CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND
401 Bosley Avenue, P.O. Box 6754
Towson, MD 21285-6754
Main: 410-887-2601

Case Number: **03-C-19-001486**
Other Reference Numbers:

IN THE MATTER OF CONGREGATION ARIEL RUSSIAN COMM SYN INC

ORDER OF DISMISSAL / NOTICE TO PARTIES

WHEREAS, an Order of Court pursuant to Md. Rule 2-507(e) having been entered on 12/23/2021, providing that dismissal pursuant to Md. Rule 2-507(c) be deferred until 07/01/2022,

WHEREAS, the terms of the Order deferring dismissal not having been satisfied within the time set forth therein, and no further motion pursuant to Maryland Rule 2-507(e) having been filed, it is hereby,

ORDERED, that the within action is DISMISSED without prejudice for lack of prosecution pursuant to Md. Rule 2-507(c).

07/06/2022 10:51:31 AM Ruth Jakubowski

Date Judge

Entered: Clerk, Circuit Court for
Baltimore County, MD
July 8, 2022

E-FILED; Baltimore County Circuit Court
Docket: 12/1/2021 6:28 PM; Submission: 12/1/2021 6:28 PM
12/23/2021 10:36:10 AM

GRANTED

Dismissal deferred until July 1, 2022. If further extension is needed, counsel must fuke status report on federal action.

Ruth Jakubowski

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY *

PETITION OF: *

Congregation Ariel Russian Community Synagogue, Inc. *
8420, 8430, Stevenson Road
Pikesville, MD 21208 *

FOR JUDICIAL REVIEW OF THE DECISION OF: *

The Baltimore County Board of Appeals * Case No. 03-C-19-001486

105 W. Chesapeake Ave. *
Suite 203
Towson, Maryland 21204 *

IN THE CASE OF: *

Henry and Leslie Goldman, Legal Owners *
Congregation Ariel Russian Community Synagogue, Inc.
8420 Stevenson Road *
Pikesville, MD 21208
*

RE: Petition for Special Hearing and Variance
Case No. 15-239 and 15-276-SPH *

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

MOTION TO DEFER DISMISSAL

Respondents, Kenneth Abel, Caren B. and Bruce S. Hoffberger, and Dana Stein and Margaret C. Presley, move the Court to defer the contemplated dismissal of this action and state as follows:

1. Respondents concur with the Request to Defer Dismissal filed by Petitioner and the grounds stated for deferring dismissal of this action, that is, this Court has issued an order staying the action pending the outcome of the federal action. The federal action is still outgoing.

2. Good cause exists for deferral.

WHEREFORE, Respondents respectfully request deferral of the contemplated dismissal.

Entered: Clerk, Circuit Court for
Baltimore County, MD
December 23, 2021

Respectfully submitted,

/s/

Michael R. McCann
CPF No. 8112010099
Michael R. McCann, P.A.
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(410) 825-2150

Attorneys for Respondents

Dated: December 1, 2021

CERTIFICATE OF SERVICE

I HERE BY CERTIFY that, on this 1st day of December 2021, a copy of the foregoing Motion was sent, via electronic filing, to:

Herbert Burgunder III (CPF 9412130094)
Hb3@rimonlaw.com
Rimon, PC
1501 Sulgrave Avenue, Ste. 311
Baltimore, MD 21209

/s/
Michael R. McCann

IN THE MATTER OF Harvey and Leslie Goldman, Legal Owners Congregation Ariel Russian Comm. Syn., Inc., Contract Purchaser/Petitioner 8420 Stevenson Road Pikesville, MD 21208 3rd Election District, 2nd Councilmanic District	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY
RE: Petition for Special Hearing and Variance	*	Case No. 15-239-SPH and 15-276-SPH

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

OPINION

This case comes to the Board on appeal of the final decision of the Administrative Law Judge ("ALJ") in Case No.: 15-239-SPH, granting the Petition for Special Hearing seeking relief from §500.7 of the Baltimore County Zoning Regulations ("BCZR"): (1) to permit a synagogue in a D.R.1 zone (BCZR, §1B01.1A(3); (2) for a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with the Residential Transition Area ("RTA") Use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises (BCZR, §1B01.B(1)(G)(6)); and (3) to confirm that 8420 Stevenson Road may remain a dwelling use for a parsonage by the synagogue clergy.

In Case No.: 15-276-SPH, the ALJ denied the Special Hearing relief filed by the Protestants under BCZR, §500.7, and found that the proposed plan submitted by the Congregation Ariel Russian Community Synagogue, Inc. and Harvey and Leslie Goldman for a proposed religious assembly building and parsonage was not consistent with the spirit and intent of the original plan as required under BCZR, §1B01.3(7)(b)(1) and (3).

A public hearing was held before this Board over 10 days in 2016: May 12; May 18; May 26; June 7; June 21; June 22; July 8; August 25; September 6; and October 14. Congregation of

Ariel Russian Community Synagogue, Inc. and Harvey and Leslie Goldman were represented by Herbert Burgunder, III, Esquire. Protestants, Kenneth Abel and Jessamyn Abel, were represented by J. Carroll Holzer, Esquire. Protestants, Caren B. Hoffberger, Bruce S. Hoffberger, Dana M. Stein, Margaret C. Presley, Eric Lewis, Joanna Lewis, Brendan Hoffman and An Goffin were represented by Michael R. McCann, Esquire. The Board held a public deliberation on January 4, 2017.

Factual Background

The property is located in the middle of a residential block on Stevenson Road in the Stevenson Park area of Pikesville. It measures 3.19 acres +/- and is split zoned D.R.1 (3.08 acres +/-) and R.C.5 (0.11 acres +/-) (the "Property"). (Pet. Ex. 1); (Prot. Ex. 10). Stevenson Road is a designated scenic route. The Property is comprised of three (3) separate lots which have addresses at 8420 (Lot 3), 8430 (Lot 3A) and 8432 (Lot 3B). It is improved with a two-story farmhouse located on Lot 3 which dates back to 1851 (the "farmhouse"), along with a freestanding barn on the southern end of the property (the "barn"). (Abel Ex. 7). The Property has always been used as a residence.

Harvey and Leslie Goldman are the legal owners of the Property (the "Goldmans") and Congregation Ariel Russian Community Synagogue, Inc. (the "Petitioner") is the contract purchaser. The Contract of Sale is contingent upon obtaining the approvals sought in this case. The Petitioner proposes to build an 8,000 sq. ft., 88-seat synagogue on the Property with its associated parking, and to use the farmhouse as a parsonage (the "proposed Plan").

EVIDENCE

A. Petitioner's Case.

1. Rabbi Belinsky.

Testifying first for the Petitioner was Rabbi Velvel Belinsky, who leads the Congregation. Services are held at its current location, 6701 Old Pimlico Road, Baltimore, MD 21209 (the "Old Pimlico location"), which is owned by Friends of Lubavitch, Inc., an entity associated with the Petitioner. (PC Ex. 12). Rabbi Belinsky testified at length about his childhood in the USSR and the persecution of the Russian Jewish people. It was this background that motivated him to move from Russia to Brooklyn, New York. Twelve years ago, he opened a synagogue in Baltimore for Russian-speaking Jewish people.

Rabbi Belinsky's synagogue is an Orthodox sect which Rabbi Belinsky described as one that would assist Russian Jews with understanding their religion. The synagogue is affiliated with "Chabad," "Lubavitch," or "Chabad-Lubavitch" movement. The Rabbi described this particular sect as "unique" in that it does not differentiate among denominations and is welcoming to all Jewish people. As such, there is no formal membership record and no list of congregants.

Rabbi Belinsky indicated that the synagogue's current facility on Old Pimlico Road was not large enough for the Congregation's services and programs, which include: religious services on Friday nights, a Kiddish meal after services; Sunday school; weeknight classes; and events described as 'family celebrations'. The Sunday school currently has 16 children ranging in age from 6 yrs. to 13 yrs. The weeknight classes have 7-10 students. He wishes to hold Saturday morning services but indicated that there are time and space conflicts at the Old Pimlico location.

The synagogue presently has approximately 25 regular members; three families live close to Stevenson Road and the area at issue. He explained that there are 10-12 High Holidays on the

Jewish calendar which are celebrated at synagogues. On High Holidays, he has historically seen more people attend services at the synagogue's current location. This attendance has required the synagogue to rent larger facilities. Rabbi Belinsky testified that, at the first event hosted by the synagogue, over 500 people attended. The Rabbi was clear that the goal of the synagogue is to grow beyond 25 members.

With regard to the specifics of the proposed building, Rabbi Belinsky explained that there would be: a lobby; a sanctuary with benches or pews to accommodate 88 attendees; a social hall for Kiddish meals; a kitchenette with a pantry to prepare Kosher food; and a basement, which would have three classrooms for Sunday school, as well as three offices – one for the Rabbi, one for a secretary, and one for a bookkeeper.

The outside of the proposed building would be covered with some stone to resemble the Methodist Church on the corner of Stevenson Road and Greenspring Valley Road, about a mile away. (Pet. Ex. 25). There will be 22 total proposed parking spaces. If more than 22 vehicles come to the proposed facility, the Rabbi is not opposed to having cars parking on the grass or side streets. The existing farmhouse is proposed to be used as a parsonage for the Rabbi and his family; his four children, range in age from 9-14 years.

The Rabbi explained that the proposed synagogue would be open for services on Friday between 7:00-9:00 p.m., on Saturday for services between 10:00 a.m.-12:00 p.m., and on Sunday for Hebrew school between 10:00 a.m.-12:30 p.m. Members may drive or walk to services, although the Orthodox faith discourages driving between Friday night and Saturday night. At the current location, most members must drive to services. However, there are no traffic problems for vehicles and pedestrians at the Old Pimlico Road location as it is not a rural road, is wider than Stevenson Road, and has sidewalks.

In addition, the Rabbi proposes evening classes on separate weeknights, including a Torah class, as well as a themed lecture. These weeknight classes are expected to run between 7:30-8:30 p.m. During weekdays, the proposed offices will be occupied. In addition, on Sundays, three teachers will be teaching Hebrew Sunday school.

On High Holidays, if there are more than 88 people attending, Petitioner may still have to rent a larger facility. In contrast to regular Friday night/Saturday morning services, where the number of attendees is unknown, the number of attendees for High Holiday services will be known in advance because those events require pre-registration. With a larger space for 88+ people, Rabbi Belinsky believes that renting a larger facility may occur up to two to three times a year.

Festivals and activities will also occur at the Property around the High Holidays. The Rabbi indicated that it is not likely that a wedding or a funeral would be held at the proposed building or on the grounds (although it is possible and would depend on the number people attending). Bar Mitzvah and Bat Mitzvah celebrations followed by Kiddish lunches are anticipated at the Property. When asked if he would agree to have conditions or restrictions imposed in an Order issued by this Board, such as a restriction on the number or types of events that can be held at the Property in order to reduce the number of people coming to the Property, Rabbi Belinsky would not agree.

The Rabbi acknowledged that he had previously filed a Petition with a plan for a 35-seat synagogue on or about October 14, 2014 which was prepared by Colbert, Matz Engineering Inc. (the "Colbert, Matz Plan"). (Prot. Ex. 5); (Abel Ex. 1). However, he withdrew that Petition in favor of the one before this Board. He desires a bigger building because he anticipates growth of the congregation.

2. Stacy McArthur – Landscape Architect.

Stacey McArthur, a landscape architect employed by D.S. Thaler & Associates, testified as an expert on behalf of the Petitioner. Ms. McArthur stated that the Property was located along Stevenson Road which is designated as a 'scenic route'. She indicated that the barn which currently exists on the Property would be razed. The proposed synagogue building footprint measures 50' x 80' (4,000 sq. ft.) but has two floors (total of 8,000 sq. ft.) with the parking lot located on the side of the building. A driveway, 24-feet wide with ingress and egress lanes is proposed.

Using the Plan to Accompany Zoning Petition (Pet. Ex. 1), Ms. McArthur highlighted the setbacks, buffer area and transition area required under the RTA Regulations, BCZR, §1B01.1 *et seq*. She agreed that the RTA Regulations apply in this case because there is a proposed change in use from residential to non-residential. BCZR, §1B01.1.B.1.a(2). The RTA Regulations require a 100-foot transition area between dissimilar uses (the "100-foot Transition Area"). Also required is a 75-foot setback for principal or accessory buildings and for parking lots (the "75-foot Setback"), and a 50-foot landscaped buffer area (which may not contain improved structures but may contain roads, paths and trails (the "50-foot Buffer"). BCZR, §1B01.1.B.1.e(3). It was Ms. McArthur's opinion that both the existing farmhouse and the proposed driveway may remain in the 100-foot Transition Area.

Ms. McArthur described the architectural style of the homes in the vicinity as containing two-story, older homes with an eclectic mix of architectural styles. She proposes that native trees would be planted in the 50-foot Buffer, as well as between the 50-foot Buffer and the property line, in order to screen the synagogue building from view along Stevenson Road. However, a

landscape plan has not been filed with the County. Consequently, she agreed that the landscaping she proposes could change when it is approved.

On cross examination, Ms. McArthur opined that the proposed driveway was included within the phrase "roads, paths and trails" under BCZR, §1B01.1.B.1.e(3) and was therefore allowed in the 50-foot Buffer Area because it connected the building to Stevenson Road.

She testified that the parsonage would be permitted to remain in the 100-foot Transition Area and in the 50-foot Buffer Area because it is a single family home under BCZR, §1B01.1.B.1.e(1). Although conceding that the parsonage would be used in conjunction with the synagogue and could be considered an "accessory structure," she added that even if the house was classified as an "accessory structure," under her interpretation of BCZR, §1B01.1.B.1.e(3), the term "accessory structure" modified the previous terms "drainage areas" and "stormwater management ponds." She reasoned that all three terms apply to water draining. Thus, in her view, only accessory structures pertaining to drainage or stormwater management were not permitted in the 50-foot Buffer Area.

While maintaining her opinion that only accessory structures associated with stormwater management are excluded from the 50-foot Buffer Area, Ms. McArthur conceded that the existing barn is an accessory structure and must be demolished because it violates the 50-foot Buffer.

When cross examined about the size of the proposed building, Ms. McArthur testified that the size of the synagogue and the number of parking spaces could be reduced, such that the RTA Regulations could be met without seeking an RTA Exception. On that point, Ms. McArthur acknowledged that the Petitioner did file the Colbert, Matz Plan proposing a 35-seat building in the existing barn. The proposed addition to the barn would have been 35'x35' and would not have had a second level. Based on her understanding of the facts, the Colbert, Matz Plan would

have been suitable for the synagogue's existing members but would not allow for as much growth as is desired by the Petitioner.

When questioned about the proposed number of parking spaces, Ms. McArthur stated that 24 parking spaces were proposed on the Plan in total, 22 spaces for the synagogue and two spaces for the parsonage. She indicated that the required number of parking spaces under BCZR, §409.6.A.4 is one space for every four seats. The proposed number of seats in the synagogue (88) drives the number of parking spaces.

Also proposed is an eight sq. ft. sign on Stevenson Road at the driveway entrance. There will be exterior lighting in the parking lot and along the driveway. At some point in the future, a lighting plan along with a landscape plan will be filed with the County Landscape Architect. Ms. McArthur explained that the County Architect could change the proposed lighting. She also indicated that the County was not requiring any alterations to Stevenson Road as a result of the proposed Plan.

On re-direct, Ms. McArthur opined that the proposed Plan met the exception in BCZR, §1B01.1.B.1.g(6) ("Exception (g)(6)") and as a result, it is exempt from the five conditions listed in BCZR, §1B01.1.B.1.e. In her opinion, under Exception g(6), the proposed Plan would qualify as a new building for religious worship because the improvements are planned in such a way that compliance, to the extent possible with the RTA use requirements, will be maintained. Under this Exception, she believes the Plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises. In her view, because she believes the driveway and parsonage are allowed in the RTA, the Plan complies to the extent possible.

3. Mickey Cornelius – Traffic Expert.

Testifying for the Petitioner on the issue of traffic was Mickey Cornelius who was accepted as an expert. Mr. Cornelius identified the Property as north of I-695 with a single lane traversing in northbound and southbound directions along Stevenson Road The Property entrance measures 23 feet south of the intersection of Keyser and Stevenson Roads and 280 feet north of the intersection of Janellen Drive and Stevenson Road. Stevenson Road varies in width between 22-24 feet. The speed of vehicles on Stevenson Road averages 30 mph.

In terms of sight distances, Mr. Cornelius opined that the access point at the Property's driveway is safe. Accessing the driveway from the south heading north, he believes the sight distance is good because the view northbound looks at the outside horizontal curve rather than the inside curve of Stevenson Road. Mr. Cornelius admitted that the northbound view from Janellen Drive toward the driveway has sight distance problems due to the combination of the curvature of Stevenson Road, the mature trees and bushes along Stevenson Road, and the embankment along Stevenson Road (Pet. Ex. 5). Notwithstanding these facts, he believed that the location access for the Property provided good sight distances and the impact on the neighborhood would be small given the maximum number of seats was only 88.

Using State Highway Administration ("SHA") data, from May of 2012, he said there were 6,700 vehicles per day on Stevenson Road In determining how the proposed Plan would affect the surrounding roads, Mr. Cornelius explained that the focus is on the time of day when the project will generate the most traffic. He understood that under the proposed Plan, most traffic would be generated on Friday nights at 7:00 p.m. and Saturday at 10:00 a.m., as well as one time per week for school services. He testified that these hours of operation were outside of normal weekday hours where traffic would be expected to be higher than normal. Even during peak

hours, in his view, the Plan would generate a maximum of only 22 vehicles entering and exiting the Property.

Mr. Cornelius also referred to a document, entitled "Trafficware," contained within the Institute for Transport Engineering manual (9th Ed.) ("ITE") (Pet. Ex. 6). Using the category for "Synagogue Land Use" with 80 members, the trip generation was 38 trips in and out of the Property. (*Id.*). He then reasoned that because traffic on Stevenson Road on weekdays during rush hour was minimal, adding 38 trips is equivalent to less than 1% impact. Therefore, in his view, there would be no change in the amount of traffic.

With regard to sight distances, Mr. Cornelius referred to the Sight Distance Tables in American Association State Highway Traffic Officials ("AASHTO") (Pet. Ex. 5). AASHTO contains road design standards and is used by Baltimore County in the evaluation of roads and driveways. Specifically referring to Case B-2 and B-3, for a 30-mph speed limit, the minimum sight distance needed to safely stop, otherwise known as the "Stopping Sight Distance" is a minimum of 200 feet. Similarly, the "Intersection Sight Distance" which measures the distance needed to stop for a 30-mph speed limit, requires a minimum of 290 feet when making a right turn.

Applying these stopping distances to the roads surrounding the Property, when stopped at Gardenview Road, the northbound view is 380 feet. The southbound view from Gardenview Road is 280 feet which is past Janellen Drive. In his opinion, both northbound and southbound views meet the minimum AASHTO sight distances.

After reviewing the Accident Code Sheets from the SHA, Mr. Cornelius also testified about traffic accidents on the surrounding roads. (Pet. Ex. 7). He related that, from 2002-2012, there were 10 reported accidents, or an average of one per year. In his opinion, this information

did not indicate a safety problem. He testified that the amount of traffic generated by the proposed Plan would be equal to the amount of traffic generated by four single family dwellings. He reasoned that the proposed Plan would generate traffic compatible with the neighborhood because it would have low traffic volume which would occur outside of rush hour and the sight distances for ingress and egress would be safe. The lack of sidewalks on Stevenson Road would not impact his opinion and there would be no safety issue for pedestrians walking to the Property as he believed most members would drive to services.

On cross examination, Mr. Cornelius explained that the ITE data regarding trip generation (Pet. Ex. 6) uses the number of projected members (80 members per Rabbi Belinsky), and not the number of proposed seats (88 seats). The ITE data also makes the assumption that 22 cars will enter the Property such that there is total of 44 trips within an hour. He further stated that even if all 22 parking spaces were filled, the impact on the surrounding community would be negligible. He was not sure whether the ITE data included any trips associated with the parsonage; but even if trips were generated by the parsonage, he assumed they would be minimal.

When questioned about his opinion on sight distances at Gardenview Road, Keyser Road, and Janellen Drive, he clarified that it was based on cars travelling at 30 mph. Mr. Cornelius' opinion on sight distances depends upon having enough setback along Stevenson Road by the removal of landscaping to ensure the 385 foot sight distance.

Mr. Cornelius admitted that his opinion on sight distances was also dependent upon vehicles driving 30 mph or less. In this case, he did not perform a "speed study" to determine the actual speed of the vehicles. His opinion on stopping sight distances were not based on field data or measurements that he took, but rather on his observations from visiting the Property.

He agreed that using a speed limit of 40 mph, the intersection sight distance would be 385 feet for a vehicle making a right turn out of the Property, assuming the existing vegetation was removed. If the vegetation was not removed, he stated that sight distances could be affected. He also acknowledged that, with cars travelling at 40 mph, an intersection sight distance of 445 feet would be required, for a vehicle turning left out of the Property.

Mr. Cornelius conceded that his opinion did not factor in cars backed up on Stevenson Road turning left into the Property on Friday nights and Saturday mornings, otherwise known as "queueing." Mr. Cornelius countered that, while he did not consider queueing, he believed that there would be little or no queueing, and therefore, it would have little-to-no impact. Although conceding that an actual traffic count would have been more precise, he did not perform one. Rather, he used AASHTO averages and estimates, and 2012 SHA data.

4. Robert Brennan – Architect.

Robert Brennan, principal architect for Brennan & Company, testified as an expert in regard to the proposed Building Plan, which he drafted. (Pet. Ex. 2). The proposed building consists of two floors for a total building size of 8,000 sq. ft. On the first floor is the lobby, bathrooms, social hall, and sanctuary. On the lower level are three offices and two classrooms. The entrance to the building is not facing Stevenson Road but on the side nearest to the parking lot. The lower level door opens to the rear of the Property. Although specific design and detail for the building has not been prepared, the outside of the building would have a stone base.

Mr. Brennan described the architectural style of the homes in the surrounding neighborhood as mid-century modern, smaller homes constructed in the 1950s-1960s. He testified that having a lower level would make the building appear to be a 1½ stories from

Stevenson Road. The proposed design would be in keeping with the scale, detail, and material quality of the surrounding homes.

Mr. Brennan concluded that the design of the proposed building was compatible with the surrounding neighborhood based on his design which shows a smaller traditional structure facing Stevenson Road. He designed gables to lower the building so that the size of the building was similar to that of a residence.

Mr. Brennan testified that in the field of architecture generally, and in the International Building Code ("IBC") specifically, the particular use of the building is important. In his review of the IBC, the proposed building is classified as "Type 5, A-3 Assembly Building/House of Worship," including classrooms and offices. Under the IBC, although this type of building is permitted up to 24,000 sq. ft., he acknowledged that this Property would not support that size due to zoning setbacks. (Pet. Ex. 8).

The IBC does not determine occupancy based on the number of classrooms. A classroom would be considered an "accessory place" under IBC, A3, §303.1.4 and would not affect occupancy calculations if the number of occupants is less than 100. Here, the largest classroom is 332 sq. ft. and could have up to 17 occupants. He clarified that calculating occupancy under the IBC is different than calculating occupancy for a Fire Rating Capacity, which concerns the distance to the exit doors on each level.

On cross examination, Mr. Brennan acknowledged that, although he did not anticipate any major changes, the proposed Building Plan was conceptual and did not yet have all final details completed. (Pet. Ex. 2). He explained that the Building Plan had not yet been filed with the County. Mr. Brennan was not certain whether the Building Plan should be incorporated as a condition in any Order of this Board.

He further acknowledged that the IBC considers the "footprint" measurement of the building (4,000 sq. ft.), in contrast to the BCZR which determines floor area ratio ("FAR") by gross building size (here, 8,000 sq. ft.). Mr. Brennan agreed that the BCZR includes lower levels in calculating FAR, unless it is used for storage. Mr. Brennan added that, although it was adopted by Baltimore County, the IBC is a national design guideline.

B. Protestants' Case.

1. Eric Lewis, Architect.

Thirteen witnesses testified on behalf of Protestants. The first witness to testify was Eric Lewis, an architect and neighbor residing at 3606 Gardenview Court. Mr. Lewis was accepted as an expert on behalf of the Protestants. (Prot. Ex. 14). In his review of the Plan, the building envelopes for the surrounding homes identified on the Plan, in comparison to the proposed building, appear 25% larger than their actual size. (Pet. Ex. 1).

He took issue with the characterization of the proposed building as a 4,000 sq. ft. structure when both floors together measure 8,000 sq. ft. In his opinion, measuring the size of a residence and measuring the size of a commercial structure was not comparable. He opined that the proposed synagogue equated to the size of five homes. Even so, he performed his own measurements of the surrounding residential premises which he described as "ranch style homes." Using a laser device, and comparing his measurements to the square footage listed in the State Department of Assessments and Taxation ("SDAT") records, he concluded that the homes are one-half the size of the proposed building. (Prot. Ex. 15).

Moreover, he stressed that there is a need to understand the final building details, including where the mechanical and electrical systems will be located. He added that an HVAC unit for a commercial space would be much larger than for a residence and may have to be placed outside

on a concrete pad or on the roof. He questioned whether the proposed doors for ingress and egress were sufficient for the total number of people anticipated.

Mr. Lewis testified that if the proposed Plan is as successful as it is intended to be, he opined that, under the IBC, at least 338 people could fit into the building. (Prot. Ex. 18, 19). There is a commercial kitchen planned for service of food to large numbers of people along with a dumpster. Additionally, the multipurpose space inside the building can hold 185 people. However, only 22 parking spaces are required by the BCZR. Therefore, even if there are four people to a car, there will be over 40 cars parked on the surrounding streets. Thus, the proposed 22 parking spaces are inadequate for the total number of people who are expected to use the proposed building, and this will negatively affect the surrounding residential premises because the nearby side streets will absorb the overflow parking.

Mr. Lewis described Stevenson Road as a 50-year old road which is difficult to navigate. He has observed people who walk and run on Stevenson Road who do so at their own risk. Walkers and runners on Stevenson Road have to jump up onto the berm to avoid getting hit by cars. He is also concerned about stacking or queueing of cars turning left or right into the proposed driveway.

Finally, Mr. Lewis made clear that he is not opposed to the Plan because it proposes a synagogue. Mr. Lewis is also Jewish and he is a member of Beth El Congregation on Park Heights Avenue. He indicated that the Property would be equally incompatible for a church, school, or social hall due to the large number of people who would visit the Property. On cross examination, Mr. Lewis commented that the SDAT records do not include garages or carports in calculating square footage.

2. Frederick Kail – 3515 Gardenview Road

Testifying next for the Protestants was Frederick Kail, who resides at 3515 Gardenview Road His home sits at the lowest point on Gardenview Road and abuts the rear of the Property. Mr. Kail, a sculptor and graphic artist by trade, described how water runs from the Property downhill to the rear onto his property. Mr. Kail produced a series of photographs showing flooding in his yard after a heavy rain. (Prot. Ex. 24a-24e).

Mr. Kail is equally concerned about increased traffic and safety issues given the current challenges of exiting from Gardenview Road onto Stevenson Road, requiring quick acceleration. Photographs were admitted showing his concern about this intersection as well as the intersection of Keyser Road and Stevenson Road

3. Ellen Miller – 8509 Arborwood Court.

Ellen Miller has lived at her home at 8509 Arborwood Court for 40 years. She is very familiar with the streets surrounding the Property as she is a walker. Mrs. Miller, who is a member of Beth Tfiloh Congregation on Old Court Road, stated that she walks two miles to and from her home on Arborwood Court, onto Stevenson Road and then onto Old Court Road, for services every Saturday. Being so familiar, she described Stevenson Road as a narrow, two-lane road with no sidewalks and no shoulders. (Abel Ex. 8A-17). Not only has the amount of traffic increased in the six-to-seven years that she has been walking to services, but the speed of the cars on Stevenson Road is faster than the posted 30-mph speed limit. The speed of the cars has been so fast that her hat often blows off.

When a car is approaching, she is forced to walk on the grassy berm next to Stevenson Road She has observed cars swerving over the double yellow line to avoid her. When snow is cleared from Stevenson Road, it is pushed up against the sides of that road and onto the grass,

which forces her to walk in the road. She does try to avoid walking when it rains, as the conditions are even more dangerous.

4. Deborah Katzen – 8505 Topping Road

The next witness for the Protestants was Deborah Katzen, who resides at 8505 Topping Road, which is parallel to Stevenson Road, between Keyser Road and Janellen Drive. Mrs. Katzen, a member of Chizuk Amuno Congregation, grew up on Birch Hollow Road and moved to her current home on Topping Road with her family. She testified that she too was concerned about the increase in traffic and overflow parking that will occur as a result of the proposed Plan. She was present when Mr. Cornelius testified and believes that the statistics do not record the unreported collisions and near miss accidents which frequently occur. In fact, she relayed that, when she was seven years old, she was struck by a car on Stevenson Road

Given that there is no turning lane into the Property, she foresees a problem with stacking of cars on Stevenson Road when services, school, or events occur. The curve in the road on Stevenson Road is already a traffic hazard. There will be an influx of people entering and leaving the Property for events at certain times on certain days of week. There is little to no street lighting. Due to safety issues, Fort Garrison Elementary School only permits children to take the school bus or carpool; walkers are not allowed due to safety concerns. The morning traffic on Stevenson Road is already heavy.

Mrs. Katzen pointed out that the streets surrounding the Property are only wide enough for one car to drive through, such that a car must pull over to let an oncoming car pass. If overflow parking occurs from the Property onto the side streets, she believes that this will be particularly difficult for emergency vehicles to drive through or turn around. She presented a series of photographs that she took in May of 2016. (Prot. Ex. 25a-25e). The photographs showed people

who had parked their cars on Keyser Road and were visiting the Property. (Id.). Importantly, there are no "No Parking" signs on the surrounding streets.

Finally, she highlighted that there are no sidewalks on Stevenson Road or in the neighborhood, other than a narrow, strip of blacktop on one side of Keyser Road, extending on the grass next to the house at 8419 Stevenson Road (Mrs. Small's house). It is not a normal width, concrete sidewalk. (Prot. Ex. 14). Having familiarity with the area, Mrs. Katzen described the surrounding residential premises as consisting of ranchers, some with a basement and some without.

5. Lauren Small - 8419 Stevenson Road

Lauren Small, a member of Chizuk Amuno Congregation, has resided at 8419 Stevenson Road for 30 years. Her house is a rancher and sits on the hill directly across from the Property on the corner of Keyser Road and Stevenson Road (Abel Ex. 25, 25A). The front of her property along Stevenson Road is a berm. (Abel Ex. 8A, 10, 11, 12, 12A, 12B, 12C, 12D, 12E, 12F, 12G). Because there are no sidewalks or shoulders along Stevenson Road on either side of the street, the only place to walk is on her property. She is very familiar with entering and exiting onto Stevenson Road in all kinds of traffic as her driveway exits onto Stevenson Road. Given her location to the Property, she is very concerned about increased traffic and safety issues.

Mrs. Small was drawn to the area for its rural quality of life. She stated that the Goldmans lived in the farmhouse, kept horses in the barn, and later built Protestants Kenneth and Jessamyn Abel's house next to the farmhouse. For several years, the Goldmans had been renting the farmhouse and the Property had been for sale. When the Goldmans subdivided the Property in 2006, the three new lots were intended for the three Goldman children to build their homes. At

that time, the community opposed the re-subdivision of the Property due to traffic and congestion issues.

With regard to the proposed Plan, despite her proximity to the Property, Mrs. Small was never contacted by the Petitioner about the proposed Plan. She later learned that the original plan (the Colbert, Matz Plan) was for a 35-seat synagogue to be located in the barn. Because of this, she believes the proposed Plan can be scaled down and a smaller building constructed. Being a member of the Jewish faith, Mrs. Small believes that the building will be rented to accommodate large events which were not mentioned by Rabbi Belinsky as being part of the regular activities. She too confirmed that there are no parking restrictions on Keyser Road As such, the overflow parking will be adjacent to her home. She and her husband will then be living with the inevitable car lights, car doors opening and closing, and people talking while entering and exiting the cars. She believes Keyser Road will become impassable.

6. Behman Soleimani - 3514 Gardenview Road

Next to testify for the Protestants was Behman Soleimani, of 3514 Gardenview Road. Mr. Soleimani, a civil engineer who works for State Highway Administration, moved into his home in 2004. He has experience with and knowledge of rivers, watersheds, and streams. He monitors a stream which flows by his property and is part of the Jones Falls. He testified that water flowing from the Property finds its way to this stream and that erosion has caused the loss of eight trees, hinting at his concern of the possibility of increased water flow and its effects after development.

7. Margaret Presley and Dana Stein - 3501 Gardenview Road

Margaret Presley and Dana Stein reside at 3501 Gardenview Road with their children. (Abel Ex. 21). Their property is on the corner of Gardenview Road and Stevenson Road and

abuts the Property. The rear of their home will face the back of the proposed building. (Abel Ex. 21A). It is a typical ranch style home of 1,876 sq. ft. Ms. Presley and Mr. Stein are members of Shalom Congregation. Ms. Presley's concerns about the proposed Plan centered on the uncertainties about the final building and layout of the Plan as there is no guarantee that it will not change. If the Plan is approved here, she will not only endure the construction, but will incur the costs for a fence and landscaping to limit, as best as possible, the view and noise.

She is also concerned about increased traffic, particularly at Gardenview and Stevenson Roads. (Abel Ex. 26-30D). Ms. Presley stated that the speed of cars traveling on Stevenson Road varies and the curves are difficult to navigate. She has personally observed car accidents as well as near-miss collisions related to speeding on Stevenson Road. The current traffic and speed of cars is already a problem with joggers and dog walkers along Stevenson Road School traffic occurs on Stevenson Road in the morning and afternoon, with the cars driving children to and from Fort Garrison Elementary School on Wood Valley Road, less than one mile from the Property. School buses also pick up children on Stevenson Road

Mr. Stein expressed his concern that his street would be one of the first locations used for overflow parking given its proximity to the Property. He stated that an 88-seat building with only 22 parking spaces will, by necessity, direct traffic to the surrounding streets. Based on his familiarity with attending services at Shalom Congregation, he believes that each car will not always be filled with the maximum number of passengers.

When they bought their home four years ago, it was Mr. Stein's understanding that one or two homes would be built on the Property in accordance with the 2006 FDP. With this proposed Plan, a commercial dumpster will be used which will affect his family's quality of life. There will be more traffic. The proposed Plan will necessarily have an increase in activities, people, and

vehicles on the weekends when he and his family are at home. He is also concerned with the increase in activity during Jewish holidays and special events which will take place at the Property.

When exiting from Gardenview Road onto Stevenson Road, Mr. Stein explained how he must always pull out very quickly because the cars regularly speed on Stevenson Road, and he cannot see cars coming southbound over the hill. (Abel Ex. 26-30D). He added that there are two signs that warn of the curves on Stevenson Road, one was recently installed and can be viewed southbound (Abel Ex. 8A) and the other is viewed heading northbound (Abel Ex. 8). When his children ride their bikes or walk, the family goes down Gardenview Road away from Stevenson Road due to the amount of cars on Stevenson Road. There are no sidewalks on Gardenview Road

Mr. Stein added that he saw the Colbert, Matz Plan for the 35-seat synagogue. He stated that he was not adverse to the Colbert, Matz Plan but was shocked when he learned of the proposed Plan for an 88-seat synagogue. Mr. Stein asked Rabbi Belinsky if he would consider reducing the 88-seat synagogue back to the Colbert, Matz Plan and the Rabbi's response was that it did not make financial sense for the Petitioner to build a synagogue smaller than 88 seats. Mr. Stein requested that Rabbi Belinsky meet with the neighbors to present the 88-seat Plan but the Rabbi declined.

In response to cross examination by People's Counsel as on a Religious Land Use and Institutionalized Persons Act ("RLUIPA") issue, Mr. Stein acknowledged that he would have the same concerns as to size, scale, traffic, and activities if the Plan proposed other uses permitted as of right in a D.R. zone, such as a community building, day camp, convalescent home, funeral home, school, art conservatory, group child care center, or volunteer fire company. Mr. Stein clarified that he was not against having a religious use on the Property.

8. Christopher Jakubiak – Expert in Zoning, Planning, and Traffic.

Christopher Jakubiak was admitted as an expert on behalf of the Protestants in the areas of planning, zoning, and traffic as it affects development. Mr. Jakubiak became familiar with the area surrounding the Property as a result of his retention in this case. It was Mr. Jakubiak's opinion that the parsonage would become an accessory structure to the synagogue and, therefore, would not be permitted to be located within the 50-foot Buffer Area under BCZR, §1B01.1.B.1.e(3).

