

~~0200W~~

- - - - -
- - - - -

~~020~~
3/6/97

ORDERS
OPINIONS
MEMORANDA

20090153

(1)

~~020~~

~~0200W~~

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

*
*
* CIVIL ACTION

* NO.: 03-C-11-003309

*

*
*

*

* * * * *

UPON CONSIDERATION of the Motion to Strike Appearance of Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt, LLC, as counsel for Petitioners, Lynn Hogg and Elizabeth Smith, it is this 29th day of August, 2011, by the Circuit Court for Baltimore County, Maryland hereby

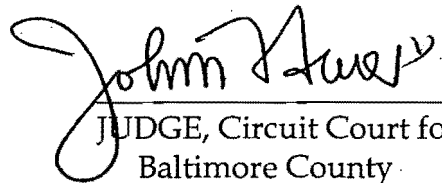
ORDERED that the appearance of Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt, LLC, is hereby stricken as counsel for the above named Petitioners, and it is further

CC: PETER M. ZIMMERMAN, ESQ.
CAROLE S. DEMILIO, ESQ.
J.C. HOLZER, ESQ.
LAWRENCE SCHMIDT, ESQ.
ELIZABETH SMITH (PRO SE)
LYNN HOGG. (PRO SE)

FILED AUG 31 2011

DR

ORDERED that pursuant to MD Rule 2-132, the Clerk shall mail a notice to:
Petitioners, Lynn Hogg and Elizabeth Smith, 505 Gun Road, Halethorpe, Maryland
21227, that if the appearance of new counsel is not entered within fifteen (15) days after
the receipt of such notice, the absence of counsel shall not be grounds for any further
continuation of the case and that should they decide not to retain new counsel, he must
inform the Court in writing of his intention to proceed in proper person


JUDGE, Circuit Court for
Baltimore County

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

JOHN F. FADER II, JUDGE
RETIRED, SPECIALLY ASSIGNED

401 BOSLEY AVENUE
COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
410-887-4810

AUGUST 29, 2011

MOTIONS RULING

RE: HOGG/SMITH - IN THE MATTER OF
CASE NO. 11-3309

ONE:

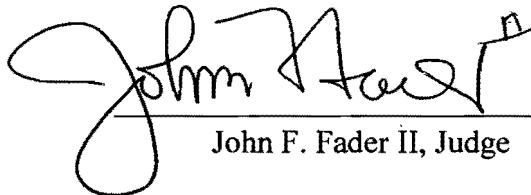
The Hogg/Smith Motion to Dismiss filed 7/29/2011 is **GRANTED**. This is a motion filed by the ones who petitioned for judicial review. Any open costs are to be paid by the Petitioners.

TWO:

The People's Counsel Motion to Dismiss filed 6/30/2011 is **MOOT**.

THREE:

The Donoghue, et. al. Motion to Dismiss filed 7/25/2011 is **MOOT**.



John F. Fader II, Judge

THE CLERK SHALL MAIL A COPY OF THIS ORDER TO THE PARTIES

CC: PETER M. ZIMMERMAN, ESQ
CAROLE S. DEMILIO, ESQ
J. C. HOLZER, ESQ
LAWRENCE SCHMIDT, ESQ

FILED AUG 31 2011

Handwritten mark

6/7/11
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
LYNN HOGG AND ELIZABETH SMITH

CIVIL ACTION
NO. : 03-C-11-003309

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

IN THE MATTER OF :
LYNN HOGG AND ELIZABETH SMITH -
LEGAL OWNERS/PETITIONERS
FOR SPECIAL HEARING ON PROPERTY
LOCATED ON THE NE CORNER OF GUN
ROAD AND KEECH ROAD
(505 GUN ROAD)

15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 09-153-SPHX

* * * * *

**PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
(FORMERLY THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT)
OF BALTIMORE COUNTY**

CIVIL DEPT. JUN 07 2011

No. 09-153-SPHX

November 25, 2008	Petition for Special Exception to allow for a Class B Child Care Center for a maximum of 24 children and Petition for Special Hearing to approve a modified parking plan filed by Sebastian Cross, Esquire and Lawrence E. Schmidt, Esquire on behalf of Lynn Hogg and Elizabeth Smith, Legal Owners/Petitioners.
December 30, 2009	Entry of Appearance filed by People's Counsel for Baltimore County.
April 9, 2009	Certificate of Posting.
April 9, 2009	Certificate of Publication in newspaper
April 16, 2009	Zoning Advisory Committee (ZAC) Comments.
May 12, 2009	Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Petition for Special Exception was DENIED and Petition for Special Hearing was DISMISSED AS MOOT.
June 9, 2009	Notice of Appeal filed by Lawrence E. Schmidt, Esquire, on behalf of Lynn Hogg and Elizabeth Smith, Legal Owners/Petitioners.
November 10, 2009	Board convened for hearing, Day 1, continued.
December 10, 2009	Board convened for hearing, Day 2, Memoranda requested by Board regarding Site Plan issue.
January 11, 2010	Petitioner's Memorandum filed by Lawrence E. Schmidt, Esquire on behalf of Petitioners.
January 11, 2010	People's Counsel's Memorandum in Support of Motion to Dismiss Petitioner's Petition for Special Exception and Modified Parking Plan.
January 11, 2010	Protestant's Memorandum in Support of Motion to Dismiss filed by J. Carroll Holzer, Esquire on behalf of Protestants, Paul and Elizabeth Donoghue, William Moore, Paul and Lucy McKean, Frank and Nancy Lindberg, Janet Bruns, William Watson, Jackie Hedeman, J. Joseph Bennett, Frank Earp, Naomi Baldwin, Charles and Mary Jane Macgill, Jeremy Walsh and Gloria Carrion, Protestants.
February 24, 2010	Board convened for Oral Argument on Motions, Day 3.

March 3, 2010	Board convened for hearing, Day 4. Counsel submitted a Stipulation to remand this matter to the Zoning Commissioner for review of an updated Site Plan.
March 9, 2010	Zoning Advisory Committee (ZAC) Comments regarding updated Site Plan.
March 24, 2010	Determination of the Zoning Commissioner on Remand from the Board of Appeals issued by the Zoning Commissioner, wherein the amended site plan was accepted into the record and the Findings of Fact and Conclusion of Law dated May 12, 2009 will remain in full force and effect, unchanged.
April 20, 2010	Board convened for hearing, Day 5, continued.
April 21, 2010	Board convened for hearing, Day 6, continued.
April 27, 2010	Board convened for hearing, Day 7, continued.
June 30, 2010	Board convened for hearing, Day 8, continued.
July 15, 2010	Board convened for hearing, Day 9, and concluded this matter.

Exhibits submitted at hearing (nine days) before the Board of Appeals:

Petitioner's Exhibit No.

- 1 – Letter from Jamie Rudy dated November 2, 2009
- 2 – Cuddles Daycare LLC License.
- 3 – Application for Use Permit and related papers
- 4a – Photograph of Reception Area
- 4b – Photograph of Master of Business Administration issued to Elizabeth A. Smith from Loyola College.
- 4c – Photograph of waiting area
- 4d – Photograph of Humpty Dumpty Area
- 4e – Photograph of Kitchen Area
- 4f – Photograph of cribs
- 4g – Photograph of room
- 4h – Photograph of bathroom
- 5 – Inspection and Licensing Certificate from Fire Department
- 6a – Photograph of Residence Entrance
- 6b – Photograph of front of house.
- 6c – Photograph of Residence Entrance to Day care.
- 6d – Photograph of separate entrances
- 6e – Photograph of pool
- 6f – Photograph from door of day care of Gun Road

- 6g – Photograph of Patio/Play area
- 6h – Photograph of Patio/Play area with illustration of closest neighbor.
- 6i – Photograph zoom in of closest neighbor.
- 6j – Photograph of location of neighbors
- 6k – Photograph of entrance
- 6l – Photograph of entrance
- 6m – Photograph of entrance to driveway
- 6n – Photograph of car entering day care
- 6o – Photograph of car entering day care
- 6p – photograph of one way sign
- 7 – Fax dated 1/26/09 from Beth Smith to Wilma Selkow, Office of Child Care.
- 8 – DEPRM Complaint Investigation Form (FOR IDENTIFICATION PURPOSES ONLY)
- 9 – Curriculum Vitae of James V. Hermann, RLA
- 10a – Site Plan (FOR IDENTIFICATION PURPOSES ONLY)
- 10b – Context Plan (FOR IDENTIFICATION PURPOSES ONLY)
- 11 – Zoning Commissioner's Order dated 3/24/10
- 12 – Zoning Advisory Committee (ZAC) Comments
- 13 – Revised Site Plan dated 1/20/10
- 14 a-g – Aerial photographs of site and surrounding area
- 15 a-g – Photographs of entrance, parking pad and Gun Road
- 16 – Series of Photographs of Keech Road
- 17 a-g – Series of Photographs of 511 Gun Road
- 18 a-h – Series of Photographs of residences on Gun Road
- 19 – Water and Sewer Supply Map
- 20 a-c – County Maps of 2009 Services
- 21 a-f – Photographs of Parking spaces
- 22 – Curriculum Vitae of Wes Guckert, PTP
- 23 – Pick up and Drop-off Data (4 pages) for November 18, 19, 23 and 24, 2009
- 24a – Photograph looking south from driveway (looking left)
- 24b – Photograph looking south from driveway (looking left)
- 24c – Photograph looking north from driveway (looking right)
- 25 – Site dimensions for Gun Road dated 11/5/2009
- 26 – Traffic County data sheet as prepared by The Traffic Group, Inc. (4 pages)
- 27a – Photograph of Rolling Road
- 27b – Photograph of sign for UMBC Training Center
- 27c – Photograph of sign for UMBC Training Center
- 27d – Photograph of signs at corner of Rolling and Gun Roads
- 27e – Photograph of sign for Mt. Providence Child Development Center

- 27f – Flyer from the Oblate Sisters of Providence
- 27g – Photograph of the Beezold property
- 28 a-b – Photographs of play set on property owned by Paul Donoghue
- 29 – Photograph of Basketball hoop on property owned by Paul Donoghue
- 30 – Photograph of Swing set in front of property owned by Paul Donoghue.
- 31 – Photograph of tractor trailer bodies on Keech Road property
- 32a – Photograph of fence at entrance to 505 Gun Road
- 32b – Photograph of stone wall at entrance to 505 Gun Road
- 32c – Photograph of fence and stone wall at entrance to 505 Gun Road
- 32d – Photograph of stone wall at entrance to 505 Gun Road
- 32e – Photograph of stone wall at entrance to 505 Gun Road
- 32f – Photograph of stone wall at entrance to 505 Gun Road
- 33a – Photograph of Relay Historic District Sign
- 33b – Photograph of Relay Historical Trust Sign
- 33c – Photograph of Relay Sign
- 33d – Photograph of Relay Sign
- 33e – Photograph of Relay Children's Center Inc. Sign
- 33f – Photograph of Relay Children's Center Inc. Sign
- 33g – Photograph of Relay Children's Center Inc.
- 33h – Photograph of Relay Children's Center Inc.
- 33i – Photograph of Relay Children's Center Inc. Playground
- 33j – Photograph of Relay Children's Center Inc. Playground
- 34a – Email to People's Counsel from Stephen Weber dated 1/23/09 regarding traffic issues
- 34b – Email to Dennis Wertz from Stephen Weber dated 4/13/09 regarding traffic issues
- 35 – Fire Inspection Report and Certificate
- 36 – Photographs of Emergency Improvements (16 photos)
- 37 – Internet information on Mount Providence Child Development Center
- 38 – Photographs of Mount Providence Child Development Center property (26 photos)

Protestants' Exhibit No.

- 1 – Statement in opposition from Laura Rudy dated 7/12/09
- 2 – Statement in opposition from James Rudy dated 7/12/09
- 3 – Protestant's and People's Counsel Sign in Sheet dated 11/10/09
- 4 – Protestant's Sign in Sheet dated 12/10/09

- 5 – Email from Stephen Weber to Dennis Wertz dated 2/19/10 regarding sight lines
- 6 – Plat to accompany petition from Zoning Commissioner's File below (FOR IDENTIFICATION PURPOSES ONLY)
- 7 – People's Counsel Sign in sheet dated 4/20/10
- 8 – Letter to Bruce Doak from J. Robert Powell, DEPRM dated 3/8/05
- 9 – Interoffice correspondence to Timothy Kotroco from Dave Lykens, DEPRM dated 1/21/09
- 10 – Photograph from Gun Road of play area
- 11 – Photograph from Gun Road of play area
- 12 a-b – Photographs from Keech Road of old play area
- 13 – Baltimore County Building Code Sections 308
- 14 – Baltimore County Building Code Sections 305
- 15 – Baltimore County Building Code Sections 105, 305.2, 308, 903 of the International Building Code
- 16 – Baltimore County Regulation for Residential Trash and Recycling Collection dated 7/2009
- 17 – Aerial Photo for Video (FOR IDENTIFICATION PURPOSES ONLY)
- 18 – Video Discs (3) MISSING FROM FILE
- 19 – Hard copy of PowerPoint presentation prepared by William H. Moore and Joe Bennett
- 20 – Hard copy of PowerPoint presentation prepared by William H. Moore of Gun Road Historic Homes
- 21 – Maryland Historic Property Designations Map
- 22 – People's Counsel Sign in sheet dated 4/21/10
- 23 – CD with 5 videos
 - a. Baltimore County Trash collection
 - b. Public School bus
 - c. Oncoming school bus from 505 Gun Road driveway
 - d. View of front of 505 Gun Road
 - e. Exiting 512 Gun Road/Car traveling 30 mph
- 24 – Baltimore County Zoning Map of property
- 25 – List of Gun Road Residents and Length of Ownership
- 26 – Maryland State Department of Assessments and Taxation Trade Name Application dated 2/26/08
- 27 – Excerpt of testimony of Hogg (FOR IDENTIFICATION PURPOSES ONLY)
- 28 – Four photographs of Gun Road
- 29 – Video of Entrance to 505 Gun Road
- 30 – Context Plan (FOR IDENTIFICATION PURPOSES ONLY)
- 31 – Three photographs of Gun Road presented by Mr. Bennett
- 32 – People's Counsel Sign in Sheet dated 4/27/10 (FOR IDENTIFICATION PURPOSES ONLY)

- 33 – People's Counsel Sign in Sheet dated 6/30/10 (FOR IDENTIFICATION PURPOSES ONLY)
- 34 – Curriculum Vitae of Mary Jane MacGill
- 35 – Rule 8 Resolution for Paul Donoghue
- 36 – Survey Summary of Gun and Keech Road Residents for and against.
- 37 – Signed Opposition Letters (59 pages)
- 38 – Opposition Letters (17 pages)
- 39 – Article in “History Trails” Publication (8 pages)
- 40 – List of Residents who did not see a Class A Sign (43 pages)
- 41 – People's Counsel Sign in sheet dated 7/15/10 (FOR IDENTIFICATION PURPOSES ONLY)

September 9, 2010	Memorandum of People's Counsel for Baltimore County filed by Peter M. Zimmerman, Esquire and Carole S. Demilio, Esquire.
September 9, 2010	Petitioner's Post Hearing Memorandum filed by Lawrence E. Schmidt, Esquire on behalf of Lynn Hogg and Elizabeth Smith, Legal Owners/Petitioners.
September 9, 2010	Protestant's Memorandum and Appendix in Lieu of Final Argument filed by J. Carroll Holzer, Esquire on behalf of Protestants.
November 3, 2010	Board convened for Public deliberation.
March 4, 2011	Final Opinion and Order issued by the Board in which the Petition for Special Exception was DENIED and the Petition for Special Hearing was DISMISSED AS MOOT.
April 4	Petition for Judicial Review filed by Lawrence E Schmidt, Esquire, on behalf of Lynn Hogg and Elizabeth Smith, Petitioners.
April 8	Copy of Petition for Judicial Review filed by Lawrence E Schmidt, Esquire, received from the Circuit Court for Baltimore County by the Board of Appeals.
April 12	Certificate of Compliance sent to all parties and interested persons.
April 15	Intention to Participate filed by Gun Road Historical & Preservation Association, Paul Donoghue, President; and individuals, Paul Donoghue; William Moore; Naomi Baldwin; Lucy McKean; Frank Lindberg; and Joseph Bennett, filed by J. Carroll Holzer, Esquire.

April 18 Response to Petition for Judicial Review filed by Office of People's Counsel.

June 7, 2011 Transcript of testimony filed for the following hearing dates before the Board of Appeals for Baltimore County: November 10, 2009, December 10, 2009, and June 30, 2010.

June 7, 2011 Record of Proceedings filed in the Circuit Court for Baltimore County without the transcripts of testimony for the following hearing dates before the Board of Appeals for Baltimore County: February 24, 2010, March 3, 2010, April 20, 2010, April 21, 2010, April 27, 2010, and July 15, 2010.

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


Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Ave.
Towson, Maryland 21204
410-887-3180

c: Lynn Hogg and Elizabeth Smith
 Larry Link
 Paul Donoghue
 Paul & Lucy McKean
 Janet Bruns
 Jackie Hedeman
 Frank Earp
 Charles & Mary Jane Macgill
 Gloria Carrion
 The Gun Road Historical and Protective Association/Paul Donoghue, President
 Donna Murphy
 Office of People's Counsel
 Arnold Jablon, Director/PAI
 Nancy West, Assistant County Attorney
 Councilman John Olszewski

Lawrence E. Schmidt, Esquire
J. Carroll Holzer, Esquire
William Moore
Frank Lindberg
William Watson
John Joseph Bennett
Naomi Baldwin
Jeremy Walsh
Donald Laury
Michelle Reed
Lawrence M. Stahl, Managing Administrative Judge
Andrea Van Arsdale, Director/Planning
Michael Field, County Attorney, Office of Law



Board of Appeals of Baltimore County

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

June 7, 2011

Clerk of the Court
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, MD 21204

VIA HAND DELIVERY

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-11-003309
In the Matter of: Lynn Hogg and Elizabeth Smith
Board of Appeals Case No.: 09-153-SPHX

Dear Sir or Madam:

Enclosed for filing please find the Record of Proceedings in the above referenced case as well as the Board of Appeals record and exhibits.

Please be advised that the Record is being filed without the transcripts from the February 24, 2010, March 3, 2010, April 20, 2010, April 21, 2010, April 27, 2010, and July 15, 2010 hearings before the Board.

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

Very truly yours,

Sunny Cannington
Sunny Cannington
Legal Secretary

cc with enclosure:

Lawrence E. Schmidt, Esquire
J. Carroll Holzer, Esquire
Office of People's Counsel
Michael Field, County Attorney
Nancy C. West, Assistant County Attorney

CIVIL DEPT. JUN 07 2011

4/18/11
PETITION OF LYNN HOGG & ELIZABETH SMITH
FOR JUDICIAL REVIEW OF THE DECISION
OF THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

* IN THE
*
* CIRCUIT COURT

IN THE CASE OF LYNN HOGG & ELIZABETH SMITH *
LEGAL OWNERS FOR A PETITION FOR SPECIAL
HEARING ON PROPERTY LOCATED AT 505 GUN RD * FOR

15th Election District, 7th Councilmanic District

* BALTIMORE COUNTY

CBA Case No. 09-153-SPHX
Before the County Board of Appeals

* Case No. 03-C-11-3309

* * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, in accordance with Maryland Rule 7-204, submits this response to the Petition for Judicial Review filed by LYNN HOGG & ELIZABETH SMITH, and states that the office intends to participate in this action for Judicial Review. The undersigned participated in the proceeding before the County Board of Appeals.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
The Jefferson Building
105 W. Chesapeake Avenue, Room 204
Towson, MD 21204
(410) 887-2188

RECEIVED

APR 18 2011

BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of April, 2011, a copy of the foregoing Response to Petition for Judicial Review was mailed to Lawrence E. Schmidt, Esquire, Smith, Gildea & Schmidt LLC, 600 Washington Avenue, Suite 200, Towson, MD 21204, attorney for Petitioner; J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286, attorney for Respondents; and Theresa Shelton, Administrator, County Board of Appeals, 105 W. Chesapeake Avenue, Suite 203, Towson, Maryland 21204.



PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE COUNTY
*
* Case No.: 03-C-11-3309

* FOR
* BALTIMORE COUNTY
* Case No.: 03-C-11-3309

* * * * *

GUN ROAD HISTORICAL & PRESERVATION ASSOCIATION, Paul Donoghue, President, 508 Gun Road; and individuals, Paul Donoghue; William Moore, 510 Gun Road; Naomi Baldwin, 324 Gun Road; Lucy McKean, 403 Gun Road; Frank Lindberg, 511 Gun Road; and Joseph Bennett, 516 Gun Road, all of Baltimore, MD 21227, by and through their attorney, J. Carroll Holzer, Esquire herewith file their intention to participate in the above captioned Petition for Judicial Review filed by Lynn Hogg and Elizabeth Smith on April 4, 2011. Respondents Gun Road Historical & Preservation Association, et al. fully participated in the hearings below.

CLERK OF THE CIRCUIT COURT
ALTIMORE COUNTY

**BALTIMORE COUNTY
BOARD OF APPEALS**

Respectfully submitted,



J. CARROLL HOLZER, Esquire

Holzer & Lee

508 Fairmount Avenue

Towson, Maryland 21286

410-825-6961

Attorney for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April, 2011, a copy of the foregoing Intention to Participate was mailed first class, postage pre-paid to the following: Lawrence E. Schmidt, Esquire, Smith, Gildea and Schmidt, LLC, 600 Washington Avenue, Suite 200, Baltimore, MD 21204; Peoples' Counsel for Baltimore County, 105 West Chesapeake Ave., Room 204, Towson, MD 21204; and Theresa Shelton, County Board of Appeals, 105 West Chesapeake Ave., Suite 203, Towson, MD 21204



J. CARROLL HOLZER, Esquire

4/12/11
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
LYNN HOGG AND ELIZABETH SMITH

CIVIL ACTION
NO: 03-C-11-003309

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING - ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

IN THE MATTER OF :
LYNN HOGG AND ELIZABETH SMITH
- LEGAL OWNER/PETITIONERS -
FOR SPECIAL HEARING ON PROPERTY
LOCATED ON THE NE COR GUNN RD AND
KEECH RD (505 GUNN ROAD)

13TH ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 09-153-SPHX *

* * * * *

CERTIFICATE OF COMPLIANCE

Madam Clerk:

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

Lynn Hogg
Elizabeth Smith

505 Gun Road
Halethorpe, MD 21227

RECEIVED AND FILED

2011 APR 12 AM 11:34

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Lawrence E. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Ave, Ste 200
Towson, MD 21204

Larry Link
P.O. Box 727
Brooklandville, MD 21022

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

Paul Donoghue
508 Gun Road
Baltimore, MD 21227

William Moore
510 Gun Road
Baltimore, MD 21227

Paul & Lucy McKean
403 Gun Road
Baltimore, MD 21227

Frank Lindberg
511 Gun Road
Baltimore, MD 21227

Janet Bruns
301 Gun Road
Baltimore, MD 21227

William Watson
422 Gun Road
Baltimore, MD 21227

Jackie Hedeman
408 Gun Road
Baltimore, MD 21227

John Joseph Bennett
516 Gun Road
Baltimore, MD 21227

Frank Earp
424 Gun Road
Baltimore, MD 21227

Naomi Baldwin
324 Gun Road
Baltimore, MD 21227

Charles & Mary Jane Macgill
319 Gun Road
Baltimore, MD 21227

Jeremy Walsh
5300 Keech Road
Baltimore, MD 21227

Gloria Carrion
428 Gun Road
Baltimore, MD 21227

Donald Laury
5012 Leeds Avenue
Baltimore, MD 21227

The Gun Road Historical and
Protective Association
Paul Donoghue, President
508 Gun Road
Baltimore, MD 21227

Donna Murphy
406 Gun Road
Baltimore, MD 21227

Michelle Reed
307 Gun Road
Baltimore, MD 21227

Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

Lawrence M. Stahl, Managing Judge
Office of Administrative Hearings
The Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, MD 21204

Jeff Mayhew, Acting Director
Office of Planning
The Jefferson Building, Suite 101
105 W. Chesapeake Avenue
Towson, MD 21204

Nancy C. West, Assistant County Attorney
Office of Law
400 Washington Avenue
Towson, MD 21204

Arnold Jablon, Director
Office of Permits, Approvals and
Inspections
County Office Building
111 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

Michael Field, County Attorney
Office of Law
400 Washington Avenue
Towson, MD 21204

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

I HEREBY CERTIFY that on this 12th day of April, 2011, a copy of
the foregoing Certificate of Compliance has been mailed to the individuals listed above.

Sunny Cannington
Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
410-887-3180



County Board of Appeals of Baltimore County

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

April 12, 2011

Lawrence E. Schmidt, Esq
Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204

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

Office of People's Counsel
The Jefferson Building
Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-11-003309
In the Matter of: Lynn Hogg and Elizabeth Smith
Board of Appeals Case No.: 09-153-SPHX

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on April 4, 2011 by Lawrence E. Schmidt, Esquire on behalf of Lynn Hogg and Elizabeth Smith in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response with the Circuit Court for Baltimore County within 30 days after the date of this letter, pursuant to the Maryland Rules.

In accordance with the Maryland Rules, the Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review within 60 days. Lawrence E. Schmidt, Esquire on behalf of Lynn Hogg and Elizabeth Smith, having taken the appeal, are responsible for the cost of the transcript of the record and the transcript must be paid for in time to transmit the same to the Circuit Court within the 60 day timeframe as stated in the Maryland Rules.

As you are aware, the hearings in this matter spanned nine (9) days, November 10, 2009, December 10, 2009, February 24, 2010, March 3, 2010, April 20, 2010, April 21, 2010, April 27, 2010, June 30, 2010, and July 15, 2010. The transcripts have been previously provided for the November 10, 2009, December 10, 2009, and June 30, 2010 hearing dates.

Courtsmart was the official record of the hearings before the Board. The disk(s) will be copied by this office and provided to you for transcription. The transcriptionist must meet the requirements set forth in Maryland Rule 16-406d(B) which states: "*a stenographer, court reporter, or transcription service designated by the court for the purpose of preparing an official*

transcript from the recording." The Board of Appeals can assist in obtaining a qualified transcriptionist upon request.

Please be advised that the ORIGINAL transcripts must be provided to the Board of Appeals no later than May 31, 2011 so that they may be transmitted to the Circuit Court with the record of proceedings, pursuant to the Maryland Rules.

A copy of the Certificate of Compliance has been enclosed for your convenience.

Very truly yours,



Sunny Cannington
Legal Secretary

Enclosure
Multiple Original

cc:	Lynn Hogg	Elizabeth Smith
	Larry Link	Paul Donoghue
	William Moore	Paul & Lucy McKean
	Frank Lindberg	Janet Bruns
	William Watson	Jackie Hedeman
	John Joseph Bennett	Frank Earp
	Naomi Baldwin	Charles & Mary Jane Macgill
	Jeremy Walsh	Gloria Carrion
	Donald Laury	Donna Murphy
	Michelle Reed	
	Paul Donoghue, President/ The Gun Road Historical and Protective Association	Arnold Jablon, Director/PAI
	Lawrence M. Stahl, Managing Administrative Judge	Nancy West, Assistant County Attorney
	Director/Office of Planning	Councilman John Olszewski
	Michael Field, County Attorney, Office of Law	

4/4/11

RECEIVED

APR - 8 2011

BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF: LYNN HOGG AND ELIZABETH SMITH * IN THE

FOR JUDICIAL REVIEW OF THE DECISION OF THE * CIRCUIT COURT
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY * FOR

Jefferson Building

105 W. Chesapeake Avenue, Room 203

Towson, MD 21204

* BALTIMORE COUNTY

IN THE CASE OF: LYNN HOGG
AND ELIZABETH SMITH

Petitioner/Legal Owners

505 Gun Road

Arbutus, MD 21227

* Case No.

C-11-3309

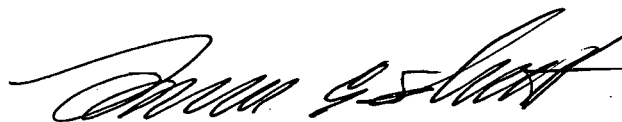
Case No. CBA-09-153-SPHX

* * * * *

PETITION FOR JUDICIAL REVIEW

The Appellant, Lynn Hogg and Elizabeth Smith, by and through their attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, herein file their Petition for Judicial Review pursuant to Rule 7-203(b) from the Opinion and Order of the County Board of Appeals of Baltimore County in the above referenced matter dated March 4, 2011, attached hereto. The Appellant was a party to the agency proceeding and has standing to pursue Judicial Review.

Respectfully submitted,



LAWRENCE E. SCHMIDT

Smith, Gildea & Schmidt, LLC

600 Washington Avenue, Suite 200

Towson, MD 21204

410-821-0070

Attorney for Appellant

RECEIVED AND FILED

2011 APR -4 PM 2:19

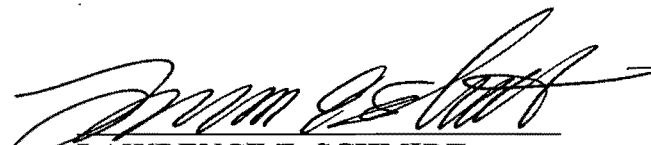
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this **4th** day of **April, 2011**, a copy of the foregoing Petition for Judicial Review was mailed, first-class mail, postage pre-paid to:

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21204

Theresa R. Shelton
County Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204


LAWRENCE E. SCHMIDT

IN THE MATTER OF
LYNN HOGG AND ELIZABETH SMITH

– Legal Owners/Petitioners
NE Corner of Gun Road and Keech Road
(505 Gun Road)
15th Election District
7th Councilmanic District

RE: Petition for Variance and Petition for
Special Hearing

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
*
* Case No.: 09-153-SPHX

* * * * *

OPINION

This matter comes before the Board of Appeals for Baltimore County on an appeal filed by Appellants, Lynn Hogg and Elizabeth Smith, doing business as “Cuddles Early Learning Center” of two decisions of the Zoning Commissioner for Baltimore County denying Appellants’ request for Special Hearing and Special Exception to operate a Class B Daycare Center from their residence at 505 Gun Road in the 13th Election District, 1st Councilmanic District of Baltimore County. Public *de novo* hearings were held by the Board on November 10, 2009, December 10, 2009, February 24, 2010, March 3, 2010, April 20, 2010, April 21, 2010, April 27, 2010, June 30, 2010 and July 15, 2010. Appellants were represented by Lawrence E. Schmidt, Esquire. Protestants were represented by J. Carroll Holzer, Esquire. People’s Counsel for Baltimore County was represented by Carole S. Demilio, Esquire. Post hearing Memoranda were presented by Messer’s Schmidt and Holzer and Ms. Demilio in lieu of closing argument. A public deliberation was held by the Board on November 3, 2010.

History

The Appellants have operated “Cuddles Early Learning Center” from their residence at 505 Gun Road as a Class A Daycare Center since June, 2008. The residence is zoned R.C. 5 which permits a Class A Daycare Center as a right. They wish to increase enrollment to 24 which requires a Class B license by Special Exception in an R.C. 5 zone. The Special Hearing

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
D. DUSKY HOLMAN

RECEIVED
APR - 4 2011

**BALTIMORE COUNTY
BOARD OF APPEALS**

April 4, 2011

LAUREN M. DODRILL
MICHAEL J. LIPPENHOLZ
CHARLES B. MAREK, III
ELYANA TARLOW
JASON T. VETTORI
REBECCA G. WYATT
of counsel:
MICHAEL G. DEHAVEN

Ms. Julie Ensor
Clerk of the Circuit Court
Circuit Court for Baltimore County
401 Bosley Avenue, 2nd Floor
Towson MD, 21204

RECEIVED
APR - 4 2011

**BALTIMORE COUNTY
BOARD OF APPEALS**

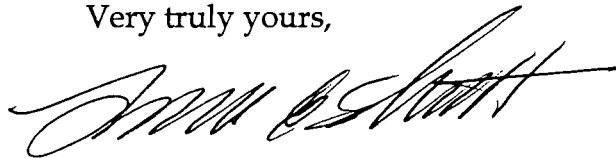
Re: Petition for Judicial Review filed by Lynn Hogg and Elizabeth Smith

Dear Madame Clerk:

Please find enclosed Appellants' Petitions for Judicial Review for filing in the above referenced matter. Also enclosed is our check for \$145.00 for the filing fee.

Thank you for your cooperation with this matter. Should you have any questions or comments, please contact me.

Very truly yours,



Lawrence E. Schmidt

LES: jkl

Enclosure

CC: J. Carroll Holzer, Esquire, Holzer and Lee
Theresa R. Shelton, County Board of Appeals of Baltimore County
Lynn Hogg and Elizabeth Smith, Cuddles Daycare

3/4/11
IN THE MATTER OF
LYNN HOGG AND ELIZABETH SMITH

– Legal Owners/Petitioners
NE Corner of Gun Road and Keech Road
(505 Gun Road)
15th Election District
7th Councilmanic District

RE: Petition for Variance and Petition for
Special Hearing

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
*
* Case No.: 09-153-SPHX

* * * * *

OPINION

This matter comes before the Board of Appeals for Baltimore County on an appeal filed by Appellants, Lynn Hogg and Elizabeth Smith, doing business as “Cuddles Early Learning Center” of two decisions of the Zoning Commissioner for Baltimore County denying Appellants’ request for Special Hearing and Special Exception to operate a Class B Daycare Center from their residence at 505 Gun Road in the 13th Election District, 1st Councilmanic District of Baltimore County. Public *de novo* hearings were held by the Board on November 10, 2009, December 10, 2009, February 24, 2010, March 3, 2010, April 20, 2010, April 21, 2010, April 27, 2010, June 30, 2010 and July 15, 2010. Appellants were represented by Lawrence E. Schmidt, Esquire. Protestants were represented by J. Carroll Holzer, Esquire. People’s Counsel for Baltimore County was represented by Carole S. Demilio, Esquire. Post hearing Memoranda were presented by Messer’s Schmidt and Holzer and Ms. Demilio in lieu of closing argument. A public deliberation was held by the Board on November 3, 2010.

History

The Appellants have operated “Cuddles Early Learning Center” from their residence at 505 Gun Road as a Class A Daycare Center since June, 2008. The residence is zoned R.C. 5 which permits a Class A Daycare Center as a right. They wish to increase enrollment to 24 which requires a Class B license by Special Exception in an R.C. 5 zone. The Special Hearing

request is for approval of a modified parking plan on the property if the Special Exception is approved. Appellants purchased the residence in February, 2008 and have lived there permanently since. On February 26, 2008 they applied for a Class A Childcare license and a use permit was issued on April 17, 2008. The property was zoned D.R. 1 at the time. Under that zoning classification, Group Childcare Centers, Class A, are permitted as an accessory use in a single family detached dwelling. In September, 2008, the Baltimore County Council as part of the 2008 Comprehensive Zoning Map Process (CZMP) rezoned the property to R.C. 5. The subject property is located at the northeast corner of the intersection of Keech Road and Gun Road. Both are dead end streets. Keech Road dead ends at Gun Road, and Gun Road dead ends at Patapsco State Park. Access to Keech Road is from Gun Road. Access to Gun Road is from Rolling Road. Gun Road and Keech Road are both two lane, shoulderless roads. There are forty (40) houses on Gun Road and two (2) on Keech Road.

Issues

Section 424.5 of the Baltimore County Zoning Regulations (BCZR) allows a Class B Group Childcare Center in an R.C. 5 zone by Special Exception only, subject to the conditions determining the granting of the Special Exception in § 502.1 BCZR, which states:

§502.1. Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air;

[Bill No. 45-1982]

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;

[Bill No. 45-1982]

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

[Bill No. 45-1982]

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

[Bill No. 74-2000]

In granting a Special Exception, the Zoning Commissioner and the Board of Appeals, upon Appeal, shall be governed by the principals and conditions as outlined in Section 502.1 BCZR.

The Special Hearing request was to make modifications to the property should the request for a Class B Child Care Center be approved.

Testimony and Exhibits

Protestants presented the testimony of eleven (11) witnesses, nine (9) of whom reside on Gun Road. The other two (2) witnesses were John Bryan, Deputy Fire Marshal and Chief Fire Protection Engineer for DEPRM and Dennis Wertz, Baltimore County Office of Planning.

Appellants presented the testimony of eleven (11) witnesses also, two (2) of which live on Gun Road, Beth Smith and Lynn Hogg, the Petitioner.

Mr. William H. Moore, a fifteen (15) year resident of 510 Gun Road testified for the Protestants over the course of three (3) days and presented a historical context of the

neighborhood. Mr. Moore testified that he recorded videos (Exhibit 23 and Exhibit 29) of cars, school buses, trash trucks, etc., traveling on Gun Road. In these Exhibits, you become aware of, that the road (from the start) has no shoulders and steep banks, on both sides.

The term 'sunken road' was used by most individuals that testified. Gun Road consists of deep ditches, blind driveways and no shoulders. Trees and other vegetation grow almost directly up to the macadam roadway. Utility poles are also placed close to the road's edge.

Also during the videos, the Board noticed how all vehicles drive over the double yellow line, almost in the center when traveling.

The school bus that picks up children, makes a U-turn on a side road off Gun Road and backs up on the start of a curve. Making matters worse is the fact that there are no sidewalks or a designated area for children to be picked up for school. Due to the fact of no shoulders and rough terrain on the road's edge, the school children are forced to walk in the road.

Vehicles entering Gun Road from driveways, seem to make wide turns, crossing the double yellow line to compensate for the narrow entrance from the driveways. The narrow entrances from the driveways and the fact that the road has no should for road width adds to the dangers mentioned above in regard to school bus activity.

Another hazard neighboring Gun Road is the animal population, i.e., deer and other wildlife that live and thrive in the area.

Traffic problems on the road are increased and made worse, due to the lack of shoulders, in winter weather when the region receives any substantial snow. This weather hazard reduces Gun Road to a one-lane road.

The pictures presented to this Board, reflect that the road is impassable for two (2) vehicles. Emergency vehicle use on Gun Road gives the Board great concern.

Mr. Moore also testified that since the 1960s, the Gun Road Historical and Protective Association has fought off efforts to commercialize nearby properties. He testified that the videos he presented established the difficulty vehicles have navigating the narrow shoulderless Gun Road, especially larger vehicles. He feels granting the Class B license will make the primary use of 505 Gun Road a commercial enterprise.

Mr. Joseph Bennett, a thirty-three (33) year resident of 516 Gun Road testified and presented video of traffic entering and exiting the daycare driveway on Gun Road. He said this video establishes that all traffic traveled well across the center line of Gun Road when making the right turn from 505 Gun Road. He also submitted still photographs showing the dangerous site lines.

Other residents of Gun Road who testified expressed their concern about the increase in traffic if the Class B license was granted. Some testified they would have opposed the Class A license originally but were not aware of it at the time it was approved, claiming they did not see the zoning notice sign.

Mr. John Bryant testified that any number of children above twelve (12) changes the building from an accessory use of a residential structure to a commercial building. He explained the legal requirements necessary under the Baltimore County Building Code should this change occur. He testified they are not in place at present.

Ms. Mary Jane Macgill, a licensed real estate agent and broker whom the Board conditionally qualified as an expert witness and has been a resident of 319 Gun Road for forty-four (44) years testified that the changes to 505 Gun Road that would be necessary as a result of its primary business use classification, would effect its "sale-ability". The increased traffic as a result of the present Class A daycare facility is evident. It is a detriment to the overall character

of the neighborhood. She testified that granting the Petitioners the Class B license would compound an already unfortunate and dangerous situation. She opposes the application for a Class B license.

Mr. Dennis Wertz, an employee of the Baltimore County Office of Planning for twenty-eight (28) years and a District 1 Planner for nine (9) years testified for the Protestants. Mr. Wertz conducted the initial staff review of the Class B application in December 2008 and wrote the staff reports recommending that the Class B application be denied. It said it would be incompatible and inappropriate with the neighborhood. It would operate as the principal use in the middle of a low density residential area.

Mr. Paul Donahue, who has lived at 508 Gun Road since 1997 and is President of the Gun Road Historical and Protective Association, testified for the Protestants. Mr. Donahue provided Rule 8 documentation that qualified him to speak on behalf of the Association. He testified that he and others conducted a survey of the forty-two (42) homes on Gun Road and Keech Road and thirty-eight (38) of the homes or ninety percent (90%) expressed opposition to the granting of the Class B license (Protestant's Exhibit No. 36). Mr. Donahue testified about the fifty-five (55) signed statements from residents opposing the Special Exception (Protestant's Exhibit No. 37).

Mr. James V. Hermann testified for the Petitioner. Mr. Hermann is a Landscape Architect and was accepted as an expert witness. He testified he is familiar with the property and prepared the site plan (Petitioner's Exhibits No. 10 and 10A). He testified the Site Plan complies with all the requirements of Baltimore County. Mr. Holzer objected claiming the Plan had not been reviewed by the County.

Mr. Michael Thomason, a builder and developer, who owns 34 acres, 200 yards from the day care center and intends to build 26 homes, supports the Petitioners. He testified the Day Care Center enhances the area and creates opportunity for new residents.

Mr. Steven Joseph testified for the Petitioner. His daughter attends the Day Care. He sees no traffic or parking problem. His daughter has been attending a year and a half. He goes to the Day Care 3 days a week. His wife also picks up and drops off their daughter.

Ms. Elizabeth Smith, the Petitioner, testified she is the co-owner with her husband, Lynn Hogg, of the Day Care Center at 505 Gun Road which they also use as their residence. She has two (2) grandchildren who attend the Day Care facility. She testified she has no intention of increasing enrollment beyond twenty-four (24) children. She explained in detail the operation of the day care facility as to hours of operation, personnel, etc. She testified she was not aware of any accidents on Gun Road.

Ms. Wendy Adams of 309 Gun Road , Thomas Jarvis of 426 Gun Road and Elizabeth Donohue of 508 Gun Road also testified for the Protestants. They cited several reasons for their opposition to the Petitioners, e.g. the area is not a place for an entrepreneur business, they were not aware of the application for the Class A License in 2008, numerous delivery trucks in the area, trash collection, a unique community, and no place for a commercial entrepreneur.

Over the course of the nine (9) days of testimony, Protestants introduced a total of 41 Exhibits. Petitioner introduced a total of 33 Exhibits.

Decision

The Board commends Counsel for the Petitioners, Protestants, and People's Counsel for their extensive effort put forth over the nine (9) days of hearing, exhibits presented, and the closing memorandums submitted. The Board feels they were given everything needed to make a determination.

It was evident from the testimony and attendance at the hearings that the Gun Road area is a long established community which its residents take very seriously when any change in the community is proposed. The daycare facility is evidently well run and maintained. The grounds and setting are an asset to any community. This Board takes no issue with the way this facility operates. It seems to be operated professionally and with a caring manor. The Board concentrated their attention on the requirements of § 502.1 of the BCZR and how they relate to the Special Exception for the Class B License. The Board specifically discussed the traffic issues that would result if the Special Exception was granted and the changing of the primary use of the property from residential to commercial. Doubling the number of children would double the traffic related to the pick-ups and drop-offs. Testimony presented indicated that Gun Road is a "sunken road" meaning that the road sits with high embankments on both sides. A video showed most people drive on Gun Road toward the center of the road. Increasing the number of vehicles on the road and adding commercial vehicles on the road as a result of the Special Exception would, in our opinion, be dangerous and create more congestion.

Testimony and exhibits showed that there is a difficulty at present turning in and out of the driveway of the facility due to the sight lines.

After reviewing the testimony and exhibits presented, it is the unanimous opinion of the Board that the Class B Child Care Facility at 505 Gun Road would tend to increase congestion on Gun Road, would be inconsistent with the purpose of the property in zoning classification and inconsistent with the spirit and intent of § 502.1 of the BCZR. Therefore the Petition for Special Exception is denied and the Petition for Special Hearing is dismissed as moot.

ORDER

THEREFORE, IT IS THIS 4th day of March, 2011 by the

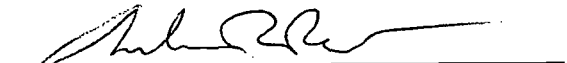
County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Exception to allow a Class B Group Child Care Center as a principal use on their property with a maximum of up to twenty-four (24) children be and the same is hereby **DENIED**; and it is further

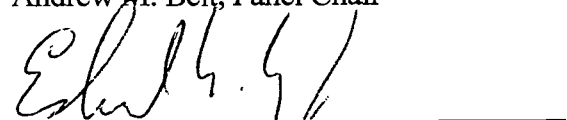
ORDERED that the Petition for Special Hearing from § 409.12.B of the Baltimore County Zoning Regulations requesting approval of a modified parking plan on the property be and the same is hereby **DISMISSED AS MOOT**.

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*.

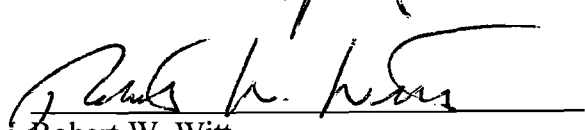
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew M. Belt, Panel Chair



Edward W. Crizer, Jr.



Robert W. Witt



County Board of Appeals of Baltimore County

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

March 4, 2011

Lawrence E. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Ave, Ste 200
Towson, MD 21204

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

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Bldg, Ste 204
105 W. Chesapeake Avenue
Towson, MD 21204

RE: *In the Matter of: Lynn Hogg & Elizabeth Smith – Legal Owners/Petitioners*
Case No.: 09-153-SPHX

Dear Counsel:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Theresa Shelton/KC

Theresa R. Shelton
Administrator

TRS/klc
Enclosure
Duplicate Original Cover Letter

c: Lynn Hogg and Elizabeth Smith
Paul Donoghue
Paul & Lucy McKean
Janet Bruns
Jackie Hedeman
Frank Earp
Charles & Mary Jane Macgill
Gloria Carrion
The Gun Road Historical and Protective Association/Paul Donoghue, President
Donna Murphy
Lawrence M. Stahl, Managing Administrative Judge
Director/Office of Planning
Michael Field, County Attorney, Office of Law

Larry Link
William Moore
Frank Lindberg
William Watson
John Joseph Bennett
Naomi Baldwin
Jeremy Walsh
Donald Laury
Michelle Reed
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney
Councilman S. G. Samuel Moxley

9/9/10

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE BOARD
505 Gun Road; NE corner of Gun *
Road & Keech Road * OF APPEALS
13th Election & 1st Councilmanic Districts
Legal Owner(s): Elizabeth Smith & Lynn Hogg* FOR
Petitioner(s) * BALTIMORE COUNTY
* 09-153-X

BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED
SEP - 9 2010

* * * * *

**MEMORANDUM OF PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY**

"Even within the same zoning geography, the intensity of the proposed conditional use could also be a factor. A large-scale operation of automobile storage, automobile repair, and body and fender work completely filling, and perhaps spilling over, the entire lot could well be deemed to constitute a degree of adverse influence not constituted by a much smaller automobile repair operation as an auxiliary of a service station." Futoryan v. Mayor & City Council 150 Md. App. 157 (2003). (emphasis supplied).

People's Counsel's Position

People's Counsel adopts the Statement of Facts and Memorandum of Protestants. People's Counsel presumes this Board is familiar with the special exception requirements set out in BCZR 502.1 and discussed in the Maryland appellate cases. The highlights are repeated below on page 11 as a reminder of the standards to be applied to the facts here. In addition to the special exception standards, other specific zoning regulations apply to the proposed use. BCZR 101 defines Group Child Care Centers and contains separate definitions that distinguish Class A, Class B and Family facilities. BCZR 424 lists the zones where the child-care uses are permitted, whether by right, by special exception, or by right with conditions. BCZR 424 also establishes restrictions and standards that must be met over and above the special exception standards in BCZR 502.1.

First, it may be helpful to see the child-care center use in the context of other uses permitted in Baltimore County. A comprehensive zoning scheme usually groups similar uses together in a specific zone, generally based on the

zone's purpose and intent. Lot size may also be a factor. For child-care facilities, there is the added condition of the number of children enrolled, meaning the intensity of the use is a distinguishing factor. The effect is akin to a density restriction in the residential zones. For example, in the R.C. 5 zone density is calculated at .5 per acre, meaning a 4 acre tract is necessary to subdivide for 2 homes ($.5 \times 4 = 2.0$ density units). If the property owner has just slightly less, say 3.9 acres, only 1 density unit exists ($.5 \times 3.9 = 1.95$ noting that density is always rounded down).

The numerical cut-off for child-care center is also unambiguous and non-discretionary. This means just one additional child above the maximum - Family Child Care Home: up to 8 children; Class A: up to 12 children; Class B: 13 or more children - bumps the use into a different category. The restrictions and standards among the types of child-care centers are clearly defined. Moreover, there is not a graduated application of the standards in proportion to the number of children within that classification. If 13 children enroll or 30 children enroll, the Class B requirements must be met. There are no "semi-Class B" or "mini Class B" facilities - if the enrollment increases to the next category by even one child, it's a different ballgame.

This is important to keep in mind in light of the Petitioners' consternation at the CBA hearing that the neighbors would oppose relief for "just 12 more children". This posture misses the point of the categories. If the enrollment at any Class A Center increases to 13 children, the facility must be approved as a Class B Center. So the proposal here should not be presented as inconsequential - it is a 100% increase over what is currently permitted. Doubling anything makes it significant and requires close scrutiny. See Futoryan v. Mayor & City Council, *supra*.

Second, a word must be said about the approval of the Class A Center here in 2008. All the neighbors sought to explain that they were unaware of the request for the Class A facility and did not see a sign posted on Gun Road, the only access

road in the neighborhood. This is relevant and probative to demonstrate why their opposition now is not inconsistent with their position on the Class A center. Everyone acknowledges the facility is there and operating. No one is seeking to close it down, undo the approval or reverse the Zoning Commissioner's decision. But the neighbors contend that any child-care facility is inappropriate at this site and should be denied. Period. Their position is that a Class B facility exacerbates the concerns they would have expressed for the Class A facility; and this involves more than the relative harm of going from 12 to 24 children. It means the adverse effects are going from no Group Child Care center to a Class B, a more intense child-care use, if you will. The neighbors should be able to express their opposition in these relative terms and should not be prohibited from expressing their opposition to any Group Child Care Center. If the neighbors had known of and opposed the Class A Center at the Zoning Commissioner's hearing in 2008, surely the CBA now would not prohibit them from saying I opposed it then and I oppose it now. Furthermore, it is not fair to allow Petitioners to minimize the change by arguing the proposal adds "only" 12 children, and, on the other hand, prohibit the neighbors from expressing their opposition to a facility which is 3 times what is permitted as an accessory use by right in the zone. (Family Child Care for $8 \times 3 = 24$ for Class B).

Application of Special Exception Standards

Query: Does the proposed Class B Group Child Care Center pose more adverse effects here than at other locations in the R.C. 5 zone?

The R.C. 5 zone is known as a "rural-residential" zone but it is also applied to farmland and the rural town centers in Jacksonville and Hereford. This makes it geographically diverse and applicable to different types of land use. As a result the actual development of R.C. 5 tracts may vary more than the way in which other Resource Conservation zones such as R.C. 2, R.C. 4, R.C. 6, and R.C.7, are developed. R.C. zones other than R.C. 5 tend to develop more homogenously as primarily agricultural and residential. This is significant because the special

exception standards in BCZR 502.1 require the CBA to weigh the adverse effects at this site to diverse R.C. 5 locations.

Residential density in the R.C. 5 zone is also an important factor that differentiates the Gun Road residences from other R.C. 5 residential areas. In 2005 the density in the R.C. 5 zone was decreased from .667 dwellings per acre to .5 dwellings per acre. About the same time, the minimum lot size was increased from 1 acre to 1 ½ acres in 2004. Since the R.C. 5 zone was first applied in the 1970's, many homes were constructed under the higher density/smaller lot size regulations. In contrast, the homes on Gun Road were built well before the enactment of the R.C. 5 Zone in Baltimore County. Most are on an average lot size of at least 7-8 acres. This makes the appearance of Gun Road, including its road structure, an anomaly in the R.C. 5 Zone.

The relatively newer developments in the rural residential areas must adhere to higher standards regarding road width, site distances and road configurations. This is directly related to the density under which the tracts can be developed, and the concomitant traffic emanating from the residences. Here, the Gun Road homes were constructed in an era where the automobiles, if any, that traveled to the relatively few homes were fewer and smaller. Today, this same road is barely able to handle the larger pick-up trucks, suvs, vans, delivery trucks, trash trucks, emergency vehicles and school buses. While a minimum number of these vehicles can be expected on any residential road today, increasing the intensity of the uses on Gun Road only increases the number of these vehicles, exacerbating the flow of traffic and the safety of all vehicles traveling on Gun Road. In other words, Gun Road, with its current configuration and size, could not support a residential development under the current standards. This makes it more rural than other R.C. 5 zones and less forgiving of additional traffic generated by a Class B Group Child-Care Center. These conditions, accurately and thoroughly depicted by the neighbors' testimony, photographs and videos, are significant. They must be considered under **BCZR 502.1** to determine if the 96 round trips

generated in the morning and late afternoon, plus the additional deliveries and other traffic generated by a Class B Group Child Care Center for 24 children and teachers and visitors would:

“A. Be detrimental to the health, safety or general welfare of the locality involved;” or

“B. Tend to create congestion in roads, streets or alleys therein;” or “C. Create a potential hazard from fire, panic or other danger,” (emphasis added) or

“E. Interfere with adequate provisions for schools, parks, water, sewage, transportation or other public requirements, conveniences or improvements; (emphasis added).

It is reasonable to believe that the dangers created here from additional traffic generated from non-residents is greater than it would be at other locations in the R.C. 5 zone. Other R.C. 5 residential developments with wider roads, turnoff lanes, sidewalks, and terrains that are capable of eliminating or minimizing blind curves and maximizing site lines are more suitable and preferable.

The Court of Special Appeals recognized the significance of the additional traffic on inferior roadways in affirming the Baltimore County Board of Appeals’ denial of a special exception for a nursing home in a residential area in People’s Counsel v. Mangione, 85 Md.App. 738, 751-752 (1991). The Court referred approvingly to the reasons given by the CBA:

“Before the Board were various facts and circumstances which, we believe, satisfy the Schultz standard of particular adverse impact....There was testimony concerning the effects of the intrusion of the project into the residential neighborhood presently existing around that location. There was testimony about small arterial streets whose only access to York Road from the community was by way of Greenridge Road, and that the narrow, winding nature of those streets, with the increased traffic, would jeopardize the safety of the children playing in the streets.” Further the Board was unconvinced that the “traffic generated by the home’s employees and visitors would not overtax an interior community road system designed to accommodate residential traffic.”

In addition to the **traffic safety factors**, the neighbors here also oppose the **negative visual impact** of the Class B Group Child Care Center and the interior

and exterior alterations required of the dwelling. A Class B Center is more akin to an institution rather than a residence and is out of character in this rural, wooded area consisting of historic and vintage homes, some of which are listed on historic registries. The neighbors are concerned about a negative impact on their property values, particularly given the fact that Gun Road is a unique enclave that has retained a rural residential and historic setting for centuries. The residents on Gun Road have managed to stave off the impacts from Interstate 95, UMBC and other such developments and do not want an institutional use in their midst.

This position has been applied by the Court of Special Appeals in affirming the denial of a special exception for a helicopter and airplane landing strip in Greenspring Valley because of the historic nature of the area. In Lucas v. People's Counsel, 147 Md. App. 209 (2002), Judge Kinney approved the CBA's conclusion **“. . . that the impact upon the National Historic District would be greater in the Greenspring Valley than if located in other northern areas of the R.C. 2 zones.”**

Since the Gun Road residents comprise a unique enclave of similar homes and lot sizes, the evidence of the protestants here describing the impact to all the residents on the entire road is relevant. In determining the “area” affected in the Lucas case, the Court, at 241, pointed out:

“The Court of Appeals has noted that the word “neighborhood” is flexible. In Alviani v. Dixon, 365 Md. 95, 117-20, 775 A.2d 1234 (2001), the Court said that a neighborhood could be defined by a more flexible area, so long as the description “is precise enough to enable a party or an appellate court to comprehend the area that the Board considered [.]”

Despite Petitioners' claim here that the primary use of their site would remain residential if the Class B facility is approved, the zoning regulations clearly recognize the greater intensity of a Class B facility. Under BCZR 424.4, a Class A group child-care center with 12 children or less is a permitted accessory use in single-family detached dwelling in residential zones:

“§ 424.4 Group child-care centers as accessory use.

A. Group child-care centers, Class A, are permitted as an accessory use within single-family detached dwellings in all residential zones . . .”

(Similarly, BCZR 424.3 permits by right a “Family child-care homes” for 8 children or less as an accessory use in all zones.). There is no provision for an “accessory Class B” facility. To be sure, Class B facilities are permitted in residential zones by special exception, including the R.C. 5 zone, but only as a principal use:

“BCZR 434.5. child care centers as principal use.”

A. All other principal use group child-care centers and nursery schools in residential zones are permitted in accordance with the following schedule: . . .”

This comports with the testimony of Dennis Wertz, the long-time and experienced employee of the Office of Planning. Mr. Wertz emphasized that changing to a Class B facility makes it a principal commercial use. For this reason, he opposes the special exception as being contrary to the spirit and intent of the zoning regulations under BCZR 502.1; he also pointed out the ingress and egress conditions pose a threat to the safety of the vehicles on Gun Road.

To be sure, if the height and area requirements can be met, more than one principal use is permitted on a site. But the point here is that the expansion and intensification to Class B interjects a business use to a wholly residential area, and the concomitant changes to the site highlighted in the testimony of John Bryant, the Chief Fire Protection Engineer who reviews all the building plans for Baltimore County, and Robert Powell, Supervisor of Soil Evaluation and Ground Water Management for DEPRM, are out of character for this neighborhood.

In Board of County Comm'rs. v. Holbrook, 314 Md. 210 (1988), the Court of Appeals reversed the Court of Special Appeals and upheld a decision by the CBA for Cecil County denying a special exception for a mobile home on land

zoned agricultural and limited residential use. The Court focused on the adverse impact on a single neighbor's property and stated:

"As a general matter, we note that the Board justifiably assumed that the conspicuous presence of a mobile home will lower adjacent property values."

The Holbrook Court recognized the significance of the area at issue there compared to other locations in the zone and that the neighboring home adversely affected was built:

" . . . in a uniquely valuable, heavily forested, low-growth area. Moreover, photographs clearly depicted the direct and proximate view of the mobile home from the Peters's home. The Board found that this evidence "vividly indicate[d] the debilitating (sic) effect of the mobile home on the value of [the Peter's] property," inferring thereby that the trailer's continued presence would create "significantly greater adverse effects in this location than were it located in other areas in the zone."

In Holbrook, only one home was adversely affected. Here, there is virtually unified opposition from all the neighbors who actually reside on Gun Road, exponentially increasing the adverse effect.

Similarly, in Richmark Realty Co. v. Whittliff, 226 Md. 273 (1961), the Court of Appeals rejected a Baltimore City ordinance purporting to permit construction of a filling station in a residential area. The Court recognized the adverse effects of the protestant Whittliff, who claimed adverse effects when she and members of her family had to pass the gas station going to and from their property. The Whittliff's home did not adjoin the proposed gas station. The Court deferred to the findings of the chancellor that the Whittliffs would sustain a depreciating effect on their property based on the testimony of a realtor and appraiser. The witness " . . . pointed out that part of the value of these properties is derived from their proximity to the park, and that a "chipping away" of the restrictions established to protect the areas in and around the parks would inevitably reduce the value of nearby residential real estate."

The relevance to the instant case is that the appellate Court sanctioned the recognition of unique and different geographic features in a residential area, such

as the parkland in the Richmark Realty, or the historic nature of the Greenspring Valley in Lucas. The CBA here should apply the same standard to the historic and rural nature of Gun Road.

Moreover, there is nothing sacrosanct about a child-care use. The emotional nature of the use is not relevant. A special exception for a child related use should not be seen as more benign or favorable. The standards in BCZR 502.1 are applied evenhandedly. An institutional use for children's activities can create the same type of adverse effects as other uses and the legal standards are not relaxed because the use pertains to children. This was made clear by the Court of Appeals in 1966. In Creative Country Day Sch. V. Montgomery Co. Bd. Of A., 242 Md. 552 (1966), the Court affirmed the denial of a special exception for a private school, riding stable, and child care facility in a residential use district. The thrust of the opposition was that the use would create a nuisance, resulting from noise and traffic and would decrease the value of surrounding properties.

Ironically, the Court there noted approvingly the testimony about the inferior conditions on access road as a basis to deny the special exception:

"Route 108 is a black top road with a width of about 18-20 feet. It has a speed limit of 40 miles per hour. Buford Hayden, an expert land planner, who testified for the petitioners before the Board, stated that the sight distance to the entrance of the subject property from west to east is over 1000 feet and is "very good", while the sight distance from east to west is between 300 to 400 feet and "is not so good."

* * * * *

Remarkably, there were other educational institutions in the area, but like the Oblate Sisters' operation of a child care center in an existing building at the entrance onto Gun Road in the instant case, the Court refused to find that the presence of such other institutions did not mean approval should be extended to the proposed school. The Court in Creative Country Day described the surroundings:

"There are several large houses on large tracts in the immediate neighborhood of the subject property. . . In the general area there are several

institutional uses. They include the following: The Sherwood School, approximately a mile to the east of the subject property, a large public school, which is a combined elementary and junior senior high school complex having approximately 1880 pupils on 30.2 acres of land. In the general neighborhood, St. John's Episcopal Church operates a school which includes a kindergarten and an elementary school. St. Peter's Roman Catholic Church has an elementary school. There is also a Quaker day and boarding school for students of secondary years."

In affirming the denial of the special exception, Judge Barnes concluded:

"We are of the opinion that there was substantial evidence before the Board which would justify it in concluding that the appellants [property owner] did not meet the burden upon them of establishing that the "proposed use would not constitute a nuisance because of traffic, number of students, noise or type of physical activity."

Moreover, in addition to affirming the denial on the merits, the Court rejected the claims raised by the Petitioners there that since public and most parochial schools were permitted by right in the zone but private schools were required to obtain a special exception, there was a violation of due process and equal protection.

Zoning Change On the Site From D.R. 1 to R.C. 5

The change in zoning on the site between the approval of the Class A Group Child Care Center in 2008 and the current Petition for a Class B facility is relevant because BCZR also makes a distinction. In § 424.5 a Class B facility requires a special exception in the R.C. 5 zone. On the other hand, a Class B facility in a D.R. 1 zone for 24 children is a permitted use (subject to conditions found in BCZR §424.7 which apply to both Class A and Class B facilities in all D.R. zones). In other words, the distinction in BCZR and relevant to the instant case is that both Class A and Class B facilities would be permitted on the instant site by right if the prior D.R. 1 zoning were in place but are only permitted by special exception under the current R.C. 5 zone.

Clearly, the zoning regulations recognize concerns with a Group Child Care facility in a residential area zoned R.C. 5 more so than within a D.R. 1 residential area. Perhaps a special exception would not have been approved for the Class A

facility here in 2008 if the site were zoned R.C. 5 then. In any event, it reinforces People's Counsel's and the neighbors' position that approval of the current Petition is a significant request and should not be viewed as a minor unobtrusive and natural extension of the current use.

Special Exception Law

In Schultz v. Pritts, 291 Md. 1 (1981), Judge Davidson rejected the idea that a special exception should be granted whenever the prospective adverse effect is no worse than from a use permitted by right. She explained that special exception uses are separately listed because of heightened concerns about the potential problems they pose.

The Court relied on this reasoning in its next important special exception case. In Board of County Comm'rs. v. Holbrook, 314 Md. 210 (1988), the Court applied Schultz to reinstate a zoning board denial of a special exception based on adverse visual impact of a motor home on a residence. In this decision, which reinstated the Cecil County CBA's denial of a special exception for a mobile home in proximity to a single-family home, Judge Cole wrote:

"In *Schultz v. Pritts*, *supra*, this Court determined the applicable standard for judicial review of the grant or denial of a special exception use. We observed:

'The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. **The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the zoning plan.**'

* * *

'The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one

for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. *Turner v. Hammond*, 270 Md. 41, 54-55 (1973); *Rockville Fuel and Feed Co. v. Board of Appeals of Gaithersburg*, 257 Md. 183, 187-88 (1970); *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287 (1953); *Anderson v. Sawyer*, 23 Md.App. 612, 617 (1974). **These standards dictate that if requested special exception use is properly determined to have an adverse effect upon neighbors properties in the general area, it must be denied.** 291 Md. at 11-13, 432 A.2d 1319 [Emphasis supplied.]

We then defined the specific nature of the requisite adverse impact required to warrant denial of a special exception application:

‘[A] special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is **whether there are facts that show that the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.**’ 291 Md. at 15 [emphasis supplied]. 314 Md. at 216, 217.

In Alviani v. Dixon 365 Md. 95, 112-14 (2001), the court again quoted Schultz extensively, and repeated this statement in Holbrook:

“In summary, where the facts and circumstances indicate that the particular special exception use and location proposed would cause an **adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone**, the application should be denied. Furthermore, if the evidence makes the issue of harm fairly debatable, the matter is one for the Board’s decision, and should not be second-guessed by the appellate court.” (Emphasis supplied).

See also Chester Haven L.P. v. Queen Anne’s County Board of Appeals 103 Md. App. 324 (1995).

Special Exception Statute: BCZR 502.1

The **preface to BCZR 502.1** codifies the zoning principle that a special exception is a conditional use:

“Section 502
Special Exception
BCZR 1955

Note: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another . . . All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the uses listed as special exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals. . .”

Petitioner has the burden to prove the proposed special exception use satisfies all the standards in **BCZR 502.1**:

“502.1 Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air; [Bill No. 45-1982]
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-1982]
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone. [Bill No. 74-2000]”

If the Petitioner cannot meet just one standard in BCZR 502.1, the special exception must be denied. See People’s Insurance Counsel Division, et al. v. Allstate Insurance Company, et al. 408 Md. 336 (2009), which reiterates that

“Court begins statutory analysis by first looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless, or nugatory.”

The burden of proof for a special exception remains with the applicant. Turner v. Hammond 270 Md. 41, 55-56 (1973); Futoryan v. Mayor & City Council 150 Md. App. 157 (2003). Judge Davidson wrote in Schultz 291 Md. 1, 15:

“These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such special exception use irrespective of its location within the zone.” (emphasis added).

This means that a special exception must be denied where the adverse effects are particular to the location, and above and beyond the normal adverse effects. It should be underlined, in this context, that in order for a special exception to be denied, it is not necessary that the CBA find that the proposal is in the worst possible location in the county or that it is the most extreme in size and scope. It just has to present some particular adverse effect at this location.

The Court of Special Appeals sustained a denial of a special exception for a rubble fill in Moseman v. Prince George’s County, 99 Md.App. 258 (1994). The factors particular to the site included the presence of an existing rubble fill across the street, a narrow and winding access road, the proximity of single family homes, highly erodible soils, risks to well water, and depreciation of property values. There was no evidence that the Moseman site was the worst site in Prince George’s County. There may have been other sites as bad or worse. Moseman

could have been proposed a larger or more hazardous landfill. But the potential for worse locations or worst case scenarios did not require approval at this location.

Unlike the variance standard where the unique characteristics must be indigenous to the property itself, such as geographic features, the adverse effects to deny a special exception may result from existing uses on the site or from surrounding, off-site conditions, such as traffic or road configurations.

Schultz v. Pritts implements BCZR 502.1 and focuses on whether “neighboring properties in the general neighborhood would be adversely affected.” It is elementary that “the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards . . .” The proposed use must not cause “harm or disturbance . . .” or “disruption of the harmony of the comprehensive plan.” 291 Md. at 11.

Judge Rita Davidson explained the harm must be particular, “above and beyond the inherent ones ordinarily associated with such uses” [in the zone]. 291 Md. at 14. She wrote:

“These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied”. 291 Md., at 12.

In People’s Counsel v. Country Ridge Shopping Center 144 Md.App. 580 (2002), Futoryan v. Mayor & City Council 150 Md. App. 157 (2003), and People’s Counsel v. Mangione, 85 Md. App. 738 (1991) the Court affirmed denial of a special exception because there was something particular about the project or neighborhood, which justified denial. These Courts followed the thrust of Judge Davidson’s opinion in Schultz that particular adverse neighborhood effects tolerated for uses permitted by right would not be acceptable for a special exception. So to in Futoryan where evidence showed how the garage operation was “ ... a detriment to the general welfare of the adjoining residential community,” it warranted denial of the special exception.

For these reasons, the special exception for a Class B Group Child Care Center should be denied.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of September, 2010, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286 and Lawrence E. Schmidt, Esquire, Gildea & Schmidt LLC, 600 Washington Avenue, Suite 200, Towson, MD 21204, Attorney for Petitioner(s).

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel for
Baltimore County

9/9/10

IN RE: PETITIONS FOR SPECIAL EXCEPTION * BEFORE
and SPECIAL HEARING *
NE Corner of Gun Road & Keech Road * THE
(505 Gun Road) *
13th Election District * COUNTY
1st Councilmanic District * BOARD OF APPEALS
Lynn R. Hogg, *et ux.* * FOR
and Elizabeth Smith * BALTIMORE COUNTY
Legal Owners/Petitioners *
Case No.: 2009-0153-SPHX

* * * * *

**PROTESTANTS' MEMORANDUM
AND APPENDIX IN LIEU OF FINAL ARGUMENT**

Gun Road Historical and Protective Association, by ***Paul Donoghue***, President, and individual neighbors, Frank Lindberg, Wendy Adams, Thomas Jarvis, Elizabeth Donoghue, Willie Moore, Mary Jane McGill, Charles McGill and Paul Donoghue, Protestants, by ***J. Carroll Holzer, Esquire*** and Holzer & Lee, their attorney, submit this Memorandum in Lieu of Final Argument and say:

I.

STATEMENT OF THE CASE

This matter came before the Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the owners of the property, Elizabeth A. Smith and her husband, Lynn R. Hogg. They requested a Special Exception to permit a Class B Group childcare center as a principal use on their property, pursuant to §424.5A of the Baltimore County Zoning Regulations to allow a maximum of twenty-four (24) children. Special Hearing

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

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

RECEIVED
SEP - 9 2010
BALTIMORE COUNTY
BOARD OF APPEALS

relief was also requested from §409.12.B of the Zoning Regulations to approve a modified parking plan. A Site Plan was submitted prepared by Larry Link, a licensed architect.

(Note: On April 17, 2008, a Class A Group childcare center use permit was issued by the Director of Permits and Development Management which allowed for twelve (12) children as an accessory use within the Petitioners single-family dwelling. The Protestants claim the property was not posted with a sign).

The above-named Protestants appeared before the Zoning Commissioner and opposed the request and on May 12, 2009, the Petition for Special Exception was denied by the Zoning Commissioner and the Special Hearing Request was dismissed as moot. The Zoning Commissioner noted that the Office of Planning and the Division of Traffic Engineering recommended denial of the Special Exception. The Zoning Commissioner found that under the tests set out in §502.1.B of the Zoning Regulations, there were two (2) factors that justified denial. First, that in other cases before the Zoning Commissioner a Special Exception for day care use Class B is most appropriately located on the fringes of a residential community as opposed to its interior. The Zoning Commissioner further found the traffic to be generated by the proposed day care center will tend to cause congestion on Gun Road. The Zoning Commissioner also found that the proposed traffic patterns that will be generated by the increased use are problematic.

Finally, the Zoning Commissioner found that the number of children proposed in the middle of a very low-density single-family neighborhood tilts the character of the operation from an accessory type use to a principal type business use, which was inconsistent with the Zoning Classification.

An appeal was filed to this Board from the Zoning Commissioner's Decision by the Petitioners. Early at the hearing of this case before the Board, a new Site Plan was prepared for the Petitioners by James V. Hermann which differed from the Plans submitted by architect Link. After debate, the parties agreed to a Stipulation which the Board accepted and remanded the matter back to the Zoning Commissioner based on the new Hermann Plan.

On March 24, 2010, the Zoning Commissioner reviewed the new Plan and reviewed additional negative comments from the Planning Office. The Zoning Commissioner, after reviewing the Amended Site Plan did not find any basis for altering or amending his original Decision denying the request for Class B childcare center. From that Decision, the matter was again forwarded to the Board of Appeals for its consideration.

II.

STATEMENT OF FACTS

The Board of Appeals heard this case over the course of nine days beginning November 10, 2009 and continuing through and concluding on July 15, 2010.

Protestants presented the testimony of eleven (11) witnesses, Wendy Adams (309 Gun Road), Thomas Jarvis* (402 Gun Road), Elizabeth Donoghue* (508 Gun Road), Willy Moore (510 Gun Road), Joe Bennett (516 Gun Road), Frank Lindberg (511 Gun Road), John Bryan** (Deputy Fire Marshall and Chief Fire Protection Engineer for DEPRM), Mary Jane Macgill (319 Gun Road), Dennis Wertz (Baltimore County Office of Planning), Charles Macgill (319 Gun Road) and Paul Donoghue (508 Gun Road).

William Jahnigan,* Michael Thomasson,* Steven Joseph Antonelli,* Beth Smith,* Jessica Baker,* Jamie Rudy, James Hermann, Wes Guckert, Lt. Messing and Lynn Hogg and Robert Powell (Supervisor of Soil Evaluations and Ground Water Management for DEPRM), testified for Petitioners. With the exception of Petitioners Smith and Hogg, owners of 505 Gun Road, none of the witnesses who testified on their behalf are Gun Road residents.

A. Protestants' Case

Wendy Adams

Ms. Adams, a 309 Gun Road resident, has lived in the area her entire life. She testified that she and Gene Pometto, her husband, are opposed to the special exception and variance which Petitioners request, because a twenty-four (24) child day care facility in the middle of the neighborhood is contrary to the spirit and character of the Gun Road community. Gun Road, Ms. Adams testified, is no place for a "business or commercial venture." She testified that she did not see any sign posted on Hogg's property relative to the Class "A" license and would have opposed such a use.

Thomas Jarvis

Mr. Jarvis, who has lived at 402 Gun Road for thirty-five (35) years, explained that his home is at the end of a panhandle driveway the entrance to which is directly opposite the intersection of Gun Road and Keech Road, nearly directly across the street from the entrance to 505 Gun Road. Mr. Jarvis, therefore, has ample opportunity to observe traffic entering and exiting Cuddles Day Care, not just for customers of the business, but delivery trucks and other

*Testimony attached in Appendix A – November 10, 2009

**Testimony attached in Appendix B – June 30, 201

vehicles, which increased traffic adversely affecting quality of life on Gun Road. There are more trash cans at the Hogg/Smith residence relative to the norm, Mr. Jarvis testified, and more trash gets out of the Smith/Hogg cans on to the street, compared to the other neighbors. This community, explained Mr. Jarvis, does not lend itself to a business of this nature. He opposes a day care business of any size, especially one with twenty-four (24) children. He testified that he did not see any sign posted on Hogg's property relative to the Class "A" license.

Elizabeth Donoghue

Ms. Donoghue has lived at 508 Gun Road since 1997 and walks often, at least 2-3 days per week, from her house which is diagonally across Gun Road from 505. Her walks continue south across the property which is directly opposite 505 Gun Road. She is aware of increased traffic as a result of the day care center with the Class A license, and is very much opposed to the special exception, because people choose to live on Gun Road to avoid just this sort of increased traffic and commercial activity. Gun Road is unique throughout Baltimore County, Ms. Donoghue testified, for its rural character, beauty and history, which a twenty-four (24) child day care facility would negatively impact. She insisted that she did not see the Zoning Notice sign, which was supposedly posted for thirty (30) days beginning March 14, 2008, prior to issuance of the Class A license. She testified that she did not see any sign posted on Hogg's property relative to the Class "A" license and would have opposed such activity.

William H. Moore

Mr. Moore has lived at 510 Gun Road with his wife and two sons for fifteen (15) years. Mr. Moore owns about seven acres of property and supported the 2008 CZMP down zoning, arguably at personal financial sacrifice, because the character of the neighborhood overrides financial self-interest.

Mr. Moore, who testified over the course of three days, explained that the Gun Road community is an anomaly, not just with respect to the immediate surrounding area but compared to other R.C. 5 Zoned communities. Mr. Moore presented an historical context. While the surrounding southwest Baltimore County area developed throughout the 60's and 70's into a bedroom community of typical suburban housing developments, Gun Road did not change. The Gun Road Historical and Protective Association has its roots in the 1960's when neighbors banded together to fight off efforts by developers to commercialize nearby properties.

The Gun Road residential community is historically significant. The age, width and condition of Gun Road itself distinguishes the neighborhood. Gun Road is a dead end road with only one entrance and exit (Rolling Road). The houses on Gun Road and the properties on which the homes are situated are significantly unique relative to those in other R.C. 5 zones as well as the immediate surrounding area.

There are forty (40) houses on Gun Road and two on Keech Road. But for the Petitioners and their Cuddles Day Care, no Gun Road resident runs any type of business out of their home. A Class B license will, by operation of law, necessarily make the principal use of 505 Gun Road a business.

Mr. Moore testified that the Cuddles Day Care playground has, since its construction, violated Baltimore County Code, initially because it did not have the five foot (5') high stockade board-on-board fence. Hogg/Smith moved the playground, presumably because it was too close to the property line on the Keech Road side of the property. Now, the obviously (commercial for its size), bright plastic playground equipment is in the Gun Road "view shed." And, while not

too close to the property line, is still in violation of current zoning regulations because the absence of any fence, much less the requisite sixty inch (60") stockade fence which Petitioners have never thought necessary to build. Photographs of the playgrounds (Protestants' Nos. 10 and 11) are in evidence.

Mr. Moore explained that the County will require the business owners to utilize a commercial trash removal business if they obtain a Class B license, because its principal use will be a business. This is problematic from Mr. Moore's and the neighborhood's perspective because there will be yet additional and noisy traffic from commercial trash haulers on the already-too narrow, hilly and curvy road. This would be inconsistent with the letter and spirit of the R.C. 5 Zone in addition to posing additional problems from transportation perspective. See Protestants' Exhibit 16.

The stone wall issue is a conundrum, according to Mr. Moore, and is typical of the difficult situation in which the local taxpayers find themselves, because per the February 19, 2010 memorandum from Division of Traffic Engineering Chief Stephen Weber to Dennis Wertz, the stone wall presents hazards for its obstruction of sight lines for traffic exiting the business establishment. Mr. Moore does not advocate that Petitioners do any less than what the law requires, especially when the safety of neighborhood residents (or anyone else, for that matter) is at issue, but he also does not want the aesthetically-pleasing stone wall razed. The same would hold true for the white fence, which may also be problematic for traffic exiting Cuddles for the same reason—obstruction of drivers' sightlines to the north---but the removal of which would detract from the attractiveness of the property.

Mr. Moore presented a 50+ photograph Power Point slide show (Protestant's No. 19) which establishes the remarkable beauty and history of Gun Road and its houses. Three houses (309, 324 and 403) are on the Baltimore County Landmark Preservation Commission List. Those three (3), plus two (2) others (301 and 319) are on the Maryland Historical Trust Inventory List.

Mr. Moore, who is a principal and Vice President of Southway Builders, where he has worked since 1993, presented a video (Protestants' No. 18) of Gun Road from the vantage point of a driver entering on to Gun Road from South Rolling Road and proceeding south to the terminus of the road at an unofficial entrance to the fourteen thousand (14,000) acre Patapsco Valley State Park, which surrounds the southern and western boundaries of the Gun Road neighborhood.

