BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: November 3, 2014

TO: David Duvall
Zoning Review Office
Permits, Approvals & Inspections

FROM: Tammy McDiarmid, 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.

Case No:	Case Name:
08-456-X	Prigel Family Creamery
12-091-X	Rainbow Hall, LLC (2 Folders)
13-132-XA	9400 Liberty Limited Partnership

c: Arnold Jablon, Director/Permits, Approvals & Inspections
Michael Field, County Attorney
Nancy West, Assistant County Attorney

12-091-X

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BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER	*	IN THE
OF	*	CIRCUIT COURT
THE VALLEYS PLANNING	*	FOR
COUNCIL, INC., *et al.*	*	BALTIMORE COUNTY
	*	CASE NO.: C-13-3597

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

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on the timely Petition for Judicial Review filed by the Valleys Planning Council, Inc., Mark Wilson, and Harlan Zinn (collectively, "Petitioners"), seeking review of the January 17, 2013 decision of the Baltimore County Board of Appeals ("Board") and the subsequent denial by the Board of Petitioner's Motion for Reconsideration on March 20, 2013. The Board's decisions affirmed the May 7, 2012 decision by an Administrative Law Judge granting a special exception to Rainbow Hall, LLC ("Respondent") to utilize the property located at 10709 Park Heights Avenue ("the Property") for "churches and other buildings of worship." Following the filing of Petitioners' Petition, Respondent, the owner of the Property, timely filed a Response in Opposition to the Petition. This Court held a hearing on this matter on April 17, 2014. For the reasons set forth below, the decision of the Board is AFFIRMED.

BACKGROUND

The Property is a 19-acre parcel of land situated in the Greenspring Valley area f Baltimore County. The Property contains a main house, constructed in approximately 917, that was once occupied by General Douglas MacArthur and his family. The operty also contains a small cottage and two ranch-style houses built in the 1970s. instant case involves only the use of the main house, which Respondent previously

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sought to use as a "multi-family dwelling" or for the hosting of events. Board of Appeals for Baltimore County Opinion in Case No. 12-091-X ("Board's Opinion") at 2. Because the Property is zoned R.C.2 (agricultural), the Board prohibited this use, and directed Respondent to cease renting out rooms at the Property. *Id.* Following this, Respondent sought a special exception pursuant to Baltimore County Zoning Regulation ("BCZR") §1A01.2(C)(6) to use the Property for "churches or other buildings for religious worship."

Respondent filed its Petition for Special Exception on September 27, 2011. A hearing was held before an Administrative Law Judge on May 1, 2012 and an Opinion granting the special exception was signed on May 7, 2012. Following Petitioners' appeal, the Board held a hearing on September 25 and 26, 2012.

Because the Board has exhaustively summarized the testimony and evidence presented at this hearing in its own Opinion, *see* Board's Opinion at 3-14, this Court will not reiterate the content of this evidence. In brief, Respondent presented testimony from six witnesses: Stacy McArthur, a landscape architect; Lance Roth, a founding member of the Church of the Resurrection, which once occupied the Property; Stephen Ferrandi, a principal at a real estate firm specializing in the sale and lease of churches and schools; Mickey Cornelius, a traffic engineer; Robert Sheesley, an environmental consultant; and David Thaler, a civil engineer. Petitioners presented testimony from seven witnesses: Jon Seitz, a traffic engineer; Harlan Zinn, one of the Petitioners and a resident of 10628 Park Heights Avenue; John Koontz, an environmental consultant; David Thomas, the Assistant to the Director, Baltimore County Department of Public Works; Mark Wilson, another of the Petitioners, and a resident of 10705 Park Heights Avenue; James Patton, a land development consultant; and Hsiao-Yun Hung, a resident

of 10714 Park Heights Avenue. The Court shall state such facts below as are necessary to support the conclusions it reaches.

Following the hearing and public deliberations held December 11, 2012, the Board issued a decision, dated January 17, 2013, which granted the special exception to use the property for "churches and other buildings for religious worship," on the conditions that Respondent: (1) perform certain specified acts of preventative maintenance on the septic system of the Property and (2) remove shrubbery and level embankments along the north side of the southern entrance to the Property in order to provide "a clear 350 foot view from at least eight (8) feet from the edge of Park Heights Avenue (MD Route 129)." Board's Opinion at 20.

Petitioners then filed a Motion for Reconsideration, arguing that the Board should alter its Opinion to make it clearer that a church of only 212 seats was being approved. Petitioners also sought to have the Board prohibit the renting of the Property to multiple religious entities on the ground that this would constitute an impermissible commercial rental property. Respondent opposed Petitioners' Motion. The Board held public deliberations on the Motion on February 28, 2013. On March 20, 2013, the Board issued a Ruling on Motion for Reconsideration, denying Petitioners' Motion. Petitioners' appeal to this Court timely ensued.

QUESTIONS PRESENTED

The following questions[1] are presented for review:

(1) Did the Board err (either as a matter of law or on substantial evidence grounds) in approving the special exception when Respondent did not state precisely the scope of its proposed use of the Property?

(2) Did the Board err, on substantial evidence grounds, in approving the special exception when "known and obvious sight distance dangers" should have precluded the grant as a safety hazard?

(3) Did the Board err in considering Respondent's Petition for Special Exception when the Petition was not ripe for review because Respondent first needed to obtain an amendment to Baltimore County's Master Plan for water and sewage usage and approval from the Maryland Department of the Environment (MDE) prior to making use of the Property?

STANDARD OF REVIEW

"A court's role in reviewing an administrative agency adjudicatory decision is narrow." *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 67 (1999). The court is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine [*sic*] if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel Service, Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 577 (1994).

"In applying the substantial evidence test, a reviewing court decides 'whether a reasoning mind reasonably could have reached the factual conclusion the agency

[1] Petitioners do not specifically identify any questions in their Memorandum. The listed questions are gleaned from the text of Petitioners' argument.

reached.'" *Banks*, 354 Md. at 68 (quoting *Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 512 (1978)). The court "'must review the agency's decision in the light most favorable to it; the agency's decision is prima facie correct and presumed valid....'" *CBS, Inc. v. Comptroller*, 319 Md. 687, 698 (1990) (quoting *Ramsay, Scarlett & Co., Inc. v. Comptroller*, 302 Md. 825, 834-35 (1985)). The forgiving substantial evidence test applies both to questions of fact and to mixed questions of law and fact. *See Baltimore Lutheran High School Ass'n, Inc. v. Employment Sec. Admin.*, 302 Md. 649, 664 (1985) ("even if conflicting inferences could be drawn from the factual findings made by [the] Board in the exercise of its function as the trier of fact...it is for the Board to draw the inference, not the reviewing court"). Where the agency's factual findings are supported by substantial evidence and those findings support more than one legal conclusion, the Court may not substitute its judgment for that of the agency's, so long as the agency's legal conclusion was reasonable. *See Ramsay, Scarlett & Co., Inc.*, 302 Md. at 839. "When, however, the agency's decision is predicated solely on an error of law, no deference is appropriate and the reviewing court may substitute its judgment for that of the agency." *Maryland State Police v. Lindsey*, 318 Md. 325, 334 (1990).

DISCUSSION

The R.C.2 (agricultural) zoning classification was established "in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County." BCZR §1A01.1(B).[2] As such, the preferred use of property in such a zone is "agricultural operations." BCZR §1A01.2(A). A further twelve uses are

[2] It is unclear when the Property was last used for agricultural purposes, if it ever was. The evidence before this Court indicates that it has contained a (non-agricultural) residence for almost 100 years. Similarly, none of the Petitioners are engaged in agricultural uses and none of them complain that agricultural uses would be hampered by the proposed use of the Property. Petitioners' complaints about the proposed use are, instead, limited to those related to traffic and sewage use.

permitted as of right, *see* BCZR §1A01.2(B), and an additional twenty-nine uses (ranging from airports to "standard restaurants or tearooms converted from dwellings" to wireless telecommunications towers) are permitted by special exception, *see* BCZR §1A01.2(C). One such use permitted by special exception is use for "churches or other buildings of worship." BCZR §1A01.2(C)(6).

A use permitted by special exception is "*prima facie* compatible" or "presumptively compatible" with a given zoning classification, *Montgomery Co. v. Butler*, 417 Md. 271, 293-95 (2010), so long as "there are facts and circumstances that show that the particular use proposed at the particular location proposed" would be compatible, *see Schultz v. Pritts*, 291 Md. 1, 15 (1981). The burden of showing this compatibility is on the party seeking the special exception. *See Rockville Fuel & Feed Co. v. Board of Appeals of City of Gaithersburg*, 257 Md. 183, 190-91 (1970). In order to obtain a special exception generally, a use must not (1) be detrimental to the health, safety, or general welfare of the locality; (2) create traffic congestion; (3) create a potential risk of fire, panic, or other danger; (4) overcrowd land or unduly concentrate population; (5) interfere with the adequate provision of schools, parks, water, sewerage, transportation, or other public provisions; (6) interfere with adequate light and air; (7) be inconsistent with the location's zoning classification or the "spirit and intent" of the BCZR; (8) be inconsistent with the BCZR's "impermeable surface and vegetative retention provisions"; or (9) be detrimental to the environment at and near the site. BCZR §502.1. Furthermore, in an R.C.2 zone, there must be a finding that "the [proposed] use would support the primary agricultural use in...[the] vicinity and would not itself be situated on land more appropriately used for primary agricultural uses."

BCZR §1A01.2(C).[3] The Board found (with the exception noted in footnote 3) that these requirements had been met and granted the special exception.

A. The Board Did Not Err in Finding That Sufficient Evidence Existed to Grant the Special Exception

Petitioners assail the Board's approval of the special exception at first on three grounds: (1) Respondent introduced "no evidence, literally none, regarding the scope of the proposed use," Petitioners' Memorandum at 19; (2) because some testimony indicated that the Property could host multiple congregations, the proposed use was not a "church" at all, but "a commercial enterprise akin to the already prohibited apartment use," Petitioners' Memorandum at 24; and (3) the Board erred in considering evidence of the prior illegal use of the Property as a church, or, alternately, erred in prohibiting Petitioners' counsel from asking certain questions regarding the current activities of the congregation that illegally used the Property. The Court will not address Petitioners' third argument, but will instead assume, *arguendo*, that the Board should not have considered the evidence presented regarding the prior illegal use of the Property.[4] Since the Board could have reached the same decision absent this evidence, Petitioners' arguments are all to no avail, for the reasons detailed below.

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[3] The Board failed to comply with this last requirement. While the Board dutifully marched through the nine factors it needed to assess under BCZR §502.1 before granting *any* special exception, it never addressed this specific requirement of the R.C.2 zone. The closest the Board came was its statement that "Mr. Thaler indicated that the use would not be inconsistent with the purposes of the property's zoning classification since a house of worship or other religious building is authorized under the BCZR for an RC 2 zoned property." Board's Opinion at 19. With respect to the requirement of BCZR §1A01.2(C), however, this does not settle the matter: a church is authorized only when the Board makes the required finding regarding agricultural uses, and the Board never did so.

However, since Petitioners raised this issue neither before the Board nor in their Memorandum in Support of Petition for Judicial Review in this Court, the issue has been waived. *See Cicala v. Disability Review Bd. for Prince George's Co.*, 288 Md. 254, 263 (1980); *see also Dept. of Econ. and Empl. Dev. v. Owens*, 75 Md. App. 472, 477 (1988).

[4] Although the Court makes this assumption, it is worth noting that Petitioners did not object to this evidence before the Board, *see* T1 at 34-42, and that issue is therefore waived on appeal.

Petitioners complain that Respondent presented no evidence regarding how many congregations might use the Property, what activities or events will be held and with what frequency, which rooms in the building would be used, whether the congregation would have offices (and therefore "permanent" commuters) on the Property, and whether the institutional kitchen on the Property (dating from its time as a nursing home) would be utilized. While, as noted above, Petitioners are correct that the burden fell to Respondent to demonstrate that its proposed use fell within a category of use permitted by special exception, Respondent presented sufficient evidence to justify the Board's finding here.

Three of Respondent's witnesses discussed the types of activities a church might undertake when using the Property. One of these witnesses, Lance Roth, testified about the illegal use of the Property by the Church of the Resurrection. *See* Transcript of September 25, 2012 Proceedings ("T1") at 36-47. As stated above, the Court will not consider Mr. Roth's testimony.

Respondent's witness Stephen Ferrandi, "an expert in commercial, real estate brokerage, specifically houses of worship," T1 at 58:6-9, testified that a property being used as a church requires adequate parking and that the Property had sufficient parking[5] for the number of seats proposed, T1 at 61:16-21; that, given market conditions relating to houses of worship, any congregation using the Property would likely be on the small side, with less than the 150 to 200 members required to obtain financing to purchase a building, T1 at 62:8 to 63:6; that leasing of worship spaces is common for "starting" congregations, T1 at 73:15-17; and that multiple-congregation

[5] The testimony of another of Respondent's witnesses, Stacey McArthur, was that the Property has parking for fifty-five vehicles. T1 at 15:21-25.

buildings are generally permitted by right or by special exception in any residential zone, T1 at 74:2-4. This evidence, from a witness accepted by the Board—without objection from Petitioners—as an expert in the rental of religious use buildings, was sufficient to establish that any congregation using the building would be relatively small (something also established by the hard limit of 212 chairs to be placed in the building—a limit referred to throughout the record), and that other zoning authorities have approved multiple-congregation buildings in residential areas.

In addition, Respondent's witness David Thaler, an expert in land use, testified to the following facts: that "on [the Property's] maximum day it would [host] 212 people," T1 at 179:16-17; that, when the Property "was the Baptist home...they had services...probably on every day" and that on "larger religious occasions they attracted families and visitors," T1 at 184:19-25; that the Property would be used for "worship on a Saturday or a Sunday or whatever," T1 at 186:20-24; that, because "it's a 212 seat church," it would generate only "a minor amount of traffic," and that "[c]hurches, synagogues...even if it was a mosque operating on a Friday night, tend to operate at off peak times," T1 at 188:20-23; that three families are currently living on the property and, with the proposed use, "you might get a rector maybe or minister" living on the property, T1 at 189:14-15; that "churches do what churches do...have brotherhood meetings, sisterhood meetings, bible [*sic*] study," T1 at 198:15-20; and that any congregation may also have administrative offices on the site, T1 at 200:16-22. Mr. Thaler also admitted that the proposed scope of use was "not...completely clear," T1 at 184:1-2, and indicated a number of times on cross-examination that he did not know the exact scope of the proposed use because no specific congregation was yet associated with the

proposed use, *see* T1 at 195:16 to 201:16. However, throughout cross-examination, Mr. Thaler continued to note that any use of the Property would be limited to what could be accommodated by the proposed 212 seats that the space can accommodate, *see id.*

While Petitioners are correct that Mr. Thaler's testimony does not set a specific scope of use in stone, his testimony nonetheless provides far more than the "literally" no evidence on the subject that Petitioners assert exists. Mr. Thaler's testimony establishes that any use of the property by a congregation is constrained by the 212 seat limit of the site, that the Property previously hosted services (when it contained the nursing home) without problems arising, that religious functions are held at off-peak hours, that perhaps one person associated with the congregation might live on site, that congregations hold services and certain types of meetings, and that a congregation might have an administrative office on the site. All of this is evidence about the proposed use of the Property upon which the Board properly relied. While Mr. Thaler acknowledged that the *exact* scope of the use was uncertain, this hardly means that *no* evidence was presented to the Board about what use by a religious congregation (or congregations) would entail. Such evidence was presented throughout Mr. Thaler's testimony.

This evidence was itself sufficient to meet Respondent's burden of showing that its proposed use qualified for a special exception as a "church or other building for religious worship." Once such evidence is presented, "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 is arbitrary, capricious and illegal." *Anderson v. Sawyer*, 23 Md. App.

612, 617 (1974). Petitioners in fact put forth evidence to in an effort to rebut Respondent's case and neither Petitioners' traffic expert, *see* T1 at 207-44, nor Petitioners' septic and water expert, *see* Transcript of September 26, 2012 Proceedings ("T2") at 9-60, nor Petitioners' witness David Thomas, *see* T2 at 60-66, had any difficulty presenting evidence of the purported harm that would come from the proposed use in spite of the vague scope of that proposed use. The only one of Petitioners' witnesses who stated that he was unable to draw conclusions about the proposed use based on any ambiguity in the proposed scope of the use was Petitioners' land use expert, James Patton, *see* T2 at 94:1-9. To the extent that Petitioners therefore failed to present "probative evidence of harm" through Mr. Patton, this is a failing of Petitioners' own making, not one—as the testimony of several of Petitioners' other witnesses demonstrates—of necessity.

Furthermore, as the Board noted in its Opinion, nothing in the BCZR requires that a *specific* church be associated with a proposed use in order for that proposed use to qualify for a special exception. Board's Opinion at 15. This is true both as a matter of statutory interpretation and as a matter of common sense. When approving *any* proposed use, the Board is faced with some ambiguity regarding the scope of the use. If the Board is approving the use of some property as a single-family home, that home might be occupied by an elderly widower who rarely leaves his house or by a large family with a dozen or more children who are travelling to various activities at various times throughout the day. That the exact nature of the use contemplated for the "single-family home" is unclear before some actual use is made of the property is not fatal to the approval of such a use. The same logic applies in the instant case: in the absence

of a requirement that it do otherwise—and Petitioners do not contend that anything in the BCZR mandates otherwise—the Board can make a determination about what the likely scope of use is, based upon the testimony and evidence presented to it. Substantial evidence was presented to the Board to establish that Respondent proposed to use the Property as a religious building, the use of which would be limited since it could accommodate only 212 chairs. From that evidence, the Board reasonably concluded that the proposed use qualified for a special exception. Although other inferences might be drawn from the evidence presented, "it is for the Board to draw the inference, not the reviewing court." *Baltimore Lutheran High School Ass'n*, 302 Md. at 664.

Moreover, it is clear that the determination that a proposed use fits within a special exception category carries with it a legislative determination that certain "inherent effects" will be associated with the use and that those "inherent effects," when not amplified by other evidence, are not such as will disqualify a use from receiving a special exception. *People's Counsel for Baltimore Co. v. Loyola College of Maryland*, 406 Md. 54, 106 (2008) ("The inherent effects notwithstanding, the legislative determination necessarily is that the uses [approved of by special exceptions] conceptually are compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the body to whom the power to grant or deny individual applications is given that actual incompatibility would occur"). Once Respondent had established, through its witnesses, that the proposed use here fell within the specially permitted category of "churches or other buildings for religious worship," the Board was free to consider the "inherent effects" caused by religious use

of the building (e.g., that there would be a substantial number of people travelling to the Property at certain off-peak hours, or that a certain amount of noise would be generated during religious services). It then fell to Petitioners to "adduce[ ] evidence" that would convince the Board that the effects produced by *this* proposed use would result in "actual incompatibility" with the zoning designation. The Board's conclusion was that Petitioners failed to do so. That conclusion, as discussed above, was based on substantial evidence and will not be set aside by this Court.

Indeed, though the Board does not employ in either of its opinions the term "inherent effects," the Board's repeated references to the 212 seat cap on the proposed use of the Property, *see* Board's Opinion at 15, at 17, and at 20, indicate that, so far as scope of use was concerned, the Board focused heavily on what the *maximum* use of the Property could be, with its "inherent" religious purpose in mind. Again, in its Ruling on Motion for Reconsideration ("Reconsideration Ruling"), the Board noted that "the size of the hall where services might be conducted and the parking spaces available would limit the size of the congregation using the property." Reconsideration Ruling at 2. This statement, too, is a consideration of the manner in which the proposed use would "inherently affect" its surroundings. Furthermore, the Board wrote that, "[t]he services more than likely would be on the weekends or in the evening." Board's Opinion at 15. This statement is also a consideration of the "inherent effects" of a religious use of the site—i.e., that, inherently, religious use will tend to occur at off-peak hours.[6] The Board's action in considering these various "inherent effects" was correct, given the unambiguous statement in *Loyola College* that uses permitted by special exception are

course, as noted above, Respondent also presented testimony that substantiated this assumption ut the "inherent effects" of a religious use.

such uses as have certain legislatively acknowledged "inherent effects" which, in themselves, are not sufficient to prohibit the proposed use.[7]

Finally, Petitioners cite to a number of previous Board decisions in which special exceptions were denied because the party seeking such an exception failed to demonstrate that the proposed use fell within a special exception use category defined in the BCZR. There is no doubt that such situations arise. Had Respondent presented no witnesses at all, or presented witnesses who merely made conclusory remarks to the effect that the proposed use was "a church," the Board would have been required to deny the special exception here. However, as discussed above, Respondent here presented testimony that established what sort of activities were contemplated for the Property. As noted above, once Respondent established that its proposed use qualified under BCZR §1A01.2(C)(6), the burden shifted to Petitioners to demonstrate in what manner the proposed use would negatively affect the area. This burden Petitioners failed to carry.[8]

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[7] The instant case in many ways resembles that analyzed in *Anderson v. Sawyer*, 23 Md. App. 612, as that case is glossed by the *Loyola College* decision: "There was no probative evidence offered that the depressing effect of the funeral home would be any greater at the proposed location than in any other residential area in the same zone where it was allowed by special exception....[T]he Court of Special Appeals [also] discussed the effect of traffic, also inherent to operation of a funeral home," focusing on the way such inherent traffic would impact the proposed location for the funeral home. *Loyola College*, 406 Md. at 105.

[8] It is noteworthy that Petitioners failed to call *any* witnesses regarding intensity of church use. Certainly, witnesses could have been found to testify about congregations making unusually intensive use of their properties (e.g., holding services five, six, or seven times a week; holding meetings at peak commute times, etc.). Such evidence, had it been presented, might have given the Board pause about granting the special exception here, given the ambiguity about the specific scope of the proposed use. Absent such evidence, however, the Board properly relied on the evidence before it and upon the "inherent effects" produced by any religious use of property.

Petitioners did attempt to question Respondent's witness Lance Roth about the intensity of his congregation's current use of its religious space, but were prevented from doing so when the Board sustained objections to this line of questioning. *See* T1 at 47:17 to 52:19. Petitioners complain, as an auxiliary to their complaint regarding the Board's consideration of evidence of illegal past use, about the sustaining of these objections. The objections were correctly sustained since Petitioners' questions on cross-examination exceeded the scope of Respondent's direct examination of Mr. Roth. On direct, Mr. Roth was asked only about the size of his congregation and the activities carried out by that congregation

Respondent presented sufficient evidence such that "a reasoning mind reasonably could have reached the factual conclusion the agency reached," *Banks*, 354 Md. at 68, especially in light of the requirement that the Board keep in mind the "inherent effects" produced by religious use of the Property. The Board's decision, therefore, was not in error merely because some ambiguity existed as to the exact scope of the proposed use.

Petitioners also argue, along similar lines, that the mooted use of the Property as a "multi-faith center" should be considered "a commercial enterprise" rather than use for "religious worship." Petitioners cite no provision of the BCZR nor any caselaw in support of this proposition, and, indeed, the literal language of BCZR §1A01.2(C)(6) is to the contrary. That provision says that a special exception exists in areas zoned R.C.2 for "churches or other buildings for religious worship." A "multi-faith center" is, on its face, a "building[ ] for religious worship" and thus literally falls within the regulatory language. The Board did not err in failing to hold otherwise.

B. Substantial Evidence Existed to Support the Board's Finding That the Proposed Use of the Property Would Not Create a Safety Hazard

Petitioners also contend that, even if the Board properly decided the issues relating to the scope of proposed use, it erred in finding compliance with BCZR §502.1(A) or (B).[9] The Board erred, Petitioners assert, because (1) it credited the

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while occupying the Property; on cross, Petitioners repeatedly sought to question Mr. Roth about the *current* activities of his congregation, a matter beyond the scope of the direct examination.

[9] Some ambiguity exists in Petitioners' Memorandum, since it does not specify in what manner Petitioners think traffic safety problems impact the special exception analysis. The Board discusses traffic safety with respect to subsection (B), "congestion in roads, streets, or alleys." However, subsection (B) deals with traffic *volume* issues; traffic *safety* issues would seem to fall within the purview of subsection (A), detriments to "the health, safety or general welfare of the locality." This Court, therefore will consider this issue as arising under subsection (A) and involving a potential safety hazard, not a potential traffic congestion problem.

testimony of Respondent's traffic expert over the testimony of Petitioners' traffic expert and Petitioners' lay witnesses, and (2) it granted the special exception even though the proposed use of the Property's entrances will not conform to American Association of State Highway and Transportation Officials (AASHTO) standards.

Petitioners' first contention on this issue is easily rejected. Maryland courts have "repeatedly held that a reviewing court may not substitute its judgment for that of the agency concerning the credibility of witnesses and evidence." *Maryland State Retirement and Pension Systems v. Martin*, 75 Md. App. 240, 249 (1988). Respondent's traffic expert, Mickey Cornelius, testified at length about his analysis of traffic safety issues related to the entrances to the Property, *see* T1 at 74-128, and made a specific suggestion about a remediation measure that could be taken to render those entrances safer, *see* T1 at 81:9 to 82:20. The Board adopted this suggestion in its Opinion at 16, and ordered further remedial measures to ensure traffic safety in its Opinion at 20. It is true that Petitioners' traffic expert, Jon Seitz, testified to conclusions contrary to those of Mr. Cornelius, *see* T1 at 207-44, and that the two individual Petitioners, Harlan Zinn and Mark Wilson, both testified about traffic problems on Park Heights Avenue, but this merely means that the testimony presented was not one-sided. The Board found Mr. Cornelius's conclusions more credible than those of Mr. Seitz or than the lay impressions of Messrs. Zinn and Wilson. This determination is for the Board to make. It can hardly be said that the lengthy testimony of Mr. Cornelius—whose testimony occupies more pages in the Transcript than that of any other witness—was not sufficient to establish "substantial evidence" that the traffic associated with the proposed use will not pose a danger to public safety.

As to Petitioners' second contention on this issue, it is unclear what requires the *Board* to comply with AASHTO standards. In certain respects, the State Highway Administration (SHA) requires its own adherence to these standards, but nothing requires the Board to adhere to them strictly. While non-compliance with the standards may be evidence that a safety hazard potentially exists, such non-compliance need not be dispositive. Instead, it is a factor for the Board to consider, as it did in the instant case, where it noted that it was "mindful of the fact that the AASHTO standards are not going to be exactly met by the situation here." Board's Opinion at 16. The Board took this fact into consideration,[10] as well as the facts that "the entrances and exits [to the Property] have been established for quite some time" and that no accidents had been reported at the entrances to the Property in the preceding five years. *Id.* at 16-17. These facts, when coupled with Respondent's Exhibit 9—a letter from Steven Foster, the Chief of the Access Management Division of SHA, stating that SHA's position was that "an entrance onto MD129 [Park Heights Avenue] consistent with current [SHA] guidelines is not required"—are sufficient such that a reasonable decision-maker could find that the technical failure to comply with AASHTO standards was not enough to render the proposed use a detriment to public safety.[11]

Indeed, far from ignoring the sight distance concerns raised by the Property's entrances, the Board required a number of changes to the entrances beyond the one suggested by Mr. Cornelius in order to address these concerns. *See* Board's Opinion at

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[10] Contrary to Petitioners' assertion, *see* Petitioners' Memorandum at 30, that the Board endorsed Mr. Cornelius's (erroneous, *see* State Highway Access Manual §3.4(4)) statement that the AASHTO standards apply only to new construction, the Board noted that "there is nothing to confirm" this statement. *See* Board's Opinion at 16.

[11] Though he was evasive when questioned on the subject, Petitioners' own traffic expert, Mr. Seitz, refused to disagree with the assessment made by the SHA, instead stating that he thought SHA needed "all the information." *See* T1 at 238:24 to 240:14. Mr. Seitz also agreed that the determination of whether an entrance was permitted on Park Heights Avenue was for SHA to make. *Id.*

16-17 and at 20. This solution—and the broader conclusion the Board reached regarding the lack of a threat to public safety from the proposed use—was reasonable; therefore, this Court may not substitute its own judgment for that of the Board. *See Ramsay, Scarlett & Co., Inc.*, 302 Md. at 839.

C. The Board Did Not Err in Considering the Petition for Special Exception Because, Even if MDE Approval and/or Amendment of the Baltimore County Master Plan Were Required, the Petition Was Still Ripe

Lastly, Petitioners argue that the Board should not have considered Respondent's Petition at all, as it was not "ripe" for adjudication since Respondent's proposed use will, Petitioners argue, require approval from MDE and an amendment to the Baltimore County Master Plan in order to proceed. This argument is based in a disagreement between Petitioners' witnesses John Koontz and David Thomas and Respondent's witness Robert Sheesley about the interpretation of certain COBAR and COMAR provisions related to water and sewer systems. The Board agreed with Respondent's witness that the relevant regulatory provisions do not require permitting for the proposed use. *See* Board's Opinion at 17-18. Petitioners, in their Memorandum, assert that this was error, but they do so only in order to advance an argument that Respondent's Petition for Special Exception was therefore not ripe for consideration.[12]

Petitioners, however, cite no authority for the proposition that Respondent was required to obtain approval for its proposed use in any particular order. Even assuming,

[12] Petitioners do not argue that the asserted failure to comply with the relevant COMAR and COBAR provisions implicates BCZR §§502.1(E) (proposed use must not "interfere with adequate provisions for...water [and] sewerage") or 502.1(I) (proposed use must not "[b]e detrimental to the environmental and natural resources of the site and vicinity"). The sole ground upon which they claim error as to the Board's alleged faulty interpretation of these regulations is that the alleged proper interpretation of the regulations renders the Board's action premature.

arguendo, that Petitioners are correct that MDE and Baltimore County approval are also required for the proposed use, that did not prevent the Board from giving *its* approval—which certainly was required—to the proposed use when it did. Indeed, not only is there no authority which requires that an individual seeking a special exception follow some predetermined sequence when seeking approval from various agencies, BCZR §502.3 suggests the *contrary*. That section states that when a special exception cannot be used within the normal two year utilization window "because of inadequacy or unavailability of public sewer or water facilities," an eighteen month extension of the special exception beyond the date upon which such facilities become available "shall" be granted. BCZR §502.3. Although the situation in the instant case is not identical to that governed by §502.3, this section nonetheless suggests that proper provision of water and sewer to a property is not a condition precedent to the granting of a special exception. Thus, even if Petitioners are correct that MDE and Baltimore County approval are required before Respondent can engage in the proposed use, nothing prevented the Board from hearing the Petition for Special Exception when it did. If Respondent needs to obtain further approval from other agencies before engaging in the proposed use, that is a matter for Respondent to address, not a matter that deprives the Board of jurisdiction to grant the approval it can grant.

The Board, therefore, did not err in finding Respondent's Petition to be ripe for adjudication.

CONCLUSION

For the reasons set forth above, it is, this 22nd day of April, 2014, hereby

ORDERED that the decision of the Baltimore County Board of Appeals is AFFIRMED.

Susan Souder

Judge Susan Souder

Copies mailed to:

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Marlow & Wyatt
404 Allegheny Avenue
Towson, Maryland 21204

Michael McCann, Esq.
Michael R. McCann, P.A.
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True Copy Test
JULIE L. ENSOR, Clerk
By: Assistant Clerk

7/1/13

CIRCUIT COURT FOR BALTIMORE COUNTY
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N O T I C E O F R E C O R D

Case Number: 03-C-13-003597 AA
Administrative Agency : 12091X
C I V I L

In the Matter of Valleys Planning Council Inc The, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 1st day of July, 2013.

Julie L. Ensor

Julie L. Ensor
Clerk of the Circuit Court, per RWC

Date issued: 07/01/13

TO: BOARD OF APPEALS OF BALTIMORE COUNTY THE
Jefferson Building Room 203
105 W Chesapeake Avenue
Towson, MD 21204

RECEIVED
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BALTIMORE COUNTY
BOARD OF APPEALS

7/1/13

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
RAINBOW HALL, LLC *

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE BOARD OF APPEALS NO. : 03-C-13-003597
OF BALTIMORE COUNTY *
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF:
RAINBOW HALL, LLC – LEGAL OWNER/ *
APPELLANT FOR SPECIAL HEARING
FOR PROPERTY LOCATED AT *
E/S OF PARK HEIGHTS AVE, 170' S/OF
VELVET VALLEY WAY *
(10729 PARK HEIGHTS AVENUE)

*

3RD ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT *

BOARD OF APPEALS CASE NO.: 12-091-X *

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CLERK OF CIRCUIT COURT
BALTIMORE COUNTY

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

PROCEEDINGS BEFORE THE ADMINISTRATIVE LAW JUDGE
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the 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 and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
OF BALTIMORE COUNTY

No. 12-091-X

September 27, 2011	Petition for Special Exception to use the subject property for churches and other buildings for religious worship, filed by Michael T. Wyatt, Esquire on behalf of Legal Owners/Petitioners Rainbow Hall, LLC.
October 14, 2011	Entry of Appearance filed by People's Counsel for Baltimore County.
November 17, 2011	ZAC Comments.
February 16, 2012	Certificate of Publication in newspaper
April 12, 2012	Certificate of Posting.
Various dates	Letters in opposition and support (58 pages)
May 1, 2012	Hearing held before the Administrative Law Judge.
May 7, 2012	Opinion and Order issued by Administrative Law Judge John E. Beverungen wherein the Petition for Special Exception was GRANTED with restrictions.
May 16, 2012	Notice of Appeal filed by Michael R. McCann, Esquire on behalf of The Valleys Planning Council, Mark Wilson, and Harlan Zinn, Protestants.
June 21, 2012	Notice of Assignment issued by Board of Appeals scheduling this matter for hearing on September 25 and September 26, 2012.
August 9, 2012	Letter from Michael R. McCann, Esquire requesting a postponement of the hearing dates scheduled in this matter.
August 17, 2012	Letter from Wendell H. Grier, Chairman of the Board of Appeals for Baltimore County to Michael R. McCann, Esquire wherein the request for postponement was denied.
September 20, 2012	Letter from People's Counsel for Baltimore County to Board of Appeals.
September 18 - September 20, 2012	Various Subpoenas issued by Board of Appeals.
September 25, 2012	Board convened for hearing, Day 1. Matter continued to day 2.
September 26, 2012	Board convened for hearing, Day 2. Matter completed.

Exhibits submitted at hearing [two days] before the Board of Appeals:

Petitioner's Exhibit No. (binder)

1 – Notice of Appeal filed by Michael McCann, Esquire on behalf of Valleys Planning Council, Mark Wilson and Harlan Zinn, dated 5/16/12
2 – Baltimore County Code Section 32-4-281
3 – Order of the Circuit Court for Baltimore County granting a Motion to Stay Action of Administrative Agency pending appeal dated 4/19/12
4 – Opinion and Order of Administrative Law Judge dated 5/7/12
5 – Two Photographs of site
6 – Photo Enlargement (LARGE EXHIBIT – Not in Binder)
7 – Plan to Accompany Petition (LARGE EXHIBIT – Not in Binder)
8 – Aerial Photograph/Churches and Schools (LARGE EXHIBIT – Not in Binder)
9 – Letter from State Highways Administration dated 10/12/11 and Well yield prepared by G. Edgar Harr Sons' Corp dated 11/16/11
10 – Trace Laboratories Certificate of Analysis dated 11/16/11
11 – Septic System Inspection Report dated 11/17/11
12 – Letter from Robert Powell, Supervisor Soil Evaluation Section of Department of Environmental Protection and Sustainability dated 4/30/12
13 – Letter from D.S. Thaler dated 4/11/12 requesting review

Protestants' Exhibit No.

1 – Website for Church of the Resurrection (Exhibit Rejected)
2 – Events Calendar (Exhibit Rejected)
3 – Curriculum Vitae of Mickey Cornelius, P.E., PTOE
4 – American Association of State Highway and Transportation Officials (AASHTO) Policy on Geometric Design of Highways and Streets 2011 Edition
5 – State Highway Access Manual 2004
6 – Guidelines for Maryland State Highway Access Permits Section 3.0 Regulatory Authority and Policy
7 – Traffic Impact Analysis dated 10/1/10
8 – State Highway Administration comments and conclusions based on the Traffic Impact Study dated 10/1/10
9 – Valley Girls Dirt Stompers website (Exhibit Rejected)

10 – Sight Triangle (Enlargement)
11 A-G – Photographs of sight lines
12 – Curriculum Vitae of John W. Koontz
13 – Record Plat of subject property
14 – MDE Guidance on Wastewater Flows for Use in Designing On-site Systems
15 – Proposed Septic Replacement Plan
16 – Water Supply System Capacity
17 – COMAR Section 26.03.01
18 – 10-Year Baltimore County Water Supply and Sewerage Plan 2000-2010, 2007 Triennial Review
19 – COBAR Section 01.03
20 – Development Plan Review Comments from Dennis Kennedy, Supervisor, dated 1/4/12
21 – Executive Order Baltimore County Water and Sewerage Plan Amendment Process
22 – Development Plan and Plan to Accompany Zoning Petition
23 – The Valleys Planning Council brochure
24 – Valleys Planning Council member sign up envelope
25 – Baltimore City & County Map, pink area showing Valleys Planning Council Jurisdiction
26 – Letter from Kathleen Pontone dated 5/19/06

November 7, 2012	Memorandum of People's Counsel for Baltimore County.
November 13, 2012	Protestants' Post-Hearing Memorandum filed by Michael R. McCann, Esquire.
November 13, 2012	Memorandum of Petitioner Rainbow Hall, LLC filed by Michael T. Wyatt, Esquire.
December 11, 2012	Board convened for Public deliberation.
January 17, 2013	Final Opinion and Order issued by the Board of Appeals for Baltimore County in which the Petition for Special Exception was GRANTED with conditions.
January 31, 2013	Protestants' Motion for Reconsideration filed by Michael R. McCann, Esquire.
February 4, 2013	Letter from Theresa R. Shelton, Administrator for the Board of Appeals for Baltimore County acknowledging receipt of Motion for

	Reconsideration filed by Michael R. McCann, Esquire on behalf of Protestants.
February 19, 2013	Petitioner Rainbow Hall, LLC's Response in Opposition to Protestants' Motion for Reconsideration filed by Michael L. Snyder, Esquire and Michael T. Wyatt, Esquire on behalf of Rainbow Hall, LLC, Petitioner.
February 26, 2013	Protestants' Reply to Petitioner's Response in Opposition to Motion for Reconsideration filed by Michael R. McCann, Esquire on behalf of Protestants.
February 28, 2013	Board convened for public deliberation on Motion for Reconsideration.
March 20, 2013	Ruling on Motion for Reconsideration issued by Board of Appeals for Baltimore County wherein the Motion for Reconsideration was DENIED.
April 2, 2013	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Michael R. McCann, Esquire on behalf of The Valleys Planning Council, Mark Wilson and Harlan Zinn.
April 9, 2013	Rainbow Hall, LLC's Response in Opposition to Petition for Judicial Review filed by Michael L. Snyder, Esquire of Coady and Farley, and Michael T. Wyatt, Esquire of Marlow and Wyatt, on behalf of Rainbow Hall, LLC.
April 30, 2013	Copy of Petition for Judicial Review retrieved from the Circuit Court for Baltimore County by the Board of Appeals. Civil Action No: 03-C-13-003597
April 30, 2013	Certificate of Compliance sent to all parties and interested persons.
July 1, 2013	Transcript of testimony filed.
July 1, 2013	Record of Proceedings filed in the Circuit Court for Baltimore County.

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

Sunny Cannington

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

c:
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MICHAEL L. SNYDER, ESQUIRE/COADY & FARLEY
HENRY WRIGHT
TERESA MOORE/VALLEYS PLANNING COUNCIL
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ANDREA VAN ARSDALE, DIRECTOR/DEPT OF PLANNING
NANCY C. WEST, ASSISTANT COUNTY ATTORNEY

4/30/13

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
RAINBOW HALL, LLC *

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE BOARD OF APPEALS NO. : 03-C-13-003597
OF BALTIMORE COUNTY *
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE *
TOWSON, MARYLAND 21204
*
IN THE MATTER OF:
RAINBOW HALL, LLC – LEGAL OWNER/ *
APPELLANT FOR SPECIAL HEARING
FOR PROPERTY LOCATED AT *
E/S OF PARK HEIGHTS AVE, 170' S/OF
VELVET VALLEY WAY *
(10729 PARK HEIGHTS AVENUE)
*
3RD ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT *

BOARD OF APPEALS CASE NO.: 12-091-X *

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BALTIMORE COUNTY

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

CERTIFICATE OF COMPLIANCE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the 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:

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BALTIMORE MD 21208

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MILES STOCKBRIDGE
10 LIGHT STREET
BALTIMORE, MD 21202-1487

ERIN SHER SMYTH, ESQ.
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JEAN J. LUBKE
10733 PARK HEIGHTS AVE
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CLEON SHUTT
511 GARRISON FOREST RD
OWINGS MILLS MD 21117

NOEL LEVY
11 WINDSONG CT
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BALTIMORE MD 21213

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ROSEDALE MD 21237

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ADMINISTRATIVE LAW JUDGE
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NANCY C. WEST
ASSISTANT COUNTY ATTORNEY
BALTIMORE COUNTY 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 30th day of April, 2013 a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.

Sunny Cannington

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

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 30, 2013

Michael T. Wyatt, Esquire
Marlow & Wyatt
404 Allegheny Avenue
Towson, MD 21204

Michael L. Snyder, Esquire
Coady & Farley
400 Allegheny Avenue
Towson, MD 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, MD 21204

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-13-003597
In the Matter of: Rainbow Hall, LLC
Board of Appeals Case No.: 12-091-X

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on April 2, 2013 by Michael R. McCann, Esquire, on behalf of Valleys Planning Council, Inc., Mark Wilson, and Harlan Zinn, 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 of this letter. The transcripts from the September 25 and 26, 2012 hearings before the Board of Appeals have been previously provided. Please contact our office for additional copies at the rate of $0.50 per page pursuant to the County's copy policy.

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

Very truly yours,

Sunny Cannington

Sunny Cannington
Legal Secretary

Multiple Original Cover Letters
Enclosure

cc:

HENRY WRIGHT
HARLAN ZINN
DAVID THALER
ALBERT M. SHAPIRO
SARAH EASTMAN
ALLISON J MAGAT
ILENE COHEN
LUCY HOWARD
AMY NEWHALL
SUE AND MARK LEVI\
DR & MRS TODD SARUBIN
SONDRA AND STANLEY CRAIN
CHERYL & JONATHAN AARON
MARCIA AND IRWIN FUSS
BARBARA ST. OURS
JOHN AND FRANCES ROCKWELL
LEE & TARYN HASELHUHN
RICHARD AND ELIZABETH BLUE
MARK WILSON
SALLY & GREG MERZ
BARBARA KAPLOW
SHIRLEY SPARAGANA
JONATHAN & BEVERLY MYERS
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THALIA & MARTIN RESNICK
STILES COLWILL
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SHELDON LEWIS
THEODORE HOUCK
TERESA MOORE/VALLEYS PLANNING COUNCIL
WILLIAM AND NATALIE FEINBLUM
TERESA MOORE
LOUIS ROSENTHAL
HERBERT & LINDA BECKENHEIMER
REBECCA FLYNN
DEBORAH JOY
SHELLEY & SHELDON GOLDSEKER
JEAN HINLICKY
EUGENE & LORETTA REYNOLDS
JAYNE GERSON AND ELLIOTT HAUST
LANA & HENRY GREENBERG
PAUL AND JANE BRICKMAN
PAMELA MARKS & MICHAEL MININSOHN
MARK GOTTLIEB AND ELLEN FRANK
DAVID & ELIZABETH WILMERDING
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ANNE BROOKS
CHARLOTTE GOLDSTEIN
BETTY & JERRY LIEBOWITZ
GORDON AND FIONA GREENSPUN
BARBARA & LOUIS DENRICH
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EDWARD & MARIE MASSAL
MR. & MRS. STUART GARBIS
SHARON AND PETER REID
MR AND MRS JOHN HEYN
G.L. AND M.C. CUMMINGS
GRANT AND KIMBERLY GOODER
VIRGINIA JOYCE
JAMES PATTON/PATTON CONSULTANTS
SUITBERTUS VANDERMEER
RACHEL AND PETER RUBIN
STEVEN J.GANZERMILLER
AURELIA B BOLTON
MICKEY CORNELIUS
MANNY BRONSTEIN
BARRY ZUCKERMAN
DONNA EDEN
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WENDY RURKA
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RAYMOND CAPLAN
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LOIS ROTHBERG
ROBERT CHOW
DAN KOUIGSBERG
MAYBELLE FRIEMAN
PAUL SINGER
CHESSIE DONNELLY
IRING WALKER
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ANNA SMITH
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KIM SIMONETTI
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JEAN J. LUBKE
RUTH GOLDSTEIN
CLEON SHUTT
BEVERLY PEARCE
STUART & LESLIE DENRICH, RABEKAH DENRICH, DAVID LANG
KATHLEEN PONTONE, ESQ./MILES STOCKBRIDGE
LINDA CORBIN, PRESIDENT/GREATER GREENSPRING ASSOCN.
PETER M. ZIMMERMAN, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
ARNOLD JABLON, DIRECTOR/PERMITS, APPROVALS & INSPECTIONS
LAWRENCE M. STAHL, MANAGING ADMINISTRATIVE LAW JUDGE
JOHN BEVERUNGEN, ADMINISTRATIVE LAW JUDGE
MICHAEL FIELD, COUNTY ATTORNEY
ANDREA VAN ARSDALE, DIRECTOR/DEPARTMENT OF PLANNING
NANCY C. WEST, ASSISTANT COUNTY ATTORNEY

4/9/13

IN THE MATTER OF:	*	IN THE
RAINBOW HALL, LLC 10729 Park Heights Avenue Owings Mills, Maryland 21117	* *	CIRCUIT COURT FOR
Board of Appeals Case No: 2012-0091-X	*	BALTIMORE COUNTY
	*	Case No: 03-C-13-003597

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BALTIMORE COUNTY
BOARD OF APPEALS

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

RAINBOW HALL, LLC'S RESPONSE IN OPPOSITION
TO PETITION FOR JUDICIAL REVIEW

RAINBOW HALL, LLC, property owner and Respondent, by its attorneys, Michael L. Snyder and Michael T. Wyatt, pursuant to Maryland Rule 7-204, hereby files this Response in opposition to the Petition for Judicial Review filed by Petitioners THE VALLEYS PLANNING COUNCIL, INC., MARK WILSON and HARLAN ZINN and states its intention to participate fully to deny Petitioners any relief in this administrative appeal.

Respectfully submitted,

Michael L. Snyder
Coady & Farley
400 Allegheny Avenue
Towson, Maryland 21204
(410) 337-0200

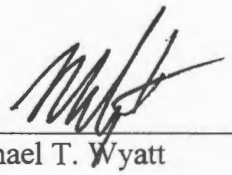
Michael T. Wyatt
Marlow & Wyatt
404 Allegheny Avenue
Towson, Maryland 21204
(410) 821-1013
Attorneys for Respondent RAINBOW HALL, LLC

RECEIVED AND FILED
2013 APR -9 A 10: 24
CLERK OF CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9 day of April, 2013, a copy of the foregoing was mailed first class, postage prepaid to:

Michael R. McCann, Esquire
118 West Pennsylvania Avenue
Towson, Maryland 21204
Baltimore, Maryland 21203
Attorney for Petitioners



Michael T. Wyatt

MARLOW & WYATT
ATTORNEYS-AT-LAW
404 ALLEGHENY AVENUE
TOWSON, MARYLAND 21204
(410) 821-1013
TELEFAX (410) 821-5432
www.marlowwyatt.com

WILLIAM F. C. MARLOW, JR.
MICHAEL T. WYATT
ADMITTED IN MARYLAND AND
THE DISTRICT OF COLUMBIA

WASHINGTON ADDRESS
SUITE 300
6935 WISCONSIN AVENUE
WASHINGTON, D.C. 20815

April 9, 2013

VIA HAND DELIVERY

Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: Rainbow Hall, LLC
10729 Park Heights Avenue,
Owings Mills, Maryland 21117
Baltimore Co. Board of Appeals Case No: 2012-0091-X
Baltimore County Circuit Court Case No: 03-C-13-003597

Dear Clerk:

For filling in the above-referenced administrative appeal, this transmits Respondent's Response in Opposition to Petition for Judicial Review.

Thank you for your continued courtesies.

Very truly yours,

Michael T. Wyatt

MTW/sjm
cc: Michael L. Snyder, Esquire
Michael R. McCann, Esquire
Enclosures

M:\Wyatt\Wright, H\Church\Circ Ct Appeal\Clerk Ltr 4-9-13.Doc

4/2/13

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY *

PETITION OF: *

THE VALLEYS PLANNING COUNCIL, INC., *
118 W. Pennsylvania Ave.
Towson, Maryland 21204 *

MARK WILSON *
10705 Park Heights Ave.
Owings Mills, MD 21117 *

and HARLAN ZINN *
809 Coldspring Road
Middle River, Maryland 21220 *

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

IN THE MATTER OF: *

RAINBOW HALL, LLC *
10729 Park Heights Ave.
Baltimore, Maryland 21117 *

CASE NO. 12-091-X *

RECEIVED AND FILED
2013 APR -2 P 12:49
CLERK OF CIRCUIT COURT
BALTIMORE COUNTY

Civil Action No. _____
03-C-13-3597

RECEIVED
APR 30 2013
BALTIMORE COUNTY
BOARD OF APPEALS

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

PETITION FOR JUDICAL REVIEW

The Valleys Planning Council, Inc., Mark Wilson, and Harlan Zinn, by their attorneys, Michael R. McCann and Michael R. McCann, P.A., pursuant to Maryland Rule 7-202 *et al.*, file this petition for judicial review of the final Opinion and Order of the Board of Appeals of Baltimore County dated January 17, 2013, and the Ruling on Motion for Reconsideration dated March 20, 2013. Petitioners, The Valleys Planning Council, Inc., Mark Wilson, and Harlan Zinn were parties to the proceedings below and are aggrieved by the Board's decision. Petitioners Mark Wilson and Harlan Zinn own real property proximate

HC CC Rainbow Hall LLC

to the subject property. Petitioners have personal and property rights adversely affected by the Board's decision.

Michael R. McCann

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 825-2150

Attorneys for Petitioners

Dated: April 2, 2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of April 2013 a copy of the foregoing Petition for Judicial Review was sent via U. S. Mail, postage prepaid to:

Michael Wyatt, Esq.
Marlow & Wyatt
404 Allegheny Avenue
Towson, Maryland 21204

Attorneys for Respondents

Michael R. McCann

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

April 2, 2013

Clerk, Circuit Court for Baltimore County
Civil Division
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204-0754

Re: *In the Matter of Rainbow Hall, LLC*

Dear Clerk:

Enclosed please find a Petition for Judicial Review, as well as a civil non-domestic case information report and a check for One Hundred Forty-Five Dollars ($145.00) to cover filing fees.

Thank you for your assistance. Please contact me if you have any questions.

Sincerely,

Michael R. McCann

Enclosures

3/20/13

IN THE MATTER OF RAINBOW HALL, LLC – Legal Owner/Petitioner 10729 Park Heights Avenue Baltimore, MD 21117	*	BEFORE THE
	*	BOARD OF APPEALS
	*	FOR
RE: Petition for Special Exception to use the property for a church and buildings for religious worship pursuant to BCZR	*	BALTIMORE COUNTY
	*	Case No. 12-091-X

* * * * * * * * * * *

RULING ON MOTION FOR RECONSIDERATION

On January 17, 2013, the Board issued an Order and Opinion in the above matter granting "the Special Exception to use the property herein for "churches and other buildings for religious worship per Baltimore County Zoning Regulations ("B.C.Z.R.") § 1A01.2.C.6 and 502 with certain conditions".

On January 31, 2013, the Protestants filed a timely Motion for Reconsideration. In their Motion, the Protestants contended that the Order of the Board did not address any limitations on the use of the property. In the Motion, the Protestants stated:

> "Protestants submit that it would be in the interests of all parties concerned if the Board's Order made clear that the property shall only be used for a single church with 212 folding chairs. From an enforcement prospective, it would also be in the interest of Baltimore Count, and its citizens at large, to know more specifically the scope of the use allowed at the property."

The Protestant's went on contend that it would be beneficial to all concerned to know that neither Petitioner nor any subsequent property owner of the property is allowed to rent the facility out to multiple churches and they contended that in order to do so would constitute a commercial rental facility that could have capacities, uses, and impacts far in excess of a single 212 seat church described in the Board's opinion.

On February 28, 2013, the Board held a Public Deliberation in which the Board reviewed the Protestant's Motion for Reconsideration. The Board recalled that there was testimony in the hearing with respect to the utilization of church properties by several different congregations. The discussion included a church in Mt. Washington on Lake Avenue in Roland Park, and also in Columbia, Maryland; where a multi-faith center was constructed. The Board recalled in its deliberation on the original case, that it did discuss the question of the utilization of the property by several different types of congregations.

The Board recognizes that there is no limitation in the Baltimore County Zoning Regulations (BCZR) with respect to the number of congregations which might utilize a particular piece of property to conduct church services. The Board feels that the size of the hall where services might be conducted and the parking spaces available for the church congregation to park during the services would limit the size of congregations utilizing the property. The Board also feels that it would be very difficult to limit the types of church related activities that could be conducted on the property. Therefore, the Board feels that the Motion for Reconsideration should be denied.

RULING AND ORDER

THEREFORE, IT IS THIS 20th day of March, 2013 by the Board of Appeals for Baltimore County

ORDERED that the Motion for Reconsideration FILED IN Case No.: 12-091-X be and is hereby **DENIED**.

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

Lawrence S. Wescott, Panel Chairman

Maureen E. Murphy

Edward W. Crizer, Jr.

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 20, 2013

Michael T. Wyatt, Esquire
Marlow & Wyatt
404 Allegheny Avenue
Towson, MD 21204

Michael R. McCann, Esquire
118 W. Pennsylvania Avenue
Towson, MD 21204

RE: *In the Matter of: Rainbow Hall, LLC – Legal Owner/Petitioner*
Case No.: 12-091-X

Dear Counsel:

Enclosed please find a copy of the Ruling on Motion for Reconsideration 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

See attached Distribution List

NOTICE OF ASSIGNMENT (CONTINUED)

CASE #: 12-091-X *IN THE MATTER OF*: RAINBOW HALL, LLC – LEGAL OWNER/PETITIONER
10729 PARK HEIGHTS AVENUE

3RD E; 2ND C

AMY NEWHALL
CHRISTOPHER SHEEHAN
OLIVIA & EDWARD WELBOURN III
RONNIE SILVERSTEIN
ROBERT CHOW
STILES COLWILL
SALLIE WORTHINGTON
LESTER KONAROFF
KELLY MURPHY
BARBARA ST. OURS
WILLIAM & NATALIE FEINBLUM
SHIRLEY SPARAGANA
PAUL SINGER
HARVEY BROOKS JR
VIRGINIA JOYCE
LANA & HENRY GREENBERG
MARK GOTTLIEB
JONATHAN AND BONNIEFARBER
ANNE BROOKS
GORDON AND FIONA GREENSPUN
PATRICIA DEFORD
THALIA & MARTIN RESNICK
IRING WALKER
GRANT AND KIMBERLY GOODER
ERIN SHER SMYTH, ESQ.
JAMES S. PATTON
EMANUEL BRONSTEIN
MARK AND SUE LEVI
SUITBERTUS VANDERMEER
CLEON SHUTT
AURELIA BOLTON
JEAN LUBKE
HENRY M. WRIGHT
MANNY BRONSTEIN
ALLISON J MAGAT
RABEKAH DENRICH
DONNA EDEN
LUCY HOWARD

DR & MRS TODD SARUBIN
JOHN AND FRANCES ROCKWELL
RAYMOND CAPLAN
BETTY & JERRY LIEBOWITZ
MAYBELLE FRIEMAN
EVAN MAILIN
WILLIAM GROFF
EUGENE & LORETTA REYNOLDS
WHITNEY & TODD EHRLICH
LEE & TARYN HASELHUHN
SALLY & GREG MERZ
BARBARA & LOUIS DENRICH
CHESSIE DONNELLY
G.L. AND M.C. CUMMINGS
IRENE AND FRANCIS WELLS
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MR AND MRS JOHN HEYN
KIM SIMONETTI
KATHLEEN PONTONE
AL AND FLORENCE SHAPIRO
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BONNIE AND PACY OLETSKY
MICHAEL GRIMES
SARAH CAREY
GARY BLUE
MARCIA AND IRWIN FUSS
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BARBARA KAPLOW
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LOIS ROTHBERG
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MR. & MRS. STUART GARBIS
ANNA SMITH
MARGOT AND DAVID BLOOM
JAYNE GERSON/ELLIOTT HAUST
LOUIS ROSENTHAL
NOEL LEVY
PAUL BRICKMAN
LINDA CORBIN
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SHELDON LEWIS
BARRY ZUCKERMAN
JERROLD & DENISE THROPE
STUART & LESLIE DENRICH
ALAN & ROBIN COHN
DEBORAH JOY
SARAH EASTMAN
SHELLEY & SHELDON GOLDSEKER

David Thaler, D.S. Thaler & Associates, Inc.
Stacey McArthur, D.S. Thaler & Associates, Inc.
Mickey Cornelius, Traffic Group
Michael L. Snyder, Esquire
Coady & Farley

Office of People's Counsel
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Planning
Nancy C. West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
John Beverungen, ALJ
VINCENT J. GARDINA, DIRECTOR /DEPS
Michael E. Field, County Attorney

2/26/13

IN RE: RAINBOW HALL Petitioner/Legal Owner – Rainbow Hall, LLC	*	BEFORE THE
	*	BALTIMORE COUNTY
10729 Park Heights Ave. 12th Election District 3rd Councilmanic District	*	BOARD OF APPEALS
	*	Case No: 2012-0091-X
	*	
	*	

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

PROTESTANTS' REPLY TO PETITIONER'S RESPONSE
IN OPPOSITION TO MOTION FOR RECONSIDERATION

Petitioners, Valleys Planning Council ("VPC"), Mark Wilson, and Harlan Zinn, submit this reply to Petitioner Rainbow Hall, LLC's response in opposition to motion for reconsideration, and state as follows:

A. There Was Evidence At The Hearing To Support The Clarification Requested In Protestants' Motion For Reconsideration

Petitioner contends that the clarification requested by Protestants in their Motion for Reconsideration – that the subject property shall be used by only one church or other religious organization with 212 chairs – is not supported by any evidence introduced at the hearing. (Pet's Resp., pp. 2, 3-4) (Protestants' request is "an arbitrary limitation unrelated to actual proof or evidence in this case" and an "after-the-fact conjecture regarding potential and prospective uses of the Property").

At the hearing, there was no doubt a complete dearth of evidence regarding the nature of the use proposed by Petitioner at this property. Mr. Thaler and Ms. MacArthur – the only witnesses with knowledge of Petitioner's proposal and who could testify about it – made abundantly clear that they had no idea how the property would be used. They did not know

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BALTIMORE COUNTY
BOARD OF APPEALS

what activities or events might take place at the property or how the main building would be used. They did not know whether there would be administrative offices, whether the McCormick wing or the three houses would be put to use, or whether the institutional kitchen would be used. (T., pp. 195-197, 200-01, 202-03, 186, 188, 189).

Yet, despite the utter vagueness of Petitioner's proposal, Mr. Thaler did make clear at the hearing that Petitioner was proposing only a single church or religious organization at the property.

> MR. WYATT:Can you describe for us the proposed scope of the use, o[f] this project?
>
> MR. THALER: Well, I'm not sure it's completely clear... [T]he *only thing* that's essentially being proposed is to, is to put 212 folding chairs in here an[d] use it for *a church or other house of worship*. So that, so that all the Board is being asked to approve is the change in the use.... Its just put up the folding chairs and hold services.

(T. 183-84) (emphasis added).

The Board's Opinion itself demonstrates, in both its summary of the evidence and in its conclusions, that the Board viewed the evidence at the hearing as supporting the approval of use by only a single church or other religious organization. (*See* Op., at p. 3 ("Ms. McArthur stated that the Petitioners were requesting to adopt the mansion for *a church* by installing 212 folding chairs."); *id.* at p. 5 (Mr. Cornelius opined that "the traffic utilizing the facility *as a church* would be at non-peak hours...."); *id.* at p. 6 (Mr. Sheesley testified that "there was adequate capacity to serve the intended use *of a 212 seat church.*"); *id.* at p. 7 (Mr. Thaler opined that the property was "well suited for the utilization *as a church* with the installation of 212 folding chairs"); *id.* ("It was Mr. Thaler's opinion that property would be a perfect site for *a church.*"); *id.* at p. 15 ("the Board feels that 212

parishioners, if that is the number utilizing the property, would not be detrimental to the health, safety and general welfare...."); *id.* at ("The Board feels that the wells and sewer systems are adequate to handle *a congregation of approximately 212 people*."); *id.* at p. 20 ("The Board finds that utilizing the property herein for a church service with *a congregation* with approximately 212 parishioners would not be detrimental...."). Petitioner's contention that there is no factual basis for asking the Board to clarify the permitted use of the property is simply wrong.

B. The Testimony Of Messrs. Roth, Thaler And Ferrandi Does Not Support Petitioner's Request, Now Apparent, That The Property Be Used For A Multiple Congregation Rental Facility

Petitioner asserts that Protestants ignore the testimony of Lance Roth, Steven Ferrandi, and Mr. Thaler whom, according to Petitioner, "all testified as to the typical activities, timeframes of use, and intensities of use put to properties for church or other religious worship use." (Pet's Resp., p. 2 n. 1). According to Petitioner, the Board "had before it ample evidence of the usual and customary uses of a church and the trend of multiple congregations in one location." (*Id.*). Petitioner, again, is wrong.

Mr. Roth testified about the very limited manner in which his congregation used the property for *a single* church from 2006 to 2010.[1] (T. 38, 42, 46, 47). He did not testify about the "typical activities, timeframes of use, and intensities of use" or the "usual and customary uses" of a church, as Petitioner claims. Indeed, counsel for Protestants attempted to solicit this very information from Mr. Roth on cross-examination by asking him to describe the nature and

[1] It should not be forgotten that the use of this property for a single church was illegal because there was special exception approval for that church.

scope of activities and events that take place at his church.[2] However, the Board sustained Petitioner's objection and would not allow Mr. Roth to testify about these matters. (T. 47-52). The Board also did not allow the introduction of a calendar and another printout from the website of Mr. Roth's church in order to show the nature and scope of activities associated with a church. (*See* Prot's Exs. 1 and 2 (marked for identification)).

Mr. Thaler, likewise, did not testify in these areas. To the contrary, Mr. Thaler stated that he did not know what, if any, activities and events might take place at the property other than services. (T., pp. 195-197, 200-01, 202-03, 186, 188, 189). He also stated that he had no idea whether the property would be used by multiple religious organizations. (T. 195-97). He simply didn't know.

Mr. Ferrandi testified that the subject property is a good candidate for *a*_house of worship. (T. 57, 61, 63) ("Mr. Henry Wright contacted me and asked for my expert opinion as to whether the property would make *a good house of worship*"; he concluded that "it's a very fine candidate as adaptive reuse, as *a house of worship*... It's a good property for someone ...to use it as [a] site to grow *their house of worship*.... [T]his would be a good candidate because it allows for *a small congregation* to occupy the space").[3] Mr. Ferrandi did *not* address whether the property was a good candidate for use by multiple congregations and did not discuss any "trend of multiple congregations in one location" as Petitioner claims. He did, however, testify on cross-examination about buildings in Baltimore City and in Howard County that he said are being used by several churches, but he did not know the zoning of these properties and did not testify that the subject property is a good candidate for such a facility. (T. 70-72).

---

[2] The obvious purpose of attempting to solicit such testimony from Mr. Roth was to give the Board some understanding of what Petitioner's use of the property would entail since Petitioner had strategically declined to do so.

[3] Mr. Ferrandi was very clear to point out that he was not engaged by Mr. Wright and had not performed any work or analysis of the property. (T. 59). He simply visited the property.

Not a single witness testified that Petitioner intended to rent the property to multiple congregations,[4] but Mr. Ferrandi's errant comments at the hearing suggested what Petitioner now makes clear in its Response to Motion for Reconsideration – Petitioner may in fact rent the property to multiple religious organizations. (*See* Resp., p. 3 ("it could be that one church or religious denomination seeks the use of the building for Friday evening or Saturday worship and another for Sunday worship"); *id.* ("Some religious organizations may only meet one time a week, while others could have activities on more than one day").

This begs the question why wasn't the Board informed about this? Why didn't Mr. Thaler or Mr. Wright (who did not testify at all) simply tell the Board that is what Petitioner wants to do? The answer, of course, is that Petitioner thought it best, from a strategic standpoint, to describe the proposed use as vaguely as possible and keep all options open.

The problem with this strategy is two-fold. First, it was Petitioner's burden to describe its use of the property. (*See* Prots' Post-Hearing Memo.) Second, the rental of this property to multiple religious organizations is not a "church," is no different than the rental of the property for apartments or any other use, and is not permitted in the RC zone. (*Id.*).

C. There Are Not Inherent Restrictions Associated With The "Church" Special Exception In The BCZR

Petitioner argues that the clarification requested by Protestants is not necessary because "the special exception 'church' use already has inherent restrictions associated with it." (Pet's Resp., p. 2). Assumedly, Petitioner means to say that everyone knows what a church does and that knowledge is sufficient to guide the use of this property in the future.

This argument demonstrates Petitioner's fundamental misunderstanding of special exceptions and the burden of proof in these cases. It is true that there are certain *impacts*

[4] Mr. Thaler stated that he did not know whether the property would be used by one religious organization or multiple religious organization. (T. 195-96).

inherent in any special exception use and that the County Council, in approving a special exception in the BCZR, recognizes those impacts. However, in each case, the burden rests with a petitioner to *prove* that "the *particular* use proposed at the *particular* location proposed [will not] have any adverse effects above and beyond those inherently associated with such a special exception use..." *Shultz v. Pritz*, 291 Md. 1, 15 (1981) (emphasis added). If this was not the standard, then special exceptions could be handled administratively, without a hearing, and anyone could obtain approval for a special exception by simply requesting one.

Contrary to Petitioner's argument, there are not certain *activities* inherent in a "church" use. Each case stands on its own and each petitioner must present evidence of those activities, both their nature and their extent, and prove to the Board the impact they might have on the surrounding properties. In this case, it is Protestants' position that Petitioner woefully failed to meet its burden in this regard. Protestants attempted to elucidate the potential scope of activities and events that this proposed use might engender, but was not allowed to do so. Although the Board disagreed with Protestants, that does not mean the Board may not impose limitations or clarify its ruling as Protestants have requested. The Board is not required to, and should not, leave open the future use of this property – a property that has a long history of violations – to what Petitioners deem to be the "inherent" activities of a church. Approval of a 212-seat church is not self-limiting. Depending upon the number of services held per day/week and the number and type of accessory uses associated with a 212-seat church, the impact could vary dramatically. And certainly, the rental of a property for use by multiple religious organizations is not an "inherent" activity of a church. There is no evidence of any such "multi-faith facility" anywhere in Baltimore County.

