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June 25, 2015

Hand Delivery
Arnold Jablon
Director,
Baltimore County Permits, Approvals & Inspections
111 W. Chesapeake Avenue
Towson, MD 21204

Re:

Beachmont Christian Camp - 6433 Mt. Vista Road 11th Election District, 5th Councilmanic District Spirit & Intent Request

Dear Mr. Jablon:

This office represents the Beachmont Christian Camp located in the Kingsville area of Baltimore County off of Mt. Vista Road. The Camp enjoys a Special Exception approval granted in Case #75-83-X. Since that approval was granted, approval was granted in Case #89-489-SPH to permit an addition and pavilion. Thereafter, in Case #94-50-SPH, some restrictions were lifted and some site plan modifications were permitted. On March 20, 1996, your office granted a Spirit & Intent request was approved to permit a revised parking layout.

At this time, the Camp is requesting Spirit & Intent relief to permit the construction of a 35′ x 80′ tractor shed. The location for this proposed shed is shown on the attached plan to accompany this request. My apologies but the shared boundary line for two parcels owned by Beachmont, specifically Parcels 96 and 527, are not shown on the site plan attached and the proposed shed will straddle this shared boundary line. For this reason, I am providing you with a My Neighborhood aerial which shows the boundary line and the approximate location of the proposed shed thereon.

As demonstrated by the attachments, the proposed shed will be located in an area already containing camp improvements. The nearest property line is that shared with Parcel 620, a 15 acre parcel also owned by the Camp. (See, Case # 99-347-SPH wherein a Special Hearing was granted approving a non-density transfer from the Estate of Aimee Foard.)

The proposed shed will not increase the intensity of the camp's operations but rather is simply necessary to permit the continuation of current activities in a cleaner and more aesthetically pleasing manner. The proposed shed will not create any adverse impacts to the area.

If you are in agreement with this request, please execute below and thank you for your consideration of this request. Please do not hesitate to let me know if you need anything further in support of this request. Attached hereto is my firm's check in the amount of \$150 representing payment for this request.

Sincerely,

Jennafer R. Busse

SPIRIT AND INTENT RELIEF APPROVED:

Arnold Jabor, Esq Director, Permits, Approvals & Inspections

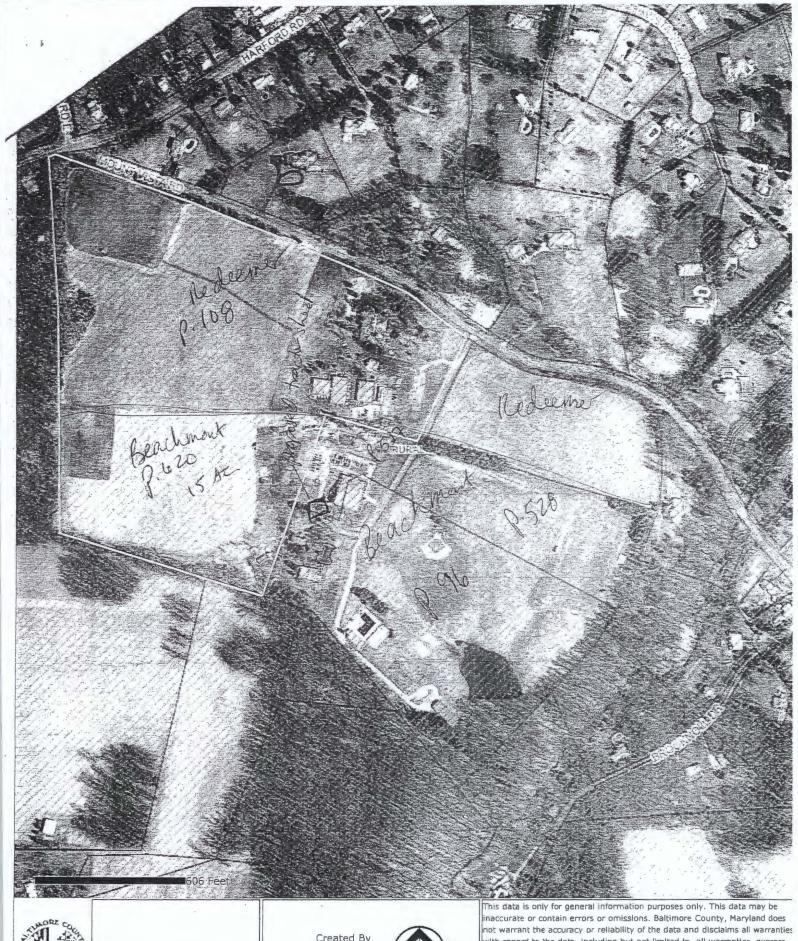
Planner I: Lary H

cc: W

W. Carl Richards
Steve Freeman
Craig Rogers
Timothy M. Kotroco, Esquire

440609

approval will be removed, base on 85-245x and restriction #5.





