

4/15

REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1008

September Term, 2014

LUCY WARE

v.

PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY, ET AL.

Eyler, Deborah S.,
Meredith,
Leahy,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: July 2, 2015

Lucy Ware, the appellant, appeals from a judgment of the Circuit Court for Baltimore County affirming a decision of the Board of Appeals for Baltimore County ("the Board"). The Board's decision denied Ware's petitions for a special hearing and for zoning variances, both of which arose from her proposal to convert a single family home into a church. The appellees are the People's Counsel for Baltimore County ("People's Counsel") and 21 nearby residents who appeared before the Board as protestants and participated in the judicial review proceedings.¹

Ware presents four questions for review, which we have combined and rephrased as follows:

- I. Did the Board err when it determined that the residential transition area regulations set forth in the Baltimore County Zoning Regulations ("BCZR") imposed conditions upon Ware's proposed change in use of the property?
- II. If the Board correctly determined that the RTA regulations applied, was the Board's decision to deny Ware an exception from those regulations legally correct and supported by substantial evidence in the record?^[2]

¹The protestants are: Barbara Roberson, Jimmie Roberson, Ruthanne Otto, Tom Otto, Barry Powell, Sylvia Powell, Gayle Emerson, Lillian Nolley, Helen Aiken, Linda Miller, Tim Lang, Peggy Lang, Wade Young, II, Dale Watkins, Rathea Mims, Al Michel, Evelyn Michel, E. Eddie Daniels, Muriel Lyles, Clyde Lyles, and Ella Green.

While the protestants filed a separate brief in this Court, they also adopted the arguments raised in People's Counsel's brief. We shall refer to the appellees collectively as "People's Counsel" unless otherwise necessary.

²As framed by Ware, the questions are:

1. Did the Board err when it determined that Residential Transition Area ("RTA") regulations are applicable in this instance, considering that the purpose of the RTA is to regulate housing types?
2. Did the Board err when it determined that the RTA regulations applied notwithstanding that the Property is not being developed and instead the

(continued...)

For the reasons to follow, we shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

Ware was born and educated in Kenya, where she earned a degree in construction engineering. She has lived in the United States for over 20 years. In 1996, she established a non-denominational Christian church known as "Jesus Christ is the Answer Ministries" ("the Church"). For many years, the Church operated in rented space in a hotel at Cross Keys, in Baltimore City. In 2005, Ware became an ordained minister.

On August 31, 2012, Ware purchased a 2,900 square-foot rancher style house on a 1.2 acre lot at 4512 Old Court Road, in Milford Mill ("the Property"). The Property was built in 1951 and is located in "Diana Acres," a residential subdivision. It is zoned Density Residential ("DR") 3.5 (3.5 units permitted per acre), and is situated in the middle of a residential block. All the surrounding properties are single-family homes that are zoned DR 5.5 (5.5 units permitted per acre).

The Property was used as a single-family residence from the time it was built until Ware purchased it (61 years). Ware and her husband do not live at the Property; they live in

²(...continued)

use of the building thereon is being converted from a single family dwelling to a church?

3. Did the Board err when it applied the RTA as a use regulation and considered the impacts of the proposed church use on the neighborhood?
4. Did the Board err when it found that the proposed use/conversion of the property was not an exception to the application of the RTA regulations?

a house on Liberty Road. Ware bought the Property in order to convert it from use as a single-family residence to use as a church, *i.e.*, for the operation of the Church.

A. The Pertinent Zoning Regulations

Article 1B of the BCZR governs DR Zones in Baltimore County (“the County”).³ A church or any other building used for religious worship is a use “permitted as of right” in a DR zone. § 1B01.1.A.3. Even a permitted use in a DR zone must comply with section 1B01.1.B, however, which establishes “[d]welling-type and other supplementary use restrictions based on existing subdivision and development characteristics.” One such restriction pertains to residential transition areas (“RTA”), which are buffer and screening areas. § 1B01.1.B.1. An RTA is a “one-hundred-foot area, including any public road or public right-of-way, extending from a D.R. zoned tract boundary into the site to be developed.” § 1B01.1.B.1.a(1).

As relevant here, an RTA is “generated” if the property “to be developed is zoned D.R. and lies adjacent to land zoned . . . D.R.3.5 [or] D.R.5.5” containing a “single-family detached . . . dwelling within 150 feet of the tract boundary.” § 1B01.1.B.1.b. A property owner may seek a variance from the RTA buffer requirements, but only if 1) the variance is recommended by certain County agencies *or* 2) there is a finding at a development review hearing, pursuant to Article 32, subtitle 4 of the County Code (“the Code”), that a modification to the RTA satisfies compatibility criteria and that a reduction in the RTA “will

³All citations are to the BCZR unless otherwise indicated.

not adversely impact the residential community . . . adjacent to the property to be developed.”

§ 1B01.1.B.1.c.

An RTA “use is any use” permitted as of right or by special exception in the zone or “[a]ny [business or industrial] parking area permitted under Section 409.8.B subject to the approval of a specific landscape plan for the buffer area which must meet the requirements for a Class A plan.” § 1B01.1.B.1.d.

Section 1B01.1.B.1.e establishes the “[c]onditions” in an RTA. Any single-family detached, semi-detached, or duplex dwelling is permissible within an RTA. A “parking lot” must be “set back from the tract boundary 75 feet and provide a fifty-foot RTA buffer.” § 1B01.1.B.1.e(2). The “buffer” must be an “upgraded, uncleared, landscaped buffer” and may not contain drainage areas, stormwater management ponds, or accessory structures, unless otherwise directed by the hearing officer upon the recommendation of the County. § 1B01.1.B.e(3).

There are “[e]xceptions to residential transition” that, if applicable, eliminate the “conditions” set forth above for a proposed site plan. § 1B01.1.B.1.g. Four of the exceptions pertain to churches. As relevant here, subsection (6) excepts a “new church or other building for religious worship, the site plan for which has been approved after a public hearing in accordance with Section 500.7” if there is a finding that “the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements,

will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.”

B. The Proposed Changes to the Property

The house on the Property is situated on the eastern side of the lot, 28 feet from the property line of the neighboring property at its closest point. When Ware purchased the Property, it had a macadam driveway that ran from Old Court Road to the east of the house. The driveway emptied into a wide paved parking area that extended nearly to the eastern property line.

Ware replaced the roof of the house and added a deck. She did not make any other changes to the exterior of the house, and does not plan to do so. Significant to the issues in this case, Ware created a parking lot to the rear of the house by covering the grass in that area with gravel. To access this parking lot, cars must drive beyond the end of the macadam driveway along the eastern side of the house and turn left onto the gravel lot. Ware planted 45 Leyland Cypress trees along the eastern and northern Property lines to partially screen the new parking lot.⁴

In October of 2012, Ware held two Church events on the Property: a cookout and a party. During both events, parishioners parked on the gravel parking lot and also on the lawn at the rear of the Property. Neighbors counted 50 cars at the Property. They complained to

⁴Ware plans to renovate the interior of the house to accommodate its use as a church. At the time of the relevant proceedings, she had not undertaken any such changes.

County zoning authorities, who contacted Ware and advised her that she could not use the Property as a church until she brought it into compliance with the BCZR.

C. The Zoning Petitions

On December 21, 2012, Ware filed petitions for a special hearing and zoning variances with the County Department of Permits, Approvals, and Inspection. Her petition for special hearing sought to change the Property's use from a single-family residence to a church; to allow an RTA buffer of 0 feet in lieu of the required 50 feet; and to allow an RTA setback of 0 feet in lieu of the required 75 feet from a tract boundary to a parking lot. Ware sought variances from parking regulations that require every parking space to have direct access to an aisle (section 409.4); the surface of the lot to be "durable and dustless" (section 409.8A2); and the lot to be striped (section 409.8A6).

In January of 2013, People's Counsel entered its appearance in the case.

On February 27, 2013, a hearing was held before an Administrative Law Judge ("ALJ") at the Office of Administrative Hearings. On March 7, 2013, the ALJ issued a written decision recommending denial of Ware's petitions. Ware noted a timely appeal to the Board.

On June 18, 2013, the Board conducted a *de novo* hearing. Ware testified and called two Church members who supported her petitions. She also called as an expert witness Bruce Doak, P.E., the engineer and property line surveyor who prepared her site plan.

The site plan shows the contours of the existing house on the Property with the gravel parking lot at the rear. It shows that the parking lot has 16 spaces, which is the number required for a "principal place of worship" with 64 seats, under section 409.6. The easternmost parking space is only a few feet from the property line with the adjacent residential property. All or part of six of the parking spaces are within the 50-foot RTA buffer and all or part of 10 of the parking spaces are within the 75-foot RTA setback area. The driveway is entirely within the 50-foot buffer.

Ware testified that the Church has 30 adult members. They bring their children to services and are permitted to bring guests. She hopes to increase church membership, but will determine the maximum size based upon fire department occupancy regulations. She expects that parishioners will travel to the church by car and by bus. If the parking lot is full, they can "park on the grass." She plans to hold one traditional service on Sunday mornings, prayer and worship services on Monday and Friday evenings from 7:00 p.m. to 8:30 p.m., and prayer services on Wednesday evenings in the same time frame.

Doak testified that without zoning relief Ware cannot use the Property as a church because there is no area of the Property for a parking lot that will not infringe on the 75-foot RTA setback area and the 50-foot RTA buffer. Doak presented an alternate site plan to show that a parking lot could be reconfigured to move more of the parking out of the buffer and setback areas, but even this site plan (which the parties agree was not before the Board for approval) would include some parking within those areas. With respect to the driveway,

Doak explained that if the Property were used as a dwelling, it would not need to comply with the RTA conditions; once the use changed to a church, the driveway was within the RTA buffer and zoning relief was necessary to bring it into compliance.

Doak also testified that three other churches are located on Old Court Road in close proximity to the Property. Two are in a DR 5.5 zone and one is in a DR 3.5 zone. Doak did not testify about whether these church properties comply with the RTA conditions.

Finally, with respect to the parking variances, Doak opined that the Property is unique because it is larger than many lots in the area and had not reached maximum density.

Seven of the protestants testified in opposition to the petitions. They expressed concern about increased traffic and noise that will result if the Property is allowed to be converted for use as a church, and about decreased property values. Dale Watkins, who lives in a house behind the Property, testified that a parking lot and additional parking at the rear of the Property likely will cause "noise and commotion," especially during the evening hours when the area is dark.

The protestants called James Patton, P.E., as an expert witness. He testified that Ware's site plan did not satisfy even the minimal RTA requirements. With respect to the variance requests, he opined that the Property was not unique and that the hardships Ware was claiming were self-imposed because she did not investigate the zoning requirements for a church before she purchased the Property.

At the conclusion of the hearing, the Board directed the parties to submit memoranda of law. On July 30, 2013, the Board reconvened to deliberate.

On October 9, 2013, the Board issued its final written decision denying the petitions. After summarizing the evidence and the relevant regulations, the Board turned to the threshold question whether an RTA was “generated” by Ware’s proposed change in use of the Property. That inquiry turned on whether the “proposed use as a ‘church’ is a residential transition use” under sections 1B01.1.B.1.b & d. The Board determined that it is a “residential transition use” because a church is a use permitted as of right in the zone, the Property is in a covered DR zone, and the Property is adjacent to properties in a covered DR zone. Thus, “the transition area [is] generated.”

The Board rejected Ware’s argument that “because she [was] not making any exterior structural changes or additions to the home” the RTA was not generated. To support this argument, Ware pointed to language in section 1B01.1.B.1 that references the site or property “to be developed,” and the definition of “development” in section 32-4-101(p) of the Code, which includes “the improvement of property for any purpose involving building.” The Board concluded that Ware was “improving” the Property, and thus was developing it, because she was “changing the landscaping, driveway and parking that is required under the BCZR to change the use from single family home to church.” The Board referenced the definition of “[i]mprovements” in the Code, which includes “[l]andscaping” and “[o]ther improvements as determined necessary and appropriate by the [C]ounty.” Code § 32-4-

101(w). The Board found that the County had required Ware to landscape the Property to “screen the parking lot from the adjoining property.” Further, the County had required Ware to provide off-street parking for the proposed church use, which also qualified as an improvement “determined necessary and appropriate by the [C]ounty.”

The Board then turned to the question whether the church use “qualifie[d] for an exception from the RTA restrictions under 1B01.1.B.1.g(6),” the only exception that possibly could apply to the Property. The Board opined:

[T]he proposed Church does not even minimally comply with the RTA requirements. The proposal is for no buffer and no setbacks. The evidence did not show that the plan submitted by [Ware] would be compatible with the character or general welfare of the surrounding homes which homes are occupied by the Protestants who testified. The Board finds credible the concerns voiced by the Protestants concerning increased traffic generated by this use in the middle of a residential block.

While [Ware] testified that there were 30 members, the parking calculations on the site plan revealed that this was a 64 seat church. [Ware] agreed that members could bring guests and family members as well as children. We see this Church as being in the early stage of growth and we expect and anticipate that it will continue to grow, particularly given the charitable work that it does. The modest size of this single family home, on 1.2 acres, is not sufficient to house the planned functions and services.

The Board noted that photographs of the other three churches on Old Court Road showed that each property had adequate space for a parking lot that was “paved and striped,” so that the “impact on the surrounding properties” was less intense. In contrast, it was “not compatible with the neighborhood for cars to park on the grass [of the Property] for church activities that [would] occur during the week and on weekends.” For all of these reasons, the

Board determined that the subsection g(6) exception was not satisfied and denied the petition for special hearing.

The Board's denial of Ware's petition for special hearing rendered moot her petition for parking variances. The Board stated, however, that had it considered that issue, it would have denied the requested variances because the Property was not unique and because the hardships resulting in any practical difficulty all were self-imposed.

Ware timely filed an action for judicial review in the Circuit Court for Baltimore County. That court affirmed the decision of the Board. This appeal followed.

We shall include additional facts as necessary to our discussion of the issues.

STANDARD OF REVIEW

In an appeal from a judgment entered on judicial review of a final agency decision, we look "through" the decision of the circuit court to review the agency decision itself. *People's Counsel v. Country Ridge Shopping Center, Inc.*, 144 Md. App. 580, 591 (2002). Our role "in reviewing [the final] administrative agency adjudicatory decision is narrow." *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67 (1999) (citing *United Parcel v. People's Counsel*, 336 Md. 569, 576 (1994)). It is limited to determining whether "there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Id.* at 67-68 (quoting *United Parcel*, 336 Md. at 577).

“An agency’s fact-finding is based on substantial evidence if ‘supported by such evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Kim v. Md. State Bd. of Physicians*, 196 Md. App. 362, 370 (2010) (quoting *People’s Counsel v. Surina*, 400 Md. 662, 681 (2007)). “The agency’s decision must be reviewed in the light most favorable to it; because it is the agency’s province to resolve conflicting evidence and draw inferences from that evidence, its decision carries a presumption of correctness and validity.” *State Bd. of Physicians v. Bernstein*, 167 Md. App. 714, 751 (2006). In contrast, while we may “give weight to an agency’s experience in interpretation of a statute that it administers, . . . it is always within our prerogative to determine whether an agency’s conclusions of law are correct.” *Schwartz v. Md. Dep’t of Natural Res.*, 385 Md. 534, 554 (2005).

DISCUSSION

I.

Ware contends the Board erred as a matter of law in ruling that the RTA regulations apply to the proposed change in use of the Property. She offers two reasons in support. First, the RTA regulations are expressly intended to “*assure that . . . adequate buffers and screening are provided between dissimilar housing types.*” § 1B01.1.B.1.a(2) (emphasis added). Ware maintains that because she is proposing an institutional use on the Property, the RTA regulations do not come into play. Second, Ware asserts that the RTA regulations only apply when a property is being “developed.” According to Ware, the changes she

proposes to the use of the Property do not amount to “development” within the dictionary meaning of that term.

People’s Counsel responds that Ware is “bound by the four corners of her petition for special hearing,” in which she sought relief from the RTA buffer and setbacks, and may not now argue that the RTA conditions do not apply to the Property at all. In any event, People’s Counsel maintains that the RTA conditions apply to any “residential transition use,” which includes a church use. With respect to Ware’s argument that she is not developing the Property, People’s Counsel responds that the landscaping and creation of a new parking lot plainly amount to development of the Property under the definitions in the Code and in the dictionary.

Our interpretation of the RTA regulations in the BCZR is governed by the well-established principles of statutory interpretation.

We have said time and again that “the paramount object of statutory construction is the ascertainment and effectuation of the real intention of the Legislature.” The process of statutory interpretation begins with the plain language of the statute, where we “read[] the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory.” If the plain language of the statute is clear and unambiguous, the process ends and “no further sleuthing of statutory interpretation is needed.”

Fisher v. E. Corr. Inst., 425 Md. 699, 706-07 (2012) (citations omitted).

We begin with Ware’s argument that the RTA conditions only apply to “dissimilar housing types.” She maintains that because she is proposing to change the use of the Property from a residential dwelling to a church, the Property need not comply with any RTA

conditions. We disagree. The language Ware cites appears in section 1B01.1.B.1.a, which is the purpose clause of the RTA regulations. It states that “the purpose of an RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types.” Although this may be a central purpose of the RTA regulations, subsection d makes plain that the regulations apply even when a proposed use is not residential in character. As relevant here, subsection d defines a “residential transition use” to be “*any* use . . . permitted as of right under Section 1B01.1.A.” (Emphasis added.) That section permits as of right many non-residential uses within a DR zone, including hospitals, day care facilities, schools, and churches. Subsection d applies to “any” of these uses, without regard to whether the use is residential or non-residential. Ware’s proposal to convert a single-family dwelling in a DR 3.5 zone into a church involves a “residential transition use.” The Board’s legal conclusion to this effect was correct.⁵

⁵Ware argues that the Board’s decision in this case is contrary to a prior Board decision and, as such, its legal conclusion that the RTA was applicable is erroneous as a matter of law. We disagree. The prior decision of the Board, which Ware acknowledges is not binding on this Court, involved the development of a Sonic fast food restaurant on a split-zoned parcel. See *In the Matter of Michael R. Mardiney, Jr. M.D. - Legal Owner*, Case No. 13-171-SPHXA (decided Nov. 21, 2013). The restaurant was to be built on the front of the Property, which was zoned commercial, and an existing parking lot was to be repaved and screened on the back part of the Property, which was in a DR zone. The Board determined that because “[n]o housing [was] proposed to be constructed,” the RTA did not apply and because the property owner was not constructing a parking lot on the DR portion of the property, but was continuing its permitted use in that regard, there also was no development of the DR zoned portion of the property. No petition for judicial review was filed.

(continued...)

This conclusion also is borne out by the exceptions to the RTA conditions. If compliance with RTA conditions only would be required when a property owner proposed the development of a “dissimilar housing type,” there would be no need for the four exceptions for church uses, the exception for a child care center, or the exception for transit facility or rail passenger facility. None of these uses involve housing and all are expressly excepted from the application of the RTA conditions. *See Fisher*, 425 Md. at 706 (“we ‘read[] the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory.’”)(citation omitted).

We now turn to whether Ware is “develop[ing]” the Property for use as a church. In her memorandum of law submitted to the Board following the hearing, Ware argued that she is not developing the Property, citing the definition of that term as it appears in section 32-4-101(p) of the Code. The Board rejected her argument, noting that that definition encompasses “[t]he improvement of property for any purpose involving building” and, under another definition in the Code, “[i]mprovements” include landscaping and any other “improvements as determined necessary and appropriate by the county.” Code § 32-4-101(w).

⁵(...continued)

For the reasons already explained, we have held as a matter of law that the plain language of the RTA regulations makes the buffer and setback conditions applicable to RTA uses, not just to dissimilar housing types. Thus, to the extent the two decisions are in conflict, we conclude that the Board’s decision in the instant case correctly interpreted the RTA regulations.

Before this Court, Ware now argues that the Board erred as a matter of law by relying on the definition *she* cited to it. She asserts that the Board should have looked to the dictionary definition of “development” because the BCZR instructs that any term not defined therein shall have “the ordinarily accepted definition as set forth in the most recent edition of Webster’s Third International Dictionary of the English Language, Unabridged.” § 101. The pertinent Webster’s definition of “develop” is “to make actually available or usable . . . as (1) to convert (as raw land) into an area suitable for residential or business purposes.”

Under either definition, Ware’s changes to the Property amounted to “development.” As discussed, she created a new parking lot behind the house on the Property. Although she did not pave or stripe the lot (and sought variances to avoid having to do so), she poured gravel over the area to establish the lot. She planted numerous trees to screen the new parking lot and agreed to plant additional trees if the relief requested in her petition for special hearing were granted. She proposed new drainage and stormwater management systems to accommodate the new use. These changes to the Property were necessitated by the conversion of the Property from use as a single-family residence to a 64-seat church. The changes are improvements under the Code definition. They also are necessary to make the Property usable as a church, under the dictionary definition, because, unlike a single-family residence, which only requires parking to accommodate residents, a church (especially a 64-seat church) requires parking for parishioners who will be coming to services and events. Indeed, that is the very reason that Ware put a gravel parking lot on the Property. For all of

these reasons, we perceive no error in the Board's finding that the Property was being developed by Ware for use as a church.

II.

Ware contends the Board erred by denying her relief from the RTA because, even if the RTA regulations apply (which we have held they do), the Property is excepted from the buffer and setback conditions. People's Counsel responds that the Board correctly found that Ware's site plan failed even to minimally comply with the RTA conditions and that the "incompatibility with the general welfare of the surrounding premises [was] conspicuous."

As discussed, section 1B01.1.B.1.g(6) states that a "new church or other building for religious worship, the site plan for which has been approved after a public hearing in accordance with Section 500.7" may be excepted from the RTA conditions if two requirements are met. First, "the proposed improvements [must be] planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained." § 1B01.1.B.1.g(6). Second, the "plan [must] be compatible with the character and general welfare of the surrounding residential premises." *Id.*

The Board found that neither prong of the exception was met. Ware's site plan did not comply with the RTA use requirements at all because it proposed no buffer and no set back between the parking lot and the eastern boundary of the Property. As mentioned, Doak acknowledged in his testimony that Ware could configure the parking lot to reduce its infringement upon the RTA. The Board's finding that the site plan did not comply with the

RTA to the extent possible was supported by substantial evidence in the record and validates its conclusion that the exception does not apply.

The Board also found that the “plan” could not “otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.” Ware takes issue with the Board’s finding that the *use* of the Property as a church would be incompatible with the surrounding residential premises. She points out that a church is a use as of right in a DR zone and argues that the RTA regulations do not restrict use; they only restrict building or developing land within the buffer. She argues that the Board improperly considered how the *use* would affect the neighboring properties.

Although the Board commented on the testimony from the protestants concerning noise and traffic occasioned by the change in use, it also found that the physical layout of the Property was not suited for the planned use. The other church properties in the area are situated on larger lots and have sufficient space for parking. In contrast, the planned 16-space parking lot immediately adjacent to a residential property, mostly within the RTA buffer and setback areas, is not compatible with the character and general welfare of the neighborhood. These findings are supported by substantial evidence in the record and are a sufficient basis to support the Board’s incompatibility finding.

For all of these reasons, the Board did not err by concluding that the RTA conditions applied to the Property, that the proposed site plan did not satisfy the conditions, and that the Property was not excepted from those conditions. In light of our holding, we need not

address the Board's alternative ruling on Ware's petition for variances from parking regulations.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE COUNTY
AFFIRMED. COSTS TO BE PAID BY
THE APPELLANTS.**

6/19/14

CIRCUIT COURT FOR BALTIMORE COUNTY

Julie L. Ensor

Clerk of the Circuit Court

County Courts Building

401 Bosley Avenue

P.O. Box 6754

Towson, MD 21285-6754

(410)-887-2601, TTY for Deaf: (800)-735-2258

Maryland Toll Free Number (800) 938-5802

RECEIVED

JUN 20 2014

BALTIMORE COUNTY
BOARD OF APPEALS

06/19/14

Case Number: 03-C-13-012865 AA OTH

Date Filed: 11/06/2013

Status: Closed/Inactive

Judge Assigned: To Be Assigned,

Location :

CTS Start : 11/06/13 Target : 05/05/15

In the Matter of Lucy Ware

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	13-147-SPHA
Case Folder ID	C13012065401

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
PET	001 Ware, Lucy	Party ID: 1946834	CT DO 06/16/14	11/08/13
	Capacity : Reverend			
	Mail: 4512 Old Court Road	11/08/13		11/08/13 AAW
	Baltimore, MD 21208			
	Attorney: 0007161 Schmidt, Lawrence	Appear: 11/08/2013		11/08/13
	Gildea & Schmidt, LLC			
	600 Washington Avenue			
	Suite 200			
	Towson, MD 21204			
	(410)821-0070			

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
RES 001	2nd Election District	Party ID: 1946836	CT DO 06/16/14	11/08/13
RES 002	2nd Councilmanic District	Party ID: 1946838	CT DO 06/16/14	11/08/13
ADA 001	Board Of Appeals	Party ID: 1946840	CT DO 06/16/14	11/08/13
	Mail: Jefferson Bldg, Suite 203 105 W. Chesapeake Avenue Towson, MD 21204	11/08/13		11/08/13 AAW
	Attorney: 0005744 Demilio, Carole S People's Counsel For Baltimore County 105 W Chesapeake Avenue Room 204 Towson, MD 21204 (410)887-2188	Appear: 11/14/2013		11/26/13
	0029075 Zimmerman, Peter M People's Counsel For Baltimore County 105 West Chesapeake Ave. Room 204 Towson, MD 21204 (410)887-2188	Appear: 11/14/2013		11/26/13
ITP 001	Mims, Rathea	Party ID: 1963236	CT DO 06/16/14	12/30/13
ITP 002	Mims, Jeffrey	Party ID: 1964546	CT DO 06/16/14	01/07/14
	Mail: 4508 Old Court Rd Baltimore, MD 21208	01/07/14		01/07/14 CMS

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec			
06/16/14	09:30A	CR12	Civil Non-Jury Trial	Y	SRB	01 /01	JMO KTW
	Held/Concluded		06/16/14 E S.Bailey	Y			
Stenographer(s): Court Smart							

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	Activity User	Date
06/16/14	DO	Decree or Order	CT	AFTER TRIAL/HEARING	KTW	06/16/14

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
TBA To Be Assigned,	J	11/08/13		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
00001000	Petition for Judicial Review with exhibit	11/06/13	11/08/13	PET001	TBA	06/16/14	AAW KTW
00001001	Answer *	11/14/13	11/26/13	ADA001	TBA	06/16/14	EMH KTW
00001002	Response for Petition for Judicial Review in Proper Person	12/30/13	12/30/13	ITP001	TBA	06/16/14	NF KTW
00001003	Answer in Proper Person	12/16/13	01/07/14	ITP002	TBA	06/16/14	CMS KTW
00002000	Affidavit of Compliance *	11/14/13	11/26/13	ADA001	TBA	11/26/13	EMH
00003000	Transcript of Record from Adm Agency In transcript box 42	01/23/14	01/23/14	ADA001	TBA	06/16/14	KAS KTW
00004000	Notice of Transcript of Record Sent	01/23/14	01/23/14	ADA001	TBA	01/23/14	KAS
00005000	Notice of Transcript of Record Sent	01/23/14	01/23/14	PET001	TBA	01/23/14	KAS
00006000	Notice of Transcript of Record Sent	01/23/14	01/23/14	RES001	TBA	01/23/14	KAS
00007000	Notice of Transcript of Record Sent	01/23/14	01/23/14	RES002	TBA	01/23/14	KAS
00008000	Memorandum in support of petition for judicial review	02/24/14	03/11/14	PET001	TBA	03/11/14	EMH
00009000	Scheduling Order	03/21/14	03/21/14	000	TBA	03/21/14	JMO
00010000	Memorandum of People's counsel of Baltimore County	03/21/14	04/02/14	000	TBA	04/02/14	SAP

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
00010001	Petitioner's Reply Memorandum in Support of Petition for Judicial Review with exhibit	04/08/14	04/16/14	PET001	TBA	06/16/14	AMV KTW
00011000	Memorandum of Respondents Jimmie and Barbara Robertson et al	03/26/14	04/08/14	000	TBA	04/08/14	NF
00012000	Open Court Proceeding June 16, 2014. Hon. Sherrie R. Bailey. Hearing had in re: Administrative appeal. Testimony taken. Ruling of the court affirms the decision of the Board of appeal.	06/16/14	06/16/14	000	SRB	06/16/14	KTW KTW
00013000	Docket Entries Transferred to Board of Appeals for Baltimore County	06/19/14	06/19/14	000	TBA		JD

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	11/14/13	0	no	no	DANS	D	1	001
1ANS	1st Answer Tickle	CLOSED	04/08/14	0	no	no	DANS	D	10	001
1YRT	One Year Tickle (Jud	CLOSED	11/06/14	365	no	no	DAAA	D	1	000
SLTR	Set List For Trial	CANCEL	11/14/13	0	yes	no	1ANS	T	1	001
SLTR	Set List For Trial	CANCEL	01/23/14	0	yes	no	DTRA	D	3	000
SLTR	Set List For Trial	CANCEL	04/08/14	0	yes	no	1ANS	T	10	001

DIFFERENTIATED CASE MANAGEMENT**TRACKS AND MILESTONES**

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 03/21/14 Order Date : 03/21/14
Start Date : 03/21/14 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(	04/05/14	06/16/14	CLOSED	
All Motions (excluding Motions in Limine	05/07/14	06/16/14	CLOSED	
TRIAL DATE is	06/16/14	06/19/14	06/16/14	REACHED

PUBLIC NOTE TITLES

- 1) CIVIL ASSIGNMENT NOTES 1-23-14

ACCOUNTING SUMMARYNON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct Desc	Oblig	Payment	Total MOP	Balance
11/08/13		1265 MLSC	55.00	.00	55.00	55.00
11/08/13		1102 CF-Civil Fil	80.00	.00	80.00	135.00
11/08/13		1500 Appearance F	10.00	.00	10.00	145.00

CIRCUIT COURT FOR BALTIMORE COUNTY

Case #:
03-C-13-012865F
01Date Filed:
11/06/2013

Case Type:

Administrative Agency Appeal

In the Matter of Lucy
WarePetitioner: Lucy Ware
Respondent: 2nd Election DistrictPetitioner's Attorney:
Lawrence Schmidt EsqPhone No.:
(410)821-0070Fax No.:
(410)821-0071

C13012865V01

CIRCUIT COURT
FOR
BALTIMORE COUNTY

3/24/14

RECEIVED

MAR 21 2014

BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF REVEREND LUCY WARE
FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

* IN THE
*
* CIRCUIT COURT

IN THE CASE OF REVEREND LUCY WARE, LEGAL
OWNER, PETITION FOR SPECIAL HEARING &
VARIANCE ON PROPERTY LOCATED AT 4512
OLD COURT ROAD, BALTIMORE MD 21208

*
* FOR
*

2nd Election District, 2nd Councilmanic District

* BALTIMORE COUNTY

Case No. 2013-147-SPHA
Before the County Board of Appeals

* Case No. 03-C-13-012865

* * * * *

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

TABLE OF CONTENTS

Statement of the Case	1
Questions Presented	3
Relevant Baltimore County Zoning Regulations: In the Appendix	4
Overview	4
Argument.....	5
I. The Residential Transition Area buffer and setback standards apply particularly to new churches, generally to uses permitted by right and special exception in residential zones, and to business parking in density residential zones, subject also to exception standards for enumerated uses such as churches.	5
A. The RTA applies to all uses permitted in the residential zone, not just to dissimilar dwelling uses.	5
B. The RTA exception standards plainly apply to a new church or other building for religious worship, in the context of site development.....	11
C. The County Board of Appeals Opinion.....	12
D. Ware's Citation to the "Sonic opinion"	13
E. Past Practice.....	14

II. Ware failed to satisfy the burden to produce evidence to meet the RTA exception test, that it comply to the extent possible with use requirements and that it be compatible with the character and general welfare of the surrounding premises.	14
A. The June 18, 2013 County Board of Appeals Hearing: Ware’s Case	14
B. June 18, 2013 County Board of Appeals Hearing: Protestants’ Case	17
III. Ware’s proof was legally insufficient; anyway, there was substantial evidence to support the County Board of Appeals decision to deny the petition; its opinion was at least fairly debatable.....	21
A. Ware’s confusion of the “exception” as an “exemption”	21
B. The County Board of Appeals Denial of the RTA exception.....	21
C. Scope of Judicial Review of Agency Factual and Mixed Factual-Legal Findings.....	22
D. The Legal Insufficiency of Ware’s Case	25
E. The Court must anyway affirm the CBA because the CBA simply was not convinced by Petitioner’s presentation and, moreover, there was substantial evidence to support the administrative decision to deny the petition.....	27
F. There was no evidence to justify the request for parking variances	29
IV. Ware’s Religious Land Use and Institutionalized Persons Act (RLUIPA) claim is not viable and is anyway without merit.	31
A. Ware failed to preserve a RLUIPA claim for judicial review by failing to raise it at the CBA, so the CBA understandably could not address it.....	31
B. The RLUIPA claim anyway without merit because there is nothing coercive in the zoning law, and there is no shortage of land zoned for religious institutions, as reflected in the plethora of such institutions on suitable sites.	31
Conclusion.....	34

APPENDIX

BCZR § 1B01.1	Apx. 1
BCZR § 307.1	Apx. 6
BCZR § 600.....	Apx. 7
County Board of Appeals Opinion dated October 9, 2013	Apx. 8

PETITION OF REVEREND LUCY WARE
FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

* IN THE
*
* CIRCUIT COURT

IN THE CASE OF REVEREND LUCY WARE, LEGAL
OWNER, PETITION FOR SPECIAL HEARING &
VARIANCE ON PROPERTY LOCATED AT 4512
OLD COURT ROAD, BALTIMORE MD 21208

*
* FOR
*

2nd Election District, 2nd Councilmanic District

* BALTIMORE COUNTY

Case No. 2013-147-SPHA
Before the County Board of Appeals

* Case No. 03-C-13-012865

* * * * *

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Statement of the Case

This zoning case involves a 1.2 acre lot at 4512 Old Court Road ("4512") in a residential subdivision named Diane Acres. The property is zoned D.R. (Density Residential) D.R. 3.5 and has a single-family dwelling built in 1951. This case centers on the proposed conversion of dwelling use to church use.

Reverend Lucy Ware ("Ware") resides at 7111 Liberty Road, away from the Diane Acres area. T. 27-28. On August 31, 2012, she acquired 4512 from Haywood Robinson and Renee Robinson. Pet. Exh. 1. Ware came from Kenya about 20 years ago,, with a degree in construction engineering, started a ministry called Jesus Christ Ministries in 1996, and became ordained a full-time minister in 2005. T. 9-12. Before acquiring 4512, she conducted services at the hotel in Cross Keys village. T. 26-27.

Ware began immediately to use the vintage dwelling as a church, and added a gravel parking lot. T. 16-18, 75. She paid no attention to zoning requirements. She did not consult an attorney or county staff.

On Sunday October 28, 2012, Ware hosted a big party with an estimated 30 cars and 50 people. T. 29-30, 104, 111. Area citizens complained of the brouhaha and disruption to

their quiet neighborhood. T. 29-30, 104, 111. In November, 2012, County officials told Ware to stop until she gained zoning approval. T. 29. Ware retained consultant/surveyor Bruce Doak, who prepared her zoning petition and site plan. T. 1-6. She held off on services at the property and moved to "temporary quarters" at her residence as the zoning process ensued. T. 24.

On December 21, 2012, Ware filed her zoning petition to convert 4512 to church use. The petition requested a special hearing. Baltimore County Zoning Regulation (BCZR) Sec. 500.7. The purpose was to obtain an exception from Residential Transition Area (RTA) minimum setback and buffer distances from adjacent single-family dwelling properties. A special hearing is like a declaratory judgment. Antwerpen v. Baltimore County 165 Md. App. 194, 207 (2005).

Ware's special hearing petition asked for approval of "a new church or other building for religious worship" under BCZR Sec. 1B01.1.B.1.g(6), with an RTA buffer of (zero) feet instead of the required 50 feet and a setback of 0 feet instead of the required 75 feet per BCZR Sec. 1B01.1.B.1.e.5. To obtain the exception, a petitioner must show that there will be "... compliance to the extent possible with RTA use requirements, ... and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises."

The petition also included parking variances. The variances involved 4 parking spaces without direct access to an aisle, as required by BCZR Sec. 409.4; a gravel surface instead of durable and dustless surface, per Sec. 409.8.A.2; and excusal from striping requirements of BCZR Sec. 409.8.A.6.

There followed public notice and a trial hearing before Administrative Law Judge (ALJ) John Beverungen. Edward Gilliss represented Ware at the hearing. Many area citizens appeared in opposition. On March 7, 2013, ALJ Beverungen denied the petitions in a written opinion and order.

Ware appealed to the County Board of Appeals (CBA). It is *de novo*. County Charter Sec. 603. The CBA 3-member panel held a trial hearing June 18, reviewed

memoranda, deliberated publicly, and unanimously denied the petition. The CBA finalized its decision in the attached written opinion and order dated October 9, 2013.

On November 6, 2013, Ware filed her petition for judicial review in Circuit Court. Responses were filed. Ware has filed her memorandum. This is our office's response.

Questions Presented

1. Do the Residential Transition Area buffer and setback standards apply particularly to new churches, generally to uses permitted by right and special exception in density residential zones, and to business parking in residential zones, subject also to exception standards for enumerated uses such as churches?

a. Does the RTA apply to all uses permitted in the residential zone, not just to dissimilar dwelling uses?

b. Do the RTA exception standards plainly apply to a new church or other building for religious worship, in the context of site development?

2. Did Ware failed to satisfy the burden to produce evidence to meet the RTA exception test, that it comply to the extent possible with use requirements and that it be compatible with the character and general welfare of the surrounding premises?

3. Must the Court anyway affirm the CBA because the CBA simply was not convinced by Ware's presentation and, moreover, there was substantial evidence to support the administrative decision to deny the petition?

4. Is Ware's Religious Land Use and Institutionalized Persons Act claim viable; and is it anyway without merit?

a. Did Ware fail to preserve a RLUIPA claim for judicial review by failing to raise it at the CBA, so the CBA understandably could not address it?

b. Is the RLUIPA claim anyway without merit because there is nothing coercive in the zoning law, and there is no shortage of land zoned for religious institutions, as reflected in the plethora of such institutions on suitable sites?

Relevant Baltimore County Zoning Regulations: In the Appendix

Attached in the appendix are BCZR Sec. 1B01.1, D.R. Zone use and RTA provisions; BCZR Sec. 307.1, variances; and BCZR Sec. 600, interpretation.

Overview

The proposed church at 4512 would be located on a 1.2 acre lot with an existing single-family residential dwelling listed at 2,938 square feet in floor area. The proposed church will have 64 seats, and the minimum allowance of 16 parking spaces. Lucy Ware continues to live at 7111 Liberty Road in Randallstown. The proposed church thus will not be used even in part for dwelling purposes.

The property is situated in the midst of and surrounded by other single-family dwellings. The Maryland Department of Assessments and Taxation printout indicates the area is known as Diane Acres. Pet. CBA Exh. #2. Public records show the Diane Acres Plat for residential subdivision was recorded in the land records for Baltimore County in 1978 in EHK Jr 42, folio 55. The neighborhood lies between Pikesville (Reisterstown Road) and Randallstown (Liberty Road). It is near Scotts Level Road. It is also just west of I-795, the Northwest Expressway, near where it intersects with I-695, the Baltimore Beltway. Old Court Middle School is several blocks away.

Ware's proposed new church use within the RTA setback and buffer areas generates the requirement that she satisfy the exception standards for under BCZR 1B01.1.B.1g(6). . If the property continued in its historic dwelling use, it would not be subject to these RTA conditions. BCZR Section 1B01.1.B.1.(1). Mr. Bruce Doak, petitioner's surveyor had to admit that the site could continue in use as a residence without any additional zoning review. The bottom line is that this conversion is a major new proposal.

A church use also has specific parking requirements, 1 parking space per 4 seats, so that 16 spaces are required for the 64-seat church. BCZR 409.6.A.4. This is a very lenient minimum, and arguably unrealistic. Even with this number, the RTA deviation and other variances would make possible a use that the basic law deems excessive, in overcrowding the land, impinging on nearby single-family homes, and diverging from parking standards.

Even though a church is a permitted use “by right” in the D.R. 3.5 Zone (BCZR Sec. 1B01.1 A. 3.), a new church is not exempt from RTA buffer and setback standards. The proposed zero buffer and setbacks and other variances put in play the proposed church’s impact. In particular, Ware has the burden to justify and prove qualification for an “exception” from RTA controls.

It should be highlighted that zoning review in this case benefits from evidence of Reverend Ware’s initial church activities at the site. The evidence in most zoning cases is limited to observations about the likely impact of future uses and activities. Although activities here were preliminary, they provide clues and indications of what may reasonably be expected from more intense future activity. It should also be noted that stakes increase in a so-called “after-the-fact” zoning case. Whenever a zoning petitioner comes in to legitimize a use begun without regard to the law, the tension magnifies.

Argument

We shall present the facts as they relate to each phase of the argument. We begin with a discussion of the fundamental governance of the RTA and then proceed to evaluate the requested RTA exception and parking variances.

I. The Residential Transition Area buffer and setback standards apply particularly to new churches, generally to uses permitted by right and special exception in residential zones, and to business parking in density residential zones, subject also to exception standards for enumerated uses such as churches.

A. The RTA applies to all uses permitted in the residential zone, not just to dissimilar dwelling uses.

As noted, the main thrust of the petition is the request for an exception to the Residential Transition Area buffer and setback standards. Indeed, Ware’s consultant, Bruce Doak testified to the need for an exception:

“So a special hearing was requested for the church where it was once a dwelling. Then we also, because the existing driveway and the existing parking lot [put in by Ware, see, T. 75, we applied for variances from the seventy-five foot setback and the fifty-foot buffer for the RTA, residential transition area and [applied for gravel and striping parking variances].” T. 60.

Despite this recognition of RTA governance, Ware's attorney questioned whether a new church is a covered RTA use. At the outset, Ware's claim is disqualified because she is bound by her petition. Cf. People's Counsel v. Mangione 85 Md. App. 738, 745 (1991), "... parties are generally bound by their pleadings."

Ware's tactic echoes Futoryan v. Mayor & City Council 150 Md. App. 157, 162-73 (2003). There, petitioner applied for a condition use for a service garage. But as the zoning case progressed, there evolved what Judge Moylan described in the Court of Special Appeals (CSA) opinion as a "shadow issue." Futoryan argued there was no need for new zoning approval because there was a previously approved conditional use permit for a gas station with auxiliary repairs. 150 Md. App. 162-65. Judge Moylan wrote,

"Although we have serious reservations about whether the threshold issue is properly before us, we will indulge Futoryan and address it." 150 Md. App. at 164.

The CSA found that the service garage would be a sufficient change to warrant the requirement of a new zoning approval, recognizing also a degree of deference to the zoning board's opinion, quoting Board of Physicians Quality Assurance v. Banks 354 Md. 59, 68-69 (1999) and Marzullo v. Kahl 366 Md. 158, 178 (2001) at 150 Md. App. 169-70.

In any event, if Ware is indulged with a review of the RTA's applicability, there is no doubt that a new church is covered and indeed explicitly addressed in the subsection dealing with RTA exceptions, subject to articulated standards. Even if there were a serious question about it, deference would be due to the CBA's finding that the RTA does apply.

The Court of Appeals has recently revisited established rules of statutory construction in Lipitz v. Hurwitz 435 Md. 273, 281-91 (2013); Blue v. Prince George's County 434 Md. 681, 689 (2013); In re Adoption of Tracy K 434 Md. 198, 206-07 (2013); and Bourgeois v. Live Nation 430 Md. 14, 26-28 (2013). In analyzing legislative purpose, the court considers a statute as a whole, in context, including structure, inter-related sections, parts, clauses, words, history and other relevant information. No part of a statute is to be considered superfluous, meaningless, or nugatory. Correlatively, no single part of

a statute may be read in isolation. It is also elementary that a statute must be read reasonably, logically and in accord with common sense.

Residential Transition Area "RTA" legislation is codified in BCZR 1B01.1.B. The RTA applies to development in all Density Residential ("D.R.") zones if the proposal is adjacent to any D.R. or Resource Conservation zone ("R.C.") site that either contains a dwelling within 150 feet or is capable of supporting a dwelling and is less than 2 acres. The RTA is a 100-foot area extending from the boundaries of the surrounding D.R. or R.C. zone sites into the proposed development. RTA law provides, among other things, for property line setbacks and landscape buffers to mitigate incompatibility and other adverse impacts to the area. BCZR 1B01.1.B.1.e sets these specific conditions for RTA uses,

"e. Conditions in residential transition areas. [Bill No. 2-1992]

- (1) The RTA may contain single-family detached, semidetached or duplex dwellings.
- (2) Group-house, back-to-back group houses, multifamily building and parking lots shall be set back from the tract boundary 75 feet and provide a fifty-foot RTA buffer.
- (3) The fifty-foot RTA buffer shall remain an upgraded, uncleared, landscaped buffer unless otherwise directed by the hearing officer, based upon recommendations of the county. It shall not contain cleared drainage areas, stormwater management ponds or accessory structures, but it may be bisected by roads, paths and trails that are designed to connect to adjoining developments.
- (4) The maximum height of any lighting fixtures in an RTA buffer area shall be 16 feet, except for public utility uses which must be of reasonable height. The fixtures shall be designed and placed so as to prevent the spillage of light into any adjoining dwelling or lot. The intensity of the fixture shall not exceed 0.2 candle at the tract boundary.
- (5) Parking lots or structures, either as principal or accessory use, whether permitted by right, special exception or pursuant to Section 409.8.B, shall provide a fifty-foot buffer and seventy-five-foot setback, and a height not to exceed 35 feet within the one-hundred-foot transition area."

To deviate from the setback and buffer standards, property owners must ordinarily apply for a variance. However, BCZR 1B01.1B.1.g.(1)-(17) articulates exceptional

standards for particular uses, including churches and other religious institutions. The applicable provision here for the new church is BCZR 1B01.1.B.1.g.(6):

“g. Exceptions to residential transition. The restrictions contained in paragraphs a through c above, of this Subsection B.1, do not apply to: [Bill Nos. 109-82; 40-92]

* * * *

“(6) A new church or other building for religious worship, the site plan for which has been approved after a public hearing in accordance with Section 500.7. Any such hearing shall include a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises. [Bill Nos. 109-1982; 40-1992]”

Lucy Ware filed her petition to determine if the new church satisfies this provision.

In Ware’s opening statement, Edward Gillis broached the question whether RTA law limits only dissimilar housing types. T. 1-4. This focuses narrowly and in isolation on the “dissimilar housing types” clause in BCZR 1B01.1.B.1.a.(2)

“The purpose of an RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types (Bill 2-92).”

If he were correct, the RTA law would not apply to other uses, such as church uses, other uses permitted in residential zones, or business parking in residential zones.

But the plain language, legislative history, and consistent administrative practice all coalesce to show that the RTA integrates and governs all of the residential zone uses. Indeed, as we emphasize, the application to church uses could not be more explicit. The larger point is that the scope of coverage is not limited to “dissimilar housing types.”

RTA law came into being with Bill 100, 1970. Bill 124-81 subsequently introduced the building setback and buffer area controls now found, with minor amendments, in BCZR Section 1B01.1.B.1.e. This 1981 bill also defined residential transition uses broadly and is the source for the current law, albeit reworded without substantial change..

A decade later, Bill 2-92 reformulated the RTA use definition in BCZR Section 1B01.1.B.1.d(3) to define a residential transition use as currently codified:

“d. A residential transition use is any use: [Bill No. 2-1992]

- (1) Permitted as of right under Section 1B01.1.A; or
- (2) Any use permitted by special exception under Section 1B01.1.C, except an accessory use permitted only special exception; or
- (3) Any parking area permitted under Section 409.8.B, subject to the approval of a specific landscape plan for the buffer area which must meet the requirements for a Class A plan.”

For D.R. Zones, BCZR 1B01.1.A permits *by right* not only dwellings, but also churches and other religious institutions and buildings for worship, hospitals, community garages, certain research institutes, certain schools, transit facilities, parking facilities, and accessory uses. BCZR Sec. 1B01.1.C permits *by special exception* are camps, conservatories, convalescent homes, community buildings, community care centers, child care centers, fishing facilities, funeral establishments, helistops, colleges, public utility centers, radio and television studios, veterinarians offices, voluntary fire company stations, and cell towers. So, it is crystal clear that the RTA applies to all residential zone uses, with setback and buffer standards controlling all but single-family and duplex dwellings. As noted, some uses have exceptions, still subject to specified standards, such as the new church here.

By 1992, Bill 26-88 had meanwhile amended the law for business parking in residential zones and codified them in BCZR Sec. 409.8.B. This remains in the current law. So, there is no doubt that RTA use controls apply to such business parking as well.

Bill 2-92 also included new definitions and purposes for “residential transition area” and its “generation.” This included the introductory clause referring to controls for dissimilar housing types. BCZR Sec. 1B01.1.B.1.a.2. Bill 2-92 also set the still current geographic frameworks of “... a 100 foot area ... extending from a D.R. zoned tract into the site to be developed” and “An RTA is generated if the property to be developed lies adjacent to land zoned D.R. 1, D.R. 2, D.R. 3.5, D.R. 5.5 or R.C. ... (subject to further criteria).” BCZR Secs. 1B01.1.B.1.a.1, and 1B01.1.B.1.b. Bill 2-92 also added a particular variance clause relating to the RTA area, not involved here. BCZR Sec. 1B01.1.B.1.c.

Bill 40-92 in turn added the exceptions to the RTA for public utility uses, including community buildings, fishing and shell fishing facilities, group child care centers, conversions to bed and breakfast homes and inns and country inns, assisted living facilities, and transit facilities and rail passenger stations. Most important here, this Bill enacted the qualified exception in paragraph 6 for "A new church or other building for religious worship, the site plan for which has been approved after a public hearing in accordance with Section 500.7. As stated earlier, to qualify for approval it must be shown the proposed improvements are planned in such a way "... that compliance to the extent possible with RTA use requirements will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises." BCZR Section 1B01.1.B.1.g.(6). All the exceptions remain, with subsequent amendments not affecting the new church exception.

