

5. The site in question, 105 Washington Grove Lane, is approximately 1400 square feet. Occupancy limits will be determined by the Montgomery County Fire Marshal.

6. Under Section 6.2224, the church will need about 15 parking spaces during services. The commercial corner has 62 total, with 43 spaces in front, and 19 spaces in back. Accordingly, there is adequate parking to accommodate the proposed special exception.

7. There will be incidental consumption of light snacks such as coffee and pastries, but there will not be any on site preparation or sale of food.

8. The evening uses will primarily take place on weekday evenings between 6:30 p.m. and 9:30 p.m.

9. The Washington Grove Planning Commission submitted a memorandum indicating that the Planning Commission held a vote on February 6, 2019 and determined unanimously that the proposed use of 105 Washington Grove Lane would be a violation of section 8.23, Nuisances, but did not provide any explanation supporting its decision.

10. Charlie Challstrom raised a concern that nothing in the Code of Ordinances prohibits more than one church occupying premises at the commercial corner, and that multiple churches' occupancy of space at the corner could lead to inadequate parking during church services. He suggested that in order to minimize this possibility, the Board could condition the granting of a special exception for a church or other religious institution. Specifically, this condition would provide that any exception granted by the Board expires within a specified time period, if the church or other religious institution fails to take occupancy of the space in question within that time period.

11. Robyn Renas testified on behalf of the Washington Grove Historic Preservation Commission. She noted that given that the proposed use is for an assembly of congregants, the Montgomery County Fire Marshal would determine a fire rating for the proposed use, and that the church would need to construct a ramp for the use of handicapped members in order to comply with the Americans with Disabilities Act.

12. Silvia Albanez, on behalf of the church, submitted a letter dated January 7, 2019, to the town stating, *inter alia*, that the use of the church will comport with the parking requirements stated under section 6.2224 and that the use of the premises will not significantly burden the town with increased noise, litter, or pedestrian or vehicular traffic. The testimony of Silvia Albanez and Kenneth Brown reiterated the provisions of this letter. Ms. Albanez also testified that church services and meetings would include singing, and the playing of musical instruments.

13. John McClelland testified on behalf of McClelland Insurance & Financial Services. McClelland Insurance is also located at 105 Washington Grove Lane, on the second floor and directly above the premises in question. Mr. McClelland submitted a letter dated February 16, 2019, to the Board stating that an assembly of up to 60 congregants singing and playing music would result in an auditory disturbance that would adversely impact the professional environment of his business.

At the hearing, Mr. McClelland testified *inter alia* that he often conducts business or is otherwise working in his offices during times when the church would occupy the premises in question (*i.e.*, weekday evenings, and Saturdays from late morning to late afternoon). He also stated that the church had set up musical equipment to be used during church services and meetings, including an electronic sound system, a drum kit, guitars, keyboard, and amplifiers. He reiterated his concern that singing and music during church services would adversely affect his business.

Decision.

Based on these findings of fact, the Board concludes:

1. Whether the activities of the Movimiento Pentecostal Rios de Agua Viva church might amount to a private nuisance for other tenants in the Commercial Zone is not within the Board's purview to decide. Tenants have recourse against their landlords under their leases, where co-tenants interfere with the peaceful enjoyment of their leased premises. Noise issues between tenants can also be resolved through reliance on Chapter 31B, Noise Control, of the Montgomery County Code, which applies in the Town.

2. Any noise generated by the church as a result of singing or music during worship services or other meetings does not rise to the level of a public nuisance; it does not amount to an unreasonable or unlawful interference with a right common to the residents of the Town, or to the general public. The church's activities are therefore not in violation of section 8.23, Nuisances.

3. A public nuisance must arise from the unreasonable use of property. The use of music in connection with a religious use is not unreasonable *per se*. Excessively loud music might well be an unreasonable use, but in that case, the County's noise ordinance would again provide a means for redressing that problem.

4. The applicant has shown by clear and convincing evidence that occupation of unit 105 of the commercial corner by the Movimiento Pentecostal Rios de Agua Viva church will not significantly burden the residents of or other properties within the Town with increased noise, litter, or pedestrian or vehicular traffic.

5. The Board notes that, in granting special exceptions in the Commercial Zone, the Board has never issued any condition that either limits the activities of an applicant based on the potential for noise resulting from those activities, or prohibits the applicant from singing or playing music. The Board cannot establish such a condition for this applicant when other Commercial Zone tenants are not required to meet the same condition—imposition of such a condition would subject the applicant church to disparate treatment.

6. The applicant's proposed use is consistent with the Town's Master Plan.

7. Accordingly, the Board GRANTS the applicant's request for a special exception to perform religious and other activities related to a religious institution in the Commercial Zone with the following condition:

The granting of this special exception is hereby terminated if the Movimiento Pentecostal Rios de Agua Viva church does not occupy the first-floor premises at 105 Washington Grove Lane within one year from the date of this decision, or the use of 105 Washington Grove Lane by Movimiento Pentecostal Rios de Agua Viva church is terminated or abandoned for a period of one year.

3/28/19
Date

Marc Hansen
Marc Hansen, Chair
Board of Zoning Appeals