

IN THE MATTER OF	*	BEFORE THE
HUNT VALLEY PRESBYTERIAN CHURCH, INC.	*	
LEGAL OWNERS AND PETITIONERS FOR	*	BOARD OF APPEALS
SPECIAL HEARING ON THE PROPERTY	*	
LOCATED AT 13015 BEAVER DAM ROAD	*	OF
8 th ELECTION DISTRICT	*	BALTIMORE COUNTY
3 rd COUNCILMANIC DISTRICT	*	
	*	Case No. 16-099-SPH

* * * * *

**ORDER ON REMAND FROM THE
CIRCUIT COURT FOR BALTIMORE COUNTY**

This matter comes before the Board on remand from the Circuit Court for Baltimore County.

WHEREAS, on March 7, 2019 the Circuit Court issued an Order lifting the stay in this matter and remanding this matter "... to the County Board of Appeals for their consideration to issue a revised order changing the conditions of approval..."; and

WHEREAS, on December 7, 2017, the Board of Appeals issued an Order in this matter Granting the Petitioner's Petition to Amend the Bishops Pond Final Development Plan, as proposed with the following conditions:

1. Petitioner shall provide in writing to Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. its monthly calendar, including identification of scheduled services and events, upon publication and in any event 30-days prior to the following month. The church may, upon written agreement with Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd., provide a weekly calendar in lieu of a monthly calendar at least one week prior to the scheduled events on the weekly calendar. The purpose is to provide reasonable notice to Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. to minimize conflicts in scheduling their matters.

2. Petitioner shall provide advance written notice, with a minimum of 48-hour notice, to Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. of any special events not otherwise on the calendar, including Bible Camp, ceremonies and parties other than church services (such as weddings) and any other event where it is reasonably expected to have 50+ attendees. Notice shall

In the matter of: Hunt Valley Presbyterian Church, Inc.
Case No: 16-099-SPH

include the beginning and end time for the events. This notice shall also be applicable to any changes in time, size, scope and/or description to scheduled events identified in the monthly calendar. The purpose, like condition No. 1, is to provide reasonable notice to Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. to minimize conflicts in scheduling their matters.

3. To the greatest extent possible, the church shall prioritize the ingress and egress of the Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. The church, at all times, shall take all reasonable steps to minimize delays in exiting the site and entering the site. In the event, any Protestant(s), lot owner(s) of properties within the FDP, and/or any resident(s) residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. seek to exit Old Mill Road at the same time traffic is entering or exiting from the church property, church personnel, employees and/or workers, including all traffic flaggers, shall stop vehicles entering or exiting Old Mill Road and prioritize the exit of Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. above other vehicles. The purpose is to prevent and/or mitigate traffic delays on Old Mill Road for Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd.

4. If water runoff, water collection, pooling, drainage and/or flooding or leaking becomes an issue on Old Mill Road and/or for any property within the FDP because of or fairly attributable, whether solely or in combination with any other condition or event, to any change to Petitioner's property as a result of the proposed amendment and/or construction, Petitioner shall take any and all immediate and reasonable measures to address and eliminate the issue.

5. Mr, Cook's Traffic Recommendations, with modifications, are imposed as follows:

a. Access for the church is to be widened to provide two outbound lanes, an exclusive left turn lane, and an exclusive right turn lane along the entire length of the drive aisle.

b. Advanced warning signs are to be provided along westbound Beaver Dam Road alerting motorist of the intersection of Old Mill Road. The first sign is to be located approximately 100' east of intersection.

c. The church shall secure the services of one or more police officers (on-duty or other uniformed secondary employer) be available at the Beaver Dam Road access for a 30 minute period before, after and during Sunday services,

holiday services, and any events where 350 or more attendees or other heavy traffic are expected in order to help direct traffic out of sight and minimize disruptions.

d. Petitioner shall make sure that Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. have the ability on Sundays to come and go from their respective properties. Therefore, Sunday services are to be staggered so that the end of a service provides ample time to clear vehicles from the church parking lot (estimated at 30 minutes) and prevent overlap with incoming vehicles for the next service (estimated to begin 30 minutes prior), as well as provide some window of time as best as possible for Protestants, etc., to avoid regular and unreasonable delays that result in a functional denial of access to and from Old Mill Road. As such, Petitioner is required to stagger services so that there is an hour and fifteen minutes to 1 ½ hours between the end of one service and the beginning of the next, rather than the 45 minutes to an hour suggested by Petitioner via Mr. Cook.

6. To the greatest extent possible, the Petitioners shall employ best practices in lighting design to prevent light spillage from the church parking lot onto surrounding properties and to minimize the amount of lighting used when the church is not in use.

7. It is intended that these conditions help Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. as part of HVPC's proposed expansion. If any one or more of these conditions require adjustment or modification, Petitioner and Protestants/lot owners of 13023, 13025, 13021 and 13027 Beaver Dam Rd. may adjust or modify any of these conditions; however, any adjustment or modification shall be in writing and signed by Petitioner and all Protestants/lot owners of 13023, 13025, 13021 and 13027 Beaver Dam Rd., with the agreement filed accordingly and as necessary.

WHEREAS, pursuant to the Order of the Circuit Court, the Board of Appeals hereby revises the above conditions as follows:

Conditions 2, 3, and 4 are hereby rescinded;

Condition 5(c) is hereby revised to read:

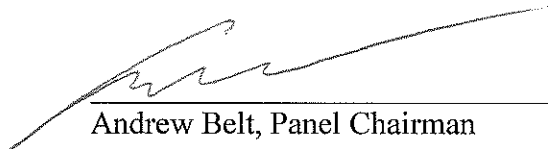
The church shall secure the services of one or more police officers (on-duty or other uniformed secondary employer) to be available at the Beaver Dam Road access for a 30 minute period before, during and after Sunday services, holiday services, and any events where 350 or more attendees or other heavy traffic are expected in order to help direct traffic out of sight and minimize disruptions. The Church will employ the services of one or more flaggers, as necessary, whenever a police officer is required to be present under the terms of this condition.

Condition 5(d) is hereby revised to read:

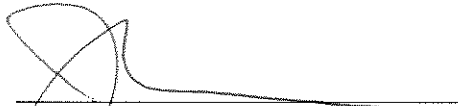
Petitioner shall make its best efforts to ensure that Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. have the ability on Sundays to come and go from their respective properties. In complete satisfaction of this condition, Sunday services are to be staggered so that the end of a service provides ample time to clear vehicles from the church parking lot and prevent overlap with incoming vehicles for the next service, as well as provide some window of time as best as possible for Protestants, etc., to avoid regular and unreasonable delays that result in a functional denial of access to and from Old Mill Road. As such, Petitioner is required to stagger services so that there is at least 45 minutes between the end of one service and the beginning of the next.

IT IS THEREFORE ORDERED, this 4th day of April, 2019 by the Board of Appeals for Baltimore County that the Order issued by the Board on December 7, 2017 in case number 16-099-SPH, be and the same is **REVISED AS ORDERED** by the Circuit Court for Baltimore County.

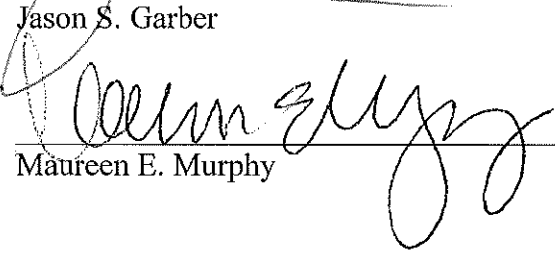
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew Belt, Panel Chairman



Jason S. Garber



Maureen E. Murphy



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
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April 4, 2019

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RE: *In the Matter of: Hunt Valley Presbyterian Church, Inc.*
Case No.: 16-099-SPH

Dear Counsel:

Enclosed please find a copy of the Order on Remand from the Circuit Court for Baltimore County issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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

Very truly yours,

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

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Hunt Valley Presbyterian Church, Inc.
Jeff Mayhew, Acting Director/Department of Planning
Lawrence Stahl, Managing Administrative Law Judge
Michael Mohler, Acting Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

Deidre Bosley
Michael and Mary Kate Fitz-Patrick
Tony and Marsha Gaspari
Beaver Dam Community Association

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY *
PETITION OF: BEAVER DAM COMMUNITY ASS'N, et al. *
FOR JUDICIAL REVIEW OF THE DECISION OF: *
THE BALTIMORE COUNTY BOARD OF APPEALS * Case No. 03-C-18-00166
105 W. Chesapeake Ave. *
Suite 203 *
Towson, Maryland 21204 *
IN THE CASE OF: *
HUNT VALLEY PRESBYTERIAN CHURCH *
13015 Beaver Dam Road *
Case No. CBA-16-099-SPH *

* * * * *

ORDER

Upon consideration of the parties' Consent Motion to Lift Stay and Remand Action to County Board of Appeals, it is this 7th day of March, 2019:

ORDERED, that the stay entered by this Court's Order of March 9, 2018 be, and the same hereby is, LIFTED; and it is

FURTHER ORDERED, that this action be, and the same hereby is, REMANDED to the County Board of Appeals to issue a revised order changing the conditions of approval as follows:

- Rescind conditions 2, 3, and 4.
- Revise condition 5(c) to read as follows:

The church shall secure the services of one or more police officers (on-duty or other uniformed secondary employer) to be available at the Beaver Dam Road access for a 30 minute period before, during and after Sunday services, holiday services, and any events where 350 or more attendees or other heavy traffic are expected in order to help direct traffic out of sight and minimize disruptions. The Church will employ the services of one or more flaggers, as necessary, whenever a police officer is required to be present under the terms of this condition.

- Revise Condition 5(d) to read as followse

Petitioner shall make its best efforts to ensure that Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Road have the ability on Sunday to come and go from their respective properties. In complete satisfaction of this condition, Sunday services are to be staggered so that the end of a service provides ample time to clear vehicles from the church parking lot and prevent overlap with incoming vehicle for the next service, as well as provide some window of time as best as possible for Protestants, etc., to avoid regular and unreasonable delays that result in a functional denial of access to and from Old Mill Road. As such, Petitioner is required to stagger services so that there is at least 45 minutes between the end of one service and the beginning of the next.

03/07/2019

Date

03/07/2019 03:41:12 PM



Kathleen Gailloch Cox
Judge, Circuit Court for Baltimore County

Copies to: counsel of record

CROSS PETITION OF:
HUNT VALLEY
PRESBYTERIAN CHURCH, INC.

* IN THE
* CIRCUIT COURT

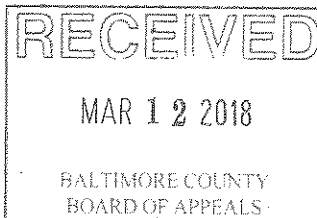
FOR JUDICIAL REVIEW OF
THE DECISION OF THE BOARD
OF APPEALS FOR BALTIMORE
COUNTY

* FOR
* BALTIMORE COUNTY

IN THE MATTER OF:
Hunt Valley Presbyterian
Church, Inc.
13015 Beaver Dam Road
Hunt Valley, MD 21030

* Case No. 03-C-18-000166
*
*

* * * * *



ORDER

Upon consideration of the Motion to Stay the above-captioned matter, and any response thereto, it is the ruling of this Court on this 7 day of March, 2018 ^{for 180 days} that the Motion is granted. This matter is hereby stayed pending the outcome of Case

Number 1:17-cv-03686-CCB in the United States District Court.

Petitioner shall file a status report in 180 days, and may seek to further extend the stay if appropriate in light of the status of the federal proceedings

[Signature]
CIRCUIT COURT JUDGE

True Copy Test

JULIE L. ENSOR, Clerk

Per *[Signature]*

Assistant Clerk

FILED MAR 09 2018

IN THE MATTER OF	*	BEFORE THE
HUNT VALLEY PRESBYTERIAN CHURCH, INC.	*	BOARD OF APPEALS
LEGAL OWNERS AND PETITIONERS FOR	*	OF
SPECIAL HEARING ON THE PROPERTY	*	BALTIMORE COUNTY
LOCATED AT 13015 BEAVER DAM ROAD	*	Case No. 16-099-SPH
8 th ELECTION DISTRICT		
3 rd COUNCILMANIC DISTRICT		

* * * * *

OPINION AND ORDER

I. Procedural History and Other Background

This case comes before the Board of Appeals arriving via a virtual procedural corn maze and accompanied by an ample zoning and development history as baggage for and from its travel. More directly, the subject matter of this Opinion and Order concerns the remaining part of the appeal of the Administrative Law Judge's Combined Development Plan and Zoning Opinion issued on March 15, 2016. The on-the-record appeal before this Board of the issues particular to the Development Plan occurred on July 18, 2016, which the Board affirmed following deliberation on August 9, 2016.¹

Also on July 18, 2016, Petitioner filed a Motion to Dismiss its own zoning relief request, contending Petitioner did not need to formally amend the Final Development Plan (FDP) at issue as the use was, by Petitioner's terminology, "institutional," rather than residential, among other arguments, and therefore, no approval from the Board of Appeals was needed. Following a deliberation on October 19, 2016, the Board, however, disagreed and denied Petitioner's Motion to Dismiss its own petition, concluding that subject property was still part of the Bishops Pond

¹ In turn, following Protestants' Petition for Judicial Review, the Honorable Vicki Ballou-Watts, Judge for the Circuit Court of Baltimore County, affirmed the Board of Appeals' decision via Memorandum and Order on July 18, 2017.

FDP and Baltimore County Zoning Regulation §1B01.3(A)(7)² required Petitioner to amend the FDP. The subject matter for this Opinion and Order concerns the hearing for Petitioner's proposed amendment to the FDP.

The FDP amendment hearing took place on April 19, April 20, April 26, and April 27, 2017. Adam Rosenblatt, Esq., and Patricia Malone, Esq., of Venable, LLP appeared as counsel for Petitioner, and Michael McCann, Esq., appeared as counsel on behalf of Protestants. As reviewed in more detail below, each party called fact and expert witnesses to testify in furtherance of their respective positions. After the hearing was concluded, Petitioner renewed its Motion to Dismiss, which was opposed by Protestants. Protestants also moved to strike Exhibit C to Petitioner's Post-Hearing Memorandum, to which Petitioner did not object.³ The Board deliberated on June 27, 2017 and approved of the proposed amendment to the Bishops Pond FDP, but imposed conditions as part of the approval.⁴

The FDP at issue, prior to all of these events described above, had its own independent Greek epic of a journey on its way to the Board of Appeals for the hearing at hand. By way of background, in 1991, Baltimore County approved the subdivision of a 63.5 acre property into three lots by way of County Review Group Plan, known as "Bishops Pond." Depicted on the FDP were four lots, with the largest designated as Lot 1. Hunt Valley Presbyterian Church, the Petitioner, (also, "HVPC," "Hunt Valley Church" below) purchased the property designated as Lot 1 in order to build a church. To accomplish this, County regulations, by virtue of its RC-4 zoning designation

² As set forth in the Board's October 28, 2016 Opinion and Order.

³ The Motion to Strike was not material to the Deliberation and is not material to this Opinion and Order.

⁴ The renewed Motion to Dismiss is denied. Leaving aside the procedural issues raised by Protestants, nothing new was presented to necessitate a reconsideration of the Board's October 28, 2016 Opinion and Order. Any issues raised as part of the amendment hearing that prompted Petitioner to renew its Motion were previously addressed in the Board's prior Opinion and Order, which is incorporated herein, and/or, to the extent applicable, are otherwise addressed below.

at that time, required Hunt Valley Church to petition for a special exception for use of the property as a church, and, further, Hunt Valley Church was required to seek an amendment to the Bishops Pond FDP. The Board of Appeals, at Case No. 91-466-X, granted the petition, with conditions imposed upon the special exception, and the amendment was approved. The matter was appealed. While awaiting resolution of the appeal, a Second Amended FDP was submitted by the owner of Lot 3, which received final approval on October 22, 1992. The Second Amended FDP depicted a church 25,175 sq. ft. in size to be built on Lot 1. Like an older sibling to a baby, the First Amended FDP still demanded, and required, attention. On December 3, 1992 (roughly 6 weeks *after* the Second FDP was approved), the First Amended FDP was also approved, rendering the Second Amended FDP as the first amendment by time, and the First Amended FDP second, thus, creating a disruptive ripple in humanity's multi-millennium understanding of counting, generally, and civilization's objective determination of the relative value of numbers, specifically. The church was constructed in or around 1998.

In 2012, as part of the County's Comprehensive Zoning Map Process (CZMP), the church property was rezoned from RC-4 to RC-3.⁵ The RC-3 designation permits churches and other buildings for religious worship by right, while the property's previous RC-4 zoning designation required a special exception for churches or other buildings for religious worship. BCZR §1A02.2(A)(1); BCZR §1A03.3(B)(4). The change to the RC-3 designation also removed various curtailments attendant to RC-4 zoned properties, including impervious surface and storm water management restrictions.

Therefore, in light of the Board's prior decision denying the Motion to Dismiss, requiring Petitioner to formally amend the FDP in accordance with BCZR §1B01.3(A)(7), the subject matter

⁵ As part of the 2016 CZMP, the property's zoning designation remained RC-3.

for the hearing giving rise to this Opinion and Order concerned the requirements for approval under BCZR §1B01.3(A)(7) and the related application of BCZR Section 502 and its special exception factors to Petitioner's proposed FDP amendment, while recognizing the change in zoning classification allows the church as a matter of right and not by special exception as required when zoned RC-4 at the time of the First and Second Amended FDPs. With the background set forth, we can now begin digesting the evidence presented at the subject hearing, followed by the merits of this proposed amendment to the FDP.

II. Evidence Presented

A. Proposed Amendment

The church, as depicted on the First Amended FDP, is 17,275 sq. ft., with 500 seats and 200 parking spaces. As it exists presently, Hunt Valley Church is between approximately 16,000-17,000 square feet, with 375 seats and approximately 146 parking spaces. The church property has an additional 11-12 acres of, essentially, undeveloped land. The church is bounded by Beaver Dam Road to the north, a residential neighborhood to the west, Protestants' properties to the south, and I-83 to the east. According to Randy Race, Hunt Valley Church's Director of Operations, the church's formal members consist of 800+ adult members and 120 children, but up to 3,000 people "call the church home." To conduct certain events and programs in the sanctuary, HVPC must move the 375 seats presently located in the sanctuary. Due to the number of attendees (almost triple that with formal membership) and the church's growing number of programs and activities, Hunt Valley Church leased warehouse space on the other side of I-83 for, among other things, their offices, the 5th-6th grade classes, storage, and extra seating for a simulcast of the services taking place in the sanctuary at the church.

Seeking to expand its reach, eliminate its need for the warehouse space (called “The Point”), and relocate the functions of The Point to the church property, Petitioner seeks to construct a church with 67,115 sq. ft. of space (an increase of approximately 50,000 sq. ft.), increase seating from 375 movable seats to 950 fixed seats, and increase parking spaces from 146 to 437.

B. Review of Testimony

Petitioner’s Witnesses

1. Randy Race

Mr. Race, as noted above, the Director of Operations of HVPC, testified that the church is not proposing to change the actual use of the property and that the church will operate under the same leadership as present. (4/19/17 T. pp. 54-66). Mr. Race testified that the church has outgrown its present space and has been required to lease additional space on the other side of I-83 which he referred to as the “Point”. Mr. Race explained that church offices, conference rooms, as well as religious education for 5th through 12th grade are now being housed at the Point location due to space constraints at the site at issue. He explained that simulcast services were also being offered at the Point location. Mr. Race testified that this fragmented arrangement impacts the church’s ability to fulfill its religious mission in that it does not allow the church to fully gather together and that having some church activities take place at the Point discourages participation, in that people might not want to travel to the Point for activities, but might be more inclined to do so if they were offered at the actual location of the church itself. Mr. Race explained that the simulcast service also caused problems with the administering of communion, in that the pastor could not be present in both places during a service.

Mr. Race testified that the church would need to expand from 375 seats to 950 to fulfill their needs for space and to serve their congregation in one centralized location. The new building

would be to 67,115 square feet, including administrative offices, a nursery, three bathrooms, a library, a welcoming center, a café and a chapel. Through direct and cross-examination, Mr. Race reviewed the scope of activities that are now offered by the church and reflected on the church's website. (Protestants' Ex. 1). The church provides ministry for children referred to as "Party Town". It includes "Front Church" daycare for children under 2 years, "House Party" for children from 2 years of age through kindergarten, and "Street Party" for children in kindergarten through 4th grade. There is also "Preschool Bible Story Time" at 9:30 a.m. on the first Tuesday of each month.

The church also has "student ministries" for youth in the 5th and 12th grades. There is a "Middle School Ministry" for children of that age, which meets on Sundays at 9:30 a.m. and on Monday evenings for bible study from 7:00 to 8:30 p.m. The church's "High School Ministry" meets on Sunday evenings, from 6:30 p.m. to 8:30 p.m. For high school children, there is also Worship Band, which has rehearsals on Sunday nights from 5:00-6:00 p.m., and a "New Life Furniture Ministry" that meets on Saturday mornings from 9:30 -11:30. The church offers "adult ministries" which meet on Sundays at 9:30 a.m. and 11:00 a.m. There are also small group meetings, women's bible studies on Thursday mornings, a women's book club, a women's ministry called "Women's Connection, a 13-week program called "Divorce Care," a women's mentoring ministry that meets once a month, an adult learning program called "Point Break" that meets several times each month in the morning and the evening, a women's program called "Food for Thought Outreach" attended by 200 people several times a year, a "New Mom's Ministry" a four-week course called "Vision Possible" that runs twice a year and meets on Sunday afternoons from 3:00- 5:00 p.m., and "Parent Small Group" meeting once a month on Thursday evenings.

In addition to regular activities, there are also “recurring special events” throughout the year. These events include “Vacation Bible School” for a week in the summer that is attended by approximately 400 to 600 children and 200 volunteers; a Women’s Retreat, attended by approximately 300 people from 8 a.m. to 6 p.m., one weekend per year, Good Friday Worship Services, attended by approximately 400 to 500 people once a year; Christmas Eve Worship attended by approximately 1,600 people, ‘Trunk or Treat” attended by approximately 300 people, Easter Sunday Worship attended by approximately 1,600 people, blood drives two times a year, CPR training once per year and Adult Education Seminars, three times a year.

Mr. Race testified that the church currently has between 1,000 to 1,100 people attending regular services on a weekend and that, with the new structure, they would like to accomplish having everyone meet in one location in either one or two services on Sunday, instead of the three services presently being offered.

2. Michael Pieranunzi --- Landscape Architect and Land Planner

Mr. Pieranunzi was retained by the Petitioner to create and submit the Development Plan and Plan to Accompany Petition for Special Hearing. He testified that the plan now reflected County agency comments regarding the plan. Mr. Pieranunzi testified as to the actual Amendment to the FDP that was filed with the County and the history of the prior FDP Amendments at the site at issue. Mr. Pieranunzi opined that the proper inquiry in this case is whether this, the Third Amended FDP, is consistent with the spirit and intent of the First Amended FDP because “that is the plan that is the latest approved plan that supersedes all other plans at the County.” (4/19/17 T. p.111).

Counsel for the Protestants noted that Mr. Pieranunzi testified before the ALJ that the original plan and all amendments should be considered in this analysis, he now concludes that the

original FDP and Second Amended FDP should not be considered. (4/19/17 T. p.146). Comparing the First Amended FDP and the current plan, Mr. Pieranunzi opined that the “spirit and intent” standard is satisfied. He noted that the ownership is the same, there is no change in use, the church and the parking lot are still within the building envelope, there are already wells and septic reserve area on the site, and the building is situated on the northeast portion of the property and there is a large buffer to the lots to the south. Mr. Pieranunzi testified that several steps were taken to minimize impact on the other lot owners in the FDP. The building and parking lot are situated away from Old Mill Road and towards I-83. The landscaping plan has been approved by the County, which includes a berm and landscaping to screen residents. A seven acre-no build and forest conservation area will be located on the southern portion of the site. Storm water management will be brought up to current standards and there will be cut-off light fixtures to reduce impact from lighting to the parking lot. (4/19/17 T. pp. 113-14).

Counsel for Protestants made the point that if the proposed Amendment to the FDP was within the “spirit and intent” of the original FDP, why would all these alterations be necessary in the first place. Mr. Pieranunzi opined that the restrictions imposed by the Board in its 1992 Opinion do not apply today due to the fact that the zoning has been changed from RC-4 to RC-3. (4/19/17 T. p.156).

3. Robert Green --- Storm Water Management

Mr. Green was called by the Petitioner as an expert in storm water management requirements pertaining to development in Baltimore County. Mr. Green testified that he supervised the preparation of the storm water management plans for the church. Mr. Green explained that there is not currently storm water management on Lot 1 and that, pursuant to his plan, it will be provided on the site for the first time. Mr. Green’s storm water plan, admitted into

evidence as Petitioner's Exhibit 17, reflects that impervious surface at the site will be increased from 92,347 square feet to 289,195 square feet. Mr. Green opined that his plan will reduce water flowing towards the Protestants' homes and that the proposed storm water management design will not have any negative impact on the Protestants' properties. Mr. Green testified that Baltimore County approved the storm water management plan for the project.

4. Christa Kerrigan --- Architecture and County Design Requirements

Ms. Kerrigan was called by the Petitioner as an expert in architecture with a particular knowledge of the design requirements for Baltimore County. Ms. Kerrigan was responsible for the design of the church addition at issue. Ms. Kerrigan explained that it was her intention to design a building that would respect the predominantly residential character on the west side of I-83. This goal guided her decisions regarding materials. She explained that she also worked with the existing grade to reduce the massing of the building, positioning the more prominent side towards I-83. Ms. Kerrigan stated that once constructed, the church will be no closer to the other lots within Bishops Pond than the current building. She explained that she worked with her firm's civil engineer to design landscaping to try to help shield the views from the residences to the new addition.

5. Mitch Kellman --- Zoning

Mr. Kellman testified that once a FDP is amended all prior FDP's are rendered "null and void." He explained that when he worked in the Zoning Review office in Baltimore County, when someone came in to look at the FDP for a property, he would show them the last approved FDP, not prior amendments. Mr. Kellman opined that prior FDP's are null and void and that the proper inquiry in this case is whether the Third Amended FDP is consistent with the spirit and intent of the First Amended FDP, which was the last approved plan. Mr. Kellman opined that the last

approved FDP is the plan that provides the most “true” representation of what exists and/or what is approved for the property. (4/26/17 T. p.15). He believes that once an FDP is amended, the prior version of the FDP is legally superseded by the later approved version. (4/26/17 T. pp. 10, 13-15, 42-44). Mr. Kellman further opined that the special exception granted to HVPC in 1992 was extinguished and, because it was extinguished, any conditions imposed upon the previously granted special exception no longer apply. (4/26/17 T. pp. 15-17). He recognized that the Board has the authority to impose conditions on the granting of an amendment to an FDP. He opined that the conditions imposed by the Board in this 1992 case involving this property are tied to the 1992 Special Exception, not with this case. Mr. Kellman did not provide a specific basis for this opinion.

6. Glenn Cook --- Traffic

Mr. Cook opined that the traffic volumes anticipated on Sundays can be properly managed. Mr. Cook submitted an updated Traffic Impact Analysis (Petitioner’s Exhibit No. 25) in which he provided an analysis of existing and projected traffic conditions for the site. In looking at projected trip generation, he described his approach as “very conservative” and representative of a “worst case” scenario. (4/20/17 T. pp. 55-56, 118, 132). Mr. Cook testified that he used several methodologies and tools to project and analyze future traffic conditions based on that trip generation. In presenting the results, he separated his analysis into two parts: “Weekdays” and “Sundays.” (4/20/17 T. pp. 53-54). On weekdays, he concluded that the church expansion would have “little to no impact on the adjacent roadways,” which would still operate at “acceptable” service levels. (4/20/17 T. pp. 54-66).