Mr. Moore explained that the Oblate Sisters Convent and day care facility is located at the north end of Gun Road, closer to Rolling Road than any of the forty-two (42) houses on Gun and Keech Roads. The Mt. Providence traffic, then, does not pass by a single home on Gun Road.

Mr. Moore showed yet another video (Protestants' No. 23) which shows three (3) vehicles - a trash truck and two buses, approaching 505 Gun Road from the north, which establishes the difficulty with which vehicles, especially larger ones, navigate the narrow, shoulder-less Gun Road. All of the vehicles were well over the centerline of the road.

Mr. Moore testified that there are three clusters of two to three houses towards the south end of Gun Road which are situated near each other and which are owned by members of three extended families. These seven (7) houses are in at least the third if not fourth generation of

family ownership. The average length of ownership of all properties on the entire road is fifty (50) years, and the current average duration of residency is thirty (30) years, indication of yet another facet of Gun Road which makes it unique relative to other R.C. 5 Zoned areas as well as the general vicinity.

Mr. Moore explained why comparing Gun Road to Relay, as Petitioners through counsel on cross examination tried to do, is a red herring. Relay is a much larger area than Gun Road, in terms of population, number of houses, number of streets and traffic. Gun Road is isolated, because it is sandwiched between the state park to the south and west and 95 to the east. Relay has many through arteries including, for example, those that serve traffic from Catonsville, Arbutus and Halethorpe to ElkrIDGE.

There is overwhelming opposition to operation of the day care with a Class B license, Moore testified. The neighborhood has been consistently apprised as to the status of Petitioners' case, and the vast majority (all but perhaps three homeowners) have communicated concern about the effect granting Smith/Hogg the Class B license, which will make the primary use of 505 Gun Road a commercial enterprise. Insertion of a commercial enterprise into the middle of such a pastoral residential setting, Moore explained, will tend to destroy the fabric of the neighborhood whose residents have been fighting diligently for decades to preserve for future generations.

Joseph Bennett

Mr. Bennett has lived at 516 Gun Road for thirty-three (33) years. His wife's family has owned property on Gun Road for over eighty-seven (87) years. Mr. Bennett owns a twelve (12) acre parcel which includes his horse farm from which he, his wife and seven grandchildren ride

into the Patapsco Valley State Park, which his property borders to the west. Mr. Bennett also supported the 2008 zoning change, because he and his family value the rural character of the community, unique among R.C. 5 as well as other zoned areas of Baltimore County.

Mr. Bennett stressed that many families, like his own, have been property and homeowners on Gun Road for generations and they, like those who purchased homes on Gun Road, love the neighborhood for its rural feel so close to the city.

Mr. Bennett testified about the Maryland State Department and Assessment trade name application dated February 26, 2008 for Cuddles Day Care (Protestant's No. 26). *Smith/Hogg submitted the applications days prior to their purchase of 505 Gun Road*, directly contrary to Beth Smith's November 10, 2009 testimony on this point. At page 44 lines 11-12 of the transcript of the hearing, Ms. Smith testified that she decided to operate the day care facility in the "neighborhood after we moved... in the March, April time frame."

Mr. Bennett explained that Smith/Hogg should have, in his opinion, purchased a commercial property from the start, not invest in a business in a residential community where a primary use business can lawfully operate only by special exception.

Mr. Bennett testified about and presented video evidence of traffic entering and exiting the Cuddles Day Care driveway on to Gun Road (Protestants' No. 29), which evidence established without exception that all traffic shown on the video traveled well across the center line of Gun Road when making the right turn from 505 Gun Road on to north bound Gun Road. There is evidence in the video that traffic cannot enter and exit the business driveway at the same

time, because the video showed a south bound Gun Road car coming to a complete stop just short of the entrance to the Smith/Hogg business, waiting for a car exiting the business to negotiate its right turn on to north bound Gun Road. This contradicts testimony of James Hermann, the Petitioners' landscape architect.

Mr. Bennett also testified about still photographs (Protestants' No. 28) of the common driveway for 508, 510, 512 and 514 Gun Road and the dangerous site lines to the south due to the bank on the west side of Gun Road and, even more so, the sharp incline for traffic traveling north on Gun Road after exiting the commercial day care business.

Mr. Bennett testified about and submitted photographs of vehicles that were involved in a head-on collision at the crest of the blind rise between 505 Gun Road and the common driveway that serves 508, 510, 512 and 514 Gun Road. This is likely the most precarious section of a typically dangerous road and is within a hundred yards or so of the Cuddles Day Care driveway.

Frank Lindberg

Frank Lindberg is the adjoining property and homeowner to the north at 511 Gun Road. Mr. Lindberg, who recently retired after a forty-five (45) year career as an engineer for Northrup Grumman, has lived on Gun Road for twenty-eight (28) years. The original home on Mr. Lindberg's "Waveland" property dates to 1836, according to Mr. Lindberg, who also informed the Board that Gun Road has been in existence since before the Revolutionary War. The road is as narrow as seventeen feet (17'), has no shoulders, and has steep embankments on either side.

Mr. Lindberg testified that Gun Road residents are, as a rule, vigilant about zoning issues. On cross examination and in response to Petitioners' counsel's own question about why he did not protest the granting of the Class A license, Mr. Lindberg said that he did not see the Class A sign posted during the thirty (30) day period beginning March 14, 2008. It is very unlikely, Mr. Lindberg testified, that the many residents traveling past the Smith/Hogg property would not have seen a zoning hearing sign with six inch letters had such a sign, in fact, been posted.

Mr. Lindberg testified that he opposes the granting the special exception which is necessary in order for Petitioners to obtain the Class B day care license.

John Bryan

John Bryan works for Permits and Development Management (PDM). He is the Chief Fire Protection Engineer for the Building Management, Building Plans Review. He has also been the Deputy Fire Marshall for Baltimore County for thirty-two (32) years, which job entails enforcement of fire prevention codes and the Baltimore County Building Code, among others.

Mr. Bryan is a nationally certified Building Official, Building Code Official, Building Inspector and one and two family Building Inspector. He has a B.S. in Fire Protection.

A Transcript of Mr. Bryan's testimony before the Board on June 30, 2010, is attached as Appendix B.

Mr. Bryan testified that the law requires that a Class B licensed day care facility with more than twelve (12) children engage a licensed architect before the County would issue a use and occupancy permit. Further, the architect would prepare and sign off on drawings which establish conformity with Chapter 43 of the Maryland Existing Building Codes, including safety

and accessibility provisions. (NOTE: This Site Plan would have to be prepared after DEPRM did soil evaluations to determine what areas need to be set aside for the septic system, the drain field, and one backup drain field. These areas would not be available for the driveway or the parking lot with handicap access. The driveway has to be twenty feet (20') wide throughout with a thirty-five foot (35') inside radius to allow access for a seventy-five thousand (75,000) pound fire truck. A thirty-five foot (35') radius where the driveway meets Gun Road would most likely require the removal of the decorative stone entranceway which would permanently ruin the appearance of the property).

The character of the building will "absolutely, absolutely" change, according to Mr. Bryan, because there would have to be emergency lighting and a "full blown" smoke and fire alarm system. There would have to be, typically, two code-compliant accessible entrances to the building (32-inch wide doorways), thirty-six inch (36") wide interior hallways and, potentially, a wheel chair ramp. Bryan testified that any number of children above twelve (12) changes the building from an accessory use for a residential structure to a commercial building. (T. p. 8, Appendix B).

Mr. Bryan explained that the law requires installation of a fire sprinkler system in the absence of at least a one hour, possibly a two-hour fire "separation" system. (There has been no testimony that such a fire separation system is, in fact, in place. It is more likely than not that there is no hour or more fire separation system in place now, based on the age of the house and the fact that the house was constructed for residential purposes). If the building requires a sprinkler system, then the building would have to be within one hundred fifty feet (150') feet of a fire hydrant. (NOTE: There has been no testimony that the fire hydrant is within one hundred

fifty feet (150') of the building. The drawings, to the contrary, establish that the hydrant at the northwest border of the property is closer to two hundred twenty-five to two hundred fifty feet (225'-250') from the building).

The day care owners, in other words, would have to install a fire separation system between the residential and day care areas of the building or, alternatively, provide a fire hydrant to within one-hundred fifty feet (150') of the structure to service the fire sprinkler system pursuant to Chapters 9 and 10 of the Code.

The exterior of the building would also have to be altered pursuant to the applicable Maryland Accessibility Code. There would have to be a minimum number of parking spaces and certain number of those would have to be handicap accessible. For example, there would have to be an eight foot (8') wide parking spot and with an additional eight foot (8') wide access aisle for handicap parking, and there would also have to be handicap parking signage, because the primary use of the property would be commercial, not residential.

If the building has the day care facility on one floor and living quarters on the second floor, according to Mr. Bryan, then there would have to be "fire separation" between the primary commercial use part of the building and the living quarters. The code requires minimum aisle and doorway widths and requires compliance with combustibility regulations. All toilet facilities for use by day care children would have to be handicap accessible.

While the County does not technically enforce federal ADA requirements, Maryland's 8-A Accessibility law, according to Mr. Bryan, parallels the federal statute and regulations so that there is, at least as a practical matter, enforcement of the same strict regulations through the

State counterpart. For example, there would have to be an "accessible route" to "all primary function areas," which would likely mandate some type of internal wheelchair accessible ramps, as well.

Per the "disproportionality" aspects of both County and State regulations, the Building Inspector and Chief Fire Protection Engineer testified, twenty percent (20%) of construction costs must be earmarked for ADA upgrades

Mr. Bryan confirmed that county law does not permit him to grant waivers from the requirements of the Maryland Accessibility Code. Thus, above twelve (12) children changes this house from a residence with accessory use as childcare to a commercial building under the Baltimore County Building Code.

Mary Jane Macgill

Mary Jane Macgill has been a resident of 319 Gun Road for forty-four (44) years. Ms. Macgill is also a licensed real estate agent and broker. She has been in the real estate business since 1986. She is a lifetime member of the Howard County \$1 Million Club and has listed and sold Ten Million Dollars (\$10,000,000.00) worth of properties. She has an undergraduate degree from University of Maryland-College Park and an MBA from Loyola College of Maryland.

Ms. Macgill testified that she has listed neighborhood properties, including 505 Gun Road. She defined the neighborhood as attractive and unique relative to the general vicinity in that there are larger lots and older, larger homes. The neighborhood is serene, borders the state park, has historical significance and is very stable. She stated the properties typically list for quite a bit more than those in nearby Catonsville and Arbutus neighborhoods.

The Board conditionally qualified Ms. Macgill as an expert witness to the extent that she testified about “perceived factors she would consider in advising prospective purchasers” about given properties.

Ms. Macgill testified that the changes to 505 Gun Road that would be necessary as a result of its primary business use classification would affect its “sale-ability.” Fewer buyers would be attracted to a property which is commercial as opposed to residential. Further, the aesthetics of a nearby residential home would be adversely affected, in Ms. Macgill’s expert opinion, by its proximity to a commercial building. Based on the requisite changes about which Mr. Bryan testified, according to Ms. Macgill, it likely would cost a prospective purchaser \$100K to “fix” the property by renovating it back into a completely residential home. Further, the location of 505 Gun Road in the relative center of the neighborhood compounds the problem, because of its visibility.

Ms. Macgill’s concerns as a resident relate to the dangerous precedent that such a profound change would set. She questioned who would want to live next to a commercial building on Gun Road? Wouldn’t the next investor (as opposed to a home owner) reasonably be able to argue that, “if the owners of 505 are allowed to run a business out of a building whose primary use is commercial, why shouldn’t I be allowed to do the same?” “Why shouldn’t I be allowed to put a condo or an apartment building on the lot next door?”

The increased traffic as a result of the present Class A day care facility, according to Ms. Macgill, is evident and is a detriment to the overall character of the neighborhood. Granting Petitioners their Class B license would compound an already unfortunate and dangerous situations.

Ms. Macgill opposes the Petitioners’ application for a Class B day care license.

Dennis Wertz

Dennis Wertz has been an employee of the Baltimore County Office of Planning for twenty-eight (28) years. He has been the District 1 planner for nine years.

Mr. Wertz reiterated that the current zoning for Gun Road, including 505 Gun Road, is R.C. 5, and that it was the county councilman who initiated the zoning change pursuant to the 2008 C.Z.M.P.

The proposed day care center, according to Mr. Wertz, is allowed only by special exception, not as a matter of right. He stated that when a property becomes a Class B day care center, it becomes a commercial primary use.

Mr. Wertz, conducted the initial staff review of the Class B application in December, 2008 and wrote the April 8, 2009 and February 25, 2010 staff reports, recommending that the Class B application be denied for several reasons. Wertz claimed that a Class B day care center would be incompatible and inappropriate with the neighborhood. It would operate as the principal use in the middle of a low density residential area, which would distinguish this property from others on the road.

Mr. Wertz testified that Mr. Hermann's revised site plan does not address Division of Traffic Engineering Chief Stephen E. Weber's concerns, which Mr. Weber spells out in his February 19, 2010 memorandum to Mr. Wertz. First, the Hermann revised plan does not address site line issues which are problematic as a result of both the fence along the road and the stone pillars closer to the driveway, because it is not clear what Petitioners intend to do with the fence, and the plan does not even address the stone wall.

The Hermann Plan likewise does not address the driveway width issue, either, because it would have to be at least twenty feet (20') wide for at least a distance of one hundred forty feet (140') from the road if not for its entire length. Increasing the width of the driveway, according to Mr. Wertz, is also a problem, because that would make the property inconsistent with the character of the neighborhood.

The revised Site Plan does not comply with the County's Zoning Regulations Section 409 - parking.

More generally, Mr. Wertz testified, permitting the special exception would be contrary to the spirit and intent of the R.C. 5 Zone, which was enacted to protect and maintain the rural character of the neighborhood.

The Office of Planning has maintained a consistent position for Denial of this Special Exception request for a Class B operation on both the Link Plan or the Hermann Plan.

Paul Donoghue

Paul Donoghue has lived at 508 Gun Road since 1997. He is married and has two (2) teenage sons. Mr. Donoghue is President of the Gun Road Historical and Protective Association and provided the Rule 8 documentation, including an affidavit, that qualified him to speak in that capacity as well as a resident and homeowner.

Mr. Donoghue testified that he and others conducted a survey of residents of the forty-two (42) homes on Gun Road and Keech Road. Residents of thirty-eight (38) of the homes, ninety percent (90%) have expressed opposition to the granting of the Class B license. Other than Smith/Hogg, only one other neighbor has supported the Petitioners' plans to turn the house

into a primary use business. One homeowner moved but has not sold her house, and she did not weigh in on the issue. Another relative newcomer to Gun Road did not take a position.

Protestant's No. 36 is the "survey summary" which identifies the addresses of the houses, the homeowners' names and the homeowners' position on whether Petitioners should be given the Class B license.

Mr. Donoghue testified about the fifty-five (55) signed statements from residents or homeowners which articulates their position that they are opposed to the granting of a special exception which will allow more than twelve (12) children at the home day care facility at 505 Gun Road. (Protestants' No. 37). Speaking on his own behalf, Mr. Donoghue pointed out that not one resident of Gun Road or Keech Road has testified on behalf of Smith/Hogg (other than Petitioners themselves). Pointing to the Protestants' side of the courtroom, Mr. Donoghue emphasized not only the near unanimity of the neighborhood's opposition to expansion of the day care facility, but also the consistent support the residents of Gun Road have shown by appearing in court on all nine of the hearing dates. People's Counsel's sign-in sheets, submitted as Protestant's exhibits, verify that, on average, at least twelve (12) residents, often eighteen (18) or more, have appeared in court to express support for the neighboring homeowners' concern about the adverse effect an expanded day care facility whose primary use is a business will have on Gun Road.

Mr. Donoghue expressed his concern about the credibility of Petitioners' assurances that they will not seek to expand beyond the twenty-four (24) children they now ask approval for and that Hogg/Smith will comply with all of the requirements about which Mr. Bryan testified.

Mr. Donoghue gave as examples, Ms. Smith's testimony on Day 1 of the hearing that she and Mr. Hogg did not decide to turn the property into a day care business until after they bought the house.

Donoghue testified that Ms. Smith's application for the SDAT trade name application (Protestants' No. 26) on February 26, 2008, before she and Mr. Hogg settled on the property, belies her testimony.

Further, Mr. Donoghue pointed out, Ms. Smith represented on her March 7, 2008 application for Class A license that the nearest child care center is on "Aylesbury Avenue [in] Catonsville (over one mile away)." Ms. Smith had no good explanation for this error, but she did acknowledge during her November 19, 2009 testimony (page 163 lines 12-15) that she knew about the Oblate Sisters' day care center at the time that she completed the application. She had enrolled her daughter in the Oblate sister's child care center when she was the appropriate age.

Charles Macgill

Mr. Macgill, a resident of 319 Gun Road for forty-four (44) years, testified that Gun Road is dangerous relative to most other roads, including those in other R.C. 5 Zones, due to its hills, curves, narrow width, poor site lines and steep banks. As a result, there have been numerous accidents over the years, and one of Mr. Macgill's concerns is that the increased traffic as a result of the day care facility has made an already treacherous road more risky. Granting Petitioners their Class B license will considerably increase the traffic over and above what is already perceived to be an unreasonably dangerous situation and will adversely affect the health and welfare of the residents of this R.C. 5 Zone.

B. Petitioners' Case

Beth Smith

Beth Smith, owner of Cuddles Day Care, testified at page 44 lines 11-12 of the transcript of the November 10, 2009 hearing that she decided to operate the day care facility in the March/April, 2008 time frame, after she and Mr. Hogg purchase 505 Gun Road. Protestants' No. 26, the February 26, 2008 SDAT trade name application, proves this wrong.

Ms. Smith testified that the Class A zoning sign was displayed for the requisite thirty (30) day period beginning March 14, 2008. Many Protestants challenged that statement.

Ms. Smith acknowledged at page 163 lines 12-15 of the transcript that she represented in writing on the March 7, 2008 application that the nearest child care center is on Aylesbury Avenue in Catonsville, over one mile away. This, obviously, given all of the various testimony about the Oblates Sisters' day care facility, is not true.

Ms. Smith initially represented that the county zoning regulations do not require that the day care center's play area be fenced notwithstanding that her own site plan requires that it be fenced. Later, she conceded (at page 201 lines 3-21) that her business would be in violation of the regulation which requires that the play area have a five foot (5') high fence and that she "absolutely" intends to bring the playground into compliance with the relevant regulation. Some eight months later, however, according to husband and day care business co-owner Lynn Hogg, the playground is still not fenced. Neither had any explanation, much less a plausible one, for this continuing County Code violation.

Ms. Smith also testified that she moved the playground from the south east corner of the property that borders Keech Road and the Rudy parcel to within the Gun Road view shed on the west side of the house to get it in the shade. Photographs which Protestant witness Willy Moore testified about and which were moved into evidence indicate otherwise, because the original location is much more shaded relative to the playground's new location.

Ms. Smith testified at page 61 line 18 that the facility has two septic systems, yet DEPRM's Rob Powell strongly suggested otherwise to the extent that he saw no evidence of two systems either while conducting his May, 2009 investigation or during his search of the county's records of septic system permits for 505 Gun Road.

Ms. Smith also testified at page 79 lines 7-8 that, contrary to County Chief Traffic Engineer Stephen Weber's conclusion, the stone pillars at the driveway are not a visual obstruction to traffic exiting the day care business property on to Gun Road.

Bill Jahnigen

Mr. Jahnigen testified on direct examination (November 10, 2009, at page 26 lines 19-20) that his son-in-law Jamie Rudy lives on the property adjacent to the Smith/Hogg property. On cross examination, he clarified at page 29 lines 8-14 that his son-in-law does not live on Keech Road, next door to Cuddles Day Care, and that there is no house on his son-in-law's property. Mr. Jahnigen had no explanation for why both his son-in-law Jamie Rudy and daughter Laura Rudy initially expressed in writing their opposition to the day care (Protestant's Nos. 1 and 2) later did a turn-about.

Mike Thomasson

Mr. Thomasson, an Anne Arundel County-based real estate developer, owns the thirty-four (34) acre parcel of land that is situated at the terminus of Keech Road and borders Interstate 95 on east side of the property. Mr. Thomasson intends to develop that property with twenty-six (26) houses and is involved in litigation with Baltimore County in federal court. Mr. Thomasson conceded that he has no idea the need for a day care facility in this neighborhood.

Stephen Antonelli

Mr. Antonelli, a customer of the business, does not live on Gun Road and does not know who the patrons would be if the Class B license was issued or how respectful of the neighborhood the new customers would be.

Jessica Baker

Jessica Baker, Beth Smith's daughter, lives two and one-half (2 ½) miles away and has two (2) children who are clients at the day care center.

Jamie Rudy

Jamie Rudy owns property contiguous to the Hogg/Smith property but lives on Ivy League Court in Catonsville. He bought the property to build three houses, reportedly could only get one lot to perc and intends to build a large house on the lot. He conceded that he originally opposed the Class B day care license.

James Hermann

Mr. Hermann is not a civil engineer or an architect. He is a landscape architect. His plans therefore would not be acceptable for the Building and Fire Inspectors per the testimony of John Bryan, who testified that a licensed architect and a civil engineer, with respect to the fire lane, would have to submit revised plans before the County would issue an occupancy and use permit even if Petitioners obtained a Class B license.

Mr. Hermann acknowledged that Gun Road is rural.

He relied upon the survey for the contract of sale and did not have the property surveyed again for his own use and satisfaction. Mr. Hermann acknowledged that he did not double-check the measurements to confirm the distance between the house and the driveway. Mr. Hermann accepted that the County regulations would require a twenty foot (20') wide driveway. In response to questioning by Board member Witt, Mr. Hermann admitted that cars would spill out on to Gun Road if there were twenty-four (24) cars dropping off or picking up children at the same time.

Mr. Hermann said that the playground was originally "pretty close" to the Rudy property line. He testified that Smith/Hogg relocated the playground and that there was no fence much less the five foot (5') high stockade fence around the playground as regulations require.

Mr. Hermann testified—incorrectly—that other Gun Road residents must back out of their driveways on to Gun Road. Mr. Moore corrected this misconception during his own testimony and by way of admission of photographs and video.

Mr. Hermann acknowledged that certain of the proposed parking spaces would have cars partly on the existing driveway and partly on the unpaved portion of the property.

Robert Powell

Robert Powell is the Supervisor of Soil Evaluations and Ground Water Management for DEPRM and is a thirty-three (33) year employee of DEPRM. He testified that 505 Gun Road is serviced by public water but by a private septic system. Mr. Powell was at 505 Gun Road in May, 2009 to inspect, at least visually, the septic system, in response to a complaint (by Jamie Rudy, the adjoining Keech Road landowner to the east) that sewage was flowing from the Hogg/Smith septic system on to the neighboring property.

A more thorough evaluation of the septic system will be required, according to Mr. Powell, before issuance of the Class B license. Mr. Powell referred to the March 9, 2010 report which Dave Lykens, DEPRM-Coordination, prepared and forwarded to Timothy M. Kotroco (Petitioners' # 9). A usage letter must be submitted and *two* soil evaluations will be required. Mr. Powell clarified that a soil evaluation is a "perc test." The second (successful) perc test is necessary, Mr. Powell explained, because there must be a "repair area" in the event of failure of the primary system.

Mr. Powell indicated that, so far as he can tell from his visual inspection of the property and absence of existence of any septic permits on file with the County, there is presently only one septic system on the subject property. This is contrary to the testimony of property and day care owner and Petitioner Beth Smith, who represented in her testimony that there are now, in fact, two septic systems on the property.

Protestants note the following in keeping with Powell's testimony:

Logically, the County should reasonably require that DEPRM conduct its two soil evaluations *before* Petitioners submit architectural and civil engineering drawings in the event that the County grants Petitioners the Class B license. The civil engineer will have to submit plans for the twenty foot (20') wide driveway with thirty-five foot (35') turning radius and handicap accessible parking spaces, for example, and it does not make sense for this to be done absent knowledge of where the two drain fields would be situated.

Wes Guckert

Mr. Guckert, the Petitioners' traffic expert, acknowledged that Gun Road is narrow and has no shoulder. He recommended that trees to the north of the stone wall be trimmed to improve site lines. Mr. Guckert also conceded that 505 Gun Road is in the center of the neighborhood.

Lieutenant Messing

Lieutenant Messing, of the County Fire Marshall's office, testified that the facility is currently, so far as he knows, in compliance with fire regulations, but he also acknowledged that he's never set foot on the property and cannot reasonably speak to the changes which would have to be made if the Class B license is granted per John Bryan's testimony.

Lynn Hogg

Mr. Hogg, the co-owner of 505 Gun Road and Cuddles Day Care, admitted under oath that the day care center is currently in violation of county zoning regulations for the lack of a five foot (5') high stockade board-on-board fence around the playground.

Summary

Protestants have presented to the Board a unique visual presentation of the nature of the Gun Road Community. The video and power point presentations depict not only views of the multiple historic homes on Gun Road, but also views of the general neighborhood which present for the record the large lots, the generally old large homes which create the unusual nature and setting of Gun Road into which the intrusion of a commercial day care operation is totally out of character in the opinion of the neighbors and the Association. The Board has also been treated to multiple videos that show the unique character of Gun Road which establishes a very narrow country road with no shoulders with hills which impact site distance and such a narrow road that County trash trucks, school buses and traffic entering and leaving the subject site, 505 Gun Road, the Cuddles Day Care, by necessity cross the yellow centerline which creates traffic concerns. The videos likewise show traffic issues at the current entrance to 505 Gun Road. This testimony is un rebutted. The videos and the power point presentations should provide the Board with a visual understanding of the Protestants testimony.

III.

QUESTIONS PRESENTED

1. **Petitioners have failed to meet their burden of proof pursuant to the Baltimore County Zoning Regulations, §502.1 and the Maryland case law; in fact, the Protestants have affirmatively established that the Special Exception for a Class B child care facility will negatively impact the immediate neighborhood as discussed in People's Counsel v. Loyola.**

IV.

LAW CONCERNING SPECIAL EXCEPTIONS AND 502.1 CRITERIA

Special Exceptions in the Court of Appeals

Judge Hall Hammond, later Chief Judge for many years, explained the law of special exceptions in Montgomery v. Merlands Club, Inc., 202 Md. 279 (1953). It is the seminal case. The more recent decisions are actually restatements or reformulations of Judge Hammond's analysis and language. So, in Turner v. Hammond, 270 Md. 41 (1973), Judge McWilliams said:

"Occasionally the bar and less often the bench lose sight of the concept that the conditional use or special exception, as it is generally called, is a part of the comprehensive zoning plan sharing the presumption that as such it is in the interest of the general welfare and, therefore, valid. Rockville Fuel and Feed Co. v. Board of Appeals of the City of Gaithersburg, 257 Md. 183, 187 (1970). The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses the legislature has determined can be allowed, properly albeit *prima facie*, absent any fact or circumstance negating the presumption. Rockville, supra. In Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287 (1953), we said:

'... The duties given the Board are to judge whether the neighboring properties and the general neighborhood would be adversely affected, and whether the use, in the particular case, is in harmony with the general purpose and intent of the zoning plan.'

While the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements he does not have the burden of showing affirmatively that his proposed use accords with the general welfare. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses, is, of course, material but if there is no *probative* evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal. Rockville, supra." 270 Md. 41.

There were many Court of Appeals' special exception decisions between 1953 and 1973, all of which followed the path between Merlands Club and Turner v. Hammond.

Chief Judge Hammond's 1970 opinion, Rockville Fuel and Feed Co. v. City of Gaithersburg, 257 Md. 183 (1970), is also quoted often. Another case, Redden v. Montgomery County, 270 Md. 668 (1974), analyzed particular problems of a proposal for a facility to house the elderly and handicapped. Special exceptions never were routine or automatic.

In 1981, the tradition carried forward Schultz v. Pritts, 291 Md. 1 (1981) in Board of County Comm'rs. v. Holbrook, 314 Md. 210 (1988). There, Judge Harry Cole quoted Judge Davidson's opinion in Schultz and referred to the earlier decisions.

"In Schultz v. Pritts, *supra*, this Court determined the applicable standard for judicial review of the grant or denial of a special exception use. We observed.

'The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.'

* * *

'The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55 (1973); Rockville Fuel and Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287 (1953);

Anderson v. Sawyer, 23 Md. App. 612, 617 (1974). These standards dictate that if requested special exception use is properly determined to have an adverse effect upon neighbors properties in the general area, it must be denied.’ 291 Md. At 11-13, 432 A.2d 1319. [emphasis in original].

We then defined the specific nature of the requisite adverse impact required to warrant denial of a special exception application:

‘[A] special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts that show that the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15 [emphasis supplied]. 314 Md. At 216, 217. (emphasis supplied).

It is important to recall what led Judge Rita Davidson to write the *Schultz* opinion. She wrote to reject the Court of Special Appeals’ view that a special exception use must be approved if it can be shown that its adverse effects are no worse than some use permitted by right in the zone. Her simple point was that a special exception use could be denied based on particular problems because the legislature intended stricter scrutiny than that provided for permitted uses.

Schultz did not envision routine or semi-automatic approval of special exceptions. The decision remanded the matter for a review of particular access problems. Similarly, *Holbrook* respected the Zoning Board’s the administrative denial of a special exception, based just on a particular visual intrusion and its detrimental impact upon the character of the neighborhood.

Recent Court of Special Appeals Applications

Since *Holbrook*, there have been a number of special exception decisions issued by the Court of Special Appeals which apply the above standards and are helpful here.

People's Counsel v. Mangione, 85 Md. App. 738 (1991) sustained this Board's denial of a convalescent home in a residential zone based on particular problems site problems above the norm for residentially zoned properties. **It was off the main road and had poor access on narrow winding streets where children played.** It would block out light from the west and exacerbate both drainage and erosion problems.

Mangione shows that the proposed use need not give rise to a worst case scenario, or mathematical demonstration, to warrant denial. There were many other residential zones in Baltimore County which also would pose particular and unusual problems.

Mangione, fn. 6, also confirms that under BCZR 502.1:

The size and scope of the project are thus relevant considerations. To contend otherwise... is to engage in specious and sophistic reasoning."

In *Hayfields v. Valleys Planning Council*, 122 Md. App. 616 (1998), the Court remanded, on environmental grounds, the Board's approval of a country club/golf course special exception. It rejected the Board's reasoning that the proposal should be approved merely because there were other properties underlain by the Cockeysville Marble aquifer which also could be vulnerable. 122 Md. App., at 649-55.

The Board had granted the special exception because it thought there were other locations in the zone which plausibly could suffer adverse environment effects equal to or worse than the subject site. But this is not the standard. The standard is simply whether the subject site poses problems over and above the norm for the entire zone.

Loyola

The most recent discussion by the Court of Appeals of Maryland addressed the case of *People's Counsel for Baltimore County, et al. v. Loyola College in Maryland*, 406 Md. 54 (2008). Judge Harrell of the Court of Appeals reviewed the legacy in Maryland Land Use Law of *Schultz v. Pritts*, as having been beneficial and "well applied for the most part over the ensuing years." The Court stated:

"We aim in the present case to greater clarity in explaining the property evaluative framework for discrete Special Exception/Conditional Use applications and dispelling any lingering misunderstandings of what the Court truly intended when it filed the Opinion in *Schultz* twenty-seven (27) years ago." (at page 57).

The Court distilled the legal issues for review into a sole question and that was whether the zoning body must consider a comparison of the potential adverse effects of the proposed use at the proposed location to the potential adverse effects of the proposed use at other similarly zoned locations throughout the jurisdiction? The Court then concluded that *Schultz* imposed no such requirement. (at page 66).

The *Loyola* case clearly arose in Baltimore County and was subject to the §502.1 criteria of the Baltimore County Zoning Regulations as is the case before this Board.

The Court of Appeals cited *Anderson v. Sawyer*, 23 Md. App. 612 (1974), a Decision by Judge Rita Davidson, who seven (7) years later became the author of *Schultz v. Pritts*, setting forth the standard to be reviewed by the finder of fact in granting or denying a Special Exception as the following:

"The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular cases in harmony with the general purpose and intent of the Plan." (emphasis supplied). (at page 84).

The Court in Loyola, also cited Board of County Commissioners for Cecil County v. Holbrook, 314 Md. 210 (1988) at page 93. In Holbrook, a landowner sought a Special Exception to locate a mobile home in an area zoned for agricultural use and a neighboring property owner who owned a brick home objected to the mobile home on a visual and aesthetic basis. The Cecil County Board of Appeals denied the Special Exception Request which was affirmed by the Court of Appeals. The Court in affirming the Cecil County Board summarized the standard as follows:

“In summary, where the facts and circumstances indicate that the particular Special Exception Use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, then that inherently associated with such a use regardless of its location within the zone, the Application should be denied.” The Court in Holbrook, then concluded the following:

“The evidence revealed that the Peters built there One Hundred Forty-Seven Thousand (\$147,000.00) house in a uniquely valuable, heavily forested, low growth area. Moreover, photographs clearly depicted the direct and approximate view of the mobile home from the Peters home. The Board found that this evidence ‘vividly indicated the debilitating effect of the mobile home of the Peters property, inferring thereby that the trailer’s continued presence would create significantly greater adverse effects in this location than were located in other areas in the zone.’” (emphasis supplied). (at page 93).

The Court of Appeals in Loyola stated that:

“The Court [Holbrook] did not compare the location of the proposed use to other locations within the zone, or require such an analysis in every case. Instead, it highlighted characteristics of the particular neighborhood that exacerbated the problems inherent to the placement of a mobile home there.” (emphasis supplied). (at page 95).

Finally, the Court in Loyola, in its Analysis section of the Opinion, (at page 101), provides the following points. First, it is clear that the focus for the trier of fact should be entirely on the neighborhood involved in each case. (at page 102). The Court established the test for this Board as follows:

“Schultz speaks pointedly to an individual case analysis focused on the particular locality involved around the proposed site. See Schultz, 291 Md. at 15.... (These cases establish that a Special Exception Use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested Special Exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a Special Exception use located anywhere within the zone. (Emphasis added). Schultz 291 Md. at 11... The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the Plan... If the Applicant shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is of course, material. (Emphasis supplied)... These standards dictate that if a requested Special Exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (emphasis supplied). (at page 102-3).

The effect of the Loyola Decision on the Protestants is that the Protestants’ burden is eased in that they no longer have to establish by a comparative analysis and evidence that this proposed use on Gun Road would have greater impact on the neighborhood of Gun Road than it would elsewhere in the Zone. Thus, the Protestants’ burden of establishing, at comparative analysis, has been eased by the Court of Appeals in the Loyola case. It is also clear from the Loyola case that the Court of Appeals has placed the greater and more significant focus on the impact of the proposed use on the immediate neighborhood. In the Legal Argument, the

Protestants will maintain that the Petitioner has clearly not met its burden of meeting the criteria of §502.1 of the Baltimore County Zoning Regulations, nor has it established that its use will not negatively impact the immediate Community of Gun Road. In fact, Protestants submit that by the presentation of their testimony, the power points, and the videos, that the Protestants have clearly established the negative impact of this proposed Class B facility on the immediate neighborhood of Gun Road.

V.

LEGAL ARGUMENT

Protestants submit that from a legal perspective, the Petitioners have failed to meet their burden of proof pursuant to the requirements of the Baltimore County Zoning Regulations, §502.1. In fact, Protestants have affirmatively established that the Special Exception for a Class B childcare facility will negatively impact the immediate neighborhood as discussed in *People's Counsel of Baltimore County v. Loyola*, and thus, the Special Exception should be denied by this Board.

The facts and the law are clear in this case as reflected by the Zoning Commissioner in two (2) Opinions and Orders. The Zoning Commissioner found that in other cases that have been presented to the County for Special Exceptions, a day care use Class B has been determined to be most appropriately located on the fringes of a residential community as opposed to its interior. Secondly, he found the traffic to be generated by the proposed increased day care will cause congestion on Gun Road and that the traffic patterns that will be generated by the increase use are problematic. The Zoning Commissioner further recognized that the increase from twelve (12) students tilts the character of the Petitioners operation from an accessory type use for a residence to a principle type business use which is inconsistent with the Zoning classification.

This position is supported by the testimony of John Bryan, the Chief Fire Protection engineer for building management and building plans review.

Protestants submit that on remand, the Zoning Commissioner, even with a new Site Plan, the Zoning Commissioner's Decision was the same. Protestants submit that the Zoning Commissioner got it right.

The Baltimore County Planning Office likewise got it right. Dennis Wertz, a long time employee of the Baltimore County Office of Planning and District I Planner for nine (9) years, on behalf of the Planning Office, recommended to this Board denial of the Special Exception request. In his first staff report of 2009, and the subsequent 2010 report, Wertz provided reasons that the Class B Application should be denied. He characterized that when a property becomes a Class B day care center, it becomes a commercial primary use as opposed to accessory use to a residence. He testified the Planning Office felt a Class B day care center would be incompatible and inappropriate with the neighborhood, that it would operate as a principal use in the middle of a low density residential homes with large lots and historic properties. Wertz also felt that the Hermann Plan did not address site line issues for the driveway related to both the fence and the stone pillars and thus, impacted sight distance. He likewise discussed the driveway width issue as well as failure to comply with the parking regulations. Finally, he concluded that the Special Exception would be contrary to the spirit and intent of the R.C. 5 Zone which was enacted to protect and maintain the rural character of the neighborhood. The Planning Office got it right, too.

Protestants, in a carefully prepared presentation which included, for the benefit of this Board, Power Points and actual video showing not only the neighborhood's rural context, and character, but also specific incidents related to the narrowness of Gun Road and traffic complications inherent in the location with specific problems related to the ingress and egress of vehicular traffic in and out of 505 Gun Road. It is seldom the occasion that the Board has visual proof of the kinds of traffic problems generated by this proposed day care operation. Examples of trash trucks and school buses taking over the entire Gun Road, crossing centerlines as well as examples of traffic leaving 505 Gun Road which crosses the centerline in order to make turns in and out of the subject site all enhance and support the conclusions of the Zoning Commissioner and the Office of Planning's comments and findings.

Protestants' Concerns

It is clear from the cumulative Protestant testimony that there is certain skepticism among the vast majority of the residents that reside on Gun Road that the Petitioners intend to comply or will comply with the legal requirements of a Special Exception. First, there is the testimony of multiple witnesses that they never saw an initial sign for a Class A childcare facility. Secondly, that the testimony of Ms. Smith that they did not decide to have a childcare operate out of their home until after they purchased the property was clearly shown by the physical evidence of their application not to be true. And finally, while a fence has always been required to surround the play area, even up to the present time, proper compliance of that requirement by Petitioners has not been accomplished.

These issues certainly create legitimate concerns by the Protestants as to the operation of this Class B facility.

Turning to other issues of concern by the Protestants, it is clear that the vast majority of Gun Road residents oppose this request. In addition, the testimony of Robert Powell, Supervisor of Soil Evaluations and Ground Water Management for DEPRM, raises issues concerning the adequacy of the septic system, if in fact, the Board grants the Special Exception. It should be noted that Powell testified that, contrary to Mrs. Smith's testimony, that there were not two (2) septic systems on the property. Powell indicated he could only determine from a visual inspection of the property and the lack of any septic permits on file with the County that there was only one septic system there now. Powell further indicated that there should be an additional evaluation for capacity of an alternate septic system.

In addition to the testimony of Dennis Wertz for Planning recommending denial and the testimony of Mr. Powell from DEPRM, significant testimony of John Bryan was provided. Bryan who is a fire protection engineer for the County as well as a building code official, clearly testified that going from twelve (12) children, which is an accessory use to a residence, to more than twelve (12) changes the character of the facility from residential to commercial. The significance of that legal effect should not be lost on the Board because it is clear that the character then of the 505 residence changes to a commercial structure for purposes of the building code and the fire code. As Bryan testified, if in fact the Board grants a Special Exception, a licensed architect and engineer must prepare formal drawings and provide strict compliance with fire codes as well as building codes. It is clear from his testimony that those codes require certain changes both internal to the building and external that changes the character of the structure from residential to commercial.

Finally, Mrs. Mary Jane McGill, who is a Gun Road resident, but also a licensed real estate agent and broker, testified that based on her experience, the changes necessary to a residence based on Mr. Bryan's testimony and based upon the fact that the building becomes commercial as opposed to residential would cause questions in regard to the building's attractiveness as a residence as well as possible devaluation of adjacent properties based on their proximity to a commercial building. She further testified that a prospective purchaser more than likely will desire to use the facility as a commercial building because of the cost to return the building back to a residence as a result of the changes that were required to conform to a Class B childcare.

William Moore testified that the difficulties posed by the Petitioners obtaining a Class B childcare center create a conundrum for the neighborhood. That is to say, that the current fence, front yard and stone walls of 505 Gun Road present a pleasant residential appearance to anyone traversing Gun Road; however, those same fences, landscaping and stone walls create a safety problem from the traffic standpoint as testified to not only by the neighbors and the videos shown to the Board, but admitted by Wes Gukert, the traffic engineer, testifying for the Petitioners. Thus, if the neighborhood wants increased safety of access to 505 Gun Road, stone walls must be removed and the driveway widened which makes the 505 residence look more commercial. On the other hand, if the Community wants the continued residential look and the Special Exception is granted, they will have continued site distance and safety problems. This conundrum on the part of the Community should be resolved by this Board in denying the Special Exception request since the conundrum illustrates exactly the point that is made in Schultz v. Pritts and People's Counsel of Baltimore County v. Loyola and the many Appellate cases that have been decided as set forth in this Memorandum.

It is clear from all of the testimony that the impact of a Class B facility on the interior portion of Gun Road is greater than if it were located elsewhere in the same R.C. 5 Zone. For instance, while a comparison is not necessary under Loyola, it is clear that a Class B childcare facility on Rolling Road or in Relay would have less of an impact on the neighborhood as discussed by Mr. Moore than it does on Gun Road.

Finally, Mr. Donoghue testified on behalf of the Gun Road Historical and Protective Association which was formed to protect the unique and unusual nature of Gun Road from improper development even before the instant case arose.

There is one final point of consideration that should be mentioned concerning the Gun Road area and that is that the County Councilman for the First District took it upon himself to downzone the Gun Road area to R.C. 5 and the County Council adopted that recommendation which shows the intent of the Council to preserve the rural nature of this area from overdevelopment which supports Protestants' testimony.

There is one additional point that should be mentioned and that is the testimony of both parties reflects that the Oblate Sisters facility at the entrance to Gun Road provides adequate local childcare capacity for this area of Baltimore County, and thus, there is no demand or need for additional services to be rendered by the Petitioners.

Violation

Protestants also raise one final point for the Board. Under Baltimore County Code §32-4-114(c), the County is not to accept, and this Board should not grant relief, where there is an existing zoning violation unresolved on a subject property. The testimony of both Petitioner and

Protestant establish that during the operation as a Class A childcare facility, Petitioners never provided the required fencing around the outdoor play area. Further, once the outdoor play area was moved to the proposed location according to the Hermann Plan, Petitioners still failed to erect the required fencing. Both Petitioners acknowledged lack of fencing, acknowledged their awareness of the requirement for the fencing and indicated that at the time of this hearing before the Board, they have not complied with the existing requirements.

Pursuant to the above quoted Section, this Board should deny the relief requested.

VI.

CONCLUSION

For all of the above reasons, Protestants respectfully request this Board to deny the Petition for Special Exception and Special Hearing.

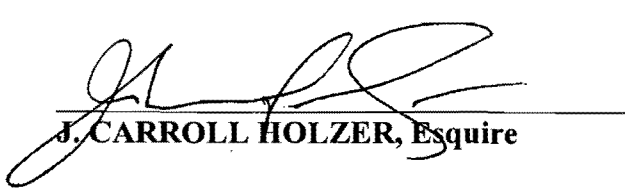
Respectfully submitted,



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of September, 2010, a copy of the foregoing Protestants' Memorandum in Lieu of Final Argument was mailed first class, postage pre-paid to the following: Lawrence Schmidt, Esquire, Gildea & Schmidt, 600 Washington Avenue, Suite 200, Towson, Maryland 21204; and Carole S. Demilio, Esquire, Deputy People's Counsel for Baltimore County, 105 West Chesapeake Avenue, Suite 204, Towson, Maryland 21204.


J. CARROLL HOLZER, Esquire

1 IN THE MATTER OF: * BEFORE THE
 2 Lynn Hogg and Elizabeth Smith- * COUNTY BOARD OF APPEALS
 3 Legal Owners/Petitioners * OF
 4 505 Gun Road * BALTIMORE COUNTY
 5 13th Election District * Case No. 09-153-SPHX
 6 1st Councilmani District * ^{Nov,} October 10, 2009

7 * * * * *

8 The above-entitled matter came on for hearing
 9 before the County Board of Appeals of Baltimore County,
 10 Hearing Room #2, Jefferson Building, 105 W. Chesapeake
 11 Avenue, Towson, Maryland 21204, at 10 o'clock a.m.,
 12 October 10, 2009.

13 * * * * *

21 Reported by: Carolyn E. Peatt

IN THE MATTER OF:

Case No.: 09-153-SPHX
LYNN HOGG & ELIZABETH SMITH
(AKA CUDDLES DAYCARE)

Wednesday, June 30, 2010

Pursuant to Notice, the above-entitled hearing was held before Chairman Belt, at

Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue,

Towson, Maryland 21204, commencing at 10:00 a.m., there being present on

behalf of the respective parties:

ON BEHALF OF THE APPELLEES/PETITIONERS:

LAWRENCE E. SCHMIDT, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

J. CARROLL HOLZER, ESQUIRE
CAROLE DEMILIO, ESQUIRE,
THE OFFICE OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

ALSO PRESENT:

THE GUN ROAD HISTORICAL & PROTECTIVE ASSOCIATION
PAUL DONOGHUE, JOE BENNETT, FRANK LINDBERG, LUCY & PAUL MCKEAN, NAOMI BALDWIN, WILLIAM H. MOORE, DONNA MURPHY & MICHELLE REED

Debbie H. Eichner
Eichner Transcribing Services
8101 Bletzer Road
Baltimore, Maryland 21222
410-477-1242

9/9/10

RECEIVED
SEP - 9 2010
BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: PETITIONS FOR SPECIAL EXCEPTION *	BEFORE THE
AND SPECIAL HEARING	
NE Corner of Gun Road and Keech Road *	COUNTY BOARD OF APPEALS
(505 Gun Road)	
	FOR
13 th Election District	
1 st Councilmanic District *	BALTIMORE COUNTY
Lynn R. Hogg, et ux *	Case No. 2009-0153-SPHX
Petitioners	
* * * * *	

PETITIONERS' POST HEARING MEMORANDUM

Lynn R. Hogg and Elizabeth A. Smith, his wife, by and through their attorneys, Lawrence E. Schmidt and Gildea and Schmidt, LLC, hereby file this Post Hearing Memorandum in support of the Petitions for Special Exception and Special Hearing filed herein and respectfully state:

I. BACKGROUND & PROCEDURAL HISTORY

This matter comes before the County Board of Appeals of Baltimore County (hereinafter "Board") on Petitions for Special Exception and Special Hearing for the property known as 505 Gun Road located in southwestern Baltimore County. The subject property is owned by Lynn R. Hogg and Elizabeth A. Smith, his wife (hereinafter "Petitioners"). The Petitioners request special exception approval for a Class B Group Child Care Center on the property, pursuant to Baltimore County Zoning Regulations ("BCZR") § 424.5.A. The Petitioners also request approval of a modified parking plan, pursuant to BCZR § 409.12. The matter is before the Board pursuant to an appeal of the written Findings of Facts and Conclusions of Law and Order of Zoning Commissioner William J. Wiseman, III, dated May 12, 2009.

The Petitioners' property has been described as located in Relay, Arbutus, and/or greater Catonsville. Whatever the labeled community, the property is located in southwestern Baltimore County, near the County's boundary with Howard County and the Patapsco Valley State Park. The property is located within immediate proximity of several major interstate roadways,

including the Baltimore Beltway (I-695), I-95 and I-195. The overall area (see aerial photos, Petitioners' BOA Exhibit No. 14) can be described as an institutional/employment center in character, given the property's immediate proximity to the University of Maryland-Baltimore County ("UMBC") and UMBC Technical Research Park. However, notwithstanding this character, there are a number of established residential communities within this area of southwestern Baltimore County. The subject property itself is located within a residential community which features single-family detached dwellings located on Gun Road and Keech Road. Access to the community is via the major interstates nearby; to Rolling Road and Gun Road.

The subject property itself is located at the northeast corner of the intersection of Keech Road and Gun Road. It is 2.44 acres in area, zoned RC-5. The property is improved with an existing single-family detached dwelling in which the Petitioners reside. The Petitioners are empty nesters and their grown children live elsewhere. The dwelling is quite large and the residential portion occupies two floors totaling 4,157 square feet. The lower floor contains an existing Class A Group Child Care Center which occupies 1,169 square feet. Vehicular access to the property is directly from Gun Road. As one enters the property from that roadway, the interior of the property is accessed via an existing macadam driveway which extends into the property nearly one-hundred fifty feet and then becomes a loop driveway. The Petitioners and visitors to the site follow the loop in a counterclockwise direction to the immediate frontage of the house. In addition to the dwelling, the property also features an existing pool and deck. Although the property is served by public water, there is no public sewer service and there is an existing working septic system.

The Petitioners purchased the property in February, 2008. Shortly thereafter, Ms. Smith desired to open a daycare facility at the property. She testified that she loves children and that the

genesis of the daycare operation was to accommodate her grandchildren. At the time, the property was zoned DR-1. Group Child Care Centers are defined in BCZR § 101.1; including both Class A and Class B facilities. They are regulated under BCZR § 424. Section 101.1 defines a "Group Child Care Center" as "a building or structure wherein care, protection and supervision is provided for part or all of a day, on a regular schedule, at least twice a week to at least nine children, including children of the adult provider." A "Group Child Care Center, Class A" is defined as "a group child care center wherein group child care is provided for no more than 12 children at one time." A "Group Child Care Center, Class B" is defined as "a group child care center wherein group child care is provided for more than 12 children."

In the spring of 2008, Ms. Smith moved forward with her plans for the child care operation. She became licensed by the Maryland State Department of Education (Petitioners' BOA Exhibit No. 2) and satisfied the rigorous requirements imposed by the Maryland State Department of Education, Office of Child Care on daycare operators. As noted above, the property was then zoned DR-1. Under that zoning classification Group Child Care Centers, Class A are permitted by use permit as an accessory use in a single-family detached dwelling. BCZR § 424.4 requires that an individual make application to Baltimore County Department of Permits and Development Management ("PDM") for a use permit to operate such a Class A facility. Such application was made by Ms. Smith on or about March 7, 2008. After intake, Baltimore County then arranges for the posting of a sign on the property to provide public notice to the community of the application. In this case, a sign was posted on March 14, 2008, by Martin Ogle, an independent sign poster approved by Baltimore County. Mr. Ogle is in no way affiliated with the Petitioners and is on a list of "approved sign posters" maintained by PDM for zoning cases. Mr. Ogle provided Baltimore County with photos of the posted sign, and after the sign was posted, PDM monitored the application. When no request for public hearing or inquiry was

made, the file was forwarded to Director Timothy M. Kotroco for disposition. After the required posting period, Mr. Ogle returned to the property and removed the posted sign. Director Kotroco approved the issuance of the use permit on April 17, 2008. Thus, Ms. Smith has been validly operating a Class A operation since shortly after that approval date¹.

The existing operation has continued, uninterrupted, for over two years without incident. There have been no traffic accidents whatsoever involving anyone, including residents, staff, clients or guests of the operation since it began. Indeed, many of the residents who now oppose the instant Petitions knew nothing about the existing operation until the current Petitions were filed. Indeed, the "best evidence" that a daycare center is appropriate for this property is the fact that the existing operation has been ongoing on the site for over two years without any apparent "adverse impacts" whatsoever. The "impacts" of the existing daycare center are so benign that during cross examination of one of the Protestants (Mrs. Donohue) she testified to the effect that, she did not even know that there was a daycare in operation directly across from her property until the notice for the Class B Group Child Care Center was posted.

After approximately a year of operation, Ms. Smith decided to expand the facility to allow infants currently enrolled to move from age group to age group. There are no daycare facilities in the immediate area that specialize in infant care because infant care requires a higher child/teacher ratio. Her operation has been successful and news of a reliable, safe and well run child care spreads quickly by word of mouth. A Class B Group Child Care Center is defined in BCZR § 101.1 as "a group child care center wherein group child care is provided for more than 12 children." Under the zoning regulations, Ms. Smith could be permitted to enroll up to 40 children at the facility. However, given the limitations of the interior space and her desire to limit

¹ Although the Protestants apparently object to the current use, it is a legal use and has valid approval from Baltimore County. As will be discussed hereinafter, this case is really about the impact of an addition of 12 children to the existing daycare center.

the operation, she seeks approval for a maximum of 24 children².

In September, 2008, the Baltimore County Council (as part of the 2008 Comprehensive Zoning Map Process ("CZMP")) rezoned the subject property to RC-5. This rezoning was a result of Issue No. 1-054/Bill No. 85-08 and was not limited to the subject property. Rather, it included approximately 315 acres and many of the properties which abut Gun and Keech Roads. The rezoning had little impact on the existing daycare operation, in that a Class A facility in an existing dwelling is permitted in both the RC-5 zone and the DR-1 zone, by use permit. Additionally, Class B facilities are permitted in both zones by special exception. Therefore, in order to obtain zoning approval for the Class B operation, the Petitioners filed the requisite Petition for Special Exception.

In addition to the Petition for Special Exception, the Petitioners also filed a Petition for Special Hearing. BCZR § 409 sets forth the County's requirements for off-street parking for uses delineated in the BCZR. Such parking requirements regulate the number of parking spaces required for any given use, as well as the size, orientation and construction of such spaces. The BCZR requires that all street parking spaces be striped (i.e. painted) and that they be of a durable and dustless (e.g. macadam) surface. In this case, desiring to keep the residential appearance and feel of the property and in view of the actual operation under the existing and proposed center, the Petitioners requested a modified parking plan to waive the paint/striping and durable and dustless requirements. It is to be noted that this is not a zoning variance and that the "modification" to the parking requirements in the BCZR is expressly permitted under BCZR § 409.12³.

After the requisite zoning Petitions were filed, some, but not all, in the community began

² The instant Petition seeks only to allow 12 additional children which the Petitioners have stipulated. Any number beyond that amount would require another filing/hearing in the future.

³ Zoning variances may be granted by the Zoning Commissioner and Board pursuant to the provisions of BCZR § 307. No variance is sought in this case.

to oppose the proposed daycare expansion. These opponents have put incredible effort in opposing what will unquestionably be a limited impact of 12 additional children at this site. It cannot be emphasized enough that Ms. Smith's current Class A operation is permitted and can continue. The Protestants efforts are geared to prevent an additional 12 infants and toddlers (all children of pre-school age) from receiving daycare services at this property. Thus, whatever the impacts of a child care facility at this site on the "bucolic character" of the Gun Road area and/or the traffic on Gun Road, the existing center will continue.

Ms. Smith's daycare operation is highly regulated and receives both announced and unannounced inspections by multiple agencies, including: Office of Child Care, Baltimore County Fire Marshall, and Baltimore County Building Inspection. The daycare operation has also been subject to close scrutiny by the neighborhood since the pending Petitions were filed. In addition to the video taping, picture taking and constant surveillance, by neighbors, complaints have been made to the Department of Environmental Protection and Resource Management ("DEPRM") about the existing septic system. However, DEPRM inspected the site on May 19, 2009 and its written report indicates "no violation noted," "no evidence of [septic] failure" and "no leaks observed about the septic fields." More recently, upon request of the Petitioners, Robert Powell from DEPRM, in an effort to familiarize himself with the subject property, visited the site. He physically inspected the existing septic system and concluded that there was no evidence of septic failure and no leaks observed about the septic fields. He testified that should the Board grant the requested special exception, the Petitioners would be required to have a licensed septic contractor inspect the existing septic system and test for a back-up septic site elsewhere on the property. The Petitioners agreed to all such requirements, inspections and tests with the granting of the special exception. Moreover, the Petitioners have been routinely inspected by the County Fire Department and have passed all regulatory inspections (see

Petitioners' BOA Exhibit No. 5). There are not now nor have there been any zoning violations issued by PDM. There are no violations from the State of Maryland either.

After the Petitions for Special Exception and Special Hearing were filed and duly advertised by Baltimore County, the matter came in for hearing before Zoning Commissioner William J. Wiseman, III. Commissioner Wiseman denied the Petitions by Opinion and Order dated May 12, 2009. As noted above, a timely appeal was filed to the Board. This appeal before the Board is "de novo" in nature and thus the findings of Commissioner Wiseman are of no effect. Indeed, the case before the Board was significantly different than the hearing before Commissioner Wiseman. Commissioner Wiseman's hearing lasted less than one day, while the proceedings before the Board consumed eight days of hearing. Moreover, many more and different witnesses appeared at the Board. The scant record before the Zoning Commissioner is quite different than that before the Board.

Additionally, the Petitioners submitted a new site plan to the Board. It was the submission of this site plan which lengthened the hearing. Following an objection to the introduction of the site plan, a stipulation by and between the parties was agreed wherein the case was remanded to Zoning Commissioner Wiseman. This was to ensure that the plan met the County's technical requirements for the filing of site plans in support of zoning petitions. The Petitioners' site plan (see Petitioners' BOA Exhibit No. 13), was reviewed and approved by W. Carl Richards, Jr., Zoning Supervisor. His acceptance signature is noted on the plan. Additionally, Commissioner Wiseman convened a public hearing to expressly accept that plan on March 11, 2010. By his Order dated March 24, 2010, Commissioner Wiseman found, "...that the plan was properly presented to the Bureau of Zoning Review and sealed, signed and certified by the necessary parties. The plan meets all requirements for filing and will be accepted and transferred to the Board of Appeals pursuant to the terms of the stipulation." Following the

Zoning Commissioner's hearing, the matter returned to the Board for further proceedings.

At the hearing before the Board, significant testimony was offered by Ms. Smith regarding the operation of her facility. As noted above, she indicated that presently the facility serves 12 children. The facility is open from 7:30 a.m. until 5:30 p.m., Monday through Friday. Like most daycare centers, parents and guardians drop children off during the two hour window from 7:30 to 9:30 a.m. This staggered drop-off is particularly significant, given concerns of the Protestants regarding traffic. Thus, the use is unlike other commercial operations with a set starting time whereby traffic all arrives at the same time. The staggered drop-off time ensure that there will be a minimal amount of vehicles visiting the property at any one time. Similarly, child pick-up is from 3:30 to 5:30 p.m. Again, given the varying routine and schedule of the parents, children are picked up during that two hour span so that few vehicles are at the site at any one time. This staggered pick-up and drop-ff was expressly shown in the Protestants' video which was presented to the4 Board. The video demonstrated, during the entire filmed period, no traffic incidents whatsoever.

As noted above, there is no before or after school care, that is, all of the children served are infants and toddlers ranging in age from infant to four years old. Therefore, there is a single drop off in the morning and a single pickup in the afternoon. There are no additional trips to take children to and from school. Moreover, the operation is fully staffed by Ms. Smith and her employees; who are all fully licensed and accredited with the State of Maryland. Photographs of the interior child care area were presented which show an attractive and professionally run center.

II. ARGUMENT

1. The Petition for Special Exception for a Class B Group Child Care Center should be Granted. As noted herein above, a Class B Group Child Care Center is permitted in the RC-5

zone by special exception. (See BCZR § 424.5.A). Special exception uses are governed by the standards enumerated in BCZR § 502. The law of special exceptions has been discussed by the appellate courts of Maryland frequently over the years. A recent comprehensive discussion of special exceptions is contained in an opinion of Maryland's highest Court (i.e. Court of Special Appeals), in *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54 (2008). This lengthy opinion comprehensively discussed the history and development of special exception law in Maryland and provides guidance in the Board's consideration of the instant request.

As noted in *Loyola*, the "fairly static and rigid form of zoning" known as Euclidean Zoning was upheld as a lawful exercise of the state's police power by the United State Supreme Court in the *Village of Euclid Ohio v. Sambler Realty Company*, 272 US 365 (1926). Baltimore County's zoning scheme is a Euclidean form of zoning. Under such an approach, a municipality divides an area geographically into particular zones and specifies what uses are permitted in each zone. Euclidean Zoning is designed to achieve stability in land use, planning and zoning and has been described as a relative inflexible statutory scheme. (see *Loyola*, *infra*, pg. 69, quoting *Mayor and City Council v. Rylyns*, 372 Md. 914 (2002)).

In order to provide some means of flexibility to Euclidean Zoning scheme, the concept of "special exceptions" was created. In other jurisdictions, special exceptions are known as "conditional uses" and that term is perhaps a better description of the intended use regulation. Special exceptions/conditional uses are "middle ground" uses between those uses which are permitted automatically in a given zone and those uses which are prohibited under any circumstances.

As recounted in *Loyola*, special exceptions were discussed by the Maryland courts as a viable zoning tool as far back as 1946 (see *Heath v. Mayor and City Council of Baltimore*, 187

Md. 296 (1946). Over the years, the appellate courts of this State carved out the necessary analysis for an administrative body to consider when evaluating the propriety of a proposed special exception use. The *Loyola* Court examined the history of this analysis in its opinion.

Most zoning authorities in Maryland would acknowledge that the current special exception analysis was first enunciated by the Court of Special Appeals in the bellwether decision of *Schultz v. Pritts* 291 Md. 1 (1981). The *Schultz* Court rejected prior standards in its analysis of the special exception zoning tool as part of a Euclidean Zoning scheme. The Court noted that “the special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid”. *Id.* at 11. Thus, it is to be noted that special exceptions are unlike zoning variances, which are not favored under law. Whereas variances carry a legal presumption that they are contrary to the zoning scheme and should thus be denied, a special exception use is part of that scheme and is therefore favored under law. In an often quoted paragraph from the *Schultz* opinion, the Court held that a special exception use should be granted unless persuasive evidence was submitted that the, “...use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone.” *Id.* at 12. In *Schultz* and the cases which followed, the appellate courts noted that all special exception uses carry with them adverse impacts⁴. For example, in *Mossburg v. Montgomery County*, 107 Md.App. 1 (1995), the Court considered a proposed special exception use for a solid waste transfer station. Recognizing that all solid waste transfer stations cause certain inherent impacts (i.e. noise, traffic, etc.), the Court emphasized it was not the fact of these impacts revisited which justified the denial of the

⁴ As the Courts have stated, land uses permitted by special exception are so designated (rather than being permitted by right) because of the impacts they inherently possess.

special exception. Rather, only if those impacts were particularly egregious at the subject location could the special exception be denied.

Similarly, in a Baltimore County case (*Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md.App. 616 (1998)), the Court of Special Appeals considered a special exception for a golf course. The Court noted that all golf courses would involve the use of large amounts of water to irrigate and maintain the golf course. Thus, it was not this use of water (e.g. impact on the water table, run off, etc.) which could justify a denial, but whether the use the particular location involved justified a denial.

Thus, in the instant case, it is not enough that the proposed daycare center will generate traffic. Rather, it must be shown that the traffic generated will cause a particularly egregious impact at the subject location. Other impacts must be similarly adjudged.

2. Special Exception Requirements.

Baltimore County's treatment of special exceptions is contained in BCZR § 502.1. Therefore, a veritable "laundry list" of considerations is spelled out which must be applied to any special exception application. BCZR § 502.1 states:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

An evaluation of each of those factors is persuasive to a finding the special exception should be granted. The Petitioner presented extensive testimony as to each factor.

BCZR § 424.5.A requires that the Board evaluate the Class B Group Child Care center in accordance with the standards of BCZR § 502.1. Testimony and evidence was offered by the Petitioners regarding those criteria.

i. Create a potential hazard from fire panic or other danger.

As noted herein, the property is subject to annual inspections by the Baltimore County Fire Marshall's office and has passed every inspection. It has received inspection certificates evidencing compliance with the criteria mandated by the Fire Department (Petitioners' BOA Exhibit No.5). The Protestants solicited the testimony of John Bryant from the Building Inspections Division of PDM. Mr. Bryant, who has never set foot on the property, testified that a series of improvements might be required to bring the building into compliance with the building and fire codes. The desired impact of his testimony was reduced however by the subsequent testimony of Captain Richard Green at the Fire Department who indicated that there is a fire hydrant on the property, that the property is in compliance with the Fire Code and there are no entrance or driveway issues whatsoever that would interfere in any way with Fire or Emergency vehicle access to the property or the daycare facility within it. Additionally, the Petitioners indicated that many of the building upgrades required for the request Class B Group Child Care Center, had in fact, already been installed; a contention that none of the Protestants or Mr. Bryant could refute given the fact that they had not been on the property. In sum, the Protestants hope to convince the Board that the building could not meet the requirements. This contention is simply factually inaccurate. Many of Mr. Bryant's proposed improvements have already been made. Others will be installed upon the grant of the special exception and subsequently inspected by the representative agencies. Future permits will ensure compliance.

Moreover, the Protestants objections on this issue are also legally incorrect. Much of the Protestants concerns in this regard were that the building was inappropriate for the proposed use and that the operation could not be conducted safely and according to code. In response, it is first noted that the operation is subject to intense scrutiny under the licensing requirements imposed by the State of Maryland and Ms. Smith's licensing through the Department of Education. Thus, both Baltimore County and the State of Maryland will monitor the operation on an on-going basis to ensure the safety of the children cared for at this facility. Second, and more importantly, the "on site" impacts of the proposed operation are not relevant under the special exception criteria. In *Hayfields, supra*, opponents to a proposed special exception golf course objected upon the basis that development of a historic farm property with a country club/golf course would cause the loss of that "historic public resource" and the loss of the prime agricultural soils on the property. On appeal, the Court of Special Appeals rejected this contention, noting that the special exception test relates to "off site" impacts and not "on site impacts." In the instant case, the Protestants objections (offered through the testimony of Mr. Bryant) complained of such alleged failings as the lack of handicap ramps, insufficient ADA door frame widths, etc. These factors have no impact on the impact of the proposed Class B operation *on the locale*. They effect only the internal operation of the facility, which has no relevance to the special exception criteria.

In sum, the proposed Class B Child Care Center poses no threat from panic, fire or other danger on the surrounding locale. Moreover, the building and operation has and will continue to be monitored to ensure that the children who are cared for will be in a safe environment; compliant with all government standards. There is no evidence to the contrary.

ii. Tend to overcrowd land and cause undue concentration of population.

The proposed Class B facility will not overcrowd land or cause undue concentration of

population. It will not increase residential density. As noted above, the licensing provisions enforced by the State of Maryland will ensure that adequate area will be provided to conduct the operation. These State requirements establish the number of employees required and ensure that the children are cared for in an appropriate environment. Ms. Smith testified that an additional 12 children would require only one additional staff member to comply with the child/teacher ratios required by the State of Maryland.

The subject property is nearly two and one-half acres in area. It is more than sufficient in size to accommodate the proposal. No additional building construction is proposed or required; no set back variances are needed. This is not a situation where the building or lot cannot handle the proposed operation.

Interestingly, the rezoning of the property during the 2008 CZMP served to eliminate certain requirements relating to the size of the lot, setbacks and similar standards. Specifically, BCZR Section 424.7 establishes certain bulk standards for group centers in the DR zones. These requirements relate to minimum lot size, setbacks, impervious areas and the like. Parenthetically, the proposed operation meets these requirements; however, more importantly, they are not applicable. When the property was re-zoned to RC5, these requirements became no longer applicable. In sum, the proposal does not overcrowd the property.

iii. Interfere with adequate provisions for schools, parks, water, sewer, transportation or other public requirements, conveniences or improvements.

There will be no impact of the Class B Group Child Care Center on these criteria. The property is not served by public sewer. It will not impact schools, parks or other public improvements. Public water is available to the site and there is no public sewer system that will be impacted.

The proposed use will also provide a needed service (child care center), with a

unique focus in infant care and will be a valuable resource to the surrounding locale. Michael Thomasson, owner of an adjacent property that is proposed for residential development, testified that a child care center is an asset to residential neighborhoods, as it provides a needed service to residents who have small children. Even the Protestants "expert" real estate agent, acknowledged that property values can be increased or decreased due to the presence of a child care center, depending upon the perspective of each individual owner's needs and desires. She also testified that the play ground equipment on the property is similar to other equipment on residential lots nearby and will not be an adverse factor on property values. In sum, the use will not detrimentally impact property values, since as many people who might object to such a use would welcome it.

The property is inside the Urban-Rural-Demarcation-Line ("URDL") which has been established by Baltimore County. Thus, the County has designated this property and its environs as an urban setting and not rural. The proposal will not detrimentally impact any of the public services which serve this urban locale.

iv. Interfere with adequate light and air.

There are no proposed changes to the building. It is not inappropriately tall nor will it cast a shadow onto adjacent properties. It is significantly setback from the nearest property line. The use will not cause the emission of any smells or other factors.

v. Be inconsistent with the purposes of the property's zoning classification or any other way inconsistent with the spirit and intent of these regulations.

This is one of the major complaints offered by the Protestants. In a nutshell, they object to the impacts of this Class B center on what was repeatedly referred to as the "historic" and "bucolic" character of the Gun Road community. This objection is completely without merit for many reasons. First, the Gun Road community is not historic. Admittedly, there are some old

houses in the community but this fact alone does not make the community historic. Like many words used in County regulation; the term "historic" has a defined meaning in County law and not merely the generic definition which might be used in layman's discussion. The County Code allows for the protection of historic landmarks and the creation of historic districts, such as the Relay Historic District, which is less than two miles from the subject property. Similarly, the State of Maryland and the Federal Government provide for protection of historic properties and areas. The Gun Road community is not a historic district. The area and properties therein are not on the County landmarks list or under any Federal historic designation. The designation of certain buildings by the Maryland Historic Trust confers (under law) no historic significance and provides no historic "protection." "Old" does simply not mean "historic" under the law. None of the criteria which permits the government (be it Federal, State or local) to designate an area as "historic" and thus worthy of preservation exist in this case. Although submitted by the Protestants, who rightfully are proud of their neighborhood, it is not historic.

Insofar as bucolic, this description also misses the mark. As noted above, area photos show that this community is in the middle of the institutional and employment center that is clustered around the UMBC campus. UMBC and its Technology Park are a mere stone's throw from the subject property. Certain residents testified that they get their exercise by walking to and through the greater UMBC campus. Moreover, the community itself is not purely residential in character. One adjacent neighbor apparently operates a produce market and parks his large commercial truck with commercial advertising in the front yard, highly visible to all passersby. The massive Oblate Sister's facility is just one property removed from the subject property. This facility itself has a large day care operation, which interestingly enough, does not focus on highly needed infant care. The Oblate Sister's facility provides residential services for nearly 100 sisters of that religious order. Additionally, the Oblate Sister's propose a significant construction project

on their property, which will include substantial building and parking facilities. The size and scope of the activity and building on the Oblate Sister's property dwarfs the activity on the subject property which is nearby.

Moreover, by law, the designation of the Class B Group Child Care Center itself as a special exception use carries with it the legal inference that it is "part of the zoning scheme" and thus presumptively valid. Although Ms. Smith charges a fee for the service she provides, to label this a "commercial intrusion" is not an entirely accurate portrayal of the activity here. This is not an office, factory, restaurant or place where services or goods are manufactured and/or sold. It is a place where small children are cared for; in an extended family setting. To argue that an operation designed to care and nurture infants and toddlers is a commercial operation which will ruin the bucolic character of a neighborhood within the core of an adjacent transportation network and burgeoning college campus and research/employment center is disingenuous. The spirit and intent of the Petitioners' request is consistent with the BCZR.

vi. Be inconsistent with the impermeable surface and the vegetation retention of these zoning regulations.

This operation will also meet these requirements. Compared to the acreage of the property (2.44 acres), the impermeable surface proposed is limited. There will be no clearing of woodland or vegetation required. Absent a denial of the special hearing and requirement for macadam spaces, no new impervious surface is required or proposed.

vii. Be detrimental to the environmental and natural resources of the site and vicinity including forest, streams, wetlands, aquifers and flood planes in an RC 2, RC 4, RC 5 or RC 7 zones.

There will be no adverse environmental impact. There is no impact to any adjacent environmental resources at all. In sum, there will be no environmental detriment occasioned by

the proposed use.

viii. Tend to create congestion in roads, streets or alleys therein.

Much of the proposed opposition to the Petitioners' proposed plans relates to traffic concerns. Admittedly, the Class B Group Child Care Center will generate some traffic to and from the property. Any center will generate traffic during its hours of operation. However, clearly that impact will not be detrimental to the locale and particularly egregious in this neighborhood. The video presentations prepared by the Protestants had the opposite effect of what was intended; in that they showed a lightly traveled road with no congestion and little potential for accident.

As was developed during the testimony and evidence in this case, when the Protestants initially decided to oppose this request, one of their members was William Moore, a resident in the locale and member of the Baltimore County Planning Board. Mr. Moore apparently enlisted the assistance of Dennis Wertz, of the Office of Planning to oppose the request. Mr. Wertz had worked with Mr. Moore as part of his Planning Board responsibilities.⁵

Apparently hoping to get further support from County agencies, Mr. Moore and the Office of People's Counsel contacted Steven Weber of the Bureau of Traffic Engineering. Mr. Weber's initial assessment, prior to apparent lobbying by Mr. Wertz was succinct and presented an unbiased and accurate assessment of the use. As he noted in his reply email, Mr. Weber opined that the site was "an ideal location" for a Class B Group Child Care Center.⁶ This is because of the unique character of the property and access thereto. Unlike many of the other properties on Gun Road, the Petitioners' property is not served by a driveway/parking pad which

⁵ Mr. Wertz prepared a written report to the Zoning Commissioner, which was far more lengthy than the typical report generated in a case of this type. Despite his written opposition, he acknowledged during cross examination that the proposal did not create a "traffic issue", that the Petitioners' play ground equipment was not visible from Gun Road and that the parking spaces on the site which were the subject of the modified parking plan did not impact the neighborhood. These statements contradicted much of the testimony of the residents who appeared in opposition.

⁶ Mr. Weber's e-mails are part of the record in this case and were also introduced before the Zoning Commissioner.

immediately abuts Gun Road. Rather, the property is served by a lengthy circular driveway. This circular driveway allows patrons of the child care center to enter the property, proceed nearly two hundred fifty feet into the property and drop-off children immediately in front of the daycare center entrance. In many cases, the Zoning Commissioner or Board are confronted with a situation where vehicles are stopped along the public road way and a public safety issue is created during the drop-off and pick-up of children. In those instances, congestion can result in the public thoroughfare and the safety of both parents and children is at risk. Thus, Mr. Weber's comment that this location is "ideal" is of merit and based upon the loop driveway and preferable traffic configuration it provides. There will be no detrimental impact to the surrounding locale in that all of the pick-up and drop-off of children can be safely conducted well within the interior of the property so that there will be no adverse impact on the adjacent public roadway or adjacent properties.

The Protestants claim is apparently that any additional volume of traffic on Gun Road will cause major problems. They note some visitors, like all other drivers on Gun Road (including residents and the local school bus driver) occasionally stray across the solid yellow line on that roadway. This is primarily due to the fact that Gun Road is narrow and carries such light traffic volumes. These volumes are so light that residents apparently feel comfortable in straying over the center line and the school bus driver can turn around by stopping in the middle of one public road (Keech Road) and backing through an intersection into another (Gun Road) as was highlighted in the Protestants' video. On cross-examination, Mr. Magill, a resident of Gun Road, testified that to his knowledge, there have not been any traffic accidents on Gun Road for more than 10 years.

The expert testimony and extensive report produced by Wes Guckert of The Traffic Group was also persuasive as to the "traffic issue" and not refuted by any expert testimony or

evidence. He concluded that the minimal increase in traffic caused by this expansion will not cause any congestion or overcrowd Gun Road. Road capacity cannot be seriously contended to be an issue. Moreover, insofar as sight distance, Mr. Guckert opined that vehicles can safely enter and exit the property. He suggested two slight modifications to the front of the site to improve sight distance. One would be to trim the numerous trees which line the front of the Petitioners' property. During the course of the hearing, this work was preformed. The other was to relocate a fence along the property's frontage. The plan, as shown, proposes the simple relocation of this fence. If special exception approval is granted, it will be relocated in accordance with the approved plan. Indeed, the Petitioners stand ready to make whatever improvements the Board or County might require throughout the approval/permitting process. Although the Petitioners do not desire to adversely impact the residential feel of their lot, they will do whatever is required by the Board or Baltimore County during the permitting/inspection process. Indeed, the driveway is wide enough at that location to accommodate two cars; one entering and one exiting. Moreover, it is to be noted that the Petitioners' driveway is wider, has better sight distance and alignment than most of the other driveways in the area, including that one shared by Protestants Donoghue and Moore and the total of 11 drivers who live in the households that share that common driveway. Notwithstanding the Protestants arguments, how a poor driveway condition at the Protestants properties justifies denial of the instant Petition, traffic is simply not an issue.

In sum, the request easily complies with all of the standards in Section 502.1. The request satisfies the standard of law as enunciated in *Schultz* and *Loyola*.

3. The Playground Equipment.

There was also testimony offered about the playground equipment on Petitioner's property which is used by the children who are enrolled in the center. When the Class A facility

was approved, the Petitioner's proposed that the equipment would be located immediately adjacent to the dwelling and in the yard area between the house and Gun Road. Even at that location, it would be (as indicated by Mr. Wertz) barely visible from the road, given the landscaping, distance setback and grade. However, when the center began operation, the equipment was placed in the rear yard, to accommodate any concerns of visibility from the neighbors and afford more privacy. This location was acceptable to the State licensing authorities and thus is remained there for the first year of operation. When the instant Petition for Special Exception was filed, the plan filed therewith shows that the equipment be placed where originally shown. That area will also be fenced and setback from the nearest property line, as required by the BCZR. This "relocation" to the original site done by the Petitioners to avoid the need for any variance and eliminate the opposition from contending that the Petitioner's were in violation of the BCZR. The Petitioner's anticipated (correctly) that their request would be scrutinized by the neighbors and that any deviation (even if in the neighbor's best interests and acceptable to the State) would be claimed as a violation and would be used in a negative connotation.

The Petitioners proposed location as shown on the plan offered to the Board satisfies all requirements. If the opponents prefer; and the County and State agree, the Petitioners will retain the equipment in the rear yard where originally built. They remain willing to work with their neighbors; even if the offer is not reciprocated.

4. The Special Hearing Request for the Modified Parking Plan should be Granted.

As noted herein above, the Petitioners have also filed a Petition for Special Hearing, wherein they request approval of a modified parking plan, pursuant to BCZR § 409.12. It need first be emphasized that this is not a request for a zoning variance. The request is made via a Petition for Special Hearing (per BCZR § 500.7), not a Petition for Variance. Most importantly,

the standards for variance do not apply to the instant request.

The Board is well familiar with the variance standards as set out in BCZR § 307 and enunciated in *Cromwell v. Ward*, 102 Md. App. 691 (1995). In that seminal case, the Court stated that the variance test is a two step inquiry. First, the Board must determine whether the property is unique. Only, if uniqueness is determined can the Board move on to the second analysis, i.e. whether the applicant would suffer a “practical difficulty” or “unreasonable hardship” if the variance requested was denied. In this case, no finding of uniqueness is required. Moreover, the legislature in drafting the BCZR omitted the requirement of “practical difficulty” or “unreasonable hardship”. In lieu thereof, the regulation requires a finding of “undue hardship”. This standard is different from not only BCZR § 307 but also not used in other statutes throughout Maryland that have been subject to appellate court interpretation. The BCZR provides that when words or terms are undefined in BCZR § 101.1, that the words shall be accorded their definition in Webster’s Dictionary.

