

IN THE MATTER OF

BEFORE THE

CHIN BAPTIST MISSION CHURCH

BOARD OF APPEALS

Petitioner

BA Case No. 11-009C

.....

DECISION AND ORDER

The Howard County Board of Appeals (the "Board") convened on March 22, 2012, April 12, 2012, April 14, 2012 and June 5, 2012 to consider the application of Chin Baptist Mission Church, ("Petitioner") for conditional use approval of a Structure Used Primarily for Religious Facilities, in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, filed pursuant to Section 131.N.40 of the Howard County Zoning Regulations (the "Zoning Regulations").

All members of the Board were present at the April 12 and June 5 hearings; Board member James Howard was absent from the March 22 hearing, and Board member James Walsh was absent from the April 24 hearing. In accordance with Section 2.201(c) of the Board's Rules of Procedure, Board member Howard reviewed all of the evidence submitted and listened to a recording of the March 22 hearing for which he was not present and Board member Walsh reviewed all of the evidence submitted and listened to a recording of the April 24 hearing for which he was not present. Chairperson Walsh presided at the March 22, April 12 and June 5 hearings. Vice Chairperson John Lederer presided at the April 24 hearing. Barry M. Sanders served as counsel to the Board.

The notice of the hearing was advertised and notice of the hearing was sent to the property owner and the adjoining property owners as required by the Howard County Code. The Board members viewed the subject property, as required by the Zoning Regulations, and

the hearing was conducted in accordance with the Board's Rules of Procedures. The following items were incorporated into the record by reference:

1. The Howard County Code;
2. The Howard County Charter;
3. The Howard County Zoning Regulations;
4. The various reports of the responding and reviewing agencies;
5. The Department of Planning and Zoning Technical Staff Report recommending approval dated May 27, 2011;
6. The General Plan for Howard County;
7. The General Plan of Highways;
8. The Petition and Plat and the material submitted with it.

Thomas M. Meachum, Esquire, represented the Petitioner. Zo Tum Hmung, Roland Maung, Siang Dun, Thluoi Zathang, Monica Uk, Patrick Richardson, Mike Nalepa and Chistopher Tsien testified in favor of the petition. Joan M. Becker, Esquire, represented Opponents John and Lourdes Wisniewski, Jeffrey and Jerry Muneses, Steven and Donna Mazer, David and Pamela Parry, Scott and Margaret Ortel, John and Cathy Quinn, Sondra and Timothy Beltz, Stuart and Marie Balderson, Stacey and Vincent Jarvie, Richard and Lisa Shackelford, William and Jennifer Wendel, Steven Cersovsky and Heidi Gaasch, Patrick and Christine Baehr, Joseph and Michele Stellone, Andrew and Beth Krushinski, Jeffrey and Ann Whittle, Zach Mashburn, Dan and Suzanne Caulfield, Lynn Young and E. Adelaine Stocks, Edward and Linda Cassity, Elizabeth Hobbs Lioi and Andrew Guido Lioi, George and Shirl Scaletta, John Mitchell Hobbs and Elizabeth Hobbs Blackert, Stanton and Ann Levine, Nathan Levine, Timothy and Mary Patricia Wineman, John and Geraldine Halper, David and Holly

Moyer, Lewis and Victoria Glassmire, William and Elizabeth Blackert, Katherine Voss and Robert Manfuso, Kevin and Dara Field, Michael and Michele Richardson, Frank Gurfolino and Margie Fitton, David and Sherry Cubbage, Stephen and Laura Pettit, William and Karen Blackert, William Walk, Curtis and Jennifer Lowrey (Walk), David and Joy McDaniel, Gregory and Tina Monahan, Robert and Diane Altieri, John and Jacqueline Milani, Mary Crehan, Michael and Lisa Preece, Joseph and Eileen Facchina, Bradley and Bette Walsh, Robert and Laura Beaver, Brian and Michelle Walsh, Matthew and Julia Dillon, Robert and Georgea Moore, Gregg and Carrie Repole, Sherry Sullivan and Michale Knowles, Thomas and Karen Keller, David Yungmann, Julie and Jim Brent, Lucinda Peters, Brigitte Droegemeyer, Jeff Hyde, Robert Smyth and Richard Tufts.

