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1/31/03

PETITION OF BETH TFILOH
CONGREGATION OF BALTIMORE
COUNTY
3300 OLD COURT ROAD
BALTIMORE, MD 21208

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALS FOR BALTIMORE
COUNTY
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

IN THE CASE OF:
IN THE MATTER OF THE
APPLICATION OF BETH TFILOH
CONGREGATION OF BALTIMORE
CITY, INC.
CASE NO. 01-468-SPH

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No: 03-C-02-9339

FEB - 3 2003

* * * * *

STIPULATION OF VOLUNTARY DISMISSAL

Pursuant to Maryland Rule 2-506(a), Beth Tfiloh Congregation of Baltimore City,
Inc., Petitioner/Respondent, Glyndon Community Association, Inc., *et al.*,
Respondents/Petitioners, and People's Counsel for Baltimore County, Respondent,
(collectively, the "Parties") stipulate as follows:

1. Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh") filed a
Petition for Judicial Review of a decision of the Baltimore County Board of
Appeals, which initiated the above-captioned action.
2. Thereafter, Glyndon Community Association, Inc. filed a Cross-Petition for
Judicial Review.

CIVIL DEPT. JAN 31 2003

3. The Parties stipulate the above-captioned action, including both the Petition for Judicial Review and the Cross-Petition for Judicial Review, shall be dismissed with prejudice.

WHEREFORE, the parties respectfully request that the Clerk mark the docket "dismissed with prejudice".

RESPECTFULLY SUBMITTED,

Dino C. La Fiandra

G. Scott Barhight
Dino C. La Fiandra
Whiteford Taylor & Preston,
LLP
210 W. Pennsylvania Avenue
Fourth Floor
Towson, Maryland 21204
410-832-2000

Attorneys for Beth Tfiloh
Congregation of Baltimore
City, Inc.

Gary R. Jones

Gary R. Jones, Esquire
Baxter, Baker, Sidle, Conn &
Jones, P.A.
Suite 2100
120 E. Baltimore Street
Baltimore, Maryland 21202
(410) 230-3800

Attorneys for Glyndon
Community Association,
Inc., et al.

PLEASE SEE ATTACHED

Peter M. Zimmerman
People's Counsel for Baltimore
County
400 Washington Avenue
Room 47
Towson, Maryland 21204
410-887-2188

People's Counsel for Baltimore
County

3. The Parties stipulate the above-captioned action, including both the Petition for Judicial Review and the Cross-Petition for Judicial Review, shall be dismissed with prejudice.

WHEREFORE, the parties respectfully request that the Clerk mark the docket "dismissed with prejudice".

RESPECTFULLY SUBMITTED,

G. Scott Barhight
Dino C. La Fiandra
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210 W. Pennsylvania Avenue
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410-832-2000

Attorneys for Beth Tfiloh
Congregation of Baltimore
City, Inc.

Gary R. Jones, Esquire
Baxter, Baker, Sidle, Conn &
Jones, P.A.
Suite 2100
120 E. Baltimore Street
Baltimore, Maryland 21202
(410) 230-3800

Attorneys for Glyndon
Community Association,
Inc., et al.

Peter M. Zimmerman
Peter M. Zimmerman
People's Counsel for Baltimore
County
400 Washington Avenue
Room 47
Towson, Maryland 21204
410-887-2188

People's Counsel for Baltimore
County

9/27/02

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

*

*

PETITION OF:
BETH TFILOH CONGREGATION
OF BALTIMORE COUNTY

*

CIVIL ACTION
NO.: 03-C-02-9339

*

FOR JUDICIAL REVIEW OF THE
OPINION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

*

*

*

IN THE MATTER OF: BETH TFILOH
CONGREGATION BALTIMORE
CITY

*

*

CASE NO: 01-468-SPH

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* * * * *

**SUPPLEMENTAL RECORD OF PROCEEDINGS BEFORE THE DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the
Petition for Judicial Review directed against it in this case, herewith supplements the previously
filed extract in Case No.: 03-C-02-9339, filed on September 20, 2002, as follows:

October 26, 2001	Answer of Appellees/Protestants to Petition on Appeal filed by Robert J. Carson, Esquire and Thomas F. Corcoran, Esquire, Attorneys for Protestants.
March 22, 2002	Letter to Charles L. Marks, Chairman, County Board of Appeals of Baltimore County from Peter Max Zimmerman, People's Counsel for Baltimore County, consisting of two pages.
Undated	Notice of Entry of Appearance of Gary R. Jones as co-counsel for Petitioners, filed on March 26, 2002
September 27, 2002	Supplemental Record of Proceedings filed in the Circuit Court for Baltimore County.

RECEIVED AND FILED
2002 SEP 27 P 2:20
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Respectfully submitted,



Theresa R. Shelton, Legal Secretary
County Board of Appeals of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204
(410) 887-3180

c: G. Scott Barhight, Esquire
Dina C. La Fiandra, Esquire
Robert J. Carson, Esquire
Gary R. Jones, Esquire
Peter Max Zimmerman / People's Counsel for Baltimore County
Matis Warfield, Inc.
Arnold F. Keller, III, Director, Office of Planning
Donald Rascoe / PDM
Arnold Jablon, Director / PDM



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

September 27, 2002

Robert J. Carson, Esquire
Robert J. Carson, P.A.
345 Green Street
Havre de Grace, MD 21078

RE: Circuit Court Civil Action No. 3-C-02-9339
Petition for Judicial Review
Beth Tfiloh Congregation of Baltimore County
Case No.: 01-468-SPH

Dear Mr. Carson:

I am in receipt of your letter dated September 26, 2002. In accordance with your request, enclosed is a copy of the Supplemental Record of Proceeding that was filed this date in the Circuit Court.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Theresa R. Shelton".

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: G. Scott Barhight, Esquire
Dina C. La Fiandra, Esquire
Gary R. Jones, Esquire
Matis Warfield, Inc.
People's Counsel of Baltimore County
Arnold F. Keller, III, Director, Office of Planning
Donald Rascoe / PDM
Arnold Jablon, Director / PDM



9/20/02
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
BETH TFILOH CONGREGATION
OF BALTIMORE COUNTY

FOR JUDICIAL REVIEW OF THE
OPINION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

CIVIL ACTION
NO.: 03-C-02-9339

IN THE MATTER OF: BETH TFILOH
CONGREGATION BALTIMORE
CITY

CASE NO: 01-468-SPH

* * * * *

**CERTIFIED COPIES OF PROCEEDINGS BEFORE THE
BALTIMORE COUNTY DEPARTMENT OF PERMITS & LICENSES
AND THE BOARD APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the
Petition for Judicial Review directed against it in this case, herewith transmits the record of
proceedings had in the above-entitled matter, consisting of the following certified copies or original
papers on file in the Department of Permits and Development Management and the Board of
Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND OFFICE OF ZONING
ADMINISTRATION AND THE DEPARTMENT OF PERMITS AND DEVELOPMENT
MANAGEMENT OF BALTIMORE COUNTY:

RECEIVED AND FILED

2002 SEP 20 A 10: 56

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

01-468-SPH

May 7, 2001	Petition for Special Hearing
June 4	Notice of Appearance by People's Counsel
June 5	Notice of Zoning Hearing
July 3	Certificate of Publication/The Jeffersonian
July 2	Certificate of Posting
September 19	<u>FINDINGS OF FACT AND CONCLUSIONS OF LAW</u> by Lawrence E. Schmidt, Zoning Commissioner/Hearing Officer ORDERED that the Petition for Special Hearing is GRANTED with special requests.
October 19	Notice of Appeal filed by G. Scott Barhight, on behalf of Beth Tfiloh Congregation of Baltimore City, Inc.
November 16	Motion for Consolidation of related appeals filed by Robert Carson, Esquire on behalf of Protestants and Motion to Postpone case number CBA-01-106 scheduled for 12/4/01.
November 19	Beth Tfiloh's Answer to Motion to Consolidate Related Appeals
November 26	Protestant's Reply to Beth Tfiloh's Answer to Motion to Consolidate filed by Robert Carson, Esquire.
January 7, 2002	Notice of Assignment sent to parties; consolidated for hearing – Cases Nos.: CBA-01-118; CBA-01-136 and 01-148-SPH; assigned for March 26, 2002.
February 8	Memorandum of People's Counsel filed by Peter Zimmerman and Carol Démilio.
March 1	Beth Tfiloh's Response to Memorandum of People's Counsel filed by G. Scott Barhight, Esquire/Dino C. LaFiandra, Esquire
March 11	Beth Tfiloh's Motion to Dismiss Appeal for Lack of Standing / Jurisdiction in case: CBA-01-118 only, filed by G. Scott Barhight, Esquire/Dino C. LaFiandra, Esquire

March 14 Memorandum submitted on behalf of Glyndon Community Association, Inc. and Individual Protestants, filed by Robert J. Carson, Esquire and Thomas F. Corcoran, Esquire

March 20 Notice to Strike Appearance of Thomas F. Corcoran, Esquire on behalf of Glyndon Community Association

March 26 --Hearing before the Board of Appeals

**PETITIONER'S
EXHIBITS**

1. Stephen A. Warfield, P.E. / Professional Registration
2. Plan to accompany Special Hearing (2 pages)
3. Deed at Liber 1433
4. DRC Request Form
5. Letter dated June 29, 2001 from Arnold Jablon to Stephen A. Warfield
6. Timothy F. Madden, ASLA, AICP / Qualifications
7. Board of Appeals Opinion and Order attached to letter dated February 8, 2002 to G. Scott Barhight, Esquire, from Kathleen C. Bianco.

**PROTESTANT'S
EXHIBITS**

1. Alfred W. Barry, III / qualifications – 2 pages
2. Zoning Commissioners file in SPH case.

April 29 Memorandum of Fact and Law filed by Robert J. Carson, Esquire, on behalf of Protestants;
-- Appellant/Petitioner's Post-Hearing Brief filed by Dino C. LaFiandra, Esquire, on behalf of Beth Tfiloh Congregation of Baltimore City, Inc. and People's Counsel

May 21 Deliberation held by Board of Appeals

July 24 Order issued and distributed by Board of Appeals

August 22 Petition for Judicial Review filed in the Circuit Court for Baltimore County by G. Scott Barhight, Esquire, Attorney for Petitioner.

August 26 Copy of Petition for Judicial Retrieved received by the County Board of Appeals from the Circuit Court for Baltimore County.

August 28 Certificate of Notice sent to interested parties.

September 19 Transcript of Proceedings filed.

September 20 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Respectfully submitted,



Theresa R. Shelton, Legal Secretary
County Board of Appeals of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204 (410) 887-3180

c: G. Scott Barhight, Esquire
Dina C. La Fiandra, Esquire
Robert J. Carson, Esquire
Matis Warfield, Inc.
Arnold F. Keller, III, Director, Office of Planning
Donald Rascoe / PDM
Arnold Jablon, Director / PDM

8/13/02

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

*

*

PETITION OF:
BETH TFILOH CONGREGATION
OF BALTIMORE COUNTY

*

*

CIVIL ACTION
NO.: 03-C-02-9339

FOR JUDICIAL REVIEW OF THE
OPINION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

*

*

*

IN THE MATTER OF: BETH TFILOH
CONGREGATION BALTIMORE
CITY

*

*

CASE NO: 01-468-SPH

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* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston, L.L.P., 7 Saint Paul Street,
Suite 1400, Baltimore, MD 21202

Dina C. La Fiandra, Esquire
Whiteford, Taylor & Preston, L.L.P., 7 Saint Paul Street,
Suite 1400, Baltimore, MD 21202

Robert J. Carson, Esquire
Robert J. Carson, P.A., 345 Green Street, Havre de Grace, MD 21078

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2002 AUG 28 A 10 07

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

Theresa R. Shelton
Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to: Robert J. Carson, Esquire, Robert J. Carson, P.A., 345 Green Street, Havre de Grace, MD 21078; and G. Scott Barhight, Esquire, Dina C. La Fiandra, Esquire, Whiteford, Taylor & Preston, L.L.P., 7 Saint Paul Street, Suite 1400, Baltimore, MD 21202, this 28th day of August, 2002.

Theresa R. Shelton
Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

August 28, 2002

Robert J. Carson, Esquire
Robert J. Carson, P.A.
345 Green Street
Havre de Grace, MD 21078

RE: Circuit Court Civil Action No. 3-C-02-9339
Petition for Judicial Review
Beth Tfiloh Congregation of Baltimore County
Case No.: 01-468-SPH

Dear Mr. Carson:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on August 22, 2002, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-02-9339.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: Thomas F. Corcoran, Esquire
Glyndon Community Association, Inc.
c/o John A. Morris, President
G. Scott Barhight, Esquire
Dina C. La Fiandra, Esquire
Matis Warfield, Inc.
Mr. Gary D. Applestein
Mr. Sean O. Connell
Beth Tfiloh Congregation of Baltimore City





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

August 28, 2002

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston, L.L.P.
210 West Pennsylvania Avenue
Towson, MD 21204

Dina C. La Fiandra, Esquire
Whiteford, Taylor & Preston, L.L.P.
210 West Pennsylvania Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-02-9339
Petition for Judicial Review
Beth Tfiloh Congregation of Baltimore County
Case No.: 01-468-SPH

Dear Masseurs Barhight and La Fiandra:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for 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 in time to transmit the same to the Circuit Court within sixty days, in accordance with the Maryland Rules.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Theresa R. Shelton".

Theresa R. Shelton
Legal Secretary

/trs

Enclosure

c: Robert J. Carson, Esquire



Robert J. Carson, Esquire
Robert J. Carson, P.A.
August 28, 2002
Page Two

James H. Thompson, Code Enforcement
People's Counsel of Baltimore County
Lawrence Schmidt, Zoning Commissioner
Don Rascoe, Development Manager / PDM
John R. Reisinger, P.E. / PDM
Arnold F. Keller, III, Director, Office of Planning
Donald Rascoe / PDM
Arnold Jablon, Director / PDM

7/24/02

C-02-9339

PETITION OF BETH TFILOH
CONGREGATION OF BALTIMORE
COUNTY
3300 OLD COURT ROAD
BALTIMORE, MD 21208

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No:

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALS FOR BALTIMORE
COUNTY
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

*
*

IN THE CASE OF:
IN THE MATTER OF THE
APPLICATION OF BETH TFILOH
CONGREGATION OF BALTIMORE
CITY, INC.
CASE NO. 01-468-SPH

*
*
*
*

* * * * *

PETITION FOR JUDICIAL REVIEW

Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh"), by and through its counsel, G. Scott Barhight and Whiteford, Taylor & Preston, L.L.P. requests Judicial Review of the Opinion of the County Board of Appeals for Baltimore County (the "Board") in its case, "In the matter of the Application of Beth Tfiloh Congregation of Baltimore City, Inc.", under its case number CBA-01-468-SPH, which is dated July 24, 2002. Beth Tfiloh was a party to the proceeding below.

Specifically, Beth Tfiloh appeals from the Board's Order appearing at the bottom of page 17 of the Opinion, which states:

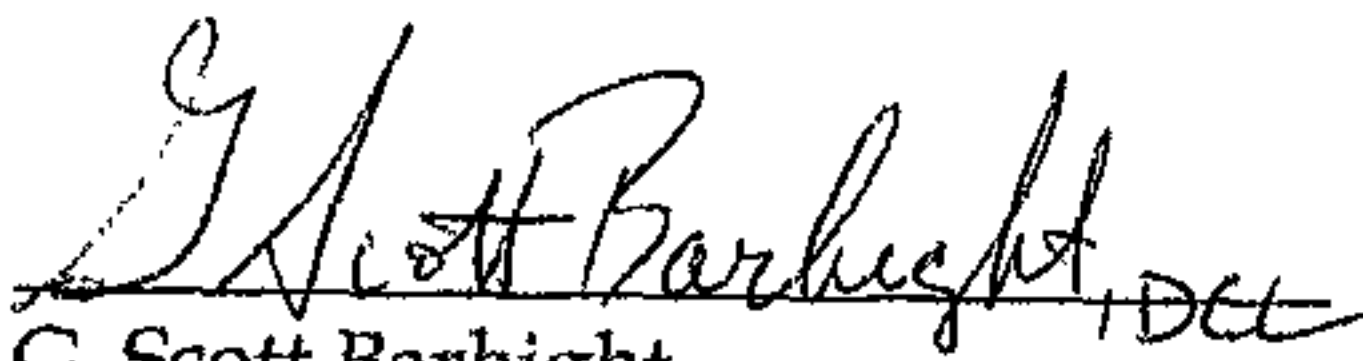
ORDERED that the existing camp buildings and proposed athletic fields are not accessory uses to the school and synagogue; that Petitioner may not develop the proposed athletic fields on the R.C.4 zoned portion of the subject site, and likewise may not use the existing buildings in association

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CLERK
BALTIMORE COUNTY

C. J. ...
A. J. ...
2002

with the school or synagogue; and, therefore, any activities associated therewith shall not be permitted on that portion of the property zoned R.C.4;

WHEREFORE, Beth Tfiloh respectfully requests this honorable Court REVERSE the decision of the Board as it relates to the scope of accessory uses proposed in the application at issue.


G. Scott Barhight
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000

Attorney for Petitioner, Beth Tfiloh

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-02-009339

TO: COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
400 Washington Avenue
Baltimore, MD 21204

02 AUG 26 AM 11:52

7/24/02
IN THE MATTER OF
THE APPLICATION OF
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC. - LEGAL OWNER
(GLYNDON PROPERTY) FOR SPECIAL
HEARING ON PROPERTY LOCATED ON
THE NE/S CENTRAL AVENUE, 250' NW OF
C/L HUNTING HORN CIRCLE AND FOR
LIMITED EXEMPTION /DRC NO. 0625011
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 01-468-SPH and
* Case No. CBA-01-136

* * * * *

OPINION

This case comes to the Baltimore County Board of Appeals based on an appeal by the Petitioner from certain portions of the decision rendered by the Zoning Commissioner in Case No. 01-468-SPH involving a special hearing. The Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh") is the sole Petitioner in that case. Also on appeal is a decision rendered by the Development Review Committee in which the Glyndon Community Association, Inc., Gary D. Applestein, John Morris, Nan Kaestner, and Sean O'Connell appealed that decision to this Board. That case has been number CBA-01-136.

Statement of Facts

The subject property has been the topic of previously approved plans, in Case No. 65-389-X, Case No. 94-27-SPH, and Case No. IV-455. The site encompasses 43.83 acres. It is presently split-zoned in D.R. 1, D.R. 2, R.C. 4 and R.C. 5 zones. In the special hearing, Case No. 65-389-X, the usage of the property was on a shared basis, used as a camp by the Petitioner, Beth Tfiloh, and also by the Maryland Diabetes Association, and the American Diabetes Association. The Petitioner's current plan requesting an amendment to the Plan calls for several changes to the configuration of the improvements on the property. The Plan is seeking an amendment which already reflects an existing synagogue within the D.R. 1 portion of the property. That facility is to be retained. A number of proposed improvements are being

suggested in the D.R. zoned area of the property. These include a lower school building, dining hall, and a gymnasium. Additionally, the requested Plan suggests relocation of the camp bunkhouses to the R.C. 4 zoned portion of the property, with the installation of athletic fields for recreation within the R.C. 4 zoned area of the property.

This case was originally heard before the Zoning Commissioner for Baltimore County. The Zoning Commissioner subsequently approved the amendment of the approved plans by an "Opinion and Order" dated September 19, 2001 concerning the property use as a school and a synagogue. The approval was allowed on Beth Tfiloh's abandonment of a special exception for a camp. In the Order, the Zoning Commissioner approved the length of the lower school building, which, because of its length of 271 feet, necessitated a modification of residential standards as required under the Comprehensive Manual of Development Policies as to building length. The Zoning Commissioner also determined that the language of Beth Tfiloh's Petition did not properly request a waiver of certain public works, to which the Department of Public Works had already agreed. Because of the procedural deficiency in the Petition language, the Zoning Commissioner felt compelled to deny the request for a waiver.

Also present in his decision was a declination by the Zoning Commissioner to approve the athletic field and bunkhouses as "accessory" uses to the school and synagogue in the R.C. 4 zoned areas of the property. Under the formal "Notice of Appeal and Petition on Appeal" dated October 19, 2001, that is the only isolated matter which is being appealed to this Board by Beth Tfiloh.

In a separate matter, Case No. CBA-01-136 (the DRC appeal), the Protestants are appealing a recommendation rendered by the Development Review Committee (DRC) on June 25, 2001 formalized by letter dated June 29, 2001 under the signature of Arnold Jablon, the Director of the Department of Permits & Development Management, approving a requested

exemption on the Plan submitted to the Zoning Commissioner in Case No. 01-468-SPH. The limited exemption from the development review and approval process under BCC § 26-171(a)(2) was for a "lot of record." The Protestants appealed the approval of Mr. Jablon's letter to this Board.

Public Hearing on March 26, 2002

The Board heard the two cases on appeal in public session on March 26, 2002. Prior to the hearing, the Board had been supplied with a Memorandum filed by People's Counsel on February 8, 2002 and a Response by Beth Tfiloh to that Memorandum filed on March 1, 2002. Additionally, on March 15, 2002, another Memorandum was filed on behalf of the Glyndon Community Association and individual Protestants. The Board had the benefit of these various memoranda and responses prior to the public hearing date. In addition to their notes taken on the day of the hearing, the Board has had the benefit of a copy of the complete transcript supplied by Counsel for the Protestants.

At the offset of the hearing, Mr. Barhight acknowledged that Beth Tfiloh had the burden in the two cases pending, and that there would be a co-mingling of the fact issues in both cases to assist in the employment of the evidence to the Board. Mr. Barhight's opening statement consisted of a description of the property and current uses. The essential and only position on appeal from the special hearing was "whether that portion of the proposed athletic field situated in the R.C. 4 zoned portion of the property is a legal accessory use under the Baltimore County Zoning Regulations"; and, second, "whether the bunks which are situated and proposed to be situated, because we want to move a couple of them around, in the R.C. 4 zone portion of the property, are permitted accessory uses under the Baltimore County Zoning Regulations." [T 3/26/02, p 10]

The Protestants did not file an appeal relative to the Zoning Commissioner's Order. Mr. Carson stated that the principal issue was that you cannot have an accessory use in the R.C. 4 zone for either athletic fields or for camp use where the principal use was not permitted in the R.C. 4 zone. As to the (A)(2) exemption, it was to be the position of the Protestants that if a governmental agency (such as the DRC) approves a plat that contains an error, that approval is illegal and the exemption providing for same should be remanded back to the DRC for reconsideration in light of the Protestants' consensus that the accessory uses were not permitted.

Mr. Stephen Warfield was called as the first witness for the Petitioner. Petitioner's Exhibit 1 was Mr. Warfield's resume. He was accepted without objection as an expert witness in the field of civil engineering, land development and zoning. Mr. Warfield had prepared the Plan filed to accompany the Petition for Special Hearing (Petitioner's Exhibit 2). His testimony encompassed a description of the property and existing structures. [T 3/26/02, p 24-27] Petitioner's Exhibit 3 was admitted as a deed to the property. That deed reflects the site consisting of 44.07 +/- acres, with a public dedication of 2.07 +/- acres and a net acreage of 42 +/- acres. Only one lot exists on the property. Mr. Warfield stated that the property existed as a "lot of record." There has been no subdivision. The current Plan also calls for no subdivision. Mr. Warfield opined concerning his application to the DRC for a (A)(2) exemption to the subject Plan (Petitioner's Exhibit 4). The approval by Mr. Jablon as to the exemption was admitted as Petitioner's Exhibit 5.

On cross-examination to Mr. Carson's questioning, Mr. Warfield opined that prior to 1998 the property had been used as a diabetic camp by the Maryland Diabetes Association. The present structure on the R.C. 4 area consisted of bunkhouses and possibly one pavilion, used for summer camp purposes. The R.C. 4 area was principally a wooded area with a stream that branched out into two sections. A copy of the Deed Mr. Warfield reviewed and relied upon in

identifying the boundary of the property was reviewed and previously identified as Petitioner's Exhibit 3. Examining this exhibit, Mr. Warfield restated his opinion that the lot had not been subdivided. The only changes to the lot were the public right-of-ways and the public stormwater management area that had been delineated. Those factors in his opinion did not alter the status of the property as a lot of record. [T 3/26/02 p 28]

Mr. Barhight and Mr. Carson agreed to accept a copy of the DRC application form as Petitioner's Exhibit 4. The letter granting the exemption was admitted as Petitioner's Exhibit 5. Mr. Warfield acknowledged that there were no camps or any physical connection to any of the bunkhouses to the lower proposed school building, or the proposed dining hall for the gymnasium. He also acknowledged that the three prior zoning cases had resolved the granting of the special exception to use the property for a "camp use" within the R.C. 4 and D.R. 1 zones. The school existed as a matter of right. He also opined in his letter to the DRC that no mention had been made of the Beth Tfiloh intention to abandon this special exception. [T 3/26/02, p 35] He stated that the DRC was not advised that there was to be an abandonment of the special exception. The first time such knowledge became evident in a public forum was one month later during the Zoning Commissioner's hearing in July, that there was to be such an abandonment. [T 3/26/02, p 36]

On re-direct, Mr. Barhight focused on the bunks being situated in a wooded area, and the proposed athletic fields.

Mr. Timothy Madden was the next witness called by Mr. Barhight. Mr. Madden's C.V. was admitted as Petitioner's Exhibit 6. He was accepted as a land expert in planning and zoning in Baltimore County. Mr. Carson was concerned and expressed his concerns with the Board that the witness did not have sufficient credibility nor was it permissible to ask him what the ultimate question was in this case concerning the accessory issue. The Board agreed to hear Mr. Madden

and give whatever appropriate weight deemed appropriate by the Board members. Mr. Madden was familiar with the Beth Tfiloh Congregation and the Plan that had been requested by the Petitioner. He had visited the property on a number of occasions. He described the property. He agreed with the prior characterizations of Mr. Warfield. He was familiar with § 101 of the *Baltimore County Zoning Regulations* (BCZR), the R.C. zones and § 1A03.03.9, the use regulations in the R.C. zone. He was also familiar with the governing uses permitted as a matter of right, and the accessory uses in the R.C. zone as a matter of right. He opined that the BCZR prescribed uses or structures as a matter of right in the R.C. 4 zone (T 3/26/02, p 42). He also stated that a portion of the bunks and the majority of the athletic fields were in the R.C. 4 zone. He further opined that "(1) the property is all one lot of record; and (2) the bunks and majority of the proposed athletic fields are situated in R.C. 4 zone. They are situated on the same lot as the proposed lower school and synagogue." [p 43]

Mr. Carson raised an objection at that point. [T, 3/26/02, pp 43-46] The Board took the position that ultimately it was going to be the responsibility of the Board to determine the accessory use question. It was Mr. Madden's position that the athletic fields are customarily incidental to the school use and synagogue and on the same lot. [T, 3/26/02, p 47] In essence Mr. Madden opined that you would find athletic fields on the same lots as uses in this case; i.e., a synagogue and a lower school. [T. 3/26/02, p 48] The athletic fields were subordinate in area, extent and purpose to the principal uses of the school and the synagogue on this property. Mr. Madden indicated that they would not have any purpose unto themselves without the principal use being there and the relationship that was created by them.

On cross-examination, Mr. Madden acknowledged that the property had been rezoned R.C. 4 in the latter part of 2000 and that it had been rezoned at the request of some of the Protestants and in accordance with the Master Plan and the R.C. 4 provisions, when created.

It had previously been zoned R.C. 5. The front portion was also downzoned from D.R. 2 to D.R. 1 during the latter part of the year 2000. The proposed lower school, dining hall and gymnasium were also being proposed since Beth Tfiloh has made it known that it would be moving its lower school to the Glyndon campus. It was Mr. Madden's position that, while the athletic fields have not been used in any way that was accessory or incident to any buildings on the property in a formal sense as reflected in the Plan, "the use area is an area available for accessory use for the primary use on the site today....The church is a primary use, principal use in place...today on the site." [T, 3/26/02, p 54] "The principal synagogue of Beth Tfiloh was located in Pikesville with approximately 1,300 families as its congregation...This was a satellite facility for the congregation...with 80 to 90 persons meeting for Sabbath services." [T, 3/26/02, p 55] Mr. Madden acknowledged that, until 1998 or 1999, the bunkhouses had been used by the Maryland Diabetic Association. In the year 2000, Beth Tfiloh had approximately 30 to 35 campers attend a small summer camp, continuing also into 2001. It was Mr. Madden's position that the bunkhouses had been used as an accessory use to the camp facility that have been standing on the site, and that bunkhouses were accessory use to camp use. The Maryland Diabetic Association employed the principal use of the site as a diabetic camp. It was in the year 2000/2001 that Beth Tfiloh operated the camp in the summer months, with some religious programming extending beyond that time.

Mr. Donald Rascoe next testified as to the DRC recommendations. He is Development Manager within the Department of Permits & Development Management (DPDM), responsible for issues that relate to land development. He explained the functions of the DRC, and the procedures employed when exemptions are filed for under a (A)(2) exemption. The request for the exemption was on the June 25, 2001 agenda of the DRC as Item 1. The standard letter of approval was admitted as Petitioner's 5A dated June 29, 2001. The approval was granted based

on "the evidence that was presented to us at that time to support the request....No one objected to that interpretation." [T, 3/26/02, pp 61-62] Essentially, Mr. Rascoe testified that if a "single lot... one piece of property is being considered the development, then the applicant has met the requirement if it is a single lot for that use that is allowed. If zoning relief is required, we would certainly require or table our determination until the zoning relief was acquired or granted." [T, 3/26/02, p 62]

On cross-examination, Mr. Rascoe acknowledged that the DRC was aware of the previous zoning cases involving the granting of the special exception and that the owner had filed for a special hearing to upgrade the current special exception and a desire to proceed with a new DRC submittal. (Petitioner's Exhibit 4 and 5) Mr. Rascoe opined that the Plan submitted was only a site plan...and an exemption does not require a development plan under the terms of the code. The site plan would proceed directly to a building permit. Mr. Warfield's letter referenced a proposed two story, 46,500 sq. ft. lower school, gymnasium, dining hall, and camp buildings, reconfiguration and expansion of existing parking areas. It did not make any reference to ball fields as Mr. Rascoe opined that was not an issue before the DRC. [p 67] Mr. Rascoe also opined that the Petitioner never, to his knowledge, acknowledged that Beth Tfiloh intended to abandon the camp special exception request. Mr. Carson posed questions concerning public involvement relative to the issue and proposals made by Beth Tfiloh. Petitioner's Exhibit 7, a decision by the Baltimore County Board of Appeals, was entered into evidence over Mr. Carson's objections, relating to a decision that involved an "(A)(2) exemption for a plan involving a new enlarged synagogue in the R.C. 4 portion of the property in which the Board reversed a decision of the Director of Permits and Development Management and reflected that the (A)(2) exemption should have been granted. Mr. Barhight rested his case in chief.

Mr. Bernard Suffel was called as the first witness for the Protestants. He is the executive director of Beth Tfiloh Congregation. He stated that the congregation acquired the property consisting of 44 +/- acres in 1998, which was previously owned by the Maryland Diabetes Association and run as Camp Glyndon for diabetic children. The camp property was used by approximately 150 campers and ran for 2 or 3 summer weeks. The diabetic association continued to run the camp for about one year after Beth Tfiloh purchased the site. In 2000, Beth Tfiloh ran a small camp, in 2000/2001, with about 30 campers and open enrollment. Beth Tfiloh uses the site now for pre-school purposes on the site and a small synagogue used on the Sabbath with approximately 60 to 80 persons on the Sabbath. It is the intention of Beth Tfiloh to move its lower school onto the campus, grades pre-kindergarten, kindergarten, grades 1 to 5, from 350 to 370 students, 18-12 students per class. The congregation has not made any decisions to relocate its present synagogue with approximately 1,300 families to the Glyndon property. Mr. Suffel acknowledged that it was the intention of Beth Tfiloh to continue to operate the small camp.

Mr. Alfred W. Barry III also testified. He was accepted as an expert in planning and zoning. Protestant's Exhibit #1 was submitted. Mr. Barry was familiar with the ECZR; was familiar with Camp Glyndon as it existed up to 1998 through the present time. He had visited the property. Mr. Barry expressed his opinion concerning whether having a camp or other use in the R.C. 4 zone is a permitted accessory use under the zoning regulations. He opined that such an interpretation "sets a rather dramatic threshold change in the county, so that any need to add a number of uses could be expanded from a permitted use in one zone in another zone where that use was not permitted but would require a separate exception." [T, 3/26/02, pp 88-89] Mr. Barry stated that in his opinion "(this would) allow unbridled expansion of commercial or high density residential use, or an industrial use even, into adjoining properties simply by this type of

decision.” [T 3/26/02, p 90] He also stated that “(it) would lead to much uncertainty as on the part of any property owners that live either adjacent to or nearby these other zoning classifications.” [T 3/26/02, p 91] Mr. Barry was also questioned concerning the loop road specified on the plans in light of the Zoning Commissioner’s ruling that the loop road could be maintained and utilized for all purposes incidental to the use of the subject property and would provide access to adjacent properties. Mr. Barry opined that driveways are not special uses in the sense that we were talking about the use of the athletic fields.

Application of the Law to the Facts

The subject property has been the topic of prior land use issues. In Case No. 65-389-X, a special exception was granted the Maryland Diabetes Association, Inc., to operate and maintain a summer camp for diabetic children on the property, to be known as Camp Glyndon. Subsequently in Case No. 94-27-SPHA, an amendment of the previously granted special exception was requested to allow an expansion of the multi-purpose building on the property. That request was granted subject to six conditions that sought to restrict future expansion of the buildings. Without comment relative to the action of the DRC and approval of the limited exemption under § 26-171(A)(2), Baltimore County Code, the Petitioner’s special hearing was held before the Zoning Commissioner on July 18, 2001. At that time, the Petitioner dismissed the “amendments” which essentially resulted in an abandonment of the previously granted special exception. It was the position of the Petitioner that, with the downsizing of the previously D.R. 2 to D.R. 1 and the R.C. 5 portion of the property to R.C. 4 (done at the request of the Glyndon Community), that the current D.R. 1 zoning legally permitted the Petitioner to use the land for the proposed school and synagogue; further, that the Petitioner was allowed to operate and maintain, on the D.R. 1 and R. C. 4 sections of the property, accessory uses as reflected on Petitioner’s Exhibits 4 and 5.

At the preliminary stage of the hearing, the Protestants sought to broaden the scope of the appeal. It was their argument that an Appellant cannot limit the scope of an appeal as was done quite specifically by the Petitioner in this case. The only issue appealed to this Board is referenced in Mr. Barhight's letter of October 19, 2001 (Petitioner's Exhibit 1). It is limited to the findings that "the existing camp buildings and proposed athletic fields are not accessory uses to the school or synagogue and therefore any activity associated therewith shall not be permitted on that portion of the property zoned R.C. 4." No other appeal of the Zoning Commissioner's Order is mentioned. Clearly the Protestants did not appeal any of the matters. The statutory procedure for filing an appeal has long since passed. Those conditions not appealed by any "aggrieved" party are indeed finalized and they are in fact law. It is obvious to the Board that the Zoning Commissioner's Order contained five very specific decisions. Three were favorable to the Petitioner. Two were adverse. The Petitioner, being aggrieved, could have appealed from those two adverse conditions, but he chose to appeal only one. The Protestants, likewise, could have appealed those portions of the Zoning Commissioner's Order which were favorable to the Petitioner on the basis of being "aggrieved." They chose not to do so. This Board hears such cases under the Baltimore County Charter, § 603, on a *de novo* basis. The County Council has legislated the authority of this Board under § 26-132 of the *Baltimore County Code*. It references "any person...aggrieved...by any decision or order of the zoning commissioner shall have the right to appeal therefore to the county board of appeal." The Board concurs with the Appellant that since the Protestants did not take an appeal of any matter, those aspects of the Zoning Commissioner's Order are, by law, final; only the issues raised by Beth Tfiloh are before this Board.

The essential question posed in this case is one of interpretation of the BCZR, more specifically, § 101 which defines accessory uses and structures and its application to the R.C. 4

zones under § BCZR 1A03.3.9. Beth Tfiloh desires to relocate bunkhouses from the D.R. 1 portion of the property to the R.C. 4 area; and also to construct athletic fields on the R.C. 4 portion. Section 101 defines an accessory use as follows:

A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served....

BCZR 1A03.3.A.9 specifies that "accessory uses or structures" are permitted as a matter of right in the R.C. 4 zone.

There is no question but that Beth Tfiloh has every legal right to use that portion of its property that is zoned D.R. 1 for the proposed private school and religious purposes that are permitted by right in the D.R. 1 zone under the BCZR. However, the essential question, which is a legal interpretative one, is whether or not Beth Tfiloh, on the single lot of record, can have activities on the R.C. 4 zoned portion of this tract which are incidental or accessory to the permitted uses of right in the D.R. 1 portion of the tract. Beth Tfiloh alleges that BCZR 1A03.3.A.9, "that accessory uses or structures" are permitted as a matter of right in the R.C. 4 zone. Permitted accessory uses in the R.C. 4 zone include, but are not limited to, "swimming pools, tennis courts...or other accessory structures or uses," and "parking spaces." (Section 1A03.3.A.9(e) through (f)). Therefore, Beth Tfiloh argues that, when one refers to the definition of accessory uses, and the R.C. 4 zoning regulations that permit such uses by right without any further qualification, that settles the issue of camp bunkhouses and athletic fields that are permitted by right in the R.C. 4. Essentially, if the proposed uses suggested by Beth Tfiloh (bunkhouses and athletic fields) qualify as "accessory uses" under § 101, then the R.C. 4 zoning regulations permit those by right under § 1A03.3.A.9(e) through (f); and no other factors need be taken into consideration.

The Protestants and Office of People's Counsel take a different view. They have no disagreement that Beth Tfiloh has a right to construct and maintain athletic fields and facilities as an accessory use to its school located in the D.R. 1 zoned property. However, they contest the right of Beth Tfiloh to use the D.R. 1 property as a camp accessory to its school (even assuming that the camp could satisfy the definition of "accessory uses").

They argue that Article 1B of the BCZR deals with Density Residential Zones, which includes the D.R. 1 zone. Section 1B01.1.A specifies 19 uses permitted as of right. These include, in subpart (3), churches or other buildings for religious worship and in subpart (14), public and private schools. They point out that § 1B01.1.A specifically states those 19 "uses only are permitted as of right in D.R. zones...." Subpart (18) describes and permits "accessory uses and buildings other than those permitted by special exception." (Emphasis added.)

Consequently, the argument is presented by the Protestants that, by the express terms of the BCZR, a use permitted by special exception in the D.R. 1 zone may not be an accessory use (unless permitted by special exception).

Further, it is argued that § 1B01.1.C also establishes 28 uses that are permitted by special exception in D.R. zones; and those 28 uses are only "permitted by special exception in all D.R. zones." Subpart (1) describes camps, including day camps. Further, they present the argument that § 1A03.3 pertains to the R.C. 4 zone. Section 1A.03.3.A allows 10 uses as a matter of right. Although subpart (4) does permit public schools, neither private schools, churches, or other buildings for religious worship or camps are permitted as a matter of right in the R.C. 4 zone. Section 1A03.3.B enumerates 22 uses permitted by special exception. Section 1B01.C(1) only permits camps as a special exception, and since Beth Tfiloh has abandoned its previous special exception, it, therefore, may not use any portion of the D.R. 1 zoned property for a camp because the special exception, previously granted, has been abandoned. The Board has reviewed the

transcript provided and the briefs submitted by the various parties. There is obviously conflict on the legal interpretation of the BCZR. There is no question but that the Beth Tfiloh position, that it may use the R.C. 4 zoned property for accessory uses to a principal use or building in the D.R. 1 zone, is unique in its construction of the BCZR. A reading of § 101, and the application of that definition to the R.C. 4 zone under § 1A03.3.A.9 would seem, without further inquiry, to suggest that such uses are permitted by right under § 1A03.3.A.9 (e) through (f). The Board has no difficulty, after review of the transcript, in holding that the bunkhouses and athletic fields and facilities do qualify as "accessory uses" to the principal uses in the D.R. 1 property. Counsel for Beth Tfiloh is correct that, in some instances, the County Council has determined that in certain zones accessory uses are permitted (1) as long as the uses meet the definition of "accessory" under § 101; and (2) that they also meet the additional qualifications that they are "normally and customarily incidental to any permitted principal uses" in the zone.

Beth Tfiloh questions why the County Council decided to include specific language in the regulation of the zones limiting the accessory uses to those serving permitted principal uses only and omitted the same language from other zones such as the R.C. 2, R.C. 3, R.C. 4 and R.C. 5 zones, or the B.L., B.M. or M.R. zones. The Protestants argued, just as convincingly, that the BCZR, relative to the R.C. 4 zone, provides that the only use that can be made of land within that zone are the uses permitted as of right in § 1A03.3.A and those permitted by special exception in § 1A03.3.B. They further suggest that accessory uses or structures that are permitted as a matter of right in subpart (9) of § 1A03.3.A are obviously uses or structures which are accessory to one of the nine principal uses or uses or structures in the R.C. 4 zone. They allege that there is absolutely nothing in the BCZR that either suggests or states that an accessory use may be permitted which is accessory to a principal use or structure in a D.R. zone (Article 1B), in an elevator apartment (Article 2), or an office zone (Article 202 et seq) or any business zone (215 et seq) or any manufacturing zone (204 et seq).

It is obvious to the Board that the County Council clearly intended that the property should be protected in accordance with the strict requirements of the resource conservation zones. To that end, the legislative body of Baltimore County wisely dictated those principal uses that are permitted by right and by special exception [BCZR 102.1 – *Kowalski v. Lamar*, 25 Md.App. 493 (1973)] Section 1A03.3 pertains to the R.C. 4 zone. The BCZR relative to the R.C. 4 zone provides that the only uses that can be made of land with that zone are uses permitted as of right in § 1A03.3.A and those permitted as special exceptions in § 1A03.3.B. While subpart (4) does allow for public schools, neither private schools, churches, nor other buildings for religious worship or camps are permitted in the R.C. 4 zone as a matter of right. Section 1A03.3.B enumerates 22 uses that are allowed by special exception. Subpart (1) describes camps, and subpart (4) allows public schools. Additionally, Section 1A.00.5, which applies exclusively to resource conservation zones, states as follows:

Application to tract divided by zone boundary. Whenever a single tract is divided by zone boundaries so that portions of such a tract lie within R.C. zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and for the purpose of these regulations, shall be treated as separate parcels.

It is obvious to this Board that, where a tract is divided into varying R.C. zones, each part must be regulated by its own requirement relative to the number of dwellings or units that are permitted. It is also obvious to this Board that, in considering the protection of the watershed areas, the County Council wisely intended to provide that any portion of property situated in an R.C. zone would be governed by the requirements of that R.C. zone as specified in the BCZR. This viewpoint is consistent with Maryland and out-of-state cases that had issues dealing with tracts that were split-zoned. [Reference *Alvani v. Dickson*, 365 Md. 95 (2001) and also cases referenced in Commissioner's Schmidt's opinion and order relative to *Moss v. Town of Winchester*, 311 NE.2 555 (1974), *Town of Kittery v. White, et al*, 435 A.2d 405 (ME 1981)]

This Board takes judicial notice of Commissioner Schmidt's rationale in rejection of Beth Tfiloh's theory concerning the proposed activities of Beth Tfiloh on the R.C. 4 zoned portion of the tract that are incidental or accessory to those permitted uses of right on the D.R. 1 zoned portion of the tract. If

one were to accept the theory proposed by Beth Tfiloh, it would follow that the entire structure of zoning law in Baltimore County would be in serious jeopardy to quote more specifically from Commissioner Schmidt's opinion, which is well reasoned and constructed:

"To follow the Petitioner's conclusion, this case could lead to an observed result. One can imagine, for example, a property owner with a significantly sized parcel containing a small portion of commercial zoning adjacent to road frontage and noncommercial zoning to the rear. Following the Petitioner's accessory use argument, that property owner might establish automobile sales operation on the front side of the site, with the sales building in the commercial zone. The storage or parking of 1,000 vehicles in the rear, noncommercial zoned portion of the lot could be argued as permitted as accessory to the primary use on the commercial zone. I [Commissioner Schmidt] do not believe that the Council intended such a result. The essential purpose of zoning is to regulate and control land use. The uses proposed by Beth Tfiloh on the R.C. 4 zoned portion of the property are simply not allowed. When all is said and done, the applicant in this case seeks a result that undermines the essential theory of zoning.

This Board takes a similar view. For this Board to permit such an illogical construction would permit one owning significant acreage in an R.C. zone to expand his or her operation into that area from any other adjacent zone so long as the test for accessory use or structure set forth in § 101 was met. We agree with the comments made in Protestants' Brief that "this could permit, for example, the expansion of a commercial or manufacturing use into an R.C. zone, including those R.C. zones which are within the Critical Area." Merely to state the proposition is to refute it. Clearly the Board must hold that § 1A.00.5 specifically provides, where a tract is divided into different R.C. zones, that each part is to be regulated by its own requirements with respect to the number of dwellings or density units permitted. We agree that this section clearly provides the Board with the conclusion that it was the legislative intent of the County Council that any portion of property zoned in a resource conservation zone would be governed by the specific requirements of that R.C. zone as set forth in the BCZR as contrasted with being an accessory use amalgamated into an adjacent zone.

For the reasons so stated, the Board will concur with Commissioner Schmidt's decision on the issue of the scope of accessory uses for athletic fields and camp use, and, from the testimony and evidence presented at hearing, concludes that the existing camp buildings and proposed athletic fields are not accessory uses to the school and synagogue.

As to the DRC approval issue, the Board, in consideration of the testimony and evidence, concludes that the members of the DRC acted appropriately in approving the (A)(2) exemption. Clearly, the subject is, without dispute, a "Lot of Record" recorded among the land records of Baltimore County by deed in 1946 (Petitioner's Exhibit 3). There has been no change on the property, except for road dedications and stormwater management reservations. The plan submitted did not call for any further subdivision. The property existing as a "Lot of Record" again, clearly meets the requirement for such an exemption. The Plan that was submitted and reviewed by the DRC membership, along with the Petition for Special Hearing to amend previously approved zoning plans, illustrated from a geographic standpoint the conversion of the property from a predominantly recreation use (camp) to an educational (lower school) and religious (synagogue) use.

At the DRC hearing, no mention was made that Beth Tfiloh intended to abandon its special exception for a camp. The facts which the DRC had before it were sufficient to grant the exemption. If the use was permitted based on the facts presented to the DRC, the approval was in accordance with the law. The decision on the part of Beth Tfiloh to abandon its special exception for a camp at the latter Zoning Commissioner's hearing would have no impact on the decision already made by the DRC to grant the exemption.

The Board will therefore affirm the decision of the DRC in granting the exemption, and concludes that Beth Tfiloh has complied with the requirements for an (A)(2) limited exemption.

ORDER

THEREFORE, IT IS THIS 24th day of July, 2002 by the
County Board of Appeals of Baltimore County

ORDERED that the existing camp buildings and proposed athletic fields are not accessory uses to the school and synagogue; that Petitioner may not develop the proposed athletic fields on the R.C. 4 zoned portion of the subject site, and likewise may not use the existing buildings in association with the school or synagogue; and, therefore, any activities

associated therewith shall not be permitted on that portion of the property zoned R.C. 4; and
it is further

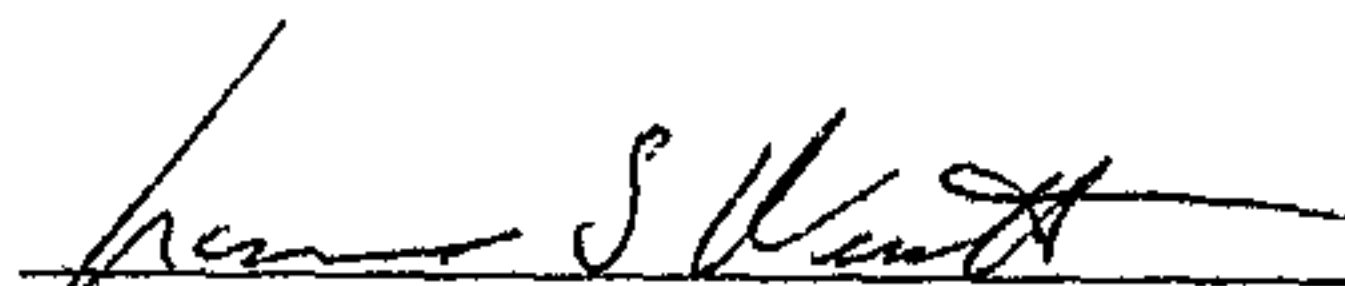
ORDERED that the decision of the DRC in Case No. 01-136 in which the requested limited
exemption was approved is **AFFIRMED**; and it is further

ORDERED that the limited exemption requested in under § 26-171(A)(2) of the *Baltimore*
County Code be and the same is **APPROVED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-
201 through Rule 7-210 of the Maryland Rules of Procedure.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Charles L. Marks, Chairman


Lawrence S. Wescott


C. Lynn Barranger

4/29/02

RE: PETITION FOR SPECIAL HEARING
407 Central Avenue, NE/S Central Ave,
250' NW of c/l Hunting Horn Cir
4th Election District, 3rd Councilmanic

Beth Tfiloh Congregation of Baltimore City,
Inc.
Petitioner

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY

* Case Nos. 01-468-SPH
* CBA-01-118
* CBA-01-136

02 APR 29 * PM 11:57

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PEOPLE'S COUNSEL'S POST-HEARING MEMORANDUM

Introduction

In this unusual case, Petitioner (Beth Tfiloh) has advanced a novel theory about accessory uses which, taken to its conclusion, threatens to collapse the structure of zoning law. The crossover of an established zoning boundary has implications far beyond the present case. For these reasons, it is important to think logically and not be entranced by the superficial attraction of a private school's promotion of such amenities as athletic fields and other recreational facilities.

1. Question Presented; The Nature of the Case: A Legal Issue

The material facts are basic and undisputed. There is a split-zone. The proposed private school and/or synagogue uses are permitted as principal uses in the D.R. 1 (Density Residential) zone, but not in the R.C. 4 (Watershed Protection) zone. Beth Tfiloh proposes to locate athletic fields, structures, and/or other facilities in the R.C. 4

zone to serve the school or synagogue in the adjacent D.R. 1 zone. The question presented is:

Does the R.C. 4 zone allow such athletic fields, structures and/or other facilities as “accessory uses” to serve principal uses prohibited in the subject zone on the theory that they may connect to principal uses permitted in the adjacent zone, here D.R. 1?

In the spectrum of zoning cases, some present purely or primarily factual issues, others legal, and others a mixture. The striking thing about this case is that it is situated at the purely legal end of the spectrum.

It is reminiscent of People’s Counsel v. Maryland Marine Mfg. Co., 316 Md. 491 (1989). There, the question was whether the business zone mapped on waterfront property extended into the navigable waters of Frog Mortar Creek to allow a restaurant on pilings. We argued successfully that they did not so extend. The Court treated it as a purely legal question based on simple, undisputed facts.

Whether a principal use permitted in the D.R. 1 zone can stretch across the zone line to allow as “accessory” a use unrelated to a principal permitted use in the adjoining zone is a legal question on a par with the question in Maryland Marine. As explained in our pre-hearing memorandum, and here, there is no authority to stretch the D.R. 1 zone and subvert the R.C. 4 zone in the way Petitioner proposes.

II. The 2000 Comprehensive Zoning Map; Implications of the Present Case; Disguised Rezoning

The 2000 comprehensive zoning map process (CZMP) is instructive. The County Council addressed this property as a specific issue. It made a deliberate decision both to reduce the zoning intensity on this sizable property and split the zoning classification.

If the Council wished to allow a private school with associated uses on the entire property, it would have zoned the entire property D.R. 1. By designating a section of the property R.C. 4, the Council sent a clear message that this portion of the property should be protected and used in accordance with the applicable regulations of the zone. See Security Mortgage Co. v. Baltimore County, 104 Md.App. 234 (1995) for a discussion of the background of the Resource Conservation zones generally and the R.C. 4 zone particularly.

Allowance of an “accessory use” not associated with a principal use permitted in the R.C. 4 zone would be tantamount to disguised rezoning. This would precipitate a breakdown of zoning boundaries in all zones. On any split-zoned property, a property owner could enlarge the core primary use in the more intense zone and cross the zoning line to place “accessory uses” related to principal uses forbidden in that more restrictive zone.

III. Structure of Zoning; Transfer of Uses

For each zone, the law enumerates principal uses permitted by right and by special exception. BCZR 102.1; Kowalski v. Lamar, 25 Md.App. 493 (1975). Kowalski is also helpful because of its discussion of accessory uses. Judge Davidson there explained that an accessory use cannot properly exist on a property unless associated with a principal use in the zone. That is to say, accessory uses are impermissible by themselves, or as freestanding uses.

In Baltimore County, there must be explicit authority for any crossover or mixed uses. As to accessory uses, the obvious example is a use permit – subject to special

exception standards – for commercial parking in a residential zone. BCZR 409.8. As to principal uses, zoning laws sometimes provide for mixed uses under the planned unit development concept. These amount to explicit deviations from the fundamental integrity of use limitations in each zone. In general, transfer of uses is not allowed. If it were allowed, there be no such thing as the “Euclidean” zone structure described in the landmark Supreme Court case, Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).

The Resource Conservation Zone law goes further and states explicitly that each R.C. zone within a tract divided by a zone boundary shall be treated as a separate parcel, so that it is not even permissible to average density across the zone line. BCZR 1A00.5. The same principle holds for D.R. zoned tracts divided by a zone boundary, with the exception of D.R. 10.5, D.R. 16, and nonresidential zones allowing residential development. BCZR 1B01.2.A.2. In general, transfer of density is not allowed in the absence of specific authorization. West Montgomery Citizens v. MNCP&P Comm’n., 309 Md. 183 (1987).

IV. Enumeration of Accessory Uses in Various Zoning Classifications

Beth Tfiloh cites the enumeration of accessory uses in the R.C. 4 zone and compares it with the enumeration of different accessory uses in other zones. But this does not authorize an accessory use independent of a permitted principal use.

The Kowalski case illustrates that an accessory use may not exist on its own. It follows that it may not serve a principal use which is impermissible in the zone, whether within or across the zoning boundary.

The differentiation in the enumeration of accessory uses in various zones functions to identify appropriate accessory uses in the respective zones. It is not intended to effect a conjunction with impermissible principal uses.

V. Expert Evidence; Conclusory Opinions

Expert planning and zoning testimony has a looser, more subjective quality than expert testimony in most other areas of the law. Planning is not a science. It is primarily a mixture of art and opinion as to what fits in an area. Anyone with a background in engineering, landscape architecture, land planning and development can present as an “expert” in zoning and become facile in giving opinions on any matter. Usually, experts are on the side of property owners interested in resale or development. There are no hard and fast rules. Judge Luttig’s observations for the U.S. Court of Appeals in AT&T Wireless v. City Council of Virginia Beach, 155 F.3d 423 (4th Cir. 1998) are apt here:

In all cases of this sort, those seeking to build will come armed with exhibits, experts, and evaluations. Appellees, by urging us to hold that such a predictable barrage mandates that local governments approve applications, effectively demand that we interpret the Act so as always to thwart average, nonexpert citizens; that is, to thwart democracy.

To guard against routine acceptance of such testimony, appellate courts hold that expert evidence is not entitled to weight unless based on strong substantial supporting facts and sound reasoning. People’s Counsel v. Beachwood, 107 Md.App. 627, 649-51 (1995). Judge Moylan wrote at page 650:

A self-evident reason for rejecting as an effective catalyst an expert opinion that a mistake was made is the fact that the opinion is merely conclusory or is, at best, quasi-conclusory.

Furthermore, "... the opinion of an expert is of little or no weight in the absence of strong supporting facts..." *Ibid.* Judge Moylan went on:

There have been numerous occasions when the Court of Appeals has held that the testimony of expert witnesses that there had been a mistake was not sufficient to generate a fairly debatable issue with respect to mistake. On a number of occasions reclassifications by the [Baltimore] County Board of Appeals, finding a mistake on the basis of such opinions, were overturned. Pahl v. County Board of Appeals, 237 Md. 294 (1965)...; Brenbrook Const. Co. v. Dahne, 254 Md. 443 (1969)...; Creswell v. Baltimore Aviation, 257 Md. 712 (1970)...; Stratakis v. Beauchamp, 268 Md. 643... (1970). On another occasion, it was a reclassification by the Zoning Commissioner of Baltimore County based on an unsupported expert opinion that was held to have been without the benefit of substantial evidence of mistake. Agneslane, Inc. v. Lucas, 247 Md. 612 (1967).

There may be occasions where expert testimony is helpful. A good example would be the use of an expert who has specialized knowledge legislative history and/or administrative practice. See Marzullo v. Kahl, 366 Md. 158 (2001).

In the present case, there is no detailed legislative history. Nor is there any particular administrative policy or practice of which we are aware. The absence of historic support for Beth Tfiloh's position is a factor against it.

The main point, however, is that this is an ultimate legal interpretation issue which goes to the heart of zoning law. It involves a consideration of language in the context of legislative purpose. It also involves a review of the case law.

This is not a case to be decided on the basis of testimony of landscape architects, such as Timothy Madden, or even planners such as Alfred Barry. All they are doing in this case is making surrogate legal arguments. Nothing they can say in this case can alter the correct legal analysis.

If the CBA nevertheless decides to weigh expert testimony in deliberation of the merits, then the record reflects Barry has much the better of the argument. His reasoning is on target. It accords with the legal analysis in our memorandum.

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April, 2002, a copy of the foregoing People's Counsel's Post-Hearing Memorandum was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner, to Robert J. Carson, Esq., 345 Green Street, Havre de Grace, MD 21078, and Thomas F. Corcoran, Esq., Baxter, Baker, Sidle, 120 E. Baltimore Street, Suite 2100, Baltimore, MD 21202, attorneys for Protestants.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

4/29/02
IN THE MATTER OF:

BETH TFILOH GLYNDON PROPERTY

Consolidated Appeals in:
01-468-SPH (Appeal from Zoning
Commissioner)

CBA-01-136 (Appeal from DRC No.
062501I)

* * * * *

* IN THE

* COUNTY BOARD OF APPEALS

* FOR

* BALTIMORE COUNTY

* Hearing Date: March 26, 2002.

* * * * *

POST HEARING MEMORANDUM OF BETH TFILOH

Beth Tfiloh Congregation of Baltimore City, Inc., ("Beth Tfiloh"), by and through its attorneys, G. Scott Barhight, Dino C. La Fiandra, and Whiteford, Taylor & Preston, LLP, hereby submits its Post Hearing Memorandum, and in support thereof, states:

The above captioned matters both involve Beth Tfiloh's property located at 407 Central Avenue in Glyndon, Maryland. Case No. 01-468-SPH is an appeal from portions of the decision of the Zoning Commissioner in which Beth Tfiloh is the sole Appellant. Case No. CBA 01-136 is an appeal from the decision of the Development Review Committee in which the Glyndon Community Association, Inc., Gary Applestein, Nan Kaestner and Sean O'Connell ("the Protestants") are the Appellants, and in which Beth Tfiloh was the applicant below.

PROCEDURAL HISTORY

Case No. 01-468-SPH (Zoning Appeal)

On or about May 2, 2001, Beth Tfiloh filed its application for special hearing before the Zoning Commissioner requesting "Amendments to the previously approved plans in

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Case No. 65-389-X, Case No. 94-27-SPHA and Case No. IV-455". The plan was marked as Petitioner's Exhibit 2 in these proceedings before the Board and shows the property which contains 43.83 acres, and which is split zoned in the D.R.1, D.R.2, R.C.4, and R.C.5 zones. By virtue of the special exception in Case no. 65-389-X, the property was used as a camp for many years by the Maryland Diabetes Association and the American Diabetes Association, and Beth Tfiloh. The plan accompanying the petition showed several changes to the configuration of the improvements on the property. The existing synagogue within the DR 1 portion of the property was shown to be retained on the property. Among the proposed improvements was a Lower School building, a Dining Hall and a Gym. These proposed improvements were to occur within the D.R. zoned portions of the property. The plan also showed the relocation of the camp bunk houses to the RC 4 zoned portion of the property, and the installation of athletic fields for recreation within the RC 4 zoned portion of the property.

The Zoning Commissioner approved the amendment of the approved plans in his decision dated September 19, 2001 as to the use of the property for a school and synagogue. As part of this approval, the Zoning Commissioner allowed Beth Tfiloh to abandon its special exception for a camp. The Zoning Commissioner also approved the length of the Lower School building, which at 271 feet in length required a modification of residential standards under the Comprehensive Manual of Development Policies as to building length. The Zoning Commissioner also found that the language of Beth Tfiloh's petition failed to properly request a waiver of certain public works, a waiver to which the

Department of Public Works had agreed. Nonetheless, the Zoning Commissioner denied the request for waiver because of the perceived deficiency in the language of the Petition.

The Zoning Commissioner also failed to approve the athletic fields and the bunk houses as accessory uses to the school and synagogue in the RC 4 zoned portion of the property. It is only this aspect of the Zoning Commissioner's order which Beth Tfiloh appeals. See Notice of Appeal and Petition on Appeal, dated October 19, 2001, attached hereto as Exhibit 1.

Case No. CBA 01-136 (DRC Appeal)

On June 6, 2001, Beth Tfiloh submitted a request to the Baltimore County Development Review Committee ("DRC") for a limited exemption from the development review and approval process under Baltimore County Code § 26-171(a)(2), for a "lot of record". The plan accompanying the DRC request was identical to the plan which was submitted to the Zoning Commissioner in Case 01-468-SPH. On June 25, 2001, the DRC met and recommended approval of the requested exemption based on the status of the property as a "lot of record". This recommendation was accepted in a letter from Arnold Jablon, Director of the Department of Permits and Development Management, dated June 29, 2001. The Protestants appealed Mr. Jablon's letter to this Board.

PROCEEDINGS BEFORE THE BOARD OF APPEALS

Case No. 01-468-SPH. (Zoning Appeal)

As noted above, Beth Tfiloh is the sole Appellant in this zoning case. Beth Tfiloh filed a Notice of Appeal and Petition on Appeal which narrowly defined the questions

presented to the Board. The effect of the limited appeal is to present for consideration by the Board only the Zoning Commissioner's conclusions as they regard the accessory use of the RC 4 zoned portion of the property.

Scope of Appeal

As a preliminary matter, the Protestants attempted to widen the scope of the appeal during the hearing on this matter. They assert that an appellant may not limit the scope of an appeal and that a notice of appeal, no matter how worded, brings the whole matter before the appellate forum.

Appeals are, by their nature, limited to the issues raised by the complaining party. In an appeal to the Circuit Court or the higher appellate Court of this State, the Appellant defines the issues for review. See, Md. Rules 7-207 (" . . . concise statement of questions presented for review . . .") and 8-504(a)(3). The same is true before this Board even where the review is on a *de novo* basis. The scope of review, be it "on the record" or *de novo*, must not be confused with the scope of the appeal. *De novo* refers to the weight of the record below and of the decision being reviewed in informing the decision under consideration by the Board. It does not define the scope of the Board's inquiry. As the instant case illustrates, there can be a *de novo* review of a discrete question.

The County Charter, § 603, provides that the scope of review before the Board of Appeals is *de novo*, unless otherwise provided by law. As to matters from which an appeal may be taken, with respect to zoning decisions, the Charter provides that the Board shall have all the functions and powers described in Article 25A of the Maryland

Code, as those functions and powers may be prescribed by legislative act of the County Council. In accordance with the Charter language, the County Council has prescribed the authority of the Board with regard to decisions of the Zoning Commissioner in § 26-132 of the County Code which provides, "Any person . . . aggrieved . . . by any decision or order of the zoning commissioner shall have the right to appeal therefrom to the County Board of Appeals."

In the matter before the Board, the Zoning Commissioner made one order, which contained five discrete decisions (see, Zoning Commissioner Opinion and Order in 01-468-SPH, of record in this case). Three of the five decisions were favorable to Beth Tfiloh, and indeed, because they were favorable, one could not say that Beth Tfiloh was aggrieved by them. Indeed, Beth Tfiloh would not have standing to bring appeals of those matters, and if for some reason it had done so, Beth Tfiloh's appeals of those matters would have been vulnerable to dismissal for lack of jurisdiction or standing under Baltimore County Code § 26-132.

However, two of the five decisions were in fact adverse to Beth Tfiloh, and accordingly, Beth Tfiloh could appeal from either or both of those two decisions. Of those two, Beth Tfiloh appealed only one decision, that which was noted in the Notice of Appeal and the Petition on Appeal regarding the accessory uses.

It should go without saying that, while Beth Tfiloh was indeed not aggrieved by three of the Zoning Commissioner's decisions, the Protestants very well may have been. Whereas Beth Tfiloh's appeal of those three decisions would not have been proper, the

Protestants were free to note their own appeal of any or all of those matters. However, as the Protestants did not take an appeal of any matter, those aspects of the Zoning Commissioner's order are, by law, final.

The Protestants argument as to the scope of the appeal is merely an attempt to distort the issues before the Board. Only the issue raised by Beth Tfiloh is before this Board, which must review the matter on a *de novo* basis.

Merits of the Appeal.

Substantively, Beth Tfiloh's appeal involves an interpretation of Baltimore County Zoning Regulation, § 101, defining "accessory uses and structures", and the application of that definition to the RC 4 zones, under BCZR § 1A03.3.9. As proposed on Petitioner's Exhibit 2, which is the plan to accompany the Petition for Special Hearing, and as discussed by Mr. Warfield, Beth Tfiloh's professional engineer, Beth Tfiloh intends to relocate bunk houses from the DR 1 zoned portion of the property to the RC 4 zoned portion. Beth Tfiloh also sought permission for athletic fields on the RC 4 zoned portion of the property.

The BCZR defines an accessory use as "a use or structure which:

- (a) is customarily incident and subordinate to and serves a principal use or structure;
- (b) is subordinate in area, extent or purpose to the principal use or structure;
- (c) is located on the same lot as the principal use or structure served ; and
- (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served"

BCZR §101.

Mr. Tim Madden, a principal at Morris & Ritchie Associates, was called by Beth Tfiloh and qualified as an expert witness in the field of land planning and zoning. Mr. Madden testified as to the nature and character of the camp and athletic field uses, as they relate to other principal uses on the property. In his opinion, the relocation of the bunk houses involves a camp use as accessory to a school and synagogue, which exist on the property as principal uses. The bunk houses are attributable to the camp use. Beth Tfiloh asserts, and the facts bear out, that the camp use is accessory to the school and synagogue, and the bunk houses are permitted as accessory to the school and synagogue.

With regard to the athletic fields, Mr. Madden testified this use is also attributable to the school and synagogue uses occurring on the same lot, as accessory to the school and synagogue. The athletic fields do not involve any structures.

Mr. Madden testified that a camp is indeed customarily incidental to and supportive of a school or a synagogue. He further testified that a camp as an accessory use, and the bunk houses as accessory structures, are proposed to be subordinate in area, extent and purpose to the principal uses, that the camp will contribute to the comfort, convenience and necessity of the principal uses, and that the camp use, involving the bunk houses, is located on the same lot of record as the principal uses.

Mr. Madden testified that the definitional requirements of "accessory use" were met with regard to the camp and athletic fields, and his testimony in this regard is undisputed.

BCZR §1A03.3.A.9 provides that "accessory uses or structures" are permitted as a matter of right in the RC 4 zone. Permissible accessory uses in the RC 4 zone include, but are not limited to, "swimming pools, tennis courts . . . or other accessory structures or uses" and "parking spaces". §1A03.3.A.9.e-f. Thus, the issue of the permissibility of the camp bunk houses and the athletic fields by right in the RC 4 zoned portion of the property is settled by reference to both the definition of "accessory use", and the RC 4 zoning regulations which permit such uses by right without further qualification. If the proposed uses, consisting of bunk houses and athletic fields qualify as "accessory uses" under § 101, the RC 4 zoning regulations permit those uses by right under §1A03.3.A.9.e-f, without consideration of any other factors.

Anticipating the Protestant's argument, Mr. Madden was asked on direct-examination a series of questions to illicit his opinion regarding the permissibility of these accessory uses in the RC 4 zone by right, while the principal uses which they serve are not permitted by right. In his expert opinion, Mr. Madden testified that the definition of accessory use is extremely clear and contains no implied limitation that the accessory use must be permitted by right in the zone to be permitted as an accessory use.

However, the Protestants would have the Board go beyond the plain language uses in these sections on account of the placement of the uses in the RC 4 zoned portion of the property. The mere fact that the athletic field and camp buildings are located on Beth Tfiloh's RC 4 zoned property has no effect on their status as accessory uses (under the definition), or on the permissibility of such uses in the RC 4 zone (under § 1A03.3.9,

which allows such uses by right, without further qualification). This follows from the fact that these uses, as accessory uses, are specifically permitted under the Baltimore County Zoning Regulations § 1A03.3.A.9

Fortunately, the plain language of the Zoning Regulations is particularly instructive as to the permissibility of accessory uses in the RC 4 zone. BCZR §1A03.3.A.9 specifically identify "permissible accessory uses in the R.C.4 zone *include, but not limited to*, swimming pools, tennis courts . . . *or other accessory structures or uses . . .*". Section §1A03.3.A.9 was drafted broadly in order to provide for a wide range of permissible accessory uses. Beth Tfiloh's athletic field and camp buildings most certainly qualify as "other accessory structures or uses". The Baltimore County Council was free to limit or qualify the *definition* of an accessory use in BCZR § 101, but they chose not to do so.

Moreover, the County Council was free to limit the scope of accessory uses *in the RC 4 zone*, as they have done with regard to other zones. For example, the County Council has determined that in the following zones, accessory uses are allowed so long the uses are 1) meet the definition of "accessory" under BCZR § 101, *and* 2) they also meet the *additional qualification* that they are "normally and customarily incidental to any *permitted principal use*" in the zone [emphasis supplied]: OR-1 (§ 205.3), OR-2 (§ 206.3), O-3 (§ 207.3), OT (§ 209.3), SE (§ 210.3), BMM (§ 216.C), BMYC (§225.C), CB (§ 229.4.A.3). The fact that the Council determined to include specific language in the regulations of these zones limiting the accessory uses to those serving *permitted principal uses* only, and determined to omit the same language from other zones, such as the R.C. 2, 3, 4, and 5

zones, or the BL, BM, or MR zones, is very instructive as to its intent. As the additional language is included in the regulations of the former group, the omission of the language from the latter must be intentional and meaningful. Whereas the Council has determined to impose an *additional* restriction on accessory uses in some zones such that the accessory uses in those zones must be "normally and customarily" incidental to a permitted use in the zone, the fact that this additional qualification is *missing* from the regulations of the other zones, among them the RC 4 zone, clarifies that the Council has purposefully chosen to retain a broad range of accessory uses in the RC 4 zone. Unlike in the other zones, an accessory use in the latter group of zones, including the RC 4 zones, need not serve a principal permitted use in the RC 4 zone, so long as the *other* criteria as to the accessory use are met. Even so, the Protestants would have the Board read far too much into BCZR §1A03.3.A.9, which contains no such limitation on the permissibility of accessory uses.

The Protestants suggest that Beth Tfiloh's interpretation of the accessory use definition and regulations as they relate to the RC 4 zone will lead to "disorderly" development and allow a property owner to abuse the large RC zoned portions of the county adjacent to relatively small commercially zoned areas. This argument is a red herring. Any accessory use must meet the definition in the Baltimore County Zoning Regulations, § 101. This definition contains 4 elements, each of which is designed to ensure that the intensity of the accessory use is not too great. In addition to being located on the same lot as the principal use, the accessory use must be customarily incidental to the principal use, it must be subordinate in area, extent and purpose to the principal use,

and it must contribute to the comfort, convenience or necessity of the principal use. These factors combine to ensure that the accessory use does not eclipse the principal use in terms of intensity or purpose. If a use fails to meet the definitional requirements of "accessory use", then it is a principal use, and as a principal use it must be supported by the underlying zoning of the parcel on which the use occurs.

Furthermore, the Maryland courts have imposed a significant limitation on the character of the accessory use in an effort to prevent the harms of which Protestants warn. Eastern Service Centers, Inc. v. Cloverland Farms Dairy, Inc., 130 Md. App. 1 (2000) and County Commissioners of Carroll County v. Zent, 86 Md. App. 745 (1991) effectively prohibit accessory uses which change the basic nature of the principal use, and allow those only truly incidental to and supportive of the principal use. By judicially superimposing this limitation, the Courts have implicitly endorsed Beth Tfiloh's position in this case – that the status of a use as an "accessory use" is not dependant upon the underlying zoning because *other* safeguards are in place to limit the extent and the scope of the use.

In the case at bar, there is abundant evidence that the criteria of BCZR § 101 as it relates to accessory uses are met with regard to the bunk houses and the athletic fields. This evidence is undisputed. The question is one of legal interpretation of the accessory use regulation of the RC 4 zoned portion of the property. The question arises because this property straddles a zone line. The uses to which the accessory uses are in fact accessory are permitted by right in the DR 1 zoned portion of the property, but not in the RC 4 zoned portion of the property. Beth Tfiloh's position is that, given the clear language of

the zoning regulations and that it is virtually undisputed that the definitional requirements of accessory use are met, the bunk houses and athletic fields are permitted in the RC 4 zoned portion of the property. The rationale is that the RC 4 zoning regulations do not limit accessory uses to those which are "normally and customarily incidental" to a "permitted principal use" in the zone, as do regulations for other zones. However, the Protestants would have the Board read this additional language into the RC 4 zoning regulations and have the Board block the ball fields and the bunk houses on this property. The Board should find that the interpretation offered by Beth Tfiloh is more reasonable, and rule in its favor.

Case No. CBA 01-136. (DRC Appeal)

In support of its request for an exemption from Division 2 of the Baltimore County Development Regulations, Beth Tfiloh called Steven A. Warfield, professional engineer. After being accepted as an expert in civil engineering and real estate development, Mr. Warfield testified that he is familiar with the site, having visited it many times, and that he created the site plan describing the development proposal and accompanying the request for exemption to the DRC.

Mr. Warfield described that the present uses on the Beth Tfiloh property in Glyndon are those of a school and a synagogue. The site is presently improved with a lower school building, a synagogue building, a dining hall, an infirmary, a laundry building, multiple "bunk buildings", parking, a multi-purpose building, and some graded and wooded areas.

Mr. Warfield explained that the lot which constitutes the Beth Tfiloh property was recorded among the land records of Baltimore County by deed in 1946. See Appellant's Exhibit 3. He further testified that the lot is the same today as it was in 1946, except for some road dedications and stormwater management reservations. He also stated that the plan that was presented to the DRC did not call for any further subdivision of the property.

Beth Tfiloh also called Mr. Donald Rascoe, who is the Development Manager of the Baltimore County Department of Permits and Development Management. Mr. Rascoe testified that he sat as chairman of the DRC on the occasion that the exemption request was considered by the DRC. He confirmed that the DRC exemption request under consideration in this case was indeed recommended for approval by the DRC and adopted by Mr. Jablon.

With regard to the (a)(2) exemption generally, Mr. Rascoe testified that DRC considers a "lot of record" as one created by deed and description or by subdivision plat. With regard to the (a)(2) exemption at issue in this case, Mr. Rascoe stated that the property at issue in this appeal meets the criteria for being a "lot of record" under the development regulations.

The issue presented by this appeal is whether or not Beth Tfiloh's development qualifies for an exemption from Division 2 of the Development Regulations under BCC § 26-171(a)(2). As such, the project could proceed directly to the building permit stage.

Development, as defined by the Baltimore County Code, must be approved pursuant to a development process as identified in BCC 26-201, *et seq.* Development plan approval usually involves protracted proceedings, including community input meetings, hearing officer's hearings, and county review by different agencies. BCC § 26-201, *et seq.* However, the Baltimore County Code specifies 19 different types of development which are exempt from this lengthy and costly procedures. They are provided for in BCC, § 26-171.

Among the types of development entitled to an exemption is that which will occur on a "lot of record". BCC § 26-171(a)(2) provides:

(a) The following development is exempt from division 2 of this article only. Compliance with divisions 3, 4, and 5 is required, as is compliance with all applicable zoning regulations: . . . (2) The building or preparation of land for building on a lot of record lawfully in effect at the time of building or preparation of law for building if the lot of record did not result from a subdivision of land exempt under section 26-170 [subdivision of land for agricultural purposes].

Appellant's Exhibit 3, the deed for the Beth Tfiloh property dating back to 1946,
establishes that the property exists as a lot of record. It can hardly be argued to the contrary, and indeed, no witness took the position that the property was anything different. Mr. Warfield and Mr. Rascoe both testified that the property exists as a lot of record. Mr. Warfield testified that the property exists today as it does in the 1946 deed, except for some road dedications and stormwater management reservations. Furthermore, and importantly, no subdivision of the property is proposed on the

development plan. Mr. Rascoe testified extremely clearly that the property meets the criteria for "lot of record".

None of the Protestants' witness interjected anything to put the status of the property as a lot of record into question. Indeed, most tellingly, in his opening statement before this Board, Mr. Carson conceded that the property exists as a lot of record. Instead, the Protestant's argument seems to be that the DRC was uninformed of Beth Tfiloh's intention to abandon its special exception for a camp use on the property when the DRC granted the (a)(2) exemption for the Lower School, the Dining Hall, the Gym, and the other improvement shown on Petitioner's Exhibit 2. Mr. Warfield testified under cross examination by Mr. Carson that it was not until the Zoning Commissioner hearing in July, 2001 that Beth Tfiloh actually articulated a specific request to abandon the camp special exception, and thus that the DRC was unaware of the intention to formally abandon the use. The Protestants argue that this fact requires the Board to remand the matter to the DRC for a determination of the exemption with the knowledge that the camp special exception has been abandoned.

The Protestant's argument illustrates a failure to appreciate the distinction between zoning, on the one hand, and development approval, on the other hand. The fact that Beth Tfiloh was abandoning the special exception for the camp as part of its Petition for Special Hearing had absolutely nothing to do with the DRC's task of approving the site plan for an exemption from the protracted development approval process. The plans which were submitted both to the DRC and with the petition for special hearing to amend

the previously approved zoning plans were identical and graphically illustrated the conversion of the property from a predominantly recreational use (camp) to an educational (lower school) and religious (synagogue) use. The formal "abandonment" of the special exception was of no importance to the DRC, and simply did not come up. The DRC is only interested in zoning tangentially; it is interested in whether a use is permitted, not in the formalities of abandoning one use in favor of another use. A remand to the DRC of the (a)(2) exemption request would be useless, as even Mr. Rascoe, the Chairman of the DRC, testified that the knowledge that Beth Tfiloh was formally abandoning its special exception for a camp would have had no impact on the decision of the DRC to grant the exemption.

Lastly, Beth Tfiloh cannot close this portion of this Memorandum without discussing Petitioner's Exhibit 7, the February 8, 2002 Opinion and Order of this Board in Case No. CBA-01-106. In that case, the Board found the precise Beth Tfiloh property at issue in this case, that which is described in the 1946 deed which is Petitioner's Exhibit 3, to be a lot of record qualifying for an exemption under § 26-171(a)(2). It is a procedural anomaly that this precise issue is before the Board twice in less than 4 months. However, the "lot" at issue is the same as that which was considered in February, and being "of record", it qualifies for the same result as in the previous Board Opinion. The Protestants, of course, have appealed that decision, but that does not effect the validity of the decision pending appeal (Md. Rule 7-205), nor is it likely that the Protestants appeal will be

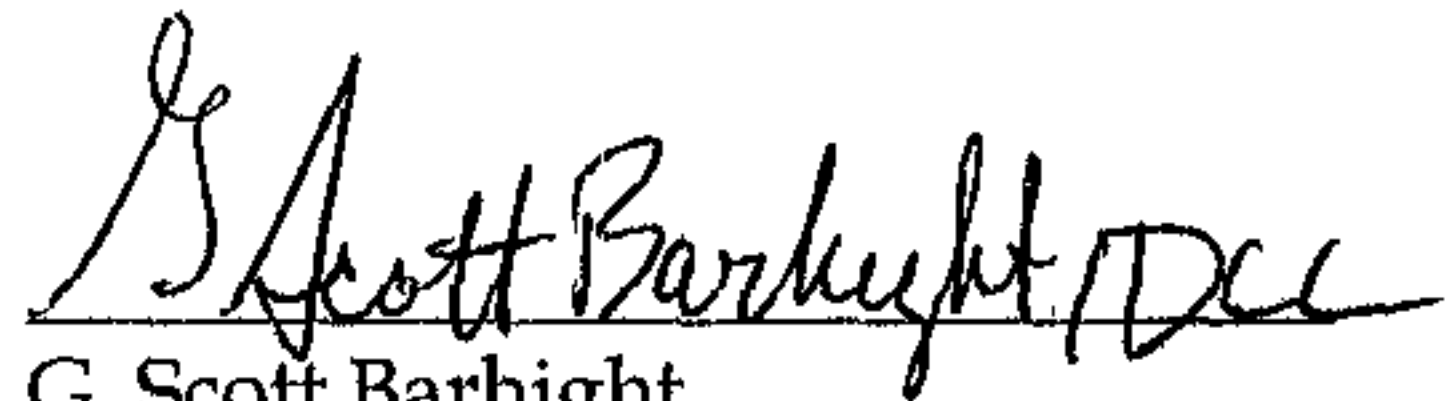
successful, as the decision was well-reasoned and correct, and Beth Tfiloh is confident the Circuit Court will so find.

As illustrated, the property's status as a lot of record unconditionally and without any discretion entitles Beth Tfiloh to proceed exempt from Division 2 of the Development Regulations.

Conclusion

Whether the bunk houses and athletic fields are permitted in the RC 4 zone as accessory uses to the school and synagogue in DR 1 zone is a straight forward question with an equally straight forward answer. The unambiguous language of the Baltimore County Zoning Regulations leads to the inescapable conclusion that these accessory uses may exist in the RC 4 zone by right. The Board should grant the petition for special hearing and amend the approved zoning plan in accordance with Petitioner's Exhibit 2, the proposed zoning plan, including, specifically, the bunk houses and the athletic fields.

Furthermore, the Board should find that, as a "lot of record", the development of the property in accordance with the site plan qualifies for a limited exemption from the development regulations under Baltimore County Code § 26-171(a)(2). The Board so found with regard to this same property just a few months ago in Case No. CBA 01-106. Oddly, the same exact question is before this Board again. The Board should rule consistently with its previous finding, the testimony of Messrs. Warfield and Rascoe, and Mr. Carson's admission during opening statement, that the property is a "lot of record" and may be developed in accordance with Baltimore County Code § 26-171(a)(2).

A handwritten signature in black ink, appearing to read "G. Scott Barhight".

G. Scott Barhight

Dino C. La Fiandra

Whiteford, Taylor & Preston L.L.P.

210 West Pennsylvania Avenue

Towson, Maryland 21204-4515

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Attorney for Appellant in 01-468-SPH
And Appellee in CBA-01-118,

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April, 2002, a copy of the foregoing Brief was mailed first class, postage prepaid to:

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G. Scott Barhight

3/12/02

RE: PETITION FOR SPECIAL HEARING

407 Central Avenue, NE/S Central Ave.

250 NW of c/1 Hunting Hor Cir

4th Election District, 3 Councilmanic

Beth Tfiloh Congregation of Baltimore City, Inc.

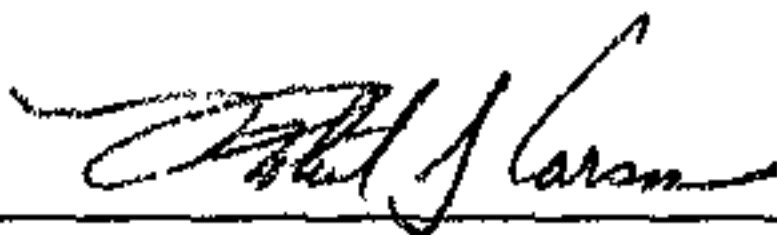
Petitioner

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case Nos. 01-468-SPH
CBA-01-136

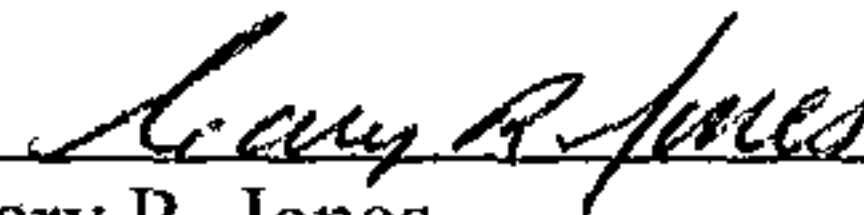
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NOTICE OF ENTRY OF APPEARANCE

Please enter the appearance of Gary R. Jones on behalf of Glyndon Community Association, Inc. ("GCA") and Gary D. Applestein, Nan Kaestner and Sean O'Connell (all of whom are collectively referred to as the "Petitioners"). Robert J. Carson, Robert J. Carson, P.A. will remain as co-counsel on behalf of the Petitioners in both cases, namely CBA-01-136 and 01-468-SPH.



Robert J. Carson
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Gary R. Jones
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Attorneys for Petitioners



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

March 22, 2002

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

Charles L. Marks, Chairman
County Board of Appeals
of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204
Hand-delivered

02 MAR 22 PM 5:19

Re: Petition for Special Hearing
407 Central Avenue
NE/S Central Ave, 250' NW of c/l Hunting Horn Cir,
4th Election District, 3rd Councilmanic
Beth Tfiloh Congregation of Baltimore City, Inc.,
Petitioner
Case No.: 01-468-SPH

Dear Mr. Marks:

People's Counsel concurs with the Glyndon Community Association Memorandum.

Beth Tfiloh's argument that an accessory use is allowed regardless of any connection to a principal use permitted in the zone where it is located is absurd. It is contrary to the spirit and intent of zoning law generally and to the accessory use concept specifically. It would set a novel and unfortunate precedent, and open up a Pandora's Box of all sorts of discordant accessory uses.

At this juncture, our office submits on brief with respect to the issues in controversy. In the event the Board calls for further memoranda after the hearings scheduled March 26 and April 2, we reserve the opportunity to file same along with the other parties.

Very truly yours,

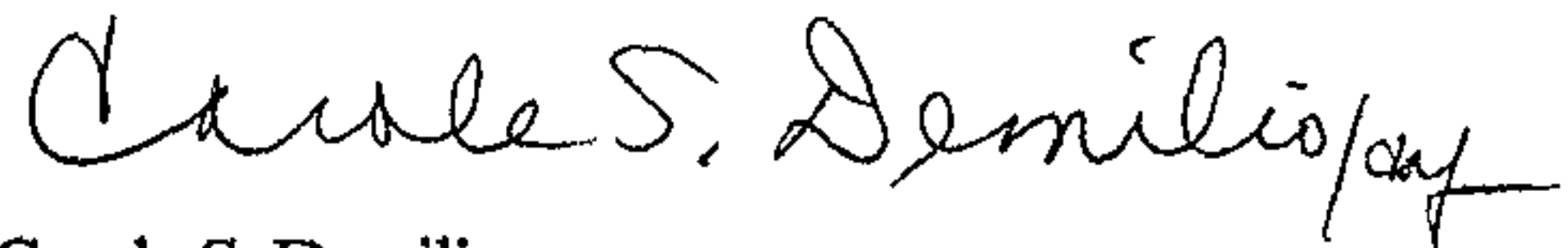
A handwritten signature in cursive script that reads "Peter Max Zimmerman". The signature is written in dark ink and is positioned above the printed name.