Conclusion

Protestants and others in the community have been disturbed by the illegal uses at this property since 2001. They have spent an extraordinary amount of time and money to end such abuses and are understandably concerned about how Petitioner will interpret and extrapolate upon an open-ended approval by the Board. These concerns are heightened by the fact that Petitioner, according to its Response to Motion for Reconsideration, now apparently intends to rent the property to multiple congregations. To be fair to all who have a stake in the outcome of this case, the allowed use and intensity of use should be clearly spelled out in the Board's Order.

For these reasons, Protestants respectfully request that the Board clarify its Order dated January 17, 2013 to specify that the subject property shall be used by only one church or other religious organization with 212 folding chairs. Further, in light of Petitioners now apparent intent to rent the property to multiple religious organizations, Protestants also request that the Board revise the Order to expressly prohibit such use.

Respectfully submitted,

Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 825-2150

Attorneys for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 26th day of February 2013, a copy of the foregoing Reply to Petitioner's Response in Opposition to Motion for Reconsideration was sent *via* regular mail to:

Michael Wyatt, Esq.
Marlow & Wyatt
404 Allegheny Avenue
Towson, Maryland 21204

Michael R. McCann

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BALTIMORE COUNTY
BOARD OF APPEALS

February 26, 2013

Theresa R. Shelton, Administrator
County Board of Appeals
Jefferson Building
105 W. Chesapeake Avenue, Ste. 203
Towson, Maryland 21204

Re: *In re: Rainbow Hall, LLC*
Case No. 2012-0091 X

Dear Ms. Shelton:

Enclosed please find an original and three (3) copies of Protestants' Reply yo Response to Motion for Reconsideration.

Thank you for your assistance. Please contact me if you have any questions.

Sincerely,

Michael R. McCann

Enclosures

2/19/13

IN THE MATTER OF:	*	BEFORE THE
RAINBOW HALL, LLC Petitioner / Legal Owner 10729 Park Heights Avenue Owings Mills, Maryland 21117 3rd Election District 2nd Councilmanic District	*	BOARD OF APPEALS
	*	OF
	*	BALTIMORE COUNTY
	*	Case No: 2012-0091-X

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BOARD OF APPEALS

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

PETITIONER RAINBOW HALL, LLC'S
RESPONSE IN OPPOSITION TO
PROTESTANTS' MOTION FOR RECONSIDERATION

RAINBOW HALL, LLC, Petitioner and legal owner, by its attorneys, Michael L. Snyder and Michael T. Wyatt, hereby files this response in opposition to Protestants' Motion for Reconsideration. The grounds for the opposition are as follows:

I. BACKGROUND

Following a two-day hearing of this matter which took place on September 25 and 26, 2012, the Board of Appeals of Baltimore County ("CBA") issued its Order and Opinion dated January 17, 2013 granting the Petition for Special Exception filed by RAINBOW HALL, LLC to use its property located at 10729 Park Heights Avenue (the "Property") as a church or other building for religious worship per Baltimore County Zoning Regulations ("BCZR") § 1A01.2.C.6 and § 502. In granting the special exception, the CBA also imposed certain conditions relating to: (a) the Property's onsite sewage disposal system and (b) enhancing traffic visibility at the northern and southern entrances to the Property. The CBA will recall these

conditions were the subject of conflicting, oftentimes contentious, evidence and argument during the hearing and in post-hearing memoranda.

In their Motion for Reconsideration, Protestants argue that the CBA should impose additional restrictions on the special exception granted in this case. Specifically, Protestants request that "the subject property… be used by only one church or other religious organization with 212 folding chairs". For the reasons set forth herein, this request should be denied. First, this request is not based on the evidence in this case, but rather Protestants' after-the-fact conjecture regarding potential and prospective uses of the Property under the special exception. Second, additional limitations are not necessary or advisable for the protection of surrounding or neighboring properties – the special exception "church" use already has inherent restrictions associated with it.

II. DISCUSSION

Protestants complained earlier that Petitioner adduced insufficient evidence to support its request for special exception as a church or other building for religious worship.[1] Protestants now posit that the CBA should limit the Property to "only a single church with 212 folding chairs", yet fail to provide any factual bases why such limitation should be imposed. Other than

---

[1] Calling this lack of detail an "evidentiary vacuum", Protestants ignored the testimony of Mssrs. Lance Roth, Steven Ferrandi, and David Thaler, who all testified as to the typical activities, timeframes of use, and intensities of use put to properties for church or other religious worship use. Specifically, the CBA will recall the testimony of Mr. Lance Roth relating to uses typically put to a property and the ongoing activities of a church, including picnics, Bible study, staff meetings and the like. (T. 34-52). Also, Mr. Steven Ferrandi testified that it is not uncommon in today's market to have more than one congregation sharing a facility, particularly since many churches struggle financially to keep up one location. Mr. Ferrandi cited examples of this existing in the town of Columbia, St. John's Episcopal Church in Mt. Washington, and the church along Lake Avenue. (T. 54-74). Mr. David Thaler also confirmed that many churches utilize the same location. (T. 176-204). The CBA had before it ample evidence of the usual and customary uses of a church and the trend of multiple congregations in one location. Contrary to Protestants' suggestion, it is not clear from the text of the Opinion and Order "that the Board contemplated that the Property would be used by only a single church with 212 folding seats".

vague references to the avoidance of "future zoning problems", Protestants never articulate specific concerns about the use of the Property by more than one congregation over the course of a typical week. Protestants also overlook the fact that with a limit of 212 seats, the Property cannot be used at the same time by more than one congregation.

Under the applicable provisions of the BCZR, the plural phraseology "churches or other buildings for religious worship" is not specifically defined.[2] Unlike commercial uses, religious services and related activities typically take place outside of the workday to enable congregants the ability to attend religious functions. This "off peak" use was discussed during the hearing. As the CBA knows, there is no specific church or religious congregation associated with this case at this time, since it is the owner's intent to have the approval in place prior to marketing the Property for sale or lease. Depending on market conditions, it could be that one church or religious denomination seeks the use of the building for Friday evening or Saturday worship and another for Sunday worship. Some religious organizations may only meet one time a week, while others could have activities on more than one day. Imposing a "one church" limit could unduly burden and restrict Petitioner's religious use of the Property.

Further, Protestants would have the CBA impose conditions not supported by the record. Protestants' proposition that more than one organization's use of the Property would result in any impacts to the surrounding and neighboring properties is unfounded. In fact, quite the opposite can be argued. It could easily be true that one single religious congregation's usage of the Property could be significantly more intense than several religious users. Imposing a restriction that the Property be limited to a "single church or religious organization" is an arbitrary

---

[2] The Baltimore County Council had within its province the ability to further define this use and it can be logically inferred the delineation of the use for churches or other buildings for religious worship already carries with it historical and inherent limitations.

limitation unrelated to actual proof or evidence in this case. The only limitation is that contained in the BCZR and, applied in this case, the use is approved for the existing mansion house to be used as a building for religious worship with up to 212 seats.[3] Several witnesses discussed the customary and traditional activities of a church or religious worship location. Given these modest use factors, there should be no need to further restrict the Property.[4]

Imposing additional restrictions on the special exception use is also unnecessary. In accordance with BCZR § 502.2, the CBA "shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties". The evidence in this case amply supported the use of the Property for religious worship. In addition to the restrictions already imposed by the CBA, there is the implied restriction relating to the use of the Property for "churches or other buildings for religious worship". This limit on the number of congregants – 212 – directly limits the intensity and frequency of use of the Property. Whether these congregants belong to one church or multiple organizations is not material. Protestants' comical notion that the Property will be used on an hourly, round-the-clock basis is utter nonsense. The logical inference is that church or other religious worship use of a property carries with it its own inherent limitations and restrictions. In this case, despite the enormous size of the Property and main building, there will

---

[3] The "folding chair church" referenced by Protestants was simply a means of illustration utilized by Petitioner's expert, David Thaler, to amplify that no construction is necessary to use the existing mansion as a church.

[4] Petitioner was required to run the gauntlet of all of Protestants' challenges at the hearing and in post-trial memoranda. If Protestants had legitimate concerns based on "intensity of use" (other than traffic and environmental), they should have shared them at the hearing. At this late juncture, the glaring absence of such "proof" should be construed against, not in favor of, Protestants.

be a limit on the number of parishioners at one time[5]. The CBA found the requirements of Section 502.1 satisfied and the proposed use is presumptively in conformity with the spirit and intent of the RC-2 zone.

The specific constraints of the CBA's order make it clear that there is to be no religious use beyond a 212-seat church consistent with the other requirements. Additional restrictions would be unfair. Why should the Property have imposed upon it restrictions not usual or customarily imposed upon any other churches or religious organizations?

WHEREFORE, Petitioner, for the reasons stated herein, respectfully requests that the CBA deny Protestants' Motion for Reconsideration.

Respectfully submitted,

Michael L. Snyder
Coady & Farley
400 Allegheny Avenue
Towson, Maryland 21204
(410) 337-0200

Michael T. Wyatt
Marlow & Wyatt
404 Allegheny Avenue
Towson, Maryland 21204
(410) 821-1013

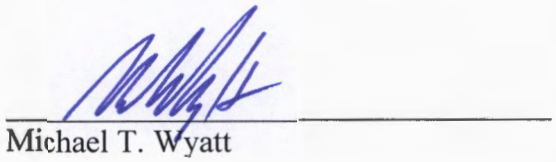
[5] Contrary to Protestants' arguments, the rental of the Property to potentially more than one church or religious organization would not "constitute a commercial rental facility".

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of February, 2013, a copy of the foregoing was sent via hand delivery, to:

Michael R. McCann, Esquire
118 West Pennsylvania Avenue
Towson, Maryland 21204
Baltimore, Maryland 21203
Attorney for VALLEYS PLANNING COUNCIL, INC.

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, Maryland 21204



Michael T. Wyatt

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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

February 4, 2013

Michael R. McCann, Esquire
118 W. Pennsylvania Avenue
Towson, MD 21204

In the Matter of: RAINBOW HALL, INC. / 10729 PARK HEIGHTS AVENUE
Case No.: 12-091-X/ Motion For Reconsideration

Dear Mr. McCann:

This will acknowledge receipt of your Motion for Reconsideration filed January 31, 2013 in the subject matter. A copy of your motion to reconsider, along with any response that may be filed thereto, will be forwarded to the appropriate Board members for their review and ultimate consideration.

With regard to this request for reconsideration, Rule 10 of the Board's Rules of Practice and Procedure states in part as follows:

> ...**The filing of a motion for reconsideration shall stay all further proceedings in the matter, including the time limits and deadlines for the filing of a petition for judicial review. After public deliberation and in its discretion, the board may convene a hearing to receive testimony or argument or both on the motion.** Each party participating in the hearing on the motion shall be limited to testimony or argument only with respect to the motion; the board may not receive additional testimony with respect to the substantive matter of the case. Within 30 days after the date of the board's ruling on the motion for reconsideration, any party aggrieved by the decision shall file a petition for judicial review. The petition for judicial review shall request judicial review of the board's original order, the board's ruling on the motion for reconsideration or both. [Emphasis added.]

Therefore, in response to your motion for reconsideration, a public deliberation will be scheduled and appropriate notice promptly sent to all parties to this matter.

Should you have any questions, please contact me at 410-887-3180.

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Administrator

c: Michael T. Wyatt, Esquire
Marlow & Wyatt
Rainbow Hall, LLC
Valleys Planning Council
c/o Michael R. McCann, Esquire

MARLOW & WYATT
ATTORNEYS-AT-LAW
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BOARD OF APPEALS

WILLIAM F. C. MARLOW, JR.
MICHAEL T. WYATT
ADMITTED IN MARYLAND AND
THE DISTRICT OF COLUMBIA

WASHINGTON ADDRESS
SUITE 300
6935 WISCONSIN AVENUE
WASHINGTON, D.C. 20815

February 19, 2013

VIA HAND DELIVERY

Theresa Shelton, Administrator
County Board of Appeals of Baltimore County
Suite 203, Jefferson Building
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: In Re: Rainbow Hall, LLC
10729 Park Heights Avenue
Case No: 2012-0091-X

Dear Ms. Shelton:

This transmits one (1) original and three (3) copies of Petitioner Rainbow Hall, LLC's Response in Opposition to Protestants' Motion for Reconsideration in connection with the above-referenced special exception case.

Thank you for your customary courtesies.

Very truly yours,

Michael T. Wyatt

MTW/sjm
cc: Mr. Henry M. Wright, Jr.
Michael L. Snyder, Esquire
Michael R. McCann, Esquire
David S. Thaler, P.E.
Peter Max Zimmerman, Esquire
Enclosures

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1/31/13

IN RE: RAINBOW HALL Petitioner/Legal Owner – Rainbow Hall, LLC 10729 Park Heights Ave. 12th Election District 3rd Councilmanic District	*	BEFORE THE BALTIMORE COUNTY BOARD OF APPEALS Case No: 2012-0091-X

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

PROTESTANTS' MOTION FOR RECONSIDERATION

Petitioners, Valleys Planning Council ("VPC"), Mark Wilson, and Harlan Zinn, pursuant to Rule 10 of the Board's Rules of Practice and Procedure, submit this motion for reconsideration of the Board's Opinion and Order dated January 17, 2013, and state as follows:

1. In the Order accompanying its Opinion, the Board granted the Petition for Special Exception filed by Rainbow Hall, LLC and imposed certain conditions relating to (a) the property's sewer system and (b) the sight distance at the northern and southern entrance to the property. (Op. and Order, p. 20). The Order does not address any limitations on the use of the property.

2. The text of the Opinion, however, makes clear that the Board contemplated that the property would be used by only a single church with 212 folding seats. This is borne out by the evidence presented by the Petitioner at the hearing. (*See* Op., at p. 3 ("Ms. McArthur stated that the Petitioners were requesting to adopt the mansion for *a church* by installing 212 folding chairs."); *id.* at p. 5 (Mr. Cornelius opined that "the traffic utilizing the facility *as a church* would be at non-peak hours…."); *id.* at p. 6 (Mr. Sheesley testified that "there was adequate capacity to serve the intended use *of a 212 seat church.*"); *id.* at p. 7 (Mr. Thaler opined that the

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BOARD OF APPEALS

property was "well suited for the utilization *as a church* with the installation of 212 folding chairs"); *id.* ("It was Mr. Thaler's opinion that property would be a perfect site for *a church.*").[1]

3. It is also borne out by the Board's own conclusions. *See* Op. at p. 15 ("the Board feels that 212 parishioners, if that is the number utilizing the property, would not be detrimental to the health, safety and general welfare...."); *id.* at ("The Board feels that the wells and sewer systems are adequate to handle *a congregation of approximately 212 people.*"); *id.* at p. 20 ("The Board finds that utilizing the property herein for a church service with *a congregation* with approximately 212 parishioners would not be detrimental....").

4. Protestants submit that it would be in the interests of all parties concerned if the Board's Order made clear that the property shall only be used for a single church with 212 folding chairs. From an enforcement perspective, it would also be in the interest of Baltimore County, and its citizens at large, to know more specifically the scope of the use allowed at the property.

5. Finally, it would be beneficial to all concerned to know that neither Petitioner nor any subsequent owner of the property is allowed to rent the facility out to multiple churches or other religious organizations. This would constitute a commercial rental facility that could have capacities, uses, and impacts far in excess of a single 212-seat church described in the Board's opinion. Clarifying this issue in the Order would benefit both parties and residents of the surrounding community.

---

[1] When asked about the proposed use of the property, Mr. Thaler testified that "the only thing that's essentially that's being proposed is to, is to put 212 folding chairs in here an[d] use it for *a church or other house of worship.*" (Transcr. 184)

WHEREFORE, Protestants, for the reasons stated, respectfully request that the Board revise its Order dated January 17, 2013 to specify that the subject property shall be used by only one church or other religious organization with 212 folding chairs.

Respectfully submitted,

Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 825-2150

Attorneys for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 31st day of January 2013, a copy of the foregoing Motion for Reconsideration was sent *via* regular mail to:

Michael Wyatt, Esq.
Marlow & Wyatt
404 Allegheny Avenue
Towson, Maryland 21204

Michael R. McCann

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

January 31, 2013

Theresa R. Shelton, Administrator
County Board of Appeals
Jefferson Building
105 W. Chesapeake Avenue, Ste. 203
Towson, Maryland 21204

Re: *In re: Rainbow Hall, LLC*
Case No. 2012-0091 X

Dear Ms. Shelton:

Enclosed please find an original and three (3) copies of Protestants' Motion for Reconsideration.

Thank you for your assistance. Please contact me if you have any questions.

Sincerely,

Michael R. McCann

Enclosures

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1/17/13

IN THE MATTER OF RAINBOW HALL, LLC – Legal Owner/Petitioner 10729 Park Heights Avenue Baltimore, MD 21117 RE: Petition for Special Exception to use the property for a church and buildings for religious worship pursuant to BCZR	* * * * *	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY Case No. 12-091-X

* * * * * * * * * * *

OPINION

This matter comes to the Board on appeal of the final decision of the Administrative Law Judge dated May 7, 2012 in which the ALJ granted a Petition for Special Exception to use the property herein for "churches and other buildings for religious worship per Baltimore County Zoning Regulations ("B.C.Z.R.") § 1A01.2.C.6, 502. The timely appeal was filed on May 22, 2012 by Michael R. McCann, Esquire representing the Valleys Planning Counsel ("VPC"), Mr. Mark Wilson and Mr. Harlan Zinn. Mr. Wilson and Mr. Zinn are neighbors.

The hearing was held on September 25 and September 26, 2012. Michael T. Wyatt, Esquire of Marlow and Wyatt, represented the Petitioner, Rainbow Hall, LLC and as previously stated Mr. Michael R. McCann, Esquire represented the Valleys Planning Council and the other protestants. Briefs were filed and a public deliberation was held on December 11, 2012.

Background

The subject property is a 19 acre parcel located at 10709 Park Heights Avenue in the Stevenson/Greenspring Valley area of Baltimore County (the "Property"). The zoning for the Property is RC2. The main house on the Property was built in approximately 1917 and was occupied by General Douglas MacArthur and his family during the 1920s. It was named

"Rainbow Hill Estate" in honor of General MacArthur's Rainbow Division of World War I. A historical feature on the Property is a Ming tree given to General MacArthur by Japanese Emperor Hirohito in 1926. (Pet. Ex. 4).

Also located on the Property are a small cottage built in 1898 located at 10709 Park Heights Avenue (the "cottage") as well as two (2) single family homes built in the 1970s (10731 and 10733 Park Heights Avenue) (the "ranchers").

The property as been the subject of a previous case before this Board in which the Petitioner sought to use the house as a "multi-family dwelling" or "boarding house" under the B.C.Z.R. and to utilize the two ranchers and the older cottage as rental units on the property continuing their non-conforming uses. The detailed history of the property is set forth in that opinion (Case No: 10-280-SPH, February 24, 2012). In that decision the Board refused to allow the house to be used as a "boarding house", apartment or multi-residential use, and refused to allow the hosting of events at the main house because it was in violation of RC 2 zoning requirements. The Board, however, did allow the three single family homes located on the property as non-conforming uses to continue to be used as single family residences.

The Petitioner filed an appeal of the decision of the Board with the Circuit Court for Baltimore County. On October 12, 2012, the Circuit Court denied the appeal and affirmed the decision of the Board of Appeals prohibiting the apartment use and the hosting of events, deemed catering, in an RC 2 zone.

Upon receiving the Circuit Court's ruling the Petitioner acted to terminate any remaining unlawful apartment uses at the property and concluded the enforcement action which had been sought by the County Attorney for Baltimore County. The Petitioner indicated that it was not

appealing the Circuit Court Order and was complying with the finality of the Board of Appeals decision.

Petitioner now seeks a Special Exception to utilize the main building of Rainbow Hall as a church by installing 212 folding chairs.

Testimony and Evidence

A. Petitioner

In support of its Petition, Petitioner submitted the testimony of Stacy McArthur of D.S. Thaler Associates. Ms. McArthur is a licensed architect and was accepted as an expert in landscape architecture and landscape planning. She testified that the property has been used at one point by the Church of the Resurrection, when it was seeking to find a new home. It held services in the main house while it was seeking a permanent facility. Ms. McArthur stated that the Petitioners were requesting to adopt the mansion for a church by installing 212 folding chairs. She also indicated that there was ample parking available, since one space is required for every 4 seats which would constitute 53 parking spaces. She stated that there was a total of 55 spaces available in the parking lot of the main house.

Petitioner then presented Mr. Lance Roth who was with the Church of the Resurrection. Mr. Roth testified that his church was a spin off of the Episcopal Church on Western Run Road. He stated that they met at a few different locations after the spin off and he was familiar with Rainbow Hall. In 2006, the Church congregation started meeting at Rainbow Hall and utilized the home for Sunday and religious holiday worship from 2006 until 2010. Roth indicated that they had approximately 130 to 140 people at services and that there was no problem parking. In

addition, he indicated that the congregation paid for the expenses incurred of $2,250 to $2,500 per month for opening the home.

Mr. Roth indicated that the church has moved to Kelly and Greenspring Avenues in Lutherville. He also indicated that there was no problem with noise or any of the neighbors during the period of time that his church utilized Rainbow Hall.

Petitioner then presented Stephen Sterrandi, a principle of the real estate firm KLMB. Mr. Sterrandi testified that he specialized in selling and leasing properties as houses of worship and schools. He was asked by Mr. Wright, a principle of Rainbow Hall, LLC, to look at the property and see if it was suitable for religious worship. He made an evaluation and stated that he felt it would be fine for a house of worship, particularly for a congregation that was growing. Mr. Sterrandi stated that he published a magazine "Praise Buildings" and would list the property for sale or lease. At the present time, he has not been contracted for either listing the property for sale or lease.

Petitioner then presented Mickey Cornelius, a traffic engineer, who had performed a traffic study in September of 2010 for a proposed 1,000 seat capacity church at the site. This proposal is still being processed. Mr. Cornelius felt that the traffic study performed at that time for the 1,000 seat church would be directly relatable to the less intense 212 seat church proposed in this case. Mr. Cornelius felt that all of the nearby intersections would be maintained at optimum service level A or AB condition even with the church utilizing the property. He recommended that the northern entrance be used as the entrance site and the southern entrance as the exit site with one-way traffic from north to south. Park Heights Avenue forms a hill in between the two entrances to the property. At the north access the sight distance is good looking to the north but looking south, the sight distance is about 350 feet. Similarly from the south

access, sight distance is good looking south but looking to the north you can see at best approximately 350 feet.

Mr. Cornelius testified that the posted speed limit is 40 miles per hour and the desired intersection sight distance for that speed is 445 feet for left turns and 385 feet for right turns. He indicated in a report that the Petitioner did not meet that criteria but there was safe stopping sight distances for speeds up to 45 miles per hour. Mr. Cornelius indicated that he also had researched the accident history for the last 5 years on the stretch of road between the two driveways and found only one accident to have occurred. This accident was two cars hitting head on and did not involve the sight distances from either the north or south driveway. Mr. Cornelius felt that the proposed use would not be detrimental to the safety of the area or tend to create congestion on roads, streets or alleys. He opined that the traffic utilizing the facility as a church would be at non-peak hours and therefore would not pose any problem in the area for congestion or traffic backup. He noted that the past use of the mansion as a nursing home and as a church had not provided any difficulties and did not feel that the use of the proposed 212 seat church would create any traffic problem.

Petitioner then present Mr. Robert Sheesley an expert in the area of environmental health. Mr. Sheesley is the former Director of the Baltimore County Department of Environmental Protection and Resource Management. He stated that he had reviewed the sewer disposal and capacity and the water supply at the property. He stated that there was a well water evaluation performed in November of 2011. He had reviewed the "upstairs kitchen test" and found that it was acceptable. He reviewed the inspection report of Harry O. Shaneybrook, Inc. of an inspection conducted on November 17, 2011 and agreed with its conclusion that the sewer

disposal system was performing adequately. The report indicated that a new septic drain field was installed in 1997.

Mr. Sheesley also reviewed a letter from Mr. David Thaler, P.E. to Robert Powell, Supervisor of Soil Evaluation Section of Baltimore County, and Mr. Powell's reply to Mr. Thaler. He agreed with the letter of reply from Mr. Powell, that an inspection of the existing field system conducted on March 23, 2012, indicated that the system appeared to be functioning adequately. Sheesley was questioned with respect to the requirements of Section 502.1 of the B.C.Z.R. He indicated that there was no interference with adequate light and air. With respect to water and sewage there was no inconsistency with the purposes of the property's zoning classification, nor was it in any other way inconsistent with the spirit and intent of the Zoning Regulations. He also felt that the proposal was not inconsistent with the impervial surface and vegetation retention provisions of the Zoning Regulations as set forth in 502.1H. Finally he felt that it was not detrimental to the environmental and natural resources at the site and vicinity including forests, trees, wetlands, aquifers, and flood plains. Mr. Sheesley indicated that the water requirement for a church would be 5 gals per seat. He also indicated that perc tests had been conducted on the property, the last one being approximately August of 2000. He agreed that the perc test was good for 5 years. It was his opinion that the well for the cottage could be connected to the water supply for the main house rather than a separate water supply. Mr. Sheesley's opinion was that the proposed use would under utilize the design of the existing sewerage disposal system and there was adequate capacity to serve the intended use of a 212 seat church.

Finally, the Petitioners submitted the testimony of David Thaler, a civil engineer who was accepted as an expert in land use zoning and development. Mr. Thaler indicated that the

property was well suited for the utilization as a church with the installation of 212 folding chairs. He reviewed the requirements of Section 502.1 and indicated that he felt that this proposed use would not be detrimental to the primary agricultural uses in the vicinity. He testified that the house was handicapped accessible since it had been a nursing home prior to the current use of the property. Mr. Thaler reviewed the various requirements, of BCZR Section 502.1. He felt that the use would not be detrimental to the health, safety or general welfare of the locality. It would not tend to create congestion in roads, streets or alleys. With respect to 502.1C, the use would not create a potential hazard from fire, panic or other danger. He felt that there would not be overcrowding of the land because there are 27 acres. With respect to the interference with adequate provisions for schools, parks, water, etc., he felt that there would be no children involved here and there was adequate sewerage and water on the property. He felt that there would be no interference with adequate light and air, and it was not inconsistent with the zoning classification since the church would be allowed by Special Exception. Impervious surfaces would not be affected since there is no indication that trees or any other vegetation would be taken down. With respect to the environmental aspects, there would be no effect on environmental or natural resources. It was Mr. Thaler's opinion that the property would be a perfect site for a church.

B. Protestants

As their first witness, Protestants presented Jon Seitz with the Transportation Resources Group located at 204 N. George Street in York, PA. Seitz was accepted as an expert in traffic engineering. Mr. Seitz testified that he disagreed with Mr. Cornelius in his testimony before the Board. He felt that the sight distances which Mr. Cornelius felt were safe, did not meet the requirements of the Association of State Highway and Transportation Officials (AASHTO) as

adopted by the Maryland Highway Administration. Under the AASHTO requirements at a road designed for speeds of 40 mile per hour, the stopping sight distance is 305 feet and the design sight distance for passenger cars is 445 feet. Seitz felt that the sight distances at the driveways, both north and south, were obstructed by hedges, bushes and even part of the embankment. It was his opinion that the sight distances did not meet the AASHTO requirements. Seitz stated that he felt that because the Petitioner was petitioning for Special Exception for a church, that that was a change or use therefore the AASHTO requirements came into effect. He did admit that the State Highway Administration, was the agency that would determine whether or not an access permit was required for an entrance to Route 129 (Park Heights Avenue).

Finally, Mr. Seitz presented seven photographs showing the north and south entrances to the property. He indicated that he felt the sight distances from both entrances were obstructed by the shrubbery and the embankment. He felt that the 350 foot sight distance, cited by Mr. Cornelius was from the edge of the roadway at the north entrance looking down Route 129 to the crest of the hill from the north and up Route 129 from the southern entrance to the crest of the hill. The embankments and shrubbery presented a hazard for people entering or leaving both of those entrances. Mr. Seitz did not feel it was appropriate to use the speed limit for the calculations with respect to sight distances but felt that the at least 10 miles per hour should be added to the speed limit of 40 miles per hour in order to properly compute the sight distances. Seitz indicated that if the sight distance was calculated from 14 ½ feet from the edge of the roadway as required by AASHTO then the proper sight distance was more like 150 feet. Seitz disputed Mr. Cornelius' testimony that the AASHTO requirements were for new construction rather than for entrances that had been utilized for a considerable period of time. Mr. Seitz stated that he had had a problem exiting Mr. Wilson's driveway which was just south of the south

driveway of Rainbow Hall. He was driving a Mercury Mountaineer and was sitting fairly high and had difficulty seeing because of the shrubbery and the embankment which obstructed the view. He said that he had to inch out of the driveway and then floor it to get out on Route 129.

Protestants presented a letter from Stephen D. Foster, Chief Engineering Access Permits Division of the State Highway Administration of the State of Maryland. Dated November 8, 2010 to Dennis A. Kennedy, P.E., Bureau of Development Plans Review, Department of the Department Permits and Development Management of Baltimore County (Prot Ex 8). In the letter, Mr. Foster stated he had reviewed the traffic impact study report prepared by the Traffic Group (Mr. Cornelius' study) and had two (2) comments. He felt that Rainbow Hall should consider moving the site access driveway which is "proposed and just across from Velvet Valley Way on Park Heights Avenue. Baltimore County should consider the requirement to align the proposed site access driveway directly across from Velvet Valley Way for safety and operational reasons". The second statement was that the traffic report determine that the proposed development could be supported by the surrounding road network. He indicated that the SHA concurred that the proposed development could be supported based upon the capacity analysis represented in the report. What was not mentioned was the requirement that the Petitioner should submit an Application for an Access Point as required by the Maryland State Highway Access Manual. It should be noted that there is no development at issue in this matter.

Mr. Sykes agreed that the had not performed a design speed calculation for this particular case at the site between the two driveways of the Rainbow Hall property.

Mr. Sykes was also shown the Petitioner's Exhibit No.9, a letter from Stephen D. Foster, Chief Access Management Division of the Maryland State Highway Administration to Kristen

Matthews, Baltimore County Department of Permits, Approvals and Inspections (PAI), dated October 12, 2011, in which Mr. Foster stated:

"we have reviewed the site plan to accompany the Petition for Variance on the subject of the above captioned, which was received on 10/12/11. A field inspection and internal review reveals that an entrance onto Maryland 129 consistent with the current State Highway Administration guidelines is not required. Therefore, SHA has no objection to approval for Special Exception in Case No.: 2012-0091-X."

Mr. Sykes stated that he had seen the letter before and that he was not sure that the site plan set forth the particular site distances with respect to traffic. He agreed that it was the decision of the SHA Administration as to whether or not an access permit was required. Mr. Sykes also indicated that he had not had an opportunity to review the accident data, which Mr. Cornelius had prepared.

The next witness on behalf of the Protestants was Harold Zinn, one of the Protestants who lives next to Rainbow Hall and whose driveway is approximately 250 feet south of the lower exit of Rainbow Hall. Mr. Zinn testified that it is very difficult to pull out of his driveway and there is high risk, as the traffic is always traveling at a rate of speed higher than 40 m.p.h. He indicated that there was at least 3 or 4 accidents a year near his driveway. Mr. Zinn himself testified that in the 22 years that he has lived on the property he has never had an accident coming into or exiting his driveway. Counsel for the Petitioner calculated that it would be approximately 35,000 times in 22 years.

Protestants then presented John W. Kooncz from Davidsonville, Maryland, from an Environmental Consulting firm. Mr. Kooncz was accepted as a expert in septic and water systems.

Mr. Kooncz testified that in his opinion the reserve septic system extended into the forest conservation easement, which bordered Lot No. 4 on the plat.

Protestants contended that a septic reserve system could not be designed in a Forest Conversation Area. Petitioners took the position that Lot No. 4 was not involved in the present Special Exception for the 212 seats to be utilized in the main house. They indicated that there was no construction and that the question of the septic reserve system was not involved in the issues with respect to the present Special Exception.

The basic thrust of Mr. Kooncz testimony was that the Petitioner must apply for an amendment to the comprehensive water and sewage plan of Baltimore County. He felt that the sewage and water plan was a new system and therefore would require an amendment to the County plan. The present plan shows that the system is that of the Baptist Home and that it is "out of service". The approval must be obtained from the Maryland Department of the Environment if the capacity of the system was over 5,000 gallons a day. This was required by COMAR Section 103.

> Section 103.01 SCOPE of COMAR states in part "...this chapter applies to the proper citing and design of on-site sewage disposal systems for new construction, repairs to existing on-site sewage disposal systems, and existing on-site sewage disposal systems involved in a subdivision of land."

Mr. Kooncz contended that the sewage and water plan must be amended if the "capacity" exceeded 5,000 gallons per day. He stated that the term was 'capacity' and not "usage". Mr. Kooncz was questioned concerning the statement of David Kennedy in his Development Review Comments of January 11, 2012 (Protestants Ex. No. 20) in which he stated: "the developer must have County Council approval on an amendment to the water and sewer plan if the proposed

usage exceeds 5,000 Gal/day. The deadline to apply for the next amendment cycle is May 1, 2012. "It was Mr. Kooncz contention that Mr. Kennedy was incorrect and that if the actual capacity was 5,000 gallons or more and that he needed an amendment to the plan." Mr. Kooncz stated in his Opinion, Mr. Powell overlooked the question of amendment to the sewer and water plan in his letter of April 30, 2012 to David Thaler, P.E. (Pet Ex 12)

Protestant's then presented David L. Thomas, Assistant to the Director, Department of Public Works of Baltimore County. Mr. Thomas gave his interpretation of what was provided in COMAR 26 Chapter 1. He stated:

> "When a property is located outside of the plan service area for public water and sewer, so that they have to be served by private well water supply and private on-site sanitary disposal systems, usually a septic system, then State regulations designate, they use the term multi-use system, if an individual property discharges more than 5,000 gallons per day and the word discharge, I suppose, is what your question is about. My understanding is that if the system has the capacity to discharge that much, then before MDE would grant a permit to build such a system, the water and sewer Master Plan would have to be amended to list that capacity, if the capacity is greater than 5,000 gallons per day."

Mr. Thomas went on to state:

> "The amendment would have to be listed, in the appropriate tables in the Master Plan, otherwise MDE would not grant the permit to building such a system. So if the capacity is, for example, 10,000 gallons per day, but the actual usage is 4,900, then to build that system and to get the permits for it, it would still be necessary to amend the Master Plan to say 10,000." (Transcript, September 26, 2012 p. 65)

Mr. Thomas went on to verify that the tables set forth in the Master Plan were the tables he was referring to and were set forth in Protestant's Exhibit No. 18.

Protestants then presented Mr. Mark Wilson, a neighbor who lives south of the southern entrance of Rainbow Hall. Mr. Wilson testified that his driveway exits on to Park Heights Avenue (Route 129) and that he uses it on a daily basis. The traffic on Park Heights Avenue is

bad and that people do not always abide by the speed limit. He stated that his son rode a school bus to Gilman and that the bus driver had to pull into his driveway rather than stop on Park Heights Road in order to allow students to enter and leave the bus.

Mr. Wilson also indicated that there was steep slope coming down on the property from Rainbow Hall to his property and that when he first moved in he noticed water seeping out of the ground which he though was sewage because it smelled. He contacted Mr. Wright and Mr. Wright had someone look at the seepage and Mr. Wilson believes that the septic tank was pumped and he is has not smelled anything or seen any seepage since 2010.

Finally, Protestants presented James S. Patton, a professional engineer who was accepted as an expert in zoning and land use, including Baltimore County Zoning regulations. Mr. Patton testified that in his opinion the State Highway regulations which control access permits (Section 3.4)(5) (Prot Ex 6) states as one of the criteria for access permits; "parties desiring to change use of occupancy of an existing facility". In Patton's opinion the use of the facility was being changed from a nursing home use to the use of a church and that therefore a permit was required. Mr. Patton was asked whether or not he could testify as to whether or not the Petitioner had met the requirements of BCZR Section 502.1 and 1A01.2c the requirements for Special Exception. Mr. Patton indicated that he felt there was more detail needed for him to evaluate whether or not the Petitioner met the requirements of Section 502.1.

Mr. Patton affirmed the opinion of Protestant's witness Mr. Kooncz, in that he believed that an amendment was required to the water and sewer plan of the property for a church use. He felt that the question of the sewage plant was related to the Section 502.1, with respect to health and safety, relative to the size of the septic system.

Another witness Protestants presented was Hsido-Yun Hung. She lives at 10714 Park Heights Avenue and has lived there since 1989. Ms. Hung was quite disturbed about the traffic situation on Park Heights Avenue. She indicated that she had problems getting in and out of her driveway and also indicated that she had problems with her well and that she was concerned about the well water being enough when in use by Rainbow Hall. Ms. Hung indicated that when she was making a left turn into her driveway, traffic would back up on Park Heights Avenue because she was very careful about making a turn and she was rather slow in doing so.

Ms. Hung also indicated that she and her husband had smelled septic smells but she could not pin-point exactly where it came from.

Decision

The Board has evaluated the evidence and testimony which has been given in this matter.

A. Petitioner's Motion to Dismiss

At the beginning of the hearing, Petitioner moved to dismiss the appeal on the basis that the Protestants had filed the appeal under the wrong section of the *Code*. In its brief to the Board, Petitioner withdrew the motion to dismiss and therefore the motion is moot.

B. People's Counsel Position.

People's Counsel submitted a Memorandum to the Board indicating that the *Baltimore County Code* (BCC) states that if a case is pending on appeal concerning a violation of the Code, which has not been resolved, the Board cannot entertain a second Petition by the same Petitioner with respect to the same property. The Board discussed this matter and considered the fact that Petitioner has indicated to the County Attorney that they will comply with the decision of the Board and remove the apartments, which have found to be illegal in case number 12-280-SPH.

The Board felt that since the Petitioner was complying of the requirements of the Board's Order, it would process the Petition for Special Exception in the present case.

C. Issues in the Present Case.

The issues with respect to Section 502.1 of the BCZR cover the issues with respect to traffic and the water and sewage issued raised in this case.

While Protestant contend that the Board can not find that the Petitioners meet the requirements of Section 502.1 of the BCZR because there is no particular church involved in the matter, the Board disagrees. Section 502.1 does not require a specific church or religious organization to be a Petitioner in such a case. The factors set forth in Section 502.1 are to determine whether or not the Petitioner met the requirements of that Section. The Board has reviewed the requirements of Section 502.1 which are as follows:

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;

Petitioner proposes to set up 212 folding chairs in the main hall of the house. There is no particular church that wishes to avail itself of the property at this time, however, the Board feels that 212 parishioners, if that is the number utilizing the property, would not be detrimental to the health, safety and general welfare of the locality involved. The services, more than likely would be on the weekends or in the evening. A previous church, the Church of the Resurrection, had utilized the property without obtaining the Special Exception as required under the BCZR. The property was used for approximately 4 to 5 years without incident. While the Board is not condoning the use in violation of the BCZR it appears that any church related use would not be detrimental to the health, safety, or general welfare or the public.

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

The question arose as to whether or not a report by Mr. Mickey Cornelius and the Traffic Group was sufficient to allow entrance and egress from the property. The Board is mindful of the fact that the AASHTO standards are not going to be exactly met by the situation here. The Board feels that Mr. Cornelius' recommendation for a one-way driveway entering at the north and leaving exiting at the south would be appropriate. The AASHTO guidelines state:

> "the guidelines at the profiles of the intersecting roadways should be designed to provide the recommended site distances for drivers as the intersection approaches. Within a site triangle, any object at a height above the elevation of the adjacent roadways that would obstruct the drivers view should be removed or lowered, if practical. Such objects may include buildings, parked vehicles, highway structures, road side hardware, hedges, trees, bushes, un-mowed grass, tall crops, walls, fences, and the terrain itself."

While Mr. Cornelius indicates he felt that the AASHTO guidelines were for the construction of new roadways and entrances to main highways, there is nothing to confirm this except the discussion of possible 'what should be done' that indicates that it might be for new construction. However, the entrances and exits to the property have been established for quite some time. According to the Protestant's expert, Mr. Seitz, there is about 350 feet sight distance to the north at the south entrance and at least 350 feet sight distance to the south from the north entrance. This is not ideal and maybe obstructed somewhat by trees and shrubbery as well as an embankment. The Board feels that with modification the driveways entrances would be considered more safe. Therefore, the Board will require the Petitioner to remove shrubbery and level the banks in order to establish a better sight distance from the edge of the driveway at eight (8) feet back from the edge of the road. This would be the bank on the north side of the southern driveway and the bank and shrubbery on the south side of the northern driveway. While the access is not ideal because of the hill on Park Heights Avenue (Rt 129) between the two

driveways, the Board feels that the clearing of obstructions will contribute to the safety of the people entering and leaving the property. It appears that there have been no accidents at the property entrances for the past five (5) years, with people entering or leaving the property. Therefore, with the modifications required by the Board, the Board feels that it will meet the requirement of 502.1B.

C. Create a potential hazard from fire, panic or other dangers;

The Board sees no basis for indicating that utilizing the property as a place of worship would create any hazard from fire, panic or other danger.

D. Tend to overcrowd land and cause undue concentration of population;

The Board feels that seating for 212 parishioners plus the parking that is available would not overcrowd the land.

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

The Board feels that the wells and sewer systems are adequate to handle a congregation of approximately 212 people. The Board recognizes that the systems are over 5 years old and that current perc tests will probably be required and should be done. The Board does not feel that an amendment is required to the County sewage and water plan since COBAR 0.1.03 is pertinent in this situation. Section .01 SCOPE states:

> ..."this Chapter applies to the proper citing and design of on-site sewage disposal systems for new construction, repairs to existing on-site sewage disposal systems and existing on-site sewage systems involved in a subdivision of land." (Prot Ex 19)

The Board finds that the present situation with respect to Rainbow Hall is not new construction or a repair to an on-site sewage disposal system nor is it involved in a subdivision of

land. Therefore, the Board feels that there is no need for an amendment to the County Sewer and Water Plan.

In addition, the Board notes the letter from Robert Powell, supervisor of the soil evaluation section of the Department of Environmental Protection and Sustainability, dated April 30, 2012 to David S. Thaler, P.E., Engineer in for Rainbow Hall, (Pet Ex 12) which indicates that the department has evaluated the sewer disposal system and finds it to be adequate. They recommend 4 preventative maintenance items that should be performed and the Board will require that those 4 items be carried out. There are as follows:

1. Locate all observation pipes at the end of the existing trenches, repair piping, bring to the final grade and protect from mowing operations;
2. Investigate dosing siphon and verify that the siphon alternates properly, if not, repair it so that it does.
3. If not done within the last two (2) years, clean all septic tanks and inspect/repair outlet baffles.
4. Take readings on sewage levels for all trenches.

While this is not a development plan, Protestants placed in evidence the Memo from Dennis Kennedy, Supervisor, Bureau of Development Plans Review, on the subject of the development plan at Rainbow Hall. This is obviously for another matter. In that Memo, Mr. Kennedy states that the Developer must have County Council approval and amendment to the water and sewer plan if the proposed usage exceeds 5,000 Gal/day. The deadline to apply to the next amendment cycle is May 1, 2012. It is clear from the testimony that the usage will not exceed 5,000 gallons per day. Therefore, no amendment will be required even under the Memo from Mr. Kennedy.

F. Interfere with adequate light and air; [Bill No. 45-1982]

The testimony given by Mr. Thaler and other does not indicate that that there would be any interference 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; [Bill No. 45-1982]

Mr. Thaler indicated that the use would not be inconsistent with the purposes of the property's zoning classification since a house of worship or other religious building is authorized under the BCZR for an RC 2 zoned property.

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]

Mr. Sheesley testified that he felt that the proposed use would not be inconsistent with impermeable surface and vegetative retention provisions of the Zoning Regulations. There was no testimony to contradict his statements in that matter. Finally,

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]

Again, Mr. Sheesley indicated in his testimony that there would not be any detrimental effects to the environmental and natural resources of the site and vicinity. While there may have been some indication of sewage leaking from the septic tanks in prior years, Mr. Sheesley could find no leaking from any of the septic systems. There was no testimony to contradict Mr. Sheesley's testimony on that point in recent years.

As stated by the Court of Appeals in *Peoples Counsel vs. Loyola* 406 MD 54 at p103:

> 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.
>
> ... 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 Board finds that utilizing the property herein for a church service with a congregation with approximately 212 parishioners would not be detrimental to the neighborhood or adversely affect the public interest. Therefore the Board will grant the Special Exception.

ORDER

THEREFORE, IT IS THIS 17th day of January, 2013 by the Board of Appeals of Baltimore County,

ORDERED that the Petition for Special Exception to use the property herein for "churches and other buildings for religious worship per Baltimore County Zoning Regulations ("B.C.Z.R.") § 1A01.2.C.6 and 502 in case number 12-091-X be and is hereby GRANTED with the following conditions:

a) Preventive maintenance be performed on the septic system as set forth below:

1. Locate all observation pipes at the end of the existing trenches, repair piping, bring to the final grade and protect from mowing operations;
2. Investigate dosing siphon and verify that the siphon alternates properly, if not, repair it so that it does.
3. If not done within the last two (2) years, clean all septic tanks and inspect/repair outlet baffles.
4. Take readings on sewage levels for all trenches.

In addition, appropriate perc tests should be conducted if they have not been conducted within the past five (5) years; and

b) The shrubbery and embankment to the north side of the southern entrance to the property and the south side of the northern entrance to the property shall be cleared to provide a clear 350 foot view from at least eight (8) feet from the edge of Park Heights Avenue (MD Route 129).

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

Lawrence S. Wescott, Panel Chairman

Maureen E. Murphy

Edward W. Crizer, Jr.

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
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January 17, 2013

Michael T. Wyatt, Esquire
Marlow & Wyatt
404 Allegheny Avenue
Towson, MD 21204

Michael R. McCann, Esquire
118 W. Pennsylvania Avenue
Towson, MD 21204

RE: *In the Matter of: Rainbow Hall, LLC – Legal Owner/Petitioner*
Case No.: 12-091-X

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

See attached Distribution List

C:
RAINBOW HALL, LLC./HENRY M. WRIGHT, JR.
VALLEYS PLANNING COUNCIL
MARK WILSON
HARLAN ZINN
M. L. SNYDER
MICKEY CORNELIUS
DAVID THALER
STACY MCARTHUR
TERESA MOORE
MANNY BRONSTEIN
ALBERT M. SHAPIRO
LOUIS ROSENTHAL
BARRY ZUCKERMAN
WILLIAM AND NATALIE FEINBLUM
SARAH EASTMAN
HERBERT & LINDA BECKENHEIMER
DONNA EDEN
ALLISON J MAGAT
HERBERT ROSSMAN
ILENE COHEN
REBECCA FLYNN
DEBORAH JOY
SHELLEY & SHELDON GOLDSEKER
STUART & LESLIE DENRICH
RABEKAH DENRICH, DAVID LANG
LUCY HOWARD
SARAH CAREY
LAN & ROBIN COHN
JEAN HINLICKY
PATRICIA DEFORD
AMY NEWHALL
EUGENE & LORETTA REYNOLDS
LANA & HENRY GREENBERG
LINDA CORBIN, PRESIDENT
/GREATER GREENSPRING ACN.
JAYNE GERSON
ELLIOTT HAUST
SONDRA AND STANLEY CRAIN
DR & MRS TODD SARUBIN
GARY BLUE
CHERYL & JONATHAN AARON
SUE AND MARK LEVI
PAUL AND JANE BRICKMAN
DON KIRSON
WENDY RURKA
KELLY MURPHY
MARK GOTTLIEB
ELLEN FRANK
CHRISTOPHER SHEEHAN
PAMELA MARKS & MICHAEL MININSOHN
LANA BANK
JOHN AND FRANCES ROCKWELL
MARCIA AND IRWIN FUSS
JONATHAN AND BONNIEFARBER
DAVID & ELIZABETH WILMERDING
BARBARA ST. OURS
RICHARD AND ELIZABETH BLUE
FRED GREENBERG
LEE & TARYN HASELHUHN
KATHLEEN SHIOTA
OLIVIA & EDWARD WELBOURN III
LEE & SANDRA GORDON
ANNE BROOKS
RAYMOND CAPLAN
CHARLOTTE GOLDSTEIN
SAMUEL MUHER
SALLY & GREG MERZ
LOIS ROTHBERG
RONNIE SILVERSTEIN
BARBARA KAPLOW
GORDON AND FIONA GREENSPUN
BETTY & JERRY LIEBOWITZ
SHIRLEY SPARAGANA
WHITNEY & TODD EHRLICH
JONATHAN & BEVERLY MYERS
BARBARA & LOUIS DENRICH
JERROLD & DENISE THROPE
ROBERT CHOW
DAN KOUIGSBERG
THALIA & MARTIN RESNICK
EDWARD & MARIE MASSAL
MAYBELLE FRIEMAN
PAUL SINGER
MR. & MRS. STUART GARBIS
BONNIE AND PACY OLETSKY
CHESSIE DONNELLY
IRING WALKER
STILES COLWILL
SHARON AND PETER REID
MR AND MRS JOHN HEYN
EVAN MAILIN
HARVEY BROOKS JR
ANNA SMITH
MICHAEL GRIMES
G.L. AND M.C. CUMMINGS
GRANT AND KIMBERLY GOODER
SALLIE WORTHINGTON
NORA LINSTROM
KIM SIMONETTI
WILLIAM GROFF
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MARGOT AND DAVID BLOOM
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RACHEL AND PETER RUBIN
LESTER KONAROFF
LISA K. AND CLAUDIO A. LEVIN
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PATTON CONSULTANTS
KATHLEEN PONTONE, ESQ.
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JOHN BEVERUNGEN, ADMINISTRATIVE LAW JUDGE
ARNOLD JABLON, DIRECTOR/PAI
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MICHAEL FIELD, COUNTY ATTORNEY, OFFICE OF LAW

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BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: RAINBOW HALL Petitioner/Legal Owner – Rainbow Hall, LLC 10729 Park Heights Ave. 12th Election District 3rd Councilmanic District	* * * * * *	BEFORE THE BALTIMORE COUNTY BOARD OF APPEALS Case No: 2012-0091-X

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

PROTESTANTS' POST-HEARING MEMORANDUM

Petitioners, Valleys Planning Council ("VPC"), Mark Wilson, and Harlan Zinn submit this post-hearing memorandum in support of their opposition to the Petition for Special Exception filed by Petitioner, Rainbow Hall, LLC.

I. INTRODUCTION[1]

In its Petition for Special Exception, Petitioner seeks approval from the Board of a special exception for "churches and other buildings of religious worship." This language tracks the special exception that is identified in and authorized by BCZR § 1A02.02A1. At the hearing, however, Petitioner offered no evidence, literally none, regarding the nature or scope of its proposed use of the property. David Thaler, Petitioner's engineer and lead witness, acknowledged that it was "not completely clear" how the property will be used. The most we know is that 212 folding chairs will be brought in to hold an unknown number of services for an unknown number of religious organizations of an unknown denomination, for an unknown number of people, who may or may not use the facility for related or accessory activities at an unknown frequency. We also do not know how the main building itself will used, whether there

[1] Protestants incorporate herein and adopt the memorandum filed by People's Counsel for Baltimore County.

will be offices or whether institutional kitchen will be put into operation, whether the McCormick wing will be utilized, whether the three houses on the property will be used in conjunction with the "church" use, and what if any connection Lot 4 (included in Petitioner's plan) has to this proposed use.

While this may have been Petitioner's strategy, it falls far short of meeting the burden of proof and persuasion that Petitioner shoulders. Established case law, decisions of this Board, and BCZR § 502.1 itself make clear that an applicant must demonstrate that its particular use will not have a peculiar effect or impact greater than is inherently associated with such issues. In order to meet this standard – indeed, for the standard to have any meaning whatsoever – the applicant must sufficiently describe its proposed use and enable opponents to rebut the presumption of validity that special exceptions carry.

Further, even if Petitioner met its burden and the nature and scope of the proposed use were disclosed to us, the Petition for Special Exception still should be denied for two additional reasons. First, as agreed by Petitioner's and Protestants' traffic experts, there are significant sight distance dangers at the two access points at the site. Petitioner cannot meet the applicable standards without moving the access points or otherwise addressing these issues. Second, Petitioner's request for a special exception is not ripe because it cannot obtain approval of its water supply and sewage systems unless and until it obtains an amendment to Baltimore County's comprehensive water and sewer plan, a process that requires County Executive and County Council approval. These two issues preclude the granting of the petition irrespective and independent of Petitioner's failure to sufficiently describe the nature and scope of its proposed use. For these reasons, and those stated below, the Board should deny the Petition for Special Exception.

II. FACTS

A. The Property

The property which is the subject of this action (the "Property") is located at 10729 Park Heights Avenue, north of Greenspring Valley Road, in northern Baltimore County. The Property is zoned RC2, meaning that it is a "resource conservation" zone intended to "foster conditions favorable to a continued agricultural use" and to "prevent[] incompatible forms and degrees of urban uses." Baltimore County Code ("BCC"), § 1A01.1B. The Property it located outside the Urban Rural Demarcation Line and within the borders of the Greenspring Valley National Historic District. (Transcript of Hearing ("T.__"), 19).[2] The main building is on the Maryland Historic Trust Inventory of Historic Places as well as the Baltimore County Final Landmarks List. (T. 18). The County's Master Plan classifies the area in which the Property is located as "rural residential" and "agricultural preservation," and identifies the proposed land use as "rural." (T. 19). Park Heights Avenue is a designated "scenic route." (*Id.*).[3]

B. The Proposed Use Of The Property

On or about September 27, 2011, Rainbow Hall, LLC filed a Petition for Special Exception seeking approval to use the Property for "church*es* and other building*s* for religious worship." (Emphasis added). In its original Plan to Accompany Petition for Special Exception, Petitioner represented that the existing use of Lot 5 would remain ("3 single family and up to 8 Mult-Family [units]") and that the proposed use would be "Church (156 seats)." In a redlined plan subsequently filed (Pet's Ex. 7) (the "Red-Lined Plan"), Petitioner now represents that the

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[2] A copy of the transcript from the hearing has been filed with the Board. References herein to "T. _" are to the transcript of the first day of hearing on September 25, 2012. References to "T2. __" are to the second day of the hearing on September 26, 2012.

[3] The historic nature of the Property and its main building is well known to the Board from Case No. 10-280-SPH. Rather than repeat that history here, Protestants incorporate herein the post-hearing memorandum filed in that case and the exhibits thereto.

use of Lot 5 for 8 Multi-Family units is "Pending and subject to Disposition of Case #10-280-SPH." The Red-Lined Plan provides that the proposed church use will have 212, rather than 156 seats, but does not indicate that this increase in seats is likewise subject to the disposition of Case No. 10-280-SPH. With respect to Lot 4, the Red-Lined Plan represents that the lot is currently a vacant lot and that Petitioner "does not propose any changes to the prior approval." (*Id.*).

Petitioner's engineer, Stacey MacArthur, described the physical changes that are proposed at the Property. She described the additional parking spaces and improvements that would be undertaken to the long driveway that passes from the southern entrance from Park Heights Avenue to the parking in the middle of the property. (T. 25-26). Ms. McArthur has not quantified this area of disturbance, but agreed that a grading permit and soil erosion and sediment control plan would be required if more than 5,000 square feet was disturbed. (T. 26-27).

Importantly, Petitioner did not introduce any evidence at the hearing to support the nature or scope of the proposed "church" use of the Property. None. Indeed, counsel for Petitioner asked engineer David Thaler only a single question in this regard and Mr. Thaler candidly acknowledged that it was not "completely clear" to him.

> MR. WYATT:Can you describe for us the proposed scope of the use, o[f] this project?
>
> MR. THALER: Well, I'm not sure it's completely clear... [T]he only thing that's essentially that's being proposed is to, is to put 212 folding chairs in here an[d] use it for a church or other house of worship. So that, so that all the Board is being asked to approve is the change in the use.... Its just put up the folding chairs and hold services.

(T. 183-84).[4]

[4] On cross, Mr. Thaler clarified that the seating may not be folding chairs, but doubted seriously it would be permanent seating. (T. 198-99).

On cross-examination, Mr. Thaler revealed the extent to which Petitioner has no idea how the Property will be utilized. For example, Mr. Thaler did not know whether the Property would be used by only one religious organization or multiple organizations, or by what denomination or denominations:

> MR. McCANN: [T]he proposed use on this petition is churches and other buildings for religious worship. And what I heard you just say is, is not that at all, but rather this is just going to be used by one church? Is that, is that what your understanding of what this property owner is committed to?
>
> MR. THALER: I, I don't think that we've – we've not committed to that, no.
>
> MR. McCANN: [S]itting here today. You don't know whether this will be one church, two churches, or more churches, is that fair?
>
> MR. THALER: It, it could be, it could be multiple churches operating at different times. It could be a single church.
>
> MR. McCANN: [B]ut we don't know who any one or more of those churches are, is that right?
>
> MR. THALER: That's correct.
>
> MR. McCANN: In fact, this may be what's, what is sometimes referred to not in the Zoning Regulations, but as a Multi-Faith Center?
>
> MR. THALER: I, I guess that's one way of describing it.
>
> * * *
>
> MR. McCANN: That's not going to happen here right – the property owner is going to – if he does allow more than one church to use it he's going to lease it to those churches, right?
>
> MR. THALER: I, I don't know.
>
> MR. McCANN: Don't know?
>
> MR. THALER: Could sell it to them.

> MR. McCANN: [S]o, given that we don't know how many churches, what, we don't know what denominations those churches would be, do we?
>
> MR. THALER: No.

(T. 195-97).[5]

Because he did not know how many or what religious organizations would be using the Property, Mr. Thaler admitted that he did not know the type or nature of the activities or events that might take place there:

> MR. McCANN: [W]e don't know sitting here today how may services a week the, this church or churches will hold their services, correct?
>
> MR. THALER: Correct.
>
> * * *
>
> MR. McCANN: And we also don't know what other activities this church or churches might engage in at, at, on the site other than just holding services? We don't know that?
>
> MR. THALER: Churches do what churches do.
>
> MR. McCANN: Okay. Churches do a lot of things, don't they?
>
> MR. THALER: Um, churches have brotherhood meetings, sisterhood meetings, bible study. And we don't, I imagine it will be something in that order. We don't know specifically.[6]

In terms of how the Property itself will be utilized physically speaking, Mr. Thaler could not say how the main building would be used, *e.g.*, whether there would be administrative offices in the building, whether the institutional kitchen would be put to use, or whether the McCormick wing of the building would be used. (T. 200-01). He also did not know whether the three houses

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[5] Mr. Thaler testified that the Petitioner does not have a contract or lease with any particular church. (T. 200).

[6] Although 212 seats are proposed, Mr. Thaler could not say whether there would be any limit on the number of people that might use the main building. (T. 199-200).

on the Property would be used in conjunction with the church use or if anyone would be living on site to minister the proposed church(es). (T. 202-03).

The evidentiary vacuum supporting Petitioner's request for a special exception was apparent when it came to applying the factors in BCZR § 502.1. When asked whether the proposed use would be detrimental to the primary agricultural uses in the vicinity, Mr. Thaler stated:

> [U]sing this existing facility *to go in and worship on a Saturday or a Sunday* <u>*or whatever*</u> I just can't see could have *any affect one way or the other* on an agricultural use.

(T. 186) (emphasis added).

When asked whether the proposed use would tend to create congestion in the road, street or alleys, Mr. Thaler testified:

> Churches, synagogues, *not likely to be a mosque*, but *even if it was a mosque* operating on Friday night *tend to operate* at off peak times.

(T. 188) (emphasis added).

When asked whether the proposed use will tend to overcrowd the land and cause undue concentration of population, he stated:

> It's a 40,000 square foot building. I think, know – three families are living there. You *might get a rector maybe or minister*.

(T. 189) (emphasis added).

C. <u>The Testimony Of Mr. Roth</u>

Lance Roth testified that, between 2006 and 2010, the Church of the Resurrection used the main building for Sunday services and on religious holidays such as Easter and Christmas. (T. 38). The church also held picnics approximately twice a year. (T. 42, 46). There were 140

parishioners at the time, and generally 130 attended the services. They were a "fairly quiet group." On the holidays, closer to 160 people attended. (T. 40-41). The church paid Mr. Wright $2,000, then $2,500, per month, to use the building. (T. 46). To Mr. Roth's knowledge, the building was not used by any other religious organization during the time his church was using it. (T. 47).

The Church of Resurrection has since moved to a permanent location at the corner of Kelly and Greenspring Avenues in Lutherville. The church now averages around 180 parishioners. (T. 41). Before moving to Rainbow Hall, the Church had 40 to 50 parishioners, then 80 to 100, and 140 by the time they moved to Rainbow Hall. (T. 43). As Mr. Roth acknowledged, churches try to grow; that's what they do. (T. 45).

D. <u>The Testimony of Petitioner's Traffic Engineer, Mickey Cornelius</u>

Mickey Cornelius of the Traffic Group performed a Phase I traffic analysis that addressed the expected volume of traffic to be generated at the Property and whether the surrounding road system could handle that volume. Mr. Cornelius concluded that the intersections nearby the site would continue to operate an optimum or "A" level of service during Saturday peak hours and Sunday peak hours, and would operate at "A" or "B" level of service during weekday, evening peak hours. (T. 77-78).

In his report, Mr. Cornelius did not mention any sight distance problems at the Property, nor did he raise any such problems with the State Highway Administration during its review of the development plan filed by Petitioner.[7] However, in response to a subpoena served by

[7] Mr. Cornelius's "Phase I Traffic Impact Analysis" addressed only the capacity of the road system and did not address any sight distance issues or concerns at the access points. (Prot's Ex. 7; T. 117-18, 119). The SHA's approval letter (Prot's Ex. 8), likewise, is directed only to the approval of the traffic impact study, that is the volume of traffic, as opposed to sight distance issues. (T. 125)

Protestants, Mr. Cornelius produced an email he sent to Petitioner's counsel in which he candidly acknowledged that there are sight distance problems at the northern and southern access points of the property due to the crest of the hill that exists on Park Heights Avenue between those two points. (Prot's Ex. 3; T. 81). Specifically, he explained that, at the northern access point, vehicles turning left onto Park Heights can see only "about 350 feet" to the south. However, "[t]o see that distance the driver needs to pull out just to the edge of the road." (Prot's Ex. 3; T. 91, 106). At the southern access point, a vehicle turning left can only see about 350 feet to the north and, likewise, "[t]o see that distance the driver needs to pull out just to the edge of the road." (Prot's Ex. 3).[8]

Mr. Cornelius also identified a safety concern for vehicles heading southbound on Park Heights Avenue seeking to turn left into the southern access point. Cars heading southbound over the crest do not have adequate distance to see any vehicles queued to turn left into the southern entrance. (T. 81). "[T]here is the danger of motorists coming from behind and having limited time to stop." (Prot's Ex. 3).

Mr. Cornelius measured the two sight distances by using a wheel measurement. He parked his vehicle at each entrance, then walked along the road towards the crest of the hill until he could no longer see his parked vehicle. Using the wheel, he then walked back towards his car and measured the distance along the western side of Park Heights Avenue until he came to the point opposite his vehicle (parked on the eastern side). (T. 94, 96-97). He acknowledged that the manner in which he measured the sight distance did not comport with the AASHTO "Policy on Geometric Design of Highways and Streets" (the "AASHTO Policy") because he did not begin his measurements from the "decision point," which is located 14.5 feet from the edge of

[8] Mr. Cornelius depicted the location of these sight distances in yellow and pink highlighting on Petitioner's Ex. 7. (T. 91-93).

the pavement. (T. 98-99). Mr. Cornelius posited that the AASHTO Policy applies only to the design of new access points and roads, not to existing access points and roads. (T. 100-01). When asked to identify where in the AASHTO Policy it states that the policy only applies to new access points and roads, Mr. Cornelius could not identify such a provision. (T. 99). He admitted that the Policy does apply when determining sight distances but opined that he was permitted to use the edge of the road rather than the decision point described in the AASHTO Policy. (T. 100-01). In his words, "you're allowed to pull up to the edge of the, of the pavement and to be able to see, which is what people normally do." (T. 99).

Mr. Cornelius acknowledged that, under the AASHTO Policy, the required sight distance for a 40 mph road is 445 feet and that the northern and southern access points do not meet this standard. (T. 104-06, 110). He opined, however, that the "*stopping* sight distance" is the minimum accepted under the AASHTO standards and that the "stopping sight distance" for a 40 mph road such as Park Heights Avenue is 305. (Prot's Ex. 4, at p. 9-38 (Table 9-6); T. 103-05)). "[S]o, we do meet safe, *stopping* sight distance criteria." (T. 82-83) (emphasis added).

Nevertheless, because of his concerns regarding sight distance, Mr. Cornelius recommended that the entrances at the Property be redesigned to a one-way system with the northern access point serving as an entrance only and the southern access point serving as an exit only. (T. 81-82, 87-88; Prot's Ex. 3). Recognizing that even this one-way system subjects drivers turning left out of the access point to a limited sight distance, Mr. Cornelius, remarkably, suggested that vehicles could pull onto Park Heights Avenue to see oncoming traffic before turning left:

> [W]hen exiting from the south access, since you can see a great distance to the left (or south) the driver has the ability to move out into the northbound travel lane to improve the sight line to

> the right (or north) before completing the left turn exit movement.

(Prot's Ex. 3).

