

APPLICANTS:
Advent Lutheran Church and
Cypress School

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

REQUEST: Special exception to allow a
school in the RR District

Case No. 5746

HEARING DATE: August 17, 2011

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Advent Lutheran Church

CO-APPLICANT: Cypress School

LOCATION: 2230 Rock Spring Road, Forest Hill
Tax Map: 33 / Grid: 4D / Parcel: 446
Third (3rd) Election District

ZONING: RR / Rural Residential District

REQUEST: A special exception, pursuant to Section 267-88C(7) of the Harford County Code, to allow a school in the Rural Residential District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject parcel is approximately 6.5 acres in size and is located on Rock Spring Road, just south of the Village of Forest Hill. The property has frontage on MD Route 24 and is zoned RR, Rural Residential. The Applicant's main building (which contains both its' sanctuary, support space, and classrooms), two playground areas and parking improve the property. According to the Staff Report, the property is well landscaped and all improvements are well maintained. The facility is used by the Applicant for its religious purposes.

On July 28, 2008 Advent Lutheran Church received, by Board of Appeals decision in Case No. 5657, a special exception to allow a kindergarten to be located within its main building. That Decision approved the use of the subject property for a 16 child pre-school nursery, with conditions.

The nursery is no longer in operation and the Applicant now seeks permission to allow the facility to be used by Cypress School, which will eventually provide services to approximately 60 students with special learning needs. As this would be a different user from that approved in 2008, this new request for special exception approval has been made.

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For the Applicant first testified Harry Bellsinger, Secretary of the Advent Lutheran Church.

Providing a brief history of the facility, Mr. Bellsinger stated in 2007 Advent Lutheran closed its own school and, as a result, found itself with in excess of 12,000 square feet of unoccupied space. A subsequent school operation, approved by the 2008 zoning decision, has also now gone out of business and has ceased conducting school operations. As a result of a search for an institution to fill the space, Advent Lutheran Church and Cypress School began negotiations which resulted in Cypress School's agreement to take space at the subject property. Cypress School's purpose is to provide education to children with learning needs.

Mr. Bellsinger indicated that the property is in very good condition and is well landscaped and well maintained. No additional changes will be necessary to the school or its grounds in order to support the Cypress School.

Next testified Pastor Paul Bickel. Pastor Bickel identified himself as both Pastor of Advent Lutheran Church and, in his past career, as a longtime educator. One of the goals of the Advent Lutheran Church ministry is to support children's education. He explained that the bad economy forced the last occupant of the church property to disband after the 2010-2011 school year. The Church then engaged in a search to find a user for the space which would also meet the goals of the Church's ministry. Pastor Bickel believes that Cypress School will meet those goals.

Next for the Applicant testified Terry Cooper. Mr. Cooper explained that in 2003 enrollment at the Church school was 63 children. Enrollment eventually dropped over the years to a low of 15 students where it became economically unfeasible for the Church to continue to operate the school. The Applicant's building houses 7 classrooms, and those classrooms are now vacant. The economy was also a key reason why the last tenant, the Forest Hill Cooperative Nursery School, was forced to close its doors at the end of the last academic year.

Next testified Clarence Fry. Mr. Fry identified himself as a founder of Advent Lutheran Church and is the current Treasurer. The Church is in need of additional funding to support the congregation. The Church has sufficient vacant space to rent and believes that the Cypress School is a good candidate, would meet the Church's ministerial goals and would also help provide needed income to the Applicant.

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Next testified Debbie Temple, who identified herself as the founder and chief operator of Cypress School. Ms. Temple described Cypress School as designed for special needs children. The school has been located in Delta, Pennsylvania. Ms. Temple believes that a move to Advent Lutheran Church would provide a more central location and allow better access to the majority of its students, many of which now come from Maryland. Within three years the school will be at its maximum enrollment of 60 children. The facility at Advent Lutheran Church will ideally meet Cypress School’s needs.

Typical hours of the school operation would be 9:00 a.m. to 3:00 p.m., with infrequent before and after school activities. At the commencement of school operations Cypress School will have approximately 6 staff members which will increase to a maximum of 20 staff members when the school reaches its full capacity. Parking is on-site. The school admits children in the kindergarten through 8th grade learning level. The school does not receive funding from the Harford County Board of Education, and is a fully-independent school. Ms. Temple envisions that no changes need be made to the building, landscaping or parking areas. Transportation will be provided by parents.

Next testified Gerald Backof, who identified himself as President of the Advent Lutheran Church. Mr. Backof has been employed for 36 years in the Baltimore County school system and his wife and two daughters are in special education. Mr. Backof believes there is a remarkable need for schools providing services to children with special needs. Public schools do not adequately address this population.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune, Deputy Director. Mr. McClune indicated no variance is necessary. The Applicants meet all special exception requirements and all conditions of Section 267-9I. Parking is adequate; additional buffer yards are not required; he can envision no adverse impact and there should be no difficulty with traffic access to and from MD Route 24.

No testimony or evidence was given in opposition.

APPLICABLE LAW:

This special exception request is governed by Section 267-88C(7) of the Code:

“(7) Schools, colleges and universities, excluding Harford County Schools and Harford Community College, offering general academic instructions. These uses may be granted in the AG, RR, R1, R2, R3, R4, RO, VR, VB, B1, B2, B3, CI and LI and Districts, provided that:

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- (a) *It is located on a parcel of at least 1 acre. An additional 800 square feet of parcel area is required for each student in excess of 30.*
- (b) *A parcel frontage of at least 200 hundred feet.*
- (c) *A front yard depth of at least 50 feet, a side yard depth equal to at least 2 times the height of the tallest located on the parcel which is proximate to the side yard and rear yard depth of at least 50 feet.*
- (d) *School buses shall be garaged or shall be stored in an area to the rear of the main building and adequately buffered.*
- (e) *A type "C" buffer, pursuant to Section 267-30 (Buffer Yards), shall be provided along any boundary with an adjacent residential lot."*

Section 267-9I, Limitations, Guides and Standards is also applicable to this request and will be discussed in further detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject property is an established, well maintained, attractive facility on MD Route 24, approximately 5 miles north of Bel Air. The facility was built with classrooms attached in order to help meet, in the words of its representatives, "the goals of the Church's ministry". Originally, this consisted of a Church operated school which, because of economic reasons, was eventually discontinued. A subsequent user took the space as was approved by a 2008 Board of Appeals decision. However, that user, also for economic reasons, failed to survive.