Peter Max Zimmerman
People's Counsel for Baltimore County

Charles L. Marks, Chairman
County Board of Appeals
of Baltimore County

March 22, 2002

Page Two

A handwritten signature in cursive script that reads "Carole S. Demilio" followed by a short horizontal line.

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/cdf

cc: G. Scott Barhight, Esq.,
Attorney for Petitioner

3/18/07

RE: PETITION FOR SPECIAL HEARING
407 Central Avenue, NE/S Central Ave.
250 NW of c/1 Hunting Hor Cir
4th Election District, 3 Councilmanic

Beth Tfiloh Congregation of Baltimore City, Inc.

Petitioner

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case Nos. 01-468-SPH
CBA-01-118
CBA-01-136

* * * * *

NOTICE TO STRIKE APPEARANCE

Please strike the appearance of Thomas F. Corcoran on behalf of Glyndon Community Association, Inc., Gary R. Jones, John Morris, Sean O'Connell, Gary Applestein and Nan Kaestner. Robert J. Carson and Robert J. Carson, P.A. will remain as counsel on behalf of said protestants.

Robert J. Carson P.A. (GNT)
Robert J. Carson
Robert J. Carson, P.A.
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050

TF Corcoran (GNT)
Thomas F. Corcoran
Baxter, Baker, Sidle, Conn & Jones, P.A.
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 230-3800

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of March, 2002, copies of the Notice to

Strike Appearance were mailed first class, postage prepaid, to:

G. Scott Barhight, Esquire
Dino C. La Fiandra, Esquire
Whiteford, Taylor & Preston, L.L.P.
7 Saint Paul Street
Suite 1400
Baltimore, Maryland 21202
Attorneys for Beth Tfiloh Congregation

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
Room 47
Old Court House
400 Washington Avenue
Towson, Maryland 21204



Robert J. Carson

3/1/03
RE: PETITION FOR SPECIAL HEARING
407 Central Avenue, NE/S Central Ave.
250 ' NW c/1 Hunting Horn Circle
4th Election District, 3rd Councilmanic
District.

Beth Tfiloh Congregation of Baltimore
City, Inc.
Petitioner

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case No: 01-468-SPH

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* * * * *

BETH TFILOH'S RESPONSE TO MEMORANDUM OF PEOPLE'S COUNSEL

Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh"), by G. Scott Barhight, Dino C. La Fiandra, and Whiteford, Taylor & Preston, LLP, files this Response to Memorandum of People's Counsel, and states:

A casual reading of People's Counsel's memorandum in this case leaves the reader with the impression that Beth Tfiloh desires to use its Glyndon property in a manner contrary to the Baltimore County Zoning Regulations. It is, after all, replete with citations for the most basic principles of zoning law - that the intended use of the property must be allowed in the zoning classification in which the property is located. Simply stated, Beth Tfiloh agrees with this legal truism.

In fact, Beth Tfiloh's Petition for Special Hearing relies upon this legal truism. Thankfully, the Baltimore County Zoning Regulations contain a provision which speaks directly to it. The evidence will show that Beth Tfiloh owns approximately 43 acres of land in Glyndon which is split zoned DR1 and RC4. A school and synagogue are proposed and permitted by right in the DR1 zoned portion of the property. Bunk houses, an athletic field, and an access road are proposed as accessory uses to the principle school

and synagogue uses. These accessory uses are proposed in the RC4 portion of the property, and the Baltimore County Zoning Regulations clearly permit these accessory uses by right.¹

The Baltimore County Zoning Regulations define an accessory use as “a use or structure which:

- (a) is customarily incident and subordinate to and serves a principal use or structure;
- (b) is subordinate in area, extent or purpose to the principal use or structure;
- (c) is located on the same lot as the principal use or structure served ; and
- (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served”

BCZR §101.

BCZR §1A03.3.A.9 provides that “accessory uses or structures” are permitted as a matter of right in the R.C.4 zone. Permissible accessory uses in the R.C.4 zone include, but are not limited to, “swimming pools, tennis courts . . . or other accessory structures or uses” and “parking spaces”. §1A03.3.A.9.e-f. Thus, the issue is settled by reference to both the definition of “accessory use”, and the RC4 zoning regulations which permit such uses by right. If the proposed uses, consisting of bunk houses, athletic fields, and the access road, qualify as accessory uses, the RC4 zoning regulations permit those uses by right. End of inquiry.²

¹ People’s Counsel’s memorandum incorrectly notes that the Zoning Commissioner determined that the access road was not permitted in the RC4 zone. The “loop road”, as it was called, was specifically permitted by the Zoning Commissioner in his Findings of Fact and Conclusions of Law, in unambiguous terms.

² Under Maryland law, an accessory use may not change the basic nature of the primary use of the property. See, *Carroll County v. Zent*, 86 Md. App. 745, 768-9 (1991) (“when a use does not change the basic nature of the primary permitted non-conforming use and is truly incidental to, supports the non-conforming use, it is an accessory and, unless expressly prohibited by statute, is permitted.”)

The evidence produced at the hearing in this case will show that that the bunk houses, athletic fields and access road are accessory uses to the principle educational and religious uses permitted as of right in the DR1 zoned portion of the property. However, the Protestants and People's Counsel would have the Board go beyond this finding on account of the placement of the uses in the RC4 zoned portion of the property. The mere fact that the athletic field, camp buildings and loop road are located on Beth Tfiloh's R.C.4 zoned property has no effect on their accessory use status. This follows from the fact that these uses, as accessory uses, are specifically permitted under the Baltimore County Zoning Regulations § 1A03.3.A.9

Fortunately, the plain language of the Zoning Regulations is particularly instructive as to the permissibility of accessory uses in the R.C.4 zone. BCZR §1A03.3.A.9 specifically identify "permissible accessory uses in the R.C.4 zone *include, but not limited to, swimming pools, tennis courts . . . or other accessory structures or uses . . .*". Section §1A03.3.A.9 was drafted broadly in order to provide for a wide range of permissible accessory uses. Beth Tfiloh's athletic field, camp buildings and loop road most certainly qualify as "other accessory structures or uses". The Baltimore County Council was free to limit or qualify the definition of an accessory use, but they chose not to do so. There is nothing in the Zoning Regulations that states that accessory uses in the R.C.4 are permitted only if they are permitted as a matter of right in the R.C.4 zone. Indeed, if that were the case, there would be little sense to having a provision for accessory uses in the first place, as every use would have to be explicitly permitted by right or special exception. Even so, People's Counsel and the Protestants would have the Board read far

too much into BCZR §1A03.3.A.9, which contains no such artificial limitation on the permissibility of accessory uses.

Indeed, as noted, the Maryland courts have imposed a significant limitation on the character of the accessory use in an effort to prevent the harms of which People's Counsel warns. Eastern Service Centers, Inc. v. Cloverland Farms Dairy, Inc., 130 Md. App. 1 (2000) and County Commissioners of Carroll County v. Zent, 86 Md. App. 745 (1991) effectively prohibit accessory uses which change the basic nature of the principal use, and allow those only truly incidental to and supportive of the principal use. By imposing this limitation, the Courts have implicitly endorsed Beth Tfiloh's position in this case – that the status of a use as an “accessory use” is not dependant upon the underlying zoning because other safeguards are in place to limit the extent and the scope of the use.

Lastly, Beth Tfiloh must note that none of the cases cited by People's Counsel in its Memorandum speaks even remotely to the issue presented by the Petition in this case. Beth Tfiloh proposes a mix of principle and accessory uses on a single parcel of 43 acres. People's Counsel has failed to cite a single case which is probative of the issues presented by these facts. For example, Leimbach Construction v. City of Baltimore, 257 Md. 635 (1970) and Delbrook Homes, Inc. v. Mayers, 248 Md. 80 (1967) deal with uses, explicitly prohibited, occurring on separate parcels from the one on which the principle use is located. Accordingly, in these cases, not only were these uses expressly prohibited, but also as a definitional matter, the uses on separate lots could not be accessory uses, as the BCZR 101 requires accessory uses to occur on the same lot as the principle use. Thus, it is no wonder that they cases failed to find an accessory use.

Likewise, *Anne Arundel County v. Snyder*, 186 Md. 342 (1946) and *Moss v. Town of Winchester*, 311 N.E.2d 555 (Mass. 1974) in broad terms discuss and affirm the validity of a zoning ordinance as it is applied to particular property. Neither has anything to do with accessory uses. Nor does *Town of Kittery v. White*, 435 A.2d 405 (Mass. 1981) deal with accessory uses. That case deals instead with the restrictions on a split-zoned parcel. Finally, the recent Court of Appeals case of *Alviani v. Dixon*, 365 Md. 95 (2001) is a special exception case, once again having nothing to do with accessory uses.

The one case cited by People's Counsel which discusses accessory uses is *Arundel Supply Corp. v. Cason*, 265 Md. 371 (1972). In that case, the property owner came under attack for using its property as a gravel pit, with on-site washing and screening of the product of the pit, as accessory to the gravel pit operations. In invalidating the accessory uses, the Court relied upon a particular section of the Anne Arundel zoning code which prohibited accessory uses involving the conduct of "retail business". Finding that the property owner sold the washed and screened gravel at retail, the Court invalidated the accessory use. The holding of the Court of Appeals with regard to accessory uses is limited to applying the Anne Arundel County zoning ordinance to the facts and determining that the washing and screening did not constitute an accessory use, as a matter of application of the zoning regulations. This case has absolutely no bearing on accessory use issues presented by Beth Tfiloh's Petition for Special Hearing.

In conclusion, Beth Tfiloh looks forward to the hearing in this case and the opportunity to confirm this important point of zoning law. The evidence and the argument will lead to the inescapable conclusion that the bunk houses, athletic fields, and

the access road, hardly typical "intensive" uses requiring prohibition, are permitted as accessory uses to the school and synagogue principal uses on the property. The position of People's Counsel and the Protestants is not born out in the cases, and is not legally tenable.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "G. Scott Barhight".

G. Scott Barhight
Dino C. La Fiandra
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000

Attorney for Plaintiff,
BETH TFILOH CONGREGATION
OF BALTIMORE CITY, INC.

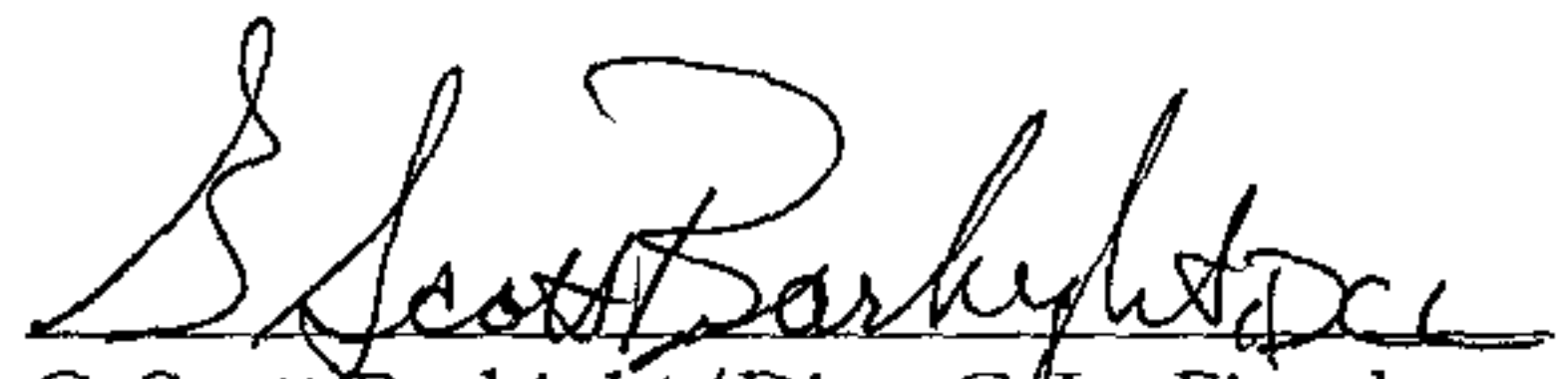
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March, 2002, a copy of the foregoing Response was sent by first class mail, postage prepaid, to:

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
400 Washington Avenue, Room 47
Towson, Maryland 21204

Robert J. Carson, Esquire
345 Green Street
Havre de Grace, Maryland 21078

Thomas F. Corcoran, Esquire
Baxter, Baker, Sidle
120 E. Baltimore Street, Suite 2100
Baltimore, MD 21202


G. Scott Barhight/Dino C. La Fiandra

2/8/02

RE: PETITION FOR SPECIAL HEARING
407 Central Avenue, NE/S Central Ave,
250' NW of c/l Hunting Horn Cir
4th Election District, 3rd Councilmanic

Beth Tfiloh Congregation of
Baltimore City, Inc.
Petitioner

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case Nos. 01-468-SPH
* CBA-01-118
* CBA-01-136

* * * * *

MEMORANDUM OF PEOPLE'S COUNSEL

Our office agrees with the Zoning Commissioner's conclusion, that the proposed cluster of bunk houses, athletic field, and loop road is not a permitted use in the R.C. 4 (Watershed Protection) zone. His September 21, 2001 Opinion, at pages 7-9, is well-reasoned.

The property is large and split-zoned, mainly D.R. 1 and R.C. 4. The proposed cluster is to be combined with a school or synagogue use in the D.R. zoned area. It is undisputed that the list of R.C.-4 uses permitted by right do not include private schools or synagogues. BCZR 1A03.3A. Synagogues are permitted by special exception. BCZR 1A03.3B4. Private schools are not permitted at all.

Beth Tfiloh claims that the cluster is a valid "accessory" use to the school and synagogue uses allowed in the D.R. zone. BCZR 1B01.1A3.14. We disagree. The accessory use concept is not a vehicle to bootstrap elements of uses not permitted by right or special exception in a mapped zone.

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Where properties are split-zoned, the property owner must adopt his proposed uses to fit properly within each zone. There is no crossover or blurring of the line. The recent Alviani v. Dixon case illustrated the application of the principle. 365 Md. 95, 99 (2001). In order to be eligible to apply for an automotive service facility use, the property owner had to obtain a rezoning of the part of the property zoned residential.

Well before Alviani, our office has taken the position that resource conservation zones may not serve uses permitted in adjacent zones of higher intensity, but not permitted in the R.C. zone itself.

The Baltimore County Zoning Regulations are structured so that in each zoning district, only uses enumerated as permitted by right or by special exception are allowed. BCZR 102.1; Kowalski v. Lamar, 25 Md.App. 491 (1975). BCZR 1A03.1 governs the watershed protection zone:

“The R.C. 4 zoning classification and its regulations are established to provide for the protection of the water supplies of metropolitan Baltimore and neighboring jurisdictions by preventing contamination through unsuitable types or levels of development in their watersheds.”

The uses allowed by right or special exception support or fit within the pattern of environmentally sensitive land use consistent with this policy. BCZR 1A03.3.

The Court of Appeals has held that commercial uses, including those which otherwise arguably are accessory, such as road access and private beaches, are not allowed in a residential zone. Leimbach Construction Co. v. City of Baltimore, 257 Md. 635 (1970); Delbrook Homes v. Mayers, 248 Md. 89 (1967); see Board of County Comm’rs. v. Snyder, 186 Md. 342 (1946).

The Court of Special Appeals has held that a septic field is an impermissible use in a residential-agricultural zone when it services adjacent commercially zoned and used property, even under common ownership. GLP Dev. Co. v. Md.-Nat'l. Cap. P & P Comm'n., Court of Special Appeals, Sept. Term, 1989. The Connecticut Supreme Court held that a commercial septic system is an impermissible use in a residential zone. Silitschanu v. Groesbeck, 532 A.2d 737 (Conn. 1988). There are no known appellate decisions to the contrary.

Consistent with these cases, the Circuit Court for Baltimore County has held the R.C. 2 (Agricultural) zone may not have a septic system to serve adjacent commercially zoned property. Rohrbaugh v. Jones, No. 94-CV-10257, (Smith, J., March 7, 1996). The Protestants have aptly cited several out-of-state cases which reject crossover or "spillage" theories involving, respectively, disparate residential zones and disparate commercial zones. Moss v. Town of Winchester, 311 N.E.2d 555 (Mass. 1974); Town of Kitterly v. White, 435 A.2d 405 (Me. 1981).

The Baltimore County Zoning Regulations reinforce this general principle in recognizing the need for explicit statutory authorization for accessory uses which serve a land use in an adjacent zone. The most familiar example is the BCZR 409.8 use permit for commercial parking in a residential zone.

The Zoning Commissioner's Opinion observes that the property here is under single fee-simple ownership. Some of the cases cited above were similar in this respect. Others involved easements or rights-of-way. It makes no difference whether the ownership is unitary or not. It is settled that zoning "is concerned with the use of

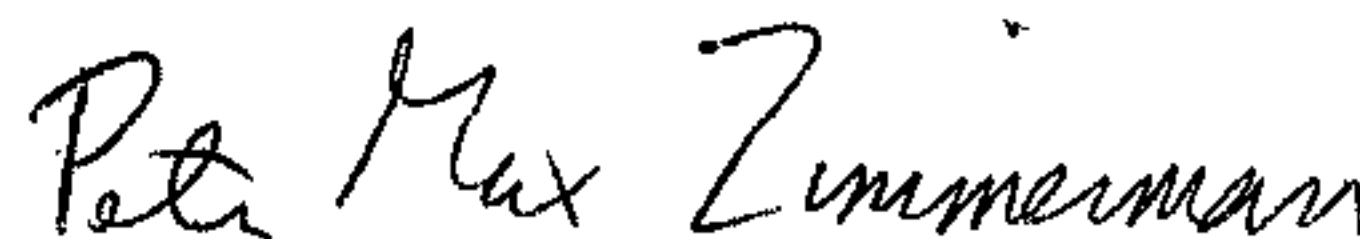
property and not with ownership thereof.” City of Baltimore v. Poe, 224 Md. 428 (1961); Boulevard Scrap Co. v. Mayor & City Council, 213 Md. 6, 10 (1957).

There are many split-zoned properties in Baltimore County. In the rural and suburban fringe areas, it is common to find large properties which are split-zoned for a variety of reasons. In such cases, the property owner must adjust the land uses to the respective classifications.

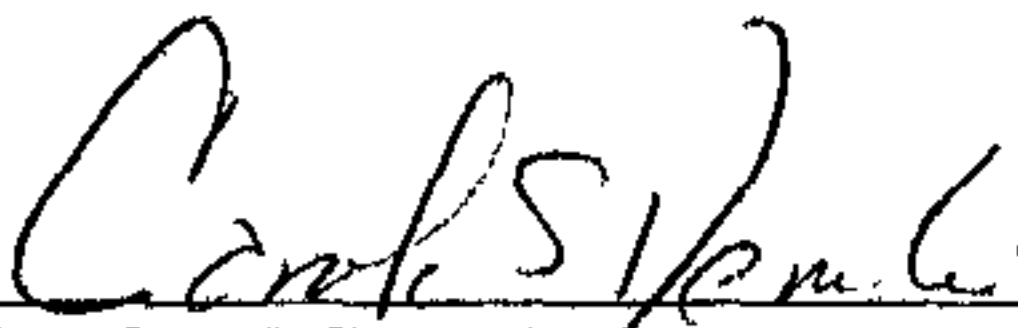
In the present case, Petitioner has available a variety of uses in each zone. Petitioner may also request a special exception to extend the synagogue use into the R.C. 4 zone. Whether or not the proposed cluster could be considered a valid part of a synagogue use is an issue not ripe for review. But the fact that a synagogue is allowed by special exception is an additional reason to disallow the bootstrapping of an accessory use. See Arundel Supply Co. v. Cason, 265 Md. 371, 377 (1972). Even were it not allowed by special exception, it would be inappropriate to spill over into the R.C. 4 zone uses which manifestly are intended to be confined to the D.R. zones or other appropriate zones. See Smith v. Miller, 249 Md. 390 (1968).

Conclusion

This case is important beyond its immediate facts. The County Board of Appeals should arrive at the conclusion that the proposed R.C. 4 zone cluster of uses is not permitted.



PETER MAX ZIMMERMAN
People's Counsel For Baltimore County



CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of February, 2002, a copy of the foregoing Memorandum of People's Counsel was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner, to Robert J. Carson, Esq., 345 Green Street, Havre de Grace, MD 21078, and Thomas F. Corcoran, Esq., Baxter, Baker, Sidle, 120 E. Baltimore Street, Suite 2100, Baltimore, MD 21202, attorneys for Protestants.



PETER MAX ZIMMERMAN

Rather, Beth Tfiloh takes the position that The Protestants had not previously been involved in the proceeding known as DRC 101600D. That is correct, since the Protestants were not aware that Beth Tfiloh had requested a §26-171(a)(2) exemption for a synagogue to be developed on "a remote portion of the large property." (Beth Tfiloh's Answer, ¶IV.)

To the Protestants' knowledge, there never was any hearing, nor did the Protestants ever receive any notice or notification of the exemption request in DRC 101600D.

Richard Desser, President of Sagamore Forest and Worthington/Hillside Community Association, advises the Protestants that that association similarly had no notice or notification of the exemption request in DRC 101600D. Indeed, neither Mr. Desser nor the Protestants (nor their counsel) have ever seen the plans which were submitted by Beth Tfiloh to the Department of Permits & Development Management in DRC 101600D.

It should be noted that a synagogue is not permitted in the R.C.-4 zone without a special exception. B.C.Z.R. §1A03.3.B.4. This reinforces the desirability that any application for a synagogue should not be subject to any exemption which would avoid or prevent public notice, input, and comment. For this reason, the Protestants (and Sagamore Forest & Worthington/Hillside Community Association) desire to participate in the hearing in DRC 101600D and desire that it be held at the same time as the hearing on the other three cases. Numerous residents in both communities will attend these hearings, and it should be to everyone's interest and benefit that (i) there be one consolidated hearing of all these appeals at a time to be set by the Board of Appeals and (ii) that notice of the hearing be given to all interested parties.



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Robert J. Carson, P.A.
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(410) 939-0050

Thomas F. Corcoran by R/C
Thomas F. Corcoran
Baxter, Baker, Sidle, Conn & Jones, P.A.
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 230-3800

Attorneys for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of November, 2001, copies of the foregoing Protestants' Reply to Beth Tfiloh's Answer to Motion to Consolidate thereon were sent by first class mail, postage prepaid, to:

Board of Appeals for Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

The Honorable Lawrence E. Schmidt
Zoning Commissioner of Baltimore County
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

Peter M. Zimmerman, Esq.
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

G. Scott Barhight, Esq.
Julie a. DiGrigoli, Esq.
Whiteford, Taylor & Preston, L.L.P.
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Richard B. Desser, Esq.
920 Providence Road, Suite 307
Towson, Maryland 21286

Fanshaw Family
204 Central Avenue
Glyndon, Maryland 21071

Mr. Richard W. Stem
4810 Butler Road
Glyndon, Maryland 21071

Mr. Michael G. Baker
348 Central Avenue
Glyndon, Maryland 21071



Robert J. Carson

Glyndon/Protestants' Reply to Beth Tfiloh's answer to Motion to Consolidate

Robert J. Carson, P.A.
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Baltimore, Maryland 21202
(410) 385-8130 or (410) 230-3800

November 26, 2001

VIA EXPRESS MAIL
AND VIA FACSIMILE

Ms. Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
400 Washington Avenue
Old Courthouse, Room 49
Towson, Maryland 21204

Re: Beth Tfiloh Appeals Pending before the Baltimore County Board of Appeals

Dear Ms. Bianco:

Please find enclosed a Protestants' Reply to Beth Tifloh's Answer to Motion to Consolidate Related Cases and to Postpone 12/4/01 Hearing in Case No. DRC 101600D.

It would be appreciated if you would present this Reply, as well as my clients' Motion dated November 15, 2001, to the Board of Appeals as soon as possible, in view of the fact that we are requesting a consolidation of all four appeals and the postponement of the presently scheduled December 4 hearing in DRC 101600D.

With my appreciation for your assistance in the foregoing, I am

Sincerely yours,


Robert J. Carson

RJC/jak

cc: Lawrence S. Wescott, Chair ✓
County Board of Appeals of Baltimore County
The Honorable Lawrence E. Schmidt
Zoning Commissioner of Baltimore County
Peter M. Zimmerman, Esq.
G. Scott Barhight, Esq.
Julie A. DiGrigoli, Esq.
Mr. Gary R. Jones

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Ms. Kathleen C. Bianco

November 26, 2001

Page Two

Mr. John A. Morris

Mr. Sean O'Connell

Mr. Gary Applestein

Ms. Nan Kaestner

Mr. Michael Burns

Glyndon Community Association, Inc.

c/o John A. Morris, President

Richard B. Desser, President

Sagamore Forest & Worthington/Hillside Improvement Association

Thomas F. Corcoran, Esq.

Glyndon/Bianco ltr3

File

* IN THE

* COUNTY BOARD OF APPEALS

* FOR

* BALTIMORE COUNTY

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Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh"), by its attorneys, G. Scott Barhight and Whiteford, Taylor & Preston L.L.P. responds to the Motion of Protestants for Consolidation of Related Appeals (dated November 15, 2001) and states as follows:

I. Beth Tfiloh is the Appellee in the appeal from DRC case number 0625011 (CBA-01-136) and in the appeal of building permit number B443403 (CBA-01-118). Beth Tfiloh is the Appellant in the appeal of zoning commissioner

case number 01-468-SPH, and in the appeal of DRC 101600D (CBA-01-106).

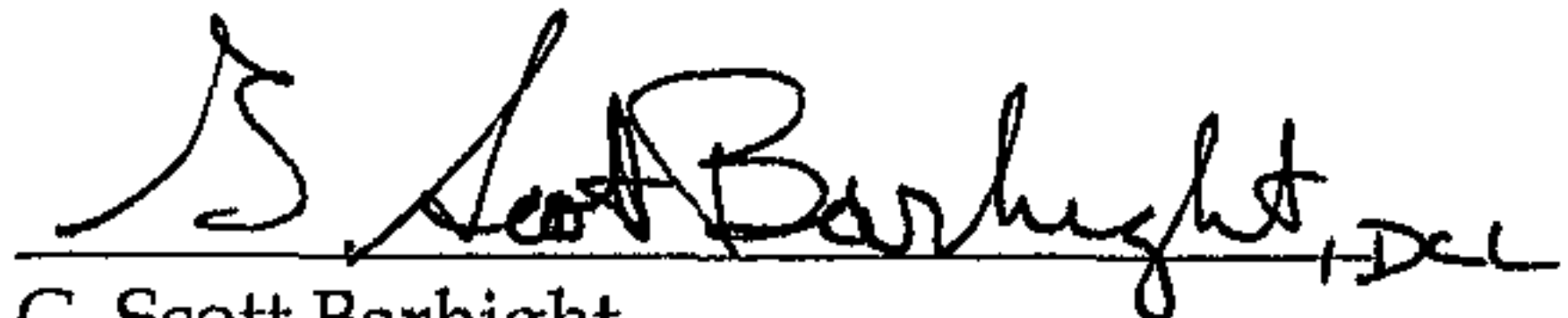
- II. The appeal from DRC case number 0625011, the appeal of building permit number B443403, and the appeal of zoning commissioner case number 01-468-SPH are referred to herein as "the School Appeals". The Appeal of DRC number 101600D is referred to herein as "the Synagogue Appeal".
- III. Initially, the Protestants in the School Appeals moved to consolidate the appeal of DRC case number 0625011 and zoning case number 01-468-SPH. By response dated November 8, 2001, Beth Tfiloh consented to the Protestants' Motion because the cases are related. Indeed, they each involve various aspects of Beth Tfiloh's right to use a portion of the subject property, which contains over 43 acres, for a school use. Each of the School Appeals involves a distinct aspect of land use approval for this school use: zoning, site plan approval, and building permit. Consolidation of these three matters makes sense, because they are in fact very interrelated; they involve the various county approvals required at the various stages for the *same use*.
- IV. However, the Synagogue Appeal does not involve the same use as that at issue in the School Appeals. It involves, quite obviously, use of a remote portion of the large property for a house of worship. There have been no zoning hearings, nor have there been any building permits applied for.

- V. On October 31, 2001, the Board scheduled the Synagogue Appeal for December 4, 2001. It is an appeal that Beth Tfiloh initiated from the adverse decision of the DRC of January 4, 2001, nearly 11 months ago. The matter had been pending before the DRC for nearly 3 months prior to the date of the decision.
- VI. Aside from Baltimore County, until November 15, 2001 no other party had enough interest in the case to even enter an appearance before the DRC or the Board, let alone advocate a position or request a certain outcome. Now, only 2 weeks prior to the Board hearing, the Glyndon Community Association, Inc. requests a consolidation and delay of the proceedings.
- VII. To consolidate the Synagogue Appeal with the School Appeals, when the cases deal with wholly different land uses and are not appropriate for consolidation, would result in a further delay for Beth Tfiloh, the Appellant, which is prepared to proceed on the date originally scheduled for hearing. The resulting delay would be unfair and unjust for Beth Tfiloh, whose property rights have been clouded by the adverse decision of the DRC, about which the Synagogue Appeal concerns.
- VIII. The Board hearing in the Synagogue Appeal has been scheduled for December 4, 2001, and Beth Tfiloh anticipates that the hearing on that one case will consume the entire day.
- IX. Whereas, the School Appeals are in fact interrelated and thus Beth Tfiloh agreed to and facilitated their consolidation, the Synagogue Appeal is

unrelated to these other cases, and it should not be consolidated with the School Appeals. Beth Tfiloh opposes the consolidation of the appeal of DRC Case Number 101600D with the other captioned cases.

WHEREFORE, Beth Tfiloh respectfully requests that case number CBA-01-106 (DRC 101600D) NOT be consolidated with the other captioned cases and that the hearing on the appeal proceed as scheduled for December 4, 2001.

Respectfully submitted,



G. Scott Barhight
Whiteford, Taylor & Preston L.L.P.
400 Court Towers
210 W. Pennsylvania Ave
Towson, Maryland 21204
(410) 832-2050
Attorney for Beth Tfiloh Congregation
of Baltimore City, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 2001, a copy of Beth Tfiloh's Answer To Motion To Consolidate Related Appeals Dated November 15, 2001, was mailed, first class, postage prepaid, to:

County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

The Honorable Lawrence E. Schmidt
Zoning Commissioner for Baltimore County

401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

Peter M. Zimmerman, Esquire
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

Robert J. Carson, Esquire
345 Green Street
Havre de Grace, Maryland 21078

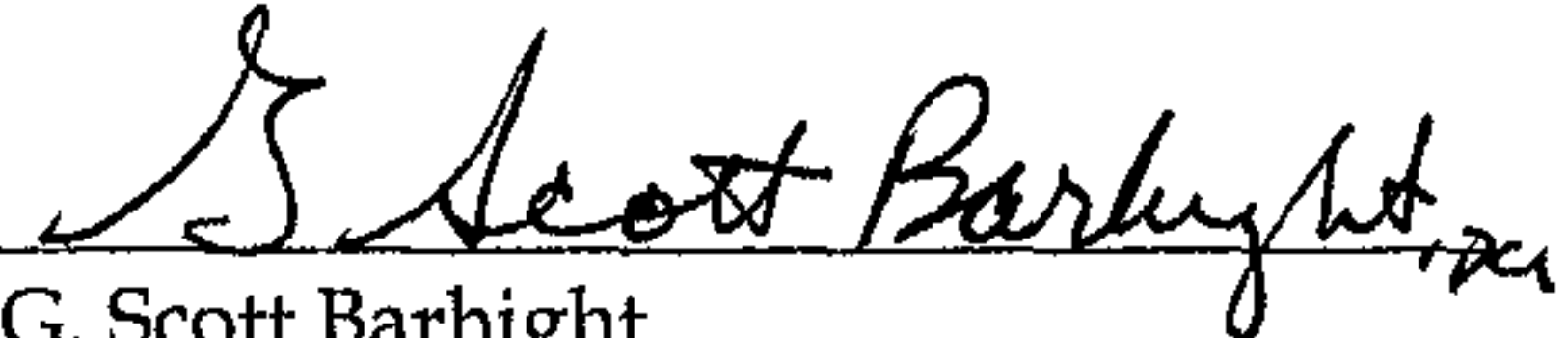
Thomas F. Corcoran, Esquire
Baxter, Baker, Sidle, Conn & Jones, P.A.
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202

Richard B. Dresser, Esquire
920 Providence Road, Suite 307
Towson, Maryland 21286

Fanshaw Family
204 Central Avenue
Glyndon, Maryland 21071

Mr. Richard W. Stem
4810 Butler Road
Glyndon, Maryland 21071

Mr. Michael G. Baker
348 Central Avenue
Glyndon, Maryland 21071


G. Scott Barhight

11/15/01

IN RE:
APPEAL FROM DRC NO. 101600D
(407) CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208
* * * * *

IN RE:
APPEAL OF BUILDING PERMIT NO.
B443403
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208
* * * * *

IN RE:
APPEAL FROM DRC NO. 0625011
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208
* * * * *

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* IN THE
* COUNTY BOARD OF APPEALS
*
* FOR
* BALTIMORE COUNTY
*
* APPEAL FROM DRC NO.101600D
* * * * *
* IN THE
* COUNTY BOARD OF APPEALS
*
* FOR
* BALTIMORE COUNTY
*
* APPEAL FROM BUILDING
PERMIT NO. B443403
* * * * *
* IN THE
* COUNTY BOARD OF APPEALS
*
* FOR
* BALTIMORE COUNTY
*
* APPEAL FROM DRC NO. 0625011
* * * * *

IN RE:

PETITION FOR SPECIAL HEARING
NE/S CENTRAL AVENUE, 250' NW
OF THE CL/L HUNTING HORN CIRCLE
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* IN THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* APPEAL FROM CASE NO.
01-468-SPH
*

* * * * *

PROTESTANTS' MOTION TO CONSOLIDATE RELATED APPEALS
AND TO POSTPONE 12/4/01 HEARING IN CASE NO. DRC 101600D

Glyndon Community Association, Inc. and individual residents in Glyndon are the Protestants in each of the above-described cases pending before the Board of Appeals. All of the Protestants are represented by the same undersigned attorneys. Some of the appeals were taken by the Protestants, and some were taken by Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh").

All of the Protestants hereby move the Board of Appeals to consolidate all four cases for all purposes, including for the purpose of a consolidated hearing.

1. The first above-captioned case involves an appeal by Beth Tfiloh of a recommendation by the Development Review Committee ("DRC") and the January 4, 2001 adoption by Arnold Jablon, Director, Baltimore County Department of Permits & Development Management (the "Director"), of that recommendation to deny Beth Tfiloh's §26-171 request for an exemption from the full development process.

2. The second above-described case involves an appeal by the Protestants of Building Permit B443403 with respect to construction of a building at 407 Central Avenue.

3. The third above-captioned case involves an appeal by the Protestants of an Administrative order and decision embodied in the June 29, 2001 letter of the Director granting a limited exception under §25-171(a)(2) of the Baltimore County Code. That decision appears to have reversed and superceded the previous January 4, 2001 action of the Director. As a result, the January 4, 2001 action appears to have become moot. In any event, there is no question that the property and subject matter covered by the January 4, 2001 action of the Director are the same as those involved in each of the other three cases before the Board of Appeals relating to Beth Tfiloh and its 407 Central Avenue property.

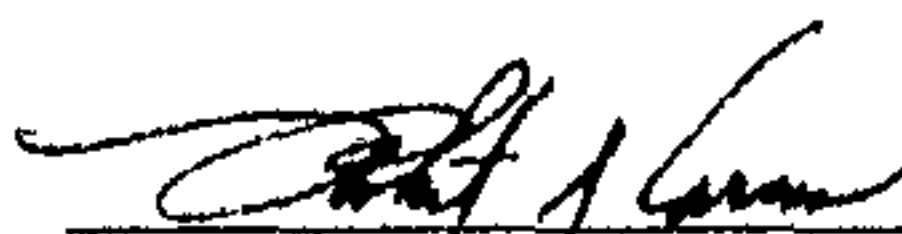
4. All of these cases essentially involve the same parties, the same property, a common subject matter, and similar questions of fact and law, and it would be most economical, both from an administrative standpoint and from the standpoint of the parties, to have the cases consolidated for all purposes, including for a consolidated hearing thereon. In addition to the Protestants who are specifically named in these appeals, there are many residents of the Glyndon and Sagamore Forest Communities who can be expected to attend the hearing before the Board of Appeals on these cases.

5. The first above-described case has been scheduled for a hearing on December 4, 2001, at 10:00 a.m. The Protestants request the Board of Appeals to postpone that hearing, to consolidate all of the cases, and to reschedule a hearing of the consolidated cases at a date in 2002 which will give sufficient time to the Protestants and Beth Tfiloh to prepare their presentations to the Board of Appeals in these cases.

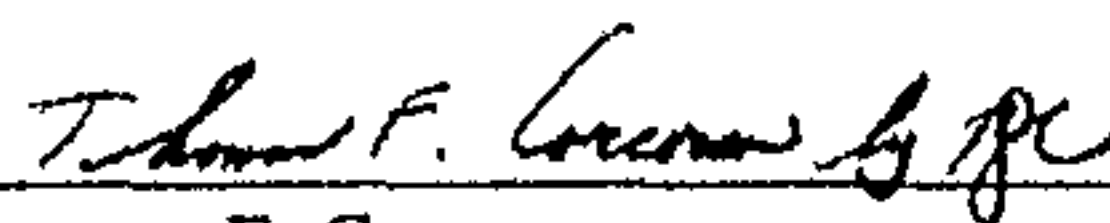
6. The Protestants and their counsel first became aware of the December 4 hearing date in the first above-described case only a few days prior to the filing of this Motion.

7. The Protestants previously filed a motion to consolidate seeking to consolidate the third and fourth above-described cases. Beth Tfiloh filed an answer agreeing to that consolidation. Beth Tfiloh then filed a motion to consolidate the second, third, and fourth above-described cases. The Protestants agree to that consolidation.

Respectfully submitted,



Robert J. Carson
Robert J. Carson, P.A.
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050



Thomas F. Corcoran
Baxter, Baker, Sidle, Conn & Jones, P.A.
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 230-3800

Attorneys for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 2001, copies of the foregoing Motion and proposed Order thereon were sent by first class mail, postage prepaid, to:

Board of Appeals for Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

The Honorable Lawrence E. Schmidt
Zoning Commissioner of Baltimore County
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

Peter M. Zimmerman, Esq.
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

G. Scott Barhight, Esq.
Julie a. DiGrigoli, Esq.
Whiteford, Taylor & Preston, L.L.P.
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Richard B. Desser, Esq.
920 Providence Road, Suite 307
Towson, Maryland 21286

Fanshaw Family
204 Central Avenue
Glyndon, Maryland 21071

Mr. Richard W. Stem
4810 Butler Road
Glyndon, Maryland 21071

Mr. Michael G. Baker
348 Central Avenue
Glyndon, Maryland 21071



Robert J. Carson

Glyndon/Motion to Consolidate Related Appeals

IN RE:
APPEAL FROM DRC NO. 101600D
(407) CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208
* * * * *

IN RE:
APPEAL OF BUILDING PERMIT NO.
B443403
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208
* * * * *

IN RE:
APPEAL FROM DRC NO. 0625011
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208
* * * * *

*
* IN THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* APPEAL FROM DRC NO. 101600D
* * * * *
* IN THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* APPEAL FROM BUILDING
PERMIT NO. B443403
* * * * *
* IN THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* APPEAL FROM DRC NO. 0625011
* * * * *

IN RE:

PETITION FOR SPECIAL HEARING
NE/S CENTRAL AVENUE, 250' NW
OF THE CL/L HUNTING HORN CIRCLE
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* IN THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* APPEAL FROM
* CASE NO.01-468-SPH

* * * * *

ORDER CONSOLIDATING CASES AND
POSTPONING 12/4/01 HEARING IN CASE NO. DRC 101600D

The Baltimore County Board of Appeals, having considered the Motion of
Protestants for Consolidation of Related Appeals, and any opposition thereto, HEREBY
ORDERS THIS ____ day of _____, 2001, as follows:

1. That all four of the above-captioned cases be consolidated for all purposes,
including for purposes of a consolidated hearing.
2. That the presently scheduled hearing of the appeal scheduled for December 4,
2001, of the appeal in Case No. DRC 101600D (the first above-described case) is hereby
cancelled and postponed. The Board will give notice of a new hearing date in 2002 at which
time all of the above-described cases will be heard together.

BOARD OF APPEALS FOR BALTIMORE
COUNTY

By: _____

By: _____

By: _____

Glyndon/Motion to Consolidate Order

11/15/01

Res

Robert J. Carson, P.A.
Attorney at Law
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050 (phone)
(410) 939-1007 (fax)

e-mail:
bobcarson@hdglegal.com

Baltimore Office:
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 385-8130 or (410) 230-3800

November 15, 2001

VIA EXPRESS MAIL

| 9

Ms. Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
400 Washington Avenue
Old Courthouse, Room 49
Towson, Maryland 21204

Re: Beth Tfiloh Appeals Pending before the Baltimore County Board of Appeals

Dear Ms. Bianco:

Please find enclosed a motion for consolidation of related appeals which also includes a motion to postpone the presently scheduled hearing date of December 4, 2001 at 10:00 a.m. in connection with the appeal of DRC No. 101600D (which is the first above-described case).

It would be appreciated if this Motion could be presented to the Board of Appeals as soon as possible, due to the fact that a hearing has been scheduled for December 4 in the first above-described case.

As you will see from your file, counsel for the Protestants and counsel for Beth Tfiloh have previously agreed that the second, third, and fourth cases above-described cases should be consolidated for all purposes. The parties, property, and subject matter of the first above-described appeal is similar to those in the other appeals and should be heard at the same time, especially in view of the fact that the June 29 administrative decision and order in DRC No. 0625011 appears to have reversed and superceded the earlier January 4 administrative decision and order and decision in DRC 101600D.

With my appreciation for your assistance in the foregoing, I am

Sincerely yours,


Robert J. Carson

RJC/jak

Ms. Kathleen C. Bianco

November 15, 2001

Page Two

cc: Lawrence S. Wescott, Chair
County Board of Appeals of Baltimore County
The Honorable Lawrence E. Schmidt ✓
Zoning Commissioner of Baltimore County
Peter M. Zimmerman, Esq.
G. Scott Barhight, Esq.
Julie A. DiGrigoli, Esq.
Mr. Gary R. Jones
Mr. John A. Morris
Mr. Sean O'Connell
Mr. Gary Applestein
Ms. Nan Kaestner
Mr. Michael Burns
Glyndon Community Association, Inc.
c/o John A. Morris, President
Richard B. Desser, President
Sagamore Forest Improvement Association
Thomas F. Corcoran, Esq.

Glyndon/Bianco ltr2

11/11/01

IN RE:

APPEAL FROM DRC NO. 0625011
(CBA-01-136)

APPEAL FROM ZONING
COMMISSIONER CASE NO. 01-468-
SPH

APPEAL FROM BUILDING PERMIT
NO. B443403 (CBA 01-118)

APPEAL FROM DRC NO. 101600D
(CBA-01-106)

(407) CENTRAL AVENUE
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:

BETH TFILOH CONGREGATION
OF BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* * * * *

* IN THE

* COUNTY BOARD OF APPEALS

* FOR

* BALTIMORE COUNTY

*

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CBA 01-136

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CBA 01-468-SPH

CBA 01-118

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CBA 01-106

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**BETH TFILOH'S ANSWER TO MOTION TO CONSOLIDATE
RELATED APPEALS DATED NOVEMBER 15, 2001**

Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh"), by its attorneys,
G. Scott Barhight and Whiteford, Taylor & Preston L.L.P. responds to the Motion of
Protestants for Consolidation of Related Appeals (dated November 15, 2001) and states
as follows:

- I. Beth Tfiloh is the Appellee in the appeal from DRC case number 0625011
(CBA-01-136) and in the appeal of building permit number B443403 (CBA-
01-118). Beth Tfiloh is the Appellant in the appeal of zoning commissioner

case number 01-468-SPH, and in the appeal of DRC 101600D (CBA-01-106).

II. The appeal from DRC case number 0625011, the appeal of building permit number B443403, and the appeal of zoning commissioner case number 01-468-SPH are referred to herein as "the School Appeals". The Appeal of DRC number 101600D is referred to herein as "the Synagogue Appeal".

III. Initially, the Protestants in the School Appeals moved to consolidate the appeal of DRC case number 0625011 and zoning case number 01-468-SPH.

By response dated November 8, 2001, Beth Tfiloh consented to the Protestants' Motion because the cases are related. Indeed, they each involve various aspects of Beth Tfiloh's right to use a portion of the subject property, which contains over 43 acres, for a school use. Each of the School Appeals involves a distinct aspect of land use approval for this school use: zoning, site plan approval, and building permit.

Consolidation of these three matters makes sense, because they are in fact very interrelated; they involve the various county approvals required at the various stages for the *same use*.

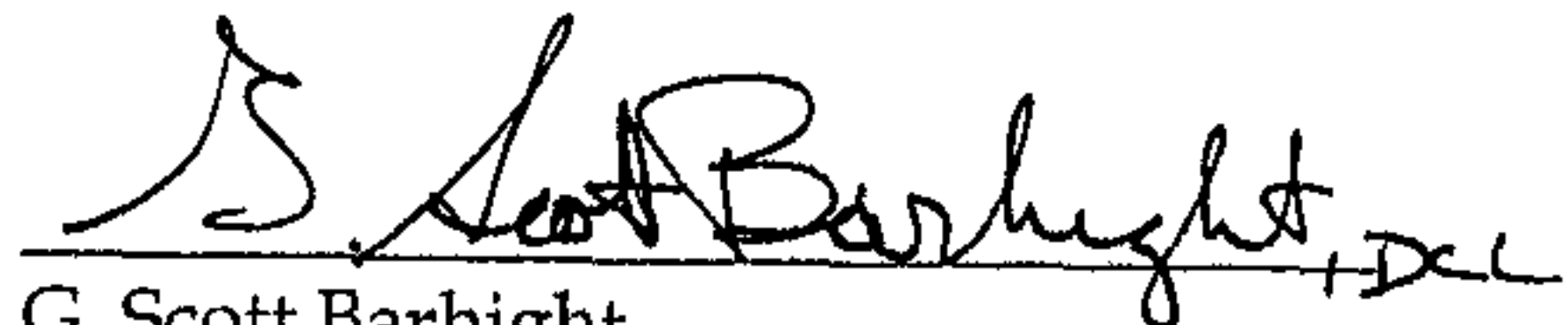
IV. However, the Synagogue Appeal does not involve the same use as that at issue in the School Appeals. It involves, quite obviously, use of a remote portion of the large property for a house of worship. There have been no zoning hearings, nor have there been any building permits applied for.

- V. On October 31, 2001, the Board scheduled the Synagogue Appeal for December 4, 2001. It is an appeal that Beth Tfiloh initiated from the adverse decision of the DRC of January 4, 2001, nearly 11 months ago. The matter had been pending before the DRC for nearly 3 months prior to the date of the decision.
- VI. Aside from Baltimore County, until November 15, 2001 no other party had enough interest in the case to even enter an appearance before the DRC or the Board, let alone advocate a position or request a certain outcome. Now, only 2 weeks prior to the Board hearing, the Glyndon Community Association, Inc. requests a consolidation and delay of the proceedings.
- VII. To consolidate the Synagogue Appeal with the School Appeals, when the cases deal with wholly different land uses and are not appropriate for consolidation, would result in a further delay for Beth Tfiloh, the Appellant, which is prepared to proceed on the date originally scheduled for hearing. The resulting delay would be unfair and unjust for Beth Tfiloh, whose property rights have been clouded by the adverse decision of the DRC, about which the Synagogue Appeal concerns.
- VIII. The Board hearing in the Synagogue Appeal has been scheduled for December 4, 2001, and Beth Tfiloh anticipates that the hearing on that one case will consume the entire day.
- IX. Whereas, the School Appeals are in fact interrelated and thus Beth Tfiloh agreed to and facilitated their consolidation, the Synagogue Appeal is

unrelated to these other cases, and it should not be consolidated with the School Appeals. Beth Tfiloh opposes the consolidation of the appeal of DRC Case Number 101600D with the other captioned cases.

WHEREFORE, Beth Tfiloh respectfully requests that case number CBA-01-106 (DRC 101600D) NOT be consolidated with the other captioned cases and that the hearing on the appeal proceed as scheduled for December 4, 2001.

Respectfully submitted,



G. Scott Barhight
Whiteford, Taylor & Preston L.L.P.
400 Court Towers
210 W. Pennsylvania Ave
Towson, Maryland 21204
(410) 832-2050
Attorney for Beth Tfiloh Congregation
of Baltimore City, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 2001, a copy of Beth Tfiloh's Answer To Motion To Consolidate Related Appeals Dated November 15, 2001, was mailed, first class, postage prepaid, to:

County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

The Honorable Lawrence E. Schmidt
Zoning Commissioner for Baltimore County

401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

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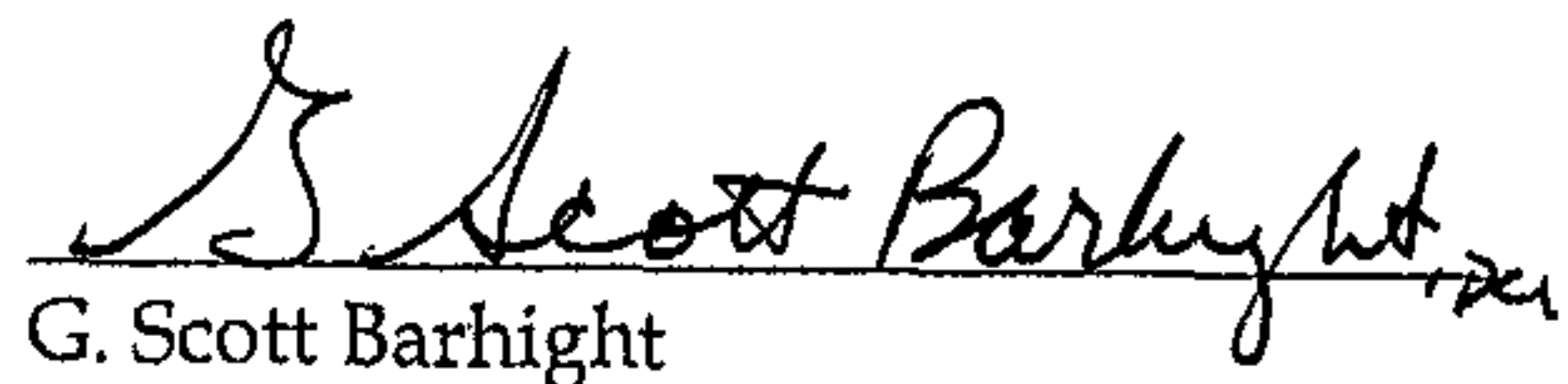
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Glyndon, Maryland 21071

Mr. Richard W. Stem
4810 Butler Road
Glyndon, Maryland 21071

Mr. Michael G. Baker
348 Central Avenue
Glyndon, Maryland 21071


G. Scott Barhight

11/8/01

IN RE:
APPEAL FROM DRC NO. 0625011
(407) CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION
OF BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* * * * *

IN RE:
PETITION FOR SPECIAL HEARING
NE/S CENTRAL AVENUE, 250' NW
OF THE CL/L HUNTING HORN CIR
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

APPLICANT:
BETH TFILOH CONGREGATION
OF BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* * * * *

* IN THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* APPEAL FROM DRC NO. 0625011
* BOARD OF APPEALS CASE NO.

* * * * *

* IN THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* CASE NO. 01-468-SPH
* BOARD OF APPEALS CASE NO.

* * * * *

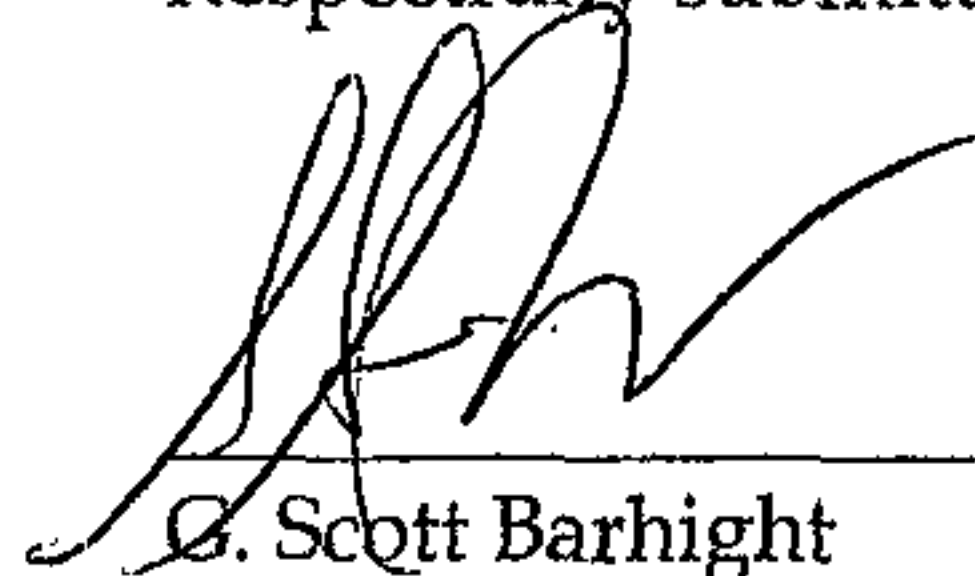
**ANSWER TO MOTION OF PROTESTANTS
FOR CONSOLIDATION OF RELATED APPEALS**

Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh"), Appellee in the first above captioned case and Appellant in the second above captioned case by its attorneys, G. Scott Barhight and Whiteford, Taylor & Preston L.L.P. responds to the Motion of Protestants for Consolidation of Related Appeals and states as follows:

1. Beth Tfiloh consents to the Motion of Protestants for Consolidation of Related Appeals.

2. Notwithstanding Beth Tfiloh's consent to the request to consolidate, Beth Tfiloh reserves the right to contradict any factual assertion made in the Motion of Protestants for Consolidation of Related Appeals.

Respectfully submitted,



G. Scott Barhight
Whiteford, Taylor & Preston L.L.P.
400 Court Towers
210 W. Pennsylvania Ave
Towson, Maryland 21204
(410) 832-2050
Attorney for Beth Tfiloh Congregation
of Baltimore City, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 9TH day of November, 2001, a copy of Beth Tfiloh's Answer To Motion Of Protestants For Consolidation Of Related Appeals was mailed, first class, postage prepaid, to:

County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

The Honorable Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
401 Bosley Avenue, 4th Floor
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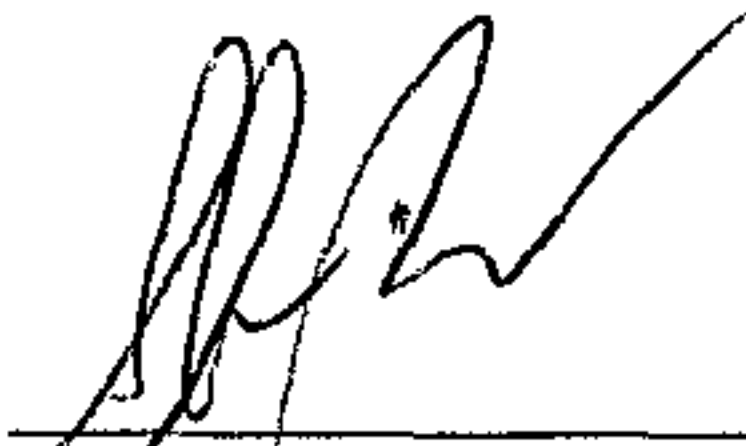
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204 Central Avenue
Glyndon, Maryland 21071

Mr. Richard W. Stem
4810 Butler Road
Glyndon, Maryland 21071

Mr. Michael G. Baker
348 Central Avenue
Glyndon, Maryland 21071



G. Scott Barhight

11/8/01

IN RE:
APPEAL OF BUILDING PERMIT
NO. B443403
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION
OF BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* * * * *

IN RE:
APPEAL FROM DRC NO. 0625011
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION
OF BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* * * * *

IN RE:
PETITION FOR SPECIAL HEARING
NE/S CENTRAL AVENUE, 250' NW
OF THE CL/L HUNTING HORN CIR
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

APPLICANT:
BETH TFILOH CONGREGATION
OF BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* * * * *

* IN THE
*
* COUNTY BOARD OF APPEALS
*
* FOR
*
* BALTIMORE COUNTY
*
* APPEAL FROM BUILDING PERMIT
NO. B443403
*
* BOARD OF APPEALS CASE NO.

* * * * *

* IN THE
*
* COUNTY BOARD OF APPEALS
*
* FOR
*
* BALTIMORE COUNTY
*
* APPEAL FROM DRC NO. 0625011
*
* BOARD OF APPEALS CASE NO.

* * * * *

* IN THE
*
* COUNTY BOARD OF APPEALS
*
* FOR
*
* BALTIMORE COUNTY
*
* CASE NO. 01-468-SPH
*
* BOARD OF APPEALS CASE NO.

* * * * *

01 NOV -8 PM 2:07
COUNTY BOARD OF APPEALS

**BETH TFILOH'S MOTION
FOR CONSOLIDATION OF RELATED APPEALS**

Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh"), by its attorneys, G. Scott Barhight and Whiteford, Taylor & Preston L.L.P., is the Appellee in the first above-captioned case, Appellee in the second above-captioned case, and Appellant in the third above-captioned case. Beth Tfiloh hereby moves the Board of Appeals to consolidate these three cases for all purposes, including for the purpose of a consolidated hearing.

I. The first above-captioned case involves an appeal by the Glyndon Community Association, Inc. and Michael Burns of Building Permit B443403 with respect to construction of a building at 407 Central Avenue.

II. The second above-captioned case involves an appeal by the Glyndon Community Association, Inc., Gary R. Jones, John A. Morris, Sean O'Connell, Gary D. Applestein and Nan Kaestner of a letter dated June 29, 2001 from Arnold Jablon, Director of the Baltimore County Department of Permits and Development Management, granting a limited exemption under §25-171(A)(2) of the Baltimore County Code for development at 407 Central Avenue.

III. The third above-captioned case involves an appeal by Beth Tfiloh of a portion of the Zoning Commissioner's decision on September 19, 2001, in which a *Petition for Special Hearing* was granted in part and denied in part regarding the property located at 407 Central Avenue.

IV. All three cases essentially involved the same parties. All involve similar questions of law or fact, a common subject matter, the identical property, and the

identical development/construction project, namely, the Beth Tfiloh Elementary School at 407 Central Avenue. Additionally, it would be economical, both from an administrative stand point and from the stand point of the parties, to have the cases consolidated for all purposes, including for a consolidated hearing.

Respectfully submitted,



G. Scott Barhight
Whiteford, Taylor & Preston L.L.P.
400 Court Towers
210 W. Pennsylvania Ave
Towson, Maryland 21204
(410) 832-2050
Attorney for Beth Tfiloh Congregation
of Baltimore City, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2001, a copy of Beth Tfiloh's Answer To Motion Of Protestants For Consolidation Of Related Appeals was mailed, first class, postage prepaid, to:

County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

The Honorable Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

Peter M. Zimmerman, Esquire
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

Robert J. Carson, Esquire
345 Green Street
Havre de Grace, Maryland 21078

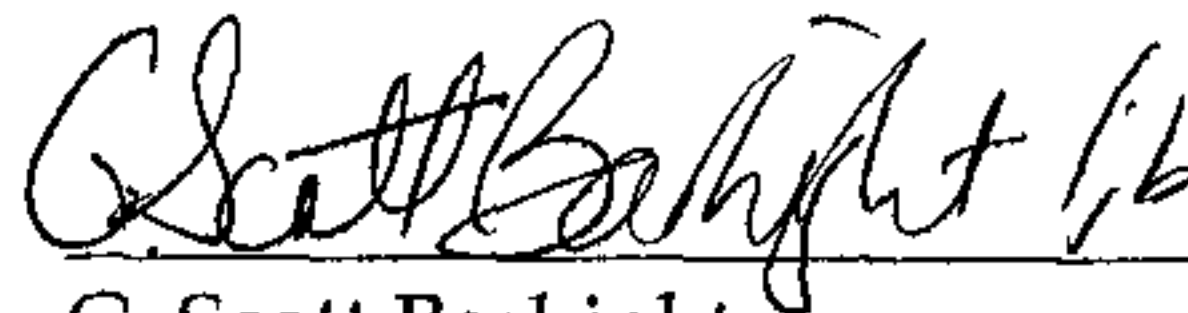
Thomas F. Corcoran, Esquire
Baxter, Baker, Sidle, Conn & Jones, P.A.
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202

Richard B. Dresser, Esquire
920 Providence Road, Suite 307
Towson, Maryland 21286

Fanshaw Family
204 Central Avenue
Glyndon, Maryland 21071

Mr. Richard W. Stem
4810 Butler Road
Glyndon, Maryland 21071

Mr. Michael G. Baker
348 Central Avenue
Glyndon, Maryland 21071


G. Scott Barhight

IN RE:
APPEAL OF BUILDING PERMIT NO.
B443403
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION
OF BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* * * * *

IN RE:
APPEAL FROM DRC NO. 0625011
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION
OF BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* * * * *

IN RE:
PETITION FOR SPECIAL HEARING
NE/S CENTRAL AVENUE, 250' NW
OF THE CL/L HUNTING HORN CIR
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

APPLICANT:
BETH TFILOH CONGREGATION
OF BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* * * * *

* IN THE
*
* COUNTY BOARD OF APPEALS
*
* FOR
*
* BALTIMORE COUNTY
*
* APPEAL FROM BUILDING PERMIT
NO. B443403
*
* BOARD OF APPEALS CASE NO.

* * * * *

* IN THE
*
* COUNTY BOARD OF APPEALS
*
* FOR
*
* BALTIMORE COUNTY
*
* APPEAL FROM DRC NO. 0625011
*
* BOARD OF APPEALS CASE NO.

* * * * *

* IN THE
*
* COUNTY BOARD OF APPEALS
*
* FOR
*
* BALTIMORE COUNTY
*
* CASE NO. 01-468-SPH
*
* BOARD OF APPEALS CASE NO.

* * * * *

ORDER CONSOLIDATING CASES

The Baltimore County Board of Appeals, having considered Beth Tfiloh's Motion for Consolidation of Related Appeals, and any opposition thereto, hereby ORDERS this _____ day of _____, 2001, that the three above-captioned cases be consolidated for all purposes, including for the purpose of a consolidated hearing.

BOARD OF APPEALS FOR BALTIMORE
COUNTY

By: _____

11/8/01

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

30 COLUMBIA CORPORATE CENTER
10440 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044
TELEPHONE 410 884-0700
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G. SCOTT BARHIGHT

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410 832-2050
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WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
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410 832-2000
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1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

November 8, 2001

Via Hand Delivery

County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Beth Tfiloh Congregation of Baltimore City, Inc.
Appeal from Building Permit No. B443403 01-118
Appeal from DRC No. 0625011 01-136
Appeal from Case No. 01-468-SPH

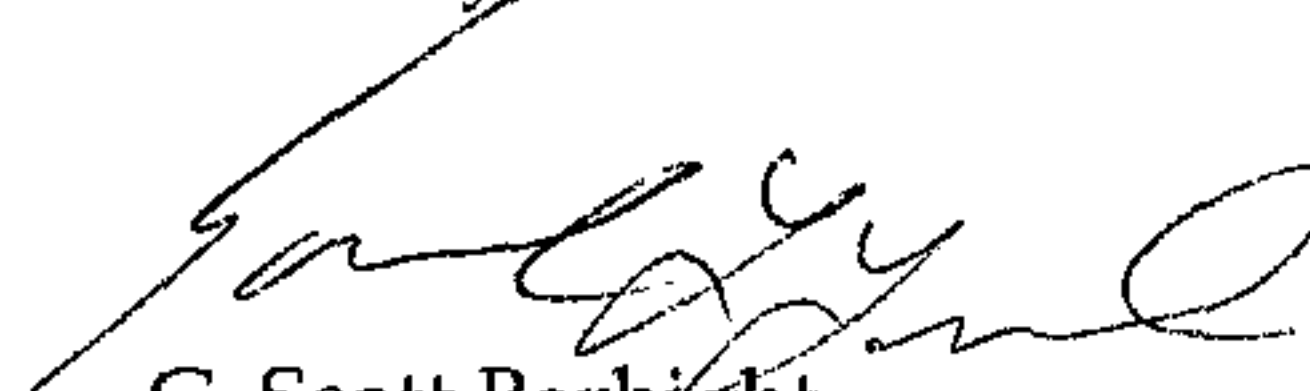
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Dear Ms. Bianco:

Enclosed for filing in the above-referenced cases, please find Beth Tfiloh Congregation of Baltimore City, Inc.'s Motion for Consolidation of Related Appeals and Answer to Motion of Protestants for Consolidation of Related Appeals. Please date stamp one copy of these Motions and return it to the messenger.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,


G. Scott Barhight
17

GSB:sll
Enclosures

238467

10/15/01
IN RE:
PETITION FOR SPECIAL HEARING
NE/S CENTRAL AVENUE, 250' NW
OF THE CL/L HUNTING HORN CIRCLE
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

*
IN THE
*
COUNTY BOARD OF APPEALS
*
FOR
*
BALTIMORE COUNTY
*
CASE NO.: 01-468-SPH
*
BOARD OF APPEALS CASE NO.

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* * * * *

ANSWER OF APPELLEES/PROTESTANTS TO PETITION ON APPEAL

Glyndon Community Association, Inc., Sean O'Connell, Gary D. Applestein, Nan Kaestner, Gary R. Jones, and John A. Morris, Appellees/Protestants ("Protestants"), by their undersigned attorneys, state as follows in answer to the Petition on Appeal filed in the above-captioned case by Beth Tfiloh Congregation of Baltimore City, Inc., Appellant/Petitioner ("Beth Tfiloh").

1. Protestants were personally present at the July 18, 2001 hearing before Zoning Commissioner Schmidt and opposed the petition for special hearing filed on behalf of Beth Tfiloh. All of the individual Protestants live adjacent or in close proximity to the property involved and are and would be specially affected by the proposed development of the property by Beth Tfiloh.

2. Sean O'Connell resides at 408 Central Avenue, Glyndon, Maryland 21071; Gary D. Applestein resides at 9 Victoria Green Court, Glyndon, Maryland 21071; Nan Kaestner resides at 107 Central Avenue, Glyndon, Maryland 21071; Gary R. Jones resides at 17 Worthington Hill Drive, Glyndon, Maryland 21071; and John A. Morris resides at 4715 Butler

Road, Glyndon, Maryland 21071. The mailing address of Glyndon Community Association, Inc. is c/o John A. Morris, President, 4715 Butler Road, Glyndon, Maryland 21071.

3. Beth Tfiloh's petition on appeal attempts to limit Beth Tfiloh's appeal to that portion of the Zoning Commissioner's Order dated September 19, 2001, which ruled in part that "the existing camp buildings and proposed athletic fields are not [permitted] accessory uses to the school or synagogue, and therefore, any activities associated therewith shall not be permitted on that portion of the property zoned R.C.4." However, Beth Tfiloh's appeal must be of the entire Order under Section 501 of the Baltimore County Zoning Regulations and all other applicable provisions of Article 25A of the Annotated Code of Maryland, the Baltimore County Charter, the Baltimore County Code, and the B.C.Z.R.

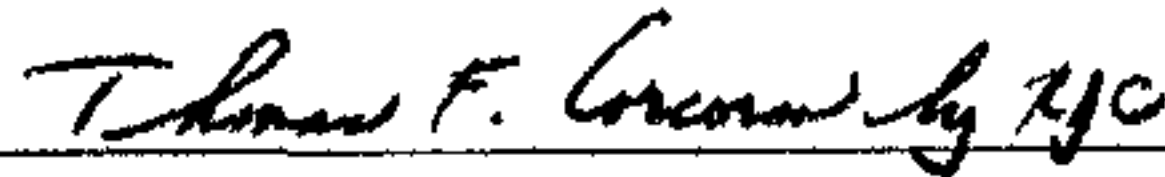
4. The Zoning Commissioner's September 19, 2001 Order was and is supported by the weight of evidence (and, necessarily, by substantial evidence) and is correct as a matter of law in its ruling that the existing camp buildings and proposed athletic fields are not permitted accessory uses to the school or synagogue in the R.C.4 district and that any activities associated therewith shall not be permitted on that portion of the property zoned R.C.4. Protestants therefore request the Board of Appeals to affirm that part of the Order.

5. Protestants also request the Board of Appeals to affirm that part of the Order ruling that Beth Tfiloh did and could abandon the special exception which had previously been granted for use of portions of the property as a camp.

6. However, Protestants request the Board to reverse those parts of the Order (i) granting Beth Tfiloh's request for a modification of the residential standards of the Comprehensive Manual of Development Policies and (ii) failing to grant a waiver of public works standards for improvements to Central Avenue.



Robert J. Carson
Robert J. Carson, P.A.
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050



Thomas F. Corcoran
Baxter, Baker, Sidle, Conn & Jones, P.A.
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 230-3800

Attorneys for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of October, 2001, copies of the foregoing Answer to Petition on Appeal were sent by first class mail, postage prepaid, to:

Board of Appeals for Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

The Honorable Lawrence E. Schmidt
Zoning Commissioner of Baltimore County
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

Peter M. Zimmerman, Esq.
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

G. Scott Barhight, Esq.
Julie A. DiGrigoli, Esq.
Whiteford, Taylor & Preston, L.L.P.
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Richard B. Desser, Esq.
920 Providence Road, Suite 307
Towson, Maryland 21286

Fanshaw Family
204 Central Avenue
Glyndon, Maryland 21071

Mr. Richard W. Stem
4810 Butler Road
Glyndon, Maryland 21071

Mr. Michael G. Baker
348 Central Avenue
Glyndon, Maryland 21071



Robert J. Carson

Glyndon/Answer to Petition on Appeal

10/15/01
IN RE:
APPEAL FROM DRC NO. 0625011
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* * * * *

IN RE:
PETITION FOR SPECIAL HEARING
NE/S CENTRAL AVENUE, 250' NW
OF THE CL/L HUNTING HORN CIRCLE
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* * * * *

*
IN THE
*
COUNTY BOARD OF APPEALS
*
FOR
*
BALTIMORE COUNTY
*
APPEAL FROM DRC NO. 0625011
*
BOARD OF APPEALS CASE NO.

* * * * *

*
IN THE
*
COUNTY BOARD OF APPEALS
*
FOR
*
BALTIMORE COUNTY
*
CASE NO.: 01-468-SPH
*
BOARD OF APPEALS CASE NO.

*

* * * * *

MOTION OF PROTESTANTS
FOR CONSOLIDATION OF RELATED APPEALS

Glyndon Community Association, Inc., Gary Applestein, and Sean O'Connell are
the Appellants/Protestants in the first above-captioned case ("Protestants in the First Case").

Glyndon Community Association, Inc. and Gary R. Jones, John A. Morris, Sean O'Connell,
Gary D. Applestein, and Nan Kaestner are the Appellees/Protestants in the second above-
captioned case ("Protestants in the Second Case"). The Protestants in the First Case and the

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Protestants in the Second Case are represented by the same attorneys. All of the Protestants hereby move the Board of Appeals to consolidate these two cases for all purposes, including for purpose of a consolidated hearing.

1. The first above-captioned case involves an appeal by the Protestants in the First Case of the administrative order and decision embodied in the June 29, 2001 letter of Arnold Jablon, Director of the Baltimore County Department of Permits and Development Management, granting a limited exception under §25-171(A)(2) of the Baltimore County Code. That decision eliminated the necessity that there be any public notice, review, and comment with respect to the review and approval of the proposed plans for the Beth Tfiloh project at 407 Central Avenue.

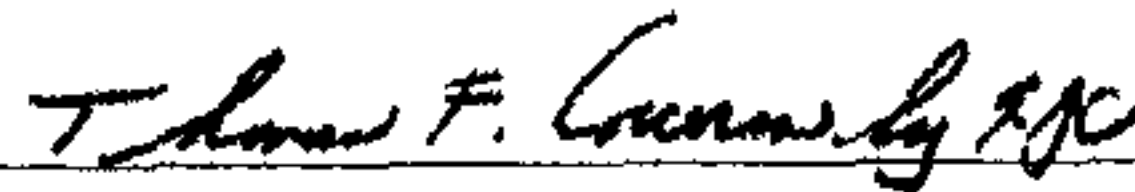
2. The second case involves Beth Tfiloh's request for a special hearing in connection with the modification of previously granted special exceptions for the camp use of portions of the same property located at 407 Central Avenue. The Zoning Commissioner on September 19, 2001 rendered a decision and passed an Order in this case which has been appealed by Beth Tfiloh. That Order ruled in part that the existing camp buildings and proposed athletic fields are not permitted accessory uses to the Beth Tfiloh school or synagogue in the R.C. 4. District and that any activities associated therewith shall not be permitted on that portion of the property zoned R.C.4.

3. Both cases essentially involve the same parties, both involve similar questions of law or fact and a common subject matter, and it would be most economical, both from an administrative standpoint and from the standpoint of the parties, to have the cases consolidated for all purposes, including for a consolidated hearing thereon. In addition to the named

Protestants, there are many residents of the Glyndon and Sagamore Forest communities who can be expected to attend the hearing before the Board of Appeals on these cases.



Robert J. Carson
Robert J. Carson, P.A.
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050



Thomas F. Corcoran
Baxter, Baker, Sidle, Conn & Jones, P.A.
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 230-3800

Attorneys for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of October, 2001, copies of the foregoing Motion to Consolidate and proposed Order thereon were sent by first class mail, postage prepaid, to:

Board of Appeals for Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

The Honorable Lawrence E. Schmidt
Zoning Commissioner of Baltimore County
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

Peter M. Zimmerman, Esq.
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

G. Scott Barhight, Esq.
Julie a. DiGrigoli, Esq.
Whiteford, Taylor & Preston, L.L.P.
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Richard B. Desser, Esq.
920 Providence Road, Suite 307
Towson, Maryland 21286

Fanshaw Family
204 Central Avenue
Glyndon, Maryland 21071

Mr. Richard W. Stem
4810 Butler Road
Glyndon, Maryland 21071

Mr. Michael G. Baker
348 Central Avenue
Glyndon, Maryland 21071



Robert J. Carson

Glyndon/Motion to Consolidate

IN RE:

APPEAL FROM DRC NO. 0625011
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* * * * *

IN RE:

PETITION FOR SPECIAL HEARING NE/S
CENTRAL AVENUE, 250' NW
OF THE CL/L HUNTING HORN CIRCLE
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* * * * *

ORDER CONSOLIDATING CASES

The Baltimore County Board of Appeals, having considered the Motion of
Protestants for Consolidation of Related Appeals, and any opposition thereto, HEREBY
ORDERS THIS ____ day of _____, 2001, that the two above-captioned cases be
consolidated for all purposes, including for the purpose of a consolidated hearing.

BOARD OF APPEALS FOR BALTIMORE
COUNTY

By: _____

* IN THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* APPEAL FROM DRC NO. 0625011
* BOARD OF APPEALS CASE NO.
* * * * *

IN THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* CASE NO.: 01-468-SPH
* BOARD OF APPEALS CASE NO.
*

By: _____

By: _____

Glyndon/Order on Motion to Consolidate

10/25/01

IN RE:
PETITION FOR SPECIAL HEARING
NE/S CENTRAL AVENUE, 250' NW
OF THE CL/L HUNTING HORN CIRCLE
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

PROPERTY OWNER/DEVELOPER/
APPLICANT:
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

*
IN THE
*
COUNTY BOARD OF APPEALS
*
FOR
*
BALTIMORE COUNTY
*
CASE NO.: 01-468-SPH
*
BOARD OF APPEALS CASE NO.
*

* * * * *

ANSWER OF APPELLEES/PROTESTANTS TO PETITION ON APPEAL

Glyndon Community Association, Inc., Sean O'Connell, Gary D. Applestein, Nan Kaestner, Gary R. Jones, and John A. Morris, Appellees/Protestants ("Protestants"), by their undersigned attorneys, state as follows in answer to the Petition on Appeal filed in the above-captioned case by Beth Tfiloh Congregation of Baltimore City, Inc., Appellant/Petitioner ("Beth Tfiloh").

1. Protestants were personally present at the July 18, 2001 hearing before Zoning Commissioner Schmidt and opposed the petition for special hearing filed on behalf of Beth Tfiloh. All of the individual Protestants live adjacent or in close proximity to the property involved and are and would be specially affected by the proposed development of the property by Beth Tfiloh.

2. Sean O'Connell resides at 408 Central Avenue, Glyndon, Maryland 21071; Gary D. Applestein resides at 9 Victoria Green Court, Glyndon, Maryland 21071; Nan Kaestner resides at 107 Central Avenue, Glyndon, Maryland 21071; Gary R. Jones resides at 17 Worthington Hill Drive, Glyndon, Maryland 21071; and John A. Morris resides at 4715 Butler

Road, Glyndon, Maryland 21071. The mailing address of Glyndon Community Association, Inc. is c/o John A. Morris, President, 4715 Butler Road, Glyndon, Maryland 21071.

3. Beth Tfiloh's petition on appeal attempts to limit Beth Tfiloh's appeal to that portion of the Zoning Commissioner's Order dated September 19, 2001, which ruled in part that "the existing camp buildings and proposed athletic fields are not [permitted] accessory uses to the school or synagogue, and therefore, any activities associated therewith shall not be permitted on that portion of the property zoned R.C.4." However, Beth Tfiloh's appeal must be of the entire Order under Section 501 of the Baltimore County Zoning Regulations and all other applicable provisions of Article 25A of the Annotated Code of Maryland, the Baltimore County Charter, the Baltimore County Code, and the B.C.Z.R.

4. The Zoning Commissioner's September 19, 2001 Order was and is supported by the weight of evidence (and, necessarily, by substantial evidence) and is correct as a matter of law in its ruling that the existing camp buildings and proposed athletic fields are not permitted accessory uses to the school or synagogue in the R.C.4 district and that any activities associated therewith shall not be permitted on that portion of the property zoned R.C.4. Protestants therefore request the Board of Appeals to affirm that part of the Order.

5. Protestants also request the Board of Appeals to affirm that part of the Order ruling that Beth Tfiloh did and could abandon the special exception which had previously been granted for use of portions of the property as a camp.

6. However, Protestants request the Board to reverse those parts of the Order (i) granting Beth Tfiloh's request for a modification of the residential standards of the Comprehensive Manual of Development Policies and (ii) failing to grant a waiver of public works standards for improvements to Central Avenue.



Robert J. Carson
Robert J. Carson, P.A.
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050



Thomas F. Corcoran
Baxter, Baker, Sidle, Conn & Jones, P.A.
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 230-3800

Attorneys for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of October, 2001, copies of the foregoing Answer to Petition on Appeal were sent by first class mail, postage prepaid, to:

Board of Appeals for Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

The Honorable Lawrence E. Schmidt
Zoning Commissioner of Baltimore County
401 Bosley Avenue, 4th Floor
Towson, Maryland 21204

Peter M. Zimmerman, Esq.
People's Counsel for Baltimore County
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

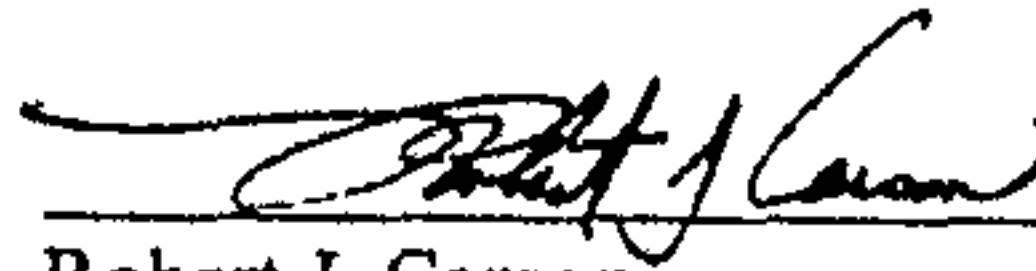
G. Scott Barhight, Esq.
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210 W. Pennsylvania Avenue
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Glyndon, Maryland 21071

Mr. Richard W. Stem
4810 Butler Road
Glyndon, Maryland 21071

Mr. Michael G. Baker
348 Central Avenue
Glyndon, Maryland 21071


Robert J. Carson

Glyndon/Answer to Petition on Appeal

Robert J. Carson, P.A.
Attorney at Law
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050 (phone)
(410) 939-1007 (fax)

e-mail:
bobcarson@hdglegal.com

Baltimore Office:
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 385-8130 or (410) 230-3800

October 25, 2001

Ms. Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
400 Washington Avenue
Old Courthouse, Room 49
Towson, Maryland 21204

Re: In the Matter of Beth Tfiloh Congregation of Baltimore City, Inc.
Case No. 01-468-SPH/Petition on Appeal

In the Matter of Beth Tfiloh Congregation of Baltimore City, Inc.
Appeal From DRC No. 0625011

Dear Ms. Bianco:

Please file the enclosed pleadings in the above-described cases, as follows:

1. Answer of Appellees/Protestants to Petition on Appeal relating to Case No. 01-468-SPH.
2. Motion of Protestants for Consolidation of Related Appeals, together with proposed Order, *in duplicate*. One original should be filed on 01-468-SPH, and the other should be filed in the Appeal from DRC No. 0625011.

With my appreciation for your assistance in the foregoing, I am

Sincerely yours,



Robert J. Carson

RJC/jak

cc: Lawrence S. Wescott, Chair ✓
County Board of Appeals of Baltimore County
The Honorable Lawrence E. Schmidt
Peter M. Zimmerman, Esq.
G. Scott Barhight, Esq.
Julie A. DiGrigoli, Esq.
Mr. Gary R. Jones

01 OCT 29 PM 3:31

Ms. Kathleen C. Bianco

October 25, 2001

Page Two

Mr. John A. Morris

Mr. Sean O'Connell

Mr. Gary Applestein

Ms. Nan Kaestner

Glyndon Community Association, Inc.

c/o John A. Morris, President

Richard B. Desser, President

Sagamore Forest Improvement Association

Thomas F. Corcoran, Esq.

Glyndon/Bianco ltr

10 / 11 / 01
IN RE:
PETITION FOR SPECIAL HEARING
NE/S CENTRAL AVENUE,
250' NW OF THE C/L
HUNTING HORN CIRCLE
(407 CENTRAL AVENUE)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* IN THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY

PROPERTY OWNER/DEVELOPER/
APPLICANT:

BETH TFILOH CONGREGATION
OF BALTIMORE CITY, INC.
3300 OLD COURT ROAD
BALTIMORE, MARYLAND 21208

* CASE NO: 01-468-SPH
* BOARD OF APPEALS CASE NO:

*

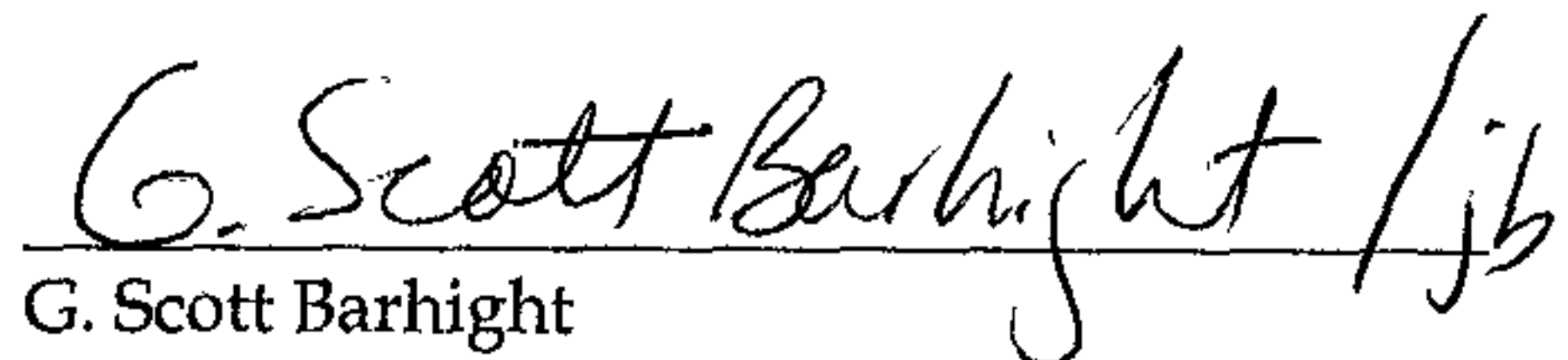
PETITION ON APPEAL

Appellant/Petitioner, Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh"), by and through its attorneys, G. Scott Barhight and Whiteford, Taylor & Preston, LLP, hereby appeals a portion of the Zoning Commissioner for Baltimore County's September 19, 2001 Findings of Fact and Conclusions of Law ("decision"), specifically the Zoning Commissioner's finding that "the existing camp buildings and proposed athletic fields are not accessory uses to the school or synagogue, and therefore, any activities associated therewith shall not be permitted on that portion of the property zoned R.C. 4".

Beth Tfiloh requests this Board reverse and modify said portion of the Zoning Commissioner's September 19, 2001 decision. In support of its requested relief, Beth Tfiloh states:

1. The Zoning Commissioner erred as a matter of law in finding that "the existing camp buildings and proposed athletic fields are not accessory uses to the school or synagogue, and therefore, any activities associated therewith shall not be permitted on that portion of the property zoned R.C. 4".
2. Based on the foregoing, Beth Tfiloh requests this Board modify the Zoning Commissioner's September 19, 2001 decision by reversing the portion of the Zoning Commissioner's decision that "the existing camp buildings and proposed athletic fields are not accessory uses to the school or synagogue, and therefore, any activities associated therewith shall not be permitted on that portion of the property zoned R.C. 4".

Respectfully submitted,

A handwritten signature in cursive script that reads "G. Scott Barhight" followed by a slanted "ljb".

