15 percent in the gross floor area.

16 MS. SCUDDER: And it looks like we're well below
17 that.

18 MR. FERGUSON: Well, so the Staff Report, I was
19 able to find the Staff Report contends that the new lot
20 coverage would 54 and if it is 54 divided by 48.8, that
21 would increase the lot coverage by a little over 10 percent,
22 which would qualify as a minor amendment.

23 MS. MCNEIL: And that's why I asked you as the
24 expert, because my eyes just glazed having to remember
25 division. I sent to law school to forget that stuff, so

1 okay.

2 MR. FERGUSON: Yes, but --

3 MS. MCNEIL: So we'll put that aside for now and
4 that's what I'm thinking but if you all really are --

5 MR. FERGUSON: So the question --

6 MS. MCNEIL: -- married to this, then I'll leave
7 the record open.

8 MR. FERGUSON: -- yes the question I guess I have,
9 is that the building gross floor area would increase by more
10 than 15 percent.

11 MS. MCNEIL: Hmm.

12 MR. FERGUSON: So the lot coverage would not, but
13 the building gross floor area would, and let me refer down
14 to \$32,500.

15 MS. MCNEIL: Okay. And I'm looking at it, it
16 doesn't seem to have an exception for that. But then, you
17 know, just not to prolong this, then I think it's even more
18 incumbent that we know what it looks like. And that there
19 be some time limit as to when it might be constructed.

20 MR. FERGUSON: Understood.

21 MS. MCNEIL: But I'll leave the record open for
22 you to convince me otherwise. I hear you all, but --

23 MR. FERGUSON: Understood.

24 MS. MCNEIL: -- I think the very least there's no
25 condition in here for pictures and I don't remember there

1 might have been pictures in 16, but could we put some
2 pictures of the property in this record?

3 MR. FERGUSON: There are pictures in the record,
4 that was specifically discussed in the transcript.

5 MS. SCUDDER: Yes.

6 MS. MCNEIL: Okay. So can we have some more
7 pictures since it's now 2021, almost 2022, if you all don't
8 mind?

9 MS. SCUDDER: Okay. We will --

10 MS. MCNEIL: So go ahead, I stopped you, I'm sorry
11 you (indiscernible) finish all of them.

12 MR. FERGUSON: No.

13 MS. SCUDDER: Actually we have a ton of pictures,
14 but those prior photos were Exhibit 8B, 8C, 8A.

15 MS. MCNEIL: 8A (indiscernible) okay, I stopped
16 you at 1B.

17 MR. FERGUSON: Well, 1D1 and I think we've
18 explored that quite thoroughly. So 1D2 we have discussed
19 and we agree. 1D3, I believe is related to 1D1, right,
20 because there is existing building mounted lighting that is
21 shown on the Site Plan. They asked that to be on the
22 architectural elevations.

23 1D4, of course is related to our discussion of 1D1
24 as well. So your discussion of 1D1 would really trickle
25 down through all of those. We agree with 1E. We agree with

1 1F. We agree with 1G. We agree with 1H.

2 Condition 2A, is one that again I believe that
3 planning staff here is trying to take two bites of an apple
4 in asking for a Photometric Site Plan. So the intent of a
5 Photometric Site Plan is to demonstrate that proposed
6 lighting will not have an adverse impact on adjacent
7 properties. And that's particularly important, obviously,
8 when you have large pole mounted lighting. In this case,
9 the only exterior lighting is one building mounted light and
10 it's an existing light and so getting, doing a photometric
11 plan for that, the reason it wouldn't be possible unless
12 somebody has the photometric characteristics of the specific
13 existing luminaire which is not likely to me. So staff did
14 not require a photometric plan in 2016, I'm not really sure
15 what's changed in that case. But I think this is a
16 requirement that, particularly given the character of the
17 existing lighting, and the fact that there is no proposed
18 pole mounted lighting or others, that this recommendation is
19 unnecessary and really just an undue encumbrance for --

20 MR. BROWN: The acreage --

21 MR. FERGUSON: -- seem like it's not that big of
22 deal, but it would be.

23 MR. BROWN: The acreage is what, a half-acre?

24 MR. FERGUSON: That's about right, yes.

25 MR. BROWN: Yes, I don't think a photometric plan

1 is needed for that.

2 MS. MCNEIL: Perhaps the picture would make a
3 difference because I think they were just concerned about
4 the residential property next door and if there's parking in
5 the rear, that it might be used at night, would it affect
6 them. So if you show a picture of where that light is --

7 MR. FERGUSON: Yes.

8 MS. MCNEIL: -- and it would be great if you'd
9 show one at night with the light on.

10 MR. FERGUSON: Yes.

11 MS. MCNEIL: That might --

12 MR. FERGUSON: So the light is shown on the
13 building and you'll see it in the pictures of the building.
14 If Madam Examiner would like a picture of the building at
15 night with the light on, I'm sure the applicant can provide
16 that.

17 MS. MCNEIL: Thank you.

18 MR. FERGUSON: And I believe the last two
19 questions are technical in that the NRI and the TCP
20 exemption letter have of course expired and staff just
21 simply wants new ones for the file.