In Webster’s, “undue” is defined as “unsuitable as to time, *place* or occasion” (emphasis added). “Hardship” is defined as suffering or privation; privation meaning the taking away of something. In this case, the requested modification relates to two requirements under the parking requirements imposed in BCZR § 409. That is, the Petitioners desire to retain several of the parking spaces as grass spaces, and neither stripe (paint) or provide a durable and dustless surface to those spaces. Needless to say, even the Protestants do not object to this requested relief in that all parties agree that the Petitioners property should retain its residential feel and character.

The Petitioners aver that the desire to retain the current driveway (which accommodates existing and anticipated volumes easily), as well as the character of the property, constitutes an “undue hardship”. The installation of additional macadam would be unsuitable to this place/site

and would deprive the owners of the character of the property which they wish to retain. It is also noted that only several of the spaces are subject to this request. Spaces one, two and three as shown on the property will not be paved or striped; and a portion of spaces six and seven will be on the fringe of the lawn. Indeed, these grass spaces in their present configuration are being used by the Class A Group Child Care Center without any impact.

Additionally, the plan (Note No. 4) as approved by Mr. Richards (Zoning Supervisor) shows three other regulations for which a modification may be required, subject to the interpretation of the Board. These three requirements relate to required dimensions of "drive aisles". The parking regulations in BCZR § 409 regulate not just the number of parking spaces required (and their dimension and character) but also other components of a parking lot. In a commercial setting, a parking lot typically contains both actual parking spaces and traffic areas where vehicles maneuver and access specific spaces. This maneuvering room is designated as "drive aisles" as distinguished with "driveways" which typically lead from a public road into the interior of the property. When this plan was filed, a question was raised whether the loop road on the subject property was a "driveway", or a drive aisle; since it provided access to certain spaces on site. The Petitioners believe that the loop road is most appropriately characterized as a driveway and thus a modified parking plan for "drive aisle" requirements is not needed. Mr. Hermann, Petitioner's expert witness testified about this distinction. However, if the Board concludes that the access is a drive aisle then Petitioners likewise seek a modification of that requirement.

Finally, Petitioners have made quite clear during the proceedings that they will modify the plan as required by the Board or any agency of Baltimore County in order to meet any standard determined applicable. If the Board denies the special hearing; it may nonetheless grant the special exception. The approval of the modified parking plan is not a prerequisite to the

special exception for the Group Child Care Center, Class B. Just as the Petitioners agree to relocate the fence and trim the trees (already done) on the property's frontage, they will improve the driveway as required. However, they aver that such improvements are not required as the site can easily handle the existing and proposed traffic and has operated without incident in the current configuration; and such improvement would only diminish to character of the subject property.

5. Consideration of the Special Hearing does not preclude granting the Special Exception.

During the hearing, the Protestants advanced the argument a special exception to allow for a Class B Group Child Care Center cannot be granted due to a Variance for the same property being necessary. Despite this being an incorrect statement of the facts in this case, they seem to make this assertion in large part based on *Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 324, 653 A.2d 532 (1994). By citing this overruled case law, an attempt is made by Protestants to use the *Chester Haven* ruling to extend that Court's finding a special exception was not permitted due to a variance being filed for the same property to the case *sub justice* where a special exception has been applied with an accompanying SPECIAL HEARING. In so doing, Protestants not only ignore a later ruling from the Court of Special Appeals distinguishing *Chester Haven*, but also misconstrues the differences of legal principles involved with a variance request from that of a special hearing.

In *Chester Haven*, a special exception and variance were applied for a residential development in Queen Anne's County. The special exception request was for a Planned Unit Development ("PUD") and variances were required (among others) to alter the desired character of these PUDs outlined in the regulations from single family dwellings to clustered development. The Court of Special Appeals denied the request for special exception, as it found this relief was

contingent upon the requested variances. As such, the Court first analyzed the variance request and failed to find the prong of uniqueness had been proven. Therefore, the special exception could not be approved due to a major component of the character of PUDs being unavailable. In so doing, the Court found the special exception could not be approved without the variances as they were in attempt to eliminate necessary characteristics of PUDs.

Similarly, in 1996, the Court of Special Appeals also denied a special exception for a trucking facility based on the circumstances of variance approval being necessary to alter the character of the special exception request in *Umerley v. People's Counsel for Baltimore County*, 108 Md. App. 497, 672 A.2d 173. Here, setback, lot coverage and area to be used for building, operation and storage so altered the character of what was permitted without the variances the resulting use would not be what was permitted for trucking facilities. Just as in *Chester Haven*, the *Umerley* Court saw the two requests as contingent on one another and denied the petition based on a lack of uniqueness.

The Court stated:

In the case *sub justice*, the Umerleys petitioned for a special exception to operate a Class II trucking facility on the subject property. For such a special exception to be granted, the Merles must show that all the conditions established by the Baltimore County Council for operation of a Class II trucking facility are met. The Umerleys cannot meet several of these applicable conditions. Accordingly, they have applied for variances from these conditions. As noted in the preceding section, however, the petition for those variances will not be successful. As stated *supra*, because the Umerleys failed to produce substantial evidence showing that the subject property is "unique," their variance requests must fail. *Id.* at 510, 672 A.2d at 179.

Both of these decisions were distinguished by a later Court of Special Appeals case of *Alviani v. Dixon*, 365 Md. 95, 775 A.2d 1234 (2001), in which it was found that a special exception could be approved when submitted together with a variance request for the same property. The Court approved a Fuel Service use while allowing some minor setback variances.

In so finding, the Court found:

We hold that in certain circumstances, a zoning body may grant a special exception together with area variances to what otherwise would be specific standards or requirements applicable to such special exception. The special exception, however, must be in a section of the local code for which variances are not excluded. Moreover, the granting of the variances may not be so substantially alter the criteria for the granting of the special exception so that the criteria of the special exception would be swallowed by the variance to the extent that the special exception would not be a use that was contemplated in the comprehensive zoning scheme in respect to any particular special exception. *Id.* at 119, 775 A.2d at 1249.

In this way, the special exception was not contingent upon the requested variances and therefore could be approved even if petitioned with the variance petition. The variances did not so alter the character of a use that the remaining character elements could be addressed independently and was therefore approved.

As demonstrated in this latest *Alviani* case from the Court of Special Appeals, special exceptions can be approved when applied for with a variance request; however, this entire analysis and argument is unnecessary as Protestants' argument over this issue ignores the fact a variance request has not been submitted, but rather that for a special hearing. Even if the two legal notions of variance and special hearing were to be seen as synonymous (an error of the law), the special exception request is not contingent on this special hearing, rather, the special hearing seeks to clarify a modified parking is proper for the property in question although it is not required for the child care use. The special hearing merely seeks to maintain the current characteristics of the property, while limiting any further disturbance by providing pervious area, thereby creating a better environmental property.

As stated directly by the *Umerley* Court itself:

The difference between a special exception and a variance lies in the legislative approval of the underlying use. A special exception grants permission to engage in a use that the appropriate legislative

authority has sanctioned under certain conditions. The special exception is an acknowledgement by the appropriate zoning authority that those conditions have been met. A variance, by contrast, grants permission to engage in a use that the appropriate legislative authority has otherwise proscribed. It represents a determination by the appropriate zoning authority that adherence to the letter of the applicable zoning regulations would result in extreme hardship to the property owner. *Id.* at 510, 672 A.2d at 179.

Therefore, a variance allows people to engage in development otherwise prohibited, while a special exception deems these uses to be preferred and rather evaluates the detrimental impact. As variances normally deal with a prohibited action, these characteristics or proof are based on the uniqueness of the property and undue hardship or practical difficulty. This standard for consideration is different than that of the special hearing applied for. Here, the Petitioner is not applying for a variance, but a special hearing.

Special hearings are permitted under BCZR § 500.7, which states:

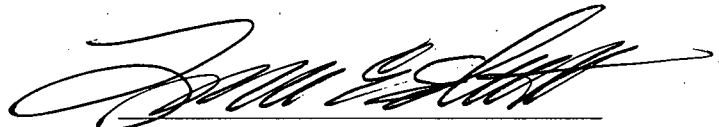
§ 500.7 Petitions for public hearing; notice.

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations...or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

As found by the Court of Special Appeals in *Antwerpen v. Baltimore County*, 163 Md. App 194, 877 A.2d 1166 (2005), "A request for a special hearing is, in legal effect, a request for declaratory judgment." *Id.* at 209, 1174 and therefore the focus of analysis for this special hearing is on the propriety of the request in relation to the purpose of the Zoning Regulations. In this case, BCZR § 419.12 allows special hearings for a modified parking plan if it can be demonstrated there is an undue hardship. Therefore, the more stringent variance standards of uniqueness or practical difficulty are not present, and there is no case law in Maryland preventing a special exception and special hearing being filed together. By attempting to use the

Chester Haven decision in order to demonstrate a special exception cannot be approved when a variance is filed is ignoring the clear definitions within the BCZR and case law, and also the legal standards which apply to both special hearings and variances. As such, this argument for denial of the proposed petitions should be ignored.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Lawrence E. Schmidt', written over a horizontal line.

LAWRENCE E. SCHMIDT

Gildea & Schmidt, LLC

600 Washington Avenue, Suite 200

Towson, MD 21204

(410) 821-0070

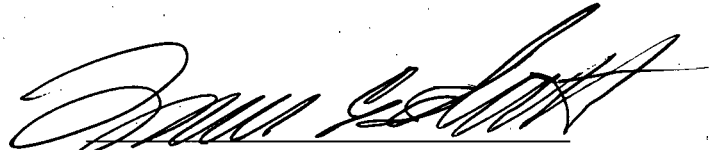
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 9th day of **September, 2010**, a copy of the foregoing Petitioners' Post Hearing Memorandum was mailed, first class, postage pre-paid, to:

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21204
Attorney for Protestants

Carole S. DeMilio, Esquire
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, MD 21204


LAWRENCE E. SCHMIDT

Westlaw.

432 A.2d 1319
 291 Md. 1, 432 A.2d 1319
 (Cite as: 291 Md. 1, 432 A.2d 1319)

Page 1

▷

Court of Appeals of Maryland.
 Roger SCHULTZ et al.
 v.
 Robert K. PRITTS et al.
 No. 153.

July 16, 1981.

Applicants for special use permit to construct funeral establishment in single family residential zone appealed the denial of their application by the county board of zoning appeals. The Circuit Court, Carroll County, Donald J. Gilmore, J., reversed and remanded the matter to the board for a new hearing, and application protestants appealed. The Court of Special Appeals dismissed the appeal on the ground that the circuit court's order was not a final judgment. Protestant filed a petition for writ of certiorari and applicants filed a cross petition, both of which the Court of Appeals granted. The Court of Appeals, Davidson, J., held that: (1) circuit court's order remanding the proceeding to the board was a final appealable order; (2) applicants were not denied due process by the board's consideration of cumulative evidence submitted after close of the hearing on the application where applicants acquiesced in submission of the evidence; and (3) the appropriate standard to be used in determining whether requested special exception use would have adverse effect and therefore should be denied is whether there are facts and circumstances that show that particular use proposed at particular location proposed would have any adverse effects above and beyond those inherently associated with such special exception use irrespective of this location within zone.

Vacated and remanded with directions.

Smith, J., concurred in part and dissented in part and filed opinion.

West Headnotes

[1] Zoning and Planning 414 ➡ 1738

414 Zoning and Planning
 414X Judicial Review or Relief
 414X(E) Further Review
 414k1736 Decisions Reviewable
 414k1738 k. Finality; ripeness. Most Cited Cases
 (Formerly 414k741)

Circuit court's order, on appeal from decision of county board of zoning appeals denying application for special exception use permit, which remanded case to board and thereby terminated judicial proceeding and denied parties means of further prosecuting or defending their rights in judicial proceeding was appealable final order. Code, Courts and Judicial Proceedings, §§ 12-101(f), 12-301.

[2] Administrative Law and Procedure 15A ➡ 458.1

15A Administrative Law and Procedure
 15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
 15AIV(D) Hearings and Adjudications
 15Ak458 Evidence
 15Ak458.1 k. In general. Most Cited Cases
 (Formerly 15Ak458)

In general, while administrative agencies are not bound by technical common-law rules of evidence, they must observe basic rules of fairness as to parties appearing before them.

[3] Constitutional Law 92 ➡ 4027

92 Constitutional Law
 92XXVII Due Process
 92XXVII(F) Administrative Agencies and Proceedings in General
 92k4027 k. Hearings and adjudications. Most Cited Cases
 (Formerly 92k318(1))
 When administrative agency relies upon evidence

Westlaw.

956 A.2d 166
 406 Md. 54, 956 A.2d 166
 (Cite as: 406 Md. 54, 956 A.2d 166)

Page 1

H

Court of Appeals of Maryland.
 PEOPLE'S COUNSEL FOR BALTIMORE
 COUNTY, et al.

v.

LOYOLA COLLEGE IN MARYLAND.
 No. 137 Sept.Term, 2007.

Sept. 9, 2008.

Background: Petitioners sought judicial review of order of board of zoning appeals approving application for special exception. The Circuit Court, Baltimore County, Ruth Ann Jakubowski, J., remanded to board for further action, and applicant appealed. The Court of Special Appeals vacated and remanded with instructions, and petitioners sought writ of certiorari. Writ was granted.

Holding: The Court of Appeals, Harrell, J. held that applicant was required to adduce evidence of potential adverse effects of its proposed use only within area of such proposed use.

Decision of Court of Special Appeals affirmed.

Murphy, J., concurred with separate opinion.

West Headnotes

[1] Zoning and Planning 414 ⚡ 1745

414 Zoning and Planning
 414X Judicial Review or Relief
 414X(E) Further Review
 414k1744 Scope and Extent of Review
 414k1745 k. In general. Most Cited

Cases

(Formerly 414k745.1)

When the court of appeals reviews the final decision of an administrative agency, such as the Board of Zoning Appeals, it looks through the circuit court's and intermediate appellate court's de-

cisions, although applying the same standards of review, and evaluates the decision of the agency.

[2] Zoning and Planning 414 ⚡ 1747

414 Zoning and Planning
 414X Judicial Review or Relief
 414X(E) Further Review
 414k1744 Scope and Extent of Review
 414k1747 k. Questions or errors of law. Most Cited Cases
 (Formerly 414k745.1)

Legal conclusions of board of zoning appeals were entitled to no deference, on review by the court of appeals in proceedings on application for special exception, where controversy concerned proper application and analysis of case law, rather than of statute or regulation administered by the agency.

[3] Administrative Law and Procedure 15A ⚡ 413

15A Administrative Law and Procedure
 15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
 15AIV(C) Rules and Regulations
 15Ak412 Construction
 15Ak413 k. Administrative construction. Most Cited Cases

Statutes 361 ⚡ 219(1)

361 Statutes
 361VI Construction and Operation
 361VI(A) General Rules of Construction
 361k213 Extrinsic Aids to Construction
 361k219 Executive Construction
 361k219(1) k. In general. Most

Cited Cases

Deference often accorded an administrative agency's interpretation by a reviewing court extends only to the application of the statutes or regulations that the agency administers.

[4] Zoning and Planning 414 ⚡ 1473

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

September 9, 2010

Sent via Hand Delivery

Ms. Theresa R. Shelton

County Board of Appeals of Baltimore County

105 W. Chesapeake Avenue, Suite 203

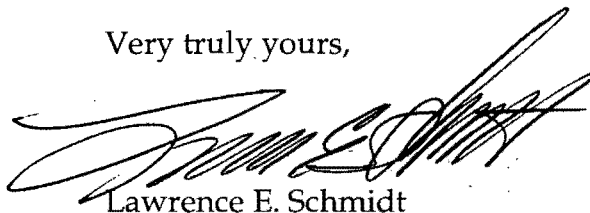
Towson, MD 21204

**Re: Cuddles Day Care/505 Gun Road
Case No.: 09-153-SPHX**

Dear Ms. Shelton:

Enclosed please find an original and three (3) copies the Petitioners' Post Hearing Memorandum with the accompanying exhibits for the above captioned matter. Thank you for your cooperation in this matter. With kind regards, I am

Very truly yours,



Lawrence E. Schmidt

LES: jkl

Enclosures

CC: J. Carroll Holzer, Esquire, Holzer & Lee
Carole S. DeMilio, Esquire, People's Counsel for Baltimore County
James V. Hermann, JVHermann & Associates
Lynn R. Hogg & Elizabeth A. Smith, Cuddles Day Care

RECEIVED
SEP - 9 2010

BALTIMORE COUNTY
BOARD OF APPEALS

7/15/10

RECEIVED

JUL 14 2010

BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: PETITIONS FOR SPECIAL EXCEPTION *
and SPECIAL HEARING

NE Corner of Gun Road & Keech Road *
(505 Gun Road)

13th Election District *
1st Councilmanic District

Lynn R. Hogg, et ux. *
Petitioners

BEFORE THE

COUNTY BOARD OF

APPEALS FOR

BALTIMORE COUNTY

Case No.: 2009-0153-SPHX

* * * * *

PROTESTANTS' MEMORANDUM

1. Under Maryland law, a real estate broker may testify as to the valuation of real property.

The case of Melrod v. Melrod, is directly on point for this issue. In this case, the Court of Special Appeals found prejudicial error in the trial court's refusal to allow a real estate broker to testify. See Melrod v. Melrod, 83 Md. App. 180 (1990), attached hereto and incorporated herein. The trial court would not allow the real estate broker to testify about the value of the husband's properties, on the basis that the broker was not an appraiser, and therefore, not qualified as an expert.

The Court of Special Appeals explained that Maryland case law has been repeatedly cited in error as supporting the refusal of broker testimony. The case most often erroneously referred to is Stickle v. City of Baltimore, in which the Court of Appeals refused to allow the testimony of a real estate broker as to the value of real property. The Melrod court points out the basis for the Court of Appeals' ruling in Stickle was: "not that the witness was a real estate broker rather than an appraiser, but that he did not have even a minimal understanding of the principles implicit in

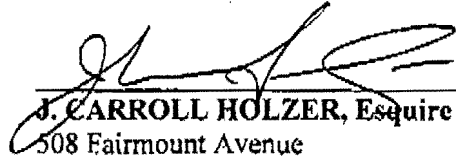
LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21206

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

the definition of fair market value (referencing the multiple times that the witness was unable to define fair market value). Melrod v. Melrod at 190, citing Stickle v. City of Baltimore, 252 Md. 464 (1969).

The court explained that "there is no inflexible rule defining how much a person must know in order to be qualified to express and give expert opinion on any given subject." Melrod v. Melrod at 191. If a real estate broker has prepared the appropriate research, valuations, comparisons and has a level of experience/knowledge in the valuation of real property, a court may not exclude the broker's testimony solely on the basis of not being an appraiser; to do so would result in "manifest prejudice." Id. at 193.

Respectfully submitted,


J. CARROLL HOLZER, Esquire
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 2010, a copy of the foregoing Protestants' Memorandum was mailed first class, postage pre-paid to the following:
Lawrence Schmidt, Esquire, Gildea & Schmidt, 600 Washington Ave., Suite 200, Towson, MD 21204; and Carole S. DeMilio, Esquire, Deputy People's Counsel for Baltimore County, 105 West Chesapeake Ave., Suite 204, Towson, MD 21204.


J. CARROLL HOLZER, Esquire

C:\My Docs\Memos 2010\Memo - Willy Moore 3 CBA - 7/14/10

Maryland Law Encyclopedia

Database updated May 2010

Evidence

Anne M.H. Foley, J.D., of the staff of the National Legal Research Group, Inc., and Edward K. Esping, J.D. and Susan L. Thomas, J.D.

IV. PARTICULAR TYPES OF EVIDENCE

E. OPINION EVIDENCE

2. Expert Testimony

c. Competency Of Experts

Topic Summary References Correlation Table

§ 180. Valuation experts

West's Key Number Digest

West's Key Number Digest, Evidence ¶543

While there is no inflexible rule defining how much a witness must know in order to be qualified to express an opinion as an expert on value, it must be made to appear that the witness possesses such special knowledge or experience on the subject as to make it appear that his or her opinion is of some value; [50] however, the expert need not have direct personal knowledge of an item in order to express an opinion as to its value. [51]

Illustrations:

The head of a hospital's department of accounts, who was familiar with the customary charges for services such as those afforded to the plaintiff, was competent to testify as an expert on the fair and reasonable value of those services; [52] similarly, one who had been in the construction business for more than 30 years and was familiar with the plaintiff's building, having laid the foundation and furnished other materials therefor, was competent to testify as to the value of the plaintiff's building at the time in question, even though he had not seen the building from the time it was built until four years after the time in question. [53]

A person who is familiar with the value of property in the neighborhood, and who has examined the property in question, may testify as to the value of land. [54] It is well established that any real-estate dealer, assessor, or any other person who has engaged in business of such a character as to have acquired special knowledge of the subject is competent to testify with reference to the value of land if he or she has an opportunity to form a correct opinion as to its value. [55] Thus, it is prejudicial error for the court to refuse to allow a real-estate broker to testify as an expert witness on the value of a party's property and property interests solely on the basis that such witness is not an appraiser. [56] The fact that a witness is a government official also does not constitute a ground for disqualifying him or her from testifying as an expert on the value of certain property [57] but merely constitutes a circumstance to be considered by the jury in weighing the expert's testimony; [58] however, before real-estate experts can give opinions of land values they must qualify by showing that they have knowledge of comparable sales, that is, they should know what similar

v

Court of Special Appeals of Maryland.

Ann Marie MELROD

v.

Joseph K. MELROD.

No. 1385 Sept. Term 1989.

May 31, 1990.

Both parties appealed from a judgment of absolute divorce entered by the Circuit Court, Montgomery County, L. Leonard Ruben, J. The Court of Special Appeals, Bloom, J., held that: (1) court's method of determining what was marital and what was non-marital property, in the case of the husband's assets, was erroneous; (2) it was prejudicial error to refuse to allow wife's expert witness to testify regarding the value of husband's property interests on ground that expert, a real estate broker, was not an appraiser; and (3) Chancellor did not abuse his discretion in failing to award wife indefinite alimony, as such relief was not requested.

Affirmed in part and reversed in part; remanded.

West Headnotes

[1] Divorce 134 $\Rightarrow$ 252.3(1)

134 Divorce

134V Alimony, Allowances, and Disposition of Property

134k248 Disposition of Property

134k252.3 Particular Property or Interests and Mode of Allocation

134k252.3(1) k. In general. Most Cited Cases

Divorce 134 $\Rightarrow$ 252.3(3)

134 Divorce

134V Alimony, Allowances, and Disposition of Property

134k248 Disposition of Property

134k252.3 Particular Property or Interests and Mode of Allocation

134k252.3(3) k. Separate property and property acquired before marriage. Most Cited Cases

In general, "marital property" is any property, however titled, acquired by either or both of the parties during the marriage; thus, it does not include property acquired before the marriage; expressly excluded is property acquired by inheritance or gift from a third party, property excluded by valid agreement, or property "directly traceable" to nonmarital sources. Code, Family Law, § 8-201 (c).

[2] Divorce 134 $\Rightarrow$ 252.3(1)

134 Divorce

134V Alimony, Allowances, and Disposition of Property

134k248 Disposition of Property

134k252.3 Particular Property or Interests and Mode of Allocation

134k252.3(1) k. In general. Most Cited Cases

Divorce 134 $\Rightarrow$ 252.3(3)

134 Divorce

134V Alimony, Allowances, and Disposition of Property

134k248 Disposition of Property

134k252.3 Particular Property or Interests and Mode of Allocation

134k252.3(3) k. Separate property and property acquired before marriage. Most Cited Cases

Method of determining what was marital and what was nonmarital property belonging to husband, whereby any expenditure out of husband's commingled nonmarital and marital funds, for any purpose, would be construed as expenditure of both marital and nonmarital money in the same proportion that his marital and nonmarital income bore to

7/16/10

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
505 Gun Road; NE corner of Gun
Road & Keech Road * ZONING COMMISSIONER
13th Election & 1st Councilmanic Districts
Legal Owner(s): Elizabeth Smith & Lynn Hogg* FOR
Petitioner(s) * BALTIMORE COUNTY
* 09-153-X

* * * * *

MEMORANDUM

People's Counsel submits the following references in support of the position that a real estate broker may be qualified to testify as an expert and render an opinion on the impact of a zoning special exception on the value of homes in the neighborhood and the subject site.

BCZR Appendix H Rule 7 a. states:

"Proceedings before the board being administrative in nature, the board will not be bound by the technical rules of evidence but will apply such rules to the end that needful and proper evidence shall be most conveniently, inexpensively and speedily produced while preserving the substantial rights of the parties."

BCZR 501.4:

"The Board shall have the right to employ such technical, expert and other assistance as in its judgment may be necessary to aid in the proper investigation and determination of any questions pending before it."

Maryland Rule 5-702:

"Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony."

Johnson & Higgins of Pa., Inc. v. Hale, 121 Md. App. 426 (1998):

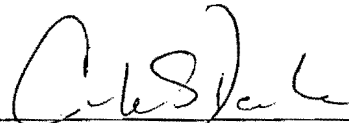
RECEIVED
JUL 14 2010
BALTIMORE COUNTY
BOARD OF APPEALS

A person whose education and work experience had provided him with considerable background in the field of marine insurance was properly qualified as an expert in the field; the fact that he had not personally worked as an insurance broker, or specifically underwritten tug and barge operations, did not disqualify him as an expert regarding marine insurance contracts.

See attached from Salkin, American Law of Zoning 5th Edition, § 40:36:

“Real estate brokers are frequently used to prove the probable impact or lack of impact of a proposed use, . . .”

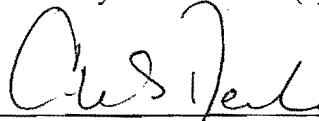
See attached from Salkin, American Law of Zoning 5th Edition, § 40:31.



CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of July, 2010, a copy of the foregoing Memorandum was mailed to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286 and Lawrence E. Schmidt, Esquire, Gildea & Schmidt LLC, 600 Washington Avenue, Suite 200, Towson, MD 21204, Attorney for Petitioner(s).



CAROLE S. DEMILIO
Deputy People's Counsel for
Baltimore County

can separate the material and relevant facts and arrive at the truth.

§ 40:31 The rules of evidence

As is true generally in proceedings before administrative bodies, the "strict rules of judicial procedure are not imposed with respect to inquiries made by" the board of appeals.¹ In general, it is held that the board of adjustment is not bound by the rules of evidence.² The courts have said that such a board has sufficient expertise in the matters which come before it to sort the wheat from the chaff without the aid of the formal rules which apply to courts, and with which the members are not fully conversant.³

[Section 40:31]

¹Fandel v. Board of Zoning Adjustment of Boston, 280 Mass. 195, 182 N.E. 343 (1932).

²Neuman v. City of Baltimore, 251 Md. 92, 246 A.2d 583 (1968); Monte Vista Professional Bldg., Inc. v. City of Monte Vista, 35 Colo. App. 235, 531 P.2d 400 (1975); Bonnie View Country Club, Inc. v. Glass, 242 Md. 46, 217 A.2d 647 (1966); Dal Maso v. Board of County Com'rs of Prince George's County, 238 Md. 333, 209 A.2d 62 (1965); Socony Vacuum Oil Co. v. Murdock, 165 Misc. 713, 1 N.Y.S.2d 574 (Sup. 1937); Zimarino v. Zoning Bd. of Review of City of Providence, 95 R.I. 383, 187 A.2d 259 (1963); Carter v. Town of Chapel Hill, 14 N.C. App. 93, 187 S.E.2d 588 (1972); Board of Adjustment of City of San Antonio v. Willie, 511 S.W.2d 591 (Tex. Civ. App. San Antonio 1974), writ refused n.r.e., (Dec. 11, 1974).

See also Silveri v. Nolte, 128 A.D.2d 711, 513 N.Y.S.2d 205 (2d Dep't 1987); Van Sant v. City of Everett, 69 Wash. App. 641, 849 P.2d 1276 (Div. 1 1993). Local zoning boards are not strictly bound by formal rules of evidence as long as the party whose rights are being determined has the opportunity to examine an adverse witness and to present evidence in support of his position and in rebuttal of his opponents. Burton v. New Hanover County Zoning Bd. of Adjustment Under Zoning Ordinance of New Hanover County, 49 N.C. App. 439, 271 S.E.2d 550 (1980).

See generally Roswig, Rules of Evidence in Zoning Trials, 31 Syracuse L. Rev. 787 (1980).

³People ex rel. Fordham Manor Reformed Church v. Walsh, 244 N.Y. 280, 155 N.E. 575 (1927).

Admission into evidence of a memorandum of law submitted to the zoning board of adjustment by counsel for applicants for a variance was proper as it could be found material in assessing the legality of the actions of the board. Carter v. City of Nashua, 113 N.H. 407, 308 A.2d 847 (1973). Where zoning hearing board granted a certificate of occupancy confirming a nonconforming use of a 27-unit trailer park, the board did not abuse its discretion by relying on findings in solicitor's letter to the borough council regarding the property even if the letter was hearsay, considering there was no objection made to its use. Borough of Youngsville v. Zoning Hearing Bd. of Borough of Youngsville, 69 Pa. Commw. 282, 450 A.2d 1086 (1982). Evaluation of the testimony offered at a

3/24/16

IN RE: PETITIONS FOR SPECIAL HEARING *
AND SPECIAL EXCEPTION

NE Corner of Gun Road and *
Keech Road *
(505 Gun Road) *

13th Election District *
1st Council District *

Lynn R. Hogg, et ux *
Petitioners *

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

Case No. 2009-0153-SPHX

* * * * *

DETERMINATION OF THE ZONING COMMISSIONER ON REMAND
FROM THE BALTIMORE COUNTY BOARD OF APPEALS

This matter originally came before the Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the legal owners of the property, Elizabeth A. Smith and her husband, Lynn R. Hogg, through their attorney, Lawrence E. Schmidt, Esquire. Pursuant to Section 424.5A of the Baltimore County Zoning Regulations (B.C.Z.R.), the Petitioners requested a special exception to allow a Class B Group Child Care Center as a principal use on their property with a maximum of up to 24 children.¹ Special hearing relief was also requested from Section 409.12.B of the B.C.Z.R. to approve a modified parking plan on the property.

Following a public hearing before the undersigned, the requested relief was denied in an Order dated May 12, 2009. The Petitioners filed a timely appeal to the Baltimore County Board of Appeals and a *de novo* hearing ensued. On behalf of the Petitioners, Mr. Schmidt offered an amended site plan into evidence that was not previously submitted to the Zoning Commissioner.

¹ On April 17, 2008, a Class A Group Child Care Center Use Permit was issued for this location by Timothy M. Kotroco, Director of the Department of Permits and Development Management. This permit, introduced at the Zoning Commissioner's hearing as Petitioners' Exhibit 2, allows for a maximum of 12 children and is an accessory use within the Petitioners single-family dwelling. The petition for special exception was therefore filed to expand the existing facility.

J. Carroll Holzer, Esquire and Carole S. DeMilio, Esquire who respectively represented the Protestants and the Office of People's Counsel at the *de novo* hearing, objected to the submittal of the amended plan.

In the interest of judicial economy, the parties settled this dispute by entering into a stipulation whereby this case was remanded to this Commission "for the sole purpose of him convening a public hearing at which time the Hermann site plan shall be offered into evidence." See stipulation. The stipulation provided that "following the hearing, the Zoning Commissioner shall issue a written decision indicating if the plan is compliant with County rules/regulations for site plans accompanying Petitions for Special Exception and Special Hearing and shall also affirm or amend, as the case may be, his decision of May 19, 2009 based thereon." Accordingly, this matter was scheduled for a public hearing on March 11, 2010 to consider the effects, if any, of the amended site plan on the decision to deny the Petitioners' request for Special Exception.

Appearing at the public hearing following the remand were Lynn Hogg and Jim Hermann with JV Hermann & Associates, LLC, the registered landscape architect who prepared the amended site plan, along with Petitioners attorney, Charles Marek, Esquire from Gildea and Schmidt, LLC. Several interested citizens appeared at the hearing including Paul and Lucy McKean, John Joseph Bennett, William H. Moore, and Paul Donoghue. J. Carroll Holzer, Esquire appeared on behalf of several citizens who oppose the requested relief.

The subject property and requested relief were explained in great detail in the May 19, 2009 Order and will not be recounted in this Order. To briefly summarize, the Petitioners have operated Cuddles Early Learning Center as a Class A Child Care Center since June 2008 and now wish to increase the number of pre-school children enrolled in the center from 12 to 24. While a Class A Center is permitted as of right in the R.C.5 zone, the proposed increase in

enrollment creates a Class B Child Care Center, which is only permitted by Special Exception.² Accordingly, the Petitioners filed a Petition for Special Exception, which was denied for several reasons more fully explained in my Order of May 12, 2009.

At the public hearing following the Board of Appeals' remand, Mr. Marek simply introduced the new site plan for the Petitioners and refrained from making any argument with regard to how the amended plan might affect the prior denial of the special exception use. The plan was marked and accepted into evidence as Petitioners' Remand Exhibit 1.

Testimony describing the changes illustrated on the amended plan was briefly given by Mr. Marek and William H. Moore. Mr. Marek explained that the primary changes include the relocating of the playground area, modifying parking space locations, and correcting the width of the macadam driveway. Mr. Moore expanded on these amendments and pointed out that the new plan also reflects changes to fencing along Gun Road, corrections to the circle driveway configuration and location of the residential transition area (vegetative buffer).

The Zoning Advisory Committee (ZAC) comments concerning the updated plan were received and are made a part of the record in this case.

After reviewing the amended site plan, I find that the plan was properly presented to the Bureau of Zoning Review and sealed, signed and certified by the necessary parties. The plan meets all requirements for filing and will be accepted and transferred to the Board of Appeals pursuant to the terms of the stipulation. Given the limited testimony presented at the remand hearing, I do not find any basis for altering or amending my original decision denying the

² Group Child Care Center is defined in Section 101 of the B.C.Z.R as: "A building or structure wherein care, protection and supervision is provided for part or all of a day on a regular schedule at least twice a week to at least 9 children, including children of the adult provider." A Group Child Care Center, Class A, is defined as: "A Group Child Care Center wherein child care is provided for no more than 12 children at one time". A Group Child Care Center, Class B, is defined as: "A Group Child Care Center wherein child care is provided for more than 12 children."

ORDER RECEIVED FOR FILING

Date

3-24-10

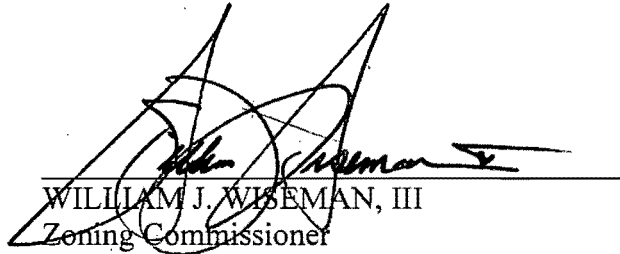
By

123

Petitioners' request for a Class B Child Care Center use on the subject property. In my judgment, the proposal still does not meet the criteria set out in Sections 502.1.B and 502.1.G of the B.C.Z.R. and thus, the burden of proof to demonstrate otherwise lies with the Petitioners.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 24th day of March, 2010, that the amended site plan will be accepted into evidence, incorporated in the case file, and transmitted to the Board of Appeals.

IT IS FURTHER ORDERED that the Conclusions and Findings of Fact contained in the Order issued on May 12, 2009 continue to remain in full force and effect.

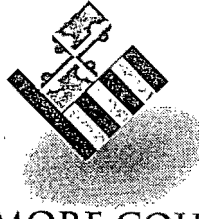

WILLIAM J. WISEMAN, III
Zoning Commissioner
of Baltimore County

WJW:dlw

ORDER RECEIVED FOR FILING

Date 3-24-10

By 193



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

March 24, 2010

WILLIAM J. WISEMAN III
Zoning Commissioner

Andrew M. Belt, Panel Chair
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Room 203
Towson, Maryland 21204

**RE: ORDER ON REMAND - PETITIONS FOR SPECIAL HEARING
AND SPECIAL EXCEPTION**

NE Corner of Gun Road and Keech Road
(505 Gun Road)
13th Election District - 1st Council District
Lynn R. Hogg, et ux – Petitioners
Case No. 2009-0153-SPHX

Dear Mr. Belt:

The public hearing on remand to provide an opportunity for the Zoning Commissioner, County reviewing agencies and the parties time to clarify or amplify their opinions on the amended site plan has been completed. Accordingly, the case file(s), amended site plan (Petitioners' Remand Exhibit 1) and agency comments are being returned to you and Theresa R. Shelton for further proceedings.

By copy of this letter, all parties have been provided with the findings and decision rendered in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "William J. Wiseman III", written over a horizontal line.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

- c: Lawrence E. Schmidt, Esquire & Charles Marek, Esquire, Gildea & Schmidt, LLC,
600 Washington Avenue, Ste. 200, Towson, MD 21204
Elizabeth Smith and Lynn Hogg, 505 Gun Road, Halethorpe, MD 21227
Jim Hermann, JV Hermann & Associates, LLC, 1895 Eden Mill Road,
Pylesville, MD 21132
Paul F. and Lucy W. McKean, 403 Gun Road, Baltimore, MD 21227



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

March 24, 2010

WILLIAM J. WISEMAN III
Zoning Commissioner

Andrew M. Belt, Panel Chair
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Room 203
Towson, Maryland 21204

**RE: ORDER ON REMAND - PETITIONS FOR SPECIAL HEARING
AND SPECIAL EXCEPTION**

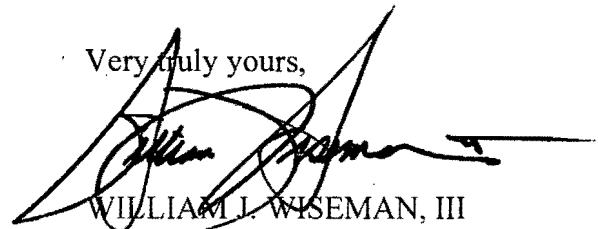
NE Corner of Gun Road and Keech Road
(505 Gun Road)
13th Election District - 1st Council District
Lynn R. Hogg, et ux – Petitioners
Case No. 2009-0153-SPHX

Dear Mr. Belt:

The public hearing on remand to provide an opportunity for the Zoning Commissioner, County reviewing agencies and the parties time to clarify or amplify their opinions on the amended site plan has been completed. Accordingly, the case file(s), amended site plan (Petitioners' Remand Exhibit 1) and agency comments are being returned to you and Theresa R. Shelton for further proceedings.

By copy of this letter, all parties have been provided with the findings and decision rendered in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "William J. Wiseman III".

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

c: Lawrence E. Schmidt, Esquire & Charles Marek, Esquire, Gildea & Schmidt, LLC,
600 Washington Avenue, Ste. 200, Towson, MD 21204
Elizabeth Smith and Lynn Hogg, 505 Gun Road, Halethorpe, MD 21227
Jim Hermann, JV Hermann & Associates, LLC, 1895 Eden Mill Road,
Pylesville, MD 21132
Paul F. and Lucy W. McKean, 403 Gun Road, Baltimore, MD 21227

Andrew M. Belt, Panel Chair

March 24, 2010

Page 2

John Joseph Bennett, 516 Gun Road, Baltimore, MD 21227

William Moore, 510 Gun Road, Baltimore, MD 21227

Paul G. Donoghue, President, Gun Road Historical and Protective Association,
508 Gun Road, Baltimore, MD 21227

Elizabeth A. Donoghue, 508 Gun Road, Baltimore, MD 21227

Larry Link, L.J. Link, Jr., Inc., Box 727, Brooklandville, MD 21022

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

Nancy J. and Frank A. Lindberg, 511 Gun Road, Baltimore, MD 21227

Janet G. Bruns, 301 Gun Road, Baltimore, MD 21227

William Watson, 422 Gun Road, Baltimore, MD 21227

Jackie Hedeman, 408 Gun Road, Baltimore, MD 21227

Frank Allen Earp, 424 Gun Road, Baltimore, MD 21227

Naomi Baldwin, 324 Gun Road, Relay, MD 21227

Mary Jane and Charles G. Macgill, 319 Gun Road, Relay, MD 21227

Jeremy S. Walsh, 5300 Keech Road, Relay, MD 21227

Dennis E. Wertz, Community Planner, Office of Planning

Stephen E. Weber, Chief, Traffic Engineering Division, DPW

People's Counsel; File

1/11/10

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE COUNTY
505 Gun Road; NE corner of Gun
Road & Keech Road * BOARD OF APPEALS
13th Election & 1st Councilmanic Districts
Legal Owner(s): Elizabeth Smith & Lynn Hogg* FOR
Petitioner(s) * BALTIMORE COUNTY
* 09-153-X

RECEIVED
JAN 11 2010

**BALTIMORE COUNTY
BOARD OF APPEALS**

**People's Counsel files this Memorandum in Support of Motion to Dismiss
Petitioner's Petition for Special Exception and Modified Parking Plan**

Protestants and People's Counsel joined in an oral Motion to Dismiss Petitioner's case on Day 2 of the hearing. The Board of Appeals ("CBA") asked all Counsel to prepare Memorandum to be submitted simultaneously on January 11, 2010 before any further proceedings in this case.

Introduction

The Motion is based on the following: (i) lack of jurisdiction based on lack of public notice on the amended petition due to Petitioner's introduction at the hearing of a site plan that is not the original site plan submitted at the Zoning Commissioner's hearing and reviewed by the Baltimore County agencies; (ii) the proposed site plan has not been seen or reviewed by the Baltimore County agencies charged with review of zoning petitions; (iii) lack of jurisdiction based on lack of public notice on the amended petition because Petitioner's counsel introduced a new or amended plan for the first time on the first day of the hearing on November 10, 2009, thus depriving Protestants and People's Counsel of the required notice and opportunity to prepare their case; (iv) at the hearing on Day 1, Petitioner's attorney continued to refuse to provide a copy of the site plan to opposing counsel, and refused to provide them with a copy following the first day of hearing so that they may have had, at the least, a copy to prepare for the subsequent hearing dates; (v) it appears the proposed plan does not contain the necessary requirements for a plan required by Zoning Review, Department of Permits and Development Management and, in any event, the proposed plan does not affirmatively state

or explain the difference from the original plan submitted with the zoning petition by "red-line" or any other way.

Petitioner's actions have placed an undue burden on Protestants and People's Counsel and constitutes defective notice which prohibits Petitioner from proceeding with this hearing before the CBA. In addition, Petitioner's actions are unfair to the CBA who is being asked to rule on a zoning petition without the benefit of Baltimore County comments on the plan in areas such as fire code, road and traffic impact, design, screening, landscaping, and environmental impact. Since Petitioner is requesting a special exception and modified parking plan, such comments concern the standards under BCZR 502.1 as well as the parking requirements and are directly related to the CBA's decision. In any event, in zoning matters on appeal such comments are always in the CBA file for its review.

It is also important to note that the Zoning Commissioner denied the relief based on the vehicular access, site distances, and compatibility of the size of the proposed day care center, all of which depend on specifics in the site plan reviewed by the Zoning Commissioner.

Moreover, the Office of Planning found numerous deficiencies in the original site plan and recommended a denial of the special exception. It is logical to assume that the proposed site plan also requires the benefit of scrutiny by the Planning Office and the other reviewing agencies. The Planning Office's comments dated April 8, 2009 are strikingly lengthy and comprehensive, and include the following:

"The size (capacity) of the proposed group childcare center is not compatible with, and won't complement, the Gun Road neighborhood. . . . A Class B Group Child Care center is not a logical extension of a residential use. . . . The site plan doesn't comply with Section 409 (Off-street Parking and Loading) of the BCZR . . . It appears that the site plan doesn't accurately show the location of the one-way driveway. . . . The existing fence surrounding the play area shown on the site plan is in violation of the BCZR. . . . Public sewer does not serve this neighborhood. It isn't clear whether the private on-lot sewer system will be adequate to serve a large-capacity day care center."

Petitioner cannot try to escape the unfavorable Planning comments by claiming they do not pertain to the newly proposed site plan or by suggesting they comply with the Planning Office's objections without another review by the Planning staff, among others.

Any changes to the site plan would necessarily relate to these issues. A petition may not be amended at the CBA in such a way as to increase the impact of the proposal or add a new element which a member of the public reasonably would find material in considering whether to participate. Cassidy v. County Board of Appeals 218 Md. 418 (1958).

Legal Analysis

The notice requirements in zoning cases is statutory and the Maryland appellate courts have addressed this issue. In addition, the respected zoning treatise, *Anderson's American Law of Zoning*, discusses this issue at length.

Notice is an element of procedural due process of law. It is incorporated in the Express Powers Act, Article 25A, Sec. 5(U), Maryland Code, in County Charter Sec. 603 for the Board of Appeals, and County Code Sec. 26-127 pertaining to zoning commissioner hearings.

Defective notice is fatal to jurisdiction. Cassidy, supra. While its scope of review is *de novo*, the CBA nevertheless exercises appellate jurisdiction. UPS v. People's Counsel 336 Md. 569 (1994). A petition may not be amended at the CBA if it increases a plan's impact or adds an element which a citizen reasonably would find material in deciding whether to participate. Cassidy, supra.

In People's Counsel v. Mangione, 85 Md. App. 738 (1991), the Court of Special Appeals reversed the Circuit Court's granting of a Motion to Alter or Amend, thus prohibiting a Petitioner from amending his special exception for a 240-bed nursing facility to a 120-bed nursing facility, even though arguably a less intense use. The Petitioners originally sought a special exception for a 240 bed facility. The request was denied by both the Zoning Commissioner and Board of Appeals. On appeal, and after the Circuit Court affirmed the CBA's denial, the Petitioners filed a Motion to Amend with the Circuit Court to reduce the size to a 120 bed facility. The Circuit Court granted the Motion and remanded the case to the CBA. The Court of Special Appeals reversed the

Circuit Court and rejected Petitioners' argument, among others, that the Petition before the Zoning Commissioner sought only to obtain zoning approval for a convalescent home and that the number of beds was not relevant to the relief sought. The CSA stated :

"Our review of the record does not reflect that a petition for a 120-bed facility was ever filed with the administrative zoning agency. . . . We first note that the site plans that are included in the extract as being filed with the application (that is missing) refer to a 240-bed facility." Id. at 744.

"The record reflects that at no time was an application for a 120- bed facility ever filed with the administrative agency. Nor is there any record that the original 240-bed application was downsized by proper amendment. . . . Furthermore, the Board made no ruling on the feasibility of a 120-bed facility." Id. at 747.

Although the amendment in Mangione occurred in the appellate process after the CBA hearing, the law pertains to the instant case under the UPS case, *supra* at 581-584, which held the CBA exercises appellate jurisdiction in a *de novo* appeal:

"The Baltimore County Charter, in § 602 (e), grants to the Board of Appeals "original and exclusive jurisdiction over all petitions for reclassification." This is the only original jurisdiction granted to the Board of Appeals by the Charter or laws of Baltimore County. Except for reclassifications, the Board's jurisdiction is exclusively appellate. . . . Baltimore County has decided to give its Board of Appeals original jurisdiction in only one category of cases, namely reclassifications. In all other matters, Baltimore County has decided to vest only appellate jurisdiction in the Board of Appeals."

Even if the amendment proposed by the Petitioner was in response to opponents' concerns, amendments to the site plan on the hearing date were not permitted by the Court of Special Appeals in Great Falls v. Constellation, 122 Md. App. 700 (1998). There, the petitioner Constellation requested a special exception for a nursing home. On the last day of the hearing and with only a few days notice to the opponents, Constellation offered a revised site plan that reduced the square footage of the building in response to objections by the neighbors, showed additional landscaping to provide more buffer between the proposal and the residences, reduced the length of one wing of the structure in response to an adjoining neighbor's opposition, and showed a revised planting and forest conservation plan showing additional landscaping to more effectively screen and buffer the proposal from an opponent's residence. None of the

amendments produced a concomitant negative effect. The special exception was approved by the Board and affirmed by the Circuit Court. The CSA reversed and remanded, citing Constellation's failure to comply with the Board's 10 day notice requirement for introduction of evidence. The CSA said the notice provision was a rolling requirement enforceable throughout the many days of hearing, the Board had no discretionary power to waive the notice, and dismissed Constellation's argument that the Board could "waive minor procedural defects or errors that do not affect substantive rights of the parties in order to proceed on the merits." Id. at 743. Instead the CSA found that the inability of the opponents to respond to the amended plan because the record was closed constituted a prejudicial, rather than a minor error. Id. at 744.

Although the re were specific statutory notice requirements in Great Falls, it is relevant here because the Court recognized that opposing parties must be given the opportunity to review with Counsel and experts, if any, and prepare a response to, an amended plan, even if the plan attempts to address concerns of the opposition in their favor or to resolve disputed issues.

The issue of amendment of a site plan and notice was again addressed in In The Matter Of John Mangione, et al #03-C-03-009661. (Coincidentally, this case involves a different location for an assisted living facility proposed by another member of the Mangione family. But it is otherwise unrelated to the CSA case cited above).

In a Circuit Court opinion in this 2003 Mangione case, Judge John O. Hennegan reversed and remanded the CBA's approval of a special exception and variances for a proposed continuing care facility building in Padonia. At the hearing, the CBA permitted amendments of the variance requests which increased the height variance from 50 ft to 60 ft and the length of the building from 250 ft to 260 ft. In addition to referring to the Express Powers Act, Judge Hennegan pointed out that the amendment at the CBA level violated the notice provision in the Baltimore County Code [currently BCC 32-3-302] and Rule 2a of the CBA, which requires a ten day notice for hearings to all parties.

Judge Hennegan reversed the CBA's decision, which was based on the CBA's position that the amendment was in its sole discretion. The Circuit Court disagreed and stated:

"The Board, however, incorrectly assessed its amount of discretion. The Board has de novo review, yet it still exercises appellate jurisdiction. UPS v. People's Counsel, 336 Md. 569 (1994). Although the Board has the right to hear additional evidence,¹ if the additional evidence is material, then the other party must have proper notice of that evidence. Cassidy v. County Board of Appeal, 218 Md. 418 (1958)."

Petitioner in the instant case claims that there is no change to the special exception request, only changes to the site plan. But in Mangione, 2003, the Petitioners also argued that no additional notice is required because the changes in the site plan were minor, that this was not an "amendment" because only the site plan and not the zoning petition itself was changed, and that there is no requirement that the zoning petition contain the dimensions of the proposal.

Judge Hennegan rejected Petitioners' positions and pointed out that the Zoning Commissioner "needed the dimensions of the facility at his disposal" to review the special exception request under the BCZR 502.1 criteria. Judge Hennegan pointed out:

"By changing the facility's dimensions, a new determination is required as to whether or not section 502.1's criteria were met. The increased height and width of the facility could possibly not satisfy the criteria of 502.1 which would prevent granting the special exception."²

This Court finds that Petitioners' claim is without merit. A decision on whether the facility meet the criteria of section 502.1 cannot be made without looking at the site plan. Therefore, this Court finds that the site plan is an integral part of the petition."

The Circuit Court held that the material change to the site plan required that notice be given and an opportunity for the public to be heard. The Court remanded the case for a new hearing.

Similarly, in the instant case, the Petitioner is requesting a special exception, which by its nature requires review a detailed site plan by Protestants and People's Counsel, as well as the CBA. A day care facility differs from the surrounding residential uses. The nature of the special exception use here includes both the home and outdoor facilities, as well as the roads in and out of the neighborhood. Compared to the

surrounding single home uses, it is more intense in areas such as traffic, concentration of population, and safety for both the children and the neighborhood residents, including fire, pedestrian and traffic safety. Thus the details in the site plan are important to the community and merit special attention from Baltimore County agencies charged with zoning, planning and development.

It is also significant that the R.C. 5 zone, which applies to the site, has numerous restrictions, in addition to the general restrictions in residential zones. They include location and size of accessory structures or uses, the setbacks from property lines, the percentage of the lot that may be covered by structures, as well as performance standards, which include such aspects as "architectural form, scale, materials, detailing and landscaping context. . . . vegetation, . . . vistas, . . . location of fences, . . ." BCZR §1A04.3, §1A04.4, §400.

Young, Kenneth H. Anderson Law of Zoning 4th Edition

People's Counsel believes excerpts from the Anderson treatise would be helpful to the CBA on the issue of notice and lack of jurisdiction. They are reproduced here as quotes from the named section of the treatise.

§ 22.21 Ruling on the adequacy of notices which contained varied deficiencies, the courts have been guided by the main objective of notices of hearing, to inform persons entitled to notice of the purpose and subject of the hearing. . . . where notice of hearing is required the notice must inform the party entitled to it of the nature of the application and of the land which is involved. (citations omitted).

A notice of hearing must describe with reasonable accuracy the relief which is sought by the applicant or appellant. (citation omitted).

§ 22.17 Traditionally, all of the principal steps in the zoning process, from enactment through enforcement, are taken after notice and public hearing. . . . the public interest in the outcome of zoning disputes is protected by procedural requirements. Given the quasi-judicial character of the board of adjustment function, it is predictable that the board can decide a matter which falls within its original or appellate jurisdiction, only after notice and hearing . . . The tolerance of informality which is reflected in the judicial

decisions which relate to pleadings, rules of evidence, and other aspects of board procedure, are less evident where notice and hearing are involved. These are regarded as essential ingredients of administrative justice, and substantial or even literal compliance with requirements is required. Statutory notice and hearing requirements are regarded as mandatory. Failure substantially to comply will result in reversal of the boards decision unless the court concludes that the person not notified had actual notice and appeared at the hearing, that the litigant had adequate time to prepare, and that no public harm was done. (citations omitted).

The requirement that board action be preceded by notice and hearing is jurisdictional. Action by a board of adjustment which is taken without notice and hearing may be nullified. (citations omitted).

The requirement of notice is satisfied only if the notice affords to parties and other interested persons an adequate opportunity to prepare as well as to attend. (citations omitted).

§ 22.18. A simple requirement that notice of hearing be given is considered to mean that "reasonable" notice must be given. . . . Where an undated letter notified a party on Friday, that a hearing would be held on the following Tuesday, a Massachusetts court held that the requirement of reasonable notice was not satisfied because the litigant was not given adequate time in which to prepare. (citations omitted).

§22.24 The power of a board of adjustment to grant administrative relief, in the exercise of its original or appellate jurisdiction, may be employed only after such notice and hearing as is required by the applicable enabling acts, charters, or ordinances. (citations omitted). The hearing requirement is regarded as mandatory; action by a board of adjustment without compliance is a nullity. (citations omitted). A board decision reached through informal procedures which do not include an official hearing is void. (citations omitted). . . . Reviewing administrative conduct in the hearing room, the courts have fixed their attention upon the basic purpose of a public hearing to afford to all interested parties a full and fair opportunity to be heard, and they have placed little emphasis upon rules of evidence, or other niceties of court procedure. (citations omitted).

§ 22.24 In general, judicial attention is focused upon the question whether the hearing was basically fair. . . . Defects which might otherwise constitute reversible error will be overlooked if they apparently did not prejudice any litigant, or if they were knowingly waived in the course of the hearing. Where, for example, plans and specifications relevant to a hearing on an application for a special permit were unavailable on the hearing day, but the party who later complained declined the chairman's offer of a postponement, the lack of such relevant evidence did not render the hearing unfair. This result was reached although the plans were held by a public official on the hearing day. (citations omitted).

§22.24 A litigant must not be denied a fair opportunity to introduce relevant evidence. (Citations omitted).

Baltimore County Requirements for Zoning Petitions and Plats

In addition to the case law and treatise, the Baltimore County Zoning Review Office under the Department of Permits and Development Management has set forth the requirements for a zoning petition and plat. It is clear Petitioner in the instant case has failed to follow both the letter and spirit of these requirements in proposing an amended plan for the first time at the CBA hearing.

Baltimore County has issued a type of manual titled "Hearing Checklist" for zoning petitions. On page 7 of the manual it is stated that "The Application Must Contain . . . 2. Twelve (12) copies of the plat with information as indicated on checklist – See Example #2." The specific Plat requirements are delineated on page 11 and are attached to this Memorandum. At the end it is important to note the phrase referring to the zoning Petition and the documents that accompany the Petition: "***All of the above information must be complete and accurate or the Petition cannot be accepted for filing!***" (emphasis in original).

Clearly, all of the requirements, including the Plat, are part of the zoning application included in the file as part of the Petition. This means that any interested party should have the ability to see the entire application in order to determine its position.

The manual also points out that in a hearing, the zoning commissioner [and CBA in a *de novo* hearing] cannot address the requirements of county and state agencies, who have sole responsibility to make those decisions. The manual lists 10 agencies and states: "Prior to preparing the required plan, the petitioner or his engineer should contact the following agencies for pertinent data that may be required by that particular agency."

In practical terms, this means a plan must be reviewed by the agencies before it is presented at the hearing. Not only is it not permitted but it is patently unfair to preclude not only the citizens but the CBA to have the benefit of the comments of the County agencies.

Summary

Contrary to Petitioner's position stated at the hearing in the present case, the CBA's authority in this matter derives from its appellate jurisdiction, meaning the application, requested relief, plat and site plan, etc cannot be amended at the CBA level under the language in UPS, *supra*, Mangione, *supra* and the long-standing policies stated in the Anderson treatise.

Under these circumstances, the case must be dismissed or remanded to the Zoning Commissioner for a new public notice and new hearing, including a review by the County agencies. This also will afford the Zoning Commissioner the opportunity to exercise his original jurisdiction over the new proposal, and afford county agencies and existing parties, as well as the public, an opportunity to prepare for it.

Peter Max Zimmerman

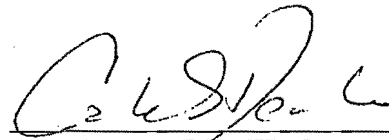
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of January, 2010, a copy of the foregoing People's Counsel files this Memorandum in Support of Motion to Dismiss Petitioner's Petition for Special Exception and Modified Parking Plan was mailed to J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286 and Lawrence E. Schmidt, Esquire, Gildea & Schmidt LLC, 600 Washington Avenue, Suite 200, Towson, MD 21204, Attorney for Petitioner(s).

A handwritten signature in dark ink, appearing to read "Carole S. Demilio", is written over a horizontal line.

CAROLE S. DEMILIO
Deputy People's Counsel
for Baltimore County

1/31/10

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
505 Gun Road *
N/E Corner of Gun Road & Keech Road * BOARD OF APPEALS
*
13th Election District * FOR
1st Councilmanic District * BALTIMORE COUNTY
Legal Owner(s): Elizabeth Smith & Lynn Hogg * Case No.: 09-153-X
*
Petitioner(s) *

* * * * *

PROTESTANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Protestants' file this Memorandum in Support of Motion to Dismiss Petitioner's Petition for Special Exception and Modified Parking Plan and Motion to Remand Petitioner's Petition for Review by County Agencies and Zoning Commissioner.

Protestants', *Gun Road Historical and Preservation Association* and individuals, *Paul Donohue, William Moore, et al.*, hereby submit this Memorandum, by and through their attorney, *J. Carroll Holzer, Esquire*, Holzer & Lee, as requested by the County Board of Appeals on January 11, 2010, and say as follows:

I.

INTRODUCTION

Protestants' Community Association and individuals, hereby adopt the Memorandum in Support of Motion to Dismiss filed by Deputy People's Counsel for Baltimore County, Carole S. Demilio, Esquire, as if it were fully incorporated herein.

II.

STATEMENT OF THE CASE

Protestants' submit that on Day 1 of the hearing before the County Board of Appeals, Protestants' counsel became aware of the fact that the Petitioner's intended to submit to the Board a new Site Plan. Protestants' counsel called for a copy of that Site Plan to be submitted in order that the Protestants' might review the proposed document. Petitioner's counsel refused on the theory that there was no discovery.

On Day 2, December 10, 2009, when the proposed Amended Site Plan was introduced, Protestants' counsel objected and made an oral motion to remand the case back to the Zoning Commissioner for appropriate County Agency review. The Board requested written Memorandum by January 11, 2010, and indicated Oral Argument would be held on Tuesday, February 2, 2010. Protestants' counsel has since received notification from the Court of Special Appeals that he must attend an Oral Argument at the Court of Special Appeals on Tuesday, February 2, 2010, at 9:00 a.m. Counsel has requested a postponement of the Argument before the Board which has been granted.

Legal Analysis

As previously stated in People's Counsel's Memorandum, she has accurately identified the Questions Presented (i – v).

Case Law

Protestants' counsel again adopts the Legal Analysis of Deputy People's Counsel as it relates to the cases of *Cassidy v. County Board of Appeals*, 218 Md. 418 (1958), *UPS v. People's Counsel*, 336 Md. 569 (1994), *People's Counsel v. Mangione*, 85 Md. App. 738 (1991) and most

significantly, the Circuit Court case, Case No.: 03-C-03-009661, In the Matter of: John Mangione, et al.

Protestants' counsel had previously in Oral Argument cited Anderson's Law of Zoning, 4th Edition, §22.21, §22.17, §22.18 and §22.24 as the basis for the Notice requirements.

Baltimore County Zoning Requirements

People's Counsel has accurately set forth the procedural requirements of the County when a Zoning Petition and plat are filed. It is significant to note that twelve (12) copies of the plat are required to be filed. The obvious purpose of this requirement is to provide all agencies of Baltimore County with the proposed Site Plan so they may review the Site Plan which is required to meet all the zoning and other agency requirements before approval by either the Zoning Commissioner or the County Board of Appeals.

It is interesting to note in this case that the Planning Office received the first Site Plan and had negative comments which were submitted to the Zoning Commissioner and which were adopted by the Zoning Commissioner in his Opinion Denying the Petition from which this appeal was taken by Petitioner.

It is undisputed that if a new Site Plan is submitted before the County Board of Appeals that the County Agencies must have the opportunity to review the new Amended Site Plan for compliance with the County Regulations. Certainly, the Planning Office is entitled to also review the Amended Site Plan in regard to its Opinion.

Original vs. Amended Site Plan

The new Site Plan shows the following significant modifications to the original Site Plan filed with the County.

The playground area has in fact been relocated from the side yard to the front yard, which negatively impacts the aesthetics of the neighborhood and affects the other residents residential view of the subject property. The playground will hold, if the Special Exception is granted, an increased number of children and will provide a commercial character to the otherwise residential home and neighborhood. Certainly, questions may be raised as to the proper location of the playground in a front yard from a zoning standpoint.

The Plat submitted to the Zoning Commissioner for a Class B application showed the location of the playground as a trapezoidal shape between the circular drive and the East property line, approximately three thousand, thirty-five square feet (3,375 sq. ft.), large enough for forty-five (45) children at seventy-five square feet (75 sq. ft.) per child. The Amended Plat shows the playground drawn in the front yard as 40 x 45 feet or one thousand, eight hundred square feet (1,800 sq. ft.), large enough for twenty-four (24) children at seventy-five square feet (75 sq. ft.) per child. There is enough room in the front yard to enlarge it in the future to an enormous size. Many questions are raised concerning the location of the playground. If it is an accessory use to the daycare operation, does it properly belong in the front yard?

Secondly, does Planning and Zoning have concerns that from an aesthetic and technical standpoint, a large playground in the front yard is not consistent with the residential aspect of the neighborhood and of the Zoning applicable thereto.

There are other changes to the initial Plat including differing parking spaces and areas and location of fences which may play a role in any Baltimore County Departmental review.

In addition to the relocation of the playground and the differences in the number of parking spaces (all seven (7) of the newly defined spaces are now located in various spots around the drive circle – numbers 1, 2 and 3 are on the dirt outside the circle, number 6 and 7 seem to be one-half on the drive and one-half on the dirt, and number 4 and 5 appear to be on existing paving). Another significant difference between the drawings submitted to the Zoning Commissioner which detailed the drive aisle as a uniform twelve feet (12') in width and the new drawing shows variations from nineteen feet (19') down to ten feet (10'). Please note that the two-way drive portion that connects from Gun Road to the circle is now noted at ten feet (10') where it was shown as twelve feet (12') on the Plat submitted to the Zoning Commissioner. While twelve feet (12') was clearly inadequate for two-way traffic, the newly defined ten feet (10') is even less so. In addition, while the Plat to accompany the Petition showed screening in accordance with the landscape manual and a twenty foot (20') planning buffer between 505 and 515 Gun Road, as well as between 505 and the Rudy Parcel, neither the screening nor the Planning buffer are shown on the new Plan. The radius of the circle driveway is significantly different on each drawing. Specifically, the old drawing scales at a dimension of sixty-two feet (62') between the edge of the circle driveway and the Rudy property line, while in the new Plat, this dimension scales to only thirty feet (30').

Finally, the fence that fronts on Gun Road has been relocated on the new Plat as a “proposed relocated fence.”

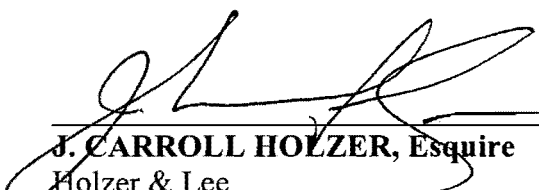
It is clear from all of these changes that the need for Planning and Zoning review is absolutely necessary before the Board and properly hear this case.

Summary

The Protestants' position should be made clear in this summary. It is not sufficient for the Board to suggest that the case will be heard in March, and therefore there will be time for the Protestants' and People's Counsel to review the Amended Site Plan. That is not a satisfactory compliance with County Regulations and State Case Law. Since this Board is an appellate body, it cannot, as Judge Hennegan said in the Mangione case, increase its authority when there is no statutory basis. It is an appellate body, not the initial reviewer (County Agency), nor the initial Charter determiner of the right to obtain a Special Exception (Zoning Commissioner).

As a result, the Protestants' Motion to Remand the new Site Plan for review by all County Agencies, as well as the Zoning Commissioner, should be granted.

Respectfully submitted,

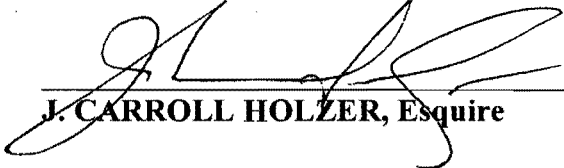


J. CARROLL HOLZER, Esquire

Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Protestants

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 11th day of January, 2010, a copy of the foregoing Protestants' Memorandum in Support of Motion to Dismiss was mailed first class, postage pre-paid to the following: Carole S. Demilio, Esquire, Deputy, People's Counsel, Jefferson Building, 105 West Chesapeake Avenue, Room 204, Towson, Maryland 21204 and Lawrence E. Schmidt, Esquire, Gildea & Schmidt, LLC, 600 Washington Avenue, Suite 200, Towson, Maryland 21204.



J. CARROLL HOLZER, Esquire

1/11/10

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
NE Corner of Gun Road and Keech Road	*	COUNTY BOARD OF APPEALS
(505 Gun Road)		
	*	FOR
13 th Election District		
1 st Councilmanic District	*	BALTIMORE COUNTY
Lynn R. Hogg, et ux	*	Case No. 2009-0153-SPHX
<i>Petitioners</i>		
* * * *		

MEMORANDUM

Lynn R. Hogg and his wife, Elizabeth A. Smith, (hereinafter "Petitioners"), by and through their attorneys, Lawrence E. Schmidt and Gildea & Schmidt, LLC, submit this Memorandum and respectfully state:

STATEMENT OF THE CASE

This matter comes to the County Board of Appeals of Baltimore County ("Board") as a *de novo* appeal of the Findings of Fact and Conclusions of Law and Order of the Zoning Commissioner of Baltimore County dated May 12, 2009. By order of that date, the Zoning Commissioner denied a Petition for Special Exception to permit a Group Child Care Center, Class B; and further, dismissed the Petition for Special Hearing to approve a modified parking plan, as moot.

The Petitioner, Lynn R Hogg and Elizabeth Smith, his wife, are owners of the subject property known as 505 Gun Road located in the Halethorpe/Relay community of western Baltimore County. Their property is about 2.442 acres in area, zoned RC 5. It is improved with a two story building that serves as their residence. On the bottom floor of the dwelling, the Petitioners currently operate a Group Child Care Center, Class A.

Section 101 of the Baltimore County Zoning Regulations ("BCZR") defines the relevant

RECEIVED
JAN 11 2010

**BALTIMORE COUNTY
BOARD OF APPEALS**

land uses in this case. Therein, a "Group Child Care Center" is defined as a building where care, protection and supervision is provided, at least twice a week, to at least nine (9) children. Group Child Care Centers are classified into two categories; namely, Class A and Class B. A Group Child Care Center, Class A is a Group Child Care Center that provides services to no more than twelve (12) children at one time. A Group Child Care Center, Class B, is a facility where care is provided to more than twelve (12) children.

Group Child Care Centers (as well as nursery schools) are regulated in BCZR § 424. Pursuant to those regulations and the process set forth therein, the Petitioners obtained approval for a Class A center in 2008. As required, the Petitioners at that time submitted an application for a "use permit" along with the requisite information to the Department of Permits and Development Management (copies of the application and supporting documentation were accepted by the Board as Petitioner's Exhibit Number 3). Public notice of the application was posted on the property and a use permit (also included in Petitioner's Exhibit Number 3) was issued by Director Kotroco on April 17, 2008. Thus, a validly authorized day care center (Class A) has been operating on the property for nearly two years. In addition to County approvals, the Petitioners have also obtained all State of Maryland mandated licenses and approvals.

Due to demand, the Petitioner's have decided to expand the center. Although BCZR Section 424 permits Class B centers to accommodate up to 40 children (additional children above that number may be permitted under certain conditions) the Petitioner's intend to limit the number of children enrolled to twenty four (24).

Class B centers are permitted in the RC zone by Special Exception. Thus, the Petitioners filed a Petition for Special Exception requesting, "approval of a Group Child Care Center, Class B". Additionally, in order to modify certain of the parking requirements imposed by BCZR

Section 409 (e.g. that all spaces be striped); the Petitioners filed a Petition for Special Hearing requesting approval of a modified parking plan, as permitted under BCZR § 409.12. As noted above, the matter came in before the Zoning Commissioner on the two petitions. At that hearing, the Petitioners testified and presented certain evidence in support of their request. Testifying on their behalf was Larry Link, an architect who prepared a site plan of the property which was filed with the petitions. Several residents of the locale appeared in opposition and testified against the petitions. As noted above, by written opinion and order, the Commissioner denied the Petitions and a timely appeal was filed by the Petitioners to the Board.

The matter has been before the Board for two hearing dates, November 10, 2009 and December 10, 2009. On November 10, certain neighbors testified in support of the request and the Board received extensive testimony from Elizabeth A. Smith, co-Petitioner and licensed operator of the existing Child Care Center. She described in detail the property and existing operation; including the steps that she completed to obtain the Class A use permit that was issued by Baltimore County in 2008. She also described the proposed modifications to the operation necessary to accommodate her plans to increase enrollment from twelve (12) to twenty four (24) children. On the second hearing date, the Petitioners offered the testimony of James Hermann, a licensed Registered Landscape Architect in the State of Maryland. Mr. Hermann was accepted as an expert witness. He offered a detailed site plan into evidence, which he had prepared, depicting the property and requested relief. The offer of this plan was objected to by Protestants' attorney and People's Counsel and, at the request of the Board, this memorandum follows.

ISSUE PRESENTED

Question: Should the Board of Appeals allow a site plan as evidence in a *de novo* hearing that was not in evidence at the hearing before the Zoning Commissioner?

Answer: Yes, *de novo* hearings allow consideration of new evidence particularly where the issues presented and argued before the Zoning Commissioner have not changed from the underlying hearing.

ARGUMENT

1. *De novo* hearings allow for consideration of new evidence

a. Authority of the Board of Appeals for a *de novo* hearing

Under the Express Powers Act, Md.Code (1957, 1994 Repl.Vol.), Art. 25A, § 5(U), each chartered Maryland county is authorized to create a Board of Appeals. Baltimore County, by its charter, created the Board as an independent unit of county government and vested the Board with the power to hear, *de novo*, all proceedings authorized by the Express Powers Act; including appeals from decisions of the Zoning Commissioner. The particular language proscribing these proceedings is found in Baltimore County Charter Article VI, Sec. 603 and mandates “[a]ll hearings held by the board shall be heard *de novo*.” Moreover, as specifically stated in BCZR § 501.6, all appeals from the Zoning Commissioner to the Board shall be heard *de novo*. Chairman Belt acknowledged the *de novo* nature of the Board’s proceedings repeatedly in open hearing. As he affirmatively stated and is beyond dispute, the hearing on the intent Petitions is required to be *de novo* by law.

As a *de novo* hearing, the Board is charged with hearing this matter and all evidence presented as if it were a new trial. This necessarily requires evaluation of the entire case presented by both sides “fresh, as if it had not been held before and as if no decision had been previously rendered,” (citing Rathkopf’s Administrative Law, Section 698, 1962, as quoted in

Boehm vs. Anne Arundel County, 54 MD App 497, 459 Ad 590(1983)). See Halle Companies v. Crofton Civic Assoc., 339 MD 131, 139, 661 A.2d 682, 686 (1195)(*stating* “the proceedings before the Board were conducted *de novo*, or as if the proceedings before the administrative hearing officer had never occurred.”).

b. Definition of *de novo* under State Law

Appeals from the Zoning Commissioner heard by the Board differ from appellate review of decisions by lower courts or of an administrative body by State courts where a full review of the record is made and oral arguments are presented based on this record. (See e.g. Md. Rule 7-201 et seq.) *De novo* hearings by the Board differ, in that, although the issues presented at the Commissioner level are the same, the hearing itself is a new trial with the Board evaluating all evidence presented without former review or knowledge of the previous hearing or findings. The propriety of these proceedings acting as a “fresh” hearing, limited only by the issues formerly presented, was explained by the Halle court.

“We have consistently treated *de novo* appeals as wholly original proceedings, with the word ‘appeal’ meaning simply that the proceedings are new and independent rather than strict review of prior proceedings. See also Lohrman v. Arundel Corp., 65 Md.App. 309, 318, 500 A.2d 344, 348 (1985)(“the use of the word ‘appeal,’ to the extent it denotes review of the action of a lower tribunal, is a misnomer, for there is no review”); Hardy v. State, 279 Md. 489, 369 A.2d 1043 (1977); Travelers Indemnity Co. v. Nationwide Construction Corp., 244 Md. 401, 224 A.2d 285 (1966)”.
Id at 143, 687

Baltimore County Code (“BCC”) § 32-3-108 further provides that on appeal from the Zoning Commissioner to the Board, all of the Zoning Commissioner’s file shall “remain part of the

Board's case file." BCC § 32-3-108(b) provides that, absent objection, all of the Zoning Commissioner's file shall be considered as evidence by the Board without authenticating testimony. The BCC goes on to state that, upon objection to any part of the Zoning Commissioner's file, the evidence must be properly authenticated by the party offering the evidence. In conclusion, this section in no way prohibits the introduction of new evidence, and, to the contrary, provides a mechanism where the evidence before the Zoning Commissioner might not be admitted and this would not be reviewed by the Board. Thus, the Protestants' argument that only the "Link Plan" should be considered is contrary to the law.

c. New evidence is permitted to be considered in *de novo* hearings

In the case *sub justice*, an objection was made by Protestants over the admission of a site plan being introduced by the Petitioners as claims were made this site plan may differ in some aspect from that plan by Mr. Link and offered to the Zoning Commissioner. Although the site plan presented by Petitioners was prepared by a different consultant who did not appear before the Zoning Commissioner, it did not alter the relief requested. That is, the issue presented to the Board (i.e. Petition for Special Exception for a Group Child Care Center, Class B and Petition for Special Hearing for a modified parking plan) is identical to that considered by the Zoning Commissioner. Protestants apparently aver Petitioners are limited to introduce only exhibits from the Zoning Commissioner hearing. This limitation on relevant evidence being produced at a trial goes against the basic tenets of jurisprudence and is in direct conflict with the findings of Maryland courts as to procedure for *de novo* hearings. This site plan is required to be produced by Petitioners in order to accurately depict the property as new evidence; and is permitted in a *de novo* setting.

The Court of Appeals specifically found these *de novo* hearings are open to new evidence in its finding:

De *novo* means that the Board of Appeals may hear testimony **and consider additional evidence** pertaining to the issue or issues presented on appeal. See Vol. 2, *The Law of Zoning and Planning*, Rathkopf, ch. 65-30, Sec. 7. The original nature of a de novo hearing with its quality of newness is in contradistinction to a review upon the record as exists where matters are heard on certiorari. *Id* at 141-2, 687.(*emphasis added*).

It should be pointed out that the Halle court dealt specifically with the propriety of allowing new evidence to be admitted by the Baltimore County Board of Appeals in a *de novo* setting:

Although the issues to be addressed on review by the Board may be limited, **new and additional evidence is permitted**. The proceedings, therefore, are wholly original with regard to all issues properly raised. . . .

On an appeal from the decision of administrative officials, . . . the Baltimore County Board of Appeals was authorized under the Express Powers Act and local law **to receive and consider evidence in addition to that contained in the record before the administrative officials . . .**

The [] County Board of Appeals may not entertain a truly original petition for variance or special exception, but it may review the actions of the administrative hearing officer and take any action which that officer could have taken in the original proceeding. See *Soothcage v. King*, 227 Md. 142, 152-53, 176 A.2d 221, 227 (1961). **Additional evidence may be presented in the de novo proceedings, . . .** It is appellate review mainly in the sense that a decision by the administrative hearing officer is a prerequisite to proceedings before the Board and not in the sense that the Board is restricted to the record made before the administrative hearing officer. See also, *The Law of Zoning and Planning* Sec. 37.01[7][a]. (citing *People's Counsel v. Crown Development*, 328 Md. 303, 316, 614 A.2d 553, 559 (1992)).

Id at 142-44, 687-88.

The courts did clarify the issues from the lower court were to remain the subject matter of the hearing but stated new evidence on these previous issues was permitted

The Board conducts wholly original proceedings with regard to all issues properly before it, and may consider new and additional evidence beyond that introduced before the administrative hearing officer... In a *de novo* hearing before a board of appeals, new or different evidence beyond that presented during the original proceeding may be used concerning any issue properly before the tribunal.

Id at 145, 688-9.

As noted above, it need be emphasized that the petitions considered by the Board are the same as were presented to the Zoning Commissioner. The relief requested on the original petition was for a Special Exception for a Class B Child Care Facility and a Special Hearing for a modified parking plan. The plan in no way changes the relief of the use or request for the modified parking plan, but merely presents an accurate depiction of the property with its existing structures, and provides informational notes desired by Baltimore County agencies. The plan in no way effects the underlying issues petitioned for and rather serves to clarify attributes of the property for which the relief was requested, which is necessary for zoning relief requests. Counsel for the Protestants (J. Carroll Holzer) and People's Counsel (Carole DeMilio) incorrectly blur the distinction between "notice" and "evidence." At oral argument, Mr. Holzer argued, "it's an appellate review" (Transcript, page 28) and Ms. DeMilio stated, "it's still based on an appellate record." (Transcript, page 30) These arguments are legally incorrect. Although, in order to provide proper public notice, an applicant may not change the nature of the relief requested, new evidence is freely allowed in a *de novo* context. Furthermore, the notice to the public was proper, as the petitions for relief were

published as required and the language “informed the notice of the nature of the proceedings and the capacity in which he is required to appear and answer,” which was found to satisfy notice requirements by the Court of Appeals in Cassidy v. County Board of Appeals of Baltimore County, 218 Md. 418, 424, 146 A.2d 896, 899 (1958).