G. Scott Barhight
Whiteford, Taylor & Preston L.L.P.
400 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204
410-832-2000
Attorneys for Appellant/Petitioner,
Beth Tfiloh, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of October, 2001, a copy of the foregoing

Petition on Appeal was sent via first class mail to:

Arnold Jablon, Esquire
Director,
Baltimore County Department of Permits & Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Board of Appeals for Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

The Honorable Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
401 Bosley Avenue, 4th Floor
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204 Central Avenue
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Mr. Gary Applestein
9 Victoria Green Court
Reisterstown, Maryland 21136

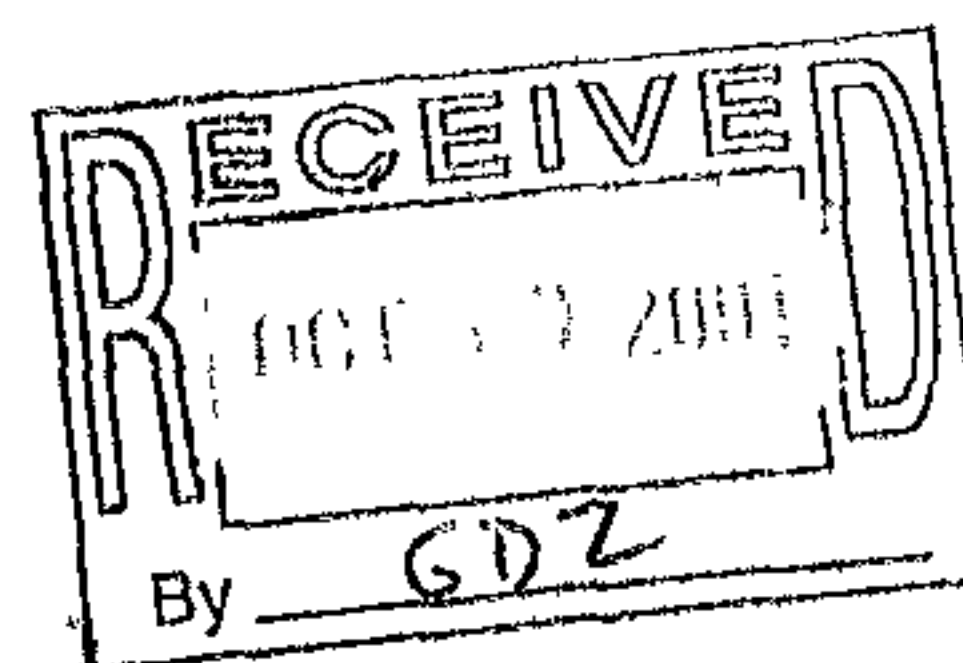
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Glyndon, Maryland 21071

Mr. Richard W. Stem
4810 Butler Road
Glyndon, Maryland 21071

Mr. Michael G. Baker
348 Central Avenue
Glyndon, Maryland 21071

G. Scott Barhight lib
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G. SCOTT BARHIGHT
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October 19, 2001

HAND-DELIVERY

Arnold Jablon, Esq.
Director, Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

**Re: In the Matter of: Beth Tfiloh Congregation of Baltimore City, Inc.
Petitioners/Appellants
Case No. 01-468-SPH/Petition on Appeal**

Dear Mr. Jablon:

On behalf of Beth Tfiloh Congregation of Baltimore City, Inc., 3300 Old Court Road, Baltimore, Maryland 21208, please note an appeal of the portion of the Zoning Commissioner's Order dated September 19, 2001 in the above-referenced case, namely, the findings that "the existing camp buildings and proposed athletic fields are not accessory uses to the school or synagogue, and therefore, any activities associated therewith shall not be permitted on that portion of the property zoned R.C. 4."

Enclosed is Beth Tfiloh Congregation of Baltimore City, Inc., Petitioner/ Appellant's Petition on Appeal with regard to the above-referenced matter. Also enclosed is a check in the amount of \$210.00 representing the filing fee for this appeal.

Should you have any questions or comments, please feel free to contact me. Thank you for your cooperation in this matter.

Sincerely,



G. Scott Barhight

GSB:sll
Enclosures

Ms. Kathleen C. Bianco

October 18, 2001

Page 2

cc: The Honorable Lawrence E. Schmidt
Ms. Kathy Bianco, Baltimore County Board of Appeals
Peter M. Zimmerman, Esquire
Robert J. Carson, Esquire
Richard B. Desser, Esquire
Fanshaw Family
Mr. Gary Applestein
Mr. John Morris
Mr. Richard W. Stem
Mr. Michael G. Baker
Beth Tfiloh Congregation

236070

7/19/01

IN RE: PETITION FOR SPECIAL HEARING
NE/S Central Avenue, 250' NW of the c/l
Hunting Horn Circle
(407 Central Avenue)
4th Election District
3rd Council District

Beth Tfiloh Congregation of
Baltimore City, Inc. - Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 01-468-SPH
*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, Beth Tfiloh Congregation of Baltimore City, Inc. (Beth Tfiloh), through their attorney, G. Scott Barhight, Esquire. Through its Petition, Beth Tfiloh seeks approval of "amendments to the previously approved site plans in Cases Nos. 65-389-X and 94-27-SPHA, and IV-455." The subject property and requested relief are more particularly described on the site plan submitted with the Petition filed and accepted into evidence as Petitioner's Exhibit 3.

Appearing at the requisite public hearing in support of the request were Bernard H. Suffel, Executive Director of Beth Tfiloh, property owners; Steve Warfield, Civil Engineer with Matis Warfield, Inc.; Timothy Madden, Registered Landscape Architect with Morris Ritchie & Associates, Inc.; and, G. Scott Barhight, Esquire, attorney for the Petitioners. Numerous citizens from the surrounding locale appeared in opposition to the request. They included several members of the Fanshaw family, Gary Applestein, John Morris, Richard W. Stem, Jr., and Michael G. Baker. Robert J. Carson, Esquire appeared on behalf of many of these individuals as well as the Glyndon Community Association, Inc. Alfred W. Barry, III appeared as an expert witness on behalf of the Protestants.

Testimony and evidence offered revealed that the subject property is an irregularly shaped parcel located on the north side of Central Avenue just north of Bond Road in the long-established village of Glyndon, which has been designated as a historic district. The property is a

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single lot of record, which is bisected into several zones. The predominant zoning of the property is R.C.4 (23.51 acres) and D.R.1 (18.16 acres). In fact, a zoning line runs in a northwest/southeast direction through the center of the property, essentially dividing the parcel into those two zones. However, a small portion (2.28 acres) along the northern boundary of the property is zoned R.C.5 and there is a small sliver (.12 acres) zoned D.R.2.

The history of this property and its use are of note. The first zoning approval was granted on June 30, 1965 in Case No. 65-389-X. In that case, special exception relief was granted to the Maryland Diabetes Association, Inc., which owned the property at that time, to operate a camp, community building, swimming pool and other structures for use as a camp for diabetic children. Ultimately, as part of the camp use, the property was improved with a pavilion, numerous bunk houses, medical building, shower/laundry structure, infirmary, a dining hall, swimming pool and pool house, a multi-purpose center, and other related accessory structures. The property was for years known as Camp Glyndon, and the primary purpose of the site was to provide a recreational area for diabetic children; however, the facility also served as a place for educational meetings and seminars by the Maryland Diabetes Association, Inc.

The second zoning case for this property related to Petitions for Special Hearing and Variance relief filed by the Maryland Diabetes Association, Inc. under Case No. 94-27-SPHA. That case was considered by the undersigned Zoning Commissioner in 1993. By Order dated September 28, 1993, the Petition for Special Hearing was granted to permit certain upgrades to the special exception relief which had been approved in Case No. 65-389-X. Additionally, certain variances were granted for existing and proposed setbacks between existing and proposed buildings to provide certain changes and upgrades to the property. In addition, a variance from the sign regulations was granted.

Thereafter, on or about March 4, 1994, the Maryland Diabetes Association, Inc. obtained a limited exemption from the development review process for certain additional improvements to the camp under Case No. IV-455.

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Beth Tfiloh subsequently acquired the property in 1998 from the Maryland Diabetes Association, Inc. Since that time, a lower school and synagogue have been built on the property. Additionally, Beth Tfiloh sought a limited exemption from the development review process codified in Title 26 of the Baltimore County Code. On June 29, 2001, Beth Tfiloh received a limited exemption from the Development Review Committee (DRC), pursuant to Section 26-171(a)(2) of the Baltimore County Code for the development as shown on Petitioner's Exhibit 3. The grant of this limited exemption, communicated by Arnold Jablon, Director of the Department of Permits and Development Management (DPDM), has been appealed by the Protestants to the County Board of Appeals and is now pending.

Although broadly worded, the relief sought under the instant Petition for Special Hearing raises a number of site-specific issues. These will be addressed separately.

- 1) Beth Tfiloh may develop a school and synagogue on the D.R. zoned portion of the property as a matter of right.

The inclusive nature of the B.C.Z.R. is well-settled. Section 102.1 of the B.C.Z.R. provides that "No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use." In Kowalski v. Lamar, 25 Md. App. 493 (1975), the Court of Special Appeals emphasized that only the uses identified within the B.C.Z.R. as being permitted either by right or by special exception are allowed. That is, a property owner in Baltimore County must use its land only in a manner identified as being permitted by right or by special exception in the B.C.Z.R. Nonetheless, zoning and land use regulations do not mandate a property owner to use its property in a specific manner. See Hayfields, Inc. v. Valleys Planning Council, 122 Md. App. 616 (1998).

In this case, a large portion of the property is zoned D.R.1. Section 1B01.1.A.3 of the B.C.Z.R. permits "Churches, other buildings for religious worship or other religious institutions" as a matter of right in the D.R. zone. Section 1B01.1.A.14 provides that "schools" are a permitted

use as of right in the D.R. zone. Thus, it is abundantly clear that the applicant may use the D.R. zoned portion of its property for a school and/or church for so long as compliance with all bulk and area regulations is maintained. Despite their protestations, the site's neighbors cannot stop the use of the D.R.1 zoned portion of the property as a school or religious building.

2) Beth Tfiloh may abandon the existing special exception use as a camp.

As part of its request for an "amendment" to the previously approved plans in the prior cases referenced above, Beth Tfiloh seeks to formally abandon the special exception relief granted in those cases for a camp. It is clear that a property owner may use his property in any manner legally permissible under local, state and federal law. See Hayfields, Inc. v. Valleys Planning Council, infra. It is clear that a property owner cannot be forced to utilize his property in any certain way. Moreover, Section 502.3 of the B.C.Z.R. provides that a special exception, which has not been utilized within a period of two years from the date of the final Order granting same, shall thereafter be void. Thus, under the B.C.Z.R., an approved special exception use can be terminated.

These sources are all persuasive to a finding that the property owner can abandon the special exception use. The neighbors cannot insist that this property continue to be used as a camp, no more than can Beth Tfiloh insist that neighboring homeowners use their properties in a specific fashion. The property owner has affirmatively requested, as part of its amendment, that the special exception granted in the prior cases be rescinded. This is within the property owner's discretion and thus, that portion of the Petition for Special Hearing shall be granted.

3) Beth Tfiloh's request for modification to the residential standards of the Comprehensive Manual of Development Policies (CMDP) as to building length.

The CMDP requires that the total building length of a non-residential principal building in the D.R. zone shall not exceed 200 feet. (See CMDP - Residential Standards, Pg. 29). The CMDP provides, however, that "upon a favorable recommendation by the Director of the Office of Planning to the Hearing Officer" the maximum building length can be increased to 300 feet. The

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Hearing Officer is defined as the Zoning Commissioner. (See Baltimore County Code, Section 26-168(w)). The CMDP sets forth particular guidelines for evaluating such a request.

In this case, Beth Tfiloh seeks a modification of standards for its two-story lower school building to permit a building length of 271 feet, in lieu of the maximum 200 feet allowed. Additionally, Beth Tfiloh is proposing a connection between the existing synagogue building and the proposed dining hall on the property. As a result of this connection, these two separate buildings are considered one structure under the CMDP. The length of that structure will be approximately 240 feet. Thus, Beth Tfiloh seeks a modification of standards to permit the connection of those two buildings, which will result in a length in excess of the 200 feet permitted.

In accordance with the CMDP, Beth Tfiloh submitted a request for modification to the Director of the Office of Planning, Arnold F. (Pat) Keller, III. Beth Tfiloh submitted detailed architectural elevations of the proposed buildings in support of its request. (See Petitioner's Exhibit 3.) The Office of Planning offered a favorable recommendation on July 12, 2001. (See Petitioner's Exhibit 2). The Office of Planning has conditioned its recommendation upon their review and approval of Beth Tfiloh's final landscaping and lighting plan at the building permit stage of the development plan process. Apparently, Beth Tfiloh consents to the imposition of this condition. The testimony offered by Mr. Madden in support of this request is contained in the record of this case and within Petitioners' Memorandum. It will not be restated here.

In sum, I am persuaded, based upon the testimony and evidence offered, that a modification of standards is appropriate in this case. The testimony offered by Mr. Madden was undisputed and demonstrates compliance with the guidelines set out in the CMDP. Moreover, the favorable recommendation by the Office of Planning supports this request. Thus, under the Petition for Special Hearing, relief shall be granted for a modification to the residential standards of the CMDP.

4) Use of the R.C.4 zoned portion of the property.

The primary issue raised in the Petition for Special Hearing relates to the possible use of the R.C.4 zoned portion of the tract. As noted above, the County Council recently rezoned this

property and bisected the parcel on a northwest/southeast axis with an R.C.4/D.R.1 zone line.¹ As clearly shown on the plat, this line separates the entire parcel into two pieces. The southern piece, zoned D.R.1, is and will be improved with the buildings necessary for the synagogue and school use. The plan shows a series of structures to accommodate those uses as well as roads and parking areas. The northern piece of the property zoned R.C.4 is mostly unimproved. It does, however, contain three identifiable land uses that are to be used in conjunction with the activities occurring on the D.R.1 zoned portion of the tract: 1) a series of buildings which were formerly used as bunk houses and a medical building in association with the camp; 2) a loop road which provides interior access to the site as well as access to off-site separately owned lots (see e.g., those parcels owned by Peregoy and Felser); and, 3) an area for proposed athletic fields. The thrust of the issue in this case is whether those three uses/activities are permitted in the R.C.4 zone. Essentially, the question framed is "Can Beth Tfiloh, on its single parcel of record, conduct activities on the R.C.4 zoned portion of this tract that are incidental or accessory to those permitted uses of right on the D.R.1 zoned portion of the tract?"

Expert testimony was received on this issue from both sides. Additionally, both Counsel for Beth Tfiloh and the Protestants have briefed the issue. Essentially, Beth Tfiloh argues that the uses proposed on the R.C.4 zoned portion of the tract (i.e., the cluster of buildings, the athletic fields, and loop road) are, by definition, accessory uses to the school and synagogue and are therefore permitted. In contrast, the Protestants argue that because neither a school nor synagogue is permitted as of right in the R.C.4 zone, that part of the tract cannot be so used.

The Petitioners contend that Section 1A03.3.A.9 of the B.C.Z.R. is controlling. That Section permits accessory uses or structures in the R.C.4 zone by right. The Section then goes on to describe certain accessory structures. The question presented is whether accessory uses or structures, as contemplated within that Section, may include uses not permitted by right.

An accessory use is defined in Section 101 of the B.C.Z.R. Therein, it is stated that an accessory use is "A use or structure which: a) is customarily incidental and subordinate to and

¹ Neither party alleges that the split zoning of a single parcel is illegal. Indeed, the cases cited herein support the Council's authority to split zone a single lot.

serves a principal use or structure; b) is subordinate in area, extent or purpose to the principal use or structure; c) is located on the same lot as the principal use or structure served; d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served;..."

On the surface, it appears that the cluster of bunk houses, athletic field, and loop road qualify as accessory uses under that definition. Persuasive testimony was offered that those uses indeed do not change the basic nature of the primary uses of the property as a school or synagogue. Additionally, it is clear that such uses are common accessory uses of schools and churches. Many schools and churches have recreational facilities such as what is proposed on the R.C.4 zoned portion of this property. Moreover, the entire parcel is but a single lot of record. Thus, all of the activity is on the same "lot of record."

Although it is easily concluded that the activities in the former camp houses or on the proposed athletic fields would indeed be accessory, by definition, if they were on D.R. zoned land, the Protestants contend that the different zoning classification mandates a finding that these uses cannot be accessory. I agree. Just as it is clear that a school is permitted by right in the D.R. zone, it is equally clear that it is prohibited in the R.C.4 zone. Moreover, although a church or other building for religious worship is a permitted use by right in the D.R. zone, it is permitted only by special exception in the R.C. 4 zone. In that there is no special exception requested for a building for religious worship to be located in the R.C.4 zoned portion of the tract, I must conclude, for the purpose of this deliberation, that the synagogue activity cannot occur on that portion of the tract.

Despite well-researched and thorough briefs, neither party was able to cite controlling Maryland authority for this specific issue. The Protestants cited a number of cases for the proposition that an accessory use cannot occur on a separate lot with a different zoning classification owned by the same property owner. (See, Leimbach v. City of Baltimore, 257 Md. 635 (1969)). Although germane to this issue, these cases are not controlling in that they dealt with separate parcels. A separate or different lot clearly precludes a finding of accessory use under the

B.C.Z.R., in view of the requirement that such accessory use must be "located on the same lot as the principal use or structure served."

Moreover, this case is unlike other cases of which the undersigned is aware that have been considered by the Zoning Commissioner, County Board of Appeals, Circuit Court of Baltimore County. (See, e.g. In Re: Orville Jones, 94 CV 10257 and, In Re: Application of Maryland Line Association, 95 CV 4750). In those cases, Petitions for Special Hearing were filed to permit septic system or storm water management outfalls on separate parcels with different zoning classifications. Those separate parcels were not in common ownership. The unusual nature of this case is that the Beth Tfiloh property is one parcel, owned by one entity, with two separate and divergent zoning classifications.

The out-of-state cases referenced by the Protestants are helpful. In Moss v. Town of Winchester, 311 NE 2nd 555 (1974), the property under consideration was a single lot of record, split zoned into two separate residential districts. The Court did not permit "spillage" of a permitted use from one district into that portion of the property where the use was not allowed. In Town of Kitterly v. White, et al, 435 A2d 405 (Me. 1981), the split zoning of a lot was upheld, where one zone allowed certain commercial uses and the other zone did not. The Court concluded, "(e)ach part of the lot must comply with the restriction imposed upon the zone in which it is located..." (Pg. 407). The other cases cited by the Protestants have similar holdings.

Although it might be argued that the County Council should have inserted language in the accessory use definition clearly stating that such use be located in the same zone as the principal use served, I believe that such a requirement is manifest from the zoning regulations taken as a whole. To follow the Petitioners' conclusion in this case could lead to an absurd result. One can imagine, for example, a property owner with a significantly sized parcel containing a small portion of commercial zoning adjacent to road frontage and non-commercial zoning to the rear. Following the Petitioners' accessory use argument, that property owner might establish an automobile sales operation on the front portion of the site with the sales building in the commercial zone. The storage or parking of 1,000 vehicles in the rear, non-commercial zoned portion of the

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lot could be argued as being permitted as accessory to the primary use on the commercial zone. I do not believe that the Council intended such a result. The essential purpose of zoning is to regulate and control land use. The uses proposed by Beth Tfiloh on the R.C.4 zoned portion of the property are simply not allowed. When all is said and done, the applicant in this case seeks a result that undermines the essential theory of zoning. Since the uses proposed are not permitted by right in the zone as primary uses, they simply cannot be allowed as accessory uses.

Absent the filing of a Petition for Special Exception, it is clear that the Petitioners may not use a portion of the R.C.4 zoned tract as a church or other building of religious worship, pursuant to Section 1A03.B.4 of the B.C.Z.R. This result is clear as to the series of camp buildings and the proposed athletic fields. However, the loop road is another issue. In addition to "serving" the primary use of the property as a religious building and school, the loop road also provides access from a public road to off-site residences. Moreover, in a legal opinion issued by Baltimore County's Office of Law on January 17, 1980, a similar issue was addressed. Although recognized as not binding, the logic stated therein is insightful. In that case, 5 acres of commercially zoned land were located in the center of a residentially zoned property with the residential land acting as a buffer. The residentially zoned land need be crossed for vehicular access to the commercial portion of the property. The question was whether a driveway should be allowed for purposes of ingress and egress across the residential zone. Noted the opinion, "For all practical purposes, the zoning of the core of commercial property surrounded by residential buffer anticipates the erection of business structures and the conducting of permissible business uses in that core; moreover, the conducting of permissible business must have also anticipated that there would be a practical means of ingress and egress..." Moreover, although there was limited testimony, the road may well be nonconforming under Section 104 of the B.C.Z.R. That is, the road was surely there prior to the split zoning of the property. In conclusion, unlike the former camp houses and proposed athletic fields, the loop road is of a different character and serves other purposes.

For all of these reasons, I find that the property owner may not develop proposed athletic fields on the R.C.4 zoned portion of the site, and likewise, may not use the existing

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buildings in association with the school or synagogue. The existing loop road, however, may remain, since same is not only used in connection with the primary uses of this property, but serves other purposes as well. Moreover, it existed prior to the split zoning of the property.

5) Waiver of Public Works Standards for improvements to Central Avenue.

The final issue raised within the Petitioners' Memorandum relates to proposed improvements to Central Avenue. The Hearing Officer/Zoning Commissioner has the authority, pursuant to Section 26-172 of the Baltimore County Code, to grant waivers from the requirements of Divisions 3, 4 and 5 of the Development Regulations codified in Title 26 of the Code. Certain Public Works Standards are indeed contained in those divisions.

The record of this case will reflect the testimony of Robert W. Bowling, a Professional Engineer employed by Baltimore County's Department of Permits and Development Management (DPDM), who represents the Department of Public Works in the development review process. Mr. Bowling testified at the hearing that certain improvements would be required by the Department of Public Works; however, his testimony represented a modification of the requirements set out in the Zoning Advisory Committee (ZAC) comment offered by him in this case on June 7, 2001. In his testimony, Mr. Bowling indicated that Beth Tfiloh would be required to widen Central Avenue a distance of approximately 10 feet, only along the frontage of its property. That is, there would be no widening required on the other side of the street. Additionally, Mr. Bowling indicated that the Department of Public Works would permit a bituminous mountable curb in lieu of a full curb and gutter, and would require sidewalks along the frontage of Beth Tfiloh's property. No additional lighting would be required along Central Avenue. Additionally, Mr. Bowling confirmed that a proposed extension of the loop road within the interior of the property to St. Paul Avenue would be deleted, as would the construction of a connection between the existing sections of that road. That is, at present, St. Paul Avenue terminates in both directions and is not a through road. Mr. Bowling indicated that a proposed connection of the two existing St. Paul Avenues must be deleted.

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The Petitioners' plan has been red-lined to reflect Mr. Bowling's testimony and the modifications set out therein. As to the requested waiver from public works standards, I do not find that the Petition for Special Hearing, as filed, has properly requested a waiver. As noted above, the language in the Petition is general and essentially seeks an amendment to previously approved site plans. In order to afford both Baltimore County and the public accurate notice of relief sought, the Petition should have clearly stated that a waiver of Public Works Standards was sought. The language set out in the Petition is deficient in that respect. Moreover, it is not manifest that the waiver has actually been "recommended" by any Department Director, as required under Section 26-172 of the Code. Under the circumstances, I decline to grant any waiver of public works standards; however, the red-lined plan accurately reflects the testimony offered by Mr. Bowling and the agreed modifications to Department of Public Works standards.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted in part, and denied in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 19th day of September, 2001, that the Petition for Special Hearing seeking approval of an amendment to the previously approved site plans in Cases Nos. 65-389-X, 94-27-SPHA, and IV-455, to reflect the abandonment of the special exception relief granted for the camp formerly known as Camp Glyndon, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking a modification of the standards to the CMDP to allow a building length greater than 200 feet for the two-story school building, and proposed connection of the synagogue and dining hall building, in accordance with Petitioner's Exhibit 3, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the lower school and synagogue (building for religious worship) are uses permitted as of right in the D.R.1 zoned portion of the subject property; and,

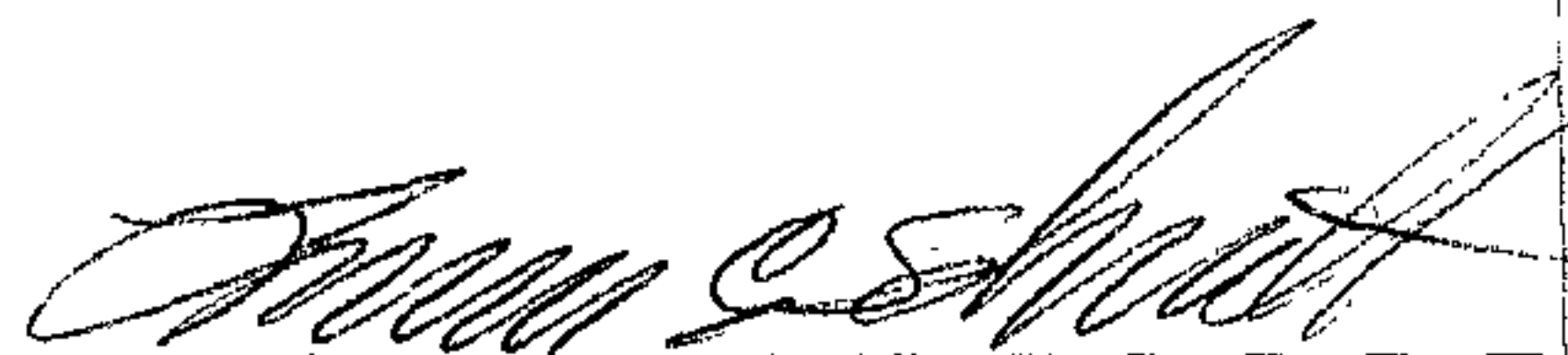
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Date 9/19/01
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IT IS FURTHER ORDERED that the existing camp buildings and proposed athletic fields are not accessory uses to the school and synagogue, and therefore, any activities associated therewith shall not be permitted on that portion of the property zoned R.C.4; and,

IT IS FURTHER ORDERED that the loop road may be maintained and utilized for all purposes incidental to the use of the subject property and to provide access to adjacent properties; and,

IT IS FURTHER ORDERED that the requested waiver of Public Works Standards be and is hereby DENIED, without prejudice, in that same was not properly identified as relief being requested within the Petition for Special Hearing.

Any appeal from this decision must be filed in accordance with the applicable provisions of law.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

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Date 2/19/11
By [Signature]

8/17/01

BETH TFILOH CONGREGATION
OF BALTIMORE CITY, Inc., Petitioner
407 Central Avenue
NE/S Central Avenue, 250' NW
Centerline Hunting Horn Circle
4th Election District
3rd Councilmanic District

BEFORE THE
ZONING COMMISSIONER
FOR
BALTIMORE COUNTY

AUG 17 2001

*

*

CASE No. 01-468-SPH

* * * * *

PETITIONER'S MEMORANDUM OF LAW

Beth Tfiloh Congregation of Baltimore City ("Beth Tfiloh"), Petitioner, by and through its attorneys, G. Scott Barhight, Julie A. DiGrigoli, and Whiteford, Taylor & Preston L.L.P., hereby submits this Memorandum of Law in Lieu of Closing Argument and states:

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter comes before the Zoning Commissioner for Baltimore County upon Beth Tfiloh's filing of a petition for special hearing. Beth Tfiloh's 44.07 acre ± property located at 407 Central Avenue, Glyndon is the subject of this Petition ("subject property"). The subject property is a single lot of record straddling several different zone lines. The subject property consists of 23.51 acres of R.C. 4 zoned property, 2.28 acres of R.C.5 zoned property, 18.16 acres of D.R. 1 zoned property and 0.12 acres of D.R.2 zoned property. Beth Tfiloh is currently using the property as a synagogue, school and camp.

Beth Tfiloh's Petition for Special Hearing seeks to amend the previously approved plans on the property in Case Nos. 65-689-X, 94-27-SPHA and IV-455. Specifically, Beth Tfiloh seeks to abandon the special exception for a principal camp use currently covering the entire property in order to utilize the subject property for the principal uses of a school and synagogue. Additionally, Beth Tfiloh seeks a determination that the athletic field, camp buildings and Insulin Drive (hereinafter referred to as "loop drive") are accessory uses of the school and synagogue.

Testimony in this case was heard by Zoning Commissioner Lawrence E. Schmidt on July 18, 2001. During the hearing, Beth Tfiloh restated its request for a modification of standards (building length) for the proposed lower school building and connection between the dining hall and synagogue. Beth Tfiloh also presented its red-lined revisions to the Plan to Accompany Petition for Special Hearing. See Petitioner's Exhibit 5. The red-lined revisions were made in response to comments Beth Tfiloh received from the Department of Public Works only two days prior to the hearing. Specifically, the red-lined plan reflects that Beth Tfiloh withdrew its proposal to provide access to the subject property to St. Paul Avenue as well as its proposal to connect the two existing St. Paul Avenues. Additionally, the red-lined plan shows Central Avenue widened to its ultimate section along the entire frontage of the property. Despite this revision to the plan, Beth Tfiloh requested a waiver of standards for Central Avenue explaining that it would not have widened the road unless the Department of Public Works so mandated. In a request supported by the Protestants,

Beth Tfiloh has requested that Central Avenue be permitted to remain in its existing condition.

In support of its Petition for Special Hearing, Waiver and Modification of Standard requests, Beth Tfiloh offered Timothy Madden of Morris & Ritchie Associates as an expert in planning and zoning and Steve Warfield of Matis-Warfield as an expert in civil engineering. Protestants Glyndon Community Association, J. Morris, G. Jones, S. O'Connell, G. Applestein, and N. Cowner offered Al Barry of AB Associates as an expert in planning and zoning. Additionally, Bernard H. Suffel, the Executive Director of Beth Tfiloh, was called by the Protestants to testify. Protestant Mr. Richard Desser offered testimony in his individual capacity as a neighboring property owner. Zoning Commissioner Schmidt called Robert Bowling of the Department of Public Works as a witness in order to explain the Department's comments on the improvement of Central Avenue.

At the conclusion of the proceedings, the parties agreed to submit Memoranda in lieu of closing argument in this matter on or before August 17, 2001.

II. ZONING AND DEVELOPMENT HISTORY OF BETH TFILOH'S PROPERTY

Zoning and development approvals were obtained on the subject property in Case Nos. 65-689-X, 94-27-SPHA and IV-455. A special exception to operate a camp, community buildings, swimming pool and other structures was granted on June 30, 1965 in Case No. 65-389-X. The property was thereafter used as a camp by the Maryland Diabetes Association, Inc. On September 28, 1993, the special exception for the camp was upgraded and variances were obtained for setbacks between camp

buildings and signage. (See Case No. 94-27-SPHA). Thereafter, on or around March 4, 1994, the Maryland Diabetes Association obtained B(9) limited exemption plan approval for additional improvements to the camp. (See Case No. IV-455; *Petitioner's Exhibit 3*).

Beth Tfiloh acquired the subject property in 1998 for use as a synagogue, school and camp. A preschool and synagogue were developed on the property shortly thereafter. In order to proceed with its plans for a lower school on the property, Beth Tfiloh sought a limited exemption from the Development Review Committee (DRC). On June 29, 2001, Beth Tfiloh received a limited exemption from the Baltimore County Development Regulations, pursuant to 26-171(A)(2), for the development described on the Plan to Accompany Special Hearing. (See DRC No. 062501I).

III. ARGUMENT

A. Beth Tfiloh may develop a lower school and synagogue on the subject property as a matter of right.

There is no question that Beth Tfiloh may develop a lower school and synagogue on the D.R. portion of its property as a matter of right. BCZR §1B01.1.A.14 provides that "schools" are permitted as a matter of right in the D.R. zone. Additionally, §1B01.1.A.3 states that "churches, other buildings for religious worship or other religious institutions" are also permitted as a matter of right in the D.R. zone. The Court of Special Appeals has held that "[a] use permitted as of right may be developed, as matter of zoning, regardless of the kind and extent of adverse impact (from a land use perspective) it will create in the particular location proposed". Hayfields, Inc. v.

Valleys Planning Council, Inc., 122 Md. App. 616, 639, 716 A.2d 311 (1998). Since the lower school and synagogue are permitted by right, the only issue in these proceedings is whether the school and synagogue's accessory uses may be located on the R.C. portion of its property.

B. The Athletic Field, Camp Buildings and Loop Road are Accessory Uses of the School and Synagogue.

1. *In order to be accessory, the athletic field, camp buildings and loop road must meet the Baltimore County Zoning Regulation's definition of an accessory use.*

As set forth herein, the athletic field, camp buildings, and loop road on Beth Tfiloh's property meet the Baltimore County Zoning Regulation's definition of an accessory use of the school and synagogue. The Baltimore County Zoning Regulations define an accessory use as "a use or structure which:

- (a) is customarily incident and subordinate to and serves a principal use or structure;
- (b) is subordinate in area, extent or purpose to the principal use or structure;
- (c) is located on the same lot as the principal use or structure served ; and
- (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served"

BCZR §101.

By contrast, a principal use is defined by the Regulations as "a main use of land, as distinguished from an accessory use." BCZR §101.

BCZR §1A03.3.A.9 provides that "accessory uses or structures" are permitted as a matter of right in the R.C.4 zone. Permissible accessory uses in the R.C.4 zone include, but are not limited to, "swimming pools, tennis courts . . . or other accessory structures or uses" and "parking spaces". §1A03.3.A.9.e-f. Similarly, BCZR §1B01.1.A.18 provides

that in the D.R. zone accessory uses or buildings, other than those permitted only by special exception, are permitted as a matter of right.

2. *Under Maryland case law, Beth Tfiloh must also demonstrate that its athletic field, camp buildings and loop road do not change the basic nature of the primary uses of the property.*

Beth Tfiloh's athletic field, camp buildings and loop road are accessory uses since they do not change the basic nature of the primary uses of the property as a school and synagogue. Under Maryland law, there are two pivotal cases dealing with accessory uses, Eastern Service Centers, Inc. v. Cloverland Farms Dairy, Inc., 130 Md. App. 1, 744 A.2d 63 (2000) and County Commissioners of Carroll County v. Zent, 86 Md. App. 745, 587 A.2d 1205 (1991). The Court of Special Appeals in Eastern Service adopted the Court's test in Zent for evaluating whether a use is accessory. The test is whether a use changes the basic nature of the primary use and is truly incidental to, and supports the use. Eastern Service, 130 Md.App. at 12; Zent, 86 Md.App. at 769. The Maryland Court of Special Appeals has held that the zoning board's determination as whether a use is accessory is ultimately a finding of fact. Eastern Service, 130 Md. App. at 9.

In Eastern Service, the issue was whether a convenience store was an accessory use of a gas station in an industrial district. Id. at 4. In other words, whether the proposed convenience store was customarily incident and subordinate to the gasoline station. This finding was significant in that automobile service stations were permitted as conditional uses, but, food/grocery stores were only permitted as accessory uses. Id. Therefore, if the convenience store was not found to be accessory it was not permitted. The Court of Special Appeals ultimately held that a convenience store was an accessory

use of a gas station since it did not change the basic nature of a gas station and was not expressly prohibited by statute. *Id.* at 12.

Zent also involved an accessory use issue. In Zent, the Maryland Court of Special Appeals acknowledged "a paucity of Maryland cases defining accessory uses, incidental uses, and their relationship with legal primary uses".¹ 86 Md. App. 759.² As a result, the Court of Special Appeals relied upon case law from foreign jurisdictions in order to address the accessory use question. *Id.* The court examined accessory use tests from several jurisdictions. Specifically, the Court in Zent considered the following test adopted by Supreme Court of Louisiana's test for determining whether a use is accessory:

- 1) They must be related to the principal use (usually non-explicitly stated, but implied.)
- 2) They must be subordinate and clearly incidental use (almost always stated.)
- 3) They must be customarily incidental (almost always stated.)
- 4) They must be located on the same lot as the principal use (almost always stated) and, occasionally must also be in the same ownership.
- 5) They must not alter the character of the area or be detrimental thereto (occasionally stated.)

¹ The Court in Zent stated that they had "... reviewed the Maryland case law for cases dealing with incidental and accessory uses and their relationship to primary permitted or legal non-conforming uses. With the few exceptions we have noted, we have not found any clear definitive discussions." 86 Md. App. 770, FN10.

² Although this case involved a non-conforming use, the Court of Special Appeals stated that in defining an accessory use's relationship with a legal primary use, there was no distinction between a primary use which is permitted and a legally non-conforming use. 86 Md. App. 759.

Id. at 762 quoting *Redfearn v. Creppel*, 445 So.2d 1356, 1360 (La. 1984).

Similarly, the Court considered the Supreme Court of New Jersey's two-prong test in determining whether a use is customarily incident to the permitted use. In New Jersey, it must first be determined whether the use is incidental to the main use:

"Does the use bear close resemblance and *obvious relation to the main use* to which the premises are put? Second, it must be determined whether a use which is found to be incident to the permitted use is also a *customary use*. Generally, a use which is so necessary or commonly to be expected that cannot be supposed that the ordinance was intended to prevent it will be found to be a customary use. Notably, the fact that a use is not customarily indulged in, however, is not conclusive, and even if the use in question is found in a small percentage of main uses, the use may still be found to be customary."

Id. at 764 (emphasis added) quoting *New Jersey v. P.T. & L. Constr. Co.*, 77 N.J. 20, 389 A.2d 448 (1978).

Additionally, in rendering its decision, the Court in *Zent* evaluated a Pennsylvania Court's determination that "[t]he accessory use doctrine is, in essence, only an acknowledgement that certain general types of real estate usage have a natural and reasonable tendency to lead to certain other more specific uses." *Id.* at 766.

After consideration of various accessory use cases outside of Maryland, the Court in *Zent*, held that "when a use does not change the basic nature of the primary permitted non-conforming use and is truly incidental to, supports the non-conforming use, it is an accessory and, unless expressly prohibited by statute, is permitted." *Id.* at 768-769. *Zent* involved a bulk milk delivery, distribution and trucking business which had been operating in Carroll County since 1923. *Id.* at 747. "In order to facilitate

maintenance of its vehicles, Zent stored decommissioned vehicles on the site as a source of parts for its operable trucks". *Id.* at 748. In 1988, the Carroll County Zoning Office attempted to order the cessation or reduction of use of the outside portions of the property for storage on the basis that it was an illegal junkyard. *Id.* at 749. The issue on appeal was whether the incidental storage of materials on the property was an accessory use of a lawful non-conforming trucking business or a principal junkyard. *Id.* at 749-751. The Court of Special Appeals ultimately held that Zent's truck maintenance operation was a use incidental to the primary use of the property as a bulk milk, delivery, distribution and trucking business. *Id.* at 747, 768-769.

3. *Recreational facilities have been recognized as accessory uses of schools and churches.*

Recreational facilities have been recognized as accessory uses of schools and churches in many jurisdictions. Recreational facilities have been found to be accessory uses of churches based upon a finding that the recreational programs were integral parts of church activities. For example, in Corporation of Presiding Bishop of the Church of Jesus Christ of Latter Day Saints v. Ashton, 92 Idaho 571, 574, 448 P.2d 185 (1968), the Court held that a lighted church recreation field was a permissible accessory use of a "Church" as defined by the local city zoning ordinance. The Idaho Supreme Court reasoned that the "scope of term 'church' is broader than the church building itself" *Id.* at 574. The Court recognized that "churches have always developed social groups for adults and youth where the fellowship of the congregation is strengthened with the

result that the parent church is strengthened” *Id.* quoting Community Synagogue v. Bates, 1 N.Y.2d 445, 154 N.Y.S.2d 15, 136 N.E.2d 488 (1956).

Additionally, other jurisdictions have held that playgrounds, athletics fields, seating stands and other recreational facilities were accessory uses to permitted educational uses reasoning that modern educational institutions should not be limited to school buildings. For example, in Commissioners of District of Columbia v. Shannon & Luchs Const. Co., 57 App. D.C. 67, 17 F.2d 219, 220 (1927) recognized that “an educational institution consists not only of buildings, but of all the grounds necessary for the accomplishment of the full scope of educational instruction.” The Court went on to state that “a modern educational institution embraces those things which experience has taught us are essential to the mental, moral and physical development of the pupils”. *Id.* Therefore, an educational institution should not merely be a school building, but should also include “playground space, basketball backboards, chinning bars and room for calisthenics, all in the open air.” *Id.*

4. *Beth Tfiloh’s athletic field, camp buildings and loop road are accessory uses as defined by the Baltimore County Zoning Regulations and Maryland case law.*

As explained herein, Beth Tfiloh’s athletic field, camp buildings, and loop road are accessory uses as defined by the Baltimore County Zoning Regulations and Maryland case law.

- a. **Beth Tfiloh's athletic field, camp buildings and loop road are customarily incident and subordinate to the primary use of the property as a school and synagogue.**

Beth Tfiloh's athletic field, camp buildings and loop road meet the Baltimore County Zoning Regulation's definition of an accessory use since they are customarily incident and subordinate to the primary use of the property, a school and synagogue. This follows first from the fact that without its school and synagogue programs, Beth Tfiloh would have little practical use for the field or camp buildings. Similarly, without the loop road, Beth Tfiloh would be unable to access the camp buildings and the rear portion of the property. Second, the athletic field, camp buildings and loop road are clearly subordinate to the school and synagogue in area. Third, the athletic field, camp buildings and loop road are located on the same lot as the school and synagogue. Notably, in its request for an A(2) limited exemption, Beth Tfiloh submitted substantial title work establishing that its property is a single lot of record. Fourth, the athletic field, camp buildings and loop road contribute to the comfort, convenience and necessity of the school and synagogue. Beth Tfiloh, like nearly every other modern educational institution, incorporates recreational activities into its lower school program. Similarly, as part of its synagogue program, Beth Tfiloh encourages social and recreational activities among congregants.

Beth Tfiloh's loop road is also customarily incident and subordinate to two off-site dwellings. Significantly, the loop road has been used by neighboring property owners as their main access for many years. Thus, at the very least, the loop road serves as a necessary accessory use of the neighboring dwellings.

- b. Beth Tfiloh's athletic field, camp buildings and loop road also qualify as accessory uses, under Maryland case law, since they do not change the basic nature of the primary uses of the property.**

Beth Tfiloh's athletic field and camp buildings also qualify as accessory uses, under Maryland case law, since they do not change the basic nature of the primary uses of the property and are not prohibited by statute. In fact, as described above, such uses only serve to support Beth Tfiloh's primary use of the property as a school and synagogue. A cursory familiarity with educational and religious institutions in Baltimore County demonstrates that recreational facilities, such as athletic fields and camp buildings, are customary uses of such institutions. Significantly, counsel for the Protestants even conceded during the hearing that athletic fields and camps could be customarily incidental to a school and synagogue.

Similarly, the loop road does not change the basic nature of the primary uses of the property and is not prohibited by statute. To the contrary, the loop road supports the school and synagogue as well as the neighboring dwellings. Therefore, under Maryland case law, Beth Tfiloh's athletic field, camp buildings and loop road are accessory uses.

- c. The mere fact that the athletic field, camp buildings and loop road are located on R.C.4 zoned property has no effect on their accessory use status.**

The mere fact that the athletic field, camp buildings and loop road are located on Beth Tfiloh's R.C.4 zoned property has no effect on their accessory use status. This follows from the fact that they are permitted uses under the Baltimore County Zoning

Regulations. The accessory use issue has arisen in these proceedings since Beth Tfiloh's proposed athletic field, camp buildings and loop road are located in both the D.R.1 and R.C.4 zone. Under this proposal, the athletic field, camp buildings and loop road will ultimately be located almost entirely on the R.C.4 portion of Beth Tfiloh's property.

Fortunately, the plain language of the Zoning Regulations are particularly instructive as the permissibility of accessory uses in the R.C.4 zone. BCZR §1A03.3.A.9 specifically identify "permissible accessory uses in the R.C.4 zone *include, but not limited to, swimming pools, tennis courts . . . or other accessory structures or uses . . .*". Section §1A03.3.A.9 was drafted broadly in order to provide for a large range of permissible accessory uses. Beth Tfiloh's athletic field, camp buildings and loop road most certainly can be characterized as "other accessory structures or uses".

5. ***Basic Principles of Statutory Construction Support the Finding that the Athletic Field, Camp Buildings and Loop Road are Accessory Uses of the School and Synagogue.***

Basic principles of statutory construction support the finding that the athletic field, camp buildings and loop road are accessory uses of Beth Tfiloh's school and synagogue. When a statute is at issue, the Maryland Courts have held that the actual words of the statute are instructive. See Tidewater/Havre de Grace, Inc. v. Mayor & City Council of Havre De Grace, 337 Md. 338, 344 (1995).

Maryland Courts have made clear that the principles of statutory construction mandate that if the meaning of a word is questioned, common sense should dictate. The Court of Appeals has even held that "the court, in seeking to ascertain legislative intent, may consider the consequences resulting from one meaning rather than another,

and adopt that construction which avoids any illogical or unreasonable result, or one which is inconsistent with common sense." Kaczorowski v. Mayor and City Council of Baltimore, 309 Md. 505, 513, 525 A.2d 628 (1987)(emphasis added). The principles of statutory construction also mandate that when "interpreting the statute, we assume the words of the statute have their ordinary and natural meaning, absent some indication to the contrary." Atkinson v. State, 331 Md. 199, 215, 627 A.2d 1019 (1993).

Here, the Baltimore County Council was free to limit or qualify the definition of an accessory use, but they chose not to do so. There is nothing in the Zoning Regulations that states that accessory uses in the R.C.4 are permitted only if they are permitted as a matter of right in the R.C.4 zone. This is significant since there are innumerable places in the Baltimore County Zoning Regulations where the County Council chose to qualify the definition of a particular use or exclude certain types of permissible uses. Significantly, BCZR §1A03.3.A.9 provides for no such limitations on accessory uses.

6. *The Protestants Failed to Offer any Competent Evidence to Dispute that Beth Tfiloh's Athletic Field, Camp Buildings and Loop Road are Accessory Uses.*

The Protestants failed to offer any competent evidence to dispute that Beth Tfiloh's athletic field, camp buildings and loop road are accessory to the school and synagogue. Significantly, the Protestants entire case relies upon the testimony of Mr. Barry. Mr. Barry attempted to argue that Beth Tfiloh is precluded from using the R.C.4 portion of its property for school and synagogue activities. The basis of his argument was that since a synagogue or camp require special exception in the R.C.4 zone, accessory uses of

a synagogue and camp must also obtain a special exception. Mr. Barry also attempted to argue that since a private school is not permitted at all in the R.C.4 zone, then accessory uses or activities of a private school are prohibited in the R.C.4 zone. Based on Mr. Barry's interpretation of the Regulations, Beth Tfiloh's lower school students would be wholly prohibited from crossing the invisible zoning line and playing on or using the R.C. portion of its property.

Mr. Barry's contentions are wholly unsupported by the Baltimore County Zoning Regulations. Significantly, when questioned on cross-examination, Mr. Barry did not identify any provision of the Baltimore County Zoning Regulations which directly support his argument. Rather, Mr. Barry mistakenly claimed that BCZR sections: 1A00.5 (R.C. 4 zone), 1A03, et seq. (R.C.4 zone), 1B00, et seq. (D.R. zone), 100 (Definitions), 407 (Churches, Synagogues and Other Houses of Worship in Manufacturing Zones), Article 4 (Special Regulations) and Article 5 (Administration and Enforcement) support his opinion. Interestingly enough, none of these sections support Mr. Barry's opinion.

Mr. Barry's reliance on BCZR §§ 1A00.5 and 1B01.2 to bolster his position and show the legislature's intent with respect to split zoned property is misplaced.

Section 1A00.5 provides that:

[w]henver a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. zones of different classifications, the total number of dwellings or density units permitted shall apply to each tract individually and, for the purpose of these regulations, shall be considered as separate parcels.

BCZR § 1A00.5.

Similarly, § 1B01.2 states:

Application to tract divided by zone boundary. . . . wherever a single tract is divided by a zone boundary so that portions of such tract lie within D.R. zones of different classification, the total number of dwelling or density units permitted, as determined by multiplying the gross acreage of each portion by the maximum density permitted under section 1B02.2 in the zone within which that portion lies and totaling the results, shall be permitted without further regard to the zone boundary, and the units may be distributed over the tract as though it were in a single zone.

BCZR § 1B01.2.

Both of the above sections are wholly irrelevant to the accessory use issue in this case as they only address the calculation of density for split zoned property. Second, Mr. Barry's opinion is further flawed by his reliance on BCZR §407 dealing with "Churches, synagogues and other houses of worship in the Manufacturing zones". Section 407 has absolutely no relevancy to the issues in this case since the subject property is not located in a manufacturing zone.

Third, section 400 of Article 4 of the BCZR's Special Regulations, dealing with accessory buildings in residential zones also fails to support Mr. Barry's contentions. Section 400.1 states that "accessory buildings in residence zones, other than farm buildings (§404) shall be located only in the rear yard and shall occupy no more than 40% thereof". The section goes on to specify the applicable setbacks for accessory buildings in residential zones. Notably, there is nothing in this section that would

indicate that Beth Tfiloh's athletic field, camp buildings and loop road cannot be accessory uses.

In addition to the above, Mr. Barry attempted to argue that the camp buildings could not be an accessory use of the school and synagogue since, in his opinion, the buildings were not necessary to those uses. Mr. Barry's testimony simply failed to discredit the testimony of Bernard Suffel, the Executive Director of Beth Tfiloh, that the camp buildings were in fact an integral part of Beth Tfiloh's school and synagogue programs. Mr. Suffel testified that Beth Tfiloh utilizes the camp buildings on the subject property for a program geared toward Jewish children, ages 1 to 3 years of age. He testified that during the summer of 2000, Beth Tfiloh had approximately 50 young children using the camp buildings. Mr. Suffel confirmed that Beth Tfiloh is not proposing to use the subject property as a typical day or overnight camp. He explained that Beth Tfiloh already operates a full service day camp for 450 to 500 campers in the Owings Mills area.

Based on the foregoing, Beth Tfiloh's use of the camp buildings is in fact an integral part of the school and synagogue. Practically speaking, if a special exception is required for the above use, then all religious institution or school must obtain a special exception in order to operate a summer bible camp, sports camp, computer camp or similar summer activity on its property.

Mr. Barry's opinions in these proceedings should be accorded very little weight since they were wholly without support in the Baltimore County Zoning Regulations and/or Baltimore County Code. Based on his testimony in this matter, it is clear that

Mr. Barry's familiarity and understanding of the Baltimore County Zoning Regulations is limited. Mr. Barry himself admitted that he had only testified in one special exception case in Baltimore County involving a convenience store in the BL zone. Additionally, he indicated he has only been involved in one Hearing Officer's Hearing in which he played an insignificant role. In the course of testimony, Mr. Barry even conceded that his opinion was primarily based on Baltimore City's treatment of accessory uses. Mr. Barry's testimony simply failed to contradict the substantial evidence provided by Beth Tfiloh that the athletic field, camp buildings and loop road are accessory uses of the school and synagogue.

C. Beth Tfiloh's Request for a Modification to the Residential Standards of the CMDP (Building Length) Should be Granted.

Beth Tfiloh meets the criteria for a modification of standards under the Comprehensive Manual of Development Policy's (CMDP) Residential Standards. Beth Tfiloh requested a modification of standards in order to construct the proposed lower school and connection between the dining hall and synagogue. The lower school was specifically designed in order to meet the needs of Beth Tfiloh's lower school program. As a result, the lower school building and the dining hall connection are greater in length than permitted by Baltimore County.

Under the CMDP, the total building length or fullest building width of non-residential principal buildings in the D.R. zone may not exceed 200 feet. *CMDP, Residential Standards*, p. 29. The CMDP provides, however, that "upon a favorable recommendation by the Director of the Office of Planning to the Hearing Officer," the

maximum building length can be increased to 300 feet. *Id.* The CMDP sets forth the following guidelines for evaluating such a request: "1) the materials are specified; 2) the buildings are segmented and architecturally varied to break up their massing; 3) landscaping is used to visually break up the massing of the façade; 4) the architectural details reflect regional architectural elements; and 5) buildings shall comply with §26-203(d)(20) (critical area of review), "the development plan, additional items to be provided" and §26-282, "compatibility" of the development regulations." *Id.*

Beth Tfiloh seeks a modification of standards for its two-story lower-school building to permit a building length of 271 feet in lieu of the 200 feet permitted as a matter of right. Additionally, Beth Tfiloh is proposing a connection between the existing synagogue and the proposed dining hall on the property ("dining hall connection"). As a result of the connection between the buildings, the length of the dining hall and synagogue is approximately 240 feet. Beth Tfiloh seeks a modification of standards to permit a connection of 240 feet in length in lieu of the 200 feet permitted as a matter of right.

In accordance with the CMDP, Beth Tfiloh submitted its request for a modification of standards to the Director of the Office of Planning, Arnold F. "Pat" Keller. Beth Tfiloh included detailed architectural elevations of the lower school and the dining hall connection as part of its submittal to the Office of Planning. *See Petitioner's Exhibit 6.* After consideration of Beth Tfiloh's submittal, the Director of the Office of Planning recommended that the modification of standards be granted. *See Petitioner's Exhibit 2.* The Office of Planning conditioned its recommendation upon its

review and approval of Beth Tfiloh's Final Landscape Plan and Lighting Plan at the building permit stage of the development process. Beth Tfiloh consents to this condition.

In support of his favorable recommendation, Mr. Keller stated:

[Beth Tfiloh's] elevations demonstrate that the scale, massing, materials of this addition are compatible with those of the existing synagogue and preschool. The proposed lower school and dining hall with gabled roof is veneered of a similar brick, window fenestration, and roof material used throughout the campus. The mass of the proposed lower school is segmented and architecturally varied to break up the massing. The overall building complex will present a consistent architectural theme.

Petitioner's Exhibit 2.

In these proceedings, Mr. Madden offered substantial and convincing evidence that Beth Tfiloh's lower school building and dining hall connection meet the CMDP's guidelines for a modification of standards. Mr. Madden offered the following evidence in support of his expert opinion: First, the architectural elevations for the lower school building and connection demonstrate that the buildings are segmented and architecturally varied to break up their massing. See Petitioner's Exhibit 6. Mr. Madden explained that the proposed school buildings, including academic classrooms, gym and dining hall were intentionally separated in order to create a "campus feel" on the property.

Second, landscaping is being proposed in order to visually break up the massing of the façade of the lower school buildings. Mr. Madden explained that the lower school building was designed and positioned on the site to take advantage of existing

grades and forest. For instance, in order to minimize the visual impact of the lower school building, Beth Tfiloh positioned the lower school building away from Central Avenue. Mr. Madden also testified that to further reduce the massing of the buildings, Beth Tfiloh will prepare a landscape plan for the areas surrounding the lower school building and dining hall connection. Third, Mr. Madden testified that the proposed lower school is compatible with the existing buildings on the property. The lower school building and dining hall connection will be constructed of materials similar to the existing preschool and synagogue.

Based on the foregoing, Mr. Madden testified that in his expert opinion Beth Tfiloh meets the criteria for a modification of standards to the CMDP's Residential Standards (building length). Significantly, the Protestants offered absolutely no evidence to contradict Mr. Madden's expert opinion or the findings of Mr. Keller.

D. Beth Tfiloh's ability to abandon the existing special exception for a camp on the property is supported by Baltimore County Zoning Regulations and Maryland case law.

Beth Tfiloh's ability to abandon the existing special exception for a camp on the property is supported by Maryland case law. In Maryland, it is clear that a property owner may use his property in any manner permissible under current local, state and federal law. *Hayfields*, 122 Md. App. at 658-659. Likewise, Maryland Courts have made clear that a property owner cannot be forced to utilize his property in any certain way, such as farming one's own land. *Id.* Based on these basic principles, it logically follows that a property owner must have the right to freely abandon a special exception use and make a new or different use of his/her property. Here, Beth Tfiloh seeks to abandon

the special exception in order to convert the principal use of its property from a camp to a school and synagogue. Upon the abandonment of the Special Exception, all of the rights and restrictions related thereto extinguish. Significantly, the Protestants failed to offer any evidence that Beth Tfiloh cannot abandon its Special Exception for a camp.

E. The Zoning Commissioner has the authority to consider and render a decision on Beth Tfiloh's request for a waiver of Public Works' standards.

The Zoning Commissioner has the authority to consider and render a decision on Beth Tfiloh's request for a waiver of Public Works' standards. During the hearing, Beth Tfiloh formally requested a waiver of standards relating to certain improvements to Central Avenue. The waiver was in response to comments received just two days prior to the hearing from the Department of Public Works. The comments require Beth Tfiloh to widen and make significant improvements to a portion of Central Avenue.

During the proceedings, the Zoning Commissioner called Mr. Robert Bowling as a witness to explain the basis for the Department of Public Works' comments. Interestingly enough, Mr. Bowling, after questions from the Zoning Commissioner, wavered as to what improvements were required along Central Avenue. Mr. Bowling testified that the Department had modified its original position on the issue and would only require that Beth Tfiloh widen Central Avenue, approximately 10 feet, along the frontage of its property. Additionally, the Department would permit a bituminous curb instead of full curb and gutter and would require sidewalks only along the frontage of

Beth Tfiloh's property. Further, no additional lighting would be required along Central Avenue.

Beth Tfiloh's waiver of standards should be granted since there is no competent evidence in the record justifying the need for the widening or improvements to Central Avenue. Mr. Bowling failed to over any evidence that such improvements were dictated by safety or circulation considerations. Further, the Protestants supported Beth Tfiloh's waiver request. Based on the foregoing, Beth Tfiloh requests that its waiver of standards be granted. If the Zoning Commissioner determines it is without authority to entertain Beth Tfiloh's waiver request, Beth Tfiloh requests that the Department of Public Works' revised comment on the improvement of Central Avenue be incorporated into the record of these proceedings.

F. The Zoning Commissioner does not have the authority to impose conditions on Beth Tfiloh's use of the subject property in these proceedings.

The Zoning Commissioner does not have the authority to impose conditions or restrictions in these proceedings on Beth Tfiloh's use of the subject property. Under Baltimore County law, the Zoning Commissioner/Hearing Officer has the power to impose conditions only in special exception and development plan cases. This follows from the fact that the legislature specifically provided the Zoning Commissioner/Hearing Officer with such power through its enactment of § 502.2 of the Baltimore County Zoning Regulations governing special exception cases and § 26-206(o) of the Baltimore County Code dealing with development plan cases. It logically follows that had the legislature intended for the Zoning Commissioner to have the power to

condition a use outside of a special exception or development plan case, it would have so legislated.

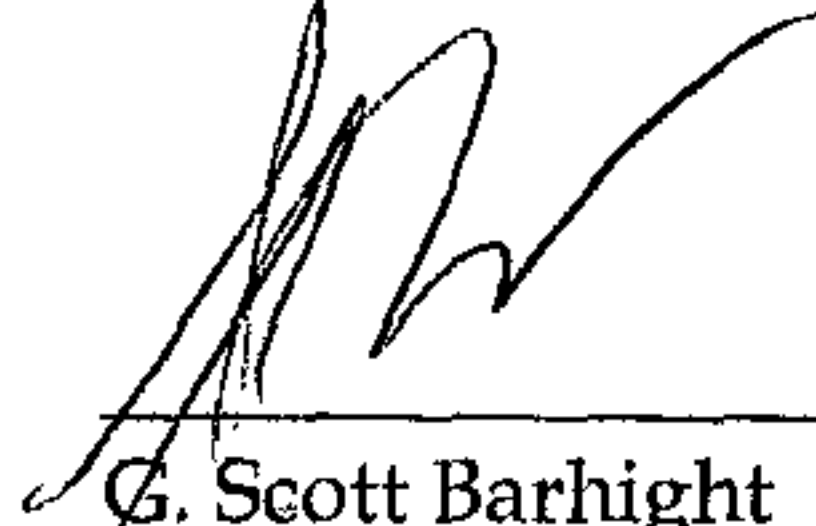
This case involves merely a petition for special hearing. Beth Tfiloh is not seeking development plan or special exception approval in these proceedings. In fact, Beth Tfiloh does not need such relief since its proposed use of the property is permitted as a matter of right and it has obtained an A(2) limited exemption. Therefore, the Zoning Commissioner has absolutely no authority to impose conditions or restrictions on Beth Tfiloh's use of the property.

III. CONCLUSION

Beth Tfiloh Congregation of Baltimore City, Inc., petitioner and owner of the subject property, respectfully requests that the relief requested in its Petition for Special Hearing be granted. Specifically, Beth Tfiloh requests that the Zoning Commissioner make the following findings: (1) the Special Exception for a camp on the property is hereby abandoned; (2) Beth Tfiloh's request for a modification of standards to the Comprehensive Manual of Development Policy's (CMDP) Residential Standards (building length) is hereby granted; (3) Beth Tfiloh's waiver of Public Works' standards for Central Avenue is hereby granted; (4) Beth Tfiloh's school and synagogue are permitted as a matter of right in the D.R. 1 zone under the Baltimore County Zoning Regulations; and (5) Beth Tfiloh's athletic field, camp buildings and loop road are accessory uses of the school and synagogue, and thereafter permitted as a matter of right in the D.R.1 and R.C.4 zones under the Baltimore County Zoning Regulations. As discussed herein, there is substantial, uncontradicted evidence within the record that

supports the granting of Beth Tfiloh's Petition for Special Hearing, Modification of Standards and Waiver requests.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'G. Scott Barhight', written over a horizontal line.

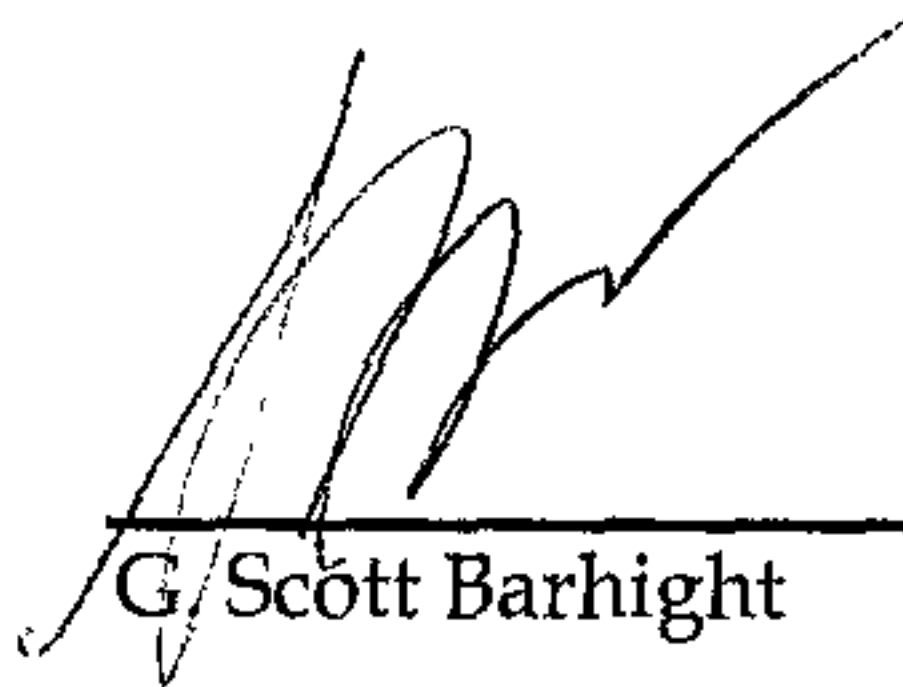
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410-832-2050
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of August, 2001, a copy of
Petitioner Beth Tfiloh Congregation of Baltimore City, Inc. Memorandum of Law was
mailed to the following persons:

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August 16, 2001

VIA EXPRESS MAIL

The Honorable Lawrence E. Schmidt
Zoning Commissioner for Baltimore County
401 Bosley Avenue, Room 405
Towson, Maryland 21204

AUG 17

Re: Petition by Beth Tfiloh Congregation of Baltimore City, Inc., Case No.

Dear Mr. Schmidt:

Enclosed are the original and one copy of our clients' Memorandum which we are submitting in the above-captioned case. A copy is concurrently being sent to opposing counsel.

Respectfully yours,



Robert J. Carson

RJC/jak

Enclosures

cc: G. Scott Barhight, Esq.
Julie A. DeGrigoli, Esq.
Whiteford, Taylor & Preston, LLP
Thomas F. Corcoran, Esq.
John A. Morris, President
Glyndon Community Association, Inc.
Gary R. Jones, Director
Glyndon Community Association, Inc.
Mr. Sean O'Connell
Mr. Gary Applestein
Ms. Nan Kaestner
Richard B. Desser, President
Sherwood Forest Community Association
Alfred W. Barry, III, Principal
AB Associates

Glyndon/Schmidt ltr

8/10/01

PETITION FOR SPECIAL HEARING
BY BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC.

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 01-468-SPH

AUG 17

* * * * *

MEMORANDUM OF FACT AND LAW
SUBMITTED ON BEHALF OF GLYNDON
COMMUNITY ASSOCIATION, INC. AND INDIVIDUAL PROTESTANTS

This Memorandum of Fact and Law is submitted on behalf of Glyndon Community Association, Inc. ("GCA"), protestant, and individual protestants Gary R. Jones, John Morris, Sean O'Connell, Gary Applestein, and Nan Kaestner, pursuant to the request by Zoning Commissioner Schmidt that counsel for petitioner Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh") and for the protestants file memoranda dealing with the issue of the scope of permissible use by Beth Tfiloh of its property, principally zoned in the D.R.1 and R.C.4 Zones.

The protestants, as well as the numerous other Glyndon and Sherwood Forest residents who attended the July 18 hearing, are opposed to the requested expanded use of the Beth Tfiloh facility because that would tend to create traffic and noise in what is a quiet and peaceful setting with older residences, mostly of Victorian architecture. The Glyndon community has been classified as a Historic District and the sign as one enters the community says, "Historic Glyndon 1871." Several of the residents are second or third generation residents.

A. STATEMENT OF THE CASE

On May 7, 2001, Beth Tfiloh filed a Petition for Special Hearing requesting the approval of "Amendments to the previously approved plans in Case No. 65-389-X, Case No. 94-27-SPHA, and Case No. IV-455."

A special exception was initially granted to the Maryland Diabetes Association, Inc. (the "MDA") in Case No. 65-389-X to operate and maintain a camp on the property known as Camp Glyndon. After the granting of this special exception, the property was thereafter used as a summer camp for diabetic children.

In Case No. 94-27-SPHA the MDA requested the Zoning Commissioner to amend the special exception to permit expansion of the multi-purpose building on the property. Zoning Commissioner Schmidt rendered his decision on September 28, 1993.

The Findings of Fact and Conclusions of Law by Commissioner Schmidt included the following description of the property and its use:

"[T]he subject site is approximately 45 acres in size. It is split-zoned with approximately 1/2 of the area zoned R.C.5. Most of the balance of the site is zoned D.R.2 with a small portion zoned D.R.3.5. The property was approved for camp use pursuant to the granting of a Petition for Special Exception in 1965. The property has been owned by the Maryland Diabetes Association since 1965 and has been used as a camp for approximately 30 years. * * * Presently there is a pavilion, numerous bunk houses, a medical building, a shower/laundry structure, an infirmary, dining hall, pool house, multi-purpose center and other related structures."

Commissioner Schmidt also noted: "The Petitioner has submitted a plan showing an area of expansion of nearly all of the existing structures."

Commissioner Schmidt granted the Petition, finding that the requested expansion was justified and that "grouping of the structures within the site is warranted so as to preserve as

much open space and woods as possible.” However, he affixed the following six conditions (with the paragraph numbers below corresponding to the condition numbers in his Order):

“2. That the new proposed community building would not be enlarged by more than 20% and would be within the area of the building envelope shown on the plan.

3-5. That the dining hall building, medical building, and multi-purpose center would not be increased by more than twice their size and all such expansion would be within the building envelope shown on the plan.

6. That the MDA would relocate the existing sign on Insulin Lane. The MDA was also permitted to construct a sign no larger than 15’ at the location of the existing sign to be compatible with other signs in the locale and to be approved by the GCA or the Zoning Commissioner prior to construction.

7. That the MDA would cause to be included in any lease language prohibiting (i) signage for functions on the property within the surrounding community and (ii) outside amplified music after 9:00 p.m. Monday through Thursday and after 10:00 p.m. on Friday and Saturday.”

A site plan implementing the special exception was approved by the Baltimore County Office of Administration on March 4, 1994, in Case No. IV-455. That site plan depicted the property’s use, structures, and facilities in accordance with the decision of the Zoning Commissioner in Case No. 94-27-SPHA. It also showed the zoning districts described by the Zoning Commissioner in his decision.

The present Petition for Special Hearing, as noted above, requested that the Zoning Commissioner approve “Amendments to the previously approved plans in Case No. 65-389-X, Case No. 94-27-SPHA and Case No. IV-455.”

Prior to the hearing on the Petition for Special Exception, Director Arnold Jablon of the Department of Permits and Development Management on June 29, 2001, issued an order and decision adopting the June 25 recommendation of the Baltimore County Development Review

Committee (the "DRC") that the Beth Tfiloh project be granted a limited exemption under §26-171(A)(2) of the Baltimore County Code, thereby avoiding the necessity for public review and comment on the project. The June 29 administrative order and decision by Director Jablon were appealed to the Baltimore County Board of Appeals on July 19, 2001, by Gary D. Applestein, Sean O'Connell, and GCA.

On July 13, the Zoning Advisory Committee ("ZAC") reviewed Beth Tfiloh's plans, as well as the comments of the ZAC members. These comments included (i) a requirement that the "developer... improve Central Avenue along the entire property frontage to include curb and gutter, sidewalks, street lights, storm drains, etc."; and (ii) that "no connection to St. Paul Avenue will be permitted" and that "the proposed interconnection between the two existing St. Paul Avenues will not be permitted."

The hearing on Beth Tfiloh's Petition for Special Hearing was held before Zoning Commissioner Schmidt on Wednesday, July 18. Beth Tfiloh's counsel in his opening statement said that the "amendments" sought by Beth Tfiloh consisted of its desire to abandon the previously granted special exception. Its counsel explained that Beth Tfiloh's position was that it is legally permitted to utilize that portion of its property zoned D.R. 1¹ for the proposed private school and church uses which are permitted as a matter of right in a D.R. 1 Zone under the Baltimore County Zoning Regulations. Additionally, he stated that Beth Tfiloh's position was that it is also permitted to operate and maintain on both the D.R. 1 and R.C. 4 portions of its property, as accessory uses to these principal uses, the athletic fields and facilities and the camp facilities which are shown and reflected on the site plans marked as Exhibits 4 and 5 at the hearing.

¹ In 2000, the property was downzoned by the County Council from D.R. 2 to D.R. 1 and from R.C. 5 to R.C. 4, at the request of the Glyndon community.

Protestants' counsel then moved to dismiss the Petition because the Petition sought to amend the previously granted special exception, rather than to abandon it, so that the relief sought was not within the scope of the Petition for Special Hearing. Commissioner Schmidt denied the motion on the basis that the requested amendment could include an abandonment.

Beth Tfiloh's abandonment of its special exception completely changed the nature of the hearing, thereby eliminating the testimony of most of the protestants' witnesses - and the comments by many of the interested Glyndon and Sherwood Forest residents - opposing Beth Tfiloh's overall proposal and/or demonstrating why substantial conditions should be attached to any special exception amendment. Rather, the hearing immediately became limited to the legal issues relating to the scope of permissible use of the property in light of the abandonment of the special exception.

The parties then proceeded with testimony, as is described below.

B. TESTIMONY AND EXHIBITS PRESENTED AT 7/18/01 SPECIAL HEARING

Beth Tfiloh called two witnesses, Timothy Madden from Morris & Richie, a land planner, and Steven Warfield, a professional engineer.² Their testimony principally consisted of describing the buildings and facilities, and proposed buildings and facilities, shown on the site plan.

Mr. Madden described the property as consisting of approximately 45 acres, including slightly more than 18 acres in the D.R.1 Zone and almost 24 acres in the R.C.4 Zone. A small portion of the southerly part of the property is zoned D.R.2, and there is approximately 2.8 acres on the west and northwest which is zoned R.C.5. He described the proposed lower school

² The Zoning Commissioner called one witness, Mr. Bowling, who is chief of the DPW Development Plans Division, with respect to the proposed widening of Central Avenue, which is opposed by both Beth Tfiloh and the protestants.

facility consisting of approximately 46,500 square feet, the proposed dining hall consisting of approximately 8,000 square feet, and the proposed gym consisting of approximately 13,800 square feet, as well as the expanded athletic fields and facilities to be located in both the D.R.1 and the R.C.4 Zones. The camp use, according to the site plan, would not be significantly changed. Most of the camp use is contained in the R.C.4 Zone, although there are some bunkers in the D.R.1 Zone as well as the existing buildings which service the camp. Mr. Madden was permitted to express an opinion that the proposed athletic and camp uses were permitted accessory uses under the Zoning Regulations.

Protestants' counsel then called Beth Tfiloh's executive director, Bernard Suffel, as an adverse witness. Mr. Suffel testified that Beth Tfiloh had acquired the property in 1998 and was presently using two buildings on the property for a pre-school and a small synagogue (60-80 worshipers) for services on the Sabbath, and that Beth Tfiloh had continued in 2000 and 2001 to operate a summer camp which was smaller in size than Camp Glyndon previously operated by the MDA. The Beth Tfiloh camp enrollment was about 50 in 2000 and about 35 in 2001. (By contrast, Mr. Suffel said that the previous MDA camp had been operated for 3 weeks in the summer and that its enrollment had consisted of approximately 150 campers.)

According to Mr. Suffel, Beth Tfiloh plans to move its lower school, consisting of its pre-kindergarten, kindergarten, and grades 1 through 5, from Beth Tfiloh's Pikesville location at Old Court Road to Glyndon. Mr. Suffel estimated that the lower school population would be 350-370 students, with an average class size of 18-22.

Although Beth Tfiloh also owns and operates a Camp Beth Tfiloh (500 campers) adjacent to Red Run on the other side of I-795, Mr. Suffel testified that Beth Tfiloh had no plans to move the Red Run camp to Glyndon. Rather, Beth Tfiloh plans to continue the present summer camp

at Glyndon. That camp is not restricted to Beth Tfiloh members and is open to all students, irrespective of religious belief or denomination. On cross-examination, Mr. Suffel testified that he had no idea what percentage of students were from Beth Tfiloh, although he estimated that approximately 90% of them were Jewish.

Al Barry was then called by the protestants as an expert witness. Mr. Barry, who is now the principal of AB Associates, a land planning and consulting firm, previously had over 24 years of professional planning experience with Baltimore City including his last eight years as the City's Assistant Planning Director. His impressive resume was introduced in evidence.

Mr. Barry testified that in his opinion the requested accessory uses, for athletic fields and facilities and for a camp, were not permissible in the R.C.4 Zone because the principal uses were not permitted there, either as a matter of right or by special exception. Private schools are not permitted in the R.C.4 Zone, and camps are only permitted by way of special exception. Accordingly, that portion of Beth Tfiloh's property in the R.C.4 Zone could not legally be used for athletic fields or for a camp as an accessory use to its school (or church building) in the D.R.1 Zone. On cross-examination, Mr. Barry cited the pertinent provisions from the Baltimore County Zoning Regulations which were pertinent to this inquiry.

At the conclusion of the hearing, Commissioner Schmidt requested that counsel for the parties submit memoranda of fact and law in connection with what accessory uses, if any, could be operated and maintained by Beth Tfiloh on the subject property, taking in consideration Beth Tfiloh's abandonment of the previously granted special exception for a camp.

C. RELEVANT PORTIONS OF BALTIMORE COUNTY ZONING REGULATIONS

Article 1B of the Baltimore County Zoning Regulations deals with Density Residential Zones including the D.R.1 Zone. §1B01.1.A provides that 19 uses are permitted as of right,

including in subpart (3) churches or other buildings for religious worship and in subpart (14) public and private schools. It is to be noted that §1B01.1.A specifically provides that these 19 “uses only are permitted as of right in D.R. Zones....” Subpart (18) describes and permits “accessory uses and buildings *other than those permitted only by special exception*”. (Emphasis added.) Therefore, by the express terms of the Regulations, a use permitted by special exception in the D.R.1 Zone may not be an accessory use (unless permitted by a special exception).

§1B.01.1.C similarly sets forth 28 uses which are permitted by special exception in D.R. Zones. Again, these 28 “uses, only, are permitted by special exception in all D.R. Zones....” Subpart (1) describes camps, including day camps.

§1A.03.3 deals with the R.C.4 Zone. §1.A.03.3.A permits 10 uses as a matter of right. Again, these “uses only are permitted as of right”. Although subpart (4) permits public schools, neither private schools, churches or other buildings for religious worship or camps are permitted in the R.C.4 Zone as a matter of right.

§1.A.03.3.B sets forth 22 uses which are permitted by special exception. Again, only these uses are permitted by special exception in R.C.4 Zones. Subpart (2) describes camps, including day camps, and subpart (4) describes churches and other buildings for religious worship. Private schools are not one of the uses permitted by special exception.

§1A.00.5, which applies to Resource Conservation Zones generally, states as follows:

“Application to tract divided by zone boundary. Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. Zones of different classifications, total number of dwellings or density units permitted shall apply to each tract individually and, for the purpose of these regulations, shall be considered as separate parcels.”

D. ARGUMENT

1. Accessory Uses Permitted to Beth Tfiloh in D.R.1 Zone.

The protestants do not contest Beth Tfiloh's right to establish and operate a private school or a church building, as a matter of right, in the portion of its property zoned D.R. 1, nor do the protestants contest Beth Tfiloh's right to construct and maintain athletic fields and facilities as an accessory use to its school on its D.R. 1 property.

The protestants do contest Beth Tfiloh's right to use its D.R. 1 property as a camp accessory to its school, even assuming that Beth Tfiloh's camp could meet the definition of Accessory Use or Structure in §101.³ It is clear that the Zoning Regulations in §1.B.01.A.(18) only permit accessory uses or buildings other than those permitted only by special exception. (Emphasis added.) As we have seen above, §1.B.01.C(1) only permits camps as a special exception. Beth Tfiloh has abandoned its previous special exception and therefore may not use any portion of its D.R. 1 zoned property for a camp because it no longer has a special exception for that use.

2. Accessory Uses Permitted to Beth Tfiloh in R.C. 4 Zone.

Beth Tfiloh's position that it may use its R.C. 4 zoned property for uses accessory to a principal use or building in the D.R. 1 Zone is a unique and impermissible construction of the Baltimore County Zoning Regulations. These Regulations, with respect to the R.C. 4 Zone, provide that the only use that can be made of land within that zone are the uses permitted as of right in §1.A.03.3.A and those permitted as special exceptions in §1.A.03.3.B. The accessory uses or structures which are permitted as a matter of right in subpart (9) of §1.A.03.3.A are

³ Beth Tfiloh does not appear to have met its burden of showing that the camp would be an Accessory Use or Structure within the meaning of §101, irrespective of the fact that a camp is not permissible as an accessory use in the R.C. 4 Zone. Mr. Suffel's testimony indicates that the summer camp which is now run by Beth Tfiloh is similar to the previous MDA camp, except that there are fewer campers. There was no testimony that the camp run by Beth Tfiloh in 2000 and in 2001 was in any way connected to or an adjunct of its private school, nor was there any testimony that that would be the case in the future. Mr. Suffel did not know what percent of the campers were from Beth Tfiloh. Indeed, his testimony showed that the camp was available to children of all denominations, even though the great majority of campers were Jewish.

obviously uses or structures which are accessory to one of the 9 principal uses in the R.C.4 zone. There is absolutely nothing in the Regulations which states or suggests that an accessory use may be permitted which is accessory to a principal use or structure in a D.R. Zone (Article 1B), in an elevator-apartment residence zone (Article 2), in an office zone (§202 *et seq.*), in a business zone (§215 *et seq.*), or in a manufacturing zone (§240 *et seq.*).

To permit such a construction would permit one owning significant acreage in an R.C. Zone to expand his or her operation into that area from any other adjacent zone so long as the test for an Accessory Use or Structure set forth in §101 was met. This could permit, for example, the expansion of a commercial or manufacturing use into a R.C. Zone, including those R.C. Zones which are within the Critical Area. Merely to state the proposition is to refute it.

§1.A.00.5, which is set forth verbatim above, provides that where a tract is divided into different R.C. Zones, each part is to be regulated by its own requirements with respect to the number of dwellings or density units permitted. This section clearly reflects a legislative intent that any portion of property zoned in a Resource Conservation Zone will be governed by the requirements of that R.C. Zone as set forth in the Regulations, as contrasted with being an accessory use amalgamated into an adjacent zone.

§1.A.00.5 is in accordance with the Maryland and out-of-state cases dealing with tracts which are divided into separate zoning districts or zones.

The most recent Court of Appeals decision to discuss a split-zoned property⁴ is *Alviani v. Dixon*, _____ Md. _____, 2001 Md. Lexis 458 (7/13/01), a copy of which is

⁴ The phrases "split-zoned" property or "split lot" are often used in connection with a small lot or tract of land, such as was involved in the *Alviani v. Dixon* case just decided by the Court of Appeals on July 13, 2001. However, a split-zoned property or split lot may also be present with respect to a larger tract such as is involved here (45 acres) or such as was involved in *Euclid* (68 acres). (It may be noted that Commissioner Schmidt used the phrase "split-zoned" in connection with the subject property in his 1993 decision.)

attached hereto since neither the A. 2d or Maryland advance sheet is yet available. In that case, the Court of Appeals was involved with a parcel of land that had been split-zoned 40% C1-B (community retail) and 60% RLD (residency low density). The owner desired to build an automobile service station on the property but could not do so without obtaining a zoning reclassification of the entire parcel to C1-B which permitted a service station. The Court, through Judge Cathell, observed: "An automotive service facility could not be developed on that part of the parcel encumbered with an RLD classification." Although this statement is contained in the Court's recital of the underlying facts, it is also Judge Cathell's conclusion. This is emphasized by his footnote 2 which states:

"2. Split-zoned is a zoning phrase indicating that one parcel of land is encumbered with two different zoning classifications; a portion of the parcel is zoned differently than the remaining parcel."

The earlier adjudicated cases in Maryland are in accord.⁵ *Leimbach v. City of Baltimore*, 257 Md. 635 (1970), cert. denied, 400 U.S. 991 (1971), involved a contractor's attempt to use a residentially zoned property for the purpose of installing a driveway and culvert to access other property owned by him which was zoned commercial. The Court of Appeals, affirming Judge Sodaro in the Baltimore City Court, held: "We agree with Judge Sodaro that the use Litty proposes to make of the driveway shown in the plat would be a 'business' use of land in a residential use district." *Id.* at 240. Earlier, *Ullrich v. State*, 186 Md. 353 (1946), had reached a similar conclusion, sustaining Ullrich's conviction for a zoning violation because of

⁵ *Eastern Service v. Cloverland*, 130 Md. App. 1 (2000), is a more recent case involving an accessory use but is inapplicable to the issues in this appeal. The property in *Eastern Service* was not split-zoned. Moreover, the convenience store accessory use was permitted under the Baltimore City Zoning Ordinance and the BMZA decision permitting that use was supported by substantial evidence in the record.

his attempt to use his home on Erdman Avenue as a funeral parlor accessory to his undertaking establishment on Orleans Street. The Court of Appeals stated:

“...the zoning ordinance...excludes undertaking establishments, not existing at the time of its passage, from residential use districts.... If the use of the defendant’s home was in connection with or in furtherance of his undertaking business..., it was a violation of the ordinance.” [*Id.* at 357.]⁶

Kowalsky v. Lamar, 25 Md. App. 493 (1975), is also instructive. There, Lamar’s property in an RPD zone was being used for the berthing of boats and for fishing activities on a pier which had been constructed into the waters of Muddy Gut. No other use was being made of either of the lots owned by Lamar, with the only activity on the property being the boating and fishing use of his pier. The Court of Special Appeals, in affirming the Circuit Court for Baltimore County, held that since nothing in the Baltimore County Zoning Regulations permitted such a use without a special exception (which had not been granted), the use was illegal. The Court carefully reviewed the applicable sections of the Zoning Regulations and stated:

“These sections established that the only uses permitted in the RDP zone are those designated as uses permitted as of right and uses permitted by special exception. Any use other than those permitted and being carried on as of right or by special exception is prohibited.” [*Id.* at 498.]

Although Lamar attempted to defend the use as an accessory use the Court rejected that argument, pointing out that the actual boating and fishing “uses constitute the main

⁶ Both the *Leimbach* and *Ullrich* cases involved situations where separate lots were involved, as contrasted with a tract where the entire lot was split-zoned. However, the rationale and language of those cases indicate that the same ruling would have been present if the property involved were one split-zoned lot. That was the situation in *Alviani* and was also the situation in *Euclid* and in the Maine and Massachusetts decisions cited below, each of which involved a single lot or parcel of real estate which had been split-zoned into two or more zoning districts. Moreover, §1.A.00.5 of the Zoning Regulations clearly reflects a legislative intent that in a split-zoned situation each piece of land zoned in an R.C. Zone be treated as a separate parcel in determining what uses and structures are permitted thereon.

or principal uses of the subject property. They do not and cannot fall within the ambit of the definition of an accessory use.” *Id.* at 500.

The out-of-state cases are in accord. The most famous of these is *Village of Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926). This was a split-zoned case involving Ambler’s 68 acre property on the west end of the Village of Euclid. The property fronted on Euclid Avenue to the south and on the Nickel Plate Railroad to the north. A strip of 620’ immediately north of Euclid Avenue was zoned U-2 (a residential district), the next 130’ to the north was zoned U-3 (which also permitted apartments, hotels, churches, schools, and a variety of other uses), and the remainder of 500’ was zoned U-6 (which also permitted commercial and industrial uses). The Supreme Court (which included Justices Holmes and Brandeis), in a decision authored by Justice Sutherland, framed the pertinent issue as follows:

“The serious question in the case arises over the provisions of the ordinance excluding from residential districts, apartment houses, business houses, retail stores and shops, and other like establishments. The question involves the validity of what is really the crux of the more recent zoning legislation, namely, the creation and maintenance of residential districts, from which business and trade...are excluded.” [*Id.* at 390.]

After reviewing the reasons for these zoning regulations, Justice Sutherland succinctly stated that “the reasons are sufficiently cogent to preclude us from saying...that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare.” [*Id.* at 395.]

State court decisions have been decided with facts remarkably similar to those involved in the present case. *Town of Kittery v. White*, 435 A. 2d 405 (Me. 1981), involved a “split lot” and garage-type building which straddled both business and residential districts. The Supreme Judicial Court of Maine held that the defendant’s used car business could not be

conducted on that portion of the lot and building which was in the residential zone. Rather, the Court ruled that “[e]ach part of the lot must comply with the restrictions imposed upon the zone in which it is located, subject only to the 15-foot extension of the business zone.”⁷ *Id.* at 407.

Moss v. Town of Winchester, 311 N.E. 2d 555 (Mass. 1974), involved a similar situation where the plaintiff’s property was divided into two separate residence districts, one of which permitted apartments and the other of which did not. The Court upheld the ordinance and ruled that the petitioner could not use the less restricted zone for apartments.

Finally, *Commonwealth v. Cieslak*, 115 A. 2d 418 (Pa. App. 1955), dealt with a situation similar to that found in the Maryland Court of Appeals *Ullrich* case. The defendant’s conviction was sustained for violating a zoning ordinance where she attempted to use residentially zoned property for parking ancillary to an adjacent funeral home in a commercial zone.