Dan Caulfield, Richard Tufts, Jennifer Lowrey, Curtis Lowrey, Zach Mashburn, Elizabeth Hobbs Blackert-Lioi, Brigitte Droegemeyer, Steve Mazer, Jeff Hyde, Lynn Young, William Blackert and Sherry Sullivan testified in opposition to the petition.

The Petitioner proffered, and the Board accepted, the following documents into evidence:

Petitioner's Exhibits

- 1 Conditional use plan for Chin Baptist Mission Church (dated 2/28/11)
- 2 Conceptual Landscaping Plan dated 2/28/11 re: Chin Baptist Mission Church
- 3A McKendree Road Sight Distance Analysis Plan dated 5/19/11
- 3B Hobbs Road Sight Distance Analysis Plan dated 5/19/11
- 4 Traffic Impact Analysis dated 10/12/11
- 5 Testimony of Bicycling Advocates of Howard County, Inc.
- 6 Technical Staff Report dated 4/17/06 for BA 06-007C, Animal Medical Hospital at Glenwood
- 7 E-mail from William Erskine to Thomas Meachum, dated 4/11/12, re: acceleration/deceleration lanes

- 8 Conditional Use Exhibit Plan dated 2/28/11 - Chin Baptist Mission Church showing distance to vicinal properties
- 9A-O Photographs taken from the proposed site of surrounding properties
- 10 Hearing Examiner D&O for BA 11-009C, Chin Baptist & other D&Os for churches in the RR Zoning District

The opponents proffered, and the Board accepted, the following documents into evidence:

Protestant's Exhibits

- 1 Aerial photograph of the proposed site
- 2 Aerial photograph of proposed site & surrounding area
- 3 Resolution of the Board of Concerned Citizens of Western Howard County, Inc. authorizing Richard Tufts to testify in opposition
- 4 Excerpt from the Howard County General Plan – Chapter 3: Preservation of the Rural West (pages 35-65)
- 5 Resolution of Bicycling Advocates of Howard County, Inc.
- 6 Howard County Zoning Map
- 7 Subdivision Plan for Green Meadows
- 8A-D Four Photographs taken from Mr. Lawry's property
- 9A-D Four Photographs showing water on Hobbs and McKendree Roads
- 10A-D Photographs taken from & near Mr. Mashburn's property
- 11A-D Photographs taken of the Hobbs Farm Land
- 12 Howard County Rural Land Preservation Map August 2011
- 13A-V Photographs of various churches in the area of the proposed Chin Baptist Church
- 14 Chart prepared by Ms. Droegemeyer showing the Churches in the area, their size, parking spaces, lights, landscaping and times of services
- 15 Earlier version of Site Plan for Chin Baptist Church obtained from Health Dept.
- 16 Howard County Dept. of Public Works Burntwoods Road Corridor Study (12/12/11)
- 17 Resolution of Gwyndyl Oak Estates Homeowners Association, Inc., allowing Mr. Mazer to speak on their behalf
- 18 Site Plan for Chin Baptist Mission Church dated 2/2/11 re: perc plan
- 19A-H Various photographs of the Glenwood Community Complex and surrounding businesses, schools and Western Regional Park
- 20 Chart prepared by Ms. Young showing usage at Glenwood Center and Western Regional Park for Fiscal year 2011
- 21A-F Photographs taken on Hobbs Road
- 22 Excerpt from the Chin Baptist Church Website

FINDINGS OF FACT

Based upon the testimony presented at the hearing, the Board makes the following Findings of Fact:

1. The Petitioner is the contract purchaser of the subject property, known as 2510 Hobbs Road, which is located in the 4th Election District on the southwest corner of the McKendree Road intersection with Hobbs Road. The Property is referenced as Tax Map 14, Grid 11, Parcel 217, Lot 2 (the "Property").

