

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

EMMANUEL BAPTIST CHURCH  
16221 National Pike  
Hagerstown, MD 21740

Appeal No. AP2007-100

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).

This action was the subject of a prior appeal, AP2007-069, wherein we granted Appellant leave to reapply for this variance notwithstanding the prohibition of § 25.7 of the Zoning Ordinance. A public hearing was held before a full Board on December 12, 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 subject property is located within the Urban Growth Area.
2. The Appellant has a private school and daycare, with approximately 50 children enrolled.
3. The Appellant wishes to eventually increase school enrollment to 200 children and the daycare enrollment to 70 children.
4. 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.
5. At the prior hearing on this action, concerns were expressed regarding forest conservation and stormwater management issues. The Appellant has taken adequate steps to address those concerns, including cleaning a drain pipe to enhance stormwater runoff

efficacy.

#### 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).

When we considered this application previously, we were concerned about the intensification of the use of this site without adequate forest buffering and stormwater management. Our concerns regarding those points have been addressed and compliance with prior site plan conditions has been verified by County staff.

The use proposed—a daycare and private school—is an appropriate accessory use for this church. The property is of adequate size to support the uses. Importantly, the uses will occur in a sequential and not simultaneous fashion; churchgoers will not normally be visiting the property during school hours, and school/daycare operations will not normally occur during church services. Thus, the proposed uses will not overburden the property. As the size, shape, and location of current improvements on the site limit design possibilities, no lesser relaxation is available that would provide substantial relief. No evidence was presented that the proposed use was incompatible with the neighborhood; disruptive of neighbors’ quiet enjoyment of their properties; detrimental to surrounding property values; generative of excessive odors, dust, gas, smoke, fumes, vibrations, or glare; generative of traffic that would exceed the capacity of existing infrastructure; or that the proposal was an inappropriate use of land or structure. Therefore, granting this appeal upholds the spirit of the Ordinance.

Based upon all of the testimony and evidence presented, this Board finds that the requested change and expansion of non-conforming use does not adversely affect the public health, safety, security, morals, or general welfare, nor does it result in dangerous traffic conditions or jeopardize the life and property of neighborhood residents. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED this 11<sup>th</sup> day of January, 2008.

BOARD OF APPEALS  
By: Bert Iseminger, Chair