Mr. Cook described the analysis of Sunday conditions as being “a lot more complicated” because of the trip generation patterns inherent to a church use. (4/20/17 T. p. 66). Although he applied the typical methodologies to project future traffic conditions, Mr. Cook acknowledged that

the results (which conclude that the study intersections will operate at a “level of service” A 11) are misleading. He suggested that these methods make projections based on a “peak hour” and cannot project for shorter periods of congestions, such as those experienced by churches. (4/20/17 T. pp. 66-69); see also Petitioners Exhibit 25, pp. 18-31. Utilizing other available tools (SYNCHRO/Sim Traffic Simulation model and Analysis model), Mr. Cook opined that, as with any church, there will be periods of time (20-25 minutes before and after services) when traffic volumes entering or exiting the site will be heavy, (4/20/17 T. pp. 67-68) See also, Petitioner’s Exhibit 25, pp. 23-24.

Mr. Cook proposed a Traffic Management Plan, which included four recommendations:

1. It is recommended that the access for the church be widened to provide two outbound lanes, an exclusive left turn lane, and an exclusive right turn lane along the entire length of the drive aisle.
2. It is recommended that advanced warning signs be provided along westbound Beaver Dam Road alerting motorist of the intersection of Old Mill Road. First sign to be located approximately 100’ east of intersection.
3. It is recommended that a police officer be available at the Beaver Dam Road access for a 25 to 30 minute period after a service is over to help direct traffic out of sight.
4. It is recommended that 45 minutes to an hour be provided between services to prevent the overlap of the incoming vehicles and the outbound vehicles from the church at the same time.

Petitioner’s Exhibit 25, p.2. Mr. Cook opined that, with the recommended Traffic Management Plan in place, the anticipated traffic volumes could be properly managed and any impacts to Protestants could be minimized. (4/20/17 T. p. 90-92).

Mr. Cook acknowledged the stopping sight distance standards contained in “A Policy on Geometric Design of Highways and Streets” published by the American Association of State Highway and Transportation Officials (“AASHTO Manual”). Using this standard, Mr. Cook

calculated the required stopping sight distance for westbound Beaver Dam Road approaching Old Mill Road to be 333 feet based on existing grade. (2/26/17 T. p. 81d; 4/26/17 T. p. 220). Mr. Cook did not dispute the existence of the AASHTO standard but he did question its applicability. He opined that AASHTO is a design manual and is not intended to be applied to existing road conditions. (4/20/17 T. p. 80-81, 149). Beaver Dam Road is an existing Baltimore County owned and maintained road. As Cook confirmed, “the entrance to the church has been there all these years and Baltimore County has never commented on that intersection not being safe because of stop distance,” including no such comment being made during review of the Development Plan (Petitioner’s Exhibit 1B). (4/20/17 T. p. 149). He further opined that there is more than sufficient “intersection sight distance” at the intersection of Old Mill Road and Beaver Dam Road. (4/20/17 pp. 79-80). This measurement was required by Baltimore County and is reflected on Petitioner’s Exhibit 1B.

Protestants’ Witnesses

1. **Deidre Bosley**

Protestant Deidre Bosley owns Lot 3 of the original Bishops Pond FDP. Her 13-acre property has a stream and woods along its southern boundary. She testified that her house, which was constructed in the 1790s, is the original farmhouse for the property.

Ms. Bosley purchased her property in 1994 and moved there in 1995, and therefore, prior to the construction of the church. Ms. Bosley further testified that, prior to purchasing the property, she hired an attorney who investigated its zoning history and she was made aware of the restrictions imposed by the Board in conjunction with the 1992 request for Special Exception. She further testified that she would not have purchased her property had she known the church would be expanding. She explained that the single most attractive feature for her was the rural character of

the property and the area surrounding it. She states that even since the church in its present version was constructed, the property and the area around it have remained essentially unchanged. She clarified that I-83 provided a barrier between the area surrounding her home and the buildings on the other side of I-83, which can't be seen from her home.

Ms. Bosley testified that she is concerned about the level of activity at the church and the constant stream of traffic going in and out on Sundays and during the week. She believes that church activities will take place seven days a week and all evenings. She is also concerned about the large events hosted by the church like Vacation Bible School in the summer, which, she states has become increasingly crowded and "Trunk or Treat" in the fall, which she states attracts people from all over the area.

Ms. Bosley further testified that she regularly has to sit and wait for traffic in order to get out of her own driveway. She explained that the "flagger" provided by the church to direct traffic usually has his back turned to her while assisting cars entering the church and she has to wait until the flagger realizes that she's waiting and instruct the cars entering the church to let her out. Additionally, she described that during the change in services and on days with special events, traffic on Beaver Dam Road backs up as well. Ms. Bosley believes that now that many activities that were previously held at the Church's "Point" location are now to be held at the church itself, the back-ups on Beaver Dam will be a daily occurrence. Ms. Bosley made it clear that she has no objections to the fact that HVPC is a church, but rather objects to the size of the proposed facility at that location.

2. Marsha Gaspari

Protestant Marsha Gaspari resides with her family on 20 acres at 13027 Beaver Dam Road. Mrs. Gaspari seconded Ms. Bosley's concerns. She has also had problems getting the attention of

the church flaggers who are directing traffic and has found that people leaving the church are not always willing to allow her to turn on to Old Mill Road. She testified that the current traffic situation caused by church traffic affects her ability to go in and out of her own driveway. Additionally, she described witnessing cars speeding over the bridge on Beaver Dam Road and that police often wait there to catch speeders. She is also concerned about the impact of all the cars, lights, people, and noise will have on her neighborhood which she described as quiet and tranquil. Finally, she expressed concerns over what effect these conditions will have on her property value.

3. Connie Newton

Ms. Newton lives just west of the church property on Beaver Dam Road, directly adjacent and to the west of the church property on the other side of Old Mill Road. Her driveway is approximately five to six feet from Old Mill. She has lived there for over 20 years. Ms. Newton testified that she believes that the church is too big for the size and character of the neighborhood. She likened it to a Wal-Mart. She testified that she is concerned about the water supply and notes that wells in the area have been close to dry on occasion. She described Old Mill and Beaver Dam as a precarious spot for traffic that is often very dangerous. She has observed queuing on a regular basis and has had cars come up suddenly behind her while trying to make a left turn into her property. She described almost being rear-ended trying to make the turn. She went to on to describe several accidents at that location over the last couple years.

4. Michael Fitz-Patrick

Mr. Fitz-Patrick testified that he purchased his property from John Sewell, the named Protestant in the proceedings in 1992. He explained that prior to purchasing the property, he spoke with his realtor who had an attorney look into what the church could do on the property which it

currently occupies. He also spoke with the selling agent who detailed knowledge about the 1992 case and was provided a copy of the church's plan. Mr. Fitz-Patrick bought the property with the understanding that there were covenants that had to be followed and that he was buying into. He testified that that had he known about the proposed church expansion, he would never have purchased the property. Mr. Fitz-Patrick explained that prior to the filing of the HVPC's plan, he and other Protestants were not notified and were never asked to provide input. Mr. Fitz-Patrick testified that he shares the concerns expressed by the other Protestants and that the size and frequency of the activities at the church and traffic that will accompany them, he and the other Protestants will "end up prisoners in their own homes." (4/27/17 T. p. 106).

5. Christopher Tiesler --- Traffic Engineering, Safety and Analysis

Mr. Tiesler was tendered and accepted as an expert in traffic engineering, safety and analysis on behalf of the Protestants. Mr. Tiesler undertook an investigation of traffic at the site, sight distance issues on Beaver Dam Road, and HVPC's plan for entering and exiting the property. In reviewing the volume of traffic under current and projected conditions, Mr. Tiesler testified that he looked at both the estimates provided by the Institute of Traffic Engineers (ITE) Manual and the estimates provided by Mr. Cook (Petitioner's Traffic Expert) based on actual traffic accounts.

Mr. Tiesler stated that, applying the ITE Manual, there will be 2 1/2 to 4 times as much traffic generated by the proposed expansion over current levels, whether one looks at the number of seats or the square footage of the proposed church building:

Daily Trips Based On Square Footage (ITE)

	Existing (16,000 sf)	Proposed (67,000 sf)
Weekday	147	611
Sunday	608	1,411

Daily Trips Based on # of Seats (ITE)

	Existing (16,000sf)	Proposed (67,000sf)
Weekday	229	694
Sunday	580	1,758

In addition, the Sunday peak hour trips will increase from 235 (existing, at 16,000 sq. ft.) to 718 (proposed, at 67,000 sq. ft.) trips per ITE. (Protestants' Ex. 17, p.1).

Mr. Tiesler noted, however, that Mr. Cook's traffic counts and projections are considerably higher than even those estimated by ITE. Per Mr. Cook's counts, there are 327 trips during the peak hour on Sunday compared to 235 per hour estimated by ITE for a 16,000 square foot church. For a 67,000 square foot church, Mr. Cook projected 826 trips during the peak hour on Sunday compared to 718 estimated by ITE for a church of that size. For Sunday daily trips (ADT's), Mr. Cook projected 1,930 trips; the ITE Manual estimates 2,111. As Mr. Tiesler put it, "this particular church is actually generating more trips than the average ITE number would suggest." (4/26/17 T. p. 159)

Existing Sunday Peak Hour Trips (16,000 sq. ft. church)

Per ITE: 235

Mr. Cook's actual counts: 327

Projected Sunday Peak Hour Trips (67,000 sq. ft. church)

Per ITE: 718

Mr. Cook's projection 826

Projected Sunday Daily Trips (67,000 sq. ft. church)

Per ITE: 2,111

Mr. Cook's projection 1,930

Mr. Tiesler was asked to compare the Sunday peak hour and daily traffic volume for a three lot residential subdivision versus for a 67,000 square foot church. He stated that the difference is an "order of magnitude." Applying Mr. Cook's numbers, the Sunday Peak hour traffic generated by a 67,000 square foot church is 826 trips while a residential subdivision generates only 3 trips. The daily trips generated by a 67,000 square foot church would be 2,111, while a three lot subdivision generates 30 trips per day. (4/26/17 T. pp. 193-94).

	<u>3-lot resd. land</u>	<u>67,000 sq. ft. church</u>
Sunday peak hour:	3	826
Sunday daily:	20	2,111

Mr. Tiesler was also asked to compare the traffic volume of a 16,000 square foot church with a 67,000 square foot church. Again, applying Mr. Cook's numbers, the difference is substantial.

	<u>16,000 sq. ft. church</u>	<u>67,000 sq. ft. church</u>
Sunday peak hr. (per Mr. Cook):	327	826
Sunday daily:		
Per Mr. Cook	504	2,111
Per ITE (#seats)	694	1,758
Per ITE (square foot)	608	1,411

Finally, in terms of levels of service (LOS), Mr. Tiesler explained that the existing LOS for the Sunday peak hour was a C. With the expansion, the LOS will be an F with an average delay of at least 1,096 seconds (roughly 18 minutes) and will worsen over time. In the year 2024, the average delay would be so long that it falls outside the bounds of the Highway Capacity Manual's methodology and computed as an "error." (Protestants' Ex. 17, p. 2). As Mr. Tiesler explained, the

methodology reports an error because “we’re so far outside the bounds of the highway capacity manual methodology that it won’t produce a result because the model is not valid in these kinds of regimes that are so oversaturated with traffic, it can’t produce a reliable result” (4/26/17 T. p. 165).

Mr. Tiesler opined that the large “recurring events” hosted by HVPC should be taken into consideration. Some of these events are so large that they are analogous to the amount of traffic generated during the Sunday peak hour as calculated by Mr. Cook. (4/26/17 T. p. 166). Mr. Tiesler explained that stopping sight distance (SSD) is the distance required for a driver traveling on a road to see and react to an object in the travel path and to stop before hitting it. (4/26/17 T. p. 167; Protestants’ Ex. 18). When the road is on a grade, AASHTO requires adjustment to the SSD to account for the speed of the vehicle. Here, as Mr. Tiesler explained, there is a down grade of 6% as you go over the bridge on Beaver Dan Road heading westbound. (4/26/17 T. pp. 169-71).

According to the AASHTO manual, specifically the chart at Table 3-2, the minimum required SSD on Beaver Dam Road westbound is 333 feet. (Protestants’ Ex. 18, p. 4; T3, pp. 171-72). Mr. Tiesler performed measurements on Beaver Dam Road to determine if this standard is met. He explained that AASHTO requires that SSD measurements be taken from a height of 3.5 feet (representing the height of the driver’s eye on the roadway) to a height of 2.5 feet (representing the height of taillights). This is the standard in the industry. (4/26/17 T. pp. 172-75; Protestants’ Ex. 19) It is based on empirical data and engineering studies conducted over time to determine the appropriate object height when measuring site distance. (4/26/17 T. pp. 174-75). Mr. Tiesler testified that in his experience, he has never used any height other than 2 feet when measuring SSD. (4/26/17 T. p. 175-76). AASHTO takes into consideration more than just the capability of seeing an object in a driver’s path, but also the ability of the driver to see an object given the

background of the roadway, road conditions, weather conditions, reaction time, and braking time. (4/26/17 T. pp. 232-34).

Applying this industry standard, Mr. Tiesler opined that SSD is not met on Beaver Dam Road westbound whenever 4 or more cars are queuing to make a left turn onto Old Mill Road. He observed this number of cars queuing on multiple occasions while he was at the site. (4/26/17 T. pp. 177-79; 220). It is also supported by the sheer number of cars making left hand turns according to the traffic counts conducted by Mr. Cook. Those traffic counts revealed 140 cars making left turns in just a one hour period between the first and second services on Sunday and 124 cars making left hand turns in a one hour period between the second and third services. (4/26/17 T. p. 181; Petitioner's Ex. 25, p.20). Mr. Cook projected that, with the church expansion, there would be 327 and 347 cars making left turns in these same one hour periods. (4/26/17 T. pp. 179-80; Petitioner's Ex. 25, p. 27). This is also supported, he noted, by the fact that 80% of the traffic coming to the church is arriving on Beaver Dam Road from the east. (4/26/17 T. p. 182).

Mr. Tiesler testified that he foresaw several problems from an operational perspective with the way in which the ingress and egress has been redesigned. Currently, there are two "choke points." One at the single entrance to the church off Old Mill and another at the intersection of Old Mill and Beaver Dam. The proposed redesign introduces a third choke point which, with the three-fold increase in traffic, will make it much more difficult for Protestants to enter and exit their properties.

It is the opinion of Mr. Tiesler that having a police officer direct traffic on Beaver Dam Road will not make any meaningful difference. He stated that an officer can help to some extent with outbound traffic and how people are leaving the site, but he or she cannot impact "in any way

shape or form” how people arrive at the site, that is, the random bunching or “platooning” manner in which they arrive. (4/26/17 T. pp. 185-86).

Explaining further, Mr. Tiesler testified that a police officer cannot coordinate all of the moving parts of the traffic system and cannot prevent the danger associated with the queuing of cars on Beaver Dam Road. Mr. Tiesler testified that he does not believe that the stop sign at the church’s exit onto Old Mill or the expansion of Old Mill Road to two lanes will have any effect on how quickly cars will be able to exit. He explained that because of the road is two lanes for only 50 to 60 feet between that church exit and Beaver Dam Road, there will be a “standing queue” of two cars in this area, which will prevent two lanes from acting like true turning lanes.

Mr. Tielser opined that a stop sign at the church’s exit onto Old Mill Road will not make it easier for Protestants to get to Beaver Dam Road because the metering of that stop sign is dependent upon the next stop at Beaver Dam Road and the availability of gaps in traffic to make a left or right turn. (4/26/17 T. p. 205). The new configuration may decrease the number of cars queuing at the intersection of Old Mill Road and Beaver Dam, but it will not eliminate the choke points he described.

When asked whether staggering the start times of church services every two hours would impact his opinions, Mr. Tiesler, because there was no information regarding length of service, assumed they were only an hour long and therefore, still believes there will be overlap and substantial congestion. Mr. Tiesler concluded that Mr. Cook’s mitigation measures might help if the church was not expanding, but the several-fold increase in traffic will make conditions “a lot worse” irrespective of those measures. (4/26/17 T. p. 218; p. 219).

6. Bruce Doak --- Baltimore County FDP Amendment Process

Mr. Doak disagreed with the testimony of Petitioner's expert, Mr. Kellman who stated that FDP renders all prior FDP's null and void. Mr. Doak opined that the paper itself is void, but the substance is not voided. Mr. Doak opined that "everything that was from the original to that point forward" should be considered in a subsequent FDP. Mr. Doak further opined that the ALJ and the Board can impose restrictions and conditions on the approval of an FDP amendment and have done so in cases he's been involved in. He opined that the conditions imposed by the Board in its 1992 Opinion (Protestant Ex. 7) apply today despite the change in zoning in 2012 because the Board's Supplemental Order (Protestants' Ex. 9) states the First Amended FDP was approved subject to the restrictions in the Board's 1992 Opinion.

Mr. Doak disagreed with the limited factors identified by Petitioner's Expert, Mr. Pieranunzi, for considering whether an amended FDP is consistent with the spirit and intent of the original FDP. He agreed that the use of the property is the same under the proposed Third Amended FDP, "but the magnitude is extremely greater." (4/27/17 T. p.16).

Mr. Doak opined that the Third Amended FDP is not consistent with the original FDP or the First Amended FDP. He does not believe that the fact that the zoning has been changed to RC-3, which allows churches by rights, means that the Board does not have to consider the size of the church and impacts on neighbors when applying the spirit and intent standard.

7. Chris Jakubiak --- Planning, Zoning, and Zoning Regulations

Mr. Jakubiak was called by the Protestants as an expert in the areas of planning, zoning, and the zoning regulations, including those pertaining to FDPs and amendments to FDPs. Mr. Jakubiak agreed with Mr. Doak in opining that the restrictions in the Board's 1992 Opinion still apply today and are not affected by the change in zoning to RC-3. He opined that the Third

Amended FDP is not consistent with the spirit and intent of the original FDP or the subsequent amendments.

In evaluating the issue of spirit and intent, Mr. Jakubiak opined that you cannot ignore the original FDP. He opined that you have to look at the “continuum of amendments and changes over time” to understand what the spirit and intent was and to determine consistency. (4/27/17 T. pp. 134-35). Mr. Jakubiak analyzed the issue by looking at three factors and criteria as a guide when applying the spirit and intent standard.

He noted first, “programmatic” aspects of the plan, which concern the land use and intensity of the activities associated with that use. He opined that it was not the spirit and intent of the Original FDP or the First Amended FDP to have such a large intensive church use on the property. Second, he noted “physical aspects” of the plan, which include the structure itself, but also the access, the parking spaces, the amount of impervious area and the storm water management. Mr. Jakubiak noted that the new proposed structure will be nearly four times the size of the current church; that the private residential drive is being expanded to what one might consider major institutional or commercial road; the increase in the number of parking spaces to 430 and the area covered by the parking lot, and the near tripling of the impervious area to over 288,000 square feet. Additionally, Mr. Jakubiak testified that he considered “impacts” such as traffic and safety, pointing to the difference in the traffic volume between the Original FDP (30 ADT’s), and the First Amended FDP (544 ADT’s), and the proposed 67,000 square foot church (2,111 ADT’s), as well as the fact that the sight distance on Beaver Dam Road, which he opines violated AASHTO, will be worsened. (4/27/17 T. 137). Mr. Jakubiak opined in summary that he believes that the property at issue was rural in nature and that the infrastructure did not support the proposed development of that property.

In analyzing the Baltimore County Zoning Regulations §502.1 factors, Mr. Jakubiak opined that the proposed expansion falls short. In addressing whether the proposal is detrimental to the health, safety and general welfare, Mr. Jakubiak stated “if we’re reasonable and thoughtful, we have to conclude there’s going to be a safety issue at that intersection” as a result of sight distance limitations. He opined that “general welfare” is a reference to quality of life, and here, the quality of life for the residents of Old Mill Road will surely be harmed by the proposed expansion. In addressing whether the proposed development will create congestion in roads, streets, alleys, Mr. Jakubiak opined that the expansion clearly will create a congestion problem on a private drive that is Protestants’ only means of ingress and egress. (4/27/17 T. pp. 139-140). Mr. Jakubiak analyzed whether the proposal is consistent with the spirit and intent of the zoning regulations and opined that the purpose of the RC-3 zone is to foster conditions favorable to agricultural and residential use of the land while still maintaining the rural character of the area. He notes that, in this case, while a church is permitted in the zone, expanding it to a level this intense in a rural area is not consistent with the purpose of the zone. (4/27/17 T. pp. 140-41, 146).

While addressing questions from the Board, Mr. Jakubiak explained that, for the purposes of applying the §502.1 factors, we don’t have to accept the fact that the zone is now RC-3 and should not simply assume that because churches are allowed as of right in the RC-3 zone, that the purpose of the zone is automatically met. (4/27/17 T. p. 143).

8. Michael Brassert --- Photography and Photographic Lenses

Mr. Brassert testified regarding two photographs introduced into evidence by the Petitioner, one showing the view of the existing church from the south and the other showing the proposed church building superimposed on that same photograph. (Petitioner’s Ex. 15). Mr. Brassert testified that the photographs are deceptive because they were taken with a wide lens,

which makes objects look farther away and smaller. (4/27/17 T. pp. 44). Mr. Brassert explained that he took a photograph from the same location using a “normal lens,” which depicts what the human eye would see with no distortion in terms of perspective, depth and field of view. He offered an exhibit (Protestants’ Ex. 22,) which compares his photograph with the photographs introduced by the Petitioner. He testified that his photograph, which shows the church much closer, than the Petitioner’s pictures, more fairly and accurately depicts what a person would see from that vantage point.

III. Interpretation and Application of the Zoning Regulations

A. Amendments Pursuant to BCZR §1B01.3(A)(7)

Baltimore County Zoning Regulations provides certain regulations on development plans and plats, as well as proposed amendments to those plans previously approved. BCZR §1B01.3. As relevant herein, §1B01.3(A)(7) identifies three sets of circumstances for amendments to final development plans: (a) Amendment prior to sale of interest in nearby property; (b) Amendment after sale of interest in nearby property or upon demand for hearing; and (c) Amendment upon request by owner of lot within subdivision. Each set of circumstances carries its own requirements.

The Final Development Plan depicts four lots, Lot 1 (Hunt Valley Church), Lot 2 (Turley), Lot 3 (Protestant, Ms. Bosley), and Lot 4 (Protestant, the Fitz-Patricks). Pet. Ex. 1A, 7-9. The owner of Lot 2 is not among the Protestants. The present-day owners of Lots 3 and 4 purchased their homes, respectively, in 1994 (Ms. Bosley), and 2000 (the Fitz-Patricks). Both, Ms. Bosley and the Fitz-Patricks, purchased their respective properties after the Final Development Plan was approved in 1991, after the Second Amended Final Development Plan was approved in October 1992, and after the approval of the First Amended Final Development Plan in December 1992.

Therefore, BCZR §1B01.3(A)(7)(b) applies to the instant proposed amendment, as Petitioner's request concerns an amendment after sale of interest in nearby property or upon demand for a hearing.

Under BCZR §1B01.3(A)(7)(b), "the plans may be amended through special exception procedures, in the manner provided under Section 502 and subject to the following provisions:

(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.⁶

(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."

1. What Do "Special Exception Procedures" and "Section 502" Mean?

In this matter and other recent matters in front of the Board, much ado has been made over the phrase "special exception procedures" as it relates to the qualifying phrase "in the manner provided under Section 502." For example, Petitioner argued that the plain language of BCZR §1B01.3(A)(7) "does not require that a petitioner demonstrate compliance with each of the nine conditions outlined in Section 502.1 in order to amend an FDP." (Petitioner's Post-Hearing Memorandum, p. 7, emphasis in original). Petitioner further argues that "it followed proper 'procedures'" as it filed a standard zoning petition form, paid a filing fee, posted the property with notice of a public hearing, advertised the request in a newspaper of general circulation and attended

⁶ The Department of Planning determined that the amendment is in accord with the provisions of the CMDP, and the comments provided by the Dept. of Planning were incorporated into Pet. Ex. 1B. Protestants did not address within their Post-Hearing Memorandum whether the amendment is in accord with the CMDP.

a public hearing. (*Id.*, at p. 8). Section 502, however, does not identify the “procedures” identified by Petitioner.⁷ Rather, other Baltimore County zoning regulations address the process for zoning petitions and related notice matters, including, *inter alia*, Sections 500.5, 500.6, and 500.7. Therefore, what are the special exception procedures under Section 502 that are contemplated by §1B01.3(A)(7)(b)?

To get started, it must be noted that “[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature.” Rosemann v. Salsbury, Clements, Bekman, Marder & Adkins, LLC, 412 Md. 308, 314; 987 A.2d 48, 52 (2010) (citation omitted). “‘Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English language.’ ” *Id.* at 314–15, 987 A.2d at 52 (citations omitted). In interpreting a statute, a court first looks to the language, applying it where the statute’s language “is unambiguous and clearly consistent with the statute’s apparent purpose[.]” Motor Vehicle Admin. v. Gonce, 446 Md. 100, 110, 130 A.3d 436, 442 (2016); quoting Lark v. Montgomery Hospice, Inc., 414 Md. 215, 227, 994 A.2d 968, 975 (2010) (citation omitted). As is well established under Maryland law, canons of statutory interpretation forbid construction of a statute so that a word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory. Oglesby v. State, 441 Md. 673; 109 A.3d 1147 (2015).

Section 502, entitled, “Special Exceptions,” contains eleven subsections enumerated §502.1-§502.10 (with separate subsections designated as §502.5 and §502.5A). There is no individual “Section 502” with any text or one that functions independently of the subsections enumerated §502.1-§502.10. Therefore, for the reference to Section 502 to have any meaning, and not be discarded as meaningless, surplusage, or superfluous, the reference to special exception

⁷ The quotation marks for “procedures” reflect the quotation marks in Petitioner’s Post-Hearing Memorandum (at p. 8).

procedures has to include all subsections within Section 502, specifically, those identified within §502.1-§502.10, to the extent that each individual subsection may be applicable to the case at hand.⁸

Not all subsections may be applicable to a certain petition or project. For instance, Section 502.4 concerns “Special exceptions for certain elevator apartment buildings and office buildings.” As the petition in this case concerns neither an elevator apartment building, nor an office building, the provisions within §502.4 will not factor into the analysis as to whether the final development plan here can be amended as proposed.

As a result, the language within each §502 subsection dictates its applicability to each matter requiring consideration of special exception procedures in Section 502, which, in this case, is limited to subsections §502.1 and §502.2. Section 502.2 only becomes a consideration upon granting of the special exception --- “*In granting any special exception, [...] the Board of Appeals, upon appeal, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties.*” (emphasis added).

The sections of the Baltimore County Zoning Regulations cited by Petitioner do not aid Petitioner’s argument. To the contrary, such sections provide further support for the Board’s interpretation and a further basis to reject Petitioner’s argument. By way of example, if the County Council wanted to limit the review under BCZR §1B01.3(A)(7) to the factors set forth in BCZR §502.1, it would have specifically stated that intent, as it did in BCZR §§ 232C.2(A), 235C.2(A),

⁸ The Board in this case decided 3-0 that, in fact, Section 502 required a review of all subsections with Section 502 and application of those subsections at issue in the case at hand. Since the decision here, the Board, in *Katrina Grewe, et al.*, Case No. 17-114-SPH, unanimously interpreted “Section 502” in the exact same manner as this case and applied the §502.1 factors.

