87-323-SPH
Affirmed CCt

IN THE COURT OF APPEALS OF MARYLAND

No. 120

September Term, 1988

THE BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC. et al.

v.

HUBERT S. HARKER et al.

Murphy, C.J.
Eldridge
Cole
Rodowsky
McAuliffe
Adkins
Blackwell,
JJ.

Opinion by Murphy, C.J.

Filed: July 28, 1989

The question presented is whether a State-licensed and regulated child care facility, to be operated by a nonprofit charitable corporation on property owned by it, is subject to county zoning regulations.

I.

The Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc. (the Methodist Board) was established, according to its charter, "to aid, protect, care for the needs and welfare of orphaned, indigent, neglected and dependent children." It currently operates two adolescent shelter facilities in Baltimore County. The first was established in 1960, and provides residential care for sixty homeless children. The second was built in 1982 and provides emergency short-term shelter for seventeen children.

Subsequently, on December 5, 1985, the Methodist Board purchased a 14.77 acre tract of land on Liberty Road in Baltimore County with the intention of constructing a third child care facility, to be composed of five residential buildings, each with the capacity to house twelve children. This facility was proposed to house non-delinquent children between the ages of two and seventeen who were victims of serious physical, sexual and emotional abuse. The site selected by the Methodist Board for this facility was within the Resource Conservation zone established by the Baltimore County Zoning Regulations (BCZR). Specifically, the property was zoned, in part, as R.C. 2 (agricultural use) and as R.C. 5 (rural-residential use). Under

the BCZR, child care facilities are categorized as "community care centers." § 101. They are permitted in an R.C. 2 zone only by special exception, provided that "the use would not be detrimental to the primary agricultural uses in its vicinity," and the facility not "provide care for more than 15 persons per site." BCZR § 1A01.1(C). The R.C. 5 zone contains a similar density restriction. § 1A04.2(B)(5A). Thus, the larger sixty person facility proposed by the Methodist Board would not be permitted at all in either an R.C. 2 or R.C. 5 zone.

The Methodist Board purchased the Liberty Road site, believing it was entitled to an exemption from county zoning regulations because one of its earlier child care facilities had been afforded an exemption based upon a 1983 opinion of the then County Attorney of Baltimore County. That opinion, which the Zoning Commissioner accepted at that time as pronouncing the governing law, expressed the view that a child care facility performs a governmental function and was therefore exempt from county zoning regulations.

A special hearing before the Zoning Commissioner pursuant to § 500.7 of the BCZR was held to determine whether the proposed new Liberty Road facility was entitled to an exemption. The Methodist Board maintained that the exemption was appropriate because, in providing a child care facility, it was acting as an agent of the State performing a governmental function. A number of adjoining property owners opposed the exemption claiming,

inter alia, that the proposed use of the property did not make the use "a governmental function or entitle it to an exemption from the effect of the zoning law."

The Zoning Commissioner, after a hearing, noted that the Methodist Board was licensed by the Social Services Administration of the Maryland Department of Human Resources and was governed by the Code of Maryland Administrative Regulations, 07.02.13 (COMAR). He recognized that the proposed facility would provide short-term emergency care for non-delinquent children, who were homeless, dependent, neglected or who had been abused. Referrals would come from various county Departments of Social Services. The Methodist Board, the Commissioner found, "provides a facility that serves a definite public policy, satisfying our society's overriding concern for the benefit and welfare of children." The Commissioner opined that the General Assembly "has mandated that government assume the responsibility to ensure that our children be provided a safe and stable facility where they can be protected during times of crises"; consequently, he said, "the State has overriding interests that subjugate local concerns," as a result of which the statutory provisions for child care facilities constitute "a legislatively imposed obligation." The Commissioner concluded that it was the general policy of the State, as manifested by statute, to promote child care facilities; that being governmental in nature, these facilities were not subject to local zoning restrictions; and that such a facility constituted a "public use," which extended

beyond direct State ownership and control of property. According to the Commissioner, "the extrapolation from publicly-owned property to privately-owned property does not change the result as long as the ultimate use and purpose to which the property will be used is unquestionably a public one." The determinative factor, the Commissioner summarized, is "the character of the proposed use" -- if it is a "public one or confers a public benefit . . . [,] local zoning regulations are inapplicable."

The protesting property owners, together with People's Counsel of Baltimore County, appealed to the County Board of Appeals (the County Board).[1] Following a hearing, the County Board vacated the Zoning Commissioner's order. It identified the question presented as whether "the State's immunity from local zoning regulations attaches to a privately-owned property being used for public purposes." The County Board, after recognizing the "urgent need" for child care facilities, noted that all referrals to the facility "would be made pursuant to a contractual arrangement entered into by and between the property owner and the State of Maryland." Nevertheless, it said that the County intended that its zoning regulations apply to these facilities; that the facility was not exempt because it exercised

[1]The Baltimore County Charter, § 524.1(b) (1978) provides in part that the People's Counsel shall have the power and duty "to defend the comprehensive zoning maps as adopted by the county council, in which he may deem the public interest to be involved."

"a governmental function" and this was so notwithstanding the fact that child care facilities exist for the public good and must be licensed by the State.

The Methodist Board appealed to the Circuit Court for Baltimore County. At this juncture, Baltimore County was permitted to intervene. Its position echoed that of the Methodist Board, namely, that the county zoning regulations did not apply because the facility was performing a governmental function and was therefore exempt from zoning restrictions in the BCZR. The court (Nickerson, J.) affirmed the County Board, holding that no exemption existed "from local zoning for privately owned land used by private organizations for functions governmental in nature."

The Methodist Board appealed to the Court of Special Appeals. Prior to consideration by the intermediate appellate court, we granted certiorari to consider the significant issue of public importance raised in the case. We also granted permission to the State of Maryland to file a brief Amicus Curiae in the case in support of the position taken by both the Methodist Board and by Baltimore County.

II.

Title 5 of the Family Law Article of the Maryland Code (1984, 1988 Cum. Supp.), entitled "Children," contains eleven subtitles covering §§ 5-101 through 5-1104. Subtitle 5 is captioned "Child Care: Foster Care"; it encompasses §§ 5-501 through 5-589.

Section 5-502(b) of subtitle 5 declares it to be the policy of this State "to protect minor children whose care has been relinquished to others . . . [and] to encourage the development of day care services for minor children in a safe, healthy, and homelike environment." Section 5-506(a)(1) recognizes that the care of these children is a State responsibility. With exceptions not here pertinent, a license from the Social Services Administration of the Department of Human Resources (the Administration) is required to operate a child care home or institution before exercising "care, custody, or control of a minor child." §§ 5-508 and 5-509. The Administration is authorized by § 5-506 to adopt rules and regulations to carry out the purpose of these sections.[2]

In connection with its licensing function, the Administration is authorized by § 5-519 to "investigate the policies, purposes, premises, and facilities of a licensee or an applicant for a license." Section 5-525 directs the Administration to establish a program of short term and permanent foster care for minor children in approved child care facilities and in connection therewith to adopt rules and regulations. Section 5-526(a) requires the Administration to provide "for the

[2]Subtitle 7 of the Family Law Article, entitled "Neglected Children," sets forth in § 5-702 the policy of the State to protect neglected children; it requires that "appropriate service [be provided throughout the State] in the best interests of the neglected child."

care, diagnosis, training, education, and rehabilitation of children by placing them in . . . institutions that are operated by nonprofit charitable corporations." Section 5-526(b) directs the Administration to reimburse these corporations "for the cost of these services at appropriate monthly rates." Section 5-532 authorizes the Administration "to adopt rules and regulations to carry out the child welfare services and foster care programs under this subtitle."

Maryland Code (1985 Repl. Vol., 1988 Cum. Supp.), Article 88A, entitled "Social Services Administration," empowers the Administration to supervise "all public and private institutions having the care, custody or control of dependent, abandoned or neglected children, except those institutions under the authority of the State Juvenile Services Administration." § 3(c). The Administration has also been authorized "to designate existing agencies or organizations within the State as its agents as may in its discretion be desirable or necessary for the purpose of this article." § 3(f). The Administration does not itself operate any child care facilities.

The Administration's regulations of child care facilities are contained in Volume III, Title 7 of COMAR (Human Resources). Subtitle 2 of this Title, captioned "License for Care of Children" comprehensively prescribes health and safety requirements for child care facilities, both in respect to the services provided to the children and to the physical facilities housing them. They also delineate standards of financial

accountability, record keeping and provisions for reimbursement of services to the State. COMAR, Section 07.02.13.07, under the caption "General Requirements for all Child Care Facilities" provides:

"(1) Zoning Approval. The facility shall comply with any applicable zoning regulations and obtain approval when this is required by the local zoning authority."

Section 5-506(d)(1) of the Family Law Article provides that a child care home or institution "may not be required to obtain a license from more than 1 State agency."[3]

III.

The rule in Maryland is that the State is not bound "by an enactment of the General Assembly unless the enactment specifically names the State or manifests a clear and indisputable intention that the State is to be bound." City of

[3] Code (1988 Repl. Vol.), Art. 83C, § 2-117, authorizes the Juvenile Services Agency (JSA) (now a Department) "to operate facilities necessary to diagnose, care for, train, educate and rehabilitate" children within its jurisdiction who are in need of these services. Sections 2-114 and 2-120 authorize JSA to place these children in institutions operated by nonprofit corporations, to designate these corporations as its agent for the purpose of buying services, and to reimburse them for the cost of services provided. Sections 2-123 and 2-124 require JSA to license child care facilities except, inter alia, where such a facility has previously been licensed by the Administration under § 5-506 of the Family Law Article.

COMAR, § 14.22.03.16 requires that before a child care facility can be licensed by JSA, it must comply with "local zoning requirements as to physical plant."

Baltimore v. State, 281 Md. 217, 223, 378 A.2d 1326 (1977). See also People's Counsel for Baltimore County v. Maryland Marine Manufacturing Co., Inc., Md. , A.2d (1989) (No. 89, September Term, 1988, filed July 6, 1989); City of Baltimore v. State Dep't, 38 Md. App. 570, 571, 381 A.2d 1188 (1978). We held in City of Baltimore, supra, 281 Md. at 223, that the State was exempt from the city's zoning regulations because nothing in its zoning enabling law, either expressly or by clear implication, subjected the State to the provisions of that jurisdiction's zoning ordinance.

Maryland Code (1987 Repl. Vol.), Article 25A, § 5(X), which grants Baltimore County its zoning authority, neither specifically provides nor clearly implies that the State is intended to be subject to its provisions. That statute (a part of the Express Powers Act governing home rule counties) provides in subsection (X)(1)(i)(2)(i) that it is "the policy of this State that the orderly development and use of land and structures requires comprehensive regulation through implementation of planning and zoning controls"; and subsection (ii) thereof specifies that "zoning controls shall be implemented by local government." Section 5(X)(2)(v)(4) provides that the county's zoning powers shall not "preempt or supersede the regulatory authority of any State department or agency under any public general law."

The Methodist Board argues before us that the State's exemption from Baltimore County's zoning regulations extends to

property owned by a nonprofit charitable corporation which that corporation uses pursuant to a contract with the State to provide governmental services mandated by State law. It says that the statutory authority of the Administration to designate private corporations as agents of the State to carry out clearly defined public policy is necessarily accompanied by exemption from local zoning regulations. According to the Methodist Board, title to the property is not the determinative factor for exemption purposes; rather, it is the nature of the use to which the property is put by its owner.

The Methodist Board points to the provisions of the Family Law Article which require the State to place homeless children in licensed child care facilities operated by nonprofit charitable corporations. It also focuses on those provisions of Article 88A authorizing the State to designate nonprofit charitable corporations as its agent to provide child care services required by statute. Applying fundamental principles of agency law, the Methodist Board claims that, as the State's statutory agent, it succeeds to the exemption held by its principal while performing the governmental function required by law.

The Methodist Board augments its basic argument by contending that the State has impliedly preempted the field of licensing and regulation of child care facilities, and thus Baltimore County is precluded from exercising any control over these facilities by means of local zoning regulations. State legislation, the Methodist Board contends, is so comprehensive as

to evidence a clear intention by the legislature to occupy this entire field and, as a consequence, the State has reserved to itself exclusive dominion over determinations governing whether, or where, child care facilities may be established and operated. The State of Maryland, in its amicus brief, fully supports the Methodist Board's preemption argument.

The protesting property owners and People's Counsel maintain that the Methodist Board is not a constituent part of the State government and is not, therefore, an agency or instrumentality of the State in any traditional sense; rather, they say, the Methodist Board is simply a vendor of services required to be provided by the State, for which the State makes payments under a contract authorized by statute. Nothing in the law, they say, requires the Methodist Board, or any other nonprofit charitable corporation, to undertake these activities. Moreover, it is argued, the State's immunity from local zoning controls emanates from its sovereign nature rather than from the type of activity to be conducted on the property.

As to implied preemption, the protesting property owners and People's Counsel claim that the State statutes in question, while regulating child care facilities through the licensing process, do not encompass the location of these facilities. They point out that these statutes are silent on the applicability of local zoning criteria to licensed child care institutions and that preemption cannot be implied by mere silence.

IV.

That the exemption from county zoning regulations accorded to the State under our holding in City of Baltimore v. State, supra, extends to the State's agencies and instrumentalities is entirely manifest. Plainly, the Methodist Board is not a unit of State government. It was not created by legislative enactment and the State exercises no control over it beyond licensing its child care facilities and prescribing various operating standards. The relationship of the Methodist Board to the State is defined by the provisions of the "child care" contract between them and the licensing regulations and requirements. That child care institutions licensed under Subtitle 5 of the Family Law Article are identified as "agents" of the State by § 3(f) of Article 88A in no sense was intended by the legislature to invest them with any part of the State's sovereign power to act as an instrumentality of the State government.

Contrary to the Methodist Board's argument, it is not the law of Maryland that a nonprofit corporation which voluntarily contracts to perform a governmental service required by State law on property which it owns is entitled to the State's immunity from municipal zoning ordinances. As the Supreme Court of Georgia held in Macon Ass'n for Retarded Cit. v. Macon-Bibb, 252 Ga. 484, 314 S.E.2d 218, 223 (1984), "property owned by a nonprofit corporation [and licensed to operate a home for retarded citizens] is not immune from local zoning regulations, even if the corporation is performing services which are governmental in nature, at least in the absence of a clear

expression of intent by the legislature that such immunity be extended." Similarly, the Supreme Judicial Court of Maine in Penobscot Area, etc. v. City of Brewer, 343 A.2d 14, 19 (1981), also involving a nonprofit corporation organized to provide housing for retarded citizens pursuant to state law, found no merit in the argument that the corporation was entitled to the State's exemption from local zoning ordinances because it "was acting as an agent of the state in furtherance of clearly articulated state obligations and interests." After noting that nonprofit corporations frequently promote state interests, and often are beneficiaries of financial programs offered by state agencies, the court concluded that the corporation was subject to municipal zoning regulations.

Outerbridge Terminal v. Perth Amboy, 179 N.J. Super. 400, 432 A.2d 141 (1980) involved a private organization which claimed an exemption from local zoning regulations because of its contractual relationship to provide governmental services to the federal government. At 143, the court held that "[z]oning regulations are directed to the land itself, and in determining whether the important local interests which are reflected in the zoning scheme ought to be avoided by immunity, the pivotal question is the nature of the government's interest in the property and not the nature of the government's interest in the subject matter of the contract." (Emphasis in the original.) To the same effect, see Tp. Township of Wash. v. Cent. Bergen Com. M. H. Ctr., 156 N.J. Super. 388, 383 A.2d 1194 (1978) (the

doctrine of immunity from local zoning regulations by a nonprofit corporation cannot be invoked because it is not a governmental agency); Carroll v. Board of Adjustment of Jersey City, 15 N.J. Super. 363, 83 A.2d 448 (1951); 2 Anderson, American Law of Zoning, § 9.06 (1968); Comment, Governmental Immunity from Local Zoning Ordinances, 84 Harv. L. Rev. 869 (1971).

These authorities make clear that the right to exemption does not turn on the use being made of the property by the party claiming exemption but upon its ownership by the state or its instrumentalities. Were it otherwise, all entities licensed by the state, and providing governmental services, would be entitled to exemption from local land use regulations -- a sweeping application of the state exemption doctrine which would undoubtedly undermine the important objectives of municipal zoning.

In concluding that the Methodist Board is not entitled to invoke the State's immunity from Baltimore County zoning regulation, we have considered those cases relied upon by the Methodist Board in support of its view of the governing law. Wiltwyck School for Boys, Inc. v. Hill, 11 N.Y.2d 182, 182 N.E.2d 268 (1962) held that a charitable corporation which operated an institution for the education of mentally retarded persons constituted a "school" and was therefore a permitted use in the municipal zone in which it sought to construct a building. The case does not stand for the principle espoused by the Methodist Board, i.e., that the State's exemption from local zoning

regulations extends to a private noncharitable corporation performing a vital governmental function. Equally inapposite is Rutgers, State University v. Piluso, 60 N.J. 142, 286 A.2d 697 (1972). The issue in that case was whether municipal zoning ordinances were applicable to a state agency. The court there adopted the so-called "balancing of interests" test in determining whether the legislature intended to subject a state agency to local zoning regulations. Similarly, Blackstone Park, etc. v. State Bd., etc., 448 A.2d 1233 (R.I. 1982) offers no support to the Methodist Board's position; that case involved an intergovernmental zoning dispute in which the court applied the balancing of interests test in determining whether local municipal zoning regulations applied to a governmental agency.

Several cases do lend support to the Methodist Board's position that a nonprofit corporation providing a governmental service pursuant to a contract with a state agency is entitled to the state's zoning immunity. See the New Hampshire cases of Northern N. H. Mental Health v. Town of Conway, 121 N.H. 811, 435 A.2d 136 (1981); Region 10, etc. v. Town of Hampstead, 120 N.H. 885, 424 A.2d 207 (1980); Portsmouth v. John Clark & Sons, Inc., 117 N.H. 797, 378 A.2d 1383 (1977). City of Temple Terrace v. Hillsborough Ass'n, etc., 322 So. 2d 571 (Fla. App. 1975), aff'd, 332 So. 2d 610 (1976) is also supportive of the Methodist Board's argument. Some of these cases appear to turn on an application of the implied preemption doctrine, rather than on the proposition that a private corporation performing a governmental

service can avail itself of the state's exemption from local zoning regulations. We are, in the circumstances, not persuaded by the rationale of these decisions and decline the Methodist Board's invitation to adopt the principle there adopted.

V.

The Methodist Board and the State as amicus curiae advance the related argument that the General Assembly has preempted the field of licensing and regulation of child care facilities, thereby precluding any control over these institutions by means of local zoning restrictions. Moreover, they contend that the BCZR conflicts with State public general law and therefore is void as to its zoning regulation of child care facilities. As to this, they say that any proscriptions of child care facilities in R.C.2 and R.C.5 zones jeopardize the State's ability to meet its statutory responsibility to care for and protect dependent and neglected children. Thus, the Methodist Board argues that the State's effort to license a child care facility at a particular location where a compelling need exists cannot be thwarted by local zoning restrictions.

That the legislature has power to reserve for itself exclusive dominion over an entire field of legislative concern is clear. Ad + Soil, Inc. v. County Comm'rs, 307 Md. 307, 324, 513 A.2d 893 (1986). The primary indicia of a legislative purpose to preempt an entire field of law is the comprehensiveness with which the General Assembly has legislated in the field. Id. at 328. In McCarthy v. Bd. of Education of A.A. Co., 280 Md. 634,

639, 374 A.2d 1135 (1977), we recognized three grounds upon which otherwise valid local legislation might be invalidated because of State legislation concerning the same matter, i.e.,

> "(1) ordinances which conflict with public general law, (2) ordinances which deal with matters which are part of an entire subject matter on which the General Assembly has expressly reserved unto itself the right to legislate, and (3) ordinances which deal with an area in which the General Assembly has acted with such force that an intent to occupy the entire field must be implied."

In other words, preemption may be accomplished either expressly by statutory language prohibiting local legislation, e.g., Montgomery County v. Atlantic Guns, Inc., 302 Md. 540, 489 A.2d 1114 (1985), or impliedly by other unequivocal conduct of the General Assembly, County Council v. Montgomery Ass'n, 274 Md. 52, 325 A.2d 112 (1974). In either case, the focus of the inquiry must be on whether the General Assembly has manifested a purpose to occupy exclusively a particular field. Ad + Soil, supra, 307 Md. at 324 and authorities there cited.[4]

That there has been no express preemption by the legislature of the entire field of regulation of child care facilities under Code, Article 88A and Subtitle 5 of the Family Law Article is altogether plain. As to implied preemption or "preemption by

[4]Our cases involving implied preemption of county laws in light of comprehensive State legislation in the fields include National Asphalt v. Pr. Geo's Co., 292 Md. 75, 437 A.2d 651 (1981), and Mont. Co. Bd. of Realtors v. Mont. Co., 287 Md. 101, 411 A.2d 97 (1980).

occupation," see National Asphalt, supra, 292 Md. at 78, the precise issue is whether, in light of State statutory provisions, Baltimore County zoning regulations governing the location of these facilities are valid. In this regard, we recognized in Ad + Soil, supra, 307 Md. at 334, that under Article 25A, § 5(X) of the Code, one of the cornerstones of Maryland's system of land use in home rule counties is that zoning controls be implemented by local government. Specifically, we there said that "[i]n view of such a clearly established legislative policy, evidence of a countervailing legislative purpose to prohibit local zoning control . . . must be strong indeed." Id. at 334. In Ad + Soil, we found no implied preemption of local zoning ordinances governing the location of sewage sludge facilities, despite the existence of pervasive statewide legislation requiring permits for sewage sludge facilities and extensively governing the storage and distribution of sewage sludge.

We conclude that there is no comprehensive regulatory scheme governing child care facilities under the public general laws of the State legally sufficient to imply a legislative purpose to totally occupy the field, and thereby preclude all local zoning regulations pertaining to the location of these facilities. Nothing in the statewide statutes mentions preexisting local zoning ordinances, a clear indication that the General Assembly did not intend to preempt these local laws. See Ad + Soil, supra, 307 Md. at 333; National Asphalt, supra, 292 Md. at 79;

Baltimore v. Sitnick & Firey, 254 Md. 303, 322, 255 A.2d 376 (1969).

As earlier observed, the legislative authority vested in the Administration to promulgate rules and regulations governing child care facilities, § 5-506(b) of the Family Law Article, resulted in COMAR 07.02.13.07, which explicitly requires a licensed child care facility to comply with the zoning ordinances of political subdivisions. The validity of this provision is presumed when, as here, it is "consistent with the letter and spirit of the statute under which the agency acts." Sullivan v. Bd. of Licensing Comm'rs, 293 Md. 113, 121, 442 A.2d 558 (1982). Moreover, in such circumstances, the agency rule is entitled to considerable weight in determining the meaning of Subtitle 5's provisions relating to child care facilities. See McCullough v. Wittner, 314 Md. 602, 612, A.2d (1989); Sinai Hosp. v. Dep't of Employment, 309 Md. 28, 46, 522 A.2d 382 (1987); Consumer Protection v. Consumer Pub., 304 Md. 731, 759, 501 A.2d 48 (1985).[5]

[5]The Methodist Board, citing 72 Op. Atty. Gen'l 309 (1987), argues that COMAR 07.02.13.07 requires only that child care facilities comply with local zoning requirements as to their physical plants, local environmental safety, health and fire requirements and not as to location requirements. However, the Attorney General was there interpreting a specific Juvenile Services Agency regulation. The regulations of the Administration precisely define and thus distinguish a "child care facility" from a "physical facility" of a child care facility at 07.02.13.08D and .10D.

In a nutshell, therefore, approval of the location of child care facilities under Baltimore County's zoning ordinances is not preempted by the statewide statutory scheme.[6] Nor is there an irreconcilable conflict between the State law and the county zoning ordinance. This is not a case of a political subdivision prohibiting by local law what a State by public general law has permitted. The BCZR does not prohibit the operation of child care facilities; rather, it expressly allows such facilities to operate subject to compliance with zoning regulations. See County Council v. Montgomery Ass'n, supra, 274 Md. at 57-58; Baltimore v. Sitnick & Firey, supra, 254 Md. at 317.[7]

JUDGMENT AFFIRMED.

WITH COSTS.

[6]Of course, the General Assembly has been capable of expressly preempting municipal zoning regulations when it is of a mind to do so. For example, Code (1983 Repl. Vol.), § 3-705(d) of the Natural Resources Article explicitly exempts hazardous waste facilities, after receiving a certificate of public necessity, from local zoning regulations.

[7]Child care facilities and institutions licensed by the Administration are permitted by special exception in a number of zoning districts in Baltimore County.

PET'r
PAG. 1

BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC.	*	In the
	*	Court of Appeals
	*	of Maryland
v.	*	Petition Docket No. 427
	*	September Term, 1988
HUBERT H. HARKER, et al.	*	(No.PHC 729,Sept. Term,1988 Court of Special Appeals)
	*	

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, and the answer filed thereto, in the above entitled case, it is this 13th day of January, 1989

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, granted and a writ of certiorari to the Court of Special Appeals shall issue and said case shall be transferred to the regular docket as No. 120, September Term, 1988; and it is further

ORDERED, that counsel shall file briefs and printed record extract in accordance with Rules 8-501 and 8-502, petitioner's brief and record extract to be filed on or before February 15, 1989; respondents' brief to be filed on or before March 15, 1989; and it is further

ORDERED that this case shall be argued in the April session of this Court.

/s/ Robert C. Murphy
Chief Judge

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BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC.	*	In the
	*	Court of Appeals
	*	of Maryland
v.	*	Petition Docket No. 427
	*	September Term, 1988
HUBERT H. HARKER, et al.	*	(No.PHC729, Sept.Term,1988 Court of Special Appeals)
	*	

WRIT OF CERTIORARI

STATE OF MARYLAND, to wit:

TO THE HONORABLE THE JUDGES OF THE COURT OF SPECIAL APPEALS OF MARYLAND:

WHEREAS, Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc. v. Hubert H. Harker, et al., No. PHC 729, September Term, 1988 is pending before your Court and the Court of Appeals is willing that the record and proceedings therein be certified to it.

