

2/27/15

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
1301 CHEVERLY ROAD		
9 th Election & 3 rd Councilmanic Districts	*	BOARD OF APPEALS
Legal Owner: The Belvedere Baptist Church	*	FOR
of Baltimore		
Lessee: Davenport Preschool LLC,	*	BALTIMORE COUNTY
Petitioners	*	Case No.: 15-004-SPH

OPINION

This case comes before the Baltimore County Board of Appeals on an appeal of Administrative Law Judge John Beverungen's decision denying a Petition for a Special Hearing to approve an amendment to Restriction No. 2 in Zoning Case No. 2013-0166-X for the property located at 1301 Cheverly Road in Eastern Baltimore County. People's Counsel for Baltimore County has moved for dismissal of Petitioners' appeal on the grounds of *res judicata*. Petitioner Davenport Preschool, LLC ("Davenport")¹ and People's Counsel submitted Memoranda, and the Board heard oral arguments on January 27, 2015. Matthew T. Vocci of Ober Kaler Grimes & Shriver appeared on behalf of Davenport, J. Carroll Holzer appeared on behalf of the Protestants, and Peter M. Zimmerman appeared on behalf of People's Counsel. The Board publicly deliberated the Motion to Dismiss on January 27, 2015.

BACKGROUND

The dispute at issue dates back to March 28, 2013, when Administrative Law Judge ("ALJ") Beverungen of the Office of Administrative Hearings issued a written order granting, with certain conditions, the Petition for a Special Exception filed by The Belvedere Baptist Church of

¹ Counsel for Davenport has indicated the proper name of the Lessee is 'Davenport Education, LLC.'

Baltimore, Legal Owner ("Belvedere") and Davenport, the Lessee. (Belvedere and Davenport are collectively referenced herein as "Petitioners"). Petitioners had sought the special exception pursuant to §424.5.A of the Baltimore County Zoning Regulations ("BCZR") to permit a Class B Group Child Care Center with more than 40 children in an existing church on the subject property. (Case No. 2013-166-X). After a contested hearing involving testimony and evidence from Davenport and several members of the community, the ALJ granted the Petition, subject to three conditions. The pertinent condition is No. 2, which states as follows:

2. The Petitioner shall have no more than 120 children in the facility at any one time, unless state regulations or fire and life safety regulations provide a lower number which would prevail.

(March 28, 2013 ALJ Opinion and Order at 7). Petitioners did not file an appeal of this Order. Certain community members ("Protestants") did file a timely appeal to the Board of Appeals from the ALJ's decision but subsequently withdrew their appeal. By Order dated June 27, 2013, the Board of Appeals dismissed Protestant's appeal with prejudice. (The 2013 hearing and appeal process shall be referred to as "Davenport I").

More than a year later, on July 8, 2014 and pursuant to § 500.7 of the BCZR, Petitioners filed for a Special Hearing, seeking amendment of Condition No. 2. Specifically, Petitioners wanted the ALJ to amend that condition to allow a maximum of 150 rather than 120 children in the child care facility. A public hearing was held and both sides again presented testimony and evidence. By Order dated September 12, 2014, ALJ Beverungen denied the Petition. Petitioners filed a timely appeal to this Board of Appeals. (The 2014 hearing and appeal process shall be referred to as "Davenport II"). People's Counsel has filed a Motion to Dismiss Petition for Special Hearing, based on the doctrine of *res judicata*. Petitioner Davenport opposes the Motion.

FACTS

In Davenport I, Petitioner Davenport sought a special exception in order to operate a childcare facility for more than forty children. Davenport intended to lease space in the existing Belvedere Baptist Church to house the facility. The Church is situated on a 12.711 acre property in a rural residential neighborhood consisting of approximately 160 homes and zoned DR 1. See Davenport I ALJ Opinion at 2,4. Under the DR 1 classification the Petitioners would be permitted to operate a class B Group Child Care Center with up to forty children as a matter of right. See BCZR §1B01.1.A.12. The Regulations require a Special Exception to operate a facility with more than forty children. See BCZR §424.5.A.

During the hearing in Davenport I, the Davenport representative indicated that applicable child care regulations would limit the number of child in the facility as planned to approximately 135. Davenport stated further that its goal was to enroll 150 children, resulting in approximately 120 children attending the center on any given day.² See Davenport I ALJ Opinion at 5-6. Neighborhood residents who spoke at the hearing identified potential traffic problems as their primary concern. Id. at 4. There was some divergent testimony as to the estimated number of vehicle trips through the neighborhood 150 enrolled children would generate. ALJ Beverungen stated that each such estimate represented “a lot of traffic” for the rural residential neighborhood and may well disturb the peace and quiet of the neighborhood. He stated further, however, that a large child care center with 100+ children would generate a large volume of traffic in any DR zone, not just this particular location. Id. at 4. According to ALJ Beverungen, the increase in traffic was “inherent” in the proposed use and “is exactly the type of inherent adverse effect that the legislature

² Given that some of the younger children would attend on a part-time basis, Davenport counted two such part-time children as one full-time enrollment.

was presumed to have anticipated when it allowed the use by a special exception.” Id. He concluded he was compelled to grant the Petition because the Protestants failed to show that the proposed use at the particular location would have non-inherent adverse effects. Id. at 5.

Although he granted the Petition, ALJ Beverungen also conditioned the relief in an attempt “to mitigate the impacts on the community.” Id. The “most significant condition” concerned the number of children at the facility. Considering both the expected traffic problems, and Davenport’s testimony regarding the anticipated number of students and classrooms, the ALJ concluded 120 children was an appropriate figure. Id. He thus granted the special exception subject to the condition that Davenport would have “no more than 120 children in the facility at any one time. . . .” Id. at 7. Petitioners did not appeal this decision. Protestants did file but later withdrew an appeal. Therefore, on June 27, 2013, this Board dismissed the appeal with prejudice.

In July 2014 Petitioners reemerged and filed a Petition for a Special Zoning Hearing. The Petition sought amendment of Condition No. 2 in the March 2013 Order, such that Davenport would be permitted to increase the number of children in the facility to 150, rather than 120. Petitioners also wanted to build an additional classroom on the property to accommodate more children. ALJ Beverungen again heard testimony from witnesses for the Petitioner and Protestants and received exhibits regarding the proposed changes. In an Opinion dated September 12, 2014, ALJ Beverungen denied the Petition for Special Hearing. He emphasized that Petitioners had failed to indicate why the original restriction should not remain in place, that Davenport had not yet reached the maximum number of students permitted in condition No. 2,³ and that Petitioners failed to demonstrate some change in circumstances that would justify a different restriction. See

³ The Davenport representative indicated the then-current class had 109 children and that she wanted to build another classroom to house 16 more students. See Davenport II ALJ Opinion at 2.

Davenport II ALJ Opinion at 2-3. On October 10, 2014 Davenport filed a Notice of Appeal. People's Counsel filed a Motion to Dismiss the Petition for Special Hearing and Petitioner's appeal from the decision in Davenport II on the ground of *res judicata*. Davenport responded and on January 27, 2015 all parties presented arguments before the Board of Appeals.

DISCUSSION

I. Res Judicata

Under the doctrine of *res judicata*, a judgment on the merits in a previous suit between the same parties or their privies is entitled to full preclusive effect and bars a second suit predicated upon the same cause of action. Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n, Inc., 192 Md. App. 719, 734 (2010)(citations omitted). *Res judicata* acts as "an absolute bar, not only as to all matters which were litigated in the earlier case, but as to all matters which could have been litigated." Whittle v. Bd. of Zoning Appeals, 211 Md. 36, 49 (1956). See Garrett Park v. Montgomery County Council, 257 Md. 250, 257 (1970) (*res judicata* applies to every matter that was or might have been presented in the prior case).

Although some older cases held that *res judicata* did not apply to rulings of administrative agencies, it is now well-established that "when an administrative agency is performing a quasi-judicial function, the principles of *res judicata* are applicable." Seminary Galleria, 192 Md. App. at 735. This determination is guided by a three-part test: 1) whether the agency was acting in a judicial capacity; 2) whether the issue presented to the tribunal was actually litigated before the agency; and 3) whether the issue's resolution was necessary to the agency's decision. Id. at 736. See Batson v. Shiflett, 325 Md. 684, 705-08 (1992).

In acting upon the Petitions filed herein, the Office of Administrative Hearings acted in a judicial capacity, conducting a hearing and allowing the parties to present evidence. The parties

were precisely the same in both Davenport I and II. The issues regarding the maximum number of children presented in Davenport II were previously addressed, litigated and resolved in Davenport I. That resolution was key to the original decision. According to these criteria, the resulting conditioned decision rendered by ALJ Beverungen in Davenport I should preclude maintenance of a second action to amend that same condition.

Petitioners argue the decision is not entitled to a preclusive effect because it was based on an error of law. However, just as a final decision in a prior litigation, even if incorrect, will bind the parties to the litigation, a decision by an administrative agency acting in a judicial capacity is equally binding whether or not the decision was made in error. See Powell v. Breslin, 430 Md. 52, 64-65 (2013)(an incorrect ruling in a prior action does not deprive the ruling of *res judicata* effect). This should particularly apply when the party striving for that proverbial second bite at the apple failed to appeal the first determination. Even if this were not the case, the decision in Davenport I was not in error. Petitioners argue that Schultz v. Pritts, 291 Md. 1 (1981) and its progeny such as Montgomery County v. Butler, 417 Md. 271 (2010) should be considered in analyzing the matter. However, that is exactly the path ALJ Beverungen followed. Citing Schultz and Butler, the ALJ concluded that insofar as the community's traffic concerns are an inherent effect of a large child-care center in any DR zone, he was bound to, and therefore he did grant the Petition. See Davenport I ALJ Opinion at 3-4.

The fact that the ALJ also imposed certain conditions in an attempt to alleviate the traffic burden and protect the neighborhood does not in any way undermine the validity of his decision. To the contrary, the applicable zoning regulations specifically permit such conditional grants. According to BCZR §502.2, "[i]n granting any special exception, the Zoning Commissioner . . . shall impose such conditions, restrictions or regulations as may be deemed necessary or

advisable for the protection of surrounding and neighboring properties.” See Halle Companies v. Crofton Civic Ass'n, 339 Md. 131, 140 (1995) (agency may impose reasonable conditions and restrictions in connection with a special exception order to mitigate the effect upon neighboring property and the community at large.); Baylis v. City Council of Baltimore, 219 Md. 164, 168 (1959). The ALJ permitted Petitioners to operate their business on a scale larger than that permitted as of right while concomitantly imposing certain restrictions intended to protect the neighborhood and its residents. This compromise was an appropriate use of his discretionary powers:

II. Substantial Change in Circumstances

Res judicata operates on the premise that faced with the same information, there is no reason to expend judicial resources and force opposing parties to rehash the same case in an ongoing effort to reach a different result. Thus, if a party *does* provide evidence of substantial changes in circumstances and fact between the first case and the second, *res judicata* may not necessarily prevent a second hearing on a previously decided matter. This issue arises fairly often in the zoning arena. According to the Court of Appeals, “[t]his rule seems to rest not strictly on the doctrine of *res judicata* but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law.” Whittle, 211 Md. at 45. See Seminary, 192 Md. App. at 737 (“The Court of Appeals has emphasized that before a party can apply to a zoning agency for relief previously denied by the agency, ‘substantial changes in fact and circumstances’ must be, indeed, substantial.”) (citations omitted); Jack v. Foster Branch Homeowner's Ass'n No. 1, Inc., 53 Md. App. 325, 333 (1982) (*res judicata* doctrine may not preclude a second case where there has been a material change in circumstances since the first decision); Chatham Corp. v. Beltram, 243 Md. 138, 151-52 (1966)

(barring a second attempt to re-raise a previously decided issue where the underlying facts remained unchanged).

Davenport contends that the actual operation of the school is a significant change in circumstances. They point to a document all school parents are required to sign regarding safe driving through the neighborhood and note that there have not been any traffic accidents. They further indicate that the growth of the student population and current space restrictions may require them in the future to refuse admittance to a few families. (Davenport's Response Memorandum at 7-8). These are not significant material changes that would warrant a rehearing or amendment of Condition No. 2. These same items were raised in Davenport I. The school's operation and the consequences thereof was a fact that was anticipated and discussed at the prior hearing. Condition No. 2 was imposed precisely to mitigate contemplated traffic problems resulting from the student population; the current absence of accidents argues more for the continuation of the condition rather than its amendment and a larger student body.⁴ As to the school's parents now signing an agreement regarding safety and neighborhood issues, that is not a change warranting a rehearing; one would have assumed that school parents would obey traffic laws and exercise caution when driving through the neighborhood irrespective of the agreement.⁵ In short, there was no substantial change to the property, the neighborhood or the facts that would lead to a contrary result upon re-litigation, particularly in the relatively short time span between the decisions.

⁴ Moreover, while Davenport may desire more available student slots, the school has yet to reach the maximum number of students allowed under the existing condition.

⁵ The "Community Respect Agreement" signed by the Davenport parents includes such statements as "I will come to a complete stop at every stop sign" and "I will not speed through the neighborhood"

CONCLUSION

In Davenport I, the ALJ struck a valid compromise between each party's concerns in light of the governing law. If Petitioners took issue with Condition No. 2 in the ALJ's decision they could have and should have filed a timely appeal with the Board. They failed to do so. The Protestants filed an appeal but withdrew that appeal in the apparent belief that Petitioners would be adhering to the conditions set forth in Davenport I. The community's good faith in withdrawing its appeal should not mean they are now required to fight the same battle every new school year. The parties in both Davenport I and II are identical, there are no material changes of fact or law, and the issues now presented either were addressed or could have been addressed in Davenport I. Petitioners have not presented any compelling reason permitting them, contrary to the doctrine of *res judicata*, to go back to the well and re-litigate the same issue in the hope of achieving a different result.

ORDER

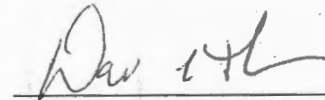
IT IS THEREFORE, this 27th day of February, 2015 by the Board of Appeals for Baltimore County,

ORDERED, that the Motion to Dismiss Petition for Special Hearing filed by Baltimore County's People's Counsel be and is hereby GRANTED; and it is further

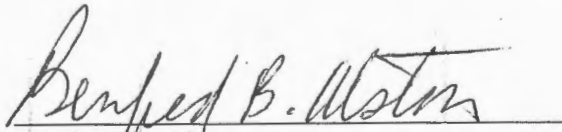
ORDERED, that the appeal in Case No. 2015-0004-SPH be and is hereby DISMISSED WITH PREJUDICE.

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*.

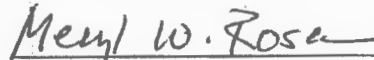
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



David L. Thurston, Chairman



Benfred B. Alston



Meryl W. Rosen



Board of Appeals of Baltimore County

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February 27, 2015

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RE: *In the Matter of: The Belvedere Baptist Church of Baltimore – Legal Owner
Davenport Preschool, LLC*
Case No.: 15-004-SPH

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,

A handwritten signature in cursive script that reads "Sunny Cannington Han".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Multiple Original Cover Letters

c: See Attached Distribution List

In Re: The Belvedere Baptist Church of Baltimore – Legal Owner
Davenport Preschool, LLC – Lessee
Distribution List
February 27, 2015
Page 2

The Belvedere Baptist Church of Baltimore
Carl Dyhrberg
Davenport Preschool, LLC
Liz Harlan
Julie Sugar
Mary Barry
Edward and Terry Shapiro
Helen Kraft
M.J. Watson
Larry and Cheryl Cleavenger
William and Linda Lilly
Wayne Skinner
Sandy Kylliainen
Linda M. Rubeor
Richard and Susan Pescatore
Richard and Joan Magnani
Tim and Ellen Mering
Daniel and Theresa Driscoll
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney/Office of Law
Michael Field, County Attorney/Office of Law

1/23/15

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
1301 Cheverly Road; SE end of Cheverly Road,		
240' SE of Valewood Road	*	COUNTY BOARD
9 th Election & 3 rd Councilmanic Districts		
Legal Owner(s): Belvedere Baptist Church	*	OF APPEALS FOR
of Baltimore		
Lessee: Davenport Preschool LLC	*	BALTIMORE COUNTY
Petitioner(s)		
	*	2015-004-SPH

* * * * *

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S REPLY MEMORANDUM

People's Counsel replies to Petitioner Davenport Education, LLC's (Davenport's) response, as follows:

This is the latest outbreak of an epidemic where petitioners try to overcome the results of earlier adverse or limiting decisions by overturning them indirectly with new petitions. Davenport's July 8, 2014 petition seeks to supersede and effectively overturn Administrative Law Judge (ALJ) John Beverungen's March 28, 2013 decision granting conditional approval in a hotly contested case. The pertinent condition at issue is on page 7, condition 2, limiting the use to

“... no more than 120 children in the facility at any one time, unless state regulations or fire and life safety regulations provide a lower number which would prevail.”

Davenport now wants a 25% increase to 150 children, along with the construction of an additional classroom to accommodate 16 more children.

Davenport was fortunate to obtain approval of a special exception, with conditions; having chosen not to appeal and run the concurrent risk of losing their special exception upon the citizen appeal, Davenport now wants their cake with an added layer of icing, which ALJ Beverungen plainly denied. This tactic burdens area citizens, the zoning advisory committee county staff, the ALJ, and the County Board of Appeals (CBA) with the task, time, and resources to relitigate a case which reached its conclusion just a year earlier, on June 27, 2013, upon the withdrawal of the citizens' appeal.

RECEIVED
JAN 23 2015
BALTIMORE COUNTY
BOARD OF APPEALS

This is our reply to each of Davenport's false assumptions and premises.

I. *Res Judicata* bars this application whether or not the original decision was right or wrong, sound or unsound

Davenport attempts to circumvent the *res judicata* doctrine by challenging the correctness of the original decision's condition limiting the number of children. Davenport cites County Comm'rs of Cecil County v. Racine 24 Md. App. 435 (1975). But Racine was an outlier when issued and anyway has been superseded by many Court of Appeals and Court of Special Appeals (CSA) decisions. In Batson v. Shifflett 325 Md. 684, 701-05 (1992), the Court of Appeals confirmed that the *res judicata* doctrine applicable to judicial decisions likewise covers quasi-judicial administrative decisions. It is fundamental to this doctrine that the ruling in the original litigation is conclusive regardless of any arguable mistake or unsoundness.

The CSA stated in Seminary Galleria v. Dulaney Valley Imp. Ass'n 192 Md. App. 719, 736 (2010), (Exhibit A, attached) upon judicial review of a decision of this County Board of Appeals (CBA),

"The Court of Appeals has confirmed that an administrative agency's decision will be entitled to preclusive effect if the test first enunciated in Exxon Corp. v. Fischer 807 F.2d 842, 845-46 (9th Cir. 1987) is met. See Batson v. Shifflett 325 Md. 684, 705 (1992). In Batson id. At 701, the Court of Appeals quoted with approval the following test for determining whether an administrative agency's ruling 'is entitled to preclusive effect':

'Whether an administrative agency's declaration should be given preclusive effect hinges on three factors: (1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to the [reviewing] court was actually litigated before the agency; and (3) whether the resolution was necessary to the [agency's] decision.'