Mr. Jakubiak further opined that the proposed Plan did not meet Exception g(6) for a new church or other building for religious worship. The basis for his opinion was that the Property is not big enough to maintain the 100-foot Transition Area. The proposed synagogue which is located within the 100-foot Transition Area, could be built smaller.

As described by the Protestants in their testimony, Mr. Jakubiak agreed that the character of the area surrounding the property was rural. He stated that Stevenson Road had limited sight distances and that it had not been modernized or updated. He said that an institutional building within this setting would change the character of the neighborhood. The footprint of the proposed building will be located 78 feet from Stevenson Road which was, in his view, closer to Stevenson Road than the existing homes. The Abel residence is 160 feet from Stevenson Road and the home at 8419 Stevenson Road is 150 feet from the road.

Mr. Jakubiak further indicated that the traffic which will be generated by the proposed Plan is not compatible with the surrounding residential premises. The lack of sidewalks along Stevenson Road will make it less safe for pedestrians and therefore impact the safety and general welfare. The quality of life will be impacted by the car lights and sounds coming and going from the Property. The level of noise from the proposed Plan will generate more noise and light than a couple of houses.

Mr. Jakubiak also opined that the Petitioner was required to amend, pursuant to BCZR, §1B01.3.A.7, the 2006 Final Development Plan (the "2006 FDP") filed by the Goldmans. (Prot. Ex. 9). In his view, the proposed Plan was not consistent with the spirit and intent of the 2006 FDP, which depicted two homes, and therefore, was for residential lots. He testified that BCZR, §1B01.3.A.7.b requires the Plan to satisfy the Special Exception factors in BCZR, §502.1. In applying those factors, Mr. Jakubiak stated that it did not satisfy three of those factors.

9. Caren Hoffberger – 8417 Stevenson Road

Caren Hoffberger was next witness to testify for the Protestants. She has lived next door to Lauren Small at 8417 Stevenson Road for 16 years. (Abel Ex. 9D). Her home is located on the corner of Janellen Drive and Stevenson Road. She is a life-long resident of this neighborhood as she grew up on Keyser Road and her parents still reside in that home. Her property has two 100-year old trees which hug the northbound, right-side curved portion of Stevenson Road prior to the Property's driveway. (Abel. Ex. 9B, 9C, 9D, 10, 12E, 12F, 12G, 12H, 12I, 13, 13A, 13B and 14).

Like the other neighbors, Mrs. Hoffberger testified that there is already a lack of parking in the neighborhood. With the increase in traffic that will come with the Plan, the lack of parking will only get worse with the number of people and vehicles that are expected with the Petitioner's desire for growth. If people attending an event at the Property park along Keyser Road or Janellen Drive, Mrs. Hoffberger noted that emergency vehicles will be prevented from reaching the homes along those streets. In addition, she mentioned that while the homes on her side of Stevenson Road have public water and sewer, the side of the street where the Property is located does not have public sewer. Likewise, the homes on her side of Stevenson Road are governed by a Homeowner's Association, whereas the Property side is not.

10. Jordon Max – Stevenson Village.

Jordon Max is the owner of Stevenson Village Shopping Center, which is downhill from the Property, approximately four blocks north of Gardenview Road. Stevenson Village Shopping Center has existed since 1930 and is a fully leased shopping center. (Abel Ex. 18). Mr. Max emphasized that there are no "No Parking" signs located along any of the streets surrounding the Property. He agreed with Mrs. Hoffberger that people attending events at the Property have no restriction on where they can park. He believed that traffic would back up on Stevenson Road for people making a turn into the Property. There is no shoulder or turn lane on Stevenson Road

11. Kenneth Abel – 8418 Stevenson Road

Kenneth Abel and his wife, Jessamyn, live and own the home located at 8418 Stevenson Road. The Abels' home sits on 1.25 acres and abuts the Property to the south. (Abel Ex. 7, 19,19E, 19F, 19G, 19H). Harvey and Leslie Goldman were the original builders of their home and sold it to the Gottliebs. The Abels purchased their home from the Gottliebs in February, 2014 for the purchase price of $1,100,000.00. The Abels decided to purchase this home because it was located in a beautiful, rural neighborhood but was close enough to their work, their children's schools, and their synagogue. After the Abels moved into their home, the Goldmans continued to rent the farmhouse.

Professionally, Mr. Abel is a corporate attorney with Ober, Kaler, PC.[1] Similar to Rabbi Belinsky's narrative of his childhood and the persecution of Russian Jews in the former Soviet Union, Mr. Abel told a moving story of his family's persecution and migration to the United States with only $140.00 to their name. Mr. Abel's grandparents were Holocaust survivors. They

[1] Since the hearing, Ober Kaler merged and is now known as Baker Donelson.

lived in Poland before fleeing into Russia for safety, leaving extended family behind. Unfortunately, anyone in his family who remained in Poland was killed. Mr. Abel's mother was born in Russia, in a small town located approximately 1,100 miles west of Moscow. This heritage makes Mr. Abel half Russian. Mr. Abel, and both his immediate and extended family, are active members of Chizuk Amuno Congregation. However, neither he nor his family walk to services or events at Chizuk Amuno because Stevenson Road is too dangerous. The only place to walk is in the road.

Prior to purchasing their home, Mr. Abel did a lot of research including information on the Property. He learned that it consisted of the farmhouse, a barn and two vacant lots for two homes. Those lots had been for sale for 10 years. He also discovered a Revised Forest Conservation Plan dated December 7, 2005 for the proposed Property. (Abel, Ex. 2). The Revised Forest Conservation Plan was prepared for the Goldmans by KJ Wells, Inc., a surveying company, wherein the Goldmans agreed to provide 0.7 acres in afforestation upon development of the two residential lots. That Plan shows not only the existing farmhouse but also the two proposed dwelling lots as well as a few specimen trees. Based on his research, Mr. Abel concluded that his next door neighbors would include the existing farmhouse plus, possibly, two more homes.

On October 15, 2014, several months after the Abels moved in, counsel for Petitioner, Mr. Burgunder, contacted Mr. Abel via email, requesting to meet with him and Rabbi Belinsky. Mr. Abel spoke with Mr. Burgunder by phone and testified as to his impression of the conversation. The tone and message delivered was that if Mr. Abel agreed to the Colbert, Matz Plan for a 35-seat synagogue, then the Petitioner would plant some trees to shield his view. If he did not agree, the 35-seat synagogue would inevitably be built. Mr. Abel responded that he would not agree because the proposed building was "right outside his bedroom window." (Abel Ex. 19F, 19G).

Subsequently, Mr. Abel obtained a copy of the Colbert, Matz Plan which was dated October 14, 2014 – one day prior to this telephone conversation. (Abel Ex. 1; Prot. Ex.5). The Colbert, Matz Plan proposed a 35-seat synagogue in the existing barn on the Property along with an addition and associated parking. (Abel Ex. 19G).

Mr. Abel repeated his objection to the Colbert, Matz Plan in the barn because the barn sits on his property line; it is measured as 20 feet from his bedroom window which room is positioned on the first floor of his home. (Abel Ex. 19F, 19G). He learned, after the fact, that a setback variance was actually required to get the Colbert, Matz Plan approved and that, a variance hearing had been scheduled to occur in November 2014. Mr. Abel reasoned that the Petitioner withdrew the Colbert, Matz Plan because a variance would not have been granted, particularly without Mr. Abel's consent.

Mr. Abel was adamant that there was no transparency by the Petitioner, that information was not forthcoming, nor was there any guarantee as to the details of the Colbert, Matz Plan or the proposed Plan. In January 2015, Mr. Abel later learned that on the day he spoke with Mr. Burgunder (October 14, 2014), the Baltimore County Development Review Committee (DRC") had met in an open meeting to discuss the Colbert, Matz Plan. The DRC determined that it constituted a material amendment to the 2006 FDP. (Abel Ex. 3). Mr. Burgunder did not share this information with Mr. Abel during their phone call on October 14, 2014.

That same month, Mr. Abel invited Rabbi Belinsky to a community meeting. At that meeting, only a small drawing of the proposal was shown to Mr. Abel, Dana Stein and the other attendees, not an actual plan.

On January 12, 2015, the Abels, Mr. Stein and his wife, Ms. Presley, and the other Protestants wrote to the Director of Permits, Approvals and Inspections ("PAI"), Arnold Jablon,

stating that the Colbert, Matz Plan constituted a "material amendment to the final development plan." (Abel Ex. 5). The same day, Mr. Jablon wrote an email to Mr. Abel which stated that Baltimore County agreed that an amendment to the plan should be requested. (*Id.*)

As to the size of the homes surrounding the Property, Mr. Abel produced records, without objection, from SDAT. (Abel Ex. 7). According to those records, the farmhouse (8420 Stevenson Road) is a two-story house, built in 1851, and is 2,381 sq. ft. (*Id.*). The Smalls' house (8419 Stevenson Road) is one-story, built in 1956, and is 3,625 sq. ft. (*Id.*). The Hoffberger house (8417 Stevenson Road) is one-story, built in 1969 and is 2,763 sq. ft. (*Id.*). The Stein house (3501 Gardenview Road) is one-story, built in 1960 and is 1,876 sq. ft. (*Id.*). The Kail house (3515 Gardenview Road) is one-story, built in 1966 and is 3,299 sq. ft. (*Id*).

The Abels' home was built in 1988 and is therefore newer than the surrounding homes. The SDAT records show that the Abels' house is two stories, consisting of 6,482 sq. ft. living space and a finished basement of 800 sq. ft., for a total of 7,282 sq. ft. (*Id.*). In Mr. Abel's view, the size of the proposed synagogue is not compatible with either their home or the surrounding homes. In addition, the Abels' driveway (900 sq. ft.) is much smaller than the proposed parking lot (7,200 sq. ft.). Because there is no homeowner's association governing the Property, there is no prohibition for cars to park on the Property's grass.

Mr. Abel highlighted that the traffic pattern for the proposed Plan would cause a surge of people driving cars and/or walkers to the Property at specific start and stop times each day of the week. The exact start and stop times will vary, depending upon the event being held. In his view, this will be a lot of people converging on one place at the same time. Holding services and events is different than hosting a party at one of the surrounding homes because the party does not occur every day or every week. In contrast, traffic generated by the surrounding residential premises is

generally early morning when homeowners leave for work and school, after school, and/or in the evening when they return. He believes that the traffic patterns for the proposed Plan will cause safety issues on existing rural roads which already have bad sight lines.

Mr. Abel produced a series of photographs of the surrounding area, including the roadways. (Abel Ex. 9). These photographs are identified in a descriptive narrative prepared by Mr. Abel. (Abel Ex. 8). The photographs were taken from south of the Property beginning at I-695 at Chizuk Amuno heading north toward the Property (Abel Ex. 9-1, 9-5,); from the Property driveway looking south (Abel Ex. 25D); from Janellen Drive looking north (Abel Ex. 9-9B) and south (Abel Ex. 9-9A); from Keyser Road looking north (Abel Ex. 9-13, 9-13A, 9-13B) and south (Abel Ex. 9-12C, 9-12I); and from Gardenview Road looking north (Abel Ex. 9-16, 9-26, 9-27, 9-28, 9-29, 9-30) and south (Abel Ex. 9-30C).

He emphasized his concern about the uncertainty with exactly what the proposed building will look like in terms of height, or architecture style, and outside lighting. All of those factors are subject to change in this case because the final determination occurs when, and if, the proposed Plan is approved. It was Mr. Abel's position that the proposed Plan is not consistent with the spirit and intent of the 2006 FDP of which his property was a part.

On cross examination, Mr. Abel was asked whether a house that was 10,000 sq. ft. would be compatible with the surrounding residential premises. Mr. Abel pointed out that, if a house were being proposed, compatibility would not be a factor because Exception g(6) (new church) would not apply.

Mr. Abel continued in his testimony that the proposed Plan does not specify whether the proposed synagogue will comply with the RTA's 35-foot height restriction under BCZR, §1B01.1.B.1.e(5). The Plan also does not specify that the proposed lighting will comply with

RTA restrictions regarding the intensity of the light spilling onto a neighboring property under BCZR, §1B01.1.B.1.e(4). The Plan merely indicates that lighting will be addressed in the final landscape plan yet to be filed. Mr. Abel stressed that these omissions in the Plan do not guarantee compliance with the RTA Regulations and will easily be overlooked if approval is granted here.

12. Edward Myers. – Traffic Expert.

After Mr. Abel testified, the Protestants offered Edward Myers as a traffic expert. Mr. Myers is a principal at Kittleson and Associates which is a national transportation engineering and planning firm based out of Portland, Oregon with offices throughout the country. Mr. Myers works in the Baltimore City office where he is the East Coast Operations Manager. His firm works for both public and private sector clients doing transportation studies. In Baltimore County, Mr. Myers designed the Towson roundabout on York Road in the heart of Towson.

To complete his traffic analysis of the proposed site, Mr. Myers walked the site and the roads/streets intersecting with Stevenson Road and he reviewed the proposed Plan. He described the topography of Stevenson Road as rolling and winding in all directions beginning in the north until it reaches I-695 south of the Property. Stevenson Road is a 24 ft. wide, two-lane road. The intersecting streets are also 24 ft. wide. The posted speed limit is 30 mph coming from I-695 just past the Property's driveway and then, just north of Keyser Road, the posted speed limit reduces to 25 mph. Based on his observations, vehicles were traveling at least 10 mph over the speed limit. For the purposes of the speed limit at the Property, Mr. Myers used 25 mph.

Coming from the north beginning at Stevenson Village toward the Property, he observed a traffic warning sign which indicates that the grades of Stevenson Road are hilly and that there are sight distance constraints. (Abel Ex. 8A). Mr. Myers went to the intersections of Gardenview Road, Janellen Drive and Keyser Road to observe the sight distances. In his opinion, all three

intersections had sight distances constraints. Between Gardenview Road and Janellen Drive, notably there are three driveways and three roadways located within a ¼ mile. (Abel Ex. 4, 13A, 13B, 14, 14A, 14B, 15, 16, 26-30D).

Mr. Myers explained that there are two sight distance terms: Stopping Sight Distance and Intersection Sight Distance. Stopping Sight Distance is the distance required to see and react to an object in the road when the vehicle is moving forward. Intersection Sight Distance is when a vehicle is at an access point and the driver is able to look to the left or to the right to be able to see whether there is another vehicle coming in either direction so that the vehicle can pull out and make a right or a left turn. Stopping Sight Distance is more important for vehicles trying to enter a site and Intersection Sight Distance is more important for exiting a site.

Using a chart entitled "Stopping Sight Distance Tables" (Prot. Ex. 40), Mr. Myers opined that, north of the Property's driveway, the Stopping Sight Distance traveling southbound where the speed limit is 25 mph (plus 10 mph over for a design speed of 35 mph), on a 3% downgrade, is 257 feet. Traveling northbound past the Property's driveway on a 3% upgrade, the stopping sight distance is 237 feet. Traveling south out of the Property's driveway, Mr. Myers used a design speed of 40 mph (30 mph limit plus 10 miles over speed limit), the stopping sight distances for a 3% downgrade traveling southbound toward I-695 is 315 feet and traveling northbound toward the Property on a 3% upgrade, the stopping sight distance is 289 feet.

Using a chart entitled "Design Intersection Sight Distances" (Prot. Ex. 41), Mr. Myers testified that when making a left hand turn out of that driveway, a driver needs to see 445 feet to the right to safely make the left turn (using a design speed of 40 mph). (*Id.* at Table 9-6). Likewise, when making a right hand turn out of the Property's driveway, a driver would need to see 335 feet to the left to safely exit (using a design speed of 35 mph). (*Id.* at Table 9-8).

With regard to the Stopping Sight Distance, a northbound vehicle would need 315 feet to see a vehicle turning left into the Property driveway, which is at or close to the intersection of Janellen Drive and Stevenson Road Mr. Myers opined that a northbound vehicle does not have 315 feet in front of it to see a vehicle turning left into the Property driveway due to the curve along Stevenson Road which is lined with mature trees and bushes, along the front of the Hoffberger property at 8417 Stevenson Road

With regard to the Intersection Sight Distance, Mr. Myers opined that whether making a left turn or a right turn out of the Property's driveway, due to the topography of Stevenson Road, the Intersection Sight Distances of 445 feet and 335 feet are lacking. Based on his personal observations, and knowing that 445 feet is needed, Mr. Myers contended that the southbound sight distance is worse than the northbound sight distance because a driver cannot see Janellen Drive, which is only 315 feet away. Consequently, one cannot see a vehicle which is south of Janellen Drive, but heading north.

Mr. Myers also agreed that there are existing limited sight distances for vehicles exiting Gardenview Road, Keyser Road, and Janellen Drive which will only get worse with the concentration of people attending a service or event at a given time period. For pedestrians walking to the Property either from their homes or from their cars parked on adjacent streets, he observed that there are no sidewalks and therefore, pedestrians would be walking on private property. Due to the narrow width of the side streets (24 feet) and the influx of people and vehicles coming to the Property, there is less room to maneuver vehicles on all these streets. This will lead to an increase in the likelihood of pedestrian and vehicle crashes.

With a 24-foot width, vehicles parking on the side streets would reduce the width by eight feet. Not only do vehicles passing the parked cars have to pull over but emergency vehicles will

have a more difficult time driving around parked cars. Additionally, the distance between the intersections surrounding the Property do not meet the distance mandated by the Baltimore County Plan Review Policy Manual. (Prot. Ex. 42). Referring to that Policy Manual, Mr. Myers testified that it provides the distance between intersections for both roadways and driveways. In his profession as a traffic engineer, Mr. Myers regularly consults with this Manual when intersections are too closely spaced.

Mr. Myers testified that there would be more vehicular trips generated by the proposed Plan than by two single-family homes. Even more important to Mr. Myers was the fact that the trips to and from the Property would be concentrated at specific times for the events taking place there, as opposed to a single family home, which would have trips distributed throughout the day. This problem is accentuated when vehicles are lined up to make a turn into the Property.

On cross examination, People's Counsel asked questions of Mr. Myers regarding the correlation between traffic issues and RLUIPA. Mr. Myers agreed that if the Plan proposed one of the other uses permitted as of right in a D.R. zone under BCZR, §1B01.1.A (e.g., a community building, a school, a day care center, a group home, or a funeral home) or any other use which has people coming and going to the Property at specific times for events or classes - whether such uses are religious or non-religious - the same traffic concerns about which he opined would apply equally to those uses. The lack of Stopping Sight Distance for the northbound direction will be exacerbated with any use that concentrates an influx of people or vehicles at a specific time to this Property.

C. Petitioner's Rebuttal Case.

1. Timothy Kotroco, Esquire – Expert Planning, Zoning, and Development.

In rebuttal, the Petitioner called Timothy Kotroco, Esquire as an expert witness in land planning, zoning, and development in Baltimore County. Mr. Kotroco previously worked for Baltimore County for 25 years as an assistant County Attorney representing the Zoning Office and prosecuting zoning violations. He then served as Deputy Zoning Commissioner for 12 years followed by eight years as Director of Permits and Development Management ("PDM") (now known as Permits, Approvals and Inspections or "PAI"). Lastly, he served for two years as Administrative Law Judge. He currently works in his own law firm in Towson.

Mr. Kotroco testified that the Goldman Property was originally three lots and was filed in 1988 as a Health Master Plan. It was his position that the Health Master process was akin to filing a minor subdivision. The Health Master Plan process became the County Review Group ("CRG") process, which was then replaced with the Hearing Officer's Hearing. The 2006 FDP for the Goldman Property was filed October 16, 2006 during the time in which he was working as the Director of PDM. (Pet. Ex. 12).

On February 2, 2006, a hearing was held on the 2006 FDP wherein the Goldmans sought to further subdivide Lot 3 (containing the farmhouse) into three lots, making the total number of lots five. (Pet. Ex. 13). The Hearing Officer approved the request. (*Id*). Mr. Kotroco testified that the 2006 FDP was a major subdivision process because it was for more than four lots. Lot 3 was the largest of the three Goldman lots. In the 2006 FDP, the re-subdivision of Lot 3 requested to keep the existing farmhouse at 8420 Stevenson Road, and to create two additional residential lots namely: Lot 3A (8430 Stevenson Road) and Lot 3B (8432 Stevenson Road).

It was Mr. Kotroco's opinion that the "Small Lot Table" set forth in BCZR, §1B02.3 applied to the 2006 FDP because the total number of lots, when the Goldmans owned the Property was five. Mr. Kotroco interpreted the Hearing Officer's Order as making a finding that the Small Lot Table applied to the 2006 FDP. (Pet. Ex. 13). Under BCZR, §1B02.3, he stated that if the proposed number of lots were six or more, the subdivision would be subject the setbacks in the Large Lot Table, found in BCZR, §1B01.2.C.

Mr. Kotroco clarified that, because the 2006 FDP shows that there were less than six dwelling units, and that the Goldmans were the owners of all the lots, the Small Lot Table applied in the Hearing Officer's decision. First, Mr. Kotroco referred to the plan prepared by Protestants' expert, Bruce Doak as part of the Protestants' Petition for Special Hearing in this case. (Pet. Ex. 24F, 24G). Mr. Kotroco testified that the Abels' lot was not part of the re-subdivision of Lot 3, and therefore, the Abels are not protected, and have no standing under BCZR, §1B01.3.A.7.

Second, according to Mr. Kotroco, because the Small Lot Table was applicable to the 2006 FDP, the proposed Plan is exempt under BCZR, §1B02.3.D from having to go through the final development amendment process. In short, the proposed Plan would not be subject to BCZR, §1B01.3.A.7 meaning that an amendment to the 2006 FDP would not have to be filed.

On cross examination, Mr. Kotroco conceded that he was not aware of any zoning decision issued by him when he was Deputy Zoning Commissioner for 12 years, or when he was an ALJ for two years, or by any other Zoning Commissioner/Hearing Officer/ALJ, which interprets BCZR, §1B02.3.A.3 as he has in this case. Additionally, when he served as Director of PDM, he agreed that it was the policy of PDM that an applicant for a subdivision of less than six lots would file an amendment to an FDP.

Mr. Kotroco also agreed that the June 25, 2005 Development Plan had the Large Lot Table (BCZR, §1B01.2.C), not the Small Lot Table, referenced on it. (Prot. Ex. 8). Mr. Kotroco further acknowledged that while he was the Director of PDM, at the Development Plan Conference on January 22, 2006, his employee, Mr. Moxley, specifically directed Kenneth Wells, surveyor, to:

> "Add the large tract table to the plan. Remove all references to the small tract table and typical lot layouts."

(Prot. Ex. 48).

On cross examination, Mr. Kotroco acknowledged that the 2006 FDP was not only a re-subdivision of Lot 3, but was also a lot line adjustment of Lot 2 (The Abels' property). That lot line adjustment was called the "Reconfiguration of Lot 2" on the 2006 FDP.

Moreover, Mr. Kotroco did not deny that the Small Lot Table in BCZR, §1B02.3.C. refers to "dwellings" and that this case concerns a non-residential use. He acknowledged that BCZR, §1B01.2.C, known as the "Large Lot Table," prescribed setbacks in D.R. zones for "nonresidential principal buildings," and that the proposed synagogue was a non-residential, principal building.

2. Mickey Cornelius – Traffic Expert.

In rebuttal, the Petitioner recalled Mr. Cornelius. Mr. Cornelius disagreed with Mr. Myers' testimony because he felt that, based on the fact that there were only 21 [sic 22] parking spaces available, there would only be a small amount of people coming to the Property. He conceded on cross examination that if 100 cars came to the Property for an event, his opinion would change. Yet, he was emphatic that this was not a large synagogue with hundreds of people attending. Because of this, he believed that there would be very little chance of queueing on Stevenson Road on Friday nights or Saturday mornings.

Mr. Cornelius added that the Stopping Sight Distance which Mr. Myers indicated would be a problem, was, in his view, not a concern. The Stopping Sight Distance, which was calculated by AASHTO years ago, is based on the average braking distance and then increased to account for safety. With today's improved braking systems, Mr. Cornelius opined that being rear-ended is not a real danger because vehicle braking systems today are much better than when AASHTO initially made this calculation. Also, he emphasized again that there is no accident data to support a conclusion that Stevenson Road or and the surrounding roads, were unsafe.

3. David Thaler, PE – Land Planning, Zoning, and Civil Engineering.

David Thaler, PE testified for the Petitioner as an expert in the areas of land planning, zoning and civil engineering. Mr. Thaler, who has testified before the Board in many cases, is licensed as a civil engineer, a surveyor and a real estate broker with DS Thaler Associates, the company that drafted the proposed Plan. (Pet. Ex. 1). Mr. Thaler grew up in the area at issue and lived in a house on Arborwood Court. He worked for his father's construction company, H.M.H Construction, which built many of the home in this neighborhood.

Having grown up nearby, Mr. Thaler was able to describe it as consisting of "prairie style" and "ranch" homes which were long and flat, typical of homes built in the 1960s. Viewing the aerial photograph, Mr. Thaler noted that this style of homes were built on Gardenview Road and along Arborwood Court. He recalled that his father's company also built the development on Swan Hill Court off of Keyser Road which had similar ranch style homes built in same era. In the Anton Woods development, which is located south of the Property prior to I-695, one-story, ranch-style homes were also built during that time. The development of homes along Birch Hollow Road were built in the 1970s and were two-story homes, reflective of that time period.

Mr. Thaler testified through photographs that he believed the older ranch style homes in Anton Woods were being torn down, and were being replaced by larger, more modern-style homes. (Pet. Ex. 18A-18I; Pet. Ex. 19). He also pointed to the size of the Abels' house and the house at 3502 Gardenview Road which is across from Mr. Stein's and Ms. Presley's house. It was Mr. Thaler's opinion that the homes shown in the photographs and as positioned on the plat, particularly the homes in Anton Woods, were within the "neighborhood" of the Property, and therefore should be considered by the Board in deciding whether the proposed Plan is compatible with those homes.

As for the size of the Abels' house, Mr. Thaler testified the measurement listed by SDAT of 6,482 sq. ft. plus 800 sq. ft. for the finished basement, was not incorrect. While SDAT measures the usable floor area, Mr. Thaler measured each of the three floors of Mr. Abel's home to be 3,830 sq. ft. each, or a total of 11,400 sq. ft. Similarly, he noted that SDAT listed the home at 3502 Gardenview as 4,559 sq. ft. Likewise, SDAT listed the home at 3507 Englemead as 6,788 sq. ft. In his view, the size of these homes are comparable to the proposed building of 8,000 sq. ft.

In support of his position that the proposed Plan met Exception g(6), Mr. Thaler defined the "neighborhood" as extending from I-695 to Greenspring Valley Road and from Park Heights Ave. to Greenspring Ave. Mr. Thaler found support for his neighborhood using the definition of "neighborhood" found in BCC §32-4-402A (entitled "*Compatibility*"), covering development. This definition references a definable boundary as designated by a collector street or an arterial street; or an area with a significant change in character or land use; or a major natural feature.

Mr. Thaler read BCC §32-4-402(d), entitled "Compatibility Objectives," as applying to all land development. Therefore, he believed the definition contained therein is relevant to this case. He also referred to the definition of "residential development" which reads "development

of land for any purpose allowed of right by special exception in residential zones in accordance with the BCZR." With regard to this case, although the proposed use will be non-residential, Mr. Thaler opined that the BCC identified a religious use as "residential development."

Referring to Webster's Dictionary definition of "compatibility," Mr. Thaler reiterated that the term "compatibility" as defined there means "the capability to live together in harmony"; it does not mean "the same." (Pet. Ex. 22). Mr. Thaler then testified as to how the Plan was designed to meet the Compatibility Objectives set forth in BCC, §32-4-402(d). As to the orientation of the proposed building under BCC, §32-4-402(d)(1), while acknowledging that the size of the homes surrounding the Property are of varying sizes, it was his opinion that the footprint of the proposed building (4,000 sq. ft.) was roughly the same size as the footprints of the surrounding homes. As with some of those homes, the proposed building is a one-story building with a full basement.

With regard to BCC, §32-4-402(d)(2), he said that the proposed building will be set back from Stevenson Road in a manner similar to the surrounding homes. He also believed that the proposed building and parking lot located behind the building and out of view, were designed to reinforce the building and streetscape design in the neighborhood and therefore, would not be adverse to the neighborhood. The proposed streets and sidewalks under BCC, §32-4-402(d)(3), in his view, were not applicable because the proposed driveway will connect to Stevenson Road in the only manner possible and there are no sidewalks in the neighborhood, other than black-top paving along Keyser Road

Likewise, BCC, §32-4-402(d)(4) was not applicable here as there is no proposed open space on the Property and none exists in the neighborhood. With regard to BCC, §32-4-402(d)(5), he opined that the most locally significant feature of the Property is the farmhouse which sits on

Stevenson Road and is proposed to be retained for use as a parsonage. As for landscaping patterns in the neighborhood under BCC, §32-4-402(d)(5), Mr. Thaler did not find any in the neighborhood but stated that there will be a landscaped buffer, as required by the RTA Regulations.

In BCC, §32-4-402(d)(7), the proposed exterior signs, site lighting, and accessory structures include two proposed lights; one in the front near Stevenson Road and one in the rear of the Property. There is a proposed sign as reflected on Petitioner's Ex. 1. Finally, with regard to BCC, §32-4-402(d)(8), the scale, proportions, massing, and detailing of the proposed building are in proportion to those existing in the neighborhood and, as with his analysis under (d)(1), the scale of the proposed building is designed to be consistent with the size of neighboring homes. Mr. Thaler added that the architectural style of the neighborhood was eclectic. The proposed building was designed architecturally to reflect the style of Stevenson United Methodist Church located north of the Property, on the corner of Greenspring Valley Road and Stevenson Road (Pet. Ex. 25).

With regard to the required number of parking spaces, Mr. Thaler explained the number of desired seats in the building determines the number of parking spaces required. In this case, the Petitioner wants 88 seats. As a result, 22 parking spaces are required under the BCZR and the proposed Plan meets this requirement. Contrary to Protestants' suggestions, a building would not be designed for, and the number of parking spaces would not be determined by, as suggested by the Protestants, the maximum number of people who would be at the Property for a special event.

Mr. Thaler explained that the RTA Regulations require a development located within 150 feet of a tract boundary to design the building and parking lot so that they are both set back 75 feet from the property line and to provide for a landscaped, 50-foot buffer. He prepared a flow

chart (Pet. Ex. 23) as a demonstrative aid, to outline three issues which he believed were before the Board. As to the first issue, he testified that a synagogue and parsonage were both permitted as of right in a D.R.1 zone under BCZR, § 1B01.1.A.3. In particular, Mr. Thaler read BCZR, § 1B01.1.A.3 as allowing a parsonage because it permits other buildings with a "religious purpose." He also stated that a parsonage was a permitted accessory use under BCZR, §1B01.1.B.1.e.3.

The second issue he addressed is whether the proposed Plan complies with the RTA standards under BCZR, §1B01.1.B.1.e.(1)(2)(3), or whether it meets one of the exceptions listed in BCZR, §1B01.1.B.1.g. Mr. Thaler opined that the proposed improvements have been planned in such a way that it complies to the extent possible with the RTA use requirements. He stated that both the proposed building and parking are set back 75 feet and there is a 50 foot-buffer on the proposed Plan. His reading of BCZR, 1B01.1.B.1.e(3) was that there were two exceptions for improvements which were permitted to be located within the required 50-foot Buffer Area.

The first exception is that the driveway to the proposed building may be located within the 50-foot Buffer because it qualifies as a "road, path or trail." The second exception he explained, as did his employee, Ms. McArthur, was that the "accessory structures" in Subsection e(3) prohibit only stormwater management structures within the 50-foot Buffer. Mr. Thaler admitted that while the parsonage was an accessory structure as defined under the BCZR, it was not a stormwater management accessory structure. Therefore, he reasoned that it can be located within the 50-foot Buffer. He also added that under BCZR, 1B01.1.B.1.e(1), the parsonage can exist within the 50-foot Buffer because it is a single family dwelling.

Addressing the Protestants' Petition for Special Hearing that the proposed Plan does not meet the spirit and intent of the 2006 FDP under BCZR, 1B01.3.A.7, Mr. Thaler offered a series of seven plans: Concept Plan dated 3/15/04 (Pet. 24-A); Development Plan (Pet. 24B); Revised

Forest Conservation Plan (Pet. 24C); Final Development Plan (Pet. 24D); Subdivision Plat (Pet. 24E); plans prepared by Bruce Doak (Pet. 24F and G).

Like Mr. Kotroco, Mr. Thaler's analysis of these plans was that the Small Lot Table in BCZR, §1B02.3.A.3 applies because the 2006 FDP showed five lots under common ownership by the Goldmans. As a result, he agreed with Mr. Kotroco that there is no requirement under BCZR §1B01.3.A.7 to amend the Final Development Plan.

Yet, Mr. Thaler went a step further with his testimony and added that, if the Board finds that BCZR §1B01.3.A.7 applies here and an Amendment must be filed, the Board should find that the Abels do not have standing under that Section because the 2006 FDP was for Lot 3, 3A and 3B only, and not for the Abels' property, which is Lot 2. Said another way, according to Mr. Thaler, in order to have standing and be in a position to complain that an amendment must be filed under BCZR, §1B01.3.A.7, the Abels must be owners of one of the lots in the 2006 FDP.

Using the series of plans (Abel Ex. 24A-24G), Mr. Thaler explained that the original 5.45 acre parcel was comprised of three lots as filed under the 1988 Health Master Plan. Thereafter, the Goldmans sought to subdivide Lot 3, which had the farmhouse on it, into three total lots. The Concept Plan (Pet. Ec. 24A) showed five lots. The vicinity map on the Concept Plan shows the entire site as including all five lots. Mr. Thaler pointed to a note on the Concept Plan that indicates that Lots 1 and 2 were shown on that plan for density calculation purposes.

Mr. Thaler agreed with Mr. Kotroco, that the vicinity map on the 2006 FDP (Pet. Ex. 24B) only showed that the "Site" was the re-subdivision of Lot 3 - not all five lots - and Lot 3 on that Plan also has the word "Site" written underneath of it. Further, under the Site Data on that plan, the density was calculated based on three lots, not five: "3.2007 acres x 1 = 3; Units proposed = 3." On the revised Forest Conservation Plan, (Pet. Ex. 24C), both the forest conservation data

and the density shown are calculated based on three lots. Both of these exhibits, in Mr. Thaler's view, showed a three-lot subdivision.

On the 2006 FDP (Pet. Ex. 24D), Mr. Thaler highlighted the same information regarding the three-lot subdivision. Not only is the density calculated for three lots, but both the parking and open space were calculated based on 3 lots. Finally, Mr. Thaler stressed that the Record Plat (Pet. Ex. 24E), showed the same information as on the Concept Plan, the Development Plan and the Final Development Plan.

Referring to Mr. Doak's Plan, and his First Amended Plan to Accompany the Petition (Pet. Ex. 24F and 24G), Mr. Thaler opined that these Plans also show the area to be developed only refers to the three lots. The "Site Information" listed the three lots, their addresses of those lots and their tax account numbers. The Abels' lot was only shown for the purpose of density calculation and is therefore not part of the three-lot subdivision. Consequently, Mr. Thaler reasoned that the Abels do not have standing.

In sum, Mr. Thaler described the subdivision of Lot 3 as a "subdivision of a subdivision." While acknowledging that minor subdivisions of three lots or less are not required to have either a hearing officer's hearing or a Final Development Plan, and that both occurred in 2006, Mr. Thaler's remained steadfast in his opinion as to the Abels' lack of standing.

Finally, Mr. Thaler testified that, if the Board found that the Abels have standing to file the Petition under BCZR 1B01.3.A.7, then the only remaining issue for the Board was to determine the spirit and intent of the 2006 FDP. He pointed out that the phrase "spirit and intent" is contained in BCZR §307, "Variances," and in BCZR §502.1, "Special Exceptions." It was Mr. Thaler's opinion that the intent of the 2006 FDP was to subdivide Lot 3. He further opined that the phrase "spirit and intent" means "in harmony with the neighborhood," "appropriate to the

neighborhood" or "compatible with the neighborhood." Mr. Thaler believes that "spirit and intent" is something that could have been approved at filing of the 2006 FDP.