E. <u>The Testimony of Protestants' Traffic Expert, Mr. Seitz</u>

Mr. Seitz disagreed with Mr. Cornelius's opinions regarding the sight distance from the southern and northern access points. He first observed that Mr. Cornelius incorrectly measured the site distances from the edge of Park Heights Avenue as opposed to 14.5 feet back from the road as required by the AASHTO Policy (Prot's Ex. 4 at 9-36). (T. 210-20). He explained that, when you're pulling onto a road such as Park Heights Avenue, you don't stand on the road or at the edge of the road, but rather you sit in your vehicle back from the road. (T. 214). The AASHTO Policy provides that the "decision point" for measuring site distance is 14.5 feet from the edge of the road, which is "the typical position of the minor-road driver's eye when a vehicle is stopped relatively close to the major road." (Prot's Ex. 4 at p. 9-36). In the photographs he took depicting these limited sight distances, Mr. Seitz actually stood 10 feet, rather than 14.5 feet, from the edge of the road. (T. 217-18; Prot's Exs. 11A, 11B, and 11D). As these photographs demonstrate, even from 10 feet from the edge of the road, a driver's sight distance is significantly inhibited when exiting the northern and southern access points. (*Id.*). Based on his observations, Mr. Seitz concluded that the sight distance from the northern and southern access points is actually only 150 feet, not 350 feet as Mr. Cornelius concluded. (T. 226-27).[9]

Mr. Seitz also explained that Mr. Cornelius, in applying the AASHTO standards, incorrectly used the posted speed limit on Park Heights Avenue of 40 mph rather than the design speed of 50 mph. (T. 225). "Design speed" is the speed that is considered when determining site

[9] Mr. Seitz also pointed out that the shrubbery and steep embankment that exists on the east side of Park Heights Avenue significantly limits a driver's view looking both north from the southern access point and south from the northern access point; indeed, a driver cannot even see the crest of the hill from that vantage point. (T. 217, 220-21; Prot's Exs. 11A, B, D, E, and F).

distance, as opposed to the posted speed limit, because it is well known that people exceed the speed limit when driving. (T. 222-24). Mr. Seitz, in fact, performed a study several years ago in connection with the development of the Jemicy School, across the street from Rainbow Hall, in which he determined that the design speed on this stretch of Park Heights Avenue was 49 mph. (T. 224). He noted that this is consistent with the general rule in his industry, and with the State Highway Administration's Access Manual (Prot.'s Ex. 5), which states that "[t]he design speed for the highway shall be determined by adding 10 mph to the posted speed limit." (*Id.*, p. 48; T. 225).

Using the proper design speed, Mr. Seitz concluded that the AASHTO Policy requires, for left turns, a "stopping sight distance" of 425 feet and an "intersection sight distance" of 555 feet. For right hand turns, the AASHTO Policy requires a "stopping sight distance" of 425 and an "intersection sight distance" of 480 feet. (T. 225-26; Prot's Ex. 4 at pp. 9-38, 9-41). Whether you apply the stopping sight distance or intersection sight distance standard, the sight distances at the northern and southern access points (150 feet) fall significantly short of those standards. Indeed, even if we assume Mr. Cornelius's calculation of 350 feet was correctly measured, that distance fails to meet both standards as well.

Mr. Seitz addressed Mr. Cornelius's testimony that the standards set forth in the AASHTO Policy do not necessarily apply in this case because Petitioner is not constructing a new access point onto Park Heights Avenue. Mr. Seitz disagreed and explained that, based on § 3.4 of the SHA Access Manual (Prot's Ex. 9), the proposed church use of the property is a change of use that would require compliance with the AASHTO Policy. (T. 228-229). Mr. Seitz

pointed to the fact that, under the ITE Trip Generation Manual, a church constitutes a separately defined use from nursing home and apartment uses. (T. 229).[10]

Mr. Seitz concluded that the sight distances at the northern and southern access points are simply not safe. (T. 229). In fact, he described his experience when he recently visited the site and tried to pull out of the southern entrance onto Park Heights Avenue.

> I drive a Mercury Mountainerr. So, it's a fairly big vehicle, but it's a high vehicle. I have you know better sight distance than, than certainly a Chevy Corvette. I'm in my Mercury Mountaineer and I see how there's shrubbery, there's an embankment. I can't see great. I'm looking at traffic on Maryland 129. I'm seeing as I saw in my previous traffic counts that traffic is flowing pretty fast. And I'm sort of inching up to the driveway. ... It's one of those driveways where you inch up, you edge up and you really floor it. You want to get out there and get out there quickly because its just, its just, its not the safest driveway to pull out of frankly. And it isn't something that's, that's certainly desirable. And its not something that I'd really want to have a lot of people pulling out. And I do think there is a problem there.

(T. 230).

F. <u>The Testimony of Petitioner's Expert, Robert Sheesley</u>

Robert Sheesley testified that the main building and the cottage along Park Heights Avenue are on the same well and sewage systems. (T. 162-65, 178-79). This is confirmed by an April 30, 2012 letter from Robert Powell of Baltimore County (Pet's Ex. 12) ("The proposed usage of the facility (a combination of one residence, assumed to be four bedrooms and a church...)"); (*see also* Pet's Ex. 13 (the cottage "utilizes and same well and septic fields as the main mansion"); (T2. 27, 28-29)). It is further confirmed by the Septic Replacement Plan from 1997 which does not show any well associated with the cottage. (Prot's Ex. 15; T2. 28-29).

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[10] Protestants' zoning expert, James Patton, confirmed that from a zoning perspective the proposed church use is a distinct, different use than the prior use of the property. (T2. 93).

Mr. Sheesley testified that the sewage disposal system at the Property has sufficient capacity to handle the sewage from the main building and the cottage. He pointed to the calculations of Mr. Powell (Pet's Ex. 12), who determined that the sewage system has a capacity of 5,523 gallons per day (gpd) and that the anticipated water usage for the main building and the cottage is 1,660 gpd. (T. 160-61).[11]

G. The Testimony of Protestants' Expert, John Koontz

John Koontz has over 45 years of experience working on water and sewage systems in both the public sector, on behalf of MDE and the Prince George's County Department of Environmental Health, and in the private sector as a consultant. (T2. 3-9). Since entering private practice in 1986, more than 95% of his work in this area has been on behalf of landowners and developers as opposed to community groups. (T2. 11).

Mr. Koontz testified, first, regarding the septic reserve area for Lot 4 as depicted in the Red-Lined Plan. Mr. Koontz observed that the vast majority of the septic reserve area for Lot 4 is in a designated forest conservation area, which is not permitted. (Prot's 13; T2. 13-14).

Mr. Koontz next addressed the capacity of the sewage and water supply systems for the main building and the cottage. With respect to the sewage system, Mr. Koontz explained that he did not dispute Mr. Powell's conclusion that the system has capacity of 5,523 gpd. With respect to water usage, Mr. Koontz agreed with Mr. Powell for the most part but noted that there are various possible scenarios that might increase the anticipated water usage for the main building

[11] This calculation of 1,660 gpd water usage is derived from "MDE Guidance on Wastewater Flows for Use in Designing On-Site Systems" (Prot.'s Ex. 14), which states that a church assembly hall with a private kitchen has anticipated water usage of 5 gallons per seat (5 gpd x 212 seats = 1060 gpd) and that a private residence has anticipated water usage of 150 gpd per bedroom (150 gpd x 4 bedrooms = 600 gpd for the cottage). If you combine those two anticipated waters usages (1,060 gpd and 600 gpd), which you must do because the main building and cottage are on the same well and sewage system, there is a total of 1,660 gpd water usage for that portion of the property. (Prot's Ex. 14, pp. 1, 4); (T2. 23-26).

and cottage. He prepared a chart (Prot's Ex. 16) that identifies these scenarios. (T2. 29-31). For example, as noted above, if you consider only a 212 seat church and 4 bedroom house, the anticipated water usage would be 1,660 gpd. However, if you take into consideration that Petitioner proposes to have "administrative offices" in the main building (*see* Pet's Ex. 7), this would increase the water usage to 2,020 gpd.[12] (Prot's Ex. 16). Alternatively, if Petitioner prevails in its appeal of the Board's denial of an apartment use for the main building, and elects to have a combined apartment/church use, then the anticipated water usage would be 3,780 gpd. (Prot's Ex. 16).[13]

Mr. Koontz explained the significance of the sewage capacity and water usage figures. The State of Maryland requires each County and Baltimore City to submit and obtain approval of a comprehensive plan for the provision of adequate water supply and sewerage systems within its borders, whether publicly or privately owned. (T2. 32; COMAR 26.03.01 *et seq.*; *see also* Md. Ann. Code, Env't § 9-501 *et seq.*). The plan becomes the basis for whether a property owner can obtain a permit to install a private system or must wait for pubic water and sewer. (T2. 32). The comprehensive plan must identify and include a description of any "multi-use sewerage systems" or "multi-use supply system." COMAR 26.03.01.04E, F. These systems are defined in COMAR as follows:

> 'Multi-use sewerage system' means *a single system serving a single lot*, whether owned or operated by an individual or group of individuals under private or collective ownership and serving a

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[12] The "MDE Guidance on Wastewater Flows for Use in Designing On-Site Systems" (Prot.'s Ex. 14) states that anticipated water usage for an office is 15 gpd per employee but states that, when the number of employees is unknown, .18 gpd per square foot of office space should be used. Since Petitioner has not identified how many employees will be working in the administrative offices, Mr. Koontz used this water usage factor and multiplied by 2000 square feet, which is the approximate size of the "administrative offices" depicted in the schematic in Petitioner's plan accompanying Petition for Special Exception. (Pet's Ex. 7; T2. 30-31).

[13] The Circuit Court for Baltimore County recently affirmed this Board's decision denying the apartment use. The deadline for appealing that decision, as of the filing of this memorandum, has not passed.

> group of individuals for the collection and disposal of sewerage or industrial wastes of a liquid nature, including various devices for the treatment of sewage and industrial wasters *having a treatment capacity in excess of 5,000 GPD.*
>
> * * *
>
> 'Multi-use water supply system' means a single system of piping, pumps, tanks, or other facilities utilizing a source of ground or surface water to supply a group of individuals *on a single lot* and *having a capacity in excess of 1,500 GPD.*

COMAR 26.03.01.01 (Prot's Ex. 17 at p. 2) (emphasis added).

Mr. Koontz explained that the sewage disposal system for the main building and cottage meets the definition of a "multi-use sewerage system" because it is a system located on a single lot, Lot 5, and has a treatment capacity of 5,523 gpd, *i.e.*, greater than 5,000 gpd. (T2. 33-34). Likewise, the water supply system for the main house and cottage is a "multi-use water supply system" because it serves a single lot and has a capacity greater than 1,500 gpd, even under the least intensive scenarios depicted in Mr. Koontz's chart (Prot's Ex. 16). (T2. 34-35). Thus, because the water and sewage systems are "multi-use" systems, the Petitioner must file for an amendment to the County's comprehensive plan. (T2. 35-36, 38-39; Prot's Ex. 18).[14]

Mr. Koontz also explained that because the sewage system has capacity exceeding 5,000 gpd, it is considered a "large capacity on-site sewage disposal system" under Baltimore County regulations. COBAR 01.03J (Prot's Ex. 19 at p. 10). Those regulations provide that all such systems "shall also meet the approval of Maryland Department of the Environment." (*Id.*; T2.

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[14] A copy of the existing plan was introduced as Protestant's Exhibit 18. At Table 4 of the plan, a multi-use water supply system is identified for the "Baptist Home," Petitioner's predecessor in title, but the Table states that the system is "out of service." (Prot's Ex. 18 at p. 69 (Table 4)). Mr. Koontz explained that an amendment to this aspect of the plan would be required to reflect that Petitioner anticipates water usage in excess of 1,500 gpd. (T2. 38). Table 10A, which identifies the multi-use sewage systems that are part of the plan, does not include the system for this property. (Prot's Ex. 18 at p. 117 (Table 10A).

41). Thus, Mr. Koontz testified that in addition to a plan amendment, Petitioner is required to obtain a permit from MDE for its large on-site sewage disposal system.

Mr. Koontz agreed, on cross-examination, that Mr. Powell and Baltimore County have the authority delegated to them by the State to approve water and sewage systems, but he believes that Mr. Powell overlooked the necessity of obtaining an amendment to the comprehensive plan. (T2. 49, 51). As Mr. Koontz noted, however, DEPS did not miss this important point. In the written comments it issued during review of the development plan submitted by Petitioner, DEPS informed Petitioner that a water and sewer plan amendment would be necessary. (Prot's Ex. 20, p. 3; T2. 58). DEPS also informed Petitioner that if the County Council approves the plan amendment, it would still need the County and State permits required by DEPS and MDE. (*Id.*).

During cross-examination, counsel for Petitioner suggested that, when determining whether the thresholds are met for amending the comprehensive plan, one looks to the actual usage of the systems rather than their *capacity*. Mr. Koontz rejected this assertion, pointing to the plain language of the definitions of "multi-use sewage system" and "multi-use water supply system" in COMAR 26.03.01.01 (defining "multi-use sewerage system" as a system "having a treatment *capacity* in excess of 5,000 GPD" and "multi-use water supply system" as one "having a *capacity* in excess of 1,500 GPD"). (T2. 51, 56).

H. <u>The Testimony of Baltimore County Employee, Dave Thomas</u>

Protestants called Dave Thomas to clarify for the Board whether the thresholds for amending the County's sewer and water plan apply to the system's capacity or to actual usage. Mr. Thomas is the Assistant to the Director of DPW and *the* person responsible for managing the

County's comprehensive sewer and water plan. He is intimately familiar with the plan and the process for amending the plan. (T2. 61-62).[15]

Mr. Thomas testified that if a system has the capacity to handle more than 5000 gpd of sewage or 1500 gpd of water, then the County's comprehensive plan must be amended and it must be amended before MDE will grant approval. (T2. 65, 66). The actual usage is not determinative. As Mr. Thomas put it, if sewage capacity is, for example, 10,000 gpd, but the actual usage is only 4,500 gpd, it is still necessary to amend the plan. (*Id.*).

I. <u>The Testimony of Protestant Harlan Zinn</u>

Protestant Harlan Zinn lives on Park Heights Avenue, approximately 250 south of the southern access point of the property. (T. 245-46). He has lived there for 22 years and has witnessed first-hand the site distance problems expressed by Mr. Seitz and Mr. Cornelius. He exits his driveway several times a day and has a great deal of difficulty doing so, particularly when looking north up Park Heights Avenue. He believes that, whether he turns right or left, he is at high risk when doing so. He explained that cars traveling on Park Heights travel much faster than the posted 40 mph. In fact, he frequently puts on his flashers when he makes a right turn into his driveway because of his concern that cars cascading down the crest of Park Heights might strike his vehicle from behind. Three or four times a year, he has observed cars veering off the roadway before his driveway to avoid hitting his car or each other. (T. 248-50).

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[15] The amendment process is described in an Executive Order (Prot's Ex. 21). The process begins with the property owner filing an application with DPW. Then, in Phase I, the Directors of Planning and Zoning and DEPS provide departmental reports on the application. In Phase II, DPW reviews the reports and submits them to the Planning Board for consideration. In Phase III, the Planning Board holds a public hearing and then submits a recommendation on the application to the County Executive. The County Executive reviews the recommendation and submits the matter to the County Council for its review. (*Id.*; T2. 62-63).

J. The Testimony of Protestant Mark Wilson

Protestant Mark Wilson, who lives at 10705 Park Heights Avenue, immediately adjacent to the Property, echoed the sentiments of Dr. Zinn. He described the sight distance from his driveway as "terrible," adding that "you're taking your life in your own hands." (T2. 69). As a example of this, he pointed out that a school bus had been picking his son up at the entrance of his driveway on Park Heights Avenue, but the bus company asked him to allow the bus to travel down his driveway to pick up his son and other children in order to avoid the danger associated with stopping on Park Heights at that location. (T2. 69-70).

Mr. Wilson described the topography in the septic reserve area for the main house as "very, very steep." (T2. 73-74). The main mansion sits at a much higher elevation, and the grade on the slope away from the mansion is steep, ultimately forming a valley at low point in his driveway. (T2. 74). The septic reserve area is located in that steep slope, as demonstrated by the development plan filed by Petitioner (Prot's Ex. 72) (depicting in dark shading the steep slopes greater than 25%). For a couple years, Mr. Wilson observed sewage discharge above ground in the area near the septic reserve area. (T2. 76). He also has seen water percolating out of the ground, running across his driveway, and ponding on the property owned by Henry Rosenberg to the south. (*Id.*).

III. ARGUMENT[16]

A. The Petition For Special Exception Must Be Denied Because Petitioner Woefully Failed To Meet Its Threshold Burden Of Describing The Proposed Use Of The Property And Its Impact

1. The Law Regarding Special Exceptions And The Burden Of Proof – Generally

The zoning scheme in Baltimore County, as in all jurisdictions, distinguishes between permitted uses and uses permitted by special exception. A permitted use in a given zone is permitted as of right, that is, without regard to any potential or actual adverse effect that the use might have. *People's Counsel for Baltimore County v. Loyola College of Md.*, 406 Md. 54, 471 (2008). A special exception, in contrast, is "merely deemed *prima facie* compatible" in a given zone and requires "a case-by-case evaluation" by the zoning body according to legislatively-defined standards. *Id.* Thus, a special exception use is "only permissible conditionally and each applicant must prove actually, to the satisfaction of the administrative decision-maker [] that his/her/its application will be compatible with the uses on (or future permitted use of) other properties in the neighborhood." *Montgomery County v. Butler*, 417 Md. 271, 295 (2010).

In describing further the presumptive validity afforded special exception uses, the Court of Appeals in *Butler* stated:

> The uses for which a special exception is required are conceptualized generally as having some deleterious effects on surrounding uses or undeveloped land in the neighborhood—or, stated differently, may be said potentially not to promote the public safety, health, morals, welfare, and prosperity and, therefore, are not appropriate to be allowed as uses of right. *See* John J. Delaney et al., *supra,* § 30:1 ("Most [uses for which a special exception is required] are regarded as potentially

[16] Counsel for Petitioner has informed undersigned counsel that Petitioner will be withdrawing the motion to dismiss that was advanced at the beginning of the hearing. For that reason, the motion is not addressed in this memorandum. If the Board nevertheless intends to address the issue *sua sponte*, then Protestants request the opportunity to be heard on the motion and, if necessary, submit a brief memorandum.

> troublesome because of noise, traffic, congestion, or other associated problems."). The local legislature, however, determines that this potential may not be so tangible in every case as to warrant prohibition of the use in the zone or zones; rather, *an applicant should be given the opportunity to satisfy an administrative decision-maker that in his/her/its case, such potential does not rise to the level of so likely or actual incompatibility as to rebut the presumption.*

417 Md. at 298.

Although a presumption of validity exists, the applicant nevertheless shoulders the burden of proof and persuasion that a special exception should be granted for the particular use proposed.

> The applicant has the burden of *adducing testimony which will show that his use meets the prescribed standards and requirements*.... 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.*

Shultz v. Pritz, 291 Md. 1, 11-12 (1981).

Thus, the appropriateness of granting a special exception in a given case depends entirely on the facts and circumstances peculiar to that use, to the particular property at issue, and to the actual effect on neighboring properties. As the Court concluded in *Shultz v. Pritz*:

> We now hold 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 a special exception use* irrespective of its location within the zone.

291 Md. at 15 (emphasis added); *see also Loyola*, 406 at 102 ("*Shutlz* speaks pointedly to an individual case analysis....").

This Board has, likewise, held that the burden of production and persuasion in a special exception case falls squarely on the applicant. *See In The Matter of Robert L. and Astra Brantley*, Case No. 09-042-SPHX ("[T]he applicant bears both the *burden of production and the burden of persuasion* on the issue of whether the special exception should be granted."); *In the Matter of Application of Sharonda Ellerby for Special Exception and Variance*, Case No. 06-009-XA ("[I]t is the Petitioner's *burden to provide credible, affirmative evidence and testimony* that her proposed use is not detrimental to the neighborhood and meets each of the nine criteria set forth in 502.1); *see also Rockville Fuel & Feed Co. v. Board of Appeals of City of Gaithersburg,* 257 Md. 183, 190-91 (1970) (same); *Easter v. Mayor & City Council of Balt.*, 195 Md. 395, 400 (1950) (same).

The Board, in fact, has not hesitated to deny a petition for special exception where the applicant failed to meet its burden. *See In re: Petition for Special Hearing, Exception and Variance for Union Bethel A.M.E. Church of Randallstown, Md., Inc.*, Case No. 2009-0093-SPHX (denying special exception where applicant failed to adduce evidence regarding several of the § 502.1 factors); *In The Matter of Robert L. and Astra Brantley*, Case No. 09-042-SPHX (denying special exception for religious retreat when the applicant failed to sufficiently address the § 502.1 factors); *In the Matter of the Application of Kathyrn Belitos*, 05-567-SPHXA (holding that property owner did not meet its affirmative burden of establishing that proposed special exception would comply with all of the § 502.1 factors).

2. The "Evidence" Introduced By Petitioner Regarding The Proposed Use

In the Petition for Special Exception, the Petitioner identified its proposed use of the Property simply as follows: "Churches and other buildings for religious worship." This

description tracks *verbatim* the language in BCZR § 1A01.2.C.6, which identifies the uses permitted by special exception in the RC 2 zone.

At the hearing, Petitioner introduced no evidence, literally none, regarding the nature or scope of the proposed use. Mr. Thaler, who admitted he was "not completely certain" about the proposed use, testified simply, and somewhat sarcastically, that the "only thing" that's being proposed is to put up 212 folding chairs for religious services. (T. 183-84). Mr. Thaler did not know, and could not tell the Board, how many religious organizations will use the Property, the type of activities or events that the unknown religious organization(s) might undertake or their frequency. He also could not say how the main building would be used, whether there would be offices in the building, whether the institutional kitchen would be put to use, whether the McCormick wing would be used, or whether the three houses on the Property would be used in conjunction with the "church" use.

The significance of this evidentiary vacuum cannot be overstated. It strikes at the heart of the special exception standard. Special exception uses, by nature, are conditional uses whose granting depends upon the particular effect and impact that they have on the property at issue and neighboring properties. If there is not, in the first instance, at least basic information regarding the nature and scope of proposed use, then the Board cannot determine the impact of the use or apply the factors in § 502.1.[17] If an applicant could obtain a special exception merely by citing the correct provision of the BCZR and quoting from it (to wit, "churches or other buildings for religious worship"), then there would be no need for a hearing or for the application of the factors in § 502.1. The County could simply grant, administratively, any and all such requests.

[17] The evidentiary vacuum is also demonstrated by the Opinion and Order of the Office of Administrative Hearings, in which the Administrative Law Judge's only description of the proposed use was simply, "[t]he present proposal seeks permission to establish a 212 seat church within the approximately 20,000 square foot main house on the premises." (Op. and Order, p. 2).

That is, effectively, what Petitioner has done – it has filed a Petition for Special Hearing that seeks approval for "churches and other buildings of religious worship," but has offered no actual evidence to support what it is seeking approval of.[18]

The lack of evidence is particularly problematic given the broad range and variety of activities that churches and other places of worship engage in. Some churches hold only services, some hold only a limited number of other activities, some hold activities everyday of every week, and some hold large events. Where Petitioner's proposal fits in this broad spectrum, and how many religious organizations will be involved, is simply unknown.

The Board should not be confused by the fact that special exceptions carry presumptive validity. The presumption arises only when the applicant invokes a special exception use, files the requisite petition, and sufficiently identifies the use so that the standards in § 502.1 can be applied. Sufficient detail regarding the nature and scope of the use is also necessary in order for members of the community, such as Protestants, to rebut the presumption. Here, by introducing no evidence regarding its proposed use of the Property, Petitioner put itself in the enviable position of insulating itself from attack and not having to respond to any attempt by Protestants to rebut the presumption. Indeed, this may have been Petitioner's strategy from the beginning. The presumption is not raised, and thus does not exist, if there are no facts to support it. That special exception uses are presumptively valid does not mean that Petitioner does not bear the burden of proof or persuasion on its petition for special exception. The intensity of the proposed use must be identified and described in order to contemplate water, sewer, traffic and community impacts.

[18] Mr. Patton, accepted by the Board as an expert in the zoning regulations and qualified to render an opinion regarding the factors in § 502.1 testified, convincingly, that he simply could not apply those factors to this case because he not have sufficient information.

Further, it should be pointed out that although there was abundant evidence at the hearing on two discrete issues - traffic and water/sewage supply – those issues had nothing to do *per se* with the nature or scope of the proposed use. The two issues pertain to the Property itself, its current condition, and would exist regardless of the number of religious organizations using the church or the amount of activities that might take place there. Traffic conditions and water or sewage issues might be exacerbated or worsened depending on the nature of the use, but they exist today and continue to exist independently of such unknowns.[19] Petitioner should not be heard to argue that Protestants had sufficient information and took advantage of the opportunity to challenge the Petition for Special Exception on these two grounds.[20]

At the hearing, counsel for Petitioner suggested that there is no requirement in the BCZR that a property owner, when seeking a special exception, must delineate how the property will be used. While such a requirement may not be explicitly set forth in the BCZR, as matter of general jurisprudence, evidentiary proof, and common sense, a petitioner must present sufficient evidence to identify the use for which a special exception is sought and present at least a threshold level of evidence from which the Board can apply the § 502.1 factors. Section 502.1 itself states that "Before any special exception may be granted, *it must appear that the use for which the special exception is requested* will not ...[b]e detrimental to the health...." This language certainly suggests that the use must be sufficiently described and that application of the

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[19] Mr. Cornelius acknowledged, for example, that the traffic impact would depend upon what denomination or denominations ends up using the church, which would affect when and how often the facility would be used. (T. 119-120). Nevertheless, his traffic impact study assumed that the religious organization was a church and would only use the main building on either Saturdays or Sundays. The Phase I Traffic Impact Analysis states that, "[s]ince the religious denomination has not been identified, this study uses trip generation rates for church land use of ITE and basis trip generation for the weekday evening peak hour and Sunday peak hour on those rates. For Saturday peak hour, the Sunday peak hour trip generation rates were used in case the future users of the site have primary services on Saturdays."

[20] The only reason Petitioner even knew to put on evidence in their case-in-chief of traffic and water/sewage issues is that counsel knew those were areas of concern for the community.

factors must be directed to that use. Similarly, § 502.2 provides that the Board, in granting any special exception, "shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties." The Board obviously cannot comply with this mandate without sufficient information to determine what conditions, restrictions or regulations are "necessary or advisable."

Viewed differently, Petitioner failed to show that the proposed use, in the first instance, fits within a use permitted by special exception in the RC2 zone. *See* 101A C.J.S. Zoning & Land Planning § 325 (applicant for a special exception must first show that the proposed use is permissible, and then show that the application meets the requirements for a special exception; once it does, the burden of proof shifts to those opposing the application to prove that the special exception would endanger the health, safety, or general welfare of the community).

This Board was presented with an analogous situation in *In the Matter of Application of Sharonda Ellerby for Special Exception and Variance*, Case No. 06-009-XA. There, the petitioner, Ms. Ellerby, filed a petition for special exception seeking approval to have an office in her residence for her tax preparer business. The applicable zone, DR 3.5, allows by special exception offices for certain types of "professional persons." The Board denied Ms. Ellerby's petition on the ground that she had not submitted sufficient evidence to prove that she was, in fact, a "professional person" so as to come within the allowed special exception use. (*Id.* at pp. 4-5); *see also Mulligan v. Zoning Bd. of Adjustment of East Norriton Tp.*, 495 A.2d 647 (Pa. Commw. 1985) (the "initial burden of proof borne by applicant for special exception" includes a showing "that proposed use was type permitted by special exception").

Similarly, in *Petition for Special Hearing, Exception and Variance for Union Bethel A.M.E. Church of Randallstown, Md., Inc.*, Case No. 2009-0093-SPHX, the petitioner requested

a special hearing to determine whether the proposed use was permitted by right as a church. Alternatively, special exception relief was requested to approve use of the property as a community building. The Zoning Commissioner assumed, without undertaking an explicit analysis of which category of use the proposed use properly fell under, that the proposed use was a church and was permitted by right. On appeal, the Board found there was insufficient evidence to conclude that the proposed use was, in the first instance, a church, and on that ground reversed the Zoning Commissioner's decision to permit the proposed use by right. The Board, instead, analyzed the use as a community building, which is allowed by special exception in the DR 5.5 zone, and held that the petitioner failed to meet the standards in § 502.1. On appeal to the Circuit Court for Baltimore County, the Court considered the testimony and exhibits presented to the Board and found that its decision was supported by substantial evidence.

In sum, the most we know about Petitioner's proposed use of the Property is that 212 folding chairs will be brought in to hold an unknown number of services for an unknown number of religious organizations of an unknown denomination, for an unknown number of people, who may or may not use the facility for related or accessory activities at an unknown frequency. Perhaps Petitioner was hedging its bets and hoping that by leaving these matters open it could use the Property for whatever it might deem necessary or whatever its unknown lessee(s)/contract purchaser(s) might wish to do in the future. That strategy, however, is woefully insufficient to meet Petitioner's burden in this case.[21]

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[21] That this was Petitioner's strategy is supported by the fact that its petition requests approval of a special exception for "churches *and* other buildings of religious worship," while the language of BCZR § 1A02.2A1 states "churches *or* other buildings of religious worship." Petitioner is hoping to obtain approval for anything and everything.

3. *Rental Of The Property To Multiple Religious Organizations Is Not A "Church" But Rather A Commercial Enterprise Akin To The Already Prohibited Apartment Use*

As noted, there is much we were not told about the proposed use. However, one possibility, according to Mr. Thaler, is that the Property may be rented to multiple religious organizations. This would constitute a commercial rental facility and, at bottom, would be no different than the renting of apartments that this Board has already held is not permitted in the RC2 zone. The reasons for prohibiting the rental of apartments would apply, with equal force, to the rental to an organization, religious or otherwise, for meetings, activities and events. Moreover, such a facility would not constitute a "church." Indeed, the property owner is not a "church" and there has been no church identified by Petitioner or affiliated with its Petition for Special Exception.

4. *The Testimony Of Mr. Roth Was Irrelevant And Should Not Be Considered As Evidence Of How The Petitioner Intends To Use The Property*

Mr. Roth testified regarding the Church of the Resurrection's use of the Property for Sunday services from 2006 to 2010. Petitioner did not articulate how this evidence was relevant to the instant case, but apparently intended to suggest that because the main building at the Property had been used in the past as a church (assumedly, without incident), then there is no reason why it cannot be used as such today.

The testimony of Mr. Roth was meaningless. First, the church (if it qualified as such) was illegal. Petitioner did not obtain a special exception or any other approval from the County before renting the building as a church. Second, the manner in which the Church of Resurrection used the building is not probative of how Petitioner might use the Property. Had Petitioner

represented to the Board that it intends to use the Property in that precise same way, then that would be a different matter, but there was no such representation or testimony.

Moreover, it should be recalled that the Board sustained Petitioner's objection and would not allow Protestants to ask Mr. Roth questions about the activities of his church as an example of what might take place under Petitioner's proposal. (T. 47-52). The Board, in fact, would not allow Protestants to admit portions of the church's website showing those activities. (T. 52) (Prot's Exs. 1 and 2). If Protestants were prohibited from demonstrating, in the evidentiary vacuum that existed, the scope of activities that might potentially take place at this unknown "church," then Petitioner surely cannot rely upon Mr. Roth's testimony for the same point. Mr. Roth's testimony, in its entirety, should be disregarded.[22]

C. Even Assuming We Knew The Nature And Scope Of The Use That Will Occur At The Property, The Petition For Special Exception Still Should Be Denied

1. The Known and Obvious Sight Distance Dangers at the Site Should Preclude any further Intensification of the Use of the Property

The photographs taken by Mr. Seitz show, plainly, that there is a significant sight distance problem at both the northern and southern access points to the Property created by the crest of the hill on Park Heights Avenue. The problem exists not only for vehicles exiting the two access points, but also for vehicles heading south on Park Heights seeking to turn left into the southern access or queuing to make a left. Dr. Zinn and Mr. Wilson, who travel Park Heights

[22] Similarly, Mr. Thaler speculated about the scope of the Baptist Home's use of the property for worship services, stating that "[w]hen it was the Baptist home that they had services. They had worships services on probably every day. But I won't – because it was a religious house. But certainly on Sunday's and certainly on special religious occasions. And I believe that on the larger religious occasions they attracted families and visitors." (T. 184). This was rank speculation and there was no evidence to support it, including the evidence introduced at the hearing in Case No. 10-280-SPH.

Avenue everyday, spoke anecdotally about their experiences getting onto and off of the road. Indeed, they each characterized the problem as life-threatening.

Mr. Cornelius, in the main, did not dispute that the sight distance problem exists. In fact, although he did not disclose the problem to SHA, he was concerned enough to disclose it in an email to Petitioner's counsel, an email that was only discovered when Protestants subpoenaed his files.[23] The email speaks to "the danger of motorists coming from behind and having limited time to stop" and concludes that "sight distance is compromised from both access points." Nevertheless, Mr. Cornelius testified that the access points can function "safely" if Petitioner institutes a one-way travel system in which the north access is used for entering vehicles and the south access for exiting vehicles.

Even under this one-way system, however, vehicles exiting the southern access are still subjected to the sight distance limitation looking right up the crest of the hill. Mr. Cornelius did not offer a solution for this remaining problem but rather downplayed it by suggesting, incredibly, that vehicles making a left turn out of the southern access point can simply pull out onto Park Heights Avenue before making their turn onto the road.

> [W]hen exiting from the south access, since you can see a great distance to the left (or south) the driver has the ability to move out into the northbound travel lane to improve the sight line to the right (or north) before completing the left turn exit movement.

(Prot's Ex. 3). Mr. Cornelius's one-way system does not solve the undisputed sight distance problems at this site. Indeed, his solution exposes drivers to the new risk (perhaps one they are not already taking) of using Park Heights Avenue itself as an acceleration lane. It also ignores the fact, attested to by Mr. Wilson, that cars are regularly queued at his driveway and at the

[23] That Mr. Cornelius raised his concern is even more significant given that he was asked only to perform a "simple" traffic study.

southern access point waiting to access. If a vehicle pulls out onto Park Heights Avenue as Mr. Cornelius suggested, any cars that are queued will prevent the vehicle pulling out from backing up and force it onto the road.

Mr. Cornelius's opinions are flawed in several other fundamental ways. First, Mr. Cornelius testified that he measured the sight distance to be 350 feet at both the northern and southern access points. As Mr. Seitz explained, this measurement was inaccurate because Mr. Cornelius measured from the edge of the road rather than 14.5 feet back (or even 10 feet back as Mr. Seitz did) as required by the AASHTO Policy. The correct site distance is 150 feet. Moreover, even if the sight distance is 350 feet as Mr. Cornelius claimed, that distance fails to meet either the standard for stopping sight distance (425 feet for left and right turns) or the standard for intersection sight distance (555 for left turns and 480 for right turns).[24]

Second, Mr. Cornelius was incorrect he testified that Petitioner need only meet the "stopping sight distance" standard and not the more stringent "intersection sight distance" standard. The SHA's Access Manual (Prot's Ex. 5) provides that both intersection sight distance and stopping sight distance must be addressed:

> **10.4.1 Criteria for Evaluation.** Sight distance shall be measured and evaluated for each proposed point of State highway access in accordance with the current version of AASHTO's A Policy on Geometric Design of Highways and Streams. The required stopping distance shall be available along the highway in both directions from the proposed access point. The required *intersection sight distance* and clear sight triangle shall be demonstrated for the range of proposed turning movements at the access point, in accordance with the AASHTO models. Appropriate adjustments to the required sight distance shall be made for road grades, skew, or

[24] Counsel for Petitioner intimated that, in its October 12, 2011 approval letter, SHA concluded that there were no sight distance problems at the property and an access permit was not required. (Pet's Ex. 9). The letter says nothing of the kind, but rather simply states that "an entrance onto MD 129" is not required. (*Id.*). Moreover, as Mr. Cornelius acknowledged, the Phase I Traffic Impact Study he submitted to SHA addressed only traffic volume. He did not disclose to SHA his concerns regarding sight distance.

> predominant bus or truck traffic. The design speed for the highway shall be determined by adding 10 mph to the posted speed limit. Sight distance standards for full movement access on undivided highways are tabulated at Appendix 'G'.[25]
>
> * * *
>
> **10.4.3 Substandard Conditions**. Access points that do not or would not meet both the intersection sight distance *and* stopping sight distance criteria as outline above are considered 'substandard.'

(Prot's Ex. 5, pp. 47-48) (emphasis added).

Third, Mr. Cornelius was incorrect in applying the posted speed limit in determining whether the standards in the AASHTO Policy were met. The SHA's Access Manual clearly states that "[t]he design speed for the highway shall be determined by adding 10 mph to the posted speed limit." (Prot's Ex. 5, pp. 47-48).

And fourth, Mr. Cornelius erroneously asserted that the sight distance standards in the AASHTO Policy apply only when new access points are constructed. The SHA's Access Manual states otherwise:

> **10.4.3 Substandard Conditions**. Access points that do not or would not meet both the intersection sight distance and stopping sight distance criteria as outline above are considered 'substandard.' When an *existing or proposed access point* is determined to have substandard sight distance, the applicant shall be required to consider a different location for the access, including available public road access....
>
> *Many older highways have alignments that are substandard with respect to current geometric design practices. Proposing access along such alignments does not relieve the developer of the requirement for adequate sight distance*, nor does it obligate the SHA in any way to construct, or otherwise participate in, sight distance mitigation.

(Prot's Ex. 5, p. 48) (emphasis added)

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[25] Appendix G contains a table that, similar to the table in the AASHTO Policy identifies an "assumed design speed" of 10 mph greater than the posted speed. This table has the same stopping sight distance and intersection sight distance numbers as the AASHTO Policy.

More to the point, section 3.4 of the Access Manual identifies the circumstances when the substantive provisions of the manual apply and the property owner must obtain an access permit. (T. 113-14).

> **3.4 Applicability – Who Must Apply For A Permit**
> As states in the published regulations, the following is a descriptive list of some of the parties required to apply for a permit....
>
> (4) Parties desiring to modify, expand, or in any other manner make improvement to an *existing facility*, which will increase or change the type vehicular generation or traffic pattern;
>
> (5) Parties desiring to *change use of occupancy of an existing facility*;
>
> An Access Permit is required for the construction of these improvements, *even if no entrances or street connections are proposed.*

(Prot's Ex. 6, pp. 10-11) (emphasis added).

As Mr. Seitz testified, the proposed church use of the property is a change of use from the recent nursing home and apartment uses, and thus compliance with AASHTO Policy is required. (T. 228-229).[26] Mr. Cornelius posited that § 3.4(5) is not applicable because "the testimony has been that it's been used as a church for ... the past 4 or 5 years." (T. 113). There was no such testimony. Mr. Roth testified that the Church of Resurrection used the main building for Sunday services from 2006 to 2010, but that use ceased several years ago and, in any event, was never approved by Baltimore County.

2. The Petition for Special Exception Is Not Ripe For The Board's Review And Cannot Be Granted Because Petitioner Cannot Obtain Approval For Its Water And Sewage Systems Unless And Until It Obtains An Amendment To The County's Master Plan And Approval From MDE

[26] Protestants' zoning expert, James Patton, confirmed that from a zoning perspective the proposed church use is a distinct, different use than the prior use of the property. (T2. 93).

Using Mr. Powell's sewage capacity and anticipated water usage numbers, which were confirmed by Mr. Thaler and Mr. Sheesley, Mr. Koontz testified that the sewage and water supply systems serving the main building and cottage meet the definition of "multi-use" systems set forth in COMAR. Because they are multi-use systems, Petitioner must seek an amendment to the County's comprehensive sewer and water plan. Moreover, Petitioner must obtain a permit from MDE for a "large on-site disposal system," which MDE will not approve unless and until a plan amendment is obtained.

As Mr. Thomas explained, obtaining a plan amendment is not simply a matter of applying for it. Rather, the County Executive and the County Council, after the required hearing process, must approve the amendment. This is a contingency that may never occur. The petition for special exception is, therefore, not ripe for this Board's review and, for this reason alone, should be denied.

IV. CONCLUSION

For the reasons stated, Protestants respectfully request that the Board of Appeals deny the Petition for Special Exception filed by Rainbow Hall, LLC. If the Board grants the Petition for Special Exception, Protestants request that the Board, pursuant to the mandate of § 502.2, impose the conditions and restrictions set forth above in order to adequately protect the community.

Respectfully submitted,

Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 825-2150

Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 14th day of November 2012, a copy of the foregoing post-hearing memorandum was sent *via* regular mail to:

Michael Wyatt, Esq.
Marlow & Wyatt
404 Allegheny Avenue
Towson, Maryland 21204

Michael R. McCann

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
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RECEIVED
NOV 13 2012
BALTIMORE COUNTY
BOARD OF APPEALS

November 13, 2012

Theresa R. Shelton, Administrator
County Board of Appeals
Jefferson Building
105 W. Chesapeake Avenue, Ste. 203
Towson, Maryland 21204

Re: *In re: Rainbow Hall, LLC*
Case No. 2012-0091 X

Dear Ms. Shelton:

Enclosed please find an original and three (3) copies of Protestants' post-hearing memorandum in the above matter. I understand that the Board has already received a copy of the transcript from the hearing. If the Board wishes to have additional copies for their reference, please let me know.

Thank you for your assistance. Please contact me if you have any questions.

Sincerely,

Michael R. McCann

Enclosures

11/13/12

RECEIVED
NOV 13 2012
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	BEFORE THE
RAINBOW HALL, LLC Petitioner / Legal Owner 10729 Park Heights Avenue Owings Mills, Maryland 21117 3rd Election District 2nd Councilmanic District	*	BOARD OF APPEALS
	*	OF
	*	BALTIMORE COUNTY
	*	Case No: 2012-0091-X

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

MEMORANDUM OF PETITIONER RAINBOW HALL, LLC

RAINBOW HALL, LLC, Petitioner and legal owner, by its attorneys, Michael L. Snyder and Michael T. Wyatt, hereby files this Memorandum in support of the special exception sought by it in this *de novo* appeal from the Office of Administrative Hearings of Baltimore County. This Memorandum follows the September 25 and 26, 2012 hearing of this matter before the Board of Appeals of Baltimore County ("CBA").

I. BACKGROUND

Petitioner's property located at 10729 Park Heights Avenue comprises 27.53 acres and is improved by a mansion house (inclusive of a former institutional nursing facility) and three (3) individual residential dwellings (the "Property"). Lot 5 of the Property (which is 19.83 acres) is zoned RC-2 and includes the mansion house, which in its nearly 100-year history has been variously used as a private residence, hotel, boarding house, 80-bed nursing facility, and most recently, as a private residence with now-abandoned apartments.[1]

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[1] As discussed in Section III, all issues relating to apartments have been adjudicated and Petitioner accepts that the apartments in the main house may no longer be rented.

This case concerns RAINBOW HALL, LLC's request to use the main house at the Property for a church or other building for religious worship as a permitted special exception use. Baltimore County Zoning Regulations ("BCZR"), § 1A01.2.C.6 specifically authorizes "churches or other buildings for religious worship" among its list of 29 different special exception uses. If granted, it is Petitioner's intention to market the Property for sale or lease to a suitable congregation.

This matter was originally heard by Administrative Law Judge John Beverungen, who issued an Opinion and Order dated May 7, 2012 approving Petitioner's request. Protestants VALLEYS PLANNING COUNCIL ("VPC"), MARK WILSON ("WILSON") and HARLAN ZINN ("ZINN") filed the subject appeal on May 16, 2012 and this matter came on for a *de novo* hearing before the CBA on September 25 and 26, 2012.

II. STANDARD OF REVIEW

This Special Exception appeal, by virtue of BCZR § 501.6, is heard *de novo* by the CBA. As the CBA well knows, *de novo* appeals are tried anew based on testimony and evidence and determined for legal sufficiency under applicable BCZR provisions and the case law addressing special exceptions.

III. PRELIMINARY ISSUES

At the beginning of the hearing before the CBA, counsel for Petitioner moved to dismiss the appeal on the basis that Protestants appealed the case under the incorrect provisions of the

Baltimore County Code. Protestants' counsel's letter of appeal (Pet. Ex. 1)[2] references "Baltimore County Code § 32-4-281, *et seq.*" (which is found under the development regulations, Baltimore County Code §§ 32-4-100 – 32-4-506, *et seq.*). The CBA did not rule on the motion at that time and this case proceeded through several days of testimony and evidence in connection with the special exception case. Looking back, Petitioner can identify no prejudice associated with Mr. McCann's inadvertent citation and hereby withdraws its motion to dismiss the appeal.

In its recent memorandum, People's Counsel for Baltimore County updates the CBA with respect to a prior zoning case involving the Property, *In Re: Rainbow Hall, LLC*, CBA Case No: 10-280-SPH, which at the time of the hearing on this matter was pending in the Circuit Court for Baltimore County. People's Counsel correctly points out that the Honorable Patrick Cavanaugh, in an October 12, 2012 Opinion and Order, denied the appeal and affirmed the prior decision of the CBA prohibiting apartment use and the "hosting of events" deemed "catering" in an RC-2 zone. Baltimore County had also initiated an enforcement action arising out of that zoning case, which was stayed by Order of the Circuit Court dated April 19, 2012.

Upon receiving Judge Cavanaugh's ruling, Petitioner immediately acted to terminate any remaining unlawful apartment uses at the Property and conclude the enforcement action. (*See* correspondence by and between counsel for RAINBOW HALL, LLC and Adam Rosenblatt, County Attorney with the Baltimore County Department of Permits, Approvals and Inspections ("PAI") attached hereto as Pet. Memo. Ex. 1). Petitioner is not appealing the Circuit Court Order and is compliant with the finality of the CBA's decision in the prior zoning case. Apartments will no longer be rented at the Property and this will be confirmed by a Baltimore County PAI

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[2] References throughout this memorandum for the sake of simplicity are as follows: Petitioner = Pet., Protestants = Prot., and "T" for transcript.

inspection on November 29, 2012. (*See* Pet. Memo. Ex. 1, email confirming Baltimore County inspection on November 29, 2012 at 9:00 A.M.).

In its memorandum, People's Counsel argues that the CBA should summarily dismiss the subject Petition. The sole thrust of People's Counsel's motion to dismiss is based upon Baltimore County Code § 32-4-114 which provides:

> "(c) *County prohibited from processing if violations exist.* The county may not process plans or permits for a *proposed development* if the applicant owns or has an interest in property located in the county upon which there exists, at the time of the application or during the processing of the application, a violation of the zoning or development regulations of the county". (Emphasis added).

People's Counsel's argument is fundamentally flawed for two (2) reasons. First, People's Counsel misapplies Baltimore County's development regulations to this Petition for Special Exception. A review of Baltimore County Code §§ 32-4-101, *et seq.* details requirements for development plans in Baltimore County. Section 32-4-104 specifically provides that Title 4 "shall apply to the process of review for approval of all development". "Development" is defined as:

> "(1) The improvement of property for any purpose involving building;
> (2) The subdivision of property;
> (3) The combination of any two or more lots, tracts, or parcels of property for any purpose;
> (4) Subjecting property to the provisions of the Maryland Condominium Act; or
> (5) The preparation of land for any of the purposes listed in this subsection".

However, the comprehensive requirements set forth in the Baltimore County Code development regulations do not apply to pure zoning matters like this case. This case is involves only a Petition for Special Exception to utilize the main house at the Property as a church or other

building for religious worship. It is not a "development plan", as suggested by People's Counsel. The provision cited by People's Counsel is inapposite.[3]

Second, even if People's Counsel's interpretation of the development regulations is correct (which it is not), the County is not processing "plans or permits" where the applicant owns property, at the time of the application or during the processing of the application, where there exists "a violation of the zoning or development regulations of the county". As stated, RAINBOW HALL, LLC has complied with the finality of the decision in the prior zoning case. Petitioner has resolved any such violations by cooperating with Baltimore County zoning enforcement authorities. The Property is fully code compliant and People's Counsel's interjection to the contrary is without support.

IV. EVIDENCE

A. The Property

The Rainbow Hall Property has an extensive history. As depicted in the photos and plan, the original mansion house includes an institutional-style wing and provides approximately 35,000 square feet of living space. It has existing parking for vehicles, which could be increased to 55 if the use is approved. (Pet. Ex. 7). The structure is built to institutional standards, fully sprinklered, handicapped-accessible, and contains enormous interior rooms. The Property, known as "Rainbow Hill", is listed on the Baltimore County Final Landmarks list. It was used as a hotel known as the Avalon and later owned by the Rosenberg family. From the early 1960s until 2002, the Property was used as a boarding, convalescence and nursing home for residents of

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[3] It is never explained how People's Counsel can insist on the one hand that the development regulations *do apply* to this case, while counsel for Protestants expressly acknowledged the development regulations *do not apply* because this case is not a "development plan case". (Sept. 25, 2012 T. 5-6).

the Baptist faith under the ownership of Baptist Home of Maryland/Delaware, Inc. ("Baptist Home"). During this time, there were intermittent religious services. (Sept. 25, 2012 T. 184). More recently, the Property was used as a church by the Church of the Resurrection. (*Id.* at 37-39). This use accommodated approximately 140-150 parishioners, who utilized the mansion house for church-related purposes from 2006 through 2010.

At present, the mansion house is used as a single family residence in accordance with its RC-2 zoning designation.[4]

B. <u>Petitioner's Witnesses and Other Evidence</u>

1. *Stacey McArthur*. Ms. Stacey McArthur is a landscape architect with the firm of D. S. Thaler & Associates, Inc. She is an expert in the areas of landscape architecture and land planning. Ms. McArthur prepared the redline Plan to Accompany Petition for Special Exception. (Pet. Ex. 7). Ms. McArthur discussed generally the nature of the special exception sought in this case. She spoke briefly about the history of the Property (Sept. 25, 2012 T. 13-14) and that the subject request is to "adaptively reuse [the] mansion as a church for 212 seats". (*Id.* at 14). Other than the repositioning of handicapped parking and some minor road widening, there is no construction planned in connection with the special exception. Ms. McArthur talked about Petitioner's Exhibit 6, an aerial photograph which identifies a dozen or so other institutional and religious uses in the vicinity. (Pet. Ex. 6). This exhibit highlights precedence and co-existence of many other churches and schools in Greenspring Valley and its surrounding areas (the majority of which appears to be outside the urban rural demarcation line or URDL). (*Id.* at 30-31). Ms.

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[4] As stated, the CBA's February 24, 2012 Opinion and Order in Case No: 10-280-SPH was recently affirmed in the Circuit Court for Baltimore County and Petitioner has resolved all outstanding zoning violations with the Baltimore County Department of Permits, Approvals and Inspections.

McArthur also talked about compliance with all Zoning Advisory Committee ("ZAC") comments relative to the Plan. The ZAC comments in this case are favorable.

2. *Lance Roth*. Mr. Lance Roth is a member of the Church of the Resurrection, an Anglican denomination church which presently has a place of worship just up the road from Rainbow Hall. The Church of the Resurrection is a spin-off from an Episcopal church on Western Run Road. (Sept. 25, 2012 T. 36). During its formative years, the Church of the Resurrection moved around to a few different locations in Greenspring Valley, first at the house of Mrs. Norman Baetjer, and then to Rainbow Hall in 2006. For approximately four (4) years, the Church of the Resurrection held worship services at the Property on Sundays, along with other church-related functions. Typically, church services had 130-140 parishioners, with up to 60-70 cars parked at the Property. Occasionally the church would have picnics with parishioners bringing food. (*Id.* at 37-39, 42).

During this entire period of time, there were no traffic incidents or congestion on the surrounding roads. (*Id.* at 39-40). Mr. Roth described the area as quiet and there were no complaints or incidents involving neighbors. Mr. Roth believed the location was ideal and a beautiful, bucolic setting. (*Id.*).

3. *Stephen Ferrandi*. Mr. Stephen Ferrandi is a principal at the real estate firm of KLNB. He specializes in selling and leasing churches, schools and other houses of worship. Mr. Ferrandi has extensive experience in churches and other houses of worship. (Sept. 25, 2012 T. at 54). His family owned and operated a church restoration services company for many years before he went into the real estate brokerage community. Mr. Ferrandi was asked questions regarding the marketability and suitability of Rainbow Hall for a church or other house of worship. (*Id.* at 59). Mr. Ferrandi had high praise for the Property, stating that it is ideally suited for adaptive reuse, offering that it is a "beautiful building… with plenty of parking and a great location". (*Id.* at 61-62). Mr.

Ferrandi also discussed trends in the house of worship marketplace, particularly lease versus purchase options. In today's financial climate, it is difficult for smaller religious groups to secure financing to purchase a property. This is what makes Rainbow Hall attractive, according to Mr. Ferrandi. Mr. Ferrandi testified that it was not uncommon for some owners to permit more than one congregation to utilize a particular location. Mr. Ferrandi described Rainbow Hall as a perfect property for a house of worship because of the building, parking, location and demographics. (*Id.*).

4. *Mickey Cornelius*. Next up for Petitioner was Mickey Cornelius, an expert in traffic engineering. Mr. Cornelius was involved initially at the Property for the proposed development plan for a 1,000 seat church facility. As part of that project, Mr. Cornelius's Traffic Group performed a Phase I traffic study which he believed was directly relatable to the less-intense 212-seat church proposed in this case. For this case, Mr. Cornelius opined that there would be no detrimental impact in the vicinity with respect to traffic volume and trip generation. Even at peak hours, he believed all nearby intersections would be maintained at optimum service Level A or AB conditions. These levels are the best volume operational level and indicate no congestion. (Sept. 25, 2012 T. 78-79).

Specifically relating to the access points for the Property, Mr. Cornelius confirmed the use of the existing driveway system which features both southern and northern entrances/exits along Park Heights Avenue. (*Id.* at 80). Mr. Cornelius detailed the historical safe use of these access points during the more intense Baptist Home operations and, more recently, the prior church use. To further enhance safety, Mr. Cornelius proposes that all ingress at the Property would be by means of the north entrance and all outgoing traffic would be directed to the south, resulting in a one-way traffic pattern. Mr. Cornelius testified the existing access points meet all applicable stopping site distances, even with the site distance impacts of the crest of the hill at the midpoint of the Property along Park Heights Avenue. (*Id.* at 81-83).

With respect to the standards set forth in the BCZR, Mr. Cornelius testified that the proposed use would not be detrimental to the safety of the area, or tend to create congestion on roads, streets or alleys. Mr. Cornelius also researched accident data and found only one (1) in the past five years which involved a collision unrelated to access points along Park Heights Avenue. (*Id.* at 85, 109). Based on the State Highway Administration's (Maryland Dept. of Transportation) October 12, 2011 approval letter for this case (Pet. Ex. 9), Mr. Cornelius opined that there would be no need for any additional work. Mr. Cornelius was emphatic that he believed the design in this case was safe, pointing repeatedly to the Property's long history of operating safely at higher or similar intensities. From a traffic safety perspective, the existing access points have proven safe for years. Nothing proposed in this case is an intensification of the prior use, nor does it alter the already safe-functioning access points. Moreover, Mr. Cornelius's one-way traffic system improves safety at all locations. (*Id.* at 81).

5. *Robert Sheesley*. Mr. Robert Sheesley was the director of Baltimore County Department of Environmental Protection and Resource Management (now PAI) for many years. Mr. Sheesley testified as an expert for Petitioner in the area of environmental health. Mr. Sheesley possesses extensive experience as a sanitarian dealing with onsite sewage disposal systems and well-water supplies. After reviewing all well and septic data, including information on file with Baltimore County and history at the Property, Mr. Sheesley provided testimony relating to the adequacy of the well and septic systems on the Property. (Sept. 25, 2012 T. 133, 136, 138-142).

Mr. Sheesley testified as to the adequate well supply and capacity numbers. In reviewing Baltimore County files for these systems, Mr. Sheesley spoke about Mr. Robert Powell's April 30, 2102 letter detailing the existing sewage disposal systems set forth in Petitioner's Exhibit 12. Mr. Powell is the supervisor in the Soil Evaluation Section of Baltimore County Department of

Environmental Protection and Sustainability. Mr. Powell provided calculations about the design of the existing sewage disposal system in 1997, provided peak flow calculations and extrapolated those to the proposed use. According to Baltimore County's Mr. Powell, whose findings were confirmed by Mr. Sheesley, the proposed use would significant underutilize the design of the existing sewage disposal system and "there is adequate capacity to serve the intended use". (Pet. Ex. 12). In terms of field inspections, Mr. Sheesley opined as to the excellent percolation of the soils in the vicinity of the Property and their porosity and that the design is at least 150% of what is actually needed for the Property. (*Id.* at 143). Mr. Sheesley found the sewage disposal system approved by Baltimore County in 1997 to be "more advanced in design and capabilities" than were available at that time. (*Id.* at 142).

With respect to the water well supply on the Property, Mr. Sheesley confirmed and determined existing wells "were very competent for water supply, storage, and for use". (*Id.* at 145). Reviewing the factors set forth in the BCZR, Mr. Sheesley believed the proposed use to be compliant with septic systems and private water supplies in the RC-2/RC-5 zone and would have no adverse impact on surrounding areas.

6. *David S. Thaler*. Petitioner's final witness was David S. Thaler, P.E. Mr. Thaler is a project engineer and testified as an expert in the areas of land use and zoning. Initially, Mr. Thaler augmented Mr. Sheesley's opinions by tying adequacy of well and septic systems to the prior use, expressing his view that the system previously servicing a 80-bed nursing home would be clearly way in excess of that required for a 212-seat church. (Sept. 25, 2012 T. 179). Mr. Thaler first discussed BCZR § 1A02.2.C as to whether the proposed use "would be detrimental to primary agricultural uses in the vicinity". Mr. Thaler's response was:

> "Well, of course not. First of all, in the immediate, as the Board well remembers, this is largely surrounded by residential areas. So

> I'm not sure that in the immediate vicinity, you would say there is [*sic*] agricultural uses. Just down the hill, of course, is the Greenspring Valley, which has agricultural uses. But using this existing facility to go in and worship on a Saturday or a Sunday or whatever, I just can't see it could have any effect one way or the other on an agricultural use. So my opinion would be it has no detrimental effect". (*Id.* at 186).

Mr. Thaler then discussed the requirements relating to special exceptions. Mr. Thaler has experience dealing with churches, synagogues, mosques and other places of worship. Under the requirements of the BCZR, Mr. Thaler summarized the aesthetics of the historic mansion, its prior intense history as a nursing home and ample parking provide an ideal location and facility. (*Id.* at 188-191, 194). Mr. Thaler opined that the proposed use would have no detrimental effect on the surrounding area. The institutional structure is handicapped-accessible and is located in a park-like setting of some 27-plus acres. It would not create any undue concentrations of populations or interfere with adequate public provisions. Mr. Thaler's opinions are based on a lengthy factual discussion (*Id.*). Finally, Mr. Thaler expressed his view that he could not think of a "more perfect site" for religious worship than Rainbow Hall. (*Id.* at 194).

V. LEGAL AUTHORITY FOR SPECIAL EXCEPTION

As stated, the Property is zoned RC-2/RC-5. Only the RC-2 portion of the Property contains the mansion house which Petitioner proposes to be adaptively reused as a church or other building for religious worship. BCZR § 1A01.2.C sets forth uses permitted by special exception in an RC-2 zone and the specific use in this case is delineated as "churches or other buildings for religious worship". *See* BCZR § 1A01.2.C.6.

The special exception use permitted in the RC-2 zone, "churches and other houses of worship", is not specifically defined in the BCZR. Only the term "building" is defined in BCZR as "[a] structure enclosed within exterior walls or fire walls for the shelter, support or enclosure

of persons, animals or property of any kind". Therefore, the undefined words "shall have the ordinary accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged". The definition of a "church" includes "a building set apart for public especially Christian worship... [or] a place of worship of any religion". The term "religious" means "of or relating to religion". "Worship" is defined as "a form or type of worship or religious practice with its creed and ritual". Applied in this case, the proposed use seeks approval for the use of the existing mansion house as a building for religious worship with up to 212 seats. The BCZR provides no other limitations with respect to this use permitted as a special exception in an RC-2 zone. Specific to the RC-2 zone, the proposed special exception use shall "not be detrimental to the primary agricultural uses in its vicinity". BCZR, § 1A01.2.C.

BCZR § 502.1 governs overall conditions relating to the grant or denial of a petition for special exception. The section provides as follows:

> "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;
> 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".

In this case, the special exception use would relate to the historic mansion building and permit the owner to market it to prospective houses of worship. Any such use would need to comply with all applicable requirements of federal, state and local laws. The limitation of 212 seats is determined by Baltimore County parking requirements.

In the case of *People's Counsel for Baltimore County v. Loyola College,* 406 Md. 54 (2008), the Court of Appeals interpreted the BCZR in its review of a petition for special exception for a "college" in a rural section in northern Baltimore County. The *Loyola College* case provides an excellent discussion of the evolution of special exception cases in Maryland. The Court of Appeals found that the special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a "middle ground" between permitted uses and prohibited uses in a particular zone. *Loyola College*, at 72. Any special exception analysis begins with the proposition that such uses are *prima facie* compatible with a particular zone, subject to an evaluation of that particular use at the particular location.

The *Loyola College* Court quotes favorably the special exception case of *Schultz v. Pritts*, 291 Md. 1 (1981): "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". *Loyola College*, at 103. And similarly, a "special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislative body has determined can, *prima facie*, properly be allowed in a specified use district, absent any fact or circumstance in a particular case which would change this presumptive finding". *Loyola College*, at 105, citing *Montgomery County v. Merlands Club, Inc.,* 202 Md. 279, 287 (1953). Finally, it should be

noted that the Court of Appeals found special exception uses "conceptually are compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the party to whom the power to grant or deny individual applications is given, that actual incompatibility would occur." *Loyola College*, at 106.

VI. DISCUSSION

At the hearing of this matter, Petitioner adduced substantial evidence regarding the proposed use and its lack of any discernible negative impact to the surrounding area. Specifically with regard to each of the factors, Petitioner offered evidence and testimony establishing the complete absence of any adverse impacts from the proposed use. The totality of Petitioner's witnesses and evidence established:

1. The proposed use will not be detrimental to primary agricultural uses in the vicinity, if any.

2. The proposed use will not be detrimental to the health, safety or general welfare of the locality involved or in any manner impact negatively those factors enumerated in BCZR § 502.1.

Moreover, the Property has already experienced special exception "stress test" with the prior nursing home and church use without complaint or incident. The reliability of this real-world "trial run" cannot seriously be questioned by Protestants. Petitioner's evidence about the proposed future use can be verified by the historical use of the Property, including its use as a church by the Church of the Resurrection from 2006 to 2010. Based on this, Petitioner submits it

has satisfied its burdens of production about the proposed use and its compatibility with the surrounding area.

Protestants' Evidence

A. Lay Witnesses

Mssrs. WILSON and ZINN spoke extensively about their concerns for traffic, safety and environmental issues associated with the proposed use. Factually, Protestants WILSON and ZINN's testimony is unsupported and completely overlooks their own experiences with regard to these issues.

Mr. WILSON allows his driveway to be utilized by numerous school buses to pick up and discharge students going to and from Gilman, Friends and Park Schools, so apparently he believes it affords a safe turnaround for these school buses operating along Park Heights Avenue. (Sept. 26, 2012 T. 69-70). Mr. WILSON complains vaguely about the septic reserve area located on the south side of the Property, but provides nothing concrete. (*Id.* at 76-77, 83-84). It should be pointed out that Mr. Wilson's home is close in proximity to Rainbow Hall's septic reserve area, so if there were any real problems, he would know. It also follows that Mr. WILSON's inability to articulate specific concerns about the onsite sewage disposal system of the Property should in fact corroborate that the system functions properly, given the close proximity to the WILSON residence.

Dr. ZINN talked about traffic conditions along Park Heights Avenue in front of his home office. (Sept. 25, 2012 T. 248). Fortunately he conceded to having never been in a traffic accident in this area despite 1,500 – 2,000 annual trips in and out of his driveway over the past 22 years of living there. (*Id.*) The CBA will recall that Mr. Cornelius's investigated traffic

accident data found only one (1) accident and it was unrelated to the Rainbow Hall Property. In this sense, it can be said that nothing about the proposed use would impact the traffic concerns expressed by Mssrs. WILSON and ZINN.

B. <u>Traffic Safety</u>

Protestants' traffic expert, Mr. Jon Seitz disagreed with Petitioner's traffic engineer. First, he urged the imposition of American Association of State Highway and Transportation Officials ("AASHTO") design standards for the existing access points at the Property. Mr. Seitz maintained strict adherence to the "Policy on Geometric Design of Highways and Streets" was mandated and that a State Highway Administration ("SHA") access permit was required, even though (1) the SHA stated compliance with these standards was not necessary; (2) the SHA is the final authority on traffic safety for this project; (3) there is the complete accident-free history of the Property; and (4) there is no new construction associated with this request.

With regard to traffic safety, Petitioner's Exhibit 9 unequivocally demonstrates that the SHA has reviewed the proposal and conducted "a field inspection and internal review" resulting in the SHA's determination "that an entrance onto Maryland 129 consistent with current State Highway Administration guidelines is not required". Importantly, the SHA has no objection to approval for special exception in Case No. 2012-0091-X.

The CBA will recall extensive testimony by Mr. Seitz regarding the necessity of incorporating the geometric approach triangles for the exit point at the existing driveways on the Property. Utilizing an intersection site triangle would require the motorist to have an unobstructed view at 3.5 feet above the roadway from 14.5 feet set back from the roadway in either direction. At Rainbow Hall, there exist shrubberies and an embankment, which may partially obstruct a clear view utilizing a setback of that distance and it was upon this that Mr.

Seitz seized to opine the proposed use does not satisfy applicable access requirements. Mr. Seitz did not address specifics to the proposed use. Mr. Seitz's opinion that the existing driveway access points do not satisfy standards for design does not necessarily mean these access points are unsafe. Without question, the SHA reviewed the plan, conducted its own onsite inspection and determined that compliance with AASHTO design standards was not necessary, nor was an access permit.

Next, Mr. Seitz differed from Mr. Cornelius in his analysis regarding site distance and design speed specifications. Essentially Mr. Seitz expressed that most drivers exceed the posted speed limit and for designing an access roadway, AASHTO standards require adding 10 miles per hour above the posted speed limit, which in this case is 40 miles per hour. With greater speed, there is a decrease in safe stopping distance and, according to Mr. Seitz, this would marginalize safety aspects associated with the Property. Of course, Mr. Seitz never addresses the long history of safe use along Park Heights Avenue and conducted no scientific analysis in connection with this case. (He vaguely referred to some of his work in 2004 involving Jemicy School).

During cross-examination, Mr. Seitz conceded that he did not believe the SHA was in error or that it issued its approval of the proposed use upon an erroneous predicate set of facts. (Sept. 26, 2012 T. 238-239). Moreover, Petitioner's Exhibit 16, pulled from the same AASHTO manual introduced by Protestants, explains that the work "a Policy on Geometric Design of Highways and Streets" provides guidance based on established practices that are "supplemented by recent research". It is "intended as a comprehensive reference manual to assist administrative planning and educational efforts pertaining to design formulation". Further, the foreword section of the policy states "[t]he fact that new design values are presented herein *does not imply that*

existing streets and highways are unsafe, nor does it mandate the initiation of improvement projects". Additionally "*specific site investigations and crash history analyses often indicate that the existing design features are performing in a satisfactory manner. The cost of full reconstruction* for these facilities, particularly where major realignment is not needed, *will often not be justified*". (Pet. Ex. 16) (Emphasis added).