Just off the press, sustaining a recent CBA dismissal of another zoning petition, the CSA issued Back River, LLC v. Baltimore County, No. 2495, Sept. Term 2013 (December 30, 2014). (Exhibit B, attached). Judge Kevin Arthur explained the "transaction test" to "determine whether a case involves the same claims that were or could have been decided in the earlier litigation ...," citing Sec. 24 of the Restatement

(Second) of Judgments and Kent County Bd. of Educ. v. Bilbrough 309 Md. 487, 499-500 (1987),

“Under the transaction test, what factual grouping constitutes a ‘transaction’ and what grouping constitutes a series of connected ‘transactions’ are to be determined ‘pragmatically’, giving weight to such considerations as whether facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties expectations or business understanding or usage.”

Here, the parties, the nature of the petition, and the issues are all the same. The neighborhood road and traffic access and congestion issues are identical.

Davenport’s criticizes ALJ Beverungen’s 2013 decision as mistaken or unsound. But Judge Arthur in Back River, page 16 described Fertitta v. Brown 252 Md. 594, 599 (1969), another case reviewing this CBA’s decision, as ruling that,

“(prior determination that particular use of property violated zoning ordinance barred later action seeking declaratory relief to legitimize same use even if prior determination is unsound).”

Judge Arthur discussed and quoted various cases where parties were barred from challenging earlier decisions even when they proposed different classifications or conditions. He concluded this part of the discussion on page 17,

“Res judicata, or claim preclusion, ‘ensures that courts do not waste time adjudicating matters which have been decided *or could have been* decided fully and fairly.” Anne Arundel County v. Bd. of Ed. of Norville 390 Md. 93, 107 (2005) (emphasis in original). For this reason, the final judgment in a prior litigation will bind the parties even if a ruling in the original litigation is found later to be in error. Powell v. Breslin 430 Md. 52, 64-65 (2013).

This means a party cannot escape the binding consequences of an adverse final decision by questioning the correctness or soundness of the decision; a party is bound not only as to the claims, arguments, and theories advanced in the initial case, but also to any which might have been made or advanced; and, otherwise stated, if the subsequent case involves the same “transaction,” then the party is bound by the original decision.

The present case classically deserves the application of the *res judicata* doctrine. Based on the nature and timing of Davenport’s application, it is abusive of the process and of the resources and time of area citizens.

II. ALJ Beverungen's original decision was within the scope of his discretion

Anyway, Davenport's criticism of ALJ Beverungen's 2013 decision is without merit or substance. BCZR Sec. 502.2 explicitly states

In granting any special exception, the Zoning Commissioner (now translated as administrative law judge under the Code Sec.3-12-104(b)) or the Board of Appeals, upon appeal, shall impose such conditions, restrictions, or regulations as may be deemed advisable for the protection of surrounding and neighboring properties."

ALJ Beverungen explicitly based his 2013 decision on the description of the proposed use and the necessity to "... impose conditions on the relief that may help to mitigate the impacts upon the community." Page 5.

A special exception decision is classically a discretionary decision and may involve conditions not even raised by the parties. See Halle Companies v. Crofton Civic Ass'n 339 Md. 131, 141-49 (1995), upholding broad scope of authority to impose conditions in special exception case, even on CBA *de novo* appellate review.

In this context, the "size and scope of a proposed project are thus relevant considerations." People's Counsel v. Mangione 85 Md. App. 738, 746-47 n. 6-7 (1991), limitation of beds of a convalescent home. Traffic access and congestion issues are among the basic considerations. BCZR Sec. 502.1.B. Mangione, supra, 85 Md. App. at 751-53; Eger v. Stone 253 Md. 533 (1969); Schultz v. Pritts 291 Md. 1 (1981); Mills v. Godlove 200 Md. App. 213, 239 (2011).

Applicants typically cite the legislative "presumption" of general compatibility of a proposed special exception use. They disregard their burden of proof to show that the proposed use does not cause a particular adverse effect in the surrounding area. Schultz, supra, 291 Md. at 11-12.

Judge Charles Moylan recently cautioned, quoting James Thayer, that the topic of "presumptions" is fraught with "difficulties" and, Dean Charles McCormick, that it "is the slipperiest member of the family of legal terms, except its first cousin, 'burden of proof.'" Cooper v. Singleton 217 Md. App. 626, 627-28 (2014). It is thus not enough just to say there is a presumption and that the use is good or should be approved. Mills, 200 Md. at 236-40. The burden of proof remains with the applicant.

Here, the 2013 case was contested seriously as to traffic and road access and congestion. Davenport was fortunate to gain conditional approval. If they felt the condition inappropriate, they could have had the benefit of a *de novo* appeal to the CBA under Charter Sec. 603. Davenport did not do so. ALJ Beverungen had discretion to grant or deny the petition, and if granted, to impose conditions. He chose the latter course. It was a reasonable exercise of discretion. Having been content with it in 2013, Davenport cannot come back for another bite off the apple and criticize it now. End of story.

III. There is no significant or legally sufficient change in circumstances

Davenport suggests there is a change of circumstances, based on the affidavit of Elizabeth Harlan, Davenport's owner and managing director. Ms. Harlan asserts she is unaware of any traffic accidents so far; that all parents are required to sign a "Community Respect Agreement" that addresses traffic safety and neighborhood issues; and that attrition at the school is extremely low so there is a need for more available spots.

None of this is germane to the "change in circumstances" in the neighborhood standard. Whittle v. Board of Zoning Appeals 211 Md. 36, 38-45 (1956); Woodlawn Ass'n v. Board of County Comm'rs 241 Md. 187, 197 (1965); Chatham Corp. v. Beltram 243 Md. 138, 151-52 (1966); Alvey v. Hedin 243 Md. 334, 340 (1966). As did the Court of Appeals in these cases, the CSA reviewed in depth and rejected an analogous argument in Seminary Galleria v. Dulaney Valley Imp. Ass'n, *supra*, 192 Md. App. at 736-42, addressing a limit on the number of commercial parking spaces.

ALJ Beverungen's 2013 decision does not depend on the occurrence of accidents in the next year(s). Nor would it change based on Ms. Harlan's renewed expression of good faith or innovation of a safety "agreement" for parents. Nor was it to vary to accommodate Ms. Harlan's perceived needs. The condition was necessarily based on an evaluation of the neighborhood and the likely particular adverse impact of the proposed use. It was to mitigate the overall impact on the neighborhood.

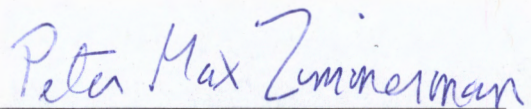
The neighborhood has not changed substantially or significantly in character. It has really not changed at all. It is still little more than a year and a half since the 2013 decision went final.

To repeat, ALJ Beverungen's 2013 order imposed the 120-child limit to "... help to mitigate the impacts upon the community." Page 5. In the present 2014 decision, ALJ Beverungen observed that neighbors had the same concerns expressed at the 2013 hearing: "increased traffic in the community, safety of pedestrian and neighborhood children, and the potential for expansion of the site if Ms. Harlan eventually purchases the property." Page 2. So, the question of expansion was before ALJ Beverungen in 2013 when he imposed the limit of 120 children at any one time.

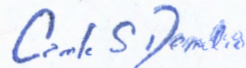
Again, if Davenport (Ms. Harlan) believed the limiting condition too onerous, they could have filed an appeal. This was not a decision to be changed at the discretion of their business convenience, desires, or perceived "needs." If Ms. Harlan had in mind a potential additional classroom or other expansion, she could have included that in her initial 2013 petition, asked for the opportunity to amend it prior to the final decision, or even asked to amend it upon reconsideration. She did none of these things. Rather, having gotten her proverbial "foot in the door" or "camel's nose under the tent," she is coming back for more. Next year, she will probably come back for 180, and so on.

Conclusion

The *res judicata* doctrine precludes this zoning petition. It is unnecessary and inappropriate to treat this application as if it were a new petition. On this record, there is no need for a new evidentiary hearing on the merits. The CBA should dismiss this petition as a matter of law.



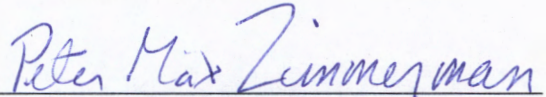
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of January, 2015, a copy of the foregoing People's Counsel for Baltimore County's Reply Memorandum was mailed first class and e-mailed to J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, MD 21286 and Matthew Vocci, Esquire, Ober & Kaler, Grimes & Shiver, 100 Light Street, 19th Floor, Baltimore, Maryland 21202, Attorney for Petitioner(s).



PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

192 Md.App. 719
Court of Special Appeals of Maryland.

SEMINARY GALLERIA, LLC
v.
DULANEY VALLEY
IMPROVEMENT ASS'N, INC., et al.

No. 2591 Sept.Term, 2008. | May 27, 2010.

Synopsis

Background: Improvement association sought review of decision by county board of appeals that retroactively approved new parking spots on split-zoned property. The Circuit Court, Baltimore County, Robert E. Cahill, Jr., J., 2008 WL 7291951, reversed. Property owner appealed.

[Holding:] The Court of Special Appeals, Meredith, J., held that owner of split-zoned property was precluded by res judicata from seeking retroactive approval for additional parking spaces.

Affirmed.

West Headnotes (8)

[1] **Administrative Law and Procedure**
◊ Limitation of scope of review in general
Review of an administrative agency's action generally is a narrow and highly deferential inquiry.

2 Cases that cite this headnote

[2] **Administrative Law and Procedure**
◊ Substantial evidence
Administrative Law and Procedure
◊ Law questions in general
Review of administrative action is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if

the administrative decision is premised upon an erroneous conclusion of law.

2 Cases that cite this headnote

[3] **Administrative Law and Procedure**

◊ Wisdom, judgment or opinion

Administrative Law and Procedure

◊ Substantial evidence

Appellate court may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise, so long as the agency's determination is based on substantial evidence.

1 Cases that cite this headnote

[4] **Administrative Law and Procedure**

◊ Law questions in general

Judicial deference to an agency's legal determinations is less broad.

Cases that cite this headnote

[5] **Administrative Law and Procedure**

◊ Law questions in general

Where the legal conclusions reached by the agency are based on an erroneous interpretation or application of law, court may reverse those decisions.

1 Cases that cite this headnote

[6] **Judgment**

◊ Nature and requisites of former recovery as bar in general

The doctrine of "res judicata" provides that a judgment on the merits in a previous suit between the same parties or their privies precludes a second suit predicated upon the same cause of action.

1 Cases that cite this headnote

[7] **Administrative Law and Procedure**

◊ Res judicata

Whether an administrative agency's declaration should be given preclusive effect hinges on three factors: (1) whether the agency was acting in a judicial capacity; (2) whether the issue presented to the reviewing court was actually litigated before the agency; and (3) whether its resolution was necessary to the agency's decision.

Cases that cite this headnote

[8] **Zoning and Planning**

◊ Effect of determination; res judicata and collateral estoppel

Owner of split-zoned property was precluded by res judicata from seeking retroactive approval for additional parking spaces; evidence relating to calculation of required parking spaces that was produced for second petition for variance or special hearing before county board of appeals could have been offered with the owner's first petition to support efforts to retain the 14 spaces constructed without a permit, and the facts at the time of owner's first petition were no different than when owner brought second petition.

1 Cases that cite this headnote

Attorneys and Law Firms

**1069 Howard L. Alderman, Jr. (Aaron J. Turner, on the brief), Towson, MD, for Appellant.

Michael P. Tanczyn and Peter M. Zimmerman (Carole S. Demilio, on the brief), Towson, MD, for Appellee.

Panel: MEREDITH, WRIGHT and RAYMOND G. THIEME, JR. (Retired, specially assigned), JJ.

Opinion

MEREDITH, Judge.

*721 Appellant, Seminary Galleria, LLC ("Seminary"), owns a commercial property used for retail and offices. The property is located in Baltimore County, and is split-zoned, with most of the property located in the "Business Local" zone and the rest in a "Density Residential" zone. In 2003,

without seeking prior approval from the County, Seminary reconfigured four of the existing parallel parking spaces that were located in the residentially zoned portion of the property, and created 14 new parking spaces in their place. The net effect was that Seminary gained ten additional spaces upon the portion of the property that was zoned Density Residential. After a complaint to the County was lodged by, among others, Dulaney Valley Improvement Association, Inc. ("DVIA"), one of the appellees, Seminary attempted to obtain retroactive approval of the parking spots, but its first application for a special hearing or a variance was denied by the Zoning Commissioner. Following **1070 *de novo* review by the Board of Appeals of Baltimore County ("the Board"), the Board issued an order denying Seminary's requests for retroactive approval of the new parking spots on September 19, 2005.

*722 Just five months later, on February 23, 2006, Seminary again filed petitions for approval of the ten new parking spaces, arguing this time that the additional spaces were needed to help it meet the County's parking requirements as amended in 1986. By the time the 2006 petitions came before the Board, the Board was composed of new members, and the Board approved Seminary's request to keep the new parking configuration on the property in the Density Residential zone. DVIA and the People's Counsel for Baltimore County, the second appellee, petitioned for judicial review in the Circuit Court for Baltimore County. The Circuit Court for Baltimore County agreed with the appellees' contention that approval of Seminary's second petition was precluded by *res judicata*. The circuit court reversed the Board.

In its appeal to this Court, Seminary challenges the circuit court's determination.

QUESTIONS PRESENTED

Seminary presents four questions:

1. Whether an administrative agency's determination of the applicability of the doctrine of *res judicata* should be assessed pursuant to the substantial evidence standard of review when such determination constitutes a mixed question of law and fact[.]

2. Whether an assessment of the causes of action in the current and prior proceedings pursuant to a same evidence analysis establishes that the doctrine of *res judicata* does not preclude the relief granted by the Board[.]

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2495

September Term, 2013

BACK RIVER, LLC, ET AL.

v.

BALTIMORE COUNTY,
MARYLAND, ET AL.

Zarnoch,
Arthur,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: December 30, 2014

This appeal is the second appeal before this Court concerning the retention of a wireless telecommunications tower in Baltimore County.

In 2002, landowner Back River LLC and its tenant Sprint PCS (hereinafter collectively referred to as "Sprint")¹ constructed a cell tower on a commercially-zoned property. In an administrative proceeding before the County Board of Appeals, Sprint requested variances to permit noncompliance with a local zoning ordinance that required the tower to be "set back at least 200 feet from any other owner's residential property line." Baltimore County Zoning Regulations § 426.6.A.1. The Board rejected that request, a circuit court affirmed the decision, and this Court ultimately affirmed the judgment in an unreported opinion: *Sprint PCS v. Baltimore County*, No. 47, Sept. Term 2004 (filed Aug. 3, 2005).

In 2012, Sprint filed a petition for special hearing, asserting a new legal theory under which the existing tower was actually in compliance with the setback regulations. An administrative law judge ruled otherwise and also held that the new petition was barred under the doctrine of res judicata. Sprint appealed to the Board of Appeals, which dismissed the appeal on res judicata grounds. The circuit court affirmed that decision. Because the Board's determination was legally correct, we also affirm.

¹ During the course of this series of zoning cases, Sprint merged with Nextel Communications in 2005 to form Sprint Nextel Corporation. See, e.g., *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1256 (D. Kan. 2006).

Exh. B

1/16/15

RECEIVED
JAN 16 2015

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
(1301 Cheverly Road) *
9th Election District * COUNTY BOARD
3rd Councilmanic District * OF APPEALS FOR
The Belvedere Baptist Church of Baltimore *
Legal Owner * BALTIMORE COUNTY
Davenport Preschool, LLC, *
Lessee * Case No. 2015-0004-SPH
Petitioners *

BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

**DAVENPORT'S RESPONSE TO PEOPLE'S COUNSEL'S MOTION TO DISMISS
PETITION FOR SPECIAL HEARING**

Davenport Education, LLC (referred to in the caption as Davenport Preschool, LLC) (hereinafter referred to as "Davenport"), by and through its undersigned counsel, hereby files this Response to People's Counsel for Baltimore County's Motion to Dismiss Petition for Special Hearing. Simply put, the doctrine of *res judicata* does not apply under the circumstances of this case and does not bar a full hearing on the merits of Davenport's request to amend the improper condition applied by the Administrative Law Judge of the Office of Administrative Hearings ("OAH"). For the reasons set forth below, Davenport urges that, in accordance with Baltimore County Zoning Regulation ("BCZR") § 501.6, it has a right to a *de novo* hearing in this appeal. The doctrine of *res judicata* is not reflexively applied in zoning matters and does not restrict this Board's ability to correct errors made by OAH.

BACKGROUND

Davenport is a licensed Child Care Center and preschool that teaches and cares for children in their program designed for children that are 2 to 5 years of age. The preschool simply wants to amend a restrictive condition on the number of children allowed to be present at any one time within the Davenport School, located at 1301 Cheverly Road. The 120 children restriction was imposed by OAH before the school was open and enrolling children. It was not

based upon a lack of space available to teach the children. Indeed, it would be very possible to have a school large enough to safely teach many more than 120 children on the 12.71 acre parcel.

Now that Davenport has opened its doors and is entering its third enrollment period, it is merely asking for the ability to have 150 children in the school at any given time. This reasonable request is rationally based upon the circumstances presented at the school in that the physical space will allow for an additional classroom which will in turn allow for each of the children to have a place on the school's roster. (Given retention rates at the school, the arbitrary 120-child limit will cause a shortage in openings in the pre-Kindergarten classes.) As will be noted below, Davenport has been saddled with an improper restrictive condition that should not have been imposed at all. Yet, Davenport is not requesting unlimited children at the site – see OAH's March 2013 decision describing the potential for over 1,000 children on the 12.71 acre parcel – it would simply ask to have the ability to teach up to 30 more children at a given time.

ARGUMENT

A. Res Judicata Does Not Insulate Erroneous Decisions Of Administrative Agencies From Review.

Contrary to the position taken by the People's Counsel, Davenport's appeal should not be dismissed upon motion. This is particularly true given that Davenport is entitled to a *de novo* appeal from the decision made by the OAH as mandated by BCZR § 501.6 (appeals "shall be heard by the Board of Zoning Appeals *de novo*." [The County Board of Appeals having jurisdiction of the Board of Zoning Appeals]). The main thrust of the People's Counsel argument is that the restriction on the number of children cannot be disturbed in these proceedings because the OAH granted the special exception with conditions in March 2013. However, the March 2013 OAH decision was based upon an erroneous interpretation and application of the law and

must not be allowed to block the implementation of the proper special exception application to the Davenport School.

This Board has the opportunity to right a wrong that has occurred in the application of the law as it is reviewing the request for 150 children to be allowed within Davenport at any one time. The circumstances of this matter are quite similar to those in *Bd. of County Comm'rs of Cecil County v. Racine*, 24 Md. App. 435 (1975). In *Racine*, a petitioner, in 1967, requested a permit for use of a mobile home on his land. The permit was denied by the County Board of Appeals and an appeal to the Circuit Court was dismissed as untimely. *Id.* at 443. The petitioner requested the same permit in 1973, which was denied by the Board. The Circuit Court reversed the Board's decision finding that it was based upon an erroneous interpretation of the zoning ordinances. *Id.* at 441-43. The County appealed to the Court of Special Appeals, which held that the Board's denial was improper and that *res judicata* did not bar the petitioner's request.