238C.2(A), 259.3(B)(4), 259.11(A)(3), 400.4(B)(3), 404.2(B)(1), 404.3(C), 404.4(C)(8)(b), 408B, 409B, 412A.2(E)(9), and 424.4(A)(6)(c).⁹

Whatever vagaries that may exist, or any of those that can be imagined or conjured, are eliminated by the Board's reconciliation of the phrases "special exception procedures" and "in the manner provided under Section 502" and provides the requisite standards for a hearing on an amendment to a FDP. Importantly, the Board's interpretation fully effectuates and harmonizes the requirements with the defined purposes, as well as common sense. As noted by Petitioner, a final development plan is a zoning notice plan.¹⁰ Section 1B01.3(A)(1) identified the purpose for the development plan regulations as follows: "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 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."

Requiring a property owner whose lot is subject to a final development plan to provide evidence that adjacent properties, subject to the same final development plan, will not be harmed, as per, the subsections within Section 502, including e.g., the factors set forth in §502.1, by such changes is not an onerous burden put upon the requesting property owner. To the contrary, requiring a full analysis of the applicable factors within Section 502 implements the necessary mechanism and

⁹ It is also fair to conclude that the "special exception procedures" does not simply refer to a hearing, etc., as various other BCZR sections specifically provide for a hearing, e.g. BCZR §§ 230.2(G)(4) ("formal request for a public hearing ...in accordance with Section 500.7"); 405.7(C) ("after notice and hearing pursuant to Section 500.7"); and 424.4(A)(3) ("public hearing...in accordance with Section 500.7"). This list of BCZR citations does not exhaust the references to a "hearing" in accordance with §500.7.

¹⁰ See, e.g., Petitioner's Motion to Dismiss, at p. 6, referencing BCZR §1B01.3(A)(4), "The FDP is commonly referred to as a 'zoning notice plan',..." . §1B01.3(A)(4) states, in part, "The notice shall also generally apprise the buyer of the rights, requirements and remedies provided under the development plan, those provided under this article and these zoning regulations in general..." .

standards “to protect those who have made decisions based on such plans from inappropriate changes therein.” As noted recently in the Board’s Opinion in the case of Katrina Grewe, et al., Case No. 17-114-SPH, when analyzing changes to a final development plan “the consumer protection aspects [of BCZR §1B01.3(A)] for purchasers such as the [Protestants], cannot be ignored or taken lightly.” The Board’s interpretation also gives adjacent property owners subject to a final development plan a meaningful voice, manner, and opportunity to participate and protect their investments after relying upon the plans in existence at the time of purchase.

Therefore, as a result, the Board concludes that the reference to special exception procedures in conjunction with the related reference to Section 502 dictates a review of each subsection with Section 502 to determine relevance and applicability, and then an analysis of those subsections (which appears will always include §502.1 and its factors) in light of the proposed amendment.

2. What Is The “Original Plan” For Spirit and Intent Consideration Under BCZR §1B01.3(A)(7)(b)(3)?

Another issue that arises in this matter is what Final Development Plan is at issue for purposes of the analysis. Pursuant to BCZR §1B01.3(A)(7)(b)(3), an amendment to a final development plan “is required to be consistent with the spirit and intent of the *original* plan and of this article.” (emphasis added).

Based on Baltimore County Zoning Review Office practice, as identified by Petitioner’s expert witness, Mitch Kellman, a land use and zoning expert who worked for many years within that Office, Petitioner argues the operative plan for this analysis is the last one approved, the First Amended Final Development Plan. As noted above, Mr. Kellman, and Petitioner, contend that upon approval of the last FDP, all prior FDPs are null and void. And, as also noted above, by quirk,

the last Amended Final Development Plan for Bishops Pond is the First Amended Final Development Plan, not the Second Final Developmental Plan.

Protestants contend that it is the initial Final Development Plan that must be considered for the spirit and intent analysis and not either, or the combination, of the subsequent Second and First Amended Final Development Plans. Protestants offer multiple reasons for their position, including: (a) the plain language of the section, "original plan;" (b) the last approved plan defeats the purpose of the statute; and (c) the practice of showing the last amended plan is a different issue than review of the substance of an amendment. (See, Protestants' Post-Hearing Memorandum, pp. 37-39).

The parties offer differing interpretations of "original" that stand in stark opposition --- one party claims it is the initial FDP and the other claims it is the last approved amended FDP on file. The Board believes that both interpretations fail to account for the overarching purpose for the development plan regulations.

Protestants, though overshooting their mark, correctly assert that limiting evaluation of proposed amendments to the last final development plan defeats the purpose of the statute. One of the stated purposes for development plans, as noted above, is 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. BCZR §1B01.3(A)(1). By focusing on the last plan, as urged by Petitioner, a subsequent amendment may supersede the operative plan in place at the time of purchase for adjacent property. In other words, Petitioner's approach erroneously assumes that the proposed amendment is to be objectively determined solely by the date of approval, rather than the subjective view of the property purchaser.

Akin to the analysis above, to effectuate the identified purposes for the development plans regulations and therefore, to protect purchasers of adjacent property within a FDP, the Board must

focus upon on the FDP plan in place at the time of the decision to purchase the property within the FDP. In other words, the “original plan” at issue for to evaluate the spirit and intent of an amendment has to at least start with and heavily focus upon the plan on file that was reviewed and relied upon by the adjacent property owner at the time of purchase.

Going back to the initial FDP in this case irrespective of the conditions that exist at the time a subsequent purchaser reviews the plan on file, as suggested by Protestants, asks the Board to look at conditions the purchaser could not have reasonably relied upon. By way of illustration in this case, the initial Final Development Plan does not identify a church to be built on Lot 1. The Fitz-Patricks purchased their home in 2000 after the church had been built and therefore, were aware of its existence. The Fitz-Patricks did not purchase their property with an understanding that Lot 1 was for residential development. If the Board were to accept Protestants’ argument, the Board would have to ignore the actual circumstances presented to the Fitz-Patricks at the time of their purchase, as well as the reasonable expectations at the time of purchase, thus, frustrating the intent behind the regulations.

Likewise, an approved post-purchase amendment does not render null and void the “original plan” reviewed and relied upon by an adjacent property owner within a FDP, as suggested by Petitioner. Doing so eliminates from consideration the very purpose of the development plan regulations, which protects a purchaser’s investment at the time of purchase.

Protestants express concern over subsequent amendments that are minor in nature that give way to another subsequent amendment that has more of a substantial impact --- a grim harbinger of the waiver argument yet to come. An adjacent property owner within the FDP may not care about a minor change to engage in litigation but may oppose a more major one. The issue of what effect, if any, the decision to not oppose a more minor post-purchase amendment has on any

subsequent opposition to another, perhaps more controversial, proposed amendment is not is what occurred in this case and, therefore, is not before this Board at this time. In any event, by requiring an initial and primary focus, if not more, upon the operative plan in place at the time of purchase of adjacent property as the “original plan” under §1B01.3(A)(7)(b)(3), that property owner’s decision-making process and reliance upon that plan is properly accounted for and protected, as required.

Lastly, as to which FDP is at issue, as noted above, the First Amended FDP was approved after the Second Amended FDP, though the Second Amended FDP was intended to replace the First Amended FDP. The testimony from Mr. Fitz-Patrick and Ms. Gaspari failed to identify which FDP was reviewed and relied upon. The testimony from Ms. Bosley, in which she described her understanding was that the church could not be larger than 25,000 sq. ft., implies that she, via her attorney, reviewed and relied upon the Second Amended FDP. No Protestant testified about any confusion over whether they reviewed and/or relied upon the initial, First, or Second Amended FDP.

Both, the First and Second FDP, depict a large church with a parking lot to be built on Lot 1. In the end, there is no material difference between the two that may be instantly dispositive of this matter, nor is there a difference that presents a fork in the analytical road. The Board also does not have to address whether the approval date is the dispositive factor in this case or whether other circumstances dictate a different outcome. In light of the procedural quirks in this case, it is expected that the facts and procedural history in this case have created a unicorn in the Baltimore County zoning and development world on this point.

IV. DECISION

A. Prior to Purchase, Protestants Were On Notice of a Large Church on Lot 1

As set forth above, Ms. Bosley purchased her property in 1994 and the Fitz-Patricks in 2000. The Church's purchase of Lot 1 occurred prior to both. The Second Amended FDP approved on October 22, 1992, was the first one on file that depicted a church to be built on Lot 1. The First Amended Final Development Plan was approved on December 3, 1992. See Petitioner's Exhibits 8, 9 and 11. In either event, prospective purchasers from October 22, 1992 forward would be on notice that there were plans for a yet-to-be-constructed large church with a sizable parking lot on Lot 1, and certainly, the same applies from December 3, 1992 forward. Concomitant with notice of the proposed church, prospective purchasers would have to expect that church activities and programs would take place on church property, once constructed, and that matters associated with the participation in such activities and programs, such as attendant traffic, noise, etc., would flare up during certain events, potentially causing inconvenience and delays given the one-road access to and from the properties behind Lot 1.

Ms. Bosley, who purchased her property prior to the construction of the church, acknowledged she investigated the possibility of a church being constructed before her purchase and questioned whether it would ever go forward. Petitioner argues that the documents she presented as evidence (Protestants' Exhibit No. 13 and No. 14) fail to reference the contents of the Final Development Plan, concluding that the Final Development Plan played no part in Ms. Bosley's decision to purchase Lot 3. Of course, if Ms. Bosley did not consider and/or did not rely on the Final Development Plan at the time of purchase, the regulations' intended consumer protection is not at issue.

The Board found Ms. Bosley to be a credible witness and therefore, credited her testimony that the construction of the church was part of her investigation into the purchase of her property. However, breathing life into that testimony fatally undermines any reliance argument. Ms. Bosley, by her own admission, was on notice of the proposed church and elected to purchase her property irrespective of the proposed church's existence. Rather, she questioned whether the project would go forward, making an assessment that it may or may not be constructed, but that she would purchase the property in any event. In the end, the First (and Second) Amended Final Development Plan did as intended, it disclosed that a proposed church with a parking lot was to be built on Lot 1 to Ms. Bosley.

The Fitz-Patricks are similarly situated to Ms. Bosley, though the church had been constructed by the time the Fitz-Patricks purchased their property. Mr. Fitz-Patrick testified that he knew about the church prior to moving in, as well as the conditions upon the church previously imposed. Given his testimony, the Fitz-Patricks reliance on the First Amended FDP to provide notice of the church is not dispositive. The Fitz-Patricks were indisputably on notice of the church's existence and purchased the property. To be clear, this discussion should not be interpreted as excusing a requirement to prove review and reliance on a final development plan, but rather, the Fitz-Patricks purchased their property with actual knowledge of the church's existence as it had already been constructed.

Therefore, both adjacent property owners with properties within the FDP were on notice of the proposed church as depicted in the First (and Second) Amended FDP as that is the operative one at the time of their respective purchases. The First Amended FDP depicted a church, consisting of a chapel area, offices, classrooms, a nursery and a kitchen, all amounting to 17,275 square feet,

with 200 parking spaces within a paved lot that was 12,397 square feet, and the Second Amended FDP depicted a slightly larger version of the church.

B. Petitioner Has Met Its Burden Under Section 502

Under BZCR §502.1, before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

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

As this was a *de novo* hearing, Petitioners, with the burden of proof, presented evidence to address all factors identified above. More specifically, as set forth by the Court of Appeals in Schultz v. Pritts:

the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of

establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide.

291 Md. 1, 11; 432 A.2d 1319, 1325 (1981).

The Court of Appeals, in Attar v. DMS Tollgate, LLC, 451 Md. 272; 152 A.3d 765 (2017), recently addressed burden of proof and burden of persuasion issues in special exception cases. First, the Court of Appeals reiterated that a “special exception is presumed to be in the interest of the general welfare, and therefore a special exception enjoys the presumption of validity.” Id., 451 Md. at 286; 152 A.3d at 774, citing Schultz, 291 Md. at 11; 432 A.2d at 1325. Even with that presumption, Petitioner must still persuade the Board of Appeals “by a preponderance of evidence that the special exception will conform to all applicable requirements.” Attar, 451 Md. at 286; 152 A.3d at 774, quoting People’s Counsel for Balt. Cty. v. Loyola Coll. In Md., 406 Md. 54, 109; 956 A.2d 166, 199 (2008). As such, Petitioner has both, the burden of proof and burden of persuasion. Attar, 451 Md. at 286; 152 A.3d at 774. Protestants, on the other hand, must provide sufficient evidence that indicates the subject matter for the special exception “has adverse effects above and beyond those inherently associated with such use under the Schultz standard.” Id., 451 Md. at 287; 152 A.3d at 774.

With that in mind, the Board finds the following with respect to the §502.1 factors:

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

The evidence presented by Petitioner fails to yield any issue that makes it apparent the proposed amendment presents a concern for the health, safety or general welfare for the Protestants. One or more of the Protestants and/or witnesses called on their behalf identified some

general crime concerns. The concerns raised, though no reason to doubt the sincerity of the belief, were the product of speculation. Even assuming that those inclined to undertake criminal activity would systematically target this church, there is no evidence that can reasonably link the proposed amendment to the general crime concerns. There is no suggestion that the proposed exterior lighting would be insufficient to serve as a deterrent. There is no reason to believe that any criminal activity that may take place requires a solution other than what presently occurs when faced with similar activity.

Mr. Fitz-Patrick expressed a concern about water runoff. The parking lot expansion extends toward I-83 to the southeast, rather than Old Mill Road to the west, or Protestants' properties to the southwest. See, Petitioner's Exhibit No. 17. Petitioner's design incorporates a new storm water management system and Petitioner's Drainage Area Plan illustrates drainage away from the Fitz-Patrick's property. Id. Based on the proposed design and supporting testimony, it appears that water runoff from the church will not present a health, safety or general welfare concern for Protestants. Having said that, the Board, as set forth below, will impose a condition that Petitioner is required to ensure that in the event that any drainage and runoff from the church property becomes a problem on Old Mill Road or for any Protestant, Petitioner will be required to address and eliminate the problem.

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

Protestants' case, as per the testimony of Ms. Bosley, Mr. Fitz-Patrick, Ms. Gaspari, and Chris Tiesler, Protestants' traffic engineering, safety and operational analysis expert, primarily focused on the expected increased traffic brought on by the increase of attendees in its existing programs and events and the addition of new and/or relocation of offsite programs and events to the church property.

By way of background, Hunt Valley Church is located at the intersection of Beaver Dam Road, a two-lane County road, and Old Mill Road, which was described as a “one-lane driveway” by Ms. Bosley. There is no street sign marking Old Mill Road. Old Mill Road services only the traffic entering the church and the properties located behind it, including the Turley property, Ms. Bosley’s property, the Fitz-Patricks’ property, and the property that belongs to Marsha Gaspari, another Protestant.¹¹ Old Mill Road does not connect to any other road and is the only access point to and from these properties. Ms. Bosley testified that she has an easement to share Old Mill Road and implied that she understood that the Fitz-Patricks and Turleys do as well, but not Ms. Gaspari.

Protestants’ testimony made clear that, even in the absence of this proposed amendment, the various church programs and events presently cause traffic congestion and difficulty with entering and exiting on Old Mill Road. The concerns raised about exacerbating the present conditions are well understood. The traffic to and from the church affects these properties, whether on Beaver Dam Road, and of course, on Old Mill Road, presents congestion and related concerns on both roads.

Mr. Cook, Petitioner’s expert in traffic engineering, testified that there will be times (typically, 20-25 minutes before and after Sunday services) with traffic congestion caused by the

¹¹ Ms. Gaspari’s ability to participate in this case was challenged by Petitioner. Neither party in their respective post-hearing memoranda addressed in any meaningful detail whether Ms. Gaspari was able to participate as a party and/or what protections, if any, the amendment process extends to Ms. Gaspari. It should be noted that BCZR §1B01.3(A)(7)(b) limits those who may demand a public hearing on an amendment. To the extent necessary, the Board finds that Ms. Gaspari’s property is not part of the Bishops Pond FDP. Nevertheless, the Board also finds that her property, by its location and complete reliance on Old Mill Road for access, is influenced by the proposed amendment. The issues she identified mirrors those raised by Ms. Bosley and the Fitz-Patricks, whose properties are subject to the Bishops Pond FDP. Given the mutuality of issues raised by those within the FDP, particularly Old Mill Road as the sole access to and from her property, and the uniqueness of her situation, there is no harm in allowing her to participate in this case. The public interest is also served by allowing her to participate and is consistent with the spirit and intent of the zoning regulations. The decision and reasoning for permitting her participation is limited to this case in light of the unique set of facts applicable to her property. The same consideration, for example, would not apply to other area neighbors that do not exclusively rely upon Old Mill Road to reach their property.

church's operation, acknowledging that "there's going to be traffic congestion...and there's no way to avoid it." (April 20, 2017 T. p. 67). Mr. Cook added, "[traffic congestion is] common to most churches in Baltimore County or anywhere really." (*Id.*, p. 67). Mr. Cook likened the traffic congestion to that of attending a Baltimore Ravens game. (*Id.*, p. 69). Mr. Cook opined that, as with any church, traffic will be heavy for the 20-25 minute period before and for 25-30 minutes after services. (Pet. Ex. 25, p. 24).

Mr. Tiesler agreed that traffic congestion presently exists and agreed congestion will be experienced if the proposed amendment is approved. Mr. Tiesler, however, identified a substantial increase in traffic volume will be caused by the expansion of the church, well beyond that acknowledged by Mr. Cook. (See, e.g., Protestants' Exhibit No. 17; also, Protestants' Post-Hearing Memorandum, p. 24-25). A comparison of trip numbers generated by the church, with the expansion, and that generated by the residences behind it differ on an "order of magnitude," according to Mr. Tiesler. He also estimated that that the church expansion will result in 2 ½ to 4 times as much traffic as the current levels.

It was clear that Mr. Cook and Mr. Tiesler had a significant dispute over the applicable trip generation numbers, volume within peak hours, application of the ITE Manual, stopping sight distance, and related items. It is not necessary for the Board to determine which of the experts is correct as to the numbers or those issues. It is obvious that there will be more traffic generated by the expansion of the church and addition of new and relocated programs.

The property is presently zoned RC-3,¹² which permits a church by right. A church may be developed even if the volume of traffic that it generates causes congestion and unsafe conditions at the particular location proposed. See, Schultz v. Pritts, 291 Md. 1, 22; 432 A.2d 1319, 1331

¹² While questioned within Protestants' case, the Board has no authority to reverse or change the County Council's decision.

(1981). However, because this property falls within a FDP, the proposed change must also be evaluated as a special exception, which, with traffic congestion, could result in a denial. Id. Seemingly, those two factors are in conflict, but only if the nature of the purpose for a special exception analysis here is obscured --- the particularized effects upon Protestants.

Without question, the proposed amendment will result in increased traffic congestion and delays to be experienced by Protestants. One tangible effect to be experienced by Protestants occurs when they compete with other vehicles to enter or exit Old Mill Road close in time to church services. Here, Mr. Tiesler and Mr. Cook have accord. Both testified that 25 minutes is a reasonable estimate for an expectation as to complete clearance of vehicles from the church property following services or major events. The arrival and clearance rates readily identify traffic congestion and resulting delays, and importantly, obstacles to timely and efficiently access Protestants' properties.

The increase in traffic on Beaver Dam Road to be experienced by the public generally is not at issue for the Board in this case. The Board, however, is required to consider not only the traffic congestion to be caused (and experienced by Protestants) pursuant to §502.1(B), but also whether or not the proposed amendment is consistent with the property's zoning designation, as per §502.1(G). For those considerations, Schultz v. Pritts, again, is instructive:

Because the legislative body, in reaching its determination, is engaged in a balancing process, certain uses may be designated as permitted although they may not foster all of the purposes of the zoning regulations and, indeed, may have an adverse effect with respect to some of these purposes. Thus, when the legislative body determines that the beneficial purposes that certain uses serve outweigh their possible adverse effect, such uses are designated as permitted uses and may be developed even though a particular permitted use at the particular location proposed would have an adverse effect above and beyond that ordinarily associated with such uses. For example, churches and schools generally are designated as permitted uses. Such uses may be developed, although at the particular location proposed they may have an adverse effect on a factor such as traffic, because the moral and educational purposes served are deemed to outweigh this particular adverse effect.

291 Md. 1, 21; 432 A.2d 1319, 1330 (1981).

Thus, the Board, in its review of this case, must take into account that County Council, by rezoning the property to RC-3 in 2012, has determined the beneficial purposes of the church outweigh the adverse effects, including particularly the anticipated detrimental impact to Protestants that will be caused by increased traffic. Therefore, the Board concludes that neither, the expected traffic congestion, nor the RC-3 zone designation, is solely dispositive of this factor. Rather, we are required to account for both as parts of our analysis. This is why, in the Board's opinion, the access issue presents a greater concern in light of the scope of this case, rather than the stopping sight distance issues or others, though, without discrediting of the seriousness of the other traffic issues raised by Protestants or the sincerity in raising the same.

Recognizing that the expected influx of traffic will result in adverse traffic conditions, both specifically and generally, Mr. Cook, on behalf of Petitioner, issued several recommendations in his "Traffic Management Plan," identified above. The recommendations appear to at least lessen the impacts upon Protestants and others going to and from the church. The Board believes, however, that the recommendations can be improved upon to provide more assistance to Protestants. The improvements will be addressed below.

Therefore, the Board finds on this issue that the proposed amendment: (1) will increase congestion at the intersection of Beaver Dam Road and Old Mill Road; (2) Protestants' access to and from their properties will be detrimentally affected as a result, as reflected by the agreed upon 25-30 minute expected traffic clearance rate from the church property; (3) by changing the zoning designation of RC-4 to RC-3, thus, permitting a church by right, the County Council at least implicitly determined that traffic congestion caused by the church was outweighed by the benefits associated with the church; and (4) Mr. Cook's Traffic Management Plan, with some

improvements, will help at least lessen the detrimental effects to be experienced by Protestants specifically (as well as church attendees and others on Beaver Dam Road generally). Therefore, the Petitioner has met its burden on this issue.

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

The testimony from Petitioner's expert witnesses confirmed that the proposed amendment will not result in any potential fire, panic or other hazard. Protestants did not identify any fire, panic or other danger hazards that may be caused by the proposed amendment.

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

Petitioner has met its burden on this point. It is well understood and accepted that church operations result in attendance spikes for services and special events. To the extent it may be argued that Sunday services and/or major events cause an undue concentration of population, those services and events are temporary, scheduled, and ordered. To that point, the church proposes to schedule additional services and to stagger its services to alleviate any such issue caused by the expected increase in attendees. In addition, seven of the church's 23 acres will be designated as a "no build" area and 4.37 of those seven acres will be preserved via forest conservation easement.

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

There is no evidence in the record that suggests the proposed amendment may interfere with any schools, parks, water (the property is not served by the public water system), sewerage (the property is not served by the public sewage system), or other public requirements, conveniences or improvements. The property is not within a deficient traffic shed and no infrastructure requirements were required in the development process. See, e.g., Petitioner's Post-Hearing Memorandum, Exhibit D. No evidence was presented by Protestants to counter the testimony on these points.

F. Interfere with adequate light and air

There is no evidence in the record that suggests the proposed amendment may interfere with adequate light and air. As testified to by Ms. Kerrigan, the building, at its closest point to any of Protestants' properties, will be approximately 800-900 feet away. (4/19/17 T., p. 232). As evidenced by the plans in evidence, the overwhelming majority of the expansion will take place to the eastern and southeastern sections of the property, which are away from Protestants' respective properties and closer to I-83. Even after accepting the obvious, that an expansion of the church building will obscure and/or otherwise alter more of the existing view to the north from Protestants' properties, the evidence reveals that the proposed amendment will not interfere with adequate light and air.

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

As noted herein, the church property is within the RC-3 zone. BCZR §1A02.1(A) expresses that RC-3 zone is established to "foster conditions favorable to agricultural and residential use of the land while still maintaining the rural character of the area." The RC-3 designation permits churches as a matter of right. Concomitant with that right comes the understanding that the County Council weighed the benefits and adverse effects of the use of this property as a church. Therefore, adverse impacts, such as increased traffic, have been accepted by the County Council as part of the calculus to designate this property as RC-3. See discussion under §502.1(B) above.

To help preserve the property's rural character, Petitioner, as noted above, is designating seven of the church's 23 acres as a "no build" area and will be preserving 4.37 acres within that seven acres as forest conservation easement. In addition, Petitioner proposes additional landscaping to shield views of the church. Also as noted above, Petitioner is adding to the storm water management system, which is not required for RC-3 zoned properties, but is consistent with

the spirit and intent of the zoning regulations. The expansion of the existing church, as proposed, does not run afoul of the purposes for the RC-3 zone, nor is it inconsistent with the spirit and intent of the zoning regulations, generally.

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations

The Baltimore County Zoning Regulations do not expressly impose impermeable surface limitations or vegetative retention requirements within the RC-3 zone, and therefore, there is no inconsistency.

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

The property is zoned RC-3. Therefore, the applicable regulations from RC-2, RC-4, RC-5, and RC-7 are not at issue.

In light of the foregoing, in combination with the conditions identified below, the Board finds that Petitioner has met its burden as to the BCZR §502.1 factors.

C. Spirit And Intent of the “Original Plan” And Article 1B

The final analysis the Board is required to undertake in evaluating the proposed amendment is found in §1B01.3(A)(7)(c): “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.” As noted above, there is no material difference between the First and Second Amended FDPs for purpose of this analysis.

Incorporating the discussion above, the Board finds that the expansion of the church as proposed is consistent with the spirit and intent of the First Amended FDP, as well as Second Amended FDP. As noted in Protestants’ Exhibit No. 32, at the time of purchase for each of the Protestants, the First Amended FDP depicted a 17,275 sq. ft. church that accommodated 500 seats,

and came with 200 parking spaces, and to the extent necessary, the Second Amended FDP was slightly larger. The proposed amendment will result in a church at 67,115 sq. ft. with 950 seats, and 437 parking spaces.

It is true that that proposed expansion would yield a church nearly three (compared to the Second Amended FDP) to four times (compared to the First Amended FDP) the size of the existing one, with almost doubling the seating and more than double the parking spaces. At the same time, given the more than ample size of the church property, the increase in church size, seats and parking is not out of character. The expansion will occur largely to the east and southeast, so away from Protestants' properties and closer to I-83.

It should be noted that in the earlier case approving the First Amended FDP, the Board concluded the area was not, in fact, rural, and was actually suburban. Cignal Development Corp., Case No. 91-466-X, at p. 5). Time has not aided Protestants with this argument. While previously, the proposed gymnasium-type building was out of character, the design for the expansion fails to present the same type of issue. Nevertheless, the reservation of seven acres as restricted from further development and preservation of 4.37 of those seven acres as forest conservation enables Lot 1 to perpetuate the more rustic view from Protestants' properties.

The Board recognizes that the property's zoning designation prevented desired expansion at any earlier point in the history of this FDP and that when Protestants purchased their respective properties, the additional zoning regulations from the prior classification restricted development. While the Board is sympathetic to the Protestants in light of the change in zoning designation that gives rise to the proposed amendment, the Board has no authority to revisit the rezoning decision. The Board cannot render a decision that essentially overrules the County Council's rezoning of the property. In the end, Protestants were aware that there was a large church that was to be built

(and/or that had been built) on an even larger piece of property, giving plenty of room for additional activities and development. Therefore, the Board concludes that the proposed amendment is consistent with the spirit and intent of the First and Second Amended FDPs as well as Article IB.