2. The 10.02-acre, generally rectangular corner lot, is currently improved with a highly visible frame barn in the southeast corner of the Property. To the barn's west are a garage, an in-ground pool, and the presumed foundation of a former dwelling. A narrow gravel driveway runs from the Property's southeast corner to these improvements. The Property is mostly open lawn/field, except for a wooded area along the south lot line, the area of the former dwelling, and an area at the southwest corner of the McKendree Road intersection with Hobbs Road. Fences enclose the open areas.

The Property has a moderate slope, the high point being the site of the former dwelling. From here, the land has a gradual slope toward the northeast corner and a steeper slope to the lowest point in the southeast corner.

3. To the Property's north, across McKendree Road, is the mostly wooded area of Environmental Preservation Parcel C and Parcel 44, zoned RC-DEO, which is improved with a two-story, single-family detached dwelling. Across Hobbs Road to the east is RC-DEO zoned Parcel 108, which is improved with a one and one-half story single-family detached dwelling close to Hobbs Road, and RC-DEO zoned Parcel 55, an Agricultural Preservation Easement Parcel. To the south, Parcel 189 zoned RR-DEO is improved with a one and one-

half story dwelling set back from Hobbs Road and well screened by vegetation. To the west, Lot 6 of Parcel 217 zoned RR-DEO is a stable facility with large paddock areas and a single-family detached dwelling located about 260 feet from the Property's southwest corner.

4. McKendree Road has two travel lanes and about 23 feet of paving within a proposed 80-foot right-of-way. The posted speed limit is 30 miles per hour. The estimated sight distance from the proposed driveway entrance on McKendree Road is about 600 feet to the west and about 400 feet to the east. The Technical Staff Report (TSR) comments in footnote 1 state that on May 24, 2011, Petitioner submitted updated, more detailed sight distance information to DPZ. This information reasonably coincides with staff sight distance estimates and further recognizes the need to trim back the vegetation on the south side of McKendree Road to improve the sight distance to the east. There is no current traffic volume data available for McKendree Road. According to data from the Department of Public Works, traffic volume on McKendree Road east of MD 97 was 603 average daily trips as of January 1997. Hobbs Road has two travel lanes and about 24 feet of paving within a proposed 50-foot right-of-way. The posted speed limit is 30 miles per hour. The estimated sight distance from the proposed driveway entrance on Hobbs Road is more than 260 feet to the north and more than 700 feet to the south.

5. The Property is served by private water and sewer.

6. The Policies Map 2000-2020 of the 2000 General Plan designates the Property as a "Rural Residential" land use. Transportation Map 2000-2020 of the 200 General Plan depicts McKendree Road as a Minor Collector. Hobbs Road is a local road.

7. The Petitioner is proposing to demolish the existing structures and develop the Property with a new one-story religious facility. The proposed facility is a one-story church with a 13,800 sq. ft. floor area. The facility would be generally sited in the southeast section of the Property, about 60 feet from the Hobbs Road right-of-way and about 184 feet from the south rear lot line. This church would have 350 seats and its height will not exceed 35 feet. Two 24-foot wide driveways would provide access. The McKendree Road driveway would be located near the northwest corner of the Property and extend south and southeast. The Hobbs Road driveway would be sited about 230 feet south of McKendree Road and it would extend west through the Property. The two driveways would lead to a generally rectangular parking lot with 120 spaces to the north and northwest of the church. The Petitioner proposes pole lighting about 18 feet high with 250-watt metal halide full cutoff light fixtures. A timer will turn the fixtures off at 9:15 p.m. The only remaining improvement depicted on the conditional use plan is an outside playground area for children. This area is shown as being generally to the west of the church and is approximately 200 feet south from the closest lot line to the south. On Sundays, there would be two church services proposed: 10:00 a.m. to 12:30 p.m. and 2:00 p.m. to 5:00 p.m. The petition states parishioners will be evenly distributed between the two services. The Church would use the property in the evenings from 6:00 p.m. to 9:00 p.m. for choir practice, Bible study and committee meetings, with 30-40 persons on site at such times. The Pastor of the Church would be on site during the week from 9:00 a.m. to 5:00 p.m. A screened and enclosed dumpster is proposed to be located along the southwest side of the parking lot.