On cross examination, Mr. Thaler conceded that part of the proposed building on this Plan is within the 100-foot Transition Area. (Pet. Ex. 1). He further agreed that the proposed parsonage is within the 100-foot Transition Area. He also admitted that the parsonage is an "accessory use" as defined by the BCZR, §101. Mr. Thaler also acknowledged that he recommended to Rabbi Belinsky to withdraw the Colbert, Matz Plan. Mr. Thaler's reading of the Exception g(6) is that the proposed Plan (Pet. Ex. 1) must be compatible to the extent possible with the RTA use requirements.

Mr. Thaler explained on cross examination that, in his view, the term "surrounding residential premises" is synonymous with the terms: "the neighborhood;" "the surrounding residential community;" "the area in the vicinity;" and the "surrounding community." Mr. Thaler accepted that the houses surrounding the Property which are depicted on the proposed Plan (Pet. Ex. 1) range in size from 1,800-3,200 sq. ft. as described in the SDAT records. (Prot. Ex. 52).

With regard to the Protestants' Petition for Special Hearing and the Small Lot Table under BCZR §1B01.3.A.7, Mr. Thaler interprets "single ownership" set forth in Subsection A(3) as applying to the ownership of a property when it was first subdivided, not as it now exists at the time of the hearing before this Board. Notwithstanding the present tense used in Subsection A(3), Mr. Thaler does agree that the purpose of Subsection A(7) requiring the amendment of a final development plan is to protect prospective purchasers and purchasers who have bought property in reliance on that plan.

In reference to Mr. Thaler's series of plans, he acknowledged that the Large Lot Table was noted on both the Development Plan. (Pet. Ex. 24B) and the Final Development Plan (Pet.

Ex. 24D). He further acknowledged that the Abels' property (Lot 2) is shown in bold on the Development Plan (Pet. Ex. 24B), on the Final Development Plan, (Pet. Ex. 24D) and on the recorded Subdivision Plat (Pet. Ex. 24E).

As to the Abels' standing, Mr. Thaler agreed that BCZR 1B01.3.A.7 does not expressly support his opinion that the Abel's property is outside of the subdivision. Rather, he explained that his opinion is based on his interpretation of the 1972 Comprehensive Manual of Development Policies, and a long standing practice consistent with his 40 years of experience in Baltimore County. Ultimately, Mr. Thaler agreed that if the Abels' property was part of the 2006 FDP, then they do have standing to request a hearing on whether the 2006 FDP should be amended.

As to whether the Amendment is within the spirit and intent of the 2006 FDP under BCZR 1B01.3.A.7, it was Mr. Thaler's opinion that the Special Exception factors in BCZR, §502.1 are not applicable, only the Special Exception procedure, such that a hearing is required. Mr. Thaler testified that the spirit and intent of the 2006 FDP was the subdivision of Lot 3.

On cross examination, Mr. Thaler acknowledged that, as of the hearing before this Board, Mr. Goldman was interested in the outcome of this case because the Contract of Sale was contingent upon the Board's decision. In addition, Mr. Thaler testified that Rabbi Belinsky selected this Property because it did not have any deed restrictions or restrictive covenants that would impede his proposed Plan.

Further, while he was adamant that the 2006 FDP consisted of a three-lot subdivision which would be a "minor subdivision," and a minor subdivision would not have had a final development plan or a Hearing Officer's hearing, Mr. Thaler attributed this fact to a zoning supervisor at the time who classified the Health Master Plan as a "major subdivision" such that a final development plan had to be filed and Hearing Officer's hearing had to be held. This would

prevent a second minor subdivision of an earlier minor subdivision and the County's policy at the time was to prevent creeping subdivisions through the minor development process.

Before the Colbert, Matz Plan was withdrawn by the Petitioner at the recommendation of Mr. Thaler, Mr. Thaler acknowledged that the Colbert, Matz engineers filed a request for exemption from the development process to avoid having to file an amendment of the FDP and have a Hearing Officer's hearing. However, the Development Review Committee ("DRC") denied that request. (PC Ex. 4). In the County denial letter dated October 14, 2014, the DRC wrote that the Colbert, Matz Plan was "a material amendment of the development plan." (PC Ex. 4). The Petition for the Colbert, Matz Plan also requested a variance from the setbacks. (PC Ex. 2).

With regard to the proposed Plan, Mr. Thaler conceded that an exemption will not be requested if and when a final development plan is ultimately filed in this case. The proposed Plan would not be filed as a "minor subdivision" and would be subject to the full development process. If the requested relief is granted here, the development process will be followed and the proposed Plan in terms of scale, size, massing, materials used for the building or the parking, etc. are all subject to change. As a result, the Petitioner could not guarantee that it would build the exact building or parking lot as depicted on the proposed Plan. (Pet. Ex. 1).

When questioned about the RTA Regulations, Mr. Thaler agreed that religious uses were identified as "RTA uses" and, as such, are subject the RTA Regulations. Mr. Thaler recognized that the BCZR allows religious uses either by right or special exception in the many zones: Density Residential (D.R.); Resource Conservation (RC); Business Major (BM); Business Roadside (BR); Business Local (BL); and Manufacturing Restricted (MR); and Manufacturing

Light (ML). He confirmed that it is only when the religious institution elects to build or operate in a D.R. zone that the RTA Regulations apply.

With regard to the applicability of the Small Lot Table, Mr. Thaler agreed that before the zoning for the Property was designated as D.R.1, the zoning was known as "R40." In the 1964 BCZR, the Small Lot Table, as it currently exists in BCZR, §1B02.3.C, was previously found in BCZR Section 202 – Area Regulations. Mr. Thaler agreed that the Small Lot Table identifies setbacks for "dwellings," not for commercial uses. Specifically, he acknowledged that the Small Lot Table requires setbacks only for: "Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4." Mr. Thaler also agreed that the "Large Lot Table" set forth in BCZR, §1B01.2.C.1.a provides setbacks for "Non-residential principal buildings in D.R. Zones."

On cross examination, questions were asked of Mr. Thaler about the applicability of RLUIPA to the instant case. Mr. Thaler was asked whether a denial by this Board of the requested relief here was a violation of RLUIPA. At that point, counsel for the Petitioner objected to any questions being asked of Mr. Thaler in regard to RLUIPA as beyond the scope of the direct examination and beyond Mr. Thaler's expertise. The Board agreed with Petitioner's counsel that Mr. Thaler had never been qualified as a RLUIPA expert.

That fact notwithstanding, documents were submitted by People's Counsel through a proffer which was accepted by the Petitioner's counsel consisting of: (1) the website for the Petitioner's synagogue (PC. Ex. 13); and (2) a list of Russian-speaking synagogues and other places entitled "Russian Baltimore." (PC. Ex. 14). People's Counsel proffered that the Petitioner raised a RLUIPA issue during the course of the Board hearings and the Petitioner should have put on evidence regarding its RLUIPA claim but failed to do so. Counsel for the Petitioner did

not object to the documents but disagreed that those documents had any relevance to a RLUIPA claim.

In cross examination by the Abels' counsel, Mr. Thaler identified an attorney, Roman Storzer, who specializes in RLUIPA cases, and acknowledged that Mr. Storzer had been present in the gallery during each of the hearing dates before this Board.

D. Protestants' Rebuttal Case.

1. Bruce Doak, Surveyor – Zoning Expert.

In the Protestants' rebuttal case, Bruce Doak, a licensed surveyor with 37 years' experience in Baltimore County, was accepted as an expert in the areas of zoning regulations, including those pertaining to FDPs, amending FDPs, including the process for filing and also those regulations pertaining to the Residential Transition Area.

It was Mr. Doak's opinion that the proposed Plan did not meet the RTA regulations as follows: (1) the proposed building is located within the 100-foot Transition Area; (2) the parsonage falls within the 100-foot Transition Area, the 75-foot Setback, and the 50-foot Buffer Area; and (3) a portion of the storm water management facilities falls within the 75-foot Setback and the 50-foot Buffer Area. Mr. Doak disagreed with Mr. Thaler with regard to whether the parsonage was permitted to be located within the 50-foot Buffer because the parsonage was classified as an "accessory structure" in the BCZR. If the parsonage was found to be a single-family dwelling as identified in Subsection B.1.e(1), it, along with the synagogue building would both be principal uses. There cannot be two principal uses on the same lot. Therefore, the parsonage has to be an accessory structure and, if it is, the parsonage is an accessory structure under Subsection B.1.e(3) and cannot be located in the 50-foot Buffer. In his view, Mr. Thaler

misconstrued BCZR, 1B01.1.B.1.e(3) because accessory structures can be garages, outbuildings or structures unrelated to storm water management.

With regard to the Small Lot Table issue, it was Mr. Doak's opinion that BCZR, §1B02.3.A.3 does not apply to the Property because the subdivision, as it exists today, is not under single ownership. The ownership of lots is not viewed from the time of the 2006 FDP because, if that were true, in nearly all cases, the lots would be owned by the same owner. Accordingly, because the Small Lot Table does not apply here, the 2006 FDP must be amended under BCZR, §1B01.3.A.7.

Mr. Doak described three categories for amendments to FDPs under BCZR, §1B01.3.A.7: (1) in Subsection 7.a, where title to the lots have been held under the same ownership from the time the subdivision was created, then an Amendment can be filed; (2) in Subsection 7.b, if an owner has acquired a lot since the time of the original subdivision, an amendment must be prepared and a hearing held to determine whether the Amendment was prepared in accordance with the Comprehensive Manual of Development Policies ("CMDP") and is within the spirit and intent of the original Final Development Plan and of BCZR, Article 1B; and (3) in Subsection 7.c, if there is no hearing requested because there is no challenge to the Amendment, then owners within the subdivision will sign the Amendment showing their consent.

In this case, Mr. Doak testified that, when Lot 3 was re-subdivided, this was a five-lot subdivision with the Abels' lot (Lot 2) being one of those five lots. He added that in his experience, it is County policy that all lots in the original subdivision must be shown on the FDP. If this was a minor subdivision of three lots or less, there would not have been an FDP or a Hearing Officer's hearing, and both occurred in 2006. Therefore, the Abels have standing. In addition to that, Mr. Doak stated that Subsection 7.b(2) provides a separate basis for standing such that an

owner of a lot abutting or lying directly across the street or other right-of-way from the property can have standing, and need not be part of the subdivision. Under that Subsection, because the Abels' lot abuts the Property, the Abels have standing.

DECISION.

I. The Residential Transition Area Regulations.

Petitioner asserts that the proposed Plan complies in all respects with the RTA regulations set forth in BCZR, §1B01.1.B.1.a-e and therefore it is entitled to construct the proposed synagogue. For this reason, Petitioner believes the Board need not consider its request for approval under Exception g(6). In the alternative, Petitioner requests that if the Board finds that the conditions in Subsection B.1.e have not been met, then the proposed Plan should be approved under Exception g(6).

A. Legislative History of the Residential Transition Area Regulations.

Given some of the arguments raised in this case, a thorough understanding and application of the RTA Regulations to the facts in this case requires an overview of its legislative history. In 1970, the Baltimore County Council enacted Bill 100-70 which changed the pattern of residential subdivision development from a system based on minimum lot sizes, with specific types of housing in each zone, to a system based on density per acre with virtually all types of housing permitted in each zone. (PC Ex. 9). (Final Report of Baltimore County Planning Board, adopted 9/19/1991, p. 1).

While Bill 100-70 was designed to promote a variety of housing types in any D.R. zone ranging from single-family detached to apartment buildings, it permitted by right, the movement of density across zoning classification boundaries for tracts containing more than one D.R. zone,

without regard for the zoning boundaries. (County Council Resolution 38-91). However, the flexibility provided in Bill 100-70 often resulted in development that was incompatible with the surrounding existing neighborhoods, and uncertainty among County residents as to the ultimate build out of vacant land in established neighborhoods. (*Id*).

With the change to a density per acre system, Bill 100-70 created transition requirements, called "Residential Transition Areas," which initially provided a method to assure a similar appearance (through bulk and area standards) between existing and new residential subdivisions, even if the existing and new housing types were different. (PC Ex. 9; Bill 100-70).

Bill 100-70 informs us that the original purpose of a 50-foot Buffer Area requirement was to: "provide a method of screening a proposed residential transition use from any existing dwelling or lot in a residential transition area." The RTA uses in Bill 100-70 were divided into four groups of dwellings, which included single-family and group homes. Churches and community buildings were not initially included as RTA uses.

In 1981, through Bill 124-81, the groups of RTA uses listed in Bill 100-70 were replaced with the current definition of "Residential Transition Use" found in BCZR, §1B01.1.A as those uses permitted as of right, and by special exception as found in BCZR, §1B01.1.C. As of 1981, no other buildings were permitted within the buffer, except "walkways, site landscaping, and other similar site amenities." (*Id.*). The buffer and minimum building setbacks set forth in Bill 124-81 were measured from the "abutting residential lot line" that existed at the time the new development was to occur.

Bill 124-81 also added to Bill 100-70 in explaining that the RTA setbacks and buffer criteria (as currently found in BCZR, §1B01.1.B.1.e) were established to provide for separation and buffering in the event that the housing type to be developed was not the same as the housing

which already existed. Bill 124-81 created four exceptions from the RTA restrictions. One of those exceptions was for the reconstruction of an existing church which was destroyed by natural causes, as currently found in BCZR, §1B01.1.B.1.g(3).

In 1982, the County Council passed Bill No 109-82, which replaced the buffer measurement from an "abutting residential lot line" with a buffer situated so as to effectively "screen off-site dwellings…that lie within 300 feet of a proposed building or parking lot." With regard to uses permitted within the buffer area, Bill 109-82 retained "walkways" and "site landscaping" from Bill 124-81 but replaced "other similar amenities" with "storm drain easements and public utility uses other than a public utility service center or a storage yard or a road or a right-of-way."

Bill 109-82 also provided for additional RTA exceptions including, three additional exceptions for "church[es] or other buildings for religious worship." The language in Exception g(6) for a "new church" (at issue in this case) has not been changed since 1982 with the enactment of Bill 109-82.

In June 1991, the County Council passed Resolution 38-91 requesting that the Baltimore County Planning Board revise and amend the BCZR relating to RTAs. The Planning Board issued a Final Report dated September 19, 1991 which primarily recommended the language as exists today in BCZR, §1B01.1.B.

Based on the 1991 Planning Board Final Report, the County Council passed Bill 2-92, in which the previous wording for the definition, purpose, and generation of the RTA was modified but the primary goal of the RTA Regulations remained unchanged. The "Declaration of Findings" by the County Council, as now found in BCZR, §1B00.1, added Subsections G and H in order to highlight the unintended consequence caused by Bill 100-70 of distributing density across

different zone boundaries, as well as the problem of residential development which was incompatible with existing neighborhoods due to this flexibility in density. Subsection F was also added to the "Purpose" Section of the D.R. zones, revealing the County Council's intent to "provide greater certainty about dwelling types and densities **within existing communities with the goal of conserving and maintaining these areas.**" (Emphasis Added).

Toward that end, in Bill 2-92, the County Council modified the RTA from a 300-foot transition area to a 100-foot transition area and included any public road or public right-of-way, extending from a D.R.-zoned tract boundary into the site to be developed as now found in BCZR, §1B01.1.B.1.a(1). Similarly, the County Council added the introductory purpose of the RTA found in BCZR, §1B01.1.B.1.a(2) which was to assure that similar housing types are built adjacent to one another, or that adequate buffers and screening are provided between dissimilar housing types.

In addition, Bill 2-92 delineated when a 100-foot transition area is generated, as now contained in BCZR, §1B01.1.B.1.b(1) and (2). At that time, Bill 2-92 did not specify that the property to be developed had to be zoned D.R. (as is now found in BCZR, 1B01.1.B.1.b); it only had to lie adjacent to land zoned D.R.1, D.R.2, D.R.3.5, D.R. 5.5 or R.C. BCZR, §1B01.1.B.1.b(1) and (2) now contain the provision that the property to be developed must be zoned D.R. and lie adjacent to land zoned D.R.1, D.R.2, D.R.3.5, D.R.5.5 or R.C. which contains a single-family dwelling within 150 feet of tract boundary.

Importantly, Bill 2-92 created the variance process found in BCZR, §1B01.1.B.1.c, wherein the hearing officer is given authority to modify the RTA, including a reduction of the 100-foot Transition Area, provided that the hearing officer finds that such a reduction will not adversely impact the residential community or development on the land adjacent to the property

to be developed. Subsequently, Bill 137-04, added the requirement that an RTA variance would require a finding of "Compatibility" under BCC, §32-4-402 after a hearing officer's hearing.

In 2004, Bill 8-04 added the requirement that a property to be developed must be zoned D.R. In that Bill, the County Council added the provision originally omitted from the language in Bill 2-92, that the RTA requirements contained in BCZR, §1B01.1.B.1 were only intended to apply to D.R./R.C.-zoned properties, not to the development of residential dwellings within a non-residential zone.

The last significant piece of legislation is Bill 68-11 which added a fifth exception for churches or other building of religious worship under BCZR, §1B01.B.1.g(16). This exception is for new churches where the footprint of the building is located entirely within the Business-roadside (B.R.) zoned portion of a tract which is split-zoned D.R. and B.R.

B. Current RTA Regulations – BCZR, §1B01.1

With that legislative history in mind, BCZR, Article 1B as presently constituted, is titled, "Density Residential (D.R.) Zones." Within Article 1B, Section 1B01 sets forth the regulations with respect to D.R. zones in general, and Subsection 1B01.1 is entitled "General use regulations in D.R. zones." Contained within Subsection 1B01.1.A is a list of 19 "uses" permitted as of right in a D.R. zone, which uses are *subject to* the RTA restrictions contained in Subsection 1B01.1.B. Among those uses are: "churches, other buildings for religious worship or other religious institutions." (BCZR, §1B01.1.A.3).

Similarly, Subsection 1B01.1.B delineates the "use restrictions based on existing subdivision and development characteristics." It is divided into three parts: (1) Residential Transition areas and uses permitted therein (BCZR, §1B01.1.B.1); (2) Use regulations in existing

development (BCZR, §1B01.1.B.2); and (3) Use regulations for existing subdivision tracts (BCZR, §1B01.1.B.3).

As our focus is on the RTA restrictions, we note that BCZR, §1B01.1.B.1 utilizes the terms "area" and "uses." Before determining whether an "area" is generated here, it is necessary to determine whether the proposed use as a synagogue is a "residential transition use" under §1B01.1.B.1.d. If the proposed synagogue is an RTA use, it is subject to the RTA restrictions.

On that point, we note first that the Petitioner does not dispute that the RTA restrictions apply. Indeed, the Petition filed in this case requests a determination that the proposed synagogue meets the RTA Regulations and, if not, that it meets Exception g(6). Second, even without the Petitioner's acknowledgement that the RTA Regulations apply here, given that "building[s] for religious worship" are permitted uses as of right under BCZR, §1B01.1.A.3, a synagogue is a residential transition use under §1B01.1.B.1.d(1). As such, it is subject to the RTA restrictions.

Third, the Court of Special Appeals in *Ware v. People's Counsel for Baltimore County*, 223 Md. App. 669, 682-683 (2015), affirming this Board, held that, even though the purpose of the RTA restrictions under BCZR, §1B01.1.B.1.a(2) is to assure similar "housing types" are built adjacent to one another, non-residential uses under BCZR, §1B01.1.A.3 including hospitals, day care facilities, schools and churches are also subject to the RTA Regulations. As the Court in *Ware* explained:

> This conclusion also is borne out by the exceptions to the RTA conditions. If compliance with RTA conditions only would be required when a property owner proposed the development of a "dissimilar housing type," there would be no need for the four exceptions for church uses, the exception for a child care center, or the exception for transit facility or rail passenger facility. None of these uses involve housing and all are expressly excepted from the application of the RTA conditions.

(*Id.* at 683). Based on the *Ware* holding, we find that the RTA restrictions apply to this proposed synagogue use.

With regard to the "area" restrictions, the RTA is a 100 foot "area" extending from a tract boundary zoned D.R., into a D.R.-zoned site to be developed (previously defined herein as the "100-foot Transition Area"). BCZR, §1B01.1.B.1.a(1). Section 1B01.1.B.1.b reveals that the transition "area" is generated if the property to be developed is zoned D.R., and lies adjacent to land zoned D.R.1, D.R.2, D.R.3.5, D.R. 5.5 or R.C. which:

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

In this case, nearly all of the Property is zoned D.R.1, and it lies adjacent to single-family homes located both in a D.R.2 zone and R.C.5 zones. As a result, we find the 100-foot Transition Area has been generated here.

Next, BCZR, §1B01.1.B.1.e. mandates that, within the 100-foot Transition Area, conditions on setbacks and buffers are imposed. In this case, because the proposed Plan is for a RTA use, one such condition is for an "upgraded, uncleared, [and] landscaped" 50-foot Buffer. §1B01.1.B.1.e(3). The 50-foot Buffer must not contain cleared drainage areas, storm water management ponds, or accessory structures, but may be bisected by roads, paths, and trails that are designed to connect to adjoining developments. (*Id.*). Another condition is that all principal or accessory structures, and all parking lots, must not only provide the 50-foot Buffer, but must also provide a 75-foot Setback from the track boundary. BCZR, §1B01.1.B.1.e(5).

C. Does the Proposed Plan comply with the RTA Regulations on its face without meeting Exception g(6)?

1. The Parsonage:

a. Proposed Parsonage is an Accessory Structure Not Permitted within the 50-foot Buffer under BCZR, §1B01.1.B.1.e(3).

As it currently exists under the 2006 FDP (Pet. Ex. 24D; Prot. Ex. 9), the existing farmhouse is the principal use on Lot 3 and has been used as a dwelling since 1851. Under the 2006 FDP, Lots 3A and 3B were to be developed as single-family homes and the principal uses of those lots would have been dwellings.

However, under the proposed Plan, the Petitioner is combining Lots 3, 3A, and 3B into one single lot, the principal use of which both Parties agree will be a non-residential building. The existing farmhouse/parsonage then, by definition, will become an accessory structure in support of the principal synagogue building. On this point, we note that it was the Petitioner who labeled and identified the existing farmhouse as a "parsonage" on the proposed Plan. (Pet. Ex. 1). Likewise, in the Petition filed with Baltimore County, the Petitioner requested confirmation that the existing farmhouse be permitted to remain as a "parsonage" for use by the synagogue clergy.

Surprisingly, there was a consensus among opposing experts, Ms. McArthur and Mr. Thaler for the Petitioner, and Mr. Doak for the Protestants, that the parsonage met the definition of "accessory structure" under BCZR, §101.1, and that the proposed synagogue met the definition of "principal use" under the same Section. Ms. McArthur added that the parsonage was a use provided by the synagogue and would therefore be a part of the synagogue.

The disagreement between the parties lies in the interpretation of BCZR, §1B01.1.B.1.e(3). Ms. McArthur and Mr. Thaler each opined that the meaning of the term "accessory structure" in Subsection B.1.e(3) is limited to accessory structures connected to storm

water management facilities. Both experts concluded that because the parsonage is not connected to storm water management, it is permitted to remain in the 50-foot Buffer.

However, Mr. Doak emphasized that the term "accessory structure" is not limited to storm water management functions because it has a defined meaning as found in BCZR, §101.1 and is often referenced in zoning cases:

> ACCESSORY USE OR STRUCTURE
> A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served; except that, where specifically provided in the applicable regulations, accessory off-street parking need not be located on the same lot. An accessory building, as defined above, shall be considered an accessory structure.

Similarly, he added that the BCC also defines "accessory structure" as follows:

> **BCC, § 32-4-101. –DEFINITIONS**
>
> (a) *In general.* In this title the following words have the meanings indicated.
>
> (b) *Accessory structure.*
>
> (1) "Accessory structure" means a building or other improvement to property that has a use or an intended use that is subordinate or customarily incidental to the use of the principal building on the same lot, parcel, or tract.
>
> (2) "Accessory structure" includes additions or modifications to the principal building.

Mr. Doak emphasized that the term "principal use" is also defined in BCZR, §101.1 as: "a main use of land, as distinguished from an accessory use." Reduced to its simplest terms, the Protestants' argument is that a single lot cannot have two principal uses.[2] By definition, if there is a principal structure, the other structure on the same lot becomes "accessory." Accordingly, under the proposed Plan, we find that the synagogue and parsonage cannot both be principal structures on the new, single lot.

Under the proposed Plan, we agree with the experts and find that the synagogue will become the principal use of the lot under BCZR §101.1, and that the parsonage will become the "accessory structure" under BCZR §101.1. Based on the evidence presented, we find that the parsonage meets the BCZR §101.1 definition of "accessory structure" because it is a structure which is "customarily incident and subordinate to" the synagogue building, and, in terms of size, it is also "incident and subordinate in area, extent and purpose" to the synagogue building. Additionally, the parsonage meets the remaining part of the definition of "accessory use or structure" because it will be located on the same lot as the synagogue, and it contributes to the comfort, convenience and necessity of the Rabbi and will serve as an additional workplace and meeting place for the operation of the synagogue.

In fact, on the Colbert, Matz Plan (Abel Ex. 1) (Prot. Ex. 5), the Petitioner clearly identified the parsonage as an "Accessory Building." Yet, we see that this same identification of

[2] The defined terms "principal use" and "accessory use" are separate and distinct terms found throughout the BCZR. By way of example, a restaurant is a principal use and a carryout service is accessory to the restaurant business. BCZR, §101.1. Likewise, an "accessory apartment" can be located either in the principal single family dwelling or in a separate accessory building. (*Id*). A fishing or shell fishing facility is a principal use that consists of the buildings, equipment, or other facilities necessary to accommodate the onshore activities of a fishing and shell fishing business. A garage is an accessory building, portion of a main building, or building attached thereto used for storage of private motor vehicles. A produce stand is an accessory structure placed on a farm property for the sale of indigenous produce, all of which has been grown or produced on that property or on adjacent land, or on properties farmed by the same agricultural producer.

the parsonage was noticeably missing on the proposed Plan. (Pet. Ex. 1). Accordingly, the Petitioner's creative interpretation of Subsection B.1.e(3) is in conflict with the Colbert, Matz Plan. The reference to "Accessory Building" therein is further evidence, if not outright admission attributable to Petitioner, of the nature of the parsonage relative to the synagogue.

Petitioner's reading of Subsection B.1.e(3) became even more unconvincing to this Board when Ms. McArthur testified that, under the proposed Plan, the existing barn on the Property must be demolished because it is an "accessory building" which violates the 50-foot Buffer. Yet, it was undisputed that the barn is neither connected to storm water management facilities, nor to the drainage of water. If the Petitioner's interpretation of Subsection B.1.e(3) were accurate, the barn, like the parsonage, would not be a violation of the 50-foot Buffer Area and would not need to be removed. Because it is in violation, the parsonage must also be in violation.

Moreover, we find that there is no legislative history or other legal support for the Petitioner's theory that the "accessory structures" identified in Subsection B.1.e(3) refers only to structures which are accessory to storm water management ponds. If we were to agree with the Petitioner on this point, we would be re-writing that Subsection as: "drainage areas or storm water management ponds and its accessory structures." As defined terms in both the BCZR and the BCC, we can neither overlook the definitions of "principal" and "accessory," nor can we agree that those terms have different meanings in the context of the RTA Regulations. It is beyond the role of this Board to rewrite zoning regulations. Specifically, there are no words in Subsection B.1.e.(3) which limit "accessory structures" to those only related to storm water management facilities. We interpret that requirement as it expressly reads: accessory structures are not permitted in the 50-foot Buffer area.

Furthermore, the intent of the County Council was made clear to this Board through the selection of the word "shall" before the words "upgraded, uncleared and landscaped" in Subsection B.1.e(3). The obligation to keep the buffer free and clear of all structures – parsonages and barns alike - is mandatory, not discretionary. That phrase is also harmonious with the intent and purpose of the legislative history which was to keep a buffer of "vegetation and woodlands" that would *provide a screen for the existing dwellings*. Under the Petitioner's reading, an accessory building would become the "*screen*" for the existing, adjacent dwellings. That notion is exactly contrary to the purpose behind the RTA Regulations.

We know that, with the enactment of Bill 124-81, the 50-foot Buffer area, with the exception of walkways, contains only landscaping:

> 5. (A) The purpose of the Buffer Area requirement is to provide a method of screening a proposed residential transition use from any existing dwelling or lot in a residential transition area. In order to accomplish that purpose, the Buffer Area shall consist of vegetation or woodland, at least 70% of which shall be evergreen trees of a minimum height of 6 feet, and 10% of which shall be shrubs of a minimum spread of 15 inches. The Buffer area shall contain one tree or shrub for each 3 feet of the boundary of the buffer area.
>
> (B) **No other uses are permitted within the Buffer Area, except walkways, site landscaping, and other similar site amenities.**

(Emphasis Added). This requirement has not changed.

b. Parsonage is Not Permitted within the 50-foot Buffer under BCZR, §1B01.1.B.1.e(5).

In addition to mandatory language in Subsection B.1.e(3), the Petitioner's belief that the existing farmhouse/parsonage can exist in the 50-foot Buffer area is also contrary to the restriction in Subsection B.1.e(5). Under Subsection B.1.e(5), the same limitation as to the 50-foot Buffer is repeated without distinction between principal or accessory uses or buildings. As previously

stated, Ms. McArthur confirmed for this Board that the restrictions in Subsection B.1.e.(5) apply to both buildings and parking lots. Subsection B.1.e.(5) directs that a parsonage - whether as a principal or an accessory use – must provide the same 50-foot Buffer:

> [S]tructures, either as principal or accessory use, whether permitted by right, special exception or pursuant to Section 409.8.B shall provide a fifty-foot buffer.

Accordingly, the proposed Plan also fails to provide the 50-foot Buffer area under Subsection B.1.e(5).

Finally, Petitioner turned to Subsection B.1.e(1) in an attempt to validate the location of the parsonage within the 50-foot Buffer area. As will be discussed in detail below, Subsection B.1.e(1) permits a single family or duplex dwelling to be built in the 100-foot Transition Area. In reviewing this argument, even assuming *arguendo* that the parsonage is a "single-family dwelling" under that Subsection and could therefore remain in the 100-foot Transition Area, it is clear that the parsonage is still separately prohibited from being located in the 50-foot Buffer area under Subsection B.1.e(3).

In making this argument, Petitioner clearly muddles these two separate RTA restrictions. Consequently, we find the Petitioner's interpretation on this point to be entirely self-serving. Thus, the parsonage violates Subsection B.1.e.(5) because it is located within the 50-foot Buffer area.

c. Parsonage is not permitted within 75-foot Setback under BCZR, §1B01.1.B.1.e(5).

The other RTA restriction in Subsection B.1.e.(5) directs that the parsonage - whether as a principal or an accessory structure or use – must also provide a 75-foot setback:

> [S]tructures, either as principal or accessory use, whether permitted by right, special exception or pursuant to Section 409.8.B shall provide a...seventy-five foot setback,....

Under the proposed Plan, it is clear that the entire parsonage is located inside the 75-foot Setback. (Pet. Ex. 1). Again, the language in Subsection B.1.e(5) through the use of the word "shall" makes this restriction mandatory. For the same reasons that we previously articulated with regard to Subsection B.1.e(1) as to certain dwellings being permitted to be built within the 100-foot Transition Area, that Subsection does not exempt the parsonage from being located in the 75-foot Setback. As a result, the proposed Plan violates Subsection B.1.e.(5) for this reason.

d. Parsonage is not permitted within the 100-foot Transition Area under BCZR, §1B01.1.B.1.e(1).

We are compelled to address the Petitioner's argument that the location of the existing farmhouse/parsonage is permitted within the 100-foot Transition Area because it is the "single-family dwelling" which is identified in Subsection B.1.e(1). Petitioner repeated this theory throughout the hearings. Based on the legislative history above, and express words enacted in Subsection B.1, we find that Subsection B.1.e(1) only applies when a new dwelling is proposed to be constructed; not as in this case, where a non-residential building is being proposed for construction on a lot and a building that already exists on the same lot. It is clear that the RTA Regulations apply **when construction is proposed** for any of the 19 uses listed in BCZR, §1B01.1.A. For that matter, each of the Exceptions to the RTA describe future construction, additions and/or improvements to existing buildings.

While at first glance this issue may seem immaterial given that the existing farmhouse/parsonage is still a single-family dwelling whether it is to be built or existing, the distinction is critical to the application of the RTA Regulations in this and future cases. In our

view, the Petitioner's selection of "single-family dwelling" in Subsection B.1.e(1) is taken out of context and distorts the statutory framework of Section B.1 in an attempt to legitimize the location of this farmhouse to make the proposed Plan appear to meet the RTA Regulations. Contrary to the Petitioner's argument, we find that the term "single-family dwelling" used in Subsection B.1.e(1) refers to a proposed dwelling *to be built*, not to an existing dwelling.

By way of example, if the Property were to be developed as outlined on the 2006 FDP with two new single-family dwellings, those two new single family dwellings would generate the 100-foot Transition Area because the lots are located within 150-feet of the existing single family homes in Stevenson Park as well as within 150-feet of the existing farmhouse which is on its own lot (Lot 3). In that situation, the existing farmhouse, like the adjacent homes, acts to generate the 100-foot Transition Area. To be clear, because the homes to be built are single-family dwellings, Subsection B.1.e(1) would permit construction of those two, new dwellings within the 100-foot Transition Area. This assures that similar housing types (i.e. existing single-family homes and new single-family homes) *are built* adjacent to one another. (BCZR, §1B01.1. B.1.b(2)).

We know from the legislative history that the RTA Regulations, as enacted in 1970 through Bill 100-70, and as amended in 1981 through Bill 124-81, and in 1982 through Bill 109-82, were intended to address citizen concerns for the *construction of* group homes, multi-family units, and apartment buildings on vacant land next to existing neighborhoods of single-family homes. As discussed above, while Bill 100-70 was designed to promote a variety of housing types in any D.R. zoned land, the unintended effect of Bill 100-70 was the *construction of* group homes, multi-family units, and apartment buildings on vacant land, which development was *incompatible* with existing neighborhoods of single-family homes.

As we see in Bill 109-82, as originally drafted, the proposed placement of new single-family or duplex dwellings was permitted in the transition area if the proposed dwelling was "of the same type" as the existing dwellings. If the proposed use was dissimilar from the existing dwellings in the RTA, then the buffer had to be provided between the new use and the dissimilar use.

Here, as articulated by Ms. McArthur, the existing farmhouse/parsonage becomes part of, and functions on behalf of the synagogue. The existing farmhouse/parsonage will not only be used to house the Rabbi, but will serve as a place to conduct business of the synagogue and for meetings with the Rabbi. It will therefore be a dissimilar use. As the Petitioner's expert concedes, a dissimilar use located inside the 100-foot Transition Area must provide for the 50-foot Buffer Area and 75-foot Setback, which, as we have previously addressed above, it cannot do within the confines of the buildable space on this Property.

As such, the correct reading of Subsection B.1.b(1) is that, when a new single-family detached, semi-detached or duplex dwelling is proposed to be built on vacant land, the prospective home is permitted to be constructed within the 100-foot Transition Area under Subsection B.1.e(1). This reading is consistent with the language chosen by the County Council in Subsection B.1.b(1) which refers to *future construction of new dwellings*:

> the RTA is generated when D.R. zoned property is "***to be developed***" **next to *existing* development** ("lies adjacent to land zoned D.R.1... which (1) contains a single-family detached, semi-detached or duplex dwelling").

(Emphasis Added).

This interpretation is also consistent with the stated purpose of the RTA in Subsection B.1.a(2) which is: "to assure that similar housing types *are built* adjacent to one another."

Additionally, the language used in Exception g(1) that the "*proposed dwelling to be placed* in the RTA containing existing dwellings of the same type…" reiterates that Subsection B.1.e(1) applies to future development of certain dwellings.

Of the few Maryland appellate cases addressing the RTA Regulations, *Miller v. Forty West Builders, Inc.*, 62 Md. App. 320, 489 A.2d 76 (1984) shows how Subsection B.1.e(1) was designed to be applied. In *Forty West Builders*, a community of single family homes was adjacent to an unimproved tract of land. Forty West Builders proposed to construct seven single-family homes and 12 rowhomes inside the 100-foot Transition Area. The Court of Special Appeals clarified that the proposed future development of rowhomes in the 100-foot Transition Area was considered a "dissimilar use" from existing single-family homes. (*Id.* at 338). As a dissimilar use, the Court of Special Appeals held that the plan for the new row homes should not have been approved because it failed to provide the 50-foot Buffer and 75-foot Setback. (*Id.* at 336-337).

