

10-22-02

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION –		
NE/S Central Avenue, 250' NW of the c/l	*	ZONING COMMISSIONER
Hunting Horn Circle		
(407 Central Avenue)	*	OF BALTIMORE COUNTY
4 th Election District		
3 rd Council District	*	Case No. 02-463-SPHX
Beth Tfiloh Congregation of	*	
Baltimore City, Inc. - Petitioners		
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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the owners of the subject property, Beth Tfiloh Congregation of Baltimore City, Inc., (hereinafter, "Beth Tfiloh"), through their attorney, G. Scott Barhight, Esquire. The Petitioners request a special hearing to approve an amendment to the site plan approved in prior Case No. 01-468-SPH and special exception relief as follows: 1) With respect to the R.C.4 zoned portion of the property, a special exception for a camp and a synagogue, or, in the alternative, a community building and other uses of a civic, social, recreational and educational nature; and 2) with respect to the R.C.5 zoned portion of the property, a special exception for a camp, or in the alternative, for a community building and other uses of a civic, social, recreational and educational nature. The subject property and requested relief are more particularly described on the revised site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1A.

A public hearing on the matter commenced June 17, 2002. In that the hearing was not completed on that date, the matter was continued to August 16, 2002. Thereafter, Counsel for the parties submitted memoranda to support their respective positions.

Appearing at one or both of the requisite public hearings in support of the request were Bernard H. Suffel, Executive Director, and Rabbi Mitchell Wohlberg, representatives of Beth Tfiloh, property owners. Also appearing and testifying on behalf of the Petitioners were Steve Warfield, Civil Engineer with Matis Warfield, Inc., the consultants who prepared the site plan for

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this property, and G. Scott Barhight, Esquire, attorney for the Petitioners. A number of Protestants appeared at the hearing, including the Glyndon Community Association, through Gary R. Jones, Esquire and Robert J. Carson, Esquire. In addition, Messrs. Carson and Jones represented Gary D. Applestein, Nan Kaestner and Mary Ellen Porter, all of who are individual residents of the area. Also appearing in opposition to the request was Rich Desser on behalf of the Sagamore Forest/Worthington Hillside Community Association. In addition, Alfred W. Barry, III, a Land Planner, offered expert testimony on behalf of the Protestants. Numerous other individuals from the community appeared at the hearing and their attendance is reflected on the sign-in sheets.

The subject property under consideration is an irregularly shaped parcel located on the north side of Central Avenue, just north of Bond Road in Glyndon. Glyndon is a historic community that features a small commercial core surrounded by residential neighborhoods. Although the property is a single lot of record, it is bisected into several zones. Specifically, the property is split zoned R.C.4 (23.5 acres), R.C.5 (2.3 acres), D.R.1 (18.2 acres) and D.R.2 (0.1 acres). As more particularly shown on the site plan, the predominant zoning classifications of the site are D.R.1 and R.C.4. The D.R.1 classification largely encompasses the southwest portion of the site that has road frontage on Central Avenue and Glyndon Mews Court. The northeast portion of the tract is considered the rear portion of the parcel and abuts several residences to the east and north.

As shown on the site plan, the property is improved with a number of existing buildings. These include a two-story pre-school building, an existing dining hall, a one-story synagogue, and a number of other structures. The Petitioners propose significant new construction, including a gymnasium, a new dining hall, and the largest structure, a 46,500 sq.ft. lower school building. Generally, the existing and proposed improvements are clustered in that portion of the site zoned D.R.1. However, some existing structures are located across the zoning line towards the rear of the site on that portion of the tract zoned R.C.4. These mainly include a number of bunkhouses. All of these existing and proposed improvements are more particularly shown on the site plan.

The historic use of the property as well as its zoning history bear on the issues presented. The first zoning approval was granted for this property on June 30, 1965 under Case No. 65-389-X at which time, the Maryland Diabetes Association, Inc. owned the property. In that case, special exception relief was granted for that organization to operate a camp, community swimming pool, and other structures for use as a camp for diabetic children. As part of this camp use, the property was improved over the years with a pavilion, numerous bunkhouses, a medical building, a shower/laundry structure, infirmary, dining hall, swimming pool, pool house, a multi-purpose center, and other related accessory structures. For years, the property was known as Camp Glyndon and the primary purpose of the site was to provide a recreational area for diabetic children. Typically, the camp was used most frequently during the summer. Additionally, the facility served as a place for educational meetings and seminars conducted by the Maryland Diabetes Association, Inc.

In 1993, the Maryland Diabetes Association, Inc. filed a Petition for Special Hearing and Variance under Case No. 94-27-SPHA. Following the public hearing, special hearing relief was granted to permit certain upgrades and amendments to the special exception relief which had been originally approved in Case No. 65-389-X. Additionally, certain variances were granted for existing and proposed setbacks between existing and proposed buildings. A sign variance was also approved. Thereafter, on or about March 4, 1994, the Maryland Diabetes Association, Inc. obtained a limited exemption pursuant to the County's Development Review Process codified in Title 26 of the Baltimore County Code. That exemption was granted under Case No. IV-455 and allowed the property owner to build on the site without undergoing "full process" review.

In 1998, Beth Tfiloh acquired the property from the Maryland Diabetes Association, Inc. Since its acquisition, Beth Tfiloh has built a synagogue on the site and proposes additional construction. Moreover, there has been further litigation, some of which has been the result of Petitions filed and considered by the Office of the Zoning Commissioner. Other litigation in other forums has resulted due to the County's interpretation and implementation of the development review regulations contained in Title 26 of the Code. Insofar as the development review

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regulations are concerned, Beth Tfiloh sought an exemption from the full development review process, pursuant to Section 26-172 of the Baltimore County Code, for the construction of its synagogue building. By letter dated January 4, 2001, Arnold Jablon, Director of the Department of Permits and Development Management, denied Beth Tfiloh's request for exemption. Beth Tfiloh appealed that decision to the County's Board of Appeals. Following a hearing on that matter, the Board reversed Mr. Jablon's decision and issued an Order approving the exemption. The Glyndon Community Association appealed that decision to the Circuit Court of Maryland for Baltimore County and by Order dated August 26, 2002, Judge Thomas J. Bollinger of that Court reversed the Board's decision. He held that Mr. Jablon's decision could not be appealed. Thus, his Order vacated the decision of the Board of Appeals, essentially reinstating Director Jablon's denial of the exemption. (See Case No. 01-106)

In addition to that case, Beth Tfiloh sought a second exemption, pursuant to Section 26-172 of the Baltimore County Code, for certain amendments to its plan reflecting improvements to the property. In that instance (Case No. 01-136), the requested exemption was approved by Mr. Jablon by letter dated June 29, 2001. This decision was appealed by the Glyndon Community Association to the Board of Appeals, which affirmed Mr. Jablon's decision on July 24, 2002. That decision has likewise been appealed and is pending in the Circuit Court for Baltimore County.

In addition to these matters regarding Beth Tfiloh's plan and whether review of same is exempt from the full process set out in Title 26 of the Code, Beth Tfiloh also filed a Petition for zoning relief. Specifically, Beth Tfiloh filed a Petition for Special Hearing in Case No. 01-468-SPH, which was considered by the undersigned Zoning Commissioner. Following the requisite public hearing, the undersigned issued an Opinion and Order on September 19, 2001, granting in part, and denying in part, the requested relief. Essentially, that Opinion approved amendments to the site plans and Orders in the prior cases to permit the proposed construction and abandonment of the special exception previously granted to the Maryland Diabetes Association, Inc. for a camp. Additionally, relief was granted to allow school and synagogue building lengths of greater than 200 feet. The Order also affirmed that the lower school and synagogue buildings were uses

permitted as of right in the D.R.1 zoned portion of the property. Finally, it was held that certain existing camp buildings and proposed athletic fields were not permitted on that part of the property zoned R.C.4 as accessory to the uses on the D.R.1 zoned portion of the site.

Beth Tfiloh appealed that decision to the County Board of Appeals and the Board considered the matter in conjunction with Mr. Jablon's denial of the exemption on January 4, 2001 (Case No. 01-106). Within its 18-page Opinion, the Board held that much of the decision rendered by the undersigned Zoning Commissioner had not been appealed. However, the Board affirmed that the Petitioners could not utilize the R.C.4 zoned portion of the site as an accessory use to activities in the D.R.1 zone.

The Protestants have raised a number of issues relating to the instant Petitions filed by Beth Tfiloh. They will be addressed in turn.

A. ESTOPPEL AND ISSUE PRECLUSION:

1) Preliminarily, the Protestants argued that the requested relief cannot be considered because Beth Tfiloh is estopped and precluded from seeking a special exception on the R.C.4 and R.C.5 zoned portions of the property. Within its Post-Trial Memorandum, the Protestants summarize their argument and state that, "Beth Tfiloh is now trying to make an end-run around the Board's decision while at the same time, ignoring the requirements of the zoning regulations."

Admittedly, Beth Tfiloh's goal remains the same as was expressed when the initial Petition for Special Hearing was filed in Case No. 01-468-SPH. That is, Beth Tfiloh wishes to use the property to fulfill its religious vision and purposes. Although the goal is the same, the approach is different and therefore, Beth Tfiloh is not estopped and/or precluded. I explain.

The issue presented in the prior zoning hearing was whether Beth Tfiloh could conduct uses on the R.C.4 zoned portion of the property as accessory to the principal activities that occur on the D.R.1 zoned portion of the property. The question presented in that case was whether the definition of "accessory use" in Section 101 of the B.C.Z.R. could be interpreted to allow Beth Tfiloh's proposed use in the R.C.4 zone. That question was answered negatively by the undersigned and the Board of Appeals affirmed. The instant request is different. The Petitioners

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now seek special exception relief, pursuant to Sections 1A03.3.B(2)&(3) of the R.C.4 regulations, and Section 1A04.2.5(2) and (4) of the R.C.5 regulations. Although the ultimate effect may largely be the same, the nature of the request (special hearing v. special exception) is different as are the standard of proof and issues presented. Whereas the prior case involved an interpretation of an "accessory use" as defined in Section 101 of the B.C.Z.R., the instant case requires the application of the standards set out in Section 502.1 of the B.C.Z.R. to the use proposed. While the principles of res judicata can apply to an administrative (zoning) hearing, they do not bar this case given the different issues presented. (See, e.g., Washington Suburban Sanitary Commission v. TKU Associates, 281 Md.1 (1977)). For these reasons, I decline to adopt the Protestants' arguments that Beth Tfiloh is now estopped or precluded from seeking special exception relief.

2) The Protestants also contend that Section 500.12 of the B.C.Z.R. precludes the filing of the instant Petition for Special Exception. Indeed, that Section provides that a Petition for Special Exception with respect to the same property or any part thereof, cannot be filed until at least 18 months have passed from the date of the final Order for special exception relief. Although the issues presented in Case No. 01-468-SPH remain in litigation as outlined above, the simple answer to Protestants' assertion is that the prior case did not consider a Petition for Special Exception. Specifically, the litigation in Case No. 01-468-SPH was requested under a Petition for Special Hearing. There was no special exception relief sought in that case. The Petition for Special Hearing filed in that case sought an interpretation of the zoning regulations that would have allowed Beth Tfiloh to use part of the property as accessory to the principle activities that are conducted elsewhere on the site. Thus, the instant Petition does not represent a second Petition for Special Exception; rather, it is the first Petition for Special Exception that Beth Tfiloh has filed for this property.

3) The Protestants contend that as a practical matter and in the interest of judicial economy, a decision on the Petition should be stayed until various other pending administrative and judicial proceedings are ultimately concluded. Arguably, it might be appropriate for all of these issues to be litigated at one time and in one forum. However, the requested exemption from

the development review process, pursuant to Section 26-172 of the Baltimore County Code, is not a matter within the jurisdiction of the Zoning Commissioner, and is properly made by the Development Review Committee (DRC) as set out within Mr. Jablon's letters. Thus, those matters arose in a different forum. Moreover, there have been no stays or orders of consolidation issued by the Circuit Court relating to this matter. It is within the Petitioner's discretion whether the instant Petition should be filed. Under the circumstances, I decline to dismiss the instant Petition for Special Exception which in my view, has been properly filed and considered by me in accordance with the applicable provisions of law.

B. DOES THE B.C.Z.R. PERMIT BETH TFILOH TO OBTAIN A SPECIAL EXCEPTION FOR COMMUNITY BUILDINGS AND OTHER COMMUNITY USES?:

The Protestants also argue that a special exception for a community building to be located in the R.C.4 zone cannot, by law, be granted for the Beth Tfiloh property. Section 1A03.3.B.3 of the B.C.Z.R. sets forth those special exception uses permitted in the R.C.4 zone as follows: "Community buildings, swimming pools, or other uses of a civic, social, recreational or educational nature, including picnic grounds and tennis facilities, provided that no tennis facilities shall comprise more than four (4) courts." Section 450.3 of the B.C.Z.R. defines community buildings as "A building used for recreational, social, educational, or cultural activities, which is open to the public, or a designated part of the public, and is operated by a public or non-commercial organization." The Protestants argue that Beth Tfiloh's use cannot be considered a community building in that the property will be used solely for Beth Tfiloh's purposes and adjacent residents will not be allowed to utilize the facility unless they are members of that congregation.

The Protestants are correct in their assertion that Beth Tfiloh's proposed uses in the R.C. zones are not, by definition, a community building. However, the uses permitted in the R.C.4 zone by special exception identified in Section 1A03.3.B.3 are broadly stated. Not only are community buildings designated as a potential special exception use, but so are "other uses of a civic, social, recreational or educational nature..." Moreover, the use of the word "or"

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demonstrates the legislative intent that the definition be read in the disjunctive. Thus, community buildings are but one use allowed by Section 1A03.3.B.3; any other use of a civic, social, recreational and/or educational nature might be allowed.

As described by Rabbi Wohlberg, the uses proposed within the R.C.4 zone are clearly of a recreational and/or educational nature. As such, they are included within the broad range of special exception uses set out in Section 1A03.B.3.b(1). Finally, it is to be noted that the Petition for Special Exception itself is written in the alternative; to request approval for a camp and synagogue in the R.C.4 zone, or, in the alternative, a community building or other uses of a civic, social, recreational, educational nature. Although the Protestants' argument has merit as to whether a community building is permitted, the wording of the Petition and the language in the B.C.Z.R. is sufficiently broad to allow Beth Tfiloh to proceed with its Petition for Special Exception.

C. APPROPRIATENESS OF THE PETITION FOR SPECIAL EXCEPTION:

To emphasize, the requested relief in this instance is whether special exception approval should be granted to Beth Tfiloh for the proposed uses in the R.C.4 and R.C.5 zoned portion of the property. The proposed use of that part of the property was fully described within the testimony of Rabbi Wohlberg. Essentially, the R.C.4 and R.C.5 zoned portions of the property will be used in two fashions.

First, the existing bunkhouses will remain and be occupied at various times by members of Beth Tfiloh's congregation. As more particularly shown on the plan, there are a number of bunk buildings that were constructed on the R.C.4 zoned portion of the site when the Maryland Diabetes Association used the property. Beth Tfiloh does not wish to raze these structures, a decision that is certainly logical given both the historic and proposed use of the site. Additionally, three bunkhouses will be relocated to the R.C.4 zoned portion of the property to make room for the proposed lower school building. All of the bunkhouses will be used by members of the Beth Tfiloh congregation. The uses will primarily be generated by the activities on the D.R.1 zoned portion of the site. Some members of the congregation cannot operate automobiles during the

Sabbath and will use the bunkhouses for lodging overnight at those times. On other occasions and during special activities, children of adult members of the congregation will use the bunkhouses.

In addition to the activities in the bunkhouses, the second use for the R.C.4 zoned portion of the site will be recreational in nature. Athletic fields are proposed within areas of the R.C.4 and R.C.5 zoned portions of the tract for active recreational purposes (e.g. soccer games). Additionally, members of Beth Tfiloh may walk or enjoy this area as passive recreation.

The record of this case will reflect the overwhelming weight and testimony offered that these proposed uses will not, in and of themselves, cause detrimental impact to the health, safety and general welfare of the locale. As is well settled, any special exception must be considered in accordance with the provisions of Section 502.1 of the B.C.Z.R. That Section requires that the Zoning Commissioner determine whether the proposed use(s) will cause any adverse effects above and beyond the inherent impact of such use upon the health, safety and general welfare of the locale. The record of this case is clear that the occasional occupancy of the bunkhouses and recreational activities on the R.C.4/R.C.5 zoned portions of the site will not, in and of themselves, cause adverse impacts on the neighborhood. The Protestants' objections and concerns are as to the permitted by-right activities that are proposed in the D.R.1 zoned portion of the site. There was no credible testimony that use of the bunkhouses and/or fields/walking trails will harm adjacent properties. Thus, it is clear based on the overwhelming testimony and evidence presented that the Petition for Special Exception should be approved.

D. IMPOSITION OF CONDITIONS:

Having determined that the Petition for Special Exception for uses of a civic, social, recreational and educational nature should be approved on the R.C.4 and R.C.5 zoned portions of the site, the final issue is whether any restrictions or conditions should be attached.

Section 502.2 of the B.C.Z.R. empowers the Zoning Commissioner to impose such conditions, restrictions or regulations upon the grant of the special exception as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. Indeed, the appellate courts of this state have recognized the inherent authority of a zoning body to impose

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conditions upon a special exception use, given the fact that special exceptions are conditional uses which are permitted only upon a finding that the use proposed will not detrimentally impact the surrounding locale. (See, e.g., Skipjack Cove Marina, Inc. v. Board of County Commissioners of Cecil County, 264 Md. 381 (1972)).

The Protestants in this case have requested 15 specific conditions be attached to any special exception approval granted for the R.C.4/R.C.5 zone. That list of conditions was entered into evidence as Protestants' Exhibit 3. It is manifest that many of the conditions requested by the Protestants are not offered to mitigate the impacts of Beth Tfiloh's use of the R.C.4/R.C.5 zoned portions of the property, but to reduce the impact of those uses permitted by right in the D.R.1 zoned portion of the tract. For example, requested Condition No. 2 seeks to limit the lower school to Kindergarten through 5th Grade, only. Likewise, Condition No. 6 seeks a limitation on the number of parking spaces on site. As shown on the plan, there is no parking area proposed within the R.C.4/R.C.5 zoned portions of the property; all parking is shown in the D.R. zone.

The undersigned has researched this issue, but has found no persuasive Maryland authority which definitively states that restrictions entered on a special exception use must be limited to that use only. However, it is axiomatic that this is indeed the statement of the law. Obviously, there must be some reasonable nexus between the activity for which mitigation is sought and the restriction imposed. In this case, the simple fact of the matter is that Beth Tfiloh is permitted to use, as a matter of right, the D.R.1 zoned portion of its property for its religious and educational (school) purposes. Those uses are enumerated as uses as of right in the D.R.1 zone. There can be no restrictions entered for those activities as they are permitted by right. Any restrictions imposed for uses occurring on the R.C.4/R.C.5 zoned portions of the property must mitigate impacts specifically associated with those uses. That is, the restrictions imposed must mitigate the impact of the use of the bunkhouses, athletic fields, and walking trails.

The record of the case will show that the reasons offered in support of the restrictions was to mitigate the activity which now occurs and will occur in the future on the D.R.1 zoned portion of the site. Thus, nearly all of the requested conditions bear no reasonable nexus to the

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proposed uses on the R.C.4/R.C.5 zoned portions of the site. None of those restrictions may therefore be imposed.

Nonetheless, there are certain restrictions that are appropriate. The red lined revised plan shows all structures as either existing or proposed for the R.C.4/R.C.5 zoned portions of the tract. A restriction shall be imposed prohibiting the construction and/or relocation of any additional buildings/structures in those zones other than those shown on the plan. That is, only the existing bunkhouses and those buildings that are to be relocated to that portion of the site shall be permitted. Any additional proposed construction of any building/structure/use shall constitute a material amendment to the plan, which will require an additional public hearing. Second, the area of the athletic fields shall be as shown and limited on the site plan. Generally, that area of the site plan is within the confines of the "loop road" and therefore, the fields shall be limited to that area, only. The existing area of woods located between the loop road and property line to adjacent sites shall remain undisturbed and in its current state. Those woods shall remain to serve as a buffer between the adjacent properties and the athletic fields. Third, the athletic fields shall not be lighted. The use of the athletic fields shall be limited to daylight hours, only. Fourth, there will be no amplified noise on the R.C.4/R.C.5 zoned portions of the site after 9:00 PM Sunday through Thursday, and 10:00 PM Friday and Saturday. These four restrictions are appropriate and are imposed to address the impact of the uses proposed in the R.C.4 and R.C.5 zoned portions of the tract.

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.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 22nd day of October, 2002 that the Petition for Special Hearing to approve an amendment to the site plan approved in prior Case No. 01-468-SPH, in accordance with Petitioner's Exhibit 1A, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Special Exception seeking relief as follows: 1) With respect to the R.C.4 zoned portion of the property, a special exception for a camp

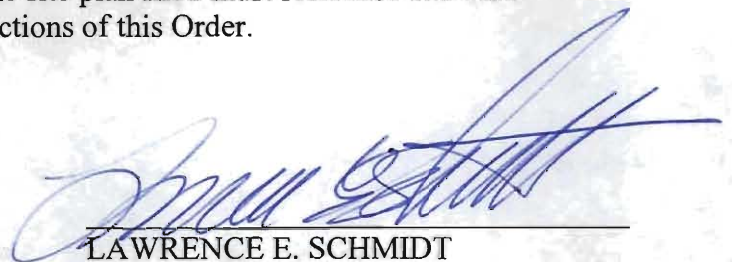
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and a synagogue, or, in the alternative, a community building and other uses of a civic, social, recreational and educational nature; and 2) with respect to the R.C.5 zoned portion of the property, a special exception for a camp, or in the alternative, for a community building and other uses of a civic, social, recreational and educational nature, in accordance with Petitioner's Exhibit 1A, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) There shall be no additional buildings/structures in the R.C.4/R.C.5 zones other than those shown on Petitioner's Exhibit 1A. That is, only the existing bunkhouses and those buildings that are to be relocated to that portion of the site shall be permitted. Any additional proposed construction of any building/structure/use shall constitute an amendment to the plan, which will require an additional public hearing.
- 3) The area of the athletic field shall be limited to that shown on the site plan. Generally, that area of the site is within the confines of the "loop road." The existing area of woods located between the loop road and property line to adjacent sites shall remain undisturbed and in its current state. Those woods shall remain to serve as a buffer between the adjacent properties and the athletic fields.
- 4) The athletic fields shall not be lighted. The use of the athletic fields shall be limited to daylight hours, only.
- 5) There will be no amplified noise on the R.C.4/R.C.5 zoned portions of the site after 9:00 PM Sunday through Thursday, and 10:00 PM Friday and Saturday.
- 6) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

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Date 10/28/02
By LES

LES:bjs



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County



**Baltimore County
Zoning Commissioner**

October 22, 2002

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Dino C. LaFiandra, Esquire
Whiteford, Taylor & Preston
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RE: PETITIONS FOR SPECIAL HEARING & SPECIAL EXCEPTION
NE/S Central Avenue, 250' NW of the c/I Hunting Horn Circle
(407 Central Avenue)
4th Election District – 3rd Council District
Beth Tfiloh Congregation of Baltimore City, Inc. - Petitioners
Case No. 02-463-SPHX

Dear Messrs. Barhight & LaFiandra:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing and Special Exception have been granted, 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 Congregation of Baltimore City, Inc.
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Mr. Gary Applestein, 9 Victoria Green Court, Reisterstown, Md. 21136
Ms. Nan Kaestner, 117 Central Avenue, Glyndon, Md. 21071
Ms. Mary Ellen Porter, 4611 Butler Road, Glyndon, Md. 21071
People's Counsel; Case File

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9-6-02

IN THE MATTER OF:

BETH TFILOH GLYNDON PROPERTY

PETITION FOR SPECIAL EXCEPTION

PETITION FOR SPECIAL HEARING

BETH TFILOH CONGREGATION OF
BALTIMORE CITY, INC., PETITIONER

* BEFORE THE

* ZONING COMMISSIONER

* FOR

* BALTIMORE COUNTY

* Case No. 02-463-SPHX

* * * * *

POST HEARING MEMORANDUM OF BETH TFILOH

Beth Tfiloh Congregation of Baltimore City, Inc. ("Beth Tfiloh"), Petitioner, by and through its counsel, G. Scott Barhight, Dino C. La Fiandra, and Whiteford, Taylor & Preston, L.L.P, submits this Post-Hearing Memorandum in support of its Petitions for Special Exception and for Special Hearing, as grounds therefor, states:

Beth Tfiloh owns approximately 44.1 acres of land in Glyndon. The property is split zoned R.C. 4 (23.5 acres), R.C. 5 (2.3 acres), D.R. 1 (18.2 acres), and D.R. 2 (0.1 acres). The D.R. zoned portions of the property are developed with a preschool and a synagogue, which are uses permitted by right in the zone. Beth Tfiloh is further developing the D.R. zoned portions of the property with a lower school for grades K through 4, which will be ready for occupancy in September, 2003.

Beth Tfiloh desires to use parts of the R.C. zoned portion for uses complimentary to the established uses on the D.R. zoned portion. To this end, by the Petitions for Special Exception and Special Hearing, they request approval for a camp, and "community buildings and other uses of a civic, social, recreational, and educational nature" in the R.C.

4 and R.C. 5 zoned portions of the property, and for a synagogue in the R.C. 4 zoned portion of the property¹.

Appearing as Protestants at the hearings which were held on June 17 and August 16, 2002 were Glyndon Community Association, Inc., Ms. Nan Kaestner, and Mr. Gary Applestein (collectively, the "Protestants".)

Preliminarily, the Protestants moved to dismiss the appeal or to stay the proceedings pending the outcome of various other appellate proceedings. The Zoning Commissioner denied the motion to dismiss or to stay, and Beth Tfiloh proceeded with its hearing.

Testimony of Rabbi Wohlberg

Beth Tfiloh offered the testimony of Rabbi Mitchell Wohlberg. Rabbi Wohlberg is the Chief Religious Officer of the Congregation and the dean of the Beth Tfiloh schools. He described himself as "central" to the religious, educational and service programs that the synagogue and school conduct.

Rabbi Wohlberg discussed the present uses of the Glyndon property. There is a preschool program which serves approximately 70 children. In addition to the preschool, there is an afternoon Hebrew school program for approximately 60 students. There is presently one religious service per month in the existing chapel. The facilities are also used for adult education programs, faculty get-togethers, and for certain religious holidays.

¹ Synagogue is permitted by right in the R.C. 5 zone, and thus there is no request for special exception for that use in the R.C. 5 zoned portion of the property.

Rabbi Wohlberg described generally Beth Tfiloh's plans for the Glyndon property. Overall, there are presently three branches of the Beth Tfiloh schools: a lower school, a middle school, and a high school. These schools are presently located at Beth Tfiloh's Pikesville facility. Because of its growth, Beth Tfiloh is constructing a new lower school facility on the DR zoned portion of the Glyndon property. Once the Glyndon school is completed, the lower school will be transferred from Pikesville to Glyndon. The middle school and the high school will remain in Pikesville. Beth Tfiloh also intends to expand the preschool program, enhance the Hebrew school program, and conduct Sabbath services at the synagogue every Sabbath.² Rabbi Wohlberg was very clear that there is no plan to move the middle school or the high school from Pikesville to Glyndon. Indeed, Beth Tfiloh intends to free up space at the Pikesville campus for the expansion of the middle school and the high school by moving the lower school to Glyndon.

Rabbi Wohlberg took considerable time to describe the importance of the proposed uses in the R.C. 4 zone to the religious mission of Beth Tfiloh. The Rabbi described the religious mission of Beth Tfiloh as one of outreach - bringing traditional Judaism to the broader modern American Jewish community. Beth Tfiloh has been very successful in this endeavor over the past eighty years, and the present plans for the Glyndon property are an extension of these prior successes. For example, Beth Tfiloh was the first synagogue in Baltimore to have a gymnasium, which although now may be commonplace, was unheard of at that time. The vision was to get the children from the broader

² Sabbath begins at sundown on Friday, and lasts through Saturday. Sabbath services are held on Saturday mornings and may last until the afternoon.

Jewish community in the door and, once they are there, to expose them to something which could benefit them religiously. The first step for many leading figures in the community was through the Beth Tfiloh youth program, which was possible because of that gym. Beth Tfiloh just built its third gymnasium because of how central athletics has become to its programs. The rabbi summed it up well when he said

I believe Beth Tfiloh is the only Jewish school in the country that has a lacrosse team. We've never won, but we have a lacrosse team. This is what we are. . . . One of the reasons we started a lacrosse team is not because we needed a lacrosse team, but we didn't want any Jewish child to say I would've come to Beth Tfiloh but you don't have a lacrosse team. The same thing that we did with our performing arts center as well. We didn't want someone to say, well, I would've come to Beth Tfiloh, but you don't have this and we're going instead to Peabody Conservatory. That's exactly what Beth Tfiloh has always done. *Protestant's Exhibit 1, Transcript of testimony of Rabbi Wohlberg, p. 25.*

The rabbi discussed the conditions in Glyndon which make the establishment of the proposed uses there so desirable. A substantial number of the congregants live there. There is a Jewish Community Center with a preschool nearby. Beth Tfiloh anticipates that many parents of children in that preschool may send their children to the Beth Tfiloh lower school, especially if the family is a member of the Beth Tfiloh congregation.

The availability of youth programs at the Glyndon site is necessary for the future success of Beth Tfiloh in its religious mission. For example, a camp at Glyndon is important to Beth Tfiloh because it allows Beth Tfiloh to reach out to a segment of the population which might not otherwise be brought within a Jewish atmosphere. Beth Tfiloh is not interested in having a camp for the sake of having a camp. The camp could be a "religious camp", similar to other types of camps with designated themes, like sports

camps. The campers would be exposed to Jewish culture. Friday afternoons would take on aspects of Sabbath observance and other times would be spent doing and learning about things that are religiously significant.

The bunks located on-site will be very important to the synagogue use. Beth Tfiloh is somewhat unique within the Jewish community in that its congregants are both Sabbath observant and Sabbath non-observant. Sabbath observant Jews do not operate cars on the Sabbath. The bunks will be used by Sabbath observant Jews to stay overnight at the Glyndon facility during and in advance of various Sabbath services. Likewise, the availability of the ball fields within the R.C. 4 zoned portion of the property is important, for similar reasons. Beth Tfiloh is fortunate to have its own youth sports program. Many of Beth Tfiloh's children cannot play in established little league programs because these programs typically meet on the Sabbath. Instead, Beth Tfiloh's league meets on other days. Rabbi Wohlberg cited as an example the constant use of its ball fields in Pikesville, especially on Sundays, as evidence of the need of the synagogue and the broader Jewish community on whole for the athletic field use.

The ball fields and the bunks take relatively little of the 25 acres of the property which are zoned R.C. 4 or R.C. 5. The balance of the R.C. zoned property would be available for synagogue and camp activities, like nature walks. Rabbi Wohlberg spent a few moments describing the importance of such walks in Jewish tradition, culture and religious observation.

The availability of the R.C. zoned portions of the property for each of the special exception uses sought is critical to the success of Beth Tfiloh in achieving its religious

mission. Although the proposed improvements to the R.C. 4 zoned portions of the property are minor and involve only the relocation of existing structures, they are very significant to this mission. The ball fields will allow Beth Tfiloh to continue to expand its athletics program, which has been a significant draw to new congregants, and in turn, new students for the schools. The ball fields will also supplement the camp activities. The bunk houses will accommodate the observant segment of the congregation, who cannot drive on the Sabbath, to attend the weekly services (which will be held in the existing synagogue on the D.R. zoned portion of the property). The bunks will also support the camp and other religious and educational programs. An approval for a camp use in the R.C. 4 portion of the property will allow Beth Tfiloh to do in Glyndon the good work it has done for many years at its camp facility in Owings Mills. Once again, this inures to the benefit of the congregation as a whole and the broader Jewish community, and contributes to the fulfillment of the religious mission. An approval for "community buildings and other uses of a civic, social, recreational, and educational nature", will allow the ball fields, and other recreational uses in the R.C. zoned portions of the property, such as but not limited to the nature walks referred to by the Rabbi. Lastly, an approval for a synagogue use on the R.C. 4 zoned portion of the property will affirm with certainty that the intent and scope of the approvals granted, that these uses are approved as a religious use and for the benefit of the congregation as a whole.

Testimony of Stephen A. Warfield

Beth Tfiloh's second and final witness was Stephen A. Warfield. Mr. Warfield is a professional engineer who was engaged by Beth Tfiloh to prepare the plan to accompany the requests for special exception and special hearing.

After being accepted as an expert in civil engineering and zoning, Mr. Warfield testified on direct examination as to the relief requested in the petitions. He stated generally and also in specific terms that the proposed uses would generate no real adverse effects. Most significantly for the Petitioner's case, Mr. Warfield testified that the standards of BCZR § 502.1 are met.

Notably absent from the plan, as Mr. Warfield testified on cross-examination, are any grandstands or lighting for the athletic fields. Mr. Warfield did say that any lighting which would be installed on the property will conform to all Baltimore County requirements.

Upon the completion of the direct- and cross-examination of Mr. Warfield, the Petitioner rested its case.

Testimony of Alfred W. Barry, III

The Glyndon Community Association called Mr. Barry as an expert in land planning. After being accepted an expert, Mr. Barry testified that the Petitions and the plan to accompany them were too vague to enable him to determine the impact, even in light of the testimony of Beth Tfiloh's witnesses.

Despite this limitation however, Mr. Barry was able to testify on both direct and cross-examination that the uses which are proposed for the R.C. 4 and R.C. 5 portions of

the property are not inherently negative. Indeed, Mr. Barry himself testified that with one exception discussed below, all the criteria of BCZR § 502.1 governing special exceptions are satisfied.

The one exception that Mr. Barry found pertained to traffic. Mr. Barry noted that the plan shows two means of access to and from Central Avenue. One access point is directly from Central Avenue onto the property. This avenue has been referred to in the past as Insulin Lane. The plan shows a second means of access to the site via a small public road called Glyndon Mews Court which serves a neighboring subdivision. Mr. Barry found that the second access onto Central Avenue, that which is by Glyndon Mews Court, would generate a potentially hazardous condition. Mr. Barry asserted this even though he acknowledged on cross-examination that vehicles leaving the site via Glyndon Mews Drive would not pass any residential dwellings.

Mr. Barry testified that the lack of specificity in the Petition and the plan warranted the imposition of conditions in any order granting any of the relief which was requested. Mr. Barry stated that in his opinion the Zoning Commissioner could and should place restrictions not only on the R.C. zoned portion of the property which is under consideration in this proceeding, but also on the D.R. zoned portion of the property. He stated that such restrictions were warranted because Beth Tfiloh was proposing an "integrated" use throughout the site and he suggested that by doing so Beth Tfiloh was attempting to manipulate the zoning regulations. The Glyndon Community Association introduced its proposed conditions for both the R.C. and the D.R. zoned property through

Mr. Barry as Protestant's exhibit 3, the particulars of which will be discussed as needed in other sections of this brief.

Testimony of Nan Kaestner

Nan Kaestner is a resident of Central Avenue in the vicinity of the Beth Tfiloh property. Having grown up in Glyndon, she testified as to the ambience of the area as a small village. She sees the issues presented by the petitions as quality of life issues for the Glyndon community. She is concerned about the intensification of the use on the Beth Tfiloh property and the ramification of intensification on the Glyndon community. Although she is not opposed to the individual uses proposed for the R.C. zoned portions of the property, she objects to them if they will allow Beth Tfiloh to have a larger school in the D.R. zoned portion of the property.

Testimony of Others

There was testimony offered by other witnesses including Mary Ellen Porter and Richard Desser, which advocated the imposition of substantial conditions in any order granting the relief requested. However, notably there was no consensus on the substance of the proposed conditions even among the Protestants. Mr. Desser, for example, opposed the condition which was proposed by the Glyndon Community Association and Ms. Porter that Glyndon Mews Court not be used as an egress from the site, and that traffic from the site be precluded from using Central Avenue to access Butler Road. Mr. Desser represents the 200 homes in the Sagamore Forest and Worthington areas, past which the Beth Tfiloh traffic would have to travel, miles out of their way, if the Glyndon

Community Association's condition prohibiting the use of Central Avenue is incorporated in the Zoning Commissioner's order.

Applicable Law

Baltimore County Zoning Regulations sections 1A03.3.B.2 - .4 permit camps, community buildings and other civic, social, recreational and educational uses, and synagogues, respectively, in the R.C. 4 zone by special exception. Likewise, sections 1A04.3.B.2 and 1A04.3.B.4 permit camps and community buildings and other civic, social, recreational and educational uses, respectively, in the R.C. 5 zone by special exception.

Furthermore, BCZR § 502 governs special exceptions. Of particular note are the requirements of § 502.1 and the provisions of § 502.2. These sections are reproduced below.

- Section 502.1 Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:
- A. Be detrimental to the health, safety or general welfare of the locality involved;
 - B. Tend to create congestion in the roads, streets or alleys therein;
 - C. Create a potential hazard from fire, panic, or other danger;
 - D. Tend to overcrowd land and cause undue concentration of population;
 - E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
 - F. Interfere with adequate light and air;
 - G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
 - H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations;
 - I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands,

aquifers and flood plains in and R.C. 2, R.C. 4, R.C. 5 or R.C. 7 zone.

Section 502.2 In granting any special exception, the Zoning Commissioner or the Board of Appeals, upon appeal, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. . . .

Legal Argument

Of the nine criteria enumerated in BCZR § 502.1 governing whether the special exception should be approved, the uncontradicted evidence shows that eight of the criteria are satisfied. The one exception, according to Mr. Barry, relates to § 502.1.B, pertaining to traffic and congestion.

Before discussing the legal standards, it is appropriate to reiterate the context of the proposed uses. Beth Tfiloh presently has a synagogue and a preschool on site, and a lower school is planned and underway. These uses are located within the D.R. zoned portion of the property, and are permitted by right under the D.R. zoning regulations. Beth Tfiloh has an absolute right to conduct these uses on the D.R. zoned portion of the property, subject only to the bulk restrictions and other requirements of the Baltimore County Zoning Regulations.

The proposed uses, synagogue, camp, and community building including other social, civic, recreational and educational uses, are merely an extension of Beth Tfiloh's present uses on site, and will allow Beth Tfiloh to fulfill its religious mission in Glyndon as it has done elsewhere. The proposed uses are complimentary to the existing uses and have very little meaning for Beth Tfiloh in isolation from the existing uses, especially the

existing synagogue use. Paraphrasing Rabbi Wohlberg's testimony, Beth Tfiloh does not need a camp or ball field for the sake of having them; Beth Tfiloh needs these uses to make its religious goals a reality.

Mr. Warfield testified with specificity that each and every criterion of § 502.1 was met and that, accordingly, the special exceptions which were requested should be approved. Mr. Barry concurred that the proposed uses would create no harm, and that the only potential adverse impact arises from the plan to provide a second means of access to Central Avenue via Glyndon Mews Court.

On the matter of traffic, Mr. Warfield testified that the property was not in a marginal traffic shed nor in the vicinity of a failing intersection, as these items are rated by Baltimore County on the basic services maps. He further indicated that the state and the county had both reviewed the plans for this special exception request, and neither agency commented adversely on the matter of the dual access to Central Avenue.

Mr. Barry, on the other hand, opined in general terms that the second means of egress from the site, via Glyndon Mews Court, presented a potential traffic hazard. However, he failed to articulate any substantiation for this assertion. Mr. Barry suggested that what he perceived as the vagueness of the plan together with this potential traffic hazard warranted the imposition of the conditions contained in Protestant's Exhibit 3. This vague and unsubstantiated testimony cannot reasonably be said to generate sufficient doubt as to the approvability of the uses. His testimony is pure conjecture designed merely to interfere with Beth Tfiloh's planned uses of its property.

Beth Tfiloh has met its burden regarding the permissibility of the requested uses. The proposed uses should be allowed. Mr. Warfield and Mr. Barry agree on 8 of the 9 criteria in BCZR § 502.1 that the uses are not inherently negative. The one lingering issue relates to traffic, and Mr. Barry so much as stated that his concerns are so minor that his client's interests can be protected through the imposition of conditions relating thereto. Thus, we arrive at the functional post-hearing posture of this case – what conditions are appropriate? It follows that, in the context of this case, where the only truly contested issue is “traffic”, that any such conditions imposed on Beth Tfiloh must relate to traffic under BCZR § 502.1.b.

As noted above, pursuant to BCZR § 502.2, the Zoning Commissioner is authorized to impose such conditions upon the granting of a special exception as are appropriate to protect surrounding and neighboring properties. Such conditions which do not violate or go beyond the law and are appropriate and reasonable are permissible. *Montgomery County v. Mossburg*, 228 Md. 555 (1961). More particularly however, in a zoning case involving precisely the zoning regulation at issue here, BCZR § 502.1(b) relating to traffic, the Court of Appeals of Maryland has explicitly refrained from holding that the zoning authority (in that case, the Board of Appeals) may impose affirmative off-site obligations upon the applicant. In *Bonhage v. Cruse*, 233 Md. 10, 15 (1963), the Court of Appeals refused to find that the applicant could be required to widen an off-site public lane which provided access to the site. However, interestingly, within the context of the Baltimore County development regulations, the Court of Appeals has held that a developer may not be held financially responsible for required public improvements

beyond the four corners of the property being developed. *Baltimore County v. Security Mortgage Corp.*, 227 Md. 234 (1961).

The off-site conditions which have been upheld by the Court of Appeals relate largely to the actions of third parties and are more akin to sequencing requirements than restricting the applicant's use of the special exception. For example, in the context of BCZR § 502.1(b) (traffic), in *Rohde v. Baltimore County Board of Appeals*, 234 Md. 259 (1962), the Court of Appeals affirmed a condition that Goucher Boulevard must be extended pursuant to a programmed and funded capital project before construction under to the special exception may begin. Likewise, in *Halle Companies v. Crofton Civic Association*, 339 Md. 131, the Court of Appeals upheld a condition precluding the applicant from utilizing a special exception until it has acquired in fee an alternative access to the site.

The zoning petitions at issue in this case were accompanied by a Zoning Description which limited the area of consideration in this matter to the R.C. 4 and R.C. 5 zoned portions of Beth Tfiloh's property. These areas constitute the "site" for purposes of this proceeding and the Zoning Commissioner has the authority to impose conditions upon activities within that area. The Zoning Commissioner does not have authority to impose conditions on the uses permitted by right in the D.R. 1 zoned portion of the property, either directly or indirectly. For example, it would be improper for the Zoning Commissioner to impose a condition on the proposed uses in the R.C. 4 zoned portion of the property with the intent or effect of actually limiting the use of the D.R. 1 zoned portion of the property. The existing and proposed uses in the D.R. zoned portion of the property are permitted by right, and are not subject to this zoning hearing.

Protestant's Exhibit 3 lists 13 proposed conditions on the grant of the special exceptions at issue. Beth Tfiloh's comments regarding several of the conditions appear below.

Proposed Condition 1: Construction and use of RC4 zoned property is limited to what is specifically shown on plat accompanying Petition for Special Exception in Case No. 02-463-SPHX.

Based upon their fear that Beth Tfiloh will somehow bootstrap an approval in the instant case into an approval for a larger synagogue specifically to be located within the R.C. 4 zone, the Protestants desire a condition to limit Beth Tfiloh to the approved plan. Beth Tfiloh seeks approval only for the improvements and uses shown on the plan. As in all zoning matters, Beth Tfiloh will be bound to the approved zoning plan. Any material deviation from the approved plan, if not administratively determined to be within the spirit and intent of the approved plan, would require a further hearing before the Zoning Commissioner. The construction of a large synagogue building in the R.C. 4 zoned portion of the property would not be within the spirit and intent of an approval in this case. Even so, Beth Tfiloh opposes the imposition of such a condition, because it is implied in the law and therefore not legally necessary.

Proposed Conditions 2 and 7: School only to have grades K through 5; Substantially all students should be bused from Beth Tfiloh Old Court facility to the Glyndon facility, coming northwest by way of Owings Mills Boulevard and Central Avenue.

The school is permitted by right in the D.R. zoned portion of the property. There is no petition for a school in the R.C. zoned portion. Once again, the Protestants are

attempting to leverage restrictions on the school, permitted by right, from the petition for other uses which are permitted by special exception. Because the school is permitted by right in the D.R. zone, which is where it is located, restrictions effecting the school, either directly or indirectly, are legally improper and should not be imposed.

Proposed Condition 3: The camp facilities should be retained and maintained in substantially the same size, configuration and manner as required under Case No. 65-389-X; Case No. 94-27-SPHA; and Case No. IV-455.

The noted cases, especially the two zoning cases, pertain to approvals for a camp use on the property. The planned uses of the property have changed, and therefore the special exceptions of 1965 and 1994 (and the conditions imposed by them) are no longer appropriate or warranted and have been abandoned. The reconfiguration of the camp facilities as depicted on Beth Tfiloh's plan to accompany the petitions is appropriate for the range of uses planned for the site. Furthermore, this proposed condition has nothing to do with traffic or congestion in the streets, and therefore its imposition will not remedy any matter related to BCZR § 502.1, if the Zoning Commissioner should find any such circumstance. Accordingly, Beth Tfiloh objects to this proposed condition.

Proposed Condition 4: The camp should only be operated with campers present during the summer.

Once again this proposed condition has no relation to traffic or congestion and should be rejected. The BCZR does not limit the operation of a camp to any particular season or time. The parameters of the proposed camp use and activities were set forth by Rabbi Wohlberg, and any limitation of them is not warranted.

Proposed Condition 5: Any athletic facilities on the RC 4 zoned property may only be used by the campers (and not by the school children).

This proposed condition is wholly inappropriate. As Rabbi Wohlberg said in his direct examination, "That's an impossible situation. You can't have a school and a synagogue there, and say, 'But you can't step over this line to throw a baseball.'" The Berlin Wall came down in 1989. The Glyndon Community Association would have Beth Tfiloh erect the "Glyndon Wall" in 2002. It cannot be done, and the Zoning Commissioner should not impose the condition. This is especially true because the code provision for special exception for community building and other uses specifically references other recreational and education uses. Use of the athletic facilities by school children is precisely the use contemplated by and permitted by the BCZR. This proposed condition also undercuts the sincerity of the Glyndon Community Association's purported concern over traffic. New traffic may very well be generated by a camp use, however the use of the athletic fields by the students of the existing school will not generate additional traffic. Finally, the Association's suggestion is for the Zoning Commissioner to do indirectly what he cannot do directly – limit the uses in the DR zoned portion of the property, the uses which are permitted by right. The Zoning Commissioner should see through this thinly veiled attempt and reject it.

Proposed Condition 6: The parking spaces should not be the greater of (1) 230 or (2) the number of spaces literally required for the school.

The only way this condition makes sense is if one regards it as a limitation on the activities in the D.R. zoned portion of the property. The proposed parking is located

within the D.R. zoned portion of the property. Parking is a use permitted by right in the D.R. zones. The parking requirements of the BCZR are minimum requirements. In every other zoning case in which the undersigned counsel has ever been involved, the community and the county want more parking instead of less. Less parking may actually tend to create congestion in the streets rather than prevent it. Mr. Barry's suggestion that there be less parking is truly perplexing and one for which he failed to give any reasonable explanation. The proposed condition should be rejected.

Proposed Conditions 8, 9, 10 & 15: All traffic should enter and exit the Glyndon facility using Insulin Drive; No bus traffic should use Central Avenue northwesterly of the intersection of Insulin Lane with Central Avenue; Buses leaving the facility on Insulin Drive should turn left only on Central Avenue; Construction traffic should exit to the south and east of the facility.

While these proposed conditions arguably relate to traffic, the Protestants have failed to set forth any evidence which would warrant their imposition. Several witnesses testified to generalized fears that traffic will increase, and that conditions are necessary to keep Beth Tfiloh within the bounds of its approved site plan. However, notably, Mr. Desser of the Sagamore Forest Homeowners Association opposed these restrictions because they will focus more traffic past those homes. There has been an insufficient showing in this case to warrant these conditions, which do not reduce traffic but merely remove it from one area and place it in another area.

Proposed Condition 12: Third-party use of the camp facilities should not be permitted.

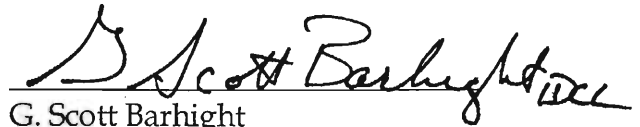
Zoning is concerned with particular and specific uses of property; it is not concerned with *who* uses the property. A restriction on Beth Tfiloh's ability to allow others to use its facilities in a very real way will substantially burden Beth Tfiloh in fulfilling its religious mission. It is very common for religious institutions like Beth Tfiloh to be part of a league or association, the individual members of which, although not members of Beth Tfiloh, might use the camp facilities at one time or another. Furthermore, as a leader in the broader Jewish community, Beth Tfiloh will likely offer its camp facilities to other users from within the Jewish community. Once again, Beth Tfiloh notes that this restriction has absolutely nothing to do with traffic, and if for no other, it should be rejected for that reason.

Conclusion

Beth Tfiloh's witnesses, Rabbi Wohlberg and Mr. Warfield establish quite persuasively that the proposed uses of camp, synagogue, and community building and associated uses, should be approved and that the special exceptions should each be granted without substantive condition. Mr. Warfield and Mr. Barry agree that almost all of the BCZR § 502.1 factors are met, and where the witnesses disagree, on the issue of traffic, the Protestants have failed to create a genuine issue of fact by making general and unsubstantiated assertions of fact.

Even if the Zoning Commissioner believes that a genuine traffic issue exists, despite the vagueness of the Protestant's testimony, any such issue can be addressed through the imposition of conditions regarding the same. However, such conditions must be limited to those which are appropriate, reasonable, and within the law. There is

no authority for the imposition of substantive off-site conditions. Any conditions so imposed must relate to the traffic issue, if any, generated by the proposed uses, and be limited to the R.C. 4 zone. The Zoning Commissioner should reject any suggestion that he should limit the uses permitted by right in the D.R. zone.



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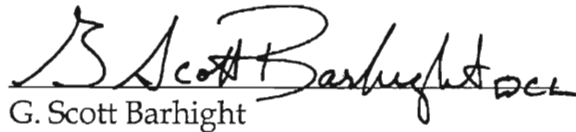
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of September, 2002, a copy of the foregoing Brief was mailed first class, postage prepaid to:

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September 6, 2002

VIA HAND DELIVERY

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

**Re: In the Matter of:
Beth Tfiloh Glyndon Property
Case No. 02-463-SPHX**

Dear Mr. Schmidt:

Enclosed please find two copies of Beth Tfiloh's Post Hearing Memorandum.
Please accept the original for filing and date stamping one copy and returning it to my
office.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Dino C. La Fiandra

DCL:mbb

Enclosures
261643

9-202

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
PETITION FOR SPECIAL HEARING * ZONING COMMISSIONER
By: Beth Tfiloh Congregation of Baltimore * OF BALTIMORE COUNTY
City, Inc. *
Case No. 02-463-SPHX
* * * * *

SEP - 9 2002

**GLYNDON COMMUNITY'S
POST-HEARING MEMORANDUM**

I. Introduction

The facts of this case are well known to the Commissioner. Since late 2000, Beth Tfiloh has petitioned for various special exceptions and other approvals, and has taken various appeals with respect to its property located at 407 Central Avenue in Glyndon, Maryland (hereinafter referred to as the "Property"). The Property is split zoned, DR-1 and RC-4. In the case presently before the Commissioner, Beth Tfiloh filed two petitions. One seeks a special exception to allow a camp and a synagogue, or in the alternative, for a community building and other uses of a civic, social, recreation, and educational nature on the RC-4 and RC-5 zoned portion of the property. The second petition requests a special hearing to amend the previously approved plan in Case No. 01-468-SPH. A hearing on both petitions was held before the Commissioner on June 17, 2002, and was continued August 16, 2002.

The Glyndon Community Association (GCA) and the individual Glyndon protestants request that the Zoning Commissioner deny the special exception and special hearing requested by Beth Tfiloh. In the alternative, if the special exception is granted, it is GCA's position that the Zoning Commissioner should impose substantial conditions on the Property which are necessary to protect the Glyndon and Sagamore Forest communities and their residents. During the hearing on August 16, GCA presented a list of requested conditions to be attached to the Property.

II. Argument

A. Beth Tfiloh is estopped and precluded from seeking a Special Exception and/or Special Hearing for A Camp or Synagogue on the RC-4 portion of the Property.

As the Commissioner is aware, on July 18, 2001, Beth Tfiloh affirmatively abandoned the previously granted special exception authorizing use of the RC-4 portion as a camp. (Case No. 01- 468-SPH). Instead, it requested that the Zoning Commissioner rule that Beth Tfiloh was entitled to use its RC-4 property for athletic fields and a camp as accessory uses to the uses permitted of right on the DR-1 portion of the property. The Zoning Commissioner rejected Beth Tfiloh's request, and Beth Tfiloh filed an appeal to the Board of Appeals. The Board of Appeals affirmed the Commissioner's decision in a written opinion dated July 24, 2002. (A copy of the Board of Appeals' written Decision is attached and marked as Exhibit 1.) Beth Tfiloh appealed that ruling to the Circuit Court.

Beth Tfiloh is now trying to make an end run around the Board's decision while at the same time ignoring the requirements of the Zoning Regulations. Beth Tfiloh seeks the same result it sought during the July 18, 2001 hearing.

GCA does not argue that a camp is not permitted by special exception on RC-4 zoned property. Clearly it is. However, Beth Tfiloh had a special exception allowing use of the RC-4 zoned property as a camp, and elected to abandon that use. The election is binding on Beth Tfiloh. It appears that Beth Tfiloh believed that it could abandon its special exception, ignore relevant zoning laws, and still utilize the RC-4 land in the same manner as it did pursuant to the special exception. Beth Tfiloh should not be allowed, a year later, to reverse its decision because its alternative argument failed. The Commissioner and the Board of Appeals considered Beth Tfiloh's request, and concluded that it was not entitled to use its RC-4 property for athletic fields

or as a camp. The denial of a zoning application constitutes res judicata. See *Woodlawn Area Citizens Association v. Board of County Commissioners*, 241 Md. 187 (1966) (concluding that principles of res judicata apply to administrative determinations or actions of an agency).

Furthermore, Case No. 02-463-SPHX was filed prematurely. Pursuant to Section 500.12 of the Baltimore County Zoning Regulations, the Zoning Commissioner may not accept for filing a special petition with respect to the same property or any part of that property until at least 18 months have passed from the date of the final order relating to the previous petition. The decision filed in Case No. 01- 468-SPH is not yet final. Beth Tfiloh recently appealed the Board of Appeals decision relating to athletic field and camp use to the Circuit Court for Baltimore County. GCA and several individual community members then filed a cross-appeal in Case No. 01-468-SPH. Therefore, Beth Tfiloh cannot file another Petition for Special Exception for the Property until: (i) a “final” order has been rendered, and (ii) eighteen months has expired from the date of the final order.

Finally, as a practical matter, and in the interests of judicial economy, a decision on this petition should be stayed until the various other pending administrative and judicial proceedings are ultimately concluded. Judge Thomas Bollinger held a hearing on August 18 with respect to GCA’s appeal of an exception from the development process for development of a synagogue on the RC-4 zoned portion of the property, and thereafter reversed the Board of Appeals’ Decision and found in GCA’s favor by a written Opinion dated August 26, 2002. (A copy of Judge Bollinger’s Opinion is attached as Exhibit 2.) Beth Tfiloh may, and likely will, appeal that ruling to the Court of Special Appeals. Each petition cannot be viewed in a vacuum. There are three separate proceedings at various stages in the hearing process. All of the proceedings involve the same property, the same parties, and similar, if not identical, issues. Considering

each separate issue piecemeal, while other petitions are on appeal, is a waste of time, money, and resources. In the interest of fairness and judicial economy, piecemeal litigation is discouraged. *Walls v. Bank of Glen Burnie*, 135 Md. App. 229 (2000). Accordingly, the Petition for Special Exception in Case No. 02-463-SPHX should be denied/stayed until the outcome of the other pending proceedings.

B. The BCZR Does Not Permit Beth Tfiloh to Obtain a Special Exception for Community Buildings and Other Community Uses.

Beth Tfiloh seeks a special exception for a community building located in the RC-4 zoned portion of the Property. The Zoning Regulations allow a special exception for community buildings in the RC-4 zone: "Community buildings, swimming pools or other uses of a civic, social, recreational or educational nature, including picnic grounds and tennis facilities, provided that no tennis facility shall comprise more than four courts." Section 1A03.3(B)(3).

However, the plan submitted by Beth Tfiloh does not include "community buildings" as defined by BCZR §450.3:

"COMMUNITY BUILDINGS – A building used for recreational, social, educational or cultural activities which is open to the public or a designated part of the public and is operated by a public or non commercial organization."

The buildings shown on the plan submitted with the petitions include camp bunks and an Open Pavilion. These are not "community buildings" which are constructed and used for the benefit of the neighborhood and community. The neighborhood and community in this situation are the Glyndon and Sagamore Forest communities. However, as testified to by Rabbi Wohlberg, these buildings and this property will be used solely for Beth Tfiloh's purposes, and the Glyndon and Sagamore Forest communities will not be allowed to utilize the "community

buildings or any other Beth Tfiloh facilities.” Therefore, the petition for special exception for the bunk houses, athletic field, and “community building” should be denied.

Moreover, the adjective “community” in Section 1A03.3(B)(3) also modifies all the other uses described there, including (i) “swimming pools” and (ii) “other uses of a civic, social, recreational or educational nature”. For this reason, Beth Tfiloh’s requested special exception for “other uses of a civic, social, recreational or educational nature” should also be denied, because these uses will not be public “community” uses within the meaning of Section 1A03.3(B)(3).

C. The Zoning Commissioner Has Authority to Impose Conditions when Granting Special Exceptions.

If the Zoning Commissioner grants Beth Tfiloh’s Petition, GCA requests that the Zoning Commissioner impose reasonable (and necessary) terms and conditions on the use of the RC-4 land as a camp, synagogue, or community buildings. It is undisputed that the Zoning Commissioner possesses this power. Section 502.2 of the Regulations states:

In granting any special exception, the Zoning Commissioner or the Board of Appeals, upon appeal, shall impose such conditions, restrictions, or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees, or tenants of the property for which a special exception is granted, if required by the Zoning Commissioner, or Board of Appeals, upon appeal, shall enter into an agreement in writing with said Zoning Commissioner...stipulating the conditions, restrictions or regulations governing such special exception...

Halle Companies v. Crofton Civil Association, 339 Md. 131 (1995) (board justified in limiting the exception in such a way as to mitigate the effect on neighboring property and community). A recent Maryland decision upholding the authority of the Zoning Commissioner to impose conditions on special exceptions is *Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md.

App. 616 (1998) (condition upheld where necessary for the protection of surrounding neighboring properties).

At the August 16 hearing, GCA presented a list of reasonable conditions it requests that the Zoning Commissioner impose. As testified to by Mr. Alfred Barry, who was accepted as an expert in land planning, the enumerated conditions are necessary to control the use and the ultimate size of the proposed facility. Mr. Barry testified that the 15 conditions were fair and reasonable. GCA and the individual protestants, as representatives of the surrounding and neighboring properties, are entitled to necessary conditions to protect the character of the neighborhood and their property interests.

Counsel for Beth Tfiloh makes the rather novel argument that the Zoning Commissioner is not empowered to append conditions which relate to the DR1 portion of the Beth Tfiloh property, since the special exception is solely being sought in connection with that portion of the property zoned RC4 and RC5.

Beth Tfiloh's counsel has absolutely no authority for this position, and no Maryland or out-of-state case can be found which supports such a position.

Moreover, the facts relating to this case clearly show that Beth Tfiloh intends to make a unitary use of the entire property in support of Rabbi Wohlberg's perception that everything done there will contribute to Beth Tfiloh's mission and purpose:

Rabbi Wohlberg testified as follows:

"I know the discussion here is focusing on the athletic fields ... the athletic fields to us is not a ball field. It is part of the religious mission of our institution." (Pg. 12).

The Rabbi also testified that the bunks and ball fields were integral to their long-standing mission with respect to both synagogue and school:

“The bunks are very important for the synagogue (Pg. 20) ... not to have a ball field means to put up a fence ... to restrict our ability to do what we are doing now and what we have done the last 80 years” (Pg. 24).

Similarly, with regard to the pavilions that are proposed on the RC-4 zone, Rabbi Wohlberg testified that the pavilions served a unitary use of the entire property: “those two pavilions could be used for the synagogue, school and camp as a place for outdoor services, as a place for social activities, and as a place to eat as well.” (Pg. 46).

It cannot be disputed that the approvals sought here for the pavilions, bunk houses, and athletic fields would service the entire site, including the school, synagogue and camp use and, accordingly, conditions would properly be placed on the entire property as one use.

D. The BCZR Does Not Permit Beth Tfiloh To Use The RC4 Portion Of Its Property For Athletic Fields In Connection With Its School.

The Zoning Commissioner on September 19, 2001, handed down his decision ruling that Beth Tfiloh was not permitted under the BCZR to use the RC4 portion of its property for athletic fields as an accessory use to its private school facilities. That decision was affirmed by the Board of Appeals on July 24, 2001, whose decision is attached hereto as Exhibit 1.

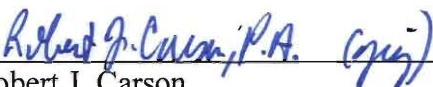
Beth Tfiloh now seeks in this proceeding essentially to do an end around those decisions and to have the Zoning Commissioner broadly permit it to use the athletic fields, including use which would be in connection with and in support of its private school facility. This was and is not permitted.

In this regard, especially taking in consideration the expansive attempt by Beth Tfiloh to use the entire property to support its school facility proposed Condition 5 is appropriate and necessary if the Zoning Commissioner grants the special exception. This condition provides

simply (and correctly): "Any athletic facilities on RC4 zoned property may only be used by the campers (and not by the school children)."

III. Conclusion

GCA and the individual protestants respectfully request that the Zoning Commissioner deny Beth Tfiloh's Petition for Special Exception and Petition for Special Hearing, or in the alternative, impose the requested conditions on the Property.


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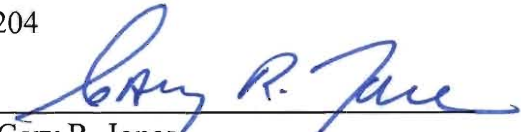

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Attorneys on behalf of Glyndon Community Association, Inc., Gary D. Applestein, Nan Kaestner and Mary Ellen Porter, Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9 day of September 2002, a copy of the foregoing Post-Hearing Memorandum was sent via facsimile to:

G. Scott Barhight, Esquire
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Attorneys for Beth Tfiloh Congregation

Lawrence Schmidt
Zoning Commissioner's Office
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Towson, Maryland 21204


Gary R. Jones

Jones/Glyndon/Pleadings/Glyndon Post Hearing Memo – final version

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FILE COPY

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

EXHIBIT

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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 Permit & Development Management, approving a requested

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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]

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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

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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

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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.

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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 submitted as Petitioner's SA dated June 29, 2001. The approval was granted based

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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.

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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 LCZR; 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

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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.

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Cases No. 01-468-SPH and CBA-01-136 (DRC)

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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

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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.

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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 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

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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).

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Beth Tfiloh Congregation /Glyndon Property
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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 *Mass 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 necessary to those permitted uses of right on the D.R. 1 zoned portion of the tract. If

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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 ^{absurd} 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.

THE SENTENCE
REPEATED

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.

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Beth Tfiloh Congregation / Glynndon Property
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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

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Both Tiflon Congregational Church Property
Cases No. 01-464-SPH and CBA-01-136 (DRC)

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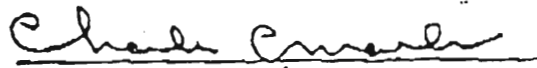
associated therewith shall not be permitted on that portion of the property zoned R.C. 4; and
it is further

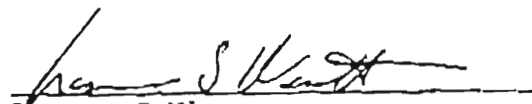
ORDERED that the decision of the DRC in Case No. 01-136 in which the requested limited
exemption was approved is **AFFIRMED**; and it is further

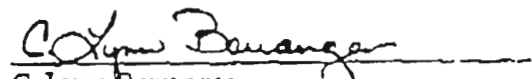
ORDERED that the limited exemption requested in under § 26-171(A)(2) of the *Baltimore*
County Code be and the same is **APPROVED**.

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

IN THE MATTER OF
GLYNDON COMMUNITY
ASSN., INC., ET AL

Petition for Judicial Review of the
Decision of the Baltimore County
Board of Appeals

Case No. CBA-01-106
DRC No. 101600D
Beth Tfiloh Congregation
(407 Central Avenue)

IN THE

CIRCUIT COURT

FOR BALTIMORE COUNTY

CASE NO. 03 C-02 001720

* * * * *

OPINION AND ORDER

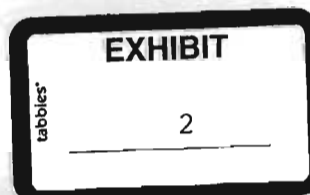
The above case is before the Court on appeal from the Order of the County Board of Appeals of Baltimore County ("Board") by Beth Tfiloh Congregation of Baltimore City, Inc. of the denial by Arnold Jablon, Director of the Department of Permits and Development Management of its request for exemption from *Division 2* of the Baltimore County Development Regulations ("BCDR").

The Board held a hearing on December 4, 2001. The parties were represented by counsel and a *De Novo* evidentiary hearing was had.

BACKGROUND

On October 4, 2000 Beth Tfiloh submitted to the Baltimore County Development Review Community ("DRC") a request for limited exemption from *Division 2* of the BCDR for its proposed improvements to the property located at 407 Central Avenue in Glyndon, Baltimore County, Maryland. Beth Tfiloh sought an exemption under Baltimore County Code Section 26-171(a)(2), contending that the property is a "lot of record" as set forth in that Section and, thus, deserves an exemption. The Board entertained an evidentiary hearing and had two issues before it:

(1) Whether or not the protestant's Motion to Dismiss should be granted because 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; and,



FILED AUG 23 2002

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(2) Whether or not the Director of the Department of Permits and Development Management erred in upholding the denial of the DRC of a requested exemption under Section 26-171(a)(2) of the Baltimore County Code.

The Board, in a written opinion, found that the matter was ripe for appeal in that Mr. Jablon's letter of January 4, 2001 was a final decision from the Director of the Department of Permits and Development Management and, therefore, was appealable. It also determined that the requested exemption should be granted, and reversed the decision of the Director of the Department of Permits and Development Management.

DISCUSSION

This Court entertained argument and reviewed the excellent memorandum of the Petitioners, as well as the reply memorandum and the excellent memorandum of the Respondent/Appellee. In addition, it has read the various *nisi prius* decisions of colleagues with respect to this matter, and thoroughly digested the opinion of the Court of Special Appeals in *Meadows v. Foxleigh*, 133 Md. App. 510 (2000).

This Court is persuaded that the holding of the Court of Special Appeals in *Meadows v. Foxleigh* is not only persuasive authority, but is also a precedent within the rule of *stare decisis*, and is thus binding on this Court and the Board. Therefore, this Court will reverse the decision of the Board on the first issue of whether or not Mr. Jablon's decision was appealable.

The Appellees before this Court argue precisely what the Court of Special Appeals discounted in *Meadows, supra*. The Court of Special Appeals declined to consider the Opinions of the Circuit Court for Baltimore County, but plainly held that Mr. Jablon's letters are not an "operative event" which would determine in this case whether Beth Tfiloh's proposed plan would be granted a license or permit, and did not determine the conditions or scope of that license or permit. The Court of Special Appeals further stated that the question of whether a judgment, order, or decree is final and appealable is not determined

by the name or description which the Court below gives it, but is to be decided by the appellate court (emphasis added) on a consideration of the essence of what is done thereby. *Art Wood v. Wiseburg*, 88 Md. App. 723 at 732-733 (1991).

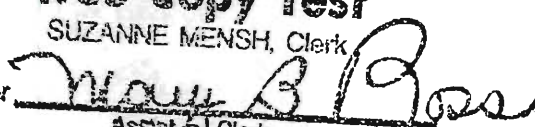
This Court believes that the Mandate of the Court of Special Appeals is clear and, as such, it is not for this Court nor the Board to find contrary to the Court of Special Appeals of Maryland. In view of the above and the Mandate of an appellate court of this State, this Court reluctantly vacates the Order of the County Board of Appeals of Baltimore County.

ACCORDINGLY, THIS MATTER IS REMANDED TO THE BOARD FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THIS RULING.

AND IT IS SO ORDERED THIS 26th DAY OF AUGUST, 2002.


THOMAS J. BOLLINGER, JUDGE

TJB/am

True Copy Test
SUZANNE MENSCH, Clerk
Per 
Assistant Clerk

Baxter, Baker, Sidle, Conn & Jones, P.A.

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Gary R. Jones

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September 9, 2002

HAND DELIVERED

SEP - 9 2002

Lawrence Schmidt
Zoning Commissioner's Office
401 Bosley Avenue
Suite 405
Towson, MD 21204

Re: Beth Tfiloh/Camp Glyndon
02-463-SPH
Our File No. 20205-003

Dear Commissioner Schmidt:

Enclosed for filing in the above-captioned matter is Glyndon Community's Post-Hearing Memorandum.

Very truly yours,



Gary R. Jones

GRJ/mjr

Enclosure

cc: G. Scott Barhight, Esquire (via facsimile)

6-7-02
RE: PETITION FOR SPECIAL EXCEPTION
PETITION FOR SPECIAL HEARING

By: Beth Tfiloh Congregation of Baltimore
City, Inc.

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 02-463-SPHX

* * * * *

JUN 10 2002

MOTION TO DISMISS OR STAY PROCEEDINGS

Glyndon Community Association, Inc. ("GCA"), protestant, and individual protestants Gary R. Jones, Sean O'Connell, Gary Applestein, and Nan Kaestner (collectively, the "Protestants"), by their undersigned counsel, move the Zoning Commissioner to dismiss or stay the proceedings in the above-described case. The reasons for this motion are set forth below.

A. *Present Application(s)*

Beth Tfiloh Congregation of Baltimore City, Inc., petitioner ("Beth Tfiloh"), has filed two petitions in the present proceeding, namely, (i) a Petition for a Special Exception "for a camp and a synagogue, or in the alternative, for a community building and other uses of civic, social, recreational, and educational nature" for the RC-4 and RC-5 portions of its property and (ii) a Petition for Special Hearing "to amend the previously approved plan in zoning Case No. 01-468-SPH." The two-page plan submitted with the applications show the same camp bunks and related structures and facilities that have existed on the Camp Glyndon property for many years going back to approximately the time when a special exception was first granted for a camp use. In addition, the site plan shows a Proposed 20' x 40' Open Pavilion and a proposed Splash Pools/Splash Pad. There is nothing else shown on the plan which appears to depict any other recreational use or a synagogue use.

B. Status of Pending Proceedings

1. First (a)(2) Exemption Application. On October 4, 2000, Beth Tfiloh submitted a request for limited exemption from the Baltimore County Development Regulations, pursuant to Baltimore County Code §26-171(a)(2), for the development of its 44-acre Glyndon property with school facilities and a 1,500 seat synagogue, with the synagogue to be located in the now DR-4 zoned portion of its property. The application was denied by the DRC, and Beth Tfiloh then filed an appeal to the Board of Appeals. The Board of Appeals on February 8, 2000¹~~X~~, filed a decision and order granting the appeal. GCA and the other Protestants filed a Petition for Judicial Review in the Circuit Court, which is Case No. 3-C-02-1720. That Petition is scheduled to be heard by the Circuit Court on August 20.

2. Second Exemption Application. In the Spring of 2001, Beth Tfiloh filed a second (a)(2) exemption application with the DRC for the development of the property with school facilities but with no synagogue. This was granted by Director Arnold Jablon on June 29, 2001, and the Protestants thereafter filed an appeal to the Board of Appeals. On May 21, 2002, the Board of Appeals deliberated and verbally decided, on a 1-2 vote, that it would uphold the DRC action and not require a remand to the DRC action in approving the site plan. The Board of Appeals has not yet rendered a written decision, and it is likely (if not virtually certain) that that decision will be appealed to the Circuit Court.

3. 6/7/01 Petition for Special Hearing. Beth Tfiloh on June 7, 2001, filed a Petition for Special Hearing which was assigned Case No. 01-468-SPH requesting 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. 1V-455." As Commissioner Schmidt is aware, Beth Tfiloh's counsel at the hearing on July 18, 2001, stated that the "Amendments" sought by Beth

Tfiloh consisted of its desire to abandon the previously granted special exception. He then proceeded on behalf of Beth Tfiloh (i) to abandon the special exception and (ii) to request the Zoning Commissioner to rule that Beth Tfiloh was be entitled to use its RC-4 property for athletic fields and as a camp, as accessory uses to the private school and chapel uses on the DR-1 portion of its property. Commissioner Schmidt on September 19, 2001, filed a Decision and Order which permitted Beth Tfiloh to abandon the special exception but ruled that Beth Tfiloh could not legally use its RC-4 property for athletic fields or as a camp as accessory uses to the private school and chapel facilities located on the DR-1 portion of its property. Beth Tfiloh then appealed that Decision and Order to the Board of Appeals which on May 21, 2002, in its oral deliberation stated that it would affirm Commissioner Schmidt's Decision and Order with respect to the athletic fields and camp uses. The Board of Appeals has not yet rendered its written decision, and it is obviously likely that Beth Tfiloh will appeal the Circuit Court.

C. Bases for Motion to Dismiss Proceedings

There are several alternative bases for the present motion, since the action taken by Beth Tfiloh in filing the present applications largely duplicates the application which was the subject of the July 18, 2001 hearing before Commissioner Schmidt. The following legal bases appear to support Protestants' motion to dismiss the applications which have now been filed by Beth Tfiloh, or to stay and postpone the June 17 hearing which has been scheduled.

1. Election; Waiver; Estoppel. At the 7/18/01 hearing before Commissioner Schmidt, Beth Tfiloh elected to abandon its special exception for a camp, and to proceed to attempt to obtain an adjudication that it could utilize its RC-4 property as a camp and for athletic fields, as uses accessory to the private school and chapel facilities on its DR-1 property. That election was and is binding on Beth Tfiloh, and it would be an abuse of the system and a

miscarriage of justice to permit Beth Tfiloh now effectively to reverse its 7/18/01 actions, after those actions were intentionally taken and after Protestants have been required to devote their time, expense, and effort to defeat Beth Tfiloh, both before the Zoning Commissioner and the Board of Appeals. Beth Tfiloh's action on June 18, 2001, also constituted a waiver of any right which it may have had to obtain any amendment or change of its existing special exception for a camp use, other than to abandon the special exception. Beth Tfiloh is also estopped by its action.

2. 18-Month Special Petition Refiling Prohibition. Section 500.12 of the Baltimore County Zoning Regulations prohibits the filing of a special petition within 18 months after the date of a final order denying a prior petition with respect to the same property. Section 500.12 appears to apply here (or will apply when the September 19, 2001 Zoning Commissioner Decision and Order become final).

3. Res Judicata. The Maryland cases hold that the denial of a zoning application constitutes res judicata, unless there has been a substantial change in conditions in the neighborhood. Here, there has been none. See, for example, *Woodlawn Area Citizens Ass'n v. Board of County Commissioners*, 241 Md. 187 (1966), and *Whittle v. Board of Zoning Appeals*, 211 Md. 36 (1956).

4. Pending Administrative and Judicial Proceedings. Alternatively, and in any event, the pending administrative and judicial proceedings, which are described in sections B.1-3 above, should be concluded before the new applications are considered. The Zoning Commissioner will necessarily have to follow any final decision of the Board of Appeals, the Circuit Court, or any of the Maryland appellate courts. It is therefore premature for the Zoning Commissioner to hear or rule on any similar Beth Tfiloh application until the pending appeals have been concluded and are final, beyond any further appeal. Administrative and judicial

economy also dictate that the present applications should be stayed in any event, unless they are dismissed for one of the foregoing reasons.

For the foregoing reasons, Protestants respectfully submit that this motion should be granted and that the Zoning Commissioner should pass an Order dismissing or staying the present applications filed by Beth Tfiloh.



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



David B. Jackson
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 7th day of June, 2002, copies of the foregoing Motion and of the proposed Order thereon were mailed 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.



Robert J. Carson

RE: PETITION FOR SPECIAL EXCEPTION
PETITION FOR SPECIAL HEARING

By: Beth Tfiloh Congregation of Baltimore
City, Inc.

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 02-463-SPHX

* * * * *

ORDER GRANTING MOTION TO DISMISS OR STAY PROCEEDINGS

The Zoning Commissioner, having considered the Motion to Dismiss or Stay
Proceedings filed by Protestants, and any opposition thereto,

IT IS HEREBY ORDERED this ____ day of June, 2002, that the applications filed
by Beth Tfiloh be and the same are hereby dismissed (or, in the alternative, that all proceedings
with respect to the applications filed by Beth Tfiloh are hereby stayed and postponed until the
passage of a subsequent Order by the Zoning Commissioner).

Lawrence E. Schmidt
Zoning Commissioner for Baltimore County

cc: G. Scott Barhight, Esq.
Dino C. La Fiandra, Esq.
Robert J. Carson, Esq.
David B. Jackson, Esq.

Glyndon/463/Order

fio
6/17

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

June 7, 2002

VIA FEDERAL EXPRESS

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

Re: Applications by Beth Tfiloh Congregation of Baltimore City, Inc. for a
Special Exception and for Special Permit, Case No. 02-463-SPHX

Dear Commissioner Schmidt:

Filed herewith is my clients' Motion to Dismiss or Stay Proceedings in the above-captioned case.

As you know, a hearing in this case has been scheduled for Monday, June 17, at 2:00 p.m.

We would request that you hear the present motion before the June 17 hearing, if possible, since it is expected that a large number of Glyndon and Sagamore Forest residents may be present at the hearing. If the motion is granted, either to dismiss or to stay the proceedings, then it will not be necessary for these residents to attend the June 17 hearing. Either I or my co-counsel are available to attend a brief hearing on this motion if it is scheduled for next Wednesday morning, June 12, or next Thursday, June 13.

With best regards, I am

Respectfully yours,



Robert J. Carson

RJC/jak

Enclosures

cc: G. Scott Barhight, Esq.
Dino C. La Fiandra, Esq.
Gary R. Jones, Esq.
Richard B. Desser, President
Sagamore Forest & Worthington Hillside Community Association
Peter Max Zimmerman, Esq., People's Counsel

Glyndon/463/Schmidt ltr

W/10-10
Has a Motion?



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 407 Central Avenue
which is presently zoned RC4, RC5

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

To amend the previously approved plan in Zoning Case No. 01-468-SPH

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 and

Dino C. La Fiandra

Name - Type or Print

City

Signature

Whiteford, Taylor & Preston L.L.P.

Company

210 W. Penna. Ave.

410.832.2000

Address

Telephone No.

Towson

MD

21204-4515

City

State

Zip Code

Legal Owner(s):

Beth Tfiloh Congregation of Balto. City Inc.

Signature

Bernard H. Suffel, Executive Director

Name - Type or Print

Signature

3300 Old Court Rd.

410.486.1900

Address

Telephone No.

Baltimore

MD

21209

State

Zip Code

Representative to be Contacted:

Dino C. La Fiandra

Name

210 W. Penna. Ave.

410.832.2000

Address

Telephone No.

Towson

MD

21204-4515

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

1 DAY

UNAVAILABLE FOR HEARING

AUG 2-11

Reviewed By

SDJ

Date

04-19-02

Case No.

02-463 SPHx

REV 9/15/98

ORDER RECEIVED FOR FILING

Date

By



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 407 Central Avenue

which is presently zoned RC4, RC5

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 Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

With respect to the RC4 zoned portion of the property, a special exception for a camp and a synagogue, or in the alternative, for a community building and other uses of a civic, social, recreational, and educational nature.

With respect to the RC5 zoned portion of the property, a special exception for a camp, or in the alternative, for a community building and other uses of a civic, social, recreational and educational nature.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Exception, 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 and

Dino C. La Fiandra

Name - Type or Print

City

Signature

Whiteford, Taylor & Preston L.L.P.

Company

210 W. Penna. Ave.

410.832.2000

Address

Telephone No.

Towson

MD

21204-4515

City

State

Zip Code

Legal Owner(s):

Beth Tfiloh Congregation of Baltimore

Name - Type or Print City, Inc.

Signature

Bernard H. Suffel, Executive Director

Name - Type or Print

Signature

3300 Old Court Rd.

410.486.1900

Address

Telephone No.

Baltimore

MD

21209

State

Zip Code

Representative to be Contacted:

Dino C. La Fiandra

Name

210 W. Penna. Ave.

410.832.2000

Address

Telephone No.

Towson

MD

21204-4515

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1 day

UNAVAILABLE FOR HEARING Aug 2-11

Reviewed By SPD

Date

04/19/02

Case No. 07-463-SPHx

REV 09/15/98

ORDER RECEIVED FOR FILING

Date 10/22/12

By [Signature]

ZONING DESCRIPTION**OF SPECIAL EXCEPTION USE AREA**

Beginning at a point northwest of Saint Paul Road which is 50-feet wide, at the distance of 130-feet northwest of the centerline of the nearest improved intersecting street, Saint Paul Road. Thence the following courses and distances:

N 49° 08' 30" W 161.38';
N 48° 20' 02" W 905.70';
N 44° 04' 36" W 440.95';
N 08° 00' 59" E 35.77';
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 95.94';

To the point of beginning,

As recorded in Deed Liber 14271, Folio 691 and shown on Baltimore County Zoning Maps NW 16I, NW 16J, NW 17I, and NW 17J.

Containing 25.831-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

02-463-SPHx

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: #02-463-SPHX

407 Central Avenue

4th Election District - 8th Councilmanic District

Legal Owner(s): Beth Tfiloh Congregation of Balto. City, Inc.
Bernard H. Suffel

Special Exception: with respect to the R.C.4 zoned portion of the property for a camp and Synagogue, or in the alternative, for a community building and other uses of a civic, social, recreational, and educational nature. **Special Hearing:** to amend the previously approved plan in zoning case No. 02-468-SPH.

Hearing: Monday, June 17, 2002 at 2:00 p.m. in Room 407, County Courts Building, 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 concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 5/8/23 May 28

C541572

CERTIFICATE OF PUBLICATION

5/30, 2002

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 5/28, 2002.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

J. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No. 02-463-SPHX
Petitioner/Developer:
Beth Tfiloh Congregation
Hearing Date: **06/17/02**

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Mr. George Zahner

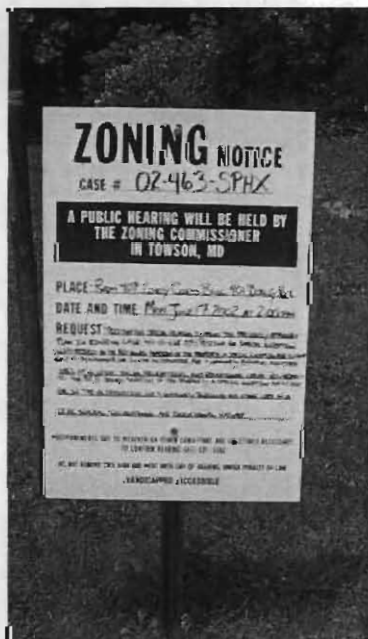
Ladies and Gentlemen:

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 **407 Central Ave..**

The sign(s) were posted on 06/02/02.

Sincerely,

Thomas J. Hoff
Thomas J. Hoff, Inc.
406 West Pennsylvania Avenue
Towson, MD. 21204
410-296-3668



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

02-463-SPHY.

No. 13308

DATE 04-19-02 ACCOUNT R-001-006-6130

AMOUNT \$ 5.50 00

RECEIVED
FROM:

DR. HITTAFORD, Taylor & Preston L.P.

550 SPECIAL HEARING 750

FOR: SPECIAL EXCELSIOR 300

TOTAL 1050

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

SPHY.

PAID RECEIPT

BUSINESS ACTUAL TIME
4/22/2002 4/19/2002 15:19:43

REG WS05 WALKIN RDOS LRB DRAWER 5

>>RECEIPT # 262052 4/19/2002 OFLN

Dept 5 528 ZONING VERIFICATION

CR NO. 013508

Recpt Tot \$550.00

550.00 CK .00 CA

Baltimore County, Maryland

CASHIER'S VALIDATION

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: 02-463-SPHX
Petitioner: Beth Tilden Congregation of Baltimore City, Inc
Address or Location: 3300 Old Court Rd, Baltimore MD 21209

PLEASE FORWARD ADVERTISING BILL TO:

Name: Dino LaFiandra, Esq.
Address: 210 W. Pennsylvania Avenue, Suite 400
Towson, MD 21204
Telephone Number: 410-832-2000

Revised 2/20/98 - SCJ

02-463-SPHX



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

May 16, 2002

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: 02-463-SPHX

407 Central Avenue

4th Election District – 8th Councilmanic District

Legal Owner: Beth Tfiloh Congregation of Balto. City, Inc., Bernard H Suffel

Special Exception with respect to the R.C.4 zoned portion of the property for a camp and Synagogue, or in the alternative, for a community building and other uses of a civic, social, recreational, and educational nature. Special Hearing to amend the previously approved plan in zoning case no. 02-468-SPH.

HEARING: Wednesday, June 12, 2002 at 9:00 a.m. in Room 106, Baltimore County Office Building, 111 W Chesapeake Avenue

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon G-DZ
Director

C: G. Scott Barhight & Dino C. LaFiandra, Whiteford Taylor & Preston LLP,
210 W Pennsylvania Avenue, Towson 21204-4515
Beth Tfiloh Congregation of Baltimore City Inc, Bernard H Suffel, 3300 Old
Court Road, Baltimore 21209

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, MAY 28, 2002.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, May 28, 2002 Issue – Jeffersonian

Please forward billing to:

Dino LaFiandra, Esquire
210 W Pennsylvania Avenue
Suite 400
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: 02-463-SPHX

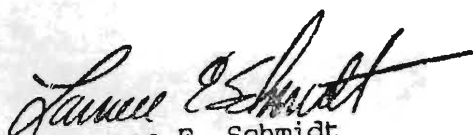
407 Central Avenue

4th Election District – 8th Councilmanic District

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HEARING: Wednesday, June 12, 2002 at 9:00 a.m. in Room 106, Baltimore County Office Building, 111 W Chesapeake Avenue



Lawrence E. Schmidt

LAWRENCE E. SCHMIDT GDZ
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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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

May 16, 2002

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: 02-463-SPHX

407 Central Avenue

4th Election District – 8th Councilmanic District

Legal Owner: Beth Tfiloh Congregation of Balto. City, Inc., Bernard H Suffel

Special Exception with respect to the R.C.4 zoned portion of the property for a camp and Synagogue, or in the alternative, for a community building and other uses of a civic, social, recreational, and educational nature. Special Hearing to amend the previously approved plan in zoning case no. 02-468-SPH.

HEARING: Monday, June 17, 2002 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue

A handwritten signature in cursive script, reading "Arnold Jablon".

Arnold Jablon GDB
Director

C: G. Scott Barhight & Dino C. LaFiandra, Whiteford Taylor & Preston LLP,
210 W Pennsylvania Avenue, Towson 21204-4515
Beth Tfiloh Congregation of Baltimore City Inc, Bernard H Suffel, 3300 Old
Court Road, Baltimore 21209

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, MAY 28, 2002.**
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- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, May 28, 2002 Issue – Jeffersonian

Please forward billing to:

Dino LaFiandra, Esquire
210 W Pennsylvania Avenue
Suite 400
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: 02-463-SPHX

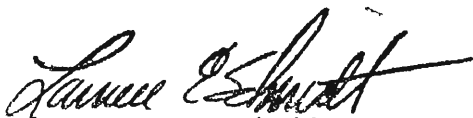
407 Central Avenue

4th Election District – 8th Councilmanic District

Legal Owner: Beth Tfiloh Congregation of Balto. City, Inc., Bernard H Suffel

Special Exception with respect to the R.C.4 zoned portion of the property for a camp and Synagogue, or in the alternative, for a community building and other uses of a civic, social, recreational, and educational nature. Special Hearing to amend the previously approved plan in zoning case no. 02-468-SPH.

HEARING: Monday, June 17, 2002 at 2:00 p.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

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

June 14, 2002

G. Scott Barhight
Whiteford Taylor & Preston LLP
210 W Pennsylvania Avenue
Towson MD 21204-4515

Dear Mr. Barhight:

RE: Case Number: 02-463-SPHX, 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 April 19, 2002.

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. G72
Supervisor, Zoning Review

WCR: gdz

Enclosures

- c: Beth Tfiloh Congregation of Baltimore City Inc, Bernard H Suffel, 3300 Old Court Road, Baltimore 21209
Dino C. La Fiandra, Whiteford Taylor & Preston LLP, 210 W Pennsylvania Avenue, Towson 21204
People's Counsel

Come visit the County's Website at www.co.ba.md.us



Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

May 7, 2002

ATTENTION: George Zahner

RE: Beth Tfiloh

Location: 407 Central Ave.

Item No.: S463

Dear Mr. Zahner:

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.

The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

REVIEWER: LIEUTENANT JIM MEZICK, Fire Marshal's Office
PHONE 887-4881, MS-1102F

cc: File
{PRIVATE}

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
Management

DATE: May 29, 2002

FROM: *RWB* Robert W. Bowling
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for May 6, 2002
Item No. 460, 461, 462, 463, 464, 465, 466, 467, 468, 469
and 471.

The Bureau of Development Plans Review has reviewed the
subject zoning items and we have no comments.

RWB:CEN
Cc: file



Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 5.2.01

Mr. George Zahner
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 463

JRA

Dear Mr. Zahner:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

fig
6/17

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits and
Development Management

DATE: May 20, 2002

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

MAY 20

SUBJECT: Zoning Advisory Petition(s): Case(s) 02-463, 02-476, & 02-484

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared by: Mark A. Cunningham

Section Chief: Arnold F. Keller

AFK/LL:MAC

RE: PETITION FOR SPECIAL HEARING
PETITION FOR SPECIAL EXCEPTION
407 Central Avenue, NE/S Central Ave, 130 NW
4th Election District, 8th Councilmanic

Legal Owner: Beth Tfiloh Congregation of
Baltimore City, Inc.
Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 02-463-SPHX

* * * * *

ENTRY OF APPEARANCE

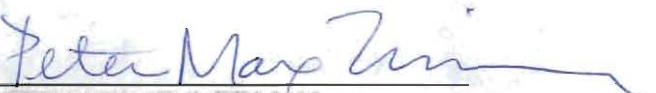
Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order. **All parties should copy People's Counsel on all correspondence sent/ documentation 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 22nd day of May, 2002 a copy of the foregoing Entry of Appearance was mailed to Dino C. LaFiandra, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 515, Towson, MD 21204, attorney for Petitioner(s).


PETER MAX ZIMMERMAN



Baltimore County
Zoning Commissioner

June 26, 2002

*6/27/02
Jesse*
Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

G. Scott Barhight, Esquire
Dino C. LaFiandra, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL HEARING & SPECIAL EXCEPTION
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. 02-463-SPHX

Dear Messrs. Barhight & LaFiandra:

This letter is to confirm that the above-captioned matter, which was continued in open hearing on Monday, June 17, 2002, has been scheduled to reconvene by agreement of all parties, on Friday, August 16, 2002, at 9:00 AM in Room 407 of the County Courts Building.

Should anyone have any questions, please do not hesitate to call me.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Robert J. Carson, Esquire, Robert J. Carson, P.A.
345 Green Street, Havre de Grace, Md. 21078
David B. Jackson, Esquire, Baxter, Baker, Sidle, Conn & Jones, P.A.
120 E. Baltimore Street, Suite 2100, Baltimore, Md. 21202
✓ Mr. George Zahner, DPDM; People's Counsel; Case File



Come visit the County's Website at www.co.ba.md.us



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".

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



Baxter, Baker, Sidle, Conn & Jones, P.A.

Attorneys at Law

120 E. Baltimore Street, Suite 2100

Baltimore, Maryland 21202-1643

Telephone (410) 230-3800

Facsimile (410) 230-3801

Gary R. Jones

Direct Line (410) 385-8004

e-mail: gjones@bbsclaw.com

August 15, 2002

AUG 19 2002

VIA FACSIMILE

Lawrence Schmidt
Zoning Commissioner's Office
401 Bosley Avenue
Suite 405
Towson, MD 21204

Re: Beth Tfiloh/Camp Glyndon
02-463-SPH
Our File No. 20205-003

Dear Commissioner Schmidt:

Enclosed for filing in the above-captioned matter is a Notice of Entry of Appearance.

Very truly yours,



Gary R. Jones

GRJ/mjr

Enclosure

cc: G. Scott Barhight, Esquire (*via facsimile*)

IN RE: Petition for Special Hearing
407 Central Avenue
Beth Tfiloh Congregation
of Baltimore City, Inc.

Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* 02-463-SPH

* * * * *

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 Mary Ellen Porter ("Protestants"). Robert J. Carson, Robert J. Carson, P.A., and Baxter, Baker, Sidle, Conn & Jones, P.A. will remain as counsel for the Protestants along with Mr. Jones.

Robert J. Carson

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

Gary R. Jones

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

Attorneys on behalf of Glyndon Community Association, Inc., Gary D. Applestein, Nan Kaestner and Mary Ellen Porter, Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of August 2002, a copy of the foregoing

Notice to Enter Appearance was sent via facsimile to:

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

Attorneys for Beth Tfiloh Congregation

Lawrence Schmidt
Zoning Commissioner's Office
111 West Chesapeake Avenue
Towson, Maryland 21204



Gary R. Jones

Baxter, Baker, Sidle, Conn & Jones, P.A.

Attorneys at Law

120 E. Baltimore Street, Suite 2100

Baltimore, Maryland 21202-1643

Telephone (410) 230-3800

Facsimile (410) 230-3801

Gary R. Jones

Direct Line (410) 385-8004

e-mail: gjones@bbsclaw.com

September 17, 2002

HAND DELIVERED

SEP 17 2002

Lawrence Schmidt
Zoning Commissioner's Office
401 Bosley Avenue
Suite 405
Towson, MD 21204

Re: In The Matter of: Beth Tfiloh/Camp Glyndon
407 Central Avenue
02-463-SPHX
Our File No. 20205-003

Dear Mr. Schmidt:

I write to clarify an issue raised in Beth Tfiloh's Post Hearing memorandum.

There is no question that a genuine traffic issue exists, and that several proposed conditions (at minimum GCA conditions 8, 9, 10 & 15) relate solely to the traffic problem that would be caused by the proposed development of the site.

It is incorrect to state, however, that there was "no consensus" on the proposed traffic conditions or that Beth Tfiloh would have to travel "miles out of their way" if the GCA's conditions "prohibiting the use of Central Avenue" are attached to the Zoning Commissioner's Order.

Proposed Conditions 8, 9, 10 & 15 state that: all traffic should enter and exit the Glyndon facility using Insulin Drive; no bus traffic should use Central Avenue north-westerly of the intersection of Insulin Lane with Central Avenue; buses leaving the facility on Insulin Drive should turn left only on Central Avenue; and construction traffic should exit to the south and east of the facility.

As shown by the attached map, the proposed routing of bus traffic to the south and east of the Camp Glyndon facility is a straight shot toward Beth Tfiloh's Old Court location and does not impact Sagamore Forest or Sagamore Forest Lane, as was implied in Beth Tfiloh's memorandum, so long as Beth Tfiloh routes their buses out of the facility by turning left on Central Avenue and so long as Beth Tfiloh is required to route buses/construction traffic via Owings Mills Boulevard.

On the other hand, traffic going up Central Avenue toward Butler Road will adversely impact the persons residing on Central Avenue as was testified to very clearly by Nan Kaestner and Alfred Barry at the August 16 hearing.

Richard Desser, on behalf of Sagamore Forest Homeowners Association has authorized me to state that he concurs with the contents of this letter.

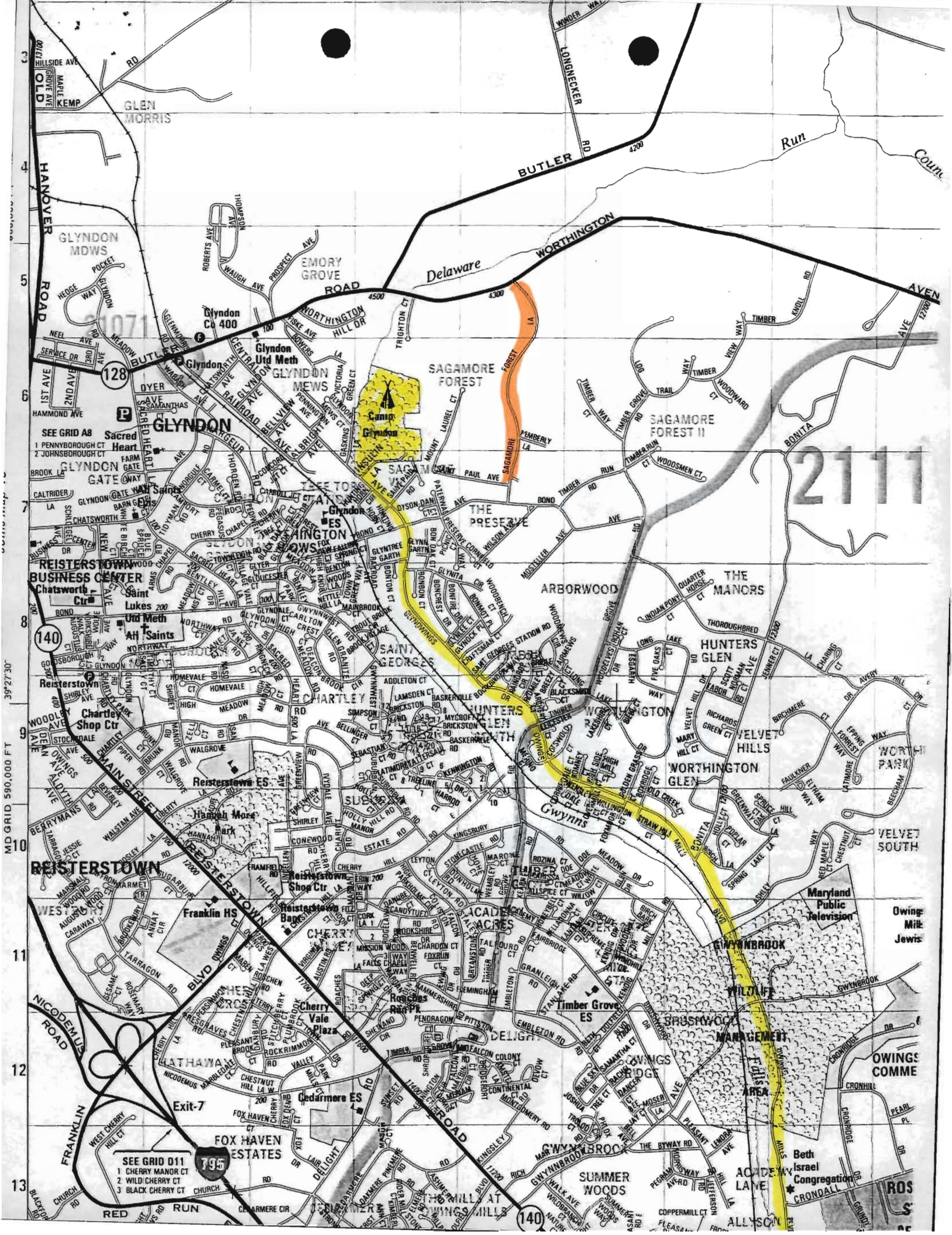
Very truly yours,



Gary R. Jones

GRJ/mjr
Enclosure

cc: G. Scott Barhight, Esquire
Richard Desser, Esquire
Robert J. Carson, Esquire



SEVEN SAINT PAUL STREET
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10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
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G. SCOTT BARHIGHT
DIRECT NUMBER
410 832-2050
gbarhight@wtplaw.com

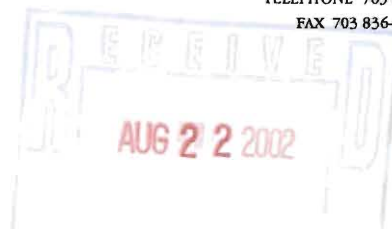
WHITEFORD, TAYLOR & PRESTON
L.L.P.

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



August 20, 2002

Gary R. Jones, Esquire
Baxter, Baker, Sidle & Conn, P.A.
Suite 2100
120 E. Baltimore Street
Baltimore, Maryland 21202

Re: Beth Tfiloh Glyndon, Petition for Special Hearing

Dear Mr. Jones:

Near the conclusion of the hearing on Friday, August 16, an unidentified woman in the gallery stated from her seat that she had heard that Beth Tfiloh was conducting a technology program for high school aged students at its Glyndon property. In response to this statement, the Zoning Commissioner asked Mr. Suffel to testify as to his knowledge of any such program. Having been called as a witness and sworn, Mr. Suffel advised Mr. Schmidt that he did not know if there was any such program.

To properly conclude this issue, Mr. Suffel has inquired and confirmed that Beth Tfiloh has no such program. Beth Tfiloh is conducting no such program nor are any such programs occurring on the Glyndon campus.

Sincerely,

G. Scott Barhight

C: Hon. Lawrence Schmidt, Zoning Commissioner
Beth Tfiloh Congregation of Baltimore City, Inc.

WHITEFORD, TAYLOR & PRESTON
L.L.P.

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G. SCOTT BARHIGHT
DIRECT NUMBER
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gbarhight@wtplaw.com

SEP 20 2002

September 19, 2002

Via Hand Delivery
Hon. Lawrence Schmidt, Baltimore County Zoning Commissioner
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

**Re: Beth Tfiloh Glyndon Campus / 407 Central Avenue
Case No. 02-463-SPHX**

Dear Mr. Schmidt:

Mr. Jones' letter to you of September 17, 2002 is inappropriate and, quite frankly, disappointing, on a number of levels. Preliminarily, I note that the Zoning Commissioner and counsel agreed to a briefing schedule. Briefs were due and filed on September 6, with an extension of time for the Glyndon Community Association until September 9, 2002. Mr. Jones' supplemental letter contains argument, which should have been included, if at all, within his September 9 memorandum. His new letter is not based on new or newly discovered facts, nor does it even take issue with my recitation of the facts as testified to by the witnesses. He is responding to my argument by trying to introduce new evidence. (Note the map attached to Mr. Jones' letter, and the statement that Mr. Desser now concurs with the proposed traffic conditions.) The record is closed. For this reason, I move that both Mr. Jones' September 17 letter, and this (the instant) letter be stricken.

If however, the Zoning Commissioner is not inclined to strike these letters, I note the following matters. The Petitioner may assert in its brief, as argument, that there was "no consensus" amongst the protestants as to the proposed traffic conditions, or that the proposed prohibition of use of Central Avenue, north of Insulin Drive, would require travel "miles out of the way". These assertions, made in good faith, are based on my recollection of the testimony and my hearing notes. In any event, *your* recollection of the testimony will win the day.

Furthermore, it appears that Mr. Jones has utterly failed to appreciate the effect on Beth Tfiloh of the proposed conditions relating to the use of Central Avenue. A prohibition on a right turn onto Central Avenue from the Beth Tfiloh campus would mean that school buses could not use Central Avenue northerly to access Butler Road, and I-795. Instead, such buses would necessarily exit the campus onto Central Avenue, southerly to Bond Avenue, where they would then travel easterly to Sagamore Forest Lane, then northerly to Worthington Avenue, then westerly to Butler Road, and finally then to I-795. The proposed route is significantly longer than a direct route on Central Avenue to Butler Road, and indeed "miles out of the way".

On the map attached to Mr. Jones' letter, he tries to illustrate that a left turn only requirement (southerly) onto Central Avenue from the Beth Tfiloh property results in a "straight shot toward Beth Tfiloh's Old Court location." Mr. Jones proposes that these school buses, which will be carrying kindergarten through fourth graders to and from school, travel south on Central Avenue, south on Owings Mills Boulevard, south on Reisterstown Road, west on Old Court Road, through Glyndon, Reisterstown, Owings Mills, Garrison, and finally Pikesville. Hardly a "straight shot". On the map which was attached to his letter, I note that Mr. Jones seems to have confused the Beth Israel Congregation on Crondall Lane for the Beth Tfiloh Congregation at Old Court Road, which is miles away. The proposed condition makes no sense, is based on a misapprehension of the location of the Beth Tfiloh's Old Court campus, and is not warranted.

I urge the Zoning Commissioner to strike and disregard both Mr. Jones' letter, and this letter. If, however, the Zoning Commissioner is inclined to consider these letters, I note that Mr. Jones' apparent confusion on the required route from 407 Central Avenue to I-795, goes a long way to explaining why the Glyndon Community Association fails to appreciate why its "proposed conditions" are unworkable. Lastly, Beth Tfiloh reiterates its objection to any condition relating to the lower school on site, for all the reasons asserted in its September 6 brief. The school is permitted by right in the zone, which may not be limited directly or indirectly through conditions attached to the special exceptions granted in the RC 4 zoned portion of the property.

Thank you for your attention and consideration of this matter.

Sincerely,


G. Scott Barhight

Hon. Lawrence Schmidt, Baltimore County Zoning Commissioner
September 20, 2002
Page 3

C: Gary R. Jones, Esquire
Richard Desser, Esquire

262557

Robert J. Carson, P.A.
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345 Green Street
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e-mail:
bobcarson@hdglegal.com

Baltimore Office:
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Baltimore, Maryland 21202
(410) 385-8130 or (410) 230-3800

July 2, 2002

Arnold Jablon, Director
Department of Permits & Development Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petitions for Special Exception and Special Hearing filed by Beth Tfiloh
Congregation of Baltimore City, Inc., Zoning Commissioner of Baltimore
County Case No. 02-463-SPHX

Dear Arnold:

My firm represents the Glyndon Community Association, Inc. and several individual residents who oppose Beth Tfiloh's petitions in the above-referenced zoning case.

On the first day of the hearing before Commissioner Schmidt, testimony was given by Rabbi Wohlberg of Beth Tfiloh.

My clients would like to obtain a transcript of this testimony, and it is my understanding from Commissioner Schmidt's office that this should be ordered through you. I am, therefore, requesting that his testimony be transcribed. My recollection is that Rabbi Wohlberg testified for about an hour, so the amount of testimony is not that lengthy.

I would appreciate very much if a transcript could be prepared and delivered to me in July. We have the second day of the hearing scheduled for August 16.

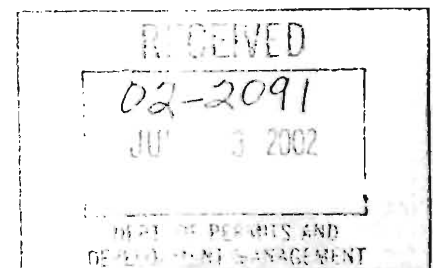
You may have the transcriber contact me directly if any deposit or further coordination is necessary with respect to the transcript.

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

Sincerely yours,


Robert J. Carson

RJC/jak
cc: G. Scott Barhight, Esq.
Gary R. Jones, Esq.
Glyndon/Jablon ltr



Schmitt

June 17 407

Tape 160 Side 2

"125" → end

161 Side 1

000 → end

Side 2

000 → "402

A.M.S. de Lange
"Sagamore Forest"
5 Trighton Court
Reisterstown, MD 21136 U.S.A.

AUG - 8 2002

les
9/4

July 27, 2002

Office of Planning & Zoning
County Court Building
111 W. Chesapeake Ave.
Towson, MD 21204

To the Zoning Commissioner,

The Beth Tfiloh congregation purchased Camp Glyndon sometime ago. The property has zoning in place that limits development in certain portions. Beth Tfiloh is now engaged in a campaign to get special exception in order to develop the RC4 and RC 5 portions.

I wish to go on record that I am against this spot zoning! As a neighbor to this property, the knowledge that the rear portions were zoned RC4 and RC 5 and precluded extensive development was very comforting. Beth Tfiloh knew of these restrictions when they acquired this property. Developing this entire area to serve their congregation is not needed and not in the best interest of the quiet residential neighborhood in which they chose to be located.

The county has just completed a huge county park near the intersection of I-795 and MD 140, adjacent to the golf complex. If Beth Tfiloh needs ball fields, they are ready and waiting. No need exists to strip land of trees and vegetation or to install lighting and P.A. system. Neighborhoods should not be overrun with what is essentially a profit making venture, be it a repair garage or a religious school complex.

I urge the Commissioner to temper the request of this effort to develop all that can be, and consider the negative impact all of this will have on the residents of Sagamore Forest and Glyndon.

I respectfully suggest that the requested variances on the RC 4 and RC 5 property not be granted.

Very Truly Yours,


Antonius de Lange

Cc: Richard Desser
Sagamore Forest Worthington Hillside C.A.

Robert J. Carson, P.A.
Attorney at Law
345 Green Street
Havre de Grace, Maryland 21078
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(410) 385-8130 or (410) 230-3800

July 2, 2002

Arnold Jablon, Director
Department of Permits & Development Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petitions for Special Exception and Special Hearing filed by Beth Tfiloh
Congregation of Baltimore City, Inc., Zoning Commissioner of Baltimore
County Case No. 02-463-SPHX

Dear Arnold:

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My clients would like to obtain a transcript of this testimony, and it is my understanding from Commissioner Schmidt's office that this should be ordered through you. I am, therefore, requesting that his testimony be transcribed. My recollection is that Rabbi Wohlberg testified for about an hour, so the amount of testimony is not that lengthy.

I would appreciate very much if a transcript could be prepared and delivered to me in July. We have the second day of the hearing scheduled for August 16.

You may have the transcriber contact me directly if any deposit or further coordination is necessary with respect to the transcript.

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

Sincerely yours,


Robert J. Carson

RJC/jak
cc: G. Scott Barhight, Esq.
Gary R. Jones, Esq.
Glyndon/Jablon ltr



6/18/17

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

Beth Tfiloh

02-463-SPHX

NAME

ADDRESS

G. Scott Barhight

210 W. Penn. Ave

Towson, MD 21204

Steve Warfield

10540 YORK RD

SUITE 1000

Hunt Valley, MD 21030

Mitchell Wohlberg

3407 Old Ct. Rd.

BALT 21208

DEANARD SUFFEL

1311 Park Heights Ave

BALT 21208



PLEASE PRINT CLEARLY

CITIZEN SIGN-IN SHEET

8/18

NAME

ADDRESS

ANITA MILLER
Bruce Venn
Sylvia Ruppenthal
Marti B. Clements
Lynne Maher
Frances M. Acle
Emily Acle
Elizabeth B Steele
Eliza Steele
Hannah Garman
Emma Garman
Christy Garman
Norman W. Karolinski Jr.
Robert S. Tarleton
Carlyle Montano Jr.
Jan D. Wroe
Mike Wroe
Duffen
Randy Quinn
Josh Quinn
JOE WOLF
Dorothy Hammond

19 WORTHINGTON HILL DR. 21071
340 Central Ave 21071
322 Central Ave. 21071
200 Central Ave. 21071
220 Central Ave 21071
4606 Prospect Ave. 21071
4000 Prospect Ave. 21071
211 Central Ave 21071
211 Central Ave 21071
120 Central Ave. 21071
120 Central Ave 21071
120 Central Ave 21071
4801 Butler Rd. 21071
4805 Butler Rd 21071
4500 Prospect Ave 21071-0014
317 CENTRAL AVE 21071
10 Waugh Ave 21071
10 Waugh Ave 21071
18 Chatsworth Ave 21071
18 Chatsworth
14 TRIGHTON CT. 21136
4626 Butler Rd. 21071
Blindon

PLEASE PRINT CLEARLY

CITIZEN SIGN-IN SHEET

8/18

NAME

ADDRESS

Mary Ellen Paten

4611 Butler Rd Glyndon 21071

John R. Kessner

206 Central Ave Glyndon 21071

Henry Koch

304 Central Ave Glyndon 21071

John R. Thre

4802 Butler Rd Glyndon 21071

George B. Wolfe

4802 Butler Rd Glyndon MD 21071

Muriel H. Wells

15 Glyndon Ave 21071

TAMI DANIEL

225 Central Ave GLYNDON

Bryan Benson

4813 Butler Rd Glyndon 21071

Emily Benson

4813 Butler Rd Glyndon 21071

Kirsten Macellon

4815 Butler Rd Glyndon

Grace Benson

4813 Butler Rd Glyndon MD

Missy Fanshaw

13 Glyndon Ave Glyndon 21071

Patrick Fanshaw

13 Glyndon Ave Glyndon 21071

HOWARD SOLHEIM

329 CENTRAL AVE GLYNDON MD

Kathleen Toth

12608 Watersport Ct Owings Mills

Robert Toth

12608 Watersport Ct, Owings Mills MD

Kim Karsen

4806 Butler Rd GLYNDON MD 21071

JAMES D. GARMAN

10 TRIGATOR CT, GLYNDON MD 21071

VERDON H. MUMMERT

21 WAUGH AVE, GLYNDON, MD 21071

HILDA MUMMERT

21 WAUGH AVE, GLYNDON, MD

8/18

PLEASE PRINT CLEARLY

CITIZEN SIGN-IN SHEET

NAME

ADDRESS

ALFRED W. BARRY III
Pamela S. White
Janet J. Wroe
MARTHA I. HEALY
ELEANOR TAYLOR
NAN Kaestner
ELEANOR KAESTNER
Geordy Clements
Tom Clements
Alex Clements
Sam Hans
Ed Hans
BEN Kaestner
Robert Kaestner
Vory Hans
Daniel Carey
Carol Moore
DONALD MOORE
Helen M. Forbes
Marian MacDonald
Jim MacDonald
Reilly Zumwalt
Derise Zumwalt
Zachary Zumwalt
Kier na Dzumwalt

ONE SOUTH CALVERT ST. #1150, BALT. 21202
11 Worthington Hill Drive 21071
8 Worthington Hill Dr. Glyndon 21071
222 CENTRAL AVE, GLYNDON, 21071
16 Worthington Hill Dr. Glyndon 21071
117 Central Ave. Glyndon 21071
117 Central Ave. Glyndon
200 Central Ave Glyndon 21071
200 central Ave Glyndon 21071
200 Central Ave
300 Central Ave
300 Central Ave
117 Central Ave
117 Central Ave Glyndon Md 21071
300 Central Avenue, Glyndon 21071
315 Railroad Ave 21071
15 Worthington Hill Dr. 21071
15 WORTHINGTON HILL DR. 21071
10 Worthington Hill Dr. 21071
111 Central Avenue, Glyndon MD 21071
111 Central Ave Glyndon, MD 21071
16 Glyndon Ave 21071
16 Glyndon Ave 21071
16 Glyndon Ave, 21071
16 Glyndon Ave, 21071



PLEASE PRINT CLEARLY

CITIZEN SIGN-IN SHEET

8/18

NAME *Sageview Forest
Worthington Hillside
Community Assoc.*

ADDRESS

Rich Desser

8 Worthington Bridge Ct 21136

James A. Houston

12615 Mt. Laurel Ct. 21136

Stephen McLegendre

12618 Mt Laurel Ct 21136

Martha S. Harrison

702 St. Paul Ave. 21136

Douglas E. Harrison

702 St. Paul Ave 21136

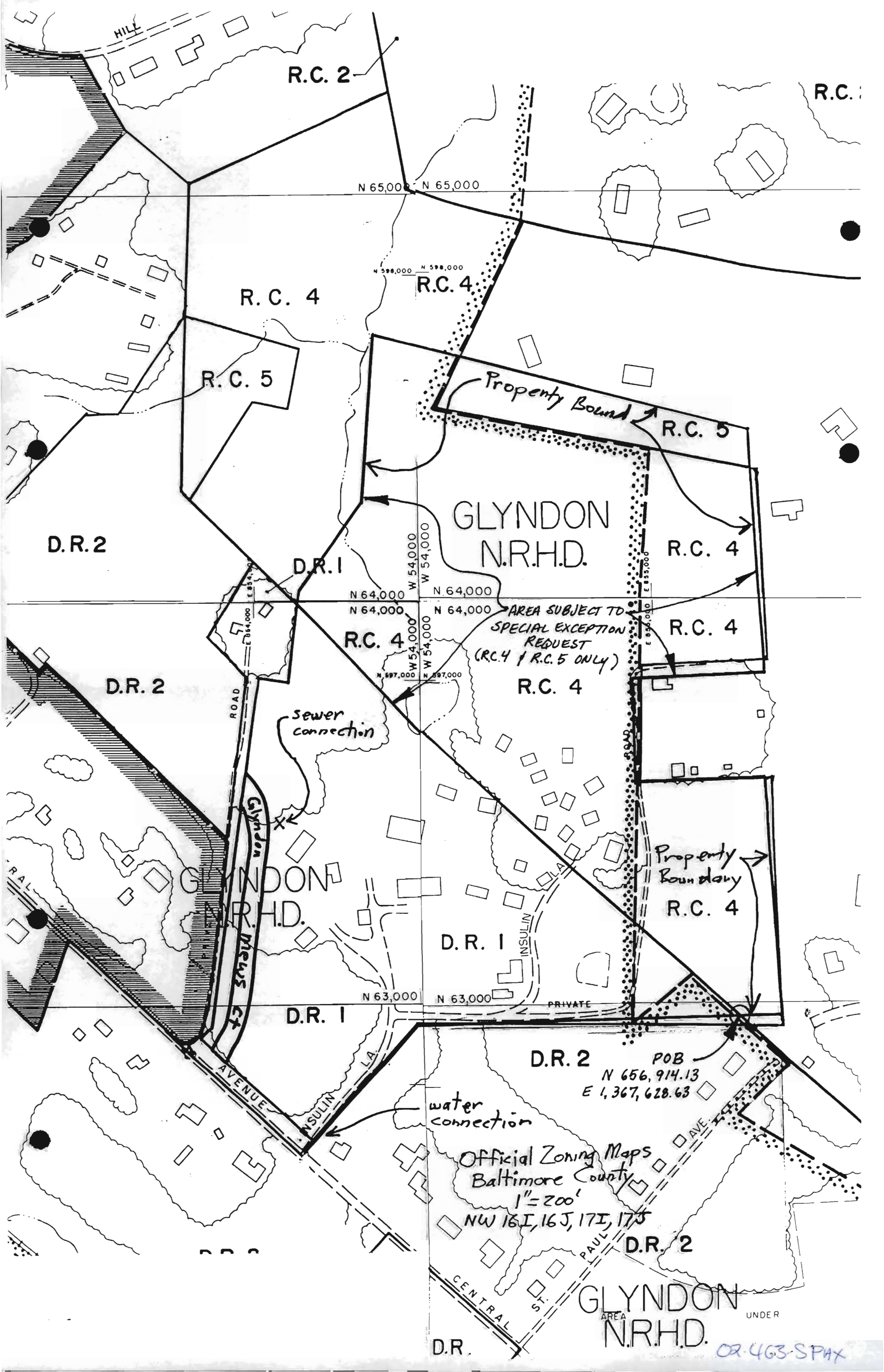
Richard Stanley

215 Central Ave 21071



Protestant Sign-in sheet

Eileen Wuerthele	111 Central Ave Glyndon 2107
Colin Wuerthele	111 Central Ave Glyndon 2107
Mary Wuerthele	111 Central Ave Glyndon 2107
Cam Wuerthele	111 Central Ave Glyndon
CHARLES WELSH	4601 PROSPECT AVE Glyndon 2107
Tom Montanye	4500 PROSPECT AVE GLYNDON
x Lindsay Montanye	" " " "
x DEN MONTANE	" " " "
x NICK MONTANE	" " " "
John A. Morris	4715 Butler Rd Glyndon 21071
Steve Kerz	12620 MT. LAUREL CR. Persimmon 21136



R.C. 2

R.C. 1

N 65,000 N 65,000

N 598,000 N 598,000

R.C. 4

R.C. 4

R.C. 5

Property Bound

R.C. 5

D.R. 2

GLYNDON N.R.H.D.

R.C. 4

D.R. 1

N 64,000 N 64,000

AREA SUBJECT TO SPECIAL EXCEPTION REQUEST (R.C. 4 / R.C. 5 ONLY)

R.C. 4

R.C. 4

R.C. 4

D.R. 2

sewer connection

Property Boundary R.C. 4

GLYNDON N.R.H.D.

D.R. 1

N 63,000 N 63,000

PRIVATE

D.R. 1

D.R. 2

POB N 656,914.13 E 1,367,628.63

water connection

Official Zoning Maps Baltimore County

1" = 200'

NW 16I, 16J, 17I, 17J

D.R. 2

GLYNDON N.R.H.D.

UNDER

D.R.

02-463-SPAX

**J. ROLAND DASHIELL REALTY COMPANY v. WICOMICO COUNTY,
MARYLAND**

No. 1204, September Term, 1997

COURT OF SPECIAL APPEALS OF MARYLAND

122 Md. App. 239; 712 A.2d 104; 1998 Md. App. LEXIS 125

June 26, 1998, Filed

SUBSEQUENT HISTORY:

[***1]

As Corrected July 8, 1998.

PRIOR HISTORY:

Appeal from the Circuit Court for Wicomico County,
Richard D. Warren, Judge.

DISPOSITION:

JUDGMENT AFFIRMED; APPELLANT TO PAY THE
COSTS.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant realty company appealed from the judgment of the Circuit Court for Wicomico County (Maryland), which enjoined the company from accepting and disposal of rubble waste at its borrow pit, except that rubble waste being generated by the company's operations. Plaintiff county filed a complaint against the company that sought to stop use of the pit that violated the company's special exception from zoning.

OVERVIEW: The realty company was the successor to the family construction business, which had operated a landfill operation in connection with a borrow pit operation on the same property. It had obtained, and renewed, a special exception to the zoning law that allowed the disposal of land clearance, construction, or demolition debris generated only from the operation of the company's construction, land clearance, or demolition activities. The county filed suit for injunctive relief because of a substantial increase in the debris, which it believed was being generated by out-of-state companies. The circuit court granted the county's

request, and enjoined the disposal that did not conform to the special exception. On appeal, the court affirmed the circuit court. The board of zoning appeals was vested with the power to put limits on special exceptions, which otherwise would not be permitted. Implicit in that power was the power to limit those uses to protect the health, safety, and welfare of the community. Environmental law did not preempt the zoning regulation.

OUTCOME: The court affirmed the judgment of the circuit court.

CORE CONCEPTS

Real & Personal Property Law > Zoning & Land Use > Conditional Use Permits & Variances

Real & Personal Property Law > Zoning & Land Use > Statutory & Equitable Limits

Under the Wicomico County zoning ordinance (Wicomico County Code § 225-106D): When granting any special exception, the Board of Zoning Appeals or Planning Commission may impose such conditions and restrictions upon the site design, agricultural character, location, type of construction, ingress and egress, landscaping, screening and operation as deemed necessary to mitigate any potential adverse impacts upon adjacent properties or the general area and to insure compliance with the standards, criteria or other specific requirements for a special exception. Boards of zoning appeals when granting special exceptions are vested with power to put limits on them. The power to impose conditions upon the grant of a variance or special exception is one which is implicit in the power to grant a variance or special exception. This is so because the whole basis for the exception is the peculiar hardship to the applicant, and the Board is justified in limiting the exception in such a way as to mitigate the effect upon

neighboring property and the community at large. Both a variance and a special exception authorize uses which otherwise would not be permitted. Having been given the power to authorize such unusual uses, the Board must also have the power to limit those uses to protect the health, safety, and welfare of the community.

Environmental Law > Zoning & Land Use > Conditional Use Permits & Variances

Environmental Law > Solid Wastes > Disposal Standards

Real & Personal Property Law > Zoning & Land Use > Zoning Generally

Despite the breadth of the Sewage Sludge Part generally, and the specific provisions that address safety, environmental, and health concerns, the legislature did not intend to preempt the field in regard to traditional zoning matters, such as the location of sewage sludge storage facilities. Rather, the legislature intended to complement, not supplement, local zoning law.

Real & Personal Property Law > Zoning & Land Use > Land Use Planning

Real & Personal Property Law > Zoning & Land Use > Zoning Generally

Zoning provides a tool by which to establish general areas or districts devoted to selected uses. Indeed, the very essence of zoning is the territorial division of land into use districts according to the character of the land and buildings, the suitability of land and buildings for particular uses, and uniformity of use. Generally, when a use district is established, the zoning regulations prescribe that certain uses are permitted as of right (permitted use), while other uses are permitted only under certain conditions (conditional or special exception use). In determining which uses should be designated as permitted or conditional in a given use district, a legislative body considers the variety of possible uses available, examines the impact of the uses upon the various purposes of the zoning ordinance, determines which uses are compatible with each other and can share reciprocal benefits, and decides which uses will provide for coordinated, adjusted, and harmonious development of the district. When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses.

Governments > Local Governments > Ordinances & Regulations

Governments > State & Territorial Governments > Relations With Governments

State law may preempt local law in three ways: 1) preemption by conflict, 2) express preemption, or 3) implied preemption.

COUNSEL:

Argued By Morton A. Sacks (McGuire, Woods, Battle & Boothe, LLP all of Baltimore, MD., Raymond S. Smethurst, Jr., Robert B. Taylor and Adkins, Potts & Smethurst, LLP of Salisbury, MD. on the brief.) For Appellant. Submitted By: J. Joseph Curran, Jr., Attorney General and J. Van Lear Dorsey, Assistant Attorney General for Amicus Curiae, State of Maryland, Department of the Environment, both of Baltimore, MD., for Appellant.

Argued By Robert M. McCaig (Edgar A. Baker, Jr. and Seidel, Baker & Tilghman, P.A. on the brief) all of Salisbury, MD., for Appellee.

JUDGES:

Murphy, C.J., Moylan, Smith, Marvin H. (retired, specially assigned), JJ. Opinion by Smith, J.

OPINIONBY:

SMITH

OPINION:

[*241] [**105] Opinion by Smith, J.

At issue in this case is the validity of a provision in a special exception issued to J. Roland Dashiell & Sons, Inc. (Dashiell Construction) for a "sanitary fill operation (in connection with a borrow pit operation on the same property)." It restricted the materials brought to the landfill site "to the land clearance, demolition and construction debris waste generated by J. Roland Dashiell & Sons, Incorporated" n1 We shall hold that the Circuit Court for Wicomico County properly enjoined appellant J. Roland Dashiell Realty Company (Dashiell Realty) "from making any further use of the Real Property [at issue] for the disposal of land clearance, construction or demolition debris other than such debris generated from the operation of [that company's] own construction, land clearance, or demolition activities"

n1 J. Roland Dashiell & Sons, Inc., is a general contractor long on the Wicomico County scene. See *State v. Dashiell*, 195 Md. 677, 75 A.2d 348 (1950).

[***2]

From 1971 to 1996 Dashiell Construction owned the land containing the rubble-fill at issue in this case. In 1971, it applied for and obtained a special exception for a borrow pit. It applied for and obtained a special exception in 1975 for a "sanitary fill operation (in connection with a borrow pit operation on the same property)." A representative of the corporation explained that it was becoming more difficult to dispose of construction debris and that Dashiell Construction planned to use the pit for that purpose. The special exception was granted with the provision that "fill operations shall be [*242] conducted by J. Roland Dashiell & Sons, Inc., only and shall be continuous from one point and not scattered throughout the site" This special exception was continued from time to time.

In 1987, as a result of a previous inspection by the Maryland Department of the Environment, Dashiell Construction applied to that department for a refuse disposal permit to expand the rubble fill to twelve acres. Ultimately, there was a consent order. It, among other things, provided that:

1 - Any fill operation shall be conducted by the company *only*.

....3 - All waste disposed [***3] of at the landfill site shall be limited to the land clearance, demolition and construction debris waste generated by J. Roland Dashiell & Sons, Incorporated unless further restricted by any other applicable federal, state, or local restrictions.

The Wicomico County Board of Zoning Appeals took cognizance of this consent order when it inserted a new condition into Dashiell Construction's special exception when it was extended in 1989. This condition provided:

2 - Those materials to be disposed of shall only include "Land Clearance, Demolition, and Construction Debris" as defined in Environment Article, *Section 9-204(a)* and (d), Annotated Code of Maryland and operation shall be made in accordance with COMAR 10.17.11 and consistent with the requirements and conditions of J. Roland Dashiell & Sons, Inc., Consent Order, CO-88-SWE-022 issued by Hazardous and Solid Waste Management Administration.

[**106] The special exception was extended from time to time thereafter. In July, 1996, some months before the special exception was to expire, a five-year extension was requested with the further request that the special exception be in the name of "J. Roland Dashiell Realty Company to whom the [*243] property [***4] is being transferred." n2 It apparently was represented that this proposed transfer was "from one generation to

the next." This was accomplished with the provision that "this Special Exception is subject to the Conditions of Approval as imposed March 30, 1989." The conditions included the requirement previously mentioned relative to being "consistent with the requirements and conditions of J. Roland Dashiell & Sons, Inc., Consent Order, CO-88-SWE-022 issued by Hazardous and Solid Waste Management Administration," which, as we have said, limited waste disposal at the site to materials "generated by J. Roland Dashiell & Sons, Incorporated."

n2 This request was for "an extension from the Special Exception # WA75127 Sanitary Landfill from the current expiration of April 4, 1997, for an additional five (5) years." As we have already said, "Special Exception # WA75127" contained the conditions here under attack. The request was from Dashiell Construction with the further request that the special exception "be issued in the name of J. Roland Dashiell Realty Company to whom the property is being transferred." Nothing was said concerning conditions. The language used would give rise to the inference that it was expected that the extended special exception would contain the same language as the prior special exception. Thus, it might be said that the parties here consented to or acquiesced in these conditions. The question as to whether under those circumstances an attack on these conditions as has been mounted here may be maintained has not been raised, briefed, or argued. Thus, we do not pass upon the point. We observe, however, that there is authority to the effect that one may not attack zoning to which one has consented. *See, e.g., Meredith v. Talbot County*, 80 Md. App. 174, 560 A.2d 599 (1989).

[***5]

Originally all stock in Dashiell Realty Company was owned by Dashiell Construction. It is now owned by Garnet Development, L.L.C.

Wicomico County (the County) filed a complaint against Dashiell Realty in the Circuit Court for Wicomico County. It alleged, among other things, that "20 to 25 tractor trailer loads a day of rubble are being emptied into the borrow pit" and that "the site is operating in violation of the Special Exception and other zoning laws of Wicomico County, in that rubble waste is being disposed of at the site which is not being generated by J. Roland Dashiell & Sons, Inc., in its course of operations, but rather appears to be waste generated by [*244] several out-of-state companies." The parties

ultimately entered into a stipulation of facts which included:

During the period January 13, 1997 to March 12, 1997 such operations involved approximately 25 truck loads of rubble per day, except for Saturdays and Sundays, and included rubble from sources or projects other than those of J. Roland Dashiell & Sons, Inc. During this period 1035 tons of rubble from J. Roland Dashiell & Sons, Inc., were deposited and 11292 tons of rubble from other parties were deposited. This volume [***6] of rubble and trucks substantially exceeded that which had been transported to the site at any time prior to that period.

As indicated at the outset of this opinion, the circuit court enjoined appellant, Dashiell Realty, from making any further use of the property in question "for the disposal of land clearance, construction or demolition debris other than such debris generated from the operation of [its] own construction, land clearance, or demolition activities." This appeal followed. n3

n3 Wicomico County took no appeal. It thus has acquiesced in the court's restriction to materials from Dashiell Realty rather than Dashiell Construction.

Questions presented as perceived by Dashiell Realty are:

1 - Did the trial court commit reversible error in ruling that the special exception restricts the source of the rubble that can be deposited in Appellant's rubble fill?

2 - Did the trial court commit reversible error in failing to find that state regulation of solid waste preempts the local government [***7] from imposing a rubble source restriction upon Appellant's rubble fill?

[**107] 3 - Did the trial court commit reversible error in failing to find that the rubble source limitation imposed *arguendo* by the special exception is invalid and unenforceable because it (a) violates the Commerce Clause of the Constitution of the United States and (b) since the restriction bears no substantial relationship to public health, safety and welfare, it [*245] violates Appellant's constitutional right to due process of law?

4 - Did the trial court commit reversible error in (a) finding that Appellant's operation of its rubble fill is a Nonconforming Special Exception Use under Wicomico County's Paleochannel Regulation or (b) in failing to find

that such Paleochannel Regulations are preempted by State regulation of solid waste?

We need not consider this last question because the contention of the County as reflected in paragraph 14 of its complaint that the Paleochannel Regulations "required approval by the Planning Commission and Board of Zoning Appeals prior to enlarging size or area" was but another, alternate, basis for the relief it sought. Given that which we shall hold relative to the special [***8] exception contentions as set forth in the first three questions, we have no need to reach this fourth question. We shall discuss the questions seriatim.

1.

In this case one of the conditions of the special exception was that it was to be "consistent with the requirements and conditions of J. Roland Dashiell & Sons, Inc., Consent Order, CO-88-SWE-022 issued by Hazardous Waste and Solid Waste Management Administration." That consent order was to the effect that "waste disposed of at the landfill site should be limited to the land clearance, demolition and construction debris waste generated by J. Roland Dashiell & Sons, Incorporated"

Under the Wicomico County zoning ordinance (Wicomico County Code § 225-106D):

When granting any special exception, the Board of Zoning Appeals or Planning Commission may impose such conditions and restrictions upon the site design, agricultural character, location, type of construction, ingress and egress, landscaping, screening and operation as deemed necessary to mitigate any potential adverse impacts upon adjacent properties or the general area and to insure compliance with [*246] the standards, criteria or other specific requirements [***9] for a special exception.

Boards of zoning appeals when granting special exceptions are vested with power to put limits on them. *See, e.g., Halle Cos. v. Crofton Civic Ass'n*, 339 Md. 131, 140-41, 661 A.2d 682, 686 (1995), where Judge Karwacki said for the Court:

The power to impose conditions upon the grant of a variance or special exception is one which is implicit in the power to grant a variance or special exception. "This is so because the whole basis for the exception is the peculiar hardship to the applicant, and the Board is justified in limiting the exception in such a way as to mitigate the effect upon neighboring property and the community at large." [*Baylis v. Mayor & City Council of Baltimore*, 219 Md. 164, 148 A.2d 429 (1959)] at 169, 148 A.2d at 432. *See also Skipjack Cove Marina, Inc. v.*

Legal description
The parcel at this
issue is only Redwood road
case is only
thoughts - Board said to treat
like separate tracts -
See Vol 2 Memo
language

Board of County Comm'rs of Cecil County, 264 Md. 381, 287 A.2d 49 (1972); 3 Yokley, *Zoning Law and Practice*, § 21-12. Both a variance and a special exception authorize uses which otherwise would not be permitted. Having been given the power to authorize such unusual uses, the Board must also have the power to limit those uses to protect the health, safety, and [***10] welfare of the community. See *Skipjack Cove Marina, Inc.*, 264 Md. at 386, 287 A.2d at 51 (The board is justified in limiting the special exception in such a way as to mitigate its effect upon neighboring property and the community at large.); 3 Rathkopf, *The Law of Zoning and Planning*, § 40.02[3] ("Even in the absence of any specific provision therefor in the ordinance, the board would thus have inherent power to condition a variance. If this were not so, the board, for lack of such right, might be forced, at times, to deny a variance and thus perpetuate the hardship which the restrictions have imposed upon the landowner.").

[**108] We think it absolutely plain that by the terms of the special exception which incorporated the consent order no waste materials were to be brought to the site except those from Dashiell Construction's own "land clearance, demolition and [*247] construction" It is as plain as the nose on one's face. The plain language here controls.

2.

We find persuasive as to the contentions relative to preemption this Court's recent decision, handed down after argument in this case, in *County Comm'rs of Queen Anne's County v. Soaring Vistas Properties, Inc.*, [***11] 121 Md. App. 140, 708 A.2d 1066 (1998), where an analogous situation was considered. Judge Hollander, for the Court, opened that opinion by saying that the Court "must determine whether State law preempts a local zoning ordinance that makes construction of a sewage sludge storage facility a conditional use." She pointed out for the Court in footnote two, "The terms 'conditional use' and 'special exception use' are frequently interchanged. *Richmarr [Holly Hills, Inc. v. American PCS, L.P.]* [117 Md. App. 607] at 643 n.26[. 701 A.2d 879]; *Hofmeister v. Frank Realty Co.*, 35 Md. App. 691, 699, 373 A.2d 273 (1977)." The Court said in that opinion:

Accordingly, despite the breadth of the Sewage Sludge Part generally, and the specific provisions that address safety, environmental, and health concerns, we are persuaded that the Legislature did not intend to preempt the field in regard to traditional zoning matters, such as the *location* of sewage sludge storage facilities. Rather, we believe the Legislature intended to complement, not supplement, local zoning law.

Therefore, we agree with appellants that "to affirm the circuit court would be [***12] to leave various matters, including the particular location of a sludge facility, if it meets MDE's permitting criteria, unaddressed and unregulated by either state or county law.

In reaching this conclusion, we are convinced that the Legislature was mindful of the vital role of zoning in accomplishing the "coordinated, adjusted, and harmonious development of [a] jurisdiction ... which will ... promote ... [the] general welfare." *Schultz v. Pritts*, 291 Md. 1, 19-20, 432 A.2d 1319 (1981) (quoting Maryland Code (1957, [*248] 1978 Repl. Vol.) Article 66B, § 3.06). In *Schultz*, the Court explained:

Zoning provides a tool by which to establish general areas or districts devoted to selected uses. Indeed, the very essence of zoning is the territorial division of land into use districts according to the character of the land and buildings, the suitability of land and buildings for particular uses, and uniformity of use.

Generally, when a use district is established, the zoning regulations prescribe that certain uses are permitted as of right (permitted use), while other uses are permitted only under certain conditions (conditional or special exception use). In determining which [***13] uses should be designated as permitted or conditional in a given use district, a legislative body considers the variety of possible uses available, examines the impact of the uses upon the various purposes of the zoning ordinance, determines which uses are compatible with each other and can share reciprocal benefits, and decides which uses will provide for coordinated, adjusted, and harmonious development of the district.

...When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses.

Id. at 20 (citations omitted)(footnote omitted).

Id. 121 Md. App. at 162-163, 708 A.2d 1066. n4

n4 Judge Rita Davidson the author for the Court of Appeals of *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981), was a zoning expert in her own right.

In *Soaring Vista* Judge Hollander also pointed out for the Court:

We emphasize that local zoning boards may not utilize the conditional use process as a ploy to

frustrate or undercut an identifiable State objective. Stated otherwise, a zoning board may not arbitrarily or unlawfully withhold approval of a conditional use application that satisfies valid criteria, in order to preclude the erection of an unwanted sewage sludge storage facility. Nevertheless, such contentions are not before us; the local zoning authorities never considered the merits of appellees' conditional use application.

Soaring Vista, 121 Md. App. at 167.

Soaring Vista involved a locality's attempt, by text amendment to its zoning ordinance, to require sludge storage facilities to obtain a conditional use. The locality, however, had not acted on the property owner's application for a conditional use. In the instant case, the Wicomico County Board of Zoning Appeals has granted a special exception to Dashiell Construction for its use, and faithfully renewed it a number of times. Moreover, Dashiell Realty has failed to identify any State objective which could arguably be frustrated or undercut by appellee's grant of the special exception with the condition.

[***14]

In *Talbot County v. Skipper*, 329 Md. 481, 487-88, 620 A.2d 880 (1993), Judge Eldridge [**109] said for the Court, "Under [*249] our decisions, state law may preempt local law in three ways: 1) preemption by conflict, 2) express preemption, or 3) implied preemption." (Footnotes omitted.) We have none of that here. There is no express preemption. There is no implied preemption. Zoning is concerned with land use. The statute that Dashiell Realty would have us hold preempts zoning here is concerned not with land use, but with how to handle solid waste disposal properly. There is no conflict. The land fill statute by its very terms recognizes zoning and thus evinces the intent on the part of the General Assembly not to preempt specifically nor to preempt impliedly. Maryland Code (1982, 1996 Repl. Vol.), § 9-210 of the Environment Article, in setting forth the prerequisites for issuing a waste disposal permit states:

(a) *In general.* -- The Secretary may not issue a permit to install, materially alter, or materially extend a refuse disposal system ... until the requirements set forth in this subsection are met in the following sequence:

....(3) The county has completed its review of the [***15] proposed refuse disposal system, and has provided to the Department a written statement that the refuse disposal system:

[*250] (i) Meets all applicable county zoning and land use requirements [Emphasis added.]

We have just quoted from *Halle*, 339 Md. at 141, 661 A.2d at 686, in which the Court of Appeals stated, "The power to impose conditions upon the grant of a variance or a special exception is one which is implicit in the power to grant a special exception." The restrictions here imposed were reasonable. To apply the propositions put forth by Dashiell Realty would result in a situation in which a governmental body with zoning powers, such as Wicomico County or the City of Salisbury, would be powerless to prevent a well heeled, spiteful, and irresponsible person or corporation from buying up, for instance, the very center of Salisbury, clearing it of buildings, and then proceeding with solid waste disposal, provided, of course, that such person or corporation obtained the requisite state permits. The argument of Dashiell is not well founded.

3.

Dashiell Realty cites numerous state and federal cases, including those of the Supreme Court, on the issue of whether [***16] the restriction here is an infringement on interstate commerce. None of the cases is applicable. For instance, the restriction here is in no way comparable to that in *Browning-Ferris, Inc. v. Anne Arundel County*, 292 Md. 136, 438 A.2d 269 (1981). There, in an effort, as Judge Eldridge put it for the Court, "to control the transportation and depositing of various hazardous and toxic wastes, and radioactive materials within its borders," the County enacted ordinances, one of which prohibited "the disposal in and transportation through Anne Arundel County of various hazardous wastes not originating in that county." *Id.* at 138-39 (emphasis added)(footnote omitted). The Court of Appeals held this provision to be "clearly prohibited by the Commerce Clause." It held valid, however, the portion of the statute which "required a license to dispose of hazardous waste in the county, and requiring [**110] that the cargo manifest be retained at the dumpsite" (Emphasis added.) The restriction here does [*251] not in any way forbid bringing out-of-state material to this site. Wicomico County abuts Sussex County, Delaware. This site is but a few miles from the Maryland-Delaware line. If [***17] Dashiell Realty were to have a contract in Delmar, Delaware (the portion of the town of Delmar in Delaware as distinguished from Delmar, Maryland, that portion in Maryland) or, for that matter, in Dover, Delaware (about fifty miles away), this restriction would in no wise prevent Dashiell Realty's importation of materials generated at those sites to this waste disposal site.

122 Md. App. 239, *; 712 A.2d 104, **;
1998 Md. App. LEXIS 125, ***

We have referred to the Wicomico County Code provision granting the Board of Zoning Appeals the right to impose conditions and restrictions when granting any special exception and to *Halle*, 339 Md. at 140-41, 661 A.2d at 686, where the Court of Appeals spoke of such powers. No doubt the Board of Zoning Appeals in imposing the restriction here desired to limit the amount of traffic to and from the waste disposal site and the amount of materials which would be placed therein. The point is illustrated by the stipulation between the parties that in a two-month period in 1997 the rubble deposited at the site by Dashiell Construction amounted to 1,035

tons compared to "11292 tons of rubble from other parties" This restriction had to do with land use, not commerce. This does not impinge upon interstate [***18] commerce.

For the reasons just stated, the argument of Dashiell that "the rubble source restriction violates due process because it bears no substantial relationship to public health, safety and welfare" is without merit.

JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.

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

02-463-SPH

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.

02-463-SPHX

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 Perego 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

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,

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

02-463-SPHX

Prot No 4

THE GLYNDON COMMUNITY ASSOCIATION, INC.

RESOLVED: That at the Annual meeting of the Glyndon Community Association ("GCA") held on May 30, 2002, it was decided by GCA that responsibility for review and action on all zoning matters until voted otherwise be placed in the Board of Directors and John Morris, President.

By action of the Board of Directors ("Board"), and approved by the members of the Glyndon Community Association ("GCA"), the following attorneys are appointed to represent the Board and GCA at the hearing(s) on June 17, 2002 and August 16, 2002 in Case No. 02-463 SPH, which is a Petition(s) for Special Exception and for Special Hearing filed by Beth Tfiloh Congregation of Baltimore City, Inc.:

Robert J. Carson, Esquire
Robert J. Carson, P.A.

and/or

Gary R. Jones, Esquire
Baxter, Baker, Sidle, Conn & Jones, P.A.

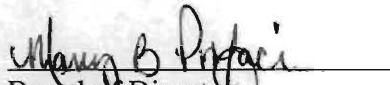
and the following persons have authority to testify on behalf of GCA at the special exception hearing(s):

Mary Ellen Porter (GCA Board Member);

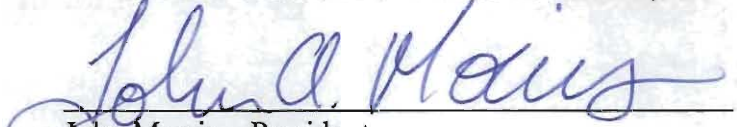
Nan Kaestner (GCA Resident)

AS WITNESS OUR HANDS AND SEAL this 13 day of August, 2002.

ATTEST:


Board of Directors
Member/Secretary

GLYNDON COMMUNITY ASSOCIATION, INC.


John Morris - President

Protestants Ex. 2

**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.

Mr. Barry had over twenty-four years of professional planning experience with Baltimore City including the last eight years as the City's Assistant Planning Director (1987-1995). In this capacity, he managed the Planning Commission's development approval process as well as directed the Planning Department's strategic, economic development, environmental, urban design and legislative responsibilities. Mr. Barry also authored landmark state legislation in 1994 creating property tax abatement for historic properties.

A selection of economic development projects for which Mr. Barry was a key participant in their planning and implementation includes: the Hopkins Bayview Research Campus (1985), the Port Covington Business Park (1988), the Camden Yards Stadium Complex for which he was recognized by the State chapter of the American Planning Association (1989), and the Key Highway and Harborview urban renewal plans (1986, 1991).

Mr. Barry frequently represented the Planning Department and City on various public-private partnerships, including: the Mayor's Advisory Committee for Fells Point and Canton (1988), Johns Hopkins University's Environmental Working Group (1990, 1991), the Managing Team directing a new strategic plan for the Department of Recreation and Parks (1990), the Mayor's Economic Incentive Task Force (1992, 1993), Baltimore City Homebuilders' Board (1993-1995), the Metropolitan Planning Council's Land Use Subcommittee (1994, 1995), the State Economic Growth Commission's Committee revising the State Planning and Zoning Act (1994, 1995), Governor-elect Parris Glendening's Environmental Policy Transition Team (1994), and the Maryland Chapter of the American Planning Association's Board (1995). Mr. Barry also coordinated the City's efforts to successfully plan and implement the Charles Village Community Benefits District, the first combined residential-business special taxing district in the country.

Mr. Barry's international experience includes planning efforts in Germany, Poland and the Czech and Slovak Republics for the State Department, Johns Hopkins University, and the private sector. In June of 2001, Mr. Barry was selected as a Fulbright Scholar to study urban and regional planning in Germany.

Mr. Barry received his bachelor's degree in urban studies from the Johns Hopkins University in 1970. He has lectured and been a visiting critic at the Johns Hopkins University, University of Maryland Graduate School of Community Planning, and Morgan State University's Graduate Schools of Architecture and Landscape Architecture. Since 1998, he has taught a course on development regulation for the Johns Hopkins University's Masters in Real Estate program.

Community activities include board membership on the Citizens Planning and Housing Association (1974-1983, 1996-present), Baltimore Heritage (1987, 1988), Roland Park Community Foundation (1987-1995), the Roland Park Roads and Maintenance Corporation (1995), and the Baltimore Architecture Foundation (1996-present). He was also a past president of the Charles Village Civic Association (1982, 1983).

More recently, Mr. Barry has been involved in two significant volunteer activities relating to growth management issues. From 1996 to 2000, he chaired the Citizens Planning and Housing Association's Committee on the Region and is now President of the Board. He is a founding organizer and Board member of 1000 Friends of Maryland. From 1997 to 1999, he was vice president of the Maryland Chapter of the American Planning Association.

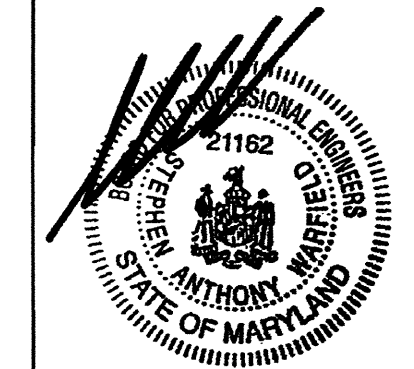
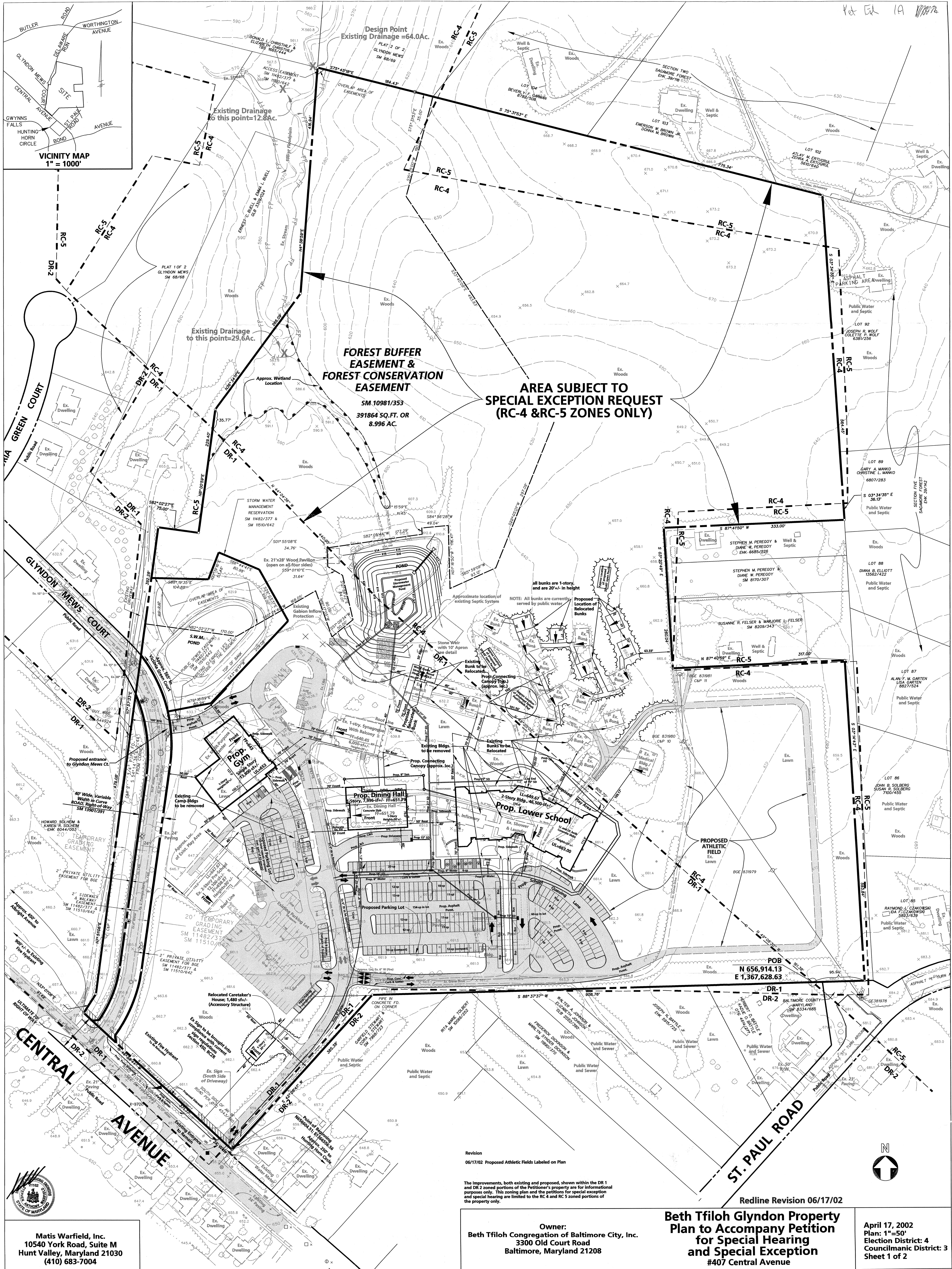
A representative sample of AB ASSOCIATES' clients include the Johns Hopkins University and Hospital, Bell Atlantic, Lancellota and Associates, Edison Parking, Lighthouse Point, Quadrangle Development, the Rouse Company and Himmelrich Associates. Community clients have included the Charles Village Community Benefits District, the Northwest Baltimore Corporation, Southeast Development, Inc., the Harford Road Partnership, East Harbor Village Center and Preservation Maryland. Municipal clients have included Maryland cities of Cambridge, Aberdeen, and Taneytown. Since 1999, Mr. Barry has been under contract with HUD as a project expediter for HOPE VI developments in Chester, Pennsylvania; Richmond, Virginia; and Bradenton, Florida. He was recently named to a project team by KPMG to evaluate underachieving Public Housing Authorities.

Ex 3

CONDITIONS REQUESTED BY
GLYNDON COMMUNITY ASSOCIATION, INC.

1. Construction and use of RC4 zoned property is limited to what is specifically shown on plat accompanying Petition for Special Exception in Case No. 02-463 SPH.
2. School only to have grades K through 5.
3. The camp facilities should be retained and maintained in substantially the same size, configuration and manner as required under Case No. 65-389-X; Case No. 94-27-SPHA; and Case No. IV-455.
4. The camp should only be operated with campers present during the summer.
5. Any athletic facilities on the RC4 zone property may only be used by the campers (and not by the school children).
6. The parking spaces should not be the greater of (i) 230 or (ii) the number of spaces literally required for the school.
7. Substantially all students should be bused from Beth Tfiloh Old Court facility to the Glyndon facility, coming northwest by way of Owings Mills Boulevard and Central Avenue.
8. All traffic should enter and exit the Glyndon facility using Insulin Drive.
9. No bus traffic should use Central Avenue northwesterly of the intersection of Insulin Drive with Central Avenue.
10. Buses leaving the facility on Insulin Drive should turn left only on Central Avenue. Signs to this effect should be placed on Insulin Drive.
11. There should be no lighting at night on the athletic fields except what is reasonably needed for security purposes.
12. Third-party use of the camp facilities should not be permitted.
13. There should be no outside amplified noise after 9:00 p.m. ~~Monday~~ through Thursday and after 10:00 p.m. on Friday and Saturday. (See 9/28/93 Order, ¶ 7(2)).
14. Any construction work on Beth Tfiloh Glyndon facility should be on weekdays only (excluding holidays) between the hours of 7:00 a.m. and 6:00 p.m.
15. Construction traffic should exit to the south and east of the facility.

Sunday — amended by M.E. Porter in testimony
JES
8/18/02



Matis Warfield, Inc.
10540 York Road, Suite M
Hunt Valley, Maryland 21030
(410) 683-7004

Revision
06/17/02 Proposed Athletic Fields Labeled on Plan

The Improvements, both existing and proposed, shown within the DR-1 and DR-2 zoned portions of the Petitioner's property are for informational purposes only. This zoning plan and the petitions for special exception and special hearing are limited to the RC-4 and RC-5 zoned portions of the property only.

Owner:
Beth Tfiloh Congregation of Baltimore City, Inc.
3300 Old Court Road
Baltimore, Maryland 21208

**Beth Tfiloh Glyndon Property
Plan to Accompany Petition
for Special Hearing
and Special Exception
#407 Central Avenue**

Redline Revision 06/17/02

April 17, 2002
Plan: 1"=50'
Election District: 4
Councilmanic District: 3
Sheet 1 of 2

LEGEND

Existing Contour ----- 653 -----
----- 650 -----
Property Line -----
Proposed Contour ----- 652 -----
15" RCCP
Existing Storm Drain -----
Proposed Storm Drain =====
Existing Sanitary -----
Proposed Sanitary -----
10" SAN
Existing Water -----
Proposed Water -----
8" WATER
Existing Curb -----
Proposed Conc. Curb =====
Existing Electric ----- E -----
Existing Telephone -----
Existing Gas ----- GAS -----

Asphalt Paving

Proposed Concrete

Existing Spot Elevation +604
Proposed Spot Elevation 652.2+

Zoning Line

ML-IM
D.R. 3.5

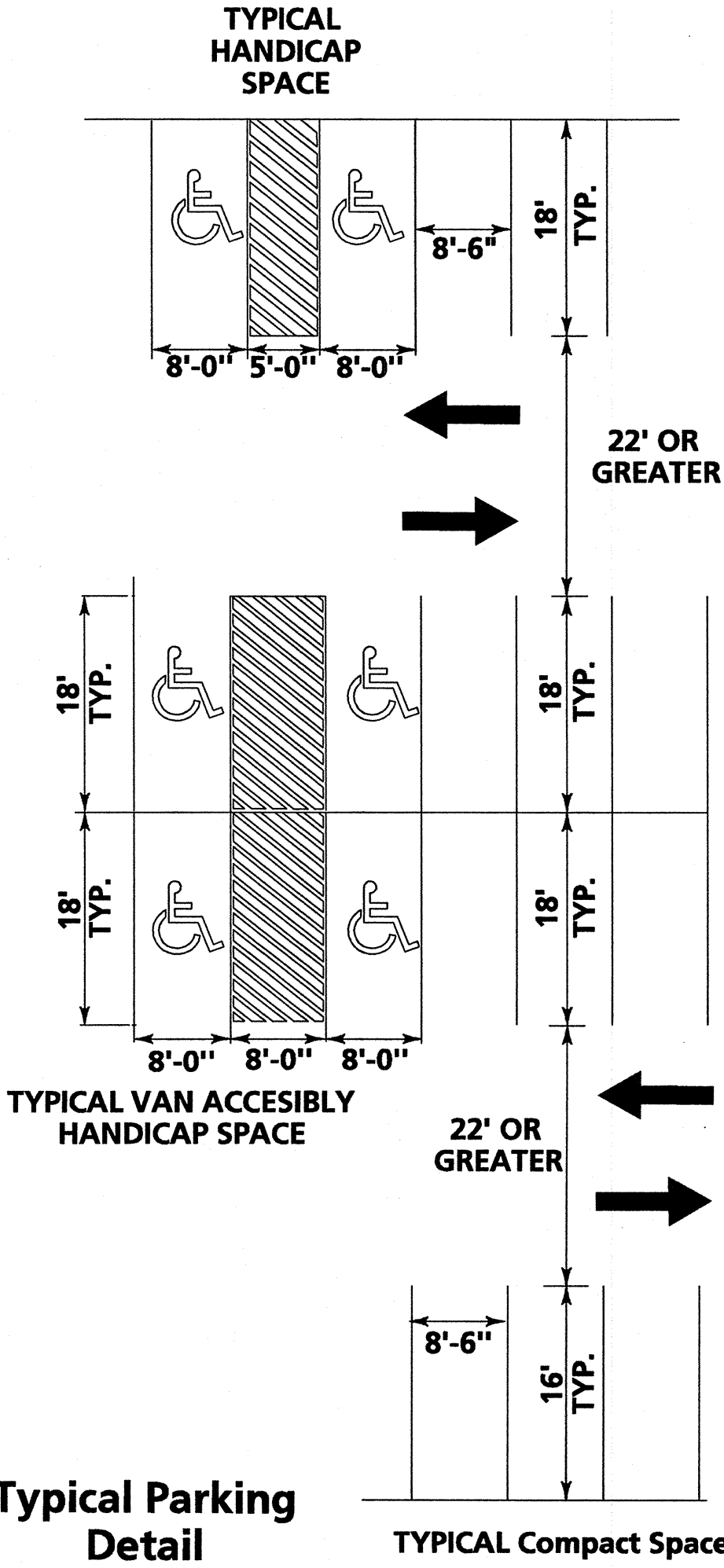
100-YR Floodplain

FP FP FP

N.R.H.D.

SOILS

GcB2
EhC2



Case No. CBA-01-106 /Beth Tfiloh -Camp Glyndon /PDM IV-455

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 28th 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. Frish

C. Lynn Barranger

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-SPLA, 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,

NOTES:

SITE AREA:
GROSS AREA OF SITE: 44.07 AC +/- (1,919,700 sq +/-)
GROSS AREA OF SITE INCLUDES UP TO 30' OF ADJACENT PUBLIC ROADS. AND TO THE CENTERLINE OF THE ROAD IF LESS THAN 30'.
FOREST BUFFER EASEMENT AND FOREST CONSERVATION EASEMENT DEDICATED: 8,996 AC +/- (GM 10891-353)
NET AREA OF SITE: 42.00 AC +/- (1,829,500 sq +/-) = (GROSS AREA)-(2.07 AC +/- OF ADJACENT PUBLIC ROADS AND A SWM RESERVATION.)
SPECIAL EXCEPTION USE AREA: 23.831 AC +/- (1,129,000 sq +/-)

Deed Reference: 14271/691
Tax Account No.: 04-130229-70
Existing Zoning: 18.16-ac/- DR1, 0.12-ac/- DR2, 2.28-ac/- RC5, and 23.51-ac/- RC4
Zoning Maps (NW-16-1, NW-16-1, NW-17-1, NW-17-1)

Zoning History:
Case No. 65-389-X Special Exception for Camp, Community Buildings, Swimming Pool, and Other Structures, Granted 6/30/65
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Case No. CBA-01106/DRC No. 101600D/PDM IV-455 (a)(2) Limited Exemption Pursuant to 26-171 of the Baltimore County Code, Granted 02/08/02
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Waivers:
Waiver of Road Widening for Central Avenue granted 2/28/94
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Pre-School Building Permit: B365464 (Pre-School Addition)
Chapel Building Permit: B375919 (Chapel Alteration Enclosure)
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Grading Permit: B381294 (Pre-School Parking Lot)
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Other Permits:
B380730: Outdoor Pavilion
B430417: Alteration Pre-School
B432181: Open Deck on Pre-School
B437222: Dining Hall with kitchen, and porches
B437228: Raze Existing Dining Hall
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All proposed canopy connections between buildings will be structural and meet the zoning definition of a building element used to connect buildings so that they will be treated as one structure. See typical detail herein.
Existing paved and gravel driveways will be improved to meet current Baltimore County standards.
Stormwater Management Requirements will be addressed at building permit approval stage.
Walks will be provided to provide pedestrian access between buildings and site features.
Landscaping to be provided in accordance with the Baltimore County Landscape Manual, and all other manuals adopted pursuant to Section 22-105 of the Baltimore County Code.
A small portion of the site lies within the Baltimore County 100-yr Floodplain.

LIGHTING: Any fixture used to illuminate an off-street parking area shall be so arranged as to reflect light away from adjacent residential site and public streets.

The Forest Buffer and Forest Conservation Easements shown hereon are recorded among the land records.

Allowable Impervious coverage in RC-4 Zone
Portion of the Property = 10% of lot = 2,351-acres

Existing and Proposed Impervious Area in RC-4 Zone
Portion of the Property = 0.73-ac (3.1%)

Allowable Clearing of Natural Vegetation in RC-4 Zone
Portion of the Property = 25% of lot = 5.88-acres

Proposed Clearing of Natural Vegetation in RC-4 Zone
Portion of the Property = 3.60-ac (15.3%)

BULK REGULATIONS FOR DEVELOPMENT:
DR-1
MAXIMUM BUILDING HEIGHT=50-feet
NON-RESIDENTIAL PRINCIPAL BUILDINGS (minimum setbacks)
Front Yard=70-feet
Side Yard=40-feet
Corner Street Side=65-feet
Rear Yard=50-feet
RC-4
MAXIMUM BUILDING HEIGHT=35 feet
BUILDING SETBACKS
Except for agricultural buildings, any nonresidential principal building hereafter constructed in an RC-4 Zone shall be situated at least 100 feet from the center line of any street and at least 50 feet from any lot line other than a street line, except as otherwise provided in Paragraph 4.
(See BCZR 1A03.A.8.2 Paragraph 5)
No buildings proposed in DR-2 or RC-5 areas of the site at this time
NOTE: ONE DWELLING UNIT HAS BEEN ASSIGNED TO THE PRIVATE SCHOOL, SYNAGOGUE, CAMP, AND ACCESSORY STRUCTURES.

Existing Use: Private School, Synagogue, and Camp
Proposed Use: Private School, Synagogue, and Camp

Preliminary Parking Tabulation:
Required:
400-Seat Chapel @ 1space/4-seats=100-spaces
20 (Pre-School employees, visitors) @ 1space/each=30-spaces
100 (Lower-School employees, visitors) @ 1space/each=100-spaces
Total Required=230-spaces
Provided:
Total Provided=384 (32-spaces are compact)
ALL PARKING SHALL BE PERMANENTLY STRIPED ON A DURABLE AND DUST FREE SURFACE

Zoning Relief Requested:
Special Hearing to amend the previously approved plan in Zoning Case No. 01-468-SPL. With respect to the RC4 zoned portion of the property, a special exception for a camp and a synagogue, or in the alternative, for a community building and other uses of a civic, social, recreational, and educational nature.
With respect to the RC5 zoned portion of the property, a special exception for a camp, or in the alternative, for a community building and other uses of a civic, social, recreational and educational nature.

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 1801.2.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.

- 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.
- 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.
- 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.
- 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 as shown on the submitted plan.
- The existing multi-purpose center (Bldg. 1) will likewise not increase by more than twice its size (100%) and all expansions shall be within the building envelope as shown on the submitted plan.

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.

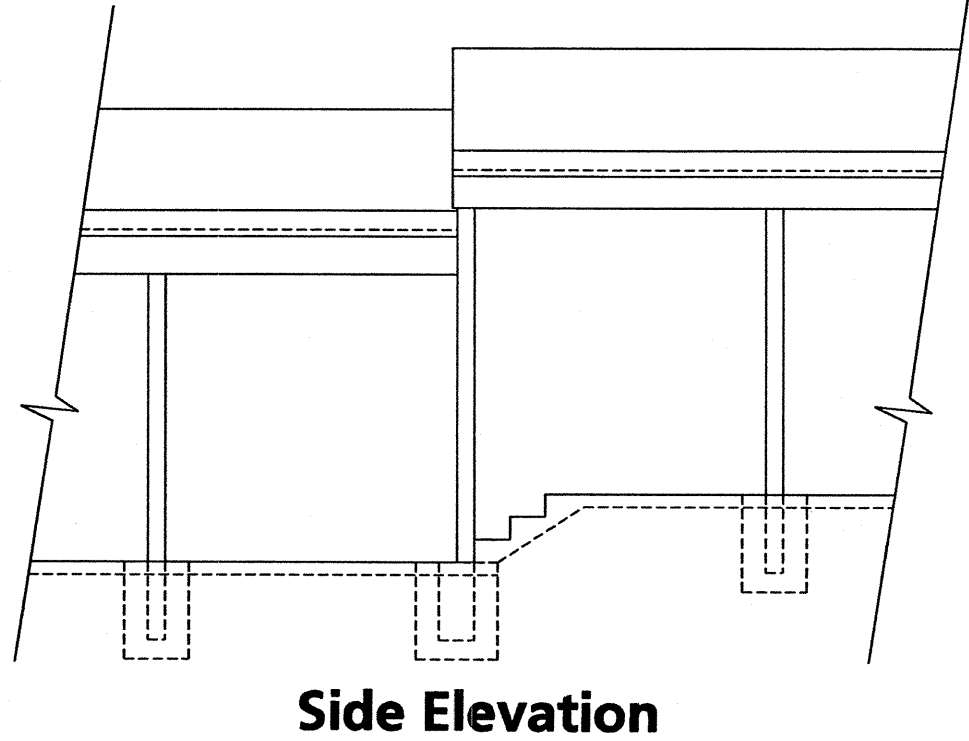
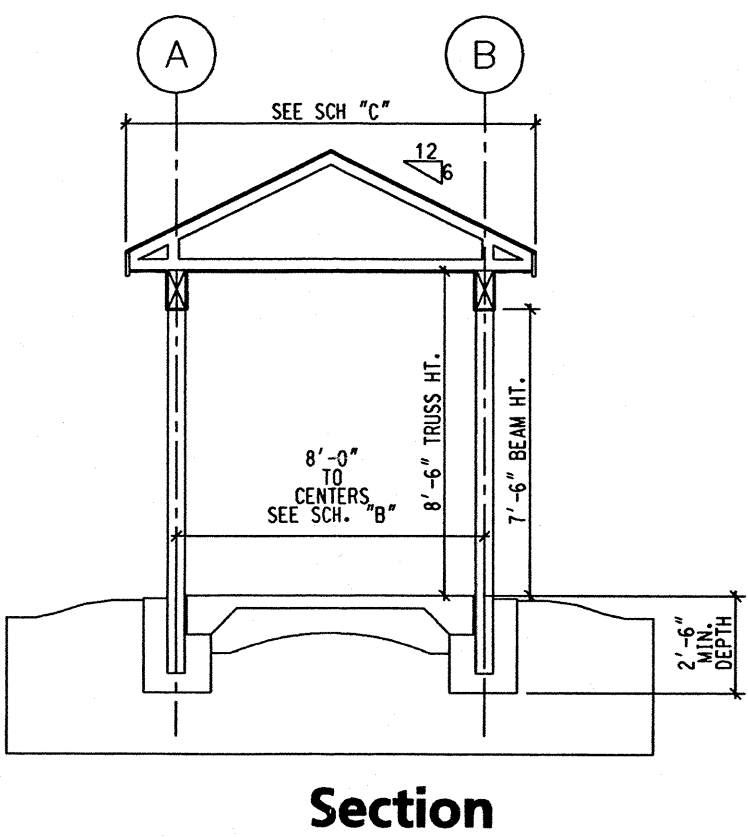
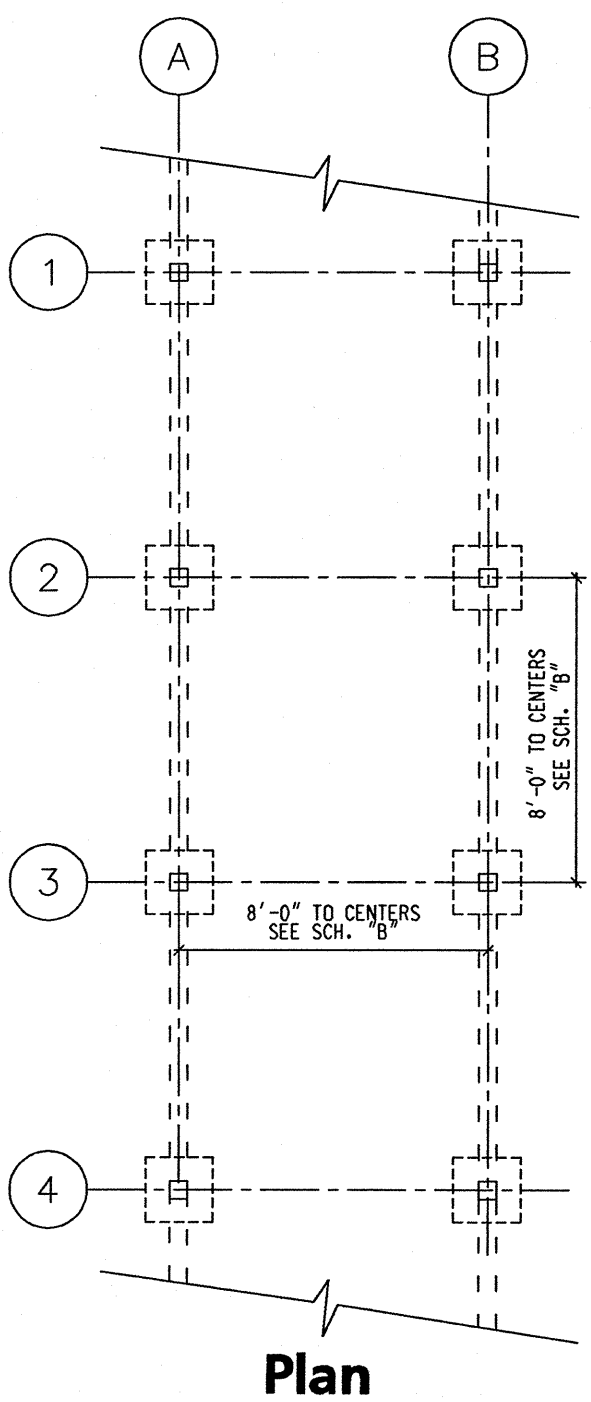
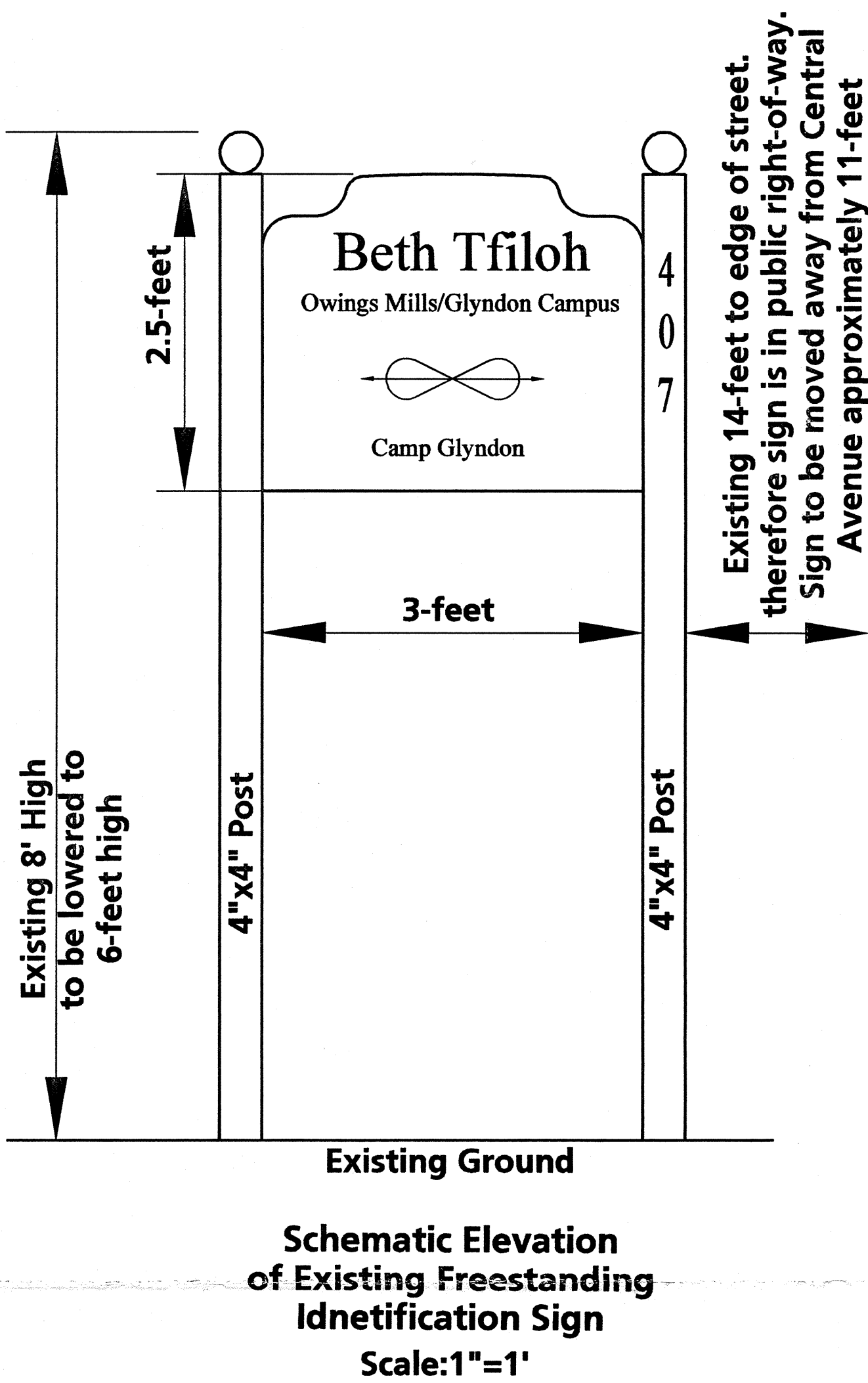
7. The Petitioner shall cause to be included, in any lease of the property and/or facilities thereon, language prohibiting (1) signage for functions on the property within the surrounding community, and (2) outside amplified music after 9:00 P.M. Monday through Thursday and after 10:00 P.M. on Friday and Saturday.

LAWRENCE R. SCHMIDT
Zoning Commissioner for
Baltimore County

LES:mm

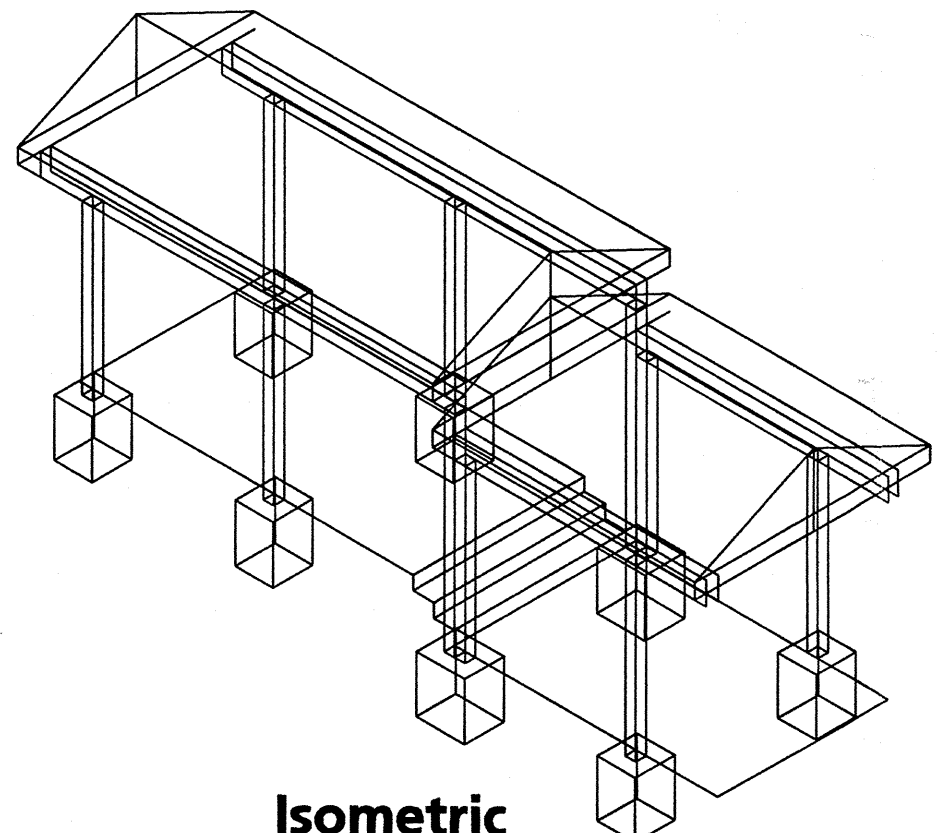
-11-

- Existing Sign is freestanding;
- Double sided;
- Non-illuminated;
- Area=7.5-sf (3x2.5)
- Address 10% of sign area so exempt



Typical Connecting Canopy Detail (Not To Scale)

	DIMENSION A	DIMENSION B	DIMENSION C
BETWEEN BUNKS	4'	6'	8'
BETWEEN DINING HALL & CHAPEL	6'	8'	10'



Matis Warfield, Inc.
10540 York Road, Suite M
Hunt Valley, Maryland 21030
(410) 683-7004



Owner:
Beth Tfiloh Congregation of Baltimore City, Inc.
3300 Old Court Road
Baltimore, Maryland 21208

Beth Tfiloh Glyndon Property
Plan to Accompany Petition
for Special Hearing
and Special Exception
#407 Central Avenue

April 17, 2002
Scale: as noted
Election District: 4
Councilmanic District: 3
Sheet 2 of 2

LEGEND

Existing Contour ----- 653 -----
----- 650 -----

Property Line -----
Proposed Contour ----- 652 -----
15" RCCP
Existing Storm Drain -----
Proposed Storm Drain -----
Existing Sanitary -----
Proposed Sanitary -----
10" SAN
Existing Water -----
8" WATER
Proposed Water -----
8" WATER
Existing Curb -----
Proposed Conc. Curb -----
Existing Electric ----- E -----
Existing Telephone -----
Existing Gas ----- GAS -----

Asphalt Paving
Proposed Concrete

Existing Spot Elevation +604
Proposed Spot Elevation 652.2+

Zoning Line ----- ML-IM -----
----- D.R. 3.5 -----
100-YR Floodplain ----- FP -----
N.R.H.D. -----
SOILS ----- GcB2 -----
----- EhC2 -----

Case No. CBA-01-106/Beth Tfiloh -Camp Glyndon/PDM IV-455
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 28th 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.

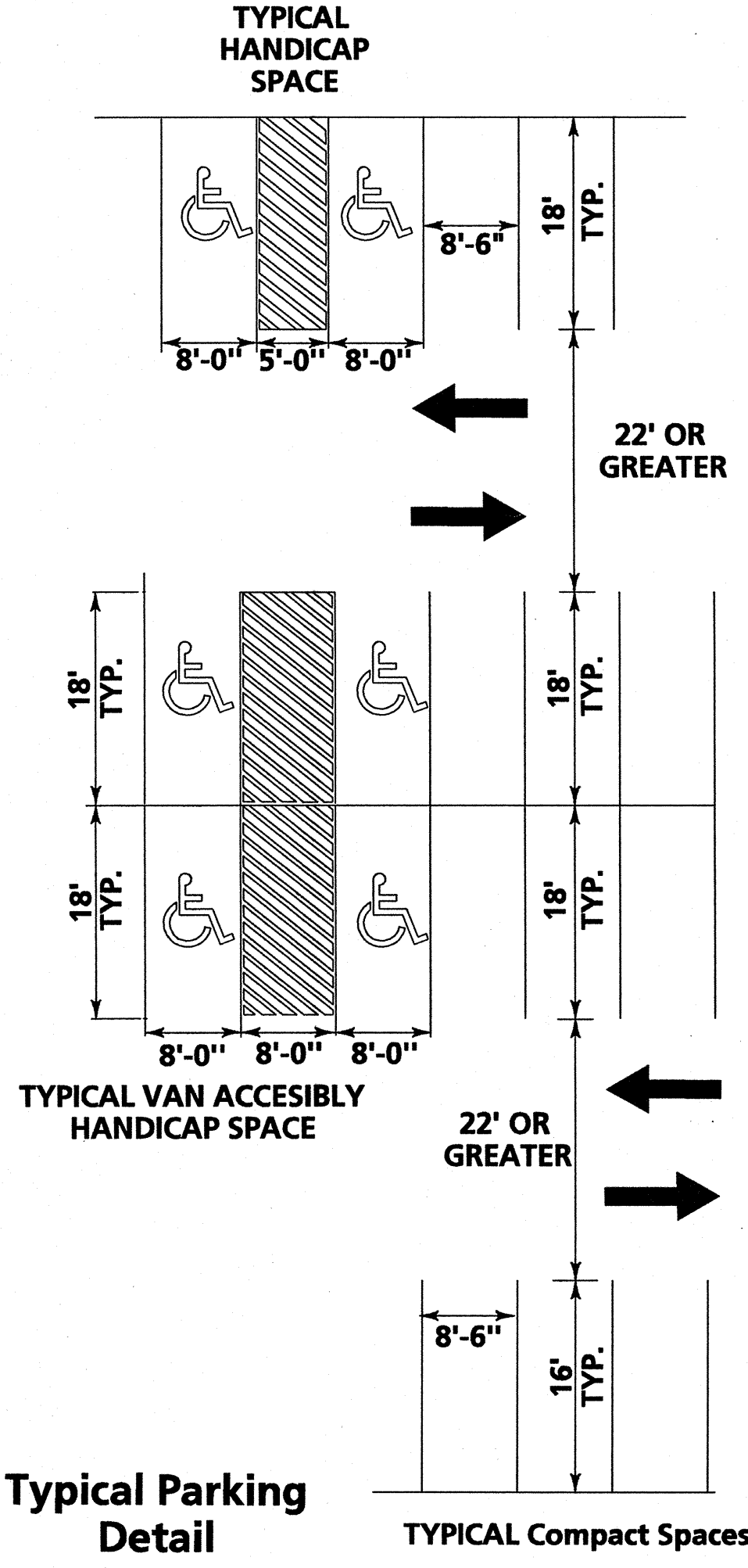
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Westcott, Chairman

Richard K. Frish

C. Lynn Barranger

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,



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 1801.2.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.

- 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.
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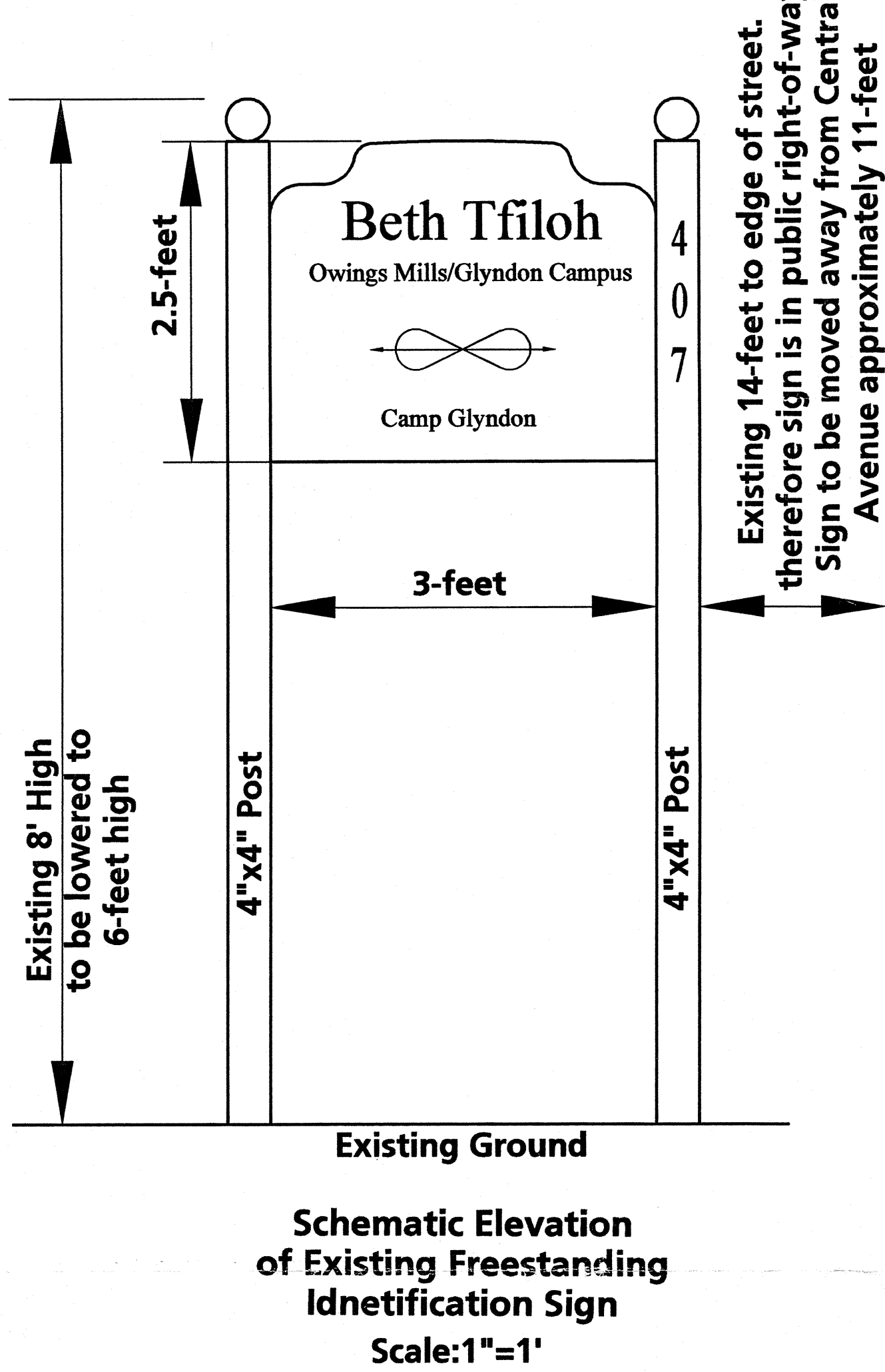
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LAWRENCE R. SCHMIDT
Zoning Commissioner for Baltimore County

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ORDER RECEIVED FOR FILING
Date By

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- Double sided;
- Non-illuminated;
- Area=7.5-sf (3x2.5)
- Address 10% of sign area so exempt



NOTES:

SITE AREA:
GROSS AREA OF SITE: 44.07AC +/- (1,919,700-sf +/-)
GROSS AREA OF SITE INCLUDES UP TO 30' OF ADJACENT PUBLIC ROADS. AND TO THE CENTERLINE OF THE ROAD IF LESS THAN 30'.
FOREST BUFFER EASEMENT AND FOREST CONSERVATION EASEMENT DEDICATED: 8.896-AC +/- (SM 1081-353)
NET AREA OF SITE: 42.00-AC +/- (1,829,500-sf +/-) (GROSS AREA) (2.07-AC +/- OF ADJACENT PUBLIC ROADS AND A SWIM RESERVATION.)
SPECIAL EXCEPTION USE AREA: 25.831-AC +/- (1,125,000-sf +/-)

Deed Reference: 14271/691
Tax Account No.: 04-130229-70
Existing Zoning: 18.16-ac +/- DR1, 0.12-ac +/- DR2, 2.28-ac +/- RCS, and 23.51-ac +/- RC4
Zoning Maps (NW-16-1, NW-16-1, NW-17-1, NW-17-1)
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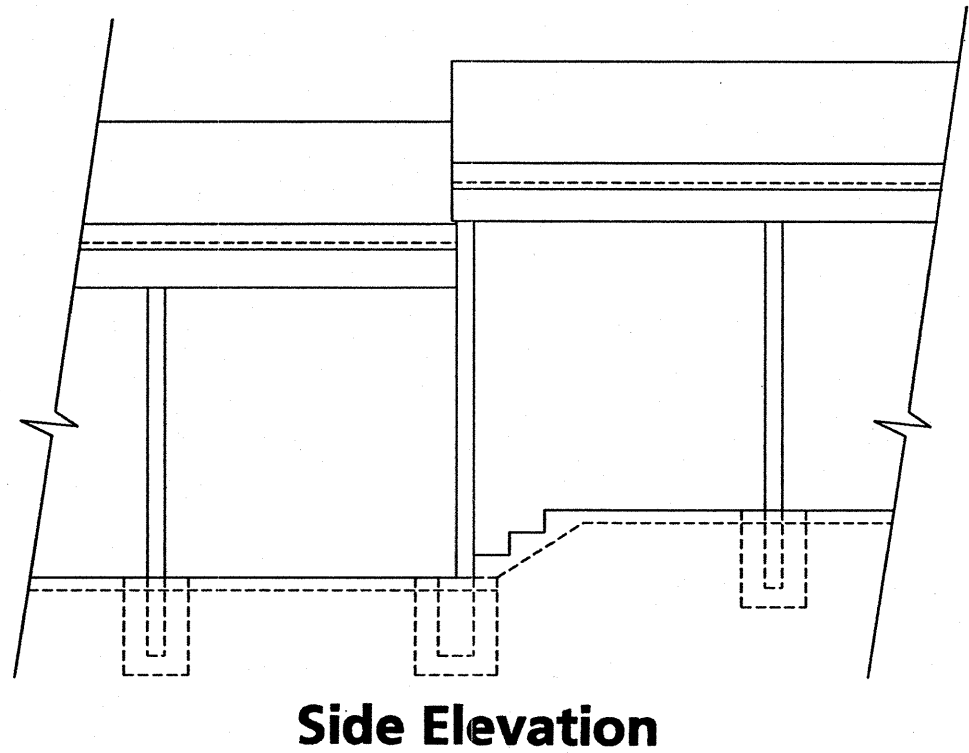
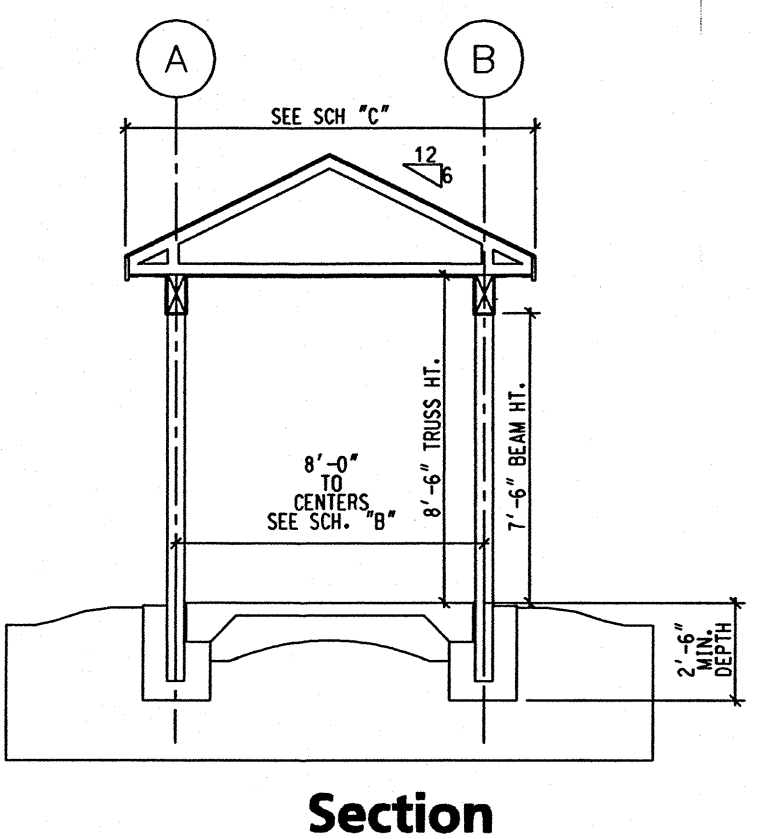
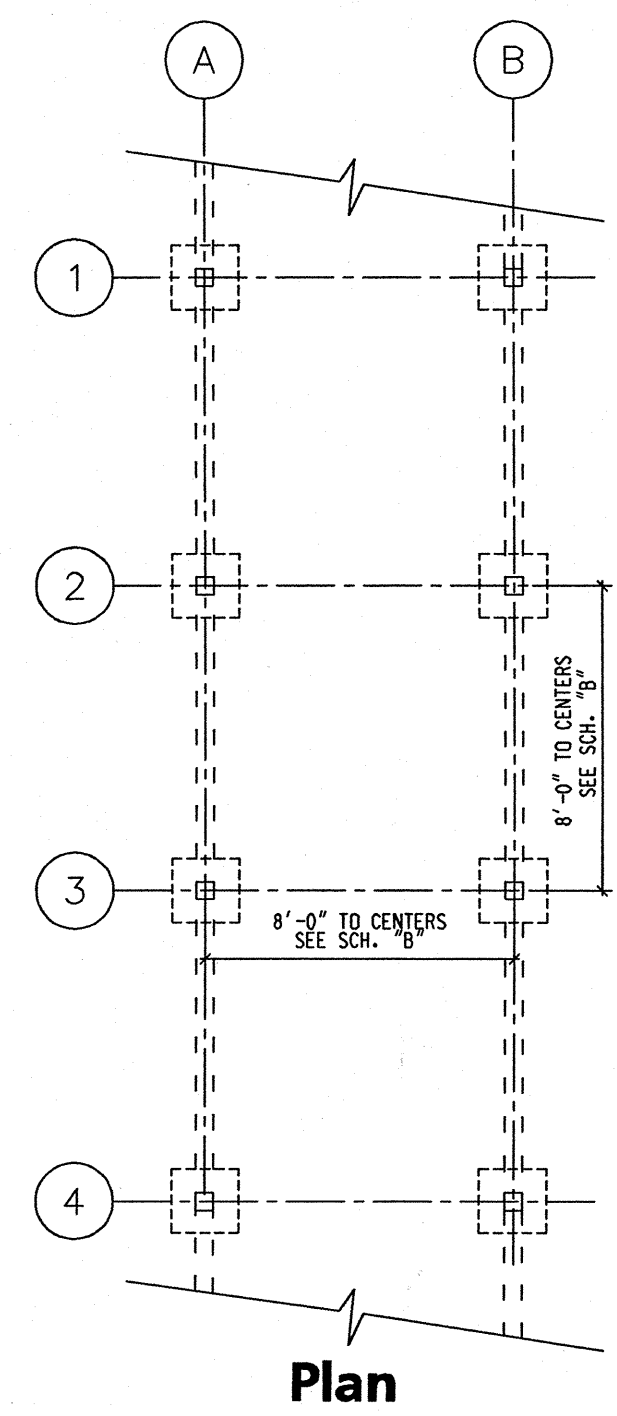
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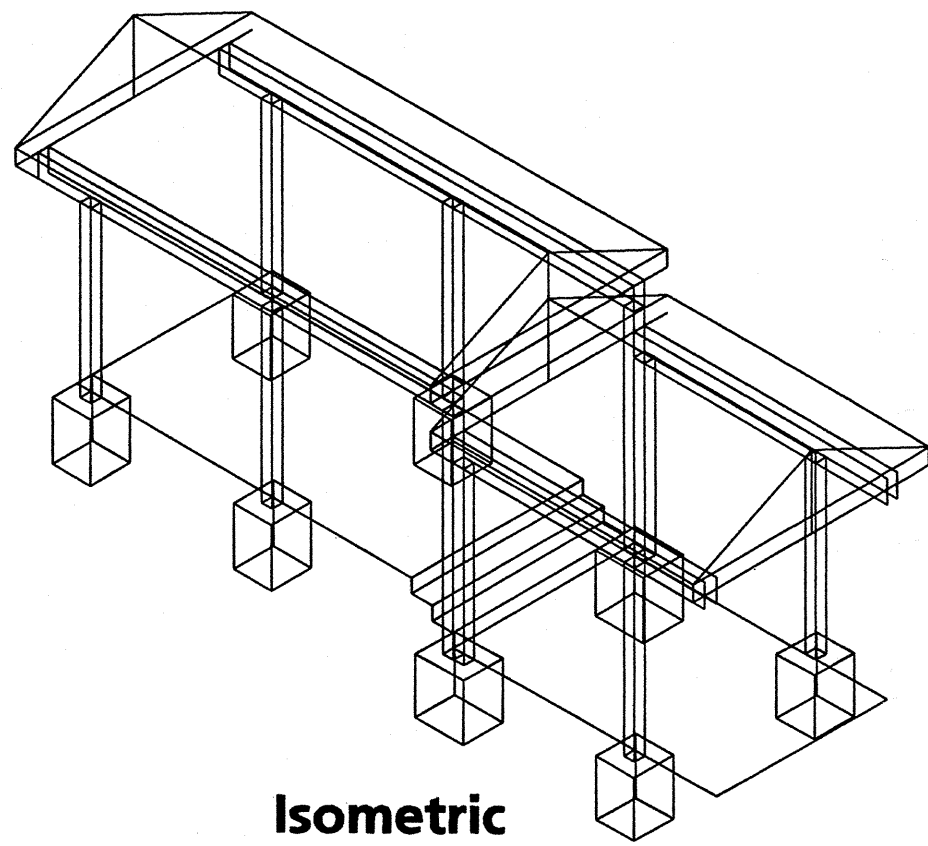
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