

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

SPECIAL EXCEPTION

4750

VARIANCE

4750

DECISION

Application: Church
Applicant: Sheriff Road Seventh-Day Adventist Company
Opposition: Town of Fairmount Heights, et. al.
Hearing Dates: May 3, 2017 and June 5, 2017
Hearing Examiner: Maurene Epps McNeil
Disposition: Approval with Conditions

NATURE OF PROCEEDINGS

- (1) Special Exception 4750 is a request for permission to use approximately 0.2860-acre of R-55 (One-Family Detached Residential) zoned land located at the intersection of Eastern Avenue and 59th Avenue, and identified as 602 59th Avenue, Fairmount Heights, Maryland, for a 40-seat church. The property is also known as Lots 71-75, Block D, of the Fairmount Heights Subdivision, located on Tax Map 65, Grid F-3.
- (2) Variance 4750 is a request to reduce the minimum setback requirements for the church set forth in Sections 27.341.02 (a) (1) and 442 (e) of the Zoning Ordinance.
- (3) The Technical Staff recommended approval with conditions. (Exhibit 12) The Planning Board also recommended that the Application be approved subject to conditions. (Exhibit 13(b))
- (4) The Town of Fairmount Heights and several individuals appeared in opposition to the instant request.
- (5) A second hearing was held to provide proper notice of the requested variances. The record was left open at the close of the second hearing to allow the submission of additional documents. All items were received on August 17, 2017, and the record was closed at that time.

FINDINGS OF FACT

Subject Property

- (1) The subject site is a 0.2860-acre, rectangular-shaped corner lot with frontage on Eastern Avenue and 59th Avenue in Fairmount Heights, Maryland. It is currently improved with a 2,181 square-foot one-story brick and frame residence with basement.

(2) The site is exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance, because it is less than 40,000 square feet in size and has no previously approved Tree Conservation Plan. (Exhibit 9) Applicant has been issued a Natural Resources Inventory exemption letter which notes that there are no regulated environmental features on site. (Exhibit 10) The subject property does not lie within a Chesapeake Bay Cultural Overlay Zone. (Exhibit 12, p.37)

Neighborhood/Surrounding Uses

(3) The Neighborhood is defined by the following boundaries:

- North – Sheriff Road
- South – Martin Luther King Jr. Highway
- East – Addison Road
- West – Eastern Avenue

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

- North - Single- family residences in the R-55 Zone
- South and West – The District of Columbia boundary line and Eastern Avenue
- East - 59th Avenue and single–family residences in the R-55 Zone

Master Plan/Sectional Map Amendment/General Plan

(5) The subject property is in an area covered by the 2010 Subregion 4 Master Plan and Sectional Map Amendment (“SMA”). The Master Plan designates this property for infill development that will complement the surrounding areas:

Living Area B... includes the ... [Town] of Fairmount Heights....

For the purpose of the Subregion 4 Master Plan, Living Areas B and D, along with the adjoining industrial areas that extend all the way to US 50 to the north, are combined as Zone 2....

The Fairmount Heights survey area... consists of approximately 514 primary historic resources....

The topography of the neighborhood is hilly and houses have uniform setbacks. Because of the twentieth-century resubdivisions of property, lots are often irregularly sized. The community is predominately residential and contains single dwellings, twin dwellings, and multiple-family dwellings, including apartment buildings. Fairmount Heights contains several religious, social, and educational buildings. Commercial buildings are typically located around the perimeter of the community....

Zone 2 has a relatively dense urban character, street grid, and tight neighborhood fabric that make it very walkable.... New areas of infill development on vacant and underutilized sites should complement the existing

urban/neighborhood scale and character to reinforce the area's cohesiveness....

(2010 Subregion 4 Master Plan, pp. 87, 92, 96-97)

(6) The Master Plan also included the following recommendation applicable to the instant request:

Steer churches/religious institutions to residential or institutional land use/zoning areas, rather than commercial or industrial sites to keep from losing additional tax base.

(2010 Subregion 4 Master Plan, p. 100)

(7) The 2010 SMA retained the property in the R-55 Zone.