The RTA law has thus evolved explicitly to cover churches, as is explicit in BCZR Section 1B01.1.B.1.d.(1) and the pertinent exception clause. To make a long story short, Ware's petition involves a new proposal, neither exempted nor grandfathered. It must qualify under current law, including the RTA exception and parking variances. Because the proposed church building and parking lot occupy a major portion of the site, it is abnormally extensive in this residential area. The RTA relief requested is to the maximum — zero setbacks and buffers. The parking variances just add to the conflict with incompatibility and detriment to the general welfare of the neighborhood. The proposed extensive encroachment into the RTA buffer and setback area crowd the land at a size and scale disproportionate to surrounding residential uses.

If the scope of coverage were limited to dissimilar housing types, this would negate and render nugatory the explicit coverage in Bill 2-92 of residential zone uses permitted by right and by special exception, and of business parking in residential zones. BCZR 1B01.1.B.1.d(1),(2),(3). The exceptions added by Bill 40-92 and later enactments would likewise be nugatory if the RTA law applied only to dissimilar housing types.

Furthermore, there is no genuine dispute that consistent administrative practice has applied the plain RTA law to churches and the other uses permitted in residential zones. It is presumed that the legislature is aware of agency policy and practice when it enacts amendments to legislation, as has occurred from time to time for the RTA. Ware's petition reflects this longstanding practice.

The Court of Appeals recognized the presumption in Maryland Classified Employees Association, Inc. v. Schaeffer, 325 Md. 19, 34 (1991):

"Furthermore, "[t]he General Assembly is presumed to have had, and acted with respect to, full knowledge and information as to prior and existing law and legislation on the subject of the statute and the policy of the prior law." (citation omitted). See also *Lussier v. Maryland Racing Commission*, 343 Md.681 (1996)."

In Washington Suburban Sanitary Comm'n v. C.I. Mitchell and Best Co. 303 Md. 544, 559. (1985), a declaratory judgment action, the Court upheld a long-standing administrative interpretation that was not disturbed by subsequently enacted statutes.

"This legislative acquiescence in the administrative construction gives rise to a presumption that the administrative interpretation is correct."

It is noteworthy that Protestants offered James Patton, an engineer, planner, and expert in Baltimore County land use and zoning. T. 145-47. Mr. Patton reviewed the zoning file, site plan, Zoning Regulations and County Code. He visited the site and is familiar with the area. T. 147-50. Not surprisingly, Patton testified that the RTA applies to Ware's new church proposal. He explained why the introductory reference to "dissimilar housing types" does not exempt the church. T. 157-61, 167-70. He stated the RTA law treats a church essentially as another dissimilar use relative to single-family dwellings, subject to the exception provision and standards. Ibid.

B. The RTA exception standards plainly apply to a new church or other building for religious worship, in the context of site development.

Ware argues next that the RTA does not apply because there is no "site to be developed," referring to BCZR Sec. 1B01.1B.1.a. This is another exercise in sophistry.

The short answer is that all parts of a legislative scheme must be read together, and that the RTA plainly encompasses new churches as development by virtue of the explicit coverage in BCZR Sec. 1B01.1.1.g(6), quoted above.

Furthermore, the new church, whether viewed integrally as an entirely new use (as it should) or as a conversion, plainly constitutes “development” under the County Code Sec. 32-4-101(p)(1). It involves “The improvement of property for any purpose involving building.” The new church is such an improvement, including the existing building, the new roof, and the new parking lot, whether viewed separately or together.

Ware manufactures a cramped, narrow-minded, and manipulative argument that conversion does not involve development. Ware criticizes the CBA’s use of the County Code definition of “development” by asserting that zoning and development are entirely different. But while they involve different elements of land use law, they are “intended to complement each other.” People’s Counsel v. Surina 400 Md. 662, 688-90 (2007). It is perfectly reasonable for the CBA to consider the Code definition.

Even if we isolate the Webster’s Third New International Dictionary definition, we see the word has many usages and that Ware’s argument again is cramped and manipulative. The closest usage here is **5b**

“**b** to make actually available or usable ... as (1) to convert (as raw land) into an area suitable for residential or business purposes ...”

The definition does not cover every detail. The reference to “raw land” is illustrative and does not exclude other conversions, such as the conversion here to a church use permitted in the residential zone. Similarly, the reference to “residential and business purposes” certainly is not meant to exclude development for agricultural or industrial purposes.

C. The County Board of Appeals Opinion

The CBA addressed the threshold RTA issue at pages 7-9 of its opinion. The CBA had no difficulty finding that the plain language demonstrated that a church must comply. As the CBA put it, at page 8,

“In determining whether the {RTA}‘area’ is generated here it is necessary to determine whether the proposed use as a ‘church’ is a ‘residential transition use’ under Section 1B01.1.b.1.d. Given that ‘churches’ are permitted uses as of right under Section 1B01.1.A.3, a church is a residential transition use, under Section 1B01.1.B.1.d(1). Next, in determining whether the 100 foot transition ‘area’ has been generated, the property to be developed must be in a DR zone and be adjacent to one of the DR zone uses listed in Section 1B01.1.B.1.b. [including single-family dwellings]. The property here is located in the D.R. 3.5 zone and is located adjacent to a D.R. 5.5 zone. Thus, the transition area is generated.”

The CBA also addressed Ware’s bizarre argument that the church does not have to comply with the RTA because there is no “development.” The basic answer, as noted, is that a new church or other building for religious worship is explicitly covered within the enumerated exceptions, subject to the stated standards. Where there is a change in use, it is inevitably a new development. The property must comply with both zoning and development laws, whichever are most restrictive. BCZR Section 600. The change in use generates the RTA requirement, and new churches are obviously covered.

Anyway, the use does fit the definition of “development” in Code Section 32-4-101(p). It involves “improvement of property for any purposed involving building. As the CBA said,

“The Petitioner is ‘developing the property because she is ‘improving’ it by changing the landscaping, driveway and parking that is required under BCZR to change the use from single family home to church.

The CBA cited the Section 32-4-101(w) “improvements” definition, with “Landscaping” and “Other improvements as determined necessary and appropriate by the county.”

D. Ware’s Citation to the “Sonic opinion”

Ware did not cite the Sonic opinion (Michael Mardiney, Petitioner, Case No.13-171-SPHA, Nov. 21, 2013) at the CBA. It is understandable, therefore, that the CBA did not address it. The Sonic decision is final, as there was no petition for judicial review.

The 3 CBA panel members there, out of 7 (Zerwitz, Thurston, Belt) decided that the RTA applied only to dissimilar housing types. Our office did not participate in that CBA proceeding. Because of the different history there, including the relative similarity of the

Sonic drive-in/fast food use to the pre-existing fast-food use, we did not find the case warranted our participation. There was no attorney representing the Protestants.

An unfortunate side effect was the CBA's failure properly to analyze RTA law. The Sonic opinion focused in isolation and out of context on the one subsection of the RTA law which alludes to dissimilar housing types. The Sonic panel failed to consider the rest of the statute and the legislative history.

In contrast, as our office participated in the present case, we were able to brief the issue and present the CBA panel with the entire statutory context, language, history, and logic. In the present case, with attorneys on both sides, the issue was briefed and argued more thoroughly. The current panel (Belt, Murphy, Grier), thereupon came to a different conclusion, with Andrew Belt revisiting the issue and the others presented with it for the first time. This is the first case where it arises upon judicial review.

E. Past Practice

Again, for many years, the consistent practice reflected that RTA law applied to churches, other permitted residential uses, and to business parking in a residential zone. Petitioners have frequently sought to fit within the "exception" category, as in the present case. Ware's petition follows past practice as well as the plain language of the law.

The Sonic case was the first case where the argument was made that the RTA's applicability is limited to dissimilar housing types. It does not withstand scrutiny.

II. Ware failed to satisfy the burden to produce evidence to meet the RTA exception test, that it comply to the extent possible with use requirements and that it be compatible with the character and general welfare of the surrounding premises.

A. The June 18, 2013 County Board of Appeals Hearing: Ware's Case

Reverend Ware's direct examination focused on her ministry and improvements to what she called a vacant "crack house." T. 9-26. This turned out to be propaganda. She had not lived in the area and could only say she found needles and other things. There was no specific testimony or documentation of any problems caused by the previous owners. As discussed below, area residents with personal knowledge refuted this speculation.

To the extent Doak focused on the church use, he rationalized that the house would "continue to look like a residence," so it would not change visually; that the lot is "larger than most of the properties in the area;" and that he had met with the County landscape architect and was providing more planting than required. T. 65-67.

He repeated that the driveway could not be placed outside the RTA buffer/setback area. Ironically, as illustrated by his submission of a hypothetical alternative plan, he could redesign the parking area to place it beyond the RTA buffer/setback area. T. 67-70. Having gone to that trouble, he never explained why the petition did not propose this preferable alternative. Perhaps it was because Reverend Ware had already put in the gravel parking lot, and it would have cost a fair amount more to implement the alternative.

Doak concluded his direct examination with some boilerplate answers about practical difficulty, the absence of increase in residential density, and absence of injury to public health or safety or general welfare:

"MR GILLISS: Would strict compliance with the County's regulations cause practical difficulty or un, unreasonable hardship in this instance?

MR DOAK: Yes, it would.

MR GILLISS: And would the grant of a variance increase residential density in any way?

MR DOAK: No, sir.

MR GILLISS: Would the grant of any of the requested reliefs cause injury to the public health or safety or general welfare?

MR DOAK: No, sir.

MR GILLISS: I have no further questions of Mr. Doak."

On cross-examination by Carroll Holzer, Doak sparred with him about Reverend Ware's lack of "due diligence" before she acquired the property and the "self-created hardship." T. 71-73. Shown an aerial photograph, Doak had to agree that Reverend Ware placed the gravel parking lot there after she acquired the property. T. 75-76.

Doak disagreed with Dennis Kennedy's county staff comment that the property's slope was too steep for such a lot because of drainage issues. T. 73-74. Doak also tried to

2013-0147

missing page 15 of
C.C. Mem.

To the extent Doak focused on the church use, he rationalized that the house would "continue to look like a residence," so it would not change visually; that the lot is "larger than most of the properties in the area;" and that he had met with the County landscape architect and was providing more planting than required. T. 65-67.

He repeated that the driveway could not be placed outside the RTA buffer/setback area. Ironically, as illustrated by his submission of a hypothetical alternative plan, he could redesign the parking area to place it beyond the RTA buffer/setback area. T. 67-70. Having gone to that trouble, he never explained why the petition did not propose this preferable alternative. Perhaps it was because Reverend Ware had already put in the gravel parking lot, and it would have cost a fair amount more to implement the alternative.

Doak concluded his direct examination with some boilerplate answers about practical difficulty, the absence of increase in residential density, and absence of injury to public health or safety or general welfare:

"MR GILLISS: Would strict compliance with the County's regulations cause practical difficulty or un, unreasonable hardship in this instance?

MR DOAK: Yes, it would.

MR GILLISS: And would the grant of a variance increase residential density in any way?

MR DOAK: No, sir.

MR GILLISS: Would the grant of any of the requested reliefs cause injury to the public health or safety or general welfare?

MR DOAK: No, sir.

MR GILLISS: I have no further questions of Mr. Doak."

On cross-examination by Carroll Holzer, Doak sparred with him about Reverend Ware's lack of "due diligence" before she acquired the property and the "self-created hardship." T. 71-73. Shown an aerial photograph, Doak had to agree that Reverend Ware placed the gravel parking lot there after she acquired the property. T. 75-76.

Doak disagreed with Dennis Kennedy's county staff comment that the property's slope was too steep for such a lot because of drainage issues. T. 73-74. Doak also tried to

defend his site plan's failure to show adjacent dwellings and the actual RTA area. He rationalized that "the whole property is within that [the 100 foot RTA]." T. 77-80

Doak did admit to distinguishing features of this church use from several area religious institutions he had identified. T. 82-85. These included locations, zoning, and adjacent properties or areas, such as higher intensity D.R. 16 zones and the beltway. So far as the record shows, none of these institutions presented RTA problems.

On cross-examination from Deputy People's Counsel Carole Demilio, Doak confirmed that the property is still usable as a residence. T. 88. This examination also exposed the contradiction of claiming a practical difficulty while presenting an alternative plan with a parking area which would satisfy the RTA buffer and setbacks. T. 88-89.

Ware's also presented two witnesses who had benefited from her ministry, Michael Sterling and Angela Jean-Louis. T. 54-57, 95-99. There was also a petition signed by various church members. T. 99. Mr. Gilliss proffered that their testimony would be supportive and similar to that of Mr. Sterling and Ms. Jean-Louis.

B. The June 18, 2013 County Board of Appeals Hearing: Protestants' Case

Anyway, Protestants presented an overwhelming case to show the church plainly does not comply to the extent possible with RTA use requirements and would be incompatible with the surrounding premises and have an adverse impact on the character and general welfare of the surrounding community. Seven area residents testified in opposition to the petition: Rathea Mims, 4508 Old Court Road (two dwellings from 4512), T. 101-08; Barbara Roberson, 4520 Old Court Road (in the same block), T.108-13; Dale Watkins, 4513 Dresden Road (diagonally backing up to the rear of 4512), T. 114-27; Ruth Ann Otto, 4523 Tapscott Road (a block and a half away), T. 128-34; Sylvia Powell, 4531 Maryknoll Road (two streets over), T. 134—36; Rev. Lillian Nolley, Dresden Road (half a block to a block away), T. 136-39; and Muriel Lyles, 4511 Dresden Road (just in back of 4512, next Ms. Watkins). T. 139-44. It is noteworthy that Ms. Watkins is a real estate broker and Ms. Nalley is a reverend, as her title indicates.

As Ms. Roberson explained, the residents were not opposed to Reverend Ware's ministry and good works *per se*, but rather to the location of the church in the middle of a residential area and block of single-family dwellings,

"I admire the young people who have spoken about what has been done for them. However, we are not here to talk about what minister has done. We're here to talk about where the church is." T. 112

Reverend Nolley made a similar observation, on cross-examination,

"I admire Reverend Ware. This is my first time seeing her. I think she's doing marvelous work and I would love to see it being continued in a, in a more suitable surrounding." T. 139

Sounding a more cautious note, Ms. Mims commented,

"Mrs. Ware never, not one time, from the day that she was there till now, the young lady said that she helps people and brings them in not one time has she came and said anything to any of the neighbors that I know of and I am 'm very active in that particular block and if you're a minister and you want to have your church in the block, the first thing you do is to reach out to the community that you're in that block and say, hey, I'm here, I'd like to do A, B, C, D, E, F, G. If she's done all the things for the church, but she can't, but she hasn't done it for our community how can we believe that she's only going to have thirty members there and how Can we Believe that the parking is not Going to Get out of hand and that the hours are not going to be longer than an hour and a half from 7:00 to 8:30. You have to look at that."

Area citizens all saw the situation as a classic example of "the right thing in the wrong place." Village of Euclid v. Ambler Realty Co. 272 U.S. 365, 388 (1926). As Justice Sutherland there explained,

"Thus, the question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality. ... A nuisance may be merely the right thing in the wrong place, like a pig in the parlor instead of the barnyard." 272 U.S. 388. (citation omitted).

There were consistent descriptions of the quiet residential neighborhood with dwellings and lots of varying sizes. Mims, T. 103; Roberson, T. 109; Otto, T. 129-30; Powell, 135; Lyles, T. 141. The 4512 property lies in the middle of the 4500 block. Mims,

T. 104; Watkins, T. 116. Contrary to Reverend Ware's description, it was never a crack house, but rather suffered from a series of traffic accidents. Mims, T. 102; Watkins, T. 116.

The citizens expressed a number of concerns. These included the visual impact of the parking lot and the detriment to property values. Watkins, T. 117; Roberson, T. 110; Otto, T. 132; Powell, T. 135; Lyles, T. 143. In this context, the 4512 property was just too small for such an intense church use, as described by Reverend Ware, as suggested by the October 28 event, and in view of the likely growth. Watkins, T. 115-16, 120-21; Otto, T. 133; Powell, T. 135; Lyles, T. 142. For example, Ms. Powell said,

"My concerns are several things. One, I'm concerned about the noise. We moved into, we bought our house because we wanted to move into a quiet residential setting area. It was very quiet, low traffic, nice, it looks very nice aesthetically, et cetera, and we are concerned that with a church, at that location, in the middle of the block, that it's going to create a lot of increased traffic, noise and really concerned about the property value. I have to say that when we moved in, we moved in because it was quiet and, and low traffic and I we['re looking at it now with a church with a lot of noise and a lot of traffic, I would not want to move in. Secondly, very, very importantly, I'm really concerned that this would open up a Pandora's Box because once you have persons coming in and not, I think we all [inaudible] residential and we're using, most of us are using it residentially. My concern is once you allow people to get around variances and ordinances and community desires and all of that, then you open up a Pandora's Box because then anyone can do anything they want. My neighbor next door, if they wanted to sell their property ad they can open up a church next door to me because if you d o it for one person or this, you can do it for everyone and, and, of course I want to say, we have no problems about the church because, you know, , I['m] definitely believe in church, I've been going to church forever, since in mother's womb, but I think there is a place for everything and I think that in our community, in the middle of a block, simply is not the place where it is for [inaudible] and I think I['ve] voice concerns of most of the persons in our community. T. 135-36.

Other residents also focused on the traffic issue. Mims, T. 102; Roberson, T. 111; Watkins, T. 118-19; Otto, T. 130-31. Residents focused on the parking lot's proximity to adjacent properties and noise impact. Roberson, T. 111; Otto, T. 130. Ms. Otto underlined,

"One is the noise. Any large group of people congregating is going to bring more noise. For the people who are adjacent to it, of course the parking the cars in their backyard practically, you know, they're going to be adjacent to it. That I think is not, is not good. I'm, I'm concerned that with the request for all these variance and buffers and setbacks an parking, that it is no going to fit as it should in the, as church should in the neighborhood that it's in It's going to be too close and too tight and too impactful on, on the neighbors around there."

Ms. Lyle added,

“However, with all the cars that I have seen in the backyard, the one that, the one occasion that I saw cars, they were so close together that I said how in the world did they get them in there and it was a lot of cars and I’m sure that if it continues that way, it’s going to be the same, unless some other provisions are made.” T. 142.

Ms. Lyles added that anticipated growth of the church would aggravate the problem. Ibid.

Residents also addressed the suggestion that the area dental office and religious institutions somehow justified this conversion. There were cogent descriptions of the dental office use, which revealed its small size, scale, and impact compared to the church use. Mims T. 103; Watkins, T. 116. Along the same line, the residents described the very different locations, situations, and impacts of area religious institutions. Mims, T. 103, Roberson, T. 113; Otto, T. 130, 133.

James Patton added his expert observations. He explained that Ware’s site plan is incomplete and lacked the required information and illustrations; that the RTA boundaries are not shown completely and accurately; that the plan shows neither the size of surrounding lots, whether vacant or improved, nor the distances from the dwellings and lots to the subject site. T. 150-55. All of this disregarded the plain language in the RTA and the Zoning Review Checklist requiring this data. T. 164-65.

Patton went on to observe there is no proposed landscape plan and no space to create one. He agreed with the only significant county staff comment from Dennis Kennedy, who objected to the proposal “ . . . because a Landscape screen should be provided.” Furthermore, the Baltimore County Landscape Manual’s General Standards section for the RTA buffer between “dissimilar housing types, buildings or parking lots” emphasizes “ . . . a spatial and vegetative buffer . . . and the use of a planting scheme reflective of natural Maryland landscape . . . “ including “A minimum of 30% . . . evergreen trees and a minimum of 50% shall be major deciduous trees.” T. 159.

Patton also noted the site plan does not show parking curbs or bumper blocks to regulate and limit onsite parking. T. 156. As a result, cars will be squeezed erratically on the site.

Significantly, Patton found the proposal did not meet the tests for an exception. T. 155. He also saw no justification for the variances since the lot is the same as others in the neighborhood, or even slightly larger. Rather, any "hardship" was a self-created. Ware purchased the site knowing the proposed use, yet failed to determine if zoning and development regulations permitted the conversion of a dwelling into an institutional use, including the statutory setbacks and other limitations and restrictions. T. 156-57.

III. Ware's proof was legally insufficient; anyway, there was substantial evidence to support the County Board of Appeals decision to deny the petition; its opinion was at least fairly debatable

A. Ware's confusion of the "exception" as an "exemption"

Ware persistently refers to her request and the issue at hand as an "exemption." This shows a fundamental misreading and misunderstanding of the law. If the law provided for an exemption, then Ware would be entirely free from any RTA obligation. But the law provides in a more limited way for a qualified "exception," subject to the requirement to prove satisfaction of explicit legislative standards. To illustrate, the familiar special exception use category is subject to standards under BCZR Sec. 502.1. People's Counsel v. Loyola College 406 Md. 54 (2008).

It cannot be emphasized enough that Ware applied for the qualified RTA exception in BCZR Sec. 1B01.1.B.1g(6). This explicitly targets Ware's new church under the RTA. This is at the heart of the case, despite Ware's belated evasive tactics.

B. The County Board of Appeals Denial of the RTA exception

The County Board of Appeals fairly summarized the evidence. Pages 2-7. As we saw, the CBA found the proposed church is subject to the RTA requirements for which Ware seeks the exception, as well as variances to the parking standards. Turning to the BCZR 1B01.1.B.1.g(6) exception review, the CBA explained, at pages 10-11

"The evidence did not show that the plan submitted by the Petitioner would be compatible with the character or general welfare of the surrounding homes which homes are occupied by the Protestants who testified. The Board finds credible the concerns voiced by the Protestants concerning increased traffic generated by this use in the middle of a residential block."

"While the Petitioner testified that there were 30 members, the parking calculations on the site plan revealed that this was a 64 seat church. The Petitioner agreed that members could bring guest and family members as well as children. We see this church as being in the early stage of growth and we expect and anticipate that it will continue to grow, particularly given the charitable work that it does. The modest size of this single family home, on 1.2 acres, is not sufficient to house the planned functions and services."

"In reviewing the photographs of the other churches in the area, we notice that with the exception of one church, all of those churches are located in a DR 5.5 or DR 16 zones, or they are located on a corner. In addition, all of those churches have adequate land for a parking lot. Those parking lots are paved and striped. Because of this, there is adequate ingress and egress and sufficient control of church traffic. As a result, the impact on the surrounding properties is less. In the case of 4619 and 4535 Old Court Road, those buildings are large and there is still room for paved parking. In this case, however, it is not, in our view, compatible with the neighborhood, for cars to park on the grass for church activities that will occur during the week and on weekends."

* * *

"We find, based on the evidence, that this use is not compatible in this location and therefore fails to meet exception (6)."

C. Scope of Judicial Review of Agency Factual and Mixed Factual-Legal Findings

Ware's proof failed as a matter of law. The CBA had no choice but to deny the petition. Even were this not the case, the narrow scope of judicial review comes into play. The CBA decision is well-reasoned and, at the very least, satisfies the test to be affirmed based on substantial evidence and a fairly debatable judgment call.

The scope of judicial review of agency action is deferential to factual findings and mixed questions of law and fact, but more expansive as to errors of law. The Council has delegated broad authority to the CBA. Where the agency is acting reasonably within the scope of its authority, the courts must respect the agency's function to hear, view, and assess evidence and often to employ specialized expertise to interpret the law.

People's Counsel v. Maryland Marine Mfg. Co. 316 Md. 491, 496-97 (1989) stated,

"As we have frequently indicated, the order of an administrative agency must be upheld on judicial review if it is not based on an error of law, and if the agency's conclusions reasonably may be based upon the facts proven. ... But a reviewing court is under no constraints in reversing an administrative decision which is premised solely on an erroneous conclusion of law. ..." Citations omitted.

Judge Dale Cathell wrote in Marzullo v. Kahl 366 Md. 158, 171-72 (2001),

“ . . . A reviewing court should defer to the agency's fact-finding and drawing of inferences if they are supported by the record. . . . A reviewing 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, and . . . it is the agency's province to resolve conflicting evidence” and to draw inferences from that evidence.’ . . . A reviewing 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, and . . . it is the agency's province to resolve conflicting evidence” and to draw inferences from that evidence.’ . . . (Citations omitted).”

In Trinity Assembly of God, v. People’s Counsel for Baltimore County, 407 Md.53, 77-78 (2008), Judge Harrell quoting Marzullo, *supra*, summarized:

“The scope of judicial review of administrative fact-finding is a narrow and highly deferential one. . . .Accordingly, we will affirm a decision on the facts if it is supported by “substantial evidence.” . . . A conclusion by a local zoning board satisfies the substantial evidence test if “a reasonable mind might accept as adequate” the evidence supporting it.” (citations omitted).

As to evaluation of the facts, the “substantial evidence” test applies. Judge Hall Hammond, later Chief Judge, articulated this classic analysis in Snowden v. Mayor and City Council of Baltimore, 224 Md. 443, 447-48 (1961),

“The substantial evidence test ‘means that the reviewing court's inquiry is whether on the record the agency could reasonably make the finding.’ 4 Davis, Administrative Law Treatise, Sec. 29.11, p. 186 (1958). The text goes on to point out that the scope of review of administrative findings and of jury verdicts is the same, but the scope of review of judge made findings is broader for it is governed by the ‘clearly erroneous test; findings may be clearly erroneous without being unreasonable.’ Substantial evidence is ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’ (quoting Consolidated Edison Co. of New York v. National Labor Relations Board, 305 U.S. 197, 229, 59 S.Ct. 206, 83 L.Ed. 126.) The heart of the fact finding process often is the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence. ‘The Court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness.’ Davis, op. cit., Sec. 29.05, p. 139.”

Concisely stated, Judge Harrell stressed deference to the agency opinion Armstrong v. Mayor and City Council of Baltimore et al. 410 Md. 426, 444 (2009).:

“An agency decision is “*prima facie* correct and presumed valid. . . . Accordingly, when applying the substantial evidence test, we construe the evidence in the record in a light most favorable to the agency.”(citations omitted).

In Montgomery County v. Butler, 417 Md. 271, 284 (2010) the Court of Appeals reinstated the Board of Appeals' denial of a special exception. Judge Harrell explained: "Thus in examining the record made below, "we do not engage in an 'independent analysis of the evidence'" . . . and we proceed from the premise that an agency's decision is prima facie correct and presumed valid. . . if reached in accordance with the applicable and valid regulatory scheme." (citations omitted).

For the CSA, Judge Charles Moylan discussed the "substantial evidence" standard in Futoryan v. Mayor and City Council of Baltimore, 150 Md. App. 157, 177 (2003):

As to the quality of "substantial evidence," Judge Harrell had earlier described that quality in Friends of the Ridge v. Baltimore Gas and Electric Co., 120 Md. App. 444, 446, (1998), vacated in part, 352 Md. 645 (1999):

The substantial evidence standard applicable to the Board's findings of fact and resolution of mixed questions of law and fact, sometimes referred to as the "fairly debatable" test, is implicated by our assessment of whether the record before the Board contained at least "a little more than a scintilla of evidence" to support the Board's scrutinized action. If such substantial evidence exists, even if we would not have reached the same conclusions as the Board based on all the evidence, we must affirm. Stated another way, substantial evidence pushes the Board's decision into the unassailable realm of a judgment call, one for which we may not substitute our own exercise of discretion. (Emphasis supplied)."

He also elaborated on the "fairly debatable" standard,

"If there is some evidence pointing in each direction, the issue is, by definition, "fairly debatable," and the decision of the administrative agency, whichever way it goes, may not be reversed on judicial review as having been arbitrary or capricious." 150 Md. App. at 172.

Judge Moylan went on to explain that it is virtually impossible to reverse the agency where the agency is just not persuaded by a petitioner's evidence. In Pollard's Towing v. Bermans Body Frame & Mechanical, 137 Md. App. 277, 289 (2001), he wrote,

"With respect to the substantial evidence test, Stover v. Prince George's County, 132 Md.App. 373, 381, 752 A.2d 686 (2000), explained:

[T]o the extent the issues on appeal turn on the correctness of an agency's findings of fact, such findings must be reviewed under the "substantial evidence test." The reviewing court's task is to determine "whether there was substantial evidence before the administrative agency on the record as a whole to support its

conclusions.” The court cannot substitute its judgment for that of the agency, but instead must exercise a “restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions.” (Citations omitted).

In this case, all that was required was that the Board be **not persuaded** that there was a need for additional towing services. To the extent its finding was weightier than that, the incremental weight was surplusage. Far less is required to support a merely negative instance of non-persuasion than is required to support an affirmative instance of actually being persuaded of something. In Starke v. Starke, 134 Md.App. 663, 761 A.2d 355 (2000), we discussed that distinction between persuasion and non-persuasion:

[I]t is far easier to sustain as not clearly erroneous the decisional phenomenon of not being persuaded than it is to sustain the very different decisional phenomenon of being persuaded. Actually, to be persuaded of something requires a requisite degree of certainty on the part of the fact finder (the use of a particular burden of persuasion) based on legally adequate evidentiary support (the satisfaction of a particular burden of production by the proponent). There are within reasonable frequency reversible errors in those regards. Mere non-persuasions, on the other hand, requires nothing but a state of honest doubt. It is virtually, albeit perhaps not totally, impossible to find reversible error in that regard. (Emphasis supplied).

In this case, the Board was not simply **UNPERSUADED OF A NEED** (a mere state of honest doubt is all that is required for non-persuasion). It was affirmatively **PERSUADED OF NO NEED** (more than it was required to find). There was, moreover, much evidentiary support for the Board's findings in that regard.”

D. The Legal Insufficiency of Ware's Case

In Shakespeare's King Lear, among the famous lines is, “Nothing will come of nothing.” The blunt reality is that Ware's case produced nothing to prove or satisfy the relevant burdens of production for an exception under BCZR Sec. 1B01.1.B.1.g.(6).

The CBA correctly began its discussion of the exception, at page 10,

“The evidence did not show that the plan submitted by the Petitioner would be compatible with the character or general welfare of the surrounding homes which homes are occupied by the Protestants who testified.”

It should be kept in mind that the Ware had first to show compliance with RTA use requirements to the extent possible, Ware not only failed to supply positive proof, but also contradicted or undermined her own case by showing an alternative plan which could place much parking outside the restricted buffer/setback area. Ware simply chose to pursue a

plan which encroached into the RTA to the maximum and could not possibly warrant approval. Ware may have hoped that her church status would trump everything else.

The second requirement was to show compatibility with the character and general welfare of the neighborhood. To begin, while Doak made references to the “neighborhood” and showed photographs of selected properties (the dental office and religious institutions), he never actually defined the neighborhood boundaries or surrounding properties with any precision. This is a prerequisite where the legal standard is based on the impact to the neighborhood. Lucas v. People’s Counsel 147 Md. App. 209, 240-42 (2002).

Doak never actually expressed any opinion as to compatibility. He answered a question about adverse effect on general welfare, a different issue. Even there, as shown above, he gave a rote boilerplate answer “no” to attorney Gilliss’ inquiry. There was no explanation. Nor could random photographs of other religious institutions substitute for a reasoned description of the neighborhood and the central issue of compatibility.

Doak’s opinions are disqualified because “conclusory or “quasi-conclusory, unsupported by adequate facts and supporting reasons, so that they are entitled to no weight. Mayor & Council of Rockville v. Henry 268 Md. 469, 473-74 (1973); A.H. Smith Sand & Gravel Co. v. Dep’t of Natural Resources 270 Md. 652, 667 (1974); People’s Counsel v. Beachwood 107 Md. App. 627, 650 (1995), cert. denied 342 Md. 472 (1996). Doak never expressed a cogent opinion on anything, much less the key issues.

In Aubinoe v. Lewis 250 Md. 645, 654-55 (1968), the Court of Appeals found a lack of sufficient evidence to satisfy a similar compatibility standard, despite much more effort than in the present case. Among other things, the Court commented on a real estate appraiser’s more detailed opinion that the proposed R-H zone would have no adverse effect on residential land values and desirability and that the “... standards set forth in the proposed R-H zoning classification provide the type of development that is compatible with adjacent residential development.” But the Court pointed out that the appraiser was not a land planner and “... did not purport to express an opinion that the R-H zone was compatible with the general uses in the neighborhood.”

The same can be said for the failure to produce evidence to satisfy the parking variance standards. There was no evidence that there was anything unique about the property which resulted in practical difficulty or hardship. BCZR Sec. 307.1. Trinity Assembly of God v. People's Counsel 407 Md. 53, 79-85 (2008). The property, like others in the area, continued to be suitable for residential use.. Moreover, it is obvious that any alleged "difficulty" or "hardship" or "difficulty" was self-created. Cromwell v. Ward 102 Md. App. 691, 722 (1995); Chesley v. City of Annapolis 176 Md. App. 413, 436-41 (2007); Montgomery County v. Rotwein 169 Md. App. 716, 733 (2006).

The bottom line is that Ware's evidence was legally not only legally insufficient, but either self-contradictory or non-existent on the key issues.

E. The Court must anyway affirm the CBA because the CBA simply was not convinced by Petitioner's presentation and, moreover, there was substantial evidence to support the administrative decision to deny the petition.

Based on the foregoing discussion, it should anyway be crystal clear that the Court must affirm the CBA decision. Even were it arguable that Ware produced the bare minimum of evidence to get by the burden of production, the CBA acted well within the scope of its authority and discretion when it was unconvinced. As Judge Moylan underlined in his illuminating discussion in the Pollard's Towing case, the agency is the judge of credibility. If the agency is not convinced, case closed; and it is virtually impossible for a court to reverse within the narrow exercise of the scope of judicial review.

Here, there was, in addition, the consistent and overwhelming evidence produced by the area citizens. The location is in the middle of a block of single-family dwellings in a residential neighborhood. The RTA parking lot exception is extreme and to the maximum. Plainly, there was no effort to comply to the extent possible with the RTA use requirements. Indeed, Doak showed they could have done better but that Ware chose to stick with the gravel parking lot which she had installed without regard to zoning law or neighborhood impact. She has proposed the most onerous plan possible. The request for zero setbacks and buffer reflects not even a modicum of RTA use compliance.

The incompatibility with the general welfare of the surrounding premises is also conspicuous. It must be kept in mind that the RTA law is intended to provide reasonable setbacks and buffers for dissimilar uses. Unlike nearby dwellings, the institutional parking lot here will dominate the yard and lawn on the site. In appearance and operation, the proposed church overcrowds the site and overwhelms the surrounding residences. The parked cars, the daily comings and goings of members and others church participants, as well as the outside activities, all infringe upon the neighbors and the residential setting, the exact impingement the RTA standards intend to eliminate or at least minimize.

There is the obvious visual impact. There is the noise. There is the potential for automobile encroachment across the boundary. There is the adverse impact on property values, upon which citizens are entitled to express opinions as to their own properties. There is also an extraordinary problem involving automobiles swerving on to the property.

Adding to the credibility of citizen concerns is that they had already experienced the sour taste of Ware's October 28, 2012 event and her indifference to their enjoyment of their properties. This indifference has persisted. It spotlights an incongruous contradiction to Ms. Ware's promotion of her good works.

This neighborhood was not laid out or situated in such a way that the proposed institutional use fits on this interior street and interior lot. The problems witnessed and reasonably anticipated by the neighbors demonstrate the proposed use is incompatible with the general welfare of the residential subdivision as a whole. It disturbs and substantially interferes with the nearby homeowners in particular.

As an aggravating factor, area citizens testified Ware made no attempt to contact them to explain her proposal and address their concerns. Some never saw her until the hearing. In this light, there is a legitimate concern that Ware would not abide or respect conditions or restrictions if the use were approved, even with conditions. Furthermore, enforcement would place an undue burden on the neighbors. The residents should not have to police the site, count cars, or be saddled with continuous monitoring of the activities. The bottom line is the use does not fit on the site under any circumstances.

There are many churches and other religious institutions in Baltimore County. The zoning regulations allow churches in many zones. As noted, churches are included in the list of residential zone uses permitted by right. But they are still subject to legal standards, including RTA and parking standards. The Court can take judicial notice that there are many religious institutions in the Pikesville and Randallstown area. Lucy Ware had a choice, and still has choices. She chose an unsuitable property and may not trump the zoning law on the basis that she has a good ministry.

As we said, citing Euclid, *supra*, this is an illustration of the right thing in the wrong place. We have already discussed the Aubinoe case. The size and scale of the proposed church and parking area also brings to mind the proposed convalescent home in People's Counsel v. Mangione 85 Md. App. 738 (1991), a special exception case. While the proposed convalescent home there was much larger, the property was near York Road and bordered just the edge of the residential area. It was not in the middle. The main point is that Judge Cathell's opinion recognized, among other things, the traffic and visual impacts. Indeed, in Board of County Comm'rs v. Holbrook 314 Md. 210 (1986), the Court of Appeals affirmed the denial of a special exception based simply on the visual impact and effect on property values of a single mobile home.

F. There was no evidence to justify the request for parking variances

While the main issue dealt with the qualification of the new church for an exception, there were also several parking variances at issue. BCZR Sec. 307.1 governs variances. It states, in pertinent part, that the CBA may grant variances:

“... only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship.”

The first inquiry here is whether the property is peculiar or “unique.” If evidence of uniqueness is insufficient or unpersuasive, the inquiry ends there. Cromwell v. Ward 102 Md. App. 691 (1995); Umerley v. People's Counsel 108 Md.App. 497 (1996); Riffin v. People's Counsel 137 Md. App. 90 (2002). Here, there was no evidence of uniqueness.

Even if the uniqueness threshold were satisfied, there would have to be proof that it results in “practical difficulty.” McLean v. Soley 270 Md. 208, 213-15 (1973); Trinity Assembly of God v. People’s Counsel 407 Md. 53, 83-85 (2008). To paraphrase, the “practical difficulty” test focuses on whether the property owner is prevented unreasonably from using property for a permitted use, comparative justice to the applicant and other area property owners, the spirit of the zoning ordinance, and public safety and welfare. Here, the property remained suitable for its traditional residential use. There was strong evidence of injustice to area property owners, and there was evidence of safety problems.

The evidence was thus insufficient as a matter of law to justify approval of a variance. Indeed any difficulty was self-created. Cromwell, *supra*, 102 Md. at 722-25.

By some twisted logic, Ware claimed the relatively large lot size made it unique and deserving of variances and special hearing relief to reduce the buffer and setback to zero. But the size did not prevent its use as a residence for many years.

The site is too small for the church. The size, scale and number of church activities conducted without buffer or setback, intrude on the area’s residential character. As we have seen, the neighbors testified that the increased traffic creates congestion and unsafe conditions. They have legitimate concerns that the use will diminish the value of their homes. Again, this exemplifies “the right thing in the wrong place.”

Nor is Ware entitled any leeway because she failed to obtain zoning approval as a contract purchaser. Indeed, to the contrary, it is the buyer’s responsibility to consult with the proper legal authority to determine if a use is permitted – most assuredly for a relatively unorthodox institutional use for a dwelling at this site in the midst of a long-standing residential community. If Ware had consulted with the neighbors prior to purchasing the site, she may have been alerted to the zoning regulations and their concerns. Instead she unabashedly burst into the neighborhood with outdoor events for about 40-60 attendees.

IV. Ware's Religious Land Use and Institutionalized Persons Act (RLUIPA) claim is not viable and is anyway without merit.

A. Ware failed to preserve a RLUIPA claim for judicial review by failing to raise it at the CBA, so the CBA understandably could not address it.

Ware's RLUIPA claim is a desperate and untimely afterthought.

An administrative agency has authority to consider all relevant issues, including constitutional issues. Maryland Reclamation Associates v. Harford County 342 Md. 476, 491-92 (1996); Holiday Point Marina v. Anne Arundel County 349 Md. 190, 198-200 (1998); Prince George's County v. Ray's Used Cars 398 Md. 632, 650-56 (2007). Ware never raised a RLUIPA claim at the CBA. It surfaces in Circuit Court for the first time.

Ware never asserted a RLUIPA claim in her petition, before the ALJ, or at the CBA. Failure to raise the claim at the administrative level precludes its viability on judicial review. Heft v. Maryland Racing Comm'n 323 Md. 257, 269-73 (1991); Mayor and City Council of Rockville v. Woodmont Country Club 348 Md. 572, 582, n. 3 (1998).

Equally important, this timing reflected and confirmed that Ware failed to produce evidence of any real burden on religious exercise, and that there is no burden. The Baltimore County Zoning Regulations provide wide latitude for the location of religious institutions, which are permitted uses in the Resource Conservation Zones (BCZR 1A01 to 1A07), the Density Residential Zones (BCZR 1B01), Residential-Office Zones (BCZR 202, 204, and Business Zones adjacent to residential zones (BCZR 230.1.A.1, 233.1.A and 236.1.A. The Court can take judicial notice of the plethora of religious institutions in Baltimore County, including appropriate nearby locations. The problem is that Ware chose a particularly inappropriate location. RLUIPA is not a zoning immunity statute.

B. The RLUIPA claim anyway without merit because there is nothing coercive in the zoning law, and there is no shortage of land zoned for religious institutions, as reflected in the plethora of such institutions on suitable sites.

It is serendipitous that our office participated in the landmark Maryland RLUIPA case. Trinity Assembly of God v. People's Counsel 407 Md. 53, 86-101 (2008), Harrell, J.

The bottom line is that the threshold "substantial burden" occurs where "... the government's conditions receipt of an important benefit upon conduct proscribed by religious faith, or where it denies such a benefit because of conduct mandated by religious belief." 407 Md. at 93. There is no substantial burden just because it "operates as to make the practice of ... religious beliefs more expensive." Nor is there any substantial burden where the law may "... make it more difficult to practice certain religions but has no tendency to coerce individuals into acting contrary to their religious beliefs." Ibid.

Judge Harrell quoted the U.S. Court of Appeals for the Fourth Circuit, which spelled out that the government may not "put substantial pressure on an adherent to modify his behavior and to violate his beliefs." He cited the Ninth Circuit's interpretation that the law must be "oppressive" to a "significantly great extent." 407 Md. at 94.

The Court of Appeals rejected the "rote application" of RLUIPA to cover any situation where the law simply does not allow the religious institution to get what "it wants." 407 Md. at 95. Judge Harrell concluded, 407 Md. at 96,

"We resolve that under the RLUIPA, a land use regulation, or a zoning authority's application of it, imposes a substantial burden on religious exercise only if it leaves the aggrieved religious institution without a reasonable means to observed a [particular religious precept. Such a regulation would be 'oppressive to a significantly great extent."

In Trinity Assembly , we referred to the Joint Statement of Senators Orrin Hatch and Ted Kennedy made on the day of passage. 146 Cong. Rec. S7774 (daily ed. July 27, 2000). The Statement began with a focus on "various forms of discrimination and exclusion.

On the other hand, Senators Hatch and Kennedy stated that RLUIPA does not provide religious institutions with "land use immunity." They stated, at S7776,

"This Act does not provide religious institutions with immunity from land use regulation, nor does it relieve religious institutions from applying for variances, special permits or exceptions, hardship approval, or other relief provisions in land use regulations, where available without discrimination or unfair delay."

They noted that the Act does not contain a definition of “substantial burden” and add,

“The term, ‘substantial burden,’ as used in this Act is not intended to be given any broader interpretation than the Supreme Court’s articulation of the concept of substantial burden or religious exercise.”

The Joint Statement continued with the observation that,

“... the party asserting a violation of the Act shall in all cases bear the burden of proof that the governmental action in question constitutes a substantial burden on religious exercise.”

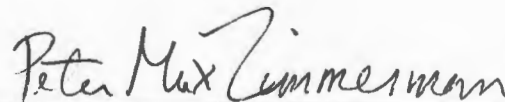
In Trinity Assembly, we also discussed CLUB v. City of Chicago 342 F.3d 752 (7th Cir. 2003). In CLUB, four churches complained about scarcity of affordable land in R (residential) zones, where churches were allowed, and the difficulty of obtaining special use approvals in B or C (business or commercial) zones. Each of the churches, which began meeting in private homes or high schools, or rental space, eventually acquired a suitable property. The court explained that such costs and difficulties are “incidental to any high-density urban land use,” and that “they do not render impracticable the use of real property in Chicago for religious exercise, much less discourage churches from locating or attempting to locate in Chicago.” The court found that the law does not require approval of every location chosen by a religious institution. RLUIPA does not “favor them in the form of an outright exemption from land-use regulations.” As the Court underlined,

“Unfortunately for Appellants, no such free pass for religious land uses masquerades among the legitimate protections RLUIPA affords to religious exercise.”

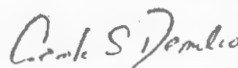
In the present case, there is not even any evidence of a scarcity of affordable land for religious institutions. So far as the record shows, Lucy Ware made a unilateral choice to purchase a property without regard for the zoning law and without regard for neighborhood concerns. Her persistent effort to shift blame and portray herself and her institution as a victim is unacceptable. On this record, the only oppression is that of her land use on the neighborhood, not any legal oppression on religious exercise.

Conclusion

For all of the above reasons, the Circuit Court should affirm the County Board of Appeals decision.



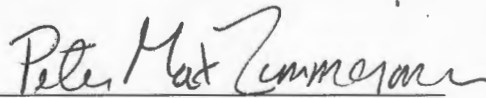
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March, 2014, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed to Lawrence Schmidt, Esquire, Smith, Gildea & Schmidt, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Reverend Lucy Ware, J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Maryland 21286 and County Board of Appeals, 105 West Chesapeake Avenue, Suite 203, Towson, Maryland 21204.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Baltimore County, MD
Thursday, March 13, 2014

ARTICLE 1B. DENSITY RESIDENTIAL (D.R.) ZONES

SECTION 1B01. Regulations With Respect to D.R. Zones in General

§ 1B01.1. General use regulations in D.R. Zones.

A. Uses permitted as of right. The following uses only are permitted as of right in D.R. Zones of all classifications, subject to the restrictions hereinafter prescribed.

[Bill No. 2-1992]

1. Dwellings as provided herein and as provided in Section 430 and subject to Section 402:

a. In all D.R. Zones: single-family detached, semidetached or duplex dwellings.

b. In all D.R. Zones: alternative site-design dwellings, subject to findings of compatibility pursuant to § 32-4-402 and the hearing officer's hearing under Article 32, Title 4, Subtitle 2 of the Baltimore County Code, and as provided for in the Comprehensive Manual of Development Policies.

[Bill No. 137-2004]

c. In D.R.5.5 Zones, subject to findings of compatibility by the hearing officer: group houses and multifamily buildings.

[Bill No. 85-1997]

d. In D.R.10.5 and D.R.16 Zones: group houses and multifamily buildings.

[Bill No. 85-1997] *Editor's Note: Former Section 1B01.1.A.1.e which followed, regarding elderly housing and assisted-living facilities, was repealed by Bill No. 19-2004.*

2. Trailers (Section 415).

3. Churches, other buildings for religious worship or other religious institutions.

4. Aboveground electrical-power, telephone, telegraph lines, except aboveground electrical power lines having a capacity of 35 kilovolts or more; pole-mounted transformers or transformer banks.

5. Other cables; conduits; gas, water or sewer mains; or storm-drain systems, all underground.

6. Excavations, uncontrolled (as defined in Section 101).

7. Farms, produce stand in association with a farm, or limited-acreage wholesale flower farms (see Section 404).

[Bill No. 41-1992]

8. Garages, community.

9. Hospitals.

[Bill No. 37-1988]

10. Local open space tracts or other common amenity open space.

11. Privately sponsored day care and nursery programs, as an ancillary use, within housing for the elderly projects, as defined in Section 101 of these regulations.

[Bill No. 47-1982]

12. Class A group child care centers and Class B group child care centers providing for up to 40 children, if not located in a residential transition area, subject to the requirements of Section 424, and family child care homes, group child care centers and nursery schools.

[Bill No. 200-1990]

13. Research institutes or laboratories in existence at the time of the adoption of Bill No. 122-1984, subject to the zoning regulations in effect at the time of the approval by Baltimore County of the institute or laboratory.

[Bill No. 122-1984]

14. Schools, except business or trade schools or such schools as are permitted by special exception (Subsection C, below), but including schools for agricultural training.

[Bill Nos. 63-1980; 47-1982; 47-1985]

15. Signs, nonaccessory, to the extent permitted under Section 413.

16. Antennas used by CATV systems operated by companies franchised under Article 25 of the Baltimore County Code, if situated on property owned by the county, state or federal government or by a governmental agency.

[Bill Nos. 220-1981; 137-2004]

17. Transit facilities.

[Bill No. 91-1990]

Apex. 1

18. Accessory uses or buildings other than those permitted only by special exception, including, but not limited to:

- a. Accessory radio or television receiving antennas.
- b. Wireless transmitting and receiving structures, provided that any such structure: is a radio antenna in conjunction with transmitting and receiving facilities used by a resident amateur radio operator possessing an amateur radio operator's license issued by the Federal Communications Commission; if it is an independent structure, shall be subject to the same requirements as are applied to buildings under Section 400; if it is a rigid-structure antenna, shall be no higher than 50 feet above grade level and with no supporting structure thereof closer than 10 feet to any property line; and does not extend closer to the street on which the lot fronts than the front building line. *Editor's Note: Former Item c, which followed this item and permitted automotive-service stations, was repealed by Bill No. 172-1993.*
- c. Home occupations, as defined in Section 101. *Editor's Note: Former Item c, which followed this item and permitted offices of certain professional persons as an accessory use to their residences, was repealed by Bill No. 105-1972, effective 8-26-1982.*
- d. Parking spaces, including accessory garage spaces.
- e. Offices for the conduct of business incidental to the rental, operation, service or maintenance of apartment buildings.
- f. Signs, subject to Section 450.

[Bill No. 89-1997]

- g. Swimming pools, tennis courts, garages, utility sheds, satellite receiving dishes (subject to Section 429) or other accessory structures or uses (all such accessory structures or uses subject to the height and area provisions for buildings as set forth in Section 400).

[Bill No. 71-1987]

19. Commercial film production, subject to Section 435.

[Bill No. 57-1990]

B. Dwelling-type and other supplementary use restrictions based on existing subdivision and development characteristics.

[Bill No. 124-1981]

1. Residential transition areas and uses permitted therein.

[Bill No. 2-1992]

a. Definitions and purpose.