Section 8.07(c) of *Rathkopf, The Law of Planning and Zoning*, contains a good discussion of cases involving split-zoned properties or split lots.

E. CONCLUSION

For the foregoing reasons, the protestants request the Zoning Commissioner to rule as follows:

1. That Beth Tfiloh may not continue a camp use on its D.R.1 property, since Beth Tfiloh has abandoned its special exception for such a use and since a camp is only permitted by special exception.

⁷ The Kittery zoning regulations provided that in the case of split lots the less restrictive zoning regulation could extend up to 50’ into the more restrictive zone. *Id.* at 406, n.1.

2. That Beth Tfiloh cannot use its R.C.4 property for uses accessory to its private school, including the proposed use of such property as an accessory use for athletic fields and facilities and/or as a camp.



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Attorneys for protestants Glyndon Community
Association, Inc., Gary R. Jones, John Morris, Sean
O'Connell, Gary Applestein, and Nan Kaestner

CERTIFICATION OF MAILING

I HEREBY CERTIFY that on this 16th day of August, 2001, a copy of the foregoing Memorandum was mailed by first class mail, postage prepaid, to G. Scott Barhight, Esq. and Julie A. DeGrigoli, Esq., Whiteford, Taylor & Preston, LLP, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, attorneys for Petitioner Beth Tfiloh Congregation of Baltimore City, Inc.



Robert J. Carson

Glydon/Memorandum of Law

4/26/01

RE: PETITION FOR SPECIAL HEARING
407 Central Avenue, NE/S Central Ave,
250' NW of c/1 Hunting Hor Cir
4th Election District, 3rd Councilmanic

Beth Tfiloh Congregation of Baltimore City, Inc.

Petitioner

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case Nos. 01-468-SPH
CBA-01-136

* * * * *

**POST-HEARING MEMORANDUM SUBMITTED ON BEHALF OF
GLYNDON COMMUNITY ASSOCIATION, INC. AND INDIVIDUAL PROTESTANTS**

This post-hearing Memorandum is submitted on behalf of Glyndon Community Association, Inc. ("GCA"), protestant, and individual protestants Gary R. Jones, John Morris, Sean O'Connell, Gary Appelstein, and Nan Kaestner, in Case No. 01-468-SPH on (i) the issue of the scope of accessory use available to Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh") under the BCZR for its Glyndon property, principally zoned in the D.R. 1 and R.C.4 Zones, which is raised by Beth Tfiloh's appeal of the September 19, 2001 Decision and Order of Hearing Commissioner Schmidt which ruled against Beth Tfiloh on this issue; and (ii) the "loop road" issue raised in the same appeal. This Memorandum will also address the issue in CBA-01-136 of whether the DRC approval should be reversed and remanded to the DRC since its approval was based upon an erroneous construction of the Baltimore County Zoning Regulations ("BCZR").

The protestants, as well as numerous other Glyndon and Sherwood Forest residents, are opposed to the expanded use of the Beth Tfiloh facility because that would tend to create traffic and noise in what is a quiet and peaceful setting with older residences, mostly of Victorian architecture. The Glyndon community has been classified as a Historic District and

02 APR 2001 11:09 AM

the sign as one enters the community says, "Historic Glyndon 1871." Several of the residents are second or third generation residents.

A. STATEMENT OF THE CASE

On May 7, 2001, Beth Tfiloh filed a Petition for Special Hearing requesting the approval of "Amendments to the previously approved plans in Case No. 65-389-X, Case No. 94-27-SPHA, and Case No. IV-455."

A special exception was initially granted to the Maryland Diabetes Association, Inc. (the "MDA") in Case No. 65-389-X to operate and maintain a camp on the property known as Camp Glyndon. After the granting of this special exception, the property was thereafter used as a summer camp for diabetic children.

In Case No. 94-27-SPHA the MDA requested the Zoning Commissioner to amend the special exception to permit expansion of the multi-purpose building on the property. Zoning Commissioner Schmidt rendered his decision on September 28, 1993. The Findings of Fact and Conclusions of Law by Commissioner Schmidt included the following description of the property and its use:

"[T]he subject site is approximately 45 acres in size. It is split-zoned with approximately ½ of the area zoned R.C.5. Most of the balance of the site is zoned D.R.2 with a small portion zoned D.R.3.5. The property was approved for camp use pursuant to the granting of a Petition for Special Exception in 1965. The property has been owned by the Maryland Diabetes Association since 1965 and has been used as a camp for approximately 30 years. * * * Presently there is a pavilion, numerous bunk houses, a medical building, a shower/laundry structure, an infirmary, dining hall, pool house, multi-purpose center and other related structures."

Commissioner Schmidt granted the petition, finding that the requested expansion was justified and that "grouping of the structures within the site is warranted so as to preserve as

much open space and woods as possible.” However, he affixed six conditions which principally served to restrict the future expansion of the buildings.

A site plan implementing the special exception was approved by the Baltimore County Office of Administration on March 4, 1994, in Case No. IV-455. That site plan depicted the property’s use, structures, and facilities in accordance with the decision of the Zoning Commissioner in Case No. 94-27-SPHA.

Prior to the hearing on Beth Tfiloh’s May 7, 2001 Petition for Special Hearing, Director Arnold Jablon of the Department of Permits and Development Management on June 29, 2001, issued an order and decision adopting the June 25 recommendation of the Baltimore County Development Review Committee (the “DRC”) that the Beth Tfiloh project be granted a limited exception under §26-171(A)(2) of the Baltimore County Code, thereby avoiding the necessity for public review and comment on the project. The site plan presented to the DRC showed the contemplated use of that portion of the Beth Tfiloh property zoned R.C. 4 was for athletic fields and for camp use, which Commissioner Schmidt’s September 19, 2001 Decision and Order held was not permitted under the BCZR. The June 29, 2001 administrative order and decision by Director Jablon were on July 19, 2001, appealed to the Board of Appeals by Gary D. Applestein, Sean O’Connell, and GCA. This is Case No. CBA-01-136.

On July 13, 2001, the Zoning Advisory Committee (“ZAC”) reviewed Beth Tfiloh’s plans, as well as the comments of the ZAC members. These comments included (i) a requirement that the “developer...improve Central Avenue along the entire property frontage to include curb and gutter, sidewalks, street lights, storm drains, etc.”, and (ii) that “no connection to St. Paul Avenue will be permitted” and that “the proposed interconnection between the two existing St. Paul Avenues will not be permitted.”

The hearing on Beth Tfiloh's Petition for Special Hearing was held before Zoning Commissioner Schmidt on Wednesday, July 18, 2001. Beth Tfiloh's counsel in his opening statement said that the "amendments" sought by Beth Tfiloh consisted of its desire to abandon the previously granted special exception. Its counsel explained that Beth Tfiloh's position is that it is legally permitted to utilize that portion of its property zoned D.R.1¹ for the proposed private school and church uses which are permitted as a matter of right in a D.R.1 Zone under the BCZR. Additionally, he stated that Beth Tfiloh's position is that it is also permitted to operate and maintain on both the D.R.1 and R.C.4 portions of its property, as accessory uses to these principal uses, the athletic fields and facilities and the camp facilities which are shown and reflected on the site plans marked as Exhibits 4 and 5 at that hearing.

Beth Tfiloh's abandonment of its special exception completely changed the nature of the hearing, thereby eliminating the testimony of most of the protestants' witnesses - and the comments by many of the interested Glyndon and Sagamore Forest residents - opposing Beth Tfiloh's overall proposal and/or demonstrating why substantial conditions should be attached to any special exception amendment. Rather, the hearing mainly involved the legal issues relating to the scope of permissible use of the property in light of the abandonment of the special exception.

The parties then proceeded with testimony, as is described below.

B. TESTIMONY AND EXHIBITS PRESENTED AT 7/18/01 SPECIAL HEARING

Beth Tfiloh called two witnesses, Timothy Madden from Morris & Ritchie, a land planner, and Steven Warfield, a professional engineer. Their testimony principally consisted of

¹ In 2000, the property was downzoned by the County Council from D.R.2 to D.R.1 and from R.C.5 to R.C.4, at the request of the Glyndon community.

describing the buildings and facilities, and proposed buildings and facilities, shown on the site plan.

Mr. Madden described the property as consisting of approximately 45 acres, including slightly more than 18 acres in the D.R.1 Zone and almost 24 acres in the R.C.4 Zone. A small portion of the southerly part of the property is zoned D.R.2, and there is approximately 2.8 acres on the west and northwest which is zoned R.C.5. He described the proposed lower school facility consisting of approximately 46,500 square feet, the proposed dining hall consisting of approximately 8,000 square feet, and the proposed gym consisting of approximately 13,800 square feet, as well as the expanded athletic fields and facilities to be located in both the D.R.1 and the R.C.4 Zones. The camp use, according to the site plan, would not be significantly changed. Most of the camp use is contained in the R.C.4 Zone, although there are some bunkers in the D.R.1 Zone as well as other existing buildings which service the camp. Mr. Madden was permitted to express an opinion that the proposed athletic and camp uses were accessory uses under the BCZR.

Protestants' counsel then called Beth Tfiloh's executive director, Bernard Suffel, as an adverse witness. Mr. Suffel testified that Beth Tifloh had acquired the property in 1998 and was presently using two buildings on the property for a pre-school and a small synagogue (60-80 worshipers) for services on the Sabbath, and that Beth Tfiloh had continued in 2000 and 2001 to operate a summer camp which was smaller in size than Camp Glyndon previously operated by the MDA. The Beth Tfiloh camp enrollment was about 50 in 2000 and about 35 in 2001. (By contrast, Mr. Suffel said that the previous MDA camp had been operated for 3 weeks in the summer and that its enrollment had consisted of approximately 150 campers.)

According to Mr. Suffel, Beth Tfiloh plans to move its lower school, consisting of its pre-kindergarten, kindergarten, and grades 1 through 5, from Beth Tifloh's Pikesville location at Old Court Road to Glyndon. Mr. Suffel estimated that the lower school population would be 350-370 students, with an average class size of 18-22.

Additionally, Mr. Suffel testified that Beth Tfiloh plans to continue the present summer camp at Glyndon. That camp is not restricted to Beth Tifloh members and is open to all students, irrespective of religious belief or denomination. On cross-examination, Mr. Suffel testified that he had no idea what percentage of students were from Beth Tfiloh, although he estimated that approximately 90% of them were Jewish.

Al Barry was then called by the protestants as an expert witness. Mr. Barry, who is now the principal of AB Associates, a land planning and consulting firm, previously had over 24 years of professional planning experience with Baltimore City including his last eight years as the City's Assistant Planning Director. His impressive resume was introduced in evidence.

Mr. Barry testified that in his opinion the requested accessory uses, for athletic fields and facilities and for a camp, were not permissible in the R.C.4 Zone because the principal uses were not permitted there, either as a matter of right or by special exception. Private schools are not permitted in the R.C.4 Zone, and camps are only permitted by way of special exception.

Accordingly, that portion of Beth Tifloh's property in the R.C.4 Zone could not legally be used for athletic fields or for a camp as an accessory use to its school (or church building) in the D.R.1 Zone. On cross-examination, Mr. Barry cited the pertinent provisions from the BCZR which were pertinent to this inquiry.

C. COMMISSIONER SCHMIDT'S 9/19/01 DECISION AND ORDER

In his September 19, 2001 Findings of Fact and Conclusions of Law (which are herein referred to as his "Decision"), Commissioner Schmidt framed the relevant issue as follows:

"Essentially, the question framed is 'Can Beth Tfiloh, on its single parcel of record, conduct activities on the R.C.4 zoned portion of this tract that are incidental or accessory to those permitted uses of right on the D.R.1 zoned portion of the tract?' "

Commissioner Schmidt then went on to analyze the issue and to rule that such activities could not be conducted on the R.C.4 portion of Beth Tfiloh's property:

"[T]he Protestants contend that the different zoning classification mandates a finding that these uses cannot be accessory. I agree. Just as it is clear that a school is permitted by right in the D.R. zone, it is equally clear that it is prohibited in the R.C.4 zone. Moreover, although a church or other building for religious worship is a permitted use by right in the D.R. zone, it is permitted only by special exception in the R.C.4 zone. * * *

"* * * The unusual nature of this case is that the Beth Tfiloh property is one parcel, owned by one entity, with two separate and divergent zoning classifications.

"The out-of-state cases referenced by the Protestants are helpful. In Moss v. Town of Winchester, 311 NE 2nd 555 (1974), the property under consideration was a single lot of record, split zoned into two separate residential districts. The Court did not permit 'spillage' of a permitted use from one district into that portion of the property where the use was not allowed. In Town of Kittery v. White, et al., 435 A2d 405 (Me. 1981), the split zoning of a lot was upheld, where one zone allowed certain commercial uses and the other zone did not. The Court concluded, "(e)ach part of the lot must comply with the restriction imposed upon the zone in which it is located..." (Pg. 407). The other cases cited by the Protestants have similar holdings.

"* * * To follow the Petitioner's conclusion in this case could lead to an absurd result. One can imagine, for example, a property owner with a significantly sized parcel containing a small portion of commercial zoning adjacent to road frontage and non-commercial zoning to the rear. Following the Petitioner's accessory use argument, that property owner might establish an

automobile sales operation on the front portion of the site with the sales building in the commercial zone. The storage or parking of 1,000 vehicles in the rear, non-commercial zoned portion of the lot could be argued as being permitted as accessory to the primary use on the commercial zone. I do not believe that the Council intended such a result. The essential purpose of zoning is to regulate and control land use. The uses proposed by Beth Tfiloh on the R.C.4 zoned portion of the property are simply not allowed. When all is said and done, the applicant in this case seeks a result that undermines the essential theory of zoning.

“* * * For all of these reasons, I find that the property owner may not develop proposed athletic fields on the R.C.4 zoned portion of the site, and likewise, may not use the existing [camp] buildings in association with the school or synagogue. * * *” [Commissioner Schmidt’s Decision, pp. 6-9.]

D. PEOPLE’S COUNSEL’S POSITION

People’s Counsel Peter Max Zimmerman has filed a Memorandum and a letter agreeing with the Zoning Commissioner’s Decision and Order and his conclusion that the proposed accessory uses are *not permitted* uses in the R.C.4 Zone. This Memorandum is well reasoned and cites several additional cases which support Commissioner Schmidt’s Decision and Order.

E. TESTIMONY AND EXHIBITS PRESENTED AT 3/26/02 BOARD OF APPEALS HEARING.

Essentially the same testimony was presented to the Board of Appeals on March 26 by the witnesses who had previously testified before Commissioner Schmidt. However, Bernard Suffel, Beth Tfiloh’s executive director, gave an amazing answer to a question by Board Member Wescott, stating that Beth Tfiloh intends to continue operating the small camp with 30-35 campers, in spite of the fact that it has abandoned its special exception for a camp. (3/26/02 Transcript at 82.)

Beth Tfiloh called one additional witness to testify before the Board of Appeals. This was Don Rascoe, Chairman of the DRC. (Transcript at 58-72.) Mr. Rascoe testified on cross-

examination that the (a)(2) exemption application filed by Beth Tfiloh stated: "A revised special hearing request was filed to update the current zoning plans." The DRC was under this understanding at the time that it reviewed the application and the proposed site plan. (64-65.) Mr. Rascoe rather reluctantly agreed that the site plan showed the proposed athletic fields and camp use. (65-67.) Moreover, Beth Tfiloh never advised Mr. Rascoe or the DRC that it intended to abandon its special exception for the camp, which was the subject of a pending application for expansion at the time of the DRC recommendation to approve the (a)(2) exemption application. (68-69.)

Contrasted to this testimony is Mr. Rascoe's testimony on direct examination: "If zoning relief is required, we certainly would require or table our determination until the zoning relief was acquired or granted." (62.)

F. RELEVANT PORTIONS OF BALTIMORE COUNTY ZONING REGULATIONS

Article 1B of the BCZR deals with Density Residential Zones including the D.R. 1 Zone. §1B01.1.A provides that 19 uses are permitted as of right, including in subpart (3) churches or other buildings for religious worship and in subpart (14) public and private schools. It is to noted that §1B01.1.A specifically provides that these 19 "uses only are permitted as of right in D.R. Zones...." Subpart (18) describes and permits "accessory uses and buildings *other than those permitted only by special exception*". (Emphasis added.) Therefore, by the express terms of the BCZR, a use permitted by special exception in the D.R. 1 Zone may not be an accessory use (unless permitted by a special exception).

§1B.01.01.C similarly sets forth 28 uses which are permitted by special exception in D.R. Zones. Again, these 28 "uses, only, are permitted by special exception in all D.R. Zones...." Subpart (1) describes camps, including day camps.

§1A.03.3 deals with the R.C.4 Zone. §1.A.03.3.A permits 10 uses as a matter of right. Again, these “uses only are permitted as of right”. Although subpart (4) permits public schools, neither private schools, churches, or other buildings for religious worship or camps are permitted in the R.C.4 Zone as a matter of right. §1.A.03.3.B sets forth 22 uses which are permitted by special exception. Again, only these uses are permitted by special exception in R.C.4 Zones. Subpart (2) describes camps, including day camps, and subpart (4) describes churches and other buildings for religious worship. Private schools are not one of the uses permitted by special exception.

§1A.00.5, which applies to Resource Conservation Zones generally, states as follows:

“Application to tract divided by zone boundary. Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. Zones of different classifications, total number of dwellings or density units permitted shall apply to each tract individually and, for the purpose of these regulations, shall be considered as separate parcels.”

G. ARGUMENT: ISSUE OF SCOPE OF ACCESSORY USE AVAILABLE TO BETH TFILOH

1. *Accessory Uses Available to Beth Tfiloh in D.R.1 Zone.*

The protestants do not contest Beth Tfiloh’s right to establish and operate a private school or a church building, as a matter of right, in the portion of its property zoned D.R.1, nor do the protestants contest Beth Tfiloh’s right to construct and maintain athletic fields and facilities as an accessory use to its school on its D.R.1 property.

The protestants do contest Beth Tfiloh’s right to use its D.R.1 property as a camp accessory to its school, even assuming that Beth Tfiloh’s camp could meet the definition of Accessory Use or Structure in §101. It is clear that §1.B.01.A(18) only permits uses or buildings other than those permitted only by special exception. (Emphasis added.) As we have seen

above, §1.B.01.C(1) only permits camps as a special exception. Beth Tfiloh has abandoned its previous special exception and therefore may not use any portion of its D.R.1 zoned property for a camp because it no longer has a special exception for that use.

2. Accessory Uses Available to Beth Tfiloh in R.C.4 Zone.

Beth Tfiloh's position that it may use its R.C.4 zoned property for uses accessory to a principal use or building in the D.R.1 Zone is a unique and impermissible construction of the BCZR. The BCZR, with respect to the R.C.4 Zone, provides that the only use that can be made of land within that zone are the uses permitted as of right in §1.A.03.3.A and those permitted as special exceptions in §1.A.03.3.B. The accessory uses or structures which are permitted as a matter of right in subpart (9) of §1.A.03.3.A are obviously uses or structures which are accessory to one of the 9 principal uses in the R.C.4 zone. There is absolutely nothing in the BCZR which states or suggest that an accessory use may be permitted which is accessory to a principal use or structure in a D.R. Zone (Article 1B), in an elevator-apartment residence zone (Article 2), in an office zone (§202 *et seq.*), in a business zone (§215 *et seq.*), or in a manufacturing zone (§240 *et seq.*). And Beth Tfiloh has never cited any case which so construes the BCZR or any similar zoning ordinance.²

To permit such a construction would permit one owning significant acreage in an R.C. Zone to expand his or her operation into that area from any other adjacent zone so long as the test for an Accessory Use or Structure set forth in §101 was met. This could permit, for

² Beth Tfiloh's counsel in his cross-examination of Al Barry reviewed various sections of the BZCR to show that the enumerated accessory uses vary from zone to zone. (103-107.) Mr. Barry agreed with this, as do the protestants. There is no question that, in the BZCR, some zones such as R.C.C. have language which limit accessory uses or structures to: "The following uses, only, are permitted as an accessory use: * * *." BZCR §1A06.2.C. On the other hand, some zones, such as R.C.4, have language which state: "Accessory uses or structures, including, but not limited to the following: * * *." BZCR §1A03.3.A.9. *This in no way affects Commissioner Schmidt's construction of the BCZR, namely, that any accessory use must be accessory to a principal permitted use or a special exception in that zone.*

example, the expansion of a commercial or manufacturing use into a R.C. Zone, including those R.C. Zones which are within the Critical Area. Merely to state the proposition is to refute it.

§1.A.00.5, which is set forth *verbatim* above, provides that where a tract is divided into different R.C. Zones, each part is to be regulated by its own requirements with respect to the number of dwellings or density units permitted. This section clearly reflects a legislative intent that any portion of property zoned in a Resource Conservation Zone will be governed by the requirements of that R.C. Zone as set forth in the BCZR, as contrasted with being an accessory use amalgamated into an adjacent zone.

§1.A.00.5 is in accordance with the Maryland and out-of-state cases dealing with tracts which are divided into separate zoning districts or zones.

The most recent Court of Appeals decision to discuss a split-zoned property³ is *Alviani v. Dixon*, 365 Md. 95 (2001). In that case, the Court of Appeals was involved with a parcel of land that had been split-zoned 40% C1-B (community retail) and 60% RLD (residency low density). The owner desired to build an automobile service station on the property but could not do so without obtaining a zoning reclassification of the entire parcel to C1-B which permitted a service station. Judge Cathell observed: "An automobile service facility could not be developed on that part of the parcel encumbered with an RLD classification." Although this statement is contained in the Court's recital of the underlying facts, it is also Judge Cathell's conclusion. This is emphasized by his footnote 2 which states:

"2. Split-zoned is a zoning phrase indicating that one parcel of land is encumbered with two different zoning classifications; a

³ The phrases "split-zoned" property or "split lot" are often used in connection with a small lot or tract of land, such as was involved in the *Alviani v. Dixon* case. However, a split-zoned property or split lot may also be present with respect to a larger tract such as is involved here (45 acres) or such as was involved in *Euclid* (68 acres). It may be noted that Commissioner Schmidt used the phrase "split-zoned" in connection with the subject property in his 1993 decision.

portion of the parcel is zoned differently than the remaining parcel.”

The adjudicated Maryland cases are in accord.⁴ *Leimbach v. City of Baltimore*, 257 Md. 635 (1970), *cert. denied*, 400 U.S. 991 (1971), involved a contractor’s attempt to use a residentially zoned property for the purpose of installing a driveway and culvert to access other property owned by him which was zoned commercial. The Court of Appeals, affirming Judge Sodaro in the Baltimore City Court, held: “We agree with Judge Sodaro that the use Litty proposes to make of the driveway shown on the plat would be a ‘business’ use of land in a residential use district.” *Id.* at 240. Earlier, *Ullrich v. State*, 186 Md. 353 (1946), had reached a similar conclusion, sustaining Ullrich’s conviction for a zoning violation because of his attempt to use his home on Erdman Avenue as a funeral parlor accessory to his undertaking establishment on Orleans Street. The Court of Appeals stated:

“...the zoning ordinance...excludes undertaking establishments, not existing at the time of its passage, from residential use districts.... If the use of the defendant’s home was in connection with or in furtherance of his undertaking business..., it was a violation of the ordinance.” [*Id.* at 357.]⁵

Kowalsky v. Lamar, 25 Md. App. 493 (1975), is also instructive. There, Lamar’s property in an RPD zone was being used for the berthing of boats and for fishing activities on a pier which had been constructed into the waters of Muddy Gut. No other use was being made of

⁴ *Eastern Service v. Cloverland*, 130 Md. App. 1 (2000), is a recent case involving an accessory use but is inapplicable to the issues in this appeal. The property in *Eastern Service* was not split-zoned. Moreover, the convenience store accessory use was permitted under the Baltimore City Zoning Ordinance and the BMZA decision permitting that use was supported by substantial evidence in the record.

⁵ Both the *Leimbach* and *Ullrich* cases involved situations where separate lots were involved, as contrasted with a tract where the entire lot was split-zoned. However, the rationale and language of those cases indicate that the same ruling would have been present if the property involved were one split-zoned lot. That was the situation in *Alviani* and was also the situation in *Euclid* and in the Maine and Massachusetts decisions cited below, each of which involved a single lot or parcel of real estate which had been split-zoned into two or more zoning districts. Moreover, §1.A.00.5 of the BCZR clearly reflects a legislative intent that in a split-zoned situation each piece of land zoned in an R.C. Zone be treated as a separate parcel in determining what uses and structures are permitted thereon.

either of the lots owned by Lamar, with the only activity on the property being the boating and fishing use of his pier. The Court of Special Appeals, in affirming the Circuit Court for Baltimore County, held that since nothing in the BCZR permitted such a use without a special exception (which had not been granted), the use was illegal. The Court carefully reviewed the applicable sections of the Zoning Regulations and stated:

“These sections established that the only uses permitted in the RDP zone are those designated as uses permitted as of right and uses permitted by special exception. Any use other than those permitted and being carried on as of right or by special exception is prohibited. [Id. at 498.]

Although Lamar attempted to defend the use as an accessory use the Court rejected that argument, pointing out that the actual boating and fishing “uses constitute the main or principal uses of the subject property. They do not and cannot fall within the ambit of the definition of an accessory use.” Id. at 500.

The out-of-state cases fully support Commissioner Schmidt’s Decision and Order, and the protestants’ position before him and in this appeal. The most famous of these cases is *Village of Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926). This was a split-zoned case involving Ambler’s 68 acre property on the west end of the Village of Euclid. The property fronted on Euclid Avenue to the south and on the Nickel Plate Railroad to the north. A strip of 620’ immediately north of Euclid Avenue was zoned U-2 (a residential district), the next 130’ to the north was zoned U-3 (which also permitted apartments, hotels, churches, schools, and a variety of other uses), and the remainder of 500’ was zoned U-6 (which also permitted commercial and industrial uses). The Supreme Court (which included Justices Holmes and Brandeis), in a decision authored by Justice Sutherland, framed the pertinent issue as follows:

“The serious question in the case arises over the provisions of the ordinance excluding from residential districts, apartment houses, business houses, retail stores and shops, and other like establishments. The question involves the validity of what is really the crux of the more recent zoning legislation, namely, the creation and maintenance of residential districts, from which business and trade...are excluded.” [*Id.* at 390.]

After reviewing the reasons for these zoning regulations, Justice Sutherland succinctly stated that “the reasons are sufficiently cogent to preclude us from saying...that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare.” [*Id.* at 395.]

State court decisions have been decided with facts remarkably similar to those involved in the present case. *Town of Kittery v. White*, 435 A. 2d 405 (Me. 1981), involved a “split lot” and garage-type building which straddled both business and residential districts. The Supreme Judicial Court of Maine held that the defendant’s used car business could not be conducted on that portion of the lot and building which was in the residential zone. Rather, the Court ruled that “[e]ach part of the lot must comply with the restrictions imposed upon the zone in which it is located, subject only to the 50-foot extension of the business zone.”⁶ *Id.* at 407.

Moss v. Town of Winchester, 311 N.E. 2d 555 (Mass. 1974), involved a similar split lot situation where the plaintiff’s property was divided into two separate residence districts, one permitting apartments and the other not permitting them. The Court upheld the ordinance and ruled that the petitioner could not use the more restricted zone for apartments.

Finally, *Commonwealth v. Cieslak*, 115 A. 2d 418 (Pa. App. 1955), dealt with a situation similar to that found in the Maryland Court of Appeals *Ullrich* case. The defendant’s conviction was sustained for violating a zoning ordinance where she attempted to use

⁶ The Kittery zoning regulations provided that in the case of split lots the less restrictive zoning regulation could extend up to 50’ into the more restrictive zone. *Id.* at 406, n.1.

residentially zoned property for parking ancillary to an adjacent funeral home in a commercial zone.

H. ARGUMENT: THE "LOOP ROAD" ISSUE

Commissioner Schmidt's Decision and Order permitted the so-called "loop road" to remain. (Decision, pp. 9-10.) However, that portion of his ruling was obviously incorrect, since there is an existing right-of-way which provides a means of access to the adjacent residences to the north and since Beth Tfiloh's new structures have full and complete internal access on the portion of the property zoned B.R.1. Mr. Barry's testimony was that this portion of the "development plan has no longer any validity [since] the relocated road running along its parameter should be under again further review by the appropriate development authority...because one piece of the approval has been denied." (Transcript, p. 94.)

The protestants therefore request this Board either to reverse that portion of Commissioner Schmidt's decision or, alternatively, to remand that issue back to Commissioner Schmidt for further consideration (or to the DRC, for the reasons more fully stated in the next section).

Beth Tfiloh takes the position that it only appealed the athletic fields and camp use issue decided by Commissioner Schmidt, and that since there was no appeal or cross-appeal of the "loop road" issue by any of the protestants this issue is not properly before the Board of Appeals. Beth Tfiloh will undoubtedly cite *Daihl v. County Board of Appeals*, 258 Md. 157 (1970). However, that case is not applicable here. There, a developer had filed for reclassification and for variances in connection with two separate properties. The Deputy Zoning Commissioner had granted ML rezoning for one parcel, but denied the rezoning for the other. Protestants appealed the ML rezoning, but neither they nor the developer appealed from the denial of the rezoning for

the other parcel. The Court of Appeals held that the Board of Appeals had no jurisdiction to consider the rezoning denial for the other parcel, since no appeal had been taken with respect to that action. Here, Commissioner Schmidt's decision with respect to the athletic fields and camp use, which he decided were not permissible on the R.C.4 property, is inseparably wrapped up with the issue of the loop road which, as a review of the site plan shows, has as its sole function running around (rather than through) the athletic fields. There is absolutely no reason to do this any longer, since the R.C.4 portion of the property may not be used for athletic fields.

The protestants believe it appropriate to bring to the Board's attention the fact that, while this issue has been pending before the Board, Beth Tfiloh has proceeded to demolish a substantial number of trees and to proceed with grading activities in order to construct this road, as well as to demolish the existing buildings on the D.R.1 portion of the property. Photographs of this activity are attached hereto as Exhibit A. The protestants intend to take whatever action is necessary to have Beth Tfiloh cease its construction and/or use of the loop road in the event that the Board of Appeals rules in the protestants' favor on this issue.

I. ARGUMENT: THE DRC APPROVAL ISSUE

There is no question that the (a)(2) exemption application filed by Beth Tfiloh advised the DRC that there was pending an application for an expanded special exception for camp use, and that the site plan presented to the DRC showed the proposed athletic field and camp use on the R.C.4 portion of Beth Tfiloh's property. Stephen Warfield, Beth Tfiloh's engineer, testified that the application and his accompanying letter so advised the DRC. Mr. Warfield also testified that he never advised the DRC that Beth Tfiloh intended to abandon its special exception for a camp, and indeed the first time such an abandonment was mentioned was at the July 18, 2001

hearing before Commissioner Schmidt. (Transcript, pp. 34-36.) Mr. Rascoe's testimony, which has been summarized above, was also to this effect.

The Maryland case law is that a board which is charged with approving a development or site plan, such as a planning board or the DRC, may not approve such a plan based upon uses that are not permitted under the zoning regulations. If it does, then any such approval is null and void and should be reversed. *Miller v. Forty West Builders, Inc.*, 62 Md. App. 320, 334-339 (1985), and *G.L.P. Development v. MNCPPC*, Court of Special Appeals No. 1755, September Term, 1989, filed July 31, 1990 (a copy of which was sent to the Board on February 26 by People's Counsel).

J. CONCLUSION

For the foregoing reasons, the protestants respectfully request the Board of Appeals to resolve the issues presented by this appeal as follows:

1. To affirm Commissioner Schmidt's Decision and Order on the issue of the scope of accessory use, for athletic fields and camp use, available to Beth Tfiloh under the BCZR.
2. To reverse that portion of Commissioner Schmidt's Decision and Order relating to the "loop road" or, alternatively, to remand that issue to Commissioner Schmidt or the DRC.

3. To reverse and remand the (a)(2) exemption application determination to the DRC.

Respectfully submitted,



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Attorneys for protestants Glyndon Community Association, Inc., Gary R. Jones, John Morris, Sean O'Connell, Gary Applestein, and Nan Kaestner

CERTIFICATION OF MAILING

I HEREBY CERTIFY that on this 26th day of April, 2001, copies of the foregoing Memorandum were mailed by first class mail, postage prepaid, to G. Scott Barhight, Esq., and Dino C. La Fiandra, Esq., Whiteford, Taylor & Preston, LLP, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, attorneys for Beth Tfiloh Congregation of Baltimore City, Inc., and to Peter Max Zimmerman, People's Counsel for Baltimore County, Room 47, Old Court House, 400 Washington Avenue, Towson, Maryland 21204.



Robert J. Carson

Glyndon/Post-Hearing Memorandum by Glyndon

3/14/01

RE: PETITION FOR SPECIAL HEARING
407 Central Avenue, NE/S Central Ave,
250' NW of c/1 Hunting Hor Cir
4th Election District, 3rd Councilmanic

Beth Tfiloh Congregation of Baltimore City, Inc.

Petitioner

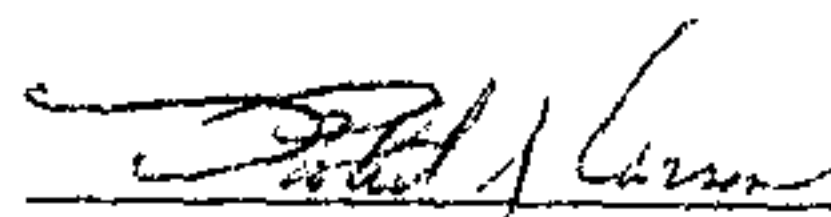
* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case Nos. 01-468-SPH
* CBA-01-118
* CBA-01-136

* * * * *

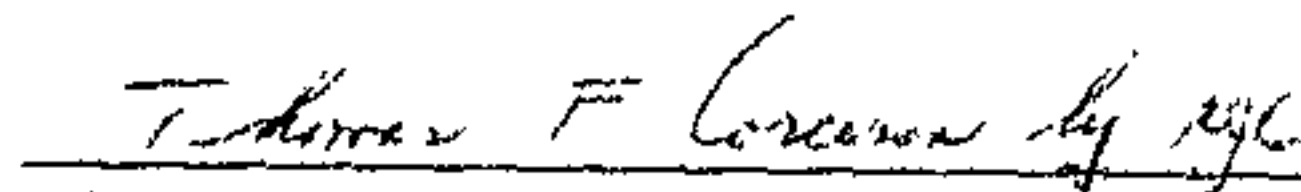
NOTICE OF DISMISSAL OF APPEAL IN CASE NO. CBA-01-118

Glyndon Community Association, Inc., and the individual protestants who
appealed Case No. CBA-01-118, hereby dismiss the appeal in that case.

As a result of this dismissal, the other two cases remain to be decided by the
Board of Appeals, namely, (i) Case No. CBA-01-136 which is an appeal by Glyndon
Community Association, Inc., et al., and (ii) Case No. 01-468-SPH which is an appeal by Beth
Tfiloh Congregation of Baltimore City, Inc.



Robert J. Carson
Robert J. Carson, P.A.
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050



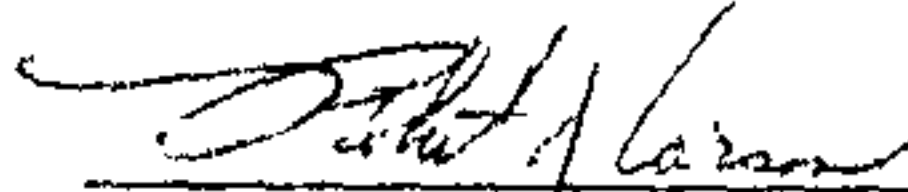
Thomas F. Corcoran
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120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 230-3800

Attorneys for protestants Glyndon Community
Association, Inc., Gary R. Jones, John Morris, Sean
O'Connell, Gary Applestein, and Nan Kaestner

021118 15 PM 3:38

CERTIFICATION OF MAILING

I HEREBY CERTIFY that on this 14th day of March, 2001, copies of the foregoing Notice of Dismissal of Appeals in Case No. CBA-01-118 by first class mail, postage prepaid, to G. Scott Barhight, Esq., and Dino C. La Fiandra, Esq., Whiteford, Taylor & Preston, LLP, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, attorneys for Beth Tfiloh Congregation of Baltimore City, Inc., and to Peter Max Zimmerman, People's Counsel for Baltimore County, Room 47, Old Court House, 400 Washington Avenue, Towson, Maryland 21204.



Robert J. Carson

Glyndon/Notice of Dismissal - Case Nos. 01-118 & 136

RE: PETITION FOR SPECIAL HEARING

407 Central Avenue, NE/S Central Ave,

250' NW of c/1 Hunting Hor Cir

4th Election District, 3rd Councilmanic

Beth Tfiloh Congregation of Baltimore City, Inc.

Petitioner

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BEFORE THE

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COUNTY BOARD OF APPEALS

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FOR

*

BALTIMORE COUNTY

*

Case Nos. 01-468-SPH

CBA-01-118

*

CBA-01-136

* * * * *

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

TO: Bernard H. Suffel, Executive Director
of Beth Tfiloh Congregation of Baltimore City, Inc.
3300 Old Court Road
Baltimore, Maryland 21208

YOU ARE HEREBY SUMMONSED AND COMMANDED TO: Personally appear
in Room 48, Old Courthouse, 400 Washington Avenue, Towson, MD 21204, on Tuesday,
March 26, at 10:00 a.m.

Subpoena Requested by:

Robert J. Carson

Robert J. Carson, P.A.

345 Green Street

Havre de Grace, Maryland 21078

(410) 939-0050

Attorney for Glyndon Community Association, Inc. and individual protestants

The witness named above is hereby ordered to so appear before the County Board of Appeals.
The Board requests Robert J. Carson, Esq. to serve the subpoena.

County Board of Appeals of Baltimore County

Robert J. Carson, P.A.
Attorney at Law
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050 (phone)
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e-mail:
bobcarson@hdglegal.com

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Baltimore, Maryland 21202
(410) 385-8130 or (410) 230-3800

March 14, 2001

Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
400 Washington Avenue
Old Courthouse, Room 49
Towson, Maryland 21204

Re: In the matter of Beth Tfiloh Congregation of Baltimore City, Inc, Case
Nos. 01-468-SPH, CBA-01-118, and CBA-01-136

Dear Ms. Bianco:

Please find enclosed the following:

1. Notice of Dismissal of Appeal in Case No. CBA-01-118.
2. Subpoena to be issued to Bernard H. Suffel, Executive Director of Beth Tfiloh. Please issue and return the subpoena to me. I have received a letter from Beth Tfiloh's counsel advising that he will accept service of the subpoena if I fax him the subpoena.

With my appreciation for your assistance in the foregoing, I am

Sincerely yours,



Robert J. Carson

RJC/jak

Enclosures

cc: Charles L. Marks, Chair
County Board of Appeals of Baltimore County
G. Scott Barhight, Esq.
Dino C. La Fiandra, Esq.
Peter M. Zimmerman, Esq.
People's Counsel for Baltimore County
Mr. Gary R. Jones
Thomas F. Corcoran, Esq.

Glyndon/Bianco ltr2

3/13/01

RE: PETITION FOR SPECIAL HEARING
407 Central Avenue, NE/S Central Ave,
250' NW of c/1 Hunting Hor Cir
4th Election District, 3rd Councilmanic

Beth Tfiloh Congregation of Baltimore City, Inc.

Petitioner

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case Nos. 01-468-SPH
CBA-01-118
* CBA-01-136

* * * * *

MEMORANDUM SUBMITTED ON BEHALF OF
GLYNDON COMMUNITY ASSOCIATION, INC. AND
INDIVIDUAL PRTESTANTS IN CASE NO. 01-468-SPH ON ISSUE OF SCOPE OF
ACCESSORY USE AVAILABLE TO BETH TFILOH UNDER BCZR

This Memorandum is submitted on behalf of Glyndon Community Association, Inc. ("GCA"), protestant, and individual protestants Gary R. Jones, John Morris, Sean O'Connell, Gary Appelstein, and Nan Kaestner, in Case No. 01-468-SPH on the issue of the scope of accessory use available to Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh") under the BCZR for its Glyndon property, principally zoned in the D.R.1 and R.C.4 Zones, which is raised by Beth Tfiloh's appeal of the September 19, 2001 Decision and Order of Hearing Commissioner Schmidt which ruled against Beth Tfiloh on this issue.

The other issues in Case No. 01-468-SPH and in the other appeals will be discussed and dealt with at the March 26 hearing of these combined appeals.

The protestants, as well as numerous other Glyndon and Sherwood Forest residents, are opposed to the expanded use of the Beth Tfiloh facility because that would tend to create traffic and noise in what is a quiet and peaceful setting with older residences, mostly of Victorian architecture. The Glyndon community has been classified as a Historic District and

the sign as one enters the community says, "Historic Glyndon 1871." Several of the residents are second or third generation residents.

A. STATEMENT OF THE CASE

On May 7, 2001, Beth Tfiloh filed a Petition for Special Hearing requesting the approval of "Amendments to the previously approved plans in Case No. 65-389-X, Case No. 94-27-SPHA, and Case No. IV-455."

A special exception was initially granted to the Maryland Diabetes Association, Inc. (the "MDA") in Case No. 65-389-X to operate and maintain a camp on the property known as Camp Glyndon. After the granting of this special exception, the property was thereafter used as a summer camp for diabetic children.

In Case No. 94-27-SPHA the MDA requested the Zoning Commissioner to amend the special exception to permit expansion of the multi-purpose building on the property. Zoning Commissioner Schmidt rendered his decision on September 28, 1993. The Findings of Fact and Conclusions of Law by Commissioner Schmidt included the following description of the property and its use:

"[T]he subject site is approximately 45 acres in size. It is split-zoned with approximately 1/2 of the area zoned R.C.5. Most of the balance of the site is zoned D.R.2 with a small portion zoned D.R.3.5. The property was approved for camp use pursuant to the granting of a Petition for Special Exception in 1965. The property has been owned by the Maryland Diabetes Association since 1965 and has been used as a camp for approximately 30 years. * * * Presently there is a pavilion, numerous bunk houses, a medical building, a shower/laundry structure, an infirmary, dining hall, pool house, multi-purpose center and other related structures."

Commissioner Schmidt granted the petition, finding that the requested expansion was justified and that "grouping of the structures within the site is warranted so as to preserve as

much open space and woods as possible.” However, he affixed six conditions which principally served to restrict the future expansion of the buildings.

A site plan implementing the special exception was approved by the Baltimore County Office of Administration on March 4, 1994, in Case No. IV-455. That site plan depicted the property’s use, structures, and facilities in accordance with the decision of the Zoning Commissioner in Case No. 94-27-SPHA. It also showed the zoning districts described by the Zoning Commissioner in his decision.

Prior to the hearing on the present Petition for Special Hearing, Director Arnold Jablon of the Department of Permits and Development Management on June 29, 2001, issued an order and decision adopting the June 25 recommendation of the Baltimore County Development Review Committee (the “DRC”) that the Beth Tfiloh project be granted a limited exception under §26-171(A)(2) of the Baltimore County Code, thereby avoiding the necessity for public review and comment on the project. The June 29, 2001 administrative order and decision by Director Jablon were on July 19, 2001 appealed to the Board of Appeals by Gary D. Applestein, Sean O’Connell, and GCA. This is Case No. CBA-01-136.

On July 13, 2001, the Zoning Advisory Committee (“ZAC”) reviewed Beth Tfiloh’s plans, as well as the comments of the ZAC members. These comments included (i) a requirement that the “developer...improve Central Avenue along the entire property frontage to include curb and gutter, sidewalks, street lights, storm drains, etc.”, and (ii) that “no connection to St. Paul Avenue will be permitted” and that “the proposed interconnection between the two existing St. Paul Avenues will not be permitted.”

The hearing on Beth Tfiloh’s Petition for Special Hearing was held before Zoning Commissioner Schmidt on Wednesday, July 18, 2001. Beth Tfiloh’s counsel in his opening

statement said that the "amendments" sought by Beth Tfiloh consisted of its desire to abandon the previously granted special exception. Its counsel explained that Beth Tfiloh's position was that it is legally permitted to utilize that portion of its property zoned D.R. 1¹ for the proposed private school and church uses which are permitted as a matter of right in a D.R. 1 Zone under the BCZR. Additionally, he stated that Beth Tfiloh's position was that it is also permitted to operate and maintain on both the D.R. 1 and R.C. 4 portions of its property, as accessory uses to these principal uses, the athletic fields and facilities and the camp facilities which are shown and reflected on the site plans marked as Exhibits 4 and 5 at the hearing.

Beth Tfiloh's abandonment of its special exception completely changed the nature of the hearing, thereby eliminating the testimony of most of the protestants' witnesses - and the comments by many of the interested Glyndon and Sherwood Forest residents - opposing Beth Tfiloh's overall proposal and/or demonstrating why substantial conditions should be attached to any special exception amendment. Rather, the hearing mainly involved the legal issues relating to the scope of permissible use of the property in light of the abandonment of the special exception.

The parties then proceeded with testimony, as is described below.

B. TESTIMONY AND EXHIBITS PRESENTED AT 7/18/01 SPECIAL HEARING

Beth Tifloh called two witnesses, Timothy Madden from Morris & Ritchie, a land planner, and Steven Warfield, a professional engineer.² Their testimony principally consisted of describing the buildings and facilities, and proposed buildings and facilities, shown on the site plan.

¹ In 2000, the property was downzoned by the County Council from D.R. 2 to D.R. 1 and from R.C. 5 to R.C. 4, at the request of the Glyndon community.

Mr. Madden described the property as consisting of approximately 45 acres, including slightly more than 18 acres in the D.R.1 Zone and almost 24 acres in the R.C.4 Zone. A small portion of the southerly part of the property is zoned D.R.2, and there is approximately 2.8 acres on the west and northwest which is zoned R.C.5. He described the proposed lower school facility consisting of approximately 46,500 square feet, the proposed dining hall consisting of approximately 8,000 square feet, and the proposed gym consisting of approximately 13,800 square feet, as well as the expanded athletic fields and facilities to be located in both the D.R.1 and the R.C.4 Zones. The camp use, according to the site plan, would not be significantly changed. Most of the camp use is contained in the R.C.4 Zone, although there are some bunkers in the D.R.1 Zone as well as other existing buildings which service the camp. Mr. Madden was permitted to express an opinion that the proposed athletic and camp uses were permitted accessory uses under the BCZR.

Protestants' counsel then called Beth Tfiloh's executive director, Bernard Suffel, as an adverse witness. Mr. Suffel testified that Beth Tfiloh had acquired the property in 1998 and was presently using two buildings on the property for a pre-school and a small synagogue (60-80 worshipers) for services on the Sabbath, and that Beth Tfiloh had continued in 2000 and 2001 to operate a summer camp which was smaller in size than Camp Glyndon previously operated by the MDA. The Beth Tfiloh camp enrollment was about 50 in 2000 and about 35 in 2001. (By contrast, Mr. Suffel said that the previous MDA camp had been operated for 3 weeks in the summer and that its enrollment had consisted of approximately 150 campers.)

² The Zoning Commissioner called one witness, Mr. Bowling, who is chief of the DPW Development Plans Division, with respect to the proposed widening of Central Avenue, which was opposed by both Beth Tfiloh and the protestants.

According to Mr. Suffel, Beth Tfiloh plans to move its lower school, consisting of its pre-kindergarten, kindergarten, and grades 1 through 5, from Beth Tifloh's Pikesville location at Old Court Road to Glyndon. Mr. Suffel estimated that the lower school population would be 350-370 students, with an average class size of 18-22.

Additionally, Mr. Suffel testified that Beth Tfiloh plans to continue the present summer camp at Glyndon. That camp is not restricted to Beth Tifloh members and is open to all students, irrespective of religious belief or denomination. On cross-examination, Mr. Suffel testified that he had no idea what percentage of students were from Beth Tfiloh, although he estimated that approximately 90% of them were Jewish.

Al Barry was then called by the protestants as an expert witness. Mr. Barry, who is now the principal of AB Associates, a land planning and consulting firm, previously had over 24 years of professional planning experience with Baltimore City including his last eight years as the City's Assistant Planning Director. His impressive resume was introduced in evidence.

Mr. Barry testified that in his opinion the requested accessory uses, for athletic fields and facilities and for a camp, were not permissible in the R.C.4 Zone because the principal uses were not permitted there, either as a matter of right or by special exception. Private schools are not permitted in the R.C.4 Zone, and camps are only permitted by way of special exception.

Accordingly, that portion of Beth Tifloh's property in the R.C.4 Zone could not legally be used for athletic fields or for a camp as an accessory use to its school (or church building) in the D.R.1 Zone. On cross-examination, Mr. Barry cited the pertinent provisions from the BCZR which were pertinent to this inquiry.

C. COMMISSIONER SCHMIDT'S 9/19/01 DECISION AND ORDER

In his September 19, 2001 Findings of Fact and Conclusions of Law (which are herein referred to as his "Decision"), Commissioner Schmidt framed the relevant issue as follows:

"Essentially, the question framed is 'Can Beth Tfiloh, on its single parcel of record, conduct activities on the R.C.4 zoned portion of this tract that are incidental or accessory to those permitted uses of right on the D.R.1 zoned portion of the tract?'"

Commissioner Schmidt then went on to analyze the issue and to rule that such activities could not be conducted on the R.C.4 portion of Beth Tfiloh's property:

"[T]he Protestants contend that the different zoning classification mandates a finding that these uses cannot be accessory. I agree. Just as it is clear that a school is permitted by right in the D.R. zone, it is equally clear that it is prohibited in the R.C.4 zone. Moreover, although a church or other building for religious worship is a permitted use by right in the D.R. zone, it is permitted only by special exception in the R.C.4 zone. * * *

"* * * The unusual nature of this case is that the Beth Tfiloh property is one parcel, owned by one entity, with two separate and divergent zoning classifications.

"The out-of-state cases referenced by the Protestants are helpful. In Moss v. Town of Winchester, 311 NE 2nd 555 (1974), the property under consideration was a single lot of record, split zoned into two separate residential districts. The Court did not permit 'spillage' of a permitted use from one district into that portion of the property where the use was not allowed. In Town of Kittery v. White, et al., 435 A2d 405 (Me. 1981), the split zoning of a lot was upheld, where one zone allowed certain commercial uses and the other zone did not. The Court concluded, "(e)ach part of the lot must comply with the restriction imposed upon the zone in which it is located..." (Pg. 407). The other cases cited by the Protestants have similar holdings.

"* * * To follow the Petitioner's conclusion in this case could lead to an absurd result. One can imagine, for example, a property owner with a significantly sized parcel containing a small portion of commercial zoning adjacent to road frontage and non-commercial zoning to the rear. Following the Petitioner's accessory use argument, that property owner might establish an

automobile sales operation on the front portion of the site with the sales building in the commercial zone. The storage or parking of 1,000 vehicles in the rear, non-commercial zoned portion of the lot could be argued as being permitted as accessory to the primary use on the commercial zone. I do not believe that the Council intended such a result. The essential purpose of zoning is to regulate and control land use. The uses proposed by Beth Tfiloh on the R.C.4 zoned portion of the property are simply not allowed. When all is said and done, the applicant in this case seeks a result that undermines the essential theory of zoning.

“* * * For all of these reasons, I find that the property owner may not develop proposed athletic fields on the R.C.4 zoned portion of the site, and likewise, may not use the existing buildings in association with the school or synagogue. * * *” [Commissioner Schmidt’s Decision, pp. 6-9.]

D. PEOPLE’S COUNSEL’S POSITION

People’s Counsel Peter Max Zimmerman has filed a Memorandum agreeing with the Zoning Commissioner’s Decision and his conclusion that the proposed accessory uses are not permitted uses in the R.C.4 Zone. This Memorandum is well reasoned and cites several additional cases which support Commissioner Schmidt’s Decision and Order.

E. RELEVANT PORTIONS OF BALTIMORE COUNTY ZONING REGULATIONS

Article 1B of the BCZR deals with Density Residential Zones including the D.R.1 Zone. §1B01.1.A provides that 19 uses are permitted as of right, including in subpart (3) churches or other buildings for religious worship and in subpart (14) public and private schools. It is to noted that §1B01.1.A specifically provides that these 19 “uses only are permitted as of right in D.R. Zones....” Subpart (18) describes and permits “accessory uses and buildings *other than those permitted only by special exception*”. (Emphasis added.) Therefore, by the express terms of the BCZR, a use permitted by special exception in the D.R.1 Zone may not be an accessory use (unless permitted by a special exception).

§1B.01.01.C similarly sets forth 28 uses which are permitted by special exception in D.R. Zones. Again, these 28 “uses, only, are permitted by special exception in all D.R. Zones....”

Subpart (1) describes camps, including day camps.

§1A.03.3 deals with the R.C.4 Zone. §1.A.03.3.A permits 10 uses as a matter of right. Again, these “uses only are permitted as of right”. Although subpart (4) permits public schools, neither private schools, churches, or other buildings for religious worship or camps are permitted in the R.C.4 Zone as a matter of right. §1.A.03.3.B sets forth 22 uses which are permitted by special exception. Again, only these uses are permitted by special exception in R.C.4 Zones. Subpart (2) describes camps, including day camps, and subpart (4) describes churches and other buildings for religious worship. Private schools are not one of the uses permitted by special exception.

§1A.00.5, which applies to Resource Conservation Zones generally, states as follows:

“Application to tract divided by zone boundary. Whenever a single tract is divided by a zone boundary so that portions of such a tract lie within R.C. Zones of different classifications, total number of dwellings or density units permitted shall apply to each tract individually and, for the purpose of these regulations, shall be considered as separate parcels.”

F. ARGUMENT

1. Accessory Uses Available to Beth Tfiloh in D.R.1 Zone.

The protestants do not contest Beth Tfiloh’s right to establish and operate a private school or a church building, as a matter of right, in the portion of its property zoned D.R.1, nor do the protestants contest Beth Tfiloh’s right to construct and maintain athletic fields and facilities as an accessory use to its school on its D.R.1 property.

The protestants do contest Beth Tfiloh’s right to use its D.R.1 property as a camp accessory to its school, even assuming that Beth Tfiloh’s camp could meet the definition of

Accessory Use or Structure in §101. It is clear that §1.B.01.A(18) only permits uses or buildings other than those permitted only by special exception. (Emphasis added.) As we have seen above, §1.B.01.C(1) only permits camps as a special exception. Beth Tfiloh has abandoned its previous special exception and therefore may not use any portion of its D.R.1 zoned property for a camp because it no longer has a special exception for that use.

2. Accessory Uses Available to Beth Tfiloh in R.C.4 Zone.

Beth Tfiloh's position that it may use its R.C.4 zoned property for uses accessory to a principal use or building in the D.R.1 Zone is a unique and impermissible construction of the BCZR. The BCZR, with respect to the R.C.4 Zone, provides that the only use that can be made of land within that zone are the uses permitted as of right in §1.A.03.3.A and those permitted as special exceptions in §1.A.03.3.B. The accessory uses or structures which are permitted as a matter of right in subpart (9) of §1.A.03.3.A are obviously uses or structures which are accessory to one of the 9 principal uses in the R.C.4 zone. There is absolutely nothing in the BCZR which states or suggest that an accessory use may be permitted which is accessory to a principal use or structure in a D.R. Zone (Article 1B), in an elevator-apartment residence zone (Article 2), in an office zone (§202 *et seq.*), in a business zone (§215 *et seq.*), or in a manufacturing zone (§240 *et seq.*). And Beth Tfiloh has never cited any case which so construes the BCZR or any similar zoning ordinance.

To permit such a construction would permit one owning significant acreage in an R.C. Zone to expand his or her operation into that area from any other adjacent zone so long as the test for an Accessory Use or Structure set forth in §101 was met. This could permit, for example, the expansion of a commercial or manufacturing use into a R.C. Zone, including those R.C. Zones which are within the Critical Area. Merely to state the proposition is to refute it.

§1.A.00.5, which is set forth *verbatim* above, provides that where a tract is divided into different R.C. Zones, each part is to be regulated by its own requirements with respect to the number of dwellings or density units permitted. This section clearly reflects a legislative intent that any portion of property zoned in a Resource Conservation Zone will be governed by the requirements of that R.C. Zone as set forth in the BCZR, as contrasted with being an accessory use amalgamated into an adjacent zone.

§1.A.00.5 is in accordance with the Maryland and out-of-state cases dealing with tracts which are divided into separate zoning districts or zones.

The most recent Court of Appeals decision to discuss a split-zoned property³ is *Alviani v. Dixon*, 365 Md. 95 (2001). In that case, the Court of Appeals was involved with a parcel of land that had been split-zoned 40% C1-B (community retail) and 60% RLD (residency low density). The owner desired to build an automobile service station on the property but could not do so without obtaining a zoning reclassification of the entire parcel to C1-B which permitted a service station. Judge Cathell observed: "An automobile service facility could not be developed on that part of the parcel encumbered with an RLD classification." Although this statement is contained in the Court's recital of the underlying facts, it is also Judge Cathell's conclusion. This is emphasized by his footnote 2 which states:

"2. Split-zoned is a zoning phrase indicating that one parcel of land is encumbered with two different zoning classifications; a portion of the parcel is zoned differently than the remaining parcel."

³ The phrases "split-zoned" property or "split lot" are often used in connection with a small lot or tract of land, such as was involved in the *Alviani v. Dixon* case just decided by the Court of Appeals on July 13, 2001. However, a split-zoned property or split lot may also be present with respect to a larger tract such as is involved here (45 acres) or such as was involved in *Euclid* (68 acres). (It may be noted that Commissioner Schmidt used the phrase "split-zoned" in connection with the subject property in his 1993 decision.)

The earlier adjudicated cases in Maryland are in accord.⁴ *Leimbach v. City of Baltimore*, 257 Md. 635 (1970), cert. denied, 400 U.S. 991 (1971), involved a contractor's attempt to use a residentially zoned property for the purpose of installing a driveway and culvert to access other property owned by him which was zoned commercial. The Court of Appeals, affirming Judge Sodaro in the Baltimore City Court, held: "We agree with Judge Sodaro that the use Litty proposes to make of the driveway shown on the plat would be a 'business' use of land in a residential use district." *Id.* at 240. Earlier, *Ullrich v. State*, 186 Md. 353 (1946), had reached a similar conclusion, sustaining Ullrich's conviction for a zoning violation because of his attempt to use his home on Erdman Avenue as a funeral parlor accessory to his undertaking establishment on Orleans Street. The Court of Appeals stated:

"...the zoning ordinance...excludes undertaking establishments, not existing at the time of its passage, from residential use districts.... If the use of the defendant's home was in connection with or in furtherance of his undertaking business..., it was a violation of the ordinance." [*Id.* at 357.]⁵

Kowalsky v. Lamar, 25 Md. App. 493 (1975), is also instructive. There, Lamar's property in an RPD zone was being used for the berthing of boats and for fishing activities on a pier which had been constructed into the waters of Muddy Gut. No other use was being made of

⁴ *Eastern Service v. Cloverland*, 130 Md. App. 1 (2000), is a more recent case involving an accessory use but is inapplicable to the issues in this appeal. The property in *Eastern Service* was not split-zoned. Moreover, the convenience store accessory use was permitted under the Baltimore City Zoning Ordinance and the BMZA decision permitting that use was supported by substantial evidence in the record.

⁵ Both the *Leimbach* and *Ullrich* cases involved situations where separate lots were involved, as contrasted with a tract where the entire lot was split-zoned. However, the rationale and language of those cases indicate that the same ruling would have been present if the property involved were one split-zoned lot. That was the situation in *Alviani* and was also the situation in *Euclid* and in the Maine and Massachusetts decisions cited below, each of which involved a single lot or parcel of real estate which had been split-zoned into two or more zoning districts. Moreover, §1.A.00.5 of the BCZR clearly reflects a legislative intent that in a split-zoned situation each piece of land zoned in an R.C. Zone be treated as a separate parcel in determining what uses and structures are permitted thereon.

either of the lots owned by Lamar, with the only activity on the property being the boating and fishing use of his pier. The Court of Special Appeals, in affirming the Circuit Court for Baltimore County, held that since nothing in the BCZR permitted such a use without a special exception (which had not been granted), the use was illegal. The Court carefully reviewed the applicable sections of the Zoning Regulations and stated:

“These sections established that the only uses permitted in the RDP zone are those designated as uses permitted as of right and uses permitted by special exception. Any use other than those permitted and being carried on as of right or by special exception is prohibited. [*Id.* at 498.]

Although Lamar attempted to defend the use as an accessory use the Court rejected that argument, pointing out that the actual boating and fishing “uses constitute the main or principal uses of the subject property. They do not and cannot fall within the ambit of the definition of an accessory use.” *Id.* at 500.

The out-of-state cases fully support Commissioner Schmidt’s Decision and Order, and the protestants’ position before him and in this appeal. The most famous of these cases is *Village of Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926). This was a split-zoned case involving Ambler’s 68 acre property on the west end of the Village of Euclid. The property fronted on Euclid Avenue to the south and on the Nickel Plate Railroad to the north. A strip of 620’ immediately north of Euclid Avenue was zoned U-2 (a residential district), the next 130’ to the north was zoned U-3 (which also permitted apartments, hotels, churches, schools, and a variety of other uses), and the remainder of 500’ was zoned U-6 (which also permitted commercial and industrial uses). The Supreme Court (which included Justices Holmes and Brandeis), in a decision authored by Justice Sutherland, framed the pertinent issue as follows:

“The serious question in the case arises over the provisions of the ordinance excluding from residential districts, apartment houses,

business houses, retail stores and shops, and other like establishments. The question involves the validity of what is really the crux of the more recent zoning legislation, namely, the creation and maintenance of residential districts, from which business and trade...are excluded." [*Id.* at 390.]

After reviewing the reasons for these zoning regulations, Justice Sutherland succinctly stated that "the reasons are sufficiently cogent to preclude us from saying...that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." [*Id.* at 395.]

State court decisions have been decided with facts remarkably similar to those involved in the present case. *Town of Kittery v. White*, 435 A. 2d 405 (Me. 1981), involved a "split lot" and garage-type building which straddled both business and residential districts. The Supreme Judicial Court of Maine held that the defendant's used car business could not be conducted on that portion of the lot and building which was in the residential zone. Rather, the Court ruled that "[e]ach part of the lot must comply with the restrictions imposed upon the zone in which it is located, subject only to the 50-foot extension of the business zone."⁶ *Id.* at 407.

Moss v. Town of Winchester, 311 N.E. 2d 555 (Mass. 1974), involved a similar split lot situation where the plaintiff's property was divided into two separate residence districts, one permitting apartments and the other not permitting them. The Court upheld the ordinance and ruled that the petitioner could not use the less restricted zone for apartments.

Finally, *Commonwealth v. Cieslak*, 115 A. 2d 418 (Pa. App. 1955), dealt with a situation similar to that found in the Maryland Court of Appeals *Ullrich* case. The defendant's conviction was sustained for violating a zoning ordinance where she attempted to use

⁶ The Kittery zoning regulations provided that in the case of split lots the less restrictive zoning regulation could extend up to 50' into the more restrictive zone. *Id.* at 406, n.1.

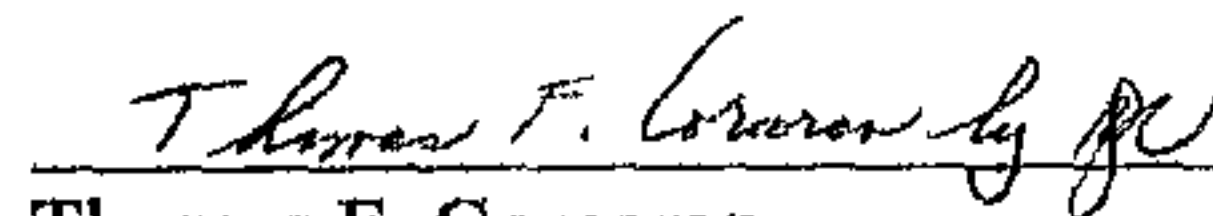
residentially zoned property for parking ancillary to an adjacent funeral home in a commercial zone.

G. CONCLUSION

For the foregoing reasons, the protestants request the Board of Appeals to affirm Commissioner Schmidt's Decision and Order on the issue of the scope of accessory use available to Beth Tfiloh under the BCZR.



Robert J. Carson
Robert J. Carson, P.A.
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050



Thomas F. Corcoran
Baxter, Baker, Sidle, Conn & Jones, P.A.
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 230-3800

Attorneys for protestants Glyndon Community Association, Inc., Gary R. Jones, John Morris, Sean O'Connell, Gary Applestein, and Nan Kaestner

CERTIFICATION OF MAILING

I HEREBY CERTIFY that on this 13th day of March, 2001, copies of the foregoing Memorandum were mailed by first class mail, postage prepaid, to G. Scott Barhight, Esq., and Dino C. La Fiandra, Esq., Whiteford, Taylor & Preston, LLP, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, attorneys for Beth Tfiloh Congregation of Baltimore City, Inc., and to Peter Max Zimmerman, People's Counsel for Baltimore County, Room 47, Old Court House, 400 Washington Avenue, Towson, Maryland 21204.



Robert J. Carson



Baltimore County
Zoning Commissioner

September 19, 2001

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

G. Scott Barhight, Esquire
Julie DiGrigoli, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
NE/S Central Avenue, 250' NW of the c/l Hunting Horn Circle
(407 Central Avenue)
4th Election District - 3rd Council District
Beth Tfiloh Congregation of Baltimore City, Inc. - Petitioners
Case No. 01-468-SPH

Dear Mr. Barhight & Ms. DiGrigoli:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in part and denied in part, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Bernard H. Suffel, Executive Director, Beth Tfiloh
3300 Old Court Road, Baltimore, Md. 21208
Robert J. Carson, Esquire, 120 E. Baltimore Street, Suite 2100, Baltimore, Md. 21202-1615
Richard B. Desser, Esquire, 920 Providence Road, Suite 307, Towson, Md. 21286-2922
Mr. Steve Warfield, Matis Warfield, 10540 York Road, Suite M, Hunt Valley, Md. 21030
Mr. Timothy Madden, Morris & Ritchie, 110 West Road, Suite 245, Towson, Md. 21204
Fanshaw Family, 204 Central Avenue, Glyndon, Md. 21071
Mr. Gary Applestein, 9 Victoria Green Court, Reisterstown, Md. 21136
Mr. John Morris, 4715 Butler Road, Glyndon, Md. 21071
Mr. Richard W. Stem, Jr., 4810 Butler Road, Glyndon, Md. 21071
Mr. Michael G. Baker, 348 Central Avenue, Glyndon, Md. 21071
People's Counsel; Case File

Come visit the County's Website at www.co.ba.md.us





Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 407 Central Avenue
which is presently zoned D.R. 1/R.C. 4

This Petition shall be filed with the Department of Permits and Development Management. 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 Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

Amendments to the previously approved plans in Case No. 65-389-X,
Case No. 94-27-SPHA and Case No. IV-455.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded 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.

Contract Purchaser/Lessee:

N/A
Name - Type or Print
Signature
Address Telephone No.
City State Zip Code

Attorney For Petitioner:

G. Scott Barhight & Julie A. DiGrigoli
Name - Type or Print
Signature
Whiteford, Taylor & Preston, LLP
Company Suite 400
210 W. Pennsylvania Ave. 410-832-2000
Address Telephone No.
Towson, MD 21204
City State Zip Code

Legal Owner(s):

Beth Tfiloh Congregation of Baltimore
Name - Type or Print City, Inc.

Signature By: Bernard H. Suffel
Executive Director
Name - Type or Print
Signature
3300 Old Court Road Contact Attny
Address Telephone No.
Baltimore MD 21208
City State Zip Code

Representative to be Contacted:

Julie D. DiGrigoli, Esquire
Name Whiteford, Taylor & Preston, LLP
210 W. Pennsylvania Ave. 410/832-2000
Address Suite 400 Telephone No.
Towson, MD 21234
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING

Reviewed By Bh Date 5/7/01

ORDER RECEIVED FOR FILING

Date

By 9/15/98

Case No. 01-468-SPH

Matis Warfield

consulting engineers

ZONING DESCRIPTION

Beginning at a point on the northeast side of Central Avenue which is 70-feet wide at the distance of 250-feet northwest of the centerline of the nearest improved intersecting street, Hunting Horn Circle, which is 50-feet wide. Thence the following courses and distances:

N 46 58' 44" W 371.77';
N 33 01' 06" E 41.49';
N 07 51' 06" E 479.08';
N 07 57' 33" E 392.28';
S 82 02' 27" E 75.00';
N 08 00' 59" E 229.40';
N 36 34' 11" E 266.09';
N 04 38' 59" E 416.94';
S 75 45' 18" E 184.43';
S 75 31' 53" E 775.34';
S 03 34' 35" E 564.45';
S 87 41' 50" W 333.00';
S 03 20' 49" E 260.04';
N 87 40' 59" E 317.00';
S 03 14' 43" E 593.84';
S 88 37' 37" W 908.76';
S 42 28' 41" W 385.38';

To the point of beginning,

As recorded in Deed Liber 14271, Folio 691

Saving and excepting the right-of-way for Glyndon Mews Court and a stormwater management reservation. Containing 42.00-acres+/- . Also known as 407 Central Avenue, Beth Tfiloh Glyndon Property (Formerly Camp Glyndon) and located in the 4th Election District.



Matis Warfield, Inc.

10540 york road • suite m • hunt valley, maryland 21030
phone 410-683-7004 • facsimile 410-683-1798
www.matiswarfield.com

#4

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 92872

DATE 5/7/01

ACCOUNT R001-006-6150

AMOUNT \$ 250.00

RECEIVED FROM: Whiteland Taylor & Preston LLP

FOR: Special Hearing

DISTRIBUTION
WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

Item # 468

PAID RECEIPT

PAYMENT	ACTUAL	TIME
5/07/2001	5/07/2001	10:54:34
RECEIPT # 102572		
Def: 5 520 ZONING VERIFICATION		
CR NO. 092872		
Receipt Tot	250.00	
250.00 LK		.00 CA
Baltimore County, Maryland		

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 0670

DATE 10/19/01 ACCOUNT R001 006 6150

AMOUNT \$ 210.00

RECEIVED FROM: G. SCOTT BARNHART
WHITEFORD TAYLOR & PRESTON LLP
BETH TFILOH CONGREGATION OF BALTIMORE
FOR: CITY INC 01-468-SPH

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

DATE RECEIVED
10/19/01 11:02:31
BY: [illegible]
FOR: [illegible]
CASHIER'S VALIDATION
210.00
00.00
BALTIMORE COUNTY, MARYLAND

CASHIER'S VALIDATION

BAXTER BAKER SIDLE CONN & JONES, P.A.
120 E. BALTIMORE STREET, 21ST FLOOR
BALTIMORE, MARYLAND 21202

MERCANTILE-SAFE DEPOSIT & TRUST COMPANY
2 Hopkins Plaza
Baltimore, Maryland 21201 11

CHECK NO. 7-61/520
11

1517
001517

Seventy Five ***** 00/100

PAY TO THE ORDER OF

Baltimore County Board of Appeals

DATE

AMOUNT

Apr 6/2001 \$75.00

TWO SIGNATURES REQUIRED

Filing Fee - Board of Appeals

Leary R. Jones
[Signature]

⑈001517⑈ ⑆052000618⑆

⑈649897 3⑈

**NOTICE OF ZONING
HEARING**

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #01-468-SPH
407 Central Avenue
NE/S Central Avenue, 250' NW
centerline Hunting Horn Circle
4th Election District
3rd Councilmanic District
Legal Owner(s): Bernard H.
Sutell, Beth Tikhon Congregation
of Baltimore City, Inc.

Special Hearing: to amend
previously approved plans
in case no. 65-388-X, 94-
27-SPHA & case IV-465.

**Hearing: Wednesday &
Thursday, July 18 & 19,
2001 at 9:00 a.m. in Room
407, County Courts Build-
ing, 401 Bosley Avenue.**

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are
Handicapped Accessible; for
special accommodations
Please Contact the Zoning
Commissioner's Office at
(410) 887-4386.

(2) For information con-
cerning the File and/or
Hearing, Contact the Zoning
Review Office at (410) 887-
3391.

JT/7/612 July 3 C478946

CERTIFICATE OF PUBLICATION

7/5/, 2001

THIS IS TO CERTIFY, that the annexed advertisement was published
in the following weekly newspaper published in Baltimore County, Md.,
once in each of 1 successive weeks, the first publication appearing
on 7/3/, 2001.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 01-468-SPH

Petitioner/Developer: Beth Tfiloh

Congregation of Baltimore City, Inc.

Date of Hearing/Closing: July 18+19, 2001

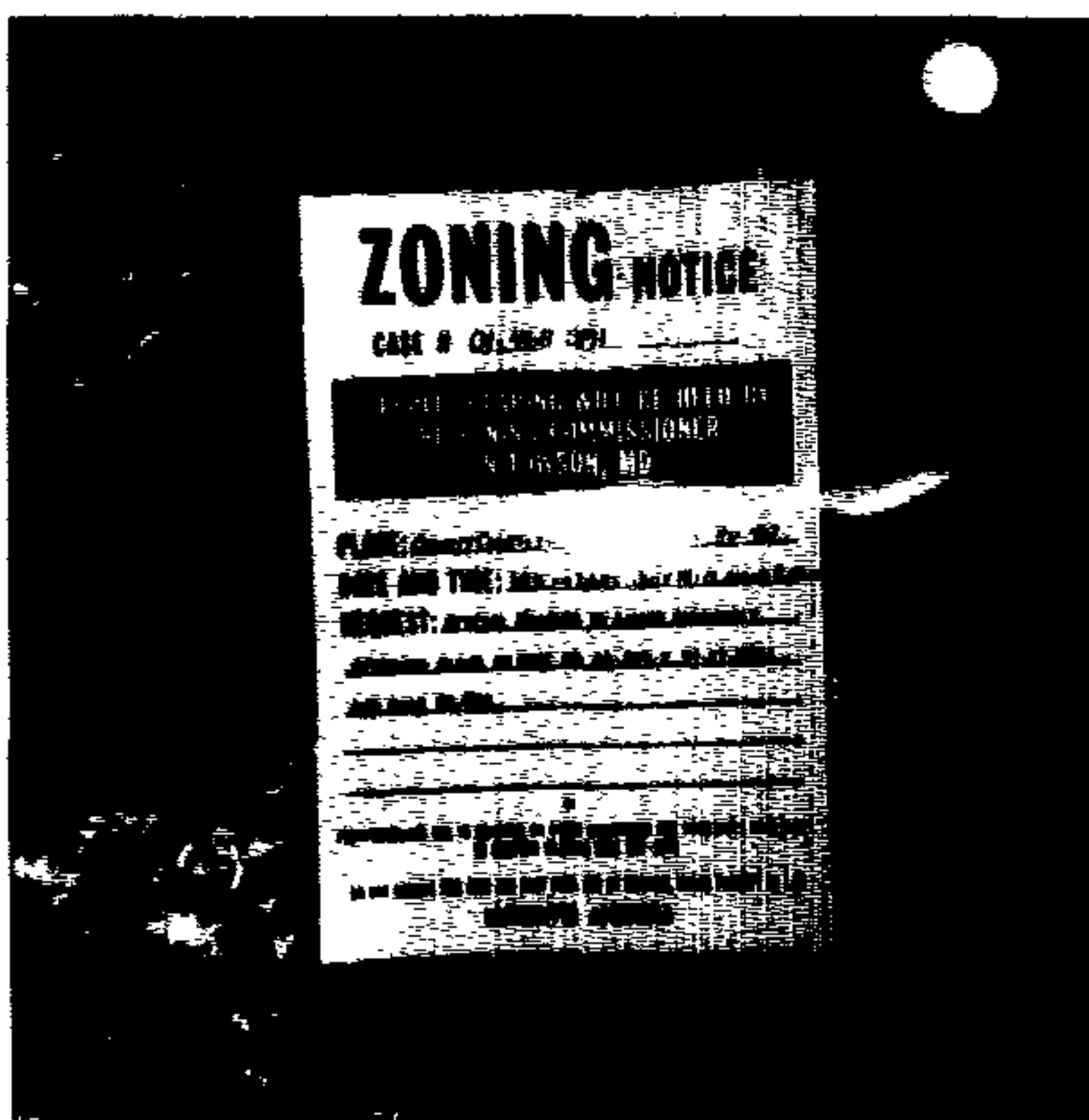
Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at (1) 407 Central Avenue
& (1) Glyndon Mews Ct. Glyndon, MD 21071

The sign(s) were posted on July 2, 2001
(Month, Day, Year)



Sincerely,

Stacy Gardner 7/3/01
(Signature of Sign Poster and Date)

Stacy Gardner
(Printed Name)

SHANNON-BAUM SIGNS INC.

105 COMPETITIVE GOALS DR.

ELDERSBURG, MD, 21784

(City, State, Zip Code)

410-781-4000

(Telephone Number)

APPEAL SIGN POSTING REQUEST
CASE NO. 01-468 -SPH

BETH TFILOH CONGREGATION OF BALTIMORE CITY, INC. – Legal Owner

**NE/S Central Avenue, 250' NW of centerline Hunting Horn Circle
(407 Central Avenue)**

4th Election District

Appealed: 10/19/01

**Attachment – (Plan to accompany Petition -
Petitioner's Exhibit No.3)**

RECEIVED
JUL 10 2001
DEPT. OF LICENSING AND
REGISTRATION

APPEAL SIGN POSTING REQUEST

CASE NO. 01-468 -SPH

BETH TFILOH CONGREGATION OF BALTIMORE CITY, INC. – Legal Owner

NE/S Central Avenue, 250' NW of centerline Hunting Horn Circle
(407 Central Avenue)

4th Election District

Appealed: 10/19/01

Attachment – (Plan to accompany Petition -
Petitioner's Exhibit No.3)

16B6

*******COMPLETE AND RETURN BELOW INFORMATION*******

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Attention: Kathleen Bianco
Administrator

RE: Case No. 01-468-SPH
Petitioner/Developer:
BETH TFILOH CONG.

This is to certify that the necessary appeal sign(s) was posted conspicuously on
property located at 407 CENTRAL AVE.

The sign(s) was posted on 12/10, 2001.

By Gary C. Freund
(Signature of Sign Poster)

GARY C. FREUND
(Printed Name)

**DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW**

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 01-468-SPA

Petitioner: Beth T. Filah Congregation of

Address or Location: Baltimore City, Inc.
407 Central Avenue

PLEASE FORWARD ADVERTISING BILL TO:

Name: Julie D. Grigoli

Address: Whiteford, Taylor + Preston

200 W. Pennsylvania Ave., Towson, MD

Telephone Number: 21204 410-832-2000

TO: PATUXENT PUBLISHING COMPANY
Tuesday, July 3, 2001 Issue – Jeffersonian

Please forward billing to:

Julie DiGrigoli
Whiteford Taylor & Preston LLP
210 W Pennsylvania Avenue
Towson MD 21204

410 832-2000

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 01-468-SPH

407 Central Avenue

NE/S Central Avenue, 250' NW centerline Hunting Horn Circle

4th Election District – 3rd Councilmanic District

Legal Owner Bernard H Suffel, Beth Tfiloh Congregation of Baltimore City Inc

Special Hearing to amend previously approved plans in case no. 65-389-X, 94-27-SPHA & case IV-455.

HEARING: Wednesday & Thursday, July 18 & 19, 2001, at 9:00 a.m. in Room 407,
County Courts Building, 401 Bosley Avenue



Lawrence E. Schmidt

LAWRENCE E. SCHMIDT G.D.Z.
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

June 5, 2001

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 01-468-SPH

407 Central Avenue

NE/S Central Avenue, 250' NW centerline Hunting Horn Circle

4th Election District – 3rd Councilmanic District

Legal Owner Bernard H Suffel, Beth Tfiloh Congregation of Baltimore City Inc

Special Hearing to amend previously approved plans in case no. 65-389-X, 94-27-SPHA & case IV-455.

HEARING: Wednesday & Thursday, July 18 & 19, 2001, at 9:00 a.m. in Room 407,
County Courts Building, 401 Bosley Avenue

A handwritten signature in black ink, appearing to read "Arnold Jablon".

Arnold Jablon 672
Director



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

January 7, 2002

NOTICE OF ASSIGNMENT

~~CASE #:~~ CBA-01-118 and

IN THE MATTER OF: Beth Tfiloh Congregation /Camp Glyndon
407 Central Avenue 4th E; 3rd C

~~RE: Issuance of Building Permit #B443403~~ W/D 3/15/02 (one appeal)

CASE #: CBA-01-136 and

RE: Approval of Limited Exemption under 26-171(A)(2)

CASE #: 01-468-SPH

9/19/2001-- ZC's Order in which special hearing request was
GRANTED with special requests

ASSIGNED FOR:

TUESDAY, MARCH 26, 2002 at 10:00 a.m. /Day #1 and

TUESDAY, APRIL 2, 2002 at 10:00 a.m. /Day #2

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the
advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be
in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted
within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

**If you have a disability requiring special accommodations, please contact this office at least one week prior to
hearing date.**

Kathleen C. Bianco, Administrator

c: Counsel for Appellant /Petitioner /Legal Owner
Appellant /Petitioner /Legal Owner
Matis Warfield, Inc.

: G. Scott Barhight, Esquire
: Beth Tfiloh Congregation of Balto City

Counsel for Protestant /Appellant

: Robert J. Carson, Esquire
Thomas F. Corcoran, Esquire
: Glyndon Community Association, Inc.
c/o John A. Morris, President

Appellant /Protestant

Gary D. Applestein
Sean O'Connell
Michael Burns
Richard B. Desser, President
Sagamore Forest Improvement Association

Office of People's Counsel
Pat Keller, Director /Planning
Lawrence Schmidt /Zoning Commissioner
Don Rascoe, Development Manager /PDM
John R. Reisinger, P.E. /PDM
Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
Edward J. Gilliss, County Attorney





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

January 7, 2002

NOTICE OF ASSIGNMENT

~~CASE #:~~ CBA-01-118 and

IN THE MATTER OF: Beth Tfiloh Congregation /Camp Glyndon
407 Central Avenue 4th E; 3rd C

~~RE: Issuance of Building Permit #B443403~~ w/d 3/15/02

CASE #: CBA-01-136 and

RE: Approval of Limited Exemption under 26-171(A)(2)

CASE #: 01-468-SPH

9/19/2001-- ZC's Order in which special hearing request was
GRANTED with special requests

ASSIGNED FOR:

~~TUESDAY, MARCH 26, 2002 at 10:00 a.m. /Day #1 and~~
~~TUESDAY, APRIL 2, 2002 at 10:00 a.m. /Day #2~~

Completed in one
day of hearing

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the
advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be
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within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to
hearing date.

Kathleen C. Bianco, Administrator

c: Counsel for Appellant /Petitioner /Legal Owner
Appellant /Petitioner /Legal Owner
Matis Warfield, Inc.

: G. Scott Barhight, Esquire
: Beth Tfiloh Congregation of Balto City

Counsel for Protestant /Appellant
Appellant /Protestant

: Robert J. Carson, Esquire
Thomas F. Corcoran, Esquire
: Glyndon Community Association, Inc.
c/o John A. Morris, President

Gary D. Applestein
Sean O'Connell
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Arnold Jablon, Director /PDM
Nancy C. West, Assistant County Attorney
Edward J. Gilliss, County Attorney





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

March 27, 2002

NOTICE OF DELIBERATION

IN THE MATTER OF:

**BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC. – Legal Owner
(Camp Glyndon Property)
Case No. CBA-01-136 /DRC 0625011; File IV-455
and Case No. 01-468-SPH**

Having heard this matter on 3/26/02, deliberation has been scheduled for the following date and time:

DATE AND TIME : TUESDAY, MAY 21, 2002 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

**(NOTE: MEMOS ARE DUE ON MONDAY, APRIL 29, 2002 BY CLOSE OF BUSINESS
(Original and three (3) copies).)**

**Kathleen C. Bianco
Administrator**

c: Counsel for Appellant /Petitioner /Legal Owner : G. Scott Barhight, Esquire
Appellant /Petitioner /Legal Owner : Beth Tfiloh Congregation of Balto City
Matis Warfield, Inc.

Counsel for Protestant /Appellant : Robert J. Carson, Esquire
Appellant /Protestant : Glyndon Community Association, Inc.
c/o John A. Morris, President

Gary D. Applestein
Sean O'Connell
Michael Burns
Richard B. Desser, President
Sagamore Forest Improvement Association

Office of People's Counsel
Pat Keller, Director /Planning
Lawrence Schmidt /Zoning Commissioner
Don Rascoe, Development Manager /PDM
John R. Reisinger, P.E. /PDM
Arnold Jablon, Director /PDM

fyi copy: C.S.B.



PAGE TWO

THURSDAY 5/23 10:00 am Case No.: CBA-01-123 /HEARING

In the Matter of:

Maryland Plkating Services

8243 Rosebank Avenue, Baltimore, MD 21222

RE: IWOV / pH violation issued by Eng. and Reg. Division / DPW

1:00 pm Case No.: CBA-02-109 /HEARING

In the Matter of:

Robert Boston – Owner / Appellant

12717 Fork Road, Fork, MD 21051

RE: AHB Decision

c: Executive Office
 Law Office
 Director /PDM

People's Counsel
Planning Office
Court Info. Desk

County Council
Board Members
Court Reporter



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

*** HEARING ROOM – Room 48 ***

Basement – Old Courthouse
400 Washington Avenue

APPEAL HEARINGS SCHEDULED FOR THE WEEK OF MARCH 25, 2002

TUESDAY 3/26 10:00 am ~~Case No.: CBA-01-118~~ W/D /HEARING

In the Matter of:

Beth Tfiloh Congregation/Camp Glyndon
407 Central Avenue

RE: Decision of Buildings Engineer – approval of building permit B443403 / construction of shell building and kitchen on camp property

scheduled with

Case No.: CBA-01-136
Beth Tfiloh Glyndon Property

RE: DRC No. 0625011 / Approval of limited exemption under 26-171(A)(2)

scheduled with

Case No.: 01-468-SPH
Beth Tfiloh Congregation / Zoning Appeal

WEDNESDAY 3/27 10:00 am Case No.: 01-220-A /HEARING

In the Matter of:

Mark E. Davison – Legal Owner
24 Treadwell Court

VAR – To permit bldg setback of 5' ilo req'd 50' for proposed addition
Day #2 from 2/26/02

THURSDAY 3/28 11:00 am Case No.: CBA-02-105 /HEARING

In the Matter of:

Devra Moulton Mohammed – Appellant - Owner
3408 Retlaw Road, Baltimore, MD 21207

RE: AHB Decision / dangerous animal

2:00 pm Case No.: 01-134 /HEARING

In the Matter of:

Maurice Williams
3934 Red Deer Circle, Randallstown, MD 21133

RE: False Alarm Fees /Registration R 013717 6

c: Executive Office
Law Office
Director /PDM

People's Counsel
Planning Office
Court Info. Desk

County Council
Board Members
Court Reporter



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

July 13, 2001

G. Scott Barhight
Whiteford Taylor & Preston LLP
210 W Pennsylvania Avenue
Suite 400
Towson MD 21204

Dear Mr. Barhight:

RE: Case Number: 01-468-SPH, 407 Central Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on May 7, 2001.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

W. Carl Richards, Jr. GDZ
Supervisor, Zoning Review

WCR: gdz

Enclosures

c: Julie A DiGrigoli, Whiteford Taylor & Preston LLP, Suite 400, 210 W Pennsylvania Avenue, Towson 21204
Bernard H Suffel Executive, Beth Tfiloh Congregation of Baltimore City, Inc., 3300 Old Court Road, Baltimore 21208
People's Counsel



LD
7/19

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits and
Development Management

DATE: June 19, 2001

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

JUN 21

SUBJECT: 407 Central Avenue

INFORMATION:

Item Number: 01-468

Petitioner: Beth Tfiloh Congregation of Baltimore City, Inc.