(8) The 2014 General Plan, *Plan Prince George's 2035*, places the property within the Established Communities, an area described as follows:

Plan 2035 classifies existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Districts and Local Centers as Established Communities. Established communities are most appropriate for context-sensitive infill and low-to medium-density development. Plan 2035 recommends maintaining and enhancing existing public services (police and fire/EMS), facilities (such as libraries, schools, parks and open-space), and infrastructure in these areas (such as sidewalks) to ensure that the needs of existing residents are met.

(2014 General Plan, p. 20)

Applicant's Proposal

(9) The Applicant operates under the aegis of the Seventh Day Adventist Church Potomac Conference. (Exhibit 26) In 2012 it was been granted a religious exemption by the State Department of Assessments and Taxation. (Exhibit 35) The Pastor, Lloyd Palmer, explained upon cross-examination that the Seventh Day Adventist religion requires a certain status before recognizing a congregation as a "church":

Mayor Martin: Now when you came to the Town... the request was to see if a company, if the church could be operated as a company,...so it wouldn't be regular church services....

Mr. Palmer: In the... Seventh Day Adventist organization members go out and do evangelism, and when the people accept the message that we have they are organizing what is called a company.... [A]nd that's the status at which we are at the moment. The church is the overall name of the Seventh Day Adventist Church, and under the

umbrella of the Seventh Day Adventist Church we have companies, and we have what you call an organized church. The company... could be regarded as a trial, but they are still believing members of a church, but they are not- there [is a]... certain status that a church has to reach before it can be called Fairmount Heights Seventh Day Adventist Church.... So, what the company is, is... getting members coming together, believing, teaching, preaching, and evangelism, and helping newcomers, so it's called a company....

(June 5, 2017 T.42-44)

(10) The Applicant is seeking permission to operate a Church with 40 members at the subject property. Applicant acquired the property in 2010. (Exhibit 20) The congregation observes its Sabbath on Saturdays, although there may also be special meetings held occasionally and prayer meetings on Wednesday evenings. Accordingly, the Applicant believes the proposed use will have minimal impact on traffic in the area. (June 5, 2017 T.9) All meetings and services generally occur between 10:00 a.m. and 8:30 p.m. (June 5, 2017 T.9-10)

(11) According to the Pastor, at the time of purchase the dwelling was in a state of disrepair, with overgrown bushes, an old garage that was later removed, and siding hanging from the structure.(June 5,2017 T.53-54). The church replaced the siding, mended the roof, cleaned the yard, painted the foundation and made the dwelling habitable. At some point someone also resided in the dwelling. (June 5, 2017 T.7)

(12) In June, 2013 Applicant began the process of applying for a special exception for the church, and was cited by the Town of Fairmount Heights in February, 2015 for operating without benefit of said special exception. (Exhibit 19) It has also received at least one citation from the Town for having excessive weeds on the property. (Exhibit 18) The Pastor further noted that the Church has received no other complaints about its operation other than concerns about parking in front of the residence. (June 5, 2017 T.15-16) Approximately 3-5 cars can park in the church driveway but any other visitor/member must park on the County streets. (Exhibits 17 (a)-(h)); June 5, 2017 T. 16-17) The Pastor encourages all church visitors to not park beyond the stop sign and crosswalk area on 59th Avenue to lessen the neighbors parking concerns. (Exhibits 17(g) and (t); June 5, 2017 T.23)

(13) Mr. Mark Ferguson, accepted as an expert in the area of land use planning, testified in support of the Special Exception and Variance applications. He also submitted a land planning analysis detailing his reasoning. (Exhibit 22)

(14) Mr. Ferguson provided the following support for his belief that the Special Exception should be approved:

[T]he character of the neighborhood.... is predominantly single-family, is fairly eclectic, there are a number of churches scattered throughout the neighborhood, there are some small multifamily dwellings, there is an office building... across the street and then one property further....

[T]he proposed use is for a church to occupy an existing structure which has been used as a dwelling for a long time. One notable thing about the neighborhood...is that this property is within the Fairmount Heights National Historic District....