The *Forty West Builders* Court in interpreting the 1982 version of the RTA Regulations discussed future development within the 100-foot Transition Area:

> In the case *sub judice*, appellee **proposes to develop a residential transition area and must, therefore, provide the defined buffer area between the new use and any abutting lot line that exists in the residential transition area**, or come within one of the state exceptions. The plan did not provide for a buffer area which was required to "consist of vegetation or woodland," of at least 70% evergreen trees and 10% shrubs. BCZR, §1B01.1-B.1.b.5(a) (1981).
>
> The plan does not satisfy the "similar type of dwelling" exception, which provides that the buffer area requirements do not apply to **proposed dwellings to be placed in a residential transition area containing existing dwellings of the same type**, defined as "a dwelling which has the same or lesser number of dwelling units. BCZR, §1B01.1-B.1.c.1 (1982).

(Emphasis Added).

Finally, in light of the *Forty West Builders* case, the existing farmhouse/parsonage is further disqualified from being the single-family dwelling identified in Subsection B.1.e(1), because it must be the principal building on the new single lot. But, as we know, under the proposed Plan, the synagogue is the principal building and existing farmhouse/parsonage is accessory to it.

Thus, for these reasons, the existing farmhouse/parsonage is not permitted within the 100-foot Transition Area under Subsection B.1.e(1).

2. The Drainage Areas.

a. Cleared Drainage Areas not permitted within the 50-foot Buffer Area under BCZR, §1B01.1.B.1.e(3).

The proposed Plan also fails to meet the restriction against the location of drainage areas within the 50-foot Buffer set forth in Subsection B.1.e(3). On cross examination, Ms. McArthur admitted that drainage areas were set forth within the 50-foot Buffer Area. While caging her answer, she indicated that while the proposed Plan showed these drainage areas, they were easements recorded for the 2006 FDP. (Pet. Ex. 24D). In fact, the drainage areas are located on the 2006 FDP. (*Id.*). When pressed on this issue, Ms. McArthur testified that the Petitioner had not decided whether or not those particular drainage fields will used.

In our review of the evidence, we have a proposed Plan which shows drainage areas located in the 50-foot Buffer Area. While Ms. McArthur testified that the Petitioner did not "clear" that area, photographs of that drainage area reveal that that it is clear of trees. (Prot. Ex. 21A). As previously indicated, the 50-foot Buffer Area is designed to consist of a natural screen of trees and vegetation. Therefore, having trees planted in the same areas where water will be directed would threaten the root systems. Indeed, we see drainage fields in the same location on

the Colbert, Matz Plan, (Prot. Ex. 5) (Abel Ex. 1) thus making Ms. McArthur's explanation evasive at best.

It is obvious to this Board that the proposed Plan will need a drainage field. With the limited buildable area on this Property, if the Petitioner proposed to put the drainage area in a location on the Property other than within the 50-foot Buffer Area as shown, then the proposed Plan should have directed this Board to that area in order that we can consider whether this factor has been satisfied. In the alternative, if the Petitioner has not yet decided whether to use the drainage areas which it shows on the proposed Plan, then, in our view, the Petitioner has failed to prove that the proposed Plan meets all the requirements in Subsection B.1.e(3). We also note that the Petitioner was careful to address each of the other criteria in Subsection B.1.e(3) but was noticeably reticent to commit on this issue. Either way, we find that the proposed Plan is in violation of Subsection B.1.e(3).

3. RTA Variance not Requested by Petitioner.

When a proposed development cannot meet the RTA restrictions, as is the case here, one option available is to request a variance from the RTA restrictions under Subsection 1.c. If a variance is requested, a hearing officer would then determine the extent of the RTA. Bill 2-1992 created the variance relief.

For the proposed Plan, Petitioner did not request a variance. Instead, the Petitioner opted to proceed under Exception g(6) for new religious buildings as discussed below. Yet, when filing the Colbert, Matz Plan, the Petitioner did request variance relief from the RTA Regulations. This is compelling evidence that the Petitioner was not only aware that a variance should be requested but that one was needed to meet the RTA Regulations. Accordingly, we find that the Petitioner knowingly waived this option.

D. Does the proposed Plan meet the exception from the RTA standards for new churches or other buildings for religious worship under BCZR, §1B01.1.B.1.g(6)?

As the above analysis demonstrates, the proposed Plan, on its face, does not meet BCZR, §1B01.1.B.1.e due to the location of the parsonage, in the 50-foot Buffer Area, in the 75-foot Setback, and in the 100-foot Transition Area, due to the location of the drainage fields and due to the failure to request a variance. As a result, the Petition can only be granted if the Petitioner meets an exception from the RTA Regulations under BCZR, §1B01.1.B.1.g.

As we know, the Petition requests approval of the exception for new churches under Exception g(6). If the proposed Plan meets Exception g(6), the conditions listed in BCZR, §1B01.1.B.1.e do not apply, and the proposed parsonage can be located in the 50-foot Buffer Area, and in the 75-foot Setback.

The "new church" exception set forth in Exception g(6) reads as follows:

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

As indicated by the legislative history, Exception g(6) has remained the same since 1982 (Bill 109-82). Petitioner advocates that the proposed Plan meets this Exception because the synagogue and parsonage have been planned "to the extent possible" to meet the RTA use requirements. Having heard the evidence here, it is the Petitioner's position that "to the extent possible" means "as best it can" in order for the 88-seat synagogue to be built on this Property and in order for the parsonage to remain in its present location.

The Petitioner argues that, because a religious building is a use permitted by right in the D.R. zone under BCZR, §1B01.1.A.3, the proposed Plan *is presumed*, under Exception g(6), to be "compatible with the character and general welfare of the surrounding residential premises."

We do not agree. If that were so, there would be no need for the RTA Exceptions; the proposed church or religious building would automatically be compatible. This argument ignores the language in Exception g(6) which requires that "a hearing" be held and that "findings" be made of compliance with the RTA Regulations and compatibility with, the boundaries of, the character of, and the general welfare of the surrounding residential premises. If there was "automatic compatibility," there would be no need for a hearing.

Reading the list of RTA Exceptions, we see that it was particularly important to the County Council that findings of fact be made after a merits hearing because the same process is repeated in both the "New Community Building" exception under g(10), and the "Group Child Care Centers" exception under g(11). Conspicuous in these exceptions is an inherent trust in the hearing process. Thus, the mandatory findings to be made by this Board in Exception g(6) were not an anomaly to be ignored, or glossed over when convenient.

Another reason why a church permitted by right under Subsection A cannot be deemed "automatically compatible" is because the County Council created five separate exceptions for churches/buildings for religious worship, each of which has its own specific requirements. If the Petitioner were correct, there would be no reason for the County Council to have done so.

1. Does the proposed Plan comply "to the extent possible" with the RTA Regulations?

In determining whether the proposed Plan meets the RTA Regulations "to the extent possible," we weigh heavily the fact that the Petitioner, prior to filing the proposed Plan, filed the

Colbert, Matz Plan for a smaller, 35-seat, 1,225 sq. ft. synagogue, which was to be housed in the existing barn on the Property. (Abel Ex. 1; Prot. Ex. 5). On this issue, it is significant that the Petitioner withdrew a smaller plan in favor of a building which is 6.5 times its size. Ms. McArthur explained that if the proposed synagogue were built outside of the 100-foot Transition Area (i.e. inside the green box on Pet. Ex. 1), then there would not be a requirement to meet the 75-foot Setback or 50-foot Buffer Area. Thus, the Petitioner has caused these additional requirements to come into play with its desire for a larger building in a confined buildable area.

In essence, the proposed Plan attempts to squeeze this 8,000 sq. ft. building, and its accompanying parking lot, into the only spot (according to Mr. Thaler's and Ms. McArthur's testimony) that is buildable on the Property due to the Forest Conservation Easement, existing topography and access issues. These site constraints impact the location of the proposed improvements.

Here, the Property chosen is an oddly-shaped heptagon, consisting of a total of 3.49 acres. (Pet. Ex. 1). The width of the Property across the spot where the proposed building will be located is only 260 feet+/-. (*Id.*). Additionally, on the western portion of the Property, 0.6875 acres of the total 3.49 acres is consumed by an existing Forest Conservation area and Forest Buffer area which is unbuildable. (Abel Ex. 2; Pet. Ex. 1). Taking into account this Forest Conservation area, along with the location of the existing parsonage, existing driveway and other existing infrastructure, the only remaining place on the Property (according to Mr. Thaler) is not nearly large enough to even remotely meet the RTA Regulations for what the Petitioner desires. When asked about the reason for the larger building, Rabbi Belinsky testified that he wanted the 88-seat synagogue because he expected growth of his congregation.

As we see it, the existence of the Colbert, Matz Plan proposing a smaller synagogue is one compelling piece of evidence which negates the Petitioner's assertion that the proposed Plan complies "to the extent possible." While we are not deciding here that the Colbert, Matz Plan would comply with the RTA Regulations, we find that a smaller building with a smaller parking lot (nine spaces) would, at least comply *to a better extent* than a larger building with a larger parking lot (22 spaces), which larger building not only infiltrates the 100-foot Transition Area, but consumes both the 50-foot Buffer Area and 75-foot Setback with its accessory parsonage.

Understanding that a larger building is designed to accommodate growth, if approved, the legislative policy behind instituting a 100-foot Transition Area, a 50-foot Buffer and a 75-foot Setback between a proposed building and existing homes, would be entirely disregarded. Since 1992, (Bill 2-92), the 100-foot Transition Area has been in place. To reduce the 100-foot Transition Area even further and allow the proposed synagogue to be built and the parsonage to remain, while at the same time eliminating the 50-foot Buffer and the 75-foot Setback, is not complying "to the extent possible" with the RTA Regulations.

Reduction of these areas overlooks the importance of, and reasons for, their creation. Our reasoning is supported by the language found in two of the other exceptions applicable to churches/buildings for religious worship. With regard to religious buildings in the RTA context, the requirement for a 100-foot Transition Area, 50-foot Buffer, and 75-foot Setback was obviously important to the County Council as it was repeated in Exception g(4) when an addition to an existing church is proposed, and when a new church is proposed on land large enough to provide a 100-foot yard area in Exception g(5) as follows:

> g(4) An addition to an existing church or other building for religious worship, including parking areas and driveways,

> **provided all other applicable zoning regulations including setback, parking and screening requirements, are maintained.**
>
> g(5) A new church or other building for religious worship constructed on a parcel of **land large enough to provide landscaped but otherwise unimproved yard areas of 100 feet between any improvement and any property line** other than street frontage.

(Emphasis Added). For all these reasons, the proposed Plan fails to comply "to the extent possible."

2. Compatible with the Character and General Welfare of the Surrounding Residential Premises.

Even if the proposed Plan was found to comply with the RTA Regulations "to the extent possible," the other part of the Exception g(6) requires that the proposed Plan be "compatible with the character and general welfare of the surrounding residential premises." In weighing the evidence on this requirement, this Board must first determine the extent of the area that comprises the "surrounding residential premises."

(a) "Surrounding Residential Premises."

The Petitioner, through Mr. Thaler, identified the "surrounding residential premises" as a "neighborhood" stretching from I-695 to Greenspring Valley Road and from Park Heights Avenue to Greenspring Avenue. We take judicial notice that this "neighborhood" is a little more than one square mile.[3] He based this area on the definition of "neighborhood" found in BCC, §32-4-402 which is entitled "Compatibility." As he testified, his "neighborhood" included larger

[3] BCC, Board Rule 7, Appendix B permits this Board to use its discretion and apply the MD Rules of Evidence. Under MD Rule 5-201, this Board may take judicial notice of mileage. Under that Rule, mileage is both "generally known" and "capable of accurate and ready determination." *Sugarloaf Citizens Ass'n v. Dept. of Env.*, 103 Md. App. 269, 279 (1994) (judicial notice of proximity of appellant's property to determine standing).

homes in the Anton Farms subdivision, located south and west of the Property. (Pet. Ex. 18A-J; Pet. Ex. 19).

We do not agree that the County Council intended for the phrase "surrounding residential premises" in Exception g(6) to equate to definition of "neighborhood" in BCC, §32-4-402. First, BCC, §32-4-402(a) specifically states that the definition of "neighborhood" only applies in BCC, Section 402. Therefore, it is not applicable to the RTA Regulations.

Second, if the County Council had intended for this Board to apply BCC, §32-4-402 in regard to Exception g(6), that Exception would have used the term "neighborhood." In fact, we know that as of 2004, with Bill 137-04, the County Council was aware of the existence of BCC, §32-4-402 because a request for a RTA Variance in BCZR, §1B01.1.B.1.c.(2) specifically identifies BCC, §32-4-402 and requires the hearing officer to apply the "Compatibility" factors there in rendering a variance decision. The County Council has also been clear as to the application of the 'Compatibility" Factors in other areas of the BCC where a hearing officer must make such "Compatibility" findings in regard to Planned Unit Developments under BCC, §32-4-243(b)(3)(iv)3. Thus, the County Council could have required compliance with "Compatibility" Section in BCC, §32-4-402, but it did not.

Third, at a minimum, we find that "abutting properties" are necessarily included in the "surrounding residential premises." The origin of the word "abutting" is found in Bill 124-81 wherein the County Council originally measured the 75-foot Setback from the "abutting residential lot line," setting the distance as 75 feet if the front or side of any proposed building faces the lot line; or 150 feet of the rear of any proposed building faces the lot line. In 1982, with the enactment of Bill 109-82, the word "abutting" was substituted with the phrase "surrounding

residential premises," thereby only slightly expanding the area beyond the properties next door to the proposed development.

Fourth, in determining which homes constitute the "surrounding residential premises," we emphasize again that the County Council established a 150-foot distance from the existing homes to the proposed development in order to generate the 100-foot Transition Area. Accordingly, we find that homes located within the 150-foot area must also be included in the "surrounding residential premises."

Applying that 150 feet distance here, at a minimum those homes include those owned by Frederick Kail (3515 Gardenview Road); Rosalind and Arthur Cheslock (3513 Gardenview Road); Alan and Jacqueline Wilder (3511 Gardenview Road); Paul and Olivia Leckner (3507 Gardenview Road); The Marvin Taubenfeld Revocable Trust (3505 Gardenview Road); Stephanie R. Weinstein (3503 Gardenview Road); Dana Stein and Margaret Presley (3501 Gardenview Road); Donald and Lauren Small (8419 Stevenson Road); Bruce and Caren Hoffberger (8417 Stevenson Road); and Kenneth and Jessamyn Abel (8418 Stevenson Road). (Pet. Ex. 1). (Abel Ex. 7).

Fifth, "adjacent homes" must also be considered part of the "surrounding residential premises" because the County Council used the word "adjacent" in the RTA "Purpose" section: building similar housing types "adjacent" to one another. BCZR, §1B01.1.B.1.a.(2). We also see that the generation of the RTA occurs when the property to be developed lies "adjacent" to land zoned D.R. or R.C. as set forth in BCZR, §1B01.1.B.1.b.

Sixth, when lighting fixtures are located in the 50-foot Buffer area under Subsection B.1.e(4), those fixtures must be designed and located to prevent the spillage of light onto any "adjoining dwelling or lot."

By use of words, "abutting," "adjacent," "adjoining" as well as the delineation of the 150-foot distance necessary to generate the 100-foot Transition Area, the County Council was concerned with shielding and protecting the homes which surround the property to be developed. It is for these reasons that Mr. Thaler's one- square-mile "neighborhood" is too large to be considered the "surrounding residential premises."

With that basis, it is apparent to this Board that, when applying Exception g(6), we need to analyze the facts in each case to determine what properties constitute the "surrounding residential premises." Unlike the BCC, §32-4-402 definition of "neighborhood," which is limited to arterial collector roads, there is no one-size-fits-all definition of "surrounding residential premises" applicable to all cases. The "surrounding residential premises" in one case will be different in another case.

In review of the evidence here, we can definitively rule out Anton Farms subdivision as being part of the "surrounding residential premises," as it is located south and west of the Property and is set off in its own distinct enclave. We find that Anton Farms is an entirely different neighborhood than Stevenson Park. (Pet. Ex. 9 and 19). While some of the older homes in Anton Farms may be in the process of being torn down and newer homes built, the evidence reveals that nearly all of the original 1960s homes in Stevenson Park have remained unchanged. Similarly, the location of the Methodist Church on the corner of Stevenson Road and Greenspring Valley Road is also located in an entirely different neighborhood and has no reasonable connection to the proposed Plan. (Pet. Ex. 25).

Having said all of that, in our review of the evidence, the "surrounding residential premises" includes all of the homes not only identified on the proposed Plan, but all of the homes on Stevenson Road between Keyser Road and Janellen Drive; on Keyser Road; on Janellen Drive;

on Topping Road; on Gardenview Road; on Arborwood Road; and on Arborwood Court It necessarily also includes the roads themselves connecting these homes because these roads provide ingress and egress and are part of the network of homes. (Prot. Ex. 23 A-D; 25A-E); (Abel Exs. 8 and 9).

(b) What is the "Character" of the Surrounding Residential Premises?

Having determined the scope of the area which comprises the "surrounding residential premises," we find that the word "character" is synonymous with "nature," "features," "charm," and "atmosphere." The evidence confirmed that the "character" is rural, modest and quaint, consisting of one to one and a half-story, ranch style homes built in the late 1950s and 1960s, some with finished basements, some without. (Prot. Ex. 52). These homes generally are not large, ranging in size from 1,192 sq. ft. to 3,625 sq. ft., and are located on lots that are less than an acre to 1.95 acres at most. (*Id.*). The photographs of these homes confirms that they are largely of mid-century style and size. (Abel Ex. 9.D; 21; 25A) (Prot.Ex.15).

On the issue of "character," this Board found credible the testimony of several life-long residents who described the atmosphere and features of our "surrounding residential premises." Ellen Miller who has lived at 8509 Arborwood Court for the last 40 years accurately described the surrounding residential premises. For the last six to seven years, Mrs. Miller has walked the roads nearly every Saturday from her home on Arborwood Road, up Gardenview Road, and along Stevenson Road to Beth Tfiloh Synagogue on Old Court Road for services. She expressed the same view that we saw in the photos of Stevenson Road, emphasizing that Stevenson Road is a narrow street, has one lane in each direction, and has no sidewalks or shoulders for walkers or bicyclists. She said that the clearance of snow to the side reduces the width of Stevenson Road

and makes travel along Stevenson Road more hazardous. She testified that the speed of the traffic is much faster than the posted speed limit, often causing her hat to blow off.

For 30 years, Lauren Small has lived at 8419 Stevenson Road which is located directly across from the Property on the corner or Keyser Road and Stevenson Road She alerted the Board to the berm located in front of her home along Stevenson Road as seen in photographs. (Prot. Ex. 23D). (Abel Ex. 8A, 12, 12A, 12B, 12C, 12D, 12H, 12I). Because of this character trait, she testified that walkers along Stevenson Road must walk on her Property in order to escape speeding traffic. There is only one narrow, make-shift, paved walkway which extends only the length of her house, on one-side of Keyser Road (Prot. Ex. 14). This paved walkway is not a standard concrete sidewalk.

Caren Hoffberger of 8417 Stevenson Road, grew up in a house on Keyser Road and moved to her present home 15 years ago. On the front edge of her Property along Stevenson Road are located two 100-year old, mature trees. These trees sit along the blind curve on Stevenson Road and block the northbound view of the driveway entrance to the Property and southbound view exiting the Property's driveway. (Abel Ex. 9B, 9C, 10, 11, 12, 12A, 12E, 12F). There are no overhead street lights on the portion of Stevenson Road between Janellen Drive and Gardenview Road. Consequently, at night, the only lights on that portion of Stevenson Road are from car headlights. (Abel Ex. 9.30C; 9.30D; 9.31; 9.31A; 9.31B; 9.32; 9.33; 9.34).

We find that the description of the character of the surrounding residential premises by these witnesses was compelling and was consistent with the photographs which we reviewed. (Abel Ex. 8). These characteristics include, without limitation, the following features:

> (1) modest, 1- 1 ½ story 1950s/1960s ranchers on ½ acre to 1.95 acre lots ranging in size from 1,192 sq. ft. to 3,625 sq. ft.
> (2) Stevenson Road is designated by Baltimore County as a "scenic route";

(3) the narrow width (24-feet) of Stevenson Road;
(4) the narrow width of (24-feet) of the side streets;
(5) the winding, curved travel lanes of Stevenson Road;
(6) the blind angles of Stevenson Road and lack of Sight Distance due to road curvature and mature trees along with bushes and other vegetation;
(7) road curvature warning signs;
(8) the lack of sidewalks on Stevenson Road and lack of sidewalks on side streets;
(9) the lack of shoulders on Stevenson Road and lack of shoulders on side streets;
(10) existing problem of speeding on Stevenson Road affecting the safety of people walking on and/or crossing Stevenson Road;
(11) the back up of cars turning into driveways and into side streets from Stevenson Road due to lack of turn lanes;
(12) single-entrance driveways to ranch style homes;
(13) the lack of street lights on Stevenson Road between Janellen Drive and Keyser Road; and
(14) the absence of parking restrictions on the surrounding streets.

This area is not a suburban thoroughfare but is a quiet place preserved in time.

(c) Is the proposed Plan "compatible" with the character of the surrounding residential premises?

In an attempt to make its "compatibility" argument, the Petitioner stressed that the proposed Building will be the same size as the Abels' home. The Abels' home was built in 1988. It is 7,282 sq. ft., including a finished basement. The proposed synagogue will be 8,000 sq. ft. (Pet. Ex. 18F). (Abel Ex. 7). The Property also has 3.49 total acres and the Abels' home sits on 1.25 acres. (Prot. Ex. 53). Moreover, the Abels' home sits back from Stevenson Road by a circular driveway and is hidden by large trees. (Abel Ex. 9-19E). Given that the size of homes range from 1,192 sq. ft. to 3,625 sq. ft., we find that the size of the Abels' home is the exception, not the majority, to the other homes located within our defined "surrounding residential premises."

The Petitioner pointed to another home (3502 Gardenview Road) which is closest in size to the Abels' home and within the "surrounding residential premises." That home, which was not

built as part of Stevenson Park subdivision in the 1950s and 1960s, was built in 2004 as part of the Englemeade Subdivision. (Pet. Ex. 18H). It measures 4,559 sq. ft. and does not have a finished basement. *(Id)*. While it is a newer home, we find that it is half the size of the proposed building.

Given the rural and modest nature of the "surrounding residential premises," the portion of the proposed synagogue building which is located outside of the 100-foot Transition Area (*i.e.* within the green box on Pet. Ex. 1) is permitted under the BCZR to reach as high as 50 feet. Ms. McArthur explained that while any part of a principal or accessory building located within the 100-foot Transition Area may not exceed 35-feet under Subsection B.1.e(5), the proposed synagogue is positioned in both areas. Ms. McArthur would not guarantee that the synagogue would have one height level. To have even part of a 50-foot structure tower over these 1950s homes is anything but compatible.

Just as concerning is that the proposed driveway is measured to be the same width (24-feet) as Stevenson Road and the surrounding side streets. (Pet. Ex. 1). That driveway will have enough width for cars to pass one another coming into and leaving the parking lot. This is tantamount to constructing a road which will only service the Petitioner. On the contrary, the surrounding residential premises have single-entrance driveways compatible with modest homes.

We define the term "compatible" as having ordinary connotations and being synonymous with the words: "fitting," "harmonious" and "similar in nature." In order for us the make that determination, we must decide whether the proposed Plan fits in, and is harmonious with, the established "character" of the "surrounding residential premises."

In our review of the evidence, the character of the "surrounding residential premises" as we have described, the physical layout of the homes in Stevenson Park, and the surrounding narrow side streets, is not compatible with an 88-seat synagogue, 22-space parking lot and its

accessory parsonage. Stevenson Road was described by many witnesses as a "country road" – a "rural area"; indeed, it is a designated "scenic route." Based on the photographs, we find those descriptions to be accurate. The proposed Plan indicates that Stevenson Road is 24-feet wide. (Pet. Ex. 1). It is narrow and winding, with sharp twists and turns; a two-lane road, lined with historic trees. These trees block driving angles when driving northbound toward the Property entrance.

We cannot ignore the following factors that necessarily come with the proposed Plan and which affect the character of the surrounding residential premises:

> (1) increase in vehicular traffic concentrated at times both daily and weekly;
> (2) increase in pedestrian traffic in the roadbeds of Stevenson Road and side streets;
> (3) increased risk of vehicular conflicts and accidents;
> (4) increased risk of vehicular and pedestrian conflicts and accidents;
> (5) the commercial lighting needed for this operation along the proposed driveway and parking lot which will negatively affect the quality of life for surrounding homes;
> (6) the inevitable increased noise level resulting from services, programs and events at the Property;
> (7) the lack of adequate onsite parking to accommodate anything other than four attendees per vehicle (although the amount required by Code is met) will likely result in overflow parking on surrounding streets;
> (8) the inevitable noise level flowing into the surrounding residential premises and streets from overflow parking;
> (9) the existence of commercial trash dumpsters and the imposition of trash removal services;
> (10) the imposition of regular commercial maintenance and repair services including janitorial, landscaping, snow removal from parking lots and driveway; and
> (11) the imposition of weekly commercial food delivery services.

These "characteristics" and physical attributes, combined with the lack of street lights, lack of shoulders and sidewalks, are not "compatible" with the proposed Plan. Said another way, the size and location of this particular Property - in this specific location - for the proposed non-residential operation, is not compatible with the existing "surrounding residential premises."

Petitioner testified that as many as 500 people attended the first event held by this synagogue. On the 10-12 High Holidays, family gathering celebrations, Bat Mitzvahs, Bar Mitzvahs, and other events, there will likely be more than 88 people attending. Even the influx of 88 people and vehicles on a regular, weekly basis to this location leads us to conclude that it is entirely incompatible.

(d) Is the proposed Plan compatible with the "general welfare" of the surrounding residential premises?

With regard to the last component of Exception g(6), we find the general welfare of the surrounding residential premises will be adversely affected by the approval of the proposed Plan. The concept of "general welfare" in zoning cases is synonymous with the words: well-being, safety, public health, morals, order, comfort, convenience, appearance, prosperity. In its ordinary sense, this phrase means: for the "well-being of the people who are affected by the proposed development."

In our review of the evidence, approving an 88-seat non-residential building, in this established, older residential area, particularly given the physical limitations of both the Property and the characteristics of the surrounding residential premises as we have described above, would be entirely detrimental to the well-being, safety, public health, comfort and convenience of the surrounding residential premises. We make this decision in thoughtful consideration of all the evidence, regardless of whether the building being proposed was industrial, office, commercial, or religious.

Consideration of the proposed Plan on the general welfare of the surrounding residential premises necessarily demands reflection of the proposed operations and activities that come with it. For this Board to limit our review to the data and dimensions on the proposed Plan (as the

Petitioner urges), and ignore the proposed operation, would negate the reason for considering the impact on the general welfare. We cannot and do not interpret Exception g(6) as making findings of fact with blinders on.

On this point, the Petitioner had no problem discussing the "use" associated with the proposed Plan when doing so was needed to make an argument. Ms. McArthur looked at the use in admitting that the RTA Regulations applied because the "use" changed from single-family dwelling to non-residential. Mr. Brennan discussed the "use" in stating that the particular use of a building as a religious facility was important in applying the International Building Code. Mr. Cornelius studied the activity and the operation generated by this proposed use to reach his opinion about whether traffic would be impacted.

As we concluded when discussing factors the effect on the "character," we cannot overlook the adverse impact on the surrounding residential premises that an influx of 88 or more people and their vehicles would have as a result of coming and going from this Property on a daily and weekly basis, regardless of whether the proposed operation was for a religious or non-religious use. In determining the factors affecting the "general welfare," we cannot ignore the volume of people and vehicles which will be coming and going from and to the Property, and into the surrounding narrow, residential side streets, on a regular basis, under the proposed Plan.

Even if the proposed Plan was for one of the other "Uses Permitted as of Right" as listed in BCZR, §1B01.1.A such as: a hospital (A.9); a research institute (A.13), or a school (A14), the negative impact would affect the surrounding residential premises in the same way. The increased noise level generated by people and vehicles will intrude upon the quality and comfort of the surrounding residential premises. The hours of operation and intensified use coincide with times when residents are at home. The lights needed for the operation of the Property (or of any of the

non-residential uses above) combined with all the car lights disrupts the quiet, rural atmosphere of the residential area. The proposed operation will require commercial trash services as well as delivery and service trucks for the commercial operation of a kitchen and school which will torture this established area of homes.

On the issue of traffic and safety, we find credible the testimony of Mr. Myers, the traffic expert for the Protestants. We agree with his testimony that a northbound vehicle does not have 315 ft. in front of it to see a vehicle turning left into the Property driveway due to both the curve in Stevenson Road and the mature trees and bushes abutting the Hoffberger property at 8417 Stevenson Road. In view of the photographs, the driveway entrance is entirely hidden northbound during the day and, at night, this problem is magnified due to the lack of street lights.

We also agree with Mr. Myers' analysis that the Intersection Sight Distances of 445 ft. and 335 ft. are lacking due to the topography of Stevenson Road. We find the basis for his opinion to be credible that a driver cannot see Janellen Drive which is only 315 ft. away, when 445 ft. is needed. Consequently, one cannot see a northbound vehicle which is south of Janellen Drive

The photos of intersecting side streets support Mr. Myers' opinion that there are also limited sight distances for vehicles exiting Gardenview Road, Keyser Road, and Janellen Drive As we have indicated herein, the traffic issues will only get worse with the concentration of people coming to and from the Property at any given time. Due to the narrow width of the side streets (24-feet wide), the vehicles generated by the Property which will inevitably be parked on the side streets will reduce this width by at least eight feet. There will be less room to maneuver vehicles on all these streets. We agree that this will lead to an increase in the likelihood of pedestrian and vehicle conflicts and accidents and will limit access by emergency vehicles.

For all these reasons, the proposed Plan is not compatible with either the character or the general welfare of the surrounding residential premises. Therefore, the proposed Plan has failed to meet Exception g(6) for the reasons set forth herein.

II. Amending the 2006 FDP.

The Protestants filed their own Petition for Special Hearing requesting a determination as to whether the proposed Plan is "consistent with the spirit and intent of the original plan" in accordance with BCZR, §1B01.3.A.7.b(1) & (3). The Petitioner argued that, in order for us to make that decision, this Board must address whether the Petitioner was even required to file an amendment to the Final Development Plan under BCZR, §1B01.3.A.7, and whether the Abels had standing as property owners to file for this request.

A. The Small Lot Table Exemption.

The Petitioner's experts, Mr. Kotroco and Mr. Thaler, each testified that the Petitioner was not required to file an amendment to the 2006 FDP because, they urge, the exemption under BCZR, §1B02.3.D. (otherwise known as the "Small Lot Table Exemption") applies here. The applicable zoning regulation reads as follows:

> BCZR, §1B02.3. Special regulations for certain existing or proposed developments or subdivisions and for small lots or tracts in D.R. Zones.
>
> **A.** In D.R. Zones, contrary provisions of this article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy and development of; alteration or expansion of structures upon; and administrative procedures with respect to:
>
> **1.** Any lot which is in a recorded residential subdivision approved by the Baltimore County Planning Board or Planning Commission and which has been used, occupied

or improved in accordance with the approved subdivision plan;

2. Any land in a subdivision tract which was laid out in accordance with the regulations of residence zoning classifications now rescinded, for which a subdivision plan tentatively approved by the Planning Board remains in effect and which has not been used, occupied or improved in accordance with such plan;

3. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. Zone in which such tract is located;

4. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is less than 1/2 acre in area, regardless of the number of dwelling or density units permitted at the maximum permitted density in the zone in which it is located; or

5. Any lot or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission.

B. Standards applicable to existing developments, etc. The minimum standards for net area, lot width, front yard depth, single-side-yard width, sum of widths of both side yards, rear yard depth and height with respect to each use in a development described in Subsection A.1 above, shall be as prescribed by the zoning regulations applicable to such use at the time the plan was approved by the Planning Board or Commission; however, the same or similar standards may be codified under Section 504, and these standards shall thereupon control in such existing developments. Development of any subdivision described in Subsection A.2 shall be in accordance with the tentatively approved subdivision plan therefor. Standards for development of lots or tracts described in Subsection A.3, A.4 or A.5 shall be as set forth in Subsection **C** below.

* * *

> **D.** An amendment to any part of a development plan involving only property subject to the provisions of this subsection shall not be subject to the provisions of Section 1B01.3.A.7.

Reduced to its essence, the Petitioner's experts look back to the 2006 FDP in order to qualify this proposed Plan under the foregoing exemption. Specifically, their collective opinion is that this proposed Plan meets BCZR, §1B02.3.A.3 ("Subsection A.3") because, back in 2006, there were five lots and all were owned by the Goldmans.

We disagree with the Petitioner's interpretation. First, for Subsection A.3 to apply, there must be common ownership of the lots on this Plan, *not* the 2006 FDP. Subsection A.3 is very clearly written in the present tense: "Any lots or tract of lots in single ownership which **is not** in an existing development or subdivision…" There are no words which direct this Board to look back in time to the 2006 FDP, and it makes no logical sense to do so. This proposed Plan is the only plan before the Board. As of the filing of the Protestants' Petition, the facts are not in dispute that, presently, we do not have common ownership of the lots; Lots 1, 3, 3A and 3B are owned by the Goldmans but Lot 2 is owned by the Abels.

By the express words and tenses found within BCZR, §1B02.3.A, our interpretation is consistent throughout. Subsections A.1 and A.2 are grandfathering provisions for existing developments or subdivisions, and Subsections A.3, A.4, and A.5 are for proposed developments. The same present tense language regarding ownership is repeated in A.3, A.4, and A.5.

Second, while Mr. Kotroco and Mr. Thaler suggested otherwise, there was no finding in the February 16, 2006 Opinion and Order of the Hearing Officer that the Small Lot Table applied to the 2006 FDP. (Pet. Ex.13). The summary of facts in the Opinion and Order which they believe support their position was just that – the Hearing Officer's recitation of the testimony of the

Zoning Office employee (Lloyd Moxley). (*Id.* at p. 3). In fact, the actual findings and decision of the Hearing Officer are set out in a separate section of the Opinion entitled "Findings of Fact and Conclusions of Law" beginning on page seven. (*Id* at. p. 7). The Order page itself does not set forth any such findings. (*Id.* at pp. 8-9).

The position taken by Mr. Kotroco and Mr. Thaler is also contrary to the evidence produced, which evidence indicates that Mr. Moxley believed the Large Lot Table applied, as evidenced by his instructions to the surveyor retained by the Goldmans, Kenneth Wells:

> *Add the large tract table to the plan. Remove all references to the small tract table and typical lot layouts.*

(Prot. Ex. 48). The Large Lot Table was also visible on the 2005 Development Plan. (Pet. Ex. 24B, 24D).

Third, as conceded by Mr. Kotroco who was a Baltimore County Zoning Commissioner/Hearing Officer for 12 years, we find significant that there are no decisions by the Zoning Commissioners or Hearing Officers, by the ALJs, or by this Board, where the Petitioner's reading of Subsection A.3 has been found.

Fourth, while this may be a case of first impression, the Board's reasoning is supported by the PAI policy requiring amendments to be filed, which Mr. Kotroco agreed was in place while he was the Director of PAI. Significantly, the October 21, 2014 letter from PAI to Colbert, Matz stated that PAI determined that the Colbert, Matz Plan was "a material amendment to the development plan," (PC Ex. 4; Abel Ex. 3). As a result, the Petitioner's insistence on the Small Lot Table exemption under BCZR, §1B02.3.D is inconsistent with the PAI policy and contradicts the prior determination by PAI that the Colbert, Matz Plan required a FDP amendment. Given that this Plan and the Colbert, Matz Plan both concern this Property and proposed the same non-

residential operation (albeit at different spots on the Property), and the Petitioner was previously directed by Baltimore County to file an amendment, it is unreasonable to conclude that one can ignore the amendment requirement.

Fifth, the actual table, which has become known as the "Small Lot Table" as found in Subsection C.1, only identifies "dwellings." which are described in Subsection A.3 and A.4 – all of the front, side, and rear setbacks listed in Subsection C.1 are for "dwellings" as follows:

> **C.** Development standards for small lots or tracts.
>
> > **1.** Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table:

Zoning Classification	Minimum Net Lot Area per Dwelling Unit (square feet)	Minimum Lot Width (feet)	Minimum Front Yard Depth (feet)	Minimum Width of Individual Side Yard (feet)	Minimum Sum of Side Yard Widths (feet)	Minimum Rear Yard Depth (feet)
D.R.1	40,000	150	50	20	50	50
D.R.2	20,000	100	40	15	40	40
D.R.3.5	10,000	70	30	10	25	30
D.R.5.5	6,000	55	25	10	—	30
D.R.10.5	3,000	20	10	10	—	50
D.R.16	2,500	20	10	25	—	30

> > **2.** Other standards for development of small lots on tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504.