Zoning: DR 1 & RC 4

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not oppose the request. However, building elevation drawings should be submitted to this office for review and approval prior to the issuance of any building permits.

Prepared by: Martha Cunningham

Section Chief: Jeffrey W. Lan
AFK:MAC:



Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

June 5, 2001

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTENTION: Gwen Stephens

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF May 21, 2001

Item No.: See Below

Dear Ms. Stephens:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

8. The Fire Marshal's Office has no comments at this time,
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

461, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474,
477, 478, 479, 482, 483,

REVIEWER: LIEUTENANT JIM MEZICK, Fire Marshal's Office
PHONE 887-4881, MS-1102F

cc: File

Come visit the County's Website at www.co.ba.md.us



Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Mgmt.

DATE: June 7, 2001

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For May 29, 2001
Item No. 468

The Bureau of Development Plans Review has reviewed the subject zoning item.

The developer is required to improve Central Avenue to its ultimate section along the entire property frontage. These improvements will include curb and gutter, sidewalks, street lights, storm drains, etc.

No connection to St. Paul Avenue will be permitted.

The proposed interconnection between the two existing St. Paul Avenues will not be permitted.

RWB:HJO:jrb

cc: File

DIVISION OF CODE INSPECTIONS AND ENFORCEMENT

ACTIVE VIOLATION CASE DOCUMENTS

BALTIMORE COUNTY MARYLAND
INTER-OFFICE CORRESPONDENCE

DATE: June 8, 2001

TO: W. Carl Richards, Jr.
Zoning Review Supervisor

FROM: Rick Wisnom, Chief
Division of Code Inspections & Enforcement

SUBJECT: Item No.: 468
Legal Owner/Petitioner: Beth Tfiloh Congregation of Balto. City Inc.
Contract Purchaser: N/A
Property Address: 407 Central Ave.
Location Description:

VIOLATION INFORMATION: Case No. 99-7486
Defendants: NE/S Central Ave. 250' NW centerline Hunting
Horn Cir.

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following person(s) regarding the hearing date:

NAME	ADDRESS

In addition, please find attached a duplicate copy of the following pertinent documents relative to the violation case, for review by the Zoning Commissioner's Office:

☐	1.	Complaint letter/memo/email/fax (if applicable)
☒	2.	Complaint Intake Form/Code Enforcement Officer's report and notes
☐	3.	State Tax Assessment printout
☐	4.	State Tax Parcel Map (if applicable)
☐	5.	MVA Registration printout (if applicable)
☐	6.	Deed (if applicable)
☐	7.	Lease-Residential or Commercial (if applicable)
☐	8.	Photographs including dates taken
☐	9.	Correction Notice/Code Violation Notice
☐	10.	Citation and Proof of Service (if applicable)
☐	11.	Certified Mail Receipt (if applicable)
☐	12.	Final Order of the Code Official/Hearing Officer (if applicable)
☐	13.	Office of Budget & Finance Billing Notice/Property Lien Sheet (if applicable)
☐	14.	Complete Chronology of Events, beginning with the first complaint through the Billing Notice/Property Lien Sheet (if applicable).

After the public hearing is held, please send a copy of the Zoning Commissioner's order to Helene Kehring in Room 113 in order that the appropriate action may be taken relative to the violation case.

RSW/hr
C: Code Enforcement Officer

CODE ENFORCEMENT REPORT

N.C.F

DATE: 11/1/94 INTAKE BY: N.P. CASE #: 99-7486 INSPEC: H.R.

COMPLAINT LOCATION: 407 CENTRAL AVE

ZIP CODE: 21136 DIST: _____

COMPLAINANT NAME: 18605 INSULIN LN PHONE #: (H) 410 526 6083 (W) 410 833 3000

ADDRESS: DR. FELSIR ZIP CODE: 21136

PROBLEM: Call complainant before going out
cutting tree PRODDING LAND
CUTTING TREES & GRADING LAND

OWNER/TENANT INFORMATION: _____

TAX ACCOUNT #: _____ ZONING: _____

INSPECTION: _____

REINSPECTION: _____

REINSPECTION: _____

REINSPECTION: _____

BALTIMORE COUNTY MARYLAND
INTER-OFFICE CORRESPONDENCE

DATE: June 8, 2001

TO: W. Carl Richards, Jr.
Zoning Review Supervisor

FROM: Rick Wisnom, Chief
Division of Code Inspections & Enforcement

SUBJECT: Item No.: 468
Legal Owner/Petitioner: Beth Tfiloh Congregation of Balto. City Inc.
Contract Purchaser: N/A
Property Address: 407 Central Ave.
Location Description: NE/S Central Ave. 250' NW centerline Hunting Horn Cir.

VIOLATION INFORMATION: Case No. 99-8083
Defendants: Beth Tfiloh Congregation of Balto. City Inc.

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following person(s) regarding the hearing date:

NAME	ADDRESS

In addition, please find attached a duplicate copy of the following pertinent documents relative to the violation case, for review by the Zoning Commissioner's Office:

☐	1.	Complaint letter/memo/email/fax (if applicable)
X	2.	Complaint Intake Form/Code Enforcement Officer's report and notes
☐	3.	State Tax Assessment printout
☐	4.	State Tax Parcel Map (if applicable)
☐	5.	MVA Registration printout (if applicable)
☐	6.	Deed (if applicable)
☐	7.	Lease-Residential or Commercial (if applicable)
☐	8.	Photographs including dates taken
☐	9.	Correction Notice/Code Violation Notice
☐	10.	Citation and Proof of Service (if applicable)
☐	11.	Certified Mail Receipt (if applicable)
X	12.	Violation Inquiry Notice
X	13.	Building Permits
☐	14.	Complete Chronology of Events, beginning with the first complaint through the Billing Notice/Property Lien Sheet (if applicable).

After the public hearing is held, please send a copy of the Zoning Commissioner's order to Helene Kehring in Room 113 in order that the appropriate action may be taken relative to the violation case.

RSW/gk
C: Code Enforcement Officer

COMPLAINT ENFORCEMENT REPORT

DATE: 11/29/99 INTAKE BY: Rm CASE #: 99-8083 INSPEC: Kidd

COMPLAINT LOCATION: 407 Central Ave

ZIP CODE: 21136 DIST: 444

COMPLAINANT NAME: Steve Duvall PHONE #: (H) 410-450-0843 (W)

ADDRESS: _____ ZIP CODE: _____

PROBLEM: work in progress, no permits

OWNER/TENANT INFORMATION: _____

TAX ACCOUNT #: _____ ZONING: _____

INSPECTION: 11/30/99 - MET SUPT ON SITE, ALL WORK HAS VALID BUILDING PERMITS. ALL INSPECTIONS HAVE BEEN DONE. CALLED COMPLAINANT ABOUT RESULTS. PERMITS ARE B37A62F, B37A294, B375919. CASE CLOSED. 11/30/99 Grant Kidd
REINSPECTION: GRANT KIDD

REINSPECTION: _____

REINSPECTION: _____

December 4, 1999

VIOLATION INQUIRY NOTICE

MR. DUVALL, this is to advise that your inquiry concerning, 407 CENTRAL AVE, REISTERSTOWN, MD, 21136 has been assigned to GRANT KIDD with case number 99-8083. After an inspection of the property, it has been determined that the property is not in violation and complies with existing codes and regulations or has been resolved or corrected.

Please contact inspector GRANT KIDD at 410-887-3953 if you have a question or concern about the status of case number 99-8083. Baltimore County is dedicated to effectively enforcing the codes in a manner which will protect the rights of everyone.

TIME: 15:19:57
DATE: 11/30/1999

AUTOMATED PERMIT TRACKING SYSTEM
GENERAL PERMIT APPLICATION DATA

PANEL BP1004M
LAST UPDATE 08/19/1999
PLQ 14:08:04

PERMIT #: B388628 PROPERTY ADDRESS
RECEIPT #: A391352 407 CENTRAL AVE
CONTROL #: C- SUBDIV: 1320FT E GLYNDON AV
XREF #: B388628 TAX ACCOUNT #: 0413022970 DISTRICT/PRECINCT 04 08

FEE: 157.00 NAME: GLYNDON LLP C/O DAVID BROWN ENTERPRISES
PAID: 157.00 ADDR: 100 PAINTERS MILL RD STE900 OWINGS MILLS MD 21117
PAID BY: APPL

DATES APPLICANT INFORMATION
APPLIED: 08/19/1999 NAME: KEN BERNSTEIN
ISSUED: 08/23/1999 COMPANY: GLYNDON LLP
OCCFNCY: ADDR1: 100 PAINTERS MILL RD STE900
ADDR2: OWINGS MILLS MD 21117
INSPECTOR: 04C PHONE #: 410-363-3434 LICENSE #:
NOTES: VLL/COP/COP

PASSWORD :

ENTER - PERMIT DETAIL PF3 - INSPECTIONS PF7 - DELETE PF9 - SAVE
PF2 - APPROVALS PF4 - ISSUE PERMIT PF8 - NEXT PERMIT PF10 - INQRY

TIME: 15:20:07 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 08/23/1999
DATE: 11/30/1999 BUILDING DETAIL 1 PLQ 14:20:09

PERMIT # B388628 PLANS: CONST 2 PLOT 0 DRG# PLAT 0 DATA 0 EL 1 PL 2
TENANT
BUILDING CODE: 2 CONTR: OWNER
IMPRV 2 ENGR:
USE 08 SELLR:

FOUNDATION BASE WORK: INT ALT TO CONSTRUCT MEZZANINE IN EX PAVILLION
TO BE USED AS FIXED SEATING & FINISHES.
CONSTRUCT FUEL SEWAGE WATER 946SF. ANY ADDITIONAL WORK REQUIRES A
1E 1E SEPARATE PERMIT.

CENTRAL AIR

ESTIMATED COST

15,000.00 PROPOSED USE: CAMP & ENCLOSED PAVILLION

OWNERSHIP: 1 EXISTING USE: CAMP & PAVILLION

RESIDENTIAL CAT:

#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APIS:
1 FAMILY BEDROOMS: PASSWORD:

ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE
PF1 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU

TIME: 15:18:54
DATE: 11/30/1999

AUTOMATED PERMIT TRACKING SYSTEM
GENERAL PERMIT APPLICATION DATA

PANEL BP1003M
LAST UPDATE 05/21/1999
PLQ 15:37:51

PERMIT #: B378294 PROPERTY ADDRESS
RECEIPT #: A384961 407 CENTRAL AVE
CONTROL #: C- SUBDIV: 1320FT E GLYNDON AV
XREF #: B378294 TAX ACCOUNT #: 0413022970 DISTRICT/PRECINCT 04 08

OWNERS INFORMATION (LAST, FIRST)
FEE: 157.00 NAME: GLYNDON LLP C/O DAVID S. BROWN ENTERPRISES
PAID: 157.00 ADDR: 100 PAINTERS MILL RD STE 900 21117
PAID BY: APP

DATES APPLICANT INFORMATION
APPLIED: 05/21/1999 NAME: KEN BERNDTEIN
ISSUED: 05/27/1999 COMPANY: GLYNDON LLP
OCCUPY: ADDR1: 100 PAINTERS MILL RD STE 900
ADDR2: OWINGS MILLS, MD 21117
INSPECTOR: 04C PHONE #: 410-363-3434 LICENSE #
NOTES: KRA/COP

PASSWORD :

ENTER - PERMIT DETAIL PF3 - INSPECTIONS PF7 - DELETE PF9 - SAVE
PF2 - APPROVALS PF4 - ISSUE PERMIT PF8 - NEXT PERMIT PF10 - INGR

PANEL BP1004M
TIME: 15:19:05 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 05/21/1999
DATE: 11/30/1999 BUILDING DETAIL 1 PLQ 15:44:32

PERMIT # B378294 PLANS: CONST 2 PLOT 9 PLAT 0 DATA 0 EL 1 PL 1
TENANT
BUILDING CODE: 2 CONTR: OWNER
IMPRV 2 ENGR:
USE 01 SELLR:

FOUNDATION BASE WORK: CONST ADDITION ON EX PAVILLION BEING ENCLOSED
CONSTRUC FUEL SEWAGE WATER ROOF LINE: 37'6"X21'4"X28'10"=1,136SF.
CENTRAL AIR REFER TO B375919 FOR CONST PLANS.
ESTIMATED COST ANY ADDITIONAL WORK REQUIRES A SEPARATE PERMIT.

25,000.00 PROPOSED USE: CAMP & PAVILLION + ADDITION
OWNERSHIP: 1 EXISTING USE: CAMP & PAVILLION

RESIDENTIAL CAT:

#EFF: #1BED: #2BED: #3BED: TOT BED TOT APTS:
1 FAMILY BEDROOMS:

PASSWORD:

ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE
PF1 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU

TIME: 15:16:58
DATE: 11/30/1999

AUTOMATED PERMIT TRACKING SYSTEM
GENERAL PERMIT APPLICATION DATA

PANEL BP1003M
LAST UPDATE 05/21/1999
FDM 13:47:16

PERMIT #: B375919 PROPERTY ADDRESS
RECEIPT #: A383467 407 CENTRAL AVE
CONTROL #: C- SUBDIV: 1320FT E GLYNDON AV
XREF #: B375919 TAX ACCOUNT #: 0413022970 DISTRICT/PRECINCT 04 08

OWNERS INFORMATION (LAST, FIRST)

FEE: 350.00 NAME: GLYNDON LLP C/O DAVID BROWN ENTERPRISES
PAID: 350.00 ADDR: 100 PAINTERS MILL RD STE900 OWINGS MILLS MD 21117
PAID BY: APPL

DATES

APPLICANT INFORMATION

APPLIED: 05/04/1999 NAME: KEN BERNSTEIN
ISSUED: 11/30/1999 COMPANY: GLYNDON LLP
UCCPNY: ADDR1: 100 PAINTERS MILL RD STE900
ADDR2: OWINGS MILLS MD 21117
INSPECTOR: 04C PHONE #: 410-363-3434 LICENSE #:

NOTES: JB/TLM

WORDING CHANGE TO REMOVE "VESTIBULE" PER DAS; NO CHARGE 5/21/99

PASSWORD :

ENTER - PERMIT DETAIL PF3 - INSPECTIONS PF7 - DELETE PF9 - SAVE
PF2 - APPROVALS PF4 - ISSUE PERMIT PF8 - NEXT PERMIT PF10 - INQRY

PANEL BP1004M

TIME: 15:17:19 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 11/30/1999
DATE: 11/30/1999 BUILDING DETAIL 1 FLR 12:06:04

PERMIT # B375919 PLANS: CONST 2 PLOT 0 DRC#
TENANT PLAT 0 DATA 3 EL 1 PL 1
BUILDING CODE: 2 CONTR: OWNER
IMPRV 2 ENGR:
USE 08 SELLER:

FOUNDATION BASE WORK: ALT TO ENCLOSE EXISTING PAVILION AND
CONSTRUCT FUEL SEWAGE WATER HVAC, DUCTWORK & FINISHES. 4161SF.
1E 1E SEPARATE PERMIT REQUIRED FOR ANY ADDITIONAL
GENERAL AIR WORK. SEE B378294 FOR ADDITION.

ESTIMATED COST 25,000.00 PROPOSED USE: CAMP & ENCLOSED PAVILION
OWNERSHIP: 1 EXISTING USE: CAMP & PAVILION

RESIDENTIAL CAT:

#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APFS:
1 FAMILY BEDROOMS.

PASSWORD

ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE
PF1 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU

BALTIMORE COUNTY MARYLAND
INTER-OFFICE CORRESPONDENCE

DATE: June 8, 2001

TO: W. Carl Richards, Jr.
Zoning Review Supervisor

FROM: Rick Wisnom, Chief
Division of Code Inspections & Enforcement

SUBJECT: Item No.: 468
Legal Owner/Petitioner: Beth Tfiloh Congregation of Balto. City Inc.
Contract Purchaser: N/A
Property Address: 407 Central Ave.
Location Description: NE/S Central Ave. 250' NW centerline Hunting
Horn Cir.

VIIOLATION INFORMATION: Case No. 99-8022
Defendants: Bet Tfiloh Congregation of Balto. City, Inc.

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following person(s) regarding the hearing date:

NAME	ADDRESS

In addition, please find attached a duplicate copy of the following pertinent documents relative to the violation case, for review by the Zoning Commissioner's Office:

☐	1.	Complaint letter/memo/email/fax (if applicable)
X	2.	Complaint Intake Form/Code Enforcement Officer's report and notes
X	3.	State Tax Assessment printout
☐	4.	State Tax Parcel Map (if applicable)
☐	5.	MVA Registration printout (if applicable)
☐	6.	Deed (if applicable)
☐	7.	Lease-Residential or Commercial (if applicable)
☐	8.	Photographs including dates taken
☐	9.	Correction Notice/Code Violation Notice
☐	10.	Citation and Proof of Service (if applicable)
☐	11.	Certified Mail Receipt (if applicable)
X	12.	Violation Inquiry Notice
☐	13.	Office of Budget & Finance Billing Notice/Property Lien Sheet (if applicable)
☐	14.	Complete Chronology of Events, beginning with the first complaint through the Billing Notice/Property Lien Sheet (if applicable).

After the public hearing is held, please send a copy of the Zoning Commissioner's order to Helene Kehring in Room 113 in order that the appropriate action may be taken relative to the violation case.

RSW/hr
C: Code Enforcement Officer

CODE ENFORCEMENT REPORT

DATE: 11/30/99 INTAKE BY: EC CASE #: 998022 INSPEC: H R

COMPLAINT
LOCATION: 407 CENTRAL AVE.

ZIP CODE: 21071 DIST: 4

COMPLAINANT
NAME: STEVE DUVALL PHONE #: (H) ⁴¹⁰ 526-3982 (W) ⁴¹⁰ 450-0842

ADDRESS: 240 PENNINGTON AVE ZIP CODE: 21071

PROBLEM: SITE PLANS FOR PARKING ADDITION

OWNER/TENANT
INFORMATION:

TAX ACCOUNT #: _____ ZONING: _____

INSPECTION: Inspected site NO violation
Per A.V. & J.T.

Close Case

REINSPECTION: 12/2/99

REINSPECTION:

REINSPECTION:

December 14, 1999

VIOLATION INQUIRY NOTICE

MR. DUVALL, this is to advise that your inquiry concerning, 407 CENTRAL AVE, GLYNDON, MD, 21071 has been assigned to HUNTER ROWE with case number 99-8022. After an inspection of the property, it has been determined that the property is not in violation and complies with existing codes and regulations or has been resolved or corrected.

Please contact inspector HUNTER ROWE at 410-887-3351 if you have a question or concern about the status of case number 99-8022. Baltimore County is dedicated to effectively enforcing the codes in a manner which will protect the rights of everyone.

RA1001B

DATE: 11/30/1999

STANDARD ASSESSMENT INQUIRY (1)

TIME: 13:30:47

PROPERTY NO.	DIST	GROUP	CLASS	OCC.	HISTORIC	DEL	LOAD DATE
04 13 022970	04	2-2	06-00	N	NO		11/18/99

BETH TEILOH GLYNDON LLC

DESC-1.. IMPS43.52 AC

DESC-2.. 1320FT E GLYNDON AV

3300 OLD COURT RD

PREMISE. 00407 CENTRAL

AVE

00000-0000

BALTIMORE

MD 21208-3316 FORMER OWNER: GLYNDON LLP

----- FCV -----		----- PHASED IN -----	
	PRIOR	PROPOSED	
LAND:	559,200	545,200	
IMPV:	905,990	972,100	
TOTL:	1465,190	1517,300	
PREF:	0	0	
CURT:	0	0	
DATE:	12/94	12/98	
---- TAXABLE BASIS ----		FM DATE	
00/01 ASSESS:	599,970	10/14/99	
99/00 ASSESS:	593,020	06/04/99	
98/99 ASSESS:	0	06/05/98	

ENTER-INQUIRY2 PA1-PRINT PF4-MENU PF5-QUIT PF7-CROSS REF



Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

November 29, 2001

Mr. Robert J. Carson, Esquire
120 E. Baltimore Street, Suite 2100
Baltimore MD 21202

Dear Mr. Carson:

RE: Case No. 01-468-SPH, 407 Central Avenue

Please be advised that an appeal of the above-referenced case was filed in this office on October 19, 2001 by G. Scott Barhight on behalf of Beth Tfiloh Congregation of Baltimore City, Inc. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Jablon". The signature is fluid and cursive, with a large, sweeping "A" and a long, trailing "J".

Arnold Jablon
Director

AJ:

c: G. Scott Barhight, Whiteford Taylor & Preston, 210 W Pennsylvania Avenue,
Towson 21204-4515
People's Counsel

01 NOV 30 AM 10:26

RECEIVED
COUNTY BOARD OF APPEALS



APPEAL

Petition For Special Hearing
407 Central Avenue
NE/S Central Avenue, 250' NW of centerline Hunting Horn Circle
4th Election District – 3rd Councilmanic District
Beth Tfiloh Congregation of Baltimore City, Inc - Legal Owner
Case No.: 01-468-SPH

Petition for Special Hearing (dated 05/07/01)

Zoning Description of Property

Notice of Zoning Hearing (dated 06/05/01)

Certification of Publication (The Jeffersonian issue 07/03/01)

Certificate of Posting (dated 07/02/01 posted Stacy Gardner)

Entry of Appearance by People's Counsel (dated 06/04/01)

Petitioner(s) Sign-In Sheet (1 Page)

Protestant(s) Sign-In Sheet (3 Pages)

Citizen(s) Sign-In Sheet (None)

Zoning Advisory Committee Comments

Petitioners' Exhibits:

1. Letter to Stephen A. Warfield from Arnold Jablon, Director, dated 06/29/01
2. Letter to Mr. Scott Barhight from Arnold F. "Pat" Keller, III, Director, dated 07/12/01
3. Plan to Accompany Petition for Special Hearing dated 05/07/01

Protestants' Exhibits:

1. Resume for Alfred W. Barry, III

Miscellaneous (Not Marked as Exhibits):

- Division of Code Inspections and Enforcement, Active Violation Case Documents, Case No. 99-7486
- Division of Code Inspections and Enforcement, Active Violation Case Documents, Case No. 99-8022
- Division of Code Inspections and Enforcement, Active Violation Case Documents, Case No. 99-8083

Zoning Commissioner's Order (dated 09/19/01 – GRANTED w/special requests)

Notice of Appeal received on October 19, 2001 from G. Scott Barhight on behalf of Beth Tfiloh Congregation of Baltimore City, Inc.

c: James H. Thompson, Code Enforcement (Enforcement Case No. 99-7486, 99-8022, 99-8083)
G. Scott Barhight, Whiteford Taylor & Preston, 210 W Pennsylvania Avenue
Towson 21204-4515
Robert J Carson, Esquire, 120 E Baltimore Street, Suite 2100, Baltimore 21202
People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

APPEAL 01 NOV 30 PM 5:34

Petition For Special Hearing

407 Central Avenue

NE/S Central Avenue, 250' NW of centerline Hunting Horn Circle

4th Election District -- 3rd Councilmanic District

Beth Tfiloh Congregation of Baltimore City, Inc - Legal Owner

Case No.: 01-468-SPH

- ✓ Petition for Special Hearing (dated 05/07/01)
- ✓ Zoning Description of Property
- ✓ Notice of Zoning Hearing (dated 06/05/01)
- ✓ Certification of Publication (The Jeffersonian issue 07/03/01)
- ✓ Certificate of Posting (dated 07/02/01 posted Stacy Gardner)
- ✓ Entry of Appearance by People's Counsel (dated 06/04/01)
- ✓ Petitioner(s) Sign-In Sheet (1 Page)
- ✓ Protestant(s) Sign-In Sheet (3 Pages)
- ✓ Citizen(s) Sign-In Sheet (None)
- ✓ Zoning Advisory Committee Comments

Petitioners' Exhibits:

- ✓ 1. Letter to Stephen A. Warfield from Arnold Jablon, Director, dated 06/29/01
- ✓ 2. Letter to Mr. Scott Barhight from Arnold F. "Pat" Keller, III, Director, dated 07/12/01
- ✓ 3. Plan to Accompany Petition for Special Hearing dated 05/07/01

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- ✓ • Division of Code Inspections and Enforcement, Active Violation Case Documents, Case No. 99-7486
- ✓ • Division of Code Inspections and Enforcement, Active Violation Case Documents, Case No. 99-8022
- ✓ • Division of Code Inspections and Enforcement, Active Violation Case Documents, Case No. 99-8083

- ✓ Zoning Commissioner's Order (dated 09/19/01 -- GRANTED w/special requests)

- ✓ Notice of Appeal received on October 19, 2001 from G. Scott Barhight on behalf of Beth Tfiloh Congregation of Baltimore City, Inc.

c: James H. Thompson, Code Enforcement (Enforcement Case No. 99-7486, 99-8022, 99-8083)
G. Scott Barhight, Whiteford Taylor & Preston, 210 W Pennsylvania Avenue
Towson 21204-4515
Robert J Carson, Esquire, 120 E Baltimore Street, Suite 2100, Baltimore 21202
People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

Case No. CBA-01-118

In the Matter of: Beth Tfiloh Congregation /Camp Glyndon
3/08/2001 – Issuance of Building Permit #B443403

and

Case No. CBA-01-136

6/29/2001 – Approval of Limited Exemption under 26-171(A)(2)

and

Case No. 01-468-SPH

9/19/2001 – ZC's Order – special hearing request GRANTED with special requests

7/30/01 – Entry of Appearance filed by G. Scott Barhight, Esquire, and Julie A. DiGrigoli, Esquire, on behalf of Beth Tfiloh Congregation of Baltimore City.

10/18/01 – Letter from Robert J. Carson, Esquire – requesting hearing “in near future” for this matter – October /November hearing dates proposed.

-- Response to Mr. Carson – dates proposed are not available; will note file and schedule as dates become available.

11/08/01 – Motion for Consolidation of Related Appeals filed by G. Scott Barhight, Esquire – to consolidate with CA-01-118 and 01-468-SPH, the latter zoning appeal yet to be received from PDM.

11/16/01 – Motion for Consolidation of related appeals filed by Robert Carson, Esquire, on behalf of Protestants – and motion to postpone Case No. CBA-01-106 already scheduled for 12/04/01 inasmuch as this is also a related case.

11/19/01 – Beth Tfiloh's Answer to Motion to Consolidate Related Appeals Dated November 15, 2001 filed by B.Scott Barhight, Esquire – Concurs with request to consolidate CBA-01-136, CBA-01-118, and Case No. 01-468-SPH referred to in Answer as “school appeals”; however, opposes consolidation of CBA-01-106 (referred to in Answer as “synagogue appeal” with the above-referenced three appeals; should be heard on 12/04/01 as scheduled.

11/21/01 – Letter to R. Carson – request to include CBA-01-106 in consolidation is denied; CBA-01-106 will go forward on 12/04/01 as scheduled; however, consolidation of remaining Beth Tfiloh cases (CBA-01-118, CBA-01-136, and 01-468-SPH) to be addressed on 12/04/01.

11/26/01 – FAX from R. Carson -- copy of “Protestants' Reply to Beth Tfiloh's Answer to Motion to Consolidate Related Cases and to Postpone 12/4/01 Hearing in Case No. DRC 101600D”
-- FAX to Mr. Carson – copy of 11/21/01 letter noted above.

11/27/01 – Hard copy from R. Carson – “Protestants' Reply to Beth Tfiloh's Answer...” referenced above. Files noted.

1/07/2002 – Notice of Assignment sent to parties; consolidated for hearing – Cases Nos. CBA-01-118; CBA-01-136; and 01-468-SPH; assigned for Tuesday, March 26, 2002 at 10:00 a.m. and Tuesday, April 2, 2002 at 10:00 a.m. (two days):

G. Scott Barhight, Esquire
Beth Tfiloh Congregation of Balto City
Matis Warfield, Inc.
Robert J. Carson, Esquire
Thomas F. Corcoran, Esquire
Glyndon Community Association, Inc.
c/o John A. Morris, President
Gary D. Applestein
Sean O'Connell
Michael Burns

Richard B. Desser, President
Sagamore Forest Improvement Assn.
Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /Zoning Commissioner
Don Rascoe /PDM
John Reisinger /PDM
Arnold Jablon /PDM
Nancy West, Asst. County Attorney
Edward J. Gilliss, County Attorney

2/08/02 – Memorandum of People's Counsel filed by P Zimmerman and C Demilio. Copies to S.R.B.

Case No. CBA-01-118

In the Matter of: Beth Tfiloh Congregation /Camp Glyndon
3/08/2001 – Issuance of Building Permit #B443403

and

Case No. CBA-01-136

6/29/2001 – Approval of Limited Exemption under 26-
171(A)(2)

and

Case No. 01-468-SPH

9/19/2001 – ZC's Order – special hearing request GRANTED
with special requests

Page 2

2/26/02 – Letter from People's Counsel w/attached copy of case cited in its Memorandum filed 2/08/02. File noted.

3/01/02 – Beth Tfiloh's Response to Memorandum of People's Counsel filed by G. Scott Barhight, Esquire /Dino C. LaFiandra, Esquire

3/05/02 – Copy of Beth Tfiloh's Memo to S.C.B., along with copy of original PC memo and PC letter.

3/11/02 – RE: Case No. CBA-01-118 /building permit appeal - Beth Tfiloh's Motion to Dismiss Appeal for Lack of Standing /Jurisdiction filed by G. Scott Barhight, Esquire, and Dino LaFiandra, Esquire, on behalf of Beth Tfiloh. Copies to S.C.B. 3/13/02.

3/14/02 – Memorandum submitted on behalf of Glyndon Community Association, Inc. and Individual Protestants...filed by Robert J. Carson, Esquire, and Thomas F. Corcoran, Esquire – copies provided for panel members. Cover letter indicates that only 1 day will be needed for consolidated appeals.
- T/C from Dino LaFiandra – clarification that only if two of three appeals is withdrawn by Appellants will only one day be sufficient. To follow with letter.

3/15/02 – Letter from Dino LaFiandra, Esquire – requests that both days be maintained; only if 01-468-SPH were the sole issue would one day be sufficient.

-- Letter from Robert J. Carson, Esquire – withdrawal of appeal in Case No. CBA-01-118; Order of Dismissal to be issued in this case ONLY. Also, submitted subpoena to be issued and signed; returned to him per letter.

-- Copy of Glyndon Comm Assn memo to panel members this date; also issued subpoena and returned to Mr. Carson per his request.

Case No. CBA-01-136

6/29/2001 -- Approval of Limited Exemption under 26-171(A)(2)

and

Case No. 01-468-SPH

9/19/2001 -- ZC's Order -- special hearing request GRANTED with special requests

Page 2

2/26/02 -- Letter from People's Counsel w/attached copy of case cited in its Memorandum filed 2/08/02. File noted.

3/01/02 -- Beth Tfiloh's Response to Memorandum of People's Counsel filed by G. Scott Barhight, Esquire /Dino C. LaFiandra, Esquire

3/05/02 -- Copy of Beth Tfiloh's Memo to S.C.B., along with copy of original PC memo and PC letter.

3/11/02 -- RE: Case No. CBA-01-118 /building permit appeal - Beth Tfiloh's Motion to Dismiss Appeal for Lack of Standing /Jurisdiction filed by G. Scott Barhight, Esquire, and Dino LaFiandra, Esquire, on behalf of Beth Tfiloh. Copies to S.C.B. 3/13/02.

3/14/02 -- Memorandum submitted on behalf of Glyndon Community Association, Inc. and Individual Protestants... filed by Robert J. Carson, Esquire, and Thomas F. Corcoran, Esquire -- copies provided for panel members. Cover letter indicates that only 1 day will be needed for consolidated appeals.
- T/C from Dino LaFiandra -- clarification that only if two of three appeals is withdrawn by Appellants will only one day be sufficient. To follow with letter.

3/15/02 -- Letter from Dino LaFiandra, Esquire -- requests that both days be maintained; only if 01-468-SPH were the sole issue would one day be sufficient.
-- Letter from Robert J. Carson, Esquire -- withdrawal of appeal in Case No. CBA-01-118; Order of Dismissal to be issued in this case ONLY. Also, submitted subpoena to be issued and signed; returned to him per letter.
-- Copy of Glyndon Comm Assn memo to panel members this date; also issued subpoena and returned to Mr. Carson per his request.

3/19/02 -- Letter from Scott Barhight in response to Glyndon Comm Assn Memo; copies to panel members.

3/20/02 -- Notice to Strike Appearance of Thomas F. Corcoran, Esquire on behalf of Glyndon Community Assn, Gary Jones, John Morris, Sean O'Connell, Gary Appelstein and Nan Kaestner; Robert J. Carson and Robert J. Carson, P.A. will remain as counsel on behalf of said protestants.

3/22/02 -- Letter submitted by Office of People's Counsel with regard to 01-468-SPH /concurs with Glyndon Comm Assn Memorandum; Office submits on Brief at this juncture; if further memoranda is to be filed post-hearing, OPC reserves opportunity to file same along with other parties.

3/26/02 -- Board convened for hearing (Marks, Wescott, Barranger); hearing concluded in one (1) day of hearing; 4/02/02 will NOT be needed for this matter. Memos due from counsel 4/29/02; deliberation to be held on 5/21/02. Notice of Deliberation to be sent.

3/27/02 -- Notice of Deliberation sent to parties; deliberation assigned for Tuesday, May 21, 2002 at 9:00 a.m.; fyi copy to C.S.B.

4/29/02 -- Memos filed by: Robert J. Carson, Esquire on behalf of Protestants; Dino C. LaFiandra, Esquire, on behalf of Appellant /Petitioner; and Office of People's Counsel.

4/30/02 -- Copies of above closing memos sent to C.S.B. (deliberation assigned for 5/21/02 at 9 a.m.)

5/21/02 -- Board convened for deliberation (Marks, Wescott, Barranger); unanimous decision -- DRC affirmed; approval granted for limited exemption; approved as accessory use; however, cannot be used across zoning line in zone which does not allow such use.

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Transmittal of Memorandum

DATE: February 11, 2002

TO: L. Wescott
R. Irish
L. Barranger

FROM: Kathi

SUBJECT: Case No. 01-468-SPH; CBA-01-118; and CBA-01-136
Beth Tfiloh Congregation of Baltimore City, Inc.
(Hearing assigned for 3/26/02 and 4/02/02)

The subject matter, which involves the school and cafeteria, is scheduled for hearing on two days (3/26/02 and 4/02/02). The attached memorandum was filed by the Office of People's Counsel on February 8, 2002.

Should any additional memos be filed by the parties to this matter, they will also be forwarded to you. (This hearing involves issuance of permit; DRC approval; and a special hearing case.)

Should you have any questions, please call me.

Kathi

Attachment



BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Transmittal of Memorandum

DATE: March 5, 2002

TO: C. Marks
L. Wescott
L. Barranger

FROM: Kathi

SUBJECT: Case No. 01-468-SPH; CBA-01-118; and CBA-01-136
Beth Tfiloh Congregation of Baltimore City, Inc.
(Hearing assigned for 3/26/02 and 4/02/02)

The subject matter, which involves the school and cafeteria, is scheduled for hearing starting 3/26/2002 and continuing to 4/02/02. While copies of People's Counsel's Memo were previously sent to S.R. and B. on February 11, 2002, I've made additional copies and attached them to this transmittal note, inasmuch as there has been a change in panel composition (namely, Chuck in place of Rick).

Therefore, attached for your review prior to the March 26th start of this case are the following:

1. Memorandum of People's Counsel filed on February 8, 2002; and
2. Beth Tfiloh's Response to Memorandum of People's Counsel filed March 1, 2002..

Also enclosed FYI is a letter dated February 26, 2002 from Mr. Zimmerman with attached copy of a case cited in his above-referenced Memorandum.

Should you have any questions, please call me.

Kathi

Attachments (3)



BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: March 5, 2003

TO: Arnold Jablon, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton *TR*
Board of Appeals

SUBJECT: **Beth Tfiloh Congregation of Baltimore City**
CBA No.: 01-468-SPH
PDM File No.: 01-468-SPH
Circuit Court Case No.: 03-C-02-9339

This case has been Voluntarily Dismissed by the parties in Circuit Court. No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file that is attached herewith.

Attachment: SUBJECT FILE ATTACHED

3/11/02

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Transmittal of Memorandum

DATE: March 13, 2002

TO: C. Marks
L. Wescott
L. Barranger

FROM: Kathi

SUBJECT: Case No. CBA-01-118 Beth Tfiloh Congregation of Baltimore City, Inc.
(Hearing assigned for 3/26/02 and 4/02/02)

Attached for your review prior to day #1 of the subject matter scheduled for 3/26/02 is a copy of Beth Tfiloh's Motion to Dismiss Appeal for Lack of Standing /Jurisdiction filed by Scott Barhight and Dino LaFiandra on behalf of Beth Tfiloh.

While you are in receipt of Memos filed by Scott and Peter regarding the zoning matter, this particular Motion relates to Case No. CBA-01-118 /Building Permit appeal.

Again, this case, along with the two related cases for Beth Tfiloh, begins on Tuesday, March 26, 2002 at 10:00 a.m., continuing to Tuesday, April 2, 2002 for day #2.

Should you have any questions, please call me.

Kathi

Attachment



BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Transmittal of Memorandum

DATE: March 15, 2002

TO: C. Marks [hand-delivery 3/20/02 /CBA office]
L. Wescott [hand-delivery 3/19/02 /CBA office]
L. Barranger [hand-delivery 3/19/02 /CBA office]

FROM: Kathi

SUBJECT: Case No. 01-468-SPH
Beth Tfiloh Congregation of Baltimore City, Inc.
(Hearing assigned for 3/26/02 and 4/02/02)

The attached Memorandum was filed this date by Messrs Carson and Corcoran on behalf of Glyndon Community Association. This filing is in addition to the memos previously sent to you on March 5, 2002.

PLEASE NOTE: The **appeal** filed from the issuance of the building permit (Case No. **CBA-01-118**) **has been withdrawn** by the Protestants. An Order of Dismissal as to that appeal only has been prepared and will be issued. **Therefore, you need not review the Motion to Dismiss filed by Mr. Barhight as to CBA-01-118 (mailed to you on 3/11/02).**

As a summary – you now have in your possession, as of receipt of the attached, the following documents to review prior to hearing on March 26th:

1. Memorandum of People's Counsel filed on February 8, 2002;
2. Beth Tfiloh's Response to Memorandum of People's Counsel filed March 1, 2002.;
and
3. Memorandum Submitted on Behalf of Glyndon Community Association, Inc., and Individual Protestants....filed March 15, 2002.

...and a letter dated February 26, 2002 from Mr. Zimmerman with attached copy of a case cited in his above-referenced Memorandum which was also mailed on 3/05/02.

Should you have any questions regarding any of these cases, let me know.

Thank you.

Kathi

Attachment (1)



BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Transmittal of Memorandum

DATE: March 19, 2002

TO: C. Marks [hand-delivery 3/20/02 /CBA office]
L. Wescott [hand-delivery 3/19/02 /CBA office]
L. Barranger [hand-delivery 3/19/02 /CBA office]

FROM: Kathi

SUBJECT: Case No. 01-468-SPH
Beth Tfiloh Congregation of Baltimore City, Inc.
(Hearing assigned for 3/26/02 and 4/02/02)

Attached is a letter received today from Scott Barhight which responds to the Memorandum filed on behalf of the Glyndon Community Association on March 15th

The attached letter will be given to you at the same time as the Memo filed by Glyndon.

Should you have any questions regarding any of these cases, let me know.

Thank you.

Kathi

Attachment (1)



BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Transmittal of Memorandum

DATE: April 30, 2002

TO: C. Marks
L. Wescott
L. Barranger

FROM: Kathi

SUBJECT: Case No. 01-468-SPHand CBA-01-136
Beth Tfiloh Congregation of Baltimore City, Inc.
Closing Briefs

The subject matter is scheduled for deliberation on Tuesday, May 21, 2002 at 9:00 a.m.; notice of same was previously sent to you.

Attached for your review prior to deliberation are copies of the following briefs which were filed by respective counsel on 4/29/02:

1. Post-Hearing Memorandum Submitted on Behalf of Glyndon Community Association, Inc., and Individual Protestants by Robert J. Carson, Esquire;
2. Post-Hearing Memorandum of Beth Tfiloh filed by Dino C. LaFiandra, Esquire; and
3. People's Counsel's Post-Hearing Memorandum

Please note that Case No. CBA-01-118, which is referenced in the header of People's Counsel's Memo, was dismissed and is not included in the matter currently before you for deliberation on 5/21/02. I believe the additional case number was included by oversight.

Should you have any questions, please call me.

Kathi

Attachments (3)





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

March 15, 2002

Robert J. Carson, Esquire
345 Green Street
Havre de Grace, MD 21078

RE: *In the Matter of: Beth Tfiloh Congregation
of Baltimore City, Inc.*
Case No. 01-468-SPH and Case No. CBA-01-136

Dear Mr. Carson:

Enclosed is the Subpoena issued to Bernard H. Suffel per your letter of March 14, 2002 which I have signed and stamp-dated. I've also enclosed a copy of the Subpoena for your records.

Also, this office is in receipt of your Notice of Dismissal of Appeal in Case No. CBA-01-118. An Order of Dismissal as to Case No. CBA-01-118 will be issued by the Board, and that case has been withdrawn from the Board's docket. The remaining two cases (01-468-SPH and CBA-01-136) will go forward as scheduled.

Should you have any questions, please call me at 410-887-3180.

Very truly yours,


Kathleen C. Bianco
Administrator

Enclosure

c: Thomas F. Corcoran, Esquire
G. Scott Barhight, Esquire
Dino C. LaFiandra, Esquire
Peter M. Zimmerman, People's Counsel
for Baltimore County
Arnold Jablon, Director /PDM



RE: PETITION FOR SPECIAL HEARING
407 Central Avenue, NE/S Central Ave,
250' NW of c/1 Hunting Hor Cir
4th Election District, 3rd Councilmanic

Beth Tfiloh Congregation of Baltimore City, Inc.

Petitioner

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case Nos. 01-468-SPH
* CBA-01-118
* CBA-01-136

* * * * *

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

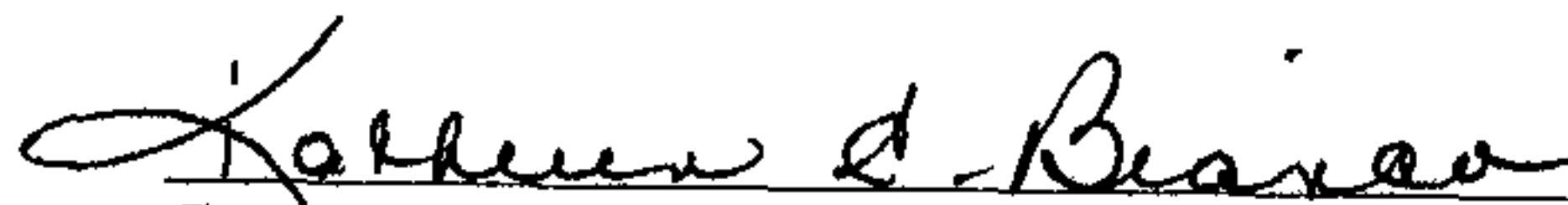
TO: Bernard H. Suffel, Executive Director
of Beth Tfiloh Congregation of Baltimore City, Inc.
3300 Old Court Road
Baltimore, Maryland 21208

YOU ARE HEREBY SUMMONSED AND COMMANDED TO: Personally appear
in **Room 48, Old Courthouse, 400 Washington Avenue, Towson, MD 21204**, on Tuesday,
March 26, at 10:00 a.m.

Subpoena Requested by:

Robert J. Carson
Robert J. Carson, P.A.
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050
Attorney for Glyndon Community Association, Inc. and individual protestants

The witness named above is hereby ordered to so appear before the County Board of Appeals.
The Board requests Robert J. Carson, Esq. to serve the subpoena.


County Board of Appeals of Baltimore County

02 MAR 15 PM 3:38

RE: PETITION FOR SPECIAL HEARING
407 Central Avenue, NE/S Central Ave.
250 NW of c/1 Hunting Hor Cir
4th Election District, 3 Councilmanic

Beth Tfiloh Congregation of Baltimore City, Inc.

Petitioner

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case Nos. 01-468-SPH
CBA-01-136

* * * * *

NOTICE OF ENTRY OF APPEARANCE

Please enter the appearance of Gary R. Jones on behalf of Glyndon Community Association, Inc. ("GCA") and Gary D. Applestein, Nan Kaestner and Sean O'Connell (all of whom are collectively referred to as the "Petitioners"). Robert J. Carson, Robert J. Carson, P.A. will remain as co-counsel on behalf of the Petitioners in both cases, namely CBA-01-136 and 01-468-SPH.


Robert J. Carson
Robert J. Carson, P.A.
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050


Gary R. Jones
Baxter, Baker, Sidle, Conn & Jones, P.A.
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 230-3800

Attorneys for Petitioners

RE: PETITION FOR SPECIAL HEARING
407 Central Avenue, NE/S Central Ave,
250' NW of c/l Hunting Horn Cir
4th Election District, 3rd Councilmanic

Legal Owner: Beth Tfiloh Congregation of
Baltimore City, inc.
Petitioner(s)

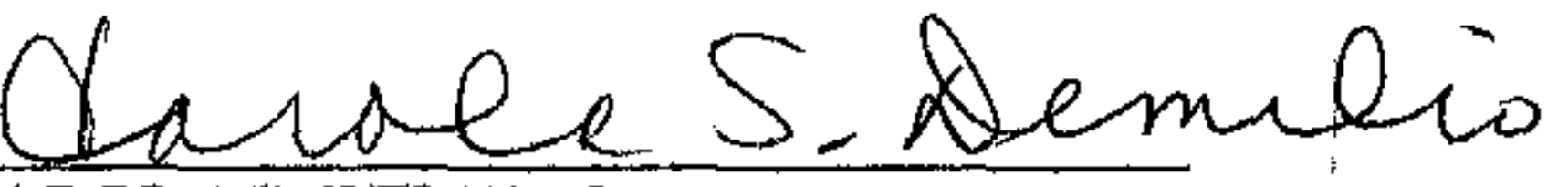
* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 01-468-SPH

* * * * *

ENTRY OF APPEARANCE

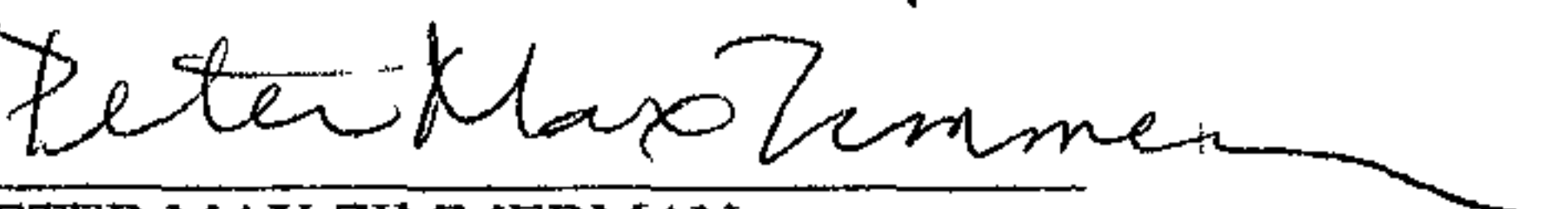
Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County


CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of June, 2001 a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner(s).


PETER MAX ZIMMERMAN

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

10/21/02

Case Number: 03-C-02-009339 AE
Date Filed: 08/23/2002
Status: Open/Active
Judge Assigned: To Be Assigned,
Location :

In The Matter Of: Beth Tfiloh Congregation Of Baltimore City Inc

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
-----	-----
Case Folder ID	C02009339V01

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
PET	001 Beth Tfiloh Congregation Of Baltimore City Inc			08/23/02
		Party ID: 0519664		
	Mail: Congregation Of Baltimore County	08/23/02		
	3300 Old Court Road			
	Baltimore, MD 21208			
	Attorney: 0016862 Barhight, G Scott	Appear: 08/23/2002		08/23/02
	Whiteford, Taylor & Preston L.L.P.			
	210 West Pennsylvania Ave			
	400 Court Towers			
	Towson, MD 21204-4515			
	(410)832-2000			
	0801879 Lafiandra, Dino C	Appear: 10/10/2002		10/10/02
	Law Offices Of Peter G Angelos P.C.			

210 West Pennsylvania Ave
Court Towers Suite 300
Towson, MD 21204
(410)825-7300

Type Num	Name(Last,First,Mid,Title)	Disposition Addr Update	Entered
RES 001	County Board Of Appeals For Baltimore County Party ID: 0519667		08/23/02
	Mail: 400 Washington Avenue Baltimore, MD 21204	08/23/02	
	Attorney: 0804268 Demilio, Carole S Deputy Peoples Counsel Old Courthouse Room 47 400 Washington Ave Towson, MD 21204 (410)887-2188	Appear: 09/12/2002	09/12/02
ITP 001	Glyndon Community Association Inc Party ID: 0524349		09/11/02
	Attorney: 0014809 Carson, Robert J 345 Green Street Havre De Grace, MD 21078 (410)939-0050	Appear: 09/11/2002	09/11/02
	0022799 Jones, Gary R Baxter, Baker, Sidle & Conn, P A 120 E Baltimore Street Suite 2100 Baltimore, MD 21202 (410)385-8004	Appear: 09/11/2002	09/11/02
ITP 002	Applestein, Gary D Party ID: 0524350		09/11/02
	Attorney: 0014809 Carson, Robert J 345 Green Street Havre De Grace, MD 21078 (410)939-0050	Appear: 09/11/2002	09/11/02
	0022799 Jones, Gary R Baxter, Baker, Sidle & Conn, P A 120 E Baltimore Street Suite 2100 Baltimore, MD 21202 (410)385-8004	Appear: 09/11/2002	09/11/02

Type Num	Name(Last,First,Mid,Title)	Disposition Addr Update	Entered
ITP 003	Kaestner, Nan		09/11/02
	Party ID: 0524351		
Attorney: 0014809	Carson, Robert J	Appear: 09/11/2002	09/11/02
	345 Green Street		
	Havre De Grace, MD 21078		
	(410)939-0050		
0022799	Jones, Gary R	Appear: 09/11/2002	09/11/02
	Baxter, Baker, Sidle & Conn, P A		
	120 E Baltimore Street		
	Suite 2100		
	Baltimore, MD 21202		
	(410)385-8004		
ITP 004	Oconnell, Sean		09/11/02
	Party ID: 0524352		
Attorney: 0014809	Carson, Robert J	Appear: 09/11/2002	09/11/02
	345 Green Street		
	Havre De Grace, MD 21078		
	(410)939-0050		
0022799	Jones, Gary R	Appear: 09/11/2002	09/11/02
	Baxter, Baker, Sidle & Conn, P A		
	120 E Baltimore Street		
	Suite 2100		
	Baltimore, MD 21202		
	(410)385-8004		

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
TBA To Be Assigned,	J	08/23/02		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0001000	Petition for Judicial Review	08/22/02	08/23/02	PET001	TBA		JET JET
0001001	Response to petition for judicial review	09/06/02	09/11/02	ITP004	TBA		AR AR
	Filed by ITP004-Oconnell, Sean, ITP003-Kaestner, Nan,						
	ITP002-Applestein, Gary D. ITP001-Glyndon Community Association						

Inc,

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0001002	*Answer	09/10/02	09/12/02	RES001	TBA		PH PH
0002000	Cross Petition for Judicial Review Filed by ITP004-Oconnell, Sean, ITP003-Kaestner, Nan, ITP002-Applestein, Gary D, ITP001-Glyndon Community Association Inc,	09/06/02	09/11/02	ITP004	TBA		AR AR
0002001	Response to Cross-Petition for Judicial review	10/04/02	10/10/02	PET001	TBA		AR AR
0003000	*Transcript of Record from Adm Agency	09/20/02	09/25/02	000	TBA		MJ MJ
0004000	Notice of Transcript of Record Sent	09/25/02	09/25/02	ITP001	TBA	09/25/02	MJ MJ
0005000	Notice of Transcript of Record Sent	09/25/02	09/25/02	PET001	TBA	09/25/02	MJ MJ
0006000	Notice of Transcript of Record Sent	09/25/02	09/25/02	RES001	TBA	09/25/02	MJ MJ
0007000	Supplement to record of proceedings	09/27/02	10/01/02	RES001	TBA		PH PH
0008000	Motion to Dismiss or for Summary Judgmen t on Cross-Petition for judicial review	10/04/02	10/10/02	PET001	TBA		AR AR

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	OPEN	09/06/02	0	no	no	DANS	D	001	001
1ANS	1st Answer Tickle	OPEN	10/04/02	0	no	no	DANS	D	002	001
1YRT	One Year Tickle (Jud	OPEN	08/22/03	365	no	no	DAAA	D	001	000
SLMR	Set List For Motions	OPEN	10/26/02	22	no	no	MDIS	D	008	000
SLTR	Set List For Trial	OPEN	09/06/02	0	yes	no	1ANS	T	001	001

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By

Offered By: ITP 001 Glyndon Community Association
000 B BOX 333/TRANSCRIPT B

CIRCUIT COURT FOR BALTIMORE COUNTY
 Suzanne Mensh
 Clerk of the Circuit Court
 County Courts Building
 401 Bosley Avenue
 P.O. Box 6754
 Towson, MD 21285-6754
 (410)-887-2601, TTY for Deaf: (800)-735-2258
 Maryland Toll Free Number (800) 938-5802

02/12/03

Case Number: 03-C-02-009339 AE
 Date Filed: 08/23/2002
 Status: Closed/Active
 Judge Assigned: To Be Assigned,
 Location :

In The Matter Of: Beth Tfiloh Congregation Of Baltimore City Inc

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
-----	-----
Case Folder ID	C02009339V01

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
PET	001 Beth Tfiloh Congregation Of Baltimore City Inc		CT DO 02/03/03	08/23/02
		Party ID: 0519664		
	Mail: Congregation Of Baltimore County	08/23/02		
	3300 Old Court Road			
	Baltimore, MD 21208			
	Attorney: 0016862 Barhight, G Scott	Appear: 08/23/2002		08/23/02
	Whiteford, Taylor & Preston L.L.P.			
	210 West Pennsylvania Ave			
	400 Court Towers			
	Towson, MD 21204-4515			
	(410)832-2000			
	0801879 Lafandra, Dino C	Appear: 10/10/2002		10/10/02
	Law Offices Of Peter G Angelos P.C.			

210 West Pennsylvania Ave
Court Towers Suite 300
Towson, MD 21204
(410)825-7300

Type Num	Name(Last,First,Mid,Title)	Disposition Addr Update	Entered
RES 001	County Board Of Appeals For Baltimore County Party ID: 0519667 Mail: 400 Washington Avenue Baltimore, MD 21204	CT DO 02/03/03 08/23/02	08/23/02
	Attorney: 0804268 Demilio, Carole S Deputy Peoples Counsel Old Courthouse Room 47 400 Washington Ave Towson, MD 21204 (410)887-2188	Appear: 09/12/2002	09/12/02
ITP 001	Glyndon Community Association Inc Party ID: 0524349	CT DO 02/03/03	09/11/02
	Attorney: 0014809 Carson, Robert J 345 Green Street Havre De Grace, MD 21078 (410)939-0050	Appear: 09/11/2002	09/11/02
	0022799 Jones, Gary R Baxter, Baker, Sidle & Conn, P A 120 E Baltimore Street Suite 2100 Baltimore, MD 21202 (410)385-8004	Appear: 09/11/2002	09/11/02
ITP 002	Applestein, Gary D Party ID: 0524350	CT DO 02/03/03	09/11/02
	Attorney: 0014809 Carson, Robert J 345 Green Street Havre De Grace, MD 21078 (410)939-0050	Appear: 09/11/2002	09/11/02
	0022799 Jones, Gary R Baxter, Baker, Sidle & Conn, P A 120 E Baltimore Street Suite 2100 Baltimore, MD 21202 (410)385-8004	Appear: 09/11/2002	09/11/02

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
ITP 003	Kaestner, Nan		CT DO 02/03/03	09/11/02
		Party ID: 0524351		
Attorney: 0014809	Carson, Robert J		Appear: 09/11/2002	09/11/02
	345 Green Street			
	Havre De Grace, MD 21078			
	(410)939-0050			
0022799	Jones, Gary R		Appear: 09/11/2002	09/11/02
	Baxter, Baker, Sidle & Conn, P A			
	120 E Baltimore Street			
	Suite 2100			
	Baltimore, MD 21202			
	(410)385-8004			
ITP 004	OConnell, Sean		CT DO 02/03/03	09/11/02
		Party ID: 0524352		
Attorney: 0014809	Carson, Robert J		Appear: 09/11/2002	09/11/02
	345 Green Street			
	Havre De Grace, MD 21078			
	(410)939-0050			
0022799	Jones, Gary R		Appear: 09/11/2002	09/11/02
	Baxter, Baker, Sidle & Conn, P A			
	120 E Baltimore Street			
	Suite 2100			
	Baltimore, MD 21202			
	(410)385-8004			

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec	User	ID
12/16/02	11:30A	01Q	yes	MOTN	S		TBA	01	/01	VAC	C	11/07/02	P	11/07/02		RC	RC	
12/27/02	09:30A	01H	yes	MOTN	S		TBA	01	/01	VAC	C	12/03/02	P	12/03/02		RC	RC	
01/06/03	09:30A	01H	yes	MOTN	S		TBA	01	/01	VAC	C	11/25/02	P	11/25/02		RC	RC	
02/03/03	09:30A	01H	yes	CIVI	S		JFF	01	/01	VAC	C	02/03/03	P			KLS	CKC	
02/03/03	09:30A	02Q	yes	MOTN	S		TBA	01	/01	VAC	C	01/10/03	P	12/03/02		RC	TF	
02/06/03	09:30A	01H	yes	MOTN	S		TBA	01	/01	VAC	C	11/25/02	P	11/22/02		RC	RC	

JUDGE HISTORY

JUDGE ASSIGNED Type Assign Date Removal RSN

TBA To Be Assigned, J 08/23/02**DOCUMENT TRACKING**

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0001000	Petition for Judicial Review	08/22/02	08/23/02	PET001	TBA	02/03/03	JET CKC
0001001	Response to petition for judicial review Filed by ITP004-Oconnell, Sean, ITP003-Kaestner, Nan, ITP002-Applestein, Gary D, ITP001-Glyndon Community Association Inc,	09/06/02	09/11/02	ITP004	TBA	02/03/03	AR CKC
0001002	*Answer	09/10/02	09/12/02	RES001	TBA	02/03/03	PH CKC
0002000	Cross Petition for Judicial Review Filed by ITP004-Oconnell, Sean, ITP003-Kaestner, Nan, ITP002-Applestein, Gary D, ITP001-Glyndon Community Association Inc,	09/06/02	09/11/02	ITP004	TBA	02/03/03	AR CKC
0002001	Response to Cross-Petition for Judicial review	10/04/02	10/10/02	PET001	TBA	02/03/03	AR CKC
0003000	*Transcript of Record from Adm Agency	09/20/02	09/25/02	000	TBA	02/03/03	MJ CKC
0004000	Notice of Transcript of Record Sent	09/25/02	09/25/02	ITP001	TBA	09/25/02	MJ MJ
0005000	Notice of Transcript of Record Sent	09/25/02	09/25/02	PET001	TBA	09/25/02	MJ MJ
0006000	Notice of Transcript of Record Sent	09/25/02	09/25/02	RES001	TBA	09/25/02	MJ MJ
0007000	Supplement to record of proceedings	09/27/02	10/01/02	RES001	TBA	02/03/03	PH CKC
0008000	Motion to Dismiss or for Summary Judgment on Cross-Petition for judicial review	10/04/02	10/10/02	PET001	TBA	02/03/03	AR CKC
0008001	Answer with Request for Hearing Filed by ITP001-Glyndon Community Association Inc, , ITP002-Applestein, Gary D, ITP004-Oconnell, Sean, ITP003-Kaestner, Nan	10/21/02	10/24/02	ITP001	TBA	02/03/03	PH CKC
0008002	Reply to Answer	10/06/02	11/07/02	PET001	TBA	02/03/03	MI CKC
0009000	Hearing Notice	10/25/02	10/25/02	000	TBA	10/25/02	RC RC

Num/Seq Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0010000 Memorandum	10/25/02	10/29/02	PET001	TBA	10/29/02	PH PH
0010001 Memorandum in response to petitioners memorandum	10/31/02	11/04/02	000	TBA	02/03/03	CS CKC
0011000 Scheduling Order	11/01/02	11/01/02	000	TBA	11/01/02	KLS KLS
0012000 Hearing Notice	11/07/02	11/07/02	000	TBA	11/07/02	RC RC
0013000 Hearing Notice	11/22/02	11/22/02	000	TBA	11/22/02	RC RC
0014000 Hearing Notice	11/25/02	11/25/02	000	TBA	11/25/02	RC RC
0015000 Hearing Notice	11/25/02	11/25/02	000	TBA	11/25/02	RC RC
0016000 Hearing Notice	12/03/02	12/03/02	000	TBA	12/03/02	RC RC
0017000 Hearing Notice	12/03/02	12/03/02	000	TBA	12/03/02	RC RC
0018000 Memorandum relating to Glyndon's Petition	12/02/02	12/06/02	PET001	TBA	12/06/02	PH PH
0019000 Reply Memorandum toPetition for Judicial Review	12/02/02	12/06/02	PET001	TBA	12/06/02	PH PH
0020000 *People's Counsel for Baltimore County's Memorandum	01/27/03	01/31/03	RES001	TBA	01/31/03	DR DR
0021000 Stipulation Voluntary Dismissal	02/03/03	02/03/03	000	JFF Granted	02/03/03	CKC CKC

TICKLE

Code Tickle Name	Status Expires	#Days	AutoExpire	GoAhead	From Type	Num Seq
1ANS 1st Answer Tickle	CLOSED 09/06/02	0	no	no	DANS D	001 001
1ANS 1st Answer Tickle	CLOSED 10/04/02	0	no	no	DANS D	002 001
1YRT One Year Tickle (Jud	CLOSED 08/22/03	365	no	no	DAAA D	001 000
EXPU Exhibit Pickup Notic	CLOSED 04/04/03	30	no	no		000 000
EXPU Exhibit Pickup Notic	CLOSED 04/04/03	30	no	no		000 000
EXPU Exhibit Pickup Notic	CLOSED 04/06/03	30	no	no		000 000
SLMH Set List For Motions	CANCEL 10/21/02	0	no	no	SLMM T	008 001
SLMM Set List Motions Mar Done	07/16/05	999	yes	yes	DARH D	008 001

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
SLMR	Set List For Motions	CANCEL	10/26/02	22	no	no		SLMM T	008	000
SLTR	Set List For Trial	Done	09/06/02	0	yes	yes		1ANS T	001	001

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp	Dt	Dis	By

Offered By: ITP 001 Glyndon Community Association
 000 B BOX 333/TRANSCRIPT 8

DIFFERENTIATED CASE MANAGEMENT**TRACKS AND MILESTONES**

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
 Assign Date: 11/01/02 Order Date : 11/01/02
 Start Date : 11/01/02 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(	11/16/02	02/03/03	CLOSED	
All Motions (excluding Motions in Limine	12/21/02	02/03/03	CLOSED	
TRIAL DATE is	02/03/03	01/30/03	02/03/03	CLOSED



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

March 22, 2002

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

Charles L. Marks, Chairman
County Board of Appeals
of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204
Hand-delivered

02 MAR 22 PM 5:19

Re: Petition for Special Hearing
407 Central Avenue
NE/S Central Ave, 250' NW of c/l Hunting Horn Cir,
4th Election District, 3rd Councilmanic
Beth Tfiloh Congregation of Baltimore City, Inc.,
Petitioner
Case No.: 01-468-SPH

Dear Mr. Marks:

People's Counsel concurs with the Glyndon Community Association Memorandum.

Beth Tfiloh's argument that an accessory use is allowed regardless of any connection to a principal use permitted in the zone where it is located is absurd. It is contrary to the spirit and intent of zoning law generally and to the accessory use concept specifically. It would set a novel and unfortunate precedent, and open up a Pandora's Box of all sorts of discordant accessory uses.

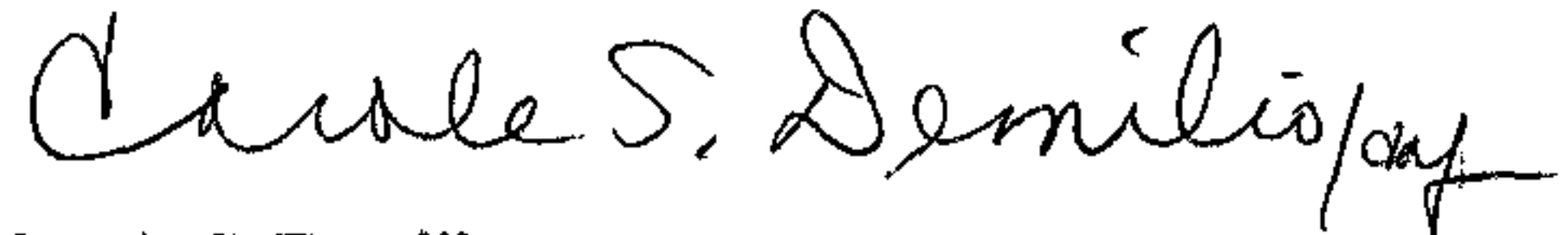
At this juncture, our office submits on brief with respect to the issues in controversy. In the event the Board calls for further memoranda after the hearings scheduled March 26 and April 2, we reserve the opportunity to file same along with the other parties.

Very truly yours,

A handwritten signature in cursive script that reads "Peter Max Zimmerman".

Peter Max Zimmerman
People's Counsel for Baltimore County

Charles L. Marks, Chairman
County Board of Appeals
of Baltimore County
March 22, 2002
Page Two

A handwritten signature in cursive script that reads "Carole S. Demilio/cdf". The signature is written in dark ink and is positioned above the printed name and title.

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/cdf

cc: G. Scott Barhight, Esq.,
Attorney for Petitioner

Zoning Commissioner

Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
Tel: 410-887-3868 • Fax: 410-887-3468



Baltimore County

James T. Smith, Jr., County Executive
Lawrence E. Schmidt, Zoning Commissioner

October 16, 2003

Dino C. LaFiandra, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING & SPECIAL EXCEPTION
(407 Central Avenue)
Beth Tfiloh Congregation of Baltimore City, Inc. - Petitioners
Case No. 02-463-SPHX

Dear Mr. LaFiandra:

Your letter of August 26, 2003 to Mr. Timothy M. Kotroco, Director of the Department of Permits and Development Management, has been referred to me for a response.

I have reviewed the contents of your letter, the plan attached thereto and the provisions of Section 415 of the B.C.Z.R. and find that the proposed replacement modular structure meets the requirements of an accessory structure and as such, should be permitted. As noted in your letter, the primary use of the D.R.1 zoned portion of the subject property is for a school and synagogue, which are uses permitted by right. Accessory structures are permitted in the D.R.1 zone, provided its use is incidental and subordinate to the primary use on a property. Although the caretaker of the school/synagogue property will occupy the proposed building, it cannot be characterized as a principal residence. Thus, I believe that the proposed use meets the spirit and intent of the Order issued in the above-captioned matter and that permits can be properly issued for the replacement modular structure. It also bears emphasis that the existing and proposed caretaker's residence was shown on the approved site plan in this case, as well as the prior case for this property (01-468-SPH).

Please feel free to call me should you have any further questions in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt", is written over a horizontal line.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Timothy Kotroco, DPDM
Mr. James Thompson, Code Enforcement, DPDM
Case Files (01-468-SPH & 02-463-SPHX)

Visit the County's Website at www.baltimorecountyonline.info





Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

February 26, 2002

CAROLE S. DEMILIO
Deputy People's Counsel

Charles L. Marks, Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

Re: Petition for Special Hearing
407 Central Avenue, NE/S Central Ave,
250' NW of c/l Hunting Horn Cir,
4th Election District, 3rd Councilmanic
Beth Tfiloh Congregation of Baltimore City, Inc.,
Petitioner(s)
Case No.: 01-468-SPH

Dear Mr. Marks:

It has been brought to our attention by Dino La Fiandra, Esq. of Whiteford, Taylor & Preston that we inadvertently neglected to attach copy of a case we cited on page 3 of our Memorandum filed 2/8/02, GLP Dev. Co. v. Md.-Nat'l. Cap. P & P, Court of Special Appeals No. 1755, Sept. Term, 1989, filed July 31, 1990. We are therefore submitting same herewith, with copies being sent to Mr. LaFiandra, Robert Carson, Esq., and Thomas Corcoran, Esq.

Very truly yours,

A handwritten signature in cursive script that reads "Peter Max Zimmerman".

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/caf
Enclosure

cc: G. Scott Barhight, Esq. and Dino C. LaFiandra, Esq., Attorneys for Petitioners
Robert J. Carson, Esq., Attorney for Protestants
Thomas F. Corcoran, Esq., Attorney for Protestants

02 FEB 26 PM 2:32



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

March 9, 2000

Julius W. Lichter, Esquire
Law Offices of Peter G. Angelos
Court Towers, Suite 300
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Dear Mr. Lichter:

RE: Zoning Verification, Beth Tfiloh Glyndon Property (formerly Camp Glydon),
PDM File #IV-455, Dining Hall Building Permit, 4th Election District

Your letter to Arnold Jablon, Director of Permits and Development, has been referred to me for reply. During the week of February 7, 2000, Mr. Ken Bernstein, permit applicant requested this office's approval on a building permit for an addition to the dinning hall, a grand total of 8, 400 square feet. At that time, Mr. Bruno Rudaitis, Planner II, informed Mr. Bernstein that the total square footage exceeded what was granted by zoning hearing Case #94-27-SPHA. On that hearing site plan, as well as the red-lined plans dated March 29th and June 18, 1999, the dining hall building is labeled 4,000 square feet. Per restriction #3 of the Zoning Commissioners order, the dining hall (Building F) will not increase in size more then 100% and that all expansion will be within the labeled building envelope as shown on the plan. As such the proposed building on the permit exceeds what was allowed by 400 square feet. Additionally, the proposed building is 12 feet wider then the envelope. As such the building permit cannot be approved by this office.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

John J. Sullivan
Planner II
Zoning Review

MICROFILMED

JJS:kew



BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Beth Tfiloh Congregation of Baltimore City, Inc.
407 Central Avenue
Case Nos.: CBA-01-136 and 01-468-SPH

DATE: May 22, 2002

BOARD/PANEL:	Charles L. Marks	CLM
	C. Lynn Barranger	CLB
	Lawrence S. Wescott	LSW

RECORDED BY: Theresa R. Shelton / Legal Secretary

PURPOSE: To deliberate the decision from Arnold Jablon, Director, Department of Permits and Development Management adopting recommendation of DRC that this project meets the requirements of a limited exemption under § 26-171(A)(2), BCC (CBA-01-136) and to deliberate the Zoning Commissioner's Order with regards to use of property (RC 4 land / accessory usage / split zoning).

PANEL MEMBERS DISCUSSED THE FOLLOWING:

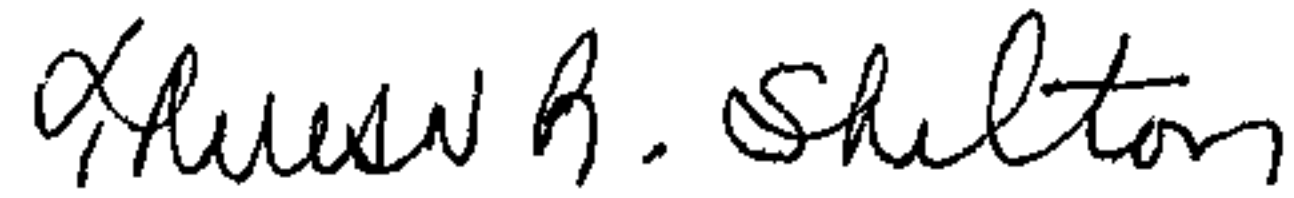
- Usage of Property – Appeal was filed only on use of property – Protestants did not appeal – Hearing is not open hearing
- The entire matter of §26.132 is not before the Board, only the two parts of the decision
- Diah vs. County – Board is De Novo
- §101 – Accessory usage - ingredients need to be met – incidental and/or subordinate to main function
- Athletic fields are accessory use to school
- Camp is held there, so bunks are subordinate
- Incidental to primary use – what is proposed is accessory use
 - Split zone is paramount issue
 - Can not carry over one usage to lap over to split zone
 - Needs to remain in zone – not overlay
 - Section 101 does not require that both be in same zone – what was the intent of the Council – interpretive decision
 - Not permitted in RC 4 – can not carry-over
 - prior cases do not allow to spill-over
 - Principal and accessory in same zone
 - DRC Appeal – zoning issues are not determined by the developer

- Area space – approximately 56,000 sq. ft; however, based on what the DRC had at the time the DRC made correct decision
- Project is massive – a lot of record – special exception was abandoned
- Can not find error with DRC's decision with the information that was presented
- The Board has to abide by what the Code / Law is

FINAL DECISION: A unanimous decision by the Board of Appeals that both the Zoning Commissioner's decision and the DRC decision are AFFIRMED

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted,



Theresa R. Shelton
County Board of Appeals

Robert J. Carson, P.A.
Attorney at Law
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050 (phone)
(410) 939-1007 (fax)

e-mail:
bobcarson@hdglegal.com

Baltimore Office:
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 385-8130 or (410) 230-3800

March 13, 2001

VIA FEDERAL EXPRESS

Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
400 Washington Avenue
Old Courthouse, Room 49
Towson, Maryland 21204

Re: In the matter of Beth Tfiloh Congregation of Baltimore City, Inc, Case
Nos. 01-468-SPH, CBA-01-118, and CBA-01-136

Dear Ms. Bianco:

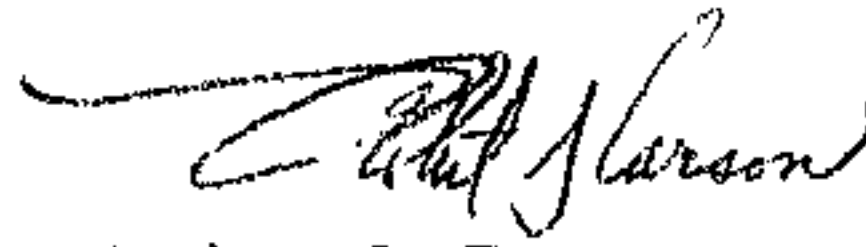
Please file the original Memorandum which I am submitting herewith on behalf of my clients, Glyndon Community Association, Inc. and individual protestants, in Case No. 01-468-SPH on the issue of the scope of accessory use available to Beth Tfiloh under the BCZR.

Three additional copies are also enclosed so that you may furnish one to each of the Board of Appeals members who will hear this appeal on March 26.

It is my present estimate of time, which I have discussed with Beth Tfiloh's counsel, that probably at most only 1 day will need to be devoted to these consolidated appeals.

With my appreciation for your assistance in the foregoing, I am

Sincerely yours,


Robert J. Carson

RJC/jak
Enclosures

cc: Charles L. Marks, Chair
County Board of Appeals of Baltimore County
Hon. Lawrence E. Schmidt
Peter M. Zimmerman, Esq.

02 MAR 16 PM 12:24

Kathleen C. Bianco, Administrator
March 13, 2002
Page Two

G. Scott Barhight, Esq.
Dino C. La Fiandra, Esq.
Mr. Gary R. Jones
Mr. Gary D. Applestein
Mr. Sean O'Connell
Ms. Nan Kaestner
John Morris, President
Glyndon Community Association, Inc.
Alfred W. Barry, III, Principal
AB Associates

Glyndon/#468-SPH/Bianco ltr

Robert J. Carson, P.A.
Attorney at Law
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050 (phone)
(410) 939-1007 (fax)

e-mail:
bobcarson@hdglegal.com

Baltimore Office:
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 385-8130 or (410) 230-3800

March 14, 2001

Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
400 Washington Avenue
Old Courthouse, Room 49
Towson, Maryland 21204

Re: In the matter of Beth Tfiloh Congregation of Baltimore City, Inc, Case
Nos. 01-468-SPH, CBA-01-118, and CBA-01-136

Dear Ms. Bianco:

Please find enclosed the following:

1. Notice of Dismissal of Appeal in Case No. CBA-01-118.
2. Subpoena to be issued to Bernard H. Suffel, Executive Director of Beth Tfiloh. Please issue and return the subpoena to me. I have received a letter from Beth Tfiloh's counsel advising that he will accept service of the subpoena if I fax him the subpoena.

With my appreciation for your assistance in the foregoing, I am

Sincerely yours,



Robert J. Carson

RJC/jak

Enclosures

cc: Charles L. Marks, Chair
County Board of Appeals of Baltimore County
G. Scott Barhight, Esq.
Dino C. La Fiandra, Esq.
Peter M. Zimmerman, Esq.
People's Counsel for Baltimore County
Mr. Gary R. Jones
Thomas F. Corcoran, Esq.

Glyndon/Bianco ltr2

02 MAR 15 PM 3:38
COUNTY CLERK
BALTIMORE COUNTY

Robert J. Carson, P.A.
Attorney at Law
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050 (phone)
(410) 939-1007 (fax)

e-mail:
bobcarson@hdglegal.com

Baltimore Office:
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 385-8130 or (410) 230-3800

October 25, 2001

Ms. Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
400 Washington Avenue
Old Courthouse, Room 49
Towson, Maryland 21204

Re: In the Matter of Beth Tfiloh Congregation of Baltimore City, Inc.
Case No. 01-468-SPH/Petition on Appeal

In the Matter of Beth Tfiloh Congregation of Baltimore City, Inc.
Appeal From DRC No. 0625011

Dear Ms. Bianco:

Please file the enclosed pleadings in the above-described cases, as follows:

1. Answer of Appellees/Protestants to Petition on Appeal relating to Case No. 01-468-SPH.
2. Motion of Protestants for Consolidation of Related Appeals, together with proposed Order, *in duplicate*. One original should be filed on 01-468-SPH, and the other should be filed in the Appeal from DRC No. 0625011.

With my appreciation for your assistance in the foregoing, I am

Sincerely yours,



Robert J. Carson

RJC/jak

cc: Lawrence S. Wescott, Chair
County Board of Appeals of Baltimore County
The Honorable Lawrence E. Schmidt
Peter M. Zimmerman, Esq.
G. Scott Barhight, Esq.
Julie A. DiGrigoli, Esq.
Mr. Gary R. Jones

01 OCT 26 PM 2:09

Ms. Kathleen C. Bianco
October 25, 2001
Page Two

Mr. John A. Morris
Mr. Sean O'Connell
Mr. Gary Applestein
Ms. Nan Kaestner
Glyndon Community Association, Inc.
c/o John A. Morris, President
Richard B. Desser, President
Sagamore Forest Improvement Association
Thomas F. Corcoran, Esq.

Glyndon/Bianco ltr

Robert J. Carson, P.A.
Attorney at Law
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050 (phone)
(410) 939-1007 (fax)

e-mail:
bobcarson@hdglegal.com

Baltimore Office:
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 385-8130 or (410) 230-3800

April 26, 2002

VIA FEDERAL EXPRESS

Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
400 Washington Avenue
Old Courthouse, Room 49
Towson, Maryland 21204

Re: In the matter of Beth Tfiloh Congregation of Baltimore City, Inc, Case
Nos. 01-468-SPH and CBA-01-136

Dear Ms. Bianco:

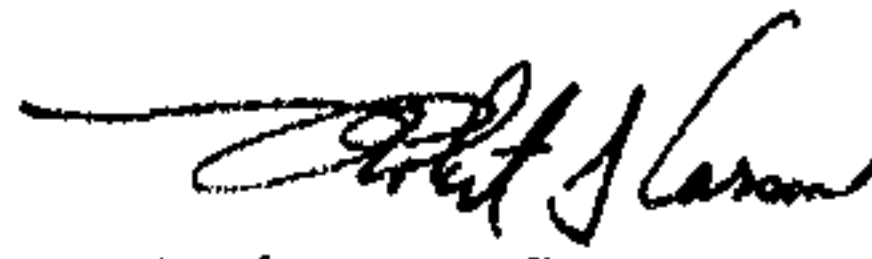
Please find enclosed the following:

1. Original and three (3) copies of a Post-Hearing Memorandum which I am submitting on behalf of the protestants in the above-described consolidated appeals.
2. Four (4) copies of the transcript of the March 6, 2002 hearing which was prepared by the Board's reporter.

I would appreciate your distributing copies of this letter and of the attached Memorandum and transcript to the three Board Members who heard the appeal, namely, Charles L. Marks, Chair, Lynn Barringer, and Lawrence Wescott.

With my appreciation for your assistance in the foregoing, I am

Sincerely yours,


Robert J. Carson

RJC/jak
Enclosures

cc: Charles L. Marks, Chair
County Board of Appeals of Baltimore County

02 APR 29 PM 5:11

Lynn Barringer, Member

County Board of Appeals of Baltimore County

Lawrence Wescott, Member

County Board of Appeals of Baltimore County

G. Scott Barhight, Esq.

Dino C. La Fiandra, Esq.

Peter M. Zimmerman, Esq.

People's Counsel for Baltimore County

Richard B. Desser, President

Sagamore Forest Improvement Association

Gary R. Jones, Esq.

Glyndon/Bianco ltr3

Robert J. Carson, P.A.

Attorney at Law

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Baltimore, Maryland 21202

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September 26, 2002

RECEIVED

SEP 27 2002

**BALTIMORE COUNTY
BOARD OF APPEALS**

Theresa R. Shelton, Legal Secretary
County Board of Appeals of Baltimore County
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: *Petition of Beth Tfiloh Congregation of Baltimore County for Judicial Review*, Circuit Court for Baltimore County, Civil Action No. 03-C-02-9339

Dear Ms. Shelton:

Receipt is acknowledged of a paper which you filed in the Circuit Court titled "Certified Copies of Proceedings Before the Baltimore County Department of Permits & Licenses and the Board of Appeals of Baltimore County" in the above-captioned case.

First, I would appreciate your filing a supplement adding the following documents to the record filed with the Circuit Court in this case:

1. Answer of Appellees/Protestants to Petition on Appeal filed on or about 10/25/01.
2. Letter from People's Counsel to the Board of Appeals dated 3/22/02.
3. Notice of Entry of Appearance of Gary R. Jones as co-counsel for Petitioners filed 3/26/02.

Copies of each of these papers are attached. The originals should be in your file.

Second, please note on your records and in the future send copies of all communications to Peter Max Zimmerman, People's Counsel for Baltimore County, whose appearance was entered in this case before the Board of Appeals and is also entered in the Circuit Court. I am forwarding a copy of your Certified Copies to Mr. Zimmerman together with a copy of this letter.

Third, please also note for your records and send copies of any future communications to Gary R. Jones, Esq., who is co-counsel with me representing the Protestants in these cases.

Theresa R. Shelton, Legal Secretary
September 26, 2002
Page Two

Please call me if there is any question in connection with the foregoing.

With my appreciation for your assistance in the foregoing, I am

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Robert J. Carson".

Robert J. Carson

RJC/jak

Enclosures

cc: G. Scott Barhight, Esq.
Dino C. LaFiandra, Esq.
Peter Max Zimmerman, People's Counsel for Baltimore County
Gary R. Jones, Esq.

Glyndon/9339/Shelton ltr

Baxter, Baker, Sidle & Conn, P.A.

Attorneys at Law

120 E. Baltimore Street, Suite 2100

Baltimore, Maryland 21202-1643

Gary R. Jones
Principal
Direct Line (410) 385-8004

Telephone (410) 230-3800
Facsimile (410) 230-3801
e-mail: grj@bbsclaw.com

December 5, 2000

Mr. Lawrence Schmidt
Baltimore County Zoning Commissioner
401 Bosley Avenue, Room 405
Towson, Maryland 21204

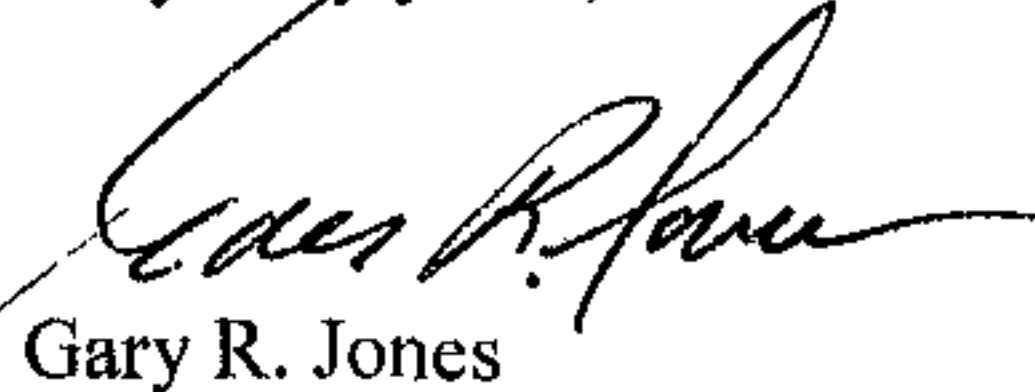
- 7

Re: Beth Tfiloh Congregation – Camp Glyndon
Petition for Amendment to Special Exception
for School and Gymnasium
Our File No.: 20205-003

Dear Mr. Schmidt:

My law firm represents the Glyndon Community Association and two neighboring landowners of Camp Glyndon with respect to Beth Tfiloh's proposed development of a school and a gymnasium. As I am sure you are aware, my client, which is comprised of homeowners of Glyndon that border the proposed site, has an interest in how this property is developed. It is my understanding that Beth Tfiloh is in the process, or shortly will be in the process, of attempting to amend the special exception zoning status of the property to build a school, as well as gymnasium and cafeteria, and possibly daycare facilities. We would appreciate it if you could keep us informed of any and all filings, requests and/or hearings related to Camp Glyndon. We intend to be present at all proceedings with respect to this property. Thank you in advance for your cooperation.

Very truly yours,



Gary R. Jones

GRJ/mjr

cc: G. Scott Barhight, Esquire
Honorable Dutch Ruppertsberger
Honorable T. Bryan McIntire
Arnold Jablon, Esquire
Virginia W. Barnhart, Esquire
Norman Karolenko
Mary Ellen Porter
Thomas F. Corcoran, Esquire

Baxter, Baker, Sidle, Conn & Jones, P.A.