8. Zo Tum Hmung testified to being the founding member of the Chin Baptist Mission Church and a member of the building committee. The church currently rents space from another church in Silver Spring. The Chin Baptist Mission Church is seeking a more central and convenient location to worship because members live in Frederick, Baltimore, Rockville, Laurel, Elkridge and Savage. Mr. Hmung stated that the Church has 318 members, of which 98 are families. Currently there are 250 persons who regularly attend services. During the week, the Church pastor would maintain office hours with assistance from two employees. Evening activities include committee meetings, choir practice, bible study, and membership and fellowship meetings. The Church also has 13 special days, including Christmas, New Year's Day, Thanksgiving, holy day's and the church's birthday. No childcare is proposed. Since the Church was founded in 1999, there have been four funerals and ten weddings held on Saturdays. To more evenly disperse traffic in the course of Sunday, Mr. Hmung stated that the Church would have two services. A church member survey indicated that 101 persons in 31 cars would attend morning service and 211 in 58 cars would attend afternoon services. The church also has two vans for driving up to 15 members. The survey also showed that for morning services, most members (19 cars) would use the McKendree Road access, and twelve cars would use Hobbs Road. For afternoon services, 28 cars would use the McKendree Road access and 30 cars would use the Hobbs Road access.

9. Roland Maung, a founding member of the Church, testified that he is a Rockville, Maryland resident. Mr. Maung requested that the Board grant the petition and noted that the Church is seeking a more central location since members come from areas such as Laurel, Savage, Elkridge, Frederick and Silver Spring.

10. Siang Dun, a Columbia, Maryland resident, stated that he is one of the founding

members of the church and requested that the petition be granted.

11. Thluoi Zathang, a Rockville, Maryland resident and founding member of the Church, stated that she heads the women's department of the Church and requested that the petition be granted.

12. Monica Uk, a Frederick, Maryland resident, who serves as the secretary of the youth group within the Church, requested that the Board grant the petition.

13. Patrick Richardson, a civil engineer with over twenty years experience, testified that he prepared the amended conditional use plan dated June 7, 2011. The amended conditional use plan depicts a dumpster and additional parking spaces north near McKendree Road. Mr. Richardson testified to the preparation of an alternative landscape plan dated June 7, 2011 in response to the TSR. The revised landscaping plan moves some evergreen landscaping from the south side of Hobbs Road over to the north side. The dumpster is also landscaped and enclosed. Mr. Richardson stated that the proposed landscaping will meet Landscape Manual perimeter requirements. Mr. Richardson stated that the outdoor playground will be located generally near the center of the site and the playground will be enclosed by a fence. Mr. Richardson stated that the proposed ingress/egress driveways provide safe access and meet Design Manual sight distance requirements. Referring to the two-page sight distance analysis exhibit dated May 19, 2011 and submitted as a supplement to the petition, he explained that the required sight distance to the west is based on a Howard County Design Manual design speed of 37 miles per hour, which translates into a 539 foot sight distance (Sight Distance Analysis Exhibit, 3-A). On the east side, an approximately 580 foot sight distance can be accomplished by removing vegetation and creating an easement on the Property for the Church to maintain the reduction in vegetation. On Hobbs Road, the best location for sight distance is the high

point. Based on a design speed of 37 miles per hour, there is 268 feet of sight distance to the north (based on a reduced speed due to configuration of road) and 477 feet to the south (Sight Distance Analysis Exhibit, 3-B). Regarding the TSR comment about the possible need for a deceleration lane at the McKendree Road driveway, Mr. Richardson testified that the scenario does not meet the Design Manual's recommendations for when an auxiliary lane should be installed. Mr. Richardson testified that the lighting would be no more than 18 feet in height with shielding to prevent light spillover. Mr. Richardson prepared an exhibit showing the distances from the proposed Church site to the homes on the nearby properties. The distances to the four closest houses are 552 feet to the Droegemeyer house at 2732 McKendree Road; 244 feet to the Mashburn house at 2509 Hobbs Road; 706 feet to the Lowrey house at 2751 McKendree Road; and 485 feet to the Caulfield house at 2626 Hobbs Road.

