

**Matter of United Full Gospel Church of God v Board  
of Appeals of the Inc. Vil. of Val. Stream**

2021 NY Slip Op 32075(U)

August 20, 2021

Supreme Court, Nassau County

Docket Number: 600004/2021

Judge: Helen Voutsinas

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**Present: Hon. Helen Voutsinas, J.S.C.  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU - IAS/TRIAL PART 19**

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**In the Matter of the Application of  
UNITED FULL GOSPEL CHURCH OF GOD,**

**Index No.: 600004/2021**

**Petitioner,**

**for Judgment Pursuant to Article 78,  
Civil Practice Law and Rules,**

**-against-**

**Short Form Order**

**BOARD OF APPEALS OF THE INC.  
VILLAGE OF VALLEY STREAM,**

**Respondent.**

-----X

The following papers were read on this motion:

Notice of Motion, Affirmation, Affidavit, Exhibits and	
Petitioner’s Memorandum of Law .....	1
Respondent’s Memorandum of Law .....	2
Verified Answer and Return .....	3

In this application, pursuant to CPLR Article 78, petitioner seeks to annul and reverse the determination of the respondent Board of Appeals of the Inc. Village of Valley Stream (“Board”) dated November 24, 2020, which, after a public hearing, denied petitioner’s application for: (i) a special use permit to utilize the premises as a place of public assembly that is able to accommodate fifty (50) or more occupants pursuant to Village Code §99-2008(B)(19); (ii) an area variance to waive any off-street parking requirements pursuant to Village Code §99-2202(E); (iii) the modification of the window openings on the building for egress to the street to pursuant to Village Code §99-3405(2); and (iv) the modification of storefront display areas pursuant to Village Code §3405(A)(10).

It is undisputed the petitioner's premises at 31 Central Avenue, Valley Stream, New York is located in a commercial C-2 Zoning District and is improved with a one and two story brick building formerly used as an office. A special exception permit is required for establishment of a religious use seeking a capacity of fifty (50) people or more. The petitioner seeks a special use permit for seating of 125 congregants which also necessitates an area variance for waiver of off street parking requirements. The petitioner also seeks modifications to the storefront in order to comply with fire ordinances.

In support of the application, petitioner submits its traffic engineer's report, the traffic engineer's testimony, its project architect's drawings, the architect's testimony, and the testimony of its real estate expert.

The respondent opposes the petition stating that in its determination there was substantial evidence that the proposed assembly place: (i) fails to comply with construction safety and fire standards established by the New York State Fire Code, Building and Construction Code and/or Nassau County Fire Marshall; (ii) will negatively impact abutting properties by reason of noise, congestion, and/or use of other's property without express permission; and (iii) provides zero off-street parking. Respondent submits an answer with numerous exhibits.

Petitioner also offered extensive testimony and written reports by real estate and parking experts who indicated that petitioner's proposal would have no adverse or detrimental impact on the surrounding area and that there existed ample on-street parking as well as parking within a municipal parking field located one block from the premises. In particular, petitioner's traffic engineer, Sean P. Mulgran, PE indicated that Municipal Lot 24 has thirty-six (36) spaces and granting the application would not have an adverse impact on the parking conditions in the area surrounding the premises. Petitioner also offers the testimony of Mr. Erik Bjerneby, an architect,

who states that there exists adequate egress from the building in case there is an issue with the New York State Building Code. In addition, petitioner offered evidence of a lease entered into with the owner of the neighboring premises, 33-35 N. Central Avenue for the use of its parking area on Sundays and at other times during special events, providing an additional twenty (20) parking spaces.

