

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 20-1707

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Wye Oak Room, Talbot County Community Center, 10028 Ocean Gateway, Easton, Maryland beginning at 9 a.m. on June 1, 2020, on the application of **FAIRVIEW CONGREGATION CHURCH OF BRETHREN** (the “Applicant” or, alternately, the “Congregation”). The Applicant is requesting a special exception and a variance. Applicant’s special exception request is for a modification of the special exception to expand and continue the use of an existing two-story church with basement. Applicant seeks a non-Critical Area variance from the 50-foot required front setback to construct a 2,012-square-foot gross floor area addition 31 feet from the front property line at its closest point. The proposed addition will be located no closer to the front property line than the existing structure. The subject property (the “Property”) is a 5.4-acre improved parcel owned by Applicant and located at 11243 Chapel Road, Cordova, Maryland. The Property is shown on tax map 12, grid 20 as parcel 38, and its zoning classification is Agricultural Conservation (“AC”). The Congregation owns the Property in trust. The Property is improved by a house of worship dating back, in its oldest portion, to the early 1890s. It is bound to the north, east and south by actively tilled farmland and to the west by Chapel Road, a 40-foot right-of-way maintained by Talbot County. Adjacent to the Property on Chapel Road are several residential lots ranging from 1 to 3 acres in size. The surrounding properties are also within the AC zone. The area encompassing the proposed variance request is not situated within the 100-foot Critical Area buffer.

Applicant’s request is made in accordance with Chapter 190 Zoning, Article II, §190-8.1, Table II-2; Article IV, §190-25, Table IV-1; Article VII, §190-56.2, and Article VII, §190-58.3

of the Talbot County Code (the “Code”). Pursuant to §190-25, Table IV-1, churches and related cemeteries are a permitted use by special exception in the AC zone. Pursuant to 190-8.1, Table II-2, 50-foot front, rear and side setbacks are required for all structures on properties of over 2 acres in size within the AC zone.

Present at the hearing were Board of Appeals members Phillip Jones, Chairman, Frank Cavanaugh, Vice-Chairman, and Paul Shortall, member. Members Louis Dorsey and Zakary Krebeck participated remotely by teleconference pursuant to the Fourth Amended Emergency Declaration of the County Council of Talbot County, adopted May 26, 2020 (the “Emergency Declaration”), declaring a state of emergency in Talbot County expiring at midnight on June 30, 2020, recognizing the continued threat posed by COVID-19 and allowing for county board and commission meetings to include an option for participants and the public to “participate by teleconference, live streaming, or other available technology . . .”; and pursuant to Board of Appeals Resolution 20-01, passed on June 1, 2020, implementing a policy to coordinate the Talbot County Board of Appeals Rules of Procedure (the “Rules”) with the Emergency Declaration by defining the term “convene” in Rule 4 of the Rules to include Board members who choose to participate remotely by any of the methods set forth in the Emergency Declaration. Miguel Salinas, Assistant Planning Officer and Maria Brophy, Planner II, attended the hearing on behalf of Talbot County. William C. Chapman was the attorney for the Board of Appeals (the “Board”). Zachary Smith, Esq., 114 Bay Street Building C, Easton, Maryland, appeared on behalf of the Applicant. It was noted for the record that each member of the Board had individually visited the site.

The following exhibits were offered and admitted into evidence as Board’s Exhibits as indicated:

1. Application for modification of Special Exception and Non-Critical Area Variance with Applicant's narrative as Attachment A.
2. Tax Map of subject property.
3. Notice of Public Hearing for advertising in *The Star Democrat* newspaper.
4. Newspaper Confirmation.
5. Notice of Public Hearing and Adjacent Property Owner List.
6. Standards for Non-Critical Area Variance with Applicant's responses.
7. Staff Report prepared by Maria Brophy, Planner II.
8. Sign Maintenance Agreement/Sign Affidavit.
9. Authorization Letter.
10. Disclosure and Acknowledgment Form.
11. Aerial Photos.
12. Direction to the Property
13. Site Plan of the Property prepared by Lane Engineering, LLC.
14. Construction/Floor plans prepared by Lane Engineering, LLC.
15. Property deeds.
16. Board of Appeals decision No. 18-1673.

