



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

February 20, 2004

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: CBA-03-142

IN THE MATTER OF: *Karma Academy Group Home*
4202 Holbrook Road 2nd E; 4th C

9/17/03 – Letter from Timothy M. Kotroco, Director /PDM to KHI Services – issuance of use permit to KHI Services Inc., stating “that the Fair Housing Act mandates the issuance of said use permit.”

which was assigned to be heard on 3/03/04 has been **POSTPONED** at the request of Applicant to allow sufficient time “to secure counsel” for this matter as indicated in said postponement request; and has been

REASSIGNED FOR: THURSDAY, JUNE 3, 2004 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board’s Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board’s Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants
Appellants /Protestants

: Steven K. Fedder, Esquire
: Holbrook Community Association

Counsel for Applicant
Applicant

: Beth Pepper, Esquire
: Roger D. Larson, M.G.A. /HCA
Executive Director /KHI Services, Inc.

Deborah Depkin Esq.
co-counsel

Juanita E. Hoyle, Licensing /Compliance Officer
Maryland Dept. of Juvenile Justice
Lawrence E. Schmidt, Zoning Commissioner
John R. Alexander, Planner /PDM
Jeffrey N. Perlow, Planner /PDM
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
Margaret F. Ferguson, Assistant County Attorney
Edward J. Gilliss, County Attorney





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June 1, 2004

Steven K. Fedder, Esquire
PIPER RUDNICK
6225 Smith Avenue
Baltimore, MD 21209

RE: *In the Matter of: Karma Academy Group Home*
Case No. CBA-03-142 /Ruling on Motion to Dismiss

Dear Mr. Fedder:

Enclosed please find a copy of the Ruling on Motion to Dismiss issued this date by the County Board of Appeals of Baltimore County in the 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 of Procedure*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all subsequent Petitions for Judicial Review filed from this decision should be noted under the same civil action number as the first Petition.** 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,

Kathleen C. Bianco
Kathleen C. Bianco
Administrator

Enclosure

c: Holbrook Community Association
Beth Pepper, Esquire
Deborah C. Dopkin, Esquire
Roger D. Larson, M.G.A. /HCA
Executive Director /KHI Services, Inc.
Juanita E. Hoyle, Licensing /Compliance Officer
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IN THE MATTER OF
KARMA ACADEMY GROUP HOME
4202 HOLBROOK ROAD
2ND ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

RE: LETTER OF DIRECTOR, DEPARTMENT
OF PERMITS AND DEVELOPMENT
MANAGEMENT – GROUP HOME

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-03-142

* * * * *

RULING ON MOTION TO DISMISS

This matter is before the Board on a Motion to Dismiss filed by Respondent, KHI Services, Inc., (KHI) by its attorneys, Deborah C. Dopkin and Deborah C. Dopkin, P.A., and Beth Pepper and Beth Pepper, P.A. A hearing was held before the Board on April 21, 2004. Ms. Dopkin and Ms. Pepper represented KHI, and Steven K. Fedder, Esquire, and Piper Rudnick, LLP and Michael Ramsey, Esquire, represented the community association. Public deliberation was held on May 11, 2004.

Background

On March 5, 2003, Roger D. Larson, Executive Director of KHI sent a letter to Mr. Arnold Jablon, then Director of Baltimore County Department of Permits & Development Management (PDM) for zoning verification as to whether a group home that he wished to operate at a particular address in an R.C. 2 zoning district was a permitted use, exempt from local zoning requirements. Mr. Larson submitted payment of \$250.00 for a response in accordance with the policy of that office. On March 7, 2003 Mr. Jeffrey Perlow, Planner II of the zoning review for PDM, responded to Mr. Larson's request in a general way by outlining various policies and zoning exceptions but did not address the specific property at issue. On April 14, 2003, Mr. Larson sent another letter to Mr. Jablon, raising the same inquiry as set forth in his

March correspondence but referencing a different address in the same zoning district. This letter referred to the property at 4202 Holbrook Road, which is the subject of the Appellants' appeal. After additional correspondence with representatives of PDM and the Office of Law of Baltimore County, in which additional was obtained from KHI, Mr. Larson received a letter dated September 17, 2003 from Timothy Kotroco, the current Director of PDM and successor to Arnold Jablon. In his letter to Mr. Larson, Mr. Kotroco stated that KHI, through its attorney, had requested Baltimore County to issue a use permit for the property at 4202 Holbrook Road for a group home. He indicated, based on the information which he had received with respect to the occupants of the home, that "my office in conjunction with the Office of Law for Baltimore County has determined that the Fair Housing Act mandates the issuance of said use permit to KHI Services, Inc." In fact, no license or "use permit" was ever issued by PDM to KHI Services, Inc., for the property at 4202 Holbrook Road. It does not appear that such a permit is necessary in order for the building to be occupied by KHI Services, Inc.

On September 29, 2003, Mr. Fedder, on behalf of his client, Holbrook Community Association, appealed what he called the "final order issued by Timothy M. Kotroco, Director of the Office of Permits and Development, on September 17, 2003 granting a use permit for a group home to be located at 4202 Holbrook Road, Randallstown, Maryland 21133."

On October 1, 2003, Mr. Fedder was notified by Mr. Kotroco that all materials relative to the appeal had been forwarded to the Baltimore County Board of Appeals.

KHI filed a Motion to Dismiss with the Board on March 18, 2004. In its Motion to Dismiss, KHI raises several issues. They are as follows:

1. The use of the property is mandated by the Fair Housing Act, 42 USC § 3604(f) *et seq* which supercedes local zoning regulations.

2. The letter from Mr. Kotroco dated September 17, 2003 is not a final order and not susceptible to appeal. Based on the holding in *United Parcel Service, Inc., v People's Counsel*, 336 Md. 569 (1994), the September 17, 2003 letter is not an appealable decision.
3. The letter of Mr. Kotroco is an affirmation that the use is permitted as of right and, since it is a use permitted by right, the County had no need to and did not issue any form of permit. Accordingly, the Board had no jurisdiction to decide the appeal.
4. Appellant, Holbrook Community Association, is not a person aggrieved as set forth in the *Baltimore County Zoning Regulations*, 500.10, and lacks the requisite standing to bring the subject appeal.
5. Appellant, Holbrook Community Association, is not a person aggrieved pursuant to Code § 26-132 in that it does not have an interest "of such a nature as to personally and specifically affect, damage or impact the members of the association in a way different from that suffered by the members of any other associations."
6. Appellant, Holbrook Community Association lacks standing to bring the appeal pursuant to BCC § 7-36.
7. Appellant, Holbrook Community Association, failed to comply with the formal mandatory requirements of the Rules of Practice and Procedure of the County Board of Appeals.

Decision

In its Brief to the Board, Appellant Holbrook states "the issue of whether the use of the property is controlled by the Federal Fair Housing Act, 42 USC § 3604(f) *et seq*, and if so, whether the needs of handicapped citizens of Baltimore County are reasonably accommodated, is the issue which must be tried before the Board of Appeals." KHI argues that the Board does not have the authority to interpret the Federal Fair Housing Act and therefore is without jurisdiction to hear this matter.

The appellate jurisdiction of the County Board of Appeals is set forth in Article 25A, § 5(U) of the *Maryland Annotated Code*. It is limited in scope and allows the Board to hear exclusively those "matters arising (either originally or on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of, or subject to amendment or repeal by, the County Council." which include "an application for a zoning variation or exception...; the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval...or other form of permission or of any adjudicatory order...." Section 602 of the Baltimore County Charter incorporates Article 25A by reference. It does not provide the Board with any specific power or authority to consider matters of Federal law. It provides that the Board shall have the following functions and powers:

- a) Appeals from orders relating to zoning
- b) Appeals from orders relating to licenses
- c) Appeals from orders relating to building
- d) Appeals from executive, administrative and adjudicatory orders
- e) The County Board of Appeals shall have original and exclusive jurisdiction over all Petitions for Reclassification.

None of the above authorizes the Board to hear any matters with respect to the interpretation of Federal law. Therefore, without ruling on the other issues raised by KHI in its Motion to Dismiss, the Board will grant the Motion.

ORDER

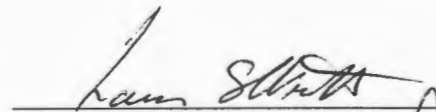
IT IS, THEREFORE, THIS 1st day of June, 2004 by the
County Board of Appeals of Baltimore County

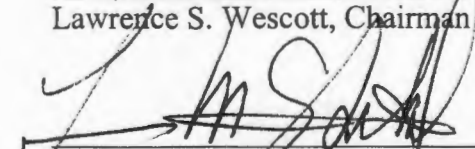
ORDERED that the Motion to Dismiss of KHI Services, Inc., filed in the instant matter is hereby **GRANTED**; and it is further

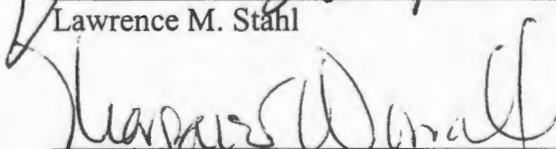
ORDERED that the appeal of the letter issued by the Director of PDM is hereby
DISMISSED.

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

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott, Chairman


Lawrence M. Stahl


Margaret Worrall

IN THE MATTER OF
KARMA ACADEMY GROUP HOME
4202 HOLBROOK ROAD
2ND ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

RE: LETTER OF DIRECTOR, DEPARTMENT
OF PERMITS AND DEVELOPMENT
MANAGEMENT – GROUP HOME

* BEFORE THE
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* OF
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* Case No. CBA-03-142

* * * * *

RULING ON MOTION TO DISMISS

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Background

On March 5, 2003, Roger D. Larson, Executive Director of KHI sent a letter to Mr. Arnold Jablon, then Director of Baltimore County Department of Permits & Development Management (PDM) for zoning verification as to whether a group home that he wished to operate at a particular address in an R.C. 2 zoning district was a permitted use, exempt from local zoning requirements. Mr. Larson submitted payment of \$250.00 for a response in accordance with the policy of that office. On March 7, 2003 Mr. Jeffrey Perlow, Planner II of the zoning review for PDM, responded to Mr. Larson's request in a general way by outlining various policies and zoning exceptions but did not address the specific property at issue. On April 14, 2003, Mr. Larson sent another letter to Mr. Jablon, raising the same inquiry as set forth in his

March correspondence but referencing a different address in the same zoning district. This letter referred to the property at 4202 Holbrook Road, which is the subject of the Appellants' appeal. After additional correspondence with representatives of PDM and the Office of Law of Baltimore County, in which additional was obtained from KHI, Mr. Larson received a letter dated September 17, 2003 from Timothy Kotroco, the current Director of PDM and successor to Arnold Jablon. In his letter to Mr. Larson, Mr. Kotroco stated that KHI, through its attorney, had requested Baltimore County to issue a use permit for the property at 4202 Holbrook Road for a group home. He indicated, based on the information which he had received with respect to the occupants of the home, that "my office in conjunction with the Office of Law for Baltimore County has determined that the Fair Housing Act mandates the issuance of said use permit to KHI Services, Inc." In fact, no license or "use permit" was ever issued by PDM to KHI Services, Inc., for the property at 4202 Holbrook Road. It does not appear that such a permit is necessary in order for the building to be occupied by KHI Services, Inc.

On September 29, 2003, Mr. Fedder, on behalf of his client, Holbrook Community Association, appealed what he called the "final order issued by Timothy M. Kotroco, Director of the Office of Permits and Development, on September 17, 2003 granting a use permit for a group home to be located at 4202 Holbrook Road, Randallstown, Maryland 21133."

On October 1, 2003, Mr. Fedder was notified by Mr. Kotroco that all materials relative to the appeal had been forwarded to the Baltimore County Board of Appeals.

KHI filed a Motion to Dismiss with the Board on March 18, 2004. In its Motion to Dismiss, KHI raises several issues. They are as follows:

1. The use of the property is mandated by the Fair Housing Act, 42 USC § 3604(f) *et seq* which supercedes local zoning regulations.

2. The letter from Mr. Kotroco dated September 17, 2003 is not a final order and not susceptible to appeal. Based on the holding in *United Parcel Service, Inc., v People's Counsel*, 336 Md. 569 (1994), the September 17, 2003 letter is not an appealable decision.
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6. Appellant, Holbrook Community Association lacks standing to bring the appeal pursuant to BCC § 7-36.
7. Appellant, Holbrook Community Association, failed to comply with the formal mandatory requirements of the Rules of Practice and Procedure of the County Board of Appeals.

Decision

In its Brief to the Board, Appellant Holbrook states “the issue of whether the use of the property is controlled by the Federal Fair Housing Act, 42 USC § 3604(f) *et seq*, and if so, whether the needs of handicapped citizens of Baltimore County are reasonably accommodated, is the issue which must be tried before the Board of Appeals.” KHI argues that the Board does not have the authority to interpret the Federal Fair Housing Act and therefore is without jurisdiction to hear this matter.

The appellate jurisdiction of the County Board of Appeals is set forth in Article 25A, § 5(U) of the *Maryland Annotated Code*. It is limited in scope and allows the Board to hear exclusively those “matters arising (either originally or on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of, or subject to amendment or repeal by, the County Council.” which include “an application for a zoning variation or exception...; the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval...or other form of permission or of any adjudicatory order...” Section 602 of the Baltimore County Charter incorporates Article 25A by reference. It does not provide the Board with any specific power or authority to consider matters of Federal law. It provides that the Board shall have the following functions and powers:

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ORDER

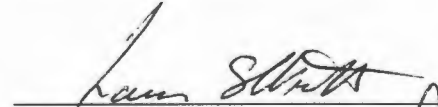
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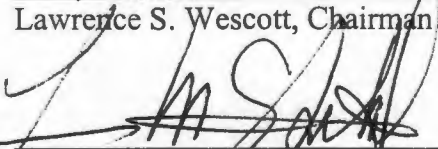
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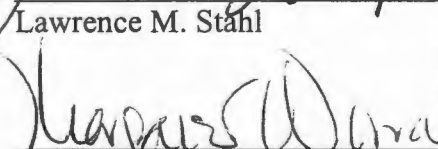
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DISMISSED.

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**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott, Chairman


Lawrence M. Stahl


Margaret Worrall

IN THE MATTER OF
KARMA ACADEMY GROUP HOME
4202 HOLBROOK ROAD
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RE: LETTER OF DIRECTOR, DEPARTMENT
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ORDER

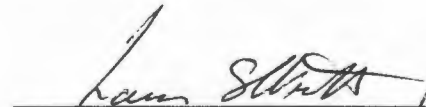
IT IS, THEREFORE, THIS 1st day of June, 2004 by the
County Board of Appeals of Baltimore County

ORDERED that the Motion to Dismiss of KHI Services, Inc., filed in the instant matter is hereby **GRANTED**; and it is further

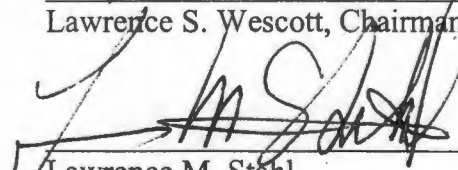
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DISMISSED.

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

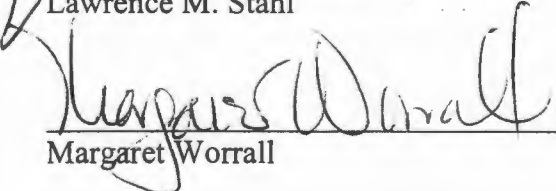
**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence S. Wescott, Chairman



Lawrence M. Stahl



Margaret Worrall

Case No. CBA-03-142

In the Matter of: Karma Academy Group Home
4202 Holbrook Road Randallstown 21136

RE: Issuance of Use Permit to KHI Services for group
home /mentally /developmentally disabled

Page 2

5/11/04 – Board convened for deliberation (4-2-3); unanimous decision that Motion is to be granted; issue raised as to Federal Fair Housing Act and whether or not it applies to this group home is not within the jurisdiction of the this Board; no need to go into issues of missing address, whether or not letter was final order – the case in and of itself is not within the purview of this Board. Therefore, the Motion is granted; appeal to be dismissed; written Ruling to be issued and case on merits pulled from June docket.

RE: Issuance of Use Permit to KHI Services for group
home /mentally /developmentally disabled

10/10/03 – T/C from Damon Krieger, Esquire (PIPER RUDNICK) – provided him with a copy of Board's Rules of Practice & Procedure via letter this date.
- Copy of appeal and Rules of CBA to Beth Pepper, Esquire, Counsel for KHI Services via FAX.