After the public hearing, the Board denied petitioner's application in its entirety in a Decision dated November 24, 2020. By Notice of Decision dated November 24, 2020, the Board unanimously denied the application in all respects stating that it has considered and found that:

1. An undesirable change will be produced in the character of the neighborhood and a detriment to nearby properties will be created by the granting of the area variances and in particular the requested parking variance from Section 99-2201.
2. The benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue, other than the requested area variances
3. The requested variances are substantial
4. The requested variances will have a potential adverse effect and impact on the physical and environmental conditions in the neighborhood or district as relates to the requested variances from Section 99-2201; and
5. Although the alleged difficulty is self-created, this fact in and of itself should not preclude the granting of the area variances. With respect to the requested special use permit, the Board has taken the requirements of Sections 99-2008 and 99-2008-B.19 into consideration in making the determination to deny the special use permit.

The petitioner asserts in this proceeding that the Board's denial of petitioner's application was arbitrary, capricious, unreasonable and unsupported by substantial evidence.

The respondent challenges petitioner's allegations that its determination was arbitrary and capricious stating that the Board of Zoning Appeals, composed of local officials generally possessing familiarity with local conditions must take into consideration how planning decisions affect the development of the community. The respondent asserts in this proceeding that the Board's denial of the petitioner's

application was rationally concluded in its discretion and supported by substantial evidence.

The respondent rebuts the presumption that buildings that are religious and educational in use produce beneficial effects on the community. The respondent states that as a result religious applicants are not more deserving of deference and special treatment from zoning boards. According to the respondent, there exists substantial evidence that the presence of petitioner's proposed church would have significant adverse effects on fire safety, traffic, parking, and noise in the Village, which would warrant the Board's suggestions of mitigation or an outright rejection of the petitioner's proposal. In the instant case, the respondent stated that the petitioner was unwilling to consent to the measures the Board suggested to mitigate potential adverse safety, health, and welfare impacts. The respondent's suggestions included: (i) the reduction in the number of seats to 50 persons (to eliminate the need for a special permit for an Assembly Place); (ii) to widen the Emergency Corridor to be building/fire code compliant; (iii) to provide an alternate method of emergency egress other than the Emergency Corridor; and (iv) provide the requisite Village license or certificate of occupancy to use the leased private lot for additional parking.

Of concern, the Board stated that currently egress from the rear of the building is primarily through the third-party building. However, the third-party building will be leased to another tenant and the space will be unavailable for egress. To remedy this issue the petitioner proposed an Emergency Corridor. The Board reasoned that the petitioner's proposed Emergency Corridor, as the only point of emergency egress, is non-compliant with fire and building codes and creates a potential public health and safety hazard for

petitioner's intended 125+ persons building. Petitioner proposes to install a new walled-off corridor extending the length of the north side of the building. Respondent states that, an Emergency Corridor must have a minimum width of 44 inches citing, section 1003.6 of the 2018 International Fire Code which provides that: "[t]he minimum width or required capacity of a means of egress system shall not be diminished along the path of egress travel." Additionally, respondent asserts that the petitioner's proposition of maintaining an exit door for egress onto the abutting property to the north would result in noise, congestion, and potential trespass extending beyond the property line. Respondent further contends the petitioner's proposed Emergency Corridor has sections that are much narrower in width than 44 inches and therefore demonstrates a failure to comply with the express conditions set forth in Village Code §§99-2008(B)(19)(a) and (e), which requires the Emergency Corridor to be code compliant. In addition, respondent argues that the church has failed to meet the parking requirements pursuant to Village Code §99-2201.

Petitioner argues that where an irreconcilable conflict arises with the right to establish religious use and potential hazards of traffic or diminution in value, the First Amendment right to establish religious use must prevail. In support, petitioner argues that the Board's decision is arbitrary and capricious since the testimony at the public hearing and the report of the petitioner's parking and traffic engineer demonstrates that ample on-street and municipal parking existed for all church functions. The petitioner argues that the Board has not attempted to mitigate whatever inconveniences may arise to the community.