The subject property is not a County historic site.... [I]n doing my pre-acceptance assessments I found that the... house on the property was most likely built by a gentleman... who is the nephew of Francis Cardozo, after whom the high school in the District of Columbia is named. It is certainly representative of the style and age of the historic houses in Fairmount Heights, and the preservation of the character of this house was something that seemed to me to be a particularly important part of this application. When the Applicant first contacted me they had an idea of improving the property with a parking lot to serve the congregants.... Our recommendation to them was that given that they're not just a corner lot, but a corner that's fairly oblique... the property isn't square, but it comes to a more acute angle, so it has a greater length of frontage than a typical corner lot. This amount of frontage... [a]fforded sufficient space for the number of cars that would be required to serve the 40 congregants to be accommodated on street adjacent to the subject property's frontage... and therefore their parking does not need to spill over in front of adjoining residences or businesses.... What this allowed then.... for the community as constituted, let's say, in this narrow instance by people who are interested in historic preservation is that the character of the house, and the property it sits on was allowed to remain to have an appearance of a single-family dwelling, and did not have to be substantially occupied by paving....[T]he regulations for the R-55 Zone allow an extended amount of lot coverage for non-residential uses in that zone, this property as approved with the departure from parking and loading standards with the very small number of congregants that would be approved is allowed to remain wholly.... in appearance as a single-family house, and in fact could be returned to that use at such time as the church grows beyond its capacity to service its congregants.

There's been a number of questions... that were posed to Pastor Palmer about the capacity of the church. Madam Examiner, you noted that the capacity is 40 seats [and] in my visits to the church the assembly space is the former front room, the living room and dining through an alcove in the front of the church. The church has placed pews in that space, and I don't know that it would be physically possible for 40 people to occupy those pews, maybe 35, but the limitation on the number of congregants is physical as well as presumably statutory....

(June 5, 2017 T. 99-103)

(15) Applicant submitted a floor plan and pictures of the interior of the dwelling which support Mr. Ferguson's position that there may be insufficient space to accommodate the requested 40 seats. (Exhibits 28(a)-(j) and 36) The Fire Department will further review maximum occupancy at the time Applicant's Use and Occupancy Permit is under review. (Exhibit 38)

(16) Applicant seeks a variance from two provisions of the Zoning Ordinance. Section 27-341.02 requires the instant Church to have a 25-foot setback from all lot lines;

Section 27-442(e) requires 25-foot front and side yards in the R-55 Zone. Mr. Ferguson offered the following analysis in support of Applicant's variance requests:

[Variances] are being sought for the 25' setback required by §27-341.02(a)(1) and §27-442(e).

Section 27-341.02(a)(l) requires a 25' setback from each lot line; §27-442(e) requires a 25' setback for the front yard.

The existing structure at the subject property was built by 1926 (according to a WSSC sewer plan approved on April 22, 1926), prior to the approval of the Maryland-Washington Regional District and the earliest imposition of zoning in 1928. The corners of this building are 12.8' from 59th Avenue and 24.4' from Eastern Avenue; while the provisions of §27-118(c) would allow the building's use to continue without issuance of a variance from §27-442(e) if it were used exclusively for residential purposes, its conversion to a church use requires the grant of variance from the provisions of both §27-341.02 (a) and § 27-442(e), for 12.2' along 59th Avenue 0.6' along Eastern Avenue....

(1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;

The subject property is compromised by an extraordinary situation of the conditions of its development and subsequent planning/governmental action.

The requirement for the variance to the 25-foot setback required by §27-341.02(a)(1) and §27-442(e) is engendered by the existing building which was constructed prior to the arrival of the Maryland-Washington Regional District and the earliest imposition of zoning in 1928. As described above, the main body of the structure was set back only 12.8 feet and 24.4 feet from the adjacent streets. The requested variance to allow use of the existing structure as a church only proposes to validate the situation of the existing structure, and does not seek to alter the character of the neighborhood, or to increase the volume of the existing building.

Furthermore, the requested variances are for setbacks from street lines, and are in keeping with the surrounding development: the adjacent house, for example, is set back only 8' from 59th Avenue. Finally, the separation of the existing building from the nearest neighbor far exceeds the requirements of the Ordinance.

(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

The strict application of this subtitle would result in exceptional or undue hardship upon the owner of the property as compliance would require the demolition of a part of the existing structure which has long been legally existing. Furthermore, it would impair the character of the existing National Register Historic District by removing a structure which contributes to the historic character by virtue of its age, architectural character and physical condition.

(3) The variance will not substantially impair the intent, purpose, or integrity of

the General Plan or Master Plan.