1/06/04 – Notice of Assignment sent to the following; hearing assigned for Wednesday, March 3, 2004 at 10:00 a.m.:

Steven K. Fedder, Esquire
Holbrook Community Association
Beth Pepper, Esquire
Roger D. Larson, M.G.A. /HCA
Executive Director /KHI Services, Inc.
Juanita E. Hoyle, Licensing /Compliance Officer
Maryland Dept. of Juvenile Justice
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Jeffrey N. Perlow, Planner /PDM
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
Margaret F. Ferguson, Assistant County Attorney
Edward J. Gilliss, County Attorney

2/10/04 – Letter received from Beth Pepper, Esquire, via FAX requesting postponement of 3/03/04 hearing date to allow time for KHI Services "to secure local counsel with expertise in the hearing and zoning procedures of the Baltimore County Board of Appeals."

2/12/04 – Received original letter from Ms. Pepper via USPS.

2/20/04 – Notice of PP and Reassignment sent to parties; reassigned for Thursday, June 3, 2004 at 10:00 a.m.

3/10/04 – Letter of entry of appearance filed by Deborah C. Dopkin, Esquire, as co-counsel to represent KHI Services, Inc. To be included in all communications and notices sent to lead counsel, Beth Pepper, Esquire. File so noted.

3/18/04 – Motion to Dismiss filed by Deborah C. Dopkin, Esquire, and Beth Pepper, Esquire, on behalf of Karma Academy Group Home.

4/07/04 – Letter from Steven K. Fedder, Esquire, amending "Notice of Appeal of the September 17, 2003 Order by Timothy M. Kotroco...to include the address of the Holbrook Community Association as c/o Meg Bober, 4110 Holbrook Road, Randallstown, Maryland 21133.
-- Memorandum in Opposition to Motion to Dismiss filed by Steven K. Fedder and Michael Ramsey, counsel for Appellant Holbrook Community Association.

4/08/04 - Copies of D. Dopkin's Motion to Dismiss and S. Fedder's response to same to 4-3-2 in office this date.

4/21/04 – Board convened for Motion hearing (Wescott, Worrall, Stahl); concluded this date; deliberation to be assigned. (Awaiting withdrawal of case assigned for 5/11/04; possible for 5/11/04 at 10:30 a.m.

4/28/04 – Notice of Deliberation sent to parties; assigned for Tuesday, May 11, 2004 at 10:30 a.m. FYI copy to Wescott, Stahl, Worrall.

**BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION
MOTION TO DISMISS**

IN THE MATTER OF : Karma Academy Group Home
Case No. CBA-03-142

DATE : Tuesday, May 11, 2004

BOARD /PANEL : Lawrence S. Wescott (LSW)
Margaret Worrall (MW)
Lawrence M. Stahl (LMS)

RECORDED BY : Kathleen C Bianco /Administrator

PURPOSE: To deliberate Motion to Dismiss filed by Counsel for Karma Academy Group Home / Case No. CBA-03-142

The Board deliberated this Motion at a public deliberation; argument on Motion to Dismiss received by the Board on April 21, 2004.

Deliberation included following comments /decision:

- ◆ Board is being asked to interpret Fair Housing Act – which is not within the purview of the Board of Appeals
 - ◆ Jurisdiction of the Board is limited by statute
 - ◆ Kotroco sent letter in which he stated that permit would be issued....; but the Board is being asked to interpret whether or not the people being housed at this home are there because of their disabilities or actions on their part – Wisconsin case may be relevant – but the question is – is it relevant here?
 - ◆ Question – whether or not this group home falls under the purview of the Federal Fair Housing Act – Federal jurisdictions where that could be brought – but that would be a different court on a different day – State licensing issue
 - ◆ The Board is charged with interpreting laws passed by the Baltimore County Council only, including zoning laws, licensing laws, etc.
 - ◆ Briefly discussed advisory opinions – which had been discussed by this Board but only as part of a zoning case on appeal to the Board
 - ◆ Read and reviewed the letter written by Mr. Kotroco – a verification of what the zoning would be
 - ◆ Appellants, in second paragraph: (paraphrased):
 - The issue is whether or not the use of the property is controlled by the Federal Fair Housing Act and whether the needs of the citizens of Baltimore County are accommodated is the issue to be tried before the County Board of Appeals
- This is not within the purview of the Board.
- ◆ Not necessary to go into issues such as missing address, whether or not letter is a final Order, etc. – appeal is dismissed for the reasons determined; not within the jurisdiction of the Board to here the issue as indicated.



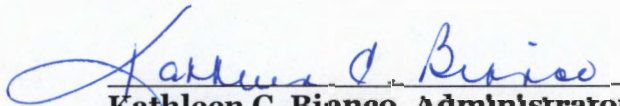
- ◆ L. Wescott – would grant Motion to Dismiss; not within the jurisdiction of this Board.
- ◆ M. Worrall – Agrees - Motion granted.
- ◆ L. Stahl – Also agrees that Motion should be granted; not within purview of Board to decide issue raised.

BOARD'S FINAL RULING:

Motion to Dismiss will be granted; appeal filed by Protestants in this matter will be dismissed; hearing scheduled in this matter before the Board on June 3, 2004 has been pulled from the docket. Written Ruling on Motion to Dismiss will be issued.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place this date regarding the subject matter. A written Opinion /Ruling on Motion to Dismiss will be issued by the Board and the appellate period in this matter to the Circuit Court will run for 30 days from the date of that written Order /Ruling.

Respectfully submitted


Kathleen C. Bianco, Administrator
County Board of Appeals



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 28, 2004

NOTICE OF DELIBERATION

IN THE MATTER OF:

KARMA ACADEMY GROUP HOME
Case No. CBA-03-142

Having heard oral argument in this matter on 4/21/04 (Motion to Dismiss), public deliberation has been scheduled for the following date /time:

DATE AND TIME : **TUESDAY, MAY 11, 2004 at 10:30 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants	: Steven K. Fedder, Esquire
Appellants /Protestants	: Holbrook Community Association
Counsel for Applicant	: Beth Pepper, Esquire
Co-Counsel for Applicant	: Deborah C. Dopkin, Esquire
Applicant	: Roger D. Larson, M.G.A. /HCA
	Executive Director /KHI Services, Inc.
Juanita E. Hoyle, Licensing /Compliance Officer	
Maryland Dept. of Juvenile Justice	
Lawrence E. Schmidt, Zoning Commissioner	
John R. Alexander, Planner /PDM	
Jeffrey N. Perlow, Planner /PDM	
Timothy M. Kotroco, Director /PDM	
Nancy C. West, Assistant County Attorney	
Margaret F. Ferguson, Assistant County Attorney	
Edward J. Gilliss, County Attorney	

FYI: 4-2-3



**BALTIMORE COUNTY
BOARD OF APPEALS
410-887-3180
FAX – 410-887-3182**

Fax

To: Margaret

From: Theresa Shelton

Fax: 410- 527 - 0007

Pages: 15 incl cover

Phone:

Date: April 20, 2004

Re: Dopkin Memo

CC:

☐ **Urgent**

☒ **For Review**

☐ **Please Comment**

☐ **Please Reply**

☐ **Please Recycle**

● **Comments:**

In the Matter of:	*	BEFORE THE
Karma Academy Group Home	*	BOARD OF APPEALS
4202 Holbrook Road		
2 nd Election District	*	OF
4 th Councilmanic District		
	*	BALTIMORE COUNTY
Holbrook Community Association,		
	*	Case No. CBA-03-142
Appellant		
* * * * *		

KHI'S REPLY MEMORANDUM

Respondent, KHI Services, Inc. (KHI), by its attorneys, Deborah C. Dopkin and Deborah C. Dopkin, P.A. and Beth Pepper and Beth Pepper, P.A., submits this Reply Memorandum in opposition to the Motion to Dismiss filed by the Appellant, Holbrook Community Association.

Introduction

This Board has no subject matter jurisdiction to consider this appeal for three reasons.

First, Mr. Timothy Kotroco's September 17 letter, upon which this appeal is based, is neither an "order" nor a "decision" susceptible of appeal to the County Board of Appeals (hereinafter "CBA" or the "Board"). The letter did not result in the issuance of any permit, license, or any other action by the County; it merely advised KHI that the proposed use of its property was a permitted use as a matter of right in the district in which it was located, and that KHI did not have to petition for zoning relief, obtain a special exception or pursue a public hearing process.

RECEIVED

APR 19 2004

BALTIMORE COUNTY
BOARD OF APPEALS

Second, this Board has no jurisdiction to decide questions of federal law, which is the exclusive basis for this appeal. Indeed, to do so would entangle the Board in a web of federal jurisprudence which it has no legal authority to consider.

Third, the Appellant has no standing to bring this matter, because this is not an appeal of a "zoning" proceeding, nor does standing arise under any statute or at common law.

Summary of Relevant Jurisdictional Facts

A summary of the relevant jurisdictional facts is stated herein, based on the record currently before the Board.

On March 5, 2003, Roger D. Larson, Executive Director of KHI Services, Inc., asked Mr. Arnold Jablon, then Director of Baltimore County Department of Permits and Development Management ("PADM"), for zoning verification whether a group home that he wished to operate at a particular address in an RC-2 zoning district was a permitted use, exempt from local zoning requirements. Mr. Larson submitted payment of \$250 for a response in accordance with the policy of that office.

On March 7, 2003, Mr. Jeffrey Perlow, Planner II of the Zoning Review for PADM, responded to Mr. Larson's request in a general way by outlining various policies and zoning exemptions, but did not address the specific property at issue.

On April 14, 2003, Mr. Larson sent another letter to Mr. Jablon, raising the same inquiry as in his March correspondence,

but referencing a different address in the same zoning district. This letter referred to the 4202 Holbrook Road property, which is the subject of the Appellant's appeal.

On April 16, 2003, Mr. John Alexander, Planner II of the Zoning Review for PADM responded by describing various policies and zoning exemptions that, if applicable, would exempt the use from special hearing requirements. Mr. Alexander, however, did not respond definitively to Mr. Larson's request with respect to the Holbrook Road property.

On June 3, 2003, Mr. John Alexander requested that Mr. Larson provide additional information to help PADM respond specifically to the question of whether the use of the Holbrook Road property was permitted as of right and exempt from special exception hearing requirements.

On July 9, 2003, Mr. Larson, through his attorney, provided the additional information that Mr. Alexander requested.

On July 15, 2003, the Baltimore County Office of Law, through its lawyer, Ms. Margaret Ferguson, asked KHI for further information in order to provide advice to her client, PADM, regarding the proper classification of KHI's use, ie., whether it is a use permitted as a matter of right.

On August 6, 2003, KHI, through its lawyer, provided the County Office of Law with the additional information it requested.

On September 17, 2003, Mr. Timothy Kotroco, current Director of PADM and successor to Mr. Arnold Jablon, finally responded to Mr. Larson's original April 14 zoning verification request, advising that the Holbrook Road property is a permitted use as a matter of right exempt from special hearing requirements by operation of federal law.

After Mr. Kotroco's letter, PADM has had no involvement with the Holbrook Road property. Nothing has ever been "issued" by Mr. Kotroco's office. No special paper or document named "use permit" was ever sent to KHI and no license or action has been taken by PADM for any matter related to the Holbrook Road property.

Argument

A. Mr. Kotroco's September 17 Letter Is Not An "Order" or "Decision."

Mr. Kotroco's letter of September 17, 2003 is not an executive, administrative or adjudicatory order of the sort the CBA has the power to hear under the Baltimore County Charter, §602. It is a verification of zoning, as requested. The letter merely states and affirms the application of existing law, i.e., that the proposed use is one permitted under the provisions and protections of the federal Fair Housing Act.

The Appellant seizes on the semantics used in the correspondence to re-characterize a zoning verification as a

permit. In fact, no permit was required, none issued and none exists because PADM recognized that there was nothing further required of KHI to allow the use.

A procedure exists within PADM in those instances where the Baltimore County Zoning Regulations ("BCZR") dictate that a use permit be obtained. An examination of zoning forms and applications available at the zoning office and listed on the Baltimore County web site enumerates those uses. None applies in the instant case. In fact, once the determination was made that federal law controls this use, no permit of any character was required as a pre-condition of KHI's use and occupancy.

Under the language of United Parcel Service, Inc. v. People's Counsel, 336 Md 569, 650 A2d 226 (1994), a re-iteration or re-affirmation is not a "decision" susceptible of appeal. A zoning verification is a re-iteration of the law. The letter from Mr. Kotroco did not, despite the terminology, grant, deny, decide or order anything. Had no letter been written, the use would still be permitted by right under existing law. The letter merely explained the application and mandate of federal law to the use in question, and verified that the use is permitted in the zone. As such, the letter does not rise to the level of a decision appealable to the County Board of Appeals.

B. The Board Has No Jurisdiction to Decide Issues of Federal Law.

The Appellant contends that it is entitled to an evidentiary hearing on a host of federal questions under federal court interpretations of the Fair Housing Act, a federal law enacted in 1968 and since amended in 1988 that protects persons with disabilities against discrimination in housing. The Appellant explains that the types of federal law issues that it wants to have this Board consider include: whether the boys in KHI's program are "disabled" within the meaning of the Fair Housing Act; whether the boys have impairments that are "substantial limitations" within the meaning of the Fair Housing Act; whether the boys are in the home "because of their disabilities" within the meaning of the Fair Housing Act; and whether the home is "therapeutic" in nature and a benefit to the boys within the meaning of the Fair Housing Act. Appellant's Brief, pp. 3-4.

In addition to these specific federal questions regarding the Holbrook Road site, the Appellant wants this Board to explore Baltimore County's compliance with federal law in the general sense. For example, the Appellant would like this Board to consider whether Baltimore County provides reasonable accommodations to its disabled citizens, whether Baltimore County has adequately accommodated those citizens, whether the Liberty Road corridor has had its fair share of housing for persons with disabilities, and whether Baltimore County acts with discriminatory

animus against persons with disabilities. (Appellant's Brief, pp. 4-6).

All these federal inquiries are beyond the authority of the Board. The appellate jurisdiction of a county board of appeals, set forth in Article 25A, § 5(U) of the Maryland Annotated Code, is limited in scope, allowing a board to hear exclusively those "*matters arising* (either originally or on review of the action of an administrative officer or agency) *under any law, ordinance, or regulation of, or subject to amendment or repeal by, the county council,* " which include "an application for a zoning variation or exception...; the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, ... or other form of permission or of any adjudicatory order..." (emphasis added).

Accordingly, while the Board clearly has authority to consider matters arising under the local laws of the Baltimore County Council, it has no authority to consider questions or matters arising under *federal* law. Indeed, the Appellant, who has the burden to demonstrate that this Board has jurisdiction, cites no authority to the contrary.

The Board's jurisdiction is also set forth in §602 of the Baltimore County Charter, which incorporates Article 25A by reference. This provision also fails to provide the Board with any

specific power or authority to consider matters of federal law.

Section 602 provides as follows:

[T]he county board of appeals shall have and may exercise the following functions and powers:

(a) *Appeals from orders relating to zoning.* The county board of appeals shall have and exercise all the functions and duties relating to zoning described in Article 25A of the Annotated Code of Maryland... as such functions and powers may be prescribed by legislative act of the County Council...

(b) *Appeals from orders relating to licenses.* The county board of appeals shall have and exercise all the functions and powers of the board of license appeals as such functions and powers are prescribed in the public local laws of the county in effect at the time of the adoption of this Charter...

(c) *Appeals from orders relating to building.* The county board of appeals shall hear and decide all appeals from orders relating to building...

(d) *Appeals from executive, administrative and adjudicatory orders.* The county board of appeals shall hear and decide appeals from all other administrative and adjudicatory orders as may from time to time be provided by Article 25A of the Annotated Code of Maryland (1957 Edition), as amended, or by legislative act of the county council not inconsistent therewith...

(e) The county board of appeals shall have original and exclusive jurisdiction over all petitions for reclassification...

(emphasis added).

Thus, while §602 confers on the Board the authority to consider appeals from orders relating to "zoning," "licenses," "buildings," "executive or administrative agencies," and grants it authority to have original jurisdiction to hear "petitions for

reclassification," it has no authority to hear the types of federal questions that the Appellant raises. For such questions that affect the national and federal interest, the Appellant might have a forum in a state or federal court, but not here before the CBA.

C. The Appellant Has No Standing to Appeal.

The Appellant, Holbrook Association, contends it has standing to note this appeal under both the Baltimore County Zoning Regulations and the Baltimore County Code. It has made no showing that the instant case meets the standards of either. No such right accrues under any theory advanced by the Appellant.

The September 17, 2003 letter is not a decision of the Baltimore County Zoning Commissioner, so BCZR §500.10 simply does not apply.

If, as the Appellant contends, Baltimore County Code §26-132 were to confer standing on the Appellant, the Appellant has failed to demonstrate that it meets the criteria set forth therein, or that the letter itself constitutes an appealable decision.

In particular, §26-132(b) includes certain associations within the definition of person aggrieved entitled to appeal certain decisions. To fall within the language of the Code:

1. An association must be duly constituted. The Appellant has not demonstrated that it is duly organized under Maryland law. In fact, an examination of the corporations index of the state Department of Assessments reveals **no** incorporated association

organized as the "Holbrook Community Association." The Appellant has produced no organizational documents to support its assertion.