YOU ARE HEREBY COMMANDED to cause them to be sent without delay to the Court of Appeals of Maryland, together with this writ, for the said Court to proceed thereon as justice may require.

WITNESS the Chief Judge of the Court of Appeals of Maryland this 13th day of January, 1989.

/s/ Alexander L. Cummings
Clerk
Court of Appeals of Maryland

CBA AFFIRMED by Nickerson

THE BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC.		IN THE
		CIRCUIT COURT
Appellant		FOR
		BALTIMORE
vs.		COUNTY
HUBERT S. HARKER, ET AL.		
Appellee		CASE NO. 88CG-1313
		Zoning Case No. 87-323-SPH

MEMORANDUM OPINION AND ORDER

This case came before the Court on August 15, 1988, pursuant to an appeal by the Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc. (hereinafter "Appellant") from a decision of the County Board of Appeals (hereinafter the "Board"). The Board reversed a decision of the Zoning Commissioner and ruled that the proposed use of the property owned by Appellants is not exempt from the zoning regulations and that the State's immunity from local zoning regulations does not extend to Appellants. Hubert H. Harker, et al. (hereinafter "Appellees") in answer to the Petition for Appeal, states that the decision of the Board is correct as a matter of law.

A brief summary of the facts is as follows. Appellant presently operates two shelters for adolescent boys and girls. It is currently licensed by the Department of

Social Services of the State of Maryland, Department of Human Resources. In 1986, Appellant purchased a fifteen acre site with plans to erect five residential buildings, each housing twelve children. The housing would provide emergency shelter for children exposed to danger because of the environment in which they live. The proposed site is primarily zoned RC2 (agricultural) and, unless exempt from zoning regulations, the intensity of the proposed use would not be allowed. Appellees are nearby landowners who are opposed to Appellant's exemption from local zoning on property that is privately owned.

Appellant argues on appeal that it may avail itself of the State's immunity from local zoning as a result of its holding a valid license from a State agency. 63 Op. Att'y Gen. 377. In addition, Appellant cites case law supporting its position that if a public use is being made of the property and a public purpose is not being served, municipal zoning ordinances are not applicable. Mayor and City Council of Baltimore v. State Dept. of Health & Mental Hygiene, etc., 38 Md. App. 570 (1978).

Appellees argue that the Board correctly found that Appellant's proposed "residential emergency shelter" is

not exempt or immune from Baltimore County Zoning Regulations. Appellees agree that in Maryland it is well settled that when the State owns property located in a subdivision and uses it for the performance of its governmental function, it is exempt from local zoning regulations. Mayor & City Council of Balto. v. State, 281 Md. 217 (1977). In addition, when State owned property is leased to a private tenant for a public purpose, the State's immunity attaches to protect the public user. Mayor & City Council of Balto., 38 Md. App. 570 (1978). However, Appellees contend that no Maryland appellate case addresses the question of private ownership of land for a public purpose. Appellees aver that the State had no part in the site selection of the property in question. They argue that the ramification of allowing exemption from local zoning for privately owned land used by private groups for functions governmental in nature would unlock a Pandora's Box.

This Court has carefully considered memoranda submitted by counsel and argument presented at the hearing on the appeal. The Court concludes that legal precedent in Maryland supporting Appellant's argument is absent. It is further

apparent that the argument of Appellees that a finding in favor of Appellant would open a "Pandora's Box" is true and compelling.

Accordingly, it is this 20th day of September, 1988, by the Circuit Court for Baltimore County,

ORDERED that the February 24, 1988 Order of the County Board of Appeals be, and the same is hereby, AFFIRMED.

William M. Nickerson
WILLIAM M. NICKERSON, JUDGE

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Room 223, Court House
Towson, Maryland 21204

IN THE MATTER OF THE APPLICATION OF HUBERT H. HARKER, JR., ET AL FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTH SIDE OF LIBERTY ROAD, 200' EAST OF THE CENTERLINE OF POWELL'S RUN ROAD 2nd ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 87-323-SPH

: :

OPINION

This matter comes before the Board as an appeal from the decision of the Zoning Commissioner, dated February 18, 1987, which denied the Petition for Special Hearing filed by Hubert H. Harker, Jr. In addition to the appeal denying the Petition for Special Hearing, the Board considered a companion case concerning this property; that is, an appeal of the decision of the County Review Group (CRG). The Board has issued an Opinion and Order affirming the decision of the CRG. Disposing of that issue, the Board now turns its attention to Mr. Harker's petition. The petition is somewhat out of the ordinary in that it was not filed by the contract property purchaser, the Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc. (Methodist Home), but by a neighboring resident. Testimony solicited was that, after learning of the proposed use, Mr. Harker filed his petition, seeking a determination as to whether the proposed use was subject to or exempt from the Baltimore County Zoning Regulations (B.C.Z.R.). The Zoning Commissioner has held that the use is exempt from the regulations and is therefore permissible as a matter of right.

Prior to addressing that threshhold issue, however, a preliminary matter must be discussed. The Methodist Home has sought a dismissal of the appeal and as a basis therefore asserts the doctrine of latches. The Methodist Home argues that the Petitioners are estopped from appealing the decision of the Commissioner in that his initial yet informal decision was not timely appealed.

In our view, that argument is without merit. As the Zoning Commissioner stated in his Findings of Fact and Conclusions of Law, a formal administrative decision may be rendered only after a public hearing. We are therefore in agreement with the Zoning Commissioner's premise that significant zoning decisions should not be made "behind closed doors" and without the opportunity for all interested parties to participate. The Petitioner cannot be charged with knowledge of the Zoning Commissioner's informal decision which was rendered by letter to the Methodist Home. Under these circumstances, we find that the Petitioners diligently and timely filed their petition and that the consideration of the issues in this case by both the Zoning Commissioner and the Board of Appeals is proper.

Turning to the threshhold issue, a brief overview of the nature of the proposed facility is in order. There was extensive testimony by both a representative of the Methodist Home, Claude Libis, and others, regarding the proposed use of this site. In sum, it seems undisputed that the property owners seek to construct, ultimately, five residential shelter buildings, each housing twelve children, and an administrative building. Further, the construction would be funded by the property owner, a private corporation. However, once constructed, the facility would be licensed by and subject to the regulations governing shelters promulgated by the State of Maryland. Children would be housed within the five buildings, and only non-delinquent children would be considered for admission. Rather than attempting to rehabilitate delinquent children, the facility would operate as a haven for children in danger; that is, victims of physical, sexual, and emotional abuse. Candidates for admission would be between the ages of 2 to 17, and school age children would attend public schools. The maximum duration of any one stay in the facility would be ninety days. All referrals would be made pursuant to a contractual arrangement

entered into by and between the property owner and the State of Maryland.

There is no doubt that an urgent need exists for facilities of this nature both locally and nationwide. We do not question this need. However, its consideration has no place in our evaluation of the issue before us. Likewise, we do not question either the motivations or intentions of the neighbors who oppose this facility. In our view, their concerns are valid and justifiable and, as property owners, they are rightfully concerned as to the impact of the proposed facility on their properties.

In addition to the lengthy testimony received in this case, the Board has entertained and considered argument provided by counsel for all sides. This argument included oral argument at the conclusion of the case and memorandums received from Counsel for the Petitioner, Counsel on behalf of the Methodist Home, and from the office of the People's Counsel. In many respects, much of the argument is in agreement. That is, there seems to be no dispute that property owned by the sovereign state and used in the performance of its governmental functions is exempt from local zoning regulations. Additionally, it is clear that, when property is used for private purposes, the property is subject to zoning regulations both when owned privately or by the State. Further, when State-owned property is leased to a private tenant for a public purpose, the State's immunity attaches to protect the public use. Counsel have provided the Board with numerous and lengthy authorities for the above three premises. Regrettably, however, none of the scenarios described above fits the issue presented to this Board; namely, does the State's immunity from local zoning regulations attach to a privately-owned property being used for public purposes. None of the parties has produced a Maryland appellate decision on this point; consequently, the Board is without authoritative guidance from that source.

In determining this issue, it is first vital to define the identity of the proposed use. In his Findings of Fact and Conclusions of Law, the Zoning Commissioner defines the use as a "residential emergency shelter care facility." Counsel from the office of People's Counsel and Counsel representing the Methodist Home both have adopted this definition. Counsel for the Petitioner does not directly define or designate the proposed use. A review of the B.C.Z.R. discloses no definition existing for the term "residential emergency shelter." However, a community care center is defined by the B.C.Z.R. Under Section 101 thereof, a community care center is defined as:

> "A small-scale facility, sponsored or operated by a private charitable organization or by a public agency and licensed by the Maryland State Department of Health and Mental Hygiene or by the Maryland State Department of Social Services, for the housing, counseling, supervision, or rehabilitation of alcoholics or drug abusers or of physically or mentally (including emotionally) handicapped or abused individuals who are not subject to incarceration or in need of hospitalization."

In the view of the Board, despite its designation by the Zoning Commissioner and the parties to this case, the use herein is clearly a community care center. The proposal is, in fact, for a "small-scale facility...operated by a private charitable organization...licensed by...the Maryland State Department of Social Services...for the housing, counseling, supervision...of physically or mentally ...abused individuals who are not subject to incarceration or in need of hospitalization." It is of note that the definition as provided in Section 101 does not restrict the services in the said facility to adults but allows the providing of services to "individuals." Additionally, the use of the term "or," which is sprinkled liberally throughout the definition, does not restrict community care centers to providing services, as examples, only to alcoholics or to providing only rehabilitative services. That is, the definition in our

view is sufficiently broad to clearly incorporate the use proposed herein.

Having made the determination that the proposed use has been defined by the Council within the B.C.Z.R., we need not consider the numerous foreign authorities and arguments as to exemption from local zoning regulations. Rather, we need only consider Section 1A01.2.C.5 of the B.C.Z.R. which provides that community care centers are permissible in an R.C. zone only by special exception. Clearly, by defining the proposed use and providing for its approval by way of special exception, the legislature has mandated that the use is subject to the zoning regulations. Certainly, if this were not the case, the Council in its wisdom would never have attempted to so define and regulate a use which by its own definition is licensed by the State and exists for the public good.

Notwithstanding our decision, a final issue remains. Although we have found that the language of the B.C.Z.R. specifically defines and applies to this proposed use, there may be a question as to the constitutionality of the regulations in view of their potential infringement on a public use. That is, these regulations may be interpreted as sufficiently specific to infringe upon the exercize of a power reserved to the sovereign state. As an administrative body, however, we will not attempt to set aside these regulations on constitutional grounds. In this case, any such consideration on constitutional grounds is best reserved to the upper courts.

For the aforegoing reasons, the Board will reverse the decision of the Zoning Commissioner and grant the Petition for Special Hearing and order that a Petition for Special Exception be filed should the landowners desire to proceed further.

Case No. 87-323-SPH
Hubert H. Harker, Jr., et al 6.

ORDER

It is therefore this 24th day of February, 1988 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special Hearing be and is hereby GRANTED, and that the use as proposed for the subject property (community care center) is not exempt as a governmental function from, and is subject to, the Baltimore County Zoning Regulations.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence E. Schmidt, Acting Chairman

Patricia Phipps

William T. Hackett

ORDER RECEIVED FOR FILING
Date 2/24/88
By Kathi Bowersox

IN RE: PETITION SPECIAL HEARING
S/S of Liberty Road, 200' E of the centerline of Powells Run Road - 2nd Election District
Hubert H. Harker, Jr.,
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 87-323-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests that the Zoning Commissioner disapprove a projected use by the Board of Child Care (Board) of the Baltimore Annual Conference of the Methodist Church, Inc., for a residential emergency shelter care facility.

The Petitioner appeared and was represented by Counsel. The Board appeared and was also represented by Counsel. Numerous residents of the community appeared.

The Board filed a Motion to dismiss the instant Petition and a Memorandum in support of its motion based on the theory of laches or equitable estoppel. This motion will be denied. The Board maintains that it relied on a letter from the Zoning Commissioner, described below, when it purchased the property, from which no appeal was taken. However, the Zoning Commissioner's authority is unique. There is, of course, no question that any decision by the Zoning Commissioner can be appealed within 30 days of that decision, as is true of any administrative decision by any County agency. The decision-making authority of the Zoning Commissioner differs from other County agencies in that it is clear that the Baltimore County Charter dictates that formal decisions should be, i.e., must be, rendered after a public hearing. If the Board wishes to have an official decision, a request for a hearing, pursuant to Section 500.7, Baltimore County Zoning Regulations (BCZR), could have been

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requested. The Petitioner cannot be charged with knowledge of that letter inasmuch as it was sent to Counsel for the Board and not to him. It would not be fair to so extrapolate. The Petitioner has taken the appropriate route and filed this Petition. To dismiss and charge responsibility of knowledge of the letter to the Petitioner would be to permit decisions to be rendered "behind closed doors". It was not the intent of the Baltimore County Council to hide zoning decisions but rather to open them up to scrutiny of the highest order. No issue is as emotional and important to communities as zoning, and all decisions impacting land use must be open to discussion and public input. For this very purpose, Section 500.7 is a part of the BCZR, which the Petitioner has taken advantage of to dissect and discuss the proposed use at the instant site. This is available to communities to avoid decisions being made in vacuums.

Testimony indicated that the Board purchased approximately 17 acres, zoned R.C.2 and R.C.5 and located on Liberty Road and Powells Run Roads, in order to construct a residential emergency shelter care facility. It will consist of five cottages, each with a capacity of housing up to 12 children. In addition, there will be a central building which would have a kitchen, space for clinical staff and counselors, and an upstairs play area. The surrounding community objects to its placement here.

On February 12, 1986, Counsel for the Board requested a written opinion from the Zoning Commissioner as to whether the proposed use, as described above, would be exempt, or immune, from the BCZR. The request was founded on an Opinion originally rendered by the then County Attorney Leonard S. Jacobson, dated July 12, 1982, attached hereto as Exhibit A, which was issued at the request of the then County Council Chairman James T. Smith, Jr. The Opinion concerned the exact issue presented here, i.e., whether the "...action

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of the Board of Child Care to provide residential emergency shelter care for young people of Baltimore County who come through the Baltimore County Department of Social Services..." is governmental in nature, thereby exempting it from the BCZR. The Zoning Commissioner responded on February 24, 1986, stating that indeed the exemption, or immunity, was still applicable. It is from this letter that the Petitioner has filed the Petition for Special Hearing pursuant to Section 500.7, BCZR.

The Petitioner called Claude Libis, Executive Director of the Board, as an adverse witness. He explained the Board's function in detail and described its proposal for the instant site.

The Board is an integral part of the Baltimore Annual Conference of the Methodist Church, Inc., and is a non-profit, charitable organization. It provides short-term emergency care for children as well as shelter for homeless, dependent, neglected, and/or abused children. The Board was founded 112 years ago as an orphanage for girls and has evolved into its present status of providing shelter for boys and girls. One-third of the children it proposes to shelter at the new location will be approximately 6 years of age or under, one-third between 6 and 12, and one-third between 13 and 18. Supervision will be provided 7 days per week, 24 hours per day. In fact, the Board is licensed by the Maryland Departments of Social Services and Human Resources and is governed by COMAR, Section 07.02.13. The Board is fully responsible to those agencies which ensure compliance with all State requirements. The purpose of this licensure is to enable the Board to receive children requiring emergency shelter from the various County Departments of Social Services which have found themselves in dire need of emergency shelter beds. See letter from Department of Social Services to the Community Planning Division, dated December 18, 1986, marked Protestants' (Board's) Exhibit 4. Baltimore City

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and Baltimore County are the primary sources from whom the children are received, but many other subdivisions also send children in need of such shelter. The Board is reimbursed $2,000 a month by the State for each child served, which does not cover all of the expenses but is an amount determined by the State. The stay of the children is limited to 60 days.

It is obvious that the purpose of the Board's existence is to provide alternative living arrangements for children in need. They are not criminals or juvenile delinquents but are children who may have been sexually and/or physically abused and require short-term emergency removal from their homes. See Protestant's (Board's) Exhibit 3, letter from Ruth Massinga, Secretary, Department of Human Resources, to the Community Planning Division, dated December 11, 1986.

The Board provides a facility that serves a definite public policy, satisfying our society's overriding concern for the benefit and welfare of children. There is no question that the State Legislature has mandated that government assume the responsibility to ensure that our children be provided a safe and stable facility where they can be protected during times of crises. A typical child has suffered sexual and/or physical abuse while living with the mother and boyfriend or stepfather, has been removed from the home after investigation by the Department of Social Services, and has been adjudged by a juvenile court. Clearly, the State has overriding interests that subjugate local concerns. The importance of such facilities is unambiguously recognized by Maryland law. Strong statements on behalf of such temporary emergency shelter for children are found in the regulations promulgated by the State Departments of Social Services and Human Resources that determine the licensure requirements for such facilities. In fact, the State Department of Social Services is in the process of promulgating more definitive and intense

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regulations for carrying out the obvious intent of the Legislature, under which the Board will be required to adhere. The provision of facilities such as that proposed by the Board is not merely a desirable option but a legislatively imposed obligation.

Although not precedent nor binding, a decision by Circuit Court Judge George B. Rasin, Jr., in County Comm'rs. of Caroline Co. v. Loscomb, Chancery No. 7175 (Circuit Court for Caroline County, September 11, 1978), attached hereto as Exhibit B, directly on point, is persuasive:

> ...where the State does not actually own or lease property but only licenses or otherwise authorizes the use of a private facility owned or leased and operated by a private party for a public purpose, the State's immunity from zoning passes to the licensee.

Judge Rasin then points out that State policy with respect to juvenile treatment facilities is to encourage local subdivisions and private persons or groups to provide local services instead of relying totally on the State. This conclusion is no less true for temporary emergency shelter facilities.

The general policy of the State to promote, certify, and review facilities such as that proposed by the Board elevates such uses to be "governmental" in nature, and therefore, not subject to local zoning restrictions. This has been recognized in many states as well as by Judge Rasin, and although not specifically addressed by the Maryland Court of Appeals, it is indirectly recognized by Maryland. See City of Balto. v. State Department of Health, 38 Md. App. 570 (1978). The Board's proposed facility constitutes a "public use", a use defined by the State to be of benefit to the general public, and such a determination has been extended beyond direct State ownership and control of property. In City of Balto., supra, it was a group home for CINS acquired by the State and leased to the Campfire Girls. In Loscomb, supra, it was a privately-owned home used as a group home for juvenile court placements.

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The traditional and prevailing test for determining immunity from zoning regulations is whether the proposed use is governmental in nature or proprietary. If the use is determined to be governmental in nature, exemption is the rule; however, if it is proprietary, there is no exemption. The applicability of the zoning regulations is dependent upon the character of the proposed use. If the use is implemented in furtherance of obligations imposed by legislative mandate, the use is governmental in nature, and thereby immune. The criteria used to define the distinction between a governmental or proprietary function revolve around the acts performed or to be performed and if they are in furtherance of obligations imposed by the Legislature. See O'Brien v. Town of Greenbaugh, 268 NYS 173 (1933). If the act is permissive in nature and if the municipality has the power but not the duty to perform the specific function, then the use is proprietary. See State Ex. Rel. Helsel v. Bd. of County Comm'rs., 79 NE.2d 698 (Ohio).

In City of Balto., supra, the Court of Special Appeals dealt with the question of state-owned facilities leased to a private concern. The Court stated that "there was the benefit to the public or the use was in the interest of the public, or where the use proposed by the private concern on the public property was a use mandated by the legislature of the State of Maryland." The use was held to be governmental. See also Mayor of Balto. City v. State, 281 Md. 217 (1977).

Clearly, the extrapolation from publicly-owned property to privately-owned property does not change the result as long as the ultimate use and purpose to which the property will be put is unquestionably a public one. See Youngstown Cartage Co. v. North Point Peninsula Community Co-Ordinating Council, 24 Md. App. 624 (1975). In light of the broad definition of "public use" set forth in City of Balto., supra, the exemption of the Board, which

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is acting pursuant to a governmental duty to provide emergency shelter for children in need, is well within the intent of Maryland case law.

An Opinion of the Attorney General has also recognized the exemption of private groups from zoning requirements if their proposed use is a "public use" pursuant to governmental mandate. 63 Op. Atty. Gen. 377 (1978). To the extent that zoning restrictions contravene State policy or State authorization, the Attorney General concluded that the restrictions are invalid, even if the use is privately owned and operated. Based on the use of the property, this distinction is consistent with the approach taken in other jurisdictions, notwithstanding the two cases cited by Counsel for the neighbors. See Op. Atty. Gen. 377. The prevailing rule is that the determinative factor is whether the use is a public one or confers a public benefit. If so, local zoning regulations are inapplicable.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the requested relief should not be granted.

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 18th day of February, 1987, that the residential emergency shelter care facility proposed by the Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc., is permitted as a matter of right in an R.C.2 and R.C.5 Zone and, as such, the Petition for Special Hearing is hereby DENIED.

Zoning Commissioner of
Baltimore County

AJ/srl

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Date 2/24/88
By Kathi Bowersox

cc: Arnold Fleishmann, Esquire
Marvin I. Singer
People's Counsel

EXHIBIT A

IN RE: PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION
End/Gaither Rd. 413.13'SW c/l Sublet Rd.(3300 Gaither Rd.)
2nd Election District
2nd Councilmanic District

Board of Child Care of the Balto. Annual Conference of the Methodist Church, Inc. Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE # 89-356-SPHX

****

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requested, pursuant to a Special Hearing, approval of a nonconforming use and the following additions to existing improvements at the Board of Child Care facility at 3300 Gaither Road and a Special Exception to use the herein described property for a Community Care Center and/or Community Building for existing improvements and additions, as more particularly described on Petitioner's Exhibit 1.

The Petitioner, represented by Duncan Cornell, Esquire, Law Offices of Hooper, Kiefer and Cornell, appeared and testified. The Petitioner was supported in its testimony by Mr. Rosenfelt, a professional engineer, and Ms. Judith Raab of Rosenfelt and Woolfolk, Inc., Mr. Claude Libis and Ms. Jeanne Dewey. There were no Protestants.

The evidence and testimony, all of which was uncontradicted, tends to establish that the subject property consists of approximately 21 acres of ground situated west of Liberty Road and north of the Baltimore Beltway in the greater Milford Mill section of Baltimore County. The property is located at the end of Gaither Road and is depicted on Petitioner's Exhibit 1. The property is currently zoned D.R.5.5 and is improved with six (6) cottages, a gymnasium, and various ancillary recreational facilities.

HOOPER, KIEFER & CORNELL BALTIMORE, MD. 21201

IN THE MATTER OF THE APPLICATION OF HUBERT H. HARKER, et al. FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTH SIDE OF LIBERTY ROAD, 200' EAST OF THE CENTERLINE OF POWELL'S RUN ROAD 2ND ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 87-323-SPH

* * * * * * * * * * *

PETITION FOR APPEAL

Now comes the Appellant, Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc., by its attorneys, Marvin I. Singer and F. Duncan Cornell, pursuant to Maryland Rules B1-B13 inclusive and Article 66B, Sec. 4.08(a) of the Annotated Code of Maryland, and appeals the Order of the County Board of Appeals of Baltimore County (the "Board") dated February 24, 1988 entered in the above-entitled proceedings, and in connection therewith respectfully states:

1. The property which is the subject of the Board's action is located in Baltimore County and is owned by Appellant, who was a party to the proceedings before the Board.

2. The matter came before the Board on appeal from a decision of the Zoning Commissioner, which ruled that the proposed use of the property as an emergency child care facility was exempt from the Baltimore County Zoning Regulations.

3. The central issue is whether the Baltimore County Zoning Regulations apply to property owned by a private charity and operated by it for a public purpose, one which the State of Maryland is mandated by statute to perform but which it has refrained from fulfilling, rather electing to obtain such services and care from private groups such as Appellant.

HOOPER, KIEFER & CORNELL BALTIMORE, MD. 21201

The Board ruled that the proposed use for the subject property is not exempt from the Zoning Regulations, and that the State's immunity from local zoning regulation does not extend to Appellant in the instant circumstances.

4. The Board's ruling was erroneous for the following reasons:

A. Such action was incorrect as a matter of law and inconsistent with rulings by the Attorney General and County Attorney, as well as the spirit of appellate rulings on the issue.

B. Such action was based on the view that the proposed use has been defined by the County Council within the Zoning Regulations, and thus cannot be exempt.

C. Such action was not supported by substantial, competent and material evidence in light of the entire record.

D. Such action was arbitrary, capricious, discriminatory and illegal.

E. The Board recognized that there existed a question as to the constitutionality of the language of the Baltimore County Zoning Regulations which it had applied, but declined to rule upon the issue, stating that "any such consideration on constitutional grounds is best reserved to the upper courts."

F. Such action as to the question of laches was incorrect, both as a matter of law and as being against the evidence and the weight of the evidence.

WHEREFORE, Appellant respectfully prays that an Order be passed:

HOOPER, KIEFER & CORNELL BALTIMORE, MD. 21201

(A) Reversing the decision by the County Board of Appeals of Baltimore County, and declaring that the proposed use of the subject property is exempt from the Baltimore County Zoning Regulations.

(B) Requiring Appellees to pay all reasonable costs of Appellant.

(C) Granting such other and further relief as the nature of this case may require.

MARVIN I. SINGER

F. DUNCAN CORNELL
343 North Charles Street
Baltimore, Maryland 21201
301/727-4700
Attorneys for The Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc.