[Bill No. 2-1992]

- (1) The residential transition area (RTA) is a one-hundred-foot area, including any public road or public right-of-way, extending from a D.R. zoned tract boundary into the site to be developed.
- (2) The purpose of an RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types.
- b. Generation of residential transition area. An RTA is generated if the property to be developed is zoned D.R. and lies adjacent to land zoned D.R.1, D.R.2, D.R.3.5, D.R.5.5 or R.C. which:

[Bill Nos. 2-1992; 8-2004]

- (1) Contains a single-family detached, semi-detached or duplex dwelling within 150 feet of the tract boundary; or
- (2) Is vacant, less than two acres in size, and contains a buildable area at least 20 feet by 30 feet on which a dwelling meeting all required setbacks can be erected.

c. Variance of RTA.

[Bill No. 2-1992]

- (1) Notwithstanding the provisions of Section 307, the hearing officer, upon the recommendation of the Departments of Public Works, Planning, Environmental Protection and Sustainability, Permits, Approvals and Inspections, Recreation and Parks, or Economic Development, may determine the amount of RTA in cases where a single tract is more than two acres, is vacant, or contains no more than one single-family detached, semidetached or duplex dwelling.

[Bill No. 122-2010]

- (2) The RTA for a tract may be modified as directed by findings pursuant to § 32-4-402 and the hearing officer's hearing under Article 32, Title 4, Subtitle 2 of the Baltimore County Code. However, the hearing officer may not reduce the amount of RTA unless the officer specifically finds and determines that such a reduction will not adversely impact the residential community or development on the land adjacent to the property to be developed.

[Bill No. 137-2004]

d. A residential transition use is any use:

[Bill No. 2-1992]

- (1) Permitted as of right under Section 1B01.1.A; or
- (2) Any use permitted by special exception under Section 1B01.1.C, except an accessory use permitted only by special exception; or
- (3) Any parking area permitted under Section 409.8.B, subject to the approval of a specific landscape plan for the buffer area which must meet the requirements for a Class A plan.

e. Conditions in residential transition areas.

[Bill No. 2-1992]

- (1) The RTA may contain single-family detached, semidetached or duplex dwellings.
- (2) Group-house, back-to-back group houses, multifamily building and parking lots shall be set back from the tract boundary 75 feet and provide a fifty-foot RTA buffer.
- (3) The fifty-foot RTA buffer shall remain an upgraded, uncleared, landscaped buffer unless otherwise directed by the hearing officer, based upon recommendations of the county. It shall not contain cleared drainage areas, stormwater management ponds or accessory structures, but it may be bisected by roads, paths and trails that are designed to connect to adjoining developments.
- (4) The maximum height of any lighting fixtures in an RTA buffer area shall be 16 feet, except for public utility uses which must be of reasonable height. The fixtures shall be designed and placed so as to prevent the spillage of light into any adjoining dwelling or lot. The intensity of the fixture shall not exceed 0.2 candle at the tract boundary.

Apx. 2

- (5) Parking lots or structures, either as principal or accessory use, whether permitted by right, special exception or pursuant to Section 409.8.B, shall provide a fifty-foot buffer and seventy-five-foot setback, and a height not to exceed 35 feet within the one-hundred-foot transition area.
- f. Any subdivision of land or PUD that has received CRG approval or reclamation plan approval or has been accepted for filing prior to the date of adoption of Bill No. 2-92 or 3-92 is subject to the laws in effect at the time of the approval or filing.

[Bill No. 2-1992]

- g. Exceptions to residential transition. The restrictions contained in Paragraphs a through e above, of this Subsection B.1, do not apply to:

[Bill Nos. 109-1982; 40-1992]

- (1) A proposed dwelling to be placed in a RTA containing existing dwellings of the same type, or, if two or more types of dwellings exist, a proposed dwelling of the same type as the existing dwelling with the fewest number of dwelling units. Such dwellings shall be governed by the applicable laws, zoning regulations and policies otherwise applicable. As used herein, a "dwelling of the same type" means a dwelling which has the same or lesser number of dwelling units and party walls as the existing dwelling units.

[Bill Nos. 109-1982; 40-1992]

- (2) Public utility uses (except public utility service centers and storage yards). Such uses shall be governed by the provisions of Sections 411 and 502 and such other applicable sections of these regulations.

[Bill 40-1992]

- (3) Notwithstanding the provisions of Section 104, the reconstruction of an existing church, community building or other structure devoted to civic, social, recreational, fraternal or educational activity which is destroyed by fire or other casualty. However, such reconstruction may not increase the size or ground floor area of the structure or alter the location or use of the structure.

[Bill No. 40-1992]

- (4) An addition to an existing church or other building for religious worship, including parking areas and driveways, provided all other applicable zoning regulations including setback, parking and screening requirements, are maintained.

[Bill Nos. 109-1982; 40-1992]

- (5) A new church or other building for religious worship constructed on a parcel of land large enough to provide landscaped but otherwise unimproved yard areas of 100 feet between any improvement and any property line other than street frontages.

[Bill Nos. 109-1982; 40-1992]

- (6) A new church or other building for religious worship, the site plan for which has been approved after a public hearing in accordance with Section 500.7. Any such hearing shall include a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.

[Bill Nos. 109-1982; 40-1992]

- (7) Shoreline fishing and shellfish facilities. Such uses shall be governed by the provisions of Sections 500.4, 1A01.2.C.9, 1A02.2.B.10, 1A04.2.B.7 and 1B01.1.C.8.

[Bill Nos. 109-1982; 40-1992]

- (8) An addition to an existing trailer park or mobile home park or contiguous to such park. If the park is lawfully in existence in a D.R. Zone on the effective date of this act.

[Bill Nos. 109-1982; 40-1992]

- (9) An addition to an existing community building, or other structure devoted to civic, social, recreational, fraternal or educational activity, including parking areas and driveways, provided all other applicable zoning regulations, including setback, parking, and screening requirements, are maintained.

[Bill Nos. 109-1982; 40-1992]

- (10) A new community building, or other structures devoted to civic, social, recreational, fraternal or educational activity, if the Zoning Commissioner determines during the special exception process that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that the special exception can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.

[Bill Nos. 109-1982; 40-1992]

- (11) Principal use Class A and Class B group child care centers, provided that the Zoning Commissioner determines, during the special exception process that the proposed improvements are planned in such a way that compliance with the bulk standards of Section 424.7 will be maintained and that the special exception can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.

[Bill Nos. 200-1990; 59-1991; 40-1992]

- (12) The conversion of a dwelling to a bed-and-breakfast home, bed-and-breakfast inn or country inn pursuant to Section 402D or Section 402E.

[Bill Nos. 113-1988; 40-1992]

- (13) Notwithstanding the provisions of Section 104, the reconstruction of an existing nursing home which is destroyed by fire or other casualty. However, such reconstruction may not increase the size or ground floor area of the structure or alter the location or use of the structure.

[Bill Nos. 37-1988; 40-1992]

- (14) Transit facilities and rail passenger stations shall be exempt from the RTA requirements.

[Bill Nos. 91-1990; 40-1992]

- (15) Assisted living facilities, Class A.

[Bill No. 188-1993]

Apx. 3

- (16) A new church building or other building for religious worship, including any required parking, driveways, stormwater management facilities, and other related infrastructure, located on a tract zoned D.R., in part, and B.R., in part, where the footprint of the building is located entirely within the B.R.-zoned portion of the tract.

[Bill No. 68-2011]

- (17) Any parking area permitted under Section 409.8.B in a Commercial Revitalization District.

[Bill No. 36-2013]

- h. The provisions contained in Paragraphs a through e of Subsection B.1 shall not apply to existing developments as described in Subsection A.1 of Section 1B02.3, nor to subdivision tracts for which tentatively approved plans remain in effect as described in Subsection A.2 of said section.

[Bill No. 40-1992]

2. Use regulations in existing developments. In existing developments as described in Subsection A.1 of Section 1B02.3, uses shall be limited to those now lawfully established or to those indicated in the subdivision plans on file with the Department of Permits, Approvals and Inspections, except as may otherwise be permitted under provisions adopted pursuant to the authority of Section 504.

[Bill No. 122-2010]

3. Use regulations for existing subdivision tracts. On subdivision tracts for which tentatively approved plans remain in effect as described in Subsection A.2 of Section 1B02.3, the uses permitted shall be those indicated in the plan or, where the use is not indicated and if not inconsistent with the plan, the uses shall be those permitted under zoning regulations in effect at the time the tentative approval was granted.

- C. Uses permitted by special exception. The following uses, only, are permitted by special exception in all D.R. Zones, subject to the restrictions hereinafter prescribed:

[Bill Nos. 105-1982; 36-1988] *Editor's Note: Former Item 1 of this subsection, which permitted boarding or rooming houses, was repealed by Bill No. 124-1993, and former item 2, which permitted boat yards, including marinas, was repealed by Bill No. 179-1995. See, however, Section 408B of these regulations, which permits boarding- and rooming houses in D.R. Zones.*

1. Camps, public or quasi-public, including day camps.
2. Conservatories for music or other arts.
3. Convalescent homes.
4. Community buildings, swimming pools, commercial beaches, golf courses, country clubs or other similar civic, social, recreational or educational uses, including tennis facilities, provided that no tennis facility in a D.R.1 or D.R.2 Zone shall comprise more than four courts and no tennis facility in a D.R.3.5, D.R.5.5, D.R.16 Zone shall comprise more than six courts (Section 406A).

[Bill No. 62-1978]

5. Community care centers.

[Bill No. 142-1979]

6. Class B group child care centers for more than 40 children subject to the standards set forth in Section 424 (family child care homes, group child care centers and nursery schools) and principal use Class A and Class B group child care centers providing for up to 40 children, if located in a residential transition area.

[Bill Nos. 200-1990; 59-1991]

7. Excavations, controlled (see Section 403).

8. Fishing and shellfishing facilities, shoreline Class I or Class II, except that a facility existing on July 1, 1977, may continue without a special exception if a use permit has been granted for it, provided that:

- a. The owner (or his legally authorized representative) applies for the use permit within six months hereafter (Section 500.4);
- b. With the application for the use permit is filed a site plan in accordance with the Zoning Commissioner's rules of practice and procedure; *Editor's Note: See Appendix G of this edition.*
- c. Any fencing, screening or other change in the site or limitations on the manner of selling the catch necessary to make the facility more compatible with its surroundings that is required by the Zoning Commissioner is completed within the time limits for partial and full compliance with a program of compliance submitted to him; and
- d. No increase in the amount of floor or site area or in the number of boats devoted to the use nor any other change in the site plan is made.

[Bill No. 30-1978]

9. Funeral establishments.

10. Helistops.

11. Home occupations of disabled persons, where the use is established in a structure originally constructed as a dwelling or as accessory to a dwelling or where the use is established in a structure that is situated on the same lot as a dwelling and which the Zoning Commissioner finds to be compatible with its surrounding neighborhood, provided that:

- a. Only three persons including the disabled person and the members of his immediate family who are residents of the dwelling are employed in the use on the premises; and
- b. In any case the use is conducted by a disabled person whose domicile is the dwelling to which the use is accessory and whom the hearing authority finds is so severely disabled as to be unable to engage in this occupation away from the premises of his home.

Any provision of Subsection 502.2 to the contrary notwithstanding, any special exception granted pursuant to this item shall expire upon the first to occur of the following:

- (1) Five years after the issuance of the permit;
- (2) The death of the disabled person;
- (3) The termination of the disability; or
- (4) The failure of the disabled person to permanently reside at the premises.

A new special exception for the use may be granted when the previous special exception expires but only upon the completion of the entire application and hearing process in the same manner as if it were the initial application for this special exception. It

Apx. 4

is the purpose of this provision to prevent the use of residential property for business purposes by an occupant other than a disabled person and to ensure that any occupation permitted pursuant to this item will be conducted in a manner appropriate to its surroundings.

[Bill No. 27-1981]

12. Office or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professional persons, provided that any such office or studio is established within the same building as that serving as the professional person's primary residence at the time of application; does not occupy more than 25% of the total floor area of such residence; and does not involve the employment of more than one nonresident professional associate nor two other nonresident employees.

[Bill Nos. 105-1982; 65-1999]

13. Poultry killing, commercial, as an accessory use on farms, only.
14. Private colleges (not including business or trade schools), dancing schools, dormitories or fraternity or sorority houses.

[Bill No. 47-1985]

15. Public utility uses other than those permitted as of right, but excluding steam power plants, service centers and storage yards.
16. Public utility service centers.
17. Public utility storage yards.
18. Radio studios.
19. Rail passenger stations, subject to Section 434.

[Bill No. 91-1990]

20. Television studios.
21. Tourist homes.
22. Veterinarians' offices.
23. Volunteer fire company stations.
24. Wireless telecommunications towers, subject to Section 426.

[Bill No. 30-1998] *Editor's Note: Former Sections 1B01.1.C.25, 26, 27 and 28, which followed, regarding continuing-care and assisted-living facilities and housing for the elderly, were repealed by Bill No. 19-2004.*

- D. The following provision, which was enacted by Bill No. 140-1962, took effect on November 17, 1962, and was heretofore designated as Subsection 200.16 of these Zoning Regulations, is reenacted without amendment, and nothing in this article shall be construed to abrogate its effect:

Junkyards and open dumps as defined in Section 101. Any existing junkyards in this (R.40) or any other residential zone, and any existing open dumps in any zone shall be completely eliminated not later than two years after the date of effectuation of this amendment.

[Bill No. 140-1962]

Apx. 5

Baltimore County, MD
Thursday, March 13, 2014

ARTICLE 3. EXCEPTIONS TO HEIGHT AND AREA REQUIREMENTS

SECTION 307. Variances

§ 307.1. Authority to grant variances; procedures and restrictions.

The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. *Editor's Note: Apparently conflicts with certain provisions found in the Baltimore County Code, 2003, as revised, which prescribe requirements with respect to notice and hearing regarding conventional reclassification petitions that differ from those which it prescribes regarding variance petitions. See the Appendices of this volume for excerpts from the Baltimore County Code, 2003. See Section 32-3-301 for authority of the Zoning Commissioner to grant variances, and Section 32-3-103 for provision regarding conflicts between Article 32, Title 3 of the Baltimore County Code, 2003 and the Zoning Regulations.* Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

Apx. 6

Baltimore County, MD
Thursday, March 13, 2014

ARTICLE 6. INTERPRETATION AND VALIDITY

SECTION 600. Interpretation

§ 600.1. Interpretation of provisions.

In their interpretation and application, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience and general welfare. Where these regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these regulations shall control. When greater restrictions are imposed by any law, ordinance, regulation or private agreement than are required by these regulations, such greater restrictions shall not be affected by these regulations.

SECTION 601. Validity

§ 601.1. Validity of provisions.

If any section, paragraph, subdivision, clause or provision of these regulations shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provisions so adjudged, and the remainder of the regulations shall be deemed valid and effective.

The Board of County Commissioners of Baltimore County hereby declares that it would have adopted these regulations and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

ApX. 7

IN THE MATTER OF
REVEREND LUCY WARE, Legal Owner/Petitioner
4512 Old Court Road
Baltimore, MD 21208
2nd Election District, 2nd Councilmanic District

RE: Petition for Special Hearing and Variance

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 13-147-SPHA

* * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Administrative Law Judge ("ALJ") denying the Petition for Special Hearing seeking relief from §500.7 of the Baltimore County Zoning Regulations ("BCZR") to: (1) allow a new church for religious worship on the subject property; (2) allow a residential transition area ("RTA") buffer of 0' in lieu of the required 50'; and (3) allow a RTA setback of 0' in lieu of the required 75' from a track boundary to a parking lot or structure. The ALJ also denied a Petition for Variance filed pursuant to BCZR §§409.4, 409.8A2 and §409.8A6 to: (1) allow 4 parking spaces that do not have direct access to an aisle; (2) allow a gravel surface of the parking area in lieu of a durable and dustless surface; and (3) allow no striping of the parking area.

A public hearing was held before this Board on June 18, 2013. The Petitioner was represented by Edward J. Gilliss, Esquire. The Protestants, Barbara Roberson, Jimmie Roberson, Ruthanne Otto, Tom Otto, Barry Powell, Sylvia Powell, Gayle Emerson, Lillian Nolley, Helen Aiken, Linda Miller, Tim Lang, Peggy Lang, Wade Young, II, Dale L. Watkins, Rathea Mims, Al Michel, Evelyn Michel, R. Eddie Daniels, Muriel Lyles, Clyde D. Lyles and Ella Green (the "Protestants") were represented by J. Carroll Holzer, Esquire. A public deliberation was held on July 30, 2013.

Factual Background

On August 31, 2012, the Petitioner, Reverend Lucy Ware (the "Petitioner") purchased a single family home located at 4512 Old Court Road, Pikesville, MD (Pet. Ex. 1) (the "Property") for the purpose of operating a church called "Jesus Christ is the Answer Ministries" (the "Church"). The Petitioner has a degree in construction engineering and was ordained as a minister in 2005. The Church began in 1996, followed by the formation of a 501(c)(3) corporation in 1997.

The Property is located in middle of a residential block on Old Court Road between Scotts Level Road and Streamwood Drive (Pet. Ex. 5). The zoning is D.R. 3.5 (Pet. Ex. 4). The single family home is a 1 story rancher style home (Pet. Exs. 6 and 7) built in 1951 which sits on 1.2 acres (Pet. Ex. 2). Prior to the Petitioner's purchase, the Property had always been used as a residence. The Petitioner testified that she has made numerous improvements to the home including the installation of a new roof, adding a new deck, planting 45 Leyland Cypress trees around the property (Pet. Ex. 19), putting new gravel on the driveway and filling sink holes that existed in the yard.

The Petitioner testified extensively at the hearing about the mission of the Church. From her testimony, the Board learned that it is a non-denominational Christian-based Church which has approximately 30 members. It was formed to assist several groups of people namely: young people who are in trouble with the law; families with children who are disadvantaged; the homeless; and the sick.

In November of 2012, the Petitioner held church services at the property. Before that, the Petitioner hosted a cookout and prayer service in October, which was attended by approximately 40 guests. At both the October and November events, cars were parked on the grass. As a result

App. 8

of these gatherings, complaints were filed with the County. Code Enforcement informed the Petitioner that she could no longer operate the church at the property.

In this case, the Petitioner would like to continue having worship services on Sunday mornings along with worship and prayer services on Monday and Friday evenings from 7:00-8:30, as well as prayer services on Wednesday evenings from 7:00 - 8:30. She intends to offer counseling services at the Church at times which are convenient for the individual being counseled. The Petitioner was uncertain whether or not other events would be held at the Church such as weddings, school services, or daycare. At this time, there was no plan to increase the footprint of the home. However, she would like to erect a sign for the Church on the property.

With regard to the Church's need for parking, according to the Site Plan, a 64 seat church needs 16 parking spaces (1 per 4 seats) (Pet. Ex. 22). The Petitioner indicated that there are 14 parking spaces in the rear of the property. If there are more than 14 cars coming to the Church, she would allow those cars to park on the grass. The Petitioner admitted that while the Church had 30 members, the members also bring children and sometimes guests. Members will travel to the Church by car or bus. In fact, the Petitioner drives from her home on Liberty Road to the Church. She was also unsure whether there was a limit on the number of members that the Church could have.

The Petitioner's case was supported by other members of the Church namely: Michael Sterling and Angela Jean-Louis. Both witnesses provided the Board with compelling stories about how the Church has changed their lives in a positive way. Mr. Sterling testified about how the Church helped him with both homelessness and drug use and encouraged him to graduate from Pikesville High School. He is now in his first year of college at Catonsville Community College.

Likewise, Ms. Jean-Louis supported the Church's position. She testified about her suicide attempt in 2004 and the loss of job clearance with the Department of Defense. The Church took her in for 6 months. With the Church's support, she completed her bachelor's degree in electrical engineering and is presently working on her Master's degree in the same field.

Bruce Doak, P.E., a property line surveyor and engineer, testified for the Petitioner as an expert in land use, in the BCZR and as a surveyor. He prepared both the Petition and site plan showing the proposed use and variances requested. Mr. Doak explained that a church is permitted in a DR zone but that a special hearing request is needed to be filed for use of a home as a church.

Mr. Doak first visited the property in the Fall of 2012 as a result of the County's notice to the Petitioner to cease operation of the Church. Mr. Doak provided the Board with photographs of 30 other churches located on Old Court Road namely 4619 (Pikesville SDA Church), 4535 (Blessed Trinity Church) and 4727 (New Life Fellowship Worship) (Pet. Ex. 21A-21F). He also marked a zoning map with the address of those other churches in relation to the proposed church (Pet. Ex. 20). Mr. Doak conceded on cross examination that 2 of these other churches are located in DR 5.5 zones which is more intense than the DR 3.5 zoning for this property.

With regard to the parking needed for the Church, Mr. Doak explained that the parking and driveway cannot be designed to meet the RTA requirements in BCZR, §1B01.1.B.1 and thus, the request for variance relief. He agreed that if the use remained a single family home, there would be no need to comply with the RTA. The reason it must comply with RTA is because of the proposed use as a Church. Mr. Doak also stated that the property is unique because it has not reached maximum density whereas most of the lots in the area have.

APX-9

There were numerous people who testified against the requested relief. The Board heard from Rathea Mims, 4508 Old Court Rd, who has lived in her home for 19 years. Ms. Mims' house is three homes away from the property. Ms. Mims testified that she is concerned with the additional traffic that would be generated by the Church. She has witnessed the increase in traffic and the high speeds at which cars travel in a neighborhood where the speed limit is 30 mph. She added that the prior owners of 4512 took care of the home. Ms. Mims observed the Church's gathering on October 28 and estimated that there was more than 50 people there. From her observations, she believes that the Church has more than 30 members.

Barbara Roberson, 4520 Old Court Rd. has resided there for 20 years. Her home is also located three homes away from the Church. She testified that the size of her lot was comparable to the Petitioner's lot. Her concerns centered on the decrease in her property value should a Church be located in the middle of a residential block. She believes that the hours of operation will continue to be extended and does not believe the present plan as outlined will be limited as suggested by the Petitioner. Ms. Roberson observed the October 28 gathering at the Petitioner's home and saw people in the backyard. The event generated a lot of noise. Ms. Roberson is also opposed to the Petitioner having a sign on her property to identify the Church.

Dale Watkins, 4513 Dresden Rd. has lived there since 2001. Her home is adjacent and diagonal to the Petitioner's backyard. She is also concerned with the amount of cars coming to the property for Church services including weeknights. She sees the Church as having the potential for growth and the home located on the property is not sufficient to handle the growth. Ms. Watkins also testified that the Leyland trees planted by the Petitioner are in a drainage easement which runs along the back of the houses including her own house. She further added

that allowing parking in the rear of the property which is not illuminated will cause noise, commotion and traffic issues.

Ruth Ann Otto lives at 4523 Tapscott Road and is one and a half blocks from the property. She has lived there for 44 years. She testified that she is not opposed to Churches but does not support the location of a church at this property. Her concerns range from increased noise and parking, the small size of the property, the increase in traffic generated and a decrease in property values. She highlighted that other churches have parking lots and striping for spaces.

Silvia Powell, 4531 Merry Knoll Rd. is located two streets away from the property. Ms. Powell moved to the neighborhood to enjoy a quiet, attractive neighborhood with a low volume of traffic. She too is concerned that property values will decrease but that traffic will increase. She added that allowing a Church in this location could set a precedent for future churches to open in residential areas.

Reverend Lillian Nolley, 4500 Dresden Rd., is located half of a block away from the property. She is not able to see the Church from her home. As a minister, she works on Park Heights Avenue in Baltimore City. She added that there is a church on every corner in the City because it is a high crime area.

Muriel Lyles, 4511 Dresden Rd. is located directly behind the property. Ms. Lyles moved to the neighborhood because it was a peaceful place. A church is not an appropriate use for the property which will increase activity and traffic. In her opinion, a church in this location will negatively impact the neighborhood.

Finally, the Protestants had James Patton, P.E. testify as an expert in land planning and in the BCZR. He testified that he has previously been hired as an expert in a zoning case involving a church. He visited the property and is familiar with the area of Pikesville. Mr. Patton opined

APX. 10

that the plat which was filed to accompany the Petition for Special Hearing is not a site plan. He believes that the Petitioner needs to prepare a development plan under BCC, Art. 32 (Prot. Ex. 10).

Mr. Patton contended that the plat was flawed because it did not show the RTA, it did not show the adjacent lots or houses, nor did it show the tract boundary. He emphasized that the neighborhood included medium density single family homes (Prot. Ex. 11). Mr. Patton did not believe that the request satisfied even the minimal RTA requirements.

With regard to the parking variance, Mr. Patton contended that uniqueness of the property was not satisfied. He stated that having a lot which might be a little larger did not satisfy the uniqueness element. Even if uniqueness has been satisfied, Mr. Patton highlighted that all of the hardships here were self-imposed as the Petitioner did not seek expert advice about her intended use prior to purchase.

Decision

1. The Residential Transition Area.

The RTA is described in BCZR, §1B01.1.B.1 in terms of both 'area' and 'uses'. The RTA is a 100 foot area buffer extending from a D.R. zoned tract boundary into the property or the site to be developed. BCZR, §1B01.1.B1a(1). The purpose of the RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types. BCZR, §1B01.1.B1a(2). There are numerous exceptions to the RTA as listed in BCZR, §1B01.1.B1g.

Section 1B01.1.B1b clarifies that the transition 'area' is generated if "the property to be developed is zoned DR and lies adjacent to land zoned D.R.1, D.R.2, D.R.3.5, D.R. 5.5 or R.C. which:

(1) Contains a single-family detached, semi-detached or duplex dwelling within 150 feet of the tract boundary; or

Within the transition 'area', conditions on setbacks and buffers are imposed under §1B01.1.B1e. The 50 foot buffer must "remain an upgraded, uncleared, landscaped buffer unless otherwise directed by the hearing officer, based upon recommendations of the county." §1B01.1.B1e(3). A parking lot for a church must provide a 50 foot buffer and 75 foot setback from the track boundary. §1B01.1.B1e(2).

In determining whether the 'area' is generated here, it is necessary to determine whether the proposed use as a 'church' is a 'residential transition use' under §1B01.1.B1d. Given that 'churches' are permitted uses as of right under §1B01.1.A.3, a church is a residential transition use under §1B01.1.B1d(1). Next, in determining whether the 100 foot transition 'area' has been generated, the property to be developed must be in a DR zone and be adjacent to one of the DR zones listed in §1B01.1.B1b. The property here is located in the DR 3.5 and is located adjacent to a DR 5.5 zone. Thus, the transition area has been generated.

The Petitioner argues that because she is not making any exterior structural changes or additions to the home, than the RTA does not apply. In support of her argument, the Petitioner cites the definition of "development" in BCC, §32-4-101(p) which definition includes: "(1) the improvement of property for any purpose involving building." She therefore concludes that since there is no improvement or building completed, in progress or contemplated, there is no development.

We disagree. The Petitioner is 'developing' the property because she is "improving" it by changing the landscaping, driveway and parking that is required under BCZR to change the

APX. 11

use from single family home to church. The definition of "improvement" is found in BCC §32-4-101(w):

(w) *Improvements.*

(1) "Improvements" means improvements as determined necessary and appropriate by the county.

(2) "Improvements" include:

- (i) Streets;
- (ii) Drains, bridges, and culverts;
- (iii) Sewers;
- (iv) Water lines;
- (v) Open space;
- (vi) Curbs and gutters;
- (vii) Sidewalks and paths;
- (viii) Streetlights;
- (ix) Landscaping;
- (x) Stormwater management facilities;
- (xi) Traffic-control devices;
- (xii) Telecommunications conduits; and
- (xiii) Other improvements as determined necessary and appropriate by the county.

(Emphasis Added).

In reviewing the proposed use, the County required the Petitioner to landscape the property. Toward that end, the Petitioner submitted a landscaping plan (Prot. Ex. 6). The County required the Petitioner to plant (8) 6 ft.- 8ft. tall green giant arborvitae to screen the parking lot from the adjoining property. With this required landscaping, the Church is subjected to the RTA regulations.

Additionally, the County, through the BCZR §§409.6, 409.8A2 and 409.8A6. requires that certain parking requirements be met for church parking lots. These are the same requirements from which the Petitioner is seeking variance relief. Consequently, the parking spaces, the surface of the parking area and the striping of the parking area are not only necessary and appropriate under BCC, §32-4-101 (w)(1) and (2)(xiii) above, but are required.

Given that the transition area is generated by this proposed use as a church, the next issue is whether the plan qualifies for an exception from the RTA restrictions under 1B01.1B.1g(6). The Petitioner argued in the alternative that the proposed use is not subject to RTA requirements because it meets the exception listed in B.C.Z.R. 1B01.1B.1g(6) wherein the landscaping plan was approved:

a new church or other building for religious worship, the site plan for which has been approved after a public hearing in accordance with Section 500.7 and to the extent possible, the proposed use shall comply with RTA use requirements and the plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.

As the Board analyzes this, of the 16 exceptions listed in BCZR 1B01.1Bg, if any exception applies here based on the facts, Subsection (6) is the only possible candidate.

However, in applying the evidence to exception (6), the proposed Church does not even minimally comply with the RTA requirements. The proposal is for no buffer and no setbacks. The evidence did not show that the plan submitted by the Petitioner would be compatible with the character or general welfare of the surrounding homes which homes are occupied by the Protestants who testified. The Board finds credible the concerns voiced by the Protestants concerning increased traffic generated by this use in the middle of a residential block.

While the Petitioner testified that there were 30 members, the parking calculations on the site plan revealed that this was a 64 seat church. The Petitioner agreed that members could bring guests and family members as well as children. We see this Church as being in the early stage of growth and we expect and anticipate that it will continue to grow, particularly given the charitable work that it does. The modest size of this single family home, on 1.2 acres, is not sufficient to house the planned functions and services.

Appx. 18

In reviewing the photographs of the other churches in the area, we notice that with the exception of one church, all of those churches are located in DR 5.5 or DR 16 zones, or they are located on a corner. In addition, all of those churches have adequate land for a parking lot. Those parking lots are paved and striped. Because of this, there is adequate ingress and egress and sufficient control of church traffic. As a result, the impact on the surrounding properties is less. In the case of 4619 and 4535 Old Court Road, those buildings are large and there is still room for paved parking. In this case, however, it is not, in our view, compatible with the neighborhood, for cars to park on the grass for church activities that will occur during the week and on weekends.

As one of the Protestants mentioned, there is no dispute that the work of this Church is admirable and is providing a great service to individuals who truly need the Church's help and guidance. However, the issue for this Board is whether this use, at this particular location, is compatible with the character and general welfare of the surrounding residences. We note that neither the Petitioner, Mr. Sterling nor Ms. Jean-Louis live in the neighborhood and thus the perspective of the Protestants is understandably different. We find, based on the evidence, that this use is not compatible in this location and therefore fails to meet exception (6).

2. Parking Variances.

As to the Petitioner's request for Variances from the BCZR parking requirements, based on the Board's decision to deny the request for Special Hearing relief, the variance requests are moot. If the Petitioner is not entitled to a waiver of the RTA standards and the property does not qualify under one of the RTA exceptions, the parking variances are not needed.

While we need not address the parking variances, if the Petitioner was entitled to the special hearing relief, this Board would have also denied the parking variances. For the

Petitioner to succeed on a variance request, this Board must follow the standard in Section 307.1 of the BCZR which states, in pertinent part, as follows:

.....(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare....

The Petitioner argued that the property is unique because it was a little larger than other lots in the neighborhood. Protestant, Barbara Roberson testified that her lot was compatible in size to the Property. We do not agree that this point meets the uniqueness standard in *Cromwell v. Ward*, 102 Md. App. 691 (1995), wherein the Court writes:

...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...."

Id. at 698.

In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical

APX.13

restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or parting walls....

Id. at 710. We find that, actually, the property is more similar to other properties in the neighborhood than it is different. The evidence presented shows no unusual property characteristics which would warrant a deviation from the parking requirements.

So that the record may be clear, we further find, even assuming *arguendo* that the property was somehow determined to be unique, that no showing of practical difficulty has been established. Petitioner admitted on cross examination that nothing prevents the use of the Property as a single family home. Moreover, the law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722.

In this case, all of the hardships are self-imposed. The Petitioner purchased the property without performing the due diligence necessary to make certain that the zoning would permit her intended use. The fact that she made improvements to the property, in addition to the purchase price, only adds to the self-inflicted nature of the hardship.

For all the foregoing reasons, we deny the Petitioner's request for variances.

ORDER

THEREFORE, IT IS THIS 9th day of October, 2013, by the

Board of Appeals of Baltimore County,

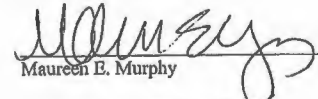
ORDERED that the Petition for Special Hearing seeking relief from §500.7 of the Baltimore County Zoning Regulations ("BCZR") to: (1) allow a new church for religious worship on the subject property; (2) allow a residential transition area ("RTA") buffer of 0' in lieu of the required 50'; and (3) allow a RTA setback of 0' in lieu of the required 75' from a track boundary to a parking lot or structure. be and the same are hereby DENIED; and it is further,

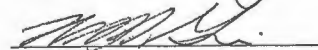
ORDERED that the Petitioner's request for a Petition for Variance filed pursuant to BCZR §§409.4, 409.8A2 and §409.8A6 to: (1) allow 4 parking spaces that do not have direct access to an aisle; (2) allow a gravel surface of the parking area in lieu of a durable and dustless surface; and (3) allow no striping of the parking area, be and the same 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**


Andrew M. Belt, Panel Chair


Maureen E. Murphy


Wendell H. Grier

APX-14

1/13/14

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
REVEREND LUCY WARE

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

CIVIL ACTION
NO. : 03-C-13-012865

IN THE MATTER OF:
REVEREND LUCY WARE – LEGAL OWNER/
PETITIONER FOR SPECIAL HEARING AND
VARIANCE FOR PROPERTY LOCATED AT
4512 OLD COURT ROAD

2ND ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 13-147-SPHA*

RECEIVED AND FILED
2014 JAN 13 A 9:17
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. 13-147-SPHA

December 21, 2012	Petition for Special Hearing to 1) allow a new church for religious worship on the subject property per section 1B01.1B1g(6) of the Baltimore County Zoning Regulations (BCZR); 2) allow a residential transition area (RTA) buffer of 0 feet in lieu of the required 50 feet per section BCZR §1B01.1e(5); 3) allow a residential transition area (RTA) setback of 0 feet in lieu of the required 75 feet from a track boundary to a parking lot or structure per BCZR § 1B01.1e(5) and Petition for Variances to 1) allow four parking spaces that do not have direct access to an aisle per BCZR § 409.4; 2) allow gravel surface of the parking area in lieu of a durable and dustless surface per BCZR § 409.8A2; and 3) allow no striping of the parking area per BCZR §409.8A6, filed by Reverend Lucy Ware, Petitioner.
January 8, 2013	Entry of Appearance filed by People's Counsel for Baltimore County.
February 6, 2013	Certificate of Posting.
February 7, 2013	Certificate of Publication in newspaper
February 20, 2013	ZAC Comments.
February 27, 2013	Hearing held before the Zoning Commissioner
March 7, 2013	Findings of Fact and Conclusions of Law issued by the Administrative Law Judge wherein the Petitions for Special Hearing and Variance were DENIED.
March 15, 2013	Notice of Appeal filed by Edward J. Gilliss, Esquire, on behalf of Reverend Lucy Ware, Petitioner/Appellant.
April 4, 2013	Appeal received by Board of Appeals.
June 18, 2013	Board convened for hearing.

Exhibits submitted at hearing before the Board of Appeals:

Petitioner's Exhibit No.

- 1 – Deed for 4512 Old Court Road
- 2 – SDAT record for 4512 Old Court Road
- 3 – My Neighborhood Zoning Printout
- 4 – My Neighborhood close up of lot
- 5 – My Neighborhood Aerial map
- 6 – Photographs of Front of 4512 Old Court Road

- 7 – Photograph of Left side of subject property
- 8 – Photograph from Metro toward property
- 9 – Photograph from metro toward property
- 10 – Photograph away from metro toward right
- 11 – Photograph of vacant house to right of property
- 12 – Photograph of Dental Office/House to left
- 13 – Photograph of Church opposite side of property
- 14 – Photograph of Old Court Road toward Metro
- 15 – Photograph of Old Court Road
- 16 – Photograph of Talmudiacah Academy
- 17 – Special Exception and Variance requested by Catherine Washington Case No 07-567-XA to allow a single-family dwelling with Home Dental Office at 4518 Old Court Road.
- 18 – Site Plan of subject property
- 19 – Photograph of back of subject property shows trees planted.
- 20 – My Neighborhood Zoning Map
- 20a – Photograph of New Life Fellowship Worship Center at 4727 Old Court Road
- 20b – Photograph of Talmudicah Academy at 4445 Old Court Road
- 20c – Photograph of Church at 4535 Old Court Road
- 20d – Photograph of Church at 4619 Old Court Road
- 21a – Photograph of Church at 4619 Old Court Road
- 21b – Photograph of Church at 4535 Old Court Road
- 21c – Photograph of Church at 4535 Old Court Road
- 21d – Photograph of Church at 4727 Old Court Road
- 21e – Photograph of Church at 4535 Old Court Road
- 21f – Photograph of Church at 4535 Old Court Road
- 22 – Plan showing alternative parking plan.
- 23 – List of Persons In Support
- 24 – District Court of Maryland for Baltimore County Final Peace Order Lucy Ware vs. Dale Watkins FOR IDENTIFICATION PURPOSES ONLY

Protestants' Exhibit No.

- 1 – Photograph of back of house dated October 28, 2012
- 2 – Photograph of back of house dated October 28, 2012
- 3 – Photograph of side of house dated October 28, 2012
- 4 – Petitioner's Site Plan (Exhibit 7 ALJ)
- 5 – Petitioner's Landscape Plan (Exhibit 9 ALJ)
- 6 – Petitioner's Landscape Plan (Exhibit 10 ALJ)
- 7 – Protestant's List of Witnesses

8 – Email from Kyra Lyles to Muriel Lyles dated 6/18/13 FOR
IDENTIFICATION PURPOSES ONLY

9 – Curriculum Vitae of James Patton

10 – Zoning Commissioners Checklist

11 – Aerial Photograph of neighborhood

June 19, 2013	Entry of Appearance filed by J. Carroll Holzer, Esquire on behalf of Jimmie and Barbara Robertson; Tom and Ruthanne Otto; Barry and Sylvia Powell; Gayle Emerson; Rev. Lillian Nolley; Helen Aiken; Linda Miller; Tim and Peggy Lang; James S. Patton; Wade Young, II; Dale Watkins; Jeffrey and Rathea Mims; Al and Evelyn Michel; R. Eddie Daniels; Clyde and Muriel Lyles; George and Martha Zentz; Alonzo and Dale Griffin; Ella Green, Protestants.
July 15, 2013	Memorandum of People's Counsel for Baltimore County
July 15, 2013	Protestant's Memorandum filed by J. Carroll Holzer, Esquire on behalf of Protestants.
July 16, 2013	Post-Hearing Memorandum of Petitioner, the Reverend Lucy Ware filed by Edward J. Gilliss, Esquire.
July 30, 2013	Board convened for Public deliberation.
October 9, 2013	Final Opinion and Order issued by the Board in which the Petition for Special Hearing was DENIED; and the Petition for Variance was DENIED.
November 6, 2013	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Lawrence E. Schmidt, Esquire on behalf of Rev. Lucy Ware, Petitioners
November 12, 2013	Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
November 14, 2013	Response to Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County.
November 14, 2013	Certificate of Compliance sent to all parties and interested persons.
December 3, 2013	Notice of Intent to Participate and Response to Petition for Judicial Review filed by J. Carroll Holzer, Esquire on behalf of Jimmie and Barbara Robertson, Tom and Ruthanne Otto, Barry and Sylvia Powell, Rev. Lillian Nolley, Tim and Peggy Lang, Dale Watkins, Jeffrey and

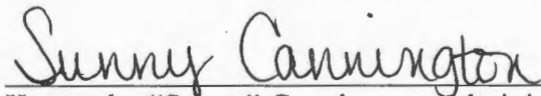
Rathea Mims, Clyde, Muriel and Kyra Lyles, George and Martha Zentz, Alonzo and Dale Griffin, David Greene, Kim Yates, Charles Handy, Mel and Viola Homes, James and Norren Scott, Wanda Beach, Harry and Rosilyn Burns and David Perry, Protestants.

December 12, 2013 Letter received post-appeal from George and Margaret Zentz expressing their opposition to the Petitions for Special Hearing and Variance.

January 13, 2014 Transcript of testimony filed.

January 13, 2014 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.



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

c: Lawrence E. Schmidt, Esquire
Reverend Lucy Ware
Tom and Ruthanne Otto
Lillian Nolley
Tim and Peggy Lang
Dale Watkins
R. Eddie Daniels
George and Martha Zentz

J. Carroll Holzer, Esquire
Bruce E. Doak
Barry and Sylvia Powell
Helen Aiken
James S. Patton
Jeffrey and Rathea Mims
Clyde and Muriel Lyles
Reverend Ervin Dantzler

Jimmie and Barbara Roberson
Gayle Emerson
Linda Miller
Wade Young, II
Al and Evelyn Michel
Ella Green

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
John E. Beverungen, Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

11/24/13

IN THE CIRCUIT COURT OF BALTIMORE COUNTY, MARYLAND

PETITION OF REVEREND LUCY WARE
FOR JUDICIAL REVIEW OF THE DECISION
OF THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

*

*

*

Case No.: 03-C-13-012865

IN THE CASE OF REVEREND LUCY WARE
LEGAL OWNER, PETITION FOR SPECIAL
HEARING & VARIANCE ON PROPERTY
LOCATED AT 4512 OLD COURT ROAD
BALTIMORE, MD 21208

*

*

*

*

2nd Election District
2nd Council District

*

Case No. 2013-147-SPHA
Before the County Board of Appeals

RECEIVED
DEC 03 2013

BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

**NOTICE OF INTENT TO PARTICIPATE AND RESPONSE
TO PETITION FOR JUDICIAL REVIEW**

**JIMMIE & BARBARA ROBERTSON; TOM & RUTHANNE OTTO; BARRY &
SYLVIA POWELL; REV. LILLIAN NOLLEY; TIM & PEGGY LANG; DALE L.
WATKINS; JEFFREY & RATHEA MIMS; CLYDE, MURIEL & KYRA LYLES;
GEORGE & MARTHA ZENTZ; ALONZO & DALE GRIFFIN; DAVID GREENE; KIM
YATES; CHARLES HANDY; MEL & VIOLA HOMES; JAMES & NORREN SCOTT;
WANDA BEACH; HARRY & ROSILYN BURNS AND DAVID PERRY, by and through
undersigned counsel, J. Carroll Holzer, 508 Fairmount Ave., Towson, MD 21286, and pursuant
to Md. Rule 7-204, hereby give notice of their intent to participate in the above-captioned
Petition for Judicial Review.**

The above named respondents participated in the proceedings before the Board of
Appeals.

Respectfully submitted,



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of November, 2013, a copy of the foregoing Notice of Intent to Participate was mailed first class, postage pre-paid to the following:

Lawrence Schmidt, Esquire
Smith, Gildea & Schmidt
600 Washington Ave., Suite 200
Towson, Maryland 21204
Attorney for Petitioner

Carole Demilio, Esquire
Deputy People's Counsel
105 West Chesapeake Ave., Suite 204
Towson, Maryland 21204

County Board of Appeals
105 West Chesapeake Ave., Suite 203
Towson, MD 21204



J. CARROLL HOLZER, Esquire

11/14/13
PETITION OF REVEREND LUCY WARE
FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

* IN THE
*
* CIRCUIT COURT

IN THE CASE OF REVEREND LUCY WARE, LEGAL
OWNER, PETITION FOR SPECIAL HEARING &
VARIANCE ON PROPERTY LOCATED AT 4512
OLD COURT ROAD, BALTIMORE MD 21208

*
* FOR

2nd Election District, 2nd Councilmanic District

* BALTIMORE COUNTY

Case No. 2013-147-SPHA
Before the County Board of Appeals

* Case No. 03-C-13-012865

* * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

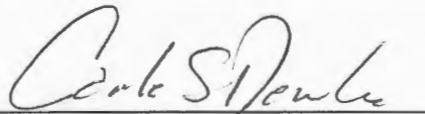
CAROLE S. DEMILIO
Deputy People's Counsel
The Jefferson Building
105 West Chesapeake Avenue, Suite 204
Towson, MD 21204
(410) 887-2188

RECEIVED
NOV 14 2013

BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 2013, a copy of the foregoing Response to Petition for Judicial Review was mailed to Lawrence Schmidt, Esquire, Smith, Gildea & Schmidt, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Petitioner(s), J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Maryland 21286 and County Board of Appeals, 105 West Chesapeake Avenue, Suite 203, Towson, Maryland 21204.



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

11/14/13
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
REVEREND LUCY WARE

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

CIVIL ACTION
NO. : 03-C-13-012865

IN THE MATTER OF:
REVEREND LUCY WARE – LEGAL OWNER/
PETITIONER FOR SPECIAL HEARING AND
VARIANCE FOR PROPERTY LOCATED AT
4512 OLD COURT ROAD

2ND ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 13-147-SPHA*

* * * * *

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:

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Ste 200
Towson, Maryland 21204

Bruce E. Doak
3801 Baker Schoolhouse Road
Freeland, MD 21053

Reverend Lucy Ware
7111 Liberty Road
Baltimore, MD 21207

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

RECEIVED AND FILED
2013 NOV 14 A 10:00
CLERK OF CIRCUIT COURT
BALTIMORE COUNTY

Jimmie and Barbara Roberson
4520 Old Court Road
Baltimore, MD 21208

Tom and Ruthanne Otto
4523 Tapscott Road
Baltimore, MD 21208

Barry and Sylvia Powell
4531 Maryknoll Rd
Baltimore, MD 21208

Gayle Emerson
8205 Autrim Lane
Baltimore, MD 21208

Lillian Nolley
4500 Dresden Road
Baltimore, MD 21208

Helen Aiken
4502 Dresden Road
Baltimore, MD 21208

Linda Miller
4643 Hawksbury Road
Baltimore, MD 21208

Tim and Peggy Lang
4524 Tapscott Road
Baltimore, MD 21208

James S. Patton
780 Elkridge Landing Road #210
Baltimore, MD 21090

Wade Young, II
4524 Maryknoll Road
Baltimore, MD 21208

Dale Watkins
4513 Dresden Road
Baltimore, MD 21208

Jeffrey and Rathea Mims
4508 Old Court Road
Baltimore, MD 21208

Al and Evelyn Michel
8150 Scotts Level Road
Baltimore, MD 21208

R. Eddie Daniels
4519 Maryknoll Road
Baltimore, MD 21208

Clyde and Muriel Lyles
4511 Dresden Road
Baltimore, MD 21208

Ella Green
4607 Hawksbury Road
Baltimore, MD 21208

George and Martha Zentz
4509 Old Court Road
Baltimore, MD 21208

Reverend Ervin Dantzler
4515 Old Court Road
Baltimore, MD 21208

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

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

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

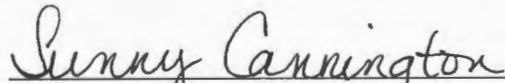
Nancy C. West, Assistant County Attorney
Baltimore County Office of Law
The Historic Courthouse
400 Washington Avenue
Towson, MD 21204

Andrea Van Arsdale, Director
Department of Planning
The Jefferson Building, Ste 100
105 W. Chesapeake Avenue
Towson, MD 21204

Michael Field, County Attorney
Baltimore County Office of Law
The Historic Courthouse
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 14th day of November, 2013 a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.



Krysundra "Sunny" Cannington
Acting Administrator
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

November 14, 2013

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Ste 200
Towson, Maryland 21204

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

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-13-012865
In the Matter of: Reverend Lucy Ware
Board of Appeals Case No.: 13-147-SPHA

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on November 6, 2013 by Lawrence E. Schmidt, Esquire, on behalf of Reverend Lucy Ware, 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 transcript from the June 18, 2013 hearing before the Board of Appeals has been ordered. 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

Krysundra "Sunny" Cannington
Acting Administrator

Enclosure

cc: Reverend Lucy Ware
Bruce E. Doak
Jimmie and Barbara Roberson
Tom and Ruthanne Otto
Barry and Sylvia Powell
Gayle Emerson
Lillian Nolley
Helen Aiken
Linda Miller
Tim and Peggy Lang
James S. Patton
Wade Young, II
Dale Watkins
Jeffrey and Rathea Mims
Al and Evelyn Michel
R. Eddie Daniels
Clyde and Muriel Lyles
Ella Green
George and Martha Zentz
Reverend Ervin Dantzler
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
John E. Beverungen, Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

11/6/13
SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
RAY M. SHEPARD
JASON T. VETTORI

LAUREN M. DODRILL
CHARLES B. MAREK, III
NATALIE MAYO
ELYANA TARLOW

of counsel:
DAVID T. LAMPTON

November 6, 2013

Sent Via Hand Delivery

Julie Ensor, Clerk of Court
County Courts Building
401 Bosley Avenue
Towson, MD 21204

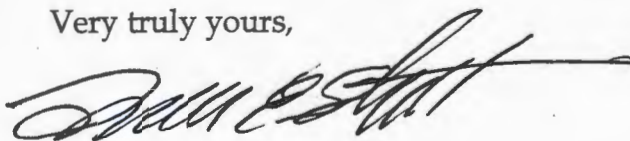
Re: Petition of: Reverend Lucy Ware
Case No.: unknown

Dear Ms. Ensor:

Enclosed for filing please find a Petition for Judicial Review in connection with the above matter. Please date-stamp the additional copy and return the same to my courier.