D. Effect of Prior Conditions Imposed

Protestants argue that the conditions imposed by the Board of Appeals in Case No. 91-466-X were imposed in connection with the special exception granted at that time, but importantly, were also imposed as part of the approval to amend the Final Development Plan. Because the conditions were imposed in connection with the First Amended Final Development Plan independent of the special exception, Protestants assert that the conditions imposed at that time have not been extinguished and remain in place. In other words, the change in zoning to RC-3 would have zero effect on the viability and continuing operation of these conditions. If correct, the conditions would, *inter alia*, restrict maximum seating to a capacity of 500, with additional restrictions prohibiting a fellowship hall and a commercial day care (though nursery services during services would be permitted). See, Cignal Development Corp., Case No. 91-466-X, Nov. 5, 1992 Opinion, p. 6-7.

The problem with Protestants' position is that restrictions were never imposed independent of the special exception; rather, they were imposed upon both, the special exception and the amendment.¹³ The imposition of the conditions cannot be so disentangled absent an express statement of that intent or by context that permits a reasonable interpretation of that intent.¹⁴ The judicial decision-making process then cannot be deconstructed as proposed now to conclude that

¹³ It should be noted that the Board, at first, imposed the conditions on the Special Exception, and then by way of its Supplemental Order, added the conditions to the FDP.

¹⁴ Therefore, it is reasonable to conclude that the Board specifically intended the conditions to be imposed upon the special exception.

the conditions were intended to have continued effect if the need for a special exception was eliminated.

On the other hand, the closest the Opinion comes to substantively identifying its intent operates to the detriment of Protestants' argument. The Opinion expressly states that the church "is a permitted use on RC-4 land by means of a special exception if all requirements thereto are met. The church as proposed will occupy less than 10 percent of the proposed site leaving approximately 90 percent in open space." *Id.*, at p. 4-5. The seating was not otherwise addressed in the earlier Opinion. Therefore, the significance of the second sentence is triggered by its association with the substance in the first sentence.

In other words, the church would be approved in the RC-4 zone via special exception if the requirements are met; to meet one or more of the special exception requirements, the church proposed to leave 90% of its property undeveloped, restricting the size of the church. The implication is that the development restrictions, which includes the seating restriction, were intentionally imposed as part of the special exception in light of its zoning classification at the time. If that is the case, the change in zoning classification may have more significance, as it constitutes a change in circumstances and eliminates the need for a special condition, neither of which help Protestants.

If that is not the case, there is nothing in the decision below from which the Board can conclude that the conditions were intended to act independent of the special exception. The procedural history and substance of the prior Opinion suggest that the Board's intended to impose those conditions on the special exception because of the property's zoning designation at the time. It appears to this Board that the inclusion of the conditions on the FDP amendment, as ordered by the prior Board in the Supplemental Order, is for consistency, as, again, the FDP is a zoning plan.

If there were any conditions unique to the amendment of the FDP and/or that were to apply independent of the special exception, the Board would have (and should have) stated as much at that time. Failing to do so then precludes the Board from finding that to be the case 25 years later.

E. Conditions To Be Imposed

As the Board is required to apply “special exception procedures” in Section 502, the Zoning Regulations, via §502.2, empower the Board, when granting a special exception, to order “conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties.”

The Board finds that the imposition of conditions is warranted to help protect the other property owners within the FDP. As noted above, the Board concluded that the expansion of the church will create additional traffic congestion, but the conditions imposed helped mitigate certain aspects of the detrimental effects to be experienced by the Protestants. In the absence of these conditions applying to the proposed expansion, the Board may have had different analysis of the traffic congestion issues, which, in turn, may have resulted in a different outcome. In short, Protestants need to have access to and from their properties.

Recognizing that the Board cannot change the zoning designation or cure the existing traffic issues, and has virtually no authority to effectuate changes to Beaver Dam Road as a result of this proposed amendment, the Board imposes the following conditions in order to help alleviate delays caused by traffic and other items to help Protestants maintain the quality of life and enjoyment of their properties:

1. Petitioner shall provide in writing to Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. its monthly calendar, including identification of scheduled services and events, upon publication and in any event 30-days prior to the following month. The church may, upon written agreement with Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023,

13025, 13021 and 13027 Beaver Dam Rd., provide a weekly calendar in lieu of a monthly calendar at least one week prior to the scheduled events on the weekly calendar. The purpose is to provide reasonable notice to Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. to minimize conflicts in scheduling their matters.

2. Petitioner shall provide advance written notice, with a minimum of 48-hour notice, to Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. of any special events not otherwise on the calendar, including Bible Camp, ceremonies and parties other than church services (such as weddings) and any other event where it is reasonably expected to have 50+ attendees. Notice shall include the beginning and end time for the events. This notice shall also be applicable to any changes in time, size, scope and/or description to scheduled events identified in the monthly calendar. The purpose, like condition No. 1, is to provide reasonable notice to Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. to minimize conflicts in scheduling their matters.

3. To the greatest extent possible, the church shall prioritize the ingress and egress of the Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. The church, at all times, shall take all reasonable steps to minimize delays in exiting the site and entering the site. In the event, any Protestant(s), lot owner(s) of properties within the FDP, and/or any resident(s) residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. seek to exit Old Mill Road at the same time traffic is entering or exiting from the church property, church personnel, employees and/or workers, including all traffic flaggers, shall stop vehicles entering or exiting Old Mill Road and prioritize the exit of Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. above other vehicles. The purpose is to prevent and/or mitigate traffic delays on Old Mill Road for Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd.

4. If water runoff, water collection, pooling, drainage and/or flooding or leaking becomes an issue on Old Mill Road and/or for any property within the FDP because of or fairly attributable, whether solely or in combination with any other condition or event, to any change to Petitioner's property as a result of the proposed amendment and/or construction, Petitioner shall take any and all immediate and reasonable measures to address and eliminate the issue.

5. Mr, Cook's Traffic Recommendations, with modifications, are imposed as follows:

a. Access for the church is to be widened to provide two outbound lanes, an exclusive left turn lane, and an exclusive right turn lane along the entire length of the drive aisle.

b. Advanced warning signs are to be provided along westbound Beaver Dam Road alerting motorist of the intersection of Old Mill Road. The first sign is to be located approximately 100' east of intersection.

c. The church shall secure the services of one or more police officers (on-duty or other uniformed secondary employer) be available at the Beaver Dam Road access for a 30 minute period before, after and during Sunday services, holiday services, and any events where 350 or more attendees or other heavy traffic are expected in order to help direct traffic out of sight and minimize disruptions.

d. Petitioner shall make sure that Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. have the ability on Sundays to come and go from their respective properties. Therefore, Sunday services are to be staggered so that the end of a service provides ample time to clear vehicles from the church parking lot (estimated at 30 minutes) and prevent overlap with incoming vehicles for the next service (estimated to begin 30 minutes prior), as well as provide some window of time as best as possible for Protestants, etc., to avoid regular and unreasonable delays that result in a functional denial of access to and from Old Mill Road. As such, Petitioner is required to stagger services so that there is an hour and fifteen minutes to 1 ½ hours between the end of one service and the beginning of the next, rather than the 45 minutes to an hour suggested by Petitioner via Mr. Cook.

6. To the greatest extent possible, the Petitioners shall employ best practices in lighting design to prevent light spillage from the church parking lot onto surrounding properties and to minimize the amount of lighting used when the church is not in use.

7. It is intended that these conditions help Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. as part of HVPC's proposed expansion. If any one or more of these conditions require adjustment or modification, Petitioner and Protestants/lot owners of 13023, 13025, 13021 and 13027 Beaver Dam Rd. may adjust or modify any of these conditions; however, any adjustment or modification shall be unanimous, in writing, and signed by Petitioner and all Protestants/lot owners of 13023, 13025, 13021 and 13027 Beaver Dam Rd., with the agreement filed accordingly and as necessary.

Again, the Board recognizes the access issues, and others, caused by the church expansion, which is reasonably understood to exacerbate existing issues to some degree. These conditions are imposed in order to help address some of the effects and lessen the impact upon Protestants by providing advance notice of events, lessen scheduling conflicts between the church and its operations with that of Protestants, prioritization of Protestants' exit from Old Mill Road, provide greater opportunity to enter and exit during periods where heavier traffic can be reasonably foreseen, improve communication between Petitioner and Protestants, and otherwise help mitigate other possible detrimental effects that may be experienced.

CONCLUSION

Based on our review of the evidence presented, the Board of Appeals unanimously concludes that Petitioner has satisfied its burden of proof under BCZR §1B01.3(A)(7), and particularly §502.1 with respect to the proposed amendment and therefore, Petitioners' Petition shall be granted subject to the conditions set forth herein.

ORDER

THEREFORE, IT IS THIS 7th day of December, 2017, by the
Baltimore County Board of Appeals,

ORDERED that Petitioner's Petition to Amend the Bishops Pond Final Development Plan, as proposed, be GRANTED, subject to the following conditions:

1. Petitioner shall provide in writing to Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. its monthly calendar, including identification of scheduled services and events, upon publication and in any event 30-days prior to the following month. The church may, upon written agreement with Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd., provide a weekly calendar in lieu of a

monthly calendar at least one week prior to the scheduled events on the weekly calendar. The purpose is to provide reasonable notice to Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. to minimize conflicts in scheduling their matters.

2. Petitioner shall provide advance written notice, with a minimum of 48-hour notice, to Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. of any special events not otherwise on the calendar, including Bible Camp, ceremonies and parties other than church services (such as weddings) and any other event where it is reasonably expected to have 50+ attendees. Notice shall include the beginning and end time for the events. This notice shall also be applicable to any changes in time, size, scope and/or description to scheduled events identified in the monthly calendar. The purpose, like condition No. 1, is to provide reasonable notice to Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. to minimize conflicts in scheduling their matters.

3. To the greatest extent possible, the church shall prioritize the ingress and egress of the Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. The church, at all times, shall take all reasonable steps to minimize delays in exiting the site and entering the site. In the event, any Protestant(s), lot owner(s) of properties within the FDP, and/or any resident(s) residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. seek to exit Old Mill Road at the same time traffic is entering or exiting from the church property, church personnel, employees and/or workers, including all traffic flaggers, shall stop vehicles entering or exiting Old Mill Road and prioritize the exit of Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. above other vehicles. The purpose is to prevent and/or mitigate traffic delays on Old Mill Road for Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd.

4. If water runoff, water collection, pooling, drainage and/or flooding or leaking becomes an issue on Old Mill Road and/or for any property within the FDP because of or fairly attributable, whether solely or in combination with any other condition or event, to any change to Petitioner's property as a result of the proposed amendment and/or construction, Petitioner shall take any and all immediate and reasonable measures to address and eliminate the issue.

5. Mr, Cook's Traffic Recommendations, with modifications, are imposed as follows:

a. Access for the church is to be widened to provide two outbound lanes, an exclusive left turn lane, and an exclusive right turn lane along the entire length of the drive aisle.

b. Advanced warning signs are to be provided along westbound Beaver Dam Road alerting motorist of the intersection of Old Mill Road. The first sign is to be located approximately 100' east of intersection.

c. The church shall secure the services of one or more police officers (on-duty or other uniformed secondary employer) be available at the Beaver Dam Road access for a 30 minute period before, after and during Sunday services, holiday services, and any events where 350 or more attendees or other heavy traffic are expected in order to help direct traffic out of sight and minimize disruptions.

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6. To the greatest extent possible, the Petitioners shall employ best practices in lighting design to prevent light spillage from the church parking lot onto surrounding properties and to minimize the amount of lighting used when the church is not in use.

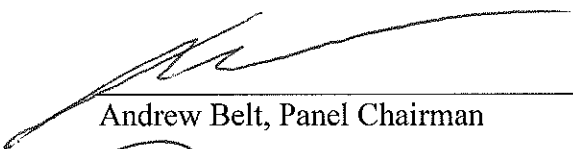
7. It is intended that these conditions help Protestants, lot owners of properties within the FDP, and/or any and all residents residing at 13023, 13025, 13021 and 13027 Beaver Dam Rd. as part of HVPC's proposed expansion. If any one or more of these conditions require adjustment or modification, Petitioner and Protestants/lot owners of 13023, 13025, 13021 and 13027 Beaver Dam Rd. may adjust or modify any of these conditions; however, any adjustment or modification shall be in writing and signed by Petitioner and all Protestants/lot owners of 13023, 13025, 13021 and 13027 Beaver Dam Rd., with the agreement filed accordingly and as necessary.

It is further **ORDERED**, that Petitioner's Renewed Motion to Dismiss is **DENIED**; and it is further

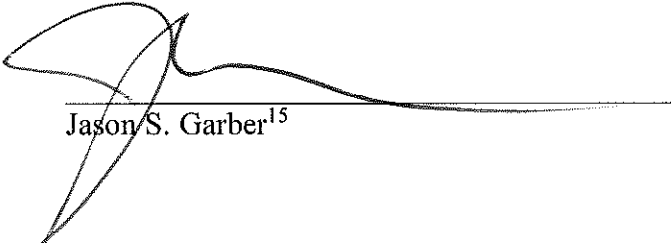
ORDERED that Protestants' Motion to Strike Exhibit C is **GRANTED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew Belt, Panel Chairman



Jason S. Garber¹⁵

¹⁵ Since the Board's Deliberation, the third member of the Board panel on this matter, Meryl Rosen, resigned from the Board of Appeals.



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
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December 7, 2017

Patricia A. Malone, Esquire
Adam M. Rosenblatt, Esquire
Venable LLP
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

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

RE: *In the Matter of: Hunt Valley Presbyterian Church, Inc.*
Case No.: 16-099-SPH

Dear Counsel:

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

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

Very truly yours,

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

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Hunt Valley Presbyterian Church, Inc.
Century Engineering
Office of People's Counsel
Andrea Van Arsdale, Director/Department of Planning
Lawrence Stahl, Managing Administrative Law Judge
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

Deidre Bosley
Michael and Mary Kate Fitz-Patrick
Tony and Marsha Gaspari
Beaver Dam Community Association



Board of Appeals of Baltimore County

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October 28, 2016

Patricia A. Malone, Esquire
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Venable LLP
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

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

RE: *In the Matter of: Hunt Valley Presbyterian Church, Inc.*
Case No.: 16-099-SPH

Dear Counsel:

Enclosed please find a copy of the Ruling on Motion to Dismiss issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Pursuant to the enclosed, this is not a final decision of the Board of Appeals for Baltimore County and does not constitute an appealable event at this time. This matter will be held open on the Board's docket until such time as a final opinion can be issued.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

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

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Hunt Valley Presbyterian Church, Inc.
Century Engineering
Office of People's Counsel
Andrea Van Arsdale, Director/Department of Planning
Lawrence Stahl, Managing Administrative Law Judge
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

Deidre Bosley
Michael and Mary Kate Fitz-Patrick
Tony and Marsha Gaspari
Beaver Dam Community Association
Vincent Gardina, Director/DEPS
Darryl Putty, Project Manager/PAI
Jan M. Cook, Development Manager/PAI

IN THE MATTER OF
HUNT VALLEY PRESBYTERIAN CHURCH, INC.
PETITIONER FOR SPECIAL HEARING ON THE
PROPERTY LOCATED ON THE S/S OF
BEAVER DAM ROAD APPROX 582 FT NW OF
INTERSECTION WITH I-83
(13015 BEAVER DAM ROAD)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 16-099-SPH

* * * * *

RULING ON MOTION TO DISMISS

This matter is before the Board on a Motion to Dismiss filed on behalf of Petitioner Hunt Valley Presbyterian Church, by and through its counsel, Patricia A. Malone and Adam Rosenblatt of Venable LLP.

By way of background, following other, related proceedings concerning the same property,¹ Petitioner filed a Development Plan² and also sought a Special Hearing, “if necessary,” to approve the removal of Lot 1 as an amendment to the most recently approved Final Development Plan (“FDP”) for Bishops Pond or to approve the proposed plan changes as an amendment to the FDP. Petitioner sought to have its own Special Hearing Petition regarding the amendment of the Final Development Plan dismissed. On September 13, 2016, the Board conducted a hearing on Petitioner’s Motion to Dismiss and on October 19, 2016, the Board held its deliberation.

For the reasons set forth below, we deny Petitioner’s Motion.

The Final Development Plan Needs to Be Amended Pursuant to B.C.Z.R. §1B01.3(a)(7)

Petitioner makes three arguments in support of its Motion: (1) FDPs apply only to residential plans and the use at issue here is institutional, to wit: a church; (2) the FDP was tied to the Bishops Pond CRG Plan, which no longer governs the property as Petitioner went through the

¹ The details from the earlier proceedings are not required for disposition of the subject Motion and therefore, are not set forth herein.

² The on the record appeal of the approval of the Development Plan was heard by the Board of Appeals on July 18, 2016. The Board deliberated on August 9, 2016 and affirmed the decision below. Much like the earlier proceedings, the details of that proceedings are not required for disposition of the subject Motion.

development plan process; and (3) the new development plan provides all required notice to existing owners and prospective purchasers.

The Board disagrees with Petitioner's analytical approach. There is an existing FDP. In 1991, the then owner of the entire tract, Cignal Development Corporation, subdivided the property into three residential lots. As such, a Final Development Plan was created for the three residential lots. Shortly thereafter, Cignal sought to amend the FDP to permit a church on Lot 1, which was approved. Also close in time, the owner of Lot 3 sought to amend by further subdividing Lot 3 into Lots 3 and 4, which was also approved. In time, Hunt Valley Church purchased Lot 1. The subsequent change in use of Lot 1 from residential to institutional did not extinguish the FDP or remove Lot 1 from the FDP. The FDP is a zoning notice plan, and has been on file and served its purpose from its inception, through both prior amendments and the 24 years that followed.

The purpose for development plans can be found in B.C.Z.R. § 1B01.3(A):

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 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.

When the CRG process was eliminated, the County Council did not eliminate Final Development Plans or provide a different process by which they may be amended. Importantly, the FDP bestows certain rights upon neighbors that are subject to the FDP. Both parties agree that the amendment procedure is, in essence, a consumer protection measure. That procedure effectuates the purpose for development plans. See B.C.Z.R. §1B01.3(A)(1). Section 1B01.3(A)(7), entitled "Amendment of approved development plans," sets forth (as is relevant):

After partial or final development plans have been approved as provided under Paragraph 6, preceding,³ **they may be amended only as follows** (emphasis added):

b. Amendment after sale of interest in nearby property or upon demand for hearing. In the case of an amendment not allowed under Subparagraph a, by reason of sale of property within this area, or in case of a demand for hearing by an eligible individual or group, the plans may be amended through special exception procedures, in the manner provided under Section 502 and subject to the following provisions: (omitted).⁴

In short, because the final development plan was approved, it can only be amended in accordance with B.C.Z.R. § 1B01.3(A)(7). The utility of doing the same in this instance has been questioned, but B.C.Z.R. § 1B01.3 is quite clear in identifying the limited circumstances and methods to amend an FDP. As recently reiterated by the Court of Appeals, in Maryland:

“The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature.” Rosemann v. Salsbury, Clements, Bekman, Marder & Adkins, LLC, 412 Md. 308, 314; 987 A.2d 48, 52 (2010) (citation omitted). “‘Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English language.’ ” Id. at 314–15, 987 A.2d at 52 (citations omitted).

Spangler v. McQuitty, 449 Md. 33; 141 A.3d 156, 165 (2016).

Because the language in B.C.Z.R. §1B01.3(A)(7) is abundantly clear, and the County Council did not remove it from the Zoning Regulations following the elimination of the CRG process, the only conclusion to be drawn is that if a property is subject to a final development plan, any amendment to such plan must comport with the requirements under §1B01.3(A)(7). Doing so effectuates the purposes specifically outlined in §1B01.3 and protects the rights of other property owners subject to the same FDP and prospective purchasers. There is no authority for the Board to take action that is tantamount to radically altering the FDP by removing a lot subject to the FDP and in the process, substantially alter the rights afforded to others by being subject to the same.

³ There is no dispute that the Bishops Pond FDP satisfies this element.

⁴ The provisions (1)-(3) are omitted as the Motion concerns whether the Bishops Pond FDP needs to be amended. Application of those provisions will be something left for another day.

As a result, the language of Section 1B01.3 compels this Board to deny Petitioner's Motion to Dismiss.

ORDER

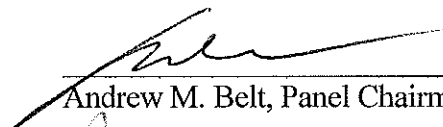
THEREFORE, ON THIS 28th day of October, 2016, by the Board of Appeals of Baltimore County, it is hereby:

ORDERED that Petitioner's Motion to Dismiss is **DENIED**; and it is further,

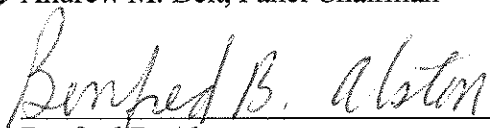
ORDERED that the appeal filed in Case No. 16-099-SPH be scheduled for an evidentiary hearing on a date mutually convenient for the parties and the Board's docket; and it is further,

ORDERED, that a final Opinion will be issued by this Board after a hearing on the merits and a public deliberation, with no further action to be taken on this Ruling until such time as the Board's final decision is issued.

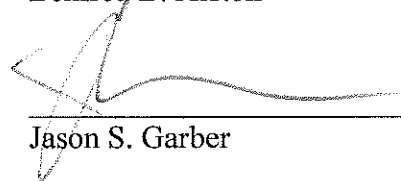
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew M. Belt, Panel Chairman



Benfred B. Alston



Jason S. Garber

**IN RE: DEVELOPMENT PLAN HEARING &
PETITION FOR SPECIAL HEARING**

(13015 Beaver Dam Road)
8th Election District
3rd Council District
(HUNT VALLEY CHURCH)

Hunt Valley Presbyterian Church, Inc.
Owner/Applicant

* BEFORE THE OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR
* BALTIMORE COUNTY
* **HOH Case No. 08-0524 &**
* **Zoning Case 2016-0099-SPH**
*

* * * * *

ORDER ON MOTION FOR RECONSIDERATION

Now pending is Protestants' motion for reconsideration, which will be denied as explained below. As an initial matter, such motions serve a limited purpose. Maryland's highest court has held an agency "may reconsider an action previously taken and come to a different conclusion upon a showing that ... some new or different factual situation exists that justifies the different conclusion." Calvert County v. Howlin Realty, Inc., 364 Md. 301, 325 (2001). Here, Protestants do not identify any "new or different factual situation," and I do not believe the motion can be granted in these circumstances.

Protestants again stress the amendment rules require a comparison with the "original plan," and note that issue was not addressed in the order. That is because, as Mr. Kellman testified, County reviewers evaluate proposed FDP amendments based on a comparison with the most recently approved plan. If Protestants' argument was valid, County reviewers would evaluate the current plan by comparing it to a plan that does not reflect the institutional (church) use on Lot 1. That would be illogical, and statutes should not be construed or interpreted in such a fashion. Moreover, it is hard to see how Protestants have been harmed in this scenario. Protestants' argument throughout the case has focused on the restrictions imposed in the 1991 County Board

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Date 4-21-16

By [Signature]

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Protestants next attempt to draw an analogy between this case and the Goldman matter (Case No. 2015-0276-SPH), which are as similar as May and December. Indeed, the synagogue in Goldman had not been constructed, while in the present case the church has been in existence for many years. And each of the individual Protestants testified they purchased their homes knowing that a church was to be constructed on Lot 1, which is completely different from the factual scenario in Goldman. In Case No. 2015-0276, a neighbor filed a petition for special hearing seeking a determination that the proposed synagogue on the vacant lot next to his was not consistent with "spirit and intent" of the four lot residential FDP. The petition in that case did not seek a determination as to whether the FDP needed to be amended in the first instance, and that issue was not addressed.

The order in Goldman indicated that if the plan needed to be amended (i.e., if A7 applied as a threshold matter), the synagogue would not be consistent with the "spirit and intent" of the FDP, which specified single family dwellings were proposed on the lots. Thus, it is incorrect the "clear underpinning of the Administrative Law Judge's (ALJ) decision in the Goldman case was that institutional amendments to final development plans are indeed governed by A7 of 1B01.3." Motion, p. 3. In addition, there was expert testimony in Goldman that the longstanding practice in Baltimore County does not require churches to file FDPs, and that too is another basis on which to deny Protestants' motion.

Protestants later argue (in an attempt to distinguish the improvements constructed by Ms. Bosley and Mr. Fitz-Patrick) an FDP is only required to be amended whenever the improvements require the filing of a development plan. Motion, p. 4. This too is incorrect, as even a brief perusal

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By PW

of recent variance cases will reveal. Countless orders in both administrative and contested variance cases have involved amendments to an FDP occasioned by the construction of a deck or addition to a dwelling, similar to those undertaken by Ms. Bosley and Mr. Fitz-Patrick. The orders in those cases do not contain an in-depth discussion of the FDP amendment issue, as opposed to the substantive zoning (variance) request. The Office of Zoning Review insists Petitioners make such a request, which is in the nature of a housekeeping matter. And the same can be said for the 1991 CBA case upon which Protestants place such emphasis.

Protestants make repeated references to the “very significant restrictions imposed by the Board of Appeals in the 1991 case.” See, e.g., Motion, p. 6. Protestants also contend the CBA “imposed those restrictions as a condition of approving Hunt Valley Presbyterian Church’s request to amend the FDP, not just as a condition of granting the special exception.” Id. That is incorrect. The Board recognized it was “granted the power under the Baltimore County Zoning Regulations (B.C.Z.R.) to place reasonable restrictions upon any special exception,” and “certain restrictions” were imposed on that basis only. Protestants’ Exhibit 17, p. 6. Indeed, the FDP amendment rules are not even mentioned in the original order, and it strains credulity to argue they were the basis for imposing the restrictions. It was only after the Petitioner (the Church) filed a motion for reconsideration (Protestants’ Exhibit 8) that the Board even addressed the FDP issue (in a supplemental order, Protestants’ Exhibit 9). And even then, the CBA did not discuss, interpret or even cite the A7 rules Protestants now contend are of such importance. They were in fact an afterthought, which Petitioner’s counsel charitably characterized as an “inadvertent oversight.” Protestants’ Exhibit 8, p. 3.

The restrictions in the 1991 CBA case were imposed in connection with the grant of a special exception, which has now been abandoned. Unlike B.C.Z.R. § 502.1, which authorizes the

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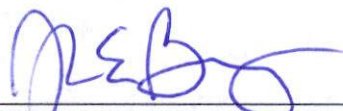
Date 4-21-16

By RSW

imposition of restrictions, the FDP amendment rules do not indicate that the granting of an amendment to an FDP may be conditioned upon certain restrictions, and the parties have not identified any prior cases wherein the Zoning Commissioner or County Board of Appeals purported to do so.

WHEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 21st day of April, **2016**, that the Motion for Reconsideration, be and is hereby DENIED.

Any appeal of this Order shall be taken in accordance with Baltimore County Code, § 32-4-281.



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw

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Date 4-21-16

By kw

IN RE: DEVELOPMENT PLAN HEARING &	*	BEFORE THE OFFICE OF
PETITION FOR SPECIAL HEARING		
(13015 Beaver Dam Road)	*	ADMINISTRATIVE HEARINGS
8 th Election District		
3 rd Council District	*	FOR
(HUNT VALLEY CHURCH)		
	*	BALTIMORE COUNTY
Hunt Valley Presbyterian Church, Inc.		
Owner/Applicant	*	HOH Case No. 08-0524 &
		Zoning Case 2016-0099-SPH
	*	

* * * * *

ORDER ON MOTION FOR RECONSIDERATION

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By BW

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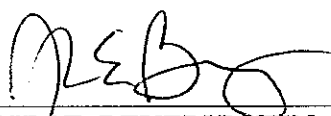
Date 4-21-16

By pw

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WHEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 21st day of April, 2016, that the Motion for Reconsideration, be and is hereby DENIED.