IN THE MATTER OF THE APPLICATION OF HUBERT H. HARKER, et al. FOR SPECIAL HEARING ON PROPERTY LOCATED ON S/S LIBERTY RD., 200' E OF C/L OF POWELL'S RUN RD. 2nd ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

: IN THE CIRCUIT COURT
: FOR BALTIMORE COUNTY
: AT LAW
: Case No. 88CG1313/54/113

: : : : : : :

ANSWER TO PETITION FOR APPEAL

People's Counsel for Baltimore County, Protestant below and Appellee herein, answers the Petition for Appeal heretofore filed by the Appellant, viz:

1. That the Appellee admits the allegations made and contained in the first and second paragraphs of said Petition.

2. That the Appellee denies the allegations made and contained in the third and fourth paragraphs of said Petition.

3. In further answering, People's Counsel states that the decision of the County Board of Appeals was reasonable and lawful and based on substantial evidence, and was neither arbitrary nor capricious.

WHEREFORE, Appellee People's Ccunsel respectfully prays that an Order be passed sustaining and affirming the decision of the Baltimore County Board of Appeals dated February 24, 1988.

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman

Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

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IN THE MATTER OF THE APPLICATION OF HUBERT H. HARKER, ET AL FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTH SIDE OF LIBERTY RD., 200' EAST OF THE CENTER LINE OF POWELL'S RUN RD. 2nd ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

THE BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC., PROTESTANTS-PLAINTIFFS

FILE NO. 87-323-SPH

: IN THE
: CIRCUIT COURT
: FOR
: BALTIMORE COUNTY
: AT LAW
: CG Doc. No. 54
: Folio No. 113
: File No. 88-CG-1313

: : : : : : : : : : : : : :

CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence E. Schmidt, William T. Hackett, and Patricia Phipps, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

No. 87-323-SPH

December 22, 1986	Petition of Hubert H. Harker, Jr. for special hearing to determine whether or not the Zoning Commissioner should not approve the exemption of the "Residential Emergency Shelter" from the zoning regulations as a governmental function.
December 22	Order of the Zoning Commissioner directing advertisement and posting of property - date of hearing set for Feb. 9, 1987, at 11:45 a.m.
January 21, 1987	Certificate of Posting of property filed
January 22	Certificate of Publication in newspaper filed
January 23	Comments of Baltimore County Zoning Plans Advisory Committee filed
January 27	Comments of Baltimore County Director of Planning filed.

IN THE MATTER OF METHODIST HOME CHAPELDALE ROAD 2nd ELECTION DISTRICT

RE: CRG DECISION - APPROVAL OF PLAN

HUBERT HARKER, ET AL, PROTESTANTS-PLAINTIFFS

FILE NO. CBA-87-103

: IN THE
: CIRCUIT COURT
: FOR
: BALTIMORE COUNTY
: AT LAW
: CG Doc. No. 50
: Folio No. 161
: File No. 88-CG-161

: : : : : : : : : : : : : :

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt, Thomas J. Bollinger and Patricia Phipps, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Arnold Fleischmann, Esq., 408 Bosley Ave., Towson, Md. 21204, Counsel for Protestants-Plaintiffs; Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc., 3300 Gaither Rd., Balto., Md. 21207; Hoff, Rosenfelt & Woolfolk, Inc., Suite 8, Owings Mills Professional Center, 10706 Reisterstown Rd., Owings Mills, Md. 21117; and Arnold Jablon, Esq. and Nancy West, Esq., Office of Law, Court House, Towson, Md. 21204, County Attorneys for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

June Holmen

June Holmen
County Board of Appeals of Baltimore County
Rm. 200, Court House, Towson, Md. 21204
494-3180

HOOPER, KIEFER & CORNELL BALTIMORE, MD. 21201

IN THE MATTER OF THE APPLICATION OF HUBERT H. HARKER, ET AL. FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTH SIDE OF LIBERTY ROAD, 200' EAST OF THE CENTERLINE OF POWELL'S RUN ROAD 2ND ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 87-323-SPH

* * * * * * * * * * *

ORDER OF APPEAL

Please enter an Appeal on behalf of the Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc., pursuant to Maryland Rules B1-B13 inclusive, from the Order of the County Board of Appeals of Baltimore County dated February 24, 1988.

MARVIN I. SINGER

F. DUNCAN CORNELL
343 North Charles Street
Baltimore, Maryland 21201
301/727-4700
Attorneys for The Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc.

RECEIVED COUNTY BOARD OF APPEALS '88 MAR 15 A 8:51

IN THE MATTER OF THE APPLICATION OF HUBERT H. HARKER, ET AL FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTH SIDE OF LIBERTY RD., 200' EAST OF THE CENTER LINE OF POWELL'S RUN RD. 2nd ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

THE BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC., PROTESTANTS-PLAINTIFFS

FILE NO. 87-323-SPH

: IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

CG Doc. No. 54
Folio No. 113
File No. 88-CG-1313

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Lawrence E. Schmidt, William T. Hackett, and Patricia Phipps, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Marvin I. Singer, Esq. and F. Duncan Cornell, Esq., 343 N. Charles St., Baltimore, Md. 21201, Counsel for Protestants-Plaintiffs; Arnold Fleischmann, Esq., 408 Bosley Ave., Towson, Md. 21204, Counsel for Petitioner; The Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc., 3300 Gaither Rd., Baltimore, Md. 21207, Protestants-Plaintiffs; and Phyllis C. Friedman, Esq., Rm. 223, Old Court House, Towson, Md. 21204, People's Counsel for Baltimore County, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

June Holmen
County Board of Appeals of Baltimore County, Rm. 200, Court House, Towson, Md. 494-3180

Form CA4

Jobi Adams — 494-2660
Civil Assignment Commissioner
Settlement Court

Tina Campbell — 494-2662
Masters Assignment Clerk
Medical Records

Kathy Rushton — 494-2660
Jury Assignments — Motions

Irene Summers - 494-2661
Assistant Civil Assignment Commissioner
Assignment—Non-Jury—Motions

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21285-6754

TO: MARVIN I. SINGER, ESQ.
F. DUNCAN CORNELL, ESQ.
ARNOLD FLEISHMANN, ESQ.
COUNTY BOARD OF APPEALS
ARNOLD JABLON, ESQ.
NANCY WEST, ESQ.
PHYLLIS COLE FRIEDMAN, ESQ.
PETER MAX ZIMMERMAN, ESQ.

JUNE 7, 1988

NOTE: CORRECTED NOTICE

RE: NON-JURY - 88CG-1313 - IN THE MATTER OF HUBERT H. HARKER, ET AL. VS. PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

HEARING DATE: MONDAY, AUGUST 15, 1988 @ 9:30 A.M.

ON THE FOLLOWING: APPEAL: 2½ - 3 HOURS

Please see the below notations.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

If the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 15 DAYS OF TRIAL should be directed to Irene Summers or Jobi Adams. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Grimm - 494-3497.

SETTLEMENTS: If a settlement if reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

RECEIVED
COUNTY BOARD OF APPEALS
1988 MAY -4 AD 5b

Form CA4

Jobi Adams — 494-2660
Civil Assignment Commissioner
Settlement Court

Maria Ercolano — 494-2662
Masters Assignment Clerk
Medical Records

Kathy Rushton — 494-2660
Assignment — Jury — Motions
Marcia Fennell
Assistant Clerk Tyler

Irene Summers - 494-2661
Assignment — Non-Jury — Motions
Freddie Grove
Assistant Clerk Tyler

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21204-0754

TO: Marvin I. Singer, Esq.
F. Duncan Cornell, Esq.
Arnold Fleshmann, Esq.
County Board of Appeals
Arnold Jablon, Esq.
Nancy West, Esq.
Phyllis Cole Friedman, Esq.
Peter Max Zimmerman, Esq.

May 3, 1988

RE: NON-JURY - 88CG-1313 - IN THE MATTER OF HUBERT H. HARKER, ET AL. VS. PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

HEARING DATE: TUESDAY, AUGUST 2, 1988 @ 9:30 A.M.

ON THE FOLLOWING: APPEAL: 2½ - 3 HOURS

Please see the below notations.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

If the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 15 DAYS OF TRIAL should be directed to Irene Summers or Jobi Adams. POSTPONEMENTS WITHIN 15 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments - Joyce Grimm - 494-3497.

SETTLEMENTS: If a settlement if reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

RE: PETITION FOR SPECIAL HEARING
CONCERNING THE PROPERTY
10939 LIBERTY ROAD
2ND ELECTION DISTRICT

: BEFORE THE
: ZONING COMMISSIONER
: OF BALTIMORE COUNTY
: Case No. 87-323-SPH

NOTICE OF APPEAL TO THE COUNTY BOARD OF APPEALS
FROM THE FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF THE ZONING COMMISSIONER

Please note an appeal to the County Board of Appeals on behalf of Hubert Harker et al, Petitioners, from the decision of Arnold Jablon, Zoning Commissioner for Baltimore County dated February 18, 1987.

RECEIVED
MAR 4 1987
ZONING OFFICE

Arnold Fleischmann, Esquire
408 Bosley Avenue
Towson, Maryland 21204
(301) 337-7600
Attorney for Petitioners,
Hubert Harker et al

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4th day of March, 1987, a copy of the aforegoing Petition was mailed, postage prepaid, to F. Duncan Cornell, Esquire, and Marvin I. Singer, Esquire, 405 West Pennsylvania Avenue, Towson, Maryland 21204, Attorneys for Board of Child Care.

Arnold Fleischmann

FEB 6 1987

MOTION TO DISMISS PETITION FOR SPECIAL HEARING CONCERNING THE PROPERTY 10939 LIBERTY ROAD 2ND ELECTION DISTRICT
HUBERT H. HARKER, SR.

: BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
: Case No. 87-323-SPH

And now comes the BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC., by F. Duncan Cornell and MARVIN I. SINGER, its attorneys, and move to Dismiss the Petition for Special Hearing on the following grounds:

1. The Board of Child Care (Board), a duly licensed child care agency of Baltimore County contracted to purchase the property 10939 Liberty Road, 2nd Election District of Baltimore County, subject to zoning and other contingencies, on December 9, 1985.

2. Based on precedent on February 19, 1986, the Board asked the Zoning Commissioner to exempt the said property from the Baltimore County Zoning Regulations (see letter of February 19, 1986, from Hooper, Kiefer & Cornell to Honorable Arnold Jablon, Attachment A).

3. On February 24, 1986, Commissioner Jablon granted the exemption requested based on appropriate authority (Attachment B).

4. In reliance on this and because other contingencies (water, septic, etc.) were resolved, the Board purchased the subject 15.75 acres on October 21, 1986, for $110,000.00 and engaged engineers and planners to draw site plans.

5. The Petition of Hubert H. Harker, Jr. filed on December 5, 1986, is not filed in a timely manner. The Petitioner's late-

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BALTIMORE, MD. 21201

ness has occasioned the Board to be severely prejudiced in the premises.

6. On December 17, 1986, a hearing was held by the Baltimore County Review Group at which time the Petitioner and many others near and far from Chapeldale attended and all were afforded an opportunity by the hearing officer (Mr. Covahey) to speak on all manner of subjects germane and not germane. Approval (subject to certain minor changes which were agreed to) was granted.

WHEREFORE, the Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc. asks that the Petition for Special Hearing be dismissed.

F. Duncan Cornell

Marvin I. Singer
Hooper, Kiefer & Cornell
343 North Charles Street
(301) 727-4700

Attorneys for Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc.

HOOPER, KIEFER & CORNELL
BALTIMORE, MD. 21201

(2)

I HEREBY CERTIFY that on this 3rd day of February, 1987, a copy of the aforegoing Motion to Dismiss Petition for Special Hearing Concerning the Property 10939 Liberty Road was mailed, postage prepaid, to:

Arnold Fleischmann, Esquire
408 Bosley Avenue
Towson, Maryland 21204

Phyllis Cole Friedman, Esquire
People's Counsel for Baltimore County
and
Peter Max Zimmerman, Esquire
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204.

F. Duncan Cornell

HOOPER, KIEFER & CORNELL
BALTIMORE, MD. 21201

(3)

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 2nd
Posted for: Petition for Special Hearing
Petitioner: Hubert H. Harker
Location of property: S/S of Liberty Road, 200' E. of the c/l of Powells Run Road
Location of Signs: Facing Liberty Road on property being petitioned, approximately 600' west of Powells Run Road
Remarks:
Posted by: [signature] Signature
Number of Signs: 1

Date of Posting: 3-16-87
Date of return: 3-17-87

87-323-SPH

MEMO TO FILE

Case No. CBA-87-103
87-323-SPH

FROM: L. E. Schmidt

This case involves two appeals that were originally consolidated. They are an appeal from the Zoning Commissioner on a special hearing regarding the immunity issue, and, secondly, an appeal from CRG.

Spurrier, Phipps and Schmidt sat on the first day's hearing which included all of the Zoning Commissioner's issues. There were also two witnesses on that day as to CRG. Spurrier than resigned from the Board. Upon agreement of counsel, Tom Bollinger was present for the second day's testimony which included CRG and agreed to read the first day's testimony by way of transcript.

Prior to the third day, it was discovered that Tom Bollinger had written an opinion while in the Office of Law on the immunity issue. A motion was made by Fleischmann to recluse him. We decided to now bifurcate the hearing so that Tom will hear the rest of the testimony and will sit as a member insofar as the CRG hearing. He will participate in the hearing and decision. Insofar as the immunity issue, a third Board member must be appointed who will review the transcript of the first day and join Patti Phipps and I in rendering that decision.

Additionaly, the Board will order an original transcript of the first day's hearing which will be available on December 14 at 10:00 a.m. During the fifth day set for this case, December 15, we will allow counsel to supplement the first day's hearing with additional testimony.

Lawrence E. Schmidt
December 8, 1987

RE:

PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
S/S of Liberty Rd., 200' E of
C/L of Powell's Run Rd., : OF BALTIMORE COUNTY
2nd District
:
HUBERT H. HARKER, JR., et al. Case No. 87-323-SPH
Petitioners :
: : : : : : : : :

MEMORANDUM ON BEHALF OF THE BOARD OF CHILD CARE

The instant proceedings have their origin in a Petition for Special Hearing filed by Hubert H. Harker, Jr. and others ("Petitioners") requesting the Zoning Commissioner to "not approve the exemption of the 'Residential Emergency Shelter' from the zoning regulations as a governmental function", concerning the property known as 10939 Liberty Road. The Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc. (Board) proposes to build a needed residential emergency care shelter facility on the 15.75 acre site. The Board provides short-term emergency care for adolescent youths as well as shelter for homeless, dependent, neglected and/or abused children. The proposed facility would serve primarily the clients of the Baltimore County Department of Social Services and, to a lesser extent, other social service departments in the area. The Board is licensed by the State of Maryland, Department of Social

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Services and the Department of Human Resources and is governed by the State regulations as set forth in COMAR Regulation 07.02.13.

Counsel for the Board requested from the Zoning Commissioner an exemption from the Baltimore County Zoning Regulations for the proposed use of the site, citing a prior instance in 1982 wherein a similar shelter was found to be a governmental use, to which the Zoning Regulations were not applicable. The Zoning Commissioner, in a letter dated February 24, 1986, concluded that the "proposed use is exempt from the Baltimore County Zoning Regulations". That decision was based, in part, upon an opinion of the County Solicitor dated July 12, 1982, which held "that the Board of Child Care acting in furtherance of the Baltimore County Department of Social Services can proceed with implementing the program..., as it is clearly a governmental function in nature mandated by the acts of the General Assembly and the decision of the courts". That opinion addressed itself to the establishment of a similar shelter facility in 1982.

Although Petitioners were not involved in the grant of the exemption, as early as August, 1986 the public press carried accounts of protests by neighboring property owners. On September 25, 1986 present counsel for Petitioners, representing "about 300 residents and adjoining property owners", wrote to the Director of Planning and Zoning protesting development of the proposed facility, and took issue with the previously cited opinion of the County Solicitor. However, not until on or about

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BALTIMORE, MD. 21201

- 2 -

December 5, 1986 did Petitioners bring the present action seeking a reversal of the Commissioner's ruling of February 24, 1986, although the Board had settled for the property on October 21, 1986 in accordance with its contract to purchase same, the contingencies therein having been resolved.

The threshold question thus presented by Petitioner's inactivity is whether they have been guilty of laches, and whether they are now estopped from seeking a reversal of the granting of the exemption. Laches has been defined in the following manner:

> "Strictly speaking, and using the term as it is understood in the law, laches is such neglect or omission to assert a right as, taken in conjunction with lapse of time more or less great, and other circumstances causing prejudice to an adverse party, operates as a bar in a court of equity." Boehm v. Boehm, 182 Md. 254, 34 A.2d 447 at 454 (1954).

And in Berman v. Leckner, 193 Md. 177, 66 A.2d 392, 396 (1949) the Court further stated:

> "This doctrine is based upon the ground of public policy, which requires the discouragement of stale demands. Equity considers that deliberate delay or gross negligence constitutes an implied waiver arising from a knowledge of the conditions and an acquiescence in them."

Certainly under the circumstances presented in this case, the Petitioners have been guilty of laches by the deliberate and excessive delay in asserting their rights, and should not now be entitled to attempt to overthrow the ruling of February 24, 1986.

Concomitantly, Petitioners would also be barred from attacking the exemption on the basis of the doctrine of estoppel. The heart of the principles was stated in the following words:

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- 3 -

> "If a person maintains silence, when in conscience he ought to speak, equity will debar him from speaking when conscience requires him to be silent. Hall v. Fisher, 9 Barbour 17." Funk v. Newcomer, 10 Md. 301 at 317 (1856).

Most recently, the general rule was set forth in Permanent Fin. Corp. v. Montgomery County, 308 Md. 239 at 247, A.2d (1986).

> "As we pointed out in **Salisbury Beauty Schools v. St. Bd.**, 268 Md. 32, 82, 300 A.2d 367 (1973), we have adopted and continually applied the definition of equitable estoppel set forth at 3 J. Pomeroy, **Equity Jurisprudence**, Section 804 (5th ed., 1941), as follows:
>
> 'Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might have otherwise existed, either of property, or contract or of remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.'
>
> In **Fitch v. Double "U" Sales Corp.**, 212 Md. 324, 339, 129 A.2d 93 (1957), we said:
>
> 'Equitable estoppel operates to prevent a party from asserting his rights under a general technical rule of law, when that party has so conducted himself that it would be contrary to equity and good conscience to allow him to do so.'"

Earlier, Judge Lowe had surveyed the commentators and text writers in Ganley v. G & W Limited Partnership, 44 Md. App. 568, 409 A.2d 761 (1980), and there stated:

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- 4 -

> "...Where, however, the circumstances are such as to require a silent party to speak, so that an injured party may take steps to protect himself against a loss which might otherwise result, the silent party will be estopped from asserting the defense he would have had but for his silence,..."

Therefore, if Petitioners contend that the Board has failed to meet developmental requirements, there presently exists an appropriate forum in which to litigate such issues, notably their pending appeal from the CRG approval. They would also seem to have available to them direct access to a judicial determination, by means of injunctive relief, pursuant to Section 22-36 of the Baltimore County Code. However, at this late date, Petitioners ought not to be allowed to challenge the propriety of the Commissioner's ruling, which was almost ten months old when the Petition for Special Hearing was filed.

The major thrust by the Petitioners must, of necessity, be that the facility sought to be developed by the Board to provide emergency care shelter is subject to the Zoning Regulations, and that the exemption was granted in error. The Petitioners, to date, have attempted to frustrate the project on developmental grounds, which properly do not infringe on the applicability, vel non, of the Zoning Regulations. And while recognizing the previously mentioned opinion of the County Solicitor, they contend that it too is erroneous.

However, support for the position advanced by Petitioners is lacking where the issue has arisen in circumstances similar to those now before the Commissioner. A 1978 opinion by the

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- 5 -

Attorney General of Maryland is apposite and directly confronted the effect of Prince George's County legislation upon a proposed group facility, concluding:

> "Thereupon, it is our opinion that group facilities which are funded, operated, or licensed by the State, to achieve a public purpose, participate in the State's immunity from local zoning restrictions insofar as the power to distinguish among occupants making the same physical use of premises is beyond the reach of the zoning powers conferred in Article 25A, Section 5 (X), Md. Ann. Code. Such restrictions are also invalid wherever they contravene State policy, State authorization, or State licensure for group homes under Public General Law. Therefore, we conclude homes holding a valid license from a State agency such as the Juvenile Services Administration do not have to meet local zoning requirements except insofar as State regulations presently require compliance of the physical plant with such requirements." 63 Op. Att'y Gen. 377 at 398.

The ordinance there under consideration sought to regulate group care facilities at the county level in addition to their regulation by the Juvenile Services Administration of the State Department of Health and Mental Hygiene. In addition, the County had passed a zoning ordinance as a companion bill that would also have had the effect of regulating the location of group care facilities in Prince George's County. The content and effect of those ordinances was essentially the same as Sections 1A01.2.C.5, 1AC2.2.B.7A and 1A04.2.B.5A of the Baltimore County Zoning Regulations as amended by Bill No. 157-86.

In support of his conclusion, the Attorney General pointed to the Juvenile Services Regulation, at COMAR 10.08.03.16, and

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BALTIMORE, MD. 21201

- 6 -

particularly subsection E, which provided that the juvenile care facility, before licensing, must demonstrate that it "meets local zoning requirements as to physical plant." Clearly then, compliance with zoning regulations was constricted to a narrow portion of the requirements for construction, such as set-back standards, parking and the like. Beyond the realm of regulating the physical plant, the Opinion makes clear that the local jurisdiction's power of zoning does not extend to the type of residential child care shelter now proposed.

> "The companion Zoning Ordinance presents a potential conflict with State Licensing activities, insofar as it purports to require a special zoning exception for group facilities housing more than eight persons. Facilities licensed by the State participate in the State's immunity from local zoning insofar as local zoning restrictions contravene State policy, State authorization, or State licensure for group homes under Public General Law. Under the State regulations, compliance of a facility's physical plant with local zoning requirements is unsured." 63 Op. Att'y Gen. 377 at. 399. (emphasis supplied).

The appellate courts of the State, while not having decided the exact issue now presented, had earlier pointed the way which was followed by the Attorney General. In Mayor and City Council vs. State, 281 Md. 217, (1977) the Court of Appeals held that property owned by the State and intended for use as a prison was not subject to the requirements of the zoning ordinance of Baltimore City. That decision was read by the Court of Special Appeals to mean that "when the State uses its property for public purposes, municipal zoning laws are not applicable to the use."

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- 7 -

See City of Baltimore v. State Department of Health, 38 Md. App. 570, (1978). The latter case held that the State's immunity from local zoning requirements extends to private parties, where State property is leased for a public purpose. In that instance the lessee was the Camp Fire Girls Council of the Chesapeake, Inc., a private, non-profit, charitable organization similar to the Board of Child Care. The purpose of the agreement with the Department of Juvenile Services (DJS- an agency of the Department of Health and Mental Hygiene) was to provide a home for six teenage girls, between the ages of 15 and 18, who had been found to be "children in need of supervision" and committed by the Juvenile Court to the custody of Juvenile Services.

In holding that the municipal zoning ordinance was not applicable, Chief Judge Gilbert affirmed the lower court's ruling that the use made of the property was public, and that it served a public purpose, while noting that public use is not synonymous with the physical use or access by the general public. The Court emphasized that the public use of the property was aligned with the statutory mandate to provide appropriate services for the benefit of a certain class of children.

> "The DJS is specifically charged by Md. Ann. Code art. 52A, Section 11 with establishing, maintaining, and operating 'within the annual budgetary appropriations' such 'facilities as may be needed properly to diagnose, care for, train, educate, and rehabilitate children in need of these services....'
> By Section 11A of the same article, enacted as 1974 Md. Laws, ch. 788, section 1, the legislative mandate directed to DJS was

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BALTIMORE, MD. 21201

that it 'shall provide for care, diagnosis, training, education, and rehabilitation of children by placement in group homes and institutions operated by nonprofit charitable corporations....'

> "We think it apparent from the record that the CFG is a 'charitable corporation' and that the DJS (Department of Juvenile Services), in acquiring the property on Ferndale Avenue and renting it to CFG as a 'group home' for CINS (children in need of supervision), is carrying out the will of the General Assembly as manifested by Section 11A. We further think that the use made of the Ferndale property is a 'public use' in that it is being used by the State for the benefit of the general public in providing to CINS 'care, diagnosis, training, education, and rehabilitation.' Md. Ann. Code art. 52A, Section 11A. Hopefully, such a program will turn a CINS from any desire to pursue errant ways into a responsible and productive member of society." 38 Md. App. at 577.

A similar type of public purpose was identified by the County Solicitor in his Opinion dated July 12, 1982 with respect to the type of emergency care facility proposed by the Board.

Courts of other states have spoken directly to the issue and have denied the local jurisdiction the power to regulate such uses by means of the zoning process. Illustrative of this view is Abbott House v. Village of Tarrytown, 34 A.D. 2d 821, 312 N.Y.S. 2d 841 (1970), where a zoning ordinance prohibited more than five unrelated persons from residing in a single home. Abbott House was an authorized agency under the Social Services Law, whose main purpose was caring for neglected and abandoned children. It operated on a nonprofit, charitable basis and was supervised by the State Board of Social Welfare. In that context

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the court concluded, at page 843 of 312 N.Y.S. 2d.

> "It is clear that this Zoning Ordinance has the effect of totally thwarting the State's policy, as expressed in its Constitution and Social Service Law, of providing for neglected children. We are therefore of the opinion that the Tarrytown Zoning Ordinance, insofar as it conflicts and hinders an overriding State Law and policy favoring the care of neglected and abandoned children, is void as exceeding the authority vested in the Village of Tarrytown...."

Again, in Y.W.C.A. of Summit v. Board of Adjustment, 134 N.J. Super. 384, 341 A.2d 356, 359 (1975), aff'd 141 N.J. Super-315, 358 A.2d 211 (1976), it was held that in view of the clearly enunciated position of the legislature, communities may not use their planning and zoning powers to discriminate against group homes or foster homes.