Because the development proposed is in accordance with the recommendations of the General Plan and the Sector Plan as described above, the approval of the requested variance will not impair their purpose, intent or integrity.

As such, the requested variances would be in conformance with the criteria of §27 230(a).

(Exhibit 22, pp 12-13)

Landscaping

(17) The Application is subject to Sections 4.2 (Requirements for Landscape Strips along Streets), 4.7 (Buffering Incompatible Uses), and 4.9 (Sustainable Landscaping Requirements) of the Landscape Manual. (Exhibit 12, p.11-12)

(18) The Applicant concurs with all conditions recommended by the Planning Board. (June 5, 2017 T. 25-26)

Opposition's concerns

(19) Lillie Martin, the Mayor of the Town of Fairmount Heights, and Sherrie Downing, a Councilwoman for the Town, testified in opposition to the request. The Town first had an objection because it was led to believe that Applicant wished to operate a trial "company" on site.¹ Larger concerns are the perceived failure to keep the yard landscaped and free of overgrowth on a regular basis; the insufficient parking for the use, and Applicant's seeming "defiance" to following the Code requirements. Pictures of the exterior of the site were submitted to show the overgrowth and substandard condition of the property. (Exhibits 23 (a)-(o); June 5, 2017 T.189-202)

(20) A resident in the area, Mr. Dean Cooks, testified that he and others were concerned because they have had problems with prostitutes in the area and because allowing a church to operate could lead to parking problems. (June 5, 2017 T. 170)

(21) Others in opposition simply do not want the property to be used as a church, as noted by Ms. Sylvia Syphax (owner of a business in the Town):

[T] his property owner clearly has nothing but contempt for property standards, and for safety, and welfare. So, I hope that in making a decision that the will of the people like me and all of us who have been in Fairmount Heights for 50, 60 years, and we have told them since they started coming... to our town meetings in 2009 that we don't want a church there. And the point is that they could sell this gift that they [acquired] and it would give them the funds that they need to

¹ Applicant explained the "confusion" over its representation of the church as a company *supra*.

acquire sites in the town that have adequate off street parking.... [R]ight now they have been operating church services out of compliance with fire regulations, and not paying taxes, and somehow it just reeks of contempt for us as a community, and for law and order....

(June 5, 2017 T. 178)

(22) Ms. Nancy Saxon offered similar testimony as to why the instant request should be denied:

My thing is I'm trying to get the Town on the [National Register of Historic Districts]....[and] I will not have a church in there, don't have a church coming to [the] Town of Fairmount Heights. Not in the houses. And I always call them store front churches.... No, that's the R-55 and it should stay R-55. And the house look[s] like it's too small for 40 people And it hasn't been kept up... So, no I would oppose it....

(June 5, 2017 T.187-188)

Agency Comments

(23) The Technical Staff recommended approval of the Special Exception with conditions, reasoning as follows:

The 2010 Subregion 4 Master Plan and SMA recommends establishing enabling legislation to support a neighborhood conservation plan for Fairmount Heights to encourage housing and neighborhood revitalization through the preservation and protection of the unique architectural, historical, and cultural character of the area (page 101). Plan Prince George's 2035 designates this area as one of its established communities. The communities are the heart of the County. They include neighborhoods, municipalities, and unincorporated areas outside of designated centers.

The subject property is located at the northeast quadrant of the intersection of Eastern Avenue and 59th Avenue. The applicant proposes to use an existing single-family home for a church in the Town of Fairmount Heights requesting a waiver for the 10 parking spaces required for this use via a departure from parking and loading standards. The master plan recommends establishing guidelines for design, and the preservation and protection of the unique architectural, historical, and cultural character of existing neighborhoods via a neighborhood conservation plan. Such a plan would not only promote cohesiveness as the area redevelops but ensure future development maintains the appropriate scale. Given the church's small size, the availability of on-street parking on both sides of 59th Avenue toward Eastern Avenue and that the use will be operating in an existing dwelling, further limiting capacity, it appears unlikely that the neighborhoods character will be upset by its existence. It should also be noted that the church use is permitted in the R-55 Zone by special

exception....