14. Traffic engineer Mike Nalepa testified that his company performed the traffic study for the proposed conditional use. The traffic study (prepared on May 18, 2011 and updated on October 12, 2011) was a traffic impact analysis (TIA) of County designated intersections, which are determined by the access to the road, a traffic volume and capacity analysis of how intersections are currently performing, how intersections will perform based on approved (background) but not constructed development projects, and the proposed use. The base data is derived from Institute of Transportation Engineers (ITE) data, which generates trip rates for uses based on actual uses. Mr. Nalepa reviewed the County critical intersections map and identified four intersections – MD 97 and McKendree Road, McKendree Road and Hobbs Road, McKendree Road at Rover Mill Road, and Burntwoods Road at Hobbs Road. His company conducted turning moving counts (at intersections) on weekdays and Sundays. The TIA concludes that most studied intersections would operate at an "A" level of service. MD 97

at McKendree Road would operate at a "C" level during morning and evening peak hours and at an "A" level during Sunday peak hours. The TIA concludes that there is a low frequency of accidents at the relevant intersections and streets. In rebuttal testimony, Mr. Napela stated that he applied a 3% a year growth rate in his traffic study. He further stated that there is nothing inherent or present in the roads serving the conditional use site that would make them unsafe. Lastly, Mr. Nalepa stated that lane widths, dimensions, geometry and speed limits of the roads serving the conditional use site are very similar to other roads in the western part of Howard County.

15. Christopher Tsien testified on behalf of Bicycling Advocates of Howard County, Inc., (BAHC) and stated that his organization has no objection to a church being located at the intersection of McKendree and Hobbs Road, however, his organization is concerned about minor construction debris such as stones and loose sand running off the site and creating a hazard to a bicyclist. BAHC proposes a list of safety conditions for the Church to abide by if its conditional use were approved.

16. Richard Tufts testified as a representative of Concerned Citizens of Western Howard County. Mr. Tufts stated that the organization is opposed to a church being built at the corner of Hobbs and McKendree Roads because the rural nature of this proposed location cannot accommodate exponential growth of the proposed full service church. Mr. Tufts expressed his organization's concern regarding the adverse impact the proposed church will have on road safety in the immediate area. Mr. Tufts expressed his organization's concern that the proposal will lead to an "expansion of the commercial crossroad in the west" in contravention of the General Plan, however, upon questioning by Petitioner's counsel, he conceded that the Church is not a commercial use, but rather an institutional use.

17. Dan Caulfield testified to residing south of the proposed facility at 2626 Hobbs Road since 1999. Mr. Caulfield stated that adding a church to the Glenwood area will result in an increase in traffic and create a traffic impact to the surrounding area. Mr. Caulfield testified that the size and scope of the proposal will also have a major adverse impact to the Glenwood area.

18. Jennifer Lowrey testified in opposition to the petition and stated that she resides at 2751 McKendree Road. Ms. Lowrey lives southwest of the Property and owns 34 acres of which approximately 15 to 18 are pasture. Ms. Lowrey runs a business boarding horses on her property. Ms. Lowrey expressed her concern that the noise generated from the church and the playground will negatively impact her horse boarding and riding business.

19. Curtis Lowrey testified in opposition to the petition and stated that he has resided at 2751 McKendree Road since 2007. His residence is located to the west/southwest of the proposed church. He owns a horse boarding facility on approximately 34 acres. Mr. Lowrey expressed his concern about his property being sandwiched between two conditional uses (the proposed church and the Animal Medical Hospital of Glenwood). Mr. Lowrey stated that the church will not be a good mix with the character of the community.

20. Zach Mashburn testified in opposition to the petition and stated that he resides at 2509 Hobbs Road east of the subject property. Mr. Mashburn expressed his concerns regarding additional traffic, decreased property values and being able to view the Church from his property.