2. The property or issue which is the subject of the appeal must be within the geographic limits of the association, as those limits are set forth in the organizational documents for an incorporated association. If the association is not incorporated, then those limits should exist by a metes and boundaries description for the association contained in a zoning map, plat or similar document on file at the county, land records of other county governmental agency or department. If no such description exists, then by a street, road or thoroughfare description for the association contained in a zoning map, plat or other similar document filed as described above. The Appellant has produced no description or other document to support its assertion.

3. The property is within the association's discernable tax base, or *"of such a nature as to personally and specifically affect, damage, or impact the members of the association in a way different from that suffered by the members of any other associations or in a way different from a general interest such as is the concern shared by the public in general."* (emphasis added). Appellant has not identified the association's discernable tax base, nor has Appellant suggested in any way that the use impacts its members in a way different from that of the general public.

4. The association must comply with the rules of procedure of the County Board of Appeals.

The Appellant has failed to demonstrate that it meets any of the statutory criteria for standing for a duly constituted association, nor has it, by its own admission, complied with the rules of this Board of Appeals. Thus, no statute nor other theory confers standing on the Appellant. Bald and unsupported assertions are not adequate to bring the so-called association within the ambit of the County Code.

Even had Appellant tried to demonstrate that it met some of the code requirements, it utterly failed to comply with the rules of the Board.

Absent a statutory right to note the appeal, no right arises under Maryland case law which would permit the Appellant to bring this appeal. A person bringing an appeal must suffer a wrong differing in character and kind from that suffered by the general public. This Appellant has no such distinguishing interest as enunciated in Bryniarski v. Montgomery Co., 247 Md. 137, 230 A.2d 289 (1967).

D. The Appellant Has Failed to Properly Note Its Appeal.

Compliance with the Rules of the Board arises two times - both under the very code section the Appellant cites and under Appendix H ("RULES OF PRACTICE AND PROCEDURE OF THE BALTIMORE COUNTY BOARD OF APPEALS") to the Baltimore County Zoning Regulations. Such

compliance is mandatory, not discretionary, and as such, should not be ignored.

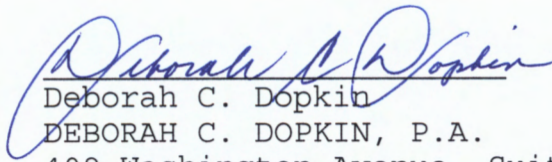
The cardinal rule of statutory interpretation is "to ascertain and give effect to the intention of the legislative body which enacted the statute." Harford County v. McDonough, 536 Md. App. 119, 123 (1988) (citations omitted). This rule, like other generally applicable rules of statutory construction, applies with equal force to zoning and land use regulations. While, to be sure, such regulations have been recognized as being in derogation of common-law rights regarding use of property, Maryland courts have routinely recognized that such laws nevertheless "should be liberally construed to accomplish their plain purpose and intent." See, e.g. Aspen Hill Venture v. Montgomery County Council, 265 Md. 303, 308 (1972) (emphasis added) (citing Landay v. Board of Zoning Appeals, 173 Md. 460, 466 (1938)); Harford County v. McDonough, 74 Md. App. at 123. Maryland courts have routinely recognized that the provisions of zoning ordinances and land use regulations, like any other statutory provisions, must be considered in their entirety, their parts to be read together and reconciled and given effect to the extent possible. See, e.g., Smith v. Miller, 239 Md. 390 (1968); Gruver-Cooley Jade Corp. v. Perlis, 252 Md. 684, 692-93 (1968); Bowie Volunteer Fire Dep't & Rescue Squad, Inc. v. County Comm'rs of Prince George's County, 255 Md. 381, 387 (1969).

The rule is intended to identify a party with certainty. The need to apply and enforce the rule could not be better demonstrated than in this case where the Appellant's association does not exist among the state corporate records, and KHI could not, in spite of its attempts to do so in defending its rights, readily identify the Appellant, its resident agent, geographic boundaries or members. It is a basic precept of our system of laws that a party should be able to identify those taking action against it. Without compliance with the Board's rules, KHI's ability to do so would be frustrated.

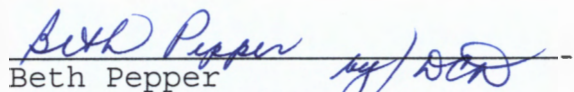
Conclusion

Wherefore, for all these reasons, this Board has no jurisdiction to hear this appeal and the motion to dismiss should be granted.

Respectfully submitted,


Deborah C. Dopkin
DEBORAH C. DOPKIN, P.A.

409 Washington Avenue, Suite 1000
Towson, Maryland 21204
(410) 821-0200


Beth Pepper

BETH PEPPER, PA.
201 N. Charles Street, Suite 1700
Baltimore, Maryland 21201
(410) 752-2744

ATTORNEYS FOR RESPONDENT,
KHI SERVICES, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 19th day of April, 2004, a copy of the foregoing Reply Memorandum was hand delivered to Steven K. Fedder, Esquire, Piper Rudnick, LLP, 6225 Smith Avenue, Baltimore, Maryland 21209-3600 and Michael Ramsey, Esquire, 2122 Maryland Avenue Baltimore, Maryland, 21218, attorneys for Appellant, Holbrook Community Association; and to Edward J. Gilliss, Esquire and Margaret Z. Ferguson, Esquire, County Attorneys, 400 Washington Avenue, Towson, Maryland 21204.


Deborah C. Dopkin

C:\docs\DCD\ZONING\KHI SERVICES\dcreplybrief3.wpd

In the Matter of:	*	BEFORE THE
Karma Academy Group Home	*	BOARD OF APPEALS
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In addition to these specific federal questions regarding the Holbrook Road site, the Appellant wants this Board to explore Baltimore County's compliance with federal law in the general sense. For example, the Appellant would like this Board to consider whether Baltimore County provides reasonable accommodations to its disabled citizens, whether Baltimore County has adequately accommodated those citizens, whether the Liberty Road corridor has had its fair share of housing for persons with disabilities, and whether Baltimore County acts with discriminatory

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Accordingly, while the Board clearly has authority to consider matters arising under the local laws of the Baltimore County Council, it has no authority to consider questions or matters arising under federal law. Indeed, the Appellant, who has the burden to demonstrate that this Board has jurisdiction, cites no authority to the contrary.

The Board's jurisdiction is also set forth in §602 of the Baltimore County Charter, which incorporates Article 25A by reference. This provision also fails to provide the Board with any

specific power or authority to consider matters of federal law.

Section 602 provides as follows:

[T]he county board of appeals shall have and may exercise the following functions and powers:

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(b) *Appeals from orders relating to licenses.* The county board of appeals shall have and exercise all the functions and powers of the board of license appeals as such functions and powers are prescribed in the public local laws of the county in effect at the time of the adoption of this Charter...

(c) *Appeals from orders relating to building.* The county board of appeals shall hear and decide all appeals from orders relating to building...

(d) *Appeals from executive, administrative and adjudicatory orders.* The county board of appeals shall hear and decide appeals from all other administrative and adjudicatory orders as may from time to time be provided by Article 25A of the Annotated Code of Maryland (1957 Edition), as amended, or by legislative act of the county council not inconsistent therewith...

(e) The county board of appeals shall have original and exclusive jurisdiction over all petitions for reclassification...

(emphasis added).

Thus, while §602 confers on the Board the authority to consider appeals from orders relating to "zoning," "licenses," "buildings," "executive or administrative agencies," and grants it authority to have original jurisdiction to hear "petitions for

reclassification," it has no authority to hear the types of federal questions that the Appellant raises. For such questions that affect the national and federal interest, the Appellant might have a forum in a state or federal court, but not here before the CBA.

C. The Appellant Has No Standing to Appeal.

The Appellant, Holbrook Association, contends it has standing to note this appeal under both the Baltimore County Zoning Regulations and the Baltimore County Code. It has made no showing that the instant case meets the standards of either. No such right accrues under any theory advanced by the Appellant.

The September 17, 2003 letter is not a decision of the Baltimore County Zoning Commissioner, so BCZR §500.10 simply does not apply.

If, as the Appellant contends, Baltimore County Code §26-132 were to confer standing on the Appellant, the Appellant has failed to demonstrate that it meets the criteria set forth therein, or that the letter itself constitutes an appealable decision.

In particular, §26-132(b) includes certain associations within the definition of person aggrieved entitled to appeal certain decisions. To fall within the language of the Code:

1. An association must be duly constituted. The Appellant has not demonstrated that it is duly organized under Maryland law. In fact, an examination of the corporations index of the state Department of Assessments reveals no incorporated association

organized as the "Holbrook Community Association." The Appellant has produced no organizational documents to support its assertion.

2. The property or issue which is the subject of the appeal must be within the geographic limits of the association, as those limits are set forth in the organizational documents for an incorporated association. If the association is not incorporated, then those limits should exist by a metes and boundaries description for the association contained in a zoning map, plat or similar document on file at the county, land records of other county governmental agency or department. If no such description exists, then by a street, road or thoroughfare description for the association contained in a zoning map, plat or other similar document filed as described above. The Appellant has produced no description or other document to support its assertion.

3. The property is within the association's discernable tax base, or *"of such a nature as to personally and specifically affect, damage, or impact the members of the association in a way different from that suffered by the members of any other associations or in a way different from a general interest such as is the concern shared by the public in general."* (emphasis added). Appellant has not identified the association's discernable tax base, nor has Appellant suggested in any way that the use impacts its members in a way different from that of the general public.

4. The association must comply with the rules of procedure of the County Board of Appeals.

The Appellant has failed to demonstrate that it meets any of the statutory criteria for standing for a duly constituted association, nor has it, by its own admission, complied with the rules of this Board of Appeals. Thus, no statute nor other theory confers standing on the Appellant. Bald and unsupported assertions are not adequate to bring the so-called association within the ambit of the County Code.

Even had Appellant tried to demonstrate that it met some of the code requirements, it utterly failed to comply with the rules of the Board.

Absent a statutory right to note the appeal, no right arises under Maryland case law which would permit the Appellant to bring this appeal. A person bringing an appeal must suffer a wrong differing in character and kind from that suffered by the general public. This Appellant has no such distinguishing interest as enunciated in Bryniarski v. Montgomery Co., 247 Md. 137, 230 A.2d 289 (1967).

D. The Appellant Has Failed to Properly Note Its Appeal.

Compliance with the Rules of the Board arises two times - both under the very code section the Appellant cites and under Appendix H ("RULES OF PRACTICE AND PROCEDURE OF THE BALTIMORE COUNTY BOARD OF APPEALS") to the Baltimore County Zoning Regulations. Such

compliance is mandatory, not discretionary, and as such, should not be ignored.

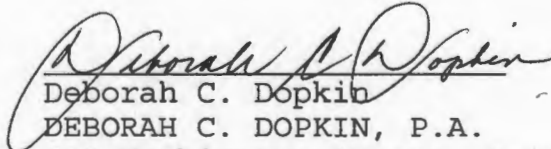
The cardinal rule of statutory interpretation is "to ascertain and give effect to the intention of the legislative body which enacted the statute." Harford County v. McDonough, 536 Md. App. 119, 123 (1988) (citations omitted). This rule, like other generally applicable rules of statutory construction, applies with equal force to zoning and land use regulations. While, to be sure, such regulations have been recognized as being in derogation of common-law rights regarding use of property, Maryland courts have routinely recognized that such laws nevertheless "should be liberally construed to accomplish their plain purpose and intent." See, e.g. Aspen Hill Venture v. Montgomery County Council, 265 Md. 303, 308 (1972) (emphasis added) (citing Landay v. Board of Zoning Appeals, 173 Md. 460, 466 (1938)); Harford County v. McDonough, 74 Md. App. at 123. Maryland courts have routinely recognized that the provisions of zoning ordinances and land use regulations, like any other statutory provisions, must be considered in their entirety, their parts to be read together and reconciled and given effect to the extent possible. See, e.g., Smith v. Miller, 239 Md. 390 (1968); Gruver-Cooley Jade Corp. v. Perlis, 252 Md. 684, 692-93 (1968); Bowie Volunteer Fire Dep't & Rescue Squad, Inc. v. County Comm'rs of Prince George's County, 255 Md. 381, 387 (1969).

The rule is intended to identify a party with certainty. The need to apply and enforce the rule could not be better demonstrated than in this case where the Appellant's association does not exist among the state corporate records, and KHI could not, in spite of its attempts to do so in defending its rights, readily identify the Appellant, its resident agent, geographic boundaries or members. It is a basic precept of our system of laws that a party should be able to identify those taking action against it. Without compliance with the Board's rules, KHI's ability to do so would be frustrated.

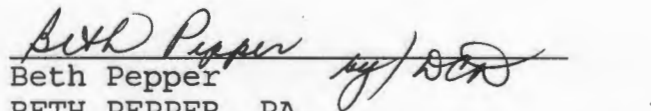
Conclusion

Wherefore, for all these reasons, this Board has no jurisdiction to hear this appeal and the motion to dismiss should be granted.

Respectfully submitted,


Deborah C. Dopkin

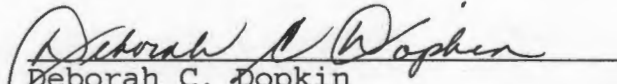
DEBORAH C. DOPKIN, P.A.
409 Washington Avenue, Suite 1000
Towson, Maryland 21204
(410) 821-0200


Beth Pepper
BETH PEPPER, PA.
201 N. Charles Street, Suite 1700
Baltimore, Maryland 21201
(410) 752-2744

ATTORNEYS FOR RESPONDENT,
KHI SERVICES, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 19th day of April, 2004, a copy of the foregoing Reply Memorandum was hand delivered to Steven K. Fedder, Esquire, Piper Rudnick, LLP, 6225 Smith Avenue, Baltimore, Maryland 21209-3600 and Michael Ramsey, Esquire, 2122 Maryland Avenue Baltimore, Maryland, 21218, attorneys for Appellant, Holbrook Community Association; and to Edward J. Gilliss, Esquire and Margaret Z. Ferguson, Esquire, County Attorneys, 400 Washington Avenue, Towson, Maryland 21204.


Deborah C. Dopkin

C:\docs\DCD\ZONING\KHI SERVICES\dcreplybrief3.wpd



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 18, 2004

NOTICE OF ASSIGNMENT /MOTION ONLY HEARING

CASE #: CBA-03-142

IN THE MATTER OF: *Karma Academy Group Home*
4202 Holbrook Road 2nd E; 4th C

9/17/03 – Letter from Timothy M. Kotroco, Director /PDM to KHI Services – issuance of use permit to KHI Services Inc., stating “that the Fair Housing Act mandates the issuance of said use permit.”

3/18/04 – Motion to Dismiss filed by Deborah C. Dopkin, Esquire, and Beth Pepper, Esquire, on behalf of KHI Services, Inc., Applicant.

A Motion Only Hearing has been assigned for the following date and time; argument to be received from counsel on this Motion only; no testimony or evidence to be received on 4/21/04 on the merits of this appeal; said motion hearing has been:

ASSIGNED FOR: WEDNESDAY, APRIL 21, 2004 at 9:00 a.m.

NOTE: Any response to Applicant’s Motion to Dismiss must be filed no later than Wednesday, April 7, 2004 (Original and three [3] copies).

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board’s Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board’s Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco, Administrator

c:	Counsel for Appellants /Protestants	: Steven K. Fedder, Esquire
	Appellants /Protestants	: Holbrook Community Association
	Counsel for Applicant	: Beth Pepper, Esquire
	Co-Counsel for Applicant	: Deborah C. Dopkin, Esquire
	Applicant	: Roger D. Larson, M.G.A. /HCA
		Executive Director /KHI Services, Inc.
	Juanita E. Hoyle, Licensing /Compliance Officer	
	Maryland Dept. of Juvenile Justice	
	Lawrence E. Schmidt, Zoning Commissioner	
	John R. Alexander, Planner /PDM	
	Jeffrey N. Perlow, Planner /PDM	
	Timothy M. Kotroco, Director /PDM	
	Nancy C. West, Assistant County Attorney	
	Margaret F. Ferguson, Assistant County Attorney	
	Edward J. Gilliss, County Attorney	



STEVEN K. FEDDER
steven.fedder@piperrudnick.com
direct 410.580.4145 fax 410.580.3145

April 7, 2004

VIA HAND DELIVERY

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

RECEIVED
APR 07 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Re: *In re Karma Academy Group Home*
Case No. CBA-03-142

Dear Sir or Madam:

Enclosed for filing in the above-captioned matter, please find an original and three copies of Appellant's Memorandum in Opposition to Motion to Dismiss. Please return a date-stamped copy to me with the waiting messenger.

Thank you for your attention to this matter.