Land Development Map

Created By Baltimore County My Neighborhood



This data is only for general information purposes only. This data may be inaccurate or contain errors or omissions. Baltimore County, Maryland does not warrant the accuracy or reliability of the data and disclaims all warranties with regard to the data, including but not limited to, all warranties, express or implied, of merchantability and fitness for any particular purpose. Baltimore County, Maryland disclaims all obligation and liability for damages, including but not limited to, actual, special, indirect, and consequential damages, attorneys' and experts' fees, and court costs incurred as a result of, arising from or in connection with the use of or reliance upon this data.

85-245-X	S/S Mt. Vista Rd., 1800' se of Harford Rd.  (6433 Mt. Vista Rd.)  11th Elec. Dist.
1/30/85	Petition for Special Exception (for a camp, day camp, uses accessory thereto, etc.) - filing fee \$100.00 - Beachmont, Inc.
1/30/85	Hearing set for 3/4/85, at 11:30 a.m.
3/5/85	Advertising and Posting - \$51.26
3/7/85	Ordered by the Zoning Commissioner that the Petition for Special Exception with accessory uses thereto and the amendment to the special exception granted in Case No. 75-83-X to delete Restrictions 1 and 2 and the site plan filed and approved therein to allow the proposed expansion are GRANTED with restrictions.
4/2/85	Appeal filed by Protestants/Appellants, B. Scott Striebinger, et al - filing fee \$105.00 - to the County Board of Appeals.
11/5/85	Ordered by the County Board of Appeals that the Petition for Special Exception for a camp with accessory uses thereto and the amendment to the Special Exception granted in Case No. 75-83-X to allow the proposed expansion are GRANTED with restrictions and any appeal from this decision must be in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.
12/6/85	Appeal filed by Protestants/Appellants, Scott and Judy Striebinger, et al, to the Circuit Court for Baltimore County.
11/20/86	Memorandum and Order of Circuit Court for Baltimore County (Judge A. Owen Hennegan) AFFIRMING the decision of the Baltimore County Board of Appeals and ORDERING Appellants to pay the costs.
12/17/86	Order for Appeal of Protestants/Appellants, Scott and Judy Strienbinger, et al, to Court of Special Appeals of Maryland.
-	(Over)

7/6/87	COURT OF SPECIAL APPEALS - Judgment reversed.
8/5/87	Appellee's Motion for Reconsideration.
8/31/87	Motion for Reconsideration and Modification of Opinion Granted.
9/1/87	MANDATE ISSUED BY COURT OF SPECIAL APPEALS - JUDGMENT REVERSED. Accordingly, we hold that the

Zoning Commissioner and the Board of Appeals lacked the authority under B.C.Z.R. § 1A01.2.C to grant the uses that Beachmont requested. Without the necessary authority, the granting of the special exception to appellee was invalid and thus devoid of all legal effect.

85-245-X

# **MANDATE**

## Court of Special Appeals

No. 1686, September Term, 1986

Scott Strienbinger et al

Beachmont, Inc.

JUDGMENT: July 6, 1987: Per Curiam filed.

Judgment reversed; costs to be paid by

appellee.

August 5, 1987: Appellee's Motion for

Reconsideration.

August 10, 1987: Answer to Motion for

Reconsideration filed by appellant counsel. August 31, 1987: Motion for Reconsideration

and modification of opinion granted.

September 1, 1987: Mandate issued.

### STATEMENT OF COSTS:

In Circuit Court: for BALTIMORE COUNTY 85CG3878

In Court of Special Appeals:

Filing Record on Appeal	50.00
Printing Brief for Appellant	183.40
Portion of Record ExtractAppellant	1665.60
Printing Brief for Appellee	124.80

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this First day of September A.D. 1987

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFIC

# UNREPORTED IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1686

September Term, 1986

SCOTT STRIENBINGER, ET AL

ν.

