

BEFORE THE BOARD OF ZONING APPEALS  
TOWN OF WASHINGTON GROVE

IN THE MATTER OF :  
 :  
 : Case No. 2021-01  
Iglesia de Dios del Septimo dia en Reforma, Inc. :  
105 Washington Grove Lane :

OPINION AND ORDER

The Iglesia de Dios del Septimo dia en Reforma, Inc. (Church), has applied for a special exception under Section 8.21 (c) of the Washington Grove Zoning Ordinance<sup>1</sup> to operate a church at 105 Washington Grove Lane in the Commercial Zone.

The Board conducted a public hearing on July 31, 2021, at 1:00 p.m. in McCathran Hall. At the conclusion of the hearing, the Board closed the record and determined that petitioner's application for a special exception should be granted. This opinion memorializes and finalizes that decision.

After being sworn in, the following individuals gave testimony: Elmer Orellana on behalf of the Church and John McClelland on behalf of his insurance agency, which leases space above 105 Washington Grove Lane.

Based on: (a) the evidence admitted, including the letter from the Church dated May 6, 2021, requesting a special exception; a letter from Thomas and Sylvia Appleby opposing the grant of the special exception; numerous documents submitted by John McClelland, including relevant portions of the lease with the owner of the Commercial Corner; and the testimony of Elmer Orellana and John McClelland; and (b) a review of applicable law, the Board makes the following findings of fact and conclusions of law:

1. The Church, a Religious Corporation incorporated under the laws of Maryland, wishes to use 105 Washington Grove Lane, a space located in the commercial zone in the Town, for church operations.
2. The Church's planned primary operations at the site are gatherings on Wednesday evenings (7:00 pm to 9:00 pm); gatherings on Saturday mornings (9:00 am to 12 pm) and evenings (7:00 pm to 9:00 pm); and gatherings on Sunday evenings (5:00 pm to 7:00 pm).
3. The Church's congregation currently consists of about 15 adults and five children.
4. Elmer Orellana testified that there will be incidental consumption of food and drink, but there will not be any on-site preparation of food.

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<sup>1</sup> Unless otherwise indicated, Section references are to Article VII, Zoning, of the Washington Grove Code of Ordinances.

5. Elmer Orellana testified that music may be performed when the Church uses the premises, and that the Church would use a guitar and piano in addition to singing.
6. John McClelland testified in opposition to the granting of a special exception. Mr. McClelland stated that specifically he opposed the performance of music, which he stated would interfere with his quiet enjoyment of his leased premises. He noted that there was minimal sound insulation between the ground floor of 105 Washington Grove Lane and his 2<sup>nd</sup> floor space above the premises being leased by the Church. Mr. McClelland further testified that he had called the police 5 times for a noise disturbance created by the former religious institution that occupied the ground floor at 105 Washington Grove Lane; each time Mr. McClelland testified that the police forced a stop to the noise. Mr. McClelland also testified that in his lease the landlord covenants that the tenant (Mr. McClelland) is entitled to the quiet enjoyment of his leased space. Mr. McClelland asserts that the landlord is in breach of this covenant by renting 105 Washington Grove Land to a religious institution that performs music. Finally, Mr. McClelland asserts that the Church cannot meet the legal requirements for granting a special exception because the music performed by the Church is an objectionable noise disturbance that imposes a significant burden on the Town.
7. Although the Board acknowledges and is empathetic with the concerns raised by Mr. McClelland, for the following reasons the Board finds that the Church has met its burden of proof that the Church will not significantly burden the Town (or neighboring residential properties) with increased noise, litter, or pedestrian or vehicular traffic:
  - (a) Section 11.324 (a) (1) provides that the “inherent effects” of a use permitted as a special exception “alone are not a sufficient basis for denial of a special exception.” An inherent effect is defined, in part, as an operational characteristic necessarily associated with the particular use. The Board finds that performing music is an inherent effect of a religious institution and cannot, standing alone, provide a predicate for denying the Church’s special exception.
  - (b) The Board concludes that Sections 8.21 and 11.324 instruct the Board to assess whether the impacts of granting a special exception will impose a significant burden on the Town or the surrounding residential properties or area. The Board finds no evidence that the Church’s performance of music will impose such burdens. In fact, the Town by allowing a religious institution as a special exception use has determined (as a matter of policy) that a religious use and its inherent effects are compatible with the character of the Town.
  - (c) The Board is mindful that land use regulation of a religious entity is subject to the Religious Land Use and Institutionalized Act<sup>2</sup> (RLUIPA), a Federal statute. RLUIPA prohibits a local government from imposing a substantial burden on the religious exercise of a religious institution or treating a particular religious institution on less than equal terms with another religious denomination. The Board notes that for over a half century a United Methodist Church has operated in the heart of the Town’s residentially zoned property. The Board finds that it would be anomalous, indeed, for the Board to conclude that a religious use at the Commercial Corner is not permitted when there is a religious use in the middle of the Town’s residential zone. Therefore, the denial of the Church’s special exception would appear to conflict with the requirements of RILUPA.