A special exception use is considered compatible with uses permitted by-right within the zone, as long as specific criteria are met. Unless unique adverse impacts are identified, the special exception may be approved. The appropriate standard for determining whether the use would create an adverse impact upon surrounding properties is to show that the proposed use, **at the particular location proposed, would have adverse impacts above and beyond those inherently associated with the special exception use, regardless of its location within the zone.**

Based on the preceding analysis and findings, the applicant has met their burden of proof in this instance. Therefore, staff recommends APPROVAL of Special Exception Application No. SE-4750.... (Emphasis in original)

(Exhibit 12, pp.13,15)

(24) The Planning Board also recommended approval with conditions, echoing staff's reasoning. (Exhibit 13(b), pp 11-14)

(25) The Transportation Planning Section reviewed the request and noted "[i]n light of the fact that nearby on-street parking is available and that the use will only be active two days a week, staff does not oppose granting of the special exception...." (Exhibit 12, p.40)

LAW APPLICABLE

(1) A Church in the R-55 Zone, on a lot of less than one (1) acre in size, is permitted by grant of a Special Exception in accordance with Section 27-341.02 of the Zoning Ordinance. All Special Exceptions must be found to comply with the general criteria of Section 27-317 of the Zoning Ordinance.

(2) Section 27-317 provides as follows:

(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 provides as follows:
 - (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;
 - (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(e) requires Applicant's front and side yards to be a minimum of 25 feet in depth/width.
- (5) The Application must be in harmony with Section 27-430 (a) of the Zoning Ordinance, which provides as follows:
 - (a) **Purposes.**
 - 1) The purposes of the R-55 Zone are:
 - (A) To provide for and encourage variation in the size, shape, and width of one-family detached residential subdivision lots, in order to better utilize the natural terrain;
 - (B) To facilitate the planning of higher density one-family residential developments with small lots and dwellings of various sizes and styles;
 - (C) To encourage the preservation of trees and open spaces; and
 - (D) To prevent soil erosion and stream valley flooding.

Variance

- (6) Applicant's request for variances 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) “Practical difficulties” has been defined in Carney v. Baltimore, 201 Md.130,137 (1952), as follows:

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, an area variance (such as the ones 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))

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.

CONCLUSIONS OF LAW

(1) Applicant has provided sufficient justification for its variance requests from the strict application of Sections 27-341.02 (25-foot setback from all lot lines) and Section 27-442 (e) (25-foot side yard depth/width). The dwelling was constructed in 1926, on an oddly shaped parcel, many years prior to the adoption of the Regional District Act and the instant setback requirements. The corners of the structure are 12.8' from 59th Avenue and 24.4' from Eastern Avenue. The variances are requested to validate the existing structure rendered nonconforming by subsequent law – an extraordinary condition or situation. (Section 27-230(a)(1)) It would result in an unusual practical difficulty for Applicant to tear down the structure, given the shape of the yard, and given the need to not “impair the character of the existing National Register Historic District by removing a structure which contributes to the historic character by virtue of its age, architectural character and physical condition.” (Exhibit 22, p.13) (Section 27-230 (a)(2)) The General Plan and Master Plan both urge that vacant or infill development preserve the character of the neighborhood in a manner that will not tax public facilities. This small church can operate in such a manner given the limited number of seats, the on street and driveway parking, and the negligible impact on public facilities. (Section 27-230 (a)(3))

(2) 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.

The Application satisfies this purpose since: the 2014 General Plan urged context-sensitive infill development within Established Communities such as the Town of Fairmount Heights and approval of the variances and the departure will ensure that the use will be operated in a manner that would not change the residential character of the area; the 2010 Master Plan urges that churches be located in residential or institutional land use areas, and that new infill development complement the existing neighborhood scale and character; and there are no Functional Master Plans with directly applicable recommendations for this property.

(3) 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; [and]

(12) To insure the social ... stability of all parts of the County.