Very truly yours,



Steven K. Fedder

SKF/jll
Enclosures

cc: Deborah Dopkin, Esq.
Beth Pepper, Esq.
Edward J. Gillis, County Attorney
Margaret Z. Ferguson, Assistant County Attorney

IN THE MATTER OF:
Karma Academy Group Home
4202 Holbrook Road
2nd Election District
4th Councilmanic District

Case No. CBA-03-142

Holbrook Community
Association,
Appellant

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

*
*

RECEIVED
APR 07 2004
BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

Appellant Holbrook Community Association, by its attorneys Steven K. Fedder and Michael Ramsey, submits this Memorandum in Opposition to the Motion to Dismiss filed by Respondent, KHI Services, Inc.

**THE BALTIMORE COUNTY ZONING REGULATIONS ARE
NOT PRE-EMPTED BY THE FEDERAL FAIR HOUSING ACT**

This matter comes before the Board of Appeals of Baltimore County as a result of the issuance of an order authorizing Respondent to operate a group home for adjudicated delinquents licensed by the Maryland Department of Juvenile Services. A timely appeal of that order followed, but now, Respondents seek the dismissal of that appeal.

The issue of whether the use of the property is controlled by the Federal Fair Housing Act, 42 U.S.C. § 3604(f) *et. seq.*, and if so, whether the needs of handicapped citizens of Baltimore County are reasonably accommodated, is the issue which must be tried before the Board of Appeals. Evidence will have to be presented by both sides to determine whether, as Appellant believes, the adolescent offenders placed in the facility by the Department of Juvenile Justice are there because of having committed crimes, not because of their disabilities, or

whether they are there because they have a disability which interferes with their major life activities, as contended by Respondent.

The Maryland Court of Appeals previously has explained that, unless there is an express exemption given by statute or other unequivocal language of the General Assembly, temporary housing facilities, even when licensed by the State, must comply with local zoning regulations. *See Board of Child Care of Baltimore Annual Conference of the Methodist Church v. Harker*, 316 Md. 683 (1989). In *Harker*, a nonprofit corporation purchased a tract of land on Liberty Road in Baltimore County. The facility proposed was to house non-delinquent children who were victims of serious physical, sexual, and emotional abuse. Because of its size, the facility, which otherwise would have met the definition of a community care center, was not permitted in an R.C. 5 zone. *Id.* at 685-86. The Zoning Commissioner erroneously believed that such facilities were exempt from county zoning regulations because the corporation that owned the facility was licensed by the Social Services Department of the Maryland Department of Human Resources to provide the proposed services. *Id.* at 686. The Court of Appeals held that "it is not the law of Maryland that a nonprofit corporation which voluntarily contracts to perform a governmental service required by State law on property which it owns is entitled to the State's immunity from municipal zoning ordinances." *Id.* at 993. The Court further found that there was no conflict between State law and the county zoning ordinance, noting that BCZR does not prohibit facilities such as the one proposed, it merely requires them "to operate subject to compliance with zoning regulations." *Id.* at 699.

There is no doubt that the General Assembly is aware of the steps that it must take to exempt a facility from local zoning regulations. Indeed, it has done so in certain instances. For example, a "small private group home" licensed under the Health-General Article of the

Maryland Code “(i) Is deemed conclusively a single-family dwelling; and (ii) Is permitted to locate in all residential zones.” See MD. CODE ANN., HEALTH-GENERAL § 10-518. The General Assembly, however, specifically excluded facilities such as the one proposed by KHI from this exemption. Section 10-514 provides, in relevant part, “Private group home” does not include “. . . Any facility that is regulated by the Department of Juvenile Justice.” See MD. CODE ANN., HEALTH-GENERAL § 10-514.

Here, as did the appellants in *Harker*, KHI has targeted the area of Baltimore County known as the Liberty Road Corridor. KHI hopes that the proposed facility will be licensed by the Department of Juvenile Justice and claims that the occupants of the facility will be “adolescent boys who exhibit mental health, substance abuse, and/or behavior problems,” and who will reside in the facility for three to six months. Such a facility would, by no means, be a single-family home, as the transient residents would not all be from the same family. The facility also would not be a community care center, as it would not be licensed by the Maryland State Department of Health and Mental Hygiene or by the Maryland State Department of Social Services. Accordingly, the operation of such a facility in an R.C. 5 zone is not permitted as of right or by special exception. Moreover, as the Court of Appeals has explained, such a facility would not be exempt from Baltimore County’s zoning regulations. Indeed, the General Assembly has expressly stated that such a facility should not be included with those facilities deemed single-family dwellings and permitted to locate in all residential zones.

The proposed facility also is not exempted from zoning regulations by federal statutes. Recently, courts have decided that city and county councils are not required to grant use permits for facilities such as the one proposed by KHI and that such facilities are not protected by the Fair Housing Amendments Act or the Americans with Disabilities Act. See, e.g., *Wisconsin ex*

rel. Bruskewitz v. City of Madison, 635 N.W.2d 797 (Wisc. App. 2001). In *Bruskewitz*, a corporation intended to operate a group home for eight delinquent adolescents in a residential neighborhood and sought a conditional use permit exempting it from the applicable zoning regulations. The corporation claimed that because some of its residents had disabilities, the proposed use fell under the FHAA and the ADA. *Id.* at 801. The purpose of the group home was “to teach the boys skills necessary to live independently and successfully.” *Id.* at 800. “The average length of stay [was] between three and six months . . . The boys [were] supervised by either one or two staff members at all times.” *Id.* The boys had been referred by the Wisconsin Department of Corrections and Dane County Human Services. *Id.* The Court of Appeals of Wisconsin noted that the boys were referred to the facility based upon whether they were eligible to leave a correctional facility and had the need for independent living skills to reintegrate into the community, rather than based upon their disabilities. *Id.* at 806. Furthermore, there was no evidence that the boys had been removed from their homes or placed at the facility because their disabilities prevented them from living in a single-family home. *Id.* Accordingly, the court concluded that the FHAA and the ADA did not require the city to make reasonable accommodations because the proposed residents would not be living in the group home because of their disabilities. *Id.* at 807.

Even if the Board of Appeals determines that the individuals placed in the home by the Department of Juvenile Services are “disabled” within the meaning of the Fair Housing Act, the County still may impose reasonable restrictions on the placement of group homes, so long as there is no discriminatory intent on the part of the County. This matter cannot be resolved on a motion to dismiss, but requires witnesses and testimony on the subject matter. Asking the Board of Appeals to dismiss at this time is thus premature.

In enacting the Fair Housing Act, "Congress clearly did not contemplate abandoning the deference that courts have traditionally shown to such local zoning codes. And the FHA does not provide a blanket waiver of all facially neutral zoning policies and rules, regardless of the facts, which would give the disabled carte blanche to determine where and how they would live regardless of zoning ordinances to the contrary." *Bryant Woods Inn, Inc. v. Howard County, Md.*, 124 F. 3d 597, 603 (4th Cir. 1997). (Affirming size limitations on a group home for elderly disabled persons." The juvenile offenders placed in Respondent's group home, whether handicapped or not, are not free to determine where and how they would live, as a result of having been involuntarily committed to the custody of the Department of Juvenile Services. "Seeking to recognize local authorities' ability to regulate land use and without unnecessarily undermining the benign purposes of such neutral regulations, Congress required only that local government make 'reasonable accommodation' to afford persons with handicaps 'equal opportunity to use and enjoy' housing in those communities." *Id.*

Both Baltimore County and the State of Maryland have made reasonable accommodations to afford persons with equal opportunity to use and enjoy housing in the community. Indeed, the Liberty Road corridor of Baltimore County has by far the densest population of group homes for disabled persons in the state. By statute and zoning regulation, group homes licensed by the Department of Health and Mental Hygiene and the Department of Social Services are specifically deemed to be single family homes for the purpose of local zoning regulations. Group homes licensed by the Department of Juvenile Services enjoy no similar designation. *See* MD. CODE ANN., HEALTH-GENERAL § 10-514.

The right of a municipality to require a permit for the placement of a group home for troubled youths was recently affirmed by the United States Court of Appeals for the Tenth

Circuit in *Key's Youth Services, Inc. v. City of Olathe, Kansas*, 248 F.3d 1267 (10th Cir. 2001). In *Key*, the court held that the City of Olathe did not issue the requested permit because of public safety or property damage concerns, not because of any attempt to discriminate on the basis of handicap or family status. *Id.* at 1273-74.

The Baltimore County Zoning Code and the Annotated Code of Maryland specifically treat group homes licensed by the Departments of Health and Mental Hygiene and Social Services as single family residences. Those group homes licensed by the Department of Juvenile Services are not treated as single family residences. By specifically excluding group homes licensed by the Department of Juvenile Services for such treatment, the Legislature has not violated the Fair Housing Act by either intentionally discriminating against handicapped persons or by failing to make reasonable accommodations. Therefore, the order of September 17, 2003 should be reversed.

**THE SEPTEMBER 17, 2003 RULING IS A FINAL ORDER SUBJECT
TO APPEAL TO THE BOARD OF APPEALS**

The September 17, 2003 letter from Mr. Kotroco is a final order susceptible to appeal under Baltimore County Charter § 602. The second ground for its motion to dismiss is the contention by Respondent that the September 17, 2003 letter from Mr. Kotroco is not a final order and not susceptible to appeal. This matter was originally initiated by Respondent by letter dated April 14, 2003 to Arnold Jablon, Director of Baltimore County Department of Permits and Development Management, in which Respondent sought a formal exception from zoning restrictions for the property at issue. On September 17, 2003, after an exchange of information between Respondent and the Office of Permits and Development Management, Mr. Kotroco issued a letter stating, in particular, that "Based on this information, my office, in conjunction

with the Office of Law for Baltimore County, has determined that the Fair Housing Act mandates the issuance of said use permit to KHI Services, Inc.” Mr. Kotroco’s letter went on to state that “If, at any time, the use of this property changes, such that one or more non-handicapped residents is housed in the group home or if a resident who poses a direct threat is housed in the home, KHI Services will be in violation of this use permit.”

Section 602(d) of the Baltimore County Charter provides that the Board of Appeals has jurisdiction to hear appeals from any executive, administrative and adjudicatory order. It cannot be seriously contended that Mr. Kotroco’s decision, as contained in his September 17, 2003 letter, is not an executive, administrative or adjudicatory order. Indeed, it grants permission for the use of the home, and limits that provision to certain circumstances. It is not, as contended by Respondent, a mere restatement of applicable law affirming a use as a matter of right. *See United Parcel Service, Inc. v. People’s Counsel*, 336 Md. 569, 650 A.2d 226 (1994), in which the letter issued by the administrative agency was a mere repetition of rights previously granted by that Board.

Baltimore County Code, Section 26-132 is of no assistance to Respondent. Section 26-132(a) provides “that any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by any decision or order of the Zoning Commissioner or the Director of Zoning Administration and Development Management shall have the right to appeal therefrom to the County Board of Appeals.” Nothing in Section 26-132 requires that there be a particular form of “final order” for an appeal to lodge as a matter of right. Indeed, the statute specifically provides that an appeal will lie from any “decision or order.”

**THE HOLBROOK COMMUNITY ASSOCIATION HAS STANDING
TO CHALLENGE THE SEPTEMBER 17, 2003 ORDER**

The Holbrook Community Association is a person aggrieved as set forth in Baltimore County Zoning Regulation Section 500.10. In Section 500.10 the Baltimore County Zoning Regulations provides that "any person or persons, jointly or severally, or any taxpayer or any official, department, board or bureau of Baltimore County feeling aggrieved by any decision of the Zoning Commissioner shall have the right to appeal therefrom to the County Board of Appeals." Although Section 500.10 does not specifically refer to a community association's right to bring an appeal, that right is preserved in Section 26-132 of the Baltimore County Code, which provides

For purposes of this Section, the term "person aggrieved or feeling aggrieved" includes a duly constituted civic, improvement, or community association if:

(1) the property or issue which is the subject of the final order being appealed is:

a. located within the geographical limits of the association

The Holbrook Community Association is a duly constituted community organization and the home falls within its community. Therefore, the argument that the Holbrook Community Association lacks standing is without merit.

To the extent that Respondent is arguing that Baltimore County Zoning Regulation § 500.10 deprives the Board of Appeals of jurisdiction, Respondent errs. Section 26-117 of the Baltimore County Code specifically provides that "in the case of any conflict between such regulations and the provisions of [Title 26], these provisions shall control." Since Section

26-132 of the Code explicitly grants community associations the right to appeal to the Board of Appeals, Baltimore County Zoning Regulation § 500.10 cannot be used to abrogate that right.

Finally, Respondent contends that the Holbrook Community Association must demonstrate that its interest is

of such a nature as to personally and specifically affect, damage, or impact the members of the association in a way different from that suffered by the members of any other associations or in a way different from a general interest such as is the concern shared by the public in general; or of such a nature or type as to give the members of the association a valid and discernible property interest therein or right thereto.

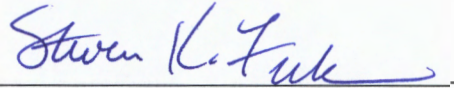
This language is quoted directly from § 26-132(b) which is an alternative basis for defining whether the term “person aggrieved or feeling aggrieved” includes a duly constituted civic, improvement, or community association.” It is an alternative to Section 26-132(b)(1)(a).

**THE HOLBROOK COMMUNITY ASSOCIATION’S APPEAL
HAS BEEN PROPERLY NOTICED**

Appellant Holbrook Community Association has complied with the formal mandatory requirements of the Rules of Practice and Procedure of the Baltimore County Board of Appeals. Respondent’s final contention is that the Appellant has failed to comply with Rule 3 of the Rules of Practice and Procedure of the County Board of Appeals. The only information required pursuant to Board Rule 3 is that the notice of appeal state the names and addresses of the persons taking such appeal. The notice was filed by the Holbrook Community Association, and contains the address of its counsel. However, to avoid any confusion, contemporaneously herewith, the Holbrook Community Association is filing an amended notice of appeal in which it specifically states that the address for the Holbrook Community Association is c/o Meg Bober, 4110 Holbrook Road, Randallstown, MD 21133.

WHEREFORE, for the foregoing reasons, the Holbrook Community Association requests that the Motion to Dismiss be denied.

Respectfully submitted,



Steven K. Fedder
PIPER RUDNICK LLP
6225 Smith Avenue
Baltimore, Maryland 21209-3600
(410) 580-4145

Michael Ramsey
2122 Maryland Avenue
Baltimore, MD 21218
(410) 752-1646

Attorneys for Appellant

CERTIFICATION OF SERVICE

I HEREBY CERTIFY, that on this 7th day of April, 2004, a copy of the foregoing

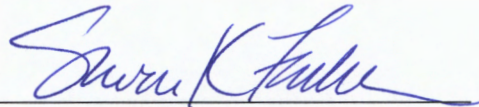
Memorandum in Opposition to Motion to Dismiss was mailed, postage prepaid to:

Deborah C. Dopkin, Esq.
DEBORAH C. DOPKIN, P.A.
409 Washington Avenue, Suite 1000
Towson, Maryland 21204

Beth Pepper, Esq.
201 North Charles Street
Suite 1700
Baltimore, Maryland 21201

Attorneys for Respondent KHI Services, Inc.

Edward J. Gilliss, Esq.
Margaret Z. Ferguson, Esq.
400 Washington Avenue
Towson, MD 21204



Steven K. Fedder

STEVEN K. FEDDER
steven.fedder@piperrudnick.com
direct 410.580.4145 fax 410.580.3145

April 7, 2004

VIA HAND DELIVERY

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

RECEIVED
APR 07 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Re: *In re Karma Academy Group Home*
Case No. CBA-03-142

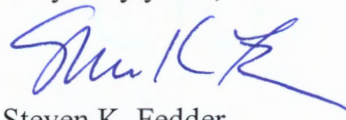
Dear Sir or Madam:

Please amend our Notice of Appeal of the September 17, 2003 Order by Timothy M. Kotroco, Director for the Office of Permits & Development Management, to include the address of the Holbrook Community Association as c/o Meg Bober, 4110 Holbrook Road, Randallstown, Maryland 21133.

In all other respects, the other provisions of the Notice are unchanged.

Thank you for your attention to this matter.

Very truly yours,



Steven K. Fedder

SKF/jll
Enclosure

DEBORAH C. DOPKIN, P.A.
ATTORNEY AT LAW
409 WASHINGTON AVENUE, SUITE 1000
TOWSON, MARYLAND 21204
TELEPHONE 410-821-0200
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e-mail ddopkin@dopkinlaw.com

DEBORAH C. DOPKIN

March 18, 2004

RECEIVED
MAR 18 2004
BALTIMORE COUNTY
BOARD OF APPEALS

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

RE: Karma Academy Group Home
4202 Holbrook Road
CBA-03-142

Dear Ms. Bianco:

Enclosed for filing please find a Motion to Dismiss with regard to the above captioned case. Please set this matter in for a hearing before the Board.

Thank you for your prompt attention to this matter.