Attorneys at Law

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Facsimile (410) 230-3801

March 15, 2002

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
400 Washington Avenue
Old Courthouse, Room 49
Towson, Maryland 21204

RE: In the matter of Beth Tfiloh Congregation of Baltimore City
Case Nos.: 01-468-SPH
CBA-01-118
CBA-01-136
Our File No.: 20205-003

02 MAR 20 AM 11:50

Dear Ms. Bianco:

Enclosed for filing please find an original and one copy of Protestants Glyndon Community Association, Inc., Gary R. Jones, John Morris, Sean O'Connell, Gary D. Applestein and Nan Kaestner's Notice to Strike Appearance. I would appreciate it if you would date stamp the enclosed copy of the Notice and return it to the undersigned in the enclosed self-addressed, stamped envelope.

Very truly yours,



Thomas F. Corcoran

TFC/af
Enclosures

cc: G. Scott Barhight, Esquire
Dino C. La Fiandra, Esquire

Baxter, Baker, Sidle, Conn & Jones, P.A.

Attorneys at Law

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Gary R. Jones

Direct Line (410) 385-8004

e-mail: [gri@bb\\$claw.com](mailto:gri@bb$claw.com)

April 6, 2001

VIA FACSIMILE – (410) 887-2824
AND HAND DELIVERY

Arnold Jablon, Director
Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: **NOTICE OF APPEAL**
Beth Tfiloh Congregation Camp Glyndon
407 Central Avenue
Building Permit No.: B443403

Dear Mr. Jablon:

The undersigned represent Michael Burns, 605 St. Paul Avenue, Glyndon, Maryland, and Glyndon Community Association, Inc. ("GCA"). Mr. Burns owns property and lives adjacent to the Camp Glyndon (407 Central Avenue) property on the corner of Central Avenue and St. Paul. The property at issue is within the geographic limits of the Glyndon Community Association. On behalf of Mr. Burns and GCA ("Appellants"), we hereby note an appeal to the Board of Appeals of the Zoning Commissioner's approval for Building Permit No.: B443403, which was issued on March 8, 2001 for the construction of a shell building with dining hall and kitchen on the Camp Glyndon property pursuant to Section 26-132 of the Baltimore County Code.

We request that the zoning approval for the permit be rescinded and that Building Permit No.: B443403 issued on March 8, 2001 be suspended/revoked.

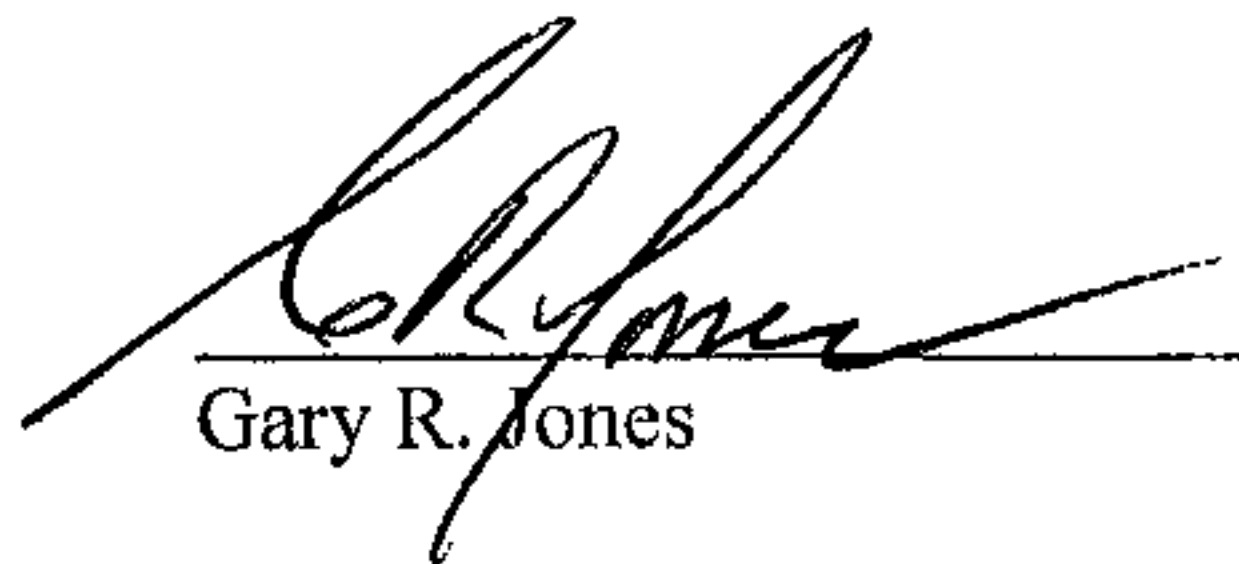
Your letter to Michael Burns dated October 31, 2000 states that with respect to the school you would continue to require public input, as well as requiring Beth Tfiloh to file a Petition for Special Hearing before the Zoning Commissioner. (Copy of 10/31/00 letter attached). Beth Tfiloh has not filed a Petition for Special Hearing. Moreover, the dining hall and kitchen would serve the needs of all students at the Camp Glyndon facility, including the

Arnold Jablon, Director
Department of Permits and
Development Management
April 6, 2001
Page 2

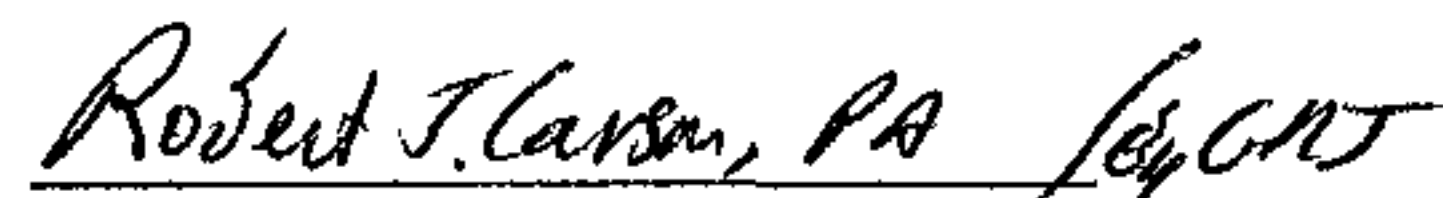
proposed school, as well as the currently existing preschool, Hebrew school, daycare and camp facilities. Accordingly, a special hearing before the Zoning Commissioner is required. We are simultaneously filing a Request for Special Hearing on behalf of our clients under separate cover.

Please note an appeal to the County Board of Appeals. Thank you for your cooperation.

Very truly yours,



Gary R. Jones



Robert J. Carson
Robert J. Carson, P.A.
120 E. Baltimore Street
Baltimore, Maryland 21202
(410) 385-8130

GRJ/mjr

cc: Lawrence Schmidt, Zoning Commissioner
G. Scott Barhight, Esquire
Michael Burns
Glyndon Community Association, Inc.

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1317 KING STREET
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FAX 703 836-0265

G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw.com

July 23, 2001

Via Hand Delivery

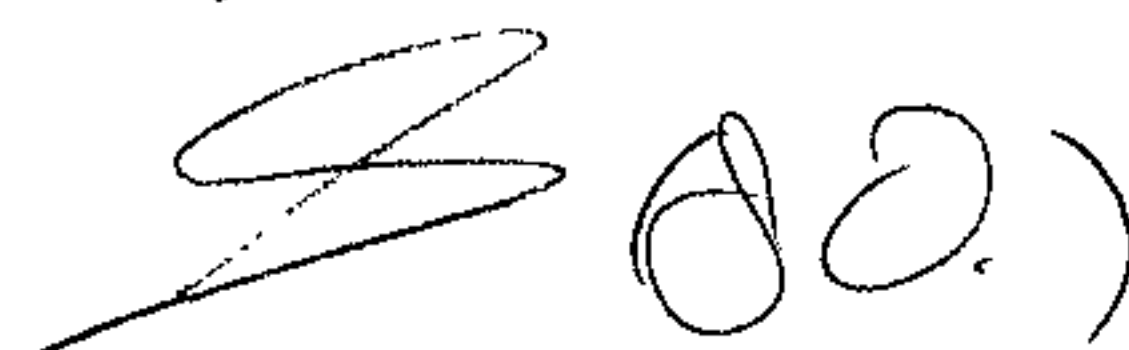
The Honorable Lawrence E. Schmidt
Zoning Commissioner of Baltimore County
4th Floor
401 Bosley Avenue
Towson, MD 21204

Re: Beth Tfiloh Glyndon
Special Hearing Case No. 01-468-SPH

Dear Mr. Schmidt,

Enclosed please find the Camp Glyndon Development Plan entered into evidence as Petitioner's Exhibit No. 3 in the above-referenced matter. Copies of Petitioner's Exhibit No. 3 have been distributed to the parties of record via regular mail.

Sincerely,


G. Scott Barhight

cc: Robert J. Carson, Esquire (w/enclosure)
Richard B. Desser, Esquire (w/enclosure)

GSB:j

Enclosure

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G. SCOTT BARHIGHT
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gbarhight@wtplaw.com

August 17, 2001

Via Hand Delivery

The Honorable Lawrence E. Schmidt
Zoning Commissioner of Baltimore County
4th Floor
401 Bosley Avenue
Towson, MD 21204

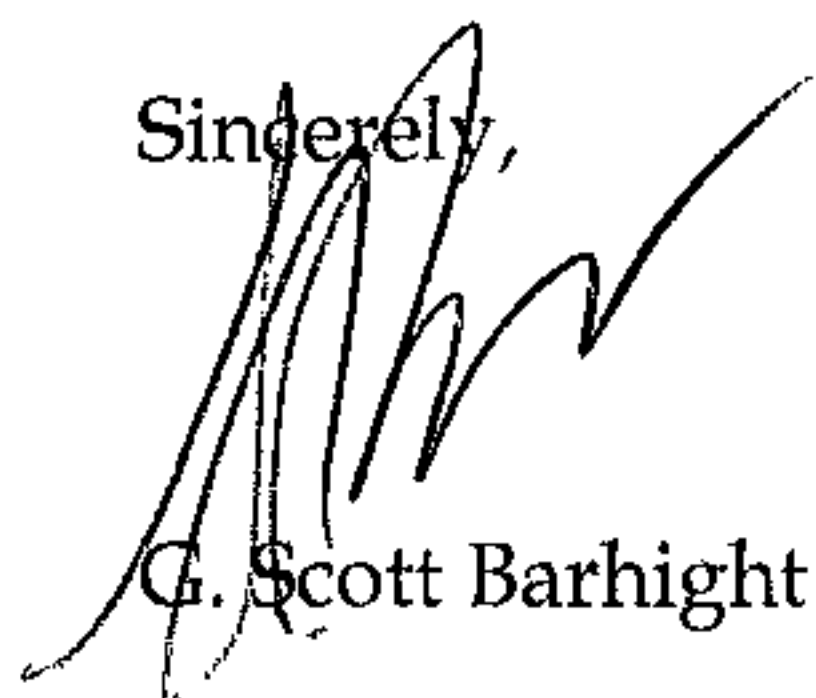
AUG 17 2001

**Re: Beth Tfiloh Glyndon
Special Hearing Case No. 01-468-SPH**

Dear Mr. Schmidt,

Enclosed please find the Petitioner's Memorandum of Law for filing in the above-referenced matter.

Sincerely,



G. Scott Barhight

GSB:lgs

Enclosure

cc: Robert J. Carson, Esquire (w/enclosure)
Richard B. Desser, Esquire (w/enclosure)

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March 14, 2002

Via Hand Delivery

Ms. Kathleen C. Bianco, Administrator
Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Re: In the Matter of Beth Tfiloh, CBA 01-118, 01-126, 01-468-SPH

Dear Ms. Bianco:

I am in receipt of Mr. Carson's transmittal letter to you under which he filed his client's memorandum in the above-referenced matter.

In that letter, Mr. Carson states, "It is my present estimate of time, which I have discussed with Beth Tfiloh's Counsel, that probably at most only 1 day will need to be devoted to these consolidated appeals." Most regretfully, I believe there may have been a misunderstanding between Mr. Carson and me.

If all three appeals go forward as scheduled, I believe that two days will be necessary. Mr. Carson and I were discussing that the trial of 01-468-SPH *only* should take not more than one day. However, if the other 2 cases go forward *also*, as they are presently scheduled, then I estimate that two days total will be necessary. The Board has 2 days set aside for these consolidated matters and unless there is some indication that CBA-01-118 and CBA 01-136 are not going to be tried, I would request that you maintain the two days presently scheduled.

Ms. Kathleen C. Bianco, Administrator

March 14, 2002

Page 2

I regret any confusion this miscommunication may have caused. Should you have any questions, please contact me.

Sincerely,



Dino C. La Fiandra

C: Peter M. Zimmerman, Esquire
Gary R. Jones, Esquire

247918

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G. SCOTT BARHIGHT
DIRECT NUMBER
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gbarhight@wtplaw.com

March 18, 2002

02 MAR 19 01:11:18

Via Hand Delivery
Charles L. Marks, Chair
Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Re: In the Matter of Beth Tfiloh, Case No. 01-468-SPH

Dear Mr. Marks:

The above-referenced matter is scheduled for hearing on March 26 and April 2, 2002. Mr. Carson filed the pre-hearing brief of the Glyndon Community Association ("GCA") on March 14, 2002. This letter responds briefly to the GCA's memorandum.

With regard to the issue of the scope of permissible accessory uses in the RC 4 zone GCA would have the Board read more into the text of the zoning code than the plain meaning of the words used. Their memorandum states:

The accessory uses or structures which are permitted as a matter of right in subpart (9) of § 1A03.3.A are obviously uses or structures which are accessory to one of the 9 principal uses in the RC 4 zone. *There is absolutely nothing in the BCZR which states or suggest that an accessory use may be permitted which is accessory to a principal use or structure in a DR zone, in an elevator apartment residence zone, in an office zone, in a business zone, or in a manufacturing zone. And Beth Tfiloh has never cited any case which so construes the BCZR or any similar zoning ordinance.*

To permit such a construction would permit one owning significant acreage in an RC zone to expand his or her operation into that area from any other adjacent zone *so long as the test for an Accessory Use or Structure set forth in § 101 was met.* [Emphasis added].

GCA memo, page 10.

The GCA would have the Board read into the BCZR a limitation which simply does not exist. Contrary to the assertion that there is nothing in the BCZR which "states or suggests" where an accessory use may or may not be located, there is an operative provision of the zoning regulations which governs the permissibility, scope, and location of accessory uses: BCZR § 101, defining "Accessory Uses or Structures". This point is borne out by the italicized language in the second quoted paragraph, that the scope of permissible accessory uses is limited by the "test" for such uses found in BCZR 101, presumably read in conjunction with the Maryland case law governing accessory uses. The GCA is looking for the limitation on accessory uses in the wrong place. It exists in the zoning text; but, since they do not like that limitation (perhaps because it is too permissive for what they want it to do), they have chosen to ignore it, and fabricate their own standard.

In footnote 4 of its memo, the GCA dismisses *Eastern Service v. Cloverland*, 130 Md. App. 1 (2000), as a "more recent case . . . but [] inapplicable to the issues in this appeal." *Eastern Service* is perhaps the clearest judicial pronouncement of the scope of accessory uses, and it is directly applicable to this case. Beth Tfiloh discusses *Eastern Service* and *Zent* on page 4 of its "Response to the Memorandum of People's Counsel" dated March 1, 2002.

For a further response to GCA's pre-hearing memo, please see Beth Tfiloh's Response to Memorandum of People's Counsel. Beth Tfiloh looks forward to the hearing in this matter on March 26 and April 2, 2002.

Sincerely,


G. Scott Barhight

C: Beth Tfiloh Congregation of Baltimore City, Inc.
Peter M. Zimmerman, Esquire
Thomas F. Corcoran, Esquire

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DINO C. LA FIANDRA
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April 29, 2002

VIA HAND DELIVERY

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204

RE: In the Matter of Beth Tfiloh
Petitioner's Post-Hearing Memorandum

Dear Ms. Bianco:

I am transmitting herewith an original and three copies of the above-referenced Beth Tfiloh Congregation of Baltimore City, Inc., Appellant/Petitioner's Post-Hearing Memorandum for filing.

Thank you for your customary courtesy. Should you have any questions, please contact me.

Sincerely,


Dino C. La Fiandra

cc: Robert J. Carson, Esquire
Gary R. Jones, Esquire
Peter M. Zimmerman, Esquire

02 APR 29 11:10:07

**WHITEFORD, TAYLOR & PRESTON
L.L.P.**

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DLaFiandra@wtplaw.com

August 26, 2003

Via Hand Delivery
Mr. Timothy Kotroco, Director
Department of Permits and Development Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Beth Tfiloh Glyndon (407 Central Avenue)

Dear Mr. Kotroco:

This firm represents the Beth Tfiloh Congregation of Baltimore City, Inc., which owns approximately 43 acres of land at 407 Central Avenue. The property is split zoned DR 1 in the "front", and R.C. 4 in the "rear". In the 1960's and then again later in the 1994, the entire property, obviously including the DR portion, received special exception approval for a day camp. Then, in 2001, by Petition for Special Hearing, Beth Tfiloh abandoned its special exception for a day camp. Now, the DR 1 portion of the property is used for a school and a synagogue, by right. (Case No. 01-468). Last year, Mr. Schmidt approved a special exception request for a camp, a community building, and a synagogue on the R.C. 4 portion of the property. (Case No. 02-463) The DR portion of the property was not included in the special exception request last year.

Notably, none of the issues or approvals noted above was appealed. Beth Tfiloh took a limited appeal of an unrelated discrete issue in Case No. 01-468, however, the abandonment of the special exception for a day camp was not among the issues appealed. There was no appeal of the special exceptions granted in Case No. 02-463.

As part of executing its plans for the property, Beth Tfiloh has requested a permit to replace and relocate the existing caretaker's house within the DR zoned portion of the property with a modular structure of similar dimensions, also to be located within the DR zone. I note that the approved plan which accompanied the petition in case no. 01-468 shows both the existing and proposed locations of the caretaker's house. (Plan enclosed). The plan notes that the caretaker's house is an accessory structure. While the caretaker will actually live in the structure, the function of the caretaker is to tend to whatever maintenance or property issues may arise in the school or synagogue.

RECEIVED
AUG 27 2003
ZONING COMMISSIONER

Mr. Timothy Kotroco, Director

August 26, 2003

Page 2

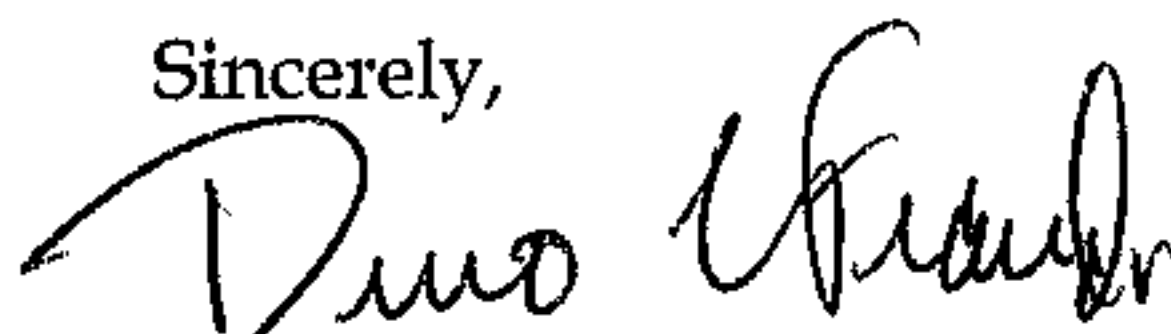
My client describes the replacement modular structure as a pre-owned relocatable structure in good to excellent condition and measuring 28 feet by 44 feet, which approximates the dimensions of the existing caretakers house. The structure will be placed permanently on footers with all utility hook-ups, and the plan shows the structure will be fully screened from Central Avenue by existing vegetation. The caretaker lives alone and his only employment is taking care of the premises. The structure has 3 small bedrooms and 2 bathrooms, with central air conditioning and a kitchen. The manufacturer is Skyline. Enclosed are copies of some promotional material which is representative of the exterior finish and interior floor plan of the modular structure which Beth Tfiloh desires to locate on the property.

Obviously, there would be no caretaker's house in the absence of the other uses on the property. The caretaker's house meets the criteria of accessory use and structure as set forth in BCZR § 101, to wit: such a structure is customarily incident and subordinate to and serves the principal uses on the property, it is subordinate in area, extent and purpose, it is located on the same lot as the principal uses, and it contributes to the comfort convenience and necessity of the principal uses served. For this reason, the use of the caretaker's house is an accessory use and cannot reasonably be characterized as an independent principal residential use.

Relying on BCZR § 415 which governs the use of such modular structures, Jim Thompson of your Department has refused to issue the permit for this caretaker's house. However in light of the above analysis, specifically that the use of the caretakers house is an accessory and not a principal residential use, clearly BCZR § 415 does not apply. Indeed, the enclosed zoning plan and the accessory use provisions of the DR zone permit this use and structure. Therefore, I would appreciate your intervention, if possible, to cause the necessary permits to be issued.

Not previously anticipating a problem in this regard, my client has already purchased the modular structure at issue and it is in transit for arrival at the property in the near future. Accordingly, I would appreciate your earliest response. Of course, if you have any questions, please contact me directly.

Sincerely,



Dino C. La Fiandra

Enclosure

C: Mr. Jim Thompson, Permits and Development Management
Mr. Bruce Eisen, Beth Tfiloh Congregation of Baltimore City, Inc.
Ms. Eve Steinberg, Beth Tfiloh Congregation of Baltimore City, Inc.
Mr. Steve Warfield, Matis Warfield, Inc.
G. Scott Barhight, Esquire

LAW OFFICES

PAUL MICHAEL POLANSKY, P.A.

PAUL MICHAEL POLANSKY
ALAN L. COHEN

111 N. CHARLES STREET
SUITE 500
BALTIMORE, MARYLAND 21201
410-837-1080
FAX 410-837-5777

July 17, 2001

Baltimore County Zoning Commissioner's Office
401 Bosley Avenue
Room 405
Towson, Maryland 21204

To Whom It May Concern:

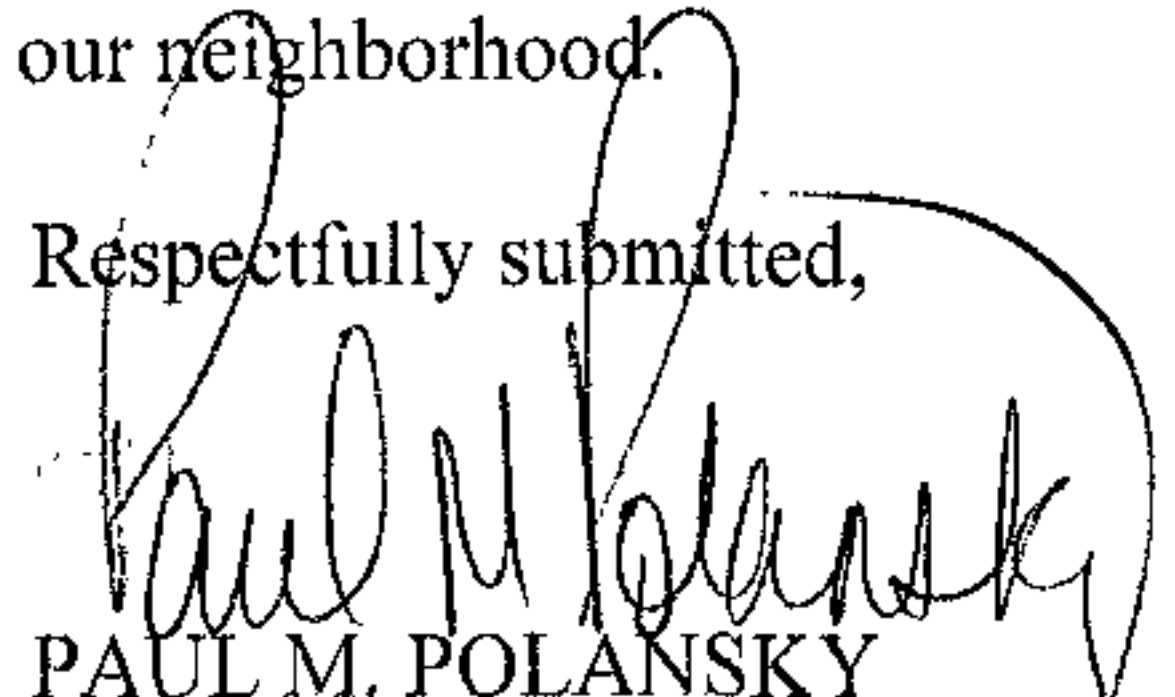
I am writing this letter in opposition to case number 01-468-SPH, which is scheduled for a public hearing on July 18th and 19th, 2001. I live at 718 St. Paul Avenue with my wife, Toni, and our four (4) children. We purchased our lot, built our home, and moved in, in the spring of 1983. We have been actively involved in all aspects of our community. I felt that our development was and is a good place to raise a family. The fact that St. Paul Avenue is not a through street was one (1) of the reasons we purchased our lot because it made the street that we live on a much safer area for our children to play.

I am extremely disturbed that Beth Tfiloh has now indicated its intention to change its proposal to greatly expand the building project, and to propose a connection through the two (2) currently unconnected portions of St. Paul Avenue. I strongly oppose the entrance from St. Paul Avenue and through connection between the two (2) unconnected portions of St. Paul Avenue. Making St. Paul Avenue a through street would obviously result in increased traffic, radically change the nature of our neighborhood, and create a safety hazard for our children. St. Paul Avenue is a relatively narrow street without sidewalks.

I find it offensive that Beth Tfiloh, having declared its intent to build a lower school at the time it purchased the property, has now expanded its plans without any concern for the surrounding community and residents who have lived here for so many years.

I would strongly urge you to reject the amended plans that Beth Tfiloh has proposed, as it would be very detrimental to our neighborhood.

Respectfully submitted,


PAUL M. POLANSKY

**JOHN B. HERTS, M. D.
12614 MT. LAUREL COURT
REISTERSTOWN, MD 21136**

July 16, 2001

Baltimore County Zoning Commissioner
401 Bosley Avenue
Room 405
Towson, MD 21204

Re: Case #01-468-SPH

Gentlemen:

I am a resident of Sagamore Forest, a development in the vicinity of the former Camp Glyndon property located at 407 Central Avenue in Glyndon, Maryland. It is now owned by the Beth Tfiloh Congregation. I learned that the congregation has petitioned Baltimore County to amend previously approved plans that would allow the construction of a lower school and associated facilities on that property.

I and other community members are distressed to learn that the plan proposes new buildings, an athletic field, an extensive parking lot, and associated paving. This plan calls for a proposed entrance from St. Paul Avenue. This would create a connection between the two previously unconnected portions of St. Paul Avenue. I am writing to voice my opposition to these plans.

This issue was visited several years ago at the Baltimore County Bureau. The plans were reviewed and entry onto and the inter-connection of St. Paul Avenue was opposed. I am troubled to learn of these new developments, particularly the connection of the two currently unconnected portions of St. Paul Avenue and of the volume of traffic which it invites.

I and other residents of this community moved to Sagamore Forest that we might live in a sparsely populated area with narrow roadways and minor traffic. It is a neighborhood made up largely of courts and cul-de-sacs. This was the attraction of the neighborhood in which we moved.

We are alarmed to learn that a school and associated facilities are being planned for this residential area. The size and scope are entirely out of keeping with the quality of the neighborhoods of Glyndon and Sagamore Forest.

I urge that your office uphold the present opposition to the connection of St. Paul Avenue and place limits upon development proposals which would alter the quality of our neighborhoods.

Sincerely,

A handwritten signature in dark ink, appearing to read 'John B. Herts', with a stylized flourish at the end.

John B. Herts, M.D.
JBH;bl

7/18

David G. Neschis, M. D.
Kim T. Neschis
12612 Mount Laurel Court
Reisterstown, MD 21136
July 11, 2001

Baltimore County Zoning Commissioner's Office
401 Bosley Ave.
Room 405
Towson, MD 21204

To whom it may concern,

We are writing in opposition to case # 01-468-SPH which is scheduled for a public hearing on July 18th and 19th, 2001. After careful consideration, we purchased our home on Mount Laurel Court in December 2000. There were multiple features of our property that concluded that this was the perfect place to raise our family. One of the most notable features was the quiet nature of the community. As parents, we were also thrilled with the fact that neither St. Paul Ave. nor Mt. Laurel Ct. were through ways. This reduced the flow of traffic through the area and created a much safer area for our children to play and ride bikes. Upon moving into the neighborhood we were pleased to discover many families with children residing on both St. Paul Ave. and Mt. Laurel Ct.

Having researched Baltimore County Zoning and the ten year plan for the area, we were aware that Beth Tfiloh planned to build a lower school on the former Camp Glyndon Property. We were however, deeply concerned over the recent proposal to amend the previously approved plans. In particular, we strongly oppose the entrance from St. Paul Ave. and a through connection between the two currently unconnected portions of St. Paul Ave. Not only would the resulting increased traffic destroy the nature of both neighborhoods located on either side of the St. Paul partition, it would create a significant safety hazard to the children who congregate, play and ride bikes along St. Paul Ave. and Mt. Laurel Ct.

St. Paul Ave., especially the area that connects to Central Ave., is a narrow street and is obviously not designed to handle larger volumes of traffic than what already exists. Sagamore Forest does not have side walks. Increased traffic along St. Paul Ave. would prove hazardous to the many pedestrians who walk through the neighborhood and create an unfair burden to the families who reside in this area.

We strongly urge you to oppose the amended plans that Beth Tfiloh has proposed.

Sincerely,

Kim T. Neschis, D. Neschis

Kim and David Neschis

07/11/01

702 St. Paul Avenue
Reisterstown, MD 21136
July 16, 2001

Baltimore County Zoning Commissioner's
Office
401 Bosley Avenue
Room 405
Towson, MD 21204

JF 23

Dear Sir or Madam,

We are writing this letter in reference to Case No. 01-468-SPH which will be the subject of a public hearing before the Baltimore County Zoning Commissioner on July 18 and 19, 2001.

We are strongly opposed to any amendments to the previously approved plans for the development of the property at 407 Central Avenue, Glyndon, MD. In particular, we vehemently oppose the proposed entrance to this property from St. Paul Avenue and the connection of the two currently unconnected portions of St. Paul Avenue.

Sagamore Forest Lane and St. Paul Avenue are residential streets. These streets were not built to accommodate a large volume of traffic. Speeding has been a long-standing problem along Sagamore Forest Lane. The connection of the two parts of St. Paul Avenue would only extend traffic volume and speeding problems onto St. Paul Avenue. In turn, these problems would bring about unsafe conditions for our 6½ year old son and other young children who live in the immediate area.

We feel that the proposed through connection of St. Paul Avenue would ultimately result in reduced property values throughout the Sagamore Forest community. Our family has enjoyed living in this quiet neighborhood for more than six years. We do not wish to see a decline in the quality of our community.

For the reasons stated above, we urge the Zoning Commissioner to reject plans for further development as proposed in Case No. 01-468-SPH.

Sincerely,

Doug and Martha Harrison

Doug and Martha Harrison

original to follow in mail

July 16, 2001

*Baltimore County Zoning Commissioner
401 Bosley Avenue
Room 405
Towson, MD 21204*

RE: Case No: 01-468-SPH

Dear Sir or Madam:

This letter is in reference to the above mentioned case, and the petition by the Sagamore Forest Worthington Hillside Community Association, which involves opposition to the proposed entrance to St. Paul Avenue, with a through connection between the two currently unconnected portions of St. Paul Avenue.

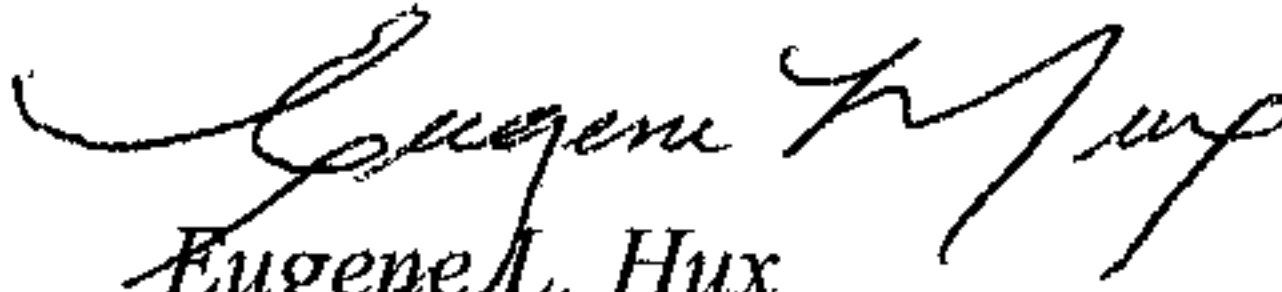
I reside at 713 St. Paul Avenue, a beautiful avenue that is narrow and very country-like, and has lots of beautiful homes, lovely trees, etc. To open St. Paul Avenue to the Beth Tfiloh project destroys the neighborhood by causing buses and all sorts of vehicles to practically dead-end into Sagamore forest Lane.

We urge you to not consider amending Beth Tfiloh's petition for a proposed entrance to St. Paul Avenue.

JUL 17,

Thanking you in advance for your consideration not to approve such an outrageous request.

Sincerely,


Eugene L. Hux
713 St. Paul Avenue
Reisterstown, MD 21136

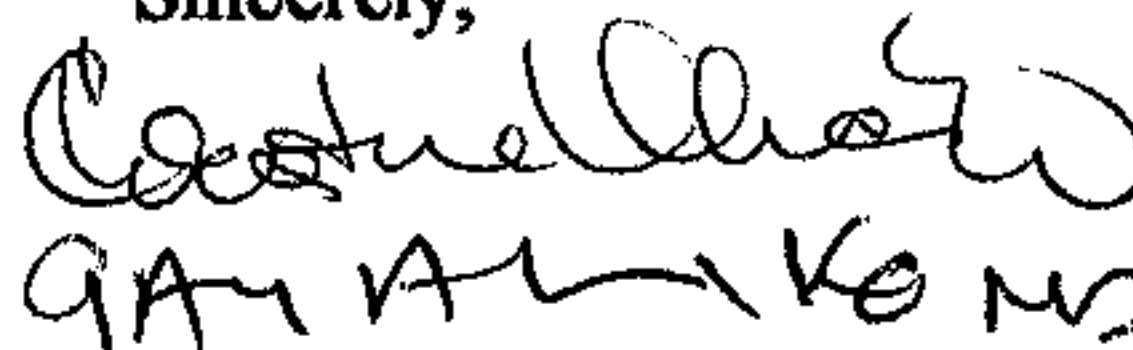
Enclosure: Petition

Christine and Gary Manko
12608 Mt. Laurel Ct.
Reisterstown, Maryland 21136
July 16, 2001

To Whom It May Concern:

We have been residents of 12608 Mount Laurel Court since October 1984. We chose our home based on the lack of access to traffic which we valued as essential to the safety of our children. As time has passed we have watched as the area has developed, greatly increasing the traffic as well. This has caused us irritation when we have to travel to work however, has not impacted our lives or the safety of our children on Mount Laurel Ct. It has come to our attention that the developer for the synogogue on Central Ave wants to open St. Paul at Mount Laurel Court. We are vehemently opposed to this for many reasons. We do not want to have to start fighting traffic at the end of our own street. Our children are still of age that this increase in traffic is a threat to their safety. Our school bus stop is at the corner of Mount Laurel Court and St. Paul. We concerned for our many new neighbors who have young children and chose their homes based on the lack of access to traffic. These families will be denied the safety of this court. They will not be able to feel safe allowing their children to play outside their homes, as this street will become a major thoroughfare for traffic. We see no need for this when people have access to Sagamore Forest Lane via Bond. We are outraged that this road opening may take place as this developer has a reputation of moving forward, disregarding the feelings of people in the community because he is willing to pay the fines later. We hope that as a part of this community what we think makes a difference. Please consider denying the opening of St. Paul. It is not fair to the tax payers of this community to watch helplessly as their property devalues unnecessarily.

Sincerely,

Handwritten signatures of Christine L. Manko and Gary A. Manko. The signature for Christine is written over the signature for Gary.

Christine L. Manko
Gary A. Manko

David & Cheryl Trudil
12616 Mt. Laurel Court
Reisterstown, Maryland USA 21136

July 15, 2001

Baltimore County Zoning Commissioner's Office
401 Bosley Avenue, Room 405 / fax: 410-887-3468
Towson, Maryland 21204

RE: Case No. 01-468-SPH

Dear Sirs:

We are vehemently opposed to the amendments Beth Tfiloh has petitioned to their proposed plans.

We strongly recommend that an environmental impact study be performed prior to any additional construction in this fragile ecosystem. Among our concerns is the fact that the property where they want to uproot trees and demolish the natural flora and fauna is a unique protected wetland. This proposed construction, and subsequent development, could, unknowingly have a negative effect on the local stream and also possibly alter the downstream ecosystem of the entire Greenspring Valley. It would certainly affect the habitat of the wildlife (deer, raccoons, and reptiles, not to mention Pileated woodpeckers, Baltimore Orioles, and Scarlet Tanagers) that live in this beautiful and specially unique hard wood forest.

In addition to the fact that Beth Tfiloh wants to move into a forest and then tear down a major portion of the trees to create soccer fields and parking lots; they also propose to open a road (St. Paul) that has been closed prior to the building of the first home in the neighborhood. Most of the homeowners on St. Paul have a substantial investment in their homes; and that investment was predicated on the fact that St. Paul was a dead end street. People, like us, purchased homes on this street because of safety concerns for our children and pets. Like many other homeowners, prior to purchasing our property, we called the Baltimore County Bureau of Development. We were assured that we could purchase the property with comfort in the knowledge that, as no purpose would be served in opening the road, it would remain closed.

The proposed amendments would create unbearable hardships and inconveniences. Real property would be devalued to all the residents; the traffic created would pose a safety

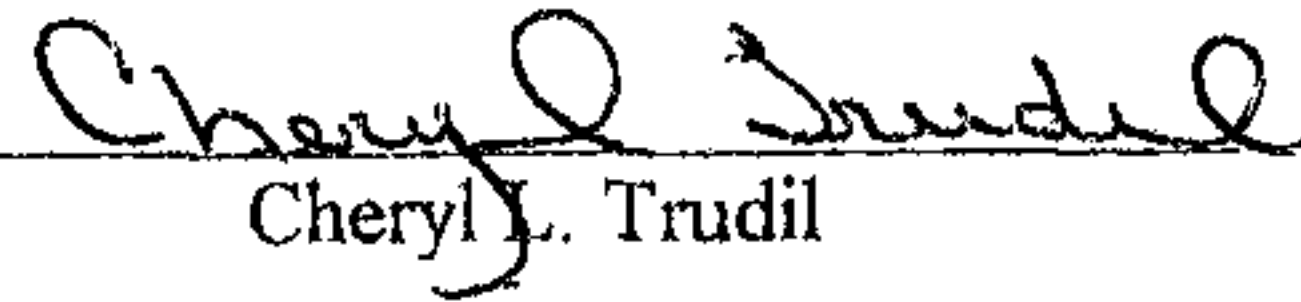
threat to our children, our pets and our property; and the noise pollution would be unfair and unbearable for people who purposefully chose to live in a quiet forest.

Question: Are these variances being proposed to help the many local, long-term residences who have a major investment in their property and life style, or are the proposed amendments solely to benefit the interests of the new owner of the Camp Glyndon property and their outside interests? It appears to be outside interests!

As this proposed development would directly back up to our property, we are hopeful in the fact that you will make the morally correct decision, we remain,

A stylized, horizontal signature in black ink, consisting of several overlapping loops and a long, sweeping tail that extends to the right.

David P. Trudil

A handwritten signature in black ink, written in a cursive style. The first name 'Cheryl' is clearly legible, followed by a stylized 'L' and the surname 'Trudil'.

Cheryl L. Trudil

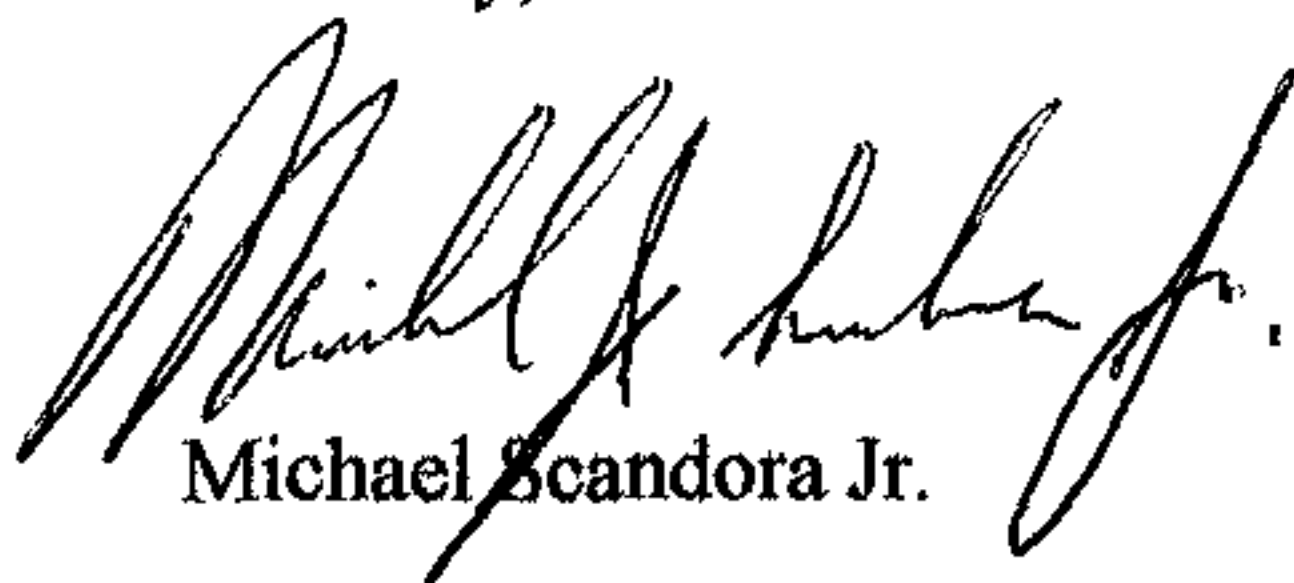
Mike Scandora
701 St Paul Ave
Reisterstown, MD 21136

The subject matter in this letter pertains to Case No. 01-468-SPH and is directed to the Baltimore County Zoning Commissioner for consideration.

We (wife/myself/neighborhood) are heavily opposed to the proposal to connect the two St Paul Avenue's. Our feelings are that this proposal, if it were approved, would cause a considerable amount of upset for all residents located in this area. Especially my family, since it will connect to my property and threatens to decrease the value of my home, increase traffic by a large amount throughout the day, jeopardize our children's safety in addition to a high level of noise generated by the traffic flow. I feel very confident when I say, I speak for the residents of Mt. Laurel Ct., St Paul Ave and Sagamore Forest lane.

This neighborhood was occupied with the consideration of its location, privacy, safety of us and our children and convenience in mind. The simple thought of this happening so close to my home and family, severely impairs my ability to see the overall value this gives anyone but the developer/owners of what was once a quiet/reserved Camp Glyndon! I have not met one person who supports this proposal in any way. So I ask that you kindly take into consideration, our thoughts and feelings when the time comes to make a decision on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Scandora Jr.", written over a printed name.

Michael Scandora Jr.
701 St Paul Ave
Reisterstown, MD 2113

DANCE RAGS

July 16th, 2001

KAREN SACHS ACADEMY OF DANCE

This is to inform the zoning commission that I am horrified by the prospect of St. Paul Avenue being opened up. This is a neighborhood where children play, ride their bikes - where people walk their dogs. We do not need or want a street that would bring traffic, noise, and air pollution and jeopardize the safety of the families that reside here!

As for the former Camp Glyndon property, we will be attending the meetings to gain information. We strongly oppose, however, further development for the same reasons as above. Glyndon, as well, is a wonderful neighborhood. The congestion would be unbelievable.

Thank you,
Ken & Karen Sachs

July 15, 2001

To Whom it May Concern:

As residents of Mt. Laurel Court, Sagamore Forest, for 23 years, we would like to express our opposition to connecting the Two St. Paul Avenues. We do not want the increase in traffic and noise, the decrease in walking safety and the potential increase in crime that we believe would come with the connection of the two streets.

Respectfully submitted,

James Houston
Hallie Houston

James and Hallie Houston
12615 Mt. Laurel Court
Reisterstown, MD 21136
410-833-6511

From:

**Ida Czakowski
12600 Mt Laurel Ct
Reisterstown, MD 21136**

To:

**Baltimore County Zoning Commissioner
RE: Case No. 01-468-SPH**

To whom this may concern,

I (Ida Czakowski) have very strong feelings against the proposal of the St Paul Ave connection since it directly affects my property! I am located right next to the proposed connection and it scares me to death to think such a thing could happen. Serious concerns I have are the amount of traffic that already comes through the neighborhood and I cannot even imagine the horrifying traffic increase that will frequent our neighborhood if this is approved. Furthermore, the neighborhood that is proposed to connect to us will make a significant difference in the value of our homes in a negative way. Finally, the safety of our children and security in the neighborhood will be severely jeopardized since this provides a direct inlet/outlet for traffic of all kinds on a regular basis not to mention the increase of noise pollution. Please consider me and all of my close neighbors deepest feelings regarding this matter when making your decision.

Sincerely,

A handwritten signature in cursive script that reads "Ida Czakowski". The signature is written in dark ink and is positioned above the printed name.

Ida Czakowski

July 16, 2001

To Whom It May Concern,

This is to inform you that we are opposed to connecting the two St. Paul Aves. We have lived here for twenty years and seen the increased traffic and schools.

It would be dangerous for the children on this street and lower the values of our homes.

Sincerely,

Annette Feldman

George V. Castelli
12603 Mount Laurel Court
Reisterstown, MD 12603
Home Phone 410-833-3512

July 15, 2001

Baltimore County Zoning Commission
401 Bosley Avenue
Towson, MD 21204

The subject of this letter is Case No. 01-468-SPH, more specifically the portion of the case that pertains to a connection of two currently unconnected portions of St. Paul Avenue. This interconnection would significantly degrade the quality of life in my neighborhood by allowing additional traffic in a neighborhood not designed to handle an additional load.

I am against the connection of the two sections and feel the Board should follow the recommendation of the Baltimore County Bureau of Development Plans Review and oppose this interconnection.

Sincerely,



George V. Castelli
12603 Mt. Laurel Court
Reisterstown, MD 21136

MIKE
701 S. Paul

702 St. Paul Avenue
Reisterstown, MD 21136
July 16, 2001

Baltimore County Zoning Commissioner's
Office
401 Bosley Avenue
Room 405
Towson, MD 21204

Dear Sir or Madam,

We are writing this letter in reference to Case No. 01-468-SPH which will be the subject of a public hearing before the Baltimore County Zoning Commissioner on July 18 and 19, 2001.

We are strongly opposed to any amendments to the previously approved plans for the development of the property at 407 Central Avenue, Glyndon, MD. In particular, we vehemently oppose the proposed entrance to this property from St. Paul Avenue and the connection of the two currently unconnected portions of St. Paul Avenue.

Sagamore Forest Lane and St. Paul Avenue are residential streets. These streets were not built to accommodate a large volume of traffic. Speeding has been a long-standing problem along Sagamore Forest Lane. The connection of the two parts of St. Paul Avenue would only extend traffic volume and speeding problems onto St. Paul Avenue. In turn, these problems would bring about unsafe conditions for our 6½ year old son and other young children who live in the immediate area.

We feel that the proposed through connection of St. Paul Avenue would ultimately result in reduced property values throughout the Sagamore Forest community. Our family has enjoyed living in this quiet neighborhood for more than six years. We do not wish to see a decline in the quality of our community.

For the reasons stated above, we urge the Zoning Commissioner to reject plans for further development as proposed in Case No. 01-468-SPH.

Sincerely,

Doug and Martha Harrison

Doug and Martha Harrison

PSYCHIATRY

PHONE 356-3804

JOHN B. HERTS, M.D., P.A.
9199 REISTERSTOWN ROAD
VALLEY VILLAGE PROFESSIONAL CENTER • SUITE B14C
OWINGS MILLS, MARYLAND 21117

FAX TRANSMISSION FORM

TO: Balt. County Zoning Comm.FAX NO. 410-887-3468NUMBER OF PAGES: 3DATE: 7-16-01

MESSAGE:

Re: Case # 01-468-SPH

The information contained in this facsimile message and/or the document transmitted are confidential medical records and intended only for the use of individual or entity named above. If the reader of this message is not the intended recipient or agent responsible to deliver it to the intended recipient, you are hereby notified that any examination, use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone.

Should you have any questions regarding this facsimile, please call 410-356-3804

fax transmission form

**JOHN B. HERTS, M. D.
12614 MT. LAUREL COURT
REISTERSTOWN, MD 21136**

July 16, 2001

Baltimore County Zoning Commissioner
401 Bosley Avenue
Room 405
Towson, MD 21204

Re: Case #01-468-SPH

Gentlemen:

I am a resident of Sagamore Forest, a development in the vicinity of the former Camp Glyndon property located at 407 Central Avenue in Glyndon, Maryland. It is now owned by the Beth Tfiloh Congregation. I learned that the congregation has petitioned Baltimore County to amend previously approved plans that would allow the construction of a lower school and associated facilities on that property.

I and other community members are distressed to learn that the plan proposes new buildings, an athletic field, an extensive parking lot, and associated paving. This plan calls for a proposed entrance from St. Paul Avenue. This would create a connection between the two previously unconnected portions of St. Paul Avenue. I am writing to voice my opposition to these plans.

This issue was visited several years ago at the Baltimore County Bureau. The plans were reviewed and entry onto and the inter-connection of St. Paul Avenue was opposed. I am troubled to learn of these new developments, particularly the connection of the two currently unconnected portions of St. Paul Avenue and of the volume of traffic which it invites.

I and other residents of this community moved to Sagamore Forest that we might live in a sparsely populated area with narrow roadways and minor traffic. It is a neighborhood made up largely of courts and cul-de-sacs. This was the attraction of the neighborhood in which we moved.

We are alarmed to learn that a school and associated facilities are being planned for this residential area. The size and scope are entirely out of keeping with the quality of the neighborhoods of Glyndon and Sagamore Forest.

I urge that your office uphold the present opposition to the connection of St. Paul Avenue and place limits upon development proposals which would alter the quality of our neighborhoods.

Sincerely,



John B. Herts, M.D.
JBH/bl

Singleton
703 St Paul Ave
Reisterstown, MD 21136

FAX 410-887-3468

July 15, 2001

Baltimore County Zoning Commissioner
401 Bosley Ave., Room 405
Towson, MD 21204

Ref. Case No. 01-468-SPH

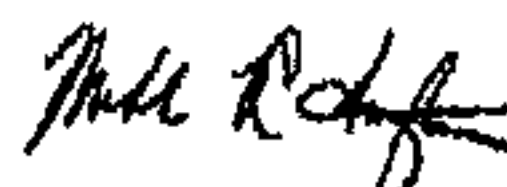
Dear Commissioner:

We are strongly opposed to the revised plan of Beth Tfiloh congregation whereby increased development includes an entrance from St. Paul Ave., with a through connection between the two currently unconnected portions of St. Paul Ave.

Increasing traffic on St Paul as well as connecting traffic between the two unconnected portions of St Paul will disproportionately harm the safe and peaceful existence of our neighborhood that has attracted residents for decades.

It is bad enough that we have been feeling the effects of development around our neighborhood; however, we don't feel it is at all necessary for development to cut through our neighborhood.

Sincerely,



Michele R Singleton

TO: Baltimore County Zoning Commissioner's Office
401 Bosley Avenue, Room 405
Towson, Maryland 21204

RE: Case No. 01-468-SPH

We, the undersigned residents of St. Paul Avenue and Mt. Laurel Court, (21136) oppose any plan by Beth Tfiloh that would propose a through connection between the two currently unconnected portions of St. Paul Avenue, as well as entry onto St. Paul Avenue.

Charlene Jones

Charlene Forrest

4 St. Paul Avenue

Jackie Speigats
Jackie Speigats

10 St. Paul Avenue

Frederick Dickinson
Frederick Dickinson

16 St. Paul Avenue

Not Home

6 St. Paul Avenue

Charlotte Tapp
Charlotte Tapp

14 St. Paul Avenue

Michael Johnson
Susan Porter

18 St. Paul Avenue

RE: Case No. 01-468-SPH

We, the undersigned residents of St. Paul Avenue and Mt. Laurel Court, (21136) oppose any plan by Beth Tfiloh that would propose a through connection between the two currently unconnected portions of St. Paul Avenue, as well as entry onto St. Paul Avenue.

Joseph M. Battle
Joseph N. Battle Jr.

22 St. Paul Avenue

Robert D. Battle
ROBERT D. BATTLE

26 St. Paul Avenue

Michael S. Burns
MICHAEL S. BURNS

605 St. Paul Avenue

Gason W. Cox
GASON W. COX

609 St. Paul Avenue

Jack Kiner
JACK KINER

607 St. Paul Avenue

Nelli Zilberman
Nelli Zilberman

611 St. Paul Avenue

RE: Case No. 01-468-SPH

We, the undersigned residents of St. Paul Avenue and Mt. Laurel Court, (21136) oppose any plan by Beth Tfiloh that would propose a through connection between the two currently unconnected portions of St. Paul Avenue, as well as entry onto St. Paul Avenue.

Judy Sugar Bloom
Judy Sugar Bloom

613 St. Paul Avenue

Eva D Savold
Eva D Savold

617 St. Paul Avenue

Jeffrey W. Martin
JEFFREY W. MARTIN

621 St. Paul Avenue

Lori Jones
Lori Jones
626 St. Paul Avenue

Melissa Howard
Melissa Howard

615 St. Paul Avenue

Jeremy Kinstlinger
Jeremy Kinstlinger

~~619 St. Paul Avenue~~

NOT HOME

Neighbors said they would support
petition

624 St. Paul Avenue

Robert K. Gehman
Robert K. Gehman
619 St. Paul Avenue

TO: Baltimore County Zoning Commissioner's Office
401 Bosley Avenue, Room 405
Towson, Maryland 21204

RE: Case No. 01-468-SPH

We, the undersigned residents of St. Paul Avenue and Mt. Laurel Court,
(21136) oppose any plan by Beth Tfiloh that would propose a through
connection between the two currently unconnected portions of St. Paul
Avenue, as well as entry onto St. Paul Avenue.

Soonduk Park
Chong Mint Soon Duk Park

Mike J. Scawsona Jr.

MIKE J. SCAWSONA JR.

700 St. Paul Avenue

Matthew D. Harrison
Matthew HARRISON

702 St. Paul Avenue

Joanne Codd
Joanne Codd

704 St. Paul Avenue

701 St. Paul Avenue

(NOT HOME) Robert & Michele
Singleton have both
Personally to me VERBALLY Agreed with this petition.
They are our neighbors & are on vacation.
JAMES F. DASINGER

703 St. Paul Avenue

James F. & Elizabeth Dasinger
JAMES F. & ELIZABETH DASINGER

705 St. Paul Avenue

RE: Case No. 01-468-SPH

We, the undersigned residents of St. Paul Avenue and Mt. Laurel Court, (21136) oppose any plan by Beth Tfiloh that would propose a through connection between the two currently unconnected portions of St. Paul Avenue, as well as entry onto St. Paul Avenue.

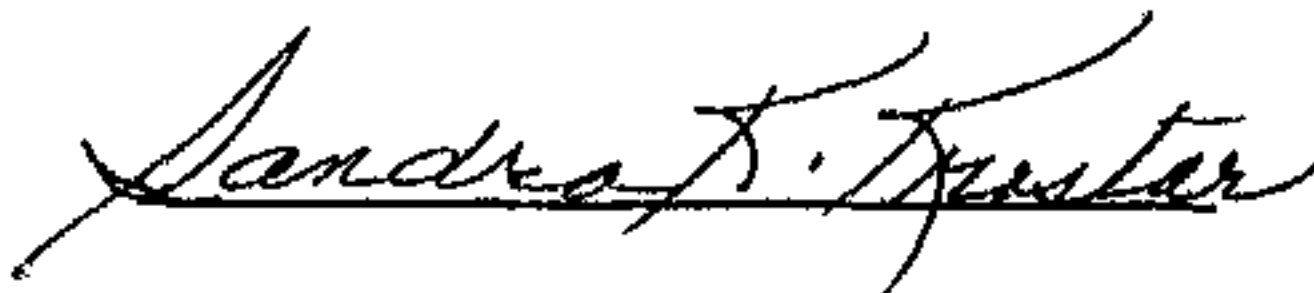

Hugh P. Shertel

706 St. Paul Avenue

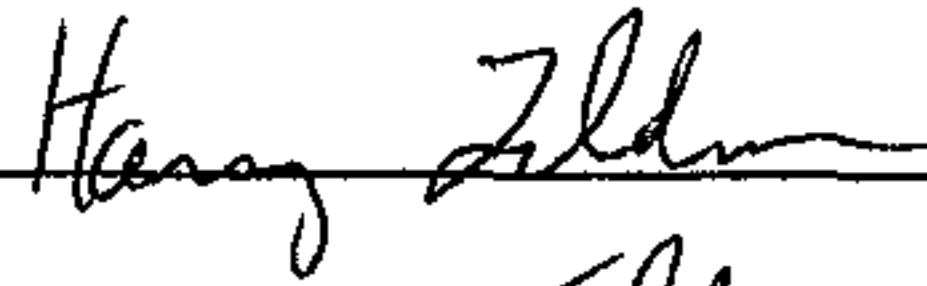


Hugh + Monica Warns

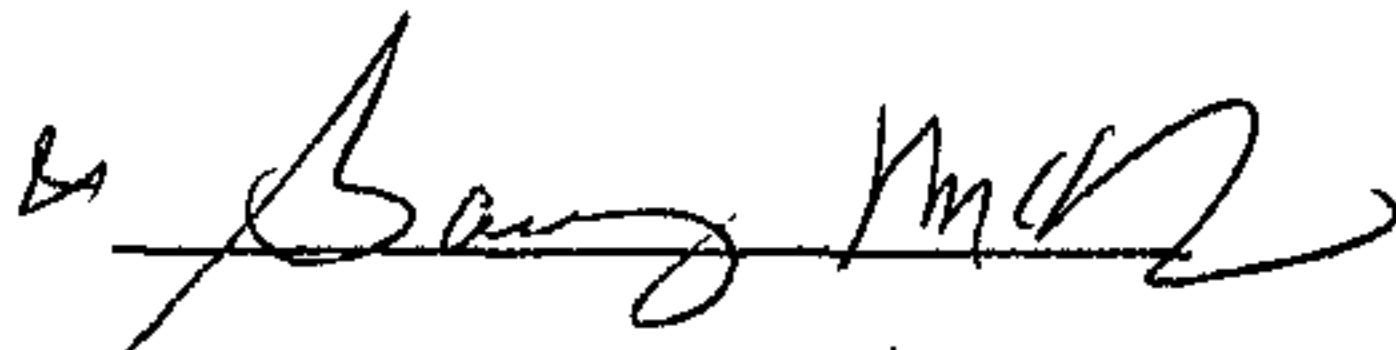
707 St. Paul Avenue


SANDRA K. KROSTAR

708 St. Paul Avenue


Harvey Feldman

709 St. Paul Avenue

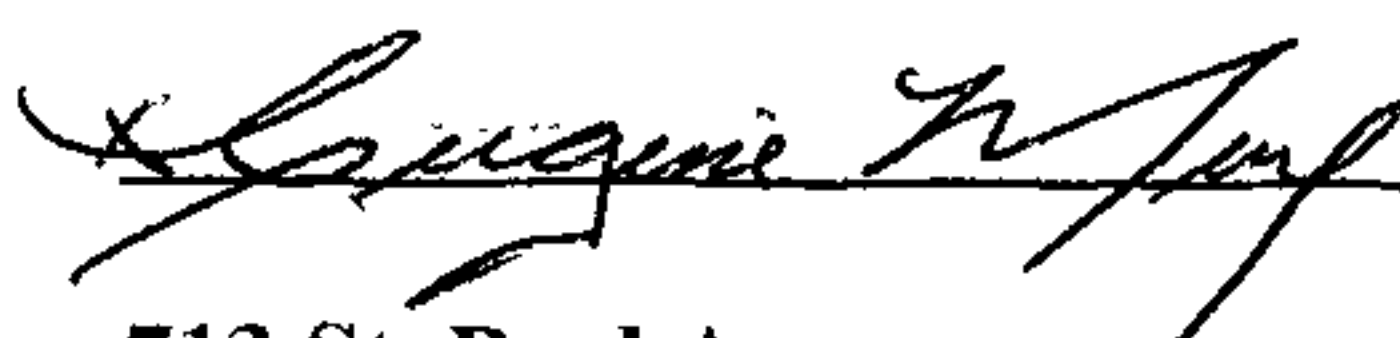

GARY McHENRY

710 St. Paul Avenue

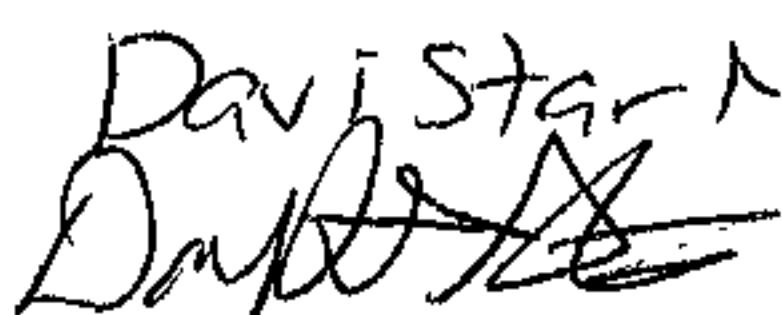

JUAN PINSKY

711 St. Paul Avenue

SHIRLEY K. HUX
EUGENE L. HUX


713 St. Paul Avenue Shirley K. Hux

712 St. Paul Avenue


David Starik

RE: Case No. 01-468-SPH

We, the undersigned residents of St. Paul Avenue and Mt. Laurel Court, (21136) oppose any plan by Beth Tfiloh that would propose a through connection between the two currently unconnected portions of St. Paul Avenue, as well as entry onto St. Paul Avenue.

Not Home

714 St. Paul Avenue

Paul M. Polansky

718 St. Paul Avenue

X Susan Solberg

12602 Mt. Laurel Court

Thomas J. DeSalvo

12604 Mt. Laurel Court

HANIT AIZEN

716 St. Paul Avenue

IDA CZAKONSKI

12600 Mt. Laurel Court

GEORGE V. CASTELLI

12603 Mt. Laurel Court

Charles Stewart III

12605 Mt. Laurel Court

RE: Case No. 01-468-SPH

We, the undersigned residents of St. Paul Avenue and Mt. Laurel Court, (21136) oppose any plan by Beth Tfiloh that would propose a through connection between the two currently unconnected portions of St. Paul Avenue, as well as entry onto St. Paul Avenue.

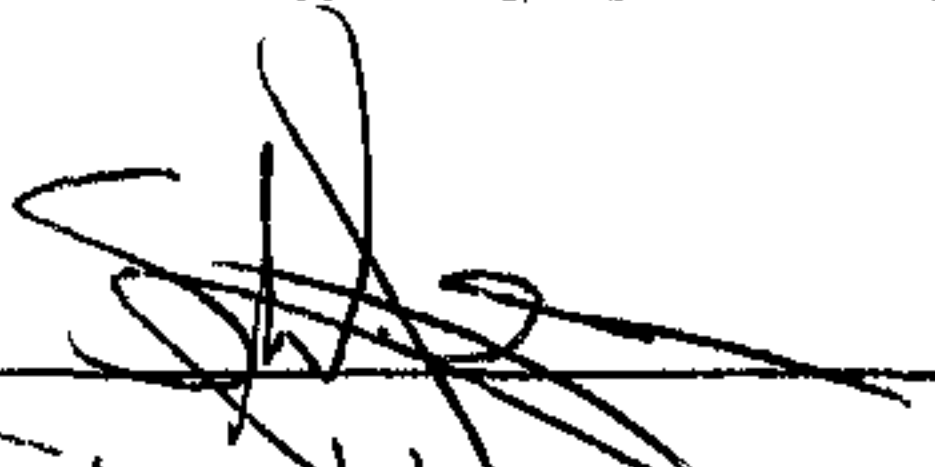
Bert & Hallie Houston

BERT & HALLIE HOUSTON

12615 Mt. Laurel Court

VACANT

12617 Mt. Laurel Court


Stu Kerser

12620 Mt. Laurel Court

Elizabeth Houston
John Harsham
JOHN HARSHAM

12622 Mt. Laurel Court

Cheryl Trudil & Paul Trudil

DAVID & CHERYL TRUDIL

12616 Mt. Laurel Court

Glenda & Steve Legendre

Glenda Legendre

12618 Mt. Laurel Court

x Hedy Rosman
" Hedy Rosman

12621 Mt. Laurel Court

R. Verma
Rajesh Verma

~~12500~~ Sagamore Forest Ln
12511

RE: Case No. 01-468-SPH

We, the undersigned residents of St. Paul Avenue and Mt. Laurel Court, (21136) oppose any plan by Beth Tfiloh that would propose a through connection between the two currently unconnected portions of St. Paul Avenue, as well as entry onto St. Paul Avenue.

Diane R. Rothberg

Diane Rothberg

~~12501~~ Sagamore Forest Ln
12510

To: Balt. Co. Zoning Comm

From: Mike Medinger

Date: 7/11/01

Re: Case # 01-468-SFH
+ Sagamore Forest Lane

Fax # (410) 887-3468

Beth Filoh

Dear Bal. Co. Zoning Comm. :

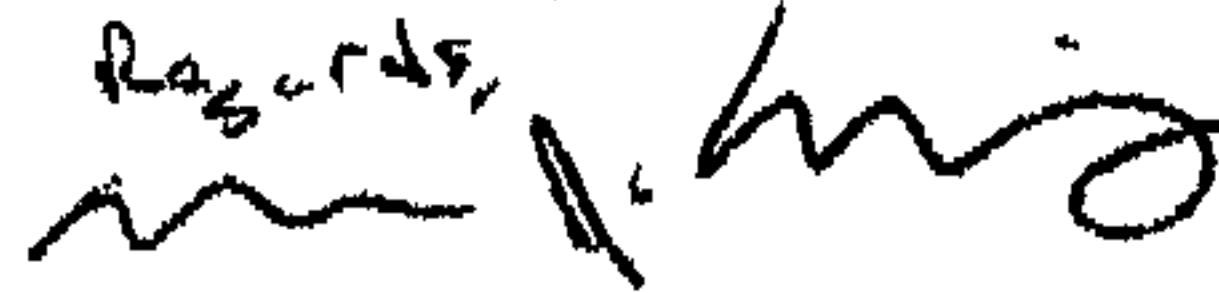
I am opposed to the
St. Paul Avenue entry & interconnect
as it relates to Case No. 01-468-SPH.
The increased traffic will be
hazardous to the numerous children
in the neighborhood.

In addition, I propose the following
for Sagamore Forest Lane :

- 1) Improved signs (i.e. - children at play)
- 2) Speed bumps
- 3) Speed traps

It's only a matter of time before
someone gets hurt, unless we do
something.

Regards,



PETITIONER(S) SIGN-IN SHEET

ADDRESS

210 W. Penn Ave. Tucson 2, Ariz.

10540 York Rd Suite M Hunt Valley
21030

7311 Park Heights Ave, Apt no 21208

Tim Madden



Case Number _____

PLEASE PRINT LEGIBLY

PROTESTANT'S SIGN-IN SHEET

[illegible]

Revised 4/17/00

Case Number _____

PLEASE PRINT LEGIBLYPROTESTANT'S SIGN-IN SHEET

Name	Address	City, State	Zip Code
Richard Desser	8 Weyphington Bridge Ct	Reisterstown MD	21136
Stephen McLeGendre	12618 Mt Laurel Ct.	Reisterstown MD	21136
CHEYL TRUDIL	12616 Mt. Laurel Ct.	REISTERSTOWN MD	21136
Neve T Steele, Jr.	211 Central Ave	Glyndon	21071
Robert Kaestner	117 Central Ave	Glyndon, Md.	21071
ANTHONY	Giancola 14 Glyndon Ave	Glyndon, Md.	21071
Katharine Giancola	↓	↓	↓
Nan Kaestner	117 Central Ave	Glyndon, Md.	21071
Titantha J. Healy	222 Central Ave.	Glyndon, Md.	21071-0043
Clara Taylor	16 Weyphington Hill Dr	Glyndon Md	21071-0043
Marti Clements	200 Central Ave	Glyndon Md	21071
Sylvia Ruppenthal	322 Central Ave.	Glyndon MD	21071
Barbara C. Whitman	4702 Butler Rd.	Glyndon	21071
Meredith Wells	15 Glyndon Ave	Glyndon	21071
ALFRED W. BARRY	ONE SOO R CALIENT ST #1150		
George B. W. W.	21202 4802 Butler Rd	Glyndon MD	21071
Jackie Duval	21071 240 Pennington Ave	Glyndon	21071
Jordan Duval	240 Pennington Ave	Glyndon	21071
Ross Smith	229 CENTRAL AVE	GLYNDON, MD	21071

Revised 4/17/00

PLEASE PRINT LEGIBLY

PROTESTANT'S SIGN-IN SHEET

Name	Address	City, State	Zip Code
Seam O'Connell	408 ~~Central~~ Central Ave	Reisterstown MD	21136
NORMAN KAROLEWICZ JR.	4801 Butler Rd.	Glyndon, Md.	21071
Jos. P. GEIPE, SR.	119 Central Ave	Glyndon MD	21071
Elizabeth B. Steele	211 Central Ave	Glyndon MD	21071
LABINE HEKTS	209 Central Ave	Glyndon MD	21071
David Trudil	12616 Mt. Laurel Ct	Reisterstown	21136
Mary Wuerthele	340 Central Ave.	Glyndon MD	21071
Colm Wuerthele	340 Central Ave.	Glyndon MD	21071
Alex Clements	200 Central Ave	Glyndon MD	21071
Tom Clements	206 Central Ave	Glyndon MD	21071
Jack Wells	15 Glyndon Ave.	Glyndon MD	21071
Beck Kaestner	11 Central Ave.	Glyndon MD	21071
Cam Wuerthele	340 Central Ave	Glyndon MD	21071
Denise Zumwalt	16 Glyndon Ave	Glyndon MD	21071
Eileen Wuerthele	340 Central Ave	Glyndon MD	21071
Stu Kelson	12620 Mt. Laurel Ct	Reisterstown MD	21136
Michael Rosman	12621 Mt. Laurel Ct	Reisterstown MD	21136
Mary Profaci	506 Bond Box 73	Glyndon MD	21071
Karen Sachs	12609 Mt. Laurel Ct	Reisterstown MD	21136

Verified
3/26/02

PROTOSTAVES

EXHIBITS

BOTH TELCOH

MAR 26 '02

CBA-01-136 / 01-468-SPH

✓ PROT 1 ALFRED BARRY C.U. 2 PGS

✓ PROT 2 Z.C. FLEW BLOW IN SPH CASE

**Alfred W. Barry, III
Principal
AB ASSOCIATES**

**One South Calvert Street, Suite 1150
Baltimore, Maryland 21202**

**410-547-6900
410-547-6903 (fax)**

Alfred W. Barry, III is the principal of AB ASSOCIATES, which he founded in July of 1995 as a comprehensive land planning consulting firm for business, government, non-profit and institutional clients. Services currently being provided to clients include consultation, analysis and representation on strategic development opportunities, state and local government liaison, development approvals and historic preservation.

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PROTOK. 1
10F2

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Prot of 1
20 F 2

Baltimore County Government
Department of Permits and
Development Management



111 West Chesapeake Avenue
Towson, Md. 21204

410-887-3335

June 29, 2001

Stephen A. Warfield
10540-M York Road
Hunt Valley, MD 21030

RE: Beth Tfiloh Glyndon Property
PDM Number IV-455
DRC Number 0625011, Dist. 4C3

Dear Sir or Madam:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Section 26-132 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 26-171 and Section 26-211 of the Baltimore County Code and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on June 25, 2001, and made the following recommendations:

The DRC has determined that your project meets the requirements of a limited exemption under Section 26-171 (A) (2).

Pet. No 1

Stephen A. Warfield
Beth Tfiloh Glyndon Property
June 29, 2001
Page 2

A copy of this letter must be presented when submitting engineering/construction plans to this office, and/or when applying for a permit with the Permits and Licenses Section.

Be advised that Phase 2 review fees may apply, depending on the amount of site disturbance, and/or the requirement of a Public Works Agreement.

I have reviewed the recommendations carefully, and I have determined to adopt the recommendations set forth above. It is this 29th day of June 2001, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permits that may be required for this project, your application will be processed subject to the conditions set forth above and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,



Arnold Jablon
Director

AJ:DTR:dak

c: File



Baltimore County
Office of Planning

401 Bosley Avenue - Ste 406
Towson, Maryland 21204
410-887-3211
Fax: 410-887-5862
E-mail: planning@co.ba.md.us

July 12, 2001

22 No 2
[Handwritten signatures]

Mr. Scott Barhight
Whiteford, Taylor & Preston
210 West Pennsylvania Avenue
Towson, MD 21204-4515

Re: Request for Modification of Standards: Beth Tfiloh Glyndon
PDM# IV-455
DRC 103100F, 101600D, 0625011
Case No.# 01-468-SPH

Dear Mr. Barhight:

The applicant was granted an A-2 Limited Exemption on June 25, 2001. A zoning hearing is scheduled for July 18, 2001.

The Office of Planning received a request for a modification of standards on July 6, 2001. Upon a favorable recommendation by the Director of the Office of Planning, non-residential uses permitted in the density residential zones may be increased from 200 feet in length up to a maximum of 300 feet.

Beth Tfiloh is proposing a two-story lower school building 271± feet in length. Additionally, Beth Tfiloh is proposing a connection between the existing synagogue and the proposed dining hall. As a result of the connection between the buildings, the length of the dining hall and synagogue extends approximately 240 feet. The applicant has submitted building elevations that address the guidelines of the CMDP and compatibility objectives.

The elevations demonstrate that the scale, massing, and materials of this addition are compatible with those of the existing synagogue and preschool. The proposed lower school and dining hall with gabled roof is veneered with similar brick, window fenestration, and roof material used throughout the campus. The mass of the proposed lower school is segmented and architecturally varied to break up the massing.

Mr. Scott Barhight
July 12, 2001
Page 2

The overall building complex will present a consistent architectural theme. Therefore, the Office of Planning recommends favorably for the modification of standards contingent upon the review and approval of a Final Landscape Plan and Lighting Plan prior to the issuance of building permits.

Sincerely,

A handwritten signature in dark ink, appearing to read "Pat Keller, III". The signature is fluid and cursive, with the first name "Pat" being more prominent than the last name "Keller".

Arnold F. 'Pat' Keller, III
Director

AFK:LL:lsn

c: Donald Rascoe, Permits and Development Management

Prot. No 1
~~10/11~~

Alfred W. Barry, III
Principal
AB ASSOCIATES

One South Calvert Street, Suite 1150
Baltimore, Maryland 21202

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Verif
3/26/02

PETITIONERS

EXHIBITS

CBA-01-136 / 01-468-SP4

BOTH THFLOH

MAR. 26, '02

- ✓ PET 1 STEVEN WAREFIELD C.U.
BOTH THFLOH
- ✓ PET 2 PLAN TO ACCOMPANY SPECIAL HEARING (2 PG.)
- ✓ PET 3 DDD
- ✓ PET 4 DRC REQUEST FORM (2 PGS)
- ✓ PET 5 JUNE 29, '01 JABLON'S LETTER OF APPROVAL (2 PGS)
- ✓ PET 6 TIMOTHY MADON C.U.
- ✓ PET 7 BOTH CBA-01-106 / DRC NO 101600D / PDM IV-455

Stephen A. Warfield, P.E.

10540 York Road, Suite M
Hunt Valley, Maryland 21030
(410) 683-7004

Professional Registration

Registered Professional Engineer - Civil Engineering 1995 - Maryland P.E. # 21162

Education

Master of Environmental Engineering - 1994- Johns Hopkins University
B.S. Civil Engineering - 1990 - University of Maryland, College Park

Professional Experience

- 12/94-Present Matis Warfield, Inc.; 10540 York Road, Suite M; Hunt Valley, Maryland 21030; President, Currently employed as a principal at Matis Warfield, Inc., and as a project engineer on-call with C. L. Warfield & Associates, Inc. Responsible for civil engineering services for the development community. Responsibilities include; design, development, and permitting for site development projects. Responsibilities include; concept plans, development plans, zoning plans, floodplain studies, open channels, stormwater management facilities, storm drain systems, erosion and sediment control plans, highways, pumping stations, utilities, specification development, cost estimating, grading, alternatives analysis, critical area analysis, project management, computer programming, marketing, administration, client relations, etc.
- 5/91-12/94 Gannett Fleming, Inc.; Suite 200; East Quadrangle; The Village of Cross Keys; Baltimore, Maryland 21210: Supervisors: Fred Wagner-Project Manager, and Dave Ross-Office Manager
Employed as a project engineer by Gannett Fleming, Inc., Baltimore Maryland. Responsible for design and specification development for water treatment plant process design, wastewater treatment plant process and site design, pumping station design, open channel design, stormwater management design, erosion and sediment control design, drainage studies, alternatives analysis, and highway designs.
- 6/90-5/91 George William Stephens, & Associates, Inc.; 658 Kenilworth Drive; Towson, Maryland 21204: Supervisor: Tapobrata Chakrabarti, Partner
Employed as a design engineer by George William Stephens Jr. & Associates, Inc., Towson, Maryland. Performed floodplain studies, designed stormwater management facilities, and designed open channel flow systems for residential, commercial, and industrial development projects. Responsibilities also included development of computer programs to aid stormwater management design.

Professional Affiliations

Baltimore County Engineers Association
American Society of Civil Engineers
Maryland Association of Home Builders

DGT 1

99560

Baltimore S & L Assn

Rel to

American Homes Corp

THIS RELEASE made this fifth day of January 1946 by
Baltimore Federal Savings and Loan Association a body
corporate duly incorporated

Witnesseth that whereas all the covenants of the
hereinafter described mortgage have been performed and the whole sum of money and inter-
est secured thereby has been paid and satisfied the said body corporate doth grant and
release unto American Homes Corporation its successors and assigns all those lots of
ground and premises described in a mortgage from American Homes Corporation to the said
body corporate dated November 15 1945 recorded in the land records of Baltimore County
on December 13 1945 free and clear from the operation of said mortgage

As witness the corporate seal of said body corporate and the signature of Joseph
M. Hisley the vice president thereof

Signed sealed and delivered

in the presence of

Mary M. Sauerwein

BALTIMORE FEDERAL SAVINGS AND LOAN
ASSOCIATION

By Joseph M. Hisley

Vice President

(Corporate Seal)

STATE OF MARYLAND BALTIMORE CITY TO WIT

I HEREBY CERTIFY that on this fifth day of January 1946 before me the subscriber
a notary public of said State in and for the City of Baltimore aforesaid personally
appeared Joseph M. Hisley the vice president of said body corporate releasor and acknow-
ledged the said deed of release to be the act of the said body corporate

Witness my hand and notarial seal

Mary M. Sauerwein

Notary Public

(Notarial Seal)

Recorded Jan 28 1946 at 11:30 A.M. & exd per

Robert J. Spittler Clerk

Rec'd by H.M.D.

(Examiner's Seal)

99562

Geo. W. Arnold & wf

Deed to

Vickers Norwood & wf

US 44.95 St 44.50

THIS DEED made this 26th day of January in the year one
thousand nine hundred and forty six by and between
George W. Arnold and Wilmer M. Arnold his wife of Bal-
timore County State of Maryland parties of the first
part and Vickers Norwood and Ethel A. Norwood his wife of

the same place parties of the second part

WITNESSETH that in consideration of the sum of five dollars and other valuable con-
siderations this day paid the receipt whereof is hereby acknowledged the said parties
of the first part do hereby grant and convey unto the said parties of the second part
as tenants by the entireties their assigns the survivor of them and the heirs and as-
signs of the survivor in fee simple all that lot of ground situate in the 4th election
district in Baltimore County in the State of Maryland and described as follows that is
to say

BEGINNING for the same at an iron pipe on the east side of a twenty five foot road

Page 3

on the fourth line of the land described in a deed from William Dwyer to John W. Ringrose
dated December 11, 1886 and recorded among the land records of Baltimore County
(now City) in Liber A.M.B. No. 180 folio 131 and north sixteen degrees 45 minutes east four
hundred and seventy nine feet from the end thereof and running thence reversely along said
line north sixteen degrees forty five minutes east three hundred ninety four and four
tenths feet to the end of the third line of the lot of ground conveyed by George W. Arnold
and wife to the heirs by deed recorded among the land records of Baltimore City in Liber
W.P.C. No. 606 folio 163 and running thence binding reversely along the third and second
lines of the parcel of land described in said deed the two following courses and distan-
ces to wit: South seventy two degrees fifteen minutes east seventy five feet and north
sixteen degrees forty five minutes east two hundred twenty nine and five tenths feet to
the outline of the property conveyed by William Dwyer to John W. Ringrose above referred to
and thence continuing along said outlines and along the outlines of the property described
in the deed from William L. Shriver et al to George W. Arnold and wife dated November 26
1921 and recorded among the land records of Baltimore County in Liber W.P.C. No. 602 folio
41 the twelve following courses and distances to wit: North forty three degrees thirty
seven minutes east two hundred sixty one and seven tenths feet to the north side of an
old chestnut tree thence north fourteen degrees two minutes east four hundred sixteen
feet to an iron pipe north of a maple tree on the east bank of a stream thence south
sixty six degrees eighteen minutes east one hundred eighty nine feet to a stone marked
twelve feet south sixty six degrees eighteen minutes east seven hundred seventy seven
and five tenths feet to a stone thence south five degrees forty six minutes west five
hundred sixty five and three tenths feet to a stone thence still south five degrees forty
six minutes west thirty six and four tenths feet to an iron pipe thence north eighty
three degrees fourteen minutes west three hundred thirty four and one tenth feet to an
iron pipe thence south five degrees forty six minutes west two hundred fifty nine and
nine tenths feet thence south eighty three degrees fourteen minutes east three hundred
seventeen and six tenths feet to an iron pipe sixteen and five tenths feet west of the
north one degree east three hundred twenty eight purchase line of a tract of land called
"Murray's Blaine" bounded thence by a line parallel to and sixteen and five tenths
feet westerly from said line south five degrees forty six minutes west five hundred ninety
four feet to an iron pipe thence north eighty two degrees twenty one minutes west nine
hundred and nine feet to an iron pipe thence south fifty one degree west three hundred
ninety four and seven tenths feet to a stone on the east side of Central Avenue and the
south side of an eighteen foot road thence continuing said course south fifty one degrees
west twenty five feet to the center line of Central Avenue thence north thirty nine de-
grees forty five minutes west binding along the center line of Central Avenue three hundred
sixty eight and one half feet to the southeast side of a twenty five foot road there laid
out thence north forty one degrees ten minutes east binding on the southeast side of said
twenty five foot road eighty three feet nine inches to a bend in said road and thence
north sixteen degrees east still binding along the southeast side of said twenty five
foot road four hundred seventy nine feet to the place of beginning containing forty three
and eighty three one hundredth acres of land more or less
being and comprising all of the property acquired by George W. Arnold and Wilmer

and wife by two deeds one that of dated September 11 1922 recorded among the land records of Baltimore County in Liber WPC No 501 folio 52 from Edwin R. Stringer et al to them and the other dated November 26 1914 recorded among the land records aforesaid in Liber WPC No 502 folio 134 from William L. Shriver et al excepting however a parcel of land containing twenty seven one hundredths of an acre conveyed by George W. Arnold and wife to Caskins by deed recorded in Liber WPC No 608 folio 163.

TOGETHER with the buildings and improvements thereupon and the rights ways ways waters privileges appurtenances and advantages to the same belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said lot of ground and premises unto and to the use of the said Vickers Norwood and Ethel A. Norwood his wife as tenants by the entireties their assigns the survivor of them and the heirs and assigns of the survivor in fee simple

AND the said parties of the first part covenant that they will warrant specially the property hereby granted and conveyed and that they will execute such further assurances of the said land as may be requisite.

WITNESS the hands and seals of the said grantors

WITNESS

George W. Arnold (Seal)

J. Lloyd Wilkinson

Wilmer Hain Arnold (Seal)

STATE OF MARYLAND BALTIMORE CITY TO WIT

I HEREBY CERTIFY that on this 26th day of January in the year one thousand nine hundred and forty six before me the subscriber a notary public of the State of Maryland in and for Baltimore City aforesaid personally appeared George W. Arnold and Wilmer Hain Arnold his wife the within named grantors and acknowledged the foregoing deed to be their respective act

IN TESTIMONY WHEREOF I hereunto set my hand and affix my notarial seal

J. Lloyd Wilkinson

(Notarial Seal)

Notary Public

Recorded Jan 28 1946 at 11:30 A.M. & exd per

Robert J. Spittell Clerk

Rec'd by H.M.D.

(Examiners W & V)

9956

Peter P. Purol & wf

Deed to

Frank N. Sibley & wf

US \$2.20 St \$2.00

THIS DEED made this 25th day of January in the year one thousand nine hundred and forty six by and between Peter P. Purol and Jane J. Purol his wife of Baltimore City State of Maryland parties of the first part and Frank Neil Sibley and Marion Arlene Sibley his wife of the same place parties of the second part

WITNESSETH that in consideration of the sum of five dollars and other valuable considerations this day paid the receipt whereof is hereby acknowledged the said parties of the first part do hereby grant and convey unto the said parties of the second part as tenants by the entireties the survivor of them their assigns and the heirs and assigns of the survivor in fee simple all those two lots of ground situated in Baltimore County in the State of Maryland and described as follows that is to say



DEVELOPMENT REVIEW COMMITTEE REQUEST FORM

062501 I

3 Copies of the Plan as Required/ Folded 8½ x 11
and is non-refundable)

FEE: \$ 40,00 (payable to Baltimore County)

Tax No(s): 04-130229-70

Applicant & Engineer Name: Stephen A. Warfield MATIS WARFIELD, INC. Filing Date: 6/6/01
Address: 10540 York Road Suite M Phone #: (410) 683-7004
Hunt Valley, Maryland 21030 Acreage: 44.07 acres
Project Name: Beth Tfiloh Glyndon Property (Formerly Camp Glyndon) PDM File #: IV-455
Project Address: 407 Central Avenue Zip Code 21136 ADC Map #: 16D6
Councilmanic District: 3 Election District: 4 Building Permit #: N/A
Is this an Antenna? ☐ Yes ☒ No If "Yes" check one of the following: ☐ Cellular (CAC) ☐ Water Tower (WTC) ☐ MonoPole (CFC)

Request: ☐ Refinement ☒ Limited Exemption ☐ Waiver

(Attach letter if necessary)

Request for an (A)(2) Limited Exemption. Please see the attached letter for a full explanation.