The legislative policy enunciated by the General Assembly establishes the purpose of Subtitle 7 of the Family Law Article (Neglected Children) to be the protection of neglected children and "requiring each local department to give the appropriate service in the best interests of the neglected child." Section 5-702. A local department is empowered to obtain judicial permission to enter the household of a child forceably, to remove the child and to establish a treatment plan for its welfare. Section 5-706. Inherent in the ability to remove a child in such manner is the requirement and authorization to provide emergency shelter care for such children. The Juvenile Service Administration, an agency of the Department of Health and Mental

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BALTIMORE, MD. 21201

Hygiene, and the Social Services Administration of the Department of Human Resources are mandated to "provide for care, diagnosis, training, education, and rehabilitation of children by placing them in group homes and institutions that are operated by nonprofit charitable corporations", and to pay for such services as provided in the State budget. Section 6-120, Health-general Volume (1982), Annotated Code of Maryland and Section 5-526 Family Law Volume.

The legislative purpose, as interpreted by the County Solicitor and the Attorney General, makes plain the public use nature of the facility proposed by the Board. The authorities cited herein amply demonstrate that the Zoning Regulations are not allowed to impinge upon the intended use of the emergency care shelter, except as limited to the physical plant. For these reasons, it is urged that the present exemption not be rescinded.

Respectfully submitted,

MARVIN I. SINGER

F. DUNCAN CORNELL

Attorneys for the Board of Child Care

HOOPER, KIEFER & CORNELL
BALTIMORE, MD. 21201

THE BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC. * IN THE
* CIRCUIT COURT
Plaintiff * FOR
* BALTIMORE
v. * COUNTY
* CASE NO. 54/113/88CG-1313
HUBERT H. HARKER, et al
Defendants

87-323-SPH

ORDER OF APPEAL

MR. CLERK:

Please enter an appeal to the Court of Special Appeals from the Order of September 20, 1988 entered herein.

F. DUNCAN CORNELL

MARVIN I. SINGER
343 North Charles Street
Baltimore, Maryland 21201
(301) 727-4700
Attorneys for

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of , 1988 a copy of the foregoing Order of Appeal was mailed, postage prepaid, to Arnold Fleischmann, Esquire, 408 Bosley Avenue, Towson, Maryland 21204; Arnold Jablon, Esquire and Nancy West, Esquire, Courthouse, Towson, Maryland 21204; and to Phyllis Cole Friedman, Esquire, People's Counsel for Baltimore County, Courthouse, Room 223, Towson, Maryland 21204.

MARVIN I. SINGER

HOOPER, KIEFER & CORNELL
BALTIMORE, MD. 21201

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

March 16, 1988

Arnold Fleischmann, Esq.
408 Bosley Avenue
Towson, Md. 21204

Re: Case No. 87-323-SPH
Hubert H. Harker, et al

Dear Mr. Fleischmann:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen, Secretary

Encl.
cc: Phyllis C. Friedman
P. David Fields
James Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk

RECEIVED
MAR 17 1988
ZONING OFFICE

RE: PETITION FOR SPECIAL HEARING
S/S of Liberty Rd., 200' E of C/L of Powell's Run Rd., 2nd District
HUBERT H. HARKER, JR., Petitioner
: BEFORE THE ZONING COMMISSIONER
: OF BALTIMORE COUNTY
: Case No. 87-323-SPH

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 20th day of January, 1987, a copy of the foregoing Entry of Appearance was mailed to Arnold Fleischmann, Esquire, 408 Bosley Ave., Towson, MD 21204, Attorney for Petitioner; and F. Duncan Cornell, Esquire, 405 W. Pennsylvania Ave., Towson, MD 21204, Attorney for Board of Child Care of Baltimore Annual Conference of Methodist Church, Inc.

Peter Max Zimmerman

HOOPER, KIEFER & CORNELL
BALTIMORE, MD. 21201

87-323-SPH

Board of Child Care of Baltimore Annual Conference of Meth. Ch., Inc. - (Hubert H. Harker, Jr. - Petitioner)

RECEIVED
DEC 18 1986
ZONING OFFICE

RE: OBJECTION TO THE PROPOSED EXEMPTION OF THE USE BY THE BOARD OF CHILD CARE OF 10939 LIBERTY ROAD 2ND ELECTION DISTRICT FROM THE EFFECT OF THE ZONING REGULATIONS
: BEFORE THE ZONING COMMISSIONER
: OF BALTIMORE COUNTY
: item 232

ANSWER TO PETITION FOR SPECIAL HEARING UNDER 500.6 OF THE ZONING REGULATIONS OF BALTIMORE COUNTY

And now comes the BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC. , by F. Duncan Cornell, its attorney, and for Answer to Petition for Special Hearing, says:

1. It admits the allegations of paragraph 1.
2. The subject parcel is zoned RC-2 and RC-5.
3. The owner substantially admits the allegations of paragraph 3; see copy of letter dated December 10, 1986, from Board of Child Care to Frank H. Fisher, Chief, Community Planning Division, describing the Owner's proposed use of the subject property.
4. Answering paragraphs 4 and 5, the Owner admits that neither public water or sewers are presently available to the site, but denies that adequate sewage and water is questionable. In fact, both sewage and water are plentifully available and proper verification of this has been furnished to appropriate agencies of Baltimore County.
5. Answering paragraph 6, the Owner denies that problems and questions of health, safety, fire, police protection and other matters pertaining to the public welfare have not been considered; in fact, all these items of public concern have been considered by appropriate agencies of Baltimore County which have ruled favorably upon them.
6. Answering paragraph 7 of the Petition, the Owner says that the Laws of Maryland mandate Baltimore County to provide shelter for children in need of emergency shelter and in doing so the County performs a governmental function. See Opinion of the Honorable Leonard S. Jacobson, then County Solicitor, dated

HOOPER, KIEFER & CORNELL
BALTIMORE, MD. 21201

COPY: J. Robert Haines

Ann - Please see me, File

RECEIVED
SEP 23 1988
ZONING OFFICE

THE BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC.		IN THE
		CIRCUIT COURT
Appellant		FOR
		BALTIMORE
vs.		COUNTY
HUBERT S. HARKER, ET AL.		
Appellee		CASE NO. 88CG-1313
		Zoning Case No. 87-323-SPH

MEMORANDUM OPINION AND ORDER

This case came before the Court on August 15, 1988, pursuant to an appeal by the Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc. (hereinafter "Appellant") from a decision of the County Board of Appeals (hereinafter the "Board"). The Board reversed a decision of the Zoning Commissioner and ruled that the proposed use of the property owned by Appellants is not exempt from the zoning regulations and that the State's immunity from local zoning regulations does not extend to Appellants. Hubert H. Harker, et al. (hereinafter "Appellees") in answer to the Petition for Appeal, states that the decision of the Board is correct as a matter of law.

A brief summary of the facts is as follows. Appellant presently operates two shelters for adolescent boys and girls. It is currently licensed by the Department of

Social Services of the State of Maryland, Department of Human Resources. In 1986, Appellant purchased a fifteen acre site with plans to erect five residential buildings, each housing twelve children. The housing would provide emergency shelter for children exposed to danger because of the environment in which they live. The proposed site is primarily zoned RC2 (agricultural) and, unless exempt from zoning regulations, the intensity of the proposed use would not be allowed. Appellees are nearby landowners who are opposed to Appellant's exemption from local zoning on property that is privately owned.

Appellant argues on appeal that it may avail itself of the State's immunity from local zoning as a result of its holding a valid license from a State agency. 63 Op. Att'y Gen. 377. In addition, Appellant cites case law supporting its position that if a public use is being made of the property and a public purpose is not being served, municipal zoning ordinances are not applicable. Mayor and City Council of Baltimore v. State Dept. of Health & Mental Hygiene, etc., 38 Md. App. 570 (1978).

Appellees argue that the Board correctly found that Appellant's proposed "residential emergency shelter" is

not exempt or immune from Baltimore County Zoning Regulations. Appellees agree that in Maryland it is well settled that when the State owns property located in a subdivision and uses it for the performance of its governmental function, it is exempt from local zoning regulations. Mayor & City Council of Balto. v. State, 281 Md. 217 (1977). In addition, when State owned property is leased to a private tenant for a public purpose, the State's immunity attaches to protect the public user. Mayor & City Council of Balto., 38 Md. App. 570 (1978). However, Appellees contend that no Maryland appellate case addresses the question of private ownership of land for a public purpose. Appellees aver that the State had no part in the site selection of the property in question. They argue that the ramification of allowing exemption from local zoning for privately owned land used by private groups for functions governmental in nature would unlock a Pandora's Box.

This Court has carefully considered memoranda submitted by counsel and argument presented at the hearing on the appeal. The Court concludes that legal precedent in Maryland supporting Appellant's argument is absent. It is further

apparent that the argument of Appellees that a finding in favor of Appellant would open a "Pandora's Box" is true and compelling.

Accordingly, it is this 20th day of September, 1988, by the Circuit Court for Baltimore County,

ORDERED that the February 24, 1988 Order of the County Board of Appeals be, and the same is hereby, **AFFIRMED.**

William M Nickerson
WILLIAM M. NICKERSON, JUDGE

Copies Sent To:

F. Duncan Cornell, Esquire
Marvin I. Singer, Esquire
343 North Charles Street
Baltimore, Maryland 21201

Nancy C. West, Esquire
Assistant County Attorney
Second Floor
Towson, Maryland 21204

Phyllis Cole Friedman, Esquire
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204

232

PETITION FOR SPECIAL HEARING

87-323-SPH

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should ~~approve~~ not approve the exemption of the "Residential Emergency Shelter" from the zoning regulations as a governmental function. (see attached petition)

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Petitioner

~~Contract Purchaser~~

Hubert H. Harker, Jr.
(Type or Print Name)

Hubert H. Harker, Jr.
Signature

See attached
Address

City and State

Legal Owner(s): - Contract Purchasers

Board of Child Care
(Type or Print Name)

Signature

(Type or Print Name)

Signature

MAP 7H/9L
IC
E.D. 2nd
DATE 2/10/87
200 ft
1600 ft
DP

Attorney for Petitioner:

Arnold Fleischmann, Esquire
(Type or Print Name)

Arnold Fleischmann
Signature

408 Bosley Avenue
Address

Towson, Maryland 21204
City and State

Attorney's Telephone No.: (301) 337-7600

3300 Gaither Road
Address

Phone No.

Baltimore, MD 21207
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

F. Duncan Cornell, Esquire
Name

405 W. Pennsylvania Ave. 823-3010
Address

Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 22nd day of December, 1986, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 9th day of February, 1987, at 11:45 o'clock A.M.

Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1

(over)

RE: OBJECTION TO THE PROPOSED EXEMPTION OF THE USE BY THE BOARD OF CHILD CARE OF 10939 LIBERTY ROAD 2ND ELECTION DISTRICT FROM THE EFFECT OF THE ZONING REGULATIONS

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* * * * * * * * * * * * *

PETITION FOR SPECIAL HEARING UNDER 500.6 OF THE ZONING REGULATIONS OF BALTIMORE COUNTY

The undersigned adjoining property owners and parties aggrieved, by Arnold Fleischmann, their attorney, request a hearing before the Zoning Commissioner of Baltimore County and for reasons say:

1. On the 24th day of February, 1986, responding to a letter of F. Duncan Cornell, Esquire dated February 19, 1986, Arnold Jablon, Zoning Commissioner for Baltimore County, concluded that the proposed use of the property known as 10939 Liberty Road, being a 15 acre parcel, to be acquired by the Board of Child Care would be exempted from the effect of the zoning laws.

2. The subject parcel is zoned RC-2.

3. The undersigned have been advised, believe and therefore aver that the property is to be used for the housing of juveniles under the age of 18, a total of five multiple units to be occupied by a total of 60 juveniles plus approximately 12 staff members to be constructed on the premises.

4. Public sewer facilities for the site are not available and the availability of adequate sewage disposal is questionable.

5. Public water facilities are not available and the adequacy of water supply is questionable.

6. There are problems and questions of health, safety, fire, police protection and other matters pertaining to the public welfare which have not been considered in the determination previously made.

1

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7. The proposed use of the property may be subsidized by Baltimore County and the State of Maryland. However the proposed use of the property for homeless juveniles of Baltimore City and the Baltimore Metropolitan Area does not make the use of the property a governmental function or entitle it to an exemption from the effect of the Zoning Law.

8. The property is not intended for a religious purpose and therefore is not entitled to be treated like the property of a church or religious institution.

For all the aforegoing reasons, the undersigned petitioners request a hearing on the decision of the Zoning Commissioner, a copy of which is attached hereto and request an opportunity to be heard in opposition to the ruling of the zoning commissioner.

John F. Feezer, Jr. — 11670 Marriottsville Road, Marriottsville, Maryland 21104

Hubert H. Harker, Jr. — 11116 Liberty Road, Randallstown, Maryland 21133

Katherine Johnson — 4339 Holbrook Road, Randallstown, Maryland 21136

HOLBROOK-CHAPELDALE COMMUNITY ASSOCIATION

BY Katherine Johnson, President — 4339 Holbrook Road, Randallstown, Maryland 21136

Arnold Fleischmann, Esquire, Attorney for Petitioners — 408 Bosley Avenue, Towson, Maryland 21204, (301) 337-7600

2

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of December, 1986, a copy of the aforegoing Petition was mailed, postage prepaid, to F. Duncan Cornell, Esquire, 405 West Pennsylvania Avenue, Towson, Maryland 21204, Attorney for Board of Child Care.

Arnold Fleischmann

3

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

February 24, 1986

F. Duncan Cornell, Esquire
405 West Pennsylvania Avenue
Towson, Maryland 21204

RE: Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc.
~~3300 Gaither Road~~ 10939 Liberty Rd.
2nd Election District

Dear Mr. Cornell:

After reviewing your letter dated February 19, 1986 and in consideration of the attached Opinion, I conclude that your proposed use is exempt from the Baltimore County Zoning Regulations. However, you will still need to prepare and submit a site plan, the primary purpose of which is to document your use and limit potential future use, to this office for approval.

Sincerely,

ARNOLD JABLON
Zoning Commissioner

AJ/srl

cc: Mr. James E. Dyer

LAW OFFICES
HOOPER, KIEFER & CORNELL
343 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201-4381
(301) 727-4700

TOWSON OFFICE
405 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4895
823-3010

OF COUNSEL
PHILIP HELLER SACHS
THOMAS E. ROSSER
ARTHUR U. HOOPER
1905-1978

RICHARD W. KIEFER
F. DUNCAN CORNELL
IRA R. SINSHEIL
WILLIAM L. CLARK
DOROTHY W. BEAMAN
GEORGE L. RUTHERFORD, III

February 19, 1986

Honorable Arnold Jablon
Zoning Commissioner
Room 109
County Office Building
Towson, Maryland 21204

FEB 21 '86 AM
BALTIMORE COUNTY
ZONING DEPARTMENT

Re: Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc.
3300 Gaither Road
Baltimore, Maryland 21207

Dear Mr. Jablon:

The Board of Child Care is licensed by the State of Maryland, Department of Social Services, Department of Human Resources. The Board provides short-term, emergency care for adolescent youth as well as shelter for homeless, dependent, neglected and/or abused children.

The Board of Child Care wishes to provide a needed additional residential emergency care shelter facility for the Baltimore County Department of Social Services and, to a lesser extent, other Social Services departments in the State.

The last such shelter, put in place in 1982, was found to be a governmental function to which the Zoning Regulations were found to be not applicable. See letter dated July 12, 1982, from Leonard S. Jacobson, County Solicitor, to James T. Smith, Jr., Chairman, Baltimore County Council.

A contract to purchase 15.75 acres of land at 10939 Liberty Road, Baltimore County, Maryland (at the corner of Powells Run Road) has been entered into by The Board of Child Care. The contract, of course, is contingent upon the Board securing proper zoning clearance, permits and authorizations to proceed.

HOOPER, KIEFER & CORNELL

Honorable Arnold Jablon (2) February 19, 1986

On the 15.75 acres, presently zoned R.C. 2, the Home proposes to erect up to five cottages, each cottage to house no more than twelve children for the Baltimore County Department of Social Services. These children will be in need of emergency shelter care for one or more of the various reasons cited above.

Only one or two of the cottages will be erected in the next year or two. Other cottages (up to five) may be erected as the Department of Social Services needs may require.

We hope your office can act to exempt the said 15.75 acres from the Baltimore County zoning regulations.

Respectfully,

F. DUNCAN CORNELL

FDC:acm
Enclosure
CC: Mr. Claude Libis
Executive Director
Board of Child Care
3300 Gaither Road
Baltimore, Maryland 21207

BALTIMORE COUNTY
OFFICE OF LAW
TOWSON, MARYLAND 21204
494-4420

LEONARD S. JACOBSON
COUNTY SOLICITOR

July 12, 1982

James T. Smith, Jr., Chairman
Baltimore County Council
Second Floor - Court House
Towson, Maryland 21204

Re: Legal Opinion - Re: Development of residential emergency shelter care for young people of Baltimore County

Dear Chairman Smith:

You have asked our opinion with respect to the proposal that the Board of Child Care, which is the official child caring agency of the Baltimore and Peninsula Conferences of the United Methodist Church, can provide for the Baltimore County Department of Social Services short-term emergency shelter care for adolescent youths and would this program be a governmental function as opposed to a proprietary function thus exempting same from Baltimore County Zoning Regulations.

OPINION

Our answer is that the action of the Board of Child Care to provide residential emergency shelter care for young people of Baltimore County who come through the Baltimore County Department of Social Services is definitely a governmental function in nature and thus Zoning Regulations are not applicable.

REASONING

As we have stated in recent opinions, the majority of states make the distinction between governmental and proprietary actions and enterprises. The courts have attempted to define the distinction between governmental and proprietary enterprises to show that a governmental action is being performed if the act is in pursuance to and in furtherance of obligations imposed by the legislature, both state and local. The unit would be performing a proprietary function if the act is

STORM DRAINS, SEDIMENT CONTROL, AND STORM WATER MANAGEMENT COMMENTS: (cont'd)

Onsite drainage facilities serving only areas within the site are considered private. Therefore, construction and maintenance shall be the Developer's responsibility. However, a drainage area map, scale 1"=200', including all facilities and drainage areas involved, shall be shown on a plan and submitted to Baltimore County for review.

Drainage studies and storm water management drawings will be necessary to be reviewed and approved prior to the recording of any record plat or the issuance of any grading or building permits.

The Developer must furnish the Bureau of Public Services with a drainage study containing the following information:

a. A map of scale 1"=200', for the entire drainage area which contributes to the open stream including a tabulation of flow quantities.

b. Field run cross-sections of the stream with the flood plain of a 100-year design storm indicated on them. These sections are to be taken at 50-foot intervals and are to be shown on standard cross-section paper at 1"=5' horizontal to 1"=5' vertical scale.

c. A profile of the stream.

d. A plan with the location of the field run cross-sections indicated.

e. Hydraulic computations which were used to establish the elevation of the flood plain for each cross-section based on "The Standard Step Method" or "The U.S. Corps of Engineers Computer Program HEC-2."

f. Hydraulic computations, including inlet and outlet control analysis, which determine the size of any proposed structure within the flood plain. The Developer's engineer shall submit economically comparable alternate designs (type, size, and location) with estimated construction costs included, to verify his selection.

g. The stream is to be cleared of all fallen trees, stumps and debris.

In accordance with Bill No. 56-82, filling within a flood plain is prohibited.

A sediment control plan is required.

The rear of buildings may not be constructed within 20 feet of the limits of the flood as established for a 100-year flood level with a 1 foot freeboard. See Plate 19D in the Baltimore County Design Manual, dated 1982 and adopted 1983.

WATER AND SEWER COMMENTS:

Public water is not available to serve this property. Therefore, private well systems must be provided in conformance with Health Department requirements. A water appropriation permit must be approved prior to signature on the record plat.

WATER AND SANITARY SEWER COMMENTS: (cont'd)

Public sewers are not available to serve this property; therefore, private sewerage systems must be provided. Soil tests must be conducted on each lot prior to approval of a record plat in accordance with Department of Health requirements.

EDWARD A. MCDONOUGH, P.E., CHIEF
Developers Engineering Division

EAM:RWB:dlr

cc: File

BALTIMORE COUNTY
DEPARTMENT OF PERMITS & LICENSES
TOWSON, MARYLAND 21204

DECEMBER 16, 1986

TED ZALESKI, JR.
DIRECTOR

Mr. Arnold Jablon, Zoning Commissioner
Office of Planning and Zoning
Towson, Maryland 21204

Dear Mr. Jablon:

Comments on Item # 232 Zoning Advisory Committee Meeting are as follows:

Property Owner: BOARD OF CHILD CARE OF BALTO. ANNUAL CONFERENCE OF METHODIST
Location: S/S LIBERTY RD W OF CHAPEL DALE RD. CHURCH, INC.(PETITIONER:
District: 2ND HUBERT H. HARKER, JR)

APPLICABLE ITEMS ARE CIRCLED:

(A) All structures shall conform to the Baltimore County Building Code as adopted by Council Bill #17-85, the Maryland Code for the Handicapped and Aged (A.N.S.I. #117-1 - 1980) and other applicable Codes and Standards.

(B) A building and other miscellaneous permits shall be required before the start of any construction.

C. Residential: Two sets of construction drawings are required to file a permit application. The seal of a registered in Maryland Architect or Engineer is/is not required on plans and technical data.

(D) Commercial: Three sets of construction drawings sealed and signed by a registered in Maryland Architect or Engineer shall be required to file with a permit application. Reproduced seals are not acceptable.

E. All Use Groups except R-1 Single Family Detached Dwellings require a minimum of 1 hour fire rating for exterior walls closer than 6'-0 to an interior lot line. R-1 Use Groups require a one hour wall if closer than 3'-0 to an interior lot line. Any wall built on an interior lot line shall require a fire or party wall. See Table 401, Section 1407, Section 1406.2 and Table 1402. No openings are permitted in an exterior wall within 3'-0 of an interior lot line.

F. The structure does not appear to comply with Table 505 for permissable height/area. Reply to the requested variance by this office cannot be considered until the necessary data pertaining to height/area and construction type is provided. See Table 401 and 505 and have your Architect/Engineer contact this department.

G. The requested variance appears to conflict with Section(s) _____, _____, of the Baltimore County Building Code.

H. When filing for a required Change of Use/Occupancy Permit, an alteration permit application shall also be filed along with three sets of acceptable construction plans indicating how the existing structure is to be altered in order to comply with the Code requirements for the new use. Maryland Architectural or Engineer seals are usually required. The change of Use Groups are from Use _____ to Use _____, or to Mixed Uses _____. See Section 312 of the Building Code.

I. The proposed project appears to be located in a Flood Plain, Tidal/Riverine. Please see the attached copy of Section 516.0 of the Building Code as adopted by Bill #17-85. Site plans shall show the correct elevations above sea level for the lot and the finish floor levels including basement.

(J) Comments: THE APPLICANT HAS HAD A PRELIMINARY REVIEW WITH THIS OFFICE AND FIRE PREVENTION PLANS REVIEW TO DETERMINE THE USES PER BUILDING FIRE CODE, TYPE OF CONSTRUCTION AND THE ALLOWABLE AREAS. HOWEVER, HANDICAPPED PARKING CURB CUTS, RAMPS ETC ARE NOT SHOWN.

K. These abbreviated comments reflect only on the information provided by the drawings submitted to the Office of Planning and Zoning and are not intended to be construed as the full extent of any permit. If desired the applicant may obtain additional information by visiting Room 122 of the County Office Building at 111 W. Chesapeake Avenue, Towson, Maryland 21204.

BY: C. E. Burnham, Chief
Building Plans Review

1/22/86

BALTIMORE COUNTY, MARYLAND

SUBJECT: COUNTY REVIEW GROUP COMMENTS DATE: 12/17/86

FROM: ZONING OFFICE

PROJECT NAME: Methodist Home PLAN: 11/19/86

LOCATION: W/S Chapeldale Road, E/S Powells Run Road, S/S of Liberty Road REV: 12/10/86 REV:

DISTRICT: 2nd Election District

REVISED PLAN KEY:
COMPLIANCE WITH COMMENT CHECKED ✓
NON-COMPLIANCE IS CIRCLED
ADDITIONAL COMMENTS ADDED LAST

✓ 1) The Zoning Commissioner, in a letter of reply dated 2/24/86 to F. Duncan Cornell, attorney representing the Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc., stated that this proposed use would be exempt from the zoning regulations. This determination was based on the County Solicitor's opinion that this use is a governmental function and that the zoning regulations are not applicable.

✓ 2) A petition was filed in the zoning office on December 5, 1986 by Hubert H. Harker, Jr. Et.Al. for the Zoning Commissioner to NOT approve the exemption of the proposed "Residential Emergency Shelter" from the zoning regulations as a governmental function. The petition was filed under Item #232.

✓ 3) The gross and net acreage should be re-calculated. The net area is the area of the lot only not including any public rights-of-way. The Gross area includes one-half of the boundary street rights-of-way to which the property has the right of access up to a maximum of 30 feet.

✓ 4) Adjust the RC-2/RC-5 zone line perpendicular to Liberty Road west of Chapeldale Road; it does not agree with the 1" = 200' zoning maps.

✓ 5) Change the proposed use to "Social Services Residential Emergency Shelter" as described by the County Solicitor.

✓ 6) When detailed plans are available, a detail of the covered walkway building connections will be reviewed and approved by this office.

W. CARL RICHARDS, JR.
Zoning Coordinator

6 6

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. P. David Fields, Current Planning Division Date: December 16, 1986

FROM: Frank H. Fisher, Chief, Community Planning Division

SUBJECT: Methodist Home Child Care Center

My division has reviewed your responses regarding the proposed use of this site, and find most to be satisfactory with regard to our concerns. The staff have also done some additional research with regard to the use and generally feel more comfortable with the proposed use, with some reservations. Our reservations arise out of the fact that the Planning Board and the County Council have worked toward the adoption of certain zoning and land use regulations which established specific standards and procedures to follow for community care facilities.

The C.R.G. plan should indicate the location of the recreation facilities identified in the response from the Methodist Home to our initial concerns. It seems that the Methodist Board of Child Care, while trying to be sensitive to the needs of children within the community, have not been particularly responsive to the concerns of the community itself. Unless there is a foundation of support and understanding within the community, an atmosphere of agitation and hostility may prevail, which can have a severe impact on the children.