2. Site plan satisfies submission requirements under the Baltimore County Zoning Regulations.

In Protestants’ objection to Mr. Hermann’s plan, reference was made that this site plan necessitated remand to the Zoning Commissioner, as it had not been reviewed by County agencies. No legal authority was presented by Protestants for this position; rather, this argument was offered, apparently based on the administrative process utilized by of Baltimore County’s Zoning office for the intake of zoning petitions. As stated previously, the site plan presented by Petitioners serves to provide an understandable depiction of the property as well as adjoining properties, roadways, zoning districts, etc. Therefore, the plan satisfies requirements for submitting plans at a zoning hearing as demonstrated by Section 500.5 and 500.9 of the BCZR.

In particular, Section 500.5 states, “in cases of a Petition for Special Exception under 500.2 of these regulations, the Zoning Commissioner shall receive such Petitions as he may prescribe.” Furthermore, Section 500.9 states,

The Zoning Commissioner shall have the power to require the production of plats ...[for a] petition for a special exception, ... such plats to show the location of streets or roads and of buildings or other structures proposed to be erected, repaired, altered or added to. All such plats shall be drawn to scale and shall clearly indicate the proposed location, size, front, side and rear setbacks from property lines and elevation plans of proposed buildings or other structures.

No claim has been made this site plan would be unacceptable to the Zoning Commissioner, and in fact, under these sections, all the specific requirements contained in 500.9 have been

provided. The additional notes and amendments that have been made to this site plan exceed these requirements as a plat need only show the location of streets, roads and buildings, as well as building setbacks. Review of these plans by all the departments of Baltimore County is not a requirement for these types of hearings, and rather, has been adhered to due not only to Baltimore County's administrative practice but also in order to provide the most information necessary. As such, any plan that provides the information as prescribed in Section 500.5 and 500.9 is acceptable for a hearing, and as such, the submitted site plan is proper evidence to be presented before the Board.

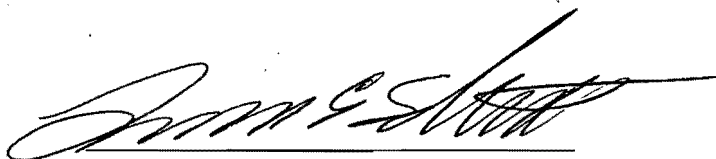
The Protestants' objection is also premature. If the Protestants contend that Mr. Hermann's plan has not been received by the County, or, upon review would not be acceptable to County standards, then they may produce such evidence as a means to question the credibility of the plan. The Petitioners intend to call (after Mr. Hermann's testimony offering the plan as evidence) a witness from the County's Zoning office to corroborate that the plan is "acceptable" to Baltimore County. Witnesses from other County agencies who have reviewed the plan may also be called. Moreover, the Protestants can call whatever relevant witnesses they deem appropriate to contest the credibility of the plan.

CONCLUSION

The amended site plan presented by Petitioners and objected to by Protestants is permissible evidence in front of the Board of Appeals, given the *de novo* setting. Argument can be made that this site plan simply has corrected some informational shortcomings of the previous site plan submitted to the Zoning Commissioner in order to more clearly demonstrate the actual physical attributes of the property; but regardless, this site plan and any other new evidence is permitted to be admitted in this setting under Maryland State law. *De novo* hearings by the Board are meant to

constitute a new trial involving any necessary arguments and evidence presented to the Board, which evaluates it for the first time. Although reference can be made to the record from the Zoning Commissioner level, the Board is only to consider what is presented as evidence at their hearing. As such, any relevant evidence pertaining to the issues before the Board is proper. This goes to the heart of a *de novo* hearing, which is to provide a new attempt to resolve a case. The zoning relief requested and the notice to the public have remained the same since the Zoning Commissioner level and this amended site plan only serves to clarify the particulars of the zoning relief requested. Furthermore, this site plan fulfills all the requirements for submission of evidence contained in the BCZR and cannot be subject to remand based on a procedure that has no legal authority.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lawrence E. Schmidt', is written over a horizontal line.

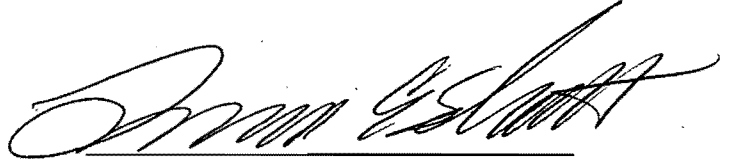
LAWRENCE E. SCHMIDT
Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
410-821-0070
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of **January, 2010**, a copy of the foregoing Memorandum was mailed first class, postage pre-paid to:

Carole S. DeMilio, Esquire
Deputy People's Counsel
People's Counsel for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson MD 21204

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21204


LAWRENCE E. SCHMIDT

IN THE MATTER OF:

LYNN HOGG & ELIZABETH SMITH
(AKA CUDDLES DAYCARE)

Case No.: 09-153-SPHX

Monday, December 10, 2009

Pursuant to Notice, the above-entitled hearing was held before Chairman Belt, at
Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue,
Towson, Maryland 21204, commencing at 10:00 a.m., there being present on
behalf of the respective parties:

ON BEHALF OF THE APPELLEES/PETITIONERS:

LAWRENCE E. SCHMIDT, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

J. CARROLL HOLZER, ESQUIRE
CAROLE DEMILIO, ESQUIRE,
THE OFFICE OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

ALSO PRESENT:

THE GUN ROAD HISTORICAL & PROTECTIVE ASSOCIATION
PAUL DONOGHUE, JOE BENNETT, FRANK LINDBERG, LUCY & PAUL
MCKEAN, NAOMI BALDWIN, WILLIAM H. MOORE, DONNA MURPHY &
MICHELLE REED

Debbie H. Eichner
Eichner Transcribing Services
8101 Bletzer Road
Baltimore, Maryland 21222
410-477-1242

COPY 0148

1 to the Zoning Commissioner and to the County for review.
2 Number two of three points. Number two. If you read the
3 U.P.S. case, and Mr. Schmidt and I just debated the U.P.S.
4 case earlier today in the Circuit Court. If you read that it
5 says, even though the hearing before the Board is de novo its
6 still an appellate hearing. It is not like Mr. Schmidt walked
7 into here today for the first time and started presenting this
8 case. The Court of Appeals has recognized that its an
9 appellate hearing. Its an appellate review. And that appellate
10 review is important. Its not the blank check Mr. Schmidt
11 would have you believe it is. That oh, I can walk in here
12 today and present anything I want. It is an appellate review of
13 what was presented below. And finally, number three, it is not
14 this Boards responsibility to review a site plan to determine
15 whether or not it is acceptable or permissible or whether it
16 contains all the material. It is not your job. You'd never do
17 that you know. Its done first by the Planning and Zoning
18 Office, to review the documents that are submitted. And this
19 is a new document that's being submitted anew. So, you just
20 can't ignore the process upon which you sit in this case. It is
21 not, you're not sitting as a case of first impression hearing
22 this stuff for the first time. Its based on what was submitted
23 below, what was reviewed below, what was reviewed by the
24 Zoning Commissioner. And if you don't like it you appeal.
25 And yes, its, you can present new evidence before the Board.

1 Its de novo. But it is still an appellate hearing as the U.P.S.
2 said. So, for all of those reasons that forms the basis of why
3 I'm suggesting this matter has to go back.

4 MS. DEMILIO: If also I can be heard just in
5 response to Mr. Schmidt's comments? This is a Special
6 Exception Case. And I can't tell you and I'm sure the Board
7 knows the number of special exceptions that have to be
8 amended because people change something that's on the plan.
9 I mean, that happens all the time. They, the Special Exception
10 is only approved based on what's on the plan. And if there's
11 any change to that in the future you have to come in and amend
12 it. So, there is no way that Mr. Schmidt can argue well, if it
13 were a variance yes, but a Special Exception, no. That its an
14 inconsistent argument on his part. It must be consistent. And
15 that is, if there's any change, if this were approved or any case
16 were approved the Special Excep-- and any change to a Special
17 Exception, that even if you were moving the playground would
18 have to come in as an Amended Special Exception with a new
19 hearing. And if Mr., look, if Mr. Schmidt's argument is
20 correct I want the Boards file right now. I'm going to throw it
21 right in that trash can, because that's what it means. It means
22 absolutely nothing. Why do you even walk in here then with a
23 Board file in any of these cases? I mean, think about it. I'll
24 take it and throw it right in the trash because if you follow his
25 logic it means that means absolutely nothing. And I hardly

1 agree with Mr. Holzer, and I think I've tried to make that point
2 before. That this Board has to rely on the county agencies for
3 their specific expertise. DEPREM, traffic, if it reviews it,
4 Zoning, Public Works. All of those things that go before-- Its
5 not up to this Board to decide if this plan complies. Now, how
6 can you possibly approve or rule on a plan when you don't
7 even know if it complies with all of those other regulations,
8 not just zoning because once you approve a plan its a go for
9 the property owner. So, how can you possibly approve it if
10 you don't, if those things have not, are not in place? And you
11 don't go backwards. It doesn't go from the board back to the
12 agencies, no, never. That's never the way it goes. And I think
13 all of you have enough experience to know that. It has to
14 come to you in a form that's ready for a zoning decision but
15 not all the other decisions. So, it seems to me that the Boards
16 decision here should be very simple because frankly in all my
17 years I've never seen something like this actually presented as
18 a de novo. And Mr. Holzer is exactly right. Its de novo on
19 the decision you have to make, but its still based on an
20 appellate record which allows new evidence to come in though.
21 New evidence but not a new plan, because you still have to
22 rely on all those county comments which petitioners and
23 developers like to do all the time. So, we cannot go without
24 the benefit of that in argu--, in this hearing. Thank you.

25 MR. SCHMIDT: Mr. Belt, I mean, I just don't

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

January 11, 2010

Sent via Hand Delivery

Theresa R. Shelton

County Board of Appeals of Baltimore County

105 W. Chesapeake Avenue, Suite 203

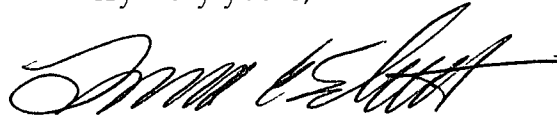
Towson, MD 21204

**Re: Cuddles Day Care/ 505 Gun Road
Case No.: 2009-153-SPHX**

Dear Ms. Shelton:

Enclosed please find an original and three (3) copies the Petitioner's Memorandum with the accompanying exhibits for the above captioned matter. Thank you for your cooperation in this matter. With kind regards, I am

Very truly yours,



Lawrence E. Schmidt

LES: jkl

Enclosures

CC: Carole S. DeMilio, Esquire, People's Counsel for Baltimore County
J. Carroll Holzer, Esquire, Holzer & Lee
Lynn R. Hogg, Cuddles Day Care

RECEIVED

JAN 11 2010

**BALTIMORE COUNTY
BOARD OF APPEALS**

IN RE:
 PETITIONS FOR SPECIAL HEARING
 AND SPECIAL EXCEPTION
 NE Corner of Gun Road and Keech Road
 (505 Gun Road)

* BEFORE THE
 * BALTIMORE COUNTY
 * BOARD OF APPEALS

Lynn R. Hogg & Elizabeth Smith
 Owners/Petitioners
 13th Election District
 1st Councilmanic District

*
 * Case No. 09-153-SPHX
 *

* * * * *

ENTRY OF APPEARANCE

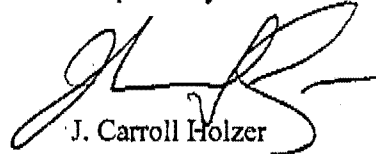
Please enter the appearance of J. Carroll Holzer on behalf of Appellants THE GUN ROAD HISTORICAL AND PROTECTIVE ASSOCIATION, 508 Gun Road, PAUL DONOGHUE, PRESIDENT; and individuals PAUL DONOGHUE, 508 Gun Road; JOE BENNETT, 516 Gun Road; FRANK LINDBERG, 511 Gun Road; LUCY & PAUL McKEAN, 403 Gun Road; NAOMI BALDWIN, 324 Gun Road; WILLIAM H. MOORE, 510 Gun Road; DONNA MURPHY, 406 Gun Road; and MICHELLE REED, 307 Gun Road, all of Baltimore, MD 21227 in the above captioned case. Notice should be sent of any hearings, motions and other proceedings in this matter, and of the passage of any preliminary or final Order to undersigned counsel at the address contained herein. All parties should copy J. Carroll Holzer on all correspondence and documents in the instant matter.

RECEIVED

OCT 13 2009

BALTIMORE COUNTY
 BOARD OF APPEALS

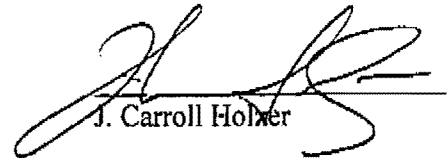
Respectfully submitted,



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of October, 2009, a copy of the foregoing Entry of Appearance was faxed to Peter Max Zimmerman, People's Counsel for Baltimore County, 105 West Chesapeake Ave., Room 204 Towson, Maryland 21204; and Lawrence Schmidt, Esquire, Gildea & Schmidt, LLC, 600 Washington Ave., Suite 200, Towson, MD 21204.



J. Carroll Holzer

6/9/09

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
AND SPECIAL EXCEPTION *
NE Corner of Gun Road and Keech Road * ZONING COMMISSIONER
(505 Gun Road) *
13th Election District * OF
1st Councilmanic District * BALTIMORE COUNTY
Lynn R. Hogg, et ux * Case No. 2009-0153-SPHX
Petitioners

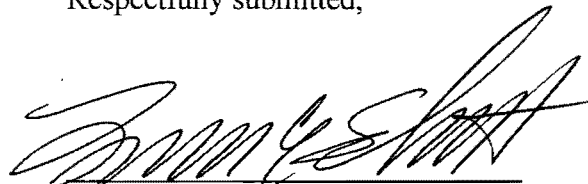
* * * * *

NOTICE OF APPEAL

Lynn R. Hogg and his wife, Elizabeth A. Smith, Petitioners in the above-captioned case, by and through their attorneys, Lawrence E. Schmidt and Gildea & Schmidt, LLC, feeling aggrieved by the decision of the Zoning Commissioner of Baltimore County in the Findings of Fact and Conclusions of Law dated May 12, 2009, attached hereto and incorporated herein as **Exhibit #1**, hereby appeals the aforementioned Findings of Fact and Conclusions of Law and Order to the County Board of Appeals of Baltimore County.

Filed concurrently with this Notice of Appeal is Petitioners' check made payable to Baltimore County in full payment of the costs of the appeal. Petitioners were a party below and fully participated in the proceedings.

Respectfully submitted,

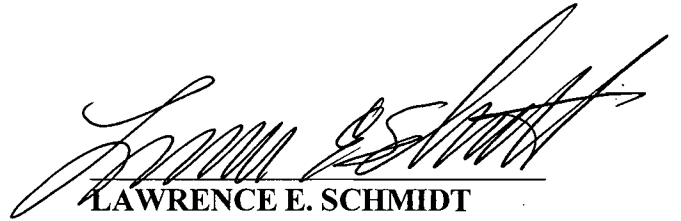


LAWRENCE E. SCHMIDT
Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
410-821-0070
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of June, 2009, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to:

Paul G. & Elizabeth A. Donoghue, 508 Gun Road, Baltimore, MD 21227
William Moore, 510 Gun Road, Baltimore, MD 21227
Lucy W. & Paul F. McKean, 403 Gun Road, Baltimore, MD 21227
Nancy J. & Frank A. Lindberg, 511 Gun Road, Baltimore, MD 21227
Janet G. Bruns, 301 Gun Road, Baltimore, MD 21227
William Watson, 422 Gun Road, Baltimore, MD 21227
Jackie Hedeman, 408 Gun Road, Baltimore, MD 21227
John Joseph Bennett, 516 Gun Road, Baltimore, MD 21227
Frank Allen Earp, 424 Gun Road, Baltimore, MD 21227
Naomi Baldwin, 324 Gun Road, Baltimore, MD 21227
Mary Jane and Charles G. Macgill, 319 Gun Road, Baltimore, MD 21227
Jeremy S. Walsh, 5300 Keech Road, Relay, MD 21227


LAWRENCE E. SCHMIDT

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
NE Corner of Gun Road and	*	ZONING COMMISSIONER
Keech Road		
(505 Gun Road)	*	OF
13 th Election District	*	BALTIMORE COUNTY
1 st Council District	*	
Lynn R. Hogg, et ux		
Petitioners	*	Case No. 2009-0153-SPHX

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the owners of the property, Elizabeth A. Smith and her husband, Lynn R. Hogg, through their attorney, Lawrence E. Schmidt, Esquire. The Petitioners request a special exception to permit a Class B Group Child Care Center as a principal use on their property, pursuant to Section 424.5A of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a maximum of 24 children.¹ It is to be noted that special hearing relief was also requested from Section 409.12.B of the B.C.Z.R. to approve a modified parking plan. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were Elizabeth Smith and Lynn Hogg, property owners, and their attorney, Lawrence E. Schmidt, Esquire with Gildea & Schmidt, LLC. Testimony was also offered in support of the Petitions by Larry Link, a

¹ On April 17, 2008, a Class A Group Child Care Center Use Permit was issued for this location by Timothy M. Kotroco, Director of the Department of Permits and Development Management. This permit, identified at the hearing as Petitioners' Exhibit 2, allows for a maximum of 12 children as an accessory use within the Petitioners single-family dwelling. The instant petition was therefore filed to expand the existing child day care facility.

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

June 9, 2009

Via Hand Delivery

Mr. Timothy M. Kotroco

Director, Department of Permits and Development Management

111 W. Chesapeake Avenue, Room 105

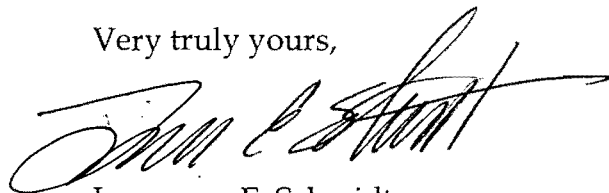
Towson, MD 21204

**Re: Cuddles Daycare/505 Gun Road
Case No.: 2009-0153-SPHX**

Dear Mr. Kotroco:

Enclosed please find the original and a copy of our Notice of Appeal in the above referenced matter. Please accept the original for filing and return a date stamped copy to my attention in the self-addressed, stamped envelope enclosed herein. Additionally, I am enclosing our check for Four Hundred Dollars (\$400.00) for the filing of the Notice of Appeal. Thank you for your prompt attention to this most important matter.

Very truly yours,



Lawrence E. Schmidt

LES: jkl

Enclosure

CC: Lynn Hogg & Elizabeth Smith, Cuddles Daycare
William J. Wiseman, III, Zoning Commissioner
Theresa R. Shelton, County Board of Appeals of Baltimore County
All Protestants

REC'D
6/9/09
REN

5/a +

IN RE: PETITIONS FOR SPECIAL EXCEPTION *	BEFORE THE
AND SPECIAL HEARING	
NE Corner of Gun Road and Keech Road *	COUNTY BOARD OF APPEALS
(505 Gun Road)	
	FOR
13 th Election District	
1 st Councilmanic District *	BALTIMORE COUNTY
Lynn R. Hogg, et ux *	Case No. 2009-0153-SPHX
<i>Petitioners</i>	

* * * * *

STIPULATION

WHEREAS, the Petitioners herein, Elizabeth A. Smith and Lynn R. Hogg, filed a Petition for Special Exception and Petition for Special Hearing to permit a Class B Group Child Care Center and approve a modified parking plan, respectively; and

WHEREAS, per the Findings of Fact and Conclusions of Law and Order of Zoning Commissioner William J. Wiseman, III, dated May 12, 2009, the Petition for Special Exception was denied and the Petition for Special Hearing was dismissed, as moot; and

WHEREAS, the Zoning Commissioner's decision was timely appealed to the County Board of Appeals for Baltimore County (hereinafter "Board"); and

WHEREAS, at a *de novo* hearing on the aforesaid appeal before the Board, Petitioners offered into evidence, a site plan to accompany the Petitions for Special Exception and Special Hearing prepared by James V. Hermann, RLA ("the Hermann plan"); and

WHEREAS, J. Carroll Holzer, representing certain individuals opposed to the Petitions, and Carole S. DeMilio, Deputy People's Counsel for Baltimore County, objected to the introduction into evidence of the Hermann plan and moved to remand this matter to the Zoning Commissioner, in part, because the Hermann plan had not been offered into evidence at the hearing before Zoning Commissioner Wiseman and because a different plan was accepted by Zoning Commissioner Wiseman which had been prepared by Lawrence Link, ALA; and

WHEREAS, in the interest of judicial economy and to fully address counsel's objections and Motion to Remand, the parties agree as follows:

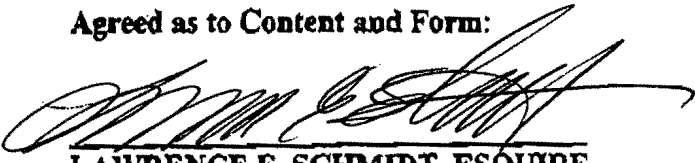
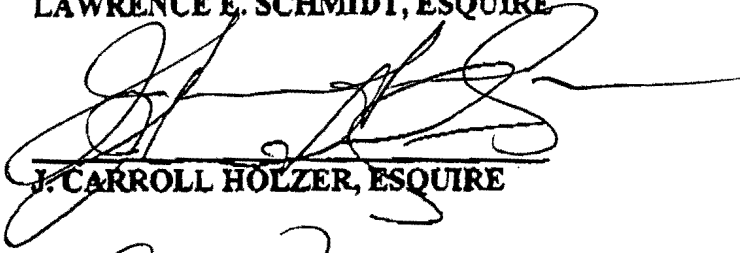
1. That this case shall be remanded to Zoning Commissioner Wiseman, for the sole purpose of him convening a public hearing at which time the Hermann site plan shall be offered into evidence;

2. That the hearing before Zoning Commissioner Wiseman need not be advertised to the public by the posting of a sign on the property, but written notice of the time, date and place of the hearing shall be given to all counsel at least seven (7) days prior thereto;

3. That following the hearing, the Zoning Commissioner shall issue a written decision indicating if the plan is compliant with County rules/regulations for site plans accompanying Petitions for Special Exception and Special Hearing and shall also affirm or amend, as the case may be, his decision of May 19, 2009 based thereon;

4. Following the Zoning Commissioner's decision, this matter shall return to the Board for further proceedings in connection with the appeal and all prior testimony heard by the Board incorporated as part of the further proceedings.

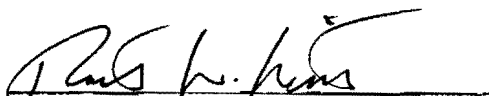
Agreed as to Content and Form:


LAWRENCE E. SCHMIDT, ESQUIRE
J. CARROLL HOLZER, ESQUIRE
CAROLE S. DEMILIO, ESQUIRE

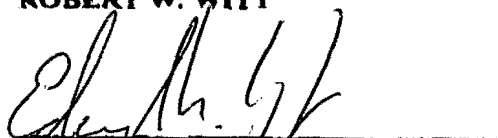
SO ORDERED BY THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:



ANDREW M. BELT, PANEL CHAIRMAN



ROBERT W. WITT



EDWARD W. CRIZER, JR.

5/12/09
IN RE: PETITIONS FOR SPECIAL HEARING *

AND SPECIAL EXCEPTION

NE Corner of Gun Road and *

Keech Road

(505 Gun Road) *

13th Election District *

1st Council District *

Lynn R. Hogg, et ux

Petitioners *

BEFORE THE

ZONING COMMISSIONER

OF

BALTIMORE COUNTY

Case No. 2009-0153-SPHX

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the owners of the property, Elizabeth A. Smith and her husband, Lynn R. Hogg, through their attorney, Lawrence E. Schmidt, Esquire. The Petitioners request a special exception to permit a Class B Group Child Care Center as a principal use on their property, pursuant to Section 424.5A of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a maximum of 24 children.¹ It is to be noted that special hearing relief was also requested from Section 409.12.B of the B.C.Z.R. to approve a modified parking plan. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were Elizabeth Smith and Lynn Hogg, property owners, and their attorney, Lawrence E. Schmidt, Esquire with Gildea & Schmidt, LLC. Testimony was also offered in support of the Petitions by Larry Link, a

¹ On April 17, 2008, a Class A Group Child Care Center Use Permit was issued for this location by Timothy M. Kotroco, Director of the Department of Permits and Development Management. This permit, identified at the hearing as Petitioners' Exhibit 2, allows for a maximum of 12 children as an accessory use within the Petitioners single-family dwelling. The instant petition was therefore filed to expand the existing child day care facility.

ORIGINAL RECEIVED FOR FILING
5-12-09
Date

licensed architect with L.J. Link, Jr., Inc., the consultant who prepared the site plan for this property.

The issues presented in this case generated significant public interest and a number of individuals from the surrounding Gun Road community appeared and testified in opposition to this group child care center operating in their neighborhood, namely Paul G. Donoghue, individually, and as President of the Gun Road Historical and Protective Association; his wife, Elizabeth A. Donoghue; William Moore, a resident and member of the Baltimore County Planning Board; Lucy W. and Paul F. McKean; Nancy J. and Frank A. Lindberg; Janet G. Bruns; William Watson, III; Jackie Hedeman; John Joseph Bennett; Frank Allen Earp; Naomi Baldwin; Mary Jane and Charles G. Macgill, and Jeremy S. Walsh. Also appearing at the hearing in opposition to the proposed day care expansion was Dennis E. Wertz, Community Planner for Baltimore County's Office of Planning.

INTRODUCTION

The Petitioners have operated Cuddles Early Learning Center since June 2008. They wish to increase the number of pre-school children from 12 to 24. Their home at 505 Gun Road is located at the mid-point between South Rolling Road and the Patapsco Valley State Park. This one-mile long road predates the American Revolutionary War and was used primarily to carry freight to the Patapsco River. Several of the 40 single-family homes that form this part of the Relay neighborhood date back to the early 1800's with many families having lived on Gun Road for generations. Most oppose a Class B Child Care Center. A significant amount of testimony and evidence was offered by both sides. Due to limitations of time and space, it is impossible to repeat all of the testimony offered herein. Additionally, there were numerous documents,

COPIES RESERVED FOR FILING
Date 5-2-08
By [signature]

photographs, plats, licenses, certificates, written memoranda, and other exhibits entered into the record of this case. I shall summarize only the relevant evidence presented.

THE PROPERTY AND PROPOSAL

Testimony and evidence offered revealed that the subject property is an irregular rectangular shaped parcel located on the east side of Gun Road, 2,600 feet south of Rolling Road and adjacent to Keech Road in Relay/Halethorpe. The property contains a lot area of 2.442 acres, zoned R.C.5, and is improved with a two-story brick single-family dwelling and features an in-ground pool and deck in the rear yard. The Petitioners purchased the property in May 2008 and have arranged the home to provide for both their living quarters and a child day care facility. Separate entrances and exits are provided for each use. Other improvements on site include a large playground area in the front yard, which is enclosed with a 5-foot high chain link fence and a long macadam driveway that leads into the property from Gun Road that splits into a circular drive. The property is served by public water but has a private septic system. Mr. Hogg stated that the septic system and driveway circulation have worked well during the past year and without incident. Elizabeth Smith stated that she is a Maryland State licensed and certified child care provider having received a degree from Howard Community College and a Child Development Program License from the Maryland State Department of Education (See Petitioners' Exhibit 9). She filed the instant petition to expand the operation so as to be able to provide day care services for 24 children. In this regard, letters of support from area residents familiar with the pre-school were received as Petitioners' Exhibit 4.

Mr. Hogg indicated that his wife runs an efficient center, which benefits both the children and their parents, and that they offer educational programs for the children. He indicated that the use serves many families in the adjacent community. Many of these individuals drop off their

children at this neighborhood site and then travel to their places of employment. Mr. Hogg indicated that the use is needed in this community and that there is a waiting list for people to enroll their children. He testified that they would not be expanding in any way the physical building structure of their home nor do they wish to make any detrimental changes to the exterior, landscape, or natural beauty of the property or the neighborhood. He stated they wanted to remain compatible with the character and general welfare of the surrounding residential properties with no adverse impact to their own property or that of their neighbors.

APPLICABLE LAW

Governmental regulation of land use is largely a local function. The Baltimore County Council adopts zoning maps every four (4) years and every property, pursuant to the Comprehensive Zoning Map Process (CZMP), is assigned one of the nearly 40 zoning classifications listed in the B.C.Z.R. ranging from "R.C." - Resource Conservation to the "M.H." - Manufacturing-Heavy zones. Each zone contains its own specific regulations governing the property's use and it is to be noted that these zones provide three (3) classifications of land use:

- 1st - Classification of uses permitted by right and allowed automatically as long as the owner meets the appropriate building, height and area regulations.
- 2nd - At the other end of the spectrum are uses prohibited under any circumstance. That is to say, any use other than those permitted in a particular zoning classification (as of right or by special exception) are prohibited. *Kowalski v. Lamar* 25 Md. App. 493 (1975).
- 3rd - Middle ground – identified as "special exception" uses. That term is a misnomer, as the uses listed are neither special nor exceptional. Other jurisdictions label special exception uses as "conditional" uses. This is a better description as these uses *may* be permitted in the zoning classification – if prior to establishing the use, the property owner or applicant petitions the Zoning Commissioner for approval of the proposed use.

Special exception (conditional) uses are regulated in the B.C.Z.R. under Section 502.1:

"Before any special exception may be granted, it must appear that the use for which

COPIES RECEIVED FROM PLANE
5-12-59
39

the special exception is requested will not:

- A) be detrimental to the health, safety or general welfare *of the locality involved*;
- B) tend to create congestion in roads, streets or alleys therein;
- C) create a potential hazard from fire, panic or other danger;
- D) tend to overcrowd land and cause undue concentration of population;
- E) interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F) interfere with adequate light and air (Bill No. 45-1982);
- G) be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these zoning regulations (Bill No. 45-1982);
- H) be inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations; nor (Bill No. 45-1982)
- I) be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 zone (Bill No. 74-2000)."

Child care centers are defined in Section 101 of the B.C.Z.R. Therein, a Group Child Care Center is defined as: "A building or structure wherein care, protection and supervision is provided for part or all of a day on a regular schedule at least twice a week to at least 9 children, including children of the adult provider." A group Child Care Center, Class A, is defined as: "A Group Child Care Center wherein child care is provided for no more than 12 children at one time". A Group Child Care Center, Class B, is defined as: "A Group Child Care Center wherein child care is provided for more than 12 children."

The B.C.Z.R. also contains specific regulations that govern particular land uses. Applicable in this case is Section 424 of the B.C.Z.R. That section establishes specific rules and

regulations for group child care centers. Section 424.5 thereof establishes specific criteria for child care centers as *principal* uses. This is to be distinguished from child care centers which are *accessory* to another use, for example - to a church or school. Clearly, the Cuddles Early Learning Center operation proposed here for 24 children is, according to the B.C.Z.R., a *principal* use, not an *accessory* use.² Although the proposal meets all of the "bulk" standards, i.e., size, height, distance, etc., the issues generated in this case are driven by the actual use. As noted above, this is a special exception use and is not permitted by right. The highest courts of this State have reviewed the treatment of proposed special exception and conditional uses by various local zoning boards and commissions. The seminal case regarding special exceptions is *Schultz v. Pritts*, 291 Md. 1 432 A2d 1319 (1981). In that case, the Court noted that a special exception use is part of the comprehensive zoning plan and thus, shares the legal presumption that it is in the interest of the general welfare and therefore valid. The Court noted that a special exception use is a valid zoning mechanism that delegates to the Zoning Commissioner a limited authority to allow certain enumerated uses which the Baltimore County Council has determined to be permissible, absent any facts or circumstances which negate that presumption.

The Court further noted that the applicant for a proposed special exception use does not have the burden of establishing affirmatively that the proposal would be of benefit to the community. Moreover, the test is not whether another use is more preferable or whether the property could be used for a higher or better purpose. Rather, the test to be considered by the Zoning Commissioner and/or the County's Board of Appeals is whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purposes and intent of the underlying zoning

² B.C.Z.R. Section 424.4 classifies a "Class A" child care center as an accessory use while Section 424.5 designates all other "Class B" child care facilities as a principal use.

scheme.

The Court of Appeals of Maryland further explained the special exception test in its recent decision of *People's Counsel for Baltimore County v. Loyola* 406 Md. 54, 956 A.2d 166 (2008). In that case after 27 years, the Court re-evaluated *Schultz* and its progenies clarifying only that:

“Applications for Special Exceptions do not require an Applicant to present, and the zoning body to consider, a comparison of the potential and adverse effects of the proposed use at the proposed location to the potential adverse effects of the proposed use at other, like-zoned locations throughout the County.”

Therefore, in considering the present application, it is not enough to simply conclude the proposed Cuddles Day Care request to expand its existing day care facility will produce impacts, such as traffic that could adversely affect the neighborhood. It most certainly will, and such an effect is inherent in any day care operation. The real test is whether the traffic produced by the proposed operation will cause an adverse impact at this location different in kind or degree than those inherently associated with such a use regardless of its location within the R.C.5 zone.

TRAFFIC IMPACTS (Section 502.1.B of the B.C.Z.R.)

The primary objection voiced by all of the witnesses who testified in opposition to the request relates to traffic impacts and the likelihood that traffic flows going into and out of the Petitioners narrow driveway entrance would backup and interfere with the traffic flows on Gun Road. This conclusion is supported by the County's Traffic Engineering Division Chief, Stephen E. Weber. At the request of People's Counsel for Baltimore County, he went to the site and took physical measurements of the site line from the subject driveway looking south and found it deficient. Essentially, he opined that with a posted speed limit of 30 miles per hour,

COPIES RECEIVED FOR FILE
5-2-09
BOS
BY

there should be a minimum 200-foot site line distance but found only 150 feet available due to the stone fence abutment on the Petitioners property. He further opined that the driveway width should be widened to 20 feet to provide for two-way traffic at an absolute minimum of the first 100 feet of driveway off of Gun Road. On behalf of the Petitioners, the testimony of Lynn Hogg was produced. He took his own photographs (collectively Petitioners' Exhibit 6) and explained that the present conditions have worked well and without incident or complaint. Furthermore, Gun Road and Keech Road are dead-end streets producing at best minimal traffic from the average daily trips (ADT) generated by the 20 to 22 homes that are to the south of his driveway. He pointed out that some day care students actually arrive in one (1) vehicle and that "drop off" and "pick up" times are staggered – from 7:30 a.m. to 10:00 a.m. in the morning and from 3:30 p.m. to 5:30 p.m. in the evenings. He stated that while not in favor of moving the entranceway monuments and expanding the driveway width, he and his wife would be amenable to do so as a condition of approval. They wish to maintain the natural beauty of their property and that of the surrounding neighborhood. He adds that there have never been any complaints concerning traffic, safety issues nor about children making noise outside. In brief, he believes from a traffic standpoint that Gun Road is clearly capable of handling the traffic demands generated by the proposed one (1) additional employee and 12 new pre-school infants that will be age targeted between 18 months to 26 months. He and his wife believe that there will be no adverse traffic impacts caused by this request. The driveway configuration ensures that children will be dropped off and picked up at a significant distance from traffic going by the site on Gun Road.

As noted above, numerous individuals wrote letters and appeared in opposition to the request. Let it also be noted that in addition to the Division of Traffic Engineering, the Office of Planning also recommended a denial of both the requested Special Exception and

COPIES RETURNED FOR PLANS
Date 5-12-05
By [signature]

Special Hearing on the basis that this particular location is not appropriate for a Class B Group Child Care Center. Community leaders and many lay witnesses who have resided in the neighborhood for decades offered their own survey summary and analysis of this proposal's conflict concerning the excess and unwanted traffic (*See* Protestants Exhibits 1 and 2). The road is narrow (18 feet wide without shoulders) and winding. There are large trees very close to the sides of the road. Many people drive over the double yellow line to avoid the edge of the road. Two (2) cars traveling toward each other will move back into their own lane only long enough to pass each other. School buses that serve the Relay Elementary, Arbutus Middle and Catonsville Senior High Schools drive down the center of the road and use Keech Road to make their U-turn to travel back to Rolling Road. The adjacent neighbor, Paul Donoghue, and Messrs. McKean (403 Gun Road) and Macgill (319 Gun Road) discussed the dangerous portion of the road at the subject property and testified to seeing young mothers coming out of the driveway with cell phones, causing difficulty for them getting out of their own driveways and instances of being run off the road while traveling southbound by cars leaving the Petitioners driveway to proceed northbound. Other residents along Gun Road point out that a day care facility already exist at the Oblate Sisters Convent³ and see no reason to allow an enlargement of the Petitioners facility. Additionally, Ms. Baldwin and others express safety concerns for the many people that use Gun Road as a means to walk, jog and bike into the State park and are always up and down the road.

As noted in the discussion above regarding the law of special exceptions, the undersigned is required to focus upon the impacts of the proposed use and how they particularly affect the locality involved. The undersigned has reviewed the proposal in that light and I find

³ The Oblate Sisters Day Care Center located at 701 Gun Road has operated for 35 years at this location. It provides day care services for children ranging in ages from 6 weeks to 5 years with a current enrollment of 65 and a capacity of 80.

that the special exception request has failed to meet the test set out in Section 502.1.B of the B.C.Z.R. There are two (2) primary factors that justify this conclusion. I explain.

First, it is acknowledged that this Commission, in considering other petitions for day care centers, has remarked that a special exception day care use is most appropriately located on the fringes of a residential community as opposed to its interior. That is, traditional wisdom would support the conclusion that the location of the day care center near the fringe of a residential community is more appropriate than a location embedded in the interior of a residential community. For example, one would conclude that the Oblate Sisters facility located at the intersection of Gun Road and South Rolling Road in the D.R.1 zoning classification is better situated than the subject location (505 Gun Road) in the middle of a surrounding R.C.5 zone. I find that the traffic to be generated by the proposed day care center will indeed tend to cause congestion on Gun Road due to the property's interior location shared with pedestrians and residents of this "National Landmark Eligible" community. Although Mr. Hogg opined that modifications could be made to his driveway, it is likewise apparent that this would have an adverse affect (outward appearance) upon adjoining properties and a detriment to this neighborhood.

Second, the proposed traffic patterns that will be generated by the increased use are problematic. Every potential client of the proposed day care center would turn right onto Gun Road when leaving the site after dropping off their children in the morning and afternoon. A right turn on Gun Road from this site would subject the traveler leaving the driveway to an impaired site line distance to the detriment of approaching traffic both north and southbound on Gun Road. It was indicated, and a site visit confirmed, that the road is winding, narrow with a hillcrest slightly to the north at the Donoghue driveway (508 Gun Road). Indeed, I find this to be

the most troubling aspect of this proposal from a traffic standpoint.

In sum, I find that the proposed use does not meet the applicable criteria set forth in Section 502.1.B of the B.C.Z.R., pursuant to *Schultz and Loyola*, infra. Specifically, an increase to a 24-child day care center will generate traffic volumes and certain congestion no matter where located in the R.C.5 zone. However, the impacts are particularly severe here due to the topography and width of the narrow public roadway. These factors warrant a denial of the plan, even with the contemplated driveway improvements.

SECTION 502.1G – Inconsistent with the Zoning Classification

Although the proposal must be denied based on the traffic issue, the undersigned feels compelled to at least address the criteria set out in Section 502.1.G of the B.C.Z.R. given the attention paid to this test at the hearing. Testimony was offered by both sides regarding this issue. The Petitioners offered the testimony of both Mr. Link and Mr. Hogg in support of their assertion that the proposed use is indeed compatible with the R.C.5 zone. The Protestants offered lay testimony on this subject and also offered the Zoning Advisory Committee (ZAC) comment prepared by Dennis Wertz from the Office of Planning.

The not-so-simple answer to this issue is that a day care center would be appropriate for this property; however, not of the size proposed by Cuddles Early Learning. The parties disagree over the nature of the use. The Protestants contend that it is a commercial intrusion while the applicants argue that it remains an accessory use to their residence. Additionally, the parties differ over the "compatibility" of the proposed use. That being said, however, the number of children proposed in this case in the middle of a very low density single-family neighborhood is persuasive and does, in my judgment, tilt the character of the operation from an accessory type use to a principal type business use.

I decline to establish a specific number of children that would be permitted at this location. The question presented under the petition for special exception was on the proposal as offered. Whether a day care center of 16 or 20 children is appropriate is not before me. In answer to the specific question presented, I find that the proposal as submitted is inconsistent with the property's zoning classification.

CONCLUSION

Based upon due consideration of all the testimony and evidence presented, I am persuaded to deny the requests. In my judgment, the proposal does not meet the criteria set out in Sections 502.1.B and 502.1.G of the B.C.Z.R. and thus, the petition for special exception must be denied.

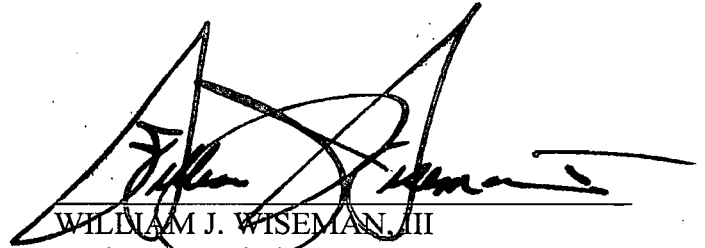
Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons set forth above, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 12th day of May, 2009, that the Petition for Special Exception, to permit a Class B Group Child Care Center as a principal use on the subject site, pursuant to Section 424.5.A of the Baltimore County Zoning Regulations (B.C.Z.R.), for a maximum of 24 children, in accordance with Petitioners' Exhibit 1, be and is hereby DENIED; and

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking relief from Section 409.12.B of the B.C.Z.R. to approve a modified parking plan, be and is hereby DISMISSED AS MOOT.

ORDER RECEIVED FOR FILING
Date 5-12-09
BY 123

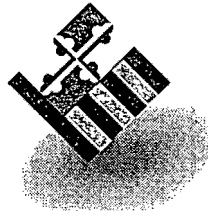
Any appeal of this decision shall be entered within thirty (30) days of the date hereof in accordance with Baltimore County Code Section 32-3-401.



WILLIAM J. WISEMAN, III
Zoning Commissioner
of Baltimore County

WJW:dlw

COPIES RECEIVED FOR FILING
Date 5-12-09
BY [signature]



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

May 12, 2009

WILLIAM J. WISEMAN III
Zoning Commissioner

Lawrence E. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Avenue, Ste. 200
Towson, MD 21204

IN RE: PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION

NE Corner of Gun Road and Keech Road
(505 Gun Road)
13th Election District - 1st Council District
Lynn R. Hogg, et ux – Petitioners
Case No. 2009-0153-SPHX

Dear Mr. Schmidt:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Exception has been denied and the Petition for Special Hearing has been dismissed as moot, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in black ink, appearing to read "William J. Wiseman, III", with a long horizontal flourish extending to the right.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

- c: Elizabeth Smith and Lynn Hogg, 505 Gun Road, Halethorpe, MD 21227
Larry Link, L.J. Link, Jr., Inc., Box 727, Brooklandville, MD 21022
Paul G. Donoghue, President, Gun Road Historical and Protective Association,
508 Gun Road, Baltimore, MD 21227
Elizabeth A. Donoghue, 508 Gun Road, Baltimore, MD 21227
William Moore, 510 Gun Road, Baltimore, MD 21227
Lucy W. and Paul F. McKean, 403 Gun Road, Baltimore, MD 21227
Nancy J. and Frank A. Lindberg, 511 Gun Road, Baltimore, MD 21227

Janet G. Bruns, 301 Gun Road, Baltimore, MD 21227
William Watson, 422 Gun Road, Baltimore, MD 21227
Jackie Hedeman, 408 Gun Road, Baltimore, MD 21227
John Joseph Bennett, 516 Gun Road, Baltimore, MD 21227
Frank Allen Earp, 424 Gun Road, Baltimore, MD 21227
Naomi Baldwin, 324 Gun Road, Relay, MD 21227
Mary Jane and Charles G. Macgill, 319 Gun Road, Relay, MD 21227
Jeremy S. Walsh, 5300 Keech Road, Relay, MD 21227
Dennis E. Wertz, Community Planner, Office of Planning
Stephen E. Weber, Chief, Traffic Engineering Division, DPW
People's Counsel; File

Friday April 24, 2009 @ 11:00 am Ken WY

APPEAL

2009-0153-~~1~~ SPAX

CERTIFICATE OF POSTING	
ENC	☐
ADVERTISEMENT	
ENC	☐
CBCA	☐
FLOOD ZONE	☐
COMMENTS	
Planning	☐
DEPRM	☐
SHA	☐
Fire	☐
Plans Rev.	☐
ZONING VIOLATION _____	
PRIOR ZONING _____	

20090153

②



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 505 Gun Road

which is presently zoned RC-5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

1. As per BCZR Section 409.12.B to approve a modified parking plan.

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

I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Sebastian A. Cross

Name - Type or Print

Signature

Gildea & Schmidt, LLC

Company

600 Washington Avenue, Suite 200

(410) 821-0070

Address

Telephone No.

Towson

MD

21204

City

State

Zip Code

Legal Owner(s):

Lynn R. Hogg

Name - Type or Print

Signature

Elizabeth A. Smith

Name - Type or Print

Signature

505 Gun Road

410-247-4040

Address

Telephone No.

Halethorpe

MD

21227

State

Zip Code

Representative to be Contacted:

Sebastian A. Cross

Name

600 Washington Avenue, Suite 200

(410) 821-0070

Address

Telephone No.

Towson

MD

21204

City

State

Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By

JNP

Date

3/9/09

REV 9/15/98

REVISED

Case No. 2009-0153-SPHX

ORDER RECEIVED FOR FILING

Date

5-12-09

By

LOW



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 509 Gun Rd. 21227
which is presently zoned ~~RC5~~ RC5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

As per Section 424.5.A of the BCZR for a Class B Group Child-Care Center for a maximum of 24 children.

Property is to be posted and advertised as prescribed by the zoning regulations. I, or we, agree to pay expenses of above Special Exception, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print _____
Signature _____
Address _____ Telephone No. _____
City _____ State _____ Zip Code _____

Attorney For Petitioner:

Sebastian A. Cross
Name - Type or Print _____
Signature [Signature] _____
Company Gildea & Schmidt, LLC
Address 600 Washington Avenue, Suite 200
Telephone No. _____
Towson, MD 21204
City _____ State _____ Zip Code 410-821-0070

Legal Owner(s):

Lynn R Hoagy
Name - Type or Print _____
Signature [Signature] _____
Elizabeth A. Smith
Name - Type or Print _____
Signature [Signature] _____
509. Gun Rd. 410.247.4440
Address _____ Telephone No. _____
Halstead, Md. 21227
City _____ State _____ Zip Code _____

Representative to be Contacted:

L. J. Link Jr. Inc
Name _____
727. 410.337.9528.
Address _____ Telephone No. _____
Brookhills, Md. 21022
City _____ State _____ Zip Code _____

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____
UNAVAILABLE FOR HEARING _____

Reviewed By JNP Date 11/25/08

REUSED
Case No. 2009-0153-SPHX

REV 09/15/98

ORDER RECEIVED FOR FILING

Date 5-12-09

By [Signature]

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **37502**

Date: **March 09, 2009**

PAID RECEIPT

BUSINESS ACTUAL TIME DRW
 3/09/2009 3/09/2009 14:29:22 1

REG USD1 WALKIN JRIC JHR
 >> RECEIPT # 410495 3/09/2009 OFLN

Fund	Dept	Unit	Sub Unit	Obj	Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				\$70.10
001	806	0000		6150				\$170.00
001	806	0000		6150				\$325.10

Total: **\$525.00**

Rec From: **Children's Schmidt, LLC**
 For: **2009-0153-SPHX**

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

Debt 5 528 ZONING VERIFICATION

NO. 037508

Recpt Tot. \$525.00
 \$525.00 CK \$0.00 CA
 Baltimore County, Maryland

**CASHIER'S
 VALIDATION**

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **31397**

Date: **11/25/08**

PAID RECEIPT

BUSINESS ACTUAL TIME DEPT
 11/26/2008 11/25/2008 11:41:22 4

REQ #004 INVTN RCH KCH

RECEIPT # 461345 11/25/2008

0118

0 526 COWING MERT (CATION)

031597

Receipt Tot 1300.00

4300.00 ON 5.00 ON

Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Rev Source/	Sub Rev/	Obj	Sub-Obj	Dept Obj	BS Acct	Amount	Dept
001	806	0200		6150						380.00	

Total: **380.00**

Rec From: Lynn R. Hogg/Elizabeth Smith
 For: Special Exception - 505 Gun Load
2109-0153-X (HOGG/SMITH)

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 505 Gun Rd. 21227.

which is presently zoned RB1.

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

1. Principal use, class B group childcare center for a max of 40 children, provided
2. Zoning Commissioner confirms compliance with section 1B01.1.B.g (11)-BCZR regarding exceptions to RTA, and
3. Zoning commissioner confirms compliance with section 424.7.C, BCZR regarding parking; drop-off; delivery areas.

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

I, or we, agree to pay expenses of above Special Exception, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

Telephone No.

City

State

Zip Code

Legal Owner(s):

Name - Type or Print

Signature

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Representative to be Contacted:

Name

Address

City

State

Zip Code

Case No. 2009-0153-X

REV 09/15/98

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By JNP

Date 11/25/08

ref: 2009- 0153-X

Zoning description for 505 Gun Road, Halethorpe, Md. 21127

Said property is located at the corner of Keech Road & Gun Road, the northeast side of said intersection of roads in Baltimore County, & this includes the measurements & directions (metes & bounds) as described on the plat submitted with this filing.

Being recorded in Liber No. 14238, Folio No. 378, containing 2.440 ac (+/-) ... 106,286 sq.ft.

Said property is described as starting at a p.o.b S 70° 10' 16" E, 54.75', N 20° 14' 05" E 161.02', N 14° 10' 00" E 78.61', N 54° 03' 46" W 133.36', N 45° 56' 05" W 202.72', S 45° 27' 17" W 14.10', S 46° 27' 17" W 255.20', S 43° 32' 03" E 21.70', S 10° 50' 07" W 40.36', S 45° 48' 52" E 72.59', N 50° 46' 54" E 30.00', S 43° 32' 03" E 15.00', & S 57° 46' 44" E 271.16' to the p.o.b. as recorded in land records & surveyed by NTT Associates, Mt. Airy, Md., James C/ Hudgins, no. 96, dated 2.27.08.

Also known as 505 Gun Road, 21227, and located in 13th election district, the ~~14th~~ councilmatic district.

1st

l.j.link jr. inc.
Architect
box 727
brooklandville md. 21022
410.337.9528
LJLINKJR@AOL.COM

nov. 24. 2008

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: # 2009-0153-SPHX

505 Gun Road

N/east corner of Gun Road and Keech Road

13th Election District — 1st Councilmanic District

Legal Owner(s): Lynn Hogg and Elizabeth Smith

Special Hearing: to approve a modified parking plan per section 409.12 of the BCZR. **Special Exception:** to permit a Class B Group child-care center for a maximum of 24 children per section 424.5.A of the BCZR.

Hearing: Friday, April 24, 2009 at 11:00 a.m. in Room 104, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2). For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

4/21/9 April 9

198393

CERTIFICATE OF PUBLICATION

4/9/2009

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 4/9/2009.

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

J. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: 2009-0153-SPHX

Petitioner/Developer: _____

Lynn Hogg and Elizabeth Smith

Date of Hearing/closing April 24, 2009

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

Attn : Kristin Matthews:

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at, _____
505 Gun Road

The sign(s) were posted on _____ April 9 2009
(Month, Day, Year)

Sincerely,

Robert Black April 11, 2009
(Signature of Sign Poster) (Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)

ZONING NOTICE

CASE # 2009-0153-SPHX

**A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD**

Room 104, JEFFERSON BUILDING
PLACE: 105 W. CHESAPEAKE AVE. TOWSON

DATE AND TIME: FRIDAY, APRIL 24, 2009 AT 11:00 A.M.

REQUEST: SPECIAL HEARING TO APPROVE A MODIFIED
PARKING PLAN PER SECTION 409.12 OF THE BCZR. SPECIAL
EXCEPTION TO PERMIT A CLASS B GROUP CHILD-CARE CENTER FOR A
MAXIMUM OF 24 CHILDREN PER SECTION 424.5.A OF THE BCZR.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING, UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **41554**

Date: **6/9/09**

PAID RECEIPT

BUSINESS ACTUAL TIME DRW
 6/10/2009 6/10/2009 09:23:12 1

RE WS01 WALKIN JRIC JMR
 RECEIPT # 419992 6/10/2009 OFLN

Dept 5 528 ZONING VERIFICATION

NO. 041554

Recpt Tot \$400.00

\$400.00 CK \$.00 CA

Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Obj	Dept	Obj	BS Acct	Amount
001	806	0000		LISO					400.00

Total: **400.00**

Rec From: **Gilder + Schmidt**

For: **Doneel**
2009-0153-PAK

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. 00291

Date: 1/27/10

Fund	Dept	Unit	Sub Unit	Rev	Sub	Obj	Sub Obj	Dept Obj	BS Acct	Amount
				Source/	Rev/					
001	80%	000		MISC						200.00
Total:										200.00

Rec
From:

C. H. ... Sub Lt

For:

Revised Per. 2009-3 SPAY

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
 PLEASE PRESS HARD!!!!

PAID RECEIPT

**CASHIER'S
 VALIDATION**

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 2009-0153-X
Petitioner: HOGG/SMITH
Address or Location: 505 GUN ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: L. J. Link Jr. Inc.
Address: Box 727
Brooklandville Md. 21022

Telephone Number: 410-937-9528

Revised 7/11/05 - SCJ

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

Phone: 410-887-3180

Fax: 410-887-3182

To: Stuart Kelly, Code Enforcement

From: Sunny Cannington, Legal Secretary *SC*

Date: October 20, 2009

Re: Sign Posting

RECEIVED

OCT 29 2009

**BALTIMORE COUNTY
BOARD OF APPEALS**

Hi Stuart,

I received a call this morning from a neighbor in the following case:

Elizabeth Smith/Lynn Hogg
Board of Appeals Case No.: 09-153-SPHX
505 Gunn Road

It appears to the neighbor that the sign has been removed again. Please re-post this sign at your earliest convenience.

Thank you for all your help. Please do not hesitate to contact us should you have any problems or questions.

10-29-09
MS Stuart Kelly
K Stuart Kelly

PHOTOGRAPHIC RECORD

~~Facility No.~~ 09-153-SPHX Record No.: _____

Date of Photograph(s): 10-29-09 505 GUN RD



I HEREBY CERTIFY that I took 3 photographs set out above, and that these photographs fairly and accurately depict the condition of the property that is the subject of the above referenced Facility/Record Number on the date set above.

M. Stuart Kelly
(Enforcement Officer)



Requested: August 19, 2009

APPEAL SIGN POSTING REQUEST

CASE NO.: 09-153-SPHX

505 Gun Road

13th ELECTION DISTRICT

APPEALED: 6/9/09

RECEIVED

AUG 27 2009

BALTIMORE COUNTY
BOARD OF APPEALS

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

*****COMPLETE AND RETURN BELOW INFORMATION*****

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
The Jefferson Building, Suite 203
102 W. Chesapeake Avenue
Towson, MD 21204

Attention: Theresa Shelton
Administrator

CASE NO.: 09-153-SPHX

LEGAL OWNER: Lynn Hogg & Elizabeth Smith

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

505 GUN ROAD
N/E CORNER OF GUN ROAD AND KEECH ROAD

The sign was posted on 8-27, 2009.

By: [Signature]
(Signature of Sign Poster)

M Stuart Kelly
(Print Name)

PHOTOGRAPHIC RECORD

Facility No.: _____

Record No.: _____

09-153-SPHX

Date of Photograph(s): _____

8-27-09



I HEREBY CERTIFY that I took 3 photographs set out above, and that these photographs fairly and accurately depict the condition of the property that is the subject of the above referenced Facility/Record Number on the date set above.

M. Stuart Kelly
(Enforcement Officer)



COUNTY BOARD OF APPEALS

JEFFERSON BUILDING •
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
PHONE: 410-887-3180 • FAX: 410-887-3182

FACSIMILE TRANSMITTAL SHEET

January 6, 2010

TO AND FAX NUMBER:

Lawrence E. Schmidt, Esquire
FAX: 410-821-0071

J. Carroll Holzer, Esquire
FAX : 410-825-4923

FROM:

Theresa R. Shelton, Administrator

FAX : 410-887-3182

TELEPHONE : 410-887-3180

TOTAL NO. OF PAGES INCLUDING COVER:

3

Re: Hogg/Smith
Postponement of Argument

URGENT FOR REVIEW FOR YOUR RECORDS PLEASE REPLY PLEASE RECYCLE

PERSONAL AND CONFIDENTIAL

Attached is the Notice of Postponement due to the conflict with Court of Special Appeals.

I have the following dates and times available to re-schedule the Oral Argument. Please contact me as to your availability. Thank you.

2/11/10 at 10 am; 2/24/10 at 9 am; 3/3/10 at 9 am; and 3/9/10 at 9 am

This message is intended only for the addressee and may contain information that is privileged and/or confidential in nature. If the reader is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, and/or received this communication in error, please notify the sender immediately by telephone and return the original message to the sender.

TO: PATUXENT PUBLISHING COMPANY
Thursday, April 9, 2009 Issue - Jeffersonian

Please forward billing to:

L.J. Link
P.O. Box 727
Brooklandville, MD 21022

410-337-9528

NOTICE OF ZONING HEARING

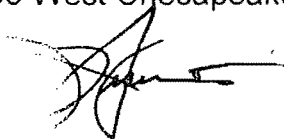
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2009-0153-SPHX

505 Gun Road
N/east corner of Gun Road and Keech Road
13th Election District – 1st Councilmanic District
Legal Owners: Lynn Hogg and Elizabeth Smith

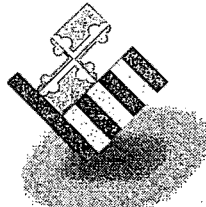
Special Hearing to approve a modified parking plan per section 409.12 of the BCZR. Special Exception to permit a Class B Group child-care center for a maximum of 24 children per section 424.5.A of the BCZR.

Hearing: Friday, April 24, 2009 at 11:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

March 25, 2009
TIMOTHY M. KOTROCO, Director
Department of Permits and
Development Management

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2009-0153-SPHX

505 Gun Road

N/east corner of Gun Road and Keech Road

13th Election District – 1st Councilmanic District

Legal Owners: Lynn Hogg and Elizabeth Smith

Special Hearing to approve a modified parking plan per section 409.12 of the BCZR. Special Exception to permit a Class B Group child-care center for a maximum of 24 children per section 424.5.A of the BCZR.

Hearing: Friday, April 24, 2009 at 11:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Handwritten signature of Timothy Kotroco in cursive.

Timothy Kotroco
Director

TK:klm

C: Sebastian Cross, 600 Washington Ave., Ste. 200, Towson 21204
Lynn Hogg, Elizabeth Smith, 505 Gun Road, Halethorpe 21227

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, APRIL 9, 2009.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



County Board of Appeals of Baltimore County

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

Hearing Room #2, Second Floor
Jefferson Building, 105 W. Chesapeake Avenue

October 9, 2009

NOTICE OF ASSIGNMENT

CASE #: 09-153-SPHX IN THE MATTER OF: Lynn Hogg and Elizabeth Smith-Legal Owners/Petitioners
505 Gun Road
13th Election District; 1st Councilmanic District

Re: 5/12/09-ZC decision that Petition for Special Exception to permit a Class B Group Child Care Centers as a principal use on their property, pursuant to Section 424.5A of the BCZR to allow a maximum of 24 children was DENIED and; Petition for Special Hearing to approve a modified parking plan pursuant to Section 409.12.B of the BCZR was DISMISSED AS MOOT.

ASSIGNED FOR: TUESDAY, NOVEMBER 10, AT 10:00 A.M. – DAY #1 – ; and THURSDAY, DECEMBER 10, 2009, AT 10:00 A.M. – DAY #2, if necessary

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 B, 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.

Theresa R. Shelton
Administrator

c: Counsel for Petitioner/Appellant	: Lawrence E. Schmidt, Esquire	
Petitioner/Appellant	: Lynn R. Hogg and Elizabeth A. Smith	
Protestants	: Paul & Elizabeth Donoghue	William Moore
	Paul & Lucy McKean	Frank & Nancy Lindberg
	Janet Bruns	William Watson
	Jackie Hedeman	John Joseph Bennett
	Frank Earp	Naomi Baldwin
	Charles & Mary Jane Macgill	Jeremy Walsh
	Gloria Carrion	

Donald Laury
Office of People's Counsel
Timothy Kotroco, Director/PDM
John Beverungen, County Attorney

William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, Director/Planning



County Board of Appeals of Baltimore County

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

Hearing Room #2, Second Floor
Jefferson Building, 105 W. Chesapeake Avenue

December 10, 2009

NOTICE OF ASSIGNMENT / DAY #3 / ARGUMENT ONLY
NOTICE OF ASSIGNMENT / Day #4, 5 and 6

CASE #: 09-153-SPHX IN THE MATTER OF: Lynn Hogg and Elizabeth Smith-Legal
Owners/Petitioners
505 Gun Road
13th Election District; 1st Councilmanic District

Re: 5/12/09-ZC decision that Petition for Special Exception to permit a Class B Group Child Care Centers as a principal use on their property, pursuant to Section 424.5A of the BCZR to allow a maximum of 24 children was DENIED and; Petition for Special Hearing to approve a modified parking plan pursuant to Section 409.12.B of the BCZR was DISMISSED AS MOOT.

This matter having been heard on November 10, 2009 (Day #1) and continued to December 10, 2009 (Day #2); a hearing on Argument only will be held as indicated below; and hearing dates have been scheduled as listed by agreement of Counsel:

ASSIGNED FOR ARGUMENT ONLY (1 HOUR):

TUESDAY, FEBRUARY 2, 2010 AT 9:00 A.M. – DAY #3;

MEMOS ON THE ISSUE DUE AT THE BOARD NO LATER THAN 4:00 P.M.
ON MONDAY, JANUARY 11, 2010 / **AN ORIGINAL AND THREE (3).**

DAY 4, 5 AND 6 HAVE BEEN ASSIGNED AS FOLLOWS BY AGREEMENT OF COUNSEL:

TUESDAY, MARCH 16, 2010 AT 10 A.M. – Day #4
WEDNESDAY, MARCH 17, 2010 AT 10 A.M. – Day #5
THURSDAY, MARCH 18, 2010 AT 10 A.M. – Day #6

CONTINUED

*Call PP
Office
gls
EP.*

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 B, 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.

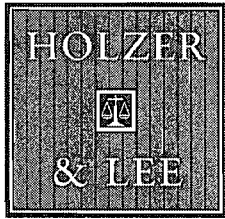
Theresa R. Shelton
Administrator

c: Counsel for Petitioner/Appellant : Lawrence E. Schmidt, Esquire
Petitioner/Appellant : Lynn R. Hogg and Elizabeth A. Smith

Counsel for Protestants: : J. Carroll Holzer
Protestants : The Gun Road Historical and Protective Asso.
Paul Donoghue, President
: Paul Donoghue, Individually
: Joe Bennett
: William Moore
: Paul & Lucy McKean
: Frank Lindberg
: Donna Murphy
: Michelle Reed

Janet Bruns
William Watson
Jackie Hedeman
Frank Earp
Naomi Baldwin
Charles & Mary Jane Macgill
Jeremy Walsh
Gloria Carrion
Donald Laury

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, III, Director/Planning
Timothy Kotroco, Director/PDM
John E. Beverungen, County Attorney
Councilman S. G. Samuel Moxley



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER

1907-1989

THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

E-MAIL: JCHOLZER@CAVTEL.NET

January 4, 2010

#7857

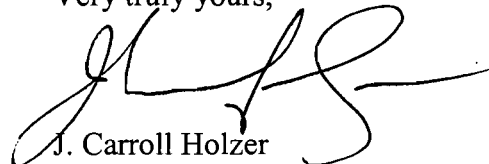
Mr. Andrew Belt
County Board of Appeals
of Baltimore County
Jefferson Building
105 West Chesapeake Avenue
Second Floor, Suite 203
Towson, Maryland 21204

RE: 505 Gun Road
Legal Argument, Tuesday, February 2, 2010

Dear Mr. Belt:

Please be advised that I received the enclosed notice from the Court of Special Appeals dated December 21, 2009, scheduling an Argument on February 2, 2010, in Courtroom #002. This case had previously been filed and briefed and apparently the Court of Special Appeals just got around to scheduling it for Oral Argument. I would therefore request a postponement of the above-captioned legal argument which you set for Tuesday, February 2, 2010, at 9:00 a.m. to another convenient date.

Very truly yours,



J. Carroll Holzer

JCH:mlg

Enclosure

cc: Carole S. Demilio, Esquire
Lawrence E. Schmidt, Esquire
Theresa Shelton, Administrator, BOA

RECEIVED

JAN - 5 2010

**BALTIMORE COUNTY
BOARD OF APPEALS**



LESLIE D. GRADET
CLERK

Court of Special Appeals
Robert C. Murphy Courts of Appeal Building
Annapolis, Md. 21401-1699

(410) 260-1450
WASHINGTON AREA 1-888-200-7444

ROBERT J. GREENLEAF
CHIEF DEPUTY

Notice Date 12/21/2009

J. CARROLL HOLZER, ESQUIRE
508 FAIRMOUNT AVE.
TOWSON, MD 21286

Re: A.M.P. CREEKS COMM. VS. M-NCPPC ET AL.

No. 02823, September Term, 2008

Dear Counsel:

Argument in the above-referenced case has been set for
02/02/2010, in Courtroom 002. Please report to this office
no later than 9:00 a.m. on that date.

Very truly yours,

LESLIE D. GRADET
CLERK



County Board of Appeals of Baltimore County

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

Hearing Room #2, Second Floor
Jefferson Building, 105 W. Chesapeake Avenue

January 6, 2010

NOTICE OF POSTPONEMENT / DAY #3 / ARGUMENT ONLY **NOTICE OF ASSIGNMENT / Day #4, 5 and 6**

CASE #: 09-153-SPHX IN THE MATTER OF: Lynn Hogg and Elizabeth Smith-Legal Owners/Petitioners
505 Gun Road
13th Election District; 1st Councilmanic District

Re: 5/12/09-ZC decision that Petition for Special Exception to permit a Class B Group Child Care Centers as a principal use on their property, pursuant to Section 424.5A of the BCZR to allow a maximum of 24 children was DENIED and; Petition for Special Hearing to approve a modified parking plan pursuant to Section 409.12.B of the BCZR was DISMISSED AS MOOT.

This matter having been heard on November 10, 2009 (Day #1) and continued to December 10, 2009 (Day #2); a one hour hearing on Argument only was schedule for Tuesday, February 2, 2010 at 9:00 a.m.(Day #3) and has been postponed by request of Counsel due to a conflict with the Court of Special Appeals.

The Argument Only (Day #3) will be re-scheduled to a mutually agreeable date.

All other dates remain as previously assigned.

MEMOS ON THE ISSUE DUE AT THE BOARD NO LATER THAN 4:00 P.M.
ON MONDAY, JANUARY 11, 2010 / **AN ORIGINAL AND THREE (3).**

DAY 4, 5 AND 6 HAVE BEEN ASSIGNED AS FOLLOWS BY AGREEMENT OF COUNSEL:

TUESDAY, MARCH 16, 2010 AT 10 A.M. – Day #4
WEDNESDAY, MARCH 17, 2010 AT 10 A.M. – Day #5
THURSDAY, MARCH 18, 2010 AT 10 A.M. – Day #6

CONTINUED

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 B, 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.

Theresa R. Shelton
Administrator

c:	Counsel for Petitioner/Appellant	: Lawrence E. Schmidt, Esquire (via facsimile)
	Petitioner/Appellant	: Lynn R. Hogg and Elizabeth A. Smith
	Counsel for Protestants:	: J. Carroll Holzer (via facsimile)
	Protestants	: The Gun Road Historical and Protective Asso. Paul Donoghue, President
		: Paul Donoghue, Individually
		: Joe Bennett
		: William Moore
		: Paul & Lucy McKean
		: Frank Lindberg
		: Donna Murphy
		: Michelle Reed

Janet Bruns
William Watson
Jackie Hedeman
Frank Earp
Naomi Baldwin
Charles & Mary Jane Macgill
Jeremy Walsh
Gloria Carrion
Donald Laury

Office of People's Counsel **(Hand Delivered)**
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, III, Director/Planning
Timothy Kotroco, Director/PDM
John E. Beverungen, County Attorney
Councilman S. G. Samuel Moxley



County Board of Appeals of Baltimore County

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

Handwritten: 2/24/10

Hearing Room #2, Second Floor
Jefferson Building, 105 W. Chesapeake Avenue

January 14, 2010

NOTICE OF RE-ASSIGNMENT / DAY #3 / ARGUMENT ONLY
NOTICE OF ASSIGNMENT / Day #4, 5 and 6

CASE #: 09-153-SPHX IN THE MATTER OF: Lynn Hogg and Elizabeth Smith-Legal Owners/Petitioners
505 Gun Road
13th Election District; 1st Councilmanic District

Re: 5/12/09-ZC decision that Petition for Special Exception to permit a Class B Group Child Care Centers as a principal use on their property, pursuant to Section 424.5A of the BCZR to allow a maximum of 24 children was DENIED and; Petition for Special Hearing to approve a modified parking plan pursuant to Section 409.12.B of the BCZR was DISMISSED AS MOOT.

This matter having been heard on November 10, 2009 (Day #1) and continued to December 10, 2009 (Day #2); a hearing on Argument only scheduled for 2/2/10 (Day #3) was postponed and has been re-assigned by agreement of Counsel to the following date and time:

ASSIGNED FOR ARGUMENT ONLY (1 HOUR):

WEDNESDAY, FEBRUARY 24, 2010 AT 9:00 A.M. – DAY #3;

MEMOS RECEIVED AT THE BOARD ON MONDAY, JANUARY 11, 2010

DAY 4, 5 AND 6 HAVE BEEN ASSIGNED AS FOLLOWS BY AGREEMENT OF COUNSEL:

TUESDAY, MARCH 16, 2010 AT 10 A.M. – Day #4
WEDNESDAY, MARCH 17, 2010 AT 10 A.M. – Day #5
THURSDAY, MARCH 18, 2010 AT 10 A.M. – Day #6

CONTINUED

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 B, 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.

Theresa R. Shelton
Administrator

c:	Counsel for Petitioner/Appellant	: Lawrence E. Schmidt, Esquire
	Petitioner/Appellant	: Lynn R. Hogg and Elizabeth A. Smith
	Counsel for Protestants:	: J. Carroll Holzer
	Protestants	: The Gun Road Historical and Protective Asso. Paul Donoghue, President
		: Paul Donoghue, Individually
		: Joe Bennett
		: William Moore
		: Paul & Lucy McKean
		: Frank Lindberg
		: Donna Murphy
		: Michelle Reed

Janet Bruns
William Watson
Jackie Hedeman
Frank Earp
Naomi Baldwin
Charles & Mary Jane Macgill
Jeremy Walsh
Gloria Carrion
Donald Laury

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, III, Director/Planning
Timothy Kotroco, Director/PDM
John E. Beverungen, County Attorney
Councilman S. G. Samuel Moxley



County Board of Appeals of Baltimore County

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

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

February 24, 2010

NOTICE OF DELIBERATION / ARGUMENT

**CASE #: 09-153-SPHX IN THE MATTER OF: Lynn Hogg and Elizabeth Smith-Legal
Owners/Petitioners**
505 Gun Road - 13th Election District; 1st Councilmanic District

Re: 5/12/09-ZC decision that Petition for Special Exception to permit a Class B Group Child Care Centers as a principal use on their property, pursuant to Section 424.5A of the BCZR to allow a maximum of 24 children was DENIED and; Petition for Special Hearing to approve a modified parking plan pursuant to Section 409.12.B of the BCZR was DISMISSED AS MOOT.

Having HEARD ARGUMENT on February 24, 2010; a public deliberation has been scheduled for the following date /time:

DATE AND TIME: WEDNESDAY, MARCH 3, 2010 at 9:00 a.m.

LOCATION : Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

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.

**Theresa R. Shelton
Administrator**

c: Counsel for Petitioner/Appellant
Petitioner/Appellant

: Lawrence E. Schmidt, Esquire
: Lynn R. Hogg and Elizabeth A. Smith

Protestants

: Paul & Elizabeth Donoghue	William Moore
Paul & Lucy McKean	Frank & Nancy Lindberg
Janet Bruns	William Watson
Jackie Hedeman	John Joseph Bennett
Frank Earp	Naomi Baldwin
Charles & Mary Jane Macgill	Jeremy Walsh
Gloria Carrion	

Donald Laury
Office of People's Counsel
Timothy Kotroco, Director/PDM
John Beverungen, County Attorney

William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, Director/Planning



County Board of Appeals of Baltimore County

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

Hearing Room #2, Second Floor
Jefferson Building, 105 W. Chesapeake Avenue

February 24, 2010

NOTICE OF AMENDED ASSIGNMENT / DAY #5 **NOTICE OF POSTPONEMENT / Day # 6**

CASE #: 09-153-SPHX **IN THE MATTER OF: Lynn Hogg and Elizabeth Smith-Legal Owners/Petitioners**
505 Gun Road
13th Election District; 1st Councilmanic District

Re: 5/12/09-ZC decision that Petition for Special Exception to permit a Class B Group Child Care Centers as a principal use on their property, pursuant to Section 424.5A of the BCZR to allow a maximum of 24 children was DENIED and; Petition for Special Hearing to approve a modified parking plan pursuant to Section 409.12.B of the BCZR was DISMISSED AS MOOT.

*This matter having been heard on November 10, 2009 (Day #1) and continued to December 10, 2009 (Day #2); a hearing on Argument only was held on February 24, 2010, with a Public Deliberation scheduled for March 3, 2010 (notice attached) and due to an event with one of the Panel Members the following changes are submitted by the Board **UNLESS REVISED AT A LATER DATE:***

TUESDAY, MARCH 16, 2010 AT 10 A.M. – Day #4
will go forward as scheduled

WEDNESDAY, MARCH 17, 2010 AT 10 A.M. – Day #5
will commence at 10 a.m. and close at Noon

THURSDAY, MARCH 18, 2010 AT 10 A.M. – Day #6
has been postponed – no hearing scheduled this date

CONTINUED

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 B, 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.

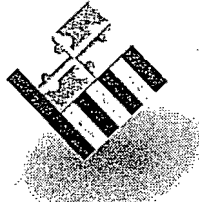
Theresa R. Shelton
Administrator

c: Counsel for Petitioner/Appellant : Lawrence E. Schmidt, Esquire
Petitioner/Appellant : Lynn R. Hogg and Elizabeth A. Smith

Counsel for Protestants: : J. Carroll Holzer
Protestants : The Gun Road Historical and Protective Asso.
Paul Donoghue, President
: Paul Donoghue, Individually
: Joe Bennett
: William Moore
: Paul & Lucy McKean
: Frank Lindberg
: Donna Murphy
: Michelle Reed

Janet Bruns
William Watson
Jackie Hedeman
Frank Earp
Naomi Baldwin
Charles & Mary Jane Macgill
Jeremy Walsh
Gloria Carrion
Donald Laury

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, III, Director/Planning
Timothy Kotroco, Director/PDM
John E. Beverungen, County Attorney
Councilman S. G. Samuel Moxley



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

March 3, 2010

11 Am
BWS 3/11
WILLIAM J. WISEMAN III
Zoning Commissioner

Lawrence E. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Avenue, Ste. 200
Towson, Maryland 21204

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

Carole S. DeMilio, Esquire
Deputy People's Counsel
Office of People's Counsel
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

IN RE: **(REMAND HEARING)** -
PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION
NE Corner of Gun Road and Keech Road
(505 Gun Road)
13th Election District - 1st Council District
Lynn R. Hogg, et ux - Petitioners
Case No. 2009-0153-SPHX

Dear Counsel:

The purpose of this letter is to confirm our verbal agreement that the captioned matter will be scheduled for a further hearing on Thursday, March 11, 2010, at 11:00 A.M., in Room 106, of the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland. This letter will comply with the notice requirement of the Board to give counsel of record seven (7) days written notice.

As set out in the Order of Remand, the referral identifies a specific issue on which the Zoning Commissioner should focus his analysis. It is not necessarily a forum to re-try the case but to conduct further proceedings necessary to make the specific factual findings requested by the Board of Appeals, i.e., to receive "the Hermann plan" not previously offered into evidence before this Commission and determine its compliance with County rules/regulations for site plans accompanying Petitions for Special Hearing and Special Exception.

I trust this complies with the Board's notice requirement in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "William J. Wiseman, III".

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure



County Board of Appeals of Baltimore County

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

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

March 3, 2010

NOTICE OF POSTPONEMENT and RE-ASSIGNMENT

CASE #: 09-153-SPHX IN THE MATTER OF: Lynn Hogg and Elizabeth Smith-Legal Owners/Petitioners
505 Gun Road
13th Election District; 1st Councilmanic District

Re: 5/12/09-ZC decision that Petition for Special Exception to permit a Class B Group Child Care Centers as a principal use on their property, pursuant to Section 424.5A of the BCZR to allow a maximum of 24 children was DENIED and; Petition for Special Hearing to approve a modified parking plan pursuant to Section 409.12.B of the BCZR was DISMISSED AS MOOT.

This matter having been heard on November 10, 2009 (Day #1) and continued to December 10, 2009 (Day #2); a one hour Argument only was heard on 2/24/10 (Day #3); and by agreement of Counsel a Stipulation was placed on the record on 3/3/10 (Day #4), in lieu of the scheduled Deliberation, to remand the matter to the Zoning Commissioner; and also by agreement of Counsel the following dates have been postponed:

**TUESDAY, MARCH 16, 2010 AT 10 A.M.
WEDNESDAY, MARCH 17, 2010 AT 10 A.M. to NOON**

this matter has been re-assigned to the following dates as agreed to by Counsel.

DAY 5, 6, 7 and 8 HAVE BEEN ASSIGNED AS FOLLOWS BY AGREEMENT OF COUNSEL:

**TUESDAY, APRIL 20, 2010 AT 10 A.M. – DAY #5
WEDNESDAY, APRIL 21, 2010 AT 10 A.M. – DAY #6
TUESDAY, APRIL 27, 2010 AT 10 A.M. – DAY #7
WEDNESDAY, APRIL 28, 2010 AT 10 A.M. – DAY #8**

CONTINUED

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 B, 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.