22 MS. MCNEIL: Did you have further questions of Mr.
23 Ferguson, Ms. Scudder? I mean further testimony.

24 MS. SCUDDER: No, Madam Examiner, you know, Mr.
25 Ferguson --

1 MS. MCNEIL: Well, I just wanted to get Mr. Brown,
2 I never did, I interrupted but I never did let him, Mr.
3 Brown do you have questions?

4 MR. BROWN: No further questions. Thank you.

5 MS. MCNEIL: Okay. Now Ms. Scudder, go ahead.

6 MS. SCUDDER: Okay. Earlier you adopted the prior
7 record into the record today and Mr. Ferguson's land use
8 report, his land planning report is already in the record
9 where he has addressed all of the criteria for approval of a
10 special exception under 27-317. So if you don't need us to
11 through all that again, we won't. The only thing that I
12 would just, you know, ask Mr. Ferguson as a final question,
13 because I don't recall whether it was addressed in the last
14 hearing, is if you could address Schultz v. Pritts (phonetic
15 sp.).

16 MR. FERGUSON: I believe I did as the closing
17 statement of my, good grief, of my report, which I'm
18 reopening right now. And that was in fact concluding
19 statement of my 2016 report is a Schultz v. Pritts opinion.

20 MS. SCUDDER: Okay.

21 MR. FERGUSON: Which I continue to hold.

22 MS. SCUDDER: Okay. With that being said, Madam
23 Examiner, that completes our case and one thing, I just
24 noticed very recently from looking at the Zoning Hearing
25 Examiner's website that it says that applicants must present

1 their cases in one hour. And I've never noticed that and
2 like I'm just looking at the clock today, you know, this
3 case took an hour and 15 minutes and I know that's all --

4 MS. MCNEIL: They put it in like the original law
5 and I had asked that it be removed, so, although maybe it
6 should be there. Yes, we'll leave it but we allow
7 deviation.

8 MS. SCUDDER: Okay. Well if you don't have any
9 further questions --

10 MS. MCNEIL: Give me one second, I had notes on my
11 Site Plan I just want to make sure I got them all. One
12 really minor one is you said Forestville and the staff said
13 District Heights. Anybody know what the official address
14 is? The pastor is laughing.

15 MR. FERGUSON: Coming back on, it is not within
16 the municipal limits of District Heights, but it is the
17 District Heights Post Office.

18 MS. MCNEIL: Thank you.

19 MS. SCUDDER: I would just like to run through the
20 items that we're going to be addressing while the record is
21 left open.

22 MS. MCNEIL: Okay. Let me start. We are going
23 renumber all exhibits to take into consideration the fact
24 that we had 22 in the earlier hearing. Okay. We are going
25 to address the SDAT issue that Mr. Brown raised at the very

1 beginning, including the proper name of the applicant.

2 MS. SCUDDER: Yes.

3 MS. MCNEIL: You're going to give me some pictures
4 of the property, some updated pictures and most importantly
5 one of the light in the rear at night, when the light is on.
6 I think that's it. Okay. Is that it?

7 MS. SCUDDER: And then there was the Condition 1D1
8 that we would address.

9 MS. MCNEIL: If you want to address it, yes.

10 MS. SCUDDER: Yes.

11 MS. MCNEIL: Or anything that you want to leave
12 the record for a closing argument, that's fine, if you want
13 to.

14 MS. SCUDDER: And then we need the certificate of
15 good standing, but I think you just were --

16 MS. MCNEIL: That was the end of that.

17 MS. SCUDDER: -- I think you included that in what
18 you said, yes.

19 MS. MCNEIL: Yes. Anymore, Mr. Brown? Or anyone?
20 I think that is it.

21 MR. BROWN: No, I think that covers it. And
22 Pastor McLaughlin, now you know you're not supposed to build
23 anymore additions until a decision is gotten, like you know
24 that?

25 PASTOR MCLAUGHLIN: Say that one more time,

1 please.

2 MR. BROWN: You know not to build anymore
3 additions until this decision is done, right?

4 PASTOR MCLAUGHLIN: Absolutely. Absolutely.

5 MR. BROWN: Thank you, sir.

6 MS. MCNEIL: Then I thank you all for being here,
7 we'll leave the record open for I guess a reasonable time,
8 I'm sure you'll get it in quickly and then a decision will
9 be coming.

10 MS. SCUDDER: Yes, ma'am.

11 MS. MCNEIL: Thank you all for being here today.

12 UNIDENTIFIED PERSON: A good one.

13 MS. SCUDDER: Thank you, both. Thank you
14 everyone. Bye-bye.

15 AUTOMATED RECORDING: This conference is no longer
16 being recorded.

17 (Whereupon, the hearing was concluded.)

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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Prince George's County Office of the Zoning Hearing Examiner in the matter of:

WORD POWER TABERNACLE BAPTIST CHURCH

Case No. SE/VSE-4694, AC 20017

By:

Diane Wilson

Diane Wilson, Transcriber