Assuming that all outstanding issues are resolved, and the C.R.G. is approvable, we would recommend the C.R.G. be approved subject to the final adjudication of the zoning petition now pending before the Zoning Commissioner and the modification of the Master Water and Sewer Plan.

Frank H. Fisher, Chief
Community Planning Division

FHF:JJD:dme

cc: Mr. Norman E. Gerber, AICP, Director of Planning and Zoning
Mr. Uri P. Avin, AICP, Deputy Director of Planning
Mr. John J. Dillon, Jr., Area Planner, Community Planning Division

CPS-008

SWM

CRG MEETING OF DECEMBER 17, 1986

METHODIST HOME

1. 2 & 10 year peak SWM is required. Downstream drainage conditions should also be investigated to determine whether 100 year management is required as well.

2. The CRG plan indicates that significant impervious area will run off unmanaged onto residential properties to the south. This runoff should be intercepted & directed to the pond or the stream at the east end of the site.

3. Water quality management of the 100 inch storm must be investigated. Also, the 1"=200' aerial photogrammetry shows 2 streams on the east end of the site. The contributory drainage area at the point proposed pond is greater than 30 acres & County policy is that no encroachment for storage is permitted in flood plains for streams with D.A. 30 acres or greater. I have met with the developer's engineer to discuss proposed SWM & he has indicated that the developer would like to locate a wet pond / wetland area. I suggest the engineer schedule a meeting with Health, Planning & this office to discuss such a scheme. If this proposal cannot be worked out, no excavation will be allowed in the flood plain.

4. A 100 year flood plain analysis is required for the aforementioned streams.

5. An Army Corps permit may be required for this project.

Thomas L. Vidmar
12/17/86

TRAFFIC

DEPARTMENT OF TRAFFIC ENGINEERING

BALTIMORE COUNTY, MARYLAND

TO : Mr. James Markle Date: December 16, 1986

FROM : C. Richard Moore

SUBJECT: C.R.G. Comments

PROJECT NAME: Methodist Home C.R.G. PLAN: X

PROJECT NUMBER & DISTRICT: DEVELOPMENT PLAN:

LOCATION: Chapeldale Road RECORD PLAT:

This department has no comment on the proposed plan.

For C. Richard Moore
Deputy Director
Department of Traffic Engineering

CRM:GMJ:lt

12-16-86
Date

COUNTY REVIEW GROUP
COMMENTS ON PROPOSED SUBDIVISION PLANS
BALTIMORE COUNTY DEPARTMENT OF HEALTH

HEALTH

METHODIST HOME
Subdivision Name, Section and/or Plat

Board of Child Care of Meth Church Inc. Hoff, Rosfelt and Woolfolk
Developer and/or Engineer

Patapsco	7 lots	15.24	Private	Private
Watershed	No. of lots or Units	Total Acreage	Water	Sewer

COMMENTS ARE AS FOLLOWS:

___ Soil percolation tests are required; a minimum of two test are required within a designated 10,000 square foot sewage disposal reserve area. For further information regarding these requirements, contact this office at 494-2762.

✓ Soil percolation test have been conducted. Revised plans, _____ must be submitted prior to approval of plat, _____ are not required and the plat can be approved as submitted. Contact this office for more complete information, 494-2762.

___ Public sewers ____, public water ____, must be utilized and/or extended to serve the property.

___ A Hydrogeological Study and Environmental Effects Report for this subdivision, _____ must be submitted, _____ are not required, _____ is incomplete and must be revised, ✓ has/have been reviewed and approved.

✓ A Water Appropriation Permit Application, _____ must be submitted, ✓ has been submitted. NOTE: Greater than 33 lots necessitates a public hearing with Water Resources Administration as part of the permit process.

___ It is recommended the plan, _____ be approved as submitted, ✓ be approved as submitted subject to the following conditions noted: Letter and as the attached memo dated 12-16-86

___ It is recommended this plan not be approved at this time. See revisions and/or comments.

REVISIONS AND/OR COMMENTS:

1. The Water and Sewer Plan needs to be amended prior to issuance of building permits.
2. All requirements regarding the treatment of water and sewage must be met as set forth by the State Dept. of Health and Mental Hygiene.
3. Provide a well reserve area for possible future well.

It indicate on the plan that Well #3 must be yield tested prior to use.

SS 783R

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Brooks Stafford, Director, Environmental Support Services — Date: 12/16/86

FROM: Jeff Morris, Waste and Water Quality Management

SUBJECT: ENVIRONMENTAL EFFECTS REPORT Methodist Home (Name)

CRG MEETING Wednesday, 17 Dec (Date) 2:30 p.m. (Time)

PLAN REVIEW NOTES

1. Proposed residential additions for single family detached dwellings on 14.67 acres.
2. Private water and Private sewer is proposed.
3. Stream is Clear (Class) an eastern boundary (Describe streams on-site) Private
4. Narrow setback 40' wide, associated with stream, White Hydric soil (Describe wetland soils on-site)
6. Storm Water Management _____ required.
7. _____ proposed impervious area.

RESPONSES

The Environmental Effects Report is not approved. In order to receive approval, the following checked items/conditions must be met.

/ The Environmental Effects report is approved, subject to the following checked items/conditions.

A. ____ No development is allowed in _____ (soil/name & symbol)

B. ____ A revised site plan indicating no development in _____ must be submitted.

Mr. Brooks Stafford
Environmental Effects Report Methodist Home (Name)
Page Two

/ 1. The developer must follow the Health Department Wetland Guidelines.

/ 2. Streams, stream buffers and wetland should be noted on all subsequent development plans

C. BEST MANAGEMENT PRACTICES

/ 1. All areas except that used for buildings, sidewalks and paved parking will be planted with vegetated cover and/or landscaped as soon as possible after final grading and maintained in such condition.

/ 2. Dirt and debris accumulating on private roads and parking lots will be removed according to the following schedule: May through October, concurrent with grass mowing; November through April, monthly.

/ 3. Snow removal will be by mechanical means except in severe snow and ice conditions, when deicing compounds may be used.

/ 4. Application of fertilizers, herbicides and pesticides will not exceed recommendations of the University of Maryland Cooperative Extension Service.

/ 5. Filling will not occur in grassed or lined drainage ditches or swales.

___ 6. _____

* No unnecessary excavation occurs in Hydric soils associated with streams for storm water management

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF

BALTIMORE COUNTY, MARYLAND

DATE: DECEMBER 2, 1986

SUBJECT: SUBDIVISION REVIEW COMMENTS

FROM: CAPTAIN JOSEPH KELLY
PLANS REVIEW DIVISION, FIRE PREVENTION BUREAU
BALTIMORE COUNTY FIRE DEPARTMENT

PROJECT NAME: METHODIST HOME

PROJECT NUMBER: CRG AGENDA 12/17/86, 2:30 PM

LOCATION: CHAPELDALE ROAD

DISTRICT # 2

COMMENTS:

CRG 01
PROPOSED BUILDINGS SHALL BE DESIGNED AND CONSTRUCTED SO AS TO MEET THE APPLICABLE PROVISIONS OF THE FIRE PREVENTION CODE AND THE NFPA 101 LIFE SAFETY CODE, 1985 EDITION.

CRG 04
ACCESS ROADS SHALL BE POSTED WITH FIRE LANE SIGNS ALONG ITS ENTIRE LENGTH. BALTIMORE COUNTY COUNCIL BILL 102-74

ALL BUILDINGS SHALL BE FULLY SPRINKLERED IN ACCORDANCE WITH NFPA 13-D. ALSO A STANDARD DRAFTING CONNECTION SHALL BE PROVIDED AND CONNECTED TO AN APPROVED STATIC WATER SOURCE OF APPROX. 75,000 GALLONS. SEE URBAN GUIDE FOR FIRE PREVENTION AND CONTROL MASTER PLANNING.

BALTIMORE COUNTY, MARYLAND

SUBJECT: COUNTY REVIEW GROUP COMMENTS
FROM: OFFICE OF PLANNING AND ZONING

DATE: December 16, 1986

PROJECT NAME: METHODIST HOME — PLAN #: XXXXXXXXXXX
COUNCIL & ELECTION DISTRICT ____ — PLAN EXTENSION ____
REVISED PLAN ____
PLAT ____

The Office of Planning and Zoning has reviewed the revised plan and explanation material for the subject property dated December 10, 1986 and has the following comments:

1. Concerns raised by this office with respect to the proposed development covered the following points.
   a. Supervision of the proposed home.
   b. On-site recreational activities.
   c. Sewerage
   d. Transportation

   These issues have now been adequately addressed in the memoranda from the Board of Child Care, dated December 10, 1986 and in the letter the Developer's Engineer, also dated December 10, 1986. The CRG plan should indicate the general location of the proposed recreational facilities.

2. The question of increased density on the site resulting from the proposed use has been addressed earlier by the Zoning Commissioner, who in a letter dated February 24, 1986 to the attorney representative the Board of Child Care, state that the proposed use would be exempt from the Baltimore County Zoning Regulations. The CRG is not a zoning hearing and is not empowered to address this issue.

3. The County Attorney has determined that the CRG is not empowered to review or enforce covenants between individual or community associations and a developer.

4. In view of the wide spread unease expressed prior to the CRG by area residents, it is strongly recommended that the developers meet with interested are residents in an effort to ease tensions and, if possible, to establish mutually acceptable guidelines for the operation of the Home. Continuing conflict between the Home and the adjacent communities will not provide a positive atmosphere or framework for the type of facility proposed.

5. A petition has been filed with the Zoning Commissioner under Item #232 requesting that the proposed development not be exempt from the Zoning Regulations. In the event that the petition is successful, a revised or amended CRG may be required.

6. A final landscape plan will need to be approved by this office prior to issuance of building permits. Existing trees to remain must be shown.

7. The Master Plan for Sewer and Water will require modification.

SHA

Maryland Department of Transportation
State Highway Administration

William K. Hellmann, Secretary
Hal Kassoff, Administrator

December 8, 1986

Mr. J. Markle-Chief
Bureau of Public Services
County Office Building
Towson, Maryland 21204

Re: CRG Meeting 12/17/86
Methodist Home
S/S Liberty Road
Maryland Route 26
west of Chapeldale Road

Dear Mr. Markle:

On review of the submittal of 10/28/86 and field inspection for the proposed Methodist Home, the State Highway Administration Bureau of Engineering Access Permits offers the following comments.

With the site plan showing frontage on the south side of Liberty Road, Maryland Route 26, we will require the ultimate 80' right-of-way (40' half section), be shown on a revised plan.

Our investigation of the Liberty Road and Chapeldale Road intersection revealed a two (2) lane roadway (Maryland Route 26) with minimal shoulder improvements.

We strongly recommend to the developer and Baltimore County, that minimal improvements to the intersection consist of a deceleration and acceleration lane be constructed on the south side of Maryland Route 26 and a by-pass lane be constructed on the north side to improve access at the Chapeldale Road intersection.

It is requested that all Baltimore County Permits be held until the site plan is revised.

Very truly yours,

Charles Lee, Chief
Bureau of Engr. Access Permits

by: George Wittman

CL-GW:es

cc: J. Ogle
Hoff, Rosenfelt and Woolfolk Inc.

attachment

My telephone number is 301-333-1350
Teletypewriter for impaired hearing or Speech
383-7555 Baltimore Metro — 565-0451 D.C. Metro — 1-800-492-5062 Statewide Toll Free
P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. P. David Fields, Current Planning Division — Date: December 5, 1986

FROM: Frank H. Fisher, Chief, Community Planning Division

SUBJECT: Methodist Home

This property is in a rural area (no planned service) of Baltimore County. The land in this part of the County is for the most part zoned RC 2, RC 5 and RC 4 with some minor commercial along Liberty Road. Those areas which are not farmed or are in wooded areas are developed with single family houses on one-acre lots (minimum). There is a small commercial center at Liberty and Wards Chapel Roads, a Methodist church and a nursing home close by, and immediately north of the site, a farm implements dealer.

The proposed use of this site raises several areas of concern to us.

1. We are very concerned about the increased density the proposed use has in relationship to the zone and the size of the site.
2. What are the methods of supervision proposed for this site?
3. What are, or where are, the on-site recreational facilities for the children?
4. We are concerned about the adequacy of the land to absorb the sewerage discharged from this site. Will there be a need for any special treatment of disposal waste?
5. Since there is no public transportation in this area, what methods of transportation will be used to transport children to schools.

If these comments are not adequately addressed, this office will recommend disapproval of the C.R.G. plan.

Frank H. Fisher, Chief
Community Planning Division

FHF:dme

CPS-008

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: James A. Markle — Date: December 3, 1986

FROM: Charles K. Weiss

SUBJECT: Methodist Home
Chapeldale Road
Dist. 2C3
CRG 12/17/86

No provision for refuse collection was made on this plan. Therefore, no comment can be given at this time.

NOTE: Acceptance of this plan in no way binds Baltimore County into refuse colelction of this development. At the time of construction, a representative of the Bureau will meet with the developer or his representative to discuss details of refuse collection.

CKW/SH/ms

CPS-008

#232

HOFF, ROSENFELT & WOOLFOLK, INC.

Civil Engineers • Landscape Architects • Planners
Water Quality & Stormwater Management Consultants

December 10, 1986

Mr. Frank H. Fisher, Chief
Community Planning Division
Baltimore County Department of Planning and Zoning
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Board of Child Care Center of the Baltimore Annual Conference of the Methodist Church, Inc.
Onsite Sewerage Discharge
R&W Job No. 145/882

Dear Mr. Fisher:

This letter is written in response to your Inter-Office Correspondence to Mr. P. David Fields, dated December 5, 1986, Item 4. You have expressed concerns about the adequacy of the land to absorb the sewerage discharged from the site. The following information outlines the design requirements for the onsite sewerage system:

1. It is proposed to develop five Child Care Units with one separate Administrative/Kitchen Building. Each Child Care Unit will house a maximum of 12 children; supervision will be provided on a 24-hour basis for each Unit. Per my discussions with Mr. Tom Ernst of the County Health Department on March 25, 1986, the sewage flow will be 75 gallons per day (gpd) per person; the sewage flow for each unit including supervision will be 975 gpd. This 75 gpd per person rate includes laundry facilities to wash residents' clothing in each Unit. Towels, table and bed linens will not be laundered onsite. Mr. Ernst recommended that an equivalent flowrate be used for the Administration Building; this additional flow will accommodate kitchen facilities. In addition, flow will be generated from the Maintenance Building; an loading of 2 equivalent persons at the 75 gpd rate will be used.

2. Food preparation will be in the Administrative/Kitchen Building. Food consumption will be in the individual Child Care Units.

3. Percolation tests were performed on July 23 and July 24, 1986. The revised test locations are shown on the CRG Plan. The test were monitored by and approved by Mr. Glenn Shaffer of the Baltimore County Health Department and by Mr. John Covalt of the State of Maryland Health Department. 18 out of the 28 tests were acceptable. The disposal area shown on the CRG Plan reflects the net area after the failed tests were taken into account.

Suite Eight Owings Mills Professional Center 10706 Reisterstown Road Owings Mills, MD 21117
Telephone: (301) 356-4600

Mr. Frank H. Fisher, Chief
Community Planning Division
Child Care Center
December 10, 1986
Page -2-

4. Sewage Treatment will be accomplished by individual collection and treatment in a 2,000 gallon septic tank for each Unit. Disposal will be to the disposal area shown on the CBG Plan. The disposal site will have an area of approximately 69,000 square feet. Per Mr. Covalt, a loading rate of 5,000 gpd per acre of disposal area shall be used. The total design sewage flow will be 975 gpd for each of the 5 Child Care Units and for the Administration Building, and 150 gpd for the Maintenance Building for a sum of 6,000 gpd. At the above loading rate, an area of 1.2 acres, or 52,270 square feet of disposal area will be required. We are providing 69,000 square feet of disposal area, which is 16,730 square feet or 32% more than required.

We trust this meets your requirements at this time.

Very truly yours,

Robert S Rosenfelt, P.E.
President

RSR/lsz

cc: Claude F. Libis

1450CRR.DOC

HOFF, ROSENFELT & WOOLFOLK, INC.

If on #232

BOARD OF CHILD CARE

BALTIMORE ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH, INC.
The Official Child Caring Agency of the Baltimore and Peninsula Annual Conferences

THE KELSO HOME FOR GIRLS
THE STRAWBRIDGE HOME FOR BOYS
SWARTZELL ASSEMBLED FAMILIES

Claude F. Libis, M.S.W., L.C.S.W., Executive Director

December 10, 1986

Mr. Frank H. Fisher, Chief
Community Planning Division
Baltimore County
Towson, Maryland 21204

Dear Mr. Fisher,

Attached herewith is a somewhat detailed statement of history, present programs, and planning for emergency shelter, all of the Board of Child Care of the Baltimore Annual Conference, The United Methodist Church, Inc.

In your memo of December 5, 1986, you raise certain specific questions which I shall address:

1) The Chapeldale site includes 14.78 acres. Maximum number of children to be served on this acreage is 60. Therefore, the maximum number of children served at any time would be 1 child per .246 acres, 4.06 children per acre.

Supervisory staff will be on grounds with the children. No staff will be in residence at the facility.

2) Each unit, housing a maximum of 12 children will operate with a minimum of five full-time child care workers. Staff will be in the cottages and awake around the clock, seven days per week. In addition, there will be supervisory staff, administrative personnel, and the full resources of our Gaither Road campus will be at the disposal of the units in the Chapeldale area. Our existing staff to children ratio is 1:1.4.

3) Recreational facilities will include outdoor playground equipment, volleyball, softball courts, other areas for games and activities outside the cottages. We plan a large play area to be located in the central building. That area will be used by and for children during inclement weather and whenever groups larger than the individual cottage group wish to assemble. Each cottage will include an area for play. There will be games, tricycles, bicycles, and other play equipment as it is needed by the children.

Recreational facilities at our Gaither Road campus will be available. For example, on that campus is an olympic size swimming pool and a full-size gymnasium.

Mr. Frank H. Fisher, Chief
Community Planning Division
Baltimore County, Towson, Md. 21204

5) Children will be transported to public schools by Baltimore County school buses. However, approximately one-third of the children will be of pre-school age and will remain on grounds during the daytime hours.

Sincerely,

Claude F Libis.

CLAUDE F. LIBIS
Executive Director
Board of Child Care

CFL/as

P.S. Your question No. 4 re sewerage disposal is to be answered by our engineers.

BOARD OF CHILD CARE

BALTIMORE ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH, INC.
The Official Child Caring Agency of the Baltimore and Peninsula Annual Conferences

THE KELSO HOME FOR GIRLS
THE STRAWBRIDGE HOME FOR BOYS
SWARTZELL ASSEMBLED FAMILIES

Claude F. Libis, M.S.W., L.C.S.W., Executive Director

PROPOSAL SUMMARY

Board of Child Care is the official child caring agency of the Baltimore and Peninsula Conferences of The United Methodist Church. For over 100 years, this agency has been committed to services to children, youth, and their families.

The Board of Child Care is sensitive to the changing needs within the community it serves. Constant evaluation of its programs reflect the agency's responsiveness to social trends and changes. New programs are implemented, designed to meet the needs changes create.

In 1981, Baltimore County Department of Social Services brought to our attention a very pressing need for emergency shelter homes, with corresponding services, for children. With the increasing demand for emergency out of home placements, existing resources, usually at great distances, proved to be inadequate, both in accessibility and service components.

Therefore, in 1981 Board of Child Care planned and developed a program designed to accommodate 10 adolescent girls and 7 adolescent boys in emergency shelter care. The program provides room, board, clothing in addition to many supportive services for these children.

I. HISTORY

The Board of Child Care brings together three children's homes; The Kelso Home established in 1873 in Baltimore, The Strawbridge Home, Carroll County, organized in 1923, and the Swartzell Methodist Home for Children opened in Washington, D. C. in 1912. The present Board of Child Care was created in 1943 and served to operate the three separate children's homes as well as a foster care and an adoption program. In 1958, land in Rockdale, Maryland was acquired and the Kelso and Strawbridge properties were sold.

The present 21 acre property is the operational base for six (6) separate programs. These include Residential Group Care program, Emergency Shelter, a unique Assembled Families Program, Foster Care for special needs children, Adoption for infants, at risk and foreign adoptions; as well as counseling for single parents and others needing placement of children.

The residential program, located on-grounds, includes five large, modern cottages, each housing 12 children between the ages of 10 to 18 years of age, plus emergency shelter for boys. In addition, a multi-purpose building that serves as a meeting room, dance hall, and chapel; a gymnasium, a central kitchen, separate administration building, pool, tennis court, basketball court and athletic fields are located on the Gaither Road campus.

The Emergency Shelter for Boys has remained full between 1981 and the present. It is limited to serving seven (7) boys, ranging in age from 11 to 17. Emergency Shelter for Girls is in the Reisterstown Road area, located in a home constructed for a private family but converted to meet the needs of the services provided therein. It houses ten (10) girls.

The staff includes the Executive Director, Master Level Supervisors and Social Workers in the Residential, Shelter, and Assembled Families programs, Consulting Psychiatrist, Public Relations Director, Director of Development, Recreation Director, Teacher, Office, Food Service, and Maintenance Staff. Foster home parents provide care in their own home for children and are supervised by a person with a Master's Degree in Social Work. The wife of each Assembled Family Home is a staff member.

The Board of Directors consists of ministers and laypersons from the professional and business community.

Funding is through purchase of care from placement agencies, invested securities, special gifts, the Auxiliary, and a once-a-year Christmas Offering taken in the churches of the Baltimore and Peninsula Annual Conferences of The United Methodist Church.

The Board of Child Care with the leadership of its Board of Directors, has kept abreast of the constantly changing needs of children and youth in the communities we serve. In 1983 and again in 1979, evaluation studies were made by the Child Welfare League of America to determine the need to change certain services and develop new ones to keep up with modern trends and child care practices.

II. PROBLEM STATEMENT

The need for Emergency Shelter Care for Children has been named the No. 1 priority for the State of Maryland Social Services Administration, Child Welfare Division. This need is reflected throughout the State. In FY '79, for example, Baltimore County had 110 referrals for Emergency Shelter Care for youth 12 years of age or over. Of the 110, 94 needed immediate placement that day. Sixty-six were girls, 44 were boys. Statistics for July 1980 - 10 emergency placements needed, 7 girls, 3 boys; August 1980 - 10 placements, 6 girls, 4 boys.

During FY '85, the last year for which statistics are available to us, Baltimore County Department of Social Services had 201 emergency placements of children from birth to 11 years of age. A breakdown is: 0 to 5 years - 29 males, 28 females; 6 to 11 years of age - 17 males, 27 females. The agency reported serious problems with foster homes, both in the ability of foster homes to accept children with the problems of those coming into care; and with the non-availability of foster homes.

The facility which we are in the process of developing in the Chapeldale area is intended to address the needs of this population of young children requiring emergency shelter; and of sibling groups of children.

Baltimore County Department of Social Services, at the time Board of Child Care opened Emergency Shelter for Boys in 1981, was in a very serious dilemma in that there was no such Shelter within the county. The need for additional shelter beds for younger children remains serious.

III. PROGRAM OBJECTIVES

The objective of this program is to provide short-term, emergency shelter care for children within the least restrictve environment. Children who are experiencing a family or personal crisis will receive continual care, adult supervision in a safe, supportive, non-stressful environment. These children will require immediate placement due to crisis situations, such as explosive incidents in the home, physicial abuse, sexual abuse, personal injury, running away from home, neglect, and abandonment.

OBJECTIVES:

1) Provide immediate, easily accessible residence for children from within Baltimore County and other jurisdictions of the State of Maryland.

2) Meet medical needs, clothe, feed, supervise and counsel with children in care. Children will remain a maximum of 90 days.

3) By providing emergency short term care, we will elminate for some children, a requirement of more extensive, more expensive long term care.

4) We will make available as indicated psychiatric and psychological evaluations thereby providing the local social services department the necessary tools to place children appropriately and more permanently. Such a placement could include:

a) own home
b) group home
c) foster home
d) psychiatric hospital

5) Relieve anxiety of personnel within the local social services departments offices, as well as the Children's Division of the Police Department by providing a quiet, supportive environment for children who come to their attention.

IV. PERSONNEL:

The Shelter Care program will operate within the administrative structure of the Board of Child Care.

Program Director - MSW

Position requires Masters in Social Work or related field.
Responsible under direction of Executive Director, Board of Child Care for operation of Shelter Care Program.
Recruits and trains staff. Works with and guides staff in daily operation of Shelter Program.
Responsible for physical maintenance of the units.
Responsible for annual budget for Shelter Program and operates program with budget as guideline.
Helps to develop annual budget for Shelter Program and operates program with budget as guideline.
Meets children upon admission or within 24 hours thereof; gets to know them, their particular problem areas and identifies any specific mental, emotional or physical need which requires attention.

Prepares statement re each child prior to discharge of child.
Relates to referring agency re each child

Child Care Supervisor (1 Position) per cottage

Position requires a Bachelor's in Social Work or a related field and one year of experience in a group setting for children or 2 years of college in Social Work or a related field, and 2 years of work in a group setting for children with outstanding recommendations from former employer.

This individual must exhibit an ability to relate in a constructive manner to children, as well as an ability to coordinate the total activities of the Shelter unit.

This Child Care Supervisor is responsible for the day by day operation of the Shelter, as well as long range planning for the children in care.

This position requires an individual with ability to relate to children and also to work in a leadership position with other staff coordinating total activities for these children.

The Child Care Supervisor is directly responsible to the Program Director of Shelter Care.

Child Care Worker - (8 positions) per cottage

Two years college in child care or in related field required.

Child Care Worker is a parent substitute, performing duties normally expected of a mother and father. Oversees waking up period, breakfast, getting off to school, and greets youth upon return from school.

With other staff, determines that all physical needs are met.

Plans activities with children. Oversees preparation of school homework.

Helps with bedtime preparation.