21. Elizabeth Hobbs Blackert-Lioi testified in opposition to the petition and stated that she resides at 2841 Hobbs Road. Ms. Blackert-Lioi resides approximately 1,000 yards from the proposed site. Ms. Blackert-Lioi owns a lot on her family's farm. Ms. Blackert-Lioi stated that

her family's farm is subject to a Howard County preservation easement and a nearby relative's farm is subject to a similar state easement. For this reason, the Church is inappropriate to a rural area subject to agricultural preservation easements. Ms. Blackert-Lioi stated that the Church does not serve her local community and that the intensification of activity at the proposed site would be detrimental to the community. Lastly, Ms. Blackert-Lioi stated that the Church's plan contradicts the General Plan requirement to locate non-residential development in and around existing Rural West centers.

22. Brigitte Droegemeyer testified to residing across McKendree Road from the proposed Church site. Ms. Droegemeyer stated that she purchased her property in 2008, demolished the existing home and constructed a new home. Ms. Droegemeyer stated that she would not have purchased her home had she known a large church and parking lot would be constructed across the street. Ms. Droegemeyer expressed her concerns over the size of the proposed Church and stated that the Church will change the character of the area. Ms. Droegemeyer submitted an exhibit of other churches in the vicinity and noted that the proposed Church will be a much larger facility than almost all of the other churches she surveyed. Lastly, Ms. Droegemeyer stated that MD 97 is the more appropriate location for a religious facility.

23. Steve Mazer testified in opposition to the petition and stated that he lives in McKendree Estates. Mr. Mazer expressed the concerns of the McKendree Estates Homeowners Association over the size and scope of the Church's proposal. Mr. Mazer also expressed concern over an increase in traffic and it affecting people's safety in the area.

24. Jeff Hyde testified to residing across McKendree Road from the proposed Church site. Mr. Hyde is opposed to the proposed conditional use petition and noted that his main

concern is over the size of the proposed Church. Mr. Hyde noted that the site plan submitted to the Health Department for perc approval showed two buildings totaling a much greater square footage than the petition that is actually before the Board.

25. Lynn Young testified to residing at 2638 Hobbs Road since 1978. Ms. Young stated that she originally was not opposed to the church but became concerned over the size of the proposed Church. Ms. Young main concern is that the proposed Church would overburden the community with traffic especially on Sundays when County's Western Regional Park field use is at its peak. Lastly, Ms. Young stated that she has witnessed several accidents through the years.

26. William Blackert testified that he resides at 2649 McKendree Road and stated that he is opposed to a church being built at the dangerous intersection of McKendree and Hobbs Roads. Mr. Blackert stated that his main concern is the proposed size of the proposed Church.

27. Sherry Sullivan testified that she lives in the Glenwood Springs Community which is approximately one-half mile away from the proposed Church site. Ms. Sullivan expressed her concerns over the size and intensity of the proposed Church and the additional traffic that will be generated on Sundays by the proposed Church.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board concludes as follows:

A. General Standards Required for Conditional Use Approval (Section 131.B).

1. General Plan: Section 131.B.1 of the Zoning Regulations requires that a conditional use plan will be in harmony with the land uses and policies indicated in the General Plan for the district in which it is located. The Maryland Court of Special Appeals has said that the term "in

harmony with” is not synonymous with “in conformity with,” “consistent with,” or “in compliance with;” rather, “in harmony with” is a more flexible standard which requires the hearing authority to determine whether a particular use would be “so inimical or injurious to the announced objectives and goals of the comprehensive development plan so as not to be able to co-exist with the plan’s recommendations.” *Richarmarr Holly Hills Inc. v. American PCS L.P.*, 117 Md. App. 607, 656, 701 A.2d 879, 903 (1997).