In this case, the proposed Plan is obviously not for a dwelling.

Accordingly, for all these reasons, we find that the 2006 FDP was not exempt under the Small Lot Table, that an amendment was required to be filed under BCZR, §1B01.3.A.7, and that the Petitioner failed to file it.

B. The Abels' Standing to Request Special Hearing Determination.

As to the Abels' standing, we find that the 2006 FDP was more than just a subdivision of Lot 3. The 2006 FDP clearly identifies that it was also an adjustment of the lot lines for Mr. Abels' Lot 2 by its words, "Reconfiguration of Lot 2." (Pet. Ex. 24D). Even more, if the 2006 FDP was just a three-lot subdivision, as Mr. Thaler advocates, there would not have been a Final Development Plan in 2006, or a Hearing Officer's hearing. A minor subdivision of three lots or less does not require either of these. Indeed, we find it meaningful that, along with the other evidence that was presented, both existed in 2006.

Even *assuming arguendo* that Lot 2 is not part of the 2006 FDP we find that the Abels have standing to demand a hearing under a different section namely, Subsection A.7.b(2) as they are "owner[s] of a lot abutting....the property in question." This reading is consistent with the "Purpose" of "Development Plan" found in BCZR, §1B01.3.A.1 which is to provide disclosure of development plans to "prospective residents and to protect those whom have made decisions based on such plans from inappropriate changes therein." Thus, under either subsection, the Abels have standing.

C. Does this Plan meet the provisions of the Comprehensive Manual of Development Policies, of BCZR, Article 1B and is it consistent with the "spirit and intent" of the original Plan?

Having found that the proposed Plan is not exempt under the Small Lot Table from filing an amendment to the 2006 FDP, and having determined that the Abels, as the property owners of Lot 2 in the 2006 FDP have standing to file this Petition, the last part of our final decision concerns

whether the proposed Plan is: (1) in accord with the provisions of the Comprehensive Manual of Development Policies and with the specific standards and requirements of BCZR, Article 1B "Density Residential Zones"; and (2) whether the amendment is consistent with the spirit and intent of the 2006 FDP and of Article 1B.

By way of background, in order to have the "Amendment" issue ripe for this Board to make a decision, the Protestants, through their surveyor, Mr. Doak, filed the required amendment by copying the proposed Plan and labeling it as an "Amendment." (Pet. Ex. 24F). Before addressing the merits of the Amendment, we note that BCZR, §1B01.3.A.7.b ("Subsection A.7.b") is the applicable subsection at issue because this Plan involves an amendment filed after the sale of Lot 2 to the Abels. While this Board is in unanimous agreement on each issue addressed in this Opinion, there is one issue in which one member of this Board disagrees (whether the Special Exception factors apply).

(1) What is the meaning of "Special Exception Procedures"?

Subsection A.7.b states that an amendment must be filed "through the special exception procedures in the manner provided under Section 502..." The same language is repeated in Subsection 7.b(3) wherein the finding of "spirit and intent" must be made "in the course of the hearing procedure."

The Majority of this Board finds that the "special exception procedures" refers only to the requirement to have a hearing, as occurs in each special exception case before an ALJ and/or before this Board on appeal. The Majority of this Board agrees that "special exception procedures" in Subsection A.7.b does not equate to making a finding of each of the "special exception factors" in BCZR, §502.1.

Our reasoning for this decision is threefold: (1) we take the words "hearing procedure" at their express meaning as found in BCZR, §502, which section necessitates a hearing as follows:

> SECTION 502 SPECIAL EXCEPTIONS
>
> * * * *
>
> Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the uses listed as special exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals.

Just as important, Section 502 states that Subsections 502.1 - 502.10 contain "principles and conditions" which "shall govern" decisions by the Zoning Commissioner and this Board on appeal **when deciding special exception cases**:

> In granting any special exception, the Zoning Commissioner and the County Board of Appeals, upon appeal, shall be governed by the following principles and conditions:
>
> 502.1 Conditions determining granting of special exception.
> 502.2 Protection of surrounding properties agreement governing special exception.
> 502.3 Time limit for utilization of special exception; extensions.
> 502.4 Special exception for certain elevator apartment buildings and office buildings.
> 502.5. Limitations on certain community care centers, boardinghouses and rooming houses.
> 502.5A Special exception for certain offices and office buildings.
> 502.6 Uses within residential transition areas.
> 502.7 Wireless telecommunications towers.
> 502.8. Special exception for certain Class B office buildings.
> 502.9 Validity of special exceptions previously granted.
> 502.10 Amendment of prior special exceptions for trailer parks.

Given that this is not a special exception case, the majority finds that the §502.1 conditions determining granting of special exception do not apply here.

Second, if the County Council had intended for the Special Exception factors to be applicable here, the Council would have stated the same, as they have done in other code sections. By way of example, in BCC, §32-4-245(c), the County Council specifically called out six of the nine the Special Exception factors (*i.e.* BCZR, §502.1.A, B, C, D, E, and F) when a proposed Planned Unit Development is being reviewed by a Hearing Officer, who must then make findings as to each factor. We do not find that same language here.

Third, given that approval of a final development plan by a Hearing Officer under BCC, §32-4-229(b)(1) is not dependent upon satisfaction of the BCZR, §502.1 factors, it would be illogical to require proof of those factors when approving an amendment to an approved FDP.

Fourth, if that reading were accurate, there would be no reason for the County Council to have enacted a separate requirement to make a finding of "spirit and intent" in Subsection A.7.b(3), when that factor is already required by BCZR, §502.1.G:

> ...the use shall not "be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations."

For these reasons, the Majority of this Board finds that the County Council did not intend for the BCZR, §502.1 Special Exceptions factors to apply to Amendment to FDPs, only the process for a hearing.

(2) Is the Amendment (proposed Plan) in accord with the provisions of the Comprehensive Manual of Development Policies and the specific standards and requirements of Article 1B?

As to the merits of whether the proposed Plan (as copied identically by Mr. Doak in Pet. Ex. 24F) meets Subsection A.7.b(1), we find that the proposed Plan is not in "accord with the provisions of the Comprehensive Manual of Development Policies and with the specific standards and requirements of this Article, as determined by the Department of Planning." Petitioner presented a portion of the Comprehensive Manual of Development Policies wherein the RTA Regulations are recited and explained. (Pet. Ex. 4). Based on the Petitioner's exhibit, and for the same reasons we have previously enunciated with regard to the failure to meet the RTA Regulations, we find the proposed Plan fails to meet the Comprehensive Manual of Development Policies.

(3) Is the Amendment (proposed Plan) within the "spirit and intent" of the 2006 FDP or of Article 1B?

As to the merits of whether the proposed Plan (as copied identically by Mr. Doak in Pet. Ex. 24F) meets Subsection A.7.b(3), we find the proposed Plan is not within the spirit and intent of the 2006 FDP or of Article 1B, entitled "D.R. Zones." Quite obviously, the "spirit and intent" of the 2006 FDP was for two additional residential lots upon which two additional dwellings would be placed; not for a non-residential, 8,000 sq. ft. building, with its associated commercial parking and its accessory building. We further find that the proposed Plan is not within the spirit and intent of Article 1B, which, like the Comprehensive Manual Development Policies, definitively includes the RTA Regulations. (Pet. Ex. 4). Thus, for all the reasons we previously

articulated as to the failure of the proposed Plan to meet the RTA Regulations, the same are applicable on this issue.

III. Does the Board's decision to deny the Petition violate the Religious Land Use and Institutionalized Persons Act ("RLUIPA")?

As reiterated in the beginning of this Opinion, the only issues presented for appeal *de novo* to this Board were outlined in each of the Petitions filed separately by the Parties, which issues we have thoroughly addressed in Sections I and II above. In the instant case, the issue of whether there has been a violation of the Religious Land Use and Institutional Persons Act ("RLUIPA") was not raised by either Party in their respective Petitions. In fact, RLUIPA was not even addressed in the Opinion and Order of the ALJ from which the Petitioner appealed. Yet, it lurked ominously like the "Elephant-in-the-Room" during each of the ten hearing days.

A. Is the Board of Appeals Permitted to Decide RLUIPA in this case?

The Baltimore County Board of Appeals is a creature of statute, deriving its authority to hear cases from the Express Powers Act, §5(U). *Blakehurst Life Care v. Baltimore County*, 146 Md. App. 509, 807 A.2d 179, 185 (2002) quoting Adamson v. Correctional Med., 359 Md. 238, 250, 753 A.2d 501 (2000) (quoting Holy Cross Hosp. of Silver Spring, Inc. v. Health Servs. Cost Review Comm'n, 283 Md. 677, 683, 393 A.2d 181 (1978)). While we have the authority to decide constitutional issues, only those constitutional issues raised in a Petition before us are heard and decided. *Prince George's County Maryland v. Ray's Used Cars*, 398 Md. 632 (2007); *Holiday Point Marina v. Anne Arundel County*, 349 Md. 190 (1998); and *Riffin v. People's Counsel*, 137 Md. App. 90 (2001).

This Board's authority to hear a case *de novo* is an exercise of appellate jurisdiction, rather than original jurisdiction. The scope of a *de novo* hearing before the Board is restricted to the specific issue or issues resolved by the ALJ from which an appeal has been taken. These issues

include ones concerning which the moving party or parties feel aggrieved. *County Fed. S&L v. Equitable*, 261 Md. 246, 254, 274 A.2d 363 (1971). This authority allows the Board to take whatever action the ALJ could take if presented with the same evidence. *Halle Companies v. Crofton Civic Ass'n*, 339 Md. 131, 143; 661 A.2d 682, 687-88 (1995). See also *Hardy v. State*, 279 Md. 489, 492, 369 A.2d 1043, 1046 (1977). *Wolfe v. AA County*, 135 Md. App. 1, 761 A.2d 935, 948 (2000). (citing *Halle* with approval, *de novo* means the Board of Appeals may hear testimony and consider additional evidence pertaining to the issue or issues presented on appeal); *Board of Cty Comm. for St. Mary's County v. Southern Resources*, 154 Md. App. 10, 837 A.2d 1059, 1068-1070, (2003) (an administrative agency exercising appellate jurisdiction must, through some procedure, satisfy fairness requirements).

Whether an appeal is on the record, substantially *de novo* or purely *de novo*, the agency must determine the issue or issues being heard and decided. Even in a purely *de novo* appeal, only those matters appealed are heard and decided, not every matter that was involved in the underlying application. *HNS Development v. People's Counsel for Baltimore County*, 200 Md. App. 1, 24 A.3d 167 (2010) (issue was not properly before the Board of Appeals because it was not raised in its Notice of Appeal and therefore was not preserved for appeal). Based on the above cited case law, in a case before this Board captioned, *In the Matter of Carol Lynn Morris/C.G. Homes*, Case No.: 15-302-SPHA, we declined to hear an issue which was not raised on appeal.

Whether this Board's exercise of jurisdiction is appellate or original does not depend on whether we are authorized to receive additional evidence. *Halle*, 339, Md. 143, 661 A.2d 688. Instead, as Chief Justice Marshall explained, "[i]t is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted and does not create that cause..." (*Id.* quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 175; 2 L. Ed. 60, 73 (1803)).

In effect, if we decide issues not raised on appeal, we would be contravening over two centuries of settled jurisprudence. Thus, this Board has no authority to create issues which might otherwise be of interest to the public.

On Day 4 (6/7/2016) of our hearings, the Abels, through their counsel, and as joined by the Protestants through their counsel, sensing that a RLUIPA claim would be filed if the Petition was not granted, filed a Motion to Dismiss the Petitioner's case for failure to raise RLUIPA as an issue and for failure to put on any evidence as to any violation thereof. In support of the argument, counsel for the Abels pointed out that an attorney specializing in RLUIPA cases (Roman Storzer, Esquire) had been in attendance in the gallery for each hearing date. Specifically, the Abels' counsel argued that this Board was required under the holding in *Trinity Assembly of God v. People's Council*, 407 Md. 53 (2008) to decide the RLUIPA issue.

In response to that Motion, the Petitioner, through its counsel, countered that the Protestants misunderstood what RLUIPA does, and how it applies. Petitioner argued that RLUIPA does not apply to the Abels' Petition regarding the Amendment to the 2006 FDP, or to the Protestants' opposition to the Petitioner's request for relief. Rather, the Petitioner urged that a RLUIPA violation does not occur until this Board denies the Petitioner's request for relief. At the time of the Motion on Day 4, we reserved ruling on the issue.

Petitioner cited *Midrash Sephardi, Inc., Young Israel of Bal Harbor, Inc. v. Town of Surf Side*, 366 F.3d 1214 (11th Cir, 2004) for the holding that use of real property for a synagogue is covered by RLUIPA. Petitioner extrapolates from that general principle and argues that it was not required to put on any evidence that the BCZR or BCC expressly violated RLUIPA, and that no evidence should be received by this Board regarding RLUIPA. While the general principle is

accurately cited, the *Midrash Sephardi* decision fails to support the Petitioner's proposition that a RLUIPA claim need not be raised.

On Day 7 (7/8/2016), People's Counsel for Baltimore County entered his appearance for the first time to specifically address the RLUIPA issue (as well as the issue regarding an amendment to a final development plan and the Small Lot Table). Throughout the remainder of the hearings (Days 7-10), People's Counsel asserted that there was no RLUIPA violation. This Board permitted People's Counsel to cross examine witnesses and to present documents in evidence in support of that position. In his Post Hearing Memorandum dated November 18, 2016, People's Counsel advocated that this Board is required to address the RLUIPA in accordance with *Trinity, supra.* Ironically, in *Trinity* it was People's Counsel who argued at the remand hearing before this Board that it was *not* appropriate for this Board to consider RLUIPA because the Church had never raised the issue there. (*Id.* at Apx. 80). In *Trinity*, People's Counsel argued that, because there was never a proper RLUIPA claim made during the initial case, this Board was prohibited from addressing it. (*Id.*).

In *Trinity*, the procedural background reveals that no testimony or evidence was presented on RLUIPA at the Board hearing. (PC Post-Hearing Memorandum, Apx. 80). The RLUIPA claim in *Trinity* was raised for the first time in Post-Hearing Memorandums. (*Id.*, at Apx. 79). As a result, in its original Opinion and Order, this Board did not decide the issue. On appeal, the Circuit Court for Baltimore County (Daniels, J.) affirmed the Board's decision on all issues except for the decision not to address RLUIPA. As a result, the Circuit Court remanded the RLUIPA issue to the Board in order for the Board to apply the existing record in that case, hear arguments, and render an opinion. (*Id.*, Apx. 76-78).

Faced with the Circuit Court's Remand Order in *Trinity*, this Board followed the Court's instructions and heard argument on RLUIPA based on the existing record. (*Id.*, at Apx. 79-83). On

March 8, 2006, the Board issued an Opinion and Order holding that there had been no violation of RLUIPA by Baltimore County in the enforcement of its sign regulations. (*Id.*). By Ruling and Order dated January 23, 2007, the Circuit Court affirmed this Board's decision. (*Id.*, at Apx. 84). The Court of Special Appeals subsequently affirmed, as did the Court of Appeals. *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore Cty.*, 178 Md. App. 232; 256, 941 A.2d 560, 575; *aff'd*, 407 Md. 53; 962 A.2d 404 (2008).

The Court of Appeals noted that *Trinity* was the first case in which Maryland's appellate courts had the opportunity to interpret and apply RLUIPA. (*Trinity*, 407 Md. at 86). While both of the appellate courts affirmed that neither the Board's decision to deny the sign variance nor the County sign law itself violated RLUIPA, neither appellate court made a decision about whether the Board actually had to make a decision on the RLUIPA issues. (*Id.* at 101). Thus, it does not appear that *Trinity* is the precedent to compel our review.

On the other hand, it is clear that the RLUIPA issue has been presented to us for review by the Protestants Kenneth and Jessamyn Abel, even if raised preemptively in their Motion to Dismiss. It is also clear that in *Trinity,* the Circuit Court for Baltimore County remanded the case for that specific issue, and the appellate courts did not find error in doing so. In addition, judicial economy dictates that if we address the RLUIPA at this stage, it may prevent further litigation and delay to the parties. Accordingly, in the event that it is ultimately determined that we should decide RLUIPA issues even though it was not raised in the Petitions, we will address RLUIPA herein.

Having taken the position during the hearing by way of its objections that the Board should not accept evidence on the RLUIPA issue, the Petitioner, in its Post-Hearing Memorandum, took the opposite position. In its Memorandum, RLUIPA was at the forefront of its cause, wherein the

Petitioner argued that RLUIPA gave it the right to build the proposed synagogue in this residential area regardless of any zoning regulations in effect:

> The First Amendment (Free Exercise Clause) and the requirements of RLUIPA provide substantial protection for the Rabbi's activity. RLUIPA was created to protect the Rabbi's right to build a synagogue in a residential neighborhood.

(Pet. Memo of Law, 11/18/16, p. 1). Also in its Memorandum and during the hearings, Petitioner unequivocally and expressly threatened that a denial by this Board of the Petitioner's request for relief, would be an automatic RLUIPA violation, with this Board as the perpetrator:

> First, as a preliminary matter, the burden is not on the Synagogue to raise RLUIPA. Rather, RLUIPA imposes an affirmative duty upon the Board to not violate its provisions; it does not create any requirements for the religious applicant..... Thus, it is incumbent on the Board to avoid violating RLUIPA. The Synagogue is not required to anticipate possible RLUIPA violations by the Board in this case. RLUIPA does not apply to opponents to a development, who are irrelevant with respect to RLUIPA and a non-entity with respect to any potential future claim. It applies to any final zoning action by a government actor, including this Board, which has not yet occurred.

(Pet. Memo of Law, 11/18/16, p. 3). Thus, the Petitioner made very clear that this Board, while acting under its statutory authority under the Express Powers Act to conduct evidentiary hearings and to render a decision on the two Petitions which were actually filed in this case, would ultimately become a defendant in a RLUIPA action if the Petitioner did not win here.

B. What is the meaning of "substantial burden" and is there such a burden on Petitioner's religious exercise?

Enacted in 2000, RLUIPA applies to governmental actions which affect land use. 42 U.S.C. 2000cc. Section (a) entitled "Substantial Burdens" provides the general rule as follows:

> (a) Substantial burdens.
>
> > (1) General rule. No government shall impose or implement a land use regulation in a manner that imposes a substantial

> burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—
>
> > (A) is in furtherance of a compelling governmental interest; and
> >
> > (B) is the least restrictive means of furthering that compelling governmental interest.

Subsection (a)(2)(C) confirms that RLUIPA applies to land use regulations

> (2) Scope of application. This subsection applies in any case in which –
>
> * * * *
>
> > (C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

The term "substantial burden" is not defined in RLUIPA. Citing *Bethel World Outreach Church v. Montgomery County, Maryland*, 706 F.3d 548 (4th Cir. 2013), Petitioner emphasized that *Bethel* superseded and replaced *Trinity*. (Pet. Memo of Law, 11/18/16, p. 3). In support of its argument that a "substantial burden" was proven here, Petitioner quoted a general statement from the *Bethel* Court's holding that reads: "in the land use context, a plaintiff can succeed on a substantial burden claim by establishing that a government regulation puts substantial pressure on it to modify its behavior." (*Bethel* at 556).

While still maintaining that the Petitioner was not required to introduce evidence of "substantial burden," the Petitioner, in attempting to mirror the facts in *Bethel*, then claimed in its Memorandum that evidence was presented showing a substantial burden existed on its religious

behavior, due to the alleged lack of adequate space and time at its present location on Old Pimlico Road (Pet. Memo. Law 11/18/16, at p. 3).

First, the *Bethel* Court's general statement does not require this Board find as Petitioner implies. Further, the *Bethel* decision and *Trinity* decision differ in facts and procedure. The *Bethel* Court determined that the evidence presented, as viewed in the best light to appellant, precluded a finding as a matter of law that the County did not impose a substantial burden on the appellant's religious exercise. *Id.,* 706 F.3d at 558. In other words, sufficient evidence was presented to defeat summary judgment, hardly a groundbreaking decision that negates or supersedes prior decisions, and one without import upon *Trinity*. For its substantial burden review, the *Bethel* Court analyzed and used some of the same cases cited with approval by the Court of Appeals in *Trinity*, and as such, the cases are analytically related. The *Bethel* decision does not identify, let alone address the *Trinity* decision. This Board emphatically rejects Petitioner's argument that *Bethel* supersedes *Trinity*.

Second, while the Petitioner seeks support under *Bethel*, noticeably missing from its Memorandum is the more recent Fourth Circuit Court of Appeals case of *Andon, LLC v. City of Newport News*, 813 F.3d 510 (4th Cir. 2016), which concerned a substantial burden claim and specifically addressed the prior decision in *Bethel*. Thus, the holding by the *Bethel* Court has been clarified by the holding in *Andon*. The facts here are nearly identical to the facts in *Andon*, not *Bethel*.

In *Andon*, the United States District Court for the Eastern District of Virginia dismissed, *with prejudice*, a complaint filed by religious organizations against both the City of Newport News, Virginia and the Board of Zoning Appeals, alleging a violation of RLUIPA for denying their request for a variance to permit a certain property to be used as a church facility. As in this case, the property there did not satisfy the setback requirements prohibiting a building from being located fewer than

100 feet from the rear and side property lines that are adjacent to properties zoned for single-family residential use.

The plaintiffs in *Andon* knew about the setback when they entered into a contract of sale which was contingent on obtaining a variance from the setbacks. The plaintiffs alleged in their lawsuit that the Board of Zoning Appeals denial of the variance imposed a substantial burden on their religious exercise because it caused "delay in obtaining a viable worship location" and "uncertainty as to whether....the [c]ongregation will be able to go forward with the lease of the [p]roperty." (*Id.* at 813 F.3d 513). The *Andon* plaintiffs asserted that they could not find "a[n alternate property] that was the appropriate size, location, and price" to serve as a place of worship for the congregation and that "[m]any of the [alternative] buildings were too large and too expensive for [the] young congregation." (*Id.*).

The *Andon* Court's explanation of how the facts in *Bethel* differed is equally applicable here. The *Andon* Court explained that RLUIPA lawsuit in *Bethel* against Montgomery County asserted a substantial burden claim because the county had adopted two land use regulations *after* the plaintiff had purchased property for the then-permitted purpose of constructing a large church. (*Bethel* 706, F.3d at 553-55). Specifically, the *Andon* Court wrote:

> The first regulation at issue in *Bethel* banned extension of public water and sewer services to certain classifications of property, including the plaintiff's property. In response to the county's implementation of this regulation, the plaintiff modified its construction plans and proposed to build a smaller church that operated on a private septic system. Before those plans were approved, however, the county adopted a second regulation applicable to the plaintiff's property, which prohibited the construction of private institutional facilities including churches. *Id.*

(*Id.*, 813 F.3d 514-515).

Because of Montgomery County's after-the-fact actions in *Bethel*, the Fourth Circuit Court in *Bethel* concluded that the plaintiff presented a "triable RLUIPA claim," and thereby reversed the District Court's grant of summary judgment. (*Bethel*, 706 F.3d at 552; *Andon*, 813 F.3d at 515). It is important to note that the *Bethel* Court did not decide that Montgomery County's actions violated RLUIPA. Rather, the case was remanded to the District Court for further fact finding. (*Bethel*, 706 F.3d 561).

The *Andon* Court held that the *Bethel* Court reached its conclusion because the plaintiff presented a reasonable expectation to use real property for religious purposes, prior to the County's change in law. (*Id.*, 813 F.3d at 515). Distinguishing *Bethel*, the *Andon* Court explained how the plaintiff in *Andon* "never had a reasonable expectation that the property could be used as a church" because the plaintiffs assumed the risk that the variance would not be approved when it entered into a contingent sale agreement for the property, which was not a permitted site for a church and had not met previously enacted setback requirements:

> The plaintiffs here never had a reasonable expectation that the property could be used as a church. When the plaintiffs entered into the prospective lease agreement, the property was not a permitted site for a community facility such as a church, and had not met applicable setback requirements for that type of use for at least 14 years. Before Andon filed the application seeking a variance, the Zoning Administrator had informed Andon that the application would not be approved for failure to meet the setback requirement. Thus, the plaintiffs assumed the risk of an unfavorable decision, and chose to mitigate the impact of such a result by including the contingency provision in the lease. Accordingly, unlike the governmental action at issue in *Bethel,* the BZA's denial of the variance in the present case did not alter any pre-existing expectation that the plaintiffs would be able to use the property for a church facility, or cause them to suffer delay and uncertainty in locating a place of worship.

(*Id.*)

The *Andon* Court held that the plaintiffs knowingly entered into a contingent agreement for a non-conforming property, and therefore the alleged burdens were not imposed by the zoning regulation, or by government action but rather were **self-imposed hardships**:

> Because the plaintiffs knowingly entered into a contingent lease agreement for a non-conforming property, the alleged burdens they sustained were not imposed by the BZA's action denying the variance, but were self-imposed hardships. *See Petra Presbyterian Church,* 489 F.3d at 851 (because the plaintiff purchased property with knowledge that the permit to use the property for a church would be denied, the plaintiff "assumed the risk of having to sell the property and find an alternative site for its church"). A self-imposed hardship generally will not support a substantial burden claim under RLUIPA, because the hardship was not imposed by governmental action altering a legitimate, pre-existing expectation that a property could be obtained for a particular land use. *See Bethel,* 706 F.3d at 556–58; *Petra Presbyterian Church,* 489 F.3d at 851. Therefore, we hold that under these circumstances, the plaintiffs have not satisfied the "substantial burden" requirement of governmental action under RLUIPA. *See Bethel,* 706 F.3d at 556; *Guru Nanak Sikh Soc'y of Yuba City,* 456 F.3d at 988–89; *Civil Liberties for Urban Believers,* 342 F.3d at 761.

(*Id.*, at 516).

The Court in *Andon* was also not persuaded by the plaintiffs' argument of lack of affordable or available properties:

> Our conclusion is not altered by the plaintiffs' further contention that they have been unable to find another property that meets the congregation's desired location, size, and budgetary limitations. The absence of affordable and available properties within a geographic area will not by itself support a substantial burden claim under RLUIPA. *See Civil Liberties for Urban Believers,* 342 F.3d at 762 (concluding that the "scarcity of affordable land available" and costs "incidental to any high-density urban land use" represent "ordinary difficulties associated with location" and do not support a substantial burden claim under RLUIPA).

(*Id.*)

The *Andon* Court, citing *Petra Presbyterian Church v. Village of Northbrook,* 489 F.3d 846 (2007), and *Civil Liberties For Urban Believers, Christ Center, Christian Covenant Outreach*

Church, et al., v. City of Chicago, 342 F.3d 752 (7th Cir. 2003) ("*CLUB*"), also made a significant holding with regard to the important role of local government in enacting and implementing land use regulations, and the equally important job of decision making in balancing individual rights against compelling government interests in not allowing RLUIPA to act as a "free pass" for churches/religious organizations land uses:

> We further observe that if we agreed with the plaintiffs that the BZA's denial of a variance imposed a substantial burden on their religious exercise, we effectively would be granting an automatic exemption to religious organizations from generally applicable land use regulations. Such a holding would usurp the role of local governments in zoning matters when a religious group is seeking a variance, and impermissibly would favor religious uses over secular uses. *See Petra Presbyterian Church,* 489 F.3d at 851 (reasoning that the substantial burden requirement must be taken seriously, or religious organizations would be free "from zoning restrictions of any kind"); *Civil Liberties for Urban Believers,* 342 F.3d at 762 (explaining that no "free pass for religious land uses masquerades among the legitimate protections RLUIPA affords to religious exercise").
>
> The plain language of RLUIPA, however, prevents such a result. By requiring that any substantial burden be imposed by governmental action and by carefully balancing individual rights and compelling governmental interests, the language of RLUIPA demonstrates that Congress did not intend for RLUIPA to undermine the legitimate role of local governments in enacting and implementing land use regulations. *See Petra Presbyterian Church,* 489 F.3d at 851; *Civil Liberties for Urban Believers,* 342 F.3d at 762.

(Id, 813 F.3d at 516).

Based on *Andon's* holding, it is clear that, contrary to the Petitioner's threats to this Board, there is not an automatic RLUIPA violation where a zoning board denies the relief requested. The *Andon* Court identified the type of facts needed to, at least, survive a Motion to Dismiss. The *Andon* Court's holding explains that where the facts as in *Bethel* show that a local government

changes the law *after* a church buys a property, there exists, at a minimum, a triable issue (not a foregone or undisputed fact), with regard to whether the plaintiff relied upon the law in existence when the property was purchased.

Conversely, as in *Andon* and here, where a zoning law, enacted prior to a plaintiff's purchase of property, requires variance or other setback relief, and where a hearing on the merits will occur during which individual rights and compelling government interests will be weighed by a fact finder, the alleged burden is self-imposed, and the plaintiff, as a party in litigation, assumes the risk that an unfavorable decision might result.

Both the *Bethel* Court and the *Andon* Court, cited with approval, the holding in *Club*. In our *Trinity* Remand Opinion and Order, we also cited the Court in *CLUB* for the proposition that there is no RLUIPA violation where the law in question merely makes the practice of religious more expensive:

> It is well established that there is no substantial burden placed on an individual's free exercise of religion where a law or policy merely 'operates so as to make the practice of [the individual's] religious beliefs more expensive.'") (quoting *Braunfeld v. Brown,* 366 U.S. 599, 605, 81 S.Ct. 1144, 6 L.Ed.2d 563, (1961) (plurality opinion)). Otherwise, compliance with RLUIPA would require municipal governments not merely to treat religious land uses on an equal footing with nonreligious land uses, but rather to favor them in the form of an outright exemption from land-use regulations.

(*Id.*, 342 F.3d at 762) (quoting *Stuart Circle Parish v. Board of Zoning Appeals of Richmond,* 946 F.Supp. 1225, 1237 (E.D.Va.1996)); (PC Post-Hearing Memorandum, 11/18/16, Apx. 82). Under the holding in *CLUB,* there is no automatic RLUIPA violation based on the allegation that there will be a greater cost to the religious institution. To find otherwise would be to treat religious uses more favorably than non-religious uses.

The Court in *CLUB* declined to accept the plaintiff's broad definition of "substantial burden on religious exercise" to mean a regulation which "inhibits or constrains the use, building, or conversion of real property for the purpose of religious exercise." (Id., 342 F.3d at 761). The Court in *CLUB* held:

> Application of the substantial burden provision to a regulation inhibiting or constraining *any* religious exercise, including the use of property for religious purposes, would render meaningless the word "substantial," because the slightest obstacle to religious exercise incidental to the regulation of land use — however minor the burden it were to impose — could then constitute a burden sufficient to trigger RLUIPA's requirement that the regulation advance a compelling governmental interest by the least restrictive means.

(*Id.*, at 342 F.3d at 761).

In *CLUB*, the argument advanced by the appellant churches was that a substantial burden existed because there was a scarcity of affordable land available for development in the residential zone where churches were permitted uses as of right as in this case, and in addition they were faced with the cost, procedural requirements, and inherent political aspects of the approval process. (*Id.*). The Court in *CLUB* found that these alleged burdens were the same ones encountered by all land-users:

> However, we find that these conditions - which are incidental to any high-density urban land use - do not amount to a substantial burden on religious exercise. While they may contribute to the ordinary difficulties associated with location (by any person or entity, religious or nonreligious) in a large city, **they do not render impracticable the use of real property in Chicago for religious exercise**, much less discourage churches from locating or attempting to locate in Chicago. *See, e.g., Love Church v. City of Evanston,* 896 F.2d 1082, 1086 (7th Cir. 1990) ("Whatever specific difficulties [plaintiff church] claims to have encountered, they are the same ones that face all [land users]. **The harsh reality of the marketplace sometimes dictates that certain facilities are not available to those who desire them**").

(*Id.*). In this case the alleged burdens on the Petitioner are the same burdens affecting all other non-religious uses permitted by right and listed in BCZR, §1B01.1.A. Here, the Petitioner is not treated any differently. To the contrary, the Petitioner was afforded a 10-day hearing to thoroughly litigate its case.

The analysis of the decision in *Petra, supra,* is also equally applicable here:

> Petra argues in the alternative for a federal "vested rights" doctrine on the basis of various provisions of the Constitution, and on RLUIPA. The argument, peppered with mysterious references to a "federal zoning law," is difficult to follow. As near as we can understand it, Petra is claiming that when it bought the property it was reasonably relying on the invalidity of the 1988 ordinance, which arbitrarily treated religious membership organizations worse than other membership organizations, thus violating not only RLUIPA but also the free-exercise clause of the First Amendment.

(*Id.*, at 489 F.3d 849). Petra, a Korean-American Church, had its eye on property and sought an informal review of a request for rezoning and a permit. While neither request was actually granted, Petra then decided to purchase a warehouse for 2.3 million dollars and began to use it as a church.

In pursuit of its RLUIPA claim, Petra claimed discrimination by the Village of Northbrook when it enacted an ordinance which banned all membership organizations (not just churches) from industrial zones. The *Petra* Court aptly held that no substantial burden is found where a religious organization claims entitlement to build anywhere under threat of RLUIPA:

> The ban on churches in the industrial zone cannot in itself constitute a substantial burden on religion, because then every zoning ordinance that didn't permit churches everywhere would be a prima facie violation of RLUIPA. *Civil Liberties for Urban Believers v. City of Chicago,* 342 F.3d 752, 760-62 (7th Cir. 2003); *Midrash Sephardi, Inc. v. Town of Surfside, supra,* 366 F.3d at 1226-28; *San Jose Christian College v. City of Morgan Hill,* 360 F.3d 1024, 1034-35 (9th Cir.2004); see also *Love Church v. City of Evanston, supra,* 896 F.2d at 1086-87. Religious organizations would be better off if they could build churches anywhere, but denying them so

> unusual a privilege could not reasonably be thought to impose a substantial burden on them.

(*Id.*, at 489 F.3d 851).

The *Petra* Court succinctly stated that the "substantial burden" factor must be taken seriously and unless a religious organization purchases property based on having obtained a permit, there is no reasonable expectation that a permit will be issued:

> Unless the requirement of substantial burden is taken seriously, the difficulty of proving a compelling governmental interest will free religious organizations from zoning restrictions of any kind.
>
> When there is plenty of land on which religious organizations can build churches (or, as is common nowadays, convert to churches buildings previously intended for some other use) in a community, the fact that they are not permitted to build everywhere does not create a substantial burden. What is true is that, as in *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin, supra,* once the organization has bought property reasonably expecting to obtain a permit, the denial of the permit may inflict a hardship on it. *Id.* at 898-900. In that case the denial was so utterly groundless as to create an inference of religious discrimination, so that the case could equally have been decided under the "less than equal terms" provision of RLUIPA, which does not require a showing of substantial burden. But Petra had no reasonable expectation of obtaining a permit. Having decided to go ahead and purchase the property outright after it knew that the permit would be denied, Petra assumed the risk of having to sell the property and find an alternative site for its church should the denial be upheld (or, if illegal, legally reimposed), just like any other religious organization that wanted to build in the industrial zone.

(*Id.*).

As in *Andon*, the Petitioner here entered into a Contract of Sale which is contingent upon the Petitioner obtaining the RTA approval, and on the denial of the Protestants' relief in regard to

amending the 2006 FDP. As we explained in detail, even a cursory glance at the proposed Plan reveals that it fails to meet the RTA Regulations.

Importantly, as outlined in the legislative history of the RTA Regulations above, the RTA Regulations have been in place since 1970. Using the date on the Colbert, Matz Petition (October 14, 2014) (Prot. Ex. 5); (Abel Ex. 1) when this Petitioner first sought to build a synagogue on this Property, the RTA Regulations had been in place for 44 years before the Petitioner entered into this Contract of Sale. While there have been amendments to the RTA Regulations through the years, the relevant change applicable here was enacted in 1992 (via Bill 2-92), 22 years prior to the Contract of Sale. Unlike the facts in *Bethel*, there was no change in the law affecting the relief sought after the Petition was filed. This is a critical distinction from the facts in *Bethel*.