The Child Care Worker is a key, on-line worker, and is largely responsible for emotional climate within the shelter care unit.

Food Service Personnel

Will prepare meals, plan menus, and purchase food supplies

Supporting Staff (from the main Center will include):

Recreation staff	Executive Director
Consulting psychiatrist	Director of Cottage Life
Director of Social Services	Accountant
Chaplain	Family Physician
Dentist	Clerical
Child Care Center Kitchen personnel	

Training of Staff

Training will be an internal part of the Shelter Care Program. Training will be provided prior to the start of the program, as well as in-service training sessions.

Emphasis will be on the following areas:

1) Passive physical restraint techniques
2) Crisis intervention
3) Crisis and emergency procedures
4) Early Childhood and Latency Age Development
5) The Child Care Worker and his job; self awareness
6) First Aid

Programs and Services

The Shelter Care program will provide a range of services to meet the children's present physical, emotional, and educational needs. Clear and consistent daily routines will insure the stability of the facility and each child in care. Each child will receive a complete orientation to the facility, its rules, and expectations, on the day of admission.

The following services will be provided:

1) Clothing of varying sizes
2) Medical services/examination
3) Dental service as needed
4) Professional counseling--to help children adjust to present placement, plus begin to consider future plans
5) Diagnostic social services--to aid placement agency with future planning for children
6) Constant supervision--in order to maintain alertness to needs and problems of children in residence
7) A range of recreational and leisure time activities
8) An educational program in accordance with State and local laws, provided by Baltimore County Board of Education
9) Clear, documented written reports on the child while in Shelter Care will be provided to the placement agency and to any facility in which he/she may be subsequently placed
10) Transportation--to all needed community services/resources

permissive in nature, that is, if the particular political unit has the power but not the duty to perform a specific function. Maryland follows this traditional view with respect to the distinction between governmental and proprietary enterprises.

A recent case in Maryland, The City of Baltimore v. State Department of Health, 38 Md. App. 570, 381 A.2d 1188 (1978), is very much similar to the proposed action by the Board of Child Care. In that case Judge Martin B. Greenfeld of the Supreme Bench of Baltimore correctly pointed out that the operation of a house for children in need of supervision was a public purpose. The appellate court agreed with Judge Greenfeld and in its opinion stated that "There was the benefit to the public or the use was in the interest of the public, or the use proposed by the private concern on public property was a use mandated by the legislature of the State of Maryland. Because of that the action would be governmental in nature and not require the application of enforcement of local zoning regulations. See also Mayor of Baltimore City v. State, 281 Md. 217, 378 A.2d 1326.

The Maryland legislature set forth in Article 25A, Section 5, Subparagraph (c) under the Express Powers Act, that the local subdivisions shall make proper provision for female and juvenile offenders as well as erect, establish, maintain and control hospitals, alms houses, pest houses or other similar institutions within the county. Further, Article 52A, Section 20a of the Annotated Code of Maryland provides that the State Department of Juvenile Services shall establish a program of assistance to runaway youths.

In addition, Article 72A, Section 5 of the Annotated Code of Maryland provides (a) The General Assembly declares as its legislative intent and purpose the protection of children who are neglected by mandating that health practitioners, educators, social workers, law enforcement officers and law enforcement agencies report suspected neglect; by extending immunity to those who report in good faith, incidents of neglect; by requiring timely investigations of the reports; and by requiring the local Department of Social Services to render the appropriate service in the best interest of the child and by requiring the local department of social services to render the appropriate service in the best interest of the child.

(b) The provisions of this article that relate to reporting child neglect are in addition to and not in substitution of provisions of Article 27, Section 35A.

(c) The provisions of this article are in addition to and not in substitution of the provisions of "Subtitle B. Juvenile Causes" of Title 3, of the Courts and Judicial Proceedings Article of the Code. Further, Article 72A, Section 8 of the 1981 Cumulative Supplement of the Annotated Code of Maryland states that the local department of social services if in the course of the investigation conducted by same determines that there is probable cause to believe a child is in any serious physical danger or any emergency exists, that the local department of social services representative obtain a court order and remove the child until a report can be made to the court. This clearly mandates the local subdivision, the Department of Social Services to act inherent in the removal of the child until a report can be made to the court would be the maintenance of an emergency shelter care basis of that child.

The Baltimore County Code, Section 35-1 authorizes the County to contribute to the maintenance and support of women having dependent minor children without adequate means of support and further to contribute for the purposes of charity to charitable organizations having headquarters in the County as they in their discretion may deem proper.

In view of the foregoing reasons, it is our opinion that the Board of Child Care acting in furtherance of the Baltimore County Department of Social Services can proceed with implementing the program as proposed and outlined in the request for the opinion, as it is clearly a governmental function in nature mandated by the acts of the General Assembly and the decisions of the courts.

Leonard S. Nicholson
County Solicitor

Thomas J. Bollinger
Assistant County Solicitor

LSJ:TJB:rmc

IN THE COURT OF APPEALS OF MARYLAND

BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC., et al.,	:	No. 120
	:	September Term, 1988
Appellants	:	
v.	:	
HUBERT H. HARKER, et al.,	:	
Appellees	:	

: : : : : : :

ORDER GRANTING MOTION TO SUPPLEMENT RECORD WITH NEW INFORMATION

Upon consideration of the aforegoing Motion, it is this 28th day of August, 1989, by the Court of Appeals of Maryland, ORDERED that the decision of the Zoning Commissioner of Baltimore County in Case No. 89-356-SPHX, attached as Exhibit A, to the Motion to Supplement Record With New Information, shall be added to the record for the purpose of consideration in these proceedings.

/s/ Robert C. Murphy
Chief Judge

Baltimore County, Maryland
PEOPLE'S COUNSEL
ROOM 304, COUNTY OFFICE BUILDING
111 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
887- [illegible]2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

May 15, 1989

The Honorable
Alexander L. Cummings, Clerk
Court of Appeals of Maryland
Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401

RE: Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc., et al. v. Hubert H. Harker, et al., No. 120, September Term, 1988

Dear Mr. Cummings:

Enclosed for filing is an original and seven copies of a Motion to Supplement Record with New Information in the above-entitled case.

Thank you for your consideration in this matter.

Very truly yours,

Peter Max Zimmerman
Deputy People's Counsel

Enclosures

cc: F. Duncan Cornell, Esquire
Marvin I. Singer, Esquire
Arnold Jablon, Esquire
Nancy C. West, Esquire
J. Joseph Curran, Jr., Esquire
Carolyn A. Quattrocki, Esquire
Arnold Fleischmann, Esquire

PMZ:sh

IN THE COURT OF APPEALS OF MARYLAND

BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC., et al.,	:	No. 120
	:	September Term, 1988
Appellants	:	
v.	:	
HUBERT H. HARKER, et al.,	:	
Appellees	:	

: : : : : : :

MOTION TO SUPPLEMENT RECORD WITH NEW INFORMATION

People's Counsel for Baltimore County moves that the Court include in the record and consider additional information, as follows:

1. On May 9, 1989, the Zoning Commissioner of Baltimore County issued an Opinion and Order concerning the petitions for special hearing and special exception of the Board of Child Care, Appellant herein, at its 3300 Gaither Road site. The Opinion is attached as Exhibit A.

2. People's Counsel believes that this additional information may be of assistance to the Court of Appeals in its consideration of the zoning questions presented; it is also noted that the Gaither Road petition was mentioned by both sides at oral argument on April 11, 1989.

WHEREFORE, it is prayed that the Court accept and consider this additional information.

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 304, County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Statement of Points and Authorities:

Rule 8 - 431.

Peter Max Zimmerman

AFFIDAVIT

I do solemnly declare under the penalty of perjury that the attached decision of the Zoning Commissioner was received in the ordinary course of business to the best of my knowledge, information, and belief.

Peter Max Zimmerman

IN THE COURT OF APPEALS OF MARYLAND

BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC., et al.,	:	No. 120
	:	September Term, 1988
Appellants	:	
v.	:	
HUBERT H. HARKER, et al.,	:	
Appellees	:	

: : : : : : :

ORDER GRANTING MOTION TO SUPPLEMENT RECORD WITH NEW INFORMATION

Upon consideration of the aforegoing Motion, it is this _____ day of _____, 1989, by the Court of Appeals of Maryland, ORDERED that the decision of the Zoning Commissioner of Baltimore County in Case No. 89-356-SPHX, attached as Exhibit A, to the Motion to Supplement Record With New Information, shall be added to the record for the purpose of consideration in these proceedings.

Robert C. Murphy
Chief Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of May, 1989, a copy of the foregoing Motion to Supplement Record with New Information, and of the attached proposed Order, was mailed to:

F. Duncan Cornell, Esquire
Marvin I. Singer, Esquire
Hooper, Kiefer & Cornell
343 North Charles Street
Baltimore, Maryland 21201-4361

Attorneys for Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc., Appellant

Arnold Jablon, Esquire, County Attorney
Nancy C. West, Esquire, Assistant County Attorney
2nd Floor, Courthouse
400 Washington Avenue
Towson, Maryland 21204

Attorneys for Baltimore County, Maryland, Appellant

J. Joseph Curran, Jr., Esquire, Attorney General
Carolyn A. Quattrocki, Esquire, Assistant Attorney General
The Munsey Building, 2nd Floor
7 North Calvert Street
Baltimore, Maryland 21202

Attorneys for State of Maryland, Amicus Curiae

Arnold Fleischmann, Esquire
408 Bosley Avenue
Towson, Maryland 21204

Attorney for all other Appellees

Peter Max Zimmerman

July 12, 1982, a copy of which is attached to the Petition.

7. Answering paragraph 8, the Owner admits the allegations of said paragraph; the proposed facility is non-sectarian and performs without regard to race, color or creed.

8. The Zoning Commission has acted to exempt the subject property from the Baltimore County Zoning Regulations on proper authority. The Petition should be denied.

THE BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC.

By _____
F. Duncan Cornell, Counsel
405 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 823 3010

I HEREBY CERTIFY that on this 17th day of December, 1986, a copy of the aforegoing Answer to Petition for Special Hearing, etc. was mailed, postage prepaid, to Arnold Fleischmann, Esquire, 408 Bosley Avenue, Towson, Maryland 21204.

_____
F. Duncan Cornell

87-323

FEB 6 1987

MOTION TO DISMISS PETITION FOR SPECIAL HEARING CONCERNING THE PROPERTY 10939 LIBERTY ROAD 2ND ELECTION DISTRICT HUBERT H. HARKER, JR.	:	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 87-323-SPH

. . . . . .

And now comes the BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC., by F. Duncan Cornell and MARVIN I. SINGER, its attorneys, and move to Dismiss the Petition for Special Hearing on the following grounds:

1. The Board of Child Care (Board), a duly licensed child care agency of Baltimore County contracted to purchase the property 10939 Liberty Road, 2nd Election District of Baltimore County, subject to zoning and other contingencies, on December 9, 1985.

2. Based on precedent on February 19, 1986, the Board asked the Zoning Commissioner to exempt the said property from the Baltimore County Zoning Regulations (see letter of February 19, 1986, from Hooper, Kiefer & Cornell to Honorable Arnold Jablon, Attachment A).

3. On February 24, 1986, Commissioner Jablon granted the exemption requested based on appropriate authority (Attachment B).

4. In reliance on this and because other contingencies (water, septic, etc.) were resolved, the Board purchased the subject 15.75 acres on October 21, 1986, for $110,000.00 and engaged engineers and planners to draw site plans.

5. The Petition of Hubert H. Harker, Jr. filed on December 5, 1986, is not filed in a timely manner. The Petitioner's late-

ness has occasioned the Board to be severely prejudiced in the premises.

6. On December 17, 1986, a hearing was held by the Baltimore County Review Group at which time the Petitioner and many others near and far from Chapeldale attended and all were afforded an opportunity by the hearing officer (Mr. Covahey) to speak on all manner of subjects germane and not germane. Approval (subject to certain minor changes which were agreed to) was granted.

WHEREFORE, the Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc. asks that the Petition for Special Hearing be dismissed.

_____
F. Duncan Cornell

_____
Marvin I. Singer
Hooper, Kiefer & Cornell
343 North Charles Street
(301) 727-4700

Attorneys for Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc.

I HEREBY CERTIFY that on this 3rd day of February, 1987, a copy of the aforegoing Motion to Dismiss Petition for Special Hearing Concerning the Property 10939 Liberty Road was mailed, postage prepaid, to:

Arnold Fleischmann, Esquire
408 Bosley Avenue
Towson, Maryland 21204

Phyllis Cole Friedman, Esquire
People's Counsel for Baltimore County
and
Peter Max Zimmerman, Esquire
Deputy People's Counsel
Room 223, Court House
Towson, Maryland 21204.

_____
F. Duncan Cornell

RE: PETITION FOR SPECIAL HEARING CONCERNING THE PROPERTY 10939 LIBERTY ROAD 2ND ELECTION DISTRICT * BEFORE THE * ZONING COMMISSIONER * OF BALTIMORE COUNTY * Case No. 87-323-SPH

* * * * * * * * * * * * * * *

PETITIONERS' MEMORANDUM OF LAW

Statement of Facts

The decision of Zoning Commissioner to exempt the property of the Board of Child Care from the operation of the zoning laws is based entirely on the opinion of the County Solicitor dated July 12, 1982, without independent research or other legal basis for arriving at the conclusion reached by the County Solicitor.

However, an examination of the authorities clearly demonstrates that the facts of the instant case do not fit within the exemptions.

Questions Raised

Should the exemption or immunity from zoning regulations be extended to the Board of Child Care for the erection of foster care facilities proposed for Powell's Run Road.

Argument

Absent an express extension of such exemption or immunity to privately owned property by the legislature, the property of the Board of Child Care is subject to the Baltimore County Zoning Regulations.

Analysis

The Board of Child Care places heavy reliance on the opinion from the County Solicitor's Office rendered July 12, 1982. That opinion made reference to The City of Baltimore v. State Department of Health , 38 Md. App. 570, 381 A.2d 1188 (1978), stating that it was similar to what the Board of Child Care is seeking to do here. However, that case is not similar to the case at bar and does not support the County Solicitor's conclusion. Even if we were to assume, arguendo, that the foster care and emergency shelters provided by the Board were in tune with legislative policy and governmental (as opposed to proprietary) in nature, neither that case nor any other case decided by any appellate court of Maryland has addressed the questions presented here. Therefore, there is no authority to exempt an organization performing a governmental function on privately owned property from the application of the Baltimore County Zoning Regulations.

The Court of Special Appeals in City of Baltimore, supra 381 A. 2d 1188 at 1191, held that "a municipality may not exercise zoning jurisdiction over State owned and used property..."(emphasis supplied). Throughout that opinion the only issue addressed was one of State owned property leased to a private organization. It was only then that the Court addressed the question of whether a government function (as opposed to one proprietary in nature) was being performed.

Thus, the exemption or immunity from the effect of Baltimore County Zoning Regulations for the Board of Child Care in the County Solicitor's opinion of July 12, is not supported by Maryland Law and is erroneous because the land is privately owned, not State owned.

While this issue had not been addressed by the Maryland courts, the questions has been decided by appellate courts of New Jersey in Township of Washington v. Central Bergen Community Mental Health Center, 156 N.J. Super. 388, 383 A.2d 1194 (1978), and the appellate courts of Georgia in Macon Association for Retarded Citizens v. Macon-Bibb County Planning and Zoning Commission, 252 Ga. 4 84, 314 S.E. 2d 218 (1984).

The New Jersey court held that the "doctrine of immunity cannot be invoked by one not a government agency." Township, supra at 1203. This case involved the use of a house in a residential area as a transitional residence for former mental patients. The subject New Jersey property in question was owned by a non-profit corporation yet the services rendered by this organization were in furtherance of legislative policies to promote the care of former mental patients and to aid their reintroduction to mainstream society. However, the New Jersey Appellate Court concluded the organization "lacks the essential indicia common to a state agency or lesser governmental unit....." 383 A.2d 1194 at 1203.

The New Jersey Court noted that the non-profit corporation exercised sole control in the hiring and firing of personnel and payment of their compensation, even though substantial funding came directly from the State, resulting in some regulatory procedures being mandated. The court noted further that a significant portion of the organization's funding came from traditional fund raising sources, it lacked the power of eminent domain, and the State was free to select and engage another entity to carry out the function if ever there was an insoluble contract dispute with the present organization.

Like the Maryland case relied on by the County Solicitor in the July 1982 opinion, the New Jersey Court listed legislative enactments promoting services similar to those being performed by other agencies. In Township of Washington, the court stood firm in not extending immunity to a private agency from municipal zoning ordinances where the legislature has not expressly granted such immunity.

The Georgia court confronted similar facts in Macon Asscciation. Here, as in the case at bar, a government funded non-profit organization sought immunity from municipal zoning regulations which prevented the establishment of group homes for retarded citizens in certain residential districts. As in the Maryland and New Jersey cases reviewed above, the agency provided services in furtherance of Georgia legislative policies. However, the agency, not the State, owned the property to be exempted. The Georgia court in rejecting a balancing of interest test found the "better rule to be that property owned by a non-profit corporation is not immune from local zoning regulations, even if the corporation is performing services which are governmental in nature, at least in the absence of a clear expression of intent by the legislature that such immunity be extended." 314 S.E. 2d 218 at 223.

Conclusion

Petitioners contend that the Zoning Commissioner erred in relying on the opinion of the County Solicitor and in concluding that the subject property could be exempted from the Baltimore County Zoning Regulations. It appears that City of Baltimore supra is authority solely for the exemption of state owned property and not property owned by private agencies. The request for exemption should therefore be denied.

In the absence of an express legislative grant of immunity to privately owned land used by non-profit organizations for functions governmental in nature, there appears to be no legal authority for the Zoning Commissioner to grant such immunity or exemption in this case.

Respectfully submitted,

Arnold Fleischmann
408 Bosley Avenue
Towson, Maryland 21204
(301) 337-7600

Attorney for Petitioners
Hubert Harker et al

11/87

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

HEARING ROOM #218

December 9, 1987
AMENDED NOTICE -STARTING TIME
NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 87-323-SPH — HUBERT H. HARKER, JR., ET AL
S/s Liberty Road, 200' E of c/l of Powell's Run Road

SPH -Residential Emergency Shelter Care Facility

2/18/87 -Z.C. denied SPH.

which is scheduled for hearing on Tuesday, December 15 will remain scheduled for that date. However, the starting time for the hearing has been changed to 1:30 p.m. for the purpose of hearing oral arguments only as to immunity issue.

ASSIGNED FOR: TUESDAY, DECEMBER 15, 1987 at 1:30 p.m.

cc: Arnold Fleischmann, Esquire — Counsel for Appellants/Petitioner
F. Duncan Cornell, Esquire — Counsel for Appellee/Developer
Marvin I. Singer, Esquire — " " " "
Board of Child Care of the Baltimore Annual Conference of the Methodist Church, Inc.
Hoff, Rosenfelt & Woolfolk, Inc.
Phyllis Cole Friedman, Esquire — People's Counsel for Baltimore County
Current Planning Office
Edward McDonough
Jorge Austrich
James Markle
Robert Covahey
Norman E. Gerber
James G. Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Robyn Clark
Arnold Jablon, County Attorney
Nancy C. West, Esquire

RECEIVED
DEC 11 1987
ZONING OFFICE

Kathi Weidenhammer
Administrative Secretary

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

July 30, 1987
(CONTINUED FROM 7/29/87)
NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79.

CASE NO. CBA-87-103 — METHODIST HOME
Chapeldale Road
RE: CRG Decision

and

CASE NO. 87-323-SPH — HUBERT H. HARKER, JR., ET AL
S/s Liberty Road, 200' E of c/l Powell's Run Road
SPH -Residential Emergency Shelter Care Facility
2/18/87 -Z.C. Denied SPH.
(CONTINUED FROM 7/29/87)

ASSIGNED FOR: THURSDAY, September 17, 1987 at 11:00 a.m.

cc: Arnold Fleischmann, Esq. — Counsel for Appellants (Hubert Harker, Jr., et al)
F. Duncan Cornell, Esq. and Marvin I. Singer, Esquire — Counsel for Appellee/Contract Purchaser
Board of Child Care of the Balto Annual Conf. of the Methodist Church, Inc. — Contract Purchaser
Hoff, Rosenfelt & Woodfolk, Inc — Engineer for Contract Purchaser
Phyllis C. Friedman, Esq. — People's Counsel
Malcolm F. Spicer, Jr., Esq. — County Attorney
Patrick D. Hanley, Esq. — Office of Law
Norman E. Gerber
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois
Current Planning
Edward McDonough
Jorge Austrich
James Markle
Robert Covahey

RECEIVED
JUL 31 1987
ZONING OFFICE

Kathi Weidenhammer
Administrative Secretary

RECEIVED
JUN 12 1987
ZONING OFFICE

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

June 9, 1987
NOTICE OF POSTPONEMENT and REASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79

CASE NO. CBA-87-103 — METHODIST HOME
Chapeldale Road
RE: CRG Decision

and

CASE No. 87-323-SPH — HUBERT H. HARKER, JR., ET AL
S/s Liberty Rd., 200' E of c/l of Powell's Run Road
SPH -Residential Emergency Shelter Care Facility
2/18/87 - Z.C. Denied SPH.

which had been scheduled for hearing on Tuesday, June 30, 1987 at 10:00 a.m. has been POSTPONED at the request of Counsel for Appellants and with the agreement of Counsel for Appellee and

REASSIGNED FOR: WEDNESDAY, July 29, 1987 at 10:00 a.m.

cc: Arnold Fleischmann, Esq. — Counsel for Appellants (Hubert Harker, Jr., et al)
F. Duncan Cornell, Esq. and Marvin I. Singer, Esquire — Counsel for Appellee/Contract Purchaser
Board of Child Care of the Balto. Annual Conference of the Methodist Church, Inc. — Contract Purchaser
Hoff, Rosenfelt & Woodfolk, Inc. — Engineer for Contract Purchaser
Phyllis Cole Friedman, Esquire — People's Counsel
Malcolm F. Spicer, Jr., Esquire — County Attorney
Patrick D. Hanley, Esquire — Office of Law
Norman E. Gerber
Current Planning Office (David Fields)
James G. Hoswell
Edward McDonough
Jorge Austrich
James Markle
Robert Covahey
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

Kathi Weidenhammer
Administrative Secretary

RE: OBJECTION TO THE PROPOSED EXEMPTION OF THE USE BY THE BOARD OF CHILD CARE OF 10939 LIBERTY ROAD 2ND ELECTION DISTRICT FROM THE EFFECT OF THE ZONING REGULATIONS — BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

* * * * * * * * * * * * *

LEGAL DESCRIPTION ACCOMPANYING THE PETITION FOR SPECIAL HEARING

Beginning southside of Liberty Road, 200' E of center line of Powell's Run Road, thence eight courses and distances.

1) In easterly direction, South 82° 42' 18" E 300. feet,

2) thence, in southerly direction, South 07° 11' 34" W 400.02 feet,

3) thence, in easterly direction, South 82° 46' 00" E 790.01 feet, continuing in an easterly direction to the right of way of Chapeldale Road,

4) thence, in southerly direction, at South 10° 38' 00" West 450.80 feet,

5) thence, in westerly direction, at North 82° 46' 00" W 1097.75 feet,

6) thence, in northerly direction at North 05° 46' 00" W 386.05 feet,

7) thence, in easterly direction, at South 82° 46' 00" E 137.00 feet,

8) thence, in northerly direction, 07° 11' 31" E 400.34 feet to the place of beginning.

OFFICE COPY

RECEIVED
MAR 30 1987
ZONING OFFICE

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

March 26, 1987
REVISION
NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). ABSOLUTELY NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE IN ACCORDANCE WITH RULE 2(c), COUNTY COUNCIL BILL #59-79.

CASE NO. CBA-87-103 — METHODIST HOME
CHAPELDALE ROAD
RE: CRG DECISION

and

CASE NO. 87-323-SPH — HUBERT H. HARKER, JR., ET AL
S/s LIBERTY RD., 200' E OF c/l
OF POWELL'S RUN ROAD
SPH -RESIDENTIAL EMERGENCY SHELTER CARE FACILITY
2/18/87 - Z.C. DENIED SPH.

The above two cases have been consolidated for hearing on date previously set for Case No. CBA-87-103; and therefore

ASSIGNED FOR: TUESDAY, JUNE 30, 1987 at 10:00 a.m.

cc: Arnold Fleischmann, Esq. — Counsel for Appellants (Hubert Harker, Jr., et al)
F. Duncan Cornell, Esq. and Marvin I. Singer, Esquire — Counsel for Appellee/Contract Purchaser
Board of Child Care of the Balto. Annual Conference of the Methodist Church, Inc. — Contract Purchaser
Hoff, Rosenfelt & Woodfolk, Inc. — Engineer for Contract Purchaser
Phyllis Cole Friedman, Esq. — People's Counsel
Malcolm F. Spicer, Jr., Esq. — Office of Law
Patrick D. Hanley, Esquire
Norman E. Gerber
Current Planning Office
Edward McDonough
Jorge Austrich
James Markle
Robert Covahey
James G. Hoswell
Arnold Jablon
Jean M. H. Jung
James E. Dyer
Margaret E. du Bois

Kathi C. Weidenhammer
Administrative Secretary

PROTESTANT'S EXHIBIT V

DHR/SSA #813

License

STATE OF MARYLAND
Department of Human Resources
SOCIAL SERVICES ADMINISTRATION — Nº 7242

This is to Certify, That a Child Care Institution license is granted

To The Methodist Board of Child Care

Located at 3300 Gaither Road, Baltimore, Maryland 21207

for the care of minor children.

This license is issued in accordance with Article 88a, Annotated Code of Maryland, and is subject to the rules and regulations of the Social Services Administration. It shall be in effect until cancelled unless revoked for due cause by the Social Services Administration or its agent as provided in the Article.