Mr. Smith presented on behalf of Applicant in support of the application, describing himself as both parishioner and board member of the Congregation. Mr. Smith referenced Applicant's prior application for modification of special exception use and non-Critical Area variance, nearly identical to the current Application, which were both approved by the Board of Appeals in Decision No. 18-1673 in March, 2018. In 2017, Mr. Smith said, the Congregation saved funds to engage Lane Engineering, LLC for plans for renovations and expansions to accommodate a growing Congregation. After obtaining the Board's approval in decision No. 18-

1673 and going through the building permit process, Mr. Smith said, Applicant learned that a building code requirement would create a hardship for the Congregation by adding significant unanticipated costs far in excess of the allowable budget. Specifically, building code required 55,000 gallons on on-site water storage to meet fire sprinkler standards. This would require a separate temperature-controlled building, pump and a new dedicated well. Mr. Smith said these requirements added approximately \$250,000.00 to the budget for the proposed addition. As a result, he said, the Congregation had to redesign the project to reduce the size of the proposed addition¹. Though this created a decrease in scope from the plan approved by the Board in March, 2018, approvals for both the modification of special exception use and non-Critical Area variance were required. The Board's prior approval expired in September 2019.

The Board then considered the application. Based on the testimony, application and exhibits, upon motion and seconded, the Board approved the requested variance, by a vote of five to zero.

The Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Decision No. 18-1673 is hereby incorporated by reference.
3. The use will be consistent with the purposes and intent of the Talbot County Comprehensive Plan. Open space, agriculture, forestry and low density single-family detached residential uses are the preferred uses in the Rural Reserve Planning Area, which includes land zoned AC, along with agriculturally related commercial and industrial uses (*2016 Talbot County Comprehensive Plan, Chapter 2, Policies 2.21 and 2.26*). However, based on information submitted by

¹ In Appeal No. 18-1673, the total gross floor area of the proposed addition was 4,160 square feet, more than double the current proposal.

the Applicant, the church has existed and conducted activities on the subject property, with similar building and site layout, for over 100 years. In its application for Appeal No. 18-1673, Applicant noted that the Comprehensive Plan discussed the need to preserve the remaining links to the County's history; this project proposes to restore and revitalize an existing historic structure. The Code permits houses of worship and related cemeteries as a permitted use by special exception in the AC zone. The Applicants' project seeks to preserve, restore and improve an existing and historic facility to better serve a growing congregation.

4. The use will comply with the standards of the zoning district in which it is located, except as those standards may have been modified by the granting of a variance. The Applicant's proposal will comply with the Code's standards for the AC zone, with the exception of Applicant's requested variance for a reduction of the 50-foot front setback to 31 feet for construction of the proposed addition, no closer to the front of the subject property adjoining Chapel Road than the existing structure.
5. The scale, bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses and with existing and potential uses in its general area, and will not be detrimental to the economic value of neighboring property. The church and Property are surrounded on the eastern side of Chapel Road by active agricultural fields. The nearest dwellings are across Chapel Road from the Property. Although the church use is inconsistent with neighboring residential and agricultural uses, the church has been in operation long before most of the neighboring structures were built and is a recognized use among the

surrounding community. The proposed addition will accommodate a growing Congregation.

6. The use will not constitute a nuisance to other properties and will not have significant, adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental disturbances. No negative implications are anticipated from Applicant's proposed addition. The church will continue to be used for weekend services, limited classes and occasional events.
7. The use will not have significant adverse affect on public facilities or services including roads, schools, water and sewer facilities, police and fire protection or other public facilities or services. The existing church has been in use for over 100 years. The church is primarily used for weekend services and occasional events. Although overall attendance may increase slightly over time with an increase in the size of the church, no adverse affect on public facilities or services is expected.
8. The use will not have a significant adverse affect upon marine, pedestrian or vehicular traffic. The subject property is located in a rural area and is not adjacent to any waterways. The subject property features on-site parking, and Applicant's proposal includes additional parking on-site and not alongside Chapel Road.
9. The use will not produce traffic volumes which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications established in Chapter 134, the Talbot County Roads and Bridges Ordinance, and other applicable standards for road capacity. The church produces

minimal daily traffic activity and no significant increase is anticipated for Applicant's project. Because the proposed development falls below the required daily one-way trips for an impact study pursuant to §134-12 D.(2)(a)[1], no impact study is required for this expansion.