Any appeal of this Order shall be taken in accordance with Baltimore County Code, § 32-4-281.



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw

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Date 4-21-16

By bw



KEVIN KAMENETZ
County Executive

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

April 21, 2016

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

RE: **MOTION FOR RECONSIDERATION –**
Development Plan and Petition for Special Hearing
Hunt Valley Church / 13015 Beaver Dam Road
PAI Case No. 08-0524 and **Zoning Case No. 2016-0099-SPH**

Dear Mr. McCann:

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

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the Baltimore County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Baltimore County Office of Administrative Hearings at 410-887-3868.

Sincerely,

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw
Enclosure

c: Patricia A. Malone, Esquire and Adam Rosenblatt, Esquire, Venable, LLP,
210 W. Pennsylvania Ave., Suite 500, Towson, MD 21204

**IN RE: DEVELOPMENT PLAN HEARING &
PETITION FOR SPECIAL HEARING**
(13015 Beaver Dam Road)
8th Election District
3rd Council District
(HUNT VALLEY CHURCH)

Hunt Valley Presbyterian Church, Inc.
Owner/Applicant

* BEFORE THE OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR
* BALTIMORE COUNTY
* **HOH Case No. 08-0524 &
Zoning Case 2016-0099-SPH**

* * * * *

**ADMINISTRATIVE LAW JUDGE'S COMBINED
DEVELOPMENT PLAN AND ZONING OPINION & ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for a public hearing on a development proposal submitted in accordance with Article 32, Title 4, of the Baltimore County Code ("B.C.C."). Patricia A. Malone, Esquire, with Venable, LLP, on behalf of Hunt Valley Presbyterian Church, Inc., *Owner/Applicant* (hereinafter "the Developer"), submitted for approval a one-sheet redlined Development Plan ("Plan") prepared by Century Engineering, Inc., known as "Hunt Valley Church."

The Developer is currently proposing to construct a 51,000 sq. ft. expansion of the existing church/building for religious worship along with additional parking (i.e., 950 seats, 437 parking spaces). The Developer also has filed a Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R), if necessary:

- (1) To approve the removal of Lot 1 as an amendment to the most recently approved Final Development Plan (FDP) for Bishops Pond or to approve the proposed plan changes as an amendment to the FDP; and (2) for such other relief as may be deemed necessary.

Details of the proposed development are more fully depicted on the redlined one-sheet Development Plan that was marked and accepted into evidence as Developer's Exhibit 1. The

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By ISW

property was posted with the Notice of Hearing Officer's Hearing and Zoning Notice, both on December 28, 2015 in compliance with the regulations. The undersigned conducted hearings on January 28, 2016, February 16, 2016, February 17, 2016, and February 18, 2016, in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland.

In attendance at the Hearing Officer's Hearing (HOH) in support of the Plan on behalf of the Developer was J. Robert Green, Glenn Cook, Mark Eisner, Christa Kerrigan, Mitchell Kellman, Randall Race, Jay Cougnet, Fred Schulte, and Paul Sleeper. Also in attendance was Michael J. Pieranunzi, a landscape architect with Century Engineering, Inc., the consulting firm that prepared the site plan. Patricia A. Malone, Esquire and Adam Rosenblatt, Esquire, both with Venable, LLP, represented the Developer. Michael McCann, Esquire appeared and represented several members of the community who objected to the requests.

Numerous representatives of the various Baltimore County agencies who reviewed the Plan also attended the hearing, including the following individuals from the Department of Permits, Approvals and Inspections (PAI): Darryl D. Putty, Project Manager, Vishnu Desai and Jean M. Tansey (Development Plans Review [DPR]), Brad Knatz, Real Estate Compliance, and Joseph C. Merrey (Office of Zoning Review). Also appearing on behalf of the County were Jeff Livingston from the Department of Environmental Protection and Sustainability (DEPS), and Lloyd Moxley from the Department of Planning (DOP).

County agencies perform an independent and thorough review of the Development Plan as it pertains to their specific areas of concern and expertise. The agencies specifically comment on whether the Plan complies with all applicable Federal, State, and/or County laws, policies, rules and regulations pertaining to development and related issues. In addition, these agencies carry out this role throughout the entire development plan review and approval process, which includes

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By ESW

providing input to the Hearing Officer either in writing or in person at the hearing. Continued review of the Plan is undertaken after the Hearing Officer's Hearing during the Phase II review of the project. This continues until a plat is recorded in the Land Records of Baltimore County and permits are issued for construction.

Pursuant to §§ 32-4-227 and 32-4-228 of the B.C.C., which regulate the conduct of the Hearing Officer's Hearing, I am required first to identify any unresolved comments or issues as of the date of the hearing. All County agency representatives indicated the Plan addressed any comments submitted by their agency, and they each recommended approval of the Plan. Ms. Tansey, the County's landscape architect, indicated that the Local Open Space regulations are not applicable in this case since residential development is not proposed. In addition, Ms. Tansey noted a schematic landscape plan was approved on January 27, 2016.

DEVELOPER'S CASE

In the "formal" portion of the case, the Developer presented several witnesses. First was Michael Pieranunzi, a landscape architect with Century Engineering, Inc. Mr. Pieranunzi explained in detail the development proposal, and began by noting that the property is approximately 23 acres in size and zoned RC 3. He testified that at present the church has 375 seats, but would expand to 950 seats if the project was approved. In addition, the number of parking spaces would increase from 139 at present to 437. Mr. Pieranunzi also described the new dual entry/exit for the facility, which he believed would greatly improve the ingress and egress from the site. The witness also noted that a large portion of the site would be in a "no build" area pursuant to a private agreement, and that additional land would be protected by a recorded easement as a protected forest conservation area.

Mr. Pieranunzi testified that the proposed church is 50 ft. in height and therefore complies

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with B.C.Z.R. § 300.2, even though the cupola is 54 ft. in height. The witness explained that an FDP is a mechanism used by Baltimore County for residential subdivisions, the purpose of which is to provide notice to neighbors in a subdivision of any proposed amendments to the plan. Mr. Pieranunzi reviewed the requirements for amending an FDP and opined that the proposed amendment is consistent with B.C.Z.R. § 1B01.3, as well as the Comprehensive Manual of Development Policies (CMDP) and scenic view regulations. The witness also opined that the amendment would be consistent with the "spirit and intent" of the regulations, which as noted above are designed to provide notice to existing homeowners in a residential subdivision. In concluding his direct examination testimony, Mr. Pieranunzi opined that the Developer satisfies all requirements set forth in the development and zoning regulations, including the special exception standards set forth at B.C.Z.R. § 502.1.

On cross-examination, Mr. Pieranunzi explained that the Developer is providing more parking spaces than required by the B.C.Z.R. since it wants to provide "ample" parking for all uses on site. In discussing the development plan amendment procedure, the witness opined that Dr. Gaspari, who resides at 13027 Beaver Dam Road, is not covered by the pertinent regulation since his dwelling is not shown on the Bishops Pond FDP. In response to a question on redirect, the witness stated that the "spirit and intent" analysis refers to the existing church compared with the proposed church, not to a hypothetical scenario where no church exists at the site.

The next witness in the Developer's case was J. Robert Green, a civil engineer accepted as an expert witness. Mr. Green explained that at present there is no stormwater management on site, and that the Developer proposes to comply with all current stormwater regulations in connection with this project. Mr. Green explained that all surface water would drain to the southeast area of the site (as shown on Developer's Exhibit 12) including a one acre portion of the site which at

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By EW

present flows in a southwesterly direction towards the Fitz-Patrick residence. In concluding his testimony, Mr. Green opined that the proposed stormwater management system would not have any negative impact upon the adjoining residential properties. In response to a question on cross-examination, the witness testified that the Developer obtained a stormwater management waiver in connection with the original construction of the church, as shown on the approved CRG plan.

Glenn Cook was the next witness in the Developer's case. Mr. Cook is a transportation engineer who was accepted as an expert witness. The witness explained that his firm prepared a traffic impact analysis for the project. Mr. Cook explained that a church (like sporting events and other similar uses) experiences a mass exodus within a short time frame, which virtually guarantees there will be traffic congestion as parishioners exit the site. Even so, Mr. Cook provided three recommendations in his traffic analysis which (if implemented) would in his opinion allow the expanded church to function with no "major" impact upon the community. In conclusion, the witness opined that there would be no congestion in nearby roads, streets and alleys, and that a safe roadway network would be provided.

On cross-examination, the witness again indicated that he did not believe Hunt Valley Church would have any measurable impact upon Beaver Dam Road. Mr. Cook explained that at present approximately 80% of the vehicles access the site from the east. In addition, he conceded that there is a "surge" period of approximately 25 to 30 minutes when parishioners exit the site wherein the intersection would not function adequately, which he equated to a level of service "E" or "F". The witness testified that implementation of his recommendation for police officers during Sunday service would alleviate this condition to some extent. In this regard, Mr. Cook opined that nearby residents will experience less delay after the proposed church expansion than they experience now.

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The next witness in Developer's case was Mark Eisner, a hydrogeologist accepted as an expert witness. Mr. Eisner explained that given the size of this project the Developer does not need to secure State permits for withdraw or discharge of groundwater. Even so, the witness explained that he applied State environmental guidelines concerning groundwater recharge to analyze the project. Using those standards, he opined that there will be sufficient groundwater recharge from rain to more than offset the amount of water the expanded church would use.

Mr. Eisner presented an exhibit (Developer's Exhibit 21) which he explained depicted the water well on the subject property. Mr. Eisner drew a circle around the well to show the maximum area of the water table drawdown, which he explained would not affect offsite properties. Mr. Eisner explained that the Developer would have to comply with all current regulations, and he opined that the septic reserve area shown on the Plan is sufficient for this project.

Mr. Eisner explained, in response to a question on cross-examination, that he became involved in this case after learning that several neighbors had concerns about water well adequacy or septic system failures. Mr. Eisner explained that if a facility uses more than 5,000 gallons of water a day (which the Hunt Valley Church would not), a water appropriations permit is required from the State of Maryland. Concerning the adequacy of the water supply and sewerage systems, Mr. Eisner explained that the church would not provide child day care on a daily basis, and that portable toilets would be used in connection with the vacation bible school and other large events, as is the current practice.

Architect Christa Kerrigan, who was accepted as an expert, was the next witness in the Developer's case. Ms. Kerrigan explained the design process for the proposed addition, which she explained would be situated closest to I-83 and farthest from adjoining dwellings. Ms. Kerrigan testified that in designing the project she tried to match the materials and design elements of the

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By lsj

existing church and the proposed addition. She stated that though the cupola is approximately 54 feet in height, no other portion of the church building would be above 50 feet. The witness also explained that while the church would have warming trays and a microwave oven in the new addition, it would not have an oven, stovetop or dishwasher.

In response to questions on cross-examination, the witness explained that the proposed expansion would be oriented towards I-83 so that the addition would not intrude upon the less developed rural residential portion of the area. Ms. Kerrigan testified that there would be six new classrooms, eight offices, approximately 11 new bathrooms, as well as a 300 to 400 sq. ft. kitchen in the proposed addition. The witness confirmed that under the Building and Fire Safety Code, the proposed church building would be classified as an "A-3 Assembly" usage, which could be occupied by a maximum of 2,200 people. In response to a question on redirect examination, Ms. Kerrigan confirmed that the proposed classrooms would be for periodic bible study and for use by children whose parents are attending church services. She testified it would be "very rare" to ever have the building filled to its maximum capacity or that all interior spaces shown in the plans would be used simultaneously.

The next witness in Developer's case was Mitchell Kellman, who was accepted as an expert. Mr. Kellman explained that during his previous employment with Baltimore County, he reviewed numerous final development plans and proposed amendments thereto. The witness explained that FDPs provide notice of proposed changes to prospective residents of a residential subdivision, to guard against inappropriate amendments of such plans. In this case, Mr. Kellman testified that the FDP was approved in 1991, and that first and second amendments thereto were approved in 1992. The witness opined that newer development plans supersede prior plans, such that the original 1991 Hunt Valley Church plan has no legal effect. Mr. Kellman also testified that

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the subject property was rezoned in 2012 to RC 3, which permits churches as a matter of right. Based upon his experience in reviewing such plans for Baltimore County. Mr. Kellman explained that in this case the regulations would require a comparison of the Second Amended Final Development Plan with the proposed development plan.

On cross-examination, Mr. Kellman opined that the restrictions set forth in the prior special exception case (Case No. 91-466-X) would no longer be applicable now that the zoning has been changed to RC 3, which permits churches as a matter of right. Mr. Kellman further explained that he has extinguished special exceptions by letter on previous occasions when employed by Baltimore County. In this case, Mr. Kellman opined the special exception would be extinguished by the note on the plan requested by Mr. Merrey in the Zoning Office.

The final witness in the Developer's case was Randall Race, Director of Operations at Hunt Valley Church. Mr. Race described the present operation of the church, including the satellite facility at "The Pointe," which is located in a warehouse across I-83. The witness explained that the Hunt Valley Church has experienced steady, "rock solid" growth and that the church has approximately 3,000 members, 1,100 of which attend services on any given Sunday. Mr. Race explained that three services are held every Sunday: at 8:00, 9:30, and 11:00 AM. He testified that on an average weeknight, approximately 15 to 20 people attend ministry services at The Pointe, and he explained that these operations would be moved to the Hunt Valley Church if this project was approved. Mr. Race testified that otherwise, not that much would change other than the size of the enlarged 950 seat sanctuary. The witness confirmed that there would not be a parochial school or child day care offered, and that day care would be provided only when the children's parents are on site.

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On cross-examination, Mr. Race conceded that the church never offered to reduce the square footage of the proposed expansion, and that there are delays experienced by parishioners and neighbors exiting the site on Sunday mornings.

PROTESTANTS' CASE

As noted above, several members of the community oppose this project and provided testimony concerning their concerns. The citizens (including Mike Fitz-Patrick, Wanda Smith, Brian Gamble, Constance Newton and Deidre Bosley) testified the size and scope of the project is inconsistent with the rural nature of the area. They believe the expanded church would cause traffic congestion and disruption of their lives, including a potential decrease in the value of their homes and heightened security concerns associated with the number of additional people visiting the site. The neighbors described worsening traffic conditions along Beaver Dam Road, and did not believe the church was a "good neighbor."

The Protestants presented one expert in their case, professional engineer Chris Tiesler. Mr. Tiesler analyzed current traffic conditions at the site, and studied the potential impact of the proposed expansion. He testified the expansion would generate at least 2.5 times the amount of traffic at present, and he disagreed with Mr. Cook's opinion that the project would not have a "detrimental impact" on the road network.

The witness opined the unsignalized intersection of Beaver Dam and Old Mill Roads would function at a failing level of service based on Highway Capacity Manual calculations. In this regard, he noted there could be as much as a 20 minute delay for left-turning vehicles exiting the site during a "surge." Mr. Tiesler also opined there would not be sufficient stopping sight distance for vehicles travelling west on Beaver Dam Road. He indicated he observed during a site visit five cars queuing to make a left turn into the church, which equates to a queue approximately 125 ft.

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By SW

in length (i.e., 25 ft. per car). Based on the grade of the road, the witness testified the stopping sight distance required is 336 ft., while only 297 ft. is provided in the scenario where five cars are occupying the road (which is one lane in each direction) waiting to make a left turn into the site.

LEGAL ISSUES

A. Development Plan

As noted by Developer, the B.C.C. and its interpretation by the courts is such that when agency reviewers confirm the plan satisfies all requirements, it "shall" be approved by the Administrative Law Judge (ALJ) unless the protestants can undermine those findings or otherwise present evidence the plan does not satisfy the development regulations. Here, the Protestants have not done so, and I believe the Development Plan must be approved. B.C.C. § 32-4-229; People's Counsel v. Elm Street Dev., 172 Md. App. 690, 703 (2007).

The testimony of Chris Tiesler was the only evidence presented by Protestants which could as a matter of law potentially rebut the findings of agency reviewers and Developer's experts. Mr. Tiesler (and Developer's traffic expert) testified traffic volume would increase significantly if the project is approved. He also testified there would be significant delays exiting the site after church services, and he opined the unsignalized intersection of the shared driveway and Beaver Dam Road would function at a level of service "F." While all this may be true, Baltimore County does not evaluate the efficiency, vel non, of unsignalized intersections in reviewing development proposals, and Protestants cite no authority or regulation for the proposition that such adverse effects could justify plan denial. Indeed, all development and permitted land uses will have at least some adverse effect upon the locality. Schultz v. Pritts, 291 Md. 1, 20-21 (1981). In addition, Mr. Cook testified that a "surge" in traffic volume is inherent in the operation of a large church or sports venue where parishioners/patrons enter/exit at the same time. Thus, I do not believe the Development Plan can

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be rejected based on a significant increase in traffic volume.

Mr. Tiesler's testimony regarding stopping sight distance presents a closer question. Two considerations play a role in evaluating this issue. First, Mr. Cook proposed several measures which in his opinion would increase the efficiency and/or safety of the ingress/egress from the site. Mr. Tiesler in his testimony did not comment upon these recommendations; in any event, he did not testify these measures would **not** be successful in improving traffic conditions. Thus, and as Mr. Cook testified, these four measures (as set forth at p. 10 of Developer's brief) should prevent the need for numerous vehicles to queue awaiting entry into the church.

Secondly, DPR and the Baltimore County Department of Public Works (DPW) reviewed the development proposal and did not express concern with the volume of traffic or the inadequacy of stopping sight distance along westbound Beaver Dam Road. Those agencies indicated in their comments a "field visit was made to this site on March 17, 2015." And in an email dated June 2, 2015, Kristoffer Nebre, an engineer in the DPW Bureau of Traffic Engineering, noted the speed limit on Beaver Dam Road and using accepted standards required the plan show a 445 ft. sight distance from the access point.

While no mention is made in the comments of the stopping sight distance, the point is these agencies considered the sufficiency and safety of the roadway, and Protestants did not challenge or contradict on cross-examination these agency findings. While neighbors testified motor vehicle accidents have occurred at the site through the years, the examples given all involved east-bound vehicles travelling along Beaver Dam Road. No evidence or police reports were presented to show accidents have occurred at the site involving vehicles travelling west along Beaver Dam Road, where Mr. Tiesler opined there exists inadequate stopping sight distance. Based on these factors, I do not believe the testimony of Mr. Tiesler can justify denial of the Plan.

ORDER RECEIVED FOR FILING

Date 3-15-16

By [Signature]

The Baltimore County Code provides that the "Hearing Officer shall grant approval of a development plan that complies with these development regulations and applicable policies, rules and regulations." B.C.C. § 32-4-229. After due consideration of the testimony and evidence presented by the Developer, the exhibits offered at the hearing, and confirmation from the various County agencies that the Plan satisfies those agencies' requirements, I find that the Developer has satisfied its burden of proof and, therefore, is entitled to approval of the Development Plan.

B. Special Hearing – Final Development Plan Amendment Issue

Protestants primary legal argument is that the Developer cannot satisfy the requirements for amendment of an FDP. Protestants contend a large church is not "consistent" with the "spirit and intent" of the original FDP per B.C.Z.R. § 1B01.3.A.7. That inquiry is germane only if the plan must be amended in the first instance.

Both parties agree the amendment procedure is in the nature of a consumer protection device; i.e., the Code provides it is designed to protect those who have made decisions based on such plans from "inappropriate changes therein." B.C.Z.R. § 1B01.3.A.1. An obvious example of such an inappropriate change would be where in a large community of new single family dwellings the developer attempts -- after half of the homes have been sold -- to amend the FDP and no longer construct a pool or other significant amenity shown thereon. Such amenities may well induce a purchaser to buy a home in that community, and to remove such feature(s) would constitute an "inappropriate change" of the FDP. In this case, it is undisputed the church was constructed approximately 20 years ago and the immediate neighbors owning lots shown on the Bishops Pond FDP purchased their homes after the church was built or were aware it had been approved and would soon be built.

ORDER RECEIVED FOR FILING

Date 3-15-16

By [Signature]

In describing the “due diligence” they undertook prior to purchasing their homes, neither Mr. Fitz-Patrick nor Ms. Bosley testified they reviewed any of the prior FDPs. Thus, as a factual matter, neither could have “made decisions based on such plans” per B.C.Z.R. §1B01.3.A.1.a. So at best this is a hypothetical or philosophic exercise. Both neighbors consulted with real estate agents, attorneys and others prior to purchasing their homes and learned about the board of appeals ruling permitting the church along with the restrictions contained therein.

That board of appeals ruling (Case No. 91-466-X) granted a special exception to construct the church, and certain restrictions were imposed upon the use. At the time, the property was zoned RC 4, which permitted churches only by special exception. A special exception, known throughout most of the country as a “conditional use,” is a permitted use under the B.C.Z.R., but is one wherein the zoning commissioner is encouraged to impose conditions to protect the community from adverse impacts of the use. Montgomery County v. Mossburg, 228 Md. 555, 558 (1962)(“not only proper but desirable to attach to the grant of a special exception conditions” which are reasonable).

Here, the property was rezoned in 2012 to RC 3, a designation which permits churches “as of right.” As of that time, the church was no longer a “conditional use,” but was permitted without restriction(s). As Developer correctly notes, permitted uses like churches and schools will frequently have adverse impacts upon a community; i.e., traffic congestion. But the legislature, in designating the use as permitted, is presumed to have determined the benefits of the church outweigh its potential adverse effects. Schultz v. Pritts, 291 Md. 1, 21 (1981). In light of the above, I do not believe the restrictions set forth in Case No. 91-466-X are enforceable. For the same reasons, Protestants cannot rely upon those restrictions (which are enumerated on the amended Bishops Pond FDPs, Protestants’ Exhibits 5 and 6) to buttress their argument the enlarged

ORDER RECEIVED FOR FILING

Date 3-15-16

By [Signature]

church would not be "consistent" with the "spirit and intent" of the original FDP. Finally, though it is not without risk, the Developer included a note on the Plan (Dev. Ex. 1, "Zoning History," note 6) which would extinguish the special exception and along with it the restrictions imposed upon that relief in 1991.

The proposed church will be quite large, and it is understandable neighbors oppose the project. But the RC 3 zoning category does not impose a limitation upon the size of churches, a point not lost on Protestants, who opposed the rezoning request. Having lost that battle, I am not at liberty to permit a rehashing of the zoning change under the guise of the FDP amendment regulations. Those regulations are subsidiary to any change in the zoning classification (i.e., a change in the law) of some or all property shown on an FDP, which is the primary determinant in how a property may be used. B.C.Z.R. §102.1. Using a property in a manner permitted by its zoning classification and amending an FDP accordingly (if required) would not constitute an "inappropriate" change to the plans. Indeed, the development regulations expressly provide "[p]roposed development shall be in compliance with the present zoning classification on the property to be developed." B.C.C. § 32-4-104(b). Thus, even if an amendment was required, I believe the Developer could satisfy the Regulations.

But in this case I do not believe the FDP needs to be amended. As an initial matter, the FDP amendment regulations apply to "residential development plans." B.C.Z.R. § 1B01.3.A. The Development Plan in this case proposes an institutional use, not residential development, and such regulations are therefore inapplicable in this case. In addition, both Mr. Fitz-Patrick and Ms. Bosley constructed additions and/or accessory structures on their property, yet neither amended the Bishops Pond FDP. While the magnitude of the change proposed by Developer may be larger, these were nonetheless "changes" to what was shown on the original FDP. The point is not all

ORDER RECEIVED FOR FILING

Date 3-15-16

By [Signature]

changes in the size or scale of a dwelling or building shown on a FDP necessitate an amendment to the Plan. An FDP amendment may be required (as it was here in 1992) when lots shown thereon are re-subdivided or uses of the lot(s) change. But the amended Bishops Pond FDP shows four Lots and "Church Use on Lot #1," and that will continue to be the case. As such, an amendment is not required and the petition for special hearing will be dismissed on that basis.

THEREFORE, IT IS ORDERED by this Administrative Law Judge/Hearing Officer for Baltimore County, this 15th day of **March, 2016**, that the "HUNT VALLEY CHURCH" redlined Development Plan, marked and accepted into evidence as Developer's Exhibit 1, be and is hereby **APPROVED**, subject to the conditions noted below.

IT IS FURTHER ORDERED that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R), if necessary, to approve the removal of Lot 1 as an amendment to the most recently approved Final Development Plan (FDP) for Bishops Pond or to approve the proposed plan changes as an amendment to the FDP, be and is hereby **DISMISSED as unnecessary**.

The relief granted herein shall be subject to the following:

1. HVC must widen the point of egress from the church to provide two outbound lanes: an exclusive left turn lane, and an exclusive right turn lane along the entire length of the drive aisle;
2. HVC must provide police officer(s) (on-duty or uniformed secondary employment) to direct traffic at the church access on Sundays before and after services and during any event in which unusual traffic volume is expected;
3. On Sundays, HVC must allow 45 minutes to one hour between services to prevent the overlap of incoming and outbound vehicles from the HVC property;
4. HVC shall advocate for a sign to be installed on westbound Beaver Dam Road east of the I-83 overpass to alert travelers to the potential for vehicles turning into the HVC property; and

ORDER RECEIVED FOR FILING

Date 3-15-16

By [Signature]

5. HVC shall add the following note to the Development Plan prior to plan signature:

40. The following building, property or site is contiguous to the proposed development:

- 13023 Beaver Dam Road (BA 975, MIHP only)
- 13025 Beaver Dam Road (BA 2307, MIHP only)
- 13027 Beaver Dam Road (BA 976, Baltimore County Final Landmarks List)
- 13030 Beaver Dam Road (BA-90 and BA 276, MIHP only).

Any appeal of this Order shall be taken in accordance with Baltimore County Code, § 32-4-281.



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw

ORDER RECEIVED FOR FILING

Date 3-15-16

By law



KEVIN KAMENETZ
County Executive

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

March 15, 2016

Patricia A. Malone, Esquire
Adam Rosenblatt, Esquire
Venable, LLP
210 W. Pennsylvania Ave.
Suite 500
Towson, MD 21204

RE: Development Plan and Petition for Special Hearing
Hunt Valley Church / 13015 Beaver Dam Road
PAI Case No. 08-0524 and Zoning Case No. 2016-0099-SPH

Dear Counsel:

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

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the Baltimore County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Baltimore County Office of Administrative Hearings at 410-887-3868.

Sincerely,


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw
Enclosure

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



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 13015 Beaver Dam Road which is presently zoned RC-3
Deed Reference 9749 / 712 10 Digit Tax Account # 2 1 0 0 0 0 5 8 7 4
Property Owner(s) Printed Name(s) Hunt Valley Presbyterian Church, Inc.

CASE NUMBER 2016-0099-SPH Filing Date 10/19/15 Estimated Posting Date / / Reviewer [Signature]

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

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

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

See Attached.

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

3. ☐ a **Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "To Be Presented At Hearing". If you need additional space, you may add an attachment to this petition)

To be presented at the hearing.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address

Zip Code

Telephone #

Email Address

Attorney for Petitioner:

Patricia A. Malone

Name- Type or Print

Signature

210 W. Pennsylvania Avenue, Towson

MD

Mailing Address

City

State

21204

Zip Code

410-494-6206

Telephone #

pamalone@venable.com

Email Address

Legal Owners:

See Attached

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Representative to be contacted:

Patricia A. Malone

Name - Type or Print

Signature

210 W. Pennsylvania Avenue, Towson

MD

Mailing Address

City

State

21204

Zip Code

410-494-6206

Telephone #

pamalone@venable.com

Email Address

**Attachment for
Petition for Special Hearing**

Hunt Valley Presbyterian Church, Inc.
13015 Beaver Dam Road

if necessary,
Petition for Special Hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations, to approve the removal of Lot 1 as an amendment to the most recently approved Final Development Plan ("FDP") for Bishops Pond or to approve the proposed plan changes as an amendment to the FDP; and for such other relief as may be deemed necessary.