Without hesitancy we declare that the December 9, 1967 decision of the Board was the product of an erroneous interpretation and application of the zoning ordinance and thus was arbitrary and capricious in a legal sense.

Although it is plain that the Board in its present decision in substance adopted the earlier and, we think, erroneous interpretation of its predecessor, it chose also to rely upon a doctrine akin to that of *res judicata* to buttress its decision.

Id. at 443.

The Court of Special Appeals went on to discuss the relaxation of *res judicata* principles in the zoning context. *Id.* at 450-52. The Court made clear that errors of law should not be continually propagated for the sake of the *res judicata* doctrine. "Should such an inflexible rule of law be made applicable to errors of law by administrative bodies? We think not." *Id.* at 450. The Court put a finer point on the matter when it observed:

Mistaken interpretations of law, however honestly arrived at, are held not to be within the exercise of sound administrative discretion and the legislative prerogative, but to be arbitrary and illegal. Perpetuation of illegality by an administrative body by inflexible application of the principle of res judicata is impermissible.

Id. at 452. See also *Radio Commc'ns, Inc. v. Pub. Serv. Comm'n of Maryland*, 50 Md. App. 422, 430-31 (1982) “[T]here is an affirmative duty upon an administrative agency to correct a prior decision when, because of an error of law, a continued adherence to its erroneous decision would place a litigant at an unfair disadvantage.”

B. OAH Imposed An Improper Condition Based Upon An Error In Interpreting And Applying the Schultz Standard For Special Exceptions

The OAH must consider the reasoning and holdings of *Schultz v. Pritts*, 291 Md. 1 (1981) and its progeny when determining whether to grant or deny a special exception. The Maryland Courts have made it clear that “...if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious, and illegal.” *People's Counsel for Baltimore County v. Loyola*, 406 Md. at 103-04 (2008). In its 2013 decision, OAH recited the *Schultz* standard for granting a special exception and noted that the residents who spoke at the hearing “identified one overriding concern with the proposal: traffic.” OAH went on to find that “though it may sound illogical, this is exactly the type of inherent adverse effect that the legislature was presumed to have anticipated when it allowed the use by special exception. In other words, most uses for which a special exception is required are regarded as ‘potentially troublesome because of noise, traffic, congestion.’” OAH March 28, 2013 decision at 4, citing *Montgomery County v. Butler*, 417 Md. 271, 297 (2010). However, OAH then erroneously “impose[d] conditions on the relief that may help to mitigate the impacts

on the community.” The impacts referenced were the traffic-based concerns that should not have been countenanced under *Schultz* and its progeny.

Absent legislation that expressly states it is not supposed to do so, this Board must also consider “the reasoning and holdings of *Schultz* and its progeny” with respect to analyzing the particular facts and circumstances of this use at this location. *Montgomery County v. Butler*, 417 Md. 271, 277-306 (2010); *Loyola College*, 406 Md. at 68-69 (“noting that the test announced in *Schultz* essentially adds language to statutory factors to be considered in evaluating proposed special exceptions”) (quoting *Mossburg v. Montgomery County*, 107 Md. App. 1, 21 (1995) (“In the absence of a provision in a zoning statute clearly requiring a stricter standard than *Schultz*, *Shultz v. Pritts* applies.”)).

In *Butler*, 417 Md. at 291-307, Judge Harrell found that, absent codified provisions to the contrary, there is a presumption under the law that a special exception is presumed to be in the public interest, and to defeat approval of same, it must be established that the inherent adverse effects associated with the use would be greater at the proposed location than at other similar zones throughout the County. See also *Mossburg*, 107 Md. App. at 7-8 (A special exception “in a zoning ordinance recognizes that the legislative body of a representative government has made a policy decision for all of the inhabitants of the particular governmental jurisdiction, and that the exception or use is desirable and necessary in its zoning planning . . .”).

The special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a “middle ground” between permitted uses and prohibited uses in a particular zone. Permitted and prohibited uses serve as binary, polar opposites in a zoning scheme. A permitted use in a given zone is permitted as of right within the zone, without regard to any potential or actual adverse effect that the use will have on neighboring properties. A special exception, by contrast, is merely deemed *prima facie* compatible in a given zone.

Loyola College, 406 Md at 71.

The Court in *Schultz*, 291 Md. at 22-23, the seminal case on special exceptions, stated the applicable test in this fashion:

We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

In *AT&T Wireless Servs. v. Mayor of Baltimore*, 123 Md. App. 681, 692 (1998), Judge Salmon summarized the standard to be applied by the Board as follows:

In short, the test, as developed in *Schultz*, is not whether a special exception is compatible with permitted uses in a zone or whether a conditional use will have adverse effects. Adverse effects are implied in all special exceptions. The standard to be considered by the Board is whether the adverse effects of the use at the particular location proposed would be greater than the adverse effects ordinarily associated with that use elsewhere within the R-1 zone. *Mossburg v. Montgomery County*, 107 Md. App. 1, 8-9, 666 A.2d 1253 (1995), *cert. denied*, 341 Md. 649, 672 A.2d 623 (1996). As the Court of Appeals said in *Board of County Comm'rs v. Holbrook*, 314 Md. 210, 217-18, 550 A.2d 664 (1988):

Where the facts and circumstances indicate that the particular special exception and location proposed would cause an adverse effect upon adjoining and surrounding properties *unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone*, the application should be denied. (Emphasis added.)

The traffic concerns of the resident protestants in this matter do not meet the *Schultz* standard and cannot serve as the reason to impose restrictions based upon traffic concerns. In this matter, OAH erroneously applied the *Schultz* standard and sought to control the traffic impact on neighborhood residents. (See OAH March 28, 2013 decision at 6 discussing the

number of vehicle trips in and out of the neighborhood when justifying the imposition of the restrictive condition). Indeed, as noted above, residents expressing concern with traffic, road safety and similar quality of life issues are exactly the types of inherent adverse effects that the legislature was presumed to have anticipated when it allowed the child care center by special exception. Most uses for which a special exception is required are regarded as “potentially troublesome because of noise, traffic, congestion” *Butler*, 417 Md. 271, 297 (2010).

OAH’s September 12, 2014 denial of the requested relief was based upon a perceived lack of change in circumstances and the validity of the underlying 120-child restriction. *Schultz* and its progeny must be followed and the traffic concerns of the residents must not be allowed to override the granting of special exception uses. If the OAH decisions are allowed to stand, an erroneous interpretation of the law and the improper use of conditions to attack traffic concerns, which Maryland law has expressly found to be precisely the type of adverse effect that is inherent in all special exceptions, will work an unjust prejudice upon Davenport.

C. There Is A Change In Circumstances

Davenport applied for the special exception in early 2013 before the school has opened and enrolled its first cohort of children. The concerns of the residents that appeared at the hearing relating to traffic and traffic safety were based upon pure conjecture. After operating the school on the site and in anticipation of the third enrollment cycle, Davenport filed the request to amend the restrictive condition. The actual operation of the child care center/school is a significant change in circumstances. Since Davenport has opened its doors, there are no known traffic accidents involving parents dropping off or gathering their children. *See* Affidavit of E. Harlan, Owner Davenport Education, LLC attached hereto as Exhibit 1 and incorporated herein by reference. Further, all parents of children enrolled at Davenport are required to sign a

Community Respect Agreement that addresses traffic safety and neighborhood issues. With input from neighborhood residents, the current Community Respect Agreement states in part:

your family has become a de facto member of the Hampton Gardens Neighborhood. As a member of this peaceful neighborhood of 160 homes with families and young children, we would like to ensure that we do all we can as a school to keep the neighborhood safe for everyone.

Please read and initial each of the statements below to demonstrate that you acknowledge the importance of safety in the neighborhood and that you will make every effort to respect the community as if it were your own.

_____ I recognize Davenport Preschool is located in the Hampton Gardens neighborhood and will respect the existing serenity.

_____ I will use Valewood Road as my only path of entering and exiting the neighborhood. (Please do not use Denby and Hart Roads.)

_____ I will allow sufficient time to get my child to and from school. I will not speed through the neighborhood even if I am running late. (Please call the office if you are running late.)

_____ I will come to a complete stop at every stop sign.

I understand that failure to comply with these respectful practices could result in warnings, and in extreme circumstances, expulsion from Davenport Preschool. I understand that safety and community respect is incredibly important to both the Davenport and Hampton Gardens' Community.

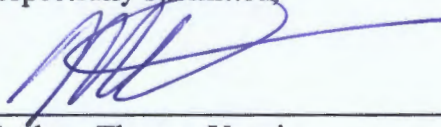
A copy of the most recently edited Community Respect Agreement is attached as Exhibit A to Ms. Harlan's affidavit. Ms. Harlan will also testify at the hearing of this matter that attrition at the school is extremely low and that if all of the families of three-year-old children enroll for next year, five families will not have an opening at the school under the current restrictions. An additional classroom would alleviate the issue and allow children who will begin in the 2 or 3

year old classes at Davenport will have an available spot on the roster until they are ready to attend Kindergarten. See Affidavit of Ms. Harlan at 7. The school is now operating, needs to add a classroom to provide full roster opportunities to the children and has worked with the community to minimize any impact on the surrounding neighborhood. Conjecture as to the impact on the neighborhood in early 2013 has given way to the reality of the daily operation of Davenport. Yes, parents drop off and pick up their children in the morning and evening. However, there have not been any automobile accidents and the Davenport families are admonished and agree in writing to be good neighbors to the Hampton Gardens community.

D. Conclusion

Davenport should not be obliged for the remainder of its operation at 1301 Cheverly Road to accept that it will not be permitted more than 120 children on site at any given time. The property is large and could easily accommodate more children. OAH has erred in its interpretation and application of the *Schultz* standard in this matter by imposing restrictions to address traffic concerns that are inherent to all special exception uses. The error of law must not be allowed to stand and the doctrine of *res judicata* should not shield the errors from review. A *de novo* hearing on the merits of this matter is the only proper course.

Respectfully submitted,



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Baltimore, Maryland 21202
Telephone (410) 685-1120
Fax (410) 547-0699
mtvocci@ober.com

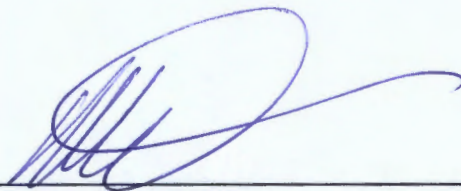
Attorneys for Davenport Education, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 16, 2015, copies of the foregoing Response to People's Counsel's Motion to Dismiss Petition for Special Hearing were mailed first class, postage prepaid to:

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

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



Matthew Thomas Vocci

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
(1301 Cheverly Road) *
9th Election District * COUNTY BOARD
3rd Councilmanic District *
The Belvedere Baptist Church of Baltimore * OF APPEALS FOR
Legal Owner *
Davenport Preschool, LLC, * FOR BALTIMORE COUNTY
Lessee *
Petitioners * Case No. 2015-0004-SPH

* * * * *

AFFIDAVIT OF ELIZABETH HARLAN

1. I, Elizabeth Harlan, am over eighteen (18) years of age and am competent to testify to the matters discussed herein.

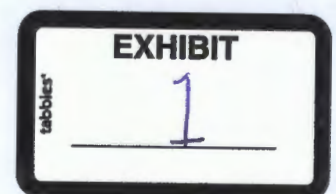
2. I am the owner and managing member of Davenport Education, LLC, which operates the Davenport School at 1301 Cheverly Road and I am familiar with the request for special exception and request to amend the condition relating to the number of children that may be on site at any one time. I have personal knowledge of the facts and the authenticity of the documents discussed herein, and if called to testify, I could and would do so competently.

3. Davenport applied for the special exception in early 2013 before the school has opened and enrolled its first cohort of children.

4. After operating the school on the site and in anticipation of the third enrollment cycle, Davenport filed the request to amend the restrictive condition.

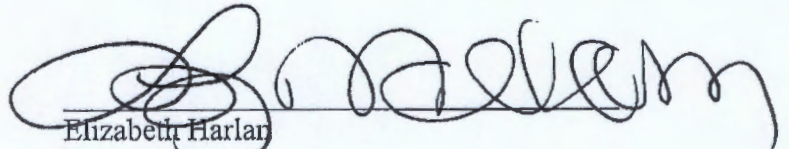
5. I am unaware of any traffic accidents involving parents dropping off or gathering their children.

6. All parents of children enrolled at Davenport School are required to sign a Community Respect Agreement that addresses traffic safety and neighborhood issues. A true and correct copy of the most recently edited version of the Community Respect Agreement is attached as Exhibit A.



7. Attrition at the school is extremely low. If all of the families of three-year-old children enroll for next year, five families will not have an opening at the school under the current restrictions. An additional classroom would alleviate the issue and allow children who will begin in the 2 or 3-year-old classes at Davenport will have an available spot on the roster until they are ready to attend Kindergarten. A copy of a visual aid I created to describe the Davenport enrollment numbers and the potential for 150 children with the addition of a classroom is attached hereto as Exhibit B.

I DECLARE, under the penalties of perjury, that the foregoing is true, correct and based upon my personal knowledge.



Elizabeth Harlan
Owner
Davenport Education, LLC



COMMUNITY RESPECT AGREEMENT

As a parent with a child enrolled at Davenport Preschool, your family has become a de facto member of the Hampton Gardens Neighborhood. As a member of this peaceful neighborhood of 160 homes with families and young children, we would like to ensure that we do all we can as a school to keep the neighborhood safe for everyone.

Please read and initial each of the statements below to demonstrate that you acknowledge the importance of safety in the neighborhood and that you will make every effort to respect the community as if it were your own.

_____ I recognize Davenport Preschool is located in the Hampton Gardens neighborhood and will respect the existing serenity.

_____ I will use Valewood Road as my only path of entering and exiting the neighborhood. (Please do not use Denby and Hart Roads.)

_____ I will allow sufficient time to get my child to and from school. I will not speed through the neighborhood even if I am running late. (Please call the office if you are running late.)

_____ I will come to a complete stop at every stop sign.

_____ I will come to a complete stop at the bottom of Cheverly Road before turning onto Valewood.

_____ I will drive with caution and be aware of vehicles exiting driveways.

_____ I will be patient while waiting to exit onto Providence Road.

_____ I will be aware that the neighborhood does not have sidewalks and will take extra precautions when pedestrians and bikers are present.

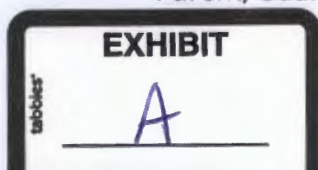
_____ I will attempt to carpool with other families, when possible, to help reduce traffic in and out of the neighborhood.

I understand that failure to comply with these respectful practices could result in warnings, and in extreme circumstances, expulsion from Davenport Preschool. I understand that safety and community respect is incredibly important to both the Davenport and Hampton Gardens' Community.

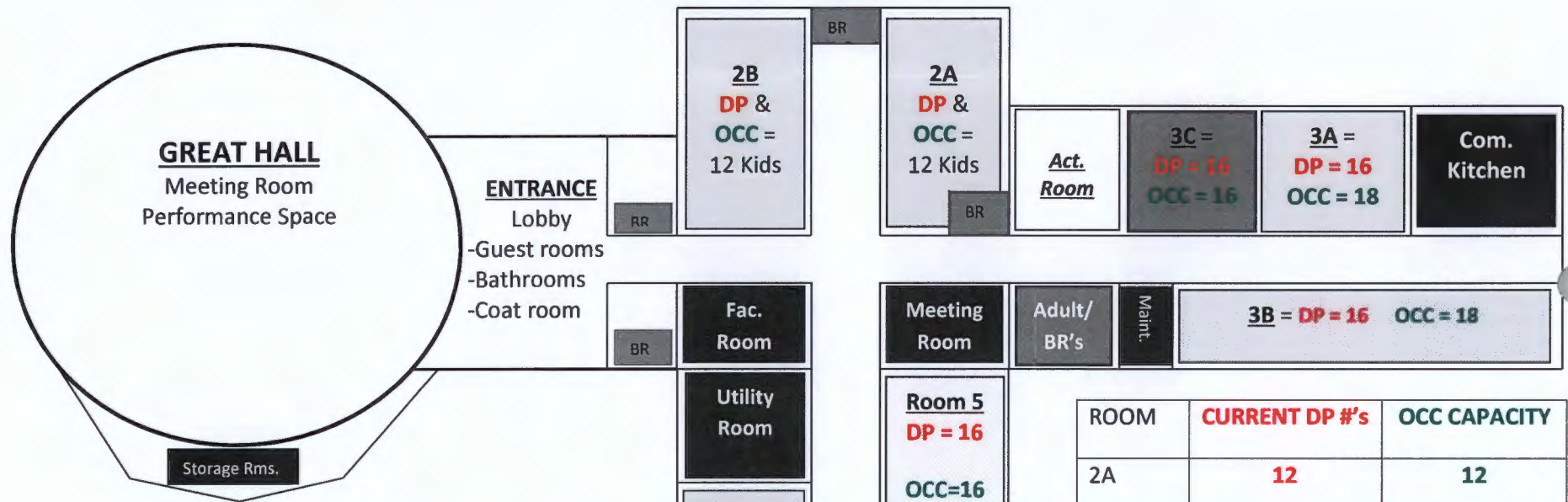
Child's Name: _____

Parent/Guardian (1): _____ Date: _____

Parent/Guardian (2): _____ Date: _____



DAVENPORT – 1301 Cheverly Road, Towson, MD, 21286



DAVENPORT FLOOR PLAN

DP = Davenport Enrollment Numbers

OCC – Office of Child Care Enrollment MAX Capacity Numbers

(35 SQFT per child)

ROOM	CURRENT DP #'s	OCC CAPACITY
2A	12	12
2B	12	12
3A	16	18
3B	16	18
3C ('15)	16	16
5	16	17
6	16	20
7	16	20
8	16	17
TOTAL KIDS	136	150

OBER | KALER
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January 16, 2015

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410.347.7358 / Fax: 443.263.7558

Offices In
Maryland
Washington, D.C.
Virginia

Ms. Krysundra "Sunny" Cannington
Administrator
Baltimore County Board Of Appeals
Jefferson Building
105 West Chesapeake Ave., 2nd Fl., Ste. 203
Towson, Maryland 21204

RE: *Case No. 15-004-SPH; Davenport Preschool, LLC [properly Davenport
Education, LLC], Lessee and Petitioner
Assigned Before the Board of Appeals for Tuesday, January 27, 2015
at 10:00 a.m.*

Dear Ms. Cannington:

Enclosed please find Davenport's Response to People's Counsel's Motion to Dismiss
Petition for Special Hearing.

If you have any questions, please feel free to contact me.