In this case, the Howard County General Plan designates the area in which the Property is located as a “Rural Residential” land use. The General Plan indicates that “places of worship” are a common component of residential communities (chapter 5, pg. 168). The proposed new religious facility is an institutional use and will be similar to most typical religious facilities. The use would be most intense on the principal regular weekly day of worship, in this case on Sundays and on several other special days of religious significance during the year, but the intensity of the use of the facility would be generally at a low level at other times. At 10.02 acres, the Property is of ample size for the proposed development and will include large areas for new landscaping buffers and for the retention of existing vegetation to serve as significant buffers as well. The Property has frontage on and direct access to McKendree Road, a Minor Collector, and Hobbs Road, a local road. With the addition of two access points, the streets giving access to the site will be adequate. The proposed religious facility is of a reasonable size given the size of the Property and such facilities are commonly found in both residential and in rural settings. Accordingly, the nature and intensity of use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site, are such that the use will be in harmony with the land uses and policies

indicated in the General Plan for the district in which it is located, in accordance with Section 131.B.1.a.

2. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires the Board to find that the proposed use “will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses.” Virtually every human activity, however, has the potential for adverse impact. Zoning recognizes this fact and, when concerned with special exceptions, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. The modern seminal case on special exceptions, *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981), establishes the standard for resolving special exception issues of adverse impact. *Schultz* states that:

[T]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *Id.* At 22-23, 432 A.2d 1319 (emphasis added).

Thus, the question in the matter before the Board is not whether the proposed Church facility has adverse effects in an RR-DEO zone. The proper question is whether those adverse effects are greater at the proposed site than they would generally be elsewhere within other RR-DEO districts of the County. While the Protestants’ concerns about the size and the intensity of the use of the facility, traffic congestion and safety, lights, noise, and lowered property values are understandable, the evidence placed before the Board does not sufficiently demonstrate any adverse effects unique or different than those ordinarily associated with the proposed use in the RR-DEO district.

Much of the testimony presented by the Protestants amounted only to unsupported opinions and conclusions. Unsupported conclusions or fears of witnesses to the effect that a proposed use of property will or will not result in harm amount to nothing more than vague and general expressions of opinion which are lacking in probative value. *Anderson v. Sawyer*, 23 Md. App. 612, 329 A.2d 716 (1974). Even where supported, however, the Protestants' testimony only tended to show the adverse effects that are inherent in a religious facility use. The evidence failed to show that such adverse effects would be unique or different than those ordinarily associated with the use in the RR-DEO zone.

The Petitioner has met its burden in presenting sufficient evidence establishing that this proposed use will not adversely affect vicinal properties to an extent greater than elsewhere in the RR-DEO district. The use will be conducted primarily indoors and consist of activities that are normally associated with a religious facility use. The uses will occur primarily on the weekends. The structure will be located on a 10.02-acre lot, away from vicinal properties. The outdoor playground will be located near the center of the site and will be screened and buffered from the residential uses in the vicinity by the Church building, by distance and by both new landscaping and a significant area of existing vegetation. The parking lot and driveway will be paved to reduce dust. The proposed parking lot lighting will have full cut off fixtures and will turn off automatically at 9:15 p.m. Therefore, the proposed use will not generate inordinate adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions that would be greater at the subject site than would generally occur elsewhere in the zone or applicable other zones for similar uses, as required by Section 131.B.2.a.

3. Structures and Landscaping: The Petitioner is proposing to develop the Property for a new one-story religious facility with a maximum height of up to 35 feet. At 35 feet, the

proposed Church would be under the 40 foot building height permitted in the RR-DEO district. The proposed Church building will comply with the structure setback requirement from the Hobbs Road right-of-way and will greatly exceed the setback requirements from all other lot lines. All use areas will greatly exceed the minimum use setback requirements. The developed areas will be well screened and buffered from the residential uses on Parcel 44 across McKendree Road and Parcel 189 to the south by substantial areas of existing vegetation. To the west are paddock areas of the adjoining stables and the dwelling on that site is located well to the southwest. Across Hobbs Road, most of the land is a wooded area of a large farm property. The Petitioner also proposed an alternative landscape plan facility to improve the screening from Parcel 108 across Hobbs Road. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b. of the Zoning Regulations.