BEACHMONT, INC.

Weant
Bishop
Bell, Rosalyn B.,
JJ.

PER CURIAM

Filed: July 6, 1987

Appellee Beachmont, Inc. filed a Petition for Special Exceptions requesting that the Zoning Commissioner of Baltimore County permit appellee to expand its seasonal camp into a year-round operation by making numerous improvements on the subject property, "including but not limited to: cabins, overnight lodges, director's house, staff house, activities building, swimming pools, pavilions, and bath houses, etc." On March 7, 1985, the Zoning Commissioner granted the special exception. Appellants, who are several landowners neighboring the subject property, appealed the decision first to the County Board of Appeals and then to the Circuit Court for Baltimore County. In each instance, the Zoning Commissioner's decision was affirmed.

### FACTS

Since 1974, appellee has operated a Christian camp in Baltimore County on approximately twenty acres. The land is located in an area zoned R.C.2., in which "agricultural operations" is the "[p]referred use permitted as matter of right." Baltimore County Zoning Regulation § 1A01.2.A [hereinafter referred to as BCZR]. Although this zoning classification

They are Scott and Judy Strienbinger, Walter and Dorothy Dunsmore, Robert Long, Leroy Hone, and William and Phyllis Swift.

precludes, as a matter of right, the use of the subject property as a camp, appellee applied for and received a special exception to use the property as a camp. In granting appellee's request, the Zoning Commissioner imposed several limitations:

- not more than 250 persons using the barn or proposed chapel area as indicated on the plat,
- not more than 150 persons camping on the property at any one time, and
- 3) approval of a site plan by the State Highway Administration, the Department of Public Works, and the Office of Planning and Zoning.

Pursuant to the Commission's approval, appellee has made numerous site improvements, including the construction of a swimming pool, pavilion and other recreational facilities.

Beachmont has operated a day camp for children during the summer. Children from the ages of three to four attend daily from 10:00 a.m. to 2:00 p.m., while older children from the ages of five to twelve attend from 10:00 a.m. to 4:00 p.m. At present, approximately 160 children participate in these two-week sessions.

In addition to the summer day camp, appellee sponsors various church-related activities. The camp's season begins with an Easter Sunrise Service in the spring of each year. Throughout the summer and fall, the campgrounds are available to local churches for picnics and other outings. On the July Fourth

holiday, Beachmont also provides an all day family picnic.
In 1985, about 250 to 300 people attended.

Since the camp's purpose is to promote Christian fellowship and principles, Beachmont imposes strict standards for guests using the facilities. No radios or tape players are allowed. Alcoholic beverages and drug use are strictly prohibited. Beachmont enforces a 10:00 p.m. curfew.

Desiring to expand both the size of the camp and the frequency of its use, appellee acquired an additional thirteen acres of land, contiguous to the existing campgrounds, and filed a second Petition for Special Exception on January 30, 1985. In that petition, appellee requested permission to build a multipurpose activities building containing a gymnasium and dining facility; three dormitory lodges, each housing sixty people; three primitive-style cabins, each holding twenty to thirty people; a staff house; director's house; bath houses; and various recreational improvements such as a volleyball court and horseshoe pit. In addition, the petition sought the removal of the first two limitations set out in the 1974 special exception, relating to the number of persons allowed to use the barn or proposed chapel at one time and the number of persons permitted to camp on the subject property at any one time.

Unlike the first petition, appellee encountered considerable opposition to the request to expand the camp's size and frequency of use. After receiving both expert and lay testimony concerning the effects of the proposed expansion, the Zoning Commissioner granted the petition subject to certain restrictions:

- 1) any and all outdoor activities of the camp will have a 10:00 p.m. curfew, and will be conducted so as not to disturb the guiet enjoyment of their own property by the neighbors.
- 2) the site will provide a minimum of 120 parking spaces and except for the specific occasions as set forth in Item No. 3 there may not be more vehicles on the property than those number of spaces provided.
- 3) a camp may conduct services or activities, e.g., Easter Sunrise Services, a maximum of three (3) times per year during which the provisions of Item No. 2 are waived.
- 4) at any activity where more than 50 vehicles are present on site, the camp will provide a trained traffic professional to assist in the entry and exit of vehicles to and from the property.
- 5) the camp will submit a revised site plan, in conformance with Petitioner's Exhibit No. 4 and all improvements will be consistent thereto.