Please do not hesitate to call me if you have any questions regarding this matter. With kind regards, I remain

Very truly yours,



Lawrence E. Schmidt

LES/amf
Enclosures

cc: J. Carroll Holzer, Esquire
Krysundra Cannington, Board of Appeals

RECEIVED
NOV 7 2013

BALTIMORE COUNTY
BOARD OF APPEALS

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
*
*
* **Case No.:** _____

* **Case No.:** _____

*
*
*
*
*
*
*

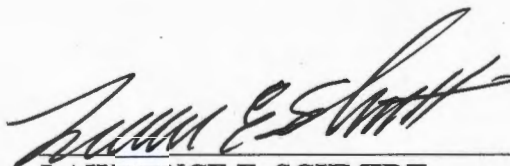
*
*

*
*

* * * * *

Petitioner, Reverend Lucy Ware, by and through her attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, requests judicial review of the Opinion of the Board of Appeals for Baltimore County dated October 9, 2013, a copy of which is attached hereto, in the above referenced matter. Petitioner was a party below and fully participated, individually and through other counsel, in the proceedings.

This Petition is filed pursuant to Rules 7-202 and 7-203(b) of the Maryland Rules of Procedure.

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

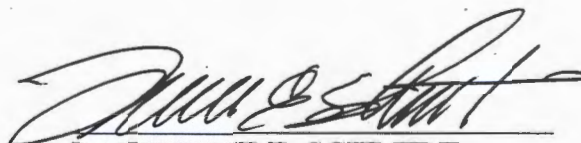
LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of November, 2013, a copy of the foregoing Petition for Judicial Review was delivered to:

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

Krysundra Cannington, Acting Administrator
County Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204


LAWRENCE E. SCHMIDT

11/5/13

RECEIVED

NOV 12 2013

BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF:
REVEREND LUCY WARE
4512 Old Court Road
Baltimore, Maryland 21208

FOR JUDICIAL REVIEW OF THE DECISION OF THE
COUNTY BOARD OF APPEALS FOR
BALTIMORE COUNTY
Jefferson Building, Suite 2030
105 W. Chesapeake Avenue
Towson, MD 21204

IN THE CASE OF:
REVEREND LUCY WARE
4512 Old Court Road
Baltimore, MD 21208

2nd Election District
2nd Councilmanic District

County Board of Appeals Case No. 13-147-SPHA

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

* Case No.: C-13-12805

RECEIVED AND FILED
2013 NOV -6 A 10:38
CLERK OF CIRCUIT COURT
BALTIMORE COUNTY

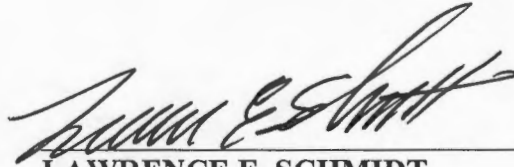
42

* * * * *

PETITION FOR JUDICIAL REVIEW

Petitioner, Reverend Lucy Ware, by and through her attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, requests judicial review of the Opinion of the Board of Appeals for Baltimore County dated October 9, 2013, a copy of which is attached hereto, in the above referenced matter. Petitioner was a party below and fully participated, individually and through other counsel, in the proceedings.

This Petition is filed pursuant to Rules 7-202 and 7-203(b) of the Maryland Rules of Procedure.

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

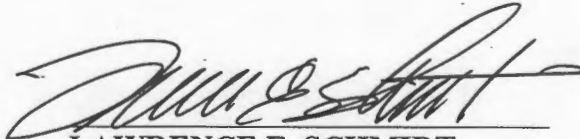
LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of November, 2013, a copy of the foregoing Petition for Judicial Review was delivered to:

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

Krysundra Cannington, Acting Administrator
County Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204



LAWRENCE E. SCHMIDT

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

Case Number: 03-C-13-012865

RECEIVED

NOV 12 2013

BALTIMORE COUNTY
BOARD OF APPEALS

TO: BOARD OF APPEALS
Jefferson Bldg, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204

10/9/13

IN THE MATTER OF
REVEREND LUCY WARE, Legal Owner/Petitioner
4512 Old Court Road
Baltimore, MD 21208
2nd Election District, 2nd Councilmanic District

RE: Petition for Special Hearing and Variance

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 13-147-SPHA

* * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Administrative Law Judge ("ALJ") denying the Petition for Special Hearing seeking relief from §500.7 of the Baltimore County Zoning Regulations ("BCZR") to: (1) allow a new church for religious worship on the subject property; (2) allow a residential transition area ("RTA") buffer of 0' in lieu of the required 50'; and (3) allow a RTA setback of 0' in lieu of the required 75' from a track boundary to a parking lot or structure. The ALJ also denied a Petition for Variance filed pursuant to BCZR §§409.4, 409.8A2 and §409.8A6 to: (1) allow 4 parking spaces that do not have direct access to an aisle; (2) allow a gravel surface of the parking area in lieu of a durable and dustless surface; and (3) allow no striping of the parking area.

A public hearing was held before this Board on June 18, 2013. The Petitioner was represented by Edward J. Gilliss, Esquire. The Protestants, Barbara Roberson, Jimmie Roberson, Ruthanne Otto, Tom Otto, Barry Powell, Sylvia Powell, Gayle Emerson, Lillian Nolley, Helen Aiken, Linda Miller, Tim Lang, Peggy Lang, Wade Young, II, Dale L. Watkins, Rathea Mims, Al Michel, Evelyn Michel, R. Eddie Daniels, Muriel Lyles, Clyde D. Lyles and Ella Green (the "Protestants") were represented by J. Carroll Holzer, Esquire. A public deliberation was held on July 30, 2013.

Factual Background

On August 31, 2012, the Petitioner, Reverend Lucy Ware (the "Petitioner") purchased a single family home located at 4512 Old Court Road, Pikesville, MD (Pet. Ex. 1) (the "Property") for the purpose of operating a church called "Jesus Christ is the Answer Ministries" (the "Church"). The Petitioner has a degree in construction engineering and was ordained as a minister in 2005. The Church began in 1996, followed by the formation of a 501(c)(3) corporation in 1997.

The Property is located in middle of a residential block on Old Court Road between Scotts Level Road and Streamwood Drive (Pet. Ex. 5). The zoning is D.R. 3.5 (Pet. Ex. 4). The single family home is a 1 story rancher style home (Pet. Exs. 6 and 7) built in 1951 which sits on 1.2 acres (Pet. Ex. 2). Prior to the Petitioner's purchase, the Property had always been used as a residence. The Petitioner testified that she has made numerous improvements to the home including the installation of a new roof, adding a new deck, planting 45 Leyland Cypress trees around the property (Pet. Ex. 19), putting new gravel on the driveway and filling sink holes that existed in the yard.

The Petitioner testified extensively at the hearing about the mission of the Church. From her testimony, the Board learned that it is a non-denominational Christian-based Church which has approximately 30 members. It was formed to assist several groups of people namely: young people who are in trouble with the law; families with children who are disadvantaged; the homeless; and the sick.

In November of 2012, the Petitioner held church services at the property. Before that, the Petitioner hosted a cookout and prayer service in October, which was attended by approximately 40 guests. At both the October and November events, cars were parked on the grass. As a result

of these gatherings, complaints were filed with the County. Code Enforcement informed the Petitioner that she could no longer operate the church at the property.

In this case, the Petitioner would like to continue having worship services on Sunday mornings along with worship and prayer services on Monday and Friday evenings from 7:00-8:30, as well as prayer services on Wednesday evenings from 7:00 - 8:30. She intends to offer counseling services at the Church at times which are convenient for the individual being counseled. The Petitioner was uncertain whether or not other events would be held at the Church such as weddings, school services, or daycare. At this time, there was no plan to increase the footprint of the home. However, she would like to erect a sign for the Church on the property.

With regard to the Church's need for parking, according to the Site Plan, a 64 seat church needs 16 parking spaces (1 per 4 seats) (Pet. Ex. 22). The Petitioner indicated that there are 14 parking spaces in the rear of the property. If there are more than 14 cars coming to the Church, she would allow those cars to park on the grass. The Petitioner admitted that while the Church had 30 members, the members also bring children and sometimes guests. Members will travel to the Church by car or bus. In fact, the Petitioner drives from her home on Liberty Road to the Church. She was also unsure whether there was a limit on the number of members that the Church could have.

The Petitioner's case was supported by other members of the Church namely: Michael Sterling and Angela Jean-Louis. Both witnesses provided the Board with compelling stories about how the Church has changed their lives in a positive way. Mr. Sterling testified about how the Church helped him with both homelessness and drug use and encouraged him to graduate from Pikesville High School. He is now in his first year of college at Catonsville Community College.

Likewise, Ms. Jean-Louis supported the Church's position. She testified about her suicide attempt in 2004 and the loss of job clearance with the Department of Defense. The Church took her in for 6 months. With the Church's support, she completed her bachelor's degree in electrical engineering and is presently working on her Master's degree in the same field.

Bruce Doak, P.E., a property line surveyor and engineer, testified for the Petitioner as an expert in land use, in the BCZR and as a surveyor. He prepared both the Petition and site plan showing the proposed use and variances requested. Mr. Doak explained that a church is permitted in a DR zone but that a special hearing request is needed to be filed for use of a home as a church.

Mr. Doak first visited the property in the Fall of 2012 as a result of the County's notice to the Petitioner to cease operation of the Church. Mr. Doak provided the Board with photographs of 3 other churches located on Old Court Road namely 4619 (Pikesville SDA Church), 4535 (Blessed Trinity Church) and 4727 (New Life Fellowship Worship) (Pet. Ex. 21A-21F). He also marked a zoning map with the address of those other churches in relation to the proposed church (Pet. Ex. 20). Mr. Doak conceded on cross examination that 2 of these other churches are located in DR 5.5 zones which is more intense than the DR 3.5 zoning for this property.

With regard to the parking needed for the Church, Mr. Doak explained that the parking and driveway cannot be designed to meet the RTA requirements in BCZR, §1B01.1.B.1 and thus, the request for variance relief. He agreed that if the use remained a single family home, there would be no need to comply with the RTA. The reason it must comply with RTA is because of the proposed use as a Church. Mr. Doak also stated that the property is unique because it has not reached maximum density whereas most of the lots in the area have.

There were numerous people who testified against the requested relief. The Board heard from Rathea Mims, 4508 Old Court Rd, who has lived in her home for 19 years. Ms. Mims' house is three homes away from the property. Ms. Mims testified that she is concerned with the additional traffic that would be generated by the Church. She has witnessed the increase in traffic and the high speeds at which cars travel in a neighborhood where the speed limit is 30 mph. She added that the prior owners of 4512 took care of the home. Ms. Mims observed the Church's gathering on October 28 and estimated that there was more than 50 people there. From her observations, she believes that the Church has more than 30 members.

Barbara Roberson, 4520 Old Court Rd. has resided there for 20 years. Her home is also located three homes away from the Church. She testified that the size of her lot was comparable to the Petitioner's lot. Her concerns centered on the decrease in her property value should a Church be located in the middle of a residential block. She believes that the hours of operation will continue to be extended and does not believe the present plan as outlined will be limited as suggested by the Petitioner. Ms. Roberson observed the October 28 gathering at the Petitioner's home and saw people in the backyard. The event generated a lot of noise. Ms. Roberson is also opposed to the Petitioner having a sign on her property to identify the Church.

Dale Watkins, 4513 Dresden Rd. has lived there since 2001. Her home is adjacent and diagonal to the Petitioner's backyard. She is also concerned with the amount of cars coming to the property for Church services including weeknights. She sees the Church as having the potential for growth and the home located on the property is not sufficient to handle the growth. Ms. Watkins also testified that the Leyland trees planted by the Petitioner are in a drainage easement which runs along the back of the houses including her own house. She further added

that allowing parking in the rear of the property which is not illuminated will cause noise, commotion and traffic issues.

Ruth Ann Otto lives at 4523 Tapscott Road and is one and a half blocks from the property. She has lived there for 44 years. She testified that she is not opposed to Churches but does not support the location of a church at this property. Her concerns range from increased noise and parking, the small size of the property, the increase in traffic generated and a decrease in property values. She highlighted that other churches have parking lots and striping for spaces.

Silvia Powell, 4531 Merry Knoll Rd. is located two streets away from the property. Ms. Powell moved to the neighborhood to enjoy a quiet, attractive neighborhood with a low volume of traffic. She too is concerned that property values will decrease but that traffic will increase. She added that allowing a Church in this location could set a precedent for future churches to open in residential areas.

Reverend Lillian Nolley, 4500 Dresdan Rd., is located half of a block away from the property. She is not able to see the Church from her home. As a minister, she works on Park Heights Avenue in Baltimore City. She added that there is a church on every corner in the City because it is a high crime area.

Muriel Lyles, 4511 Dresdan Rd. is located directly behind the property. Ms. Lyles moved to the neighborhood because it was a peaceful place. A church is not an appropriate use for the property which will increase activity and traffic. In her opinion, a church in this location will negatively impact the neighborhood.

Finally, the Protestants had James Patton, P.E. testify as an expert in land planning and in the BCZR. He testified that he has previously been hired as an expert in a zoning case involving a church. He visited the property and is familiar with the area of Pikesville. Mr. Patton opined

that the plat which was filed to accompany the Petition for Special Hearing is not a site plan. He believes that the Petitioner needs to prepare a development plan under BCC, Art. 32 (Prot. Ex. 10).

Mr. Patton contended that the plat was flawed because it did not show the RTA, it did not show the adjacent lots or houses, nor did it show the tract boundary. He emphasized that the neighborhood included medium density single family homes (Prot. Ex. 11). Mr. Patton did not believe that the request satisfied even the minimal RTA requirements.

With regard to the parking variance, Mr. Patton contended that uniqueness of the property was not satisfied. He stated that having a lot which might be a little larger did not satisfy the uniqueness element. Even if uniqueness has been satisfied, Mr. Patton highlighted that all of the hardships here were self-imposed as the Petitioner did not seek expert advice about her intended use prior to purchase.

Decision

1. The Residential Transition Area.

The RTA is described in BCZR, §1B01.1.B.1 in terms of both ‘area’ and ‘uses’. The RTA is a 100 foot area buffer extending from a D.R. zoned tract boundary into the property or the site to be developed. BCZR, §1B01.1.B1a(1). The purpose of the RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types. BCZR, §1B01.1.B1a(2). There are numerous exceptions to the RTA as listed in BCZR, §1B01.1.B1g.

Section 1B01.1.B1b clarifies that the transition ‘area’ is generated if “the property to be developed is zoned DR and lies adjacent to land zoned D.R.1, D.R.2, D.R.3.5, D.R. 5.5 or R.C. which:

(1) Contains a single-family detached, semi-detached or duplex dwelling within 150 feet of the tract boundary; or

* * * *

Within the transition 'area', conditions on setbacks and buffers are imposed under §1B01.1.B1e. The 50 foot buffer must "remain an upgraded, uncleared, landscaped buffer unless otherwise directed by the hearing officer, based upon recommendations of the county." §1B01.1.B1e(3). A parking lot for a church must provide a 50 foot buffer and 75 foot setback from the track boundary. §1B01.1.B1e(2).

In determining whether the 'area' is generated here, it is necessary to determine whether the proposed use as a 'church' is a 'residential transition use' under §1B01.1.B1d. Given that 'churches' are permitted uses as of right under §1B01.1.A.3, a church is a residential transition use under §1B01.1.B1d(1). Next, in determining whether the 100 foot transition 'area' has been generated, the property to be developed must be in a DR zone and be adjacent to one of the DR zones listed in §1B01.1.B1b. The property here is located in the DR 3.5 and is located adjacent to a DR 5.5 zone. Thus, the transition area has been generated.

The Petitioner argues that because she is not making any exterior structural changes or additions to the home, than the RTA does not apply. In support of her argument, the Petitioner cites the definition of "development" in BCC, §32-4-101(p) which definition includes: "(1) the improvement of property for any purpose involving building." She therefore concludes that since there is no improvement or building completed, in progress or contemplated, there is no development.

We disagree. The Petitioner is 'developing' the property because she is "improving" it by changing the landscaping, driveway and parking that is required under BCZR to change the

use from single family home to church. The definition of "improvement" is found in BCC §32-4-101(w):

(w) *Improvements.*

(1) "Improvements" means improvements as determined necessary and appropriate by the county.

(2) "Improvements" include:

- (i) Streets;
- (ii) Drains, bridges, and culverts;
- (iii) Sewers;
- (iv) Water lines;
- (v) Open space;
- (vi) Curbs and gutters;
- (vii) Sidewalks and paths;
- (viii) Streetlights;
- (ix) **Landscaping;**
- (x) Stormwater management facilities;
- (xi) Traffic-control devices;
- (xii) Telecommunications conduits; and
- (xiii) **Other improvements as determined**

necessary and appropriate by the county.

(Emphasis Added).

In reviewing the proposed use, the County required the Petitioner to landscape the property. Toward that end, the Petitioner submitted a landscaping plan (Prot. Ex. 6). The County required the Petitioner to plant (8) 6 ft.- 8ft. tall green giant arborvitae to screen the parking lot from the adjoining property. With this required landscaping, the Church is subjected to the RTA regulations.

Additionally, the County, through the BCZR §§409.6, 409.8A2 and 409.8A6. requires that certain parking requirements be met for church parking lots. These are the same requirements from which the Petitioner is seeking variance relief. Consequently, the parking spaces, the surface of the parking area and the striping of the parking area are not only necessary and appropriate under BCC, §32-4-101 (w)(1) and (2)(xiii) above, but are required.

Given that the transition area is generated by this proposed use as a church, the next issue is whether the plan qualifies for an exception from the RTA restrictions under 1B01.1B.1g(6). The Petitioner argued in the alternative that the proposed use is not subject to RTA requirements because it meets the exception listed in B.C.Z.R. 1B01.1B.1g(6) wherein the landscaping plan was approved:

a new church or other building for religious worship, the site plan for which has been approved after a public hearing in accordance with Section 500.7 and to the extent possible, the proposed use shall comply with RTA use requirements and the plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.

As the Board analyzes this, of the 16 exceptions listed in BCZR 1B01.1Bg, if any exception applies here based on the facts, Subsection (6) is the only possible candidate.

However, in applying the evidence to exception (6), the proposed Church does not even minimally comply with the RTA requirements. The proposal is for no buffer and no setbacks. The evidence did not show that the plan submitted by the Petitioner would be compatible with the character or general welfare of the surrounding homes which homes are occupied by the Protestants who testified. The Board finds credible the concerns voiced by the Protestants concerning increased traffic generated by this use in the middle of a residential block.

While the Petitioner testified that there were 30 members, the parking calculations on the site plan revealed that this was a 64 seat church. The Petitioner agreed that members could bring guests and family members as well as children. We see this Church as being in the early stage of growth and we expect and anticipate that it will continue to grow, particularly given the charitable work that it does. The modest size of this single family home, on 1.2 acres, is not sufficient to house the planned functions and services.

In reviewing the photographs of the other churches in the area, we notice that with the exception of one church, all of those churches are located in DR 5.5 or DR 16 zones, or they are located on a corner. In addition, all of those churches have adequate land for a parking lot. Those parking lots are paved and striped. Because of this, there is adequate ingress and egress and sufficient control of church traffic. As a result, the impact on the surrounding properties is less. In the case of 4619 and 4535 Old Court Road, those buildings are large and there is still room for paved parking. In this case, however, it is not, in our view, compatible with the neighborhood, for cars to park on the grass for church activities that will occur during the week and on weekends.

As one of the Protestants mentioned, there is no dispute that the work of this Church is admirable and is providing a great service to individuals who truly need the Church's help and guidance. However, the issue for this Board is whether this use, at this particular location, is compatible with the character and general welfare of the surrounding residences. We note that neither the Petitioner, Mr. Sterling nor Ms. Jean-Louis live in the neighborhood and thus the perspective of the Protestants is understandably different. We find, based on the evidence, that this use is not compatible in this location and therefore fails to meet exception (6).

2. Parking Variances.

As to the Petitioner's request for Variances from the BCZR parking requirements, based on the Board's decision to deny the request for Special Hearing relief, the variance requests are moot. If the Petitioner is not entitled to a waiver of the RTA standards and the property does not qualify under one of the RTA exceptions, the parking variances are not needed.

While we need not address the parking variances, if the Petitioner was entitled to the special hearing relief, this Board would have also denied the parking variances. For the

Petitioner to succeed on a variance request, this Board must follow the standard in Section 307.1 of the BCZR which states, in pertinent part, as follows:

.....(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare....

The Petitioner argued that the property is unique because it was a little larger than other lots in the neighborhood. Protestant, Barbara Roberson testified that her lot was compatible in size to the Property. We do not agree that this point meets the uniqueness standard in *Cromwell v. Ward*, 102 Md. App. 691 (1995), wherein the Court writes:

...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...."

Id. at 698.

In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical

restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or parting walls....

Id. at 710. We find that, actually, the property is more similar to other properties in the neighborhood than it is different. The evidence presented shows no unusual property characteristics which would warrant a deviation from the parking requirements.

So that the record may be clear, we further find, even assuming *arguendo* that the property was somehow determined to be unique, that no showing of practical difficulty has been established. Petitioner admitted on cross examination that nothing prevents the use of the Property as a single family home. Moreover, the law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722.

In this case, all of the hardships are self-imposed. The Petitioner purchased the property without performing the due diligence necessary to make certain that the zoning would permit her intended use. The fact that she made improvements to the property, in addition to the purchase price, only adds to the self-inflicted nature of the hardship.

For all the foregoing reasons, we deny the Petitioner's request for variances.

ORDER

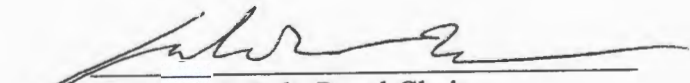
THEREFORE, IT IS THIS 9th day of October, 2013, by the Board of Appeals of Baltimore County,

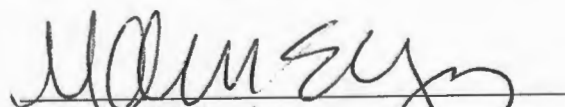
ORDERED that the Petition for Special Hearing seeking relief from §500.7 of the Baltimore County Zoning Regulations ("BCZR") to: (1) allow a new church for religious worship on the subject property; (2) allow a residential transition area ("RTA") buffer of 0' in lieu of the required 50'; and (3) allow a RTA setback of 0' in lieu of the required 75' from a track boundary to a parking lot or structure. be and the same are hereby **DENIED**; and it is further,

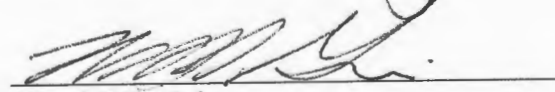
ORDERED that the Petitioner's request for a Petition for Variance filed pursuant to BCZR §§409.4, 409.8A2 and §409.8A6 to: (1) allow 4 parking spaces that do not have direct access to an aisle; (2) allow a gravel surface of the parking area in lieu of a durable and dustless surface; and (3) allow no striping of the parking area, be and the same 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**


Andrew M. Belt, Panel Chair


Maureen E. Murphy


Wendell H. Grier



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 9, 2013

Edward J. Gilliss, Esquire
102 W. Pennsylvania Avenue
Suite 600
Towson, MD 21204

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

RE: *In the Matter of: Reverend Lucy Ware – Legal Owner/Petitioner*
Case No.: 13-147-SPHA

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,

Sunny Cannington

Krysundra "Sunny" Cannington
Acting Administrator

Enclosure
Duplicate Original Cover Letter

c: Reverend Lucy Ware
Tom and Ruthanne Otto
Lillian Nolley
Tim and Peggy Lang
Dale Watkins
R. Eddie Daniels
George and Martha Zentz

Bruce E. Doak
Barry and Sylvia Powell
Helen Aiken
James S. Patton
Jeffrey and Rathea Mims
Clyde and Muriel Lyles
Reverend Ervin Dantzler

Jimmie and Barbara Roberson
Gayle Emerson
Linda Miller
Wade Young, II
Al and Evelyn Michel
Ella Green
Office of People's Counsel

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney

John E. Beverungen, Administrative Law Judge
Arnold Jablon, Director/PAI
Michael Field, County Attorney, Office of Law

From: Krysundra Cannington
To: Wiley, Debra
Date: 9/27/2013 1:13 PM
Subject: Lucy Ware
Attachments: Deliberation Minutes.pdf

Debbie,

Per our conversation, attached please find a pdf copy of the deliberation minutes in the matter of Lucy Ware 13-147-SPHA.

Additionally, as I indicated by phone, the final opinion has not yet been issued. We anticipate having it out within the next few weeks.

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

Sunny

Sunny Cannington
Legal Secretary and Acting Administrator
Board of Appeals of Baltimore County
Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
(410) 887-3180

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.

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Reverend Lucy Ware 13-147-SPHA

DATE: July 30, 2013

BOARD/PANEL: Andrew M. Belt, Chairman
Wendell H. Grier
Maureen E. Murphy

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Hearing to allow:
 - A. a new church for religious worship on the subject property;
 - B. a RTA buffer of 0 feet in lieu of the required 50 feet;
 - C. a RTA setback of 0 feet in lieu of the required 75 feet from a track boundary to a parking lot or structure;
2. Petition for Variance to allow:
 - A. 4 parking spaces that do not have direct access to an aisle;
 - B. parking area with gravel surface in lieu of durable and dustless surface;
 - C. parking area with no striping

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board reviewed the history of this matter. The Board discussed the requests and statutory requirements which would allow them to grant the requests. The Board discussed that in order to grant the RTA setbacks as the Code requires that the Petitioner comply as much as possible with the law.
- The Board discussed that the Petitioner purchased the property and has been using the property as a church, it seems the use became an issue and this matter is now before the Board.
- The Board reviewed the testimony provided at the hearing. Members of the congregation appeared at the hearing and testified in favor of the church and the location. Members of the community appeared at the hearing and testified in opposition to the church. The Board reviewed that the neighborhood in which the subject property is located, has 5 established churches located in the residential area on corners or at ends of blocks. The Board discussed that the subject property is a residential property, in the middle of a block in the middle of a residential neighborhood and the subject property is too small for the requested use. Testimony was provided detailing all the wonderful things the Petitioner does for her congregation and others.
- The Board determined that the proposed use for the subject property is not compatible with the surrounding neighborhood.
- The Board reviewed the requirements of *Cromwell v. Ward*. The subject property is not unique within the standards of *Cromwell*. Without uniqueness, this matter does not get into the other prongs of the *Cromwell* standards.

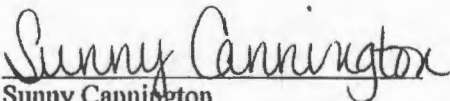
DECISION BY BOARD MEMBERS:

The Board determined that the proposed use at the subject property is not compatible with the surrounding neighborhood and the property does not meet the standards of *Cromwell v. Ward*.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the requested relief.

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

7/16/13

IN RE: PETITION FOR SPECIAL HEARING *
AND VARIANCE

4512 Old Court Road

REVEREND LUCY WARE
Legal Owner/Petitioner

2nd Election District
2nd Councilmanic District

BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: 13-147-SPHA
*

* * * * *

PROTESTANT'S MEMORANDUM

Protestants hereby submit this Memorandum before the Board in Lieu of Final Argument by and through their attorney, *J. Carroll Holzer, Esquire*, Holzer & Lee, and say:

I.

STATEMENT OF THE CASE

This matter came before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Variance filed by Bruce E. Doak on behalf of Reverend Lucy Ware, Legal Owner. The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (hereinafter referred to as "B.C.Z.R."), (1) To allow for a new church for religious worship on the subject property; (2) to allow a Residential Transition Area (hereinafter referred to as "R.TA."), buffer of zero feet (0') in

RECEIVED
JUL 15 2013
BALTIMORE COUNTY
BOARD OF APPEALS

lieu of the required fifty feet (50') and (3) to allow an R.T.A. setback of zero feet (0') in lieu of the required seventy-five feet (75') from a track boundary to a parking lot or structure. The Petition for Variance sought the following relief:

1. To allow four (4) parking spaces that do not have direct access to an aisle per §409.4 of the B.C.Z.R.;
2. To allow gravel surface of the parking area in lieu of a durable and dustless surface per §409.8(a)(2) (B.C.Z.R.);
3. To allow no striping of the parking area per §409.8(a)(6) (B.C.Z.R.).

The Site Plan was marked before the Administrative Law Judge (hereinafter referred to as "A.L.J.") as Petitioner's Exhibit #1.

The Administrative Law Judge stated the following:

"This case turns on the Residential Transition Area (R.T.A.) in the B.C.Z.R. The Regulations indicate the purpose of the R.T.A. is to 'assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between similar housing types.' Citing 1B01.1.B.1.

The A.L.J. found the R.T.A. Regulations are applicable to a church building in a D.R. Zone. The A.L.J. found that the enumerated Agencies of Baltimore County **did not** make a recommendation for Variance of the R.T.A. and in fact Mr. Dennis Kennedy indicated in his ZAC comment that the R.T.A. buffer must be provided and thus, Petitioner is not entitled to seek a Variance under this Regulation. Kennedy further required the driveway and parking area to be striped and durable and dustless surface due

to the grade of seven percent (7%) which is too steep for non-durable surfaces and dustless due to close proximity to adjacent houses. Finally, he stated the R.T.A. may not be reduced to zero feet (0').

The A.L.J. also cited B.C.Z.R. §1B01.1.B.1.G(6) as the sole avenue of relief for the Petitioner. The A.L.J. found that, as an initial matter, it does not seem that as if that Regulation is applicable since the Petitioner is not really constructing a new church but a conversion of a single-family dwelling to a church with no proposed improvements. The A.L.J. further found, assuming the Regulation is applicable, he did not believe the Petitioner is entitled to an R.T.A. exception since it is his opinion the church will not be "compatible with the character and general welfare of the surrounding residential premises."

The A.L.J. cited the fact that the Petitioner had conducted church services and other activities at the property and they have been disruptive to the neighborhood citing cars parked and overflow children onto adjacent property.

The A.L.J. in making his Decision and included in this record, is evident that there were complaints filed by the neighborhood with Zoning Enforcement and Code Enforcement Complaint Report established that complaints were received on 4512 Old Court Road on October 31, 2012, Complaint No.: C00120184. The Petitioner filed an appeal to the A.L.J. Denial, the County Board of Appeals which conducted a *de novo* hearing on June 18, 2013.

II.

STATEMENT OF FACTS BEFORE THE BOARD

The Petitioner was represented by Edward J. Gilliss, Esquire and the Protestants who testified represented by the undersigned and the People's Counsel of Baltimore County represented by Carole S. Demilio, Esquire.

A. APPELLANTS CASE.

1. Reverend Lucy Ware.

Reverend Lucy Ware testified that she purchased a former residential home to utilize as a church to support her ministry. She purchased the property on August 31, 2012. She admitted that she **did not check** with the County for any Regulations that needed to be complied with before she purchased the property. She further admitted that they used the property for an event and acknowledged pictures submitted by the Protestants to support the fact that cars were parked all over the grass. She further acknowledged that she had received complaints about the number of communicants of the church running on other properties and that there was a Code Enforcement Review of the incident. Subsequently, she filed the aforementioned Petition for Special Hearing and Variance. She acknowledged that she placed gravel in the rear of the property for a parking area. She admitted that in the future if all the parking spaces were taken she would park the excess vehicles on the grass. She indicated that there would be Sunday morning services and Wednesday, prayer meetings from 7:00 p.m. to 8:30 p.m. and

Monday through Friday, 7:00 p.m. to 8:30 p.m. She indicated most parishioners would drive to the property by car or bus. She testified that they may have two (2) services on a Sunday as growth of her ministry required.

The subject of her ministry is that she helps children and families in trouble with the law and counsels domestic problems.

2. Michael Sterling, Jr.

Michael Sterling, Jr. is an eighteen (18) year old who lives with two (2) church members and is a member of the church testified that he was involved with the law and the church helped him. He graduated from Pikesville High School.

3. Bruce E. Doak.

Bruce E. Doak testified that he was a property line surveyor who prepared the Site Plan.

He attempted to explain the Petition for Special Hearing and the need for the variances. He prepared Petitioners Exhibit #22 for a revised parking which was objected to and the Board ruled that Alternative Site Plan could not be substituted for the one submitted to the A.L.J. and to the Board.

On cross-examination, Mr. Doak admitted by preparing Petitioners Exhibit #22 for identification, that in effect the variance request could not meet the standard to apply to a grant of the variance.

B. PROTESTANTS CASE.

Protestants submitted the testimony of a number of adjacent neighboring property owners who objected to the Petitioners request. A common thread among the Protestants witnesses was the fact that they did not oppose churches because there were a number of churches in the nearby neighborhood that were suitably located on larger pieces of property and/or had existed along Old Court Road for many years having been placed there before the Communities were created. Their general concern was that this request was in the *middle* of the block surrounded by residential homes and was an inappropriate site location for a church which proposed such multi-faceted activities.

The following witnesses testified as Protestants.

1. Mrs. Rathea Mims and Jeffrey R. Mims.

Mrs. Rathea Mims and her husband, Jeffrey R. Mims, 3508 Old Court Road, testified that they had lived at their home for eighteen (18) years. They testified that the subject property had been run into and the subject of three (3) deadly accidents on the property where cars had hit the front of the building by jumping the curb from Old Court Road. They identified the dentist's office at 4518 Old Court Road as not affecting negatively the Community in that there are no more than two (2) patients at a time, no evening, no weekends and no signs on the property to indicate that it was a dentist's office. They testified that the prior owner of the subject site, contrary to the testimony of Reverend Ware, that the owners were not drug dealers and that the property was well maintained until they moved out. They testified that Reverend Ware did not reach out to the Community to discuss her action in acquiring the property for a church.

2. Ms. Barbara Roberson.

Ms. Roberson is also in opposition to the church and testified that her lot is the same size as the church lot and there was nothing unique about it. She was concerned about the value of her property being decreased and she fears increased activity by the members of the church, the parking of cars and noise from the location are all concerns. She objects to any signs being raised and believes the use of the property as a church will negatively impact the traffic on Old Court Road. She felt that the use of this residential property in the middle of the block and in the middle of a residential neighborhood was objectionable, whereas most churches in the neighborhood are located on corner lots.

3. Dale Watkins.

Ms. Watkins resides at 4513 Dresden Road which is adjacent to the subject site and which is in the rear of the subject site's property line. She has resided at the site since 2001. Her concerns expressed are related to traffic congestion and parking on the subject property, which would overflow onto the street and the neighborhood. She was concerned that the church had potential to grow beyond their current request which would overcrowd the lot which is located in the middle of the residential neighborhood. From her home, she can see the cars parked in the rear yard as being proposed on the Site Plan. She indicated further that there are drainage problems in the area which affected the subject site. She is concerned about excessive noise and many diverse church activities. She experienced first-hand the activity which caused the Zoning Enforcement Department of the County to be called in October, 2012.

4. Ruth Otto.

Ruth Otto of 4523 Tabscot Road. Ruth Otto and her husband, Tom Otto purchased their home at 4523 Tabscot Road and have lived there over forty-four (44) years. She testified that the neighborhood is a friendly, diverse Community of mostly homeowner occupied ranchers and split level homes with well kept lawns. Maintaining her home and her property value is very important. She testified that she did not oppose churches and further testified that a block from this home there is a nice quiet little church on the corner of Old Court Road and Scotts Level Road with a small congregation, proper buffers and a real parking lot, welcoming to all – a very good neighbor. She further testified that the variances that this proposed church is requesting and the increased traffic and congestion that could be caused by a church in the middle of the block is a great concern. There are many small grandchildren who visit often and if traffic is impeded in the middle of the block of Old Court Road, the traffic will detour on Tabscot Road at speeds that are not safe. She further testified that a “new owner who puts up NO TRESPASSING signs all around the property wants exceptions to all the rules at the expense of neighboring property and creates a noise and parking nuisance and increased traffic in the middle of a block is not appropriate in our residential neighborhood.” The “proposed church” would not enhance or even uphold our Community values. She testified that she felt traffic noise and activities would be detrimental to the lifestyle and property values of the neighborhood.

5. **Kyra Lyles.**

Kyra Lyles testified she has lived at 4511 Dresden Road for thirty-five (35) years. She is directly behind the proposed the proposed church location. She testified the church location has suffered occasional disruptions to the neighborhood in the past. She is an avid follower of Christ and believes in the purpose of the church. She also believes in the proper adherence to the law. She found that the establishment of this proposed facility has caused more disruption to our peaceful neighbor than she was comfortable with. She felt that a church in this location is not a proper fit for our neighborhood. We have been made to feel uncomfortable in our own backyard. Her relatives were filmed for no good reason and NO TRESPASSING signs were erected right in front of her back door. She does not believe her property or her privacy has been respected by the new owner/proposed church. She did not believe the value of her home will survive this type of establishment.

6. **George and Margaret Zentz.**

George and Margaret Zentz, 4509 Old Court Road. She is located across the street from the proposed church at 4509 Old Court Road. They purchased their lot and built a home in 1949 and have lived on the site for sixty-three (63) years. There are five (5) churches within a short distance of this location. She does not believe we need another one in the middle of the block. "We cannot imagine a church right across the street with very little parking space. Parking cars on Old Court Road is illegal.

Consequently, major traffic jams not only on Sunday, but also on any day of the week they plan to have an activity there. We feel this would affect our property values and we believe the church will do nothing but expand.”

7. **Reverend Lillian Nolley.**

Reverend Lillian Nolley, 4500 Dresden Road. She has resided there for twenty-three (23) years and she testified that she is concerned with further loss of residential atmosphere of the Community. She is concerned with the impact on traffic on Tabscot, Streamwood and Old Court Roads. She initially purchased her home which was based on the residential neighborhood and the peace and tranquility of the Community that she was moving into. Even though she is a Reverend, she felt that the proposed site was inappropriate for a church.

In summary, the Protestants’ witnesses articulated the same basic concerns that this proposed church in the middle of the block would be disruptive to the Community and objectionable even though almost unanimously the Protestants who testified were of strong religious beliefs and churchgoing members of the Community. Their testimony reinforced the findings of the A.L.J. when he concluded to deny the Petitioners request. The Protestants, as lay persons, request this Board to likewise deny the Petitioners request. However, there is a legal component to this issue relative to the R.T.A. requirements of the B.C.Z.R. The Protestants retained Mr. James S. Patton, P.E., who testified in regard to the submitted Site Plan and opined that the Petitioners request for Special Hearing and Variance should be denied.

In addition, the People's Counsel, by Carole S. Demilio, Esquire, who participated in this Hearing, will submit a written Memorandum addressing some of the same issues as Protestants' counsel. We hereby adopt as if fully set forth herein, the Legal Arguments and the Memorandum submitted by the People's Counsel to the Board in this case.

III.

LEGAL ARGUMENT RELATIVE TO JAMES S. PATTON'S TESTIMONY AS IT RELATES TO THE R.T.A.

Patton qualified as an expert in Land Planning, Zoning, Land Development, Site Engineering and with prior experience in church facilities. He testified that he had previously been involved in matters dealing with the R.T.A. Legislation pursuant to Article 1B01.1.B.1 of the B.C.Z.R. He testified that the one hundred foot (100') line from tract boundary around the property has not been shown on the Petitioners Site Plan. A proposed seventy-five foot (75') R.T.A. setback and a fifty foot (50') R.T.A. buffer line has been shown but the R.T.A. area of the site has not been shown. He characterized the surrounding neighborhood from his site visit and a review of aerial photography as D.R. 3.5 around the subject property, single-family residential. He testified as to his opinion that the proposed "church will impact the surrounding Community due to over-intensification and adversely affect the neighbors due to the size of the proposal, the number of parking spaces and types of activities, etc." He had an opinion in regard to the

process that took place in this case and that was “this is an ‘after the fact’ attempt to legitimize an activity which commences without County due process and approval that is required plans and petitions were not submitted nor approved prior to proceeding with the development of and the use of the property for a church.” He further opined that the variance being requested were not appropriate in that this subject site was not unique. He further testified that there was no hardship and if so that it has been self-created by the owner of the property in an attempt to over-utilize the property for a use by right, i.e., a church. Any practical difficulty or hardship was self-imposed due to the owner’s failure to comply with the Baltimore County Zoning Regulations and Development Regulations.

When asked to discuss the legal issues involved in this case, Patton explained as follows:

This case revolves around two main issues:

- The application of the County Code and the B.C.Z.R. to Churches in D.R. Zones.
- The petitioning and approval process for obtaining Baltimore County permission to have a church in a D.R. - 3.5 Zone.

Relative to the approval of a Development Plan for a church, which is permitted as a “Use by Right” in a D.R. 3.5, there are specific sections of the B.C.Z.R. which must be applied. In particular where there are smaller lots and dissimilar housing types

Residential Transition Areas (R.T.A.) apply:

Dwelling-type and other supplementary use restrictions based on existing subdivision and development characteristics.

By B.C.Z.R. Section 1B01.1B.1.a.

Definitions and purpose.

- (1) The residential transition area (R.T.A.) is a one-hundred-foot area, including any public road or public right-of-way, extending from a D.R. zoned tract boundary into the site to be developed.
- (2) The purpose of an R.T.A. is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types.

For purposes of applying R.T.A. and the B.C.Z.R. provisions relative to R.T.A., a church is considered a “non-residential” use and is a “dissimilar housing type” relative to “single-family detached” housing.

Based on the impact to a neighborhood/community and compatibility findings, the Hearing Officer, now A.L.J. and the CBA, has latitude in determining the Residential Transition Area (R.T.A.) but *only when findings have been determined relative to a Development Plan has been filed for review and approval in accordance with Article 32 of the County Code*. This is clearly applicable in this instance in accordance with B.C.Z.R. 1B01.1B.1.c :

c. Variance of R.T.A.
[Bill No. 2-1992]

- (1) Notwithstanding the provisions of Section 307, the hearing officer, upon the recommendation of the Departments of Public Works, Planning, Environmental Protection and Sustainability, Permits, Approvals and Inspections, Recreation and Parks, or Economic Development, may determine the amount of

R.T.A. in cases where a single tract is more than two acres, is vacant, or contains no more than one single-family detached, semidetached or duplex dwelling.

- (2) The R.T.A. for a tract may be modified as directed by findings pursuant to § 32-4-402 and the hearing officer's hearing under Article 32, Title 4, Subtitle 2 of the Baltimore County Code. However, the hearing officer may not reduce the amount of R.T.A. unless the officer specifically finds and determines that such a reduction will not adversely impact the residential community or development on the land adjacent to the property to be developed. (Emphasis added.)

[Bill No. 137-2004]

As per the B.C.Z.R., this is the procedure for modification of the R.T.A. Further as per Baltimore County Code Article 32, PLANNING, ZONING, and SUBDIVISION CONTROL, Title 4, DEVELOPMENT while a "Limited Exemption" might be granted, if such had been requested. There is no record that the D.R.C. received such an application regarding the subject property. There was no evidence presented by the Petitioner that the DRC ever took any action regarding this proposed development. The Petitioner failed in properly following the adopted procedure of Article 32 of the County Code. Even if the DRC had granted a Limited Exemption under Section 32-4-106, by item.

- (3) All development exempted under this subsection shall comply with Subtitles 3, 4, and 5 of this title and all applicable Baltimore County Zoning Regulations.

The proposed development of a church on this tract has not complied with Subtitles 4 as to compatibility, as to 32-4-412 – Landscaping, in particular. The filing, review and approval of a Development Plan for this site is the procedure for showing compliance with Article 32 of the Baltimore County Code. Further, in this instance, as shown by Mr. Patton's testimony, the R.T.A. was never shown on the Plat to Accompany the Petition, therefore the ALJ/Hearing Officer correctly disapproved the Petition and the CBA should likewise Deny.

There is agreement that a church is "Permitted as of right under §1B01.1.A" and is a residential transition use which is permitted. However the development of such a use on this site is subject to the B.C.Z.R. 1B01.1B.1.e regarding "Conditions in residential transition areas," in particular:

- (2) Group-house, back-to-back group houses, multifamily building and parking lots shall be set back from the tract boundary seventy-five feet (75') and provide a fifty-foot (50') R.T.A. buffer.
- (3) The fifty-foot (50') R.T.A. buffer shall remain an upgraded, uncleared, landscaped buffer unless otherwise directed by the hearing officer, based upon recommendations of the county. It shall not contain cleared drainage areas, storm water management ponds or accessory structures, but it may be bisected by roads, paths and trails that are designed to connect to adjoining developments. *(Refer to CMDP for diagram).*
.....
- (5) Parking lots or structures, either as principal or accessory use, whether permitted by right, special exception or pursuant to Section 409.8.B *(not applicable in this instance)*, shall provide a fifty-foot buffer and seventy-

five-foot setback, and a height not to exceed thirty-five feet (35') within the one hundred foot (100') transition area.

Granted there are, as enumerated in the B.C.Z.R., Exceptions to residential transition. The restrictions contained in Paragraphs a through e above, of this Subsection B.1, do not apply to:

- (6) A new church or other building for religious worship, the site plan for which has been approved after a public hearing in accordance with §500.7. Any such hearing shall include a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with R.T.A. use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.
[Bill Nos. 109-1982; 40-1992]

A "Site Plan," commonly used interchangeably with "Development Plan," was never submitted to the County for review regarding this development. Hence, there could never have been a "public hearing". So, by logic, this "Exception to residential transition" does not apply to the present issue. Albeit, by following appropriate County Code Article 32, this could be remedied. Briefly, from the County Code definitions of Article 32:

(p) *Development*. "Development" means:

(1) The improvement of property for any purpose involving building;

(q) *Development Plan*. "Development Plan" means a written and graphic representation of a proposed development prepared in compliance with Subtitle 2 of this title.

(w) *Improvements.*

(1) "Improvements" means improvements as determined necessary and appropriate by the county.

(2) "Improvements" includes:

.....
(v) Open space;

(vi) Curbs and gutters;

(vii) Sidewalks and paths;
.....

(ix) Landscaping;

(x) Storm Water Management Facilities;
.....

(xiii) Other improvements as determined necessary and appropriate by the county.

And further from the Code:

(ddd) *Non-residential Plan.* "Non-residential Plan" means a Plan of Development in which the dominant element of the Plan is (1) a commercial development, (2) an industrial development, or (3) a senior housing, assisted living, life care, continuing care or elderly housing facility, church, school, or other institutional use.

As a particular item which was testified to by Mr. Patton during his testimony, the landscape requirements of the Baltimore County Landscape Manual as adopted in accordance with the Baltimore County Code was not followed by the County staff regarding this petition. Under the section titled General Standards of the Landscape Manual there are specific requirements for:

D. Residential Transition Area (R.T.A.) Buffers

The R.T.A. buffer area is intended to provide a spatial and vegetative buffer between an existing residential use and proposed dissimilar housing types, buildings, or parking lots. No grading or clearing is allowed in the R.T.A. buffer unless directed by the hearing officer (CMDP, "Residential Standards," page 15). The use of a planting scheme reflective of natural Maryland landscape is recommended for proposed plantings.

The unwooded area of the R.T.A. buffer shall be planted in accordance with the following formula:

Area of buffer in square feet/400 = total Pus required

A minimum of thirty percent (30%) of the required planting units shall be evergreen trees and a minimum of fifty percent (50%) shall be major deciduous trees. The extent of the existing tree canopy coverage that has actually been retained shall be determined at the close-out stage.

This requirement is a County "Standard." While County staff, through a Departmental Director's recommendation can process and suggest a "waiver," only the Hearing Officer can grant a waiver to the County Standards after due process of a public hearing. In this instance, as presented during the Petitioner's case, having an "approved landscape plan" was clearly misrepresented. In point of fact, there was no indication anywhere on the "plat to accompany" of any acknowledgement of the Landscape Manual requirements for the landscaping of **"Residential Transition Area (R.T.A.) Buffers."**

This is an "after the fact" attempt to legitimize an activity which commenced without County due process and approval. That is required plans and petitions were not submitted nor approved prior to proceeding with the development of and the use of the

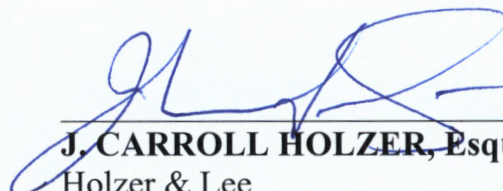
property for a church. As testified by Mr. Patton, the property is not unique and the hardships, if there are any, have been self-imposed by the owner/petitioner of the property in an attempt to over utilize the property for a use by right, i.e., a church and the parking required to support the size of the church.

IV.

CONCLUSION

Protestants respectfully request the Board DENY the Special Hearing and Variances request and allow this subject property to remain as a residential use only.

Respectfully submitted,



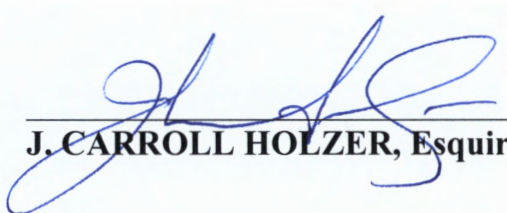
J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of July, 2013, a copy of the foregoing Protestants Memorandum was mailed first class, postage pre-paid to the following:

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

Edward J. Gilliss, Esquire
Baltimore County Planning Board
c/o Royston, Mueller, McLean
& Reid, LLP
102 West Pennsylvania Avenue
Suite 600
Towson, Maryland 21204-4510



J. CARROLL HOLZER, Esquire

7/15/13

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
4512 Old Court Road; 277' SW	*	BOARD OF
c/line of Streamwood Drive		
2 nd Election & 2 nd Councilmanic Districts	*	APPEALS FOR
Legal Owner(s): Reverend Lucy Ware		
Petitioner(s)	*	BALTIMORE COUNTY
	*	2013-147-SPHA

* * * * *

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Introduction. The decision in this case begins with the interpretation and application of the Residential Transition Area statute found in BCZR 1B01.1.B. *et. al.* ("RTA"). The RTA applies to development in all the Density Residential ("DR") zones if the proposal is adjacent to any DR or Resource Conservation ("RC") site that either contains a dwelling within 150 feet or is capable of supporting a dwelling and is less than 2 acres. The RTA is a 100 foot area extending from the boundaries of the surrounding DR or RC sites into the proposed development. The purpose of the RTA is to provide distances and buffers between potential incompatible uses and structures.

In addition to dwellings, the DR zone permits, *by right*, Churches, hospitals, community garages, certain research institutes, certain schools, transit facilities, parking facilities, and accessory uses. BCZR 1B01.1.A. Uses permitted *by special exception* are camps, conservatories, convalescent homes, community buildings, community care centers, child care centers, fishing facilities, funeral establishments, helistops, colleges, public utility centers, radio and television studios, veterinarians offices, voluntary fire company stations, and cell towers. BCZR 1B01.1.C. Some of these uses are exempted from the RTA regulations, some require conditional compliance, and others require adherence to the RTA standards.