4. Parking and Drives: The 350 seat Church requires 117 parking spaces and 120 will be provided. The TSR recognizes that additional parking may be required during special events and days of special religious significance, and notes that there is adequate space on site if necessary. The parking lot would be located away from area residences and will be buffered by existing vegetation and perimeter landscaping. Parking areas will be of adequate size for the particular religious use and the orientation and location of the parking lot and the locations for the driveways are such that they will not affect the nearby dwellings. The proposed dumpster will be screened and located away from nearby residences. The ingress and egress drives and the internal circulation of traffic flow will provide safe access. The parking areas, driveways

and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties, as required by Section 131.B.2.c.

5. Safe Access: The existing ingress and egress driveways will provide safe access with adequate sight distance. The traffic impact study indicates that travel speeds along both roads are relatively low and the sight distance study demonstrates the ingress and egress drives will provide safe access with adequate sight distance, provided certain vegetation is removed. As such, the driveways will provide safe access with adequate sight distance so as to achieve maximum safety, as required by Section 131.B.2.d.

B. Specific Criteria for Structures Used Primarily for Religious Activities (Section 31.N.40).

1. The lot coverage would be approximately 3.16 percent of the 10.02-acre Property, well below the maximum lot coverage of 25 percent allowed by Section 131.N.40.a.

2. The structures used primarily for religious activities will be no more than 35 feet in height, well below the maximum height limitation of 40 feet in the RR-DEO district, therefore, Section 131.N.40.b. does not apply.

3. Section 131.N.40.c. does not apply because the petition does not propose parking facilities on a lot separated by a public street.

C. Additional Opposition Testimony

The Opposition argues that the proposed use should be denied because it would be a destination use, does not serve anyone within the community and because the parishioners do not reside in the area or community but will travel there from other parts of the County and beyond. The Opposition also contends that MD 97, or a more central area, is a more appropriate location for the use. The religious facility conditional use category imposes no

such locational requirement. Nor is there any requirement that a religious facility serve only the residential area around the facility. Were the Board to assign weight to these arguments, it would run afoul of the constitutional and statutory protections afforded by the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), codified as 42 U.S.C. §2000cc *et seq.*, which requires that, at a minimum, religious assemblies be treated on equal terms with nonreligious assemblies. Moreover, in RLUIPA, Congress made clear public policy favoring permitting churches to relocate to new sites to assembly for worship, subject of course to land use regulations.

ORDER

Based upon the foregoing, it is, this 11th day of October 2012, by the Howard County Board of Appeals, **ORDERED**:

That the petition of Chin Baptist Mission Church for a Conditional Use for a Structure Used Primarily for Religious Facilities, in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, is hereby **GRANTED**, subject to the following conditions:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the proposed religious facility as described in the petition and as depicted on the Amended Conditional Use Plan dated June 7, 2011 and not to any other activities, uses or structures on the Property.
2. The Petitioner shall install the June 7, 2011 conceptual landscaping plan.
3. The Petitioner shall comply with all applicable Federal, State, and County laws and regulations.

ATTEST:

HOWARD COUNTY BOARD OF
APPEALS

A. Mathieson
Alison Mathieson, Secretary

DISSENT
*James Walsh, Chairperson

PREPARED BY:
HOWARD COUNTY OFFICE OF LAW
MARGARET ANN NOLAN
COUNTY SOLICITOR

DISSENT
John Lederer, Vice-Chairperson

Maurice M. Simpkins
Maurice Simpkins

Barry M. Sanders
Barry M. Sanders
Assistant County Solicitor

Henry Eagles
Henry Eagles

James Howard
*James Howard

* I hereby certify that I reviewed all of the evidence submitted on April 24, 2012 and listened to a recording of the April 24, 2012 hearing for which I was not present.

James D. Walsh
James Walsh

*I hereby certify that I reviewed all of the evidence submitted on March 22, 2012 and listened to a recording of the March 22, 2012 hearing for which I was not present.

James Howard
James Howard