01-468. SPH

DO NOT WRITE BELOW THIS LINE! TO BE FILLED OUT BY COUNTY

committee action:

DRC #: _____

- () Denied
() Limited Exemption under Section 26-171 () ()
() Material Amendment to the plan (new CRG or HOH must be scheduled)
() Plan Refinement (submit enough plans for the agencies checked off below)
() Waiver recommendation forwarded to Planning Board for determination
() Waiver of Standards referred to _____
(Department)
() Requires a zoning () Special Hearing; () Special Exception; () Variance
() Other _____

A-2

COMMITTEE COMMENTS:

Agencies to Review and Return Comments to Committee:

() DPR () PO () Zoning () DEPRM () EIR () SWM () Rec & Parks () Fire () SHA

Signature of Coordinator _____ Meeting Date: _____

POT 4
LOF 2

Matis Warfield

consulting engineers

June 6, 2001

Mr. Donald T. Rascoe, Development Manager
Baltimore County Department of Permits and
Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Beth Tfiloh Glyndon Property (Formerly Camp Glyndon)
PDM# IV-455

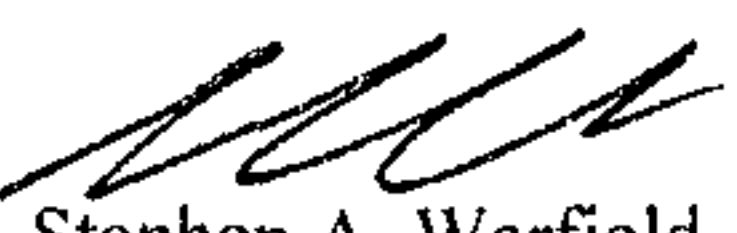
Dear Mr. Rascoe,

The Camp Glyndon property received special exception approval on 6/30/65 for a camp, community buildings, swimming pool and other structures per zoning case # 65-389-X. A Special Hearing approval on 9/28/93 per case number 94-27-SPHA, upgraded the special exception plat. Some of the improvements and expansions allowed by the previous cases have been and are being completed. The owner has previously submitted plans to the DRC to obtain approval to construct a two story lower school and a gymnasium on the property. At the previous DRC meetings for this project, the Committee agreed that the site meets the definition of an (a)(2) limited exemption; however, since there are previous zoning cases for this site, the decision was tabled until a revised Special Hearing request was filed to update the current Special Exception zoning plans. The owner has now filed for the Special Hearing to upgrade the Special Exception and wishes to proceed with a new DRC submittal. The new Special Hearing plan has been included as the DRC request plan.

The new DRC submittal is largely the same as the previous submittal; however, the plans have been modified and refined with the improvements on the plan generally including; a proposed 2-story 46,500-sf+/- Lower School; a proposed 1-story 13,800-sf+/- gym; proposed expansion of the existing 1-story dining hall from 4,000-sf+/- to 8,000-sf+/-; relocation of various existing camp/school buildings and facilities; reconfiguration of and expansion of existing parking areas; and other site work.

Therefore, the owners wish to obtain a ruling from the DRC that would allow them to proceed with the development shown on the attached plans with a 26-171(A)(2) limited exemption.

Very truly yours,
MATIS WARFIELD, INC.


Stephen A. Warfield, P.E.

SAW:saw

Enclosures: \$ 40.00 check; 3 prints

cc: Skip Antonucci, Bernie Suffel, Scott Barhight

Matis Warfield, Inc.

10540 york road • suite m • hunt valley, maryland 21030
phone 410-683-7004 • facsimile 410-683-1798
www.matiswarfield.com

DET 4
2002

TIMOTHY F. MADDEN, ASLA, AICP
Principal

Project Assignment:

Principal-In-Charge, Land Use
Planning, Zoning, Landscape
Architecture, and Environmental
Design

Years of Experience:

MRA: 11
Other Firms: 14

Education:

B.L.A., Environmental Design,
1977

Active Registration:

Certified Planner, AICP, 1984
Maryland, Landscape Architect,
1979, #406
Delaware, Landscape Architect,
1986, #154 (Inactive)
Virginia, Landscape Architect,
1982, #00124
North Carolina, Landscape
Architect, 1990, #724 (Inactive)

Professional Affiliations:

Annapolis & Anne Arundel County
Chamber of Commerce, Inc.
Anne Arundel County Chapter,
Home Builders Association of
Maryland

Awards: 2001 Consultant of the Year
HBAM, Land Development
Council.



**MORRIS & RITCHIE
ASSOCIATES, INC.**

Qualifications:

Mr. Madden is Principal-in-Charge of MRA's Baltimore Washington corridor office. He is also the Director of Land Planning and Landscape Architecture Services for the firm. In this capacity, Mr. Madden is responsible for the preparation of Land Use Plans, Reports, Zoning Studies, Environmental Effects Reports, Forest Stand Delineations, Forest Conservation Program, Site Feasibility Studies, Concept Plans, Development Plans and Land Use Planning. He also provides consultation and expert witness testimony for projects on an as needed basis.

Mr. Madden has lengthy experience in providing master planning and site design services associated with institutional and special care facilities throughout the Baltimore-Washington region. He is thoroughly knowledgeable of institutional site functions and relationships, security, site lighting, entry treatment, pedestrian amenities, efficient vehicular access, service functions (i.e. deliveries, solid waste collection, recycling services, maintenance, visitation, buses, pick-up and arrival/departure areas), site layout, spatial formation, useable open space, environmental sensitivity graphics, signage, and landscaping.

Mr. Madden is a registered landscape architect in Maryland and a Certified Planner, AICP. His experience includes management of master planning and site design projects for institutional, industrial, residential, commercial, and mixed-use sites.

Mr. Madden's project experience includes adaptive reuse of existing structures and urban streetscape design.

Mr. Madden's military master planning experience has made him familiar with requirements for the preparation of future development and mobilization TAB's in accordance with the new AR 21-0-20 and AR 210-23. He has also utilized AR 200-1, AR 420-40, TM 5-803-4 and CEMOPS documents in the course of his military master planning work.

Mr. Madden has recognized expertise in zoning and site planning, as well as expert witness testimony on wireless communications projects. His experience includes:

Projects Mr. Madden has successfully managed include:

Notable work directed by Mr. Madden includes the following projects:

Pat By #
6

AUTOMOTIVE

Carmax Auto Superstore, White Marsh, Maryland - Principal-In-Charge for comprehensive rezoning, site design, public utility and road design (extension of Campbell Blvd.), and construction phase services for a 22-acre reclaimed surface mine wash pond site.

Chesapeake Cadillac/Jaguar, Baltimore County, Maryland - Assisted the client in the rezoning of this property for an automotive dealership. Provided land planning and landscape architecture for the 30,000 SF building on a 4-acre site.

Thompson Dodge Service Center, Dundalk, Maryland - Principal-In-Charge responsible for assisting the client with pre-acquisition services by determining that the half-acre lot was suitable for the development of a 12,000 SF automotive service center and support facilities. After development feasibility was established, provided project management as part of a design-build team for demolition of an existing car wash facility and construction of a new auto service center and associated parking. Furthermore, oversaw all review and permit facilitation services.

Thompson Lincoln Mercury Auto Body Shop, Dundalk, Maryland - Principal-In-Charge responsible for civil engineering and landscape architectural services for the development of a new 20,000 SF Body Shop building on the existing Lincoln Mercury dealership property. The project included zoning analysis, CRG refinement, and forest buffer variance processing, as well as site and grading plans.

Heritage Auto Park Expansion, Owings Mills, Maryland - Principal-In-Charge site planning design and zoning analysis for redevelopment of a dealership site into a multi-franchise complex.

Frankel Cadillac - Range Rover Dealership Expansion, Pikesville, Maryland - Bob Frankel's Automobile Dealership had seemingly outgrown its urban location on Reisterstown Road, near the City line. After reviewing the site conditions and zoning regulations, Mr. Madden figured out how the dealership operations could be improved and enhanced, with minimal costs.

Beaver Court Auto Body, Baltimore, Maryland - Assisted the client in obtaining the necessary special exception approval for the new 7,500 SF building and site improvements.

GMC Pontiac Dealership, Owings Mills, Maryland - Provided zoning analysis for a new 15,000 SF automotive dealership.

BANKING & FINANCIAL

Fullerton Federal Savings Association, Expansion Study and Design for new Bank Site, Baltimore, Maryland - Principal-In-Charge of study, concept, development, and construction plans for a demolition of existing bank and design of new 6,000 SF bank in Perry Hall.

Baltimore County Savings Bank, Timonium Branch Site Feasibility Analysis Baltimore County, Maryland - Principal-In-Charge for demolition to existing BCSC bank connected to retail stores and building of new freestanding banking facility.

Baltimore County Savings Bank, Perry Hall Branch Feasibility Study, Baltimore County, Maryland - Feasibility study for adding a drive through facility to existing bank located in an office building.

Baltimore County Savings Bank, Site Feasibility Analysis for a New Standalone Bank in Towson, Baltimore County, Maryland

Farm Credit Bank of Baltimore Property, Feasibility Study, Baltimore County, Maryland - Feasibility study of

property owned by Farm Credit Bank of Baltimore for marketing purposes.

Chevy Chase Bank, Signage Upgrades, Multiple Locations, Maryland Zoning code review and variance appeals for signage upgrades to various commercial locations.

BUSINESS / INDUSTRIAL PARK PROJECTS

Prologis Park at Troyhill, Howard County, Maryland - Site planning, engineering, construction stakeout, and fast-track processing for a 40-acre development consisting of 482,000 SF of flex distribution space in three buildings. This location includes the new eastern distribution center for Mack Trucks.

Opus Arundel Six, Anne Arundel County, Odenton Town Center, Maryland - Site planning and engineering for the 80,000 SF Domino's Pizza distribution center.

Airport Square Technology Park, Anne Arundel County, Maryland - U.S. Army Corps of Engineers Section 404 nationwide permit processing for a 65-acre office and industrial distribution center near BWI Airport. Services included site design, landscape design, and wetland delineation, alternative studies, impact assessment, and permit processing.

Columbia Gateway Industrial Park, Columbia, Maryland - Provided wetland creation design for approximately 4-acres of wetland impacts for the 400-acre office technology center.

Red Run Corporate Center, Owings Mills, Maryland - This is the site of a 60-acre business community master planned by Tim Madden. The high-end corporate community includes a Hilton Hotel, a revitalized farmhouse conversion, and linkage to the future Owings Mills Arboretum Park.

AAI Corporation Building 100, Hunt Valley, Maryland - Part of the effort to reposition the owners' land holdings included the renovation and parking structure addition to the former headquarters building. After all the design services were completed by MRA including civil, structural, architectural and landscape architectural, the building was sold to another entity. Mr. Madden managed the entire conversion process from rezoning to property settlement.

Riparius Center, Owings Mills, Maryland - Master planning for the 162-acre office park in light of current market and space needs. Sensitive management, forest buffer and wetland mitigation issues were addressed and reviewed by a Joint Agency Review Group (J.A.R.G.) of local, state, and federal agencies. Approximately 1.5 million SF of office buildings will occupy the site.

COMMERCIAL/RETAIL

Golden Ring Center Expansion, Baltimore County, Maryland - Developed a plan for the expansion of the existing Circuit City Store and addition of new retail use. Processed the amended plan through the Baltimore County "DRC" process.

- * **Circuit City Stores, Site Feasibility Analysis, Baltimore County, Maryland** - Developed a plan for the expansion "of the existing Circuit City Store and processed the amended plan through the Baltimore County "DRC" process.

Industry Lane Commercial Center, Baltimore, Maryland - Provided site planning, zoning analysis, and development feasibility study.

Ravenwood Shopping Center Redevelopment, Lutherville, Maryland - Provided site planning, and zoning analysis.

Governor's Court Flex Site, Baltimore, Maryland - Provided site planning, zoning analysis, and feasibility study.

Chartley Park Shopping Center, Baltimore, Maryland - Performed alternative site plan studies of options for expansion of the existing Super Fresh store and improvements to the loading and delivery operations.

Hyde Park Shopping Center, Baltimore County, Maryland - Consulted on revisions to the site plan for a 70,000 SF shopping center in eastern Baltimore County. Provided expert witness testimony in support of the plan's approval. Worked with client to site specific users on pad sites, and processed plans through the County's plan refinement process.

The Shops at Monocacy Plaza, Frederick (North Frederick Commercial Center), Maryland - Site planning for design of a 54,000 SF retail and 52,000 SF super market on a 10-acre parcel.

Painters Mill Shopping Center Expansion, Owings Mills, Maryland - Site planning and landscape architectural design revitalization of property and expansion of existing 17,000 SF retail center into a 20,600 SF facility.

Southdale Shopping Center Expansion, Anne Arundel County, Maryland - Site planning and landscape architectural design services for the addition of one restaurant pad site. Performed a study to determine the feasibility of a 2,000 SF addition to the current in-line retail space. Also performed a study for the feasibility of adding another restaurant pad site, and re-use of the vacant Hechingers' space in the shopping center.

Metro Square at Reisterstown Road, Owings Mills, Maryland - Principal-In-Charge of the Metro Square project which involved site selection, re-zoning, and site plan development for 58,200 SF of food store and 13,300 SF of collateral retail space. Site features include extensive retaining walls, sound minimization fence, forest conservation plantings, as well as major road and landscape improvements.

Walgreen's at Liberty and Offutt Road, Baltimore County, Maryland - Principal-In-Charge for site assessment, recommendations, conceptual plan, zoning variances and waiver of standards, and site design for a new Walgreen's store.

Walgreen's at Baltimore-Annapolis Boulevard, Anne Arundel County, Maryland - Principal-In-Charge of site assessment services and preliminary design for the property.

Walgreen's at Martin Boulevard and Compass Road, Baltimore County, Maryland - Principal-In-Charge of site investigation and feasibility study for demolishing a portion of the center and then building a new Walgreen's store. Based upon the concept for revitalization, plans were prepared and approved for construction of a Walgreen's store, and renovations to the balance of the Victory Villa Shopping Center.

Walgreen's, Site Search and Selection Work, Baltimore, Anne Arundel, Howard, and Montgomery Counties.

Walgreen's at Reisterstown and Slade, Baltimore County, Maryland - Principal-In-Charge of a comprehensive rezoning issue and a site assessment study for the assembly of six residential properties to be rezoned to 'BL' and developed into a free standing 15,000 SF Walgreen's drugstore.

Wal-Mart at Parole, Anne Arundel County, Maryland - Principal-In-Charge of site planning and civil engineering for a 134,000+ SF Wal-Mart Store on an existing paved shopping center lot.

Target Store, Owings Mills, Maryland - Site and development plans for a new 100,000 SF retail store on a 12.5-acre site.

Safeway Building Expansion Study, Montgomery County, Maryland - Land planning and development processing for an addition to the existing grocery store in Silver Spring.

Safeway Building Expansion Study, Fairfax, County, Virginia - Land planning and development processing for an

addition to the existing grocery store.

Kleins Supermarket at Paper Mill Village, Baltimore County, Maryland - Principal-In-Charge responsible for re-zoning of the property for use as a 44,000 SF Kleins Food Store and new post office in Jacksonville.

Food Lion Store #1412, Baltimore, Maryland - Provided site revitalization design.

Old North Point Commercial Center, Dundalk, Maryland - Provided site revitalization design.

Romano's Macaroni Grill, Cockeysville, Maryland - Principal-In-Charge for planning, engineering and surveying for a 3,600 SF restaurant. The site was reclaimed from a previous rock quarry operation constructed in coordination with New Beaver Dam Road. Site development required the design of an extensive retaining wall as well as zoning and Environmental Protection waivers.

Exxon Fuel Service Stations and Tiger Marts in Various Maryland Locations - Provided site planning, zoning analysis, and expert witness testimony for new and retro-fit locations in Anne Arundel County, Baltimore County, and Baltimore City. Signage work was also included.

Wawa Food Stores in Various Maryland Locations - Provided site planning, zoning analysis, and expert witness testimony for new locations and building additions in Anne Arundel and Baltimore Counties. Signage work was also included.

COMMUNITY CENTERS

Penn-Mar Organization Community Care Center Facility Expansion Study, Maryland Line, Maryland - Land planning and development processing for a 32,000 SF institutional facility on a 6-acre site located in Baltimore County.

EDUCATIONAL FACILITIES

Johns Hopkins University, Montgomery County Campus, Maryland - Principal-In-Charge for land planning and civil engineering towards the development of a competitively bid, design-build document, which included preliminary drawings and typical details. Scope of work included the analysis of 20 acres of the Shady Grove Life Science Center (SGLSC), the siting of JHU's second building and parking lot expansion in the complex, and preliminary engineering to insure that storm drainage, stormwater management, and other utility provisions within the park were adequate to accommodate the proposed development.

The development program prepared by MRA included a conceptual landscape architectural plan. This plan laid out improvements for an 800 ft section of Life Sciences Boulevard, as well as plantings and hardscape treatments for the JHU parking lot. The project included the siting of typical streetscape furnishings, including bollards, light fixtures, benches, bus shelters, speciality paving treatments, railings, signage, and walkways.

Johns Hopkins University, School of Nursing Building, Baltimore, Maryland - Managed site planning and city approval process for the new 100,000 GSF facility containing classrooms, lecture halls, laboratories and conference areas.

UMBC Research Park Master Plan, Baltimore County, Maryland - Master planning services for the development of an 80-acre campus-type research facility. Sensitive community issues, environmental conditions, and archeological resources were successfully dealt with in the context of integrating nine new buildings into an existing campus facility.

University Regional Construction Center at UMB, Structural and Civil Engineering and Surveying Indefinite Delivery Contract (UB-098-005-IDC)

University of Maryland College Park and University System Campuses, Fees \$250,000 or Less, Civil and Structural Indefinite Delivery Contract (D-00318), College Park, Maryland - Miscellaneous structural engineering design and construction administration services. Specific projects include:

University of Maryland Eastern Shore, Coastal Ecology Teaching and Research Lab, Worcester County, Maryland - Project Manager for site planning, civil and geotechnical engineering, landscape architecture, and surveying for a unique coastal zone location for a teaching and research facility. Work included innovative design of a seawater recirculation system, reforestation, passive water quality design, and sensitive site planning and landscape architecture. Work was coordinated with National Park Service and Maryland Department of Natural Resources, as future facilities for those agencies are proposed to be adjacent to this project.

University of Maryland College Park, Computer Science Building Site Work, College Park, Maryland - Site design work associated with the replacement of coolant lines for the computer science building.

University of Maryland Research Facility, Solomons Island, Maryland - Provided shoreline protection design and site planning for a new research facility.

Loyola College Master Plan, Baltimore, Maryland - Master planning for additional buildings, new roads, upgraded utilities and other site functions for a city of Baltimore institution. Four new residence halls were included on the master plan.

Hood College Master Plan, Frederick, Maryland - Master planning for additional buildings and upgrades to the campus of a small private college in Maryland.

UMAB, School of Social Work, Redwood Street Pedestrian Improvements, Baltimore, Maryland - Project elements included a new entrance, new lighting, protection of existing underground utilities, accessibility design, special paving, signage, plantings, new road surfacing and reconstruction of a BGE utility vault. Work was performed under two contracts. Coordination between city agencies and two clients (UMAB and UMMS) was Mr. Madden's responsibility. This design work was performed in accordance with the UMMS Facilities Master Plans and Streetscape Design Guidelines.

ENVIRONMENTAL PLANNING AND DESIGN / WETLAND MITIGATION

Mr. Madden's past environmental design experience includes parks and recreation facility design, streetscape design, site planning, and design for adaptive use of historic sites and structures, housing developments, and other types of development projects. He has designed and/or managed many important projects, including:

Patapsco Greenway Project, Anne Arundel County, Maryland - Site design, landscape design and wetland mitigation planning for the a major State Cabinet Level development effort along the Lower Patapsco River. Consultant to Walmsley & Co., Inc., Planners.

Chestnut Hill Farm, Anne Arundel County, Maryland - Site design, landscape design, wetland assessment, and environmental analysis for a 320-acre undeveloped site owned by Baltimore Gas & Electric Company. Services included wetland delineation and mapping as well as the preparation of an Environmental Impact report.

UMBC Research Park Master Plan, Baltimore County, Maryland - Master planning services for the development of an 80-acre campus-type research facility. Sensitive community issues, environmental conditions, and archeological resources were successfully dealt with in the context of integrating nine new buildings into an existing campus facility.

- * **Sandy Oaks Planned Unit Development, Anne Arundel County, Maryland** - Environmental planning for a 110-acre, 102-unit single-family development. The site was bisected by a stream/wetland association. Services included wetland delineation, 404/401 permits, wetland disturbance mitigation design, stormwater quality enhancement design, wetland management program, and construction review/monitoring.
- * **Red Fox Farm Subdivision, Baltimore County, Maryland** - Wetland delineation and report, permit application, water quality enhancement design, slope reforestation, stream restoration, wetland creation, and permit processing.
- * **Airport Square Technology Park, Anne Arundel County, Maryland** - U.S. Army Corps of Engineers (USACE) Section 404 nationwide permit processing for a 65-acre office and industrial distribution center near BWI Airport. Services included wetland delineation, alternative studies, impact assessment, and permit processing.
- * **Highway Roadside Landscaping, Annapolis, Maryland** - Slope stabilization, sound alteration barriers, reforestation, and wetlands mitigation for the relocation of Winchester Road at U.S. Route 50. Work was performed for the Maryland State Highway Administration under an "on-call" services contract.
- * **Cedarday Estates, Harford County, Maryland** - USACE Section 404 permits for stream crossings and stormwater management facilities on a 450-lot, 450-acre development. Services included wetland delineation, alternative and minimization studies, permit processing, and mitigation design.
- * **Chestnut Hill Farm, Anne Arundel County, Maryland** - Wetland assessment and environmental analysis for a 320-acre undeveloped site owned by Baltimore Gas & Electric Company. Services included wetland delineation and mapping as well as the preparation of an Environmental Impact report.
- * **Columbia Gateway Industrial Park, Columbia, Maryland** - Wetland creation design.
- * **Worthington Place Condominiums, Owings Mills, Maryland** - Site planning, landscape design, wetlands delineation and report, Section 404 permit application and processing, stormwater management design, wetland mitigation design, and construction review services for a multi-site condominium project.
- * **Pine Ridge Golf Course, Baltimore County, Maryland** - Wetland delineation and water quality assessment for a planned 18-hole expansion of Pine Ridge Golf Course next to Loch Raven Reservoir.

EXPERT WITNESS TESTIMONY:

LaFarge Churchville Quarry, Harford County, Maryland - Expert witness testimony before the Harford County Zoning Hearing Examiner in support of the Special Exception Petition to expand the LaFarge Churchville quarry.

Hyde Park Shopping Center, Baltimore County, Maryland - Consulted on revisions to the site plan for a 70,000 SF shopping center in eastern Baltimore County. Provided expert witness testimony in support of the plan's approval. Worked with client to site specific users on pad sites, and processed plans through the County's plan refinement process.

Early Learning Daycare Center, Manassas, Virginia - Special exception testimony and site planning design.

Flint Hill Office Park, Fairfax County, Virginia - Provided site planning, landscape architectural design and expert witness land use services for the development of this property. Preservation of mature trees, use of specialty paving, and an internalized running/walking path system are notable features of this successful business park.

Lucky's Convenience Food Stores in Various Maryland Locations - Expert witness testimony for granting of special exceptions and zoning variances.

Carroll Community Church - Expert witness testimony for Special Exception Hearing and Board of Appeals Hearing.

Exxon Fuel Service Stations and Tiger Marts in Various Maryland Locations - Provided site planning, zoning analysis, and expert witness testimony for new and retro-fit locations in Anne Arundel County, Baltimore County, and Baltimore City. Signage work was also included.

Wawa Food Stores in Various Maryland Locations - Provided site planning, zoning analysis, and expert witness testimony for new locations and building additions in Anne Arundel and Baltimore Counties. Signage work was also included.

AA&T Telecommunication Tower in Parkton, Baltimore County, Maryland - Performed environmental impact assessment, and expert testimony at zoning hearing.

BGE Tower Site, Baltimore County, Maryland - Performed environmental impact assessment, and expert testimony at zoning hearing.

Verizon Wireless, Zoning Hearings, Maryland - Various zoning hearings for Verizon Wireless Cellular Tower sites.

Cellular One, Elibank Drive Site, Howard County, Maryland - Board of Zoning Appeals case for special exception.

40 York Road Office/Commercial Center, Baltimore County, Maryland - Testimony before the Baltimore County Deputy Zoning Commissioner regarding zoning variances and a special exception to permit the development of the project.

"Baylin et al vs. Maryland SHA" - Preparation of case exhibits and testimony before the Circuit Court for condemnation proceedings. Consultant to Baylin et al.

"Lonas vs. Gibson Island Homeowners Association" - Expert witness testimony regarding view obstruction and value of existing vegetation - Anne Arundel County Equity Court.

"Annapolis City Marina" Annapolis, Maryland - Expert witness testimony for the granting of various zoning variances (setbacks) and a special exception (to permit offices and a restaurant in a Maritime District) in the City of Annapolis, Maryland for a mixed use development.

Leonard's Freehold Housing, Leonardtown, Maryland - Site planning and rezoning application followed by testimony at Public & Commission Board hearings.

"Hutzler vs. Baltimore County" Baltimore County, Maryland - Preparation of case exhibits and testimony before the Circuit Court for condemnation proceedings. Consultant to Baltimore County.

- **Painter's Mill Venture Rezoning Baltimore County, MD:** Preparation of case exhibits and testimony before the Board of Appeals to request rezoning of a 30 acre parcel of Land rear the Owings Mills Town Center to a higher residential density.

FEASIBILITY STUDIES

Opus South Corporation, Site Feasibility Analysis, Multiple Sites in Maryland

Trammel Crow Company, Site Feasibility Analysis, Multiple Sites in Maryland

- * **Fullerton Federal Savings Association, Expansion Study and Design for new Bank Site, Baltimore, Maryland** - Principal-In-Charge of study, concept, development, and construction plans for a demolition of existing bank and design of new 6,000 SF bank in Perry Hall.
- * **Baltimore County Savings Bank, Timonium Branch Site Feasibility Analysis Baltimore County, Maryland** - Principal-In-Charge for demolition to existing BCSC bank connected to retail stores and building of new freestanding banking facility.
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- * **Baltimore County Savings Bank, Site Feasibility Analysis for a New Standalone Bank in Towson, Baltimore County, Maryland**
- * **Farm Credit Bank of Baltimore Property, Feasibility Study, Baltimore County, Maryland** - Feasibility study of property owned by Farm Credit Bank of Baltimore for marketing purposes.
- * **Walgreen's, Site Search and Selection Work, Multiple Sites in Maryland**
- * **Circuit City Stores, Site Feasibility Analysis, Multiple Sites in Maryland**
- * **Staybridge Hotels (Holiday Inn), Site Feasibility Analysis, Multiple Sites in Maryland**
- * **Extended Stay America Hotels, Site Feasibility Analysis, Multiple Sites in Maryland and Virginia**
- * **Penn-Mar Organization Community Care Center Facility Expansion Study, Maryland Line, Maryland** - Land planning and development processing for a 32,000 SF institutional facility on a 6-acre site located in Baltimore County.

FEDERAL INSTALLATIONS

Ft. Meade Re-use Study, Phase I, Odenton, Maryland - Mr. Madden served as joint project manager of four-consultant team for the USACE Baltimore District. Mr. Madden's responsibilities included environmental constraints

analysis, infrastructure analysis, analysis of local planning and zoning issues, cost estimating, and land use planning. The study involved detailed work on 9,000-acre track of land slated for closure and sale by Congress.

U.S. Army Corps of Engineers, Aberdeen Proving Ground, Update of Existing Condition Maps, Harford County, Maryland - Project manager for the update of over 200 composite overlay maps in accordance with the U.S. Army's TB ENG 353 manual entitled, "The Overlay Composite Method of Master Plan Preparation." Mr. Madden's work received an "excellent" evaluation rating from the Baltimore District of the U.S. Army Corps of Engineers.

Base Housing Study in Bangor, Maine, for U.S. Navy, Philadelphia Navy Yard

National Arboretum - Various Projects - Washington, D.C. - Responsible for the following projects from 1988 through 1991, for the Agricultural Research Service (ARS) in support of the Arboretum's renovation and expansion:

- Environmental Assessment Report for the National Arboretum Master Plan (1989).
- Preliminary design for the Brickyard Garden and Visitor Center.

- Final design and construction monitoring for the New York Avenue entrance improvements and new visitor parking lot.
- Comprehensive study of the water distribution system.
- Environmental assessment component of a study of existing conditions and improvements to access roads, bridges, and parking areas at the Arboretum.

HISTORIC BUILDINGS

Beltsville Agricultural Research Center, Site Improvements to the Log Lodge Visitors Center, Beltsville, Maryland - Site design, environmental assessment, landscape design for functional and aesthetic improvements to the grounds of this historic structure.

Dickey Mill Project, Oella, Maryland - Site design of adaptive reuse of a historic mill.

HOUSING PROJECTS

Apartments / Condominiums

Owings Run Apartments, Owings Mills, Maryland

Worthington Place Condominiums, Owings Mills, Maryland - Site planning, landscape design, wetlands delineation and report, Section 404 permit application and processing, stormwater management design, wetland mitigation design, and construction review services for a multi-site condominium project.

Hotels/ Motels/ Inns

Staybridge Hotels (Holiday Inn), Site Feasibility Analysis, Multiple Sites in Maryland

Hilton Garden Inn, Owings Mills, Maryland - Principal-In-Charge for site planning and civil engineering services for the 220-room luxury hotel in the Owings Mills Town Center.

Extended Stay America Hotel, Owings Mills, Maryland - Site and development plans for a 122-room hotel.

Extended Stay America Hotel, Perry Hall, Maryland - Site and development plans for a 122-room hotel.

Extended Stay America Hotel, Cockeysville, Maryland - Site and development plans for a 122-room hotel.

Residential Communities

Chestnut Hills, Loudoun County, Virginia -

St. Margaret's Landing, Anne Arundel County, Maryland -

Eckers Hollow, Columbia, Maryland - Provided site planning and project management of a 102-lot single-family subdivision.

Windsor Commons Residential Community, Catonsville, Maryland

Starwood Townhomes, Owings Mills, Maryland

Winding Ridge, Frederick County, Maryland - 79-lot single-family home development.

North Crossing, City of Frederick, Maryland - Layout grading and site plans for a residential community in the City of Frederick comprised of 137 single-family homes and 360 townhouse units.

Wellington Trace, Frederick County, Maryland - 800-unit Planned Unit Development's rezoning and construction document preparation.

Glyndon Meadows, Baltimore County, Maryland - Principal-In-Charge of planning and site engineering for 58 single family homes on 67 acres. The mixture of lot types includes a section of compact, rear service lots as long as Butler Road that are designed in compatibility with the architectural and streetscape themes of Victorian Glyndon. Existing forest and hedgerow are preserved to provide natural separation between homes.

Area 3C/3D Land Use Plan and Construction Plans for the Owings Mills New Town Planned Unit Development, Owings Mills, Maryland - Principal-In-Charge of planning and site engineering for this area of 3 housing types, including mid-rise condominiums, townhomes, and patio homes.

Area 5 CRG and Construction Plan for the Owings Mills New Town, Owings Mills, Maryland - Provided site planning services for this area of a planned unit development that included more than 800 townhomes.

Sandy Oaks Planned Urban Development, Anne Arundel County, Maryland - Site design, landscape design, and environmental planning for a 110-acre, 102-unit single family development located in northern Anne Arundel County, Maryland. The site was bisected by a stream/wetland association. Services included wetland delineation, 404/401 permits, wetland disturbance mitigation design, stormwater quality enhancement design, wetland management program, and construction review/monitoring.

Cedarday Estates, Harford County, Maryland - USACE Section 404 permits for stream crossings and stormwater management facilities on a 450-lot, 450-acre development. Services included wetland delineation, alternative and minimization studies, permit processing, and mitigation design.

Red Fox Farm Subdivision, Baltimore County, Maryland - Wetland delineation and report, permit application, water quality enhancement design, slope reforestation, stream restoration, wetland creation, and permit processing.

Retirement Communities / Life Care Communities

Atrium Village, Baltimore County, Maryland - Project manager responsible for planning, landscape architecture, and site engineering for a new senior living community in Owings Mills. The 276-unit high-rise facility is located on a 7-acre lot and incorporates independent living, assisted care and dementia patient services. A variety of recreational opportunities, gardens, walkways, and support services are provided on campus.

Strawberry Estates, Montgomery County, Maryland - Master planning and site design for a 450-unit private life care facility.

Leonard's Freehold, Leonardtown, Maryland - Mr. Madden's responsibilities included project management, local zoning liaison, site design, and construction review services for this new 68-bed care facility.

MASTER PLANNING

Master Plan Update for the U.S. National Arboretum, Washington, D.C. - Project manager for development of a comprehensive master plan update for this 446-acre site for the U.S. Dept. of Agriculture/Agricultural Research Service. The master plan update addressed environmental impacts, historical significance, and development planning for the Arboretum's expansion of facilities in support of the USDA's objective to develop an international botanical research, education, and exhibition facility. Work included a complete Section 106 Preservation Review.

Master Plan Update, Town of Bel Air, Maryland - Project Manager for the update of Bel Air's Master Plan and Unified Development Ordinance. Signage, streetscape standards and historic preservation components were included in both documents.

- * **Loyola College Master Plan, Baltimore, Maryland** - Master planning for additional buildings, new roads, upgraded utilities and other site functions for a city of Baltimore institution. Four new residence halls were included on the master plan.
- * **Hood College Master Plan, Frederick, Maryland** - Master planning for additional buildings and upgrades to the campus of a small private college in Maryland.
- * **UMBC Research Park Master Plan, Baltimore County, Maryland** - Master planning services for the development of an 80-acre campus-type research facility. Sensitive community issues, environmental conditions, and archeological resources were successfully dealt with in the context of integrating nine new buildings into an existing campus facility.
- * **Perryville Revitalization Master Planning and Study, Perryville, Maryland** - This revitalization master plan and study included a 20-block area of the town, the MARC station and public shoreline amenities. Scope of work included concept plans, studies, graphics, public participation workshops, and presentations for a revitalization of a small town central business district.

Bryan Park Improvement Plan, City of Richmond, Virginia - Mr. Madden developed a master plan for expansion of buildings and recreation facilities for a city park. Two of the buildings and the stone gate piers were of historical significance. Mr. Madden worked closely with the project architects to develop an historically sensitive plan.

Preparation for Planned Unit Development Documents, South Point, Virginia - A planned community development located on the Chincoteague Bay in Virginia.

Friendship Technology Park, Hagerstown, Maryland - Project manager for the site analysis and master planning effort for a 195-acre site owned by the Potomac Edison Company.

MEDICAL FACILITIES

Greater Baltimore Medical Center, Physicians Pavilion II, Baltimore, Maryland - Site planning and landscape architectural design for a 128,000 SF, 7-story medical / surgical office building on a steeply sloping, wooded, two-acre site.

MUSEUM PROJECTS

Calvert Marine Museum Expansion, Solomons Island, Maryland - Mr. Madden provided site design and landscape architectural services for additions to the existing museum buildings and grounds. Outdoor exhibit areas, parking, pedestrian furnishings and landscaping were also designed by Mr. Madden.

OFFICE PROJECTS

Mr. Madden has developed his office land use expertise while working on the following notable projects:

- PRE-MRA **The Bowman Green Office Park, Reston, Virginia** - Site of a historic mansion. Mr. Madden provided landscape architectural services as part of a team of professionals who converted the grounds surrounding the mansion into an office park.
- PRE-MRA **Loveton Center, Sparks, Maryland** - Provided zoning and site planning services on a variety of office and industrial sites within this 250-acre mixed-use development.
- PRE-MRA **C&P Fairland Office Center, Silver Spring, Maryland** - Performed landscape architectural work on the grounds for a 750,000 SF office building in Montgomery County.
- PRE-MRA **Flint Hill Office Park, Fairfax County, Virginia** - Provided site planning, landscape architectural design and expert witness land use services for the development of this property. Preservation of mature trees, use of specialty paving, and an internalized running/walking path system are notable features of this successful business park.

Automated Data Processing, Owings Mills, Maryland - Principal-In-Charge of site planning, engineering, and surveying.

PARKING STRUCTURES

York Road Parking Structure, Baltimore, County, Maryland - Redevelopment of an existing building for a high-employee use data processing operation required additional parking. Provided site engineering for a new, approximately 200-car, parking structure. Reworked existing areas to widen drive lanes, create drop off lanes, and modified two entrances. Project was processed through the Baltimore County Review Process as a plan refinement. Relocated public utilities including a 12" water main. Provided services for subdivision of a larger tract of land so that the portion supporting the building could be on a separate lot. This was a fast track project, delivered on time and under budget.

AAI Corporation Building 100 Parking Structure, Hunt Valley, Maryland - Part of the effort to reposition the owners' land holdings included the renovation and 500-car parking structure addition to the former headquarters building. After all the design services were completed by MRA including civil, structural, architectural and landscape architectural, the building was sold to another entity. Mr. Madden managed the entire conversion process from rezoning to property settlement.

Inner Harbor East (Parcel C), Marriott Courtyard Hotel and Office Building Complex Garage, Baltimore, Maryland - Provided site planning and parcel development for a new 470,000 SF mixed use building containing hotel, office, retail, and 3 levels of parking.

Parole Centre Parking Deck, Anne Arundel County, Maryland - Provided site planning, civil engineering, and landscape architecture for the 3-level, 531-car parking structure for a mixed-use retail/office center.

* **UMAB, School of Social Work, Redesign Entryway to Underground Parking Garage and Redwood Street Pedestrian Improvements, Baltimore, Maryland** - Project elements included a new entrance, new lighting, protection of existing underground utilities, accessibility design, special paving, signage, plantings, new road surfacing and reconstruction of a BGE utility vault. Work was performed under two contracts. Coordination between city agencies and two clients (UMAB and UMMS) was Mr. Madden's responsibility. This design work was performed in accordance with the UMMS Facilities Master Plans and Streetscape Design Guidelines.

Pre-MRA 40 York Baltimore, Baltimore County, Maryland - Provided site planning and landscape architecture for the new 3-level parking structure connected to a commercial office center.

Pre-MRA Annapolis City Marina, Anne Arundel County, Maryland - Provided site planning and landscape architecture for a 2-level parking structure connecte to a mixed-use retail/office waterfront services building.

PRE-MRA Flint Hill Office Park, Fairfax County, Virginia - Provided site planning, landscape architectural design, and expert witness land use services for the development of this property that included a 3-level, 250-car parking garage connect to four office building by a system of walking paths.

QUARRY / LANDFILL PROJECTS

Redland Genstar Texas Quarry, Baltimore County, Maryland - Land use planning for future reclamation and development of land parcels in the Texas Quarry holdings of Genstar Stone Products Company near Cockeysville, Maryland.

Gwynns Falls Quarry, Baltimore City, Maryland - Land planning and mine reclamation design associated with the re-use of the Gwynns Falls Quarry in Baltimore City, under application of the "Planned Development" provisions of the Zoning Ordinance.

Genstar Churchville Quarry Reclamation Plan, Harford County, Maryland

Redland Genstar Davidsonville Quarry Reclamation Study, Anne Arundel County, Maryland

Redland Genstar White Marsh Quarry Land Redevelopment, White Marsh Plant, Baltimore County, Maryland

*** Carmax Auto Superstore, White Marsh, Maryland** - Principal-In-Charge for comprehensive rezoning, site design, public utility and road design (extension of Campbell Blvd.), and construction phase services for a 22-acre reclaimed surface mine wash pond site.

RECREATIONAL FACILITIES

Pine Ridge Golf Course, Baltimore County, Maryland - Wetland delineation and water quality assessment for a planned 18-hole expansion of Pine Ridge Golf Course next to Loch Raven Reservoir.

White Plains Golf Course, Charles County, Maryland - Redesign of 3 holes of an existing 18-hole course to permit construction of a new clubhouse and a new maintenance shop, practice green, and driving range.

Forest Park Golf Course, Baltimore, Maryland - Redesign of the 18th hole from a par 3 to par 4 hole with extensive bunkers and preservation of existing trees.

Towson Golf and Country Club, Towson, Maryland - Improvements and support facilities design.

EIG Property Site Feasibility Study, Montgomery County, Maryland - Analysis of the former Washingtonian Country Club property to develop various alternatives for golf course layouts after the bifurcation of the property for extension of the Great Seneca Highway.

Cove Point Park, Lusby, Maryland - Recreation planning and design.

Outdoor Recreation Master Plan, Queen Anne's County, Maryland - Recreation programming and planning.

Ruth B. Swann Memorial Park, Charles County, Maryland - Site inventory analysis, recreation planning design and nature interpretive programming.

Recreation and Open Space Master Plan Study, Cecil County, Maryland - Recreation planning.

Turner's Station Park, Baltimore, Maryland

Recreation Boating Facilities, Patuxent Naval Air Station Recreation Center, Patuxent, Maryland - Boat ramps, bulkheads, piers, etc.

Elk Neck State Park, Elk Neck, Maryland

Matapeake State Park, Kent Island, Maryland - Bulkheads, dredging, rehabilitation of existing boat docks and boat ramp.

Columbia Greenway Environmental Protection Plan for Howard Research and Development Corporation, Howard County, Maryland

Development of the Baltimore County Open Space Manual

RELIGIOUS FACILITIES

Church of God of Prophecy, Site Expansion Study, Montgomery County, Maryland

St. Joseph's Parish, Multipurpose Center Design, Cockeysville, Maryland - Site work for the school addition which included gymnasium, cafeteria/multipurpose area, classrooms, and office space.

Church of the Good Shepherd, Anne Arundel County, Maryland - Addition to existing church to accommodate expansion within the Chesapeake Bay Critical Areas on a 10-acre site. Scope included calculation for critical area and parking requirements, extensive landscaping and ADA-compliant access design.

Morning Star Baptist Church, Baltimore, Maryland

Prospect Hall School, Frederick, Maryland - Site work for a 31.69-acre parcel for a highest and best use analysis.

RESEARCH & DEVELOPMENT FACILITIES

Beltsville Agricultural Research Center, Boar Housing Building, Beltsville, Maryland - Environmental assessment and site design for the expansion of Building No. 203, to provide facilities for research regarding the boar population.

- * Friendship Technology Park, Hagerstown, Maryland - Project Manager for the site analysis and master planning effort for a 195-acre site owned by the Potomac Edison Company.**
- * University of Maryland Research Facility, Solomons Island, Maryland - Provided shoreline protection design and site planning for a new research facility.**

ROADWAY / STREETSCAPE PROJECTS / TRANSPORTATION

Mr. Madden's professional experience includes environmental design and landscape architectural services on highway-related projects. Relevant project experience includes:

Glen Burnie Streetscape, Anne Arundel County, Maryland - Design of paving, street furnishings, and planting along a state highway (Crain Highway) within the Glen Burnie Urban Renewal District.

Silver Spring Streetscape, Silver Spring, Maryland - Design of paving, plantings, and street furnishings in an urban setting. Utility relocations, maintenance of traffic and new lighting were also included.

- * **UMAB, School of Social Work, Redwood Street Pedestrian Improvements, Baltimore, Maryland** - Project elements included a new entrance, new lighting, protection of existing underground utilities, accessibility design, special paving, signage, plantings, new road surfacing and reconstruction of a BGE utility vault. Work was performed under two contracts. Coordination between city agencies and two clients (UMAB and UMMS) was Mr. Madden's responsibility. This design work was performed in accordance with the UMMS Facilities Master Plans and Streetscape Design Guidelines.

Interstate 97, Maryland - Visual analysis, earth berm & planting design for viewshed protection of historic properties adjacent to Millersville Road relocation.

Highway Roadside Landscaping, Annapolis, Maryland - Slope stabilization, sound alteration barriers, landscape design, reforestation, and wetlands mitigation for the relocation of Winchester Road at U.S. Route 50. Work was performed for the Maryland State Highway Administration under an "on-call" services contract.

Interstate 595/Interstate 97 Interchange Project, Maryland - Sound barrier placement and planting design.

Park & Ride Facilities, Parole and Oxon Hill, Maryland - Site and landscape design.

Maryland State Highway Administration, On-Call Wetlands and Stream Restoration Contract, Statewide - Statewide

Perryville Revitalization Master Planning and Study, Perryville, Maryland - This revitalization master plan and study included a 20-block area of the town, the MARC station and public shoreline amenities. Scope of work included concept plans, studies, graphics, public participation workshops, and presentations for a revitalization of a small town central business district.

MARC Commuter Stations, Frederick, Maryland - Preliminary studies and site designs for MARC commuter stations at the Shady Grove Center and the Genstar site.

SHORELINE STABILIZATION

Shoreline stabilization and revegetation for St. Clement's Island in St. Mary's County, Maryland - Design included improvements to small craft docking facilities for visitors to this historic island. Funding was provided by the Waterway Improvements Section of MD-DNR.

Calvert County Harborline Study, Calvert, Maryland - Study conditions of existing piers and bulkheads along the Solomons' harborline.

WAREHOUSES

Bare Hills Self Storage Site, Baltimore County, Maryland - Provided a feasibility study including site layouts and zoning analysis for a possible self storage facility on this site which adjoins I-83.

WIRELESS COMMUNICATION

- * **AA&T Telecommunication Tower in Parkton, Baltimore County, Maryland** - Performed environmental impact assessment, and expert testimony at zoning hearing.
- * **BGE Tower Site, Baltimore County, Maryland** - Performed environmental impact assessment, and expert testimony at zoning hearing.
- * **Cellular One, Elibank Drive Site, Howard County, Maryland** - Board of Zoning Appeals case for special exception.
- * **Verizon Wireless, Zoning Hearings, Maryland** - Various zoning hearings for Verizon Wireless Cellular Tower sites, including:

- X **Oakington Tower Site, Aberdeen/Havre de Grace, Maryland**
- X **Perryman Tower Site, Harford County, Maryland**
- X **Banneker Tower Site, Howard County, Maryland**
- X **Delight Tower Site, Baltimore County, Maryland**
- X **Middle River Tower Site, County, Maryland**
- X **Rosewood Tower Site, Baltimore City, Maryland**
- X **Jacksonville Switch, Jacksonville, Maryland**

Verizon Wireless, Jacksonville Switch, Jacksonville, Maryland - Processed site plan as a limited exemption through the Baltimore County Development Process for a new freestanding 5000 SF switching station.

Verizon Wireless, Various Sites, Maryland, Virginia, Washington, D.C. - Provided Zoning Analysis, Environmental, and Landscape Architectural services for new and existing tower and/or roof top sites.

Verizon Wireless, Windsor MTSO - Processed a CRG Refinement, site plan design and construction documents for Phase One of a 60,000 sf switch facility with a cellular tower.

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Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

October 31, 2000

Dear

I wrote to you earlier this year in response to a letter you wrote to the County Executive in reference to the development of the Camp Glyndon property by Beth Tfiloh. I am writing now to keep you and your community association informed about the latest proposals for this property.

In my letter to you, dated February 10, 2000, I attempted to provide you with the position of this department as to the potential development of the Camp Glyndon property. At that time, the issues were centered around expansion of existing buildings, which were permitted by order of the Zoning Commissioner in a 1993 case, and the development of the site into a full religious complex, including a synagogue. Beth Tfiloh had requested exemption from the full development process but then withdrew its request. In my letter to you, I stated that it was my intention to require the full development process should the withdrawn proposal be resubmitted.

Since that time, through the good offices of Councilman McIntire, attempts were made to resolve the differences between Beth Tfiloh and the community. It is my understanding that, for whatever reasons, these attempts were not successful. Certainly, both Beth Tfiloh and the surrounding communities are well aware of the positions of each.

As I am sure you are aware, Beth Tfiloh still intends on developing this property. The current zoning permits both a church and school as matters of right. Each use is permitted as a principal use. Beth Tfiloh has presented to the county two plans, one for the construction of a school building and a gymnasium and the other for the construction of a synagogue. These were submitted to the Development Review Committee. Both will be tabled. In addition, permits have been approved for the grading of the ballfields, which were approved by the zoning commissioner in 1993. A second grading permit has been filed for the paving of an existing dirt road, which provides access to certain camp structures. It is not a "ring" road nor is it a "through" road, but an access road that terminates at and provides access to these structures. I believe DEPRM is presently reviewing these permits.

Mr. Michael Burns

Page 2

October 31, 2000

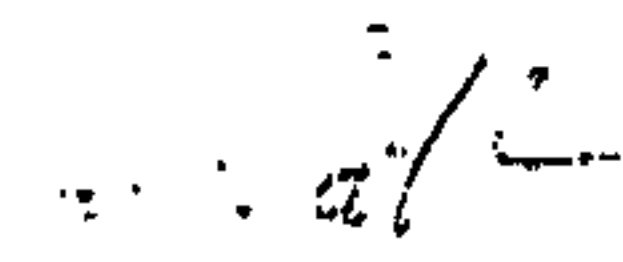
It is my intention to continue to demand the full development process should Beth Tfiloh wish to proceed with the construction and placement of a synagogue on the Camp Glyndon property. Should Beth Tfiloh wish to proceed with the construction of the school building and gym, I will continue to require public input. I would require Beth Tfiloh to file a petition for special hearing that would be heard by the zoning commissioner. The purpose of this petition would be to request approval to amend the site plan the zoning commissioner adopted and approved in 1993. Should the zoning commissioner deny the amendment, then Beth Tfiloh could not proceed as it proposes. The DRC has historically agreed to an exemption from the full development process where there is no subdivision of the property proposed and when a zoning hearing is otherwise required.

The petition for special hearing would be a public hearing, a quasi-judicial hearing, before the zoning commissioner, where testimony would be offered, evidence presented, examination and cross-examination of witnesses permitted. The zoning commissioner would then render a decision, which would be subject to full appeal to the County Board of Appeals, and then to the Courts. When filed, the property would be posted and advertised so that the community is aware of the time, date and location of the hearing. In fact, should either side disagree with the decision of the zoning commissioner, unlike an appeal from hearing officer, the appeal is heard de novo by the Board of Appeals. Evidence and testimony is heard all over again, and the Board is not limited to the record made below.

Should Beth Tfiloh wish to locate a synagogue on this property, it is my intention to require a development plan hearing. However, I would be remiss if I did not point out that Congress recently adopted federal legislation, which could impact all of this as it relates to a religious institution.

It is my intention to continue to require full public review. Should you have any questions, please feel free to call me.

Sincerely,


Arnold Jablon
Director

c: The Honorable Bryan McIntire
The Honorable C. A. Dutch Ruppersberger

*Petition to build a synagogue has been withdrawn.
Bm*

8/19

IN RE: PETITIONS FOR SPECIAL HEARING & ZONING VARIANCE NE/S Central Avenue, 1200' (+/-) NW of c/l Bond Road 18609 Insulin Lane, Camp Glyndon 4th Election District 3rd Councilmanic District Maryland Diabetes Association, Inc. Petitioner	* * * * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 94-27-SPHA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as both a Petition for Zoning Variance and Petition for Special Hearing for that property located at 18609 Insulin Lane in Glyndon. The Petition is filed by the Maryland Diabetes Association, Inc., property owner. Within the Petition for Special Hearing, relief is sought to upgrade the special exception plat approved in case No. 65-389-X. Within the Petition for Zoning Variance, relief is requested from Sections 1B01.2.B. and 504.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow existing and proposed setbacks between existing and proposed buildings; and from Section 413.1.E. to permit a 40 sq. ft. (20 sq. ft.) per side non-illuminated sign in lieu of the permitted 15 sq. ft. The relief requested is more particularly shown on Petitioner's Exhibit No. 1, the plat to accompany the Petitions.

Appearing at the public hearing in support of the Petition was Bill G. Baxter, Executive Vice-President of the Maryland Diabetes Association, Inc. Also appearing was Thomas J. Hoff, the Landscape Architect who prepared the site plan. The Petitioner was represented by Julius W. Lichter, Esquire and Kathryn May, Esquire. Numerous residents of the surrounding Glyndon community appeared in opposition. They included Vernene Lenz, President of the Glyndon Community Association, Inc., Sandy Laken, Janet

Clinton, Marjorie Felser, Susanne R. Felsor, Chris Smith, Howard Solheim and J. Michael O'Neill.

Mr. Hoff testified and presented the plan. As noted above, he is a Registered Landscape Architect in the State of Maryland. He noted that the subject site is approximately 45 acres in size. It is split zoned with approximately 1/2 of the area zoned R.C.5. Most of the balance of the site is zoned D.R.2 with a small portion zoned D.R.3.5. The property was approved for a camp use pursuant to the granting of a Petition for Special Exception in 1965. The property has been owned by the Maryland Diabetes Association, Inc. since 1965 and has been used as a camp for approximately 30 years. Numerous photographs were submitted showing the existing improvements on the site. Presently there is a pavilion, numerous bunk houses, a medical building, a shower/laundry structure, an infirmary, a dining hall, a pool house, a multi-purpose center and other related structures. All of these buildings are shown on the site plan.

Mr. Hoff also explained that the site plan shows potential areas of expansion to a number of these structures. In order to avoid the possibility of filing numerous zoning Petitions in the future, the Petitioner has submitted a plan showing an area of expansion of nearly all of the existing structures. The plan shows increased building envelopes to accommodate the proposed expansion. It is of particular note that the buildings will not be expanded so as to occupy the entire envelope shown. Rather, areas of potential expansion are delineated on the plan. Moreover, up to six additional bunk houses might be built.

Mr. Hoff noted that none of the buildings can be seen from Central Avenue, which provides the sole vehicular access to the site. That is, the improvements both existing and contemplated are all located in the interior of the site and will not be visible to the surrounding community.

As to the relief requested, Mr. Hoff noted that the special hearing is necessary to upgrade the special exception plat which was previously approved. As described above, the new plat shows areas of proposed expansion. It is to be further noted that this expansion will occur on an ongoing basis and that no definitive timetable has been established. For example, the bunk houses may not be added for some time. Mr. Hoff also explained that the setback variances requested relate to internal structures. That is, the site will continue to observe all proper setback distances from the property line. The structures within the camp are grouped in a small area of the property so as to preserve the woods and open space which occupy the balance of the tract. These setbacks are necessary so that these buildings can be grouped in this manner.

Also testifying was Bill G. Baxter, Executive Vice-President of the Maryland Diabetes Association, Inc. Mr. Baxter has overall responsibilities for this organization. As one would expect from the name, this association is a non-profit organization geared toward assisting in the prevention and cure of diabetes and to improve the life of diabetics. He noted that Camp Glyndon was purchased by his organization in 1958 and has been used as a summer camp since the mid 1960s. The property serves as a place where educational meetings and seminars are conducted. Moreover, he noted that the primary use of the camp was to provide a recreational area for diabetic children. He admitted that the camp was rented on occasion to other users. He identified these users as primarily similar types of organizations such as the American Cancer Society, certain churches, etc. Further, he observes that generally his camp has had an excellent relationship with the community. In his view, the camp can accommodate 170 people maximum overnight. However, typically, only approximately 110 are overnight campers at any one time. He further corroborated Mr. Hoff's testimony that

there are no contemplated expansions to the existing structures at the present time, but for the multi-purpose building. This building will be increased in size so as to provide additional office and meeting room space. He also noted that 14 full time equivalent employees work at the site. Mr. Baxter echoed the testimony of Mr. Hoff as it related to the requested special hearing and the internal variances.

As to the sign variance, numerous photographs were submitted of an existing sign which has been constructed at the entrance to the property on Central Avenue. This sign was constructed recently to replace an older sign which had deteriorated. The sign face is 4 ft. x 5 ft. in area with a height 8 ft. The sign identifies the Camp Glyndon site as owned by the Maryland Diabetes Association. Mr. Baxter indicated this sign was necessary to direct guests and others to the site.

As noted above, numerous Protestants appeared in opposition to the plan. Preliminarily, it appeared that they had a number of questions as to the specific relief sought by the Petitioner. Once the nature of the camp's plans were disclosed through the testimony of Mr. Hoff and Mr. Baxter, several of their concerns were resolved. That is, the Protestants largely do not seem to object to the proposed expansion of the buildings internal to the site. Their major concerns relate to the signage and the overall use of the property.

In this respect, my decision was held in abeyance after the conclusion of the hearing while the parties attempted to resolve their differences. I have received correspondence from the Petitioner's attorney, as well as the Glyndon Community Association, Inc., and several individuals within the Glyndon community. I considered this correspondence and have included same as a part of the record of this case.

As to the Petition for Special Hearing, I am persuaded that same should be granted. Thus, I will approve the site plan submitted with this case. I am persuaded that expansion of the buildings and facility is appropriate and will not be detrimental to the health, safety and general welfare of the locale. The granting of the special hearing will allow the Petitioner to expand the structures within the site in an orderly and rational basis. Thus, the Petition for Special Hearing shall be granted.

I shall also grant that portion of the Petition for Variance relating to the internal setbacks. It is, again, worth noting that the setback relief applies exclusively to internal structures. The Petitioner's testimony and site plan submitted corroborate the fact that all lot line setbacks are observed. Thus, the granting of the special exception will not adversely affect the surrounding properties. Clearly, grouping of the structures within the site is warranted so as to preserve as much open space and woods as possible.

As to the other variance relief sought, relating to the sign, that, likewise, shall be granted. I have reviewed the photographs of the sign and considered the testimony offered. As restricted hereafter, I believe that signage of the size proposed is appropriate for this site of some 45 acres. I am persuaded that the Petitioner has satisfied the burden of practical difficulty required by Section 307 of the B.C.Z.R. Thus, the sign variance shall be granted.

Notwithstanding my approval of the relief requested, I am authorized within the County Code and Section 500.7 of the B.C.Z.R. to impose reasonable restrictions as part of my approval. In this respect, I have considered the testimony and evidence offered, as well as the numerous correspondence submitted. Apparently, the parties have agreed to four restrictions as it relates to the building envelopes. These restrictions are set forth

in Julius W. Lichter's letter to me dated September 20, 1993, as well as the letter from the Glyndon Community Association dated September 17, 1993. The restrictions will be incorporated as they relate to building envelopes, as follows:

1. The new proposed community building (also known as Administration Building) will not be enlarged by more than 20% and expansion shall be within the area of the building envelope as shown on the submitted plan.

2. The dining hall building (Building F on the plan) will not increase by more than twice its size (100%) and all expansion shall be within the building envelope as shown on the submitted plan.

3. The existing medical building (Bldg. C) will, likewise, not increase by more than twice its size (100%) and all expansions shall be within the building envelope shown on the submitted plan.

4. The existing multi-purpose center (Bldg. I) will likewise not increase by more than twice its size (100%) and all expansion shall be within the building envelope shown on the submitted plan.

The Petitioner has also agreed to relocate the existing sign which presently situated at the entrance of the property on Central Avenue. Particularly, the Petitioner has advised that relocation of the sign 185 ft. north of its existing location is acceptable. Correspondence from the Glyndon Community Association acknowledges this location as a "better placement" but prefers the sign to be located even farther down the driveway towards the interior of the camp. Based on the site plan and photographs submitted, I am persuaded that the relocation of the sign 185 ft. from its present location is appropriate. Thus, I shall condition my approval to the relocation of that sign. Moreover, I will allow the Petitioner to place a new 15 sq. ft. sign, compatible with other signs in the community, at the approximate location of the existing sign so as to provide direction

and notice of the location to visitors. I will require the Petitioner to submit drawings of this sign to the Glyndon Community Association, Inc. for review and approval prior to the construction of same. If the parties cannot agree to the appearance of this 15 ft. sign, I will review the drawings and issue a supplemental decision. However, it is my sincere hope that the parties are able to reach agreement as to the appearance of the 15 ft. sign.

As to other restrictions suggested by the Protestants, they shall be addressed in turn.

The Protestants suggested a restriction be added that no alcohol would be served to minors nor would be same be served to adults when they are in the presence of children. To adopt this restriction would be impractical. It is already against Maryland law to serve alcohol to minors. This is a criminal matter, not a zoning issue. Moreover, to restrict service to adults when they are in the presence of minors would be unenforceable and inappropriate. Hypothetically, a parent who brought a single child to a meeting on the property due to a baby sitting emergency would prevent all of the adults present from consuming alcohol. The restriction is infeasible and illogical. I decline to impose same. I trust that the Petitioner will act appropriately.

The Protestants also asked for a bar from rental of the property to persons who have criminal records. Such a restriction may well be discriminatory and illegal. Surely, there are those who have made mistakes early in life who become responsible members of the community thereafter. I will not require the Petitioner to research the background of its renters.

I concur with the spirit and intent of the third restriction proposed that renters not post signs within the community advertising functions on the property. I shall require the Petitioner to include such a provision

in its leases to perspective renters. Moreover, it is to be noted that signage of this type may well be illegal under the existing sign regulations. However, the Maryland Diabetes Association, Inc. should take steps within their leases to ensure that directional signage does not litter the surrounding community.

The fourth restriction proposed suggests a limit on the number of individuals utilizing the facility. Unfortunately, the Protestants did not suggest a specific number. As noted above, Mr. Baxter testified that the camp cannot accommodate more than 170 overnight visitors at a time and that the usual numbers do not exceed 110. Those numbers certainly appear appropriate when compared with the size of this facility. In this respect, I feel compelled to trust the sound judgment of the Petitioner to not burden the surrounding community. Due to the lack of testimony and evidence offered on this subject, imposition of a specific limit would be pure speculation on my part and be without proper basis. I decline to incorporate such a restriction.

The final restriction requested is for a prohibition of loud music and noise on the site after 9:00 P.M. I concur with this request and will require the Petitioner to incorporate in its leases a provision prohibiting outside amplified music after 9:00 P.M. Sunday thru Thursday and 10:00 P.M. on Friday and Saturday.

Other restrictions were requested by several of the immediate neighbors of the property. The most significant of these proposed restrictions is a requested bar from the camp becoming "a commercially run summer or year around facility". There was no testimony suggesting that such is or will be the case. Moreover, I consider it inappropriate within the a zoning proceeding to affix damages to adjacent property owners in the event of such a development. That is, the surrounding property owners suggest a

pre-established buyout of their properties in the event there is a change of use of this property. The property, in accordance with the site plan, is designated as a camp, permissible by special exception. Although the term "camp" is not defined within the B.C.Z.R., it is defined in Webster's Third New International Dictionary as "a place of temporary shelter, lodging or residence often at a distance from urban areas or the tents, cabins, or other buildings used for such shelter, lodging, or residence; a place of rest, lodging or assembly". In order for the special exception approval which was granted in this case to remain valid, the use of the property should remain consistent with this definition. I can provide the neighbors of no further assurance than as stated above. It would be inappropriate to impose the restriction requested in the context of the relief requested. Obviously, the Protestants may have civil remedies in the event the use of the property deteriorates into a nuisance. However, there is no evidence to remotely suggest that such might occur. Moreover, the other restrictions requested by the neighboring Protestants are largely incorporated either on the site plan or within those restrictions suggested by the Glyndon Community Association. The site plan shows a 50 ft. buffer between the proposed improvements and limits noise from the site. As to Insulin Lane, which is apparently a shared facility, its use and maintenance are no doubt governed within the title documents regarding same contained within the Land Records of Baltimore County. Again, this is not a zoning matter but a question of title and use thereunder. Therefore, for the reasons set forth above, the Petitions for Special Hearing and Variances shall be granted, as restricted.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 28th day of September, 1993 that, pursuant to the Petition for Special Hearing, approval to upgrade the special exception plat previously approved in case No. 65-389-X, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a variance from Sections 1B01.2.B. and 504.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow existing and proposed setbacks between existing and proposed buildings, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a variance from Section 413.1.E. to permit a 40 sq. ft. (20 sq. ft.) per side non-illuminated sign, in lieu of the permitted 15 sq. ft., be and is hereby GRANTED, subject, however, to the following restriction which is a condition precedent to the relief granted herein.

1. The Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

2. The new proposed community building (also known as Administration Building) will not be enlarged by more than 20% and expansion shall be within the area of the building envelope as shown on the submitted plan.

3. The dining hall building (Building F on the plan) will not increase by more than twice its size (100%) and all expansion shall be within the building envelope as shown on the submitted plan.

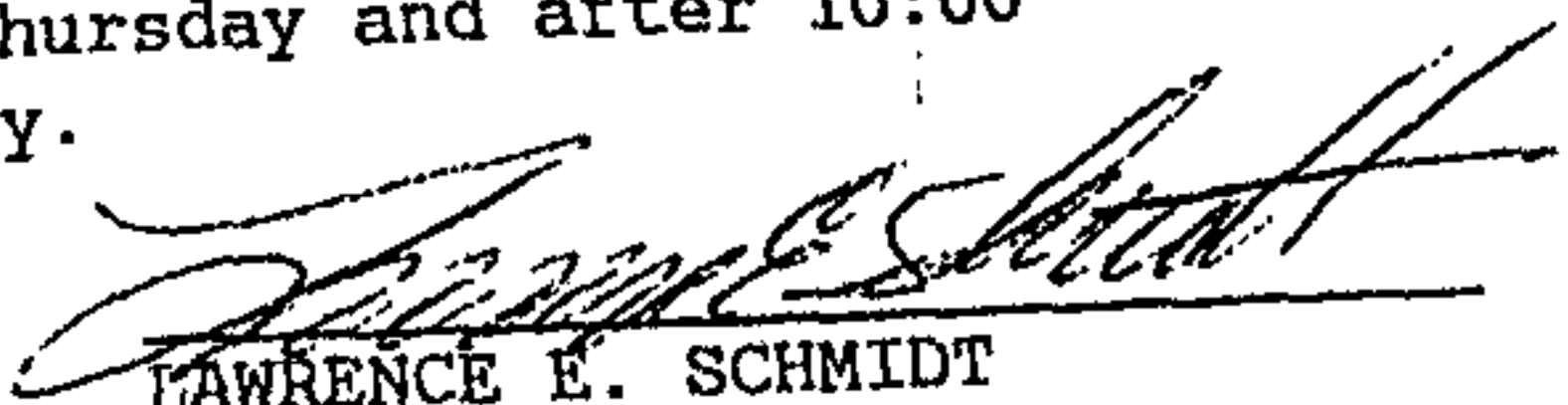
4. The existing medical building (Bldg. C) will, likewise, not increase by more than twice its size (100%) and all expansions shall be within the building envelope shown on the submitted plan.

5. The existing multi-purpose center (Bldg. I) will likewise not increase by more than twice

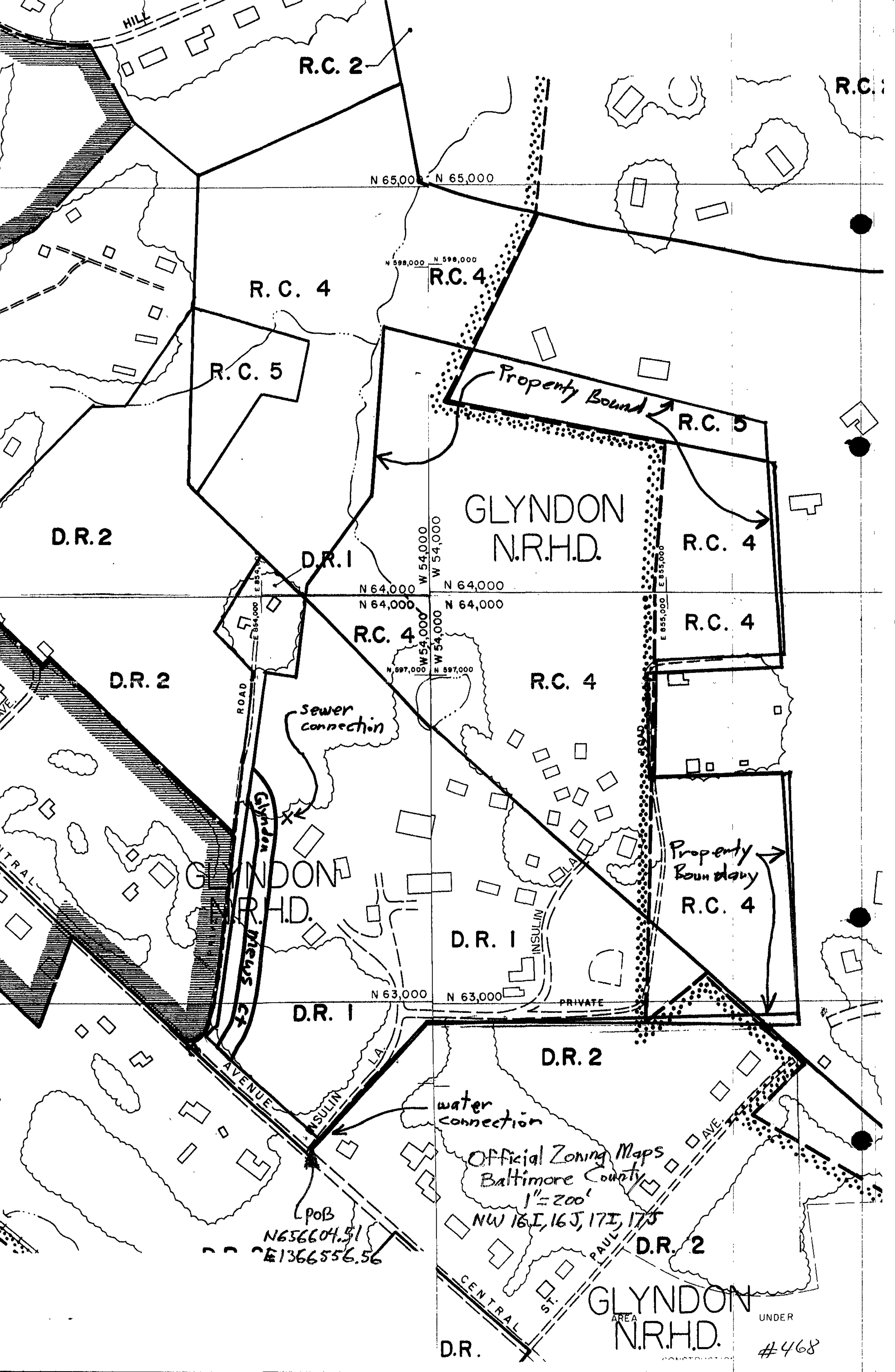
its size (100%) and all expansion shall be within the building envelope shown on the submitted plan.

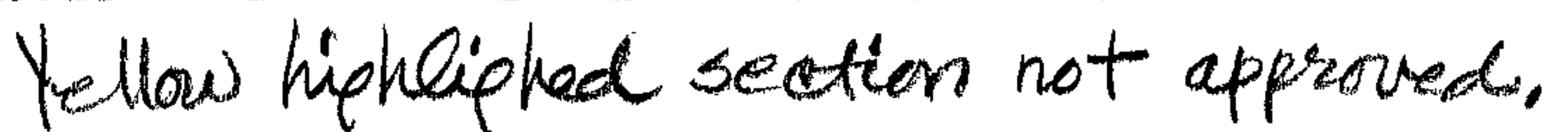
6. The Petitioner shall relocate the existing sign on Insulin Lane adjacent to Central Avenue to a point no less than 185 ft north of its existing location. Moreover, the Petitioner shall be permitted to construct a sign no larger than 15 ft. at the location with the existing sign. Said 15 ft. area sign shall be compatible with other signs in the locale and same shall be approved by the Glyndon Community Association or this Zoning Commissioner prior to construction.

7. The Petitioner shall cause to be included, in any lease of the property and/or facilities thereon, language prohibiting (1) signage for functions on the property within the surrounding community, and (2) outside amplified music after 9:00 P.M. Monday through Thursday and after 10:00 P.M. on Friday and Saturday.


LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

LES:mmn





2001 Md. LEXIS 458, *

DENNIS ALVIANI et al. v. PHYLLIS DIXON et al.

No. 132, September Term, 2000

COURT OF APPEALS OF MARYLAND

2001 Md. LEXIS 458

July 13, 2001, Filed

PRIOR HISTORY: [*1] Certiorari to the Court of Special Appeals (Circuit Court for Anne Arundel County). Case # C-97-43190AA. Michael E. Loney, JUDGE.

DISPOSITION: JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED; COSTS TO BE PAID BY PETITIONERS.

CASE SUMMARY

PROCEDURAL POSTURE: The Board of Appeals of Anne Arundel County (Maryland) granted an application for a special exception, and variance requests incident, made by respondents. Petitioner individuals filed for judicial review with the Circuit Court for Anne Arundel County, which affirmed the board's decision. They then filed an appeal to the Court of Special Appeals, which affirmed. Individuals' request for a writ of certiorari with the instant court was granted.

OVERVIEW: The court sought to determine: (1) Whether the Anne Arundel County Board of Appeals erred as a matter of law in granting the special exception when the only way to approve the special exception was by approving three variances to the statutory standards for automobile filling station special exception use; and (2) whether the board erred as a matter of law by failing to make the necessary findings required in order to grant a variance, and whether the record contained evidence sufficient to support such findings. The instant court determined the board properly granted the special exception and the variances. The variances granted only slightly modified the specific area standards for the special exception and did not enable a special exception use to be granted that would be outside of the scope of the special exception provisions of the general zoning scheme for the area. The board made appropriate findings in order to grant the variances and there was substantial evidence on the record to support those findings. The board established the relevant neighborhood in enough detail to enable it to determine the essential character of the neighborhood would not be altered.

OUTCOME: The court answered no to both questions and affirmed the decision of the Court of Special Appeals.

CORE TERMS: variance, special exception, island, pump, feet, neighborhood, dispenser, zoning, parcel, setback, canopy, row, distance, frontage, automotive, judicial review, classification, zoning ordinance, essential character, ramp, service station, proposed use, reclassification, foot, practical difficulties, substantial evidence, sufficient evidence, matter of law, exceptional, elevated

CORE CONCEPTS - ♦ Hide Concepts

Civil Procedure : Appeals : Standards of Review

- ★ A proceeding on a special exception is subject to a full judicial review.

Real Property Law : Zoning & Land Use : Judicial Review

- ★ In judicial review of zoning matters, including special exceptions and variances, the correct test to be applied is whether the issue before the administrative body is "fairly debatable," that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions." For its conclusion to be fairly debatable, the administrative agency overseeing the variance decision must have "substantial evidence" on the record supporting its decision.

Real Property Law : Zoning & Land Use : Judicial Review

- ★ The substantial evidence test is defined as whether a reasoning mind reasonably could have reached the factual conclusion the agency reached, or as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Real Property Law : Zoning & Land Use : Judicial Review

- ★ In applying the substantial evidence test the question for the reviewing court is whether the conclusions reasonably may be based upon the facts proven. The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.

Administrative Law : Judicial Review : Standards of Review : General Rules

- ★ When the court reviews an administrative agency's order, the court makes sure that it is not premised upon an error in the law.

Real Property Law : Zoning & Land Use : Judicial Review

- ★ A decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law.

Real Property Law : Zoning & Land Use : Conditional Use Permits & Variances

- ★ A special exception with variances may be granted by a zoning agency when the applicable code contains provisions excluding certain areas of the code from being subject to variance relief, but does not exclude the section covering the relevant special exception from being modified by variances.

Real Property Law : Zoning & Land Use : Conditional Use Permits & Variances

- ★ See Anne Arundel County, Md., Code art. 3, § 2-107.

Real Property Law : Zoning & Land Use : Conditional Use Permits & Variances

- ★ The Anne Arundel County, Maryland, Code grants the county board of appeals the authority to grant variances from sections within the code, except for the titles and sections enumerated in Anne Arundel County, Md., Code art. 3, § 2-107(d).

Governments : Legislation : Construction & Interpretation

- ★ When there is an express exception to a statute, additional exceptions should not be implied. Accordingly, in an ordinance in which certain matters are excluded from the applicability of variance relief, it can be inferred that the legislative body's intent is that all other areas are susceptible to variance relief.

Real Property Law : Zoning & Land Use : Conditional Use Permits & Variances

Whereas, the applicant for a special exception use has the burden of adducing testimony which will show that this use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the administrative board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden.

✱ In considering a special exception, the extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the administrative board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

✱ If a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.

Where the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone, the application should be denied. Furthermore, if the evidence makes the issue of harm fairly debatable, the matter is one for the administrative board's decision, and should not be second-guessed by an appellate court.

✱ The Schultz test accords with the general standard for judicial review of the ruling of an administrative agency, which has been defined as whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment.

* There is a marked distinction between "variance" and "special exception" in Montgomery County, Maryland. A special exception within the meaning of the zoning ordinance is one which is controlled and expressly permissible in a given zone. It is granted by the county board of appeals, after a public hearing, upon a finding that

a special exception to build an automotive service facility and variance requests incident to the proposed automotive service facility made by Phyllis Dixon and Jonathan Aaron, respondents. Dennis Alviani, Fulvio Alviani, Maryann Alviani, Leonard Bender, and William E. Neiman, petitioners, filed a request for judicial review with the Circuit Court for Anne Arundel County. The Circuit Court affirmed the decision of the Board.

Petitioners then filed an appeal to the Court of Special Appeals. The Court of Special Appeals, in an unreported opinion, affirmed the decision. Petitioners then filed a Petition for Writ of Certiorari with this Court. We granted the Petition. Petitioners have presented two questions in the Petition:

1. Whether the Anne Arundel County Board of Appeals erred as a matter of law in granting the special exception [*2] when the only way to approve the special exception was by approving three (3) variances to the statutory standards for the automobile filling station special exception use?
2. Whether the Board erred as a matter of law by failing to make the necessary findings required in order to grant a variance, and whether the record before the Board contained evidence sufficient to support such findings?[n1]

-Footnotes-

n1 Petitioners changed question two in their brief to this Court to state:

Whether the Board erred as a matter of law by failing to make the necessary findings required in order to grant the special exception and variances in that the board did not define in its opinion the limits of the neighborhood as it relates to certain statutory standards for approval and whether the record before the board contained evidence sufficient to support any such finding? [Emphasis added.]

We will answer question two as it was submitted to us in the Petition for Writ of Certiorari.

- - - - -End Footnotes- - - - -

We answer no to both questions [*3] and affirm the decision of the Court of Special Appeals. We hold that the Board had the authority to grant a special exception with variances when the Anne Arundel County Code precluded variances from being applied to some sections of the code and the special exception section was not one of those excluded sections. We also hold that there is substantial evidence in the record to establish that the Board made the necessary findings to grant the variances.

I. Facts

Respondents own a 1.2 acre parcel of land located on Old Mill Bottom Road at U.S. Route 50 east in Annapolis, Maryland. The property was originally part of a larger tract, but in 1990 the State Highway Administration obtained 7.65 acres of that tract by threat of condemnation for placement of an access ramp to Route 50. After the access ramp was built and various improvements were made to Route 50, the remaining parcel was an isolated, circular plot of land that was surrounded by roads and access ramps. As it currently sits, the parcel is partially developed with an old service station that is in a state of disrepair.

Prior to 1995, the parcel of land was split zoned 40% C1-B (community retail) and 60% RLD (residential [*4] low density). n2 In 1995, respondents, who hoped to develop an automotive service facility n3 on the parcel, filed an application with the Anne Arundel County Department of Planning and Code Enforcement requesting a zoning reclassification. An automotive service facility could not be developed on that part of the parcel encumbered

- - - - -Footnotes- - - - -

- - - - -End Footnotes- - - - -

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-----Footnotes-----

<http://www.lexis.com/research/retrieve? m=h30c4f95c4d146662155200305c>

etc., to cut up the islands so that people wanting to go between the pumps would not have to step up and down. In any event, it appears that the twenty-foot provision was intended to apply to the distance between parallel lines of pump islands to enable two cars to be side by side - one at each island. Its wording, however, is not that specific. Here, it was applied, perhaps incorrectly, to a distance between two dispensers on the same dispenser line because the operator desired to eliminate the elevated area between two dispensers.

-----End Footnotes----- [*7]

Respondents requested one other variance from Article 28, section 10-103(a) of the Anne Arundel County Code, which covers general setback requirements for all uses located on a dual, multi-lane, or divided highway. Section 10-103 states, in relevant part, that:

§ 10-103. General setback requirements.

(a) Notwithstanding any provision to the contrary, each structure that is located on a dual, multi-lane, or divided highway shall be setback at least 60 feet from the existing right-of-way line. An accessory use may not be permitted in this setback.

The proposed overhead elevated canopy over the pump islands would roughly be located at the site of the present dilapidated service station structure. It was proposed that one corner of the overhead canopy be setback thirty-five feet from the Route 50 access ramp. Respondents requested a variance of twenty-five feet from the sixty-foot setback requirement for this corner of the edge of the elevated canopy. Because it was elevated, it would not interfere with ground level lines of sight across the edge of the property.

The Department of Planning and Code Enforcement for Anne Arundel County recommended to the Hearing Officer that [*8] respondent's application for the C1-B zoning option and the special exception and variances, subject to certain conditions, be approved. In its Findings and Recommendations, the Department of Planning and Code Enforcement stated that:

VARIANCE

Relative to the variance application, the Department has no major issues with the granting of the setback, lot frontage and distance between pump islands. The canopy and pump islands are to be located in the general vicinity of the existing building which is to be torn down. Only a small corner of the canopy projects into the setback area and the area at issue is oriented towards the ramps, not the main highway. The lot frontage issue was created by State action with the resulting configuration limited by roadways. There is no option to reconfigure the property. *The distance between pump islands is almost a non-issue. The 20 foot minimum distance between pump islands was established to allow two cars side by side served from parallel pump islands.* The 12 foot break between islands results in the splitting of a single island to enhance drainage and pedestrian flow.

SPECIAL EXCEPTION

The site plan submitted as part of the application, [*9] appears to satisfy the specific design standards for a service station with the approval of the variances. Though the ability to access Ferguson Road is not yet resolved, Special Exception approval should remain flexible to accommodate the general layout whether this access point occurs or not. Relative [to] the more general standards, the issue of "need" should be addressed by the applicant to the satisfaction of the Hearing Officer.

RECOMMENDATION

Based on the reasoning as outlined herein, the Department of Planning and Code

Enforcement would recommend denial of the C-4 zoning option and in the alternative support C-1-B, the variances and the special exception subject to:

- 1) the upgrading of Old Mill Bottom Road to a 70 rating as outlined by Public Works.
- 2) the resolution of the Ferguson Road issue with the State Highway or the modification of the plan to contain only one access point from Old Mill Bottom Road.
- 3) the showing of "need" to the satisfaction of the Administrative Hearing Officer. [Emphasis added.]

On March 7, 1996, a hearing was held by a Hearing Officer to consider respondent's application. The Hearing Officer's Findings and Recommendations of **[*10]** March 28, 1996 approved the C1-B reclassification but denied the C4 reclassification and also denied the special exception and variances. Respondents appealed to the Board of Appeals, seeking reversal of either the Hearing Officer's denial of the C4 reclassification or a reversal of the denial of the special exception and variances. The Board of Appeals made respondents either appeal the denial of the C4 reclassification or the denial of the special exception and variances. Respondents chose to appeal the denial of the C4 reclassification. That appeal was denied by the Board of Appeals.

Respondents filed a Petition for Judicial Review in the Circuit Court for Anne Arundel County. The Circuit Court held that the Board of Appeals should have allowed respondents to present evidence on the special exception and variances under the C1-B classification. The Circuit Court remanded the case to the Board of Appeals for the taking of testimony and a determination on the issue of the special exception and the variances in a C1-B classification. n5

- - - - -Footnotes- - - - -

n5 On remand respondents dropped their request for the parcel to be zoned C4 and concentrated on the special exception and variances under the C1-B classification.

- - - - -End Footnotes- - - - - **[*11]**

On September 11, 1997, after the case was remanded, the Board of Appeals held a public hearing on the special exception and variances. The Board of Appeals then issued a Memorandum of Opinion on December 2, 1997 in which the Board conditionally approved the special exception and variances. The Board stated that:

The Board finds from the testimony presented and its site visit, that, except where a variance has been requested, the Petitioners meet the criteria set forth in Section 12-206 of the Zoning Regulations. The Board finds further that the Petitioners have presented sufficient evidence to warrant the grant of the three requested variances.

The Board then discussed the granting of the variances, stating that "in order to grant the variances requested, the Board must find that the Petitioners comply in all respects with the relevant provisions of Section 2-107 of Article 3 of the Anne Arundel County Code." n6

- - - - -Footnotes- - - - -

n6 Article 3, section 2-107 of the Anne Arundel County Code states, in relevant part:

§ 2-107. Standards for granting variance.

- (a) The County Board of Appeals may vary or modify the provisions of Article 28 of this Code

when it is alleged that practical difficulties or unnecessary hardships prevent carrying out the strict letter of that article, provided the spirit of law shall be observed, public safety secured, and substantial justice done. A variance may be granted only after determining:

(1) that because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape, or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with this article; or

(2) that because of exceptional circumstance other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop such lot.

(c) A variance may not be granted under subsection (a) or (b) of this section unless the Board finds that:

(1) the variance is the minimum variance necessary to afford relief;

(2) the granting of the variance will not:

(1) alter the essential character of the neighborhood or district in which the lot is located;

(ii) substantially impair the appropriate use or development of adjacent property;

(iii) be contrary to acceptable clearing and replanting practices required for development in the critical area; or

(iv) be detrimental to the public welfare.

-----End Footnotes----- [*12]

The first variance examined by the Board was the seven-foot variance from the requirement of having 150 feet of road frontage. The Board stated that there was testimony that the parcel was bound on three sides by State Highway Administration rights-of-way and the remaining side was bound by Old Mill Bottom Road for 143 feet. The Board then stated:

The Board finds that requiring the Petitioners to strictly meet the requirement of at least 150 of road frontage, where the property actually binds on all sides by either unbuildable road rights-of-way or actual road bed, represents an exceptional circumstance and an unnecessary hardship upon the Petitioners. Since the Petitioners cannot change their amount of lot frontage, the request for a 7 foot variance is the minimum necessary to afford relief to the Petitioners.

The Board then examined the eight-foot variance from the twenty-foot pump island separation requirement. Respondents were going to have three rows with two gasoline dispensers in each row. Instead of connecting the two dispensers in each row into one pump island, respondents were going to make each dispenser its own pump island. Respondents, however, only wanted to leave [*13] twelve feet of space between each pump island in a single lineal row of pump islands, not the twenty feet that is required to exist between adjacent parallel rows containing multiple pumps. The Board stated that:

The separation of each pump dispenser into a separate pump island will ease the flow of runoff and pedestrian traffic under the canopy. The Board finds that requiring the Petitioners to include each row of pump dispensers in one pump island would result in a practical

difficulty to and an unnecessary hardship upon the Petitioners and the community. Pedestrian traffic should be as unencumbered as possible. Large raised islands would hinder the ability of pedestrians, handicapped individuals, families with strollers and the like to move freely under the canopy and to access the convenience store component of this project. The Petitioners are providing 30 feet of width between adjacent rows of pump islands to create more than ample space for vehicles to access the pumps. The Board finds that the grant of a variance to this requirement will increase the public welfare which represents an exceptional circumstance worthy of the grant of a variance. The request for a variance of [*14] 8 feet to the 20 foot required setback is the minimum necessary to afford relief to the Petitioners while providing the maximum public accommodation. [Footnote omitted.]