Very truly yours,


Deborah C. Dopkin

DCD/kmc

Enclosure

cc: Steven K. Fedder, Esquire
Edward J. Gilliss, Esquire
Margaret Z. Ferguson, Esquire
Beth Pepper, Esquire
Mr. Roger Larson

IN THE MATTER OF:
Karma Academy Group Home
4202 Holbrook Road
2nd Election District
4th Councilmanic District

Case No. CBA-03-142

Holbrook Community
Association,
Appellant

* BEFORE THE
*
* BOARD OF APPEALS
*

* OF

*
* BALTIMORE COUNTY
*

* * * * *

MOTION TO DISMISS

Respondent, KHI Services, Inc., by its attorneys, Deborah C. Dopkin, Deborah C. Dopkin, P.A., and Beth Pepper, moves that the appeal filed by Appellant, Holbrook Community Association, be dismissed for lack of subject matter jurisdiction, and specifically states as follows:

1. The use of the property is controlled by the federal Fair Housing Act (the "Act"), 42 U.S.C. §3604(f) *et. seq.* which supercedes local zoning regulations. The Act mandates that a group home for persons with disabilities be treated as a single family home. The subject property is a residence for up to eight individuals with disabilities. Thus the use is permitted as a matter of right.

2. The letter from Mr. Timothy Kotroco, Director, Baltimore County Department of Permits and Development Management, dated September 17, 2003, is not a final order and is not susceptible to appeal. The Board is limited under the Baltimore County Charter, §602 to:

(d) Appeals from executive, administrative and adjudicatory orders...

Based on the holding in United Parcel Service, Inc. v. People's Counsel, 336 Md. 569, 650 A.2d 226 (1994), the September 17, 2003 letter is not an appealable decision. Merely restating applicable law affirming a use as a matter of right does not rise to the status of an order.

3. Similarly, Baltimore County Code §26-132, provides for the appeal of "any decision or order" of the Director. Applying the Parcel Service case, the September 17, 2003 letter does not constitute an appealable decision under Code §26-132.

4. The letter of Mr. Kotroco is an affirmation that the use is permitted as of right given that it is a single-family residence in a residential district. Since the use is permitted, the County had no need to and did not issue any form of permit. Having no such action arising from the County, there is nothing to appeal under the United Parcel decision. Accordingly, the Board has no jurisdiction to decide this appeal.

5. Appellant Holbrook Community Association is not a person "aggrieved" as set forth in the Baltimore County Zoning Regulation §500.10, and lacks the requisite standing to bring the subject appeal.

6. Appellant Holbrook Community Association is not a person "aggrieved" pursuant to Code §26-132 in that it does not have an interest of "such a nature as to personally and specifically

affect, damage, or impact the members of the association in a way different from that suffered by the members of any other associations or in a way different from a general interest such as is the concern shared by the public in general; or of such a nature or type as to give the members of the association a valid and discernible property interest therein or right thereto."

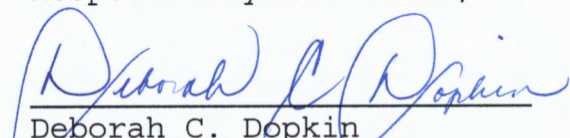
7. Appellant Holbrook Community Association lacks standing to bring this appeal pursuant to Baltimore County Code §7-36 under which the only party entitled to appeal the denial or issuance of a permit is the applicant therefor.

8. Appellant Holbrook Community Association failed to comply with the formal mandatory requirements of the Rules of Practice and Procedure of the County Board of Appeals. In particular, the letter of September 29, 2003, noting the appeal, fails to include information required pursuant to Board Rule 3. Compliance is mandatory both under the Board's own rules and under County Code §26-132.

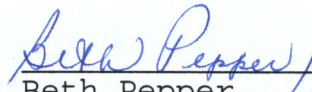
WHEREFORE, Respondent prays:

- A. That the Appeal be **dismissed**; and
- B. Such other and further relief as the nature of its cause may require.

Respectfully submitted,



Deborah C. Dopkin
DEBORAH C. DOPKIN, P.A.
409 Washington Avenue, Suite 1000
Towson, Maryland 21204
(410) 821-0200


Beth Pepper
201 North Charles Street
Suite 1700
Baltimore, Maryland 21201
(410) 752-2744

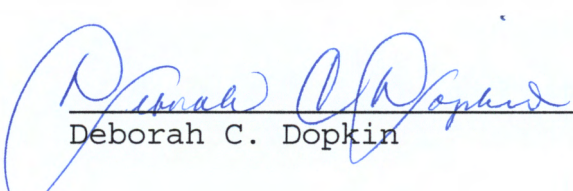
ATTORNEYS FOR RESPONDENT

MEMORANDUM OF POINTS AND AUTHORITY

1. Baltimore County Charter
2. Baltimore County Code, 1988, as amended
3. Baltimore County Zoning Regulations §500.10
4. Federal Fair Housing Act (the "Act"), 42 U.S.C. §3604(f)
5. United Parcel Service, Inc. v. People's Counsel, 336 Md. 569, 650 A.2d 226 (1994)

CERTIFICATION OF SERVICE

I HEREBY CERTIFY, that on this 18th day of March, 2004, a copy of the foregoing Motion to Dismiss was hand delivered or mailed, postage prepaid to Steven K. Fedder, Esquire, Piper Rudnick, 6225 Smith Avenue, Baltimore, Maryland 21209, Attorney for Holbrook Community Association; and to Edward J. Gilliss, County Attorney, 400 Washington Avenue, Towson, Maryland 21204.


Deborah C. Dopkin

DEBORAH C. DOPKIN, P.A.
ATTORNEY AT LAW
409 WASHINGTON AVENUE, SUITE 1000
TOWSON, MARYLAND 21204
TELEPHONE 410-821-0200
FACSIMILE 410-823-8509
e-mail ddopkin@dopkinlaw.com

DEBORAH C. DOPKIN

March 9, 2004

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

RE: Karma Academy Group Home
4202 Holbrook Road
CBA-03-142

Dear Ms. Bianco:

This office has been retained as co-counsel to represent KHI Services, Inc., the appellee, in the above captioned matter. Please enter my appearance in this matter and include me in all communications relating to the case, along with any notices that you send to lead counsel, Beth Pepper, Esquire.

Thank you for your prompt attention to this matter.

Very truly yours,


Deborah C. Dopkin

DCD/kmc

cc: Beth Pepper, Esquire
Mr. Roger Larson

C:\docs\KMC\DCD\LETTERS 2004\Bianco Kathleen-larson.wpd

RECEIVED
MAR 10 2004

BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED
POST - APPEAL



County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

January 6, 2004

NOTICE OF ASSIGNMENT

CASE #: CBA-03-142

IN THE MATTER OF: *Karma Academy Group Home*
4202 Holbrook Road 2nd E; 4th C

9/17/03 – Letter from Timothy M. Kotroco, Director /PDM to KHI Services –
issuance of use permit to KHI Services Inc., stating “that the Fair Housing Act
mandates the issuance of said use permit.”

ASSIGNED FOR:

WEDNESDAY, MARCH 3, 2004 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the
advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests
must be in writing and in compliance with Rule 2(b) of the Board's Rules. No
postponements will be granted within 15 days of scheduled hearing date unless in full
compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to
hearing date.

Kathleen C. Bianco
Administrator

c: Counsel for Appellants /Protestants
Appellants /Protestants

: Steven K. Fedder, Esquire
: Holbrook Community Association

Counsel for Applicant
Applicant

: Beth Pepper, Esquire
: Roger D. Larson, M.G.A. /HCA
Executive Director /KHI Services, Inc.

Juanita E. Hoyle, Licensing /Compliance Officer
Maryland Dept. of Juvenile Justice
Lawrence E. Schmidt, Zoning Commissioner
John R. Alexander, Planner /PDM
Jeffrey N. Perlow, Planner /PDM
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
Margaret F. Ferguson, Assistant County Attorney
Edward J. Gilliss, County Attorney

*PP'd to
6/03/04 -
reg. of Beth Pepper*



BETH PEPPER, ESQ.
Attorney at Law

201 N. CHARLES STREET, SUITE 1700
BALTIMORE, MARYLAND 21201

TEL (410) 752-2744
FAX (410) 752-7392
bethpepper@aol.com

Via Facsimile (410-887-3182) and First Class Mail

February 10, 2004

Ms. Kathleen Bianco
Administrator
County Board of Appeals
of Baltimore County
400 Washington Avenue
Towson, MD 21204

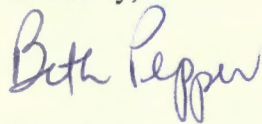
Re: **Request for Postponement**
Case No.: CBA-03-142K
In the Matter of Karma Academy Group Home
4202 Holbrook Road

Dear Ms. Bianco:

This is to request a postponement of the above-mentioned hearing scheduled on March 3, 2004 to give the party, KHI Services, Inc., additional time to secure local counsel with expertise in the hearing and zoning procedures of the Baltimore County Board of Appeals.

Thank you for your consideration in this matter.

Sincerely,



Beth Pepper

BP/rs

cc: Steven K. Fedder, Esq.
Margaret Ferguson
Roger Larson
Judith Bresler

RECEIVED

FEB 12 2004

BALTIMORE COUNTY
BOARD OF APPEALS

BETH PEPPER, ESQ.
Attorney at Law

201 N. CHARLES STREET, SUITE 1700
BALTIMORE, MARYLAND 21201

TEL (410) 752-2744
FAX (410) 752-7392
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Via Facsimile (410-887-3182) and First Class Mail

February 10, 2004

Ms. Kathleen Bianco
Administrator
County Board of Appeals
of Baltimore County
400 Washington Avenue
Towson, MD 21204

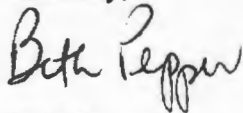
Re: **Request for Postponement**
Case No.: CBA-03-142K
In the Matter of Karma Academy Group Home
4202 Holbrook Road

Dear Ms. Bianco:

This is to request a postponement of the above-mentioned hearing scheduled on March 3, 2004 to give the party, KHI Services, Inc., additional time to secure local counsel with expertise in the hearing and zoning procedures of the Baltimore County Board of Appeals.

Thank you for your consideration in this matter.

Sincerely,



Beth Pepper

BP/rs

cc: Steven K. Fedder, Esq.
Margaret Ferguson
Roger Larson
Judith Bresler

Board of Appeals
KHI SERVICES, INC.
OPERATING ACCOUNT

Date 10/24/03 Check No. 20569 0020569

Invoice	Inv.Date	Inv.Amt	Disc/Fin	Prev Pmts	Due	Amt.Paid
	10/15/03				30.00	
		30.00				30.00
Total					30.00	
		30.00				30.00

khi services, inc

20528 BOLAND FARM ROAD, SUITE 101
GERMANTOWN, MD 20874
(240) 686-0707

SANDY SPRING NATIONAL BANK
OLNEY, MARYLAND 20832

65-109/550

0020569

Check No. 20569

Thirty and 00/100

DATE

AMOUNT

10/24/03 \$*****30.00

PAY
TO THE
ORDER
OF

Board of Appeals
Old Courthouse, Room #49
400 Washington Ave.,
Towson, MD 21204

OPERATING ACCOUNT

Ryan Janson

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.

⑈020569⑈ ⑆055001096⑆ 0108017997⑈

Please call me if you have any questions. Beth thought it was best for you to submit a check directly.

*Copies sent
10/29/03
tr*

TRANSMISSION VERIFICATION REPORT

TIME: 01/22/1991 13:00
NAME: BOARD OF APPEALS
FAX: 4108873182
TEL: 4108873180

DATE, TIME
FAX NO./NAME
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10/14 Spoke to Roxanne re: Copies
Amount due \$30.00.
When check received - will mail
copies
trs

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
FAX COVER SHEET

DATE: October 10, 2003

TO: Beth Pepper, Esquire

FAX : 410-752-7392

TELEPHONE: 410-752-2744

FROM: Kathleen Bianco

TELEPHONE: 410-887-3180

FAX : 410-887-3182

RE: Board's Rules and Copy of Appeal – Case No. CBA-03-142 /*In the Matter of:*
Karma Academy Group Home

Pursuant to our telephone conversation, attached are the following:

- A copy of the Board's Rules of Practice and Procedure
- A copy of the appeal filed by Mr. Fedder on behalf of the Holbrook Community Association
- A copy of the transmittal letter from Mr. Kotroco to Mr. Fedder

Please call me at 410-887-3180 should you have any questions.

Number of pages including this page: 11 (Eleven)

Original copy to follow : Yes No X

**Department of Permits and
Development Management**

Director's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
Tel: 410-887-3353 • Fax: 410-887-5708



Baltimore County

*James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director*

October 1, 2003

Mr. Steven K. Fedder
6225 Smith Avenue
Baltimore, MD 21209

Dear Mr. Fedder:

RE: Address: 4202 Holbrook Road

Please be advised that an appeal of the above-referenced case was filed in this office on September 29, 2003 by you on behalf of Holbrook Community Association. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

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

Sincerely,

A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

KT:rlh

c: Timothy Kotroco, Director of PDM
People's Counsel



6225 Smith Avenue
Baltimore, Maryland 21209-3600
main 410.580.3000 fax 410.580.3001

STEVEN K. FEDDER
steven.fedder@piperrudnick.com
direct 410.580.4145 fax 410.580.3145

September 29, 2003

VIA HAND DELIVERY

Office of Zoning
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Appeal of Director Kotroco's decision to issue a use permit for a group home
to be located at 4202 Holbrook Road, Second Election District.

On behalf of my client, the Holbrook Community Association, I submit this notice of appeal concerning the final order issued by Timothy M. Kotroco, Director for the Office of Permits & Development Management, on September 17, 2003 granting a use permit for a group home to be located at 4202 Holbrook Road, Randallstown, MD 21133. A copy of Director Kotroco's order is attached hereto as Exhibit A.

Enclosed with this letter is a check made payable to Baltimore County Government in the amount of Three Hundred Dollars (\$300.00) to cover the cost of the appeal and the posting of a sign on the property at issue.

Thank you for your attention to this matter.

Very truly yours,

Steven K. Fedder

Enclosures

**Department of Permits and
Development Management**

Director's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
Tel: 410-887-3353 • Fax: 410-887-5708



Baltimore County

*James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director*

September 17, 2003

Mr. Roger D. Larson, M.G.A./HCA
Executive Director
KHI Services, Inc.
20528 Boland Farm Road, Suite 101
Germantown, Maryland 20874

RE: Karma Academy Group Home, 4202 Holbrook Road, Second Election District

Dear Mr. Larson:

You have requested, through your attorney, that the Office of Permits and Development Management for Baltimore County issue a use permit for the above referenced group home which is proposed to be located at 4202 Holbrook Road. You have asserted through your attorney, that each resident of the home will be handicapped and therefore entitled to protection by the Federal Fair Housing Act. You have also asserted that no resident will pose a danger to himself or others. In addition, you have provided substantial factual information to support these assertions. Based on this information, my office, in conjunction with the Office of Law for Baltimore County, has determined that the Fair Housing Act mandates the issuance of said use permit to KHI Services, Inc.

If, at any time, the use of this property changes, such that one or more non-handicapped residents is housed in the group home or if a resident who poses a direct threat is housed in the home, KHI Services will be in violation of this use permit. Please be aware that this response applies to the Baltimore County Zoning Regulations and policies only, and does not apply to regulations enforced by other county and state agencies.

I trust that the information set forth in this letter is sufficiently detailed and responsive to your request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3353.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy M. Kotroco".

Timothy M. Kotroco, Director
Office of Permits & Development Management

c: Letter File

Office of Law

400 Washington Avenue
Towson, Maryland 21204
Tel: 410-887-4420 • Fax: 410-296-0931

James T. Smith, Jr., County Executive
Edward J. Gilliss, County Attorney



Baltimore County

*One of the Best-Managed
Counties in America*

July 15, 2003

Ms. Beth Pepper, Esq.
201 N. Charles Street, Suite 1700
Baltimore, Maryland 21201

Re: 4202 Holbrook Road

Dear Ms. Pepper:

Ed Gilliss has advised that you and he spoke on July 14, 2003. He has asked me, on behalf of the Baltimore County Department of Permits and Development Management, to analyze your letter of July 9 regarding the application by KHI Services, Inc. for a use permit for a proposed juvenile group home at 4202 Holbrook Road.

The County recognizes its obligation to comply with the federal Fair Housing Amendments Act of 1988. We trust that you and your client also recognize Baltimore County's obligation to apply and enforce County zoning regulations.

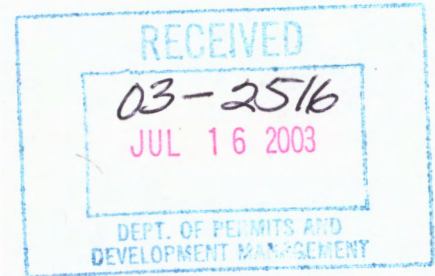
In order for this office to provide appropriate advice to the Department regarding KHI's application, we request that you provide additional information regarding several points raised in your letter.