RECEIVED
JUL 15 2013

BALTIMORE COUNTY
BOARD OF APPEALS

The Petition. The petition here centers on a new church use in a residential dwelling and requests special hearing relief "To allow a new church for religious worship on the subject property per section 1B01.1B1g (6) (BCZR)" and for a number of deviations from the RTA standards. The petitioner requests an RTA *buffer* of 0 feet in lieu of the required 50 feet and a RTA *setback* of 0 feet in lieu of 75 feet. The Petitioner also requests three variances from BCZR Section 409 to allow 4 parking spaces that do not have direct access to an aisle, to allow gravel surface of the parking area in lieu of a durable and dustless surface, and to eliminate the requirement of striping the parking spaces. For some uses, a request for lesser RTA setbacks is treated as a variance request. (BCZR Section 1B01.1 B. 1.c.). Here, a "new church or other building for religious worship" appears to require special hearing approval under BCZR 500.7, subject to a degree of compliance to foster compatibility and the general welfare of the community. BCZR 1B01.1B.g.(6).

The proposed church will be located in an existing residential dwelling in the midst of other residences. Petitioner's Exhibit #2, the Maryland Department of Assessments and Taxation printout, indicates the area is known as Diane Acres. Public records show the Diane Acres Plat for residential subdivision was recorded in the land records for Baltimore County in 1978 in EHK Jr 42, folio 55.

The petitioner's desire to operate a church generates the setback and buffer. If the property continued its residential use, it would not be subject to the RTA standards. Even Mr. Bruce Doak, petitioner's surveyor, concurs, and acknowledges the site could continue as a residence. The bottom line is that this is a major new proposal, which demands a fresh look at all the standards. It should be kept in mind that a church use has specific parking and setback requirements. The RTA deviation and the other variances make possible a use that otherwise would not fit on the premises. In this context, while a church is a use permitted by right in the D.R. 3.5 Zone (BCZR Section 1B01.1 A. 3.), consideration of the reduced setbacks and other variances is inextricably

intertwined with the impact of the proposed church use. That is to say, the petition deserves no favorable status just because the use is permitted by right. The proposed use and the area requirements should be considered as an integrated whole, and not disconnected from each other or in isolation.

RTA Law, Legislative History, and Applicability. A question has arisen as to whether RTA law applies only to assure "...that similar housing types are built adjacent to one another. . ." (Bill 2-92; BCZR Section 1B01.1.B.1.a.(2)). The focus, under this approach, is to protect adjacent single-family homes from apartment uses. But clearly this is not the only application. The RTA statute states in section 1.d:

"d. A residential transition use is any use:

(1) Permitted as of right under Section 1B01.1.A; or

(2) Any use permitted by special exception under Section 1B01.1.C, except an accessory use permitted only by special exception; or

(3) Any parking area permitted under Section 409.8.B, subject to the approval of a specific landscape plan for the buffer area which must meet the requirements for a Class A plan."

Moreover, section 1.g. lists exceptions to residential transition such as shoreline fishing and shellfish facilities, bed and breakfast facilities, assisted living facilities, Class A, and transit and rail passenger stations. Other uses, such as churches, community buildings, and group child care centers require conditional compliance. All other permitted and special exception uses as well as the business parking in a residential zone use are not exempt and must comply with RTA standards. Clearly, the statute itself does not limit the RTA to "dissimilar housing types". Otherwise subsection 1.g (1)–(16) is superfluous and without meaning. We submit, as protestants' expert witness Mr. James Patton testified, that "dissimilar housing types" extends also to any nonresidential structure or nonresidential use. The entire legislative context, history, and language confirm this broad scope of the law.

The RTA legislation evolved over many decades this may account for the perceived question of applicability raised at the hearing. Based on our research, the RTA law came into being with Bill 100, 1970. Bill 124-81 identified exceptions to the RTA, such as public utility uses and reconstruction of an existing church destroyed by natural causes. There was no exception for new churches. Bill 124-81 also introduced the building setback and buffer area provisions in then BCZR Sections 1B01.B.2.B.3, which substantially are still in place albeit as amended in BCZR Section 1B01.1.B.1.e. Bill 26-88 subsequently identified RTA uses to include business parking in a DR zone under BCZR 409.8. Bill 2-92 provided new definitions and purposes for "residential transition area" and its "generation." This included the introductory purpose to assure similar housing types adjacent to one another. BCZR Section 1B01.1.B.1.a.2. This is still the law.

Bill 2-92 also added the provision for variance of the RTA area itself, subject to certain standards, including that the hearing officer "... may not reduce the amount of RTA unless the officer specifically finds and determines that such a reduction will not adversely impact the residential community or development on the land adjacent to the property to be developed." BCZR Section 1B01.1.B.1.c. The RTA has been applied in many cases before the now Administrative Law Judge and this Board.

Bill 2-92 also included geographic frameworks of "... a 100 foot area ... extending from a D.R. zoned tract into the site to be developed" and "An RTA is generated if the property to be developed lies adjacent to land zoned D.R. 1, D.R. 2, D.R. 3.5, D.R. 5.5 or R.C. ... (subject to further criteria)." BCZR Sections 1B01.1.B.1.a.1, and 1B01.1.B.1.b. These remain in the current law.

Bill 40-92 subsequently added the various exceptions to the RTA for public utility uses, community buildings, fishing and shell fishing facilities, group child care centers, conversions to bed and breakfast homes and inns and country inns, assisted living facilities, and transit facilities and rail passenger stations; AND for the first time, the conditional exception in paragraph 6 for "A new church or other building for religious

worship, the site plan for which has been approved after a public hearing in accordance with Section 500.7. Any such hearing shall include a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.” BCZR Section 1B01.1.B.1.G. 6. These remain, with modest subsequent amendments.

Bill 68-11 amended the RTA exception for churches on split zoned sites where the building is located on the Business Roadside (“BR”) portion of the tract and for setbacks from adjoining RC sites. While not applicable to the instant case, it is significant that this 2011 amendment was enacted after CBA decisions applying the RTA standards to church uses in the DR zones. See Windsor Mill Gospel Hall, Inc. #03-049-A. This calls into play general principles of statutory construction and well established principles that if the County Council intended the RTA did not apply to churches, it would not have enacted the most recent Bill 68-11, at the very least.

Principles of Statutory Construction. As a matter of statutory construction, there are applicable the time-honored principles recently summarized in Bourgeois v. Live Nation 430 Md. 14, 26-28 (2013). These include an integrated consideration of purpose, language, legislative history, practical impacts, and common sense. All related parts of the statute must be considered, so that no part is superfluous. Apparent differences must be harmonized. In the present situation, these principles support our office’s position that the RTA law has evolved explicitly to cover churches.

It is also significant that the consistent administrative practice has been to apply the RTA law to churches. It is presumed the legislative body was aware of the outstanding decisions and practice when it enacts amendments to legislation, as has occurred with some frequency for the RTA law. This presumption was articulated in

reference to state legislation in The Maryland Classified Employees Association, Inc. v. Schaeffer, 325 Md. 19, 34 (1991):

"Furthermore, "[t]he General Assembly is presumed to have had, and acted with respect to, full knowledge and information as to prior and existing law and legislation on the subject of the statute and the policy of the prior law." (citation omitted). See also *Lussier v. Maryland Racing Commission*, 343 Md.681 (1996)."

Similarly MLE Section 65 summarizes this principle:

"A contemporaneous construction, especially where there are subsequent reenactments without change of the language thus construed, is entitled to great weight." (citations omitted).

In Washington Suburban Sanitary Commission v. C.I. Mitchell and Best Co. 303 Md. 544, 559. (1985), a 1985 declaratory action for statutory construction, the Court upheld a long-standing administrative interpretation that was not disturbed by subsequently enacted statutes.

"This legislative acquiescence in the administrative construction gives rise to a presumption that the administrative interpretation is correct."

The law has thus evolved beyond the stated preliminary purpose to assure that similar housing types are adjacent to one another. If it were not already apparent, the addition by Bill 40-92 of the various exceptions to the RTA law would make no sense and be unnecessary if the RTA law applies only to dissimilar residential uses. As Mr. James Patton, testified, the phrase "housing types" is not restricted to dwellings but includes other uses within the structures.

Appellate decisions on statutory construction support the application of the RTA here; otherwise the amendments described above would serve no purpose.

"When we pursue the context of statutory language, we are not limited to the words of the statute as they are printed in the Annotated Code. We may often and must consider other "external manifestations" or "persuasive evidence," including a bill's title and function paragraphs, amendments that occurred as it passed through the legislature, its relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context within which we read the particular language before us in a given case." Kaczorowski v. Mayor and City Council of Baltimore, 309 Md. 505, 515 (1987).

"[t]he meaning of the plainest language is controlled by the context in which it appears." Building Materials Corp of America v. Bd of Ed of Baltimore County, 428 Md. 573 (2012).

"The cardinal rule of statutory construction is to ascertain and carry out the intention of the Legislature. . . . Our search for legislative intent begins, and usually ends, with the words of the statute at issue. . . . When the statutory language is clear, we need not look beyond the statutory language to determine the Legislature's intent. . . .

Sometimes the statutory language is susceptible of more than one meaning. When faced with an ambiguity, courts must consider not only the literal or usual meaning of the words but also the meaning of words in light of the statute as a whole and within the context of the objectives and purposes of the enactment. . . . Common sense must guide us in our interpretation of statutes, and "we seek to avoid constructions that are illogical, unreasonable, or inconsistent with common sense. . . . Although this Court is not limited to the literal or usual meaning of statutory language, . . . the Court may not insert or omit terms to make a statute express an intention not reflected in the statute's original form. . . ." Marriott Employees Federal Credit Union v. Motor Vehicles Administration, 346 Md. 437, 444-446 (1997).

As noted above, the CBA has applied the RTA to churches and other DR uses in past decisions without legislative reaction or suppression from the County Council. The presumption is the correctness of these prior decisions.

" . . . The weight given an agency's construction of a statute depends on several factors – the duration and consistency of the administrative practice, the degree to which the agency's construction was made known to the public, and the degree to which the Legislature was aware of the administrative construction when it reenacted the relevant statutory language. . . . Other important considerations include "the extent to which the agency engaged in a process of reasoned elaboration in formulating its interpretation" and "the nature of the process through which the agency arrived at its interpretation," with greater weight placed on those agency interpretations that are the product of adversarial proceedings that are the product of adversarial proceedings or formal rules promulgation. . . ." (citations omitted). *Id.*

Analysis. To make a long story short, the present petition presents an entirely new proposal, neither grandfathered nor supported by any existing situation. It must comply with current law, and this includes both the RTA and other variances. Because the proposed church parking occupies a significant portion of the subject site, it is unnaturally extensive in this residential subdivision. It must be emphasized that the relief requested is to the maximum – zero setbacks and buffers. And the parking

variances conflict with the statutory requirement for compatibility and general welfare with the neighborhood. As noted, the extensive encroachment into the RTA buffer and setback areas make possible a church use to a size and scale much greater than otherwise possible.

Impact on the Character of the Area. This standard is crucial in the present case. Over and above the basic RTA standards, “. . . compatible with the character and general welfare of the surrounding residential premises.” and, in the case of a development plan, “. . . not adversely impact the residential community or development on the land adjacent to the property to be developed.” there must be an inquiry as to whether the proposed use fits in the area. It puts even more emphasis on the matter of fit and compatibility with the quality of the neighborhood. Consideration of size and scale becomes even more important. See People’s Counsel v. Magione, 85 Md. App. 738, 746-47, n. 6 (1991).

Variance standards; Uniqueness Resulting in Practical Difficulty. Meanwhile, to justify a variance, BCZR Section 307.1 requires proof of a special circumstance or condition peculiar to the land or structure (uniqueness), which results in practical difficulty or undue hardship. Trinity Assembly of God v. People’s Counsel 407 Md. 53, 79-85 (2008). The test is not abstract uniqueness by itself, i.e. that the property is shaped a certain odd way, for example. Rather, there must be real uniqueness which results in practical difficulty in using the property under the existing law. Quoting McLean v. Soley 270 Md. 208, 213-14 (1973), the Court identified the relevant criteria, paraphrased here, as whether the zoning law unreasonably prevents the property owner from using the property for a permitted purpose, whether the grant would do substantial justice to the property owner and other property owners in the area; and whether the spirit of the ordinance will be observed and the public safety and health secured.

There is no doubt that the subject site in this case has had a reasonable residential use for many years without the maximal choice of utilizing the residence and the entire site as a church and church parking lot. It is hard, therefore, to perceive any genuine unique situation which results in any difficulty or hardship which would justify variances, especially since the requests here unduly overcrowd the site and disturb the neighborhood with a gravel parking lot that generates noise, dust and runoff, unlike anything on the area's residential lots. (Comment of Dennis Kennedy, Bureau of Development Plans Review). Indeed, petitioner for some unknown reason introduces an exhibit that allegedly could comply with the buffer although not the setbacks. (petitioner's Exhibit. 22). But that alternative has not been reviewed by the County agencies and is not an option for this Board. It does demonstrate petitioner's lack of practical difficulty and her complete disregard of the RTA standards. The proposal here is a matter of choice, not necessity. It appears that this use belongs on a larger parcel with some reasonable boundaries and buffers from the residential uses. Indeed, the protesting witnesses point out that an existing church in the area is on a larger lot, on the fringe of the neighborhood, and so relatively compatible with the residential uses.

Insufficiency and Noncompliance of Petitioner's Site Plan. It is obvious that a measured review of the site plan in this case is not possible without identification of the actual residential transition area (100 ft) and identification of the surrounding dwellings within 150 ft of the subject site. BCZR Section 1B01.1B.1.a.(1) and Section 1B01.1B.1.b.(1), respectively. Neither is shown on petitioner's site plan (petitioner's Exhibit 18). The enlarged aerial map of the neighborhood (protestants' Exhibit 11) shows the surrounding dwellings but the CBA has no measurable indication of the distances crucial to the application of the RTA.

Moreover, the Department of Permits, Approvals and Inspections ("PEI") checklist for Plats states: "It [plat] shall contain all the information as set forth on the checklist as follows: . . . [including] 9. BUILDINGS: The general use, building and lot

dimensions and all facing property line setbacks of buildings on adjoining lots." (emphasis added).

The purpose of the RTA is thwarted, and the credibility of petitioner's witnesses and the merits of the petition are in jeopardy without full disclosure of key facts that illustrate the impact on the neighborhood. Indeed, the testimony of protestants, discussed later in this memorandum, demonstrates the adverse effects when the protection afforded by RTA setbacks and buffers, as well as general parking standards, are disregarded. The petitioner is required to present a site plan or plat with the required information so that the CBA has the necessary facts and appropriate view of the site in the context of its surroundings. Clearly, the plan here is defective.

Testimony of Protestants. The five neighbors described succinctly the reasons the proposed use is inappropriate at this site. Ms. Sylvia Powell said it best when she remarked that there is "a place for everything". It echoes Euclid v. Ambler Realty Co. 272 U.S. 365 (1926), where the Supreme Court validated comprehensive zoning. The Court sustained the constitutionality of residential zones which in that case prohibited apartment building use. Justice Sutherland wrote that common law nuisance provides a clue to the legitimacy of zoning,

"Thus, the question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality. ... A nuisance may be merely the right thing in the wrong place, like a pig in the parlor instead of the barnyard." 272 U.S. 388. (citation omitted).

The Court also recognized the evolution of urban planning, including the insight that in a detached house section "... very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district." 262 U.S. at 394.

This is not to say that apartments are always incongruous next to single-family detached dwellings. Rather, they can present serious problems. The RTA statute addresses contiguous but incongruous uses with setbacks and buffers. Here, an attempt to reduce the buffer and setback to an absolute 0 feet and shoe-horn the church in the midst of single-family dwellings illustrates the type of problem the Supreme Court envisioned.

Testimony of Petitioner Lucy Ware. Petitioner Lucky Ware acknowledges the church activities include much more than Sunday services. The church engages in counseling for families, individuals, and the homeless, presumably for non-members as well as members of the congregation. These outreach programs require participants to meet at the church various days and times.

The scheduled services include prayer services at least 3 evenings per week, choir practice at least two evenings per week, and Sunday Bible study and services from 9:00 a.m. until 1:30 p.m. Petitioner acknowledged additional prayer services could be scheduled as well as other church events at the site. Ware is also authorized to perform wedding ceremonies. Moreover, she did not rule out a daycare facility if church funds become available. Rather, she only stated there is no plan now for a daycare.

Clearly, as the number of members increase or if other services are required in the opinion of the petitioner, the church could be utilized throughout the day, every day of the week. Petitioner and two members of the congregation testified the primary focus is to meet the needs of the members and to reach out to troubled individuals, broken families and the homeless. While she stated the current membership is 30, the number can obviously increase. For instance, the petition requests parking for 16 vehicles which allows for 64 members. (See Site Plan, petitioner's Exhibit 18 "parking calculation").

It appears the current church members do not reside in the neighborhood. It was stated some reside in Pikesville but most reside inside the beltway. Nor does petitioner

reside in the neighborhood. She currently conducts services temporarily in her home on Liberty Road. She does not want to permanently operate the church in her home or in her own neighborhood. As a result, unfortunately, here plan shifts the adverse impact to the determinant of the resident here.

Petitioner attempted to buttress her cause by discussing the improvements made to the interior of the house and the roof. She claimed without any substantiation whatsoever, that the site must have been a "crack house". The insinuation was that the relief should be granted because she improved her investment with repairs and renovations. But the long-time neighbors refuted the crack house allegation and claimed the house had been well kept by the previous owner. Furthermore, there is no *quid pro quo* - allowing relief from zoning standards in exchange for improving the appearance of the site. Furthermore, most of petitioner's improvements were to the interior of the site for her benefit, not the neighborhood. Even if there is some collateral benefit to the neighborhood here, who can dispute that renovations and repairs may have also been made if the house continued as a residence. Anyway, some modest improvement in appearance would not justify the detrimental impacts from congestion, overcrowding, and the advise impacts.

The Church's Operation. Before receiving zoning approval, the church began operating at the site. The protesting witnesses described the disturbing noise and commotion at several events. They testified the 40+ cars for the event parked on the site and in the area were unsightly, potential causing unsafe conditions, and completely out of character on a small residential lot in the midst of single family detached dwellings.

Other neighbors were concerned about the amount of traffic generated by the institutional use. While this may occur generally with churches, this site is located on an interior residential street where the homeowners park, and is in the middle of the block surrounded by residences in every direction.

Mrs. Mims described one deadly accident where a car jumped a curb and careened into the house, a concern with the influx of drivers not familiar with the neighborhood streets. Petitioner claims the dental office in the neighborhood is a comparable use. But Mrs. Mims distinguished the dentist office, a subdued practice, permitting the semi-retired dentist to retain only 10 of his oldest patients. She pointed out he has no weekend appointments and there is no sign. On the other hand, she witnessed at least 50 people attending the church event in October, 2012. Mrs. Mims was troubled that petitioner's failure to reach out to the community with her proposal is indicative of her lack of concern for the neighborhood.

Mrs. Robinson refuted Ms. Ware's testimony that her subject site is a larger, and thus unique lot, noting that her lot is the same size. She is concerned the church use would decrease her property's value and that activities at the church would extend in number and size beyond that described by petitioner. The number of cars and the noise various activities generate is troublesome. She objects to any signs for the church as out of character. She distinguished the existing church as unobtrusive and not in the middle of the neighborhood.

Ms. Watkins lives to the rear of the site and was bothered by traffic congestion at church events and the unsightliness of cars visible from her home. She also emphasized there was never a "crack house" at the site. She described the October 2012 event as an outdoor "revival". She is also concerned that overcrowding the site will exacerbate drainage problems in the area. She states the proposed use is impractical at this site and is concerned that the church's diverse activities will have a negative effect on the neighborhood as well as the enjoyment of her home.

Mrs. Otto has lived in the neighborhood for 44 years and states nearly all the homes are owner-occupied. She also is concerned about the negative impact on property values. In contrast to the proposed church here, she found the existing area

church unobtrusive and not in close proximity to dwelling. She observed also that the proposal will generate unsafe traffic conditions.

Mrs. Powell is likewise disturbed by the appearance and noise. Significantly, she articulated the reasonable apprehension that approval would open a "Pandora's Box" of more intense church use with increasingly frequent and intense events and activities.

Reverend Lillian Nolley who does therapy walking past the site, states it detracts from the neighborhood and is not a positive contribution. She personally participates in church services in Baltimore City and notes the presence of a church does not deter crime in the area. While Reverend Nolley applauds the type of work of the proposed church here, she believes such work can be done in a more appropriate location.

It is clear from the testimony of these witnesses that the neighborhood was not laid out for this institutional use on an interior street and interior lot. The problems witnessed and reasonably anticipated by the neighbors demonstrate the proposed use is incompatible and in conflict with the general welfare of the residential subdivision as a whole and a disturbance to these homeowners particularly.

The Site is Unsuitable. The RTA is intended to provide reasonable setbacks and buffers for dissimilar uses. In both operation and appearance the proposed church overwhelms the surrounding residences. The neighbors testified the increased traffic creates congestion and unsafe conditions. Unlike all the other dwellings, an institutional parking lot will dominate the yard and lawn on the site. By some twisted logic, petitioner claims the larger size makes it unique and deserving of the variances and special hearing relief to reduce the buffer and setback to zero. But the size did not prevent its use as a residence for many years. The parked cars, the daily comings and goings of members and others church participants, as well as the outside activities, all infringe upon the neighbors and the residential setting, the exact impingement the RTA standards intend to eliminate or at least minimize. Here, in requesting zero setbacks and buffer, there is not even a modicum of compliance with the RTA.

In actuality, the site is too small for the proposed use. Moreover, the size, scale and number of church activities conducted without any buffer or setback, intrude on the residential character of the neighborhood. The neighbors are concerned that the use will diminish the value of their homes. This is the perfect example of "the right thing in the wrong place."

The testimony of the neighbors indicates petitioner made no attempt to contact the neighbors to explain her proposal and address their concerns. Some never saw her until the hearing. In this light, there is a legitimate concern that petitioner would not abide or respect conditions or restrictions if the use were approved conditionally. Furthermore, enforcement would place an undue burden on the neighbors. The residents should not have to police the site, count cars, or be saddled with continuous monitoring of the activities. The bottom line is the use does not fit on the site under any circumstances.

Nor is petitioner entitled any leeway because she failed to obtain zoning approval as a contract purchaser. Indeed, to the contrary, it is the buyer's responsibility to consult with the proper legal authority to determine if a use is permitted – most assuredly for a relatively unorthodox institutional use for a dwelling at this site in the midst of a long-standing residential community. If Petitioner had consulted with the neighbors prior to purchasing the site, she may have been alerted to the zoning regulations and their concerns. Instead she unabashedly burst into the neighborhood with outdoor events for about 40-60 attendees.

Testimony of Bruce Doak. Petitioner offered Mr. Doak, a surveyor, as an expert in land use and the Baltimore County Zoning Regulations. He described the premises and did not dispute the church use is subject to the RTA regulations. He also discussed the variances. Mr. Doak claimed strict compliance with the regulations would cause practical difficulty for petitioner but offered no basis other than petitioner desires to operate a church at the site. Remarkably, petitioner has chosen the most severe

deviation from the RTA capable on the site. Mr. Doak's opinion relied primarily on the fact that the church building will continue to look like a residence, despite a proposal for at least 22 parking spaces within both the 75 foot setbacks and the 50 ft buffer. Instead he offered that the existing driveway for the dwelling does not comply with the RTA. This is irrelevant. Should the petition be approved because a driveway does not comply? And if the use remained a residence, then the driveway is not subject to the RTA standards, as Mr. Doak later conceded. The witness admitted the shape is the same as the other lots in the subdivision but inexplicably contends its somewhat larger size justifies reducing the RTA setback and buffer to zero and granting the variances. This position is mystifying. As noted, Mr. Doak admitted the house could continue as a residence without application of the RTA. His testimony never effectively refuted the testimony of the protestants that the church use is incompatible and has an adverse effect on the general welfare of the neighborhood.

On cross examination, Mr. Doak could not justify his position in light in the January 14, 2013 comment of Mr. Dennis Kennedy, Supervisor, Baltimore County Bureau of Development Plans Review. Mr. Kennedy stated: **"The RTA may not be reduced to 0 feet because a Landscape screen should be provided."** Mr. Kennedy was also adamant that the site's 7% slope is too steep for the non-durable surface requested and must be a dustless surface, not the gravel requested by petitioner, because **"the petitioner is seeking to reduce the RTA. Also, a durable dustless surface is generally quieter than gravel, when driven on."** Mr. Kennedy also requires widening the driveway to 16 feet for safe maneuvering on the site, and requires a widened entrance portion of 20 feet **" . . so that cars are not stopped on Old Court Road waiting for cars exiting the site."** Mr. Kennedy's comments support the concerns expressed by the neighbors that the use interferes with traffic and creates unsafe conditions. Furthermore, Mr. Doak acknowledged that more cars could be crammed on the site if petitioner is not required

to put in striped parking spaces as required by BCZR, thus further exacerbating the traffic congestion.

When questioned about his testimony in light of Mr. Kennedy's written comment, Mr. Doak could only say he disagrees without explaining his position. Likewise, Mr. Doak was not able to explain his position in light of ALJ Beverengen's denial. He could not point out any errors in the ALJ's Opinion and Order, but could only say he disagreed.

Clearly, a large parking lot cramped on the site, and the necessary widening of the driveway and entrance, contradicts Mr. Doak's testimony that the site will continue to look like a residence and the compatibility standard in BCZR. Mr. Doak also based his opinion on the fact that other religious facilities exist in the "immediate neighborhood." In cross-examination, it turns out not all such facilities are in the immediate area, and that most are located on major roadways, not interior residential streets. Furthermore, Mr. Doak had no evidence whether these sites complied with the RTA and other zoning requirements, making his testimony on this point both irrelevant and unpersuasive. Contrary to Mr. Doak's baseless testimony, the neighbors testified that the one church in the immediate area is located on a large lot on the periphery of the neighborhood, is unobtrusive and not in close proximity to residences on all sides.

When questioned whether the petitioner could locate on other sites in Baltimore County, Mr. Doak acknowledged that a church is permitted in some fashion in nearly all the residential zones and other zones: RC (Resource Conservation) 3, 5, 6 zones by right, RC 2 by special exception, RC 7& 8 if the prior zone on the site permitted a church by right, and DR 1, 2, 3.5, 5.5, 10.5, 16), the residential office zones (ROA and RO), the office zones (OR-1 and OR-2) and the three business zones (BL, BM, BR) if the site adjoins a residential zone. Clearly, petitioner has other more suitable options which can comply with the RTA and other zoning requirements. A permitted use does not have an absolute right to operate on every site in the zone; it must still abide by the setbacks

and other standards. Moreover, the CBA is not obligated to overlook or give short shrift to the area requirements just because the use is permitted by right. Every use is conditional to the extent it must meet all the area and setback standards in the zone. As noted, Petitioner's failure to investigate the zoning requirements prior to purchase is not legally defensible. There is no justification to grant the petitions at the expense of the homeowners in this settled residential community.

Finally, as pointed out above, Mr. Doak's site plan is deficient and misleading. He denies that a specific approval of the site plan under the RTA statute is required, despite the language in BCZR RTA subsection g. (6) requiring a site plan for a new church or other building for religious worship " . . . which has been approved after a public hearing in accordance with BCZR 500.7." In other words, there is no relief from the RTA unless the use is approved, including findings that " . . . compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises." We submit petitioner's request for zero setbacks and buffer does not meet the requirements of minimal compliance, compatibility, and maintenance of the general welfare of the community. The site plan and the testimony of Mr. Doak provide no basis to grant the petitions for special hearing and variance relief. There was no testimony that the property is unique under variance standards in BCZR 307 and Cromwell v. Ward 102 Md. App. 691 (1995). The only distinction Mr. Doak made was that the lot was larger than others in the neighborhood – which is hardly relevant nor justification "to allow 4 parking spaces that do not have direct access to an aisle. . . To allow gravel surface of the parking area in lieu of a durable and dustless surface . . . To allow no striping of the parking area. . ." It is simply illogical to propose lesser setbacks for a larger lot. The bottom line is the site is not unique in any way, and it follows there is no practical difficulty to justify the variances.

Likewise, Mr. Doak offered no testimony to support the special hearing relief for the RTA standards. He never addressed the increased traffic coming into the neighborhood; the incompatibility of 16 automobiles, at a minimum, parked on a residential lawn; the overcrowding of the site and the noise generated when the current membership of 30 attend Sunday services; weekday prayer services; twice weekly evening choir practices; and outdoor activities that admittedly will occur from time to time, as well as counseling sessions, meetings and other gatherings. There was simply no evidence for the CBA to find that the proposed use is "... planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises." Simply put, there can be no finding of compliance because the plan depicts zero setbacks, zero buffer and no landscape plan.

Testimony of James Patton. Protestants offered James Patton, an engineer and expert in Baltimore County land use and zoning. Mr. Patton reviewed the complete zoning file, the site plan, County zoning regulations and the County Code. He visited the site and is familiar with the area. Mr. Patton testified unequivocally that the RTA applies to the church use here. He explained the language in BCZR that the RTA applies to "dissimilar housing types" does not exempt the church here. He stated for purposes of applying the RTA, a church is considered a "non-residential" use and is in fact a dissimilar housing type relative to a single family detached structure.

Mr. Patton regarded petitioner's site plan as incomplete and lacking the required and necessary information and illustrations. He pointed out the RTA boundaries are not shown completely and accurately. The plan does not show the size of the surrounding lots, whether they are vacant or improved, and the distances from the dwellings and lots to the subject site, despite the language in the RTA and the Zoning Review Checklist requiring this data.

There is no proposed landscape plan and no space to create one. Mr. Patton points out the RTA requires that a parking lot for the proposed use shall maintain a seventy-five foot set-back and a fifty foot buffer which "... shall remain an upgraded, uncleared, landscaped buffer unless otherwise directed by the hearing officer, based upon recommendation of the county." Here, no County official appeared in support. The most significant official comment, from Mr. Kennedy, is against the request to reduce the buffer to 0 feet "... because a Landscape screen should be provided." Furthermore, the Baltimore County Landscape Manual's General Standards section for the RTA buffer between "dissimilar housing types, buildings or parking lots" emphasizes "... a spatial and vegetative buffer ... and the use of a planting scheme reflective of natural Maryland landscape ... " including "A minimum of 30% ... evergreen trees and a minimum of 50% shall be major deciduous trees."

Unlike Mr. Doak, Mr. Patton agrees with Mr. Kennedy's comments about the parking area and lack of any RTA setback. Mr. Patton also points out the site plan does not show any parking curbs or bumper blocks to regulate and limit the parking on the site. Instead, he predicts cars will be squeezed erratically on the site. Mr. Patton stated the proposal is too intense and expansive for the neighborhood, has an adverse effect on the neighboring residences, crowds the land, presents unsafe traffic ingress and egress. He saw no justification for the variances since the lot is the same as others in the neighborhood, or even slightly larger.

Mr. Patton testified there is no legally substantiated hardship here but rather a self-created predicament. Petitioner purchased the site knowing the proposed use, yet failed to determine if zoning and development regulations permitted the conversion of a dwelling into an institutional use, including the statutory setbacks and other limitations and restrictions.

Zoning Law. Evans v. Shore Communications 112 Md. App. 284, 1996 at 308 supports Mr. Patton's testimony:

"Moreover, while SCI unfortunately may have painted itself into a corner when it entered into a lease agreement for the property for the purpose of constructing a proposed tower, "the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process. . ." [citations omitted] "To grant a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "urgent necessity, hardship peculiar to the particular property. . ." (underlined emphasis added).

While the special hearing here is not strictly a variance, the special hearing standards to alter the RTA setbacks discuss "adverse impact" "compatibility" and "general welfare" relative to the surrounding residential community. Moreover, the impact of reduced RTA setbacks and buffers is similar to the issues for variance relief for building setback requirements in the DR zones. BCZR 1B01.2 C.

In general, zoning regulations, including the RTA standards, are for the common good and not the specific interest, economic or otherwise, of the property owner.

"As an exercise of the government's police power, zoning laws are generally aimed at the protection of the public's health, safety, and general welfare. [citations omitted] Accordingly, the adoption and enforcement of local zoning ordinances is intended to strike a balance between the public welfare and a landowner's right to use his or her property for any purpose that would otherwise be lawful." [citation omitted]. Relay v Sycamore 105 Md. App. 701,735 (1995), affirmed 344 Md. 57.

". . . zoning is an interference (if done correctly, a permissible one) with a property owner's constitutional rights to use his own property as he sees fit." Mossburg v. Montgomery County 107 Md. App. 1,5 (1995) reconsideration denied, cert denied 341 Md. 649.

Variance Law and Burden of Proof.

" . . . with respect to variances, it is said that a variance is 'designed as an escape hatch from the literal terms of the ordinance which, if strictly applied, would deny a property owner all beneficial use of his land and thus amount to confiscation.'" (citations omitted). Anderson, American Law of Zoning. Section 20.02, p. 411,412. Judge Cathell pointed out in Cromwell v. Ward 102 Md. App. 691 (1995):

"The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. See, e.g., A. Rathkopf, 3 The Law of Zoning and Planning Section 38 (1978)." Id. 651 A.2d 424, 430.

In Riffin v. People's Counsel, 137 Md. App. 90 (2001), the Court stated:

" . . . we note that a variance, if granted, permits a use that is normally prohibited and presumed to be in conflict with the ordinance. *North v. St. Mary's County*, 99 Md. App. 502,510, 638 A.2d 1175 (1994). "An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable. That is done, if at all, by satisfying fully the dictates of the statute authorizing the variance." *North*, 99 Md. App. At 510, 638 A.2d 1175."

BCZR 307.1 states that the CBA may grant variances:

"... only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship."

The first inquiry here is whether the property is peculiar or "unique." If evidence of uniqueness is insufficient or unpersuasive, the inquiry ends there. Cromwell v. Ward 102 Md. App. 691 (1995); Umerley v. People's Counsel 108 Md.App. 497 (1996); Riffin v. People's Counsel, supra. If this threshold is passed, the further question is whether the unique condition results in "practical difficulty." McLean v. Soley 270 Md. 208, 213-15 (1973).

The word "unique" is defined strictly. Otherwise, anyone could make some sort of claim. In Cromwell, 102 Md.App. at 710 (1995), the Court stated:

"In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property.

'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

In Easter v. Mayor & City Council, 195 Md. 395 (1950), the Court reaffirmed the burden rest with petitioner:

"The burden of showing facts to justify an exception or variance rests upon the applicant, and it must be shown that the hardship affects the particular premises and is not common to other property in the neighborhood."

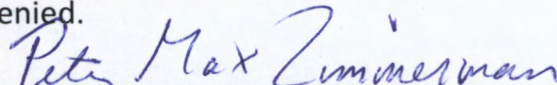
In Marino v. City of Baltimore, 215 Md. 206 (1957), the Court further elaborated on the burden of proof:

"The expression 'practical difficulties or unnecessary hardships' means difficulties which are peculiar to the situation of the applicant for the permit and are not necessary to carry out the spirit of the ordinance and which are of such a degree of severity that their existence amounts to a substantial and unnecessary injustice to the applicant."

"[I]t was incumbent upon the Marinos to have shown... (ii) that the difficulties or hardships were peculiar to the property in question in contrast with those of other property owners in the same district."

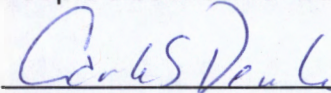
Thus, there must be a causal relationship or connection between the alleged "uniqueness" and "practical difficulty." The alleged "uniqueness" must be viewed in context.

Summary. Petitioner failed to meet the burden of proof under both RTA special hearing standards and variance law. The protestants and Mr. Patton, the expert witness, enumerated the negative effects on the community if the petitions are granted and their testimony was not refuted. For these reasons and others enumerated, the special hearing and variance petitions must be denied.



PETER MAX ZIMMERMAN

People's Counsel for Baltimore County



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 15th day of July, 2013, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed to J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, Maryland 21286 and Edward Gilliss, Esquire, 102 West Pennsylvania Avenue, Suite 600, Towson, Maryland 21204.



CAROLE S DEMILIO

Deputy People's Counsel for Baltimore County

6/16/13

IN RE: PETITIONS FOR
SPECIAL HEARING AND VARIANCE

2nd Election District
2nd Councilman District
(4512 Old Court Road)
Reverend Lucy Ware
Petitioner

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 2013-0147-SPHA

* * * * *

POST-HEARING MEMORANDUM OF PETITIONER,
THE REVEREND LUCY WARE

The Reverend Lucy Ware, Petitioner, by her undersigned counsel, hereby submits this Post-Hearing Memorandum as directed by the Board of Appeals of Baltimore County at the conclusion of the June 18, 2013 proceeding before the Board of Appeals.

INTRODUCTION

The Reverend Lucy Ware ("Reverend Ware") owns the property known as 4512 Old Court Road, Baltimore, Baltimore County, Maryland, having purchased the property on or about August 31, 2012. Reverend Ware's title to the property is reflected in the Deed recorded among the Land Records of Baltimore County at Liber 32581, Folio 132 ("Property").

Reverend Ware is a pastor and leads the congregation known as Jesus Christ is the Answer Ministries. Reverend Ware and her congregation desire to convert the interior of the Property so as to allow it to be used as a place of worship.

The Property is located just a handful of parcels west of I-695. The area is substantially residential although the Talmudical Academy of Baltimore is located just on the east side of the I-695 overpass (4445 Old Court Road) and the Blessed Trinity Church of Deliverance is located

a similar distance in the westerly direction at the intersection of Old Court Road and Scotts Level Road (4535 Old Court Road).

The Property is located in a DR3.5 zone. Pursuant to Baltimore County Zoning Regulations ("BCZR") 1B01.1A3, churches are permitted "as of right" in zones such as the one in which the Property is located. The Property is served by public water and public sewer.

In January, 2013 a Petition for Special Hearing and Variance was filed with the Department of Permits, Approvals and Inspections seeking:

1. A parking variance to allow four parking spaces that do not have direct access to an aisle pursuant to BCZR §409.4;
2. A variance to allow gravel surface on the parking area in lieu of a durable and dustless surface pursuant to BCZR §409.8A2;
3. A variance to allow no striping on the parking area pursuant to BZCR §409.8A6;
4. A Special Hearing to allow a new church for religious worship on the subject property pursuant to BCZR §1B01.1B1g6;
5. A Special Hearing to allow a residential transition area buffer of zero feet in lieu of the required 50 feet pursuant to BCZR §1B01.1e5; and
6. A Special Hearing to allow a residential transition area set back of zero feet in lieu of the required 75 feet from a tract boundary to a parking lot or structure pursuant to BZCR §1B01.1e5.

CASE HISTORY

This matter was first heard by an Administrative Law Judge on February 27, 2013. This matter was then heard by the Board of Appeals in a de novo proceeding on June 18, 2013.

Testimony was received from the Petitioner, Reverend Ware, from Reverend Ware's land use expert Bruce Doak, and from members from Reverend Ware's Jesus Christ is the Answer Ministries congregation. Certain area residents opposed the requested zoning relief and the Board heard testimony from several area residents and from James Patton, an engineer retained by those area residents.

APPLICABLE LAW

Baltimore County Zoning Regulation (BCZR) §1B01.1 states:

- A. Uses permitted as of right. The following uses only are permitted as of right in D.R. Zones of all classifications, subject to the restrictions hereinafter prescribed.

...

- 3. Churches, other buildings for religious worship or other religious institutions.

BCZR §1B01.1B concerns Residential Transition Areas (RTA). In pertinent parts it states:

- 1. Residential Transitional Areas and uses permitted therein.

- a. Definitions and Purpose.

- (1) The residential transition area (RTA) is a one-hundred-foot area, including any public road or public right-of-way, extending from a D.R. zoned tract boundary into the site to be developed.

(2) The purpose of an RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types.

b. Generation of residential transition area. An RTA is generated if the property to be developed is zoned D.R. and lies adjacent to land zoned D.R. 1, D.R. 2, D.R. 3.5, D.R. 5.5 or R.C. which:

(1) Contains a single-family detached, or semi-detached or duplex dwelling within 150 feet of the tract boundary; or

(2) Is vacant, less than two acres in size and contains a buildable area of at least 20 feet by 30 feet in which a dwelling meeting all required setbacks can be erected.

c. Variance of RTA.

(1) Notwithstanding the provisions of Section 307, the hearing officer, upon the recommendations of the Departments of Public Works, Planning, Environmental Protection and Sustainability, Permits, Approvals and Inspections, Recreation and Parks, or Economic Development, may determine the amount of RTA in cases where a single tract is more than two acres, is vacant, or contains no more than one single-family detached, semidetached or duplex dwelling.

(2) the RTA for a tract may be modified as directed by findings pursuant to §32-4-402 and the hearing officer's hearing under Article 32, Title 4, Subtitle 2 of the Baltimore County Code...

APPLICATION OF FACTS TO LAW

I. RTA does not apply at all

The fair reading of applicable zoning regulations is that RTA provisions must not apply to existing structures in residential areas where no exterior modification of the structure is sought.

The clear purpose of RTA provisions is to “assure that similar housing types are built adjacent to one another.” (Emphasis added.)

In instances such as Reverend Ware’s desire to use the Property for church purposes, nothing is to be “built” and the “similar housing types” which existed prior to Reverend Ware’s purchase of the Property continue to appear today as they did when the structures were built.

The legal analysis of the scope of the RTA regulations was recently addressed by the Office of Administrative Hearings for Baltimore County in an Opinion and Order Dated March 22, 2013 in Case 2013-0147-SPHA. There, in concluding that RTA regulations do not apply with respect to a proposed Sonic Restaurant at 2027 York Road, Timonium, Maryland, Administrative Law Judge John E. Beverungen stated:

“Likewise, I do not believe that the RTA regulations are applicable in this case. Assuming for a moment they were, I do not believe the Petitioner presented a sufficient case for variance relief from those regulations. Indeed, [the petitioner] testified that the site was in fact not unique, but was similar to other commercial zoned properties in that vicinity of York Road...

Further confusing matters, the BCZR provides a specific provision for “Variance of RTA,” which apparently “trumps” Section 307 of the Regulations and the cases (like Cromwell) which have interpreted that provision. BCZR §1B01.1.B.1.c. Under that specific provision, the RTA may be modified in

a development plan hearing (not applicable here) or by the “hearing officer” upon the recommendation of a county agency, which also seems to suggest that the issue will arise in the context of a development plan or HOH, as opposed to a zoning case. In addition, Section 307 itself provides that the Zoning Commissioner may grant variances from height, area, sign and parking regulations, but may not “grant any other variances.” These, and other inconsistencies, are what caused me in a recent case to describe the RTA regulations as “hard to decipher,” and I think describing them as cryptic might be charitable.

In any event, RTA regulations are designed to “assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types.” BCZR §1B01.1.B.1.a. “An RTA is generated if the property to be developed is zoned D.R. and lies adjacent to land zoned D.R.”

See Exhibit “A.”

On April 16, 2013, in a reconsideration of the same case, the Administrative Law Judge again visited the issue of RTA regulations. There he stated:

“I do not believe the RTA regulations are applicable in this case. At the outset, the [County] Council’s stated purpose (not often included in codified legislation) in adopting such regulations was to “assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types.” BCZR §1B01.0.B.1.a.(2). There is no housing proposed to be constructed in this case, and thus I do not believe the RTA regulations are in any way applicable. As

Maryland's highest court has noted, the overarching rule in constructing statutes is to "discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by a particular provision." Babre v. Pope, 402 Md. 157, 172 (2007). Applying the RTA regulations in this case would simply not further the Council's stated purpose.

"In addition, the RTA regulations provide that an RTA is generated when the "property to be developed is zoned "D.R." BCZR §1B01.1.B.1.b."

Judge Beverungen then defined "development" as that term is defined in the Baltimore County Code. Quoting section 32-4-101(p) he set out:

"Development" means:

- (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."

See Exhibit "B".

In Reverend Ware's instance, there is no "development" as no exterior construction of any sort is required. The "building" at 4512 Old Court Road already exists. Code §32-4-101(g) defines "building" as "a structure that is enclosed within exterior walls or fire walls for the shelter, support or enclosure of persons, animals, or property of any kind." Reverend Ware's plans for parking are not "development," as Judge Beverungen clearly established in the above-quoted matter.

The conclusion which must be reached by the Board of Appeals in this matter is either that the requested relief must be granted or that there was no need to even seek the requested relief. Either way, the analysis must be that RTA requirements cannot be interpreted to apply to a fully developed, mature community where no exterior structural construction is contemplated.

RTA's purpose, as well explained by ALJ Beverungen, is to "assure that similar housing types are BUILT adjacent to one another." (Emphasis added.)

Reverend Ware is not seeking permission to build anything. No "development" is contemplated. See the definition of "development" at BCC § 32-4-101 (p).

Any contrary conclusion would bring ridiculous result. Every "permitted use" would be impossible, as the RTA's setback/buffer application would not allow any space for such "permitted use."

Logic demands that RTA provisions not apply when no exterior change is contemplated.

Then, all that remains for this Board to consider are parking matters. If the Board believes less asphalt is better than more, and that less striping is better than more, the relief should be granted. If the Board believes that more asphalt is appropriate, the Board should direct that the parking lot be paved and not allow gravel surface. If the Board believes the Church use required striping, the Board should so direct. Reverend Ware believed that gravel is consistent with the intended intensity of use.

II. RTA does not apply to planned re-use as a church

As an alternative argument to the position set out in Section I, above, Reverend Ware asserts that RTA must not apply to her Property's re-use as a church.

BCZR §1B01.1B1g makes clear that RTA restrictions and requirements do not apply to churches.

Subsection g(4) states that the RTA restrictions do not apply to:

An addition to an existing church or other building for religious worship, including parking areas and driveways, provided all other applicable zoning regulations including setback, parking and screen requirements, are maintained.

Subsection g(6) gives further evidence that RTA restrictions do not apply to churches. It states that RTA restrictions do not apply to:

A new church or other building for religious worship, the site plan for which has been approved after a public hearing in accordance with Section 500.7. Any such hearing shall include a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.

In this instance, the evidence presented to the Board of Appeals included documentation showing that Jean Tansey, as the County Landscape Architect, approved the landscaping plan for the Property. Reverend Ware's testimony confirmed that the County's landscaping requirements were satisfied and, in addition, substantial additional landscaping was planted.

The County Council's intentions in detailing the aforesaid exceptions to RTA application as it applies to churches through Bills Nos. 109-1982 and 40-1992 was to allow church use without RTA burden.

Additional evidence that RTA should not apply to the Property is that both of the exceptions set out in Subsections g(4) and (6) necessarily concern new construction as Subsection (4) speaks to "an addition" to an existing church and Subsection (6) speaks to "a new

church.” Here, as detailed fully above, no new construction is involved with the planned church use of the Property.

CONCLUSION

Inasmuch as the RTA requirements must be deemed NOT to apply to the internal conversion of an existing structure, without any exterior modification, from residential use to church/congregational use, RTA setbacks and buffers must not be applied and must not be used as an offensive weapon to defeat Reverend Ware’s desired permitted D.R. use of the 4512 Old Court Road. The Board of Appeals is urged to find that RTA setbacks and buffers do not apply to the planned use as a church of the existing structure at 4512 Old Court Road.



Edward J. Gilliss
Royston, Mueller, McLean & Reid, LLP
102 W. Pennsylvania Ave., Suite 600
Towson, Maryland 21204-4575
(410) 823-1800

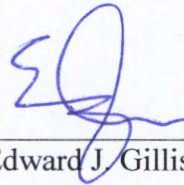
Attorney for the petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 16 day of July, 2013, a copy of the foregoing Post-Hearing Memorandum Of Petitioner, The Reverend Lucy Ware was mailed to:

J. Carroll Holzer, Esq.
508 Fairmount Ave
Towson, MD 21286

Carole S. Demilio, Esq.
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Ave.
Towson, MD 21204



Edward J. Gilliss

IN RE: PETITIONS FOR SPECIAL HEARING, *
SPECIAL EXCEPTION & VARIANCE *
(2027 York Road) *
8th Election District *
3rd Councilmanic District *
Michael R. Mardiney, Jr., M.D. *
Legal Owner *
Tom Berhle, Entourage Development LLC *
Contract Purchaser/Lessee *

BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2013-0171-SPHXA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed by Jason T. Vettori, Esquire, on behalf of the legal owner, Michael R. Mardiney, Jr., M.D. and contract purchaser Entourage Development, LLC. The Petition for Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), seeking: (1) a use permit for the use of land in a residential zone for parking facilities to meet the requirements of Section 409.6 pursuant to Section 409.8.B of the BCZR, or in the alternative for confirmation that the proposed parking facility is authorized under the use permit approved in Case No. 1971-0269-SPH, and; (2) A modified parking plan pursuant to Section 409.12.B of the BCZR.

A Petition for Special Exception was filed pursuant to §230.3 of the B.C.Z.R., to permit: a drive-in restaurant.

Finally, a Petition for Variance was filed pursuant to the B.C.Z.R. as follows: (1) Section 1B01.1.B.1.e.(5) of the BCZR to permit a 0 ft. buffer and 0 ft. setback in lieu of the required 50 ft. buffer and 75 ft. setback in a Residential Transition Area

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 2.

EXHIBIT "A"

IN RE: PETITIONS FOR SPECIAL HEARING, *
SPECIAL EXCEPTION & VARIANCE *
(2027 York Road) *
8th Election District *
3rd Councilmanic District *
Michael R. Mardiney, Jr., M.D., *
Legal Owner *
Tom Berhle, Entourage Development LLC, *
Contract Purchaser/Lessee *
Petitioner

BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2013-0171-SPHXA

* * * * *

ORDER ON MOTIONS FOR RECONSIDERATION

The Petitioner filed a motion for reconsideration, along with a revised site plan, on or about March 28, 2013. The revised plan reflects the drive through lane for the restaurant, and the commercial dumpster, were relocated from the DR-zoned portion of the property to the BL zone fronting on York Road. As such, as Petitioner correctly noted in its motion, the sole deficiencies identified in the March 22, 2013 Order have been resolved, and those issues no longer stand as obstacles to plan approval.