(4) The request will further the following purposes of the Zoning Ordinance because the small church will utilize an existing structure that covers less than 21% of the lot, will provide buffers in accordance with applicable provisions of the Landscape Manual, and will not change the residential character of the neighborhood by adding onsite parking (once the requested departure is approved), or 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; and*

(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.*

(5) The use must satisfy the purposes of the R-55 Zone, found in Section 27-430 (a)(1) of the Zoning Ordinance, *supra*. The District Council has predetermined that churches are compatible with said purposes. Additionally, the Application does not require any construction, but is an adaptive reuse of an existing dwelling. There will be no further disturbance of the site and, therefore, no new impervious area. Accordingly, the request encourages the preservation of trees and open spaces, and prevents soil erosion and stream valley flooding. (Section 27-317(a)(1))

(6) The Applicant has requested a Departure from Parking and Loading Standards (DPLS-425). If it and the variances are approved, the Application will be in conformance with all applicable requirements and regulations of the Zoning Ordinance. (Section 27-317(a)(2))

(7) For reasons noted above, the Application will not substantially impair the integrity of the 2010 Subregion 4 Master Plan. (Section 27-317 (a)(3))

(8) The Town of Fairmount Heights and some residents generally expressed three bases for their opposition to the request: concerns about the particular people operating the requested Church and their failure to meet property standards on several occasions; the use of street parking by the congregants and/or visitors; and a desire to not have a church operate on site. It has been held that a zoning authority may not reject a zoning application based on alleged violations of previously issued permits. (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. Accordingly, I cannot deny the request due to the existence of prior Code violations.

If the Departure is granted I cannot deny the instant request because on street parking will be allowed. Finally, I cannot deny the instant request because some do not want a church since the District Council has already determined that the use is permitted upon approval of a Special Exception. As a result, based on the record, 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))

(9) The property has been issued a Standard Letter of Exemption from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance. (Section 27-317 (a)(6))

(10) The Applicant has been issued a Natural Resources Inventory Exemption Letter because there are no regulated environmental features on site. (Section 27-317 (a)(7))

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

(12) A variance has been requested from the requirements in Sections 27-341.02 (a) that the building be twenty-five (25) feet from each lot line, due to the odd shape of the parcel and the fact that the dwelling was constructed long before the setback requirements were imposed. (Section 27-342.02(a)(1)) Ingress and egress to the church will be via an existing driveway from existing curb cuts on 59th Avenue, and if the Departure is approved the required parking spaces will be provided on the street adjacent to the site's frontage. (Section 27-341.02(a)(2)). The request is for a very small church, limited to 40 seats at a maximum, so resulting parking and traffic will be minimal. (Section 27-341.02(a)(3)) No parking or loading spaces will be provided on site. (Section 27-341.02(a)(4)) The maximum allowable lot coverage for a church in the R-55 Zone is 60%; the proposed lot coverage is approximately 20.3 %. (Section 27-341.02(a)(5))

DISPOSITION

Special Exception 4750 and Variance 4750 are Approved, subject to approval of DPLS-425, and the following conditions²:

- (1) Prior to the issuance of permits the Special Exception Site Plan and Landscape Plan shall be revised as follows:

² Most of Condition 1, concerning the Landscape Plan, appears to have been revised on the Special Exception Site Plan. However, neither the engineer nor the landscape architect appeared and testified at the hearing, and I want to provide the Technical Staff the opportunity to review the revisions.

- a. Provide the lot coverage percentage to determine conformance with allowable requirements in the One-Family Detached Residential (R-55) Zone.
 - b. Revise the Landscape Plan to demonstrate conformance to the requirements of Section 4.2 of the 2010 *Prince George's County Landscape Manual* along Eastern Avenue.
 - c. Revise the Landscape Plan to demonstrate conformance to the requirements of Section 4.9 of the 2010 *Prince George's County Landscape Manual* (Landscape Manual) per the sample schedule shown on page 100 of the Landscape Manual.
 - d. Revise Note 26 on the Special Exception Site Plan to state that the seating capacity is limited to 40 seats, unless a lower number of seats is recommended by the Fire Department.
 - e. Include a note on the Special Exception Site Plan citing the variances to Sections 27-341.02 and 27-441(e) of the Prince George's County Zoning Ordinance.
 - f. Provide a note on the Special Exception Site Plan indicating that the proposed six-foot-high solid fence will be in compliance with Section 27-420 (g) of the Prince George's County Zoning Ordinance.
- (2) The revised Special Exception Site Plan and Landscape Plan shall be submitted to the Office of the Zoning Hearing Examiner for review and approval prior to the issuance of permits.

[Note: The revised Special Exception Site Plan and Landscape Plan is Exhibit 37.]