Applying *Andon*, the Board finds that the Petitioner never had a reasonable expectation that the Property here could be used for an 88-seat, 8,000 sq. ft. synagogue, with its associated parking lot and an accessory parsonage. While a synagogue is certainly a use permitted as of right under BCZR, §1B01.1.A.3, the pre-existing conditions of this particular Property, including the site constraints due in part, to the Forest Conservation Easement, topography issues, access to Stevenson Road, and the location of the existing farmhouse were indicative of the fact that it could not meet the RTA conditions or setbacks. Moreover, we find that there can be no reasonable expectation that the proposed Plan would be granted for the Property when the Property has only been used as a home since 1851. In addition, there was no reasonable expectation that the proposed Plan was within the spirit and intent of the 2006 FDP, which was for the approval of two more homes.

Knowing this, the Petitioner assumed the risk of an unfavorable decision and chose to mitigate its risk by entering into a contingency contract of sale for this Property. The Petitioner's contention that its current location is not suitable for its future growth and limits its services or

programs, does not equate to a "substantial burden" imposed by a Baltimore County zoning regulation. The burden alleged here is entirely self-imposed. The Petitioner has selected this Property because this Property meets its budgetary limitations, its location prerequisites, as well as for the convenience of some members of its Congregation.

The current location is owned by Friends of Lubavitch, Inc., an entity affiliated with the Petitioner. More importantly, Rabbi Belinsky admitted that the sanctuary there does seat 85 people, and that the synagogue has never filled up that sanctuary for services. Thus, for the Petitioner to claim that the existing synagogue does not have enough space or that it must turn away participants for services, is contrary to the Rabbi's admission.

The existence of many synagogues, churches, and religious centers in the Pikesville, Stevenson, and Mays Chapel areas of Baltimore County is conspicuous from aerial photographs submitted by the Petitioner. (Pet. Ex. 3). Three synagogues located south of the Property, namely, Chizuk Amuno, Beth El, and Beth Tfiloh Congregations are situated on large parcels of land next to I-695. (*Id.*).

Moreover, the list of "Uses Permitted as of right" under BCZR, §1B01.1.A contains all non-religious uses, except one for a church or building of religious worship. All of the non-religious uses listed in BCZR, §1B01.1.A are equally subject to the RTA Regulations. By way of example, if the proposed Plan was for a hospital (A.9); a day care facility (A.12); a research institute (A.13); or a school (A.14), for which the proposed building was also 8,000 sq. ft., was in the same location as this synagogue, with the existing farmhouse as an accessory building, those non-religious buildings would face exactly the same obstacles (or more depending on the amount of parking spaces required) with regard to the RTA Regulations and amending the FDP. Yet, those non-religious uses would not be able to allege a "substantial burden" under RLUIPA.

We find that the alleged burdens facing the Petitioner are the same ones encountered by all land users. We find no "substantial" burden on the Petitioner's free exercise of religion here, where the BCZR merely operates to allegedly make the Petitioner's operation more expensive. (*See Braunfeld v. Brown,* 366 U.S. 599, 605, 81 S.Ct. 1144, 6 L.Ed.2d 563, (1961) (plurality opinion). Financial limitations are a constraint on all organizations and businesses. *Westgate Tabernacle, Inc. v. Palm Beach County*, 14 So. 3d 1027, 1032 (Fla. Dist. Ct. App. 2009).

Thus, the Board emphasizes that the RTA Regulations treat religious and non-religious uses equally. To find otherwise would be to ignore these zoning regulations and to grant an automatic exemption to the Petitioner on the sole basis that it is a religious organization. To do so would be to favor this religious organization over a non-religious one.

As the *Andon* Court held, the Petitioner is not entitled to a "free pass" under RLUIPA because it desires to build a large, non-residential building, on a parcel of land that is too small for its intended purpose and operation, the Plan for which is not compatible with the character or general welfare of the existing surrounding residential premises, nor is the Plan within the spirit and intent of the residential 2006 FDP. Thus, our denial of the requested relief does not alter any pre-existing expectation, or cause the Petitioner to suffer delay or uncertainty in finding a place of worship (other than those which are self-imposed). Given the circumstances of this particular Property, as it sits within this particular, established, residential area, any expectations of the Petitioner, as claimed, entering into the contingent contract of sale for this Property, were and are unreasonable.

The Petitioner's burden argument is further diminished by the existence of the Colbert, Matz Plan for a smaller synagogue of 35 seats with its smaller parking lot, and by the Petitioner's voluntary decision to withdraw the Colbert, Matz Plan in favor of this one that is more desirable to them. That decision created the self-imposed hardship which is masquerading here as a RLUIPA claim. A

substantial burden is not found where alternatives exist which allow for the practice of religion. (*Trinity*, at 430). While the Petitioner desires a new space in a convenient location for the right price, Baltimore County Zoning Regulations are not, under any scenario, preventing the Petitioner from practicing its religion.

There was no credible evidence presented by the Petitioner here, other than passing remark by Rabbi Belinsky during his testimony, that there were no other viable alternative locations for the proposed Plan. (*Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338, 352 (2d Cir. 2007) ("when an institution has a ready alternative – be it an entirely different plan to meet the same needs or the opportunity to try again in line with a zoning board's recommendations – its religious exercise has not been substantially burdened"). Thus, since the synagogue does not yet exist on the Property, this is not a case where relocation of an existing synagogue would cause additional relocation costs, thereby potentially burdening a petitioner. *Saints Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir., 2005).

To the contrary, the Petitioner here has complete control over the selection of suitable property, over the size of the building, the presence of other structures, and over the Plan which it is proposing.

Further, we find no substantial burden where the allegation is that the desired land use conceivably aligns with the Petitioner's religious practice. *Candlehouse v. Town of Vestal*, 2013 U.S. Dist. LEXIS 63353 (N.D.N.Y. 2013) at 59. On that point, Rabbi Belinsky pointed to the desirability of this location because it is convenient for several of the Congregation's members who could walk to services in observance of the Sabbath. "Substantial burden" is more than a simple inconvenience on a church's religious exercise. (*International Church of the Foursquare Gospel v. City of San Leandro*, 634 F.3d 1037, 1044 (9th Cir. 2011).

The same convenience argument was rejected by the Court in *Midrash Sephardi*, *supra*, wherein the Court had this to say about walking to services:

> While walking may be burdensome and "wålking farther" may be even more so, we cannot say that walking a few extra blocks is "substantial," as the term is used in RLUIPA, and as suggested by the Supreme Court. The permitted RD-1 district is in the geographic center of a relatively small municipality, proximate to the business, tourist and residential districts. Deposition testimony indicated that congregants wishing to practice Orthodox Judaism customarily move where synagogues are located and do not typically expect the synagogues to move closer to them. *See* Casper Dep. at 23-24. In any given congregation, some members will necessarily walk farther than others, and, inevitably, some congregants will have greater difficulty walking than others. While we certainly sympathize with those congregants who endure Floridian heat and humidity to walk to services, the burden of walking a few extra blocks, made greater by Mother Nature's occasional incorrigibility, is not "substantial" within the meaning of RLUIPA.
>
> Were we to adopt the synagogues' reasoning, it would be virtually impossible for a municipality to ensure that no individual will be burdened by the walk to a temple of choice. Municipalities that allow religious exemptions to alleviate even the small burden of walking a few extra blocks would run the risk of impermissibly favoring religion over other secular institutions, or of favoring some religious faiths over others.
>
> Given the facts in this case, the SZO does not exact a "substantial" burden on the congregations' religious exercise.

(*Id.* at 1228).

There was also no evidence presented of any discriminatory practices or bad faith by Baltimore County in regard to the Petitioner or its Petition. *Reaching Hearts International, Inc. v. Prince George's County*, 368 F. App'x 370 (4th Cir., 2012); *Lighthouse Community Church of God*

v. City of Southfield, 2007 WL 30280, No. 05-40220 (E.D. Mich. Jan. 3, 2007). Unlike the facts in *Reaching Hearts* and *Lighthouse Community*, there is no evidence here of representations or promises made by Baltimore County to this Petitioner that the Petition would be granted. Further, as noted above, there is no after-the-fact change of law. To the contrary, Petitioner, having filed a Petition for relief from the RTA Regulations, assumed the risk that, after a hearing in which the issues were fully litigated over ten days, that the proposed Plan would not satisfy the zoning regulations.

C. Is there a Compelling Government Interest in the RTA and Amendment of Final Development Plan Regulations.

While the Board finds no "substantial burden" on this Petitioner, in the event that it is determined that a "substantial burden" on the Petitioner's religious exercise exists on the facts here, we find the legislative history of the RTA Regulations furthers a "compelling government interest" in separating and buffering dissimilar uses, whether such uses are religious or non-religious. The purpose of the separation area, setbacks and buffer is to screen existing dwellings or lots. The legislative history clarified the problem which resulted when dissimilar uses were built adjacent to one another, an unintended consequence of Bill 100-70, which permitted a variety of housing types ranging from single family homes to apartment buildings in any D.R. zone. "Conserving and maintaining existing communities" was the stated purpose in Bill 2-92 for adding Subsection F to the "Purpose" Section now found in BCZR, §1B00.2. This established residential community is precisely the type of community which should be "conserved" and "maintained."

With regard to the regulation for amending a final development plan pursuant to BCZR, §1B01.3.A.7, the compelling government interest is identified by BCZR, §1B01.3.A.1.a and b. In the words of Mr. Thaler, BCZR, §1B01.3.A.1.a and b act as a "consumer protection provision" to

protect those, like the Abels, who have purchased property in reliance on an approved final development plan:

> A. Development plans (sic).
>
> 1. Purpose. This paragraph is intended:
>
> a. To provide for the disclosure of development plans to prospective residents and to protect those who have made decisions based on such plans from inappropriate changes therein; and
>
> b. To provide for review of residential development plans to determine whether they comply with these regulations and with standards and policies adopted pursuant to the authority of Section 504.

Without doubt, a strong compelling government interest is found in protecting home buyers, who are spending their hard-earned income, and who are relying upon a County-approved Final Development Plan to decide about whether or not to buy a particular home in a particular location.

D. Least Restrictive Means of further Compelling Government Interest.

Additionally, the RTA Regulations prescribing the 100-foot Transition Area, 75-foot setback, and 50-foot Buffer, are the least restrictive means of furthering that compelling government interest in separating dissimilar uses which are permitted by right or by special exception in D.R. zones. In fact, the distance which generated the buffer was previously larger (300-feet in Bill 109-82) than the current 150-foot distance as it now exists in BCZR, §1B01.1.B.1.b(1). The reduction of that distance mitigates the burden on a proposed development in satisfying the RTA Regulations.

As we see it, the RTA Regulations also provide the least restrictive means to further that government interest by providing 17 exceptions to the RTA Regulations, five of which are for religious buildings. BCZR, §1B01.1.B.1.g(3), (4), (5), (6) and (16). Thus, if there is any argument to be made in the overall scheme of the RTA Regulations, it is that religious uses appear to be favored over non-religious uses. Consequently, plans supporting religious uses have a greater likelihood (having more exceptions) than non-religious uses of obtaining approval.

Moreover, some of the non-religious uses listed in BCZR, §1B01.1.A such as "excavations" (A.6); farms (A.7); hospitals (A.9); research institutes or laboratories (A.13) and schools (A.14), do not even have an exception under BCZR, §1B01.1.B.1.g. Consequently, for a school which cannot look to an RTA Exception, it must comply entirely with the RTA conditions for transition areas, buffers, and setbacks. By way of example, if a secular school were proposed on the footprint of the proposed synagogue, and the farmhouse were proposed to be used as a headmaster or principal's house, along with the associated parking lot, that plan also would fail to meet the 100-foot Transition Area, the 75-foot Setback and the 50-foot Buffer for exactly the same reasons we found here.

We also see that the standard in Exception g(6) is not any more onerous for a religious building than it is for a non-religious building. Non-religious buildings such as new community buildings under Exception g(10), and group child care centers under Exception g(11), are required to prove the *same* standard as that for a new church under Exception g(6) (*i.e.*, that the proposed improvements are planned in such a way that compliance to the extent possible with the RTA requirements [or compliance with the bulk standards of Section 424.7] will be maintained and that the special exception can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises"). All three Exceptions require a hearing during which both sides present their case after which a final decision is made.

In regard to BCZR, §1B01.3.A.7 regarding amendments to a final development plan, this also requires a hearing process through which an amendment can be approved. The Board finds that the hearing process is the least restrictive means possible to provide a fair opportunity to all interested parties. Toward that end, an amendment to an approved final development plan can only be granted after a hearing is held, where only "eligible individual[s] or group[s]" have standing (i.e., owner of nearby property, an owner of an abutting lot, or one lying across the street or right of way from the property in question, or a home owners association).

Limiting the pool of Protestants for an amendment is certainly the least restrictive means of streamlining the issues and the duration of the hearing. Requiring a judicial hearing in which the evidence is impartially weighed to determine whether the proposed amendment is consistent with the spirit and intent of the original FDP and of Article 1B, is the least restrictive, and most practical way, of ensuring that homebuyers are protected.

We further find that the standard for approval of an amendment is the least restrictive means of protecting a prospective purchaser in that a finding must be made that is in accord with the provisions of the Comprehensive Manual of Development Policies (Pet. Ex. 4) and with the specific standards and policies of Article 1B, entitled "Density Residential (D.R.) Zones" (both of which include the RTA Regulations).

As the hearing process showed, because the 2006 FDP reflects the addition of two more single-family homes to this area, and the proposed amendment is for a non-residential building on a small property with all of its physical constraints located in an area which has ingress and egress issues, to which up to and perhaps over 88 people are reasonably expected to come on a regular basis with their vehicles, the proposed amendment is not consistent with the spirit and intent of the original FDP or the RTA Regulations contained in Article 1B.

In summary, the Board finds that there are no violations of RLUIPA by Baltimore County in the enactment of the applicable zoning regulations. There is no "substantial burden" on this Petitioner's exercise of religion based on the evidence presented. Baltimore County has provided a compelling government interest in both the RTA Regulations and those regarding amendments to final development plans by the least restrictive means. It is the role of this Board to interpret, apply and enforce the zoning regulations as enacted and we decline to grant the Petitioner's requested relief based upon the assertion by the Petitioner of a violation of rights under RLUIPA.

CONCLUSION

Accordingly, the Petitioner's requested relief as set forth in its Petition is denied. In addition, the Protestants' Petition for Special Hearing relief requesting a determination that the proposed Plan satisfied the legal standards for amending a FDP is denied. Further, Protestant Kenneth and Jessamyn Abel's Motion to Dismiss is hereby granted. Lastly, we find that there is no violation of RLUIPA in this case.

ORDER

THEREFORE, IT IS THIS 5th day of March, 2018, by the Board of Appeals for Baltimore County,

ORDERED that the Petition for Special Hearing filed by the Petitioner in Case No. 15-239-SPH seeking relief from §500.7 of the Baltimore County Zoning Regulations ("BCZR"): (1) to permit a synagogue in a D.R.1 zone (BCZR, §1B01.1A(3); (2) for a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with the RTA Use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises (BCZR, §1B01.B(1)(G)(6)); and (3) to confirm that 8420 Stevenson Road may remain a dwelling use for a parsonage by the synagogue clergy, be and it is hereby, **DENIED**; and it is further,

ORDERED, the Protestants' Petition for Special Hearing relief in Case No. 15-276-SPH requesting a determination that the proposed Plan satisfied the legal standards for amending a final development plan under BCZR, §1B01.3.A.7, be, and it is hereby **DENIED**; and it is further,

ORDERED, that the Protestant Kenneth Abel's Motion to Dismiss regarding RLUIPA is hereby **GRANTED**; and it is further,

ORDERED, that there is no violation of RLUIPA in either of the above captioned cases.

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

Maureen E. Murphy, Panel Chair

James West

IN THE MATTER OF Harvey and Leslie Goldman, Legal Owners Congregation Ariel Russian Comm. Syn., Inc., Contract Purchaser/Petitioner 8420 Stevenson Road Pikesville, MD 21208 3rd Election District, 2nd Councilmanic District	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY
RE: Petition for Special Hearing and Variance	*	Case No. 15-239-SPH and 15-276-SPH

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

CONCURRING AND DISSENTING OPINION

The undersigned joins the majority opinion on all issues but the majority's interpretation of what is required by the phrases "special exception procedures" and "Section 502" in conjunction with amending a final development plan. The undersigned dissents on those issues, as is set forth in more detail below. The undersigned also writes separately on related points, to which the undersigned concurs, in order to emphasize the importance of protecting property owners' investments from subsequent inappropriate changes, the discussion of which helps frame the matters at issue in this dissent.

Baltimore County has specific regulations regarding final development plans. The final development plan in this case, by virtue of the property's location within the D.R.1 Zone[1], is subject to the provisions set forth in BCZR, §1B01.3. Section 1B01.3(A)(1) specifies that the development plan regulation "...is intended:

> a. To provide for the disclosure of development plans to prospective residents and to protect those who have made decisions based on such plans from inappropriate changes therein; and
>
> b. To provide for review of residential development plans to determine whether they comply with these regulations and with standards and policies adopted pursuant to the authority of Section 504."

[1] A portion of the property is also located within the R.C.5 zone.

In other words, final development plans serve a notice function to prospective buyers and act as a shield for those who have made a decision to purchase property located within the final development plan from certain changes. The related regulations help to ensure that proposed changes to a final development plan do not materially frustrate a purchaser's decision to purchase a particular house in a particular location. The regulations also provide an avenue for review and a means to protect a homebuyer's investment from changes that may thwart or defeat a purchaser's understanding at the time of purchase.

In February 2014, the Abels purchased their property, formerly Lot 2 of the Goldman 2006 final development plan (the "FDP"). Mr. Abel, an attorney, testified, and credibly so, that prior to the purchase, he did "a lot of research" on his house and neighboring properties. He reviewed the FDP, and relied on his broker for even more information. He had other attorneys, including co-workers at his firm, look at the documents as well. BCZR §1B01.3(A)(5)(b) requires that the plan show:

> the locations, types and exterior dimensions of all proposed structures and all existing structures to be retained; generalized floor plans to scale; layout of parking facilities; streets and drives giving access to and lying within the tract; existing topography and major vegetation; proposed grading; common amenity open space (including local open space); all additional information that may be required under procedures adopted pursuant to the authority of Section 504; and all additional information which is necessary, as determined by the Director of Permits, Approvals and Inspections, to ascertain whether the project will comply with the zoning and subdivision requirements of Baltimore County. The plan shall contain the note that landscaping and screening shall conform to the standards contained in the Baltimore County Landscape Manual adopted pursuant to § 32-4-404 of the Baltimore County Code.

There is nothing in the record that indicates that the plans reviewed by Mr. Abel or on behalf of the Abels did not conform to §1B01.3(A)(5)(b). Mr. Abel learned that the adjacent property consisted of two lots, with a yet-to-be-constructed single-family house upon each lot. He remembered that there was a sign for a builder in front of the lots. After being satisfied with his

research, he and his wife purchased their "dream home," now 8418 Stevenson Road. The Abels moved in to their home shortly thereafter.

In mid-October 2014, Petitioners contacted the Abels and requested a meeting. At that meeting, Mr. Abel learned, for the first time, that Petitioners were looking to purchase the adjacent lots and, rather than build single-family homes, wished to build a synagogue. At that time, Petitioners' plan was to expand the existing barn, which sits on the edge of the Goldman property and is fairly close to the Abels' house, to accommodate a 35-seat synagogue. Over time, that plan changed and expanded before Petitioners settled on the Plan at issue.

In response to Petitioners' first attempt at making changes to the Property, the Colbert, Matz Plan, the County concluded that it was "a material amendment to the development plan," and in doing so, required an amendment to the final development plan. (See, PC Ex. 4; Abel Ex. 3). Unquestionably, and as set forth in the main opinion, the Plan now at issue similarly constitutes a material change and therefore, requires an amendment of the final development plan. Petitioners, however, did not seek an amendment, and rather, elected to gamble on the theory that application of the Small Lot Table exempts an amendment under §1B01.3(A)(7)(b). By availing themselves of this strategy, Petitioners had to prove, *inter alia*, common ownership of all lots, knowing that the Abels presently owned the property depicted as Lot 2 on the 2006 FDP.

To avoid the natural consequence that arises when the law requires common ownership but the facts require a different finding, Petitioners argued that the law time-travels back, prior to any sale, thereby reuniting the properties under common ownership, resulting in no need to amend the FDP pursuant to §1B01.3(A)(7)(b). Such an argument, while creative, eviscerates the common sense application of the Baltimore County Zoning Regulations, obliterates the purposes identified in Section 1B01.3(A), and voluntarily ignores the obvious --- an exemption from the more rigorous

amendment process may be appropriate when no one's interests can be directly harmed by material changes to a development plan. The Regulations, however, deliberately and carefully provide some measure of protection for a limited number of homeowners that may be directly harmed by such changes. Absent a regulation that permits disregard as suggested, or a stable wormhole that may allow actual time travel, the Board cannot join Petitioners on its argument's journey to go back in time. Rather, the purposes for the regulations are clear and must be effectuated.

There is nothing in the record to conclude anything other than the Property at issue was subject to the FDP, the Abels purchased their property prior to any attempt to amend the FDP, the Abels reviewed and relied upon the FDP in existence prior to February 2014 when making their decision to purchase their house, and the FDP depicted that, at most, two single-family houses may be built on the adjacent lots, the reasonable expectations that arise from the Abels' review of that plan that factored into their purchase decision are required by Baltimore County to be protected from inappropriate changes.[2] Moreover, Petitioners were required to amend the FDP. Though Petitioners were so required and did not, Protestants did, preserving it for our review.

Because the Abels' purchase of their property preceded the proposed amendment, the Baltimore County Zoning Regulations require the amendment analysis set forth in §1B01.3(A)(7)(b).[3] Under BCZR §1B01.3(A)(7)(b), in the case of an amendment not allowed due to prior sale of property within the area or in the event there was a demand for a hearing by an eligible individual or group, "the plans may be amended through special exception procedures, in the manner provided under Section 502[4] and subject to the following provisions:

---

[2] And/or those limited property owners to whom County regulations extend certain rights arising from proximity to property within a final development plan, as identified in §1B01.3(A)(7)(b)(2).
[3] Petitioners argued that BCZR §1B02.3(D) applies to exempt their amendment from §1B01.3(A)(7). The Board found that BCZR §1B02.3 did not apply to Petitioners.
[4] Emphasis added.

> (1) The amendment must be in accord with the provisions of the Comprehensive Manual of Development Policies and with the specific standards and requirements of this article, as determined by the Department of Planning. The Director, on behalf of the Planning Board, shall notify the Zoning Commissioner accordingly.
>
> (2) Only an owner of a lot abutting or lying directly across a street or other right-of-way from the property in question, an owner of a structure on such a lot, or a homes association (as may be defined under the subdivision regulations or under provisions adopted pursuant to the authority of Section 504) having members who own or reside on property lying wholly or partially within 300 feet of the lot in question are eligible to file a demand for hearing.
>
> (3) It must be determined in the course of the hearing procedure that the amendment would be consistent with the spirit and intent of the original plan and of this article."

The question that causes the divide within the Board in this case is --- What does the phrase "special exception procedures, in the manner provided under Section 502..."[5] mean?

The undersigned's fellow panel members conclude that the reference to "special exception procedures" is not that same as "special exception conditions," which is expressly stated in BCZR §502.1. As such, the identification of "special exception procedures," rather than "special exception conditions," dictates, from their interpretation, that only a public hearing is required and not an application of Section 502 factors within, e.g., BCZR §502.1. The undersigned respectfully disagrees.

The following events trigger the application of "special exception procedures" referenced in BCZR §1B01.3(A)(7)(b): (1) the prior approval of a partial or final development plan; (2) a proposed amendment to the partial or final development plan; and at least one of two of the following circumstances (a) a sale of interest in "nearby" property; or (b) a demand for a hearing by an eligible individual or group[6] (identified in BCZR §1B01.3(A)(7)(b)(2)). In other words,

[5] The remainder of the sentence "and subject to the following provisions..." is applicable as well, but is not an issue that caused a divide in the Board's opinion.
[6] Identified in BCZR §1B01.3(A)(7)(b)(2), which states "Only an owner of a lot abutting or lying directly across a street or other right-of-way from the property in question, an owner of a structure on such lot, or a homes association

assuming the first two events, amendments through "special exception procedures" are required either when there is a sale of interest in nearby property or when there is a demand for a hearing by an eligible individual or group. Therefore, "special exception procedures" cannot be interpreted so narrowly as only requiring a public hearing, as the regulation already specifically acknowledges and bestows that right upon those that otherwise may not have that right absent that express grant.

To read the regulation as the majority does, the interpretation would have to be understood as follows: "the plans may be amended through "**a public hearing**, in the manner provided under Section 502." Section 502, however, does not provide any manner for a public hearing. In fact, there is no regulation designated as "Section 502." "Section 502" is the title of a grouping of regulations, §§502.1-502.10, particular to special exception cases. It is BCZR §500.5 that provides for public hearings on petitions for special exceptions. If the intent behind use of the phrase "special exception procedures" was to provide only for a public hearing, a reference to BCZR §500.5 (or simply saying "hearing") would have been sufficient.

Section 1B01.3(A)(7)(b) specifically identifies the word "hearing" twice, independent of "special exception procedures." The County Council's choice to use the phrase "special exception procedures in the manner provided under Section 502" and choice to use the word "hearing" twice within the same regulation conveys an intent for the two to have different meanings.

The County Council could not and did not intend to for the references to "special exception procedures" and/or "Section 502" to be superfluous, nor can this Board render such language meaningless in application. See, *Ware v. People's Counsel for Baltimore County*, 223 Md.App. 669, 682-683; 117 A.3d 628, 636-637 (2015), quoting, *Fisher v. E. Corr. Inst.*, 425 Md. 699, 706-

(...) having members who own or reside on property lying wholly or partially within 300 feet of the lot in question are eligible to file a demand for a hearing."

707; 43 A.3d 338 (2012) (statutory interpretation begins with the plain language of the statute… where the statute is read "as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory."). Therefore, "special exception procedures" in combination with "Section 502" must mean something more than a providing a public hearing. The phrase "special exception procedures, in the manner provided under Section 502" refers to the regulations found within Section 502 and the regulations within Section 502 provide the criteria to evaluate proposed final development plan amendments pursuant to BCZR §1B01.3(A)(7)(b).

Some of the subsections within Section 502 will not apply to the case at hand. For example, BCZR §502.4 concerns special exceptions for certain elevator apartment buildings and office buildings. On the other hand, a couple of Section 502 subsections have applicability to this case, specifically §§502.1 and 502.6. These regulations define and give an identity to the phrase "special exception procedures, in the manner provided under Section 502…" and the requisite matters to consider and analyze for purposes of this case.

Moreover, interpreting BCZR §1B01.3(A)(7)(b) in this way effectuates the purposes reflected in BCZR §1B01.3(A)(1) and provides objective criteria to evaluate the potential "inappropriate changes", rather than a subjective determination of whether or not any change is inappropriate, thus harmonizing the framework crafted by the County Council. As recently reaffirmed by the Court of Appeals, "[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature." *Spangler v. McQuitty*, 449 Md. 33; 141 A.3d 156, 165 (2016), quoting, *Rosemann v. Salsbury, Clements, Bekman, Marder & Adkins, LLC*, 412 Md. 308, 314; 987 A.2d 48, 52 (2010) (citation omitted).

The Majority notes that this is not a "special exception case." In technical terms that may be correct, but the existence of a final development plan and proposed amendment results in this

case falling within the same orbit of a special exception case by reference to "special exception procedures" and "Section 502." Application of the same is wholly consistent with the intent and designated purposes of helping protect those that may be directly impacted by changes within a final development plan.

The Majority also notes that, in BCC §32-4-245(c), the County Council identified six of nine §502.1 factors for a Hearing Office to consider in connection with a Planned Unit Development, arguing that if the County Council intended the §502.1 factors to be applicable in this context, it would have specified the same. There is no argument that the County Council intended for six of nine factors to apply at PUD hearings; the Code specifically identifies it. The undersigned interprets the reference to §502.1 in BCC §32-4-245(c) as reflecting the Council's intent to limit the application of §502.1 to only certain factors found within and to exclude application of other regulations. The absence of a specific reference to §502.1 in this context does not negate or preclude the application of §502.1 factors when the regulation here identifies "Section 502," which in plain language is understood to include all regulations found therein.

In its third argument, the Majority states that approval of a final development plan by a Hearing Officer is not dependent upon the §502.1 factors, and therefore, would be illogical to apply the same to an amendment. To the contrary, there are significant differences as to the circumstances and relatedly, the requirements when seeking to amend a final development plan either pre-sale or post-sale.

First, at the time of approval of a final development plan, the Hearing Officer may impose conditions upon a development plan for, *inter alia*, the protection of the surrounding area and is necessary to alleviate an adverse impact on the health, safety, or welfare of the community that would be present without the condition. BCC, §32-4-229(d)(2). These concepts are echoed within

§502.1 and §502.2, but clearly the County Council did not wish for all factors in §502.1 to apply at this stage of the development plan. Consistent therewith, any amendments to a final development plan sought prior to any sale also do not require application of factors within §502.1 (or any subsection within Section 502). BCZR §1B01.3(A)(7)(a). As set forth therein, for amendments prior to any sale of nearby property:

> the development plans may be amended by simple resubmission, or by the submission of appropriate documents of revision, subject to the same requirements as are applied to original plans, if there is no change with respect to any lot, structure or use within 300 feet of a lot or structure which has been sold since the original plans were filed.

Notably, at the time of the hearing in front of the Hearing Officer, no one has come to rely on the final development plan when making a purchase decision of property located within the plan or immediately adjacent thereto. For an amendment prior to sale of nearby property, the circumstances are the same.

However, as reflected in §1B01.3(A), the County Council recognized that those that rely upon final development plans when making a home purchase deserve greater protection in light of that reliance. To effectuate that, the process has to consist of something more than the criteria considered by the Hearing Officer for the original approval of a final development plan and something more than the procedure set forth in BCZR §1B01.3(A)(7)(a).

Based on the Majority's reading, the difference is that a post-sale amendment requires a public hearing. However, the Hearing Officer's hearing on the original approval and for pre-sale amendments is a public hearing. BCC § 32-4-227(a). The affected public has the right to participate and testify. BCC § 32-4-228. Those protections are already being afforded as part of the approval and pre-sale amendment process. Interpreting "special exception procedures" on post-sale amendments as providing only a public hearing for those directly affected provides no further

protection, no recognition of the different circumstances presented by pre- and post-sale amendments, and fails to effectuate the clear intent of the County Council to provide greater protections.

Lastly, the Majority states that §1B01.3(A)(7)(b)(3) and §502.1(G) both reference "spirit and intent," suggesting that the undersigned's interpretation would lead to unnecessary duplication by the County Council. However, §1B01.3(A)(7)(b)(3) examines the spirit and intent of the amendment to the original plan and Article 1B. Section 502.1(G), in context, analyzes the spirit and intent of the amendment to the property's "zoning classification and the Zoning Regulations." While there may be some overlap, it is clear that §1B01.3(A)(7)(b)(3) is more specific than §502.1(G) in one respect --- §502.1(G) does not require analysis of the spirit and intent of the original plan. Section 502.1(G), on the other hand, is more specific in focusing on the property's zoning classification, which may not be fully reflected by the regulations contained in Article 1B (which concerns D.R. Zones). In any event, the language for each and the effect of the respective language is not duplicative, contradictory, or rendered surplusage by the other.

Therefore, as noted above, the undersigned joins the majority opinion on all issues but the majority's interpretation of "special exception procedures," "Section 502," and the requirements for the same in this case. The undersigned dissents on those points as outlined above, but concurs in the result.

March 5, 2018
Date

Jason S. Garber, Member

Board of Appeals of Baltimore County

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RE: In the Matter of: *Harvey and Leslie Goldman – Legal Owners*
Case Nos.: 15-239-SPH and 15-276-SPH

Dear Counsel:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Sunny Cannington Hag

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Multiple Original Cover Letters

c: See Attached Distribution List

c: Harvey and Leslie Goldman
Velvel Belinsky/Congregation Ariel Russian Community Synagogue, Inc.
Kenneth and Jassamyn Abel
Caren B. and Bruce S. Hoffberger
Dana M. Stein
Margaret C. Presley
Eric and Joanna Lewis
Brenda Hoffman
An Goffin
William M. Rudow, Esquire
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

KEVIN KAMENETZ
County Executive

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

January 15, 2016

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RE: **APPEAL TO BOARD OF APPEALS**
Petitions for Special Hearing
Properties: 8420, 8430 and 8432 Stevenson Road
Case Nos. 2015-0239-SPH and 2015-0276-SPH

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on January 14, 2016. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

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

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

Sincerely,

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/dlw

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County

APPEAL

Petitions for Special Hearing
(8420, 8430 & 8432 Stevenson Road)
2nd Election District – 3rd Councilmanic District
Goldman Property – Applicant: Congregation of Ariel Russian Community Synagogue, Inc.
Consolidated Case Nos. 2015-0239-SPH AND 2015-0276-SPH

Petitions for Variance Hearing – 239 (April 30, 2015) & 276 (June 2, 2015)

Zoning Description of Properties

Notice of Zoning Hearings - 239 (June 18, 2015 Postponed & June 24, 2015)
276 (August 5, 2015)

Certificates of Publication – 239 (May 28, 2015) & 276 (July 16, 2015)

Certificate of Posting – 239 (May 29, 2015) & (June 4, 2015) – Black
276 (July 13, 2015) - Doak

Entry of Appearance by People's Counsel – 239 (May 12, 2015) & 276 (June 11, 2015)

Petitioner(s)/Citizen(s) Sign-in Sheets:

- June 24, 2015 – (9 Pages)
- August 5, 2015 – (4 Pages)
- August 12, 2015 – (2 Pages)
- September 2, 2015 – (3 Pages)
- October 16, 2015 – (1 Page)
- November 19, 2015 – (2 Pages)
- November 23, 2015 – (3 Pages)

Zoning Advisory Committee (ZAC) Comments – 239 (June 17, 2015) & 276 (July 30, 2015)

Petitioner(s) Exhibits:

1. Site Plan
2. Schematic landscape plan
3. Rendering of proposed building
4. Ex. regarding institutional uses
5. Docs. Produced by Cornelius
5. Goldman property HOH Order
7. Photo regarding gathering at K.A.'s house
8. Zoning Dev. Map from County website
9. Letters of support
10. Petition of support
11. Brennan C.V.
12. Schematic architectural drawing
13. Occupancy & parking requirements – 1BC
14. Basement description and occupancy – 1BC
15. Thaler CV
16. Enclave at Perry Hall
17. Streamwood FDP
18. Rockland Ridge FDP
19. Photos – taken by Mr. Thaler
20. GIS Map w/nearby houses highlighted

Protestants' Exhibits:

1. RTA regs.
2. website of Jewish Holidays
3. "Ariel photo gallery"
4. Aerial Hebrew School
5. Website – traffic & safety
6. Thumb drive of video walking on Stevenson
7. Exhibits, photos – Mr. Kail
8. Photos, Exs. Re: drainage of stream
9. Eric Lewis CV
10. 3-sheet exhibit prepared by E. Lewis
11. Zoning Checklist
12. Specimen tree overlay

13. FDP & Schem. Landscape plan – Goldman prop.
14. Sketch re: comparison to house size – by E. Lewis
15. Petitions signed by neighbors (paper)
16. On-line petitions signed by neighbors
17. Summary of petitions – August 2015
18. Neighborhood Alert handout
19. Map-colored showing difficult roads for petition
20. Jakubiak resume
21. Amended Dev. Plan dated 10-14-2014
22. Google Earth showing surrounding properties
23. Jakubiak – evaluation of consistency
24. I.T.E. Trip Generation Rates
25. Dev. Plan Goldman Prop. date: 7/25/2005
26. 10-21-2014 letter – A. Jablon
27. Dev. Plan comments – PDM Zoning Review

K.A. Exhibits:

1. 8432 Stevenson listing
2. 8430 Stevenson listing
3. 8430 MRIS List
4. 8432 MRIS List
5. Plat Goldman prop.
6. Plan earlier zoning case
7. 10-21-14 letter - A. Jablon
8. 1-12-15 E-mail - Abel
9. 1-12-15 Email – Jablon
10. 2-6-15 letter – B. Locher
11. N/A – Not Admitted
12. N/A – Not Admitted
13. Candle lighting
14. Photos and narrative
15. Vicinity map
16. First Amended Site Plan

Miscellaneous (Not Marked as Exhibits)

Motions:

- Motion to Consolidate & Entry of Appearance - (Holzer – June 12, 2015)
- Motion to Strike Petition for Zoning Hearing - (Burgunder – June 15, 2015)
- Motion to Consolidate & Entry of Appearance - (McCann – June 16, 2015 & June 18, 2015)
- Opposition to Motion to Consolidate (Burgunder – June 16, 2015)
- Response to Opposition to Motion to Consolidate & Motion to Dismiss (Holzer – June 23, 2015)
- Protestant, Kenneth B. Abel & Jessamyn L.B. Abel Answer to Motion to Strike Petition for Zoning Hearing (Holzer – June 23, 2015)
- Administrative Law Judge Order on Motion to Consolidate – June 25, 2015

Post Hearing Briefs:

- Email to counsel from ALJ Beverungen
- Memorandum of Law – (Burgunder – December 23, 2015)
- Protestants' Post-Hearing Memorandum – (McCann - December 23, 2015)
- Protestant, Ken Abel's Memorandum and Appendix in lieu of Oral Argument – (Holzer - December 23, 2015)
- Memorandum in Support of Opposition to Applicant Congregation of Ariel Russian Community Synagogue, Inc.'s Mandatory Request to Amend Subdivision Plan – (William M. Rudow, Esq.)