Sincerely,



Matthew Thomas Vocci

MTV/pad
Enclosure

cc: Peter Max Zimmerman, Esquire
J. Carroll Holzer, Esquire

RECEIVED
JAN 16 2015

BALTIMORE COUNTY
BOARD OF APPEALS

1/5/15

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1301 Cheverly Road)		
9 th Election District	*	COUNTY BOARD
3 rd Councilmanic District		
The Belvedere Baptist Church of Baltimore	*	OF APPEALS FOR
Legal Owner		
Davenport Preschool, LLC,	*	FOR BALTIMORE COUNTY
Lessee		
Petitioners	*	Case No. 2015-0004-SPH

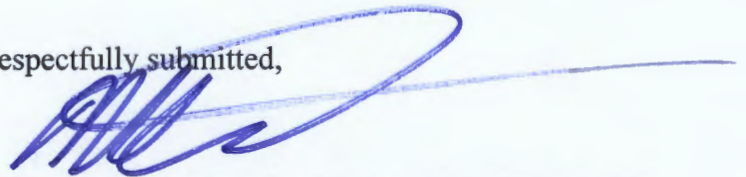
* * * * *

**LINE REGARDING DAVENPORT'S RESPONSE TO PEOPLE'S COUNSEL'S
MOTION TO DISMISS PETITION FOR SPECIAL HEARING**

Counsel for Davenport Education, LLC (also referred to in this matter as Davenport Preschool, LLC), has conferred with Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, regarding the timing for filing of Davenport Education, LLC's Response to the People's Counsel for Baltimore County's Motion to Dismiss Petition for Special Hearing.

People's Counsel for Baltimore County agreed to Davenport Education, LLC's request to file its Response to the Motion to Dismiss on or before **January 19, 2015**.

Respectfully submitted,



Matthew Thomas Vocci
Ober, Kaler, Grimes & Shriver,
A Professional Corporation
100 Light Street, 19th Floor
Baltimore, Maryland 21202
Telephone (410) 685-1120
Fax (410) 547-0699
mtvocci@ober.com

Attorneys for Davenport Education, LLC

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JAN 06 2015

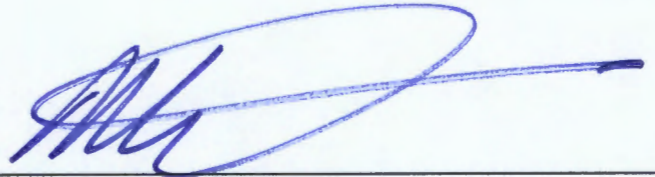
BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 5, 2015, copies of the foregoing Line were mailed
first class, postage prepaid, and e-mailed to:

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

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



Matthew Thomas Vocci

OBER | KALER
Attorneys at Law

Ober, Kaler, Grimes & Shriver
A Professional Corporation

100 Light Street
Baltimore, MD 21202
410.685.1120 Main
410.547.0699 Fax
www.ober.com

January 5, 2015

Matthew Thomas Vocci
mtvocci@ober.com
410.347.7358 / Fax: 443.263.7558

Offices In
Maryland
Washington, D.C.
Virginia

VIA FEDERAL EXPRESS

Ms. Krysundra "Sunny" Cannington
Administrator
Baltimore County Board Of Appeals
Jefferson Building
105 West Chesapeake Ave., 2nd Fl., Ste. 203
Towson, Maryland 21204

RE: *Case No. 15-004-SPH; Davenport Preschool, LLC [properly Davenport
Education, LLC], Lessee and Petitioner
Assigned Before the Board of Appeals for Tuesday, January 27, 2015
at 10:00 a.m.*

Dear Ms. Cannington:

Enclosed please find Line Regarding Davenport's Response to People's Counsel's
Motion to Dismiss Petition for Special Hearing.

If you have any questions, please feel free to contact me.

Sincerely,



Matthew Thomas Vocci

MTV/pad
Enclosure

cc: Peter Max Zimmerman, Esquire
J. Carroll Holzer, Esquire

RECEIVED
JAN 06 2015

BALTIMORE COUNTY
BOARD OF APPEALS

12/18/14

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
1301 Cheverly Road; SE end of Cheverly Road,	*	COUNTY BOARD
240' SE of Valewood Road	*	
9 th Election & 3 rd Councilmanic Districts	*	OF APPEALS FOR
Legal Owner(s): Belvedere Baptist Church	*	BALTIMORE COUNTY
of Baltimore	*	
Lessee: Davenport Preschool LLC	*	2015-004-SPH
Petitioner(s)	*	

* * * * *

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MOTION TO DISMISS
PETITION FOR SPECIAL HEARING

People's Counsel files this motion to dismiss the petition for special hearing, and, as well, petitioner's appeal from the Administrative Law Judge's Order denying same, because it is barred by the *res judicata* doctrine,

1. On July 8, 2014, Belvedere Baptist Church of Baltimore (Belvedere) and Davenport Preschool LLC (Davenport) filed this petition for special hearing for

"... an amendment to restriction #2 in Zoning Case # 2013-166-X to allow the petitioner/lessee to have a maximum of 150 children in the approved Class B Group Child Care Center in lieu of the previously granted 120 children.

The location is 130 Cheverly Road.

2. Belvedere and Davenport had filed the previous petition for a special exception for a group child center with more than 40 children at the same location. Case No. 20013-166-X. After a contested case hearing, Administrative Law Judge (ALJ) John E. Beverungen issued the attached opinion and order dated March 28, 2013, which granted the special exception subject to conditions. The second condition limited the facility to 120 children at a time, unless state regulations required a lower number. The third condition limited the hours of operation and drop-off periods.

3. ALJ Beverungen's order became final when the County Board of Appeals issued the attached Order of Dismissal on June 27, 2013, based on the Notice of Withdrawal of Appeal filed by Protestants.

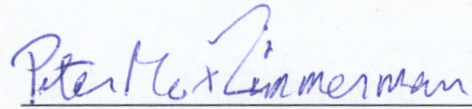
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BALTIMORE COUNTY
BOARD OF APPEALS

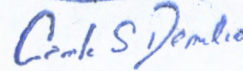
4. After a hearing in the present case, ALJ Beverungen issued the attached opinion and order on September 12, 2014. He denied the petition and noted there were no changes in circumstances to justify departure from his previous order.
5. From this latest Order, Belvedere and Davenport filed the present appeal.
6. There is no allegation in the petition that that there has been any change of circumstances regarding the property's size, location or character. Nor is there any allegation of change in the character of the neighborhood. The apparent motivation for the petition is the belief they could construct an additional classroom and accommodate 150 children within the limits of state regulations.
7. Petitioners have not alleged or shown any change in circumstances to the property or neighborhood which would justify their escape from *res judicata*. In view of the very short time period between the previous ALJ order and the filing of the present petition, it would indeed be extraordinary if there were any significant such change.
8. There has been no change in county zoning law relevant to this petition.
9. It should also be kept in mind that Maryland law governing child care centers requires compliance with local zoning law as a prerequisite to gaining a license. COMAR Secs. 13A.16.04.01.A.2; 13A.16.05.01.B; see Board of Child Care v. Harker 316 Md. 683, 696-99 (1989).
10. In zoning cases, *res judicata* serves the interest of finality in litigation, just as it does in court cases. The only allowance for departure would be a material change in circumstances relevant to the law, typically involving the property and neighborhood. A change in the desires and needs of the property owner do not justify any such departure.
11. The *res judicata* doctrine applies not only to denials of zoning petitions, but also to conditions placed on zoning approvals, as shown in the points and authorities below.
12. On this record, the present petition for special hearing is subject to dismissal without the need for a hearing on the merits as if it were a new or independent petition

Wherefore, People's Counsel requests that the County Board of Appeals consider the application of the *res judicata* doctrine as a preliminary issue and, if satisfied with the

rightness of this motion, dismiss the petition and, in conjunction with same, dismiss Petitioner's appeal of the ALJ's denial of their petition.



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

Statement of Points and Authorities

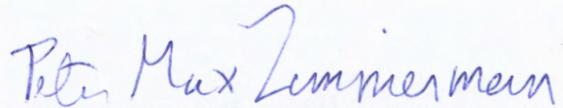
Maryland applies the *res judicata* doctrine to administrative proceedings. Batson v. Shifflett 325 Md. 684, 701-05 (1993); Powell v. Breslin 430 Md. 52, 63-66 (2013); Fertitta v. Brown 252 Md. 594, 599-600 (1969). In zoning cases, the appellate courts have consistently held that the *res judicata* doctrine applies in this sense: it would be arbitrary and capricious to reverse or overrule an earlier decision adverse to a petitioner unless there is a material change in circumstances regarding the property and neighborhood. Whittle v. Board of Appeals 211 Md. 36, 38 (1956); Woodlawn Ass'n v. Board of County Comm'rs 241 Md. 187, 197 (1966); The Chatham Corp. v. Beltram 243 Md. 138, 151-52 (1966); Alvery v. Hedin 243 Md. 334, 340 (1966); Seminary Galleria v. Dulaney valley Imp. Ass'n 192 Md. App. 719, 734-42 (2010). These cases show that the *res judicata* doctrine applies to preclude the same essential claim regardless of any new form of the petition or of any legal theory which could have been advanced.

The County Board of Appeals has dismissed petitions on the basis of the *res judicata* doctrine in several recent cases:

<u>Back River LLC</u>	Case No.: 2008-531-SPH	April 19, 2013
<u>Steven & Joanne Galasso</u>	Case No.: CBA-13-029	December 16, 2013
<u>Andrew & Stephanie Mattes</u>	Case No.: 2011-051-SPH	June 7, 2012

The Circuit Court affirmed the CBA decision in Back River. The Court of Special Appeals conducted oral argument on December 3, 2014, and it awaits decision. The Galasso and Mattes cases are final. In Galasso, a petition for judicial review was filed but subsequently withdrawn. In Mattes, there was no petition for judicial review. There were previous decisions which likewise dismissed or denied petitions based on the doctrine, but we think these illustrative cases are sufficient to make the point.

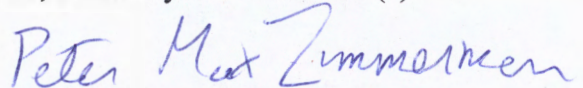
Remarkably, directed to the specific situation of a previous conditional grant, analogous to the present case, the County Board of Appeals has applied the *res judicata* doctrine to bar requests for alleviation of conditions set in earlier cases. Bonner-Joppa, LLC, Case No. 04-127-SPH, January 27, 2005; Oregon, LLC, Case No. 02-461-SPHXA, July 2, 2004. These are attached.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of December, 2014, a copy of the foregoing People's Counsel for Baltimore County's Motion to Dismiss Petition for Special Hearing was mailed to J. Carroll Holzer, Esquire, 508 Fairmount Avenue, Towson, MD 21286 and Matthew Vocci, Esquire, Ober & Kaler, Grimes & Shiver, 100 Light Street, 19th Floor, Baltimore, Maryland 21202, Attorney for Petitioner(s).



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

IN RE: PETITION FOR SPECIAL EXCEPTION *	BEFORE THE
(1301 Cheverly Road)	
9 th Election District *	OFFICE OF
3 rd Councilman District	
The Belvedere Baptist Church of Baltimore *	ADMINISTRATIVE HEARINGS
Legal Owner	
Davenport Preschool LLC *	FOR BALTIMORE COUNTY
Lessee	
Petitioners *	Case No. 2013-0166-X
* * * * *	* *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 1301 Cheverly Road. The Petition was filed by Scott E. Massengill, Esquire, on behalf of the legal owner of the subject property, The Belvedere Baptist Church of Baltimore, and the lessee, Davenport Preschool LLC., ("Petitioners"). The Special Exception Petition seeks relief pursuant to §424.5.A of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a class B Group Child Care Center for more than 40 children in an existing church in a DR zone. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the hearing was Elizabeth Harlan, the operator of the proposed facility. Scott E. Massengill, Esquire attended and represented the Petitioners. Several members of the community (whose names are listed in the case file) attended the hearing and expressed concerns regarding the proposal. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

9/12

IN RE: PETITION FOR SPECIAL HEARING *	BEFORE THE
(1301 Cheverly Road) *	
9 th Election District *	OFFICE OF
3 rd Councilmanic District	
The Belvedere Baptist Church of Baltimore, *	ADMINISTRATIVE HEARINGS
Legal Owner	
Davenport Preschool, LLC, *	FOR BALTIMORE COUNTY
Lessee	
Petitioners *	Case No. 2015-0004-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of The Belvedere Baptist Church of Baltimore, Legal Owner, and Davenport Preschool, LLC, Lessee ("Petitioners"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to determine whether or not the Administrative Law Judge should approve an amendment to restriction #2 in Zoning Case No. 2013-0166-X to allow the petitioner/lessee to have a maximum of 150 children in the approved Class B Group Child Care Center in lieu of the previously granted 120 children.

Appearing at the public hearing in support of the requests was Liz Harlan, the owner of the Davenport Preschool which is operated on site, and Carl Dyhrberg with C.D. Design Consultants, the consulting firm that prepared the site plan. Matthew Vocci, Esquire, represented the Petitioners. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Several community residents attended the hearing and opposed the request and the file also contains several letters of opposition from neighbors. The only substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP), which did not oppose the request.

IN THE MATTER OF
THE APPLICATION OF
BONNER-JOPPA, LLC - PETITIONER
FOR SPECIAL HEARING ON PROPERTY LOCATED
ON THE SW/CORNER OF "C" STREET AND
AVONDALE ROAD (3015 E JOPPA ROAD)

11TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

- * BEFORE THE
- * COUNTY BOARD OF APPEALS
- * OF
- * BALTIMORE COUNTY
- * CASE NO. 04-127-SPH

* * * * *

OPINION

This case comes to the County Board of Appeals as an appeal filed by the Office of People's Counsel from a decision of the Deputy Zoning Commissioner's decision issued on December 3, 2003, granting the special hearing request to approve an amendment to the Order in Case No. 02-066-SPHA, Restriction No. 9, to permit one tow truck to be stored on-site for the purpose of providing emergency towing services under contract from Baltimore County from the subject property at 3015 East Joppa Road.

The Petitioner, Mr. Timothy Bonner, of Bonner-Joppa, LLC, was represented by F. Vernon Boozer, Esquire. Peter M. Zimmerman, People's Counsel for Baltimore County, appeared on behalf of that office. The Board conducted a public hearing on September 22, 2004, and a public deliberation on November 4, 2004.

In his opening statement, Mr. Zimmerman described the zoning history of the subject site, which dates back to 1975. The lot is zoned for commercial use (B.L.-A.S.) but is surrounded by a residential neighborhood (D.R. 5.5). The most recent zoning decision is dated September 28, 2001. Mr. Zimmerman noted that a compromise agreement was reached at that time with the neighborhood which set 10 restrictions on the granting of the special exception. The instant case (Case No. 04-127-SPH) involves Restriction No. 9, which prohibited tow trucks from operating on the property.

The main issue in this case, according to Mr. Zimmerman, was whether an agreement that

Case No. 04-127-SPH / Bonner-Joppa, LLC - Petitioner

2

was reached only a few years ago could be changed unless the situation had changed dramatically. He argued that residents needed to have confidence when entering into an agreement to a special exception that it is going to hold; otherwise, they will be disinclined to enter into such agreements.

Mr. Zimmerman also argued that the Deputy Zoning Commissioner should not have based his decision on the "emergency need" by the County for an additional tow truck operator, but on the special exception requirements set for in § 502.1 of the *Baltimore County Zoning Regulations* (BCZR).

In his opening statement, Mr. Boozer submitted Petitioner's Exhibit 1, a copy of the decision in Case No. 02-066-SPHA dated September 28, 2001, which granted the Petitioner's request to amend a previously approved special exception granted in Case No. 95-423-SPH (decision dated August 2, 1995), and a request for variance, subject to ten restrictions.

Testimony

The first witness called by the Petitioner was Mike Walkley, a Civil Engineer who prepared the site plan for the tow truck operation at the subject location. He testified that the tow truck would be stored on the west side of the building (known as Tim's Auto), and that a fence would screen the truck. The truck would also be screened from Avondale Avenue by the building itself. Two parking spaces would be eliminated as a result. Petitioner's Exhibit 2 was accepted into evidence showing a plan of the site.

Testimony was then given by Officer Ruark, of Baltimore County Traffic Management. Mr. Ruark had prepared a report for permitting a tow truck operation at 3015 Joppa Road, which was submitted as Petitioner's Exhibit 3. Officer Ruark testified that the report recommended that

IN THE MATTER OF * BEFORE THE
 THE APPLICATION OF *
OREGON, LLC - C.P.: BALTIMORE COUNTY * COUNTY BOARD OF APPEALS
RECREATION & PARKS - LEGAL OWNER * OF
 FOR SPECIAL HEARING, SPECIAL EXCEPTION*
 AND VARIANCE ON PROPERTY LOCATED * BALTIMORE COUNTY
 ON THE SW/S KURTZ LANE AND BEAVER *
 DAM ROAD (1201 SHAWAN ROAD) *
 8TH ELECTION DISTRICT * Case No.: 02-461-SPHXA
 3RD COUNCILMANIC DISTRICT *

* * * * *

OPINION

This case comes to the Board of Appeals based on a timely appeal from the Zoning Commissioner of Baltimore County.

The Petitioner, Oregon, LLC ("Oregon") was represented by Robert A. Hoffman, Esquire, and David H. Karceski, Esquire, and VENABLE, LLP. The Protestants were represented by G. Macy Nelson, Esquire, and Michael McCann, Esquire. The Board conducted public hearings over a 5-day period on November 4, 2003, March 24, 2004, March 25, 2004, March 31, 2004 and April 13, 2004. At the conclusion of the evidentiary proceedings on April 13, 2004, counsel was directed to file simultaneous written briefs in lieu of oral argument. These were submitted on May 24, 2004. The Petitioner made available a complete copy of the Transcript along with their Brief. A public deliberation was conducted by the Board on June 9, 2004.

At the initial onset of the case on November 4, 2003, the Protestants attempted to enlarge the scope of the proceedings by requesting the Board "to revisit the entire special exception because it's a change of the prior use." [T 11/04/03, p 4] To accomplish that request would require the Board to treat the present special exception as if it were a fresh application. The Petitioner objected indicating that they were not prepared to "retry the 1995 case" [p 5] because "there is an existing

restaurant there, operating under the current Board of Appeals Opinion and in order to prove our case....that the changes on top of what is currently existing, and given the nature of the surrounding neighborhood, would not create the adverse impact. So that's how I would characterize what our proposed case would be." [p 5, 6] To agree with Mr. Nelson's argument would have had the net effect of shutting down the restaurant as being in violation of the previous Board's decision, more specifically, condition 11. "That's the relief we seek in this case (Nelson)" [p 7]. The Board heard oral argument from both sides.

The Chairman ruled, after discussion with the other panel members, that the Board was "not going to rule as to whether or not the special exception that was granted in 1995 continues to be valid or not...we are simply going to proceed on the basis that the Petitioner has filed for relief as stated in our file for a special hearing, special exception, and variance, which was granted by the Zoning Commissioner." [pp 16-17] The Board concurred that if the restaurant was operating illegally, it more appropriately was the subject of a "Code Enforcement" action - subject to investigation and determination by the Department of Permits and Development Management.