Theresa R. Shelton
Administrator

c: Counsel for Petitioner/Appellant	: Lawrence E. Schmidt, Esquire
Petitioner/Appellant	: Lynn R. Hogg and Elizabeth A. Smith
Counsel for Protestants:	: J. Carroll Holzer, Esquire
Protestants	: The Gun Road Historical and Protective Asso. Paul Donoghue, President
	: Paul Donoghue, Individually
	: Joe Bennett
	: William Moore
	: Paul & Lucy McKean
	: Frank Lindberg
	: Donna Murphy
	: Michelle Reed

Janet Bruns
William Watson
Jackie Hedeman
Frank Earp
Naomi Baldwin
Charles & Mary Jane Macgill
Jeremy Walsh
Gloria Carrion
Donald Laury

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, III, Director/Planning
Timothy Kotroco, Director/PDM
Nancy West, Assistant County Attorney
John E. Beverungen, County Attorney



County Board of Appeals of Baltimore County

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

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

March 5, 2010

AMENDED NOTICE OF POSTPONEMENT and RE-ASSIGNMENT

CASE #: 09-153-SPHX IN THE MATTER OF: Lynn Hogg and Elizabeth Smith-Legal Owners/Petitioners
505 Gun Road
13th Election District; 1st Councilmanic District

Re: 5/12/09-ZC decision that Petition for Special Exception to permit a Class B Group Child Care Centers as a principal use on their property, pursuant to Section 424.5A of the BCZR to allow a maximum of 24 children was DENIED and; Petition for Special Hearing to approve a modified parking plan pursuant to Section 409.12.B of the BCZR was DISMISSED AS MOOT.

This matter having been heard on November 10, 2009 (Day #1) and continued to December 10, 2009 (Day #2); a one hour Argument only was heard on 2/24/10 (Day #3); and by agreement of Counsel a Stipulation was placed on the record on 3/3/10 (Day #4), in lieu of the scheduled Deliberation, to remand the matter to the Zoning Commissioner; and also by agreement of Counsel the following dates have been postponed:

TUESDAY, MARCH 16, 2010 AT 10 A.M.
WEDNESDAY, MARCH 17, 2010 AT 10 A.M. to NOON

the following date has been postponed due to a conflict and will be re-assigned, if needed.

WEDNESDAY, APRIL 28, 2010 AT 10 A.M. – DAY #8

this matter has been re-assigned to the following dates as agreed to by Counsel.

DAY 5, 6, and 7 HAVE BEEN ASSIGNED AS FOLLOWS BY AGREEMENT OF COUNSEL:

TUESDAY, APRIL 20, 2010 AT 10 A.M. – DAY #5
WEDNESDAY, APRIL 21, 2010 AT 10 A.M. – DAY #6
TUESDAY, APRIL 27, 2010 AT 10 A.M. – DAY #7

CONTINUED

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 B, 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.

Theresa R. Shelton
Administrator

c:	Counsel for Petitioner/Appellant	: Lawrence E. Schmidt, Esquire
	Petitioner/Appellant	: Lynn R. Hogg and Elizabeth A. Smith
	Counsel for Protestants:	: J. Carroll Holzer , Esquire
	Protestants .	: The Gun Road Historical and Protective Asso.
		Paul Donoghue, President
		: Paul Donoghue, Individually
		: Joe Bennett
		: William Moore
		: Paul & Lucy McKean
		: Frank Lindberg
		: Donna Murphy
		: Michelle Reed

Janet Bruns
William Watson
Jackie Hedeman
Frank Earp
Naomi Baldwin
Charles & Mary Jane Macgill
Jeremy Walsh
Gloria Carrion
Donald Laury

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, III, Director/Planning
Timothy Kotroco, Director/PDM
Nancy West, Assistant County Attorney
John E. Beverungen, County Attorney



County Board of Appeals of Baltimore County

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

Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

April 28, 2010

NOTICE OF ASSIGNMENT

CASE #: 09-153-SPHX

**IN THE MATTER OF: Lynn Hogg and Elizabeth Smith-Legal
Owners/Petitioners**

505 Gun Road

13th Election District; 1st Councilmanic District

Re: 5/12/09-ZC decision that Petition for Special Exception to permit a Class B Group Child Care Centers as a principal use on their property, pursuant to Section 424.5A of the BCZR to allow a maximum of 24 children was DENIED and; Petition for Special Hearing to approve a modified parking plan pursuant to Section 409.12.B of the BCZR was DISMISSED AS MOOT.

This matter having been heard on November 10, 2009 (Day #1) and continued to December 10, 2009 (Day #2); a one hour Argument only was heard on 2/24/10 (Day #3); and by agreement of Counsel a Stipulation was placed on the record on 3/3/10 (Day #4), continued to 4/20/10 (Day #5); continued to 4/21/10 (Day #6); continued to 4/27/10 (Day #7); and this matter has been re-assigned to the following dates as agreed to by Counsel.

WEDNESDAY, JUNE 30, 2010 AT 10 A.M. – DAY #8

AND

THURSDAY, JULY 15, 2010 AT 10 A.M. – DAY #9

CONTINUED



County Board of Appeals of Baltimore County

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

July 19, 2010

NOTICE OF DELIBERATION

CASE #: 09-153-SPHX IN THE MATTER OF: Lynn Hogg and Elizabeth Smith-Legal Owners/Petitioners
505 Gun Road - 13th Election District; 1st Councilmanic District

This matter having been heard on November 10, 2009 (Day #1) and continued to December 10, 2009 (Day #2); a one hour Argument only was heard on 2/24/10 (Day #3); and by agreement of Counsel a Stipulation was placed on the record on 3/3/10 (Day #4), in lieu of the scheduled Deliberation, to remand the matter to the Zoning Commissioner; hearings continued on April 20, 2010 (Day #5); April 21, 2010 (Day #6); April 27, 2010 (Day #7); June 30, 2010 (Day #8); and concluded on July 15, 2010 (Day #9).

DATE AND TIME: WEDNESDAY, NOVEMBER 3, 2010 at 10:00 a.m.

LOCATION : Jefferson Building - Second Floor , Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: Closing briefs are due on Thursday, September 9, 2010 by 4:30 p.m.

(Original and three [3] copies)

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.

Theresa R. Shelton
Administrator

c: Counsel for Petitioner/Appellant
Petitioner/Appellant

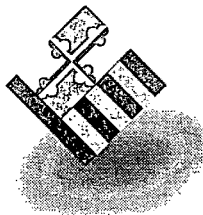
: Lawrence E. Schmidt, Esquire
: Lynn R. Hogg and Elizabeth A. Smith

Protestants

: Paul & Elizabeth Donoghue	William Moore
Paul & Lucy McKean	Frank & Nancy Lindberg
Janet Bruns	William Watson
Jackie Hedeman	John Joseph Bennett
Frank Earp	Naomi Baldwin
Charles & Mary Jane Macgill	Jeremy Walsh
Gloria Carrion	

Donald Laury
Office of People's Counsel
Timothy Kotroco, Director/PDM
John Beverungen, County Attorney

William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, Director/Planning



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management
April 16, 2009

Sebastian Cross
600 Washington Ave. Ste. 200
Towson, MD 21204

Dear: Sebastian Cross

RE: Case Number 2009-0153-SPHX, 505 Gun Rd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 9, 2009. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

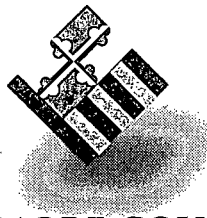
A handwritten signature in black ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:lnw

Enclosures

c: People's Counsel
Lynn & Elizabeth Smith; 505 Gun Rd.; Halethorpe, MD 21227



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

December 16, 2008

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTENTION: Zoning Review planners

Distribution Meeting of: December 15, 2008

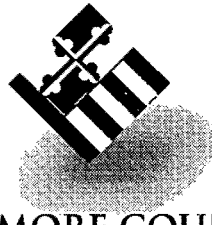
Item No.: 2009-0135-A, ~~2009-0153-A~~, 2009-0158-SPHAXA, 2009-0159-A,
2009-0160-A, 2009-0161-SPHXA, 2009-0162-A, 2009-0163-A,
2009-0165-A, AND 2009-0166-SPH.

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

The Fire Marshal's Office has no comments at this time.

Don W. Muddiman, Acting Lieutenant
Fire Marshal's Office
(Office) 410-887-4880
MS-1102F

cc: File



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

March 18, 2009

ATTENTION: Zoning Review Planners

Distribution Meeting Of: March 16, 2009

Item Numbers 0153 and 0231

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

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

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C) 443-829-2946
MS-1102F

cc: File

BW 4/24
11am

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Timothy M. Kotroco
FROM: Dave Lykens, DEPRM - Development Coordination
DATE: January 21, 2009
SUBJECT: Zoning Item # 09-153-X
Address 505 Gun Road
(Smith/ Hogg Property)

RECEIVED

JAN 21 2009

ZONING COMMISSIONER

Zoning Advisory Committee Meeting of December 15, 2008.

_____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

 X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

Prior to approval of the child care center, an evaluation of the septic system will be required. A usage letter must be submitted. Soil evaluations will be required. For more information, contact Rob Powell, Ground Water Mgmt, 410-887-2762

Reviewer: S. Farinetti

Date: 12/22/2008

BLS 3/11
11 AM

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



RECEIVED

MAR 09 2010

ZONING COMMISSIONER

TO: Timothy M. Kotroco
FROM: Dave Lykens, DEPRM - Development Coordination
DATE: March 9, 2010
SUBJECT: Zoning Item # 09-153-X - revised
Address 505 Gun Road
(Smith/ Hogg Property)

Zoning Advisory Committee Meeting of December 15, 2008.

X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

- X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
- X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

1. Development of this site must comply with Baltimore County Code Article 33, Title 3, Protection of Water Quality, Streams, Wetlands and Floodplains. Mapped information indicates there is an existing stream and non-tidal wetlands offsite which may require a Forest Buffer Easement to be recorded onsite. In addition, the modified parking plan as proposed will require a forest buffer variance application submittal. - *J. Russo; Environmental Impact Review*

2. Development of this site must comply with Baltimore County Code Article 33, Title 6, forest conservation. Pursuant to this code, a forest stand delineation, forest conservation plan and forest conservation plan must be approved. In addition, if the proposed outdoor play area involves clearing of any specimen trees, a forest conservation request must be submitted and approved. - *J. Russo; Environmental Impact Review*

3. Prior to approval of the child care center, an evaluation of the septic system will be required. A usage letter must be submitted. Soil evaluations will be required. For more information, contact *Rob Powell, Ground Water Mgmt, 410-887-2762*

DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND RESOURCE MANAGEMENT
INTEROFFICE CORRESPONDENCE

TO: William J. Wiseman
Zoning Commissioner

FROM: Patricia M. Farr *pmf*
Program Manager
Environmental Impact Review

SUBJECT: 505 Gun Road
Zoning Item # 09-153-X-revised

DATE: April 16, 2010

Environmental Impact Review (EIR) has discussed the above referenced matter with the applicant and additional information was provided. Based on our review of the additional information, EIR has determined that no development activities accompany this zoning request. Therefore, DEPRM will not apply the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code or the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code) to the above referenced Zoning item.

cc: Lawrence E. Schmidt

Theresa, 4/19
Re: Cuddles Day Care
For file.

Bee
Wiseman

J:\drive\john\gunrdZAC

RECEIVED

APR 19 2010

BALTIMORE COUNTY
BOARD OF APPEALS

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: February 25, 2010

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

RECEIVED

SUBJECT: 505 Gun Road

MAR 10 2010

INFORMATION: *Comments in response to revised petition and site plan*

ZONING COMMISSIONER

Item Number: 9-153(revised site plan)

Petitioner: Lynn R. Hogg

Zoning: RC 5

Requested Action: Special Exception

The Office of Planning has reviewed the petitioner's request and revised site plan and offers the following comments:

The Office of Planning recommends that the petitioner's revised site plan dated January 20, 2010 be **denied**. The Office of Planning recommended a denial of the Special Exception in previous comments dated 4/8/2009 (a copy of those comments have been made part of this report). Nonetheless, the following comments apply to the revised site plan submitted January 2010:

1. The location of several of the proposed parking spaces is a concern. Parking space nos. 1, 2 and 3 are not conveniently located with respect to the childcare center. It won't be appealing to walk from any of these spaces to the childcare center entrance. Parking space nos. 5 and 6 are parallel spaces located on opposite sides of the narrow, one-way driveway. As shown on the site plan, the front corner of parking space no. 5 and the back corner of parking space no. 6 are only 10 feet apart. If both of these parking spaces are occupied at the same time and the cars aren't carefully parked within the spaces, vehicular traffic movements on the driveway could be impeded. Also, parking space no. 5 partially blocks access to the 2-car garage.
2. The modified parking plan proposes several significant modifications of the parking requirements (see General Note No. 4 on the site plan). Uses permitted by special exception should generally comply with all applicable requirements, and they should not need significant variances or modifications of standards. The modified parking plan as prepared by the petitioner doesn't include a modification for the two-way driveway. The existing two-way driveway is shown as being 10 feet wide but 20 feet is required by Section 409.4.A of the BCZR.

3. The 4/8/09 Office of Planning comments noted that a 4-foot high chain link fence surrounds the existing playground equipment area located in the southeast corner of the property. The revised site plan doesn't show this fence, nor does the plan otherwise delineate the perimeter of the playground area. Has the fence been removed? If the fence hasn't been removed, it does not comply with the BCZR. Section 424.1.B requires that outdoor play space abutting residential property shall be fenced and the fence shall be solid wood stockade or panel and a minimum height of five feet. Also, it appears that the playground is not located at least 20 feet from the property line as also required by Section 424.1.B. The site plan should indicate the status of whether or not that the chain link fence and playground will be removed.
4. The site plan should address the sight line and driveway width improvements recommended by Stephen Weber, Bureau of Public Works in his 4/13/09 e-mail message regarding this case.
5. General Note No. 2 on the site plan states, "Proposed signage shall comply with Section 450 of the BCZR." The Office of Planning is not certain what signage is permitted by the BCZR for the proposed use. However, given the attractive rural residential character of this neighborhood, it is my recommendation that the area of any freestanding enterprise sign for any childcare facility at this location not exceed one square foot per face and the sign should not be illuminated.

April 8, 2009 Comments and Recommendations for reference

The Planning Office recommends that the Petition for Special Exception be **denied**. This particular location is not appropriate for a Class B Group Child Care Center.

The petitioner's property is one of several properties in the Gun Road area that were rezoned from DR1 to RC5 in the 2008 CZMP as part of Issue 1-054 (see attached map). At this time all of the single-family residential properties that have direct or indirect access to Gun Road are zoned RC5. The rezoning to RC5 was enacted to protect and maintain the area's rural residential character and integrity. The proposed use is not in harmony with the spirit and intent of the RC5 zoning classification for this particular neighborhood.

The Gun Road, RC5 zoned area is a residential neighborhood comprised of approximately 44 single-family dwellings located on large lots. Gun Road also provides access to the Our Lady of Mount Providence Convent, which is located at the intersection of Gun Road and South Rolling Road and is zoned DR1. Gun Road is classified as a local road on the 2007 Federal Highway Functional Classification Map for Baltimore County. Local roads are typically low in traffic volumes and speed. Local roads serve to provide direct access to individual land uses, but local residential access roads generally are not intended to provide service to important traffic generators.

The size (capacity) of the proposed group childcare center is not compatible with, and won't complement, the Gun Road neighborhood. The Gun Road neighborhood is not a population center. It is a small, isolated, residential area with very low development intensity. Gun Road is a long, winding, narrow (18 feet wide without shoulders), very low-volume, dead-end road. Access to the nearest major thoroughfare (i.e., South Rolling Road/Selford Road) is more than half a mile from the petitioner's site. A Class B Group Child Care center is not a logical

extension of a residential use. Class B centers are principal uses and are not permitted as an accessory use within single-family detached dwellings. The land use intensity and character of activity associated with a Class B center are greatly different than that of a typical family occupying a house. The proposed center will operate as a principal business use. It is likely that all of, or the vast majority of, the children to be served by this business will live outside the Gun Road neighborhood.

Egress from the petitioner's property is not entirely safe. There is poor sight distance to the south along Gun Road from the property because of a stonewall located along the driveway at its connection to Gun Road. When exiting the property, it would be necessary to move the front end of any motor vehicle longer than a compact car partly onto the roadway in order to see if there are any oncoming vehicles on Gun Road.

The site plan doesn't comply with Section 409 (Off-street Parking and Loading) of the BCZR. Section 409.4.A requires that driveways be at least 12 feet in width for one-way movements and at least 20 feet in width for two-way movements. Section 409.8.A.2 requires that parking facilities be paved with a durable and dustless surface. According to the petitioner's attorney, no new paving will be added to the site. The site plan indicates that the existing two-way and one-way on-site driveways are 12 feet wide although they are actually less than 10 feet wide. It appears that the 5 proposed parking spaces will not be paved with a durable and dustless surface. Also, some of the parking spaces shown on the plan are not presently usable for parking because of shrubbery planted along the driveway.

It appears that the site plan doesn't accurately show the location of the one-way driveway. The revised site plan shows this driveway as being located approximately 60 feet from the eastern property line at its closest point while the previous site plan shows the driveway as being located much closer to the property line (i.e., approximately 30 feet from the property line). The attached orthophotography shows a driveway location that appears to match the driveway location shown on the previous site plan.

The existing fence surrounding the play area shown on the site plan is in violation of the BCZR. Section 424.1.B requires that the fencing for outdoor play space shall be solid wood stockade or panel and a minimum height of five feet. The existing fence is chain link with a height of about four feet. Also, based on the above comments regarding the driveway location, it is questionable whether the play space is located at least 20 feet from the property line as also required by Section 424.1.B.

Public sewer does not serve this neighborhood. It isn't clear whether the private on-lot sewer system will be adequate to serve a large-capacity day care center.

SUMMARY OF RECOMMENDATION:

The requested special exception for a Class B Group Child Care Center should be **denied** pursuant to Section 502.1 of the BCZR because the proposed use is not appropriate at this location. Specifically, the proposed use at this particular location will:

- Operate as a principal business use on a narrow, residential access road in the middle of a very low density, single-family neighborhood;
- Be highly dissimilar in relation to the use of all other houses in the neighborhood with respect to land use intensity and character of activity;

- Generate vehicular traffic that will exacerbate an existing traffic hazard at the petitioner's driveway connection to Gun Road;
- Interfere with adequate provisions for on-site traffic circulation and parking because the driveways and parking spaces will not be in accordance with Section 409;
- Be inconsistent with the spirit and intent of the recent rezoning of the neighborhood from DR1 to the RC5 classification, which was enacted to protect and maintain the rural residential character and the integrity of the neighborhood.

In addition, the following comments are offered for consideration:

- There doesn't appear to be any legitimate undue hardship for approving a modified parking plan. Also, special exception uses generally should comply with all requirements and conditions and not need significant variances or modifications of standards.
- It isn't clear whether the proposed use will interfere with the adequate provision for on-lot sewage disposal. The applicant should demonstrate that the existing system is adequate to accommodate sewage flows from the proposed childcare center.
- In the event the requested special exception is approved --
 - The building wherein the childcare center will be located will also be used as a private residence. The Zoning Commissioner should determine whether 2 additional off-street parking spaces must be provided above the number of parking spaces required for the childcare center.
 - The area of any freestanding business identification sign should not exceed one square foot per face and the sign should be non-illuminated.
 - The fence surrounding the play area should comply with Section 424.1.B of the BCZR with respect to height, materials, and distance from the property line.

For further information concerning the matters stated here in, please contact Dennis Wertz at 410-887-3480.

Prepared by: _____

Division Chief: _____
AFK/LL: CM

Attachment: _____

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

DATE: December 18, 2008

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For December 22, 2008
Item Nos. 2009-~~0153~~, 0158, 0159, 0160,
0161, 0162, 0163, 0164, 0165, and 0166

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

DAK:CEN:lrk
cc: File
ZAC-122208 -NO COMMENTS

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

DATE: March 20, 2009

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For March 23, 2009
Item Nos. 2009-0153, 0223, 0224, 0230,
0235, and 0236

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

DAK:CEN:lrk
cc: File
ZAC-03232009 -NO COMMENTS

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

DATE: February 12, 2010

FROM: ^{DAK} Dennis A. Kennedy, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For February 22, 2010
Item Nos. 2009-153, 2010-0184, 205, 206
and 207

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

DAK:CEN:cab

cc: File

G:\DevPlanRev\ZAC -No Comments\ZAC-02222010 -NO COMMENTS.doc



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

John D. Porcari, Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date: 3/23/2009

Ms. Kristen Matthews
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No 2009-0153-SPHX
505 GUN ROAD
HOGG PROPERTY
SPECIAL EXCEPTION
SPECIAL HEARING

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2009-0153-SPHX

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-2803 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor



Beverley K. Swaim-Staley, Secretary
Neil J. Pedersen, Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: FEB, 22, 2010

Ms. Kristen Matthews
Baltimore County Office Of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

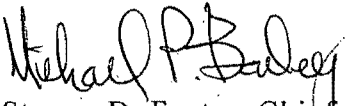
RE: Baltimore County
Item No. 2009-0153-SPHX
505 GUN RD
SMITH & HOGG PROPERTY
SPECIAL EXCEPTION
SPECIAL HEARING

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2009-0153-SPHX.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-5593 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,


For¹ Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/mb

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.sha.maryland.gov



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

August 19, 2009

Lawrence Schmidt
Gildea & Schmidt, LLC
600 Washington Avenue, Ste. 200
Towson, MD 21204

Dear Mr. Schmidt:

RE: Case: 2009-0153-SPHX, 505 Gun Road

Please be advised that your appeal of the above-referenced case was received in this office on June 9, 2009. 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,

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Elizabeth Smith & Lynn Hogg, 505 Gun Road, Halethorpe 21227
Larry Link, Box 727, Brooklandville 21022
Mr. & Mrs. Donoghue, 508 Gun Road, Baltimore 21227
William Moore, 510 Gun Road, Baltimore 21227
Mr. & Mrs. McKean, 403 Gun Road, Baltimore 21227
Mr. & Mrs. Lindberg, 511 Gun Road, Baltimore 21227
Janet Bruns, 301 Gun Road, Baltimore 21227
William Watson, 422 Gun Road, Baltimore 21227
Jackie Hedeman, 408 Gun Road, Baltimore 21227
John Joseph Bennett, 516 Gun Road, Baltimore 21227
Frank Allen Earp, 424 Gun Road, Baltimore 21227
Naomi Baldwin, 324 Gun Road, Baltimore 21227
Mr. & Mrs. Macgill, 319 Gun Road, Relay 21227
Jeremy Walsh, 5300 Keech Road, Relay 21227

Zoning Review | County Office Building

111 West Chesapeake Avenue, Room 111 | Towson, Maryland 21204 | Phone 410-887-3391 | Fax 410-887-3048

www.baltimorecountymd.gov

APPEAL

Petition for Special Hearing & Special Exception
505 Gun Road
NE corner of Gun Road and Keech Road
13th Election District – 1st Councilmanic District
Legal Owners: Lynn Hogg & Elizabeth Smith

Case No.: 2009-0153-SPHX

Petition for Special Hearing & Special Exception (November 25, 2008)

Zoning Description of Property

Notice of Zoning Hearing (March 25, 2009)

Certification of Publication (The Jeffersonian – April 9, 2009)

Certificate of Posting (April 9, 2009) by Robert Black

Entry of Appearance by People's Counsel (December 30, 2008)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet – One Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibit

11 items as listed on attached Exhibit Sheet

Protestants' Exhibits:

1 item as listed on attached Exhibit Sheet (Exhibit 2 not located in file)

Miscellaneous (Not Marked as Exhibit)

1. Letter dated January 27, 2009 from People's Counsel
2. Follow-up letter dated April 17, 2009 from People's Counsel
3. Items in reference to letters submitted in opposition

Zoning Commissioner's Order (May 12, 2009 - DENIED)

Notice of Appeal received on June 9, 2009 from Lawrence Schmidt

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner
Timothy Kotroco, Director of PDM
See attached cover letter

date sent August 19, 2009, klm

APPEAL

Petition for Special Hearing & Special Exception
505 Gun Road
NE corner of Gun Road and Keech Road
13th Election District – 1st Councilmanic District
Legal Owners: Lynn Hogg & Elizabeth Smith

Case No.: 2009-0153-SPHX

- ✓ Petition for Special Hearing & Special Exception (November 25, 2008)
- ✓ Zoning Description of Property
- ✓ Notice of Zoning Hearing (March 25, 2009)
- ✓ Certification of Publication (The Jeffersonian – April 9, 2009)
- ✓ Certificate of Posting (April 9, 2009) by Robert Black
- ✓ Entry of Appearance by People's Counsel (December 30, 2008)
- ✓ Petitioner(s) Sign-In Sheet – One Sheet
- Protestant(s) Sign-In Sheet None
- ✓ Citizen(s) Sign-In Sheet – One Sheet
- ✓ Zoning Advisory Committee Comments
- ✓ Petitioners' Exhibit
11 items as listed on attached Exhibit Sheet
- ✓ Protestants' Exhibits:
1 item as listed on attached Exhibit Sheet (Exhibit 2 not located in file)
- ✓ Miscellaneous (Not Marked as Exhibit)
 - ✓ 1. Letter dated January 27, 2009 from People's Counsel
 - ✓ 2. Follow-up letter dated April 17, 2009 from People's Counsel
 - ✓ 3. Items in reference to letters submitted in opposition
- ✓ Zoning Commissioner's Order (May 12, 2009 - DENIED)
- ✓ Notice of Appeal received on June 9, 2009 from Lawrence Schmidt

RECEIVED
AUG 19 2009
BALTIMORE COUNTY
BOARD OF APPEALS

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner
Timothy Kotroco, Director of PDM
See attached cover letter

date sent August 19, 2009, klm

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
NE Corner of Gun Road and Keech Road	*	COUNTY BOARD OF APPEALS
(505 Gun Road)		
	*	FOR
13 th Election District		
1 st Councilmanic District	*	BALTIMORE COUNTY
Lynn R. Hogg, et ux	*	Case No. 2009-0153-SPHX
<i>Petitioners</i>		
* * * * *		

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on April 21, 2010 at 10 a.m. in Hearing Room 2, Jefferson Building, located at 105 W. Chesapeake Avenue, Second Floor, Towson, MD 21204, and continuing thereafter as necessary for such witness' testimony and scheduled by the Board.

Witness: Rob Powell
Address: Groundwater Management
DEPRM
105 W. Chesapeake Avenue, Suite 400
Towson, MD 21204

Requested by:

Name: Lawrence E. Schmidt
Firm: Gildea & Schmidt, LLC

Address: 600 Washington Avenue, Suite 200
Towson, MD 21204

The witness named above is hereby ORDERED to so appear before the County Board of Appeals. The Board requests () the Sheriff, (X) Private Process Server, to issue the summons set forth herein.

RECEIVED

APR 16 2010

BALTIMORE COUNTY
BOARD OF APPEALS

Sunny Cannington
 County Board of Appeals of
 Baltimore County

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
NE Corner of Gun Road and Keech Road	*	COUNTY BOARD OF APPEALS
(505 Gun Road)		
	*	FOR
13 th Election District		
1 st Councilmanic District	*	BALTIMORE COUNTY
Lynn R. Hogg, et ux	*	Case No. 2009-0153-SPHX
<i>Petitioners</i>		

* * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on July 15, 2010 at 10 a.m. in Hearing Room 2, Jefferson Building, located at 105 W. Chesapeake Avenue, Second Floor, Towson, MD 21204, and continuing thereafter as necessary for such witness' testimony and scheduled by the Board.

Witness: Capt. Richard A. Green
Address: Baltimore County Fire Department
700 East Joppa Road
Towson, MD 21204

Requested by:

Name: Lawrence E. Schmidt
Firm: Gildea & Schmidt, LLC
Address: 600 Washington Avenue, Suite 200
Towson, MD 21204

The witness named above is hereby ORDERED to so appear before the County Board of Appeals. The Board requests () the Sheriff, (X) Private Process Server, to issue the summons set forth herein.

Sunny Cannington
County Board of Appeals of
Baltimore County

RECEIVED
JUL - 7 2010
BALTIMORE COUNTY
BOARD OF APPEALS

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 B, 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.

Theresa R. Shelton
Administrator

c:	Counsel for Petitioner/Appellant	: Lawrence E. Schmidt, Esquire
	Petitioner/Appellant	: Lynn R. Hogg and Elizabeth A. Smith
	Counsel for Protestants:	: J. Carroll Holzer , Esquire
	Protestants	: The Gun Road Historical and Protective Asso.
		Paul Donoghue, President
		: Paul Donoghue, Individually
		: Joe Bennett
		: William Moore
		: Paul & Lucy McKean
		: Frank Lindberg
		: Donna Murphy
		: Michelle Reed

Janet Bruns
William Watson
Jackie Hedeman
Frank Earp
Naomi Baldwin
Charles & Mary Jane Macgill
Jeremy Walsh
Gloria Carrion
Donald Laury

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, III, Director/Planning
Timothy Kotroco, Director/PDM
Nancy West, Assistant County Attorney
John E. Beverungen, County Attorney

IN THE MATTER OF:

*

BEFORE THE

LYNN HOGG & ELIZABETH SMITH

*

COUNTY BOARD OF APPEALS

Legal Owners/Petitioners

505 Gun Rd.

*

BALTIMORE COUNTY

13th Election District

*

1st Council District

*

Case No. 09-153-SPHX

* * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday, November 10, 2009 at 10:00 a.m. at Hearing Room #2, located at Jefferson Bldg., 2nd Floor, 105 West Chesapeake Ave., Towson 21204 and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board. Second Day, Thursday, December 10, 2009, if necessary (See attached Notice of Hearing)

Witness: Jon Seitz

Address: TRG, Inc.

204 N. George St., Suite 110

York, PA 17401 (Fax # 717-846-4858)

Name: J. Carroll Holzer

Firm: J. Carroll Holzer, PA

Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**

The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above case. The Board requests the Sheriff to issue the summons set forth herein.

Sunny Cunningham
County Board of Appeals of Baltimore County

RECEIVED
Date NOV - 3 2009

BALTIMORE COUNTY
BOARD OF APPEALS

Cost: \$

Summoned: _____, 2009

Not Served: _____, 2009

Sheriff of Baltimore County

C:\Subpoenas CBA Gun Road 11-3-09

IN THE MATTER OF:

*

BEFORE THE

LYNN HOGG & ELIZABETH SMITH

*

COUNTY BOARD OF APPEALS

Legal Owners/Petitioners

505 Gun Rd.

*

BALTIMORE COUNTY

13th Election District

*

1st Council District

*

Case No. 09-153-SPHX

* * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday, November 10, 2009 at 10:00 a.m. at Hearing Room #2, located at Jefferson Bldg., 2nd Floor, 105 West Chesapeake Ave., Towson 21204 and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board. Second Day, Thursday, December 10, 2009, if necessary (See attached Notice of Hearing)

Witness: Dennis Wertz

Address: Baltimore County Office of Planning

105 W. Chesapeake Ave., Suite 101

Towson, MD 21204

Name: J. Carroll Holzer

Firm: J. Carroll Holzer, PA

Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**

The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above case. The Board requests the Sheriff to issue the summons set forth herein.

Sunny Cannington
County Board of Appeals of Baltimore County

RECEIVED
Date **NOV -9 2009**

**BALTIMORE COUNTY
BOARD OF APPEALS**

Cost: \$

Summoned: _____, 2009

Not Served: _____, 2009

Sheriff of Baltimore County

IN THE MATTER OF:

*

BEFORE THE

LYNN HOGG & ELIZABETH SMITH

*

COUNTY BOARD OF APPEALS

Legal Owners/Petitioners

505 Gun Rd.

*

BALTIMORE COUNTY

13th Election District

*

1st Council District

*

Case No. 09-153-SPHX

* * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday, November 10, 2009 at 10:00 a.m. at Hearing Room #2, located at Jefferson Bldg., 2nd Floor, 105 West Chesapeake Ave., Towson 21204 and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board. Second Day, Thursday, December 10, 2009, if necessary (See attached Notice of Hearing)

Witness: Stephen Weber, Chief

Address: Division of Traffic Engineering

111 W. Chesapeake Ave., Room 326

Towson, MD 21204

Name: J. Carroll Holzer

Firm: J. Carroll Holzer, PA

Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**

The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above case. The Board requests the Sheriff to issue the summons set forth herein.

Sunny Carrington

County Board of Appeals of Baltimore County

RECEIVED

Date **NOV -3 2009**

**BALTIMORE COUNTY
BOARD OF APPEALS**

Cost: \$

Summoned: _____, 2009

Not Served: _____, 2009

Sheriff of Baltimore County

C:\Subpoenas CBA Gun Road 11-3-09



County Board of Appeals of Baltimore County

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

Hearing Room #2, Second Floor
Jefferson Building, 105 W. Chesapeake Avenue

October 9, 2009

NOTICE OF ASSIGNMENT

CASE #: 09-153-SPHX **IN THE MATTER OF: Lynn Hogg and Elizabeth Smith-Legal Owners/Petitioners**
505 Gun Road
13th Election District; 1st Councilmanic District

Re: 5/12/09-ZC decision that Petition for Special Exception to permit a Class B Group Child Care Centers as a principal use on their property, pursuant to Section 424.5A of the BCZR to allow a maximum of 24 children was DENIED and; Petition for Special Hearing to approve a modified parking plan pursuant to Section 409.12.B of the BCZR was DISMISSED AS MOOT.

ASSIGNED FOR: TUESDAY, NOVEMBER 10, AT 10:00 A.M. – DAY #1 – ; and THURSDAY, DECEMBER 10, 2009, AT 10:00 A.M. – DAY #2, if necessary

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 B, 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.

Theresa R. Shelton
Administrator

c: Counsel for Petitioner/Appellant
Petitioner/Appellant

: Lawrence E. Schmidt, Esquire
: Lynn R. Hogg and Elizabeth A. Smith

Protestants

: Paul & Elizabeth Donoghue
Paul & Lucy McKean
Janet Bruns
Jackie Hedeman
Frank Earp
Charles & Mary Jane Macgill
Gloria Carrion

William Moore
Frank & Nancy Lindberg
William Watson
John Joseph Bennett
Naomi Baldwin
Jeremy Walsh

Donald Laury
Office of People's Counsel
Timothy Kotroco, Director/PDM
John Beverungen, County Attorney

William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, Director/Planning

IN THE MATTER OF:

*

BEFORE THE

LYNN HOGG & ELIZABETH SMITH
Legal Owners/Petitioners
505 Gun Rd.

*

COUNTY BOARD OF APPEALS

*

BALTIMORE COUNTY

13th Election District
1st Council District

*

Case No. 09-153-SPHX

*

* * * * *

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on Tuesday, April 27, 2010 at 10:00 a.m. at Hearing Room #2, located at Jefferson Bldg., 2nd Floor, 105 West Chesapeake Ave., Towson 21204 and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

Witness: John Bryan, PDM

Address: 111 W. Chesapeake Ave., First Floor
Towson, MD 21204

Name: J. Carroll Holzer

Firm: J. Carroll Holzer, PA

Address: 508 Fairmount Ave. Towson, 21286 **410-825-6961**

The witness named above is hereby ordered to so appear before the County Board of Appeals and bring any and all files and documents referenced in above case. The Board requests the Sheriff to issue the summons set forth herein.

Theresa B. Shelton

County Board of Appeals of Baltimore County

April 21, 2010
Date

Cost: \$

Summoned: _____, 2009

Not Served: _____, 2009

Sheriff of Baltimore County

C:Subpoenas CBA Gun Road 11-3-09

RECEIVED
APR 21 2010

BALTIMORE COUNTY
BOARD OF APPEALS

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

03/23/12

Case Number: 03-C-11-003309 AA OTH
Date Filed: 04/04/2011
Status: Closed/Inactive
Judge Assigned: To Be Assigned,
Location :
CTS Start : 04/04/11 Target : 09/30/12

In the Matter of Lynn Hogg, et al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C11003309V01
Administrative Agency	CBA-09-153-SPHX

RECEIVED
MAR 30 2012
BALTIMORE COUNTY
BOARD OF APPEALS

INVOLVED PARTIES

Type Num	Name(Last.First.Mid.Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
PET 001	Hogg, Lynn	Party ID: 1631896	BT DC 08/31/11	04/07/11
	Capacity : Petitioner/ Legal Owner			
	Mail: 505 Gun Road	04/07/11		04/07/11 OLL
	Arbutus, MD 21227			
	Attorney: 0007161 Schmidt, Lawrence	Appear: 04/07/2011 Removed: 08/31/11		04/07/11
PET 002	Smith, Elizabeth	Party ID: 1631901	BT DC 08/31/11	04/07/11
	Capacity : Petitioner/ Legal Owner			
	Mail: 505 Gun Road	04/07/11		04/07/11 OLL
	Arbutus, MD 21227			

BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED
MAR 30 2012

Attorney: 0007161 Schmidt, Lawrence

Appear: 04/07/2011 Removed:08/31/11

04/07/11

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
----------	----------------------------	--------------	---------------------------	---------

ADA	001 County Board Of Appeals Of Baltimore County		BT DC 08/31/11	04/07/11
	Party ID: 1631905			

Mail: Jefferson Building	04/07/11	04/07/11 OLL
105 W Chesapeake Avenue Room 203		
Towson, MD 21204		

Attorney: 0005744 Demilio, Carole S	Appear: 04/20/2011	04/20/11
People's Counsel For Baltimore County		
105 W Chesapeake Avenue		
Room 204		
Towson, MD 21204		
(410)887-2188		

0029075 Zimmerman, Peter M	Appear: 04/20/2011	04/20/11
People's Counsel For Baltimore County		
105 West Chesapeake Ave.		
Room 204		
Towson, MD 21204		
(410)887-2188		

ITP	001 Donoghue, Paul		BT DC 08/31/11	07/06/11
	Party ID: 1662092			

Mail: 508 Gun Road	08/31/11	08/31/11 DR
Baltimore, MD 21227		

Attorney: 0012186 Holzer, J Carroll	Appear: 07/06/2011	07/06/11
Holzer & Lee		
508 Fairmount Avenue		
Towson, MD 21286-5448		
(410)825-6961		

ITP	002 Donoghue, Elizabeth		BT DC 08/31/11	07/06/11
	Party ID: 1662093			

Attorney: 0012186 Holzer, J Carroll	Appear: 07/06/2011	07/06/11
Holzer & Lee		
508 Fairmount Avenue		
Towson, MD 21286-5448		
(410)825-6961		

ITP	003 Moore, William		BT DC 08/31/11	07/06/11
	Party ID: 1662094			

Mail: 510 Gun Road	08/31/11	08/31/11 DR
Baltimore, MD 21227		

Attorney: 0012186 Holzer, J Carroll
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

Appear: 07/06/2011

07/06/11

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
----------	----------------------------	--------------	---------------------------	---------

ITP 004 McKean, Paul

BT DC 08/31/11

07/06/11

Party ID: 1662095

Attorney: 0012186 Holzer, J Carroll
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

Appear: 07/06/2011

07/06/11

ITP 005 McKean, Lucy

BT DC 08/31/11

07/06/11

Party ID: 1662096

Mail: 403 Gun Road
Baltimore, MD 21227

08/31/11

08/31/11 DR

Attorney: 0012186 Holzer, J Carroll
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

Appear: 07/06/2011

07/06/11

ITP 006 Lindberg, Frank

BT DC 08/31/11

07/06/11

Party ID: 1662097

Mail: 511 Gun Road
Baltimore, MD 21227

08/31/11

08/31/11 DR

Attorney: 0012186 Holzer, J Carroll
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

Appear: 07/06/2011

07/06/11

ITP 007 Lindberg, Nancy

BT DC 08/31/11

07/06/11

Party ID: 1662098

Attorney: 0012186 Holzer, J Carroll
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

Appear: 07/06/2011

07/06/11

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
ITP 008	Bruns, Janet		BT DC 08/31/11	07/06/11
		Party ID: 1662099,		
	Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/06/2011		07/06/11
ITP 009	Watson, William		BT DC 08/31/11	07/06/11
		Party ID: 1662100		
	Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/06/2011		07/06/11
ITP 010	Hedeman, Jackie		BT DC 08/31/11	07/06/11
		Party ID: 1662103		
	Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/06/2011		07/06/11
ITP 011	Bennett, J Joseph		BT DC 08/31/11	07/06/11
		Party ID: 1662104		
	Mail: 516 Gun Road Baltimore, MD 21227	08/31/11		08/31/11 DR
	Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/06/2011		07/06/11
ITP 012	Earp, Frank		BT DC 08/31/11	07/06/11
		Party ID: 1662105		
	Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/06/2011		07/06/11
ITP 013	Baldwin, Naomi		BT DC 08/31/11	07/06/11
		Party ID: 1662106		

Mail: 324 Gun Road
Baltimore, MD 21227

08/31/11

08/31/11 DR

Attorney: 0012186 Holzer, J Carroll
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

Appear: 07/06/2011

07/06/11

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
----------	----------------------------	--------------	---------------------------	---------

ITP 014 Macgill, Charles

Party ID: 1662111

BT DC 08/31/11

07/06/11

Attorney: 0012186 Holzer, J Carroll
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

Appear: 07/06/2011

07/06/11

ITP 015 Macgill, Mary Jane

Party ID: 1662112

BT DC 08/31/11

07/06/11

Attorney: 0012186 Holzer, J Carroll
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

Appear: 07/06/2011

07/06/11

ITP 016 Walsh, Jeremy

Party ID: 1662113

BT DC 08/31/11

07/06/11

Attorney: 0012186 Holzer, J Carroll
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

Appear: 07/06/2011

07/06/11

ITP 017 Carrion, Gloria

Party ID: 1662115

BT DC 08/31/11

07/06/11

Attorney: 0012186 Holzer, J Carroll
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

Appear: 07/06/2011

07/06/11

ITP 018 Gun Road Historical & Preservation Assn

Party ID: 1678969

BT DC 08/31/11

08/31/11

Attorney: 0012186 Holzer, J Carroll

Appear: 04/15/2011

08/31/11

Holzer & Lee
 508 Fairmount Avenue
 Towson, MD 21286-5448
 (410)825-6961

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec			
09/08/11	09:30A	CR08	Civil Non-Jury Trial	Y	MJN	01 /01	JMO PF
			Cancelled/Vacated 08/31/11 A				

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	Activity User Date
08/31/11	DC	Dismissal	BT	BEFORE TRIAL/HEARING	DR 08/31/11

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	04/07/11	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
00001000	Petition for Judicial Review with exhibit Filed by PET001-Hogg, PET002-Smith	04/04/11	04/07/11	PET001	TBA	08/31/11	OLL DR
00001001	Response to Petition for Judicial Review *	04/18/11	04/20/11	ADA001	TBA	08/31/11	LC DR
00002000	Certificate of compliance	04/12/11	04/16/11	ADA001	TBA	08/31/11	SAP DR
00003000	Intention to Participate Gun Road Historical & Preservation assn, paul donoghue, william moore, naomi baldwin, lucy mckean, frank lindberg, and joseph bennett	04/15/11	04/22/11	000	TBA	08/31/11	LC DR
00004000	Transcript of Record from Adm Agency *	06/07/11	06/08/11	000	TBA	08/31/11	SAP DR

Num/Seq Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
00005000 Notice of Transcript of Record Sent	06/08/11	06/08/11	ADA001	TBA	06/08/11	SAP
00006000 Notice of Transcript of Record Sent	06/08/11	06/08/11	PET001	TBA	06/08/11	SAP
00007000 Notice of Transcript of Record Sent	06/08/11	06/08/11	PET002	TBA	06/08/11	SAP
00008000 Motion to Dismiss for petitioners failure to obtain required transcripts for transmittal to court within maximum time permitted by rules Filed by ITP014-Macgill, ITP002-Donoghue, ITP003-Moore, ITP017-Carrion, ITP001-Donoghue, ITP016-Walsh, ITP015-Macgill, ITP013-Baldwin, ITP012-Earp, ITP011-Bennett	06/28/11	07/06/11	ITP014	TBA	08/31/11	LC DR
00009000 Scheduling Order	07/07/11	07/07/11	000	TBA	07/07/11	JMO
00010000 Motion to Dismiss For Petitioners Failure To Obtain Required Transcripts For Transmittal To Court Within Maximum Time Permitted By Rules*	06/30/11	07/08/11	ADA001	JFF Moot	08/31/11	NF DR
00011000 Motion to Strike Appearance (Lawrence E Schmidt) Filed by PET002-Smith, PET001-Hogg	07/12/11	07/19/11	PET002	JFF Granted	08/31/11	LC DR
00012000 Second Motion to Dismiss for Petitioners Failure to file a timely memorandum as required by the Maryland Rules Filed by ITP001-Donoghue, ITP002-Donoghue, ITP003-Moore, ITP004-McKean, ITP005-McKean, ITP006-Lindberg, ITP007-Lindberg, ITP008-Bruns, ITP009-Watson, ITP010-Hedeman, ITP011-Bennett, ITP012-Earp, ITP013-Baldwin, ITP014-Macgill, ITP015-Macgill, ITP016-Walsh, ITP017-Carrion	07/25/11	08/03/11	ITP001	JFF Moot	08/31/11	KAS DR
00013000 Motion to Dismiss * Filed by PET001-Hogg, PET002-Smith	07/29/11	08/05/11	PET001	JFF Granted	08/31/11	KAS DR
00014000 Attorney Appearance Removed Lawrence Schmidt	08/31/11	08/31/11	PET001	TBA	08/31/11	DR
00015000 Attorney Appearance Removed Lawrence Schmidt	08/31/11	08/31/11	PET002	TBA	08/31/11	DR
00016000 Notice to Employ New Counsel Sent	08/31/11	08/31/11	PET001	TBA	08/31/11	DR
00017000 Notice to Employ New Counsel Sent	08/31/11	08/31/11	PET002	TBA	08/31/11	DR
00018000 Docket Entries sent to Board fo Appeals	09/08/11	09/08/11	000	TBA		NMG

TICKLE

Code Tickle Name	Status Expires	#Days	AutoExpire	GoAhead	From Type	Num Seq
1ANS 1st Answer Tickle	CLOSED 04/18/11	0	no	no	DANS D	1 001
1YRT One Year Tickle (Jud	CLOSED 04/03/12	365	no	no	DAAA D	1 000
SLMR Set List For Motions	CANCEL 08/27/11	60	no	no	MDIS D	8 000
SLTR Set List For Trial	CANCEL 04/18/11	0	yes	no	1ANS T	1 001
SLTR Set List For Trial	Done 06/07/11	0	yes	yes	DTRA D	4 000

DIFFERENTIATED CASE MANAGEMENT**TRACKS AND MILESTONES**

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 07/07/11 Order Date : 07/07/11
Start Date : 07/07/11 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(	07/22/11	08/31/11	CLOSED	
All Motions (excluding Motions in Limine	08/08/11	08/31/11	CLOSED	
TRIAL DATE is	10/05/11	08/31/11	CLOSED	

ACCOUNTING SUMMARYNON-INVISED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct Desc	Oblig	Payment	Total MOP	Balance
04/04/11	201100008780/CPW	1102 CF-Civil Fil	.00	80.00	-80.00 CK	-80.00
04/04/11	201100008780/CPW	1500 Appearance F	.00	10.00	-10.00 CK	-90.00
04/04/11	201100008780/CPW	1265 MLSC	.00	55.00	-55.00 CK	-145.00
04/07/11		1102 CF-Civil Fil	80.00	.00	80.00	-65.00
04/07/11		1265 MLSC	55.00	.00	55.00	-10.00
04/07/11		1500 Appearance F	10.00	.00	10.00	.00

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

RECEIVED

SEP 9 2011

BALTIMORE COUNTY
BOARD OF APPEALS

09/08/11

Case Number: 03-C-11-003309 AA OTH
Date Filed: 04/04/2011
Status: Closed/Inactive
Judge Assigned: To Be Assigned,
Location :
CTS Start : 04/04/11 Target : 09/30/12

In the Matter of Lynn Hogg, et al

CASE HISTORY

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C11003309V01
Administrative Agency	CBA-09-153-SPHX

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
PET 001	Hogg, Lynn	Party ID: 1631896	BT DC 08/31/11	04/07/11
	Capacity : Petitioner/ Legal Owner			
	Mail: 505 Gun Road	04/07/11		04/07/11 OLL
	Arbutus, MD 21227			
	Attorney: 0007161 Schmidt, Lawrence	Appear: 04/07/2011 Removed:08/31/11		04/07/11
PET 002	Smith, Elizabeth	Party ID: 1631901	BT DC 08/31/11	04/07/11
	Capacity : Petitioner/ Legal Owner			
	Mail: 505 Gun Road	04/07/11		04/07/11 OLL
	Arbutus, MD 21227			

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
ADA 001	County Board Of Appeals Of Baltimore County		BT DC 08/31/11	04/07/11
		Party ID: 1631905		
	Mail: Jefferson Building	04/07/11		04/07/11 OLL
	105 W Chesapeake Avenue Room 203			
	Towson, MD 21204			
	Attorney: 0005744 Demilio, Carole S	Appear: 04/20/2011		04/20/11
	People's Counsel For Baltimore County			
	105 W Chesapeake Avenue			
	Room 204			
	Towson, MD 21204			
	(410)887-2188			
	0029075 Zimmerman, Peter M	Appear: 04/20/2011		04/20/11
	People's Counsel For Baltimore County			
	105 West Chesapeake Ave.			
	Room 204			
	Towson, MD 21204			
	(410)887-2188			
ITP 001	Donoghue, Paul		BT DC 08/31/11	07/06/11
		Party ID: 1662092		
	Mail: 508 Gun Road	08/31/11		08/31/11 DR
	Baltimore, MD 21227			
	Attorney: 0012186 Holzer, J Carroll	Appear: 07/06/2011		07/06/11
	Holzer & Lee			
	508 Fairmount Avenue			
	Towson, MD 21286-5448			
	(410)825-6961			
ITP 002	Donoghue, Elizabeth		BT DC 08/31/11	07/06/11
		Party ID: 1662093		
	Attorney: 0012186 Holzer, J Carroll	Appear: 07/06/2011		07/06/11
	Holzer & Lee			
	508 Fairmount Avenue			
	Towson, MD 21286-5448			
	(410)825-6961			
ITP 003	Moore, William		BT DC 08/31/11	07/06/11
		Party ID: 1662094		
	Mail: 510 Gun Road	08/31/11		08/31/11 DR
	Baltimore, MD 21227			

Attorney: 0012186 Holzer, J Carroll
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

Appear: 07/06/2011

07/06/11

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
ITP 004	McKean, Paul	Party ID: 1662095	BT DC 08/31/11	07/06/11
Attorney: 0012186	Holzer, J Carroll	Appear: 07/06/2011		07/06/11
	Holzer & Lee			
	508 Fairmount Avenue			
	Towson, MD 21286-5448			
	(410)825-6961			
ITP 005	McKean, Lucy	Party ID: 1662096	BT DC 08/31/11	07/06/11
Mail: 403 Gun Road		08/31/11		08/31/11 DR
	Baltimore, MD 21227			
Attorney: 0012186	Holzer, J Carroll	Appear: 07/06/2011		07/06/11
	Holzer & Lee			
	508 Fairmount Avenue			
	Towson, MD 21286-5448			
	(410)825-6961			
ITP 006	Lindberg, Frank	Party ID: 1662097	BT DC 08/31/11	07/06/11
Mail: 511 Gun Road		08/31/11		08/31/11 DR
	Baltimore, MD 21227			
Attorney: 0012186	Holzer, J Carroll	Appear: 07/06/2011		07/06/11
	Holzer & Lee			
	508 Fairmount Avenue			
	Towson, MD 21286-5448			
	(410)825-6961			
ITP 007	Lindberg, Nancy	Party ID: 1662098	BT DC 08/31/11	07/06/11
Attorney: 0012186	Holzer, J Carroll	Appear: 07/06/2011		07/06/11
	Holzer & Lee			
	508 Fairmount Avenue			
	Towson, MD 21286-5448			
	(410)825-6961			

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
ITP 008	Bruns, Janet		BT DC 08/31/11	07/06/11
		Party ID: 1662099		
	Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/06/2011		07/06/11
ITP 009	Watson, William		BT DC 08/31/11	07/06/11
		Party ID: 1662100		
	Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/06/2011		07/06/11
ITP 010	Hedeman, Jackie		BT DC 08/31/11	07/06/11
		Party ID: 1662103		
	Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/06/2011		07/06/11
ITP 011	Bennett, J Joseph		BT DC 08/31/11	07/06/11
		Party ID: 1662104		
	Mail: 516 Gun Road Baltimore, MD 21227	08/31/11		08/31/11 DR
	Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/06/2011		07/06/11
ITP 012	Earp, Frank		BT DC 08/31/11	07/06/11
		Party ID: 1662105		
	Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/06/2011		07/06/11
ITP 013	Baldwin, Naomi		BT DC 08/31/11	07/06/11
		Party ID: 1662106		

Mail: 324 Gun Road
Baltimore, MD 21227

08/31/11

08/31/11 DR

Attorney: 0012186 Holzer, J Carroll
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21286-5448
(410)825-6961

Appear: 07/06/2011

07/06/11

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
ITP	014 Macgill, Charles		BT DC 08/31/11	07/06/11
		Party ID: 1662111		
	Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/06/2011		07/06/11
ITP	015 Macgill, Mary Jane		BT DC 08/31/11	07/06/11
		Party ID: 1662112		
	Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/06/2011		07/06/11
ITP	016 Walsh, Jeremy		BT DC 08/31/11	07/06/11
		Party ID: 1662113		
	Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/06/2011		07/06/11
ITP	017 Carrion, Gloria		BT DC 08/31/11	07/06/11
		Party ID: 1662115		
	Attorney: 0012186 Holzer, J Carroll Holzer & Lee 508 Fairmount Avenue Towson, MD 21286-5448 (410)825-6961	Appear: 07/06/2011		07/06/11
ITP	018 Gun Road Historical & Preservation Assn		BT DC 08/31/11	08/31/11
		Party ID: 1678969		
	Attorney: 0012186 Holzer, J Carroll	Appear: 04/15/2011		08/31/11

Holzer & Lee
 508 Fairmount Avenue
 Towson, MD 21286-5448
 (410)825-6961

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec			

09/08/11	09:30A	CR08	Civil Non-Jury Trial	Y	MJN	01 /01	JMO PF
			Cancelled/Vacated			08/31/11 A	

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	Activity User	Date
08/31/11	DC	Dismissal	BT	BEFORE TRIAL/HEARING	DR	08/31/11

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	04/07/11	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0001000	Petition for Judicial Review with exhibit Filed by PET001-Hogg, PET002-Smith	04/04/11	04/07/11	PET001	TBA	08/31/11	OLL DR
0001001	Response to Petition for Judicial Review *	04/18/11	04/20/11	ADA001	TBA	08/31/11	LC DR
0002000	Certificate of compliance	04/12/11	04/16/11	ADA001	TBA	08/31/11	SAP DR
0003000	Intention to Participate Gun Road Historical & Preservation assn, paul donoghue, william moore, naomi baldwin, lucy mckean, frank lindberg, and joseph bennett	04/15/11	04/22/11	000	TBA	08/31/11	LC DR
0004000	Transcript of Record from Adm Agency *	06/07/11	06/08/11	000	TBA	08/31/11	SAP DR

Num/Seq Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0005000 Notice of Transcript of Record Sent	06/08/11	06/08/11	ADA001	TBA		06/08/11	SAP
0006000 Notice of Transcript of Record Sent	06/08/11	06/08/11	PET001	TBA		06/08/11	SAP
0007000 Notice of Transcript of Record Sent	06/08/11	06/08/11	PET002	TBA		06/08/11	SAP
0008000 Motion to Dismiss for petitioners failure to obtain required transcripts for transmittal to court within maximum time permitted by rules Filed by ITP014-Macgill, ITP002-Donoghue, ITP003-Moore, ITP017-Carrion, ITP001-Donoghue, ITP016-Walsh, ITP015-Macgill, ITP013-Baldwin, ITP012-Earp, ITP011-Bennett	06/28/11	07/06/11	ITP014	TBA		08/31/11	LC DR
0009000 Scheduling Order	07/07/11	07/07/11	000	TBA		07/07/11	JMO
0010000 Motion to Dismiss For Petitioners Failure To Obtain Required Transcripts For Transmittal To Court Within Maximum Time Permitted By Rules*	06/30/11	07/08/11	ADA001	JFF	Moot	08/31/11	NF DR
0011000 Motion to Strike Appearance (Lawrence E Schmidt) Filed by PET002-Smith, PET001-Hogg	07/12/11	07/19/11	PET002	JFF	Granted	08/31/11	LC DR
0012000 Second Motion to Dismiss for Petitioners Failure to file a timely memorandum as required by the Maryland Rules Filed by ITP001-Donoghue, ITP002-Donoghue, ITP003-Moore, ITP004-McKean, ITP005-McKean, ITP006-Lindberg, ITP007-Lindberg, ITP008-Bruns, ITP009-Watson, ITP010-Hedeman, ITP011-Bennett, ITP012-Earp, ITP013-Baldwin, ITP014-Macgill, ITP015-Macgill, ITP016-Walsh, ITP017-Carrion	07/25/11	08/03/11	ITP001	JFF	Moot	08/31/11	KAS DR
0013000 Motion to Dismiss * Filed by PET001-Hogg, PET002-Smith	07/29/11	08/05/11	PET001	JFF	Granted	08/31/11	KAS DR
0014000 Attorney Appearance Removed Lawrence Schmidt	08/31/11	08/31/11	PET001	TBA		08/31/11	DR
0015000 Attorney Appearance Removed Lawrence Schmidt	08/31/11	08/31/11	PET002	TBA		08/31/11	DR
0016000 Notice to Employ New Counsel Sent	08/31/11	08/31/11	PET001	TBA		08/31/11	DR
0017000 Notice to Employ New Counsel Sent	08/31/11	08/31/11	PET002	TBA		08/31/11	DR
0018000 Docket Entries sent to Board fo Appeals	09/08/11	09/08/11	000	TBA			NMG

TICKLE

Code Tickle Name	Status Expires	#Days	AutoExpire	GoAhead	From Type	Num	Seq
1ANS 1st Answer Tickle	CLOSED 04/18/11	0	no	no	DANS D	001	001
1YRT One Year Tickle (Jud	CLOSED 04/03/12	365	no	no	DAAA D	001	000
SLMR Set List For Motions	CANCEL 08/27/11	60	no	no	MDIS D	008	000
SLTR Set List For Trial	CANCEL 04/18/11	0	yes	no	1ANS T	001	001
SLTR Set List For Trial Done	06/07/11	0	yes	yes	DTRA D	004	000

DIFFERENTIATED CASE MANAGEMENT**TRACKS AND MILESTONES**

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 07/07/11 Order Date : 07/07/11
Start Date : 07/07/11 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(	07/22/11	08/31/11	CLOSED	
All Motions (excluding Motions in Limine	08/08/11	08/31/11	CLOSED	
TRIAL DATE is	10/05/11	08/31/11	CLOSED	

ACCOUNTING SUMMARY

NON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct Desc	Oblig	Payment	Total MOP	Balance
04/04/11	201100008780/CPW	1102 CF-Civil Fil	.00	80.00	-80.00 CK	-80.00
04/04/11	201100008780/CPW	1500 Appearance F	.00	10.00	-10.00 CK	-90.00
04/04/11	201100008780/CPW	1265 MLSC	.00	55.00	-55.00 CK	-145.00
04/07/11		1102 CF-Civil Fil	80.00	.00	80.00	-65.00
04/07/11		1265 MLSC	55.00	.00	55.00	-10.00
04/07/11		1500 Appearance F	10.00	.00	10.00	.00

CIRCUIT COURT FOR BALTIMORE COUNTY

Case #: 03-C-11-003309	Folder #: 01	Date Filed: 04/04/2011
Case Type: Administrative Agency Appeal		
 In the Matter of Lynn Hogg, et al		
Petitioner: Lynn Hogg		
Petitioner's Attorney: Lawrence Schmidt Esq	Phone No.: (410)821-0070	Fax No.: (410)821-0071

C11003309V01



8/31/11
DR



CIRCUIT COURT FOR BALTIMORE COUNTY CIVIL / FAMILY

ADDITIONAL RECORDS ON
MICROFILM YES ☐

1 pl — to —
2 pl — to —
3 pl — to —
4 pl — to —
5 pl — to —
6 pl — to —
7 pl — to —
8 pl — to —
9 pl — to —
10 pl — to —
11 pl — to —
12 pl — to —
13 pl — to —
14 pl — to —
15 pl — to —

VOLUME _____

C11 03309
CASE NUMBER

COURT MINUTES

Judge _____

Billing _____

Cashier _____

(Give to Appeals Dept) _____

Case to _____
(Give to Copy Center)

entries (Give to Copy Center)
Hand of appeals Rullo Co.
plain) _____

secret entries sent to Board of Appeals *NA*

BW 4/24
11 AM



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

January 27, 2009

William J. Wiseman, III; Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: PETITION FOR SPECIAL EXCEPTION
Elizabeth Smith & Lynn Hogg- Petitioner
505 Gun Road
Case No: 09-153-X

RECEIVED

JAN 27 2009

ZONING COMMISSIONER

Dear Mr. Wiseman,

As is our custom, because this case involves traffic issues, we asked Stephen E. Weber, Chief of Traffic Engineering, to review the site plan. He sent the enclosed e-mail report dated January 23, 2009, which we forward for your consideration. No hearing date has been set for this case.

When we checked with the Zoning Office about the hearing date, we were told that the Petition and/or site plan may be amended. If the amendment affects traffic directly or indirectly, the Petitioner should afford Mr. Weber the opportunity to review the amendment prior to the hearing.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Enclosure

cc: Larry Link, Representative for Petitioner
Stephen Weber, Chief

From: Stephen Weber
To: People's Counsel
CC: Dennis Kennedy
Date: 01/23/2009 10:38 PM
Subject: Case No. 09-153-X, 505 Gun Rd

Dear Mr. Zimmerman -

We have reviewed the site plan for the subject child care center. From a traffic standpoint, this is an ideal setting and we find no traffic issues at all. The road into the site is clearly capable of handling the traffic demands generated by the site. The site itself and the adjacent roadway basically insures that children will be dropped off and picked up on site at a significant distance from traffic going by the site. As such, we find no adverse traffic impacts caused by this request.

Should you have any questions or wish to discuss this further, please give me a call at ext. 3554.

Stephen E. Weber, Chief
Div. of Traffic Engineering
Baltimore County, Maryland
111 W. Chesapeake Avenue, Rm. 326
Towson, MD 21204
(410) 887-3554



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

BW
4-24-09

April 17, 2009

HAND DELIVERED

William J. Wiseman, III, Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

RECEIVED

APR 17 2009

ZONING COMMISSIONER

Re: PETITION FOR SPECIAL EXCEPTION
Elizabeth Smith & Lynn Hogg- Petitioner
505 Gun Road
Case No: 09-153-X

Dear Mr. Wiseman,

On January 27, 2009, we transmitted the enclosed letter and Stephen Weber's January 23, 2009 e-mail. Since then, the traffic engineering office, in communication with the planning office, has done additional investigation. This led to the enclosed supplemental e-mail correspondence between Stephen Weber, of Traffic Engineering, and Dennis Wertz, area planner for the first district, dated April 13, 2009. Mr. Weber's further site investigation did reveal concerns about obstruction to site distance at the entrance because of a stone abutment. He also recommends a two-way driveway.

The Weber-Wertz correspondence also refers to Mr. Wertz's intra-office planning correspondence dated April 7, 2009. This led to the planning office's inter-office correspondence dated April 8, 2009, approving and incorporating Mr. Wertz's views. These parallel documents, both enclosed, recommend denial of the petition and state in detail the facts and reasons relevant to the planning concerns.

William J. Wiseman, III, Zoning Commissioner
April 17, 2009
Page 2

Separately, we have received information that many citizens are concerned about this case and expect to attend the April 24 hearing.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Peter Max Zimmerman".

Peter Max Zimmerman
People's Counsel for Baltimore County

Enclosure

cc: Sebastian A. Cross, Esquire, Attorney for Petitioner
Stephen E. Weber, Division Chief, Traffic Engineering
Dennis Wertz, Office of Planning and Zoning

From: Stephen Weber
To: Dennis Wertz
CC: People's Counsel
Date: 04/13/09 9:14 PM
Subject: Fwd: Case No. 09-153 (505 Gun Road)
Attachments: ZAC 09-153 (505 Gun Road)6.doc; IMG_0430.JPG

Dennis -

Looking over your comments I don't find any issues you raised conflicting with the traffic elements of the case. We did take physical measurements of the sight line from the driveway looking to the south (photo attached). Based on the posted speed limit for the roadway of 30 mph, there should be a minimum 200-foot sight line for a driveway. However, the available sight line is only 150 feet due to the stone fence abutment and that was taken from only 8 feet back from the edge of the roadway. 10 feet back would be a more preferable location. The sight line would need to be improved and I think the property owner would want to do that anyway, just from a liability standpoint. If someone were to exit the property as a commercial venture, and it was their own property creating the vision problem and denying customers/clients adequate vision of approaching traffic in which to safely enter the traffic stream, it would seem the property owner could be sued in any resulting accidents with contributory negligence.

Also, with respect to the driveway width, if this property were changed to a Class B Group Child Care Center, I would agree it would be preferable for any 2-way driveway to be 20 feet wide. However, at an absolute minimum, the first 100 to 150 feet of the driveway off of Gun Rd would have to be at least 20 feet wide to insure that traffic flow going into and out of the driveway from Gun Rd is not interfered with. Obviously one would not want exiting traffic preventing entering traffic from getting off of Gun Rd expeditiously. A narrow entrance would create an unsafe condition.

If you feel further discussion is needed, feel free to give me a call.
Steve Weber

>>> Dennis Wertz 4/7/09 11:17 AM >>>
Steve,

My revised comments are attached. In particular, I removed the comment regarding Gun Road not being adequate for providing access to the proposed use.

Please let me know if you disagree with anything in the revised comments.

Thanks.

Dennis Wertz
Baltimore County Office of Planning
105 W. Chesapeake Avenue, Suite 101
Towson, MD 21204
dwertz@baltimorecountymd.gov
Phone: 410-887-3480
Fax: 410-887-5862



CERTIFICATE OF COMPLETION



HOWARD

COMMUNITY COLLEGE

You Can Get There From Here.

The Division of Continuing Education & Workforce Development
certifies that

Elizabeth Smith

has successfully completed the course
Child Care Administration for Directors
#4711 ZB675 (M1755) 2009CW

45 hours, 4.5 CEUs

Lynda Pollard, Instructor
awarded on March 21, 2009

JoAnn D. Hawkins

JoAnn D. Hawkins, Associate Vice President
Continuing Education & Workforce Development

Patricia M. Keeton

Patricia M. Keeton, Executive Director
Workforce Development

BALTIMORE COUNTY, MARYLAND

INTRA-OFFICE CORRESPONDENCE

TO: Curtis Murray

DATE: 4/7/09

FROM: Dennis Wertz

SUBJECT: ZAC 09-153 (505 Gun Road)

The Planning Office should recommend that the Petition for Special Exception be denied. This particular location is not appropriate for a Class B Group Child Care Center.

The petitioner's property is one of several properties in the Gun Road area that were rezoned from DR1 to RC5 in the 2008 CZMP as part of Issue 1-054 (see attached map). At this time all of the single-family residential properties that have direct or indirect access to Gun Road are zoned RC5. The rezoning to RC5 was enacted to protect and maintain the area's rural residential character and integrity. The proposed use is not in harmony with the spirit and intent of the RC5 zoning classification for this particular neighborhood.

The Gun Road, RC5 zoned area is a residential neighborhood comprised of approximately 44 single-family dwellings located on large lots. Gun Road also provides access to the Our Lady of Mount Providence Convent, which is located at the intersection of Gun Road and South Rolling Road and is zoned DR1. Gun Road is classified as a local road on the 2007 Federal Highway Functional Classification Map for Baltimore County. Local roads are typically low in traffic volumes and speed. Local roads serve to provide direct access to individual land uses, but local residential access roads generally are not intended to provide service to important traffic generators.

The size (capacity) of the proposed group child care center is not compatible with, and won't complement, the Gun Road neighborhood. The Gun Road neighborhood is not a population center. It is a small, isolated, residential area with very low development intensity. Gun Road is a long, winding, narrow (18 feet wide without shoulders), very low-volume, dead-end road. Access to the nearest major thoroughfare (i.e., South Rolling Road/Selford Road) is more than half a mile from the petitioner's site. A Class B Group Child Care center is not a logical extension of a residential use. Class B centers are principal uses and are not permitted as an accessory use within single-family detached dwellings. The land use intensity and character of activity associated with a Class B center are greatly different than that of a typical family occupying a house. The proposed center will operate as a principal business use. It is likely that all of, or the vast majority of, the children to be served by this business will live outside the Gun Road neighborhood.

Egress from the petitioner's property is not entirely safe. There is poor sight distance to the south along Gun Road from the property because of a stone wall located along the driveway at its connection to Gun Road. When exiting the property, it would be necessary to move the front end of any motor vehicle longer than a compact car partly onto the roadway in order to see if there are any oncoming vehicles on Gun Road.

The site plan doesn't comply with Section 409 (Off-street Parking and Loading) of the BCZR. Section 409.4.A requires that driveways be at least 12 feet in width for one-way movements and at least 20 feet in width for two-way movements. Section 409.8.A.2 requires that parking facilities be paved with a durable and dustless surface. According to the petitioner's attorney, no new paving will be added to the site. The site plan indicates that the existing two-way and one-way on-site driveways are 12 feet wide although they are actually less than 10 feet wide. It appears that the 5 proposed parking spaces will not be paved with a durable and dustless surface. Also, some of the parking spaces shown on the plan are not presently usable for parking because of shrubbery planted along the driveway.

It appears that the site plan doesn't accurately show the location of the one-way driveway. The revised site plan shows this driveway as being located approximately 60 feet from the eastern property line at its closest point while the previous site plan shows the driveway as being located much closer to the property line (i.e., approximately 30 feet from the property line). The attached orthophoto shows a driveway location that appears to match the driveway location shown on the previous site plan.

The existing fence surrounding the play area shown on the site plan is in violation of the BCZR. Section 424.1.B requires that the fencing for outdoor play space shall be solid wood stockade or panel and a minimum height of five feet. The existing fence is chain link with a height of about four feet. Also, based on the above comments regarding the driveway location, it is questionable whether the play space is located at least 20 feet from the property line as also required by Section 424.1.B.

This neighborhood is not served by public sewer. It isn't clear whether the private on-lot sewer system will be adequate to serve a large-capacity day care center.

In summary the requested special exception for a Class B Group Child Care Center should be denied pursuant to Section 502.1 of the BCZR because the proposed use is not appropriate at this location. Specifically, the proposed use at this particular location will:

- Operate as a principal business use on a narrow, residential access road in the middle of a very low density, single-family neighborhood;
- Be highly dissimilar in relation to the use of all other houses in the neighborhood with respect to land use intensity and character of activity;
- Generate vehicular traffic that will exacerbate an existing traffic hazard at the petitioner's driveway connection to Gun Road;
- Interfere with adequate provisions for on-site traffic circulation and parking because the driveways and parking spaces will not be in accordance with Section 409;

- Be inconsistent with the spirit and intent of the recent rezoning of the neighborhood from DR1 to the RC5 classification, which was enacted to protect and maintain the rural residential character and the integrity of the neighborhood.

In addition, the following comments are offered for consideration:

- There doesn't appear to be any legitimate undue hardship for approving a modified parking plan. Also, special exception uses generally should comply with all requirements and conditions and not need significant variances or modifications of standards.
- It isn't clear whether the proposed use will interfere with the adequate provision for on-lot sewage disposal. The applicant should demonstrate that the existing system is adequate to accommodate sewage flows from the proposed child care center.
- In the event the requested special exception is approved –
 - The building wherein the child care center will be located will also be used as a private residence. The Zoning Commissioner should determine whether 2 additional off-street parking spaces must be provided above the number of parking spaces required for the child care center.
 - The area of any freestanding business identification sign should not exceed one square foot per face and the sign should be non-illuminated.
 - The fence surrounding the play area should comply with Section 424.1.B of the BCZR with respect to height, materials, and distance from the property line.

c: Lynn Lanham
Jeff Mayhew

BW 4/24
11am

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: April 8, 2009

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

RECEIVED

SUBJECT: 505 Gun Road

APR 16 2009

INFORMATION:

Item Number: 9-153

ZONING COMMISSIONER

Petitioner: Lynn R. Hogg

Zoning: RC 5

Requested Action: Special Exception

The Planning Office recommends that the Petition for Special Exception be denied. This particular location is not appropriate for a Class B Group Child Care Center.

The petitioner's property is one of several properties in the Gun Road area that were rezoned from DR1 to RC5 in the 2008 CZMP as part of Issue 1-054 (see attached map). At this time all of the single-family residential properties that have direct or indirect access to Gun Road are zoned RC5. The rezoning to RC5 was enacted to protect and maintain the area's rural residential character and integrity. The proposed use is not in harmony with the spirit and intent of the RC5 zoning classification for this particular neighborhood.

The Gun Road, RC5 zoned area is a residential neighborhood comprised of approximately 44 single-family dwellings located on large lots. Gun Road also provides access to the Our Lady of Mount Providence Convent, which is located at the intersection of Gun Road and South Rolling Road and is zoned DR1. Gun Road is classified as a local road on the 2007 Federal Highway Functional Classification Map for Baltimore County. Local roads are typically low in traffic volumes and speed. Local roads serve to provide direct access to individual land uses, but local residential access roads generally are not intended to provide service to important traffic generators.

The size (capacity) of the proposed group childcare center is not compatible with, and won't complement, the Gun Road neighborhood. The Gun Road neighborhood is not a population center. It is a small, isolated, residential area with very low development intensity. Gun Road is a long, winding, narrow (18 feet wide without shoulders), very low-volume, dead-end road. Access to the nearest major thoroughfare (i.e., South Rolling Road/Selford Road) is more than half a mile from the petitioner's site. A Class B Group Child Care center is not a logical

extension of a residential use. Class B centers are principal uses and are not permitted as an accessory use within single-family detached dwellings. The land use intensity and character of activity associated with a Class B center are greatly different than that of a typical family occupying a house. The proposed center will operate as a principal business use. It is likely that all of, or the vast majority of, the children to be served by this business will live outside the Gun Road neighborhood.

Egress from the petitioner's property is not entirely safe. There is poor sight distance to the south along Gun Road from the property because of a stonewall located along the driveway at its connection to Gun Road. When exiting the property, it would be necessary to move the front end of any motor vehicle longer than a compact car partly onto the roadway in order to see if there are any oncoming vehicles on Gun Road.

The site plan doesn't comply with Section 409 (Off-street Parking and Loading) of the BCZR. Section 409.4.A requires that driveways be at least 12 feet in width for one-way movements and at least 20 feet in width for two-way movements. Section 409.8.A.2 requires that parking facilities be paved with a durable and dustless surface. According to the petitioner's attorney, no new paving will be added to the site. The site plan indicates that the existing two-way and one-way on-site driveways are 12 feet wide although they are actually less than 10 feet wide. It appears that the 5 proposed parking spaces will not be paved with a durable and dustless surface. Also, some of the parking spaces shown on the plan are not presently usable for parking because of shrubbery planted along the driveway.

It appears that the site plan doesn't accurately show the location of the one-way driveway. The revised site plan shows this driveway as being located approximately 60 feet from the eastern property line at its closest point while the previous site plan shows the driveway as being located much closer to the property line (i.e., approximately 30 feet from the property line). The attached orthophotography shows a driveway location that appears to match the driveway location shown on the previous site plan.

The existing fence surrounding the play area shown on the site plan is in violation of the BCZR. Section 424.1.B requires that the fencing for outdoor play space shall be solid wood stockade or panel and a minimum height of five feet. The existing fence is chain link with a height of about four feet. Also, based on the above comments regarding the driveway location, it is questionable whether the play space is located at least 20 feet from the property line as also required by Section 424.1.B.

Public sewer does not serve this neighborhood. It isn't clear whether the private on-lot sewer system will be adequate to serve a large-capacity day care center.

SUMMARY OF RECOMMENDATION:

The requested special exception for a Class B Group Child Care Center should be **denied** pursuant to Section 502.1 of the BCZR because the proposed use is not appropriate at this location. Specifically, the proposed use at this particular location will:

- Operate as a principal business use on a narrow, residential access road in the middle of a very low density, single-family neighborhood;

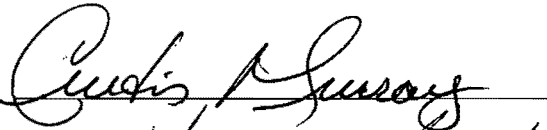
- Be highly dissimilar in relation to the use of all other houses in the neighborhood with respect to land use intensity and character of activity;
- Generate vehicular traffic that will exacerbate an existing traffic hazard at the petitioner's driveway connection to Gun Road;
- Interfere with adequate provisions for on-site traffic circulation and parking because the driveways and parking spaces will not be in accordance with Section 409;
- Be inconsistent with the spirit and intent of the recent rezoning of the neighborhood from DR1 to the RC5 classification, which was enacted to protect and maintain the rural residential character and the integrity of the neighborhood.

In addition, the following comments are offered for consideration:

- There doesn't appear to be any legitimate undue hardship for approving a modified parking plan. Also, special exception uses generally should comply with all requirements and conditions and not need significant variances or modifications of standards.
- It isn't clear whether the proposed use will interfere with the adequate provision for on-lot sewage disposal. The applicant should demonstrate that the existing system is adequate to accommodate sewage flows from the proposed childcare center.
- In the event the requested special exception is approved –
 - The building wherein the childcare center will be located will also be used as a private residence. The Zoning Commissioner should determine whether 2 additional off-street parking spaces must be provided above the number of parking spaces required for the childcare center.
 - The area of any freestanding business identification sign should not exceed one square foot per face and the sign should be non-illuminated.
 - The fence surrounding the play area should comply with Section 424.1.B of the BCZR with respect to height, materials, and distance from the property line.

For further information concerning the matters stated here in, please contact Dennis Wertz at 410-887-3480.