The CBA should look to the extensive history and uses of the Property and use common sense, based on the evidence and testimony, to determine whether the existing driveways, as modified by Mr. Cornelius's one-way traffic pattern, will provide safe access and exit points for congregants of any proposed house of worship at Rainbow Hall. This site has functioned safely for many years and, Petitioner submits, the evidence confirms that it will continue to do so if the special exception is granted in this case. In the event the CBA determines any of the concerns expressed by Mr. Seitz to negatively impact any of the § 502.1 factors, it could consider imposing conditions pursuant to BCZR § 502.1 with respect to the access points. If additional safety requirements are necessary, the CBA could require additional site work such as the removal of shrubbery, landscaping, and curtailment of existing embankments to allay safety concerns. Or the CBA could consider the incorporation of the northern 2-way driveway, proposed in connection with the larger church. This driveway is shown on the plan and would obviate all of Protestants' traffic concerns.

C. <u>Environmental</u>

Protestants called Mr. John W. Koontz, who discussed issues relating to the Property's water and sewage disposal systems. Importantly, Mr. Koontz conducted no scientific work, nor did he inspect or test the existing facilities at the Property. Instead, Mr. Koontz volunteered that current capacities of the existing systems require additional state and county approvals.

With respect to the onsite sewage disposal system, Mr. Koontz testified that a permit issued by the Maryland Department of the Environment ("MDE") is required. As support for this, Mr. Koontz relies on COBAR 01.03 (Prot. Ex. 19). The factual basis for Mr. Koontz's conclusion is that the "capacity" of the existing onsite septic system is in excess of 5,000 gallons per day. (The testimony in this case reflects that the actual usage is substantially less than this). A plain reading of Prot. Ex. 19 reveals Mr. Koontz's conclusion is wrong. COBAR's Title 1, Subtitle 3, Chapter 01.01 specifically provides "[t]his chapter applies to the proper citing and design of onsite sewage disposal systems for new construction, repairs to existing onsite sewage disposal systems, and existing onsite sewage disposal systems involved in a subdivision of land". None of these are applicable to this case.

Mr. Koontz agrees that the existing onsite sewage disposal system was approved by Baltimore County in 1997. He offers nothing to refute Petitioner's environmental expert, Robert Sheesley, who testified to the system's excellent functionality and condition.[5]

With respect to well water, Mr. Koontz could not dispute the adequacy and potability of the onsite well water supply. Rather, Mr. Koontz performed calculations which would indicate the well supply system capacity to be in excess of 1,500 gallons per day, thereby necessitating inclusion of the Property on the "Ten Year Baltimore County Water Supply and Sewerage Plan 2000 – 2010". Interestingly, the actual excerpts from the plan submitted as Protestants' Exhibit 18 indicate that the Property (under its former owner, Baptist Home) is delineated on the Baltimore County master water and sewer plan, but for reasons never explained, it is designated

---

[5] The CBA will also note the ZAC comments in this case, particularly the November 2, 2011 memo from David Lykens, Baltimore County Department of Environmental Protection and Sustainability, which indicates "[s]ince the property is served by well and septic, any future changes in usage or any future building permits will need to be reviewed by groundwater management". Petitioner is mindful of these exact comments and would adhere to the requirements.

as "out of service". From a compliance standpoint, Baltimore County is clearly cognizant of the Property and its numerous well supply designations. There is also the question whether a reduction of Mr. Koontz's calculations for a church of only 180 seats (180 x 5 = 900 + 600 = 1,500 gallons per day) would obviate this concern. It should also not be overlooked that the existing water supply has functioned adequately, safely and healthily for many years and Mr. Koontz was unable to identify any actual deficiency in the system itself. Mr. Koontz's opinions have no impact on the irrefutable evidence regarding the well system itself. If the CBA has any hesitation with respect to Mr. Koontz's conclusion, a condition relating to a reduction of the number of seats to a maximum of 180 might be the appropriate course.

In any event, there was nothing from Mr. Koontz's testimony to suggest that an amendment to the master water and sewer plan, or for that matter, an MDE permit for the onsite sewage disposal system would render the proposed use on the Property more safe or less safe. Mr. Koontz sidestepped the environmental issues embedded in BCZR § 502.1 and the RC-2-specific requirements for special exception. In the final analysis, Baltimore County has recently inspected the onsite sewage disposal system and found it to be "functioning adequately". With regard to the water supply, the uncontroverted evidence supports that the proposed use will have no negative impact on the surrounding area. There can be no serious debate that the water and septic systems currently servicing the Property are anything but sufficient. If anything, the systems are too large and sophisticated for the proposed use. On this basis, Petitioner should not be penalized where the complained-about aspects of these systems have zero impact on the special exception factors.

D. Lack of Details

Finally, Protestants rely on the testimony of James Patton. Mr. Patton's expert opinion was essentially that he "had no opinion". (Sept. 26, 2012 T. 94). Mr. Patton believed the plan and petition for a 212-seat church or house of worship lacked specificity and that there were insufficient details provided for the CBA to grant the Petition. On this point, Mr. Patton never addressed any of Petitioner's evidence about the Property, its prior uses and proposed use as a church. And Mr. Patton was unable to point to any specific requirement that a petition for special exception provide anything more than the generic description set forth in the BCZR itself. Under the BCZR, the Baltimore County Council has determined to designate various uses as allowed only by special exception in various zones. Consistent with the *Loyola College* case, this "considers in a generic sense that certain adverse effects, at least in type, potentially associated with... these uses are likely to occur wherever in the particular zone they may be located in that sense... provided that, at a given location, adduced evidence does not convince the body to whom the power to grant or deny individual applications is given that actual incompatibility would occur". *Loyola College*, at 106. Mr. Patton had sufficient factual evidence from which he could have formulated an opinion, but he chose not to do so. Mr. Patton did concede that there *could be* sufficient details to justify the grant of a special exception. (*Id.* at 100). One wonders if Rainbow Hall is not suitable for a religious house of worship, what property would be?

For the most part, the proposed use is consistent with what the prior church use was from 2006 through 2010. It maintains all of its institutional-grade systems from the days it operated as an 80-bed nursing home. Nothing proposed in this case would intensify that prior use. While a different use, it represents a less intense use specifically authorized for the RC-2 zone. If the Baltimore County Council had intended to impose additional restrictions, it would have

delineated those in the BCZR. Petitioner can find no provision in the Baltimore County Code, BCZR, or case law whereby a special exception use needs to be accompanied by the kind of specifics and detail Protestants would require.

VII. CONCLUSION

For the aforegoing reasons, Petitioner requests that its Petition for Special Exception be granted, subject to any reasonable conditions, restrictions or regulations the CBA may deem necessary or advisable for the protection of surrounding and neighboring properties.

Respectfully submitted,

Michael L. Snyder
Coady & Farley
400 Allegheny Avenue
Towson, Maryland 21204
(410) 337-0200

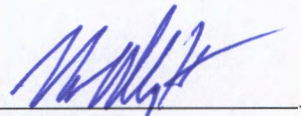
Michael T. Wyatt
Marlow & Wyatt
404 Allegheny Avenue
Towson, Maryland 21204
(410) 821-1013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of November, 2012, a copy of the foregoing was sent via hand delivery, to:

Michael R. McCann, Esquire
118 West Pennsylvania Avenue
Towson, Maryland 21204
Baltimore, Maryland 21203
Attorney for VALLEYS PLANNING COUNCIL, INC.

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, Maryland 21204



Michael T. Wyatt

M:\Wyatt\Wright, H\Church\Memorandum 11-13-12 final.doc

MARLOW & WYATT

Attorneys-At-Law
404 Allegheny Avenue
Baltimore, Maryland 21204
(410) 821-1013
Telefax (410) 821-5432
www.marlowwyatt.com

William F.C. Marlow, Jr.
Michael T. Wyatt

Admitted in Maryland and
The District of Columbia

Washington D.C. Address
Suite 300
6935 Wisconsin Avenue
Washington, D.C. 20815

October 18, 2012

VIA EMAIL AND REGULAR MAIL

Adam Rosenblatt, Esquire
Permits, Approvals and Inspections
County Office Building
111 West Chesapeake Avenue, Suite 105
Towson, Maryland, 21204

Re: Rainbow Hall –
10729 Park Heights Avenue
Owings Mills, Maryland 21117 (the "Property")
Valleys Planning Council, Inc. ("VPC") v. Rainbow Hall, LLC
CBA Case No. 10-280-SPH / Circuit Court for Baltimore
County Case No: 03-C-12-002379 ("VPC Zoning Case")
Rainbow Hall, LLC – Code Enforcement Case

Dear Adam:

I am following up on our conversation this morning regarding the above-referenced matters. As we discussed, Judge Cavanaugh recently affirmed the County Board of Appeals decision that the existing apartment use is not permitted under the current zoning for the Property, either under a nonconforming use or special exception theory. When you and I were last dealing with this issue, the Circuit Court had issued a stay of the enforcement, but at this point, it appears that stay will expire. We are still considering appeals options.

In order to address the anticipated reactivation of the code enforcement case, Rainbow Hall, LLC will issue written notice to any remaining residents in the apartments at the main building to immediately vacate. I would expect some of these residents, having already been put on notice to vacate back in the spring, will leave immediately. However, it could be that some residents would require a reasonable period of time, up to thirty (30) days), to vacate the premises. And in the event there are any tenants refusing to leave, the property owner would institute eviction proceedings.

In any event, the property owner expects the remaining residents in the apartments will be moved out within thirty (30) days and you and I agreed that this would resolve the code enforcement case.

Thank you for your continued cooperation in this regard.

Very truly yours,

/S/ Michael T. Wyatt

Michael T. Wyatt

MTW/sjm
cc: Mr. Henry M. Wright, Jr.
Michael L. Snyder, Esquire
David S. Thaler, P.E.
Enclosures

Michael T. Wyatt

From: Michael T. Wyatt <mwyatt@marlowwyatt.com>
Sent: Friday, November 09, 2012 2:04 PM
To: 'Adam Rosenblatt'
Cc: 'David Janiszewski'; 'MSnyder@coadyandfarley.com'; 'atlantic.wine@verizon.net'
Subject: RE: Rainbow Hall

Adam: That sounds good. Then we'll put this matter behind us.

Thanks and have a good weekend,

Michael

Michael T. Wyatt
Marlow & Wyatt
404 Allegheny Avenue
Towson, MD 21204
Phone: (410) 821-1013
Fax: (410) 821-5432

From: Adam Rosenblatt [mailto:arosenblatt@baltimorecountymd.gov]
Sent: Friday, November 09, 2012 1:37 PM
To: Michael T. Wyatt
Cc: David Janiszewski; MSnyder@coadyandfarley.com; atlantic.wine@verizon.net
Subject: RE: Rainbow Hall

Our inspector will meet you there at 9:00am on the 29th.

Adam M. Rosenblatt
Assistant to the Director and
Assistant County Attorney
Baltimore County Department of
Permits, Approvals and Inspections
County Office Building
111 W. Chesapeake Avenue
Suite 105
Towson, Maryland 21204
(410) 887-3353

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>>> "Michael T. Wyatt" <mwyatt@marlowwyatt.com> 11/8/2012 3:06 PM >>>
Lets do 9AM.

Thanks.

Michael T. Wyatt
Marlow & Wyatt
404 Allegheny Avenue
Towson, MD 21204
Phone: (410) 821-1013
Fax: (410) 821-5432

From: Adam Rosenblatt [mailto:arosenblatt@baltimorecountymd.gov]
Sent: Thursday, November 08, 2012 2:43 PM
To: Michael T. Wyatt
Cc: MSnyder@coadyandfarley.com; atlantic.wine@verizon.net
Subject: RE: Rainbow Hall

The 29th works for my inspector. Pick a time and he will meet you there.

Adam M. Rosenblatt
Assistant to the Director and
Assistant County Attorney
Baltimore County Department of
Permits, Approvals and Inspections
County Office Building
111 W. Chesapeake Avenue
Suite 105
Towson, Maryland 21204
(410) 887-3353

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>>> "Michael T. Wyatt" <mwyatt@marlowwyatt.com> 11/7/2012 5:54 PM >>>
Sorry, just realized a conflict. Can you do the 29th in the AM or anytime on the 30th?

Thanks.

Michael T. Wyatt

Marlow & Wyatt
404 Allegheny Avenue
Towson, MD 21204
Phone: (410) 821-1013
Fax: (410) 821-5432

From: Adam Rosenblatt [mailto:arosenblatt@baltimorecountymd.gov]
Sent: Wednesday, November 07, 2012 3:27 PM
To: mwyatt@marlowwyatt.com
Cc: MSnyder@coadyandfarley.com; atlantic.wine@verizon.net
Subject: Re: Rainbow Hall

Our inspector can do between 10-1 that day

>>> "Michael T. Wyatt" <mwyatt@marlowwyatt.com> 11/7/2012 3:23:39 PM >>>
Adam: Following up with you, does the afternoon of the 21st work to do the inspection of Rainbow Hall?

Let me know. Thanks,

Michael

Michael T. Wyatt
Marlow & Wyatt
404 Allegheny Avenue
Towson, MD 21204
Phone: (410) 821-1013
Fax: (410) 821-5432

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RECEIVED
NOV 13 2012
BALTIMORE COUNTY
BOARD OF APPEALS

WILLIAM F. C. MARLOW, JR.
MICHAEL T. WYATT
ADMITTED IN MARYLAND AND
THE DISTRICT OF COLUMBIA

WASHINGTON ADDRESS
SUITE 300
6935 WISCONSIN AVENUE
WASHINGTON, D.C. 20815

November 13, 2012

VIA HAND DELIVERY

Theresa Shelton, Administrator
County Board of Appeals of Baltimore County
Suite 203, Jefferson Building
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: In Re: Rainbow Hall, LLC
10729 Park Heights Avenue
Case No: 12-091-X

Dear Ms. Shelton:

This transmits one (1) original and three (3) copies of Petitioner Rainbow Hall, LLC's Memorandum in connection with the above-referenced special exception case.

Thank you for your customary courtesies.

Very truly yours,

Michael T. Wyatt

MTW/sjm
cc: Mr. Henry M. Wright, Jr.
Michael L. Snyder, Esquire
Michael R. McCann, Esquire
David S. Thaler, P.E.
Peter Max Zimmerman, Esquire
Enclosures

M:\Wyatt\Wright, H\Church\Board Of Appeals Ltr 11-13-12.Doc

11/7/12

RE: PETITION FOR SPECIAL EXCEPTION 10729 Park Heights Avenue; SE corner of Park Heights Avenue & Velvet Valley Way 3rd Election & 2nd Councilmanic Districts Legal Owner(s): Rainbow Hall, LLC Petitioner(s)	* * * * * *	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY 2012-091-X

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BOARD OF APPEALS

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

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

People Counsel for Baltimore County files this post-hearing memorandum. This updates and supplements the office's pre-hearing correspondence dated September 20, 2012, which focuses on the interrelationship with the pending litigation involving the 19.6 acre property owned by Rainbow Hall, LLC (RHLLC) at 10729 Park Heights Avenue in the Greenspring Valley area. Case No. 10-280-SPH. We attach to this memorandum the following documents from that litigation:

1. SDAT document identifying the property at 10729 Park Heights Avenue, reflecting the acquisition of the property by RHLLC in 2002.

2. The County Board of Appeals opinion (on *de novo* appeal) dated February 24, 2012.

3. The April 19, 2012 stay order signed by Circuit Judge John Turnbull.

4. The October 12, 2012 Opinion and Order by Judge Patrick Cavanaugh, denying the appeal and thereby affirming the County Board of Appeals opinion, filed October 19, 2012.

5. The current docket sheet for RHLLC's petition for judicial review, Case No. 03-C-12-002379.

The above documents in the pending litigation show that, so far as has been adjudicated, Petitioner Rainbow Hall LLC (RHLLC) has been operating an apartment house with seven (7) apartments on it property contrary to the pertinent zoning regulations in the R.C. 2 (Agricultural) Zone. The R.C. 2 Zone allows just two dwellings

on any property having between 2 and 100 acres, such as the property here. BCZR Section 1A01.3.B.1.

The main questions presented in the pending litigation were whether the apartment use and separate cottage use qualify as legal non-conforming uses. RHLLC also claimed that any restriction on its property would be confiscatory.

In its February 24, 2012 opinion, the County Board of Appeals held that the apartment use does not qualify as a legal nonconforming use, but that the three cottages do qualify and can legally continue in use. The CBA also rejected RHLLC's claim that the application of the R.C. 2 Zone would be confiscatory.

On March 2, 2012, RHLLC filed a petition for judicial review of the part of the order finding the apartment use to conflict with the zoning law. Valleys Planning Council, Petitioner in the pending case, filed a response, as did People's Counsel. They did not, however, file a cross-petition to challenge the part of the ruling which allowed the cottages to continue as nonconforming uses.

Concerned with potential enforcement action by Baltimore County, RHLLC filed on March 23 a motion to stay action of administrative agency pending appeal. On April 19, Judge John Turnbull, the administrative judge, signed a stay order, effectively allowing the apartment house to continue in use subject to further order of the Court.

However, on October 12, 2012, subsequent to oral argument, Judge Patrick Cavanaugh issued his opinion and order affirming the CBA's decision. His order denied RHLLC's appeal, effectively superseding the stay order.

Unless overturned on appeal to the Court of Special Appeals and/or Court of Appeals, the resolution of the pending litigation reflects that RHLLC has been operating its apartment house in violation of the Baltimore County Zoning Regulations for about a decade, including for the duration of the litigation and up to the present date.

This history places in question the relationship between RHLLC's violation of the Baltimore County Zoning Regulations at the time of its filing the present petition in 2011 and its continuing violation up to the present date. The relevant law is in Baltimore County Code Section 32-114(c). This provides as follows:

"SECTION 32-4-114 COMPLIANCE WITH LAWS ND OTHER REGULATIONS"

* * *

> "(c) *County prohibited from processing if violations exist.* The county may not process plans or permits for a proposed development if the applicant owns or has an interest in property located in the county upon which there exists, at the time of the application or during the processing of the application, a violation of the zoning or development regulations of the county."

The legislative intent is clear, to preclude the processing of zoning petitions by parties with property in violation of the zoning or development regulations. As a consequence, while RHLLC has the right to litigate the legality of its apartment use, it must face the consequence that if its use is in violation, then it is precluded from filing and processing any zoning petition, such as the present one here. The practical effect of the law is to disallow what would amount to a privilege for zoning violators to continue violations while petitioning for zoning relief. The other side of the coin of this privilege is the burden and oppression on neighboring property owners.

To be sure, RHLLC has the right to litigate the validity of its apartment house use. This includes a potential appeal to the Court of Special Appeals and/or Court of Appeals. If RHLLC chooses to file an appeal, a reversal of the CBA and Circuit Court decisions could erase the effective finding of violation and thus legalize the processing of the present petition. However, if the appellate courts affirm the CBA and Circuit Court, which our office submits would be the correct decision; it would also sustain the view that the present petition should never have been processed.

Under these circumstances, the only possible action for the CBA is to either dismiss without prejudice the special exception or stay the current case pending the conclusion of the pending litigation.

The main point is that the CBA should and must address the interrelationship and impact of the pending nonconforming use litigation on the present special exception case. The adjudication so far reflects that RHLLC has engaged in a persistent violation of the zoning regulations, without any redress. This should not be ignored or downplayed.

Unless the CBA decision is overturned on appeal, the legislative intent is to prevent a seamless transition from violation to new approval of a different use or development.

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 7th day of November, 2012, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed to Michael Wyatt, Esquire, Marlow & Wyatt, 404 Allegheny Avenue, Towson, Maryland 21204 and Michael McCann, 118 West Pennsylvania Avenue, Towson, Maryland 21204.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Maryland Department of Assessments and Taxation
Real Property Data Search (vw5.1A)
BALTIMORE COUNTY

Go Back
View Map
New Search
GroundRent Redemption
GroundRent Registration

Account Identifier: District - 03 Account Number - 2300003036

Owner Information

Owner Name:	RAINBOW HALL INC	**Use:**	COMMERCIAL
		Principal Residence:	NO
Mailing Address:	4804 BENSON AVE BALTIMORE MD 21227-1501	**Deed Reference:**	1) /16318/ 00035 2)

Location & Structure Information

Premises Address
10729 PARK HEIGHTS AVE
0-0000

Legal Description
19.6742 AC
10729 PARK HGHTS AVE ES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
0059	0020	0270		0000			5	1	Plat Ref: 0070/ 0095

Special Tax Areas Town NONE
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1917	15337	19.6700 AC	06

Stories	Basement	Type	Exterior
		GROUP HOME	

Value Information

	Base Value	Value As Of 01/01/2010	Phase-in Assessments As Of 07/01/2012	As Of 07/01/2013
Land	785,600	785,600		
Improvements:	467,100	467,100		
Total:	1,252,700	1,252,700	1,252,700	
Preferential Land:	0			

Transfer Information

Seller:	BAPTIST HOME OF MD INC	**Date:**	04/15/2002	**Price:**	$1,500,000
Type:	ARMS LENGTH IMPROVED	**Deed1:**	/16318/ 00035	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2012	07/01/2013
County	000	0.00	
State	000	0.00	
Municipal	000	0.00	

Tax Exempt:
Exempt Class:

Special Tax Recapture:
NONE

Homestead Application Information

Homestead Application Status: No Application

IN THE MATTER OF RAINBOW HALL, LLC – Legal Owner/Respondent 10729 Park Heights Avenue Baltimore, MD 21117 RE: Petition for Special Hearing to Determine the Uses of the Property pursuant to BCZR 500.7	*	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY Case No. 10-280-SPH

* * * * * * * * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Zoning Commissioner of Baltimore County in which the Zoning Commissioner granted the Petitioner, Valleys Planning Council, Inc.'s, request for Special Hearing pursuant to Baltimore County Zoning Regulations ("B.C.Z.R.") §500.7, and found that the Rainbow Hall main house could not be used as a "multi-family building" or "boarding house" under B.C.Z.R., but that the two (2) ranchers and the older cottage were non-conforming uses and may be used as single family homes.

Dissatisfied with that decision, both Parties noted appeals to this Board. A public hearing was held on multiple days: November 2, 3, and 4, 2011. The Petitioner, Valleys Planning Council ('VPC"), was represented by Michael McCann, Esquire. The Respondent, Rainbow Hall, L.L.C. ("Rainbow Hall, L.L.C.") was represented by Michael T. Wyatt, Esquire and Michael L. Snyder, Esquire. A public deliberation was held on January 19, 2012.

Facts and Evidence

The subject property is a 19 acre parcel located at 10709 Park Heights Avenue in the Stevenson/Greenspring Valley area of Baltimore County (the "Property"). The zoning for the Property is RC2. The main house on the Property was built in approximately 1917 and was occupied by General Douglas MacArthur and his family during the 1920s. It was named "Rainbow Hill Estate" in honor of General MacArthur's Rainbow Division of World War I. A historical feature on the Property is a Ming tree given to General MacArthur by Japanese Emperor Hirohito in 1926. (Pet. Ex. 4).

Also located on the Property are a small cottage built in 1898 located at 10709 Park Heights Avenue (the "cottage") as well as two (2) single family homes built in the 1970s (10731 and 10733 Park Heights Avenue) (the "ranchers").

In the 1940s, the Property was sold to Henry and Ruth Rosenberg who occupied the Property as their home until 1963, when they sold it to the Baptist Home of Maryland (the "Baptist Home"). (Pet. Ex. 25). The Property was renamed "Rainbow Hall." It was purchased to "give improved facilities to a greater number of aged persons." *Id.* The Baptist Home operated the Property until 2001 when it discontinued its operation.

The Property has a long zoning history which was reflected within the Opinion of the Zoning Commissioner at p.3 entitled "Zoning Chronology." The Zoning Chronology was admitted into evidence as Petitioner's Ex. 30. That exhibits shows that beginning on November 26, 1963, the Baptist Home received a special exception for a "boarding house for the aged (40 units/persons)." The zoning in 1963 was R-40. The Order, signed by Zoning Commissioner John G. Rose, granted the special exception as follows:

P42

PETITION OF RAINBOW HALL, LLC FOR JUDICIAL REVIEW OF THE DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY 2nd Floor, Suite 203 105 West Chesapeake Avenue Towson, Maryland 21204	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
IN THE MATTER OF RAINBOW HALL, LLC – Legal Owner / Appellant 10729 Park Heights Avenue Owings Mills, Maryland 21117	*	
Baltimore Co. Board of Appeals Case No: 10-280-SPH	*	Case No: 03-C-12-002379

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

ORDER

Upon consideration of Appellant's Motion to Stay Action of Administrative Agency Pending Appeal and the response(s) thereto, if any, it is this 19th day of April, 2012 by the Circuit Court for Baltimore County

ORDERED that Appellant's Motion be, and the same hereby is, GRANTED; and it is further

ORDERED that Baltimore County be, and the same hereby is, precluded and/or enjoined from instituting or continuing any zoning or code enforcement proceedings against Appellant or the property known and designated as 10729 Park Heights Avenue, Owings Mills, Maryland 21117 with respect to or arising out of the above-referenced appealed-from decision of the County Board of Appeals of Baltimore County, pending further order of this Court.

Judge

RECEIVED BY
APR 25 2012
Property Law Dept.
for Baltimore County

True Copy Test
JULIE L. ENSOR, Clerk
Per
Assistant Clerk

FILED APR 23 2012

	*	IN THE
	*	CIRCUIT COURT
IN THE MATTER OF:	*	FOR
RAINBOW HALL LLC	*	BALTIMORE COUNTY
	*	Case No.: 03-C-12-002379
	*	

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

OPINION ON RAINBOW HALL LLC'S APPEAL FROM THE COUNTY BOARD OF APPEALS' DECISION

Question Presented for Appeal

Did the Board of Appeals err in finding that the property in question of Rainbow Hall, LLC, located at 10729 Park Heights Avenue, Baltimore, is being used for nonconforming uses in violation of the Baltimore County Zoning Regulations for zone R.C.2?

Summary

This Court finds that the Board of Appeals did not err in finding that Rainbow Hall, LLC's use of the property as rental apartments and a catering facility violates the zoning requirements of R.C.2. Accordingly, this Court affirms the Board's decision. Further, this Court finds that Valleys Planning Council, Inc. and Messrs. Mark Wilson and Harlan Zinn had standing to file the Petition for Special Hearing with the Zoning Commissioner of Baltimore County regarding uses of the Rainbow Hall property. The conclusions drawn from the facts and inferences in the record could be reached by a reasonable mind, and thus, the Board of Appeals' decision is AFFIRMED.

Statement of Facts

The present litigation arises from the use of Rainbow Hall, LLC's property (hereinafter "Rainbow Hall" or "the property") at 10729 Park Heights Avenue, Baltimore. The 19.67-acre property is currently zoned R.C.2 and 5 under Baltimore County Zoning Regulations (hereinafter "BCZR"). *See* BCZR §§ 1A01.1 and 1A04.1. The property's zoning and ownership history has changed numerous times and is discussed herein where relevant to this case.

In 1963, the Baptist Home of Maryland, Inc. (hereinafter "Baptist Home") purchased the property and obtained a special exception from Baltimore County to run a convalescent (nursing) home for the aged of the Baptist denomination under the zoning designation of R40. In 1976, as part of Baltimore County's Comprehensive Zoning Map Process (hereinafter "CZMP"), the property was zoned to R.C.2 and 5. The Zoning Commissioner determined that the convalescent home was a legal nonconforming use. The zoning regulations permit a nonconforming use that is approved by the Commission to continue unless there has been a change in the use or an abandonment or discontinuance of such nonconforming use for one year or more. BCZR §§ 101.1 and 104.1. Under the 1988 CZMP of Baltimore County, the property's zoning was changed from R.C.2 and 5 to R.C.3 and 5. On October 11, 1988, the Valleys Planning Council, Inc. (hereinafter "VPC"), a land use planning group, and the Baptist Home entered into a Restrictive Covenant Agreement (hereinafter "the covenant") whereby Baptist Home agreed to use the property only as a nursing home but it would bind future successors in title to uses permitted solely under the R.C.2 zone.

In February 2001, the Baptist Home closed and Mr. Henry Wright, Jr., the sole member of Rainbow Hall, LLC, purchased the property, which was conveyed by deed on April 10, 2002. The Residential Contract of Sale notes that the property is subject to the covenant. The only

Circuit Court of Maryland

Go Back

Case Information

Court System: **Circuit Court for Baltimore County - Civil System**
Case Number: **03C12002379**
Title: **In the Matter of Rainbow Hall L L C**
Case Type: **Administrative Agency Appeal** Filing Date: **03/02/2012**
Case Status: **Open/Active**

Plaintiff/Petitioner Information

(Each Plaintiff/Petitioner is displayed below)
Party Type: **Petitioner** Party No.: **1**
Business or Organization Name: **Rainbow Hall L L C**
Address: **10729 Park Heights Avenue**
City: **Owings Mills** State: **MD** Zip Code: **21117**

Attorney(s) for the Plaintiff/Petitioner
Name: **Wyatt, Esq, Michael T**
Appearance Date: **03/06/2012**
Practice Name: **Marlow & Wyatt**
Address: **404 Allegheny Avenue**
City: **Towson** State: **MD** Zip Code: **21204**
Name: **Snyder, Esq, Michael L**
Appearance Date: **06/05/2012**
Practice Name: **Coady & Farley**
Address: **400 Allegheny Ave**
City: **Towson** State: **MD** Zip Code: **21204**

Court Scheduling Information

Event Type: **Civil Non-Jury Trial** Notice Date:
Event Date: **08/09/2012** Event Time: **09:30 AM**
Result: **Postponed/Reset** Result Date: **06/21/2012**

Event Type: **Civil Non-Jury Trial** Notice Date: **06/21/2012**
Event Date: **09/19/2012** Event Time: **09:30 AM**
Result: **Held/Concluded** Result Date: **09/19/2012**

Related Persons Information

(Each Related person is displayed below)
Party Type: **Administrative Agency** Party No.: **1**
Business or Organization Name: **Board Of Appeals**
Address: **Jefferson Bldg, Suite 203**
City: **Towson** State: **MD** Zip Code: **21204**

Attorney(s) for the Related Persons

Name: **Zimmerman, Esq, Peter M**
Practice Name: **People's Counsel For Baltimore County**
Address: **105 West Chesapeake Ave.**
Room 204
City: **Towson** State: **MD** Zip Code: **21204**
Name: **Demilio, Esq, Carole S**
Practice Name: **People's Counsel For Baltimore County**
Address: **105 W Chesapeake Avenue**
Room 204
City: **Towson** State: **MD** Zip Code: **21204**

Party Type: **Interested Party** Party No.: **3**
Name: **Zinn, Harlan**

Attorney(s) for the Related Persons

Name: **McCann, Esq, Michael R**
Practice Name: **Michael R McCann P A**
Address: **118 W Pennsylvania Ave**
City: **Towson** State: **MD** Zip Code: **21204**

Party Type: **Interested Party** Party No.: **1**
Business or Organization Name: **The Valleys Planning Council Inc**

Attorney(s) for the Related Persons

Name: **McCann, Esq, Michael R**
Practice Name: **Michael R McCann P A**
Address: **118 W Pennsylvania Ave**
City: **Towson** State: **MD** Zip Code: **21204**

Party Type: **Interested Party** Party No.: **2**
Name: **Wilson, Mark**

Attorney(s) for the Related Persons

Name: **McCann, Esq, Michael R**
Practice Name: **Michael R McCann P A**
Address: **118 W Pennsylvania Ave**
City: **Towson** State: **MD** Zip Code: **21204**

Document Tracking

(Each Document listed. Documents are listed in Document No./Sequence No. order)

Doc No./Seq No.: **1/0**
File Date: **03/02/2012** Close Date: Decision:
Party Type: **Petitioner** Party No.: **1**
Document Name: **Petition for Judicial Review**

Doc No./Seq No.: **1/1**
File Date: **03/15/2012** Close Date: Decision:
Party Type: **Administrative Agency** Party No.: **1**
Document Name: **Response to Petition for Judicial Review**

Doc No./Seq No.: **1/2**
File Date: **03/23/2012** Close Date: Decision:
Party Type: **Interested Party** Party No.: **1**
Document Name: **Response to Petition for Judicial Review**
Filed by ITP001-The Valleys Planning Council Inc, ITP002-Wilson, ITP003-Zinn

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Doc No./Seq No.: **2/0**
File Date: **03/08/2012** Close Date: Decision:
Party Type: **Administrative Agency** Party No.: **1**
Document Name: **Certificate of Compliance**

Doc No./Seq No.: **3/0**
File Date: **03/23/2012** Close Date: **04/23/2012** Decision: **Granted**
Party Type: **Petitioner** Party No.: **1**
Document Name: **Motion to Stay Action of Administrative Agency Pending Appeal with exhibits**
Filed by Attorney: Michael T Wyatt Esq

Doc No./Seq No.: **3/1**
File Date: **04/02/2012** Close Date: Decision:
Party Type: **Administrative Agency** Party No.: **1**
Document Name: **Answer w/Exhibit**

Doc No./Seq No.: **3/2**
File Date: **04/10/2012** Close Date: Decision:
Party Type: **Interested Party** Party No.: **1**
Document Name: **Response to Motion to Stay Action of Administrative Agency Pending Apeal with**
exhibit
Filed by ITP001-The Valleys Planning Council Inc, ITP002-Wilson, ITP003-Zinn

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Doc No./Seq No.: **4/0**
File Date: **05/04/2012** Close Date: Decision:
Party Type: **Administrative Agency** Party No.: **1**
Document Name: **Transcript of Record from Adm Agency ***

Doc No./Seq No.: **5/0**
File Date: **05/04/2012** Close Date: **05/04/2012** Decision:
Party Type: **Administrative Agency** Party No.: **1**
Document Name: **Notice of Transcript of Record Sent**

Doc No./Seq No.: **6/0**
File Date: **05/04/2012** Close Date: **05/04/2012** Decision:
Party Type: **Interested Party** Party No.: **1**
Document Name: **Notice of Transcript of Record Sent**

Doc No./Seq No.: **7/0**
File Date: **05/04/2012** Close Date: **05/04/2012** Decision:
Party Type: **Petitioner** Party No.: **1**
Document Name: **Notice of Transcript of Record Sent**

Doc No./Seq No.: **8/0**
File Date: **06/04/2012** Close Date: **06/04/2012** Decision:
Document Name: **Scheduling Order**

Doc No./Seq No.: **9/0**
File Date: **06/04/2012** Close Date: **06/05/2012** Decision:
Party Type: **Petitioner** Party No.: **1**
Document Name: **Appellant Rainbow Hall LLC's Memorandum in Support of Petition for Judicial Review**

Doc No./Seq No.: **10/0**
File Date: **06/21/2012** Close Date: **06/21/2012** Decision:
Document Name: **Hearing Notice**

Doc No./Seq No.: **11/0**
File Date: **06/22/2012** Close Date: **06/25/2012** Decision:
Party Type: **Petitioner** Party No.: **1**
Document Name: **Stipulation**
Filed by PET001-Rainbow Hall L L C, ADA001-Board Of Appeals, ITP002-Wilson, ITP003-Zinn, ITP001-The Valleys Planning Council Inc
Filed by Attorney: Michael T Wyatt Esq,Carole S Demilio Esq,Michael R McCann Esq,Michael R McCann Esq,Michael R McCann Esq

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Doc No./Seq No.: **12/0**
File Date: **07/31/2012** Close Date: **08/04/2012** Decision:
Party Type: **Administrative Agency** Party No.: **1**
Document Name: **Memorandum of Peoples Counsel for Baltimore County**

Doc No./Seq No.: **13/0**
File Date: **08/02/2012** Close Date: **08/08/2012** Decision:
Party Type: **Interested Party** Party No.: **1**
Document Name: **Appellees' Memorandum in Support of Response to Petition for Judicial Review ***
Filed by ITP001-The Valleys Planning Council Inc, ITP003-Zinn, ITP002-Wilson

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Doc No./Seq No.: **14/0**
File Date: **09/19/2012** Close Date: Decision:
Document Name: **Open Court Proceeding**
Sept.19,2012 Hon. Patrick Cavanaugh Hearing had in re:Administrative appeal. Decision hel sub-curia. Opinion and Order to be filed.

Doc No./Seq No.: **15/0**
File Date: **10/19/2012** Close Date: **10/19/2012** Decision: **Ruled**
Document Name: **Opinion of the Court this Court finds that the record reflects that all deteminations made by the Board of Appeals are supported by the record and illegal use of the property must stop immediately as specified. Therefore, petitioners' appeal is Denied.**

Doc No./Seq No.: **16/0**
File Date: **10/22/2012** Close Date: Decision:
Document Name: **DOCKET ENTRIES SENT TO BALTIMORE COUNTY BOARD OF APPEALS**

5/7/12

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
SE corner of Park Heights Avenue and Velvet Valley Way	*	OFFICE OF
3rd Election District 2nd Councilmanic District	*	ADMINISTRATIVE HEARINGS
(10729 Park Heights Avenue)	*	FOR BALTIMORE COUNTY
Rainbow Hall, LLC *Legal Owner*	*	**Case No. 2012-0091-X**

* * * * * * * *

OPINION AND ORDER

This matter comes before this Administrative Law Judge as a Petition for Special Exception filed for property located at 10729 Park Heights Avenue. The Petition was filed by the legal owner of the subject property, Rainbow Hall, LLC. The Special Exception is to use the herein described property for a church and other buildings for religious worship per Baltimore County Zoning Regulations ("B.C.Z.R.") §§ 1A01.2.C.6, 502 and 505. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 2.

Appearing at the hearing on behalf of the request in support of Rainbow Hall, LLC were Henry M. Wright, Jr., David S. Thaler, P.E., and Stacey McArthur with D.S. Thaler and Associates, Inc., Mickey Cornelius, with the Traffic Group, Michael L. Snyder, Esquire with Coady & Farley and Michael T. Wyatt, Esquire with Marlow & Wyatt. Appearing in opposition were Teresa Moore, Manny Bronstein, Albert M. Shapiro, Louis J. Rosenthal, Barry Zuckerman, Harland Zinn and Mark Wilson. Also appearing on behalf of the Valleys Planning Council was Michael R. McCann, Esquire.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and

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By DW

Sustainability (DEPS) dated November 2, 2011, which state that development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains and must comply with the Forest Conservation Regulations.

Comments were received from the Department of Planning dated November 10, 2011. That Department was primarily concerned with several references on the plan to eight multi-family dwellings; those references were removed on the redlined Plan (Petitioner's Exhibit 2).

The property at 10729 Park Heights Avenue, known as Rainbow Hill, is listed on the Baltimore County Final Landmarks List as Final Landmark No. 198. The property has an interesting history detailed by former Zoning Commissioner Wiseman, in an Order dated January 13, 2011 in Case No. 2010-0280-SPH. The present proposal seeks permission to establish a 212 seat church within the approximately 20,000 square foot main house on the premises. No new construction or additions to any structures on site is proposed or required.

The Petitioner's first witness was Stacey McArthur, a landscape architect with the firm of DS Thaler and Associates. Ms. McArthur was accepted as an expert witness in landscape architecture and land planning. Ms. McArthur testified that she prepared the redlined plan identified as Petitioner's Exhibit 2, which contained updated zoning history and also removed the references to the eight multi-family dwellings. Ms. McArthur also indicated that the driveway widths were reduced from 18' to 16' on the redlined plan, to reduce the amount of impervious surface.

On cross-examination, Ms. McArthur conceded that this was the second revision to the site plan, and she explained that neither revision had been sent to the community. She explained that originally 156 seats were proposed for the church, and now approval was being sought for a 212-

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seat facility. Ms. McArthur explained that the additional seats were added as a consequence of eliminating the multi-family dwellings on site.

Lance Roth was the next witness in Petitioner's case, and he explained that he was a parishioner at the Church of the Resurrection, which met at the Rainbow Hall facility from approximately 2006 through 2010. Mr. Roth explained that the church at this time had approximately 140 members, and that between 50 and 70 cars parked at the Rainbow Hall site for church services, which were conducted every Sunday morning. Mr. Roth described the area as very quiet on Sunday mornings, and felt that the location was ideal for a church. On cross-examination, Mr. Roth testified that his church did not pay rent to Mr. Wright, but instead agreed to cover utility costs and other expenses that were associated with the church operations. Mr. Roth explained that the church met for its services on the first floor of the main building at Rainbow Hall, and did not use other portions of that structure.

The next witness in Petitioner's case was Robert Powell, who has worked for Baltimore County (in the Department of Environmental Protection and Sustainability) for approximately 35 years. Mr. Powell testified that he was familiar with the Rainbow Hall property, having been personally involved with the significant septic repair and restoration performed in 1997. Mr. Powell indicated that he was familiar with the site, and had recently inspected both the buildings and grounds. Mr. Powell stated that the on-site septic system was designed to handle what was in essence an 80-bed nursing home, and that the church use would generate much less waste flow. As such, Mr. Powell believed the system was more than adequate, and that the church would use less than 50% of the capacity for which the system was designed. On cross-examination, Mr. Powell indicated that the recommendations found on page 2 of his April, 2012 letter (marked as Petitioner's Exhibit 5) were in the nature of "cosmetic" issues. Mr. Powell also testified that he believed the

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By DW

water and sewer designations for the property were S-7, W-7, and that none of the existing septic drain areas or the two reserve areas designated on the plan were located on steep slopes.

Mickey Cornelius, a traffic engineer with Traffic Group, Inc., was the next witness in Petitioner's case. Mr. Cornelius was accepted as an expert in traffic engineering and explained that he was engaged in September, 2010 to perform a traffic study for the Petitioner's proposal to construct a 1,000-seat sanctuary, which proposal remains pending and is undergoing County review at the present time. Mr. Cornelius explained that he did not perform an additional report for the 212-seat church, given that his findings in the study for the 1,000-seat church would obviously be applicable in the case of the present proposal which has much smaller capacity. Mr. Cornelius testified that all intersections in the area are rated at a level of service A or B, and that the existing ingress and egress points and driveways would be used for the 200-seat sanctuary.

To maximize safety at the site, Mr. Cornelius suggested in his study that the Petitioner provide one-way thoroughfares throughout the facility, such that the north access point on Park Heights Avenue be used for inbound traffic, while the south access point be used for outbound traffic. Mr. Cornelius explained that a religious use for the site will impact traffic at non-peak hours, and felt that the present proposal satisfied the pertinent special exception factors set forth at B.C.Z.R. § 502; i.e., those concerned with health and public safety and congested roadways. Mr. Cornelius further explained that he researched State Highway records between 2005 and 2009, and determined that no accidents were reported at either of the access points to the property.

On cross-examination, Mr. Cornelius explained that pursuant to ASHTO (American Association of State Highway and Transportation Officials) standards, the minimum stopping site distance required is 305' while the actual site distance in this case is 350'. Mr. Cornelius explained that Park Heights Avenue reaches a crest about midway between the access points to Rainbow Hall,

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and he believed that the one-way traffic method of ingress and egress he proposed would provide a suitable and safe traffic plan for the site.

Petitioner's final witness was David S. Thaler, P.E., who was accepted as an expert witness in land use and zoning matters. Mr. Thaler indicated that he was engaged by the Petitioner approximately four years ago, and was responsible for overseeing all plans and documents that are generated by his firm. Mr. Thaler testified that a water quality test was performed which indicated that the drinking water on site was safe, and his firm also asked Edgar Harr (a well driller) to review its records for the five producing wells on site. Apparently, upon review of those records, Mr. Thaler determined that the wells on the property produced approximately 50 gallons a minute, which he described as a substantial amount of water. Mr. Thaler indicated that he was familiar with the history of the site, and the fact that the Baptist Home operation had a chapel during the years that the convalescent center was operational, and he was also aware that the Church of the Resurrection had used the structure from approximately 2006 to 2010. Mr. Thaler indicated this was persuasive evidence that the site was suitable for use as a religious facility.

Turning specifically to the special exception factors in B.C.Z.R. § 502, Mr. Thaler reviewed in detail each of the elements set forth at § (A) through § (I). Mr. Thaler opined that the Petitioner's proposal satisfied each of these standards, and he stressed that the Rainbow Hall facility was built to an institutional standard, and also contained sprinklers, which he described as extremely rare for any structure in an RC 2 zone. Mr. Thaler explained that the existing structure is low to the ground (i.e., two stories), and that the structure had many doors on the lower level and represented an extremely low intensity use of this land. Mr. Thaler also opined that the church use was not inconsistent with the zoning, given that a special exception use designated by the County Council would be a presumptively proper use of land in any event. Finally, Mr. Thaler indicated that he was

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familiar with the Loyola College decision, and specifically opined that the church use proposed here would have no greater adverse impact at the Rainbow Hall location than at any other site in a RC 2 zone throughout the County. Put otherwise, Mr. Thaler opined that Rainbow Hall was "close to the best" site he could imagine for a church in an RC 2 zone, given that the building was constructed using institutional standards, the septic system and wells were "super adequate," and no new parking lots or structures would be required.

At this point, the Petitioner rested its case, and Mr. McCann indicated that the Protestants would not be presenting a case or submitting any additional evidence.

The legal analysis required for this case is rather straightforward, especially bearing in mind that "evaluation of a special exception application is not an equation to be balanced with formulaic precision." *People's Counsel v. Loyola College*, 406 Md. 54, 101 (2008). The uncontroverted evidence established that the property has been used for church services by two different religious orders. The Baptist church conducted services when the property was used as a nursing home, and the Church of the Resurrection used the property regularly and continuously from approximately 2006-2010. The evidence also established that there were no automobile accidents or other disturbances of the public peace, safety or welfare during this time period. Finally, Petitioner presented two expert witnesses, both of whom opined that the proposal satisfied each of the requirements of B.C.Z.R. § 502.1.

Under Maryland law, a special exception use is presumptively proper within a zone, absent evidence that "the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." Id. at 102. No such facts or circumstances are present in this case, and the relief shall be granted.

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Date 5-7-12

By DW

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence offered, I find that Petitioner's Special Exception request should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 7th day of May, 2012, that the Petition for Special Exception to use the herein described property for churches and other buildings for religious worship per Baltimore County Zoning Regulations ("B.C.Z.R.") §§ 1A01.2.C.6, 502 and 505, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

2. The maximum capacity of the church or other religious facility or use conducted on the subject premises shall be 212 seats.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw

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Date 5-7-12
By DW

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
TIMOTHY M. KOTROCO
Administrative Law Judges

May 7, 2012

Michael L. Snyder, Esquire
Coady & Farley
400 Allegheny Avenue
Towson, Maryland 21204

Michael T. Wyatt, Esquire
Marlow & Wyatt
404 Allegheny Avenue
Towson, Maryland 21204

Michael R. McCann, Esquire
118 West Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Special Exception
Case No.: 2012-0091-X
Property: 10729 Park Heights Avenue

Dear Counsel:

Enclosed please find a copy of the decision rendered in the above-captioned matter

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw
Enclosure

Flood Plains

Petition for Special Exception

to the Zoning Commissioner of Baltimore County for the property
located at 10729 Park Heights Avenue, Owings Mills, Maryland 21117
which is presently zoned RC-2 / RC-5
Deed Reference: 16318 / 35 Tax Account # 2300003036

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

Churches and other buildings for religious worship.
(Authority: Baltimore County Zoning Regulations ("BCZR"), § 1A01.2.C.6; BCZR §§ 502 and 505).

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:

Michael T. Wyatt
Name - Type or Print

Signature

Marlow & Wyatt
Company

404 Allegheny Avenue (410) 821-1013
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

Legal Owner(s):

Rainbow Hall, LLC
Name - Type or Print

BY: HENRY M. WRIGHT, JR.
Signature

Name - Type or Print

Signature

c/o 4804 Benson Avenue
Address Telephone No.

Baltimore, Maryland 21227
City State Zip Code

Representative to be Contacted:

Michael T. Wyatt
Name

404 Allegheny Avenue (410) 821-1013
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

OFFICE USE ONLY
ESTIMATED LENGTH OF HEARING _____
UNAVAILABLE FOR HEARING _____
Reviewed By BM Date 9/27/11

Case No. 2012-0291-X

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Date 5-7-12
By LW

REV 07/27/2007

Rainbow Hall
(Description for Zoning purposes only)

Beginning for a point located approximately 4 feet North of the centerline intersection of Velvet Valley Way and the eastern Right-of-Way line of Park Heights Avenue, Maryland State Route 129, thence running the following eleven courses and distances:

1. North 84°33'13" East 1100.00 feet to a point, thence
2. North 64°58'33" East 129.93 feet to a point, thence
3. South 31°11'48" East 1023.88 feet to a point, thence
4. South 72°25'35" West 72.30 feet to a point, thence
5. North 31°11'48" West 774.50 feet to a point, thence
6. South 64°58'33" West 141.49 feet to a point, thence
7. South 86°50'19" West 406.33 feet to a point, thence
8. South 02°57'01" East 1010.12 feet to a point, thence
9. South 61°00'45" West 599.54 feet to a point, thence
10. South 88°57'18" West 191.40 feet to a point, thence binding along westerly side of Park Heights Avenue, Maryland State Route 129,
11. North 02°57'00" East 1462.80 feet to the point of beginning.

Containing 27.53 acres more or less.
Located within the Second Councilmanic District and Third Election District of Baltimore County.

STATE OF MARYLAND
BERNARD F. LINSENMEYER III
No. 503
REGISTERED
PROPERTY LINE SURVEYOR

H:\Correspondence\PROJECTS\Rainbow Hall\Rainbow Hall Description 11 14 2011.doc

Revised 11/14/11
2012-0091-X

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
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: 2012- 0091-X

Petitioner: Rainbow Hall, LLC

Address or Location: 10729 Park Heights Avenue
Owings Mills, MD 21117

PLEASE FORWARD ADVERTISING BILL TO:

Name: Michael T. Wyatt Marlow + Wyatt

Address: 404 Allegheny Avenue
Towson MD 21204

Telephone Number: 410 821 1013

Revised 2/17/11 DT

NOTICE OF ZONING HEARING

The Administrative Law Judges 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: # 2012-0091-X
10729 Park Heights Avenue
S/east corner of Park Heights Avenue and Velvet Valley Way
3rd Election District
2nd Councilmanic District
Legal Owner(s): Rainbow Hall, LLC
Special Exception: under the Zoning Regulations of Baltimore County to use the herein described property for Churches and other buildings for religious worship.
Hearing: Monday, November 21, 2011 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

ARNOLD JABLON, DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS FOR BALTIMORE COUNTY

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Administrative Hearings Office at (410) 887-3868.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

11/023 Nov. 3 290060

CERTIFICATE OF PUBLICATION

11/3/, 2011

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 11/3/, 2011.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 2012-0091-X

Petitioner/Developer: Rainbow Hall, LLC

Date of Hearing/Closing: November 21, 2011

Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

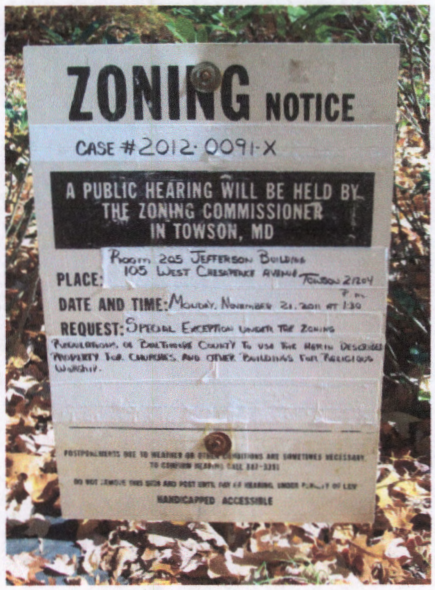
Attn: Kristen Lewis:

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:

10729 Park Heights Ave

The sign(s) were posted on November 5, 1011
(Month, Day, Year)



Sincerely,

November 5, 2011

(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)

NOTICE OF ZONING HEARING

The Administrative Law Judges 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: # 2012-0091-X
10729 Park Heights Avenue
S/east corner of Park Heights Avenue and Velvet Valley Way
3rd Election District
2nd Councilmanic District
Legal Owner(s):
Rainbow Hall, LLC
Special Exception: under the Zoning Regulations of Baltimore County to use the herein described property for Churches and other buildings for religious worship
Hearing: Wednesday, February 29, 2012 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

ARNOLD JABLON, DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS FOR BALTIMORE COUNTY

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Administrative Hearings Office at (410) 887-3868.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT/2/638 Feb. 14 296848

CERTIFICATE OF PUBLICATION

2/16/, 2012

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 2/14/, 2012.

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

S. Wilkinson

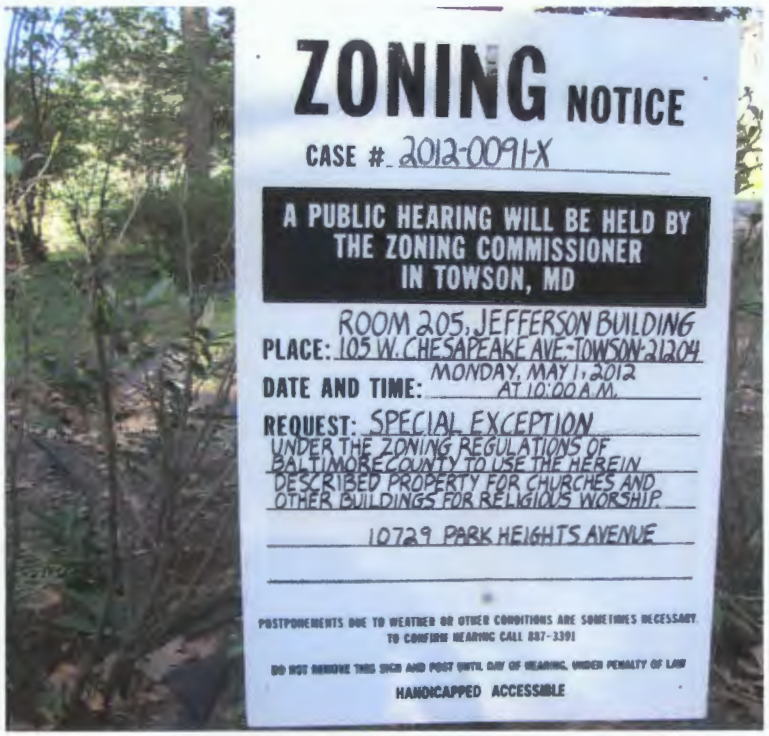
LEGAL ADVERTISING

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS
DATE: 04/12/2012
Case Number: 2012-0091-X
Petitioner / Developer: MICHAEL McCANN, ESQ.
Date of Hearing (Closing): MAY 1, 2012

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
10729 PARK HEIGHTS AVENUE

The sign(s) were posted on: APRIL 12, 2012



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 – 666 – 5366
(Telephone Number of Sign Poster)

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. 74196

Date: _____

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount

Total: _____

Rec From: _____

For: _____

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

TO: PATUXENT PUBLISHING COMPANY
Thursday, November 3, 2011 Issue - Jeffersonian

Please forward billing to:
Michael Wyatt
Marlow & Wyatt
404 Allegheny Avenue
Towson, MD 21204

410-821-1013

NOTICE OF ZONING HEARING

The Administrative Law Judges 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: 2012-0091-X
10729 Park Heights Avenue
S/east corner of Park Heights Avenue and Velvet Valley Way
3rd Election District – 2nd Councilmanic District
Legal Owners: Rainbow Hall, LLC

Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for Churches and other buildings for religious worship.

Hearing: Monday, November 21, 2011 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits, Approvals & Inspections

October 27, 2011

NOTICE OF ZONING HEARING

The Administrative Law Judges 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: 2012-0091-X
10729 Park Heights Avenue
S/east corner of Park Heights Avenue and Velvet Valley Way
3rd Election District – 2nd Councilmanic District
Legal Owners: Rainbow Hall, LLC

Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for Churches and other buildings for religious worship.

Hearing: Monday, November 21, 2011 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Michael Wyatt, Marlow & Wyatt, 404 Allegheny Avenue, Towson 21204
Rainbow Hall, Henry Wright, Jr., 4804 Benson Avenue, Baltimore 21227

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, NOVEMBER 5, 2011**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, February 14, 2012 Issue - Jeffersonian

Please forward billing to:
Michael McCann 410-825-2150
118 W. Pennsylvania Avenue
Towson, MD 21204

NOTICE OF ZONING HEARING

The Administrative Law Judges 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: 2012-0091-X
10729 Park Heights Avenue
S/east corner of Park Heights Avenue and Velvet Valley Way
3rd Election District – 2nd Councilmanic District
Legal Owners: Rainbow Hall, LLC

Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for Churches and other buildings for religious worship.

Hearing: Wednesday, February 29, 2012 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits, Approvals & Inspections

~~December 9, 2011~~

NOTICE OF ZONING HEARING

The Administrative Law Judges 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: 2012-0091-X
10729 Park Heights Avenue
S/east corner of Park Heights Avenue and Velvet Valley Way
3rd Election District – 2nd Councilmanic District
Legal Owners: Rainbow Hall, LLC

Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for Churches and other buildings for religious worship.

Hearing: ~~Wednesday, February 29,~~ Monday May 1 2012 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Michael Wyatt, Marlow & Wyatt, 404 Allegheny Avenue, Towson 21204
Rainbow Hall, Henry Wright, Jr., 4804 Benson Avenue, Baltimore 21227
Michael McCann, 118 W. Pennsylvania Avenue, Towson 21204

NOTES: (1) **THE PROTESTANT MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY T~~UESDAY, FEBRUARY 14, 2012~~**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: Daily Record
Monday, April 16, 2012 Issue - Jeffersonian

Please forward billing to:
Michael McCann 410-825-2150
118 W. Pennsylvania Avenue
Towson, MD 21204

NOTICE OF ZONING HEARING

The Administrative Law Judges 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: 2012-0091-X
10729 Park Heights Avenue
S/east corner of Park Heights Avenue and Velvet Valley Way
3rd Election District – 2nd Councilmanic District
Legal Owners: Rainbow Hall, LLC

Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for Churches and other buildings for religious worship.

Hearing: Monday, May 1, 2012 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits, Approvals & Inspections

April 12, 2012

NOTICE OF ZONING HEARING

The Administrative Law Judges 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: 2012-0091-X
10729 Park Heights Avenue
S/east corner of Park Heights Avenue and Velvet Valley Way
3rd Election District – 2nd Councilmanic District
Legal Owners: Rainbow Hall, LLC

Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for Churches and other buildings for religious worship.

Hearing: Monday, May 1, 2012 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Michael Wyatt, Marlow & Wyatt, 404 Allegheny Avenue, Towson 21204
Rainbow Hall, Henry Wright, Jr., 4804 Benson Avenue, Baltimore 21227
Michael McCann, 118 W. Pennsylvania Avenue, Towson 21204

NOTES: (1) **THE PROTESTANT MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, APRIL 13, 2012**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Rainbow Hall

June 13, 2012

Michael T. Wyatt, Esquire
Marlow & Wyatt
404 Allegheny Avenue
Towson, MD 21204

Michael R. McCann, Esquire
118 W. Pennsylvania Avenue
Towson, MD 21204

Re: In the Matter of: RAINBOW HALL, INC. / 10729 PARK HEIGHTS AVENUE
Case No.: 12-091-X

Dear Counsel:

Due to the amount of notices that will be required in the scheduling of this matter, I am sending dates that are open on the Board's docket for assignment, so that an agreed date can be established prior to the Assignment Notice being issued. The dates are as follows:

Wednesday, August 1, 2012 at 10:00;
Thursday, August 2, 2012 at 10:00;
Thursday, August 30, 2012 at 10:00;
✓ ✓ Tuesday, September 25, 2012 at 10:00; and
✓ ✓ Wednesday, September 26, 2012 at 10:00. Set

This office requests that the parties in the above referenced matter, contact the Board of Appeals upon receipt of this letter to confirm availability.

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

Very truly yours,

Theresa R. Shelton
Administrator

Duplicate Original

cc: Michael L. Snyder, Esquire
Rainbow Hall, LLC
c/o Henry M. Wright, Jr., Resident Agent
Valleys Planning Council, Inc.
c/o Michael R. McCann, Esquire
Mark Wilson
Harlan Zinn
Office of People's Counsel

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 13, 2012

Michael T. Wyatt, Esquire
Marlow & Wyatt
404 Allegheny Avenue
Towson, MD 21204

Michael R. McCann, Esquire
118 W. Pennsylvania Avenue
Towson, MD 21204

Re: In the Matter of: RAINBOW HALL, INC. / 10729 PARK HEIGHTS AVENUE
Case No.: 12-091-X

Dear Counsel:

Due to the amount of notices that will be required in the scheduling of this matter, I am sending dates that are open on the Board's docket for assignment, so that an agreed date can be established prior to the Assignment Notice being issued. The dates are as follows:

Wednesday, August 1, 2012 at 10:00;
Thursday, August 2, 2012 at 10:00;
Thursday, August 30, 2012 at 10:00;
Tuesday, September 25, 2012 at 10:00; and
Wednesday, September 26, 2012 at 10:00.

This office requests that the parties in the above referenced matter, contact the Board of Appeals upon receipt of this letter to confirm availability.

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

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Administrator

Duplicate Original

cc: Michael L. Snyder, Esquire
Rainbow Hall, LLC
c/o Henry M. Wright, Jr., Resident Agent
Valleys Planning Council, Inc.
c/o Michael R. McCann, Esquire
Mark Wilson
Harlan Zinn
Office of People's Counsel

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 21, 2012

NOTICE OF ASSIGNMENT

CASE #: 12-091-X *IN THE MATTER OF*: RAINBOW HALL, LLC – LEGAL OWNER/PETITIONER
10729 PARK HEIGHTS AVENUE

3RD E; 2ND C

Re: Petition for Special Exception – to use the property for a church and other buildings for religious worship per B.C.Z.R. § 1A01.2.C.6, 502 and 505

5/7/12 Opinion and Order issued by ALJ wherein the request for Special Exception was granted.

ASSIGNED FOR: TUESDAY, SEPTEMBER 25, 2012 AT 10:00 A.M. / Day #1 and WEDNESDAY, SEPTEMBER 26, 2012 AT 10:00 A.M. / Day #2

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

Please refer to the Board's Rules of Practice & Procedure, Appendix 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 Legal Owner / Petitioner	: Michael T. Wyatt, Esquire Marlow & Wyatt
	Legal Owner / Petitioner	: Rainbow Hall, LLC c/o Henry M. Wright, Jr., Resident Agent
	Counsel for Protestant / Appellant	: Michael R. McCann, Esquire
	Protestant / Appellant	: Valleys Planning Council, Inc. c/o Michael R. McCann, Esquire : Mark Wilson : Harlan Zinn

Assignment Notice continued for Distribution List

NOTICE OF ASSIGNMENT (CONTINUED)

CASE #: 12-091-X *IN THE MATTER OF*: RAINBOW HALL, LLC – LEGAL OWNER/PETITIONER
10729 PARK HEIGHTS AVENUE

3RD E; 2ND C

AMY NEWHALL
CHRISTOPHER SHEEHAN
OLIVIA & EDWARD WELBOURN III
RONNIE SILVERSTEIN
ROBERT CHOW
STILES COLWILL
SALLIE WORTHINGTON
LESTER KONAROFF
KELLY MURPHY
BARBARA ST. OURS
WILLIAM & NATALIE FEINBLUM
SHIRLEY SPARAGANA
PAUL SINGER
HARVEY BROOKS JR
VIRGINIA JOYCE
LANA & HENRY GREENBERG
MARK GOTTLIEB
JONATHAN AND BONNIEFARBER
ANNE BROOKS
GORDON AND FIONA GREENSPUN

THALIA & MARTIN RESNICK
IRING WALKER
GRANT AND KIMBERLY GOODER
ERIN SHER SMYTH, ESQ.
JAMES S. PATTON
EMANUEL BRONSTEIN
MARK AND SUE LEVI
SUITBERTUS VANDERMEER
CLEON SHUTT
AURELIA BOLTON
JEAN LUBKE
HENRY M. WRIGHT
MANNY BRONSTEIN
LARRY D ROBINSON
RABEKAH DENRICH
DONNA EDEN
LUCY HOWARD

ALLISON J MAGAT

DR & MRS TODD SARUBIN
JOHN AND FRANCES ROCKWELL
RAYMOND CAPLAN
BETTY & JERRY LIEBOWITZ
MAYBELLE FRIEMAN
EVAN MAILIN
WILLIAM GROFF
EUGENE & LORETTA REYNOLDS
WHITNEY & TODD EHRLICH
LEE & TARYN HASELHUHN
SALLY & GREG MERZ
BARBARA & LOUIS DENRICH
CHESSIE DONNELLY
G.L. AND M.C. CUMMINGS
IRENE AND FRANCIS WELLS
SONDRA AND STANLEY CRAIN
ELLEN FRANK
RICHARD AND ELIZABETH BLUE
CHARLOTTE GOLDSTEIN
PAMELA MARKS & MICHAEL MININSOHN
EDWARD & MARIE MASSAL
MR AND MRS JOHN HEYN
KIM SIMONETTI
KATHLEEN PONTONE
AL AND FLORENCE SHAPIRO
CHERYL AARON
ELIZABETH WILMERDING
RUTH GOLDSTEIN
THEODORE HOUCK
STEVEN GANZERMILLER
TERESA MOORE
LOUIS ROSENTHAL
REBECCA FLYNN
DAVID LANG
HERBERT ROSSMAN
JEAN HINLICKY
ILENE COHEN

PATRICIA DEFORD

WENDY RURKA
FRED GREENBERG
SAMUEL MUHER
JONATHAN & BEVERLY MYERS
BONNIE AND PACY OLETSKY
MICHAEL GRIMES
NANCY AND JAMES COX
GARY BLUE
MARCIA AND IRWIN FUSS
LEE & SANDRA GORDON
BARBARA KAPLOW
DAN KOUIGSBERG
SHARON AND PETER REID
NORA LINSTROM
LISA K. AND CLAUDIO A. LEVIN
DON KIRSON
LANA BANK
KATHLEEN SHIOTA
LOIS ROTHBERG
HERBERT & LINDA BECKENHEIMER
MR. & MRS. STUART GARBIS
ANNA SMITH
MARGOT AND DAVID BLOOM
JAYNE GERSON/ELLIOTT HAUST
LOUIS ROSENTHAL
NOEL LEVY
PAUL BRICKMAN
LINDA CORBIN
BEVERLY PEARCE
SHELDON LEWIS
BARRY ZUCKERMAN
JERROLD & DENISE THROPE
STUART & LESLIE DENRICH
ALAN & ROBIN COHN
DEBORAH JOY
SARAH EASTMAN
SHELLEY & SHELDON GOLDSEKER
SARAH CAREY

David Thaler, D.S. Thaler & Associates, Inc.
Stacey McArthur, D.S. Thaler & Associates, Inc.
Mickey Cornelius, Traffic Group
Michael L. Snyder, Esquire
Coady & Farley

Office of People's Counsel
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Planning
Nancy C. West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
John Beverungen, ALJ
VINCENT J. GARDINA, DIRECTOR /DEPS
Michael E. Field, County Attorney

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

September 28, 2012

NOTICE OF DELIBERATION

CASE #: 12-091-X *IN THE MATTER OF*: RAINBOW HALL, LLC – LEGAL OWNER/PETITIONER
10729 PARK HEIGHTS AVENUE

3RD E; 2ND C

Re: Petition for Special Exception – to use the property for a church and other buildings for religious worship per B.C.Z.R. § 1A01.2.C.6, 502 and 505

5/7/12 Opinion and Order issued by ALJ wherein the request for Special Exception was granted.