Item #2099

**Attachment for
Petition for Special Hearing**

Hunt Valley Presbyterian Church, Inc.
13015 Beaver Dam Road

Legal Owner:

Hunt Valley Presbyterian
Church, Inc.
13015 Beaver Dam Road
Hunt Valley, Maryland 21030
(410) 771-0690

Authorized Signer:

Name: Mysses A. Yates Jr.
Title: Treasurer



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 13015 Beaver Dam Road

which is presently zoned RC-3

Deed Reference 9749 / 712

10 Digit Tax Account # 2 1 0 0 0 0 5 8 7 4

Property Owner(s) Printed Name(s) Hunt Valley Presbyterian Church, Inc.

CASE NUMBER 2016-0099-SPH Filing Date 10/19/15 Estimated Posting Date / / Reviewer RJD

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

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See Attached.

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3. ☐ a **Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "To Be Presented At Hearing". If you need additional space, you may add an attachment to this petition)

To be presented at the hearing.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

Patricia A. Malone

Name- Type or Print

Signature

210 W. Pennsylvania Avenue, Towson MD
Mailing Address City State

21204 / 410-494-6206 / pamalone@venable.com
Zip Code Telephone # Email Address

Legal Owners:

See Attached

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature # 2

Mailing Address City State

Zip Code Telephone # Email Address

Representative to be contacted:

Patricia A. Malone

Name - Type or Print

Signature

210 W. Pennsylvania Avenue, Towson MD
Mailing Address City State

21204 / 410-494-6206 / pamalone@venable.com
Zip Code Telephone # Email Address

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

No.

127335

Date:

10/14/15

PAID RECEIPT

BUSINESS ACTUAL TIME 10/19/2015 10/19/2015 11:28:45 4

Rev Sub
Source/ Rev/

Fund	Dept	Unit	Sub Unit	Obj	Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		5150				500

Total: 500

Rec From

For: Zoning hear - case # 2016-0099-SPH

DISTRIBUTION

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

CASHIER'S
VALIDATION

REC W504 WALKIN KSHI KHS
RECEIPT # 085833 10/19/2015 OFLN
Dept 5 528 ZONING VERIFICATION
UR NO. 127335
Recpt Tot 500.00
500.00 CR 500 CA
Baltimore County, Maryland

**HUNT VALLEY
PRESBYTERIAN CHURCH
ZONING DESCRIPTION**

Beginning for the same at a point on the south side of Beaver Dam Road, variable width right-of-way. Said point being approximately 582.05 feet northwest from the intersection of the south side of Beaver Dam Road with the western right-of-way of the Baltimore Harrisburg Expressway (I-83) and also being point 565 as shown on the plat entitled "Hunt Valley Presbyterian Church, Inc." which is recorded among the Land Records of Baltimore County in Plat Book 66 Page 132. Thence running with and binding on the south side of Beaver Dam Road

- 1) 133.00 feet along the arc of a curve to the left having a radius of 635.00 feet and being subtended by a chord bearing South 63° 34' 56" East 132.75 feet to a point, thence by a line not tangent to the preceding arc
- 2) South 61° 27' 17" East 40.60 feet to a point, thence
- 3) South 75° 33' 50" East 53.59 feet to a point, thence
- 4) South 68° 18' 22" East 204.34 feet to a point, thence
- 5) South 74° 26' 39" East 50.16 feet to a point, thence
- 6) South 79° 01' 05" East 20.00 feet to a point, thence
- 7) South 80° 15' 52" East 83.99 feet to a point on the western right-of-way of the Baltimore-Harrisburg Expressway (I-83), thence running with and binding on said western right-of-way
- 8) South 08° 45' 10" East 40.00 feet to a point, thence
- 9) South 11° 36' 55" East 100.13 feet to a point, thence
- 10) South 08° 45' 10" East 400.00 feet to a point, thence
- 11) South 07° 19' 15" East 200.06 feet to a point, thence leaving said western right-of-way and running through Lot 1 as shown on the aforementioned plat
- 12) North 89° 51' 38" West 1002.34 feet to a point, thence
- 13) North 20° 27' 40" East 912.05 feet to a point, thence
- 14) North 18° 02' 40" East 77.04 feet to the place of beginning.

Containing 646,727 square feet or 14.847 acres of land, more or less.

Item #0099

Being a portion of Lot 1 of Bishop's Pond as shown on the plat entitled "Hunt Valley Presbyterian Church, Inc." which is recorded among the Land Records of Baltimore County in Plat Book 66 Page 132.

Professional Certification

I hereby certify that this description was prepared by me or under my responsible charge, and that I am a duly licensed professional land surveyor under the laws of the State of Maryland, License No. 21139, Expiration Date June 20, 2016.

8th Election District

3rd Councilmanic District





KEVIN KAMENETZ
County Executive

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

May 20, 2016

Patricia A. Malone, Esquire
Adam Rosenblatt, Esquire
Venable, LLP
210 W. Pennsylvania Ave.
Suite 500
Towson, MD 21204

RECEIVED
MAY 20 2016

BALTIMORE COUNTY
BOARD OF APPEALS

RE: **APPEAL TO BOARD OF APPEALS**
Development Plan and Petition for Special Hearing
Hunt Valley Church / 13015 Beaver Dam Road
PAI Case No. 08-0524 and Zoning Case No. 2016-0099-SPH

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on May 19, 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,

A handwritten signature in black ink, appearing to read "JEB", with a long horizontal line extending to the right.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw
Enclosure

c: Michael R. McCann, Esquire, 118 W. Pennsylvania Avenue, Towson, MD 21204
Baltimore County Board of Appeals
Peter Max Zimmerman, People's Counsel for Baltimore County
Darryl Putty, Project Manager, Development Processing, PAI

APPEAL

**Petition for Special Hearing – Hunt Valley Church
13015 Beaver Dam Road
8th Election District – 3rd Councilmanic District
Owner: Hunt Valley Presbyterian Church, Inc.
Case No. 2016-0099-SPH**

Petition for Variance (October 19, 2015)

Zoning Description of Property

Notice of Zoning Hearing (November 20, 2015 for January 28, 2016 hearing)

Certificate of Publication (January 7, 2016)

Certificate of Posting (December 28, 2015) – SSG Robert Black

Original Sign-in Sheets are contained with HOH file

Zoning Advisory Committee (ZAC) Comments

Original Exhibits are contained with HOH file

Entry of Appearance – People's Counsel on Nov. 2, 2015

Originals listed below are contained with HOH File:

Developer's Post-Hearing Memorandum (March 7, 2016) - Patricia A. Malone, Esq.

Protestants' Post-Hearing Memorandum (March 7, 2016) – Michael McCann, Esq.

Administrative Law Judge Opinion and Order – March 15, 2016

Motion for Reconsideration - (April 13, 2016) – Michael McCann, Esq.

E-mail Response to McCann's Motion for Reconsideration – (April 13, 2016) – Patricia A. Malone, Esq.

Administrative Law Judge Order on Motion for Reconsideration- April 21, 2016

Notice & Receipt of Appeal – (May 20, 2016) from Michael McCann, Esq.

CD Proceedings (1)

IN RE: DEVELOPMENT PLAN AND
PETITION FOR SPECIAL HEARING
13015 Beaver Dam Road

8th Election District
3rd d Councilmanic District
(Hunt Valley Church)

1/2/16
TO WCH
f file

* BEFORE THE
* BOARD OF
* APPEALS
* FOR
* BALTIMORE COUNTY
* HOH Case No. 08-0524
* Zoning Case 2016-0099-SPH



* * * * *

PETITION IN SUPPORT OF APPEAL

Appellants, Deidre Bosley, Michael and Mary Beth Fitz-Patrick, Tony and Marsha Gaspari, and the Beaver Dam Community Association, by and through undersigned counsel, pursuant to section 32-4-281(b)(2) of the Baltimore County Code, submit this petition in support of their appeal.

I. INTRODUCTION

This is an appeal of an Opinion and Order of the Administrative Law Judge ("ALJ") granting approval of a development plan for the construction of a 51,000 square foot expansion of Hunt Valley Presbyterian Church. In his Opinion and Order, the ALJ also dismissed "as unnecessary" a Petition for Special Hearing filed by the Developer requesting approval, under BCZR § 1B01.3.A.7, of an amendment to the Final Development Plan. Appellants challenge both of these rulings in this appeal.¹

¹ Since the appeal of the granting of the Petition for Special Hearing is *de novo* and not subject to the requirements of section 32-4-281(b)(2), Appellants do not believe that they are required to address this aspect of their appeal in this Petition in Support of Appeal. To the extent they are required to do so, Appellants incorporate herein the arguments set forth in their Post-Hearing Memorandum and Motion for Reconsideration filed with the ALJ.

RECEIVED
MAY 31 2016
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Subject Property and the Surrounding Area

The subject property is a 23-acre parcel presently occupied by an existing church building, approximately 16,000 square feet in size. The church presently has 375 seats and 146 parking spaces, which are located in front of the building, closer to Beaver Dam Road. Behind the church, to the south, is a large undeveloped meadow, roughly 11-12 acres in size. Appellants (Ms. Bosley, the Fitz-Patrick's and the Gaspari's) each own property to the immediate south of the church's property. Appellants access their properties via a private road, called Old Mill Road, that crosses the church's property over which they hold a 20 foot easement and right-of-way. To the south of Appellants' properties are large wooded areas and a stream system associated with the Oregon Branch, a tributary of the Jones Falls Watershed. To the east is the 1,000-acre Oregon Ridge Park.

Although the church property borders I-83 to the east, the surrounding area is nevertheless distinctly rural. The area is outside the Urban Rural Demarcation Line, is not served by public water or sewer, and is designated as a "Tier IV" area under the State's Sustainable Growth and Agricultural Preservation Act of 2012, which is the most restrictive of the four tiers in terms of allowable development. Tier IV areas are planned for "preservation and conservation." The Baltimore County Master Plan 2020, similarly, identifies the Land Management Area for the property as "Resource Preservation Area." The proposed use indicated in the Proposed Land Use Map in the Master Plan is T-2R (Rural Residential Zone).

B. The Prior History Of The Property

1. The Original Subdivision in 1991

The subject property was once part of a larger tract of land comprising approximately 56 acres. In 1991, the then owner of the tract, Cignal Development Corporation ("Cignal"),

subdivided the property into three residential lots, Lot 1 (now HVPC's property) comprising 22.76 acres, Lot 2 comprising 22.07 acres, and Lot 3 comprising 11.17 acres. The Final Development Plan for this three-lot residential development (known as "Bishops Pond") was approved by the County on June 4, 1991 and shows three residential buildings, septic reserve areas, and a shared driveway to each of the lots. (Protestants' Ex. 4).

2. *The Petition for Special Exception for a Church – Case No. 41-466-X*

In or about August 1991, Cignal filed a petition with the County seeking (i) approval of a special exception for a church on Lot 1, and (ii) an amendment to the Final Development Plan to allow the church.² On November 5, 1992, the Board of Appeals issued an Opinion and Order granting Cignal's petition but imposed certain restrictions on the size of the church and its activities, namely (1) the church "shall be limited to a maximum seating capacity for 500 individuals," (2) the church is "prohibited from operating any commercial day care or nursery school at the subject site" but that "ordinary nursery services for children of parishioners during church-related functions will be permitted," and (3) "the fellowship center as proposed and testified to shall not be permitted." (*Id.*, p. 7). With regard to the fellowship center, the Board found that "the huge gymnasium-type building is out of character with the neighborhood. It is not church-like in appearance, nor is it church-like in size, and it appears to have detrimental effect by its appearance in regard to nearby homes." (*Id.*, p. 5).³

² During the special exception case, there was considerable opposition to Cignal's request. The protestants argued that the site distance at the site was insufficient and would otherwise create unsafe traffic conditions, that the church was too large and out of character with the neighborhood, and that there would be other activities at the church other than services. (*Id.*, pp. 3, 4). Notably, Mickey Cornelius from The Traffic Group testified that queuing of vehicles would not present a site distance problem. (*Id.*, p. 4). The Board relied upon Mr. Cornelius's testimony in concluding that "the level of traffic in all neighboring intersections will not be altered and that the sight distance is adequate." (*Id.*, p. 6).

³ The Board's decision was the result of a *de novo* appeal of the Zoning Commissioner's order of December 26, 1991. In his decision, the Zoning Commissioner granted the petition for special exception and the request to amend the final development subject to the restrictions that the maximum seating be 500 seats, that there be no commercial day care or nursery, that there be no bazaar-type functions or bingo, that there be no renting of the church for commercial

Cignal subsequently filed a Motion to Revise Order requesting that the Board amend its Opinion and Order to reflect that, in addition to granting the special exception, it was also granting Cignal's request to amend the Final Development Plan. (Protestants' Ex. 8, pp. 1-3).⁴ In a Supplemental Order dated December 3, 1992, the Board granted request to amend the Final Development Plan "*subject to the terms and restrictions* of this Supplemental Order *and the Board's original Opinion and Order dated November 5, 1992....*" (Protestants' Ex. 9, p. 1) (emphasis added).⁵

3. The "Second" Amended Final Development Plan

On October 22, 1992, the County approved a "Second Amended Final Development Plan," which was filed in order to reflect the resubdivision of Lot 3 into two lots (Lots 3 and 4). (Protestants' Ex. 6). The Second Amended Final Development Plan reflects the four lots and represents a church building of 25,175 square feet, a parking lot with 200 spaces, and 99,148 square feet of impervious surface ("10%"). The plan represents the total ADT's to be 581. (*Id.*).

4. The First Amended Final Development Plan

On December 3, 1992, the County approved Cignal's "First Amended Final Development Plan," which was filed in order to "update the order set forth by the Board of Appeals [in] 91-466-X of which the Zoning Commissioner granted the church the use of Lot #1." (Protestants' Ex. 5).

The First Amended Final Development Plan reflects four lots, three residential lots (Lot nos. 2, 3, and 4) and a church building on Lot 1. The plan represents the church building to be

catering, and that there be only church-related functions at the facility. In his opening statements to the Board of Appeals, counsel for Cignal and the Church "withdrew their appeal regarding the restrictions imposed by the Deputy Zoning Commissioner and agreed to accept the imposed restrictions." (Protestants' Ex. 17, p. 1).

⁴ Cignal also requested that the Board grant it an extension, for 5 years, to utilize the special exception. (*Id.*, pp. 3-5).

⁵ The protestants had also asked the Board to amend its Opinion and Order to "limit to church members only the use of the proposed structure for Sunday school classes...." (*Id.*, p. 1, 2). The Board granted this request.

17,275 square feet, a parking lot with 200 parking spaces and 91,248 square feet of impervious surface (“9.2%”). The estimated average daily trips for the church are represented to be 544. (*Id.*).

The First Amended Final Development Plan contains a note that “the second amended [final development] plan was approved before the first amended [final development plan] as the first amended was in the appeal process.” (*Id.*).

5. The 2012 CZMP

In 1991, when the residential subdivision was approved, and for many years prior to that, the zoning of the property was RC4. During the 2012 comprehensive rezoning process, the property was rezoned to RC3 by Councilman Todd Huff.

C. The Proposed Church Expansion

In October 2015, HVPC filed its development plan along with a petition for special hearing which seeks approval of “the removal of Lot 1 as an amendment to the most recently filed approved Final Development Plan (“FDP”) for Bishops Pond or to approve the proposed plan changes as an amendment to the FDP.” (Pets’ Ex. 7).

In its development plan, HVPC proposes to expand the existing church by 51,000 square feet, which would make it a total of 67,115 square feet (*i.e.*, quadrupling its size). The numbers of seats would be increased by 575, from 375 seats to 950 seats. The number of parking spaces will expand by 321, from 146 spaces to 467 spaces, which is 229 more spaces than required by the County. The total impervious surface on site would be roughly 150,000 square feet. (Pets’ Ex. 1).

D. The Scope of Proposed Activities and Events at the Expanded Church

A single representative of the church testified at the hearing, operations manager Randy Race. Mr. Race testified that, other than transferring activities that presently occur at the Church’s

satellite facility, called The Pointe,⁶ the usage of the church will not change significantly. (T2, pp. 445-46, 50-51).

This is difficult to believe, but assuming that to be true, the current website for the Church provides a good idea of the vast scope and extent of activities and events that currently take place at the Church. The Church has a host of ministries and other programs for children of all ages. For younger aged children, there is a ministry called "Party Town." It includes the "Front Church" daycare for children under 2 years, "House Party" for children from 2 years of age through kindergarten, and "Street Party" for children in kindergarten through 4th grade. There is also "Preschool Bible Storytime" at 9:30 a.m. on the first Tuesday of each month. (Protestants' Exs. 10, 11).

HVPC has also "student ministries" for youth in the 5th through 12th grades. There is a "Middle School Ministry" for children of that age, which meets on Sundays at 9:30 a.m. and on Monday evenings from 7 to 8 pm. The church's "High School Ministry" meets on Sunday evenings, from 6:30 p.m. to 8 p.m. For high school children, there is also Worship Band, which has rehearsals on Sunday nights from 5 p.m. to 6 p.m., and a "New Life Furniture Ministry" that meets on Saturday mornings. (Protestants' Ex. 12).

The church offers "adult ministries" which meet on Sundays at 9:30 and 11 a.m. There are also small group meetings, women's bible studies on Thursday mornings, a women's mentoring ministry that meets once a month, an adult learning program called "PointBreak," a program called "Food for Thought" that meets several times a year, a "New Mom's Ministry," a six-week course called "Vision Possible" that runs twice a year and meets on Sunday afternoons

⁶ The Pointe is a 17,000 square foot warehouse that church uses for offices and to host youth ministries and activities. (T2, pp. 437-38).

from 3 to 5 p.m., "Parent Small Group" meetings once a month on Thursday evenings, and periodic classes and seminars for adults. (Protestants' Exs. 13, 14).

HVPC also allows outside groups to use its facilities, including the Girls Scouts, Divorce Care, and an Alcoholics Anonymous-related organization. The Church allows the use of its facilities by these groups so long as the management team approves and someone from HVPC is present. (T2, pp. 476-77).

In addition to weddings, the Church hosts larger events for the entire family, such as "Trunk or Treat" (an event where cars are brought onto the property, car trunks are decorated, and candy is given out), "Advent Nights," "Walk with Jesus Family Easter Experience," and ball games in the field. (Protestants' Ex.13, T2, pp. 449-50, 477). In the summer, NVPC has "Vacation Bible School" that is attended by about 400 children and 200 adult volunteers. (Protestants' Ex. 14; T2, p. 447). The church uses "port-a-toilets" for this and other large events.

According to Mr. Race, the Church has had "very steady growth" over the past 20 years. There are currently 780 official members of the church, but there are about 3000 people who, in Mr. Race's words, "call the church home." A total of about 1100 people attend the three Sunday services at the Church, which includes 150 attendees at the Pointe for the satellite services and children ministries. (T2, pp. 439-40).⁷ Mr. Race acknowledged that, since the Church presently has 375 seats, all 1100 of the attendees are being accommodated. The seats are not filled for every service and the Church is not turning anyone away for lack of seating. (T2, pp. 467-68, 470).⁸

⁷ The Church has 19 full and part-time employees, some or all of whom are there every day, Monday through Friday. (Protestants' Ex. 10; T2 p. 438-39, 444).

⁸ Mr. Race did add that the satellite service is used to free up seats at the church, but he acknowledged that he considers, and the industry considers, a service to be full when it is 80-90% occupied. (T2, pp. 468-69). Similarly, with respect to the parking lot, when asked why 199 more parking spaces than required are being proposed, Mr. Race stated that he considers the parking lot to be full when it is 80% occupied and that the additional spaces are intended to allow people to find a space to park easily and to provide "a welcoming experience." (T2, pp. 473-74).

Importantly, when asked about anticipated growth in the future, Mr. Race stated that every time the church has expanded, attendance has gone up. (T2, p. 471). He explained that, originally, before the church was built, members were meeting at another site. Then, when the church was built, membership expanded. And then, when The Pointe was established, the church had additional growth as a result of that. (T2, pp. 471-72). Mr. Race agreed that if you build something bigger, more people will come. (T2, p. 472). Of the 780 members, only 56 households are located within the immediate area near the church. (T2, p. 451).⁹ There are church members who travel from Pennsylvania and use I-83. (T2, pp. 463-64).

Mr. Race stated that he believes the church has been a “phenomenal neighbor.” (T2, pp. 460-61). He stated that HVPC shared the initial plans with Protestants, heard their concerns, and took steps to address those concerns. (T2, pp. 453-60).

E. The “Shared” Driveway

When Appellants (Deidre Bosley, the Fitz-Patrick’s, and the Gaspari’s) purchased their properties, they each received a 20 foot easement and right-of-way running from their properties across HVPC’s lot (Lot 1) to Beaver Dam Road, commonly referred to as Old Mill Road. As originally granted, and as used for many years, the easement/right-of-way at Beaver Dam Road had a “dog-leg” at its intersection with Beaver Dam Road such that Appellants entered and existed farther eastward. The redlined Development Plan shows this dog-leg faintly but the plan proposes to have Appellants, and all church traffic, enter and exit Beaver Dam Road at the same location. The plan shows an existing “private road,” assumedly Appellants’ easement/right-of-way, in shaded gray.

⁹ Mr. Race, HVPC’s operations manager, lives in Towson. (T2, p. 463).

The plan also indicates that HVPC will be granting Baltimore County a 20 foot “access easement” corresponding roughly with the private road shown on the plan and, assumedly, Appellants’ easement/right of way. Appellants have not agreed to grant an easement to the County and have not agreed to either reconfigure the easement or have it overburdened with the traffic to and from the church.¹⁰

F. The Testimony Of Traffic Expert Christopher Tiesler

Christopher Tiesler was accepted by the ALJ as an expert in traffic engineering, safety and analysis. (T3, pp. 557-60). Mr. Tiesler undertook an investigation of (i) traffic volume at the site, (ii) sight distance on Beaver Dam Road, and (iii) HVPC’s plan for entering and exiting the property.

1. Traffic Volume

With respect to traffic volume, Mr. Tiesler took traffic volume counts at the site and also looked to the ITE Trip Generation Manual to determine the expected increase as a result of the church expansion. Mr. Tiesler found that the proposed expansion would generate between 2.5 to 4 times more traffic (250-400%) during the Sunday peak hour than presently exists. (Protestants’ Ex. 29; T3, pp. 571-72). Mr. Tiesler believed this findings to be consistent with those of Mr. Glenn Cook, HVPC’s expert witness. In particular, Mr Tiesler agreed with Mr. Cook that, as a result of the increase volume, there will be a “dump” of “heavy” traffic that will take approximately 25 minutes to clear after a church service and that traffic entering for the next service would likewise be heavy for a 20-25 minute period. Mr. Tiesler disagreed, however, with Mr. Cook’s conclusion that the proposed expansion “will not have a detrimental impact on the nearby road network.” (*Id.*,

¹⁰ In its CRG comments, the Planning Office recommended that HVPC “pursue an alternative method of access and interior vehicular movement in order to avoid a potential choke point at the share entrance” and “investigate re-establishing the ‘existing’ entrance as was shown on the original FDP or similar location.” (Protestants’ Ex. 2). This was not done.

pp. 573-55; Petitioner's Ex. 14, p. 2). Mr. Tiesler also disagreed with Mr. Cook's "peaking characteristic." He believes that a much more significant peaking characteristic of .5 or .6 is more appropriate, which means that 50 to 60 percent of the traffic in a given hour is all arriving within a 15 minute period. (*Id.*, p. 576).

Mr. Tiesler also performed an "operational analysis" of the intersection of Beaver Dam Road and Old Mill Road. He determined, first, that the intersection is presently operating at a level of service "C." (Protestants' Ex. 30). He determined that, if the church were to build out the entire expansion now, and considering all projected traffic under that scenario, *i.e.*, you "flip a switch", then the intersection would operate at a level of service "F" or 2.8 times its capacity. Alternatively, if you considered the increase in traffic over a ten year period as Mr. Cook did, the level of service would still be an "F" or 3.7 times its capacity. In terms of estimated delay for someone at the intersection, Mr. Tiesler explained that there would be an average delay of 1,096 seconds, roughly 15-20 minutes, under the second scenario. Under the third scenario (the build out over 10 years), Mr. Tiesler's calculations generated an "Err" message, meaning that the intersection is so far over capacity that average delay is not even reported because "it would be nonsensical." (*Id.*; *see also* T3, pp. 581-90, 651-52).

2. Stopping Sight Distance

Mr. Tiesler performed an analysis of sight distance that took into consideration the 6.5 % grade of Beaver Dam Road, a factor that the AASHTO standards address but Mr. Cook did *not* account for. Using those standards, Mr. Tiesler determined that the required stopping sight distance is 336 feet. To determine whether this standard is *currently* being met, Mr. Tiesler took into consideration the fact that, based on his own observations, there were at least 5 cars queuing on Beaver Dam Road to get into the church property. Accounting for the length of this 5-car que,

the stopping sight distance *presently* is 296 feet, considerably less than the AASHTO standard. If there were only 4 cars queuing, the stopping sight distance would still not be met. Mr. Tiesler then looked at proposed conditions with increased traffic volumes and determined that queuing could reach as high as 13 cars, which would limit the stopping sight distance, already substandard, even further. (T3, pp. 593-603; *see also* Protestants' Ex. 33 (photographs of Beaver Dam Road)).

3. HVPC's plan for ingress/egress

With respect to HVPC's plan for ingress/egress on site, Mr. Tiesler stated that the plan may appear to make sense but cautioned that the ability of traffic to get in and out of the church property is a function of traffic on Beaver Dam Road, which is something that a few flaggers at the entrance cannot control or do anything about. He believes that the difficulty Protestants have leaving their properties and getting onto Beaver Dam Road will only be exacerbated; indeed, will be "substantively, significantly worse." (*Id.*, pp. 654). He explained:

Even if 80 percent of [] traffic wants to make a right turn, which doesn't conflict with that left in [from Beaver Dam Road], the people that are in this other lane that want to go this way are still going to spill back and extend back into the site, effectively blocking their access.

And even if a flagger can regularly say, [] let's stop traffic right here at the egress and let these people out, they can't control the stream of traffic coming in, nor can they control the directional traffic on Beaver Dam. So you know, the delay that people experience today in getting out of the site can only be exacerbated due to the fact that this increase to the church site is going to generate...two-and-a half more traffic than it does today.

(T3, pp. 567-68; *see also id.*, pp. 636-38, 653-54).

Mr. Tiesler concluded that it was very concerning to him that there are already conditions today creating an unsafe condition and that increasing the volume of traffic by 2.5 to 4 times is only going to make those conditions even worse. Even if the recommendations of Mr. Cook are

followed, he believes there are still fundamental issues related to operations and safety that will not be removed and there still will be detrimental impact. (*Id.*, pp. 607, 624).

G. The Testimony Of Appellants

1. Michael Fitz-Patrick

Michael Fitz-Patrick owns Lot 4 of the Bishops Pond subdivision. He and his wife moved there in 2000. The three original homes in the subdivision (his, Bosley-Warnoch's, and the Gaspari's) were part of an old milling operation. His house dates to 1791 and was the cottage in which the miller lived; the Gaspari's house was the mill itself; and the Bosley-Warnoch property was the gentry house. All three homes were constructed long before the church was constructed in 1998. (T3, pp. 493-97).