Mr. Theodore W. Bauer was the first witness for the Petitioner. He is the owner of the restaurant. He used Petitioner's Exhibit #1 to discuss generally the restaurant and its location. There is no disagreement that the Oregon Grille is a Mobile Four Star Restaurant. Two of the Board members were familiar with it and its general excellent reputation in the area.

Mr. Bauer described the operations of the restaurant during various days of the week. He also described the current site conditions, along with photographs he had taken (Petitioner's Exhibits 2A-2J). He opined concerning his present request to use the existing outdoor patios, with no enlargement, for special events, such as weddings, with a covered tent - limited to 15 events a year, ten of which would go until 10 o'clock at night and five of which would go until 11 o'clock at

10/14/14

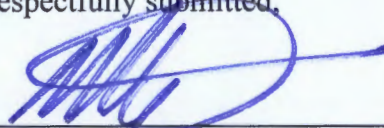
IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1301 Cheverly Road)		
9 th Election District	*	OFFICE OF
3 rd Councilmanic District		
The Belvedere Baptist Church of Baltimore	*	ADMINISTRATIVE HEARINGS
Legal Owner		
Davenport Preschool, LLC,	*	FOR BALTIMORE COUNTY
Lessee		
Petitioners	*	Case No. 2015-0004-SPH

* * * * *

NOTICE OF APPEAL

Davenport Education, LLC (referred to in this matter as Davenport Preschool, LLC), Appellant, which owns and operates the Davenport School at 1301 Cheverly Road, Towson, Maryland 21286, the same being its business address, by and through its undersigned attorney, feeling aggrieved by the Decision of the Administrative Law Judge in the above referenced matter, hereby files this notice of appeal to the County Board of Appeals from the Administrative Law Judge's Opinion and Order dated September 12, 2014 and attached hereto.

Respectfully submitted,



Matthew Thomas Vocci
Ober, Kaler, Grimes & Shriver,
A Professional Corporation
100 Light Street, 19th Floor
Baltimore, Maryland 21202
Telephone (410) 685-1120
Fax (410) 547-0699
mtvocci@ober.com

Attorneys for Appellant

RECEIVED

OCT 14 2014

OFFICE OF ADMINISTRATIVE HEARINGS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 14, 2014, copies of the Notice of Appeal were mailed first class, postage prepaid, to:

Julie Sugar
2 Pickford Court
Towson, Maryland 21286

Mary Barry
Terry & Edward Shapiro
1017 Hart Road
Towson, Maryland 21286

Helen Kraft
1008 Valewood Road
Towson, Maryland 21286

M.J. Watson
1405 Midmeadow Road
Towson, Maryland 21286

Larry & Cheryl Cleavenger
111 Valewood Road
Towson, Maryland 21286

Linda Lilly
1110 Valewood Road
Towson, Maryland 21286

Wayne Skinner
1020 Hart Road
Towson, Maryland 21286

Sandy Kyllianinen
1312 Denby Road
Towson, Maryland 21286



Matthew Thomas Vocci

9/12/14

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1301 Cheverly Road)		
9 th Election District	*	OFFICE OF
3 rd Councilmanic District		
The Belvedere Baptist Church of Baltimore,	*	ADMINISTRATIVE HEARINGS
Legal Owner		
Davenport Preschool, LLC,	*	FOR BALTIMORE COUNTY
Lessee		
Petitioners	*	Case No. 2015-0004-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of The Belvedere Baptist Church of Baltimore, Legal Owner, and Davenport Preschool, LLC, Lessee ("Petitioners"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to determine whether or not the Administrative Law Judge should approve an amendment to restriction #2 in Zoning Case No. 2013-0166-X to allow the petitioner/lessee to have a maximum of 150 children in the approved Class B Group Child Care Center in lieu of the previously granted 120 children.

Appearing at the public hearing in support of the requests was Liz Harlan, the owner of the Davenport Preschool which is operated on site, and Carl Dyhrberg with C.D. Design Consultants, the consulting firm that prepared the site plan. Matthew Vocci, Esquire, represented the Petitioners. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Several community residents attended the hearing and opposed the request and the file also contains several letters of opposition from neighbors. The only substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP), which did not oppose the request.

ORDER RECEIVED FOR FILING

Date

By

9/12/14

Den

The subject property is 12.711 acres (553,691.16 sq. ft.) and is zoned DR 1. The Petitioners were granted special exception relief in 2013, permitting them to operate a Class B child care facility with a maximum of "120 children in the facility at any one time." Case No. 2013-0166-X, Order p. 7. The current Petition seeks an amendment of that restriction, "to have a maximum of 150 children . . . in lieu of the previously granted 120 children." As noted at the hearing, the previous Order did not contain an enrollment cap. In other words, the school could very well enroll 150 students, but given the various schedules offered, only 120 children would be in the center at any one time.

Ms. Harlan stated that the fall class which just began has 109 children; in other words, to date the school has not had the maximum number of students permitted by last year's Order. Ms. Harlan would like to construct one additional classroom which would accommodate 16 children. She believes 150 would be the maximum number of students that could be accommodated at the site, and State regulations provide a similar numerical restriction based on the size of the existing and proposed classrooms. Petitioners' Ex. No. 2.

The neighbors expressed many of the same concerns which were discussed at the prior hearing: increased traffic in the community, safety of pedestrians and neighborhood children, and the potential for an expansion of the site if Ms. Harlan eventually purchases the property. Many area residents also complained Ms. Harlan did not notify them about her plans to seek approval for additional children at the School.

At this juncture, I do not believe the Petition should be granted. The special exception approval for 120 children was granted in March 2013, over the objection of many area residents. The Petitioner has not indicated why that restriction should not remain in place and no appeal was filed to challenge this aspect of the previous Order. Ms. Harlan conceded she has yet to

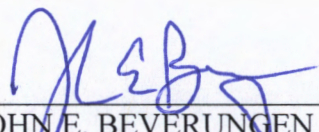
ORDER RECEIVED FOR FILING
Date 9/12/14
By Sen

reach the maximum number of students, and thus the community rightly notes that it has not had time to evaluate the impact of the school when it is operating at permitted capacity.

Therefore, I believe the current Petition, filed after the preschool has been operating for just one year, is premature. In addition, the law also requires some change in circumstances that would justify a different restriction; i.e., an increased demand for enrollment or waiting list for preschool admissions. Calvert County v. Howlin Realty, Inc., 364 Md. 301, 325 (2001) (agency may reconsider action taken previously upon a showing that "some new or different factual situation exists that justifies the different conclusion"). I do not believe the Petitioners presented any evidence of such changed circumstances here.

THEREFORE, IT IS ORDERED this 12th day of September, 2014, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R") to determine whether or not the Administrative Law Judge should approve an amendment to restriction #2 in Zoning Case No. 2013-0166-X to allow the petitioners/lessee to have a maximum of 150 children in the approved Class B Group Child Care Center in lieu of the previously granted 120 children, be and is hereby DENIED.

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

9/12/14

By

sln

KEVIN KAMENETZ
County Executive



LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

September 12, 2014

Matthew T. Vocci, Esquire
Ober & Kaler
100 Light Street
Baltimore, Maryland 21202

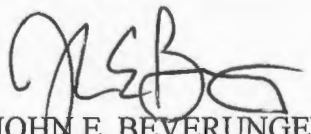
RE: Petition for Special Hearing
Property: 1301 Cheverly Road
Case No.: 2015-0004-SPH

Dear Mr. Vocci:

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 Baltimore County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Baltimore County Office of Administrative Hearings at 410-887-3868.

Sincerely,


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Julie Sugar, 2 Pickford Ct., Towson, MD 21286
Mary Barry, Terry & Edward Shapiro, 1017 Hart Road, Towson, MD 21286
Helen Kraft, 1008 Valewood Road, Towson, MD 21286
M.J. Watson, 1405 Midmeadow Road, Towson, MD 21286
Larry & Cherlyn Cleavenger, 111 Valewood Road, Towson, MD 21286
Linda Lilly, 1110 Valewood Road, Towson, MD 21286
Wayne Skinner, 1020 Hart Road, Towson, MD 21286
Sandy Kylliainen, 1312 Denby Road, Towson, MD 21286

ORDER RECEIVED FOR FILING

Date _____

By _____



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 1301 Cheverly Road, Towson, MD 21286 which is presently zoned DR1

Deed References: /20932/00156 10 Digit Tax Account # 0902650491

Property Owner(s) Printed Name(s) Belvedere Christian Church

(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 an amendment to restriction # 2 in Zoning Case # 2013-066-X to allow the petitioner/lessee to have a maximum of 150 children in the approved Class B Group Child Care Center in lieu of the previously granted 120 children.

2. ☐ a Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for

3. ☐ a Variance from Section(s)

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 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:

Davenport Preschool, LLC

Name- Type or Print

[Signature]

Signature

1301 Cheverly Road, Towson, MD

Mailing Address City State

21286 / (410) 241 9052 / liz@harlan.com

Zip Code Telephone # Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

The Belvedere Baptist Church of Baltimore

Name #1 - Type or Print

Name #2 - Type or Print

[Signature]

Signature #1

Signature #2

1301 Cheverly Road Towson, MD

Mailing Address City State

21286 / /

Zip Code Telephone # Email Address

Representative to be contacted:

Carl Dyhrberg

Name - Type or Print

[Signature]

Signature

1619 Mussula Road Towson MD

Mailing Address City State

21286 / (443) 465 6899 / cddesignconsultants@yahoo.com

Zip Code Telephone # Email Address

CASE NUMBER 2015-0004-SPH Filing Date 7/8/2014 Do Not Schedule Dates: Reviewer JNP

ORDER RECEIVED FOR FILING

Date 9/12/14

By Sen

ZONING DESCRIPTION FOR 1301 CHEVERLY ROAD

Beginning at the south^{east}~~west~~ end of Cheverly Road, which is 50 feet wide at the distance of 240 feet South of the centerline of the nearest improved intersecting street, Valewood Road, which is 50.01 feet wide, thence binding on the south end of Cheverly Road, North 69 degrees 34 minutes East 50.01 feet, thence leaving Cheverly Road, North 69 degrees 34 minutes East 624.16 feet and South 12 degrees 19 minutes 02 seconds East 646.76 feet to a point in or near the centerline of Hart Road, thence running in or near the centerline of Hart Road, South 66 degrees 57 minutes 04 seconds West 25.46 feet, South 61 degrees 22 minutes 30 seconds West 282.52 feet, North 82 degrees 32 minutes 30 seconds West 165.00 feet, South 69 degrees 31 minutes 30 seconds West 131.32 feet and South 77 degrees 44 minutes 30 seconds West 320.15 feet, thence leaving Hart Road, North 12 degrees 19 minutes 02 seconds West 564.74 feet and North 69 degrees 34 minutes East 236.53 feet to the place of beginning 12.711 Acres

Also known as 1301 Cheverly Road and located in the 9th Election District, 3rd Councilmanic District.

2015-0004-SA

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **113834**
 Date: **7/8/2014**

PAID RECEIPT

BUSINESS ACTUAL TIME DRW
 7/09/2014 7/08/2014 14:25:26 8

MS MS04 WALKIN GHIL SAN
 RECEIPT # 632066 7/08/2014 OFLN

Trst 5 528 ZONING VERIFICATION

NO. 113834

Recpt Tot \$500.00
 \$500.00 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	0000		6150				500.00

Total: **500.00**

Rec From: **Duvenport Education**
 For: **Special Hearing - 1301 Choverly Road**
2015-0004-SPH (The Belvedere Baptist Church of B.h.)

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
 PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

No.

94617

Date: 10-14-14

1970-1971 10/14/2014 14901431
 1971 08/01/1971 13051108
 1972 01/01/1972 10/15/2014 1871
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 2098 01/01/2098 08/01/2014
 2099 01/01/2099 08/01/2014
 2100 01/01/2100 08/01/2014
 2101 01/01/2101 08/01/20

[illegible]

Total: 265.00

Rec

From:

For:

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
VALIDATION**

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS

DATE: 8/13/2014

Case Number: 2014-004-SPH

Petitioner / Developer: CARL DYHRBERG ~ DAVENPORT LLC

Date of Hearing (Closing): SEPTEMBER 4, 2014

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
1301 CHEVERLY ROAD

The sign(s) were posted on: AUGUST 13, 2014



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 - 666 - 5366
(Telephone Number of Sign Poster)



THE BALTIMORE SUN MEDIA GROUP

Baltimore, Maryland 21278-0001

August 14, 2014

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 August 14, 2014

☐ The Jeffersonian

THE BALTIMORE SUN MEDIA GROUP

By: Susan Wilkinson

Susan Wilkinson

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: #2015-0004-SPH

1301 Cheverly Road

SE end of Cheverly Road, 240' ft. SE of Valewood Road

9th Election District - 3rd Councilmanic District

Legal Owners: The Belvedere Baptist Church of Baltimore

Contract Purchaser/Lessee: Davenport Preschool, LLC

Special hearing to approve an amendment to restriction #2 in zoning Case 2013-0066-X to allow the petition/lessee to have a maximum of 150 children in the approved Class B Group Child Care Center in lieu of the previously granted 120 children

Hearing: Thursday, September 4, 2014 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

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

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

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

8/118 August 14

990154

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 2015-0004-SPH
Petitioner: The Belvedere Baptist Church of Baltimore
Address or Location: 1301 Cheverly Road

PLEASE FORWARD ADVERTISING BILL TO:

Name: LIZ HAKLAN, Davenport Preschool LLC
Address: 1301 CHEVERLY RD
TOWSON 21286

Telephone Number: 410 - 2419052

TO: PATUXENT PUBLISHING COMPANY
Thursday, August 14, 2014 Issue - Jeffersonian

Please forward billing to:

Liz Harlan
Davenport Preschool, LLC
1301 Cheverly Road
Towson, MD 21286

410-241-9052

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: 2015-0004-SPH

1301 Cheverly Road

SE end of Cheverly Road, 240 ft. SE of Valewood Road

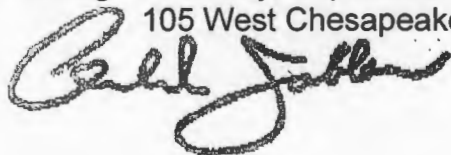
9th Election District – 3rd Councilmanic District

Legal Owners: The Belvedere Baptist Church of Baltimore

Contract Purchaser/Lessee: Davenport Preschool, LLC

Special Hearing to approve an amendment to restriction #2 in Zoning Case 2013-0066-X to allow the petition/lessee to have a maximum of 150 children in the approved Class B Group Child Care Center in lieu of the previously granted 120 children.

Hearing: Thursday, September 4, 2014 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon

Director of Permits, Approvals and Inspections for Baltimore County

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

July 25, 2014

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: 2015-0004-SPH

1301 Cheverly Road

SE end of Cheverly Road, 240 ft. SE of Valewood Road

9th Election District – 3rd Councilmanic District

Legal Owners: The Belvedere Baptist Church of Baltimore

Contract Purchaser/Lessee: Davenport Preschool, LLC

Special Hearing to approve an amendment to restriction #2 in Zoning Case 2013-0066-X to allow the petition/lessee to have a maximum of 150 children in the approved Class B Group Child Care Center in lieu of the previously granted 120 children.

Hearing: Thursday, September 4, 2014 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in dark ink, appearing to read "Arnold Jablon".

Arnold Jablon
Director

AJ:kl

C: Davenport Preschool, LLC, 1301 Cheverly Road, Towson 21286
Carl Dyhrberg, 1619 Mussula Road, Towson 21286

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, AUGUST 15, 2014**
- (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.**



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER

1907-1989

THOMAS J. LEE

OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

E-MAIL: JCHOLZER@CAVTEL.NET

December 4, 2014

#8061

Ms. Cassandra "Sunny" Cannington
Administrator
Baltimore County Board of Appeals
Jefferson Building
105 West Chesapeake Avenue
Second Floor, Suite 203
Towson, Maryland 21204

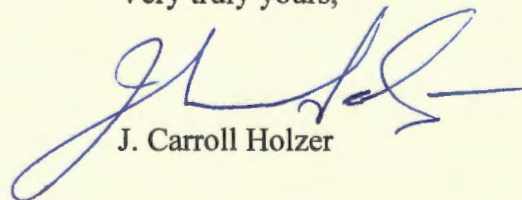
RE: *In the Matter of: The Belvedere Baptist Church of Baltimore,
Legal Owner
Case No.: 15-004-SPH
Assigned Before the Board of Appeals for Tuesday, January 27, 2015
at 10:00 a.m.*

Dear Ms. Cannington:

Please enter my appearance on behalf of the listed Protestants on the Notice of Assignment. I intend to appear and participate before the Board on Tuesday, January 27, 2014, for your courtesy in this matter.

If you have any questions, please feel free to give me a call.

Very truly yours,



J. Carroll Holzer

JCH:mlg

Enclosure

cc: Mr. Wayne Skinner
Matthew Thomas Vocci, Esquire
Peter Max Zimmerman, Esquire

RECEIVED
DEC 08 2014

BALTIMORE COUNTY
BOARD OF APPEALS



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 25, 2014

NOTICE OF ASSIGNMENT

IN THE MATTER OF:

15-004-SPH

The Belvedere Baptist Church of Baltimore – Legal Owner
Davenport Preschool, LLC – Lessee
1301 Cheverly Road
9th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing to approve an amendment to restriction #2 in Zoning Case No. 2013-0166-X to allow the petitioner/lessee to have a maximum of 150 children in the approved Class B Group Child Care Center in lieu of the previously granted 120 children.

9/12/14 Opinion and Order of Administrative Law Judge wherein the Petition for Special Hearing was DENIED.

ASSIGNED FOR: TUESDAY, JANUARY 27, 2015, 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.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c: Petitioner/Legal Owner
Counsel for Petitioner/Legal Owner

: The Belvedere Baptist Church of Baltimore
: Matthew Thomas Vocci, Esquire

Protestants

: Julie Sugar, Mary Barry, Terry & Edward Shapiro,
Helen Kraft, M.J. Watson, Larry & Cheryl Cleavenger,
Linda Lilly, Wayne Skinner, Sandy Kylliainen

Linda Rubeor

Richard and Susan Pescatore

Joan Magnani

Ellen & Tim Mering

Daniel & Theresa Driscoll

Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

August 27, 2014

The Belvedere Baptist Church of Baltimore
1301 Cheverly Road
Towson MD 21286

RE: Case Number: 2015-0004 SPH, Address: 1301 Cheverly Road

To Whom It May Concern:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on July 8, 2014. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

A handwritten signature in black ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaf

Enclosures

c: People's Counsel
Davenport Preschool LLC, 1301 Cheverly Road, Towson MD 21286
Carl Dyhrberg, 1619 Mussula Road, Towson MD 21286

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor



James T. Smith, Jr., Secretary
Melinda B. Peters, Administrator

Date: 7/14/14

Ms. Kristen Lewis
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No 2015-0004-SPH
Special Hearing
The Belvedere Baptist Church
of Baltimore
1301 Cheverly 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. 2015-0004-SPH.

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,

A handwritten signature in dark ink, appearing to read 'Steven D. Foster'.

