

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

EMMANUEL BAPTIST CHURCH
16221 National Pike
Hagerstown, MD 21740

Appeal No. AP2007-069

Appellant

OPINION

This action is a request for a variance from a required lot area of 22.5 acres to 16.94 acres to establish a daycare and a private school. The subject property is located at 16221 National Pike, Hagerstown, MD 21740, is owned by the Appellant, and is zoned Agricultural (Rural).

A public hearing was held before a full Board on August 22, 2007. The Appellant offered evidence and testimony in support of the appeal. Opponents offered evidence and testimony in opposition to the appeal.

FINDINGS OF FACT

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. The Appellant has a private school and daycare, with approximately 50 children enrolled.
2. The Appellant wishes to eventually increase school enrollment to 200 children and the daycare enrollment to 70 children.
3. The Appellant can reach an enrollment of 100 children without Board approval. However, for the purposes of architectural design, they seek this approval now so that they have some certainty for future plans.
4. Testifying in opposition to the appeal, several neighboring residents raised concerns regarding stormwater runoff and non-compliance with earlier site plan requirements (site plans which are not directly related to this appeal).
5. Received and filed with the Board was a memorandum from J. Randy Edwards, PE, Washington County Engineering Department, stating that the Department takes no exception to the appeal.

6. Received and filed with the Board was a memorandum from Kathy A. Kroboth, Washington County Zoning Coordinator, advising that the appeal is consistent with the Comprehensive Plan.

RATIONALE

This Board has authority to grant a variance upon a showing by the Appellant of practical difficulty or undue hardship. Sections 25.2(c) and 25.56, Zoning Ordinance for Washington County, Maryland. "Practical Difficulty" may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variances would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. Section 25.56(a).

In this action, we are concerned that Appellant may be premature in seeking this variance. Appellant's use of the property is not constrained at this time because the school's student population has not reached the level where a variance is required. Thus, we cannot find that our failure to grant this variance prevents the use of the property for a permitted purpose. Likewise, we are concerned that many prior issues identified by previous site plans apparently remain unaddressed. Therefore, at this time, and based on the evidence presented to us at the hearing, we cannot find that the subject request does not adversely affect the public health, safety, security, morals, or general welfare; result in dangerous traffic conditions; or jeopardize the life and property of neighborhood residents.

Appellant filed a Motion for Reconsideration seeking a new hearing so that it could show that the concerns noted by the opponents have already been fully and adequately addressed. We will allow the Appellant to reapply for this variance notwithstanding the prohibition of § 25.7 of the Ordinance. Upon written application, any additional filing fee will be waived.

Accordingly, for the reasons set forth herein, this appeal is hereby DENIED this 20th day of September, 2007.

BOARD OF APPEALS

By: Bert Iseminger, Chair