1. Statement relating to "policy and practice" of Department

Please explain the factual basis for the second sentence in the following statement from your July 9 letter:

The information we provide also supports a determination that the home meets the definition of "family" under Section 101 of the Baltimore County Zoning Code at 1-15. We understand, too, that such a conclusion would be consistent with your office's policy and practice of the last several years to refrain from imposing special hearing requirements or other conditions on 8-person group homes licensed by the Maryland Department of Juvenile Justice.

While Baltimore County is specifically pre-empted by State law from applying zoning use restrictions to most State-licensed small private group homes, that pre-emption expressly excludes any facility that is regulated by the Department of Juvenile Justice.



Visit the County's Website at www.baltimorecountyonline.info



Printed on Recycled Paper

Ms. Beth Pepper, Esq.
July 15, 2003
Page two

See Md. Code, Art-Health General §10-514 (2000 Repl. Vol.). Baltimore County's policy and practice is to apply the Baltimore County Zoning Regulations to all requests for use permits, unless those regulations are pre-empted by State or Federal law.

2. Statement that all residents will be disabled

Please provide additional information to support the assertion that all of the residents will have handicaps within the scope of the Fair Housing Act.

You have asserted that these boys will each have a "diagnosis of mental illness based on a psychiatric evaluation", and that

[t]he illness is such that it will have a substantial impact on a boy's ability to care for himself, attend school, build relationships, or otherwise function without the support and structure offered by the home. As a by-product of mental illness, the boys are likely to have emotional or behavioral problems which substantially impair their ability to cope with life's daily activities and live in their home of origin.

Pepper Letter, Page 2. You have also stated that "some boys will spend their days at school." *Id.* These assertions do not contain sufficient specific factual information for us to advise whether the Fair Housing Act pertains to this application.

A person with a diagnosis of mental illness might or might not have a qualifying handicap, depending on the nature and/or severity of the illness. The applicable test for "handicap" under the Fair Housing Act requires an impairment "which substantially limits one or more of such person's major life activities." 42 U.S.C. §3602(h). Applicable regulations define "major life activities" as "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working." 24 C.F.R. §100.201(a)(2).

To assist us in evaluating KHI's request, please explain the factual basis for asserting that each resident will have a qualifying handicap within the coverage of the Fair Housing Act. Please also identify the agency or entity that will make this determination as part of a licensing or other regulated program.

3. Statement that no resident will be a danger to himself or others

Please provide additional information to support the assertion in your letter that "[n]o individual who is a danger to himself or others is eligible to live in the home."

Ms. Beth Pepper, Esq.
July 15, 2003
Page three

The federal Fair Housing Act includes a "direct threat" exception that provides:

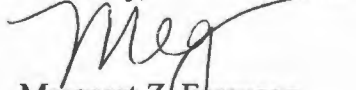
Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

42 U.S.C. §3604(f)(9).

To assist us in evaluating KHI's request, please explain the factual basis for asserting that no individual who is a danger to himself or others will live in the proposed home. Please include information about whether boys in the Community Detention program of the Department of Juvenile Services will be eligible to reside in the home.

Thank you for your prompt attention to these requests for additional information. We wish to provide appropriate advice to the Department as expeditiously as possible, in accordance with your request. Please contact me directly if you have questions or concerns.

Sincerely,



Margaret Z. Ferguson
Assistant County Attorney

cc: Edward J. Gilliss
Timothy M. Kotroco ✓

**Department of Permits and
Development Management****Baltimore County**

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

Director's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Tel: +10-887-3353 • Fax: 410-887-5708

September 17, 2003

Mr. Roger D. Larson, M.G.A./HCA
Executive Director
KHI Services, Inc.
20528 Boland Farm Road, Suite 101
Germantown, Maryland 20874

RE: Karma Academy Group Home, 4202 Holbrook Road, Second Election District

Dear Mr. Larson:

You have requested, through your attorney, that the Office of Permits and Development Management for Baltimore County issue a use permit for the above referenced group home which is proposed to be located at 4202 Holbrook Road. You have asserted through your attorney, that each resident of the home will be handicapped and therefore entitled to protection by the Federal Fair Housing Act. You have also asserted that no resident will pose a danger to himself or others. In addition, you have provided substantial factual information to support these assertions. Based on this information, my office, in conjunction with the Office of Law for Baltimore County, has determined that the Fair Housing Act mandates the issuance of said use permit to KHI Services, Inc.

If, at any time, the use of this property changes, such that one or more non-handicapped residents is housed in the group home or if a resident who poses a direct threat is housed in the home, KHI Services will be in violation of this use permit. Please be aware that this response applies to the Baltimore County Zoning Regulations and policies only, and does not apply to regulations enforced by other county and state agencies.

I trust that the information set forth in this letter is sufficiently detailed and responsive to your request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3353.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy M. Kotroco", is written over a horizontal line.

Timothy M. Kotroco, Director
Office of Permits & Development Management

c: Letter File

Visit the County's Website at www.baltimorecountyonline.info

EXHIBIT

A



BETH PEPPER, ESQ.
Attorney at Law

201 N. CHARLES STREET, SUITE 1700
BALTIMORE, MARYLAND 21201

TEL (410) 752-2744
FAX (410) 752-7392
bethpepper@aol.com

*Ms. Hope State of MD
Licensing Admin*

Via Messenger and First-Class Mail

July 9, 2003

Mr. John Alexander
Planner II
Zoning Review
Baltimore County Department of Permits
and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Re: 4202 Holbrook Road

Dear Mr. Alexander:

I represent KHI Services, Inc. ("KHI"), a private non-profit agency specializing in residential services for adolescent boys between the ages of fourteen and eighteen in the State of Maryland.

This letter is a response to your letter of June 3, 2003 to Mr. Roger Larson, the executive director of KHI, requesting additional information to determine if the group home that my client wishes to operate at 4202 Holbrook Road should be accorded the same treatment as other single-family households, and be permitted as a matter of right in the R.C. 5 zoning district.

After you review this additional information, which is also testified to in the attached sworn affidavit of Mr. Larson, we trust you will conclude that the home at issue must be treated like other single-family dwellings in the County, and not be subjected to any special hearing requirements or other zoning conditions. This conclusion is compelled by the Fair Housing Amendments Act of 1988, interpreted by the many case authorities set forth below, which prohibits local governments from singling out housing for people with disabilities for disparate treatment.

The information we provide also supports a determination that the home meets the definition of "family" under Section 101 of the Baltimore County Zoning Code at 1-15. We understand, too, that such a conclusion would be consistent with your office's policy and practice of the last several years to refrain from imposing special hearing requirements or other conditions on 8-person group homes licensed by the Maryland Department of Juvenile Justice.



*See 03-1049
03-1400
03-1563
03-1660
03-2047
03-2180
03-2183*

I. Additional Information about the Home and its Residents.

A. The Residents Must Have a Diagnosis of Mental Illness.

Up to eight adolescent boys between the ages of fourteen and eighteen will live in the home. To be eligible to live in the home, each boy must meet the age requirement, and have a DSM-IV diagnosis of mental illness based on a psychiatric evaluation. The illness is such that it will have a substantial impact on a boy's ability to care for himself, attend school, build relationships, or otherwise function without the support and structure offered by the home. As a by-product of mental illness, the boys are likely to have emotional or behavioral problems which substantially impair their ability to cope with life's daily activities and live in their home of origin. Indeed, it is because of their mental illness that the boys need this highly specialized therapeutic milieu of intensive mental health services. (see part D below). No individual who is a danger to himself or others is eligible to live in the home.

B. The Residents Will Function As a Single-Housekeeping Unit.

The home will function and operate as a single-housekeeping unit. The boys will eat together, participate in and assist each other in household chores, share common areas of the home, socialize together, and rely on each other for friendship and peer support. Like a family, some boys will spend their days at school; some may participate in community service projects; and some may be preparing for college or vocational careers.

The residents will live here on a continuous and uninterrupted basis. This is also their only home, until such time that they either reunite with their biological families or are capable of living independently.

Like a family, the boys will be supervised by staff who will function like house-parents. The staff will assist the boys with their household responsibilities and meal preparation. The staff will also provide twenty-four hour supervision and guide the boys with their development and the life-skills the boys need to succeed in the home and in the community.

C. The Home is Indistinguishable from other Single-Family Households.

In addition to its function and operation as a single housekeeping unit, the home itself resembles other homes in the neighborhood, and blends in with them. There is no special sign, gate, or fence to set this home apart. Indeed, it is an exquisite wooded site, with lovely grounds and gardens, set off from the main road. The interior has five bedrooms, a spacious living room, dining room, kitchen, and several family rooms for the boys to enjoy television, music, and be together.

D. The Home will Provide Therapeutic Services and Treatment.

The home will provide intensive therapeutic services to the boys including individual, group, family and multiple family group therapy, and a wilderness challenge therapy program. These services are intended to address and treat the boys' extensive mental health needs. These services are provided by licensed mental health practitioners, including social workers, consulting psychologists, and a consulting psychiatrist.

Individual therapy is provided throughout the course of the day between a licensed family therapist and an individual boy. Group therapy occurs daily and family therapy will occur on a weekly basis. The goal of these services is to help the boys cope with their mental illness.

E. The Home Provides Mental Health Treatment to Help Alter the Boys' Behavior.

While living in a highly structured, and supervised environment and while participating in a therapy network, the boys learn how to find socially acceptable alternatives to their previous behavior. The focus is on the young person's acceptance of responsibility for his choices, use of new coping and problem solving skills, and the setting of age-appropriate short-and long-term goals. A primary goal is to maintain the biological family's active involvement while the youth is in residence to promote the necessary changes in the family functioning crucial to that youth's successful return home. Through this on-going involvement, families learn to regain direction and control, clarify their own expectations and set realistic and meaningful goals.

F. The Home Meets All State Licensing Requirements and Approvals.

At this time, the home meets all state licensing requirements as set forth in COMAR CORE Regulations, 01.04.04, with the exception of the determination by your office that the home is a permitted use and conforms to local zoning. The zoning status of the home is accordingly the only barrier to receipt of its state license.

G. Summary of the Home and Its Residents.

In sum, the facts show that this home bears the characteristics of a single housekeeping unit. The boys, all of whom have a diagnosis of mental illness, will live at this home on a continuous basis and receive intensive mental health treatment in a highly structured and supportive home. The house itself is situated in a bucolic suburban setting, indistinguishable from other homes in the area. Here, the boys can learn to cope with their illnesses, and develop the strategies they need to become productive young men, and contributing citizens.

II. Legal Discussion.

A. The Fair Housing Act Compels that a Group Home for Disabled Individuals Be Treated Like a Single Family Home, and Therefore, a Permitted Use.

1. Overview of the Disability Provisions of the Fair Housing Act.

In 1988, Congress amended the Fair Housing Act (FHA) to include people with disabilities as a protected class. 42 U.S.C. §3601 *et. seq.*

This statute is a “clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream.” H.R. Rep. No. 711, 100th Cong. 2d Sess. 18, *reprinted* in 1988 U.S.C.C.A.N. 2173, 2179 [hereinafter “House Report”].

Under this statute, it is unlawful to discriminate in the sale or rental, or “to otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of... a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available.” 42 U.S.C. §3604(f)(1). It is also unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling because of a handicap of ... a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available.” 42 U.S.C. § 3604 (f)(2).

Furthermore, discrimination includes a “refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [handicapped persons] equal opportunity to live and enjoy a dwelling. 42 U.S.C. § 3604 (f)(3)(B). An accommodation is reasonable unless it either imposes an undue administrative burden or “fundamentally” alters the nature of the program. *Southeastern Community College v. Davis*, 442 U.S. 397, 410 (1979) (interpreting similar language under §504 of the Rehabilitation Act of 1973). A “fundamental” change is one that is so incompatible with the very character of a neighborhood that it presents problems caused by the “pig in the parlor instead of the barnyard.” *Hovsons v. Township of Brick*, 89 F.3d 1096 at 1105 (3d Cir. 1996) quoting *City of Edmonds v. Oxford House, Inc.*, 514 U.S.725 at 732 (1995).

The statute's legislative history indicates that the handicap provisions of the FHAA are intended to reach a wide array of discriminatory housing practices, including zoning and land use practices and decisions:

These new subsections would also apply to state or local land use and health and safety laws, regulations, practices and decisions which discriminate against individuals with handicaps. While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been used to restrict the ability of individuals with handicaps to live in communities.

This has been accomplished by such means as the enactment or imposition of health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities. *Since these requirements are not imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against persons with disabilities.*

House Report at 2185 (emphasis added). Additionally, the legislative history makes clear that the law “is intended to prohibit the application of special requirements through land-use regulations... that have the effect of limiting the ability of such individuals to live *in the residence of their choice in the community.*” *Id.*

Courts have required municipalities to waive, relax, modify, re-write, re-construe, and otherwise not apply zoning rules that have the effect of treating group homes for people with disabilities differently from other single-family residences. *E.g., Groome Resources v. Parish of Jefferson*, 234 F. 3d 192, 198 (5th Cir. 2000)(trial court enjoined municipality from applying its zoning code to stop the opening of a small group home); *Potomac Group Home v. Montgomery County*, 823 F. Supp. 1285, 1296 (D. Md. 1993) (county enjoined from applying neighbor notification rule to group housing for people with disabilities); *Horizon House Developmental Services v. Township of Upper Southampton*, 804 F. Supp. 683, 699-700 (E.D. Pa. 1992) *aff'd*, 995 F. 2d 217 (3rd. Cir. 1993)(Table)(municipality enjoined from imposing a special rule on a group home for people with developmental disabilities).

Courts reason that because small group homes function like families, and blend in with the neighborhood, they should be treated as permitted uses in single family zones. *See, e.g., Smith & Lee Associates v. City of Taylor*, 102 F. 3d 781,796 (6th Cir. 1996)(group home for nine elderly residents plus staff held exempt from the zoning code because the “residents...live like most of the other families in this neighborhood. They eat together, and they rely on each other for social activities and succor.”); *Remed Recovery Care Centers v. Township of Willistown, Pennsylvania*, 36 F. Supp. 2d 676, 684-85 (E.D.Pa.1999) (group home for eight residents plus staff shall be allowed to operate as a matter of right because the residents “operate as would any family” and the home fits into the residential character of the neighborhood); *Oxford House v. City of Cherry Hill*, 799 F. Supp. 450, 462-63 (D.N.J. 1992) (home for nine men in recovery should be permitted in single family zones).

2. The FHA Applies to KHI's Group Home: The Residents are Disabled and the Home Functions as Their Residence.

Applying these principles leads to the conclusion that KHI's group home for up to eight boys with mental illness should be treated like any other single family home, and regarded as a permitted use.

First, the boys, who suffer from mental illness, are unquestionably "handicapped" within the meaning of the Fair Housing Act, and their housing is clearly covered. 42 U.S.C. §3604(f)(1). See e.g., *Community Housing Trust v. Department of Consumer and Regulatory Affairs*, 257 F. Supp. 2d 208, 2003 Lexis 6197*31 and n.17 (D.D.C.)(group home for people with mental illness are "handicapped" under the FHA); *United States of America v. City of Chicago Heights*, 161 F. Supp.2d 819, 833 (N.D. Ill. 2001)(ditto); *United States v. Village of Marshall*, 787 F. Supp. 872, 879 (W. D. Wis. 1991)(applying FHA to group home for people with mental illness).

Second, the home at issue functions and operates like a single-family household. The boys participate in housekeeping chores; they share meals; and, they come together for recreational and social activities. The home is itself a five-bedroom house and is compatible in size and design with the neighborhood. Other than its therapeutic purpose to serve boys with mental illness, it is just like other homes in the neighborhood. Yet, it is precisely this difference that courts reason should not set it aside for disparate treatment.

Accordingly, the group home at issue should be permitted as a matter of right without any special conditions or requirements.¹

B. The County's Zoning Code Defines "Family" to Encompass KHI's Home.

1. The Baltimore County Zoning Code and its Definition of "Family."

The Baltimore County Zoning Code defines "family" to constitute "any number of individuals lawfully living together as a single house-keeping unit and doing their cooking on the premises, as distinguished from a group occupying a boarding or rooming house or hotel." Section 101 B.C. Z. R., at 1-15.

According to the Baltimore County Zoning Commissioner's policy manual, for a "Community Residential Facility" to meet the definition of "family," the Zoning Commissioner must be satisfied that a sufficient number, but not necessarily all, of the following apply:

- i. A continuous and uninterrupted occupancy by residents;
- ii. The facility is used for treatment of residents only;

¹ Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12101 *et. seq.*, which also applies to this home, compels a similar result. *Pathways v. Town of Leonardtown, et. al.*, 133 F. Supp. 2d 772 (D. Md. 2001); *Berch v. Baltimore County*, 68 F. Supp. 2d 602 (D. Md. 1999). The ADA, as interpreted by these cases, requires that a zoning authority not engage in disparate treatment with respect to treatment programs and services, or apply its zoning code so as to result in disparate effects on programs for people with mental illness and/or substance abuse.