Administrative Law Judge Order and Letter – 239 (GRANTED – January 12, 2016)
276 – (DENIED – January 12, 2016)

Notice of Appeal – Herbert Burgunder, III on January 14, 2016

IN RE: **PETITIONS FOR SPECIAL HEARING (8420, 8430 & 8432 Stevenson Road)** 2nd Election District 3rd Council District	*	BEFORE THE
	*	OFFICE OF
	*	ADMINISTRATIVE HEARINGS
IN THE MATTER OF: GOLDMAN PROPERTY Applicant: Congregation of Ariel Russian Community Synagogue, Inc.	*	FOR BALTIMORE COUNTY
	*	**Case Nos. 2015-0239-SPH 2015-0276-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 Harvey & Leslie Goldman, legal owners and Congregation Ariel Russian Community Synagogue, Inc., contract purchasers ("Petitioners"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows: (1) to permit a synagogue in a D.R. 1 zone; (2) for a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with Residential Transition Areas (RTA) use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises; and (3) to confirm that 8420 Stevenson Road may remain a dwelling use for a parsonage by the synagogue clergy.

A petition for special hearing (in Case No. 2015-0276-SPH) was also filed by Kenneth & Jassamyn Abel, who live at 8418 Stevenson Road. They seek a determination as to whether the Petitioners in Case No. 2015-0239 satisfy the legal standards for amending a Final Development Plan (FDP). The cases were consolidated by Order dated June 25, 2015, as reflected in the case caption above.

ORDER RECEIVED FOR FILING

Date 1-12-16

By

Herbert Burgunder, III, Esq. represented the Petitioners in Case No. 239 while J. Carroll Holzer, Esq. represented Kenneth & Jassamyn Abel in Case No. 276. In addition, Michael McCann, Esq. represented various members of the community, and William Rudow, Esq., (who lives in the area) represented himself. The Petitions were advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). Numerous community members attended the hearings and opposed the construction of a synagogue on the subject property.

PETITIONERS' CASE

The petitioners presented several witnesses in their case. First was Stacy McArthur, a landscape architect accepted as an expert. Ms. McArthur explained in detail the site plan and proposed development. The witness explained the synagogue would be constructed in such a way that its "short" side wall elevation would face Stevenson Road. She noted that no improvements were proposed within the 75' RTA setback and that landscaping along Stevenson (a scenic route) would "soften" the impact of the proposed building. Ms. McArthur also testified that the parking lot would not be visible from the road, and she opined the project was compatible with the neighborhood.

In response to cross examination questions, Ms. McArthur recognized that Baltimore County has approved a final development plan for the Goldman property, and she agreed that if more than 24 cars arrived at the synagogue for any particular function they would need to park on nearby public streets (or be transported by bus or other type of shuttle operated by the synagogue). The witness also confirmed there are no sidewalks or shoulders along Stevenson Road near the site.

Mickey Cornelius, a traffic engineer accepted as an expert, was the next witness. Mr. Cornelius began by describing the roadway network in the vicinity of the site, and he advised that a synagogue would be a very low traffic generator. In particular, he testified that using widely-accepted national statistics the synagogue would generate approximately 40 vehicle trips per day, which would be equivalent to the traffic generated by four single family dwellings. While the witnesses testified that sight line deficiencies exist at several nearby roadways which intersect with Stevenson, the proposed synagogue is located on the outside of a horizontal curve and has safe sight distances. Mr. Cornelius testified the State Highway Administration (SHA) traffic count (as of 2012) indicates 6,700 vehicles per day along Stevenson Road south of the site. He believes that approximately 5,000 vehicles pass the site on a daily basis and that on Friday evening and Saturday morning (when the synagogue would hold services) there are much lower traffic volumes.

In response to questions on cross-examination, Mr. Cornelius testified he was hired last month and has visited the site on two occasions. He conceded no sidewalks exist on Stevenson, but testified the synagogue would in no way affect the safety of pedestrians along the road. The witness testified that according to official reports there were very few accidents along this stretch of road in the last several years. Mr. Cornelius stated there was a minimum 305 ft. sight distance to the south when exiting the subject property and 250 ft. to the north, although he recognized some trees or other vegetation along Stevenson Road might need to be removed to achieve these sight distances. In addition, he testified that the synagogue could be screened with vegetation in a manner that would not interfere with the sight distances.

The next witness was Rabbi Velvel Belinsky, who explained that he is a member of the Chabbad Lubavitch organization which serves the Russian-speaking Jewish community. Rabbi Belinsky currently holds services at a synagogue on Old Pimlico Rd., but he explained that his

congregation needs a place of its own, and that he believes the subject property is ideal for that purpose. The Rabbi explained in general the plans for the proposed synagogue, and he noted that at present approximately 25 people attend Friday night services at the synagogue.

On cross-examination, the Rabbi testified that the proposed synagogue would not seek to expand beyond the 88 seats shown on the plan, and that the space will not be leased to outside groups or organizations. On "high holidays," the Rabbi indicated he would lease space on a temporary basis to accommodate the large number of participants, as he does at the current Pimlico Road facility. While a Sunday school is planned, the Rabbi testified that a "regular" school will not be operated by the synagogue. The Rabbi testified that only one person walks to his current synagogue, and he noted that he serves a non-observant segment of the Jewish population who routinely drive to services. Concerning the size of the proposed building, Rabbi Belinsky stated that there will be a 4,000 sq. ft. first floor, and a basement of similar size, for a total of 8,000 sq. ft.

The final witness in Petitioners' case was Timothy Kotroco, Esq., who recently retired from Baltimore County after a 24 year career, 14 of which he served as deputy zoning commissioner and/or ALJ. Mr. Kotroco testified he was familiar with the Goldman subdivision, of which the subject property is a part. The witness noted the "small lot table" and regulations (found at B.C.Z.R. § 1B02.3.) applies to subdivisions of five or fewer lots, which would include the Goldman subdivision. Mr. Kotroco opined that if a property falls within the small lot table regulations, it is not necessary to amend the final development plan in the manner set forth at B.C.Z.R. § 1B01.3.A.7., pursuant to B.C.Z.R. § 1B02.3.D.

PROTESTANTS' CASE

The community protestants also presented several witnesses in their case, most of whom live in the immediate vicinity of the proposed synagogue. Several of the residents have lived in the area for many years, and as a group they are vehemently opposed to the proposed synagogue. While each resident had a different perspective on the issue, a recurrent theme was that Stevenson Road in this area is a narrow and extremely dangerous roadway. The community believes it would be inappropriate to introduce an institutional use to a residential neighborhood that has a quiet, rural feel. Neighbors worry the synagogue would increase traffic in the area and heighten the safety concerns for residents, especially the large number of children that live in the area. Many residents are also concerned the synagogue will not have sufficient parking, which will lead to overflow parking in the surrounding streets and neighborhood. This would not only cause an inconvenience to residents of the area, but it could (according to the community witnesses) also endanger those congregants who would be forced to traverse Stevenson Road after securing an off-site parking spot. Community members also noted that the area is extremely quiet on the weekend, which is when the synagogue would be at its busiest. Even though the synagogue might not generate a large volume of traffic, neighbors testified it would be "concentrated" such that traffic safety would become a real concern.

Eric Lewis, a registered architect accepted as an expert, also testified in the Protestants' case. Mr. Lewis lives near the subject property, and described his background and experience in architecture, which includes several projects for religious institutions. The witness testified he attended most of the hearing in the case and had reviewed the site plan prepared by the Petitioner. Mr. Lewis prepared an exhibit (Protestants' Exhibit 10) which he explained outlined the many deficiencies found on the site plan.

Mr. Lewis testified that the plan was not viable under the building code, and that he regarded the plan as "fictitious." He explained that the plan was totally out of scale, and that the engineer cleverly tried to manipulate the size of the adjoining homes to make them appear to be the same size as the proposed synagogue. He noted that the stairways shown on the plan "go nowhere," and that the plan erroneously lists the structure as 4,000 sq. ft. when in reality it is an 8,000 sq. ft. building. Mr. Lewis stated that under the building code, at least 300 people could occupy the structure, and that therefore the provided parking was inadequate. He also identified what he believed was a defective ingress/egress that provided only a 3-point turn-around area which could lead to backed up vehicles on Stevenson attempting to enter the site. The witness stated that no overflow parking was available at this site, which means that congregants or other visitors would need to park in the neighborhood. Finally, Mr. Lewis testified that 5 "specimen" tress would need to be removed from the site, as shown on an exhibit he prepared. Protestants' Exhibit 12.

On cross-examination, Mr. Lewis disagreed that religious institutions are *per se* "compatible" with residential areas. While he agreed that compliance with the building code is an issue that would be reviewed by Baltimore County at a later stage of the project, Mr. Lewis testified that given the defective nature of the site plan and floorplan the community has no idea what exactly will be constructed at the site. For this reason, he did not believe a determination could be made as to whether the plan was compatible with the surrounding residential properties or consistent with the final development plan for the Goldman property.

As noted at the outset this is a consolidated case, and an immediate neighbor (Ken Abel and his wife) filed a zoning petition (Case No. 276) seeking a determination of whether the Petitioner satisfied the standard for amending a final development plan. Mr. Abel, an attorney,

gave extensive testimony concerning his families' purchase of their "dream home" approximately 18 months ago. The witness described the "due diligence" he undertook prior to purchasing his home, which adjoins the subject property. He testified that he reviewed the Goldman final development plan and listings for the vacant lots next door (on which the synagogue is proposed). Based on those documents, Mr. Abel anticipated that 2 single-family dwellings would be constructed on the subject property, and he did not envision that an institutional property capable of holding 300 people would be built on the lots next door to him. Had he known, Mr. Abel testified he never would have purchased his home. Mr. Abel explained that he is frustrated by the developer's lack of communication throughout the process, and believes they want the community to simply "take their word" as to what type of structure would be constructed and what uses would take place on site. As a consequence, and given the dearth of specifics and details as to the proposal, the witness did not believe a finding could be made (as required by the RTA regulations) that the plan would be compatible with the surrounding residential properties.

REBUTTAL CASE

Inasmuch as they had the burden of proof, the Petitioners were entitled to and did present a rebuttal case. Their first rebuttal witness was architect Rob Brennan, who was accepted as an expert. Mr. Brennan has over 32 years of experience as an architect and is licensed in Maryland.

Mr. Brennan indicated he was providing testimony, in large part, to rebut or respond to the testimony of architect Eric Lewis, as referenced above. The witness prepared a schematic plan for the proposed synagogue (Ex. 11) and opined it was feasible and could be built. Mr. Brennan opined that the proposed building would be appropriate in this setting, and that it would be a distinctive building patterned after the Stevenson Village architecture. He testified religious buildings are appropriate in residential areas, and remarked that such buildings are often located in the "middle"

of a neighborhood. In sum, the witness opined the design and scale of the proposed building would be compatible with the neighborhood. On cross-examination, he conceded that not all religious buildings (i.e., an extremely large "megachurch") would be appropriate in residential areas.

The final witness was David Thaler, a professional engineer accepted as an expert. Mr. Thaler noted his father (a builder) constructed the Stevenson Road community surrounding the subject property, and that during college he worked for his father and built several of the dwellings in the area. He also stated he lived for a time in the neighborhood, and was very familiar with the area.

Mr. Thaler began his testimony by discussing the RTA regulations, and initially opined the Petitioners "fully comply" with the RTA regulations. He stated that the existing dwelling at the site is permitted in the RTA, and that the driveway is also permitted to bisect the 50' RTA buffer, since it is a "road" that connects the site to "adjoining developments" per B.C.Z.R. § 1B01.1.B.1.e(3). Mr. Thaler noted that even if it did not comply with the RTA, churches and religious uses are afforded several exceptions from the RTA requirements. As relevant in the case, he stated that the exception requires the site **plan** to comply "to the extent possible" with the RTA regulations, which he believes it does. In this regard, he testified that the protestants have incorrectly focused upon the **use** proposed here and whether that use was compatible with the "surrounding residential premises," while the correct analysis under the BCZR requires an evaluation of the site plan. Mr. Thaler opined that churches are a permitted use in the D.R. 1 zone, and that the Council has thereby determined that such a use (which may very well have adverse effects on the neighborhood) is compatible with the neighborhood. The witness acknowledged churches can have greater adverse impacts than dwellings, but that the B.C.Z.R. declares the use to be consistent and compatible with the area.

The next portion of his testimony concerned the issue of whether the "Goldman" final development plan (FDP) needs to be amended, which is the subject of the petition filed by Mr. Abel in case No. 276. Mr. Thaler testified that by filing that petition Mr. Abel was in fact initiating the process for amending the FDP. The witness opined that the FDP does not need to be amended, pursuant to B.C.Z.R. § 1B02.3.D, which concerns the "small lot table." He stated that the table applies here since the original Goldman development involved less than 6 density units, as mentioned in the order of the Deputy Zoning Commissioner approving the project in 2006. Petitioners' Ex. 6, p.3.

He testified that if (hypothetically) the FDP needed to be amended, Petitioners must show that the amendment would be consistent with the "spirit and intent" of the original plan and the Regulations. Mr. Thaler testified the term "spirit and intent" appears only three times in the B.C.Z.R., in Sections 307, 502.1 and 1B01.3.A.7.b(3). He opined that the use proposed does not need to be the same as that in the original plan; i.e., "spirit and intent" could be satisfied even if a single family dwelling is not constructed on the subject property. The witness further opined that the amendment procedure set forth in the aforementioned regulation essentially requires that the Petitioners satisfy the special exception standards in section 502.1, which he believes are satisfied by the site plan in this case.

RTA ISSUE

Petitioners in Case No. 2015-239-SPH filed a Petition for Special Hearing seeking a determination that the proposed synagogue satisfies the "new church" exception to the RTA regulations. While Petitioners advance an alternative theory that the proposed synagogue is in compliance with those regulations and need not rely upon the "new church" exception thereto, the petition as filed specifically invokes that provision and thus it will be decided in this proceeding.

The "new church" RTA exception provides that a religious building may be constructed without satisfying the RTA setbacks if "the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises." B.C.Z.R. § 1B01.1.B.1.g(6).

In Ware v. People's Counsel, 223 Md. App. 669 (2015), the court considered this exact RTA exception. The court in Ware decided, among other things, that simply because a church or religious use is permitted by right in a DR zone does not mean, ipso facto, that the plan for such a building would be "compatible with the character and general welfare of the surrounding residential premises." Petitioners at the hearing and in their post-hearing memorandum continue to stress that the synagogue is permitted by right in the zone; while true, that does not dispense with the issue of whether the RTA exception is satisfied.

The other significant holding in Ware is that the use of the property and its potential adverse effects upon the community (i.e., traffic, noise, etc.) is not relevant in evaluating the RTA "new church" exception. While Protestants contend that they do not read the court's opinion in Ware to hold as such, I respectfully disagree. Indeed, as noted in Petitioners' post-hearing memorandum, the County Council has already determined, by allowing religious uses by right in residential zones, that the adverse effects associated with such uses are outweighed by the positive contribution that such institutions make to the public health and general welfare.

In determining whether or not Petitioners satisfy the "new church" RTA exception, a comparison with the facts in Ware is instructive. In that case, the lot was small, and there was an absence of any meaningful setbacks or buffers (between the proposed church and its parking area and neighboring residential properties) as required by the RTA regulations. In this case, by

contrast, the proposed synagogue is largely compliant with the RTA regulations. The site plan (Petitioners' Exhibit 1) was highlighted to show the 100, 75, and 50 ft. RTA setbacks. The existing dwelling is located within the 50 ft. buffer, although the regulations expressly state that "the RTA may contain single-family detached ... dwellings." B.C.Z.R. § 1B01.1.B.1.e(1). While it is true that the Rabbi proposes to use the dwelling as a parsonage, that does not transmogrify the structure into something other than a single-family dwelling, and it would be used as such by the Rabbi and his family. The site plan also indicates that Baltimore County holds a drainage and utility easement which is located within the 50 ft. RTA buffer, but easements of this nature (which must be dedicated to Baltimore County in virtually all development cases) do not constitute a "cleared drainage area, stormwater management pond or accessory structure" and thus are permitted within the buffer. The 50 ft. buffer is bisected by the access driveway, but again the regulations note that the RTA buffer "may be bisected by roads, paths and trails that are designed to connect to adjoining developments." Id. Finally, the proposed parking lot provides a 50 ft. buffer and 75 ft. setback, in compliance with B.C.Z.R. § 1B01.1.B.1.e(5).

Simply put, the improvements planned in this case are largely compatible with the RTA regulations, and are in no way similar to the improvements proposed in Ware. Indeed, that court, in agreeing with the Board of Appeals, found that "Ware's site plan did not comply with the RTA use requirements at all because it proposed no buffer and no setback between the parking lot and the eastern boundary of the property." Id. at 685. In this case, the site plan and improvements shown thereon are planned in such a way that the RTA buffer and setback requirements are observed, and thus I believe Petitioners have satisfied the first prong of the RTA exception; i.e., that "the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained." B.C.Z.R. § 1B01.1.B.1.g(6).

The second prong of the "new church" exception requires that the plan must be "compatible with the character and general welfare of the surrounding residential premises." As noted earlier, the Ware court acknowledged that the "*use* of the property as a church" is not relevant in evaluating this prong of the RTA exception. Id. at 686 (emphasis in original). Rather, the court focused upon whether the physical layout of the property was suited for the proposed use. Id. Here, the physical layout of the proposed synagogue is, in my opinion, compatible with the surrounding residential premises. The proposed synagogue building would be approximately 8,000 sq. ft., which is no larger than the adjoining single-family dwelling owned by Mr. Abel. The site plan includes substantial setbacks that are similar to those found on surrounding residential uses, and the building's orientation to the road and vehicular access would also in many respects mirror those found in surrounding residential properties. In light of the above, I believe Petitioners in Case No. 2015-0239-SPH are entitled to special hearing relief, to include a finding that the proposed synagogue and site plan submitted therefor qualify for the "new church" RTA exception.

AMENDMENT OF FINAL DEVELOPMENT PLAN

In Case No. 2015-0276-SPH, Petitioners Kenneth and Jassamyn Abel seek a determination of whether the proposed plan and synagogue building is "consistent with the spirit and intent of the original plan" pursuant to B.C.Z.R. § 1B01.3.A.7.b. The Petitioners in Case No. 2015-0276-SPH have not requested a determination as to whether the Final Development Plan must, in the first instance, be amended, and that issue will not be addressed. The discussion which follows will assume without deciding that the Goldman Plan (Protestants' Exhibit 13) is subject to the amendment procedures set forth at B.C.Z.R. § 1B01.3.A.7.

During his testimony, David Thaler (a professional engineer accepted as an expert) testified that the above-quoted provision was a "consumer protection" mechanism, and I concur. Indeed,

the regulations specifically state that the provisions concerning amendment of residential development plans are designed "to protect those who have made decisions based on such plans from inappropriate changes therein." B.C.Z.R. § 1B01.3.A.1. In this case, I believe the Abels fall within the ambit of this provision, and that the proposed amendment from a residential to institutional use constitutes such an "inappropriate change" that should not be permitted at this juncture.

The result in this case would be otherwise if we were writing on a clean slate, and a Final Development Plan (Protestants' Exhibit 13) did not exist for the property. But we are not, and the site plan in this case calls for an 8,000 sq. ft. institutional building, rather than two single-family dwellings as shown on the Goldman Final Development Plan.

Mr. Abel's compelling testimony in this case suggests why that is an inappropriate deviation from the original plan, and why he and his wife should be entitled to rely upon their reasonable expectations in purchasing their "dream home." In addition, I was also persuaded by the testimony of Christopher Jakubiak, a city and town planner accepted as an expert. Mr. Jakubiak outlined the programmatic differences between a synagogue and single-family dwellings, and identified other factors which supported his opinion that the proposed amendment was not consistent with the "spirit and intent of the original plan."

The synagogue, in evaluating the FDP amendment procedure, again cites Ware for the proposition that the use of the property is not germane in determining whether the amendment would be "consistent with the spirit and intent of the original plan." But the Ware court did not consider this FDP amendment provision, and thus the case cannot stand for the proposition for which it is cited by the synagogue. The synagogue also argues that "spirit and intent," as used in the FDP amendment regulation, "means compatible or in the general spirit of the law." Synagogue

post-hearing memorandum, p. 11. While it is true that the term "spirit and intent" is not defined in the B.C.Z.R., it is also the case that if the Council equated the term with "compatibility" it would have used the latter term, which appears numerous times throughout the regulations. Compatibility is obviously involved in evaluating the "new church" RTA exception, but a different standard applies in determining whether the FDP amendment procedures have been satisfied.

Finally, the synagogue notes in its memorandum that the present case is similar to Case No. 2014-0190-SPHX, involving the Hunt Valley Baptist Church. While that case did involve a plan for a three-lot residential subdivision that was amended to propose a religious sanctuary, no sales of lots in the subdivision had occurred and no one (such as Mr. Abel) had in the intervening period made a decision to purchase in the subdivision upon the reasonable expectation (based on the FDP) that he would be joined by other families in single-family dwellings, rather than large institutional buildings.

In light of the above, I believe that the proposed synagogue is in fact a radical departure from the "spirit and intent" of the original plan, which called for single-family dwellings on the property. As such, I believe that the proposed amendment would be an "inappropriate change" in the Final Development Plan, and that the Abels are entitled to protection under the aforementioned regulations.

THEREFORE, IT IS ORDERED this **12th** day of **January, 2016**, by this Administrative Law Judge, in Case No. 2015-0239-SPH, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 as follows: (1) to permit a synagogue in a D.R. 1 zone; (2) for a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises; and (3) to confirm

that 8420 Stevenson Road may remain a dwelling use for a parsonage by the synagogue clergy, be and is hereby GRANTED.

IT IS FURTHER ORDERED in Case No. 2015-0276-SPH, that the Petition for Special Hearing for a determination that the plan for a proposed synagogue is "consistent with the spirit and intent of the original plan", be and is hereby DENIED.

Any appeal of this decision must be filed 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 1-12-16
By DW

MOTION TO CONSOLIDATE
CASE NOS. 2015-0239-SPH
AND 2015-0276-SPH
BY ORDER ON
JUNE 25, 2015
BY ALJ BEVERUNGEN

THEREFORE, ANY
MATERIALS RECEIVED
AFTER JUNE 25, 2015
ARE LOCATED IN FILE
FOLDER
FOR CASE 2015-0239-SPH
INCLUDING ALL ORIGINAL
EXHIBITS

LAW OFFICES OF
HERBERT BURGUNDER III

MT. WASHINGTON CENTER
1501 SULGRAVE AVENUE • SUITE 207
BALTIMORE, MARYLAND 21209
410-664-6500 • FAX: 410-664-6501
HB3@HB3LAW.COM

6/22/15 TO LOCK for file

June 16, 2015

BY HAND-DELIVERY
Administrative Law Judge
Office of Administrative Hearings
Jefferson Building
105 West Chesapeake Avenue, Room 205
Towson, Maryland 21204

Re: 8420, 8430, and 8432 Stevenson Road – Case No. 2015-0239-SPH

Dear Your Honor:

Enclosed is an Opposition to Motion to Consolidate for filing in the above-referenced zoning case. Also enclosed is a copy to be date-stamped and returned to the waiting messenger.

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

Sincerely,

Herbert Burgunder III

HB3:hf
Enclosure
cc: Congregation Ariel Russian Community Synagogue, Inc. (by e-mail w/out encls.)
J. Carroll Holzer, Esquire (w/ encls.)
Mr. Bruce E. Doak (w/ encls.)
Peter Max Zimmerman, Esquire (w/ encls.)
Arnold Jablon, Esquire (w/ encls.)
Lawrence M. Stahl, Esquire (w/ encls.)
Michael McCann, Esquire (w/ encls.)

IN THE MATTER OF GOLDMAN PROPERTY	*	OFFICE OF
	*	ADMINISTRATIVE HEARINGS
Case No. 2015-0239-SPH		
	*	OF
8420, 8430, and 8432 Stevenson Road	*	BALTIMORE COUNTY

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

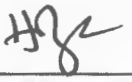
OPPOSITION TO MOTION TO CONSOLIDATE

Petitioners, Harvey and Leslie Goldman, and Contract Purchasers, Congregation Ariel Russian Community Synagogue, Inc., oppose the Motion to Consolidate filed by J. Carroll Holzer. The undersigned already filed a Motion to Strike the Petition for Zoning Hearing filed by Mr. and Mrs. Abel because it is for property the Abels do not own. In addition, the Petition for Zoning Hearing filed by Mr. and Mrs. Abel is premature: it seeks an interpretation of a modification to a development plan before the property owner has filed to modify the development plan.

While there is no written request for a postponement of the hearing scheduled for June 24, 2015, the implication of a consolidation would be to postpone the upcoming hearing. The undersigned did not oppose a prior request for a postponement made by Mr. Abel so that he could participate in a long-planned cruise to honor his parents' fiftieth wedding anniversary. This second request for postponement (implied in the request to consolidate) was not mentioned previously and it has the effect of prejudicing the Petitioners in this case. The Petitioners are seeking permission to construct a synagogue on land that it will purchase. Any unnecessary delay should be avoided.

There is no basis to consolidate this case with the Petition filed by Mr. and Mrs. Abel. Even if the Administrative Law Judge decides not to strike the Abels' Petition, the Administrative Law Judge should not delay or postpone the hearing scheduled for June 24.

Respectfully submitted,



Herbert Burgunder III
Law Office of Herbert Burgunder III
1501 Sulgrave Avenue, Suite 207
Baltimore, Maryland 21209
410-664-6500
410-664-6501 (fax)
hb3@hb3law.com

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2015, I sent a copy of the foregoing Motion to Strike by first-class mail, postage pre-paid, to the following:

J. Carrol Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286;

Mr. Bruce E. Doak
Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, Maryland 21053;

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

Arnold Jablon, Esquire
Deputy Administrative Officer
Department of Permits Approvals & Inspections
111 West Chesapeake Avenue
Towson, Maryland 21204;

Lawrence M. Stahl, Esquire
Managing Administrative Law Judge
Office of Administrative Hearings
105 West Chesapeake Avenue, Suiet 103
Towson, Maryland 21204; and

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

Herbert Burgunder III

CASE NO. 2015-0239-SPH

CHECKLIST

Comment Received	Department	Support/Oppose/ Conditions/ Comments/ No Comment
5/8/15	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	C
5/29/15	DEPS (if not received, date e-mail sent _____)	N/C
_____	FIRE DEPARTMENT	_____
5/26/15	PLANNING (if not received, date e-mail sent _____)	C
5/6/15	STATE HIGHWAY ADMINISTRATION	no obj
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	letters of opposition
_____	ADJACENT PROPERTY OWNERS	_____

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 5/28/15

SIGN POSTING Date: 5/28/15 by SSG Black

PEOPLE'S COUNSEL APPEARANCE Yes ☑ No ☐

PEOPLE'S COUNSEL COMMENT LETTER Yes ☐ No ☐

Comments, if any: _____

Sherry Nuffer

From: Sherry Nuffer
Sent: Wednesday, June 17, 2015 2:06 PM
To: Kristen L Lewis
Cc: Debra Wiley; June Wisnom
Subject: 2015-0239-SPH

Kristen,

For Case 2015-0239-SPH the newspaper and sign posting reflects the original date of June 18, 2015. We do not have an updated sign posting to reflect the new date of June 24, 2015.

Thank you,

Rec'd 6-19-15 J. Wisnom

Sherry

Kristen said new date was reflected on sign. Just waiting for new notice

TO: PATUXENT PUBLISHING COMPANY
Thursday, May 28, 2015 Issue - Jeffersonian

Please forward billing to:
Herbert Bergunder, III 410-664-6500
1501 Sulgrave Avenue, Ste. 207
Baltimore, MD 21209

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: 2015-0239-SPH
8420 Stevenson Road
W/s Stevenson Road, 11 ft. south of Keyser Road
2nd Election District – 3rd Councilmanic District
Legal Owners: Harvey & Leslie Goldman
Contract Purchaser/Lessee: Congregation Ariel Russian Community Synagogue, Inc.

Special Hearing to permit a synagogue in a DR 1 zone; to permit that the proposed improvements are planned are planned in such a way that compliance to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises; to confirm that 8420 Stevenson Road may remain a dwelling use for a parsonage by the synagogue clergy.

Hearing: Thursday, June 18, 2015 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

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

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 8420, [redacted] Stevenson Rd which is presently zoned D.R. 1

Deed References: Liber 7920, folio 238 10 Digit Tax Account # 2500002282, 2500002283

Property Owner(s) Printed Name(s) Harvey Goldman, Leslie Goldman 2500002284

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ✓ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

(see attached)

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)**

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:
Congregation Ariel Russian Community Synagogue, Inc.
c/o Velvel Belinsky
Name- Type or Print

Signature

6701 Old Pimlico Road, Baltimore, MD
Mailing Address, City, State

21209, 410-764-5000, rabbi@arielcenter.org
Zip Code, Telephone #, Email Address

Legal Owners (Petitioners):
Harvey Goldman, Leslie Goldman
Name #1 – Type or Print, Name #2 – Type or Print

Harvey Goldman, Leslie Goldman
Signature #1, Signature # 2

7004 Rock Stream Court, Baltimore, MD
Mailing Address, City, State

2120, 410-458-1002, Harleyharv@aol.com
Zip Code, Telephone #, Email Address

Attorney for Petitioner:
Herbert Burgunder III
Name- Type or Print

Signature

1501 Sulgrave Avenue, Suite 207, Baltimore, MD
Mailing Address, City, State

21209, 410-664-6500, hb3@hb3law.com
Zip Code, Telephone #, Email Address

Representative to be contacted:
Herbert Burgunder III
Name – Type or Print

Signature

1501 Sulgrave Avenue, Suite 207, Baltimore, MD
Mailing Address, City, State

21209, 410-664-6500, hb3@hb3law.com
Zip Code, Telephone #, Email Address

CASE NUMBER 2015-0239-SPH **Filing Date** 4/30/2015 **Do Not Schedule Dates:** ____ **Reviewer** JNP

REV. 10/4/11

ZONING REQUEST

- TO PERMIT A SYNAGOGUE IN A DR-1 ZONE (SECTION 1B01.1A(3));
- FOR A FINDING THAT THE PROPOSED IMPROVEMENTS ARE PLANNED IN SUCH A WAY THAT COMPLIANCE, TO THE EXTENT POSSIBLE WITH RTA USE REQUIREMENTS, WILL BE MAINTAINED AND THAT SAID PLAN CAN OTHERWISE BE EXPECTED TO BE COMPATIBLE WITH THE CHARACTER AND GENERAL WELFARE OF THE SURROUNDING RESIDENTIAL PREMISES (SECTION 1B01.1B(1)(G)(6)); AND
- TO CONFIRM THAT 8420 STEVENSON ROAD MAY REMAIN A DWELLING USE FOR A PARSONAGE BY THE SYNAGOGUE CLERGY.

February 16, 2015

Goldman Property
(Description for Zoning purposes only)

Beginning for a point located approximately 11 feet south of the centerline intersection of Keyser Road and the western right-of-way line of Stevenson Road (60 foot wide right-of-way), thence running the following eleven courses and distances:

1. South 26°41'03" West 227.00 feet to a point, thence
2. Southwesterly 52.66 feet by a curve to the left, having a radius of 433.72 feet and a chord bearing South 23°12'22" West 52.63 feet to a point, thence
3. North 71°47'31" West 121.83 feet to a point, thence
4. North 85°43'45" West 272.60 feet to a point, thence
5. North 14°44'14" West 273.27 feet to a point, thence
6. South 88°51'47" East 301.50 feet to a point, thence
7. South 76°45'44" East 285.92 feet to the point of beginning.

Containing 3.00 acres of land, more or less.

Located within the Second Councilmanic District and Third Election District of Baltimore County, Maryland.