Steven D. Foster, Chief/
Development Manager
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

9/4

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: July 28, 2014

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 1301 Cheverly Road

INFORMATION:

Item Number: 15-004

Petitioner: Belvedere Baptist Church of Baltimore

Zoning: DR 1

Requested Action: Amendment to prior case to increase number of children permitted in child care center from 120 to 150.

RECEIVED
JUL 30 2014
OFFICE OF ADMINISTRATIVE HEARINGS

SUMMARY OF RECOMMENDATIONS:

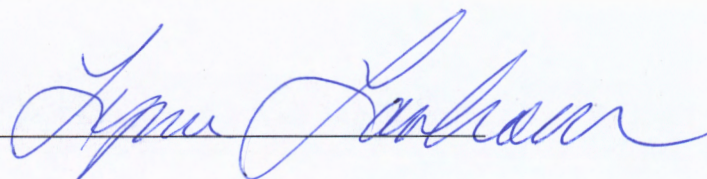
The Department of Planning has reviewed the petitioner's request and accompanying site plan. The Department of Planning does not oppose the petitioner's request for an amendment to the restriction #2 in Zoning Case #2013-066-X to allow 150 children rather than the existing limit of 120 children.

Davenport Preschool sits on a large 12.7 acre site zoned DR in a Master Plan designated Community Conservation Area. The facility is accessed by Valewood Road off of Providence Road in the Towson area. The subject property sits atop of a hill and is relatively isolated with woods to the south and wooded buffer to the residences on the north. There is a residence to the east and a church use to the west. The facility is located in the middle of the property and thus is removed from the neighboring properties.

Therefore it is this Department's opinion that the requested relief is not detrimental to the health, safety, or general welfare of the surrounding community.

For further information concerning the matters stated here in, please contact Wallace S. Lippincott, Jr. at 410-887-3480.

Division Chief:
AVA/WL



BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

FROM: ^{DAK} Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

DATE: July 28, 2014

SUBJECT: Zoning Advisory Committee Meeting
For July 14, 2014
Item No. 2014-0288, 0289, 0293, 0294 and
Item No. 2015-0004, 0006, 0007 and 0008

The Bureau of Development Plans Review has reviewed the subject zoning items, and we have no comments.

DAK:CEN
cc:file

G:\DevPlanRev\ZAC -No Comments\ZAC07282014 -.doc

RE: PETITION FOR SPECIAL HEARING * BEFORE THE OFFICE
1301 Cheverly Road; SE end of Cheverly Road, *
240' SE of Valewood Road * OF ADMINISTRATIVE
9th Election & 3rd Councilmanic Districts
Legal Owner(s): Belvedere Baptist Church * HEARINGS FOR
of Baltimore
Contract Purchaser(s): Davenport Preschool LLC* BALTIMORE COUNTY
Petitioner(s) *
2015-004-SPH

* * * * *

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

JUL 17 2014

.....

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of July, 2014, a copy of the foregoing Entry of Appearance was mailed to Carl Dyhrberg, 1619 Mussula Road, Towson, Maryland 21286, 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

RECEIVED
OCT 16 2014

October 16, 2014

BALTIMORE COUNTY
BOARD OF APPEALS

Matthew T. Vocci, Esquire
Ober & Kaler, Grimes & Shriver
100 Light Street, 19th Floor
Baltimore, Maryland 21202

RE: **APPEAL TO BOARD OF APPEALS**
Case No. 2015-0004-SPH
Location: 1301 Cheverly Road

Dear Mr. Vocci:

Please be advised that an appeal of the above-referenced case was filed in this Office on October 14, 2014. 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
Julie Sugar, 2 Pickford Ct., Towson, MD 21286
Mary Barry, Terry & Edward Shapiro, 1017 Hart Road, Towson, MD 21286
Helen Kraft, 1008 Valewood Road, Towson, MD 21286

M.J. Watson, 1405 Midmeadow Road, Towson, MD 21286
Larry & Cherlyn Cleavenger, 111 Valewood Road, Towson, MD 21286
Linda Lilly, 1110 Valewood Road, Towson, MD 21286
Wayne Skinner, 1020 Hart Road, Towson, MD 21286
Sandy Kylliainen, 1312 Denby Road, Towson, MD 21286

APPEAL

**Petitions for Special Hearing
(1301 Cheverly Road)
9th Election District – 3rd Councilmanic District
Legal Owners: The Belvedere Baptist Church of Baltimore
Lessee: Davenport Preschool, LLC
Case No. 2015-0004-SPH**

RECEIVED
OCT 16 2014

**BALTIMORE COUNTY
BOARD OF APPEALS**

Petition for Special Hearing (July 8, 2014)

Zoning Description of Property

Notice of Zoning Hearing (July 25, 2014)

Certificate of Publication (August 14, 2014)

Certificate of Posting (August 13, 2014) by Linda O'Keefe

Entry of Appearance by People's Counsel (July 17, 2014)

Petitioner(s) Sign-in Sheet – One

Citizen(s) Sign-in Sheet – One

Zoning Advisory Committee Comments

Petitioner(s) Exhibits -

1. Plan
2. Davenport Classroom Chart
3. Davenport "Community Respect" Agt.

Protestants' Exhibits –

1. Photos re: sign posting
2. Photos re: school bus stops

Miscellaneous (Not Marked as Exhibits) – Community letters, list of adjacent neighbors and prior zoning Order # 2013-0166-X3

Administrative Law Judge Order and Letter (DENIED September 12, 2014)

Notice of Appeal – October 14, 2014 by Matthew Thomas Vocci, Esquire

Address List

Petitioners/Appellants:

The Belvedere Baptist Church
of Baltimore
1301 Cheverly Road
Towson, MD 21204

Carl Dyhrberg
1619 Mussula Road
Towson, MD 21286

Davenport Preschool, LLC
1301 Cheverly Road
Towson, MD 21286

Liz Harlan
2114 Monkton Road
Monkton, MD 21111

Matthew Thomas Vocci, Esq.
Ober, Kaler, Grimes & Shriver
100 Light Street, 19th Floor
Baltimore, MD 21202

Protestants:

Julie Sugar
2 Pickford Court
Towson, MD 21286

Mary Barry
Terry & Edward Shapiro
1017 Hart Road
Towson, MD 21286

Helen Kraft
1008 Valewood Road
Towson, MD 21286

M.J. Watson
1405 Midmeadow Road
Towson, MD 21286

Larry & Cheryl Cleavenger
1111 Valewood Road
Towson, MD 21286

Linda Lilly
1110 Valewood Road
Towson, MD 21286

Wayne Skinner
1020 Hart Road
Towson, MD 21286

J. Carroll Holzer, Esquire

Sandy Kylliainen
1312 Denby Road
Towson, MD 21286

Letters of Opposition:

Helen Kraft
1008 Valewood Road
Towson, MD 21286

Linda M. Rubeor
1003 Valewood Road
Towson, MD 21286

Richard J. & Susan Q.
Pescatore
1001 Hart Road
Towson, MD 21286

Joan Magnani
1021 Valewood Road
Towson, MD 21286

Ellen & Tim Mering
1025 Hart Road
Towson, MD 21286

Daniel & Theresa Driscoll
1312 Cheverly Road
Towson, MD 21286

Interoffice:

Office of People's Counsel
Lawrence M. Stahl, Managing 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



Hampton Gardens Community Association Towson, MD 21286

September 3, 2014
Case # 2015- 004 SPH

Mr. John Beverungen, Administrative Law Judge
Baltimore County Zoning Office
105 West Chesapeake Avenue
Towson, MD 21204

Dear Mr. Beverungen:

We are writing this letter regarding the Davenport Preschool, located at 1301 Cheverly Road, Towson, MD 21286, located in the middle of our neighborhood of 160 homes.

In the spring of 2013, Davenport Preschool requested a zoning exception to have a higher number of children than Baltimore County code allows. Baltimore County Code permits 40 children in a Density Residential setting. A zoning exception was granted allowing 120 children, three times the permitted limit.

The preschool/daycare center has operated in our community for one year, reaching a maximum capacity of 106 (according to correspondence with the center's owner dated 8/13/2014).

The community was blindsided in late July when Davenport filed another zoning exception, seeking to expand their capacity to 150, nearly 4 times the permitted limit (without a special exception). The community did not learn of this through the HGCA preschool liaison who is in active communication with the center's owner concerning traffic safety concerns throughout the year. The community learned of this through a neighbor with a contact in county government.

Given the fact the center has not yet reached its exception capacity of 120, the community is understandably leery of a new exception expanding the limit to 150.

It is important to note that each child represents 4 car trips (parents coming/going at drop-off and parents coming/going at pick-up). So 120 children represents 480 extra car trips in our neighborhood of 160 homes. If an exception was granted for 150 students, this equates to 600 car trips in our neighborhood of 160 homes.

The HGCA held a neighborhood-wide meeting on 8/2/2014 to discuss the zoning exception. After an open discussion, a vote was held concerning whether to support the newly requested expansion. The decision for the HGCA to support the following statement was unanimous:

We have accepted the ALJ March 2013 ruling granting an exception allowing a 120 student capacity but we oppose granting any additional exceptions to this ruling.

Thank you for your consideration,

Hampton Gardens Community Association
Board of Directors

Adjacent Neighbors

DANIEL & THERESA DRISCOLL
1312 CHEVERLY ROAD

YOON CANG KEUM
1313 CHEVERLY ROAD

PARK CHENG SUK
1107 VALEWOOD ROAD

BOBBY & TWYLA RITTER
1109 VALEWOOD ROAD

LARRY & CHERLYN CLEAVENGER
1111 VALEWOOD ROAD

SHAMS PIRZADEH & NAEINI SAJADI
1113 VALEWOOD ROAD

LAWRENCE & PATRICIA WILLIAMS
1210 HART ROAD

NASTY 1570 SPORTS LLC
1550 HART ROAD

FRANZ & ANNA VELLA-CAMILLERI
HART ROAD

DUNCAN & SUSAN WALKER
1214 A BROOKVIEW ROAD

BINKS & KEITH CARNEY
1201 HART ROAD

JOHANNA MANNING
1111 HART ROAD

CHRIST THE KING CHURCH
1102 HART ROAD

2015-0004-SPH

MB 9-4-14
10 AM

Case #2015-004 SPH

Davenport Preschool 1301 Cheverly Rd. 21286

RECEIVED

SEP 03 2014

Sir,

OFFICE OF ADMINISTRATIVE HEARINGS

I don't believe it is in the best interest of the Hampton Gardens Community, to increase the presently allowed number of clients from 120 to 150. Until such time and the community experience the full impact of the number of vehicles for 120 students, the change should be put on hold.

I observed the traffic on 8/26/14 between the hours of 6:30 A.M and 9:00 A.M; 112 vehicles traveled East on Valewood Rd. toward the preschool.

6:30 - 7:00	1
7:00 - 7:30	11
7:30 - 8:00	33
8:00 - 8:30	31
8:30 - 9:00	36

Helen Kraft

Helen Kraft

1008 Valewood Rd.

Towson, MD 21286

1003 Valewood Road
Towson, Maryland 21286
Linrubeor@gmail.com

JB 9-4-14
10 AM
RECEIVED

Mr. John Beverungen, Administrative Law Judge
Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

SEP 03 2014

OFFICE OF ADMINISTRATIVE HEARINGS

RE: Case #2015-004 SPH
1301 Cheverly Road

Dear Mr. Beverungen:

As a 14 year resident of Valewood Road, I am writing to you regarding Davenport Preschool's zoning appeal to increase the enrollment of students. As you are aware, Davenport Preschool is located in the center of a quiet residential neighborhood, with essentially one way in and one way out. (Hart Road is available also, but a very narrow road with a dangerous intersection when exiting the neighborhood).

Despite the fact that in the 2013-2014 school year the currently approved 120 student capacity was not met, the increase of traffic was dramatic. It has been said that the increased volume of traffic, with a full enrollment of 120, would be approximately 80 cars. If that is true, someone is completely ignoring the fact that those 80 cars must: 1. enter the community 2. exit the community 3. then enter it again for pick up and 4. leave the community once again. Easy enough math to do:

80 cars = 320 cars passing by every house on Valewood and Cheverly

That is a significant amount of traffic in a community of less than 200 homes many of which are off side roads and use only a short distance on Valewood. It also does not account for staff at the school, garbage trucks and deliveries.

Yes, you may argue that we all moved here knowing there was a church in the community. But, I argue that the size of that church and its congregation would never create so much daily traffic. Many residents walk Valewood Road which has no sidewalks. We have children waiting for buses on this road.

At this time, having not seen the actual amount of traffic that a full 120 child capacity would produce, I am **opposed to approving an increase in enrollment**. Our quality of life, which is why we chose to live in Hampton Gardens, should not be impeded by a for profit enterprise.

Thank you for your time and your consideration of the opinions of Hampton Gardens residents.

Sincerely,

Linda M. Rubeor

JB 9-4-14
10 am

1021 Valewood Road
Towson, MD 21286
Aug. 31, 2014

RE: Case #2015-004 SPH
1301 Cheverly Rd
Towson, MD 21286

RECEIVED

SEP 03 2014

OFFICE OF ADMINISTRATIVE HEARINGS

Mr. John Beverunger
Administrative Law Judge
Office of Administrative Hearings
105 W Chesapeake Ave., Ste 103
Towson, MS 21204

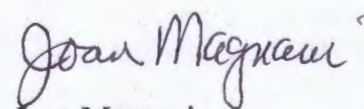
Dear Mr. Beverunger,

I am **against** granting the exception to increase the enrollment of the Davenport Preschool on Cheverly Road from 120 to 150.

Zoning for the daycare allows only 40 students without an exception. The exception requested now is 150. That is almost 4 times what is permitted without an exception.

I don't think that zoning laws are passed without thought and consideration for what will work and what is reasonable in each zoning district, so I must believe that limiting day care students to 40 is reasonable for this neighborhood. Yes, exceptions are granted if it is believed that the exception would be compatible with the character and general welfare of the surrounding residential premises, but who gets to decide that. Should the owner of the day care get to decide or should someone that does not live in this neighborhood get to decide. Shouldn't the residents be the ones to decide if a daycare with 150 students is compatible? This is becoming more than a daycare. 150 students is big business. 150 students means 150 cars dropping off one way and 150 cars leaving the neighborhood then 150 cars picking up and those 150 cars leaving again up and down Valewood Road Monday thru Friday, not counting the employees. Valewood used to be a quiet neighborhood where neighbors could take a walk and walk their dogs up and down the road, and stop and chat. We have no sidewalks and walking in the road now with only the 80 students that I have been told are presently enrolled, it is horrible with cars rushing to get to work and home and people on their cell phones not paying attention to people walking or stop signs. I can't imagine what more traffic will be like. If this exception is granted, what if next year there are even more students that want to enroll, will another exception be granted and then another and then another.

Respectfully


Joan Magnani

Mr. John Beverungen, Administrative Law Judge
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, MD 21204

83 9-4-14
10 km
August 29, 2014

RE: Case # 2015- 004 SPH
1301 Cheverly Road

RECEIVED

SEP 08 2014

OFFICE OF ADMINISTRATIVE HEARINGS

Dear Mr. Beverungen,

My husband and I have lived in Hampton Gardens for 8 years. We live on Hart Road adjacent to the Davenport property. I have been a part of the Community Association for five years and have worked in various roles. During the last year I have been the community liaison between Liz Harlan and the Community Association. It seemed Liz and I had a good working relationship as we chatted perhaps monthly online about traffic problems and community issues. I was very surprised when neighbors told me about the scheduled Zoning Hearing. I assumed that Liz would send an email letting me know of any significant changes. This lack of communication creates mistrust. Not only was the hearing three weeks away when we heard, but it is scheduled in a week when many people are on vacation or just getting back to their jobs. My husband and I cannot be present.

I realize that Liz can certainly make independent decisions without consulting the community. However, we would like to continue to have a strong voice in upcoming changes with Davenport. The change that she has requested is significant and we have not yet experienced the traffic of the full 120 enrollment. Liz asks all parents to sign an agreement to be respectful of the community and observe traffic signs; in other words to be a good neighbor. I believe that most parents follow through but there is, of course, a minority that do not. With all parents and families there is a hustle bustle to drop kids off and get to work, and it is no different here. There are limited stop signs in our neighborhood and there are no sidewalks. Hart Road is not supposed to be used by parents because it is so narrow, but there is still a minority that use it. There is significantly more traffic on a newly paved Providence Road that is also used by pedestrians and bikers. I am not sure how to address these issues but I think a slower approach is necessary for the safety of all. As busy people ourselves, we can hardly sit outside to monitor traffic, identify license plates and take pictures of offenders but it is usually obvious by the time frame and the child seats that folks are headed to Davenport.

We want to be good neighbors as well and we understand that we have to progress with change in our neighborhood but we would ask that the enrollment continue to be restricted to 120 at this point, out of respect for our residential setting. Thank you for your consideration.

Sincerely,



Ellen & Tim Mering
1025 Hart Rd
410-808-3634

RECEIVED
SEP 03 2014
OFFICE OF ADMINISTRATIVE HEARINGS
RECEIVED
SEP 08 2014

OFFICE OF ADMINISTRATIVE HEARINGS

September 1, 2014

Mr. John Beverungen
Administrative Law Judge
Office of Administrative Hearings
105 West Chesapeake Avenue
Suite 103
Towson MD 21204

RECEIVED

SEP 02 2014

RE: Case 2015-004 SPH
1301 Cheverly Road

OFFICE OF ADMINISTRATIVE HEARINGS

Dear Judge Beverungen,

We are writing to you to express our objection to the request for a zoning exception by the Davenport Preschool LLC in order to increase the authorized student attendance per day of their company from 120 students, granted by you on March 29, 2013, to 150 students. We are unable to attend the hearing in person due to the very short notice we received regarding the scheduling of the hearing and a conflict with out of town travel plans.

As members of the Hampton Gardens Community Association, we attended the previous hearing, presided over by you. The main concern expressed by the neighborhood at that time was the expected increase in the volume of traffic and safety issues related to the fact that we reside in a residential area without sidewalks. At one point in the hearing you asked the neighbors what would be an acceptable number of students if we had to compromise on an attendance figure. The consensus was that if Davenport was approved to go forward, an initial attendance of 120 students per day would give the community an opportunity to determine if the amount of traffic related to that number could be absorbed or if it created a significant negative impact on the quality of life and safety in the neighborhood. We were pleased to see that you included the 120 number in the restrictions imposed on Davenport in your decision. This number also seemed to be in line with the business plan discussed by Ms. Harlan during the hearing and in other information provided to the community by her. One document she provided showed incremental increases in attendance from 104 students by 2014, 120 by 2015 and 136 by 2016.

Our association's liaison to Davenport was finally able to get some current and projected attendance figures from Ms. Harlan within the last month. Ms. Harlan indicated that her attendance per day from the opening of the school last Fall through this past Spring averaged between 70 to 80 students. She expects her attendance per day for this Fall to be 120 students.

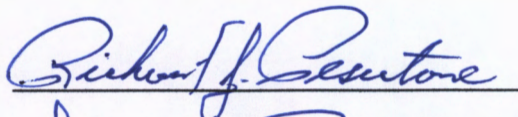
Neighbors directly impacted by the flow of traffic to and from the Davenport School on Valewood Road, Denby Road and Hart Road have not yet noticed a major impact in the volume of traffic. However, while the number of trips in and out has been proportionate to the low attendance numbers, neighbors have reported safety issues involving cars speeding to and from

the school, especially during peak pick up and drop off times, and other school related drivers failing to stop at Stop signs.