On appeal to this Court, appellants challenge the Board's action on three grounds:

- I. There was a substantial change in the facts and circumstances between the first decision, with its restrictions, and the second case justifying the decisions of the Baltimore County Board of Appeals and the circuit court.
- II. The Zoning Commissioner and the County Board of Appeals exceeded their authority in granting the special exception for the many uses contained in the petition, which are not listed among the permitted uses as a right or by special exception in the R.C.2 zone.
- III. Appellee failed to present sufficient evidence to the Board so as to render its decision granting Beachmont's petition for special exception fairly debatable.

Because the second issue is dispositive of this case, we will not address the other two issues.

### The Commissioner's Authority

Before addressing the merits of the second issue, we note that appellants failed to preserve it for appeal. Specifically, they failed to argue, and neither the County Board of Appeals nor the circuit court decided, whether the Zoning Commissioner exceeded his authority under BCZR § 2A01.2.C. Since appellate rules of procedure prohibit parties from raising issues for the first time on appeal, Md. Rule 1085; C.S. Bowen v. Maryland National Bank, 36 Md. App. 26 (1977); Washington Homes, Inc. v. Bogett, 23 Md. App. 167 (1974), we normally would decline to address an unpreserved issue. An issue involving delegation of power, however, is one of such fundamental importance that a reviewing court should consider it even when the parties failed to litigate the issue at the trial level. See, e.g., Board of Trustees of Howard County Community College v. John K. Ruff, Inc., 278 Md. 580, 583 (1976) (holding that reviewing court must address sovereign immunity issue even though defendant had not raised that issue below); Smith v. Biddle, 188 Md. 315, 318 (1947) (holding that reviewing court "will inquire into the [unpreserved] question of whether a contract sought to be specifically enforced is in the form that the law requires); Webb v. Baltimore Commercial Bank, 181 Md. 572, 577 (1943) (holding that appellate court must make a legal determination of whether plaintiff has sufficient interest in the subject matter of the suit to sustain a bill in equity, even though no point was made in demurrer, briefs or oral argument);

Schiff v. Solomon, 57 Md. 572 (1882) (holding that since the statute did not authorize joint insolvency proceedings against several persons or partners, the Court will address this deficiency, apparent on the record, even though parties did not raise the point below); Tuxedo Cheverly Volunteer Fire Company, Inc. v. Prince George's County, 39 Md. App. 322, 327-28 (1978) (reviewing issue of validity of contract in specific performance action, even though the court below did not decide the issue).

The power of the Zoning Commissioner and the County Board of Appeals to grant the special exception is statutory and can be exercised only to the extent and in the manner directed by the enabling statute. Harbor Island Marina, Inc. v. Board of County Commissioners of Calvert County, 286 Md. 303, 309-10 (1979); Gordon v. Commissioners of St. Michaels, 270 Md. 128, 136 (1976); Hewitt v. County Commissioners of Baltimore County, 195 Md. 348, 353-54 (1949). In the case sub judice, the basic zoning power is delineated in BCZR § 1A01, which established a R.C.2 agricultural zone "in order to foster conditions favorable to a continued agricultural use." BCZR § 1A01.1.B. to this zoning ordinance, the legislature identified various "preferred use[s] permitted as of right" and nonagricultural uses in which a landowner may engage by special exception. pertinent uses permitted by special exception are "camps, including day camps" and "churches or other buildings for religious worship." BCZR § 1A01.2.C.4, and 6.

In <u>Schultz v. Pritts</u>, 291 Md. 1 (1981), the Court of Appeals explained the general significance of special exception status:

The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any factor or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.2

291 Md. at 11 (emphasis in original).

(cont'd)

In the instant case, the zoning regulations provide specific guidance in assessing adverse effects of the special exception use on the surrounding area. Section C of BCZR § 1A01.A permits exceptional use only if it "would not be detrimental to the primary agricultural uses in its vicinity." Section 502.1 of the BCZR expands upon this general requirement, prohibiting the approval of a petition for special exception if any of the following adverse effects should occur:

Be detrimental to the health, safety, or general welfare of the locality involved;

b. Tend to create congestion in roads, streets or alleys therein;

Following the court's general guidelines, the Zoning
Commissioner and the Board possessed the power to grant
special exceptions in R.C.2. zones only for the uses
that BCZR § 1A01.2.C. enumerates. This ordinance is written

### 2 cont'd.

- c. Create a potential hazard from fire, panic or other dangers;
- d. Tend to overcrowd land and cause undue concentration of population;
- e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- f. Interfere with adequate light and air;
- g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor
- h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

Because we hold that Beachmont's proposed uses are not covered under the special exception section of the ordinance, we find it unnecessary to address the factual issue of whether appellee complied with these requirements by presenting sufficient evidence to demonstrate that the proposed uses would not adversely affect the surrounding area.

in the affirmative; unless explicitly stated as permitted by special exception or as a matter of right, the use is prohibited. Kowalski v. Lamar, 25 Md. App. 493, 498 (1975) (ruling that "[a]ny use other than those permitted and being carried on as of right or by special exception is prohibited"); see also Town of Harvard v. Maxan, 275 N.E.2d 347, 349-50 (Mass.1971); Williams v. City of Bloomington, McLean County, 247 N.E.2d 446, 449-50 (Ill.App.1969); Samsa v. Heck, 234 N.E.2d 312, 315-16 (Ohio App. 1967); Gada v. Zoning Board of Appeals of the Town of East Lyme, 193 A. 2d 502, 503 (Conn. 1963); Gordon v. Zoning Board of the City of Stamford, 145 A. 2d 746, 750 (Conn. 1958); Silver v. Zoning Board of Adjustment, 112 A.2d 84, 86-87 (Penn. 1955); City of Warwick v. Campbell, 107 A. 2d 334, 336-37 (R.I. 1954); City of Knoxville v. Brown, 260 S.W.2d 264, 267 (Tenn. 1953); Dolan v. DeCapua, 80 A.2d 655, 659 (N.J.Super.1951); Jones v. Robertson, 180 P.2d 929, 931 (Cal.App. 1947).

Here, Beachmont proposes to construct on the subject property a multipurpose activities building containing a gymnasium and dining facility; three dormitory lodges, each housing sixty people; three primitive-style cabins, each holding twenty to thirty people; a staff house; director's house; and bath housing

and various recreational improvements such as a volleyball court and horseshoe pit. We hold that these uses do not fall within the ambit of any of the enumerated special exceptions. Clearly, these buildings are not "churches or other buildings of religious worship." BCZR § 1A01.2.C.6.

Our interpretation of BCZR § 1A01.2.C is supported by the legislative history of the zoning ordinance. of structures requested resemble more closely "community buildings... of a civic, social, recreational, or educational nature." Although such uses were included in the 1954 version of the zoning ordinance, see Bill No. 98-75, the legislature deleted them on October 15, 1975 pursuant to Bill No. 178-79. At present these community building uses are permitted by special exception only in R.C.3 and 4 zones. See Bill No. 98-75. Including these uses as permissible in R.C.3 and 4 zones is strong proof that the legislature intended to exclude them from the R.C.2 zone. Parish of Jefferson v. Carl, 195 So.2d 401, 402 (La.Ct.App. 1967) (holding that where a zoning ordinance expressly permits "public schools, and educational institutions having a curriculum the same as that ordinarily given in public schools in R-1 districts, and permits nursery schools in R-3 districts, by inference nursery schools are prohibited in R-1 districts).

Accordingly, we hold that the Zoning Commissioner and the Board of Appeals lacked the authority under BCZR § 1A01.2.C to grant the uses that Beachmont requested. Without the necessary authority, the granting of the special exception to appellee was invalid and thus devoid of all legal effect.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

DESERVEID

JUL 9 1937

Whiteporth, Timento, Preston, Trimbee & Johnston IN THE MATTER OF
THE APPLICATION OF
BEACHMONT, INC.
FOR SPECIAL EXCEPTION
ON PROPERTY LOCATED ON
THE SOUTH SIDE OF MT.
VISTA ROAD, 1800 FT.
SOUTHEAST OF HARFORD ROAD
(6433 MT. VISTA ROAD)
11th DISTRICT

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BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. 85-245-X

OPINION

This case comes before the Board as an appeal from the Opinion and Order of the Zoning Commissioner, dated March 7, 1985, which granted the Petition for Special Exception for a camp with accessory uses thereto, and, additionally the amendment to the Special Exception granted for this property in Case No. 75-83-X (1974).