When Mr. Fitz-Patrick purchased his property, the church was already constructed. He and his wife looked into the issue, spoke to their real estate agent, spoke to leadership at the church, and understood that the church would remain a "small country church," comprise only 16,000 square feet, have limited uses, only 500 seats, no kitchen and take up no more than 10 percent of the parcel. He and his wife purchased the property based on that understanding and the information they received. (*Id.*, pp. 498-99). When asked whether he would have purchased the property had he known that the church would expand, he responded "absolutely not." (*Id.*, p. 527).

Mr. Fitz-Patrick expressed his concerns about the amount of traffic that will be generated by the expansion, particularly as it will affect his driveway. He expressed that this has been an issue since they moved into their home but has gotten worse over the past five years. "It's a mess," he stated. He described the length of time he and his wife have to wait on their driveway, for 15 minutes or more, in order to get out onto Beaver Dam Road. (*Id.*, pp. 500-01).

Mr. Fitz-Patrick also expressed his concern with the size and scope of the proposed expansion. He described the neighborhood as a rural and historic community, and stated that a

67,000 square foot facility, larger than a good-sized Wal Mart, is “ridiculous” and “just doesn’t fit the character of the neighborhood.” He believes the parking lot, with 440 parking spaces, is “obscene.” (*Id.*, pp. 502-03).

Mr. Fitz-Patrick challenged Mr. Race’s assessment that HVPC has been a “phenomenal neighbor.” Prior to the CZMP process in 2012, Mr. Fitz-Patrick may have had one conversation with the Church about things that were going on. There was never any communication about events that the Church was hosting, dilapidated fencing, or anything else prior to 2012. In his opinion, HVPC’s recent efforts, including the placement of a small sign saying “private driveway” are a day late and a dollar short. (*Id.*, 504-05).

Mr. Fitz-Patrick stated that there has also been no communications with him or his neighbors about HVPC’s expansion plans. They asked numerous times, during the CZMP process and since, for copies of a plan to see what was being proposed and how large the building would be etc., and he received nothing. In fact, he was told by a church elder during the CZMP that it would be best if he cut a deal because Mr. Huff “is a good buddy of mine this is going through....” Mr. Fitz-Patrick and other protestants did not see any plan until a meeting with HVPC representatives in 2014 when they were shown an iteration of the current plan with a 67,000 square foot building. He couldn’t speak for three minutes and his neighbors had the same reaction. (*Id.*, pp. 505-08). Mr. Fitz-Patrick showed photographs of his property, the substantial flooding problems he has, and various viewsheds towards and around the church property. (Protestants’ Exs. 18-27).

2. Deidre Bosley

Deidre Bosley owns Lot 3 of the original residential subdivision. Her property, which comprises 13 acres, has substantial woods and a stream along its southern boundary. She explained

that her house, constructed in approximately 1790, is the original farmhouse. She described the outbuildings on her property, including a barn from the same era, that was dismantled in New England and moved, piece by piece, to her property. (T4, pp. 744-46).

Ms. Bosley purchased her property in 1995, before the church was constructed but after it received approval from the Board of Appeals. She, like Mr. Fitz-Patrick, performed her due diligence prior to purchasing the property. She hired an attorney and learned about the proposed church, including the limitations imposed by the Board. (Protestants' Ex. 38). She relied upon the information she received in making her decision to move forward with the purchase. (T4, pp. 746-53).

Ms. Bosley echoed Mr. Fitz-Patrick's concerns about traffic on Old Mill Road and conveyed her own experiences attempting to get out onto Beaver Dam Road. She expressed her concerns for traffic safety, including the sight distance issues discussed by Mr. Tiesler and other witnesses. Ms. Bosley reiterated that HVPC, despite repeated requests, never provided her or anyone else a copy of the development plan prior to filing it with the County. When she saw it for the first time, she was "gobsmacked." Ms. Bosley explained how she has tried to be a good steward of her property, as an historic and environmental sensitive site, including stream restoration efforts she has undertaken. (T4, pp. 755-77; *see also* Protestants' Ex. 40 (photos)).

3. Constance Newton

Constance Newton owns and resides in the home on Beaver Dam Road directly adjacent to the church property and Old Mill Road. She agreed with many the views expressed by Ms. Bosley and Mr. Fitz-Patrick, but also was able to share some of her first-hand experiences with speeding motorists, traffic accidents right at her house, and the queuing of vehicles on Beaver Dam Road. (T4, pp. 698-727; *see also* Protestants' Exs. 35-37 (photos)).

H. The ALJ's Opinion & Order

The ALJ held that “when agency reviewers confirm the plan satisfies all requirements, it ‘shall’ be approved by the [ALJ] unless the protestants can undermine those findings or otherwise present evidence the plan does not satisfy the development regulations.” (Opinion, p. 10). The ALJ concluded that Appellants had not met this burden and approved the development plan. (*Id.*).

Specifically, the ALJ found that the testimony of Mr. Tiesler on the issues of traffic volume and sight distance “was the only evidence presented by Protestants which could as a matter of law potentially rebut the findings of agency reviewers and Developer’s experts.” (*Id.*). With respect to issue of increased traffic volume, the ALJ held that the County “does not evaluate the efficiency, *vel non*, of unsignalized intersections in reviewing development proposals” and “[t]hus I do not believe the Development Plan can be rejected based on a significant increase in traffic volume.” (*Id.*, pp. 10-11). With respect to sight distance, the ALJ found this issue to present “a closer question.” The ALJ concluded, however, that Mr. Cook’s four recommendations “should prevent the need for numerous vehicles to queue awaiting entry into the church.” The ALJ further found that Development Plans Review and Department of Public Works did not express concern with the volume of traffic or the inadequacy of stopping sight distance along westbound Beaver Dam Road. The ALJ acknowledged that no mention is made in the agencies’ comments about sight distance, but “the point is these agencies considered the sufficiency and safety of the roadway, and Protestants did not challenge or contradict on cross-examination these findings.” (Opinion, p. 11).

II. GROUND'S FOR THE APPEAL AND REASONS WHY THE ALJ'S DECISION SHOULD BE REVERSED

Section 32-4-229(b)(1) provides:

The Hearing Officer shall grant approval of a Development Plan *that complies with the development regulations and applicable policies, rules and regulations* adopted in accordance with Article 3, Title 7 of the Code, provided that *the final approval of a plan shall be subject to all appropriate standards, rules, regulations, conditions, and safeguards* set forth therein.

See also BCC, 32-4-114(a) (“[e]xcept as otherwise provided in this title all development shall comply with this title and all other applicable laws or regulations of the County”) (emphasis added).

Although this provision requires the ALJ to approve a development plan that complies with the “development regulations and applicable policies, rules and regulations,” it is well settled that it is the developer, not the protestants, who bears the burden at the hearing to demonstrate such compliance. That the burden does *not* rest with protestants is supported by the proviso in 32-4-229(b)(1) that “final approval of a plan *shall be subject to* all appropriate standards, rules, regulations, conditions, and safeguards.” (Emphasis added).

Appellants submit that the ALJ’s decision exceeds his statutory authority or jurisdiction, results from an unlawful procedure, is affected by errors of law, is unsupported by competent, material and substantial evidence in light of the entire record as submitted, and is arbitrary and capricious. Among other things:

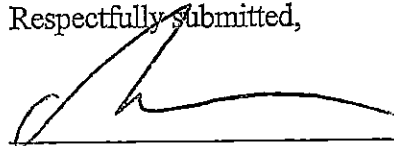
- (1) the ALJ misapplied the burdens of proof applicable in a development plan hearing;
- (2) the ALJ misinterpreted and/or gave undue weight to the testimony and other evidence presented by County witnesses, including his findings that County agencies reviewed the development proposal, considered the sufficiency and safety of the roadway, and did not express any concern with traffic volume or sight distance;

- (3) the ALJ misinterpreted and/or gave insufficient weight to the testimony and other evidence presented by Appellants, including his conclusion that the testimony of Mr. Tiesler was the only evidence presented by Appellants which could as a matter of law rebut the findings of agency reviewers and Developer's experts;
- (4) the ALJ gave misinterpreted and/or gave undue weight to the testimony of Mr. Cook; and
- (5) the ALJ failed to apply and/or misinterpreted County law and policy, including his findings that the County does not evaluate unsignalized intersections in reviewing development proposals and that a development plan cannot be rejected based on traffic volume.

III. RELIEF SOUGHT BY APPELLANTS

Appellants request that the Board reverse the decision of the ALJ.

Respectfully submitted,



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

Attorneys for Appellants

CERTIFICATE OF SERVICE

I HERE BY CERTIFY that, on this 27th day of May 2016, a copy of the foregoing
Petition in Support of Appeal was mailed, via first-class mail, to:

Patricia Malone
Adam Rosenblatt
Venable, LLP
210 W. Pennsylvania Avenue, Ste. 500
Towson, Maryland 21204

Dept. of Permits, Approvals & Inspections
111 W. Chesapeake Avenue
Towson, Maryland 21204

Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

A handwritten signature in black ink, appearing to be 'M. McCann', written over a horizontal line.

Michael R. McCann

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

May 27, 2016

Via Hand-Delivery

Sunny Cannington, Administrator
County Board of Appeals
Jefferson Building
105 W. Chesapeake Avenue, Ste. 203
Towson, Maryland 21204

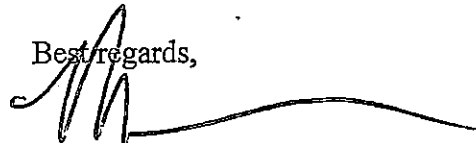
Re: Hunt Valley Presbyterian Church
Zoning Case No. 2016-0099-SPH
HOH Case No. 08-0524

Dear Ms. Cannington:

Enclosed please find Appellants' Petition in Support of Appeal in the above-referenced matter.

Thank you. Please contact me if you have any questions.

Best regards,



Michael R. McCann

cc: Patricia Malone and Adam Rosenblatt (*via* US Mail)
Dept. of Permits, Approvals & Inspections (*via* US Mail)
Office of Administrative Hearings (*via* US Mail)



Board of Appeals of Baltimore County

TO WCN

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

RECEIVED

MAR 08 2018

DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

March 8, 2018

VIA HAND-DELIVERY

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

RE: In the matter of: Hunt Valley Presbyterian Church, Inc.
Civil Action No.: 03-C-18-000166
Board of Appeals Case No.: 16-099-SPH

Dear Clerk:

Enclosed for filing please find the Proceedings before the Administrative Law Judge and the Board of Appeals for Baltimore County. Additionally, please allow this letter to reflect the filing of one box containing three accordion folders which represent a certified copy of the entire Board of Appeals case file, exhibits, and transcripts pursuant to Maryland Rule 7-206.

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

Very truly yours,

Krysundra Cannington
Administrator

KC/taz
Enclosures

c:	Patricia A. Malone, Esquire	Michael R. McCann, Esquire
	Adam M. Rosenblatt, Esquire	Beaver Dam Community Association
	Hunt Valley Presbyterian Church, Inc.	Deidre Bosley
	Office of People's Counsel	Michael and Mary Kate Fitz-Patrick
	Andrea Van Arsdale, Director/Department of Planning	Tony and Marsha Gaspari
	Lawrence M. Stahl, Managing Administrative Law Judge	
	<u>Arnold Jablon, Deputy Administrative Officer, and Director/PAI</u>	
	Nancy C. West, Assistant County Attorney/Office of Law	
	Michael E. Field, County Attorney/Office of Law	

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

*

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PETITION OF:
BEAVER DAM COMMUNITY ASSOCIATION, *ET AL.*

*

AND

*

CROSS PETITION OF:
HUNT VALLEY PRESBYTERIAN CHURCH, INC.

*

*

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

*

*

*

CIVIL ACTION
NO. : 03-C-18-000166

IN THE MATTER OF:
HUNT VALLEY PRESBYTERIAN CHURCH, INC.
FOR PROPERTY LOCATED AT
13015 BEAVER DAM ROAD

*

*

*

8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

*

BOARD OF APPEALS CASE NO.: 16-099-SPH

*

* * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

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

The following documents are Located in File 1 of 3:

October 19, 2015	Petition for Special Hearing filed by Patricia A. Malone, Esquire on behalf of Hunt Valley Presbyterian Church, Inc., pursuant to Section 500.7 of the Baltimore County Zoning Regulations, if necessary, to approve the removal of Lot 1 as an amendment to the most recently approved Final Development Plan ("FDP") for Bishops Pond or to approve the proposed plan changes as an amendment to the FDP; and for such other relief as may be deemed necessary.
November 2, 2015	Entry of Appearance filed by People's Counsel for Baltimore County.
November 20, 2015	Notice of Zoning Hearing
December 28, 2015	Certificate of Posting.
January 7, 2016	Certificate of Publication in newspaper
January 20, 2016	ZAC Comments.
January 28, 2016	Hearing held before the Office of Administrative Hearings, Day 1
February 16, 2016	Hearing held before the Office of Administrative Hearings, Day 2
February 17, 2016	Hearing held before the Office of Administrative Hearings, Day 3
February 18, 2016	Hearing held before the Office of Administrative Hearings, Day 4
March 15, 2016	Administrative Law Judge's Combined Development Plan and Zoning Opinion and Order issued wherein the "Hunt Valley Church" redlined Development Plan, marked and accepted into evidence as Developer's Exhibit 1 was APPROVED, subject to conditions; and the Petition for Special Hearing was DISMISSED as unnecessary.
April 13, 2016	Protestants' Motion for Reconsideration filed by Michael R. McCann, Esquire.
April 21, 2016	Order on Motion for Reconsideration issued by the Administrative Law Judge wherein the Motion was DENIED.

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

The following documents are Located in File 1 of 3:

October 19, 2015	Petition for Special Hearing filed by Patricia A. Malone, Esquire on behalf of Hunt Valley Presbyterian Church, Inc., pursuant to Section 500.7 of the Baltimore County Zoning Regulations, if necessary, to approve the removal of Lot 1 as an amendment to the most recently approved Final Development Plan ("FDP") for Bishops Pond or to approve the proposed plan changes as an amendment to the FDP; and for such other relief as may be deemed necessary.
November 2, 2015	Entry of Appearance filed by People's Counsel for Baltimore County.
November 20, 2015	Notice of Zoning Hearing
December 28, 2015	Certificate of Posting.
January 7, 2016	Certificate of Publication in newspaper
January 20, 2016	ZAC Comments.
January 28, 2016	Hearing held before the Office of Administrative Hearings, Day 1
February 16, 2016	Hearing held before the Office of Administrative Hearings, Day 2
February 17, 2016	Hearing held before the Office of Administrative Hearings, Day 3
February 18, 2016	Hearing held before the Office of Administrative Hearings, Day 4
March 15, 2016	Administrative Law Judge's Combined Development Plan and Zoning Opinion and Order issued wherein the "Hunt Valley Church" redlined Development Plan, marked and accepted into evidence as Developer's Exhibit 1 was APPROVED, subject to conditions; and the Petition for Special Hearing was DISMISSED as unnecessary.
April 13, 2016	Protestants' Motion for Reconsideration filed by Michael R. McCann, Esquire.
April 21, 2016	Order on Motion for Reconsideration issued by the Administrative Law Judge wherein the Motion was DENIED.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
BEAVER DAM COMMUNITY ASSOCIATION, *ET AL.*

AND

CROSS PETITION OF:
HUNT VALLEY PRESBYTERIAN CHURCH, INC.

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

CIVIL ACTION
NO.: 03-C-18-000166

IN THE MATTER OF:
HUNT VALLEY PRESBYTERIAN CHURCH, INC.
FOR PROPERTY LOCATED AT
13015 BEAVER DAM ROAD

8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 16-099-SPH

* * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

May 19, 2016	Notice of Appeal filed by Michael R. McCann, Esquire on behalf of Deidre Bosley, Michael and Mary Kate Fitz-Patrick, Tony and Marsha Gaspari, and Beaver Dam Community Association.
May 20, 2016	Appeal received by the Board.
May 27, 2016	Petition in Support of Appeal filed by Michael R. McCann, Esquire on behalf of Deidre Bosley, Michael and Mary Beth Fitz-Patrick, Tony and Marsha Gaspari, and the Beaver Dam Community Association, Protestants/Appellants.
June 2, 2016	Letter to Board from Patricia A. Malone, Esquire requesting that the Board separate the Development Plan appeal from the Zoning appeal and consider them independently.
June 15, 2016	Letter to counsel from Board advising that the request to separate the Development Plan and Zoning cases by the Board was granted, and requesting duplicate copies of all exhibits at the Administrative Law Judge level.
June 15, 2016	Notice of Assignment issued by the Board.
July 18, 2016	Motion to Dismiss filed by Patricia A. Malone, Esquire and Adam M. Rosenblatt, Esquire on behalf of Hunt Valley Presbyterian Church, Inc., Petitioner.
July 18, 2016	Letter to Board from Michael R. McCann, Esquire requesting a postponement of hearing to allow time to respond to Motion to Dismiss.
July 18, 2016	Letter to Board from Adam M. Rosenblatt, Esquire opposing request for postponement.
July 21, 2016	Letter to Michael R. McCann, Esquire from Board granting postponement.
July 21, 2016	Notice of Postponement and Reassignment of Argument Only on Motion to Dismiss issued by the Board.
August 31, 2016	Protestants' Response to Motion to Dismiss filed by Michael R. McCann, Esquire.
September 13, 2016	Hearing held before the Board on the Motion to Dismiss.
October 19, 2016	Board convened for Public Deliberation on the Motion to Dismiss.

October 28, 2016 Ruling on Motion to Dismiss issued by the Board wherein the Petitioner's Motion to Dismiss was DENIED; and Ordered that the case be scheduled for an evidentiary hearing on a date mutually convenient for the parties and the Board's docket; and Ordered that a final Opinion will be issued after a hearing on the merits and public deliberation, with no further action to be taken on the Ruling until such time as the Board's final decision is issued.

October 28, 2016 Notice of Assignment issued by the Board.

November 30, 2016 Letter to Board from Patricia A. Malone, Esquire and Adam M. Rosenblatt, Esquire requesting additional hearing dates.

January 11, 2017 Board convened for Hearing. Opened and postponed to agreed dates.

January 12, 2017 Notice of Assignment of Agreed Dates issued by the Board.

February 24, 2017 Letter to Board from People's Counsel advising they do not find it necessary to participate at trial.

April 19, 2017 Board convened for a Hearing, Day 1.

April 20, 2017 Board convened for a Hearing, Day 2.

April 21, 2017 Updated Notice of Assignment of Agreed Dates issued by the Board.

April 26, 2017 Board convened for a Hearing, Day 3.

April 27, 2017 Board convened for a Hearing, Day 4.

The following documents are Located in File 2 of 3:

Exhibits submitted during the Hearings before the Board of Appeals:

Petitioner's Exhibit No.

- 1A-B – Plan – 3rd Amended FDP
- 2 – Map of Attendees
- 3 – Hunt Valley Church Regular Events
- 4 – Aerial Map
- 5 – Letter from Michael Turley and Winnie Huskey
- 6 – Michael J. Pieranunzi Curriculum Vitae
- 7 – Initial FDP 6/4/1991 Approval
- 8 – 2nd Amended FDP 10/22/1992 Approval
- 9 – 1st Amended FDP 12/3/1992 Approval

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- 10 – Date of Purchase Aerial Map
- 11 – FDP Evolution
- 12 – January 6, 2016 ZAC Comments
- 13 – Christa L. Kerrigan Curriculum Vitae
- 14 – Waldon Images of Expansion
- 15 – 2 photographs – existing view vs. proposed view SW corner facing road
- 16 – J. Robert Green Curriculum Vitae
- 17 – Drainage Area Exhibit
- 18 – Transcript Excerpt – February 16, 2016 ALJ hearing, testimony of Mark Eisner
- 19 – Mark W. Eisner Curriculum Vitae
- 20 – Summary of Hydrogeologic Impact Evaluation
- 21 – Weekly Water Usage Chart
- 22 – MDE Guidance on Wastewater Flows for Use in Designing On-Site Systems
- 23 – Map – Environmental Impact Evaluation
- 24 – Glenn E. Cook Curriculum Vitae
- 25 – Cook Traffic Impact Analysis
- 26 – Proposed Beaver Dam Signage
- 27 – Stopping Sight Distance
- 28 – Mitchell J. Kellman Curriculum Vitae
- 29 – Development Plan Conference Approval
- 30 – 2017 Honda Odyssey Specifications
- 31 – Photo of Honda Odyssey
- 32 – 5 Series BMW Diagram/Dimensions
- 33 – 5 Series BMW Photo
- 34 – Wikipedia – Smart Fortwo
- 35 – Photo of Smart Fortwo

Protestants' Exhibit No.

- 1 – Pages from HVPC Website
- 2 – July 1, 1991 letter – Storm Water Management Waiver Request from HVPC
- 3 – Level of Service Criteria – Baltimore County
- 4 – Page from Cook's prior Report regarding Church activities
- 5 – Level of Service Intersections
- 6 – Article 1B. Density Residential (D.R.) Zones – Baltimore County Zoning Regulations
- 7 – Opinion – Cignal Development Corporation, Case No. 91-466-X, 11/5/1992
- 8 – Findings of Fact and Conclusions of Law – Cignal Development Corporation, Case No. 91-466-A, 12/26/1991

- 9 – Supplemental Order – Cignal Development Corporation, Case No. 91-466-X, 12/3/1992
- 10 – Motion to Revise Order – Cignal Development Corporation, Case No. 91-466-X
- 11A-F – Photographs of Bosley property
- 12A – Fitz-Patrick house
- 12B – Northside of Fitz-Patrick house
- 12C – Gaspari house
- 13 – Letter from G. Jones to D. Bosley dated January 31, 1994
- 14 – Plat to accompany Petition for Special Exception, revised August 8, 1991
- 15 – List of activities from Church
- 16 – Chris Tiesler Curriculum Vitae
- 17 – ITE Trip Generation calculation for existing and proposed Church
- 18 – Excerpt of most recent edition of American Association of State Highway and Transportation Officials – Stopping Sight Distance
- 19 – Excerpt of American Association of State Highway and Transportation Officials – Height of Object
- 20A – Photograph – looking east Beaver Dam Road
- 20B – Photograph – looking West Beaver Dam Road toward curve
- 21 – Closing Arguments of Petitioners, Case No. 91-466-X, August 25, 1992
- 22 – Brassert photograph compared to Petitioner's Exhibit 15
- 23A-O – Brassert photograph grouping 1
- 24A-I – Brassert photograph grouping 2
- 25A-D – Brassert photograph grouping 3
- 26A-B – Brassert photograph grouping 4
- 27A-H – Brassert photograph grouping 5
- 28A-C – Brassert photograph grouping 6
- 29A-I – Newton photograph grouping 1
- 30A-E – Newton photograph grouping 2
- 31A-B – Newton photograph grouping 3
- 32 – Evaluating Consistency with Spirit and Intent, current
- 33 – Baltimore County Zoning Regulations, § 1A02.1.
Legislative policy

The following documents are Located in File 1 of 3:

May 26, 2017

Petitioner's Post-Hearing Memorandum filed by Patricia A. Malone, Esquire and Adam M. Rosenblatt, Esquire.

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May 26, 2017	Protestants' Post-Hearing Memorandum filed by Michael R. McCann, Esquire.
June 6, 2017	Protestants' Response to "Renewed Motion to Dismiss" filed by Michael R. McCann, Esquire.
June 6, 2017	Protestants' Motion to Strike Exhibit C to Petitioner's Post-Hearing Memorandum filed by Michael R. McCann, Esquire.
June 16, 2017	Petitioner's Combined Response to Protestants' Post Hearing Motions filed by Patricia A. Malone, Esquire and Adam M. Rosenblatt, Esquire.
June 27, 2017	Board convened for Public Deliberation.
December 7, 2017	Opinion and Order issued by the Board wherein the Petition to Amend the Bishops Pond Final Development Plan was GRANTED, with conditions; the Petitioner's Renewed Motion to Dismiss was DENIED; and the Protestants' Motion to Strike Exhibit C was GRANTED.
January 5, 2018	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Michael R. McCann, Esquire on behalf of Beaver Dam Community Association, Deidre Bosley, and Michael and Mary Kate Fitz-Patrick, Petitioners/Appellants.
January 12, 2018	Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
January 18, 2018	Certificate of Compliance sent to all parties and interested persons.
January 29, 2018	Cross Petition for Judicial Review filed by Adam M. Rosenblatt, Esquire and Patricia A. Malone, Esquire on behalf of Hunt Valley Presbyterian Church, Inc.
February 9, 2018	Copy of Cross-Petition for Judicial Review received by the Board.
February 9, 2018	Response to Cross-Petition for Judicial Review filed by Michael R. McCann, Esquire on behalf of Beaver Dam Community Association, Deidre Bosley, and Michael and Mary Kate Fitz-Patrick, Petitioners/Appellants.
February 12, 2018	Second Certificate of Compliance sent to all parties and interested persons.

March 8, 2018 Transcript of testimony filed. (*Located in File 3 of 3*)

March 8, 2018 Record of Proceedings filed in the Circuit Court for Baltimore County.

CERTIFICATE OF RECORDS

As Administrator of the Board of Appeals of Baltimore County, I hereby certify the above-listed documents including, but not limited to, the exhibits entered into evidence before the Board, are true and correct copies of the original documents submitted to the Board of Appeals in this matter and such true and correct copies are hereby forwarded to the Circuit Court for Baltimore County pursuant to Maryland Rule 7-206(d). The original documents will be maintained in the case file at the Board of Appeals of Baltimore County.


Krysundra Cannington, Administrator
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180
appealsboard@baltimorecountymd.gov

c: Patricia A. Malone, Esquire
Adam M. Rosenblatt, Esquire
Michael R. McCann, Esquire
Hunt Valley Presbyterian Church, Inc.
Beaver Dam Community Association
Deidre Bosley
Michael and Mary Kate Fitz-Patrick
Tony and Marsha Gaspari
Office of People's Counsel
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
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May 26, 2017	Protestants' Post-Hearing Memorandum filed by Michael R. McCann, Esquire.
June 6, 2017	Protestants' Response to "Renewed Motion to Dismiss" filed by Michael R. McCann, Esquire.
June 6, 2017	Protestants' Motion to Strike Exhibit C to Petitioner's Post-Hearing Memorandum filed by Michael R. McCann, Esquire.
June 16, 2017	Petitioner's Combined Response to Protestants' Post Hearing Motions filed by Patricia A. Malone, Esquire and Adam M. Rosenblatt, Esquire.
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Michael R. McCann, P.A.

118 W. Pennsylvania Avenue

Towson, Maryland 21204

Phone: (410) 825-2150

Facsimile: (410) 825-2149

michael@mmccannlaw.net

RECEIVED

APR 13 2016

OFFICE OF ADMINISTRATIVE HEARINGS

April 13, 2016

Via Hand Delivery

The Honorable John Beverungen
Administrative Law Judge
Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

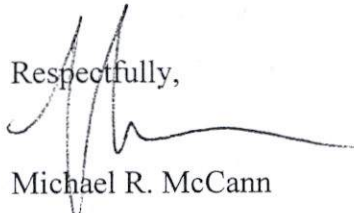
Re: Hunt Valley Presbyterian Church
Case no. 2016-0099-SPH/PAI 08-0524

Dear Judge Beverungen:

Enclosed for filing please find Protestants' Motion for Reconsideration.

Thank you for your consideration.

Respectfully,


Michael R. McCann

cc: counsel for Petitioner (via email and US Mail)

Michael R. McCann, P.A.

