

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

**1991 FGP LLC
Appellant**

Appeal No. AP2010-003

OPINION

This action is a request for a special exception to establish a church in an existing structure. The subject property is located at 12031 Hopewell Road, Hagerstown, Maryland, is owned by the Appellant, and is zoned Highway Interchange - 1.

A public hearing was held before the Board on February 24, 2010. No opposition was presented to this 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. Appellant proposes establishment of a church in the existing building on the subject property.
2. The subject property is 20 acres in area, and the building on the site is 20,000 ft.² in size.
3. The church, whose congregation numbers between 200 to 300 people, is leasing the entire building.
4. The church will see an ebb and flow of visitor traffic throughout the day, generally between the hours of 8 a.m. and 9 p.m., as the needs of the congregation demand.
5. The Appellant argues that a church is functionally similar to funeral homes, social clubs, and fraternal halls, each of which is characterized by the episodic gathering of people, generally at off-peak times.
6. The purpose of the district is furthered by the location of a church, in that it will naturally benefit from the close proximity of interstate highway access

and will not interfere with neighboring commercial and industrial uses.

7. The adverse effects of a church are no greater at this site than they would be at any other location in the district, and the proposed use is compatible with the neighborhood and conforms to the Comprehensive Plan.

8. No one testified in opposition to this request.

RATIONALE

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. A special exception is defined as “a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood.” Section 28.62.

The Appellant argues that a church is “functionally similar to” certain allowed uses in the district, namely funeral homes, social clubs, and fraternal halls, and thus, grant of a special exception authorizing its establishment is appropriate. We agree. The common feature of funeral homes, social clubs, and fraternal halls is that they are used to host the episodic gathering of visitors. So too do churches, usually at off-peak hours, and we find that they are functionally similar to the enumerated uses.

Grant of a special exception is appropriate where the proposed use will have no greater “adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” *Schultz v. Pritts*, 291 Md. 1, 15 (1981). The establishment of a church in this mixed-use area is appropriate. A church, with its office, classroom, and worship activities, will not be incongruous with other uses in the neighborhood. Moreover, the building on the site will easily accommodate the proposed use, and the site’s proximity to interstate access will support congregant access without burdening local highways. No one testified in opposition to the proposal, and 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.

Based upon all of the testimony and evidence presented, this Board finds

that the subject request 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.

BOARD OF APPEALS
By: Bert Iseminger, Chair

Date Issued: March 26, 2010