Rarely has this Board considered a petition which generated such community interest. The Board notes that both days of hearings were heavily attended and the Board received numerous letters both in support of, and in opposition to the petition. Rather than rehashing the testimony of each of the many witnesses, the substance of same may be summarized as follows:

There exists on this site of some 20 acres, a Christian Camp known as Beachmont. The property is located in an area which features some agricultural uses as well as an upper class residential community in which both protestants and supporters reside. The camp was established in 1974, after a bequest of the land by a benefactor who sought to establish a campground which promoted Christian fellowship and principles. Approval for this camp was originally granted by way of Special Exception, with certain limitations, in Case No. 75-83-X (1974). Since 1974, improvements have been made on this site, including a swimming pool, pavilion and other recreational facilities.

Beachmont, Inc. Case No. 85-245-X

Use of the camp and its facilities has also expanded, primarily retreats for church groups, day care services and other recreational uses. These activities are carefully monitored and controlled and are conducted within the guidelines envisioned by benefactor. All agree, including the protestants, that the ideals and current use of this property is laudible and enhances the surrounding community. To date, the camp has firmly established itself as a good neighbor.

The opposition to the current petition involves a proposed expansion to both the size of the camp facility and the frequency of use of Recently, the camp has received a donation of an additional the property. This land borders ten (10) acres from the family of the original benefactor. the current camp ground on the north side. Further, a second parcel of 2.6 acres has been obtained, located contiguous to the south of the current Although not extensively addressed during testimony and argument facility. before this Board, we concur with the Zoning Commissioner insofar as his comments regarding the subdivision of the recently donated parcels. Further, the subject property is currently zoned R.C. 2. Pursuant to Section 1A01.1.B of the Baltimore County Zoning Regulations (BCZR), this designation is established "in order to foster conditions favorable to a continued agricultural Additionally, Section 1A01.2.C.4, provides the camps, such as the current use, may be permitted by Special Exception, if such use "would not be detrimental to the primary agricultural uses in its vicinity". find as fact that the properties in the vicinity to the subject site are used primarily for residential purpose with some agriculture, and therefore, the petitioned use is not detrimental to the surrounding agriculture and may be allowed, subject to compliance with Section 502.1 of the BCZR.

Beachmont, Inc.
Case No. 85-245-X

Section 502.1 of the BCZR provides the benchmark for granting a Special Exception. The requirements set forth in this section provide that the use may not

- a) Be detrimental to the health, safety, or general welfare of the locality involved;
- b) Tend to create congestion in roads, streets or alleys therein;
- c) Create a potential hazard from fire, panic or other dangers;
- d) Tend to overcrowd land and cause undue concentration of population;
- e) Interfere with adequate provisions for schools, parks, water sewerage, transportation or other public requirements, conveniences, or improvements;
- f) Interfere with adequate light and air;
- g) Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor
- h) Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

The Board heard from numerous witnesses, both expert and laymen, as to these standards. In sum, we find that the proposed use as set forth in the petition complies with the standards set forth in Section 502.1 of the BCZR and will therefore order that the petition and proposed use be granted, subject to restrictions.

### ORDER

For the reasons set forth in the aforegoing Opinion, it is this <a href="https://dx.ncbi.nlm.

 Any and all outdoor activities at the camp will have a 10:00 P.M. curfew, and will be conducted so as not to disturb the quiet enjoyment of their own property by the neighbors. Beachmont, Inc. Case No. 85-245-X

- 2) The site will provide a minimum of 120 parking spaces and except for the specific occasions as set forth in Item #3, there may not be more vehicles on the property than those number of spaces provided.
- 3) The camp may conduct services or activities, e.g., Easter Sunrise Service, a maximum of three (3) times per year during which the provisions of Item #2 are waived.
- 4) At any activity where more than 50 vehicles are present on site, the camp will provide a trained traffic professional to assist in the entry and exit of vehicles to and from the property.
- 5) The camp will submit a revised site plan, in conformance with Petitioner's Exhibit #4, and all improvement will be consistent thereto.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William T. Hackett, Chairman

Lawrence E. Schmidt

Patricia Phipps