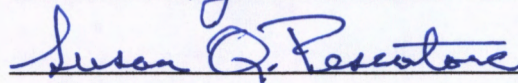
Our opinion, and the opinion of many of our neighbors directly impacted by the Davenport School, is that the community has not yet even experienced the impact of the 120 attendance per day cap ordered by you. We would like suggest that this cap remain in place for one year after the Davenport School achieves the 120 attendance per day figure so that the community can assess the impact that number has on the quality of life and safety in our neighborhood. Therefore, we respectfully request that the exception requested by the Davenport School to raise the student attendance maximum to 150 per day be denied.

Sincerely,

Richard J. Pescatore

A handwritten signature in blue ink, reading "Richard J. Pescatore", written over a horizontal line.

Susan Q. Pescatore

A handwritten signature in blue ink, reading "Susan Q. Pescatore", written over a horizontal line.

1001 Hart Road
Towson MD 21286

JB 9-4-14
10 AM

*Wanted to make sure you
received our letter. Mailed first
letter, without training code to
send the letter to. Thank you for
considering our concerns.*

86

RECEIVED

SEP 02 2014

OFFICE OF ADMINISTRATIVE HEARINGS

1301 Cheverly Road

Legal Owner: The Belvedere Baptist Church of Baltimore

Contract Purchaser: Davenport Preschool, LLC

Mr. Byrd, A L S

Dear Commissioner:

We will be away for three weeks and cannot attend the hearing, therefore we are writing to express our concerns about the zoning change to increase the preschool enrollment from 120 to 150 children. As expressed in our previous letter (Copy enclosed.), we are against any further increase that will adversely affect the increase traffic flow in our community and decrease our property value. Rather than repeat our concerns please refer to our March 7, 2013, letter as these concerns have not changed.

Also enclosed is a letter signed by Stephen W. Bird on January 3, 2013, that was not written by him nor voted on by the Hampton Gardens Neighborhood Association. At the hearing, the Administrative Law Judge, John Beverudgen's, had to force Mr. Byrd to admit that he did not write the letter and acted without approval from the community. It should also be pointed out that although a zoning notice was posted, the placement of the notice could not be seen by anyone other than people driving past our house on Cheverly as it was hidden by trees and a trash box. A neighbor in the community did make a copy of the notice and posted it at the Valewood and Providence Road stop sign.

The issue to be addressed is the impact on traffic and not whether parents' think the preschool is excellent. In fact, with the preschool being successful the owner will want to grow the preschool and request new zoning hearings to further increase future enrollment. People in the community do not mind a preschool, just the size and the impact on the community.

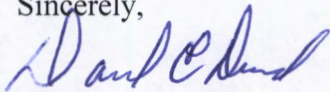
In the Administrative Law Judge's decision dated March 28, 2013, he limited enrollment to 120 children on the assumption that this would limit traffic to 400 trips on a daily basis. During the past year 2013 - 2014, the preschool has operated below the 120 limit. On a few Wednesday mornings I have counted about 80 to 90 cars going up Cheverly. At this time, there is no reason to grant another zoning exception when no one knows exactly the impact this increase traffic volume will have during the 2014 - 2015 year. To offer undocumented testimony is not a basis

for granting another exception.

On occasions I have noticed parents driving without concern for people in the neighborhood and for the parents' own children safety as they have sped up and down Cherverly (late dropping off or picking up), a few not stopping at the end of Cheverly, using mobile devices and running the stop sign at Denby and Valewood, which is a school bus stop six times a day. Further increase in traffic volume negatively impacts the community since there is only one way in and out of the neighborhood. There are no sidewalks nor are there any street lights, which makes walking in the community dangerous and when there is a time change it is even more dangerous. A few other people who use the property also ignore traffic laws.

It should also be noted that not only is there preschool traffic but a church operates on Sunday and during the summer a soccer camp. There is traffic in the community almost seven days a week plus some after hour activities. The zoning hearing is more than just a preschool increasing enrollment but the contract purchaser operating a business in a residential community to maximize its revenues.

Sincerely,



Daniel Driscoll



Theresa Driscoll

Enclosures

January 3rd, 2013

To Whom It May Concern:

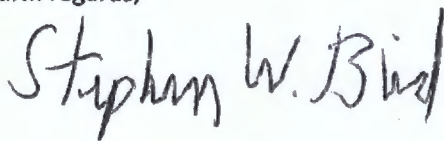
I am writing this letter on behalf of the Hampton Gardens Neighborhood Association in support of Liz Harlan's concept for Davenport Preschool, sited for the existing Belvedere Christian Church building located at 1301 Cheverly Road, Towson, MD 21286 in the heart of our community. Situated on nearly 13 acres, this site has served as a de facto gathering place for our community – for dog walkers, athletics, cub scouts or just a space to be in an open green space.

As a long-time resident of this community, I know the value that our resident members place on good neighbors. But beyond neighborliness, our association has faced numerous challenges over the past couple years in finding the right fit for what we believe will not only have a limited development and traffic impact on our tightknit community, but will actually serve to enhance the value of our properties and serve as an asset to our neighborhood families.

As the former director of a prominent preschool in the heart of Towson, and the swim coach for Hampton Pool for the past three years, Ms. Harlan, the director of Davenport Preschool, has already established deep ties in the Towson community, and specifically here in our Hampton neighborhood. I can think of no better fit than a preschool dedicated to serving the diverse needs of our families with young children, with a focus on education that views community engagement as central to its teaching philosophy.

We welcome her, her faculty, and the loyal families who will join her in building the Davenport Preschool, and the Hampton Gardens Neighborhood Association endorses the concept with no reservations. Please feel free to contact me directly at 443.465.0687 with any questions, and I thank you for your consideration.

Warm regards,

A handwritten signature in dark ink, reading "Stephen W. Bird". The signature is written in a cursive, flowing style. The first name "Stephen" is written with a large, prominent "S". The middle initial "W." is smaller and follows the first name. The last name "Bird" is written with a large, bold "B" and a stylized "d".

President, Hampton Gardens Neighborhood Association

**Daniel & Theresa Driscoll
1312 Cheverly Road
Towson, Maryland MD 21286
(410) 823-7957**

March 7, 2013

Mr. Arnold Jablon
Deputy Administrative Officer
Director, Departments of Permits
Approvals & Inspections
County Office Building
111 West Chesapeake Avenue Room 105
Towson, MD 21204

RE: CASE NUMBER: 2013-1066X
1301 Cheverly Road
SW Cherverly Road , 240FT S/of centerline of Valewood
Legal Owner: The Belvedere Baptist Church of Baltimore
Contract Purchaser: Davenport Preschool, LLC

Dear Mr. Jalon:

We are writing to express our concern about the zoning change to the property listed. Before purchasing our house in November of 1991, we investigated the Church and the flow of traffic into the neighborhood. We determined that 50 cars going to Church on a Sunday morning was not a problem.

Right now there are 44 marked parking spaces in the front lot and 76 in the back parking lot. In the 22 years we have lived here we have never seen both lots filled for a church service. On any given Sunday, the front lot would be filled and only a handful of cars, about ten, in the back lot. In the last ten years, there have been less than 20 cars going to church on any given Sunday morning. For about a year the church rented the building to another church on Sunday afternoon. This church just filled the front lot. The only time there was an overflow of cars was when a large church (3,000 members) investigated buying the property.

There is only one way into the church property and that is down Valewood and up Cheverly. There are no sidewalks or street lights in the neighborhood. There is a stop sign on Valewood right at Denby. This corner is a major school bus pickup and drop-off for children in the Hampton Community and is a dangerous intersection. Because there are no sidewalks in the neighborhood, everyone walks in the road. There are over 20 dog walkers, children riding their bikes, plus a number of neighbors that walk the streets for exercise including individuals from Providence Road and Seminary Road.

Enclosed is a projection of the increased traffic flow. The chart compares current usage to expected flow based on the new owner desire to increase enrollment to 150 kids. Traffic flow into the community would increase 2257%, which is a substantial zoning impact. The increase is even greater if you compare it to current traffic flow for the church property. Such a dramatic increase in traffic is both dangerous and disruptive to the people living in the Hampton Community. We cannot believe Andrea Van Arsdale stated, "that the traffic impact will be minimal." How can a 2257% increase in traffic flow be minimal? We want to see 170,000 cars past your house and you say that it is minimal. Furthermore, the letter signed by Steve Bird was not written by him and does not express all of the community's concerns. There was never a Hampton Community Association meeting held to determine the community's support for a preschool in excess of 40 children.

The original Zoning Board's decision saw a need to limit the property to 40 children 30 years ago. Since that time the numbers of cars on the roads have increased, making the Board's decision the correct one. Overturning the decision would place individuals especially children in the community at risk and harm the Hampton Community by substantially increasing traffic flow by over 160,000 cars into a limited access community. Furthermore, the traffic increase would occur during morning and afternoon rush hour and not throughout the day.

Parents dropping-off their children are not concerned with our community's safety but their need to drop off and get to work as fast as possible. Even when picking up in the late afternoon they would be rushing in the dark to pick up and get to their next destination as quickly as possible. Now-a-days, it is a common occurrence for individuals to drive fast, to talk on cell phones, and to text without concern for other's safety. The larger the expansion, the more it would exponentially jeopardize the safety of our community, present traffic flow and not in a "MINIMAL WAY."

Sincerely,

Daniel Driscoll

Theresa Driscoll

Enclosures

**BELVEDERE BAPTIST CHURCH
ACUTAL TRAFFIC FLOW**

YEAR	CARS	TIMES	DAYS	WEEKLY	YEARLY
1991	70	2	1	140	7,280
2005	25	2	1	50	2,600
2012	5	2	1	10	520
MISC ACTIVITIES					
Boy Scouts	15	2	30		900
Rental	20	2	20		80

**DAVENPORT
PROJECTED TRAFFIC FLOW**

PROJECTION	CARS	TIMES	DAYS	WEEKLY	STAFF DELIVERIES	YEARLY
2013	40	4	5	800	25	42,900
2013	75	4	5	1,500	225	89,700
2013	150	4	5	3,000	300	171,600

MISC ACTIVITIES

Meetings	Your projection
Rental Children Parties	Your projection
EVENING ACTIVITIES	Your projection

**NUMERICAL INCREASE
IN YERALY TRAFFIC**

**PERCENTAGE INCREASE
IN YERALY TRAFFIC**

PROJECTION	7,280	2,600	520	7,280	2,600	520
42,900	35,620	40,300	42,380	489%	1550%	8150%
89,700	82,420	87,100	89,180	1132%	3350%	17150%
171,600	164,320	169,000	171,080	2257%	6500%	32900%

IN RE: PETITION FOR SPECIAL EXCEPTION *

BEFORE THE

(1301 Cheverly Road)

9th Election District *

OFFICE OF

3rd Councilman District

The Belvedere Baptist Church of Baltimore *

ADMINISTRATIVE HEARINGS

Legal Owner

Davenport Preschool LLC *

FOR BALTIMORE COUNTY

Lessee

Petitioners *

Case No. 2013-0166-X

* * * * *

OPINION AND ORDERPrior
Zoning

This matter comes before the Office of Administrative Hearings for Baltimore County as a Petition for Special Exception filed for property located at 1301 Cheverly Road. Petition was filed by Scott E. Massengill, Esquire, on behalf of the legal owner of the subject property, The Belvedere Baptist Church of Baltimore, and the lessee, Davenport Preschool LLC., ("Petitioners"). The Special Exception Petition seeks relief pursuant to §424.5.A of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a class B Group Child Care Center for more than 40 children in an existing church in a DR zone. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the hearing was Elizabeth Harlan, the operator of the proposed facility. Scott E. Massengill, Esquire attended and represented the Petitioners. Several members of the community (whose names are listed in the case file) attended the hearing and expressed concerns regarding the proposal. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

ORDER RECEIVED FOR FILING

Date 3-28-13By Den

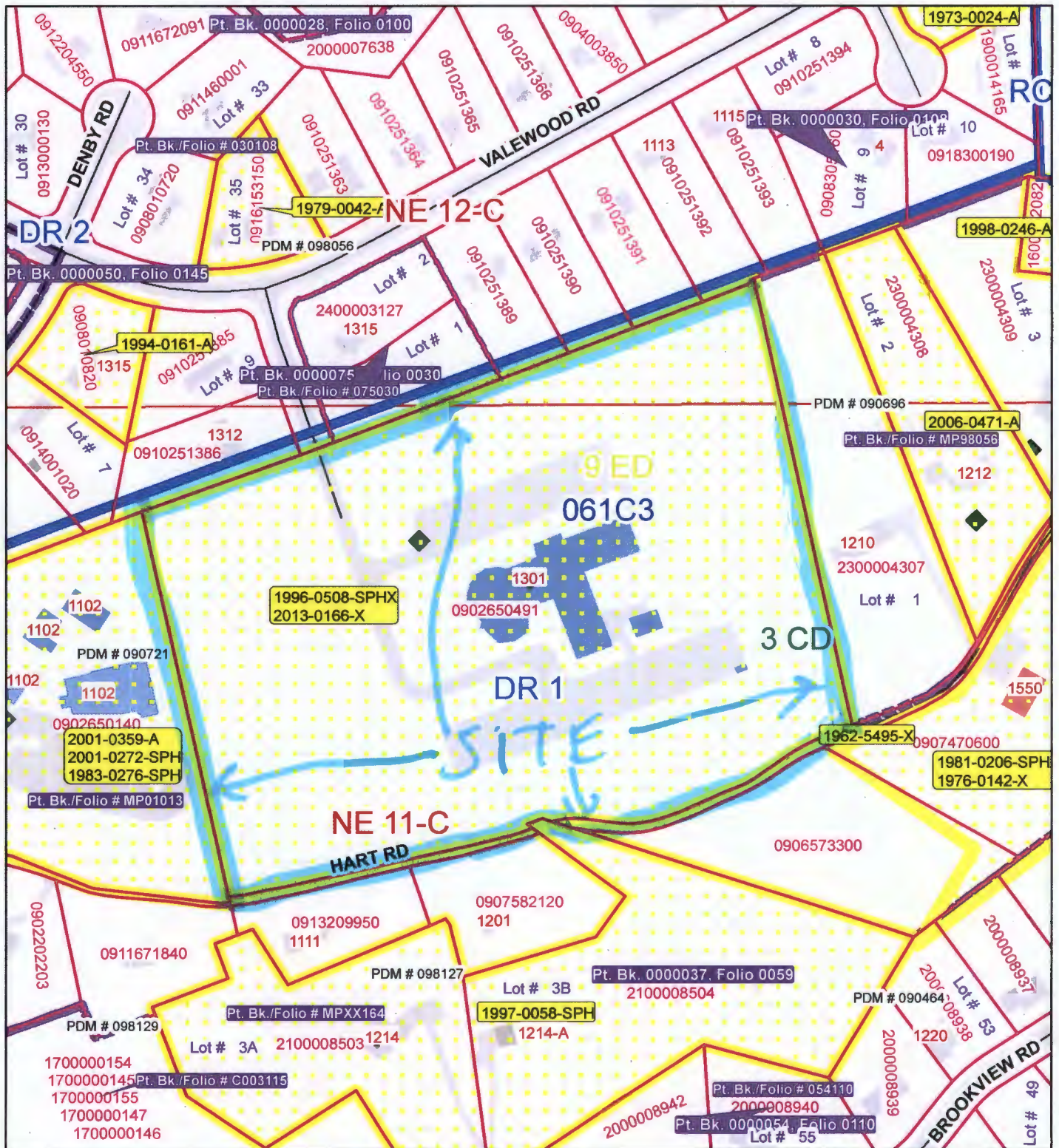
Real Property Data Search (w2)

Guide to searching the database

Search Result for BALTIMORE COUNTY

View Map		View GroundRent Redemption		View GroundRent Registration	
Account Identifier:		District - 09 Account Number - 0902650491			
Owner Information					
Owner Name:	BELVEDERE CHRISTIAN CHURCH		Use: Principal Residence:	COMMERCIAL NO	
Mailing Address:	1632 DOOLITTLE ROAD BALTIMORE MD 21221-		Deed Reference:	/20932/ 00156	
Location & Structure Information					
Premises Address:	1301 CHEVERLY RD BALTIMORE MD 21286-1624		Legal Description:	12.711 AC PARTIAL EXEMPTION NS HART RD 2400FT E PROVIDENCE RD	
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section: Block: Lot: Assessment Year: Plat No: Plat Ref:
0061	0024	0104		0000	2014
Special Tax Areas:			Town: NONE		
			Ad Valorem: Tax Class:		
Primary Structure Built	Above Grade Enclosed Area	Finished Basement Area	Property Land Area	County Use	
1981	21655		12.7100 AC	06	
Stories	Basement	Type	Exterior	Full/Half Bath	Garage Last Major Renovation
		CHURCH			
Value Information					
	Base Value	Value As of 01/01/2014	Phase-in Assessments As of 07/01/2014 As of 07/01/2015		
Land:	3,813,000	3,813,000			
Improvements	4,091,000	4,091,000			
Total:	7,904,000	7,904,000	7,904,000	7,904,000	
Preferential Land:	0			0	
Transfer Information					
Seller: TRUSTEES BELVEDERE BAPTIST CHURCH		Date: 09/30/2003		Price: \$0	
Type: NON-ARMS LENGTH OTHER		Deed1: /20932/ 00156		Deed2:	
Seller: BREIDENSTEIN AUGUST P		Date: 03/01/1971		Price: \$63,000	
Type: ARMS LENGTH IMPROVED		Deed1: /05169/ 00423		Deed2:	
Seller:		Date:		Price:	
Type:		Deed1:		Deed2:	
Exemption Information					
Partial Exempt Assessments:	Class	07/01/2014	07/01/2015		
County:	710	3,268,300.00	3,268,300.00		
State:	710	3,268,300.00	3,268,300.00		
Municipal:	710	0.00 0.00	0.00 0.00		
Tax Exempt:	Special Tax Recapture:				
Exempt Class:	NONE				
Homestead Application Information					
Homestead Application Status: No Application					

1301 Cheverly Road 2014



Publication Date: 7/1/2014



Publication Agency: Permits, Approvals & Inspections
 Projection/Datum: Maryland State Plane,
 FIPS 1900, NAD 1983/91 HARN, US Foot



0 50 100 200 300 400 Feet

1 inch = 200 feet

2015-0004-SPH

CASE NAME

CASE NUMBER

DATE _____

ER 2015-0004-SFH
9-4-13

CITIZEN'S SIGN - IN SHEET

NAME _____

ADDRESS

CITY, STATE, ZIP

E - MAIL

[illegible]

CASE NUMBER 2015-0604-584
DATE 9-4-2014

PETITIONER'S SIGN-IN SHEET

OBER KALER
A Professional Corporation
Attorneys at Law

Matthew Thomas Vocci 410.347.7358
443.263.7558 Fax
mtvocci@ober.com
100 Light Street
Baltimore, MD 21202
www.ober.com