The last variance requested by respondents and approved by the Board was a twenty-five-foot variance from the sixty-foot setback requirement for any structures on a dual, multi-lane, or divided highway. The Board found that the circular shape of the property and its proximity to Route 50 and its service ramps would leave respondents with "no reasonable possibility of developing the lot with a canopy over the pump islands which meets the requirements of the Zoning Regulations." The Board found the canopy to be reasonable in size and that the canopy would not harm the public welfare by blocking sight lines for drivers.

The Board then determined that the three variances would not alter the essential character of the area as the neighborhood is mixed with residential and commercial uses and is impacted by its proximity to Route 50. The Board also stated that the variances would not impair the use or development of adjacent properties and would not even be noticed by the public. It then concluded that there was ample [*15] evidence to grant the requested variances, noting, however, that the respondents also were required to meet the general criteria for a special exception. n7

-----Footnotes-----

n7 Article 28, section 12-104 of the Anne Arundel County Code sets forth the general criteria for the granting of a special exception. Section 12-104 states:

§ 12-104. Standards for granting.

A special exception use may be granted only if, in the opinion of the hearing authority:

- (1) the use will not be detrimental to the public health, safety, and welfare;
- (2) the location, nature, and height of each building, wall, and fence, the nature and extent of landscaping on the site, and the location, size, nature, and intensity of each phase of the use and its access streets will be compatible with the appropriate and orderly development of the district in which it is located;
- (3) operations related to the use will be no more objectionable with regard to noise, fumes, vibration, or light to nearby properties than operations in permitted uses;
- (4) the proposed use will not conflict with an existing or programmed public facility, public service, school, or road;
- (5) if electric, sewer, storm drainage, or water service is available, the service will be adequate to service the proposed use and will have suitable access;
- (6) the proposal will not overburden existing facilities as proposed in the master plan of water and wastewater for development of the surrounding areas;

- (7) on-site water supply, sewerage treatment, storm drainage disposal, or power plant proposals will be adequate to service the proposed use;
- (8) the proposed use has the written recommendations and comments of the Health Department, the Department of Public Works, and the Department of Utilities;
- (9) the applicant has presented sufficient evidence of public need for the use;
- (10) the applicant has presented sufficient evidence that the applicant meets and will be able to maintain adherence to the criteria specified in Subtitle 2 of this title for the specific use;
- (11) the application will conform to the critical area criteria for sites located in the critical area; and
- (12) the site plan demonstrates the applicant's ability to comply with the requirements of the Landscape Manual by its designation of the area necessary for screening, buffering, landscaping, and off-street parking.

- - - - -End Footnotes- - - - - [*16]

The Board then discussed its finding that respondents had presented sufficient evidence to satisfy the twelve criteria for the granting of a special exception listed in section 12-104. The Board went through each of the twelve criteria, explaining the evidence that the Board felt satisfied each criterion.

Petitioners filed a Petition for Judicial Review in the Circuit Court for Anne Arundel County seeking a reversal of the Board's conditional approval of the special exception and variances. On August 12, 1998, the Circuit Court filed a Memorandum Opinion in which the Circuit Court affirmed the Board's decision. Petitioners appealed to the Court of Special Appeals and the Court of Special Appeals also affirmed the decision of the Board.

II. Standard of Review

¶A proceeding on a special exception is subject to a full judicial review. Mossburg v. Montgomery County, 329 Md. 494, 506, 620 A.2d 886, 892 (1993). We examined the correct standard of judicial review in White v. North, 356 Md. 31, 44, 736 A.2d 1072, 1079-80 (1999), when we stated that:

¶In judicial review of zoning matters, including special exceptions and variances, "the correct test [*17] to be applied is whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions." Sembly v. County Bd. of Appeals, 269 Md. 177, 182, 304 A.2d 814, 818 (1973). See also Board of County Comm'rs v. Holbrook, 314 Md. 210, 216-17, 550 A.2d 664, 668 (1988); Prince George's County v. Meininger, 264 Md. 148, 151, 285 A.2d 649, 651 (1972); Zengerle v. Board of County Comm'rs, 262 Md. 1, 17, 276 A.2d 646, 654 (1971); Gerachis v. Montgomery County Bd. of Appeals, 261 Md. 153, 156, 274 A.2d 379, 381 (1971). For its conclusion to be fairly debatable, the administrative agency overseeing the variance decision must have "substantial evidence" on the record supporting its decision. See Mayor of Annapolis v. Annapolis Waterfront Co., 284 Md. 383, 395, 396 A.2d 1080, 1087 (1979); Montgomery County v. Woodward & Lothrop, Inc., 280 Md. 686, 706, 376 A.2d 483, 495 (1977), cert. denied sub nom. Funger v. Montgomery County, 434 U.S. 1067, 98 S. Ct. 1245, 55 L. Ed. 2d 769 (1978); [*18] Agneslane, Inc. v. Lucas, 247 Md. 612, 619, 233 A.2d 757, 761 (1967).

In Annapolis v. Annapolis Waterfront Co., 284 Md. 383, 398, 396 A.2d 1080, 1089 (1979), we defined ¶the substantial evidence test as "whether a reasoning mind reasonably could

have reached the factual conclusion the agency reached,' Insurance Comm'r v. Nat'l Bureau, 248 Md. 292, 309, 236 A.2d 282 (1967), or as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," Bulluck v. Pelham Apts., 283 Md. 505, 390 A.2d 1119 (1978); Snowden v. Mayor & C.C. of Balto., *supra*, 224 Md. 443 at 448." ¶ In applying the substantial evidence test:

The question for the reviewing court is . . . whether the conclusions "reasonably may be based upon the facts proven." The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.

Annapolis Waterfront Co., 284 Md. at 399, 396 A.2d at 1089, quoting 4 K. Davis, Administrative Law, § 29.05, 137, 139 [*19] (1958).

¶ When we review an administrative agency's order, we make sure that it is not premised upon an error in the law. Ad + Spil, Inc. v. County Commissioners of Queen Anne's County, 307 Md. 307, 338, 513 A.2d 893, 909 (1986). "Generally, ¶ a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law." Belvoir Farms Homeowners Association, Inc. v. North, 355 Md. 259, 267, 734 A.2d 227, 232 (1999), citing Catonsville Nursing Home, Inc. v. Loveman, 349 Md. 560, 569, 709 A.2d 749, 753 (1998).

III. Discussion

We hold ¶ a special exception with variances may be granted by a zoning agency when the applicable code contains provisions excluding certain areas of the code from being subject to variance relief, but does not exclude the section covering the relevant special exception from being modified by variances. In so holding, we answer the question first raised by the Court of Special Appeals in Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County, 103 Md. App. 324, 653 A.2d 532 (1995). We also find that there [*20] is sufficient evidence in the record to support the Board's findings.

A. Granting of Special Exception With Variances

Petitioners contend that the Board erred as a matter of law in granting the special exception because the criteria for the granting of a special exception must be met without a variance. n8 In support of its proposition that the criteria for a special exception must be satisfied without a variance, petitioners rely on Chester Haven, *supra*, and Umerley v. People's Counsel for Baltimore County, 108 Md. App. 497, 672 A.2d 173 (1996). Although neither Chester Haven nor Umerley decided the issue before this Court, petitioners point to language in Chester Haven, that was cited in Umerley, to support the idea that variances cannot be used to avoid meeting the expressed criteria required for the grant of a special exception. In Chester Haven, the Court of Special Appeals stated:

- - - - -Footnotes- - - - -

n8 The Board granted respondents' three variances; however, only two of the variances were for criteria necessary for the special exception. Only the two variances that relate to the special exception are expressly relevant to this part of our discussion. The two variances criteria for the granting of a special exception are the seven-foot variance from the requirement of having 150 feet of frontage along each street and an eight-foot variance from the requirement of having the pump islands twenty feet apart. In any event, there was sufficient evidence to support the granting of all three variances.

- - - - -End Footnotes- - - - - [*21]

The attempt to follow this procedure creates fundamental and conceptional problems with the generally accepted proposition that, if the express conditions necessary to obtain a conditional use are met, it is a permitted use because the legislative body has made that policy decision. Does the legislative intent that the use be permitted remain if the conditions are not met but are eliminated by an administrative body granting a variance? Upon such an occurrence, the application for a conditional use becomes dependent upon the granting of the variances. Under those circumstances, the presumption that a conditional use is permitted may well fall by the wayside. The policy that establishes certain uses as permitted is predicated upon the satisfaction, not avoidance, of conditions. Conditions the legislative body attaches to the granting of a conditional use normally must be met in accordance with the statute-not avoided. In any event, even if such a procedure would pass muster, if the variance process fails, the entire application fails.

Chester Haven, 103 Md. App. at 336, 653 A.2d at 538. While the Court of Special Appeals in *Chester Haven* realized that this [*22] could be an issue, it did not resolve the issue; it decided the case based upon the failure of the variance process itself.

The Anne Arundel County Code provides the standards for granting a variance and when variance procedures cannot be utilized. The Code, Article 3, section 2-107, states in relevant part:

§ 2-107. Standards for granting variance.

(a) *The County Board of Appeals may vary or modify the provisions of Article 28 of this Code when it is alleged that practical difficulties or unnecessary hardships prevent carrying out the strict letter of that article, provided the spirit of law shall be observed, public safety secured, and substantial justice done. A variance may be granted only after determining:*

(1) that because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape, or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility of developing the lot in strict conformance with this article; or

(2) that because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties [*23] or unnecessary hardship, and to enable the applicant to develop such lot.

...

(d) *This section does not apply to Title 1B or § 15-104A of Article 28 of this Code.* [n9]
[Emphasis added.]

-----Footnotes-----

n9 Both Title 1B and section 15-104A of Article 28 concern the Parole Town Center Growth Management Area and section 2-107 does not apply, facially, to the area at issue in this case. The Parole Town Center Growth Management Area, as far as we have been informed, is not relevant to the parcel of land in the case *sub judice*.

-----End Footnotes-----

¶The Code grants the Board the authority to grant variances from sections within the code, except for the titles and sections enumerated in section 2-107(d) aforesaid.

The local legislative body clearly knew that it could except certain parts of the Code from the application of the variance provisions. The section relating to the granting of a special

exception for an automotive service station, located in Article 28, section 12-206, the special exception provision at issue here, was [*24] not one of the sections that was excepted. We have held that "when there is an express exception to a statute, additional exceptions should not be implied. See Taylor v. Friedman, 344 Md. 572, 581, 689 A.2d 59, 63 (1997) ("Taylor's position is reinforced by the rule of statutory construction dealing with statutes that express a general rule, followed by one or more specific exceptions to the general rule. Under those circumstances, a court ordinarily cannot add to the list of exceptions."); Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Gartelman, 288 Md. 151, 156, 416 A.2d 734, 737 (1980) ("Where a statute expressly provides for certain exclusions, other should not be inserted."). Accordingly, in an ordinance in which certain matters are excluded from the applicability of variance relief, it can be inferred that the legislative body's intent is that all other areas are susceptible to variance relief. The concerns about the intention of the legislative body, expressed in Chester Haven, are thus resolved. The legislative body has, by excluding portions of the code from the variance provisions, while not excluding others, expressed an intent that variance [*25] provisions be applied to all areas not excluded. That includes the special exception provision at issue here.

We discussed the granting or denial of a special exception in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), when we stated that:

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

"Whereas, the applicant has the burden of adducing testimony which will show that this use meets the prescribed standards and requirements, [*26] he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. "The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); [*27] Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974). These standards dictate that "If a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.

291 Md. at 11-12, 432 A.2d at 1325. We discussed the granting of a special exception in Board of County Commissioners for Cecil County v. Holbrook, 314 Md. 210, 550 A.2d 664 (1988), when we stated, after discussing the standard for judicial review of the grant or denial of a special exception stated in Schultz, that:

In summary, "where the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and

surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone, the application should be denied. Furthermore, if the evidence makes the issue of harm fairly debatable, the matter is one for the Board's decision, and should not be second-guessed by an appellate court.

¶The *Schultz* test accords with the general standard for [*28] judicial review of the ruling of an administrative agency, which we have defined as "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment." *Supervisor of Assess. v. Ely*, 272 Md. 77, 84, 321 A.2d 166 [, 170] (1974).

314 Md. at 217-18, 550 A.2d at 668.

In *Stacy v. Montgomery County*, 239 Md. 189, 210 A.2d 540 (1965), we examined the granting of a special exception and a variance. Ernest Kendall purchased a piece of property with the intention of applying for a special exception to open a child care home. The special exception was granted by the County Board of Appeals for Montgomery County. This ruling was appealed to the Circuit Court for Montgomery County, which reversed the decision of the Board of Appeals on the ground that the building failed to meet the requirements of the zoning ordinance as to distance. n10 While his case had been pending on appeal, Mr. Kendall realized that the building did not meet the distance requirement so he applied for a variance from the distance requirement. [*29] His application for the variance was granted by the Board of Appeals. The Board of Appeals' decision to grant the variance was appealed to the Circuit Court, which affirmed the decision. Appellants appealed to the Court of Appeals.

-----Footnotes-----

n10 The Zoning Code required that the building be twenty-five feet from the property lines. Mr. Kendall's building was 24.42 feet from the property line and the building had a porch that was 21 feet from the property line. Mr. Kendall offered to remove the porch if he was required to by the Board. The Court, in *Stacy*, was not presented, and did not address, the combination variance - special exception nature of the applications as they evolved.

-----End Footnotes-----

The appellants first contention on appeal was "that where one purchases realty with the intention to apply for a variance from restrictions imposed by a zoning ordinance, he may not contend that such restrictions caused him peculiar hardships that entitle him to the special privileges he seeks." n11 *Id.* at 192, 210 A.2d at 541-42. [*30] The Court of Appeals found that Mr. Kendall did not know he was going to need a variance when he bought the property and that the need for the variance was not determined until after the special exception had been granted. The Court went on to state that:

-----Footnotes-----

n11 The recent Supreme Court case of *Palazzolo v. Rhode Island*, U.S. S. Ct. L. Ed. 2d , 2001 U.S. LEXIS 4910 (June 28, 2001), stands for the proposition that a purchaser of realty that is already subject to particular regulations is not foreclosed from constitutionally challenging that regulation or statute as an impermissible "taking." Justice Kennedy, for the Court, wrote:

When title was transferred to petitioner . . . the wetlands regulations were in force. The state court held [that] . . . [a] purchaser or a successive title holder like petitioner is deemed to have notice of an earlier-enacted restriction and is barred from claiming that it effects a taking.

...
The State may not put so potent a Hobbesian stick into the Lockean bundle Were we to accept the States rule, the postenactment transfer of title would absolve the State of its obligation to defend any action restricting land use, no matter how extreme or unreasonable. A State would be allowed, in effect, to put an expiration date on the Takings Clause. This ought not to be the rule. Future generations, too, have a right to challenge unreasonable limitations on the use and value of land. [Citations omitted.]

-----End Footnotes----- [*31] ¶

There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception within the meaning of the zoning ordinance is one which is controlled and which is expressly permissible in a given zone. It is granted by the Board, after a public hearing, upon a finding that conditions of the zoning ordinance are satisfied. A variance is authorized under the terms of the zoning ordinance where the literal enforcement of its terms would result in unnecessary hardships. ¶ By Section 104-22(a)(1) of the Montgomery County Code, the County Board of Appeals is authorized to "grant variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property * * * or by reason of exceptional topographical conditions or other extraordinary situations or conditions of specific parcels of property, the strict application of these regulations or amendments thereto would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of said property; provided that such relief or variances can be granted without substantial impairment of the intent, [*32] purpose, and integrity of the general plan * * *." It is further provided that this provision shall not be construed to permit the Board "under the guise of a variance, to change the use of land." See *Montgomery County v. Merlands Club*, 202 Md. 279, 96 A.2d 261.

The Board heard the testimony of Clinton Frey, Jr., a surveyor, who, after having been qualified as an expert, testified as to the unusual shape of the property. The Board exercising its discretion in accordance with its expertise in zoning matters, determined from all of the evidence that all criteria had been met by the applicant to sustain the granting of the variance. We find that the court below was not in error in affirming the decision of the Board in granting the variance as provided in Section 104-22 of the Montgomery County ordinance under the circumstances presented in this case.

Id. at 193, 210 A.2d at 542 (alteration in original). While the facts in *Stacy* are slightly different from the facts in the case *sub judice*, and the question raised for the first time in *Chester Haven* and squarely presented in the case *sub judice* was not presented, nor addressed in *Stacy*, the [*33] Court, in that case, nonetheless affirmed the granting of a variance in a special exception case.

¶ The Anne Arundel County Code, while prohibiting the application of variances from applying to certain sections of the Code, does not restrict Article 28, section 12-206, which contains the criteria for the granting of a special exception for an automotive service facility. The drafters of the Code obviously understood that they could restrict the application of variances as to certain sections within the Code. They chose to not restrict the application of variances to special exceptions.

We hold that ¶ the Anne Arundel County Board of Appeals may grant a special exception and, at the same time, also may grant area variances from the specific criteria provided in section 12-206 (b) of Article 28 (Zoning Ordinance) of the County Code.

In the case *sub judice*, respondents substantially satisfied the criteria for the granting of a special exception. The two variances granted by the Board were for modifications of criteria

that did not cause adverse effects upon the neighborhood or allow a use for the parcel that was outside of the special exception provisions of the general zoning plan. [*34] The two variances did not change the objectives of the Code to make the special exception satisfy certain criteria; the variances only allowed a slight modification that still enabled the special exception to fall into the comprehensive zoning scheme of that area. As utilized in this case, the variance procedure did not change the essential nature of the special exception use sought by the applicants. The Board did not err as a matter of law by granting the two minor variances that enabled respondents to satisfy the criteria for the granting of a special exception.

B. Granting the Variances

In their Petition for Certiorari, petitioners contended that the Board failed to make the necessary findings required in order to grant a variance and that the record does not contain evidence sufficient to support such a finding. Specifically, petitioners allege that the Board failed to properly define the relevant neighborhood that was considered when the Board found that the variances would not affect the neighborhood. We disagree with petitioners and find, after examining the record, that the Board established the relevant neighborhood and that the findings made by the Board were supported [*35] by substantial evidence.

Respondents were granted three variances by the Board. The three variances are the seven-foot variance in respect to frontage on one street from the requirement of having 150 feet of frontage along each street, an eight-foot variance from the requirement of having the pump islands twenty feet apart, n12 and, in respect to one corner of an overhead canopy, a twenty-five-foot variance from the sixty-foot setback requirement from a dual, multi-lane, or divided highway. The standard for granting a variance is codified in Article 3, section 2-107 of the Code, which states in relevant part:

-----Footnotes-----

n12 The matter of the ground level crossovers between dispensers on the same line of dispensers probably did not need a variance in the first instance. It appears evident that the provision of distance separation between pump islands was intended to apply as to the distance between parallel pump islands, not to the distance between dispensers on one of the parallel lines of dispensers.

At the hearing on the special exception and variances held before the Board of Appeals, Larry Burkins represented the Department of Planning and Code Enforcement. Mr. Burkins, discussing the requested eight-foot variance from the requirement of having the pump islands twenty feet apart, stated that:

Section 12-206 (b) (a), a variance was sought to this action by the applicant, and I think I had indicated before at the previous hearing that personally I do not believe this is required, but the applicant did apply.

But this standard requires 20 feet between pump islands, and the pump islands in this case are basically parallel to one another. And they do have at least 20 feet between those pump islands so that two cars can fit in between, one served by each pump island.

However, in this instance - and it's quite common in the modern service stations - they split the pump islands, the linear pump islands so that it doesn't disrupt the flow of water in hosing down the pumps and so forth.

In this situation, they've split those linear islands to help free up drainage and that sort of thing, a necessity in cleaning up, and people crossing will - to go inside the store or anything from the pump islands will not trip over the curb. They have the spacing of only 12 feet from

that linear split, so they asked for an 8-foot variance to allow that to occur.

The code isn't real clear and isn't up to the current technology, and the standards have changed slightly, but if I were reviewing the plans, I would not even require that because I think we're all aware of what the basic intent of that provision is, and there is no need for a car to go through that 12-foot slot.

They fit between the islands. They do not go at right angles to those pumps. So I think that basically summarizes the variance issue, and of course the special exception addresses the service station operation.

-----End Footnotes----- [*36]

§ 2-107. Standards for granting variance.

...

(c) A variance may not be granted under subsection (a) or (b) of this section unless the Board finds that:

(1) the variance is the minimum variance necessary to afford relief;

(2) the granting of the variance will not:

(i) *alter the essential character of the neighborhood or district in which the lot is located*
[Emphasis added.]

In its Memorandum of Opinion and Order dated December 2, 1997, the Board examined each variance and determined that each variance satisfied the requirements of section 2-107(a) and (c). Addressing section 2-107(c)(i), the Board stated:

*The granting of the three requested variances will not alter the essential character of this area. This neighborhood is developed with a mix of residential and commercial uses and is heavily impacted by its close proximity to Route 50 and its access ramps. The commercial uses are clustered along Route 50, as is the subject property, while the residential properties are further from the highway. The subject property is within the C1B district and is permitted to accommodate commercial uses. It is also immediately adjacent to Route 50 and a commercially [*37] developed property. The canopy will not encroach on the required setbacks to residential property, but rather, the [setback from the] Route 50 right-of-way.*
[Emphasis added.]

We find the description of the neighborhood stated by the Board to be sufficient to satisfy the requirement of section 2-107(c)(i). The Board's description is precise enough to enable a party or an appellate court to comprehend the area that the Board considered when deciding to grant the variances. Furthermore, we cannot foresee how a more specific description of a larger or smaller neighborhood would have led the Board to determine that the three variances that were granted would alter the essential character of the neighborhood. The Board's Memorandum and Opinion clearly explains the Board's reasoning behind the granting of the variances, and its explanation of the considered neighborhood properly led to an understanding of the area the Board considered when granting the variances.

We agree with the Court of Special Appeals's discussion when addressing the cases that petitioners have cited to show that the Board failed to properly define the neighborhood. The Court of Special Appeals, in its opinion, [*38] stated:

The cases cited by appellants [petitioners] in support of their contention that that Board

failed to define the surrounding neighborhood with sufficient particularity are inapposite. See Prince George's County Council v. Prestwick, Inc., 263 Md. 217, 282 A.2d 491 (1971); Chevy Chase Village v. Montgomery County Council, 258 Md. 27, 264 A.2d 861 (1970); Templeton v. County Council, 21 Md. App. 636, 321 A.2d 778 (1974). In those cases, the property owners sought to vary use restrictions imposed by the zoning ordinance through a zoning map amendment. By contrast, appellees seek to vary the Code's area restrictions, not its use restrictions. The standards applied to area variances are more relaxed than those applied to use variances because "the impact of an area variance is viewed as being much less drastic than that of a use variance." Anderson v. Board of Appeals, 22 Md. App. 28, 39, 322 A.2d 220 (1974); see also McLean v. Soley, 270 Md. 208, 215, 310 A.2d 783 (1973); Gromwell, 102 Md. App. 691 at 695 n.1, 651 A.2d 424. Consequently, the cases cited by appellants do not support their contention [*39] that the surrounding "neighborhood" must be defined with the same precision in approving area variances as is required in approving use variances.

The description given by the Board of the neighborhood sufficiently defined the relevant neighborhood for variance purposes so that the Board could make a determination about whether the variance would alter the essential character of that neighborhood.

IV. Conclusion

We hold that in certain circumstances, a zoning body may grant a special exception together with area variances to what otherwise would be specific standards or requirements applicable to such special exception. The special exception, however, must be in a section of the local code for which variances are not excluded. Moreover, the granting of the variances may not so substantially alter the criteria for the granting of the special exception so that the criteria of the special exception would be swallowed by the variance to the extent that the special exception would not be a use that was contemplated in the comprehensive zoning scheme in respect to any particular special exception.

In the case at bar, the Board properly granted the special exception and the variances. [*40] The variances granted only slightly modified the specific area standards for the special exception and did not enable a special exception use to be granted that would be outside of the scope of the special exception provisions of the general zoning scheme for that area.

We also hold that the Board made the appropriate findings in order to grant the variances and that there was substantial evidence on the record to support those findings. The Board established the relevant neighborhood in enough detail to enable the Board to determine that the essential character of the neighborhood would not be altered. It was, thus, in compliance with section 2-107(c)(1). n13

- - - - -Footnotes- - - - -

n13 As we have indicated at the beginning of this opinion, petitioners, in their brief, modified one of the questions for which we had granted certiorari, attempting to add the special exception to what, in their petition, had been termed as solely a variance issue as to "findings." That is inappropriate, and, accordingly, we have not specifically addressed that part of our opinion to the matter of the special exception. However, had we done so, we would still have upheld the granting of the special exception as well as the variances.

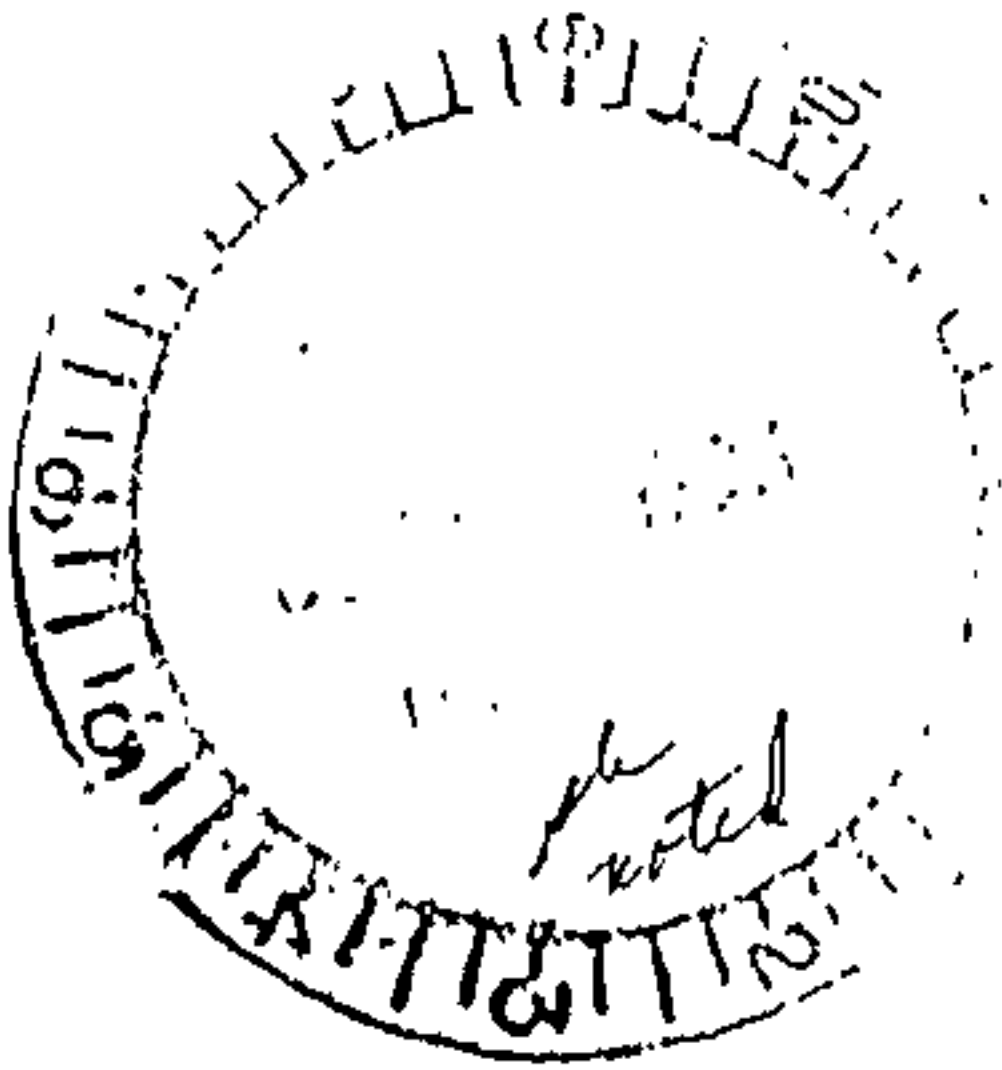
- - - - -End Footnotes- - - - - [*41]

JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED; COSTS TO BE PAID BY PETITIONERS.

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1755

September Term, 1989



G. L. P. Development

v.

Maryland National Capital Park and
Planning Commission

AUG - 2 1990

Garrity,
Bell, Rosalyn B.,
Fischer,

JJ.

Per Curiam

Filed: July 31, 1990

Appellant, G.L.P. Development, appeals from an adverse decision of the Circuit Court for Montgomery County (Sanders, J.) affirming the Montgomery County Planning Board of the Maryland National Park and Planning Commission's denial of appellant's application for approval of a preliminary plan of subdivision.

The following issues are raised by appellant:

I. Whether the circuit court committed error in refusing to allow the introduction of additional evidence, consisting of public records, to demonstrate the arbitrary, capricious and illegal quality of the Planning Board's decision.

II. Whether the Planning Board's Determination that the appellant's preliminary plan did not conform with the master plan pursuant to Montgomery County Code Section 50-35(1) was arbitrary, capricious, and erroneous, and contrary to the substantial evidence of record.

III. Whether the Planning Board's finding that the proposed septic field violated the zoning ordinance is an unlawful decision, beyond the jurisdiction of the Planning Board in a Chapter 50 Subdivision proceeding; Alternatively, whether the decision was arbitrary, capricious, and an erroneous interpretation of the zoning ordinance.

IV. Whether the Planning Board's finding that the septic field supporting a commercially zoned parcel may not extend into a rural cluster residential zone is arbitrary and capricious in light of other actions by the Planning Board approving similar preliminary plans of subdivision.

V. Whether the Planning Board applied the provisions of Montgomery County Code Sec. 50-35(k) (adequate public facilities) in an erroneous, arbitrary, capricious and unlawful manner, contrary to the substantial evidence of record.

On December 15, 1987, appellant submitted an application to the Montgomery County Planning Board of the Maryland National Capital Park and Planning Commission (Planning Board) for the approval of a preliminary subdivision plan. The application proposes to combine two parcels of land owned by appellant into one parcel containing 4.99 acres. The subject property now consists of a 1.65 acre lot zoned C-1 (commercial) and a 3.34 acre parcel zoned Rural Cluster (residential - agricultural).

Appellant, in its preliminary plan application, proposes to construct a neighborhood commercial center comprised of two buildings containing 11,134 square feet for retail commercial use on each of two floors. The parcel zoned C-1 is to contain the commercial buildings, the septic system tank, parking and driveways. The area zoned Rural Cluster is proposed to contain the underground septic field consisting of filtering pipes for sewage disposal.

After taking testimony, the Planning Board disapproved appellant's preliminary plan concluding:

1. The plan does not comply with the Subdivision Regulations (Chapter 50, Montgomery County Code).
2. The plan does not conform to the Zoning Ordinance (Chapter 33, Montgomery County Code).

Judge Sanders heard appellant's appeal in the circuit court and affirmed the Planning Board.

I. Additional Evidence

The first issue raised by appellant is that the circuit

court ~~erred~~ in refusing to allow the introduction of additional evidence. Subtitle 8 of the Maryland Rules of Procedure governs appeals from administrative agencies. Rule B10 states, "Additional evidence may be allowed when permitted by law." Appellant sought to introduce evidence of public record wherein the Planning Board had approved facilities located on residential zoned property supporting commercial development. In Aspen Hill Venture v. Montgomery County Council, 265 Md. 303 (1972), the Court of Appeals approved the introduction of additional evidence similar to the evidence sought to be introduced in the case sub judice. Judge Sanders denied appellant's request to introduce additional evidence, and after considering a motion for reconsideration of the issue again denied appellant's request. We find that he erred in doing so, but in the context of this dispute, a reversal is not mandated.

II. Conformance with Master Plan

Appellant avers that its preliminary plan is in substantial conformance with the master plan, and, therefore, the Planning Board's decision, that it did not so conform was arbitrary, capricious and erroneous.

Section 50-35(1) of the Montgomery County Code provides:

In determining the acceptability of the preliminary plan submitted under the provisions of this chapter, the Planning Board must consider the applicable master plan, including maps and text, unless the Planning Board finds that events have occurred to render the relevant master plan recommendation no longer appropriate.

The master plan for the Sandy Spring/Ashton planning area shows commercial development expansion in two Village Center areas which together are considered to be of sufficient size to service the planning area. The master plan indicates C-1 zoning for 1.65 acres of the surveyed site and Rural Cluster for the lot sought to be joined. Appellee argues persuasively that the C-1 zoning in an otherwise rural area is intended by the master plan to contain a degree of commercial development that could be supported on the 1.65 acre by well and septic system located on the 1.65 acre area. If the Planning Board were to approve appellant's request, a degree of commercial development much greater than that obtainable by reliance solely upon the 1.65 acre would result. This attendant increase in the intensity of commercial use on the 1.65 acres is far in excess of that envisioned by the master plan. This, we believe, is the basis for the Planning Board's determination that appellant's preliminary plan fails to conform to the master plan. It appears obvious that the evidence relied upon by the Planning Board in finding that appellant's preliminary plan is not in conformance with the master plan is at least fairly debatable.

To avoid that conclusion, appellant insists that the issue is one of law, and, therefore, the appellate court may substitute its judgment for that of the agency. It seems apparent to us, however, that the issue as to whether

appellant's preliminary plan is in conformance with the master plan is one of fact, not law. As such, the findings of the agency are entitled to a presumption of validity. Nationwide Mutual Ins. Co. v. Ins. Comm'r., 67 Md. App. 727, 737 cert. denied, 307 Md. 433 (1986). In O'Donnell v. Bassler, 289 Md. 501 (1981), the Court of Appeals stated, "It is a fundamental principle of administrative law that a reviewing court should not substitute its judgment for the expertise of the administrative agency from which the appeal is taken." This is true since decisions of administrative agencies are prima facie correct. Bulluck v. Pelham Wood Apts., 283 Md. 505, 513 (1978). The court must, therefore, view the agency's decision in the light most favorable to the agency. Motor Vehicle Admin. v. Lindsay, 309 Md. 555, 563 (1987). Here, the evidence before the Planning Board was sufficient to make the issue of conformance with the master plan fairly debatable. The circuit court, therefore, did not err in affirming the Planning Board.

III. Violation of Zoning Ordinance

Appellant contends the Planning Board unlawfully extended its jurisdiction in a subdivision proceeding by its determination that the placement of underground septic pipes to serve a commercial zone is not a permitted use in a Rural Cluster zone. We do not agree that the Planning Board exceeded its authority. As stated in Anderson, American Law of Zoning 3D:

While the zoning power and authority to review plats are separate, it seems clear

that plats should not be approved which violate existing zoning regulations. There is little to be said for approving a plat, for example, which discloses substandard lots. Such an approval would be a disservice to the developer who would be unable to build on those lots and it would encourage deviations from those portions of the comprehensive plan which are implemented by the zoning regulations in issue.

In Miller v. Fortv West Builders, 62 Md. App. 320, 334 (1985), this Court quoted with approval 1 E. Yokley, Zoning Law and Practice §17-10 (1979) as follows:

Enactments in the field of zoning and subdivision control are necessarily related to each other and they should be read and considered together in order to ascertain the full meaning and import of each.

A subdivider, seeking approval of a subdivision plot, must first meet applicable zoning regulations and then must comply with state and county subdivision regulations. Thus, where a preliminary plat indicates on its face that it is violative of zoning ordinances, the denial of approval of the plat will be sustained.

Applying this language to the case sub judice, it seems clear that the Planning Board did not exceed its authority in considering whether the application violated the zoning laws.

In the alternative, appellant avers that the Planning Board erroneously interpreted the zoning ordinance. Appellant insists, with some logic, that since pipelines serving commercial areas are permitted in Rural Cluster zones, a septic pipe should also be permitted. Appellant points to electric power and transmission lines as another example of utilization of residential zoned land to serve a

commercial area. While there are no Maryland cases dealing with precisely the same issue as in the case at bar, the Court of Appeals considered a similar proposal in Leimbach Constr. Co. v. City of Baltimore, 257 Md. 635 (1970). In Leimbach a property owner wished to construct a driveway over residential land owned by him to service commercial land also owned by him. The Court of Appeals affirmed the refusal of the circuit court to permit the proposed use on the basis that it was illegal to use residential zoned land for a business purpose. In Silitschanu v. Groesbeck, 208 Conn. 312, 543 A.2d 737, 739 (1988), the Supreme Court of Connecticut found that a septic system, including the septic tank and the leaching system was a structure and "its use for commercial purposes on residential property is not authorized." There are distinctions between the case at bar and Groesbeck, but we do not believe they are significant. We find that the Planning Board did not err in concluding that residential zoned land could not be used for commercial purposes and that this was sufficient justification for denying the application.

IV. Relationship of Pending Case to Other Actions of Planning Board

Appellant points out that the Planning Board, on other occasions, has approved the very procedure which it has disapproved in this case. Appellant states that at the intersection of Glen Road and Travelah Road in Montgomery County, Maryland there was approved in 1980 in Board of Appeals cases A-671 and A-672 a septic system located on

residential zoned land which services a commercially zoned center. Appellant further avers that it is arbitrary and capricious for the Planning Board to reverse its position with respect to the present case. Appellee counters that the "decision" relied upon by appellant was merely a Planning Board Staff memorandum regarding the issuance of building permits. It did not involve a Planning Board decision and the issue in contention in the instant case i.e., the use of septic system on residential land to service commercial property, was not under consideration in Board of Appeals cases A-671 and A-672. In addition, appellee points out that the Planning Board does not issue building permits, but merely makes recommendations with respect to their issuance. We do not believe that the prior action of the Planning Board, cited by appellant, constitutes "binding administrative precedent."

V. Adequate Public Facilities

The last issue raised by appellant is that the Planning Board misapplied the provisions of Montgomery County Code Sec. 50-35(k) (adequate public facilities). Pursuant to Montgomery County Code Secs. 50-27(a) and (b) and 50-35(k), the Planning Board considers the adequacy of public water and sewer facilities as part of its review of a preliminary plan of subdivision. In this connection, the Planning Board found, "Given the evidence in the record that sewage and well service for the commercial development cannot be achieved within the C-1 zoned portion of the lot, the Board

finds that public facilities will not be adequate." Putting aside that appellant's plan does not envision the use of public facilities but, rather, a private septic system, it is clear that the Planning Board has missed a point. If there was no need to use the Rural Cluster zoned lot for sewage dispersal, there would be no need to file the application which the Planning Board had under its consideration. The task of the Planning Board is to review the application to determine whether applicant's proposal is in compliance. To proceed as the Planning Board did in this case puts the applicant in an impossible position.

In summary, while we conclude that the circuit court erred in its refusal to admit additional evidence and that the Planning Board erred in its application of Section 50-35(k), we find, nonetheless that the Planning Board had sufficient evidence before it upon which to base its conclusion that appellant's application fails to conform to the Master Plan and is in violation of the zoning ordinance. We, therefore, affirm the judgment of the circuit court.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

2) cannot
remove
on Dist
bldg add it

because B-437227

1) Din. Hall connection = goes out of envelope
2) Rescind. + increase size of bldg.

- 3) Connections for Relocated Bunks max 30 ft.
4) Note Ex. Bunks do not have to be connect
5) If want to abandon Sp. Ex. for Camp then
have to justify ~~the bunks~~ bldgs by special
all camp

Hearing an accessory to the school/church
& amend case # 94-27-SPHA to increase
size of dining hall due to connect
→ or get Var. for distance between bldgs,
an

TO Aband Var connect = needed,
connect = see #1

Sp. Hear to amend
w/ changes Athletic field
parking
etc

TIME: 15:42:10 AUTOMATED PERMIT TRACKING SYSTEM PANEL BP1018M
DATE: 04/09/2001 APPROVALS DETAIL SCREEN LAST UPDATE 03/08/2001
PDM 16:04:40

PERMIT #: B443403

PASSWORD :

AGENCY	DATE	CODE	COMMENTS
BLD PLAN	03/08/2001	01	SLW/TLM
FIRE	03/08/2001	01	SLW/TLM
SEDI CTL	03/08/2001	01	AC/TLM
ZONING	03/08/2001	01	JJS/TLM
PUB SERV	03/08/2001	01	JJS/TLM
ENVRMNT	03/08/2001	01	AC/TLM
PERMITS	03/08/2001	01	RD

01 THRU 09 INDICATES AN "APPROVAL" ** 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - NEXT APPROVAL

PF4 - ISSUE PERMIT

PF9 - SAVE

CLEAR - MENU



Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

April 11, 2001

G. Scott Barhight, Esquire
Whiteford, Taylor & Preston, L.L.P.
210 West Pennsylvania Avenue
Towson, MD 21204-4515

RECEIVED
COUNTY BOARD OF APPEALS
01 APR 12 PM 3:44

Re: In the Matter of Building Permit B443403 (Beth Tfiloh Congregation Camp Glyndon)

Dear Mr. Barhight:

Please be advised that an appeal of the above-referenced matter was filed in this office on April 11, 2001, on behalf of Michael Burns and the Glyndon Community Association, Inc., represented by Gary R. Jones, Esquire, and Robert J. Carson, Esquire. All relative materials will be forwarded to the Baltimore County Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to call 410-887-3180.

Sincerely,

Arnold Jablon
Director

AJ/m

c: Baltimore County Law Office
John R. Reisinger, P.E.



CBA-01-118

APPEAL

Building Permit
407 Central Avenue
4th Election District, 3rd Councilmanic District
Gary R. Jones and Robert J. Carson, Esquire – Appellates
Beth Tfiloh Congregation Camp Glyndon - Defendants
Building Permit B443403

CBA-01-118

01 APR 12 PM 3:42

RECEIVED
COUNTY BOARD OF APPEALS

✓ Copy of application for building permit

✓ Approvals detail screen

✓ Notes of John J. Sullivan, Planner II, and John Lewis, Planner II, Baltimore County Department of Permits and Development Management, Zoning Review, at a meeting with Steve Warfield, engineer for Beth Tfiloh, on February 7, 2001

✓ Letter to Julius W. Lichter, Esquire, from John J. Sullivan, Planner II, dated March 9, 2000

Copy of map of proposed dining hall with disapproved section

✓ Copy of Findings of Fact and Conclusions of Law, Petitions for Special Hearing and Zoning Variance before the Zoning Commissioner of Baltimore County, Case No. 94-27-SPHA, dated September 28, 1993

✓ Copy of letter to citizens in response to letters to C.A. Dutch Ruppersberger, County Executive of Baltimore County, from Arnold Jablon, Director, Baltimore County Department of Permits and Development Management, dated October 31, 2000

✓ Notice of Appeal to Arnold Jablon from Gary R. Jones, Esquire, and Robert J. Carson, Esquire, on behalf of Michael Burns and the Glyndon Community Association, Inc., dated April 6, 2001

✓ Copy of Petition for Special Hearing to Arnold Jablon from Gary R. Jones, Esquire, and Robert J. Carson, Esquire, on behalf of Michael Burns and the Glyndon Community Association, Inc., dated April 6, 2001

✓ Letter to G. Scott Barhight, Esquire, from Arnold Jablon, Director, dated April 11, 2001

✓ Copy of \$75 appeal fee

c: Michael Burns, 605 St. Paul Avenue, Glyndon, MD 21136
Glyndon Community Association, Inc., c/o Michael Burns

* Gary R. Jones, Esquire, and Robert J. Carson, Esquire; Baxter, Baker, Sidle, Conn & Jones, P.A.; 120 East Baltimore Street, Suite 2100, Baltimore MD 21202-1643
G. Scott Barhight, Esquire; Whiteford, Taylor & Preston, L.L.P., 210 West Pennsylvania Avenue, Towson MD 21204-4515 *✓ JULIE A. DIGRIGOU, ESQ.*
Hon. Lawrence Schmidt, Baltimore County Zoning Commissioner
Baltimore County Law Office

Request notification:

Arnold Jablon, Director of Department of Permits and Development Management
John R. Reisinger, P.E., Buildings Engineer, Department of Permits and Development Management

NANCY C. WEST, ASST. CO. ATTY
EDWARD J. GILISS, CO. ATTY

✓ E

IN THE MATTER OF THE
BETH TFILOH CONGREGATION
CAMP GLYNDON PROPERTY
407 CENTRAL AVENUE

4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

RE: ISSUANCE OF BUILDING PERMIT
NO. B 443403

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CBA-01-118

* * * * *

ORDER OF DISMISSAL

This matter comes before this Board as an appeal filed by Gary R. Jones, Esquire, and Robert J. Carson, Esquire, on behalf of Michael Burns and the Glyndon Community Association, Inc., Appellants /Protestants, from the March 8, 2001 issuance of Building Permit No. B 443403 for construction of a shell building with dining hall and kitchen on the subject property located at 407 Central Avenue, in the Fourth Election District of Baltimore County, Maryland.

WHEREAS, the Board is in receipt of a Notice of Withdrawal of Appeal in Case No. CBA-01-118 filed March 15, 2002 by Robert J. Carson, Esquire, and Thomas F. Corcoran, Esquire, on behalf of Appellants, "Glyndon Community Association, Inc., and the individual Protestants who appealed Case No. CBA-01-118," (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Counsel on behalf of Appellants requests that the appeal taken in Case No. CBA-01-118 be withdrawn and dismissed as of March 15, 2002, with "the other two cases" (namely, CBA-01-136 and 01-468-SPH) remaining "to be decided by the Board of Appeals";

IT IS ORDERED this 21st day of March, 2002 by the County Board of Appeals of Baltimore County that the appeal taken in Case No. CBA-01-118 be and is hereby **DISMISSED**.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Charles L. Marks, Chairman


C. Lynn Barranger


Lawrence S. Wescott

RE: PETITION FOR SPECIAL HEARING
407 Central Avenue, NE/S Central Ave,
250' NW of c/1 Hunting Hor Cir
4th Election District, 3rd Councilmanic

Beth Tfiloh Congregation of Baltimore City, Inc.

Petitioner

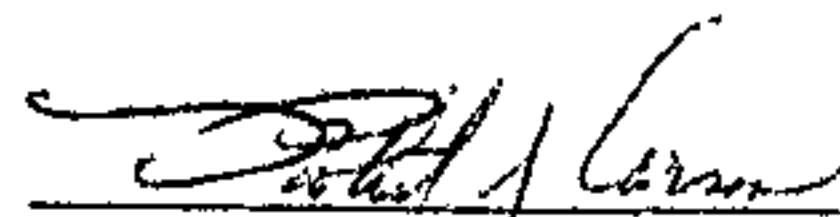
* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case Nos. 01-468-SPH
CBA-01-118
* CBA-01-136

* * * * *

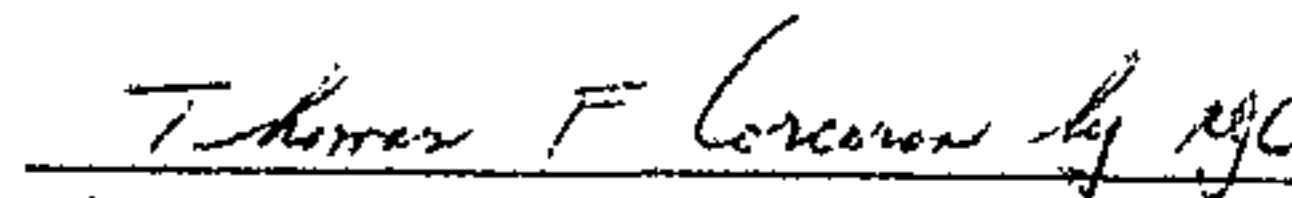
NOTICE OF DISMISSAL OF APPEAL IN CASE NO. CBA-01-118

Glyndon Community Association, Inc., and the individual protestants who
appealed Case No. CBA-01-118, hereby dismiss the appeal in that case.

As a result of this dismissal, the other two cases remain to be decided by the
Board of Appeals, namely, (i) Case No. CBA-01-136 which is an appeal by Glyndon
Community Association, Inc., et al., and (ii) Case No. 01-468-SPH which is an appeal by Beth
Tfiloh Congregation of Baltimore City, Inc.



Robert J. Carson
Robert J. Carson, P.A.
345 Green Street
Havre de Grace, Maryland 21078
(410) 939-0050



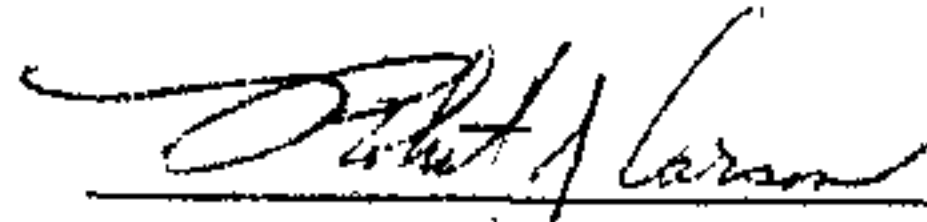
Thomas F. Corcoran
Baxter, Baker, Sidle, Conn & Jones, P.A.
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
(410) 230-3800

Attorneys for protestants Glyndon Community
Association, Inc., Gary R. Jones, John Morris, Sean
O'Connell, Gary Applestein, and Nan Kaestner

02 MAR 15 PM 3:38

CERTIFICATION OF MAILING

I HEREBY CERTIFY that on this 14th day of March, 2001, copies of the foregoing Notice of Dismissal of Appeals in Case No. CBA-01-118 by first class mail, postage prepaid, to G. Scott Barhight, Esq., and Dino C. La Fiandra, Esq., Whiteford, Taylor & Preston, LLP, 210 W. Pennsylvania Avenue, Towson, Maryland 21204, attorneys for Beth Tfiloh Congregation of Baltimore City, Inc., and to Peter Max Zimmerman, People's Counsel for Baltimore County, Room 47, Old Court House, 400 Washington Avenue, Towson, Maryland 21204.



Robert J. Carson

Glyndon/Notice of Dismissal - Case Nos. 01-118 & 136

3/11/02

COUNTY BOARD OF APPEALS
02 MAR 11 PM 3:01

IN THE MATTER OF:

APPEAL OF BUILDING PERMIT NO.
B443403

Taken By Michael Burns and the Glyndon
Community Association, Protestants.

Hearing Date: 3/26/02

* IN THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* Case No: CBA-01-118

* * * * *

**BETH TFILOH'S MOTION TO DISMISS APPEAL
FOR LACK OF STANDING / JURISDICTION**

Beth Tfiloh Congregation of Baltimore City, Inc., Appellee, by and through its counsel, G. Scott Barhight, Dino C. La Fiandra, and Whiteford, Taylor & Preston, LLP, hereby move this honorable Board of Appeals to dismiss the above-referenced case, and as grounds therefor, states:

Background

The above-captioned matter is consolidated with two other cases for the purpose of the hearing. The other cases are CBA-01-136 (regarding a DRC Appeal for an "(a)(2)" lot of record exemption, also noted by the same Appellants as in this case), and 01-468-SPH (regarding a Zoning Commissioner's order, noted by Beth Tfiloh). All three cases involve the property of Beth Tfiloh in Glyndon and its educational facilities located thereon. Only the Building Permit appeal is the subject of this Motion.

Beth Tfiloh, the owner of the property at 407 Central Avenue in Glyndon, obtained Building Permit No. B443403 (the "Permit") to enlarge an existing dining hall on the property. Quite simply, Beth Tfiloh complied with all laws, regulations and policies of

Baltimore County in designing the dining hall expansion and in processing its application for building permit. As a result, the Permit was issued on March 8, 2001.

Typically, during the building permit application approval process, the various relevant agencies of Baltimore County are asked to review the proposed building for compliance with the laws which are within the purview of the agency. In this regard, the Department of Permits and Development Management, Bureau of Zoning Review, among other agencies, reviewed the application, and signed off on its issuance. The Permit was issued on March 8, 2001, and this appeal followed. For the purposes of this Motion, the Appellants in this matter are referred to as the "Protestants".

The Protestants Lack Standing to Bring an Appeal of the Building Permit

Building permit appeals are governed by Baltimore County Code ("BCC"), § 7-36. Subsections (a)(3) and (a)(4) of that section state:

- (a)(3) Whenever the building engineer shall deny, revoke, suspend, annul or modify any permit, he shall certify his reasons therefor in writing to the applicant. For purposes of this section, "applicant" means any person who is an owner, contract purchaser, or the legally authorized representative of either requesting approval of the aforementioned permit.
- (a)(4) Within thirty days and not longer, the applicant shall be entitled to petition the county board of appeals for review of the action of the building engineer. Such petition, a copy of which shall be served on the county attorney, shall set forth in clear and concise terms and grounds for the appeal. The building engineer shall promptly certify and file with the board of appeals a complete transcript of the record in the case, upon payment of all costs for preparation of same by the appellant.

If follows from the clear and unambiguous language of these sections that only the applicant is entitled to petition for review of the action of the building engineer.

Subsections 3 and 4, when read together, provide that only the applicant, explicitly

defined as the owner, contract purchaser, or a representative, may appeal the denial, revocation, suspension annulment or modification of a permit application or permit. There is no provision for any person other than the owner, a contract purchaser, or an authorized representative to appeal any building permit.

Neither the Permit nor the Notice of Appeal, both of record in this case, even suggests that Beth Tfiloh is not the owner of the property or that the Protestants are the owners, contract purchasers, or the representatives of the owners or contract purchasers of the Property. Accordingly, as a matter of law, the Protestants simply do not have standing to bring this appeal under BCC § 7-36.

The recent Court of Appeals case of *Sugarloaf Citizen's Association, et al. v. Department of Environment, et al.*, 344 Md. 271 (1996) discusses the distinction between administrative standing and judicial standing at length. In doing so, the Court provides a useful discussion of administrative standing in general. In that case, the Court notes that the standards for administrative standing are "relatively lenient", while the standards for judicial standing are markedly more stringent. The Protestants will surely point to Maryland case law which indicates this lenient standard for establishing standing in an administrative forum. However, *Sugarloaf* makes clear that while the standards for administrative standing such as that asserted by the Protestants in this case are not very strict, the legislature may lawfully limit standing to a particular group. "The requirements for administrative standing under Maryland law are not very strict. Absent a statute or reasonable regulation specifying criteria for administrative standing, one may

become a party to an administrative proceeding rather easily." *Id.* at, 286. The Court went on to hold that, in that case, there were no statutes or regulations governing standing to be a party in the administrative proceeding. However, the Court further noted that had there been such statutes or regulations, they could operate to tighten up the relatively loose standards to establish administrative standing.

In this Building Permit appeal, there is a legislative scheme, set in place by the Baltimore County Council, which, as a matter of law, replaces the lenient standard for standing generally with the rule that only the property owner, the contract purchaser, or their authorized representative, as applicant, may be a party in a board of appeals proceeding to review the action of the building engineer, and only when the action is adverse to the applicant. As a matter of law, the Protestants fail to meet this standard, and thus do not have standing to bring this appeal.

**The Board Does Not Have Jurisdiction Over the Interlocutory Zoning Approval
Underlying Issuance of the Permit**

The Notice of Appeal dated April 6, 2001 seems to suggest an alternative theory of the Protestant's case. The Notice states, in relevant part:

. . . On behalf of [the Protestants], we hereby note an appeal to the Board of Appeals of the Zoning Commissioner's approval for Building Permit No.: B443403, which was issued on March 8, 2001 for the construction of a shell building with dining hall and kitchen on the Camp Glyndon property pursuant to Section 26-132 of the Baltimore County Code.

We request that the zoning approval for the permit be rescinded and that Building Permit No.: B443403 issued on March 8, 2001 be suspended/revoked. [Emphasis added.]

Apparently recognizing the futility of noting an appeal of the issuance of the building permit under § 7-36, the Protestants seem to be hedging by attempting to invoke § 26-132¹, which provides for appeals of the decisions of the Zoning Commissioner and the Director of the Department of Permits and Development Management. The Notice could be read to appeal the zoning approval for the permit, as opposed to the permit itself. However, for the reasons set forth below, this attempt is as futile as attempting an appeal under § 7-36.

As noted above, in the standard course of processing a building permit application, the building engineer will circulate the application and the accompanying building and site plans to the various agencies which review the plans for conformity with the laws overseen by the agency. For example, the Bureau of Building Plans Review reviews a building permit application to determine if the structure proposed in the application meets the various building codes. The Fire Department will review the application to determine if the structure meets the fire code. The Department of Public Works may review the application for compliance with public works laws. And, obviously, the Bureau of Zoning Review will review the application to determine if the use is permitted on the property under the zoning regulations, and if the bulk and area restrictions (setbacks, maximum building heights, etc.) are met.

¹ BCC § 26-132 states:

(a) Any person or persons, jointly or severally, or any taxpayer aggrieved of feeling aggrieved by any decision or order of the zoning commissioner or the director of [permits and development management] shall have the right to appeal therefrom to the county board of appeals. . .

The Protestants have couched their Notice of Appeal in terms of "Building Permit No.: B443403", in the "Re:" line, and "the Zoning Commissioner's approval" and "the zoning approval" in paragraphs 1 and 2 of the Notice. Accordingly, Protestants seem to be asserting error on the part of the Zoning Commissioner / Director of the Department of Permits and Development Management ("Director"), in approving the issuance of the permit. They further assert that this error is reviewable by the Board under § 26-132 on their Notice of Appeal, as a decision or order of the Zoning Commissioner or the Director.

Analysis of the jurisdiction of the Board must start with the Express Powers Act, Md. Ann. Code, § 25A, § 5(U), and the Baltimore County Code, § 602(d). Both of these provisions are set forth in Appendix 1 of this memorandum. The Express Powers Act authorizes charter counties such as Baltimore County to provide for a Board of Appeals with jurisdiction over " . . . the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, . . . or other form of permission . . . " Md. Code § 25A, § 5(U). Baltimore County has seized upon this grant of authority by creating the Board of Appeals and cloaking it with the broadest jurisdiction authorized by the Express Powers Act. In this regard, the Baltimore County Charter §602(d) states "the county board of appeals shall hear and decide appeals from all other administrative and adjudicatory orders as may from time to time be provided by Article 25A of the Annotated Code of Maryland, as amended, or by legislative act of the county council not inconsistent therewith". Thus, the charter authorizes the board to hear and

decide any type of case which is included within the familiar language of the Express Powers Act, the relevant portion of which is quoted above.

Thankfully, the Board has the Court of Appeals case of *UPS v. People's Counsel*, 336 Md 569 (1994) to provide guidance in determining the scope of its jurisdiction in the context of the Express Powers Act and the County Charter, which are undisputedly the exclusive sources of jurisdiction of the Board. That case discusses the scope of the provision of the Express Powers Act, which is incorporated into the charter provision by reference. Coincidentally, *UPS* discusses specifically the Baltimore County Board of Appeals, as it operates under its county charter and the Express Powers Act, and also in the context of building permit issuance. In that case, with regard to the "Zoning Commissioner's" approval of and application for a building permit, the Court of Appeals states:

. . . Under the Baltimore County statutory scheme, once the Zoning Commissioner approves the application for a building permit and the Building Engineer issues the permit, the Zoning Commissioner does not have any further authority over that permit. The *Building Engineer* is the only official authorized to issue building permits, BCC § 7-36(a), and the authority to supervise activity pursuant to a building permit is vested in the *Building Engineer*, BCC § 7-2(a), and the Department of Permits and Licenses, § 529 of the Baltimore County Charter. More specifically, only the *Building Engineer* is granted authority to "revoke, suspend, annul, or modify any [building] permit," BCC § 7-36(a)(3). An appeal to the Board of Appeals "for review of the action of the *Building Engineer*" may be taken "[w]ithin thirty (30) days and not longer," BCC § 7-36(a)(4).

The clause from Art. 25A, § 5(U) . . . grants to a board of appeals appellate jurisdiction from "the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval ... or other form of permission...." The words "issuance, renewal, denial, revocation, suspension, annulment, or modification" obviously refer to an *operative event*

which determines whether the applicant will have a license or permit, and the conditions or scope of that license or permit. . . . In the context, the phrase "approval ... or other form of permission," . . . seems to have been designed simply to encompass all forms of licensing regardless of what the particular license or permit may be called. *Nevertheless, the appealable event is the issuance, renewal, revocation, etc. of the license or permit.* 336 Md., 583-4. [Emphasis added].

UPS speaks directly to the issue presented by the Protestant's appeal, and this Motion. It makes clear that the operative event in the context of a building permit is the issuance of the permit by the Building Engineer. The "approvals" of the various agencies, including the Zoning Commissioner, are not operative events within the context of the Express Powers Act. They do not ultimately determine whether the permit will issue. Only the final act of the building engineer in issuing the permit is the operative event.

The sign-offs of the various agencies can only fairly be characterized as interlocutory in nature, and by the terms of *UPS*, not appealable. To hold otherwise will open the floodgate of appeals by countless community groups of each and every sign-off of every county agency charged with reviewing a permit application, not to mention the deluge of appeals which will surely come from permit applicants when an agency fails to sign off on the permit. This is simply not the way the permitting system is set up to operate.

The Protestant's are faced with an insurmountable standing issue under § 7-36 in that they are not the "applicant" and thus can not bring an appeal of a building permit. So, they are cleverly trying an end-run around § 7-36. This alternative theory is doomed, however, to fail on jurisdictional grounds for want of an *operative event*. Under *UPS*,

which speaks directly to the issue, the Board simply does not have jurisdiction to hear the appeal of the zoning approval. Accordingly, this case must be dismissed.

Conclusion

There are two points which bear discussion in closing. First, the Board should take judicial notice of the fact that the deficiency complained of by the Protestant in their Notice of Appeal of the building permit, has in fact been cured. In the third paragraph of its Notice, the Protestants state that they are appealing because "Beth Tfiloh has not filed a Petition for Special Hearing" which would allow the public community input which they believed they were entitled to. The Board should note that Beth Tfiloh has since filed for a Special Hearing, which has been had, and the appeal of which is consolidated with this case (01-468-SPH). The Special Hearing appeal and the DRC appeal will go forward. However, this building permit appeal is improper and must be dismissed.

Secondly, the Protestants are not without a remedy. They may obtain a declaration of Beth Tfiloh's rights under the zoning code by filing their own Petition for Special Hearing involving the Beth Tfiloh property in Glyndon. Frankly, that would be the proper way of obtaining the relief which they seek in this building permit appeal. Alternatively, under BCC § 26-120 the Protestants have the right to bring injunctive proceedings against Beth Tfiloh if they believe they have a strong case that Beth Tfiloh is acting, or has been permitted by Baltimore County to act, in a way inconsistent with the Baltimore County Zoning Regulations.

WHEREFORE, Beth Tfiloh respectfully requests that this Board of Appeals dismiss the above-captioned matter for lack of standing to bring an appeal of the building permit, and for lack of jurisdiction over the zoning approval of the issuance of the building permit.

A handwritten signature in black ink, appearing to read "G. Scott Barhight". The signature is stylized with a large initial "G" and a long, sweeping underline.

G. Scott Barhight
Dino C. La Fiandra
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000

Attorney for Appellee, Beth Tfiloh
Congregation of Baltimore City, Inc.

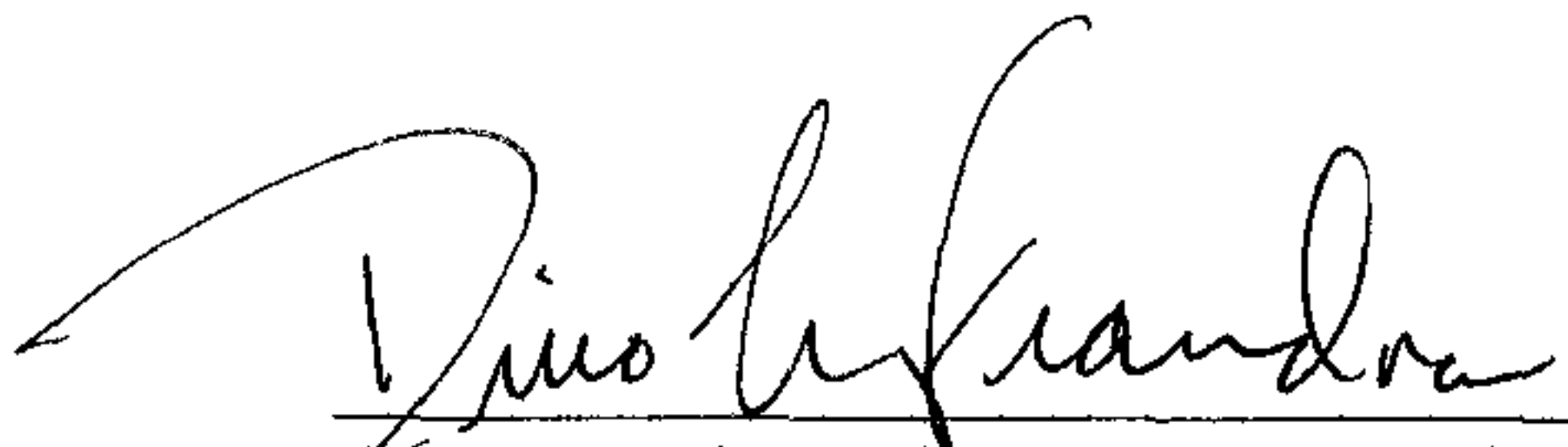
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of March, 2002, a copy of the foregoing Motion was transmitted by facsimile and first class mail, postage prepaid to:

Gary R. Jones, Esquire
Baxter, Baker, Sidle, Conn & Jones, P.A.
120 E. Baltimore Street, Suite 2100
Baltimore, Maryland 21202
Fax: 410-230-3801

Robert J. Carson, Esquire
345 Green Street
Havre de Grace, MD 21078
Fax: 410-939-1007

Peter M. Zimmerman, Esquire
People's Counsel for Baltimore County
400 Washington Avenue, Room 47
Towson, MD 21204
410-887-3182



G. Scott Barhight / Dino C. La Fiandra

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: May 10, 2002

TO: Arnold Jablon, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton *TRS*
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE FILE**

The following cases have been finalized and the Board of Appeals is closing the copy of the appeal case files and returning the file and exhibits (if applicable) attached herewith.

<u>BOARD OF APPEALS CASE NUMBER</u>	<u>PDM FILE NUMBER</u>	<u>NAME</u>	<u>LOCATION</u>
99-491-SPH	<i>99-491-SPH</i>	BETH TFILOH	DELIGHT MEADOWS ROAD / PLEASANT HIL ROAD AND RED RUN BLVD.
01-47-SPHX	<i>01-47-SPHX</i>	AT&T WIRELESS	19807 YORK ROAD
01-051-SPH	<i>01-051-SPH</i>	BRYAN NELSON & CHARLES BECKER	200 DETROIT AVENUE
CBA-01-118	<i>Building Permit B443403</i>	BETH TFILOH CONGREGATION	407 CENTRAL AVENUE
CR-02-120	<i>RECLASSIFICATION OUT OF CYCLE, 2001 DOCUMENTED SITE PLAN</i>	PENNROSE PROPERTIES	3134 ROLLING ROAD

Attachment: SUBJECT FILE(S) ATTACHED

IN THE MATTER OF
BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC. - "CAMP GLYNDON"
407 CENTRAL AVENUE
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

RE: DRC No. 101600D / LIMITED
EXEMPTION /§ 26-171(a)(2)
(PDM IV-455)

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-01-106
* * * * *

OPINION

This matter is before the Board on an appeal by Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh") from the denial by Arnold Jablon, Director of the Department of Permits & Development Management ("Jablon") of its request for exemption from *Division 2* of the Baltimore County Development Regulations pursuant to *Baltimore County Code* § 26-171(a)(2). The Board held a hearing on December 4, 2001. Beth Tfiloh was represented by G. Scott Barhight, Esquire, Dino C. LaFiandra, Esquire, and WHITEFORD, TAYLOR & PRESTON, LLP. The Appellees /Protestants ("Protestants"), Glyndon Community Association, Inc., Gary Jones, John A. Morris, Norman Karolenko, Sean O'Connell, Gary D. Applestein, and Nan Kaestner, were represented by Robert J. Carson, P.A. At the close of the evidentiary hearing, the Board requested post-hearing briefs which were to be submitted by close of business on January 7, 2002. A public deliberation was held in this matter on January 16, 2001.

Background

On October 4, 2000, Beth Tfiloh submitted to the Baltimore County Development Review Committee ("the DRC") a request for limited exemption from Division 2 of the Development Regulations for its proposed improvements to the property located at 407 Central Avenue in Glyndon. Beth Tfiloh sought an exemption, as stated above, under *Baltimore County Code* § 26-171(a)(2), contending that the property is a "lot of record" as set forth in that Section and deserves the exemption.

Donald Rascoe, Baltimore County Project Manager and Chair of the DRC as appointed by Director Arnold Jablon, testified in the hearing. Mr. Rascoe admitted that the lot in question, upon which Beth Tfiloh sought the exemption, appeared to be a closed lot and therefore a lot of record as applied by the DRC with respect to § 26-171(a)(2). He indicated that the DRC recommended denial of the exemption because there appeared to be a reasonable degree of community interest with respect to the project, and that the DRC reserved the right to have the Plan go through the full development process if there was such a degree of community interest. The position of the DRC was based upon Policy I.b dated 6/10/92, attached to the Development Management Policy Manual. That Policy stated, on the second page, in reference to (b)(9)

exemptions:

It is important that where an agency knows the community interest is intense about a particular project, such interest is brought to the attention of this office and of the development review committee.

Mr. Rascoe contended that that language pertained not only to (b)(9) exemptions but to all other exemptions under § 26-171 of the Development Regulations. However, he did admit that the Policy did not refer to (a)(2) exemptions.

Mr. Rascoe also referred to a memorandum dated March 4, 1994 from Mr. Jablon to Mr. Rascoe referring to a revision in the Development Management Policy Manual dated July 1, 1993. A portion of the March 4, 1994 memo states:

I refer you to that section of the policy which deals with a request for a (b)(9) exemption. While a "measurable degree of community interest" may well be subjective, and certainly not found in the law, we recognize the inherent interest a community has in any proposed development. I agree, until challenged and overruled, that an exemption may be refused if this criterion exists. However, the policy further states that if a zoning hearing is required, then the former issue is protected and the exemption must be allowed.

That memo went on to say as follows:

If a (b)(9) request is presented to the DRC, and it involves a minor development as defined in Section 26-168, and a zoning hearing is required, no

matter how much community interest there may be, or the subject matter of the hearing, the exemption cannot be refused.

Mr. Rascoe stated that the DRC applied the March 4, 1994 memo in the instant case because the Office of Planning indicated that the Plan should be subjected to the full development process because of the degree of interest of the community.

At the time that the DRC met, the property was split-zoned, and the portion of the property where the synagogue was to be located was zoned R.C. 5, with the remaining portion of the property being zoned D.R. 2. Subsequently, the property was rezoned on or about December 6, 2000, with the portion of the property where the synagogue is to be located being rezoned to R.C. 4 and the other portion of the property where certain other buildings were located was rezoned D.R. 1. The remaining portions of the property that were not rezoned remain R.C. 5.

Mr. Rascoe testified that, because of the community interest and the fact that no hearing would be required under the R.C. 5 zoning designation, since a church or synagogue was allowed as a matter of right under that classification, the DRC recommended the denial of the (a)(2) exemption. Subsequently, Mr. Jablon confirmed the recommendation of the DRC by letter dated January 4, 2001. This letter is dated after the reclassification of the property in question to R.C. 4.

In opposing Beth Tfiloh's appeal of Mr. Jablon's decision, the Protestants moved to dismiss the appeal on the basis that the Board was without jurisdiction to hear the appeal of Mr. Jablon's ruling affirming the DRC. In addition, the Protestants took the position that Mr. Jablon was correct in denying the exemption under § 26-171(a)(2).

Issues

1. Whether or not the Protestants' Motion to Dismiss should be granted on the basis that the Board lacks jurisdiction to hear appeals from a decision of the Director of the Department of Permits and Development Management under the DRC regulations.
2. Whether or not the Director of Permits and Development Management erred in upholding the denial of the DRC of an exemption under 26-171(a)(2) of the *Baltimore County Code*.

Decision

Issue No. 1 Whether or not the Protestants' Motion to Dismiss should be granted on the basis that the Board lacks jurisdiction to hear appeals from a decision of the Director of the Department of Permits and Development Management (DPDM) under the DRC regulations.

In support of its position that the Motion to Dismiss should be granted, the Protestants rely chiefly on *Meadow of Greenspring Homeowners' Association, Inc. v. Foxleigh Enterprises*, 133 Md.App. 510 (Md. 2000). Protestants' reliance on the *Foxleigh* decision is misplaced. As set forth in the decision of the Court of Special Appeals in that matter, the Board in its Opinion entered on September 16, 1998, stated:

...the May 12, 1998 letter describes a CRG plan as opposed to a DRC plan. As a result, it is not governed by the DRC but the CRG per Sections 26-169 and 26-211 of the [Maryland Annotated] Code. As such, Mr. Jablon's role differs from that which he arguably may exercise under the DRC. The CRG process provides for an appeal at the time the plan is approved, not at the juncture at which Developer [Foxleigh] is advised to submit a plan. That time had not yet occurred at the time of the instant appeal. The instant appeal thus is not ripe and does not constitute a final act from which an appeal lies.

While the question of an appeal from exemptions granted under § 26-171 of the BCC has been a subject of discussion and controversy, two decisions of the Circuit Court for Baltimore County, *Alan N. Kantor and Associates*, Circuit Court Civil Action No. 03-C-95-10094, and *Kucera et al vs. UMBC*, Circuit Court Civil Action No. 03-C-98-009243 (1999) have held that a decision of the Director of DPDM, adopting recommendations of the DRC, was clearly a "final decision" and therefore an appealable event. The Board has reviewed its position relative to the appealability of orders granting or denying limited exemptions under 26-171 and determined that such decisions are appealable. This position was expressed in a detailed explanation in *In the Matter of the Application of Seven Kids, LLC, et al*, Case No. 99-199-X, Case No. CBA-99-127, and CBA-99-128. It was affirmed by a second panel of the Board *In the Matter of the Application of Carroll Community Church*, Case No. CBA-00-105.

Therefore, the Board finds that the matter is ripe for appeal in that Mr. Jablon's letter of January 4, 2001, was a final decision from the Director of DPDM and therefore was appealable.

Issue No. 2. Whether or not the Director of Permits and Development Management erred in upholding the denial of the DRC of an exemption under 26-171(a)(2) of the *Baltimore County Code*.

The Board has determined that appeals from a decision of the Director of DPDM shall be heard *de novo*, since there is no record below upon which the matter could be reviewed. The Board notes that the exemptions under § 26-171 are quite subjective and, in some instances, very, very broad. Exemption (a)(2) provides an exemption for:

The building or preparation of land for building on a lot of record lawfully in effect at the time of the building or preparation of the land for building if the lot of record did not result from a subdivision of land exempt under section 26-170.

This does not appear to provide for any limitation with respect to the building to be constructed or the preparation of the land for the building, as long as it is being constructed on a "lot of record." While the property in question currently has a small synagogue building constructed in the area of the property that is currently designated D.R. 1, the proposed construction of a 1,500-seat synagogue in the area which is currently zoned R.C. 4 seems to be allowed under an (a)(2) exemption. The Board can well understand how there could be "considerable community interest" in the construction of a 1,500-seat synagogue, with the possible considerations of additional traffic, access to the land, and various other issues of water, sewer, etc. However, § 26-171 does not contain any limitations or requirements that community interest be considered in the granting of exemptions. In order to find any mention of community interest, one must go to the Development Management Policy Manual submitted by the Appellant as Appellant's Exhibit No. 11, and the attached memorandum submitted as Appellant's Exhibit No. 12.

While Protestants contend that the last paragraph under section (b)(9) of the memorandum from Mr. Jablon to David Fields, et al, dated 6/10/92, revised 9/10/92, pertains to

all of the exemptions under 26-171, the memorandum of March 4, 1994 from Mr. Jablon to Mr. Rascoe appears to limit community interest to exemptions requested under § (b)(9).

The Board takes the position that there is no mention of community interest in § 26-171 of the *Baltimore County Code*. Therefore, under the plain language of the exemption, the Board finds that an exemption under § (a)(2) must be granted, even though the Board might feel that, where there is a community interest, such an exemption should be denied.

The Board notes that even under the position taken by the DRC, the property had been rezoned to R.C. 4 at the time of Mr. Jablon's letter of January 4, 2001. Under the Development Management Policy Manual and the position of the DRC with respect to granting exemptions where a further zoning hearing would be required, the DRC would have granted the exemption since a special exception hearing is required under R.C. 4 zoning, in order for a synagogue to be constructed.

The Board also notes that the Protestants have raised the issue that an application filed by Beth Tfiloh on June 6, 2001 showing the proposed expansion of the Beth Tfiloh school facilities, and the approval thereof by the DRC /DPDM Director, legally serves to withdraw and/or to supersede the first site plan being considered herein. The Protestants cite two cases in support of their position, *County Commissioners of Frederick County v. Page*, 163 Md. 619, 626-27 (1933) and *Restivo v. Princeton Const. Co.*, 233 Md. 516, 520-21 (1960). This Board does not feel that these cases support the Protestants' position. The first case did not involve the rezoning of property, and the second case involved the issuance of a building permit. The Court of Appeals did not rule on the denial of the application since the Appellant voluntarily dismissed its petition. The Board notes that the second application in the instant case, which was approved by the Director of DPDM, does not include any plans for the portion of the lot where the synagogue is proposed to be erected. The Board does not consider that the second application supersedes or is in effect a withdrawal of the first application.

Conclusion

Having found above as to the request for limited exemption, an Order shall be issued in conformance with this decision.

ORDER

THEREFORE, IT IS THIS 8th day of February, 2002 by the
County Board of Appeals of Baltimore County

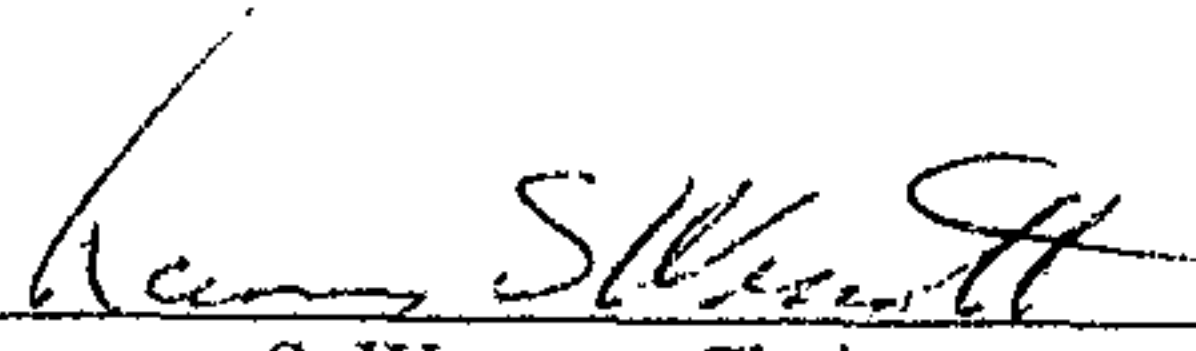
ORDERED that Protestants' Motion to Dismiss based upon the lack of jurisdiction of the Board to hear the matter shall be **DENIED**; and it is further

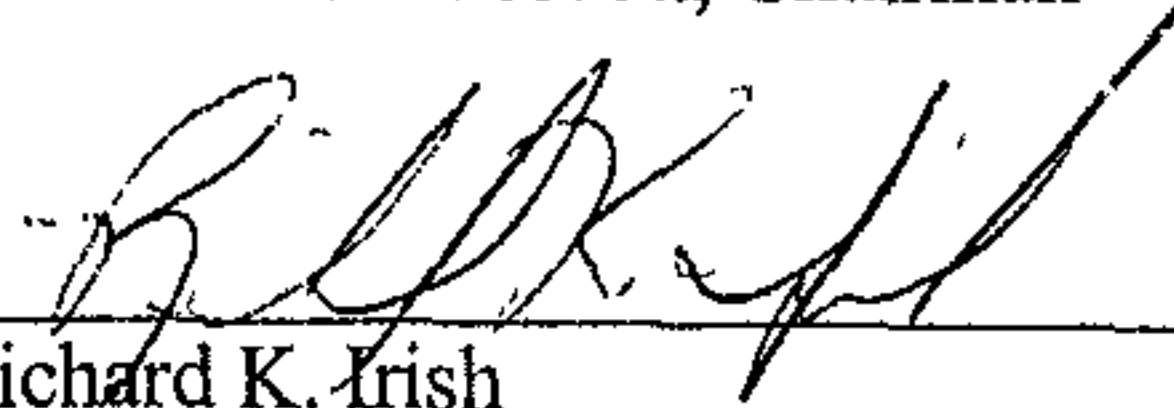
ORDERED that the requested (a)(2) limited exemption pursuant to § 26-171 of the *Baltimore County Code* be and the same is hereby **GRANTED**; and it is further

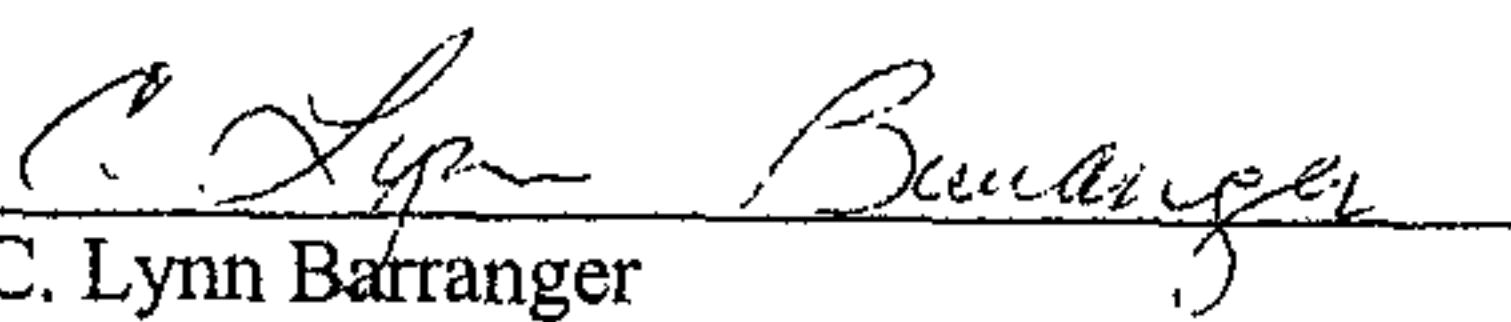
ORDERED that the decision of the Director of the Department of Permits and Development Management dated January 4, 2001 is therefore **REVERSED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott, Chairman


Richard K. Irish


C. Lynn Barranger

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ^{31st}~~30th~~ day of January, 2003, a copy of the foregoing pleading was mailed first class, postage prepaid to:

Gary R. Jones, Esquire
Baxter, Baker, Sidle, Conn & Jones, P.A.
Suite 2100
120 E. Baltimore Street
Baltimore, Maryland 21202
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Robert Carson, Esquire
345 Green Street
Havre de Grace, Maryland 21078
410-939-0050

Peter M. Zimmerman
People's Counsel for Baltimore County
400 Washington Avenue
Room 47
Towson, Maryland 21204
410-887-2188

for *D. Scott Barhight*
G. Scott Barhight

APPLICATION FOR BUILDING PERMIT

PERMIT #: 8443403 CONTROL #: C- DIST: 04 PREC: 05

LOCATION: 427 CENTRAL AVE
 SUBDIVISION: 1320FT E GLYNDON AV
 TAX ASSESSMENT #: 0413022970

OWNER INFORMATION

NAME: GLYNDON LLP
 ADDR: 100 PAINTERS MILL RD, STE900, OWINGS MILLS MD

APPLICANT INFORMATION

NAME: KEN BERNSTEIN
 COMPANY: GLYNDON LLP
 ADDR1: 100 PAINTERS MILL RD STE900
 ADDR2: OWINGS MILLS MD 21117
 PHONE #: 410-363-3434 LICENSE #:

NOTES

RD/TLM

DRC#

PLANS: CONST 00 PLOT 0 R PLAT 0 DATA 0 ELEC NO PLUM NO

TENANT:

CONTR: OWNER

ENGR:

SELLR:

WORK: SHELL BUILDING FOR DINING HALL WITH KITCHEN.

REFER TO B437227 FOR CONST & SITE PLANS.

30'X111'X36'=7,992. ISSUANCE OF THIS PERMIT

DOES NOT CONRL: BALTO BALTO COUNTY TO ANY

SUBSEQUENT PERMITS. BLDS PER GRANTED DATE

#94-SRHA NOT TO EXCEED 0,000SF.

94-27 SHH

PROPOSED USE: CAMP & SHELL BUILDING

EXISTING USE: CAMP

BLDS CODE: BOCA CODE

RESIDENTIAL CATEGORY:

OWNERSHIP: PRIVATELY OWNED

ESTIMATED COST OF MATERIAL AND LABOR: 50,000.00

TYPE OF IMPRV: NEW BUILDING CONSTRUCTION

USE: SCHOOL, COLLEGE, OTHER EDUCATIONAL

FOUNDATION:

BASEMENT:

SEWAGE:

WATER:

CONSTRUCTION:

FUEL:

CENTRAL AIR:

SINGLE FAMILY UNIT

TOTAL 1 FAMILY BEDROOMS

MULTI FAMILY UNIT

EFFICIENCY (NO SEPARATE BEDROOMS):

NO. OF 1 BEDROOM:

NO. OF 2 BEDROOMS:

NO. OF 3 BEDROOMS OR MORE:

TOTAL NO. OF BEDROOMS:

TOTAL NO. OF APARTMENTS:

PERMIT #: B443403

DIMENSIONS - INSTALL FIXTURES

	BUILDING SIZE
GARBAGE DISP:	FLOOR: 6800
PONDER ROOMS:	WIDTH: 50'
BATHROOMS:	DEPTH: 444'
KITCHENS:	HEIGHT: 30'
	STORIES: 4

LOT NOS:
CORNER LOT:

LOT SIZE AND SETBACKS

SIZE: 42.5/660
FRONT STREET:
SIDE STREET:
FRONT SETB: 79'6
SIDE SETB: 63.3/307
SIDE STR SETB:
REAR SETB: 44.2

ZONING INFORMATION

DISTRICT:	BLOCK:
PETITION:	SECTION:
DATE:	LIBER: 643
MAP:	FOLIO: 000
	CLASS: 04

ASSESSMENTS

LAND: 0545700.00
IMPROVEMENTS: 0972100.00
TOTAL ASE.:

PLANNING INFORMATION

MASTER PLAN AREA: SUBSEWERSED: CRITICAL AREA:

DATE APPLIED: 03/08/2004 INSPECTOR INITIALS: 04C

FEE: \$251.00 PAID \$251.00 RECEIPT #: A423543

PAID BY: APPL

(I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE. AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS)

COMPANY OR OWNER

DATE

ADDRESS

AGENT ____
OWNER ____

SIGNATURE OF APPLICANT

PHONE