The Office of People's Counsel, however, also filed a motion for reconsideration, raising several legal issues that merit consideration. The first such issue is whether the proposed use is for a "drive-in" restaurant, in which case special exception relief is required. As noted in the original Order, in defining "drive-in restaurant" the Baltimore County Zoning Regulations (BCZR) requires that food and beverage be served, to a substantial extent, to diners in their cars. BCZR § 101.1. Mr. Behrle testified that the drive-in aspect of the business will generate 20% of the revenue, and based on that testimony I believe that this aspect of the operation is not "substantial." The term is not defined in the BCZR, but is defined (in pertinent part) in Webster's Third New International Dictionary as "being that specified to a large degree or in the main."

ROYSTON, MUELLER, McLEAN & REID, LLP

ATTORNEYS AT LAW

SUITE 600

THE ROYSTON BUILDING
102 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4575

TELEPHONE 410-823-1800

FACSIMILE 410-828-7859

www.rmmr.com

R. TAYLOR McLEAN
WILLIAM F. BLUE
THOMAS F. McDONOUGH
LAUREL PARETTA REESE*
KEITH R. TRUFFER*
ROBERT S. HANDZO*
EDWARD J. GILLISS
TIMOTHY J. OURSLER
ROBERT G. BLUE
CRAIG P. WARD
LEANNE M. SCHRECENGOST

JONATHAN M. HERBST
JAMES L. SHEA, JR.
MARTHA K. WHITE
ROBERT F. MILLER
SARAH M. GRABENSTEIN

OF COUNSEL
E. HARRISON STONE
EUGENE W. CUNNINGHAM, JR., P.A.
BRADFORD G.Y. CARNEY
STEPHEN C. WINTER
LISA J. McGRATH

CARROLL W. ROYSTON
1913-1991

H. ANTHONY MUELLER
1913-2000

RICHARD A. REID
1931-2008

* ALSO ADMITTED IN D.C.

July 16, 2013

Via Hand Delivery

Board of Appeals for Baltimore County
Jefferson Building
105 West Chesapeake Avenue
Suite 203
Towson, MD 21204

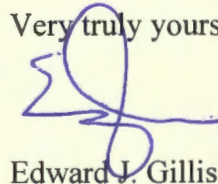
Re: Petition for Special Hearing and Variance
Case No.: 2013-0147-SPHA
Property: 4512 Old Court Road

Dear Sirs:

Enclosed please find a Post-Hearing Memorandum of Petitioner, the Reverend Lucy Ware.

Thank you for your cooperation.

Very truly yours,



Edward J. Gilliss

EJG/ajf
Enclosure

G:\LITIGATIONS\EJG\Clients\Ware, Lucy\Zoning\Appeal Letter 7-16-13.docx

RECEIVED
JUL 16 2013

BALTIMORE COUNTY
BOARD OF APPEALS

3/7/13

-IN RE: PETITIONS FOR SPECIAL HEARING *

AND VARIANCE

2nd Election District *

2nd Councilman District *

(4512 Old Court Road) *

Reverend Lucy Ware *

Petitioner *

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Case No. 2013-0147-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Bruce E. Doak on behalf of Reverend Lucy Ware, legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), (1) To allow a new church for religious worship on the subject property; (2) To allow a residential transition area (RTA) buffer of 0' in lieu of the required 50'; and (3) To allow a residential transition area (RTA) setback of 0' in lieu of the required 75' from a track boundary to a parking lot or structure. The Petition for Variance seeks the following relief: (1) to allow 4 parking spaces that do not have direct access to an aisle per § 409.4 of the B.C.Z.R; (2) to allow gravel surface of the parking area in lieu of a durable and dustless surface per § 409.8A2 (B.C.Z.R); (3) to allow no striping of the parking area per § 409.8A6 (B.C.Z.R). The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 7.

Appearing at the public hearing in support of the requests was Reverend Lucy Ware and Bruce E. Doak from Bruce E. Doak Consulting, LLC, who prepared the site plan. Edward Gilliss, Esquire represented the Petitioner. The file reveals that the Petition was properly posted

ORDER RECEIVED FOR FILING

Date 3-7-13

By Alen

and advertised as required by the Baltimore County Zoning Regulations. Several area residents attended the hearing and voiced opposition to the proposal.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The only substantive comment was from Bureau of Development Plans Review (DPR), which expressed concern about the proposed gravel parking lot and lack of striping.

The subject property is approximately 1.2 acres and is zoned DR 3.5. The property is improved with a single family dwelling, and the Petitioner proposes to convert the home into a church. To do so, zoning relief is required. Mr. Doak testified on behalf of Petitioner, and explained the layout of the proposed site, and he also described in general terms the neighborhood and roadway network. Mr. Doak presented photographs of the subject site and its environs, and also explained why (in his opinion) it was preferable for the parking lot to remain gravel, which he testified was a more environmentally sensitive material than blacktop or macadam surfaces. Mr. Doak also testified the gravel used was comprised of larger stones that were not "dusty," and he believed that a macadam parking lot would be incompatible with the residential nature of the neighborhood. Finally, the witness explained that if relief was not granted from the RTA requirements of the B.C.Z.R., the Petitioner would be unable to use the property for a purpose permitted (as of right) under the regulations: a new church.

This case turns on the Residential Transition Area (RTA) regulations in the B.C.Z.R., which are difficult to decipher. The regulations indicate the purpose of the RTA is to "assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types," B.C.Z.R. 1B01.1.B.1. Yet the RTA regulations

ORDER RECEIVED FOR FILING

Date 3-7-13

By Aln

are applicable to a church building (which is not a dwelling or housing) in a DR zone (where churches are permitted as of right), subject to certain exceptions.

The B.C.Z.R. provides for the "variance" of RTA "upon the recommendation of" certain county reviewing agencies. B.C.Z.R. § 1B01.1.B.1.c. But in this case, the enumerated agencies did not make such a recommendation (in fact, Mr. Kennedy indicated in his ZAC comment that the RTA buffer must be provided), and thus the Petitioner is not entitled to seek a "variance" under this regulation.

That leaves B.C.Z.R. § 1B01.1.B.1.g. (6) as the sole avenue of relief for the Petitioner. As an initial matter, it does not seem as if that regulation is applicable, since the Petitioner is not really constructing a "new church," but a conversion of a single family dwelling to a church with no "proposed improvements." Even assuming the regulation is applicable, I do not believe the Petitioner is entitled to an RTA exception, since (in my opinion) the church will not be "compatible with the character and general welfare of the surrounding residential premises." Id.

According to the citizens attending the hearing, the Petitioner already began conducting church services at the property, and the gatherings have been disruptive to the neighborhood. Neighbors indicated that parishioners (children) were running through their yards and that there was dancing and commotion on the premises. A neighbor whose property abuts to the rear of the subject property testified that she has seen 50 cars parked behind the building during services, and all in attendance noted the crowded and dangerous traffic conditions along Old Court Road.

In these circumstances, I simply do not believe that the proposed use would be compatible with the neighborhood.

ORDER RECEIVED FOR FILING

Date 3-7-13

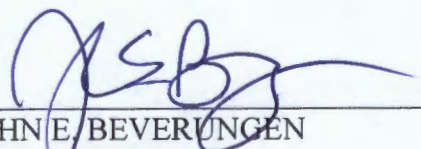
By Ala

Pursuant to the posting of the property, public hearing, and after considering the testimony and evidence offered, I find that Petitioners Special Hearing and Variance requests should be DENIED.

THEREFORE, IT IS ORDERED this 7th day of March, 2013, by the Administrative Law Judge, that the Petition for Special Hearing seeking relief from § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), (1) To allow a new church for religious worship on the subject property; (2) To allow a residential transition area (RTA) buffer of 0' in lieu of the required 50'; and (3) To allow a residential transition area (RTA) setback of 0' in lieu of the required 75' from a track boundary to a parking lot or structure, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance filed pursuant to B.C.Z.R. §§ 409.4, 409.8A2 and 409.8A6 as follows: (1) to allow 4 parking spaces that do not have direct access to an aisle; (2) to allow gravel surface of the parking area in lieu of a durable and dustless surface; and (3) to allow no striping of the parking area, be and is hereby DENIED as moot in light of the ruling on the Petition for Special Hearing.

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/sln

ORDER RECEIVED FOR FILING

Date

3-7-13

By

sln



KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

March 7, 2013

Edward J. Gilliss, Esquire
102 W. Pennsylvania Avenue
Suite 200
Towson, Maryland 21204

RE: Petition for Special Hearing and Variance
Case No.: 2013-0147-SPHA
Property: 4512 Old Court Road

Dear Mr. Gilliss:

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 410-887-3868.

Sincerely,

A handwritten signature in black ink, appearing to read "JEB", is written over the printed name.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:slh
Enclosure

c: Bruce E. Doak, 3801 Baker Schoolhouse Road, Freeland, Maryland 21053
George & Margaret Zentz, 4509 Old Court Road, Baltimore, Maryland 21208
Jeffrey & Rathea Mims, 4508 Old Court Road, Baltimore, Maryland 21208
Rev. Ervin Dantzler, 4515 Old Court Road, Baltimore, Maryland 21208
Dale Watkins, 4513 Dresden Road, Baltimore, Maryland 21208
Helen Aiken, 4502 Dresden Road, Baltimore, Maryland 21208
Clyde & Muriel Lyles, 4511 Dresden Road, Baltimore, Maryland 21208



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 4512 Old Court Road which is presently zoned OR 3.5
 Deed References: SM 32581/132 10 Digit Tax Account # 1800003161
 Property Owner(s) Printed Name(s) REVEREND LUCY WARE

(SELECT THE HEARING(S) BY MARKING ☒ AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ☒ a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

SEE ATTACHED SHEET

2. ☐ a Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for

3. ☒ a Variance from Section(s)

SEE ATTACHED SHEET

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

TO BE PRESENTED AT THE HEARING

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

I, or we, agree to pay expenses of above petition(s), 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.

Legal Owner(s) Affirmation: I / we do so 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 / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

Date

Name- Type or Print

BY

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

REVEREND LUCY WARE
 Name #1 - Type or Print Name #2 - Type or Print

Signature #1 Signature #2

7111 LIBERTY ROAD BALTIMORE MD
 Mailing Address City State

21207 443-415-0499 JADMINISTR@AOL.COM
 Zip Code Telephone # Email Address

Representative to be contacted:

BRUCE E. DOAK
 Name - Type or Print

Signature

3801 BAKER SCHOOLHOUSE ROAD
 Mailing Address City FREELAND State MD

21053 443-900-5525 BDOAK@BRUCEEDOAKCONSULTING.COM
 Zip Code Telephone # Email Address

CASE NUMBER 2013-0147-SPHA Filing Date 12/24/12

Do Not Schedule Dates: Reviewer AT

Variances Requested

- 1) To allow 4 parking spaces that do not have direct access to an aisle per section 409.4 (BCZR)
- 2) To allow gravel surface of the parking area in lieu of a durable and dustless surface per section 409.8A2 (BCZR)
- 3) To allow no striping of the parking area per section 409.8A6 (BCZR)

Special Hearing Requested

- 1) To allow a new church for religious worship on the subject property per section 1B01.1B1g (6) (BCZR)
- 2) To allow a residential transition area (RTA) buffer of 0 feet in lieu of the required 50 feet per section 1B01.1e (5) (BCZR)
- 3) To allow a residential transition area (RTA) setback of 0 feet in lieu of the required 75 feet from a track boundary to a parking lot or structure per section 1B01.1e (5) (BCZR)

2013-0147-SPHA

Bruce E. Doak Consulting, LLC

3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

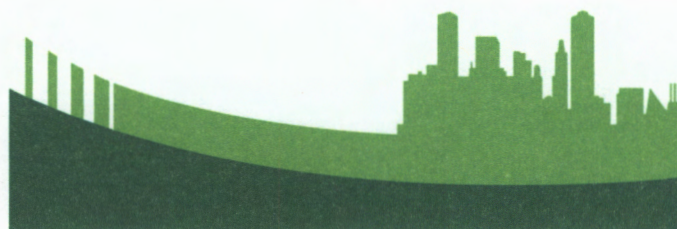
Zoning Description

4512 Old Court Road-1.206 Acre Parcel
Second Election District Second Councilmanic District
Baltimore County, Maryland

Beginning at a point on the northwest side of Old Court Road, approximately 277 feet southwest of the centerline of Streamwood Drive, thence running and binding on the northwest side of Old Court Road, the following course and distance, viz 1) South 47 degrees 44 minutes 00 seconds West 219.13 feet, thence leaving Old Court Road and running on the outlines of the subject property, the three following courses and distances, viz 2) North 35 degrees 02 minutes 06 seconds West 241.55 feet, 3) North 47 degrees 48 minutes 27 seconds East 219.50 feet, and 4) South 34 degrees 56 minutes 23 seconds East 241.31 feet to the place of beginning.

Containing 1.206 acres of land, more or less.

This description is part of a zoning hearing petition and is not intended for any conveyance purposes.



2013-0147-SPHA

Land Use Expert and Surveyor

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **92763**

Date: **12/21/12**

PAID RECEIPT

ADDRESS: BALTIMORE COUNTY, MARYLAND
 DATE: 12/21/2012
 TIME: 10:07AM
 BY: [Signature]
 \$770.00
 BALTIMORE COUNTY, MARYLAND

Fund	Dept	Unit	Sub Unit	Rev Source/Obj	Sub Rev/Obj	Dept	Obj	BS Acct	Amount
001	806	0000		6150					\$770.00

Total: **\$770**

Rec From: **REV. LUCY WARE**
 For: **4512 OLD COURT RD**
DR 3.5
2013-0147-SPHA

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
 PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

ROYSTON, MUELLER, McLEAN & REID, LLP

ATTORNEYS AT LAW

R. TAYLOR McLEAN
WILLIAM F. BLUE
THOMAS F. McDONOUGH
LAUREL PARETTA REESE*
KEITH R. TRUFFER*
ROBERT S. HANDZO*
EDWARD J. GILLISS
TIMOTHY J. OURSLER
ROBERT G. BLUE
CRAIG P. WARD
LEANNE M. SCHRECENGOST

JONATHAN M. HERBST
JAMES L. SHEA, JR.
MARTHA K. WHITE
ROBERT F. MILLER
SARAH M. GRABENSTEIN

SUITE 600
THE ROYSTON BUILDING
102 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4575

TELEPHONE 410-823-1800
FACSIMILE 410-828-7859
www.rmmr.com

OF COUNSEL
E. HARRISON STONE
EUGENE W. CUNNINGHAM, JR., P.A.
BRADFORD G.Y. CARNEY
STEPHEN C. WINTER
LISA J. McGRATH

CARROLL W. ROYSTON
1913-1991

H. ANTHONY MUELLER
1913-2000

RICHARD A. REID
1931-2008

* ALSO ADMITTED IN D.C.

March 15, 2013

Via Hand Delivery

John E. Beverungen, Esq.
Administrative Law Judge for Baltimore County
Office of Administrative Hearings for Baltimore County
105 West Chesapeake Avenue
Suite 103
Towson, MD 21204

Re: Petition for Special Hearing and Variance
Case No.: 2013-0147-SPHA
Property: 4512 Old Court Road

Dear Mr. Beverungen:

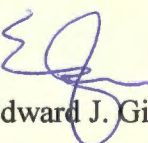
I am in receipt of your March 7, 2013 Opinion and Order in the above captioned matter.

With this letter I request an appeal of this matter.

Enclosed is a \$265.00 check made payable to Baltimore County, Maryland to satisfy the appeal request fee.

Please contact me if additional information is required to effect this appeal.

Very truly yours,


Edward J. Gilliss

OFFICE OF ADMINISTRATIVE HEARINGS

EJG/ajf
Enclosure

G:\LITIGATION\SEJG\Clients\Ware - Zoning\Appeal Letter 3-15-13.docx

MAR 15 2013

RECEIVED

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No.

94699

Date:

3/28/13

PAID RECEIPT

BUSINESS ACTUAL TIME DRW
 3/29/2013 3/28/2013 14:53:03 2

REG MSG2 WALKIN JEVA JEE
 >>RECEIPT # 819121 3/28/2013 OFLN

Dept 5 528 ZONING VERIFICATION
 CR NO. 094699

Recpt Tot \$265.00
 \$265.00 CK \$0.00 CA
 Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	000		6150				

Total: 265.00

Rec

From:

Jesus Christ is the
 Answer Ministries

For:

Appeal - 2013-0147-SPHA
 4512 Old Court Rd

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

Bruce E. Doak Consulting, LLC

3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

CERTIFICATE OF POSTING

February 6, 2013

Re:

Case Number: 2013- 0147-SPHA

Petitioner / Developer: Reverend Lucy Ware

Date of Hearing: February 27, 2013

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

Attention: 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 **4512 Old Court Road**.

The sign(s) were posted on February 6, 2013.

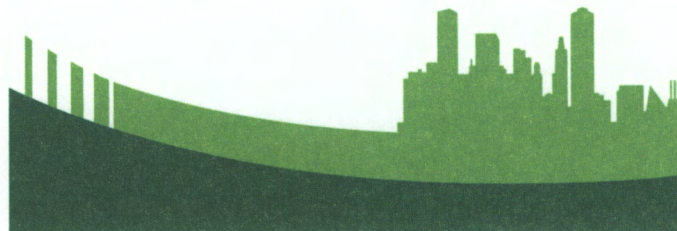
Sincerely,



Bruce E. Doak

MD Property Line Surveyor #531

See the attached sheet(s) for the photos of the posted sign(s)



Land Use Expert and Surveyor

ZONING NOTICE

CASE NO. 2013-0147-SPHA

**A PUBLIC HEARING WILL BE HELD BY THE
ADMINISTRATIVE LAW JUDGE IN TOWSON
MARYLAND**

**PLACE: Room 205 JEFFERSON BUILDING
105 W. CHESAPEAKE AVENUE
TOWSON, MD 21204**

DATE&TIME: Wednesday February 27, 2013 1:30PM

**SPECIAL HEARING TO ALLOW A NEW CHURCH FOR RELIGIOUS
WORSHIP ON THE SUBJECT PROPERTY; TO ALLOW A RESIDENTIAL
TRANSITION AREA (RTA) BUFFER OF 0 FEET IN LIEU OF THE
REQUIRED 50 FEET; TO ALLOW A RESIDENTIAL TRANSITION AREA
(RTA) SETBACK OF 0 FEET IN LIEU OF THE REQUIRED 75 FEET FROM
A TRACT BOUNDARY TO A PARKING LOT OR STRUCTURE.**

**VARIANCE TO ALLOW 4 PARKING SPACES THAT DO NOT HAVE
DIRECT ACCESS TO AN AISLE; TO ALLOW GRAVEL SURFACE OF THE
PARKING AREA IN LIEU OF A DURABLE AND DUSTLESS SURFACE AND
TO ALLOW NO STRIPING OF THE PARKING AREA.**

**POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES
NECESSARY. TO CONFIRM THE HEARING CALL 410-887-3391. THE HEARING IS
HANDICAPPED ACCESSIBLE**

**DO NOT REMOVE THIS SIGN AND POST UNTIL THE DAY OF THE HEARING UNDER
PENALTY OF LAW.**



ZONING NOTICE
CASE NO. 2013-0147-SPH
A PUBLIC HEARING WILL BE HELD AT THE ADMINISTRATIVE LAW...

4512

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: #2013-0147-SPHA

4512 Old Court Road
N/West of Old Court Road, 277 ft. S/West of centerline of Streamwood Drive

2nd Election District - 2nd Councilmanic District

Legal Owner(s): Reverent Lucy Ware

Special Hearing to allow a new church for religious worship on the subject property; to allow a residential transition area (RTA) buffer of 0 ft. in lieu of the required 50 ft.; to allow a residential transition area (RTA) setback of 0 ft. in lieu of the required 75 ft. from a tract boundary to a parking lot or structure. **Variance** to allow 4 parking spaces that do not have direct access to an aisle; to allow gravel surface of the parking area in lieu of a durable and dustless surface and to allow no striping of the parking area.

Hearing: Wednesday, February 27, 2013 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.
02/007 February 7 902636



501 N. Calvert Street, Baltimore, MD 21278

February 7, 2013

THIS IS TO CERTIFY, that the annexed advertisement was published in the following newspaper published in Baltimore County, Maryland, ONE TIME, said publication appearing on February 7, 2013.

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

PATUXENT PUBLISHING COMPANY

By: Susan Wilkinson

Susan Wilkinson

**DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW**

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 2013-0147-SPHA

Petitioner: REVEREND LUCY WARE

Address or Location: 4512 OLD COURT ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: REVEREND LUCY WARE

Address: 7111 LIBERTY ROAD

BALTIMORE MD 21207

Telephone Number: 443-415-0499

TO: PATUXENT PUBLISHING COMPANY
Thursday, February 7, 2013 Issue - Jeffersonian

Please forward billing to:
Reverend Lucy Ware
7111 Liberty Road
Baltimore, MD 21207

443-415-0499

NOTICE OF ZONING HEARING

The Administrative Law Judge 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: 2013-0147-SPHA

4512 Old Court Road

N/west of Old Court Road, 277 ft. S/west of centerline of Streamwood Drive

2nd Election District – 2nd Councilmanic District

Legal Owners: Reverend Lucy Ware

Special Hearing to allow a new church for religious worship on the subject property; to allow a residential transition area (RTA) buffer of 0 ft. in lieu of the required 50 ft.; to allow a residential transition area (RTA) setback of 0 ft. in lieu of the required 75 ft. from a tract boundary to a parking lot or structure. **Variance** to allow 4 parking spaces that do not have direct access to an aisle; to allow gravel surface of the parking area in lieu of a durable and dustless surface and to allow no striping of the parking area.

Hearing: Wednesday, February 27, 2013 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

January 22, 2013

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

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: 2013-0147-SPHA

4512 Old Court Road

N/west of Old Court Road, 277 ft. S/west of centerline of Streamwood Drive

2nd Election District – 2nd Councilmanic District

Legal Owners: Reverend Lucy Ware

Special Hearing to allow a new church for religious worship on the subject property; to allow a residential transition area (RTA) buffer of 0 ft. in lieu of the required 50 ft.; to allow a residential transition area (RTA) setback of 0 ft. in lieu of the required 75 ft. from a tract boundary to a parking lot or structure. **Variance** to allow 4 parking spaces that do not have direct access to an aisle; to allow gravel surface of the parking area in lieu of a durable and dustless surface and to allow no striping of the parking area.

Hearing: Wednesday, February 27, 2013 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Reverend Lucy Ware, 7111 Liberty Road, Baltimore 21207
Bruce Doak, 3801 Baker Schoolhouse Road, Freeland 21053

- NOTES:** (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, FEBRUARY 7, 2013.**
- (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.**



Board of Appeals of Baltimore County

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

Handwritten:
#3 not new
6/18/13
No assigned to
PP and to

April 5, 2013

NOTICE OF ASSIGNMENT

CASE #: 13-147-SPHA

IN THE MATTER OF: Reverend Lucy Ware, Legal Owner/Petitioner
4512 Old Court Road / 2nd Election District; 2nd Councilmanic District

Re: Petition for Special Hearing to allow:

1. a new church for religious worship on the subject property;
2. a RTA buffer of 0 ft ilo required 50 ft;
3. a RTA setback of 0 ft ilo required 75 ft from a track boundary to a parking lot or structure;

Petition for Variance to allow:

1. 4 parking spaces that do not have direct access to an aisle;
2. parking area with gravel surface ilo durable and dustless surface;
3. parking are with no striping.

3/7/13

Opinion and Order of the Administrative Law Judge wherein all requested relief was DENIED.

ASSIGNED FOR:

WEDNESDAY, MAY 15, 2013, AT 10:00 A.M.

LOCATION:

Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

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 Appellant/Petitioner
Appellant/Petitioner

: Edwards J. Gilliss, Esquire
: Reverend Lucy Ware

Bruce E. Doak

George and Martha Zentz

Jeffrey and Rathea Mims

Reverend Ervin Dantzler

Dale Watkins

Helen Aiken

Clyde and Muriel Lyles

Office of People's Counsel

Lawrence M. Stahl, Managing Administrative Law Judge

John E. Beverungen, Administrative Law Judge

Arnold Jablon, Director/PAI

Andrea Van Arsdale, Director/Department of Planning

Nancy West, Assistant County Attorney

Michael Field, County Attorney, Office of Law



Board of Appeals of Baltimore County

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

April 17, 2013

NOTICE OF POSTPONEMENT AND RE-ASSIGNMENT

CASE #: 13-147-SPHA **IN THE MATTER OF: Reverend Lucy Ware, Legal Owner/Petitioner**
4512 Old Court Road / 2nd Election District; 2nd Councilmanic District

Re: Petition for Special Hearing to allow:

1. a new church for religious worship on the subject property;
2. a RTA buffer of 0 ft ilo required 50 ft;
3. a RTA setback of 0 ft ilo required 75 ft from a track boundary to a parking lot or structure;

Petition for Variance to allow:

1. 4 parking spaces that do not have direct access to an aisle;
2. parking area with gravel surface ilo durable and dustless surface;
3. parking are with no striping.

3/7/13 Opinion and Order of the Administrative Law Judge wherein all requested relief was DENIED.

This matter was assigned to be heard on Wednesday, May 15, 2013 and has been postponed due to a conflict with the Board of Appeals establishing a panel; the matter has been re-assigned to the following date and time:

RE-ASSIGNED FOR: TUESDAY, JUNE 18, 2013, AT 10:00 A.M.

LOCATION:

Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

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 Appellant/Petitioner : Edwards J. Gilliss, Esquire
Appellant/Petitioner : Reverend Lucy Ware

Bruce E. Doak George and Martha Zentz Jeffrey and Rathea Mims
Reverend Ervin Dantzler Dale Watkins Helen Aiken Clyde and Muriel Lyles

Office of People's Counsel Lawrence M. Stahl, Managing Administrative Law Judge
John E. Beverungen, Administrative Law Judge Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law



Board of Appeals of Baltimore County

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

June 21, 2013

NOTICE OF DELIBERATION

CASE #: 13-147-SPHA **IN THE MATTER OF: Reverend Lucy Ware, Legal Owner/Petitioner**
4512 Old Court Road / 2nd Election District; 2nd Councilmanic District

Re: Petition for Special Hearing to allow:

1. a new church for religious worship on the subject property;
2. a RTA buffer of 0 ft ilo required 50 ft;
3. a RTA setback of 0 ft ilo required 75 ft from a track boundary to a parking lot or structure;

Petition for Variance to allow:

1. 4 parking spaces that do not have direct access to an aisle;
2. parking area with gravel surface ilo durable and dustless surface;
3. parking are with no striping.

3/7/13 Opinion and Order of the Administrative Law Judge wherein all requested relief was DENIED.

Having concluded this matter on 6/18/13 a public deliberation has been scheduled for the following:

DATE AND TIME : TUESDAY, JULY 30, 2013, 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, July 16, 2013 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

Continued on Page 2

c: Counsel for Appellant/Petitioner
Appellant/Petitioner

: Edwards J. Gilliss, Esquire
: Reverend Lucy Ware

Counsel for Protestant
Protestants

: J. CARROLL HOLZER, ESQUIRE
: Jimmie and Barbara Roberson
Tom and Ruthanne Otto
Barry and Sylvia Powell
Gayle Emerson
Lillian Nolley
Helen Aiken
Linda Miller
Tim and Peggy Lang
James S. Patton
Wade Young, II
Dale Watkins
Jeffrey and Rathea Mims
Al and Evelyn Michel
R. Eddie Daniels
Clyde and Muriel Lyles
Ella Green

George and Martha Zentz

Reverend Ervin Dantzler

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
John E. Beverungen, Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law



Board of Appeals of Baltimore County

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

June 26, 2013

AMENDED NOTICE OF DELIBERATION AS TO TIME ONLY
FROM 9:15 A.M. TO 10:00 A.M.

CASE #: 13-147-SPHA **IN THE MATTER OF: Reverend Lucy Ware, Legal Owner/Petitioner**
4512 Old Court Road / 2nd Election District; 2nd Councilmanic District

Re: Petition for Special Hearing to allow:

1. a new church for religious worship on the subject property;
2. a RTA buffer of 0 ft ilo required 50 ft;
3. a RTA setback of 0 ft ilo required 75 ft from a track boundary to a parking lot or structure;

Petition for Variance to allow:

1. 4 parking spaces that do not have direct access to an aisle;
2. parking area with gravel surface ilo durable and dustless surface;
3. parking are with no striping.

3/7/13 Opinion and Order of the Administrative Law Judge wherein all requested relief was DENIED.

Having concluded this matter on 6/18/13 a public deliberation has been scheduled for the following:

DATE AND TIME : TUESDAY, JULY 30, 2013, AT 10:00 a.m.

LOCATION : Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: Closing briefs are due on Tuesday, July 16, 2013 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 Appellant/Petitioner
Appellant/Petitioner

: Edwards J. Gilliss, Esquire
: Reverend Lucy Ware

Counsel for Protestant
Protestants

: J. CARROLL HOLZER, ESQUIRE
: Jimmie and Barbara Roberson
Tom and Ruthanne Otto
Barry and Sylvia Powell
Gayle Emerson
Lillian Nolley
Helen Aiken
Linda Miller
Tim and Peggy Lang
James S. Patton
Wade Young, II
Dale Watkins
Jeffrey and Rathea Mims
Al and Evelyn Michel
R. Eddie Daniels
Clyde and Muriel Lyles
Ella Green

George and Martha Zentz

Reverend Ervin Dantzler

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
John E. Beverungen, Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

February 20, 2013

Reverend Lucy Ware
7111 Liberty Road
Baltimore MD 21207

RE: Case Number: 2013-0147 SPHA, Address: 4512 Old Court Road

Dear Reverend Ware:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on December 21, 2012. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

A handwritten signature in black ink that reads "W. Carl Richards, Jr." The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaf

Enclosures

c: People's Counsel
Bruce E. Doak, 3801 Baker Schoolhouse Road, Freeland MD 21053

2-27-13
1.30

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: February 5, 2013

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 4512 Old Court Road

INFORMATION:

Item Number: 13-147

Petitioner: Rev. Lucy Ware

Zoning: DR 3.5

Requested Action: Special Hearing and Variance

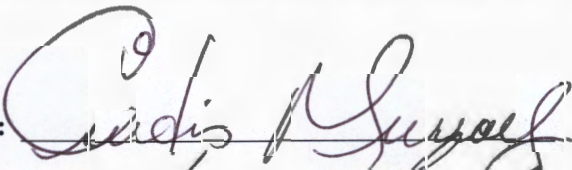
SUMMARY OF RECOMMENDATIONS:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The petitioner is seeking a Special Hearing to allow a church on the property, an RTA buffer area of 0 feet in lieu of 50 feet, and to allow an RTA setback of 0 feet in lieu of 75 feet. The petitioner is also seeking a variance to allow 4 parking spaces that do not have access to an aisle, a gravel surface parking lot in lieu of durable and dustless, and no striping of parking area.

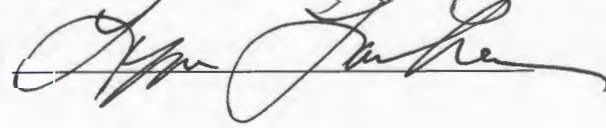
The Department of Planning does not oppose the petitioner's request provided a landscape and signage plan is submitted to the department for review and approval.

For further information concerning the matters stated here in, please contact Amy Mantay at 410-887-3480.

Prepared by:



Division Chief:
AVA/LL: CM



RECEIVED

FEB 06 2013

OFFICE OF ADMINISTRATIVE HEARINGS



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

Darrell B. Mobley, Acting Secretary
Melinda B. Peters, Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 1-11-13

Ms. Kristen Lewis
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

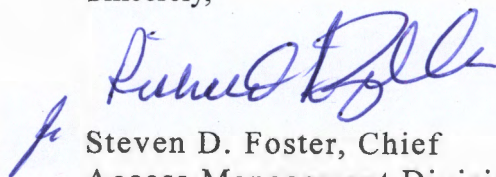
RE: Baltimore County
Item No 2013-0147-SPHA
Special Hearing Variance
Reverend Lucy Ware.
4512 Old Court Road.

Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2013-0147-SPHA.

Should you have any questions regarding this matter, please contact Richard Zeller at 410-545-5598 or 1-800-876-4742 extension 5598. Also, you may E-mail him at (rzeller@sha.state.md.us).

Sincerely,


Steven D. Foster, Chief
Access Management Division

SDF/raz

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.roads.maryland.gov

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

FROM: Dennis A. Kennedy, ^{DAK}Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For January 21, 2013
Item No. 2013-0147

DATE: January 14, 2013

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment(s).

A landscape plan must be received and approved prior to the issuance of any permits.

Driveway and parking areas should be striped and be provided with a durable and dustless surface-durable because the grade of the lot will be around 7%, which is generally too steep for non-durable surfaces, and dustless because of the closeness of adjacent houses. This is particularly important in this case, since the petitioner is seeking to reduce the RTA. Also, a durable and dustless surface is generally quieter than gravel, when driven on.

The driveway shall be a minimum of 16' wide, with the entrance portion widened to 20', so that cars are not stopped on Old Court Road waiting for cars exiting the site.

The RTA may not be reduced to 0 feet because a Landscape screen should be provided.

DAK:CEN

cc: file

ZAC-ITEM NO 13-0147-01212013.doc

RE: PETITION FOR SPECIAL HEARING
AND VARIANCE
4512 Old Court Road; 277' SW
c/line of Streamwood Drive
2nd Election & 2nd Councilmanic Districts
Legal Owner(s): Reverend Lucy Ware
Petitioner(s)

* BEFORE THE OFFICE
* OF ADMINSTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* 2013-147-SPHA

* * * * *

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

JAN 08 2013

.....

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January, 2013, a copy of the foregoing Entry of Appearance was mailed to Bruce Doak, 3801 Baker Schoolhouse Road, Freeland, MD 21053, Representative 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
Administrative Law Judge

April 4, 2013

Edward J. Gilliss, Esquire
Royston, Mueller, McLean & Reid, LLP
102 West Pennsylvania Avenue/ Suite 600
Towson, Maryland 21204

RECEIVED
APR 4 2013

BALTIMORE COUNTY
BOARD OF APPEALS

RE: **APPEAL TO BOARD OF APPEALS**
Case No. 2013-0147-SPHA
Location: 4512 Old Court Road

Dear Mr. Gilliss:

Please be advised that an appeal of the above-referenced case was filed in this Office on March 15, 2013. 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/sln

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County
Bruce E. Doak, 3801 Baker Schoolhouse Road, Freeland, Maryland 21053
George & Margaret Zentz, 4509 Old Court Road, Baltimore, Maryland 21208
Jeffrey & Rathea Mims, 4508 Old Court Road, Baltimore, Maryland 21208
Rev. Ervin Dantzler, 4515 Old Court Road, Baltimore, Maryland 21208
Dale Watkins, 4513 Dresden Road, Baltimore, Maryland 21208
Helen Aiken, 4502 Dresden Road, Baltimore, Maryland 21208
Clyde & Muriel Lyles, 4511 Dresden Road, Baltimore, Maryland 21208

APPEAL

**Petition for Special Hearing
(4512 Old Court Road)
2nd Election District – 2nd Councilmanic District
Legal Owner: Reverend Lucy Ware
Case No. 2013-0147-SPHA**

Petition for Special Hearing (December 21, 2012)

Zoning Description of Property

Notice of Zoning Hearing (January 22, 2013)

Certificate of Publication (The Jeffersonian – February 7, 2013)

Certificate of Posting (February 6, 2013) by Bruce E. Doak

Entry of Appearance by People's Counsel (January 8, 2013)

Petitioner(s) Sign-in Sheet – 1 Sheet

Citizen(s) Sign-in Sheet – 1 Sheet

Zoning Advisory Committee Comments

Petitioner(s) Exhibits

1. My Neighborhood Map
2. My Neighborhood Map-Aerial
3. SDAT Sheet
4. Deed
5. Zoning Information Sheet
6. (Petitioner did not submit Ex. #6) N/A
7. Site Plan
8. Photos- (7) sheets
9. Plan to Accompany Photos
10. Final Landscape Plan

Protestant(s) Exhibits – None

Miscellaneous (Not Marked as Exhibits) – Letter and Petition Against Residential Transition

Administrative Law Judge Order (DENIED – March 7, 2013)

Notice of Appeal on Motion – March 15, 2013 from Edward J. Gilliss

Petition for Special Hearing
(4512 Old Court Road)
2nd Election District - 2nd Councilmanic District
Legal Owner: Reverend Lucy Ware
Case No. 2013-0147-SPHA

- ✓ Petition for Special Hearing (December 21, 2012) & Variance
- ✓ Zoning Description of Property
- ✓ Notice of Zoning Hearing (January 22, 2013)
- ✓ Certificate of Publication (The Jeffersonian - February 7, 2013)
- ✓ Certificate of Posting (February 6, 2013) by Bruce E. Doak
- ✓ Entry of Appearance by People's Counsel (January 8, 2013)
- ✓ Petitioner(s) Sign-in Sheet - 1 Sheet
- ✓ Citizen(s) Sign-in Sheet - 1 Sheet
- ✓ Zoning Advisory Committee Comments

RECEIVED
APR 4 2013

BALTIMORE COUNTY
BOARD OF APPEALS

Petitioner(s) Exhibits

- ✓ 1. My Neighborhood Map
- ✓ 2. My Neighborhood Map-Aerial
- ✓ 3. SDAT Sheet
- ✓ 4. Deed
- ✓ 5. Zoning Information Sheet
- 6. (Petitioner did not submit Ex. #6) N/A
- ✓ 7. Site Plan
- ✓ 8. Photos- (7) sheets
- ✓ 9. Plan to Accompany Photos
- ✓ 10. Final Landscape Plan

Protestant(s) Exhibits - None

- ✓ Miscellaneous (Not Marked as Exhibits) - Letter and Petition Against Residential Transition
- ✓ Administrative Law Judge Order (DENIED - March 7, 2013)
- ✓ Notice of Appeal on Motion - March 15, 2013 from Edward J. Gilliss

Address List

Petitioner:

Edward J. Gilliss, Esquire
102 W. Pennsylvania Avenue
Suite 600
Towson, MD 21204

Reverend Lucy Ware
7111 Liberty Road
Baltimore, MD 21207

Bruce E. Doak
3801 Baker Schoolhouse Road
Freeland, MD 21053

Interested Persons:

George and Martha Zentz
4509 Old Court Road
Baltimore, MD 21208

Jeffrey and Rathea Mims
4508 Old Court Road
Baltimore, MD 21208

Reverend Ervin Dantzler
4515 Old Court Road
Baltimore, MD 21208

Dale Watkins
4513 Dresden Road
Baltimore, MD 21208

Helen Aiken
4502 Dresden Road
Baltimore, MD 21208

Clyde and Muriel Lyles
4511 Dresden Road
Baltimore, MD 21208

Interoffice:

Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
John E. Beverungen, Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Reverend Lucy Ware 13-147-SPHA

DATE: July 30, 2013

BOARD/PANEL: Andrew M. Belt, Chairman
Wendell H. Grier
Maureen E. Murphy

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Hearing to allow:
 - A. a new church for religious worship on the subject property;
 - B. a RTA buffer of 0 feet in lieu of the required 50 feet;
 - C. a RTA setback of 0 feet in lieu of the required 75 feet from a track boundary to a parking lot or structure;
2. Petition for Variance to allow:
 - A. 4 parking spaces that do not have direct access to an aisle;
 - B. parking area with gravel surface in lieu of durable and dustless surface;
 - C. parking area with no striping

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board reviewed the history of this matter. The Board discussed the requests and statutory requirements which would allow them to grant the requests. The Board discussed that in order to grant the RTA setbacks as the Code requires that the Petitioner comply as much as possible with the law.
- The Board discussed that the Petitioner purchased the property and has been using the property as a church, it seems the use became an issue and this matter is now before the Board.
- The Board reviewed the testimony provided at the hearing. Members of the congregation appeared at the hearing and testified in favor of the church and the location. Members of the community appeared at the hearing and testified in opposition to the church. The Board reviewed that the neighborhood in which the subject property is located, has 5 established churches located in the residential area on corners or at ends of blocks. The Board discussed that the subject property is a residential property, in the middle of a block in the middle of a residential neighborhood and the subject property is too small for the requested use. Testimony was provided detailing all the wonderful things the Petitioner does for her congregation and others.
- The Board determined that the proposed use for the subject property is not compatible with the surrounding neighborhood.
- The Board reviewed the requirements of *Cromwell v. Ward*. The subject property is not unique within the standards of Cromwell. Without uniqueness, this matter does not get into the other prongs of the Cromwell standards.

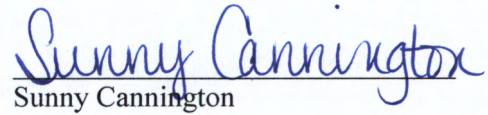
DECISION BY BOARD MEMBERS:

The Board determined that the proposed use at the subject property is not compatible with the surrounding neighborhood and the property does not meet the standards of *Cromwell v. Ward*.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the requested relief.

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

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

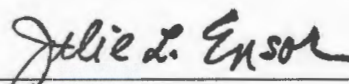
N O T I C E O F R E C O R D

Case Number: 03-C-13-012865 AA
Administrative Agency : 13-147-SPHA
C I V I L

In the Matter of Lucy Ware

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 23rd day of January, 2014.



Julie L. Ensor

Clerk of the Circuit Court, per mas

Date issued: 01/23/14

TO: LAWRENCE SCHMIDT
Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204

13-147-SPHA

1

STATE OF MARYLAND

2

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

3

IN THE MATTER OF

4

5

THE REVEREND LUCY WARE

Case No.

6

03-C-13-012865

7

8

June 16, 2014

9

10

TRANSCRIPT OF PROCEEDINGS

11

12

BEFORE: THE HONORABLE SHERRIE R. BAILEY, Judge

13

14

15

APPEARANCES:

16

17

18

19

ON BEHALF OF THE PETITIONER:

20

LAWRENCE E. SCHMIDT, ESQUIRE

21

ON BEHALF OF THE RESPONDENTS:

22

J. CARROLL HOLZER, ESQUIRE

23

PETER MAX ZIMMERMAN, ESQUIRE

24

25

Transcribed by:

1 definition which they thought support where they
2 wanted to get to. But they should have gone to
3 Webster's, and they didn't, and in failing to do so,
4 they came up with what we believe is an erroneous
5 conclusion that this property is being developed. It
6 is not. It is not being built on.

7 As you indicated, every building may need a
8 new roof. Every building may need its driveway
9 re-paved. People re-landscape their houses and their
10 properties all the time. That is not development,
11 and therefore, the RTA does not apply.

12 Thank you, Your Honor.

13 THE COURT: All right. Anything further
14 from any party?

15 MR. HOLZER: No.

16 MR. ZIMMERMAN: No. Thank you, judge.

17 THE COURT: Most respectfully to all of the
18 persons gathered, as well as to counsel, I did spend
19 sometime, I guess a week or so ago, reviewing the
20 memorandums in these matters, and I have listened
21 very carefully to the arguments of counsel.

22 I must say, in particular, you know, I find
23 myself in an unusual position. I don't know if you
24 all have done your homework or not, but you may know
25 that I am the daughter of a minister, and I have seen

1 him carry many a church through and shepherd many a
2 new congregation into existence, so it is
3 particularly painful to see this type of situation
4 develop.

5 You know, it sounds from my reading of the
6 transcript very favorable things that have been
7 relayed about Reverend Ware and the ministry there.
8 She is to be congratulated for the good work that she
9 is doing.

10 However, my reading of the relevant law,
11 the memorandums of the parties, as well as the
12 opinion of the Board of Appeals, it would appear to
13 this court that the decision of the Board of Appeals
14 should be affirmed, most respectfully, for all of the
15 reasons stated in the memorandum of Mr. Zimmerman, as
16 well as the opinion of the Board of Appeals.

17 I am so sorry, but I hope that the good
18 work of this church can continue in some form or
19 fashion, be it at this location or else where.

20 You are to be congratulated. It is a
21 wonderful thing that you are doing, and however, I do
22 believe that the correct decision is to affirm the
23 Board of Appeals.

24 MR. HOLZER: Thank you, Your Honor.

25 THE COURT: Thank you.

1 Anything further?

2 MR. SCHMIDT: No, Your Honor. Thank you.

3 THE COURT: All right. Court stands in
4 recess.

5 My best wishes to all parties as you move
6 forward from here.

7 MR. ZIMMERMAN: Thank you.

8 (Proceedings concluded)

9

10

11

TRANSCRIBER'S CERTIFICATION

12

13 I hereby certify that the foregoing proceedings
14 in the matter of the Reverend Lucy Ware, Case Number
15 03-C-13-012865, heard in the Circuit Court for
16 Baltimore County, Maryland, on June 16, 2014, were
17 recorded by means of digital recording

18 I further certify that, to the best of my
19 knowledge and belief, page numbers one through 43
20 constitute a complete and accurate transcript of the
21 proceedings

22

23

24

25

IN THE MATTER OF:

REVEREND LUCY WARE
CASE NUMBER: 13-147-SPHA

Hearing Date: June 18, 2013

Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for Baltimore County at the Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue, Towson, Maryland 21204, commencing at 10:00 AM.

PANEL PRESIDING:

ANDREW M. BELT, CHAIRMAN

MAUREEN E. MURPHY, BOARD

WENDELL H. GRIER, BOARD

PRESENT ON BEHALF OF THE PARTIES:

ON BEHALF OF THE PETITIONERS:

EDWARD J. GILLISS, ESQUIRE

ON BEHALF OF THE PROTESTANTS:

J. CARROLL HOLZER, EQUIRE



Christine R. Leary
9529 Fox Farm Road
Baltimore, Maryland 21236

From: Carl Richards
To: Humphries, Anne Marie; Jablon, Arnold; Van Dommelen, Lionel
Date: 5/21/2013 9:28 AM
Subject: 4512 Old Ct. Road Case# 0147-SPHA
Attachments: Message from 50BW-2; Carl Richards.vcf

To all,

This property was the subject of a zoning hearing on February 27, 2013. The Administrative Law Judge denied the request for a church (see petition and appeal attached). The denial was appealed on March 15, 2013 (see notice from the Administrative Law Office including copies to all concerned). The Board of Appeals should be contacted at 410-887-3180 for the scheduling of the hearing before the Board. Also, The Board has the complete file for the record. The church use is not permitted without the relief being granted (see petition attached).

W. Carl Richards, Jr.
Permits, Approvals and Inspections
Zoning Review, Baltimore County Room 111, County Office Building
111 West Chesapeake Avenue
Towson, MD 21204
410-887-3391; 410-887-3048 (fax)
http://www.baltimorecountymd.gov/agencies/permits/pdm_zoning/index.html

From: Arnold Jablon <ajablon@baltimorecountymd.gov>
To: CRichards@baltimorecountymd.gov, lvandommelen@baltimorecountymd.gov
Date: 5/20/2013 5:38 PM
Subject: Fwd: Helen Aiken/4502 Dresden Rd /Correspondence #EX003720

Carl, take a look and let Lionel have your input, and, Lionel, then please call the complainant. If a dr zone, churches are permitted as of right and could be exempt from RTA.

Sent from my iPad

Begin forwarded message:

> From: "Anne Marie Humphries" <amhumphries@baltimorecountymd.gov>
> Date: May 20, 2013, 3:08:07 PM AST
> To: "Arnold Jablon" <ajablon@baltimorecountymd.gov>
> Cc: "entsoap" <entsoap@baltimorecountymd.gov>
> Subject: Helen Aiken/4502 Dresden Rd /Correspondence #EX003720
>
> Hi Arnold....Per the below complaint from Ms Aiken. Her inquiry is a bit rambling, but it looks like she is basically asking if a residential home on Old Court Road can function as a church and if so, what the limitations are. Might it be possible for you to have someone contact Ms. Aiken regarding this and let me know what the outcome is? As always, thanks....Anne Marie
>
> Complaint Description: Transition of single family residential property into a house-church(new church for religious worship), RTA buffer of 0 ft ilo required 50ft, RTA setback of 0 ft ilo required 75ft from a track boundary to a parking lot, Variance for parking (40+ cars were parked in backyard prior to hearing on February 27, 2013)This is a residential community, I have 50+ years in the community.
> Complaint Type: General
> Complaint Address: Pikesville , MD 21208
> Complaint Location: 4512 Old Court Road
> Note 05/16/2013: Item opened via Web
> Constituent Name: Helen Aiken
> Constituent Email: dwatkins@mrisc.com
> Constituent Phone: 410.655.3255
> Constituent Address: 4502 Dresden Rd Pikesville , MD 21208
> Date Opened: 05/16/2013
>
>
>
>
>
>
> Anne Marie Humphries
> Special Assistant to the
> County Executive for
> Constituent Services
> Baltimore County Executive Office
> 400 Washington Avenue
> Towson, Maryland 21204
> 410-887-2450



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

E-MAIL: JCHOLZER@CAVTRI.NET

June 19, 2013

#8060

Andrew Belt
Baltimore County Board of Appeals
Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of: Reverend Lucy Ware/Petitioner & Legal Owner*
Case No.: 13-147-SPHA

Dear Mr. Belt:

I represent all of the Protestants/Respondents listed on Protestants' Exhibit #7 that I gave to you at the above referenced hearing yesterday.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "JCH", is written over the typed name "J. Carroll Holzer".

J. Carroll Holzer

JCH:mlg

RECEIVED
JUN 19 2013BALTIMORE COUNTY
BOARD OF APPEALS

Appeals Board - Re: Case # 13-147-SPHA

From: "G. Lewis" <arthazal@aol.com>
To: <appealsboard@baltimorecountymd.gov>
Date: 6/11/2013 2:07 PM
Subject: Re: Case # 13-147-SPHA

To Whom it May Concern,

In Reference to Case# 13-147-SPHA: Notice of Postponement And Re-Assignment
In The Matter of: Rev. Lucy Ware, Legal Owner/Petitioner 4512 Old Court Road/2nd Election District; 2nd
Councilmanic District

As a member of the residential neighborhood community which would be directly effected by the re-zoning effort, I am writing to formally state my opposition to the re-zoning and to the establishment of a church with a parking lot in our resedential area. While I have no objections to the church on any religious grounds, I do not think that a residential yard area, surrounded by neighbouring houses whose tenants would be effected by such alterations and increased traffic, should be transformed into a parking lot.