It is undisputed that petitioner's premises are located in a C-2 commercial zoning district or that the Building Zone Ordinance of the Village of Valley Stream expressly

permits religious use in this district. A special use permit is required in this case for the establishment of a religious use due to the size and nature of the proposed use. An application claiming religious exception typically is met with accommodations by both parties to ensure that an applicant is provided due process of law for the use of their property and that their First Amendment rights are not violated. The Board may grant the permit for the proposed use if it will not cause significant negative impact on the public health safety, welfare and morals.

In passing on an application for a special exception permit, the Board of Zoning Appeals must consider whether a particular religious/educational or accessory use will create any of the following impacts:

- (1) A significant traffic congestion problem that jeopardizes public safety;
- (2) a substantial adverse effect on surrounding property values;
- (3) A significant over-taxation of basic municipal services;
- (4) a cognizable and substantial fire or other emergency risk; and/or
- (5) Any other negative impact, including chronic conditions of substantial noise disturbance or garbage accumulation, which may necessarily occur as a result of the conduct of the proposed use, as may be borne out by substantial evidence in the record before the Board Village Code Section 99-2008(B)(19).

The permit will be denied where there is a finding of significant negative impact which cannot be substantially mitigated by the imposition of appropriate conditions.

Entitlement to a special exception is not a matter of right. Compliance with local ordinance standards must be shown before a special exception permit may be granted. A zoning board has discretion to find, with proper support, that a particular use does not meet the criteria of the special use provisions of the zoning ordinance and must not yield to opposition (*Pleasant Valley Home Const., Ltd. v. Van Wagner*, 41 NY2d 1028 [1997]).

“Where an “irreconcilable conflict exists between the right to erect a religious structure and the potential hazards of traffic or diminution in value, the latter must yield to the former” (*Jewish Reconstructionist Synagogue of N. Shore v. Incorporated Vil. of Roslyn Harbor*, 38 NY2d 283 [1975]), unless it is “convincingly shown” that an application “will have a direct and immediate adverse effect upon the health, safety or welfare of the community” (*Matter of Westchester Reform Temple v. Brown*, 22 NY2d 488, 494-495 [1968] *see, Cornell University v. Bagnardi, supra; Apostolic Holiness Church v. Zoning Bd. of Appeals of Town of Babylon*, 220 AD2d 740, 743 [2d Dept 1995]).

Compliance with local ordinance standards must be shown before a special exception permit may be granted. A zoning board has discretion to find, with proper support, that a particular use does not meet the criteria of the special use provisions of the zoning ordinance (*Pleasant Valley Home Const., Ltd. V. Van Wagner*, 41 NY2d 1028, 1029 [1997]).

In the context of zoning regulations, churches and schools occupy a different status from commercial enterprises. Churches, schools and accessory uses are, in themselves, clearly in furtherance of the public good and general welfare (*Matter of Rochester v. Planning Bd. of Town of Brighton*, 1 NY2d 508, 523 [1956]; *Young Israel of*

*North Woodmere v. Town of Hempstead Bd. of Zoning Appeals*, 221 AD2d 646, 647 [2nd Dept 1995]). It is well settled that while religious institutions are not exempt from local zoning laws, greater flexibility is required in evaluating an application for a religious use than for an application for another use and every effort to accommodate the religious use must be made (*Richmond v. City of New Rochelle Bd. of Zoning Appeals*, 24 AD3d 782, 783 [2d Dept 2005]; *St. Thomas Malankara Orthodox Church, Inc., Long Island v. Board of Appeals, Town of Hempstead*, 23 AD3d 666, 667 [2d Dept 2005](citations and internal quotation marks omitted), *app. dismissed*, 7 NY3d 740 [2006]).

This Court holds that although respondent Board's concerns over parking are legitimate, these concerns can be addressed by the imposition of appropriate conditions. (*Apostolic Holiness Church v. Zoning Bd. of Appeals of Town of Babylon*, 220 AD2d 740, 743 [2d Dept 1995]). While a religious use arguably brings more traffic and more congestion into an area than a residential use or a smaller scale commercial use, the Court must consider all factors before it.