Prepared by:



Division Chief:
AFK/LL: CM





Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw3.1)

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

Account Identifier: District - 13 Account Number - 1900013720

Owner Information

Owner Name:	HOGG LYNN R SMITH ELIZABETH A	Use:	RESIDENTIAL
Mailing Address:	505 GUN RD BALTIMORE MD 21227-3826	Principal Residence:	YES
		Deed Reference:	1) /26974/ 482 2)

Location & Structure Information

Premises Address	Legal Description
505 GUN RD	2.442 AC 505 GUN RD SES 2600 SW ROLLING RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
108	9	556						1	Plat Ref:

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1960	3,599 SF	2.44 AC	04
Stories	Basement	Type	Exterior
2	NO	SPLIT LEVEL	BRICK

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2007	07/01/2008	07/01/2009
Land	91,520	148,720		
Improvements:	394,030	615,090		
Total:	485,550	763,810	671,056	763,810
Preferential Land:	0	0	0	0

Transfer Information

Seller: PRINCIPIO LOUIS J,3RD	Date: 05/08/2008	Price: \$930,000
Type: IMPROVED ARMS-LENGTH	Deed1: /26974/ 482	Deed2:
Seller: PRINCIPIO SHANE J,3RD	Date: 12/30/1999	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /14238/ 378	Deed2:
Seller: PRINCIPIO LOUIS J,3RD	Date: 06/24/1994	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /10609/ 119	Deed2: /10609/ 115

Exemption Information

Partial Exempt Assessments	Class	07/01/2008	07/01/2009
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO

Exempt Class:

Special Tax Recapture:

* NONE *

BALTIMORE COUNTY PLANNING BOARD MEMBERS
As of March, 2009

NAME	MAILING ADDRESS EMAIL ADDRESS	OCCUPATION OR INTEREST	TERM EXPIRES	APPOINTED BY
William H. Moore 410-332-4134 (Office) 410-332-4136 (Fax) 410-977-7715 (Cell)	Southway Builders, Inc. 1318 East Fort Avenue Baltimore, MD 21230 willy@southwaybuilders.com	Businessperson	12/11	Council (1st District)
Robert J. Palmer 410-335-7000 (Office) 410-335-2948 (Home)	415 Armstrong Road Middle River, MD 21220 bobpalmer@tradewindsmarina.com	Businessperson	12/10	Executive (At Large)
H. Edward Parker 410-284-7316 (Home)	1902 Willow Spring Road Baltimore, MD 21222 parkerh@comcast.net	Retired Educator	12/09	Council (7th District)
Adam T. Sampson 410-472-4809 (Home) 410-823-1250 (Work) 443-421-1530 (Cell))	Bodie Nagle PA 21 W. Susquehanna Ave. Towson, MD 21204 asampson@bodienagle.com	Attorney	12/10	Executive (At Large)
Gerard J. Wit 410-369-1221 (Office) 410-667-1577 (Home) 410-369-1821 (Fax) 410-404-5521 (Cell)	St. John Properties, Inc. 2560 Lord Baltimore Drive Baltimore, MD 21244 jerry.wit@stjohnpropertiesinc.com	Businessperson	12/10	Executive (At Large)

Updated 03 05 09 – BW

Address List

Petitioners:

Lynn Hogg
Elizabeth Smith
505 Gun Road
Halethorpe, MD 21227

Lawrence E. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Ave, Ste 200
Towson, MD 21204

Larry Link
P.O. Box 727
Brooklandville, MD 21022

Protestants:

Paul & Elizabeth Donoghue
508 Gun Road
Baltimore, MD 21227

William Moore
510 Gun Road
Baltimore, MD 21227

Paul & Lucy McKean
403 Gun Road
Baltimore, MD 21227

Frank & Nancy Lindberg
511 Gun Road
Baltimore, MD 21227

Janet Bruns
301 Gun Road
Baltimore, MD 21227

William Watson
422 Gun Road
Baltimore, MD 21227

Jackie Hedeman
408 Gun Road
Baltimore, MD 21227

John Joseph Bennett
516 Gun Road
Baltimore, MD 21227

Frank Earp
424 Gun Road
Baltimore, MD 21227

Naomi Baldwin
324 Gun Road
Baltimore, MD 21227

Charles & Mary Jane Macgill
319 Gun Road
Baltimore, MD 21227

Jeremy Walsh
5300 Keech Road
Baltimore, MD 21227

Interoffice:

Office of People's Counsel
William J. Wiseman, III, Zoning
Commissioner
Arnold F. "Pat" Keller, III,
Director/Planning
Timothy Kotroco, Director/PDM
John E. Beverungen, County Attorney

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County

Interoffice Correspondence

Phone: 410-887-3180

Fax: 410-887-3182

To: Edward Crizer, Jr.
Robert Witt
Andrew Belt

From: Sunny Cannington, Legal Secretary

Date: October 9, 2009

Re: In the Matter of: Lynn Hogg
Case No.: 09-153-SPHX

Gentlemen,

Please be advised that the matter of Francis Ward, scheduled for 11/10/09 has been postponed due to Mr. Wescott's impending surgery. The Ward case had previously been heard at least one day and therefore we need Mr. Wescott to be available for the next day of hearings. As such, that date opened up for the scheduling of a new case, the Hogg/Cuddles Day Care matter. Enclosed, please find a copy of the Notice of Assignment for the Hogg matter. Please let me know if you have any problems or questions.

Thanks.

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County

Facsimile Cover Sheet

Phone: 410-887-3180

Fax: 410-887-3182

To: Sterling

Fax: 410-825-4923

From: Sunny Cannington, Legal Secretary

Date: October 9, 2009

Number of Pages (Including cover): 4

Re: Hogg (aka: Cuddles Day care) Case Number 09-153-SPHX

As per our conversation, attached please find a copy of the Notice of Assignment and the Notice of Appeal filed by Lawrence E. Schmidt, Esq on behalf of the Petitioners, Mr. Hogg and Ms. Smith.

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

Thank you.

Sunny

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County

Phone: 410-887-3180

Fax: 410-887-3182

To: Debbie Eichner
From: Sunny Cannington, Legal Secretary
Date: December 21, 2009
Re: Transcripts

Hi Debbie,

The attached is the recording from Case Number 09-153-SPHX. The Board members who sat on this case are Andrew M. Belt, Robert W. Witt, and Edward W. Crizer, Jr. Mr. Belt was the Chairman of this Panel (he sat in the middle and directed the proceedings). Mr. Crizer sat to the left of the Chairman and handled the exhibits while Mr. Witt sat to the right and operated the Courtsmart system.

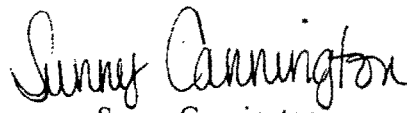
I have prepared a letter to the attorney requesting the transcript, a copy of which is included for your records. Below is the attorney's information so that you may contact the firm directly.

Please be advised that they are requesting an excerpt of the transcript for closing memoranda, which are due to the Board on January 11, 2010. This means they will require the transcript in enough time to prepare their memos. The excerpt begins with the testimony of Mr. Jim Herman as tagged and continues through the end of the hearing.

The other attorneys involved in this matter are J. Carroll Holzer, Esquire on behalf of Protestants, The Gun Road Historical and Protective Association, Paul Donoghue, Joe Bennett, Frank Lindberg, Lucy and Paul McKean, Naomi Baldwin, William H. Moore, Donna Murphy and Michelle Reed. Carole Demilio, Esquire is also involved on behalf of the Office of People's Counsel for Baltimore County.

Should you have any questions or problems, please do not hesitate to contact me.

Thank you.


Sunny Cannington

Attorney Information:

Lawrence E. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Ave, Suite 200
Towson, MD 21204
Phone: 410-821-0070

Please ask for Jennifer.



County Board of Appeals of Baltimore County

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

December 21, 2009

Lawrence E. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Ave, Suite 200
Towson, MD 21204

SENT VIA FACSIMILE
TO: 410-821-0071
AND REGULAR MAIL

Re: In the Matter of: Lynn Hogg and Elizabeth Smith (aka Cuddles Daycare)
Board of Appeals Case No.: 09-153-SPHX

Dear Mr. Schmidt:

I am in receipt of your request for transcript in the above referenced matter. Please be advised that we have sent the recording to the typist listed below.

The typist has been instructed to contact you by phone upon receipt of the recording. She will be able to provide you with the estimated cost, required deposit, and projected completion date.

I have advised her of the due date for the Memoranda.

Please direct all payments and questions regarding the transcript to the typist listed below.

Very truly yours,

Sunny Cannington
Sunny Cannington

Typist: Debbie Eichner
Telephone #: 410-404-2110
Mailing Address: 8101 Bletzer Road, Baltimore, MD 21222

Dennis Wertz - Re: 505 Gun Road, 2009-0153-SPHX

From: Stephen Weber
To: Dennis Wertz
Date: 2/19/2010 6:02 PM
Subject: Re: 505 Gun Road, 2009-0153-SPHX
CC: Dennis Kennedy

Dennis -

I reviewed the revised site plan for the subject site. While I see references to relocation of the fence and sight lines are shown on the drawing, it still isn't clear how the sight lines are being met. First, the site plan indicates "Proposed relocated fence location and/or existing fence to be removed". That means one of 3 things (1) A new fence is being installed along with keeping the old fence (2) A new fence is being installed and the old fence is being removed (3) No new fence will be installed and the existing fence is being removed. It would seem they would know by now what they're actually doing. Then the stone wall which is creating most of the sight line problems, isn't mentioned at all. While it shows the sight lines going thru the stone wall, I can find nothing on the plan which indicates that the wall is being removed or relocated to get it out of the sight line. Therefore, the plan appears to not have adequately addressed this issue.

Also, with respect to the driveway width, it is clear that issue has not been addressed either. Last April I indicated that, "... it would be preferable for any 2-way driveway to the daycare to be 20 feet wide. However, at an absolute minimum, the first 100 to 150 feet of the driveway off of Gun Rd would have to be at least 20 feet wide to insure that traffic flow going into and out of the driveway from Gun Rd is not interfered with. Obviously one would not want exiting traffic preventing entering traffic from getting off of Gun Rd expeditiously. A narrow entrance would create an unsafe condition." The plan shows no improvements to the driveway and there basically isn't even enough room for a sitting exiting car to be able to be safely bypassed by an entering vehicle coming off of Gun Rd expeditiously. Given the one-way loop in front of the daycare, it would be most appropriate to construct a 20-foot wide driveway from Gun Rd 140 feet into the property where the one-way loop starts.

Therefore, the plan does not appear to have addressed any of our prior comments. While the sight lines are shown, the plan doesn't indicate how they're going to be achieved. Should you need anything further from our office regarding this matter, please let me know.

Stephen E. Weber, Chief
Div. of Traffic Engineering
Baltimore County, Maryland
111 W. Chesapeake Avenue, Rm. 326
Towson, MD 21204
(410) 887-3554

>>> Dennis Wertz 2/9/10 11:00 AM >>>
Steve,

A revised site plan has been submitted for the proposed Class B Group Child Care Center. I have asked my secretary to make a copy of the plan and the petition for you. She will probably drop them off this morning.

Dennis Wertz
Baltimore County Office of Planning
105 W. Chesapeake Avenue, Suite 101
Towson, MD 21204
dwertz@baltimorecountymd.gov
Phone: 410-887-3480
Fax: 410-887-5862

Copy
forwarded
to
Schmidt
3/2

From: Debra Wiley
To: Matthews, Kristen
Date: 3/3/2010 10:24 AM
Subject: Remand Hearing

Hi Kristen,

Bill has advised that he will be hearing a case Remanded by the Board of Appeals. He and counsel have agreed to set it in for next Thursday, March 11th at 11 AM in Room 106 (right after his 2 zoning cases). The Case No. is 2009-0153-SPHX - Lynn Hogg & Elizabeth Smith, 505 Gun Rd.

A confirmation letter will be sent with the information above, just wanted to give you a heads up.

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

Notified Kristen via email & forwarded copy of ltr, 3/3/10



County Board of Appeals of Baltimore County

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

August 12, 2010

Frank Lindberg
511 Gun Road
Baltimore, MD 21227

Re: In the Matter of: Lynn Hogg and Elizabeth Smith (aka Cuddles Daycare)
Board of Appeals Case No.: 09-153-SPHX

Dear Mr. Lindberg:

I am in receipt of your request for the transcript of hearing Day 8, on June 30, 2010 in the above referenced matter. Please be advised that we have sent the recording to the typist listed below.

The typist has been instructed to contact you by phone upon receipt of the recording. She will be able to provide you with the estimated cost, required deposit, and projected completion date.

I have advised her that you have requested the transcript for the preparation of closing memoranda and the due date for the Memoranda.

Please direct all payments and questions regarding the transcript to the typist listed below.

Very truly yours,

Sunny Cannington
Sunny Cannington

Typist: Debbie Eichner
Telephone #: 410-404-2110
Mailing Address: 8101 Bletzer Road, Baltimore, MD 21222

c: J. Carroll Holzer, Esquire
Lawrence E. Schmidt, Esquire
Carole S. Demilio, Esquire/Office of People's Counsel

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County

Phone: 410-887-3180

Fax: 410-887-3182

To: Debbie Eichner
From: Sunny Cannington, Legal Secretary
Date: August 12, 2010
Re: Transcript

Hi Debbie,

The attached is the recording from Day 8 of hearings (June 30, 2010) in Case Number 09-153-SPHX. The Board members who sat on this case are Andrew M. Belt, Robert W. Witt, and Edward W. Crizer, Jr. Mr. Belt was the Chairman of this Panel (he sat in the middle and directed the proceedings). Mr. Crizer sat to the left of the Chairman and handled the exhibits while Mr. Witt sat to the right and operated the Courtsmart system.

I have prepared a letter to the individual requesting the transcript, a copy of which is included for your records. Below is the individual's information so that you may contact the firm directly.

Please be advised that they are requesting the transcript for closing memoranda, which are due to the Board on September 9, 2010. This means they will require the transcript in enough time to prepare their memos.

The other attorneys involved in this matter are J. Carroll Holzer, Esquire on behalf of Protestants, The Gun Road Historical and Protective Association, Paul Donoghue, Joe Bennett, Frank Lindberg, Lucy and Paul McKean, Naomi Baldwin, William H. Moore, Donna Murphy and Michelle Reed. Lawrence E. Schmidt, Esquire on behalf of Lynn Hogg and Elizabeth Smith, Petitioners and Legal Owners of the subject property. Carole Demilio, Esquire is also involved on behalf of the Office of People's Counsel for Baltimore County.

It is possible that the other attorneys in this matter may be splitting the cost of the transcript for this matter.

Should you have any questions or problems, please do not hesitate to contact me.

Thank you.


Sunny Cannington

Frank Lindberg
511 Gun Road
Baltimore, MD 21227
(410) 242-7139

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County

Interoffice Correspondence

DATE: April 2, 2012

TO: David Duvall
Zoning Review Office
Permits, Approvals & Inspections

FROM: Sunny Cannington, Legal Secretary
Board of Appeals

SUBJECT: CLOSED APPEAL CASE FILES/CASES DISMISSED

The following cases have been closed as of the above date and are being returned to your office for storage.

<u>Case No:</u>	<u>Case Name:</u>	<u>Note:</u>
09-153-SPHX	Lynn Hogg and Elizabeth Smith (aka Cuddles Daycare)	Appealed to Circuit Court and subsequently dismissed.

c: Arnold Jablon, Director/PAI
Michael Field, County Attorney
Nancy West, Assistant County Attorney

From: Dennis Wertz
To: Jeffrey Perlow
Date: 01/16/09 9:50 AM
Subject: ZAC 09-153 (505 Gun Road)

Jeff,

Larry Link and the petitioner are meeting with me and Curtis Murray at 2:00 PM on Thursday, January 22 to discuss this matter. The meeting will be held in the Courtland Conference Room at the Planning Office. You are welcome to attend if you wish.

Dennis Wertz
Baltimore County Office of Planning
105 W. Chesapeake Avenue, Suite 101
Towson, MD 21204
dwertz@baltimorecountymd.gov
Phone: 410-887-3480
Fax: 410-887-5862

From: Theresa Shelton
To: JCHOLZER@CAVTEL.NET
CC: andybelt7@gmail.com
Date: 7/14/2010 3:24 PM
Subject: 505 Gun Road - Submission of case law

Good Afternoon.

I left a voice mail regarding the submission of case law that Panel Chair, Mr. Belt was expecting prior to the hearing commencing on July 15, 2010 on the Cuddles Daycare re: Real Estate Agents.

Please call me at 410-887-3180 if you receive this e-mail prior to 5:00 P.M.

Thank you.

Theresa

Theresa R. Shelton, Administrator
Board of Appeals for Baltimore County
Suite 203, The Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

410-887-3180
410-887-3182 (FAX)
tshelton@baltimorecountymd.gov

"I took the Green @ Work Energy Challenge Pledge."

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential.

The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

Theresa Shelton - Re: Lynn Hogg and Elizabeth Smith - 505 Gun Road - 09-153-SPHX

From: J Carroll Holzer <jcholzer@cavtel.net>
To: Theresa Shelton <tshelton@baltimorecountymd.gov>
Date: 4/22/2010 9:25 AM
Subject: Re: Lynn Hogg and Elizabeth Smith - 505 Gun Road - 09-153-SPHX

Theresa

The only date not good is the first one-June 3. ALL others are good.
Sterling

On Thu, Apr 22, 2010 at 8:57 AM, Theresa Shelton <tshelton@baltimorecountymd.gov> wrote:
Good Morning:

In anticipation of additional days being needed for the above referenced matter; the following dates are currently open on the Board's docket:

Thursday, June 3, 2010 @ 10 am;
Wednesday, June 30, 2010 @ 10 am;
Thursday, July 15, 2010 @ 10 am;
Tuesday, July 20, 2010 @ 10 am; and
Thursday, July 22, 2010 @ 10 am.

Please advise if you can be present on any of these dates.
Upon notification from the parties, I will check the Board's Panel for availability.

Please do not hesitate to call me if you have any questions or concerns. Thank you.

Theresa

Theresa R. Shelton, Administrator
Board of Appeals for Baltimore County
Suite 203, The Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

410-887-3180
410-887-3182 (FAX)
tshelton@baltimorecountymd.gov

I took the Green @ Work Energy Challenge Pledge.

Confidentiality Statement

This electronic mail transmission contains confidential information

belonging to the sender which is legally privileged and confidential.
The information is intended only for the use of the individual or
entity named above. If you are not the intended recipient, you are
hereby notified that any disclosure, copying, distribution, or taking of
any
action based on the contents of this electronic mail transmission is
strictly prohibited. If you have received this electronic mail
transmission
in error, please immediately notify the sender.

From: "Larry Schmidt" <lschmidt@gildeallc.com>
To: "Theresa Shelton" <tshelton@baltimorecountymd.gov>, "Carole Demilio" ...
Date: 4/22/2010 11:13 AM
Subject: RE: Lynn Hogg and Elizabeth Smith - 505 Gun Road - 09-153-SPHX

Thanks Theresa: I will send your e-mail to all of my people and let you know asap.

Lawrence E. Schmidt

Gildea & Schmidt, LLC

600 Washington Avenue

Suite 200

Towson, MD 21204

(410) 821-0070

(410) 821-0071 - fax

This email contains information from the law firm of Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Gildea & Schmidt, LLC by telephone immediately.

-----Original Message-----

From: Theresa Shelton [mailto:tshelton@baltimorecountymd.gov]
Sent: Thursday, April 22, 2010 8:57 AM
To: Carole Demilio; JCHOLZER@CAVTEL.NET; LSchmidt@GildeaLLC.com
Subject: Lynn Hogg and Elizabeth Smith - 505 Gun Road - 09-153-SPHX

Good Morning:

In anticipation of additional days being needed for the above referenced matter; the following dates are currently open on the Board's docket:

Thursday, June 3, 2010 @ 10 am;
Wednesday, June 30, 2010 @ 10 am;
Thursday, July 15, 2010 @ 10 am;
Tuesday, July 20, 2010 @ 10 am; and
Thursday, July 22, 2010 @ 10 am.

Please advise if you can be present on any of these dates. Upon notification from the parties, I will check the Board's Panel for availability.

Please do not hesitate to call me if you have any questions or concerns. Thank you.

Theresa Shelton - Re: Lynn Hogg and Elizabeth Smith - 505 Gun Road - 09-153-SPHX

From: <csdemil@aol.com>
To: <tshelton@baltimorecountymd.gov>
Date: 4/22/2010 3:08 PM
Subject: Re: Lynn Hogg and Elizabeth Smith - 505 Gun Road - 09-153-SPHX

Thanks Theresa. We have to check with protestants because they need to be there to testify. They should be at the hearing on Tuesday and we can confirm then. Carole

-----Original Message-----

From: Theresa Shelton <tshelton@baltimorecountymd.gov>
To: Carole Demilio <csdemil@aol.com>; JCHOLZER@CAVTEL.NET; LSchmidt@GildeaLLC.com
Sent: Thu, Apr 22, 2010 8:57 am
Subject: Lynn Hogg and Elizabeth Smith - 505 Gun Road - 09-153-SPHX

Good Morning:

In anticipation of additional days being needed for the above referenced matter; the following dates are currently open on the Board's docket:

Thursday, June 3, 2010 @ 10 am;
Wednesday, June 30, 2010 @ 10 am;
Thursday, July 15, 2010 @ 10 am;
Tuesday, July 20, 2010 @ 10 am; and
Thursday, July 22, 2010 @ 10 am.

Please advise if you can be present on any of these dates.

Upon notification from the parties, I will check the Board's Panel for availability.

Please do not hesitate to call me if you have any questions or concerns. Thank you.

Theresa Shelton - Cuddles Daycare (505 Gun Road)

From: "Larry Schmidt" <lschmidt@gildeallc.com>
To: <kcarrington@baltimorecountymd.gov>
Date: 8/31/2009 1:00 PM
Subject: Cuddles Daycare (505 Gun Road)
CC: <tshelton@baltimorecountymd.gov>

Hi Sunny and Theresa:

Following up on my conversation with Sunny this morning (Monday), thanks but no thanks on the offer to set the above matter in on September 22. My clients are a husband and wife who operate a day care facility and the husband is scheduled to participate in a seminar in connection with his employment and he will be out of State on that date. I sincerely appreciate Theresa offering up the date and I am sorry that we can't take it. Since this matter was apparently delayed in getting sent to you from the Zoning Office, please let me know if there are any other dates that come free. I know that my client is particularly interested in getting this scheduled as soon as possible and he felt bad about not being able to accept the offered date.

I am also thinking that maybe there should be two dates assigned to this case. The matter was concluded in less than a day before the Zoning Commissioner but I understand that the community has hired an attorney for the Board hearing. If the scheduling cannot be expedited and will just be set in due course, let me know if assigning two dates will cause further delay. I will run that by my client and let you know. I assume that you haven't gotten any entry of appearance from another counsel on this? I understand that the community has hired an attorney but I don't know who. It would be nice to know so that I could talk about scheduling with him/her.

Thanks again.

Larry

Lawrence E. Schmidt
Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204
(410) 821-0070
(410) 821-0071 - fax

This email contains information from the law firm of Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Gildea & Schmidt, LLC by telephone immediately.

From: Larry Schmidt [mailto:lschmidt@gildeallc.com]
Sent: Thursday, August 27, 2009 12:21 PM
To: 'kcarrington@baltimorecountymd.gov'
Subject: FW: Two things

Sunny: Below is an e-mail I sent you yesterday. We have been having problems with our e-mail. Please confirm receipt.

Lawrence E. Schmidt
Gildea & Schmidt, LLC
600 Washington Avenue

Suite 200
Towson, MD 21204
(410) 821-0070
(410) 821-0071 - fax

This email contains information from the law firm of Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Gildea & Schmidt, LLC by telephone immediately.

From: Larry Schmidt [mailto:lschmidt@gildeallc.com]
Sent: Wednesday, August 26, 2009 1:25 PM
To: 'kcarrington@baltimorecountymd.gov'
Subject: Two things

Hi Sunny:
A couple of things that I wanted to ask you about.

1. On the minutes of deliberation for Vandermast, I don't know if it is a typo, but under bullet point number 1, it states that the Hearing Officer required that the cul de sac be moved 450 feet. That is incorrect, the Developer showed the location of the cul de sac on the plan where he/it desired it; and the Hearing Officer agreed and didn't require that it be moved 450 feet as requested by the Protestant/neighbor, Mr. Novak.
2. Also, I had filed an appeal on June 9, 2009 for a property at 505 Gun Road (Cuddles Day Care) and I am being asked about scheduling. The client is starting a new school year and they are anxious to get the matter set in. I think that zoning may have not gotten this over to you very quickly but I wanted to confirm that you had received it and if you had any timeframe for when the hearing might be.

Thanks Sunny.

Larry Schmidt

Lawrence E. Schmidt
Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204
(410) 821-0070
(410) 821-0071 - fax

This email contains information from the law firm of Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Gildea & Schmidt, LLC by telephone immediately.

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

RECEIVED

DEC 07 2009

BALTIMORE COUNTY
BOARD OF APPEALS

December 4, 2009

Sent via Facsimile Only

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21204

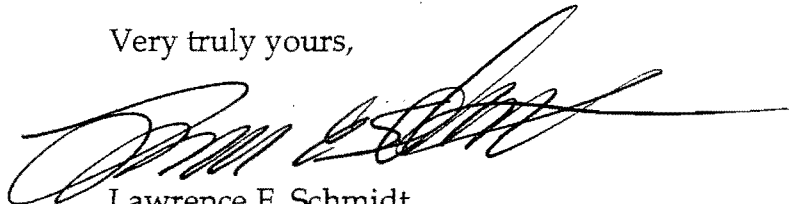
Re: Cuddles Day Care/505 Gun Road
Case No.: 09-153-SPHX

Dear Carroll:

I have spoken with Theresa at the Board of Appeals and confirmed that we will start at 12:30 p.m. on Thursday, December 10, 2009, for Day 2 of the Cuddles Daycare hearing. I also received a call from the Clerk's office for a time estimate for the Valley Framing appeal scheduled for earlier that same day. I told them we would need 30 minutes to one hour.

Theresa also asked me to bring my calendar on December 10th, so that we could schedule additional days for Cuddles. I ask that you do the same. If we finish Valley Framing early, I will get to the Board by 12:15 p.m. so that we can do the additional scheduling before we start the hearing.

Very truly yours,



Lawrence E. Schmidt

LES: jkl

CC: Theresa R. Shelton, Baltimore County Board of Appeals
Lynn Hogg, Cuddles Daycare

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

RECEIVED
FEB - 2 2010

BALTIMORE COUNTY
BOARD OF APPEALS

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

February 2, 2010

Carole S. DeMilio, Esquire
Deputy People's Counsel
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Room 204
Towson, MD 21204

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21204

**Re: Cuddles Day Care/505 Gun Road
Case No.: 2009-153-SPHX**

Dear Ms. DeMilio and Mr. Holzer:

This is in reference to the above matter, currently scheduled for oral argument on February 24, 2010, and further hearing dates on March 16, March 17 and March 18, 2010. All of these proceedings are scheduled before the Board of Appeals.

I have reviewed the separate memoranda filed by you with the Board on or about January 11, 2010. In part, the arguments that you offer in opposition to the introduction of the site plan prepared by Mr. Hermann (as opposed to one prepared by Mr. Link and offered to the Zoning Commissioner) are that:

1. You have not seen it and had time to review it;
2. It has not been reviewed by the Zoning Office for completeness and compliance with the "checklist items" that every plan allegedly need meet before it is "accepted for filing;" and,
3. There are no Zoning Advisory Committee ("ZAC") comments on it.

In order to address your concerns and provide you a reasonable period to evaluate the plan before the continued hearing dates beginning March 16, 2010; I enclose herewith a copy of Mr. Hermann's plan. This plan will be offered to the Board through Mr. Hermann's testimony at the next hearing date. Providing you with this plan now (6 weeks before the hearing), should give you sufficient time to prepare.

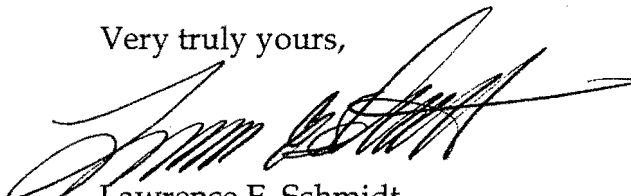
Moreover, please note that the plan bears the signature of W. Carl Richards, Zoning Supervisor. Mr. Richards has reviewed the plan and determined that it has been "accepted for filing," i.e. that it meets the so called checklist requirements for a plan to be filed with the Zoning Office.

Carole S. DeMilio, Esquire
J. Carroll Holzer, Esquire
February 2, 2010
Page 2

Finally, please be advised that this plan is now being circulated to the member agencies of the ZAC for review and written comment. When I receive their comments, I will provide a copy to each of you.

I am pleased to be able to provide this plan to you in hopes that it has cured the perceived indignities that you have suffered.

Very truly yours,



Lawrence E. Schmidt

LES: jkl

Enclosures

CC: Theresa R. Shelton, County Board of Appeals of Baltimore County (without plan)
Lynn Hogg & Elizabeth Smith, Cuddles Day Care (without plan)
James V. Hermann, JVHermann & Associates (without plan)

REV MUST
BE ZACKED
FOR MAR

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

HEARIN
DATE
AT BOA

RES. ADVISED PLANS ONLY REV.
PET. AS FILED WONT CHANGE

January 27, 2010

Sent via Hand Delivery

W. Carl Richards, Jr.
Zoning Review Supervisor
Permits and Development Management
111 W. Chesapeake Avenue
Towson MD 21204

Re: Cuddles Day Care/ 505 Gun Road
Case No.: 2009-153-SPHX

Dear Mr. Richards:

This is to follow up our recent meetings regarding the above matter. As we discussed, this case was originally filed and a hearing before the Zoning Commissioner was held on Petitions for Special Exception and Special Hearing. The Petition for Special Exception was to consider a requested Class-B Childcare Center for up to 24 children. The Petition for Special Hearing was for a modified parking plan.

I represent Lynn Hogg and Elizabeth Smith, his wife, owners of the subject property. Mr. Hogg and Ms. Smith reside in a dwelling on the property, and operate a licensed Class-A Childcare Facility at the present time. The instant request is to expand the facility to a Class-B operation. The childcare center is located on the ground floor of their dwelling and the expansion will remain at that location. After the case was heard by the Zoning Commissioner it was appealed to the County Board of Appeals. I intend to submit a revised plan at the Board of Appeals hearing. The revised plan will provide better information and detail regarding the property and request.

John Lewis and you have reviewed the revised plan and determined that it meets all of the filing "checklist" requirements of your office. As you have noted thereon, the plan is "accepted for filing." I enclose herewith 12 copies of the plan so that it may be circulated in usual course to the Zoning Advisory Committee ("ZAC"). I would appreciate copies of the ZAC comments prior to the Board's hearing on March 16, 2010. Also enclosed herewith is a check in the amount of \$20.00 to cover the cost of filing this revised plan.

200.00

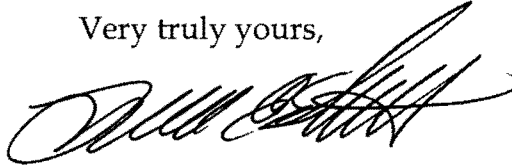
W. Carl Richards, Jr.

January 27, 2010

Page 2

Finally, it should be noted that the Petitioners' relief requested is identical to the previous filing and has not changed. I am filing herewith only a revised plan and not updating or changing any of the documents (i.e. petitions) that were considered by the Zoning Commissioner.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Lawrence E. Schmidt', with a stylized, flowing script.

Lawrence E. Schmidt

LES: jkl

Enclosures

CC: Lynn Hogg & Elizabeth Smith, Cuddles Day Care

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

July 14, 2010

Sent via Hand Delivery

Ms. Theresa R. Shelton

County Board of Appeals of Baltimore County

105 W. Chesapeake Avenue, Suite 203

Towson, MD 21204

Re: Cuddles Daycare/505 Gun Road
Case No.: 2009-153-SPHX

Dear Ms. Shelton:

Pursuant to our telephone conversation, please forward this correspondence to Chairman Belt and the other sitting members of the Board in connection with the ongoing public hearing regarding Cuddles Daycare located at 505 Gun Road. I apologize for the lateness in submitting this information. There was certain confusion whether Mr. Belt wanted this information in advance or whether it would be submitted at the beginning of the continued hearing scheduled for Thursday, July 15, 2010. In any event, at the end of the last hearing date, Protestants offered the testimony of a real estate agent. As I understand the proffered testimony, the witness was to render an opinion regarding the impact of the proposed daycare operation on property values in the vicinity. I raised an objection to that testimony and the basis thereof follows below.

Both real estate brokers/agents and real estate appraisers are defined and regulated as business occupations and professions in the Annotated Code of Maryland. Real estate appraisers are regulated within Title 16 of the Business Occupations and Professions Article of the Annotated Code of Maryland. Similarly, real estate brokers are regulated under Title 17. Both occupations must be licensed by the State.

Real estate brokers are permitted to "provide real estate brokerage services." Under law, that term is specifically defined as follows:

- (1) for consideration, providing any of the following services for another person:
 - (i) selling, buying, exchanging, or leasing any real estate; or
 - (ii) collecting rent for the use of any real estate;
- (2) for consideration, assisting another person to locate or obtain for purchase or lease any residential real estate;

- (3) engaging regularly in a business of dealing in real estate or leases or s on real estate;
- (4) engaging in a business the primary purpose of which is promoting the sale of real estate through a listing in a publication issued primarily for the promotion of real estate sales;
- (5) engaging in a business that subdivides land that is located in any state and sells the divided lots; or
- (6) for consideration, serving as a consultant regarding any activity set forth in items (1) through (5) of this subsection. (See Section 17-101 (l)).

Clearly, there is no language within the above stated definition allowing the providing of opinions relating to the value of property or rendering an opinion as it relates to the impact of external factors on the value of real estate.

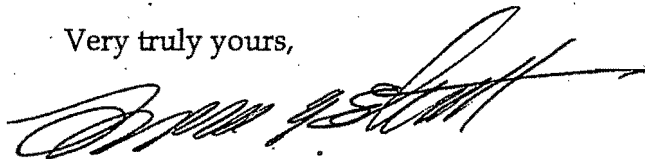
In contrast, real estate appraisers are permit to provide "appraisals," as defined in Section 16-101 of the Business Occupations and Professions Article. Therein "appraisal" means, "an analysis, conclusion, or opinion about the nature, quality, utility, or *value* of interests in or aspects of identified real estate." (emphasis added) Moreover, an "appraisal" includes: "(i) a valuation appraisal; (ii) an analysis assignment; and (iii) a review assignment."

Simply stated, real estate appraisers and real estate agents/brokers both, obviously, deal with real estate and are similar occupations. Although both are licensed by the State, the nature of the activity which is permitted under their license is separate and distinct. There is no authority for a real estate agent to render an opinion about value, particularly whether value is impacted by activity on adjacent property.

For this reason, I continue my objection to the proposed testimony.

Thank you for your consideration in this matter.

Very truly yours,



Lawrence E. Schmidt

LES: jkl

Enclosures

CC: Carole S. DeMilio, Esquire, People's Counsel for Baltimore County
J. Carroll Holzer, Esquire, Holzer & Lee
Lynn R. Hogg, Cuddles Day Care

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
D. DUSKY HOLMAN

LAUREN M. DODRILL
MICHAEL J. LIPPENHOLZ
CHARLES B. MAREK, III
ELYANA TARLOW
JASON T. VETTORI
REBECCA G. WYATT
of counsel:
MICHAEL G. DEHAVEN

April 12, 2011

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, MD 21204

Carole S. DeMilio, Esquire
People's Counsel for Baltimore County
Deputy People's Counsel
105 W. Chesapeake Avenue, Room 204
Towson, MD 21204

RECEIVED
MAY - 6 2011
BALTIMORE COUNTY
BOARD OF APPEALS

Re: Cuddles Daycare/505 Gun Road
Appellants - Lynn Hogg and Elizabeth Smith

Dear Mr. Holzer and Ms. DeMilio:

As you are aware, I have filed a Petition for Judicial Review in the above matter of the decision of the County Board of Appeals ("Board") dated March 4, 2011.

Pursuant to MD Rule 7-206(b), the parties are "strongly encouraged" to agree to a statement of issues (and any exhibits thereto) in lieu of an examination of the entire record. As I read the Board's decision, it is apparent that the Board decided this matter on a single issue; namely, traffic.

I would be pleased to prepare a joint statement and attach portions of the record and exhibits as might be required if this is agreeable. This would be in lieu of submitting the entire transcript of each hearing day. I have made inquiry with the Board and have been advised that certain transcripts have already been prepared. Please advise of your thoughts on this matter at your earliest convenience.

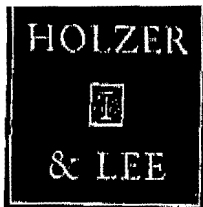
Very truly yours,

Lawrence E. Schmidt 

Lawrence E. Schmidt

LES: jkl

CC: Lynn Hogg and Elizabeth Smith, Cuddles Daycare



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER

1907-1989

THOMAS J. LEE

OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

E-MAIL: JCHOLZER@CAVTEL.NET

RECEIVED

MAY -6 -2011 KC

April 19, 2011

#7857

**BALTIMORE COUNTY
BOARD OF APPEALS**

Lawrence E. Schmidt, Esquire

Gildea & Schmidt, LLC

600 Washington Avenue

Suite 200

Towson, Maryland 21204

RE: *Cuddles Daycare*
505 Gun Road
Appellants - Lynn Hogg and Elizabeth Smith

Dear Mr. Schmidt:

Pursuant to your letter of April 12, 2011, regarding a limitation of the Transcript for the case, I cannot agree that the whole Transcript should not be prepared. There were multiple witnesses and references to the reasons for the Board to deny the Appellants request and I do not feel comfortable in agreeing to any limitation.

If you have any questions, please feel free to give me a call.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Carroll", written in black ink.

J. Carroll Holzer

JCH:mlg

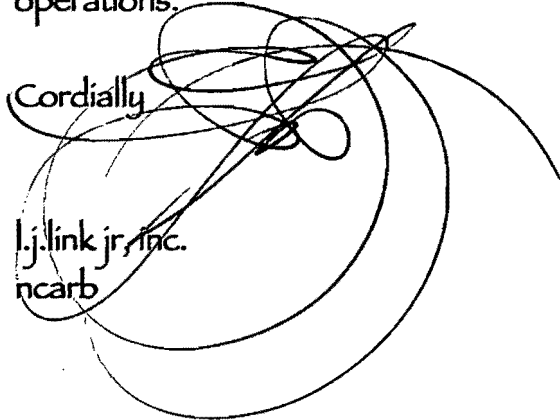
cc: Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
Mr. William H. Moore

Jeff Long
Department of Planning
Baltimore County, Maryland

Good Morning,

ref: case no.2009-0153-X

With reference to the conversation regarding 505 Gun Road, 21227 on November 24, 2008, you indicated that a variance was not needed to indicate that the front of the residence which will be used for the parking, drop off & delivery areas for the proposed childrens day care facility and that I should apply only for the special exception for expansion of the number of children being cared for on site. As I also indicated, the structure on the site is not being increased in size and that the present building is adequate for the proposed increase in density. All additional requirements shall be adhered to according to State of Maryland codes regarding the day care center facilities & operations.

Cordially

l.j.link jr, inc.
ncarb

l.j.link jr. inc.
Architect
box 727
brooklandville md. 21022
410.337.9528
LJLINKJR@AOL.COM

nov. 25.08

From: Krysundra Cannington
To: jlewis@sgs-law.com
Date: 6/2/2011 2:31 PM
Subject: Hogg/Cuddles

Hi Jennifer

I didn't scan the form but here's the info. The transcripts need to be provided for 2/24/10, 3/3/10, 4/20/10, 4/21/10, 4/27/10, and 7/15/10. It's approximately 17 and 1/2 hours of transcript. All transcripts will be provided through Courtsmart and not through the Court Reporter. The typist I have previously spoken with is Debbie Eichner. She can be reached at 410-477-1242 or 410-404-2110.

Upon speaking with Debbie, I kindly ask that either you or Debbie contact me and let me know what the plan is. Just a reminder, I have to have the record to the Court no later than the end of business on Tuesday, June 7.

Hope this helps.

Sunny

Krysundra "Sunny" Cannington
Legal Secretary
Board of Appeals of Baltimore County
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
(410) 887-3180

From: Jennifer Lewis <jlewis@sgs-law.com>
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Date: 6/2/2011 2:32 PM
Subject: RE: Hogg/Cuddles

Thanks. I will let you know what happens.

Jen

—
Jennifer K. Lewis
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
(410) 821-0071 - fax
jlewis@sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this email in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

-----Original Message-----

From: Krysundra Cannington [mailto:kcannington@baltimorecountymd.gov]
Sent: Thursday, June 02, 2011 2:31 PM
To: Jennifer Lewis
Subject: Hogg/Cuddles

Hi Jennifer

I didn't scan the form but here's the info. The transcripts need to be provided for 2/24/10, 3/3/10, 4/20/10, 4/21/10, 4/27/10, and 7/15/10. It's approximately 17 and 1/2 hours of transcript. All transcripts will be provided through Courtsmart and not through the Court Reporter. The typist I have previously spoken with is Debbie Eichner. She can be reached at 410-477-1242 or 410-404-2110.

Upon speaking with Debbie, I kindly ask that either you or Debbie contact me and let me know what the plan is. Just a reminder, I have to have the record to the Court no later than the end of business on Tuesday, June 7.

Hope this helps.

Sunny

Krysundra "Sunny" Cannington
Legal Secretary
Board of Appeals of Baltimore County
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
(410) 887-3180

From: Krysundra Cannington
To: Lewis, Jennifer
Date: 6/2/2011 2:33 PM
Subject: RE: Hogg/Cuddles

Thanks. I just called and left Debbie a message giving her the heads up that you'd be calling.

Sunny

>>> Jennifer Lewis <jlewis@sgs-law.com> 6/2/2011 2:32 PM >>>
Thanks. I will let you know what happens.

Jen

--
Jennifer K. Lewis
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
(410) 821-0071 - fax
jlewis@sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this email in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

-----Original Message-----

From: Krysundra Cannington [<mailto:k.cannington@baltimorecountymd.gov>]
Sent: Thursday, June 02, 2011 2:31 PM
To: Jennifer Lewis
Subject: Hogg/Cuddles

Hi Jennifer

I didn't scan the form but here's the info. The transcripts need to be provided for 2/24/10, 3/3/10, 4/20/10, 4/21/10, 4/27/10, and 7/15/10. It's approximately 17 and 1/2 hours of transcript. All transcripts will be provided through Courtsmart and not through the Court Reporter. The typist I have previously spoken with is Debbie Eichner. She can be reached at 410-477-1242 or 410-404-2110.

Upon speaking with Debbie, I kindly ask that either you or Debbie contact me and let me know what the plan is. Just a reminder, I have to have the record to the Court no later than the end of business on Tuesday, June 7.

Hope this helps.

Sunny

Krysundra "Sunny" Cannington
Legal Secretary
Board of Appeals of Baltimore County

Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
(410) 887-3180

Hogg

estimate time in
hrs -

Schmidt

2/24/10	00:47:17	1052 MINS
3/3/10	00:06:08	17 1/2 hrs
4/20/10	1:43:00 & 2:31:23	1050 pg
4/21/10	1:46:01 & 1:55:47	\$3.75/pg
5/27/10	2:10:13 & 2:01:50	\$3937.50
7/5/10	2:23:10 & 2:07:36	\$3.50/pg
		\$3675

4/11 - Spoke with Jennifer re: transcripts
-gave options -she will let me know

Schmidt

File w/o trans ~

confusion

re: cost

Mtn for Extent

Hogg ~ 410-935-9591

410-247-4040

Debbie - misquoted estimate

calling Hogg to straighten out

\$4200 ~ Exped

IMPORTANT MESSAGE

FOR Debbie
 DATE 4-29 TIME 120 A.M.
 M. Dennis Witz
 OF _____
 PHONE 3480
 AREA CODE _____ NUMBER _____ EXTENSION _____
☐ FAX
☐ MOBILE
 AREA CODE _____ NUMBER _____ TIME TO CALL _____

TELEPHONED	☒	PLEASE CALL	☒
CAME TO SEE YOU	☐	WILL CALL AGAIN	☐
WANTS TO SEE YOU	☐	RUSH	☐
RETURNED YOUR CALL	☐	SPECIAL ATTENTION	☐

MESSAGE He called & spoke
to both Jonathan & Moore
& neither have the
Class A Use
Permit paperwork.

SIGNED Deb



FORM 3002P
MADE IN U.S.A.

4/29 Reg'd file
from Carl

IMPORTANT MESSAGE

FOR Bill
 DATE 4-29 TIME _____
 M. Dennis Witz
 OF _____
 PHONE _____
 AREA _____ NUMBER _____ EXTENSION _____
☐ FAX
☐ MOBILE

☐ PLEASE CALL	☐ WILL CALL AGAIN
☐ CAME TO SEE YOU	☐ WANTS TO SEE YOU
☐ RETURNED YOUR CALL	☐ URGENT

NOTE

Don Rd. is
not
a scenic road

OPERATOR Deb

5/10/1 - Schmidt will let
us know by Friday about
transcripts

11/30/09 - transcript done

12/10/09 - transcript done

- 2/24/10 - Argument - CP

- 3/3/10 - Ctstmt
Remand

- 4/20/10 - CP

- 4/21/10 - Ctst

- 4/27/10 - CP

6/30/10 - transcript done

7/15/10 - Ctstmt

CP - Doesn't
want to do

2:00:17

2:05:16

≈ 4:06

≈ \$720

≈ 10,800 if expedited

9:54 ~ wants transcript
→ call back let know
who to expect call
from -

8/12 9:41am LM

Hogg

Frank Lindberg wanted a transcript
emailed

wanted
Index & Word List

→ Debbie told him before she can't
do Index / Word List

→ he called CP who had him
talk to ~~someone~~ else

→ He emailed Debbie

8/24/10 → Debbie told him again she can't
do Index / Word List.

00000000000000000000000000000000

8/13/10

HC 3G

2:37 pm

2:37pm Debbie Eichner

Lindberg called doesn't know if wants transcript
He was to call me this morning to schedule time to come listen to recording

Noted on Case History
in Server.

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Lynn Hogg and Elizabeth Smith

09-153-SPHX

DATE: November 3, 2010

BOARD/PANEL: Andrew M. Belt, Panel Chairman
Robert W. Witt
Edward W. Crizer, Jr.

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Hearing to allow modified parking plan;
2. Petition for Special Exception to permit Class B Group Child Care Center as principal use on property with maximum of 24 children.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board discussed that this matter came to the Board on appeal of the Zoning Commissioner's decision wherein the requested Special Hearing and Special Exception were denied. The Board heard this case of the course of nine days, and were presented with closing briefs from Counsel. The Board stated that they were given everything they could have been given in this matter.
- The Board discussed the history of this matter. The majority of this property is currently zoned RC5. The Petitioners already have a Class A Group Child Care Center on the subject property allowing a maximum of 12 children. Testimony and evidence were provided with regard to the Class A license but the Board determined that it is irrelevant how the Class A license was obtained because that is not at issue in this matter. The Class A license is already there.
- The Board discussed that this matter is based on the requirements of §502.1. The Board discussed specifically, the traffic issues that would pertain to this Special Exception. The Board discussed that if a Class B license were to be issued it would change the primary use of the property from residential to commercial. Allowing the Special Exception to grant the Class B license would intensify the use of the property to a commercial use which may require commercial garbage pick up. Doubling the number of children would double the traffic related to the pick up and drop offs of property. Testimony and evidence presented in this matter indicated that Gun Road is a "sunken road" meaning that the road sits with high embankments on either side. This particular property's driveway has line of sight issues for people turning in and out. The Board watched a video during the hearing which showed that currently most people drive on Gun Road

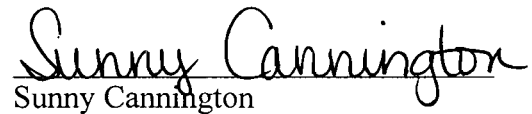
toward the center of the road. The Board determined that increasing the number of vehicles on the road, or adding commercial vehicles on the road as a result of the Special Exception, would be dangerous and create congestion.

DECISION BY BOARD MEMBERS: The Board determined that allowing the Class B Group Child Care Center would intensify the use of the property which would in turn intensify the already dangerous traffic issues.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Petition for Special Exception and DISMISS the Petition for Special Hearing as MOOT.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,


Sunny Cannington

CASE NAME Hogg, et ux
CASE NUMBER 2009-0153-SPHK
DATE 3-11-10

[illegible]

CASE NAME Hogg, et ux
CASE NUMBER 2009-0153-SM
DATE 3-11-10

[illegible]

CASE NAME Cuddles
CASE NUMBER 09-153-SPHK
DATE 4/23/09

[illegible]

DONOGHUE
McGill
More } McKenna

PLEASE PRINT CLEARLY

CASE NAME 2009-0153-SPTX
CASE NUMBER _____
DATE 4/24/2009
CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
Elizabeth Donoghue	508 Gun Rd	Baltimore, MD 21227	pandecdonoghue@comcast.net
Lucy W. McKean	403 Gun Rd.	Balti. MD 21227	Lucymckean@comcast.net
Paul F. McKean	" " "	" " "	f/aviansehoice@hotmail.com
Nancy Lindberg	511 Gun Rd	" " 21227	nanjgultev@comcast.net
Janet Bruns	301 Gun Rd	" " "	janetbruns354@aol.com
JACKIE HEDEMAN	408 Gun Rd	" " "	—
Joe Bennett	516 Gun Road	Balti MD 21227	bennett.joseph@excite.com
FRANK LINDBERG	511 GUN RD	BALTO MD 21227	FRANK_LINDBERG@COMCAST.NET
William Marx	510 Gun Rd.	Balt. MD 21227	Willy.e.southwardbldg.com
Paul Donoghue	508 Gun Rd	Balt 21227	pdonoghue@rsrm.com
BILL WATSON	422 Gun Rd	BALT. MD 21227	—
Frank Earp	424 Gun Rd	BALTO MD 21227	—
Noam Baldwin	324 Gun Rd	Relay MD 21227	nmferbal@hotmail.com
Mary Jane McGill	319 Gun Rd.	Relay Md 21227	maryjane.mcgill@longwoodfoster.com
Charles McGill	"	"	cgmsr@aol.com
Jeremy Walsh	5300 Keck Rd	Relay, MD 21227	jw@jeremy.walshrealstate.com

B15545 WR

LETTERS IN OPPOSITION

20090153

③

505 Gun Road

Location: NE corner of Gun Road and Keech Road

13th Election District, 1st Councilmanic District

Legal Owner: Elizabeth A. Smith and Lynn Hogg

SPECIAL EXCEPTION S per section 424.5.A of the BCZR for a Class B Group child-care center for a maximum of 24 children

SPECIAL HEARING As per BCZR section 409.12.B to approve a modified parking plan.

Hearing: Friday, 4/24/2009 at 11:00:00 AM Jefferson Building, 105 West Chesapeake Avenue, Room 104, Towson, MD 21204

OPPOSE	FAVOR
1 Frank A. & Nancy J. Lindberg 511 Gun Road - (2 Ltrs. Rec'd, 4/20 & 4/27) Halethorpe, MD 21227	
2 Fred & Susie Schneider Marie Ritter 512 Gun Road Baltimore, MD 21227	
3 Kaye White 409 Gun Road Baltimore, MD 21227	
4 Jeannette J. Rezai & Nasser Rezai, M.D. 416 Gun Road Halethorpe, MD 21227	
5 Joe and Jean Bennett 514 & 516 Gun Road Relay, MD 21227	
6 Gloria S. Watson-Carrion 428 Gun Road Baltimore, MD 21227	
7 Ramon A. Salas, M.D. 419 Gun Road Halethorpe, MD 21227	
8 Lucy W. McKean 403 Gun Road Relay, MD 21227	
9 Paul F. McKean 403 Gun Road Relay, MD 21227	
10 Mike and Kathy Christopolis 5303 Keech Road Baltimore, MD 21227	
11 William H. Watson, III 422 Gun Road Halethorpe, MD 21227	
12 Paul Donoghue, President & Resident Gun Road Historical & Protective Association 508 Gun Road Baltimore, MD 21227 (includes 47 Petitions, 6 Letters) - SEE ATTACHED LISTING OF RESIDENTS' POSITIONS	
13 Janet and Thomas Jarvis 426 Gun Road Halethorpe, MD 21227	
14 Frank A. Earp 424 Gun Road Baltimore, MD 21227	

CBA
PROTESTANT'S
EXHIBITS

20090153

(4)

~~20090153~~
MR

New location ⑫



CBA PRO. NO. 11

OLD Location (A)



CBA PRO. NO. 12A

OLD location (B)



CBA PRO. NO. 12B

special provisions of the *International Fuel Gas Code* applicable to the new occupancy without approval. The code official shall certify that the structure meets the intent of the provisions of law governing building construction for the proposed new occupancy and that such change of occupancy does not result in any hazard to the public health, safety or welfare.

[M] 305.8 Mechanical. It shall be unlawful to make a change in the occupancy of a structure that will subject the structure to the special provisions of the *International Mechanical Code* applicable to the new occupancy without approval. The code official shall certify that the structure meets the intent of the provisions of law governing building construction for the proposed new occupancy and that such change of occupancy does not result in any hazard to the public health, safety or welfare.

[P] 305.9 Plumbing. It shall be unlawful to make a change in the occupancy of a structure that will subject the structure to the special provisions of the *International Plumbing Code* applicable to the new occupancy without approval. The code official shall certify that the structure meets the intent of the provisions of law governing building construction for the proposed new occupancy and that such change of occupancy does not result in any hazard to the public health, safety or welfare.

[B] SECTION 306 HISTORIC BUILDINGS

306.1 Historic buildings. The provisions of this chapter relating to the construction, repair, alteration, addition, restoration and movement of structures and change of occupancy shall not be mandatory for historic buildings where such buildings are judged by the code official to not constitute a distinct life safety hazard.

306.2 Flood hazard areas. Within flood hazard areas established in accordance with Section 1612.3 of the *International Building Code*, where the work proposed constitutes substantial improvement as defined in Section 1612.2 of the *International Building Code*, the building shall be brought into conformance with Section 1612 of the *International Building Code*.

Exception: Historic buildings that are:

1. Listed or preliminarily determined to be eligible for listing in the National Register of Historic Places; or
2. Determined by the Secretary of the U.S. Department of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as an historic district; or
3. Designated as historic under a state or local historic preservation program that is approved by the Department of the Interior.

[B] SECTION 307 MOVED STRUCTURES

307.1 Conformance. Structures moved into or within the jurisdiction shall comply with the provisions of the *International Building Code* for new structures.

[B] SECTION 308 ACCESSIBILITY FOR EXISTING BUILDINGS

308.1 Scope. The provisions of Sections 308.1 through 308.9 apply to maintenance, change of occupancy, additions and alterations to existing buildings, including those identified as historic buildings.

Exception: Type B dwelling or sleeping units required by Section 1107 of the *International Building Code* are not required to be provided in existing buildings and facilities.

308.2 Maintenance of facilities. A building, facility or element that is constructed or altered to be accessible shall be maintained accessible during occupancy.

308.3 Extent of application. An alteration of an existing element, space or area of a building or facility shall not impose a requirement for greater accessibility than that which would be required for new construction.

Alterations shall not reduce or have the effect of reducing accessibility of a building, portion of a building or facility.

308.4 Change of occupancy. Existing buildings or portions thereof that undergo a change of group or occupancy shall have all of the following accessible features:

1. At least one accessible building entrance.
2. At least one accessible route from an accessible building entrance to primary function areas.
3. Signage complying with Section 1110 of the *International Building Code*.
4. Accessible parking, where parking is being provided.
5. At least one accessible passenger loading zone, when loading zones are provided.
6. At least one accessible route connecting accessible parking and accessible passenger loading zones to an accessible entrance.

Where it is technically infeasible to comply with the new construction standards for any of these requirements for a change of group or occupancy, the above items shall conform to the requirements to the maximum extent that is technically feasible. Change of group or occupancy that incorporates any alterations or additions shall comply with this section and Sections 308.5, 308.6, 308.7 and 308.8.

308.5 Additions. Provisions for new construction shall apply to additions. An addition that affects the accessibility to a, or contains an area of, primary function shall comply with the requirements in Section 308.7.

308.6 Alterations. A building, facility or element that is altered shall comply with the applicable provisions in Chapter 11 of the *International Building Code* and ICC A117.1, unless technically infeasible. Where compliance with this section is technically infeasible, the alteration shall provide access to the maximum extent that is technically feasible.

Exceptions:

1. The altered element or space is not required to be on an accessible route, unless required by Section 308.7.

Additions, alterations or repairs shall not cause an existing installation to become unsafe, hazardous or overloaded.

Minor additions, alterations, renovations and repairs to existing installations shall meet the provisions for new construction, unless such work is done in the same manner and arrangement as was in the existing system, is not hazardous and is approved.

[B] SECTION 303 FIRE ESCAPES

303.1 Where permitted. Fire escapes shall be permitted only as provided for in Sections 303.1.1 through 303.1.4.

303.1.1 New buildings. Fire escapes shall not constitute any part of the required means of egress in new buildings.

303.1.2 Existing fire escapes. Existing fire escapes shall be continued to be accepted as a component in the means of egress in existing buildings only.

303.1.3 New fire escapes. New fire escapes for existing buildings shall be permitted only where exterior stairs cannot be utilized due to lot lines limiting stair size or due to the sidewalks, alleys or roads at grade level. New fire escapes shall not incorporate ladders or access by windows.

303.1.4 Limitations. Fire escapes shall comply with this section and shall not constitute more than 50 percent of the required number of exits nor more than 50 percent of the required exit capacity.

303.2 Location. Where located on the front of the building and where projecting beyond the building line, the lowest landing shall not be less than 7 feet (2134 mm) or more than 12 feet (3658 mm) above grade, and shall be equipped with a counter-balanced stairway to the street. In alleyways and thoroughfares less than 30 feet (9144 mm) wide, the clearance under the lowest landing shall not be less than 12 feet (3658 mm).

303.3 Construction. The fire escape shall be designed to support a live load of 100 pounds per square foot (4788 Pa) and shall be constructed of steel or other approved noncombustible materials. Fire escapes constructed of wood not less than nominal 2 inches (51 mm) thick are permitted on buildings of Type V construction. Walkways and railings located over or supported by combustible roofs in buildings of Type III and IV construction are permitted to be of wood not less than nominal 2 inches (51 mm) thick.

303.4 Dimensions. Stairs shall be at least 22 inches (559 mm) wide with risers not more than, and treads not less than, 8 inches (203 mm) and landings at the foot of stairs not less than 40 inches (1016 mm) wide by 36 inches (914 mm) long, located not more than 8 inches (203 mm) below the door.

303.5 Opening protectives. Doors and windows along the fire escape shall be protected with $\frac{3}{4}$ -hour opening protectives.

[B] SECTION 304 GLASS REPLACEMENT

304.1 Conformance. The installation or replacement of glass shall be as required for new installations.

SECTION 305 CHANGE OF OCCUPANCY

[B] 305.1 Conformance. No change shall be made in the use or occupancy of any building that would place the building in a different division of the same group of occupancy or in a different group of occupancies, unless such building is made to comply with the requirements of the *International Building Code* for such division or group of occupancy. Subject to the approval of the building official, the use or occupancy of existing buildings shall be permitted to be changed and the building is allowed to be occupied for purposes in other groups without conforming to all the requirements of the *International Building Code* for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use.

[B] 305.2 Certificate of occupancy. A certificate of occupancy shall be issued where it has been determined that the requirements for the new occupancy classification have been met.

[B] 305.3 Stairways. Existing stairways in an existing structure shall not be required to comply with the requirements of a new stairway as outlined in Section 1009 of the *International Building Code* where the existing space and construction will not allow a reduction in pitch or slope.

305.4 Structural. When a change of occupancy results in a structure being reclassified to a higher occupancy category, the structure shall conform to the seismic requirements for a new structure.

Exceptions:

1. Specific seismic detailing requirements of this code or ASCE 7 for a new structure shall not be required to be met where it can be shown that the level of performance and seismic safety is equivalent to that of a new structure. Such analysis shall consider the regularity, overstrength, redundancy and ductility of the structure within the context of the existing and retrofit (if any) detailing provided.
2. When a change of use results in a structure being reclassified from Occupancy Category I or II to Occupancy Category III and the structure is located in a seismic map area where $S_{DS} < 0.33$, compliance with the seismic requirements of this code and ASCE 7 are not required.

[EC] 305.5 Energy. Buildings undergoing a change in occupancy that would result in an increase in demand for either fossil fuel or electrical energy shall comply with the *International Energy Conservation Code*.

[ICC EC] 305.6 Electrical. It shall be unlawful to make a change in the occupancy of a structure that will subject the structure to the special provisions of the *ICC Electrical Code* applicable to the new occupancy without approval. The code official shall certify that the structure meets the intent of the provisions of law governing building construction for the proposed new occupancy and that such change of occupancy does not result in any hazard to the public health, safety or welfare.

[FG] 305.7 Fuel gas. It shall be unlawful to make a change in the occupancy of a structure that will subject the structure to the

CRBA PRO NO 14

104.11 Alternative materials, design and methods of construction and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

104.11.1 Research reports. Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

104.11.2 Tests. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the building official shall approve the testing procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the building official for the period required for retention of public records.

SECTION 105 PERMITS

105.1 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

105.1.1 Annual permit. In lieu of an individual permit for each alteration to an already approved electrical, gas, mechanical or plumbing installation, the building official is authorized to issue an annual permit upon application therefor to any person, firm or corporation regularly employing one or more qualified tradespersons in the building, structure or on the premises owned or operated by the applicant for the permit.

105.1.2 Annual permit records. The person to whom an annual permit is issued shall keep a detailed record of alterations made under such annual permit. The building official shall have access to such records at all times or such records shall be filed with the building official as designated.

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the

provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet (11 m²).
2. Fences not over 6 feet (1829 mm) high.
3. Oil derricks.
4. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.
5. Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons (18 925 L) and the ratio of height to diameter or width does not exceed 2:1.
6. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.
7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
8. Temporary motion picture, television and theater stage sets and scenery.
9. Prefabricated swimming pools accessory to a Group R-3 occupancy that are less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (18 925 L) and are installed entirely above ground.
10. Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
11. Swings and other playground equipment accessory to detached one- and two-family dwellings.
12. Window awnings supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support of Group R-3 and U occupancies.
13. Nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

Electrical:

Repairs and maintenance: Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles.

Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for a power supply and the installations of towers and antennas.

Temporary testing systems: A permit shall not be required for the installation of any temporary system



Baltimore County Government
Department of Public Works
www.baltimorecountymd.gov

Bureau of Solid Waste Management
111 W. Chesapeake Avenue, Room 225
Towson, Maryland 21204-4604

**REGULATION
FOR
BALTIMORE COUNTY RESIDENTIAL TRASH AND RECYCLING COLLECTION**
(“Dual Stream” Recycling Collection Version)
(Adopted in accordance with Baltimore County Bill 88-90)
(July, 2009)

OVERVIEW

The Maryland Recycling Act of 1988 requires that Baltimore County attain at least a 20% recycling rate each year. In addition, the State had set a voluntary statewide waste diversion goal of 40% by the year 2005. The County’s annual waste diversion rate equals its recycling rate plus a credit of up to 5% for engaging in certain waste prevention activities. Maximizing waste diversion will extend the life of the County’s only landfill, the Eastern Sanitary Landfill Solid Waste Management Facility in the White Marsh area.

Private collectors, authorized and supervised by Baltimore County Government, provide once a week trash, once a week recycling collection, to all single-family homes and town homes located within Baltimore County boundaries on County and State maintained roads, County-designated alleys, and other areas as determined by the housing development “Application” and “Request for Collection” forms.

Recycling collection presently alternates between mixed paper one week and bottles and cans the next week. In addition, certain areas receive a separate yard materials recycling collection every other week during a designated portion of the year. “Yard Materials” refers to grass, leaves, vines, twigs, and shrubbery trimmings, as well as branches and limbs. See “Yard Materials Collections” section of this regulation for details.

Baltimore County also provides two collections per week for apartments and condominiums, as well as certain non-profit charities and institutions that are located within

CBA Pfo. No. 16

The Gun Road Historical and Protective Association

Please enjoy these views of our neighborhood

We hope you will agree...

This is no place for a Primary Use Business

Photos taken By: Wm H Moore, v November 2009, & Joe Bennett Spring 2009

CBA PRO NO. 19

Gun Road Historic Homes

Prepared by:
Wm. H. Moore, v
November 8, 2009

CBA Pro. No. 20

Maryland Historic Property Designations



CBA Pro. No. 21

CPSE 09-153-SPHX PROTESTANTS' EXHIBITS

Verified
11/16/09
KRC

✓ 1. STATEMENT DATED 7/12/09 FROM CAUSA RUDY.

✓ 2. STATEMENT DATED 7/12/09 FROM JAMES RUDY.

✓ 3. SIGN-IN SHEET

✓ 4. Protestants Sign-In Sheet

DAY 5 4/20/10 Wulfer

✓ 5. LETTER 2/19/10 STEPHEN WHEEL TO DENNIS WHEEL 2/10/09

✓ 6. ID ONLY - SITE PLAN FROM ZC'S FIVE BEZEL. JD

DAY 6 4/21/10

✓ 7. PEOPLE'S COUNSEL SIGN-IN SHEET

✓ 8. LETTER DATED 3/8/05 J. ROBERT POWELL TO BRUCE DODGE

✓ 9. INTER-OFFICE CORR. 1/21/09 DEPRM TO TIM KOTRACO
RE: SOS GUN ROAD

✓ 10. PHOTO - FROM GUN ROAD

✓ 11. PHOTO - FROM GUN ROAD

✓ 12A+B A. PHOTO FROM KEECHIKAN - OLD PLAY AREA
B " " " " " " " "

✓ 13 SECTION 308 INTERNATIONAL EXISTING BLDG. CODE

✓ 14 SECTION 305 " " " "

✓ 15. SECTION 105, 305.2, 308, 903 " " " "

CASE 09-153-SPHX

PROTESTANTS' EXHIBITS

✓16. BC RESIDENTIAL TRASH + RECYCLING COLLECTION

✓17. IN ONLY AEGIAL PHOTO FOR VIDEO

✓18. VIDEO DISCS (3)

✓19. HAAI COPIES OF POWERPOINT VIDEO - HOMES

✓20. HAAI COPIES " " " HISTORIC HOMES

✓21. MD. HISTORIC PROPERTY DESIGNATIONS

✓22. SIGN-IN SHEET.

DAY 7 4/27/10

✓23. CD - 5 Videos

1. BALTO. COUNTY TRASH TRUCK

2. PUBLIC SCHOOL BUS

3. ONCOMING SCHOOL BUS FROM 505 DRIVEWAY

4. VIEW OF THE FRONT OF 505

5. EXITING 512 GUN RD.

CAR TRAVELING 30 MPH

✓24. BALTO. COUNTY ZONING MAP

✓25. (~~IT DONUT~~) LIST OF GUN ROAD RESIDENTS.

2

DAY 8

✓26. MSDT-A TRAF APPLICATION

IN ONLY 27. ✓ HOGG TEXT OF TESTIMONY.

CASE 09-153 SPHX

PROTESTANTS' EXHIBITS

✓ 28. FOUR PHOTOS OF GUN RA.

✓ 29. VIDEO OF ENTRANCE TO SOS GUN RA.

ID ONLY ✓ 30. CONTEXT PLAN

✓ 31. SET OF 3 PHOTOS OF GUN RA (MR. BENNETT)

ID ONLY ✓ 32. SIGN-IN SHEET 4/27/10

ID ONLY ✓ 33. SIGN-IN SHEET 6/30/10

✓ 34. MARY LANE MAGILL RESUME DAY NO 9 All Exhibits (and ID only) 1-33
Verified

✓ 35. RULE 8 RESOLUTION FOR PAUL DONOGHUE 7/1/10 trs

✓ 36. SURVEY SUMMARY

✓ 37. SIGNED OPPOSITION LETTERS.

✓ 38. OPPOSITION LETTERS

✓ 39. ARTICLE IN "HISTORY TRAILS" PUBLICATION

✓ 40. LIST OF ~~PRO~~ RESIDENTS WHO DID NOT SEE CLASS A SIGN

ID ONLY ✓ 41. PEOPLES COUNSEL SIGN-IN SHEET 7/15/10 - ID only

Exhibits
Verified
(and ID only)
7/15/10
trs

Gun Road Historical and Protective Association

2009-0153-SPHX

I am a property owner or resident on Gun Road or Keech Road, and I am AGAINST the granting of a special exception which will allow more than 12 children at the home day care facility at 505 Gun Road.

Laura Rudy

Name

Laura Rudy

Keech Rd

Address

7-12-09

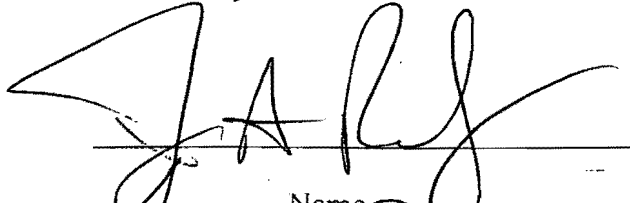
Date

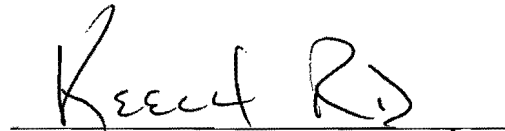
CBA PRO. EX. No. 1

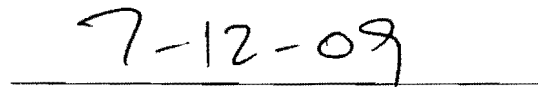
Gun Road Historical and Protective Association

2009-0153-SPHX

I am a property owner or resident on Gun Road or Keech Road, and I am AGAINST the granting of a special exception which will allow more than 12 children at the home day care facility at 505 Gun Road.


Name
James Rudy


Address


Date

CBA Pro. Ex No. 2

Protestants + People's Counsel Sign-In Sheet

Case Name: Hogg + Smith Pet.
Case No.: # 09-153-SPHX
Date: 11/10/09

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. ~~If you wish to be assisted by People's Counsel, please sign below.~~

Check to testify	Name	Address	Phone #	Email	Group you represent	Basis of your concerns
✓	William H. Moore, Jr	510 Gun Road	410-977-7715	williamhmoore@burlington.com	Protestant	multiple
✓	Paul Donoghue	508 Gun Rd	(410) 206-5376	pdonoghue@comcast.net	Protestant/Ass.	many
	John White	409 Gun Rd	410-242-8431	whoopingdog@gmail.com		change in the hood
✓	FRANK LINDBERGH	511 GUN RD	410-242-7139	FRANK_LINDBERGH@COMCAST.NET	COMCAST	BUSINESS/RESIDENTIAL
✓	FRED L. SCHNEIDER	512 GUN RD	410-242-0985	FRED.SCHNEIDER@NAVY.COM		BUSINESS/RESIDENTIAL
✓	Mary Jean Bennett	516 Gun Rd	410-242-2919	N/A	Gun Rd	Business in residential area
✓	Naomi Baldwin	324 Gun Rd	410-247-6941	nmferbal@hotmail.com	Gun Rd	comm'l business in resid.
✓	Donna Murphy	406 Gun Rd	410-247-2211	hedger914@comcast.net	Gun Rd	commercial business in resid. area
✓	Michele Reed	307 Gun Rd	410-247-0822	WMRMMR@juno.com	Gun Rd	many & multiple
✓	Janet Brans	301 Gun Rd	410-242-8989	janetbrans354@aol.com	Gun Rd	business in residential, safety
✓	GLORIA CARRION	428 GUN ROAD	410-242-8513	WEL057@COMCAST.NET	GUN ROAD	BUSINESS IN A RESIDENTIAL AREA
✓	WILLIAM WATSON	422 GUN ROAD	410-247-0638		GUN ROAD	BUSINESS/RESIDENTIAL
✓	THOMAS JARYIS	426 GUN RD	410-247-3955	JARYIS@COMCAST.NET	GUN RD	BUS/RES
✓	Wendy Adams-Pometto	359 GUN RD	410-242-4848	ADAMS@AVALONVALE.COM	GUN RD	Safety, Security, Preservation
✓	Joe Bennett	516 Gun Road	410-247-2919	jbennett@closecall.com	Gun Rd	Traffic, Business in Resid.
✓	Elizabeth Donoghue	508 Gun Rd	410-545-3789	pandeleon@comcast.net	Gun Rd	Business in a historical area
✓	Charles Macgill	319 Gun Rd	410-558-5211	cgmrsr@aol.com	Gun Rd	Traffic Safety residential neighbor
✓	Mary Anne Macgill	319 Gun Rd	410-242-3027	mjmaccgill@gmail.com	Gun Rd	Change in zoning
✓	Lucy McKean	403 Gun Rd	410-242-8854	Lucymckean@comcast.net	Gun Rd	Business in residential area
✓	Paul McKean	" "	" "	Flaviaschoice@hotmail.com	"	"

CBA Pro. No. 3

Dennis Wertz - Re: 505 Gun Road, 2009-0153-SPHX

From: Stephen Weber
To: Dennis Wertz
Date: 2/19/2010 6:02 PM
Subject: Re: 505 Gun Road, 2009-0153-SPHX
CC: Dennis Kennedy

Dennis -

I reviewed the revised site plan for the subject site. While I see references to relocation of the fence and sight lines are shown on the drawing, it still isn't clear how the sight lines are being met. First, the site plan indicates "Proposed relocated fence location and/or existing fence to be removed". That means one of 3 things (1) A new fence is being installed along with keeping the old fence (2) A new fence is being installed and the old fence is being removed (3) No new fence will be installed and the existing fence is being removed. It would seem they would know by now what they're actually doing. Then the stone wall which is creating most of the sight line problems, isn't mentioned at all. While it shows the sight lines going thru the stone wall, I can find nothing on the plan which indicates that the wall is being removed or relocated to get it out of the sight line. Therefore, the plan appears to not have adequately addressed this issue.

Also, with respect to the driveway width, it is clear that issue has not been addressed either. Last April I indicated that, "... it would be preferable for any 2-way driveway to the daycare to be 20 feet wide. However, at an absolute minimum, the first 100 to 150 feet of the driveway off of Gun Rd would have to be at least 20 feet wide to insure that traffic flow going into and out of the driveway from Gun Rd is not interfered with. Obviously one would not want exiting traffic preventing entering traffic from getting off of Gun Rd expeditiously. A narrow entrance would create an unsafe condition." The plan shows no improvements to the driveway and there basically isn't even enough room for a sitting exiting car to be able to be safely bypassed by an entering vehicle coming off of Gun Rd expeditiously. Given the one-way loop in front of the daycare, it would be most appropriate to construct a 20-foot wide driveway from Gun Rd 140 feet into the property where the one-way loop starts.

Therefore, the plan does not appear to have addressed any of our prior comments. While the sight lines are shown, the plan doesn't indicate how they're going to be achieved. Should you need anything further from our office regarding this matter, please let me know.

Stephen E. Weber, Chief
Div. of Traffic Engineering
Baltimore County, Maryland
111 W. Chesapeake Avenue, Rm. 326
Towson, MD 21204
(410) 887-3554

>>> Dennis Wertz 2/9/10 11:00 AM >>>
Steve,

A revised site plan has been submitted for the proposed Class B Group Child Care Center. I secretary to make a copy of the plan and the petition for you. She will probably drop them.

CBA Pro. No. 5

Copy
forwarded
to
Schmide
3/2

People's Counsel Sign-In Sheet

Case Name: Re Lynn Hogg / Eliza Smith / Cuddles Day Care

Case No.: 09-153-SP/7X

Date: 4-20-10

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

[illegible]

CBA PRO NO. 7

**Department of Environmental Protection
and Resource Management**

401 Bosley Avenue, Suite 416
Towson, Maryland 21204



Baltimore County

James T. Smith, Jr., County Executive
David A.C. Carroll, Director

Ground Water Management

410-887-2762
Fax: 410-887-4804

COPY

March 8, 2005

Mr. Bruce Doak
c/o GERHOLD CROSS & ETZEL
320 E TOWSONTOWN BLVD
SUITE 100
TOWSON MD 21286

RE: 5298 Keech Road, Lots 1-3, Principio Property (aka. LaVita Estates), D-13
TA: 2000013412

Dear Mr. Doak,

A representative of this office, Clare M. Brunner, R.S., conducted soil evaluations on 03/01/2005 regarding the above-referenced lot(s). The results of the tests are attached.

Based on the slow permeability of the soils and shallow rock referenced-above, approval cannot be granted for the installation of a private sewage disposal system on the property.

If you have any questions regarding this matter, please contact this office between 8:30 - 9:30 a.m.

Sincerely,


J. Robert Powell, R.S.
Soil Evaluation Program

attachment

J:\PERC LETTERS\2005 PERC LETTERS\Rejection Letters\Keech Rd., 5298, Lots 1-3, 3-8-05.doc



Printed on Recycled Paper

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

515 4895

CBA Pro. No. 8

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Timothy M. Kotroco
FROM: Dave Lykens, DEPRM - Development Coordination
DATE: January 21, 2009
SUBJECT: Zoning Item # 09-153-X
Address 505 Gun Road
(Smith/ Hogg Property)

RECEIVED

JAN 21 2009

ZONING COMMISSIONER

Zoning Advisory Committee Meeting of December 15, 2008.

- _____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.
- X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

Prior to approval of the child care center, an evaluation of the septic system will be required. A usage letter must be submitted. Soil evaluations will be required. For more information, contact Rob Powell, Ground Water Mgmt, 410-887-2762

Reviewer: S. Farinetti

Date: 12/22/2008

New location (A)



CBA PRO. NO. 10

People's Counsel Sign-In Sheet

Case Name: Hogg Smith / Caddles Day Care

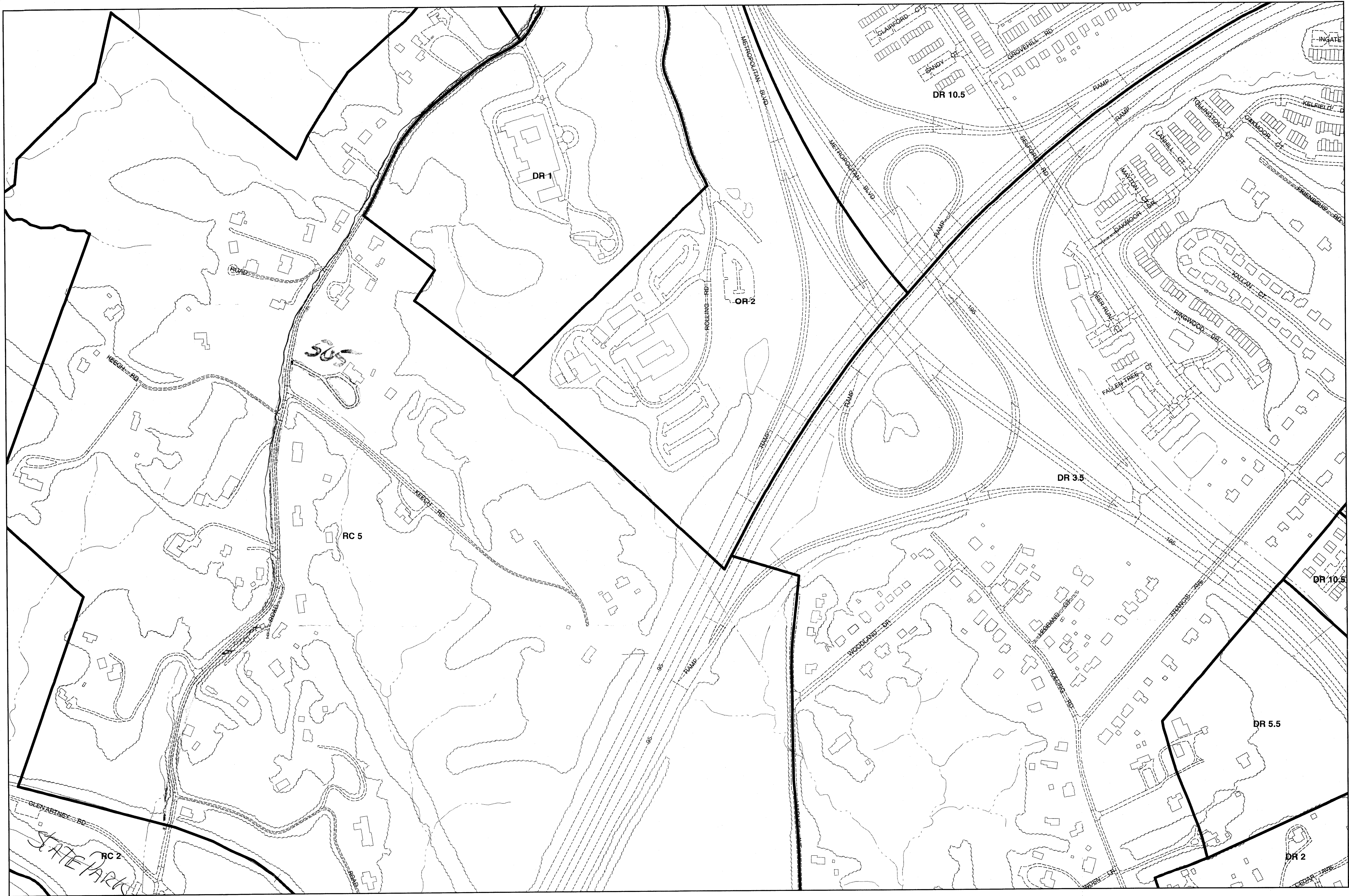
Case No.: 09-153-SPHX

Date: 4-21-10

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check to testify	Name	Address	Phone #	Email	Group you represent	Basis of your concerns
✓	Paul Donoghue	508 Gun Rd 21227	410 206-5376	pdonoghue@rrm.com	self / comm. pass.	Opposed to Day Care
✓	Epiz Donoghue	504 Gun Rd 21227	(410) 224- 3789	rendedonoghue@comcast.net	self	Maintain integrity of Road
✓	Willy Moore	510 Gun Rd 21227	443 438-2767		self	Opposed to Day Care
✓	Charles Macgill	319 Gun Rd 21227	410-242- 7811	cyrus@aol.com	self	Opposed to Day Care
	Naomi Baldwin	324 Gun Rd 21227	410-242- 8941	nmbaldwin@hotmail.com	Gun Rd	oppose to Day Care
	Mary Jean Bennett	516 Gun Rd 21227	410-242-2919		Gun Rd.	oppose Day Care
✓	FRANK LINDBERG	511 GUN RD 21227	410 242-7139	FRANK.LINDBERG@COMCAST.NET		OPPOSED TO DAYCARE
✓	Joe Bennett	516 GUN Rd 21227	410-242-2919	bennett.joseph@ excite.com	Self	Opposed to granting Exception
	Jamie Bruns	301 Gun Rd 21227	410-242-8988		self	opposed to Day Care
	Michelle Reed	307 Gun Rd 21227	410-242-0802	WMRMMR@juni.com	Comm association	opposed to Day Care
✓	Lucan W. McKean	403 Gun Rd. 21227	410-242-8854	lucanmckean@comcast.net	self	opposed to day care
	JACKIE HEDEMAN	408 GUN Rd. 21227	410-242-8137		GUN RD HIST & PROT. ASSN	OPPOSED TO DAYCARE
	GLORIA CARRION	428 GUN RD. 21227	410-242-8513	WELOST@COMCAST.NET	" " "	OPPOSED TO DAYCARE
	Mary Jane Macgill	319 Gun Rd. 21227	410 242 3027	mjmacgill@gmail.com	self & Gun Rd. HPA	opposed TO Day care

CPA Pro. No. 22



Plan Sheet: 108B2

Note:
The zoning depicted in this application incorporates the actions associated with 2008 Comprehensive Zoning Map Process, zoning changes associated with an adopted Community Plan and Baltimore County Board of Appeals actions through December 31, 2008.