Having heard this matter on September 25, 2012 (Day #1) and concluded this matter on September 26, 2012 (Day #2) a public deliberation has been scheduled for the following:

DATE AND TIME : **TUESDAY, DECEMBER 11, 2012 at 9:15 a.m.**

LOCATION : Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: Closing briefs are due on Tuesday, November 13, 2012 by 4:00 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 Legal Owner / Petitioner : Michael T. Wyatt, Esquire
Marlow & Wyatt

Legal Owner / Petitioner : Rainbow Hall, LLC
c/o Henry M. Wright, Jr., Resident Agent

Counsel for Protestant / Appellant : Michael R. McCann, Esquire

Protestant / Appellant : Valleys Planning Council, Inc.
c/o Michael R. McCann, Esquire
: Mark Wilson, c/o Michael R. McCann, Esquire
: Harlan Zinn

Notice continued for Distribution List

NOTICE OF DELIBERATION (CONTINUED)

CASE #: 12-091-X *IN THE MATTER OF*: RAINBOW HALL, LLC – LEGAL OWNER/PETITIONER
10729 PARK HEIGHTS AVENUE

3RD E; 2ND C

AMY NEWHALL
CHRISTOPHER SHEEHAN
OLIVIA & EDWARD WELBOURN III
RONNIE SILVERSTEIN
ROBERT CHOW
STILES COLWILL
SALLIE WORTHINGTON
LESTER KONAROFF
KELLY MURPHY
BARBARA ST. OURS
WILLIAM & NATALIE FEINBLUM
SHIRLEY SPARAGANA
PAUL SINGER
HARVEY BROOKS JR
VIRGINIA JOYCE
LANA & HENRY GREENBERG
MARK GOTTLIEB
JONATHAN AND BONNIEFARBER
ANNE BROOKS
GORDON AND FIONA GREENSPUN
PATRICIA DEFORD
THALIA & MARTIN RESNICK
IRING WALKER
GRANT AND KIMBERLY GOODER
ERIN SHER SMYTH, ESQ.
JAMES S. PATTON
EMANUEL BRONSTEIN
MARK AND SUE LEVI
SUITBERTUS VANDERMEER
CLEON SHUTT
AURELIA BOLTON
JEAN LUBKE
HENRY M. WRIGHT
MANNY BRONSTEIN
ALLISON J MAGAT
RABEKAH DENRICH
DONNA EDEN
LUCY HOWARD

DR & MRS TODD SARUBIN
JOHN AND FRANCES ROCKWELL
RAYMOND CAPLAN
BETTY & JERRY LIEBOWITZ
MAYBELLE FRIEMAN
EVAN MAILIN
WILLIAM GROFF
EUGENE & LORETTA REYNOLDS
WHITNEY & TODD EHRLICH
LEE & TARYN HASELHUHN
SALLY & GREG MERZ
BARBARA & LOUIS DENRICH
CHESSIE DONNELLY
G.L. AND M.C. CUMMINGS
IRENE AND FRANCIS WELLS
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ELLEN FRANK
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EDWARD & MARIE MASSAL
MR AND MRS JOHN HEYN
KIM SIMONETTI
KATHLEEN PONTONE
AL AND FLORENCE SHAPIRO
CHERYL AARON
ELIZABETH WILMERDING
RUTH GOLDSTEIN
THEODORE HOUCK
STEVEN GANZERMILLER
TERESA MOORE
LOUIS ROSENTHAL
REBECCA FLYNN
DAVID LANG
HERBERT ROSSMAN
JEAN HINLICKY
ILENE COHEN

WENDY RURKA
FRED GREENBERG
SAMUEL MUHER
JONATHAN & BEVERLY MYERS
BONNIE AND PACY OLETSKY
MICHAEL GRIMES
SARAH CAREY
GARY BLUE
MARCIA AND IRWIN FUSS
LEE & SANDRA GORDON
BARBARA KAPLOW
DAN KOUIGSBERG
SHARON AND PETER REID
NORA LINSTROM
LISA K. AND CLAUDIO A. LEVIN
DON KIRSON
LANA BANK
KATHLEEN SHIOTA
LOIS ROTHBERG
HERBERT & LINDA BECKENHEIMER
MR. & MRS. STUART GARBIS
ANNA SMITH
MARGOT AND DAVID BLOOM
JAYNE GERSON/ELLIOTT HAUST
LOUIS ROSENTHAL
NOEL LEVY
PAUL BRICKMAN
LINDA CORBIN
BEVERLY PEARCE
SHELDON LEWIS
BARRY ZUCKERMAN
JERROLD & DENISE THROPE
STUART & LESLIE DENRICH
ALAN & ROBIN COHN
DEBORAH JOY
SARAH EASTMAN
SHELLEY & SHELDON GOLDSEKER

David Thaler, D.S. Thaler & Associates, Inc.
Stacey McArthur, D.S. Thaler & Associates, Inc.
Mickey Cornelius, Traffic Group
Michael L. Snyder, Esquire
Coady & Farley

Office of People's Counsel
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Planning
Nancy C. West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
John Beverungen, ALJ
VINCENT J. GARDINA, DIRECTOR /DEPS
Michael E. Field, County Attorney

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

TO: **Wescott**
Maureen
Ed

DATE:

FROM: Theresa T

RE: **Rainbow Hall – Closing Memos**

Attached.

The Public Deliberation has been scheduled for

DECEMBER 11, 2012 @ 9:15

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

February 13, 2013

NOTICE OF DELIBERATION / MOTION FOR RECONSIDERATION

CASE #: 12-091-X *IN THE MATTER OF*: RAINBOW HALL, LLC – LEGAL OWNER/PETITIONER
10729 PARK HEIGHTS AVENUE

3RD E; 2ND C

Re: Petition for Special Exception – to use the property for a church and other buildings for religious worship per B.C.Z.R. § 1A01.2.C.6, 502 and 505

5/7/12 Opinion and Order issued by ALJ wherein the request for Special Exception was granted.

Having heard this matter on September 25, 2012 (Day #1) and concluded this matter on September 26, 2012 (Day #2) an Opinion was issued on January 17, 2013. A Motion for Reconsideration of the Opinion was filed and a public deliberation on the Motion for Reconsideration has been scheduled for the following:

DATE AND TIME : **THURSDAY, FEBRUARY 28, 2013 at 9:30 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 Legal Owner / Petitioner : Michael T. Wyatt, Esquire
Marlow & Wyatt

Legal Owner / Petitioner : Rainbow Hall, LLC
c/o Henry M. Wright, Jr., Resident Agent

Counsel for Protestant / Appellant : Michael R. McCann, Esquire

Protestant / Appellant : Valleys Planning Council, Inc.
c/o Michael R. McCann, Esquire
: Mark Wilson, c/o Michael R. McCann, Esquire
: Harlan Zinn

Notice continued for Distribution List

NOTICE OF DELIBERATION /MOTION FOR RECONSIDERATION (CONTINUED)

CASE #: 12-091-X *IN THE MATTER OF*: RAINBOW HALL, LLC – LEGAL OWNER/PETITIONER
10729 PARK HEIGHTS AVENUE

3RD E; 2ND C

AMY NEWHALL
CHRISTOPHER SHEEHAN
OLIVIA & EDWARD WELBOURN III
RONNIE SILVERSTEIN
ROBERT CHOW
STILES COLWILL
SALLIE WORTHINGTON
LESTER KONAROFF
KELLY MURPHY
BARBARA ST. OURS
WILLIAM & NATALIE FEINBLUM
SHIRLEY SPARAGANA
PAUL SINGER
HARVEY BROOKS JR
VIRGINIA JOYCE
LANA & HENRY GREENBERG
MARK GOTTLIEB
JONATHAN AND BONNIEFARBER
ANNE BROOKS
GORDON AND FIONA GREENSPUN
PATRICIA DEFORD
THALIA & MARTIN RESNICK
IRING WALKER
GRANT AND KIMBERLY GOODER
ERIN SHER SMYTH, ESQ.
JAMES S. PATTON
EMANUEL BRONSTEIN
MARK AND SUE LEVI
SUITBERTUS VANDERMEER
CLEON SHUTT
AURELIA BOLTON
JEAN LUBKE
HENRY M. WRIGHT
MANNY BRONSTEIN
ALLISON J MAGAT
RABEKAH DENRICH
DONNA EDEN
LUCY HOWARD

DR & MRS TODD SARUBIN
JOHN AND FRANCES ROCKWELL
RAYMOND CAPLAN
BETTY & JERRY LIEBOWITZ
MAYBELLE FRIEMAN
EVAN MAILIN
WILLIAM GROFF
EUGENE & LORETTA REYNOLDS
WHITNEY & TODD EHRLICH
LEE & TARYN HASELHUHN
SALLY & GREG MERZ
BARBARA & LOUIS DENRICH
CHESSIE DONNELLY
G.L. AND M.C. CUMMINGS
IRENE AND FRANCIS WELLS
SONDRA AND STANLEY CRAIN
ELLEN FRANK
RICHARD AND ELIZABETH BLUE
CHARLOTTE GOLDSTEIN
PAMELA MARKS & MICHAEL MININSOHN
EDWARD & MARIE MASSAL
MR AND MRS JOHN HEYN
KIM SIMONETTI
KATHLEEN PONTONE
AL AND FLORENCE SHAPIRO
CHERYL AARON
ELIZABETH WILMERDING
RUTH GOLDSTEIN
THEODORE HOUCK
STEVEN GANZERMILLER
TERESA MOORE
LOUIS ROSENTHAL
REBECCA FLYNN
DAVID LANG
HERBERT ROSSMAN
JEAN HINLICKY
ILENE COHEN

WENDY RURKA
FRED GREENBERG
SAMUEL MUHER
JONATHAN & BEVERLY MYERS
BONNIE AND PACY OLETSKY
MICHAEL GRIMES
SARAH CAREY
GARY BLUE
MARCIA AND IRWIN FUSS
LEE & SANDRA GORDON
BARBARA KAPLOW
DAN KOUIGSBERG
SHARON AND PETER REID
NORA LINSTROM
LISA K. AND CLAUDIO A. LEVIN
DON KIRSON
LANA BANK
KATHLEEN SHIOTA
LOIS ROTHBERG
HERBERT & LINDA BECKENHEIMER
MR. & MRS. STUART GARBIS
ANNA SMITH
MARGOT AND DAVID BLOOM
JAYNE GERSON/ELLIOTT HAUST
LOUIS ROSENTHAL
NOEL LEVY
PAUL BRICKMAN
LINDA CORBIN
BEVERLY PEARCE
SHELDON LEWIS
BARRY ZUCKERMAN
JERROLD & DENISE THROPE
STUART & LESLIE DENRICH
ALAN & ROBIN COHN
DEBORAH JOY
SARAH EASTMAN
SHELLEY & SHELDON GOLDSEKER

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VINCENT J. GARDINA, DIRECTOR /DEPS
Michael E. Field, County Attorney

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits, Approvals & Inspections

November 16, 2011

Henry M. Wright, Jr.
Rainbow Hall, LLC
c/o 4804 Benson Avenue
Baltimore, MD 21227

RE: Case Number2012-0091-X, 10729 Park Heights Avenue

To Whom It May Concern:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on September 27, 2011. 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,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:mcn

Enclosures

c: People's Counsel
Michael T. Wyatt, 404 Allegheny Avenue, Towson, MD 21204

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: November 10, 2011

FROM: Andrea Van Arsdale
Director, Department of Planning

RECEIVED
NOV 17 2011
OFFICE OF ADMINISTRATIVE HEARINGS

SUBJECT: 10729 Park Heights Avenue

Item Number: **12-091**

Petitioner: Rainbow Hall, LLC

Zoning: **RC 2 and RC 5**

Requested Action: **Special Exception**

SUMMARY OF RECOMMENDATIONS:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. This site was the subject of a concept plan proposal, PAI # 03-393, Rainbow Hall Re-subdivision of Lot 5. If development plan approval is still sought, the Department of Planning suggests the development plan and special exception requests are heard at a combined hearing.

There is a hearing pending on the subject property before the Board of Appeals, Case No. 10-280sph, to determine whether uses of the property comply with the BCZR and whether the property has been used in violation or non-compliance with same.

Rainbow Hall AKA Rainbow Hill is on the Final Landmarks list, identified as Baltimore County Landmark 198, BA 381. Park Heights Avenue is a scenic route.

The subject property's predominant zoning is RC2, (Agricultural), a zone that establishes the preferred use as agricultural. The density shown in the General Notes indicates 3 single family dwellings and up to 8 multi-family units appears to exceed what the RC2 zone allows.

The petitioner must demonstrate that the proposed 156-seat church will not be incompatible with the purpose of the zone. If granted, the site plan should be revised as follows:

1. Revise Density Note C.5 to remove any reference to 8 multi-family dwellings, as they are not permitted in the RC2 zone.
2. Remove multi-family uses from the parking chart D in the General Notes.
3. Remove multi-family from the inset building floor plan of the first floor.

For further information concerning the matters stated here in, please contact Diana Itter at 410-887-3480.

Prepared by:

Division Chief:
AVA/LL: CM

W:\DEVREV\ZAC\ZACs 2012\12-091.doc

BALTIMORE COUNTY, MARYLAND

RECEIVED

NOV 02 2011

OFFICE OF ADMINISTRATIVE HEARINGS

Inter-Office Correspondence

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: David Lykens, Department of Environmental Protection and Sustainability (DEPS) - Development Coordination

DATE: November 2, 2011

SUBJECT: DEPS Comment for Zoning Item # 2012-0091-X
Address 10729 Park Heights Avenue
(Rainbow Hall, LLC Property)

Zoning Advisory Committee Meeting of October 10, 2011.

_X_ Department of Environmental Protection and Sustainability 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. The proposed subdivision requires a special variance to the Forest Conservation Law as well as a variance and alternatives analysis in accordance to the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains. These items must be approved prior to development plan or issuance of any permits, whichever comes first. – *John Russo; Environmental Impact Review*

2. The Forest Buffer Easement and Forest Conservation Easement must be recorded in Baltimore County Land Records along with a Declaration of Protective Covenants prior to development plan approval or issuance of any permits, whichever comes first. – *John Russo; Environmental Impact Review*

3. Since the property is served by well and septic, any future changes in usage or any future building permits will need to be reviewed by Groundwater Mgmt. – *Dan Esser; Groundwater Manangement.*

Martin O'Malley, *Governor*
Anthony G. Brown, *Lt. Governor*

State Highway Administration

Beverley K. Swaim-Staley, *Secretary*
Darrell B. Mobley, *Acting Administrator*

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 10-12-11

Ms. Kristen Matthews,
Baltimore County Department of
Permits, Approvals & Inspections
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 2012-0091-X
Special Exception
Rainbow Hall, LLC
Henry Wright Jr.
10729 Parkville Heights Avenue

Dear Ms. Matthews:

We have reviewed the site plan to accompany petition for variance on the subject of the above captioned, which was received on 10-12-11. A field inspection and internal review reveals that an entrance onto MD 129 consistent with current State Highway Administration guidelines is not required. Therefore, SHA has no objection to approval for Special Exception Case Number 2012-0091-X.

Should you have any questions regarding this matter feel free to contact Richard Zeller at 410-545-5598 or 1-800-876-4742 extension 5598. Also, you may email him at (rzeller@sha.state.md.us). Thank you for your attention.

Sincerely,

for Steven D. Foster, Chief
Access Management Division

SDF/rz

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: October 12, 2011

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For October24, 2011
Item Nos. 2012-091,092, 093,094, 095
And 096.

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

DAK:CEN
cc: File
G:\DevPlanRev\ZAC -No Comments\ZAC-10242011 -NO COMMENTS.doc

RE:	PETITION FOR SPECIAL EXCEPTION 10729 Park Heights Avenue; SE corner of Park Heights Avenue & Velvet Valley Way 3rd Election & 2nd Councilmanic Districts Legal Owner(s): Rainbow Hall, LLC Petitioner(s)	* * * * * *	BEFORE THE OFFICE OF ADMINSTRATIVE HEARINGS FOR BALTIMORE COUNTY 2012-091-X

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

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

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

RECEIVED
OCT 14 2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of October, 2011, a copy of the foregoing Entry of Appearance was mailed to Michael Wyatt, Esquire, Marlow & Wyatt, 404 Allegheny Avenue, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
TIMOTHY M. KOTROCO
Administrative Law Judges

June 4, 2012

Michael L. Snyder, Esquire
Coady & Farley
400 Allegheny Avenue
Towson, Maryland 21204

Michael T. Wyatt, Esquire
Marlow & Wyatt
404 Allegheny Avenue
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 West Pennsylvania Avenue
Towson, Maryland 21204

Re: Case Number: 2012-0091-X
Location: 10729 Park Heights Avenue – Rainbow Hall, LLC

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in the Department of Permits, Approvals and Inspections on May 16, 2012 and received by this Office on May 22, 2012. 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 contact the Board at 410-887-3180.

Sincerely,

LAWRENCE M. STAHL
Managing Administrative Law Judge
For Baltimore County

LMS:dlw

c: Board of Appeals
Peter Max Zimmerman, People's Counsel for Baltimore County
Arnold Jablon, Director, Department of Permits, Approvals and Inspections

RECEIVED
JUN 4 2012
BALTIMORE COUNTY
BOARD OF APPEALS

APPEAL

Petition for Special Exception
10729 Park Heights Avenue
SE corner of Park Heights Avenue and Velvet Valley Way
3rd Election District – 2nd Councilmanic District
Legal Owner: Rainbow Hall, LLC
Case No.: 2012-0091-X

✓ Petition for Special Exception (September 27, 2011) reviewed by Bruno Rudaitis – (1 Page)

✓ Zoning Description of Property – (1 Page)

✓ Notice of Zoning Hearing for May 1, 2012, dated April 12, 2012 – CONDUCTED – (1 Page)

✓ Notice of Zoning Hearing for February 29, 2012 – POSTPONED – (1 Page)

✓ Notice of Zoning Hearing for November 21, 2011 – POSTPONED – (1 Page)

✓ Certification of Publication for February 29, 2012 – (The Jeffersonian – 2/14/12) – (1 Page)

✓ Certification of Posting for May 1, 2012 (Linda O'Keefe – April 12, 2012) – (1 Page)

✓ Entry of Appearance by People's Counsel – October 14, 2011 – (1 Page)

✓ Petitioner(s) Sign-In Sheet – (1 Page)

✓ Protestants/Citizen(s) Sign-In Sheet – (1 Page)

Zoning Advisory Committee (ZAC) Comments:

✓ 1 – Department of Planning – November 17, 2011 – (1 Page)
✓ 2 – Department of Environmental Protection & Sustainability – 11/2/12 – (1 Page)
✓ 3 - State Highway Administration – October 12, 2011 – (1 Page)
✓ 4 – Bureau of Development Plans Review – October 12, 2011 – (1 Page)

Petitioner's Exhibits:
✓ 1 – Circuit Court Order – April 19, 2012 - (1 Page)
✓ 2 – Site Plan (Redlined) As of 4-30-12 - (1 Page)
✓ 3 – Aerial Photograph - (1 Page)
✓ 4 – Letter from David Thaler to Robert Powell dated 4-11-12 - (2 Pages)
✓ 5 – Letter from Robert Powell to David Thaler dated 4-30-12 - (2 Pages)

Protestant's Exhibits:
✓ 1 - Site Plan (Revised as of 4-30-12) – 1 Page
✓ 2 – Preliminary Forest Conservation Plan – 12-7-11 by David Thaler – (1 Page)
✓ 3 – Development Plan Comments – (22 Pages)
✓ 4 - Letter from David Thaler to Robert Powell dated 3-5-12 - (2 Pages)

Miscellaneous:

✓ Notice of Appeal & Miscellaneous Cash Receipt filed in the Department of Permits, Approvals and Inspections on May 16, 2012 and received by the Office of Administrative Hearings on May 22, 2012 – Appeal Filed by Michael R. McCann, Esquire – (3 Pages)

✓ CD of Administrative Law Judge's Hearing on May 1, 2012 for Case No. 2012-0091-X – (Hearing Completed on May 1st)

✓ Cover Letter and Administrative Law Judge's Opinion and Order for Case No. 2012-0091-X – (GRANTED WITH CONDITIONS – May 7, 2012) – (8 Pages)

✓ Maryland State Department of Assessments and Taxation Real Property Data Sheet & Map – Property known as 10729 Park Heights Avenue – (2 Pages)

✓ Mailing Label List (4 Pages) including Letters of Opposition – (54 Pages) – Total of 58 Pages

✓ Previous Order & Cover Letter for (Case No. 2010-0280-SPH) from Zoning Commissioner William J. Wiseman, III, January 13, 2011 – (13 Pages)

✓ Memo & Subpoenas [4 Subpoenas] on behalf of Michael McCann, Esq., dated April 24, 2012 – (9 Pages)

✓ Circuit Court Order, dated April 19, 2012, granting Appellant's Motion and ordering Baltimore County precluded and/or enjoined from instituting or continuing any zoning or code enforcement proceedings against Appellant or property designated as 10729 Park Heights Avenue with respect to or arising out of Case No. 2010-0280-SPH/Case No. 03-C-12-002379, pending further order of the Court – (1 Page)

✓ Letter from Michael McCann, Esq. to Arnold Jablon, dated January 20, 2012, regarding long-standing violations at 10729 Park Heights Avenue & County's continued processing of development plan & zoning petitions – AND Response to Mr. McCann's correspondence from Michael Snyder, Esq., dated January 23, 2012 (5 Pages)

✓ Correspondence between Counsel (dated November 17 thru November 23, 2011) regarding request for a stay and/or postponements of the matter – (20 Pages)

c: Peter Max Zimmerman, People's Counsel for Baltimore County
Baltimore County Board of Appeals
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director, Department of Permits, Approvals and Inspections

Date Sent: June 4, 2012

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Rainbow Hall, LLC 12-091-X

DATE: February 28, 2013

BOARD/PANEL: Lawrence S. Wescott, Panel Chairman
Maureen Murphy
Edward Crizer, Jr.

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Motion for Reconsideration filed by Michael McCann, Esquire on behalf of Protestants.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board reviewed that the Protestants' Motion for Reconsideration requested that the Board clarify their decision and state whether only one house of worship may use the property or if the use can be extended to multiple houses of worship, as well as if the property is sold, will the new owner be able to continue this use of the property.
- The Board determined that they talked about this issue during the hearing and previous deliberation of this matter, they did not, however, include this issue in their opinion.
- The Board determined that any house of worship that rents the site, is limited by the number of seats and the number of parking spaces. Since different faiths worship on different days, the use of the site by more than one house of worship would not be detrimental to the area. Therefore, the Board could not find any reason to limit the use of the site to just one faith or just one house of worship. The Board discussed that it is likely the use of the property by any faith would be on a temporary basis as the church searches for a more permanent location. The use of the property will not be a typical church-with-hall use.
- The Board discussed that the Protestants seemed to be asking for future enforcement now. The Board determined that they cannot foretell what issues may arise in the future.

DECISION BY BOARD MEMBERS: The use of the subject property as a house of worship is limited by the number of seats and parking spaces available on site. The Board will not limit the use of the property by more than one faith.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to supplement their previous opinion.

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

Sunny Cannington

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Rainbow Hall, LLC 12-091-X

DATE: December 11, 2012

BOARD/PANEL: Lawrence S. Wescott
Maureen E. Murphy
Edward W. Crizer, Jr.

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Exception to allow the property to be used as a church with other buildings to be used for religious worship pursuant to BCZR § 1A01.2.C.6, 502 and 503.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board discussed that a Motion to Dismiss had been filed by the Petitioner alleging that the appeal was filed under the wrong section of the Code. The Petitioner withdrew the Motion rendering the Motion to Dismiss moot.
- The Board discussed that People's Counsel moved that the Code states that if a case is pending regarding a violation when another Petition is filed, the second petition cannot be processed. The Board discussed that a previous case was heard by the Board of Appeals with regard to the use of the subject property as apartments. In the previous case, the Board determined that the main house cannot be used as apartments but the single family, pre-existing cottages can remain rental units. The previous case went before the Circuit Court for Baltimore County and the Board of Appeals was affirmed. Additionally, the Petitioners have met with the County and indicated that they will bring the property into compliance. The Board determined that this argument is moot.
- The Board discussed that there were three main issues to discuss. 1) Does the proposed use meet the standards as set forth in BCZR § 502.1? 2) Will the sight lines impair traffic at the site? 3) Does the Petitioner need to file an amendment to the County Master Plan with regard to the Sewer and Water?
- The Board discussed the details of this matter. The Board discussed whether they could grant the Special Exception based on the concept of the use of the property for religious worship when the property is not presently being used as such. The Board determined that they can.
- The Board discussed the requirements set forth in 502.1. The Board determined that the subject property is suitable for religious worship and meets the requirements of 502.1.

The Board stated that having 212 seats as proposed by the Petitioners, does not mean there will be 212 cars frequenting the property at any given time.

- The Board discussed the traffic patterns of the area and whether the sight lines will cause a problem. The Board reviewed the evidence and testimony. The Petitioners testified that they will use the northern driveway for traffic coming into the property and the southern driveways for traffic leaving the property. The Board reviewed pictures of the site and determined that a condition for the granting of the Special Exception will be for the Petitioners to trim vegetation and change grading where possible.
- The Board discussed the existing water and sewer on the property and whether an amendment needed to be made to the County Master Plan. The Board determined that the existing water and sewer on the site was adequate for the previous use of the property as a nursing home, and will be more than adequate for religious worship. The Protestants and Petitioners each provided experts who disagreed on this point. The Board reviewed the law and found that the statutes state if capacity is 10,000 gpd and use exceeds 5,000 gpd then an amendment to the Master Plan must be filed. The existing water and sewer does not meet the capacity of 10,000 gpd and the use should not exceed 5,000 gpd. The Board reviewed a letter from DEPS regarding the capacity and usage of the existing system and making recommendations to the Petitioners for work to be done prior to the use for religious worship.

DECISION BY BOARD MEMBERS: The Board decided to Grant the Special Exception subject to the conditions that the Petitioners trim vegetation and make changes to the grading where possible to allow for increase sight lines for traffic; and subject to the conditions in the April 30, 2012 letter from Robert Powell, Supervisor of Soil Evaluation Section of Department of Environmental Protection and Sustainability (Pet Ex 12.)

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to GRANT the Petition for Special Exception with conditions.

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

Sunny Cannington

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

RECEIVED
SEP 5 2013
BALTIMORE COUNTY
BOARD OF APPEALS

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

Board Of Appeals Of Baltimore County The
Jefferson Building Room 2
105 W Chesapeake Avenue
Towson MD 21204

Assignment Date: 09/03/13

Case Title: In the Matter of Valleys Planning Council Inc The, et al
Case No: 03-C-13-003597 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 09/18/13
2. All Motions (excluding Motions in Limine) are due by..... 10/25/13
3. TRIAL DATE is..... 12/04/13
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned; 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., **cameras and recording equipment are strictly prohibited** in courtrooms

and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

cc: Michael R McCann Esq
cc: Michael T Wyatt Esq
cc: Michael L Snyder Esq
Issue Date 09/03/13

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

TK 11-21-11 Rainbow Hall

RECEIVED
NOV 17 2011
OFFICE OF ADMINISTRATIVE HEARINGS

November 17, 2011

Via Hand-Delivery

Lawrence M. Stahl
Managing Administrative Law Judge
Office of Administrative Hearings
Jefferson Building
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: 2012-0091X

Dear Judge Stahl:

I represent the respondents, Valleys Planning Council, Harlan Zinn and Mark Wilson, in the above-referenced matter, which is scheduled for hearing on Monday, November 21, 2011. I write to request a stay of this matter.

As you may or may not know, there is presently pending before the Board of Appeals a case between the same parties and involving the same property (Case No. 10-280-SPH) (the "Special Hearing Case"). That case was initiated by my clients' filing of a Petition for Special Hearing, wherein we asked then Zoning Commissioner William Wiseman to determine, *inter alia*, (i) whether a multi-family use of the mansion on this property is permitted, and (ii) whether the rental of three other houses on the property is permitted or violates the one-dwelling per lot limitation in the RC2 zone. (*See* copy of Petition for Special Hearing attached hereto.) Mr. Wiseman agreed that a multi-family use is *not* allowed at the property, but held that the three houses may remain on the theory that they are vested nonconforming structures. Both parties appealed Mr. Wiseman's decision to the Board of Appeals. The Board conducted a hearing over three days, which concluded just last week. Post-hearing memoranda are due in early December.

In the instant case, the Petition for Special Exception filed by the property owner seeks approval of a special exception for a church. However, as the plat accompanying the petition makes clear, the property owner is actually seeking approval of both a church and a "multi-family" use of the mansion and the three houses. Indeed, the plat identifies

the "existing use" of the property as "Residential and Multi-Family" and the "proposed use" as "Residential, Multi-Family and Church." The Petitioner is obviously relying upon the supposition that there has been approval for a multi-family use at the property. That, of course, is not true. That issue has not been finally decided and is the very subject of the ongoing Special Hearing Case. In fact, thus far in the proceedings, the multi-family use has been ruled a non-permitted use.

There are obvious legal and practical reasons for staying this matter until after the Board renders its decision in the Special Hearing Case. First, the Board's decision, whatever it may be, will certainly have some *res judicata* effect. Depending on the outcome of the Special Hearing Case, the hearing in this matter may not be necessary at all. Your Honor, as well as the parties, should have the benefit of knowing precisely what preclusive effect, if any, the Board's decision will have. Second, the outcome of the Special Hearing Case will have a direct impact on the scope and nature of the evidence that can or should be admitted at the hearing in the instant case. For example, if the Board rules that a multi-family use is not permitted in the mansion, then that may impact the extent to which the proposed church will be "detrimental to the health, safety or general welfare" of the community as well as the applicability of the other factors in section 502.1 of the BCZR.[1] And finally, it would be a waste of judicial resources, as well as the resources of the parties themselves, to retry the issues that have already been presented to the Board.

For these reasons, we respectfully request that the hearing in this matter be stayed temporarily until after the Board of Appeals renders its decision. Thank you for your consideration.

Respectfully,

Michael R. McCann

Michael R. McCann

cc: Michael Wyatt, Esq., Counsel for Petitioner (*via* facsimile)
Michael Snyder, Esq., Counsel for Petitioner (*via* facsimile)
Peter Zimmerman, People's Counsel
Theresa Shelton, Administrator, Board of Appeals

---

[1] It should be noted that use of the property for a church was also the subject of the hearing before the Board of Appeals. The evidence in that case revealed that the property owner allowed a local church to use the mansion for Sunday services and other events over a period of several years. My clients challenged this use of the mansion and squarely presented that issue to the Board.

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

RECEIVED
NOV 18 2011
OFFICE OF ADMINISTRATIVE HEARINGS

November 18, 2011

Via Hand Delivery

Lawrence M. Stahl
Managing Administrative Law Judge
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Rainbow Hall, LLC
Case No. 2012-0091

Dear Judge Stahl:

I am in receipt of Mr. Wyatt's letter of today's date.

Irrespective of how Petitioner chose to word the Petition for Special Exception itself, the fact remains that the plat identifies the "proposed use" of this property as "multi-family." If counsel is suggesting that the property, in fact, will *not* be used for multi-family purposes, then one wonders why he does not simply say so?

Moreover, I have no doubt that it was "for purposes of identification" that the plat states "multi-family" as the proposed use. That is precisely my point – this plat *identifies* the *proposed* use as "multi-family." Nothing short of Petitioner withdrawing its request or amending its plat will change that simple fact.

Finally, I can assure you that, while this has been a contested case, my clients have no intention of "frustrating and depriving" Petitioner of its property rights, no more than Mr. Wiseman did when he ruled against Petitioner on this proposed multi-family use. We simply want these issues resolved and cannot perceive how the Board's resolution of them will not impact the scope and nature of the case before your Honor.

Thank you for your consideration.

Respectfully,

Michael R. McCann

cc: Michael Wyatt, Esq. (*via* facsimile)

1/20/12
8
TO wpr for file

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

RECEIVED
JAN 20 2012
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

January 20, 2012

Via Hand Delivery

Arnold Jablon, Director
Baltimore County Department of
Permits, Approvals, and Inspections
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: *Rainbow Hall – 10729 Park Heights Avenue*
Zoning Case No. 2012-0091-X (filed 9/27/11; hearing scheduled for 2/29/12)
Development Plan PAI File: 03-393 (filed 12/7/11; hearing scheduled for 2/2/12)
Zoning Case No: 2012-0144-SPHX (filed 12/5/11; no hearing scheduled)

Dear Arnold:

I represent the Valleys Planning Council and neighbors of the subject property in the above-referenced matters. I write to address my clients' concerns regarding long-standing violations of the Zoning Regulations at this property and the County's continued processing of the development plan and zoning petitions.

By way of background, the current owner, Henry Wright, purchased this historic property in April 2002. Within months, Mr. Wright was hosting elaborate affairs at the property and subsequently, beginning in approximately February 2004, constructed and began renting apartments in the so-called McCormick wing of the main building. After several years, my clients discovered these illegal uses and filed a complaint with Baltimore County. On March 5, 2009, the County cited Mr. Wright for "illegal conversion of a dwelling" in violation of § 402 of the BCZR, and for "non-permitted apartments in the RC2 zone." The County informed Mr. Wright that he must "cease and desist [this] use or seek special exception hearing for non-conforming use if applicable [and][s]eek all proper permits if applicable." Mr. Wright did not cease and desist, and did not seek a hearing to establish a non-conforming use.

In April 2010, after my clients' efforts to persuade Mr. Wright to comply with the law were unsuccessful, we filed a Petition for Special Hearing asking then Zoning Commissioner William Wiseman to confirm that a multi-family use of the property was

not permitted. In a January 13, 2011 opinion, Mr. Wiseman agreed with my clients. The case was appealed to the Board of Appeals, which held a several day *de novo* hearing in October and November 2011.

Yesterday, we learned that the Board of Appeals has, likewise, held that the use of the property for apartments is not allowed, either by virtue of any previously approved special exception use or as a nonconforming use. The Board also determined that Mr. Wright's hosting of events and affairs is not permitted.

While these proceedings have been pending, Mr. Wright has filed (i) a petition for special exception seeking approval of a 156-seat church and 8 multi-family units in the existing building (the "First Zoning Petition"); (ii) a development plan proposing the construction of a 62,000 square-foot church as well as 8 multi-family units in the main building, and (iii) a petition for special hearing and special exception seeking (apparently, in the alternative) approval of the 62,000 square foot church and 8 multi-family units (the "Second Zoning Petition").

Given the Board's recent ruling, we believe that the County does not have authority to either process or hold a hearing on the development plan or the Second Zoning Petition. With respect to the development plan, section 32-4-114(c) of the County Code provides, as I'm sure you know, that the County "*may not process plans* or permits for a proposed development if the applicant owns or has an interest in property located in the county upon which there exists, at the time of the application or during the processing of the application, a violation of the zoning or development regulations of the county."[1] As the Board of Appeals has indicated, Mr. Wright's continued rental of apartments violates the zoning regulations and, accordingly, his development plan cannot be processed by the County. The hearing scheduled for February 2, 2012 and any further processing or review of this plan should cease immediately.

With respect to the Second Zoning Petition, section 500.12 of the Zoning Regulations states that when a petition for special exception is filed, a second petition relating to the same property may not be filed until 18 months after the final order is issued on the first petition. A final order has not been issued on the First Zoning Petition, which is not scheduled for hearing until February 29, 2012. The County should not have accepted the Second Zoning Petition for filing and should now cease any further processing of that petition.

---

[1] As stated in my letter to Daryl Putty dated December 30, 2011, the plan should never have been accepted for filing in the first instance. Section 32-4-225(a) of the Code provides that a development plan may not be accepted for filing if it is inconsistent with the concept plan and the revisions are "not related to the outcome of the community input meeting." There are substantial revisions reflected in this plan, which include (i) the plan identifies the proposed uses as including 4 single family and 8 multi-family dwellings, whereas the concept plan reflects only 3 single family dwellings and no multi-family dwellings, and (ii) the plan proposes the redevelopment of lots 4 and 5, whereas the concept plan proposed only the redevelopment of lot 5. These changes and others are clearly "not related to the outcome of the community input meeting." Indeed, the minutes of the CIM reflect that "100% of the attendees were opposed to this project."

We believe the time has come for the County, after many years, to put an end to the illegal use of this property and to Mr. Wright's multiple and alternative filings.

Please let me know your position on these issues. Thank you for your consideration.

Best regards,

Michael R. McCann

cc: The Honorable Lawrence Stahl (*via* hand-delivery)
Michael Snyder, Esq. (*via* facsimile)
Michael Wyatt, Esq. (*via* facsimile)

JB 5-1 10AM
205

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

RECEIVED
APR 24 2012
OFFICE OF ADMINISTRATIVE HEARINGS

April 24, 2012

Office of Administrative Hearings
Jefferson Building
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: 10729 Park Heights Ave, Rainbow Hall, LLC
PAI No. 03-393

To Whom It May Concern:

Enclosed please find subpoenas for issuance in the above matter.

Thank you for your cooperation.

Best regards,

Michael R. McCann

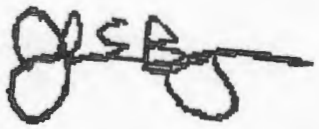
IN RE: RAINBOW HALL Legal Owners – Rainbow Hall Inc., Rainbow Hall LLC	*	BEFORE THE
	*	BALTIMORE COUNTY
	*	OFFICE OF ADMINISTRATIVE
10729 Park Heights Ave. 12th Election District 3rd Councilmanic District	*	HEARINGS
	*	Case No. 2012-0091-X
	*	

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

SUBPOENA *DUCES TECUM*

To: **Custodian of Records**
Attn: Mickey Cornelius
The Traffic Group
Suite H
9900 Franklin Square Dr.
Baltimore, Maryland 21236

You are hereby summoned and commanded to appear personally before the Baltimore County Office of Administrative Hearings, Jefferson Building, 105 W. Chesapeake Avenue, Room 205, Towson, Maryland, 21204 on the 1st day of May, 2012 at 10:00 a.m., for the purpose of testifying at the hearing in the above-captioned case, at the request of Michael R. McCann, Michael R. McCann, P.A., 118 West Pennsylvania Avenue, Towson, Maryland 21204, 410-825-2150, on behalf of the Petitioner, and bring with you the documents identified in the below Schedule of Documents.



Baltimore County Administrative Law Judge

Dated:

SCHEDULE OF DOCUMENTS

1. All documents constituting, concerning, referring to, or relating to the traffic study done for the property located at 10729 Park Heights Avenue, Owings Mills, Maryland 21117.

*The term "documents" includes, without limitation, all papers, writings, drawings, graphs, charts, photographs, recordings, emails, and other data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form.

IN RE: RAINBOW HALL Legal Owners – Rainbow Hall Inc., Rainbow Hall LLC	*	BEFORE THE
	*	BALTIMORE COUNTY
	*	OFFICE OF ADMINISTRATIVE
10729 Park Heights Ave. 12th Election District 3rd Councilmanic District	*	HEARINGS
	*	Case No. 2012-0091-X
	*	

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

SUBPOENA *DUCES TECUM*

To: Glenn Shaffer
Dept. of Envt'l Protection and Sustainability
Fourth Floor
Jefferson Building
105 W. Chesapeake Avenue
Towson, Maryland 21204

You are hereby summoned and commanded to appear personally before the Baltimore County Office of Administrative Hearings, Jefferson Building, 105 W. Chesapeake Avenue, Room 205, Towson, Maryland, 21204 on the 1st day of May, 2012 at 10:00 a.m., for the purpose of testifying at the hearing in the above-captioned case, at the request of Michael R. McCann, Michael R. McCann, P.A., 118 West Pennsylvania Avenue, Towson, Maryland 21204, 410-825-2150, on behalf of the Petitioner, and bring with you the documents identified in the below Schedule of Documents.

Baltimore County Administrative Law Judge

Dated:

SCHEDULE OF DOCUMENTS

1. All documents constituting, concerning, referring to, or relating to 10729 Park Heights Avenue, Owings Mills, Maryland 21117.

*The term "documents" includes, without limitation, all papers, writings, drawings, graphs, charts, photographs, recordings, emails, and other data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form.

IN RE: RAINBOW HALL Legal Owners – Rainbow Hall Inc., Rainbow Hall LLC	*	BEFORE THE
	*	BALTIMORE COUNTY
	*	OFFICE OF ADMINISTRATIVE
10729 Park Heights Ave. 12th Election District 3rd Councilmanic District	*	HEARINGS
	*	Case No. 2012-0091-X
	*	

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

SUBPOENA *DUCES TECUM*

To: J. Robert Powell
Dept. of Envt'l Protection and Sustainability
Fourth Floor
Jefferson Building
105 W. Chesapeake Avenue
Towson, Maryland 21204

You are hereby summoned and commanded to appear personally before the Baltimore County Office of Administrative Hearings, Jefferson Building, 105 W. Chesapeake Avenue, Room 205, Towson, Maryland, 21204 on the 1st day of May, 2012 at 10:00 a.m., for the purpose of testifying at the hearing in the above-captioned case, at the request of Michael R. McCann, Michael R. McCann, P.A., 118 West Pennsylvania Avenue, Towson, Maryland 21204, 410-825-2150, on behalf of the Petitioner, and bring with you the documents identified in the below Schedule of Documents.

Baltimore County Administrative Law Judge

Dated:

SCHEDULE OF DOCUMENTS

1. All documents constituting, concerning, referring to, or relating to 10729 Park Heights Avenue, Owings Mills, Maryland 21117.

*The term "documents" includes, without limitation, all papers, writings, drawings, graphs, charts, photographs, recordings, emails, and other data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form.

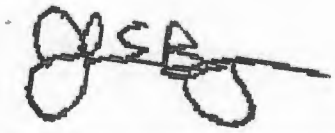
IN RE: RAINBOW HALL Legal Owners – Rainbow Hall Inc., Rainbow Hall LLC	*	BEFORE THE
	*	BALTIMORE COUNTY
	*	OFFICE OF ADMINISTRATIVE
10729 Park Heights Ave. 12th Election District 3rd Councilmanic District	*	HEARINGS
	*	Case No. 2012-0091-X
	*	

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

SUBPOENA *DUCES TECUM*

To: Mike Kulis
Dept. of Envt'l Protection and Sustainability
Fourth Floor
Jefferson Building
105 W. Chesapeake Avenue
Towson, Maryland 21204

You are hereby summoned and commanded to appear personally before the Baltimore County Office of Administrative Hearings, Jefferson Building, 105 W. Chesapeake Avenue, Room 205, Towson, Maryland, 21204 on the 1st day of May, 2012 at 10:00 a.m., for the purpose of testifying at the hearing in the above-captioned case, at the request of Michael R. McCann, Michael R. McCann, P.A., 118 West Pennsylvania Avenue, Towson, Maryland 21204, 410-825-2150, on behalf of the Petitioner, and bring with you the documents identified in the below Schedule of Documents.



Baltimore County Administrative Law Judge

Dated:

SCHEDULE OF DOCUMENTS

1. All documents constituting, concerning, referring to, or relating to 10729 Park Heights Avenue, Owings Mills, Maryland 21117.

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IN RE: RAINBOW HALL Legal Owners – Rainbow Hall Inc., Rainbow Hall LLC	*	BEFORE THE
	*	BALTIMORE COUNTY
	*	BOARD OF APPEALS
10729 Park Heights Ave. 12th Election District 3rd Councilmanic District	*	
	*	Case No. 2012-0091-X
	*	

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

SUBPOENA *DUCES TECUM*

To: Dave Thomas
Dept. of Public Works
111 W. Chesapeake Avenue, Suite 307
Towson, Maryland 21204

You are hereby summoned and commanded to appear personally before the Baltimore County Office of Administrative Hearings, Jefferson Building, 105 W. Chesapeake Avenue, Room 205, Towson, Maryland, 21204 on the 26th day of September, 2012 at 10:00 a.m., for the purpose of testifying at the hearing in the above-captioned case, at the request of Michael R. McCann, Michael R. McCann, P.A., 118 West Pennsylvania Avenue, Towson, Maryland 21204, 410-825-2150, on behalf of the Protestants.

Sunny Cannington
Administrator, Theresa Shelton

Dated:

RECEIVED
SEP 20 2012
BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: RAINBOW HALL Legal Owners – Rainbow Hall Inc., Rainbow Hall LLC	* *	BEFORE THE BALTIMORE COUNTY
	*	BOARD OF APPEALS
10729 Park Heights Ave. 12th Election District 3rd Councilmanic District	* * *	Case No. 2012-0091-X

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

SUBPOENA *DUCES TECUM*

To: Rainbow Hall, LLC
Custodian of Records
4804 Benson Avenue
Baltimore, Maryland 21227

Serve on:
Henry M. Wright, Jr.
Resident Agent
4804 Benson Avenue
Baltimore, Maryland 21227

You are hereby summoned and commanded to appear personally before the Baltimore County Office of Administrative Hearings, Jefferson Building, 105 W. Chesapeake Avenue, Room 205, Towson, Maryland, 21204 on the 25th day of September, 2012 at 10:00 a.m., for the purpose of testifying at the hearing in the above-captioned case, at the request of Michael R. McCann, Michael R. McCann, P.A., 118 West Pennsylvania Avenue, Towson, Maryland 21204, 410-825-2150, on behalf of the Petitioner, and bring with you the documents identified in the below Schedule of Documents.

Sunny Cannington
Administrator, Theresa Shelton

Dated:

RECEIVED
SEP 19 2012
BALTIMORE COUNTY
BOARD OF APPEALS

SCHEDULE OF DOCUMENTS

1. All contracts, options, leases, and other agreements with any church or other religious organization for the purchase or use, or potential purchase or use, of the main building and property at 10729 Park Heights Avenue, Owings Mills, Maryland 21117.

2. All correspondence and other documents reflecting any communications between you and any church or other religious organization regarding the purchase or use, or the potential purchase or use, of the main building and property 10729 Park Heights Avenue, Owings Mills, Maryland 21117.

3. All documents reflecting the identity of the church(es) or other religious organization(s) that will, or that you anticipate will, purchase or use the main building and property at 10729 Park Heights Avenue, Owings Mills, Maryland 21117.

4. All other documents concerning, referring or relating to, or reflecting the proposed use of the main building and property at 10729 Park Heights Avenue, Owings Mills, Maryland 21117.

5. All documents constituting, concerning, referring to, or relating to any tests, inspections, approvals, authorizations or permits of/for the septic, well and water supply systems at the property.

6. All documents constituting, concerning, referring to, or relating to the usage, maintenance or repair of the septic, well and water supply systems at the property.

*The term "documents" includes, without limitation, all papers, writings, drawings, graphs, charts, photographs, recordings, emails, and other data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form.

IN RE: RAINBOW HALL Legal Owners – Rainbow Hall Inc., Rainbow Hall LLC	* *	BEFORE THE BALTIMORE COUNTY
	*	BOARD OF APPEALS
10729 Park Heights Ave. 12th Election District 3rd Councilmanic District	* * *	Case No. 2012-0091-X

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

SUBPOENA *DUCES TECUM*

To: **Custodian of Records**
Attn: Mickey Cornelius
The Traffic Group
Suite H
9900 Franklin Square Dr.
Baltimore, Maryland 21236

You are hereby summoned and commanded to appear personally before the Baltimore County Zoning Commissioner, Jefferson Building, 105 W. Chesapeake Avenue, Room 205, Towson, Maryland, 21204 on the 25th day of September, 2012 at 10:00 a.m., for the purpose of testifying at the hearing in the above-captioned case, at the request of Michael R. McCann, Michael R. McCann, P.A., 118 West Pennsylvania Avenue, Towson, Maryland 21204, 410-825-2150, on behalf of the Protestants, and bring with you the documents identified in the below Schedule of Documents.

Sunny Cannington
Administrator, Theresa Shelton

Dated:

RECEIVED
SEP 18 2012
BALTIMORE COUNTY
BOARD OF APPEALS

SCHEDULE OF DOCUMENTS

1. All documents constituting, concerning, referring to, or relating to any traffic study performed at or near the property located at 10729 Park Heights Avenue, Owings Mills, Maryland 21117.

*The term "documents" includes, without limitation, all papers, writings, drawings, graphs, charts, photographs, recordings, emails, and other data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form.

IN RE: RAINBOW HALL Legal Owners – Rainbow Hall Inc., Rainbow Hall LLC	* *	BEFORE THE BALTIMORE COUNTY
	*	BOARD OF APPEALS
10729 Park Heights Ave. 12th Election District 3rd Councilmanic District	* * *	Case No. 2012-0091-X

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

SUBPOENA *DUCES TECUM*

To: Rainbow Hall, LLC
Custodian of Records
4804 Benson Avenue
Baltimore, Maryland 21227

Serve on:
Henry M. Wright, Jr.
Resident Agent
4804 Benson Avenue
Baltimore, Maryland 21227

You are hereby summoned and commanded to appear personally before the Baltimore County Office of Administrative Hearings, Jefferson Building, 105 W. Chesapeake Avenue, Room 205, Towson, Maryland, 21204 on the 1st day of May, 2012 at 10:00 a.m., for the purpose of testifying at the hearing in the above-captioned case, at the request of Michael R. McCann, Michael R. McCann, P.A., 118 West Pennsylvania Avenue, Towson, Maryland 21204, 410-825-2150, on behalf of the Petitioner, and bring with you the documents identified in the below Schedule of Documents.

Dated:

RECEIVED
SEP 18 2012
BALTIMORE COUNTY
BOARD OF APPEALS

Sunny Cannington
Administrator Theresa Shelton

SCHEDULE OF DOCUMENTS

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2. All correspondence and other documents reflecting any communications between you and any church or other religious organization regarding the purchase or use, or the potential purchase or use, of the main building and property 10729 Park Heights Avenue, Owings Mills, Maryland 21117.

3. All documents reflecting the identity of the church(es) or other religious organization(s) that will, or that you anticipate will, purchase or use the main building and property at 10729 Park Heights Avenue, Owings Mills, Maryland 21117.

4. All other documents concerning, referring or relating to, or reflecting the proposed use of the main building and property at 10729 Park Heights Avenue, Owings Mills, Maryland 21117.

5. All documents constituting, concerning, referring to, or relating to any tests, inspections, approvals, authorizations or permits of/for the septic, well and water supply systems at the property.

6. All documents constituting, concerning, referring to, or relating to the usage, maintenance or repair of the septic, well and water supply systems at the property.

*The term "documents" includes, without limitation, all papers, writings, drawings, graphs, charts, photographs, recordings, emails, and other data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form.

IN RE: RAINBOW HALL Legal Owners – Rainbow Hall Inc., Rainbow Hall LLC	*	BEFORE THE
	*	BALTIMORE COUNTY
	*	BOARD OF APPEALS
10729 Park Heights Ave. 12th Election District 3rd Councilmanic District	*	
	*	Case No. 2012-0091-X
	*	

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

SUBPOENA *DUCES TECUM*

To: J. Robert Powell
Dept. of Envt'l Protection and Sustainability
Fourth Floor
Jefferson Building
105 W. Chesapeake Avenue
Towson, Maryland 21204

You are hereby summoned and commanded to appear personally before the Baltimore County Office of Administrative Hearings, Jefferson Building, 105 W. Chesapeake Avenue, Room 205, Towson, Maryland, 21204 on the 25th day of September, 2012 at 10:00 a.m., for the purpose of testifying at the hearing in the above-captioned case, at the request of Michael R. McCann, Michael R. McCann, P.A., 118 West Pennsylvania Avenue, Towson, Maryland 21204, 410-825-2150, on behalf of the Protestants, and bring with you the documents identified in the below Schedule of Documents.

Sunny Cannington
Administrator, Theresa Shelton

Dated:

RECEIVED
SEP 18 2012
BALTIMORE COUNTY
BOARD OF APPEALS

SCHEDULE OF DOCUMENTS

1. All documents constituting the file for or otherwise concerning, referring to, or relating to 10729 Park Heights Avenue, Owings Mills, Maryland 21117.

2. All documents constituting, concerning, referring to, or relating to any tests, inspections, approvals, authorizations or permits of/for the septic, well and water supply systems at the property.

3. All documents constituting, concerning, referring to, or relating to the usage, maintenance or repair of the septic, well and water supply systems at the property.

*The term "documents" includes, without limitation, all papers, writings, drawings, graphs, charts, photographs, recordings, emails, and other data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form.

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

May 16, 2012

Via Hand-Delivery

Arnold Jablon, Director
Department of Permits, Approvals & Inspections
111 W. Chesapeake Ave.
Suite 205
Towson, Maryland 21204

Re: Notice of Appeal of OAH Decision
Case No. 2012-0091 X

Dear Mr. Jablon:

On behalf of the persons/entity identified below, pursuant to Baltimore County Code §32-4-281 *et seq.*, please let this letter serve as a notice of appeal of the decision of the Administrative Law Judge in regards to this property, located at 10729 Park Heights Ave., Owings Mills, MD 21117. Enclosed please find a check for Three Hundred Eighty Dollars ($380.00) to cover filing fees.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns.

Valleys Planning Council
118 W. Pennsylvania Ave.
Towson, MD 21204

Mark Wilson
10705 Park Heights Ave.
Owings Mills, MD 21117

Harlan Zinn
809 Coldspring Road
Middle River, Maryland 21220

RECEIVED
MAY 16 2012
BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED
MAY 16 2012
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

Best Regards,

Michael McCann

cc: Baltimore County Board of Appeals

RECEIVED
MAY 16 2012
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. 73465

Date: 05/16/12

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				380.00
							Total:	$380.00

Rec From: MICHAEL McCANN

For: APPEAL FEES

PROJECT NAME: 10729 Park Heights Ave.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

RECEIVED
MAY 22 2012
OFFICE OF ADMINISTRATIVE HEARINGS

CASHIER'S VALIDATION

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 825-2150
michael@mmccannlaw.net

RECEIVED
AUG 09 2012
BALTIMORE COUNTY
BOARD OF APPEALS

August 9, 2012

Via Facsimile

Theresa R. Shelton, Administrator
County Board of Appeals
Jefferson Building
105 W. Chesapeake Avenue, Ste. 203
Towson, Maryland 21204

Re: In re: Rainbow Hall
Case No: 12-091-X

Dear Ms. Shelton:

I write to request a postponement of the hearing scheduled on September 25 and September 26, 2012 in this matter. I have a trial scheduled on those days in the matter of *N.B. Contractors, Inc. v. Mendelson*, Case No. 04-10927, before the Circuit Court for Baltimore County. This trial was previously scheduled for June 18-20, 2012, but was postponed on morning of trial until September 25 and 26. A few days later on June 22, I mistakenly informed you that I was available on September 25 and 26 when, in fact, I am not. I believe this occurred because I had not yet received the notice from the Circuit Court and had not yet placed it on my calendar.

I regret this inconvenience and called counsel for Appellee, Mr. Wyatt, to discuss the matter. He does not agree to the postponement request. However, I am hoping that two days might be available soon after September 25 and 26, and that the parties might agree to a shorter postponement. Please let me know if that is feasible.

I should add that obtaining another postponement of the Circuit Court matter is not realistic. As the case number indicates, that matter has been pending since 2004 and already has been postponed.

While this error was entirely my fault, I simply cannot be in two places at the same time. Thank you for your consideration.

Respectfully,

Michael R. McCann

cc: Michael Wyatt, Esq. (*via* email)

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 17, 2012

SENT VIA FACSIMILE, ELECTRONICALLY AND U.S. MAIL

Michael R. McCann, Esquire
118 W. Pennsylvania Avenue
Towson, MD 21204

Re: In the Matter of: RAINBOW HALL, INC. / 10729 PARK HEIGHTS AVENUE
Case No.: 12-091-X

Dear Mr. McCann:

I am writing in response to your facsimile letter of August 9, 2012, in which you requested that the hearing scheduled in the above referenced matter be postponed, due to a conflict with scheduling in Circuit Court. Both the Circuit Court Notice of Hearing and the Maryland Judiciary reflect that the hearing for Case No.: 04-10927 is scheduled for September 24, 2012, which is not in conflict with the agreed dates set for the above hearing, i.e., September 25 – 26, 2012. I have taken into consideration the opposition to your request from Mr. Wyatt and the number of interested parties involved in this matter, to whom notice has been given. Also, the Board's docket is scheduled through the end of November, 2012 and this matter could not be re-assigned until December 2012..

Therefore, for the above reasons, your request for a delay in scheduling this hearing is herewith denied. However, if you would like, I can advise the Circuit Court of the situation with the Board hearing on Rainbow Hall.

The Board's Rule 2.b. states:

> " b. Postponements and continuances will be granted at the discretion of the board only upon request in writing by an attorney of record or a party of record (if not represented by counsel), addressed to the board and with a copy to every other attorney of record or party of record (if not represented by counsel) entitled to receive notice, in accordance with section 500.11 of the Baltimore County Zoning Regulations, setting forth good and sufficient reasons for the requested postponement."

The above captioned matter will convene as agreed by Counsel, beginning on Tuesday, September 25, 2012 @ 10:00 a.m. (Day #1) and continuing on Wednesday, September 26, 2012 @ 10:00 a.m. (Day #2). I remain,

Very truly yours,

Wendell H. Grier
Chairman

c: Michael T. Wyatt, Esquire

Circuit Court of Maryland

Go Back

Case Information

Court System: **Circuit Court for Baltimore County - Civil System**
Case Number: **03C04010927**
Title: **N B Contractors Inc vs Zukerberg**
Case Type: **Contract** Filing Date: **10/19/2004**
Case Status: **Reopened/Active**

Plaintiff/Petitioner Information

(Each Plaintiff/Petitioner is displayed below)

Party Type: **Plaintiff** Party No.: **1**
Business or Organization Name: **N B Contractors Inc**
Address: **341 Central Ave**
City: **Glyndon** State: **MD** Zip Code: **21071**

Attorney(s) for the Plaintiff/Petitioner

Name: **Krause, Esq, Lynn T**
Appearance Date: **10/19/2004**
Practice Name: **Krause & Ferris**
Address: **196 Duke Of Gloucester St**
City: **Annapolis** State: **MD** Zip Code: **21401**
Name: **Young, Esq, Nevin L**
Appearance Date: **07/18/2006**
Practice Name: **Krause & Ferris**
Address: **196 Duke Of Gloucester St**
City: **Annapolis** State: **MD** Zip Code: **21401**

Defendant/Respondent Information

(Each Defendant/Respondent is displayed below)

Party Type: **Defendant** Party No.: **1**
Name: **Zukerberg, Wendy**
Address: **6 Mansel Drive**
City: **Reisterstown** State: **MD** Zip Code: **21136**

Aliases Defendant/Respondent

Name: **Mendelson, Wendy**
Name: **Brown, Wendy**

Attorney(s) for the Defendant/Respondent

Name: **Kent, Esq, Cynthia Hitt**
Appearance Date: **02/11/2005**
Removal Date: **04/17/2006**
Practice Name: **Law Office Of Cynthia Hitt Kent, L L C**
Address: **10 Crossroads Drive**
Suite 107
City: **Owings Mills** State: **MD** Zip Code: **21117-2233**
Name: **McNally, Esq, Christopher M**

Appearance Date: **01/25/2006**
Removal Date: **04/17/2006**
Practice Name: **Bodie, Dolina, Smith & Hobbs, P.A.**
Address: **21 W. Susquehanna Avenue**
City: **Towson** State: **MD** Zip Code: **21204**
Name: **Moorman, Esq, Linda S**
Appearance Date: **02/11/2005**
Removal Date: **07/18/2006**
Practice Name: **Law Office Of Cynthia, Plitt & Kent, LLC**
Address: **3600 Crondall Lane**
Suite 105
City: **Owings Mills** State: **MD** Zip Code: **21117**
Name: **Keyser, Esq, Jennifer E**
Appearance Date: **04/21/2006**
Removal Date: **01/25/2012**
Practice Name: **Ballard Spahr Andrews & Ingersoll LLP**
Address: **300 E Lombard St**
18th Floor
City: **Baltimore** State: **MD** Zip Code: **21202**
Name: **McCann, Esq, Michael R**
Appearance Date: **01/25/2012**
Practice Name: **Michael R McCann P A**
Address: **118 W Pennsylvania Ave**
City: **Towson** State: **MD** Zip Code: **21204**
Name: **McCormack, Esq, Timothy F**
Appearance Date: **04/21/2006**
Removal Date: **01/25/2012**
Practice Name: **Ballard Spahr LLP**
Address: **300 E Lombard St 18th Fl**
City: **Baltimore** State: **MD** Zip Code: **21202**

Court Scheduling Information

Event Type: **Motion Hearing (Civil)** Notice Date: **06/17/2005**
Event Date: **08/10/2005** Event Time: **09:30 AM**
Result: **Held/Concluded** Result Date: **08/11/2005**

Event Type: **Motion Hearing (Civil)** Notice Date: **05/08/2006**
Event Date: **06/30/2006** Event Time: **09:30 AM**
Result: **Held/Concluded** Result Date: **06/30/2006**

Event Type: **Settlement Conference** Notice Date:
Event Date: **08/16/2006** Event Time: **10:30 AM**
Result: **Postponed/Reset** Result Date: **06/21/2006**

Event Type: **Settlement Conference** Notice Date:
Event Date: **11/20/2006** Event Time: **09:00 AM**
Result: **Postponed/Reset** Result Date: **08/29/2006**

Event Type: **Settlement Conference** Notice Date:
Event Date: **01/17/2007** Event Time: **09:00 AM**
Result: **Held/Concluded** Result Date: **01/17/2007**

Event Type: **Settlement Conference** Notice Date:
Event Date: **03/14/2007** Event Time: **09:00 AM**
Result: **Held/Concluded** Result Date: **03/14/2007**

Event Type: **Civil Non-Jury Trial** Notice Date:
Event Date: **06/04/2007** Event Time: **09:30 AM**
Result: **Postponed** Result Date: **06/06/2007**

Event Type: **Civil Non-Jury Trial** Notice Date:
Event Date: **06/05/2007** Event Time: **09:30 AM**
Result: **Cancelled/Vacated** Result Date: **06/06/2007**

Event Type: **Civil Non-Jury Trial** Notice Date:
Event Date: **06/06/2007** Event Time: **09:30 AM**
Result: **Cancelled/Vacated** Result Date: **06/06/2007**

Event Type: **Civil Non-Jury Trial** Notice Date:
Event Date: **06/07/2007** Event Time: **09:00 AM**
Result: **Cancelled/Vacated** Result Date: **06/06/2007**

Event Type: **Civil Non-Jury Trial** Notice Date: **07/03/2007**
Event Date: **12/03/2007** Event Time: **09:30 AM**
Result: **Held/Concluded** Result Date: **12/03/2007**

Event Type: **Civil Non-Jury Trial** Notice Date:
Event Date: **12/04/2007** Event Time: **09:30 AM**
Result: **Held/Concluded** Result Date: **12/05/2007**

Event Type: **Settlement Conference** Notice Date: **12/08/2011**
Event Date: **05/08/2012** Event Time: **09:00 AM**
Result: **Held/Concluded** Result Date: **05/08/2012**

Event Type: **Settlement Conference** Notice Date: **05/08/2012**
Event Date: **05/22/2012** Event Time: **10:30 AM**
Result: **Postponed/Reset** Result Date: **05/21/2012**

Event Type: **Settlement Conference** Notice Date: **05/21/2012**
Event Date: **05/29/2012** Event Time: **09:00 AM**
Result: **Held/Concluded** Result Date: **05/29/2012**

Event Type: **Settlement Conference** Notice Date: **05/29/2012**
Event Date: **06/05/2012** Event Time: **09:00 AM**
Result: **Held/Concluded** Result Date: **06/05/2012**

Event Type: **Settlement Conference** Notice Date: **06/05/2012**
Event Date: **06/12/2012** Event Time: **09:00 AM**
Result: **Held/Concluded** Result Date: **06/12/2012**

Event Type: **Civil Non-Jury Trial** Notice Date: **12/08/2011**
Event Date: **06/18/2012** Event Time: **09:30 AM**
Result: **Held/Concluded** Result Date: **06/18/2012**

Event Type: **Civil Non-Jury Trial** Notice Date:
Event Date: **06/19/2012** Event Time: **09:30 AM**

Result: **Cancelled/Vacated** Result Date: **06/12/2012**

Event Type: **Civil Non-Jury Trial** Notice Date: **06/18/2012**
Event Date: **09/24/2012** Event Time: **09:30 AM**
Result: Result Date:

Judgment Information

(Each Judgment is displayed separately.)
Judgment Date: **01/09/2008** Index Date: **01/09/2008** Status Date: **01/09/2008**
Status **Entered** Amount: **$COSTS**
For: **Zukerberg, Wendy**
Against: **N B Contractors Inc**

Related Persons Information

(Each Related person is displayed below)
Party Type: **Mediator** Party No.: **1**
Name: **YAREMA, ESQ, ELIZABETH C**
Address: **P.O. BOX 85**
City: **HEREFORD** State: **MD** Zip Code: **21111**

Party Type: **Third Party Defendant** Party No.: **4**
Business or Organization Name: **Security Title Guarantee Corp Of Baltimore**
Address: **6 South Calvert Street**
City: **Baltimore** State: **MD** Zip Code: **21202**

Attorney(s) for the Related Persons
Name: **Parsons, II, Robert J**
Practice Name: **Rogers, Moore & Rogers**
Address: **6 South Calvert Street**
City: **Baltimore** State: **MD** Zip Code: **21202-1388**

Party Type: **Third Party Defendant** Party No.: **1**
Name: **Brown, Norman**
Address: **341 Central Avenue**
City: **Glyndon** State: **MD** Zip Code: **21071**

Attorney(s) for the Related Persons
Name: **Covahey, Jr, Edward C**
Practice Name: **Covahey, Boozer, Devan & Dore, P.A.**
Address: **614 Bosley Avenue**
City: **Towson** State: **MD** Zip Code: **21204**
Name: **Covahey, Esq, Bruce Edward**
Practice Name: **Covahey & Boozer, P. A.**
Address: **614 Bosley Avenue**
City: **Baltimore** State: **MD** Zip Code: **21204**
Name: **Krause, Esq, Lynn T**
Practice Name: **Krause & Ferris**
Address: **196 Duke Of Gloucester St**
City: **Annapolis** State: **MD** Zip Code: **21401**

message

For

From Mike McCann

Time 10:25 Date 8/9

Phone

☐ URGENT! Rainbow Hall

Doesn't know what happened but has trial in CCt on 9/25 & 9/26.