The decision of the Board however, is void of any evidence that the Board made any attempts whatsoever to accommodate the proposed religious use and is arbitrary and capricious in its determination. In reviewing the transcript of the hearing, the Court notes that the Board believes that the premises should be zoned residential. They discussed the adverse effects to the surrounding properties and in terms of their then ability to continue to pursue and allow restaurant uses with a liquor license and their resale values. This Court holds that such is not a legitimate legal basis to deny a special use permit for a church. Furthermore, the traffic concerns discussed at the hearing seemed arbitrarily applied to this purpose. What is clear is that the record establishes that the Board has

provided no accommodation to fashion a solution despite its claims and petitioner's attempts to do so.

The petitioner has provided for a resolution with a lease for parking at the neighboring property and a bus which can transport its occupants at an appropriate time. The Board is required to propose ideas as to how to accommodate a religious use, rather than dismiss it because it may affect the nearby business' ability to obtain a liquor license.

Though traffic safety issues are legitimate concerns (*e.g.*, *Cornell University v. Bagnardi, supra*, at 68 NY2d 595; *Rasheed v Weiss*, Index No. 1729-2010, Supreme Court, Nassau County, J. Winslow, December 23, 2010), there is no evidence in the record that additional vehicles in the vicinity of the proposed property will result in conditions materially impacting upon the public safety and welfare during the proposed hours of operation. Specifically, there was no evidence provided by the Board depicting the prevailing traffic conditions on N. Central Avenue or W. Merrick Road so as to support a non-speculative inference that the proposed municipal lot and private lot configurations create a significant traffic risk to public safety. With regards to parking, petitioner's expert indicated that the subject property's use would be ideal since many of the businesses that might otherwise utilize the municipal lot or metered parking in the area, would be closed while the church held its services later in the day or on Sunday. In this respect, the Board's conclusion was conclusory and unsupported by empirically derived evidence in the record (*e.g.*, *Matter of G & P Investing Co. v. Foley*, 61 AD3d 684, 685 [2d Dept 2009]; *Goldsmith v. Bishop*, 264 AD2d 775, 776, [2d Dept 1999]; *Matter of Framike Realty Corp. v. Hinck*, 220 AD2d 501, 502 [2d Dept 1995]).

Notably, “[c]onclusory findings of fact are insufficient to support a determination by a zoning board of appeals \* \*” (*Matter of Cacsire v. City of White Plains Zoning Bd. of Appeals*, 87 A.3d 1135, 1137 [2d Dept 2011]).


However, compliance with building and fire codes should also be considered of the utmost importance when taking into consideration the zoning of a proposed building, its intended use, and the overall safety of the community. According to the Board, the petitioner’s application contained non-compliant fire/building code elements, namely concerning its proposed Emergency Corridor as a point of egress. The previous denial was based on the failure to meet Code requirements. Respondent represents that they have proposed compliance with such safety and fire codes. A local Zoning Board is required to suggest measures to accommodate the proposed religious use while mitigating the adverse affects on the surrounding community to the greatest extent possible (*Tabernacle of Victory Pentecostal Church v. Weiss*, 101 AD3d 738 [2d Dept 2012]).

Accordingly, based upon all of the foregoing, it is, **ORDERED**, that the decision of the respondent Board of Zoning appeals dated November 24, 2020, is hereby **annulled** and the matter is remitted to said respondent with the direction to grant the requested special exception permit/area/parking variance upon such reasonable conditions as will permit the requested religious use while mitigating any detrimental or adverse effects upon the surrounding community and compliance with all Building and Safety Codes. Upon *remittitur*, the determination of the respondent must be supported by proper findings of fact and a sufficient evidentiary basis with respect to the criteria applicable to each special exception and area variance sought.

All other requested relief not otherwise addressed herein is **DENIED**.

This constitutes the Decision and Order of the Court.

DATED: August 20, 2021  
Mineola, New York



Helen Voutsinas,  
Justice of the Supreme Court

**ENTERED**

**Aug 27 2021**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE