Apostolic Truth Tabernacle CBA-04-106
8216 McDonogh Road, Pikesville 21208

CBA-04-106

20030040

CBA-04-106
REMAND APPEAL
(SEE CBA-03-109)

ORDERS

1

**APOSTOLIC TRUTH TABERNACLE CBA-04-106**
***ON REMAND FROM CBA-03-109***
**ALSO SEE CBA-03-109 AND 03-040-SPH**

# FILE 1OF 2

*This file contains Hearing Officer's Order on Remand, Appeal and Petition*

File 2 of 2 contains Transcripts; Memos; Circuit Court pleadings; Miscellaneous correspondences and transcript for December 15, 2003

3/23/09

| | | |
|---|---|---|
| IN THE MATTER OF<br>APOSTOLIC TRUTH TABERNACLE<br>N/S MCDONOGH ROAD @ NW COR<br>OF FIELD ROAD /PDM III-446<br>3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | BEFORE<br>COUNTY BOARD OF APPEALS<br>OF<br>BALTIMORE COUNTY |
| PETITION FOR SPECIAL HEARING &<br>DECISION OF HEARING OFFICER<br>/DEVELOPMENT PLAN | * | CASE NO. CBA-03-109<br>CASE NO.: CBA-04-106 and<br>CASE NO. 03-040-SPH |

* * * * * * * * *

**ORDER OF DISMISSAL**

Upon consideration of the Declaration of Agreement and Restrictions by and between the parties to this matter (a copy of which is attached hereto and incorporated by reference herein), it is this 23rd day of March, 2009;

**ORDERED** that, subsequent to the property being subdivided as a Minor Subdivision and the Declaration and Restrictions entered into by the parties, pursuant to the attached Agreement dated June 4, 2004 and as agreed by the parties to this Agreement, the above captioned appeals, filed in Case No.: CBA-03-109, Case No.: CBA-04-106 and Case No.: 03-040-SPH, before the Board of Appeals for Baltimore County, be, and the same are hereby **DISMISSED as MOOT**.

**BOARD OF APPEALS**
**OF BALTIMORE COUNTY**

Lawrence S. Wescott, Panel Chairman

Maureen E. Murphy

Wendell H. Grier

# DECLARATION OF AGREEMENT AND RESTRICTIONS

This DECLARATION OF AGREEMENT AND RESTRICTIONS by and among APOSTOLIC TRUTH TABERNACLE, INC.,(hereinafter referred to as "the Church") and MCDONOGH-FIELD ASSOCIATION (an unincorporated association) and PHYLLIS BROTMAN, HOWARD GERSH and DR. MICHAEL WHITFIELD. (collectively referred to as "the Association")

WITNESSETH:

Whereas the Church is the owner of four parcels of land located on the northwest corner of McDonogh and Field Roads comprising acres of land zoned D. R. 1 (hereinafter referred to as the "Property); and

Whereas the Church desires to change the parcel lines to create 4 building lots on the Property (hereinafter referred to as the "Lots"); and

Whereas the Association has agreed to support line changes for the 4 building Lots subject to certain terms and conditions

NOW, THEREFORE, the parties hereto agree as follows:

1. The Association agrees to support the lot line adjustment in order to have four building lots including a lot containing the existing dwelling per the site plan attached as Exhibit A, which is made a part hereof.

2. The Church agrees that the Lots shall be configured as indicated on Exhibit A with the proposed dwellings and septic reserve areas as indicated in perpetuity and shall be binding upon future purchasers of the property.

3. The Church agrees to minimize the removal of forested areas during construction as indicated on Exhibit A and to leave a buffer around the edge of the property.

4. The Church agrees that the said Lots shall be used for single family detached residential dwellings and for no commercial or institutional use including free standing churches, schools or day care uses.

5. The residential dwellings to be constructed on said Lots shall not be of a modular, prefabricated construction and shall be at least 2,500 square feet.

6. The Church agrees that portion of old McDonogh Road on the Property lying east of the proposed driveway accessing the Lots as shown on the Site Plan shall either be removed or covered with dirt so as to allow it to be a buffer area at the time of the construction of the access driveway as shown on the attached Site Plan.

7. No additional access shall be constructed to the proposed Lots other than as shown on the attached Site Plan.

8. General Conditions:

a. The Restrictions contained in this Agreement shall run with the land and be perpetual and shall bind the parties hereto and their successors and assigns. This Agreement shall be brought to the attention of and be binding upon any subsequent purchaser of the Lots proposed in Exhibit A by the Church.

b. The Restrictions and Agreements contained in this Agreement shall be enforceable by any of the parties hereto. Any party hereto or their successors in interest to the Property now owned by them shall have the right to enforce, by a

proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges, now or hereafter imposed, by the provisions of this Declaration.

c. Any subsequent owners of the land owned by the parties hereto shall have the full rights to enforce the terms of this Agreement. The owners and properties owned by them for the purposes of this Agreement are as follows:

Phyllis Brotman
8105 McDonogh Road
Pikesville, Maryland 21208

Howard Gersh
4 Babette Court
Pikesville, Maryland 21208

Dr. Michael Whitfield
8215 McDonogh Road
Pikesville, Maryland 21208

d. Each conveyance of a Lot within the Property, or of any interest in the Lot, shall be deemed to be subject to this Declaration, whether or not the deed conveying the Lot shall so state.

e. Failure by any party hereto to enforce any agreement or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

f. Invalidation of any one of these agreements or restrictions by court order shall not affect the validity of any other provision which shall remain in full force and effect.

g. The parties hereto, by unanimous consent of all the Parties or their successors with respect to the particular restrictions may terminate or amend any or all of the above provisions. Any amendment or termination must be effected by a written

instrument executed and acknowledged by all of the parties hereto and recorded among the Land Records of Baltimore County. In the event that the McDonogh - Fields Association, an unincorporated Association, ceases to exist the individual parties hereto or their successors in interest to the land they own as referenced above shall have the authority to amend or terminate this Agreement.

h. The Church shall be responsible for the prompt recording of this Agreement in the Land Records of Baltimore County. This Agreement will be incorporated into the Lot Line Plan and become part of Baltimore County's approval of the Site Plan.

WITNESS the due execution of the Declaration of Agreement and Restrictions.

SIGNATURES CONTAINED ON FOLLOWING PAGE

WITNESS/ATTEST:

APOSTOLIC TRUTH TABERNACLE, INC.

_____

By: _____ (SEAL)
Pastor Thomas Cobb

WITNESS:

_____

_____ (SEAL)
Phyllis Brotman

WITNESS:

_____

_____ (SEAL)
Howard Gersh

WITNESS:

_____

_____ (SEAL)
Dr. Michael Whitfield

WITNESS/ATTEST:

MCDONOGH FIELD ASSOCIATION

_____

By: PHYLLIS B. BROTMAN (SEAL)
Name: Phyllis B Brotman
Title: President

STATE OF MARYLAND, CITY/COUNTY OF Baltimore, to wit:

**I HEREBY CERTIFY** that on this 4 day of June, 2004, before me, a Notary Public in and for the State and County aforesaid, personally appeared Phyllis Brotman, who acknowledged herself to be a Member of the McDonogh-Field Association and acknowledged that, being authorized to do so, she executed the same on behalf of

herself and on behalf of the McDonogh-Field Association for the purposes therein contained.

AS WITNESS my hand and notarial seal.

Notary Public

My Commission Expires: _____

ALFRED T. DARDEN
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires 5/1/08

STATE OF Maryland, CITY/COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on this 4th day of June, 2004, before me, the subscriber, a Notary Public, personally appeared Howard Gersh, and he acknowledged the foregoing Declaration of Agreement and Restrictions to be his act, and IN MY PRESENCE SIGNED AND SEALED THE SAME.

AS WITNESS my hand and notarial seal.

NOTARY PUBLIC

My Commission Expires: _____

ALFRED T. DARDEN
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires 5/1/08

STATE OF Maryland, CITY/COUNTY OF _____, to wit:

I HEREBY CERTIFY that on this 14th day of July, 2004, before me, the subscriber, a Notary Public, personally appeared Dr. Michael Whitfield, and he acknowledged the foregoing Declaration of Agreement and Restrictions to be his act, and IN MY PRESENCE SIGNED AND SEALED THE SAME.

AS WITNESS my hand and notarial seal.

Margaret F Gilley
NOTARY PUBLIC

My Commission Expires: 2-24-07

STATE OF Maryland, CITY/COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on this 25th day of June, 2004, before me, the subscriber, a Notary Public, personally appeared Pastor Thomas Cobb, and he acknowledged the foregoing Declaration of Agreement and Restrictions to be his act as said _____ on behalf of Apostolic Truth Tabernacle, Inc., and IN MY PRESENCE SIGNED AND SEALED THE SAME.

AS WITNESS my hand and notarial seal.

_____
NOTARY PUBLIC

My Commission Expires: 9-1-07

This instrument has been prepared by an attorney, under such attorney's supervision, or by one of the parties named in this instrument.

_____
John B. Gontrum
Whiteford, Taylor & Preston L.L.P.
210 W. Pennsylvania Avenue
Towson, Maryland 21204
410-832-2000

#306768

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX 410-887-3182

March 23, 2009

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

John B. Gontrum, Esquire
WHITEFORD TAYLOR & PRESTON LLP
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: *In the Matter of: Apostolic Truth Tabernacle*
Case No.s: CBA-03-109, CBA-04-106 and 03-040-SPH

Dear Counsel:

Enclosed please find a copy of the Order of Dismissal issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Theresa Shelton | kc

Theresa R. Shelton
**Administrator**

TRS/klc
Enclosure

c: Office of People's Counsel

2/6/04

| | | |
|---|---|---|
| IN RE: DEVELOPMENT PLAN | * | BEFORE THE |
| & SPECIAL HEARING REQUEST | * | |
| N/S of McDonogh Road at | * | ZONING COMMISSIONER/ |
| NW corner of Field Road | * | |
| 3rd Election District | * | HEARING OFFICER OF |
| 3RD Council District | * | |
| (Apostolic Truth Tabernacle) | * | BALTIMORE COUNTY |
| | * | |
| Apostolic Truth Tabernacle, Inc and Pastor Thomas J. Cobb, Petitioners/ Appellants | * | Case No. III -446 |

NOTICE OF APPEAL

NOW COME Apostolic Truth Tabernacle and Pastor Thomas J. Cobb, Petitioners/ Appellants. Bu and through their attorneys, John B. Gontrum and Whiteford, Taylor & Preston, LLP, pursuant to Section 26-209 of the Baltimore County Code, file this Notice of Appeal from the Hearing Officer's Opinion & Development Plan Order on Remand, denying the Development Plan of the Petitioners/ Appellants. A copy of the Hearing Officer's Opinion and Development Plan Order on Remand, dated January 9, 2004, is attached hereto as Exhibit A, and made a part hereof.

Filed with this Notice is a check in the amount of $325, payable to Baltimore County, Maryland to cover the cost of the appeal.

John B. Gontrum
Whiteford, Taylor & Preston, LLP
210 West Pennsylvania Ave.
Towson, Maryland 21204
410-832-2055
Attorney for Petitioners/ Appellants

#298218

| | | |
|---|---|---|
| IN RE: DEVELOPMENT PLAN | * | BEFORE THE |
| & SPECIAL HEARING REQUEST | * | |
| N/S of McDonogh Road at | * | ZONING COMMISSIONER/ |
| NW corner of Field Road | * | |
| 3rd Election District | * | HEARING OFFICER OF |
| 3RD Council District | * | |
| (Apostolic Truth Tabernacle) | * | BALTIMORE COUNTY |
| * | | |
| Apostolic Truth Tabernacle, Inc and | * | Case No. III -446 |
| Pastor Thomas J. Cobb, Petitioners/ | | |
| Appellants | | |

PETITION ON APPEAL
AND
MOTION TO CONSOLIDATE

NOW COME Apostolic Truth Tabernacle and Pastor Thomas J. Cobb, Petitioners/Appellants, by and through their attorneys John B. Gontrum and Whiteford, Taylor & Preston, LLP and petition the above-reference appeal from the Hearing Officer of Baltimore County, Maryland and in support thereof say as follows:

1. The Hearing Officer's Opinion and Development Plan Order on Remand denies the development plan in the above-referenced matter solely on the grounds of the denial of the Special Hearing relief.
2. The Special Hearing Relief denial of the Deputy Zoning Commissioner is now on appeal before this Board of Appeals in Case No. 03-040-SPH.
3. The Special Hearing Relief was from Section 1B01.1.B.1g.6 pertaining to new churches and the residential transition area.
4. The Hearing Officer's Opinion and Development Plan Order on Remand was generated by the County Board of Appeals in Case No. III-446 in order to clarify findings.
5. The residential transition area relief was for existing buildings in the RTA generated by the new church on the property and without the relief would have required the removal of some or all of the portions of the existing residence.
6. The denial of the special hearing relief by the Deputy Zoning Commissioner imposed a heavier burden on the church under the RTA exemption regulation than if the regulation did not exist thereby misinterpreting the regulations and causing a violation under the federal law known as RLUIPA.
7. The denial of the special hearing was in error.

8. Because the denial of the special hearing was in error and the sole reason for denial of the development plan was the denial of the special hearing, the development plan denial was in error and should be reversed.
9. Because the denial of the special hearing is currently on appeal to the County Board of Appeals for a de novo hearing, this appeal should be heard in conjunction with the appeal of the Special Hearing.
10. The Special Hearing and Development Plan Opinion and Order in Cases Nos. III-446 and 03-040-SPH originally were heard together and appealed together to the County Board of Appeals and separated only when the Board sought a more complete statement as to the reasoning in Case No. III-446 for the determination and remanded the case to the Hearing Officer for such statement.
11. The cases on appeal should, therefore, be scheduled together for appeal.

Wherefore, the Petitioners/Appellants request the County Board of Appeals to reverse the determination of the Zoning Commissioner/Hearing Officer of Baltimore County and grant the development plan as submitted by the Petitioner.

John B. Gontrum
Whiteford, Taylor & Preston, LLP
210 West Pennsylvania Ave.
Towson, Maryland 21204
410-832-2055
Attorney for Petitioners/Appellants

#289219

CERTIFICATE OF SERVICE

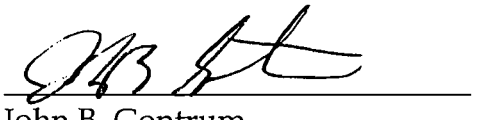
I HEREBY CERTIFY that on this 6th day of February, 2004, a copy of the foregoing Notice of Appeal, Petition on Appeal and Motion to Consolidate was mailed, first class, postage pre-paid to:

J. Carroll Holzer, Esquire
Holzer & Lee
58 Fairmount Avenue
Towson, Maryland 21286
**Attorney for Appellants**

Baltimore County Board of Appeals
Basement Old Court House
400 Washington Avenue
Towson, Maryland 21204

People's Counsel for Baltimore County
Basement Old Court House
400 Washington Avenue
Towson, Maryland 21204

Baltimore County Zoning Commissioner
401 Bosley Avenue
Towson, Maryland 21204



John B. Gontrum
Whiteford, Taylor & Preston, LLP
210 West Pennsylvania Ave.
Towson, Maryland 21204
410-832-2055
Attorney for Petitioners/Appellants

*298218*

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
www.wtplaw.com

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

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

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

JOHN B. GONTRUM
DIRECT NUMBER
410-832-2055
JGontrum@wtplaw.com

February 6, 2004

RECEIVED
FEB 09 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Baltimore County Zoning Commissioner
401 Bosley Avenue
Towson, Maryland 21204

**Re: Apostolic Truth Tabernacle-**
**Zoning Matters**
**Our File No.: 078707/00001**

Dear Sir or Madam:

You will please find enclosed our Notice of Appeal and accompanying Petition on Appeal and Motion to Consolidate to be filed in connection with this matter. Also enclosed is our firm's check in the amount of $325.00 to cover the cost of filing the appeal.

Thank you for your attention to this matter.

Sincerely,

John B. Gontrum

JBG/kml
Enclosures
cc: Pastor Thomas Cobb
299325

CBA-04-106

CBA-04-106

Baltimore County Government
Department of Permits and Development Management

111 West Chesapeake Avenue
Towson MD 21204

(410) 887-3321
(410) 887-2877 (fax)

January 30, 2004

John B. Gontrum, Esquire
Romadka & Gontrum, LLC
814 Eastern Boulevard
Baltimore, MD 21221

RE: Appeal of Hearing Officer's Opinion
and Development Plan Order on Remand
N/S McDonogh Road @ NW Corner of Field Road
The Apostolic Truth Tabernacle
District: 3 c 3
The Apostolic Truth Tabernacle- Applicant
PDM # III-446

Dear Mr. Gontrum:

Please be advised that an appeal of the above-referenced case was filed in this office on January 28, 2004 by J. Carroll Holzer, Esq. and Holzer and Lee on behalf of McDonogh-Field Association, et al. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to contact the Board at (410) 887-3180.

Sincerely,

David T. Rascoe
for Timothy Kotrocco
Director

TK:kw
Enc.
c: Pastor Thomas Cobb
Rick Richardson
J. Carroll Holzer, Esq.
Peter Max Zimmerman, People's Counsel
Baltimore County Board of Appeals
File

RECEIVED
JAN 30 2004
BALTIMORE COUNTY
BOARD OF APPEALS

2/27/04

| | | | |
|---|---|---|---|
| **IN RE:** | **DEVELOPMENT PLAN HEARING AND PETITION FOR SPECIAL HEARING (REMAND) (Apostolic Truth Tabernacle) N/S McDonogh Road @ NW Corner of Field Road 3rd Election District 3rd Councilmanic District** | * | **BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY** |
| | **Apostolic Truth Tabernacle Owners/Developers** | * | |
| | | * | **Case No. III-446 & 03-040-SPH** |

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

## NOTICE OF APPEAL

Appellants, McDonogh-Field Association, et al., by and through their attorney, J. Carroll Holzer and Holzer and Lee, feeling aggrieved by items #2 and #5 of the Hearing Officer's Opinion and Development Plan Order on Remand in the above captioned case rendered on January 9th, 2004 hereby appeals to the County Board of Appeals. Attached hereto, and incorporated herein as **Exhibit #1** is the Opinion and Development Plan Order.

Filed concurrently with this Notice of Appeal is Appellants' Petition on Appeal and a check made payable to Baltimore County to cover the costs of the appeal.

RECEIVED
FEB 05 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Respectfully submitted,

J. Carroll Holzer
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Appellants

1/27/04

| | | | |
|---|---|---|---|
| **IN RE:** | **DEVELOPMENT PLAN HEARING AND PETITION FOR SPECIAL HEARING (REMAND) (Apostolic Truth Tabernacle) N/S McDonogh Road @ NW Corner of Field Road 3rd Election District 3rd Councilmanic District** | * | **BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY** |
| | **Apostolic Truth Tabernacle Owners/Developers** | * | |
| | | * | **Case No. III-446 & 03-040-SPH** |

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

## NOTICE OF APPEAL

Appellants, McDonogh-Field Association, et al., by and through their attorney, J. Carroll Holzer and Holzer and Lee, feeling aggrieved by items #2 and #5 of the Hearing Officer's Opinion and Development Plan Order on Remand in the above captioned case rendered on January 9th, 2004 hereby appeals to the County Board of Appeals. Attached hereto, and incorporated herein as **Exhibit #1** is the Opinion and Development Plan Order.

Filed concurrently with this Notice of Appeal is Appellants' Petition on Appeal and a check made payable to Baltimore County to cover the costs of the appeal.

Respectfully submitted,

J. Carroll Holzer
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Appellants

JAN 28 2004
DEPT. OF ...

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of January, 2004, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to John B. Gontrum, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Ave., Towson, MD 21204, and the County Board of Appeals, Basement Old Court House, 400 Washington Ave., Towson, MD 21204, and People's Counsel for Baltimore County, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204.

J. Carroll Holzer

NOTICES\apostolic Truth Tabernacle-.NOA-CBA

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of January, 2004, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to John B. Gontrum, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Ave., Towson, MD 21204, and the County Board of Appeals, Basement Old Court House, 400 Washington Ave., Towson, MD 21204, and People's Counsel for Baltimore County, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204.

J. Carroll Holzer

NOTICES\apostolic Truth Tabernacle-.NOA-CBA

1/27/04

| | | | |
|---|---|---|---|
| **IN RE:** | **DEVELOPMENT PLAN HEARING AND PETITION FOR SPECIAL HEARING (REMAND) (Apostolic Truth Tabernacle) N/S McDonogh Road @ NW Corner of Field Road 3rd Election District 3rd Councilmanic District** | * | **BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY** |
| | **Apostolic Truth Tabernacle Owners/Developers** | * | **Case No. III-446 & 03-040-SPH** |

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

## PETITION TO ACCOMPANY APPEAL

Protestants/Appellants hereby appeal the Decision of the Hearing Officer dated January 9, 2004, to the County Board of Appeals and for reasons therefore sets the following:

1. Petitioners appeal that portion of the Remand Order contained in Paragraph #2, denying the acceptance of additional testimony and/or argument before the Zoning Commissioner. During the Remand Hearing, counsel for the Protestants requested the opportunity to submit additional testimony from two (2) of the experts who previously testified in the original hearing and one lay witness, Dr. Michael Whitfield. The two (2) expert witnesses who were in attendance at the Remand Hearing were Dr. Garvin and engineer Brian Carvaugh. The thrust of the proposed testimony as submitted in a proffer before the Hearing Officer on the Remand Hearing was that there has been a change in conditions on site since the initial Hearing Officer's Hearing, which new evidence confirmed the original opinions and testimony of the two (2) expert witnesses relative to migration of groundwater and the inadequacy of the septic system proposed for Apostolic Truth

Tabernacle. It was, therefore, an error by the Remand Hearing Officer not to permit this additional information and testimony and argument on the merits of the Development Plan.

Appellants also appeal the decision of the Zoning Commissioner of Baltimore County as it relates to Issue No. 5, that the Hearing Officer determined that the Plan, as presented, would be approved had the Special Hearing relief be granted. It should be pointed out to the Board that the Remand Hearing Officer was not finding as a matter of his own findings that the Development Plan is in compliance with Baltimore County Development Regulations, but merely indicating that it was the position of the first Hearing Officer.

**WHEREFORE**, the Appellants submit this Petition to support its appeal to the Board of Appeals.

**J. CARROLL HOLZER, Esquire**
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Respondent

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 21th day of January, 2004, a copy of the foregoing Petition to Accompany Appeal was mailed first class, postage pre-paid to the following: John B. Gontrum, Esquire, Whiteford, Taylor & Preston, 210 West Pennsylvania Avenue, Suite 500, Towson, Maryland, 21204 and Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland, 21204; and County Board of Appeals, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204.

**J. CARROLL HOLZER, Esquire**

C\My Docs\Petitions 2004\Apostolic Truth - Case No. C-03-4661

JANE BUEHNER
26 MILLSTONE ROAD
RANDALLSTOWN MD 21133

410-521-2642

IN RE: DEVELOPMENT PLAN HEARING and PETITION FOR SPECIAL HEARING – N/S McDonogh Road, W/S Field Road **(8216 McDonogh Road)** 3rd Election District 3rd Council District

Apostolic Truth Tabernacle Owner/Developer

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Cases Nos. III-446 & 03-040-SPH

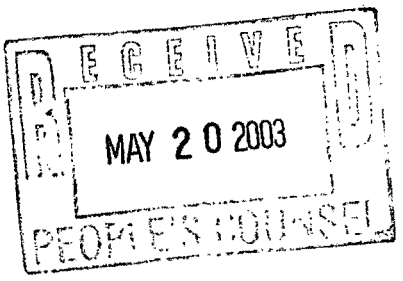
* Ex #1

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER ON REMAND

This matter came before the Office of the Zoning Commissioner/Hearing Officer for Baltimore County for a public hearing, pursuant to Section 26-206.1 of the Baltimore County Code (B.C.C.) and the development review regulations codified in Title 26 thereof. The Owner/ Developer, Apostolic Truth Tabernacle sought approval of a development plan for the proposed development of the subject property with a Church and Rectory. In addition, a Petition for Special Hearing was filed by Apostolic Truth Tabernacle seeking a finding that the proposed plan was "...in compliance to the extent possible with RTA use requirements in accordance with Section 1B01.1.B.1.g.6 of the Baltimore County Zoning Regulations (B.C.Z.R.)."

By way of background, this matter was reviewed in accordance with the development review process set out in Title 26 of the Baltimore County Code. A concept plan of the proposed development was initially prepared and a Concept Plan Conference held by and between the Developer and County agency representatives on December 31, 2001. Thereafter, two Community Input Meetings (CIM) were held, one on February 6, 2002 and the second on March 19, 2002. The Development Plan Conference (DPC) was held on July 17, 2002. Ultimately, the Hearing Officer's Hearing commenced on September 5, 2002, with the final hearing concluding on December 23, 2002. At the Hearing Officer's Hearing, issues regarding both the development plan and Petition for Special Hearing were considered.

The Hearing Officer presiding over the matter was Timothy M. Kotroco, then Deputy Zoning Commissioner for Baltimore County. By his Opinion and Order dated February 6, 2003,




IN THE CIRCUIT COURT FOR *
BALTIMORE COUNTY *

PETITION OF:
McDONOGH-FIELD ASSN. by President * Case No. C-03-4661
PHYLLIS BROTMAN and individuals
HOWARD GERSH, DR. MICHAEL WHITFIELD, *
MICHAEL HENNESSY, SUSAN GREENBERG,
MICHAEL FINKELSTEIN, JOE HOWARD, *
VLADIMIR VOLINSKY, HARRY SCHREIBER,
J. TAETLE, JUDY SKOLNIK and PHYLLIS *
BROTMAN
8105 McDONOGH ROAD *
PIKESVILLE, MD 21208
*
IN THE MATTER OF:
APOSTOLIC TRUTH TABERNACLE *
N/S McDONOGH ROAD
AT NW CORNER OF FIELD ROAD *
PDM # 446
*
3rd ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT *

RE: PETITION FOR SPECIAL *
HEARING & DECISION OF HEARING
OFFICER/DEVELOPMENT PLAN *

BEFORE THE COUNTY BOARD OF *
APPEALS OF BALTIMORE COUNTY
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204
CASE NO: CBA-03-109 and *
03-040-SPH

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

## ORDER

Having considered McDonogh-Field Association, et al.'s Motion for Stay, and any response thereto, it is this the day of May, 2003, **ORDERED:**

That the Order of the County Board of Appeals of Baltimore County dated April 4, 2003, be **Stayed** pending judicial review of the instant case.

_____
Judge

C:\My Documents\Orders\Apostolic Church-Motion to Stay.doc

IN THE CIRCUIT COURT FOR *
BALTIMORE COUNTY

*

PETITION OF:
McDONOGH-FIELD ASSN. by President * Case No. C-03-4661
PHYLLIS BROTMAN and individuals
HOWARD GERSH, DR. MICHAEL WHITFIELD, *
MICHAEL HENNESSY, SUSAN GREENBERG,
MICHAEL FINKELSTEIN, JOE HOWARD, *
VLADIMIR VOLINSKY, HARRY SCHREIBER,
J. TAETLE, JUDY SKOLNIK and PHYLLIS *
BROTMAN
8105 McDONOGH ROAD *
PIKESVILLE, MD 21208

*

IN THE MATTER OF:
APOSTOLIC TRUTH TABERNACLE *
N/S McDONOGH ROAD
AT NW CORNER OF FIELD ROAD *
PDM # 446
3rd ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT *

RE: PETITION FOR SPECIAL *
HEARING & DECISION OF HEARING
OFFICER/DEVELOPMENT PLAN *
BEFORE THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *
CASE NO: CBA-03-109 and
03-040-SPH

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

## REQUEST FOR HEARING

Petitioners hereby request a Hearing in the above captioned matter.

Respectfully submitted,

J. Carroll Holzer

J. Carroll Holzer
508 Fairmount Ave.
Towson, MD 21286
410-825-6961
Attorney for Petitioners

**BALTIMORE COUNTY, MARYLAND**

**INTEROFFICE MEMORANDUM**

**TO:** EDWARD J GILLIS, COUNTY ATTORNEY

**FROM:** PETER MAX ZIMMERMAN, PEOPLE'S COUNSEL PMZ

**SUBJECT:** APOSTOLIC TRUTH TABERNACLE, CASE NO.: 03-040-SPH AND PDM# III-446, CBA-03-109; HEARING DATE MARCH 27, 2003

**DATE:** MARCH 24, 2003

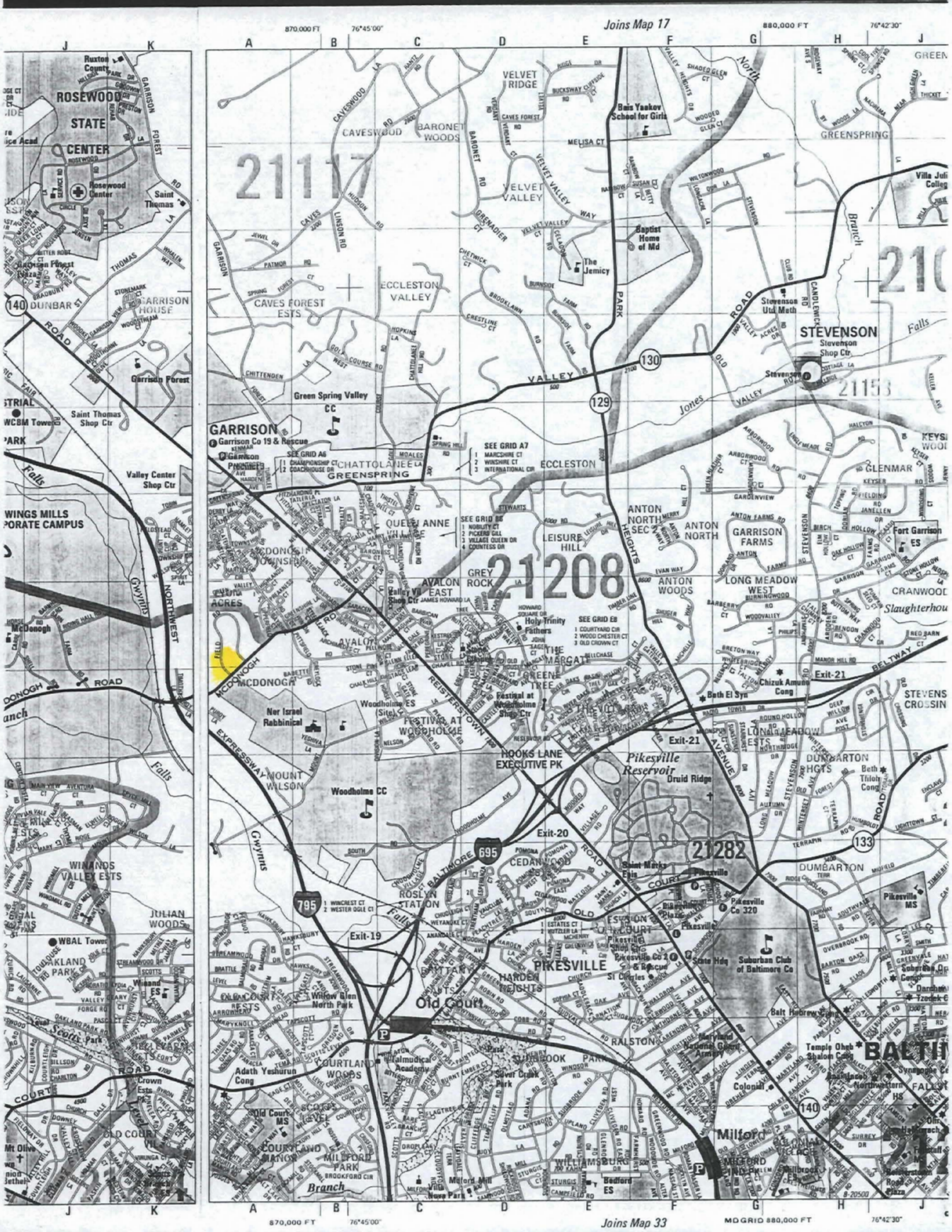
---

We are sending you a courtesy copy of the enclosed letter because the Petitioner has challenged the Deputy Zoning Commissioner's decision as in violation of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). As we read the Act, Baltimore County is an interested party, (arguably a necessary party), in RLUIPA matters.

Enclosed is a copy of RLUIPA. I would be glad to discuss this matter with you further.

PMZ/rmw

Enclosures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Rosewood Center
Ruxton County Park
Saint Thomas
Garrison Forest
Saint Thomas Shop Ctr
Valley Center Shop Ctr
WCBM Tower
WINGS MILLS CORPORATE CAMPUS
McDonogh
WBAL Tower
Scotts Park
Old Court MS
Old Court Park
Milford Park
Milford Mill Park
Milford Mill
Villa Nova Park
Bedford ES
Sudbrook Park
Silver Creek Park
Willamudica Academy
Adath Yeshurun Cong
Temple Ohab Shalom Cong
Beth Tfiloh Cong
Pikesville Reservoir
Druid Ridge
Woodholme CC
Green Spring Valley CC
Hooks Lane Executive Pk
Woodholme ES (Site)
Festival at Woodholme Shop Ctr
Holy Trinity Fathers
Ner Israel Rabbinical
Baptist Home of Md
Bais Yaakov School for Girls
The Jemicy
Stevenson Shop Ctr
Stevenson Utd Meth
Fort Garrison ES
Pikesville Co 320
Pikesville Co 1 & Rescue
Suburban Club of Baltimore Co
Saint Marks Epis
Baltimore Hebrew Univ
Maryland National Guard Armory
Colonial
Northwestern
Exit-19
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Beltway
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Court
Pikesville
Milford
Garrison
Stevenson
Greenspring
Ecclesville
Chattolanee
Greenspring
Caves Forest Ests
Caveswood
Baronet Woods
Velvet Ridge
Velvet Valley
Caves Forest
Melisa Ct
Jewel Dr
Patmor Rd
Spring Forest Ct
Golf Course Rd
Chittenden
Hopkins La
Brooklawn Rd
Crestline Ct
Chetwick Ct
Burnside
Grenadier Ct
Hudson Rd
Lindon Rd
Garrison Forest Estates
Garrison House
Dunbar St
Thomas
Whalin Hat
Stonemark
Woodthrush
Bradbury Rd
Valley Acres Dr
Candleview
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Halcyon
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Fielding
Janelleen
Glenmar
Keysedale
Woodlea
Garrison Farms
Long Meadow West
Anton North
Anton Woods
Anton North Sec
Leisure Hill
Grey Rock
Avalon East Acres
Avalon
Quelle Anne Village
Stewarts
Howard Square Dr
Timber Line
Evan Way
Shuger Hill
Barberry
Burnishwood
Woodvalley
Cranwood
Slaughterhou
Manor Mill Rd
Bretton Way
Whitebridge
Whitehall
Deep Willow
Round Hollow
Long Meadow Ests
Dumbarton Hgts
Dumbarton Terr
Dumbarton Ridge
Dumbarton Court
Terrapin
Lichtown Ct
Autumn Dr
Ivy
Meadow
Northridge
Stevens Crossin
Pomona
Cedarwood
Cedarwood Rd
Roslyn Station
Roslyn Court
Wincrest Ct
Wester Dale Ct
Estates Ct
Hutzler La
Mcinerney
Village Rd
Woodmere Ave
Woodmere Rd
Mount Wilson
Winands Valley Ests
Julian Woods
Oakland Park
Streamwood
Scotts
Valley Forge Rd
Oakland Park Rd
Toulouse
Wiseand ES
Willow Glen North Park
Courtland Woods
Courtland Manor
Crown Estates
Old Court Hills
Old Court Woods
Harden Heights
Fairfax Court
Fairfax Ests
Arrowhead Ct
Arrowhead Rd
Applecott
Apple Knoll
Hawksbury
Streamwood Ct
Brattle
Level
Pikesville Shop Ctr
Pikesville Ct
Pikesville Court
Pikesville Ests
Pikesville MS
Overbrook Rd
Barton Oaks
Greenvale
Suburban Cong
Darchei Tzedek C
Temple Ohab Shalom Cong
Beth Hebrew Cong
Northwestern
Falls Rd
Ralston
Windsor
Sturgis
Williamsburg
Surrey Dr
Milford Mill Rd
Brookford Cir
Mt Olive
Bethel
Valley Rd
Valley View Rd
Valley Vu Shop Ctr
Woodholme Shop Ctr
Woodholme Ests
Festival at Woodholme
Nor Israel Rabbinical
Holy Trinity Fathers
Bath El Syn
Chizuk Amuno Cong
Pikesville Reservoir
Druid Ridge
Saint Marks Epis
Pikesville Co 320
Pikesville Co 1 & Rescue
Suburban Club of Baltimore Co
Baltimore Hebrew Univ
Maryland National Guard Armory
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Temple Ohab Shalom Cong
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Stevenson Utd Meth
Fort Garrison ES
Pikesville Co 320
Pikesville Co 1 & Rescue
Suburban Club of Baltimore Co
Saint Marks Epis

| | | |
|---|---|---|
| RE: PETITION FOR SPECIAL EXCEPTION<br>1701 Emory Road<br>SEC Mt. Gilead and Emory Roads<br>4th Election District, 3rd Councilmanic | * | BEFORE THE<br><br>COUNTY BOARD OF APPEALS |
| | * | FOR |
| **ESTATE OF CATHERINE V. BOND,**<br>Legal Owner | * | BALTIMORE COUNTY |
| **CARROLL COMMUNITY CHURCH, INC.**<br>Contract Purchaser | * | Case No.: **99-503-X** |

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

COUNTY BOARD OF APPEALS RECEIVED
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# PEOPLE'S COUNSEL'S MEMORANDUM

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Public Law 106–274
106th Congress

# An Act

To protect religious liberty, and for other purposes.

Sept. 22, 2000
[S. 2869]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Religious Land Use and Institutionalized Persons Act of 2000.
42 USC 2000cc note.

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Religious Land Use and Institutionalized Persons Act of 2000".

42 USC 2000cc.

**SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXERCISE.**

(a) SUBSTANTIAL BURDENS.—

(1) GENERAL RULE.—No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) SCOPE OF APPLICATION.—This subsection applies in any case in which—

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) DISCRIMINATION AND EXCLUSION.—

(1) EQUAL TERMS.—No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) NONDISCRIMINATION.—No government shall impose or implement a land use regulation that discriminates against

## The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)

### Background

On September 22, 2000, Congress approved RLUIPA, copy attached. It is the second attempt in recent years to give a preferred position to religious activities with respect to land use and other regulatory matters.

The first attempt came in the Religious Freedom Restoration Act of 1993 (RFRA), which attempted to "restore" the compelling governmental interest test for regulations which "substantially burden" a person's free exercise of religion. The Supreme Court addressed RFRA in a case involving the application of a local zoning ordinance for historic preservation to a church expansion. City of Boerne v. Flores, 521 U.S. 507 (1997). There, in holding RFRA unconstitutional, the Court found that Congress had usurped the judicial power to interpret the constitution and had subverted principles articulated in Employment Division v. Smith, 494 U.S. 872 (1990). Smith held valid the application to religious practices of reasonable and neutral laws of general applicability.

RLUIPA is the response to the Boerne case. It suffers from problems similar to those which caused the RFRA's downfall.

### A. Description; Issues

RLUIPA Section 8(7) defines "Religious Exercise" (A) broadly to include any exercise of religion and, (B) by "Rule" to include "the use, building, or conversion of property for the purpose of religious exercise..." Section 2 is the main operative part of the Act which describes primary rights. In subsection 2(a), it forbids:

Public Law 106–274
106th Congress

# An Act

To protect religious liberty, and for other purposes.

Sept. 22, 2000
[S. 2869]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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FOR CARROLL COMM. CHURCH memo

evidence to support a holding that the defendants were liable for the damages done by it. The trial judge made as a finding of fact, based upon the victim's testimony, that Bozo was the instigator of the attack and had singly inflicted the major part of the damage to the youngster. Moreover, it was the huge dog, Bozo, which made the victim available to the other two dogs by knocking over the bicycle which the boy was riding and dragging him to the side of the road, and Bozo's owners were responsible for all damages which proximately flowed from this action. It is well known that dogs tend to hunt their prey in packs, and once Bozo had felled his victim it was entirely a natural consequence that the gyp would join in the attack. Because the gyp's attack was proximately caused by Bozo's actions in making the boy available, Bozo's owners were also liable for the injuries inflicted by the gyp, regardless of their previous knowledge of its vicious propensities.

[7, 8] Appellants next put forth the somewhat ingenious proposition that since the plaintiffs and defendants in this case had equal knowledge of the dogs' (Bozo's and Fuzzy's) vicious propensities, they, as defendants, can not be guilty of negligence, unless the plaintiff-parents were also guilty of contributory negligence. In an action such as the instant one there are three elements which must be proven against a defendant in order to show negligence on his part: (1) owning or haboring of an animal (2) with vicious propensities, (3) with knowledge (scienter) of its vicious propensities. See May Co. v. Drury, 160 Md. 143, 147, 153 A. 61, and Annot. 66 A.L.R.2d 916, 922. Evidence of all three of the above elements was shown. Assuming that the plaintiffs did have the same knowledge as had the defendants, their conduct vis a vis the dogs was by no means parallel, since it was the defendants who, after they had learned of the dogs' vicious propensities, also elected, at their peril, to continue to own and harbor the animals. Proof of another's knowledge of the vicious propensities of a domesticated animal, unaccompanied by proof of ownership or possession, is insufficient to show negligence, contributory or primary, under the circumstances. The plaintiff-parents' conduct subsequent to obtaining knowledge of the dogs' vicious propensities certainly does not add up to contributory negligence as a matter of law.

[9] Lastly, the appellants contend that Donald was guilty of contributory negligence because: "the fact that a dog 'chased' him on his way to the restaurant should have put him on guard against returning by the same route on the same bike without making sure that whatever dog it was that had chased him would not do so again." First, the testimony in this case clearly supports a finding that Donald had neither an alternative route nor an alternative means of transportation to his home. Second, the appellants do not suggest what precautions a reasonably prudent boy of Donald's age and intelligence might have taken for his own safety, and which were not taken by Donald so as to insure against the possibility of being again chased by a dog which the appellants had allowed to freely roam their premises. Third, there was clear evidence that Donald did take certain precautions to avoid the attack and that these measures were all that a reasonably prudent boy of Donald's age and intelligence would have taken under similar circumstances. There was evidence that Donald told Mr. Cook of the attack, that Mr. Cook called the dogs and that they were seen at the back of the Hamilton home, that Mr. Cook watched Donald as he proceeded homeward. Under these circumstances it was clearly not contributorily negligence, as a matter of law, for Donald to attempt the return journey home.

Judgment affirmed, costs to be paid by the appellants



242 Md. 552

**CREATIVE COUNTRY DAY SCHOOL OF SANDY SPRING, INC., et al.**

**v.**

**MONTGOMERY COUNTY BOARD OF APPEALS et al.**

**No. 291.**

Court of Appeals of Maryland.

May 27, 1966.

Private day school and contract purchaser of land petitioned for special exception under zoning ordinance to operate private school, riding stable, and child care home in residential use district. The Circuit Court, Montgomery County, James H. Pugh, J., affirmed zoning board's denial of special exception and school and purchaser appealed. The Court of Appeals, Barnes, held that school and purchaser were not denied due process or equal protection of laws by denial of special exception where requirements of zoning ordinance were reasonable and had a substantial relation to public health, safety and general welfare and where there was a reasonable basis to classify public and private schools differently and require special exception only as to latter.

Affirmed.

**1. Constitutional Law ⇐278(1)**

A zoning restriction on use of land is unconstitutional as a denial of due process of law unless it has some substantial relation to police power. Const. Declaration of Rights, art. 23; U.S.C.A.Const. Amend. 14.

**2. Constitutional Law ⇐211, 278(1)**

Private day school and contract purchaser of land whose petition for special exception under zoning ordinance to operate private school, riding stable, and child care home in residential use district was refused were not denied due process or equal protection where standards under zoning ordinance were reasonable and had substantial relation to public health, safety and general welfare and where there was a reasonable basis to classify public and private schools differently and require special exception only as to latter. Const. Declaration of Rights, art. 23; U.S.C.A. Const. Amend. 14.

**3. Constitutional Law ⇐211**

**Zoning ⇐112**

Zoning ordinance which required submission of same factors to zoning board for approval of establishment of private school in residential use district that public authorities must consider in regard to establishment of public schools was a reasonable exercise of police power and did not deny equal protection to private schools. Const. Declaration of Rights, art. 23; U.S.C.A. Const. Amend. 14.

**4. Municipal Corporations ⇐120**

Where language of ordinance is ambiguous, the ordinance as a whole is considered in seeking to ascertain legislative intent.

**5. Zoning ⇐508**

In zoning ordinance requiring special exception to build in residential use district for private school whose operation would not constitute a nuisance and stating that requirement of special exception shall not apply to private educational institution which is a parochial school, "parochial" should receive its ordinary and usually accepted meaning as of or pertaining to a parish so that "parochial school," within ordinance, is a school used in connection with a parish as an accessory use to the church, convent, monastery or other place of worship operating the school.

See publication Words and Phrases for other judicial constructions and definitions.

**6. Zoning ⇐508**

Under zoning ordinance, parochial schools need no special exception in a residential use district whereas such private

UNITED STATES, Petitioner,

v.

Antonio J. MORRISON, et al.

Christy Brzonkala, Petitioner,

v.

Antonio J. Morrison et al.

Nos. 99–5, 99–29.

Argued Jan. 11, 2000.

Decided May 15, 2000. *

Former university student brought claims under Violence Against Women Act (VAWA) against students who allegedly raped her. The United States District Court for the Western District of Virginia, Jackson L. Kiser, Senior District Judge, 935 F.Supp. 779, dismissed claims. Former student appealed. Following reversal, 132 F.3d 949, and following rehearing en banc, the Fourth Circuit Court of Appeals, Luttig, Circuit Judge, 169 F.3d 820, affirmed. Certiorari was granted. The Supreme Court, Justice Rehnquist, held that: (1) Commerce Clause did not provide Congress with authority to enact civil remedy provision of VAWA, inasmuch as provision was not regulation of activity that substantially affected interstate commerce, and (2) enforcement clause of Fourteenth Amendment did not provide Congress with authority to enact provision.

Affirmed.

Justice Thomas concurred and filed opinion.

Justice Souter filed dissenting opinion in which Justices Stevens, Ginsburg, and Breyer joined.

Justice Breyer filed dissenting opinion in which Justice Stevens joined, and in which Justices Souter and Ginsburg joined in part.

**1. Statutes ⇐4**

Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution.

**2. Constitutional Law ⇐50**

The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the Constitution is written.

**3. Constitutional Law ⇐70.1(3)**

Due respect for the decisions of a coordinate branch of Government demands that the Supreme Court invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds.

**4. Commerce ⇐3**

Congress' regulatory authority under the Commerce Clause is not without effective bounds. U.S.C.A. Const. Art. 1, § 8, cl. 3.

**5. Commerce ⇐7(2)**

The scope of the interstate commerce power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. U.S.C.A. Const. Art. 1, § 8, cl. 3.

**6. Commerce ⇐5, 7(2)**

There are three broad categories of activity that Congress may regulate under its commerce power: first, Congress may regulate the use of the channels of interstate commerce; second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and, finally, Congress' commerce authority includes the

* Together with No. 99–29, *Brzonkala v. Morrison et al.*, also on certiorari to the same court.



power to regulate those activities ha substantial relation to interstate merce, i.e., those activities that subst ly affect interstate commerce. U. Const. Art. 1, § 8, cl. 3.

**7. Commerce ⇐82.6**

Commerce Clause did not Congress with authority to enac remedy provision of Violence Women Act (VAWA), inasmuch as sion was not regulation of activi substantially affected interstate com gender-motivated crimes of violenc not economic activity, provision co no jurisdictional element establishi federal cause of action was in pursu Congress' power to regulate in commerce, and, although Congres findings regarding impact of gend vated violence on victims and the lies, such findings were based on able "but-for" reasoning. U.S.C.A Art. 1, § 8, cl. 3; Violent Crime and Law Enforcement Act § 40302, 42 U.S.C.A. § 13981.

**8. Commerce ⇐7(2)**

Where economic activity sub affects interstate commerce, regulating that activity will be s U.S.C.A. Const. Art. 1, § 8, cl. 3.

**9. Commerce ⇐7(2)**

While Congress normally is quired to make formal findings substantial burdens that an activi interstate commerce, the existen findings may enable the Supreme evaluate the legislative judgmen activity in question substantially terstate commerce, even thoug substantial effect is visible to eye. U.S.C.A. Const. Art. 1,

**10. Commerce ⇐5**

A jurisdictional element e that the federal cause of action a federal statute is in pursuan gress' power to regulate inter merce would lend support to th that the statute was sufficien

discovery and trial abuses. As the court explained:

> Among the types of conduct which can form a basis for finding a case exceptional are willful infringement, inequitable conduct before the P.T.O., misconduct during litigation, vexatious or unjustified litigation, and frivolous suit.

*Id.* at 1551 (citations omitted). Those cases under the patent statute fee provision confirm our conclusion that § 35(a) of the Lanham Act permits a district court to find a case exceptional based on a defendant's culpable conduct other than willful infringement.

[8] Applying the Lanham Act fee provision to the case at hand, we see no abuse of discretion in the District Court's finding that this case was exceptional. The case involved a deliberate effort by Securacom New Jersey to "bury" Libengood financially and "take everything he had" by filing multiple suits and complaints against him and his attorneys in a variety of legal fora. Slip op. at 6. As the District Court found, based on documents and testimony presented at trial, Securacom New Jersey "did not confine itself to litigating the case fairly on the merits. Rather, it tried to prevail by crushing Libengood and his corporation." Slip op. at 5. The facts of this case support the District Court's conclusion that this is an exceptional case involving culpable conduct on the part of Securacom New Jersey.[2]

Securacom New Jersey nonetheless maintains that the District Court abused its discretion in finding this case exceptional because there were other avenues, such as Federal Rule of Civil Procedure 11, through which the court could have sanctioned improper litigation behavior. It argues that because the District Court considered Rule 11 sanctions on several occasions, denied SecuraComm Pennsylvania's request for fees under Rule 11 in connection with the separate action brought by Securacom New Jersey against Libengood and his attorney, and granted SecuraComm Pennsylvania's motion to preclude introduction of evidence at trial of 90 contracts that had not been disclosed during discovery, the District Court overstepped its discretion in awarding fees under § 35(a).

Contrary to Securacom New Jersey's assertions, however, the District Court's use of an alternate tool to sanction Securacom New Jersey for its abuses of the discovery process does nothing to detract from the exceptional nature of the litigation tactics taken by Securacom New Jersey outside of the discovery process. Moreover, we see no inconsistency with the District Court's decision to deny Rule 11 sanctions in dismissing an action filed by Securacom New Jersey but to award fees in the Lanham Act case after making a factual finding concerning the culpable conduct involved in the case as a whole. Although the availability of alternate sanctioning tools may factor into the district court's decision whether to award fees under § 35(a) in a particular case, it does not bar an award of fees under the Act.[3] *See Motown Prods., Inc. v. Cacomm, Inc.*, 816 F.2d 781, 786 (2d Cir.1988) (rejecting contention that availability of other sanctioning tools, such as Rule 11 and 28 U.S.C. § 1928, renders unnecessary a discussion of § 35(a)); *see also Quiroga v. Hasbro, Inc.*, 934 F.2d 497, 504–05 (3d Cir.1991) (considering fee-shifting provision of Title VII and, alternatively, the possibility of fee-shifting under Rule 11 and the district court's inherent authority).

Like the Copyright Act fee provision which we considered in our decision in 788 F.2d at 158, the Lanham Act fee provision is distinct from Rule 11 as a basis for fees in part because it "looks to the whole of the case" rather than to small segments of the litigation. As we discussed above, this case presents more than isolated incidents of litigation abuse; it involves a sweeping attempt to beat a financially weaker opponent through the use of vexatious litigation. Because we see no abuse of discretion in the District Court's determination that this case is exceptional under § 35(a), we will affirm the court's award of fees on that ground.

## III.

For the reasons set forth, we will affirm the order of the District Court denying the Appellants' motion to recuse and the order of the District Court awarding attorney's fees.

2. Because we find that Securacom New Jersey's vexatious litigation conduct is sufficient to support the District Court's determination that this is an exceptional case, we do not reach the District Court's additional finding of bad faith in settlement negotiations.

3. Securacom New Jersey does not challenge in its brief the reasonableness of the amount of the fee calculated, and although it alluded to that issue at oral argument before us, we will not entertain such a challenge at this late date.



Birgit EHLERS-RENZI; Vincent Renzi, Plaintiffs–Appellees,

v.

CONNELLY SCHOOL OF THE HOLY CHILD, INCORPORATED, Defendant–Appellant.

The American Jewish Congress; The Becket Fund for Religious Liberty; The Convention of the Protestant Episcopal Church of the Diocese of Washington; General Conference Corporation of Seventh–Day Adventists; National Jewish Commission on Law and Public Policy; The Roman Catholic Archdiocese of Washington; Union of Orthodox Jewish Congregation of America; American Civil Liberties Union of Maryland; American Civil Liberties Union of the National Capital Area, Amici Curiae.

No. 99–2352.

United States Court of Appeals, Fourth Circuit.

Argued: May 2, 2000

Decided: Aug. 14, 2000

Homeowners filed action for declaratory judgment and injunctive relief against religious school, alleging that Establishment Clause was violated by county zoning ordinance exempting from special exception requirement parochial schools located on land owned or leased by church or religious organization. The United States District Court for the District of Maryland, J. Frederick Motz, Chief Judge, 61 F.Supp.2d 440, ruled that ordinance violated Establishment Clause. School appealed. The Court of Appeals, Niemeyer, Circuit Judge, held that ordinance was valid under Establishment Clause.

Reversed.

Murnaghan, Circuit Judge, filed dissenting opinion.

**1. Constitutional Law ⇐84.1**

"Establishment," for purposes of Establishment Clause, connotes sponsorship, financial support, and active involvement of the sovereign in religious activity. U.S.C.A. Const.Amend. 1.

See publication Words and Phrases for other judicial constructions and definitions.

**2. Constitutional Law ⇐84.5(7.1)**

Government program or law which in some manner aids an institution with a religious affiliation does not, for that reason alone, violate the Establishment Clause. U.S.C.A. Const.Amend. 1.

**3. Constitutional Law ⇐84.1**

Prohibition against the establishment of religion requires government neutrality toward religion and among religions. U.S.C.A. Const.Amend. 1.

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# U.S. Supreme Court

## VILLAGE OF BELLE TERRE v. BORAAS, 416 U.S. 1 (1974)

**416 U.S. 1**

**VILLAGE OF BELLE TERRE ET AL. v. BORAAS ET AL.
APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.**

**No. 73-191.**

**Argued February 19-20, 1974.
Decided April 1, 1974.**

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A New York village ordinance restricted land use to one-family dwellings, defining the word "family" to mean one or more persons related by blood, adoption, or marriage, or not more than two unrelated persons, living and cooking together as a single housekeeping unit and expressly excluding from the term lodging, boarding, fraternity, or multiple-dwelling houses. After the owners of a house in the village, who had leased it to six unrelated college students, were cited for violating the ordinance, this action was brought to have the ordinance declared unconstitutional as violative of equal protection and the rights of association, travel, and privacy. The District Court held the ordinance constitutional, and the Court of Appeals reversed. Held:

1. Economic and social legislation with respect to which the legislature has drawn lines in the exercise of its discretion will be upheld if it is "reasonable, not arbitrary," and bears "a rational relationship to a [permissible] state objective," Reed v. Reed, 404 U.S. 71, 76, and here the

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# UNITED STATES *v.* MORRISON *et al.*

**certiorari to the united states court of appeals for the fourth circuit**

No. 99-5. Argued January 11, 2000--Decided May 15, 2000[1]

Petitioner Brzonkala filed suit, alleging, *inter alia,* that she was raped by respondents while the three were students at the Virginia Polytechnic Institute, and that this attack violated 42 U. S. C. §13981, which provides a federal civil remedy for the victims of gender-motivated violence. Respondents moved to dismiss on the grounds that the complaint failed to state a claim and that §13981's civil remedy is unconstitutional. Petitioner United States intervened to defend the section's constitutionality. In dismissing the complaint, the District Court held that it stated a claim against respondents, but that Congress lacked authority to enact §13981 under either §8 of the Commerce Clause or §5 of the Fourteenth Amendment, which Congress had explicitly identified as the sources of federal authority for §13981. The en banc Fourth Circuit affirmed.

*Held:* Section 13981 cannot be sustained under the Commerce Clause or §5 of the Fourteenth Amendment. Pp. 7-28.

(a) The Commerce Clause does not provide Congress with authority to enact §13981's federal civil remedy. A congressional enactment will be invalidated only upon a plain showing that Congress has exceeded its constitutional bounds. See *United States* v. *Lopez,* 514 U. S. 549, 568, 577-578. Petitioners assert that §13981 can be sustained under Congress' commerce power as a regulation of activity that substantially affects interstate commerce. The proper framework for analyzing such a claim is provided by the principles the Court set out in *Lopez.* First, in *Lopez,* the noneconomic, criminal nature of possessing a

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Case in WordPerfect Format Return to Fourth Circuit Home Page

**PUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

BIRGIT EHLERS-RENZI; VINCENT

RENZI,

Plaintiffs-Appellees,

v.

CONNELLY SCHOOL OF THE HOLY

CHILD, INCORPORATED,

Defendant-Appellant.

THE AMERICAN JEWISH CONGRESS;

THE BECKET FUND FOR RELIGIOUS

LIBERTY; THE CONVENTION OF THE

PROTESTANT EPISCOPAL CHURCH OF

No. 99-2352

THE DIOCESEOF WASHINGTON;

GENERAL CONFERENCE CORPORATION

OF SEVENTH-DAY ADVENTISTS;

NATIONAL JEWISH COMMISSIONON

LAW AND PUBLIC POLICY; THE ROMAN

CATHOLIC ARCHDIOCESE OF

WASHINGTON; UNION OF ORTHODOX

JEWISH CONGREGATION OF AMERICA;

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---------- NOTE: *Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337.*

# U.S. Supreme Court

**Syllabus**

**CITY OF BOERNE v. FLORES, ARCHBISHOP OF SAN ANTONIO, et al.**

**certiorari to the united states court of appeals for the fifth circuit**

**No. 95-2074.**
**Argued February 19, 1997**
**Decided June 25, 1997**

Respondent, the Catholic Archbishop of San Antonio, applied for a building permit to enlarge a church in Boerne, Texas. When local zoning authorities denied the permit, relying on an ordinance governing historic preservation in a district which, they argued, included the church, the Archbishop brought this suit challenging the permit denial under, inter alia, the Religious Freedom Restoration Act of 1993 (RFRA). The District Court concluded that by enacting RFRA Congress exceeded the scope of its enforcement power under §5 of the Fourteenth Amendment. The court certified its order for interlocutory appeal, and the Fifth Circuit reversed, finding RFRA to be constitutional.

*Held:* RFRA exceeds Congress' power. Pp. 2-27.

ANNOTATION

# WHAT CONSTITUTES ACCESSORY OR INCIDENTAL USE OF RELIGIOUS OR EDUCATIONAL PROPERTY WITHIN ZONING ORDINANCE

*by*

*Jay M. Zitter, J.D.*

---

## TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

82 Am Jur 2d, Zoning and Planning §§ 169, 170

Annotations: See the related matters listed in the annotation, infra.

20 Am Jur Legal Forms 2d, Zoning and Planning §§ 268:1 et seq.

8 Am Jur Proof of Facts 2d 53, Unreasonableness of Zoning Restriction; 13 Am Jur Proof of Facts 2d 373, Vested Right in Continuation of Zoning

16 Am Jur Trials 99, Relief From Zoning Ordinance

US L Ed Digest, Zoning § 2

ALR Digests, Zoning §§ 13, 18, 20, 23

L Ed Index to Annos, Religion; Schools; Zoning

ALR Quick Index, Accessory Use; Colleges and Universities; Religion and Religious Matters; Religious Societies; Schools; Zoning

Federal Quick Index, Colleges and Universities; Religion and Religious Matters; Schools and School Districts, Use and Occupancy; Zoning





**What constitutes acc educational p**

§ 1. Introduction:
[a] Scope
[b] Related matters
§ 2. Summary
§ 3. Particular uses of religiou
[a] Recreational uses
[b] Parking uses
[c] Residential uses of
[d] Other uses of build
[e] Miscellaneous uses
§ 4. Particular uses of educati
[a] Recreational uses
[b] Parking uses
[c] Residential uses
[d] Miscellaneous uses

**TABLE OF JU**
**Consult POCKE**

**US:** §§ 4[a]
**Colo:** §§ 3[b, e]
**Conn:** §§ 3[c], 4[b]
**DC:** §§ 4[a]
**Idaho:** §§ 3[a]
**Ind:** §§ 3[a, c]
**Mich:** §§ 3[c], 4[d]

## § 1. Introduction

### [a] Scope

This annotation[1] collects
cusses the state cases in w
courts have considered whet

1. The annotation at 150
entitled "Construction and app
provision of zoning ordinance
mits use for accessory or incid
poses" need no longer be co
connection with the subject ma
present annotation.

2. This annotation only inclu
cases in which the courts speci

ROMADKA & GONTRUM, LLC
814 Eastern Boulevard
Baltimore, Maryland 21221
(410) 686-8274
(410) 686-6206 (fax)

ROBERT J. ROMADKA
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JOHN B. GONTRUM
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JANET RUDOLPH, Paralegal
jrudolph@rgmlaw.net

February 25, 2003

**VIA HAND DELIVERY**

Arnold Jablon, Director
Department of Permits and Development Management
Room 111 - County Office Building
111 W. Chesapeake Avenue
Towson, Maryland, 21204

Re: Apostolic Truth Tabernacle – Petition for Appeal
Hearing Officer's Hearing No. III-446, and
Case No. **03-040-SPH**

Dear Mr. Jablon:

Enclosed is a Notice of Appeal regarding a Special Hearing Request for Apostolic Truth Tabernacle, Case No. 03-040-SPH.

Please be advised that we are concurrently filing a Notice of Appeal, and Petition for Appeal in the Development Plan matter (Case No. III-446), with Donald Rascoe of Development Processing (see enclosed copy of correspondence).

A check in the amount of $300.00 to Baltimore County, Maryland is enclosed to cover the cost of filing this appeal. Would you kindly notify the undersigned if you need anything additional in this regard. Thank you for your assistance.

Sincerely yours,

Janet Rudolph
Paralegal

RECEIVED
FEB 26 2003
Per.....

cc: Pastor Thomas J. Cobb (w/encls.)
J. Carroll Holzer, Esq. (w/encls.)
Donald T. Rascoe

IN RE: DEVELOPMENT PLAN HEARING and PETITION FOR SPECIAL HEARING – N/S McDonogh Road, W/S Field Road **(8216 McDonogh Road)** 3rd Election District 3rd Council District

Apostolic Truth Tabernacle Owner/Developer

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Cases Nos. III-446 & 03-040-SPH

*

HEARING OFFICER'S OPINION AND DEVELOPMENT PLAN ORDER ON REMAND

This matter came before the Office of the Zoning Commissioner/Hearing Officer for Baltimore County for a public hearing, pursuant to Section 26-206.1 of the Baltimore County Code (B.C.C.) and the development review regulations codified in Title 26 thereof. The Owner/ Developer, Apostolic Truth Tabernacle sought approval of a development plan for the proposed development of the subject property with a Church and Rectory. In addition, a Petition for Special Hearing was filed by Apostolic Truth Tabernacle seeking a finding that the proposed plan was "...in compliance to the extent possible with RTA use requirements in accordance with Section 1B01.1.B.1.g.6 of the Baltimore County Zoning Regulations (B.C.Z.R.)."

By way of background, this matter was reviewed in accordance with the development review process set out in Title 26 of the Baltimore County Code. A concept plan of the proposed development was initially prepared and a Concept Plan Conference held by and between the Developer and County agency representatives on December 31, 2001. Thereafter, two Community Input Meetings (CIM) were held, one on February 6, 2002 and the second on March 19, 2002. The Development Plan Conference (DPC) was held on July 17, 2002. Ultimately, the Hearing Officer's Hearing commenced on September 5, 2002, with the final hearing concluding on December 23, 2002. At the Hearing Officer's Hearing, issues regarding both the development plan and Petition for Special Hearing were considered.

The Hearing Officer presiding over the matter was Timothy M. Kotroco, then Deputy Zoning Commissioner for Baltimore County. By his Opinion and Order dated February 6, 2003,

Deputy Commissioner Kotroco denied the Petition for Special Hearing. Likewise, he denied approval of the development plan. A timely appeal was then filed by the Apostolic Truth Tabernacle to the County Board of Appeals. The Board held a hearing on March 27, 2003 and by its written Opinion, remanded the matter to the Deputy Zoning Commissioner/Hearing Officer on April 4, 2003. In its Opinion, the Board stated, in part:

"The Board feels that it is entirely inappropriate for the Hearing Officer to shift the burden of deciding the approval or denial of the development plan on new testimony to be taken by the Board, when he has already taken five days of testimony with respect to the same matter. The Board also feels it is inappropriate for the Hearing Officer to deny a development plan stating that the denial is based on the fact that the development proposal failed to satisfy the requirements of the B.C.Z.R. without stating how the plan fails to meet those requirements. In the opinion of the Board, this matter should be remanded to the Hearing Officer in order for him to outline specific reasons for denial of the plan."

The Board's Order which followed provided, "...that this matter be and is hereby remanded to the Hearing Officer with instructions that the Hearing Officer set forth in detail the basis upon which the development plan is either approved or denied." The Board further ordered that the hearing on the appeal of the denial of the Petition for Special Hearing in Case No. 03-040-SPH, "...be continued, and rescheduled to a future date after the issuance of the decision of the Hearing Officer pursuant to the Remand Order set forth above."

An appeal was filed of the Board's Order to the Circuit Court of Maryland for Baltimore County seeking judicial review. The Protestants filed a Motion to Dismiss the Petition for Judicial Review, arguing that the matter was not ripe for judicial review. In response thereto, the Appellants filed a Motion to Stay their Petition for Judicial Review. Ultimately, in its written Memorandum Opinion and Order, dated August 5, 2003, the Court found that the Appellants/Owner/Developer had not exhausted their administrative remedies in that there was no final decision from the County Board of Appeals. Thus, the Court ordered that the Motion to Stay be denied and granted the Motion to Dismiss the Petition for Judicial Review.

In the judgment of the undersigned, the matter is now ripe for further action as required by the Board of Appeals' Order of Remand. Initially, it is to be noted that Timothy M. Kotroco no longer serves in the capacity of Deputy Zoning Commissioner/Hearing Officer. Thus, he is unavailable to render a decision pursuant to the Board's instructions. Nonetheless, it is clear that the matter has been remanded to the Office of the Zoning Commissioner/Hearing Officer for further proceedings. This matter was assigned to the undersigned Zoning Commissioner, and pursuant to the Board's Order of Remand, the following Findings and Conclusions are hereby offered.

1) The undersigned has read Mr. Kotroco's Order, reviewed the exhibits submitted at the hearings before him, read the transcript of the proceedings and testimony before him, reviewed the case file, reviewed the Opinion and Order of the County Board of Appeals and the Memorandum Opinion and Order of the Circuit Court for Baltimore County;

2) The Board's Order for remand does not instruct that the Hearing Officer reconvene the hearing, nor accept additional evidence and/or argument. The instructions of the Board are simple and concise, to wit, "that the Hearing Officer set forth in detail the basis upon which the development plan is either approved or denied." As there is no directive to do so, I decline to accept additional testimony and/or argument.

3) The question presented in the Board's Order can be simply stated; why did the Hearing Officer determine that the development plan could not be approved? The answer to this question is that the plan was denied because of a fundamental flaw with a required zoning condition which did not exist or does not now exist because the Petition for Special Hearing was denied. Specifically, the Developer/Petitioner had requested special hearing relief for a finding that the proposed plan would be in compliance to the extent possible with the RTA use requirements, pursuant to Section 1B01.1.B.1.g.6 of the B.C.Z.R. That requested finding was denied in that the Hearing Officer determined that the plan was not "in compliance to the extent possible with the RTA use requirements." Because of that denial, the Hearing Officer determined that a condition precedent to the approval of the plan did not exist. In this regard, Section 26-

206(b) of the Baltimore County Code requires that a plan be approved if it complies with all applicable standards and rules promulgated by Baltimore County. This includes the B.C.Z.R. Since the zoning relief sought under the Petition for Special Hearing was denied, the development plan was, by necessity, denied.

4) The Hearing Officer also denied the plan because there was a lack of final design shown thereon. Specifically, the Hearing Officer anticipated that the Developer might amend the plan in order to eliminate the necessity of the special hearing relief. If such an amendment was offered, the Hearing Officer intended that there would be additional proceedings required before him to review that amendment and reconsider the plan.

5) The Hearing Officer also determined that the plan, as presented, would be approved, had special hearing relief been granted. That is, the Hearing Officer determined that the plan, as presented, met all requirements, regulations and standards applicable to development plan review, but for the lack of the requisite special hearing relief.

WHEREFORE, IT IS ORDERED by this Hearing Officer/Zoning Commissioner this 9th day of January 2004.

Any appeal of this decision must be filed pursuant to the applicable provisions of law.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

1/a/04

| | | |
|---|---|---|
| IN RE: DEVELOPMENT PLAN HEARING and PETITION FOR SPECIAL HEARING – N/S McDonogh Road, W/S Field Road **(8216 McDonogh Road)** 3rd Election District 3rd Council District | * | BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY |
| | * | Cases Nos. III-446 & 03-040-SPH |
| Apostolic Truth Tabernacle Owner/Developer | * | |

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1) The undersigned has read Mr. Kotroco's Order, reviewed the exhibits submitted at the hearings before him, read the transcript of the proceedings and testimony before him, reviewed the case file, reviewed the Opinion and Order of the County Board of Appeals and the Memorandum Opinion and Order of the Circuit Court for Baltimore County;

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WHEREFORE, IT IS ORDERED by this Hearing Officer/Zoning Commissioner this 9th day of January 2004.

Any appeal of this decision must be filed pursuant to the applicable provisions of law.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

1/9/04

**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*

January 9, 2004

John B. Gontrum, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286

RECEIVED
JAN 13 2004
BALTIMORE COUNTY
BOARD OF APPEALS

RE: DEVELOPMENT PLAN HEARING **(REMAND)**
**(Apostolic Truth Tabernacle)**
N/S McDonogh Road @ NW/Corner Field Road
3rd Election District – 3rd Council District
Apostolic Truth Tabernacle – Owners/Developers
Case No. III-446

Dear Messrs. Gontrum & Holzer:

Enclosed please find a copy of my Findings and Conclusions relative to the Remand Hearing in the above-captioned matter.

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: Donald Rascoe, Development Mgmt.; DEPRM; OP; R&P; DPW;
Board of Appeals; People's Counsel; Case File



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8/25/03

THE CIRCUIT COURT FOR
LTIMORE COUNTY

PETITION OF:
McDONOGH-FIELD ASSN. by PRESIDENT PHYLLIS BROTMAN and INDIVIDUALS HOWARD GERSH, DR. MICHAEL WHITFIELD, MICHAEL HENNESSY, SUSAN GREENBERG, MICHAEL FINKELSTEIN, JOE HOWARD, VLADIMIR VOLINSKY, HARRY SCHREIBER, J. TAETLE, JUDY SKOLNIK and PHYLLIS BROTMAN
8105 McDONOGH ROAD
PIKESVILLE, MD 21208

IN THE MATTER OF:
APOSTOLIC TRUTH TABERNACLE
N/S McDONOGH ROAD
AT NW CORNER OF FIELD ROAD
PDM # 446

3 RD ELECTION DISTRICT
3 RD COUNCILMANIC DISTRICT

RE: PETITION FOR SPECIAL HEARING & DECISION OF HEARING OFFICER/DEVELOPMENT PLAN

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
CASE NO: CBA-03-109 and 03-040-SPH

Case No. 03-C-03-4661

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

# NOTICE OF APPEAL

Pursuant to Rule 8-202, Appellants, McDonogh-Field Association by Phyllis B. Brotman, President and individuals, Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, J. Taetle, Judy Skolnik and Phyllis Brotman, through J. Carroll Holzer and

Holzer & Lee, hereby note an appeal to the Court of Special Appeals from the decision of the Honorable Ruth Jakubowski rendered on August 5, 2003 and attached hereto.

Petitioners were parties below and fully participated in the proceedings.

Respectfully Submitted,

J. Carroll Holzer, Esquire
508 Fairmount Ave.
Towson, MD 21286
410-825-6961
Attorney for Appellants

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that on this 25th day of August, 2003, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid, to John B. Gontrum, Esq., Whiteford, Taylor & Preston, 210 West Pennsylvania Ave., Towson, MD 21204.

J. Carroll Holzer

8/5/03

| | | |
|---|---|---|
| PETITION OF | * | |
| McDONOGH-FIELD ASSN., by Pres. PHYLLIS BROTMAN, and individuals PHYLLIS BROTMAN, HOWARD GERSH, MICHAEL WHITFIELD, M.D., MICHAEL HENNESSY, SUSAN GREENBERG, MICHAEL FINKELSTEIN, JOE HOWARD, VLADAMIR VOLINSKY, HARRY SCHREIBER, J. TAETLE, and JUDY SKLONIK<br>8106 McDONOGH ROAD<br>PIKESVILLE, MD 21208 | * | IN THE<br>CIRCUIT COURT<br>FOR<br>BALTIMORE COUNTY |
| FOR THE JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY<br>OLD COURTHOUSE, ROOM 49<br>400 WASHINGTON AVENUE<br>TOWSON, MARYLAND 21204 | * | |
| IN THE MATTER OF APOSTOLIC TRUTH TABERNACLE<br><br>RE: DEVELOPMENT PALN/PDM III-446 | * | CASE NO: 03-C-03-4661 |

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BALTIMORE COUNTY
BOARD OF APPEALS

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

**MEMORANDUM OPINION AND ORDER**

This matter comes before the Court on Respondent's Motion to Dismiss Petitioner's Petition for Judicial Review of a decision of the County Board of Appeals. This Court also heard Petitioner's Motion to Stay and Responses filed by Respondent. On July 10, 2003, this Court held a hearing regarding the above-captioned matter. After careful consideration of the oral arguments presented at the hearing and the memorandums of law submitted by both parties, this Court finds the Petition for Judicial review is not ripe and will be dismissed. In addition, the case of In the Matter of James Stephens, et al, case number 03-C-04-4606, will be dismissed and

FILED AUG 07 2003

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| PETITION OF | * | |
| McDONOGH-FIELD ASSN., by Pres. PHYLLIS BROTMAN, and individuals PHYLLIS BROTMAN, HOWARD GERSH, MICHAEL WHITFIELD, M.D., MICHAEL HENNESSY, SUSAN GREENBERG, MICHAEL FINKELSTEIN, JOE HOWARD, VLADAMIR VOLINSKY, HARRY SCHREIBER, J. TAETLE, and JUDY SKLONIK<br>8106 McDONOGH ROAD<br>PIKESVILLE, MD 21208 | * | IN THE<br>CIRCUIT COURT<br>FOR<br>BALTIMORE COUNTY |
| FOR THE JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY<br>OLD COURTHOUSE, ROOM 49<br>400 WASHINGTON AVENUE<br>TOWSON, MARYLAND 21204 | * | |
| IN THE MATTER OF APOSTOLIC TRUTH TABERNACLE<br><br>RE: DEVELOPMENT PALN/PDM III-446 | * | CASE NO: 03-C-03-4661 |

RECEIVED
AUG 15 2003
BALTIMORE COUNTY
BOARD OF APPEALS

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

**MEMORANDUM OPINION AND ORDER**

This matter comes before the Court on Respondent's Motion to Dismiss Petitioner's Petition for Judicial Review of a decision of the County Board of Appeals. This Court also heard Petitioner's Motion to Stay and Responses filed by Respondent. On July 10, 2003, this Court held a hearing regarding the above-captioned matter. After careful consideration of the oral arguments presented at the hearing and the memorandums of law submitted by both parties, this Court finds the Petition for Judicial review is not ripe and will be dismissed. In addition, the case of In the Matter of James Stephens, et al, case number 03-C-04-4606, will be dismissed and

FILED AUG 07 2003

JJ
cc: Gontrum, Holzer, County Board of Appeals of Balto. Co.

CBA-03-109

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| PETITION OF | * | |
| McDONOGH-FIELD ASSN., by Pres. PHYLLIS BROTMAN, and individuals PHYLLIS BROTMAN, HOWARD GERSH, MICHAEL WHITFIELD, M.D., MICHAEL HENNESSY, SUSAN GREENBERG, MICHAEL FINKELSTEIN, JOE HOWARD, VLADAMIR VOLINSKY, HARRY SCHREIBER, J. TAETLE, and JUDY SKLONIK<br>8106 McDONOGH ROAD<br>PIKESVILLE, MD 21208 | * | IN THE<br>CIRCUIT COURT<br>FOR<br>BALTIMORE COUNTY |
| FOR THE JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY<br>OLD COURTHOUSE, ROOM 49<br>400 WASHINGTON AVENUE<br>TOWSON, MARYLAND 21204 | * | |
| IN THE MATTER OF APOSTOLIC TRUTH TABERNACLE | * | CASE NO: 03-C-03-4661 |
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RECEIVED
AUG - 8 2003
BALTIMORE COUNTY
BOARD OF APPEALS

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**MEMORANDUM OPINION AND ORDER**

This matter comes before the Court on Respondent's Motion to Dismiss Petitioner's Petition for Judicial Review of a decision of the County Board of Appeals. This Court also heard Petitioner's Motion to Stay and Responses filed by Respondent. On July 10, 2003, this Court held a hearing regarding the above-captioned matter. After careful consideration of the oral arguments presented at the hearing and the memorandums of law submitted by both parties, this Court finds the Petition for Judicial review is not ripe and will be dismissed. In addition, the case of In the Matter of James Stephens, et al, case number 03-C-04-4606, will be dismissed and

FILED AUG 07 2003

Mr. and Mrs. Stephens will become Petitioners of the case In the Matter of McDonogh Field Association, et al, case number 03-C-03-4661.

## BACKGROUND FACTS

This matter concerns a piece of property comprised of an approximate gross acreage of 8.57 acres that is located at the northwest corner of the intersection on McDonogh Road and Field Road in the Owings Mills area of Baltimore County. The owner of the property created a Development Plan that was filed for the Apostolic Truth Tabernacle, and a hearing was held on seven separate days from September 5, 2002 until December 23, 2002 before the Deputy Zoning Commissioner/Hearing Officer for Baltimore County. Petitioners, McDonogh Field Association, participated at the hearing as Protestants. On February 6, 2003 the Zoning Commissioner denied the Development Plan on the basis that the proposal failed to satisfy the underlying requirements of the Baltimore County Zoning Regulations.

The Apostolic Truth Tabernacle filed an appeal on February 2, 2003 with the County Board of Appeals and the McDonogh Field Association answered. The County Board of Appeals held a hearing on March 27, 2003. In its Opinion and Order dated April 4, 2003 the County Board of Appeals remanded the case back to the Hearing Officer in order for the Hearing Officer to indicate specifically why the Development Plan was denied. Petitioners appealed the County Board of Appeals decision to the Baltimore County Circuit Court on April 28, 2003 requesting a judicial review. A hearing was held before this Court on July 10, 2003 on Respondent's Motion to Dismiss Petitioner's Petition for Judicial Review and Petitioner's Motion to Stay.

## SCOPE OF JUDICIAL REVIEW

"[I]n the absence of a statutory provision expressly authorizing judicial review of an interlocutory administrative decision, and in the absence of an interlocutory administrative decision with immediate legal consequences causing irreparable harm, 'the parties to the controversy must ordinarily await a final administrative decision before resorting to the courts." Dorsey v. Bethel A.M.E. Church, 2003 Md. LEXIS 311, *21 (June 6, 2003 Filed) (*Quoting* State v. State Board of Contract Appeals, 364 Md. 446, 457 (2001)). "[A]s a general rule, an action for judicial review of an administrative order will lie only if the administrative order is final." Holiday Spas v. Montgomery County, 315 Md. 390, 395, 554 A.2d 1197, 1199 (1989).

"The salutary purpose of the finality requirement is to avoid piecemeal actions in the circuit court seeking fragmented advisory opinion with respect to partial or intermediate agency decisions." Driggs Corp. v. Maryland Aviation Administration, 348 Md. 389, 407, 704 A.2d 433, 443 (1998).. "Ordinarily an agency order is not final when it is contemplated that there is more for the agency to do." Kim v. Comptroller of the Treasury, 350 Md. 527, 534, 714 A.2d 176, 179 (1998). "[A] prematurely filed appeal must be dismissed by an appellate court because the appellate court has no jurisdiction over the matter." Id. at 535. In addition, "administrative remedies must be exhausted before bringing an action in court." Dorsey at 23.

## DISCUSSION

The Court of Appeals of Maryland recently held that when the County Board of Appeals remanded a case to the Hearing Officer for further proceedings, the Petitioners had not exhausted their administrative remedies and no final agency decision had been reached. Dorsey at 24-25. Thus, the action for judicial review was premature and had to be dismissed. Id. Although

counsel for Petitioner valiantly attempted to distinguish Dorsey from the case at issue, this Court does not find them distinguishable for the issue to be decided by this Court.

Similarly, this Court finds that the action for judicial review is not ripe and must be dismissed. As explained in oral arguments and the memorandums of law submitted by both parties, the County Board of Appeals remanded this case back to the Hearing Officer in order for the Hearing Officer to indicate specifically why the Development Plan submitted by the Apostolic Truth Tabernacle was denied. Therefore, Petitioners have not exhausted their administrative remedies. In fact, there is no final decision from the County Board of Appeals. The rights of the parties have not been finally determined by the administrative agency and this case is not ripe for judicial review.

**ORDER**

Therefore, it is **ORDERED** this 5 day of August 2003, that the Motion to Stay be **DENIED** and the Motion to Dismiss Petition for Judicial Review is **GRANTED**. This case shall hereby be **DISMISSED**.

_____, Judge
Ruth A. Jakubowski

Date: 8/5/03

CLERK TO MAIL COPIES

True Copy Test
SUZANNE MENSH, Clerk
Per _____
Deputy Clerk

6/27/03

6/27/03

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| IN THE CIRCUIT COURT<br>FOR BALTIMORE COUNTY | * | |
| PETITION OF:<br>JAMES STEPHENS AND<br>MARILYN BARTRAM<br>8115 McDONOGH ROAD<br>PIKESVILLE, MD 21208 | * | |
| FOR JUDICIAL REVIEW OF THE<br>OPINION OF THE COUNTY BOARD<br>OF APPEALS OF BALTIMORE COUNTY<br>OLD COURTHOUSE, ROOM 49<br>400 WASHINGTON AVENUE<br>TOWSON, MARYLAND 21204 | * | CIVIL ACTION<br>NO.: 03-C-03-4606 |
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | |
| RE: DEVELOPMENT PLAN/PDM III-446 | * | |
| 3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | |
| CASE NO.: CBA-03-109 | * | |

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

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

FILED JUN 27 2003

Appeals of Baltimore County:

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

**CBA-03-109**

| | |
|---|---|
| December 31, 2001 | Concept Plan Conference |
| February 6, 2002 | Community Input Meeting |
| March 19 | Second Communty Input Meeting |
| July 17 | Development Plan conference – Project I.D. # A011676 |
| September 5 | Hearing Officer's Hearing – Day #1 |
| October 23 | Hearing Officer's Hearing – Day #2 |
| October 30 | Hearing Officer's Hearing – Day #3 |
| December 4 | Heqring Officer's Hearing – Day #4 |
| December 11 | Hearing Officer's Hearing – Day #5 |
| December 18 | Hearing Officer's Hearing – Day #6 |
| December 23 | Hearing Officer's Hearing – Day #7 |
| February 6, 2003 | Hearing Officer's Opinion and Development Plan Order – Development Plan - DENIED. |
| February 2 | Notice of Appeal and Petition filed by John B. Gontrum and Romadka & Gontrum, LLC, on behalf of Apostolic Truth Tabernacle and Pastor Thomas J. Cobb. |
| March 27 | Hearing before the Board of Appeals |

**APPELLANT' S/ PETITIONER'S EXHIBIT**

1. Sign in Sheet (1 page – yellow lined paper).U. Stephen A. Warfield, P.E.

**PROTESTANT'S EXHIBITS**

1. Sign in Sheets, dated 3/27/03 (3 pages)
2. Motion to Limit Scope Of Review By The CBA
3. Motion To Limit The Scope Of Review Of The County Board of Appeals
4. Motion To Deny RLUIPA Application As To Development Plan
5. Motion To Determine Extent Of CBA Review Of The Development Plan In Order To Properly Prepare For This Case

6. Motion To Request Permission To Submit Memorandum Concerning The Legality Of The Application Of RLUIPA To This Case And To Respond To Facts And Arguments Presented By The Petitioners/Appellants Related To The Special Hearing And Development Plan
7. Answer To Petition For Appeal

March 27 — Deliberation held by Board of Appeals

***At conclusion of argument on various Motions submitted by Counsel For Protestants, the Board convened a public deliberation, and, in the course of deliberation, ruled to REMAND the Development Plan and indicated on the record that the Special Hearing portion of this matter would be continued until such time as the Hearing Officer responds to the Board's Remand Order.***

April 4 — Opinion/Order for Remand issued and distributed by Board of Appeals

April 25 — Petition for Judicial Review filed in the Circuit Court for Baltimore County by David Greenbaum, Esquire, on behalf of James Stephens and Marilyn Bartram, his wife.
Civil Action Case No.: C-03-4606.

April 28 — Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of McDonogh-Field Association by Phyllis B. Brotman, President and individuals, Howard Gersh, Dr. Michael Winfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, J. Taetle, Judy Skolnik and Phyllis Brotman.
Civil Action Case No.: C-03-4661.

May 2 — Copy of Petition for Judicial Review received by the County Board of Appeals from the Circuit Court for Baltimore County.
Civil Action Case No.: C-03-4661.

May 12 — Copy of Petition for Judicial Review Retrieved by the County Board of Appeals from the Circuit Court for Baltimore County.
Civil Action Case No.: C-03-4606.

May 12 — Certificate of Notice sent to interested parties.
Civil Action Case No.: C-03-4606.

| | |
|---|---|
| May 12 | Second Certificate of Notice sent to interested parties. Civil Action Case No.: C-03-4661. |
| June 26, 2003 | Transcript of Proceedings filed. |
| June 27, 2003 | Record of Proceedings filed in the Circuit Court for Baltimore County for Civil Action Case No.: C-03-4606. **ALL DOCUMENTS AND EXHIBITS ARE FILED WITH CIVIL ACTION NO. C-03-4606.** |

**EXHIBITS AND DOCUMENTS CAN NOT BE DUPLICATED.**

**FOR CIVIL ACTION NO. C-03-4661, PLEASE SEE CIVIL ACTION C-03- 4606.**

**DOCUMENTS AND EXHIBITS ARE THE SAME FOR BOTH CASES.**

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

Respectfully submitted,

Theresa R. Shelton

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

David Greenbaum, Esquire
James Stephens, et al
c/o David Greenbaum, Esquire,
John B. Gontrum, Esquire
Thomas Ernst, Esquire
J. Carroll Holzer, Esquire

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

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| PETITION OF:<br>JAMES STEPHENS and<br>MARILYN BARTRAM<br>8115 McDonogh Road<br>Pikesville, Maryland 21208 | * | |
| FOR JUDICIAL REVIEW OF THE<br>OPINION OF THE COUNTY BOARD OF<br>APPEALS OF BALTIMORE COUNTY<br>CASE NO.: CBA-03-109<br>Old Courthouse, Room 49<br>400 Washington Avenue<br>Towson, Maryland 21204 | * | **CIVIL ACTION**<br>**NO. 3-C-03-4606** |
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE<br>RE: DEVELOPMENT PLAN/PDM III-446<br>N/S OF McDONOGH ROAD @<br>NW CORNER OF FIELD ROAD<br>3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | |

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

**NOTICE OF INTENT TO PARTICIPATE IN JUDICIAL REVIEW**

Pursuant to the Provisions of Rule 7-204(a) of the *Maryland Rules*, the undersigned attorney, on behalf of Apostolic Truth Tabernacle, Inc., hereby gives notice of its intent to participate in the within action for Judicial Review.

John B. Gontrum
ROMADKA & GONTRUM, LLC
814 Eastern Boulevard
Baltimore, MD 21221
(410) 686-8274

*Attorney for Respondent*
*Apostolic Truth Tabernacle, Inc.*

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

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| PETITION OF:<br>McDONOGH-FIELD ASSN., by Pres.<br>PHYLLIS BROTMAN, and individuals<br>PHYLLIS BROTMAN, HOWARD GERSH,<br>MICHAEL WHITFIELD, M.D., MICHAEL<br>HENNESSY, SUSAN GREENBERG,<br>MICHAEL FINKELSTEIN, JOE HOWARD,<br>VLADIMIR VOLINSKY, HARRY SCHREIBER,<br>J. TAETLE, and JUDY SKOLNIK<br>8106 McDonogh Road<br>Pikesville, Maryland 21208 | * | |
| FOR JUDICIAL REVIEW OF THE<br>OPINION OF THE COUNTY BOARD OF<br>APPEALS OF BALTIMORE COUNTY<br>CASE NO.: CBA-03-109<br>Old Courthouse, Room 49<br>400 Washington Avenue<br>Towson, Maryland 21204 | * | **CIVIL ACTION**<br>**NO. 3-C-03-4661** |
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE<br>RE: DEVELOPMENT PLAN/PDM III-446<br>N/S OF McDONOGH ROAD @<br>NW CORNER OF FIELD ROAD<br>3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | |

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

**REQUEST FOR HEARING ON RESPONSE TO MOTION FOR STAY**

Respondent, Apostolic Truth Tabernacle, Inc., by its attorney John B. Gontrum, Romadka & Gontrum, LLC, hereby requests a Hearing on its Response to Motion for Stay in the above-captioned case.

John B. Gontrum
ROMADKA & GONTRUM, LLC
814 Eastern Boulevard
Baltimore, MD 21221
(410) 686-8274

*Attorney for Respondent*
*Apostolic Truth Tabernacle, Inc.*

5/22/03

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

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|---|---|---|
| PETITION OF:<br>McDONOGH-FIELD ASSN., by Pres.<br>PHYLLIS BROTMAN, and individuals<br>PHYLLIS BROTMAN, HOWARD GERSH,<br>MICHAEL WHITFIELD, M.D., MICHAEL<br>HENNESSY, SUSAN GREENBERG,<br>MICHAEL FINKELSTEIN, JOE HOWARD,<br>VLADIMIR VOLINSKY, HARRY SCHREIBER,<br>J. TAETLE, and JUDY SKOLNIK<br>8106 McDonogh Road<br>Pikesville, Maryland 21208 | * | |
| FOR JUDICIAL REVIEW OF THE<br>OPINION OF THE COUNTY BOARD OF<br>APPEALS OF BALTIMORE COUNTY<br>CASE NO.: CBA-03-109<br>Old Courthouse, Room 49<br>400 Washington Avenue<br>Towson, Maryland 21204 | * | **CIVIL ACTION**<br>**NO. 3-C-03-4661** |
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE<br>RE: DEVELOPMENT PLAN/PDM III-446<br>N/S OF McDONOGH ROAD @<br>NW CORNER OF FIELD ROAD<br>3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | |

RECEIVED
MAY 27 2003
BALTIMORE COUNTY
BOARD OF APPEALS

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

**RESPONSE TO MOTION FOR STAY**

Now Comes Apostolic Truth Tabernacle, Inc., Respondent, by and through its attorneys John B. Gontrum and Romadka & Gontrum, LLC, and in response to the Motion for Stay filed herein, says as follows:

1. On February 6, 2003, the Hearing Officer/Deputy Zoning Commissioner, after seven (7) days of hearing testimony issued a Hearing Officer's Opinion and

Development Plan Order (*see Attachment A*). The Opinion and Development Plan Order was based on a combined Zoning Special Hearing Petition and Development Plan filing as permitted in the Baltimore County Code, Section 26-206.1.

2. From the adverse ruling on the Special Hearing Petition and Development Plan, Apostolic Truth Tabernacle, Inc. noted an appeal to the County Board of Appeals for Baltimore County.

3. The Baltimore County Charter, Section 603, requires that appeals from zoning orders are tried de novo before the Board of Appeals. The Baltimore County Charter, Section 603, and Baltimore County Code, Section 26-209, allow the Board to take development appeals on the record created by the Hearing Officer.

4. The County Board of Appeals issued its Opinion/Order for Remand, dated April 4, 2003 (*see Attachment B*). In its decision the Board was very critical of the lack of findings and support on the Development Plan issues as required by Baltimore County Code, Section 26-206(a)(3). Accordingly, the Board remanded the development portion to the Hearing Officer to make findings. It continued the zoning appeal until such time as a full hearing could be scheduled on the merits.

5. Consequently, the appeal is from an Interlocutory Order continuing a hearing and remanding a determination on the Development Plan for additional findings of fact

6. The appeal is not from a final adjudication among the parties.

7. Petitioners are incorrect in their procedural analysis of the actions in front of the Board in that, regardless of the findings of the Hearing Officer, in order for the

Development Plan to be approved either the Special Hearing has to be approved, or the Plan has to be amended to withdraw the Special Hearing issues. Consequently, the Board will have to have an evidentiary hearing on the Special Hearing Petition and will either approve the request or deny it. An appeal, of course, will be possible from that decision. The Development Plan can not be approved unless the Special Hearing issue is resolved one way or the other. The Hearing Officer is being asked by the Board what the reasoning is behind the denial of the Development Plan, exclusive of the Special Hearing, and whether there are any reasons for denial of the Development Plan other than denial of the Special Hearing request. The failure of the Hearing Officer to articulate any findings beyond his determination on the Special Hearing was what prompted the remand to the Hearing officer by the Board. The Hearing Officer is not being forced into any position, but rather to articulate his findings on the record produced by him.

8. Stay of the proceeding will result in grievous injury to the Respondent by failing to allow the matters to be brought to final adjudication. The Church cannot survive without a permanent location, and the delay is unwarranted, as is the additional expense.

9. No hardship occurs to the Petitioners for Judicial Review if the Stay does not occur, for their appellate rights remain intact as they are today.

10. The only impact of the Stay is to prevent administrative determinations.

11. Absent a Stay, in any event, Apostolic Truth Tabernacle, Inc. cannot proceed with

permitting or development of the site until determinations are made. Consequently, no injury is caused Petitioners if a Stay is not granted.

12. Allowing the proceeding to go forward in no way hinders principles of judicial economy, nor in any way prejudices the rights of the Petitioners to have any final decision among the parties reviewed on appeal.

13. A Stay of this matter will cause Apostolic Truth Tabernacle, Inc., thousands of dollars in additional costs.

14. Alternatively, if this Court permits the Stay, the Respondent requests, pursuant to Maryland Rule 7-205, that a bond be posted to cover the costs of the Stay of the proceedings in the event that the appeal is not successful.

15. That other good and sufficient reasons exist for denial of the Motion for Stay or alternative imposition of bond as may be presented at the hearing required under Maryland Rule 7-205.

John B. Gontrum
ROMADKA & GONTRUM, LLC
814 Eastern Boulevard
Baltimore, MD 21221
(410) 686-8274

*Attorney for Respondent*
*Apostolic Truth Tabernacle, Inc.*

Attachment A

| | | |
|---|---|---|
| IN RE: DEVELOPMENT PLAN HEARING & SPECIAL HEARING REQUEST<br>N/S of McDonogh Road @ NW Corner of Field Road<br>3rd Election District<br>3rd Councilmanic District<br>(Apostolic Truth Tabernacle) | * | BEFORE THE<br>DEPUTY ZONING COMMISSIONER/<br>HEARING OFFICER<br>OF BALTIMORE COUNTY |
| Apostolic Truth Tabernacle<br>By: Rev. Thomas Cobb<br>*Petitioner/Developer* | * | Case Nos. III-446 & 03-040-SPH |

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

HEARING OFFICER'S OPINION & DEVELOPMENT PLAN ORDER

This matter comes before this Deputy Zoning Commissioner/Hearing Officer for Baltimore County, as a requested approval of a Development Plan and a Special Hearing Request. The Development Plan is for the project known as "The Apostolic Truth Tabernacle", which project bears Case No. III-446 and involves property located at the northwest corner of the intersection of McDonogh Road and Field Road in the Owings Mills area of Baltimore County. The property comprises a gross acreage of 8.57 acres, more or less, all of which is zoned D.R.1. The owner of the property proposes to develop the subject site with a church sanctuary, a multipurpose center, a school building, as well as a children's daycare facility. The particulars of the proposed development are more particularly shown on Developer's Exhibit Nos. 1A and 1B. In addition to the requested approval of the Development Plan, the property owner is also requesting special hearing relief to confirm that the development of the site is in compliance, to the extent possible, with RTA use requirements in accordance with Section 1B01.1.B.1.g.6 of the Baltimore County Zoning Regulations (B.C.Z.R.).

Appearing at the hearing on behalf of the Development Plan and Special Hearing Request were Pastor Thomas Cobb, appearing on behalf of the owner of the property, Rick Richardson, the professional engineer who prepared the site plan of the property, Thomas Ernst, and John B. Gontrum, attorney at law, who represented the Petitioners. Congregants of the church also attended the hearing. Appearing in opposition to the Petitioner's request were a number of

Attachment B

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| IN THE MATTER OF<br>APOSTOLIC TRUTH TABERNACLE<br>N/S MCDONOGH ROAD @ NW COR<br>OF FIELD ROAD /PDM III-446<br>3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | BEFORE<br><br>COUNTY BOARD OF APPEALS<br><br>OF<br><br>BALTIMORE COUNTY |
| PETITION FOR SPECIAL HEARING &<br>DECISION OF HEARING OFFICER<br>/DEVELOPMENT PLAN | * | CASE NO. CBA-03-109 and<br>CASE NO. 03-040-SPH<br>**[Remanded as to CBA-03-109;<br>03-040-SPH Continued and on Hold]** |

* * * * * * * * *

## OPINION /ORDER FOR REMAND

This matter comes before the Board on appeal from a final order of the Hearing Officer /Deputy Zoning Commissioner in which a Development Plan and special hearing relief were denied. The Board held a hearing on March 27, 2003 at which oral argument was heard on the Petition for Appeal and various Motions submitted by the Protestants at that time. Petitioner /Appellant was represented by John B. Gontrum, Esquire, and the Protestants were represented by J. Carroll Holzer, Esquire. The primary issue at this particular time was the manner in which the Board would proceed with the hearings on the Development Plan and the special hearing.

The Deputy Zoning Commissioner /Hearing Officer held 5 days of hearing in this matter below. The matters were tried jointly in the hearing by agreement of the parties.

In accordance with § 26-209 of the *Baltimore County Code* (the "Code"), the Board has traditionally reviewed development plans on the basis of the record below before the Hearing Officer and the oral argument of the parties. While the Board is authorized to take additional testimony, it traditionally has not taken additional oral testimony at the time of oral argument. In reviewing a development plan, the Board may remand the matter to the Hearing Officer, affirm the Plan, or reverse or modify the decision under certain conditions.

5/23/03

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

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|---|---|---|
| PETITION OF:<br>JAMES STEPHENS and<br>MARILYN BARTRAM<br>8115 McDonogh Road<br>Pikesville, Maryland 21208 | * | |
| FOR JUDICIAL REVIEW OF THE<br>OPINION OF THE COUNTY BOARD OF<br>APPEALS OF BALTIMORE COUNTY<br>CASE NO.: CBA-03-109<br>Old Courthouse, Room 49<br>400 Washington Avenue<br>Towson, Maryland 21204 | * | **CIVIL ACTION**<br>**NO. 3-C-03-4606** |
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE<br>RE: DEVELOPMENT PLAN/PDM III-446<br>N/S OF McDONOGH ROAD @<br>NW CORNER OF FIELD ROAD<br>3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | |

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

**REQUEST FOR HEARING ON MOTION TO DISMISS**

Respondent, Apostolic Truth Tabernacle, Inc., by its attorney John B. Gontrum, Romadka & Gontrum, LLC, hereby requests a Hearing on its Motion to Dismiss in the above-captioned case.

John B. Gontrum
ROMADKA & GONTRUM, LLC
814 Eastern Boulevard
Baltimore, MD 21221
(410) 686-8274

*Attorney for Respondent*
*Apostolic Truth Tabernacle, Inc.*

(3-C-03-4606)

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23 day of May, 2003, a copy of the foregoing: Notice of Intent to Participate in Judicial Review; Motion to Dismiss; Memorandum in Support of Motion to Dismiss; and Request for Hearing, were mailed First Class Mail, postage prepaid, to the following:

1. County Board of Appeals for Baltimore County
   Room 49 - Old Courthouse
   400 Washington Avenue
   Towson, MD 21204

2. David A. Greenbaum, Esquire
   Freeman, Wolfe & Greenbaum, P.A.
   Suite 300, Mercantile-Towson Building
   409 Washington Avenue
   Towson, MD 21204

John B. Gontrum

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

| | | |
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| PETITION OF:<br>JAMES STEPHENS and<br>MARILYN BARTRAM<br>8115 McDonogh Road<br>Pikesville, Maryland 21208 | * | |
| FOR JUDICIAL REVIEW OF THE<br>OPINION OF THE COUNTY BOARD OF<br>APPEALS OF BALTIMORE COUNTY<br>CASE NO.: CBA-03-109<br>Old Courthouse, Room 49<br>400 Washington Avenue<br>Towson, Maryland 21204 | * | **CIVIL ACTION**<br>**NO. 3-C-03-4606** |
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE<br>RE: DEVELOPMENT PLAN/PDM III-446<br>N/S OF McDONOGH ROAD @<br>NW CORNER OF FIELD ROAD<br>3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | |

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

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

The Petition for Judicial Review filed by James Stephens and Marilyn Bartram should be dismissed due to the lack of standing of Petitioners to seek judicial review, and further due to the fact that the Petition is not based on a final order from the County Board of Appeals of Baltimore County.

The Petitioners were not parties to either the Zoning Special Hearing, Case No. 03-040-SPH, or to the Development Hearing, Case No. III-446. The two cases were tried together before the County Hearing Officer/Deputy Zoning Commissioner over a seven (7) day period pursuant to Baltimore County Code Section 26-206.1. The two Petitioners, furthermore, did not testify or present

exhibits at the evidentiary hearing before the Zoning Commissioner/the Hearing Officer. They did not present any argument to the County Board of Appeals.

The Petitioners also do not live within sight or sound of the subject property, for their property lies about 1,000 feet east of the subject site across McDonogh Road. Both intersections with the loop of Field Road and McDonogh Road intervene between the residence stated by Petitioners in their Petition and the subject property.

Maryland Rule 7-202(c) states that if the Petitioner was not a party before the administrative agency, the basis for the standing must be stated in the Petition. Nowhere is this stated except for the erroneous allegation that the Petitioners were parties.

"An appellate right is entirely statutory in origin and no person or agency may prosecute such an appeal unless the right is conferred by statute." Committee for Responsible Development on 25th Street, et al. v. Mayor and City Council of Baltimore, et al., 137 Md. App. 60, 78, 767 A.2d 906, 915 (2001). The Baltimore County Charter Section 604 states:

> "Within thirty days after any decision by the County Board of Appeals is rendered, any party to the proceeding who is aggrieved thereby, may appeal such decision to the Circuit Court of Baltimore County, which shall have the power to affirm the decision of the Board, or, if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing, as justice may require."

The County Charter, therefore, requires that a petitioner for review be both a party and a person aggrieved in order to have review rights in Circuit Court. Neither prong, however, is present.

In Committee for Responsible Development on 25th Street, et al. v. Mayor and City Council of Baltimore, et al., 137 Md. App. 60, 85-86, 767 A.2d 906, 919-920 (2001), the Court stated:

> "To be a person aggrieved the person must allege that the decision would impact him or her in a way that is different from that of the public generally. Previous decisions of the Court of Appeals indicate that a person aggrieved by the decision of a Board of Zoning Appeals is one whose personal or property rights are adversely affected by the decision of the Board. The decision must not only affect a matter in which the protestant has a specific interest or property right, but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally."

The Court then denied standing to persons two blocks west and three blocks north of the subject property because they were within neither sight nor sound of the property. The Court further held that frequent passing of the property did not amount to special damage or adverse impact on personal or property rights.

The Petitioners, therefore, have failed to allege any factors, which would give them status as persons aggrieved so as to possess the requisite standing for judicial review.

The Petition for Judicial Review also should be dismissed for it is not timely. The Petition is seeking review of an administrative order that is doing two things: (i) continuing a case for a full de novo hearing on the merits, and (ii) remanding a decision to the finder of fact for articulation of the basis for the decision. Neither of these components of the Order creates a final disposition of the case.

All zoning petition hearings are heard de novo on appeal to the County Board of Appeals. Baltimore County Charter, Section 603. The Board did not make any determination whatsoever in its order as to the Special Hearing Petition

brought by Apostolic Truth Tabernacle. Consequently, there has been no final disposition of the case.

The Board of Appeals decides development cases on the record created by the Hearing Officer. Baltimore County Charter, Section 603; Baltimore County Code, Section 26-209 (c). The Board has the authority to remand, affirm, reverse or modify the Hearing Officer's decision. Baltimore County Code, Section 26-209(d). In this case the Board believed that the Hearing Officer had failed to articulate findings in a manner sufficient for the Board to make a determination on the issues raised at the Development Hearing. The Board did not reverse or modify the decision, but did remand it for further consideration and for findings by the Hearing Officer. It was certainly not a determination outside the scope of the Board's authority, nor was it a final disposition of the case.

The Petition for Judicial Review provokes the question of what is it that the Court is supposed to do? Is it supposed to reverse the Board? If so, does that mean that the Development Plan is approved? The Board did not approve the Plan, and it strains credulity to believe that the Petitioners herein actually want the Plan approved. Is the Court supposed to affirm the Board? If so, why did the Petitioners take the appeal? Is the Court supposed to remand to the Board for fact finding? That is the function of the Hearing Officer, and the Appellate Courts have been consistent in demanding that the finder of fact articulate reasons for the findings of fact.

It is quite clear that the action of the Board of Appeals is not a final action. There is still much for the Board to do. Consequently, there is not a final order for

which judicial review is available. *See* Holiday Spas. v. Montgomery County Human Relations Commission, 315 Md. 390, 554 A.2d 1197 (1989). The finality requirement has the goal of preventing potentially unnecessary and premature disruption of the courts. Danaher v. Department of Labor, Licensing and Regulation, 148 Md. App. 139, 162, 811 A.2d 359, 373 (2002).

Generally, an administrative agency's action "is final if it determines the rights of the parties and leaves nothing further for the agency to do." Hird v. City of Salisbury, 121 Md. App. 496, 710 A.2d 352 (1998) citing *Maryland Commission on Human Relations v. Baltimore Gas & Electric Co.*, 296 Md. 46, 57, 459 A.2d 205 (1983); *Holiday Spas v. Montgomery County Human Relations Commission*, 315 Md. 390, 395, 554 A.2d 1197 (1989); *Md. Commission v. Downey*, 110 Md.App. 493, 527, 678 A.2d 55 (1996); *GMC v. Public Service Commission*, 87 Md.App. 321, 337, 589 A.2d 982 (1991). The rights of the parties have not been finally determined by the administrative reviewers. How then can the decision of the Board have finality?

In summary, the Petition for Judicial Review meets neither the standing requirements nor the requirements of timeliness of filing. It should be dismissed.

Respectfully submitted,

John B. Gontrum
ROMADKA & GONTRUM, LLC
814 Eastern Boulevard
Baltimore, MD 21221
(410) 686-8274

*Attorney for Respondent*
*Apostolic Truth Tabernacle, Inc.*

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

| | | |
|---|---|---|
| PETITION OF:<br>JAMES STEPHENS and<br>MARILYN BARTRAM<br>8115 McDonogh Road<br>Pikesville, Maryland 21208 | * | |
| FOR JUDICIAL REVIEW OF THE<br>OPINION OF THE COUNTY BOARD OF<br>APPEALS OF BALTIMORE COUNTY<br>CASE NO.: CBA-03-109<br>Old Courthouse, Room 49<br>400 Washington Avenue<br>Towson, Maryland 21204 | * | **CIVIL ACTION NO. 3-C-03-4606** |
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE<br>RE: DEVELOPMENT PLAN/PDM III-446<br>N/S OF McDONOGH ROAD @<br>NW CORNER OF FIELD ROAD<br>3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | |

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

**MOTION TO DISMISS**

Now Comes Apostolic Truth Tabernacle, Inc., Respondent, by and through its attorneys John B. Gontrum and Romadka & Gontrum, LLC, and moves this Court pursuant to Maryland Rule 7-204(b) to dismiss the above-referenced case and in support thereof say as follows:

1. The Petitioners for Judicial Review, James Stephens and Marilyn Bartram, lack the required standing to pursue an appeal.
    a. The Appellants, who live neither within sight nor sound of the proposed use, do not fit within the definition of persons aggrieved, and therefore lack standing to file an appeal.

b. The Appellants did not actively participate in either the Development Hearing or the Zoning Hearing, at either the level of the Zoning Commissioner or the County Board of Appeals.

2. The case is not ripe for adjudication on appeal.

a. The case is not from a final Order of the County Board of Appeals in that the Board's Order continued the Zoning Special Hearing for a trial de novo before it; so that there has been no trial of the merits of the matter and, therefore, no final Order.

b. The case is not from a final Order of the County Board of Appeals in that the Board remanded the case for the Hearing Officer to clarify his decision and state reasons therefore. The Board did not finally determine the merits of the case but asked for the Hearing Officer to review his Order and state reasoning.

Accordingly, the Board has yet to make a ruling on the issues presented under the Zoning Petition and the Development Plan, and the rights of the parties have not been finally determined.

Wherefore, the Petition for Judicial Review should be denied and costs assessed against the Petitioners.

John B. Gontrum
ROMADKA & GONTRUM, LLC
814 Eastern Boulevard
Baltimore, MD 21221
(410) 686-8274

*Attorney for Respondent*
*Apostolic Truth Tabernacle, Inc.*

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

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| PETITION OF:<br>McDONOGH-FIELD ASSN., by Pres.<br>PHYLLIS BROTMAN, and individuals<br>PHYLLIS BROTMAN, HOWARD GERSH,<br>MICHAEL WHITFIELD, M.D., MICHAEL<br>HENNESSY, SUSAN GREENBERG,<br>MICHAEL FINKELSTEIN, JOE HOWARD,<br>VLADIMIR VOLINSKY, HARRY SCHREIBER,<br>J. TAETLE, and JUDY SKOLNIK<br>8106 McDonogh Road<br>Pikesville, Maryland 21208 | * | |
| FOR JUDICIAL REVIEW OF THE<br>OPINION OF THE COUNTY BOARD OF<br>APPEALS OF BALTIMORE COUNTY<br>CASE NO.: CBA-03-109<br>Old Courthouse, Room 49<br>400 Washington Avenue<br>Towson, Maryland 21204 | * | **CIVIL ACTION**<br>**NO. 3-C-03-4661** |
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE<br>RE: DEVELOPMENT PLAN/PDM III-446<br>N/S OF McDONOGH ROAD @<br>NW CORNER OF FIELD ROAD<br>3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | |

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**NOTICE OF INTENT TO PARTICIPATE IN JUDICIAL REVIEW**

Pursuant to the Provisions of Rule 7-204(a) of the *Maryland Rules*, the undersigned attorney, on behalf of Apostolic Truth Tabernacle, Inc., hereby gives notice of its intent to participate in the within action for Judicial Review.

John B. Gontrum
ROMADKA & GONTRUM, LLC
814 Eastern Boulevard
Baltimore, MD 21221
(410) 686-8274

*Attorney for Respondent*
*Apostolic Truth Tabernacle, Inc.*

(3-C-03-4661)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23 day of May, 2003, a copy of the foregoing: Response to Motion for Stay; Notice of Intent to Participate in Judicial Review; Motion to Dismiss; Memorandum in Support of Motion to Dismiss; and Request for Hearing, were mailed First Class Mail, postage prepaid, to the following:

1. County Board of Appeals for Baltimore County
   Room 49 - Old Courthouse
   400 Washington Avenue
   Towson, MD 21204

2. J. Carroll Holzer, Esquire
   Holzer & Lee
   508 Fairmount Avenue
   Towson, MD 21286

John B. Gontrum

5/23/03 ?

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

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| PETITION OF:<br>JAMES STEPHENS and<br>MARILYN BARTRAM<br>8115 McDonogh Road<br>Pikesville, Maryland 21208 | * | |
| FOR JUDICIAL REVIEW OF THE<br>OPINION OF THE COUNTY BOARD OF<br>APPEALS OF BALTIMORE COUNTY<br>CASE NO.: CBA-03-109<br>Old Courthouse, Room 49<br>400 Washington Avenue<br>Towson, Maryland 21204 | * | **CIVIL ACTION**<br>**NO. 3-C-03-4606** |
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(410) 686-8274

*Attorney for Respondent*
*Apostolic Truth Tabernacle, Inc.*

(3-C-03-4606)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23 day of May, 2003, a copy of the foregoing: Notice of Intent to Participate in Judicial Review; Motion to Dismiss; Memorandum in Support of Motion to Dismiss; and Request for Hearing, were mailed First Class Mail, postage prepaid, to the following:

1. County Board of Appeals for Baltimore County
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   400 Washington Avenue
   Towson, MD 21204

2. David A. Greenbaum, Esquire
   Freeman, Wolfe & Greenbaum, P.A.
   Suite 300, Mercantile-Towson Building
   409 Washington Avenue
   Towson, MD 21204

John B. Gontrum

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

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**REQUEST FOR HEARING ON MOTION TO DISMISS**

Respondent, Apostolic Truth Tabernacle, Inc., by its attorney John B. Gontrum, Romadka & Gontrum, LLC, hereby requests a Hearing on its Motion to Dismiss in the above-captioned case.

John B. Gontrum
ROMADKA & GONTRUM, LLC
814 Eastern Boulevard
Baltimore, MD 21221
(410) 686-8274

*Attorney for Respondent*
*Apostolic Truth Tabernacle, Inc.*

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**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

The Petition for Judicial Review filed by James Stephens and Marilyn Bartram should be dismissed due to the lack of standing of Petitioners to seek judicial review, and further due to the fact that the Petition is not based on a final order from the County Board of Appeals of Baltimore County.

The Petitioners were not parties to either the Zoning Special Hearing, Case No. 03-040-SPH, or to the Development Hearing, Case No. III-446. The two cases were tried together before the County Hearing Officer/Deputy Zoning Commissioner over a seven (7) day period pursuant to Baltimore County Code Section 26-206.1. The two Petitioners, furthermore, did not testify or present

exhibits at the evidentiary hearing before the Zoning Commissioner/the Hearing Officer. They did not present any argument to the County Board of Appeals.

The Petitioners also do not live within sight or sound of the subject property, for their property lies about 1,000 feet east of the subject site across McDonogh Road. Both intersections with the loop of Field Road and McDonogh Road intervene between the residence stated by Petitioners in their Petition and the subject property.

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The Petition for Judicial Review also should be dismissed for it is not timely. The Petition is seeking review of an administrative order that is doing two things: (i) continuing a case for a full de novo hearing on the merits, and (ii) remanding a decision to the finder of fact for articulation of the basis for the decision. Neither of these components of the Order creates a final disposition of the case.

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brought by Apostolic Truth Tabernacle. Consequently, there has been no final disposition of the case.

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The Petition for Judicial Review provokes the question of what is it that the Court is supposed to do? Is it supposed to reverse the Board? If so, does that mean that the Development Plan is approved? The Board did not approve the Plan, and it strains credulity to believe that the Petitioners herein actually want the Plan approved. Is the Court supposed to affirm the Board? If so, why did the Petitioners take the appeal? Is the Court supposed to remand to the Board for fact finding? That is the function of the Hearing Officer, and the Appellate Courts have been consistent in demanding that the finder of fact articulate reasons for the findings of fact.

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In summary, the Petition for Judicial Review does not meet the requirements of timeliness of filing. It should be dismissed.

Respectfully submitted,

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*Attorney for Respondent*
*Apostolic Truth Tabernacle, Inc.*

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**MOTION TO DISMISS**

Now Comes Apostolic Truth Tabernacle, Inc., Respondent, by and through its attorneys John B. Gontrum and Romadka & Gontrum, LLC, and moves this Court pursuant to Maryland Rule 7-204(b) to dismiss the above-referenced case and in support thereof say as follows:

1. The Petitioners for Judicial Review, James Stephens and Marilyn Bartram, lack the required standing to pursue an appeal.
    a. The Appellants, who live neither within sight nor sound of the proposed use, do not fit within the definition of persons aggrieved, and therefore lack standing to file an appeal.

b. The Appellants did not actively participate in either the Development Hearing or the Zoning Hearing, at either the level of the Zoning Commissioner or the County Board of Appeals.

2. The case is not ripe for adjudication on appeal.

a. The case is not from a final Order of the County Board of Appeals in that the Board's Order continued the Zoning Special Hearing for a trial de novo before it; so that there has been no trial of the merits of the matter and, therefore, no final Order.

b. The case is not from a final Order of the County Board of Appeals in that the Board remanded the case for the Hearing Officer to clarify his decision and state reasons therefore. The Board did not finally determine the merits of the case but asked for the Hearing Officer to review his Order and state reasoning.

Accordingly, the Board has yet to make a ruling on the issues presented under the Zoning Petition and the Development Plan, and the rights of the parties have not been finally determined.

Wherefore, the Petition for Judicial Review should be denied and costs assessed against the Petitioners.

John B. Gontrum
ROMADKA & GONTRUM, LLC
814 Eastern Boulevard
Baltimore, MD 21221
(410) 686-8274

*Attorney for Respondent*
*Apostolic Truth Tabernacle, Inc.*

5/27/03 ?

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

| | | |
|---|---|---|
| PETITION OF:<br>McDONOGH-FIELD ASSN., by Pres.<br>PHYLLIS BROTMAN, and individuals<br>PHYLLIS BROTMAN, HOWARD GERSH,<br>MICHAEL WHITFIELD, M.D., MICHAEL<br>HENNESSY, SUSAN GREENBERG,<br>MICHAEL FINKELSTEIN, JOE HOWARD,<br>VLADIMIR VOLINSKY, HARRY SCHREIBER,<br>J. TAETLE, and JUDY SKOLNIK<br>8106 McDonogh Road<br>Pikesville, Maryland 21208 | * | |
| FOR JUDICIAL REVIEW OF THE<br>OPINION OF THE COUNTY BOARD OF<br>APPEALS OF BALTIMORE COUNTY<br>CASE NO.: CBA-03-109<br>Old Courthouse, Room 49<br>400 Washington Avenue<br>Towson, Maryland 21204 | * | **CIVIL ACTION**<br>**NO. 3-C-03-4661** |
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE<br>RE: DEVELOPMENT PLAN/PDM III-446<br>N/S OF McDONOGH ROAD @<br>NW CORNER OF FIELD ROAD<br>3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | |

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

**MOTION TO DISMISS**

Now Comes Apostolic Truth Tabernacle, Inc., Respondent, by and through its attorneys John B. Gontrum and Romadka & Gontrum, LLC and moves this Court pursuant to Maryland Rule 7-204(b) to dismiss the above-referenced case and in support thereof says as follows:

1. The case is not ripe for judicial review. The case is not from a final Order of the County Board of Appeals in that the Board's Order continued the

Zoning Special Hearing for a trial de novo before it; so that there has been no trial of the merits of the matter and therefore no final Order.

2. Also, the case is not from a final Order of the County Board of Appeals in that the Board remanded the case for the Hearing Officer to clarify his decision and state reasons therefore. The Board did not finally determine the merits of the case but asked for the Hearing Officer to review his Order and state reasoning.

3. Accordingly, the Board has yet to make a ruling on the issues presented under the Zoning Petition and the Development Plan, and the rights of the parties have not been finally determined.

Wherefore, the Petition for Judicial Review should be denied and costs assessed against the Petitioners.

John B. Gontrum
ROMADKA & GONTRUM, LLC
814 Eastern Boulevard
Baltimore, MD 21221
(410) 686-8274

*Attorney for Respondent*
*Apostolic Truth Tabernacle, Inc.*

5/19/03

IN THE CIRCUIT COURT FOR *
BALTIMORE COUNTY *

PETITION OF: *
McDONOGH-FIELD ASSN. by President * Case No. C-03-4661
PHYLLIS BROTMAN and individuals *
HOWARD GERSH, DR. MICHAEL WHITFIELD, *
MICHAEL HENNESSY, SUSAN GREENBERG, *
MICHAEL FINKELSTEIN, JOE HOWARD, *
VLADIMIR VOLINSKY, HARRY SCHREIBER, *
J. TAETLE, JUDY SKOLNIK and PHYLLIS *
BROTMAN *
8105 McDONOGH ROAD *
PIKESVILLE, MD 21208 *

IN THE MATTER OF: *
APOSTOLIC TRUTH TABERNACLE *
N/S McDONOGH ROAD *
AT NW CORNER OF FIELD ROAD *
PDM # 446 *

3rd ELECTION DISTRICT *
3rd COUNCILMANIC DISTRICT *

RE: PETITION FOR SPECIAL *
HEARING & DECISION OF HEARING
OFFICER/DEVELOPMENT PLAN *

BEFORE THE COUNTY BOARD OF *
APPEALS OF BALTIMORE COUNTY
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204
CASE NO: CBA-03-109 and *
03-040-SPH

RECEIVED
MAY 19 2003
ZONING COMMISSIONER

2003 MAY 19 A 11:00
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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

**MOTION FOR STAY**

Pursuant to Maryland Rule 7-205, Petitioners McDonogh Field Association, by Phyllis Brotman, President and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, J. Taetle, Judy Skolnik and Phyllis Brotman, through J. Carroll Holzer and Holzer & Lee, request,

LAW OFFICE
OLZER AND LEE
HE 508 BUILDING
FAIRMOUNT AVENUE
WSON, MARYLAND
21286

(410) 825-6961
X: (410) 825-4923

pursuant to the aforementioned Rule, a Stay of the Order or Action of the Administrative Agency pending Judicial Review of this case for the following reasons:

1. That this matter comes before the Circuit Court from a Petition for Special Hearing and Development Plan being filed for the "Apostolic Truth Tabernacle" involving property located at the northwest corner of the intersection on McDonogh Road and Field Road in the Owings Mills area of Baltimore County. The property comprises a gross acreage of 8.57 acres, more or less, all of which is zoned DR-1. The owner of the property proposes to develop the subject site with a multi-purpose center, a school building, a children's daycare facility, and at some time in the future, a church sanctuary. The particulars of the proposed development are more particularly shown on the Development Plan submitted as Developer's Exhibit # 1 A and B before the Deputy Zoning Commissioner/Hearing Officer for Baltimore County. The Petitioners participated as Protestants at the Hearing Officer's Hearing, which lasted five full days of testimony concerning this issue. The Hearing was held to jointly consider not only the Development Plan, but also the Special Hearing request of the owner by the property. Numerous issues were raised before the Hearing Officer and it was agreed between the parties that the testimony related to both the Special Hearing and Development Plan would be given at one time by each witness and not bifurcated.

   On February 6, 2003 the Petition for Special Hearing was denied by the Zoning Commissioner. He then denied the Development Plan on the basis that the proposal failed to satisfy the underlying requirements of the Baltimore County Zoning Regulations and, therefore, the Development Plan could not be approved (see Exhibit # 1 attached hereto).

2. That, thereafter, the Apostolic Truth Tabernacle filed an Appeal with the County Board of Appeals alleging errors by the Hearing Officer (Exhibit # 2). Thereafter, Protestants/Petitioners herein filed an Answer to the Petition for Appeal (Exhibit # 3).
3. The CBA held a Hearing on March 27, 2003 at which time oral arguments were heard on the Appeal of the Development Plan and Motions submitted by Protestants (see Exhibit #4, Protestants' Motions to determine extent of CBA Review).
4. The Board of Appeals, in its Opinion and Order, issued, on April 4, 2003, remanded the case back to the Hearing Officer. In doing so, in the body of its Opinion, the Board stated, "in the Opinion of the Board, this matter should be remanded to the Hearing Officer in order for him to outline specific reasons for denial of the plan". However, in the Order portion of the Decision, the Board instructed the Hearing Officer to either approve or deny the plan in the following language:

   > "Order that this matter be and is hereby remanded to the Hearing Officer with instructions that the Hearing Officer set forth in detailed basis upon which the development plan is either approved or denied." (See Exhibit # 5)

5. As a result of the Board's Decision, a Petition for Judicial Review was filed by James Stevenson and Marilyn Bartrum vs. The Baltimore County Board of Appeals on April 25, 2003. Thereafter, the instant Petitioners filed an Appeal on April 28, 2003.
6. The Hearing Officer indicated in a letter dated April 30, 2003 that he intends to proceed with this matter unless a Stay is filed with the Circuit Court. Counsel for the Petitioners responded by indicating, in a letter dated May 5, 2003, that the prior practice of the Zoning Commissioner had been to defer the matter without the filing of a Motion for Stay (see Exhibits # 6 and # 7 attached hereto).

7. Petitioners herein respectfully request that the Circuit Court grant a Motion for Stay pending Judicial Review of this matter because the actions of the Board of Appeals, in its remand Order, constitute improper influence upon the Hearing Officer by requiring him to consider approval of the Development Plan, when in fact he has already denied the plan in his original Order. The County Board of Appeals stated it correctly in the body of their Opinion when it indicated that it should properly be remanded to the Hearing Officer for him to outline specific reasons for denial of the Plan. However, in their Order, the CBA, in effect, instructed the HO to reconsider his Decision of denial and consider approval of the Development Plan. Petitioners, herein, suggest that that was an improper action for the CBA to take.

8. A review of Protestants/Petitioners Motions before the Board (Exhibit # 4) indicate that the Protestants felt, under Argument # 3 d, that the Board should make the determination in the Special Hearing as to whether or not the Zoning Commissioner was correct in his interpretation of the RTA issues. If he were correct, then there is no need to address the Development Plan because the Development Plan fails. If he were wrong (and the CBA hears the Special Hearing de novo) then, on that basis, armed with the knowledge that the Special Hearing RTA requirements were met, the Hearing Officer could then determine whether or not that constituted sufficient basis to approve the plan.

As the case stands at the present time, the Hearing Officer is being forced to deny or approve the plan without knowing the ultimate position, or opinion of the CBA in regard to the resolution of the Special Hearing request.

Wherefore, Petitioners submit that the process envisioned by the CBA in its remand Order was in error as a matter of law and should be reversed.

Furthermore, if this case is permitted to proceed without a Stay, there will be significant hardship upon the Protestants/Petitioners and their legal position because they should not be forced into a position to appeal a reversal of the Hearing Officer's decision denying the Development Plan before the Special Hearing issue is resolved.

Finally, Petitioners request that no bond be required because this case involves a matter in the public interest, and since the Applicant already owns and lives on the subject property, there will be no prejudice to him occasioned by any Stay.

Respectfully submitted,

J. Carroll Holzer
508 Fairmount Avenue
Towson, MD 21286
410-825-6961
Attorney for Petitioners
410-825-6961

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that on this 19th day of May, 2003, a copy of the foregoing Motion to Stay was mailed first class, postage pre-paid, People's Counsel for Baltimore County, Basement Old Courthouse, 400 Washington Avenue, Towson, MD 21204; and John B. Gontrum, Esq., Romadka & Gontrum, 814 Eastern Boulevard, Baltimore, MD 21221; and David Greenbaum, Esq., Freeman, Wolfe & Greenbaum, P.A., 409 Washington Ave., Suite 300, Towson, MD 21286.

J. Carroll Holzer

Ex #1

| | | |
|---|---|---|
| IN RE: DEVELOPMENT PLAN HEARING & SPECIAL HEARING REQUEST | * | BEFORE THE |
| N/S of McDonogh Road @ NW Corner of Field Road | * | DEPUTY ZONING COMMISSIONER/ |
| 3rd Election District | * | HEARING OFFICER |
| 3rd Councilmanic District (Apostolic Truth Tabernacle) | * | OF BALTIMORE COUNTY |
| Apostolic Truth Tabernacle By: Rev. Thomas Cobb *Petitioner/Developer* | * | Case Nos. III-446 & 03-040-SPH |

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

HEARING OFFICER'S OPINION & DEVELOPMENT PLAN ORDER

This matter comes before this Deputy Zoning Commissioner/Hearing Officer for Baltimore County, as a requested approval of a Development Plan and a Special Hearing Request. The Development Plan is for the project known as "The Apostolic Truth Tabernacle", which project bears Case No. III-446 and involves property located at the northwest corner of the intersection of McDonogh Road and Field Road in the Owings Mills area of Baltimore County. The property comprises a gross acreage of 8.57 acres, more or less, all of which is zoned D.R.1. The owner of the property proposes to develop the subject site with a church sanctuary, a multipurpose center, a school building, as well as a children's daycare facility. The particulars of the proposed development are more particularly shown on Developer's Exhibit Nos. 1A and 1B. In addition to the requested approval of the Development Plan, the property owner is also requesting special hearing relief to confirm that the development of the site is in compliance, to the extent possible, with RTA use requirements in accordance with Section 1B01.1.B.1.g.6 of the Baltimore County Zoning Regulations (B.C.Z.R.).

Appearing at the hearing on behalf of the Development Plan and Special Hearing Request were Pastor Thomas Cobb, appearing on behalf of the owner of the property, Rick Richardson, the professional engineer who prepared the site plan of the property, Thomas Ernst, and John B. Gontrum, attorney at law, who represented the Petitioners. Congregants of the church also attended the hearing. Appearing in opposition to the Petitioner's request were a number of

(Exhibit 1)

Ex #2

| | | |
|---|---|---|
| IN RE: DEVELOPMENT PLAN & SPECIAL HEARING REQUEST<br>N/S of McDonogh Road @ NW Corner of Field Road<br>3rd Election District<br>3rd Councilmanic District<br>(Apostolic Truth Tabernacle) | * | BEFORE THE<br>DEPUTY ZONING COMMISSIONER/<br>HEARING OFFICER<br>OF BALTIMORE COUNTY |
| Apostolic Truth Tabernacle and Pastor Thomas J. Cobb<br>Petitioners/Appellants | * | Development Case No. III-446 |

**********

PETITION FOR APPEAL

NOW COMES Apostolic Truth Tabernacle and Pastor Thomas J. Cobb, Petitioners/Appellants, by and through their attorneys, John B. Gontrum and Romadka & Gontrum, LLC, and file this Petition for Appeal pursuant to Sec. 26-209 of the Baltimore County Code, for the reasons stated as follows:

1. That the development standards and regulations all were met by the proposed development plan.
2. That the hearing officer found that the development standards were met but denied the development plan based on denial of the zoning special hearing.
3. That the zoning special hearing did not involve the location of the proposed development, but only the location of a long-existing dwelling and swimming pool.
4. That the proposed church development met all Residential Transition Area (RTA) and zoning standards.
5. That the hearing officer was in error in denying the special hearing for the RTA based on the testimony and evidence submitted.
6. That the hearing officer failed to find compelling government interest pursuant to the Religious Land Use and Institutionalized Persons Act of

(Exh #2)

Ex #3

| | | |
|---|---|---|
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | THE |
| | * | COUNTY BOARD OF APPEALS |
| 3RD Election District; 3RD Councilmanic<br>Apostolic Truth Tabernacle<br>Petitioner/ Developer<br>8216 McDonogh Road | * | OF<br><br>BALTIMORE COUNTY |
| Case No. III-446 and<br>03-040-SPH | * | Case No. 03-109<br>and 03-040-SPH |

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

**ANSWER TO PETITION FOR APPEAL**

Protestants, McDonogh Field Association by Phyllis B. Brotman, President, and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, Jay Taetle, Judy Skolnik, and Phyllis Brotman, individuals through J. Carroll Holzer and Holzer and Lee submit this Answer to the Petition for Appeal and says:

1. That the development standards and regulations were not met by the proposed development plan presented before the Hearing Officer.

2. It is incorrect to allege in the Petition for Appeal that the Hearing Officer found the development standards were met. A review of the Hearing Officer's Opinion and Development Plan Order does not make a finding that the development plan met all development regulation standards but for the denial of the Special Hearing.

3. The Zoning Special Hearing certainly did involve the location of the proposed Development in that once the property is converted to a church, the long existing dwelling and swimming pool became accessory uses to the church. Secondly, the existing dwelling and swimming pool are on the development plan and contained within its borders.

4. Protestants deny that the proposed church development met all the Residential Transition Area and zoning standards in that the Hearing Officer found a lack of compatibility, which is a requirement under the RTA regulations.

5. Protestants allege that the Hearing Officer did not err in denying the Special Hearing. The Board reviews this matter de novo.



(Exh #3)

Ex #4

| | | |
|---|---|---|
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | THE |
| | * | COUNTY BOARD OF APPEALS |
| 3RD Election District; 3RD Councilmanic<br>Apostolic Truth Tabernacle<br>Petitioner/ Developer<br>8216 McDonogh Road | * | OF |
| | * | BALTIMORE COUNTY |
| Case No. III-446 and<br>03-040-SPH | * | Case No. 03-109<br>and 03-040-SPH |

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

**MOTION TO DETERMINE EXTENT OF CBA REVIEW OF THE DEVELOPMENT PLAN IN ORDER TO PROPERLY PREPARE FOR THIS CASE**

Now comes the Protestants/Appellees, McDonogh Field Association, by Phyllis Brotman, President, and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, Jay Taetle, Judy Skolnik, and Phyllis Brotman individuals through J. Carroll Holzer and Holzer and Lee and submits this Motion and says:

1. This case consists of a Hearing de novo on a Petition for Special Hearing, related to the issue of compatibility and the RTA zoning requirements; and secondly, a review of the Development Plan denial pursuant to Section 26-209 of the Baltimore County Code.

Therefore, the Board must review the development plan denial on the record, and the Special Hearing de novo. This case was tried jointly below before the Zoning Commissioner/Hearing Officer consisting of at least five full days of hearings in December, 2002 and September 5, October 23, and October 30, 2002. By agreement of counsel, they were tried together, that is that the testimony



(Ex. 4)

Ex #5

| | | |
|---|---|---|
| IN THE MATTER OF<br>APOSTOLIC TRUTH TABERNACLE<br>N/S MCDONOGH ROAD @ NW COR<br>OF FIELD ROAD /PDM III-446<br>3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | BEFORE<br><br>COUNTY BOARD OF APPEALS<br><br>OF<br><br>BALTIMORE COUNTY |
| PETITION FOR SPECIAL HEARING &<br>DECISION OF HEARING OFFICER<br>/DEVELOPMENT PLAN | * | CASE NO. CBA-03-109 and<br>CASE NO. 03-040-SPH<br>**[Remanded as to CBA-03-109;<br>03-040-SPH Continued and on Hold]** |

* * * * * * * * *

## OPINION /ORDER FOR REMAND

This matter comes before the Board on appeal from a final order of the Hearing Officer /Deputy Zoning Commissioner in which a Development Plan and special hearing relief were denied. The Board held a hearing on March 27, 2003 at which oral argument was heard on the Petition for Appeal and various Motions submitted by the Protestants at that time. Petitioner /Appellant was represented by John B. Gontrum, Esquire, and the Protestants were represented by J. Carroll Holzer, Esquire. The primary issue at this particular time was the manner in which the Board would proceed with the hearings on the Development Plan and the special hearing.

The Deputy Zoning Commissioner /Hearing Officer held 5 days of hearing in this matter below. The matters were tried jointly in the hearing by agreement of the parties.

In accordance with § 26-209 of the *Baltimore County Code* (the "Code"), the Board has traditionally reviewed development plans on the basis of the record below before the Hearing Officer and the oral argument of the parties. While the Board is authorized to take additional testimony, it traditionally has not taken additional oral testimony at the time of oral argument. In reviewing a development plan, the Board may remand the matter to the Hearing Officer, affirm the Plan, or reverse or modify the decision under certain conditions.

(Exh # 5)

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

April 30, 2003

Ex #6

John Gontrum, Esquire
Romadka, Gontrum & McLaughlin
814 Eastern Boulevard
Baltimore, Maryland 21221

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286

Re: Hearing Officer's Hearing No. III-446 & Case No. 03-040-SPH
Property: N/S McDonogh Road @ NW Corner of Field Road
3rd Election District, 3rd Councilmanic District
(The Apostolic Truth Tabernacle)

Dear Messrs. Gontrum & Holzer:

As both of you know, this particular case has been remanded back to me as Hearing Officer for Baltimore County for a reconsideration of my decision which I rendered on February 6, 2003. The Board of Appeals has instructed that I set forth in detail the basis upon which the Development Plan is either approved or denied. The decision of the Board of Appeals was rendered the 4th day of April, 2003.

I have been advised that a Petition for Judicial Review of the Board's decision has been filed by Mr. Holzer on behalf of his clients. Therefore, I believe it is appropriate to advise both of you gentlemen of the procedures that I intend to follow regarding this Order for Remand issued by the Board of Appeals.

I intend to proceed with the issuance of a new Order pursuant to the instructions provided to me by the Board of Appeals. Based on the language of the Board's Order, I do not believe it is necessary or appropriate to have an additional hearing. The Board did not instruct that a new hearing be held regarding this case. Therefore, I shall rule upon the matter based on the evidence that was presented during the original five days of hearings scheduled before me. It is not necessary for either party to attempt to schedule a new hearing date for this case.



(Ex #6)

Printed with Soybean Ink on Recycled Paper

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING
508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

FILE COPY

May 5, 2003

Ex #7

Timothy Kotroco
Deputy Zoning Commissioner
for Baltimore County
401 Bosley Avenue, 4th Floor
Towson, MD 21204

Re: Hearing Officer's Hearing III-446
Case No. 03-040 SPH

Dear Mr. Kotroco:

I received your letter of April 30, 2003 in the mail on Monday, May 5, 2003 and take note of the comments in regard to a Motion for Stay. While, indeed, I will pursue a Motion for Stay in the Circuit Court, I do not believe that your ruling is consistent with the past practice of the Zoning Commissioner's Office. In a similar matter in the Ensor Development Plan Case, attached hereto, the Zoning Commissioner did not take any action pending action by the Circuit Court and ultimately, the Court of Special Appeals. I believe the past practice was the proper method of proceeding. However, in light of your comments, a Motion for Stay will be filed in the very near future, and a copy will be forwarded to you.

Respectfully submitted,

J. Carroll Holzer

cc: John Gontrum
cc: David Greenbaum

JCH: bdm

(Exh 7)

C:\My Documents\Letters\Tim Kotroco--5-5-03.doc

5/12/03

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
McDONOGH-FIELD ASSN., by Pres. *
PHYLLIS BROTMAN, and individuals
PHYLLIS BROTMAN, HOWARD *
GERSH, MICHAEL WHITFIELD, M.D.,
MICHAEL HENNESSY, SUSAN *
GREENBERG, MICHAEL
FINKELSTEIN, JOE HOWARD, *
VLADIMIR VOLINSKY, HARRY
SCHREIBER, J. TAETLE, and *
JUDY SKOLNIK
8106 McDONOGH ROAD *
PIKESVILLE, MD 21208
* CIVIL ACTION
FOR JUDICIAL REVIEW OF THE NO.: 03-C-03-4661
OPINION OF THE COUNTY BOARD *
OF APPEALS OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

IN THE MATTER OF: *
APOSTOLIC TRUTH TABERNACLE
*
RE: DEVELOPMENT PLAN/PDM III-446
*
3RD ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT *

CASE NO.: CBA-03-109 *

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

RECEIVED AND FILED
2003 MAY 12 A 9:38
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

**SECOND CERTIFICATE OF NOTICE**

Madam Clerk:

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

J. Carroll Holzer, Esquire
Holzer & Lee, 508 Fairmount Ave., Towson, MD 21286

Jack Dillion, et al
Executive Director, The Valleys Planning Council, Inc., 207 Courtland Avenue, Towson, MD 21204

McDonogh-Field Association
Phyllis B. Brotman, President, c/o 8105 McDonogh Road, Pikesville, MD 21208

Phyllis B. Brotman, Individually
8105 McDonogh Road, Pikesville, MD 21208

Howard B. Gersh
4 Babette Court, Pikesville, MD 21208

Michael Whitfield, M.D.
8215 McDonogh Road, Pikesville, MD 21208

Michael Hennessey
9147 Field Road, Pikesville, MD 21208

Susan Greenberg
8109 McDonogh Road, Pikesville, MD 21208

Michael Finkelstein
9118 Field Road, Pikesville, MD 21208

Joseph Howard
9119 Field Road, Pikesville, MD 21208

Vladimir Volinsky
9141 Field Road, Pikesville, MD 21208

Harry Schreiber
9110 Field Road, Pikesville, MD 21208

Jay S. Taetle
8125 McDonogh Road, Pikesville, MD 21208

Judith Skolnik
8123 McDonogh Road, Pikesville, MD 21208

David Greenbaum, Esquire
409 Washington Avenue, Suite 300, Towson, MD 21204

James Stephens, et al
c/o David Greenbaum, Esquire, 409 Washington Avenue, Suite 300, Towson, MD 21204

John B. Gontrum, Esquire
ROMADKA & GONTRUM LLC, 814 Eastern Boulevard, Baltimore, MD 21221

Thomas Ernst, Esquire
ROMADKA & GONTRUM LLC, 814 Eastern Boulevard, Baltimore, MD 21221

Pastor Thomas Cobb
Apostolic Truth Tabernacle, 8216 McDonogh Road, Pikesville, MD 21208

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

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

Theresa R. Shelton

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

**I HEREBY CERTIFY** that a copy of the foregoing Certificate of Notice has been mailed to: David Greenbaum, Esquire, 409 Washington Avenue, Suite 300, Towson, MD 21204; James Stephens, et al, c/o David Greenbaum, Esquire, 409 Washington Avenue, Suite 300, Towson, MD 21204; John B. Gontrum, Esquire, ROMADKA & GONTRUM LLC, 814 Eastern Boulevard, Baltimore, MD 21221; Thomas Ernst, Esquire, ROMADKA & GONTRUM LLC, 814 Eastern Boulevard, Baltimore, MD 21221; Pastor Thomas Cobb, Apostolic Truth Tabernacle, 8216 McDonogh Road, Pikesville, MD 21208; J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Ave., Towson, MD 21286; Jack Dillion, et al., Executive Director,

The Valleys Planning Council, Inc., 207 Courtland Avenue, Towson, MD 21204; McDonogh-Field Association, Phyllis B. Brotman, President, c/o 8105 McDonogh Road, Pikesville, MD 21208; Phyllis B. Brotman, Individually, 8105 McDonogh Road, Pikesville, MD 21208; Howard B. Gersh, 4 Babette Court, Pikesville, MD 21208; Michael Whitfield, M.D., 8215 McDonogh Road, Pikesville, MD 21208; Michael Hennessey, 9147 Field Road, Pikesville, MD 21208; Susan Greenberg, 8109 McDonogh Road, Pikesville, MD 21208; Michael Finkelstein, 9118 Field Road, Pikesville, MD 21208; Joseph Howard, 9119 Field Road, Pikesville, MD 21208; Vladimir Volinsky, 9141 Field Road, Pikesville, MD 21208; Harry Schreiber, 9110 Field Road, Pikesville, MD 21208; Jay S. Taetle, 8125 McDonogh Road, Pikesville, MD 21208; Judith Skolnik, 8123 McDonogh Road, Pikesville, MD 21208 and Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, this 12th day of May, 2003.

Theresa R. Shelton

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

County Board of Appeals of Baltimore County

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

May 12, 2003

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

**RE: Circuit Court Civil Action No. 3-C-03-4661**
**Second Petition for Judicial Review**
*Apostolic Truth Tabernacle*
Case No.: CBA-03-109

Dear Mr. Holzer:

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

The cost of the transcript of the record must be paid prior to the record being submitted. Please verify payment of the transcript in this matter. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be paid, prior to the filing of the record. Please call me to verify that the costs for the certified copies have been paid.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with the Maryland Rules.

Enclosed is a copy of the Second Certificate of Notice.

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Legal Secretary

/trs
Enclosure
c: John B. Gontrum, Esquire
Thomas Ernst, Esquire
Paster Thomas Cobb, Apostolic Truth Tabernacle
David Greenbaum, Esquire
James Stephens, et al, c/o David Greenbaum, Esq.
Peter Max Zimmerman / People's Counsel for Baltimore County

Printed with Soybean Ink on Recycled Paper

County Board of Appeals of Baltimore County

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

May 12, 2003

John B. Gontrum, Esquire
Thomas Ernst, Esquire
ROMADKA & GONTRUM LLC
814 Eastern Boulevard
Baltimore, MD 21221

**RE: Circuit Court Civil Action No. 3-C-03-4606**
**Petition for Judicial Review**
**Circuit Court Civil Action No. 3-C-03-4661**
**Second Petition for Judicial Review**
*Apostolic Truth Tabernacle*
Case No.: CBA-03-109

Dear Messrs. Gontrum and Ernst:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on April 25, 2003, in the Circuit Court for Baltimore County; Civil Action number C-03-4606 and a Second Petition for Judicial Review was filed on April 28, 2003, in the Circuit Court for Baltimore County; Civil Action number C-03-4661 from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petitions must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. **3-C-03-4606 and/or 3-C-03-4661, respectively.**

Enclosed is a copy of the Certificate of Notice and Second Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosures
c: Paster Thomas Cobb, Apostolic Truth Tabernacle
J. Carroll Holzer, Esquire
Jack Dillion, et al
Phyllis B. Brotman, et al
David Greenbaum, Esquire
James Stephens, et al, c/o David Greenbaum, Esq.
Peter Max Zimmerman / People's Counsel for Baltimore County
Pat Keller, Director / Planning
Lawrence E. Schmidt, Zoning Commissioner
Donald Rascoe, Development Mgr / PDM
Arnold Jablon, Director/PDM

Printed with Soybean Ink on Recycled Paper

5/12/03

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
JAMES STEPHENS AND *
MARILYN BARTRAM
8115 McDONOGH ROAD *
PIKESVILLE, MD 21208
* CIVIL ACTION
FOR JUDICIAL REVIEW OF THE NO.: 03-C-03-4606
OPINION OF THE COUNTY BOARD *
OF APPEALS OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

IN THE MATTER OF: *
APOSTOLIC TRUTH TABERNACLE
*
RE: DEVELOPMENT PLAN/PDM III-446
*
3RD ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT *

CASE NO.: CBA-03-109 *

* * * * * * * * * * *

RECEIVED AND FILED
2003 MAY 12 A 9:37
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

**CERTIFICATE OF NOTICE**

Madam Clerk:

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

David Greenbaum, Esquire
409 Washington Avenue, Suite 300, Towson, MD 21204

James Stephens, et al
c/o David Greenbaum, Esquire, 409 Washington Avenue, Suite 300, Towson, MD 21204

John B. Gontrum, Esquire
ROMADKA & GONTRUM LLC, 814 Eastern Boulevard, Baltimore, MD 21221

Thomas Ernst, Esquire
ROMADKA & GONTRUM LLC, 814 Eastern Boulevard, Baltimore, MD 21221

Pastor Thomas Cobb
Apostolic Truth Tabernacle, 8216 McDonogh Road, Pikesville, MD 21208

J. Carroll Holzer, Esquire
Holzer & Lee, 508 Fairmount Ave., Towson, MD 21286

Jack Dillion, et al
Executive Director, The Valleys Planning Council, Inc., 207 Courtland Avenue, Towson, MD 21204

McDonogh-Field Association
Phyllis B. Brotman, President, c/o 8105 McDonogh Road, Pikesville, MD 21208

Phyllis B. Brotman, Individually
8105 McDonogh Road, Pikesville, MD 21208

Howard B. Gersh
4 Babette Court, Pikesville, MD 21208

Michael Whitfield, M.D.
8215 McDonogh Road, Pikesville, MD 21208

Michael Hennessey
9147 Field Road, Pikesville, MD 21208

Susan Greenberg
8109 McDonogh Road, Pikesville, MD 21208

Michael Finkelstein
9118 Field Road, Pikesville, MD 21208

Joseph Howard
9119 Field Road, Pikesville, MD 21208

Vladimir Volinsky
9141 Field Road, Pikesville, MD 21208

Harry Schreiber
9110 Field Road, Pikesville, MD 21208

Jay S. Taetle
8125 McDonogh Road, Pikesville, MD 21208

Judith Skolnik
8123 McDonogh Road, Pikesville, MD 21208

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

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

Theresa R. Shelton

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

**I HEREBY CERTIFY** that a copy of the foregoing Certificate of Notice has been mailed to: David Greenbaum, Esquire, 409 Washington Avenue, Suite 300, Towson, MD 21204; James Stephens, et al, c/o David Greenbaum, Esquire, 409 Washington Avenue, Suite 300, Towson, MD 21204; John B. Gontrum, Esquire, ROMADKA & GONTRUM LLC, 814 Eastern Boulevard, Baltimore, MD 21221; Thomas Ernst, Esquire, ROMADKA & GONTRUM LLC, 814 Eastern Boulevard, Baltimore, MD 21221; Pastor Thomas Cobb, Apostolic Truth Tabernacle, 8216 McDonogh Road, Pikesville, MD 21208; J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Ave., Towson, MD 21286; Jack Dillion, et al., Executive Director, The Valleys Planning Council, Inc., 207 Courtland Avenue, Towson, MD 21204; McDonogh-Field Association, Phyllis B. Brotman, President, c/o 8105 McDonogh Road, Pikesville, MD 21208; Phyllis B. Brotman, Individually, 8105 McDonogh Road, Pikesville, MD 21208; Howard B. Gersh, 4 Babette Court, Pikesville, MD 21208; Michael Whitfield, M.D., 8215 McDonogh Road, Pikesville, MD 21208; Michael Hennessey, 9147 Field Road, Pikesville, MD 21208; Susan Greenberg, 8109 McDonogh Road, Pikesville, MD 21208; Michael Finkelstein, 9118 Field Road, Pikesville, MD 21208; Joseph Howard, 9119 Field Road, Pikesville, MD 21208; Vladimir Volinsky, 9141 Field Road, Pikesville, MD 21208; Harry

Schreiber, 9110 Field Road, Pikesville, MD 21208; Jay S. Taetle, 8125 McDonogh Road, Pikesville, MD 21208; Judith Skolnik, 8123 McDonogh Road, Pikesville, MD 21208 and Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, this 12th day of May, 2003.

Theresa R. Shelton

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

County Board of Appeals of Baltimore County

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

May 12, 2003

David Greenbaum, Esquire
409 Washington Avenue
Suite 300
Towson, MD 21204

**RE: Circuit Court Civil Action No. 3-C-03-4606**
**Petition for Judicial Review**
*Apostolic Truth Tabernacle*
Case No.: CBA-03-109

Dear Mr. Greenbaum:

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

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with the Maryland Rules.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure
c: John B. Gontrum, Esquire
Thomas Ernst, Esquire
Paster Thomas Cobb, Apostolic Truth Tabernacle
J. Carroll Holzer, Esquire
Jack Dillion, et al
Phyllis B. Brotman, et al
Peter Max Zimmerman / People's Counsel for Baltimore County

Printed with Soybean Ink on Recycled Paper

4/28/03

2nd

C-03-4661

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF:
McDONOGH-FIELD ASSN. by President PHYLLIS BROTMAN and individuals HOWARD GERSH, DR. MICHAEL WHITFIELD, MICHAEL HENNESSY, SUSAN GREENBERG, MICHAEL FINKELSTEIN, JOE HOWARD, VLADIMIR VOLINSKY, HARRY SCHREIBER, J. TAETLE, JUDY SKOLNIK and PHYLLIS BROTMAN
8105 McDONOGH ROAD
PIKESVILLE, MD 21208

Case No.

RECEIVED
APR 30 2003
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:
APOSTOLIC TRUTH TABERNACLE
N/S McDONOGH ROAD
AT NW CORNER OF FIELD ROAD
PDM # 446

3 RD ELECTION DISTRICT
3 RD COUNCILMANIC DISTRICT

RE: PETITION FOR SPECIAL HEARING & DECISION OF HEARING OFFICER/DEVELOPMENT PLAN

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
CASE NO: CBA-03-109 and 03-040-SPH

2003 APR 28 P 12:02
CLERK OF CIRCUIT COURT
BALTIMORE COUNTY

## PETITION FOR JUDICIAL REVIEW

Pursuant to Rule 7-202, Petitioners, McDonogh-Field Association by Phyllis B. Brotman, President and individuals, Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, J. Taetle, Judy Skolnik and Phyllis Brotman, through J. Carroll Holzer and Holzer & Lee, request Judicial

LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

(410) 825-6961
FAX: (410) 825-4923

Review of the Opinion/Order for Remand in the above referenced matter rendered on April 4, 2003 and attached hereto.

Petitioners were parties below and fully participated in the proceedings.

Respectfully Submitted,

J. Carroll Holzer, Esquire
508 Fairmount Ave.
Towson, MD 21286
410-825-6961
Attorney for Petitioners

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that on this 28th day of April, 2003, a copy of the foregoing Petition for Judicial Review was mailed first class, postage pre-paid, to the Board of Appeals for Baltimore County, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204; People's Counsel for Baltimore County, Basement Old Courthouse, 400 Washington Avenue, Towson, MD 21204; and John B. Gontrum, Esq., Romadka & Gontrum, 814 Eastern Boulevard, Baltimore, MD 21221; and David Greenbaum, Esq., Freeman, Wolfe & Greenbaum, P.A., 409 Washington Ave., Suite 300, Towson, MD 21286.

J. Carroll Holzer

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

Case Number: 03-C-03-004661

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

| | | |
|---|---|---|
| IN THE MATTER OF<br>APOSTOLIC TRUTH TABERNACLE<br>N/S MCDONOGH ROAD @ NW COR<br>OF FIELD ROAD /PDM III-446<br>3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | BEFORE<br><br>COUNTY BOARD OF APPEALS<br><br>OF<br><br>BALTIMORE COUNTY |
| PETITION FOR SPECIAL HEARING &<br>DECISION OF HEARING OFFICER<br>/DEVELOPMENT PLAN | * | CASE NO. CBA-03-109 and<br>CASE NO. 03-040-SPH<br>**[Remanded as to CBA-03-109;<br>03-040-SPH Continued and on Hold]** |

* * * * * * * * *

## OPINION /ORDER FOR REMAND

This matter comes before the Board on appeal from a final order of the Hearing Officer /Deputy Zoning Commissioner in which a Development Plan and special hearing relief were denied. The Board held a hearing on March 27, 2003 at which oral argument was heard on the Petition for Appeal and various Motions submitted by the Protestants at that time. Petitioner /Appellant was represented by John B. Gontrum, Esquire, and the Protestants were represented by J. Carroll Holzer, Esquire. The primary issue at this particular time was the manner in which the Board would proceed with the hearings on the Development Plan and the special hearing.

The Deputy Zoning Commissioner /Hearing Officer held 5 days of hearing in this matter below. The matters were tried jointly in the hearing by agreement of the parties.

In accordance with § 26-209 of the *Baltimore County Code* (the "Code"), the Board has traditionally reviewed development plans on the basis of the record below before the Hearing Officer and the oral argument of the parties. While the Board is authorized to take additional testimony, it traditionally has not taken additional oral testimony at the time of oral argument. In reviewing a development plan, the Board may remand the matter to the Hearing Officer, affirm the Plan, or reverse or modify the decision under certain conditions.

4/28/03

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING
508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

April 28, 2003
#7318

Suzanne Mensh
Clerk of the Court for the
Circuit Court of Baltimore County
County Courts Building
401 Bosley Avenue
Towson, MD 21204-0754

Re: Petition for Judicial Review; McDonogh-Field Assn., et al.
From the Decision of the County Board of Appeals

Dear Ms. Mensh:

Please file the enclosed Petition for Judicial Review in the above captioned matter. Attached is a check made payable to the Clerk of the Court to cover the cost. If you have any questions, please call me at 410-825-6961.

Very truly yours,

J. Carroll Holzer

Enclosure

JCH:clh

cc: John Gontrum, Esq.
Phyllis Brotman

RECEIVED
MAY 0 2 2003
BALTIMORE COUNTY
BOARD OF APPEALS

4/25/03

1st

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY *

PETITION OF:
JAMES STEPHENS AND
MARILYN BARTRAM OF
8115 McDONOGH ROAD
PIKESVILLE, MD 21208 * Case No.

IN THE MATTER OF:
APOSTOLIC TRUTH TABERNACLE
N/S McDONOGH ROAD
AT NW CORNER OF FIELD ROAD
PDM # 446

3 RD ELECTION DISTRICT
3 RD COUNCILMANIC DISTRICT

RE: PETITION FOR SPECIAL
HEARING & DECISION OF HEARING
OFFICER/DEVELOPMENT PLAN

BEFORE THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
CASE NO: CBA-03-109 and
03-040-SPH

03-4606

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

**PETITION FOR JUDICIAL REVIEW**

Pursuant to Rule 7-202, Petitioners, individuals James Stephens and Marilyn Bartram, his wife, by and through their attorney, David Greenbaum, Esquire, request Judicial Review of the Opinion/ Order for Remand in the above referenced matter rendered on April 4, 2003 and attached hereto.

Petitioners were parties before the County Board of Appeals and fully participated in the proceedings.

RECEIVED AND FILED

2003 APR 25 P 12: 02

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Respectfully Submitted,

David Greenbaum, Esquire
409 Washington Ave.
Suite 300
Towson, MD 21204
410-321-8400
Attorney for Petitioners

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that on this 25th day of April, 2003, a copy of the foregoing Petition for Judicial Review was mailed first class, postage pre-paid, to the Board of Appeals for Baltimore County, Basement, Old Courthouse, 400 Washington Ave., Towson, MD 21204; People's Counsel for Baltimore County, Basement Old Courthouse, 400 Washington Avenue, Towson, MD 21204; and John B. Gontrum, Esq., Romadka & Gontrum, 814 Eastern Boulevard, Baltimore, MD 21221; and J. Carroll Holzer, P.A., 508 Fairmount Ave., Towson, MD 21286.

David Greenbaum, Esquire

| | | |
|---|---|---|
| IN THE MATTER OF<br>APOSTOLIC TRUTH TABERNACLE<br>N/S MCDONOGH ROAD @ NW COR<br>OF FIELD ROAD /PDM III-446<br>3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | BEFORE<br><br>COUNTY BOARD OF APPEALS<br><br>OF<br><br>BALTIMORE COUNTY |
| PETITION FOR SPECIAL HEARING &<br>DECISION OF HEARING OFFICER<br>/DEVELOPMENT PLAN | * | CASE NO. CBA-03-109 and<br>CASE NO. 03-040-SPH<br>**[Remanded as to CBA-03-109;<br>03-040-SPH Continued and on Hold]** |

* * * * * * * * *

## OPINION /ORDER FOR REMAND

This matter comes before the Board on appeal from a final order of the Hearing Officer /Deputy Zoning Commissioner in which a Development Plan and special hearing relief were denied. The Board held a hearing on March 27, 2003 at which oral argument was heard on the Petition for Appeal and various Motions submitted by the Protestants at that time. Petitioner /Appellant was represented by John B. Gontrum, Esquire, and the Protestants were represented by J. Carroll Holzer, Esquire. The primary issue at this particular time was the manner in which the Board would proceed with the hearings on the Development Plan and the special hearing.

The Deputy Zoning Commissioner /Hearing Officer held 5 days of hearing in this matter below. The matters were tried jointly in the hearing by agreement of the parties.

In accordance with § 26-209 of the *Baltimore County Code* (the "Code"), the Board has traditionally reviewed development plans on the basis of the record below before the Hearing Officer and the oral argument of the parties. While the Board is authorized to take additional testimony, it traditionally has not taken additional oral testimony at the time of oral argument. In reviewing a development plan, the Board may remand the matter to the Hearing Officer, affirm the Plan, or reverse or modify the decision under certain conditions.

LAW OFFICES
FREEMAN, WOLFE & GREENBAUM, P.A.

MERCANTILE-TOWSON BUILDING
SUITE 300
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 321-8400
TELECOPIER (410) 321-8407
Lawyers@FWGLAW.COM

STEVEN R. FREEMAN*
THOMAS D. WOLFE
DAVID A. GREENBAUM*
CRAIG M. SCHWARTZ*

ANNA L. DAVIS
*ALSO ADMITTED DISTRICT OF COLUMBIA BAR

JOAN M. JOHNSON
ADMINISTRATOR

April 25, 2003

**By Hand Delivery**
Clerk's Office
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: James Stephens and Marilyn Bartram v. County Board of Appeals for Baltimore County
Administrative Appeal

Dear Sir/Madam:

Enclosed for filing in the above-captioned matter you will find an original and one (1) copy of a Petition for Judicial Review, Civil Non-Domestic Case Information Report, and Certificate of Service attesting that the Petition for Review has been served on the Respondent and other interested entities. Also enclosed is this firm's check in the amount of $100.00 to cover the cost of filing this suit.

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

Very truly yours,

David A. Greenbaum

DAG/cbc
Enclosures
cc: Mr. James Stephens and Ms. Marilyn Bartram
Board of Appeals for Baltimore County
People's Counsel for Baltimore County
John B. Gontrum, Esquire
J. Carroll Holzer, Esquire

RECEIVED
APR 28 2003
BALTIMORE COUNTY
BOARD OF APPEALS

**Circuit Court for** Baltimore County
City or County

# CIVIL--NON-DOMESTIC CASE INFORMATION REPORT

***Directions:***

***Plaintiff:*** *This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111.* ***A copy must be included for each defendant to be served.***

***Defendant:*** *You must file an Information Report as required by Rule 2-323(h).*

***THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER OR RESPONSE.***

FORM FILED BY: ☒ PLAINTIFF ☐ DEFENDANT CASE NUMBER: _____ *(Clerk to insert)*

CASE NAME: James Stephens and Marilyn Bartram (Petitioners) v County Board of Appeals for Baltimore County (Respondent)

JURY DEMAND: ☐ Yes ☒ No Anticipated length of trial: 2 hours or _____ days

RELATED CASE PENDING? ☐ Yes ☒ No If yes, Cases #(s), if known: _____

**Special Requirements?** ☐ Interpreter/communication impairment Which language _____
(Attach Form 1-332 if Accommodation or Interpreter Needed) Which dialect _____
☐ ADA accommodation: _____

## NATURE OF ACTION
(CHECK ONE BOX)

**TORTS**
- ☐ Motor Tort
- ☐ Premises Liability
- ☐ Assault & Battery
- ☐ Product Liability
- ☐ Professional Malpractice
- ☐ Wrongful Death
- ☐ Business & Commercial
- ☐ Libel & Slander
- ☐ False Arrest/Imprisonment
- ☐ Nuisance
- ☐ Toxic Torts
- ☐ Fraud
- ☐ Malicious Prosecution
- ☐ Lead Paint
- ☐ Asbestos
- ☐ Other

**LABOR**
- ☐ Workers' Comp
- ☐ Wrongful Discharge
- ☐ EEO
- ☐ Other _____

**CONTRACTS**
- ☐ Insurance
- ☐ Confessed Judgment
- ☐ Other _____

**REAL PROPERTY**
- ☐ Judicial Sale
- ☐ Condemnation
- ☐ Landlord Tenant
- ☐ Other _____

**OTHER**
- ☐ Civil Rights
- ☐ Environmental
- ☐ ADA
- ☒ Other Administrative Appeal

## DAMAGES/RELIEF

**A. TORTS**

**Actual Damages**
- ☐ Under $7,500
- ☐ $7,500 - $50,000
- ☐ $50,000 - $100,000
- ☐ Over $100,000

- ☐ Medical Bills $_____
- ☐ Property Damages $_____
- ☐ Wage Loss $_____

**B. CONTRACTS**
- ☐ Under $10,000
- ☐ $10,000 - $20,000
- ☐ Over $20,000

**C. NONMONETARY RELIEF**
- ☐ Declaratory Judgment
- ☐ Injunction
- ☒ Other Judicial reconsideration of agency decision

## ALTERNATIVE DISPUTE RESOLUTION INFORMATION

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)

A. Mediation ☐ Yes ☐ No
B. Arbitration ☐ Yes ☐ No
C. Settlement Conference ☐ Yes ☐ No
D. Neutral Evaluation ☐ Yes ☐ No

## TRACK REQUEST

*With the exception of Baltimore County and Baltimore City, please fill in the estimated* ***LENGTH OF TRIAL. THIS CASE WILL THEN BE TRACKED ACCORDINGLY.***

- ☐ ½ day of trial or less
- ☐ 1 day of trial time
- ☐ 2 days of trial time
- ☐ 3 days of trial time
- ☐ More than 3 days of trial time

**PLEASE SEE PAGE TWO OF THIS FORM FOR INSTRUCTIONS PERTAINING TO THE BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM AND ADDITIONAL INSTRUCTIONS IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY.**

*Date:* 4/25/07 *Signature:* _____

4/4/03

| | | |
|---|---|---|
| IN THE MATTER OF<br>APOSTOLIC TRUTH TABERNACLE<br>N/S MCDONOGH ROAD @ NW COR<br>OF FIELD ROAD /PDM III-446<br>3RD ELECTION DISTRICT<br>3RD COUNCILMANIC DISTRICT | * | BEFORE<br><br>COUNTY BOARD OF APPEALS<br><br>OF<br><br>BALTIMORE COUNTY |
| PETITION FOR SPECIAL HEARING &<br>DECISION OF HEARING OFFICER<br>/DEVELOPMENT PLAN | * | CASE NO. CBA-03-109 and<br>CASE NO. 03-040-SPH |
| | * | **[Remanded as to CBA-03-109;<br>03-040-SPH Continued and on Hold]** |

* * * * * * * * *

## OPINION /ORDER FOR REMAND

This matter comes before the Board on appeal from a final order of the Hearing Officer /Deputy Zoning Commissioner in which a Development Plan and special hearing relief were denied. The Board held a hearing on March 27, 2003 at which oral argument was heard on the Petition for Appeal and various Motions submitted by the Protestants at that time. Petitioner /Appellant was represented by John B. Gontrum, Esquire, and the Protestants were represented by J. Carroll Holzer, Esquire. The primary issue at this particular time was the manner in which the Board would proceed with the hearings on the Development Plan and the special hearing.

The Deputy Zoning Commissioner /Hearing Officer held 5 days of hearing in this matter below. The matters were tried jointly in the hearing by agreement of the parties.

In accordance with § 26-209 of the *Baltimore County Code* (the "Code"), the Board has traditionally reviewed development plans on the basis of the record below before the Hearing Officer and the oral argument of the parties. While the Board is authorized to take additional testimony, it traditionally has not taken additional oral testimony at the time of oral argument. In reviewing a development plan, the Board may remand the matter to the Hearing Officer, affirm the Plan, or reverse or modify the decision under certain conditions.

In the present case, Hearing Officer Kotroco denied the development plan and the special hearing relief. In doing so, he stated:

> ...Procedurally, I believe it to be in the best interests of all parties involved that the Development Plan as submitted be denied based on the uncertainty of the final design of the site and also the Denial of the special Hearing relief. It should be understood that the denial of this Development Plan is not based upon any of the substantive arguments made relating to: groundwater septic flow, the capacity of the septic reserve area, any inadequacy regarding forest buffers, inadequacy of parking, adverse effects on traffic patterns in the area, a lack of suitable outfall or flooding of neighboring properties, or any of the other substantive issues raised by the protestants in this case. The Development Plan shall be denied based on the fact that the development proposal fails to satisfy the requirements of the Baltimore County Zoning Regulations...Some may argue that the Development Plan should be dismissed as moot. However, I believe it more appropriate to deny the plan so that the matter can be appealed and the issue presented to the Board of Appeals. The Board may then hear the special hearing request *de novo* and has the flexibility, pursuant to Section 26-209 of the Baltimore County Code, to take whatever testimony and evidence they deem appropriate at their hearing on the Development Plan proposal....

The Board feels that it is entirely inappropriate for the Hearing Officer to shift the burden of deciding the approval or denial of the Development Plan on new testimony to be taken by the Board, when he has already taken five days of testimony with respect to the same matter. The Board also feels it is inappropriate for the Hearing Officer to deny a Development Plan stating that the denial is based on the fact that the development proposal fails to satisfy the requirements of the *Baltimore County Zoning Regulations* without stating how the Plan fails to meet those requirements. In the opinion of the Board, this matter should be remanded to the Hearing Officer in order for him to outline specific reasons for denial of the Plan.

## ORDER

**IT IS THEREFORE THIS** 4th day of April, 2003 by the County Board of Appeals of Baltimore County

**ORDERED** that this matter be and is hereby **REMANDED** to the Hearing Officer with instructions that the Hearing Officer set forth in detail the basis upon which the Development Plan is either approved or denied; and it is further

**ORDERED** that the hearing on the appeal of the denial of the Petition for Special Hearing in Case No. 03-040-SPH be continued, and rescheduled to a future date after the issuance of the decision of the Hearing Officer pursuant to the Remand Order set forth above.

**COUNTY BOARD OF APPEALS**
**OF BALTIMORE COUNTY**

Lawrence S. Wescott, Panel Chair

Charles L. Marks

Richard K. Irish

County Board of Appeals of Baltimore County

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

April 4, 2003

John B. Gontrum, Esquire
ROMADKA.& GONTRUM LLC
814 Eastern Boulevard
Baltimore, MD 21221

RE: In the Matter of: *Apostolic Truth Tabernacle*
Case No. CBA-03-109 (PDM III-446)
and Case No. 03-040-SPH
**Order of Remand as to CBA-03-109**

Dear Mr. Gontrum:

Enclosed please find a copy of the Board's Opinion /Order for Remand issued this date in the subject matter.

Very truly yours,

Kathleen C. Bianco /tms
Kathleen C. Bianco
**Administrator**

Enclosure

c: Thomas Ernst, Esquire
Pastor Thomas Cobb /Apostolic Truth Tabernacle
Rick Richardson /Richardson Engineering LLC
J. Carroll Holzer, Esquire
Jack Dillon, Executive Director
Valleys Planning Council et al
Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /ZC
Donald Rascoe, Development Mgr /PDM
Arnold Jablon, Director /PDM

3/27/03

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| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | THE |
| | * | COUNTY BOARD OF APPEALS |
| 3RD Election District; 3RD Councilmanic<br>Apostolic Truth Tabernacle<br>Petitioner/ Developer | * | OF |
| 8216 McDonogh Road | * | BALTIMORE COUNTY |
| Case No. III-446 and<br>03-040-SPH | * | Case No. 03-109<br>and 03-040-SPH |

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

**MOTION TO LIMIT THE SCOPE OF REVIEW OF THE COUNTY BOARD OF APPEALS**

Now comes the Protestants/Appellees, McDonogh Field Association, by Phyllis Brotman, President, and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, Jay Taetle, Judy Skolnik, and Phyllis Brotman individuals through J. Carroll Holzer and Holzer and Lee and submits this Motion and says:

1. The Petitioner/Appellant raises in his Petition for Appeal Issue #6 that the Hearing Officer failed to find "compelling government interest" pursuant to RLUIPA related to the Development regulations. In issue #7, Petitioners/Appellants raised the denial of the Development Plan was not based on any "compelling governmental interest" pursuant to RLUIPA.
2. As related to the Development Plan and the development regulations, this Board, for over 20 years, has not taken new testimony in its review of Development Plans and has merely reviewed the Development Plan and the Development Plan Opinion and Order based upon the record. In this record, there is no evidence or testimony or exhibits that raises the RLUIPA issue before the Hearing Officer.

These proceedings generally took place in December of 2002. There is nothing in the record, which raises RLUIPA as related to the Development Plan approval and the development regulations and issues. It was not until the Petition for Appeal that the Petitioner mentioned a RLUIPA issue. Insofaras the development plan, Petitioner did not present a case before the Hearing Officer that county development regulations substantially burdens this church's exercise of religion, much less a prima facia case as required by RLUIPA. It did not request a re-opening of the Hearing at any time for that purpose. It did not notify the opposing parties of its contention and time for an opportunity to prepare specific rebuttal. Moreover, it did not notify the County Law Office, the office that directly represents the government, which is responsible for RLUIPA compliance. RLUIPA does not intend that the mere existence of the County's Zoning Special Hearing requirement to constitute a prima facia case. There is no evidence that Baltimore County nor Protestants has prevented this church or any other church from having some suitable location for religious exercise. Baltimore County has over 600 square miles. There is no evidence that RLUIPA requires any zoning regulation, which restricts a church's ability to located anywhere it desires, regardless or size, scale, and impact on the area, to be *ipso facto* a substantial burden on religious exercise.

Moreover, Petitioner must answer the observation in Creative Country Day School vs. Montgomery County Board of Appeals, 242 MD 552 (1966):

> "Indeed, they applied for the granting for a Special Exception under the Zoning Ordinance in this case. Under these circumstances, it is most doubtful that the appellants may challenge the Constitutionality of the ordinance under which they have sought relief."

As argued in the previous Motion, RLUIPA refers to a "judicial proceeding" as to the form for assertion of a violation. It also includes remedies traditionally associated with a court setting. Protestants/Appellees contend that this Board does not have authority to determine that the Baltimore County's zoning process including RTA requirements and also the requirement for development plan approval and a Petition for Special Hearing is in violation of federal law. This Board's position must be that the ordinances, regulations, and acts upon which county government functions in the zoning arena are prima facia constitutional, unless otherwise determined by a judicial proceeding in a court of law, subject to appellate review.

Therefore, Protestants/Appellees respectfully request this Board to limit the testimony, evidence, and legal argument related to RLUIPA in this matter as suggested above.

Respectfully submitted,

J. Carroll Holzer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 27th day of March, 2003, a copy of the foregoing Answer to Petition for Appeal was hand delivered to John Gontrum, Attorney for Petitioners/Appellants, 814 Eastern Blvd., Essex, MD 21221; and Peter M. Zimmerman, Office of People's Counsel, Room 47, Old Courthouse, 400 Washington Ave., Towson, MD 21204.

3/27/03

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| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | THE |
| | * | COUNTY BOARD OF APPEALS |
| 3RD Election District; 3RD Councilmanic<br>Apostolic Truth Tabernacle<br>Petitioner/ Developer | * | OF |
| 8216 McDonogh Road | * | BALTIMORE COUNTY |
| Case No. III-446 and<br>03-040-SPH | * | Case No. 03-109<br>and 03-040-SPH |

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

**MOTION TO DENY RLUIPA APPLICATION AS TO DEVELOPMENT PLAN**

Now comes the Protestants/Appellees, McDonogh Field Association, by Phyllis Brotman, President, and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, Jay Taetle, Judy Skolnik, and Phyllis Brotman individuals through J. Carroll Holzer and Holzer and Lee and submits this Motion and says:

1. Based upon the two previous Memorandums, Protestants/Appellees hereby request this Board to deny as to the development plan, any contention or allegation of violations of RLUIPA made by Petitioner/Appellant because, pursuant to RLUIPA Section 4(b), Petitioner/Appellant has failed to produce prima facia evidence to support a claim alleging of a violation of the free exercise clause or violation of Section 2. The Plaintiff has failed to bear the burden of persuasion of whether the law, including the Special Hearing regulations, the RTA zoning requirements, or the development regulations, or government practice substantially burdens the Plaintiff's exercise of religion.

Therefore, this matter should be dismissed by the Board as to these allegations related to the development plan.

Respectfully submitted,

J. Carroll Holzer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 27th day of March, 2003, a copy of the foregoing Answer to Petition for Appeal was hand delivered to John Gontrum, Attorney for Petitioners/Appellants, 814 Eastern Blvd., Essex, MD 21221; and Peter M. Zimmerman, Office of People's Counsel, Room 47, Old Courthouse, 400 Washington Ave., Towson, MD 21204.

3/27/03

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| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | THE |
| | * | COUNTY BOARD OF APPEALS |
| 3RD Election District; 3RD Councilmanic<br>Apostolic Truth Tabernacle<br>Petitioner/ Developer<br>8216 McDonogh Road | * | OF<br><br>BALTIMORE COUNTY |
| Case No. III-446 and<br>03-040-SPH | * | Case No. 03-109<br>and 03-040-SPH |

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

**MOTION TO LIMIT SCOPE OF REVIEW BY THE CBA**

There is no authority in the CBA to determine the question posed by Appellant in regard to RLUIPA (The Religious Land Use and Institutionalized Persons Act of 2000). Now comes the Protestants/Appellees, McDonogh Field Association, by Phyllis Brotman, President, and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, Jay Taetle, Judy Skolnik, and Phyllis Brotman individuals through J. Carroll Holzer and Holzer and Lee and submits this Motion and says:

1. Petitioner/Appellant raises Issues # 6 and 7, that the Hearing Officer failed to find "compelling government interest" pursuant to the RLUIPA in the imposition of the compatibility standards and in the denial of the development plan.

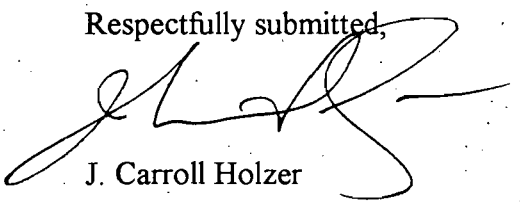
   Further, they raise the issue that the Hearing Officer failed to find the "least restrictive means of furthering the compelling government interest" under RLUIPA by denying both a Special Hearing and the Development Plan (Issue #10).

Protestants/Appellees, while not admitting the validity or constitutionality of RLUIPA, assert that this Board of Appeals has no authority or jurisdiction to determine the question of the application of, or failure to comply with, RLUIPA in the context of this proceeding for a Special Hearing and approval of a Development Plan. RLUIPA, Section 4(a), allows assertion of a violation of the act "as a claim or defense in a judicial proceeding...". It also establishes standing requirements "under the rules of standing of Article III of the Constitution." Section 4(b) states:

> "If a Plaintiff produces prime facia evidence to support a claim alleging violation of the free exercise clause, or a violation of Section 2, the government shall bear the burden of persuasion on any element of the claim, except that the Plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the Plaintiff's exercise of religion".

It can be seen from this provision that RLUIPA refers to a "judicial proceeding" as the forum for assertion of a violation. It also includes remedies traditionally associated with a court setting. Protestants/Appellees submit that this Board should not be involved in a determination of the application of RLUIPA and that a Motion to limit testimony and legal arguments should be granted in the appeal of this Special Hearing and Development Plan.

Respectfully submitted,



J. Carroll Holzer

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 27th day of March, 2003, a copy of the foregoing Answer to Petition for Appeal was hand delivered to John Gontrum, Attorney for Petitioners/Appellants, 814 Eastern Blvd., Essex, MD 21221; and Peter M. Zimmerman, Office of People's Counsel, Room 47, Old Courthouse, 400 Washington Ave., Towson, MD 21204.

3/27/03

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| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | THE |
| | * | COUNTY BOARD OF APPEALS |
| 3RD Election District; 3RD Councilmanic<br>Apostolic Truth Tabernacle<br>Petitioner/ Developer<br>8216 McDonogh Road | * | OF<br><br>BALTIMORE COUNTY |
| Case No. III-446 and<br>03-040-SPH | * | Case No. 03-109<br>and 03-040-SPH |

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

**MOTION TO DETERMINE EXTENT OF CBA REVIEW OF THE DEVELOPMENT PLAN IN ORDER TO PROPERLY PREPARE FOR THIS CASE**

Now comes the Protestants/Appellees, McDonogh Field Association, by Phyllis Brotman, President, and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, Jay Taetle, Judy Skolnik, and Phyllis Brotman individuals through J. Carroll Holzer and Holzer and Lee and submits this Motion and says:

1. This case consists of a Hearing de novo on a Petition for Special Hearing, related to the issue of compatibility and the RTA zoning requirements; and secondly, a review of the Development Plan denial pursuant to Section 26-209 of the Baltimore County Code.

   Therefore, the Board must review the development plan denial on the record, and the Special Hearing de novo. This case was tried jointly below before the Zoning Commissioner/Hearing Officer consisting of at least five full days of hearings in December, 2002 and September 5, October 23, and October 30, 2002. By agreement of counsel, they were tried together, that is that the testimony

related to the Special Hearing also related to the Development Plan and vice versa.

2. In the instant matter before the Board, it would be unfair for the Board to initially proceed to review the Special Hearing de novo, and then subsequently, review the Development Plan on the record. The Board should first advise both parties as to the manner it intends to review the Development Plan before taking testimony in the Special Hearing case.

Appellees reasoning is that if the Board intends to take testimony pursuant to Section 26-209 under the Baltimore County Code on the Development Plan, then such testimony related to the development plan should be taken concurrently with the testimony related to the Special Hearing. If the Board of Appeals does not intend to take additional testimony, you cannot approve the development plan in its current posture of having been denied. You will see from the Zoning Commissioner's Decision that the development plan was denied based on the "uncertainty of the final design of the site" and also the "denial of the Special Hearing relief" (Opinion page 9).

The Hearing Officer also indicated that while the denial of the development plan was not based upon any of the substantive arguments made below, he was not ruling and did not rule on the many issues raised by the community, such as the ground water septic flow, the capacity of the septic reserve area, and any conditions that might be attached, inadequacy of forest buffers, inadequacy of parking, adverse effects on traffic patterns, a lack of suitable outfall (Opinion page 9). The Hearing Officer did not specifically accept

that those objections were denied. As a result, the Board has no way of knowing or evaluating the testimony of all of the experts presented on both sides below, as it related to the development plan.

3. While it is recognized that various scenarios could occur in regard to the posture of this case, the following should be examined:

   a. If the Board, after a Hearing, denies this Special Hearing, then the denial of the development plan becomes moot.

   b. If the Board reverses and approves the Special Hearing, then the Board must address the development plan. Protestants/Appellees suggest that the Board cannot take testimony in regard to all of the issues presented below unless they make this determination first, so that testimony related to the Special Hearing and the development plan can be presented concurrently, as opposed to repeating all of the testimony for both cases.

   c. In the event the Board approves the Special Hearing, the Board should not review the voluminous transcript to make its own independent determination of the validity of the Hearing Officer's denial of the Development Plan. Furthermore, under this scenario, the Board cannot determine that the Hearing Officer approved the development plan as related to all the substantive argument because he made no findings thereof. In other words, there is no evidence or findings presented by the Hearing Officer upon which the Board could review his determination to find how he ruled on the ground water septic flow, the capacity of the septic reserve areas, etc. Nor can the Board properly evaluate, itself, the

testimony of the experts and witnesses not having seem and observed their demeanor first hand.

d. If the Board approves the Special Hearing, it appears the only recourse is to remand the Development Plan back to the Hearing Officer to make a decision on the development plan based upon the finding by the Board that the Special Hearing, if it is approved, can now be eliminated from his analysis.

e. Therefore, because of the uniqueness of this process, Protestants/Appellees will be extremely prejudice in the presenting of its case and in the cross-examination of the Petitioner's witnesses, unless it knows the Board's intentions in regard to the development plan.

Wherefore, Protestants/Appellees respectfully request this Board to first, take up its analysis of the denial of the development plan and advise the parties of the manner in which it intends to proceed so as to avoid the necessity of presenting witnesses and cross-examining of witnesses two times, for the two separate cases. For the Board to fail to make this determination it will unfairly prejudice the Protestants/Appellees in its position before this Board on this Appeal.

Respectfully submitted,

J. Carroll Holzer

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of March, 2003, a copy of the foregoing Answer to Petition for Appeal was hand delivered to John Gontrum, Attorney for Petitioners/Appellants, 814 Eastern Blvd., Essex, MD 21221; and Peter M. Zimmerman, Office of People's Counsel, Room 47, Old Courthouse, 400 Washington Ave., Towson, MD 21204.

7/27/03

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| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | THE |
| | * | COUNTY BOARD OF APPEALS |
| 3RD Election District; 3RD Councilmanic<br>Apostolic Truth Tabernacle<br>Petitioner/ Developer<br>8216 McDonogh Road | * | OF |
| | * | BALTIMORE COUNTY |
| Case No. III-446 and<br>03-040-SPH | * | Case No. 03-109<br>and 03-040-SPH |

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

**MOTION TO REQUEST PERMISSION TO SUBMIT MEMORANDUM CONCERNING THE LEGALITY OF THE APPLICATION OF RLUIPA TO THIS CASE AND TO RESPOND TO FACTS AND ARGUMENTS PRESENTED BY THE PETITIONERS/APPELLANTS RELATED TO THE SPECIAL HEARING AND DEVELOPMENT PLAN**

Now comes the Protestants/Appellees, McDonogh Field Association, by Phyllis Brotman, President, and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, Jay Taetle, Judy Skolnik, and Phyllis Brotman individuals through J. Carroll Holzer and Holzer and Lee and submits this Motion and says:

Protestants/Appellees request permission to submit Memorandum concerning the legality of the application of RLUIPA to this case and to respond to facts and arguments presented by the Petitioners/Appellants related to the Special Hearing and Development Plan.

Respectfully submitted,

J. Carroll Holzer

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of March, 2003, a copy of the foregoing Answer to Petition for Appeal was hand delivered to John Gontrum, Attorney for Petitioners/Appellants, 814 Eastern Blvd., Essex, MD 21221; and Peter M. Zimmerman, Office of People's Counsel, Room 47, Old Courthouse, 400 Washington Ave., Towson, MD 21204.

3/27/03

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| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | THE |
| | * | COUNTY BOARD OF APPEALS |
| 3RD Election District; 3RD Councilmanic<br>Apostolic Truth Tabernacle<br>Petitioner/ Developer<br>8216 McDonogh Road | * | OF<br><br>BALTIMORE COUNTY |
| Case No. III-446 and<br>03-040-SPH | * | Case No. 03-109<br>and 03-040-SPH |

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

**ANSWER TO PETITION FOR APPEAL**

Protestants, McDonogh Field Association by Phyllis B. Brotman, President, and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, Jay Taetle, Judy Skolnik, and Phyllis Brotman, individuals through J. Carroll Holzer and Holzer and Lee submit this Answer to the Petition for Appeal and says:

1. That the development standards and regulations were not met by the proposed development plan presented before the Hearing Officer.

2. It is incorrect to allege in the Petition for Appeal that the Hearing Officer found the development standards were met. A review of the Hearing Officer's Opinion and Development Plan Order does not make a finding that the development plan met all development regulation standards but for the denial of the Special Hearing.

3. The Zoning Special Hearing certainly did involve the location of the proposed Development in that once the property is converted to a church, the long existing dwelling and swimming pool became accessory uses to the church. Secondly, the existing dwelling and swimming pool are on the development plan and contained within its borders.

4. Protestants deny that the proposed church development met all the Residential Transition Area and zoning standards in that the Hearing Officer found a lack of compatibility, which is a requirement under the RTA regulations.

5. Protestants allege that the Hearing Officer did not err in denying the Special Hearing. The Board reviews this matter de novo.

6. Protestants allege that the Hearing Officer was not required to find "a compelling governmental interest" pursuant to the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). This matter was not raised below and was not appropriate in any event for the Hearing Officer to make that determination. Finally, the burden is upon the Petitioner to make a showing of discrimination, which was not done in the record of this case.

7. Adopt the answer to #6.

8. The Hearing Officer, having once denied the Special Hearing, could not have approved the proposed Development Plan.

9. The Hearing Officer could not have modified the proposed Development Plan. If he had done so by reducing the size of the building or parking areas, the developer would have been here on appeal saying that there is no authority in the development regulations for him to do so.

10. This issue was not raised before the Hearing Officer, and as previously indicated the Hearing Officer had no authority to review "compelling governmental interest" in any event.

11. The Hearing Officer did not err in failing to approve the Development Plan since he did not, in his opinion, find that it met all development standards.

12. The Hearing Officer could not have modified the proposed plan to meet his concerns without substantially reducing the size and number of the buildings and parking areas and redrawing and redefining the Plan. Had he done that, the developer would have been here, alleging that he had no authority to so modify the proposed Development Plan as presented to him in the case below.

Wherefore, Protestant/Appellees pray that this Board deny the Petition for Appeal for the reasons stated above.

J. Carroll Holzer
Attorney for Protestants/Appellees

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of March, 2003, a copy of the foregoing Answer to Petition for Appeal was hand delivered to John Gontrum, Attorney for Petitioners/Appellants, 814 Eastern Blvd., Essex, MD 21221; and Peter M. Zimmerman, Office of People's Counsel, Room 47, Old Courthouse, 400 Washington Ave., Towson, MD 21204.

A Petition for Special Hearing was filed to determine whether the site is in compliance to the extent possible with RTA Use requirements. The cases were tried together and the parties agreed that the proceedings would be recorded by a Court Reporter which would be the primary record in this case. The Developer offered to pay for the Court Reporter as well as the transcript to be forwarded to the CBA if any appeals were filed.

The Development Plan went through two community input meetings, a concept plan conference, a development plan conference and was scheduled for a hearing on September 5, 2002. The case was postponed because of unresolved issues in regard to the environmental reports from DEPRM as well as from the Zoning Office. The matter was continued until October 23, 2002, the second day of hearings. At that time, the Department of the Environment required additional perc tests which occasioned a second postponement of the hearing. The case was finally begun on October 30, 2002 and continued on December 4th, December 11th, December 18th and December 23, 2002.

## STATEMENT OF FACTS

Due to individual schedules, the order of witness for both the developer and the Protestants were often taken out of sequence. For purposes of this Memorandum, Protestants will briefly set forth the concerns expressed by the Protestants lay and expert witnesses in topical order.

### A. LAY WITNESSES/NEIGHBORS

1. **Howard Gersh**. 4 Babette Court. Mr. Gersh has resided for 33 years in the neighborhood. He raised questions concerning the adequacy of the septic reserve area proposed for this development. He further opined that

2/25/03

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| IN RE: DEVELOPMENT PLAN & SPECIAL HEARING REQUEST<br>N/S of McDonogh Road @ NW Corner of Field Road<br>3rd Election District<br>3rd Councilmanic District<br>(Apostolic Truth Tabernacle) | * | BEFORE THE<br><br>DEPUTY ZONING COMMISSIONER/<br><br>HEARING OFFICER<br><br>OF BALTIMORE COUNTY |
| Apostolic Truth Tabernacle and Pastor Thomas J. Cobb<br>Petitioners/Appellants | * | Development Case No. III-446 |

**********

PETITION FOR APPEAL

NOW COMES Apostolic Truth Tabernacle and Pastor Thomas J. Cobb, Petitioners/Appellants, by and through their attorneys, John B. Gontrum and Romadka & Gontrum, LLC, and file this Petition for Appeal pursuant to Sec. 26-209 of the Baltimore County Code, for the reasons stated as follows:

1. That the development standards and regulations all were met by the proposed development plan.
2. That the hearing officer found that the development standards were met but denied the development plan based on denial of the zoning special hearing.
3. That the zoning special hearing did not involve the location of the proposed development, but only the location of a long-existing dwelling and swimming pool.
4. That the proposed church development met all Residential Transition Area (RTA) and zoning standards.
5. That the hearing officer was in error in denying the special hearing for the RTA based on the testimony and evidence submitted.
6. That the hearing officer failed to find compelling government interest pursuant to the Religious Land Use and Institutionalized Persons Act of

2000 in the imposition of a compatibility standard on a proposed structure that was is in compliance with the residential transition area and all zoning and development regulations.

7. That the denial of the development plan was not based on any compelling government interest pursuant to the Religious Land Use and Institutionalized Persons Act of 2000.

8. That the hearing officer could have denied the special hearing and still have granted the proposed development plan.

9. That the hearing officer could have approved the special hearing and still have modified the proposed development plan.

10. That the hearing officer failed to find the least restrictive means of furthering a compelling government interest under the Religious Land Use and Institutionalized Persons Act of 2000 by denying both the special hearing request and the development plan.

11. That the hearing officer committed error in failing to approve the development plan since it met all development standards as he indicated.

12. That alternatively, the hearing officer could have modified the proposed plan to meet his concerns without substantially changing the proposed plan.

NOW WHEREFORE, Petitioners/Appellants pray this Honorable Court to grant this Petition for Appeal for the reasons stated hereinabove.

John B. Gontrum
Romadka & Gontrum, LLC
814 Eastern Boulevard
Baltimore, MD 21221
410-686-8274

Attorney for Petitioners/Appellants

ROMADKA & GONTRUM, LLC
814 Eastern Boulevard
Baltimore, Maryland 21221
(410) 686-8274
(410) 686-6206 (fax)

ROBERT J. ROMADKA
rromadka@rgmlaw.net

JOHN B. GONTRUM
jgontrum@rgmlaw.net

JANET RUDOLPH, Paralegal
jrudolph@rgmlaw.net

February 25, 2003

**VIA HAND DELIVERY**

Arnold Jablon, Director
Department of Permits and Development Management
Room 111 - County Office Building
111 W. Chesapeake Avenue
Towson, Maryland, 21204

Re: Apostolic Truth Tabernacle – Petition for Appeal
Hearing Officer's Hearing No. III-446, and
Case No. **03-040-SPH**

Dear Mr. Jablon:

Enclosed is a Notice of Appeal regarding a Special Hearing Request for Apostolic Truth Tabernacle, Case No. 03-040-SPH.

Please be advised that we are concurrently filing a Notice of Appeal, and Petition for Appeal in the Development Plan matter (Case No. III-446), with Donald Rascoe of Development Processing (see enclosed copy of correspondence).

A check in the amount of $300.00 to Baltimore County, Maryland is enclosed to cover the cost of filing this appeal. Would you kindly notify the undersigned if you need anything additional in this regard. Thank you for your assistance.

Sincerely yours,

Janet Rudolph
Paralegal

cc: Pastor Thomas J. Cobb (Apostolic Truth Tabernacle)
Donald T. Rascoe, Div. Chief (DP)

2/25/03

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| IN RE: DEVELOPMENT PLAN & SPECIAL HEARING REQUEST<br>N/S of McDonogh Road @ NW Corner of Field Road<br>3rd Election District<br>3rd Councilmanic District<br>(Apostolic Truth Tabernacle) | * | BEFORE THE<br>DEPUTY ZONING COMMISSIONER/<br>HEARING OFFICER<br>OF BALTIMORE COUNTY |
| Apostolic Truth Tabernacle and Pastor Thomas J. Cobb<br>Petitioners/Appellants | * | Case Nos. III-446 & 03-040-SPH |

**********

NOTICE OF APPEAL

NOW COMES Apostolic Truth Tabernacle and Pastor Thomas J. Cobb, Petitioners/Appellants, by and through their attorneys, John B. Gontrum and Romadka & Gontrum, LLC, pursuant to Sec. 26-132 of the Baltimore County Code, file this Notice of Appeal from the Hearing Officer's Opinion & Development Plan Order, denying the Development Plan and Special Hearing Request of the Petitioners/Appellants. A copy of the Hearing Officer's Opinion & Development Plan Order, dated February 6, 2003, is attached hereto as Exhibit A, and made a part hereof.

Filed with this Notice is a check in the amount of $250.00, payable to Baltimore County, Maryland, to cover the cost of the appeals.

John B. Gontrum
Romadka & Gontrum, LLC
814 Eastern Boulevard
Baltimore, MD 21221
410-686-8274

Attorney for Petitioners/Appellants

Exhibit A

| | | |
|---|---|---|
| IN RE: DEVELOPMENT PLAN HEARING & SPECIAL HEARING REQUEST<br>N/S of McDonogh Road @ NW Corner of Field Road<br>3rd Election District<br>3rd Councilmanic District<br>(Apostolic Truth Tabernacle) | * | BEFORE THE<br>DEPUTY ZONING COMMISSIONER/<br>HEARING OFFICER<br>OF BALTIMORE COUNTY |
| Apostolic Truth Tabernacle<br>By: Rev. Thomas Cobb<br>*Petitioner/Developer* | * | Case Nos. III-446 & 03-040-SPH |

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

HEARING OFFICER'S OPINION & DEVELOPMENT PLAN ORDER

This matter comes before this Deputy Zoning Commissioner/Hearing Officer for Baltimore County, as a requested approval of a Development Plan and a Special Hearing Request. The Development Plan is for the project known as "The Apostolic Truth Tabernacle", which project bears Case No. III-446 and involves property located at the northwest corner of the intersection of McDonogh Road and Field Road in the Owings Mills area of Baltimore County. The property comprises a gross acreage of 8.57 acres, more or less, all of which is zoned D.R.1. The owner of the property proposes to develop the subject site with a church sanctuary, a multipurpose center, a school building, as well as a children's daycare facility. The particulars of the proposed development are more particularly shown on Developer's Exhibit Nos. 1A and 1B. In addition to the requested approval of the Development Plan, the property owner is also requesting special hearing relief to confirm that the development of the site is in compliance, to the extent possible, with RTA use requirements in accordance with Section 1B01.1.B.1.g.6 of the Baltimore County Zoning Regulations (B.C.Z.R.).

Appearing at the hearing on behalf of the Development Plan and Special Hearing Request were Pastor Thomas Cobb, appearing on behalf of the owner of the property, Rick Richardson, the professional engineer who prepared the site plan of the property, Thomas Ernst, and John B. Gontrum, attorney at law, who represented the Petitioners. Congregants of the church also attended the hearing. Appearing in opposition to the Petitioner's request were a number of

ROMADKA & GONTRUM, LLC
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ROBERT J. ROMADKA
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JANET RUDOLPH, Paralegal
jrudolph@rgmlaw.net

February 25, 2003

**VIA HAND DELIVERY**

Donald T. Rascoe, Division Chief
Development Processing
Room 123 - County Office Building
111 W. Chesapeake Avenue
Towson, Maryland, 21204

Re: Apostolic Truth Tabernacle – Petition for Appeal
Hearing Officer's Hearing No. **III-446**, and
Case No. 03-040-SPH

Dear Mr. Rascoe:

Enclosed is a Notice of Appeal and Petition for Appeal regarding the Development Plan for Apostolic Truth Tabernacle, Case No. III-446.

Please note that we are concurrently filing an appeal in the Special Hearing Request matter (Case No. 03-040-SPH) with Arnold Jablon of the Department of Permits and Development Management (see enclosed copy of correspondence).

A check in the amount of $250.00 to Baltimore County, Maryland, is enclosed to cover the cost of filing this appeal. Would you kindly contact the undersigned if you need anything further in this regard. Thank you for your assistance.

Sincerely yours,

Janet Rudolph
Paralegal

cc: Pastor Thomas J. Cobb (w/encls.)
J. Carroll Holzer, Esq. (w/encls.)
Donald T. Rascoe

2/6/03

| | | |
|---|---|---|
| IN RE: DEVELOPMENT PLAN HEARING & SPECIAL HEARING REQUEST | * | BEFORE THE |
| N/S of McDonogh Road @ NW Corner of Field Road | * | DEPUTY ZONING COMMISSIONER/ |
| 3rd Election District | * | HEARING OFFICER |
| 3rd Councilmanic District (Apostolic Truth Tabernacle) | * | OF BALTIMORE COUNTY |
| Apostolic Truth Tabernacle | * | Case Nos. III-446 & 03-040-SPH |
| By: Rev. Thomas Cobb *Petitioner/Developer* | * | |

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

HEARING OFFICER'S OPINION & DEVELOPMENT PLAN ORDER

This matter comes before this Deputy Zoning Commissioner/Hearing Officer for Baltimore County, as a requested approval of a Development Plan and a Special Hearing Request. The Development Plan is for the project known as "The Apostolic Truth Tabernacle", which project bears Case No. III-446 and involves property located at the northwest corner of the intersection of McDonogh Road and Field Road in the Owings Mills area of Baltimore County. The property comprises a gross acreage of 8.57 acres, more or less, all of which is zoned D.R.1. The owner of the property proposes to develop the subject site with a church sanctuary, a multipurpose center, a school building, as well as a children's daycare facility. The particulars of the proposed development are more particularly shown on Developer's Exhibit Nos. 1A and 1B. In addition to the requested approval of the Development Plan, the property owner is also requesting special hearing relief to confirm that the development of the site is in compliance, to the extent possible, with RTA use requirements in accordance with Section 1B01.1.B.1.g.6 of the Baltimore County Zoning Regulations (B.C.Z.R.).

Appearing at the hearing on behalf of the Development Plan and Special Hearing Request were Pastor Thomas Cobb, appearing on behalf of the owner of the property, Rick Richardson, the professional engineer who prepared the site plan of the property, Thomas Ernst, and John B. Gontrum, attorney at law, who represented the Petitioners. Congregants of the church also attended the hearing. Appearing in opposition to the Petitioner's request were a number of

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Date 2/6/03
By R. Jamison

residents from the surrounding community whose names appear on the Protestant's Sign-In Sheet. These community residents were represented by J. Carroll Holzer, attorney at law. As is usual and customary, representatives of the various Baltimore County reviewing agencies also attended the various hearings; namely, Bruno Rudaitis (Zoning Review), Bob Bowling (Development Plans Review), Ron Goodwin & Eric Rockel (Bureau of Land Acquisition), and Dave Green & Walt Smith, (Development Management), all from the Office of Permits & Development Management; Mark Cunningham from the Office of Planning; and R. Bruce Seeley from the Department of Environmental Protection and Resource Management (DEPRM).

The testimony and evidence presented in this case consumed over five full days of testimony. It is not possible to restate the entirety of the testimony within the body of this Order. Reference is made to the transcript of the testimony which was made at the time of the hearing. It should be noted that, relative to the Development Plan submitted for this project, the Concept Plan Conference was held on December 31, 2001, followed by a Community Input Meeting held on February 6, 2002 at the Owings Mills High School. A second Community Input Meeting was held on March 19, 2002 at the same school. A Development Plan Conference was held on July 17, 2002 and the first Hearing Officer's Hearing was held September 5, 2002 and the final hearing concluded on December 23, 2002. After the conclusion of the taking of testimony and evidence, both the attorney for the owner of the property and the protestants' attorney submitted detailed and specific memoranda of law arguing the issues of this case on behalf of their respective clients.

As stated previously, the property owner also filed a Petition for Special Hearing for a finding that the proposed improvements to the site comply to the extent possible with RTA use requirements. Inasmuch as the proposal to develop this property is for a church or other buildings for religious worship, the property is subject to the RTA (residential transition area) requirements as contained within Section 1B01.1.B of the Baltimore County Zoning Regulations. The Developer has chosen to proceed under Section 1B01.1.B.1.g.6, arguing that the development proposal satisfies this particular exception to the RTA requirements. In order for

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the Development Plan to be considered and approved, a decision must first be rendered on the Special Hearing Request.

The testimony and evidence offered at the hearing demonstrated that the Apostolic Truth Tabernacle owns 8.57 acres of property, situated on the northwest corner of the intersection of McDonogh and Field Roads in Owings Mills. The property is currently improved with an existing single-family dwelling and an accessory swimming pool. Thomas J. Cobb, the pastor and president of the Apostolic Truth Tabernacle, resides with his family within the subject dwelling. Pastor Cobb is desirous of developing the subject property with a multi-use church facility as is depicted on the site plan submitted into evidence.

By way of background, Pastor Cobb founded the Apostolic Truth Tabernacle Church in 1980. This denomination is part of the United Pentecostal Church International, which has over 4 million members worldwide with principal offices in St. Louis, Missouri. At the time of its founding, the church was located in the Hampden area of Baltimore City and remained in operation at that location until approximately four years ago. As a result of a fire, which destroyed the church building in Hampden, Pastor Cobb and his congregants left the Hampden site and are currently operating from the Wellwood International School, located on Smith Avenue in Mt. Washington. At one time, the church had a congregation as large as 140 members. However, due to the loss of the church building and the relocation of the church itself, the regular attendance at this time is approximately 60 congregants.

In 2001, the Apostolic Truth Tabernacle purchased the property which is the subject of this request. Pastor Cobb is attracted to this site due to its size, the ample parking it provides, the larger building that can be constructed thereon, and its location in Owings Mills, which is a growing area of Baltimore County. Pastor Cobb believes this to be an excellent area to once again establish his church and to continue to grow his congregation.

As the site plan indicates and the testimony demonstrated, the Apostolic Truth Tabernacle is interested in constructing a church facility on the subject site. The first phase of the complex is proposed to be a multipurpose building, approximately 90 ft. x 100 ft. in area. This first phase

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would be somewhat of an L-shape. Phase II of the facility would constitute a one-story daycare facility in a 40 ft. x 40 ft. building attached to Phase I. Phase III would comprise a 60 ft. x 80 ft. one-story sanctuary building, which would be utilized strictly for religious worship. Finally, Phase IV would constitute a two-story school building having a footprint of 65 ft. x 77 ft. All of these phases would be connected to one another by a common building wall. The Petitioner has also proposed a fenced-in play area to the rear of the church building, along with a large main parking lot, and an accessory overflow lot. In addition, a storm water management pond is proposed to the rear of the facility and a large 27,000 sq. ft. septic reserve area is proposed to be located in the northwest corner of the site. As stated previously, the existing dwelling and swimming pool would continue to remain on the property and would serve the pastor's residence. Access to the property is proposed by way of a 35 ft. entrance driveway into the site directly from McDonogh Road. McDonogh Road is a two-lane roadway with a 40 mph speed limit.

The details of the building materials for the church building itself have not been finally designed. Pastor Cobb indicated that the church would proceed with the construction of Phase I and Phase II at this time, with the latter two phases occurring sometime in the future. Pastor Cobb hopes to utilize building materials that are consistent with the materials utilized in the many homes that surround the subject site. However, it was discussed that the overall structure itself would be a metal framed building which is pre-ordered from a manufacturer and assembled on site. As stated previously, the cosmetic details of this metal framed building have not yet been determined.

Pastor Cobb testified that he proposes to utilize Phase I and Phase II of the church facility for Sunday and Wednesday evening worship, in addition to a counseling program, and Sunday school classes. The church also intends to operate a daycare facility for up to 40 children in what is shown as Phase II of the structure. Pastor Cobb also testified that he intends to utilize the existing dwelling as a parsonage for himself and his family.

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The Petitioner is required to proceed with the development of this site in two separate proceedings. One proceeding involves the special hearing request, which is filed pursuant to the Baltimore County Zoning Regulations. Specifically, the Petitioner is requesting special hearing relief from Section 1B01.1.B.1.g.6, as is cited in their special hearing petition. That determination is made by me sitting as Deputy Zoning Commissioner, the appeal from which is a *de novo* appeal to the Board of Appeals for Baltimore County.

Secondly, the Petitioner is requesting an approval of the Development Plan submitted into evidence as Developer's Exhibit Nos. 1A and 1B. That approval is made by me sitting as Hearing Officer for Baltimore County, utilizing the provisions of Section 26-206. et. seq. of the Baltimore County Code. An appeal of that decision is also referred to the County Board of Appeals pursuant to Section 26-209 of the Baltimore County Code.

I believe, given the requested relief before me, that it is appropriate to first rule upon the Petitioner's special hearing request prior to entertaining the issues raised on the Development Plan. The applicant argues in their special hearing request and their memorandum submitted in support thereof, that the development of this site and the submittal of this plan falls under and is governed by one of the exceptions to the Residential Transition Area requirements. Specifically, the applicant relies on Section 1B01.1.B.1.g.6. This section requires that I, as Deputy Zoning Commissioner, make a finding that "the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises." The language of this section requires a two-part finding by this Deputy Zoning Commissioner. Not only must I find that the proposed improvements comply to the extent possible with RTA use requirements, but I must also find that the plan is compatible with the character and general welfare of the surrounding residential premises.

A great deal of testimony and much of the arguments made at the hearing, as well as within the memoranda of law submitted by counsel for both parties, pertained to this very language. I shall first address the issue as to whether the plan as submitted before me is

Date 9/6/03 By P. Jamison

compatible with the character and general welfare of the surrounding residential premises.

An issue arose as to which standards or factors apply in determining the compatibility of this proposed church with the surrounding residential premises. Mr. Holzer argued and his witness, Mr. Jack Dillon testified that the compatibility test as contained within Section 26-282 of the Baltimore County Code is applicable to this proposed development and that a finding must be made pursuant to that Section as to whether this project is compatible with the surrounding community. On the other hand, Mr. Gontrum argues on behalf of his client that the term "compatible", as contained within the language of subsection 6, carries its ordinary meaning and does not trigger the compatibility standards of Section 26-282. I find, after reviewing the language of the applicable regulations, that Section 26-282 does not apply to this application. The language of Section 26-282 provides the circumstances under which that very provision pertains. The development of a church within the D.R.1 zoning classification does not fall under any of those particular circumstances. Furthermore, the very language of Section 1B01.1.B.1.g.6 of the B.C.Z.R. makes no reference to a compatibility finding pursuant to Section 26-282. For these reasons, I find that the term compatible, as used within this section, carries its ordinary meaning as contained within Webster's Third New International Dictionary Unabridged.[1]

Webster's defines "compatible" as being "capable of existing together without discord or disharmony." Webster's also defines "compatibility" as "the capacity of two or more entities to combine or remain together without undesirable after effects." These definitions shall be utilized in determining whether the plan submitted can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.

It is also important to note that the compatibility of this proposed plan is only to be analyzed in the context of the "surrounding residential premises". This is a much narrower application than analyzing the proposed project in the context of the surrounding

[1] The Baltimore County Zoning Regulations require, pursuant to the opening paragraphs of Section 101 of the B.C.Z.R., that any word or term not defined in the B.C.Z.R. shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary Unabridged. Inasmuch as the word compatible or compatibility is not defined by the B.C.Z.R. those definitions as contained within Webster's shall be utilized herein.

"neighborhood". All that is required pursuant to this provision is to review this project as it relates to the surrounding residential premises.

The property under development is surrounded on all four sides by residential premises. To the west of the site, approximately 31 ft. from the Petitioner's property line, there exists a single-family residential dwelling, the street address of which is 8308 Timothy Lane. Also adjacent to this development, to the west of the site, is a single-family dwelling owned by Carter Snowden which is situated 50 ft. from the Petitioner's property line. To the rear of the site to be developed, situated approximately 65 ft. from the rear property line, is the home of Michael and Valerie Hennessey. Situated to the east of the subject site, on the opposite side of Field Road, exists another single-family residential dwelling situated approximately 260 ft. from the Petitioner's property. Lastly, there exist two residential dwellings on the south side of McDonogh Road, one of which is owned by Mr. Whitfield, situated approximately 200 ft. from the Petitioner's property and another dwelling further west of the Whitfield residence, situated approximately 170 ft. from the Petitioner's property. These single-family residential dwellings comprise the surrounding residential premises with which the proposed development must be compatible.

The plans to develop the subject property by the Apostolic Truth Tabernacle is ambitious. The church proposes to continue to utilize the existing dwelling as a parsonage for its pastor. New construction is proposed on the property in four phases. Once all four phases are completed, the church building itself will comprise a width of approximately 140 ft. with a depth of 155 ft. The total square footage of the overall structure will be approximately 21,700 sq. ft. The basic structural component of the building will be steel and metal frame. The finer details of the building have not yet been determined. In conjunction with the new construction, the church also proposes a paved parking area containing 80 parking spaces and a smaller overflow paved lot containing 20 additional parking spaces. The applicant also proposes a storm water management pond located to the rear of the site. Based upon the size, scale and mass of the church buildings to be constructed on this property, as compared to the residential premises that

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surround the site, I find that the evidence presented, fails to persuade me that the proposed plan can be expected to be compatible with the character and general welfare of the surrounding residential properties. The site plan presented, which depicts the proposed church buildings and the size and scale of the surrounding homes, demonstrates that the church facility to be constructed is four to five times larger than the residential premises which surround this site. This evidences discord or disharmony, which is the substance of the definition of compatible. In addition, based on the size of the building to be constructed, the Petitioner is required to construct a larger parking field, one which is commercial in its appearance. The parking field itself is not screened or buffered by the church building, but rather will sit in open view between the church facility and the existing dwelling on the property. This too is disharmonious with the surrounding residential premises. As stated previously, the Petitioner's plans are very ambitious. Perhaps a smaller church facility and smaller parking lot could be made to be compatible with the surrounding residential premises. However, the nature and extent of the plan before me is excessive and, therefore, not compatible within the context of Section 1B01.1.B.1.g.6. Accordingly, I find that the Petitioner's special hearing request must be denied.

Procedurally, having determined that the Petitioner's proposed plan does not satisfy this particular exception to the RTA use requirements, the Petitioner has the option to file an appeal of this determination to the Board of Appeals. This appeal would be, as stated previously, a *de novo* appeal. In the alternative, the Petitioner may refile a new petition for special hearing requesting a variance of the RTA requirements in accordance with Section 1B01.B.1.c of the Baltimore County Zoning Regulations. How the Petitioner chooses to proceed is entirely up to them. However, it should be noted and I hereby find that the existing dwelling and pool, which are to be used as a church parsonage, are part of the church use, and should be considered as such on appeal or in the event a new petition for Special Hearing is filed.

Having denied the special hearing request, the question arises as to what effect this Denial has on the requested approval of the Development Plan. In my opinion, I cannot approve a Development Plan until such time as the issues concerning the RTA use requirements are finally

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Date 2/6/03
By Johnson

resolved. Bringing the property into compliance with RTA requirements may materially change the proposal to develop this property. It is possible that the Petitioner may downsize this proposal. Some proposed improvements may be relocated. Procedurally, I believe it to be in the best interest of all parties involved that the Development Plan as submitted be denied based on the uncertainty of the final design of the site and also the Denial of the Special Hearing relief. It should be understood that the denial of this Development Plan is not based upon any of the substantive arguments made relating to: groundwater septic flow, the capacity of the septic reserve area, any inadequacy regarding forest buffers, inadequacy of parking, adverse effects on traffic patterns in the area, a lack of suitable outfall or flooding of neighboring properties, or any of the other substantive issues raised by the protestants in this case. The Development Plan shall be denied based on the fact that the development proposal fails to satisfy the requirements of the Baltimore County Zoning Regulations. This would be similar to the Petitioner failing to gain approval of a special exception request for a particular use, which was filed in conjunction with the Development Plan. Some may argue that the Development Plan should be dismissed as moot. However, I believe it more appropriate to deny the plan so that the matter can be appealed and the issue presented to the Board of Appeals. The Board may then hear the special hearing request *de novo* and has the flexibility, pursuant to Section 26-209 of the Baltimore County Code, to take whatever testimony and evidence they deem appropriate at their hearing on the Development Plan proposal. The Board may, at their hearing on appeal, rule on the Special Hearing request and either approve or deny the Development Plan, without having to remand the matter back to this office. Proceeding in this fashion would prevent this Petitioner from having to re-litigate this matter at the Hearing Officer's level.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner/Hearing Officer for Baltimore County, this 6th day of February, 2003, that the Petition for Special Hearing for relief filed pursuant to Section 1B01.1.B.1.g.6 of the Baltimore County Zoning Regulations, for the reasons previously cited herein, be and is hereby DENIED.

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IT IS FURTHER ORDERED, that the requested approval of a Development Plan, for the property known as the "Apostolic Truth Tabernacle", for the procedural reasons previously cited in the body of this Order and for the reason that the proposal fails to satisfy the underlying requirements of the Baltimore County Zoning Regulations, filed pursuant to their Special Hearing request, be and is hereby DENIED.

IT IS FURTHER ORDERED, that any appeal from this decision must be filed pursuant to Section 26-209 and Section 26-132 of the Baltimore County Code.

Timothy Kotroco

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

2/6/03

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

February 6, 2003

John Gontrum, Esquire
Romadka, Gontrum & McLaughlin
814 Eastern Boulevard
Baltimore, Maryland 21221

Re: Hearing Officer's Hearing No. III-446 & Case No. 03-040-SPH
Property: N/S McDonogh Road @ NW Corner of Field Road
3rd Election District, 3rd Councilmanic District
(The Apostolic Truth Tabernacle)

Dear Mr. Gontrum:

Enclosed please find the decision rendered in the above-captioned case. The Development Plan and Special Hearing request have been denied in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits & Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

Timothy Kotroco

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure

c: J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286



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| APOLOSTIC TRUTH TABERNACLE<br>8216 McDonogh Road<br>Baltimore, Maryland 21208 | * | BEFORE THE DEPUTY ZONING<br>COMMISSIONER |
| Development Plan – Project No.: III-446 | * | HEARING OFFICER OF |
| PETITION FOR SPECIAL HEARING<br>Case No.: 03-040-SPH | * | BALTIMORE COUNTY |

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

**PROTESTANTS MEMORANDUM IN LIEU OF FINAL ARGUMENT**

Protestants, McDonogh-Field Association by Phyllis B. Brotman, President and individuals, Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, J. Taetle, Judy Skolnik and Phyllis Brotman, individuals, through J. Carroll Holzer, Holzer & Lee, submit this Memorandum in lieu of final argument concerning the Development Plan and the Petition for Special Hearing presented before the Deputy Zoning Commissioner/Hearing Officer and says:

**STATEMENT OF THE CASE**

A development plan for the Apolostic Truth Tabernacle was submitted for approval to the Hearing Officer pursuant to the development regulations, Sec. 26-206 for the construction of a Phase One multi-purpose building, a Phase Two daycare, a Phase Three Sanctuary and a Phase Four school building to be constructed in the Third Councilmanic District of Baltimore County on 8.57 acres known as 8216 McDonogh Road. The site is zoned DR 1.

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he believed that while the seating initially was for 200 persons in Building One, that in reality there will be seating and space for a total of 500 persons in the combined Phase Three and Phase One. He raised questions concerning the adequacy of the parking space provided and felt there was insufficient parking spaces to accommodate the total build-out of the site.

2. **Dr. Michael Whitfield**, 8215 McDonogh Road. Dr. Whitfield has resided across from the subject area since 1993 and is a member of the Board of Directors of the Association. He has a substantial investment in his home which he has enlarged over the years. He believes that the proposed operation will produce additional traffic and noise which will affect the safety of the traveling public. He also expressed concern about the potential pollution of groundwater on which he relies for drinking water. He objected to the visibility of the parking lots and size of the facility which is not buffered nor shielded from McDonogh Road. He also believed that the size of the proposed septic system for handling the numbers of persons who could utilize this facility was woefully inadequate. He testified that he over-engineered his own septic reserve area to represent 500% of the capacity for a typical four-person household. He viewed the proposal of the developer inadequate. He further objected to the proposed organizations development of this site on the basis that it was not in reality a church, but in fact, was intended for a multiple purposes such as meeting rooms for revenue producing business operations. Finally, he believed that the proposed multi-purpose facility in

Phase One, Phase Two and Phase Four were not compatible with the rest of the neighborhood in respect to both the materials, the size of the proposed building as well as the size of the parking lot and that the incompatibility would have a negative effect upon the property values of all the neighborhood including his property.

3. **Dr. Jerry Rubin**, a member of the Board of Directors of the Community Association expressed concern in regard to the developers tapping into the main water line which would affect the use of McDonogh Road. He requested a completion bond to protect the public against the failure of the developer to properly complete the project.

4. **Harry Shriver** who has lived on Field Road for 28 years objected to the developers proposal to build a multi-purpose development which will destroy the character of the community, reduced property values, which will generate additional traffic, attract crowds of people from outside the neighborhood and produce noise and roadside trash. He questioned the need for the facility in this location. His belief was that no one from this neighborhood will be attending this facility.

5. **Vladimir Volinsky**, 9141 Field Road, testified in regard to a number of issues. First, that the septic reserve area is inadequate and that his well as well as that of his neighbor , Mr. Hennessy, may be affected by a septic failure. He testified that he is concerned about water runoff from the subject site. He questioned that if the multipurpose building is built first that the Sanctuary may never be built and that the functional use of the site

may well not be religious in nature at all. He testified that Mr. Cobb indicated that the church sanctuary could be 8 to 20 years in the future before it was built. He expressed concern that if that was the case that the use of the subject site is not really for a church at all.

6. **J. Taetle**, 8125 McDonogh Road. He has lived there for 18 years. Mr. Taetle believes that the church is not compatible with a neighborhood and that a traffic study should have been performed to determine the adequacy of McDonogh Road prior to approval. Mr. Taetle is a real estate agent who spoke to the decline of property values as a result of this proposal.

7. **Michael Hennessy**. Michael Hennessy lives immediately north of the subject site and adjacent thereto at 9147 Field Road. His concern was the septic reserve and stormwater management systems. He felt that overflow of one or both of these systems will pass directly onto his property which is in the northernly direction from the subject site. He is concerned about the risk of contamination to his well. He is further concerned that his property is already wet and after storms becomes flooded and saturated with water. He believes that the Stormwater Management System and the outflow from the Stormwater Management System will negatively impact his property. He did not believe that the outfall from the stormwater management pond was sufficient. He questioned the veracity of Mr. Cobb when he indicated that if the church was full with 300 persons, that he would turn worshippers and families away when Cobb had capacity for a total of 500 persons in Phase One and Phase Three. He objected to the

construction of the proposed multi-use facility as a metal building as not being compatible with the neighborhood.

8. **Susan Greenberg**, 8109 McDonogh Road. Ms. Greenberg has lived at her home for 11 years. She believes that the proposed use of the property will be for business purposes and questioned that, in fact, the use of the site will be for a religious purpose. Her concerns also relate to the traffic impact that the potential of 500 persons utilizing the site will have upon the road system and the neighborhood. She testified that currently there are many accidents occurring in this area of McDonogh Road, including the destruction by automobile accidents of many mailboxes, including 8109, 8111 and 8113 McDonogh Road. She raised concerns in regard to the safety of the neighborhood based upon the traffic impacts.

9. **Michael Finkelstein**, 9118 Field Road. He has lived in his home for 17 years and expressed concern in regard to the traffic congestion on McDonogh Road. He expressed concern about Mr. Cobb's use of the property in which police were required to be called because of the noise and activity on the site. He expressed the belief that there was at least one underground oil storage tank on the property which has not been identified and finally objected to the construction of a metal building to house the multipurpose center on the "Business Park."

10. **Jeremy Roth**, 9007 Purdy Lane. Mr. Roth objected to the way that the Apostolic Church has been presented with deception to the community. He objected to amplified music outside. He objected to the minimal

number of parking spaces which do not cover the total potential use of the site. He objected to the multi-purpose building being utilized for drug and alcohol and computer programs.

11. **Judith Skolnik**, 8123 McDonogh Road, has resided in her home for 41 years. Mrs. Skolnik went into great detail in describing the inadequacies of the Development Plan. She protested that no initial use of the Phase One, one-story building is mentioned on the Plat. She believed that the multi-purpose proposed building intended to offer computer classes, career and college classes, and specialized classes for substance and alcohol abuse will be an office building and not a religious facility at all for the purposes of the Zoning Regulations. She believed that Phase Three, which is marked future Phase Three sanctuary may be 8 to 20 years away and therefore Mr. Cobb is asking for permission to develop a future sanctuary or church if and when the money, people and support are available. Her point being that what is proposed to be constructed immediately in Phase One is not a church or sanctuary and is not shown as having any purpose, religious or otherwise.

Further, she objected to the adequacy of the parking spaces since Phase One and Phase Three total 500 seats. She believed that the developer should be required to show the equivalent parking spaces of at least 125 on the Development Plan and they are not shown. She noted that there are no handicapped spaces shown on the Plan. She questioned whether they had adequate parking space if they had a church supper,

wedding or other event. She further commented that he has not shown parking spaces for at least 23 teachers and administrative and maintenance staffing for the day school and daycare. She objected to the small-sized parking lot and suggested that it should be placed behind or in the rear of the structures and screened from the neighborhood if the Hearing Officer grants approval. She further expressed concern about the proposed activities on site such as alcohol and substance abuse classes, college classes, computer classes, etc. She objected to outdoor events including the use of microphones, amplifiers, bull horns, loud speakers, musical instruments, spotlights or strobe lights based upon several incidents in the summer when he held such events. She concluded by testifying that, in her opinion, just because the owner of the property has a religious title, should not automatically qualify him to be entitled to build anything he wants using the church as an umbrella.

12. **Harlan Cress**, 8227 McDonogh Road. Mr. Cress testified that he has been resided at his home for 29 years. He believes that there will be problems with the proposed well and septic areas in that he has recently had problems with his well. He believed that there should be further testing in order to determine the effects of the well and testing areas of the proposed development on adjacent properties. He adamantly opposes this project since he is an adjacent property owner.

13. **Phyllis Brotman**, 8105 McDonogh Road. Ms. Brotman is President of McDonogh-Field Association and a resident of 43 ½ years. She was

testifying on behalf of the McDonogh-Field Association and more than 1,000 neighbors from Community Groups adjoining the neighborhood. She objected to the development of the site with the 23,000 sq. ft. building in the middle of a residential area. She believed it was not consistent with the Baltimore County Master Plan 2010. She testified that she believed that the multi-purpose center Phase One was not a church and if approval was granted for this project and the Phase Three church was never built, then the property would be used for purposes not consistent with this Baltimore County Zoning Regulations. She testified that she did not believe this proposed use of the site was, in fact, a church and that the County has no criteria established to determine what is, in fact, "a church." She testified that the Applicant was quoted in the Owings Mills Times as developing the multi-purpose center for substance abuse clinics, the classes and alcohol and computer classes and that those purposes did not qualify the use of this site as a "church." She also noted that the Apostolic Truth Tabernacle was not an organization in good standing with the Mid State Department of Assessments and Taxation. Clearly, on the Development Plan, Phase One is a multi-purpose center, Phase Two is a daycare and Phase Four is a school building and none of these uses constitute a church. That the church would only be constructed in Phase Three. She testified as to the removal of the specimen tree from the subject site after Cobb assured the community it would not be removed and after the hearing before the Hearing Officer had already started he cut

the tree without permission from the Hearing Officer. She, likewise, raised issues concerning the adequacy of the septic reserve area and its affect upon the community. Finally, Ms. Brotman summarized the concerns previously expressed by the other Protestants.

**B. Expert Witnesses**

1. **Richard Klein**. Richard Klein is a former employee of the Maryland Department of Natural Resources for 18 years, whose expertise is in water quality. He reviewed DEPRM's files at the request of the Protestants. He testified that he had asked and received all of the files and reports current to his testimony. It later turned out that reports were introduced into evidence that had not been reviewed either by Mr. Klein or by a subsequent expert witness, Mr. Jeff Wolinski, a consulting ecologist. Both experts are familiar with DEPRM and DEPRM procedures and the Protestants are at a loss to understand how both could have reviewed the files and not found report related to the forest extent and forest conservation worksheets.

In any event, Klein testified that he utilized the records filed by the developer, the well information reports concerning two adjacent properties to the West - the Snowden's and Small's wells. Klein's resume' (Protestants Exhibit #17) was introduced along with Protestants #19, a chart showing the topography of the subject site including well completion report results. Klein plotted a line on the Site Plan from the highest point of the subject property through the subject reserve area between the

Snowden and the Small wells to the center of I-795. The chart prepared by Klein included the depths of both wells and their surface casings, the depth and location of the proposed septic reserve area and the depth of the surface of I-795 cut through on the vertical axis and the distance from the centerline of I-795 on the horizontal axis. The purpose of this chart was to show the potential direction of groundwater flow from the septic reserve area. The County had assumed in its review that the flow would proceed from the subject reserve area of the subject site in a northward direction. The purpose of Exhibit #19 was to establish that the flow was from East to the West which could seriously jeopardize the Snowden and Small wells. The chart shows Snowden's well is 400 feet deep with a 40 foot surface casing and Small's well is 150 feet deep also with a 40 foot surface casing.

2. **Dr. Grant Garvin**. Dr. Garvin is an earth and planetary science professor from Johns Hopkins University. His expertise is physical migration of underground water contamination, chemical attributes of groundwater and geochemistry. His PhD. is in hydrology (see Protestants Exhibit #18, resume'). Dr. Garvin testified that upon his review of the material provided by Richard Klein from the Offices of the Department of the Environment along with Protestants Exhibit #19 and the well reports, that the earth on the subject site is fractured Crystalline Gneiss overlain by a thin skin of soil and saprolyte. It is cracked structure, not sandy or spongy and that water is stored in these cracks in the Gneiss. It was his opinion that the chart prepared by Klein illustrated a strong gradiant toward I-795

rather than towards the North and the Hennessy property. He believed that as a result, there was a strong probability of contamination of Small's and Snowden's well. He referred to Protestants Exhibit #29, a study which was done of 100 wells in Frederick County which showed that bacteria migrated from septic reserve areas to wells, which were more than 100 feet away and whose surface casings were less than 60 feet deep. He testified the soils in Frederick County are similar to those in the area of the subject site. He testified that even though the Baltimore County Standard Distance requirement between the well and septic reserve area is 100 feet, that is only a minimum and that the Frederick report establishes that the minimum under certain conditions cannot provide protection. He testified that the State recognizes 100 feet as a minimum. He recommended that the County delay approval until at least four bore holes can be drilled and equipped with pizometers which can measure the direction and amount of groundwater flow. Dr. Garvin provided locations for the four test bore holes and explained the rationale for each on the Development Plan. He testified that the drilling of the bore holes would be the only way to make sure the direction of groundwater flow. He chose two sites toward the West in the direction and speed of the Small and Snowden wells and one site each toward the North and East respectively. He chose four because he felt that this was the most cost effective way to get the necessary information to determine where the groundwater was flowing. It was his opinion that there was a high probability of contamination in the Snowden

and Small wells and that it would be prudent to at least obtain the pizometer readings to make sure. Garvin testified that he also reviewed Protesants Exhibit #22 to the well report and Exhibit #23, the geologic map.

3. **Mr. Brian Carbaugh** of WWES Associates, Consulting Engneering Firm from Dover, Delaware. His resume' was submitted as Protestants Exhibit #24 which indicates Carbaugh is a civil engineer, qualified with a license in Maryland and qualified to testify. His consulting firm designs onsite waste management projects for single family septic tanks to larger projects. He testified that he has designed or is in the process of designing four church waste management systems. He testified that he reviewed Rob Powells Wastewater Flow Memorandum of March 18, 2002, concerning the Apolostic Truth Tabernacle proposed septic reserve area calculations to determine the size of the septic reserve area. Apolostic Truth Tabernacle had submitted the proposed use of the site to Rob Powell of DEPRM which resulted in Powell's Memo concerning septic reserve area calculations.

Carbaugh pointed out that a church is a multi-use facility (as shown from the Development Plan itself which calls for a multi-use building, a school building, a daycare operation and a future sanctuary). He further testified its use varies by date and season unlike homes or business which have fairly consistent patterns of use. He testified in regard to the number of students and staff for the school and daycare, the number of seats in the

multi-use facility and the seats in the sanctuary. He referred to DEPRM's conclusion that there would be a total of 2,670 per day utilized and that was what the septic reserve area was based upon. Carbaugh, however, testified that this was not an accurate reflection of actual usage and that if multiple combinations of the facilities were used in one day that in a worst case scenario, 4,570 gallons per day would be required, which would require a 70% increase in the size of the septic reserve area. As an alternative, Carbaugh testified that Cobb had indicated that the sanctuary and multi-use facilities would never be used at the same time. However, the combination of the other uses at the same time could produce a water use of 3,670 gallons per day, which would require a 37% increase in the size of the septic reserve area. These calculations also did not take into account the possibility of having meals served to children in the school and daycare facility which would require higher usage for cooking and dishwashing. There was no testimony in regard to whether or not the school would serve meals.

Carbaugh concluded that the septic reserve area should be enlarged to provide adequate environmental protection to the neighborhood.

4. **Dr. Edward Bouwer**. Dr. Bouwer's resume' is marked as Protestants Exhibit #28, which reflects that he is a Professor of Environmental Engineering at the Johns Hopkins University, teaching environmental engineering, engineering microbiology, biological processes, biofilms, and hazardous waste management. Dr. Bouwer reviewed the Exhibits

provided by Richard Klein, the documents submitted to DEPRM, the geological and hydrology reports and charts. Dr. Bouwer testified that he had reviewed the soil survey for Baltimore County for the subject site (Protestants Exhibit #29) well known studies in his field of expertise: and the Mountain Residential Development Well Protection Distances Well Water Quality by Ford (Protestants Exhibit #30) and Literature Review for Septic Siting Study: a Means for Interpreting Past Research on Septic Systems by Matic (Protestants Exhibit #31) as well as the Coliform Bacteria and Nitrate Contamination of Wells in Major Soils in Frederick, Maryland by Tuthill (Protestants Exhibit #21). He testified that while the Maryland Department of the Environment, require a minimum of 100 feet between wells and septic systems, it is site specific and under certain circumstances, the minimum separation must be enlarged.

Dr. Bouwer testified that the "subject site is a unique site" in that the groundwater flow does not flow North but flows West toward the Small and Garvin wells. Secondly, he testified that all of the sewerage on this site will be put into one concentrated septic reserve area as opposed to multiple areas if the site had been developed for residential homes. He testified that based on his study of the septic system well contamination articles and the size of the well casing depth as shown on the well reports

in this case that in his opinion, contamination of the adjacent wells was a strong and likely possibility. He supported the opinion of Dr. Garvin that well monitoring and pizometers should be employed to protect the public in this case.

5. **Jeffrey A. Wolinski**. Mr. Wolinski submitted his resume' as Protestants Exhibit #33, and qualified as an expert consulting ecologist. Wolinski had previously worked for DEPRM in Baltimore County for a number of years. He is an expert in forest and forest delineation. In reviewing the Development Plan in this case he opined that first, the forest stand delineation was incomplete as submitted by the developer, specifically a narrative report describing the findings was not submitted as required by the Regulations; second, the extent of forest on site was not accurately delineated as evidenced by conditions in the field (see aerial photos Protestants Exhibit #36 and #37) and the additional undelineated forest shown in yellow on Protestants Exhibit #35. Wolinski believed that approximately 0.3 acres of additional forest exists on the site which should require a revised forest stand delineation, forest conservation worksheet and forest conservation plan.

6. **Matthew C. Anacker** – A & A Tree Experts, Inc. Mr. Anacker testified as a Maryland licensed tree expert, as a Maryland registered landscape architect, and as a certified arborist (see Protestants Exhibit #32 resume'). He testified as to the difference between a forester who reviewed the specimen tree located in an area adjacent to the septic

reserve area and an arborist who attempts to preserve trees for their aesthetic beauty. He identified the tree in question as a 200 year old Maryland Oak, 66 inches in circumference. While he could not get on site to view the tree because the property owner would not give permission, he was familiar with the tree from past contact with it from a former owner of the property. No Protestant was able to get close to the tree, however, they could view it from McDonogh Road and also from the Western border, thereby seeing three sides of the subject tree. He testified that an arborists purpose is to serve and save trees and Anacker testified from his vantage point, he found it hard to believe the tree needed to be removed. He referred to fallen branches as routine surrounding old white oak trees. He was critical of the fact that no one, including DEPRM nor the County reviewer, thought it prudent to test bore the tree to determine whether it truly was diseased to the point that it need to be removed. He estimated the value of the tree before mutilation at approximately $29,500.00 according to a formula. This value would not have been lumber value but would have been the aesthetic value of the tree on the site. He believed this tree would have been the 11$^{th}$ or 12$^{th}$ runner up to the Wye Oak. Even now with the tree chopped down without any branches, he would leave the tree and its critical root zone undisturbed to see if it revives. He estimated the critical root zone as extending far into the septic reserve area and forest buffer and RTA areas defined on the Development Plan.

7. **Jack Dillon**. Mr. Dillon qualified as an expert in Baltimore County Planning and Zoning, land use analysis and land site evaluation. (See Protestants Exhibit #25 resume'). Mr. Dillon is currently the Executive Director of the Valleys Planning Council and had previously worked for the Baltimore County Planning and Zoning Offices for over 30 years prior to retirement. He testified that First the Planning Office has not required the submittal of the finding of compatibility by the Zoning Regulations. Specifically, Sec. 1B01.B.1.(g) provides exceptions to residential transition. The restrictions contained in Paragraph A through E above of this subsection do not apply to:

> **8. a new church or other building for religious worship**, the site plan for which has been approved after a public hearing in accordance with Sec. 500.7. Any such hearing shall include a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.

Dillon believed that this section required a finding of compatibility by the Planning Office for purposes of its recommendation to the Hearing Officer.

Dillon further indicated that Sec. 26-282, "compatibility" of the Baltimore County Code sets forth the conditions by which the Director of Planning is to make his findings. Dillon concluded that while these conditions do not include the DR 1 Zone, it is clear that the County Council intended compatibility to be an important finding for the proposed use as stated in Sec. 1B01.B.g.(6) as well as

(10) and (11). Since compatibility is not further described in that Section, Dillon concluded that the County Council has expressed in Sec. 26-282, a formula for the Planning Director to make compatibility findings. This argument is both reasonable and logical and permits the Hearing Officer to utilize the Comprehensive Manual of Development Policies which sets forth the proper standard for a finding of compatibility. Clearly, in Sec. 1B01.B.1.g.6, compatibility is a requirement. It is logical to suggest that the methodology of compatibility used in Sec. 26-282 could be applicable to this case. The eight areas for review to determine compatibility are: site analysis, site development context, site features, open space planning, building and parking layout, road widths and sidewalks, site landscaping, street scapes and buffers, exterior signs, lighting and accessory structures, building scale, proportions, massing and detail.

In this case, all of those areas of review for compatibility would be applicable in Dillon's opinion in this case and the Planning Department completely avoided doing or requiring a compatibility analysis.

Secondly, Dillon testified in regard to the RTA issue. He testified that the Zoning Representative, Bruno, at the September 5, 2002 hearing, raised issues in regard to the existing single family home and swimming pool being within the 50 foot RTA buffer. Dillon then testified that he reviewed such a 1B01B.1.e.(3) which states:

> the 50 foot RTA buffer shall remain an ungraded, unclear landscape buffer unless otherwise directed by the Hearing Office, based upon recommendations of the County. It shall not contain cleared drainage areas, stormwater management bonds or accessory structures, but it

may be bisected by roads, paths and trails that are designed to connect to adjoining developments.

Dillon then testified that as this property now exists, it is an 8 acre DR 1 Zone Property improved with a single family home with a swimming pool. The home and the swimming pool are partially located within the 50 foot RTA buffer. It is clear that a swimming pool is an accessory structure to the principal use (the single family residence). However, Dillon testified that the residence has become an accessory structure to the proposed community building. It was Dillon's opinion that under this Development Plan, the pool and residence are accessory structures to the community building, therefore shall not be within the 50 foot RTA buffer. He pointed out Sec. 101 of the Baltimore County Zoning Regulations indicates that the word "shall" is mandatory and that based upon the review of the Regulations, it was his opinion that the proposed development is deficient and cannot meet the purpose and intent of the Regulations.

Third, Dillon testified that in regard to the historic oak tree, which the site plan shows as touching the 50 foot buffer, it is without doubt that the tree canopy and the root system are within the 50 foot buffer. Dillon opined that the cutting down of the oak tree was a further violation of the RTA buffer requirements of Sec. 1B01.B.1.e.(3) and that any determination of the removal of the tree should have been done by the Hearing Officer after receiving evidence of its condition.

Finally, Dillon opined that based upon the neighborhood, in his opinion, the subject proposal was not compatible with the neighborhood and the residential subdivisions surrounding the subject site. He opined in regard to the bulk and the mass of the building and its visibility from McDonogh Road. He testified that the

compatibility study could not be made because no specific plans of the building, front dn side elevations, nature of materials were ever submitted to the Planning Office until the hearing dates. He opined that based upon Protestants Exhibits #26 and 27A that the multi-use facility and large parking lot on McDonogh Road were not compatible with the neighborhood.

## ISSUES AND ARGUMENT

The issues presented below are not presented in any order of importance, but an attempt is made in this Memorandum to consolidate some issues into single arguments.

1. **Groundwater Septic Flow**. This issue is generated by the testimony of Richard Klein that he obtained well reports from DEPRM that relate to the Snowden and Small wells which are West of the subject site. He further testified that he created a chart showing the topography of the subject site which shows a slope from the highest point on the subject site through the septic reserve area through the Snowden and Small wells to the center of I-795. This chart included the depth of both wells and their surface casings. In the review of the project by the County, the presumption was that the underground flow proceeded from the subject site in a northerly direction toward the Hennessy property and thereby would not have an effect upon the Snowden and Small wells. The purpose of Exhibit #19, the chart created by Klein, was to establish that the potential groundwater flow was from East to West. Dr. Grant Garvin, a hydrologist, testified that in reviewing the material filed in this case, and the well reports, that there is a strong gradiant in a westerly direction toward I-795, rather than in a

northerly direction and that there was a definite possibility of contamination of the Small and Snowden wells by the septic reserve area on the proposed site. He referred to a series of studies (Exhibits 21, 22, 23, 30 and 31) which show that the State minimum requirement of 100 feet between subject reserve area and wells is only that, a minimum, and that the Frederick County report establishes that the minimum distance under certain circumstances cannot provide protection. Garvin testified that as an expert hydrologist, in his opinion, the only way that the Hearing Officer could be sure of the potential for contamination to the two adjacent wells was to dig four bore holes equipped with pizometers to measure the direction and amount of groundwater flow. This was not done by the County. In his opinion, there was a high probability of contamination to the Snowden and Small wells by the current size of the subject reserve area on the subject site. Dr. Edward Bouwer, an expert in environmental engineering and groundwater assessment reviewed the documentation and testimony of Dr. Garvin and Klein. He also reviewed the soil on the subject site. Dr. Bouwer confirmed Dr. Garvin's concern, but went further and indicated that the subject site was a unique site in that the groundwater clearly does not flow in a northerly direction, but flows to the West and secondly, that all of the septic is concentrated in one area as shown on the Development Plan as opposed to being broken up into various septic areas as it would be in the event residences were constructed on the site. As a result, this concentration of sewerage and the groundwater flow combined

to, in the opinion of Dr. Bouwer, clearly raised strong concerns in regard to the Snowden and Small wells and the threat of contamination thereto from the septic reserve area. He also endorsed the concept of at least four boring holes to measure and determine groundwater flow and direction before this Plan could be approved.

Protestants respectfully submit that the Plan should not be approved and that DEPRM and the developer be required to conduct further tests to determine whether or not the concentrated septic reserve area on the subject site presents a real health hazard to the Snowden and Small wells; further, that a minimum of four bore holes be dug with pizometers installed and that the results of the borings be made available to the Protestants and the Protestants experts.

2. **Capacity of the Subject Reserve Area**. Civil engineer and expert in sewage disposal for churches, Brian Carbaugh, testified that, in his opinion, the projects septic reserve area needs to be larger. His expert testimony confirmed the sense of the lay witnesses that something was peculiar about the size of the septic reserve area. First, common sense dictates that originally the septic reserve areas consisted of an easterly septic reserve area for the proposed facility and a septic reserve area for the existing residents. The Development Plan shows a total capacity of 27,600 sq. ft. for both the residence and the multiple buildings proposed in the new septic reserve area. Second, the septic reserve area is sized totally based upon Mr. Cobb's comments as to the potential use of this facility.

The underlying fallacy is illustrated by the fact that Cobb, in presenting to his engineer, Richardson, the proposed uses of the buildings who then presented it to Rob Powell of DEPRM for their calculations separated the uses of the building and indicated that the multi-purpose center and the future Phase Three sanctuary would not be used at the same time. The fallacy in the calculation of the septic reserve area is compounded by Cobb's unbelievable testimony at the hearing, that he would turn away people from religious services and other activities so as to comply with his limitation that both Phase One and Phase Three would not be used together. This testimony defies logic as well as reason. A reasonable person should not accept this explanation. There is no way the County in the future can enforce whether or not the Phase One and Phase Three buildings are being used simultaneously. That is the whole fallacy in the way the size of the septic reserve area is being determined in this case. Logic and a reasonable understanding by the Hearing Officer would demonstrate that, under this Plan, Phase One, Phase Two, Phase Three and Phase Four are all combined into one building as shown on the Plan. There is nothing in this Plan which would prohibit a connection between Phase One and Phase Three with openings wide enough to create an assembly area of a total of 500 individuals. If accordian-type doors are used between the two buildings (and again, we have no specific building plans or drawings to verify what will, in fact, be constructed), then simultaneous use of Phase One and Three is possible. If that is the case, it

will clearly overtax the septic reserve area, particularly, if the school building, Phase Four and the daycare, Phase Two is likewise being utilized at the time Phase One and Phase Three are being utilized.

To confirm this fact, Brian Carbaugh, in his opinion, testified that churches are multi-use facilities with activities concurrently taking place. Carbaugh explained that the County calculations of 2,670 gallons per day was based on a false premise. He further testified that if all facilities were used in one day, (which is certainly possible under the Building Plan shown on the Development Plan), that the site would use 4, 570 gallons per day which would require a 70% increase in the size of the septic reserve. If you could believe that Phase One and Phase Three would never be used at the same time, the water usage would still be 3,670 gallons per day which would require a 37% increase in the size of the septic reserve area.

Clearly then, both lay testimony and expert testimony coincide in clearly establishing that the septic reserve area size is based upon a faulty premise proposed by Cobb to his engineer. After all the testimony and all of this case is reviewed, it is clear that the Hearing Officer should deny this Plan and require a septic reserve area to be of sufficient size and capacity to accommodate all of the usage combined on the subject site in order to ensure the health, safety and welfare of the community surrounding this proposal. At a minimum, the septic reserve area needs to be enlarged by 37% but the community would request a 70% increase

which would conform to the maximum usage of all the facilities on site. Therefore, the Development Plan should be rejected and the developer be required to comply with the realistic septic use. Furthermore, the burden should not be place upon the community to in the future, have to challenge the combined usage of Phase One and Phase Three. Clearly, additional plans should be required to establish that either physically these rooms cannot be used jointly or the conclusion should be drawn by the Hearing Officer that, in the future, it is practically impossible to determine whether general note #9 alleging non-combined uses of Phase One and Phase Three can be enforced. It obviously cannot be enforced from a practical matter. The community requires certainty and environmental protection from such a potential at this stage in the proceedings.

3. **Forest Buffer Inadequate**. Jeff Wolinski testified that the forest stand delineation is incomplete as submitted by the Richardson because a narrative report describing the findings was not submitted as required by the Regulations. (It was at this point that suddenly reports from Betty Kelly were submitted into evidence by the Developer which, were in the opinion of Jeff Wolinski and Richard Klein, not in the file when either of them reviewed the DEPRM file. Protestants object to these documents being utilized to satisfy this requirement if in fact they do). Wolinski went on to testify that the extent of forest on site was not accurately delineated as evidenced by conditions in the field, referring to aerial photos. He

described an additional 0.3 acres of forest existing on the site which should require a revised forest land delineation, forest conservation worksheet and forest conservation plan. This has not been done. Protestants, therefore, submit that the Plan should be denied until such correct forest delineation on site is presented, reviewed and approved formally by the County.

4. **Compatibility Analysis**. Not performed by Planning Office – The record is clear that the Planning Office, in this case, did not consider, for purposes of their analysis of either their Special Hearing or the Development Plan Comments the issue related to compatibility of this project with the surrounding neighborhood. This omission was reviewed by Jack Dillon, qualified expert in Land Planning and Zoning, a previous Planning Office employee for 30 years, who reviewed the proposed Development Plan in this case. Dillon testified that the Planning Office has not required the submittal of a finding of compatibility, nor made such a determination of compatibility. Obviously, they had not because no building plans, site elevations, etc. were presented until the hearing, and none were in the Planning files for the Protestants to review). Specifically, Baltimore County Zoning Regulations Sec. 1B01.B.1.g (6) indicates where a new church or other building for religious worship is being considered in a hearing in accordance with Sec. 500.7, that hearing shall include a finding that the proposed improvements are planned in such a way that compliance to the extent possible with RTA use

requirements be maintained and that said Plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises. In this case, Planning did not require or perform a compatibility analysis. They totally missed the point required by this section. The question of what is compatibility pursuant to that Section and the factors to be considered are not spelled out in that section, but it is very clear that the County Council wanted a church to be compatible with the neighborhood.

That left Dillon with attempting to determine what was the criteria for compatibility. He believed that the only place that compatibility is described or articulated is in the County Code, Sec. 26-282, and, that while this Section specifically does not include DR 1 Zones, it sets the criteria or the factors for the Planning Office and the Hearing Office to consider in determining what the compatibility is in Sec. 1B01.B.1.g (6). Clearly, in doing a compatibility analysis, building scale proportions massing detail would all be one of the 8 relevant areas to review. In this case, no such analysis was performed by Planning and the proposed drawing of the metal building to be utilized was not even submitted in this case until the hearing before the Hearing Officer. Then it purports to be an example of Phase One and Two, not Three or Four. As a result, Protestants respectfully request that the Planning Office be required to perform a compatibility analysis and that Section 26-282 and all 8 of the factors set forth therein be utilized as a guide in analyzing the

compatibility for the neighborhood. Therefore, this Development Plan should be denied pending receipt of adequate drawings showing building scale proportions, massing and detailing of all of the site and showing site landscaping, street scapes and buffers, lighting and accessory structure detail.

5. **RTA Violation**. Section 1B01.B.1.e.3 of the Baltimore County Zoning Regulations requires that:

> "the 50 foot RTA buffers shall remain an ungraded, unclear landscaped buffer unless otherwise directed by the Hearing Officer based upon recommendations by the County. It shall not contain clear drainage areas, stormwater management ponds or accessory structures.

This property, as shown with the proposed development of a multi-purpose building Phase One and the remaining three Phases will create a new use for the property, i.e., an alleged "church." If the church and the multi-purpose building are the principle use, then the pool and the residence are the accessory structures thereto. As accessory structures, they may not be in the 50 foot buffer and the Hearing Officer has no authority to direct otherwise. Section 101 definitions of the Baltimore County Zoning Regulations indicate that the word shall is mandatory. If that is the case, then the building and the pool may not be in the 50 foot RTA buffer. Therefore, the Plan must be denied and the Special Hearing denied.

In addition, the Development Site Plan shows the tree trunk partially within or on the 50 foot buffer line and it is clear and unrebutted

that the tree canopy and the tree roots system are within the 50 foot RTA buffer. The same Section 1B01.B.1.e.3 requires that the area within the buffer shall remain ungraded and uncleared. Only with permission with the Hearing Officer, can things be changed in that regard. Here, the specimen oak tree, over 200 years old, and the pride of the neighborhood was initially being preserved by the Developer. The hearing began, and so therefore the case was under the jurisdiction of the Hearing Officer. After the hearing began, the Developer mulitated and cut down the tree. Since the root system is part of the tree, and the root system is within the 50 foot RTA buffer, the Hearing Officer should have been the one to determine whether or not the tree could be removed and whether or not the tree was diseased and not DEPRM. Therefore, the Developer has already violated this Section of the Baltimore County Zoning Regulations. The Plan should be denied.

6. **Compatibility**. Section 1B01.B.1.g.(6) requires the "church" to be compatible with the character and general welfare of the surrounding residential community. The testimony of Jack Dillon reflects that it is not and the accompanying photos establish the nature of community. Dillon described the neighborhood as single family residential. The residential buildings are of stone, brick or a combination of those materials and board. That the neighborhood does not have a large parking lot particularly facing on McDonogh Road; that the massive size of this building are out of scale with the residential homes; that the large parking

lot is out of scale with the driveways of the residential homes; that the proposed facility is too close to McDonogh Road and is not adequately buffered or landscaped to insure compatibility with the neighborhood; that a steel building is not compatible with any of the existing structures. Dillon further opined that without suitable drawings of the building size mass, perspective elevation, materials, etc., that compatibility could not really be performed. Therefore, Protestants respectfully request this Plan be denied until such compatibility analysis is performed by the Planning Office and documentation is presented as to what the building elevation structure materials, etc. will look like.

7. **200 Year Old White Oak Issue**. This matter has already been peripherally discussed in the previous arguments. However, it is central to the distrust and bad feelings generated by this proposed usage of the site. Historically, at the community input meetings, Cobb advised the community that the tree was an outstanding specimen and it was a fine addition to the property and would remain. In fact, the record reflects that the Developer's own expert, Mr. Dennis, Mrs. LaBare, filed a report with the County that this tree "was a specimen tree and needed to be saved." At that time, the septic reserve area was on the East side of the church and was not encumbered by the specimen tree. Upon determination that the perc test failed on the East side of the church, the septic reserve area was then moved to its present location West of the proposed new buildings. It was, at this time, that the tree interfered with the location of the septic

reserve area. Suddenly, in an alleged storm, lightning hit the tree and tree branches were found on the ground which necessitated Cobb's desire to remove the tree. The Developer hussled representatives of the County out to the tree who declared it "damaged." The County representatives were foresters and not arborists. The County representatives failed to do tree borings to determine whether the tree was, in fact, diseased or dead. The tree was then mutilated after the case had already started before the Hearing Officer and in violation of the RTA provisions of the Baltimore County Zoning Regulations cited n argument #5 above.

To compound matters, the Protestants requested to go on site to examine the tree and were denied permission. Therefore, they were required to obtain an expert, Mr. Anacker, who viewed the tree from a short distance away on the adjacent property West of the subject site and also from McDonogh Road. He testified that he was familiar with the tree having seen it on prior occasions for a previous owner and that white oak trees often drop limbs and that is nothing unusual. Secondly, he testified that he did not believe the tree was struck by lightning because lightning leaves a distinctive mark on the tree which is easily identified and he did not observe any such markings on this tree. Thirdly, he testified that borings should have been done into the tree to determine whether, in fact, it was diseased. He would also have trimmed the roots and the tree and fed it to provide for its continued existence. He also testified that an oak tree could stand 20 or 30 years even if it were dead and that, in his

opinion, the tree was not located in an area that would cause any damage if the tree fell. His company had previously trimmed and cared for this very tree. Finally, he testified that he believed the tree could have been saved and it was worth approximately $29,500.00 from an aesthetic value standpoint. Protestants submit that the developers in this case have already violated the above referenced Zoning Section and as a result, this Plan should be denied. It should have been within the Hearing Officer's province to determine the state of the health of this tree under the Zoning Regulations previously referred to.

8. **Adequacy of Parking**. As previously discussed in Issue No. 2, concerning the septic reserve area, the fallacy of this Plan relating not only to the septic reserve size but also the number of parking spaces is the Note on the Plan which suggests that the Phase One of the multi-purpose building will not be used in conjunction with the Phase Three future sanctuary space. As previously noted, this condition is impossible to enforce and in all likelihood, not even reasonable. You will recall the testimony of Cobb when he indicated that he would turn worshippers away if they exceeded 300. That suggestion is just too ridiculous to be believable. Further compounding the problem, is the fact that with the Phase One, Phase Three Plan drawn on the Developer's Plan the way it is, there can be no guarantee that mutual access between the buildings will not be provided and, in fact, it may well be provided. If that is the case, the Hearing Officer is familiar with the number of large churches who

have made provision for accordion walls to be open to permit on high holidays, holy days and other religious days of worship, a combined area for worship. Clearly here, the 300 seats and the 200 seats would be utilized simultaneously if Mr. Cobb's desire to build this facility succeeds. Therefore, not only should the capacity of the subject reserve area be based upon 500 seats but the parking should be required to be based on 500 seats. If that is the case, 80 spaces are provided in the main parking lot and 20 spaces in the overflow space. One hundred twenty-five (125) spaces would be required if the maximum use is considered 500. In addition, the County has previously required that the overflow space of 20 spaces be eliminated from the Plan for various reasons, particularly due to its close proximity to McDonogh Road. While the County requested the 20 parking spaces be eliminated, they have not been removed from the Plan. Finally, in addition to not being enough parking spaces, there are no handicapped spaces provided on the Plan.

In addition, the community has testified in regard to the dangers and hazardous traffic and nature of McDonogh Road and also the fact the residents along Field Road do not want overflow parking from the church clogging either McDonogh Road or Field Road. It is totally unrealistic to believe that if this facility is developed as proposed on the Development Plan, that there is adequate parking provided. Finally, the parking lot is totally incompatible with the residential are and is reflective more of a Wal-Mart or K-Mart parking lot. This lot should be in the rear of the

building, heavily landscaped to attempt to make it compatible with the other residential uses in the neighborhood. For all of those reasons, Protestants request that this Development Plan be denied for lack of suitable parking.

9. **Flooding and Lack of Suitable Outfall**. Mr. Hennessy testified that currently his property is North of the subject site and that the subject site drains and produces a swampy, wet and flooded area behind his home North of the subject property. He expressed a desire not to have further flooding as a result of the development on the subject site. The Site Plan reflects that the stormwater management pond will drain into an open swale which runs directly in a northerly direction off of the subject site and onto the property of Mr. Hennessy. Clearly, this is not an adequate or suitable outfall as required by the Development Regulations. Therefore, this Plan should be denied in that a current flooding and wet condition exists on the Hennessy property which will be further compounded by the drainage from the unsuitable outfall from the stormwater management pond in a northerly direction on to the Hennessy property.

10. **Traffic**. The terrible traffic concerns universally registered by every Protestant who testified during the course of this hearing have not been satisfactorily addressed. The thrust of the testimony is that this current site has had numerous accidents in which mailboxes have been destroyed, fences and properties damaged by vehicles traversing McDonogh Road due to the narrowness and the heavily trafficked McDonogh Road between

Reisterstown Road on the East and Owings Mills on the West. The thousands of vehicles which utilize this road have produced long delays of the Protestant residences preventing them from being able to pull out on to McDonogh Road and have created numerous accidents as a result. As of the year 2000, it appears that approximately 16,000 vehicles were utilizing that road. That certainly has increased in the year 2003. Richardson, the developers engineer could not testify that he had checked the County to determine future developments that have been approved as required by the County Code. The traffic impacts have had a horrific impact on the neighbors residing along McDonogh Road and they expressed concern that the church with the additional potential for more than 500 persons utilizing the site would further compound an already impossible traffic condition. No traffic report was submitted by Developer from a traffic expert to establish that the traffic from the proposed facility would not severely impact the road system of the neighborhood. "Sec. 26-167, the Purpose section of the Development Regulations states in Section (a)(4) is to protect the liability of the County's existing community by ensuring that new development and redevelopment is compatible with the neighborhood and minimizes adverse environmental, traffic and economic impacts on the surrounding community." It is this Section and this purpose that the subject project violates based upon the Developer's failure to present a comprehensive traffic analysis, and clear lay testimony concerning the present traffic deficiencies of McDonogh Road. This

Development Plan should be denied, in that it violates the above Section of the Development Regulation purposes.

11. The proposed development is not a "church" within the context of the Zoning Regulations.

12. The Development Plan does not propose a "church" within the definitions of the Baltimore County Zoning Regulations. While the Protestants cannot argue that the Apolostic Truth Tabernacle may be a religious institution under the auspices of the United Pentecostal Church International, the project they are proposing on the subject site is not a church within the meaning of the word "church" as set forth in the Baltimore County Zoning Regulations Sec. 1B01.1a.3. In DR 1 Zones, churches are permitted if they meet the definition set forth therein as "churches, other buildings for religious worship or other religious institutions." The Plat reflects that this is a Development Plan for a sanctuary building, yet further review of the Plan suggests a multi-purpose Phase One building. It is not identified as a religious building. Phase Two is a daycare; Phase Four is a school building; Phase Three is defined as a future "sanctuary." This is confirmed by the testimony of Cobb, who has indicated that could be from 8 to 20 years before Phase Three is built, if at all. The principle use of this complex is not a sanctuary or a building for a religious purpose, it is a multi-purpose building which encompasses daycare, day school, youth center, computer classes, substance abuse classes, college classes, counseling sessions, meetings for adults, men and

women, etc. It may be used as an informal church according to the testimony of Cobb, but that appears only to be the use on one limited period of time on Sunday morning and perhaps on Wednesday evening. The majority of the time, according to the testimony of Cobb, the building will be used for other purposes. Therefore, the principle use of Phase One, Phase Two and Phase Four will be for other than religious purposes. The principle use of the building, therefore, will not be for a religious purpose, but for the multiple uses provided. Such uses as computer classes, drug and alcohol classes, clinics do not qualify on their own as principle uses permitted under the Regulations.

In addition, Protestants Exhibit #14 establishes that the alleged corporation, Apolostic Truth Tabernacle, is not recognized by the State of Maryland Department of Assessment and Taxation as being in good standing. The construction of the sanctuary in Phase Three, if ever done in the future, may qualify this project as a church within the Zoning Regulations at that time; however, at the present time, the Plans and testimony itself establishes that it is not. This Plan should be denied.

13. **Crime – Trash**. The lay witness neighbors testified that they were concerned that the parking lot of this facility may become an area of loitering, parking of undesirable individuals and the potential creator of crime problems. Likewise, there was testimony from the Protestants that these have been current trash problems in regard to the use of the site.

14. **Alleged Church Not Needed or Supported in the Community**. The Protestants testified that the bulk of the potential attendees and individuals will come from outside of the neighborhood and that the proposed facility did not serve the neighborhood.

15. **Lighting and Noise**. Many neighbors expressed concern over the July event that was held outside on the property and expressed fear that noise from amplifiers, sound equipment, bull horns, etc. would disturb the neighbors as well as potential lighting of the site. Certainly, outside events held on the property, would not be consistent or compatible with the residential neighborhood.

16. **Devaluation of Adjacent Property Values**. Almost all Protestants expressed concern that if this project is approved, that it will diminish the value of their homes and the adjacent properties and destabilize a 40 plus year old community.

17. **Well Capacity**. Adjacent property owners expressed concern that the well to be utilized to serve 500 plus people as well as a continued day school and daycare operation would negatively impact the availability of well water to the surrounding properties.

For all of the reasons cited in the Issues and Arguments No. 1-16, Protestants believe this Development Plan should be denied. Protestants further believe that the imposition of conditions will not make the Plan acceptable since these issues reflect serious health, safety and welfare concerns relative to a project that is not well thought out, not well planned and not well presented from the

standpoint of documentation to provide assurances that the neighborhood will not be severely impacted from an environmental and health and safety standpoint.

## CONCLUSION

If, in spite of all of the above issues which demand rejection of this Development Plan, the Plan is approved, the following should be required at a minimum before this project is permitted to proceed:

1. Four test wells should be drilled and pizometers installed to determine groundwater flow, and its speed and capacity to determine whether or not the adjacent Snowden and Small wells will be affected as Protestants believe.
2. No outside lighting of fields or amplification should be permitted and certainly no outside events should be permitted on site in light of the current violations that have already occurred.
3. Phase One, Two and Three, which are non-religious buildings should not be permitted to be rented out or used for outside organizations and should be limited to use by Apolostic Truth Tabernacle.
4. Additional landscaping along McDonogh Road should be provided to shield the facility with additional landscaping, buffering of the inadequate parking lot. The parking lot should be required to be moved to behind the facility.
5. The supplemental parking lot along McDonogh Road should be eliminated as requested by the County in that it is too close and too open to the view from McDonogh Road.
6. The number of persons attending services or school or daycare on site for <u>all</u> purposes should be limited to 200 persons at any one time or until Phase

Three, and then 300 maximum number of persons at any one time on site. Because of the enforcement problems presented in this Plan, the Protestants should be given authority to go on site to verify the number of persons utilizing the facility at any one time. As the Hearing Officer will recall, the Protestants were not permitted to go on site to observe and view the oak tree.

7. Parking off site should be prohibited on McDonogh Road and Field Road and any other neighborhood road. If more than 80 vehicles utilize the site, it should be considered a zoning violation subject to enforcement by the neighbors as well as Baltimore County Zoning Officials.
8. Any Order should prohibit a metal building and require a brick and stone facing.

9. Any proposed Order approving this Plan must, under the Zoning Regulations, require removal of the existing house and pool from the RTA buffer.

Respectfully submitted,

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508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Protestants

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 23RD day of January, 2003, a copy of the foregoing Protestants Memorandum in Lieu of Final Argument was mailed, postage pre-paid, to: John B. Gonthrum, Esquire, 814 Eastern Boulevard, Baltimore, Maryland 21221-3503.

**J. CARROLL HOLZER, Esquire**

1/23/03

RECEIVED

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ZONING COMMISSIONER

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| IN THE MATTER OF: | * | BEFORE THE |
| APOSTOLIC TRUTH TABERNACLE | * | HEARING OFFICER |
| 8216 McDonogh Road | * | OF |
| 3rd Election District | * | BALTIMORE COUNTY |
| 3rd Councilmanic District | * | Case No: 03-040-SPH<br>(PDM File No.: III-446) |

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MEMORANDUM OF PETITIONER

STATEMENT OF CASE

Petitioner Apostolic Truth Tabernacle, a Maryland non-stock corporation, through its Pastor Thomas Cobb, filed a Petition for Special Hearing to approve a site plan for a new church pursuant to the Baltimore County Zoning Regulations (hereinafter cited as the ("BCZR") Sections 1B01.1B.1.g.(6) and Section 500.7. Concurrently, the Petitioner filed for a development plan hearing pursuant to Baltimore County Code (hereinafter cited as the "Code"), Sections 26-206 and 26-206.1. The Petition and development plan originally was scheduled for September 5, 2002, and subsequently was continued to October 30, December 4, 11, 18 and 23 on which days testimony was taken and exhibits admitted.

QUESTIONS PRESENTED

1. IS THE PETITIONER PRESENTING A LEGITIMATE CHURCH USE OR IS IT A COMMERCIAL PLAN?

2. DOES PETITIONER'S SITE PLAN MEET THE STANDARDS OF BCZR SECTION 1B01.1B.1.g.(6)?

   A. IS PETITIONER REQUIRED PURSUANT TO BCZR SECTION 1BO1.1B.1.g.(1) TO CONDUCT A COMPATIBILITY STUDY AS DESCRIBED IN SECTION 26-282 OF THE CODE?

   B. ARE PETITIONER'S IMPROVEMENTS PLANNED IN SUCH A WAY THAT COMPLIANCE, TO THE EXTENT POSSIBLE WITH RTA USE REQUIREMENTS, WILL BE MAINTAINED?

   C. CAN PETITIONER'S PLAN OTHERWISE BE EXPECTED TO BE COMPATIBLE WITH THE CHARACTER AND GENERAL WELFARE OF THE SURROUNDING RESIDENTIAL PROPERTIES?

3. IS PETITIONER'S SITE PLAN REQUIRED TO MEET THE STANDARDS OF BCZR SECTION 1BO1.1B.e.(3)?

4. DOES THE PETITIONER'S SITE PLAN MEET THE DEVELOPMENT REGULATIONS AND APPLICABLE POLICIES, RULES AND REGULATIONS PROMULGATED PURSUANT TO SECTION 2-416 ET SEQ. OF THE BALTIMORE COUNTY CODE?

   A. DOES THE SITE PLAN MEET COUNTY AND STATE STANDARDS WITH RESPECT TO SEWAGE DISPOSAL?

   B. DOES THE SITE PLAN MEET COUNTY STANDARDS WITH RESPECT TO STORM WATER MANAGEMENT?

C. WILL THE SITE AS PROPOSED CREATE AN UNSAFE CONDITION WITH RESPECT TO TRAFFIC EITHER FROM AN ADDITION TO THE EXISTING TRAFFIC ON McDONOGH ROAD OR FROM ITS ACCESS ONTO McDONOGH ROAD?

D. DOES THE PARKING CONFORM TO ZONING AND DEVELOPMENT REQUIREMENTS?

E. DOES THE SITE PLAN ADEQUATELY PRESERVE THE FOREST BUFFERS AND CONSERVATION AREAS?

F. WILL THE PROPOSED BUILDINGS BE IN HARMONY WITH THE COMMUNITY?

G. DOES THE SIGN FOR THE CHURCH COMPLY WITH COUNTY REQUIREMENTS?

## STANDARDS OF REVIEW

Section 26-206(b) of the Code states in pertinent part:

> The hearing officer shall grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations promulgated pursuant to section 2-416 et seq. of the Code, provided that the final approval of a plan shall be subject to all appropriate standards, rules, regulations, conditions and safeguards set forth therein.

The hearing officer also is entitled pursuant to Section 26-206(o) of the Code as follows in pertinent part:

> In approving a plan, the hearing officer may impose such conditions, as may be deemed necessary or advisable based upon such factual findings as may be supported by evidence for the protection of surrounding and neighboring properties. Such conditions may only be imposed if:

(1) The condition is based upon a comment which was raised or a condition which was proposed or requested by a party:
(2) Without the condition there will be an adverse impact on the health, safety or welfare of the community;
(3) The condition will alleviate the adverse impact; and
(4) The condition does not reduce --- more than twenty (20) percent of square footage proposed by a non-residential development plan.

STATEMENT OF FACTS

Pastor Thomas Cobb founded Apostolic Truth Tabernacle in 1980. It is one of approximately fifteen churches in the Baltimore area that are part of the United Pentecostal Church International denomination. The United Pentecostal Church is a denomination that has over 4,000,000 members worldwide and principal offices in Saint Louis. (T. 12/04 at 84-86).

For many years Apostolic Truth Tabernacle was located in Baltimore City on West 36th street in a building with a sanctuary seating three hundred (300) (T. 12/04 at 87). About four (4) years ago a fire destroyed the church. Since the fire the church has met at various sites, and currently the congregation meets at Wellwood International School at 2901 Smith Avenue (T. 12/04 at 89-91). The church is relatively small. At its peak the active congregation had a regular attendance of one hundred forty, but today, the regular attendance is about 60 congregants (T. 12/04 at 88, 91). The church offers worship services, pastoral counseling, and Sunday school classes (T. 12/04 at 89).

The church purchased the subject site in 2001 as a location for a new church building (T. 12/04 at 97). The location was reviewed not only by the pastor and congregation but also by the denomination's district superintendent and the local presbyter, and it was approved as a site for a church (T. 12/04 at 100).

The subject property is located at 8216 McDonogh Road. The site contains 7.8 acres of net area (8.57 acres total) and is situated on the northwest corner of McDonogh and Field Roads. A scale applied to the vicinity map on Petitioner's Exhibit 1A indicates that I-795 is only a few hundred feet to the west of the property, and commercial and office uses lie about a little over half mile to the east on McDonogh Road (Pet. Ex. 1A). The property is zoned D.R. 1, but within a radius of 3,000 feet lie zones that contain much higher residential zoning and commercial and office uses (Pet. Ex. 10). The immediate vicinity of the property is occupied by single family detached dwellings, and Ner Israel Rabbinical College owns property directly across McDonogh Road from the site.

Currently, the property is improved by a dwelling in which Pastor Cobb and his family reside. There is a swimming pool to the rear of the dwelling and a play area for his children. The house and pool have existed on the property for many years. The house is set back from McDonogh Road but is located forty-two (42) feet from the western property line. A portion of the pool also is within fifty (50) feet of the property line (T. 10/30 at 25). The balance of the site is wooded (Pet. Ex. 1B). A public water line sized to serve the property is located in Field Road. The site, however, and nearby properties now are served by private wells and septic systems.

The church site was described to be somewhat bowl shaped with the higher sides along Field Road, McDonogh Road and the properties to the west. The property drains to the center and north. The proposed parking area will sit at elevations of ten (10) to sixteen (16) feet lower than the closest house on adjacent property and about ten (10) to twelve (12) feet lower than McDonogh Road. The church buildings are located in an area

even lower than the parking area. The property elevation for the church buildings will be over twenty (20) feet lower than the residential improvements across McDonogh Road and from the roadbed of Field Road (T. 12/04 at 326-33). The buildings themselves will be set into the hillside and will be no more than eighteen (18) feet in height above the highest grade (T. 10/30 at 33).[1] Consequently, the roof elevation of the buildings will be the same or lower than the elevation of Field Road and the ground elevations of the homes across McDonogh Road.

Much of the site will remain wooded. Comments in the file from the Department of Environmental Protection and Resource Management (hereinafter referred to as "DEPRM") indicate that the initial Forest Conservation Plan and calculations had to be revised on a couple of occasions and was approved (T.12/18 at 212-220; Pet. Ex. 7-9). The plan calls for three (3) acres to be maintained in undisturbed forest conservation easement area exclusive of the buildings, improvements and septic reserve areas (Pet. Ex. 1B).[2] In addition, a wooded buffer area will be maintained along the western property line and along the front of the property. The plan calls for the old roadbed of McDonogh Road, which currently serves as the driveway to the property, to be replanted with a significant buffer to extend outward to the newer roadbed of McDonogh Road (T. 10/30 at 32). Over one hundred sixty (160) feet of buffer between the proposed improvements and Field Road will exist (Pet. Ex.1A).

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[1] Although preliminary drawings showed a steeple to the church, Pastor Cobb testified that he did not intend to have a steeple but rather "We're planning on letting our sign advertise that we're a church so that we'll blend in more." (T. 12/04 at 104). A simple cross may be the only ornamentation (T. 12/04 at 104).

[2] Final forest conservation easement area and calculations will be approved only at the grading permit stage. Protestant's expert witness acknowledged that current depictions of the forest conservation area and calculations are only preliminary (T. 12/18 at 218-219).

Because the proposal calls for new church buildings and because three (3) dwellings area within one hundred fifty feet (150) of the property, residential transition areas (hereinafter referred to as "RTA") are created. Two (2) of the properties adjoin the western border on Timothy Road. No part of the church improvements lie within the transition area of the rear property, and the fifty (50) foot buffer is part of the forest conservation easement. From the other Timothy Road property no part of the church improvements are within the transition area, but the corner of the existing residence and pool are within a buffer area (Pet. Ex. 1A). These improvements, however, have existed for many years.[3]

The third property creating a residential transition is across McDonogh Road from the subject site at 8215 McDonogh Road. The elevation of this property at the dwelling is twenty-two (22) feet above the church building location (T. 10/30 at 31-32). In addition to the buffer area and forest conservation easement the property is further set back from the subject site by the seventy (70) foot right of way of McDonogh Road. A very substantial brick wall (Pet. Ex. 2A, 3A, 3B), approximately eight (8) feet in height, runs along the frontage of the property onto McDonogh Road. The property owner built the wall as a shield and buffer to McDonogh Road (T. 10/30 at 134). The church buildings and improvements are outside the buffer area and outside the seventy (70) foot building restriction line. Corners of the church buildings are within one hundred (100) feet of the proposed right of way of McDonogh Road but over one hundred (100) feet from the adjacent property.

[3] Significantly, neither of the owners of the properties on Timothy Lane, whose sites according to testimony of Protestants would be most impacted by the septic reserve field and the RTA buffer appeared at the hearing or protested to the development.

The buildings are to be constructed in four (4) phases with the possibility that phases one and two occurring at the same time. Phase one is to be a multipurpose building that initially will contain a sanctuary with a capacity of two hundred (200) seats and some rooms for Sunday school and offices and will be approximately 7,600 square feet (T. 10/30 at 58). Pastor Cobb testified as to the rational for the sanctuary coupled with other uses to assist the church in its functions as it regained its congregation (T. 12/04 at 102-103).

Phase two of the building will be a day care building of 1,600 square feet. At this size it will accommodate thirty-five (35) children. Behind the day care is the play area that will be centrally located on the property away from the roads (T. 12/04 at 104-105; Pet. Ex. 1A). Both the day care and the multi-purpose area were planned specifically to meet perceived needs and growth.

Phase three is simply a sanctuary with bathroom facilities. It would seat three hundred (300). In Pastor Cobb's church all of the children and adults attend the worship services together so that Sunday school does not occur contemporaneously with church service but as a preliminary to it. Sunday school starts at 10 a.m. on Sunday morning for all ages. At 11 a.m. all come together for a worship service. On Sunday evening there is another mass worship service, and there is another service on Wednesday evening. Sunday morning service has the highest attendance with about two-thirds attendance at the evening service and even less on Wednesday (T. 12/04 at 111-114). Services usually last an hour and a half.

The multi-purpose building would initially be consecrated as a sanctuary and not rented out for catering purposes. There would only be a warm-up kitchen and no formal

facilities (T. 2/04 at 114-116). Of obvious concern to the Protestants was that after the formal sanctuary is constructed that the multi-purpose seating would be used in conjunction with the church. Pastor Cobb testified that both the design of the structures would be such that walls would separate the structures but that he would not permit such use (T. 12/03 at 133-134, 137-138).

Phase four of the structures would be a school that would be a split-level building constructed into the side of a hill containing 10,000 square feet or 5,000 square feet per floor. The school would accommodate seventy-five (75) students and would be similar to the school the church operated for ten (10) years on West 36th street (T. 12/03 at 106-108). At that church there were forty (40) children who attended the school. The school would be for elementary and secondary grade levels with training for college preparation (T. 12/03 at 141-142).[4]

There was significant discussion of the aesthetics of the buildings to be constructed. The framing of the buildings is to be steel as testified by Pastor Cobb. The skin of the structures, however, may well be comprised of brick and aluminum siding (T. 12/23 at 166). Lynn Lanham of the Baltimore County Office of Planning indicated that her department had reviewed elevations of the buildings and had no problem with compatibility of the proposed structures as conceptually submitted after taking into account the setbacks, landscaping and opportunity for proposed landscaping (T. 12/23 at 131, 144-145). Her department requires prior to issuance of building permits: "...

[4] During the course of his testimony and in response to both direct and cross-examination Pastor Cobb agreed to the following restrictions with respect to the use of the buildings:

a. No more than 75 students in the school (T. 12/04 at 136)
b. No more than 35 children in the day care center (T. 12/04 at 136)
c. No more than 300 people at a worship service (T. 12/04 at 136)
d. The kitchen would be restricted to warming purposes only (T. 12/04 at 136)

building elevations. Those normally include all sizes, building material, and colors." (T. 12/23 at 111). At the development plan stage the detail of drawings are not required (T. 12/23 at 129, 143-144). Pastor Cobb offered to submit full renderings to the Office of Planning prior to permit stage for review and approval (T. 12/23 at 165-166).

Pastor Cobb further offered to submit a landscape plan and to buffer the area between the parking area and McDonogh Road (T. 12/23 at 166) in response to a concern over the view from McDonogh Road. Although the parking area sits back a significant distance from the right of way of McDonogh Road, and the church buildings even further behind the parking lot, there are opportunities for additional landscaping. The landscaping proposed at this stage, however, when coupled with the setbacks was deemed adequate by county reviewers (T. 12/23 at 131, 139).

Ms. Lanham of the Office of Planning indicated that her office recommended that the plan be approved as submitted (T. 12/23 at 110). The developer, however, is required not only to submit elevations but also detailed landscape plans and lighting plans (T. 12/23 at 111). Those plans typically are not submitted until after the development hearing stage.

The parking requirements for the proposed uses under the zoning and development regulations have all been met. Parking is calculated based on the most intense use, which would be the attendance at a capacity service in the Phase three sanctuary. Based on three hundred (300) seats seventy-five (75) parking spaces are

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e. When phase three is constructed, phase one will not be simultaneously occupied (T. 12/04 at 136, 163-164; Pet. Ex. 1A n. 9).

required. Eighty (80) paved spaces are provided. In addition, there is room for twenty (20) additional parking spaces (Pet. Ex. 1A.).[5]

The road access is designed for the speed limit in front of the property. The testimony at the hearing indicated that for much of McDonogh Road the speed limit was thirty (30) miles per hour, but at the subject site it increased to forty (40) miles per hour. Sight distance from the proposed entrance is provided at five hundred (500) feet in each direction (T. 10/30 at 16, 51). The entrance is located between Field Road and Timothy Lane and meets county standards as to width. In addition, a deceleration lane will be provided within the proposed right of way (T. 10/30 at 52-53). No parking is permitted either on McDonogh Road or on Field Road adjacent to the property.

Traffic engineering did not request any traffic study and did not indicate that the church would present an unsafe condition (T. 12/23 at 160-161). The controlling intersections of McDonogh at Reisterstown Road and McDonogh at Painters Mill Road both met the adequate facilities test. The intersection at McDonogh and Painters Mill Road is at level of service "A", and the intersection at Reisterstown Road is at level of service "C". The average daily traffic on McDonogh Road is 16,000 cars per day (T. 10/30 at 54).

Although some of the resident reported a high incidence of mailbox destruction and accidents in front of their properties, none testified as to actual accident data. Mr. Richardson did testify as to accident data for the past three years. Over that period of time there were two accidents, both in 1999, which were single car accidents occurring at

[5] More than ample parking is provided based on the membership of the church. The membership is comprised of numerous families. Even at the previous congregation level of one hundred forty members, many of these were children, and many were families. Also, the church utilizes car pooling and van transportation.

3:00 and 4:00 in the morning (T. 12/23 at 149-151). The data further showed that there were several accidents near the homes of the individuals who testified as to the high accident rates occurring on a curve in McDonogh Road near Pittsfield Road.

A storm water management facility is proposed to handle not only water quality but also water quantity under the current storm water regulations. DEPRM has approved the type, size and location of the storm water management system as meeting all county criteria (T. 10/30 at 49). Neither the location nor the size and design of the system were challenged. Based on issues raised by Mr. Hennessey, whose property is located to the north of the subject property it is important to note that the system was over designed not only to handle two (2) and ten (10) year storms but also one hundred (100) year storms or extreme flooding conditions (T. 10/30 at 45). This means that the pond size is much larger than might otherwise be expected.

Although public utilities do not currently serve the site, public water will be extended from the stub currently located in Field Road to the church buildings and to the existing dwelling on the property. In addition, the church will be required to extend public water along the property line on Field Road so that it will be available to the homes to the rear of the church property (T. 10/30 at 41).

The proposed facilities are to be served by a private septic system. At this time the system has not been fully designed and will not be designed until the building permit stage according to Rob Powell of DEPRM (T. 12/18 at 255). Mr. Powell is a registered sanitarian and approved the septic reserve area for the site after extensive review of the soils, topography and testing (T. 12/18 at 237, 243-244, 272). The septic reserve area will be 26,700 square feet in size capable of handling the full, proposed usage of the

property with two replacements. This is significant, for state requirements only mandate that the system be sufficient for one installation and one repair (T. 12/18 at 261). The system area, therefore, is fifty percent (50%) larger than state safety standards.

DEPRM required extensive studies of the area. Thirteen (13) tests were performed in the proposed area, and all thirteen (13) tests passed (T. 10/30 at 43). The passing tests are all indicated on Petitioner's Exhibit 1A. Baltimore County's standards for tests passing on this site also exceeded the state standards by fifty percent (50%), (T. 12/18 at 245, 247-248), by requiring a minimum of six (6) feet of earth above ground water instead of the required four (4) feet of earth.

Mr. Powell also applied maximum daily flows to be expected from the uses outlined by the development fifty percent (50%) higher than what would be expected as an average flow (T. 12/18 at 249). Consequently, the site has been designed to handle not just the expected effluent but also the peak effluent that could be reasonably ever expected over an extended period of time. The site was designed for peak weekday use based on the presence of the school and the day care.[6] Consequently, the multiple Sunday services or use of the facility on a Saturday would not impact the sizing of the system, for it is not operating at peak capacity (T. 12/18 at 279-280, 282-284). As Mr. Powell stated, he was probably tougher than he needed to be in sizing and approving the reserve area (T. 12/18 at 252-253).

Finally, in response to concerns about actual usage of the site as opposed to the uses indicated at the hearing Mr. Powell pointed out that the septic system had not been designed. At the time of the building permit the developer would have to submit,

"Detailed plans and specifications on the systems, elevations, grades, pump sizing requirements... and uses." (T. 12/18 at 255). Mr. Powell then will have the opportunity to review the usage proposal of the developer with the plans for the building and determine if the system were adequately sized and designed to handle the usage (T. 12/18 at 287, 299).

Mr. Powell stated in his expert opinion representing Baltimore County that the proposed septic reserve area of the size and location indicated on Petitioner's Exhibit 1A would be capable of handling the effluent from the proposed uses and that it would not endanger the health safety and general welfare of the adjacent property owners. He stated: "It meets the criteria of the County, Department of Environment, and the State Department of the Environment," and his department recommended approval of the plan (T. 12/18 at 305-306).

At the time of the filing of the development plan and up to the hearing a specimen oak tree existed to the rear of the existing dwelling on the subject site. The tree was not listed on any state or local records, but its trunk diameter indicated that it was an especially large tree that merited the designation of "specimen tree." Such a tree is not protected under any regulations, and there was no requirement that it be saved (T. 09/05 at 30). The facts pertaining to the tree's demise are not contested. Petitioner commissioned the study that indicated that the tree was worth saving in 2001 (T 12/04 at 10). No detailed examination of the health of the tree occurred at that time (Protestants' Ex. 8). Last summer the tree was struck by lightening, and large branches began to fall off the tree. The tree is located at the edge of the woods next to the play area used by

[6] By designing and sizing the system for the last portion of the proposal to be constructed it is anticipated that there will be several years of usage at lower levels so that adequate protections will be built in to the

Pastor Cobb's children (T. 12/04 at 123-125, 176-178; T. 12/23 at 162-163). Pastor Cobb had the tree examined by a registered forester and by Roy List of DEPRM and obtained a report, in which the parties concurred. The report recommended removal of the tree for safety reasons (Pet. Ex. 6). On the basis of that report the tree was removed (T. 12/04 at 125).[7] The tree was located just outside the RTA buffer area, and there is no question but that its canopy and root system extended into the buffer. There was no testimony that the buffer area was disturbed in the cutting of the tree.[8]

Protestants' expert witnesses Grant Garvin and Edward Bouwer expressed concern over the direction of ground water and the fact that there had been no study to determine its direction. At this time, Dr. Garvin could only speculate as to the direction of ground water. He further testified that groundwater migration toward major streams was a common occurrence throughout Maryland. Mr. Powell indicated in his testimony that the geology study, on which Mr. Garvin relied in Frederick County, was quite different from conditions in Baltimore County (T. 12/18 at 304-305).

Dr. Bouwer indicated that the percolation test results looked satisfactory for the site (T. 12/18 at 42-43) but because of the unknown factor as to where the groundwater was going, there ought to be additional studies.[9] He testified that all wells with casings similar to those on adjacent properties might have contamination from nearby septic systems, and that hydrology studies should be made of every nearby system (T. 12/18 at

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usage of the system prior to school use.

[7] It may be debatable ultimately whether the tree could have been saved or not or whether measures to save the tree would have been too costly. Certainly, Protestants speculated on the need to remove the tree. In the process of taking down the tree Pastor Cobb noted that the core of the tree was rotting, and the tree remover said it was rotting from the inside (T. 12/23 at 162).

[8] In response to extensive examination by Protestant's counsel Petitioner and his engineer indicated that the existing septic system serving the house was located adjacent to the tree, and that shifting the configuration of the system was quite possible even with the tree remaining (T. 12/04 at 15-16, 58-59, 178-179).

52-53). His testimony contrasted vividly with that of Mr. Powell, who indicated that the entire purpose of septic systems was to have the effluent eventually reach groundwater but in a cleansed condition (T. 12/18 at 244-245). On the subject site he indicated that the geologic formation would give greater protection than normal (T. 12/18 at 246-249, 288-289). Mr. Powell stated: "The general flow of groundwater has no bearing on this.... The waste leaving the waste disposal system is recharging ground water. We aim to require the necessary treatment on the waste so that when it enters ground water, it is cleansed." (T. 12/18 at 289). Mr. Powell went on to disagree with Dr. Bouwer and stated:

> When I review the site for adequacy of waste disposal, I am looking for the protection of groundwater. The direction in which ground water is travels does not enter into the decision making process.... I require minimum buffer of bedrock or ground water. The direction the ground water travels does not come into the equation. The idea is to clean up the waste before it gets to ground water, not dump it into ground water and hope it moves away from the site, and in the opposite direction of somebody else. (T. 12/18 at 291-292)

Mr. Carbaugh testified that from his review of the use statement sent to Mr. Powell that Mr. Powell had relied on incorrect assumptions in deriving his peak flow in that other uses could be occurring on the weekdays. Mr. Carbaugh testified, however, that Mr. Powell applied a more stringent standard than required by the guidelines in sizing the septic reserve area (T. 12/11 at 110) and that a pressure dosing system designed at the time of the septic system design could alleviate some of the problems he posed (T. 12/11 at 111). Mr. Carbaugh conceded that the objective of Baltimore County was to over design the system (T. 12/11 at 112).

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[9] There has never been any indication that any of the wells on adjoining properties have experienced any contamination from existing septic systems.

## DISCUSSION OF ISSUES

1. IS THE PETITIONER PRESENTING A LEGITIMATE CHURCH USE OR IS IT A COMMERCIAL PLAN?

Many of the expressed concerns at the hearing and community input meeting went to the uses on the property. The BCZR permits as of right in a D.R. zone: "Churches, other buildings for religious worship or other religious institutions" BCZR 1B01.A.3 . In addition, schools and day care centers are also permitted as of right in a D.R. 1 zone. Some Protestants opined that the placement of the church on the property would be detrimental to the tax base that could otherwise be obtained from residential uses. Another concern was over the commercial nature of church, daycare and school uses in contrast to single family, residential uses. These concerns, however, can only be addressed legislatively since Baltimore County already has held that churches, schools and day care centers are as legitimate a use as dwellings in a D.R. 1 zone. These concerns can not be addressed through the development process, which assumes that the use by law is a permitted use by the owner of the property.

Another of the Protestants' concerns is that Petitioner is not truly offering a church use of the subject property but instead a commercial enterprise or a drug treatment center. Many Protestants do not believe that the church or its people will fit into their community as they envision it. Despite the consistent testimony of the Pastor, witnesses appeared from the community, who either did not believe or did not hear the testimony, expressing concern over the treatment of addicts and alcoholics. The Protestants do not believe

that the uses of the property as depicted by Pastor Cobb are true; they do believe that the congregation of the church does not belong in their neighborhood; they believe that the church will bring addicts and alcoholics into their neighborhood. None of these beliefs have anything to do with zoning and development approval, but in another very real sense the beliefs go to the heart of the Protestants case.

Counsel for Protestants asked Pastor Cobb the following:

> You talked about trying to satisfy the community. I mean, I am not sitting here judging anybody, you, nor them, one way or the other, but how can it be a blessing to the community when you have heard the testimony of the community over the last couple of days as to their strong concerns about what you are proposing. How can this church, if that is what it is, coming to this site, be a blessing in your eyes to the community when they have said things here that have been so objectionable for multiple reasons, tax reasons, view reasons, aesthetic reasons, and all of the rest? (T. 12/23 at 185).

Nowhere in his depiction of community concern was there any reference to any standard in the development or zoning regulations. The expressed need for groundwater tests, the concerns about traffic, parking adequacy consequently are immaterial to the real issues. After all, the residents supposedly most impacted by misdirected ground water did not even attend the hearing. No community resident ever bothered to ask any county agency about storm water or traffic issues. No one bothered to check accident reports. The community concerns are, as counsel perhaps misstated, "objectionable" clearly because they had so little to do with the regulations and everything to do with excluding people and a church not fitting into a way of life. A resident of the community at the second community input meeting put into more blunt terms the same expression of thought that was heard over and over during the hearing:

> "I remember a line from "Field of Dreams" where James Earle Jones tells Kevin Costner, "BUILD IT AND THEY WILL COME." It doesn't take a rocket

scientist to figure out that if we allow this crowd to build here, it won't be long before we are overrun with people like them.

"The minister says, "God wants us here in the O.M." Well, additionally, I'm here to tell you, God may want you here but nobody else wants you and your drug addicted/alcoholic ministry around here...."

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That is the real issue that the community has presented. It just is not an issue that either the zoning regulations or the development regulations contemplate or any of the laws of this country contemplate.

Is this a real church? After the testimony of the members of the congregation could there be any real question? It is a fundamentalist church not only in the religious sense but in the sense that its success is based solely on the fundamental desire of people to join together in a religious service. Furthermore, after the submittal of the documentation from the denomination could there by any question that the church is part of an organized religion (T. 12/04 at 145)? After the articles about the fire and the history of participation of the congregation in community events over the years could there be any question? Mrs. Brotman's testimony about how a Hindu religion now utilizing the previous name of the church was somehow related to the current use, and that maybe this was not a real church after all, was perhaps the most incredible testimony ever heard from a reputedly intelligent person. Virtually every community witness by innuendo or implication alleged that there were hidden motives or agenda or that as a church it was not a "real" church. Absolutely no proof of any kind was offered, however, to support the fact that this was not a religious organization intending to use the property and improvements for religious purposes.

The BCZR clearly contemplates that multipurpose buildings may be used for religious services. The phrase "other buildings for religious worship" in BCZR Section 1B01.A.3 clearly would cover the use of a multipurpose building that is used as a sanctuary. As the Hearing Officer knows from his experience, many churches of different faiths begin with a multipurpose building. St. Clare's church in Essex started in a multi-purpose building. There is a Russian Orthodox Church on Shawan Road, which has been the subject of zoning hearings, which conducts its services in a multi-purpose building. Many times religious services are held in school halls or gymnasiums, etc., as the congregation builds. It is not the look of the building, but the purpose that is important. Pastor Cobb has been consistent since the first community input meeting that the multi-purpose building would be the church. If phase three never happens, the use of the property is no less for religious purposes[10]. The ultimate safeguard that the Protestants have is through Code enforcement in that if the use is not that of a religious institution it is a use and site plan violation enforceable by the county and by the residents under the Code.

The Protestants do not like the idea that the property also would be used for day care and possibly a school in the future, but the fact is that whether the church exists or not, these uses, on their own, are permitted uses. It is really difficult to understand the Protestant's concern when a large school such as McDonogh school with close to 1,000 students plus faculty and aides lies a quarter mile to the west of the subject property and is an accepted community landmark. After all, the church is proposing a day care of only thirty-five (35) students and a school of up to seventy-five (75) students. These

[10] The BCZR Section 1B01.1B.1.g(6) under which the zoning petition was filed refers to churches and "other building for religious worship" clearly indicating that the BCZR does not just contemplate

uses combined would be less than one (1) grade of students at McDonogh School. The presence of these uses, however, is properly the function of the church, and the zoning regulations even contemplate them as accessory uses. *See, e.g.* BCZR Sec. 407A.

Every piece of evidence presented including testimony under oath by the Pastor and members of his congregation went to the sincerity of the desire of the Petitioner to build a church on the subject site. The fact that Protestants object to the use is unfortunate, but their issue can only be remedied by changing permitted uses in residential zones, not by using the development regulations as a means of prohibiting permitted uses. The Petitioner should not be denied its use because the Protestants do not like it.

2. DOES PETITIONER'S SITE PLAN MEET THE STANDARDS OF BCZR SECTION 1B01.1B.1.g.(6)?

BCZR Section 1B01.1B.1.g.(6) states that the provisions of the residential transition area do not apply to:

> A new church or other building for religious worship, the site plan for which has been approved after a public hearing in accordance with Section 500.7. Any such hearing shall include a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises. [Bill Nos. 109-1982; 40-1992]

The residential transition area is defined to be "a one-hundred-foot area, including any public road or public right-of-way, extending from a D.R. zoned tract boundary into the site to be developed." Its purpose "to assure that similar housing types are built adjacent

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traditional churches as permitted uses.

to one another or that adequate buffers and screening are provided between dissimilar housing types." BCZR Section 1B01.1B.1.

No part of any new improvements are within a hundred (100) feet of a tract boundary or in any buffer area although the new church building is seventy-five (75) feet from the proposed right of way of McDonogh Road. The buffer area between the existing residence located west of the property and the existing dwelling and pool on the site does contain a small portion of the existing dwelling and pool thereby necessitating the hearing pursuant to Section 500.7 of the BCZR.

A. IS PETITIONER REQUIRED PURSUANT TO BCZR SECTION 1BO1.1B.1.g.(1) TO CONDUCT A COMPATIBILITY STUDY AS DESCRIBED IN SECTION 26-282 OF THE CODE?

Neither the Office of Planning, which reviews compatibility, nor any previous zoning commissioner hearing has ever ordered a compatibility study under Section 26-282 of the Code pursuant to this section of the BCZR, yet Protestants argue that pursuant to this section such a study is mandated. Jack Dillon, formerly of the Baltimore County Office of Planning, opined that the Office of Planning should have called for a compatibility study under this section (T. 12/11 at 121, 123) that complies with the requirements of Section 26-282 of the Code. He based his opinion on the use of the word "compatibility" both in the zoning code and in the development regulations (T. 12/11 at 127) and on Section 600 of the BCZR, which indicates that the more restrictive regulations should apply to an interpretation of the BCZR and other laws including conflicting BCZR sections (T. 12/11 at 145, 145-146).

Mr. Dillon's theories fall at several points. Under the clear meaning of Section 600 of the BCZR it was meant to relate the BCZR provisions to provisions outside the BCZR. Section 600 states:

> "In their interpretation and application, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience and general welfare. Where these regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these regulations shall control. When greater restrictions are imposed by any law, ordinance, regulation or private agreement than are required by these regulations, such greater restrictions shall not be affected by these regulations."

The repetitive use of the words "these regulations"' clearly means the body of regulations constituting the BCZR when compared with some other body of law. Section 600 does not state that the more restrictive of "these regulations" shall apply, and it does not state that in the event of inconsistency the more restrictive regulations shall apply. In fact, it should not even be presumed that the BCZR is internally inconsistent. The legal presumption is to the contrary; the regulations should be interpreted to be internally consistent.

Section 26-282 of the Code is neither more restrictive nor less restrictive than the BCZR. It simply does not apply to these situations. Section 26-282 is very specific about the situations to which it applies. Certain proposals in certain zones trigger a review by the Office of Planning under Section 26-282. Nowhere in that section does it state that RTA exemptions are among them. Nowhere in the BCZR does it call to a Section 26-282 study. The two sections simply are not married.

Clearly, the term "compatible" in the BCZR is not a term of art but rather a term of ordinary meaning. As a term of ordinary meaning there is no legal trigger to a Section

26-282 review. Mr. Dillon's opinion that the only way in which compatibility can be determined is by a Section 26-282 study also is wrong. The sections of the BCZR and the Code were enacted at different times for different purposes, and historically the zoning commissioner has determined compatibility issues without the aid of Section 26-282.

Ms. Lynn Lanham of the Baltimore County Office of Planning also agreed that the RTA exemption provisions in no way triggered a Code Section 26-282 review (T. 12/23 at 112-113). She indicated that her office used the term "compatible" in the BCZR in the ordinary sense of the word. Her office routinely asks for such a review under the Section of the Code and under community plans where requested. In her experience Section 26-282 has never been applied to RTA (T. 12/23 at 11-115). Consequently, under both the clear meaning of the zoning code plus its interpretation over time, a Section 26-282 study is not required.

B. ARE PETITIONER'S IMPROVEMENTS PLANNED IN SUCH A WAY THAT COMPLIANCE, TO THE EXTENT POSSIBLE WITH RTA USE REQUIREMENTS, WILL BE MAINTAINED?

The Office of Planning recommended approval of the plan because the RTA requirements had been met "to the extent possible". All of the new improvements, the ones dissimilar to the existing residential development in use, have been located outside of the buffer area and over one hundred (100) feet from adjacent properties. That is the requirement of the RTA.

The exemption provision has to be read in the greater context of the RTA provisions. First, it is an exemption provision, not a variance provision. No variance to the RTA as otherwise provided in the BCZR is sought in this case. Second, the provision is exempting the new construction from the requirements of the RTA. There is a presumption in utilizing it that the RTA provisions are not all being met; otherwise, there is no need for it. The RTA is not being strictly followed; an exemption is being sought. Consequently, strict adherence to the RTA is not at issue.

In this case the zoning review and the planning review both felt that adherence to the extent possible to the regulations was being met. The parking lot is located the mandatory distance from the roadway as are the church structures. The buffer areas abutting these uses are undisturbed. These issues were not debated at the hearing.

Protestants did raise the issue of whether the location of the house and pool in the buffer met the test of meeting the RTA "to the extent possible". Protestants misread the section, however, for it is the improvements to the site, namely the new church facilities and parking that must comply with the RTA to the extent possible and not the features already existing on the site. If features have existed on the site for decades and comply with the BCZR so that the RTA is not applicable, then when new improvements are added to the site do the existing residential features become less compliant? How could new improvements make the existing compliant improvements non-compliant. Protestants argue that the existing dwelling is no longer a dwelling but a rectory, which seems to be something different, and the pool is no longer a pool but an accessory, not to the dwelling but to the church. This is absurd.

The new improvements comply fully with the RTA. The existing house and pool are not being expanded in the buffer and comply, to the extent possible. It is not required that they comply absolutely, but to the extent possible without their removal. That opinion is shared by the Office of Planning, which recommended the existing plan.

B. CAN PETITIONER'S PLAN OTHERWISE BE EXPECTED TO BE COMPATIBLE WITH THE CHARACTER AND GENERAL WELFARE OF THE SURROUNDING RESIDENTIAL PROPERTIES?

The compatibility requirement of this phrase of Section 1B01.1B.1.g.(6) relates not to the improvements but to the overall development plan for the site. The Office of Planning had no trouble stating that the plan overall was compatible with the surrounding neighboring properties. They did analyze the improvements on the site, the scale of the improvements relative to the site and other dwellings, the situation of the improvements on the site, the opportunities for landscaping, and the existing landscaping and buffer areas (T. 12/23 at 131-133). In the context of the surrounding properties the development was compatible. In fact, upon a review of the proposal Ms. Lanham found the planned location of the church to be a "good setting" (T. 12/23 at 133).

Even apart from the opinion of the Office of Planning the layout of the site and the proposal is perfectly compatible with surrounding properties. The site certainly is not over developed. It is a large lot of eight (8) acres, capable of a density of eight (8) houses. Instead, over three (3) acres of combined forest and buffer will be preserved. The percentage of preserved acreage is larger than on adjacent properties. The ratio of building to property size is less than on the property directly across McDonogh Road.

Admittedly, the dwelling is somewhat smaller than the proposed church buildings and residence, but the lot is less than half the size. The dominant brick wall at 8215 McDonogh Road is in no way matched on the church property by any dominant man-made feature.

The height and location of the buildings also is far less obvious than the houses on neighboring properties, and the massing of the building is far less obvious than on properties located on McDonogh Road. None of the Protestants ever indicated a desire to shift the buildings further back on the site or to relocate the improvements. Their argument was not to amend the plan but rather to do away with the use.

Finally, the issue of aesthetic appeal of the buildings is handled by the Office of Planning through the final landscape and lighting proposals and also through their review of the elevations and materials. Ms. Lanham couched her recommendations in view of the fact that she would be reviewing more detailed elevations. Pastor Cobb agreed to comply with her recommendations as to the materials to be used on the outside of the building. A review of the neighborhood indicates, however, that a variety of materials exist on nearby houses including brick, wood frame, and aluminum and vinyl siding. There is no one consistent feature of building style or material. The improvements on this site, however, will be set back further than nearby residential improvements, and their height and location at a lower elevation behind a buffer area make them much less intrusive than residential structures in the area.

A review of Ms. Lanham's testimony indicates that her office as a matter of fact did review the components of Code section 26-282. She testified as to the situation of the buildings on the lot and their orientation as a good location (T. 12/23 at 133). She

testified that the parking areas could certainly be buffered and landscaped, and they have no adverse impact on the community (T. 12/23 at 141-142). The entrance on the site has been located to maximize sight distance and minimize paving areas. The open spaces or forest conservation areas were reviewed as part of planning's evaluation, and their location along the streets further buffers the improvements, and there is more natural landscaping proposed than on adjacent sites. The signage is in compliance with county requirements and is consistent with other religious institutions similarly situated. Ms. Lanham also found that the scale of the buildings was appropriate given their location on a relatively large lot and their unobtrusive location (T. 12/23 at 139-142). All the standards of Code section 26-282 (1) –(8) were addressed.

3. IS PETITIONER'S SITE PLAN REQUIRED TO MEET THE STANDARDS OF BCZR SECTION 1BO1.1B.e.(3)?

Petitioner is not required to meet the standards of Section 1B01.1B.e (3). Although Jack Dillon premised much of his testimony on the theory that Section 1B01.1B.e.(3) applied to this case, even he conceded that he did not realize that Section 1B01.1B.g effectively negated the section's applicability. In response to a question on cross-examination he indicated that subsection "g" could not be written more clearly to indicate that section "e.(3)" did not apply to exemptions (T. 12/11 at150-151). That section simply says that subsection B.1 does not apply to the exempt category.

It also is clear that even if the exemption of the RTA under subsection "g" was not sought that the prohibition against encroachment into buffer is prospective only. The use of the term "shall remain" not only is a mandatory term but also a prospective term. If

the buffer already has encroachments it does not say that they must be removed. To the extent that the buffer does not have encroachments, however, they shall not be added unless, of course, an exemption is obtained.

Ms. Lanham's interpretation of Section 1B01.1B.1.e(3) that the section did not refer to the existing improvements makes a lot more sense than Mr. Dillon's interpretation given the intent of the transition area in separating disparate uses. It seems to run contrary to the intent of the RTA to have non-transition area improvements considered as part of the encroachment. Surely, if the encroachment into the buffer is for existing dwellings and accessories that do not generate a transition area buffer, then these improvements should not be prohibited from existing in the buffer. Nothing changes with respect to the buffer by the addition of the church improvements. The house and pool remain the same. Obviously, there is no harm to the existing neighbor's property from the existing improvements, for they never evidenced any concern about the proposal at any time throughout the hearing.

4. DOES THE PETITIONER'S SITE PLAN MEET THE DEVELOPMENT REGULATIONS AND APPLICABLE POLICIES, RULES AND REGULATIONS PROMULGATED PURSUANT TO SECTION 2-416 ET SEQ. OF THE BALTIMORE COUNTY CODE?

Compliance with the Development Regulations and standards should be the issue in this case and not the use of the property. In this case every county agency presented comments indicating that the development plan as presented was in full compliance with the county's development regulations and standards. That is, every agency charged with

expertise in the administration of its own regulations indicated that after review and study the proposal did meet the agency's regulations. Every agency recommended approval. Representatives of both planning and environmental protection further buttressed their recommendations with testimony indicating why they believed that their regulations had been met.

A. DOES THE SITE PLAN MEET COUNTY AND STATE STANDARDS WITH RESPECT TO SEWAGE DISPOSAL?

Testimony was presented that the proposed septic reserve area not only met but also exceeded the state and local requirements for sewage disposal. Even Protestant's expert indicated that Mr. Powell of Baltimore County was probably a little more demanding than the law required (T. 12/11 at 110, 112). The evidence indicated that the peak flow estimates from the facility were over-estimated, the size of the reserve area was over-sized by fifty percent (50%), and the requirement of the area to pass was raised over the standard by fifty percent (50%).

Protestants, in fact, never argued that the proposed septic reserve area did not meet county and state standards. Protestants argued that the wastewater might contaminate adjacent wells, yet there was no proof despite the long-standing location of septic reserve areas for three residences in close proximity to the wells that there was any historic contamination of the well water. The well on the subject property had in fact been tested as is required on the sale of existing homes in Baltimore County, and no contamination from the existing systems was found. The owners of the wells on the adjacent properties, furthermore, did not express any concern about the issues raised by Protestants' witnesses. Their argument was based on the flimsiest of speculation.

The only testimony offered by Protestants was that in other parts of the country wells with shallow casings experienced contamination. Not taken into account was the location of adjacent septic systems to the wells or the design of the systems. Were they over-designed like the proposed system? Did they meet Maryland's current criteria for design or some other criteria? These questions were not answered.

Mr. Powell from DEPRM, who reviewed the proposed septic reserve area, responded in two ways. First, and perhaps more important, the final design of the septic system has not yet occurred. Until he reviews the building plans and proposal for use, he does not approve a septic system. He may order design restrictions or other measures including further restrictions on use based on what is proposed. Second, he indicated that the objective of his exercise is to make sure that ground water is not contaminated regardless of its drift. Consequently, assuming that the groundwater flows directly toward neighboring wells one hundred (100) feet away, there should be no contamination of the wells based on his ultimate design approval.

On a more experiential level there are dozens of churches in rural areas of this county dependent on private well and septic systems and dozens of homes directly adjacent to them all drawing water from their wells. Churches and other institutional uses are routinely approved in rural areas as safe uses provided the septic systems are designed properly. That is the purpose of the state and local regulations. It makes no sense to order ground water studies in every case, and Protestants made no argument that there was something different about this property that distinguished it from all others in rural parts of Baltimore County and made well water contamination more of a hazard.

There was no evidence produced that would justify a study of groundwater or even indicate contamination might exist under the conditions existing at the site.

B. DOES THE SITE PLAN MEET COUNTY STANDARDS WITH RESPECT TO STORM WATER MANAGEMENT?

The site plan meets all county comments with respect to storm water management and may improve on existing conditions. At the present time there is no management of the sheet flow of water off of the subject site. By building a storm water retention area that can manage the flow of two (2), ten (10) and hundred (100) year storms, the flow of water off of the site should be spread out over more time and flooding conditions reduced. Although the neighbors expressed concern over the water on their property, they located the streams on their property away from the subject property (T.12/18 at 168). Mr. Hennessey also testified that although he was "greatly concerned" about run off onto his property he had consulted with no one either independently or at the county. He also indicated that he did not know how the pond was designed. Furthermore, he had spoken with no one about the septic reserve area, and although he was concerned about the possible odor, his own system (like the one proposed) was underground, functioned properly despite the wet soil, and had no odor. No one testified that the plan for storm water management was in any way deficient or that it did not meet county standards. As Mr. Richardson testified, the county required an over-design of the pond perhaps to address the very issues raised by the property owners to the north.

C. WILL THE SITE AS PROPOSED CREATE AN UNSAFE CONDITION WITH RESPECT TO TRAFFIC EITHER FROM AN ADDITION TO THE EXISTING TRAFFIC ON McDONOGH ROAD OR FROM ITS ACCESS ONTO McDONOGH ROAD?

Although there was testimony from Protestants about the increased traffic on McDonogh Road, there was no evidence that the traffic generated by the church would make the road deficient in any respect. The testimony from Rick Richardson was that McDonogh Road carries about 16,000 trips per day. The neighbors conceded that McDonogh Road was an arterial roadway carrying significant traffic (T. 12/18 at 130). Church use during the week will generate a minute fraction of this loading based on the number of students in day care and in the eventual school. The use of the church on Wednesday evenings and other evenings is at "off peak" hours as is the use of the property on weekends when institutions such McDonogh School and the offices to the east and west are not occupied.

Although there is a perception that McDonogh Road is a dangerous road, the accident reports did not indicate that the roadway adjacent to the church property was particularly dangerous or involved any special conditions (T. 12/23 at 149-151). Two accidents over a three (3) year period occurring in the early morning hours do not indicate a particularly hazardous condition. Certainly, there does not appear to be a condition that would be aggravated by churchgoers on Sundays.

Protestants never called any representative of Baltimore County to question why the county did not require a traffic study or to question why the traffic comments were all positive relative to the plan. Protestants never conducted their own traffic study either

through experts or on their own as other communities performed in other cases. Protestants did not question the sight distance used by Mr. Richardson or the deceleration lane required by the county. An acceleration lane was not requested by anyone giving testimony.

Every use creates traffic. There was no testimony that the created traffic would directly impact safety beyond that normally associated with traffic increases generally. Again, the testimony from Ms. Brotman, Mr. Shriver, and Mr. Volinsky all attacked the institutional use in a residential community, rather than whether the institutional use meets county standards. The only expert testimony in the case was that the church met county standards with respect to design of the entrance and that the traffic generated by the church would not create any deficiency in the county facilities. There is no credible evidence that the presence of the proposed church will create an unsafe condition.

D. DOES THE PARKING CONFORM TO ZONING AND DEVELOPMENT REQUIREMENTS?

The parking for the Petitioner's church exceeds county requirements. Based on the initial seating requirements of two hundred (200), the Petitioner need only present a plan showing fifty (50) parking spaces. Clearly, this parking also would be ample for faculty at the school and day care during the week. Seventy-five (75) spaces must be provided for the three hundred (300) seat church sanctuary. Petitioner is providing eighty (80) spaces. With less than one hundred (100) members and the use by the attendees of a church bus and car-pooling, over crowding of the site should not be a problem. Indeed, it is unlikely that the church paved parking area will be filled for quite some time.

The Protestants were concerned about insufficient parking, but simultaneously did not want to see the proposed area for overflow parking ever utilized. The area shown on the plan simply indicates that space is available on site for additional parking if it ever becomes needed. It is not anticipated that the area would be paved and striped, and current regulations only call for the required parking area to be paved and striped.

Petitioner believed it was better to show more parking, however, than less, and the area designated on the site plan could be used for excess parking, if needed. It is unlikely that the overflow area would be needed except on rare occasions in the future.

Because parking is not permitted on adjacent streets, it is difficult to determine how parking could be an issue with the Protestants. Off-site parking would be addressed by enforcing the parking limitations. Furthermore, experience indicates that people attending the church are unlikely to want to walk substantial distances to reach the church on a regular basis. The limitation on seating tends to limit parking, and the limitation on available parking tends to limit attendance. In this case the standards of the county are met. No county agency had any adverse comments to the parking. The church provided parking in excess of the requirements, indicated that members of the congregation now carpool and that the church historically has used vans and mini-busses, and finally indicated an area where overflow parking could be accommodated.

E. DOES THE SITE PLAN ADEQUATELY PRESERVE THE FOREST BUFFERS AND CONSERVATION AREAS?

The calculations for the forest buffer areas were reviewed several times between the representatives of DEPRM and the Petitioner's engineer resulting in preliminary

agreement on the quantity and location. It is important to realize, however, that the present acceptance of the calculations and the location are both preliminary approvals. Prior to final building permit a metes and bounds description of the conservation area will have to be prepared and placed in a deed of easement. Mr. Wolinski, the Protestant's witness acknowledged that at the time of the grading permit a final plan would have to be reviewed and accepted (T. 12/18 at 218). At that time the county will have every opportunity to make sure that the calculations are correct and that the area actually conveyed is an undisturbed area of the size required. At this time, as Developer's Exhibits 7 and 8 indicate, that forest conservation plan including the delineation have been approved. Furthermore, at the time of the hearing representatives from DEPRM testified that all open issues had been resolved (T. 10/30 at 20). DEPRM's comments in the hearing officer's file further indicate that the plan has been approved and meets all standards.[11]

The evolution of the plan actually represents an improvement in the buffering of the property. Initially, as was pointed out at the hearing, the area in the southeast corner of the property at the intersection of Field and McDonogh Roads was intended to be a septic reserve area, and this area would have been cleared for the purpose of a reserve field. Now, a substantial area approximately one hundred thirty (130) feet deep from Field Road will remain undisturbed as a forest conservation area. The church will sit

[11] Final comments of DEPRM were contingent upon approval of a final septic reserve area, which cannot be counted into the forest conservation area. Only after Mr. Powell approved the final reserve area could Mr. Lindley sign off on the forest conservation area as meeting his criteria. As a matter of fact the forest area had to be revised upon the final approval of the septic reserve area and was available to the Protestants as indicated on Petitioner's Exhibit 1. Mr. Seeley was available for examination on October 30, at which time all approvals had been secured. Protestants asked him no questions on this issue.

back from the new right of way by at least seventy-five (75) feet and that portion of the property now used an access road will be planted and used as buffer.

As Ms. Lanham noted, a final landscape plan has to be provided also at the grading and permitting stage. That plan will look at the lighting scheme[12] and also can address buffering the parking areas with additional plantings. It is difficult to see how the site given its topography could be better buffered from the community. The parking area like the church itself sits well below McDonogh Road with a considerable setback of unpaved area well in excess of county requirements. The overflow area is designated on the plan as a "possible future overflow parking area" and also meets county standards for setback. That area is not shown as paved except for the current driveway and is set back at least one hundred thirty feet (130') from the western property line and twenty feet (20') from the proposed road easement. As Ms. Lanham indicated, the current forest areas, buffer areas, setbacks and opportunities for landscaping all allow this site to be developed in a manner fully compatible with the community (T. 12/23 at 131).

The issue of the specimen tree was certainly discussed at length. It should be noted that the Petitioner raised the issue of the tree's importance at the inception of the plan with the intention of saving the tree. The community never raised the issue at the community input meeting or spoke knowingly of the tree. Their concern started when it appeared to them that it might impact on the septic reserve area. As a practical matter the septic reserve area could have been resolved around the tree, but the tree was not in healthy condition, and certainly, there is credible evidence as submitted in the Wrable

[12] Petitioner is willing for the lighting on the site to be restricted as may be deemed appropriate by Baltimore County in rural areas.

report (Pet. Ex. 6) and acknowledged by the county tree expert Mr. List that the tree should have come down.

The county was notified of the question about the health of the tree and agreed to participate in its evaluation. Certainly, with branches having fallen off the tree into the play area in the summer after the storm, with evidence of rotting in the branches, and with the church planning to take extraordinary measures, if necessary, to protect the tree, prudence required an evaluation of the tree The church conducted an independent evaluation of the tree's health and whether there was a safety risk. While experts may disagree about whether the evaluation was accurate, the Protestants never called Mr. List and questioned his opinion even though they sought to subpoena him. The demise of the tree has no future impact on the proposed buffer area.

F. WILL THE PROPOSED BUILDINGS BE IN HARMONY WITH THE COMMUNITY?

The proposed buildings will be in harmony with the surrounding neighborhood. In this case the church buildings will be lower in height than any of the surrounding residences, and, therefore, much less imposing on the community than neighboring properties. In addition, the ground elevations are such that unlike the dwellings on either side of McDonogh Road the church will sit much lower than the road and will have much less of a visual impact than the existing dwellings, especially the dwelling and wall belonging to Mr. Whitfield. The church buildings will also sit back from the road a considerable distance and at least as far as Mr. Whitfield's house and at an elevation that

is over twenty (20) feet lower. The top of the church will be basically at Mr. Whitfield's floor level.

There is nothing in the regulations which gives a property owner the right to determine the materials or color that any of his neighbors choose for their buildings any more than they have a right to dictate to him. There was no evidence that the area was subjected to a regime of covenants, which might superimpose such right, and there is nothing in the Code which gives Baltimore County the right to dictate taste, especially in religious buildings. The federal courts have now indicated that religious institutions should not be subjected to special scrutiny by local zoning and land use regulators in their building design. Religious institutions are permitted like dwellings, and nothing in the regulations permits the hearing officers or county officials to tell people what materials to use or what color to paint or use as siding.

Nevertheless, the Petitioner has offered to work with the Office of Planning in the development of detailed schematics, particularly as they pertain to the sides of the building facing McDonogh Road. Pastor Cobb indicated that he is willing to use materials such as brick on the facing of the building along with aluminum or vinyl siding, which materials also are used in nearby dwellings.

Ms. Lanham indicated in her testimony that given the opportunity her department will have for input as to materials, particularly on the McDonogh Road side of the building, she saw no compatibility issues (T. 12/23 at 111, 133, 139, 141, 144). The Planning comments dated July 17, 2002 recommended that the plan be approved.

G. DOES THE SIGN FOR THE CHURCH COMPLY WITH COUNTY REQUIREMENTS?

The Office of Planning in its comments asked for sign detail in July, and it subsequently was added to the submitted plan (Pet. Ex. 1A). The zoning regulations require that the sign be no more than twenty-five (25) square feet in size, and the proposed sign is twenty-four (24) square feet. There was an objection by a resident of the community to an internally illuminated sign.

The sign certainly can be changed to one that is externally lighted. Many church signs, however, have movable texts to announce particular themes of services, whether they are located in a rural or in a suburban area. For example, in the Kingsville and Long Green areas virtually every older church has movable text and many are internally illuminated. The sign like the building schematics and landscaping can be submitted to planning for review.

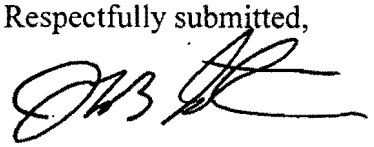
The sign to the community, moreover, is a symbol of a use that regardless of the zoning it does not want. The sign, however, will serve an important function. The church is a destination. It is important that people be able to find the church as they drive along McDonogh Road. The church will not be that obvious from the roadway given the topography and forested areas. For safety reasons in the evening as well as in the day there should be some reference as to the church's location, which is why such signs as requested by the church are permitted in residential zones.

## SUMMARY

In this case every county agency reviewing the church proposal recommended approval of the plan. No expert witness testified that the plan did not meet county or state development standards. The Protestants, which did not include the owners of the properties next to the subject property on the east or west, had many concerns, but essentially their concerns all involved the use of the property by this church rather than how the church was using the property. The county departments operated from the legal premise that the use is permitted as of right. The Protestants really are asking the Hearing Officer to change the law.

Petitioner Apostolic Truth Tabernacle respectfully requests that the Special Hearing be granted so that the corners of the house and pool do not have to be removed from the buffer and that the Development Plan submitted be approved as recommended. Petitioner further requests that no restrictions be placed on the approval, other than as described herein and during the hearing, for Protestants never demonstrated under Code Section 26-206(o) that without a condition any of the pertinent development issues raised by them would have an adverse impact on the health, safety or general welfare of the community.

Respectfully submitted,



John B. Gontrum
Romadka & Gontrum, LLC
814 Eastern Boulevard
Baltimore, Maryland 21221
410-686-8276
Attorney for Petitioner/Developer
Apostolic Truth Tabernacle

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23 day of January, 2003, a copy of the foregoing Memorandum of Petitioner was mailed, first class postage prepaid, to Carroll J. Holzer,. 508 Fairmount Avenue, Towson, Maryland 21286-5448.

John B. Gontrum

Apostolic Truth Tabernacle 03-040-SPH
McDonogh Rd and Field Rd 3rd; 3rd

03-040-SPH

3/27/03 @ 10 a.m.
HOLD Pending outcome of Remand to HO in CBA-03-109

20030040

03-040-SPH
(W-CBA-03-109)

# PETITION

(2)

# Petition for Special Hearing

## to the Zoning Commissioner of Baltimore County

for the property located at 8216 McDONOGH RD

which is presently zoned DR1

**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

that the site is in compliance to the extent possible with RTA use requirements in accordance with section 1B01.1.B.1.g.6. (BCZR)

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:**

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

**Attorney For Petitioner:**

John B. Gontrum
Name - Type or Print

Signature

Ronald A. Gontrum, LLC
Company

814 Eastern Blvd. 410-686-8274
Address Telephone No.

Baltimore MD 21221
City State Zip Code

**Legal Owner(s):**

Apostolic Truth Tabernacle
Thomas J. Cobb, Pres.
Name - Type or Print

Signature

Name - Type or Print

Signature

8216 McDONOGH ROAD 410-363-2112
Address Telephone No.

BALTIMORE MD 21208
City State Zip Code

**Representative to be Contacted:**

PATRICK C RICHARDSON JR
Name

730 W PADONIA RD 410 560 1502
Address Telephone No.

COCKEYSVILLE MD 21030
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By CTM Date 7/22/02

Case No. 03-040-SPH

ORDER RECEIVED FOR FILING
Date 12/6/02
By [signature]

REV 9/15/98

*Richardson Engineering, LLC*

730 W. Padonia Road, Suite 101
Cockeysville, Maryland 21030

410-560-1502, fax 410-560-0827

**ZONING DESCRIPTION**
**APOSTOLIC TRUTH TABERNACLE**
**8216 McDONOGH ROAD**
**3RD ELECTION DISTRICT**
**BALTIMORE COUNTY, MARYLAND**

BEGINNING FOR THE SAME at a point on the North side of McDonogh Road at the west side of Field Road, thence running and binding on the north side of the McDonogh Road right-of-way (1) by a curve to the right with a radius of 25.00 feet for a distance of 38.15 feet, (2) South 46 degrees 41 minutes 29 seconds West 319.46 feet, (3) by a curve to the right with a radius of 718 feet for a distance of 163.35 feet (4) by a curve to the right with a radius of 1181.23 feet for a distance of 238.01 feet (5) North 06 degrees 48 minutes 08 seconds West 67.00 feet, (6) North 06 degrees 21 minutes 42 seconds West 298.98 feet, (7) North 06 degrees 21 minutes 42 seconds West 292.00 feet, (8) North 57 degrees 31 minutes 52 seconds East 526.41 feet, (9) by a curve to the left with a radius of 929.93 feet for a distance of 12.43 feet, (10) South 06 degrees 12 minutes 37 seconds West 67.76 feet, (11) by a curve to the left with a radius of 290.00 feet for a distance of 247.56 feet, (12) South 40 degrees 59 minutes 08 seconds East 209.40 feet, to the point of beginning; partially being lot 13 & 14 of the Plat of Subdivision of Lyon Acres recorded in plat book 18 folio 98 in the land records of Baltimore County.

Containing a net area of 7.80 acres of land, more or less.

7/19/02

#40

**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: #03-040-SPH
8216 McDonogh Road
N/side McDonogh Road at west side of Field Road
3rd Election District
3rd Councilmanic District
Legal Owner(s): Apostolic Truth Tabernacle

**Special Hearing:** to approve that the site is in compliance to the extent possible with RTA use requirements.

**Hearing: Thursday, September 5, 2002 at 9:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake 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.

8/679 Aug. 20 C557620

# CERTIFICATE OF PUBLICATION

8/22/, 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 8/20/, 2002.

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

S. Wilkinson

LEGAL ADVERTISING

# CERTIFICATE OF POSTING

RE: Case No.: 03-040-SPH

Petitioner/Developer: APOSTOLIC, ETAL
GONTRUM

Date of Hearing/Closing: 10/23/02
10/30/02

NEW DATES
2ND POSTING

.1™ brand fax transmittal memo 7671 | # of pages ▸ 1
To BETTY OR ROBIN | From O'KEEFE
Co. ZONING - COMM | Co.
Dept. | Phone # 512 4621
Fax # 887-3468 | Fax #

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

Attention:

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 #8216 - McDONOGH RD.

The sign(s) were posted on 10/8/02 FIXED 10/12/02
(Month, Day, Year)

Sincerely,

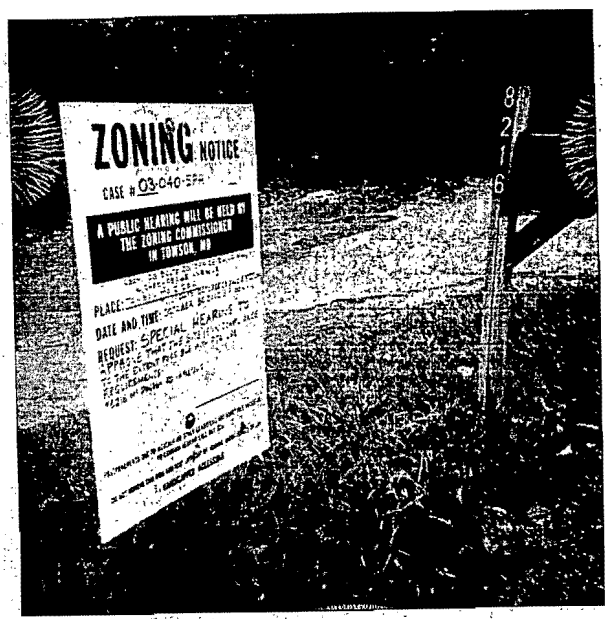
Patrick M. O'Keefe 10/14/02
(Signature of Sign Poster and Date)

PATRICK M. O'KEEFE
(Printed Name)

523 PENNY LANE
(Address)

HUNT VALLEY, MD. 21030
(City, State, Zip Code)

410-666-5366 ; CELL-410-905-8571
(Telephone Number)




03-040-SPH

10/23 10/30

Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

October 10, 2002

# CONTINUED 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: 03-040-SPH
8216 McDonogh Road
N/side McDonogh Road at west side of Field Road
3rd Election District – 3rd Councilmanic District
Legal Owner: Apostolic Truth Tabernacle

Special Hearing to approve that the site is in compliance to the extent possible with RTA use requirements.

HEARING: Wednesday, October 23, 2002 & Monday, October 30, 2002 at 9:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue

Arnold Jablon
Director

C: John B. Gontrum, 814 Eastern Blvd., Baltimore 21221
Apostolic Truth Tabernacle, Thomas Cobb, President, 8216 McDonogh Road, Baltimore 21208
Patrick C. Richardson, Jr., 730 W. Padonia Road, Cockeysville 21030
J. Carroll Holzer, 508 Fairmount Avenue, Towson 21286

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY**
(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.

Printed with Soybean Ink on Recycled Paper

County Board of Appeals of Baltimore County

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

**Hearing Room - Room 48**
**Old Courthouse, 400 Washington Avenue**

March 4, 2003

**NOTICE OF ASSIGNMENT**

**CASE #:** CBA-03-109 and

**CASE #:** 03-040-SPH

**IN THE MATTER OF: APOSTOLIC TRUTH TABERNACLE**
**Petitioner /Developer** 8216 McDonogh Road
3rd Election District; 3rd Councilmanic District

**2/06/03 – Final Order of HO/DZC in which Development Plan and special hearing relief were DENIED.**

**ASSIGNED FOR:** **THURSDAY, MARCH 27, 2003 at 10:00 a.m.**

**As to Case No. CBA-03-109 /this matter has been assigned for hearing in accordance with Section 26-209 of the *BCC* ; and as to Case No. 03-040-SPH– assigned for evidentiary hearing.**

**NOTE: The Board's Rules of Practice & Procedure are found in *Baltimore County Code.***

**Kathleen C. Bianco**
**Administrator**

---

c: Counsel for Appellant /Petitioner/Developer : John B. Gontrum, Esquire
Thomas Ernst, Esquire
Appellant /Petitioner/Developer : Pastor Thomas Cobb /Apostolic Truth Tabernacle

Rick Richardson /Richardson Engineering LLC

Counsel for Protestants : J. Carroll Holzer, Esquire
Protestants : Jack Dillon, Executive Director
Valleys Planning Council et al

Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /ZC
Donald Rascoe, Development Mgr /PDM
Arnold Jablon, Director /PDM

Printed with Soybean Ink on Recycled Paper

## APPEAL SIGN POSTING REQUEST

CASE NO.: 03-040-SPH

Apostolic Truth Tabernacle - LEGAL OWNERS

8216 McDonogh Road

3rd ELECTION DISTRICT APPEALED: 2/26/03

***ATTACHMENT*** – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

********COMPLETE AND RETURN BELOW INFORMATION*****

# CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Attention: Kathleen Bianco
Administrator

RE: Case No.: 03-040 SPH

Petitioner/Developer:

_____

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

8216 McDONOGH RD.

The sign was posted on 3/6, 2003

By: _____
(Signature of Sign Poster)

GARY FREUND
(Printed Name)

25A8

County Board of Appeals of Baltimore County

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

**Hearing Room - Room 48**
**Old Courthouse, 400 Washington Avenue**

March 4, 2003

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**NOTE: The Board's Rules of Practice & Procedure are found in *Baltimore County Code.***

**Kathleen C. Bianco**
**Administrator**

c: Counsel for Appellant /Petitioner/Developer : John B. Gontrum, Esquire
Thomas Ernst, Esquire
Appellant /Petitioner/Developer : Pastor Thomas Cobb /Apostolic Truth Tabernacle

Rick Richardson /Richardson Engineering LLC

Counsel for Protestants : J. Carroll Holzer, Esquire
Protestants : Jack Dillon, Executive Director
Valleys Planning Council et al

Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /ZC
Donald Rascoe, Development Mgr /PDM
Arnold Jablon, Director /PDM

Printed with Soybean Ink
on Recycled Paper

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

October 16, 2002

Apostolic Truth Tabernacle
Thomas J. Cobb, President
8216 McDonogh Road
Baltimore, MD 21208

Dear Mr. Cobb:

RE: Case Number: 03-040-SPH, 8216 McDonogh Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on July 22, 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.
Supervisor, Zoning Review

WCR:rlh

Enclosures

c: John B. Gontrum, 814 Eastern Avenue, Baltimore 21221
Patrick C. Richardson, Jr., 730 W. Padonia Road, Cockeysville 21030
People's Counsel



Printed with Soybean Ink
on Recycled Paper

Jim
9/5

**BALTIMORE COUNTY, MARYLAND**

**INTEROFFICE CORRESPONDENCE**

**TO:** Arnold Jablon, Director
Department of Permits & Development Mgmt.

**DATE:** August 23, 2002

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

**SUBJECT:** Zoning Advisory Committee Meeting
For August 5, 2002
Item Nos. 031, 032, 033, 034, 036, 037,
039, 040 and 041

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

RWB:CEN:jrb

cc: File

*ZAC-8-5-2002-NO COMMENT ITEMS-8232002*

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

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

**DATE:** August 5, 2002

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

**SUBJECT:** Zoning Advisory Petition(s): **Case(s) 03-036, 03-039, & 03-040**

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:** Lynn Lanham

AFK/LL:MAC

Baltimore County
Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

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

July 30, 2002

ATTENTION: George Zahner

RE:

Property Owner:

Location: 8216 McDonough Rd.

Item No.: 040

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.

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

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 200 Edition prior to occupancy.

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

cc: File



Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley RBS ITEM

DATE: August 16, 2002

Zoning Petitions

Zoning Advisory Committee Meeting of July 29, 2002

**SUBJECT**: NO COMMENTS FOR THE FOLLOWING ZONING ITEMS:

31-37, (40) 41

MDP
Maryland Department of Planning

Parris N. Glendening
Governor
Kathleen Kennedy Townsend
Lt. Governor

Roy W. Kienitz
Secretary
Mary Abrams
Deputy Secretary

July 30, 2002

Baltimore County Department of Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Room 111, Mail Stop #1105
Towson MD 21204

Re: **Zoning Advisory Committee Agenda - case numbers 03-031-A, 03-032-A, 03-033-SPH, 03-034-SPHA, 03-035-SPH, 03-036-A, 03-037-A, 03-038-A, 03-039-A, 03-040-SPH & 03-041-A**

To whom it may concern:

The Maryland Department of Planning has received the above-referenced information on 7/29/02. The information has been submitted to Mr. Mike Nortrup.

Thank you for your cooperation in this review process. Please contact me at 410.767.4550 or the above noted reviewer if you have any questions.

Sincerely,

James R. Gatto
Manager
Metropolitan Planning
Local Planning Assistance Unit

cc: Mike Nortrup

301 West Preston Street • Suite 1101 • Baltimore, Maryland 21201-2365
Telephone: 410.767.4500 • Fax: 410.767.4480 • Toll Free: 1.877.767.6272 • TTY Users: Maryland Relay
Internet: www.MDP.state.md.us

| | | | |
|---|---|---|---|
| RE: | PETITION FOR SPECIAL HEARING<br>8216 McDonogh Road<br>N/side McDonough Rd. West side<br>Field Road<br>3rd Election District 3rd Councilmanic<br>District<br>Legal Owner: Apostolic Truth Tabernacle<br>Thomas J. Cobb, President<br>Petitioner | *<br><br>*<br><br>*<br><br>*<br><br>*<br><br>* | BEFORE THE<br><br>ZONING COMMISSIONER<br><br>FOR<br><br>BALTIMORE COUNTY<br><br>03-040-SPH |

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

**ENTRY OF APPEARANCE**

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and 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**

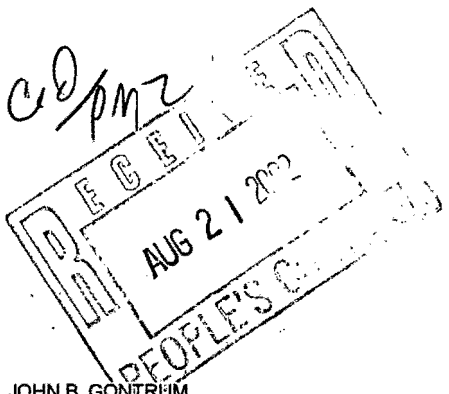
I HEREBY CERTIFY that on this 5th day of August, 2002, a copy of the foregoing Entry of Appearance was mailed to John B. Gontrum, Esquire, ROMADKA, GONTRUM & MCLAUGHLIN, 814 Eastern Blvd. Baltimore, Maryland 21221 Attorney for Petitioner(s).

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

ROMADKA & GONTRUM, LLC
814 Eastern Boulevard
Baltimore, Maryland 21221
(410) 686-8274
(410) 686-6206 (fax)

ROBERT J. ROMADKA
rromadka@rgmlaw.net

JOHN B. GONTRUM
jgontrum@rgmlaw.net




August 16, 2002

Mr. Arnold Jablon, Director
Baltimore County Dept. of Permits
and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: R & G File Name: Apostolic Truth Tabernacle
R & G File No.: 22.3008
Case No.: 03-040-SPH
Property: 8216 McDonogh Road
N/side McDonogh Road at west side of Field Road
3rd Election District - 3rd Councilmanic District
Legal Owner: Apostolic Truth Tabernacle
Hearing Date: Thursday, September 5, 2002 at 9:00 A.M.
Room 106

Dear Mr. Jablon:

Please enter the appearance of Romadka & Gontrum, LLC and John B. Gontrum, Esquire, on behalf of Apostolic Truth Tabernacle and Thomas Cobb, Petitioner, in the above captioned matter.

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

Very truly yours,

John B. Gontrum

JBG/jmh

cc: Carroll Holzer, Esq.
People's Counsel

Baltimore County Government
Department of Permits and Development Management

111 West Chesapeake Avenue
Towson MD 21204

(410) 887-3321
(410) 887-2877 (fax)

February 27, 2003

Mr. Rick Richardson
Richardson Engineering, LLC
730 W. Padonia Road, Ste. 101
Cockeysville, MD 21030

RE: Appeal of Hearing Officer's Opinion
and Development Plan Order
N/S McDonogh Road @ NW Corner of Field Road
The Apostolic Truth Tabernacle
District: 3 c 3
The Apostolic Truth Tabernacle- Applicant
PDM # III-446

Dear Mr. Richardson:

Please be advised that an appeal of the above-referenced case was filed in this office on February 24, 2003 by John B. Gontrum, Esq. and Romadka & Gontrum, LLC on behalf of the Petitioners. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to contact the Board at (410) 887-3180.

Sincerely,

Arnold Jablon
Director

AJ:kw
Enc.
c: Pastor Thomas Cobb
John B. Gontrum, Esq.
J. Carroll Holzer, Esq.
See Continuation Sheet
People's Counsel
Baltimore County Board of Appeals
File

## CONTINUATION SHEET

Thomas Ernst, Esq., Gontrum, Romadka, Gontrum & McLaughlin, 814 Eastern Boulevard, Baltimore, MD 21221
Bonnie Cobb, James Cobb, Amber Joy Cobb, Brittany Cobb, Lena Cobb, 8216 McDonogh RD, Pikesville, MD 21208
Rick Richardson, 730 W. Padonia RD, Cockeysville, MD 21030
Misty Warren, Marina Warren, Laura Warren, 227 Hanover Street, Glen Rock, PA 17327
Lauren D. Himon, 3716 Glen Avenue, Baltimore, MD 21215
Anthony Mable, Sr., Joceyln Mable, Beverly Mable, 1804 N. Smallwood Street, Baltimore, MD 21216
Robert Barnes, 4618 Park Heights Ave., Baltimore, MD 21215
Marlene Duke, 4618 Park Heights Avenue, Baltimore, MD 21215
Dennis Miller, Donna Miller, 4038 Lyndale Ave., Baltimore, MD 21213
Lottie Johnson, 9514 Axehead Court, Randallstown, MD 21133
Mary Robinson, 5115 Woolverton Ave., Baltimore, MD 21215
Harlan Cress, 8227 McDonogh RD, Pikesville, MD 21208
Cindy Rollert, 8215 McDonogh RD, Pikesville, MD 21208
Merrill Skolnik, Judith Skolnik, 8123 McDonogh RD, Pikesville, MD 21208
Jay S. Taetle, 8125 McDonogh RD, Pikesville, MD 21208
Susan Greenberg, 8109 McDonogh RD, Pikesville, MD 21208
Ruth Silverman, 8121 McDonogh RD, Pikesville, MD 21208
Vladimir Volinsky, 9141 Field Road, Pikesville, MD 21208
Michael Finkelstein, 9118 Field Road, Pikesville, MD 21208
Jerome Rubin, Barbara Rubin, 9015 Pittsfield RD, Pikesville, MD 21208
Jeremy Roth, 9007 Purdy Lane, Pikesville, MD 21208
Ira Blank, Marilyn Blank, 8019 McDonogh RD, Pikesville, MD 21208
Megan Warren, 8216 McDonogh RD, Baltimore, MD 21208
Rev. Terry McIntire, 1703 Cape May RD, Essex, MD 21221
Phil Brooks, 1552 Winford RD, Baltimore, MD 21239
Joseph Howard, Gwendolyn Howard, 9119 Field Road, Pikesville, MD 21208
M.D. Whitfield, 8215 McDonogh RD, Pikesville, MD 21208
Howard B. Gersh, 4 Babette Court, Pikesville, MD 21208
Stanley Mayer, Vonita Mayer, 9011 Purdy Lane, Pikesville, MD 21208
Stephanie McLaughlin, 8114 Green Valley Lane, Owings Mills, MD 21117
Lewis Fleischmann, Helen Fleischmann, 9004 Pittsfield RD, Pikesville, MD 21208
Aaron Tendler, 400 Mt. Wilson Lane, Pikesville, MD 21208
Phyllis B. Brotman, 8105 McDonogh RD, Pikesville, MD 21208
Robert Gerstmyer, Karen Gerstmyer, 2 Preakness Court, Owings Mills, MD 21117
Stacey Macomber, P.O. Box 380, Owings Mills, MD 21117
Harry Shriver, 9110 Field RD, Pikesville, MD 21208
Bearnice Calkins, 9100 Field RD, Pikesville, MD 21208
Michael Hennessey, 9147 Field RD, Pikesville, MD 21208
Jean Soloman, 9006 Pittsfield RD, Pikesville, MD 21208
Sandra A. Rollert, 8215 McDonogh RD, Pikesville, MD 21208

Jack Dillon, APN, 543 Park Avenue, Towson, MD 21204
Barbara Pash, Baltimore Jewish Times, 1040 Park Avenue, Ste. 200,
Baltimore, MD 21201
Ed Bouwer, Geography & Environmental Engineer, Johns Hopkins University,
Baltimore, MD 21218
Gerald Lerner, 9010 Pittsfield RD, Baltimore, MD 21208

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

March 3, 2003

Apostolic Truth Tabernacle
Thomas J. Cobb
8216 McDonogh Road
Baltimore, MD 21208

Dear Mr. Cobb:

RE: Case No. 03-040-SPH, 8216 McDonogh Road

Please be advised that an appeal of the above-referenced case was filed in this office on February 26, 2003 by Romadka & Gontrum. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Arnold Jablon
Director

AJ:rlh

c: Timothy M. Kotroco,Deputy Zoning Commissioner
Arnold Jablon, Director of PDM
People's Counsel
Romadka & Gontrum, 814 Eastern Avenue, Baltimore 21221
Patrick C. Richardson, Jr., 730 W. Padonia Road, Cockeysville 21030

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on Recycled Paper

# APPEAL

Petition for Special Hearing
8216 McDonogh Road
N/side McDonogh Road at west side of Field Road
Apostolic Truth Tabernacle - Legal Owner
Case No.: 03-040-SPH

✓ Petition for Special Hearing (July 22, 2002)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (October 10, 2002)

✓ Certification of Publication (The Jeffersonian on Tuesday, August 20, 2002)

✓ Certificate of Posting (October 8, 2002 and fixed October 10, 2002 posted by Patrick O'Keefe)

✓ Entry of Appearance by People's Counsel (August 5, 2002)

✓ Petitioner(s) Sign-In Sheet
None

✓ Protestant(s) Sign-In Sheet
None

✓ Citizen(s) Sign-In Sheet
None

✓ Zoning Advisory Committee Comments

✓ Petitioners' Exhibits:
1. Plan to accompany Special Hearing

✓ Protestants' Exhibits:
None

✓ Miscellaneous (Not Marked as Exhibits):

RECEIVED
MAR 0 3 2003
BALTIMORE COUNTY
BOARD OF APPEALS

J. Carroll Holzer, Esquire Counsel for Protestants
508 Fairmount Avenue
Towson, MD 21286

JACK DILLON, et al (Protestants)
EXECUTIVE DIRECTOR
THE VALLEYS PLANNING COUNCIL, INC.
207 COURTLAND AVENUE
TOWSON MD 21204

✓ Deputy Zoning Commissioner's Order (February 6, 2003 - DENIED)

✓ Notice of Appeal received on February 26, 2003 from Romadka & Gontrum

c: People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM
Apostolic Truth Tabernacle Church

PASTOR THOMAS COBB
APOSTOLIC TRUTH TABERNACLE
8216 MCDONOGH ROAD
PIKESVILLE, MD 21208
**PETITIONER/APPELLANT**

THOMAS ERNST, ESQUIRE
ROMADKA & GONTRUM, LLC
814 EASTERN BOULEVARD
BALTIMORE, MD 21221
**ATTORNEY FOR PETITIONER/APPELLANT**

JOHN B GRONTRUM, LLC
ROMADKA & GONTRUM, LLC
814 EASTERN BOULEVARD
BALTIMORE, MD 21221
**ATTORNEY FOR PETITIONER/APPELLANT**

RICK RICHARDSON
RICHARDSON ENGINEERING LLC
730 W PADONIA ROAD
COCKEYSVILLE, MD 21030

## NOTIFICATION LIST

Pastor Thomas Cobb, 8216 McDonogh Road, Pikesville, MD 21208
-representing the owner of property
Rick Richardson, Richardson Engineering LLC, 730 W. Padonia RD, Cockeysville, MD 21030
-engineer of project
John B. Gontrum, Esq., Whiteford, Taylor & Preston, 210 West Pennsylvania Avenue, Ste. 500, Towson, MD 21204
AND/OR
John B. Gontrum, Esq., Romadka & Gontrum, LLC, 814 Eastern Boulevard, Baltimore, MD 21221
-Attorney for Apostolic Truth Tabernacle
J. Carroll Holzer, Esq., Holzer & Lee, 508 Fairmount Ave., Towson, MD 21286
-attorney for McDonogh-Field Association, et al.
McDonogh-Field Association, c/o Phyllis B. Brotman, President & Individually, 8105 McDonogh Road, Pikesville, MD 21208
-Appellant
Joseph Howard, 9119 Field Road, Pikesville, MD 21208
-Appellant
Dr. Michael Whitfield, 8215 McDonogh Road, Pikesville, MD 21208
-Appellant
Howard B. Gersh, 4 Babette Court, Pikesville, MD 21208
-Appellant
Harry Shriver, 9110 Field Road, Pikesville, MD 21208
-Appellant
Michael Hennessey, 9147 Field Road, Pikesville, MD 21208
-Appellant
Judith Skolnik, 8123 McDonogh Road, Pikesville, MD 21208
-Appellant
Jay S. Taetle, 8125 McDonogh Road, Pikesville, MD 21208
-Appellant
Susan Greenberg, 8109 McDonogh Road, Pikesville, MD 21208
- Appellant
Vladimir Volinsky, 9141 Field Road, Pikesville, MD 21208
- Appellant
Michael Finkelstein, 9118 Field Run, Pikesville, MD 21208
-Appellant

Arnold F. Keller, III, Director, Office of Planning
Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director, Department of Permits and Development Management
Don Rascoe, Development Manager

CBA-03-109

# NOTIFICATION LIST

Pastor Thomas Cobb, 8216 McDonogh Road, Pikesville, MD 21208
-representing the owner of property
Rick Richardson, Richardson Engineering LLC, 730 W. Padonia RD, Cockeysville, MD 21030
-engineer of project
Thomas Ernst and John B. Gontrum, Romadka, Gontrum & McLaughlin, 814 Eastern Boulevard, Baltimore, MD 21221
-attorneys for petitioners
J. Carroll Holzer, Esq., Holzer & Lee, 508 Fairmount Ave., Towson, MD 21286
-attorney for protestants

Arnold F. Keller, III, Director, Office of Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director, Department of Permits and Development Management
Don Rascoe, Development Manager

JACK DILLON, et al — Protestants
EXECUTIVE DIRECTOR
THE VALLEYS PLANNING COUNCIL, INC.
207 COURTLAND AVENUE
TOWSON MD 21204

PASTOR THOMAS COBB
APOSTOLIC TRUTH TABERNACLE
8216 MCDONOGH ROAD
PIKESVILLE, MD 21208
**PETITIONER/APPELLANT**

RICK RICHARDSON
RICHARDSON ENGINEERING LLC
730 W PADONIA ROAD
COCKEYSVILLE, MD 21030

THOMAS ERNST, ESQUIRE
ROMADKA & GONTRUM, LLC
814 EASTERN BOULEVARD
BALTIMORE, MD 21221
**ATTORNEY FOR PETITIONER/APPELLANT**

JOHN B GRONTRUM, LLC
ROMADKA & GONTRUM, LLC
814 EASTERN BOULEVARD
BALTIMORE, MD 21221
**ATTORNEY FOR PETITIONER/APPELLANT**

Case No. CBA-03-109

Case No. 03-040-SPH

*In the Matter of: Apostolic Truth Tabernacle*
/PDM III-446 **and**
SPH – To confirm that development of site is in compliance to extent possible with RTA use requirements per BCZR

2/06/03– Final Order of HO/DZC in which Development Plan and special hearing relief were DENIED.

---

3/04/03 --Notice of Assignment sent to following parties; matter scheduled for hearing on Thursday, March 27, 2003 at 10:00 a.m.:

John B. Gontrum, Esquire
Thomas Ernst, Esquire
Pastor Thomas Cobb /Apostolic Truth Tabernacle
Rick Richardson /Richardson Engineering LLC
J. Carroll Holzer, Esquire
Jack Dillon, Executive Director
Valleys Planning Council et al
Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /ZC
Donald Rascoe, Development Mgr /PDM
Arnold Jablon, Director /PDM

---

3/24/03 – Letter from P. Zimmerman to Chairman of the Board of Appeals – comments and concerns re basis of appeal outlined by Petitioner; particularly references RLUIPA.
-- Letter from Jack Dillon to J. Carroll Holzer, Esquire – will not be available on 3/27/03; recovering from knee replacement surgery; home therapy through end of March; outpatient therapy first two weeks in April.

---

3/27/03 – Board convened for hearing (S.C.R.); at conclusion of argument on various Motions submitted by Counsel for Protestants, the Board convened a public deliberation and, in the course of deliberation, ruled to REMAND the Development Plan matter back to the Hearing Office /Deputy Zoning Commissioner for reasons as stated in deliberation (findings to support denial, etc.); indicated on the record that the Special Hearing portion of this matter would be continued until such time as the Hearing Officer responds to the Board's Remand Order.
-- A written Opinion /Order to be issued by the Board by no later than 4/11/03; matter to be remanded to Hearing Officer.

---

Case No. CBA-03-109

Case No. 03-040-SPH

*In the Matter of: Apostolic Truth Tabernacle*
/PDM III-446 **and**
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Thomas Ernst, Esquire
Pastor Thomas Cobb /Apostolic Truth Tabernacle
Rick Richardson /Richardson Engineering LLC
J. Carroll Holzer, Esquire
Jack Dillon, Executive Director
Valleys Planning Council et al
Office of People's Counsel
Pat Keller, Director /Planning
Lawrence E. Schmidt /ZC
Donald Rascoe, Development Mgr /PDM
Arnold Jablon, Director /PDM

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-- A written Opinion /Order to be issued by the Board by no later than 4/11/03; matter to be remanded to Hearing Officer.

---

5/07/03 – Letter from Mrs. Jane Buehner, 26 Millstone Road, Randallstown, MD 21133 – requesting that she be notified when case is set for hearing; telephone number also provided 410-521-2642.

---

1/13/04 – Received copy of Hearing Officer's Opinion and Development Plan Order on Remand issued by Zoning Commissioner on January 9, 2004 in response to Board's 4/03/03 Remand Order. (received as attachment to courtesy copy of letter to J. Gontrum and C. Holzer issuing above Order.)

---

1/23/04 – Letter to J. Gontrum and C. Holzer – Board will assign a hearing date in this matter; Jurisdiction retained by the Board during remand to Hearing Officer with hearing to be scheduled upon receipt of Order on remand, once the file has been returned from Annapolis. Notice to be sent to all parties when scheduled.

---

1/28/04 – Appeal filed by J. Carroll Holzer, Esquire, on behalf of Protestants, from decision of Hearing Officer on remand. To be assigned for hearing (Case No. CBA-04-106) as soon as material in Case No. CBA-03-109 (case remanded to Hearing Office) is returned from Annapolis.

---

2/09/04 – Appeal filed by John B. Gontrum, Esquire, on behalf of Developer, from decision of Hearing Officer; Motion to Consolidate CBA-04-106 with CBA-03-109 and 03-040-SPH for hearing.

---

3/12/09 – Letter sent to Counsel requesting status and/or Settlement Agreement

Case No. CBA-03-109

Case No. 03-040-SPH

Case No.: CBA-04-106

*In the Matter of: Apostolic Truth Tabernacle*
/PDM III-446 **and**
SPH – To confirm that development of site is in compliance to extent possible with RTA use requirements per BCZR

2/06/03– Final Order of HO/DZC in which Development Plan and special hearing relief were DENIED.



---

3/16/09 – Letter received from J. Carroll Holzer, Esquire enclosing Declaration of Agreement.

3/23/09 – Order of Dismissal issued and distributed to Counsel and People's Counsel.

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

N O T I C E  O F  M O T I O N S  H E A R I N G

Case Number: 03-C-03-004606
C I V I L

In The Matter of: James Stephens, et al

---

STATE OF MARYLAND, BALTIMORE COUNTY COUNTY, TO WIT:

RECEIVED
JUN 17 2003
BALTIMORE COUNTY
BOARD OF APPEALS

TO: Board Of Appeals Of Baltimore County
400 Washington Avenue
Baltimore, MD 21204

This case has been assigned a hearing on all open motions on:

CIRCUIT COURT FOR BALTIMORE COUNTY
County Courts Building
401 Bosley Avenue
Towson, MD 21285-6754

Court date:
July 9, 2003
At: 09:30 AM
Motion Hearing (Civil)
1/2 HOUR MOTIONS

PLEASE NOTE: If you desire to submit prior to this hearing date, please contact the Motion Assignment Clerk. A total of no more that one-half hour is allotted for a hearing on "Motion Days". If motions will take more than one-half hour, please contact the Motion Assignment Clerk for reassignment.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

A court reporter will not be present at the motion hearing unless specifically requested. Requests for reporters should be directed to the Motion Assignment Clerk. All requests for a postponement **MUST BE MADE IN WRITING AS SOON AS POSSIBLE**. This should be directed to the Motion Assignment Clerk with a copy to all counsel. Claim of not receiving this notice will not constitute reason for postponement.

Please refer to Information Desk for Court Room Designation.

Assignment Clerk: Culbertson Rebecca
Assignment Office Phone: (410)-887-2660

Date Issued: 06/16/03

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

N O T I C E  O F  M O T I O N S  H E A R I N G

Case Number: 03-C-03-004661
Administrative Agency : 03-040-SPH
Administrative Agency : CBA-03-109
C I V I L

In The Matter of: McDonogh Field Assn, et al

---

STATE OF MARYLAND, BALTIMORE COUNTY COUNTY, TO WIT:

RECEIVED
JUN 06 2003
BALTIMORE COUNTY
BOARD OF APPEALS

TO: County Board Of Appeals Of Baltimore County
400 Washington Ave
Baltimore, MD 21204

This case has been assigned a hearing on all open motions on:

CIRCUIT COURT FOR BALTIMORE COUNTY
County Courts Building
401 Bosley Avenue
Towson, MD 21285-6754

Court date:
July 10, 2003
At: 09:30 AM
Motion Hearing (Civil)
1 HOUR MOTIONS

PLEASE NOTE: If you desire to submit prior to this hearing date, please contact the Motion Assignment Clerk. A total of no more that one-half hour is allotted for a hearing on "Motion Days". If motions will take more than one-half hour, please contact the Motion Assignment Clerk for reassignment.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

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Please refer to Information Desk for Court Room Designation.

Assignment Clerk: Culbertson Rebecca

Assignment Office Phone: (410)-887-2660

Date Issued: 06/04/03

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

08/13/03

Case Number: 03-C-03-004661 AE
Date Filed: 04/28/2003
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :

In The Matter of: McDonogh Field Assn, et al

# C A S E  H I S T O R Y

## OTHER REFERENCE NUMBERS

| Description | Number |
|---|---|
| Administrative Agency | 03-040-SPH |
| Case Folder ID | C03004661V01 |
| Administrative Agency | CBA-03-109 |

## INVOLVED PARTIES

| Type | Num | Name(Last,First,Mid,Title) | Addr Str/End | Disposition Addr Update | Entered |
|---|---|---|---|---|---|
| PET | 001 | McDonogh Field Assn | Party ID: 0579484 | BT DO 08/07/03 | 04/28/03 |
| | | Capacity : By President<br>Mail: 8105 McDonogh Road<br>Baltimore, MD 21208 | 04/28/03 | | |
| | | Attorney: 0012186 Holzer, J Carroll<br>Holzer And Lee<br>The 508 Building<br>508 Fairmount Avenue<br>Towson, MD 21286-5448<br>(410)825-6961 | Appear: 04/28/2003 | | 04/28/03 |

| Type Num | Name(Last,First,Mid,Title) | Addr Str/End | Disposition Addr Update | Entered |
|---|---|---|---|---|
| PET 002 | Gersh, Howard | Party ID: 0579486 | BT DO 08/07/03 | 04/28/03 |
| | Mail: 8105 McDonogh Road<br>Baltimore, MD 21208 | 04/28/03 | | |
| | Attorney: 0012186 Holzer, J Carroll<br>Holzer And Lee<br>The 508 Building<br>508 Fairmount Avenue<br>Towson, MD 21286-5448<br>(410)825-6961 | Appear: 04/28/2003 | | 04/28/03 |
| PET 003 | Whitfield, Michael | Party ID: 0579487 | BT DO 08/07/03 | 04/28/03 |
| | Capacity : Dr<br>Mail: 8105 McDonogh Road<br>Baltimore, MD 21208 | 04/28/03 | | |
| | Attorney: 0012186 Holzer, J Carroll<br>Holzer And Lee<br>The 508 Building<br>508 Fairmount Avenue<br>Towson, MD 21286-5448<br>(410)825-6961 | Appear: 04/28/2003 | | 04/28/03 |
| PET 004 | Hennessy, Michael | Party ID: 0579488 | BT DO 08/07/03 | 04/28/03 |
| | Mail: 8105 McDonogh Road<br>Baltimore, MD 21208 | 04/28/03 | | |
| | Attorney: 0012186 Holzer, J Carroll<br>Holzer And Lee<br>The 508 Building<br>508 Fairmount Avenue<br>Towson, MD 21286-5448<br>(410)825-6961 | Appear: 04/28/2003 | | 04/28/03 |
| PET 005 | Greenberg, Susan | Party ID: 0579489 | BT DO 08/07/03 | 04/28/03 |
| | Mail: 8105 McDonogh Road<br>Baltimore, MD 21208 | 04/28/03 | | |
| | Attorney: 0012186 Holzer, J Carroll<br>Holzer And Lee<br>The 508 Building | Appear: 04/28/2003 | | 04/28/03 |

508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

| Type | Num | Name(Last,First,Mid,Title) | Addr Str/End | Disposition / Addr Update | Entered |
|---|---|---|---|---|---|
| PET | 006 | Finkelstein, Michael | Party ID: 0579492 | BT DO 08/07/03 | 04/28/03 |
| | | Mail: 8105 McDonogh Road<br>Baltimore, MD 21208 | 04/28/03 | | |
| | | Attorney: 0012186 Holzer, J Carroll<br>Holzer And Lee<br>The 508 Building<br>508 Fairmount Avenue<br>Towson, MD 21286-5448<br>(410)825-6961 | Appear: 04/28/2003 | | 04/28/03 |
| PET | 007 | Howard, Joe | Party ID: 0579493 | BT DO 08/07/03 | 04/28/03 |
| | | Mail: 8105 McDonogh Road<br>Baltimore, MD 21208 | 04/28/03 | | |
| | | Attorney: 0012186 Holzer, J Carroll<br>Holzer And Lee<br>The 508 Building<br>508 Fairmount Avenue<br>Towson, MD 21286-5448<br>(410)825-6961 | Appear: 04/28/2003 | | 04/28/03 |
| PET | 008 | Volinsky, Vladimir | Party ID: 0579494 | BT DO 08/07/03 | 04/28/03 |
| | | Mail: 8105 McDonogh Road<br>Baltimore, MD 21208 | 04/28/03 | | |
| | | Attorney: 0012186 Holzer, J Carroll<br>Holzer And Lee<br>The 508 Building<br>508 Fairmount Avenue<br>Towson, MD 21286-5448<br>(410)825-6961 | Appear: 04/28/2003 | | 04/28/03 |
| PET | 009 | Schreiber, Harry | Party ID: 0579495 | BT DO 08/07/03 | 04/28/03 |
| | | Mail: 8105 McDonogh Road<br>Baltimore, MD 21208 | 04/28/03 | | |

Attorney: 0012186 Holzer, J Carroll — Appear: 04/28/2003 — 04/28/03
Holzer And Lee
The 508 Building
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

| Type | Num | Name(Last,First,Mid,Title) | Addr Str/End | Disposition / Addr Update | Entered |
|---|---|---|---|---|---|
| PET | 010 | Taetle, J | Party ID: 0579496 | BT DO 08/07/03 | 04/28/03 |

Mail: 8105 McDonogh Road — 04/28/03
Baltimore, MD 21208

Attorney: 0012186 Holzer, J Carroll — Appear: 04/28/2003 — 04/28/03
Holzer And Lee
The 508 Building
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

| Type | Num | Name(Last,First,Mid,Title) | Addr Str/End | Disposition / Addr Update | Entered |
|---|---|---|---|---|---|
| PET | 011 | Skolnik, Judy | Party ID: 0579497 | BT DO 08/07/03 | 04/28/03 |

Mail: 8105 McDonogh Road — 04/28/03
Baltimore, MD 21208

Attorney: 0012186 Holzer, J Carroll — Appear: 04/28/2003 — 04/28/03
Holzer And Lee
The 508 Building
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

| Type | Num | Name(Last,First,Mid,Title) | Addr Str/End | Disposition / Addr Update | Entered |
|---|---|---|---|---|---|
| PET | 012 | Brotman, Phyllis | Party ID: 0579498 | BT DO 08/07/03 | 04/28/03 |

Capacity : Individually And As President

Mail: 8105 McDonogh Road — 04/28/03
Baltimore, MD 21208

Attorney: 0012186 Holzer, J Carroll — Appear: 04/28/2003 — 04/28/03
Holzer And Lee
The 508 Building
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

| Type | Num | Name(Last,First,Mid,Title) | Addr Str/End | Disposition / Addr Update | Entered |
|---|---|---|---|---|---|
| RES | 001 | Apostolic Truth Tabernacle | Party ID: 0579483 | BT DO 08/07/03 | 04/28/03 |

Mail: McDonogh Road 04/28/03
At NW Corner Of Field Road PDM #446

Attorney: 0012404 Gontrum, John B Appear: 05/23/2003 05/27/03
Whiteford, Taylor & Preston L.L.P.
210 W. Pennsylvania Ave.
Towson, MD 21204-4515
(410)832-2055

| Type | Num | Name(Last,First,Mid,Title) | Addr Str/End | Disposition Addr Update | Entered |
|---|---|---|---|---|---|
| ITP | 001 | County Board Of Appeals Of Baltimore County | Party ID: 0579481 | BT DO 08/07/03 | 04/28/03 |

Mail: 400 Washington Ave 04/28/03
Baltimore, MD 21204

## CALENDAR EVENTS

| Date | Time | Dur | Cer | Evnt | Lvl | Atty | Jdg | Day | Of | Rslt | By | ResultDt | Jdg T | Notice | Rec | User ID |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 07/10/03 | 09:30A | 01H | yes | MOTN | S | | RAJ | 01 | /01 | CON | E | 07/10/03 | RAJ P | 06/04/03 | Y | RC |

Stenographer(s): Janet A. Brown

## JUDGE HISTORY

| JUDGE ASSIGNED | Type | Assign Date | Removal RSN |
|---|---|---|---|
| TBA To Be Assigned, | J | 04/28/03 | |

## DOCUMENT TRACKING

| Num/Seq | Description | Filed | Entered | Party | Jdg | Ruling | Closed | User ID |
|---|---|---|---|---|---|---|---|---|
| 0001000 | Petition for Judicial Review | 04/28/03 | 04/28/03 | PET001 | TBA | | 08/07/03 | CMS JBJ |
| 0002000 | Second certificate of notice | 05/12/03 | 05/13/03 | ITP001 | TBA | | 08/07/03 | PH JBJ |
| 0003000 | Motion to Stay with exhibits | 05/19/03 | 05/20/03 | PET001 | RAJ | Denied | 08/07/03 | CS JBJ |

Filed by PET001-McDonogh Field Assn, , PET002-Gersh, Howard,
PET003-Whitfield, Michael, PET004-Hennessy, Michael,
PET005-Greenberg, Susan, PET006-Finkelstein, Michael,
PET007-Howard, Joe, PET008-Volinsky, Vladimir, PET009-Schreiber,
Harry, PET010-Taetle, J, PET011-Skolnik, Judy, PET012-Brotman,

Phyllis

| Num/Seq | Description | Filed | Entered | Party | Jdg | Ruling | Closed | User ID |
|---|---|---|---|---|---|---|---|---|
| 0003001 | Answer<br>Filed by PET001-McDonogh Field Assn, , PET002-Gersh, Howard, PET003-Whitfield, Michael, PET004-Hennessy, Michael, PET005-Greenberg, Susan, PET006-Finkelstein, Michael, PET007-Howard, Joe, PET008-Volinsky, Vladimir, PET009-Schreiber, Harry, PET012-Brotman, Phyllis, PET011-Skolnik, Judy, PET010-Taetle, J | 05/29/03 | 06/02/03 | PET001 | TBA | | 08/07/03 | MI JBJ |
| 0004000 | *Request for Hearing/Motion to Stay<br>Filed by PET001-McDonogh Field Assn, , PET002-Gersh, Howard, PET003-Whitfield, Michael, PET004-Hennessy, Michael, PET005-Greenberg, Susan, PET006-Finkelstein, Michael, PET007-Howard, Joe, PET008-Volinsky, Vladimir, PET009-Schreiber, Harry, PET010-Taetle, J, PET011-Skolnik, Judy, PET012-Brotman, Phyllis | 05/19/03 | 05/20/03 | PET001 | TBA | | 08/07/03 | DR JBJ |
| 0004001 | Answer with Request for Hearing on Motion to Stay | 05/23/03 | 05/27/03 | RES001 | TBA | | 08/07/03 | PKE JBJ |
| 0005000 | Motion to Dismiss | 05/23/03 | 05/27/03 | RES001 | RAJ | Granted | 08/07/03 | PKE JBJ |
| 0005001 | Answer | 05/29/03 | 06/02/03 | 000 | TBA | | 08/07/03 | MI JBJ |
| 0006000 | Request for Hearing on Motion to Dismiss | 05/23/03 | 05/27/03 | RES001 | TBA | | 08/07/03 | PKE JBJ |
| 0007000 | Notice of intent to Participate in Judicial Review | 05/23/03 | 05/27/03 | RES001 | TBA | | 08/07/03 | PKE JBJ |
| 0008000 | Hearing Notice | 06/04/03 | 06/04/03 | 000 | TBA | | 06/04/03 | RC RC |
| 0009000 | *Transcript of Record from Adm Agency | 06/27/03 | 07/01/03 | 000 | TBA | | 08/07/03 | MJ JBJ |
| 0010000 | Notice of Transcript of Record Sent | 07/01/03 | 07/01/03 | ITP001 | TBA | | 07/01/03 | MJ MJ |
| 0011000 | Notice of Transcript of Record Sent | 07/01/03 | 07/01/03 | PET001 | TBA | | 07/01/03 | MJ MJ |
| 0012000 | Notice of Transcript of Record Sent | 07/01/03 | 07/01/03 | RES001 | TBA | | 07/01/03 | MJ MJ |
| 0013000 | Open Court Proceeding<br>Hon. Ruth Jakubowski - Hearing had. Dispo - Sub-Curia - Opinion and Order to be filed. | 07/10/03 | 07/10/03 | 000 | RAJ | | 08/07/03 | MK JBJ |
| 0014000 | Open Court Proceeding<br>Hon. Ruth Jakubowski - Hearing had. Dispo Sub-Curia. Opinion and Order to be filed. | 07/10/03 | 07/10/03 | 000 | RAJ | | 08/07/03 | MK JBJ |
| 0015000 | Invoice #13242 sent to John B Gontrum | 08/13/03 | 08/13/03 | 000 | TBA | | | PKE PKE |
| 0016000 | Docket entries sent to Board of Appeals | 08/13/03 | 08/13/03 | 000 | TBA | | | CVM CVM |

for Baltimore County

## TICKLE

| Code | Tickle Name | Status | Expires | #Days | AutoExpire | GoAhead | From | Type | Num | Seq |
|---|---|---|---|---|---|---|---|---|---|---|
| 1ANS | 1st Answer Tickle | CLOSED | 05/23/03 | 0 | no | no | DARH | D | 004 | 001 |
| 1YRT | One Year Tickle (Jud | CLOSED | 04/27/04 | 365 | no | no | DAAA | D | 001 | 000 |
| EXPU | Exhibit Pickup Notic | CLOSED | 10/06/03 | 30 | no | no | | | 000 | 000 |
| SLMH | Set List For Motions | CANCEL | 05/29/03 | 0 | no | no | SLMM | T | 003 | 001 |
| SLMM | Set List Motions Mar | Done | 02/11/06 | 999 | yes | yes | DANS | D | 004 | 000 |
| SLMR | Set List For Motions | CANCEL | 06/18/03 | 30 | no | no | SLMM | T | 003 | 000 |
| SLTR | Set List For Trial | CLOSED | 05/23/03 | 0 | yes | no | 1ANS | T | 004 | 001 |

## EXHIBITS

| Line # | Marked | Code | Description | SpH | Sloc | NoticeDt | Disp Dt | Dis By |
|---|---|---|---|---|---|---|---|---|
| Offered By: ITP 001 County Board Of Appeals Of Ba | | | | | | | | |
| 000 | | I | BOX 363/CBA TRANSC | | B | | | |

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

07/28/03

Case Number: 03-C-03-004606 AE
Date Filed: 04/25/2003
Status: Closed/Inactive
Judge Assigned: To Be Assigned,
Location :

In The Matter of: James Stephens, et al

## C A S E  H I S T O R Y

RECEIVED
JUL 30 2003
BALTIMORE COUNTY
BOARD OF APPEALS

### OTHER REFERENCE NUMBERS

| Description | Number |
|---|---|
| Case Folder ID | C03004606V01 |

### INVOLVED PARTIES

| Type | Num | Name(Last,First,Mid,Title) | Addr Str/End | Disposition / Addr Update | Entered |
|---|---|---|---|---|---|
| PET | 001 | Stephens, James | Party ID: 0579165 | CT GR 07/10/03 | 04/25/03 |
| | | Mail: 8115 McDonogh Road<br>Baltimore, MD 21208 | 04/25/03 | | |
| | | Attorney: 0800147 Greenbaum, David A | | Appear: 04/25/2003 Removed:06/02/03 | 04/25/03 |
| | | 0012186 Holzer, J Carroll<br>Holzer And Lee<br>The 508 Building<br>508 Fairmount Avenue<br>Towson, MD 21286-5448<br>(410)825-6961 | | Appear: 06/02/2003 | 06/02/03 |

| Type | Num | Name(Last,First,Mid,Title) | Addr Str/End | Disposition Addr Update | Entered |
|---|---|---|---|---|---|
| PET | 002 | Bartram, Marilyn | Party ID: 0579176 | CT GR 07/10/03 | 04/25/03 |
| | | Mail: 8115 McDonogh Road<br>Baltimore, MD 21208 | 04/25/03 | | |
| | | Attorney: 0800147 Greenbaum, David A | Appear: 04/25/2003 | Removed:06/02/03 | 04/25/03 |
| | | 0012186 Holzer, J Carroll<br>Holzer And Lee<br>The 508 Building<br>508 Fairmount Avenue<br>Towson, MD 21286-5448<br>(410)825-6961 | Appear: 06/02/2003 | | 06/02/03 |
| RES | 001 | Apostolic Truth Tabernacle | Party ID: 0579177 | CT GR 07/10/03 | 04/25/03 |
| | | Attorney: 0012404 Gontrum, John B<br>Whiteford, Taylor & Preston L.L.P.<br>210 W. Pennsylvania Ave.<br>Towson, MD 21204-4515<br>(410)832-2055 | Appear: 05/23/2003 | | 05/27/03 |
| ITP | 001 | Board Of Appeals Of Baltimore County | Party ID: 0579183 | CT GR 07/10/03 | 04/25/03 |
| | | Mail: 400 Washington Avenue<br>Baltimore, MD 21204 | 04/25/03 | | |

## CALENDAR EVENTS

| Date | Time | Dur | Cer | Evnt | Lvl | Atty | Jdg | Day | Of | Rslt | By | ResultDt | Jdg | T | Notice | Rec | User ID |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 07/09/03 | 09:30A | 02Q | yes | MOTN | S | | SS | 01 | /01 | POS | C | 07/02/03 | TJB | P | 06/16/03 | RC | TF |
| 07/10/03 | 09:30A | 02Q | yes | MOTN | S | | RAJ | 01 | /01 | VAC | C | 07/10/03 | | P | | TF | MK |

## JUDGE HISTORY

| JUDGE ASSIGNED | Type | Assign Date | Removal RSN |
|---|---|---|---|
| TBA To Be Assigned. | J | 04/25/03 | |

## DOCUMENT TRACKING

| Num/Seq | Description | Filed | Entered | Party | Jdg | Ruling | Closed | User ID |
|---|---|---|---|---|---|---|---|---|
| 0001000 | Petition for Judicial Review, with exhibits.<br>Filed by PET001-Stephens, James, PET002-Bartram, Marilyn | 04/25/03 | 04/25/03 | PET001 | TBA | | 07/10/03 | JET MK |
| 0002000 | Notice of Service of Discovery | 05/12/03 | 05/13/03 | 000 | TBA | | 07/10/03 | NW MK |
| 0003000 | Notice of intent to Participate in Judicial Review | 05/23/03 | 05/27/03 | RES001 | TBA | | 07/10/03 | PKE MK |
| 0004000 | Motion to Dismiss | 05/23/03 | 05/27/03 | RES001 | TBA | | 07/10/03 | PKE MK |
| 0005000 | Request for Hearing | 05/23/03 | 05/27/03 | RES001 | TBA | | 07/10/03 | PKE MK |
| 0006000 | Memorandum in Support of Motion to Dismiss | 05/23/03 | 05/27/03 | RES001 | TBA | | 05/27/03 | PKE PKE |
| 0007000 | Withdraw and enter attorney appearance<br>Filed by PET001-Stephens, James, PET002-Bartram, Marilyn | 05/30/03 | 06/02/03 | PET001 | TBA | | 07/10/03 | MI MK |
| 0008000 | Attorney Appearance Removed<br>David A Greenbaum | 06/02/03 | 06/02/03 | PET001 | TBA | | 06/02/03 | MI MI |
| 0009000 | Attorney Appearance Removed<br>David A Greenbaum | 06/02/03 | 06/02/03 | PET002 | TBA | | 06/02/03 | MI MI |
| 0010000 | Hearing Notice | 06/16/03 | 06/16/03 | 000 | TBA | | 06/16/03 | RC RC |
| 0011000 | *Transcript of Record from Adm Agency | 06/27/03 | 07/01/03 | 000 | TBA | | 07/10/03 | MJ MK |
| 0012000 | Notice of Transcript of Record Sent | 07/01/03 | 07/01/03 | ITP001 | TBA | | 07/01/03 | MJ MJ |
| 0013000 | Notice of Transcript of Record Sent | 07/01/03 | 07/01/03 | PET001 | TBA | | 07/01/03 | MJ MJ |
| 0014000 | Notice of Transcript of Record Sent | 07/01/03 | 07/01/03 | RES001 | TBA | | 07/01/03 | MJ MJ |
| 0015000 | Open Court Proceeding<br>Hon. Ruth Jakubowski - Case dismissed in open court. Add Pet's to Case 03-C-03-4661. | 07/10/03 | 07/10/03 | 000 | RAJ | | 07/10/03 | MK MK |
| 0016000 | Invoice #13189 sent to J Carol Holzer | 07/25/03 | 07/25/03 | 000 | TBA | | | PKE PKE |
| 0017000 | Docket Entries sent to Board of Appeals | 07/28/03 | 07/28/03 | 000 | TBA | | | ED ED |

## TICKLE

| Code | Tickle Name | Status | Expires | #Days | AutoExpire | GoAhead | From | Type | Num | Seq |
|---|---|---|---|---|---|---|---|---|---|---|
| 1YRT | One Year Tickle (Jud | CLOSED | 04/24/04 | 365 | no | no | DAAA | D | 001 | 000 |
| SLMM | Set List Motions Mar | CLOSED | 02/15/06 | 999 | yes | no | DRHR | D | 005 | 000 |
| SLMR | Set List For Motions | CANCEL | 06/14/03 | 22 | no | no | MDIS | D | 004 | 000 |
| SLTR | Set List For Trial | CLOSED | 06/27/03 | 0 | yes | no | DTRA | D | 011 | 000 |
| SLTR | Set List For Trial | CANCEL | 07/02/03 | 0 | yes | no | MOTN | S | 000 | 000 |

---

I hereby certify that the aforegoing docket is a true copy of the Civil records of the Clerk of the Circuit Court for Baltimore County. IN TESTIMONY WHEREOF I hereunto subscribe my name and affix the Seal of the Circuit Court for Baltimore County, MD, this date 07/28/2003.

Suzanne Mensh
Clerk of the Circuit Court

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

# N O T I C E  O F  R E C O R D

Case Number: 03-C-03-004606
C I V I L

In The Matter of: James Stephens, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 27th day of June, 2003.

Suzanne Mensh
Clerk of the Circuit Court, per

Date issued: 07/01/03

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

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

Case Number: 03-C-03-004606

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

RECEIVED
JUL 03 2003
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF *

APOSTOLIC TRUTH TABERNACLE *
8216 MCDONOGH ROAD
3rd ELECTION DISTRICT *
3rd COUNCILMANIC DISTRICT

BEFORE THE
COUNTY BOARD OF
OF APPEALS OF
BALTIMORE COUNTY

CASE NO.(S): CBA-03-109 and
03-040-SPH

**********

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: J. ROBERT POWELL
BALTIMORE COUNTY DEPT. OF ENVIRONMENTAL PROTECTION AND
RESOURCE MANAGEMENT
401 BOSLEY AVENUE
TOWSON, MARYLAND 21204

YOU ARE HEREBY COMMANDED TO:

( ) Personally appear;
( ) Produce documents and/or objects only;
(x) Personally appear and produce documents or objects;

in Room 48, County Board of Appeals, Old Courthouse, 400 Washington Avenue, Baltimore, Maryland 21204 on Thursday, March 27, 2003 at 10:00 A.M.

YOU ARE COMMANDED TO produce the following documents or objects (for general purpose as stated):

MATERIAL AND COMMENTS RELATING TO 8216 MCDONOGH ROAD

SUBPOENA REQUESTED BY:
John B. Gontrum
Romadka & Gontrum, LLC
814 Eastern Boulevard
Baltimore, Maryland 21221
410-686-8274

The witness named above is hereby ORDERED to so appear before the Hearing Officer. John Gontrum will serve the summons set forth herein.

Theresa R. Shelton

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

RECEIVED
MAR 17 2003
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF *

APOSTOLIC TRUTH TABERNACLE *
8216 MCDONOGH ROAD
3rd ELECTION DISTRICT *
3rd COUNCILMANIC DISTRICT

BEFORE THE
COUNTY BOARD OF
OF APPEALS OF
BALTIMORE COUNTY

CASE NO.(S): CBA -03-109 and
03-040-SPH

**********

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: LYNN LANHAM
BALTIMORE COUNTY OFFICE OF PLANNING
401 BOSLEY AVENUE
TOWSON, MARYLAND 21204

YOU ARE HEREBY COMMANDED TO:

( ) Personally appear;
( ) Produce documents and/or objects only;
(x) Personally appear and produce documents or objects;

in Room 48, County Board of Appeals, Old Courthouse, 400 Washington Avenue, Baltimore, Maryland 21204 on Thursday, March 27, 2003 at 10:00 A.M.

YOU ARE COMMANDED TO produce the following documents or objects (for general purpose as stated):

MATERIAL AND COMMENTS RELATING TO 8216 MCDONOGH ROAD

SUBPOENA REQUESTED BY:
John B. Gontrum
Romadka & Gontrum, LLC
814 Eastern Boulevard
Baltimore, Maryland 21221
410-686-8274

The witness named above is hereby ORDERED to so appear before the Hearing Officer. John Gontrum will serve the summons set forth herein.

Kathleen B. Shelton

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

RECEIVED
MAR 17 2003
BALTIMORE COUNTY
BOARD OF APPEALS

CBA-03-109 McDonogh Road and Field Rd. **APOSTOLIC TRUTH TABERNACLE**

## (with 03-040-SPH)

| | |
|---|---|
| 7/8/2002 | Concept Plan |
| 2/6/2003 | Zoning Commissioner's Order / DENIED |
| 2/26/03 | Notice of Appeal filed by John Gontrum, Esquire on behalf of Apostolic Truth Tablernacle and Paster J. Cobb. |
| 3/3/03 | Received BOA |
| 4/4/03 | Opinion Issued By The Board Of Appeals / REMANDED as to CBA-03-109 03-040-SPH Continued and ON HOLD |
| 4/28/2003 | Petition for Judicial Review filed by the Petitioners. |
| 8/7/2003 | Memorandum Opinion and Order from the Circuit Court by Judge Ruth A. Jakubowski – Motion to Stay – DENIED – Motion to Dismiss Judicial Review GRANTED – action for judicial review is premature. |

NOTE: There were 2 Petitions for Judicial Review filed All Upper Court cases were dismissed. One case went to the COSA and was dismissed 5/28/04; the other was dismissed in CCT.

As to the Board's actual Opinion to Remand to Hearing Officer – the Hearing Officer simultaneously issued his Order in conjunction with appeals in the upper courts. (these appeals were dismissed as untimely)

On January 28, 2004 and February 9, 2004, Appeals were filed on the Order on Remand issued by the Zoning Commissioner.

No action on file until 3/12/09 – Letter to Counsel notifying that cases would be dismissed for lack of prosecution and status of any settlement agreement.

*** 6/4/04 the parties entered into a Declaration of Agreement and Restrictions subdividing the property as a Minor Subdivision, making the appeal cases MOOT.

| | |
|---|---|
| 3/16/09 | Letter and Settlement Agreement received by J. Carroll Holzer, Esquire. |
| 3/23/09 | Order of Dismissal issued dismissing the appeals as MOOT due to Declaration of Agreement. |

**03-040-SPH** McDonogh Road and Field Rd. **APOSTOLIC TRUTH TABERNACLE**

## (with CBA-03-109)

7/8/2002 Concept Plan

2/6/2003 Zoning Commissioner's Order / DENIED

2/26/03 Notice of Appeal filed by John Gontrum, Esquire on behalf of Apostolic Truth Tablernacle and Paster J. Cobb.

3/3/03 Received BOA

4/4/03 Opinion Issued By The Board Of Appeals / REMANDED as to CBA-03-109 03-040-SPH Continued and ON HOLD

4/28/2003 Petition for Judicial Review filed by the Petitioners.

8/7/2003 Memorandum Opinion and Order from the Circuit Court by Judge Ruth A. Jakubowski – Motion to Stay – DENIED – Motion to Dismiss Judicial Review GRANTED – action for judicial review is premature.

NOTE: There were 2 Petitions for Judicial Review filed All Upper Court cases were dismissed. One case went to the COSA and was dismissed 5/28/04; the other was dismissed in CCT.

As to the Board's actual Opinion to Remand to Hearing Officer – the Hearing Officer simultaneously issued his Order in conjunction with appeals in the upper courts. (these appeals were dismissed as untimely)

On January 28, 2004 and February 9, 2004, Appeals were filed on the Order on Remand issued by the Zoning Commissioner.

No action on file until 3/12/09 – Letter to Counsel notifying that cases would be dismissed for lack of prosecution and status of any settlement agreement.

*** 6/4/04 the parties entered into a Declaration of Agreement and Restrictions subdividing the property as a Minor Subdivision, making the appeal cases MOOT.

3/16/09 Letter and Settlement Agreement received from J. Carroll Holzer, Esquire.

3/23/09 Order of Dismissal issued dismissing the appeals as MOOT due to Declaration of Agreement.

**CBA-04-106** McDonogh Road and Field Rd. **APOSTOLIC TRUTH TABERNACLE**

**REMAND APPEAL**

***REMAND FROM CBA-03-109***
**(with 03-040-SPH)**

| | |
|---|---|
| 7/8/2002 | Concept Plan |
| 2/6/2003 | Zoning Commissioner's Order / DENIED |
| 2/26/03 | Notice of Appeal filed by John Gontrum, Esquire on behalf of Apostolic Truth Tablernacle and Paster J. Cobb. |
| 3/3/03 | Received BOA |
| 4/4/03 | Opinion Issued By The Board Of Appeals / REMANDED as to CBA-03-109 03-040-SPH Continued and ON HOLD |
| 4/28/2003 | Petition for Judicial Review filed by the Petitioners. |
| 8/5/2003 | Memorandum Opinion and Order from the Circuit Court by Judge Ruth A. Jakubowski – Motion to Stay – DENIED – Motion to Dismiss Judicial Review GRANTED – action for judicial review is premature. |

---

| | |
|---|---|
| January 9, 2004 | Hearing Officer's Opinion and Development Plan Order on Remand:<br>1) All orders were reviewed<br>2) Board's Order does not instruct for a hearing<br>3) Plan was denied because of a fundamental flaw with a required zoning condition<br>4) Plan was also denied because there was a lack of final design<br>5) The HO determined that the plan as presented would be approved had special hearing relief been granted., |
| January 28 | Notice of Appeal filed by J. Carroll Holzer on behalf of Appellants, McDonogh-Field Association, et al |
| January 30 | Appeal on Remand received at Board of Appeals. |
| February 9 | Notice of Appeal and Petition filed by John B.Gontrrum,Esquire,on behalf of Apostolic Truth Tabernacle and Paster Thomas J.Cobb,. |
| 3/12/09 | Letter to Counsel requesting status and copy of Settlement Agreement. |

**CBA-04-106** McDonogh Road and Field Rd. **APOSTOLIC TRUTH TABERNACLE**

**REMAND APPEAL**



***REMAND FROM CBA-03-109***
**(with 03-040-SPH)**

| | |
|---|---|
| 3/16/09 | Letter and Settlement Agreement received from J. Carroll Holzer, Esquire. |
| 3/23/09 | Order of Dismissal issued dismissing the appeals as MOOT due to Declaration of Agreement. |

**Apostolic Truth Tabernacle**
**Case No.s: 03-040-SPH**
**CBA-03-109**
**CBA-04-106**

These cases were set together at the Board of Appeals level. The history of this case states that after the 2003 cases were remanded by the Circuit Court to the Hearing Officer. Once the Hearing Officer issued his Opinion on Remand, the file was appealed by to the Board of Appeals and given case number CBA-04-106.

This Folder contains all three Board of Appeals Case files. The other 2 folders contain exhibits and transcripts relating to these files. **PLEASE KEEP THESE FILES TOGETHER.**

# TRANSCRIPT REQUEST

Appealed: 4/25/03

RETRIEVED: 5/7/03

Case: Apostolic Truth Tabernacle
*Case No.: CBA-03-109 and 03-040-SPH*

Hearing date(s): 3-27-2003

Petition filed by: David Greenbaum, Esquire

Telephone Number: 410-321-8400

Due Date: **JULY 2, 2003**

**THANK YOU**

May 7, 2003

County Board of Appeals of Baltimore County

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

January 23, 2004

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

John B. Gontrum, Esquire
WHITEFORD TAYLOR & PRESTON LLP
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: *In the Matter of: Apostolic Truth Tabernacle*
Case No. CBA-03-109 and Case No. 03-040-SPH

Dear Counsel:

The Board is in receipt of the **Hearing Officer's Opinion and Development Plan Order on Remand** issued by Lawrence E. Schmidt, Zoning Commissioner /Hearing Officer, on January 9, 2004 in response to this Board's Order of Remand issued April 4, 2003.

At the time of remand, the Board retained jurisdiction with the intent of scheduling a full hearing upon clarification of the issues(s) cited in its **Opinion /Order for Remand**. Therefore, with the issuance of the above-referenced Order by the Hearing Officer, and upon receipt of the subject file from the Court of Special Appeals, a full hearing will be scheduled before the Board in the above referenced cases with appropriate notice to all parties.

Should you have any questions, please don't hesitate to contact me.

Very truly yours,

Kathleen C. Bianco
Administrator

c: Peter M. Zimmerman
People's Counsel for Baltimore County

FILE

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on Recycled Paper

# *Baltimore County, Maryland*

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel


March 24, 2003


RECEIVED
MAR 24 2003
BALTIMORE COUNTY
BOARD OF APPEALS


Lawrence Stahl, Chairman
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: In the Matter of: Apostolic Truth Tabernacle, Thomas J Cobb, President
Case No.: 03-040-SPH and PDM# III-446, CBA-03-109

Dear Mr. Stahl:

Numerous citizens have expressed interest in this case. Our office is also interested because of the zoning and constitutional issues presented.

Upon review of the record, we observed serious concerns about the compatibility of the proposed land use with "the character and general welfare of the surrounding premises." This has to do with the special hearing request for an exception from Residential Transition Area (RTA) standards under BCZR 1B01.1B1g(6).

The County Board of Appeals must review this special hearing issue *de novo*, as it arises separately from the development plan. The Deputy Zoning Commissioner found the project is not compatible. This led to his denial of the special hearing and, in consequence, the development plan.

On appeal, Petitioner has challenged the denial as in conflict with the federal law, The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). The CBA should reject this challenge.

First of all, there is a serious question as to whether the County Board of Appeals is the intended forum for review of RLUIPA issues. The Act speaks of "judicial" review. The remedies available under the Act are traditional judicial remedies. Moreover, Baltimore County, the corporate body politic, appears to be a necessary party.

Secondly, as Petitioner has filed a special hearing for zoning relief, it is "most doubtful that [the Petitioner] may challenge the constitutionality of the ordinance under which they have sought relief." Creative Country Day School v. County Board of Appeals. 242 Md. 552 (1966). It is also telling that the issue does not appear to have been raised at the Zoning Commissioner/Hearing Officer level.

Thirdly, RLUIPA is unconstitutional because it sets standards different from the constitutional standards set by the Supreme Court. In short, it fails for the same reasons the Court found the predecessor Religious Freedom and Restoration Act invalid. City of Boerne v. Flores. 521 U.S. 507 (1997).

Fourthly if, on the other hand, RLUIPA is constitutional, there is no violation here. The RTA standards do not impose a "substantial burden" on religious exercise. Religious land uses may, and do, appear all over Baltimore County consistent with RTA standards.

The RTA law sets up a neutral set of standards for transition buffers and setbacks to protect single family detached, semi-detached, and duplex dwellings. All that is required is that a religious land use, like any other dissimilar land use, comply with buffer and setback standards.

Moreover, religious land uses have available the option to seek an exception or a variance. If they fail to meet not only RTA standards, but also the applicable compatibility or variance criteria, then there is a compelling public interest in denial.

In summary, this case should stand or fall with the CBA's judgment on compatibility, based on the RTA law and the evidence. There is no basis for the argument that the relevant Baltimore County Zoning Regulations violate RLUIPA on their face or as applied here.

Petitioner and Protestants are both represented by counsel. Under these circumstances, we may find it unnecessary to be present at the evidentiary hearing. If the County Board of Appeals calls for memoranda on the legal issues, especially RLUIPA, we would appreciate the opportunity to expand on this letter.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel

PMZ\rmw

cc: John Gontrum, Esquire
J. Carroll Holzer, Esquire
Phyllis Brotman
Edward J. Gillis, County Attorney

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

October 25, 2001

Howard L. Alderman, Jr., Esquire
Levin & Gann
502 Washington Avenue, 8th Floor
Towson, Maryland 21204

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286

RE: Ensor Property Development Plan & Petition for Special Hearing
Cases Nos. VII-352 & 01-114-SPH

Dear Counsel:

In response to Mr. Alderman's letter of October 18, 2001 concerning the above-captioned matter, and Mr. Holzer's response thereto dated October 19, 2001, the following comments are offered.

I concur with Mr. Holzer that jurisdiction in this matter now rests with the County Board of Appeals. However, in similar cases (e.g., Bethel AME Church), the Board has seen fit to expeditiously remand the matter to my office for further proceedings. It was my intent to reconvene the Hearing Officer's Hearing after the noise assessment study was completed and reviewed. Ultimately, a final Order addressing all issues will be rendered, subject to appeal. In any event, in that the noise assessment study has not yet been submitted, it is difficult to determine how long a reasonable review will take and when the Hearing Officer's Hearing will be scheduled. Perhaps we will hear from the County Board of Appeals by the time the noise assessment study is submitted on or before November 20, 2001 and we will be able to reconvene the Hearing Officer's Hearing as soon as is reasonably possible thereafter.

Please do not hesitate to contact me should you have any further questions on the subject.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. David Gonzales, 17 Glenberry Court, Phoenix, Md. 21131
Mr. Walt Smith, PDM; Case Files

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

March 14, 2002

Howard L. Alderman, Jr., Esquire
Levin & Gann, PA
502 Washington Avenue, 8th Floor
Towson, Maryland 21204

RE: DEVELOPMENT PLAN HEARING & PETITION FOR SPECIAL HEARING
NE and SW/S Middletown Road between I-83 & York Road (Ensor Property)
7th Election District – 3rd Council District
Arthur S. & A. Richard Tracey, Owners; David E. Gonzales, Contract Purchaser/Developer
Case Nos. VII-352 & 01-114-SPH

Dear Mr. Alderman:

In response to your letter of March 6, 2002 concerning the status of the above-captioned matter, the following comments are offered.

You have indicated that the Developer intends to provide me with the noise assessment study as required by my inter-locutory Order of September 27, 2001, once the appeals of same by the Protestants in this matter have been fully and finally resolved. I concur with your proposal to submit the requisite noise assessment study within 100 days thereafter, based on then current traffic data. Therefore, please advise me when the Protestants have exhausted all of their appeals and this matter can be scheduled for final resolution.

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

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. & Mrs. Arthur Tracey, 20815 Middletown Road, Freeland, Md. 21053
Mr. & Mrs. A. Richard Tracey, 2934 Rockdale Road, Freeland, Md. 21053
Mr. David E. Gonzales, 17 Glenberry Court, Phoenix, Md. 21131
KCI Technologies, Inc., 10 North Park Drive, Hunt Valley, Md. 21030
J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Md. 21286
Walt Smith, PDM; Bob Bowling, PDM; DEPRM; OP; R&P; People's Counsel; Case Files

DIARY 5/12

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

April 30, 2003

John Gontrum, Esquire
Romadka, Gontrum & McLaughlin
814 Eastern Boulevard
Baltimore, Maryland 21221

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286

Re: Hearing Officer's Hearing No. III-446 & Case No. 03-040-SPH
Property: N/S McDonogh Road @ NW Corner of Field Road
3rd Election District, 3rd Councilmanic District
(The Apostolic Truth Tabernacle)

Dear Messrs. Gontrum & Holzer:

As both of you know, this particular case has been remanded back to me as Hearing Officer for Baltimore County for a reconsideration of my decision which I rendered on February 6, 2003. The Board of Appeals has instructed that I set forth in detail the basis upon which the Development Plan is either approved or denied. The decision of the Board of Appeals was rendered the 4th day of April, 2003.

I have been advised that a Petition for Judicial Review of the Board's decision has been filed by Mr. Holzer on behalf of his clients. Therefore, I believe it is appropriate to advise both of you gentlemen of the procedures that I intend to follow regarding this Order for Remand issued by the Board of Appeals.

I intend to proceed with the issuance of a new Order pursuant to the instructions provided to me by the Board of Appeals. Based on the language of the Board's Order, I do not believe it is necessary or appropriate to have an additional hearing. The Board did not instruct that a new hearing be held regarding this case. Therefore, I shall rule upon the matter based on the evidence that was presented during the original five days of hearings scheduled before me. It is not necessary for either party to attempt to schedule a new hearing date for this case.



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While I am cognizant of the fact that an appeal has been taken of the Board's decision, no Stay has been granted by the Board of Appeals in the body of their Order. Furthermore, I have not been advised that a Motion for Stay has been filed with the Circuit Court for Baltimore County. Rule 7-205 of the Maryland Rules provides that the filing of a Petition for Judicial Review does not automatically Stay the Order or action of the administrative agency from which the appeal is taken. Since no Motion for Stay has been filed with the Circuit Court and no Stay was granted by the Board of Appeals in their Order, I shall proceed to rule on this matter as instructed by the Board. However, in the event that a Stay is granted by the Board of Appeals or a Motion for Stay is filed with the Circuit Court, then I will withhold taking any further action on this matter until such time as the matter is resolved by the Circuit Court.

In the event I do not hear from either of you gentlemen within ten days from the date of this letter, then I shall proceed with ruling on the Order for Remand in this case.

Very truly yours,

Timothy Kotroco

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure

c: Donald Rascoe, Development Manager
Division of Development Processing, PDM

Peter Max Zimmerman, People's Counsel
Office of People's Counsel for Baltimore County

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

May 14, 2003

John Gontrum, Esquire
Romadka, Gontrum & McLaughlin
814 Eastern Boulevard
Baltimore, Maryland 21221

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286

Re: Hearing Officer's Hearing No. III-446 & Case No. 03-040-SPH
Property: N/S McDonogh Road @ NW Corner of Field Road
3rd Election District, 3rd Councilmanic District
(The Apostolic Truth Tabernacle)

Gentlemen:

Please accept this letter as a follow-up to my previous correspondence dated April 30, 2003. I have been advised by Mr. Holzer, in his letter dated May 5, 2003, a copy of which was submitted to Mr. Gontrum, that he has in fact filed a motion for a stay with the Circuit Court for Baltimore County. Given this, I shall withhold any further action on the Apostolic Truth Tabernacle case until such time as the stay is entertained by the circuit court and, if granted, then once the appeal is resolved.

Should you have any questions regarding this matter, please feel free to contact my office at your convenience.

Very truly yours,

Timothy Kotroco

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure

c: Donald Rascoe, Development Manager, DPDM
Peter Max Zimmerman, People's Counsel, OPC



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on Recycled Paper

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

May 29, 2003

John Gontrum, Esquire
Romadka, Gontrum & McLaughlin
814 Eastern Boulevard
Baltimore, Maryland 21221

Re: Hearing Officer's Hearing No. III-446 & Case No. 03-040-SPH
Property: N/S McDonogh Road @ NW Corner of Field Road
3rd Election District, 3rd Councilmanic District
(The Apostolic Truth Tabernacle)

Dear Mr. Gontrum:

Thank you for your letter dated May 23, 2003 and please consider this letter as a response thereto. I have considered the substance of your letter and in consideration of the matters pending before the Circuit Court, I do not believe it is appropriate to rule upon the matter which was remanded to this office by the Board of Appeals. I believe it is appropriate to wait until such time as the Circuit Court has rendered a decision on the matter pending before it. Once the decision is made by the Circuit Court, then this issue may be resolved before this office.

Very truly yours,

Timothy Kotroco

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure

c: J. Carroll Holzer, Esquire
Donald Rascoe, Development Manager, DPDM
Peter Max Zimmerman, People's Counsel, OPC

RECEIVED
MAY 30 2003



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**Zoning Commissioner**

Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
Tel: 410-887-3868 • Fax: 410-887-3468

Becky / Kristen (FYI)

**Baltimore County**

*James T. Smith, Jr., County Executive*
*Lawrence E. Schmidt, Zoning Commissioner*

December 2, 2003

* P.S. Please cancel 12/23! Thanks. Bette

John B. Gontrum, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286

RE: DEVELOPMENT PLAN HEARING (REMAND)
**(Apostolic Truth Tabernacle)**
N/S McDonogh Road @ NW/Corner Field Road
3rd Election District – 3rd Council District
Apostolic Truth Tabernacle – Owners/Developers
Case No. III-446

Dear Messrs. Gontrum & Holzer:

This letter is to confirm that at the conclusion of the hearing on November 19, 2003, and by agreement of all parties, the remand hearing in the above-captioned matter has been scheduled to reconvene over two dates, namely December 15th and 16th, 2003. The hearing will commence at 9:00 AM and be held both dates in Room 407 of the Circuit Courts Building in Towson. Please notify your respective clients and witnesses to be prepared to appear and testify on either or both dates.

Thank you for your cooperation in this matter and should anyone have any questions in the meantime, please don't hesitate to call me.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner

LES:bjs

cc: Donald Rascoe, Development Mgmt.; DEPRM; OP; R&P; DPW;
People's Counsel; Case File



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**MEMORANDUM**

Re: Apostolic Truth Tabernacle

I received a telephone call from Don Rascoe and it appears that this matter will be coming back to the ZC's office in the near future for further action.

By way of background, the matter came before Tim Kotroco as DZC as an HOH (development plan) ***and*** on a Petition for Special Hearing (SPH). The SPH was for a finding that the plan complied with the RTA regulations. Tim denied the SPH and explained in his order that because he was denying the requisite zoning relief, he was also denying the development plan. The developer appealed to the County Board of Appeals (CBA) and the CBA, in a somewhat derisive opinion, said that Tim should have addressed the merits of the development plan.

The community appealed the CBA decision to the Circuit Court. The Circuit Court has recently issued an order dismissing the appeal to it as premature and remanding back to the CBA and then, presumably, to the Hearing Officer. The community has appealed to the Court of Special Appeals. At this point, as far as I know, the Court of Special Appeals has not issued a stay.

The question I expect to be presented in the near future is should we wait until the Court of Special Appeals rules or should we go ahead now with the remand? I think that the law says that unless there is a stay issued by the Court, we are obligated to go forward if requested by a party!?! If we go ahead, need we re-hear the case? There were multiple days of testimony and there are transcripts available. Obviously, rehearing the case would be a logistic nightmare.

I expect we'll hear from developer's attorney (Gontrum) and community's attorney (Holzer) in the near future. I will retain the file until then.

cc: Jack Murphy
Don Rascoe

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

March 12, 2009

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

John B. Gontrum, Esquire
WHITEFORD TAYLOR & PRESTON LLP
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: *In the Matter of: Apostolic Truth Tabernacle*
Case No. CBA-03-109 and Case No. 03-040-SPH

Dear Counsel:

A review of the subject file indicates that the appeals were filed on January 28, 2004 and February 9, 2004 respectively. There has been no activity on the record since that time. It has come to our attention that a Settlement Agreement was entered into between the parties in July 2004. Said Agreement has not been submitted to the Board as of this date, and, therefore, the purpose of this letter is to advise you that an Order of Dismissal for lack of prosecution will be entered in the above-captioned matter after the expiration of 30 days from the date of this Notice. Upon receipt of a request filed at any time before 30 days after date of this Notice, the Board, for good cause, may defer entry of the Order of Dismissal for the period and on the terms it deems proper.

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Administrator

*Duplicate Original*

c: Peter M. Zimmerman
People's Counsel for Baltimore County

Larry - is this okay -
Thanks

March 11, 2009

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

John B. Gontrum, Esquire
WHITEFORD TAYLOR & PRESTON LLP
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: *In the Matter of: Apostolic Truth Tabernacle*
Case No. CBA-03-109 and Case No. 03-040-SPH

Dear Counsel:

A review of the subject file indicates that the appeals were filed on January 28, 2004 and February 9, 2004 respectively. There has been no activity on the record since that time. It has come to our attention that a Settlement Agreement was entered into between the parties in July 2004. Said Agreement has not been submitted ~~to date~~ TO THE BOARD AS OF THIS DATE, and, therefore, the purpose of this letter is to advise you that an Order of Dismissal for lack of prosecution will be entered in the above-captioned matter after the expiration of 30 days from the date of this Notice. Upon receipt of a request filed at any time before 30 days after date of this Notice, the Board, for good cause, may defer entry of the Order of Dismissal for the period and on the terms it deems proper.

Very truly yours,

Theresa R. Shelton
Administrator

c: Peter M. Zimmerman
People's Counsel for Baltimore County

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
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WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

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TELEPHONE 703 836-5742
FAX 703 836-0265

JOHN B. GONTRUM
DIRECT NUMBER
410-832-2055
JGontrum@wtplaw.com

RECEIVED
SEP 3 '03
ZONING COMMISSIONER

September 2, 2003

Lawrence Schmidt, Esq.
Baltimore County Zoning Commissioner
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

**Re: Apostolic Truth Tabernacle**
**Case Nos. III-446 & 03-040-SPH**

Dear Mr. Schmidt:

Our office represents the Petitioner Apostolic Truth Tabernacle, which had petitioned the county to approve a development plan for a church and related uses on McDonogh Road. In addition, the petition included a request for special hearing relief under the residential transition area for new church use. The special hearing request was denied by the Deputy Zoning Commissioner, who also turned down the development plan in an Order dated February 6, 2003. This Order was appealed to the County Board of Appeals of Baltimore County, which deferred the de novo zoning appeal and remanded the development hearing portion of the case back to the hearing officer in an Order dated April 4, 2003. A subsequent appeal was taken to the Circuit Court for Baltimore County, which appeal was dismissed by the court in the attached Opinion and Order. A new appeal from that dismissal was filed by the Appellants on behalf of individuals and the McDonogh-Field Association to the Court of Special Appeals, notice of which also is attached.

We wish to request that at this time you proceed to review the official transcripts and exhibits filed in the case and to make findings consonant with the remand order of the County Board of Appeals. No stay of the Board's action has been issued by any court. Despite the fact that Mr. Kotroco no longer is present, we believe that pursuant to People's Counsel v. Country Ridge, 144 Md. App. 580, 799 A.2d 925 (2002) and the

reasoning and cases cited therein you have authority under the remand order to make findings based on the transcripts and exhibits. Although the issues were thoroughly briefed before the hearing officer, we would have no objection if oral argument was permitted. Thank you for your consideration of this matter.

Sincerely,

John B. Gontrum

JBG:jbg
cc. Pastor Thomas Cobb
J. Carroll Holzer, Esq.

Attachments

ROMADKA & GONTRUM, LLC
814 Eastern Boulevard
Baltimore, Maryland 21221
(410) 686-8274
(410) 686-6206 (fax)

ROBERT J. ROMADKA
rromadka@rgmlaw.net

JOHN B. GONTRUM
jgontrum@rgmlaw.net

JANET RUDOLPH, Paralegal
jrudolph@rgmlaw.net

February 25, 2003

RECEIVED
FEB 2 7 2003
BALTIMORE COUNTY
BOARD OF APPEALS

**FIRST CLASS MAIL**

Charles L. Marks, Chairman
Board of Appeals for Baltimore County
Room 49 – Old Court House
400 Washington Avenue
Towson, Maryland, 21204

Re: Apostolic Truth Tabernacle – Petition for Appeal
Hearing Officer's Hearing No. III-446 and
Case No. 03-040-SPH

Dear Mr. Marks:

Enclosed are copies of correspondence forwarded to Arnold Jablon at the Department of Permits and Development Management, and to Donald Rascoe at Development Processing, along with Notice of Appeal and Petition for Appeal with respect to the above-captioned matters.

In scheduling these cases before the Board of Appeals, we would like to request that both the zoning and development plan matters be combined in order to be heard at the same time.

If you have any questions, please do hesitate to contact the undersigned. Thank you for your kind assistance in this regard.

Sincerely yours,

Janet Rudolph
Paralegal

cc: J. Carroll Holzer, Esquire

CBA-03-109

ROMADKA & GONTRUM, LLC.
814 Eastern Boulevard
Baltimore, Maryland 21221
(410) 686-8274
(410) 686-6206 FAX

ROBERT J. ROMADKA
JOHN B. GONTRUM

RECEIVED
APR 10 2003
ZONING COMMISSIONER

April 9, 2003

Timothy Kotroco, Deputy Zoning Commissioner
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: Apostolic Truth Tabernacle
Case No 03-040-SPH
Hearing Officer's Hearing No. III-446

Dear Mr. Kotroco:

As you may be aware the County Board of Appeals for Baltimore County has remanded back to you the above-referenced Hearing Officer's Case for additional findings with respect to the development plan. Given the time that has lapsed since the presentation of testimony in the case, we would request the opportunity to present argument to you on the development plan issue either in oral or written form.

In addition, we believe that the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) is directly applicable to this case. A copy is enclosed. Under that Act a local government may not impose a substantial burden in the implementation of a land use regulation or system of land use regulations on a religious institution unless that burden is in furtherance of a compelling government interest in a manner that is the least restrictive means of furthering that interest. Furthermore, the government is forbidden to impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution. See, e.g., Freedom Baptist Church of Delaware County v. Township of Middletown, 204 F. Supp. 2d 857 (2002). We believe that your determination that a compatibility requirement had not been met under the Special Hearing request, which was premised on an exemption from the residential transition area, imposed a greater burden on the church than the actual transition area compliance. That is, but for the house and garage there would have been compliance with the RTA, and no compatibility issue on the church buildings would have been raised. Your implementation of the regulations under the exemption imposed a greater burden under the exemption than the actual regulations seeking to be exempted. In the implementation of the regulations the least restrictive alternative must be applied under RLUIPA.

Although RLUIPA allows suits under it in federal court, its authority must be recognized on a local basis to the same extent as other state and federal laws. Your office in the past, for example, has recognized the issues presented by the Federal Aviation Administration and by the Federal Communications Commission regulations as well as by numerous state agencies.

The Special Hearing Case is now before the County Board of Appeals, but we believe its determination had a direct determination on your ultimate finding on the development plan. We believe that the development plan met all county development standards, should be approved both under county standards and under RLUIPA and would request the opportunity to reargue this matter on the record presented.

Very truly yours,

John B. Gontrum

cc. J. Carroll Holzer, Esq.
Pastor Thomas Cobb

106th CONGRESS

2d Session

**S. 2869**

**AN ACT**

To protect religious liberty, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*

## SECTION 1. SHORT TITLE.

This Act may be cited as the `Religious Land Use and Institutionalized Persons Act of 2000'.

## SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXERCISE.

(a) SUBSTANTIAL BURDENS-

(1) GENERAL RULE- No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) SCOPE OF APPLICATION- This subsection applies in any case in which--

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) DISCRIMINATION AND EXCLUSION-

(1) EQUAL TERMS- No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) NONDISCRIMINATION- No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) EXCLUSIONS AND LIMITS- No government shall impose or implement a land use regulation that--

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

## SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITUTIONALIZED PERSONS.

ROMADKA & GONTRUM, LLC.
814 Eastern Boulevard
Baltimore, Maryland 21221
(410) 686-8274
(410) 686-6206 FAX

ROBERT J. ROMADKA
JOHN B. GONTRUM

May 23, 2003

HAND DELIVER

Timothy M. Kotroco, Esq.
Deputy Zoning Commissioner
Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: Hearing Officer's Hearing No. III-446 & Case No. 03-040-SPH
Property: N/S McDonogh Road @ NW Corner of Field Road
3rd Election District, 3rd Councilmanic District
(The Apostolic Truth Tabernacle)

Dear Mr. Kotroco:

I am in receipt of your correspondence of May 14th and of Mr.Holzer's correspondence of May 6th and of the Motion for Stay filed May 19th. As you know, the Petition for Administrative Review to circuit court stayed nothing under Maryland Rule 7-205. It is our position that the Motion for Stay also does not stay your action for several reasons. First, until it is ruled upon and granted and, if required, a bond is posted, there is no effective stay of any administrative action. Second, at the time the Motion for Stay was filed, the Board had already acted to remand the development case to you. The Motion for Stay was not directed at you but at the Board of Appeals. Consequently, even if the stay is granted, it is not against your decision. It is only directed at the Board, and may have been untimely filed. Relief was not requested against your decision. Finally, I believe that there is a very real issue over whether the appeal of a decision to continue the special hearing case and to remand the development case is a final order that is capable of appeal. We have filed motions to dismiss in both filed appeals and in both motions have indicated that the appeal is not appropriate due to the lack of finality of review.

In the interests of judicial economy it would seem appropriate for you to complete your review of the development plan and to furnish the board with your response to their remand; otherwise, a major injustice would occur against the Petitioner after five days of testimony and seven days of hearing. The Petitioner has gone through the public process,

and a delay in making findings that is not mandated by any court is not under the circumstances warranted.

Very truly yours,

John B. Gontrum

Enclosures

cc. J. Carroll Holzer, Esq. (w/out encl.)
Donald Rascoe, Development Manager (w/out encl.)
Peter Max Zimmerman, People's Counsel (w/out encl.)

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

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E-MAIL: JCHOLZER@BCPL.NET

May 5, 2003

RECEIVED
MAY - 8 2003
ZONING COMMISSIONER

Timothy Kotroco
Deputy Zoning Commissioner
for Baltimore County
401 Bosley Avenue, 4th Floor
Towson, MD 21204

Re: Hearing Officer's Hearing III-446
Case No. 03-040 SPH

Dear Mr. Kotroco:

I received your letter of April 30, 2003 in the mail on Monday, May 5, 2003 and take note of the comments in regard to a Motion for Stay. While, indeed, I will pursue a Motion for Stay in the Circuit Court, I do not believe that your ruling is consistent with the past practice of the Zoning Commissioner's Office. In a similar matter in the Ensor Development Plan Case, attached hereto, the Zoning Commissioner did not take any action pending action by the Circuit Court and ultimately, the Court of Special Appeals. I believe the past practice was the proper method of proceeding. However, in light of your comments, a Motion for Stay will be filed in the very near future, and a copy will be forwarded to you.

Respectfully submitted,

J. Carroll Holzer

cc: John Gontrum
cc: David Greenbaum

JCH: bdm

C:\My Documents\Letters\Tim Kotroco--5-5-03.doc

III-446

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

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E-MAIL: JCHOLZER@BCPL.NET

RECEIVED

MAY 30 2003

ZONING COMMISSIONER

May 28, 2003
# 7318

Timothy Kotroco
Deputy Zoning Commissioner
for Baltimore County
401 Bosley Avenue, 4th Floor
Towson, MD 21204

Re: Hearing Officer's Hearing III-446 Apostolic Truth Tabernalce
Case No. 03-040 SPH
Circuit Court Case No. 3-C-03

Dear Mr. Kotroco:

I received Mr. Gontrum's letter dated May 23, 2003. I would simply like to correct his statement that my Motion for Stay was directed solely at the Board of Appeals and not a request of Stay of Action. The Circuit Court is the appropriate place, if any, to request a Stay since the matter has been appealed to the Circuit Court and at the current time you have no jurisdiction to continue to review the matter.

Secondly, the case law suggests that a remand is an appealable event for the purpose of future appellate review. Finally, the very reason for the Appeal to the Circuit Court was that the Board's remand did not request clarification for the reasons you denied the plan, but in fact suggested you should reverse your decision and approve the plan. That Order creates prejudice for the Protestants in this case if allowed to stand. I would, therefore, respectfully request that you permit the matter to be argued before the Circuit Court in this case.

Very truly yours,

J. Carroll Holzer

cc: John Gontrum, Esq.
Cc: Phyllis Brotman

C:\My Documents\Letters\Tim Kotroco--5-28-03.doc

HOLZER
& LEE

LAW OFFICES
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J. HOWARD HOLZER
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OF COUNSEL

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RECEIVED
SEP 16 2003
ZONING COMMISSIONER

September 11, 2003
#7318

Mr. Lawrence E. Schmidt, Esquire
Baltimore County
Zoning Commissioner
Suite 405
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RE: Apostolic Truth Tabernacle
Case Nos.: III-446 and 03-040 SPH

Dear Mr. Schmidt:

I just received a copy of a letter from John B. Gontrum in regard to the above-captioned matter in which he requests that you review the official Transcripts and Exhibits and make certain findings in regard to the remand Order to the County Board of Appeals.

First, I object to the Hearing Officer proceeding while the matter is currently pending before the Court of Special Appeals. Secondly, this case was a lengthy hearing taking approximately five (5) or six (6) days (full days) before Mr. Kotroco, the Hearing Officer. During that time, numerous expert witnesses were called to testify. Various documents were examined and reviewed and marked as exhibits. Multiple Motions were made by the Protestants in regard to this hearing, some of which were ruled upon by the Hearing Officer; others deferred until the HO's Memorandum and Opinion. While cognizant of *People's Counsel of Baltimore County v. Country Ridge Shopping Center*, 144 Md. App. 580 (2002), I believe that it is fundamentally unfair to the Protestants to have you review this matter from the Transcripts. I have reviewed the Transcripts that were taken by a Court Reporter and found them difficult to follow in regard to the testimony that was presented during the case.

In addition, it is the position of the Protestants that the fundamental ***question*** presented in the case relies upon the determination by the County Board of Appeals and/or you in regard to the Special Hearing and compatibility portion of the case. Mr. Kotroco has already ruled that the church as presented in the Development Plan is not compatible for the reasons he articulated in his Opinion. Furthermore, Mr.

Kotroco correctly determined that once the underlying zoning issue was determined that the Development Plan failed, the HO need not explore that issue further.

I have appealed the Board of Appeal's Decision remanding this matter fundamentally because the Board is placing the cart before the horse on this issue. A determination of the underlying zoning question should be made and ultimately determined before evaluating the Development Plan.

Oral Argument before you in regard to the Record and the Transcript does not satisfy the underlying denial of due process to the Protestants since that is no more than could be performed by the Board of Appeals.

As a trier of fact, I believe you will be unable to property evaluate the demeanor, the intensity, the truthfulness and the clarity of testimony of not only the experts presented, which were numerous in this case, but also to evaluate the lay witnesses and determine their truthfulness based upon the Record.

A review by an Appellate Court, which utilizes the Transcript, is based upon a different standard compared to the initial finder of fact. I believe, therefore, that you cannot review this Transcript properly as a trier of fact, and should therefore, require evidence and testimony in regard to the Development Plan.

I respectfully request the opportunity to present this Argument and discuss this matter on the Record before you to determine if you intend to proceed in the manner requested by the Apostolic Truth Tabernacle.

Very truly yours,

J. Carroll Holzer

JCH:mlg

cc: John B. Gontrum, Esquire
Ms. Phyllis Brotman

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

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E-MAIL: JCHOLZER@BCPL.NET

January 5, 2004
#7318

**HAND DELIVERED**
Lawrence E. Schmidt, Esq.,
Hearing Officer for Baltimore County
401 Bosley Ave., Suite 405
Towson, MD 21204

RECEIVED
JAN 05 2004
ZONING COMMISSIONER

Re: Apostolic Truth Tabernacle
Case Nos.: III-446 and 03-040 SPH

Dear Mr. Schmidt:

Enclosed you will find a copy of the transcript of proceedings from the remand hearing on Apostolic Truth Tabernacle held on December 15, 2003 as you requested to prepare your Order and Opinion.

Very truly yours,

J. Carroll Holzer

Enclosure

cc: John Gontrum, Esq.
McDonogh-Field Assn.

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
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OF COUNSEL

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December 8, 2003
#7318

RECEIVED
DEC 9 2003
ZONING COMMISSIONER

Mr. Lawrence E. Schmidt
Baltimore County
Zoning Commissioner
Suite 405
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RE: Apostolic Truth Tabernacle
Hearing, Tuesday, December 16, 2003

Dear Mr. Schmidt:

Please be advised that I represent the community involved in the New England Motor Freight case which was scheduled for a hearing on Wednesday, December 10, 2003. Scott Barhight, on behalf of New England Motor Freight, apparently is filing his own Petition for Special Hearing and, as a result, the case has been postponed from December 10th.

I have been contacted by Tim Kotroco, who advises me that there is a meeting of eight (8) Department Heads relative to New England Motor Freight, along with Scott Barhight and Tim desires to have me attend that meeting on Tuesday, December 16th at 10:00 a.m. I advised him of the Apostolic Church case that might still be continuing. However, he was unable to reschedule the meeting for that morning.

I would therefore respectfully request that I be excused from 10:00 a.m. for approximately 1 ½ to 2 hours so that I can attend the meeting on New England Motor Freight.

For more information, please feel free to contact Mr. Kotroco directly in regard to this matter.

Very truly yours,

J. Carroll Holzer

JCH:mlg

cc: John Gontrum, Esquire
Mr. Tim Kotroco
Ms. Lorna Rudnikas
Ms. Phyllis Brotman

HOLZER
&
LEE

LAW OFFICES
J. CARROLL HOLZER, P.A.
J. HOWARD HOLZER
1927-1959
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E-MAIL: JCHOLZER@BCPL.NET

July 15, 2004
#7318

John Gontrum, Esquire
Whiteford, Taylor & Preston, LLP
210 West Pennsylvania Ave.
Towson, MD 21204

Re: Declaration of Agreement and Restrictions
Apostolic Truth Tabernacle

Dear John:

Enclosed please find the original Apostolic Truth Tabernacle Agreement which my clients have executed with respective witness signatures. Please witness Pastor Cobb's signature and after you have signed as the attorney who prepared the instrument, please send original to me so that I may record it in Land Records.

I appreciate your prompt attention in this matter and cooperation in the preparation of this Agreement. After recordation, I will send you a copy with book and page references. If you have any questions, please call me at 410-825-6961.

Very truly yours,

J. Carroll Holzer

J. Carroll Holzer

Enclosure

JCH:clh

cc: Phyllis Brotman

HOLZER & LEE

LAW OFFICES
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xxxxxxxxxxxxxxxxx
jcholzer@cavtel.net

March 16, 2009
#7318

RECEIVED
MAR 18 2009
BALTIMORE COUNTY
BOARD OF APPEALS

Ms. Theresa R. Shelton, Administrator
Baltimore County Board of Appeals
Jefferson Building
105 West Chesapeake Avenue
Second Floor, Suite 203
Towson, Maryland 21204

*RE: Apostolic Truth Tabernacle*
*Case Nos. CBA-03-109 and 03-040-SPH*

Dear Ms. Shelton:

I received your letter dated March 12, 2009 wherein you say that the Board of Appeals will file an Order of Dismissal if there is no request to re-open the above referenced matter. I have reviewed the file in this matter and the events are as follows:

1. On February 6, 2003, the Deputy Zoning Commissioner, Timothy M. Kotroco DENIED Apostolic Truth Tabernacle's Development Plan and Special Hearing Request
2. Apostolic Truth Tabernacle took a timely appeal to the Board of Appeals on both cases
3. The Board of Appeals, in an Order dated April 4, 2003, remanded the matter to the Deputy Zoning Commissioner to outline specific reasons for denial of the Plan.
4. My clients, McDonough-Field Association, et al. filed a timely Petition for Judicial Review
5. Appellee Apostolic Truth Tabernacle filed a Motion to Dismiss with the Circuit Court which was granted.
6. McDonough-Field Association then took a timely appeal to the Court of Special Appeals
7. On June 4, 2004, the parties entered into a Declaration of Agreement and Restrictions, which I have attached hereto for the record
8. Subsequent to the Agreement, Apostolic Truth, or their successors, subdivided the property as a Minor Subdivision
9. Because of the Minor Subdivision, Case Nos. CBA-03-109 and 03-040-SPH are moot

If you have any questions, please feel free to give me a call.

Very truly yours,

J. Carroll Holzer

JCH:mlg

cc: John Gontrum, Esquire
Ms. Phyllis Brotman

**Jack Dillon, APA**
**543 Park Avenue**
**Towson, Maryland 21204**

March 22, 2003

J. Carroll Holzer
Holzer and Lee
508 Farimount Ave.

Re: Case No. 03-040-SPH & CBA-03-109
Apostolic Truth Tabernacle

Dear Mr. Holzer:

In response to the subpoena issued for the above referenced case I must advise you that I am unable to attend the hearing scheduled for March 27, 2003. I am now at home recovering from knee replacement surgery and will be receiving in home physical therapy through the end of March and then will be receiving out patient physical therapy for the first two weeks in April.

Please keep me advised as to any additional hearing dates that may be scheduled for this case.

Sincerely,

Jack Dillon

c: Counsel for Appellant/ Petitioner/Developer : John B. Gontrum, Esq.
Mrs. Phyllis Brotman
Office of People's Counsel
Kathleen C. Bianco, County Board of Appeals

RECEIVED
MAR 24 2003
BALTIMORE COUNTY
BOARD OF APPEALS

26 Millstone Road
Randallstown, MD 21133
May 5, 2003

Board of Appeals
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

To whom it may concern:

Please notify me when case #03-040-SPH is scheduled. I can be reached at

26 Millstone Road
Randallstown, MD 21133

or by phone at 410-521-2642.

Thank you for your help in this matter.

Sincerely,

Jane Buehner

Mrs. Jane Buehner

RECEIVED
MAY 0 7 2003
BALTIMORE COUNTY
BOARD OF APPEALS

# Larry Schmidt - Zoning hearing - 8216 McDonogh Rd and adjoining lots

**From:** <DrMDWhitfield@aol.com>
**To:** <lschmidt@co.ba.md.us>
**Date:** 12/12/2003 3:41 PM
**Subject:** Zoning hearing - 8216 McDonogh Rd and adjoining lots
**CC:** <pbbrotman@comcast.net>

Mr. L. Schmidt
Baltimore County Zoning Commissioner
Courthouse Building
401 Bosley Ave
Towson, MD 21204

Mr. Schmidt:

I am writing to you as a direct result of the change effected to the date of the abovementioned hearing.

I am one of the property owners most directly and adversely affected by the application in question.

While I do not understand the need or justification for any revisit of the application below the level of the Appeals Board, I will leave that for the attorneys to argue. Here is what I do know, however:

I, together with several other members of our community association were present at a November 17 meeting wherein there were telephonic communications between our Association's counsel and your office. At that time, the dates of December 17 and 23 were proposed and agreed upon as being suitable for the purpose. The latter date was proposed - and, I believe, agreed upon by all - specifically to accommodate my prearranged business trip outside of the US, which was scheduled from December 2nd through the 22nd. As I have just been advised of this unscripted change, there is insufficient time even to overnight a written protest to your office in time for you to receive it prior to the hearing on Monday morning.

As I have specific and relevant new testimony to present, I can only imagine that my exclusion from this process will result in the perception of an unfair bias toward the applicant by the County. Indeed, any such exclusion will logically cause the entire integrity of this process to be brought into question and may in itself justify a separate appeal.

I believe that the community association's counsel has already expressed these misgivings to your office. This email will serve as formal record of protest and I request that it be included as part of the official hearing record.

Sincerely,

Dr. M. D. Whitfield
215 McDonogh Rd
Pikesville, MD 21208-1008

c. Mrs. P.B. Brotman, McDonogh-Field Association
J. C. Holzer, Esq., Counsel, McDonogh-Field Association.

# Theresa Shelton - Re: Apostolic Truth Sign

**From:** Gary Freund
**To:** Shelton, Theresa
**Date:** 11/3/2003 1:29 PM
**Subject:** Re: Apostolic Truth Sign

Theresa, I have got the quickest mouse finger of any human being still alive. Anyway, I have not removed the sign.
Thanks
Gary

>>> Theresa Shelton 11/03/03 01:21PM >>>
Gary:

Please do not remove the sign at Apostolic Truth. I tried to pull the E-mail back, but you were too fast for me and had opened it already. I left a voice mail, but thought I would follow-up with E-Mail as well. If you have already removed the sign, could you please let me know? I apologize for any inconvenience this may have caused you.

Thank-you.

Theresa

Theresa R. Shelton
Baltimore County Board of Appeals
410-887-3180
FAX: 410-887-3182

**From:** Theresa Shelton
**To:** Freund, Gary
**Date:** 11/3/2003 1:21:56 PM
**Subject:** Apostolic Truth Sign

Gary:

Please do not remove the sign at Apostolic Truth. I tried to pull the E-mail back, but you were too fast for me and had opened it already. I left a voice mail, but thought I would follow-up with E-Mail as well. If you have already removed the sign, could you please let me know? I apologize for any inconvenience this may have caused you.

Thank-you.

Theresa

Theresa R. Shelton
Baltimore County Board of Appeals
410-887-3180
FAX: 410-887-3182

**CC:** Bianco, Kathleen

**From:** Theresa Shelton
**To:** Freund, Gary
**Subject:** Sign Removal

Gary:

Could you please remove the sign located at the following site?

03-040-SPH
Apostolic Truth Tabernacle

McDonogh Road and Field Road
3rd Election District

Thank you

Theresa

**CC:** Bianco, Kathleen

## BOARD OF APPEALS OF BALTIMORE COUNTY

## MINUTES OF DELIBERATION

**IN THE MATTER OF:** Apostolic Truth Tabernacle
03-040-SPH and CBA-03-109

**DATE:** March 27, 2003

**BOARD/PANEL:**

| | |
|---|---|
| Charles L. Marks | CLM |
| Lawrence S. Wescott | LSW |
| Richard K. Irish | RKI |

**RECORDED BY:** Theresa R. Shelton / Legal Secretary

**PURPOSE:** To deliberate the denial of the final development plan and also development compliance to extent with RTA use requirements.

**PANEL MEMBERS DISCUSSED THE FOLLOWING:**

**DEVELOPMENT PLAN**

- The panel can not determine why the development plan was denied. The Hearing Officer's Order does not state the exact reason for the denial.
- The Board needs specifics as to why a plan is denied before they can make a determination if the Hearing Officer acted appropriately.
- The Board should not have to quess what the Hearing Officer had in mind.
- Page 9 of Hearing Officer's decision was discussed – need specifics as to why the development plan was denied.
- There was a 5 day, full and complete hearing below, and the Hearing Officer could approve; approve with restrictions or deny with specificity the development plan.

**SPECIAL HEARING**

- The Board should not be put in a position to make the decision on the approval or denial of the development plan; and without a clear and concise decision, the Board can not proceed with regards to the special hearing.
- A conclusion with regards to the special hearing can not be formulated without the specific reasons for the denial of the development plan.

**DECISIONS BY BOARD MEMBERS: Unanimous decision by the Board of Appeals to REMAND the development plan to the hearing officer for the specific reason for denial and to place the request for special hearing ON HOLD at the Board of Appeals until the final determination from the Hearing Officer on the develop plan.**

**FINAL DECISION:** **That the Development Plan be REMANDED to the Hearing Officer for a specific determination of the denial of the Development Plan (Case No.: CBA-03-109); and that the Petition for Special Hearing (Case No.: 03-040-SPH) shall remain at the Board of Appeals ON HOLD until the Hearing Officer's final determination in the development plan (case CBA-03-109). Once the final determination has been made on the development case, the Board of Appeals will schedule the hearing on the Request for Special Hearing (03-040-SPH), if applicable.**

---

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted,

Theresa R. Shelton

Theresa R. Shelton
County Board of Appeals

12-14-03

Case Number Apostolic

PLEASE ***PRINT*** LEGIBLY

## PROTESTANT'S SIGN-IN SHEET

| Name | Address | City, State | Zip Code |
|---|---|---|---|
| Michael Finkelstein | 9118 Field Road | Balto Maryland | 21208 |
| Juli Finkelstein | 9118 Field Road | Balto Maryland | 21208 |
| SANDRA ROLLERT | 8215 McDONOUGH Rd | Pikesville, MD | 21208 |
| [illegible] | 8105 Mc Donough Rd | Balto Md | 21208 |
| JIM STEPHENS | 8115 MC DONOUGH RD | PIKESVILLE MD | 21208 |
| Judith Skolnik | 8123 McDonough Rd | Pikesville | 21208 |
| [illegible] | 8125 Mc Donough Rd | Pike | 21208 |
| Merrill Skolnik | 8123 Mc Donough Rd | Pikesville | 21208 |
| | | | |
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Revised 4/17/00

Case Number _____

PLEASE ***PRINT*** LEGIBLY

## PROTESTANT'S SIGN-IN SHEET

| Name | Address | City, State | Zip Code |
|---|---|---|---|
| Ruth Silverman | 8121 McDonogh Rd | Balto | 21208 |
| Brian Carbaugh | 1132 S. Little CR Road<br>P.O. Box 902 | Dover<br>Delaware | 19903 |
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Revised 4/17/00

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER _____
DATE _____

# PETITIONER'S SIGN-IN SHEET

| NAME | ADDRESS | CITY, STATE, ZIP | E- MAIL |
|---|---|---|---|
| Bonnie Cobb | 8216 McDonogh Rd | Balto, MD 21208 | BonnieCobb77@comcast.net |
| | | | |
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PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

# CITIZEN'S SIGN-IN SHEET

| NAME | ADDRESS | CITY, STATE, ZIP | E- MAIL |
|---|---|---|---|
| ichard GREENSPUN | 42 STONE PINE CT. | Baltimore, MD 21208 | Greenglor@MSN.com |
| ARILYN + IRA BLANK | 8019 McDONOGH RD. | BALTO. MD. 21208 | BBLANK@ATT.NET |
| Phyllis P Brotman | 8105 McDonogh Rd | Balto Md 21208 | pbbrotman@comcast.net |
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PLEASE PRINT CLEARLY

CASE NAME APOSTOLIC TRUTH TABERNACLE
CASE NUMBER 03-040-SPH
DATE 12/15/03

# PETITIONER'S SIGN-IN SHEET

| NAME | ADDRESS | CITY, STATE, ZIP | E- MAIL |
|---|---|---|---|
| RICK RICHARDSON | 730 W PADONIA RD | COCKEYSVILLE MD 21030 | REWG@FIVESTONES.COM |
| Mark Gains | 11940 River Hts Rd | Owings Mills MD 21117 | markgains@att.net |
| Thomas Cobb | 8216 McDonogh Rd | Pikesville, MD. 21208 | ThomasCobb5K@Comcast.NET |
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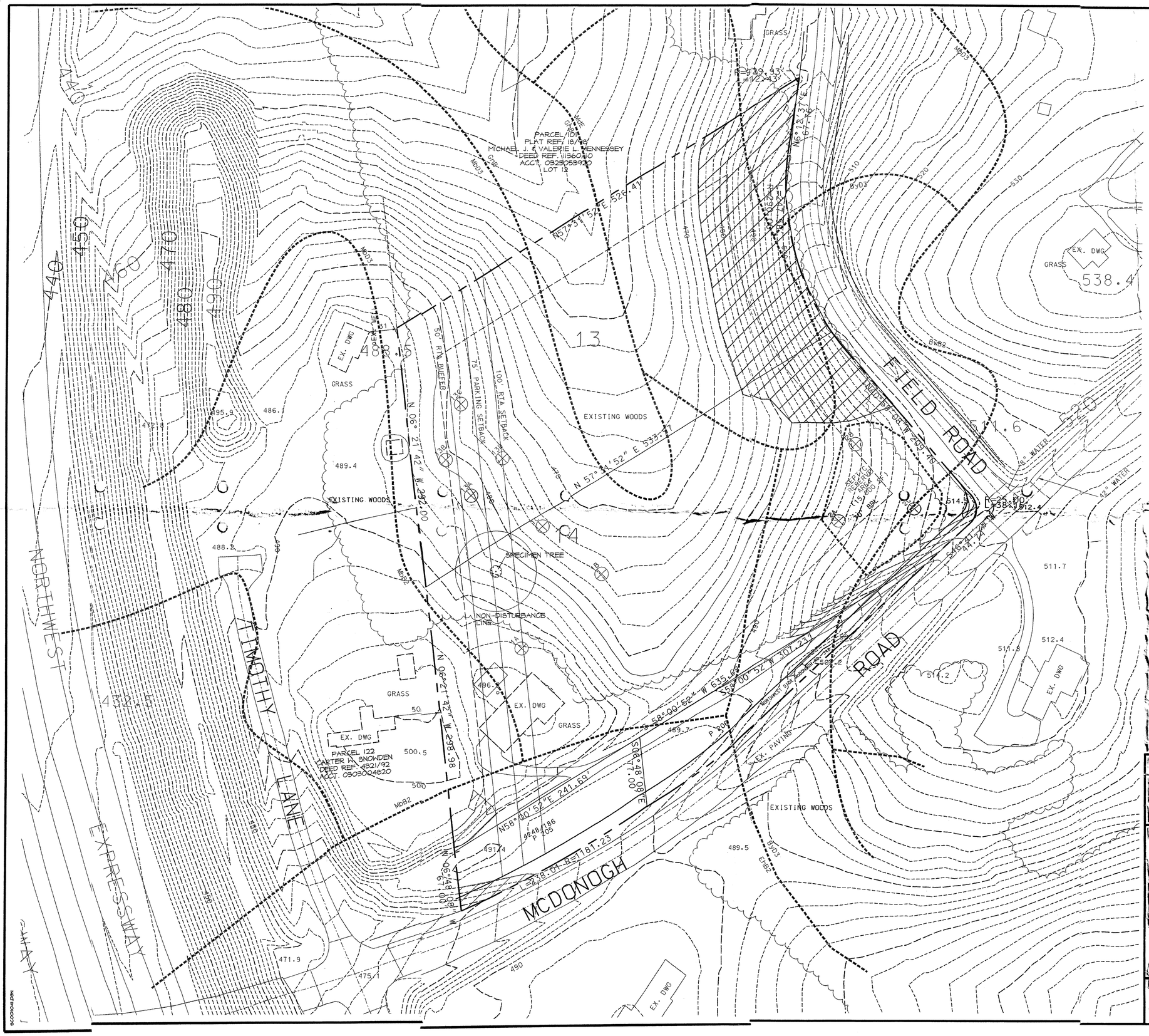

PARCEL 101
PLAT REF. 18/88
MICHAEL J. & VALERIE L. MENNESSEY
DEED REF. 11360/10
ACCT. 0323053920
LOT 12
N57°31'52"E 526.41'
N 57°31'52" E 533.47'
N 06°21'42" W 292.00'
N 06°21'42" W 298.98'
S58°00'52"W 635.65'
S35°00'52"W 307.23'
S06°48'08"E 147.00'
N58°00'52"E 241.69'
N 06°48'08" W 169.08'
R=738.01'
T=178T.23
N61°12'37"E 167.46'
R=939.93'
T=412.43'
L=25.00'
S 46°47'23" W 41.74'
N 66°47'23" E 41.74'
S 23°12'37" W 25.00'
S 66°47'23" W 41.74'
N 23°12'37" W 25.00'
N 66°47'23" E 41.74'
S 23°12'37" E

STANDARD NON-DIISTURBANCE NOTE:

THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THIS FOREST CONSERVATION EASEMENT EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.

PROTECTIVE COVENANTS NOTE:

ANY FOREST CONSERVATION EASEMENT SHOWN HEEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS.




SIGN TO BE INTERNALLY ILLUMINATED

## FREE STANDING SIGN
NOT TO SCALE

PERMITTED SIGN AREA: 25 SF
PROPOSED SIGN AREA: 24 SF
MAXIMUM HEIGHT: 6'

## CERTIFICATE AS TO DELINQUENT ACCOUNRTS

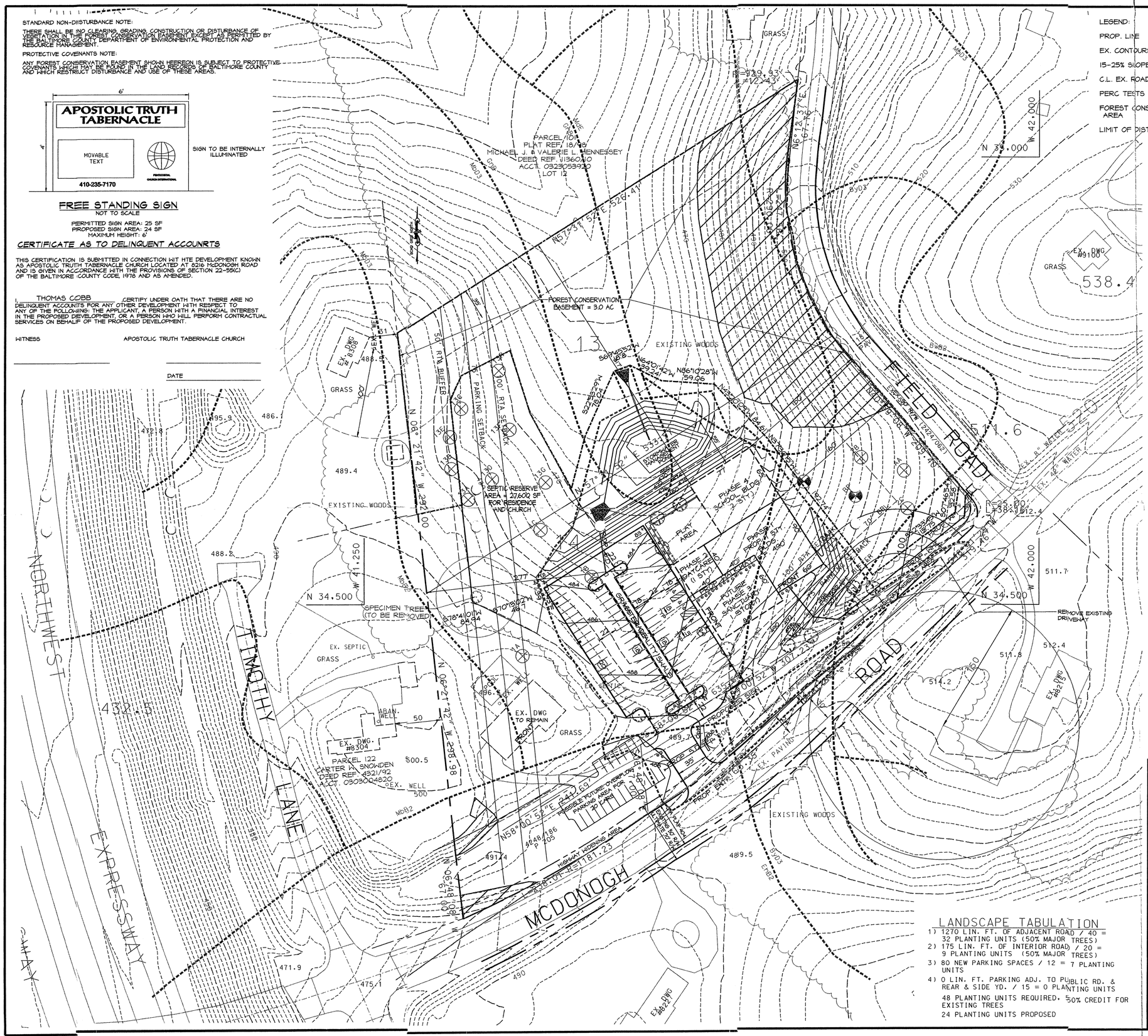
THIS CERTIFICATION IS SUBMITTED IN CONNECTION WIT HTE DEVELOPMENT KNOWN AS APOSTOLIC TRUTH TABERNACLE CHURCH LOCATED AT 8216 McDONOGH ROAD AND IS GIVEN IN ACCORDANCE WITH THE PROVISIONS OF SECTION 22-55(C) OF THE BALTIMORE COUNTY CODE, 1978 AND AS AMENDED.

I, THOMAS COBB, CERTIFY UNDER OATH THAT THERE ARE NO DELINQUENT ACCOUNTS FOR ANY OTHER DEVELOPMENT WITH RESPECT TO ANY OF THE FOLLOWING: THE APPLICANT, A PERSON WITH A FINANCIAL INTEREST IN THE PROPOSED DIEVELOPMENT, OR A PERSON WHO WILL PERFORM CONTRACTUAL SERVICES ON BEHALIF OF THE PROPOSED DEVELOPMENT.

WITNESS

APOSTOLIC TRUTH TABERNACLE CHURCH

DATE


PARCEL 101
PLAT REF/ 18/98
MICHAEL J. & VALERIE L. HENNESSEY
DEED REF. 11360/10
ACCT. 0323053920
LOT 12
FOREST CONSERVATION EASEMENT = 3.0 AC
EXISTING WOODS
GRASS
FIELD ROAD
McDONOGH
TIMOTHY LANE
NORTHWEST
EXPRESSWAY
SEPTIC RESERVE AREA = 37,600 SF FOR RESIDENCE AND CHURCH
PHASE 1 SCHOOL BLDG. 3,557 S.F.
PHASE 2 DAYCARE 10,577 S.F.
PROPOSED PHASE SANCTUARY 15,000 S.F.
FUTURE PHASE SANCTUARY 15,000 S.F.
PLAY AREA
GRASS SWALE
PROPOSED ENTRANCE
EX. PAVING
REMOVE EXISTING DRIVEWAY
SPECIMEN TREE (TO BE REMOVED)
EX. SEPTIC
EX. DWG TO REMAIN
EX. DWG #8304
PARCEL 122
CARTER A. SNOWDEN
DEED REF. 4321/92
ACCT. 0303004820
EX. WELL
EX. DWG #8100
EX. DWG #8213
EX. DWG #8229
POSSIBLE FUTURE OVERFLOW PARKING AREA FOR 30 CARS
HIGHWAY WIDENING AREA
EX. 8" WATER
EX. 42" WATER
EX. 12" WATER
EX. 8" SEWER
EX. 6" SEWER
EX. 8" GAS
EX. 12" GAS
EX. 6" GAS
EX. 8" ELEC.
EX. 6" ELEC.
EX. 6" TEL.
EX. 8" TEL.
EX. 6" CATV
EX. 8" CATV
EX. 6" STORM
EX. 8" STORM
EX. 12" STORM
EX. 15" STORM
EX. 18" STORM
EX. 24" STORM
EX. 30" STORM
EX. 36" STORM
EX. 42" STORM
EX. 48" STORM
EX. 54" STORM
EX. 60" STORM
EX. 66" STORM
EX. 72" STORM
EX. 78" STORM
EX. 84" STORM
EX. 90" STORM
EX.

STANDARD NON-DISTURBANCE NOTE:

THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST CONSERVATION EASEMENT EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.

PROTECTIVE COVENANTS NOTE:

ANY FOREST CONSERVATION EASEMENT SHOWN HEEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRUCT DISTURBANCE AND USE OF THESE AREAS.




## FREE STANDING SIGN

NOT TO SCALE

PERMITTED SIGN AREA: 25 SF
PROPOSED SIGN AREA: 24 SF
MAXIMUM HEIGHT: 6'

## CERTIFICATE AS TO DELINQUENT ACCOUNRTS

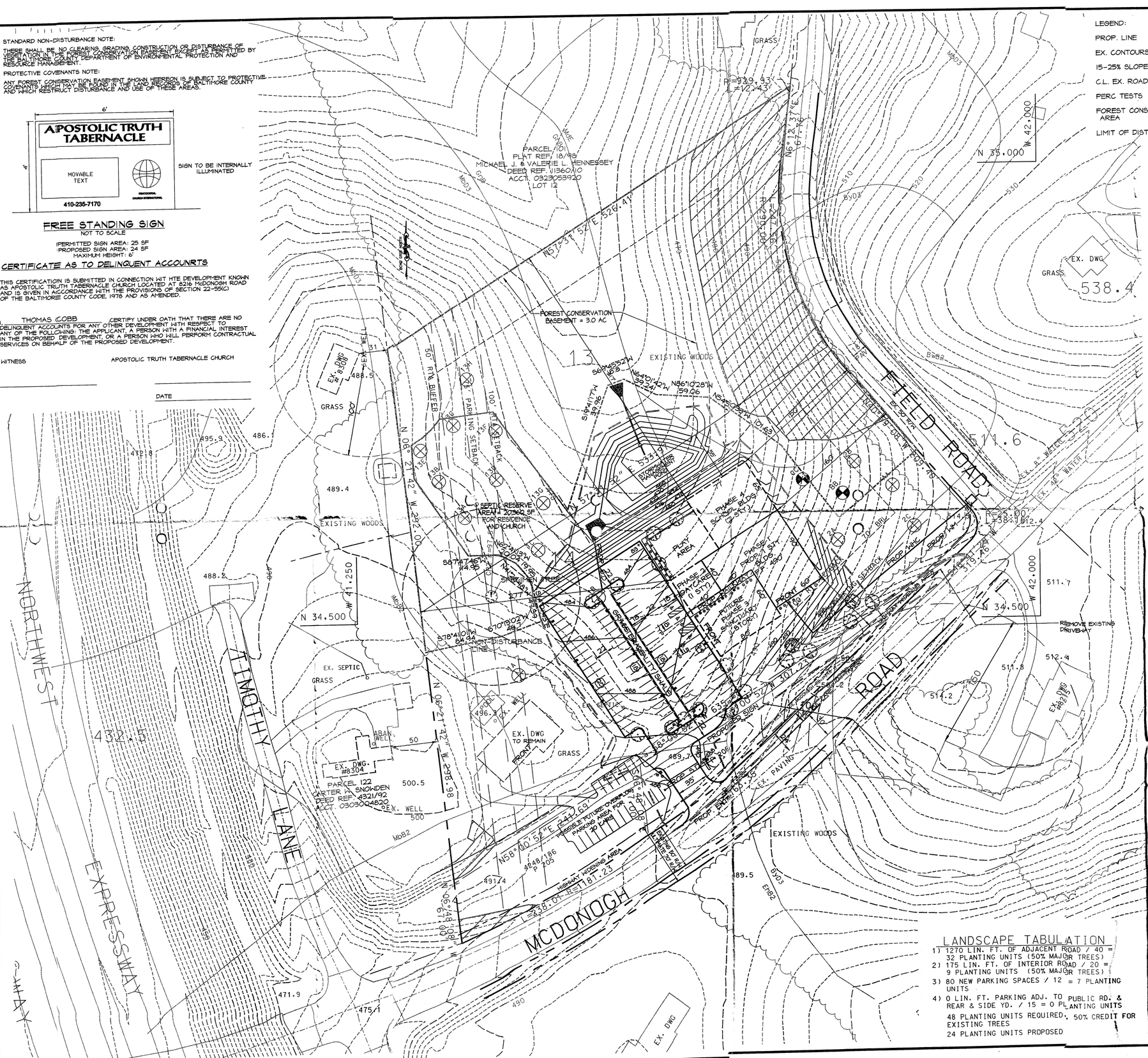
THIS CERTIFICATION IS SUBMITTED IN CONNECTION WIT HTE DEVELOPMENT KNOWN AS APOSTOLIC TRUTH TABERNACLE CHURCH LOCATED AT 8216 McDONOGH ROAD AND IS GIVEN IN ACCORDANCE WITH THE PROVISIONS OF SECTION 22-55(C) OF THE BALTIMORE COUNTY CODE, 1978 AND AS AMENDED.

I, THOMAS COBB, CERTIFY UNDER OATH THAT THERE ARE NO DELINQUENT ACCOUNTS FOR ANY OTHER DEVELOPMENT WITH RESPECT TO ANY OF THE FOLLOWING: THE APPLICANT, A PERSON WITH A FINANCIAL INTEREST IN THE PROPOSED DEVELOPMENT, OR A PERSON WHO WILL PERFORM CONTRACTUAL SERVICES ON BEHALF OF THE PROPOSED DEVELOPMENT.

WITNESS

APOSTOLIC TRUTH TABERNACLE CHURCH

DATE

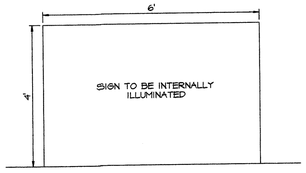

PARCEL 101
PLAT REF: 18/98
MICHAEL J. & VALERIE L. HENNESSEY
DEED REF: 11360/410
ACCT. 0323053920
LOT 12
FOREST CONSERVATION EASEMENT = 3.0 AC
EXISTING WOODS
GRASS
F I E L D R O A D
PROPOSED SANCTUARY BLDG. 1ST FL. 15,000 SF
PROPOSED SANCTUARY BLDG. 2ND FL. 15,000 SF
PHASE 1 SCHOOL BLDG. (2-STORY)
PHASE 2 CHAPEL (1 STY.)
PLAY AREA
PROPOSED ASPHALT DRIVE
PROPOSED ASPHALT PARKING AREA
PROPOSED CONCRETE SIDEWALK
PROPOSED SIGN
EX. DWG #8306
EX. DWG #8304
EX. DWG TO REMAIN
EX. DWG #8210
EX. SEPTIC
EX. WELL
PROPOSED WELL
PROPOSED SEPTIC RESERVE AREA 1 20360 SF FOR RESIDENCE AND CHURCH
NON-DISTURBANCE LINE
PARCEL 122
CARTER N. SNOWDEN
DEED REF: 4321/92
ACCT. 0303004820
T I M O T H Y L A N E
NORTHWEST EXPRESSWAY
M C D O N O G H
HIGHWAY WIDENING AREA
4248/186
P 205
EX. 8" WATER
EX. 12" WATER
PROP. ENTRANCE
PROP. 6" WATER
PROP. 8" SEWER
PROP. 4" SEWER
PROP. 1" WATER
PROP. 2" WATER
PROP. 6" WATER
PROP. 8" WATER
PROP. 12" WATER
PROP. 16" WATER
PROP. 20" WATER
PROP. 24" WATER
PROP. 30" WATER
PROP. 36" WATER
PROP. 42" WATER
PROP. 48" WATER
PROP. 54" WATER
PROP. 60" WATER
PROP. 72" WATER
PROP. 84" WATER
PROP. 96" WATER
PROP. 108" WATER
PROP. 120" WATER
PROP. 132" WATER
PROP. 144" WATER
PROP. 156" WATER
PROP. 168" WATER
PROP. 180" WATER
PROP. 192" WATER
PROP. 204" WATER
PROP.

STANDARD NON-DISTURBANCE NOTE:

THERE SHALL BE NO CLEARING, GRADING CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER, EASEMENT OR OTHER FOREST RETENTION AREAS, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.

PROTECTIVE COVENANTS NOTE:

ANY FOREST BUFFER, EASEMENT SHOWN HEEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRICT DISTURBANCE AND USE OF THESE AREAS.




## FREE STANDING SIGN

NOT TO SCALE

PERMITTED SIGN AREA: 25 SF
PROPOSED SIGN AREA: 24 SF
MAXIMUM HEIGHT: 6'

## CERTIFICATE AS TO DELINQUENT ACCOUNRTS

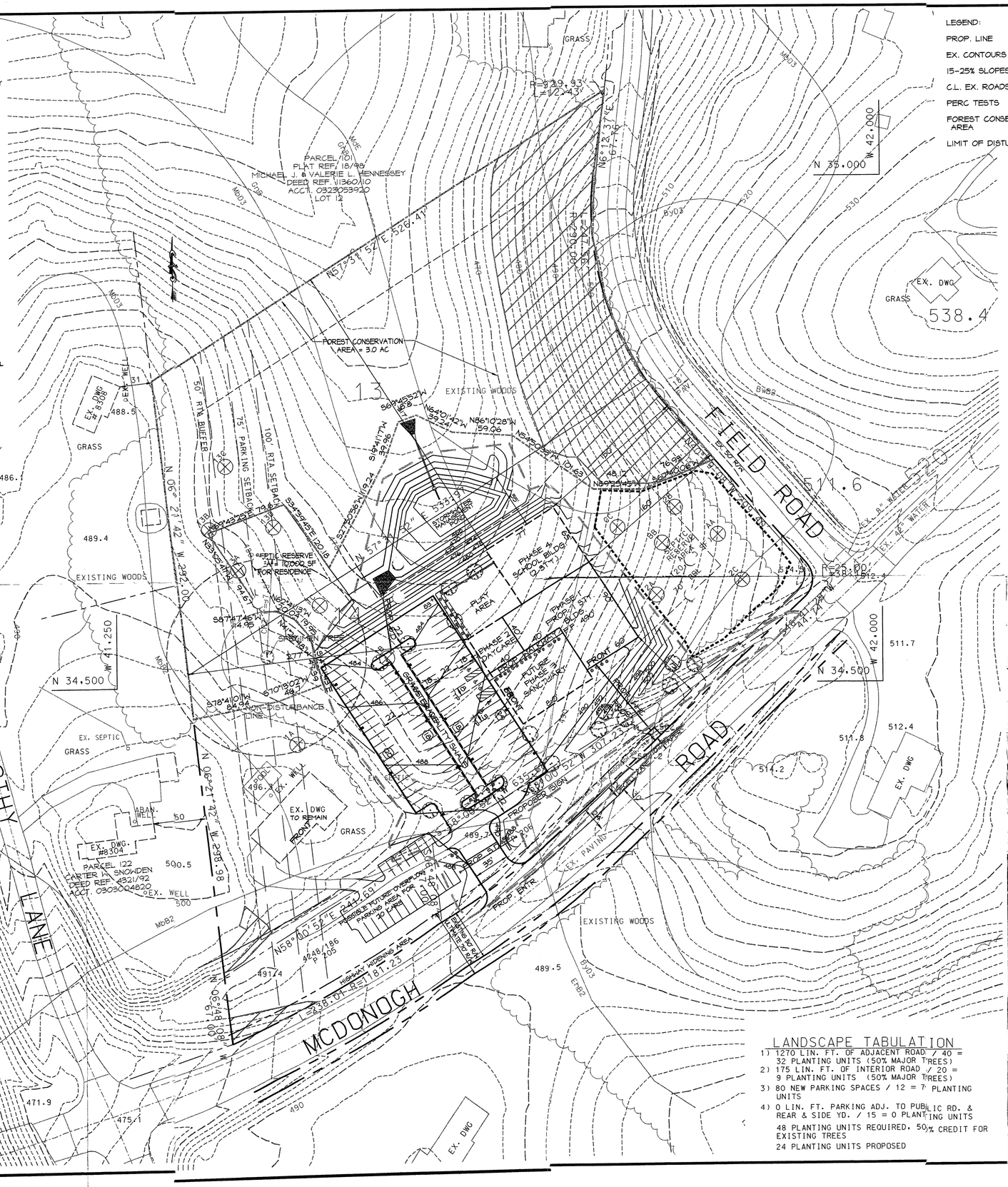
THIS CERTIFICATION IS SUBMITTED IN CONNECTION WIT HTE DEVELOPMENT KNOWN AS BIBLE FELLOWSHIP CHURCH OF REISTERSTOWN LOCATED AT 120 BERRYMENS LANE AND IS GIVEN IN ACCORDANCE WITH THE PROVISIONS OF SECTION 22-59(C) OF THE BALTIMORE COUNTY CODE, 1978 AND AS AMENDED.

I, THOMAS COBB, CERTIFY UNDER OATH THAT THERE ARE NO DELINQUENT ACCOUNTS (FOR ANY OTHER DEVELOPMENT WITH RESPECT TO ANY OF THE FOLLOWING: THE APPLICANT, A PERSON WITH A FINANCIAL INTEREST IN THE PROPOSED DEVELOPMENT, OR A PERSON WHO WILL PERFORM CONTRACTUAL SERVICES ON BEHALF OF THE PROPOSED DEVELOPMENT.

WITNESS

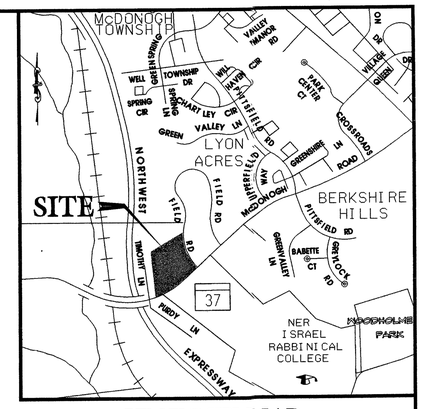
APOSTOLIC TRUTH TABERNACLE CHURCH

DATE 6-20-02




LEGEND:

- PROP. LINE
- EX. CONTOURS 500 / 502
- 15-25% SLOPES
- C.L. EX. ROADS
- PERC TESTS 2C⊕
- FOREST CONSERVATION AREA
- LIMIT OF DISTURBANCE




## VICINITY MAP

1" = 1000'

## GENERAL NOTES:

1. OWNER/ DEVELOPER:
   APOSTOLIC TRUTH TABERNACLE
   8216 McDONOGH ROAD
   BALTIMORE, MARYLAND 21208
   DEED REF: 15818/234
2. EXISTING ZONING: D.R. 1 (ENTIRE AREA WITHIN PLAN IS D.R. 1)
3. TAX ACCOUNT NOS.: 0314010727, 0314010728, 0314010729, 0314010726
4. THE PROPERTY AS SHOWN ON THE PLAN HAS BEEN HELD INTACT SINCE 1971. THE DEVELOPER'S ENGINEER HAS CONFIRMED THAT NO PART OF THE GROSS AREA OF THIS PROPERTY AS SHOWN ON THE PLAN HAS EVER BEEN UTILITZED, RECORDED OR REPRESENTED AS DENSITY OR AREA TO SUPPORT ANY OFF-SITE DWELLINGS. ORIGINAL SUBDIVISION "THE LYON ACRES" RECORDED IN PB18/98 FEB. 21, 1953
5. SITE AREA: NET: 7.80 AC. +/-
6. SITE AREA: GROSS: 8.57 AC +/-
7. EXISTING USE: RESIDENCE (HOUSE TO REMAIN AS RECTORY)
8. PROPOSED USE: RECTORY AND CHURCH
9. PARKING REQUIRED: 1 SPACE PER 4 SEATS FOR 200 SEATS = 50 SPACES (PHASE 1)
   PARKING FOR PHASE 3 SANCTUARY: 300 SEATS OR 75 SPACES
   PHASE 1 SPACE TO BE MULTIPURPOSE SPACE AFTER CONSTRUCTION OF PHASE 3 AND WILL NOT BE USED FOR WORSHIP IN CONJUNCTION WITH THE THE PHASE 3 SPACE
   ALL OFF-STREET PARKING WILL BE IN ACCORDANCE WITH 409.8.A BCZR
10. PARKING PROVIDED: 80 SPACES IN MAIN PARKING LOT
    OVERFLOW SPACE: 20 SPACES
11. EXISTING WELLS AND SEPTIC AREAS FOR SURROUNDING SITES HAVE BEEN SHOWN TO THE EXTENT VISIBLE OR AVAILABLE RECORDS.
12. THERE ARE NO KNOWN UNDERGROUND FUEL OR CHEMICAL STORAGE TANKS KNOWN TO EXIST ON THIS PROPERTY.
13. THERE ARE NO WETLANDS ON THE SITE.
14. THERE ARE NO FLOODPLAINS ON THE SITE.
15. THERE ARE NO SIGNIFICANT PLANT OR WILDLIFE COMMUNITIES ON THIS SITE.
16. EXISTING FOREST AREA: 6.5 ACRES
    ALLOWABLE CLEARING AREA: 3.5 ACRES
17. THERE ARE NO HISTORICAL FEATURES ON THIS SITE.
18. TAX MAP 67 PARCELS 101 LOTS 13 & 14, 205, 206
19. THERE ARE NO PREVIOUS ZONING CASES FOR THIS SITE.
20. THE SITE IS TO BE SERVED BY PUBLIC WATER AND PRIVATE SEPTIC.
21. PERC TESTS WERE DONE ON THIS SITE 8/24/00 AS SHOWN ON THE PLAN.
22. BUREAU OF TRAFFIC ENGINEERING AND TRANSPORTATION PLANNING HAS CONFIRMED THAT THE SUBJECCT SITE IS NOT WITHIN A TRAFFIC DEFICIENT AREA.
23. CENSUS TRACT: 4037.02
24. SCHOOL DISTRICT: OWINGS MILLS HIGH SCHOOL
    PIKESVILLE MIDDLE SCHOOL
    NEW TOWN ELEMENTARY
25. WATERSHED: 4TH
    SUBSEWERSHED: 65
26. PLANNING DISTRICT: 313

STATE OF MARYLAND — PAUL C. RICHARDSON — No. 19282 — REGISTERED PROFESSIONAL ENGINEER — 6/20/02

PDM FILE #III-446

## LANDSCAPE TABULATION

1) 1270 LIN. FT. OF ADJACENT ROAD / 40 = 32 PLANTING UNITS (50% MAJOR TREES)
2) 175 LIN. FT. OF INTERIOR ROAD / 20 = 9 PLANTING UNITS (50% MAJOR TREES)
3) 80 NEW PARKING SPACES / 12 = 7 PLANTING UNITS
4) 0 LIN. FT. PARKING ADJ. TO PUBLIC RD. & REAR & SIDE YD. / 15 = 0 PLANTING UNITS

48 PLANTING UNITS REQUIRED, 50% CREDIT FOR EXISTING TREES
24 PLANTING UNITS PROPOSED


Richardson Engineering, LLC
730 W. Padonia Road, Suite 101
Cockeysville, Maryland 21030
Phone: 410-560-1502 Fax: 410-560-0827


# DEVELOPMENT PLAN
# SANCTUARY BUILDING
# APOSTOLIC TRUTH TABERNACLE

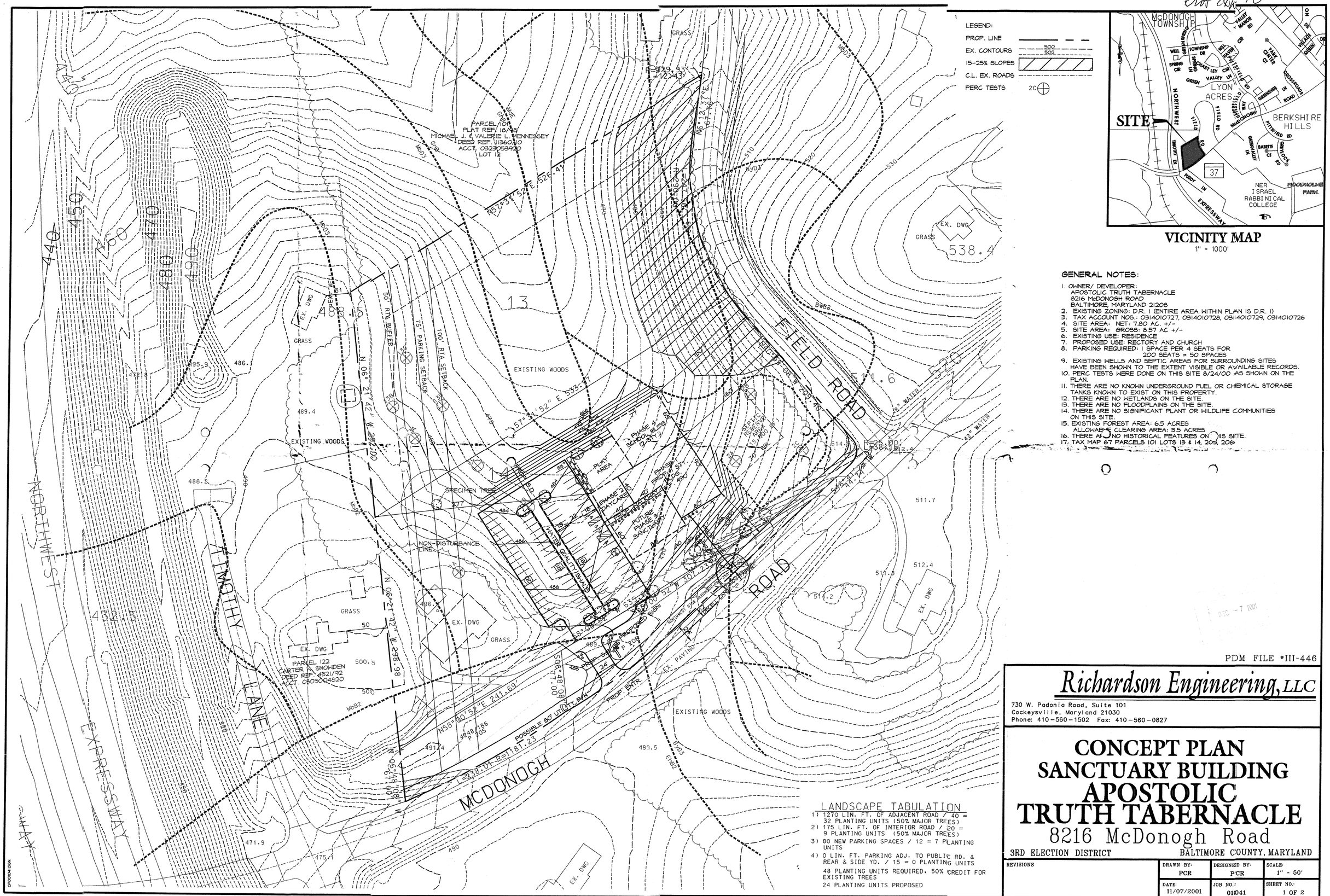
8216 McDonogh Road

3RD ELECTION DISTRICT — BALTIMORE COUNTY, MARYLAND

JUN 21 2002

| REVISIONS | DRAWN BY: PCR | DESIGNED BY: PCR | SCALE: 1" - 50' |
|---|---|---|---|
| | DATE: 6/20/2002 | JOB NO.: 01041 | SHEET NO.: 1 OF 1 |

Prot Exh. 10







## VICINITY MAP
1" = 1000'

### GENERAL NOTES:

1. OWNER/ DEVELOPER:
   APOSTOLIC TRUTH TABERNACLE
   8216 McDONOGH ROAD
   BALTIMORE, MARYLAND 21208
2. EXISTING ZONING: D.R. 1 (ENTIRE AREA WITHIN PLAN IS D.R. 1)
3. TAX ACCOUNT NOS.: 0314010727, 0314010728, 0314010729, 0314010726
4. SITE AREA: NET: 7.80 AC. +/-
5. SITE AREA: GROSS: 8.57 AC +/-
6. EXISTING USE: RESIDENCE
7. PROPOSED USE: RECTORY AND CHURCH
8. PARKING REQUIRED: 1 SPACE PER 4 SEATS FOR
   200 SEATS = 50 SPACES
9. EXISTING WELLS AND SEPTIC AREAS FOR SURROUNDING SITES HAVE BEEN SHOWN TO THE EXTENT VISIBLE OR AWAILABLE RECORDS.
10. PERC TESTS WERE DONE ON THIS SITE 8/24/00 AS SHOWN ON THE PLAN.
11. THERE ARE NO KNOWN UNDERGROUND FUEL OR CHEMICAL STORAGE TANKS KNOWN TO EXIST ON THIS PROPERTY.
12. THERE ARE NO WETLANDS ON THE SITE.
13. THERE ARE NO FLOODPLAINS ON THE SITE.
14. THERE ARE NO SIGNIFICANT PLANT OR WILDLIFE COMMUNITIES ON THIS SITE.
15. EXISTING FOREST AREA: 6.5 ACRES
    ALLOWABLE CLEARING AREA: 3.5 ACRES
16. THERE ARE NO HISTORICAL FEATURES ON THIS SITE.
17. TAX MAP 67 PARCELS 101 LOTS 13 & 14, 205, 206

### LANDSCAPE TABULATION

1) 1270 LIN. FT. OF ADJACENT ROAD / 40 = 32 PLANTING UNITS (50% MAJOR TREES)
2) 175 LIN. FT. OF INTERIOR ROAD / 20 = 9 PLANTING UNITS (50% MAJOR TREES)
3) 80 NEW PARKING SPACES / 12 = 7 PLANTING UNITS
4) 0 LIN. FT. PARKING ADJ. TO PUBLIC RD. & REAR & SIDE YD. / 15 = 0 PLANTING UNITS

48 PLANTING UNITS REQUIRED, 50% CREDIT FOR EXISTING TREES
24 PLANTING UNITS PROPOSED

PDM FILE #III-446


**Richardson Engineering, LLC**
730 W. Padonia Road, Suite 101
Cockeysville, Maryland 21030
Phone: 410-560-1502 Fax: 410-560-0827


# CONCEPT PLAN
# SANCTUARY BUILDING
# APOSTOLIC TRUTH TABERNACLE
## 8216 McDonogh Road

3RD ELECTION DISTRICT — BALTIMORE COUNTY, MARYLAND

| REVISIONS | DRAWN BY: PCR | DESIGNED BY: PCR | SCALE: 1" = 50' |
|---|---|---|---|
| | DATE: 11/07/2001 | JOB NO.: 01041 | SHEET NO.: 1 OF 2 |

Prot # 10

CBA-03-109 &
03-040-SPH

Verified
3/27/03

# EXHIBITS

## ~~PETITIONERS~~

✓ 1. ATT sign in sheet

## PROTESTANTS

✓ 1. sign in sheet pg. 3
2. MOTION TO LIMIT SCOPE OF REVIEW BY THE CBA.
✓ 3. MOTION TO LIMIT THE SCOPE OF REVIEW OF THE CBA.
✓ 4. MOTION TO DENY RLUIPA APPLICATION AS TO DEVELOPMENT PLAN.
✓ 5. MOTION TO DETERMINE EXTENT OF CBA REVIEW.....
✓ 6. MOTION TO REQUEST TO SUBMIT MEMORANDUM.
✓ 7. ANSWER TO PETITION FOR APPEAL

APOSTOLIC TRUTH TABERNACLE

PETITIONERS:

Pastor Thomas Cobb 8216 McDonogh Rd Balto, MD. 21208
Bennie Cobb - 8216 McDonogh Rd - Balto MD 21208
Misty Dawen 227 Hanover St. Glen Rock PA 17327
Megan Warren - 8216 McDonogh Rd. - Baltimore, MD 21208
Laura Warren - 227 Hanover St. Glen Rock PA. 17327
Marina Waren - 227 Hanover St. Glen Rock PA. 17327
Dana Miller - 4038 Lyndale Ave Balto MD 21213
Barry Willey - 910 N. Marilyn Ave Balto. MD 21221
Chris Willey "
Heather Giavonanni "
Devin Willey "
Dennis D. Miller 4038 Lyndale Ave Baltimore Md. 21213
Brenett Warren 8010 Valley Manor Rd Owings Mills MD 21117 (True Gospel Apostolic Faith Church)

PET #1

PROTESTANTS 3/27/03

Eugene D. Silverman 9121 McDonogh Rd
Vonita Mayer } 9011 Purdy Lane Pikesville 21208
Stanley Mayer }
Ruth Silverman 8121 McDonogh Rd Balto MD 21208
Mildred Keller 3616 Rodnalley Dr. Balto. MD 21208
Jim Stephens } 8115 McDonogh Road Pikesville 21208
Marilyn Cohen }
Jay S. Tuttle 8115 McDonogh Rd Pikesville 21208
Gyli Funkelstein 9118 Field Rd Balto., MD 21208
Gwendolyn M. Howard 9119 Field Rd. Balto., Md. 21208
Milton Solomon 9006 Pittsfield Rd. Balto Md. 21208
Lewis W. Fleischmann 9004 Pittsfield Rd. Balto MD 21208
Helen Fleischmann 9004 Pittsfield Rd. Balto. Md. 21208
Jean Solomon 9006 Pittsfield 21208
Marilyn Blank 8019 McDonogh 21208
Jo Blank 8019 McDonogh Rd. 21208
Ben Blank 8019 McDonogh Rd 21208
Merrill Skolnik 8123 McDonogh Rd 2128
Sandy Lerner 9010 Pittsfield 21208
Jerry Lerner 9010 Pittsfield R 21208
Kacey Maconber/McDonogh School 8600 McDonogh R 21208
Joe Howard 9119 Field Rd. 21208
Walter B. Thomas 9125 Field Road 21208
Vladimir Voliasky 9141 Field Rd. 21208
Judith Skolnik 8123 McDonogh Rd 21208
Karen Gerstmyer 2 Peakrest Ct 21117
CINDY ROLLERT 8215 McDonogh 21208

PROT #1
SHT 1 OF 2

| | | |
|---|---|---|
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | THE |
| | * | COUNTY BOARD OF APPEALS |
| 3RD Election District; 3RD Councilmanic<br>Apostolic Truth Tabernacle<br>Petitioner/ Developer | * | OF |
| 8216 McDonogh Road | * | BALTIMORE COUNTY |
| Case No. III-446 and<br>03-040-SPH | * | Case No. 03-109<br>and 03-040-SPH |

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

**MOTION TO LIMIT SCOPE OF REVIEW BY THE CBA**

There is no authority in the CBA to determine the question posed by Appellant in regard to RLUIPA (The Religious Land Use and Institutionalized Persons Act of 2000). Now comes the Protestants/Appellees, McDonogh Field Association, by Phyllis Brotman, President, and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, Jay Taetle, Judy Skolnik, and Phyllis Brotman individuals through J. Carroll Holzer and Holzer and Lee and submits this Motion and says:

1. Petitioner/Appellant raises Issues # 6 and 7, that the Hearing Officer failed to find "compelling government interest" pursuant to the RLUIPA in the imposition of the compatibility standards and in the denial of the development plan.

   Further, they raise the issue that the Hearing Officer failed to find the "least restrictive means of furthering the compelling government interest" under RLUIPA by denying both a Special Hearing and the Development Plan (Issue #10).



Prot #2

| | | |
|---|---|---|
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | THE |
| | * | COUNTY BOARD OF APPEALS |
| 3RD Election District; 3RD Councilmanic<br>Apostolic Truth Tabernacle<br>Petitioner/ Developer | * | OF |
| 8216 McDonogh Road | * | BALTIMORE COUNTY |
| Case No. III-446 and<br>03-040-SPH | * | Case No. 03-109<br>and 03-040-SPH |

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

**MOTION TO LIMIT THE SCOPE OF REVIEW OF THE COUNTY BOARD OF APPEALS**

Now comes the Protestants/Appellees, McDonogh Field Association, by Phyllis Brotman, President, and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, Jay Taetle, Judy Skolnik, and Phyllis Brotman individuals through J. Carroll Holzer and Holzer and Lee and submits this Motion and says:

1. The Petitioner/Appellant raises in his Petition for Appeal Issue #6 that the Hearing Officer failed to find "compelling government interest" pursuant to RLUIPA related to the Development regulations. In issue #7, Petitioners/Appellants raised the denial of the Development Plan was not based on any "compelling governmental interest" pursuant to RLUIPA.
2. As related to the Development Plan and the development regulations, this Board, for over 20 years, has not taken new testimony in its review of Development Plans and has merely reviewed the Development Plan and the Development Plan Opinion and Order based upon the record. In this record, there is no evidence or testimony or exhibits that raises the RLUIPA issue before the Hearing Officer.



Proof #3

| | | |
|---|---|---|
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | THE |
| | * | COUNTY BOARD OF APPEALS |
| 3RD Election District; 3RD Councilmanic<br>Apostolic Truth Tabernacle<br>Petitioner/ Developer | * | OF |
| 8216 McDonogh Road | * | BALTIMORE COUNTY |
| Case No. III-446 and<br>03-040-SPH | * | Case No. 03-109<br>and 03-040-SPH |

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

**MOTION TO DENY RLUIPA APPLICATION AS TO DEVELOPMENT PLAN**

Now comes the Protestants/Appellees, McDonogh Field Association, by Phyllis Brotman, President, and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, Jay Taetle, Judy Skolnik, and Phyllis Brotman individuals through J. Carroll Holzer and Holzer and Lee and submits this Motion and says:

1. Based upon the two previous Memorandums, Protestants/Appellees hereby request this Board to deny as to the development plan, any contention or allegation of violations of RLUIPA made by Petitioner/Appellant because, pursuant to RLUIPA Section 4(b), Petitioner/Appellant has failed to produce prima facia evidence to support a claim alleging of a violation of the free exercise clause or violation of Section 2. The Plaintiff has failed to bear the burden of persuasion of whether the law, including the Special Hearing regulations, the RTA zoning requirements, or the development regulations, or government practice substantially burdens the Plaintiff's exercise of religion.



Prot. #4

| | | |
|---|---|---|
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | THE |
| | * | COUNTY BOARD OF APPEALS |
| 3RD Election District; 3RD Councilmanic<br>Apostolic Truth Tabernacle<br>Petitioner/ Developer | * | OF |
| 8216 McDonogh Road | * | BALTIMORE COUNTY |
| Case No. III-446 and<br>03-040-SPH | * | Case No. 03-109<br>and 03-040-SPH |

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

**MOTION TO DETERMINE EXTENT OF CBA REVIEW OF THE DEVELOPMENT PLAN IN ORDER TO PROPERLY PREPARE FOR THIS CASE**

Now comes the Protestants/Appellees, McDonogh Field Association, by Phyllis Brotman, President, and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, Jay Taetle, Judy Skolnik, and Phyllis Brotman individuals through J. Carroll Holzer and Holzer and Lee and submits this Motion and says:

1. This case consists of a Hearing de novo on a Petition for Special Hearing, related to the issue of compatibility and the RTA zoning requirements; and secondly, a review of the Development Plan denial pursuant to Section 26-209 of the Baltimore County Code.

   Therefore, the Board must review the development plan denial on the record, and the Special Hearing de novo. This case was tried jointly below before the Zoning Commissioner/Hearing Officer consisting of at least five full days of hearings in December, 2002 and September 5, October 23, and October 30, 2002. By agreement of counsel, they were tried together, that is that the testimony

#5

| | | |
|---|---|---|
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | THE |
| | * | COUNTY BOARD OF APPEALS |
| 3RD Election District; 3RD Councilmanic<br>Apostolic Truth Tabernacle<br>Petitioner/ Developer | * | OF |
| 8216 McDonogh Road | * | BALTIMORE COUNTY |
| Case No. III-446 and<br>03-040-SPH | * | Case No. 03-109<br>and 03-040-SPH |

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

**MOTION TO REQUEST PERMISSION TO SUBMIT MEMORANDUM CONCERNING THE LEGALITY OF THE APPLICATION OF RLUIPA TO THIS CASE AND TO RESPOND TO FACTS AND ARGUMENTS PRESENTED BY THE PETITIONERS/APPELLANTS RELATED TO THE SPECIAL HEARING AND DEVELOPMENT PLAN**

Now comes the Protestants/Appellees, McDonogh Field Association, by Phyllis Brotman, President, and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, Jay Taetle, Judy Skolnik, and Phyllis Brotman individuals through J. Carroll Holzer and Holzer and Lee and submits this Motion and says:

Protestants/Appellees request permission to submit Memorandum concerning the legality of the application of RLUIPA to this case and to respond to facts and arguments presented by the Petitioners/Appellants related to the Special Hearing and Development Plan.

Respectfully submitted,

J. Carroll Holzer



PROT #6

| | | |
|---|---|---|
| IN THE MATTER OF:<br>APOSTOLIC TRUTH TABERNACLE | * | THE |
| | * | COUNTY BOARD OF APPEALS |
| 3RD Election District; 3RD Councilmanic<br>Apostolic Truth Tabernacle<br>Petitioner/ Developer | * | OF |
| 8216 McDonogh Road | * | BALTIMORE COUNTY |
| Case No. III-446 and<br>03-040-SPH | * | Case No. 03-109<br>and 03-040-SPH |

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

**ANSWER TO PETITION FOR APPEAL**

Protestants, McDonogh Field Association by Phyllis B. Brotman, President, and individuals Howard Gersh, Dr. Michael Whitfield, Michael Hennessy, Susan Greenberg, Michael Finkelstein, Joe Howard, Vladimir Volinsky, Harry Schreiber, Jay Taetle, Judy Skolnik, and Phyllis Brotman, individuals through J. Carroll Holzer and Holzer and Lee submit this Answer to the Petition for Appeal and says:

1. That the development standards and regulations were not met by the proposed development plan presented before the Hearing Officer.

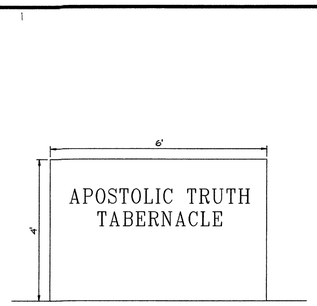
2. It is incorrect to allege in the Petition for Appeal that the Hearing Officer found the development standards were met. A review of the Hearing Officer's Opinion and Development Plan Order does not make a finding that the development plan met all development regulation standards but for the denial of the Special Hearing.

3. The Zoning Special Hearing certainly did involve the location of the proposed Development in that once the property is converted to a church, the long existing dwelling and swimming pool became accessory uses to the church. Secondly, the existing dwelling and swimming pool are on the development plan and contained within its borders.

4. Protestants deny that the proposed church development met all the Residential Transition Area and zoning standards in that the Hearing Officer found a lack of compatibility, which is a requirement under the RTA regulations.

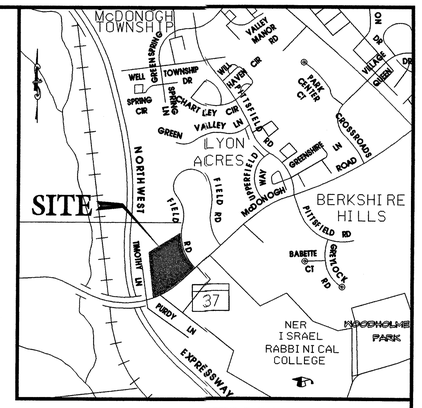
5. Protestants allege that the Hearing Officer did not err in denying the Special Hearing. The Board reviews this matter de novo.

PROT #17




**FREE STANDING SIGN**
NOT TO SCALE

PERMITTED SIGN AREA: 25 SF
PROPOSED SIGN AREA: 24 SF
MAXIMUM HEIGHT: 6'




**VICINITY MAP**
1" = 1000'

## GENERAL NOTES:

1. OWNER/ DEVELOPER:
   APOSTOLIC TRUTH TABERNACLE
   8216 McDONOGH ROAD
   BALTIMORE, MARYLAND 21208
   DEED REF: 15818/234
2. EXISTING ZONING: D.R. 1 (ENTIRE AREA WITHIN PLAN IS D.R. 1)
3. TAX ACCOUNT NOS.: 0314010727, 0314010728, 0314010729, 0314010726
4. SITE AREA: NET: 7.80 AC. +/-
5. SITE AREA: GROSS: 8.57 AC +/-
6. EXISTING USE: RESIDENCE (HOUSE TO REMAIN AS RECTORY)
7. PROPOSED USE: RECTORY AND CHURCH
8. PARKING REQUIRED: 1 SPACE PER 4 SEATS FOR
   200 SEATS = 50 SPACES (PHASE 1)
   PARKING FOR PHASE 3 SANCTUARY: 300 SEATS OR 75 SPACES
   PHASE 1 SPACE TO BE MULTIPURPOSE SPACE AFTER CONSTRUCTION OF PHASE 3 AND WILL NOT BE USED FOR WORSHIP IN CONJUNCTION WITH THE PHASE 3 SPACE.
   ALL OFF-STREET PARKING WILL BE IN ACCORDANCE WITH 409.8.A BCZR
10. PARKING PROVIDED: 80 SPACES IN MAIN PARKING LOT
    OVERFLOW SPACE: 20 SPACES
11. EXISTING WELLS AND SEPTIC AREAS FOR SURROUNDING SITES HAVE BEEN SHOWN TO THE EXTENT VISIBLE OR AVAILABLE RECORDS.
12. THERE ARE NO KNOWN UNDERGROUND FUEL OR CHEMICAL STORAGE TANKS KNOWN TO EXIST ON THIS PROPERTY.
13. THERE ARE NO WETLANDS ON THE SITE.
14. THERE ARE NO FLOODPLAINS ON THE SITE.
15. THERE ARE NO SIGNIFICANT PLANT OR WILDLIFE COMMUNITIES ON THIS SITE.
16. NO PREVIOUS COMMERCIAL PERMITS ON RECORD.
17. THERE ARE NO HISTORICAL FEATURES ON THIS SITE.
18. TAX MAP 67 PARCELS 101 LOTS 13 & 14, 205, 206
19. THERE ARE NO PREVIOUS ZONING CASES FOR THIS SITE.
20. THE SITE IS TO BE SERVED BY PUBLIC WATER AND PRIVATE SEPTIC.
21. PERC TESTS WERE DONE ON THIS SITE 8/24/00 AS SHOWN ON THE PLAN.
22. BUREAU OF TRAFFIC ENGINEERING AND TRANSPORTATION PLANNING HAS CONFIRMED THAT THE SUBJECCT SITE IS NOT WITHIN A TRAFFIC DEFICIENT AREA.
23. CENSUS TRACT: 4037.02
24. SCHOOL DISTRICT: OWINGS MILLS HIGH SCHOOL
    PIKESVILLE MIDDLE SCHOOL
    NEW TOWN ELEMENTARY
25. WATERSHED: 4TH
    SUBSEWERSHED: 65
26. PLANNING DISTRICT: 313
27. FAR: 0.06
28. SPECIAL HEARING IS TO DETERMINE THAT THE SITE IS IN COMPLIANCE TO THE EXTENT POSSIBLE WITH SECTION 1B01.1.B.1.g.6
29. LYON ACRES LOTS 13 AND 14 RECORDED IN PLAT BOOK 18 FOLIO 98
30. COUNCILMANIC DISTRICT 3

PDM FILE #III-446


*Richardson Engineering, LLC*
730 W. Padonia Road, Suite 101
Cockeysville, Maryland 21030
Phone: 410-560-1502 Fax: 410-560-0827


# PLAN TO ACCOMPANY SPECIAL HEARING
# SANCTUARY BUILDING
# APOSTOLIC TRUTH TABERNACLE
## 8216 McDonogh Road

3RD ELECTION DISTRICT — BALTIMORE COUNTY, MARYLAND

| REVISIONS | DRAWN BY: | DESIGNED BY: | SCALE: |
|---|---|---|---|
| | PCR | PCR | 1" - 50' |
| | DATE: 7/19/2002 | JOB NO.: 01041 | SHEET NO.: 1 OF 1 |

CTM 040

TRANSCRIPTS

20030040

FOLDER

2

ORIGINAL

(EXCERPT)
BEFORE THE HEARING OFFICER OF BALTIMORE COUNTY
IN RE: APOSTOLIC TRUTH TABERNACLE

RECEIVED
JAN 05 2004
ZONING COMMISSIONER

CASE NUMBER:
_____/

The following excerpt is from the above-mentioned hearing that was held on Monday, December 15th, 2003, commencing at 9:00 a.m., before Lawrence E. Schmidt, Hearing Commissioner, at the County Office Building, Room 406, Towson, Maryland, 21204.

APPEARANCES:

JOHN B. GONTRUM, ESQUIRE
On behalf of the Petitioner

J. CARROLL HOLZER, ESQUIRE
On behalf of the Protestants

REPORTED BY: R. Dwayne Harrison

| | | |
|---|---|---|
| IN THE MATTER OF: | * | BEFORE THE |
| APOSTOLIC TRUTH | * | DEPUTY ZONING |
| TABERNACLE CHURCH | * | COMMISSIONER/ |
| 8216 McDonogh Road | * | HEARING OFFICER |
| N/SIDE McDONOGH ROAD | * | CASE NO. 3-446 |
| WEST SIDE OF FIELD ROAD | * | December 11, 2002 |
| 3rd ELECTION DISTRICT | * | |
| 3rd COUNCILMANIC DISTRICT | * | |

* * * * *

The above-entitled matter came on for hearing before the Deputy Zoning Commissioner/Hearing Officer at the County Office Building, Towson, Maryland 21204, at 9:45 a.m., December 11, 2002.

* * * * *

Reported by: C.E. Peatt

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| | |
|---|---|
| IN THE MATTER OF: | * BEFORE THE |
| APOSTOLIC TRUTH | * DEPUTY ZONING |
| TABERNACLE CHURCH | * COMMISSIONER/ |
| 8216 McDonogh Road | * HEARING OFFICER |
| N/SIDE McDONOGH ROAD | * CASE NO. 3-446 |
| WEST SIDE OF FIELD ROAD | * December 11, 2002 |
| 3rd ELECTION DISTRICT | * |
| 3rd COUNCILMANIC DISTRICT | * |

* * * * *

The above-entitled matter came on for hearing before the Deputy Zoning Commissioner/Hearing Officer at the County Office Building, Towson, Maryland 21204, at 9:45 a.m., December 11, 2002.

* * * * *

Reported by: C.E. Peatt



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| | |
|---|---|
| IN THE MATTER OF: | * BEFORE THE |
| APOSTOLIC TRUTH TABERNACLE | * HEARING OFFICER/ |
| Case No. 03-040-SPH | * DEPUTY ZONING |
| | * COMMISSIONER |
| Case No. 3-446 | * OF |
| | * BALTIMORE COUNTY |
| | * September 5, 2002 |

* * * * *

The above-entitled matter came on for hearing before the Hearing Officer/Deputy Zoning Commissioner for Baltimore County in Room 106, County Office Building, Towson, Maryland 21204, at 9:15 a.m., September 5, 2002.

APPEARANCES:

TIMOTHY KOTROCO, Esquire
Hearing Officer/
Deputy Zoning Commissioner

JOHN B. GONTRUM, Esquire
On behalf of Petitioner

J. CARROLL HOLZER, Esquire
On behalf of McDonogh Field
Community Association

Reported by: C.E. Peatt



SEP 27 2002

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BALTIMORE COUNTY ZONING COMMISSION

IN RE:

CASE NUMBER: 03-040-SPH
8216 McDonogh Road
N/side McDonogh Road at west side of Field Road
3rd Election District - 3rd Councilmanic District
Legal Owner: Apostolic Truth Tabernacle
_____/

The above-entitled matter came on for Hearing before the Honorable Timothy Kotroco, Arbitrator, on Wednesday, October 23, 2002, commencing at 9:00 a.m., at the Baltimore County Zoning Commission, Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, 21204.

APPEARANCES:

JOHN B. GONTRUM, ESQUIRE
On behalf of Petitioner

J. CARROLL HOLZER, ESQUIRE
On behalf of Protestant

ALSO PRESENT:

PASTOR COBB

REPORTED BY: R. Dwayne Harrison

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BALTIMORE COUNTY ZONING COMMISSION

IN RE:

CASE NUMBER: 03-040-SPH
8216 McDonogh Road
N/side McDongh Road at west side of Field Road
3rd Election District - 3rd Councilmanic District
Legal Owner: Apostolic Truth Tabernacle
_____/

The above-entitled matter came on for Hearing before the Honorable Timothy Kotroco, Arbitrator, on Wednesday, October 30, 2002, commencing at 9:00 A.m., at the Baltimore County Zoning Commission, Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, 21204.

APPEARANCES:

JOHN B. GONTRUM, ESQUIRE
On behalf of Petitioner

J. CARROLL HOLZER, ESQUIRE
On behalf of Protestant

ALSO PRESENT:

PASTOR COBB

PHYLLIS B. BROTMAN

REPORTED BY: R. Dwayne Harrison

BALTIMORE COUNTY ZONING COMMISSION

IN RE:

CASE NUMBER: 03-040-SPH
8216 McDonogh Road
N/side McDonogh Road at west side of Field Road
3rd Election District - 3rd Councilmanic District
Legal Owner: Apostolic Truth Tabernacle

_____/

The above-entitled matter came on for Hearing before the Honorable Timothy Kotroco, Arbitrator, on Wednesday, December 4, 2002, commencing at 10:10 a.m., at the Baltimore County Zoning Commission, Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, 21204.

APPEARANCES:

JOHN B. GONTRUM, ESQUIRE
On behalf of Petitioner

J. CARROLL HOLZER, ESQUIRE
On behalf of Protestant

ALSO PRESENT:

PASTOR COBB

PHYLLIS B. BROTMAN

REPORTED BY: R. Dwayne Harrison

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BALTIMORE COUNTY ZONING COMMISSION

IN RE:

CASE NUMBER: 03-040-SPH
8216 McDonough Road
N/side McDonough Road at west side of Field Road
3rd Election District - 3rd Councilmanic District
Legal Owner: Apostolic Truth Tabernacle

* * * * *

The above-entitled matter came on for Hearing before the Honorable Timothy Kotroco, Arbitrator, on Wednesday, December 18, 2002, commencing at 9:00 a.m., at the Baltimore County Zoning Commission, Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

APPEARANCES:

JOHN B. GONTRUM, ESQUIRE
On behalf of Petitioner

J. CARROLL HOLZER, ESQUIRE
On behalf of Protestants

ALSO PRESENT:

PASTOR COBB
PHYLLIS B. BROTMAN

REPORTED BY: Susan A. Kambouris

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BALTIMORE COUNTY ZONING COMMISSION

IN RE:

CASE NUMBER: 03-040-SPH
8216 McDonough Road
N/side McDonough Road at west side of Field Road
3rd Election District - 3rd Councilmanic District
Legal Owner: Apostolic Truth Tabernacle

/

The above-entitled matter came on for Hearing before the Honorable Timothy Kotroco, Arbitrator, on Monday, December 23, 2002, commencing at 9 a.m., at the Baltimore County Zoning Commission, Room 407, County Courts Building, 401 Bosley Avenue, Towson, Maryland 21204.

APPEARANCES:

JOHN B. GONTRUM, ESQUIRE
On behalf of Petitioner

J. CARROLL HOLZER, ESQUIRE
On behalf of Protestants

ALSO PRESENT:
PASTOR COBB
PHYLLIS B. BROTMAN

REPORTED BY: Susan A. Kambouris

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Towson Reporting Co. ◇ Baltimore Video/Conferencing Center, Inc.





| | | |
|---|---|---|
| IN THE MATTER OF | * | BEFORE THE |
| APOSTOLIC TRUTH TABERNACLE | * | COUNTY BOARD OF APPEALS |
| W/S MCDONOGH ROAD @ NW COR | * | OF |
| OF FIELD RD/PDM III 446 | * | BALTIMORE COUNTY |
| | * | CASE NO: CBA-03-109 |
| | * | CASE NO: CBA-040-SPH |
| | * | March 27, 2003 |

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 a.m., March 27, 2003.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

# RELATED AND MISCELLANEOUS ITEMS

# OF THE APOSTOLIC TRUTH TABERNACLE

## III – 446

## HEARING OFFICER'S HEARING

INCLUDING EXHIBITS

20030040

FOLDER #3