

ALLEGANY COUNTY BOARD OF ZONING APPEALS

**IN RE: APPLICATION OF
ROBERT WHARTON
FOR A SPECIAL EXCEPTION**

* **Case No.: 918**
* **Hearing Date: 01/06/10**

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FINDINGS

This case came before the Allegany County Board of Zoning Appeals (the "Board") upon Robert Wharton's request for a special exception for a church in "RA" LaVale Zoning District.

A field inspection of the subject property was conducted by the members of the Board on December 28, 2009, January 4, 2010, and January 6, 2010. The purpose of the field inspection was to familiarize the Board members with the site layout in order for them to develop an understanding as to where the proposed use would be located and as to whether the proposed use would be constructed in compliance with the terms of the Zoning Ordinance.

At the hearing on January 6, 2010, the Board considered the attached list of exhibits which consisted of information gathered by the Division Chief and information provided by other agencies and individuals.

The proposed use will be located north west of LaVale Avenue; 500' West of Campground Road; and 800' South of National Highway upon the property known as parcels 29, 30, 31, and 32 on LaVale Ave, LaVale, Maryland.

The proposed use is a Church. It would consist of a one story structure measuring 40' x 70' in dimensions. It will also contain a twenty car parking lot.

The Board considered testimony presented at the hearing in order to ascertain whether the proposed use would meet the standards and criteria of the Zoning Ordinance. The Board's findings are as follows:

1. A church is a special exception use in the "RA" LaVale Zoning District in accordance with Part II - A, Section 1(B) of the Ordinance.
2. The lot size is approximately 0.60 acres.
3. That this lot meets all the lot size and setback requirements found in Ordinance No. 1 of

the LaVale Zoning Board.

4. The Board found that a standard site plan is required for this use due to the fact that the use would not involve the construction of a building larger than 2,500 square feet, the movement of 250 or more cubic yards of earth, and/or the disturbance of 20,000 square feet of surface area. Having made that determination, the Board applied the criteria of Section 141-113 of the Allegany County Ordinance to the site plan which was submitted by the Applicant. The Board found that the site plan met those criteria.

Based upon the foregoing findings, the Board found that the Applicant will comply with the criteria of the Zoning Ordinance. Having made that determination, the Board next considered whether "the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use, regardless of its location within the zone ...". Brandywine Enterprises v. County Council for Prince Georges County, 117 Md. App. 525 (1997).

During the hearing on this matter, testimony was taken from several neighboring property owners who voiced objection to the proposed use. One common theme among those objecting was their concern that increased traffic on LaVale Avenue would cause them hardship. The testimony presented established that LaVale Avenue is a very narrow, dead end street. While the plan of survey would indicate a 40' right of way exists on LaVale Avenue, testimony presented was that only about 20' feet of that right of way is actually paved and used as the travel portion of the lane. It was also determined that two vehicles approaching each other on this avenue would not be able to pass without one stopping to allow the other to pass. According to the applicant, the proposed church has twenty parking spots. He further indicated that the church conducts services once each Sunday currently, however, they do plan to increase to two services per Sunday and at least one additional service during the week.

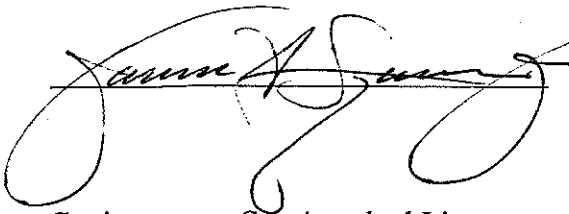
The Board, applying the law regarding site specific adverse impact, evaluated all of the evidence presented and determined that LaVale Avenue is not a large enough street to take on the additional traffic and use as proposed by the applicant. They further determined this is a site specific adverse impact based solely upon the proposed church's location upon this narrow avenue and upon no other factors.

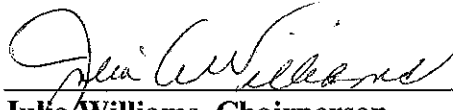
CONCLUSIONS

Based upon the findings set forth above, the Board voted at the conclusion of the hearing of January 6, 2010, 3-0 against granting the Applicant's request for a special exception for a church in the "RA" LaVale Zoning District.

ATTEST

BOARD OF ZONING APPEALS



By: 
Julia Williams, Chairperson

Copies to: See Attached List
Attachment: Exhibits List