LIMITATIONS

AGE	SEX	NO. OF CHILDREN	OTHER
10-18 years	Males/Females	77	

SOCIAL SERVICES ADMINISTRATION

By Walter F. Blanton
Walter F. Blanton
Title Acting Executive Director

March 25, 1983
(Date of Issuance)

HARRY HUGHES
Governor

DHR
DEPARTMENT OF HUMAN RESOURCES

TELEPHONE

Office of the Secretary
RUTH MASSINGA
Secretary
ERNESTINE F. JONES
Deputy Secretary

December 15, 1986

PROTESTANT'S EXHIBIT 3

Mr. Frank H. Fisher
Chief
Community Planning Division
Baltimore County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Fisher:

I am writing to express my very strong support for the shelter facility proposed by the Board of Child Care in the Chapeldale area of Baltimore County.

Baltimore County and the whole metropolitan area is currently experiencing an acute shortage of shelter beds for neglected and abused children. These children desperately need a stable and safe facility where they can be protected and the needs of their families can be adequately assessed.

I request that your office expeditiously consider and approve the proposed facility permit for extraordinary water use. It is of the utmost importance to the children of Maryland that the proposed shelter be developed.

Sincerely,

Ruth Massinga

Ruth Massinga

cc: Mr. Norman E. Gerber, Director
Office of Planning and Zoning
Mr. Jane L. Ness, Acting Director of Public Works
Mr. Kenneth D. Dryden, Director
The Baltimore County Planning Board
Dr. Donald Roop, Director
Baltimore County Department of Health

1100 North Eutaw Street Baltimore, Maryland 21201 TTY: 383-699

BALTIMORE COUNTY
DEPARTMENT OF SOCIAL SERVICES
620 YORK ROAD
TOWSON, MARYLAND 21204

494-2811
CAMILLE B. WHEELER
DIRECTOR

PROTESTANT'S EXHIBIT 4

December 18, 1986

Mr. Frank H. Fisher, Chief
Community Planning Division
Baltimore County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Fisher:

There is a critical need for emergency shelter beds in Baltimore County, for abused and neglected children who need to be removed from their homes. Unfortunately, we are seeing an increase in this county, not only in the number of complaints this Department receives about abused and neglected children, but also an increase in the number of situations that require removal of the children and placement in foster care settings. At the same time, the number of foster homes has declined drastically, from 144 homes in November 1984 to 99 homes two years later (November 1986). Thus, the need for shelter group facilities is extremely important and of great urgency.

This agency fully supports the Methodist Board of Child Care's plans to develop additional shelter beds to serve children needing foster care placements. We have worked with this private agency for many years, placing children both in their shelter home for teen-agers and in their residential group homes. They work closely with the community and with our agency and have an excellent reputation for providing quality services to youth. It is partially in response to our urgent need for additional shelter beds for children that the Methodist Board is proposing these increased services.

I urge your office to move as rapidly as possible to consider their request for an emergency meeting of the County Planning Office, so that they may proceed to pursue their efforts to develop more shelter facilities for Baltimore County foster children.

Sincerely,

Camille B. Wheeler

Camille B. Wheeler, LCSW
Director

EQUAL OPPORTUNITY EMPLOYER

CWLA

BALTIMORE COUNTY
DEPARTMENT OF SOCIAL SERVICES
620 YORK ROAD
TOWSON, MARYLAND 21204

CAMILLE B. WHEELER
DIRECTOR

November 4, 1985

PROTESTANT'S EXHIBIT 5

Claude F. Libis
Executive Director
Methodist Board of Child Care
3300 Gaither Road
Baltimore, Maryland 21207

Dear Mr. Libis:

I am delighted to write a letter in support of the Board of Child Care's plan to develop an emergency shelter facility for young children. This effort grew out of joint discussions between our agency and you and your staff, as I shared with you daily problems in our difficulty locating placements for young children coming into care. This need has grown, as our placement rate has increased. During calendar year 1984, a total of 155 children were placed. During the first nine months of 1985, 147 children have been placed. Since 23 children were placed in October, the month just ended, we will already have exceeded the annual placements, in the first ten months of 1985.

Much to the surprise of the foster care supervisors, the children coming into care are younger than before and we are also having to place more sibling groups than before. Especially when placing siblings, we have even more difficulty than usual finding a foster home that will have space for two or three additional children. As the sibling groups often consist of young children (age five, four, and two - or even one), we are forced to separate them in order to find foster home placements. This is most unfortunate, as young children especially cannot understand why they are being placed, let alone why they can't be with a sibling, who may have been the only caring person in their lives, even before placement. Many of the children placed on an emergency basis can be reunited with their parent or caretaker within one or two months. Again, placement together in a shelter facility would minimize the trauma to young children of separation from their parent.

For all of the above reasons, this agency and I, as the Assistant Director for Children's Services, would find it of immense help in our service to children needing foster care placement, if the Board of Child Care could provide a group emergency shelter facility for children aged 2 to 11. Please feel free to contact me by telephone if you need additional information.

Sincerely,

Jean E. Clarren

Jean E. Clarren, ACSW, LCSW
Assistant Director
Children's Services

JClinc
Encl: Placement statistics for FY 1985
cc: Camille B. Wheeler
Helen Mitchell, Foster Care Supervisor
Betty Parvis, Foster Care Supervisor
John Stallard, Foster Care Supervisor

EQUAL OPPORTUNITY EMPLOYER

CWLA

...Zoning Plan, prepared by Lot L. Kuszmaul, ...
Woolsuit APPEAL, ... dated 12/7/86

Petition for Special Hearing ... 25, ...
S/S Liberty Road, 200' E of the c/l of Powell's Run Road
2nd Election District - 3rd Councilmanic District
Hubert H. Harker, Jr. - Petitioner
Case No. 87-323-SPH

... Director of ... Social Services

... Towson, Maryland ... November 4, ...

Petition for Special Hearing

Description of Property ... dated February 13, 1987

Certificate of Posting ... 1987 from Arnold Fleischmann, Esquire,

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Letter dated December 10, 1986 from Robert S. Rosenfelt to Frank H. Fisher

Letter dated December 10, 1986 from Claude F. Libis, Executive Director, Board of Child Care

Director of Planning & Zoning Comments

Petitioner's Memorandum of Law prepared by Arnold Fleischmann, attorney for the Petitioner

Petitioner's Exhibits: 1 - Chart of Fiscal 1985 Operations

Letter of support dated November 4, 1985 from Jean E. Clarren, Baltimore County Department of Social Services

Letter dated February 19, 1986 from F. Duncan Cornell, attorney for the Board of Child Care, to Arnold Jablon, with attached letter dated July 12, 1982 from then County Solicitor Leonard S. Jacobson to then Councilman James T. Smith, Jr.

Answer to Petition, prepared by F. Duncan Cornell, for the Board of Child Care, received December 18, 1986

Memorandum on Behalf of the Board of Child Care, prepared by Marvin I. Singer and F. Duncan Cornell, attorneys for the Board of Child Care

Motion to Dismiss Petition, prepared by F. Duncan Cornell, Esquire

March 3, 1987

F. Duncan Cornell, Esquire
Marvin I. Singer, Esquire
405 E. Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Special Hearing
S/S Liberty Road, 200' E of the c/l of Powell's Run Road
2nd Election District, 3rd Councilmanic District
Hubert H. Harker, Jr. - Petitioner
Case No. 87-323-SPH

Dear Messrs. Cornell and Singer:

Please be advised that an appeal of the decision rendered in the above-referenced case was filed by Arnold Fleischmann, Esquire, attorney for the Petitioner, Hubert H. Harker, Jr., on February 27, 1987. Said appeal was within the thirty (30) day appellate period. This office will forward the appeal to the Board of Appeals for hearing scheduling upon receipt of the filing fee (#CE-3180).

Very truly yours,

Arnold Jablon
Zoning Commissioner

cc: Board of Appeals
Baltimore County Board of Appeals
Old Courthouse, Rm. 223
Towson, Maryland 21204
People's Counsel for Baltimore County
P.A.C. Courthouse, Rm. 223
Towson, Maryland 21204

PETITION FOR SPECIAL HEARING
2nd Election District
Case No. 87-323-SPH

LOCATION: South Side of Liberty Road, 200 feet East of the Centerline of Powell's Run Road

DATE AND TIME: Monday, February 9, 1987, at 11:45 a.m.

PUBLIC HEARING: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Hearing to disapprove the exemption of the "Residential Emergency Shelter" as a governmental function from the zoning regulations as a governmental function from the zoning regulations filed by the property of Hubert H. Harker, Jr. as shown on the plat plan filed with the Zoning Office.

In the event that this Petition(s) is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

...APERS OF MARYLAND, INC.

...Md., ...Jan...22,.19.87.....

...nnexed ..Req.#.198256....P.O.#84315
...xxxxxxxxxxxxxxxxxxxdays previous
...cy..... 19.87....., in the

a daily newspaper published in Baltimore County, Maryland.
weekly newspaper published in Baltimore County, Maryland.
weekly newspaper published in Baltimore County, Maryland.

X Community Times, a

LANDMARK COMMUNITY NEWSPAPERS OF MARYLAND, INC.

Per ...

87-323-SPH

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

Date of Posting January 21, 1987

District 2nd

Posted for: Special Hearing

Petitioner: Hubert H. Harker, Jr.

Location of property: S/S Liberty Rd., 200' E of the c/l of Powell's Run Rd.

Location of Signs: E/S of Powells Run Rd. approx. 400' S of Liberty Rd.

Remarks:

Posted by S. J. Arata (Signature) Date of return: January 30, 1987

Number of Signs: 1

CERTIFICATE OF PUBLICATION

PETITION FOR SPECIAL HEARING
2nd Election District
Case No. 87-323-SPH

LOCATION: South Side of Liberty Road, 200 feet East of the Centerline of Powell's Run Road

DATE AND TIME: Monday, February 9, 1987, at 11:45 a.m.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Hearing to disapprove the exemptions of the "Residential Emergency Shelter" as a governmental function from the zoning regulations.

Being the property of Hubert H. Harker, Jr., as shown on plat plan filed with the Zoning Office.

In the event that this Petition(s) is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

By Order Of
ARNOLD JABLON
Zoning Commissioner
of Baltimore County

3044 Jan. 22.

TOWSON, MD., January 22, 19 87

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on January 22 19 87

THE JEFFERSONIAN,

Susan Studley Obrecht

Publisher

Cost of Advertising

27.50

Mr. Hubert H. Harker, Jr.
11116 Liberty Road
Randallstown, Maryland 21133

January 2, 1987

NOTICE OF HEARING

RE: PETITION FOR SPECIAL HEARING
S/S Liberty Rd., 200' E of the c/l of Powell's Run Rd.
2nd Election District
Hubert H. Harker, Jr. - Petitioner
Case No. 87-323-SPH

TIME: 11:45 a.m.

DATE: Monday, February 9, 1987

PLACE: Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland

BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

ARNOLD JABLON
ZONING COMMISSIONER

JEAN M. H. JUNG
DEPUTY ZONING COMMISSIONER

February 2, 1987

Arnold Fleischmann, Esquire
408 Bosley Avenue
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
S/S Liberty Rd., 200' E of the c/l of Powell's Run Rd.
2nd Election District
Hubert H. Harker, Jr. - Petitioner
Case No. 87-323-SPH

Dear Mr. Fleischmann:

This is to advise you that $68.12 is due for advertising and posting of the above property. This fee must be paid before an Order is issued.

THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Do not remove sign from property from the time it is placed by this office until the day of the hearing itself.

Please make check payable to Baltimore County, Maryland, and remit to Room 113, County Office Building, Towson, Maryland

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 29917

DATE 2/9/87 ACCOUNT R-01-615-000

AMOUNT $ 68.12 CASH

SIGN & POST RETURNED

RECEIVED FROM Mr. Hubert H. Harker, Jr.

FOR ADVERTISING & POSTING COSTS RE CASE #87-323-SPH

VALIDATION OR SIGNATURE OF CASHIER

LAW OFFICES
ARNOLD FLEISCHMANN
PROFESSIONAL ASSOCIATION
408 BOSLEY AVENUE
TOWSON, MARYLAND 21204
(301) 337-7600

RECEIVED
MAR 4 1987
ZONING OFFICE

March 4, 1987

Arnold Jablon, Esquire
Zoning Commissioner
for Baltimore County
County Office Building
Towson, Maryland 21204

HAND DELIVERED

Re: Petition for Special Hearing
Case No. 87-323-SPH

Dear Mr. Jablon:

Please accept the enclosed Notice of Appeal to the County Board of Appeals and check for $75.

Thanking you for your courtesy, I am

Very truly yours,

Arnold Fleischmann

AF:cwh

County Board of Appeals
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 33082

DATE March 4, 1987 ACCOUNT 1-01-615-000

AMOUNT $ 00.00

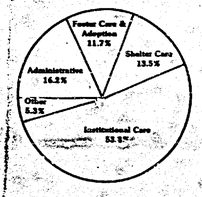
RECEIVED FROM: Arnold Fleischmann, Esquire, Attorney for Hubert H. Harker, Jr.

FOR Appeal Filing Fees in Case No. 87-323-SPH

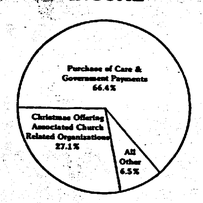
B 0085*****3000:a 2068F

VALIDATION OR SIGNATURE OF CASHIER

EXPENSES



INCOME



OPERATIONS: FISCAL 1985

INCOME:

Purchase of Care		$1,220,316
Christmas Offering Associated Church Related Organizations		497,175
All Other		119,564
		$1,837,055

EXPENSES:

Institutional Care	$ 962,013
Shelter Care	243,442
Foster Care & Adoption	210,388
Administrative	291,671
Other	96,758
	$1,804,272

111 YEARS

BOARD OF CHILD CARE
3300 GAITHER ROAD
BALTIMORE, MARYLAND 21207

ADDRESS CORRECTION REQUESTED

NON PROFIT ORG.
U.S. POSTAGE
PAID
Baltimore, Md.
PERMIT NO. 6035

EXHIBIT 1

EVENING SUN – DECEMBER 9, 1986

FOCUS/FEATURES

Voices

Changes over the past decade now require the government to intervene in family life to protect children — at the same time that the law limits the use of foster care for the carrying out of that responsibility.
Camille B. Wheeler

Needs of the Maryland social services worker

Child abuse isn't for the 'funnies'

Camille B. Wheeler

RECENTLY, the daily comic strip, "Rex Morgan, M.D.," had a child abuse theme. In the world of Dr. Morgan and Nurse Gail an unshaven, beer-drinking, unemployed, violent man beats his wife and stepchildren. The children run away and are taken in by the wise and kindly Morgans and Gail, and after some twists and turns, the police arrest and take to jail the "mom" who committed the crime. Meantime, Rex Morgan and Gail have arranged for the children to be with an elderly patient, Melissa, while their mother recovers from the serious beating inflicted by her husband.

Any child abuse worker can tell you what a fantasy that is!

In the real world, social workers, police, and state's attorneys are faced with ambiguity and claims of innocence as they try to decide whether to remove children from their families, arrest parents and prosecutors. A more realistic Rex Morgan story would start with a call from a neighbor or school principal, alleging abuse. In the ensuing investigation, both parents deny any wrongdoing. Any injuries would be minor and would be explained away. The stepfather would be employed and the major support of his family. He would be an "average" member of his community, not a bum. The children would want to stay with their parents and would be fearful of other alternatives. Neighbors, relatives and lawyers would think that they knew what was best and try to persuade the authorities of their point of view.

Once the judgment was made that a child was abused, more decisions would have to be made. Would it be sufficient to refer the family to counseling to protect the children? What other rehabilitative efforts should be attempted — in-home aide service, day care, psychiatric treatment or other referrals for other services? Must the abuser (and his income) be barred from the home? Do the children need a new home — with foster parents, in an institution, or with relatives? If so, is anyone willing to take them in; is there space in foster care? How long do children stay apart from their parents? Law and regulation would guide and shape these judgments.

In fact, changes in the law over the past decade now require the government to intervene in family life to protect children — at the same time that the law limits the use of a traditional resource, foster care, for the carrying out of that responsibility. This practice changes the role of children from a mainly psychological one of "foster care drift" to a physical one of abuse and neglect.

At the same time, there are fewer families willing to provide foster care; and we have not developed sufficient alternatives. Moreover, when children are finally removed from their families they are often very troubled, making the task of finding substitute homes for them very hard.

The public supports the notion that government has the right and obligation to intervene in a family to remove children, if there is indication that a child is in danger. What is missing is a sense of the ambiguity of most child abuse situations, of the profundity of the act of separating a child from the people who gave him life (only to place him with people he does not know in a strange and often impermanent environment), and of the complexity of the system that now exists to protect children.

The courts require social workers to demonstrate that they have made all reasonable efforts to preserve the family. Families, children and agencies are each represented by their own lawyers, each with different interests and often with conflicting points of view. After obtaining legal custody of children, agencies must arrange for alternative homes, which have become increasingly more difficult to find. At the same time, child care workers must begin immediately to plan for the return of the children to their parents, to provide help and to arrange for additional services that would facilitate that plan. Most children, therefore, return home within a year of entering foster care. The professionals who are part of Maryland's child welfare system carry out their responsibilities carefully and for the most part successfully.

The system, however, can be strengthened. Changes are needed both in the laws in Maryland and in the resources associated with child protection. In order to give the child protectors the best chance for success, tax dollars must be spent to fully staff the child protection agencies: departments of social services, the police, state's attorney's offices and the courts.

We need more sophisticated training. Higher salaries ought to be paid so that the best and the brightest can be attracted into this important work. Working conditions must be improved so that social workers have offices and places where they can conduct the sensitive interviews that are an everyday part of the job. Better statistics and research efforts are needed. Such support services as community mental health must be expanded. Although reforms will cost money, they are a small price compared to sheltering thousands of children. And they are small price for the social benefits of salvaged families and lives.

Outside of the mythical world of Rex Morgan, M.D., the protection of neglected and abused children is a very complicated and sophisticated work often requiring the wisdom of Solomon. Few of us mortals are so endowed, so we do the very best we can based on years of professional training and experience. We who administer child welfare services don't believe that we can create a world where children never suffer at the hands of their parents, any more than the police can promise an end to murder and robbery.

We do believe, however, that with deeper public education and support we can create a world where the risk of serious harm to children is substantially reduced.

Camille B. Wheeler is Baltimore County director of social services.

found that Maryland social workers are waiting an average of 2½ years before they even recommend adoption. The average wait in Baltimore is three years, the panel said.

Part of that delay, the task force said, appears to be the result of workers being unwilling to remove children permanently from their parents. While adoption decisions are supposed to be made based on a child's needs, "the emphasis in practice seems to have shifted from the best interest of the child to one of primarily considering the parents and secondarily considering the child," the report said.

The task force said Maryland needs to spend more money to pay for counseling and other services needed by troubled children, particularly after they are adopted. At present, foster children are covered by the state's Medical Assistance program even after adoption, "but that is very inadequate in covering the full cost of the care these kids need," Ms. Leviton said.

within six months develop written guidelines about how long its staff should work with natural parents, and it urged that workers be given more training.

It also said Maryland needs to spend more money to pay for counseling and other services needed by troubled children, particularly after they are adopted. At present, foster children are covered by the state's Medical Assistance program even after adoption, "but that is very inadequate in covering the full cost of the care these kids need," Ms. Leviton said.

Title 07
DEPARTMENT OF HUMAN RESOURCES
Subtitle 02 SOCIAL SERVICES ADMINISTRATION

Chapter 13 License for Care of Children

Authority: Article 88A, §§19—32c,
Annotated Code of Maryland
(Agency note: Federal regulatory reference—45 CFR 228.13, .42)

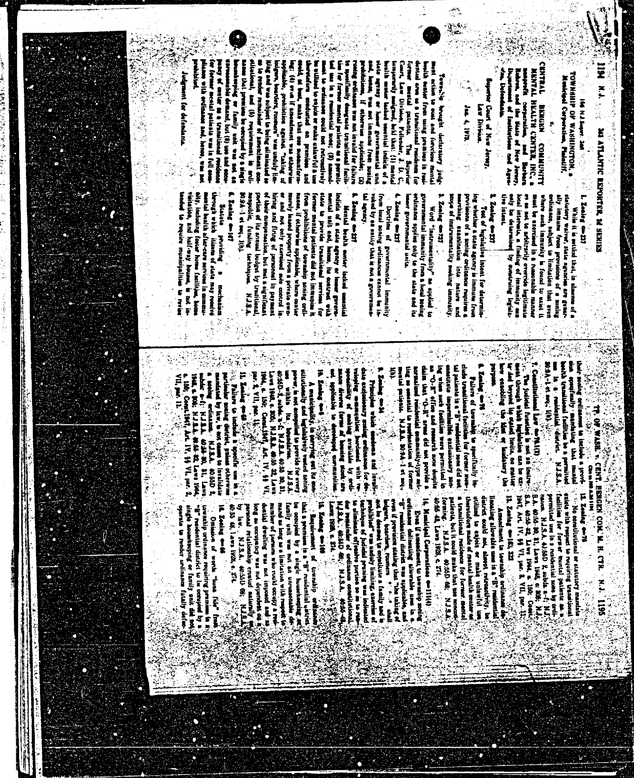
.01 General Principles.

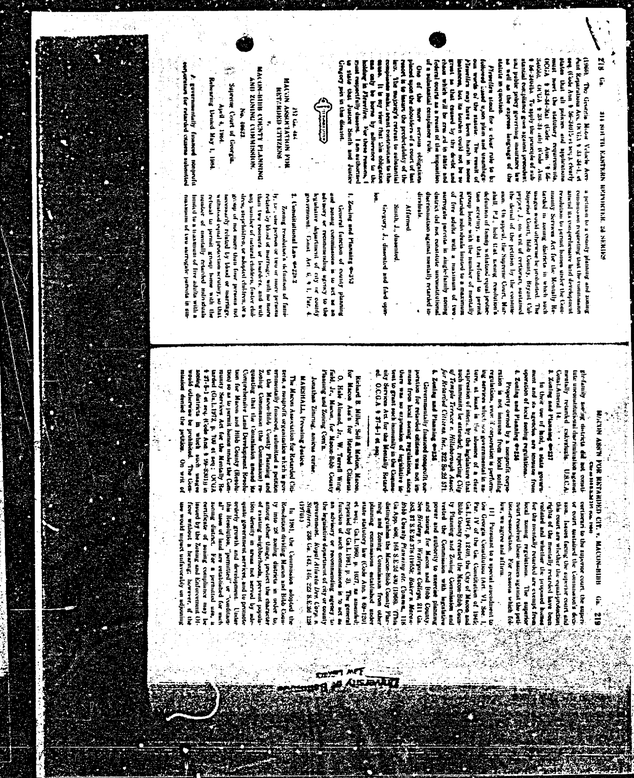
A. Protection of Children. In accord with Article 88A, §19, the paramount consideration of law and of these regulations is the protection of children. The intent of the law is stated as follows: "The condition of childhood is such that a child is not capable of protecting himself, and when its natural parents for any reason have relinquished its care to others, there arises the possibility of certain risks to the child, which in turn require comparable and off-setting measures. When the interest of a child and those of an adult are in conflict, the doubt should be resolved in favor of the child."

B. Proposed Facility. The Department offers consultation to the group seeking to establish a new facility. The Department makes available its service towards qualifying for license, but the burden of proof of compliance rests with the applicant or licensee.

C. Goals of Child Care Facility. The decision regarding an application for license rests upon responsible judgment supported by facts which establish that the essentials for qualitative service are provided. A child placement agency or child care home or institution licensed under previously adopted standards is allowed reasonable time up to 2 years and opportunity to meet current standards of child care. Even though a facility may meet the currently accepted goals of basic standards for license, it is recommended that the facility continuously evaluate the goals of its program and strive to attain a higher level and quality of service according to the standards of national professional standard-setting agencies. It should define its own goals in relation to community needs and periodically reassess these goals and redefine its services accordingly.

D. License. A license issued to a child care facility shall be valid until revoked or suspended. The Department at any time may revoke





Case 87-323-SPH

DRAFT

TITLE 07
DEPARTMENT OF HUMAN RESOURCES
Subtitle 02 Social Services Administration

Chapter 22 License for Residential Care of Children

Authority: Family Law Article §5-501 through 5-521
Annotated Code of Maryland

.01 Purpose.

A. The paramount purpose of these regulations is the protection of children from the special risks arising from the children having to live outside their own homes. When there is a conflict between the interests of a child and those of an adult, the conflict shall be resolved in favor of the child.

B. The regulations established in this chapter are the requirements for licensure for residential child care facilities to provide substitute care for children.

.02 Definitions.

A. "Administration" means the Social Services Administration of the Department of Human Resources.

B. "Child" means a person less than 18 years of age, except that the child already receiving care may continue to receive care up to the full month in which the individual becomes 21 years old.

C. "Department" means the Department of Human Resources of the State of Maryland.

D. "Direct service employee" means a child care worker or supervisor.

E. "Facility" means a residential child care facility providing group care for four or more children with a formal program of basic care, social work and health care services by the administrative, supervisory and service staff.

85-6
September 26, 1986

APPEAL

Petition for Special Hearing
S/S Liberty Road, 200' E of the c/l of Powell's Run Road
2nd Election District - 3rd Councilmanic District
Hubert H. Harker, Jr. - Petitioner
Case No. 87-323-SPH

Petition for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Letter dated December 10, 1986 from Robert S. Rosenfelt to Frank H. Fisher

Letter dated December 10, 1986 from Claude F. Libis, Executive Director, Board of Child Care

Director of Planning & Zoning Comments

Petitioner's Memorandum of Law prepared by Arnold Fleischmann, attorney for the Petitioner

Petitioner's Exhibits: 1 - Chart of Fiscal 1985 Operations

Letter of support dated November 4, 1985 from Jean E. Clarren, Baltimore County Department of Social Services

Letter dated February 19, 1986 from F. Duncan Cornell, attorney for the Board of Child Care, to Arnold Jablon, with attached letter dated July 12, 1982 from then County Solicitor Leonard S. Jacobson to then Councilman James T. Smith, Jr.