Legend

- | | | | | | |
|--|-----------|--|---------|--|------------|
| | Buildings | | Streams | | Vegetation |
| | Zoning | | Roads | | Rail Lines |

Baltimore County Office of Planning and Zoning Official Zoning Map

107C1	108A1	108B1	108C1	109A1
107C2	108A2	108B2	108C2	109A2
	108A3	108B3	108C3	109A3

Scale

1" = 200'

0 100 200 400 Feet



Data Sources:
Planimetric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2008

OR A Prot. # 24

GUN ROAD RESIDENTS AND LENGTH OF OWNERSHIP

* denotes purchase of property by ancestors

301	Bruns, Janet	*1912 - 2002
303	Andersen, Tom and Kim	*1917 - 1962
305	Bingaman, Chris	1998
307	Reed, Bill and Shelley	2003
309	Pommato, Gene and Wendy Adams	2003
311	Andersen, John and Julie	*1917 - 1998
319	Macgill, Charles and Mary Jane	1966
322	McKee, Charlie and Natalie	1993
324	Baldwin, Marty and Naomi	*1954 - 1991
401	White, Philip	*1889 - 1937
403	McKean, Paul and Lucy	*1889 - 1939
405	Scott, John Gochenour, Helen	2006
406	Hedeman, Richard	*1920 - 1942
408	Hedeman, Jackie	*1920 - 1945
409	White, John	*1889 - 1934
411	vacant	
410	Packal, Bruce and Shea	2005
415	Hess, Stan and Julie	2009
416	Rezai, Nasser and Jeannette	1972
419	Salas, Ramon and Pat	1966

CBA Prot 25 ID

TRADE NAME APPLICATION



1) Only one trade name may appear on this line

TRADE NAME: Cuddles Day Care

2) STREET ADDRESS(ES) WHERE NAME IS USED: _____

505 Gun Road

CITY: Avalon

STATE: Maryland

ZIP: 21227

P.O. Box address is not acceptable anywhere on this form.

3) FULL LEGAL NAME OF OWNER OF BUSINESS OR INDIVIDUAL USING THE TRADE NAME:

Elizabeth A. Smith

If more than one owner, attach an additional sheet listing each owner with their address. Be sure each owner signs this form.

4) If the owner is an individual or general partnership, does it have a personal property account (an "L" number)? Check one box YES ☐ NO ☒

If YES, WHAT IS THAT NUMBER? _____

If NO, see instruction 4 under How To Complete Trade Name Application.

5) ADDRESS OF OWNER: _____

1915 Surf Circle

CITY: Pasadena

STATE: Maryland

ZIP: 21122

6) DESCRIPTION OF BUSINESS: Day care service for pre-school children in the vicinity

I affirm and acknowledge under penalties of perjury that the foregoing is true and correct to the best of my knowledge.

7)

Elizabeth A. Smith

SIGNATURE OF OWNER

ELIZABETH A. SMITH

CUST ID: 0002118708

WORK ORDER: 0001561746

DATE: 04-21-2008 10:40 AM

AMT. PAID: \$25.00

SIGNATURE OF OWNER

CBA pro. 26

TRADE NAME APPROVAL SHEET

**** KEEP WITH DOCUMENT ****

TRANSACTION TYPE

TN - Trade Name Registration
TA - Amendment
TA1 - Amendment Owner Added
TA2 - Amendment Owner Deleted
TA3 - Amendment Owner Name Change
TA4 - Amendment Location Added
TA5 - Amendment Location Deleted
TA6 - Amendment Location Changed
TC - Cancellation
TR - Renewal

FEES REMITTED

25.00

Certified Copies _____

Certificates _____

Copy Fee: _____

Certificate of Fact Fee: _____

Other Change(s) _____

TOTAL FEES: 25.00

NO FEE TRANSACTION TYPES

99T - Departmental Action
99TA - Departmental Action - Name Change
220T - Void Non-Payment
220TA - Departmental Action - Amendment
220TA1 - Departmental Action - Owner Added
220TA2 - Departmental Action - Owner Deleted
220TA3 - Departmental Action - Owner Name Change
220TA4 - Departmental Action - Location Added
220TA5 - Departmental Action - Location Deleted
220TA6 - Departmental Action - Location Changed
220TC - Departmental Action - Cancellation
220TR - Departmental Action - Renewal

Code _____

Attention: _____

Mail to Address:

ELIZABETH A. SMITH
1915 SURF CIRCLE
PASADENA MD 21122

Credit Card _____ Check ☒ Cash _____

Documents on _____ Checks _____

Approved By: _____

Keyed By: _____

COMMENT(S): _____

CUST. ID: 0002118708
WORK ORDER: 0001561746
DATE: 04-21-2008 10:40 AM
AMT. PAID: \$25.00



1000361996275032

ID # T00277891 ACK # 1000361996275032
PAGES: 0002
CUDDLES DAY CARE

02/26/2008 AT 02:52 P M O # 0001561746

Stamp Work Order and
Customer Number HERE

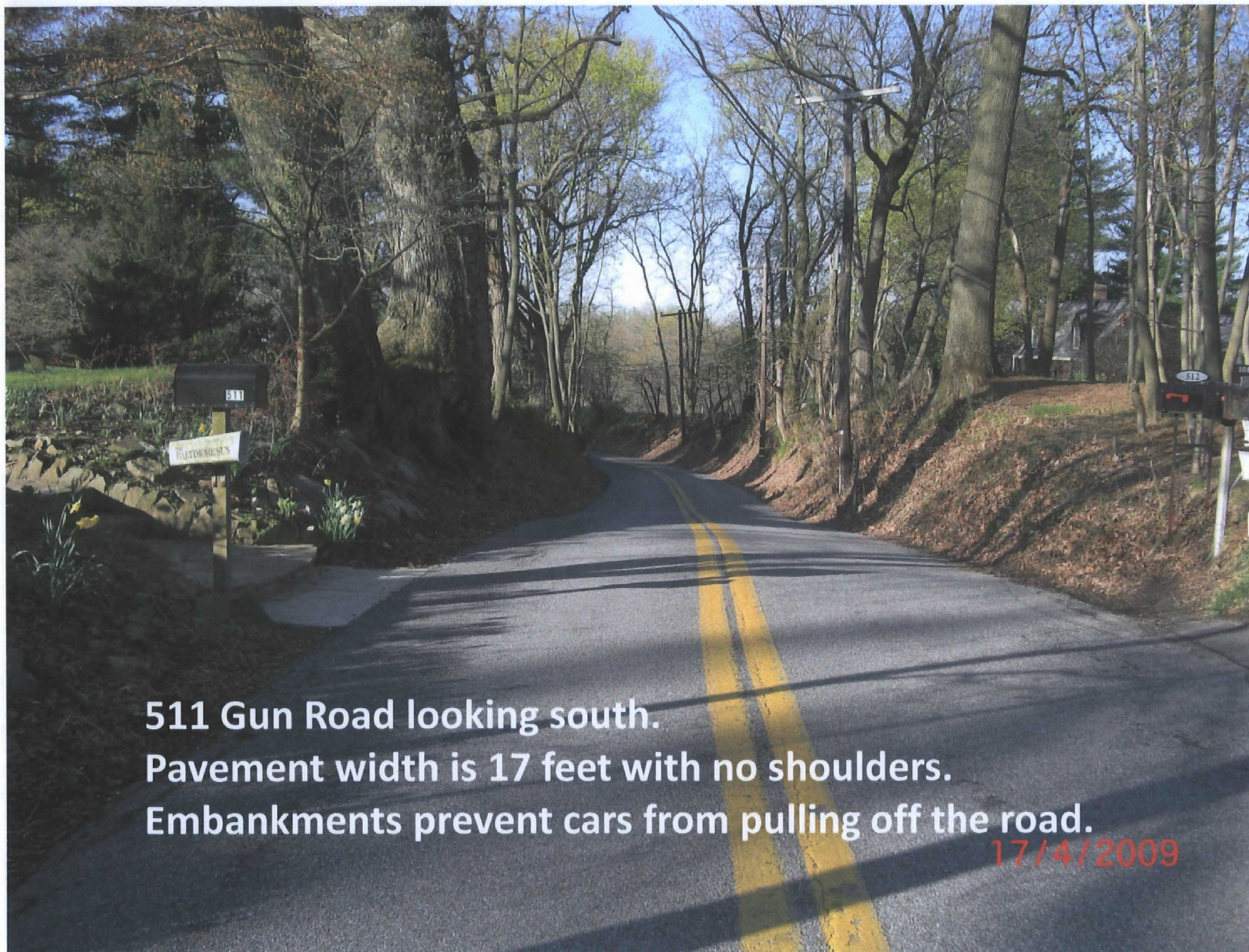


Figure 1 – Looking South from 516 Gun Road



Figure 2 - – Looking South from 514 Gun Road

CBA Pro. 28



511 Gun Road looking south.
Pavement width is 17 feet with no shoulders.
Embankments prevent cars from pulling off the road.

17/4/2009

CBA pro. No 31

MARY JANE MACGILL

PROFESSIONAL EXPERIENCE

LONG AND FOSTER REAL ESTATE. INC.
COLDWELL BANK
Associate Broker

1996-2010
1986-1996

Abide by the Code of Ethics and Standards of Practice of the State
Of Maryland and the National Association of Realtors.

Founder and Manager of The Macgill Team, with Long and Foster,
which consists of 6 real estate agents, technology personal and
transaction coordinator.

Provide knowledge-based information, advice and service in residential
real estate to buyers and sellers, renters and landlords, builders and
developers.

Provide market analysis which includes valuation of properties, market
analysis, trends, financial and economic impacts. Research information
which may affect negative or positive events in neighborhoods and
communities.

Marketing properties for sale, which includes advertising, prospecting,
net-working with other professionals in the real estate field.

Providing resources to information regarding communities,
neighborhoods demographics, and institutions.

Acquiring general knowledge in the general use of land and property
to its greatest value and best use.

Provide residual advice in the marketing of properties, i.e. home
enhancement expertise, property condition and maintenance.

Negotiate offers for buyers and sellers. Coordinate contracts from
ratification to settlement.

CIBA PRO. 34

Gun Road Historical and Protective Association

RESOLUTION - 2

Resolved, that at the November 8, 2009 meeting of the Gun Road Historical and Protective Association, the Association decided the following:

1. Paul Donoghue is President of the Gun Road Historical and Protective Association and was so voted at the June 30, 2009 meeting;
2. Paul Donoghue is appointed to represent and testify on behalf of the Gun Road Historical and Protective Association before the Baltimore County Board of Appeals or other duly constituted zoning agency, body or commission, including at the November 10, 2009 hearing involving Cuddles Day Care

Lucy H. McKean

Lucy McKean,
Secretary

11/08/09

Date

Paul Donoghue
Paul Donoghue
President

11-8-09

Date

CBA Pro. No. 35

SURVEY SUMMARY

ADDRESS	NAME	POSITION
301 Gun Road	Atwater	Opposes
301 Gun Road	Bruns	Opposes
303 Gun Road	Andersen	Opposes
305 Gun Road	Bingamen	Opposes
307 Gun Road	Read	Opposes
309 Gun Road	Pometto	Opposes
311 Gun Road	Andersen	Opposes
319 Gun Road	Magill	Opposes
322 Gun Road	McKee	Opposes
324 Gun Road	Baldwin	Opposes
401 Gun Road	White, Phillip	Opposes
403 Gun Road	McKean	Opposes
405 Gun Road	Scott	Opposes
406 Gun Road	Rick Hedeman	Opposes
408 Gun Road	Jackie Hedeman	Opposes
409 Gun Road	John/Kaye White	Opposes
410 Gun Road	Bruce Packal	Opposes
415 Gun Road		
416 Gun Road	Rezai	Opposes
419 Gun Road	Salas	Opposes
422 Gun Road	Watson	Opposes
424 Gun Road	Earp	Opposes
426 Gun Road	Jarvis	Opposes
428 Gun Road	Carrion	Opposes
500 Gun Road	Sanchez	Favors
505 Gun Road	Hogg/Smith	Favors
508 Gun Road	Donoghue	Opposes
510 Gun Road	Moore	Opposes
511 Gun Road	Lindberg	Opposes
512 Gun Road	Ritter	Opposes
512 Gun Road	Schneider	Opposes
515 Gun Road	Bezold	Opposes
516 Gun Road	Bennett	Opposes
518 Gun Road	Dixon	Opposes
600 Gun Road	Whitehead	Opposes
604 Gun Road	Snouffer	Opposes
606 Gun Road	Bush	
610 Gun Road	Daugherty	Opposes
612 Gun Road	Clayton	Opposes
614 Gun Road	Gray	Opposes
618 Gun Road	Richmond	Opposes
5300 Keech Road	Walsh	Opposes
5303 Keech Road	Christopolis	Opposes

CBA PRO. NO. 36

Gun Road Historical and Protective Association

I am a property owner or resident on Gun Road or Keech Road, and I am AGAINST the granting of a special exception which will allow more than 12 children at the home day care facility at 505 Gun Road.

Janet Brown

Name

301 Ham Rd

Address

April 20, 2009

Date

CBA Pro. No. 37

514 & 516 Gun Road
Relay, MD 21227
April 19, 2009

Mr. William Wiseman
Zoning Commissioner
Room 105 Jefferson Building
105 West Chesapeake Avenue
Towson, MD 21204-4420

Dear Mr. Wiseman,

Jean, my wife, and I would like to let you know of our opposition to granting a special exception to the Baltimore County Zoning Regulations for Case 2009-0153-SPHX, for 505 Gun Road, 21227.

The Gun Road community is zoned RC5 and a business of this size is not in keeping with the community, nor is it wanted by the Community. A poll was conducted several weeks ago and 100% of those we were able to reach (35 out of 40 households) expressed their opposition to granting this request.

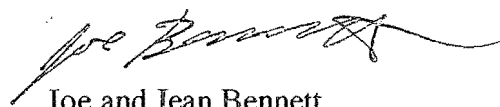
The Community is a residential community and it is not in keeping with the character of the neighborhood to allow an exception to a business that destroys the character of the neighborhood.

We are not opposed to this type of business in an area that has the proper zoning, but are adamant in our opposition to placing it in an RC5 zoned residential community. These folks at 505 Gun Road (Hogg/Smith) requesting this special exception for a Class B license, recently moved into our community and are welcomed as neighbors, but not as a major business in the middle of our residential community. Anyone in America has the right to start a business, but should be aware of the zoning laws prior to buying a house in a residential area, zoned RC5 no less, and harbor expectations that they can "have it their way."

My wife's family has lived on our Gun Road property since 1925 and my family has lived in Relay since 1845. We have been here this long because of the fact that this is a residential community, not a place for commercial enterprises.

Thank you for your consideration of our position to not grant this special exception, Class B from A, to the zoning laws.

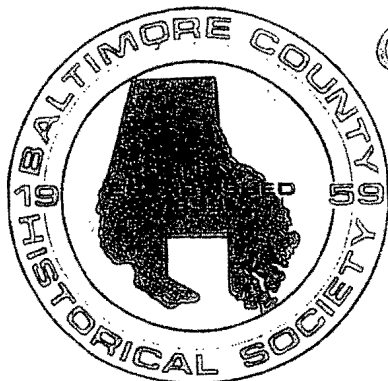
Sincerely,



Joe and Jean Bennett

Cc: Mr. Dennis Wertz
Mr. Paul Donoghue

CBA PRO. No. 38



ISSN 0889-6186

History Trails

Baltimore County Historical Society

Agriculture Building
9811 Van Buren Lane
Cockeysville, MD 21030

Editors: JOHN W. McCRAIN and WILLIAM HOLLIFIELD

VOL. 29

SPRING-SUMMER 1995

NO. 3 & 4

Gun Road "Cannon Track" to Suburb

by Lucy W. Merrill

Gun Road, a little over a mile long, extends from Rolling Road across the old Main Line of the Baltimore and Ohio Railroad into the Patapsco Valley State Park and spans the Patapsco River before ending a short distance into Howard County.

Several writers over the years have said that the road was so named because it was built under the direction of George Washington to facilitate the movement of his troops and supplies (including cannon, then commonly referred to as guns) on their journey from Philadelphia to Virginia. The Continental Army reached the Avalon area by road, crossed the Patapsco River, and went to Elkridge Landing, where it was transported southward in boats.

Earlier, however, Gun Road was the name applied to River Road, which followed the Patapsco upstream from Relay and connected with the Frederick Road above Ilchester. Part of this road was destroyed in the great

flood of 1868 and in some recent floods. Later the name Gun Road was transferred to the present road, which had been known as the Avalon Forge Road.

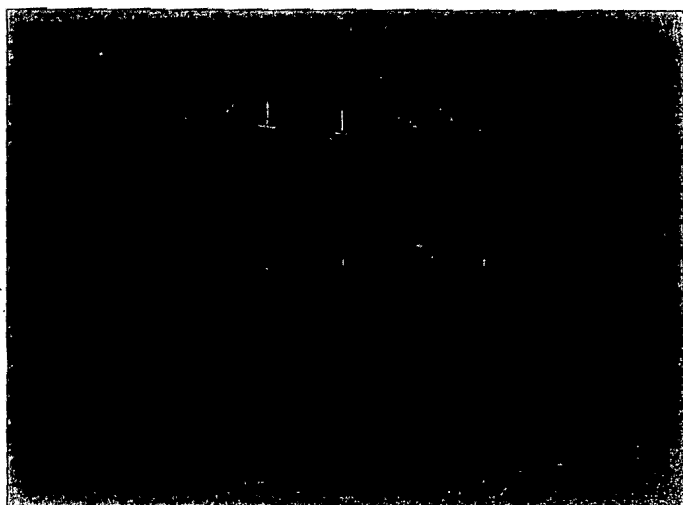
County newspaper articles of 1898 and 1901 gave both names in referring to the road:

[1898]: The Avalon road is now in better condition than it was before since George Washington built it. I am informed that this is one of the oldest roads in the State. General Washington marched his troops down it on their way from Philadelphia to Virginia, and that is the reason it is often called the 'Old Gun Road.' Washington having hauled his heavy guns down there.

[1901]: . . . The Old Gun Road, some times known as the Avalon Forge Road, is being put in first class condition. The road is being widened and graded, . . . part of the road has already been shelled. Today it is in better shape and condition than it ever has been since Gen. George Washington first surveyed it out; for it is said that this was his route when with the Continental Army, he retreated from Philadelphia, going from Avalon to Elk Ridge Landing, where he took boats for Virginia. This is historic land . . .

In the eighteenth century, Elkridge was a thriving port through which farmers shipped their tobacco overseas. The Patapsco River was then navigable beyond Elkridge nearly to Avalon. The beginning of industrial activity at Avalon can be traced to 1761 when Caleb Dorsey, Ironmaster, part owner of Elkridge Furnace, bought the 1,800-acre tract "Taylors Forest," which extended along both sides of Rolling Road from present-day Francis Avenue in Relay to Park Grove in Catonsville. Next he acquired an adjacent 375-acre tract, "Long Acre," which bordered on the Patapsco River. This land was at first used for its timber and possibly for charcoal burning. The forge he built, known as Dorsey's Forge, was at the southeastern end of "Long Acre." The forge was used to produce crowbars, the only iron tools made in Baltimore County. All other tools were imported.

The map produced by Dennis Griffith in 1794-95 showed Dorsey's Forge at the present Avalon Area of the Patapsco State Park. In 1815 the property was sold at auction to Benjamin and James Ellicott of the well-known



319 Gun Road, built in 1877, was once surrounded by the Berger vineyard.

OBA PRO EX 39

DID NOT SEE CLASS A SIGN
COPY

The residents listed below have signed this certification on the attached pages.
I certify that I have never seen the zoning notice sign depicted above posted anywhere on or near 505 Gun Road during March or April 2008 or at any other time.
Name
Signature
Address
Date

The people listed below live south of 505 Gun Road or directly opposite 505 Gun Road
These people drive past 505 Gun Road every day to go to work
There are 16 more people that live north of 505 Gun Road whose names are not included

	Gun Road address	name
1	301	Bruns, Janet
2	301	Atwater, Josephine M.
3	303	Andersen, Tomas
4	303	Andersen, Kim
5	305	Bingaman, Christopher
6	307	Reed, William M.
7	307	Reed, Michele M.
8	309	Pommato, Eugene A. Jr
9	309	Adams, Wendy B.
10	311	Andersen, John
11	311	Andersen, Julie
12	319	Macgill, Charles
13	319	Macgill, Mary Jane
14	322	McKee, Charles E.
15	322	McKee, Natalie
16	324	Baldwin, Gary M. Jr
17	324	Baldwin, Naomi
18	401	White, Philip
19	403	McKean, Lucy W.
20	403	McKean, Paul
21	406	Hedeman, Richard L.
22	406	Murphy, Donna L.
23	406	Murphy, Keith O'Neal

	Gun Road address	name
24	408	Hedeman, Jacqueline R.
25	409	White, John
26	410	Packal, Bruce
27	410	Packal, Shea
28	416	Rezai, Dr. Nasser
29	416	Rezai, Jeannette J.
30	419	Salas, Dr. Ramon A.
31	419	Salas, Pastricia A.
32	422	Watson, William W. III
33	424	Earp, Frank
34	426	Jarvis, Thomas
35	426	Jarvis, Janet
36	428	Carrion, Gloria S. Watson
37	508	Donoghue, Paul
38	508	Donoghue, Elizabeth
39	510	Moore, William H. V
40	510	Moore, Caroline

	Keech Road address	name
41	5303	Christopolis, James
42	5303	Christopolis, Kathy

CBA PRO. NO 40

CBA
PETITIONER'S
EXHIBITS

20090153

(5)

B 712.416 MR

CASE 09-153 SPHX PETITIONERS' EXHIBITS

Verified
11/16/09
KRC

- ✓ 1. LETTER DATED 11/2/09 - JAMIE RUDY.
- ✓ 2. Cuddles Day Care, LLC. LICENSE. Verified
12/10/09
JRD
- ✓ 3. APPLICATION FOR PALM BEACH COUNTY USE PERMIT AND RELATED PAPER WORK
- ✓ 4. A. PHOTO - RECEPTION AREA
B. MBA - LOYOLA COURAGE
C. PHOTO - WAITING AREA.
D. " HUMPTY DUMPTY ROOM.
E. " KITCHEN AREA.
F. " CRIBS
G. " ROOM.
H. " BATHROOM AREA.
- ✓ 5. INSPECTION + LICENSING FROM FIRE DEPT.
- ✓ 6. A. PHOTO - RESIDENCE ENTRANCE,
B. " - FRONT OF HOUSE
C. " - RESIDENCE - ENTRANCE TO DAY CARE.
D. " SEPARATE ENTRANCES
E. " SWIMMING POOL.
F. " FROM DOOR OF CENTER - GUN ROOM.
G. " PATIO - PLAY AREA
H. " SAME AS 6G.
I. " NEAREST RESIDENCE.
J. "
K. " ENTRANCE
L. " "
M. " " TO DRIVEWAY
N. " CAR ENTERING CENTER
O. " " " "
P. " " " ONE WAY SIGN.

PETITIONERS' EXHIBITS

✓ 7. FAX DATED 1/24/09 BETH SMITH TO WILMA SELKOW,
OFFICE OF CHILD CARE.

✓ 8. IDENTIFICATION ONLY - DEPRM COMPLAINT INVESTIGATION FORM.

✓ 9. James Hermann CV

✓ 10 A Site Plan I.D. only

✓ 10 B Context Plan I.D. only

DAY 5 4/20/10 Verified
4/20/10 KRC

✓ 11 A ZONING COMMISSIONERS ORDER DATED 3/24/10

✓ 12 ZAC COMMENTS

✓ 13. REVISED SITE PLAN 1/20/10

✓ 14 A-G AERIAL PHOTOS OF SITE AND SURROUNDING AREA

✓ 15 A-G A. PHOTO-ENTRANCE

B. " DRIVEWAY

C. " VEHICLES

D. " "

E. " "

F. " GUN ROAD

G. " " "

✓ 16. SERIES OF PHOTOS OF KEECH AD.

✓ 17 A-G SERIES OF PHOTOS FROM GUN ROAD

✓ 18 A-H SERIES OF PHOTOS OF RESIDENCES ON GUN ROAD

CASE 09-153 SPHX

PETITIONERS' EXHIBITS

✓ 19. WATER & SEWER SUPPLY MAP

✓ 20. A-C COUNTY MAPS OF 2009 SERVICES

✓ 21. A-F PHOTOS - OF PARKING SPACES

DAY 7

✓ 22. WES GUCKERT, PTP RESUME

✓ 23. PICK-UP AND DROP-OFF DATA (4 PAGES)
11/18, 11/19, 11/23, 11/24/09.

✓ 24. A. PHOTO - LOOKING SOUTH FROM DRIVEWAY (LOOKING LEFT)
B. " - " " " " " " "
C. " - " NORTH " " (" RIGHT)

✓ 25. SITE DIMENSIONS FOR GUN ROAD

✓ 26. TRAFFIC COUNT DATA SHEET (NORTH & SOUTH) 4 SHEETS

DAY 8

✓ 27. A - PHOTO OF ROLLING ROAD

✓ B. " - UMBC TRAINING CENTER

✓ C. " " " "

✓ D. " CORNER ROLLING & GUN ROADS

✓ E. " OBLATE CHILD DEVELOPMENT CENTER SIGN

✓ F. FLYER FROM OBLATE SISTERS REQUESTING DONATION FOR NEW BLDG.

✓ G. PHOTO OF THE BEEZOLD PROPERTY

CASE 09-153 SPHX

PETITIONER'S EXHIBITS

✓ 28 A - PHOTO PAUL DONOHUE PROPERTY SWING SET
✓ B - " " " " " "
✓ 29 " " " " " " BASKETBALL HOOP

✓ 30 " SWING SET IN FRONT OF PROPERTY

✓ 31 PHOTO OF TRACTOR TRAILER BODIES ON KEECH LAKE PROPERTY.

✓ 32 A PHOTO - FENCE AT ENTRANCE TO SONGUN PT.

✓ B " STONE WALL " " " " "

✓ C " FENCE + STONE WALL " " " "

✓ D " " " " " " " "

✓ E " " " " " " " "

✓ F " " " " " " " "

✓ 33 A PHOTO - RELAY AREA

✓ B " " "

✓ C " " "

✓ D " " "

✓ E " RELAY CHILDREN'S CENTER

✓ F " " "

✓ G " " "

✓ H " " "

✓ I " " "

✓ J " " "

(and ID only) 1-33
all Exhibits verified
7/1/10 tks

CASE 09-153 SPHX

PETITIONER'S EXHIBITS

DAY 9

✓ 34 A LETTER DATED 1/23/09 STEPHEN WEBER TO PEOPLES COUNSEL

✓ B " " 4/13/09 " " " DENNIS WATZ.

✓ 35 FILE INSPECTION REPORT AND CERTIFICATE

✓ 36 SIXTEEN PHOTOS SHOWING EMERGENCY IMPROVEMENTS MADE.

✓ 37 ORLATE SISTERS PROGRAM

✓ 38 SERIES OF 26 PHOTOS OF ORLATE PROPERTY.

Exhibits
verified

trs
7/15/10

November 2, 2009

Baltimore County Board of Appeals
Jefferson Building
105 West Chesapeake Avenue
Towson, Md. 21204

To whom it may concern:

We are the property owners on Keech Road, which is located immediately adjacent to Beth Smith's and Lynn Hogg's residence at 505 Gun Road, Halethorpe, MD 21227.

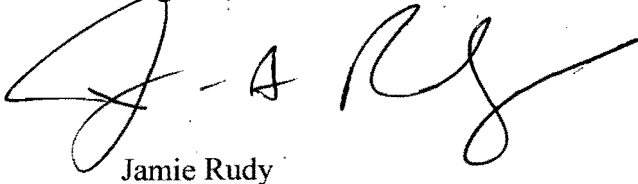
This letter will serve as our official recommendation to the Board of Appeals for the approval of the Special Exception applied for by Cuddles Day Care.

As the immediate next door neighbor, we are perhaps the most affected by the Day Care. We view Cuddles Day Care as a positive aspect of the community and support its expansion.

As the adjacent resident / land owner, we are not at all concerned by the expansion from 12 to 24 children. We have not been negatively impacted by the current Day Care facilities (traffic, noise, sight, sound, etc) nor expect any negative impact after your approved expansion.

Please approve the Special Exception as applied for by Cuddles Day Care.

Regards,

A handwritten signature in black ink, appearing to read 'J. A. Rudy', written in a cursive style.

Jamie Rudy

CBA PET. EX. NO. 1



**MARYLAND STATE DEPARTMENT OF
EDUCATION**

Achievement Matters Most

CHILD DEVELOPMENT PROGRAM LICENSE

☐ In addition, an approval is issued pursuant to Education Article, 2-206 and COMAR 13A.16.16.

Nancy S. Grasmick
State Superintendent of Schools
Maryland State Department of Education

505 GUN RD CLASS A GROUP C.C. (SMITH)

INTAKE 3/07/08 BY JL

H. DEMAND DATE 4/14/08 DEADLINE

SECS SAY NO HRAV DEMAND AS OF 4/16/08
DEADLINE WAS 4/14.

ISSUE UP ISSUED TO
MR. HOGG

MAIL 505 GUN RD.

HALETHORPE MD

21227

MAILED 4/17/08

CBA PET. EX. NO. 3



CBA PET. NO. 4A

BUSINESS OWNER'S COPY

BALTIMORE COUNTY, MARYLAND
FIRE INSPECTION CERTIFICATE

DETACH AND RETAIN
FOR DISPLAY BY BUSINESS



CUDDLES DAY CARE LLC
OR CURRENT OCCUPANT
505 GUN RD.
HALETHORPE MD 21227

INSPECTION MONTH

05 D

INSPECTION STATION

WS

PAYMENT DUE

\$34.00

PAYMENT DUE BY

MAY 1, 2009

OWNER:

CUDDLES DAY CARE LLC
OR CURRENT OCCUPANT
505 GUN RD.
HALETHORPE MD 21227
BETH SMITH

PERMIT NUMBER

339-2438

INSPECTOR'S SIGNATURE:

SEE BACK FOR DETAILED INSTRUCTIONS

Patrick Taylor

Fold and tear along perforation

CBA PET. NO. 5



ORA PET 6A

FAX

To: Wilma Selkow
Office of Child Care

From: Beth Smith
Cuddles Day Care
505 Gun Road
410-247-4747

Date: 1/26/09

Re: Day Care Fencing

Based on our discussion with you and Beth O'Connor, we recently installed a 4 foot high chain link fence, more than 20 feet from the property line, around a significant size play area for the children here at Cuddles.

Jim Garland, from building inspection, was also the one who told us that the law has recently changed to allow a 4 foot fence around swimming pools, so it was OK to put up a 4 foot fence for day care. I remember speaking to you about this and you also said that a 4 foot chain link fence would be OK as far as OCC was concerned.

I visited Mt. Providence, Relay Children's Center, CCBC Day Care and the YMCA Day Care, all in our area, and they all have chain link or wood pickets, and all less than 4 foot. I have taken pictures documenting this.

I am requesting a letter from you stating that the 4 foot chain link is OK with OCC for our file. We are requesting the same from building inspection.

Can you please fax this acknowledgement letter, on OCC letter head, to me at fax number 410-247-4041.

We appreciate your help. Thank you Wilma!

Regards,

Beth Smith

CBA PET. EX NO. 7

JAMES V. HERMANN, RLA
Owner

Project Assignment:

Landscape Architect / Planner

Years of Experience:

JVHA: < 1
Other Firms: 20

Education:

B.L.A., Landscape Architecture,
Kansas State University, 1989

Masters of Science in Real Estate
Johns Hopkins University, 2006

Active Registration:

Maryland, Landscape Architect,
1992, #1044

Qualifications:

Mr. Hermann has 20 years of professional experience in land planning, landscape architecture, and concept planning. His work has included a wide variety of projects ranging in scale from site specific to regional planning including streetscape, neighborhood parks, and recreation area planning. Mr. Hermann's project involvement includes interaction with various government agencies, private interest groups, and project related consultants (traffic engineers, SHA engineers, and State and County environmental agencies, architects, etc.); site analysis through conceptual development; graphic renderings; roadway access and realignment studies; grading, design, and cost estimating.

Mr. Hermann is the Owner and a Landscape Architect at JVHA with experience in project management and design of residential, commercial, industrial, and park projects. His responsibilities encompass preparation of site feasibility studies, site planning and design, site grading, forest stand delineation, forest conservation, landscape design, technical supervision of plans and construction documents, quality control, proposal preparation, and coordination with clients, consultants, and government agencies.

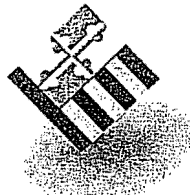
Mr. Hermann has successfully designed and managed the following representative projects:

JVHermann & Associates LLC

1895 Eden Mill Road
Pylesville, Maryland 21132
Phone: 410-688-6005
Email: jvhermann@gmail.com

CBA 09-153-SPHX
PcT.Ex #9

12-10-09



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

March 24, 2010

WILLIAM J. WISEMAN III
Zoning Commissioner

Andrew M. Belt, Panel Chair
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Room 203
Towson, Maryland 21204

**RE: ORDER ON REMAND - PETITIONS FOR SPECIAL HEARING
AND SPECIAL EXCEPTION**
NE Corner of Gun Road and Keech Road
(505 Gun Road)
13th Election District - 1st Council District
Lynn R. Hogg, et ux - Petitioners
Case No. 2009-0153-SPHX

Dear Mr. Belt:

The public hearing on remand to provide an opportunity for the Zoning Commissioner, County reviewing agencies and the parties time to clarify or amplify their opinions on the amended site plan has been completed. Accordingly, the case file(s), amended site plan (Petitioners' Remand Exhibit 1) and agency comments are being returned to you and Theresa R. Shelton for further proceedings.

By copy of this letter, all parties have been provided with the findings and decision rendered in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "William J. Wiseman III", written over a horizontal line.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

c: Lawrence E. Schmidt, Esquire & Charles Marek, Esquire, Gildea & Schmidt, LLC,
600 Washington Avenue, Ste. 200, Towson, MD 21204
Elizabeth Smith and Lynn Hogg, 505 Gun Road, Halethorpe, MD 21227
Jim Hermann, JV Hermann & Associates, LLC, 1895 Eden Mill Road,
Pylesville, MD 21132
Paul F. and Lucy W. McKean, 403 Gun Road, Baltimore, MD 21227

Jefferson Building | 105 West Chesapeake Avenue, Suite 103 | Towson, Maryland 21204 | Phone 410-887-3868 | Fax 410-887-3468
www.baltimorecountymd.gov

CBA PET. NO. 11

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: February 25, 2010

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

RECEIVED

SUBJECT: 505 Gun Road

MAR 10 2010

INFORMATION: *Comments in response to revised petition and site plan*

ZONING COMMISSIONER

Item Number: 9-153(revised site plan)

Petitioner: Lynn R. Hogg

Zoning: RC 5

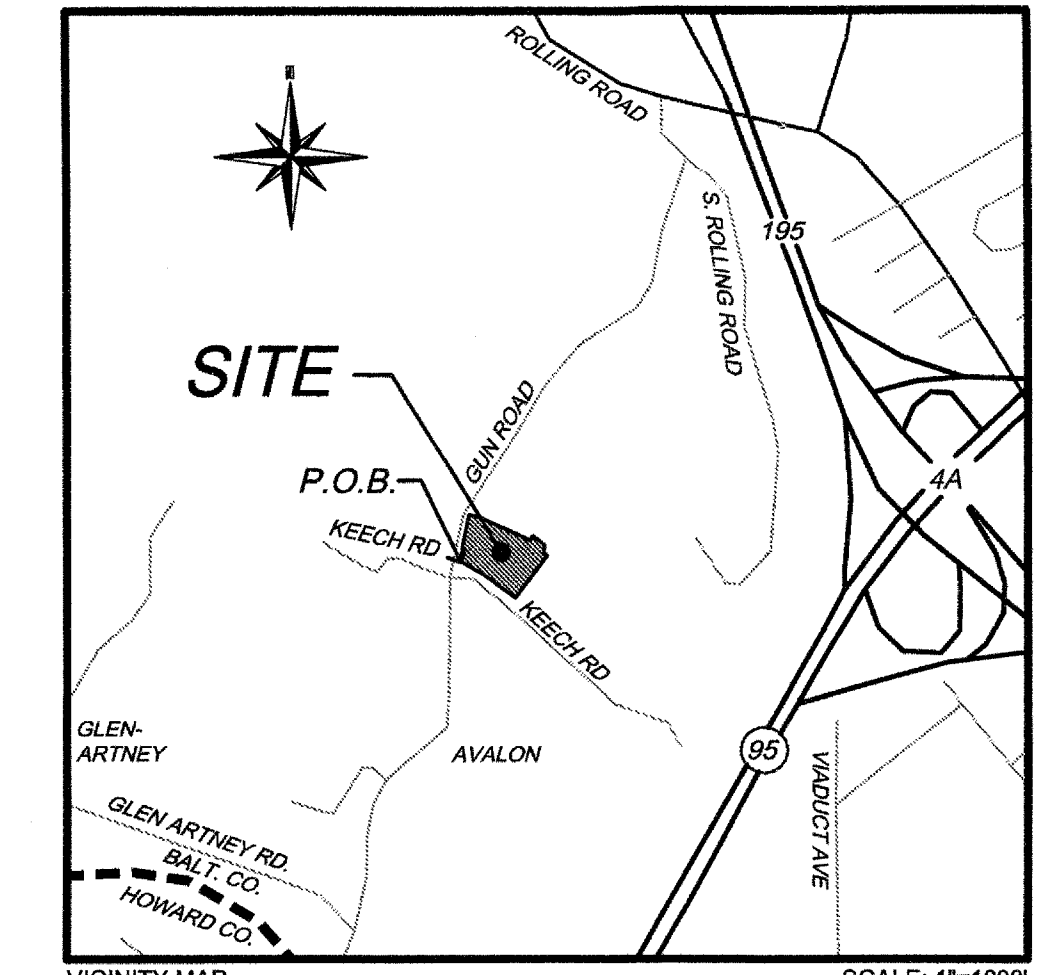
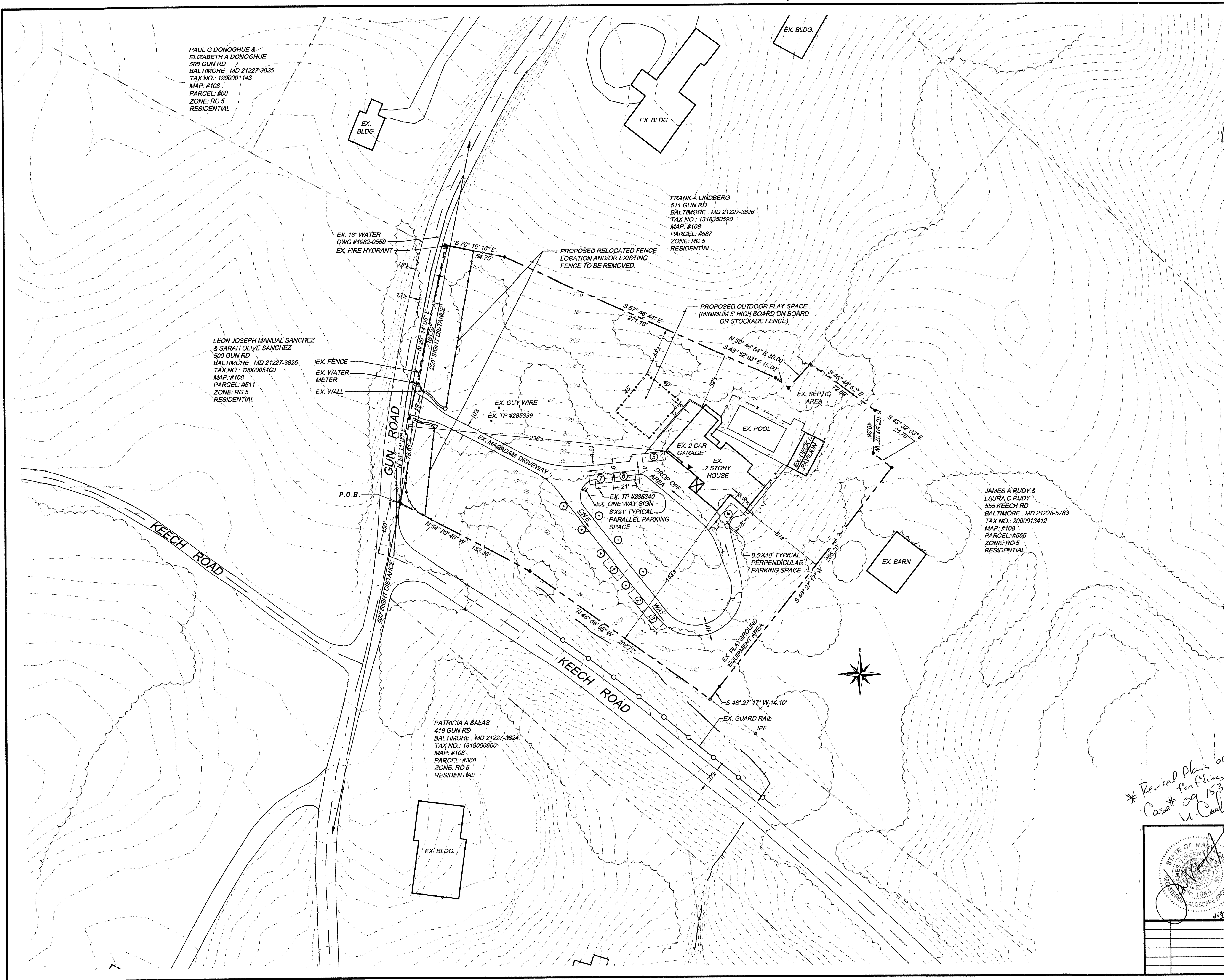
Requested Action: Special Exception

The Office of Planning has reviewed the petitioner's request and revised site plan and offers the following comments:

The Office of Planning recommends that the petitioner's revised site plan dated January 20, 2010 be denied. The Office of Planning recommended a denial of the Special Exception in previous comments dated 4/8/2009 (a copy of those comments have been made part of this report). Nonetheless, the following comments apply to the revised site plan submitted January 2010:

1. The location of several of the proposed parking spaces is a concern. Parking space nos. 1, 2 and 3 are not conveniently located with respect to the childcare center. It won't be appealing to walk from any of these spaces to the childcare center entrance. Parking space nos. 5 and 6 are parallel spaces located on opposite sides of the narrow, one-way driveway. As shown on the site plan, the front corner of parking space no. 5 and the back corner of parking space no. 6 are only 10 feet apart. If both of these parking spaces are occupied at the same time and the cars aren't carefully parked within the spaces, vehicular traffic movements on the driveway could be impeded. Also, parking space no. 5 partially blocks access to the 2-car garage.
2. The modified parking plan proposes several significant modifications of the parking requirements (see General Note No. 4 on the site plan). Uses permitted by special exception should generally comply with all applicable requirements, and they should not need significant variances or modifications of standards. The modified parking plan as prepared by the petitioner doesn't include a modification for the two-way driveway. The existing two-way driveway is shown as being 10 feet wide but 20 feet is required by Section 409.4.A of the BCZR.

CBA PET No 12

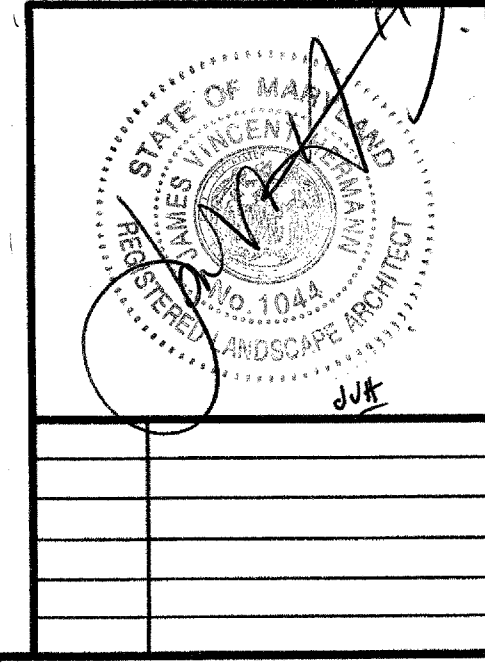


- LEGEND**
- EX. LOT LINE
 - EX. BUILDING
 - EX. 2' CONTOUR
 - EX. PAVING
 - EX. ROAD CENTERLINE
 - EX. PARKING SPACE
 - EX. TREE LINE
 - EX. FENCE
 - PROP. FENCE
 - EX. STREAM
 - EX. TREE

- SITE DATA:**
- OWNER/ADDRESS: LYNN HOGG
ELIZABETH A. SMITH
505 GUN ROAD
BALTIMORE, MARYLAND 21227
 - APPLICANT: LYNN HOGG
ELIZABETH A. SMITH
505 GUN ROAD
BALTIMORE, MARYLAND 21227
 - PROPERTY ADDRESS: 505 GUN ROAD
BALTIMORE, MARYLAND 21227
 - TAX MAP #/PARCEL: MAP #108 PARCEL 555
 - TAX NO.: 13-1900013720
 - DEED/REFERENCE NO.: 28974/482
 - ACREAGE: 2.442 ACRES ± (106,373 sq ft)
 - ZONING: RC 5
 - PROPOSED USE: RESIDENTIAL (RES.) - (4,157 S.F. ±) AND CLASS "B" GROUP CHILD CARE CENTER (GCCC) - (1,169 S.F. ±)
 - REQ. PARKING (RES.): 2 PARKING SPACES
 - PROV. PARKING (RES.): 2 PARKING SPACES (LOCATED IN GARAGE)
 - REQ. PARKING (GCCC): 5 PARKING SPACES (MAX. 9 OF EMPLOYEES ON LARGEST SHIFT WITH MIN. OF 2)
 - PROV. PARKING (GCCC): 7 PARKING SPACES
 - ELECTION DISTRICT: 13
 - COUNCILMANIC DISTRICT: 1
 - UTILITIES: PUBLIC WATER, PRIVATE SEPTIC

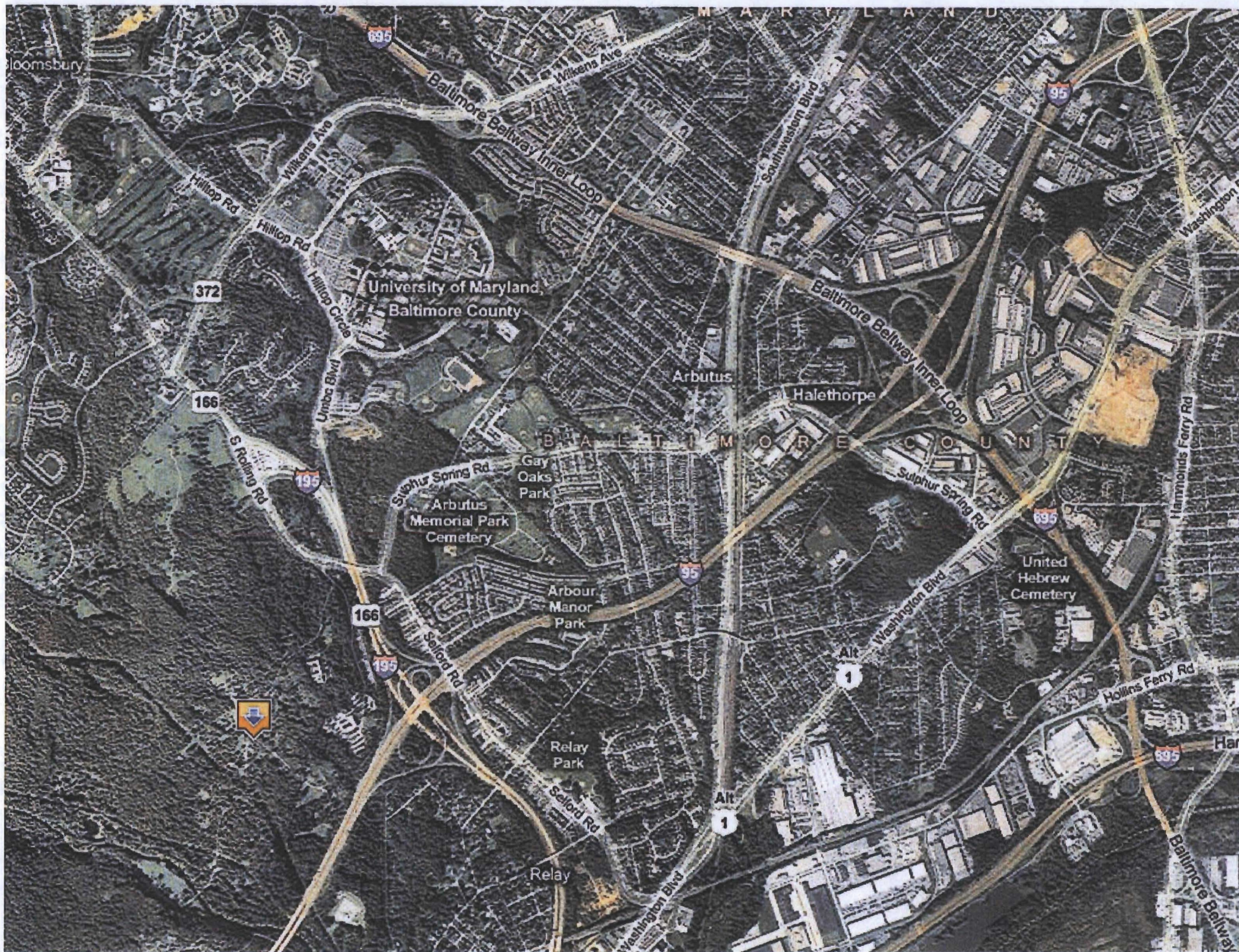
- GENERAL NOTES:**
- ALL FENCING SHALL COMPLY WITH THE REQUIREMENTS OF THE BCZR SUBJECT TO THE APPROVAL OF THE DEPARTMENT OF EDUCATION'S OFFICE OF CHILD CARE.
 - PROPOSED SIGNAGE SHALL COMPLY WITH SECTION 450 OF THE BCZR.
 - REQUEST A SPECIAL EXCEPTION TO PERMIT A CLASS "B" GROUP CHILD CARE CENTER FOR A MAXIMUM OF 24 CHILDREN PER SECTION 424.5.A OF THE BCZR.
 - REQUEST A SPECIAL HEARING TO APPROVE A MODIFIED PARKING PLAN PURSUANT TO SECTION 409.12.B OF THE BCZR. TO APPROVE:
 - A. PARKING SPACES THAT ARE NOT PERMANENTLY STRIPED.
 - B. PARKING SPACES THAT ARE NOT DURABLE AND DUST LESS.
 - (IF NECESSARY)
 - C. 0° PARKING SPACES WITH A 9' 1" WAY AISLE (14' REQUIRED).
 - D. 90° PARKING SPACES WITH A 14' 1" WAY AISLE (22' REQUIRED).
 - E. A ONE WAY DRIVE AISLE WITH A 9' WIDTH (12' REQUIRED).
 - BOUNDARY INFORMATION WAS TAKEN FROM A LOCATION DRAWING FOR 505 GUN ROAD PREPARED BY: NIT ASSOCIATES, INC. DATED 2-27-08, DRAWING #20731CAT.
 - GIS DATA: BALTIMORE COUNTY GIS TILE 108B2
 - ZONING MAP #108B2 - RECEIVED PRINT OUT OF EXISTING ZONING FROM BALTIMORE COUNTY'S DEPARTMENT OF ZONING ON 1-6-2010.
 - THE CLOSEST ADJOINING STREET IS KEECH ROAD AND IT IS 50± FEET FROM THE 505 GUN ROAD PROPERTY.
 - THERE ARE NO PROPOSED STREET IMPROVEMENTS AND OR RIGHT-OF-WAY HIGHWAY WIDENING FOR THIS PROJECT.
 - PER FEMA FLOOD INSURANCE RATE MAPS # 2400100505F AND 2400100502F THE SITE IS IN ZONE X AND IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
 - NO CURBING OR WHEEL STOPS ARE PROPOSED FOR THIS PROJECT.
 - NO ADDITIONAL LIGHTING IS PROPOSED FOR THIS PROJECT.
 - PER BOB MAIOLATESI A REAL ESTATE SPECIALIST II IN BALTIMORE COUNTY'S DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT'S, BUREAU OF LAND ACQUISITION GUN AND KEECH ROADS HAVE AND CONTINUE TO BE MAINTAINED BY BALTIMORE COUNTY AND THERE IS NO RIGHT-OF-WAY. EXCEPT AS SHOWN NO LANDSCAPE IMPROVEMENTS ARE PROPOSED FOR THIS PROPERTY.
 - THE SUBJECT PROPERTY IS NOT WITHIN THE SHED OF A FAILING INTERSECTION OR FAILING WATER OR SEWER AREA PER BALTIMORE COUNTY'S BASIC SERVICES MAPS.
 - THERE ARE NO PRIOR ZONING HEARINGS/CASES FOR THIS PROPERTY ON FILE WITH BALTIMORE COUNTY'S ZONING OFFICE.
 - THE ADJACENT PROPERTY LABELED AS PARCEL 513 ON TAX MAP 108 COULD NOT BE FOUND ON THE MARYLAND DEPARTMENT OF ASSESSMENTS AND TAXATION, BALTIMORE COUNTY'S REAL PROPERTY DATA SEARCH WEB SITE. PER SECTION 424.1.C OF THE BCZR, THERE IS NO KNOWN EXISTING FAMILY CHILD CARE HOME OR GROUP CHILD CARE CENTER OR NURSERY SCHOOL ON THE ADJOINING RESIDENTIALLY USED PROPERTY OR DWELLING UNIT.

* Revised Plans amended
Case# 09 153 SP
U. Conf. R. 2010



JvHermann & Associates, LLC 1895 Eden Mill Road Pylesville, Maryland 21132 Phone: 410-668-6005 Email: jvherrmann@gmail.com			
PLAN TO ACCOMPANY SPECIAL EXCEPTION AND SPECIAL HEARING PETITIONS CLASS "B" GROUP CHILD CARE CENTER			
505 GUN ROAD BALTIMORE COUNTY, MARYLAND			
ELECTION DISTRICT 13	COUNCILMANIC DISTRICT 1		
SCALE: 1"=40'	DWG NO. 2008-116A	DATE: 01/20/2010	SHEET: 1 OF 1

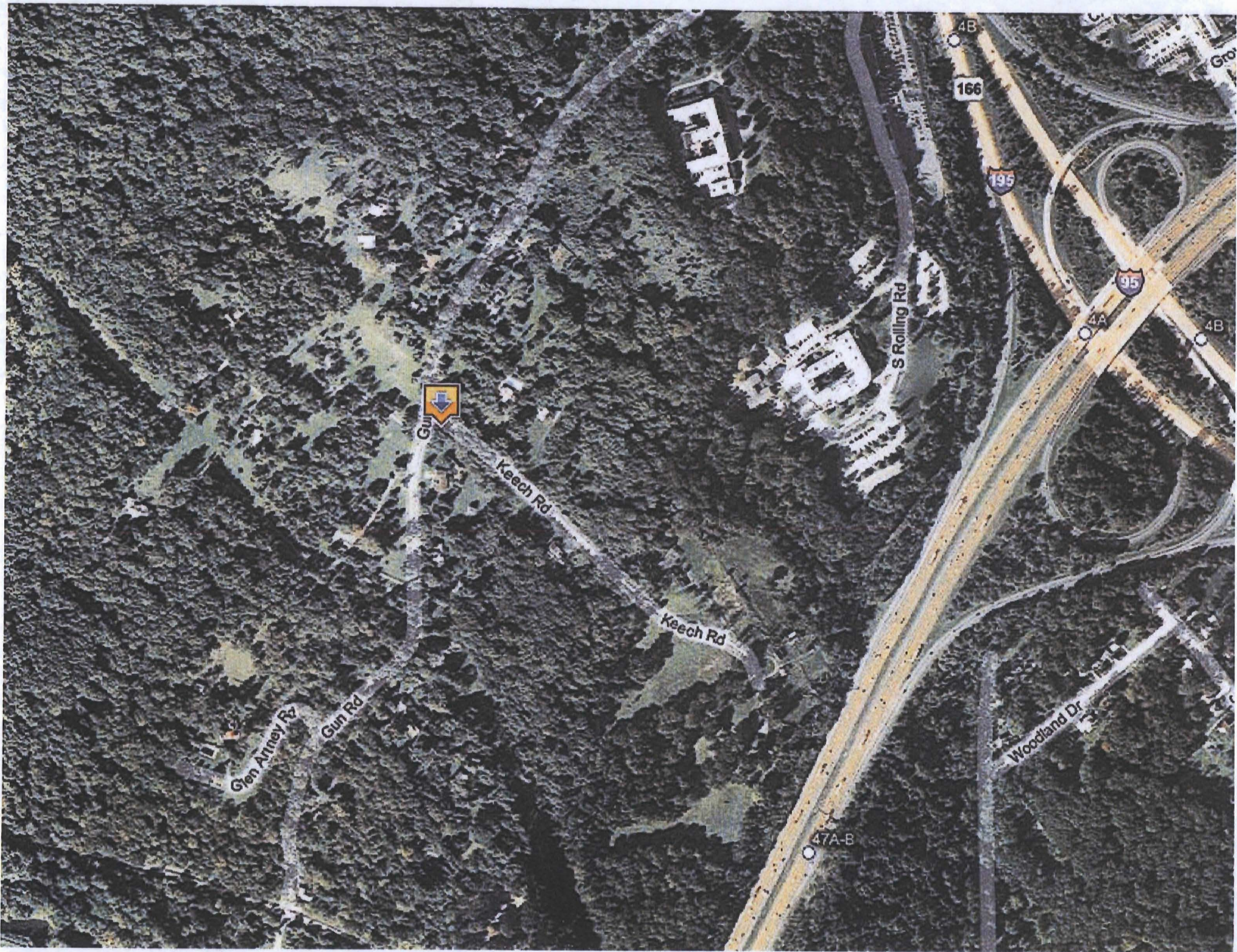
OBAPet 00 13



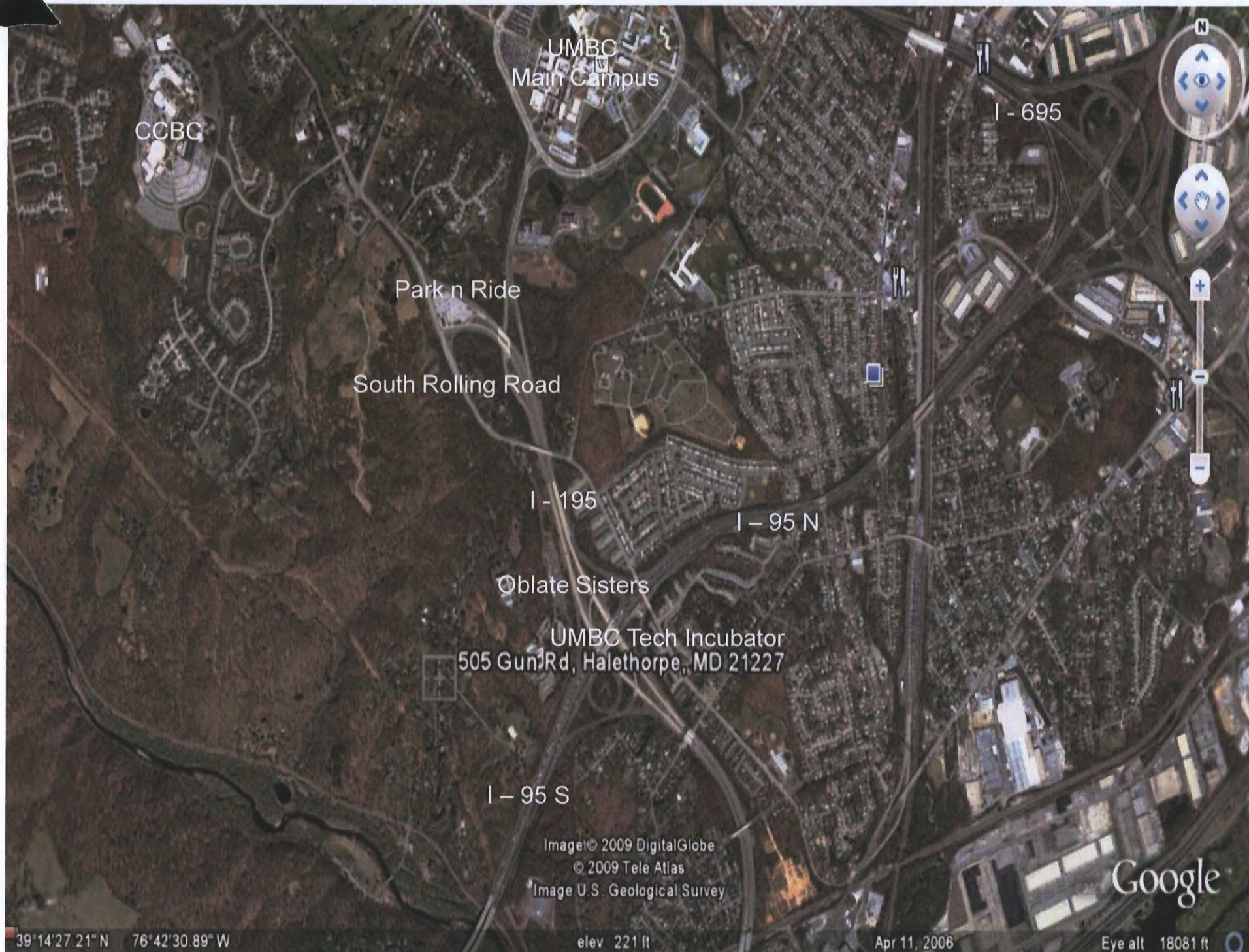
CBA P-7 14A



CRA PET 14B



CBA Dot 14C



39°14'27.21" N 76°42'30.89" W

elev 221 ft

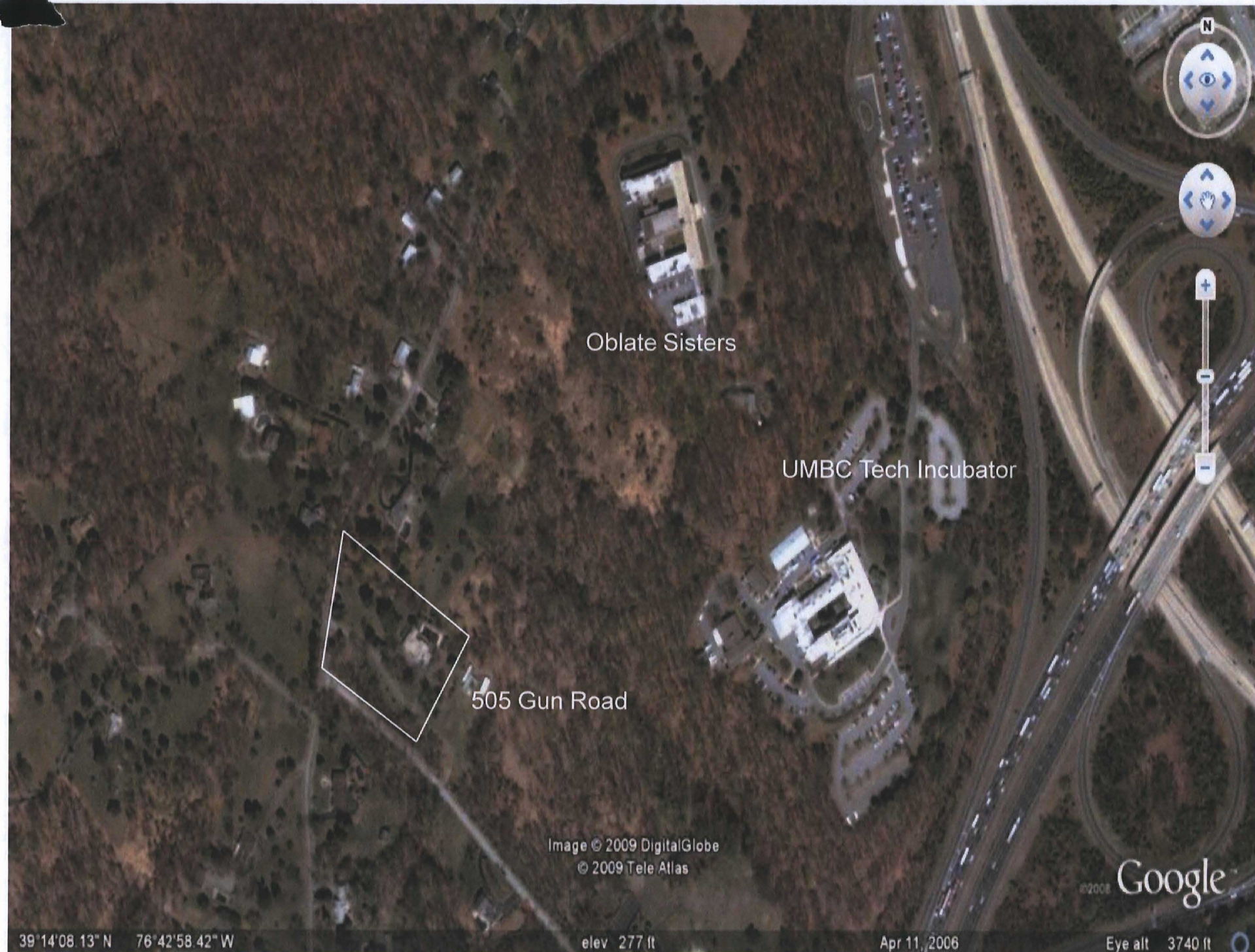
Apr 11, 2006

Eye alt 18081 ft

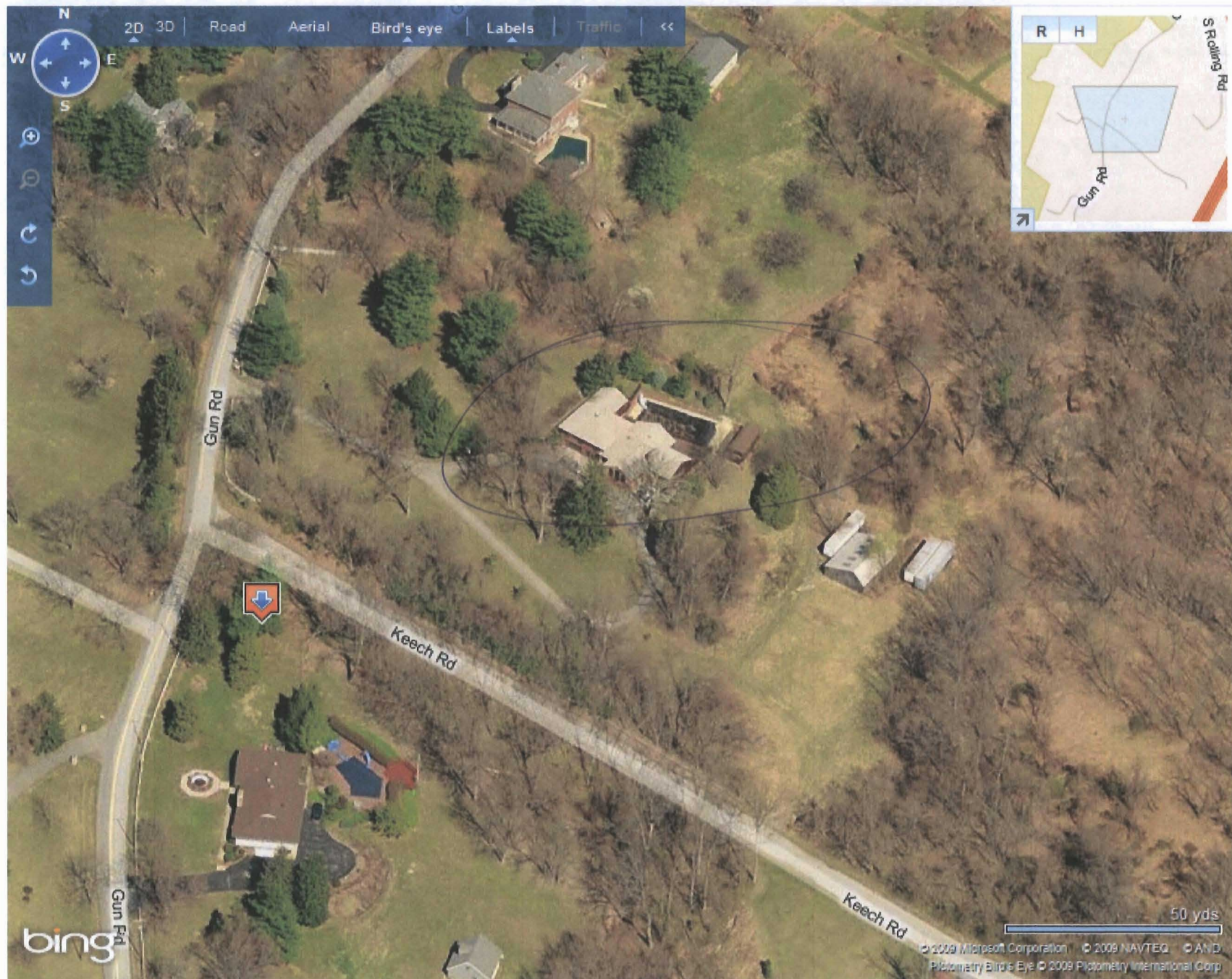
Image © 2009 DigitalGlobe
© 2009 Tele Atlas
Image U.S. Geological Survey

Google

05A R57 1410



CBA P57. 14E



CBA PG. 14F



CAAD 146



CRA PETIS, A



CRA P51 15-B



CBA PET 15-C



NG NOTICE
90153SPHX
ING WILL BE HELD BY
G COMMISSIONER
OWSON, MD
IN 104, JEFFERSON BUILDING
ESSEX, MD
ON APRIL 24, 2009, BY 11:30 A.M.
HEARING TO APPROVE A PROPOSED
WORK OF THE BICP - SPECIAL
AND B GROUP CHAIRMAN CHAIRMAN
PER SECTION 434.5 A OF THE BICP
OFFICIALS AND MEMBERS WILL BE
IN ATTENDANCE BY 11:30 A.M.
DO NOT DELAY MAKING YOUR PRESENTATION TO THE
CARRIED ACCESSIBLE

CBA PET 15-15



CBA 051 15-E



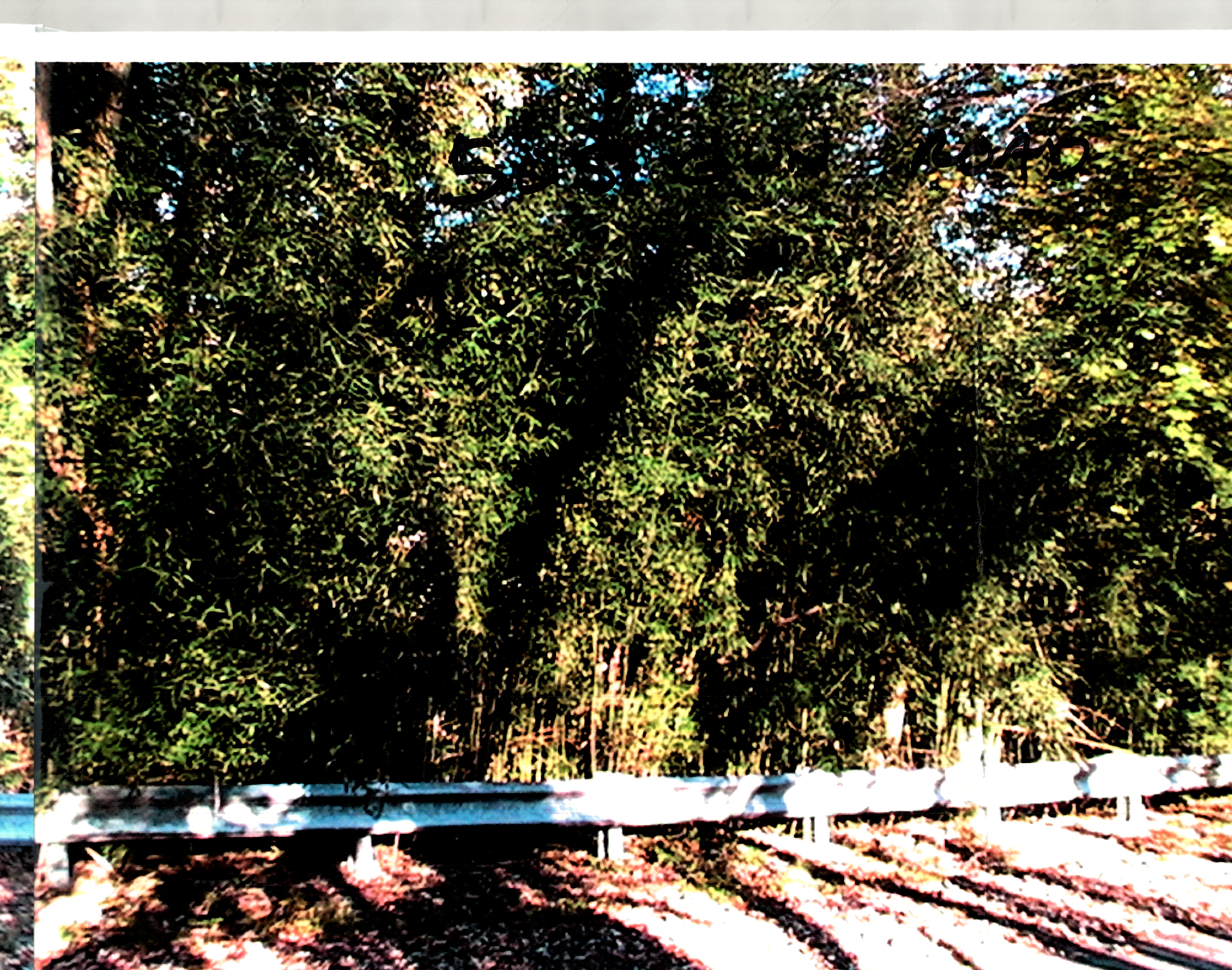
CBA PGT 15-F



CBA PET 15-6



CBA PET NO. 16



511 Gun Road

CBA DET. NO 17A



08A 021713

511 GUN ROAD



511 60



511 GUN ROAD



CBA 1257 176

511 GUN ROAD

CBA PET 17 F

511 SUN ROAD



CBA 957 176



415 GUN ROAD

CBA P67 18A



538 GUN ROAD

18-B
OBA PET 18-B



CBA PET 18-C



515 GUN ROAD

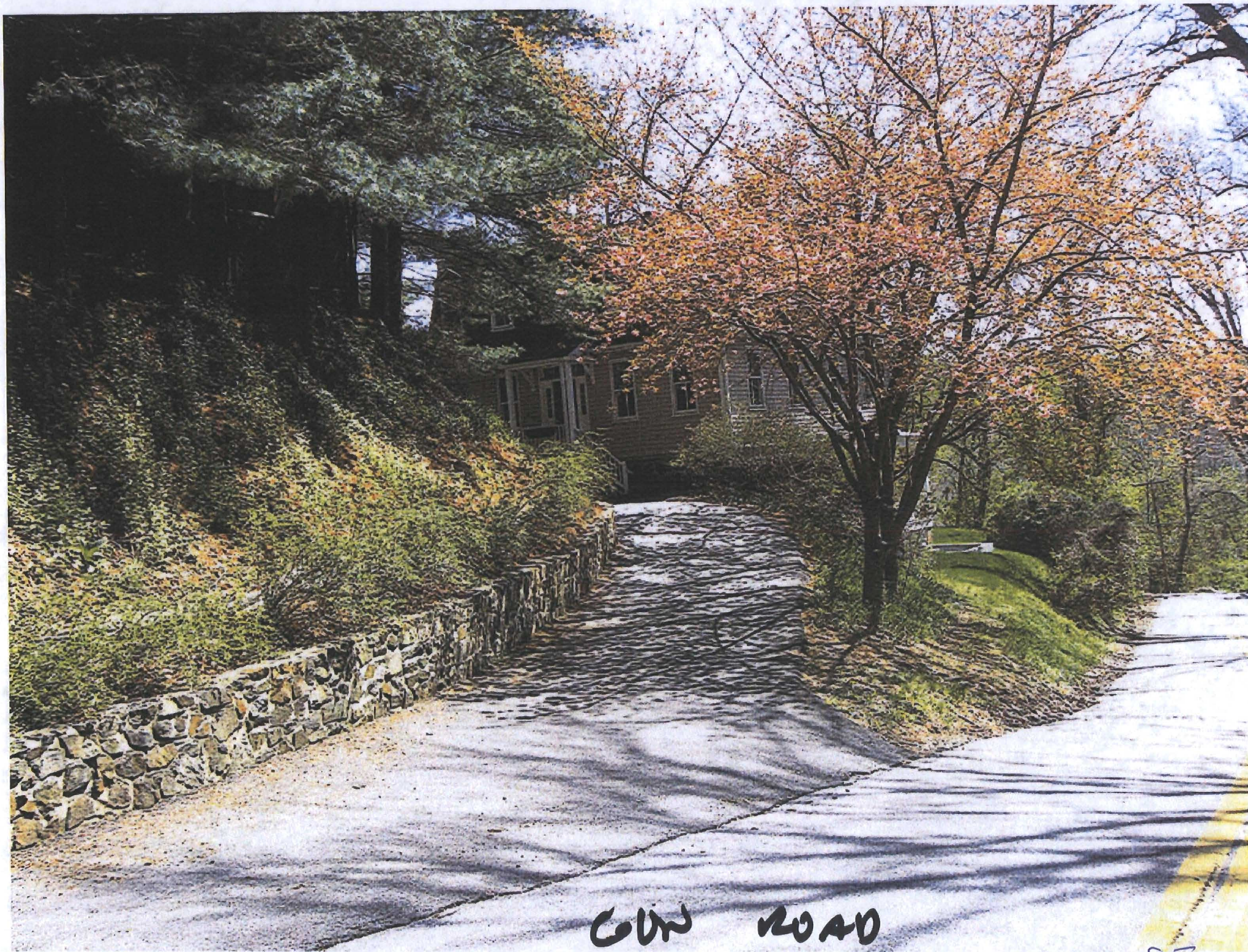
18

CIAA 057 18-15



515 GUN ROAD

CBA 12-7 18E



CUN ROAD

CBA 27 18F



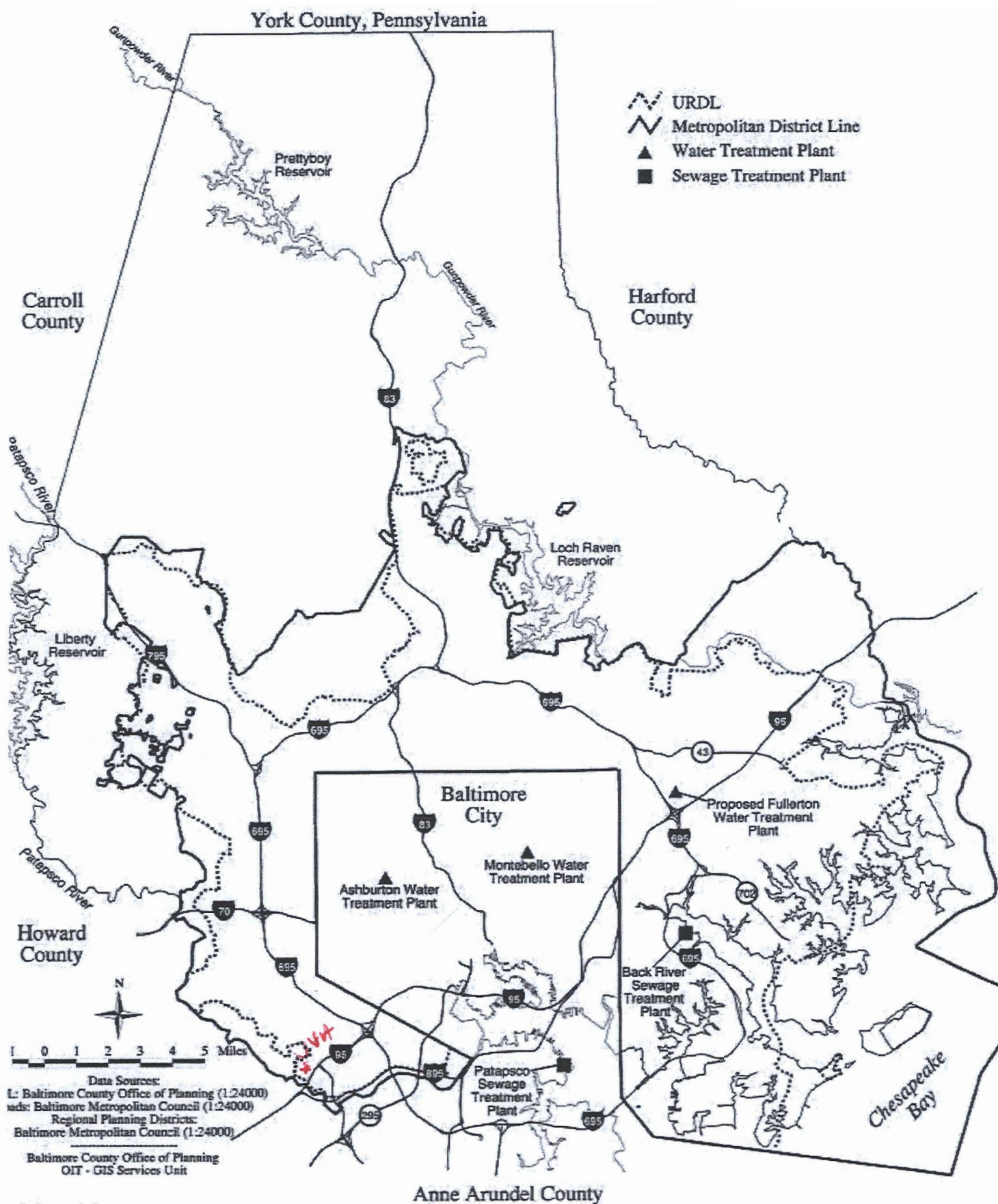
GUN ROAD

CRA PET 18-6



GUW ROAD

CBA DEL 18-41

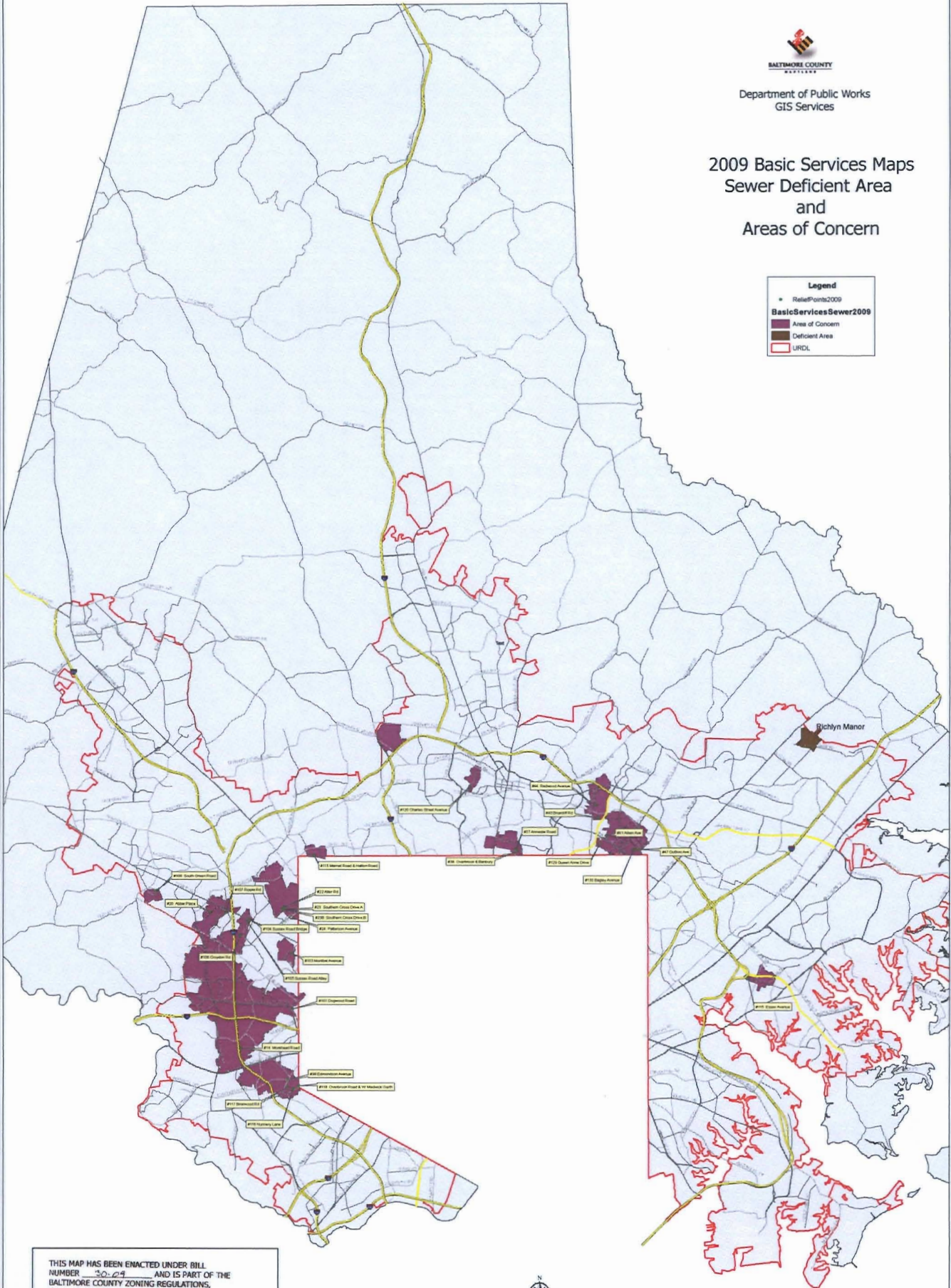


Map 16
Water Supply and Sewerage System



Department of Public Works
GIS Services

2009 Basic Services Maps Sewer Deficient Area and Areas of Concern



THIS MAP HAS BEEN ENACTED UNDER BILL
NUMBER 30-215 AND IS PART OF THE
BALTIMORE COUNTY ZONING REGULATIONS,
1955, AS AMENDED BY THE BILL ADOPTED
JUNE 21, 2007 EFFECTIVE JUNE 1, 2007

David B. Miller
COUNTY COUNCIL OF BALTIMORE COUNTY



Coordinate System:
Maryland State Plane NAD 83
Baltimore County Small Scale Data
Data Captured at 1" = 2,000'

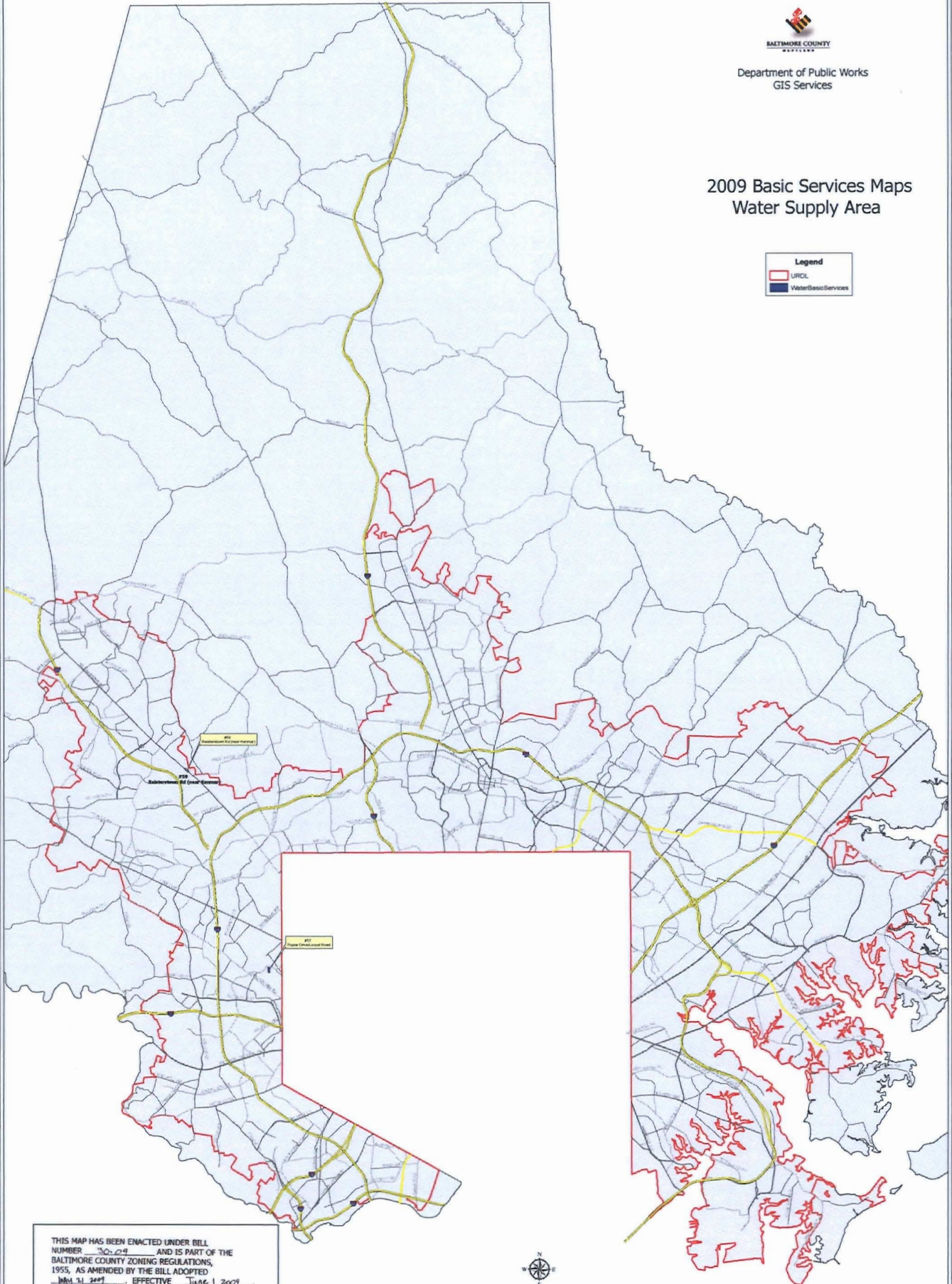
Prepared by:
GIS Services Unit
Baltimore County
Map Production Date: May 21, 2009
(20)

CBA PET 20A



Department of Public Works
GIS Services

2009 Basic Services Maps Water Supply Area



THIS MAP HAS BEEN ENACTED UNDER BILL
NUMBER 190-219 AND IS PART OF THE
BALTIMORE COUNTY ZONING REGULATIONS,
1955, AS AMENDED BY THE BILL ADOPTED
May 31, 2007, EFFECTIVE June 1, 2007

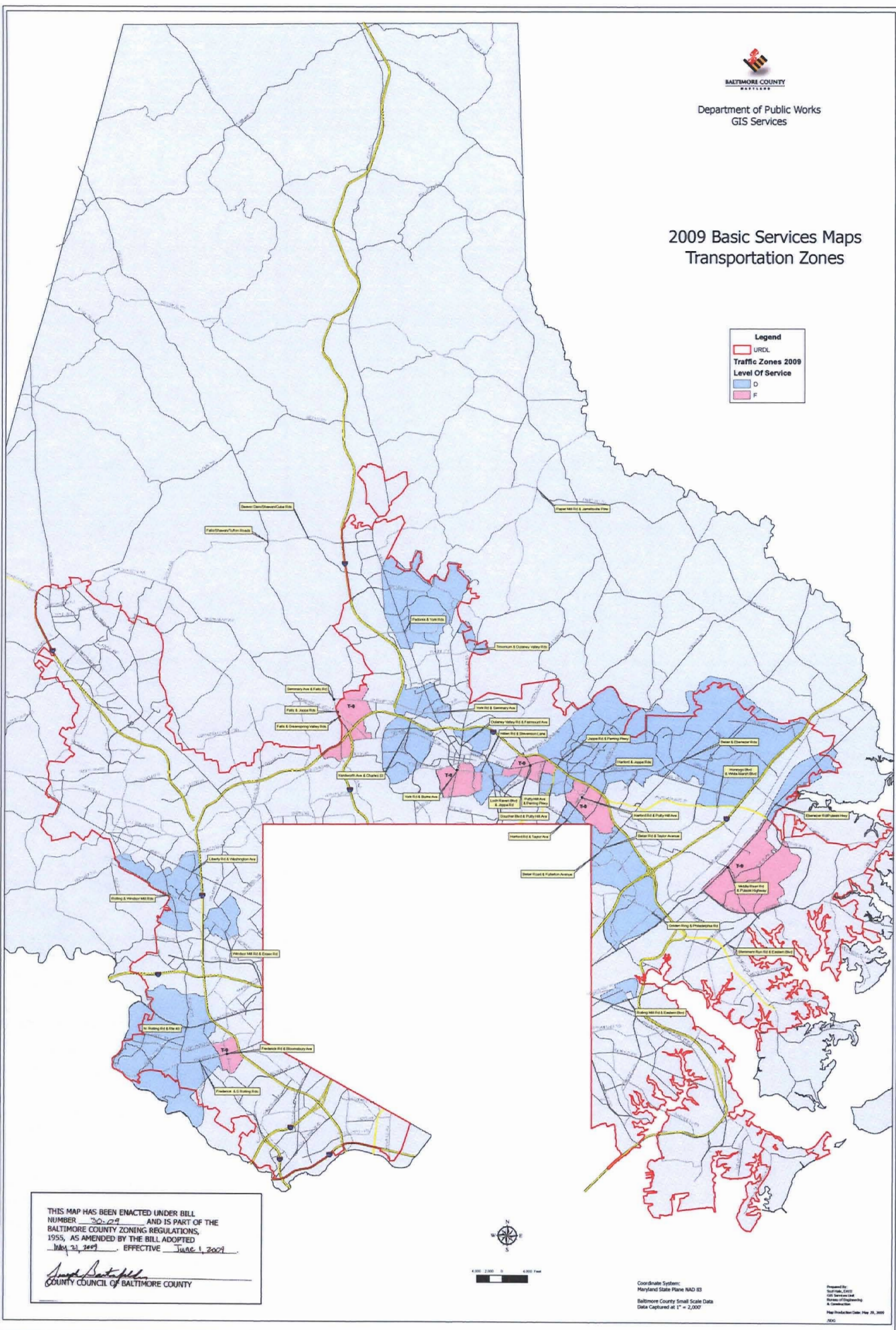
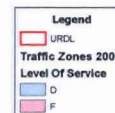
Joseph Santapfe
COUNTY COUNCIL OF BALTIMORE COUNTY



Coordinate System:
Maryland State Plane NAD 83
Baltimore County Small Scale Data
Data Captured at 1" = 2,000'

Prepared by:
Baltimore County
Department of Public Works
GIS Services
Map Production Order May 21, 2009
1000

CBA PET 20-B

2009 Basic Services Maps
Transportation Zones

THIS MAP HAS BEEN ENACTED UNDER BILL
NUMBER 30-09 AND IS PART OF THE
BALTIMORE COUNTY ZONING REGULATIONS,
1955, AS AMENDED BY THE BILL ADOPTED
July 21, 2009, EFFECTIVE June 1, 2009
Joseph B. Banta
COUNTY COUNCIL OF BALTIMORE COUNTY

Coordinate System:
Maryland State Plane NAD 83

Baltimore County Small Scale Data
Data Captured at 1" = 2,000'

Prepared By:
Scott Hale, EMT
GIS Services Unit
Bureau of Engineering
& Construction
Map Production Center: May 20, 2009

CRA PET. 20-C





CBA PET 21-13



CBA PET 21-C



CBA DE-7 21-11



CBA P67. 21-6





Merging Innovation and Excellence®

WES GUCKERT, PTP

President

Wes Guckert is a recognized and well respected expert in the field of traffic engineering and transportation planning. Serving as a technical advisor in the areas of traffic impact analysis, traffic signal design, traffic circulation, access studies and transportation planning, Mr. Guckert has played a major role in over 6,000 projects spanning both urban and suburban areas primarily in the Mid-Atlantic area. Mr. Guckert has also provided consultation on projects throughout the United States, as well as internationally including, Mexico City, Indonesia, Dubai, South Africa and Istanbul. Early in his career, Mr. Guckert served for five years with the Maryland State Highway Administration Traffic Division. Prior to founding The Traffic Group, Inc., Mr. Guckert served as a traffic engineering consultant for eight years.

Mr. Guckert has provided consultation on numerous T.O.D. and mixed-use projects; each containing one to four million square feet of development.

Since founding The Traffic Group, Inc., Mr. Guckert has been responsible for providing a variety of traffic engineering services to both the public and private sector. He has directed the design and implementation of traffic access systems for numerous regional projects such as the National Business Park, Cole Field House at UMCP (Comcast Center), Largo Town Center, Wheaton Plaza, Salisbury Centre, Bowie New Town Center, Maple Lawn Farms, Montgomery Mall, Annapolis Mall, National Harbor, Greenbelt Metro Park, Traville, Falls Grove, and King Farm. Mr. Guckert has undertaken Traffic and Transportation Studies for retailers including, Wal*Mart, Sam's Club, Target, Lowe's, Best Buy, Costco, and Home Depot.

In addition to Mr. Guckert's technical expertise, as a renowned expert in the field, he is often asked to serve as an expert witness, testifying before County and Municipal Boards, District Courts, and Planning Commissions on traffic engineering and transportation planning issues.

Job History

1985 - Present

President, The Traffic Group, Inc.

1977-1985

Traffic and Transportation Planning Consultant

1972-1977

Assistant Regional Traffic Engineer

Maryland State Highway Administration-Traffic Division

Educational Background

- *Bachelor of Science*
University of the State of New York
- *Civil Engineering Preparation*
Johns Hopkins University
Towson State University
Essex Community College
- *Traffic Engineering Courses*
Northwestern University Traffic Institute
University of Tennessee Transportation Center
University of Maryland

Affiliations

- American Planning Association (A.P.A.)
- Essex Community College Foundation
Former Board of Directors
- Carson Scholars Fund – Chairman
- Mad Hatter's Charity Foundation – Co-chair
- Home Builders Association of Maryland (HBAM)
- Institute of Transportation Engineers (I.T.E.) - Fellow
- International Council of Shopping Centers (ICSC)
- Subcommittee on Planning of the Smart Growth Commission
appointed by Governor Parris N. Glendening
- The M.U.S.E. Foundation – Former Board Member
- Transportation Research Board (T.R.B.)
- Urban Land Institute (U.L.I.)

I.T.E. Professional Committees

- Committee No. 5P-5 - Capacities of Multiple Left-Turn Lanes
- Committee No. 5P-07 - Traffic Counting Practices
- Committee No. 5S-1 - Capacities of Triple Left-Turn Lanes
- Internal Transportation Systems for Majority Activity Centers

Cuddles Day Care + Early Learning

Pick Up and Drop Off Data

Morning Drop-off

<u>Date</u>	<u>Child</u>	<u>Arrival Time</u>	<u>Departure Time</u>
11/18/2009	Teacher: Jeannette	7:33 AM	
11/18/2009	Max & Stella	7:45 AM	7:48 AM
11/18/2009	Kayleigh	7:56 AM	7:58 AM
11/18/2009	Nicole	7:57 AM	8:01 AM
11/18/2009	Abby	8:05 AM	8:07 AM
11/18/2009	Maison	8:07 AM	8:10 AM
11/18/2009	Alex	8:14 AM	8:18 AM
11/18/2009	Abbott	8:15 AM	8:17 AM
11/18/2009	Kaila	8:24 AM	8:26 AM
11/18/2009	Teacher: Tiah	8:30 AM	
11/18/2009	Teacher: Tamea	8:35 AM	
11/18/2009	Grayson	8:49 AM	8:50 AM
11/18/2009	Megan	9:06 AM	9:10 AM
11/18/2009	Lilly	9:34 AM	9:35 AM

8 cars

Afternoon Pick-up

11/18/2009	Grayson	3:25 PM	3:28 PM
11/18/2009	Abby	4:18 PM	4:20 PM
11/18/2009	Kayleigh	4:46 PM	4:48 PM
11/18/2009	Teacher: Jeannette		4:35 PM
11/18/2009	Maison	5:01 PM	5:05 PM
11/18/2009	Kaila	5:14 PM	5:17 PM
11/18/2009	Megan	5:15 PM	5:18 PM
11/18/2009	Nicole	5:17 PM	5:20 PM
11/18/2009	Lilly	5:20 PM	5:24 PM
11/18/2009	Abbott	5:25 PM	5:28 PM
11/18/2009	Teacher: Tiah		5:35 PM
11/18/2009	Teacher: Tamea		5:35 PM
11/18/2009	Max & Stella	5:48 PM	5:50 PM
11/18/2009	Alex	5:45 PM	5:46 PM

10 cars

CBA Pet. No. 23



24 A

CBA 08724A



ORA Pet 24 B

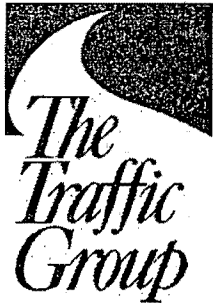


30

3005

PET
ABA ~~120~~ 24C

C



Corporate Office:
Baltimore, MD
Suite H
9900 Franklin Square Drive
Baltimore, Maryland 21236
410.931.6600
fax: 410.931.6601
1.800.583.8411

Other Office Locations
Delmarva Region
Virginia

**FINDINGS FOR CUDDLES EARLY LEARNING
CENTER
505 GUN ROAD**

Gx 25

- 1) Sight distance looking to left, for northbound traffic along Gun Road = >400 feet. Speed limit = 30 MPH. County requires 200 feet of sight distance; Sight distance looking to right for southbound traffic = 255 feet.
- 2) Distance to Keech Road = 110 feet.
- 3) Gun Road = Two 9 ft lanes.
- 4) Site Driveway is $\pm$ 10 feet wide.
- 5)

<u>Along Gun Road</u>	
<u>Morning Peak Hour Traffic</u>	<u>Evening Peak Hour Traffic</u>
NB – 36 Cars	NB – 16 Cars
SB – 18 Cars	SB – 18 Cars
- 6) One car along Gun Road, northbound, in peak hour, every 2-4 minutes.

JWGG/jew
F:\2009\2009-0515\wp\Findings for Cuddles Early Learning Center.doc

CRA PER. No. 25

The Traffic Group Inc.

9900 Franklin Square Dr. Suite H
Baltimore, Maryland 21236
800-583-8411

Page 1

GUN RD
NORTH OF DAY CARE CENTER
BALTIMORE CO.
JOB#2009-0515

Site Code: 000000000000
Station ID: GUN RD000000

Latitude: 0' 0.000 Undefined

Start Time	30-Sep-09 Wed	NORTH		SOUTH		Combined		01-Oct- Thu	NORTH		SOUTH		Combined	
		A.M.	P.M.	A.M.	P.M.	A.M.	P.M.		A.M.	P.M.	A.M.	P.M.	A.M.	P.M.
12:00		*	1	*	2	*	3		0	3	0	2	0	5
12:15		*	2	*	1	*	3		0	2	0	2	0	4
12:30		*	4	*	1	*	5		0	1	0	0	0	1
12:45		*	1	*	0	*	1		0	1	0	2	0	3
01:00		*	3	*	2	*	5		0	3	0	2	0	5
01:15		*	2	*	3	*	5		0	2	0	5	0	7
01:30		*	3	*	2	*	5		1	4	0	6	1	10
01:45		*	1	*	1	*	2		0	1	0	1	0	2
02:00		*	0	*	1	*	1		0	2	0	3	0	5
02:15		*	4	*	0	*	4		0	0	0	1	0	1
02:30		*	1	*	4	*	5		0	2	0	0	0	2
02:45		*	2	*	1	*	3		0	1	0	5	0	6
03:00		*	4	*	2	*	6		0	4	0	4	0	8
03:15		*	2	*	1	*	3		0	7	0	11	0	18
03:30		*	3	*	1	*	4		0	0	0	3	0	3
03:45		*	4	*	1	*	5		0	1	0	6	0	7
04:00		*	1	*	2	*	3		0	4	0	5	0	9
04:15		*	4	*	3	*	7		0	4	0	4	0	8
04:30		*	6	*	0	*	6		0	3	0	8	0	11
04:45		*	4	*	10	*	18		0	4	0	7	0	11
05:00		*	2	*	4	*	6		0	6	0	3	0	9
05:15		*	7	*	4	*	11		0	2	0	3	0	5
05:30		*	6	*	8	*	14		1	5	1	6	2	17
05:45		*	3	*	8	*	11		2	3	1	6	3	9
06:00		*	0	*	2	*	2		4	6	1	8	5	14
06:15		*	4	*	4	*	8		2	4	3	3	5	7
06:30		*	2	*	2	*	4		2	3	0	2	2	5
06:45		*	4	*	4	*	8		2	3	2	6	4	9
07:00		*	4	*	3	*	7		2	1	1	0	3	1
07:15		*	6	*	3	*	9		5	2	3	2	8	4
07:30		*	3	*	2	*	5		7	5	3	4	10	9
07:45		*	4	*	0	*	4		9	1	6	4	15	5
08:00		*	2	*	2	*	4		10	1	7	1	17	2
08:15		*	3	*	3	*	6		8	2	4	4	12	6
08:30		*	2	*	0	*	2		8	1	2	3	10	4
08:45		*	0	*	1	*	1		10	0	5	0	15	0
09:00		*	1	*	1	*	2		3	1	4	7	7	8
09:15		*	0	*	0	*	0		6	1	2	0	8	1
09:30		*	1	*	0	*	1		2	0	3	3	5	3
09:45		*	0	*	1	*	1		4	0	1	0	5	0
10:00		*	0	*	0	*	0		3	0	2	1	5	1
10:15		*	4	*	3	*	7		3	1	4	0	7	1
10:30		*	2	*	3	*	5		2	0	3	0	5	0
10:45		*	7	*	5	*	12		3	0	1	0	4	0
11:00		*	0	*	0	*	0		7	0	0	0	7	0
11:15		*	0	*	0	*	0		0	0	1	0	1	0
11:30		*	0	*	0	*	0		1	0	2	2	3	2
11:45		*	0	*	0	*	0		2	0	3	0	5	0
Total		4	123	7	100	11	223		109	97	65	145	174	242
Day Total		127		107		234		206		210		416		
% Total		1.7%	52.6%	3.0%	42.7%			26.2%	23.3%	15.6%	34.9%			
Peak		04:30		04:45		04:45		08:00	05:30	07:30	03:15	07:30	05:30	
Vol.		23		25		48		36	18	20	25	54	41	
P.H.F.		0.719		0.625		0.667		0.900	0.750	0.714	0.568	0.794	0.732	

CBA P51 No. 26



CBA Pet 27A

UMBC



Tech Incubator



Training Center



CBA Det. 27 C



ORA Feb 27 2017

7 0 1 G u n R o a d

410-247-0449

MOUNT PROVIDENCE

*Child Development
Center*

WHERE LOVE GROWS &
THE POWER OF KNOWLEDGE BEGINS

CBA Feb 27 13 E



THE OBLATE SISTERS OF PROVIDENCE

701 Gun Road, Baltimore, MD 21227

www.oblatesisters.com

OSP BRICK DRIVE

Help us with our addition to the Motherhouse

WE NEED

96,000 BRICKS

\$25.00

 per brick

Yes, I would like to join the brick drive

Name: _____

Street Address: _____

City: _____ State: _____

Zip Code: _____

Phone Number: (____) _____ - _____

Choose number of bricks:

_____ One Brick _____ Three Bricks _____ # of Bricks

_____ Two Bricks _____ Four Bricks or more

Amount Submitted: _____

(send to the above address)



Contact Sr. Helene Therese, OSP
at OSP Development Office @410-536-5687 or ospdevelopment.com

ABA

Ref 27 F



CBA Net 27 G



CBA 11-20-28-A



CBA Feb 28 13



ORA 100 29



CPA 100 20 (30)



Address **5374 Keech Rd**

Address is approximate

Save trees. Go green!

Download Google Maps on your phone at google.com/gmm



505 Gun Rd, Halethorpe, MD 21227



CABA Red 31



CBA Vol 32A



03A Plot 32B



CBA *Feb 2004*



CBA P0036D



©BA 10032E



CBA

Reo 320



QBA Net 33A



RELAY

CREATED IN 1830 AS A CHANGE POINT, OR "RELAY," FOR HORSES HAULING THE FIRST SCHEDULED RAILROAD CARS IN THE U. S. THE FIRST RAIL LINK TO NATION'S CAPITAL BEGAN HERE. THOMAS VIADUCT CARRIES THE TRACK ACROSS PATAPSCO GORGE; COMPLETED IN 1835, IT IS THE OLDEST MULTIPLE - ARCH RAILROAD BRIDGE IN NORTH AMERICA. IN THE CIVIL WAR, UNION TROOPS WERE STATIONED HERE TO PROTECT THIS CRITICAL JUNCTION.

MARYLAND HISTORICAL TRUST
MARYLAND STATE HIGHWAY ADMINISTRATION

CBSA Rd 33B



Welcome
to
Historic
Relay
circa 1830

RELAY
CREATED IN 1830 AS A CHANGE POINT, OR
"RELAY," FOR HORSES HAULING THE FIRST
SCHEDULED RAILROAD CARS IN THE U. S.,
THE FIRST RAIL LINK TO NATION'S CAPITAL
BEGAN HERE. THOMAS VIADUCT CARRIES
THE TRACK ACROSS PATAPSCO GORGE;
COMPLETED IN 1835, IT IS THE OLDEST
MULTIPLE-ARCH RAILROAD BRIDGE IN
NORTH AMERICA. IN THE CIVIL WAR,
UNION TROOPS WERE STATIONED HERE TO
PROTECT THIS CRITICAL JUNCTION.
MARYLAND HISTORICAL TRUST
MARYLAND STATE HIGHWAY ADMINISTRATION

CBA
P33C



Welcome
To
Historic
Relay
circa 1830

CBA

39 33D



CRA 1st 33E

Relay Children's
Center Inc.



247-2811

CRA Ref 33F



CBA WA 33G



CBA 101 334



CBA Cat 335



CBA pt 335

Pet 34A

From: Stephen Weber
To: People's Counsel
CC: Dennis Kennedy
Date: 01/23/2009 10:38 PM
Subject: Case No. 09-153-X, 505 Gun Rd

Dear Mr. Zimmerman -

We have reviewed the site plan for the subject child care center. From a traffic standpoint, this is an ideal setting and we find no traffic issues at all. The road into the site is clearly capable of handling the traffic demands generated by the site. The site itself and the adjacent roadway basically insures that children will be dropped off and picked up on site at a significant distance from traffic going by the site. As such, we find no adverse traffic impacts caused by this request.

Should you have any questions or wish to discuss this further, please give me a call at ext. 3554.

Stephen E. Weber, Chief
Div. of Traffic Engineering
Baltimore County, Maryland
111 W. Chesapeake Avenue, Rm. 326
Towson, MD 21204
(410) 887-3554

CBA PET No. 34A

Pet 34 B

From: Stephen Weber
To: Dennis Wertz
CC: People's Counsel
Date: 04/13/09 9:14 PM
Subject: Fwd: Case No. 09-153 (505 Gun Road)
Attachments: ZAC 09-153 (505 Gun Road)6.doc; IMG_0430.JPG

Dennis -

Looking over your comments I don't find any issues your raised conflicting with the traffic elements of the case. We did take physical measurements of the sight line from the driveway looking to the south (photo attached). Based on the posted speed limit for the roadway of 30 mph, there should be a minimum 200-foot sight line for a driveway. However, the available sight line is only 150 feet due to the stone fence abutment and that was taken from only 8 feet back from the edge of the roadway. 10 feet back would be a more preferable location. The sight line would need to be improved and I think the property owner would want to do that anyway, just from a liability standpoint. If someone were to exit the property as a commercial venture, and it was their own property creating the vision problem and denying customers/clients adequate vision of approaching traffic in which to safely enter the traffic stream, it would seem the property owner could be sued in any resulting accidents with contributory negligence.

Also, with respect to the driveway width, if this property were changed to a Class B Group Child Care Center, I would agree it would be preferable for any 2-way driveway to be 20 feet wide. However, at an absolute minimum, the first 100 to 150 feet of the driveway off of Gun Rd would have to be at least 20 feet wide to insure that traffic flow going into and out of the driveway from Gun Rd is not interfered with. Obviously one would not want exiting traffic preventing entering traffic from getting off of Gun Rd expeditiously. A narrow entrance would create an unsafe condition.

If you feel further discussion is needed, feel free to give me a call.
Steve Weber

>>> Dennis Wertz 4/7/09 11:17 AM >>>
Steve,

My revised comments are attached. In particular, I removed the comment regarding Gun Road not being adequate for providing access to the proposed use.

Please let me know if you disagree with anything in the revised comments.

Thanks.

Dennis Wertz
Baltimore County Office of Planning
105 W. Chesapeake Avenue, Suite 101
Towson, MD 21204
dwertz@baltimorecountymd.gov
Phone: 410-887-3480
Fax: 410-887-5862

CBA Pet 34 B

BALTIMORE COUNTY FIRE DEPARTMENT

INVESTIGATIVE SERVICES

FIRE INSPECTION REPORT

1. STATION				2. SHIFT		3. PERMIT NUMBER 339-2438		4. NUMBER OF PAGES: PAGE 1 OF	
5. DATE OF INSPECTION: 11/13/00		6. BOX NUMBER: 339		7. OCCUPANCY TYPE: 321		COMPLETE 7A AND 7B IF THE OCCUPANCY TYPE IS A 100		7-A CAPACITY SIGN: ☐ YES ☒ NO	
10. BUSINESS NAME: CUDDIOS DAY CARE LLC		11. BUSINESS TELEPHONE NUMBER: 410-241-4443		7-B CAPACITY:		8. NUMBER OF STORIES:		9. UNITS: 2	
12. BUSINESS ADDRESS: 509 DOWN RD				13. SUITE:		14. CITY:		15. STATE:	
17. BUSINESS REPRESENTATIVE NAME: BOOTH SMITH				18. KNOX BOX: ☒ YES ☐ NO		KEYS ADDED OR REMOVED FROM THE KNOX BOX - FILL OUT THE KNOX BOX FORM 25			
19. BUILDING FIRE PROTECTION SYSTEMS:									
19-1. SPRINKLER SYSTEM ☐ YES OR ☐ NO		NAME OF SPRINKLER COMPANY:				TELEPHONE NUMBER:		LAST SERVICE DATE:	
19-2. FIRE ALARM SYSTEM ☐ YES OR ☐ NO		NAME OF FIRE ALARM COMPANY:				TELEPHONE NUMBER:		LAST SERVICE DATE:	
20. OWNERS' INFORMATION: (BUILDING OR BUSINESS)									
NAME:								TELEPHONE NUMBER:	
ADDRESS:				SUITE:		CITY:		STATE:	
								ZIP CODE:	
21. VIOLATIONS / LOCATIONS / CODE SECTIONS / COMPLETION DATES									
NO VIOLATIONS									
THIS IS TRUE									
22. INSPECTED BY (PRINT NAME): Michael J. Deane				23. REPRESENTATIVE SIGNATURE: <i>[Signature]</i>				24. DATE:	
25. INSPECTORS SIGNATURE: <i>[Signature]</i>				26. INSPECTORS SIGNATURE AFTER COMPLETION OF VIOLATIONS: <i>[Signature]</i>				27. DATE: 11-13-00	
28. RE-INSPECTIONS									
1 ST RE-INSPECTION DATE:		INSPECTED BY (PRINT NAME):				2 ND RE-INSPECTION DATE:		INSPECTED BY (PRINT NAME):	
29. REFERRAL TO DISTRICT FIRE MARSHAL		CAPTAIN SIGNATURE:				DATE:		BATTALION CHIEF SIGNATURE:	
30. FIRE STATION TELEPHONE NUMBER:				31. DISTRICT FIRE MARSHAL'S OFFICE: ☒ CENTRAL ☐ EASTERN ☐ WESTERN				32. DISTRICT OFFICE TELEPHONE NUMBER: 410-587-1793	

DISTRIBUTION- MASTER FILE (WHITE) - STATION FILE (YELLOW) - REPRESENTIVES COPY (PINK)
145FP (REV. 03/10)

C.B.A. PET. NO. 35

BUSINESS OWNER'S COPY

**BALTIMORE COUNTY, MARYLAND
FIRE INSPECTION CERTIFICATE**

**DETACH AND RETAIN
FOR DISPLAY BY BUSINESS**



CUDDLES DAY CARE LLC
OR CURRENT OCCUPANT
505 GUN RD.
HALETHORPE MD 21227

INSPECTION MONTH
05

INSPECTION STATION
WS

PAYMENT DUE
\$34.00

PAYMENT DUE BY
MAY 1, 2010

OWNER:

CUDDLES DAY CARE LLC
OR CURRENT OCCUPANT
505 GUN RD.
HALETHORPE MD 21227
BETH SMITH

PERMIT NUMBER

339-2438

INSPECTOR'S SIGNATURE: *Edward J. Chab*

SEE BACK FOR DETAILED INSTRUCTIONS

Fold and tear along perforation

CBA PET - No. 35

FIRE ALARM

To sound alarm

Press * + #

Together and Hold



CBA REF. NO. 36

Mount Providence Child Development Center

About Our Teachers

Our teachers are qualified, experienced, and dedicated to the philosophy and goals of Mount Providence Center. They have a keen interest in each child's well-being. Our teachers create bright and inviting classrooms and prepare creative lesson plans focusing on monthly themes. The staff engages in monthly staff development sessions.

Meet Mount Providence Child Development Staff



Sister Brenda E. Cherry, OSP
Director



Ms. Becky Harms
Secretary



Ms. Heather Schell
Kindergarten Teacher



Ms. Loretta Otis
Teacher Assistant



Ms. Chelsea Williams
Infant Care Giver



Ms. Annette Ward
Infant Care Giver



Ms. Susan Champitt
Assistant in the 2 1/2 & 3
year old class



Sister Lucia Quesada, OSP
Assistant in the 3 1/2 & 4 year
old class



Mrs. Donna Harris
Senior Staff
Toddler



Mrs. Kathy McCausland
Senior Staff
3 1/2 & 4 year old class



Sister Aracelly, OSP
Toddler Room Assistant



Ms. Prudence Young
Senior Staff
2 1/2 & 3 year old class



CIBA PET NO 38

PETITIONER'S
EXHIBITS

20090153

⑥

Case No.:

**REMAND 09-153 X REVISED
PLAN 505 GUN RD**

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	AMENDED SITE PLAN	
No. 2		
No. 3		
No. 4		
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

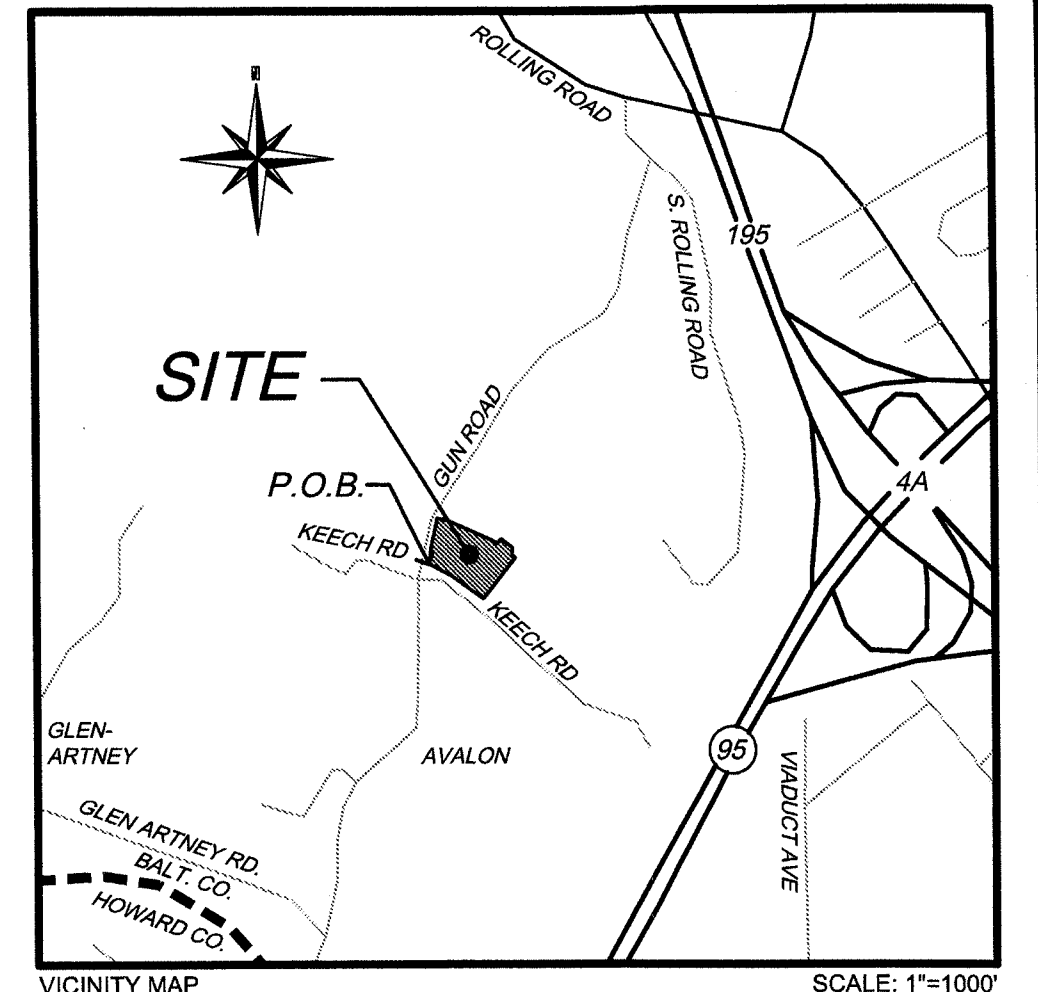
PAUL G DONOGHUE &
ELIZABETH A DONOGHUE
508 GUN RD
BALTIMORE, MD 21227-3825
TAX NO.: 1900001143
MAP: #108
PARCEL: #60
ZONE: RC 5
RESIDENTIAL

LEON JOSEPH MANUAL SANCHEZ
& SARAH OLIVE SANCHEZ
500 GUN RD
BALTIMORE, MD 21227-3825
TAX NO.: 1900005100
MAP: #108
PARCEL: #511
ZONE: RC 5
RESIDENTIAL

PATRICIA A SALAS
419 GUN RD
BALTIMORE, MD 21227-3824
TAX NO.: 1319000600
MAP: #108
PARCEL: #368
ZONE: RC 5
RESIDENTIAL

FRANK A LINDBERG
511 GUN RD
BALTIMORE, MD 21227-3826
TAX NO.: 1318350590
MAP: #108
PARCEL: #587
ZONE: RC 5
RESIDENTIAL

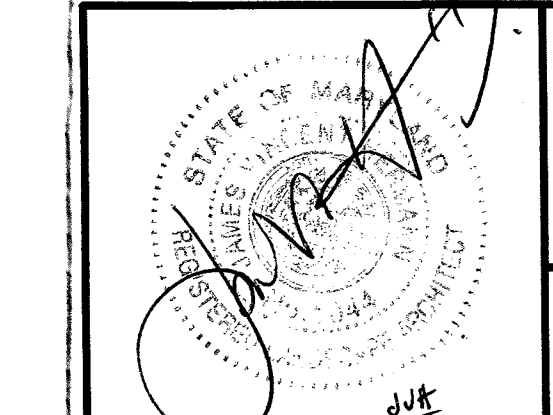
JAMES A RUDY &
LAURA C RUDY
555 KEECH RD
BALTIMORE, MD 21228-5783
TAX NO.: 2000013412
MAP: #108
PARCEL: #555
ZONE: RC 5
RESIDENTIAL



- LEGEND**
- EX. LOT LINE
 - EX. BUILDING
 - EX. 2' CONTOUR
 - EX. PAVING
 - EX. ROAD CENTERLINE
 - EX. PARKING SPACE
 - EX. TREE LINE
 - EX. FENCE
 - PROP. FENCE
 - EX. STREAM
 - EX. TREE

- SITE DATA:**
- OWNER/ADDRESS: LYNN HOGG
ELIZABETH A. SMITH
505 GUN ROAD
BALTIMORE, MARYLAND 21227
 - APPLICANT:
LYNN HOGG
ELIZABETH A. SMITH
505 GUN ROAD
BALTIMORE, MARYLAND 21227
 - PROPERTY ADDRESS:
505 GUN ROAD
BALTIMORE, MARYLAND 21227
 - TAX MAP #/PARCEL:
MAP #108 PARCEL 556
 - TAX NO.:
13-1900013720
 - DEED/REFERENCE NO.:
26674/482
 - ACREAGE:
2.442 ACRES ± (106,373 sf)
 - ZONING:
RC 5
 - PROPOSED USE:
RESIDENTIAL (RES.) - (4,157 S.F.) AND
CLASS "B" GROUP CHILD CARE CENTER (GCCC) -
(1,189 S.F.)
 - REQ. PARKING (RES.):
2 PARKING SPACES
 - PROV. PARKING (RES.):
2 PARKING SPACES (LOCATED IN GARAGE)
 - REQ. PARKING (GCCC):
5 PARKING SPACES (MAX. # OF EMPLOYEES
ON LARGEST SHIFT WITH MIN. OF 2)
 - PROV. PARKING (GCCC):
7 PARKING SPACES
 - ELECTION DISTRICT:
13
 - COUNCILMANIC DISTRICT:
1
 - UTILITIES:
PUBLIC WATER, PRIVATE SEPTIC

- GENERAL NOTES:**
- ALL FENCING SHALL COMPLY WITH THE REQUIREMENTS OF THE BCZR SUBJECT TO THE APPROVAL OF THE DEPARTMENT OF EDUCATION'S OFFICE OF CHILD CARE.
 - PROPOSED SIGNAGE SHALL COMPLY WITH SECTION 450 OF THE BCZR.
 - REQUEST A SPECIAL EXCEPTION TO PERMIT A CLASS "B" GROUP CHILD CARE CENTER FOR A MAXIMUM OF 24 CHILDREN PER SECTION 424.5.A OF THE BCZR.
 - REQUEST A SPECIAL HEARING TO APPROVE A MODIFIED PARKING PLAN PURSUANT TO SECTION 409.12.B OF THE BCZR, TO APPROVE:
A. PARKING SPACES THAT ARE NOT PERMANENTLY STRIPED.
B. PARKING SPACES THAT ARE NOT DURABLE AND DUST LESS.
(IF NECESSARY)
C. 0' PARKING SPACES WITH A 9' 1 WAY AISLE (14' REQUIRED).
D. 90' PARKING SPACES WITH A 14' 1 WAY AISLE (22' REQUIRED).
E. A ONE WAY DRIVE AISLE WITH A 9' WIDTH (12' REQUIRED) TWO WAY.
 - BOUNDARY INFORMATION WAS TAKEN FROM A LOCATION DRAWING FOR 505 GUN ROAD PREPARED BY: NTT ASSOCIATES, INC. DATED 2-27-08, DRAWING #20731CAT.
 - GIS DATA: BALTIMORE COUNTY GIS TILE 13082.
 - ZONING MAP #108B2 - RECEIVED PRINT OUT OF EXISTING ZONING FROM BALTIMORE COUNTY'S DEPARTMENT OF ZONING ON 1-6-2010.
 - THE CLOSEST ADJOINING STREET IS KEECH ROAD AND IT IS 502 FEET FROM THE 505 GUN ROAD PROPERTY.
 - THERE ARE NO PROPOSED STREET IMPROVEMENTS AND OR RIGHT-OF-WAY HIGHWAY WIDENING FOR THIS PROJECT.
 - PER FEMA FLOOD INSURANCE RATE MAPS # 2400100505F AND 2400100502F THE SITE IS IN ZONE X AND IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
 - NO CURBING OR WHEEL STOPS ARE PROPOSED FOR THIS PROJECT.
 - NO ADDITIONAL LIGHTING IS PROPOSED FOR THIS PROJECT.
 - PER BOB MAIOLESI A REAL ESTATE SPECIALIST II IN BALTIMORE COUNTY'S DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT'S, BUREAU OF LAND ACQUISITION GUN AND KEECH ROADS HAVE AND CONTINUE TO BE MAINTAINED BY BALTIMORE COUNTY AND THERE IS NO RIGHT-OF-WAY. EXCEPT AS SHOWN NO LANDSCAPE IMPROVEMENTS ARE PROPOSED FOR THIS PROPERTY.
 - THE SUBJECT PROPERTY IS NOT WITHIN THE SHED OF A FAILING INTERSECTION OR FAILING WATER OR SEWER AREA PER BALTIMORE COUNTY'S BASIC SERVICES MAPS.
 - THERE ARE NO PRIOR ZONING HEARINGS/CASES FOR THIS PROPERTY ON FILE WITH BALTIMORE COUNTY'S ZONING OFFICE.
 - THE ADJACENT PROPERTY LABELED AS PARCEL 513 ON TAX MAP 108 COULD NOT BE FOUND ON THE MARYLAND DEPARTMENT OF ASSESSMENTS AND TAXATION, BALTIMORE COUNTY'S REAL PROPERTY DATA SEARCH WEB SITE. PER SECTION 424.1.C OF THE BCZR, THERE IS NO KNOWN EXISTING FAMILY CHILD CARE HOME OR GROUP CHILD CARE CENTER OR NURSERY SCHOOL ON THE ADJOINING RESIDENTIALLY USED PROPERTY OR DWELLING UNIT.



JVHermann & Associates, LLC
1895 Eden Mill Road
Pylesville, Maryland 21132
Phone: 410-688-6005
Email: jvherrmann@gmail.com

PLAN TO ACCOMPANY SPECIAL EXCEPTION AND SPECIAL
HEARING PETITIONS
CLASS "B" GROUP CHILD CARE CENTER

505 GUN ROAD
BALTIMORE COUNTY, MARYLAND

ELECTION DISTRICT 13 COUNCILMANIC DISTRICT

SCALE: 1"=40' DWG NO. 2009-116A DATE: 01/20/2010 SHEET: 1 OF 1

PETITIONER'S
REMARK ORDER
EXHIBIT NO.

Plat revised to accompany petition for zoning

☒ special exception

special hearing to approve a modified parking plan
as per BCZR Section 409.12.B

Zoning relief requested: Special exception as per section 424.5.A of the
BCZR for a Class B Group Child Care Center for a maximum of 24 children

Maximum number employees at largest shift to be five (5)
that is 1 employee or shift person care provider = 5

Property address: 505 Gun Road 21227
Subdivision name
Liber 14238 folio no. 378
Owner: Elizabeth A Smith & Lynn Hogg
Tax a/c no. 19 00 013720
information prepared by
l.j.link jr., inc. architect
box 727 Brooklandville, Md 21022
410.337.9528 ljlinkj@aol.com



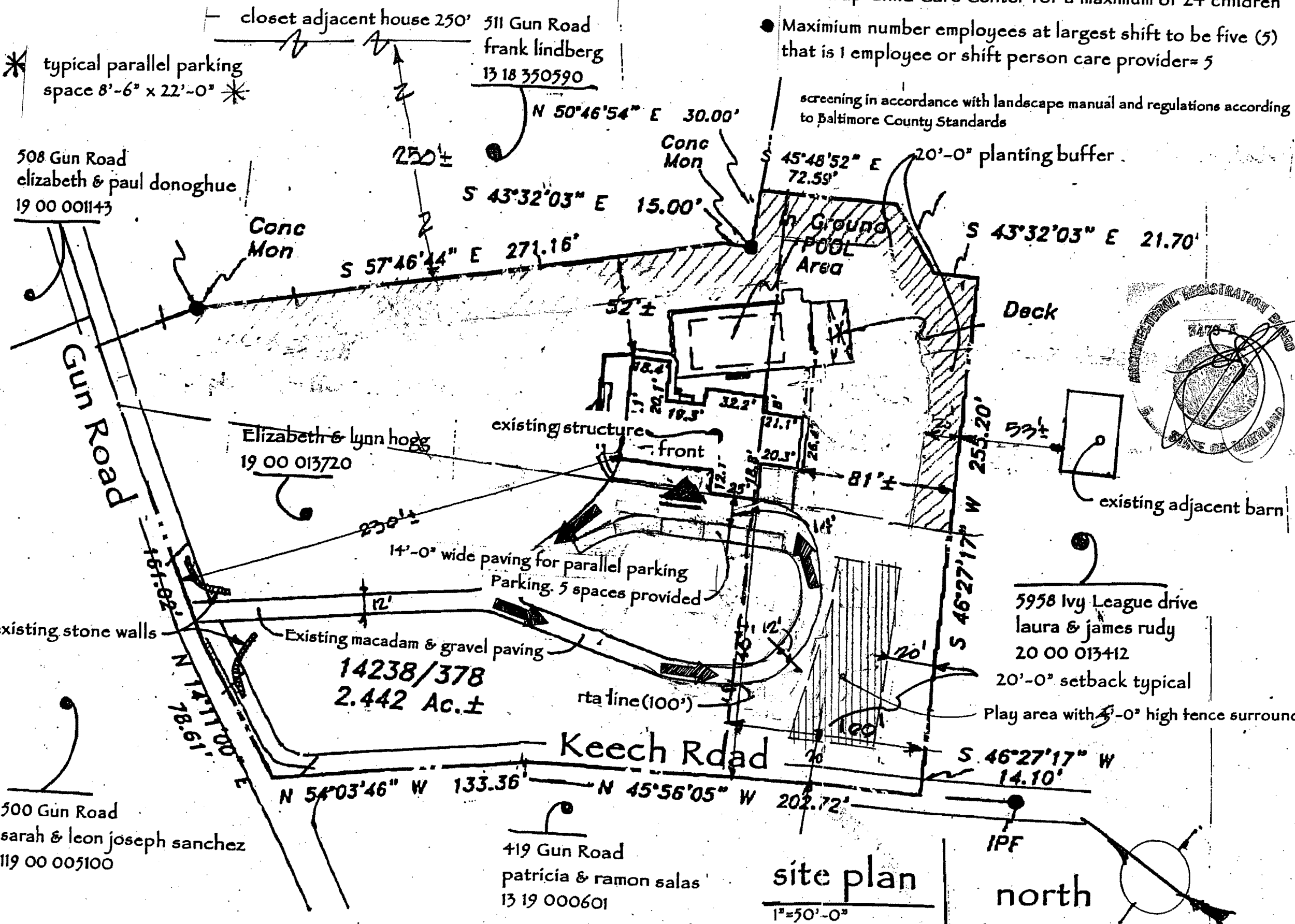
vicinity map

n.t.s.

Property address: 505 Gun Road 21227
Subdivision name
Liber 14238 folio no. 378
Owner: Elizabeth A Smith & Lynn Hogg
Tax a/c no. 19 00 013720

Location information
Election district..... 13
Councilmatic district..... 1
1"=200'-0" scale map no.
zoning RC-5
lot size 2.440 ac (=/-)
public water.....Yes
public sewer.....No...private syste
Chesapeake bay critical area...No
100 year flood zone (zone X)...No
historic property/building.....No
prior zoning hearing.....None

zoning office use only
reviewed by JNP | 0153 | 2009-0153-SP4X
item no. REVISED
case no.



site plan

north

Case No.: 2009-0153-SPHX 505 GUN RD.

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	SITE PLAN (objection made to driveway widths)	Collectively Letters in Opposition
No. 2	Class A, license and attachments	Survey Summary
No. 3	" You're INVITED to VIEW OUR CENTER	
No. 4	LETTERS IN SUPPORT	
No. 5	Collectively Aerial Photo's of Community & Property	
No. 6	Collectively - DRIVEWAY PHOTOGRAPHS	
No. 7	Collectively - Exterior PHOTOGRAPHS	
No. 8	DRIVEWAYS IN AREA	
No. 9	LICENSES AND CERTIFICATE REQUIRED	
No. 10	Day Care Fencing at Other Locations	
No. 11	PHOTOGRAPHS OF ACTIVITIES	
No. 12		

USE PERMIT



IT IS ORDERED by the Director of the Baltimore County Department of Permits and Development Management, this 17th of APRIL, 2008, that

505 GUN RD.
(street address)

should be and the same is hereby granted

permission to operate a CLASS "A" GROUP CHILD CARE IN A (SFD)

"SINGLE FAMILY DWELLING" MON-FRI, 6AM-8PM FOR A

MAXIMUM OF 12 CHILDREN

(ACCESSORY TO THE SFD)

NA

Permit No.

Jeff Kotroco
Director

Planner's Initials JLL

REV 06/00

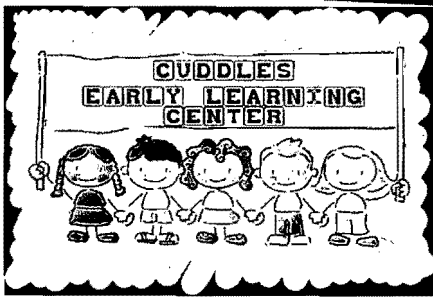
HEARING DEMAND DEADLINE
CWS 4/14/2008

PETITIONER'S

EXHIBIT NO.

2

ORIGINAL MAILED 4/17/08



You're Invited

Gun Road Community Residence Open House

PETITIONER'S

EXHIBIT NO. 3

Dear Gun Road Community Residence,

My husband Lynn and I are your newest neighbors at 505 Gun Road, at the corner of Gun and Keech Roads.

You may know that since June 20, 2008, I have been operating Cuddles Early Learning Center at our home at 505 Gun Road, which today is a fully Maryland State Licensed Childcare Facility. I am proud to serve the childcare needs of the community. You may have heard that we are in the process of working with Baltimore County on what is called a "special exception" under the current regulations. We welcome the opportunity to show you our center so you can see it for yourself.

You are therefore cordially invited to visit us on

Sunday, February 15th from 2:00 pm to 4:00 pm

Many thanks.
Regards,
Elizabeth Smith

Cuddles Early Learning Center
is fully MSDE
licensed and insured



We hope to see you this Sunday.

No RSVP needed, just stop by and visit us !

CASE NUMBER: 2009-0153--SPHX

505 Gun Road

Location: NE corner of Gun Road and Keech Road.

13th Election District, 1st Councilmanic District

Legal Owner: Elizabeth A. Smith and Lynn Hogg

PETITIONER' S

EXHIBIT NO.

4

SPECIAL EXCEPTION S per section 424.5.A of the BCZR for a Class B Group child-care center for a maximum of 24 children

SPECIAL HEARING As per BCZR section 409.12.B to approve a modified parking plan.

Hearing: Friday, 4/24/2009 at 11:00:00 AM Jefferson Building, 105 West Chesapeake Avenue, Room 104, Towson, MD 21204

OPPOSE	FAVOR
Frank A. Lindberg 511 Gun Road Halethorpe, MD 21227	Sarah Sanchez 500 Gun Road Halethorpe, MD 21227
Fred & Susie Schneider Marie Ritter 512 Gun Road Baltimore, MD 21227	Mary Jane Maegill 319 Gun Road Halethorpe, MD 21227
Kaye White 409 Gun Road Baltimore, MD 21227	David T Ort 415 Oak Ct. Catonsville, MD 21228
Jeannette J. Rezai & Nasser Rezai, M.D. 416 Gun Road Halethorpe, MD 21227	David Campbell 1216 Weddel Ave Halethorpe, MD 21227
Joe and Jean Bennett 514 & 516 Gun Road Relay, MD 21227	Nicole Sanchez 1306 Hubner Ave Catonsville, MD 21228
Gloria S. Watson-Carrion 428 Gun Road Baltimore, MD 21227	Michael Harley 1327 S. Charles Street Baltimore, MD 21230
Ramon A. Salas, M.D. 419 Gun Road Halethorpe, MD 21227	Jessica Baker 409 S. Rolling Road Catonsville, MD 21228
Lucy W. McKean 403 Gun Road Relay, MD 21227	Keena Antonelli 13 Melvin Ave, #C Catonsville, MD 21228
Paul F. McKean 403 Gun Road Relay, MD 21227	Erin Strauder 303 Oak Forest Catonsville, MD 21228

As of : 04/21/08



PETITIONER'S

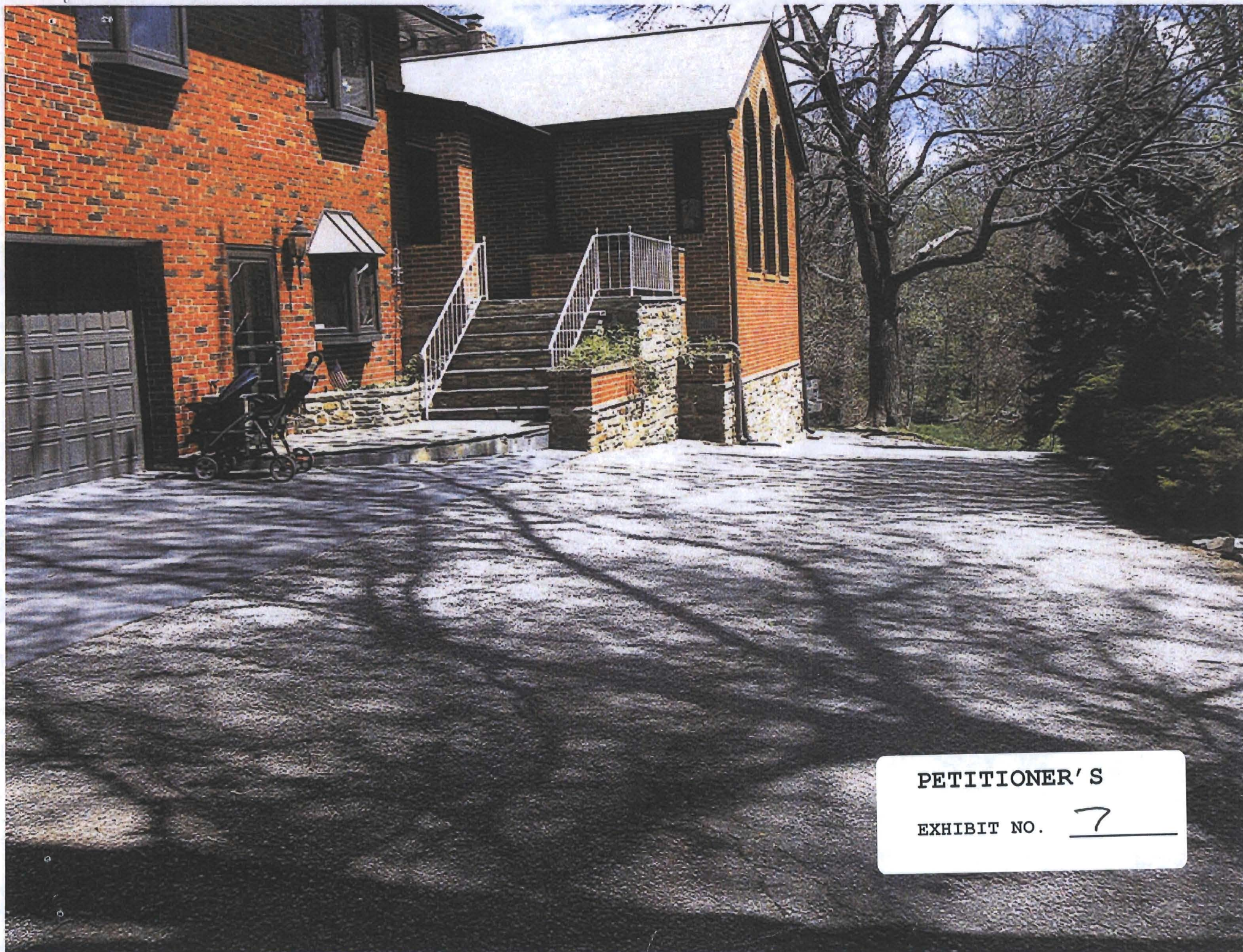
EXHIBIT NO.

5



PETITIONER' S

EXHIBIT NO. 6



PETITIONER'S

EXHIBIT NO. 7



PETITIONER'S

EXHIBIT NO.

8

CHILD DEVELOPMENT PROGRAM LICENSE

Approved since:

CUDDLES DAY CARE, INC.

☐ In addition, an approval is issued pursuant to Education Article, 2-206 and COMAR 13A.16.16.

License Status:	
Issued on:	10/18/2008
Revised on:	1/6/2009
Status:	Initial - Full
Expires on:	5/31/2010

Ages:	1	2	3
6 wks through 17 mos	Yes		No
18 mos through 23 mos	Yes		No
2 years	Yes	No	No
3 years	Yes	No	No
4 years	Yes	No	No
5 yrs through 15 yrs	Yes		No
16 yrs through 20 yrs	No		No

Schedule:	
Months:	January - December
Days:	Monday - Friday
Hours:	8:30 Am - 6:00 Pm

Total Capacity: 12

[illegible]

THE NUMBER OF CHILDREN AT ANY GIVEN TIME MAY NEVER EXCEED 12, INCLUDING A MAXIMUM OF 5 CHILDREN BETWEEN 6 WEEKS AND 24 MONTHS OF AGE.

State Superintendent of Schools
Maryland State Department of Education

EXHIBIT NO.

47



WACHOVIA

ATM DEPOSIT ENVELOPE

- Be sure to endorse all checks.
- Please do not deposit coins.
- Please do not deposit foreign currency.
- No deposit ticket required.

Day Care Fencing

Please Note

Funds from deposits may not be available for immediate withdrawal. Please refer to the Wachovia Schedule of Fees and Funds Availability for details.

Any non-US checks deposited at the ATM will be returned to you via US mail. Please speak with a Financial Center representative to assist you in collecting funds from non-US checks.

Optional Inform

Name

Amount \$

PETITIONER'S

EXHIBIT NO. 10



LITTLE DARLINGS - FRONT

Little Darlings
5419 East Drive, Arbutus
21227



LITTLE DARLINGS - REMR



CCBC DAY CARE

CCBC College
Rolling Road
Catoonsville



MT. PROVIDENCE

MT. Providence Day Care
701 Sun Road
Haltom 21207

BACK

APPROX.
25'

Cuddles

TO KEECH ROAD

APPROX. 40'



Cuddles





Cuddlet Day Care



Ymca DAY CARE 37"

YMCA
850 S. Rolling Rd.
Catoneseville



RELAY CHILDRENS CENTER

Relay Childrens Center
1620 S. Rolling Rd



GRACE EPISCOPAL DAY CARE

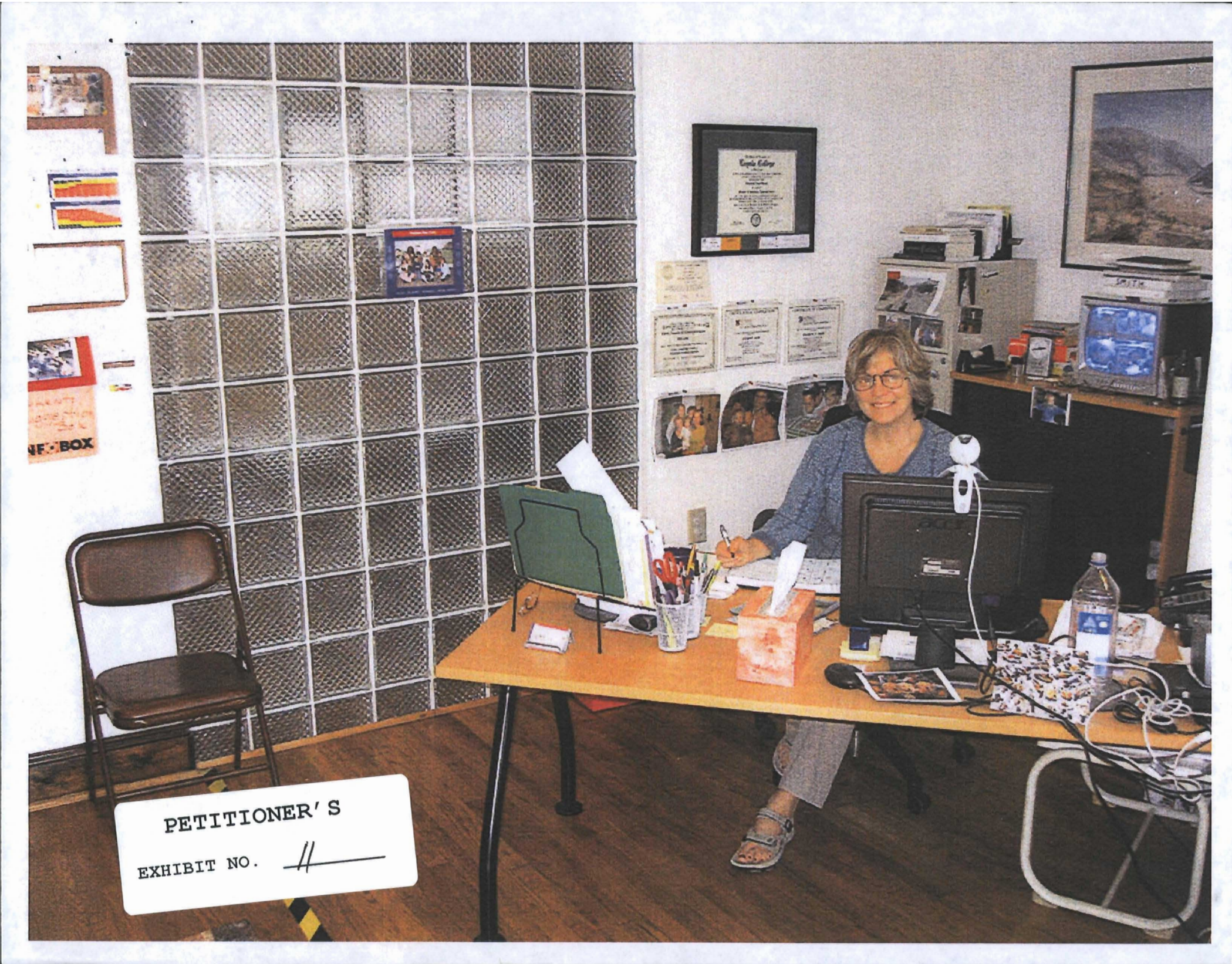
Grace Episcopal Day Care
7625 Montgomery Rd
Elkridge 21075



Cuddles



CUPPLES DAY CARE



PETITIONER'S
EXHIBIT NO. 4

PROTESTANT'S
EXHIBITS

—
TRANSCRIPTS

20090153

(7)

Case No.: 2009-0153-SPHX 505 GUN RD.

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	SITE PLAN (objection made to driveway widths)	Collectively Letters in Opposition
No. 2	Class A license and attachments	Survey Summary
No. 3	"You're INVITED to VIEW OUR CENTER	
No. 4	LETTERS IN SUPPORT	
No. 5	Collectively Aerial PHOTO'S OF COMMUNITY PROPERTY	
No. 6	Collectively - DRIVEWAY PHOTOGRAPHS	
No. 7	Collectively - Exterior PHOTOGRAPHS	
No. 8	DRIVEWAYS IN AREA	
No. 9	LICENSES AND CERTIFICATE REQUIRED	
No. 10	Day Care Fencing at Other Locations	
No. 11	PHOTOGRAPHS OF ACTIVITIES	
No. 12		

Label
Protestants

① - ~~Someone took
Originals~~

② - Someone took
Exhibit 2

Gun Road Historical and Protective Association

April 22, 2009

William Wiseman
Zoning Commissioner
Room 105 Jefferson Building
105 West Chesapeake Avenue
Towson, Md. 21204

Re: Case No. 2009-0153-SPHX
505 Gun Road

Dear Mr. Wiseman:

I am President of the Gun Road Historical and Protective Association.

I enclose copies of the following:

1. Petitions in Opposition to the Proposed Special Exception (47);
2. Letters in Opposition to the Proposed Special Exception (6);
3. Summary List of Residents' Positions.

Thirty-eight of the 42 homes (90%) on Gun Road and Keech Road are opposed to the Proposed Special Exception.

An explanation may help make sense of this. There are 40 houses on Gun Road and two on Keech Road. Gun Road is a dead-end road. Keech Road, also a dead-end street, runs off of Gun Road.

In some cases, more than one person in a home signed Petitions in Opposition. In three cases (McKee/322 Gun; Whitehead/600 Gun; Richmond/618 Gun), residents have expressed their opposition, but I do not have signed petitions as I write this. I expect to have signed petitions from those three before the hearing Friday morning. I represent on the attached summary list that McKee, Whitehead and Richmond are opposed, but I also parenthetically note their opposition with a "V" (for verbal).

We could not contact Mrs. Bush at 606 Gun, because she is in an assisted living facility, but I will try to track her down before Friday, too. I know from many previous conversations with Mrs. Bush on other neighborhood issues that she has *without exception* been supportive of the Association's position on all other issues on which she has weighed in. Notwithstanding this, I leave the "Position" space next to Mrs. Bush's

IN THE MATTER OF:

LYNN HOGG & ELIZABETH SMITH
(AKA CUDDLES DAYCARE)

:
:
Case No.: 09-153-SPHX
:

Wednesday, June 30, 2010

Pursuant to Notice, the above-entitled hearing was held before Chairman Belt, at
Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue,
Towson, Maryland 21204, commencing at 10:00 a.m., there being present on
behalf of the respective parties:

ON BEHALF OF THE APPELLEES/PETITIONERS:

LAWRENCE E. SCHMIDT, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

J. CARROLL HOLZER, ESQUIRE
CAROLE DEMILIO, ESQUIRE,
THE OFFICE OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

ALSO PRESENT:

THE GUN ROAD HISTORICAL & PROTECTIVE ASSOCIATION
PAUL DONOGHUE, JOE BENNETT, FRANK LINDBERG, LUCY & PAUL
MCKEAN, NAOMI BALDWIN, WILLIAM H. MOORE, DONNA MURPHY &
MICHELLE REED

Debbie H. Eichner
Eichner Transcribing Services
8101 Bletzer Road
Baltimore, Maryland 21222
410-477-1242

ORIGINAL *one*



IN THE MATTER OF:

LYNN HOGG & ELIZABETH SMITH
(AKA CUDDLES DAYCARE)

:
:
Case No.: 09-153-SPHX
:

Monday, December 10, 2009

Pursuant to Notice, the above-entitled hearing was held before Chairman Belt, at
Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue,
Towson, Maryland 21204, commencing at 10:00 a.m., there being present on
behalf of the respective parties:



ON BEHALF OF THE APPELLEES/PETITIONERS:

LAWRENCE E. SCHMIDT, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

J. CARROLL HOLZER, ESQUIRE
CAROLE DEMILIO, ESQUIRE,
THE OFFICE OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

ALSO PRESENT:

THE GUN ROAD HISTORICAL & PROTECTIVE ASSOCIATION
PAUL DONOGHUE, JOE BENNETT, FRANK LINDBERG, LUCY & PAUL
MCKEAN, NAOMI BALDWIN, WILLIAM H. MOORE, DONNA MURPHY &
MICHELLE REED

Debbie H. Eichner
Eichner Transcribing Services
8101 Bletzer Road
Baltimore, Maryland 21222
410-477-1242

ORIGINAL *one*



1 IN THE MATTER OF: * BEFORE THE
2 Lynn Hogg and Elizabeth Smith- * COUNTY BOARD OF APPEALS
3 Legal Owners/Petitioners * OF
4 505 Gun Road * BALTIMORE COUNTY
5 13th Election District * Case No. 09-153-SPHX
6 1st Councilman District * November 10, 2009

7 * * * * *

8 The above-entitled matter came on for hearing
9 before the County Board of Appeals of Baltimore County,
0 Hearing Room #2, Jefferson Building, 105 W. Chesapeake
1 Avenue, Towson, Maryland 21204, at 10 o'clock a.m.,
2 November 10, 2009.

3 * * * * *

4
5
6
7
8
9
0
1 Reported by: Carolyn E. Peatt