People's Counsel Sign-In Sheet

Case Name: Belvedere Baptist Church

Case No.: 2015-004-SPH

Date: 1/27/15

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check to testify

Name _____

Address

Phone #

Email

Group you represent

Basis of your
concerns

Edward Shapiro	1017 Hart Rd	410-296-2740	eshapiro@jhu.edu	Traffic / res judicate
WAYNE SKINNER	1020 HART RD	410-825-3022	W.SKINNER1012@comcast.net	
RICHARD PESCATORE	1004 HART RD	410-321-8749	Hampton Garden	TRAFFIC / GROWTH OF 34455
MJ WATSON	1405 MIDMEADOW RD	410-244-324	1128 Hampton	GROWTH
Joan Magnani	1021 Valewood Rd	410-321-1295	joanmagnani@comcast.net	GARDENS TRAFFIC / Growth
Richard Magnani	1021 Valewood Rd	410-321-1295	rmagnani@comcast.net	" "
KELEN KRAFT	1008 VALEWOOD RD	410-494-1959	"	" "
William Lilly	1110 Valewood Rd	410-321-0632	"	TRAFFIC / SAFETY
Linda P. Lilly	1110 Valewood Rd.	410-321-0632	linda-lilly@grillgardening.com	Hampton Garden Traffic / Safety
Cherlyn Cleavenger	1111 Valewood Rd	410-821-8315	thelarrygroup@gmail.com	Hampton Garden traffic safety
Larry Cleavenger	1111 Valewood Rd	410-821-8315	thelarrygroup@yahoo.com	Hampton Garden traffic safety
DANIEL DRISCOLL	1312 Cheever	410-893-7957	ST Driscoll	Hampton Garden TRAFFIC

Case No.: 2015-0004-SPH

Exhibit Sheet

9-12-14
den

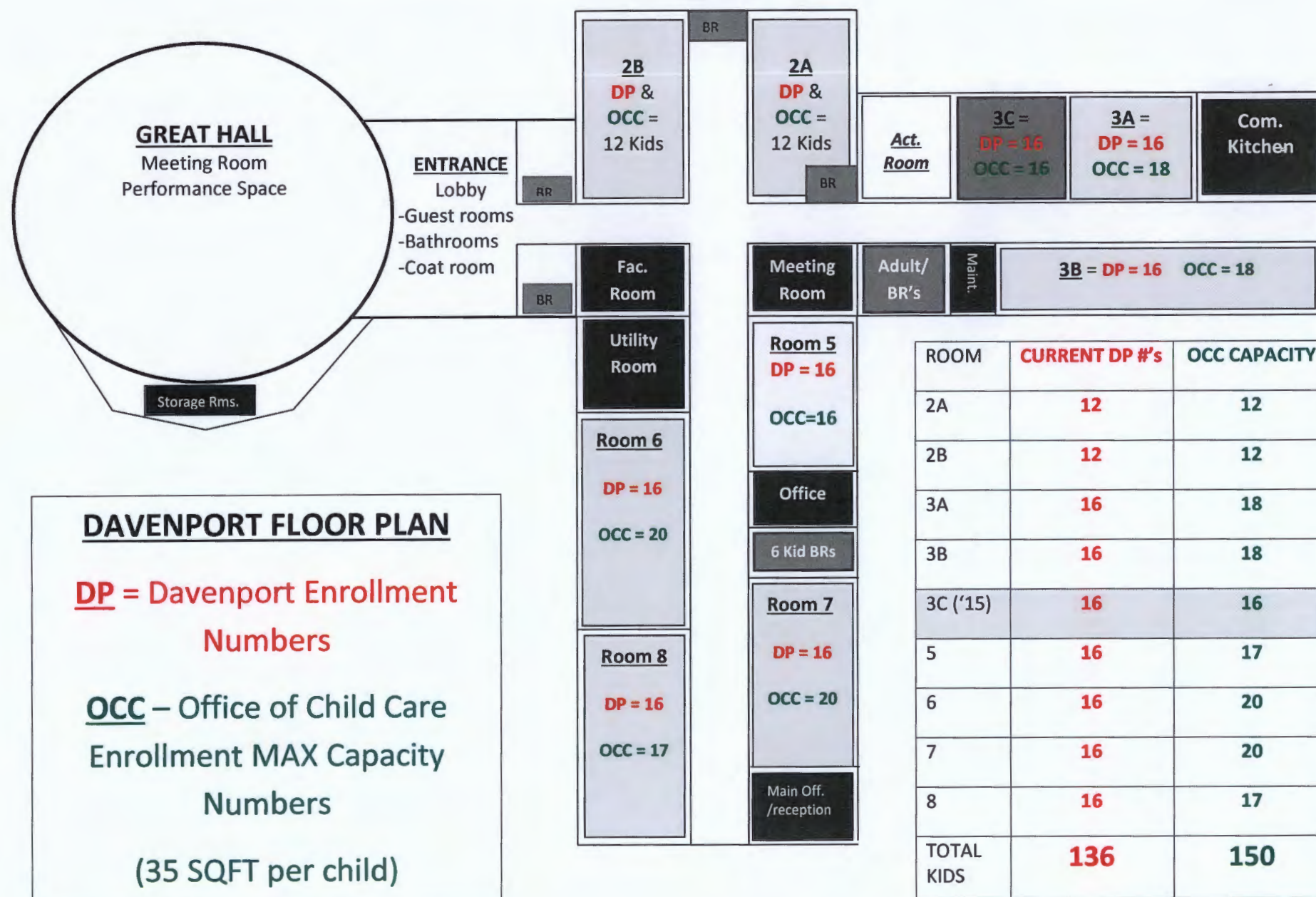
Petitioner/Developer

Protestants

No. 1	Plan	Photos re: sign posting
No. 2	Davenport Classroom Chart	Photos re: school bus stops
No. 3	Davenport "Community Respect" Agt.	
No. 4		
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

DAVENPORT – 1301 Cheverly Road, Towson, MD, 21286

EXHIBIT NO.



DAVENPORT FLOOR PLAN

DP = Davenport Enrollment Numbers

OCC – Office of Child Care Enrollment MAX Capacity Numbers

(35 SQFT per child)

DAVENPORT PRESCHOOL

COMMUNITY RESPECT AGREEMENT

As a parent with a child enrolled at Davenport Preschool, your family has become a de facto member of the Hampton Gardens Neighborhood. As a member of this peaceful neighborhood of 160 homes with families and young children, we would like to ensure that we do all we can as a school to keep the neighborhood safe for everyone.

Please read and initial each of the statements below to demonstrate that you acknowledge the importance of safety in the neighborhood and that you will make every effort to respect the community as if it were your own.

_____ I recognize Davenport Preschool is located in the Hampton Gardens neighborhood and will respect the existing serenity.

_____ I will use Valewood Road as my primary path of entering and exiting the neighborhood. (Please avoid using Denby and Hart Roads.)

_____ I will allow sufficient time to get my child to and from school. I will not speed through the neighborhood even if I am running late. (Please call the office if you are running late.)

_____ I will come to a complete stop at every stop sign.

_____ I will drive with caution and be aware of vehicles exiting driveways.

_____ I will be patient while waiting to exit onto Providence Road.

_____ I will be aware that the neighborhood does not have sidewalks and will take extra precautions when pedestrians and bikers are present.

_____ I will attempt to carpool with other families, when possible, to help reduce traffic in and out of the neighborhood.

I understand that failure to comply with these respectful practices could result in warnings, and in extreme circumstances, expulsion from Davenport Preschool. I understand that safety and community respect is incredibly important to both the Davenport and Hampton Gardens' Community.

Child's Name: _____

Parent/Guardian (1): _____ Date: _____

Parent/Guardian (2): _____ Date: _____

Cheverly Road (view from Valewood end)



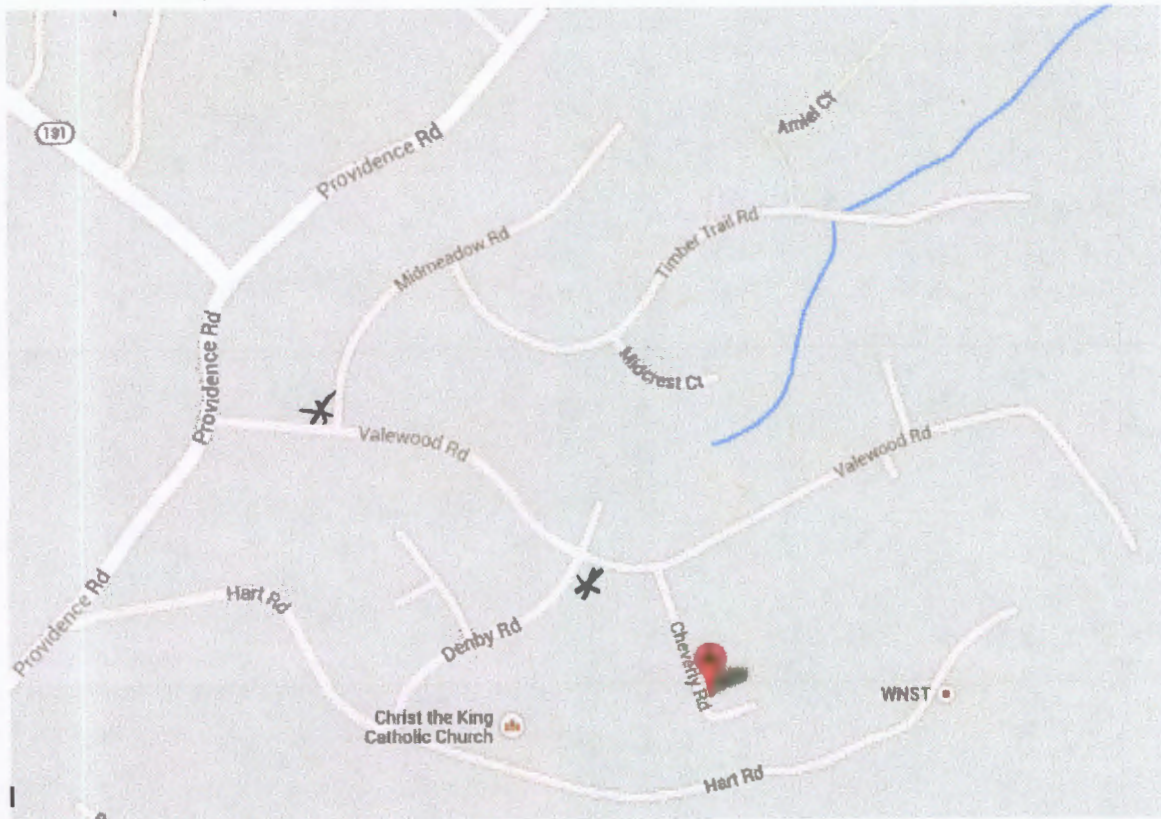
Cheverly Road (view from 1301 Cheverly property line)



PROTESTANT' S

EXHIBIT NO. 1





Hampton Gardens Community

* school bus stops

PROTESTANT' S

EXHIBIT NO.

2

Entrance to Hampton Gardens at Valewood Road (from Providence Road)



Entrance to Hampton Gardens at Hart Road (from Providence Road)



Corner of Valewood & Denby



School bus stop - children wait on Valewood. Children chatting w. dogwalker

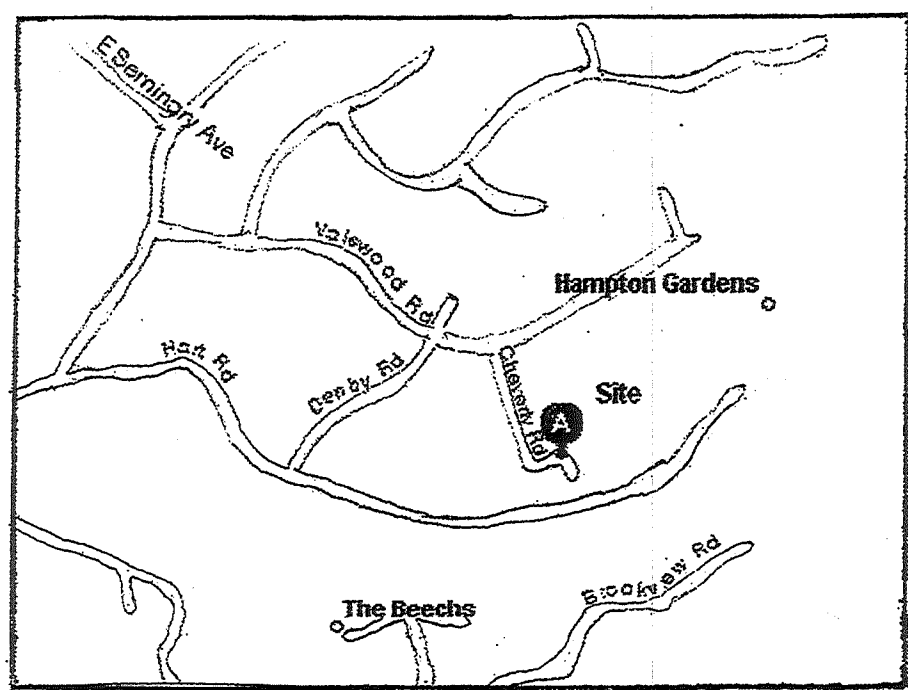


School bus picks up children on Denby then turns onto Valewood to wait

Valewood and Choverly intersection (no stop sign at Choverly)



Valewood and Denby



VICINITY MAP
NOT TO SCALE

LAND OF
DANIEL & THERESA DRISCOLL
1312 CHEVERLY ROAD
TAX # - 0919251386
TAX MAP - 0061 GRID # 0024
PARCEL 0358 LOT 10
DEED REF : /08880/00379
PLAT REF : /0030/0108
HAMPTON GARDENS
ZONED : DR1 & DR2
USE : RESIDENTIAL

LAND OF
YOON CANG KEUM
1313 CHEVERLY ROAD
TAX # - 2400003126
TAX MAP - 0061 GRID # 0024
PARCEL 0358 LOT 1
DEED REF : /2889001/150
PLAT REF : /0075/0030
HAMPTON GARDENS
ZONED : DR1 & DR2
USE : RESIDENTIAL

LAND OF
PARK CHENG SUK
1107 VALEWOOD ROAD
TAX # - 0910251389
TAX MAP - 0061 GRID # 0024
PARCEL 0358 LOT 3
DEED REF : /28578/00001
PLAT REF : /0030/0108
HAMPTON GARDENS
ZONED : DR1 & DR2
USE : RESIDENTIAL

LAND OF
BOBBY & TWYLA RITTER
1109 VALEWOOD ROAD
TAX # - 0910251390
TAX MAP - 0061 GRID # 0024
PARCEL 0358 LOT 4
DEED REF : /28753/00028
PLAT REF : /0030/0108
HAMPTON GARDENS
ZONED : DR1 & DR2
USE : RESIDENTIAL

LAND OF
LARRY & CHERLYN CLEAVINGER
1111 VALEWOOD ROAD
TAX # - 0910251391
TAX MAP - 0061 GRID # 0024
PARCEL 0358 LOT 5
DEED REF : /08844/00735
PLAT REF : /0030/0108
HAMPTON GARDENS
ZONED : DR1 & DR2
USE : RESIDENTIAL

LAND OF
SHAMS PIRZADEH & NAEINI SAJADI
1113 VALEWOOD ROAD
TAX # - 0910251391
TAX MAP - 0061 GRID # 0024
PARCEL 0358 LOT 6
DEED REF : /21616/00482
PLAT REF : /0030/0108
HAMPTON GARDENS
ZONED : DR1 & DR2
USE : RESIDENTIAL

C.D. DESIGN CONSULTANTS
Architectural & Development Consultants
1619 Mussula Road, Towson, MD 21286
Telephone: (443) 465 6899 Facsimile: (443) 320 1597
Email: cddesignconsultants@yahoo.com

GENERAL NOTES

- OWNER
BELVEDERE CHRISTIAN CHURCH
1301 CHEVERLY ROAD
BALTIMORE, MD 21286
- APPLICANT / LEASEE
DAVENPORT PRESCHOOL LLC
1301 CHEVERLY ROAD
BALTIMORE, MD 21286
TELEPHONE: (410) 241 9052
- SITE AREA
553,691.16 SQ.FT OR 12.711 ACRES
- BUILDING AREA
PRESCHOOL - 14,950 SQ.F.
AUDITORIUM - 6,705 SQ.FT.
IMPLIMENT GARAGE - 1,080 SQ. FT.
SITE COVERAGE - 4.1%
- UTILITIES
PUBLIC WATER
PRIVATE SEPTIC
- THE SITE DOES NOT LIE WITHIN THE FLOODPLAIN AS SHOWN ON THE F.I.R.M. MAPS
- PARKING CALCULATIONS
CHURCH / AUDITORIUM - 452 SEAT - 75 PARKING SPACES
CLASS B GROUP CHILD CARE CENTER - 20 TEACHERS / SUPPORT STAFF - 20 SPACES
THE PROPOSED INCREASE FROM A CLASS B GROUP CHILD CARE CENTER FOR 120 CHILDREN TO A CENTER FOR 150 CHILDREN WILL NOT RESULT IN THE NEED FOR ADDITIONAL PARKING SPACES FOR THE CHILD CARE CENTER TEACHERS AND SUPPORT STAFF
TOTAL REQUIRED - 95 SPACES
PROVIDED - 119 SPACES INCLUDING 3 HANDICAPPED.
- SETBACKS

	REQUIRED	PROVIDED
FRONT	70'	430'
SIDE	25' TOTAL 50'	420'
REAR	50'	225'
- HEIGHT OF STRUCTURE
MAX. PERMITTED - 40'
EXISTING & PROPOSED - 24'
- DEED REFERENCE - /20932/00156
- TAX ACCOUNT # - 0902850491
- CONCILIAMIC DISTRICT - 3
- REGION PLANNING DISTRICT - 42
- CENSUS TRACT - 490100
- WATERSHED - LOCH RAVEN RESERVOIR
- ZONING - DR1
(PER 1"-200' ZONING MAP 061C3)
- TAX MAP 0061 PARCEL 0014 GRID # 0024
USE : CHURCH AND CLASS B GROUP CHILD CARE CENTER
- PREVIOUS ZONING CASES ON FILE: 1996-0508-SPHX; 2013-0166-X
THE SITE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA
- THERE ARE NO HISTORIC FEATURES ON SITE NOR IS THE SITE HISTORIC ITSELF.
- THIS DRAWING WAS PREPARED BASED ON THE DRAWINGS PREVIOUSLY PREPARED IN JULY 1975 BY:
PURDUM & JESCHKE - CONSULTING ENGINEERS & LAND SURVEYORS
1023 N CALVERT STREET, BALTIMORE MD 21202
- AT THE TIME OF THE PREPARATION OF THAT PLAN, BALTIMORE COUNTY HAD DEFINED NO RIGHT OF WAY WIDTH FOR HART ROAD.

PETITIONER'S

EXHIBIT NO. 1

Plan To Accompany
A Special Hearing Application
For The Davenport Preschool
At 1301 Cheverly Road, Towson, MD 21286

Drawing
No.
DP01

Scale ~ 1 : 40

2015-0004-SPH