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<sup>2</sup> 42 U.S.C. § 2000cc.

- (d) The Board notes that that Article XIII, § 1, makes Montgomery County Code Chapter 31B, Noise Control, applicable in the Town. The Church, like all others in the Town, are subject to Chapter 31B. In fact, according to Mr. McClelland's testimony, he successfully used Chapter 31B to curb noise disturbances emanating from a prior tenant of 105 Washington Grove Lane. The Board is unwilling to conclude that the Church will systematically violate Chapter 31B. Finally, the Board, as it did in a prior special exception Opinion<sup>3</sup>, notes that tenants of the Commercial Corner have a means for legally addressing noise disturbances emanating from a co-tenant by filing a complaint under Chapter 31B and seeking to enforce a breach of the covenant of peaceful enjoyment under the tenant's lease.
8. The site in question, 105 Washington Grove Lane, is approximately 1400 square feet. Occupancy limits will be determined by the Montgomery County Fire Marshal. Elmer Orellana testified that he believed that the maximum occupancy limit for the space being leased by the Church does exceed 50 individuals.
  9. Under Section 6.2224, the proposed Church's operations will need about 4-10 parking spaces during services. The commercial corner has 62 total parking spaces, with 43 spaces in front, and 19 spaces in back. Accordingly, there is adequate parking to accommodate the proposed special exception.
  10. Under Section 8.21 (c), a religious institution is a permitted special exception use.
  11. The Church's proposed use does not conflict with the Town's master plan.

**Decision.**

Based on these findings of fact and conclusions of law, on a vote of two in favor (Hansen and Challstrom) and one abstention (Amagai), the Board GRANTS the Church's request for a special exception to perform religious and other activities related to the operation of a religious institution with the following condition:

The granting of this special exception to the Church is terminated if the Church does not occupy the first-floor premises at 105 Washington Grove Lane within one year of the date of this Opinion, or the use of 105 Washington Grove Lane by the Church is terminated or abandoned for a period of one year.

8/21/21  
Date

Marc Hansen  
Marc Hansen, Chair  
Board of Zoning Appeals

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<sup>3</sup> In Re Movimiento Pentacostal Rios de Agua Viva, Inc. (2019-01).

Washington Grove Board of Zoning Appeals  
Minutes

The Board of Zoning Appeals met on July 31, 2021, at 1:00 p.m. in McCathran Hall to conduct a public hearing on the special exception application filed by Elmer Orellana, on behalf of Iglesia de Dios del Septimo dia en Reforma, Inc., to hold church services and other related religious activities in the Commercial Zone.

Satoshi Amagai, Charlie Challstrom, and Marc Hansen sat as the Board.

After conducting a public hearing, the Board granted the special exception on a vote of 2 in favor (Hansen and Challstrom) and one abstention (Amagi).

Respectfully submitted,



Marc Hansen,  
Board of Zoning Appeals

Approved:

8/2/21  
Date