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

EXPIRES 1/28/17

B:\Correspondence\PROJECTS\Goldman Property\Goldman Property Description 2 16 2015.doc

2015-0239-SPH

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: 2015-0239-SPH

Petitioner: Harvey & Leslie Goldman

Address or Location: 8420 Stevenson Road

PLEASE FORWARD ADVERTISING BILL TO:

Name: Herbert Bergunder, III

Address: Law Offices of Herbert Bergunder, III
1501 Sulgrave Avenue, Suite 207
Baltimore, MD 21209

Telephone Number: 410-664-6500

#5

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

No. 123613

Date: 4/30/2015

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
0001	306	5240		6193				350.00

Total: 350.00

Rec From: Law Offices of Norbert Burgunder, III

For: 3920 Stevenson Road (2015-0239-SPH)
Special Hearing (Boilerplate)

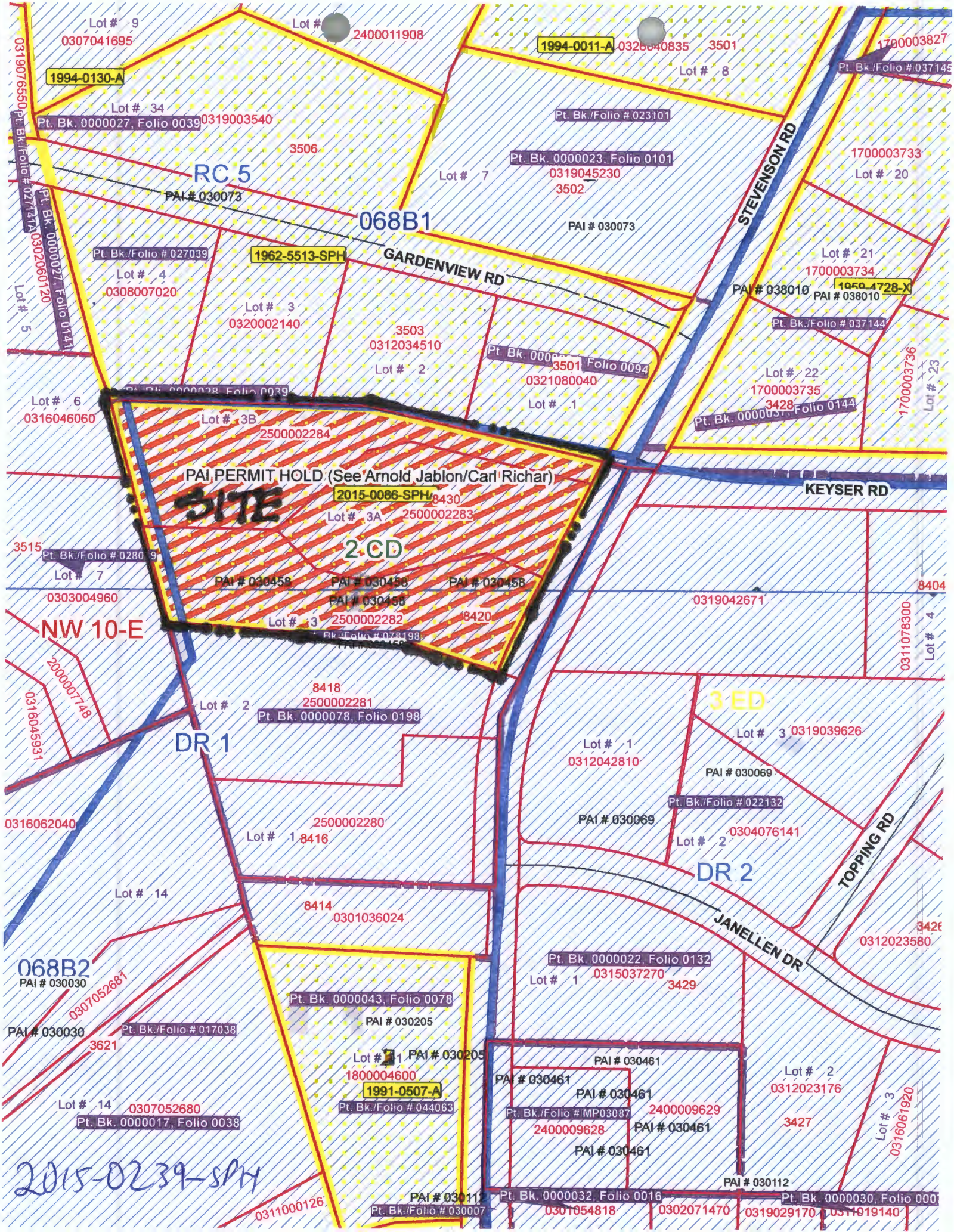
DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

PAID RECEIPT

BUSINESS	ACTION	TIME	TRN
4/30/2015	4/30/2015	09:19:45	2

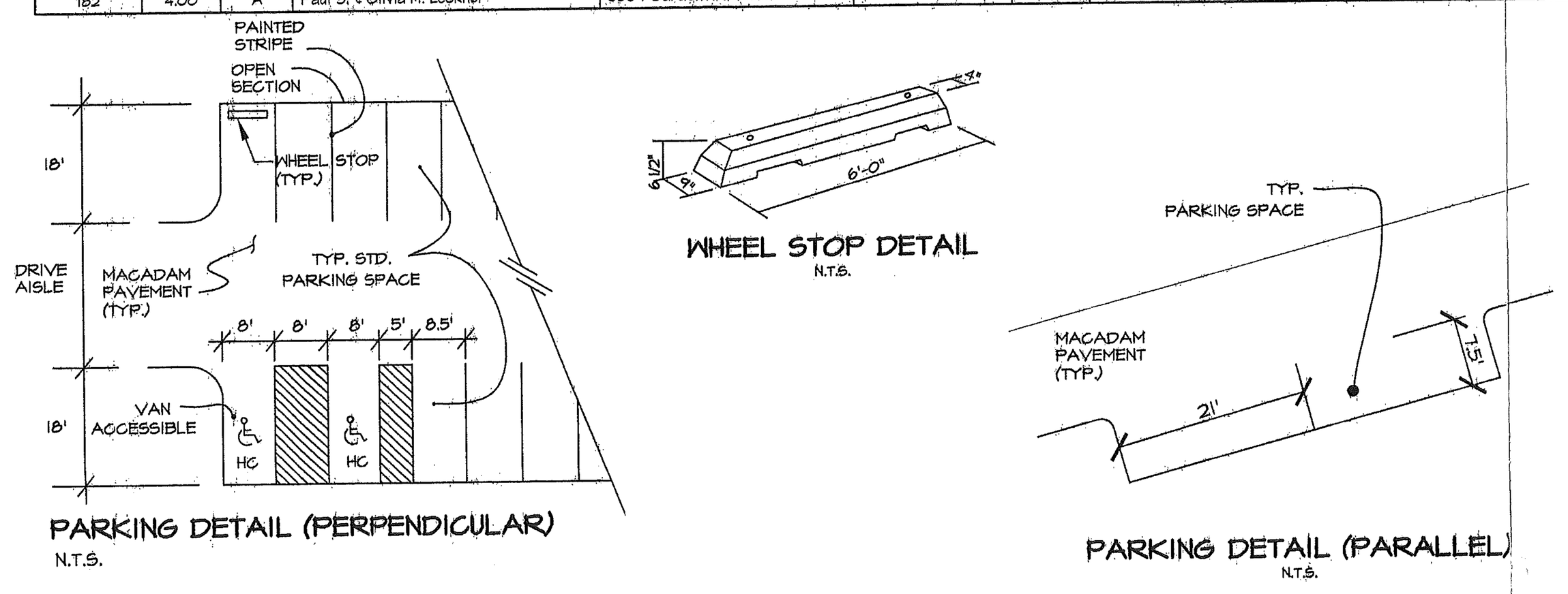
USER: WALKIN WALK IN
RECEIPT # 229429 4/30/2015 OFLo
5 528 ZONING VERIFICATION
153.93
Rcpt Tot: 350.00
350.00 CK 1.00 Ch
Baltimore County, Maryland

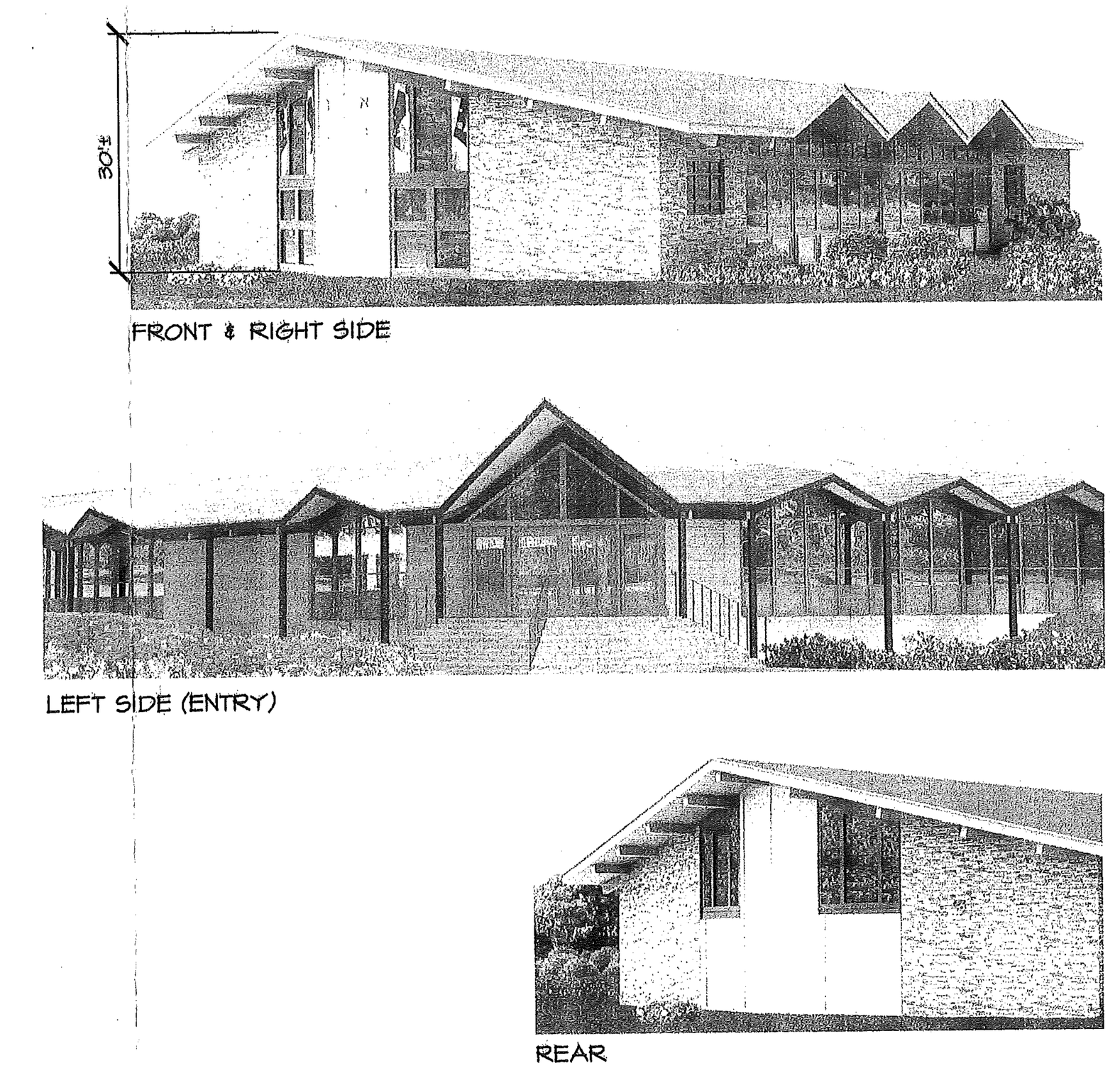
CASHIER'S VALIDATION

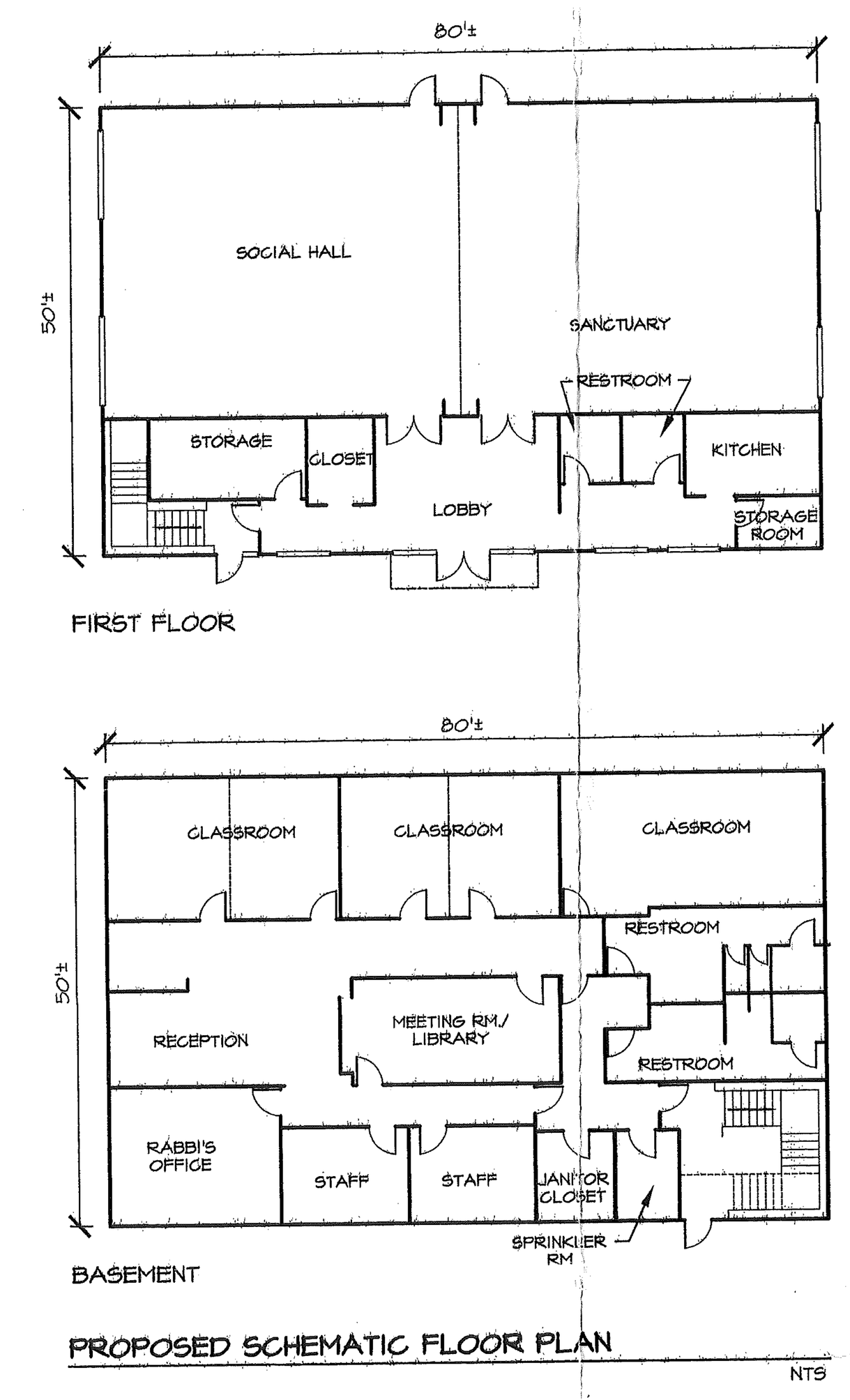

PAI PERMIT HOLD (See Arnold Jablon/Carl Richar)
SITE
2015-0086-SPH
Lot # 3A
2500002283
8430
2 CD
Lot # 3B
2500002284
Lot # 6
0316046060
Lot # 5
Lot # 4
0308007020
Pt. Bk./Folio # 027039
Lot # 3
0320002140
1962-5513-SPH
GARDENVIEW RD
RC 5
PAI # 030073
068B1
Lot # 9
0307041695
1994-0130-A
Lot # 34
Pt. Bk. 0000027, Folio 0039
0319003540
0319076550
Pt. Bk./Folio # 027141
0302060120
Pt. Bk. 0000027, Folio 0141
3506
Lot # 7
Pt. Bk. 0000023, Folio 0101
0319045230
3502
Pt. Bk./Folio # 023101
1994-0011-A
0326040835
3501
Lot # 8
2400011908
1700003827
Pt. Bk./Folio # 037145
STEVENSON RD
1700003733
Lot # 20
Lot # 21
1700003734
PAI # 038010
1959-4728-X
Pt. Bk./Folio # 037144
Lot # 22
1700003735
3428
Pt. Bk. 0000031, Folio 0144
1700003736
Lot # 23
3503
0312034510
Lot # 2
Pt. Bk. 0000 Folio 0094
3501
0321080040
Lot # 1
KEYSER RD
3515
Pt. Bk./Folio # 0280 9
Lot # 7
0303004960
NW 10-E
PAI # 030458
PAI # 030458
PAI # 030458
PAI # 030458
Lot # 3
2500002282
8420
Bk./Folio # 078198
0319042671
8404
0311078300
Lot # 4
2000007748
0316045931
8418
2500002281
Lot # 2
Pt. Bk. 0000078, Folio 0198
DR 1
3 ED
Lot # 1
0312042810
Lot # 3
0319039626
PAI # 030069
Pt. Bk./Folio # 022132
PAI # 030069
0316062040
2500002280
Lot # 1
8416
Lot # 2
0304076141
DR 2
TOPPING RD
Lot # 14
8414
0301036024
JANELLEN DR
3426
0312023580
Pt. Bk. 0000022, Folio 0132
0315037270
Lot # 1
3429
068B2
PAI # 030030
0307052681
PAI # 030030
Pt. Bk./Folio # 017038
3621
Pt. Bk. 0000043, Folio 0078
PAI # 030205
Lot # 1
PAI # 030205
1800004600
1991-0507-A
Pt. Bk./Folio # 044063
PAI # 030461
PAI # 030461
PAI # 030461
Pt. Bk./Folio # MP03087
2400009629
2400009628
PAI # 030461
PAI # 030461
Lot # 2
0312023176
3427
Lot # 3
0316061920
Lot # 14
0307052680
Pt. Bk. 0000017, Folio 0038
2015-0239-SPH
PAI # 030112
0311000126
PAI # 030112
Pt. Bk./Folio # 030007
Pt. Bk. 0000032, Folio 0016
0301054818
0302071470
Pt. Bk. 0000030, Folio 000
0319029170
0311019140

ADJACENT LOT OWNERS

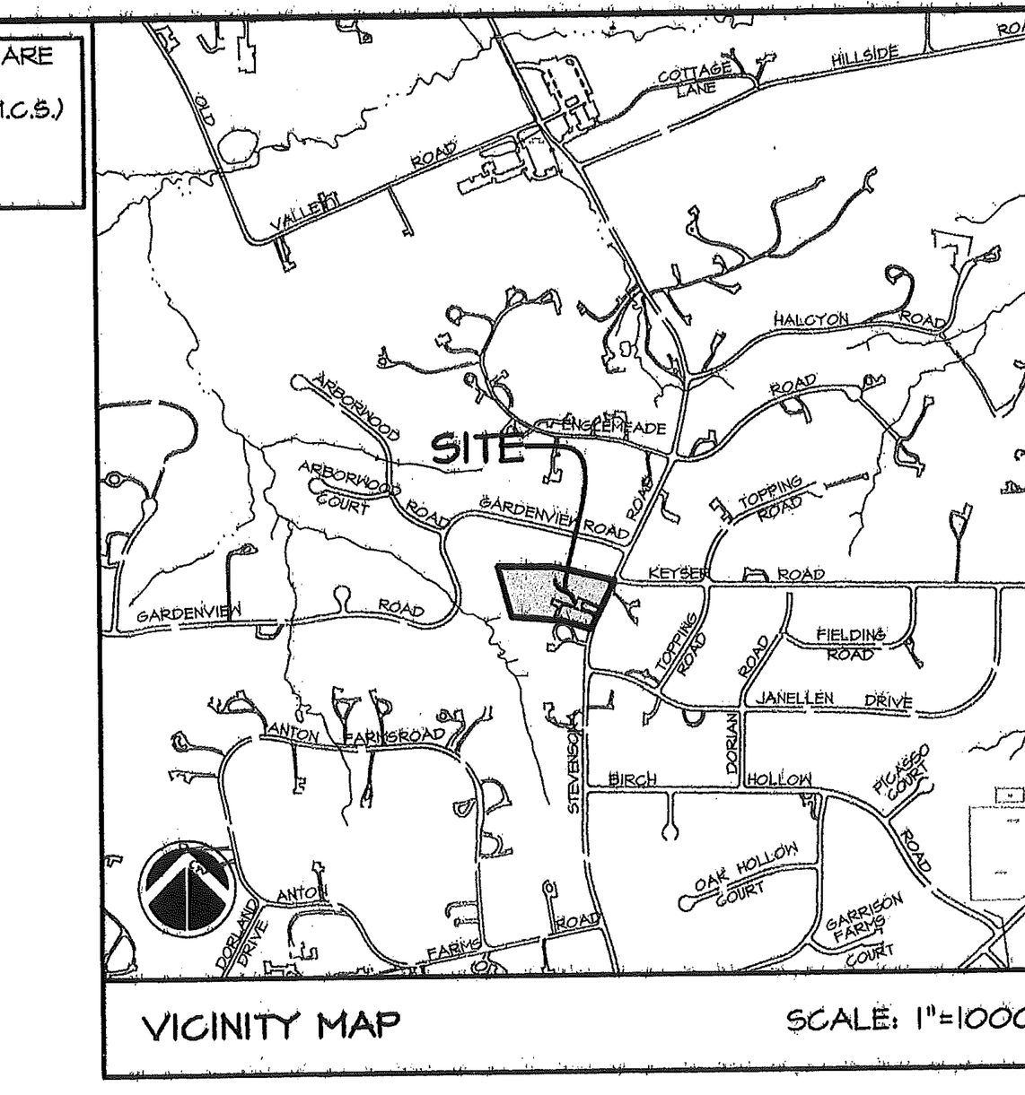
Parcel #	Lot #	Block	Name /Company	Address	Town/ City	State	Zip Code	Acc't #	Deed 1	Land Use
209	5.00	A	Tsvika Tal & Elena Helfetz	3305 Lightfoot Drive	Baltimore	MD	21208-4417	0307051840	30234/ 00264	Residential
57	6.00	A	Rosalind P. & Arthur S. Cheslock	3513 Gardenview Road	Baltimore	MD	21208-1508	0316046060	30283/ 00192	Residential
27	7.00	A	Frederick A. Kall	3515 Gardenview Road	Baltimore	MD	21208-1508	0303004960	32649/ 00325	Residential
27	8.00	A	Brendan Hoffman & Ann Goffin	3601 Gardenview Road	Baltimore	MD	21208-1511	0316045931	28713/ 00052	Residential
1	14.00		William G. & Susan M. Kolodner	3621 Anton Farms Road	Baltimore	MD	21208-1705	0307052680	05709/ 00730	Residential
551	1.00		Harvey & Leslie S. Goldman	19333 Collins Ave., Apt. 805	Sunny Island Beach	FL	33160-2369	2500002280	07920/ 00238	Residential
551	2.00		Kenneth B. & Jessamyn LB Abel	8418 Stevenson Road	Baltimore	MD	21208-1835	2500002281	34707/ 00179	Residential
229			M.A. Korman	P.O. Box 154	Stevenson	MD	21153.00	0301036024	06562/ 00020	Residential
45	1.00	A	Ronnie A. & Dovera G. Silberman	7211 Park Heights Ave., Apt.203	Baltimore	MD	21208-5404	0319039627	04350/ 00177	Residential
45	1.00	B	Richard J. Eventoff	3429 Janellen Drive	Baltimore	MD	21208-1810	0315037270	06291/ 00637	Residential
44			Donald & Lauren Cohen Small	8419 Stevenson Road	Baltimore	MD	21208-1838	0319042671	07717/ 00155	Residential
449	22.00		Judith E. Stringer	3428 Keyser Road	Baltimore	MD	21208-1815	1700003735	06728/ 00448	Residential
182	1.00	A	Dana M. Stein & Margaret C. Presley	3501 Gardenview Road	Baltimore	MD	21208-1508	0321080040	32317/ 00225	Residential
182	2.00	A	Stephanie R. Weinstein	3503 Gardenview Road	Baltimore	MD	21208-1508	0312034510	06563/ 00621	Residential
182	3.00	A	The Martin Taubenfeld Revocable Trust	3505 Gardenview Road	Baltimore	MD	21208-1508	0320002140	25624/ 00189	Residential
182	4.00	A	Paul S. & Olivia M. Leckner	3507 Gardenview Road	Baltimore	MD	21208-1508	0308007020	16299/ 00685	Residential

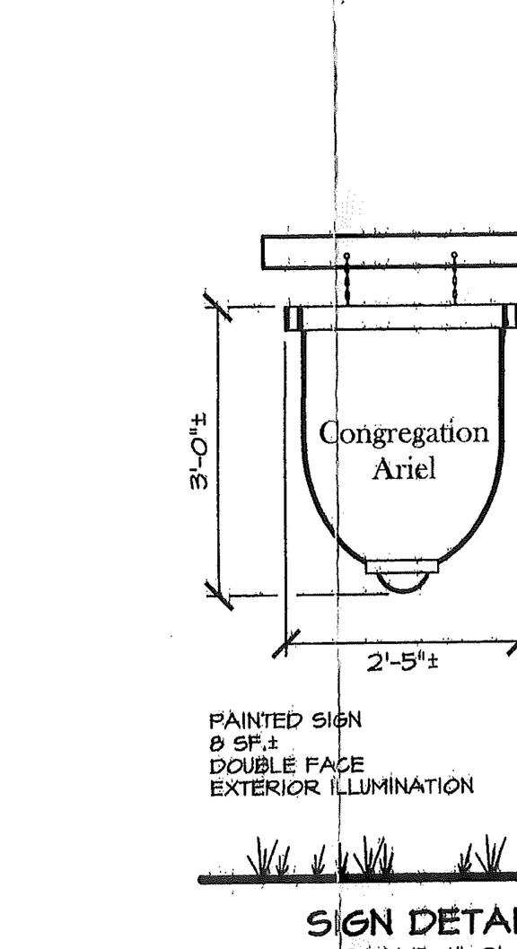






DESIGN AND DRAWINGS ARE BASED ON MARYLAND COORDINATE SYSTEM (M.C.S.) DATUM.
HORIZ. - NAD - 83/91
VERT. - NAVD. 88





GENERAL NOTES:

1. DEVELOPMENT NAME: GOLDMAN PROPERTY
2. PLAN PREPARED BY: D.S. THALER & ASSOCIATES, INC. 7115 AMBASSADOR ROAD P.O. Box 47428 BALTIMORE, MARYLAND 21244
   ATTN: STACEY A. MCARTHUR, R.L.A. (410) 944-3647
   APPLICANT: CONGREGATION OF ARIEL RUSSIAN COMMUNITY SYNAGOGUE, INC. 6701 OLD PIMLICO ROAD BALTIMORE, MD. 21209 ATTN: RABBI VELVEL BELINSKY
   OWNER: HARVEY GOLDMAN LESLIE S. GOLDMAN APT. 805 19333 COLLINS AVE. SUNNY ISLAND BEACH, FL 33160-2369
3. PROPERTY REFERENCES

PARCEL	LOT	TAX ACCOUNT #	DEED	HELD SINCE	TAX MAP/GRID	ADC MAP
551	3	2500002282	7920/238	2007	68/09	25G5,6 H5,6
551	3A	2500002283	7920/238	2007	68/09	25g5,6 h5,6
551	3B	2500002284	7920/238	2007	68/09	25g5,6 h5,6

PROPERTY ADDRESS: LOT #3 : 8420 STEVENSON ROAD
LOT #3A : 8430 STEVENSON ROAD
LOT #3B: 8432 STEVENSON ROAD

BOUNDARY: RECORD PLAT FOR GOLDMAN PROPERTY 78:198 (1.31.2007)
D.S. THALER & ASSOCIATES, INC. (2014)

INGRESS, EGRESS MAINTENANCE & UTILITIES AND BALTIMORE COUNTY ACCESS & UTILITY EASEMENT: RECORD PLAT FOR GOLDMAN PROPERTY 78:198 (1.31.2007)

ZONING: BALTIMORE COUNTY, 200 SCALE 2012 ZONING MAP, GIS TILE NO.: 068B1

FLOODPLAIN: THERE IS NO RIVERINE FLOODPLAIN ON SITE (PER GOLDMAN PROPERTY 78:198 (1.31.2007) AND FIRM PANEL #240F

4. GENERAL DATA:
   ELECTION DISTRICT: 3RD
   CENSUS TRACT: 403802
   COUNCILMANIC DISTRICT: 2ND
   WATERSHED: JONES FALLS
   REGIONAL PLANNING DISTRICT: 313
   GROWTH TIER: 1
5. SITE INFORMATION
   A. ZONING: DENSITY ALLOWED AND DENSITY PROPOSED

ZONE	(NET)	(GROSS)	DWELLING UNITS ALLOWED	EXISTING DWELLING UNIT (TO REMAIN)	USE PROPOSED	FAR
DR1	2.89 AC.± 128,888.4 SF±	3.08 AC.± 134,164.8 SF±	3	1* 1936 SF±/FL X 2 =3872 SF±	RELIGIOUS ASSEMBLY (88 SEATS) 4000 SF±	0.05± (7872 SF± (BLDGS.) / 138,956.4 SF± (SITE))
RC-5	0.11 AC.± 4791.6 SF±	0.11 AC.± 4791.6 SF±	—	—	—	
TOTAL	3.00 AC.± 130,680 SF±	3.19 AC.± 138,956.4 SF±				

(* TO BE UTILIZED AS THE PARSONAGE)

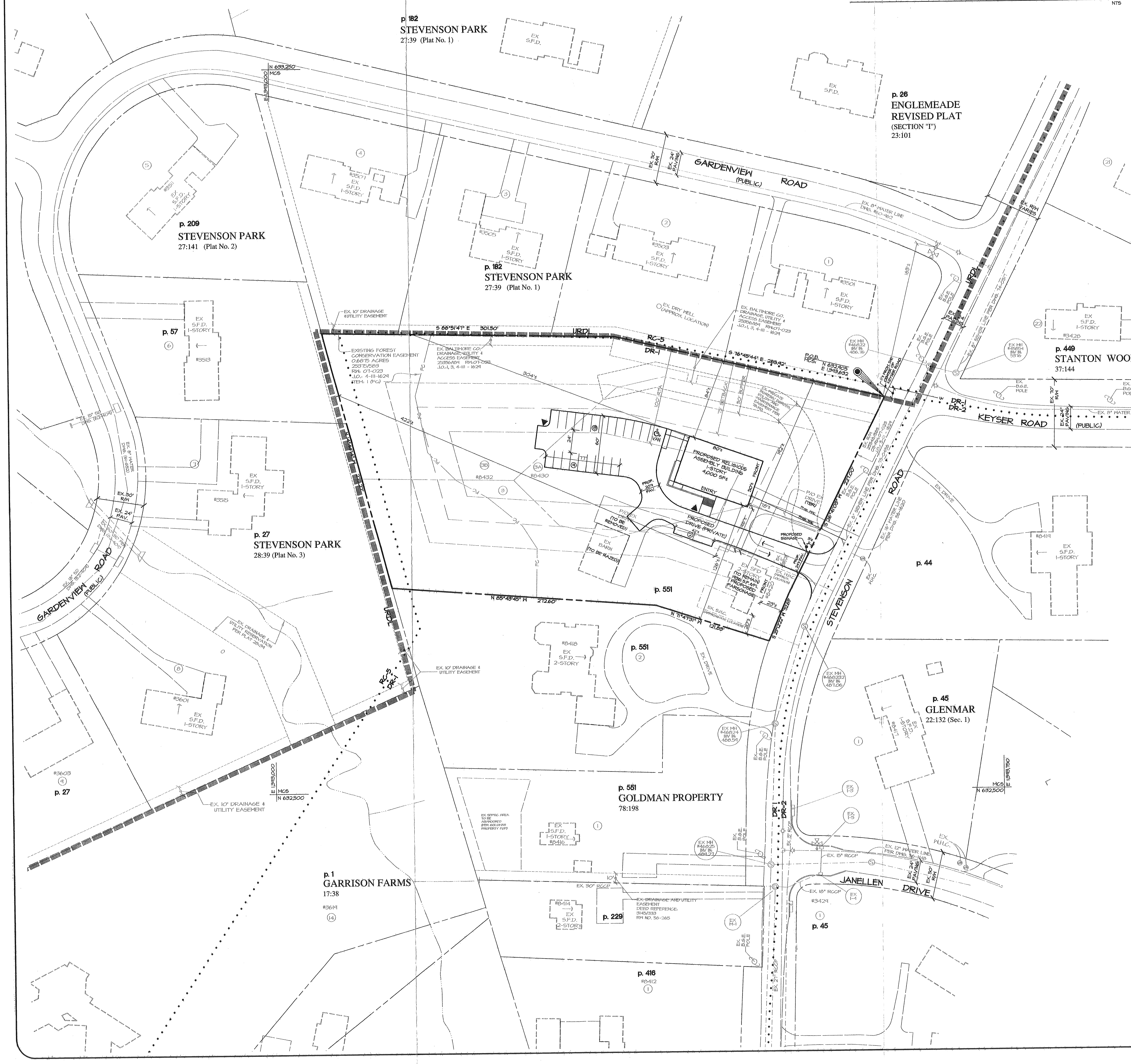
PARKING :

USE	REQUIRED	PROPOSED	TOTAL
1 SINGLE FAMILY	2 sp/unit or 2 space	2 spaces	24 sp
RELIGIOUS ASSEMBLY	1 sp/4 seats or 88 seats/4 spaces =22 spaces	22 spaces	

6. UTILITIES: PUBLIC WATER AND SEWER
7. USE: THE EXISTING USE IS RESIDENTIAL AND VACANT. THE PROPOSED USE IS RESIDENTIAL AND RELIGIOUS ASSEMBLY.
8. THIS PROPERTY HAS BEEN HELD INTACT SINCE (SEE NOTE 3, ACCORDING TO DEEDS).
9. MAXIMUM BUILDING HEIGHT ALLOWED IS 50 FEET.
10. THE SITE IS NOT LOCATED WITHIN A DEFICIENT ZONE PER BALTIMORE COUNTY 2014 BASIC SERVICES MAPS, WATER SUPPLY AREA MAP, SEWAGE AREA MAP AND TRANSPORTATION MAP. ADOPTED 5.5.14, PER BILL 14-14.
11. THIS SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
12. FUTURE SIGNS SHALL CONFORM WITH BCZR SECTION 450 AND ALL ZONING POLICIES.
13. THE SITE IS NOT LOCATED WITHIN A HISTORIC DISTRICT.
14. LANDSCAPING WILL BE PROVIDED IN ACCORDANCE WITH THE LANDSCAPE MANUAL AND ALL OTHER MANUALS & ADOPTED PURSUANT TO SECTION 32-4-404 OF THE BALTIMORE COUNTY CODE. A FINAL LANDSCAPE PLAN SHALL BE SUBMITTED FOR REVIEW AND APPROVED PRIOR TO OBTAINING BUILDING/OCCUPANCY PERMIT.
15. ANY FIXTURE USED TO ILLUMINATE AN OFF-STREET PARKING AREA SHALL BE SO ARRANGED AS TO REFLECT THE LIGHT AWAY FROM ADJACENT RESIDENTIAL SITE AND PUBLIC STREETS. LIGHTING DETAILS WILL BE ADDRESSED ON THE FINAL LANDSCAPE PLAN.
16. PRIOR TO OBTAINING BUILDING/OCCUPANCY PERMIT: STORMWATER MANAGEMENT WILL CONFORM TO BALTIMORE COUNTY STANDARDS AND THE STORMWATER ACT OF 2007 REVISIONS ON ENVIRONMENTAL SITE DESIGN.
17. THERE WERE NO COMMERCIAL PERMITS OR ACTIVE ZONING VIOLATIONS FOUND ON FILE WITH BALTIMORE COUNTY FOUND AS OF 3.16.15.
18. BUILDINGS MUST MEET BUILDING AND FIRE CODE REQUIREMENTS.

PLAT TO ACCOMPANY ZONING PETITION

GOLDMAN PROPERTY



ZONING HISTORY

- CASE NO. 111-458
  TO FURTHER SUBDIVIDE LOT #3 INTO THREE LOTS

THEREFORE, IT IS ORDERED, by this Deputy Zoning Commissioner/Hearing Officer for Baltimore County, this 16 day of February, 2006, that the revised Redline Development Plan known as the "Goldman Property", submitted into evidence as Developer's Exhibit No. 1, be and it is hereby APPROVED subject to the following conditions:

1. The Developer shall submit elevation and other documents to the Office of Planning for review and approval before building permits are issued to assure the new dwellings are compatible with the community.
2. The Developer shall install a single line of Leyland Cypress trees along the common property line between the subject property and the property owned by Paul Lechner, known as 3507 Gardenview Road. The location and implementation of this landscaping shall be subject to the review and approval of DEPRM.

Any appeal from this decision must be taken in accordance with Section 32-4-281 of the Baltimore County Code and the applicable provisions of law.

John V. Murphy
JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

- CASE NO. 2015-0086-SPHA
  WITHDRAWN
- DRC
  #101414C; DIST. 3C2
  (TRACKING #DRC-2014-00135)
  MATERIAL AMENDMENT TO THE DEVELOPMENT PLAN

ZONING REQUEST

- TO PERMIT A SYNAGOGUE IN A DR-1 ZONE (SECTION 1B01.1A(3));
- FOR A FINDING THAT THE PROPOSED IMPROVEMENTS ARE PLANNED IN SUCH A WAY THAT COMPLIANCE, TO THE EXTENT POSSIBLE WITH RTA USE REQUIREMENTS, WILL BE MAINTAINED AND THAT SAID PLAN CAN OTHERWISE BE EXPECTED TO BE COMPATIBLE WITH THE CHARACTER AND GENERAL WELFARE OF THE SURROUNDING RESIDENTIAL PREMISES (SECTION 1B01.1B(1)(G)(6)); AND
- TO CONFIRM THAT 8420 STEVENSON ROAD MAY REMAIN A DWELLING USE FOR A PARSONAGE BY THE SYNAGOGUE CLERGY.

SCALE: 1"=40'
NORTH MCS

LEGEND

EXISTING: TRACT BOUNDARY; FOREST CONSERVATION (FC); ZONING LINE; UTILITY POLE; EASEMENT; FIRE HYDRANT; ROAD; URDL; STORM DRAIN; LIGHT; EXISTING FRONT ORIENTATION
PROPOSED: TBR TO BE REMOVED; LIGHT

PROJECT NAME:
GOLDMAN PROPERTY

PLAN TITLE:
PLAT TO ACCOMPANY ZONING PETITION

COUNCILMANIC DIST.: 2
ELECTION DIST.: 3
PAI NUMBER: 3-458
PROPERTY ADDRESS: 8420, 8430 & 8432 STEVENSON ROAD

APPLICANT:
CONGREGATION OF ARIEL
RUSSIAN COMMUNITY SYNAGOGUE, INC.
6701 OLD PIMLICO ROAD
BALTIMORE, MD. 21209
ATTN: RABBI VELVEL BELINSKY

DSThaler & ASSOCIATES, INC.
CIVIL AND ENVIRONMENTAL ENGINEERS, SURVEYORS, LANDSCAPE ARCHITECTS & LAND PLANNERS
7115 AMBASSADOR ROAD
P.O. BOX 47428
BALTIMORE, MARYLAND 21244-7428
410-944-3647
www.dsthaler.com

STATE OF MARYLAND STACEY A. MCARTHUR LANDSCAPE ARCHITECT NO. 761

DATE: 4-28-2015
SCALE: 1"=40'
PROJ. NO.: 3933
SHEET 1 OF 1

File name: T:\Goldman Property\dwg\Planning\Exhibits\Zoning Plat.dwg Layout:Layout1 Apr 29, 2015-7:21am SAM

2015-0239-SPH