The Applicant now believes it has identified another user of the Church's educational space, a user which is devoted to meeting the needs of children with learning disabilities. No changes to the existing space will be necessary; no new parking will be necessary; there should be no traffic impact; and the user can meet all specific and general special exception requirements. Accordingly, there is no reason to deny this special exception which is, after all, generally permitted as long all special and general conditions are complied with no unusual impact results. The use should, in addition to carrying out a mission that directly benefits the community, present no adverse impact to the neighborhood in which it is located and will have the additional benefit of assisting the Church in its ongoing ministry.

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As stated above, all specific special exception requirements can be met, as follows:

“(7) Schools, colleges and universities, excluding Harford County Schools and Harford Community College, offering general academic instructions. These uses may be granted in the AG, RR, R1, R2, R3, R4, RO, VR, VB, B1, B2, B3, CI and LI and Districts, provided that:

(a) It is located on a parcel of at least 1 acre. An additional 800 square feet of parcel area is required for each student in excess of 30.

The Church is located within the RR District, the parcel is well in excess of 1 acres in size and will easily meet the square footage per student requirement.

(b) A parcel frontage of at least 200 hundred feet.

The parcel contains approximately 230 feet of road frontage on MD Route 24.

(c) A front yard depth of at least 50 feet, a side yard depth equal to at least 2 times the height of the tallest located on the parcel which is proximate to the side yard and rear yard depth of at least 50 feet.

The existing building meets all required setbacks.

(d) School buses shall be garaged or shall be stored in an area to the rear of the main building and adequately buffered.

School buses will not access the subject property and will not be utilized in bringing children to and from the site.

(e) A type “C” buffer, pursuant to Section 267-30 (Buffer Yards), shall be provided along any boundary with an adjacent residential lot.

According to the Staff Report, the request is not subject to this buffer yard requirement per Section 267-30C(3) which exempts “any use, building or structure for which only a change of use is requested, and which does not increase the existing intensity or building square footage, nor requires structural modifications which would increase its volume or scale”. The prior special exception approved in 2008 did not require a buffer yard. Furthermore, the testimony is that the property is attractively well landscaped and well maintained.

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The Applicant must further, however, comply with the more general requirements of Section 267-9I, Limitations, Guides and Standards, discussed as follows:

- (1) *The number of persons living or working in the immediate area.*

The proposed school will have a maximum 20 staff members and will provide services to 60 children. No adverse impact on the number of people living or working in the area is envisioned by this addition to the Forest Hill community.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Significant road frontage exists on MD Route 24 and sight distance is not a problem to passing motorists. The additional of private vehicles entering and leaving the property in the morning and afternoon should have no appreciable impact on existing traffic conditions.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The proposal is consistent with the orderly growth of the neighborhood and will have no negative impact on the fiscal conditions of the County.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such adverse characteristics should be generated by the use. At most, there would be some noise from children using the outdoor playground; however, this should be no more significant than uses of the playground in the past which have, apparently, been conducted without complaint from neighbors.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Sheriff's Office and the Maryland State Police will provide police protection. The Bel Air and Forest Hill Volunteer Fire Departments will provide fire protection and emergency services. Water and sewer systems are maintained by the Applicant.

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- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The proposal is consistent with generally accepted planning principles and practices.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals, and similar places of public use.*

There is no identifiable adverse impact on any surrounding land uses. Other than Advent Lutheran Church itself, no schools, houses of worship, theaters, hospitals or similar places of public use have been identified as being located in the vicinity.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal conforms to the intent of the 2004 Harford County Master Land Use Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

There is no envisioned detrimental impact on any of these identified features.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Lastly, to be approved, a finding must be made that the requested special exception, that is, a school for children with special learning needs in grades kindergarten through 8, will have no greater adverse impact at this location than it would at some other location within the zone. In truth, the proposed use should have no adverse impact of any nature at the location proposed. The buildings are well maintained, with no changes proposed to be made. No additional parking is necessary. No changes to the landscaping or entrance to the property will be made. In fact, the surrounding residents and passersby should notice little, if any, difference from the historical use of the Advent Lutheran Church grounds.

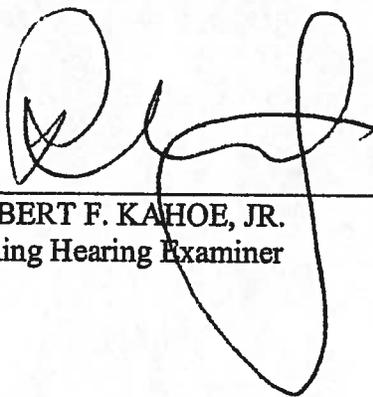
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This special exception request is, as noted above, to be treated similarly to a principal permitted use, provided that all applicable conditions are met. As also discussed above, all general and specific conditions are met, no adverse impact is found, and the use must, accordingly, be approved.

CONCLUSION:

For the reasons set forth above, it is recommended that the requested special exception be approved, subject to the Applicants obtaining all necessary permits and licenses to operate the school.

Date: October 13, 2011



ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 10, 2011.