Will call Wyatt

I asked him to send something by fax for you

Post-it® Brand

Super Sticky

From: "Michael R. McCann" <michael@mmccannlaw.net>
To: '"Theresa Shelton"' <tshelton@baltimorecountymd.gov>
Date: 8/16/2012 3:00 PM
Subject: RE: Rainbow Hall request for continuance
Attachments: CCF08162012_00002.pdf

Theresa: Per your request, please see the attached notice (dated 6/18/12) in the matter of NB Contractors v. Mendelson. Please note that while the notice states that the matter is set for "1 day merits," the trial is expected to last multiple days.

Please contact me if you have further questions. Thank you.

Best regards,

Michael

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
phone: 410.825.2150
facsimile: 410.825.2149
michael@mmccannlaw.net

E-mail Confidentiality: The information contained in this message may be confidential, proprietary and/or protected by the attorney-client privilege or work product doctrine. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please delete/destroy any copy of
this message and notify Michael R. McCann at 410 825-2150.

-----Original Message-----

From: Theresa Shelton [mailto:tshelton@baltimorecountymd.gov]
Sent: Thursday, August 16, 2012 1:58 PM
To: michael@mmccannlaw.net
Subject: Rainbow Hall request for continuance

Please see the attached.

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.

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

N O T I C E O F H E A R I N G / T R I A L

Case Number: 03-C-04-010927 CN
C I V I L

N B Contractors Inc vs Zukerberg

STATE OF MARYLAND, BALTIMORE COUNTY COUNTY, TO WIT:

TO: Michael R. McCann
Michael R McCann P A
118 W Pennsylvania Ave
Towson, MD 21204

You are hereby NOTIFIED TO APPEAR before a Judge of the:

CIRCUIT COURT FOR BALTIMORE COUNTY
County Courts Building
401 Bosley Avenue
Towson, MD 21285-6754

Court date:
September 24, 2012
At: 09:30 AM
Civil Non-Jury Trial
1 DAY MERITS AGREED DATE

PLEASE NOTE: All counsel are expected to confer with each other with regard to the assigned trial date and to advise the court and other parties of any pre-existing conflict promptly.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3081, or or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Application for postponement must be made in writing with copies to all attorneys.

Please refer to Information Desk for Court Room Designation.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., **cameras and recording equipment are strictly prohibited** in courtrooms and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

Assignment Clerk: Oldewurtel Joan M
Assignment Office Phone: (410)-887-2660

Date Issued: 06/18/12

MARLOW & WYATT
ATTORNEYS-AT-LAW
404 ALLEGHENY AVENUE
TOWSON, MARYLAND 21204
(410) 821-1013
TELEFAX (410) 821-5432
www.marlowwyatt.com

WILLIAM F. C. MARLOW, JR.
MICHAEL T. WYATT
ADMITTED IN MARYLAND AND THE DISTRICT OF COLUMBIA

WASHINGTON ADDRESS
SUITE 300
6935 WISCONSIN AVENUE
WASHINGTON, D.C. 20815

November 18, 2011

VIA TELEFAX

The Honorable Lawrence M. Stahl
Administrative Law Judge
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Rainbow Hall, LLC
Case No: 2012-0091

Dear Judge Stahl:

This firm represents Rainbow Hall, LLC in connection with the above-referenced special exception case. I am in receipt of attorney Michael McCann's November 17, 2011 letter requesting a stay. We vigorously oppose any attempts by Mr. McCann or his clients to derail this case or postpone the hearing scheduled for November 21, 2011 at 1:30 P.M.

Mr. McCann, as a basis for his request, claims the subject zoning matter would have the effect of approving issues which are currently pending before the Baltimore County Board of Appeals. As support for this, Mr. McCann nakedly asserts Rainbow Hall, LLC seeks in this proceeding approval for "multi-family" purposes. This is flat-out wrong. As reflected in the subject petition (a copy of which is attached for your ease of reference), Rainbow Hall, LLC seeks special exception approval for "[c]hurches and other buildings for religious worship". The notation on the plat recites the existing and proposed uses for purposes of identification. Petitioner is aware that these notations are subject to the Baltimore County Zoning Regulations and other requirements which might be imposed in the case.

There is simply nothing pending before the Baltimore County Board of Appeals (CBA) relating to the approval sought by Petitioner in this matter.

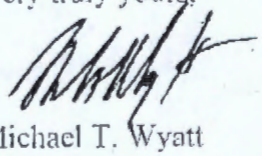
Finally, the zoning petition has been pending for some time and Mr. McCann and his clients have been aware of it. The attempt to stay this case should be seen for what it is: an eleventh hour effort designed to further frustrate and deprive Rainbow Hall, LLC of its property rights. I hasten to add the undersigned has spent considerable time conferring with experts and witnesses for the hearing on November 21, 2011 and Petitioner would be severely prejudiced by

Mr. McCann's request to stay this matter "pending decision" by the CBA at some undetermined point in the future.

For the aforegoing reasons, I would respectfully request that you deny the Mr. McCann's request.

Thank you for your anticipated prompt attention to this matter.

Very truly yours,



Michael T. Wyatt

MTW/sjm
cc: Michael L. Snyder, Esquire
David S. Thaler, P.E.
Mr. Henry M. Wright, Jr.
Michael R. McCann, Esquire
Peter Max Zimmerman, Esquire

COADY & FARLEY
ATTORNEYS AND COUNSELLORS AT LAW
400 ALLEGHENY AVENUE
TOWSON, MARYLAND 21204
(410) 337-0200
FACSIMILE (410) 337-0164
EMAIL: general@coadyandfarley.com

MICHAEL L. SNYDER
PATRICIA O'C.B. FARLEY
THOMAS J. RYAN

CHARLES P. COADY (1868-1934)
JOHN A. FARLEY (1893-1958)
CHARLES P. COADY, JR. (1901-1983)
JOHN A. FARLEY, JR. (1921-2005)
JOHN T. COADY (1925-2011)

8 to wk & file

January 23, 2012

RECEIVED
JAN 24 2012
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

VIA HAND DELIVERY

Arnold Jablon, Director
Baltimore County Department of
Permits, Approvals and Inspections
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Rainbow Hall – 10729 Park Heights Avenue
Zoning Case No: 2012-0091-X
Development Plan PAI File: 03-393
Zoning Case No: 2012-0144-SPHX

Dear Mr. Jablon:

This firm represents Rainbow Hall, LLC and its owner, Henry M. Wright, Jr. I am writing this in response to Mr. McCann's January 20, 2012 letter.

First of all, I disagree with many of Mr. McCann's characterizations regarding the property. While I realize it may be his client's position that virtually everything Mr. Wright has ever done at the property since April 2002 is illegal and that his clients are cloaked in private zoning enforcement authority, this is far from the reality in the zoning matter initiated by his clients some time ago (for convenience the private "VPC zoning case"). Importantly, Baltimore County's own zoning enforcement file in this case indicates that there have been no zoning violations arising out of Mr. Wright's uses beyond the issuance of a few enforcement notices. Therefore, Mr. McCann is patently wrong when he claims that there exists, under § 32-4-114(c) of the Baltimore County Code, "a violation of the zoning or development regulations of the County".

I would add that the County Board of Appeals has not rendered a final decision or issued an order with respect to the VPC zoning case, although one is expected shortly. Upon the parties' review of that decision, appellate rights will be evaluated just as they were over a year ago when then- Zoning Commissioner William Wiseman issued his decision in the VPC zoning case. Therefore, even if Mr. McCann's interpretation regarding "open violations" is correct, *i.e.* that same applies to a private zoning enforcement proceeding initiated under § 500.7 of the BCZR, (which it most respectfully is not), that VPC zoning case is likely to be on appeal for some time, either by the urging of Mr. McCann's clients, Rainbow Hall, LLC or both.

It is also worth reviewing the longstanding Baltimore County policy with respect to the property. A review of the pertinent Department of Permits and Development Management file (now Department of Permits, Approvals and Inspections) reflects quite the opposite from what Mr. McCann represents. For your ease of reference, I am enclosing pertinent copies of the zoning history indicating no open violations.

It is with great restraint that I will resist the temptation to respond more fully to Mr. McCann's precipitous letter. Suffice it to say he and his clients' broadside campaign against Rainbow Hall, LLC knows no bounds and the extraordinary relief requested by Mr. McCann in his January 20, 2012 letter is not available to his clients. Rainbow Hall, LLC has a vested right in the property. The Baltimore County Code and BCZR authorize the owner to seek lawful alternative uses to those assailed at every turn by Mr. McCann and his clients. Neither fairness or justice would be served by the grant of administrative fiat for that which is sought by Mr. McCann and his clients – that the property be depopulated in its entirety and all human activity ground to a halt.

In any event, I submit Mr. McCann is "jumping the gun" and in the final analysis, if there is determined to be an "open violation" in any of the subsequent proceedings, Mr. Wright has the option to comply with any lawful order requiring the cessation of such activities. This compliance would remove the impediment complained about by Mr. McCann in his letter.

In summary, we request that we be permitted to continue processing the two captioned zoning cases and the captioned development plan. The church uses requested by these two cases and the development plan are not in any way dependent upon the continuance of the contested apartments.

Thank you for your anticipated attention to this matter. We will be pleased to meet with you to discuss this matter if you so desire.

Very truly yours,

Michael L. Snyder

MLS/sjm
cc: Mr. Henry M. Wright, Jr.
Michael T. Wyatt, Esquire
Michael R. McCann, Esquire
David S. Thaler, P.E.
The Honorable Lawrence M. Stahl
Enclosures

DS Thaler & ASSOCIATES, INC.

7115 AMBASSADOR ROAD
P.O. BOX 47428
BALTIMORE, MD 21244-7428
410.944.3647 410.944.3684 (fax)

March 5, 2012

Mr. Robert Powell, Supervisor
Baltimore County Department of Environmental
Protection and Sustainability
105 West Chesapeake Avenue, Suite 400
Towson, MD 21204

RE: Rainbow Hall
Special Exception for a church in the existing building

Dear Mr. Powell:

As you may be aware, a Special Exception for a church in the existing structure is currently scheduled for May 1, 2012 before Administrative Law Judge John E. Beverungen.

The proposal contemplates church usage within the existing structure. At the moment there are also apartment units within the structure, and for the purposes of the May 1, 2012 hearing no further development or construction is planned at the site other than minor changes to the existing roads and parking.

If the eight apartments ultimately remain, the church will contain a maximum of 156 seats. Alternatively, if the eight apartments do not remain, the church will contain a maximum of 220 seats.

You may also be aware that a church operated at this facility for several years. Also, there are three freestanding homes on the site in addition to the mansion. Two are ranch style homes with their own septic systems and the third is a two story home which we believe utilizes the same well and septic fields as the main mansion.

Would you please be kind enough to render your opinion as to whether the existing sewage disposal system and wells are adequate to serve the contemplated use for the purposes of this Special Exception.

Thank you for your assistance.

Very truly yours,

D.S. THALER & ASSOCIATES, INC.

David S. Thaler, P.E., L.S., F., ASCE, F., NSPE
President

Copy: Michael L. Snyder, Esq.
Michael T. Wyatt, Esq.
Henry Wright
Robert Sheesley

KEVIN KAMENETZ
County Executive

VINCENT J. GARDINA, *Director*
Department of Environmental Protection and Sustainability

April 30, 2012

David S. Thaler, P.E.
D.S. Thaler and Associates, Inc.
7115 Ambassador Road
P.O. Box 47428
Baltimore, Maryland 21244-7428

RE: Rainbow Hall, Located 10729 Park Heights Avenue, Special Exception for a Church in the Existing Building – Case No. 2012-0091-X

Dear Mr. Thaler,

I have reviewed your letter dated April 11, 2012 wherein you have altered the proposed usage of the property to include one residence and a church containing a maximum of 212 seats.

The existing sewage disposal system was installed in 1997 and was designed to accommodate 5,523 gpd: which was calculated to be the peak flow generated by the Baptist Home at that time. The peak flow was calculated to be 150% of the average metered water flows observed for a four week period. The system of trenches installed comprised of two zones, each zone designed to accommodate 75% of the aforementioned peak flow; meaning the system was designed to receive 150% of the peak design flow.

The proposed usage of the facility (a combination of one residence; assumed to be four bedrooms and a church with a seating capacity of 212 seats) has been calculated to generate a maximum peak flow of 1,660 gpd. This figure is 30% of the design of the existing sewage disposal system; consequently there is adequate capacity to serve the intended use. In addition, this Department has identified a sewage disposal reserve area sufficient in size to accommodate two complete repairs to the existing trench field system. An inspection of the existing field system conducted on March 23, 2012 indicated the system appeared to be functioning adequately.

It is recommended that prior to occupancy by the church, some preventative maintenance on the septic system be performed by a licensed sewage disposal contractor that will serve to extend the life of the existing system. The recommended work is as noted below:

1. Locate all observation pipes at the end of the existing trenches, repair piping, bring to final grade and protect from mowing operations.
2. Investigate the dosing siphon and verify that the siphon alternates properly. If not, repair so that it does.
3. If not done within the last two years, clean all septic tanks and inspect/repair outlet baffles.
4. Take readings on sewage levels for all trenches.

If you have any questions regarding this matter, please contact this office.

Sincerely,

Robert Powell

Robert Powell, Supervisor
Soil Evaluation Section

J:/ R; Powell, Rainbow hall, Special Exception 12-0091-X, 4-30-12

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

September 28, 2012

Michael T. Wyatt, Esquire
Marlow & Wyatt
404 Allegheny Avenue
Towson, MD 21204

Michael R. McCann, Esquire
118 W. Pennsylvania Avenue
Towson, MD 21204

Re: In the Matter of: RAINBOW HALL, INC. / 10729 PARK HEIGHTS AVENUE
Case No.: 12-091-X

Dear Counsel:

Please be advised that the date given to you in regard to the submission of Closing Memos is a County Holiday; and the office will be closed on Monday, November 12, 2012. Therefore, the Closing Memos will be due in the office on the following day; specifically, Tuesday, November 13, 2012, no later than 4:00 p.m. This date and time is reflected in the attached Notice of Deliberation.

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

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Administrator

Duplicate Original

Encl.: Notice of Deliberation

cc(w/Encl.): Board of Appeals Panel

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

August 16, 2012

TO AND FAX NUMBER:

Michael R. McCann, Esquire

FAX: 410-825-2149

FROM:

Theresa R. Shelton, Administrator

FAX: 410-887-3182

TELEPHONE: 410-887-3180

TOTAL NO. OF PAGES INCLUDING COVER:
1

Re: Rainbow Hall
12-091-X

URGENT FOR REVIEW FOR YOUR RECORDS **PLEASE REPLY** PLEASE RECYCLE

In response to your postponement request sent via facsimile on August 9, 2012, and upon review by the Chairman of the Board, it is requested that you forward to this office the Notice of Assignment from the Circuit Court scheduling Case No.: 04-10927, setting that matter in before the Circuit Court for September 25 and 26, as indicated in your letter requesting a continuance.

The Chairman is requesting that the notice be received in this office no later than Friday, August 17, 2012 prior to 3:00 p.m.

Thank you for your prompt attention to this request. This request is also being sent via electronic mail to michael@mmccannlaw.net.

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.

message

For

From Mike McCann

Time 9:34 Date 8/14

Phone

☐ URGENT!

Re: Rainbow Hall postponement request status

I told him you had a message in to the Chairman but I wasn't sure if he'd responded yet

Post-it® Brand Super Sticky

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

September 20, 2012

HAND DELIVERED
Lawrence S. Wescott, Panel Chairman
County Board of Appeals
105 West Chesapeake Avenue, Suite 203
Towson, MD 21204

RECEIVED
SEP 20 2012
BALTIMORE COUNTY
BOARD OF APPEALS

Re: Rainbow Hall, LLC
10729 Park Heights Avenue
Case No.: 2012-091-X

Dear Chairman Wescott:

This petition for a special exception for "churches and other buildings for religious worship" in an R.C. 2/R.C.5 Zone involves Rainbow Hall, LLC's same property as in Case No. 10-280-SPH, wherein the CBA on February 24, 2012 issued an opinion which, among other things, found the existing multi-family (apartment use) to be impermissible. Upon judicial review, the Circuit Court (Kavanaugh, J.) heard the case on September 19, 2012, and an opinion should be forthcoming. The Circuit Court stayed the CBA order pending review.

In light of the initial case, still pending, and upon review of the present petition and ALJ Beverungen's May 7, 2012 decision upon appeal in the present case, several unusual questions present themselves.

First of all, in light of Petitioner Rainbow Hall's insistence upon continued use of the apartments despite the CBA Order, and albeit with a stay, has there been and is there a continuing conflict with County Code Section 32-4-114(c), which prohibits processing of zoning petitions when there exist, at the time of or during the processing of the application, a violation of the zoning regulations? If or when, the Circuit Court affirms the CBA's earlier decision, this will reinforce the judgment of a violation of the zoning regulations. Unless the apartment use immediately ceases at that time, it is would be difficult to justify the continued processing of the present case. As an aggravating factor, according to ALJ Beverungen's opinion, Rainbow Hall allowed a church to use the property from 2005-2010 without a special exception, another conflict with the zoning law.

Secondly, does Rainbow Hall's persistent attempt to circumvent the zoning law suggest that there will also be an inability or disinclination to be concerned about potential adverse effects of any (relatively undefined) church use on the neighborhood? In other words, does this unique past history bode poorly for the special exception?

Thirdly, as it sometimes occurs in cases involving religious institutions that there is a belated claim of conflict with federal law (RLUIPA, the Religious Land Use and Institutionalized Persons Act). Our threshold position is that it would be impermissible for Rainbow Hall to raise such a claim in the absence of a specific petition for special hearing on the subject. In any event, there is no particular religious institution named as a co-petitioner, and, on the merits, we do not perceive any colorable claim of conflict with RLUIPA.

Apart from the above issues, the question otherwise would be whether Rainbow Hall can satisfy the special exception standards. The CBA is familiar with the standards under BCZR Section 502.1 and as articulated in recent appellate cases. People's Counsel v. Loyola College 406 Md. 54 (2008); Montgomery County v. Butler 417 Md. 210 (2010); Mills v. Godlove 200 Md. App. 213 (2011). This will depend on the facts and legal analysis applicable to the presentations at the *de novo* hearing.

Thank you for your attention to this matter.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. DeMilio

Carole S. DeMilio
Deputy People's Counsel

cc: Michael McCann, Esquire
Michael Wyatt, Esquire

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County

Phone: 410-887-3180 Fax: 410-887-3182

To: Debbie/Chris

From: Sunny Cannington, Legal Secretary

Date: October 11, 2012

Re: In the Matter of: Rainbow Hall, LLC
Board Case No: 12-091-X

The attached is the recording from the above referenced case. The Board members who sat on this case are Lawrence S. Wescott, Panel Chairman, Edward W. Crizer, Jr. took Exhibits, and Maureen E, Murphy operated Courtsmart.

The attorneys who appeared were Michael T. Wyatt, Esquire on behalf of Petitioner, Rainbow Hall, LLC c/o Henry M. Wright, Jr., Resident Agent; Michael R. McCann, Esquire, on behalf of Protestants/Appellants Valleys Planning Council, Inc., Mark Wilson, and Harlan Zinn.

I have attached a copy of the Address List to provide names of people who were possibly in attendance at the hearing and who may have given testimony.

I have prepared a letter to the attorney requesting the transcript, a copy of which is enclosed. Below is the attorney's information so that you may contact him.

Please be advised that he is requesting the transcript for closing memoranda, which are due to the Board on November 13, 2012. This means he will require the transcript in enough time to prepare his memos. He was hoping for a 10-day turn around.

Should you have any questions or problems, please do not hesitate to contact me.

Thank you.

Sunny Cannington

Sunny Cannington

Attorney Information: Michael T. Wyatt, Esquire
Marlow & Wyatt
404 Allegheny Avenue
Towson, MD 21204

Phone: 410-821-1013

Theresa Shelton - Rainbow Hall, Inc-Case No: 12-091-X

From: "Michael T. Wyatt" <mwyatt@marlowwyatt.com>
To: "'Theresa Shelton'" <tshelton@baltimorecountymd.gov>
Date: 6/20/2012 10:15 AM
Subject: Rainbow Hall, Inc-Case No: 12-091-X
CC: "'Michael Snyder'" <MSnyder@coadyandfarley.com>, "'Michael R. McCann'" <...

Ms. Shelton: Reference is made to your June 13, 2012 letter regarding scheduling. The property owner is available on August 2, 30 and Sept. 25 and 26, 2012. Please let us know on which of these dates the hearing will be set.

Thank you,

Michael

Michael T. Wyatt
Marlow & Wyatt
404 Allegheny Avenue
Towson, MD 21204
Phone: (410) 821-1013
Fax: (410) 821-5432

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Debra Wiley - ZAC Comments

From: Debra Wiley
To: Kennedy, Dennis; Lykens, David; Livingston, Jeffrey; Lanham, Lynn; Murra...
Date: 10/6/2011 11:56 PM
Subject: ZAC Comments

Hi there,

Please see the cases listed below and the hearing date, if assigned. If you wish to submit a ZAC comment, please be advised that you must do so before the hearing date. If it?s not received by the hearing date, it will not be considered in our decision.

2012-0074-A ? 3435 Yardley Drive
Administrative Variance ? Closing Date: 10/10

2012-0075-A ? 8528 Lucerne Road
No hearing date per data base as of: 10/6/11

2012-0076-A ? 10606 Bird River Road
Administrative Variance ? Closing Date: 10/10

2012-0077-A ? 1472 Martin Blvd.
No hearing date per data base as of: 10/6/11

2012-0078-SPHA ? 7801 Eastern Ave.
Hearing Date: 11/1/11

2012-0079-A ? 1110 Gladway Road
Administrative Variance ? Closing Date: 10/10

2012-0080-SPH ? 19 Shipping Place
No hearing date per data base as of: 10/6/11

2012-0081-A ? 7410 Old Harford Road
Administrative Variance ? Closing Date: 10/17

2012-0082-A ? 30-115 West Ridgely Road
No hearing date per data base as of: 10/6/11

2012-0083-A ? 1003 Meadow Glen Road
Administrative Variance ? Closing Date: 10/17

2012-0084-A ? 1609 Eastern Blvd.
No hearing date per data base as of: 10/6/11

2012-0085-A ? 5713 Daybreak Terrace
No hearing date per data base as of: 10/6/11

2012-0086-SPH ? 2140 B Harris Mill Road
No hearing date per data base as of: 10/6/11

2012-0087-A ? 54 Blister Street
Administrative Variance ? Closing Date: 10/17

2012-0088-SPH ? 11618 Franklinville Road
No hearing date per data base as of: 10/6/11

2012-0089-SPHX ? **(Floodplain)** - 169 Frederick Road
No hearing date per data base as of: 10/6/11

2012-0090-A ? 500 Oella Avenue
Administrative Variance ? Closing Date: 10/29

2012-0091-X ? **(Floodplain)** - 10729 Park Heights Avenue
No hearing date per data base as of: 10/6/11

2012-0092-A ? 12116 Sugar Mill Circle
Administrative Variance ? Closing Date: 10/24

2012-0093-XA ? 3430 Sweet Air Road
No hearing date per data base as of: 10/6/11

2012-0094-A ? **(CBCA)** - 944 Lance Avenue
No hearing date per data base as of: 10/6/11

2012-0095-SPH ? 112 Cherrydell Road
No hearing date per data base as of: 10/6/11

2012-0096-A ? 607 Dunkirk Road
Administrative Variance ? Closing Date: 10/31

Thank you.

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

Patricia Zook - Case No. 2012-0091-X -- Rainbow Hall LLC -- new hearing date

From: Patricia Zook
To: mwyatt@marlowwyatt.com;michael@mmccannlaw.net;
Date: 11/23/2011 12:39 PM
Subject: Case No. 2012-0091-X -- Rainbow Hall LLC -- new hearing date
CC: Adams, Sarah; Lewis, Kristen; Shelton, Theresa; Stahl, Lawrence; Wil...

Judge Lawrence Stahl asked that I send the following to you:

Gentlemen:

This matter was scheduled to be heard on Monday, November 21, 2011, and would have been heard at that time, but for Mr. McCann's request on behalf of the Protestant. A new hearing date will necessitate the required public notice. Protestant shall be responsible for the posting notice and re-advertising the new date.

Being somewhat familiar with internal scheduling at the Board of Appeals, I am setting the matter back in before the Office of Administrative Hearings on February 29, 2012, at 10:00 am in Room 205. Given the history of this matter, I would suggest that Counsel consider setting an additional day or two as part of the initial scheduling.

To that end, please contact Kristen Lewis in the Zoning Review Office at 410-887-3391.

Patti Zook
Baltimore County
Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson MD 21204
410-887-3868
pzook@baltimorecountymd.gov

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Patricia Zook - RE: Case 2012-0091-X - Rainbow Hall LLC - hearing scheduled for Monday, November 21, 2011 (postponement requested)

From: "Michael R. McCann" <michael@mmccannlaw.net>
To: "'Lawrence Stahl'" <lstahl@baltimorecountymd.gov>
Date: 11/21/2011 9:52 AM
Subject: RE: Case 2012-0091-X - Rainbow Hall LLC - hearing scheduled for Monday, November 21, 2011 (postponement requested)
CC: "'Debra Wiley'" <dwiley@baltimorecountymd.gov>, "'Michael T. Wyatt'" <mw...

Judge Stahl: To the extent Mr. Wyatt's email is considered a formal demand for an award of costs, I would simply respond that our request was for a stay, as opposed to a request for a postponement based on a scheduling conflict or the like. In other words, there were substantive legal reasons for delaying the hearing until after the Board rules, which were not created by my clients. In fact, it was the Petitioner's premature filing of the petition that caused this situation and the need for our request.

Thank you for your consideration.

Michael

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
phone: 410.825.2150
facsimile: 410.825.2149
michael@mmccannlaw.net

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From: Michael T. Wyatt [mailto:mwyatt@marlowwyatt.com]
Sent: Friday, November 18, 2011 3:08 PM
To: 'Patricia Zook'
Cc: 'Debra Wiley'; 'Kristen Lewis'; 'Lawrence Stahl'; 'Peter Zimmerman'; 'Theresa Shelton'; msnyder@coadyandfarley.com; michael@mmccannlaw.net
Subject: RE: Case 2012-0091-X - Rainbow Hall LLC - hearing scheduled for Monday, November 21, 2011 (postponement requested)

Patti:

In light of Judge Stahl's decision to postpone the case consistent with your email advice, I would request that the costs, if any, associated with the postponement and rescheduling be assessed against Mr. McCann's clients who brought about the subject postponement.

For the record, I would also request that some definitive timeline be placed on the postponement of this matter. As things stand now, Rainbow Hall, LLC may be administratively precluded (beyond the purview of the jurisdiction in this matter) from pursuing other property rights associated with the subject property.

Thank you.

Michael T. Wyatt

Marlow & Wyatt

404 Allegheny Avenue

Towson, MD 21204

Phone: (410) 821-1013

Fax: (410) 821-5432

From: Patricia Zook [mailto:pzook@baltimorecountymd.gov]
Sent: Friday, November 18, 2011 10:31 AM
To: mwyatt@marlowwyatt.com
Cc: Debra Wiley; Kristen Lewis; Lawrence Stahl; Peter Zimmerman; Theresa Shelton; msnyder@coadyandfarley.com
Subject: Case 2012-0091-X - Rainbow Hall LLC - hearing scheduled for Monday, November 21, 2011 (postponement requested)

Good morning -

Judge Larry Stahl asked that I contact you. He is in receipt of the request for postponement submitted by Michael R. McCann, Esquire and the response by Michael T. Wyatt, Esquire. Judge Stahl has determined to grant the postponement request.

Counsel shall notify all parties of the postponement.

Counsel shall contact Kristen Lewis of the Zoning Review Office at 410 887 3391 to schedule a new hearing date after their receipt of the Board of Appeals' decision in Case No. 2010-0280-SPH.

Patti Zook
Baltimore County
Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson MD 21204
410-887-3868

pzook@baltimorecountymd.gov

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_____ Information from ESET NOD32 Antivirus, version of virus signature database 6641 (20111118)
_____

The message was checked by ESET NOD32 Antivirus.

http://www.eset.com

Patricia Zook - RE: Case 2012-0091-X - Rainbow Hall LLC - hearing scheduled for Monday, November 21, 2011 (postponement requested)

From: "Michael T. Wyatt" <mwyatt@marlowwyatt.com>
To: "'Patricia Zook'" <pzook@baltimorecountymd.gov>
Date: 11/18/2011 3:08 PM
Subject: RE: Case 2012-0091-X - Rainbow Hall LLC - hearing scheduled for Monday, November 21, 2011 (postponement requested)
CC: "'Debra Wiley'" <dwiley@baltimorecountymd.gov>, "'Kristen Lewis'" <klewi...

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Thank you.

Michael T. Wyatt

Marlow & Wyatt

404 Allegheny Avenue

Towson, MD 21204

Phone: (410) 821-1013

Fax: (410) 821-5432

From: Patricia Zook [mailto:pzook@baltimorecountymd.gov]
Sent: Friday, November 18, 2011 10:31 AM
To: mwyatt@marlowwyatt.com
Cc: Debra Wiley; Kristen Lewis; Lawrence Stahl; Peter Zimmerman; Theresa Shelton; msnyder@coadyandfarley.com
Subject: Case 2012-0091-X - Rainbow Hall LLC - hearing scheduled for Monday, November 21, 2011

(postponement requested)

Good morning -

Judge Larry Stahl asked that I contact you. He is in receipt of the request for postponement submitted by Michael R. McCann, Esquire and the response by Michael T. Wyatt, Esquire. Judge Stahl has determined to grant the postponement request.

Counsel shall notify all parties of the postponement.

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Patti Zook
Baltimore County
Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson MD 21204
410-887-3868
pzook@baltimorecountymd.gov

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_____ Information from ESET NOD32 Antivirus, version of virus signature database 6641 (20111118)
_____

The message was checked by ESET NOD32 Antivirus.

http://www.eset.com

Patricia Zook - RE: Case 2012-0091-X - Rainbow Hall LLC - hearing scheduled for Monday, November 21, 2011 (postponement requested)

From: Michael Snyder <MSnyder@coadyandfarley.com>
To: Patricia Zook <pzook@baltimorecountymd.gov>
Date: 11/18/2011 10:47 AM
Subject: RE: Case 2012-0091-X - Rainbow Hall LLC - hearing scheduled for Monday, November 21, 2011 (postponement requested)

ok

From: Patricia Zook [mailto:pzook@baltimorecountymd.gov]
Sent: Friday, November 18, 2011 10:31 AM
To: mwyatt@marlowwyatt.com
Cc: Debra Wiley; Kristen Lewis; Lawrence Stahl; Peter Zimmerman; Theresa Shelton; Michael Snyder
Subject: Case 2012-0091-X - Rainbow Hall LLC - hearing scheduled for Monday, November 21, 2011 (postponement requested)

Good morning -

Judge Larry Stahl asked that I contact you. He is in receipt of the request for postponement submitted by Michael R. McCann, Esquire and the response by Michael T. Wyatt, Esquire. Judge Stahl has determined to grant the postponement request.

Counsel shall notify all parties of the postponement.

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Patti Zook
Baltimore County
Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson MD 21204
410-887-3868
pzook@baltimorecountymd.gov

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Patricia Zook - Case 2012-0091-X - Rainbow Hall LLC - hearing scheduled for Monday, November 21, 2011 (postponement requested)

From: Patricia Zook
To: mwyatt@marlowwyatt.com;michael@mmccannlaw.net;
Date: 11/18/2011 10:30 AM
Subject: Case 2012-0091-X - Rainbow Hall LLC - hearing scheduled for Monday, November 21, 2011 (postponement requested)
CC: Lewis, Kristen; Shelton, Theresa; Stahl, Lawrence; Wiley, Debra; Zim...

Good morning -

Judge Larry Stahl asked that I contact you. He is in receipt of the request for postponement submitted by Michael R. McCann, Esquire and the response by Michael T. Wyatt, Esquire. Judge Stahl has determined to grant the postponement request.

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Counsel shall contact Kristen Lewis of the Zoning Review Office at 410 887 3391 to schedule a new hearing date after their receipt of the Board of Appeals' decision in Case No. 2010-0280-SPH.

Patti Zook
Baltimore County
Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson MD 21204
410-887-3868
pzook@baltimorecountymd.gov

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Patricia Zook - Case 2012-0091-X - Rainbow Hall

From: Patricia Zook
To: Lewis, Kristen
Date: 4/16/2012 3:00 PM
Subject: Case 2012-0091-X - Rainbow Hall
CC: Wiley, Debra

Kristen -

A representative from Mike McCann's office stopped by to review this file. She was directed to our office by someone at the zoning counter.

CASE NUMBER: 2012-0091-X
10729 Park Heights Avenue
Location: SE corner of Park Heights Avenue and Velvet Valley Way.
3rd Election District, 2nd Council District
Legal owner: Rainbow Hall, LLC

SPECIAL EXCEPTION For a special exception under the zoning regulations of Baltimore County to use the herein described property for churches and other buildings for religious worship.

Hearing ~~**Wednesday, 2/29/2012**, 10:00:00 AM~~ Jefferson Building, 105 West Chesapeake Avenue, Room 205, Towson, MD 21204

We don't have this file. We have the HOH for Rainbow Hall and Case 2012-0144-SPHX. I believe that the file for Case 2012-0091-X was never delivered to the OAH as we were told it was postponed a couple weeks prior to the scheduled hearing at the end of February.

Patti Zook
Baltimore County
Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson MD 21204
410-887-3868
pzook@baltimorecountymd.gov

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PLEASE PRINT CLEARLY

CASE NAME Rainbow Hall
CASE NUMBER 2012-0091-X
DATE 5-1-12

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
M.L. SNYDER	COADY AND FARLEY 400 ALLEGHENY AVE.	TOWSON MD. 21204	
MICKEY CORNELIUS	9900 Franklin Sq Dr Ste H	Baltimore, MD 21236	mcornelius@trafficgroup.com
DAVID THALER	BOX 4742	BALTIMORE MD	dthaler@dsthaler.com
STACEY McARTHUR	7115 AMBASSADOR RD	21244-7428	smcarthur@dsthaler.com
Michael T Wyatt	404 Allegheny Ave	Towson MD 21204 21204	mwyatt@morlawwyatt.com
HENRY M. Wright, JR.	8717 MANSION DR MARCOM	LUTHERVILLE MD 21204	

PLEASE PRINT CLEARLY

CASE NAME Rainbow Hall
CASE NUMBER 2012-0091-X
DATE 5-1-12

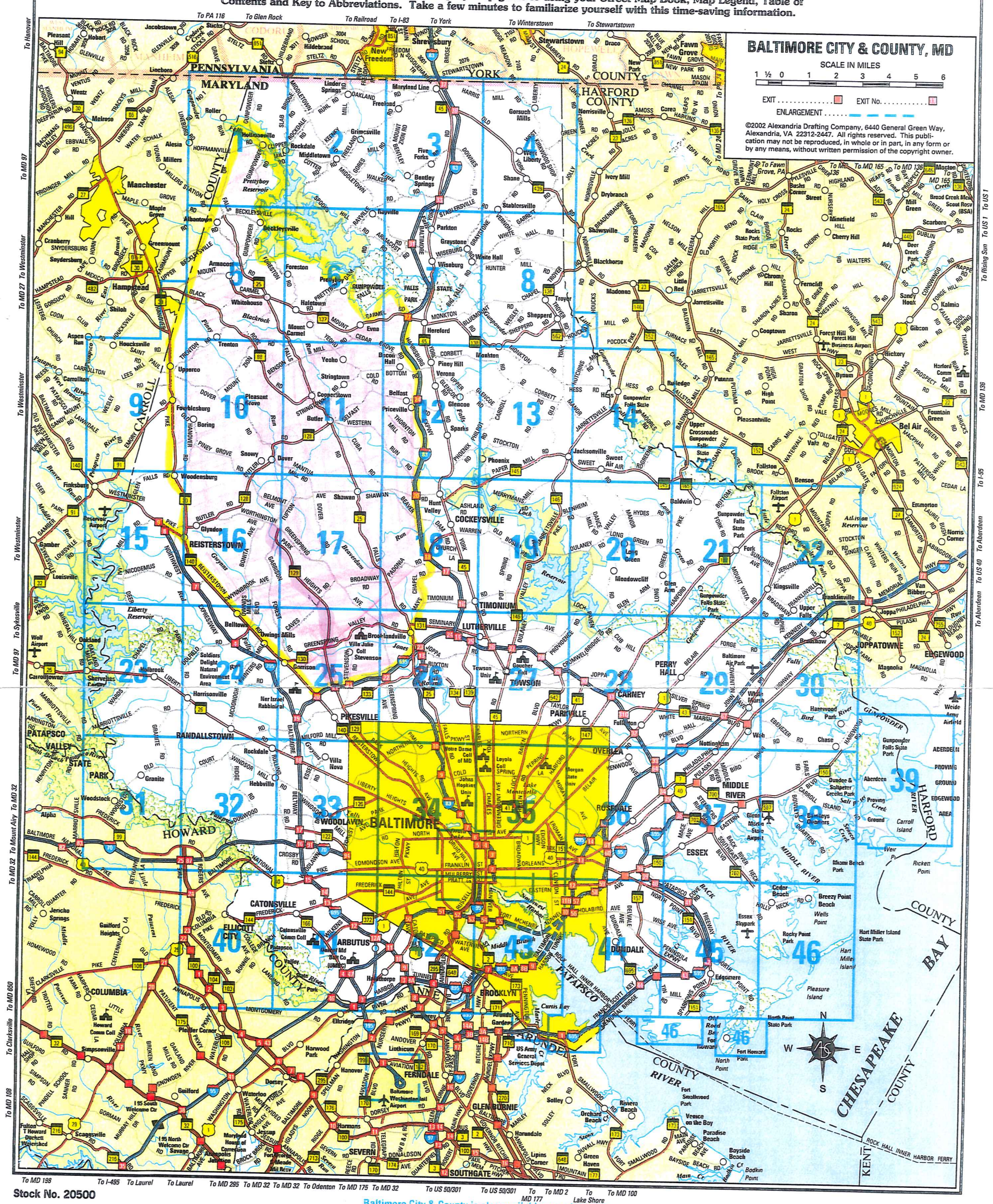
CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Teresa Moore	PO Box 5402	Towson 21285	moorevpc@comcast.net
Manny Bronstein	5 Susan Ct	Owings Mills 21117	m.bronstein@comcast.net
Albert M. Shapiro	1 Susan Ct	Owings Mills 21117	AShap68@comcast.net
Louis J Rosenthal	4 Susan Ct	" "	LJRGOLF@AOL
Barry Zuckerman	2305 Velvet Valley Way	Owings Mills MD 21117	bpzuckerman@gmail.com
HARLAN ZINN	10628 PARK HEIGHTS AVE	OWINGS MILLS, MD 21117	zinnlik@comcast.net
MARK WILSON	10705 PARK HEIGHTS AVE	OWINGS MILLS, MD 21117	mwwilson@comcast.net

BALTIMORE CITY & COUNTY, MD

INDEX TO MAPS

Pages 2, 3, and 4 provide you a complete Step-by-Step guide to using your Street Map Book, Map Legend, Table of Contents and Key to Abbreviations. Take a few minutes to familiarize yourself with this time-saving information.



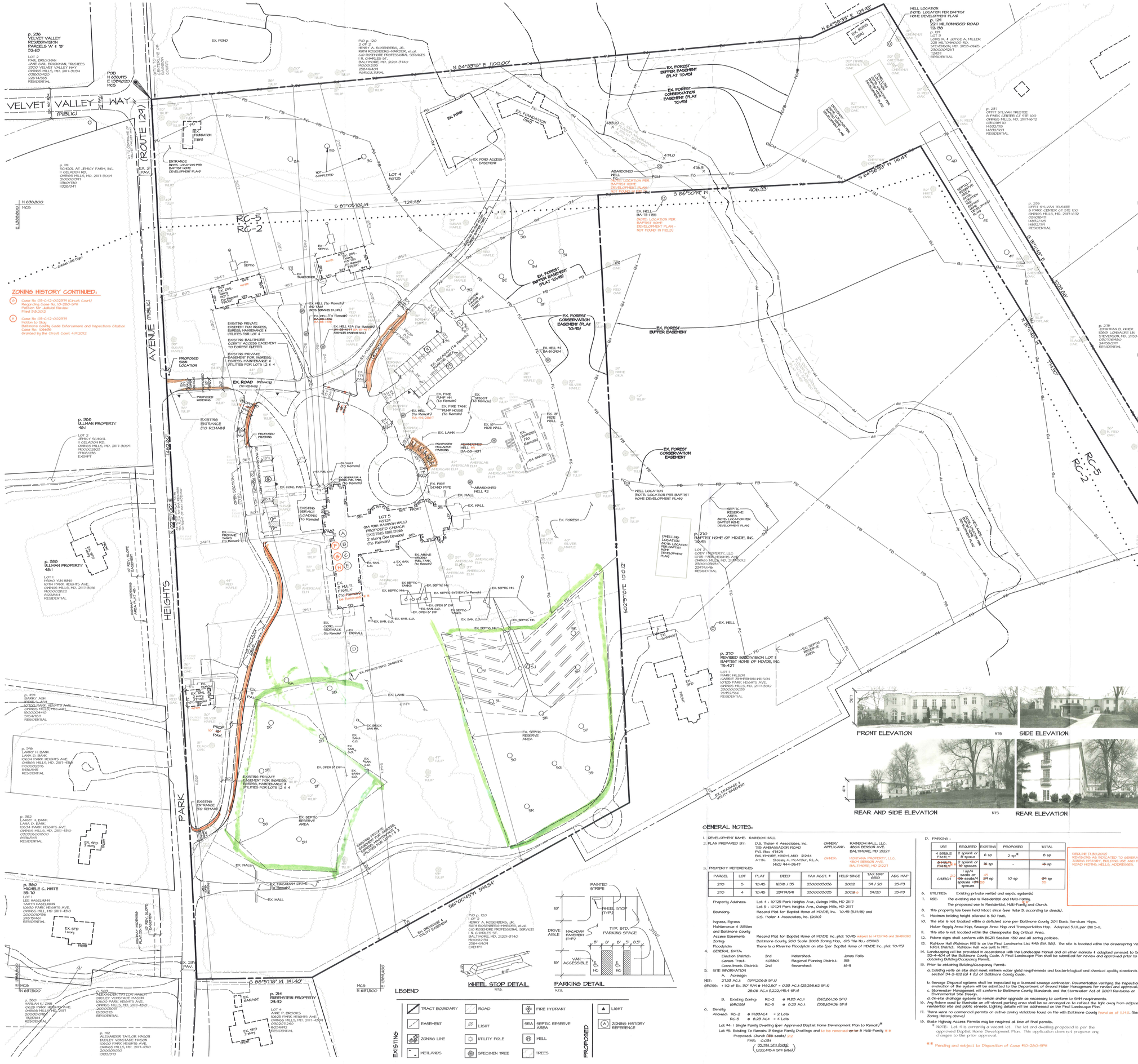
Stock No. 20500

Baltimore City & County is also available as a sheet map.

For additional ADC Maps and Charts, please see the inside back cover.

Rainbow Hall 9-26-12 577

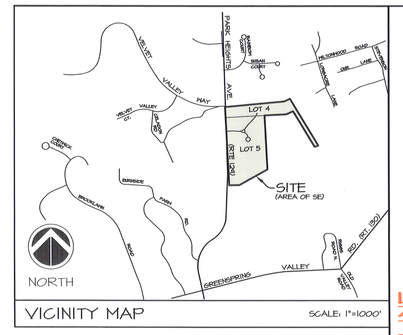
Pro Ex 25



ZONING HISTORY CONTINUED:

G. Case No 08-G-12-002STM (Circuit Court) Regarding Case No. 10-280-SPH Petition for Judicial Review Filed 3.8.2012

H. Case No 08-G-12-002STM Motion to Stay Baltimore County Code Enforcement and Inspections Citation Case No. 108636 Granted by the Circuit Court 4.19.2012



ZONING HISTORY

A. Case No. 63-152-X (II.26.63)

A Special Exception for a Boarding House for the Aged, is granted, subject, to compliance with the following restrictions:

1. That the use of the property described in the petition shall be limited to a religious, non-profit home for the aged of the Baptist denomination.
2. That the property described in the petition shall not be operated either as a nursing home, or as a home for the chronically ill or as a hospital, provided, however, that a portion of the main building presently located on the property described in the petition may be used as an infirmary for the temporary treatment of aged guests.

B. Case No. 76-84-SPH (12.1.75)

A Special Hearing to approve the construction of a new infirmary wing on an existing boarding home for the elderly, is GRANTED, and subject to the approval of a site plan by the State Highway Administration, the Department of Public Works, and the Office of Planning and Zoning.

C. Case No. 91-166-SPHX (10.16.91)

The County Board of Appeals of Baltimore County ORDERED that the Petition for Special Hearing to approve an amendment to the Special Exception and site plan previously granted in Case No. 63-152-X to construct two additions to the existing facility is GRANTED; and the Petition for Special Hearing to permit a maintenance building as an accessory use to the existing facility in the R.C. 5 zone is GRANTED; and the following restrictions are imposed and are conditions precedent to the relief:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Prior to the issuance of any building permits, Petitioner shall submit a schematic landscape plan for review and approval by the Deputy Director of Planning. A copy of the approved plan shall be submitted to the Zoning Commissioner's Office for inclusion in the case file prior to the issuance of any permits.
3. Prior to the issuance of any building permits, Petitioner shall comply or satisfy all of the Zoning Plans Advisory Committee comments submitted for inclusion into the case file.

D. Case Nos. III-993 and 91-230-SPH (6.3.91)

The development plan for Baptist Home of MD/DE, Inc., is APPROVED.

The Petition for Special Hearing seeking approval to create one (1) R.C.2 non-density parcel and the removal of an existing special exception from a portion of the tract, is GRANTED, subject to the following restrictions:

1) The Owner/Developer shall submit within thirty (30) days of the date of this Order, a revised development plan incorporating the conditions and restrictions of this Order.
2) The Order issued by the County Board of Appeals dated October 16, 1991, be and is hereby expressly extinguished so that any contemplated improvements to the Baptist Home facility must be approved through a Subsequent Petition for Special Hearing process.

The Petition for Special Hearing seeking approval to create three (3) undersized R.C. 5 non-density parcels, be and is hereby DISMISSED AS MOOT.

E. Case No. 2010-0280-SPH (1.13.2010)

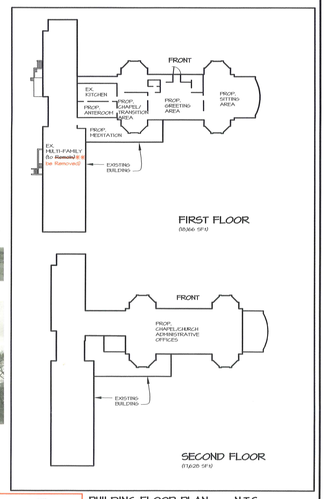
The Petitioners' (Valleys Planning Council, Inc.) request for Special Hearing is granted and that the subject property may be only used in accordance with the terms set forth in the foregoing memorandum and opinion.

~~Appeal / Cross Appeal filed/ORDER pending.~~

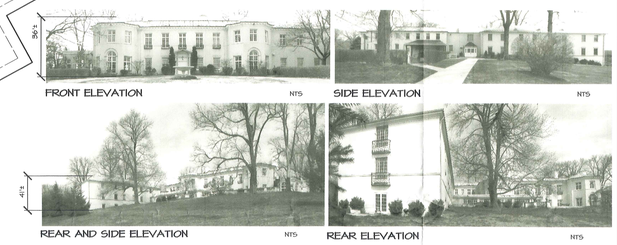
F. Case No. 10-280 SPH (Board of Appeals) (2.24.2012)

The main house shall not be used as a boarding house, apartment or multi-residential use; there is no special exception that exists for a "boarding house" for the Property; the current use by Rainbow Hall, L.L.C. of the main house as a boarding house, apartment or multi-residential use is a zoning violation in the RC2 zone and in the RC5 zone; the Board of Appeals concurring generally with the VPC's relief and determining the uses permitted in RC2 does not unreasonably deprive Rainbow Hall, L.L.C. of all use of the Property; hosting of events by Rainbow Hall, L.L.C. at the main house on the Property is a zoning violation in the RC2 zone; and 3 single family homes located on the Property are non-conforming uses and may continue to be used as single family residences.

SIGN DETAIL



BUILDING FLOOR PLAN N.T.S.



GENERAL NOTES:

1. DEVELOPMENT NAME: RAINBOW HALL
2. PLAN PREPARED BY: D.S. Thaler & Associates, Inc. 7115 AMBASSADOR ROAD P.O. Box 47428 BALTIMORE, MARYLAND 21244 ATTN: Stacey A. McArthur, R.L.A. (410) 944-3647
   OWNER/APPLICANT: RAINBOW HALL, LLC. 4804 BENSON AVE. BALTIMORE, MD 21227
   OWNER: MONTANA PROPERTY, LLC. 4804 BENSON AVE. BALTIMORE, MD 21227
3. PROPERTY REFERENCES

PARCEL	LOT	PLAT	DEED	TAX ACCT. #	HELD SINCE	TAX MAP GRID	ADC MAP
210	5	10-45	16318 / 315	2300003036	2002	54 / 20	25-F3
210	4	10-45	23478/491	2300003035	2002 &	54/20	25-F3

Property Address: Lot 4 - 10725 Park Heights Ave., Owings Mills, MD 21117
Lot 5 - 10724 Park Heights Ave., Owings Mills, MD 21117
Boundary: Record Plat for Baptist Home of MD/DE, Inc. 10-45 (5,9,48) and D.S. Thaler & Associates, Inc. (2010)
Ingress, Egress Maintenance & Utilities and Baltimore County Access Easement: Record Plat for Baptist Home of MD/DE Inc. plat 10-45 subject to 14121/146 and 26485/282
Zoning: Baltimore County, 2000 Scale 2008 Zoning Map, 6th Tile No. 059A3
Floodplain: There is a Riverine Floodplain on site (per Baptist Home of MD/DE Inc. plat 10-45)

4. GENERAL DATA:
   Election District: 3rd Watershed: Jones Falls
   Census Tract: 4038.01 Regional Planning District: 31B
   Councilmanic District: 2nd Sewershed: 61-N
5. SITE INFORMATION
   A. Acreage:
   NET: 21.53 AC.± (1,191,326.8 SF.±)
   (GROSS: + 1/2 of Ex. 30' R/W @ 1462.80' = 0.53 AC.± (23,286.62 SF.±)
   28.06 AC.± (1,222,483.4 SF.±)
   B. Existing Zoning: RC-2 @ 11.83 AC.± (863,861.06 SF±)
   (GROSS) RC-5 @ 8.23 AC.± (358,634.36 SF±)
   C. Density:
   Allowed: RC-2 @ 11.83AC.± = 2 Lots
   RC-5 @ 8.23 AC.± = 4 Lots
   Lot #4: 1 Single Family Dwelling (per Approved Baptist Home Development Plan to Remain)*
   Lot #5: Existing To Remain: 3 Single Family Dwellings and ~~up to~~ 8 Multi-Family ** Proposed: Church (~~186~~ seats) 212
   FAR: 0.091
   (35,784 SF± bldg)
   (1,222,483.4 SF± site)
   D. PARKING:

USE	REQUIRED	EXISTING	PROPOSED	TOTAL
4 SINGLE FAMILY	2 sp/unit or 8 space	6 sp	2 sp*	8 sp
~~8 MULTI FAMILY~~ **	~~2 sp/unit or 16 spaces~~	~~16 sp~~	-	~~16 sp~~
CHURCH 212	1 sp/4 seats or ~~186 seats~~/4 spaces =~~(46)~~ 53	~~24~~ sp	10 sp	~~(34~~ sp 34

6. UTILITIES: Existing private well(s) and septic system(s)
7. USE: The existing use is Residential and Multi-Family. The proposed use is Residential, Multi-Family and Church.
8. This property has been held intact since (see Note 3, according to deeds).
9. Maximum building height allowed is 50 feet.
10. The site is not located within a deficient zone per Baltimore County 2011 Basic Services Maps, Water Supply Area Map, Sewage Area Map and Transportation Map. Adopted 5.1.11, per Bill 5-11.
11. This site is not located within the Chesapeake Bay Critical Area.
12. Future signs shall conform with BCZR Section 450 and all zoning policies.
13. Rainbow Hall (Rainbow Hill) is on the Final Landmarks List #148 (BA 386). The site is located within the Greenspring Valley NRA District. Rainbow Hall was built in 1911.
14. Landscaping will be provided in accordance with the Landscape Manual and all other manuals & adopted pursuant to Section 32-4-404 of the Baltimore County Code. A Final Landscape Plan shall be submitted for review and approved prior to obtaining Building/Occupancy Permit.
15. Prior to obtaining Building/Occupancy Permit:
   a. Existing wells on site shall meet minimum water yield requirements and bacteriological and chemical quality standards per section 34-2-102 (a) & (b) of Baltimore County Code.
   b. Sewage Disposal systems shall be inspected by a licensed sewage contractor. Documentation verifying the inspection and evaluation of the system will be submitted to the Department of Ground Water Management for review and approval.
   c. Stormwater Management will conform to Baltimore County Standards and the Stormwater Act of 2007 Revisions on Environmental Site Design.
   d. On-site drainage systems to remain and/or upgrade as necessary to conform to SHM requirements.
16. Any fixture used to illuminate an off-street parking area shall be so arranged as to reflect the light away from adjacent residential sites and public streets. Lighting details will be addressed on the Final Landscape Plan.
17. There were no commercial permits or active zoning violations found on file with Baltimore County found as of 11.14.11. (See Zoning History above)
18. State Highway Access Permits may be required at time of final permits.

* NOTE: Lot 4 is currently a vacant lot. The lot and dwelling proposed is per the approved Baptist Home Development Plan. This application does not propose any changes to the prior approval.

** Pending and subject to Disposition of Case #10-280-SPH

REDLINE (4.30.2012)
REVISIONS AS INDICATED TO GENERAL NOTES, ZONING HISTORY, BUILDING USE, AND PROPOSED ROAD WIDTHS, WELLS, ADDRESSES.

STATE OF MARYLAND STACEY A. MCARTHUR No. 791 REGISTERED ENGINEER

WHEEL STOP DETAIL N.T.S.

PARKING DETAIL N.T.S.

LEGEND

EXISTING: TRACT BOUNDARY, EASEMENT, ZONING LINE, WETLANDS, ROAD, LIGHT, UTILITY POLE, SPECIMEN TREE, FIRE HYDRANT, SRA SEPTIC RESERVE AREA, WELL, TREES

PROPOSED: LIGHT, ZONING HISTORY REFERENCE

RED LINE PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION

RAINBOW HALL

REVISION: 11.14.11 PER ZONING CHECKLIST

PROJECT NAME: RAINBOW HALL

PLAN TITLE: RED LINE PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION

COUNCILMANIC DIST.: 2
ELECTION DIST.: 3
REGIONAL PLANNING DISTRICT: 31B

OWNER/APPLICANT: RAINBOW HALL, LLC. 4804 BENSON AVE. BALTIMORE, MD 21227

PROPERTY ADDRESS: 10725 & 10724 PARK HEIGHTS AVE. OWINGS MILLS, MD 21117

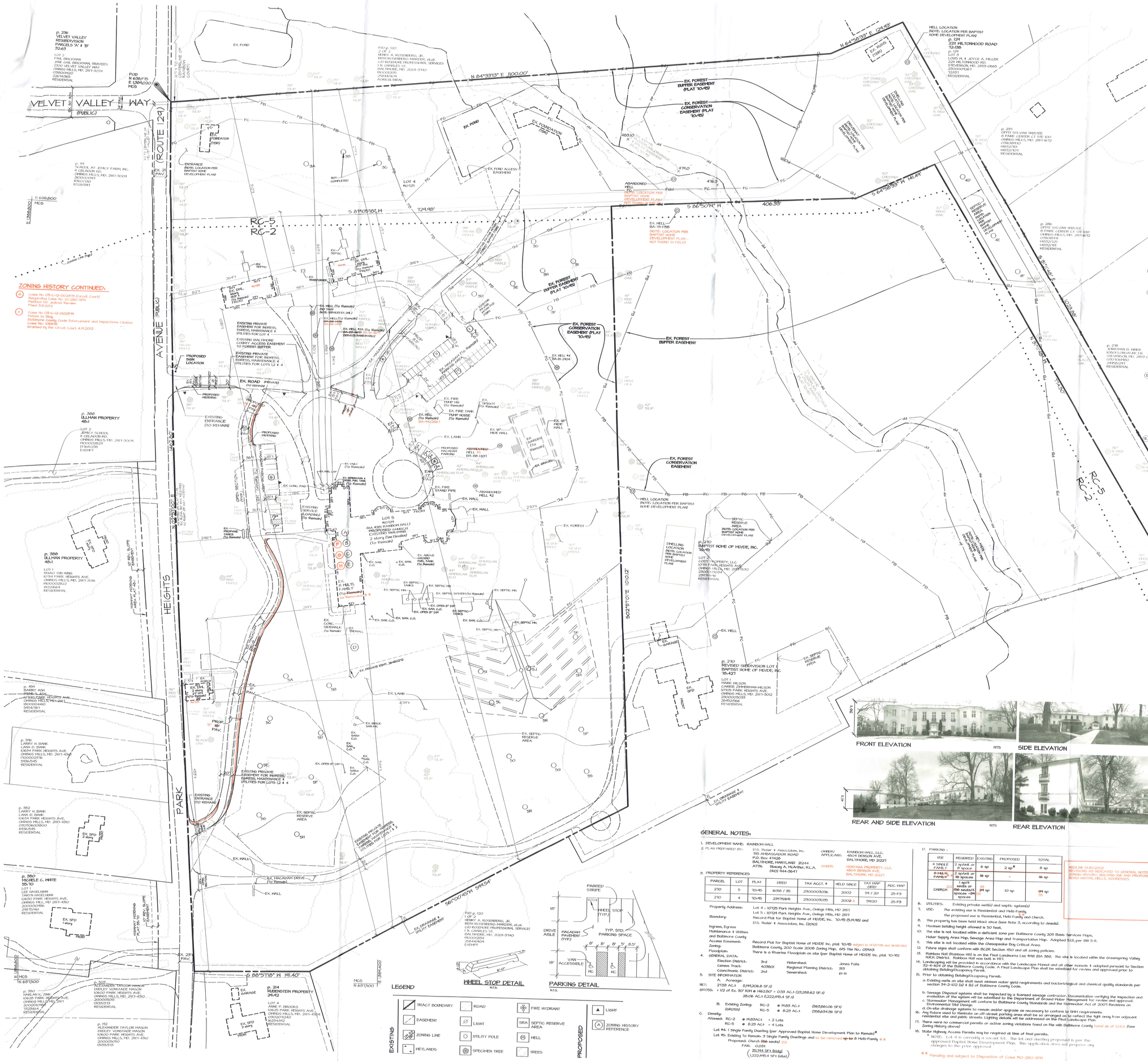
STATE OF MARYLAND STACEY A. MCARTHUR No. 791 REGISTERED ENGINEER

DS Thaler & ASSOCIATES, INC.
CIVIL AND ENVIRONMENTAL ENGINEERS, SURVEYORS
LANDSCAPE ARCHITECTS & LAND PLANNERS
7115 AMBASSADOR ROAD
P.O. BOX 47428
BALTIMORE, MARYLAND 21244-7428
410-944-3647
www.dsthaler.com

PROTESTANT'S EXHIBIT NO. 1 NO. 031486

FILING DATE: 4.27.11
REVISED: 11.14.11
SCALE: 1"= 50'
SHEET 1 OF 1

File name: T:\Rainbow Hall\dwg\Planning\Exhibits\SE REDLINE SE.dwg Layout:Layout1 Apr 30, 2012-2:30pm PFC



ZONING HISTORY CONTINUED:

(G) Case No. 08-C-12-002311 (Circuit Court)
Regarding Case No. 10-280-SPH
Petition for Judicial Review
Filed 3.8.2012

(H) Case No. 08-C-12-002311
Motion to Stay
Baltimore County Code Enforcement and Inspections Citation
Case No. 108616
Granted by the Circuit Court 4.11.2012

ZONING HISTORY

(A) Case No. 63-152-X (V.26.63)

A Special Exception for a Boarding Home for the Aged is granted, subject, to compliance with the following restrictions.

1. That the use of the property described in the petition shall be limited to a religious, non-profit home for the aged of the Baptist denomination.
2. That the property described in the petition shall not be operated either as a nursing home, or as a home for the chronically ill or as a hospital, provided, however, that a portion of the main building presently located on the property described in the petition may be used as an infirmary for the temporary treatment of aged guests.

(B) Case No. 76-84-SPH (V.21.75)

A Special Hearing to approve the construction of a new infirmary wing on an existing boarding home for the elderly is GRANTED, and subject to the approval of a site plan by the State Highway Administration, the Department of Public Works, and the Office of Planning and Zoning.

(C) Case No. 91-166-SPHX (V.26.91)

The County Board of Appeals of Baltimore County ORDERED that the Petition for Special Hearing to approve an amendment to the Special Exception and site plan previously granted in Case No. 63-152-X to construct two additions to the existing facility is GRANTED; and the Petition for Special Hearing to permit a maintenance building as an accessory use to the existing facility in the R.C. 5 zone is GRANTED; and the following restrictions are imposed and are conditions precedent to the relief:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Prior to the issuance of any building permits, Petitioner shall submit a schematic landscape plan for review and approval by the Deputy Director of Planning. A copy of the approved plan shall be submitted to the Zoning Commissioner's Office for inclusion in the case file prior to the issuance of any permits.
3. Prior to the issuance of any building permits, Petitioner shall comply with or satisfy all of the Zoning Plans Advisory Committee comments submitted for inclusion into the case file.

(D) Case Nos. 91-293 and 91-292-SPH (6.3.91)

The development plan for Baptist Home of MD/DE, Inc., is APPROVED.

The Petition for Special Hearing seeking approval to create one (1)R.C.2 non-density parcel and the removal of an existing special exception from a portion of the tract, is GRANTED, subject to the following restrictions:

1) The Owner/Developer shall submit within thirty (30) days of the date of this Order, a revised development plan incorporating the conditions and restrictions of this Order.
2) The Order issued by the County Board of Appeals dated October 16, 1991, be and is hereby expressly extinguished so that any contemplated improvements to the Baptist Home facility must be approved through a Subsequent Petition for Special Hearing process.

The Petition for Special Hearing seeking approval to create three (3) undersized R.C. 5 non-density parcels, be and is hereby DISMISSED AS MOOT.

(E) Case No. 2012-0280-SPH (1.13.2012)

The Petitioners' (Vallejo Planning Council, Inc.) request for Special Hearing is granted and that the subject property may be only used in accordance with the terms set forth in the foregoing memorandum and opinion.

~~Appeal / Cross Appeal filed/ORDER pending.~~

(F) Case No. 10-280-SPH (Board of Appeals) (2.24.2012)
The main house shall not be used as a boarding house, apartment or multi-residential use; there is no special exception that exists for a "boarding house" for the Property. The current use by Rainbow Hall, L.L.C. of the main house as a boarding house, apartment or multi-residential use is a zoning violation in the RC2 zone and is not a nonconforming use; granting the VPC's relief and determining that the proposed use in RC2 does not unreasonably disprove Rainbow Hall, L.L.C. of all use of the Property. Hosting of events by Rainbow Hall, L.L.C. at the main house on the Property is a zoning violation in the RC2 zone; and 3 single family homes on the Property are non-conforming uses and may continue to be used as single family residences.