Thank You for Your Consideration,
Sincerely,
Deloris Lewis
4521 Dresden Road, Pikesville MD, 21208

George W. & Margaret R. Zentz
4509 Old Court Road
Pikesville, Maryland 21208
410-484-2752

RECEIVED

DEC 12 2013

BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED
POST - APPEAL

Circuit Court Case No.: 03-C-13-012865

Zoning Notice complaint: Case #20213-0147SPHA

(Re: 4512 Old Court Rd., Pikesville, MD 21208)

To whom it may concern:

Regarding the above case #'s we wish to express our feeling against such a drastic change in zoning for this area. We are located across the street at 4509 Old Court Road. We purchased our lot in 1949, built our home and have lived here for 63 years. This is a residential area for one family homes only.

There are 5 churches within a short distance of this location; we do not need another one! It is rumored that this church is a spin-off of some of the congregation from the church at Old Court Rd. and Scotts Level Rd. Old Court Road is a very heavily traveled artery and it is becoming more and more difficult getting in and out of our driveway. We can't imagine a church right across the street with very little parking space if any at all. Parking cars on Old Court Rd is illegal; consequently major traffic jams, not only on Sundays but also on any day of the week that they plan to have an activity there.

Also, we feel that this zoning might affect property values, for both tax assessments and future sales.

We are also concerned that the church might later buy up properties adjacent to the church in order to expand.

We recommend that your Board deny this Zoning Application.

Thank you for your consideration.

George W. Zentz
Margaret R. Zentz

Delegate 105 W. Chesapeake Ave.
Senator Rm. 205 JEFFERSON Bldg.
2/27 @ 1:30 pm

* 4512 1/2 KW 405605858
SALE sign

Case no. 2013-0147-SPHA

Signatures
* Petition Against Residential
Transition

1. ~~REDRIGO INOCENCIO~~ 4408 DRESDEN RD. ~~Rd.~~
Rm
2. Joseph Green 4512 Dresden R
Joseph Green
3. Robert Spencer 4516 Dresden R
Robert Spencer
4. Anna Castill. 4527 Dresden R
Anna Castill
5. Melvin Holmes 4519 ~~4519~~ Dresden Rd.
Melvin Holmes
6. M. Berger 4517 Dresden Rd
7. Olivia Santillan 4509 Dresden Rd.
Olivia Santillan
8. Wanda Bech 8165 Streamwood
9. Maribel Thomas 4506 old CT Rd. Pikesville, MD
21208
10. MAX ARMSTRONG 8102 STREAMWOOD
Max Armstrong
11. Charles J. Hardy 4506 Dresden Rd
Charles J. Hardy
12. Kendra Sullivan 8112 Streamwood Dr
Pikesville MD 21208
Kendra Sullivan
13. Veronica Carter 8114 Streamwood Dr
Veronica Carter

14. David Perry *D. E. Perry* 4500 Tapscott Rd 21208
15. Rosalyn C. Burns Rosalyn E. Burns 4512 Tapscott Rd 21208
16. Carmen C. Fernandez 4515 Tapscott Rd. 21208
17. ~~HELEN AIKEN~~
HELEN AIKEN HOOD DRESDEN RD.
Helen Aiken

18.

19.

20.

Maryland Department of Assessments and Taxation
Real Property Data Search (vwl1.1A)
BALTIMORE COUNTY

[Go Back](#)
[View Map](#)
[New Search](#)
[GroundRent](#)
[Redemption](#)
[GroundRent](#)
[Registration](#)

Account Identifier: District - 02 Account Number - 1800003161

Owner Information

Owner Name: WARE REVEREND LUCY **Use:** RESIDENTIAL
Mailing Address: 7111 LIBERTY RD **Principal Residence:** NO
BALTIMORE MD 21207- **Deed Reference:** 1) /32581/ 00132
2)

Location & Structure Information

Premises Address **Legal Description**
4512 OLD COURT RD 1.206 AC
0-0000 NWS OLD COURT RD
DIANE ACRES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
0077	0012	1011		0000			2	1	
									Plat Ref: 0042/0055

Special Tax Areas **Town** NONE
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1951	2,938 SF	1.2000 AC	04

Stories	Basement	Type	Exterior
	NO	STANDARD UNIT BRICK	

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2013	07/01/2012	07/01/2013
Land	112,200	84,100		
Improvements:	168,800	144,700		
Total:	281,000	228,800	281,000	228,800
Preferential Land:	0			0

Transfer Information

Seller: ROBINSON HAYWOOD A 3RD	Date: 09/25/2012	Price: \$130,000
Type: NON-ARMS LENGTH OTHER	Deed1: /32581/ 00132	Deed2:
Seller: ROSENBERG SAMUEL ISADOR E	Date: 06/15/1990	Price: \$149,000
Type: ARMS LENGTH IMPROVED	Deed1: /08507/ 00787	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

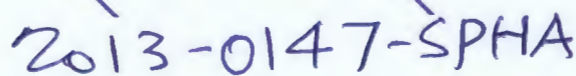
Exemption Information

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

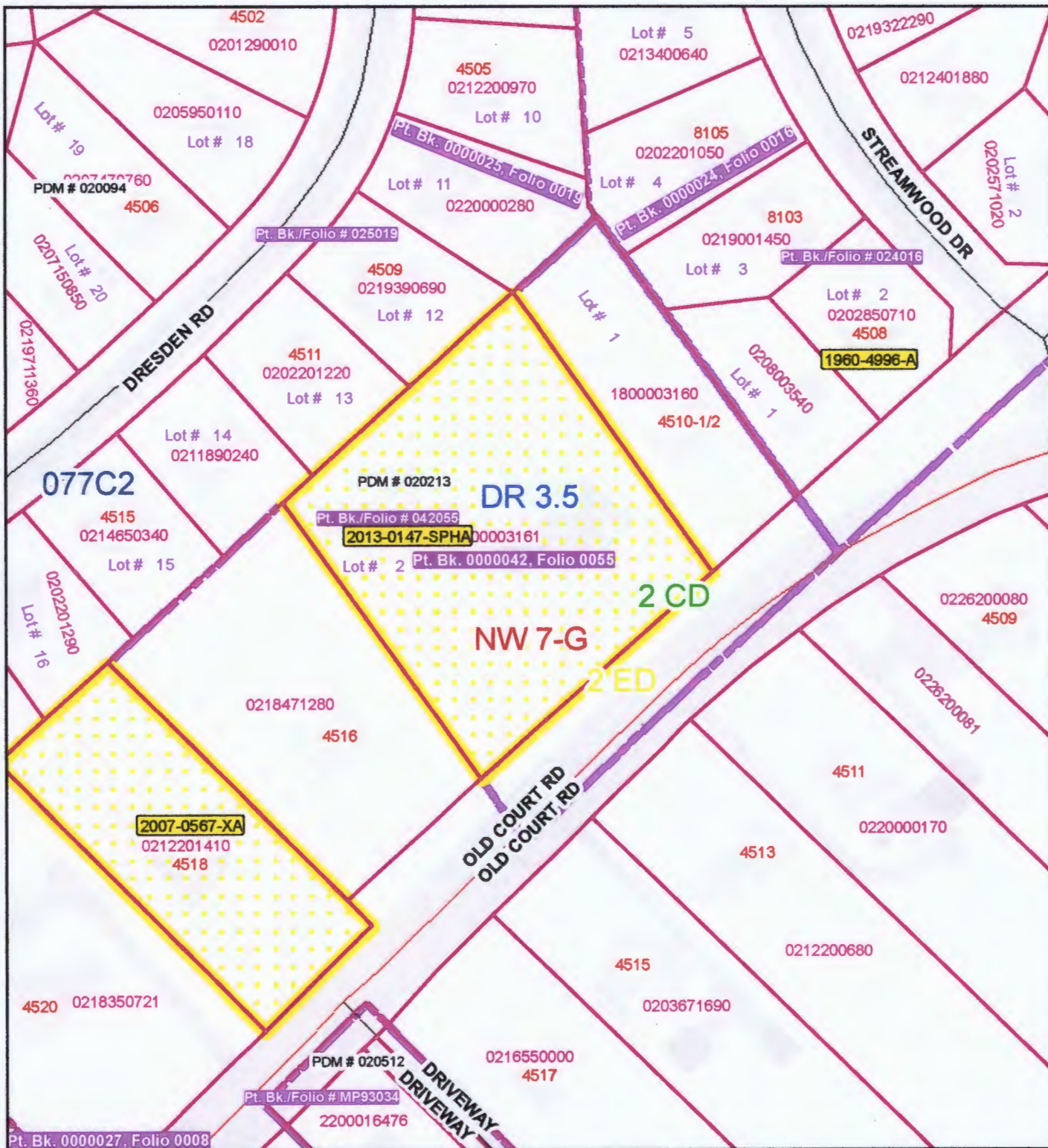
Tax Exempt: **Special Tax Recapture:**
Exempt Class: NONE

Homestead Application Information

Homestead Application Status: No Application



4512 Old Court Road



Publication Date: 5/21/2013

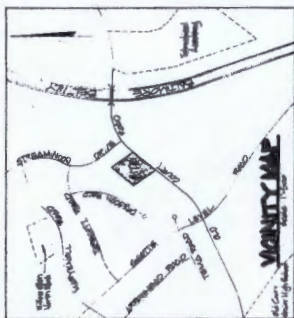
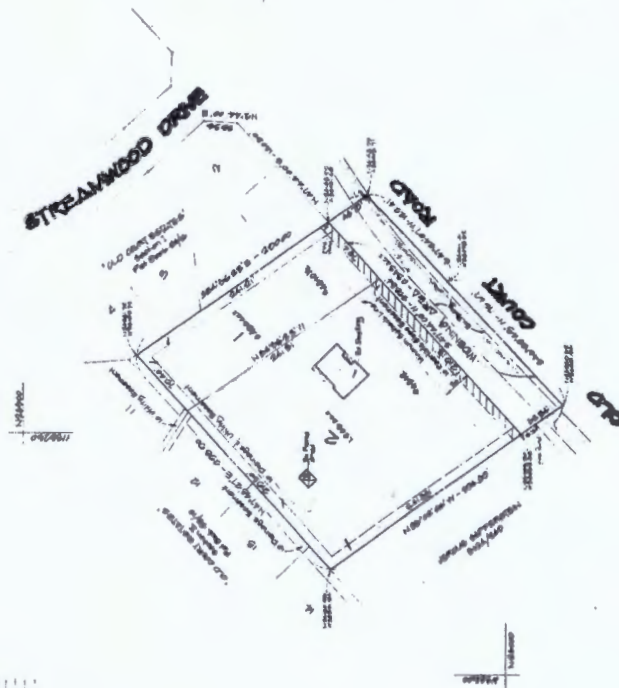


Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot



A horizontal scale bar with markings at 0, 25, 50, 100, 150, and 200 feet. The bar is black with white markings and the word "Feet" is written at the right end.

1 inch = 100 feet

[illegible]

Encl. no 42 read 55
Printed and sent 22
Date 1000 12 1779
J. O. 1000 12 1779

FINAL PLAT
DIANE ACRES

ON THE OTHER HAND, THE
AND THE OTHER HAND

SAMUEL I. A. DERRY, H. ROSENBERG
P.O. BOX 1000
SALT LAKE CITY, UTAH

P. O. 4, General Abbas, City
Postal P.O. Office
 Province India
 Signature of Abbas
 Street Address

OWNER'S CERTIFICATE	SURVEYOR'S CERTIFICATE	NOTES	APPROVED BY BALTIMORE COUNTY HEALTH DEPARTMENT	W. T. SALLER, INC. SURVEYORS 536 K. CHEAPMAN AVENUE DUBLIN, MARYLAND-22024
THE COUNTY OF BALTIMORE HAS RECEIVED OF THE ABOVE NAMED SURVEYOR A TRUE AND CORRECT COPY OF THE SURVEY MAP HEREON SHOWN, AND THE SAME HAS BEEN FILED FOR RECORD IN THE OFFICE OF THE CLERK OF THE BALTIMORE COUNTY COURT, WHERE THE SAME MAY BE VIEWED BY ANY PERSON AT ANY TIME.	THE SURVEYOR HAS BEEN DULY QUALIFIED BY THE BALTIMORE COUNTY HEALTH DEPARTMENT, AND THE SAME HAS BEEN FILED FOR RECORD IN THE OFFICE OF THE CLERK OF THE BALTIMORE COUNTY COURT, WHERE THE SAME MAY BE VIEWED BY ANY PERSON AT ANY TIME.	THE SURVEYOR HAS BEEN DULY QUALIFIED BY THE BALTIMORE COUNTY HEALTH DEPARTMENT, AND THE SAME HAS BEEN FILED FOR RECORD IN THE OFFICE OF THE CLERK OF THE BALTIMORE COUNTY COURT, WHERE THE SAME MAY BE VIEWED BY ANY PERSON AT ANY TIME.	APPROVED BY BALTIMORE COUNTY HEALTH DEPARTMENT	W. T. SALLER, INC. SURVEYORS 536 K. CHEAPMAN AVENUE DUBLIN, MARYLAND-22024
DATE	DATE	DATE	DATE	DATE

42-55

CASE NAME WARE PROPERTY
CASE NUMBER 2013-147-SPLA
DATE 2/27/13

[illegible]

PLEASE PRINT CLEARLY

CASE NAME Ware Property
CASE NUMBER 2013-147-SHA
DATE 2-27-13

CITIZEN'S SIGN - IN SHEET

[illegible]

Case No.: 2013-147-SPHA

Exhibit Sheet

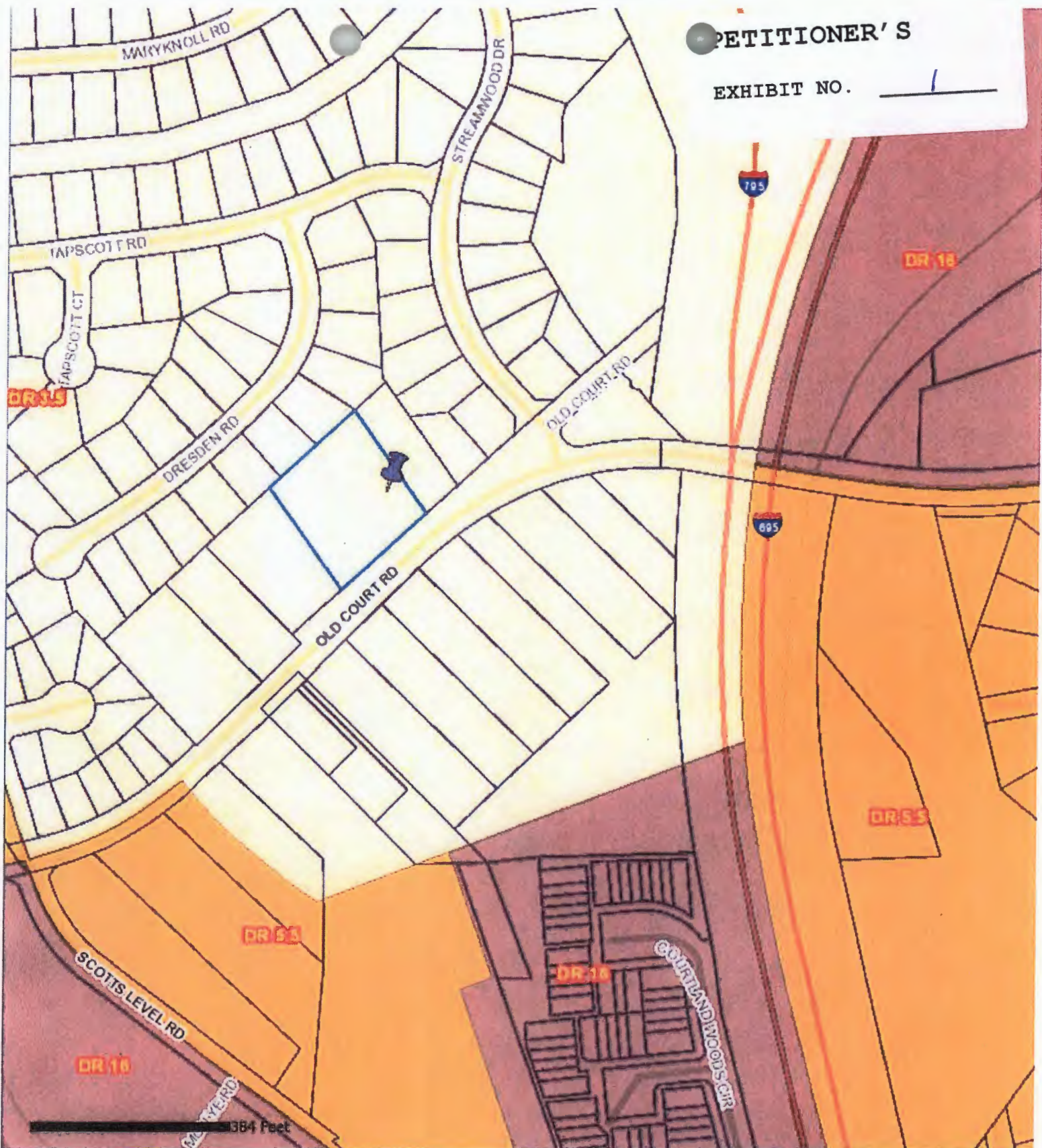
Petitioner/Developer

Protestant

No. 1	My Neighborhood Map	
No. 2	My Neighborhood-Aerial	
No. 3	SDAT sheet	
No. 4	Deed	
No. 5	Zoning Info. Sheet	
No. 6	(Pd did not submit Ex. #6) N/A	
No. 7	Site Plan	
No. 8	Photos - (7) sheets	
No. 9	Plan to Accompany Photos	
No. 10	Final Landscape Plan	
No. 11		
No. 12		

PETITIONER'S

EXHIBIT NO. 1



My Neighborhood Map

Created By
Baltimore County
My Neighborhood



This data is only for general information purposes only. This data may be inaccurate or contain errors or omissions. Baltimore County, Maryland does not warrant the accuracy or reliability of the data and disclaims all warranties with regard to the data, including but not limited to, all warranties, express or implied, of merchantability and fitness for any particular purpose. Baltimore County, Maryland disclaims all obligation and liability for damages, including but not limited to, actual, special, indirect, and consequential damages, attorneys' and experts' fees, and court costs incurred as a result of, arising from or in connection with the use of or reliance upon this data.

Printed 11/27/2012



My Neighborhood Map

Created By
Baltimore County
My Neighborhood



This data is only for general information purposes only. This data may be inaccurate or contain errors or omissions. Baltimore County, Maryland does not warrant warranties, particular p
liability for
and conseq
incurred as
reliance upi

PETITIONER' S

EXHIBIT NO. 2

Printed 11/27/2012

PEITIONER' S

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

EXHIBIT NO. 3

Registration

Account Identifier: District - 02 Account Number - 1800003161

Owner Information

Owner Name: WARE REVEREND LUCY Use: RESIDENTIAL
 Mailing Address: 7111 LIBERTY RD Principal Residence: NO
 BALTIMORE MD 21207- Deed Reference: 1) /32581/ 00132
 2)

Location & Structure Information

Premises Address Legal Description
 4512 OLD COURT RD 1.206 AC
 0-0000 NWS OLD COURT RD
 DIANE ACRES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:	Plat Ref:
0077	0012	1011		0000			2	1		0042/0055

Special Tax Areas Town NONE
 Ad Valorem
 Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1951	2,938 SF	1.2000 AC	04

Stories	Basement	Type	Exterior
	NO	STANDARD UNIT	BRICK

Value Information

	Base Value	Value As Of	Phase-in Assessments As Of
Land	112,200	112,200	07/01/2013
Improvements:	168,800	168,800	
Total:	281,000	281,000	281,000
Preferential Land:	0		

Transfer Information

Seller:	ROBINSON HAYWOOD A 3RD	Date:	09/25/2012	Price:	\$130,000
Type:	ARMS LENGTH IMPROVED	Deed1:	/32581/ 00132	Deed2:	
Seller:	ROSENBERG SAMUEL ISADOR E	Date:	06/15/1990	Price:	\$149,000
Type:	ARMS LENGTH IMPROVED	Deed1:	/08507/ 00787	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:	Special Tax Recapture:
Exempt Class:	NONE

Homestead Application Information

0032981 132

AFTER RECORDING RETURN TO:

Reverend Lucy Ware
7111 Liberty Road
Baltimore, MD 21207

DOCUMENT PREPARED BY:

Sage Title Group, LLC
7939 Honeygo Boulevard, Suite 124
Baltimore, MD 21236
File Number: 74379WHMS

Tax ID#: 02-1800003161

This Deed, MADE THIS 31st day of August, 2012, by and between Haywood Robinson and Renee Robinson, parties of the first part, and Reverend Lucy Ware, party of the second part.

WITNESSETH, That in consideration of the sum of **ONE HUNDRED THIRTY THOUSAND AND 00/100 DOLLARS (\$130,000.00)**, the receipt of which is hereby acknowledged, the said parties of the first part do grant and convey to the said party of the second part, in fee simple, all that parcel of ground situated in **Baltimore County, Maryland** and as described as follows, that is to say:

Being known and designated as Lot No. 2 as shown on Plat entitled "Final Plat Diane Acres" and recorded among the Land Records of Baltimore County in Plat Book EHK Jr. No. 42, folio 55.

The improvements thereon being known as 4512 Old Court Road, Baltimore, Maryland 21208.

Tax ID#: 02-1800003161

BEING the same property which by deed dated May 31, 1990 and recorded among the Land Records of Baltimore County, Maryland in Liber No. 8507, folio 787, was granted and conveyed by Samuel Isadore Rosenberg and Daryl H. Rosenberg unto Haywood A. Robinson, III and Renee M. Robinson.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

SUBJECT TO all rights, easements, restrictions, covenants and reservations of record.

TO HAVE AND TO HOLD the said described lot(s) of ground and premises to the said party of the second part, as sole owner, his Personal Representatives, heirs and assigns, in fee simple.

And the said parties of the first part do hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property hereby granted; and that they will execute such further assurances of the same as may be requisite.

PETITIONER' S

EXHIBIT NO. 4

My Neighborhood Results

Tax Account Number: 1800003161
Owner Name: ROBINSON HAYWOOD A 3RD ROBINSON RENEE M
Tax Premise Address: 4512 OLD COURT RD
Tax Map: 0077
Parcel: 1011
Zoning: DR 3.5
Elementary School District: Winand ES
Middle School District: Old Court MS
High School District: Milford Mill Academy
Fire Station Response Area: Pikesville
Police Precinct: Pikesville
Councilmanic District: 2
Congressional District: 2
Legislative District: 11
Election District: 2
Voting Precinct: 02-008
Census Block: 240054026041021
Census Block Group: 240054026041
Census Tract: 402604
Watershed Name: Gwynns Falls
GIS Tile Number (200 Scale): 077C2

PETITIONER' S

EXHIBIT NO. 5

①



②



③



④



PETITIONER' S

EXHIBIT NO. 8

(7) SHEETS

SHEET 1 OF 7

①



②



③





11



10



12



13



15



16



17



18



17



18



19



20



23



21



22



20



42



45



92



93

Case No: 13-147 SPTA Case Name: In matter Rev. Lucy Ware

Exhibit List

Party: Petitioner. Date: 6/18/13

Exhibit No:	Description:
✓ 1	Deed 4512 Old Court Rd.
✓ 2	SDAT Record 4512 Old Court.
✓ 3	My Neighborhood Zoning Permit out
✓ 4	My Neighborhood. Closeup Hot.
✓ 5	My Neighborhood. Aerial Map.
✓ 6	Photos Front 4512 Old Court
✓ 7	" Left Side 4512 Old Court.
✓ 8	" From metro. toward Property
✓ 9	" From metro " "
✓ 10	" Away from metro toward Prop.
✓ 11	" Vacant house to right
✓ 12	" Dental Office / vacant House to left.
✓ 13	" Church opposite side Property
✓ 14	" Old Court Rd. toward metro.
VERIFIED BY <u>ts</u> DATE: <u>6/20/13</u>	

Case No: 13-147-SPTA Case Name: In the Matter Lucy

Exhibit List

Party: Petitioner

Date: 6/18/13

Exhibit No:	Description:
✓ 15	Old Court Rd Photo
✓ 16	Photo Talmudicheh Academy
✓ 17	Catherine Washington Sp Except ⁴⁵¹⁸ Old Court
✓ 18	Site Plan w/ Marked Trees pink.
✓ 19	Photo Back 4512 shows Trees planted.
✓ 20	My Neighborhood Map Zoning.
✓ 20A	Photo
✓ 20B	"
✓ 20C	"
✓ 20D	"
✓ 21A	4519 Old Court Photo
✓ 21B	4535 Old Court Photo.
✓ 21C	4535 Old Court Photo
✓ 21D	4727 Old Court Photo
VERIFIED BY <u>trj</u> DATE: <u>6/20/13</u>	

Case No: 13-147-SPHA Case Name: In the Matter

Exhibit List

Party: Petitioner Date: 6/18/13.

[illegible]

0032581 132

AFTER RECORDING RETURN TO:
Reverend Lucy Ware
7111 Liberty Road
Baltimore, MD 21207

DOCUMENT PREPARED BY:
Sage Title Group, LLC
7939 Honeygo Boulevard, Suite 124
Baltimore, MD 21236
File Number: 74379WHMS

Tax ID#: 02-1800003161

This Deed, MADE THIS 31st day of August, 2012, by and between Haywood Robinson and Renee Robinson, parties of the first part, and Reverend Lucy Ware, party of the second part.

WITNESSETH, That in consideration of the sum of ONE HUNDRED THIRTY THOUSAND AND 00/100 DOLLARS (\$130,000.00), the receipt of which is hereby acknowledged, the said parties of the first part do grant and convey to the said party of the second part, in fee simple, all that parcel of ground situated in **Baltimore County, Maryland** and as described as follows, that is to say:

Being known and designated as Lot No. 2 as shown on Plat entitled "Final Plat Diane Acres" and recorded among the Land Records of Baltimore County in Plat Book EHK Jr. No. 42, folio 55.

The improvements thereon being known as 4512 Old Court Road, Baltimore, Maryland 21208.

Tax ID#: 02-1800003161

BEING the same property which by deed dated May 31, 1990 and recorded among the Land Records of Baltimore County, Maryland in Liber No. 8507, folio 787, was granted and conveyed by Samuel Isadore Rosenberg and Daryl H. Rosenberg unto Haywood A. Robinson, III and Renee M. Robinson.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

SUBJECT TO all rights, easements, restrictions, covenants and reservations of record.

TO HAVE AND TO HOLD the said described lot(s) of ground and premises to the said party of the second part, as sole owner, his Personal Representatives, heirs and assigns, in fee simple.

And the said parties of the first part do hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property hereby granted; and that they will execute such further assurances of the same as may be requisite.

CBA - Pet 1

PLAINTIFF'S
EXHIBIT

Account Identifier: District - 02 Account Number - 1800003161

Owner Information

Owner Name: WARE REVEREND LUCY **Use:** RESIDENTIAL
Mailing Address: 7111 LIBERTY RD **Principal Residence:** NO
BALTIMORE MD 21207- **Deed Reference:** 1) /32581/ 00132
2)

Location & Structure Information

Premises Address: 4512 OLD COURT RD
0-0000 **Legal Description:** 1.206 AC
NWS OLD COURT RD
DIANE ACRES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:	Plat Ref:
0077	0012	1011		0000			2	1		0042/ 0055

Special Tax Areas: **Town:** NONE
Ad Valorem Tax Class:

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1951	2,938 SF	1.2000 AC	04

Stories	Basement	Type	Exterior
	NO	STANDARD UNIT BRICK	

Value Information

	Base Value	Value As Of	Phase-in Assessments As Of
Land:	112,200	112,200	07/01/2012
Improvements:	168,800	168,800	07/01/2013
Total:	281,000	281,000	281,000
Preferential Land:	0		

Transfer Information

Seller:	Date:	Price:
ROBINSON HAYWOOD A 3RD	09/25/2012	\$130,000
Type: ARMS LENGTH IMPROVED	Deed1: /32581/ 00132	Deed2:
ROSENBERG SAMUEL ISADOR E	06/15/1990	\$149,000
Type: ARMS LENGTH IMPROVED	Deed1: /08507/ 00787	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: **Special Tax Recapture:**
Exempt Class: NONE

Homestead Application Information

PLAINTIFF'S
EXHIBIT

2

CBA Pst EXH 2

My Neighborhood Results

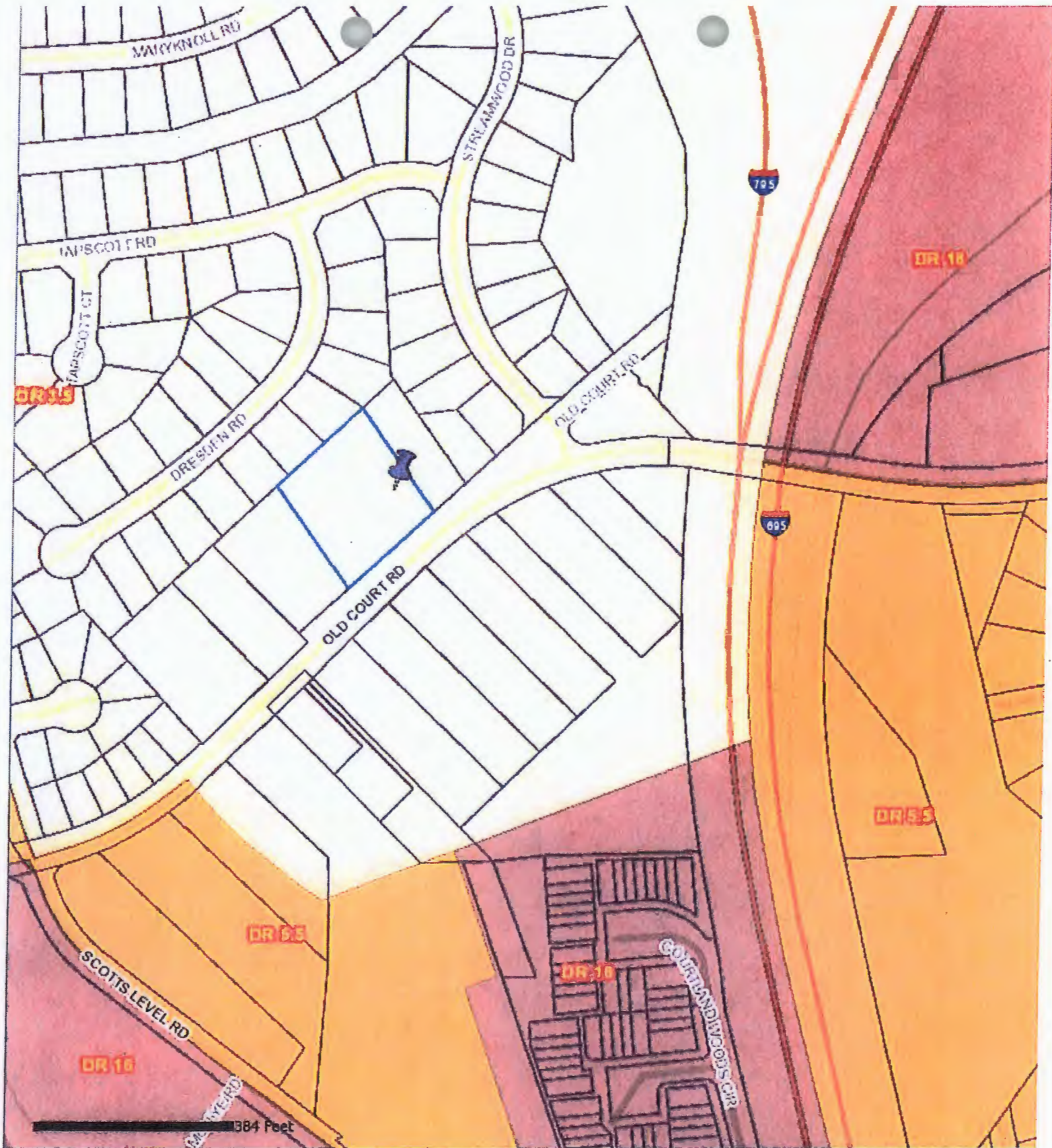
Tax Account Number: 1800003161
Owner Name: ROBINSON HAYWOOD A 3RD ROBINSON RENEE M
Tax Premise Address: 4512 OLD COURT RD
Tax Map: 0077
Parcel: 1011
Zoning: DR 3.5
Elementary School District: Winand ES
Middle School District: Old Court MS
High School District: Milford Mill Academy
Fire Station Response Area: Pikesville
Police Precinct: Pikesville
Councilmanic District: 2
Congressional District: 2
Legislative District: 11
Election District: 2
Voting Precinct: 02-008
Census Block: 240054026041021
Census Block Group: 240054026041
Census Tract: 402604
Watershed Name: Gwynns Falls
GIS Tile Number (200 Scale): 077C2

CBA - Pet #3

11/21/2012

PLAINTIFF'S
EXHIBIT

3



My Neighborhood Map

Created By
Baltimore County
My Neighborhood



This data is only for general information purposes only. This data may be inaccurate or contain errors or omissions. Baltimore County, Maryland does not warrant the accuracy or reliability of the data and disclaims all warranties with regard to the data, including but not limited to, all warranties, express or implied, of merchantability and fitness for any particular purpose. Baltimore County, Maryland disclaims all obligation and liability for damages, including but not limited to, actual, special, indirect and consequential damages, attorneys' and expenses incurred as a result of, arising from or in connection with reliance upon this data.

**PLAINTIFF'S
EXHIBIT**

Printed 11/27/2012

CBA Pet # 4

4



My Neighborhood Map

Created By
Baltimore County
My Neighborhood



This data is only for general information purposes only. This data may be inaccurate or contain errors or omissions. Baltimore County, Maryland does not warrant the accuracy or reliability of the data and disclaims all warranties with regard to the data, including but not limited to, all warranties, express or implied, of merchantability and fitness for any particular purpose. Baltimore County, Maryland disclaims all obligation and liability for damages, including but not limited to, actual, special, indirect, and consequential damages, attorneys' and expenses incurred as a result of, arising from or in connection with reliance upon this data.

Printed 11/27/2012

CBA - Pet #5

PLAINTIFF'S
EXHIBIT

5



PLAINTIFF'S
EXHIBIT

6



PLAINTIFF'S
EXHIBIT
7



PLAINTIFF'S
EXHIBIT
8



PLAINTIFF'S
EXHIBIT

9



PLAINTIFF'S
EXHIBIT

10



PLAINTIFF'S
EXHIBIT
11



© 2008 JAMES
BRIDGES
GDD

PLANTIFF'S
EXHIBIT
12



PLAINTIFF'S
EXHIBIT
13



PLAINTIFF'S
EXHIBIT
14



PLAINTIFF'S
EXHIBIT
15



PLAINTIFF'S
EXHIBIT
16

Second District

8/15/07 4518 Old Court Road

10 AM Case 07-567-XA

Legal owner: Catherine Washington

Special exception to allow a single-family dwelling with Home Dental Office pursuant to BCZR, Section 1B01.1.C.12 and proposed use for single-family dwelling with Home Dental Office consisting of 332 square feet which does not occupy more than 25 percent of the total floor area. Variance to permit a 16-foot existing driveway in lieu of the required 20 feet.

CBA Pet #17



CB4- Pet #18

FINAL LANDSCAPE PLAN OWNER CERTIFICATION FORM

I certify that I have reviewed the Final Landscape Plan that I am aware of the regulations presented in the Baltimore County Landscape Manual, and I agree to comply with these regulations and all applicable policy, guidelines and ordinances. I agree to certify the implementation of this approved Final Landscape Plan upon completion of the landscape installation prior to PMA closing if applicable or not later than one (1) year from the date of approval of this plan to the Department of Permit, Approvals and Inspections, Development, Plans Review, Room 211, County Office Building, 811 Chesapeake Avenue, Towson, MD 21204.

Applicant Signature _____ Date _____ Print Name _____
 Address (PMA) _____ Street _____
 City _____ State _____ Zip _____
 PMA# _____ Permit# _____

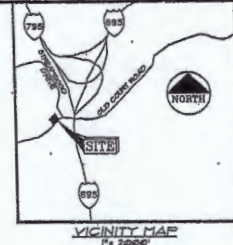
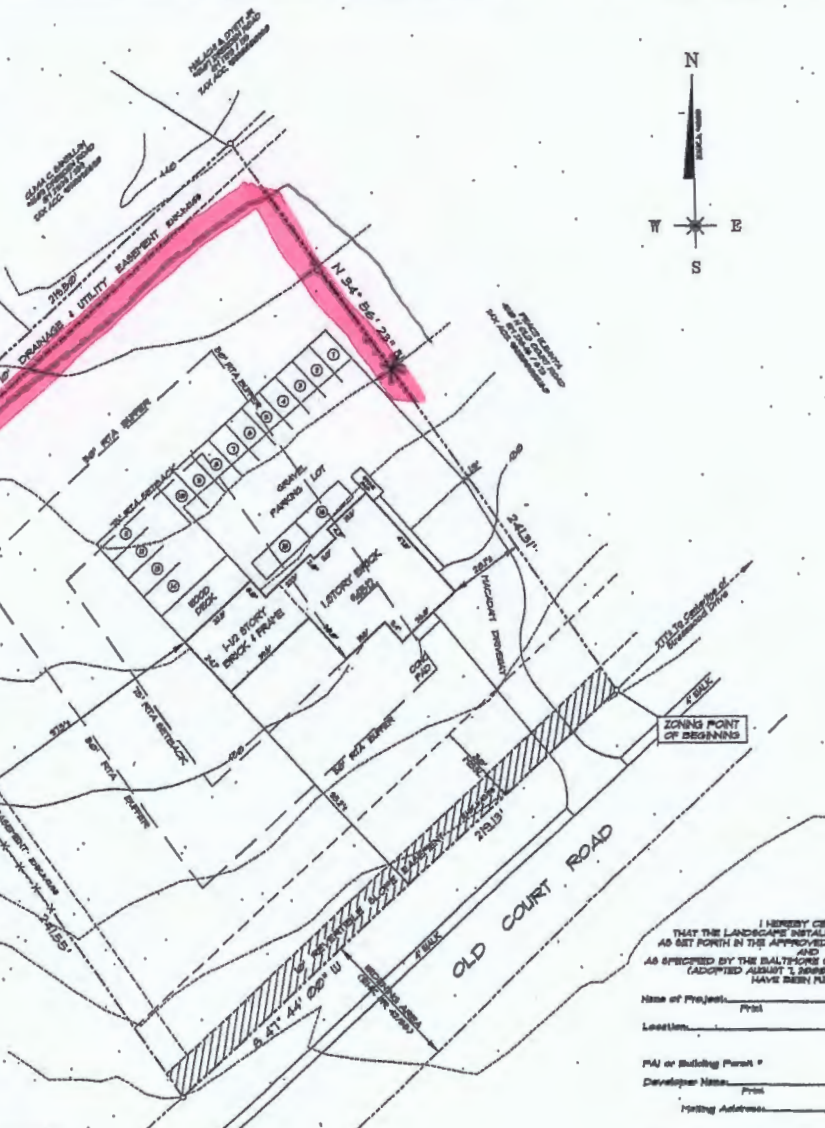
Final Landscape Plan
Landscape Architect Certification Form

It is certified that this landscape plan is in compliance with all plans previously approved by Baltimore County and the Baltimore County comments attached hereto.

Signature _____ Print Name _____

Date _____ Affix Seal

BRUCE E. DOAN
REGISTERED PROFESSIONAL LANDSCAPE ARCHITECT
MARYLAND REGISTRATION No. 931
DATE OF FIELD INSPECTION 28 NOVEMBER 2003
LICENSE EXPIRATION FEBRUARY 9, 2005



GENERAL NOTES

- OWNER: REVEREND LUCY BARE
- TAX ACCOUNT No. 0000000000
- TITLE DEED: LIBER 814 No. 32861, FOLIO 192
- TAX MAP: T1, PARCELS 100
- ZONING: DM 2B
- 200 SCALE ZONING MAP: DISTRICT 2B - B-2
- CENSUS TRACT: 402044, A.D.C. MAP: 2B - B-2
- WATERMEND, GUTTEN FALLS
- SUBJECT PROPERTY: IS NOT IN THE
- ELMENTARY SCHOOL DISTRICT: School 88
- MIDDLE SCHOOL DISTRICT: Old Court HS
- HIGH SCHOOL DISTRICT: Western Hills Academy
- REGIONAL PLANNING DISTRICT: 308
- THE SUBJECT PROPERTY IS NOT IN THE
- CHEAPSKAPE BAY CRITICAL AREA.
- THE SUBJECT PROPERTY IS SERVED BY
- PUBLIC WATER AND SEWER
- TOTAL GROSS FLOOR AREA OF EXISTING BUILDINGS: 2,849 sq. ft.
- EXISTING AREA: 6,000
- THE BUILDING DOES NOT EXCEED A HEIGHT OF 35'.

PARKING CALCULATIONS

REQUIRED PARKING SPACES FOR 84 SEATS: 18
 OTHER: 2 SEATS IN THE PRINCIPLE PLACE OF BUSINESS
 SECTION 401.04 (2002)
 PARKING SPACES PROVIDED: 18

CHANGE OF OCCUPANCY

A PERMIT FOR A CHANGE OF OCCUPANCY HAS BEEN
 APPLIED FOR FROM BALTIMORE COUNTY.

VARIANCE REQUESTED

- TO ALLOW 4 PARKING SPACES THAT DO NOT HAVE
- DIRECT ACCESS TO AN AISLE PER SECTION 401.04 (2002)
- TO ALLOW GRASSY SURFACE OF THE PARKING AREA IN LIEU
- OF A PAVED AND DISTURBED SURFACE
- PER SECTION 401.04 (2002)
- TO ALLOW 10 STOPS OF THE PARKING AREA PER
- SECTION 401.04 (2002)

SPECIAL HEARING REQUESTED

- TO ALLOW A NEW CHURCH FOR RELIGIOUS WORSHIP ON THE
- SUBJECT PROPERTY PER SECTION 401.04 (2002)
- TO ALLOW A RESIDENTIAL TRANSITION AREA (TMA) PORTION OF
- IF IN LIEU OF THE REQUIRED 84' PER SECTION 401.04 (2002)
- TO ALLOW A RESIDENTIAL TRANSITION AREA (TMA) RETEARD
- OF 8' IN LIEU OF THE REQUIRED 10' FROM A TRACT BOUNDARY
- TO A PARKING LOT OR STRUCTURE PER SECTION 401.04 (2002)

I HEREBY CERTIFY
 THAT THE LANDSCAPE INSTALLATION REQUIREMENTS,
 AS SET FORTH IN THE APPROVED FINAL LANDSCAPE PLAN
 AND
 AS SPECIFIED BY THE BALTIMORE COUNTY LANDSCAPE MANUAL
 (ADOPTED AUGUST 1, 2000 AND AS AMENDED)
 HAVE BEEN FULFILLED

Name of Project: _____ Print _____

Location: _____

PAI or Building Permit # _____

Developer Name: _____ Print _____

Printing Address: _____

Date of Final Material Installation: _____

Signature and Seal of Landscape Architect or Applicant: _____ Date: _____

Printed Name: _____

FINAL LANDSCAPING PLAN
 4812 Old Court Road, 12006 Acres
 Lot 2 "Diana Acres" SEC 4 - 47.63
 2nd ELECTION DISTRICT - 2nd COUNCILMANS DISTRICT
 BALTIMORE, MD, 21208
 1 DECEMBER 2002 SCALE: 1" = 20' PMA JOB No. 2-106

PLAINTIFF'S
EXHIBIT
18



20



20A



200

AMS On Court 100





4619 Old Court Road



02.17.2013 14:11



02.17.2013 14:17



02.17.2013 14:22



IN SUPPORT OF
REV. LUC WARE

15 persons

ADDRESS

Juanita Huggins

Aubrey Jean-Louis

Angela Jean-Louis

9925 Mill Centre Drive Dr.
Owings Mills, MD 21117

Anthony Wachira - 4810 HAWKSBURY RD 21208 Pikesville

Gregory Brown 9810 Bridge Brook Dr
Owings Mills MD 21117

CATHERINE KINYANJUI 4905 GOODNOW RD # K
BALTIMORE, MD 21206

BRUCE E. DOAK

3430 CARRIAGE HILL CIRCLE APT 201
ESTHER NGANGA RANDALLSTOWN MD 21133

MICHAEL STERLING 3510 Millvale Road 21244 MD

CAROLINE Kigava 7111 LIBERTY RD
GYRON OAK MD 21207

SAMSON GICHUKI 3402 Aurora Ln Apt K Baltimore MD 21207

MIKE GAKUNGA 3628 Valley Ter A9 Windormill MD
21244

Jay Riguru } 8427 Charton Rd Randallstown MD
Kevin Nganga } 21133

CBA-Pet No 23

PLAINTIFF'S
EXHIBIT

23



DISTRICT COURT OF MARYLAND FOR BALTIMORE COUNTY

900 WALKER AVENUE, CATONSVILLE, MD 21228



Case No. 0804SP022352013

Date: 04/17/2013 10:46 a.m.

LUCY WARE vs DALE WATKINS FINAL PEACE ORDER

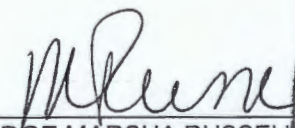
After the appearance of the PETITIONER, PETITIONER'S COUNSEL(EDWARD J GILLIS), and RESPONDENT, and in consideration of the Petition and evidence,
the Court makes the following findings:

- A. 1. That there is clear and convincing evidence that within 30 days before the filing of the Petition, the Respondent committed the following act(s):
Harassment

Based on the foregoing, the Court hereby ORDERS:

1. Unless stated otherwise below, this Order is effective until 5/16/2013.
2. That the Respondent SHALL NOT commit or threaten to commit any of the following acts against Petitioner: an act which causes serious bodily harm; an act that places the Petitioner in fear of imminent serious bodily harm; assault; rape, attempted rape, sexual offense, or attempted sexual offense; false imprisonment; harassment; stalking; trespass; or malicious destruction of property.
3. That the Respondent SHALL NOT contact (in person, by telephone, in writing, or by any other means), attempt to contact, or harass the Petitioner.
4. That the Respondent SHALL NOT enter the residence of LUCY WARE at 4512 OLD COURT ROAD, PIKESVILLE, MD, 21208.
(Residence includes yard, grounds, outbuildings, and common areas surrounding the dwelling.)

Date: 04/17/2013


JUDGE MARSHA RUSSELL



NOTICE TO RESPONDENT

Violation of this Peace Order may be a crime or contempt of court or both, and could result in imprisonment or fine or both.

Case No: 13-147-SPHA
In Matter Rev.
Lucy Ware
6/18/13



Case No: 13-147SPH A Case Name: In the Matter Rev. Lucy Ware

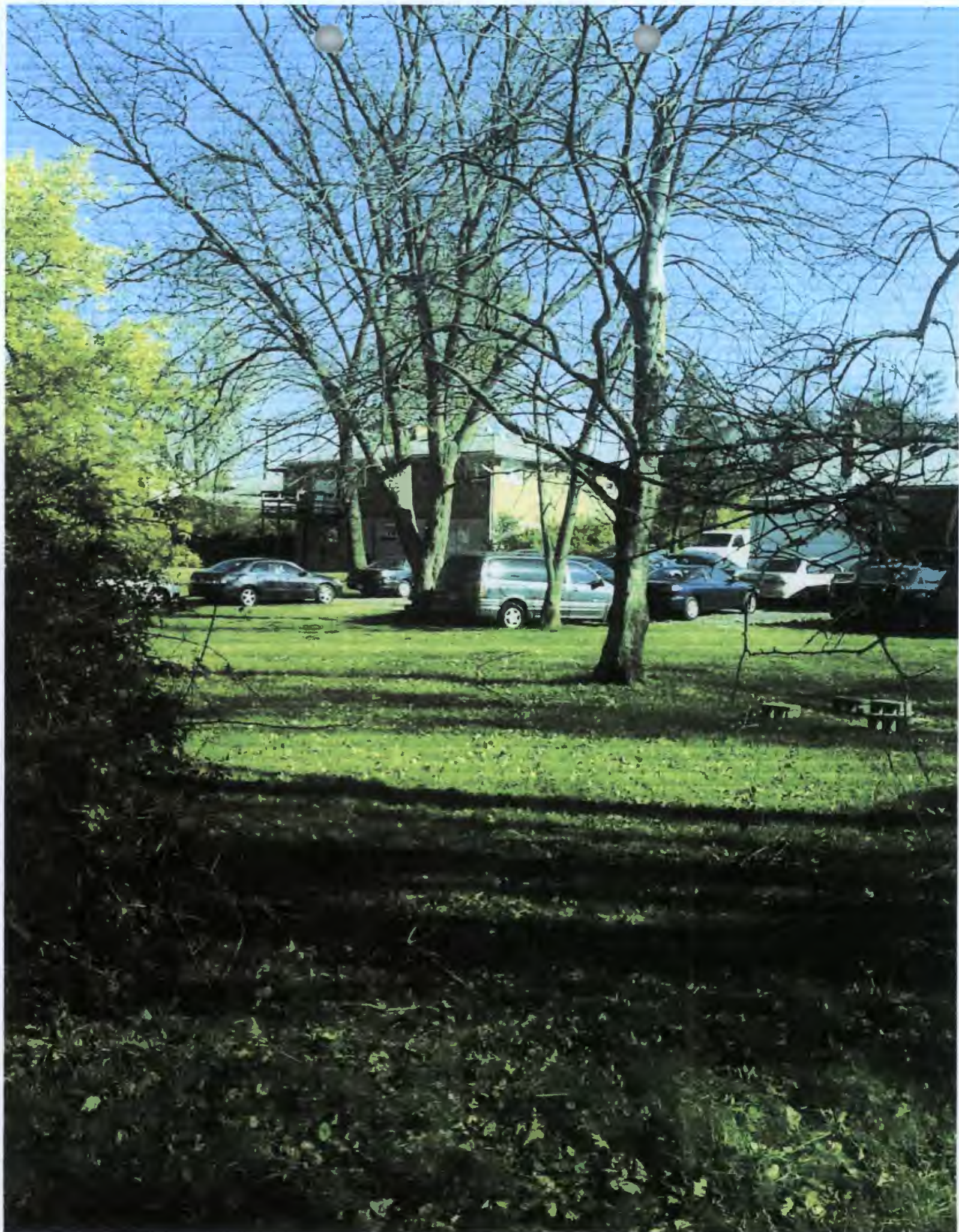
Exhibit List

Party: Protestants Date: 6/18/13

Exhibit No:	Description:
1	Photo Back house Oct 28, 2012.
2	Photo Back house Oct 28, 2012
3	Photo Side house Oct 28, 2012.
4	Pet Site Plan Ex: 7 ALT
5	Pet Landscape Plan Ex: 9 ALT
6	Pet Landscape Plan Ex: 10 ALT
7	Protestants List of Witnesses
8	6/18/13 Email from Kyratyles to Muriel Lyles
9	CV James Patton
10	Zoning Commission Checklist.
11	Aerial Photo Neighborhood.
	VERIFIED BY <u>tes</u> DATE: <u>6/20/13</u>

ID
only →







In matter Rev Lucy
Wine

Prot Ex: 7
Case No. 13-147-
SPHA

Protestants

6/18/13

Name	Address	ZIP
Barbara Roberson	4520 Old Court Rd	21208
Jimmie Roberson	" " "	"
Ruthanne Otto	4523 Tapscott Rd	21208
Tom Otto	" "	"
Barry & Sylvia Powell	4531 Maryknoll Rd.	21208
GAYLE EMERSON	8205 Autumn Ln.	21208
Lillian Nolley	4500 Dresden Rd	21208
HELEN ARLEN	4524 Dresden Rd	21208
Linda Miller	4643 Hawksbury Rd	21208
Tim + Peggy Lang	4524 Tapscott Road	21208
JAMES S. PATON	780 EKRIDGE LINDY RD	21090
WADE YOUNG II	^{#210} 4524 MARYKNOLL Rd	21208
Dale L. Watkins	4513 Dresden Rd	21208
Rutha Mims	4508 Old Court Rd	21208
AN & EVELYN Michel	8150 Scotts Level Rd	21208
R. Eddie Daniels	4519 Maryknoll Rd.	21208
Muriel Lyles	4511 Dresden Rd	21208
CLYDE D. LYLES	4511 DRESDEN RD	21208
Ella Green	4607 Hawksbury Rd	21208

Muriel Lyles

Id Only

Prot Ex: 8

Revinny Ware. 6/18/13.