Answer to Petition, prepared by F. Duncan Cornell, for the Board of Child Care, received December 19, 1986

Memorandum on Behalf of the Board of Child Care, prepared by Marvin I. Singer and F. Duncan Cornell, attorneys for the Board of Child Care

Motion to Dismiss Petition, prepared by F. Duncan Cornell, Esquire

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

March 16, 1988

Marvin I. Singer, Esq.
F. Duncan Cornell, Esq.
405 W. Pennsylvania Ave.
Towson, Md. 21204

Re: Hubert H. Harker, et al
Case No. 87-323-SPH

Gentlemen:

In accordance with Rule B-7 (a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above entitled matter within thirty days.

The cost of the transcript of the record must be paid by you. Certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid prior to transmittal of the same to the Circuit Court not later than thirty days from the date of any petition you file in court, in accordance with Rule B-7 (a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

June Holmen, Secretary

Enclosures
cc: The Board of Child Care of the
Annual Conference of the
Methodist Church, Inc.

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) ~~494-3180~~ 887-3180

December 5, 1988

Leslie D. Gradet, Clerk
Court of Special Appeals
of Maryland
Annapolis, MD 21401-165

RE: Case No. 88-CG-1313
Board of Child Care v.
Hubert H. Harker, et al

Dear Ms. Gradet:

The subject case was appealed to the Court of Special Appeals on October 5, 1988.

In order that we may continue to monitor this case to its conclusion and closing, please note our request for a copy of the Opinion of the Court of Special Appeals when it is filed in this matter.

Thank you for your assistance and kind attention to this request.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Secretary

LAW OFFICES
HOOPER, KIEFER & CORNELL
342 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201-4381
(301) 727-4700

TOWSON OFFICE
1 CHESAPEAKE PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4282
821-3010

ARTHUR W. HOOPER
(1893-1978)

RICHARD W. KIEFER
F. DUNCAN CORNELL
ROBERT J. PETTIT
MARVIN I. SINGER
IRA R. HIMMEL
WILLIAM L. CLARK
DOROTHY M. BEAMAN

October 5, 1988

Clerk
Circuit Court for Baltimore County
County Courts Building
Baltimore, Maryland 21204

Re: The Board of Child Care of
The Baltimore Annual Conference of the Methodist Church, Inc.
Case No. 54/113/88CG-1313
(HARKER)

Gentlemen:

Please file the enclosed Order of Appeal in the above-entitled case. In as much as these proceedings involved an appeal to the Circuit Court from the County Board of Appeals, I do not believe there is any transcript of testimony to be prepared other than that which is already part of the record. If anything further is needed in order to complete the record to be sent to the Court of Special Appeals, please let me know.

Enclosed are our checks in the amount of $50.00 for the Court of Special Appeals and $50.00 for the Circuit Court for Baltimore County.

Yours very truly,

Marvin I. Singer

MIS/tg
Enclosures

cc: Arnold Fleischmann, Esquire, (w/encl.)
Arnold Jablon, Esquire, (w/encl.)
Nancy West, Esquire, (w/encl.)
Phyllis Cole Friedman, Esquire, (w/encl.)

County Board of Appeals of Baltimore County
Room 200 Court House
Towson, Maryland 21204
(301) 494-3180

March 16, 1988

Arnold Fleischmann, Esq.
408 Bosley Avenue
Towson, Md. 21204

Re: Case No. 87-323-SPH
Hubert H. Harker, et al

Dear Mr. Fleischmann:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

June Holmen, Secretary

Encl.
cc: Phyllis C. Friedman
P. David Fields
James Hoswell
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk

PETITION FOR SPECIAL HEARING

2nd Election District

Case No. 87-323-SPH

LOCATION: South Side of Liberty Road, 200 feet East of the Centerline of Powell's Run Road

DATE AND TIME: Monday, February 9, 1987, at 11:45 a.m.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Special Hearing to disapprove the exemption of the "Residential Emergency Shelter" as a governmental function from the zoning regulations

Being the property of Hubert H. Harker, Jr., as shown on plat plan filed with the Zoning Office.

In the event that this Petition(s) is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JABLON
ZONING COMMISSIONER
OF BALTIMORE COUNTY

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Arnold Jablon
Zoning Commissioner
Date January 27, 1987

FROM Norman E. Gerber, AICP, Director
Office of Planning and Zoning

SUBJECT Zoning Petition No. 87-323-SPH

In view of the subject of this petition, this office offers no comment.

Norman E. Gerber, AICP
Director

NEG:JGH:slb

87-323-SPH

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this 22nd day of December, 19 86.

ARNOLD JABLON
Zoning Commissioner

Petitioner Hubert H. Harker, Jr.
Petitioner's Attorney Arnold Fleischmann, Esquire

Received by: James E. Dyer
Chairman, Zoning Plans Advisory Committee

BALTIMORE COUNTY
DEPARTMENT OF TRAFFIC ENGINEERING
TOWSON, MARYLAND 21204
494-3550

STEPHEN E. COLLINS
DIRECTOR

January 30, 1987

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Item No. 232 -ZAC- Meeting of December 16, 1986
Property Owner: Board of Child Care of Baltimore Annual Conference of Methodist Church, Inc. (Petitioned: Hubert H. Harker, Jr. et al)
Location: S/S Liberty Road W. of Chapel Dale Road
Existing Zoning: R.C. 2 and R.C. 5
Proposed Zoning: Special Hearing not to approve the exemption of the "Residential" Emergency Shelter" from the Zoning Regulations as a governmental function.
Acres: 17.44 acres
District: 2nd Election District

Dear Mr. Jablon:

The department of Traffic Engineering has no comment for Item 232.

Very truly yours,

Gregory M. Jones
Engineer III

GMJ:hza

RECEIVED
FEB 3 1987
ZONING OFFICE

2/9
87-323

Sent 1/29/87

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

January 23, 1987

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

000

Chairman

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

Arnold Fleischmann, Esquire
408 Bosley Avenue
Towson, Maryland 21204

RE: Item No. 232 - Case No. 87-323-SPH
Petitioner: Hubert H. Harker, Jr.
Petition for Special Hearing

Dear Mr. Fleischmann:

The Zoning Plans Advisory Committee and the County Review Group (CRG) have both reviewed the plans submitted with the above-referenced petition. The comments from the CRG have been added to those of the Zoning Plans Advisory Committee and are part of this case file. They are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commission with recommendations as to the suitability of the requested zoning.

This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

James E. Dyer/kkb

JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:kkb

Enclosures

cc: Hoff, Rosenfelt & Woolfolk, Inc.
Owings Mills Professional Center
10706 Reisterstown Road, Suite Eight
Owings Mills, Maryland 21117

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERBER
DIRECTOR

January 20, 1987

Mr. Arnold Jablon
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Zoning Advisory Meeting of December 16, 1986
Item # 232
Property Owner: Board of Child Care of Baltimore Annual Conference of Methodist Ch. Inc. (Hubert H. Harker Jr.) - S/S Liberty Rd. W. of Chapel Dale Rd.
Location:

Dear Mr. Jablon:

The Division of Current Planning and Development has reviewed the subject petition and offers the following comments. The items checked below are applicable.

( )There are no site planning factors requiring comment.
( )A County Review Group Meeting is required.
(X)A County Review Group meeting was held and the minutes will be forward by the Bureau of Public Services.
( )This site is part of a larger tract; therfore it is defined as a subdivision. The plan must show the entire tract.
( )A record plat will be required and must be recorded prior to issuance of a building permit.
( )The access is not satisfactory.
( )The circulation on this site is not satisfactory.
( )The parking arrangement is not satisfactory.
( )Parking calculations must be shown on the plan.
( )This property contains soils which are defined as wetlands, and development on these soils is prohibited.
( )Construction in or alteration of the floodplain is prohibited under the provisions of Section 22-98 of the Development Regulations.
( )Development of this site may constitute a potential conflict with the Baltimore County Master Plan.
( )The amended Development Plan was approved by the Planning Board on
(X)Landscaping: Must comply with Baltimore County Landscape Manual.
( )The property is located in a deficient service area as defined by Bill 178-79. No building permit may be issued until a Reserve Capacity Use Certificate has been issued. The deficient service is
( )The property is located in a traffic area controlled by a "D" level intersection as defined by Bill 178-79, and as conditions change traffic capacity may become more limited. The Basic Services Areas are re-evaluated annually by the County Council.

(X)Additional comments:
① THIS CRG II - 380 (K/A METHODIST HOME) WAS APPROVED ON 12/17/86
② FOR LANDSCAPE REQUIREMENTS - CONTACT AVERY HARDEN AT 494-3335

David Fields, Acting Chief
Current Planning and Development

cc: James Hoswell

BALTIMORE COUNTY DEPARTMENT OF HEALTH

1/14/87
Date

Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

Zoning Item # 232, Zoning Advisory Committee Meeting of 12/16/86
Property Owner: Board of Child Care of Balto. Annual Conference of Methodist Church, Inc.
Location: S/S Liberty Road W of Chapel Dale Rd District 2
Water Supply private Sewage Disposal private

COMMENTS ARE AS FOLLOWS:

(X) Prior to approval of a Building Permit for construction, renovation and/or installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Environmental Support Services, for final review and approval.

(X) Prior to new installation/s of fuel burning equipment, the owner should contact the Division of Air Pollution Control, 494-3775, to obtain requirements for such installation/s before work begins.

( ) A permit to construct from the Division of Air Pollution Control is required for such items as spray paint processes, underground gasoline storage tank/s (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere.

( ) A permit to construct from the Division of Air Pollution Control is required for any charbroiler operation which has a total cooking surface area of five (5) square feet or more.

( ) Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.

( ) Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, saunas, whirlpools, hot tubs, water and sewerage facilities or other appurtenances pertaining to health and safety; two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Health for review and approval. For more complete information, contact the Recreational Hygiene Section, Division of Environmental Support Services.

( ) Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations. For more complete information, contact the Division of Maternal and Child Health.

( ) If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with Water Resources Administration requirements.

WWQ 1 4/86

79-323

Zoning Item # 232 Zoning Advisory Committee Meeting of 12/16/86
Page 2

( ) Prior to razing of existing structure/s, petitioner must contact the Division of Water Quality and Waste Management at 494-3768, regarding removal and/or disposal of potentially hazardous materials and solid wastes.

( ) Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and either be removed from the property or properly backfilled. Prior to removal or abandonment, owner must contact the Division of Water Quality and Waste Management at 494-3768.

( ) Soil percolation tests (have been/must be) conducted.
( ) The results are valid until
( ) Soil percolation test results have expired. Petitioner should contact the Division of Environmental Support Services to determine whether additional tests are required.

( ) Where water wells are to be used as a source of water supply, a well meeting the minimum Baltimore County Standards must be drilled.

(X) In accordance with Section 13-117 of the Baltimore County Code, the water well yield test
( ) shall be valid until 12-7-89 (for wells no.1 and 2)
( ) is not acceptable and must be retested. This must be accomplished prior to conveyance of property and approval of Building Permit Applications.

(X) Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples.

( ) If submission of plans to the County Review Group is required, a Hydrogeological Study and an Environmental Effects Report must be submitted.

(X) Others
① The Balto County Water & Sewerage Plan must be amended prior to issuance of Bldg. permits - this agency supports an exemption to the normal cycle time frame
② All requirements regarding the treatment of water & sewage must be established by Maryland State Regulations
③ Assign a reserve area for future well locations
④ Aquifer well yield test if required for well No. 3

Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

WWQ 2 4/86

Maryland Department of Transportation
State Highway Administration

William K. Hellmann
Secretary
Hal Kassoff
Administrator

DEC 31 1986

ZONING OFFICE

December 22, 1986

Mr. A. Jablon
Zoning Commissioner
County Office Building
Towson, Md. 21204

Attn: Mr. James Dyer

Re: ZAC Meeting of 12-16-86
ITEM: #232.
Property Owner: Board of Child Care of Baltimore Annual Conference of Methodist Church, Inc. (Petitioner: Huber H. Harker, Jr. et al
Location: S/S Liberty Road
Route 26, W. of Chapel Dale Road
Existing Zoning: R.C. 2 and R.C. 5
Proposed Zoning: Special Hearing not to approve the exemption of the "Residential Emergency Shelter" from the Zoning Regulations as a governmental function
Area: 17.44 acres
District: 2nd Election District

Dear Mr. Jablon:

On review of the revised submittal for the Methodist Home, the State Highway Administration finds the concept generally acceptable for minimal improvements as requested in our CRG comments of 12-8-86 (see attachment).

Very truly yours,

Charles Lee - for

Charles Lee, Chief
Bureau of Engineering
Access Permits

By: George Wittman

CL:GW:maw

cc: Mr. J. Ogle

My telephone number is (301) 333-1350
Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro — 565-0451 D.C. Metro — 1-800-492-5062 Statewide Toll Free
P.O. Box 717 / 707 North Calvert St., Baltimore, Maryland 21203 - 0717

BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204-2586
494-4500

PAUL H. REINCKE
CHIEF

December 18, 1986

Mr. Arnold Jablon
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

RE: Property Owner: Board of Child Care of Baltimore Annual Conference of Methodist Church, Inc. et al.
Location: S/S Liberty Road W. of Chapel Dale Road
Item No.: 232 Zoning Agenda: Meeting of 12/16/86

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at _____

EXCEEDS the maximum allowed by the Fire Department.

* (X) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

(X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

( ) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWER: Capt. Joseph Kelly 12-18-86 Noted and Approved: John F. O'Neill
Planning Group
Special Inspection Division
Fire Prevention Bureau

*4. All buildings shall be fully sprinklered according to NFPA 13D.
/mb Also water supply shall be in accordance to Urban Guide for Fire Prevention & Control Master Planning.

BALTIMORE COUNTY, MARYLAND

CRG Plan Committee

SUBJECT: SUBDIVISION REVIEW COMMENTS DATE: December 17, 1986

FROM: Edward A. McDonough, P.E., Chief

PROJECT NAME: Methodist Home
PROJECT NUMBER: 86304
LOCATION: Chapeldale Road
DISTRICT: 2C3

GENERAL COMMENTS:

All private contracts for construction of storm drains and roads intended for public title and maintenance must be let under a contract form, proposal and attachments adopted by the Baltimore County Department of Public Works. The Developer has the option of placing the storm drains under a public contract.

All construction drawings and construction for public use shall conform with Baltimore County Department of Public Works Design Standards and Standard Specifications and Details for Construction.

The responsibilities of the Developer involving public improvements shall include the Inspection Fees, Burden and Fringe Costs incurred. Currently, these charges are 3 times payroll for Metropolitan District Projects, and 2 times payroll for the Capital Improvement Fund.

Any manmade embankment over 10 feet vertically shall be designed and/or approved by a soils engineer. The following note is to be placed on the sediment control plans and grading plans before approval will be given:

"All manmade embankments have been designed and/or certified for stability by a soils engineer."

The Developer shall be responsible for damages to the County's facilities, such as water meters, manholes, curbs and gutters, and inlets within his subdivision. Occupancy Permits will be withheld until such damages have been corrected.

The State Health Department Construction Permits for each private utility (water, sanitary sewer, and storm drains) totaling over 400 feet in length will be obtained through the Baltimore County Department of Public Works.

A Public Works Agreement must be executed by the owner and Baltimore County for the required public improvements, after which a Building Permit may be approved.

The Plan is satisfactory pending conformance with the following comments.

Project #86304
Methodist Home
Page 2
December 17, 1986

HIGHWAY COMMENTS:

Chapeldale Road and Powells Run Road are existing roads, which shall ultimately be improved as a 30-foot street cross-section on a 50-foot right-of-way.

The Developers responsibility along these two existing road frontages of the subdivision shall be as follows:

a. The submission of detailed construction drawings is to extend a minimum distance of 200 feet beyond the limits of the subdivision or as may be required to establish line and grade.

b. The submission of full cross-sections is deemed necessary for design and/or construction purposed. The sections are to be taken at 25-foot intervals and are to be shown on standard cross-section paper at 1"=5' horizontal to 1"=5' vertical scale.

c. The preparation of the right-of-way plat for, and the dedication of any widening and slope easements at no cost to the County.

d. The preparation of the right-of-way plats for any offsite road rights-of-way required to make the necessary improvements. Baltimore County will attempt to acquire the right-of-way at the Developer's cost.

e. The grading of the widening and the existing road to the established grade. Where adjacent properties are adversley affected by the improvements, the Developer shall be financially responsible for the necessary repairs to these properties.

f. The construction of combination curb and gutter in its ultimate location and a maximum of 28.5 feet of paving adjacent thereto along the frontage of the property. The paving thickness shall conform with Baltimore County Standards and requirements for 11-inch thick paving.

g. The relocation of any utilities or poles as required by the road improvements.

Powells Run Road shall have a minimum 500' centerline radius.

It shall be the responsibility of the Developer's engineer to clarify all rights-of-way within the property and to initiate such action that may be necessary to abandon, widen, or extend said rights-of-way. The Developer shall be responsible for the submission of all necessary plats and for all costs of acquisition and/or abandonment of these rights-of-way.

In accordance with Bill No. 32-72, street lights are required in all subdivisions. The Developer will be responsible for the full costs of installation of the cable, poles, and fixtures. The County will assume the cost of the power after installation.

Ramps shall be provided for physically handicapped persons at all street intersections.

Sidewalks are required adjacent to the public roads serving this site. The walks shall be 4-feet wide and shall be installed to conform with Baltimore County Standards, which places the back edge of the sidewalk 2 feet of the property line, or the adjacent unencumbered area.

Project #86304
Methodist Home
Page 3
December 15, 1986

HIGHWAY COMMENTS:

The Developer shall be responsible for construction stake-out of all highway improvements required in connection with this site and all stake-outs shall be in accordance with Baltimore County Standards.

The entrance locations are subject to approval by the Department of Traffic Engineering.

Entrances shall be a minimum of 24 feet and a maximum of 25 feet wide, shall be 10-foot minimum radii curb returns, shall be located a minimum of 15-feet from any property line, and shall be constructed in accordance with Baltimore County Standards (Details P-32, 1977 Edition), as the Developer's total responsibility.

The interior roads are considered private and shall be the Developer's full responsibility for construction and maintenance.

STORM DRAINS, SEDIMENT CONTROL, AND STORM WATER MANAGEMENT COMMENTS:

The Developer is responsible for the total actual cost of drainage facilities required to carry the storm water run-off through the property to be developed to a suitable outfall. The Developer's cost responsibilities include the acquiring of easements and rights-of-way - both onsite and offsite - and the deeding in fee of said rights-of-way to the County. Preparation of all construction, rights-of-way and easement drawings, engineering and surveys, and payment of all actual construction costs including the County overhead both within and outside the development, are also the responsibilities of the Developer.

The Developer must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Developer.

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings downstream of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

In accordance with Baltimore County Council Grading Ordinance (Bill No. 13-85) a grading plan shall be approved and a Performance Bond posted prior to issuance of a grading permit. (The number of square feet of land disturbed shall be indicated on the sediment control drawing.)

The Developer shall be responsible to stabilize the sidewalk areas and supporting slopes on all road rights-of-way following completion of the initial grading of the boxed-out subgrade. The stabilization shall be accomplished within the nearest period of optimum seeding as established in the Baltimore County Sediment Control Manual. Minimum acceptable stabilization measures will be as specified in the Baltimore County Sediment Control Manual under "Critical Area Stabilization (With Semi-Permanent Seedings)".

Failure by the Developer to accomplish the stabilization as aforementioned will result in the termination of all processing phases of this development.

HYDRO. SOIL GROUP	SOIL TYPE AND LIMITATIONS				
	TYPE	CLASS	BLDGS. W/BASEMENTS	BLDGS. W/O BASEMENTS	STREETS & PARKING LOTS
B	EkB2	LOAM	SLIGHT	SLIGHT	MODERATE : SLOPE
B	EkB2	LOAM	SLIGHT	SLIGHT	MODERATE : SLOPE
B	GcB2	LOAM	SLIGHT	SLIGHT	MODERATE : SLOPE
B	GcC2	LOAM	MODERATE : SLOPE	MODERATE : SLOPE	SEVERE : SLOPE
B	GgD2	LOAM	SEVERE : SLOPE	SEVERE : SLOPE	SEVERE : SLOPE
B	MbC2	LOAM	MODERATE : SLOPE	MODERATE : SLOPE	SEVERE : SLOPE

LIBERTY ROAD (MD 26)

RUN ROAD

POWELLS RUN

CHAPELDALE ROAD

RESERVATION FOR IMPROVING AND WIDENING POWELLS RUN ROAD

EX. WELL

EXIST. DWLG. #10939

EX. SEPTIC TANK

EX. DRY WELL

MAURICE E. & EDNA NICHOLSON 19007/353 ACCT # 02-144-000161

PROPOSED ADMINISTRATION BUILDING

PROP. COVERED WALK

PROP. MAINTENANCE BLDG./ WATER TREATMENT FACILITY W/ BURRIED 10000 GAL. STORAGE TANK (BLDG. G)

PROP. SWM POND

PROPOSED COTTAGE RESIDENCE (TYPICAL)

TYP. 2000 GAL. SEPTIC TANK

LIMITS OF DISPOSAL FIELD

PROP. COVERED WALK

PROP. MAC. PAV.

EX. 100 YR FLOOD CONTROL CURVE (RW ELEV. 534)

EX. DWLG

EXIST DWLG

NORBERT & RAYMOND PASZKIEWICZ 4593/303

LOT 1 GEORGE & DORIS E. WARCH 4708/034

LOT 2 RESUBDIVISION PLAT PART OF PLAT 1 CHAPELDALE W.J.R. 28/90

LOT 1 EDWARD & ELAINE SROKA 6302/272

LOT 2 BLOCK 'A'

LOT 3 JOHN G. & MARY J. GAST 4912/625

LOT 4 ANTHONY & ELIZABETH A. SERIO 5225/901

LOT 5 VINCENT S. & CONCETTA SABATINO

LOT 6 JOSEPH T. & ROBIN GIBBIN 6749/064

LOT 7 JOHN E. & NANCY L. MACHISHEN 6275/84

LOT 8 PAMELA L. BUTLER 5935/

LOT 9 ROBERT & [illegible] 3989/150

LOT 10 ECKHART & SUNK ETAL

LOT 11 BLOCK 'A'

LOT 12 BLOCK 'A'

LOT 13 BLOCK 'A'

LOT 14 BLOCK 'A'

CHAPELDALE, PLAT I S.B. 18/23

PERMIT # 81-0447 EX. WELL #1

PERMIT # 81-0448 EX. WELL #2

EX. WELL (TYPICAL)

#10918 #10912 #10914 #10912 #10910 #10908 #10906

EXIST. DWLG. (TYP.)

MbC2 EkB2 GcB2 GcC2

N 38500 N 38350

W 68750 W 69250

S 82° 42' 18" E 300.00'

S 07° 11' 34" W 400.34'

N 07° 11' 31" E 400.34'

S 82° 42' 00" E 1227.01'

300.00'

137.00'

R=2173.99' L=75.24'

790.01'

591.73'

572.75'

525.0'

225.03'

230.02'

365.05'

155.13'

705.14'

924.69'

538.37'

210.07'

44.27'

41.29'

225.40'

450.80'

200'

60' R/W

30' (TYP.)

10' (TYP.)

2'W

RC 2 RC 5

owner / developer

BOARD OF CHILD CARE OF THE BALTIMORE ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC.
3300 Saither Road
Baltimore, Md. 21207

1	1
2	2
3	3
4	
5	
6	6
7	7
8	9
9	
10	
11	
12	12
13	

vicinity map

Scale : 1" = 2000'

SITE

ROUTE 29 · LOCUST ROAD · RIDGEON RD. · POWELLS RUN RD. · STEEPLE CHASE RD. · LIBERTY · LYONS MILL RD. · HOLBROOK RD. · WARDS CHAPEL RD. · FALLS ROAD

general notes

1. There are no wetlands, critical areas, archeological sites, historical buildings, endangered species habitat or hazardous material on this site.
2. Census Tract No.4621
3. This site lies within Watershed No.31 & 32
4. Sdsewershed No.: N/A
5. This site lies within Councilmanic District No.3
6. Stormwater Management will be provided.
7. Development shown hereon to be served by private well water and septic systems.
8. Topography and outlines shown on this plan are based on deeds, plats, and 200 scale Baltimore County Photogrammetric Maps.
9. The entire property is meadow and pasture/lawn.
10. Property deed reference: E.H.K., Jr. 7311/8795
11. Property Tax Account No. #2144888963
    #2144888964
    #2144888965
    #2144888966
    2808002287
12. All parking areas and driveways to be paved by macadam.
13. All regular parking spaces to be 8 1/2 FT x 18 FT. Handicap spaces to be 12 FT x 18 FT.
14. ⊕ Typical perc test. ⊕ Typical failed perc test.
15. Public Services CRG No. 84-304
16. Planning No.

density calculations

Gross Acreage	15.24 AC
Net Acreage	17.44 AC
Acreage in RC-2	2.75 AC
Acreage in RC-5	12.81 AC
Existing zoning	RC-2 and RC-5
Existing use	Vacant
Proposed use	Comunity Care Center
Proposed building size:	
5-1 story residential dwellings @ 4968 SF/EA (Buildings A-E)	28368 SF
1-2 story administrative building @ 2880 SF/STY (Building F)	5688 SF
1-1 story maintenance building (Building G)	1288 SF
Total	27368 SF
Parking required:	
(1 space/5 residents) 68/5=	12 Spaces
(5688 SF @ 1/388)	18.6 Spaces
Total Parking required	38.6 Spaces
Parking Proposed (Including 2 handicapped spaces)	44 Spaces
Average daily trips	172 ADT's

I-C NW 9-L

II-38 C-3

S side of Liberty Road E of Wards Chapel Rd

CRG PLAN

METHODIST HOME

Election District No. 2
Baltimore County, Maryland

PLAT TO ACCOMPANY PETITION FOR SPECIAL HEARING

1"=50'

87-323-SPH

CRG 84-304