GENERAL NOTES:

1. DEVELOPMENT NAME: RAINBOW HALL
2. PLAN PREPARED BY: D.S. Thaler & Associates, Inc. 7115 AMBASSADOR ROAD P.O. Box 47428 BALTIMORE, MARYLAND 21244 ATTN: Stacey A. McArthur, R.L.A. (410) 944-3647
   OWNER/APPLICANT: RAINBOW HALL, LLC. 4604 BENSON AVE. BALTIMORE, MD 21227
   OWNER: MONTANA PROPERTY, LLC. 4604 BENSON AVE. BALTIMORE, MD 21227
3. PROPERTY REFERENCES:

PARCEL	LOT	PLAT	DEED	TAX ACCT. #	HELD SINCE	TAX MAP GRID	ADC MAP
210	5	10/45	16316 / 35	2300003036	2002	54 / 20	25-F3
210	4	10/45	23474/418	2300003035	2002 &	54/20	25-F3

Property Address: Lot 4 : 10725 Park Heights Ave., Owings Mills, MD 21117
Lot 5 : 10729 Park Heights Ave., Owings Mills, MD 21117
Boundary: Record Plat for Baptist Home of MD/DE, Inc. 10/45 (5/41/48) and D.S. Thaler & Associates, Inc. (2010)
Ingress, Egress
Maintenance & Utilities and Bulkhead Zone: Record Plat for Baptist Home of MD/DE Inc. plat 10/45 subject to 16123/148 and 26481/282
Access Easement: Baltimore County, 200 Scale 2008 Zoning Map, 615 Title No. 0591A3
Zoning: There is a Riverine Floodplain on site (per Baptist Home of MD/DE Inc. plat 10/45)
Floodplain:

4. GENERAL DATA:
   Election District: 3rd — Watersheds: Jones Falls
   Census Tract: 4031601 — Regional Planning District: 313
   Councilmanic District: 2nd — Sewershed: 61-N
5. SITE INFORMATION
   A. Acreage:
   NET: 27.53 AC.± (1,199,206.8 SF.±)
   GROSS: + 1/2 of Ex. 30' R/W = 1462.50' = 0.53 AC.± (23,288.62 SF.±)
   28.06 AC.± (1,222,495.4 SF.±)
   B. Existing Zoning: RC-2 = 11.83 AC.± (515,358.06 SF.±)
   (GROSS) RC-5 = 16.23 AC.± (706,937.34 SF.±)
   C. Density:
   Allowed: RC-2 @ 11.83AC.± = 2 Lots
   RC-5 @ 16.23 AC.± = 4 Lots
   Lot #4: 1 Single Family Dwelling (per Approved Baptist Home Development Plan to Remain)*
   Lot #5: Existing To Remain: 3 Single Family Dwellings and to be remained up to 5 Multi-Family **
   Proposed: Church (186 seats) 212
   FAR: 0.031
   (38,714 SF± (bldg) / 1,222,495.4 SF± (site))
   D. PARKING:

USE	REQUIRED	EXISTING	PROPOSED	TOTAL
4 SINGLE FAMILY	2 sp/unit or 8 space	6 sp	2 sp*	8 sp
5-MULTI-FAMILY**	2 sp/unit or 10 spaces	16 sp	-	16 sp
CHURCH	1 sp/3 seats or 186 seats/4 spaces =[46] spaces	45 24 sp	10 sp	[61] sp 59

6. UTILITIES: Existing private well(s) and septic system(s)
7. USE: The existing use is Residential and Multi-Family.
   The proposed use is Residential, Multi-Family and Church.
8. This property has been held intact since (see Note 3, according to deeds).
9. Maximum building height allowed is 50 feet.
10. The site is not located within a deficient zone per Baltimore County 2011 Basic Services Maps, Water Supply Area Map, Sewage Area Map and Transportation Map. Adopted 5.11, per Bill 5-11.
11. This site is not located within the Chesapeake Bay Critical Area.
12. Future signs shall conform with BCZR Section 450 and all zoning policies.
13. Rainbow Hall (Rainbow Hill) is on the Final Landmarks List #48 (BA 38). The site is located within the Greenspring Valley NRA District. Rainbow Hall was built in 1911.
14. Landscaping will be provided in accordance with the Landscape Manual and all other manuals & adopted pursuant to Section 32-4-404 of the Baltimore County Code. A Final Landscape Plan shall be submitted for review and approved prior to obtaining Building/Occupancy Permit.
15. Prior to obtaining Building/Occupancy Permit:
    a. Existing wells on site shall meet minimum water yield requirements and bacteriological and chemical quality standards per section 34-2-402 (a) & (b) of Baltimore County Code.
    b. Sewage Disposal systems shall be inspected by a licensed sewage contractor. Documentation verifying the inspection and evaluation of the system will be submitted to the Department of Ground Water Management for review and approval.
    c. Stormwater Management will conform to Baltimore County Standards and the Stormwater Act of 2007 Revisions on Environmental Site Design.
    d. On-site drainage systems to remain and/or upgrade as necessary to conform to SWM requirements.
16. Any fixture used to illuminate an off-street parking area shall be so arranged as to reflect the light away from adjacent residential site and public streets. Lighting details will be addressed on the Final Landscape Plan.
17. There were no commercial permits or active zoning violations found on file with Baltimore County found as of 11.14.11. (See Zoning History above)
18. State Highway Access Permits may be required at time of final permits.

* NOTE: Lot 4 is currently a vacant lot. The lot and dwelling proposed is per the approved Baptist Home Development Plan. This application does not propose any changes to the prior approval.

** Pending and subject to Disposition of Case #10-280-SPH

REDLINE 4.30.2012
REVISIONS AS INDICATED TO GENERAL NOTES, ZONING HISTORY, BUILDING USE AND PROPOSED ROAD WIDTHS, WELLS, ADDRESSES.

STATE OF MARYLAND STACEY A. MCARTHUR No. 791 LANDSCAPE ARCHITECT

REVISION: 11.14.11 PER ZONING CHECKLIST

PROJECT NAME: RAINBOW HALL

PLAN TITLE: RED LINE
PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION

COUNCILMANIC DIST.: 2
ELECTION DIST.: 3
REGIONAL PLANNING DISTRICT: 313

OWNER/APPLICANT:
RAINBOW HALL, LLC.
4604 BENSON AVE.
BALTIMORE, MD 21227

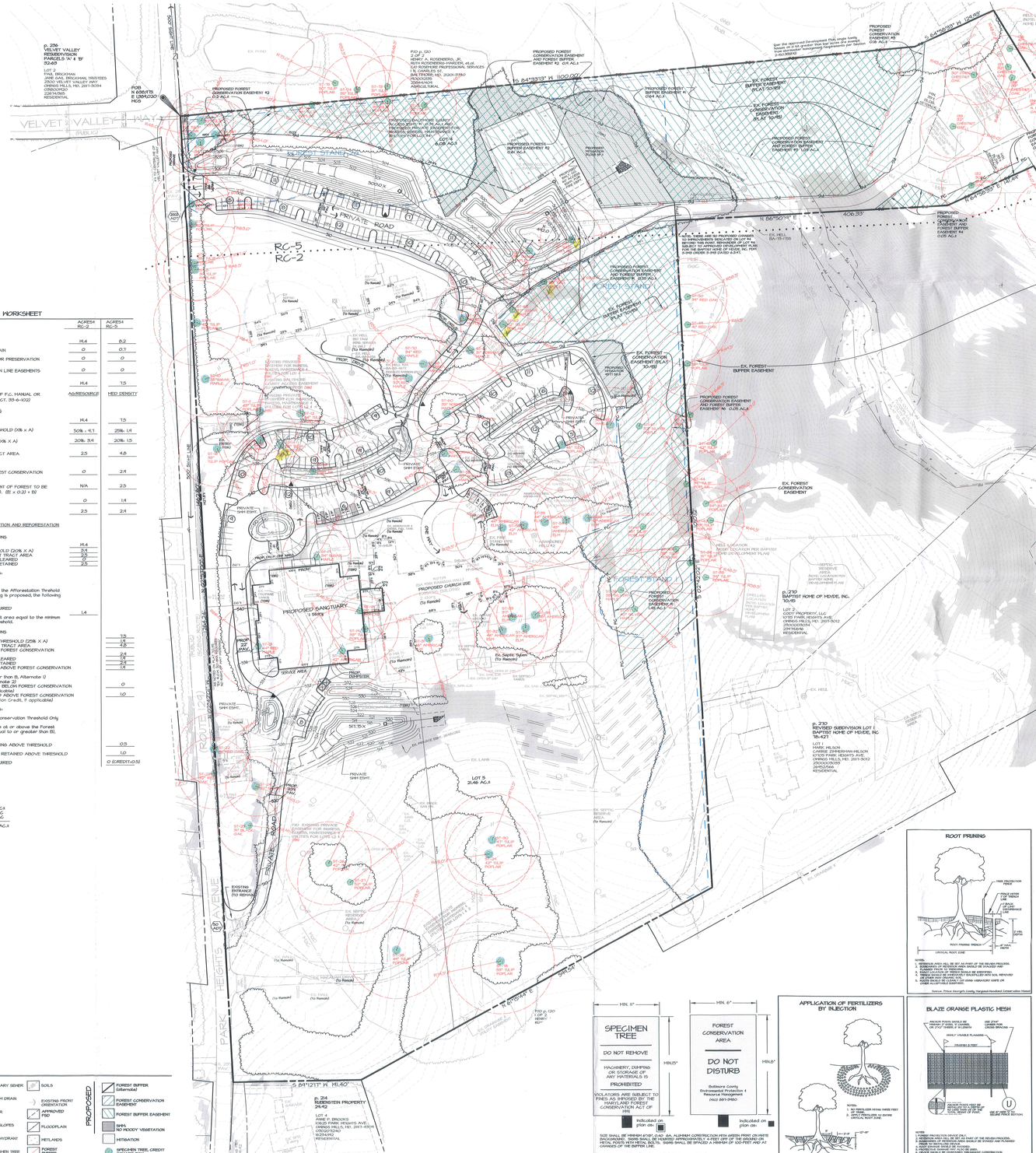
PROPERTY ADDRESS:
10725 & 10729
PARK HEIGHTS AVE.
OWINGS MILLS, MD 21117

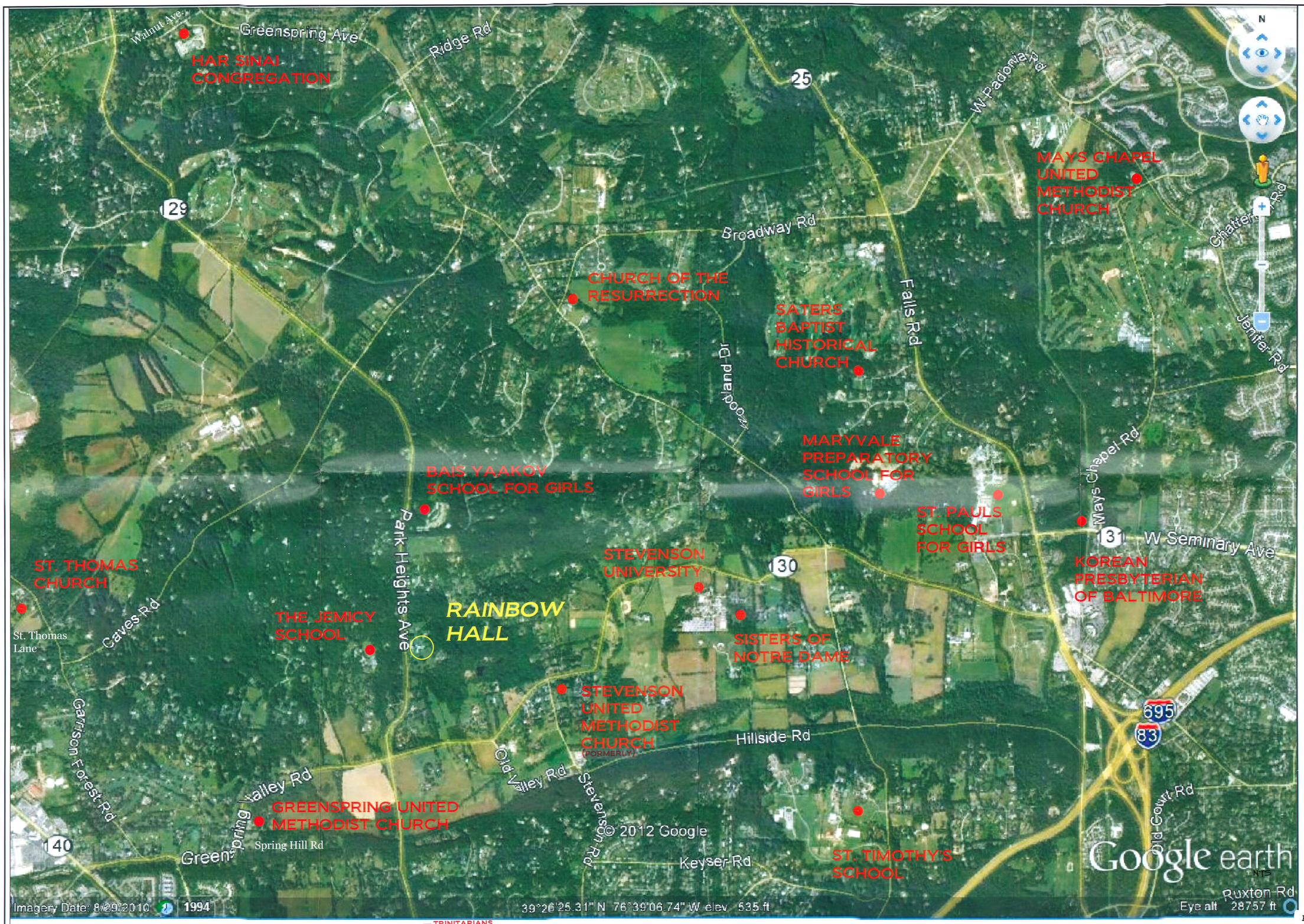
DS Thaler & ASSOCIATES, INC.
CIVIL AND ENVIRONMENTAL ENGINEERS, SURVEYORS
LANDSCAPE ARCHITECTS & LAND PLANNERS
7115 AMBASSADOR ROAD
P.O. BOX 47428

PETITIONER'S EXHIBIT NO. 7

FILING DATE: 4.27.11
REVISED: 11.14.11
SCALE: 1"= 50'
SHEET 1 OF 1

RED LINE
PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION
RAINBOW HALL


VELVET VALLEY WAY
(PUBLIC)
PRIVATE ROAD
RC-5
RC-2
PROPOSED SANCTUARY
PROPOSED CHURCH USE
FOREST STRIPE
PRIVATE ROAD
PARK HEIGHTS AVE.
S 84°21'17" W 181.40'
p. 214
RUBENSTEIN PROPERTY
24/42
LOT 1
JOHN F. BROOKS
COLD PARK HEIGHTS AVE.
OWINGS MILLS, MD. 2117-4504
2300000242
SINGLE FAMILY
RESIDENTIAL
p. 219
REVISED SUBDIVISION LOT 1
BAPTIST HOME OF MD/DE, INC
35/421
LOT 1
CARRIE MILSON
CARRIE ZIMMERMAN-MILSON
10725 PARK HEIGHTS AVE.
OWINGS MILLS, MD. 2117-3012
2300000255
2WR55/566
RESIDENTIAL
p. 219
BAPTIST HOME OF MD/DE, INC.
10/49
LOT 2
GOD'S PROPERTY, LLC
10727 PARK HEIGHTS AVE.
OWINGS MILLS, MD. 2117-3012
2300000254
2WR55/566
RESIDENTIAL
p. 216
JONATHAN D. BRIER
10729 PARK HEIGHTS AVE. LOT 3
WOODSTOCK, MD. 21163
2300000260
2WR55/201
RESIDENTIAL
p. 220
DFFIT SYLVAN TRUSTEE
& PARK CENTER C-1 SITE 10
OWINGS MILLS, MD. 2117-4011
2300000172
14832/125
14832/141
RESIDENTIAL
p. 221
DFFIT SYLVAN TRUSTEE
& PARK CENTER C-1 SITE 10
OWINGS MILLS, MD. 2117-4011
2300000173
14832/125
14832/141
RESIDENTIAL
N 84°33'33" E 1100.00'
S 84°33'33" W 1100.00'
N 84°44'4" E
N 86°50'34" E 406.33'
S 64°50'30" W 124.00'
N 64°50'30" E 124.00'
N 64°50'30" E 75.00'
S 64°50'30" W 75



DS Thaler & ASSOCIATES, INC.
CIVIL AND ENVIRONMENTAL ENGINEERS, SURVEYORS
LANDSCAPE ARCHITECTS & LAND PLANNERS
7115 AMBASSADOR ROAD
P.O. BOX 47428
BALTIMORE, MARYLAND 21244-7428
410-944-3647 www.dsthaler.com

AERIAL EXHIBIT
RAINBOW HALL
MAY 2012

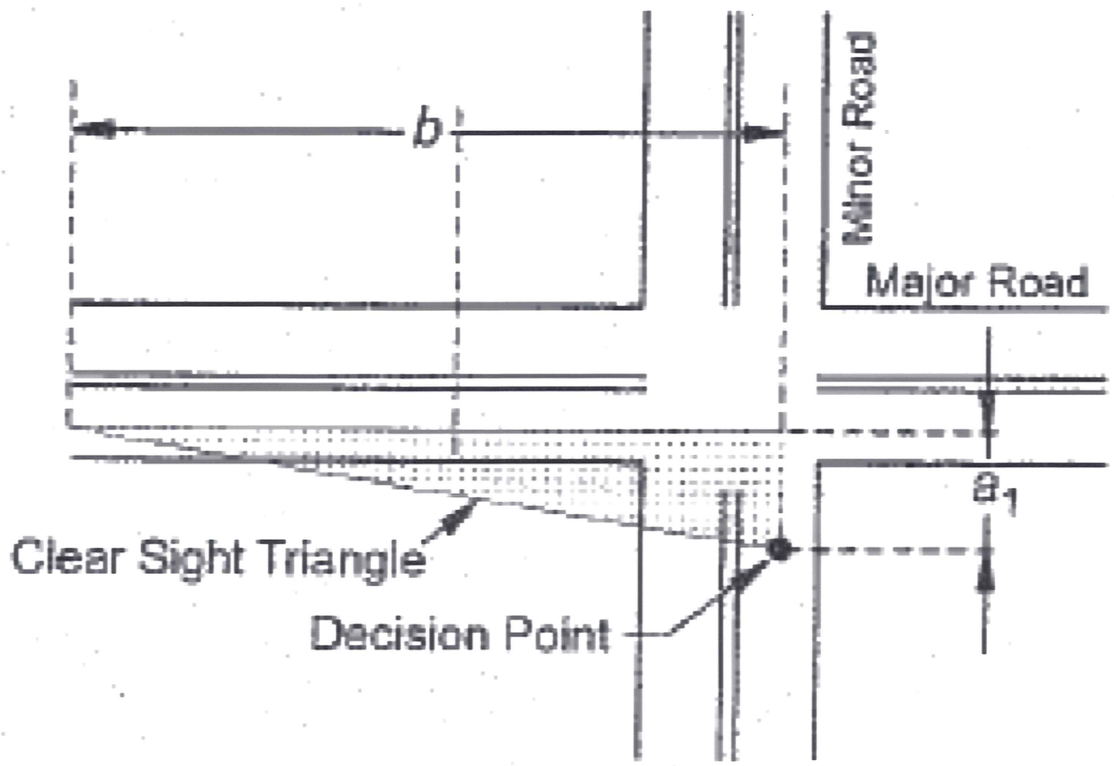
NTS

PETITIONER'S EXHIBIT NO. 3

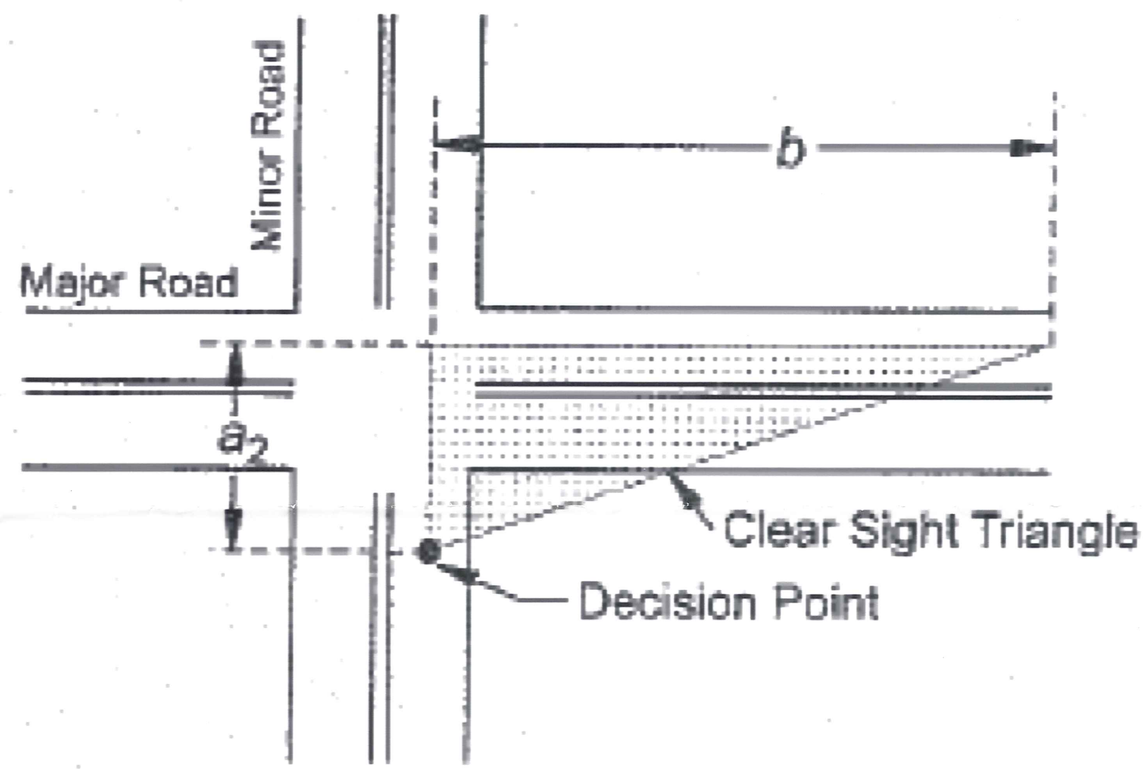
File name: I:\rainbow Hall Valley\Planning\Exhibits\Aerial 4-26-12.dwg Layout:Layout1 Apr 27, 2012-5:32pm PFC

VELVET VALLEY WAY
(PUBLIC)
PARK HEIGHTS AVENUE
(ROUTE 129)
PRIVATE ROAD
PROPOSED SANCTUARY
EX. POND
EX. FOREST CONSERVATION EASEMENT
PROPOSED FOREST CONSERVATION EASEMENT
LOT 5
21.46 AC.±
LOT 4
6.08 AC.±
LOT 3
6.05 AC.±
LOT 2
3.97 AC.±
LOT 1
3.50 AC.±
S 84°33'19" W 1100.09'
S 84°33'19" W 1128.29'
S 84°33'19" W 1181.30'
S 84°33'19" W 1230.30'
N 12°25'55" E 1230.30'
S 12°25'55" E 1230.30'
N 84°33'19" E 1181.30'
N 84°33'19" E 1128.29'
N 84°33'19" E 1100.09'
N 63°15'00" E 1215.00'
N 63°15'00" E 1215.00'
N 63°15'00" E 1215.00

VELVET VALLEY WAY
PARK HEIGHTS AVENUE
ROUTE 140
PARK HEIGHTS
RC-5
RC-2
EX. FOREST CONSERVATION EASEMENT
EX. FOREST BUFFER EASEMENT
EX. POND
EX. BUILDING
EXISTING PRIVATE DRIVEWAY FOR REMOTE PARCEL TO BE MAINTAINED BY OWNERS
PROPOSED 10' WIDE PRIVATE DRIVEWAY EASEMENT
PROPOSED 20' WIDE PRIVATE DRIVEWAY EASEMENT
PROPOSED 20' WIDE PUBLIC DRIVEWAY EASEMENT
PROPOSED 20' WIDE PUBLIC DRIVEWAY EASEMENT
EXISTING PRIVATE DRIVEWAY FOR REMOTE PARCEL TO BE MAINTAINED BY OWNERS
EXISTING PRIVATE DRIVEWAY FOR REMOTE PARCEL TO BE MAINTAINED BY OWNERS



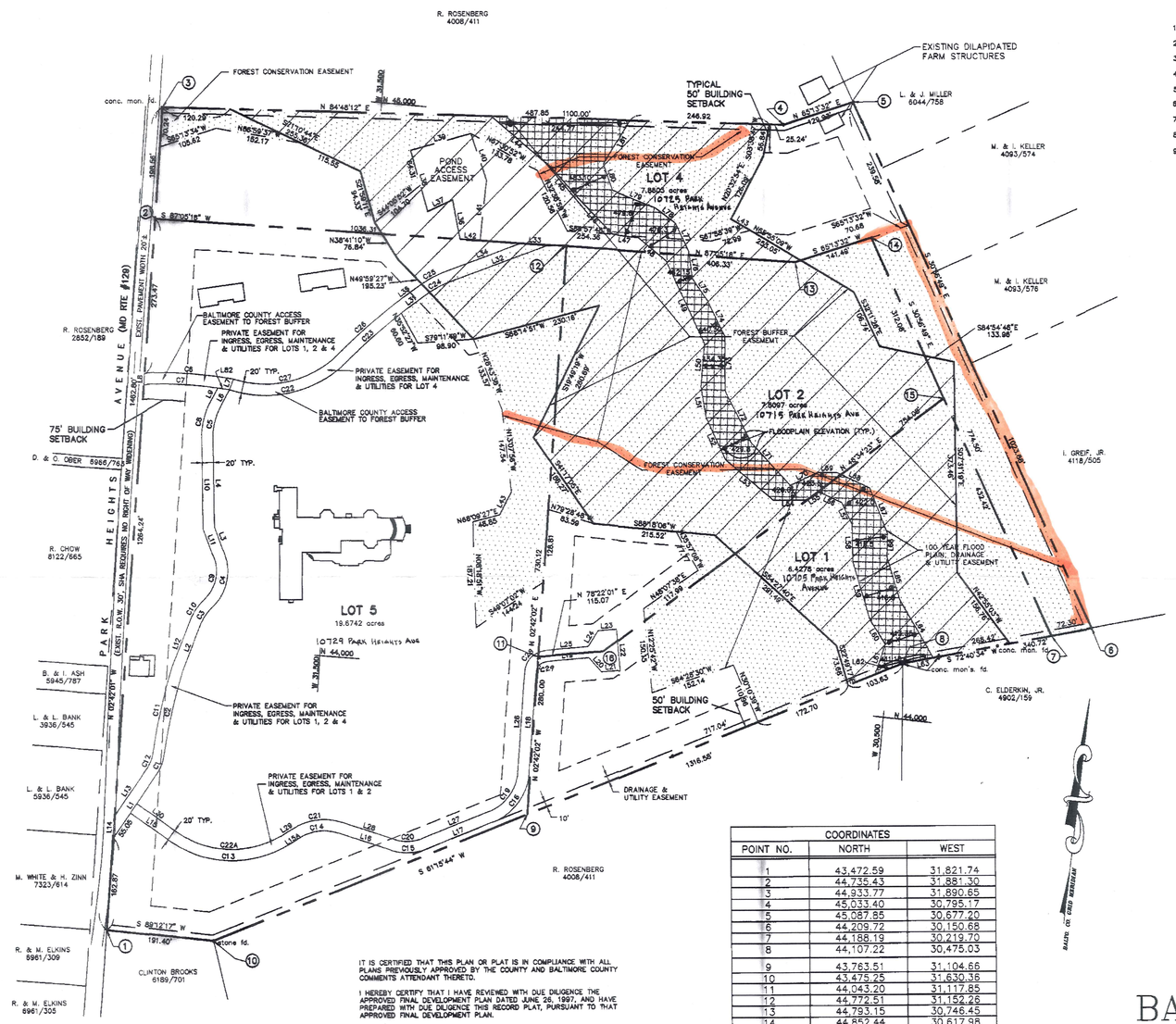
Departure Sight Triangle for Viewing Traffic Approaching the Minor Road from the Left



Departure Sight Triangle for Viewing Traffic Approaching the Minor Road from the Right

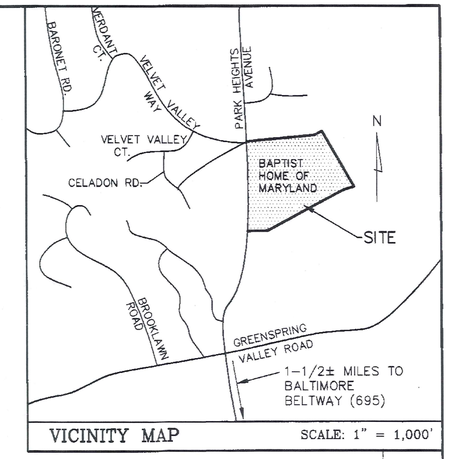
LINE TABLE		
LINE	LENGTH	BEARING
L1	132.23	S22°21'23"W
L2	84.59	S14°48'50"W
L3	40.86	S27°10'47"E
L4	154.23	S07°24'49"E
L6	38.63	N20°39'19"E
L7	20.02	N13°47'05"E
L8	20.12	S02°42'01"E
L9	31.59	N20°39'19"E
L10	157.11	S07°24'49"E
L11	45.46	S27°10'47"E
L12	85.50	S14°48'50"W
L13	98.72	S27°21'23"W
L14	38.93	S02°42'01"E
L15A	17.10	S50°25'22"W
L15	82.83	N80°39'40"W
L16	97.36	S78°45'50"E
L17	127.34	N61°15'44"E
L18	178.44	N02°42'02"W
L19	75.49	S78°22'01"W
L20	33.60	N48°09'43"W
L21	33.01	S78°22'01"W
L22	74.00	N11°37'59"W
L23	33.01	N78°22'01"E
L24	33.60	N24°53'45"E
L25	75.49	S78°22'01"W
L26	178.44	N02°42'02"W
L27	127.34	N61°15'44"E
L28	97.36	S78°45'50"E
L29	17.10	S50°25'22"W
L30	83.53	N80°39'40"W
L31	53.23	S47°08'22"W
L32	185.32	S62°28'20"W
L33	48.05	S87°05'18"W
L34	141.63	S62°28'20"W
L35	53.82	S47°08'22"W
L36	71.27	S17°31'49"E
L37	48.75	N58°01'26"E
L38	112.60	S21°52'19"E
L39	110.86	S67°38'03"W
L40	87.37	N24°52'27"W
L41	107.86	N00°22'17"W
L42	35.61	N67°05'18"E
L43	46.47	N20°35'13"E
L44	136.16	S58°01'20"E
L45	78.53	S45°12'28"E
L46	85.36	S50°03'02"E
L47	45.59	N89°43'18"E
L48	63.45	S56°54'58"E
L49	162.02	S31°34'47"E
L50	75.93	S01°44'13"E
L51	55.21	S16°13'56"E
L52	82.67	S30°56'30"E
L53	111.08	S68°36'34"E
L54	58.10	N82°56'30"E
L55	26.86	N51°22'05"E
L56	44.87	S71°31'40"E
L57	42.50	S31°01'50"E
L58	66.83	S08°27'08"E
L59	107.07	S22°52'14"E
L60	51.42	S38°51'06"E
L61	56.78	S12°29'24"W
L62	52.44	N61°15'44"E
L63	55.42	N72°40'34"E
L64	118.61	N36°27'16"W
L65	79.05	N23°07'39"W
L66	41.54	N05°37'27"W
L67	86.78	N27°55'00"W
L68	85.01	N71°28'08"W
L69	32.98	S82°56'30"W
L70	54.08	S87°33'47"W
L71	101.99	N49°11'08"W
L72	104.78	N33°21'18"W
L73	96.21	N06°54'31"W
L74	70.29	N32°49'43"W
L75	46.42	N41°10'14"W
L76	47.81	N13°51'22"W
L77	57.17	N31°37'28"W
L78	43.65	N59°13'48"W
L79	62.37	N74°31'05"W
L80	49.00	N25°52'53"W
L81	91.04	N24°19'53"E
L82	21.20	S88°44'21"E

CURVE TABLE		
CURVE	LENGTH	RADIUS
C1	43.35	74.54
C2	150.74	1164.07
C3	40.58	95.52
C4	114.49	89.20
C5	57.63	104.31
C6	156.29	749.87
C7	131.37	729.87
C8	68.03	124.31
C9	90.15	69.20
C10	49.51	115.52
C11	154.74	1184.07
C12	33.03	54.54
C13	232.14	193.00
C14	72.72	82.00
C15	64.88	93.00
C16	113.87	102.00
C19	91.54	82.00
C20	50.93	73.00
C21	90.46	102.00
C22	214.84	203.33
C22A	208.09	173.00
C23	139.20	1217.34
C24	50.47	188.00
C25	55.84	208.00
C26	141.38	1237.34
C27	192.49	183.33
C28	56.60	40.00
C29	28.30	20.00



SITE DATA

1) EXISTING ZONING: RC-2, RC-3 & RC-5
2) USE: CONVALESCENT FACILITY & RESIDENCE
3) CENSUS TRACT: 4038.01
4) COUNCILMANIC DISTRICT: 3
5) ELECTION DISTRICT: 12
6) GROSS AREA: 41.7433 ARCES
7) NO. LOTS ALLOWED: 22
8) NO. PROPOSED LOTS: 4
9) SITE ADDRESSES:
LOT 5 – 10729 PARK HEIGHTS AVENUE
LOT 1 – 10705 PARK HEIGHTS AVENUE
LOT 2 – 10715 PARK HEIGHTS AVENUE
LOT 4 – 10725 PARK HEIGHTS AVENUE



VICINITY MAP SCALE: 1" = 1,000'

GENERAL NOTES

1) HIGHWAY AND HIGHWAY WIDENING, SLOPE EASEMENTS, DRAINAGE AND UTILITY EASEMENTS, ACCESS EASEMENTS, FOREST CONSERVATION EASEMENTS, FOREST BUFFER AREAS IN FEE OR EASEMENT, GREENWAY AREAS IN FEE OR EASEMENT AND STORM WATER MANAGEMENT AREAS NO MATTER HOW ENTITLED, SHOWN HEREON, ARE RESERVED UNTO THE OWNER AND ARE HEREBY OFFERED FOR DEDICATION TO BALTIMORE COUNTY, MARYLAND. THE OWNER, HIS REPRESENTATIVES AND ASSIGNS SHALL CONVEY SAID AREAS BY DEED TO BALTIMORE COUNTY, MARYLAND, AT NO COST, UNTIL SUCH TIME AS SAID CONVEYANCE IS EXPEDITED BY BALTIMORE COUNTY. THE OWNER AUTHORIZES BALTIMORE COUNTY, IT'S AGENTS AND ASSIGNS, THE RIGHT TO ENTER UPON THE PROPERTY FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, MAINTAINING AND REPAIRING ROADS, UTILITY LINES AND FACILITIES, AND STORMWATER MANAGEMENT PONDS AND FACILITIES.

2) STREETS AND/OR ROADS SHOWN HEREON AND MENTIONED THEREOF IN DEEDS ARE FOR THE PURPOSE OF DESCRIPTION ONLY AND THE SAME ARE NOT INTENDED TO BE DEDICATED TO THE PUBLIC USE; THE FEE SIMPLE TITLE TO THE BEDS THEREOF IS EXPRESSLY RESERVED IN THE GRANTORS OF THE DEED WHICH THIS PLAT IS ATTACHED, THEIR HEIRS AND ASSIGNS.

3) THIS PLAT MAY EXPIRE IN ACCORDANCE WITH THE PROVISION OF BALTIMORE COUNTY CODE SECTION 22-68.

4) THE RECORDING OF THIS PLAT DOES NOT GUARANTEE THE INSTALLATION OF STREETS OR UTILITIES BY BALTIMORE COUNTY.

5) THE INFORMATION SHOWN HEREON MAY BE SUPERSEDED BY A SUBSEQUENT OR AMENDED PLAT.

6) ADDITIONAL INFORMATION CONCERNING THIS PLAT MAYBE OBTAINED FROM THE BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING AND THE DEPARTMENT OF PUBLIC WORKS.

7) THE RECORDING OF THIS PLAT DOES NOT CONSTITUTE OR IMPLY ACCEPTANCE BY BALTIMORE COUNTY OF ANY STREET, EASEMENT, PARK, OPEN SPACE OR OTHER PUBLIC AREA SHOWN ON THIS PLAT.

8) THE OWNER/DEVELOPER WILL COMPLY WITH THE BEST MANAGEMENT PRACTICES CONTAINED IN THE WATER QUALITY MANAGEMENT POLICY.

9) THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST CONSERVATION AREA OR THE FOREST BUFFER EASEMENT EXCEPT AS PERMITTED BY BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.

10) ANY FOREST CONSERVATION EASEMENTS AND FOREST BUFFER EASEMENTS SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY WHICH RESTRICT DISTURBANCE AND USE OF THESE AREA.

11) EXCEPT AS OTHERWISE INDICATED, ALL BUILDING RESTRICTION LINES SHOWN HEREON, HAVE BEEN PLACED AS OF THE RESULT OF AN INTERPERTATION ONLY OF THE CURRENT APPLICABLE REGULATIONS AND POLICIES OF THE BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING. EXCEPTIONS TO THESE RESTRICTIONS MAY APPLY.

12) THE COMMON DRIVEWAYS SHOWN HEREON SHALL BE MAINTAINED BY ALL PARTIES HAVING RIGHTS TO ITS USE.

13) THE AREA DESIGNATED AS FLOODPLAIN INCLUDES THE AREA INUNDATED BY THE 100-YEAR FREQUENCY STORM AND A MINIMUM OF 1 FOOT VERTICAL FREEBOARD. THE ELEVATIONS SHOWN ON THE FLOODPLAIN SECTIONS ARE THE 100-YEAR DESIGN FREQUENCY SURFACE ELEVATIONS.

14) SOIL PERCOLATION TESTS WILL BE VALID FOR A PERIOD OF FIVE YEARS FROM THE DATE OF RECORDING THIS PLAT IS SIGNED BY THE DIRECTOR, DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT. AT THE EXPIRATION OF THIS PERIOD, NEW TESTS MAY BE REQUIRED.

15) ALL REQUIREMENTS OF THE MARYLAND STATE DEPARTMENT OF THE ENVIRONMENT AND BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT PERTAINING TO PRIVATE WATER AND/OR SEWAGE SYSTEMS MUST BE COMPLIED WITH PRIOR TO APPROVAL OF BUILDING APPLICATIONS.

16) TRASH COLLECTION, SNOW REMOVAL AND ROAD MAINTENANCE ARE TO BE PROVIDED TO THE JUNCTION OF THE PANHANDLE AND STREET RIGHT OF WAY.

17) THE DEVELOPMENT PLAN FOR THIS PROPERTY SHOWN ON THIS PLAT WAS APPROVED ON JUNE 26, 1997.

18) THE DEVELOPER HAS THE LEGAL RIGHT TO ENTER THE EXISTING RIGHT OF WAY.

FROM RECEIPT	
TOTAL	25.00
Receipt # 22253	
SM LL	Blk # 1815
May 15, 1998	10:12 am

S.M. 70-95
Filed for record
Liber 70 FOLIO 95
Date MAY 19 1998
Test:
Clerk

PWA COMPLETED
FINAL PLAT:
FADM
STREETS, NUMBERING
PLAN REVIEW
ENGINEER
REAL ESTATE
RECS
R.E.C. & PARKS

COORDINATES		
POINT NO.	NORTH	WEST
1	43,472.59	31,821.74
2	44,735.43	31,881.30
3	44,933.77	31,890.65
4	45,033.40	30,795.17
5	45,087.85	30,677.20
6	44,209.72	30,150.68
7	44,188.19	30,219.70
8	44,107.22	30,475.03
9	43,763.51	31,104.66
10	43,475.25	31,630.36
11	44,043.20	31,117.85
12	44,772.51	31,152.26
13	44,793.15	30,746.45
14	44,852.44	30,617.98
15	44,584.78	30,457.49
16	44,066.40	31,005.15

IT IS CERTIFIED THAT THIS PLAN OR PLAT IS IN COMPLIANCE WITH ALL PLANS PREVIOUSLY APPROVED BY THE COUNTY AND BALTIMORE COUNTY COMMENTS ATTENDANT THERETO.

I HEREBY CERTIFY THAT I HAVE REVIEWED WITH DUE DILIGENCE THE APPROVED FINAL DEVELOPMENT PLAN DATED JUNE 26, 1997, AND HAVE PREPARED WITH DUE DILIGENCE THIS RECORD PLAT, PURSUANT TO THAT APPROVED FINAL DEVELOPMENT PLAN.

RECORD PLAT FOR
BAPTIST HOME OF MD/DE, INC.

ELECTION DISTRICT 3 — BALTIMORE COUNTY, MARYLAND
SCALE: 1" = 100' — FEBRUARY 17, 1998

APPROVED BY THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT PURSUANT TO SECTION 26-215(c), BALTIMORE COUNTY CODE

5-18-98 David Flowers
DATE — DIRECTOR OF PERMITS & DEVELOPMENT MANAGEMENT

APPROVED:

4-30-98
DATE — DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

SURVEYOR'S CERTIFICATE

THE UNDERSIGNED, A REGISTERED PROPERTY LINE SURVEYOR OF THE STATE OF MARYLAND, DOES HEREBY CERTIFY THAT HE IS THE SURVEYOR WHO PREPARED THIS PLAT, AND THAT THE LAND SHOWN ON THIS PLAT HAS BEEN LAID OUT AND THE PLOT THEREOF HAS BEEN PREPARED IN COMPLIANCE WITH SUBSECTION (C) OF SECTION 3-108 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND, PARTICULARLY INSOFAR AS SAME CONCERNS THE MAKING OF THE PLAT AND THE SETTING OF MARKERS.

KENNETH J. WELLS, PROPERTY LINE SURVEYOR
236-B — 9/13/97
REGISTRATION NO. — DATE

OWNER'S CERTIFICATE

THE UNDERSIGNED OWNER OF THE LAND SHOWN ON THIS PLAT HEREBY CERTIFIES THAT, TO THE BEST OF ITS KNOWLEDGE, THE REQUIREMENT OF SUBSECTION (C) OF SECTION 3-108 OF THE REAL PROPERTY ARTICLE OF THE ANNOTATED CODE OF MARYLAND, HAS BEEN COMPLIED WITH, INSOFAR AS SAME CONCERNS THE MAKING OF THE PLAT AND THE SETTING OF THE MARKERS.

CAROLYN JACKSON
PRESIDENT – BOARD OF TRUSTEES
2/17/98
DATE

OWNER/DEVELOPER

BAPTIST HOME OF MARYLAND, INC.
10729 PARK HEIGHTS AVENUE
BALTIMORE, MARYLAND 21117
(410) 484-3324

DEED REF: R.R.G. 4250/278
TAX ACCT. NOS.: 03-02-004580

COORDINATES AND BEARINGS SHOWN ON THIS PLAT ARE REFERRED TO THE SYSTEM OF COORDINATES ESTABLISHED IN THE BALTIMORE COUNTY METROPOLITAN DISTRICT BASED ON THE FOLLOWING STATION:

HUB	NORTH	WEST
# 13111	41,529.41	31,814.55
# 13112	41,386.96	32,333.28

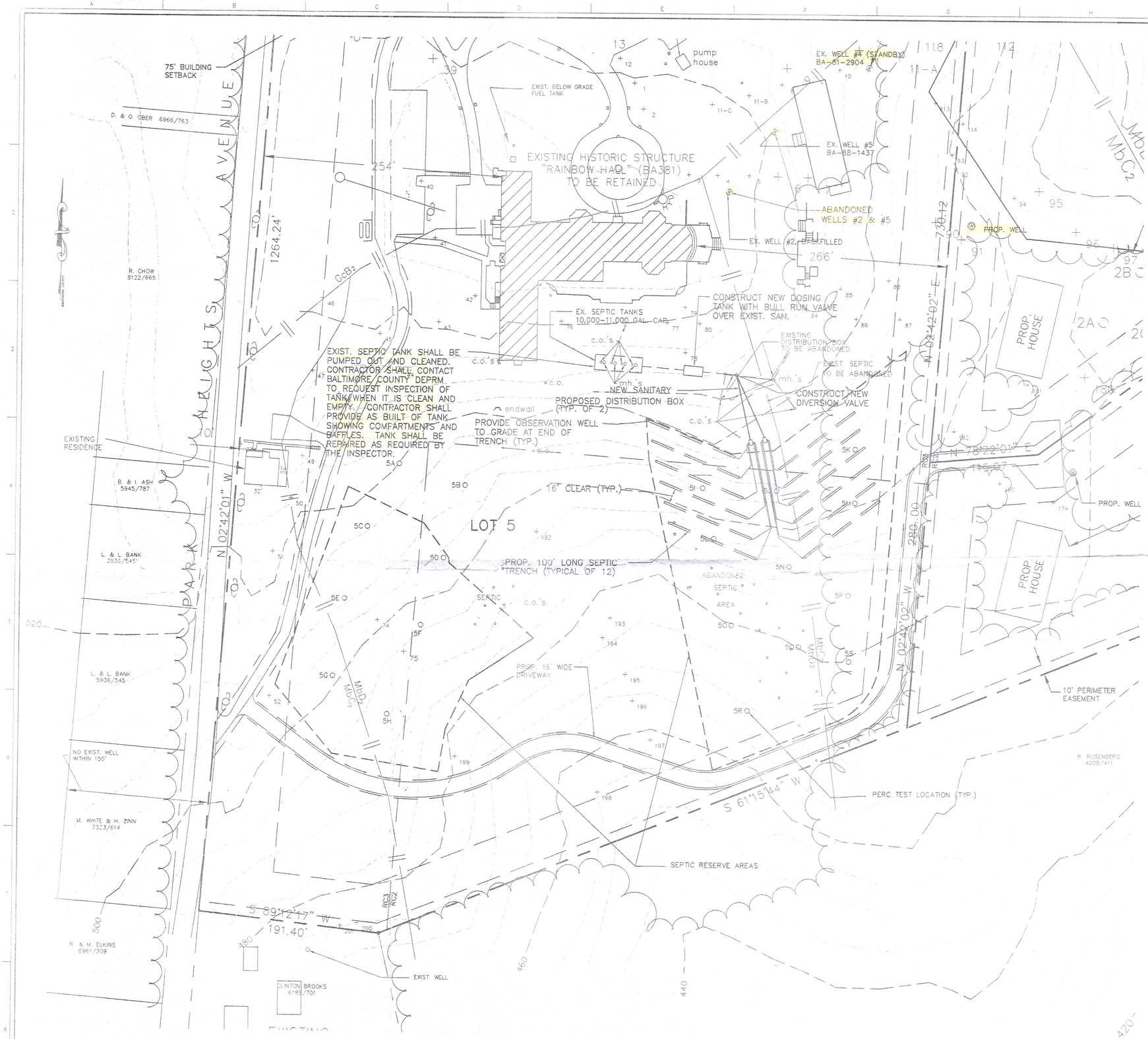
GOWER THOMPSON INC.
CIVIL ENGINEERING – SITE PLANNING
429 E. Lake Avenue
Baltimore, Maryland 21212
Phone 410-532-0101
Fax 410-532-0104

Kenneth J. Wells, Inc.
7403 NEW CUT ROAD
KINGSVILLE, MARYLAND 21087
(410) 592-8800

MSA 2SU 1236 - 5647

70-95

Box 'Ex 13 12-rolx Rainbow Hill LLC 9-26-12



CONSTRUCTION NOTES

1. CONSTRUCT 12 SEPTIC TRENCHES, 100 FEET LONG, 2 FEET WIDE, AND 10 FEET DEEP WITH 8 FEET MIN. OF STONE BELOW THE DISTRIBUTION PIPE. AN OBSERVATION WELL SHALL BE PROVIDED AT THE END OF EACH TRENCH.
2. INSTALL ONE DOSING SIPHON WITH BULL RUN VALVE. DOSING TANK SHALL BE OF SUFFICIENT CAPACITY TO PROVIDE A 700 GALLON DOSING. CONTRACTOR SHALL CONTACT ROB POWELL AT BALTIMORE COUNTY DEPREM (887-2762) FOR APPROVAL OF PROPOSED TANK & SIPHON PRIOR TO ORDERING.
3. NEW DIVERSION VALVE SHALL BE UTILIZED TO DIVERT SEPTIC FLOW TO EAST OR WEST DISTRIBUTION BOX.
4. DISTRIBUTION BOXES SHALL HAVE: AN ACCESS MANHOLE TO GRADE, A SURGE PROTECTOR AND SELF LEVELERS ON ALL OUTFLOW PIPES.
5. PUMP AND BACKFILL ALL SEEPAGE PITS NOT IN USE.

MAINTENANCE NOTES:

AFTER INSTALLATION, OWNER SHALL INSPECT AND MAINTAIN THE SYSTEM AS FOLLOWS:

1. SEPTIC AND DOSING TANKS SHALL BE PUMPED OUT, CLEANED AND REPAIRED AS REQUIRED EVERY 6 MONTHS.
2. DIVERSION VALVE SHALL BE TURNED EVERY 6 MONTHS TO CHANNELIZE FLOW TO DORMANT TRENCHES.
3. OBSERVATION WELLS ON TRENCHES SHALL BE INSPECTED EVERY 3 MONTHS. IF STANDING WATER IS OBSERVED FOR MORE THAN 3 DAYS IN THE OBSERVATION WELL, CONTRACTOR SHALL CONTACT BALTIMORE COUNTY DEPRM FOR AN INSPECTION.

Reconstruction Permit

O.K. TO FILE
DEPT. OF ENVIRONMENTAL PROTECTION & RESOURCE MGMT.
FINAL APPROVED PLAN
1/28/97

10729 Park Heights Ave

SCALE: 1" = 50'

PDM III 393

LPJ INC.
CONSULTING ENGINEERS
16 West 25th Street
Baltimore, Maryland 21218
Phone: (410) 366-7800
Fax: (410) 366-3835

GOWER THOMPSON, INC.
CIVIL ENGINEERING - SITE PLANNING
429 E. Lake Avenue
Baltimore, Maryland 21204
Phone 410-532-0101
Fax 410-532-0104

REVISIONS		
NO.	DATE	COMMENTS

PROJECT TITLE: BAPTIST HOME OF MD/DE, INC.
10729 PARK HEIGHTS AVENUE
OWINGS MILLS, MARYLAND

SHEET TITLE: PROPOSED SEPTIC REPLACEMENT PLAN

SEAL

PROJECT NO.:	1-92118
DRAWN:	LC
DESIGNED:	CG
CHECKED:	CAG
DATE:	1-20-97
DRAWING NO.:	C-1
SHEET	OF

Protestant Ex 15
13-091X Rainbow Hall LLC 9-26-12

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

October 11, 2012

Michael T. Wyatt, Esquire
Marlow & Wyatt
404 Allegheny Avenue
Towson, MD 21204

Re: In the matter of: Rainbow Hall, LLC
Board of Appeals Case No: 12-091-X

Dear Mr. Wyatt:

Pursuant to 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. As previously indicated, it is likely she will charge an expedited service fee.

Please direct all payments and questions regarding the transcript to the typist listed below.

Very truly yours,

Sunny Cannington

Sunny Cannington
Legal Secretary

Typist:	Debbie Eichner
Telephone #:	410-404-2110
Mailing Address:	8101 Bletzer Road, Baltimore, MD 21222

IN THE MATTER OF:

THE OPENING OF: RAINBOW HALL, LLC

CASE NUMBER: 12-091-X

Hearing date: September 25, 2012

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

ON BEHALF OF THE APPELLEES/PETITIONERS:

MICHAEL T. WYATT, ESQUIRE &
MICHAEL L. SCHNEIDER, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

MICHAEL McCANN, ESQUIRE

Debbie H. Eichner
8101 Bletzer Road
Baltimore, Maryland 21222

ORIGINAL DHE

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF: *

RAINBOW HALL, LLC * Case No. 12-091-X

****

September 26, 2012

Pursuant to Notice, the above-entitled hearing was held before Chairman Wescott at Jefferson Building, 2nd Floor, Suite 203, 105 West Chesapeake Avenue, Towson, Maryland 21204, there being present on behalf of the respective parties:

ON BEHALF OF THE PETITIONER:

Michael T. Wyatt, Esquire

ON BEHALF OF THE PROTESTANTS:

Michael R. McCann, Esquire

Christine R. Leary, Transcriber

STILES T. COLWILL

Mr. Stiles T. Colwill
11245 Greenspring Avenue
Lutherville, Md 21093

Sample: Letters in Opposition

April 23, 2012

RECEIVED
APR 25 2012
OFFICE OF ADMINISTRATIVE HEARINGS

John E. Beverungen
Administrative Law Judge
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

Re: Case #: 2012-0091-X
Opposition to request for special exception for a church at Rainbow Hall

Dear Judge Beverungen:

I am writing to express my opposition to the special exception request for a 156-seat church at the property known as Rainbow Hall at 10729 Park Heights Avenue. Over the years, this property has been subdivided and transformed and does not have the carrying capacity for an institutional use.

For more than 40 years (19717-1960), the property was used as a single-family residence and was once the home of General Douglas MacArthur. Subsequently, the Baptist Home of Maryland used the property as a non-profit nursing home. When the nursing home faltered, a subdivision plan was approved, and several lots were sold off to help the home raise funds to pay off debts. Three homes that were accessory to the nursing home were converted to rental homes to earn additional income. The nursing home closed its doors in 2001 and the property was sold to Henry Wright in 2002.

What Mr. Wright purchased was a property much-changed from when the Baptist Hope first acquired it and obtained permission for an institutional use. Today, the principal lot is 19 acres, less than half of the 41-acre size utilized by the Home. In addition, 6 of those 19 acres are under a restrictive easement granted by Mr. Wright in an exchange with an adjacent property owner. That leaves only 13 acres on the principal lot, which currently supports four single-family homes. There is also now a relatively new executive home within a few hundred feet of the mansion, built on one of the subdivided lots.

The site has been substantially changed and diminished in size. In addition, this is a fragile environmental site on the wall of the historic Greenspring Valley. All the surrounding residents are on well and septic, and the property is outside the URDL. There are steep slopes on site as well as specimen trees. The community is extremely worried about water and septic impacts, as well as traffic. Site lines are already difficult at this location, and additional traffic would exacerbate problems.

Given its historical significance, conservation zoning, and location outside the URDL on a designated scenic route, I feel strongly that the special exception request should be denied. The use of the property to support four single-family homes on <u>one</u> lot with 13 acres of RC2 is already quite intensive. The opportunity to rent these four dwellings as single-family homes offers the potential for a significant income stream from a use consistent with the current zoning and site conditions. I urge you to deny the special exception request.

Sincerely,

HALCYON FARM 11245 GREENSPRING AVENUE LUTHERVILLE, MARYLAND 21093

Stanley L. and Sondra H. Crain
2509 Velvet Valley Way
Owings Mills, MD 21117

April 23, 2012

RECEIVED
APR 25 2012
OFFICE OF ADMINISTRATIVE HEARINGS

John E. Beverungen
Administrative Law Judge
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

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Sincerely,

Stanley L. Crain

Stanley L. Crain

Irving E. Walker
5 Grenadier Court
Owings Mills, MD 21117

RECEIVED
APR 25 2012
OFFICE OF ADMINISTRATIVE HEARINGS

April 24, 2012

John E. Beverungen
Administrative Law Judge
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

Re: Case #: 2012-0091-X
Opposition to request for special exception for a church at Rainbow Hall

Dear Judge Beverungen:

I am writing to express my opposition to the special exception request for a 156-seat church at the property known as Rainbow Hall at 10729 Park Heights Avenue. I speak from the perspective of someone who lives close to the property, in the neighborhood known as Velvet Valley, and as someone who highly values and appreciates the efforts made to date by Baltimore County and other private citizens to preserve the special beauty and character of the Greenspring Valley area, notwithstanding the commonplace adverse effects of suburban sprawl in other areas of the County. Over the years, the Rainbow Hall property has been subdivided and transformed and does not have the carrying capacity for an institutional use.

For more than 40 years (19717-1960), the property was used as a single-family residence and was once the home of General Douglas MacArthur. Subsequently, the Baptist Home of Maryland used the property as a non-profit nursing home. When the nursing home faltered, a subdivision plan was approved, and several lots were sold off to help the home raise funds to pay off debts. Three homes that were accessory to the nursing home were converted to rental homes to earn additional income. The nursing home closed its doors in 2001 and the property was sold to Henry Wright in 2002.

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JONATHAN P. MYERS
2415 Velvet Valley Way
Owings Mills, Maryland 21117

April 20, 2012

RECEIVED
APR 23 2012
OFFICE OF ADMINISTRATIVE HEARINGS

John E. Beverungen
Administrative Law Judge
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

Re: Case #: 2012-0091-X
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Sincerely,

Jonathan P. Myers

JPM/clr
U:\CAROL\Jon\Personal\Rainbow Hall 04-20-12.doc

Eugene and Loretta Reynolds
11962 Park Heights Avenue
Owings Mills, MD 21117
410-356-6704

April 20, 2012

RECEIVED
APR 23 2012
OFFICE OF ADMINISTRATIVE HEARINGS

John E. Beverungen
Administrative Law Judge
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

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Sincerely,

Gene and Loretta Reynolds

Eugene and Loretta Reynolds
(48 year residents of the valley)

RICHARD F. BLUE, JR.
P.O. Box 1206 / 10802 Greenspring Avenue
Brooklandville, MD 21022

April 23, 2012

John E. Beverungen
Administrative Law Judge
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

RECEIVED
APR 24 2012
OFFICE OF ADMINISTRATIVE HEARINGS

RE: Case #: 2012-0091-X
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Sincerely,

Richard F. Blue, Jr.

BEVERLY S. MYERS
2415 Velvet Valley Way
Owings Mills, Maryland 21117

April 24, 2012

RECEIVED
APR 27 2012
OFFICE OF ADMINISTRATIVE HEARINGS

John E. Beverungen
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105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

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Sincerely,

Beverly S. Myers

Beverly S. Myers

JPM/clr
U:\CAROL\Jon\Personal\Rainbow Hall (Bev) 04-24-12.doc

Sender's Name Frona & Gordon Greenspun
Sender's Address 8 Bucksway Rd. Owings Mills MD. 21117

Date:April 23,2012

RECEIVED

APR 27 2012

OFFICE OF ADMINISTRATIVE HEARINGS

John E. Beverungen
Administrative Law Judge
105 W. Chesapeake Avenue, Suite 103
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Sincerely,

Frona & Gordon Greenspun

JB
11/21
1:30pm

2012-0091-X
Rainbow Hall

(Previous Order)

January 13, 2011

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 West Pennsylvania Avenue
Towson, Maryland 21204

Michael T. Wyatt, Esquire
Marlow & Wyatt
404 Allegheny Avenue
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
E/S of Park Heights Avenue, 170' S of Velvet Valley Way
10729 Park Heights Avenue)
3rd Election District - 2nd Council District
Rainbow Hall, Inc., Legal Owner/Respondent
Valleys Planning Council, Inc., et al - *Petitioners*
Case No. 2010-0280-SPH

Dear Counsel:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

c: Michael L. Snyder, Esquire, Coady & Farley, 400 Allegheny Avenue, Towson, MD 21204
People's Counsel; Division of Code Inspections and Enforcement; Office of Planning;
DEPRM; File
See Attached List

PETITION OF RAINBOW HALL, LLC FOR JUDICIAL REVIEW OF THE DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY 2nd Floor, Suite 203 105 West Chesapeake Avenue Towson, Maryland 21204	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
IN THE MATTER OF RAINBOW HALL, LLC – Legal Owner / Appellant 10729 Park Heights Avenue Owings Mills, Maryland 21117	*	
Baltimore Co. Board of Appeals Case No: 10-280-SPH	*	Case No: 03-C-12-002379

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

ORDER

Upon consideration of Appellant's Motion to Stay Action of Administrative Agency Pending Appeal and the response(s) thereto, if any, it is this 19th day of April, 2012 by the Circuit Court for Baltimore County

ORDERED that Appellant's Motion be, and the same hereby is, GRANTED; and it is further

ORDERED that Baltimore County be, and the same hereby is, precluded and/or enjoined from instituting or continuing any zoning or code enforcement proceedings against Appellant or the property known and designated as 10729 Park Heights Avenue, Owings Mills, Maryland 21117 with respect to or arising out of the above-referenced appealed-from decision of the County Board of Appeals of Baltimore County, pending further order of this Court.

Judge

True Copy Test
JULIE L. ENSOR, Clerk
Per
Assistant Clerk

FILED APR 23 2012

IN RE: PETITION FOR SPECIAL HEARING E/S of Park Heights Avenue, 170' S of Velvet Valley Way **(10729 Park Heights Avenue)** 3rd Election District 2nd Council District Rainbow Hall, Inc., *Legal Owner/Respondent* Valleys Planning Council, Inc., et al *Petitioners*	* * * * * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY **Case No. 2010-0280-SPH**

* * * * * * * * *

ZONING COMMISSIONER'S ORDER AND OPINION

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by Michael R. McCann, Esquire, on behalf of the Petitioners, Valleys Planning Council, Inc., (VPC) et al.[1] The Petitioners have requested the special hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to determine whether the present uses of the subject property are in conformance with the B.C.Z.R., including any activities that may be permitted as a non-conforming use.

The hearing in this case lasted four (4) days and it is perhaps an understatement to say that emotions are charged on both sides of this dispute.[2] More than 10 witnesses testified at the public hearing and more than 60 exhibits were received into evidence. Given the extent of the oral testimony and the voluminous nature of the documentary evidence, I will not belabor the point by

---

[1] The Petition was amended over Respondent's objection to allow the inclusion of Valleys Planning Council members Mark Wilson and Harlan Zinn as party Petitioners. Further attempts to amend the Petition to add Henry Rosenberg, Jr., David & Suzi Cordish, Blake & Angie Cordish, Reed & Maggie Cordish and Anne Brooks at the conclusion of Petitioners' case was denied.

[2] Numerous individuals appeared and/or wrote letters as interested citizens either in support or in opposition to the request. Due to limitations of time and space, a complete listing of all those individuals cannot be set out here; however, the sign-in sheets circulated at the hearing reflect their names and are contained in the case file as part of the record along with letters, e-mails and petitions received from many of the affected residents.

Case No. 2010-0280-SPH
(Rainbow Hall, Inc.)

63-152-X Operate a boarding house for the Aged (Baptist Home of Md., Inc.) limited to 40 units/residents – (GRANTED w/restrictions 11/26/63 –John G. Rose, Commissioner)

76-89-SPH Construction of new infirmary wing on existing boarding home for the elderly (Baptist Home of Md., Inc.). Proposed infirmary wing – 25 persons. – (GRANTED subject to approval of site plans by SHA, DPW, OP & Zoning – 12/1/75 –Eric Ninna, Commissioner)

Use became non-conforming after the 1976 CZMP when the property was rezoned to R.C.2. Subsequently, 1988 CZMP rezoned the property to R.C.3, which permitted convalescent home use by special exception.

91-166-SPHX Approval of Amendment to Special Exception & site plan previously approved in Case No. 63-152-X to construct of two (2) additions to an existing facility, which were never constructed. (Baptist Home of Md., Inc.) – SPH for determination that maintenance bldg. in R.C.5 zone is an accessory use to existing facility – (GRANTED, and approval of five (5) year period in which to utilize the special exception granted – DISMISSED, and SPH to remove Restrictions 1 & 2 relative to the alienability of, and services provided on, the subject property under the special exception previously granted in Case No. 63-152-X – GRANTED with restrictions – 2/1/91 – J. Robert Haines, Commissioner)

Board of Appeals Opinion – 10/16/91 – Michael B. Sauer, Acting Chairman – SPH to approve amendment to special exception & site plan previously granted in Case No. 63-152-X to construct 2 additions to existing facility GRANTED, and SPH to permit maintenance building as accessory use to existing facility in R.C.5 zone GRANTED, and restrictions imposed & conditions precedent to relief granted …

III-393 & 97-230-SPH HOH - Proposed Development & three (3) single-family dwellings & to create three (3) undersized R.C.5 non-density parcels & one (1) R.C.2 non-density parcel & and removal of an existing special exception from a portion of the tract. (Baptist Home of MD/DE, Inc.) Development Plan – APPROVED; SPH creation of one (1) R.C.2 non-density parcel & removal of an existing special exception from a portion of the tract – (GRANTED, and SPH seeking approval to create three (3) undersized R.C.5 non-density parcels – DISMISSED AS MOOT.
6-3-97 – Lawrence E. Schmidt – Hearing Officer)

Approval of one (1) R.C.3 non-density parcel. Approval of such quashed the approval for additions granted in Case 91-166-SPHX that were not built.

Maryland Department of Assessments and Taxation
Real Property Data Search (vw3.1A)
BALTIMORE COUNTY

Go Back
View Map
New Search
GroundRent Redemption
GroundRent Registration

Account Identifier: District - 03 Account Number - 2300003036

Owner Information

Owner Name:	RAINBOW HALL INC	**Use:**	COMMERCIAL
		Principal Residence:	NO
Mailing Address:	4804 BENSON AVE BALTIMORE MD 21227-1501	**Deed Reference:**	1) /16318/ 00035 2)

Location & Structure Information

Premises Address
10729 PARK HEIGHTS AVE
0-0000

Legal Description
19.6742 AC
10729 PARK HGHTS AVE ES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
0059	0020	0270		0000			5	1	Plat Ref: 0070/ 0095

Special Tax Areas Town NONE
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1917	15337	19.6700 AC	06

Stories	Basement	Type	Exterior
		GROUP HOME	

Value Information

	Base Value	Value As Of 01/01/2010	Phase-in Assessments As Of 07/01/2011	As Of 07/01/2012
Land	403,900	785,600		
Improvements:	596,100	467,100		
Total:	1,000,000	1,252,700	1,168,467	1,252,700
Preferential Land:	0			0

Transfer Information

Seller:	BAPTIST HOME OF MD INC	**Date:**	04/15/2002	**Price:**	$1,500,000
Type:	ARMS LENGTH IMPROVED	**Deed1:**	/16318/ 00035	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2011	07/01/2012
County	000	0.00	0.00
State	000	0.00	0.00
Municipal	000	0.00	0.00

Tax Exempt:
Exempt Class:
Special Tax Recapture:

JB 5/1
10 AM

Case No.: 2012-0091-X

Exhibit Sheet

	Petitioner/Developer	Protestant	
No. 1 A	Circuit Ct. Order April 19, 2012	Site Plan revised as of 4-30-2012	A
No. 2 A	Site Plan (Redlined) as of 4-30-12	Prelim. Forest Conserv. Plan 12-7-11 by Thaler	A
No. 3 A	Aerial Photograph	Dev. Plan Comments	A
No. 4 A	Thaler Letter 4-11-12	Thaler Letter March 5, 2012	A
No. 5 A	Powell letter 4-30-12	M. Cornelius File	not admitted
No. 6			
No. 7			
No. 8			
No. 9			
No. 10			
No. 11			
No. 12			

PETITION OF RAINBOW HALL, LLC FOR JUDICIAL REVIEW OF THE DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY 2nd Floor, Suite 203 105 West Chesapeake Avenue Towson, Maryland 21204	*	IN THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
IN THE MATTER OF RAINBOW HALL, LLC – Legal Owner / Appellant 10729 Park Heights Avenue Owings Mills, Maryland 21117	* *	
Baltimore Co. Board of Appeals Case No: 10-280-SPH	*	Case No: 03-C-12-002379

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

ORDER

Upon consideration of Appellant's Motion to Stay Action of Administrative Agency Pending Appeal and the response(s) thereto, if any, it is this 19th day of April, 2012 by the Circuit Court for Baltimore County

ORDERED that Appellant's Motion be, and the same hereby is, GRANTED; and it is further

ORDERED that Baltimore County be, and the same hereby is, precluded and/or enjoined from instituting or continuing any zoning or code enforcement proceedings against Appellant or the property known and designated as 10729 Park Heights Avenue, Owings Mills, Maryland 21117 with respect to or arising out of the above-referenced appealed-from decision of the County Board of Appeals of Baltimore County, pending further order of this Court.

Judge

True Copy Test
JULIE L. ENSOR, Clerk
Per
Assistant Clerk

PETITIONER'S

EXHIBIT NO. 1

FILED APR 23 2012

DS Thaler & ASSOCIATES, INC.

7115 AMBASSADOR ROAD
P.O. BOX 47428
BALTIMORE, MD 21244-7428
410.944.3647 410.944.3684 (fax)

April 11, 2012

Mr. Robert Powell, Supervisor
Baltimore County Department of Environmental
Protection and Sustainability
105 West Chesapeake Avenue, Suite 400
Towson, MD 21204

RE: Rainbow Hall
Special Exception for a church in the existing building
Case No. 2012-0091-X

Dear Mr. Powell:

As you may be aware, a Special Exception for a church in the existing structure is currently scheduled for May 1, 2012 before Administrative Law Judge John E. Beverungen.