From: kdlyles@comcast.net
Sent: Tuesday, June 18, 2013 8:52 AM
To: Muriel Lyles
Subject: Fwd: Kyra Lyles' response for June 18, 2013 hearing

Case No: 13-147-SPTA.

From: kdlyles@comcast.net
To: dwatkins26@gmail.com
Sent: Tuesday, June 18, 2013 8:51:13 AM
Subject: Kyra Lyles' response for June 18, 2013 hearing

Kyra Lyles

1. I have lived at 4511 Dresden Road for 13 years and 4 months.
2. I am directly behind the proposed church location.
3. I love the location of my house and have been pleased with the neighborhood. The said Church location has suffered occasional disruptions to the neighborhood in the past. I am a avid follower of Christ and believe in the purpose of the church. I also believe in the proper adherence to the law. I have found that the establishment of this proposed facility has caused more disruption to our peaceful neighbor than I am comfortable with. I moved my parents to this location because of the peaceful environment. I feel as if a church in this location is not a proper fit for our neighborhood. We have been made to feel uncomfortable in our own backyard. My relatives were filmed for no good reason and no trespassing signs were erected right in front of my back door. I don't believe that my property or privacy has been respected by the new owners/proposed church. I do not believe that the value of my home will survive this type establishment. I don't want to move but have serious considered the option.

Respectfully,

Kyra D. Lyles
4511 Dresden Road
Pikesville, MD 21208

JAMES S. PATTON, PE, MCP, CRE

PRINCIPAL - PATTON CONSULTANTS, LTD.

Mr. Patton has forty five (45) years' experience in site engineering, site planning, land development consulting, development project management, and real estate counseling for a wide variety of public and private clients. His experience in the private sector has been in residential, commercial, and industrial site development and construction while providing services to corporations, developers, and private individuals. His public sector experience is very broad, as he served as an officer in the U. S. Navy Civil Engineer Corps, as City Engineer and Planner for Washington, PA, and as consultant, either as consulting planner or consulting engineer, to a number of municipalities and governmental agencies including Pittsburgh, PA; Wilmington, DE; New Castle County, DE; Bradford, PA; Fredonia, NY; Wheeling, WV; Wirt and Doddridge Counties, WV; Canonsburg, PA; South Hills Regional Planning Commission, PA; Mt. Lebanon Township, PA; Baltimore County, MD, Harford County, and the U.S. Fish and Wildlife Service. In addition, he has provided site engineering and planning services to many local school boards, hospitals, colleges, and institutions in their development and construction programs, either as a consultant or as a board member.

He has been responsible for projects ranging in size and scope from a few thousand square feet to areas of more than a thousand acres. These projects have included storm water management, water distribution, sanitary sewer, streets, roads, parking areas, grading, building construction, wetlands and critical areas, and erosion control. His background includes involvement with land development projects as manager, consultant, counselor, or expert witness relative to new development, expansion, restoration, renewal and revitalization.

Planning, detail design and plan preparation, approvals and obtaining permits for site development and construction is a major focus. The ability to overview the various elements of site development and building construction such as zoning, environmental concerns, and utilities has been and is an important function performed by Mr. Patton in obtaining approvals and expediting the development of a site or project through completion.

EDUCATION:

SWARTHMORE COLLEGE
UNIVERSITY OF PENNSYLVANIA

*Bachelor of Science, Civil Engineering
Master of City Planning*

LICENSES & CERTIFICATIONS:

PROFESSIONAL ENGINEER

*Maryland - #9493
Maine - #13223
Pennsylvania & West Virginia (inactive)*

EXPERT WITNESS

*Baltimore County Circuit Court;
Baltimore County District Court;
Board of Appeals and Zoning*



6/18/13
Zoning Review
Department of Permits, Approvals and Inspections
Baltimore County Office Building
Towson, MD 21204

Prot Exp: 10

13-147-SPHA

In Matter of Rev
Lucy Ware

ZONING CHECKLIST

PART I: NON-RESIDENTIAL BUILDING PERMITS AND/OR **PART II: ZONING PUBLIC HEARING APPLICATIONS**

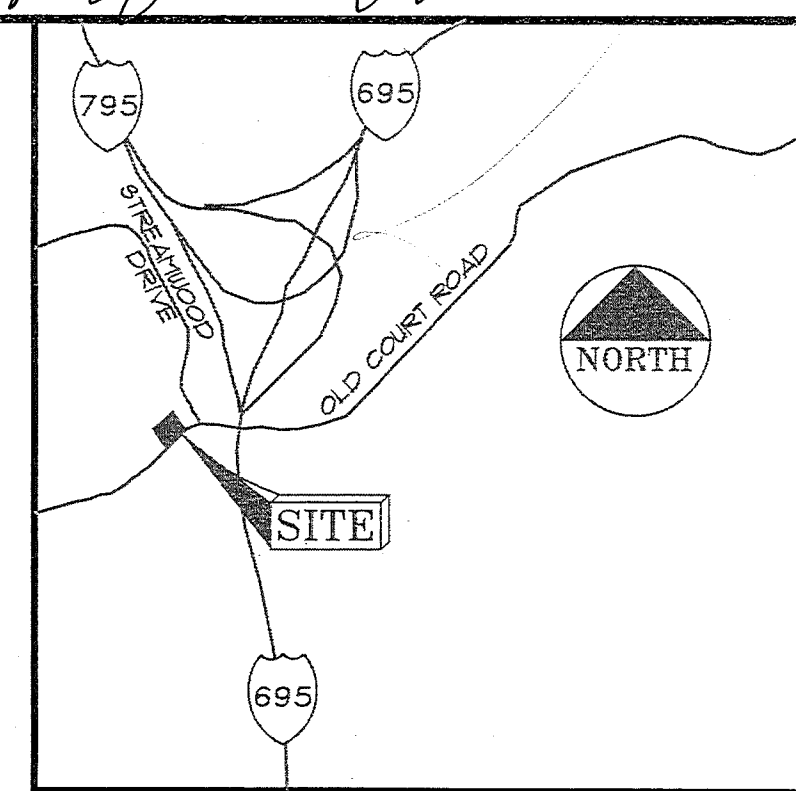
Please be aware that this checklist is for your information only and
it is not intended to offer, or to be considered, legal advice.

Revised 6/20/11

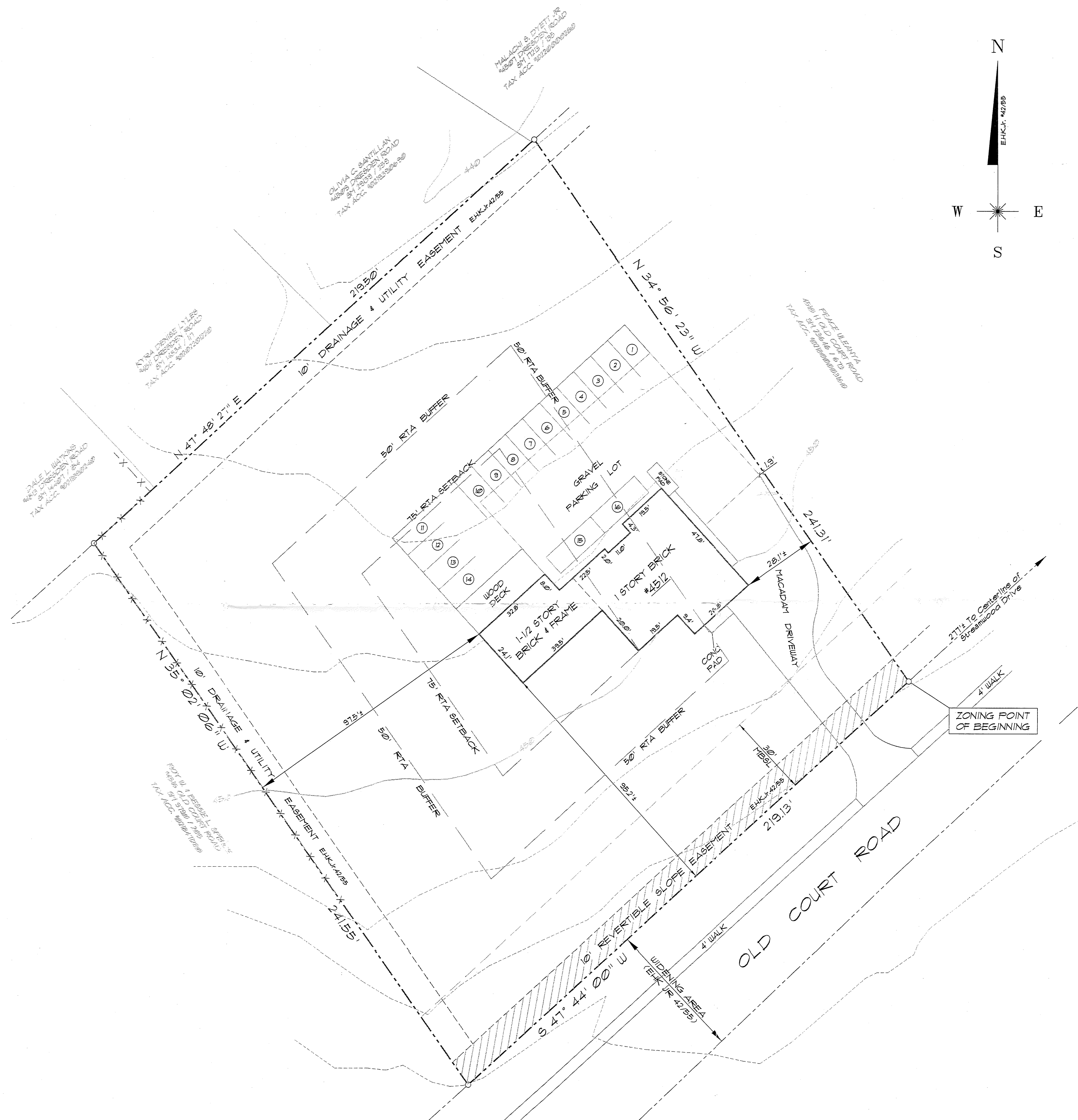
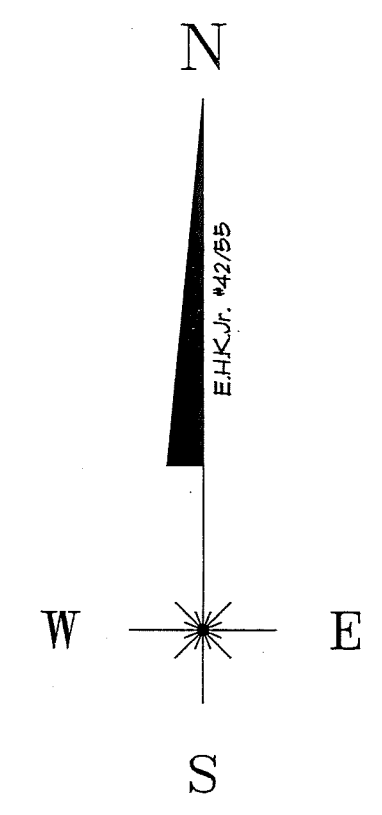
This checklist is a guide in preparing plans and information for building permit (PART I) and/or zoning public hearing (PARTS I and II) applications. Ten (10) copies of the site plan must accompany an application for a building permit, while for zoning hearings twelve (12), or fourteen (14) if in or near a floodplain, are needed. TO AVOID TIME-CONSUMING AND COSTLY DELAYS, ALL CHECKLIST INFORMATION MUST BE INCLUDED ON THE PLAN AND/OR IN THE HEARING APPLICATION.

1. _____ **NORTH ARROW, ELECTION DISTRICT, COUNTY COUNCIL DISTRICT, ZONING MAP NUMBER(S) AND TITLE PLAN "PLAN TO ACCOMPANY _____ PERMIT", (OR HEARING TYPE(S) AS APPLICABLE) AND THE DATE. Zoning Hearing Plans and Descriptions must be sealed by a MD registered Professional Engineer, Surveyor or Landscape Architect.**
2. _____ **SCALE OF DRAWING: Use Engineers Scale of 1" = 10', 1" = 20', 1" = 30', 1" = 40', 1" = 50', or 1" = 60'. If acreage exceeds 40 acres, use 1" = 100' scale.**
3. _____ **OUTLINE OF PROPERTY: Indicated by a **heavy bold line** and bearings, distances, gross and net area (acres and square feet) of parcel(s). This also applies to zoning hearing areas on the site with the POB and intersecting street name and distance shown and matching the sealed zoning description(s) required for all zoning hearing applications.**
4. _____ **VICINITY MAP: A vicinity map must be included on all site plans with the scales of 1" = 200', 1" = 500', or 1" = 1,000' WITH THE SITE AND HEARING LOCATIONS CLEARLY AND ACCURATELY OUTLINED AND LABELED.**
5. _____ **PREVIOUS COMMERCIAL PERMIT: Number(s) and the work on the same property and the approximate date of the last improvement listed on the plan or if very old, age of building and parking spaces.**
6. _____ **ZONING HEARINGS, CRG, DRC, WAIVERS: The case number(s), date of the order(s), what was granted or denied, and any restrictions must be listed and addressed in detail on the plan. List any CRG, DRC, or waiver approval dates and file numbers and dates on the plan, along with the type granted. Also reference any authorized changes on a previously approved plan. State if or not the property is under active zoning violation(s), state the reason for citation, and add the case number and the inspectors name.**

CBA - Plot EXT 5



VICINITY MAP
1" = 2000'



GENERAL NOTES

- 1) OWNER: REVEREND LUCY WARE
- 2) TAX ACCOUNT No: 1800003161
- 3) TITLE DEED: LIBER 5M, No. 32581, FOLIO 132
- 4) TAX MAP: T1 PARCEL 1011
- 5) ZONING: DR 35
- 6) 200 SCALE ZONING MAP: NU071C2
- 7) CENSUS TRACT: 402604 A.D.C. MAP: 25 - B-12
WATERSHED: GUTTINS FALLS
SUBSEWER SHED: GUTTINS FALLS
ELEMENTARY SCHOOL DISTRICT: Winard ES
MIDDLE SCHOOL DISTRICT: Old Court MS
HIGH SCHOOL DISTRICT: Milford Mill Academy
REGIONAL PLANNING DISTRICT: 301a
- 8) THE SUBJECT PROPERTY IS NOT IN THE CHESAPEAKE BAY CRITICAL AREA.
- 9) THE SUBJECT PROPERTY IS SERVED BY PUBLIC WATER AND SEWER
- 10) TOTAL GROSS FLOOR AREA OF EXISTING BUILDING: 2,845 Sq. Ft.
- 11) EXISTING F.A.R.: 0.06.
- 12) THE BUILDINGS DOES NOT EXCEED A HEIGHT OF 35'.

PARKING CALCULATIONS

REQUIRED PARKING SPACES FOR 64 SEATS: 16
(1) PER 4 SEATS IN THE PRINCIPLE PLACE OF WORSHIP
SECTION 409.6 (BCZR)
PARKING SPACES PROVIDED: 16

CHANGE OF OCCUPANCY

A PERMIT FOR A CHANGE OF OCCUPANCY HAS BEEN APPLIED FOR FROM BALTIMORE COUNTY.

VARIANCE REQUESTED

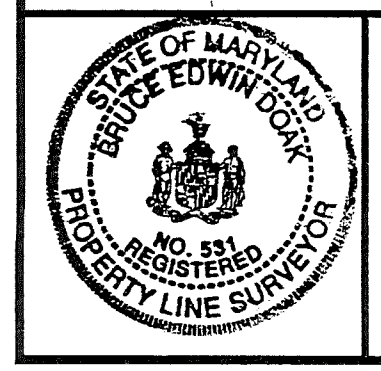
- 1) TO ALLOW 4 PARKING SPACES THAT DO NOT HAVE DIRECT ACCESS TO AN AISLE PER SECTION 409.4 (BCZR).
- 2) TO ALLOW GRAVEL SURFACE OF THE PARKING AREA IN LIEU OF A DURABLE AND DUSTLESS SURFACE PER SECTION 409.8A2 (BCZR)
- 3) TO ALLOW NO STRIPING OF THE PARKING AREA PER SECTION 409.8A6 (BCZR)

SPECIAL HEARING REQUESTED

- 1) TO ALLOW A NEW CHURCH FOR RELIGIOUS WORSHIP ON THE SUBJECT PROPERTY PER SECTION 1B01.6 (5) (BCZR)
- 2) TO ALLOW A RESIDENTIAL TRANSITION AREA (RTA) BUFFER OF 0' IN LIEU OF THE REQUIRED 50' PER SECTION 1B01.6 (5) (BCZR)
- 3) TO ALLOW A RESIDENTIAL TRANSITION AREA (RTA) SETBACK OF 0' IN LIEU OF THE REQUIRED 15' FROM A TRACT BOUNDARY TO A PARKING LOT OR STRUCTURE PER SECTION 1B01.6 (5) (BCZR)

PLAN TO ACCOMPANY A PETITION FOR A SPECIAL HEARING AND VARIANCES
4512 Old Court Road 1.206 Acres

Lot 2 "Diane Acres" E.H.K. Jr. 42/85
2nd. ELECTION DISTRICT - 2nd. COUNCILMANIC DISTRICT
BALTIMORE, MD. 21208
7 DECEMBER 2012 SCALE: 1" = 20' MAI JOB No. 12-106

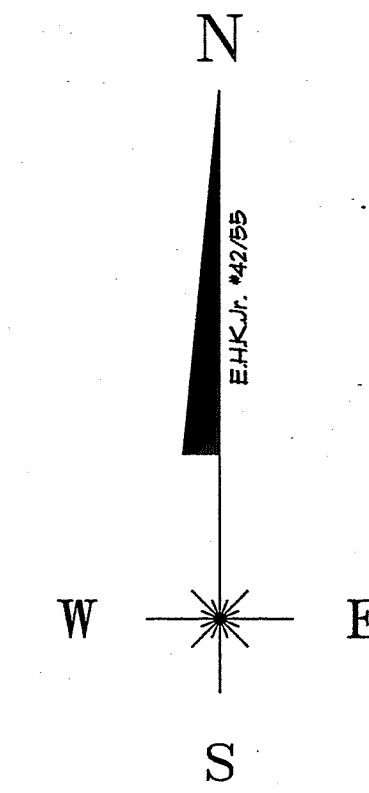
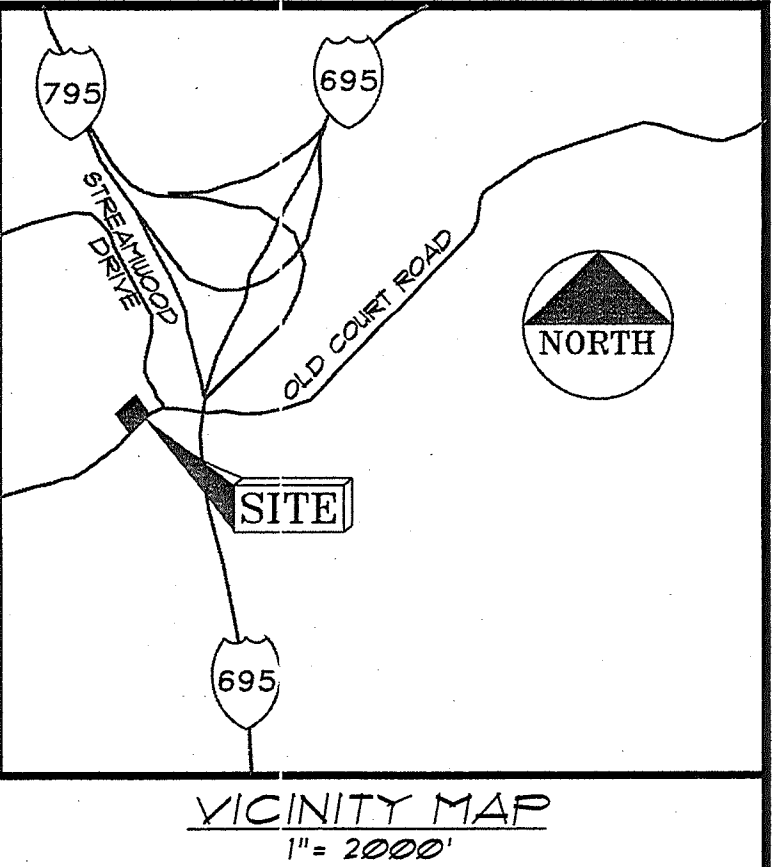


Bruce E. Doak 12/21/12
BRUCE E. DOAK DATE
REGISTERED PROPERTY LINE SURVEYOR
MARYLAND REGISTRATION No. 531
DATE OF FIELD INSPECTION 26 NOVEMBER 2012
LICENSE EXPIRATION: FEBRUARY 12, 2013

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freeland, MD 21555
o 443-900-5255 f 410-419-4906
bdoak@brucedoakconsulting.com

PETITIONER'S

EXHIBIT NO. 7



FINAL LANDSCAPE PLAN
OWNER CERTIFICATION FORM

I certify that I have reviewed this Final Landscape Plan; that I am aware of the regulations presented in the Baltimore County Landscape Manual; and I agree to comply with these regulations and all applicable policy, guidelines and ordinances. I agree to certify the implementation of this approved Final Landscape Plan upon completion of the landscape installation prior to PVA closeout if applicable or not later than one (1) year from the date of approval of this plan to the Department of Permits, Approvals and Inspections, Development Plans Review, Room 119, County Office Building, 111 W. Chesapeake Avenue, Towson, MD 21204.

Applicant Signature: Reverend Lucy Ware Date: 2/20/13 Print Name: REVEREND LUCY WARE

Address (Print): 4512 Old Court Road Street

City: PIKESVILLE State: MD Zip: 21208

PAI #: ZONING CASE #2013-0147-SPHA Permit #:

GENERAL NOTES

- 1) OWNER: REVEREND LUCY WARE
- 2) TAX ACCOUNT No: 1800003161
- 3) TITLE DEED: LIBER 5M. No. 32581, FOLIO 132
- 4) TAX MAP: T1 PARCEL 1011
- 5) ZONING: DR 3.5
- 6) 200 SCALE ZONING MAP: NW011C2
- 7) CENSUS TRACT: 402604 A.D.C. MAP: 25 - B-12
- WATERSHED: GUYTONS FALLS
- SUBSEWER SHED: GUYTONS FALLS
- ELEMENTARY SCHOOL DISTRICT: Winard ES
- MIDDLE SCHOOL DISTRICT: Old Court MS
- HIGH SCHOOL DISTRICT: Milford Mill Academy
- REGIONAL PLANNING DISTRICT: 301a
- 8) THE SUBJECT PROPERTY IS NOT IN THE CHESAPEAKE BAY CRITICAL AREA.
- 9) THE SUBJECT PROPERTY IS SERVED BY PUBLIC WATER AND SEWER
- 10) TOTAL GROSS FLOOR AREA OF EXISTING BUILDING: 2,845 Sq. Ft.
- 11) EXISTING FAR: 0.06.
- 12) THE BUILDINGS DOES NOT EXCEED A HEIGHT OF 35'.

PARKING CALCULATIONS

REQUIRED PARKING SPACES FOR 64 SEATS: 16
(1) PER 4 SEATS IN THE PRINCIPLE PLACE OF WORSHIP
SECTION 409.6 (BCZR)
PARKING SPACES PROVIDED: 16

CHANGE OF OCCUPANCY

A PERMIT FOR A CHANGE OF OCCUPANCY HAS BEEN APPLIED FOR FROM BALTIMORE COUNTY.

VARIANCE REQUESTED

- 1) TO ALLOW 4 PARKING SPACES THAT DO NOT HAVE DIRECT ACCESS TO AN AISLE PER SECTION 409.4 (BCZR)
- 2) TO ALLOW GRAVEL SURFACE OF THE PARKING AREA IN LIEU OF A DURABLE AND DUSTLESS SURFACE PER SECTION 409.8A2 (BCZR)
- 3) TO ALLOW NO STRIPING OF THE PARKING AREA PER SECTION 409.8A6 (BCZR)

SPECIAL HEARING REQUESTED

- 1) TO ALLOW A NEW CHURCH FOR RELIGIOUS WORSHIP ON THE SUBJECT PROPERTY PER SECTION 1801B16 (B) (BCZR)
- 2) TO ALLOW A RESIDENTIAL TRANSITION AREA (RTA) BUFFER OF 0' IN LIEU OF THE REQUIRED 50' PER SECTION 1801B16 (B) (BCZR)
- 3) TO ALLOW A RESIDENTIAL TRANSITION AREA (RTA) SETBACK OF 0' IN LIEU OF THE REQUIRED 15' FROM A TRACT BOUNDARY TO A PARKING LOT OR STRUCTURE PER SECTION 1801B16 (B) (BCZR)

PLAN TO ACCOMPANY A PETITION FOR A
SPECIAL HEARING AND VARIANCES
4512 Old Court Road 1206 Acres
Lot 2 "Diane Acres" EHK Jr 42/55
2nd. ELECTION DISTRICT - 2nd. COUNCILMANIC DISTRICT
BALTIMORE, MD.
7 DECEMBER 2012 SCALE: 1" = 2' PETITIONER'S

FINAL LANDSCAPE PLAN WARE PROPERTY 4512 OLD COURT ROAD

Final Landscape Plan
Landscape Architect Certification Form

It is certified that this landscape plan is in compliance with all plans previously approved by Baltimore County and the Baltimore County comments attendant thereto.

Signature: Jean Tansey Print Name: JEAN TANSEY

Date: 2/20/13

Affix Seal:

PROPOSED LANDSCAPE PLANTING

PLANT (8) 6 FT. TO 8 FT. TALL GREEN GIANT ARBORVITAE
(THUJA STANDISHII X PLICATA) FOR THE SCREENING
OF THE PARKING LOT FROM THE ADJOINING PROPERTY
ESTIMATED COST: (8) X \$180 EACH = \$1440

THEREBY CERTIFY
THAT THE LANDSCAPE INSTALLATION REQUIREMENTS,
AS SET FORTH IN THE APPROVED FINAL LANDSCAPE PLAN
AND
AS SPECIFIED BY THE BALTIMORE COUNTY LANDSCAPE MANUAL
(ADOPTED AUGUST 7, 2000 AND AS AMENDED)
HAVE BEEN FULFILLED:

Name of Project: WARE PROPERTY

Location: 4512 Old Court Road

PAI or Building Permit # ZONING CASE #2013-0147-SPHA

Developer Name: REVEREND LUCY WARE

Mailing Address: 4512 Old Court Road
PIKESVILLE MD 21208

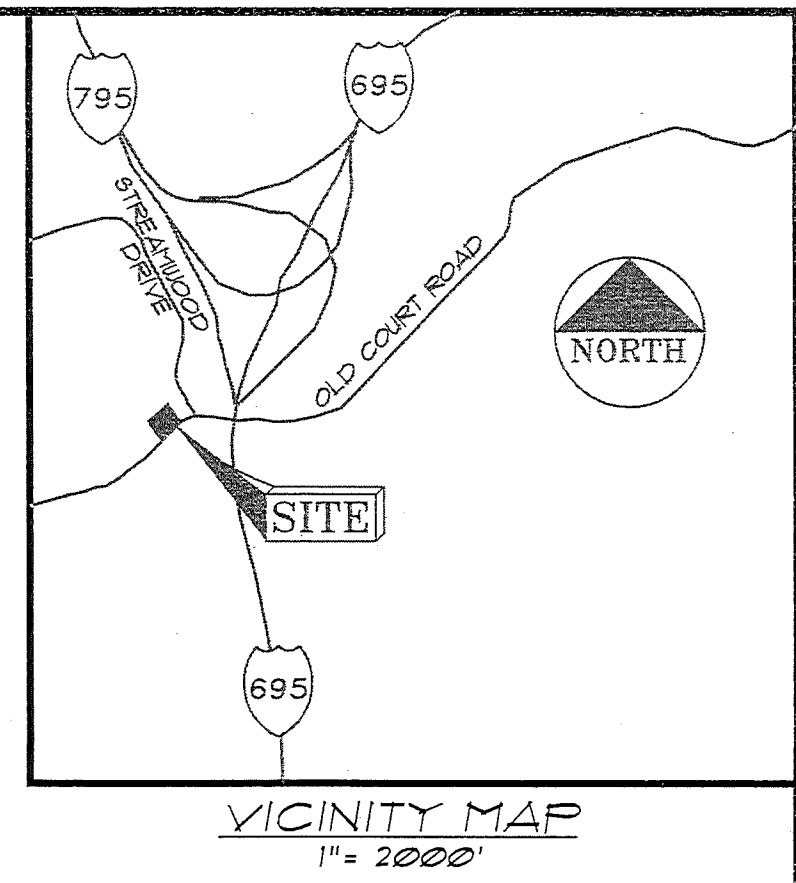
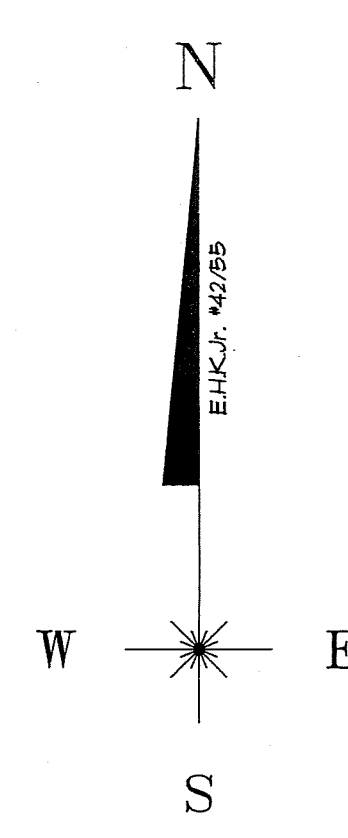
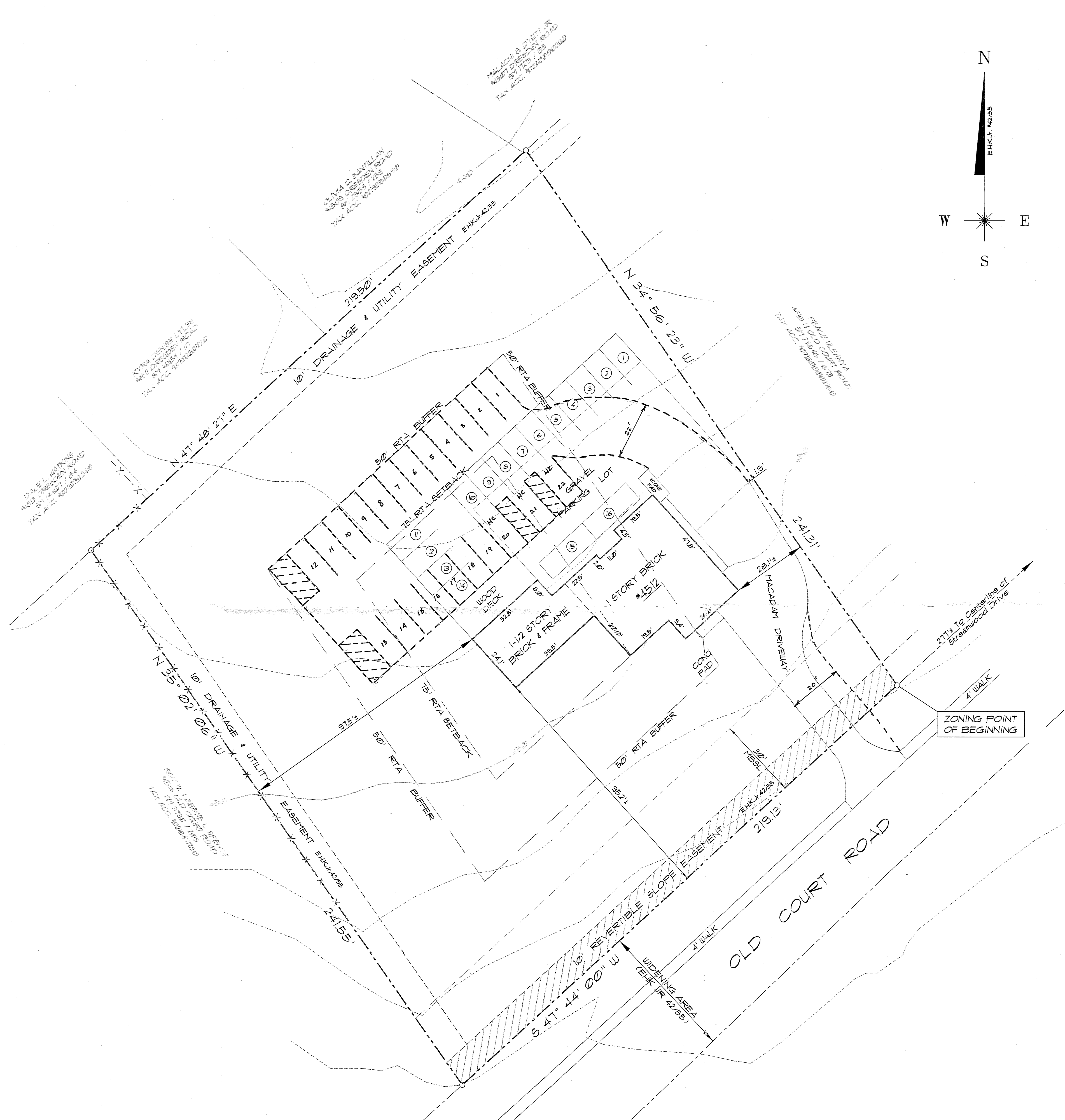
Date of Plant Material Installation:

Signature and Seal of Landscape Architect or Applicant Date

Printed Name:

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-800-3355 n 410-419-4506
bdoak@brucedoakconsulting.com

BRUCE E. DOAK
REGISTERED PROPERTY LINE SURVEYOR
MARYLAND REGISTRATION No. 931
DATE OF FIELD INSPECTION 26 NOVEMBER 2012
LICENSE EXPIRATION: FEBRUARY 12, 2013



GENERAL NOTES

- 1.) OWNER: REVEREND LUCY WARE
2. TAX ACCOUNT No: 1800003161
3. TITLE DEED: LIBER 611, No. 32581, FOLIO 132
- 4.) TAX MAP: T1 PARCEL 1011
- 5.) ZONING: DR 3.5
- 6.) 200 SCALE ZONING MAP: NU011C2
- 7.) CENSUS TRACT: 402604 A.D.C. MAP: 25 - B-12
- 8.) WATERSHED: GUYTONS FALLS
- 9.) SUBSEWER SHED: GUYTONS FALLS
- 10.) ELEMENTARY SCHOOL DISTRICT: Winand ES
- 11.) MIDDLE SCHOOL DISTRICT: Old Court MS
- 12.) HIGH SCHOOL DISTRICT: Milford Mill Academy
- 13.) REGIONAL PLANNING DISTRICT: 301a
- 14.) THE SUBJECT PROPERTY IS NOT IN THE CHESAPEAKE BAY CRITICAL AREA.
- 15.) THE SUBJECT PROPERTY IS SERVED BY PUBLIC WATER AND SEWER
- 16.) TOTAL GROSS FLOOR AREA OF EXISTING BUILDING: 2,845 Sq. Ft.
- 17.) EXISTING F.A.R.: 0.06.
- 18.) THE BUILDINGS DOES NOT EXCEED A HEIGHT OF 35'.

PARKING CALCULATIONS

REQUIRED PARKING SPACES FOR 64 SEATS: 16
(1 PER 4 SEATS IN THE PRINCIPLE PLACE OF WORSHIP SECTION 409.6 (BCZR))
PARKING SPACES PROVIDED: 16

CHANGE OF OCCUPANCY

A PERMIT FOR A CHANGE OF OCCUPANCY HAS BEEN APPLIED FOR FROM BALTIMORE COUNTY.

VARIANCE REQUESTED

- 1.) TO ALLOW 4 PARKING SPACES THAT DO NOT HAVE DIRECT ACCESS TO AN AISLE PER SECTION 409.4 (BCZR)
- 2.) TO ALLOW GRAVEL SURFACE OF THE PARKING AREA IN LIEU OF A DURABLE AND DUSTLESS SURFACE PER SECTION 409.8A2 (BCZR)
- 3.) TO ALLOW NO STRIPING OF THE PARKING AREA PER SECTION 409.8A6 (BCZR)

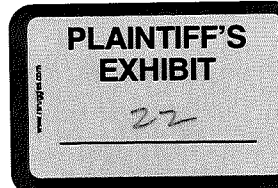
SPECIAL HEARING REQUESTED

- 1.) TO ALLOW A NEW CHURCH FOR RELIGIOUS WORSHIP ON THE SUBJECT PROPERTY PER SECTION 1801B1g (6) (BCZR)
- 2.) TO ALLOW A RESIDENTIAL TRANSITION AREA (RTA) BUFFER OF 0' IN LIEU OF THE REQUIRED 50' PER SECTION 18011e (5) (BCZR)
- 3.) TO ALLOW A RESIDENTIAL TRANSITION AREA (RTA) SETBACK OF 0' IN LIEU OF THE REQUIRED 15' FROM A TRACT BOUNDARY TO A PARKING LOT OR STRUCTURE PER SECTION 18011e (5) (BCZR)

PLAN SHOWING ALTERNATIVE PARKING

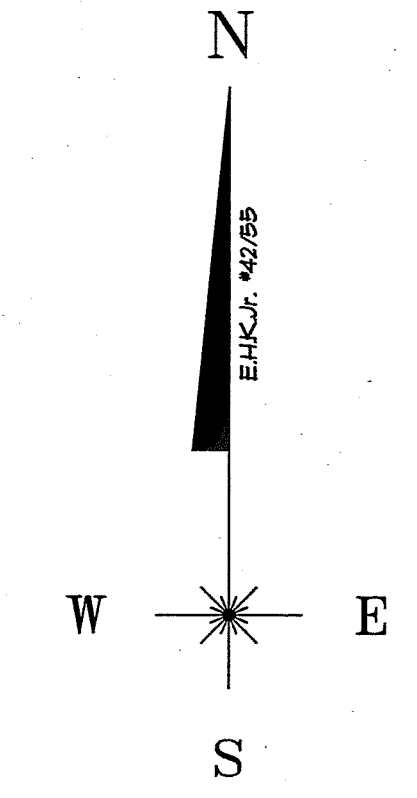
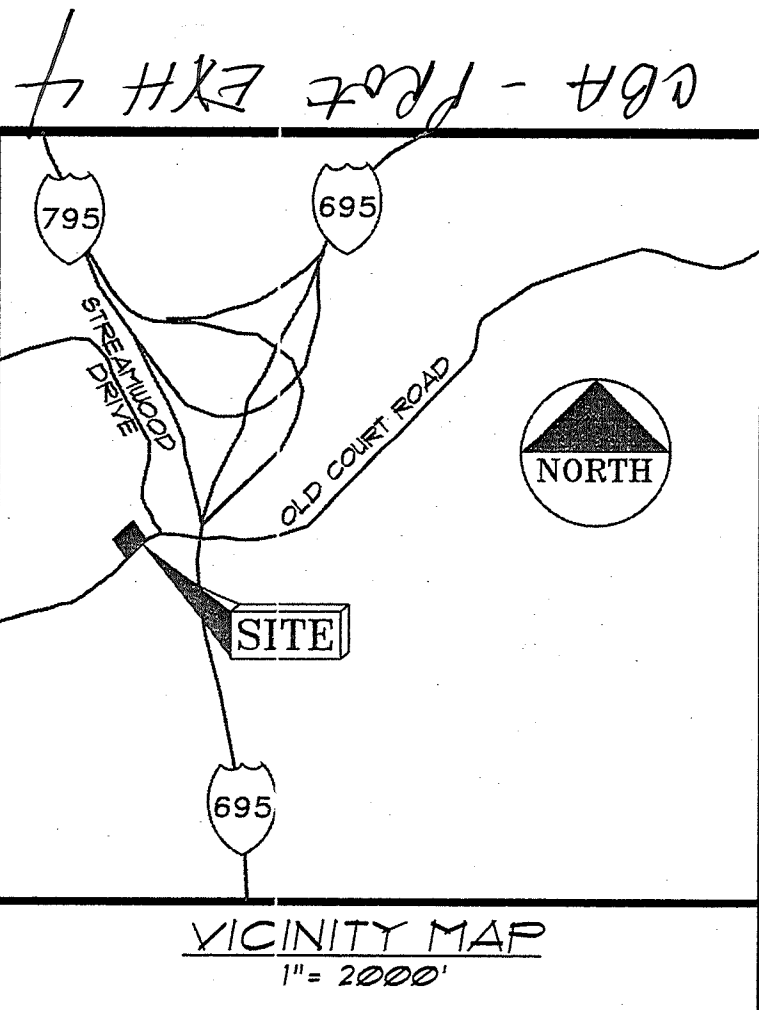
PLAN TO ACCOMPANY A PETITION FOR A SPECIAL HEARING AND VARIANCES
4512 Old Court Road 1.206 Acres

Lot 2 "Diane Acres" EHK Jr. 42/85
2nd. ELECTION DISTRICT - 2nd. COUNCILMANIC DISTRICT
BALTIMORE, MD. 21208
7 DECEMBER 2012 SCALE: 1" = 20' MAI JOB No. 12-106



BRUCE E. DOAK
REGISTERED PROPERTY LINE SURVEYOR
MARYLAND REGISTRATION No. 531
DATE OF FIELD INSPECTION 26 NOVEMBER 2012
LICENSE EXPIRATION: FEBRUARY 12, 2013

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freeland, MD 21155
P 443-900-3355 M 410-419-4906
bdoak@brucedoakconsulting.com



FINAL LANDSCAPE PLAN
OWNER CERTIFICATION FORM

I certify that I have reviewed this Final Landscape Plan; that I am aware of the regulations presented in the Baltimore County Landscape Manual; and I agree to comply with these regulations and all applicable policy, guidelines and ordinances. I agree to certify the implementation of this approved Final Landscape Plan upon completion of the landscape installation prior to PWA closeout if applicable or not later than one (1) year from the date of approval of this plan to the Department of Permits, Approvals and Inspections, Development Plans Review, Room 119, County Office Building, 111 W. Chesapeake Avenue, Towson, MD 21204.

Applicant Signature: [Signature] Date: 2/20/13 Print Name: REVEREND LUCY WARE

Address (Print): 4512 Old Court Road Street

City: PIKESVILLE State: MD Zip: 21208

PAI #: _____ Zoning Case # 2013-0147-SPHA Permit # _____

- GENERAL NOTES
- 1) OWNER: REVEREND LUCY WARE
 - 2) TAX ACCOUNT No: 1800003161
 - 3) TITLE DEED: LIBER 81, No. 32581, FOLIO 132
 - 4) TAX MAP: T1 PARCEL 1011
 - 5) ZONING: DR 35
 - 6) 200 SCALE ZONING MAP: NW01C2
 - 7) CENSUS TRACT: 402604 A.D.C. MAP: 25 - B-12
 - 8) WATERSHED: GUTYNNS FALLS
 - 9) SUBSEWER SHED: GUTYNNS FALLS
 - 10) ELEMENTARY SCHOOL DISTRICT: Winand ES
 - 11) MIDDLE SCHOOL DISTRICT: Old Court MS
 - 12) HIGH SCHOOL DISTRICT: Milford Mill Academy
 - 13) REGIONAL PLANNING DISTRICT: 301a
 - 14) THE SUBJECT PROPERTY IS NOT IN THE CHESAPEAKE BAY CRITICAL AREA
 - 15) THE SUBJECT PROPERTY IS SERVED BY PUBLIC WATER AND SEWER
 - 16) TOTAL GROSS FLOOR AREA OF EXISTING BUILDING: 2,845 Sq. Ft.
 - 17) EXISTING F.A.R.: 0.06
 - 18) THE BUILDINGS DOES NOT EXCEED A HEIGHT OF 35'.

PARKING CALCULATIONS

REQUIRED PARKING SPACES FOR 64 SEATS: 16
(1 PER 4 SEATS IN THE PRINCIPLE PLACE OF WORSHIP SECTION 409.6 BCZR)

PARKING SPACES PROVIDED: 16

CHANGE OF OCCUPANCY

A PERMIT FOR A CHANGE OF OCCUPANCY HAS BEEN APPLIED FOR FROM BALTIMORE COUNTY.

- VARIANCE REQUESTED
- 1) TO ALLOW 4 PARKING SPACES THAT DO NOT HAVE DIRECT ACCESS TO AN AISLE PER SECTION 409.4 (BCZR)
 - 2) TO ALLOW GRAVEL SURFACE OF THE PARKING AREA IN LIEU OF A DURABLE AND DUSTLESS SURFACE PER SECTION 409.8A2 (BCZR)
 - 3) TO ALLOW NO STRIPING OF THE PARKING AREA PER SECTION 409.8A6 (BCZR)

- SPECIAL HEARING REQUESTED
- 1) TO ALLOW A NEW CHURCH FOR RELIGIOUS WORSHIP ON THE SUBJECT PROPERTY PER SECTION 1801.1b (6) (BCZR)
 - 2) TO ALLOW A RESIDENTIAL TRANSITION AREA (RTA) BUFFER OF 0' IN LIEU OF THE REQUIRED 50' PER SECTION 1801.1b (3) (BCZR)
 - 3) TO ALLOW A RESIDENTIAL TRANSITION AREA (RTA) SETBACK OF 0' IN LIEU OF THE REQUIRED 15' FROM A TRACT BOUNDARY TO A PARKING LOT OR STRUCTURE PER SECTION 1801.1b (3) (BCZR)

PLAN TO ACCOMPANY PHOTOGRAPHS

PLAN TO ACCOMPANY A PETITION FOR A SPECIAL HEARING AND VARIANCES

4512 Old Court Road 1206 Acres

Lot 2 "Diane Acres" EHK Jr 42/85

2nd. ELECTION DISTRICT - 2nd. COUNCILMANIC DISTRICT BALTIMORE, M

7 DECEMBER 2012 SCALE: 1" = _____ PETITIONER'S

I HEREBY CERTIFY

THAT THE LANDSCAPE INSTALLATION REQUIREMENTS, AS SET FORTH IN THE APPROVED FINAL LANDSCAPE PLAN AND AS SPECIFIED BY THE BALTIMORE COUNTY LANDSCAPE MANUAL (ADOPTED AUGUST 7, 2000 AND AS AMENDED) HAVE BEEN FULFILLED:

Name of Project: WARE PROPERTY Print

Location: 4512 Old Court Road

PAI or Building Permit # ZONING CASE # 2013-0147-SPHA

Developer Name: REVEREND LUCY WARE Print

Mailing Address: 4512 Old Court Road
PIKESVILLE MD 21208

Date of Plant Material Installation: _____

Signature and Seal of Landscape Architect or Applicant _____ Date _____

Printed Name: _____

BRUCE E. DOAK DATE
REGISTERED PROPERTY LINE SURVEYOR
MARYLAND REGISTRATION NO. 531
DATE OF FIELD INSPECTION 26 NOVEMBER 2012
LICENSE EXPIRATION: FEBRUARY 12, 2013

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freeland, MD 21055
o 443-900-5355 m 410-419-4906
bdoak@brucedoakconsulting.com

Final Landscape Plan
Landscape Architect Certification Form

It is certified that this landscape plan is in compliance with all plans previously approved by Baltimore County and the Baltimore County comments attendant thereto.

Signature: _____ Print Name: _____

Date: _____ Affix Seal: _____

FINAL LANDSCAPE PLAN
WARE PROPERTY
4512 OLD COURT ROAD



Prepared by Geographic Information Services
Baltimore County Office of Information Technology
Business Applications
Date: May 31, 2013
2011 State Imagery

1 inch = 50 feet

The Property information on this Plot was compiled from existing
deed information. This information is not to be considered
authoritative. The Survey information was not field checked and
certified by a licensed land surveyor.



Prot. 11