10. Any vehicle access to proposed off-street parking areas and drive-in facilities will be designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. No commercial or truck traffic is proposed. Applicant's project proposes to reduce access to the subject property from Chapel Road from three points of ingress and egress to two, which will improve traffic flow and reduce any impact on Chapel Road traffic and vehicles entering and exiting neighboring properties. Applicant's project contains improvements to pedestrian and vehicular movement on-site.
11. Any use will not significantly adversely affect wildlife with respect to the site's vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife. The subject property is located outside of the Critical Area, and no adverse impact on wildlife is anticipated. Water quality and runoff will be addressed when the Applicant addresses stormwater management.
12. The use will not significantly adversely affect adjacent existing agricultural uses. Applicant's project will be limited to construction on the Property immediately adjacent to the existing church structures. No adverse impact on adjacent agricultural land is anticipated.

13. Unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that the literal enforcement of the provisions of this chapter would result in a practical difficulty or unreasonable hardship in enabling the applicant to develop or use this property. The existing church was built prior to the enactment of any setback requirements by Talbot County, and the existing church is located 31 feet from the front property line. Applicant's proposal seeks to extend the church's sanctuary in a functional manner while preserving the historical integrity of the church. Construction along the same horizontal plane will maintain the same 31-foot setback as the existing church. The placement of the building addition is somewhat constrained due to the existing ingress and egress points, cemetery and parsonage. Due to the location of the existing church relative to the front property line, any expansion of the church that preserves the historical integrity and configuration of the sanctuary must necessarily encroach on the front setback.
14. The need for the variance is not based upon circumstances which are self-created or self-imposed. The need for this variance is based solely upon the location and configuration of the existing church, built close to 130 years ago, prior to the enactment of any setback requirements in Talbot County.
15. Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance. Applicant's request for a variance is to allow for expansion of the historic church, at the same front setback distance as the existing structure. Greater profitability or lack of knowledge of restrictions are not factors in Applicant's request.

16. The variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. Applicant's proposal is designed primarily to accommodate its existing Congregation and allow for reasonable growth. The proposal will maintain the 31-foot setback of the existing church. Even with increased attendance, the church and associated facilities are used primarily for weekend services, with occasional events, and no negative impact to neighboring and adjacent properties is anticipated.
17. The variance shall not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. Applicant's proposal for a lateral expansion of the existing church conforms to the historic structure's footprint and layout. By expanding laterally, Applicant is able to retain a majority of the existing layout, reducing the need for interior modifications on the portion of the church building not included in the expansion project. Additionally, as explained herein, Applicant has reduced the scope of its expansion project in response to hardships created by building code requirements.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY
THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, **FAIRVIEW CONGREGATION CHURCH OF BRETHREN** (Appeal No. 20-1707) is **GRANTED** the requested modification of special exception and variance consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

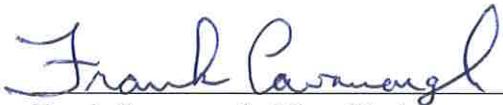
1. Applicant shall make applications to the Office of Permits and Inspections, and follow all of the rules, procedures and construction timelines as outlined regarding new construction.
2. Applicant shall commence construction on the proposed improvements within eighteen (18) months from the date of the Board of Appeals' approval.

GIVEN OVER OUR HANDS, this 7TH day of July, 2020.

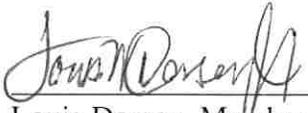
TALBOT COUNTY BOARD OF APPEALS



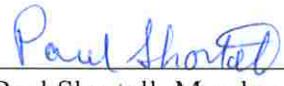
Phillip Jones, Chairman



Frank Cavanaugh, Vice-Chairman



Louis Dorsey, Member



Paul Shortall, Member



Zakary Krebeck, Member