The proposal contemplates church usage within the existing structure. The SE plat as filed proposed eight apartment units within the structure; however, per the recent order from the Board of Appeals (CaseNo.10-280-SPH) the eight apartments are not allowed, pending further legal process. For the purposes of the May 1, 2012 hearing no further development or construction is planned at the site other than minor changes to the existing roads and parking.

You may also be aware that a church operated at this facility for several years. Also, there are three freestanding homes on the site in addition to the mansion. Two are ranch style homes with their own septic systems and the third is a two story home which we believe utilizes the same well and septic fields as the main mansion.

For the purposes of Case 2012-0091-X, would you please assume one residence in the existing structure as well as a church containing a maximum of 212 seats.

PETITIONER'S

EXHIBIT NO. 4

KEVIN KAMENETZ
County Executive

VINCENT J. GARDINA, *Director*
Department of Environmental Protection and Sustainability

April 30, 2012

David S. Thaler, P.E.
D.S. Thaler and Associates, Inc.
7115 Ambassador Road
P.O. Box 47428
Baltimore, Maryland 21244-7428

RE: Rainbow Hall, Located 10729 Park Heights Avenue, Special Exception for a Church in the Existing Building – Case No. 2012-0091-X

Dear Mr. Thaler,

I have reviewed your letter dated April 11, 2012 wherein you have altered the proposed usage of the property to include one residence and a church containing a maximum of 212 seats.

The existing sewage disposal system was installed in 1997 and was designed to accommodate 5,523 gpd: which was calculated to be the peak flow generated by the Baptist Home at that time. The peak flow was calculated to be 150% of the average metered water flows observed for a four week period. The system of trenches installed comprised of two zones, each zone designed to accommodate 75% of the aforementioned peak flow; meaning the system was designed to receive 150% of the peak design flow.

The proposed usage of the facility (a combination of one residence; assumed to be four bedrooms and a church with a seating capacity of 212 seats) has been calculated to generate a maximum peak flow of 1,660 gpd. This figure is 30% of the design of the existing sewage disposal system; consequently there is adequate capacity to serve the intended use. In addition, this Department has identified a sewage disposal reserve area sufficient in size to accommodate two complete repairs to the existing trench field system. An inspection of the existing field system conducted on March 23, 2012 indicated the system appeared to be functioning adequately.

PETITIONER'S

EXHIBIT NO. 5

Before the County Board of Appeals
Jefferson Building, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204

RAINBOW HALL, LLC
Petition for Special Exception
Church / Religious Worship
Case No: 2012-0091-X

PETITIONER'S EXHIBITS

September 25 and 26, 2012

RAINBOW HALL, LLC
Petition for Special Exception – Church/Religious Worship

	PETITIONER EXHIBIT
1	McCann Appeal, 5-16-12
2	Balt. Co. Code, §32-4-281
3	Order, Stay 4-19-12
4	OAH Opinion/Order
5	Photos (2)
6	Photo Enlargement (NIB)
7	Plan to Accompany Petition (NIB)
8	Aerial Photo / Churches & Schools (NIB)
9	Harr Well Yield, 11-16-11
10	Trace Labs, 11-16-11
11	Shaneybrook-Inspection
12	R. Powell Letter, 4-30-12
13	Thaler Letter, 4-11-12
14	
15	
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21	
22	
23	

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

May 16, 2012

Via Hand-Delivery

Arnold Jablon, Director
Department of Permits, Approvals & Inspections
111 W. Chesapeake Ave.
Suite 205
Towson, Maryland 21204

RECEIVED
MAY 22 2012
OFFICE OF ADMINISTRATIVE HEARINGS

Re: Notice of Appeal of OAH Decision
Case No. 2012-0091 X

Dear Mr. Jablon:

On behalf of the persons/entity identified below, pursuant to Baltimore County Code §32-4-281 *et seq.*, please let this letter serve as a notice of appeal of the decision of the Administrative Law Judge in regards to this property, located at 10729 Park Heights Ave., Owings Mills, MD 21117. Enclosed please find a check for Three Hundred Eighty Dollars ($380.00) to cover filing fees.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns.

Valleys Planning Council
118 W. Pennsylvania Ave.
Towson, MD 21204

Mark Wilson
10705 Park Heights Ave.
Owings Mills, MD 21117

Harlan Zinn
809 Coldspring Road
Middle River, Maryland 21220

RECEIVED
MAY 16 2012
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

Pet Ex 1

TITLE 4. DEVELOPMENT

Section

Subtitle 1. In General

32-4-101. Definitions

32-4-102. Development policies

32-4-103. Purposes of the title

32-4-104. Scope of title

32-4-105. General exemptions

32-4-106. Limited exemptions

32-4-107. Waivers

32-4-107.1 Notice of limited exemption or waiver

32-4-108. Prohibition on transfer of land

32-4-109. Recording an approved plat; prohibited

32-4-110. Failure of county agency to act

32-4-111. Fees

32-4-112. Rules of procedure

32-4-113. Delinquent accounts

32-4-114. Compliance with other laws and regulations

32-4-115. Enforcement and remedies

32-4-116. Public buildings

32-4-117. Renaissance Redevelopment Pilot Program

Pet Ex 2

PETITION OF RAINBOW HALL, LLC FOR JUDICIAL REVIEW OF THE DECISION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY 2nd Floor, Suite 203 105 West Chesapeake Avenue Towson, Maryland 21204	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
IN THE MATTER OF RAINBOW HALL, LLC – Legal Owner / Appellant 10729 Park Heights Avenue Owings Mills, Maryland 21117	*	
Baltimore Co. Board of Appeals Case No: 10-280-SPH	*	Case No: 03-C-12-002379

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

ORDER

Upon consideration of Appellant's Motion to Stay Action of Administrative Agency Pending Appeal and the response(s) thereto, if any, it is this 19th day of April, 2012 by the Circuit Court for Baltimore County

ORDERED that Appellant's Motion be, and the same hereby is, GRANTED; and it is further

ORDERED that Baltimore County be, and the same hereby is, precluded and/or enjoined from instituting or continuing any zoning or code enforcement proceedings against Appellant or the property known and designated as 10729 Park Heights Avenue, Owings Mills, Maryland 21117 with respect to or arising out of the above-referenced appealed-from decision of the County Board of Appeals of Baltimore County, pending further order of this Court.

Judge

True Copy Test
JULIE L. ENSOR, Clerk
Per
Assistant Clerk

Pet Ex 3

FILED APR 23 2012

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
SE corner of Park Heights Avenue and Velvet Valley Way	*	OFFICE OF
3rd Election District 2nd Councilmanic District **(10729 Park Heights Avenue)**	*	ADMINISTRATIVE HEARINGS
	*	FOR BALTIMORE COUNTY
Rainbow Hall, LLC *Legal Owner*	*	**Case No. 2012-0091-X**

* * * * * * * *

OPINION AND ORDER

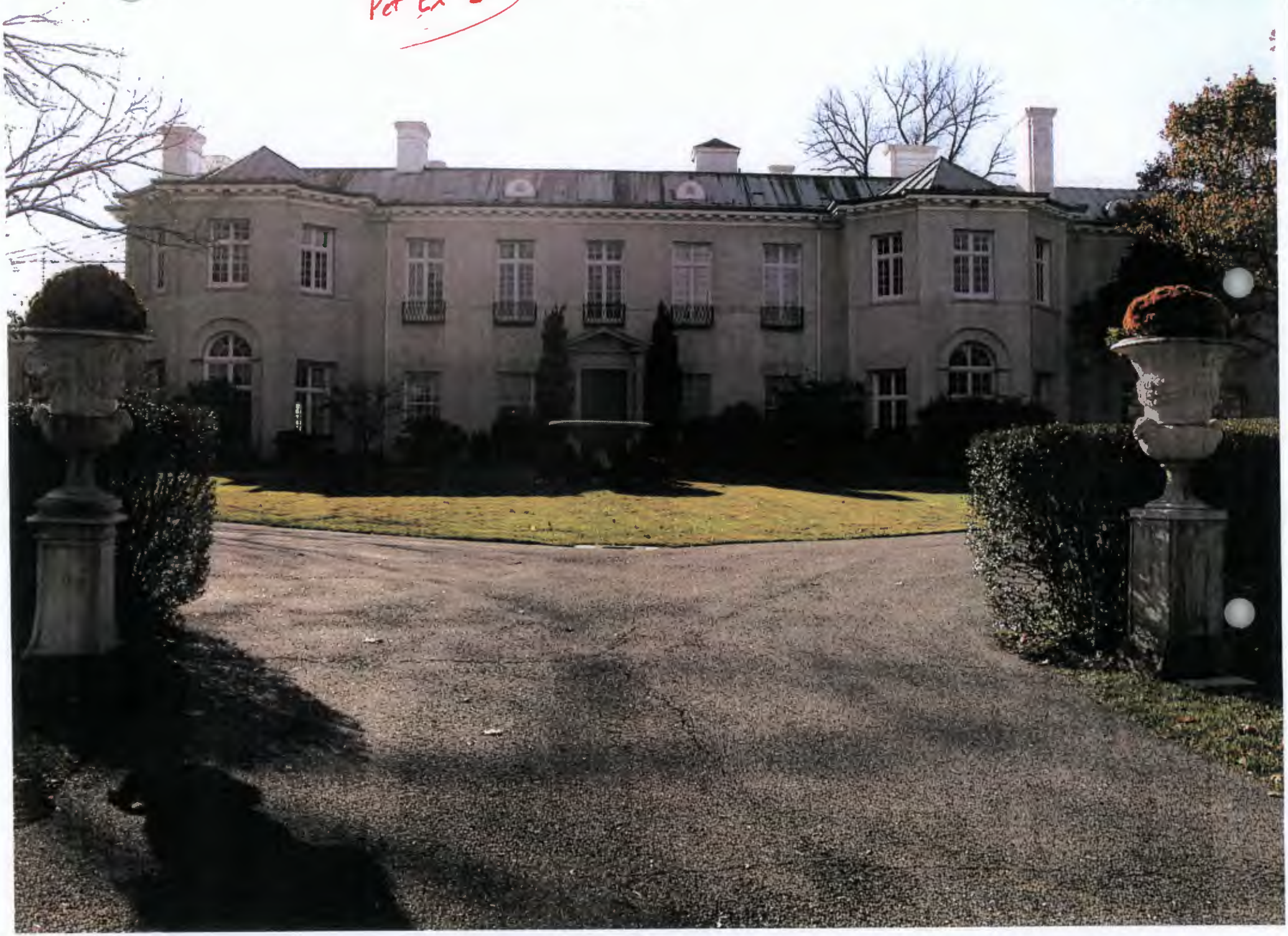
This matter comes before this Administrative Law Judge as a Petition for Special Exception filed for property located at 10729 Park Heights Avenue. The Petition was filed by the legal owner of the subject property, Rainbow Hall, LLC. The Special Exception is to use the herein described property for a church and other buildings for religious worship per Baltimore County Zoning Regulations ("B.C.Z.R.") §§ 1A01.2.C.6, 502 and 505. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 2.

Appearing at the hearing on behalf of the request in support of Rainbow Hall, LLC were Henry M. Wright, Jr., David S. Thaler, P.E., and Stacey McArthur with D.S. Thaler and Associates, Inc., Mickey Cornelius, with the Traffic Group, Michael L. Snyder, Esquire with Coady & Farley and Michael T. Wyatt, Esquire with Marlow & Wyatt. Appearing in opposition were Teresa Moore, Manny Bronstein, Albert M. Shapiro, Louis J. Rosenthal, Barry Zuckerman, Harland Zinn and Mark Wilson. Also appearing on behalf of the Valleys Planning Council was Michael R. McCann, Esquire.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and

Pet Ex 4

Pet Ex 5



Pet Ex 5

Martin O'Malley, *Governor*
Anthony G. Brown, *Lt. Governor*

State Highway Administration

Beverley K. Swaim-Staley, *Secretary*
Darrell B. Mobley, *Acting Administrator*

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 10-12-11

Ms. Kristen Matthews,
Baltimore County Department of
Permits, Approvals & Inspections
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 2012-0091-X
Special Exception
Rainbow Hall, LLC
Henry Wright, Jr.
10729 Park Heights Avenue

Dear Ms. Matthews:

We have reviewed the site plan to accompany petition for variance on the subject of the above captioned, which was received on 10-12-11. A field inspection and internal review reveals that an entrance onto MD 129 consistent with current State Highway Administration guidelines is not required. Therefore, SHA has no objection to approval for Special Exception Case Number 2012-0091-X.

Should you have any questions regarding this matter feel free to contact Richard Zeller at 410-545-5598 or 1-800-876-4742 extension 5598. Also, you may email him at (rzeller@sha.state.md.us). Thank you for your attention.

Sincerely,

for Steven D. Foster, Chief
Access Management Division

SDF/rz

Pet. Ex 9 12-091-X Rainbow Hall LLC 9-25-12

Pet Ex 9

TRACE LABORATORIES, INC
5 North Park Drive
Hunt Valley, MD 21030 USA
Telephone: 410/584-9099 / Fax: 410/584-9117
Website: www.tracelabs.com / Email: info@tracelabs.com

Maryland State Certified Laboratory #318

CERTIFICATE OF ANALYSIS

Requester:

Jean Lubke
Rainbow Hall LLC
10729 Park Heights Avenue
Owings Mills, Maryland 21117

S/O Number: 83384

Report Date: November 16, 2011

Property Sampled: 10729 Park Heights Avenue
Sample Location: Upstairs Kitchen Tap
Residual Chlorine: <0.1 mg/L

Building Permit #: Not Applicable
Sampler ID #: 0765AR
Samples Iced: Yes

County: Baltimore
Map: 59
Subdivision: Rainbow Hall
Parcel: 270
Lot #: 5

Date/Time Collected in Field: November 15, 2011 @ 3:45 pm
Date/Time Received in Lab: November 15, 2011 @ 4:39 pm

Well Tag #: Well Not Observed
Well Condition: Undetermined

Water Treatment/Conditioning: None

PARAMETER	METHOD	MCL/*SMCL	RESULT	PASS/FAIL
Total Coliform	SM 9223B	Absent	Absent	Pass
E. coli	SM 9223B	Absent	Absent	Pass
Nitrate	SM 4500D	10 mg/L as N	1.9 mg/L as N	Pass
Turbidity	EPA 180.1	10 NTU	<1.0 NTU	Pass
pH	EPA 150.1	*6.5-8.5 Units	6.0 Units	***
Sand		Absent	Absent	Pass

Katherine C. Higgs
Katherine C. Higgs
Manager – Drinking Water Testing

Pet Ex 10

MCL: Maximum Contamination Level, an enforceable level established by the EPA
*SMCL: Secondary Maximum Contamination Level, a level recommended by the EPA
***A non-enforceable parameter that may cause cosmetic effects or aesthetic effects (such as taste, color or odor) in drinking water.

Harry O. Shaneybrook, Inc.
144 Westminster Road
Reisterstown, MD 21136

Inspection Report

Date of Inspection November 17, 2011
Inspected By: Richard A. Shaneybrook
Settlement Date: _____
Inspection Ordered by: Michael Wyatt

Site: Address	Billing: Address
Rainbow Hall	Marlow/ Wyatt
10729 Park Heights Ave.	404 Allegheny Ave.
Owings Mills, MD 21117	Baltimore, MD 21204

The subsurface system serving the above property was visually inspected indicating:

__X____ No evidence of failure. The system appeared to be functioning properly. The settlement of proper functioning refers to conditions noted at the time of inspection, and does not refer to conditions which may arise in the future.

_____ There is evidence of failure.

Comments:

1. Septic tanks are mostly liquids and in good shape.
2. Checked dosing tank and water at proper level and clear of solids. (Automatic siphoning tank)
3. Checked two distribution boxes and flowing at proper level.
4. Checked drain field area and no signs of surface water.
5. 6" Cleanout is in need of repair.
6. At the time of inspection septic system is in good working order.

Richard A, Shaneybrook, President

Pet Ex 11

KEVIN KAMENETZ
County Executive

VINCENT J. GARDINA, *Director*
Department of Environmental Protection and Sustainability

April 30, 2012

David S. Thaler, P.E.
D.S. Thaler and Associates, Inc.
7115 Ambassador Road
P.O. Box 47428
Baltimore, Maryland 21244-7428

RE: Rainbow Hall, Located 10729 Park Heights Avenue, Special Exception for a Church in the Existing Building – Case No. 2012-0091-X

Dear Mr. Thaler,

I have reviewed your letter dated April 11, 2012 wherein you have altered the proposed usage of the property to include one residence and a church containing a maximum of 212 seats.

The existing sewage disposal system was installed in 1997 and was designed to accommodate 5,523 gpd: which was calculated to be the peak flow generated by the Baptist Home at that time. The peak flow was calculated to be 150% of the average metered water flows observed for a four week period. The system of trenches installed comprised of two zones, each zone designed to accommodate 75% of the aforementioned peak flow; meaning the system was designed to receive 150% of the peak design flow.

The proposed usage of the facility (a combination of one residence; assumed to be four bedrooms and a church with a seating capacity of 212 seats) has been calculated to generate a maximum peak flow of 1,660 gpd. This figure is 30% of the design of the existing sewage disposal system; consequently there is adequate capacity to serve the intended use. In addition, this Department has identified a sewage disposal reserve area sufficient in size to accommodate two complete repairs to the existing trench field system. An inspection of the existing field system conducted on March 23, 2012 indicated the system appeared to be functioning adequately.

Pet Ex 12

DS Thaler & ASSOCIATES, INC.

7115 AMBASSADOR ROAD
P.O. BOX 47428
BALTIMORE, MD 21244-7428
410.944.3647 410.944.3684 (fax)

April 11, 2012

Mr. Robert Powell, Supervisor
Baltimore County Department of Environmental
Protection and Sustainability
105 West Chesapeake Avenue, Suite 400
Towson, MD 21204

RE: Rainbow Hall
Special Exception for a church in the existing building
Case No. 2012-0091-X

Dear Mr. Powell:

As you may be aware, a Special Exception for a church in the existing structure is currently scheduled for May 1, 2012 before Administrative Law Judge John E. Beverungen.

The proposal contemplates church usage within the existing structure. The SE plat as filed proposed eight apartment units within the structure; however, per the recent order from the Board of Appeals (CaseNo.10-280-SPH) the eight apartments are not allowed, pending further legal process. For the purposes of the May 1, 2012 hearing no further development or construction is planned at the site other than minor changes to the existing roads and parking.

You may also be aware that a church operated at this facility for several years. Also, there are three freestanding homes on the site in addition to the mansion. Two are ranch style homes with their own septic systems and the third is a two story home which we believe utilizes the same well and septic fields as the main mansion.

For the purposes of Case 2012-0091-X, would you please assume one residence in the existing structure as well as a church containing a maximum of 212 seats.

Pet Ex 13

JB 5/1
10AM

Case No.: 2012-0091-X

Exhibit Sheet

	Petitioner/Developer	Protestant	
No. 1 A	Circuit Ct. Order April 19, 2012	Site Plan revised as of 4-30-2012	A
No. 2 A	Site Plan (Redlined) as of 4-30-12	Prelim. Forest Conserv. Plan 12-7-11 by Thaler	A
No. 3 A	Aerial Photograph	Dev. Plan Comments	A
No. 4 A	Thaler Letter 4-11-12	Thaler letter March 5, 2012	A
No. 5 A	Powell letter 4-30-12	M. Cornelius File	not admitted
No. 6			
No. 7			
No. 8			
No. 9			
No. 10			
No. 11			
No. 12			

SUBJECT: DEVELOPMENT PLAN COMMENTS

FROM: PAI– ZONING REVIEW

DPC DATE: 1/11/12
10:00 a.m., Rm. 123
HOH Date: 2/2/12
10:00 a.m., Rm. 205

PROJECT NAME: RAINBOW HALL RESUBDIVISION OF LOT 5 PLAN DATE: 11/23/11

PROPOSAL: 1,000 SEAT CHURCH & 250 PARKING SPACES DISTRICT: 3C2
ZONING: RC2, RC5

---

1. This office has no comments at this time provided the Administrative Law Judge grants the requested zoning relief (Petition for Special Exception to use the property for churches and other building for religious worship) Case #2012-0091-X/ 2012-0144-SPHX. Pursuant to Section 500.12 of the BCZR if a special exception petition has been denied, the Administrative Law Judge may not accept for filing any other special exception petition with respect to the same property or any part of that property until at least 18 months have passed from the date of the final order relating to the previous petition, whether that order is issued by the Administrative Law Judge, by the Board of Appeals, or by a court of competent jurisdiction considering the petition on appeal.

2. Additional comments will be added pending the outcome of the decision of the Board of Appeals on hearing case #2010-0280-SPH

3. Article 32-4-114 (c) of the Baltimore County Code states that the county may not process plans or permits for a proposed development if the applicant owns or has an interest in property located in the county upon which there exists, at the time of the application or during the processing of the application, a violation of the zoning or development regulations of the county.

Jun R. Fernando
Jun R. Fernando
Planner II
Zoning Review

JRF/mcn

PROTESTANT'S

EXHIBIT NO. 3

DS Thaler & ASSOCIATES, INC.

7115 AMBASSADOR ROAD
P.O. BOX 47428
BALTIMORE, MD 21244-7428
410.944.3647 410.944.3684 (fax)

March 5, 2012

Mr. Robert Powell, Supervisor
Baltimore County Department of Environmental
Protection and Sustainability
105 West Chesapeake Avenue, Suite 400
Towson, MD 21204

RE: Rainbow Hall
Special Exception for a church in the existing building

Dear Mr. Powell:

As you may be aware, a Special Exception for a church in the existing structure is currently scheduled for May 1, 2012 before Administrative Law Judge John E. Beverungen.

The proposal contemplates church usage within the existing structure. At the moment there are also apartment units within the structure, and for the purposes of the May 1, 2012 hearing no further development or construction is planned at the site other than minor changes to the existing roads and parking.

If the eight apartments ultimately remain, the church will contain a maximum of 156 seats. Alternatively, if the eight apartments do not remain, the church will contain a maximum of 220 seats.

You may also be aware that a church operated at this facility for several years. Also, there are three freestanding homes on the site in addition to the mansion. Two are ranch style homes with their own septic systems and the third is a two story home which we believe utilizes the same well and septic fields as the main mansion.

PROTESTANT'S
EXHIBIT NO. 4

Case No: 12-091-X Case Name: Rainbow Hall LLC

Exhibit List

Party: Protestants Date: 9-25-12

	Exhibit No:	Description:
rejected exhibits	✓ 1	Website for Church of the Resurrection
rejected exhibit	✓ 2	Events Calender
	✓ 3	Mickey Cornelius C.V.
	✓ 4	AASHTO Standards
	✓ 5	State Highway access Manual
	✓ 6	State Highway Reg. Authority + Policy
	✓ 7	Traffic Impact Analysis Rainbow Hall LLC Phase - I
	✓ 8	SHA Comments from Steven Foster
rejected exhibit	✓ 9	Valley Girls dirt stompers website
	✓ 10	Sight Triangle (enlargement)
	✓ 11A-G	Pictures of sight lines
9/26/12 KXC	✓ 12	John Rootz C.V.
	✓ 13	Record Plat
	✓ 14	MDE Guidance on Wastewater Flows
		VERIFIED BY KXC DATE: 9/25/12

Case No: 12-091-X Case Name: Rainbow Hall LLC

Exhibit List

Party: Protestants Date: 9-26-12

Exhibit No:	Description:
✓ 15	Proposed Septic Replacement Plan
✓ 16	Water Supply System Capacity
✓ 17	Title 26 subtitle 03 of COMAR
✓ 18	10 year water supply + sewerage plan
✓ 19	COBAR 01.03
✓ 20	Development Plan Review Comments From Dennis Kennedy
✓ 21	Executive Order Water + Sewerage Plan
✓ 22	Development Plan and Plan to Accompany Zoning Petition
✓ 23	VPC info piece
✓ 24	VPC member sign up envolope
✓ 25	Map of VPC jurisdiction
✓ 26	letter from Kathleen Pontone 5-19-06
	VERIFIED BY KRC DATE: 9/26/12

CHURCH OF THE
RESURRECTION

About Res Get Connected Grow Get Involved Pastoral Care

Welcome

We are so glad you have found Church of the Resurrection!
Take a look around to learn more, or feel free to ask a question.

Sunday Morning Worship - 9am & 11am
For more info and directions click HERE.

Bible Studies Start This Week

To learn more about the Men's and Women's Bible Studies, and how to sign up, click HERE!

All-Parish Potluck Shabat Dinner

Saturday, September 29
6pm -9pm

Click HERE for more Info.

Contact Us Hear a Sermon Upcoming Events Give

Pro. Ex 1 Rainbow Hall LLC 12-091-X 9-25-12

CHURCH OF THE RESURRECTION

About Res | Get Connected | Grow | Get Involved | Pastoral Care

Church of the Resurrection Events Calendar

Today | September 2012 | Print | Week | **Month** | Agenda

Sun	Mon	Tue	Wed	Thu	Fri	Sat
26 10 Service 5:30pm Evening Ser	27	28 9:30am Staff Meetin	29 10am Wms. Bible St	30	31	Sep 1
2 10am Service	3 Office Closed	4 9:30am Staff Meetin	5 10am Wms. Bible St 7:15pm Leaders in M	6	7	8 1pm Prayer Shawl M
9 10am Service 11:30am All Parish P	10	11	12 9:30am Staff Meetin 10am Wms. Bible St	13 7:30pm Choir open I	14	15
16 9am Service 11am Service	17 6:30pm Men's Night	18	19 9:30am Staff Meetin 10am Wms. Bible St 6pm Maturity Matter	20 7pm Vestry Meeting 7:30pm Choir Rehea	21	22
23 Ministry Fair 9am Service 11am Service	24	25 7pm Bible Study	26 9:30am Staff Meetin NO CHOIR 10am Wms. Bible St 4pm Bible Study	27 6:45pm Bible Study	28	29 9am Bible Study 6pm Parish Pot Luck
30 9am Service 11am Service	Oct 1	2 6pm Missions Team 7pm Bible Study	3 9:30am Staff Meetin 10am Wms. Bible St 4pm Bible Study 6:30pm Missions Tea	4 6:45pm Bible Study	5 9a-12 Prayer Team	6 9am Bible Study

Events shown in time zone: Eastern Time

Google Calendar

Church of the Resurrection | 11525 Greenspring Avenue Lutherville, MD 21093 | 410-560-0456

9-25-12

12-091-X

Pro. Ex 2 Rainbow Hall LLC

Mickey Cornelius, P.E., PTOE

From: Mickey Cornelius, P.E., PTOE
Sent: Friday, November 18, 2011 1:32 PM
To: 'Michael T. Wyatt'; 'Stacey A. McArthur'
Cc: 'David Thaler'
Subject: RE: Rainbow Hall

I have checked the sight distance at both existing access points and reviewed accident data from 2005-2009. My conclusions are as follows:

- Sight distance is compromised from both access points due to the vertical curve on Park Heights Ave between the 2 access points, as well as trees/shrubs along the road.
- For the north access, sight distance is good looking to the north, but looking to the south, at best, you can see about 350 feet. To see that distance the driver needs to pull out just to the edge of the road.
- For the south access, sight distance is good looking to the south, but looking to the north, at best, you can see about 350 feet. To see that distance the driver needs to pull out just to the edge of the road.
- The accident data showed only one accident along Park Height Avenue in the 5-year period between 2005 and 2009 in the immediate vicinity of the site. That accident occurred on 3/16/07 about 100 feet north of the south access and involved 2 vehicles on Park Height hitting head on. It had nothing to do with the site access.
- The posted speed limit is 40 MPH. Desired intersection sight distance for that speed is 445 feet for left turns and 385 feet for right turns. We do not meet that criteria, but we do have safe stopping sight distance for speeds up to 45 MPH. The intersection sight distance standard allows time for the entering vehicle to get up to speed having minimal impacts to the passing motorist. However, as long as you have sufficient stopping sight distance, a vehicle can safely pull out. The passing motorist may have to slow down, but the access can function safely.
- Both access points provide one lane of travel. Given that condition, for gatherings of people, it is recommended that a one-way travel system be used.
- Based upon the sight distance available, it is recommended that the north access be used for entering vehicles and the south access be used for exiting vehicles. The reason for this is that when entering, left turning motorists may have to stop and wait for a gap in traffic. If you turn left into the south access and you are stopped in Park Heights Ave, there is the danger of motorists coming from behind and having limited time to stop. When turning left into the north access, southbound motorists coming from behind can see the stopped vehicle at a much greater distance. Also, for exiting traffic, the north access has a sight distance limitation looking to the south, so both right turning and left turning motorists exiting the site are affected. At the south access, the sight distance limitation is to the north, so only drivers turning left out of the site are affected. Finally, when exiting from the south access, since you can see a great distance to the left (or south) the driver has the ability to move out into the northbound travel lane to improve the sight line to the right (or north) before completing the left turn exit movement.

Let me know if anyone has any questions or concerns regarding this information and my recommended travel pattern.

Thank you,

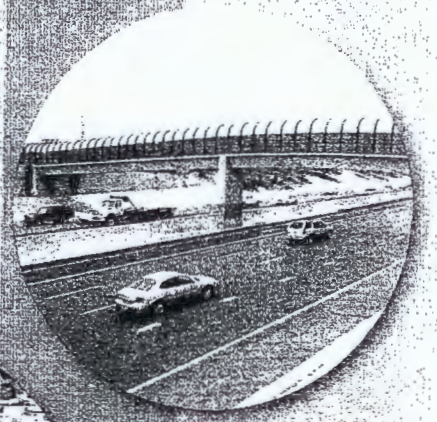
Mickey

From: Michael T. Wyatt [mailto:mwyatt@marlowwyatt.com]
Sent: Tuesday, November 08, 2011 3:50 PM
To: 'Stacey A. McArthur'
Cc: 'David Thaler'; Mickey Cornelius, P.E., PTOE
Subject: RE: Rainbow Hall

Pro. Ex 3 12-091-X Rainbow Hall LLC 9-25-12

A Policy on Geometric Design of Highways and Streets

2011
6th Edition



American Association of State Highway and Transportation Officials
AASHTO
The Voice of Transportation

Pro Et Y 12-091-X Rainbow Hall LLC 9-25-12

STATE HIGHWAY ACCESS MANUAL
ENGINEERING ACCESS PERMITS DIVISION
JANUARY 2004

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Rev. Ex 5 12-091-X Rainbow Hill LLC 9-25-12

3.0 REGULATORY AUTHORITY AND POLICY

This Chapter discusses the State's legal authority to control, deny, and otherwise regulate access to State highways. It is important for applicants to distinguish *access controls*, which are real property rights owned by the State, from the *regulatory control* of access, exercised through the permit process.

3.1 Access Controls.

Under Maryland law, a property owner is entitled to access to a State highway that abuts his or her property unless certain conditions identified in 8-625 apply or the State owns controls of access along the highway right-of-way. Access controls are real property rights owned by the State that legally deny access to abutting property. They are intended to preserve safety and traffic operating characteristics required of freeways, other important highway segments, and key intersection approaches.

When contemplating State highway access for a subdivision or development project, it is incumbent upon the applicant to research all pertinent land records and SHA right-of-way plats to determine whether these "through highway" controls, or any other easements or restrictions, may exist. An access permit can not be issued under any circumstances at locations where "Through Highway" access controls exist. In rare instances, SHA may be willing to relinquish or modify access controls, thereby facilitating an access permit along a controlled access highway. This is generally reserved for master-planned public street connections that provide a regional transportation benefit and would not compromise the safety or functional characteristics of the highway.

3.2 Regulatory Controls.

The Annotated Code of Maryland grants SHA certain regulatory authority, including the right to limit the width and location of existing access points, the requirement that an entrance from any commercial or industrial property may not be made into any highway except in accordance with a permit issued by the SHA, and the requirement that permits must be acquired from the Administration before working within and across a State highway. The purpose of the law is not to discourage or suppress development in the State, but rather to ensure that where access to a State highway is granted, it is the safest point to enter or exit the highway. Under the regulations, the State may limit access to a single location along any highway. Moreover, where other public road access is available, the State may deny access to a primary highway in accordance with 8-625.

The law requires owners, or their duly authorized representatives (i.e. developers, constructors, tenants, lessees, etc.), of land newly being developed commercially, industrially, or as a subdivision, and/or part of an existing subdivision desiring access to a State highway, to apply for a SHA permit. In addition, residential entrances and any construction activities within State highway rights-of-way require a permit. An application for a permit to construct a commercial entrance or street intersection shall be filed with plans, engineering fee check, performance surety and any other items which may be

Pro Ex 6 12-091-X Rainbow Hall LLC 9-26-12

Traffic Impact Analysis

The Traffic Group®

RAINBOW HALL – PHASE I

Baltimore County, Maryland

October 1, 2010

Prepared for:

Rainbow Hall, LLC

Pro. Ex 7 12-091-X Rainbow Hall LLC 9-25-12

Merging Innovation and Excellence®

Martin O'Malley, *Governor*
Anthony G. Brown, *Lt. Governor*

State Highway Administration

Beverley K. Swaim-Staley, *Secretary*
Neil J. Pedersen, *Administrator*

NOV 12 2010

Maryland Department of Transportation

November 8, 2010

Re: Baltimore County
MD 129
Rainbow Hall Property

Mr. Dennis A. Kennedy, P.E.
Bureau of Development Plans Review
Department of Permits & Development Management
111 West Chesapeake Avenue, Room 119
Towson, Maryland 21204

Dear Mr. Kennedy:

Thank you for the opportunity to review the Traffic Impact Study Report prepared by The Traffic Group, Inc. dated October 1, 2010 (received by the EAPD on October 13, 2010) that was prepared for the proposed Rainbow Hall Property Sanctuary development in Baltimore County, Maryland. The major report findings and the Maryland State Highway Administration (SHA) comments and conclusions are as follows:

- Access to the 25,000 square foot Sanctuary is proposed from one (1) full movement site access driveway on Park Heights Avenue (a County roadway). The site access driveway is proposed just south and across from Velvet Valley Way on Park Heights Avenue. Baltimore County should consider the requirement to align the proposed site access driveway directly across from Velvet Valley Way for safety and operational reasons.

- The traffic report determined that the proposed development could be supported by the surrounding roadway network.

SHA concurs that the proposed development can be supported based upon the capacity analyses presented in the report. However, as noted above, Baltimore County should consider the requirement to align the proposed site access driveway with Velvet Valley Way on the County-maintained Park Heights Avenue.

Unless specifically indicated in SHA's response on this report, the comments contained nerewith do not supersede previous comments made on this development application. If there are any questions on any issue requiring a permit from SHA on this application, please contact Michael Bailey at 410-545-5593, or by e-mail at mbailey@sha.state.md.us.

Pro. Ex 8 12-091-X Rainbow Hall LLC 9-25-12

What is "Deep Cleaning"?

When we say *clean*, we mean Clean!

With Valley Girls Dirt Stompers your initial cleaning session will be what we call a Deep Clean. Deep Cleaning means that we clean from ceiling to floor (and anything we find in between!)

Our cleaning starts with your crown moldings, tops of cabinet fixtures and lighting fixtures. We dust, wipe and scrub any woodwork, baseboards and moldings. Your staircases and railings will shine! In your kitchen and bathroom no faucet or tile will be left untouched.

Services We Offer:

Home and Office Deep Cleaning. Have your home and business thoroughly cleaned by our professional staff. Our Deep Cleaning services will have your home feeling fresh and welcoming.

Refreshing upkeep cleaning services. We can refresh your home and business and keep it professionally cleaned with regularly scheduled cleanings. Have your home refreshed weekly or biweekly.

Pro. Ex 9 12-091-X Rainbow Hall LLC 9-25-12

Pro. Ex 11 A 12-091-X Rainbow Hall LLC 9-25-12

Pro Ex 11 B

Pro. Ex. 11 C

Pro. Ex. 11 D

Pro. Ex 11 E

Pro Ex 11 F

Pro. Ex 11 6

Prot Ex: 12

John W. Koontz

EDUCATION

University of Maryland
College Park — B.S.C.E. Civil Engineering (1964)

The Johns Hopkins University
School of Hygiene and Public Health — M.H.S. Environmental Health (1972)

The Johns Hopkins University
School of Hygiene and Public Health — Certificate for Advanced Studies and residency in Health Policy and Management (1982/1983)

PROFESSIONAL EXPERIENCE AND BACKGROUND

Powercon Corporation
Severn, MD — 2006 – Present

Risk Manager
Responsible for OSHA, MOSH, EPA, MDE, and County regulatory compliance at a 450 employee manufactory firm.

John W. Koontz, R.S., LLC
Environmental Consulting Firm
Davidsonville, MD — 2004-Prestent

Sole Owner
Provided environmental consulting services to privet clients assistance in areas related to (but not limited to) site plans, subdivision plans, land development and environmental permits and concerns.

Mr.Hoon & Associates, LLC
Chestertown, MD — 2003 - 2006

Technical Assistant
Provided assistance in areas related to (but not limited to) site plans, subdivision plans, land development and environmental zoning issues. Performed legal research and other legal assistant tasks as needed.

9-26-12 Rainbow Hall LLC 12-091-X Pro. Ex 12

MDE GUIDANCE ON WASTEWATER FLOWS FOR USE IN DESIGNING ON-SITE SYSTEMS

212/50

ESTABLISHMENT	GPD PER UNIT
AIRPORT, per passenger	5
Per employee	15
(Add for food service facility)	
ANIMAL SHELTER/KENNELS/VETERINARIAN	
Per run (pen, cage, stall etc.)	25
Per grooming station	250
Per procedure room	250
(Consider Waste handling & strength in design)	
ASSISTED LIVING/HOMES FOR THE AGED, per bed space	100
(Consider more flow for Assisted Living facilities that provide more extensive care)	
BARBER SHOP, per seat (station)	50
BEAUTY SALON, per station	250
Consider potential impacts of any chemicals discharged to the onsite system and the potential impacts of backwash from water treatment units.	
BOWLING ALLEY	
Per lane, no bar/food	75
Per lane, with bar only	125
Per lane, bar & food	200
CAMPS, CAMPGROUNDS, & TRAVEL TRAILER/RV PARKS	
Public Campground, per travel trailer space, w/water and sewer hookups	175
Public Campground, per travel trailer space, w/no water & sewer hookup	150
Youth overnight camp, per camper	50
Labor camp, per person	50
Luxury camp, per camper	100
Day camp, per person (add flow for meals, showers or pools)	15

For information on the discharge of RV pump-out wastewater into an OSDS (septic system), please contact the Groundwater Permits Division at (410) 537-3778.

CHURCH-ASSEMBLY HALL	
Per sanctuary seat	3
With private kitchen (members only)	5
With commercial kitchen (open to general public,	
With Food Service License: see "Food and Beverage Service Facility"	

Pro. Ex 19

Water Supply System Capacity
12109 and 10709 Park Heights Avenue

Church		**Cottage** (4 bedrm x 150 gpd = 600 gpd)	
Church only (212 seats)			
212 seats x 5 gpd (per MDE)	= **1060 gpd**	+ 600 gpd	= **1660 gpd**
Church (212 seats) + Employees/staff			
212 seats x 5 gpd (per MDE)	= 1060 gpd		
2000 sq.ft x .18 gpd (per MDE)	= 360 gpd		
	1420 gpd	+ 600 gpd	= **2020 gpd**
Church (156 seats) + 8 Apts.[1]			
156 seats x 5 gpd (per MDE)	= 780 gpd		
16 bedrm x 150 gpd (per MDE)	= 2400 gpd		
	3180 gpd	+ 600 gpd	= **3780 gpd**
Church (156 seats) + 8 Apts. = Employees/staff			
156 seats x 5 gpd (per MDE)	= 780 gpd		
16 bedrm x 150 gpd (per MDE)	= 2400 gpd		
2000 sq.ft x .18 gpd (per MDE)	= 360 gpd		
	3540 gpd	+ 600 gpd	= **4140 gpd**

Pro. Ex 16 12-091-X Rainbow Hall LLC 9-26-12

[1] It is assumed that the 8 apartments have two bedrooms. There was testimony at the hearing in *In re: Rainbow Hall* (Case No. 10-0280-SPH) that a number of the apartments had three bedrooms.

Try Another Page | Return to Search Page

26.03.01.00

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 03 WATER SUPPLY, SEWERAGE, SOLID WASTE, AND POLLUTION CONTROL PLANNING AND FUNDING

Chapter 01 Planning Water Supply and Sewerage Systems

Authority: Environment Article, §§9-218, 9-505, 9-506, and 9-510, Annotated Code of Maryland

Preface

It is the intent of these regulations to require the governing body of each county and Baltimore City to develop water supply and sewerage systems so as to be consistent with county comprehensive planning.

Pl. Ex 17 12-691-X Rainbow Hall LLC 9-26-12

10-YEAR BALTIMORE COUNTY WATER SUPPLY AND SEWERAGE PLAN 2000-2010

2007 Triennial Review

Report of the Review
as submitted to the
Baltimore County Council
April 21, 2008

Pro Ex 18 12-091-X Rainbow Hill LLC 9-26-12

Title 1. Department of Environmental Protection and Sustainability

Subtitle 03 Ground Water Management

Chapter 01 On-site Sewage Disposal Systems.

Authority: Environment Article §§ 9-216, 9-217, 9-223, 9-252, 9-506, 10-103, 10-301, and 10-304, Annotated Code of Maryland

.01 Scope.

Pursuant to the authority conferred upon the Director of the Baltimore County Department of Environmental Protection and Resource Management (now the Department of Environmental Protection and Sustainability) by Memorandum of Understanding (1987) and COMAR Title 26.04.02 and 26.04.03, this chapter applies to the proper siting and design of on-site sewage disposal systems for new construction, repairs to existing on-site sewage disposal systems, and existing on-site sewage disposal systems involved in a subdivision of land.

.02 Definitions.

A. In this chapter the following terms have the meanings indicated.

B. Terms Defined.

(1) "Non-Conventional On-site Sewage Disposal Systems" are alternative systems and innovative technologies not described in COMAR 26.04.02 but categorized by the Maryland Department of the Environment as either:

(a) "Alternative Technologies," which include:

(i) At-grade Mounds (percolation rates of 2-60 minutes/inch);

(ii) Sand Mounds (percolation rates of 60-120 minutes/inch);

(iii) Enhanced Pretreatment (percolation rates of 30-60 minutes/inch);

(iv) Waterless Toilet/Graywater (percolation rates of 30-60 minutes/inch)

(v) Shallow Low Pressure Distribution (percolation rates of 30-60 minutes/inch); and

(vi) Shallow Alternating Trench (percolation rates of 30-60 minutes/inch); or

Pro Ex 19 12-091-X Rainbow Hall LLC 9-26-12

BALTIMORE COUNTY, MARYLAND

SUBJECT: Development Plan Review Comments For January 11, 2012 **DATE:** January 4, 2012

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review
Department of Permits, Approvals and Inspections

PROJECT NAME: Rainbow Hall

P.A.I. NO.: 03-393

LOCATION: Park Heights Avenue, Owings Mills

DISTRICT: 15C6

We reviewed the subject plan dated November 23, 2011 and have the following comments:

GENERAL COMMENTS:

All construction shall be accomplished in accordance with Baltimore County Standard Specifications and Details for Construction *(February, 2000, as amended)* and Baltimore City Standard Details.

The Developer shall be responsible for damages to the County's facilities, such as water meters, manholes, curbs and gutters and inlets within his subdivision and for any damages caused by his construction equipment outside of his subdivision. Occupancy permits will be withheld until such damages have been corrected.

The Developer and his engineer shall be responsible for investigating the need for and obtaining the necessary permits for the facilities serving this site that may require a "*Corps of Engineer's Permit*," a "*Water Resources Permit*," a "*Water Quality Certification*," and any other federal or state permits.

The Developer shall not allow any cable television cables to be installed in this subdivision without the required County permits being obtained. Baltimore County will not assume any rights-of-way, easements, or maintenance of any public improvements, where such cables have been installed without a permit until the cables are satisfactorily located.

Pro Ex 20 12-091-X Rainbow Hall LLC 9-26-12

Executive Order
Baltimore County Water & Sewerage Plan
Amendment Process

WHEREAS, the County Executive is responsible for the proper and efficient administration of the affairs of the County and is charged with the duty to supervise, direct and control the administrative services of the County; and

WHEREAS, Baltimore County, Maryland has adopted the 1981 Master Water & Sewerage Plan for a two (2) year period, pursuant to Title 9, Subtitle 5, County Plan of the Health-Environmental Volume of the Annotated Code of Maryland (formerly Article 43, Section 387C); and

WHEREAS, for good cause, interested parties may desire to request changes in the Master Water & Sewerage Plan during the interim period;

NOW, THEREFORE, under the authority vested in the County Executive by the Baltimore County Charter, it is this 11th day of April, 1990, by the County Executive of Baltimore County, Maryland, ordered as follows:

For the purpose of considering contemporaneous petitions for amendment to the Baltimore County Water & Sewerage Plan in relation to each other and according to a standard schedule, the following annually recurring schedule periods are hereby established, to be applicable on and after July 1, 1982, subject to the provisions hereinafter set forth.

PERIOD I - MAY (Inter-agency Review)
PERIOD II - JUNE (Compile Report)
PERIOD III - JULY 1 - SEPT 30 (PB Action)

(a) A petition for amendment to the Water & Sewerage Plan of a property (amendment petition) may be filed with the Department of Public Works only by the legal owner of such property, or by his legally authorized representative. Each such petition shall be filed no later than May 1 of each year and shall include an explanation of the reasons why, in the petitioner's opinion, the amendment sought should be made, set forth in sufficient detail to properly advise the County authorities required to review the petition. Any allegations of change in conditions as justification for the action sought shall be supported in the petition by precise description of such change, and any allegations of error shall be so supported in similar detail and as further required by Subsection (g).

(b) With the exception of those amendment petitions exempted under the procedure set forth in Subsection (f), copies of all amendment petitions accepted for filing by the Department of Public Works shall be transmitted to the Directors of Planning and Zoning and Department of Environmental Protection and Resource Management within the first five (5) days of Period 1. Within fifteen (15) days thereafter, the Director of Public Works shall publish information in two (2) newspapers of general circulation in the County for a period of at least two (2) weeks including the following:

(1) A listing of all such petitions;
(2) A map showing the locations of all properties under petition;
(3) The date, time and place of the July Planning Board hearing on the petitions.

They also shall make such listing and map available in the form of a press release and for a period of at least three (3) weeks, shall publicly display a copy of such listing and map in the County Office Building or other appropriate place for public inspection.

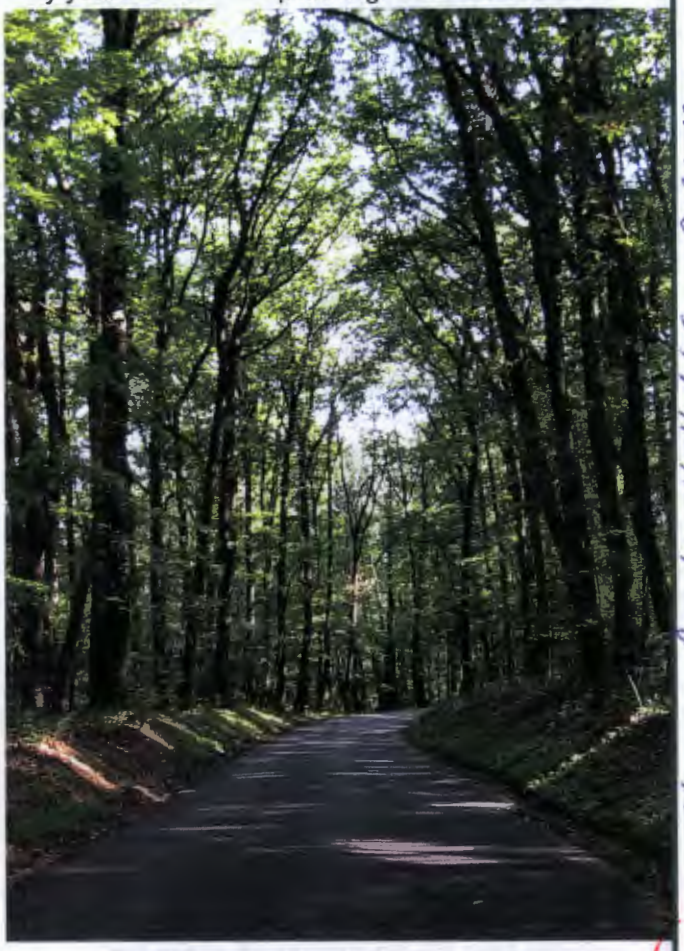
(c) During each Period I, the Directors of the Office of Planning and Zoning and the Department of Environmental Protection and Resource Management shall review the petitions and each shall submit a report to the Director of Public Works containing at least the following information:

(1) Maps showing properties under petition and the amendment sought therefor;
(2) The technical feasibility of each petition;
(3) Recommendations on each petition;
(4) Supporting data for the recommendations.

Pro Ex 2f 12-091-X Rainbow Hall LLC 9-26-12

The Valleys Planning Council

Fifty years of land-use planning with visible results…



LAND PRESERVATION WORKS

Support The Valleys Planning Council, Inc.
www.thevpc.org

…..If you like what you see out your window, support the Valleys Planning Council and help preserve the rural character and natural resources in the valleys.

Rainbow Hall LLC 9-26-12
12-091-X
Bo Ex 23

Name_____
(Please provide your full name and, if applicable, full name of spouse.)

Address_____

City_____ State_____ Zip_____

Email_____ Phone_____

(Note: We are revising our database and would appreciate updated and complete contact information.)

VPC MISSION

Conserving open space; protecting Baltimore County's agricultural, natural, historic and scenic resources; and working with stakeholders to promote a balanced and rational use of land for the benefit of present and future generations.

PLEASE HELP PRESERVE OUR VALLEYS

by becoming a member at one of the following levels:

- ☐ $5,000 & above STEWARD
- ☐ $2,500 - $4,999 GUARDIAN
- ☐ $1,500 - $2,499 PRESERVATIONIST
- ☐ $500 - $1,499 CONSERVATOR
- ☐ $150 - $499 ADVOCATE
- ☐ up to $149 SUPPORTER

Donations to the VPC can be made at any time during the year and will be listed in the annual report as a gift for the calendar year in which it is received. My enclosed gift is for calendar year _____.

The Valleys Planning Council is a 501(c)(3) tax-exempt organization and accepts gifts of appreciated securities. If transferring stock, please call the office to obtain current account information. All contributions are tax-deductible to the fullest extent allowed by law. A copy of the current financial statement is available upon request by contacting our office at 410-337-6877 or in writing to: The Valleys Planning Council, Inc., P.O. Box 5402, Towson, MD 21285-5402, or by email at: the_vpc@comcast.net.

Pro Ex 24 12-091-X Rainbow Hall LLC 9-26-12

10 LIGHT STREET
BALTIMORE, MARYLAND 21202

May 19, 2006

Mr. Henry M. Wright, Jr.
1100 W. Seminary Avenue
Towson, Maryland 21204

Dear Mr. Wright:

This is to follow up on our conversation regarding the use of the Rainbow Hall property for a church and to provide off site parking to the Symphony Show House.

We have done some investigation, discussed this at the VPC and solicited comments from the Velvet Valley Association. Our information currently is that you have allowed a religious group, which has broken off from a local church, to temporarily use the property for one worship service a week in exchange for a small fee. A member of this Church has assured us that this will only be on a very temporary basis until they find a new home, which they intend to do shortly. As you know, you would need a Special Exception to use the property as a Church and no request has been filed. We also believe that this violates our covenant. Because we understand that this will end very shortly, we will wait a few months to see what develops; however, you should know that the Community opposes this use. Hopefully this will not become an issue.

As to the parking, we have not been able to find that permits have been filed to allow that use. Providing off site parking to another use is not allowed in RC 2 and also violates our covenant. In addition, the signs which have been placed on Park Heights Avenue are illegal and unsightly. The site distances at the location for entrance and exit are very short and not suitable for parking cars for all the people who attend the show house. Since, however, the parking was heavily advertised and the use is almost over, it does not make sense to require you to cease this use immediately. You should know that we believe that this was improper and will take action if the site is used for off site parking in the future.

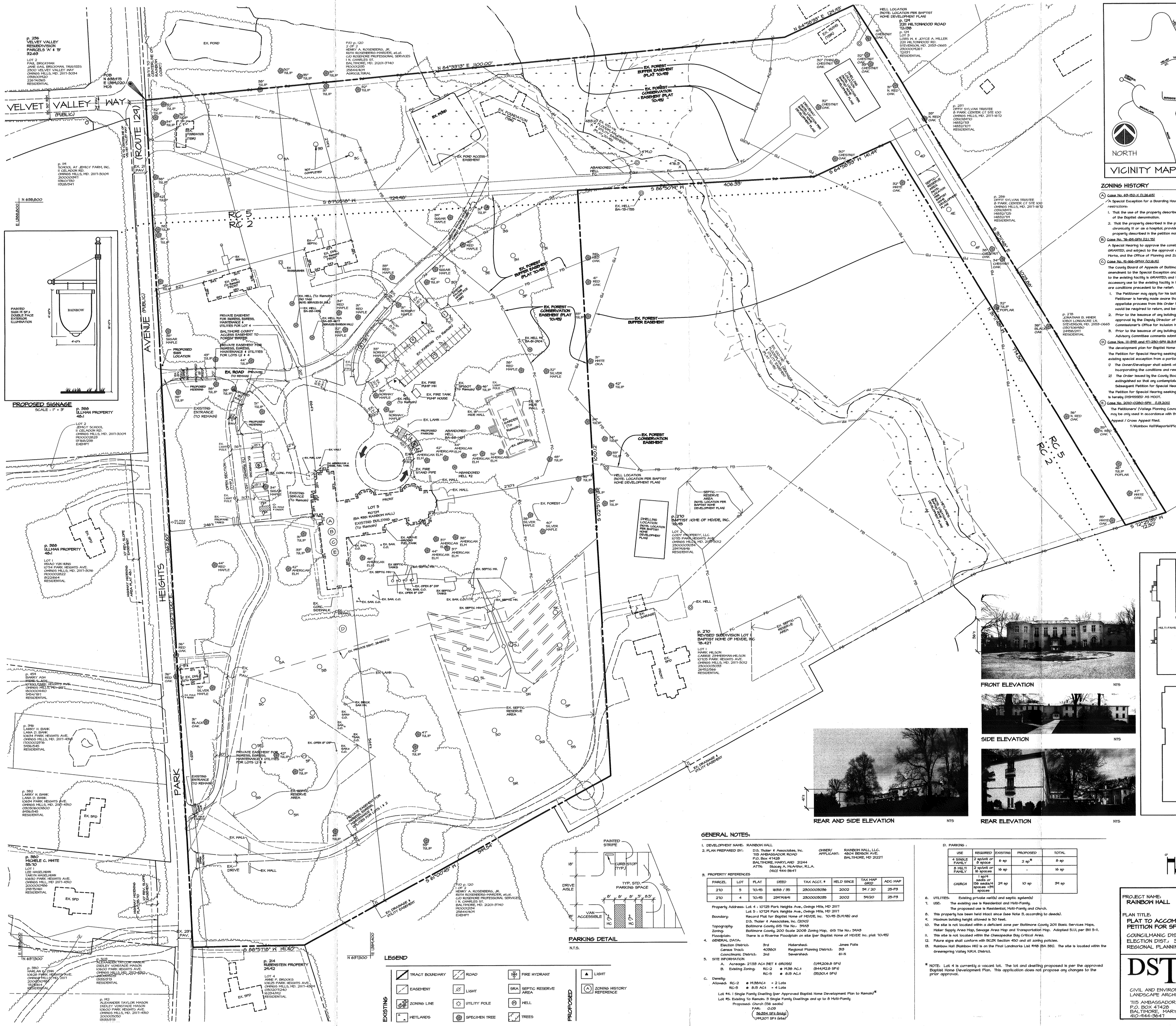
We appreciate your concern for the property and the Community and hope that you will be able to find uses which comply with RC 2 and our covenants in the future.

Very truly yours,

Kathleen Pontone

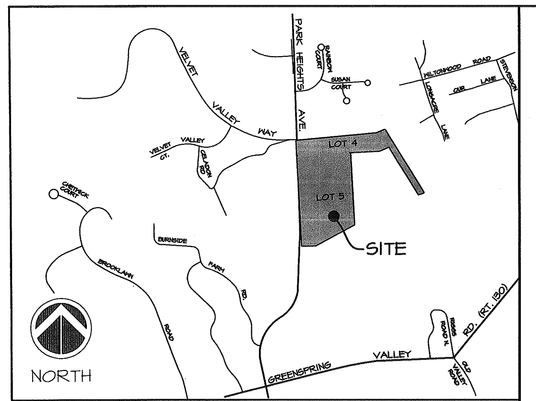
PETITIONER'S
EXHIBIT NO. 56

Pro Ex 26 12-091-X Rainbow Hall LLC 9-26-12



PROPOSED SIGNAGE

SCALE : 1" = 3'



VICINITY MAP SCALE: 1"=1000'

ZONING HISTORY

(A) Case No. 69-152-X (II.26.68)

An Special Exception for a Boarding House for the Aged, is granted, subject, to compliance with the following restrictions:

1. That the use of the property described in the petition shall be limited to a religious, non-profit home for the aged of the Baptist denomination.
2. That the property described in the petition shall not be operated either as a nursing home, or as a home for the chronically ill or as a hospital, provided, however, that a portion of the main building presently located on the property described in the petition may be used as an infirmary for the temporary treatment of aged guests.

(B) Case No. 76-85-SPH (12.1.75)

A Special Hearing to approve the construction of a new infirmary wing on an existing boarding home for the elderly, is GRANTED, and subject to the approval of a site plan by the State Highway Administration, the Department of Public Works, and the Office of Planning and Zoning.

(C) Case No. 91-145-SPHX (10.18.91)

The County Board of Appeals of Baltimore County ORDERED that the Petition for Special Hearing to approve an amendment to the Special Exception and site plan previously granted in Case No. 69-152-X to construct two additions to the existing facility is GRANTED; and the Petition for Special Hearing to permit a maintenance building as an accessory use to the existing facility in the R.C. 5 zone is GRANTED; and the following restrictions are imposed and are conditions precedent to the relief.

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Prior to the issuance of any building permits, Petitioner shall submit a schematic landscape plan for review and approval by the Deputy Director of Planning. A copy of the approved plan shall be submitted to the Zoning Commissioner's Office for inclusion in the case file prior to the issuance of any permits.
3. Prior to the issuance of any building permits, Petitioner shall comply with or satisfy all of the Zoning Plans Advisory Committee comments submitted for inclusion into the case file.

(D) Case Nos. III-213 and 97-280-SPH (6.3.97)

The development plan for Baptist Home of MD/DE, Inc., is APPROVED.

The Petition for Special Hearing seeking approval to create one (1)R.C.2 non-density parcel and the removal of an existing special exception from a portion of the tract, is GRANTED, subject to the following restrictions:

1) the Owner/Developer shall submit within thirty (30) days of the date of this Order, a revised development plan incorporating the conditions and restrictions of this Order.
2) the Order issued by the County Board of Appeals dated October 16, 1991, be and is hereby expressly extinguished so that any contemplated improvements to the Baptist Home facility must be approved through a Subsequent Petition for Special Hearing process.

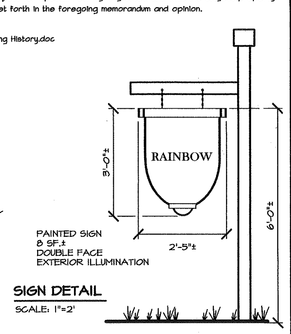
The Petition for Special Hearing seeking approval to create three (3) undersized R.C. 5 non-density parcels, be and is hereby DISMISSED AS MOOT.

(E) Case No. 2010-0280-SPH (1.13.2010)

The Petitioners' (Valley Planning Council, Inc.) request for Special Hearing is granted and that the subject property may be only used in accordance with the terms set forth in the foregoing memorandum and opinion.

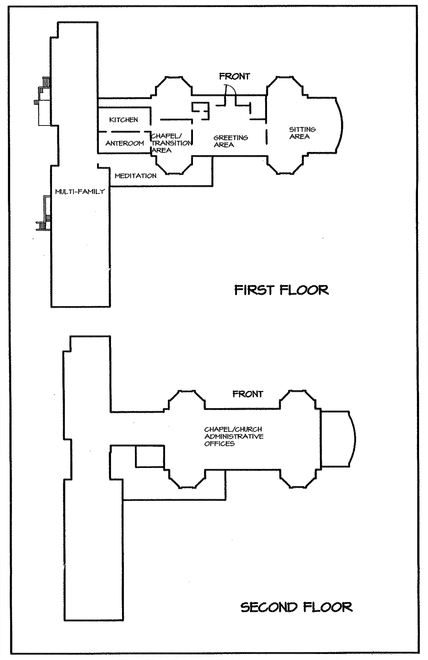
Appeal / Cross Appeal Filed.

T:\Rainbow Hall\Reports\Planning\Zoning History.doc



SIGN DETAIL

SCALE: 1"=2'



BUILDING FLOOR PLAN N.T.S.

FRONT ELEVATION NTS

SIDE ELEVATION NTS

REAR AND SIDE ELEVATION NTS

REAR ELEVATION NTS

PARKING DETAIL

N.T.S.

GENERAL NOTES:

1. DEVELOPMENT NAME: RAINBOW HALL
2. PLAN PREPARED BY: D.S. Thaler & Associates, Inc. 1115 AMBASSADOR ROAD P.O. Box 47428 BALTIMORE, MARYLAND 21244 ATTN: Stacey A. McArthur, R.L.A. (410) 444-3647

   OWNER/ APPLICANT: RAINBOW HALL, LLC. 4804 BENSON AVE. BALTIMORE, MD 21227

3. PROPERTY REFERENCES

PARCEL	LOT	PLAT	DEED	TAX ACCT. #	HELD SINCE	TAX MAP GRID	ADC MAP
230	5	10/45	16316 / 315	2300008286	2002	54 / 20	25-F3
230	4	10/45	23474/641	2300008285	2002	54/20	25-F3

Property Address: Lot 4 : 10725 Park Heights Ave., Owings Mills, MD 21117
Lot 5 : 10729 Park Heights Ave., Owings Mills, MD 21117

Boundary: Record Plat for Baptist Home of MD/DE, Inc. 10/45 (BA/46) and D.S. Thaler & Associates, Inc. (2010)

Topography: Baltimore County 615 Tile No.: 5NA9

Zoning: Baltimore County 200 Scale 2006 Zoning Map, 615 Tile No.: 5NA9

Floodplain: There is a Riverine Floodplain on site (per Baptist Home of MD/DE Inc. plat 10/45)

4. GENERAL DATA:

Election District:	3rd	Watershed:	Jones Falls
Census Tract:	4030.01	Regional Planning District:	313
Councilmanic District:	2nd	Severshed:	61-N

5. SITE INFORMATION

A. Acreage: 2.153 AC± (NET 4 GROSS) (1,94,206.8 SF±)

B. Existing Zoning: RC-2 @ 11.38 AC.± (844,912.8 SF±)
RC-5 @ 8.15 AC.± (355,014.4 SF±)

C. Density:

Allowed: RC-2 @ 11.38AC± = 2 Lots
RC-5 @ 8.15 AC± = 4 Lots

Lot #4: 1 Single Family Dwelling (per Approved Baptist Home Development Plan to Remain)*

Lot #5: Existing To Remain: 3 Single Family Dwellings and up to 8 Multi-Family

Proposed: Church (156 seats)

FAR: 0.03

(36,324 SF± bldg)
(1,94,207 SF± site)

D. PARKING :

USE	REQUIRED	EXISTING	PROPOSED	TOTAL
4 SINGLE FAMILY	2 spaces or 0 space	6 sp	2 sp*	8 sp
8 MULTI FAMILY	2 spaces or 16 spaces	16 sp	-	16 sp
CHURCH	1 sp/4 seats or 156 seats/4 spaces =39 spaces	24 sp	10 sp	34 sp

6. UTILITIES: Existing private well(s) and septic system(s)
7. USE: The existing use is Residential and Multi-Family.
   The proposed use is Residential, Multi-Family and Church.
8. This property has been held intact since (see Note 3, according to deeds).
9. Maximum building height allowed is 50 feet.
10. The site is not located within a deficient zone per Baltimore County 2011 Basic Services Maps, Water Supply Area Map, Sewage Area Map and Transportation Map. Adopted 5.11, per Bill 5-11.
11. This site is not located within the Chesapeake Bay Critical Area.
12. Future signs shall conform with BCZR Section 450 and all zoning policies.
13. Rainbow Hall (Rainbow Hill) is on the Final Landmarks List #148 (BA 386). The site is located within the Greenspring Valley N.R.H. District.

* NOTE: Lot 4 is currently a vacant lot. The lot and dwelling proposed is per the approved Baptist Home Development Plan. This application does not propose any changes to the prior approval.

LEGEND

EXISTING: TRACT BOUNDARY, EASEMENT, ZONING LINE, WETLANDS, ROAD, LIGHT, UTILITY POLE, SPECIMEN TREE, FIRE HYDRANT, SRA SEPTIC RESERVE AREA, WELL, TREES

PROPOSED: LIGHT, ZONING HISTORY REFERENCE

0' 25' 50' 100'

SCALE: 1"=50'

NORTH MCS

PROJECT NAME: RAINBOW HALL

PLAN TITLE: PLAT TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION

COUNCILMANIC DIST.: 2
ELECTION DIST.: 3
REGIONAL PLANNING DISTRICT: 313

OWNER/APPLICANT: RAINBOW HALL, LLC. 4804 BENSON AVE. BALTIMORE, MD 21227

PROPERTY ADDRESS: 10725 & 10729 PARK HEIGHTS AVE. OWINGS MILLS, MD 21117

STATE OF MARYLAND MARK A. HOFFMAN No. 701 PROFESSIONAL LANDSCAPE ARCHITECT

DS Thaler & ASSOCIATES, INC.
CIVIL AND ENVIRONMENTAL ENGINEERS, SURVEYORS
LANDSCAPE ARCHITECTS & LAND PLANNERS
7115 AMBASSADOR ROAD
P.O. BOX 47428
BALTIMORE, MARYLAND 21244-7428
410-444-3647
www.dsthaler.com

FILING DATE: 9.27.11
SCALE: 1" = 50'
C.I.: 2'
SHEET 1 OF 1

FILE NO. 03146B

File name: T:\Rainbow Hall\Aerial\Planning\Exhibits\1122.dwg Layout: Layout1 Sep 26, 2011-11:13am PFC

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PLAT TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION

RAINBOW HALL