- iii. The residents must generally live and eat together as a family;
- iv. The home must bear the generic characteristics of a family unit as a relatively permanent household;
- v. There must be supervision provided;
- vi. The residents assume certain house keeping responsibilities;
- vii. The facility has the necessary federal, state, and/or local governmental approval;
- viii. There must be services available to the residents.

Zoning Commissioner's Policy Manual, section B 2(E), pp. 1-9.3 and 1-9.4.

2. KHI's Group Home is a "Family" under the Baltimore County Zoning Code.

There is no doubt that KHI's group home meets the definition of "family." As Mr. Larson's affidavit states, the residents in the home are lawfully living together as a single family household, doing cooking on the premises, sharing in household chores, meals, and other activities.

In addition, the home satisfies many of the Commissioner's guidelines. The residents will be living continuously in the home; the home provides mental health treatment to the residents; the residents live and eat together; the home bears the characteristics of a family unit with boys being provided a stable and structured home environment; the residents are supervised; the residents participate in housekeeping chores; the home meets all state governmental approvals; and, finally, services are provided in the home. (see Affidavit of Mr. Roger Larson).

Accordingly, the home meets the definition of "family" under the Baltimore County Zoning Code.²

² It bears noting that some courts have ruled that it is unlawful for a municipality to treat housing for young people (18 and under) differently from single-family homes pursuant to the "familial status" provision of the Fair Housing Act. *See, e.g., The Children's Alliance v. City of Bellevue*, 950 F. Supp. 1491, 1495 and n. 4 (W.D. Wash. 1997). Similarly, it is illegal to characterize a group home that meets the zoning code's definition of "family" as something else so as to trigger special conditions or hearing requirements that are not imposed on other "families." *U.S. v. Thresholds*, 161 F. Supp. 2d 819, 833 n. 3 (N. D. Ill. 2001); *see also, McKinney v. Town Plan and Zoning Commission for the Town of Fairfield*, 790 F. Supp. 1197, at 1214 (D.Conn. 1992)(classifying a group home for seven people with AIDs as a "chronic nursing home" subject to a special hearing requirement, as opposed to classifying the use as a "family" under the local zoning code, was "so arbitrary as to be evidence of discrimination," and therefore, illegal under the FHA).

Mr. John Alexander
July 9, 2003
Page 8

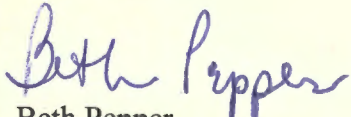
III. Conclusion.

Thank you for your review of this additional information as well as the applicable law. We trust that this letter will help your Office determine the status of the zoning of this group home. We have tried to be comprehensive in our presentation, but if there is a specific question you have that we have not addressed, please feel free to call me.

As stated above, the only barrier to the receipt of a state license at this point is the status of the home's zoning. Because there are many boys in critical need of this home, we would appreciate hearing from you by *July 16*.

Thank you for your consideration.

Sincerely,


Beth Pepper

Attachment

cc: Mr. Roger Larson

AFFIDAVIT OF ROGER LARSON

1. I am over eighteen years of age and am competent to testify to the matters herein that are based on my personal knowledge.

2. I am the Executive Director of KHI Services, Inc. ("KHI"), which is a non-profit agency that provides residential services to adolescent boys between the ages of fourteen and eighteen in the State of Maryland. KHI's principal place of business is in Germantown, Maryland. KHI Services, Inc. has been in continuous operation since 1971.

3. As the Executive Director of KHI, I am familiar with the program that KHI wishes to operate at 4202 Holbrook Road in Baltimore County.

4. KHI plans to have up to eight adolescent boys between the ages of fourteen and eighteen live in the Holbrook Road home. To be eligible to live in the home, each boy must meet the age requirement, and have a DSM-IV diagnosis of mental illness (Axis I or II) based on a psychiatric evaluation. The illness is such that it will have a substantial impact on a boy's ability to care for himself, attend school, build relationships, or otherwise function without the support and structure offered by the home. As a by-product of mental illness, the boys are likely to have emotional or behavioral problems that substantially impair their ability to cope with life's daily activities and live in their home of origin. It is because of their mental illness that the boys need this highly specialized therapeutic milieu of mental health services.

5. No boy who is a danger to himself or others is eligible to live in the home.

6. The home will function and operate as a single-housekeeping unit. The boys will eat together, participate in and assist each other in household chores, share common areas of the home, socialize together, and rely on each other for friendship and peer support. Like a family, some boys will spend their days at school; some may participate in community service projects; and some may be preparing for college or vocational careers.

7. The boys will live at the home on a continuous and uninterrupted basis. This is also their only home, until such time that they either reunite with their biological families or are capable of living independently.

8. The boys will be supervised by staff that will function like house-parents. The staff will assist the boys with their household responsibilities and meal preparation. The staff will also provide twenty-four hour supervision and guide the boys with their development and the life-skills the boys need to succeed in the home and in the community.

9. The Holbrook Road home resembles other homes in the neighborhood, and blends in with them. There is no special sign, gate, or fence to set this home apart. The

home is located on a 2.88-acre wooded site, with lovely grounds and gardens, set off from the main road. The interior has five bedrooms, a spacious living room, dining room, kitchen, and several family rooms for the boys to enjoy television, music, and be together.

10. The home will provide therapeutic services to the boys including individual, group, family and multiple family group therapy, and a wilderness challenge therapy program. These services are intended to address and treat the boys' mental health needs. These services will be provided, in part, by licensed mental health practitioners (e.g., social workers, consulting psychologists), and a consulting psychiatrist.

11. Individual therapy is provided throughout the course of the day between a licensed family therapist and an individual boy. Group therapy is provided daily and family therapy will occur on a weekly basis. The goal of these services is to help the boys cope with their mental illness.

12. While living in a highly structured, and supervised environment and while participating in a therapy network, the boys learn how to find socially acceptable alternatives to their previous behavior. The focus is on the young person's acceptance of responsibility for his choices, use of new coping and problem solving skills, and the setting of age-appropriate short-and long-term goals. A primary goal is to maintain the biological family's active involvement while the youth is in residence to promote the necessary changes in the family functioning crucial to that youth's successful return home. Through this on-going involvement, families learn to regain direction and control, clarify their own expectations and set realistic and meaningful goals.

13. This home bears the characteristics of a single housekeeping unit. The boys, all of whom have a diagnosis of a mental illness, will live at this home on a continuous basis and receive mental health treatment in a highly structured and supportive home. Here, we hope to help the boys learn to cope with their illnesses, and develop the strategies they need to become productive young men, and contributing citizens.

14. At this time, the home meets all state licensing requirements as set forth in COMAR CORE Regulations, 01.04.04, with the exception of its zoning status. The zoning status of the home is the only barrier to receipt of its state license.

I SWEAR THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND
CORRECT AND BASED ON MY PERSONAL KNOWLEDGE.

Roger Larson
Mr. Roger Larson

7/9/03
Date

Proposed Revision 22 May 89
Revised 07 Dec 89

1
COMMUNITY RESIDENTIAL FACILITIES
RM-5 formerly known as GROUP HOMES or A.L.U.s'

A. BACKGROUND State of Maryland provided the following definition in its "Proposed Selection Standards for Community Residences," which was forwarded to each jurisdiction:

Definitions:

"Community residences" means residences for populations funded by the Addiction Services Administration, the Department of Housing and Community Development, the Developmental Disabilities Administration, the Juvenile Services Agency, the Mental Hygiene Administration, or the Department of Human Resources' public assistance to adults program.

"Special populations" are people with developmental disabilities, mental illness, drug addiction, alcoholism, or children receiving services funded by the Juvenile Services Agency, or people in certain residences funded by the Public Assistance to Adults program.

Baltimore County Zoning Regulations

Under the authority of Article C.6A the Zoning Commissioner has the power to grant special provisions for:

Community Care Centerization or by all-scale fix, sponsored or operated by a private charitable organization or by a public agency and licensed by the Maryland State Department of Health, Mental Hygiene or by the Maryland State Department of Social Services for the housing, care, supervision, or treatment of alcohol or drug abusers or of physically or mentally handicapped or abused individuals who are subject to incarceration or in need of hospitalization on 101 B.C.Z.R.

State Law Supersedes

Many facilities for mentally and physically disabled persons are exempted from both C.O.M.A. and Annotated Code of Maryland following restrictions by State as indicated in Maryland.

Click here for a plain text ADA compliant screen.



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

[Go Back](#)
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[New Search](#)

Account Identifier: District - 02 Account Number - 1800008299

Owner Information

Owner Name: BROCKINGTON MCNEAL, JR
BROCKINGTON GLADYS M, ET AL
Use: RESIDENTIAL
Principal Residence: YES
Mailing Address: 4202 HOLBROOK RD
RANDALLSTOWN MD 21133
Deed Reference: 1) / 7856/ 91
2)

Location & Structure Information

Premises Address
4202 HOLBROOK RD

Zoning

Legal Description
2.88 AC 125452 SQ FT
ADELPHI CORPORATION

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:	1
66	20	132					29	80	Plat Ref:	43/ 36

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1988	3,362 SF	2.88 AC	04
Stories 2	Basement YES	Type STANDARD UNIT	Exterior 1/2 BRICK FRAME

Value Information

	Base Value	Value As Of 01/01/2001	Phase-in Assessments As Of 07/01/2002	As Of 07/01/2003
Land:	95,040	95,040		
Improvements:	218,970	229,870		
Total:	314,010	324,910	321,276	324,910
Preferential Land:	0	0	0	0

Transfer Information

Seller: HARRISON RALPH W, 3RD	Date: 05/09/1988	Price: \$52,000
Type: IMPROVED ARMS-LENGTH	Deed1: / 7856/ 91	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2002	07/01/2003
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

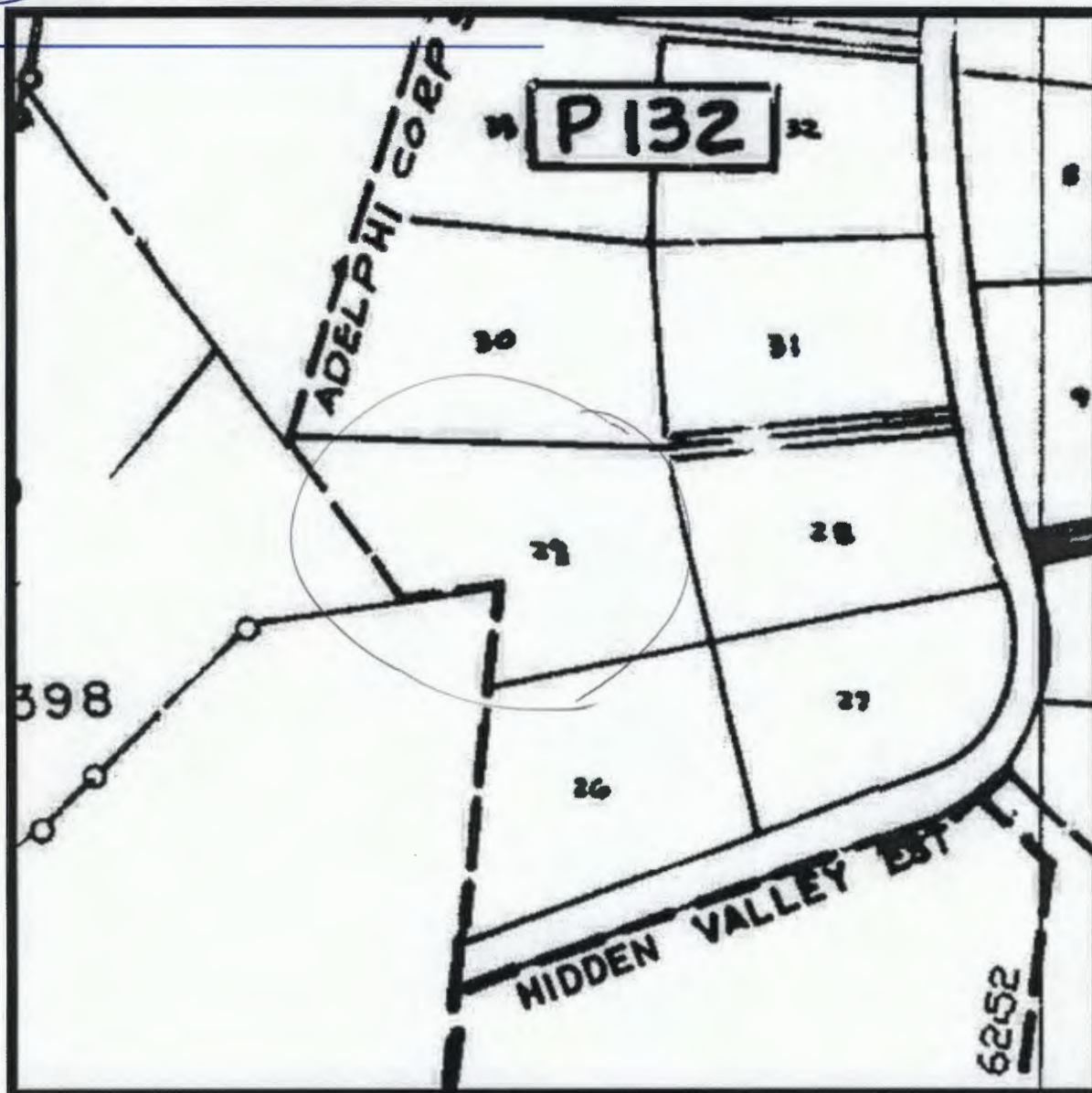
Special Tax Recapture:

* NONE *



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search
 Department of Permits and
 Development Management
 District - 02 Account Number - 1800008299

Go Back
Development Processing
View Map
New Search
 County Office Building
 111 West Chesapeake Avenue
 Towson, Maryland 21204



Property maps provided courtesy of the Maryland Department of Planning ©2001.
 For more information on electronic mapping applications, visit the Maryland Department of Planning
 web site at www.mdp.state.md.us

Visit the County's Website at www.baltimorecountyonline.info



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<http://www.baltimorecountyonline.info>
www.resiusa.org/rp_rewrite/maps/showmap.asp?countyid=04&accountid=02+18... 5/13/2003



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

May 13, 2003

Ms. Juanita E. Hoyle, Licensing Administrator/Compliance Supervisor
Audit and Compliance Unit
Maryland Department of Juvenile Services
One Center Plaza
120 West Fayette Street
Baltimore, MD 21201

RE: Zoning Verification (Request for Exemption)-KHI Services, Inc.-Karma Academy Group Home, 4202 Holbrook Road (incorrectly listed in your April 28th letter as 4002 Holbrook Road), Randallstown, MD 21136, 2nd Election District

Dear Ms. Hoyle:

Your recent letter to Arnold Jablon, Director, was forwarded to me for reply. Based on the limited information provided therein (no site plan or property ownership/tax assessment information was included and your letter incorrectly listed the address as 4002 Holbrook Road) and my review of the available zoning records, the following has been determined:

1. Assuming the correct address is 4202 Holbrook Road, the referenced property has the current zoning classification of R.C. 5 (Rural Residential) according to the official Baltimore County zoning map.
2. Pursuant to zoning policies (Section 101, Community Care Center-Community Residential Facilities, aka Group Homes or A.L.U.'s, Page 1-9, ZCPM), small private group homes (a residence that admits at least 4 but not more than 8 persons) for the mentally or developmentally disabled are exempted from the R.C. 5 zone's use regulations by State law as indicated in C.O.M.A.R. and the Annotated Code of Maryland (copy enclosed).
3. If Mr. Larson of KHI Services, Inc.-Karma Academy Group Home is proposing only 8 beds or less for the mentally or developmentally disabled, he should be exempt from the R.C. 5 zone's use regulations under State law. However, as relates to group homes of 9 persons or more for the mentally or developmentally disabled, please be aware that the State exemptions from the R.C. 5 zone's use regulations do not apply. In the instance of 9 to 15 persons, a special exception for a Community Care Center would be required and for 16 persons or more, the use would be prohibited.
4. Should the State ultimately approve and license Mr. Larson's group home as being for the mentally or developmentally disabled, this office will honor the State's decision. However, if the State does not approve and license his group home, a special hearing before the zoning commissioner will be required to allow the use.
5. Please be aware that this response applies to the zoning regulations (BCZR) and policies only and does not apply to regulations enforced by other County and State agencies.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

Jeffrey N. Perlow
Jeffrey N. Perlow, Planner II
Zoning Review

Enclosures

c: Roger D. Larson, M.G.A./HCA, Executive Director, KHI Services, Inc.-Karma Academy, 20528 Boland Farm Road, Suite 101, Germantown, MD 20874

JNP



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on Recycled Paper

Visit the County's Website at www.baltimorecountyonline.info

khi services, inc

20528 Boland Farm Road, Suite 101, Germantown, Maryland 20874 (240) 686-0707

Roger D. Larson, M.G.A./HCA, RPRP, Executive Director

May 1, 2003

Mr. Arnold Jablon, Director
Baltimore County Permits Development Management
111 West Chesapeake Ave.
Towson, MD 21204

Dear Mr. Jablon:

I am writing to clarify errors in letters recently sent to you by Juanita Hoyle, Licensing Administrator for the Department of Juvenile Justice (DJJ). Her first letter referenced the property we had originally intended to purchase (on Dogwood). I had formally requested DJJ prepare a letter for you, in response to your department's request for documentation from a state agency for a waiver from public hearing zoning requirements. The letter had been prepared prior to the property sale falling through.

5/18/03
2002
9
To: Planner who
5/19/03
Additional
RECEIVED
05-09-03

RM-5

RM-5
PAGE 3

- (2) A small private group home shall be conclusively presumed to be a single family residence and permitted in all residential zones. A large private group home shall be permitted in all areas where multi-family use is permitted. Zoning ordinances that apply to all other single and multi-family residences also apply to these licensed group homes. Any general zoning ordinance in conflict with these provisions for private group homes is superseded by this regulation and the subtitle. Special exceptions or conditional use permits or procedures may not be required of these homes. This provision shall apply only to group homes, as defined here, operated as nonprofit homes.

C. COMMUNITY RESIDENTIAL FACILITIES FOR THE DEVELOPMENTALLY DISABLED:

Facilities for the developmentally disabled are defined in Health-General Article, Title 7 Annotated Code of Maryland as excerpted below:

Subtitle 1. Definitions; General Provisions

7-101. Definitions:

- (d) Alternative living unit -- (1) "Alternative living unit" means a residence that:



April 28, 2003

Mr. Arnold Jablon, Director
Baltimore County Permits Development Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: KHI Services, Inc. - Karma Academy Group Home

Dear Mr. Jablon:

A letter received from Roger Larson, Executive Director of Karma Academy, to Kenneth C. Montague, Jr., Secretary of the Department of Juvenile Justice, was referred to me for reply regarding Mr. Larson's request for a waiver/special exception from the Baltimore County Zoning Commission public hearing. A small private group home defined as serving between four (4) and 8 handicapped persons is protected under the federal Fair Housing Amendments Act (FHAA) on certain aspects of the licensing process for group homes for the mentally ill or developmentally disabled persons.

4202(288)
4402
The above referenced entity has applied to the Department of Juvenile Justice for a license to operate a children's group home. The new location will be 4002 Holbrook Road, Randallstown, Maryland 21133. Unfortunately, the property mentioned in the previous letter (9003 Dogwood Road, Baltimore Maryland) will not be available for use by KHI Services, Inc. Mr. Larson has requested that I provide you this letter reflecting the Department's support for the program. Assuming that Karma Academy otherwise meets the conditions for licensing, as outlined in COMAR 01.04.04., this group home will be licensed to provide a valuable service to the State and the community.

It is the policy of the State of Maryland to encourage the creation of private group homes and to provide for the care, treatment, and rehabilitation of children by providing them with community based services. See Article 49D, § 2(b); Article 83C, § 2-120(a). Group homes located in residential settings are beneficial to the residents and necessary to their treatment and integration into the community. The alternative to group homes is, of course, unnecessary institutionalization or a lack of appropriate treatment. Indeed, it is the policy of this State, reflected in law that children with disabilities must be served in the least restrictive setting appropriate to their individual needs. Article 49D, § 19.1(a).

Since most of this particular population would be considered developmentally as well as emotionally and mentally impaired it would, therefore, qualify under the FHAA and American's with Disabilities Act and be protected under these laws.

Please feel free to contact me at (410) 230-3234 should you have any questions.

Sincerely,

Juanita E. Hoyle, Licensing Administrator/Compliance Supervisor
Audit and Compliance Unit

c: Roger Larson, Executive Director, KHI Services, Inc. - Karma Academy
Melinda Jones, Director, Audit and Compliance Unit
Leslie Parker, Program Specialist, Audit and Compliance Unit



Received 4/30/03 (Due 5/16/03)

DEPARTMENT OF JUVENILE JUSTICE
One Center Plaza
120 West Fayette Street
Baltimore, Maryland 21201

"Together...Reshaping Young Lives"

429/03
To code
9KNW
APC 23-69

Robert L. Ehrlich, Jr.
Governor

4202 Holbrook?
RE5

Michael S. Steele
Lt. Governor

Kenneth C. Montague, Jr.
Secretary





4/28/03
To: WCR

DEPARTMENT OF JUVENILE JUSTICE
One Center Plaza
120 West Fayette Street
Baltimore, Maryland 21201

"Together...Reshaping Young Lives"

To: planner who has?
4/29/03 JNP

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Kenneth C. Montague, Jr.
Secretary

April 25, 2003

Mr. Arnold Jablon, Director
Baltimore County Permits Development Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: KHI Services, Inc. - Karma Academy Group Home

Dear Mr. Jablon:

A letter received from Roger Larson, Executive Director of Karma Academy, to Kenneth C. Montague, Jr., Secretary of the Department of Juvenile Justice, was referred to me for reply regarding Mr. Larson's request for a waiver/special exception from the Baltimore County Zoning Commission public hearing. A small private group home defined as serving between four (4) and 8 handicapped persons is protected under the federal Fair Housing Amendments Act (FHAA) on certain aspects of the licensing process for group homes for the mentally ill or developmentally disabled persons.

The above referenced entity has applied to the Department of Juvenile Justice for a license to operate a children's group home at 9003 Dogwood Road, Baltimore, Maryland 21244. Mr. Larson has requested that I provide you this letter reflecting the Department's support for the program. Assuming that Karma Academy otherwise meets the conditions for licensing, as outlined in COMAR 01.04.04., this group home will be licensed to provide a valuable service to the State and the community.

It is the policy of the State of Maryland to encourage the creation of private group homes and to provide for the care, treatment, and rehabilitation of children by providing them with community based services. See Article 49D, § 2(b); Article 83C, § 2-120(a). Group homes located in residential settings are beneficial to the residents and necessary to their treatment and integration into the community. The alternative to group homes is, of course, unnecessary institutionalization or a lack of appropriate treatment. Indeed, it is the policy of this State, reflected in law that children with disabilities must be served in the least restrictive setting appropriate to their individual needs. Article 49D, § 19.1(a).

Since most of this particular population would be considered developmentally as well as emotionally and mentally impaired it would, therefore, qualify under the FHAA and American's with Disabilities Act and be protected under these laws.

Please feel free to contact me at (410) 230-3234 should you have any questions.

Sincerely,

Juanita E. Hoyle, Licensing Administrator/Compliance Supervisor
Audit and Compliance Unit

c: Roger Larson, Executive Director, KHI Services, Inc. - Karma Academy
Melinda Jones, Director, Audit and Compliance Unit
Leslie Parker, Program Specialist, Audit and Compliance Unit



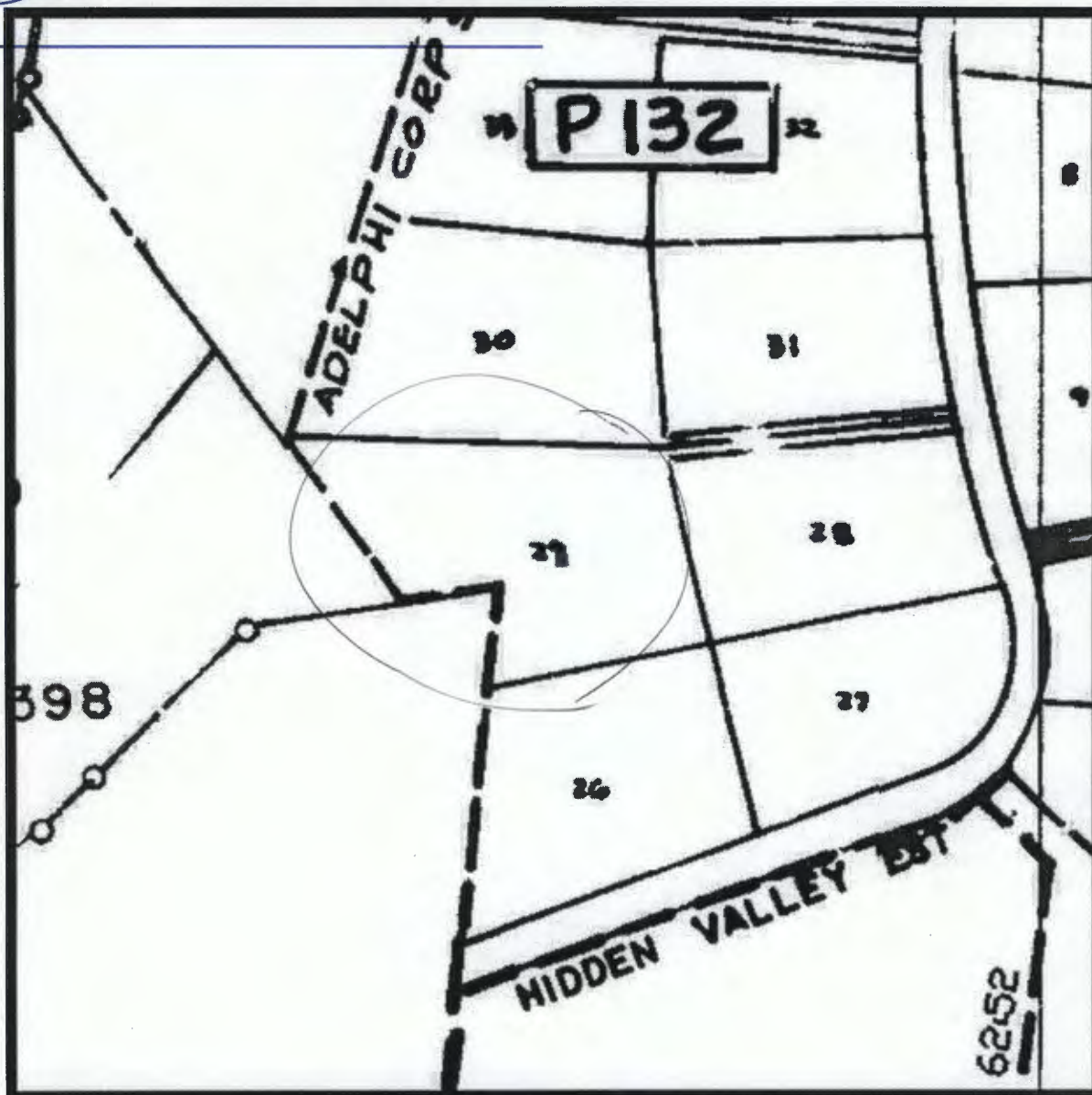


Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Department of Permits and

Development Management
 District - 02 Account Number - 1800008299

Go Back
View Map
New Search
 Development Processing
 County Office Building
 111 West Chesapeake Avenue
 Towson, Maryland 21204



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 For more information on electronic mapping applications, visit the Maryland Department of Planning
 web site at www.mdp.state.md.us

Visit the County's Website at www.baltimorecountyonline.info



Printed with Software on Recycled Paper

http://www.baltimorecountyonline.info/rp_rewrite/maps/showmap.asp?countyid=04&accountid=02+1800008299 5/13/2003

khi services, inc

20528 Boland Farm Road, Suite 101, Germantown, Maryland 20874 (240) 686-0707

Roger D. Larson, M.G.A./HCA, RPRP, Executive Director

May 1, 2003

Mr. Arnold Jablon, Director
Baltimore County Permits Development Management
111 West Chesapeake Ave.
Towson, MD 21204

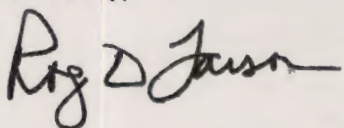
Dear Mr. Jablon:

I am writing to clarify errors in letters recently sent to you by Juanita Hoyle, Licensing Administrator for the Department of Juvenile Justice (DJJ). Her first letter referenced the property we had originally intended to purchase (on Dogwood). I had formally requested DJJ prepare a letter for you, in response to your department's request for documentation from a state agency for a waiver from public hearing zoning requirements. The letter had been prepared prior to the property sale falling through.

However, when that sale fell through we continued our search for a property to house this group home. We located a property at 4202 Holbrook Road, Randallstown, Maryland 21133. I inadvertently told Ms. Hoyle the address was 4002 Holbrook Road, which is why her corrected letter used that address. The error in address was not Ms. Hoyle's but my own.

The address is not necessarily as important as the content of her letter. I wanted to provide clarification for the error in the address. Therefore, I want to assure you that the property we purchased was 4202 Holbrook Road, and not 4002 Holbrook Road. I apologize for any inconvenience this may have caused.

Sincerely,



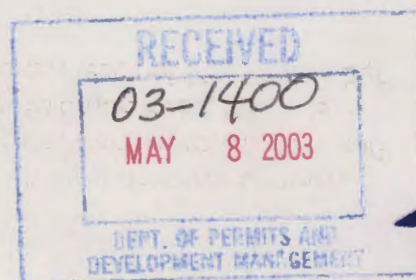
Roger D. Larson, M.G.A./HCA
Executive Director

CC: Juanita Hoyle, Licensing Administrator, Department of Juvenile Justice, State of Maryland

5/8/03
lower
9
To: planner
who
5/9/03
Additional
RECEIVED
05-09-03



Residential and Outpatient Services for Adolescents





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

April 16, 2003

410-296-0930

Mr. Roger Larson
Executive Director
KHI Services
20528 Boland Farm Road, Ste 101
Germantown, MD 20874

Dear Mr. Larson:

Re: Community Care Center at 4202 Holbrook Road, Maryland 21133, 2nd Election District

The subject property is zoned RC.5 (Resource Conservation: Rural Residential) a community care center is permitted by Special Exception according to Section 1A04.2.B.5. Baltimore County Zoning Regulations: Community care centers, provided that no residential community care center, (i.e., a center which serves as the residence of the persons for whom care is provided) shall provide care for more than 15 persons per site, and no day community care center shall provide care for more than 15 persons per acre nor more than 75 persons per site. [Bill Nos. 142-1979; 157-1986]

Enclosed are Hearing Application Forms. However, State Law Supersedes B.C.Z.R. Many facilities for the mentally and developmentally disabled have been exempted from County restrictions by State law as indicated in the following citations from both C.O.M.A.R. and Annotated Code of Maryland. See attached reference to COMAR Regulations.

Therefore, if your facility is exempted by the State of Maryland, you may operate without a Special Exception Zoning Hearing. Only the use is exempted. All other Zoning requirements must be met.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

John A. Alexander
John A. Alexander
Planner II
Zoning Review

Enclosure

JRA:klm

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



khi services, inc

20528 Boland Farm Road, Suite 101, Germantown, Maryland 20874 (240) 686-0707

Roger D. Larson, M.G.A./HCA, RPRP, Executive Director

April 14, 2003

Mr. Arnold Jablon, Director
Baltimore County Permits Development Management
111 West Chesapeake Ave.
Towson, MD 21204

Dear Mr. Jablon:

I am writing you as our formal request for exemption from zoning restrictions for a group home our company intends to open at 4202 Holbrook Road, MD 21133. This address is a single-family home, located in the Resource Conservation Zone.

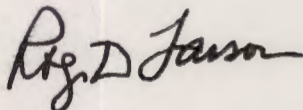
We intend to use this property as a small group home of eight (8) beds or less, for adolescent boys who exhibit mental health, substance use and/or behavioral problems. These boys will reside in the home from three (3) to six (6) months or longer, depending on the individual needs of the person. Employees of our company, who are awake at all times, will supervise the home. This program teaches skills such as meal preparation, personal hygiene skills, behavioral skills necessary to survive in the community and to become acceptable citizens of our state and country, all within a family style of living situation. These adolescent boys will learn skills necessary to survive successfully in their own homes when they leave our program.

This program is licensed by the Maryland State Department of Juvenile Justice (DJJ), and serves boys referred through the DJJ office and from the Department of Human Resources.

Please approve this request for exemption as soon as possible (within 24 hours) according to your policy of \$250.00 payment for a 24-hour turn around of your response to this request.

If you need additional information please contact me as soon as possible and I will provide it to you. Thank you for your prompt attention to our request.

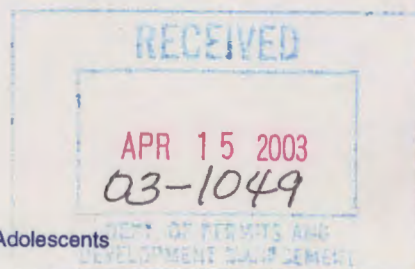
Sincerely,



Roger D. Larson, M.G.A./HCA
Executive Director



Residential and Outpatient Services for Adolescents



1 DAY
ASAP
To: TRA
If they
qualify for
state exemption
OK - otherwise
S.E. - CCC
4/15/03

Received 3:30 PM
04-15-03

NW 9-L 8-L

LOT 29

Adelphi Corp.

PLAT #1