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Towson, Maryland 21204

Phone: (410) 825-2150

Facsimile: (410) 825-2149

michael@mmccannlaw.net

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OFFICE OF ADMINISTRATIVE HEARINGS

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105 W. Chesapeake Avenue, Suite 103
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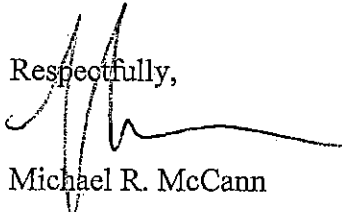
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Respectfully,


Michael R. McCann

cc: counsel for Petitioner (via email and US Mail)

IN RE: DEVELOPMENT PLAN AND
PETITION FOR SPECIAL HEARING
13015 Beaver Dam Road

8th Election District
3rd d Councilmanic District
(Hunt Valley Church)

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE
* HEARINGS
* FOR
* BALTIMORE COUNTY
* Case Nos. 2016-0099-SPH
* PAI 08-0524

* * * * *

PROTESTANTS' MOTION FOR RECONSIDERATION

Protestants, Deidre Bosley, Michael and Mary Kate Fitz-Patrick, Tony and Marsha Gaspari, and the Beaver Dam Community Association, move the Administrative Law Judge ("ALJ") to reconsider his Opinion and Order dated March 15, 2016.

A. Subsection A7 of Section 1B01.3 Applies to *Institutional* Amendments to Final Development Plans

The ALJ found that the amendment provisions in subsection A7 of 1B01.3 are not applicable to the proposed expansion of this church for two reasons. First, the ALJ found that the regulations apply only to residential development plans and the subject plan proposes an institutional use, not residential development. Second, the ALJ found that while an amendment to a final development plan (FDP) may be required when lots are subdivided or when the use of a lot changes, "not all changes in the size or scale of a dwelling or building shown on a FDP necessitate an amendment to the Plan." (Op., pp. 14-15). The ALJ noted that Mr. Fitz-Patrick constructed an addition and Ms. Bosley constructed a barn on their properties and neither of them sought to amend the Bishops Pond FDP. The ALJ concluded that Hunt Valley Presbyterian Church ("HVPC") is

not seeking to subdivide or change the use of its property - the number of lots and the use will remain the same - and therefore an amendment to the FDP is not required.

1. *No support exists for the conclusion that A7 applies only to residential, not institutional, amendments to residential plans*

It is obviously true that subsections A1 through A6 of 1B.01.3 apply only to residential plans, that is, the original final development plan must be a residential one. However, there is no support for the conclusion that subsection A7 (the provision governing amendments) applies only to residential and not institutional *amendments* of residential plans. The terms “residential,” “residence” or “dwelling” appear nowhere in subsection A7. Reading these words into A7 would defeat the purpose of that subsection, which is to provide for the disclosure of all “development plans” (not simply *residential* amendments) in order to protect residents from all “inappropriate changes” (not simply inappropriate *residential* changes).

Further, the ALJ’s interpretation of A7 is, respectfully, inconsistent with the Board of Appeals’ ruling in the original case involving this church (Case No. 91-466-X). In that case, the Board applied the standard in A7 to the proposed construction of the church, which was an *institutional amendment* to the original residential FDP. That decision clearly supports that subsection A7 is not limited to residential amendments to residential plans but also applies, as here, to institutional amendments to residential plans. In that same case, the Zoning Commissioner likewise applied A7 to the proposed institutional amendment. Indeed, not even Mr. Kellman took the position that A7 was inapplicable because HVPC was proposing an institutional amendment to a residential development.

The ALJ’s decision is also incongruent with the recent ruling in *In re: Goldman Property* (Case Nos. 2015-239 SPH & 2015-276 SPH). There, the ALJ initially stated that he would not address whether A7 applied to a proposed synagogue in a residential subdivision because the

synagogue had not sought a determination regarding that issue in its petition for special hearing. The ALJ went on, however, to rule that the adjoining residential property owner in the subdivision was the type of person that A7 was intended to protect and that "the proposed change from a residential to institutional use constitutes such an 'inappropriate change' that should not be permitted at this juncture." (Opinion and Order, pp. 12-13). The ALJ concluded that the proposed synagogue was "a radical departure from the 'spirit and intent' of the original plan, which called for single-family dwellings on the property." (*Id.*, p. 14). The clear underpinning of the ALJ's decision in the *Goldman* case was that institutional amendments to final development plans are indeed governed by A7 of 1B01.3.

The only basis to distinguish this case from the Board of Appeals' earlier decision in this matter and the *Goldman* case is that there has already been an amendment of the FDP here. Although not articulated by the ALJ, the argument would be that once there is an institutional amendment to a residential plan that plan is forever thereafter a non-residential plan. No support exists for such a reading of 1B01.3. The other three lots in the Bishops Pond subdivision, each residential, are still part of the final development plan and the owners of those lots are still entitled to the protections that A7 affords.¹ It would make no sense (and would be patently unfair) to allow a developer or an owner of one lot in a residential subdivision to achieve an end-around the requirements of A7 by, for example, first obtaining approval for an innocuous, minor institutional amendment of a plan (one consistent with the spirit and intent of the original residential plan),²

¹ Again, not even Mr. Kellman took such a position. In fact, the obvious and only possible reason for the Church's request that Lot #1 be removed from the Bishops Pond final development plan was to allow the Church to argue in the future that the new plan (without any residential lots) was purely institutional in nature, avoid forever the amendment provisions in A7, and allow the Church to continue expanding and expanding without the input of its neighbors.

² For example, the owner of a home in the residential subdivision could expand his or her existing home to allow it to be used as a church for a small number of parishioners. Such an expansion could arguably be consistent with the spirit and intent of the original residential plan.

then expand that institutional use exponentially without the other lot owners having a say in the matter. Such maneuvering would also violate the plain language of A7, which requires that the amendment be consistent with the spirit and intent of the *original* plan.

Finally, it bears repeating that A7 requires a finding that the proposed amendment be consistent with the spirit and intent of the “*original plan*,” critical language that is not addressed in the ALJ’s opinion. If A7 applies only to residential amendments to residential FDP’s, this would render the words “original plan” meaningless, if not nugatory, since a residential amendment would seldom be inconsistent with the spirit and intent of the original residential plan.

2. *The proposed church expansion is the type of amendment requiring an amendment to the final development plan*

Protestants further disagree, respectfully, with the ALJ’s suggestion that the proposed expansion of the church is not subject to A7 because it is not the type of improvement that would require an amendment to a final development plan.

It is the obvious intent and import of section 1B01.3 that amendments to FDP’s are necessary whenever the proposed improvement would require the filing of a development plan in the normal development review process under BCC 32-4-201 *et seq.* This is, of course, precisely the process that HVPC undertook in this case, that is, it filed a development plan under 32-4-201 *et seq.* and also requested approval of an amendment to the FDP. On the other hand, if the proposed improvement does not require the filing of a development plan (*e.g.*, it meets one of the exemptions in 32-4-105 or 32-4-106 such as the one for a non-material amendment/refinement to an approved development plan), then an amendment to the FDP would not be required. Ms. Bosley’s barn and Mr. Fitz-Patrick’s addition are not the type of changes that would require the filing of a development plan under 32-4-201 *et seq.* and thus would not require an amendment to the FDP. In short, Protestants do not necessarily disagree with the ALJ that “not all changes in the size or

scale of a dwelling or building shown on a FDP necessitate an amendment to the Plan"; however, the HVPC's proposed 40,000 square foot expansion is clearly one that does require an amendment, as HVPC itself has acknowledged by its own filings in this matter.

B. The Change In Zoning Is Irrelevant Because The Board Of Appeals Imposed The Restrictions As A Condition To The Amendment Of The Final Development Plan

The ALJ held that the restrictions imposed by the Board of Appeals in the 1991 case (no. 91-466-X) are not enforceable, and cannot be relied upon by Protestants, because there was a change in zoning after that case to RC3, which permits churches as of right. (Op., pp. 13-14).

This rationale fails to take into consideration the very important – indeed, determinative – fact that the restrictions imposed by the Board of Appeals in 91-466-X were imposed on *both* the granting of the special exception *and* the approval of an amendment to the Final Development Plan. In its Supplemental Order, the Board made this abundantly clear:

Petitioners' request to amend the Bishop's Pond Final Development Plan is GRANTED *subject to the terms and restrictions* of this Supplemental Order and the Board's original *Opinion and Order dated November 5, 1992*.

(Protestants' Ex. 9, p. 1) (emphasis added).

Thus, the fact that the zoning for this property changed to RC3, which allows churches as of right, is irrelevant. The restrictions imposed in 91-466-X still apply; the change in zoning did not remove those conditions to the amendment of the Final Development Plan. In fact, even if the property was always zoned RC3 and the church never sought a special exception, the restrictions would still stand today.³

³ The ALJ pointed to BCC 32-4-104(b), which states that "[p]roposed development shall be in compliance with the present zoning classification on the property to be developed." This begs the question of whether the "present zoning classification" allow the proposed expansion and does not answer the question of whether the restrictions in the Board's 1991 decision apply.

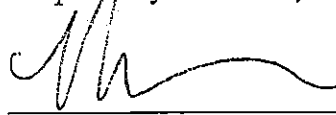
CONCLUSION

Protestants respectfully request that the ALJ reconsider his Opinion and Order dated March 15, 2016 and deny the relief sought by Petitioner. The amendment provisions in subsection A7 of 1B01.3 clearly apply to this institutional amendment to the final development plan. Assuming the ALJ agrees, application of the “spirit and intent” standard in A7 requires the ALJ to compare this proposed amendment to the “original plan” that is, the original FDP (Protestants’ Ex. 4). Even if the ALJ believes that it is appropriate to consider the *first* and *second amended* final development plans as HVPC posits, he cannot ignore the *original* FDP without violating the plain terms of A7. Under any comparison (to the original, first, and/or or second amended FDP), the proposed expansion is of a different order and magnitude and cannot reasonably meet the “spirit and intent” standard.

The rezoning of this property from RC4 to RC3 in 2012 does not change this analysis. As Mr. Kellman conceded at the hearing, the standards in A7 still apply.⁴ More importantly, the rezoning did not have the effect of removing the very significant restrictions imposed by the Board of Appeals in the 1991 case. The Board imposed those restrictions as a condition of approving HVPC’s request to amend the FDP, not just as a condition of granting the special exception. Thus, regardless of whether the appropriate comparison under A7 is to the original, first, and/or the second FDP, the restrictions still attach to this property and must be enforced.

⁴ Mr. Kellman conceded that the amendment requirements of A7 applied, but contended that the change in zoning should be considered in determining whether the amendment met the standards in A7. He explicitly acknowledged that he was not contending that the change in zoning from RC4 to RC3 eliminated somehow the original FDP or the requirement that spirit and intent be determined. (T2, pp. 408-10).

Respectfully submitted,



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

Attorneys for Protestants

CERTIFICATE OF SERVICE

I HERE BY CERTIFY that, on this 13th day of April 2016, a copy of the foregoing
Motion for Reconsideration was mailed, via first-class mail, to:

Patricia Malone
Adam Rosenblatt
Venable, LLP
210 W. Pennsylvania Avenue, Ste. 500
Towson, MD 21204



Michael R. McCann

**DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE**

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 legal owner/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 legal owner/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:

Case Number: 2016-0099-SPH
Property Address: 13015 Beaver Dam Road
Property Description: S/S Beaver Dam Road,
W of I-83
Legal Owners (Petitioners): Hunt Valley Presbyterian Church, Inc.
Contract Purchaser/Lessee: _____

PLEASE FORWARD ADVERTISING BILL TO:

Name: Patricia A. Moore
Company/Firm (if applicable): Vendole LLP
Address: 210 W. Pennsylvania Ave
Suite 500
Towson MD 21204
Telephone Number: 410.494.6200

Revised 5/20/2014

TO: PATUXENT PUBLISHING COMPANY
Thursday, January 7, 2016 Issue - Jeffersonian

Please forward billing to:

Patricia Malone
Venable, LLP
210 W. Pennsylvania Avenue, Ste. 500
Towson, MD 21204

410-494-6200

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: 2016-0099-SPH

13015 Beaver Dam Road

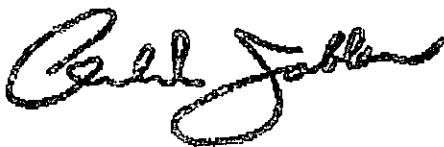
S/s Beaver Dam Road, 585 ft. n/west of centerline of Baltimore Harrisburg Expressway

8th Election District – 3rd Councilmanic District

Legal Owners: Hunt Valley Presbyterian Church, Inc.

Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations, if necessary, to approve the removal of Lot 1 as an amendment to the most recently approved Final Development Plan (FDP) for Bishops Pond or to approve the proposed plan changes as an amendment to the FDP; and for such other relief as may be deemed necessary.

Hearing: Thursday, January 28, 2016 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon

Director of Permits, Approvals and Inspections for Baltimore County

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

Debra Wiley

From: Malone, Patricia A. <PAMalone@Venable.com>
Sent: Wednesday, April 13, 2016 4:48 PM
To: John E. Beverungen
Cc: Michael McCann; Debra Wiley; Rosenblatt, Adam M.
Subject: RE: Hunt Valley Church

Judge:

We have reviewed Mr. McCann's Motion for Reconsideration and do not believe that it warrants a response.

Thank you.
Patsy

Patricia A. Malone, Esq. | Venable LLP
t 410.494.6206 | f 410.821.0147
210 W. Pennsylvania Avenue, Suite 500, Towson, MD 21204
PAMalone@Venable.com | www.Venable.com

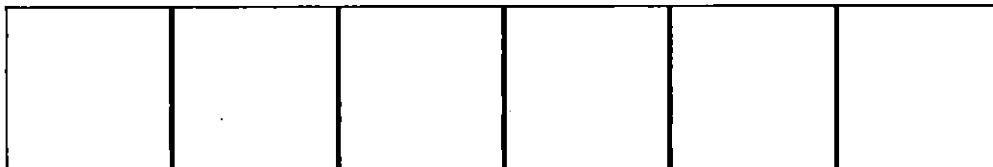
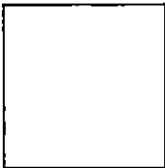
From: John E. Beverungen [mailto:jbeverungen@baltimorecountymd.gov]
Sent: Wednesday, April 13, 2016 2:17 PM
To: Malone, Patricia A. <PAMalone@Venable.com>
Cc: Michael McCann <michael@mmccannlaw.net>; Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Hunt Valley Church

Counsel,

Protestants filed today with the OAH a motion for reconsideration in the above case. Under the Rules, an order on the motion must be issued within 30 days. Please let me know if you intend to file an opposition to the motion, in which case you should do so within 15 days to allow enough time for me to review both submissions and issue a ruling.

John Beverungen
ALJ

CONNECT WITH BALTIMORE COUNTY



www.baltimorecountymd.gov

This electronic mail transmission may contain confidential or privileged information. If you believe you have received this message in error, please notify the sender by reply transmission and delete the message without copying or disclosing it.

Case No.: PAI 08-0524 & 2016-0099-SPH

Exhibit Sheet

HUNT VALLEY
CHURCH

Original Exhibits are
contained in 74504
file.

	Petitioner/Developer	Protestants	COUNT
No. 1	Dev. Plan	11-12-2015 DDP ZAC comments	Jan. 6, 201 DEPS memo
No. 2	BCZR § 300	2-25-2015 Comments for Pre-CRG	Feb. 16, 201 DEPS LOG
No. 3	Pieranunzi CV	Concept Plan Comments June 9, 2015	
No. 4	Aerial Exhibit	Final Dev. Plan June 4 1991	
No. 5	BUDG HGT. Determination	1st Am. FDP 12/3/92	
No. 6	BCZR § 101.1	2d Am. FDP 10/22/92	
No. 7	Zoning Petition	With Usage Letter	
No. 8	BCZR § 1B01.3	Motion to Revise Order	
No. 9	1-6-16 ZAC Comment from DDP.	Supplemental Order 91-466-X	
No. 10	Proposed 3d Amended FDP	HVC Website	
No. 11	Green CV	HVC Website	
No. 12	12A } drainage area 12B } maps - SWM	HVC Website	

Case No.: Hunt Valley Church

Exhibit Sheet - Continued

	Petitioner/Developer	Respondent
No. 13	Cook resume	HVC Website
No. 14	Traffic Impact Study	HVC Website
No. 15	1-27-16 update Letter from G. Cook	HVC Website
No. 16	Aerial overview re: HVBC	PDM - Zoning Review memo 1/5/2016
No. 17	EKNER CV	Order 91-466-X
No. 18	Summary of Hydrogeologic Impact	photo shared driveway south
No. 19	Weekly Water Usage	photos driveway south
No. 20	MDE Guidance on Wastewater Flows	photos proposed parking of residences Bishop's land
No. 21	Environmental Impact Site plan	photos of proposed parking area
No. 22	Kerrigan CV	photo proposed parking area
No. 23	Exterior perspective - elevations	photo driveway - north
No. 24	Kellman CV	photo Poola Road residences

Case No.: Hunt Valley Church

Exhibit Sheet - Continued

Petitioner/Developer

Protestant

No. 25	BCZR (1987 ed.) Art. 13	Photo - views from Pool Rd.
No. 26	Aerial - My Neighborhood Map	photo - Beaver Dam Rd - views
No. 27	Aerial photo - Bosley home	photos - flooding conditions
No. 28	Approved Schematic Landscape Plan	Tiesler resume
No. 29		HVC Trip Generation report
No. 30		HVC Traffic Operational Analysis
No. 31		Photo - church access
No. 32		Extract from AASHTO Manual
No. 33		Photos - grade change Beaver Dam Rd.
No. 34		Docs. from Kittleson + Assoc. re: HVC
No. 35		Photos - damaged mailbox
No. 36		Photos - damaged tree

Case No.:

HVC

Exhibit Sheet

Petitioner/Developer

Protestant

No. 36		
No. 37		
37	Photo - landscaping near drive	
No. 38	1-31-94 letter	
38	George Jones	
No. 39	Randy Race E-mail	
39	8-1-2015	
No. 5	Photos - Bosley Home	
40	and Environs	
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

PLEASE PRINT CLEARLY

CASE NAME Hunt Valley Church
CASE NUMBER 08-0524 H-2016-
DATE 2/16/2016 0099-
ET SPH

PETITIONER'S SIGN-IN SHEET

[illegible]

CASE NAME Hunt Valley Church
CASE NUMBER 08-0524 + 12016-0099-
DATE 2/16/2016 SPH

NAME

ADDRESS

CITY, STATE, ZIP

E - MAIL

[illegible]

1. *Phragmites* (Common Reed)

Spitz

COUNTY REPRESENTATIVE'S SIGN-IN SHEET

[illegible]

CASE NAME HUNT VALLEY, CALIFORNIA
CASE NUMBER 08-0524 + 2016
DATE 1/28/2016 0099-SPH

[illegible]

CASE NAME HUNT VALLEY CHURCH
CASE NUMBER 08-0524 + 2016-
DATE 1/28/2016 0099-
SPH

NAME

ADDRESS

CITY, STATE, ZIP

E - MAIL

JOHN RITZENTHALE	11103 POOL RD.	COCKEYSVILLE MD 21030	JCRACKERS2U@YAHOO.COM
FRODO SCHACTE	12836 RAND WOOD #710	TIMONIA MD 21093	
MIKE FITZ PATRICK	13025 BEAVER DAM RD	Cockeysville 21093	Mikelandmay@Comcast.net
STEVEN GUDENATH	682 STRAND HILL CT.	TIMONIA MD 21093	SHGVENTURE@VIZIUM.NET
wife church			

CASE NAME AUNT VALLEY CHURCH
CASE NUMBER 08-0524 ​
DATE 1/28/2016 2016-0099-
SPH

[illegible]

PLEASE PRINT CLEARLY

CASE NAME Hunt Valley Church
CASE NUMBER 08-0524 +
DATE 2/17/2016 2016-
0099-SPH

PETITIONER'S SIGN-IN SHEET

[illegible]

CASE NAME HVC
CASE NUMBER 08-0624 + 2016-0099 -
DATE 2/17/2016 SPH

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
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[illegible]

CASE NAME Hunt Valley Church
CASE NUMBER 08-0524-2016-
DATE 2/17/2016 0099-SH

[illegible]

CASE NAME Hunt Valley Church
CASE NUMBER 08 0024 + 2016 -
DATE 2/18/2016 0099
SPCL

CASE NAME Hunt Valley Church
CASE NUMBER 08 0024 + 2016 -
DATE 2/18/2016 0099
SPCL

[illegible]

CASE NAME Hunt Valley Church :
CASE NUMBER 08-0524 + 2016-0089
DATE 2/18/2016 SPK

NAME _____

ADDRESS

CITY, STATE, ZIP

E - MAIL

[illegible]

C H E C K L I S T

<u>Comment Received</u>	<u>Department</u>	<u>Support/Oppose/ Conditions/ Comments/ No Comment</u>
<u>11-4</u>	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	<u>NC</u>
_____	DEPS (if not received, date e-mail sent _____)	_____
_____	FIRE DEPARTMENT	_____
<u>11-18</u>	PLANNING (if not received, date e-mail sent _____)	<u>NC</u>
<u>10-27</u>	STATE HIGHWAY ADMINISTRATION	<u>No objection</u>
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____
ZONING VIOLATION	(Case No. _____)	
PRIOR ZONING	(Case No. _____)	
NEWSPAPER ADVERTISEMENT	Date: <u>1-7-16</u>	
SIGN POSTING	Date: <u>12-28-15</u> by <u>Black</u>	
PEOPLE'S COUNSEL APPEARANCE	Yes ☒ No ☐	
PEOPLE'S COUNSEL COMMENT LETTER	Yes ☐ No ☐	

Comments, if any: _____

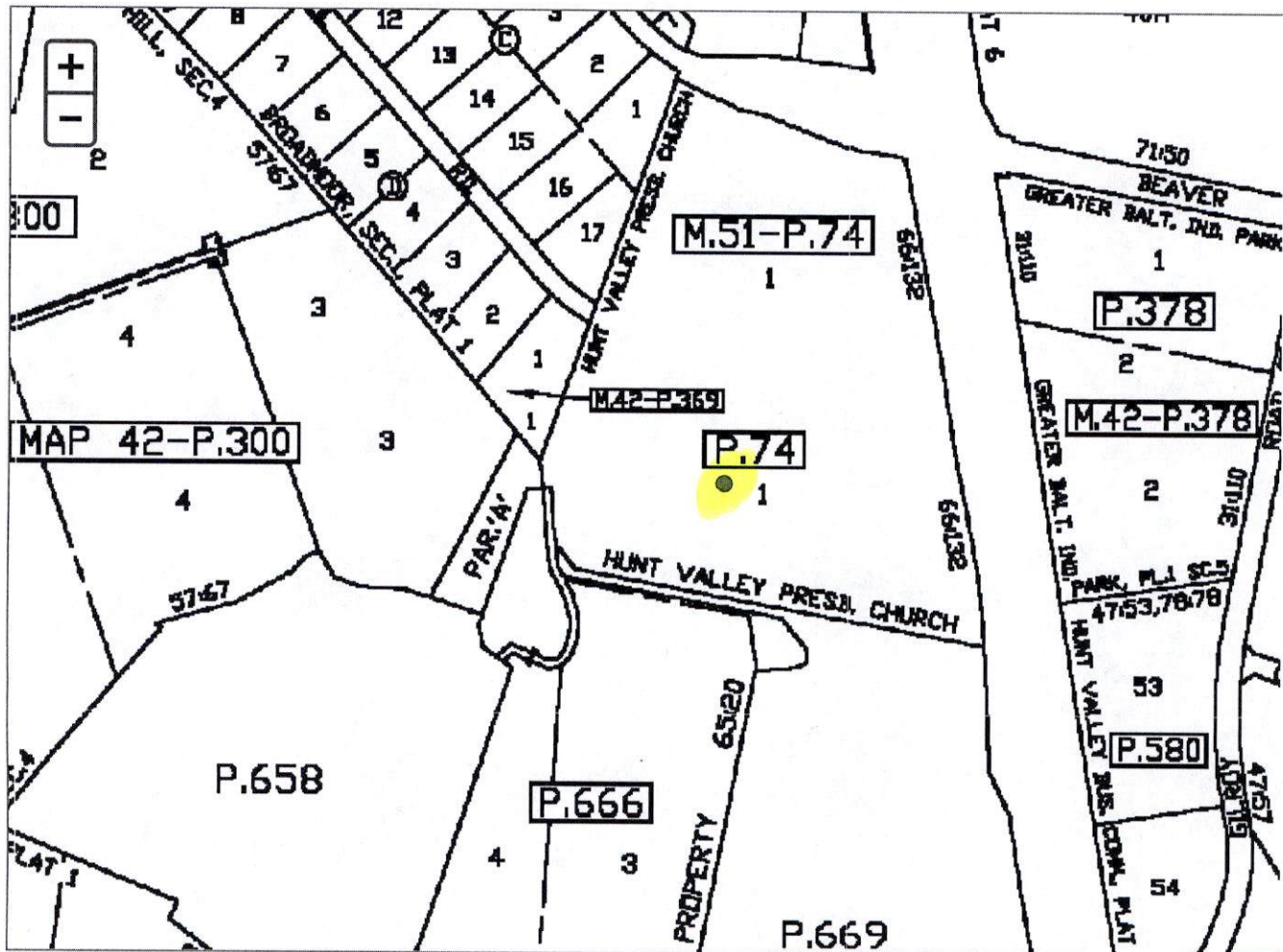
Real Property Data Search (w4)

Guide to searching the database

Search Result for BALTIMORE COUNTY

View Map		View GroundRent Redemption		View GroundRent Registration	
Account Identifier:		District - 08 Account Number - 2100005874			
Owner Information					
Owner Name:		HUNT VALLEY PRESBYTERIAN CHURCH INC		Use:	COMMERCIAL NO
Mailing Address:		10950 GILROY RD STE C HUNT VALLEY MD 21031-1327		Deed Reference:	/09749/ 00712
Location & Structure Information					
Premises Address:		13015 BEAVER DAM RD COCKEYSVILLE MD 21030-1501		Legal Description:	22.761 AC PAR EX SS BEAVER DAM RD HUNT VALLEY PRES CHURCH
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section: Block: Lot:
0051	0002	0074		0000	
				Assessment Year:	Plat No:
				2014	0066/0132
Special Tax Areas:				Town:	NONE
				Ad Valorem:	
				Tax Class:	
Primary Structure Built	Above Grade Enclosed Area	Finished Basement Area		Property Land Area	County Use
1998	11488			22.7600 AC	06
Stories	Basement	Type	Exterior	Full/Half Bath	Garage Last Major Renovation
		CHURCH			
Value Information					
		Base Value	Value As of 01/01/2014	Phase-in Assessments As of 07/01/2015 As of 07/01/2016	
Land:		1,361,000	1,361,000		
Improvements		2,622,700	2,813,200		
Total:		3,983,700	4,174,200	4,110,700	4,174,200
Preferential Land:		0			0
Transfer Information					
Seller: SIGNAL DEVELOPMENT CORP		Date: 05/07/1993		Price: \$485,000	
Type: ARMS LENGTH IMPROVED		Deed1: /09749/ 00712		Deed2:	
Seller: BISHOPS POND INC		Date: 02/13/1990		Price: \$0	
Type: NON-ARMS LENGTH OTHER		Deed1: /07894/ 00064		Deed2:	
Seller:		Date:		Price:	
Type:		Deed1:		Deed2:	
Exemption Information					
Partial Exempt Assessments:	Class	07/01/2015		07/01/2016	
County:	700	3,989,700.00		3,989,700.00	
State:	700	3,989,700.00		3,989,700.00	
Municipal:	700	0.00 0.00		0.00 0.00	
Tax Exempt:		Special Tax Recapture:			
Exempt Class:		NONE			
Homestead Application Information					
Homestead Application Status: No Application					

Baltimore County

New Search (<http://sdat.dat.maryland.gov/RealProperty>)District: **08** Account Number: **2100005874**

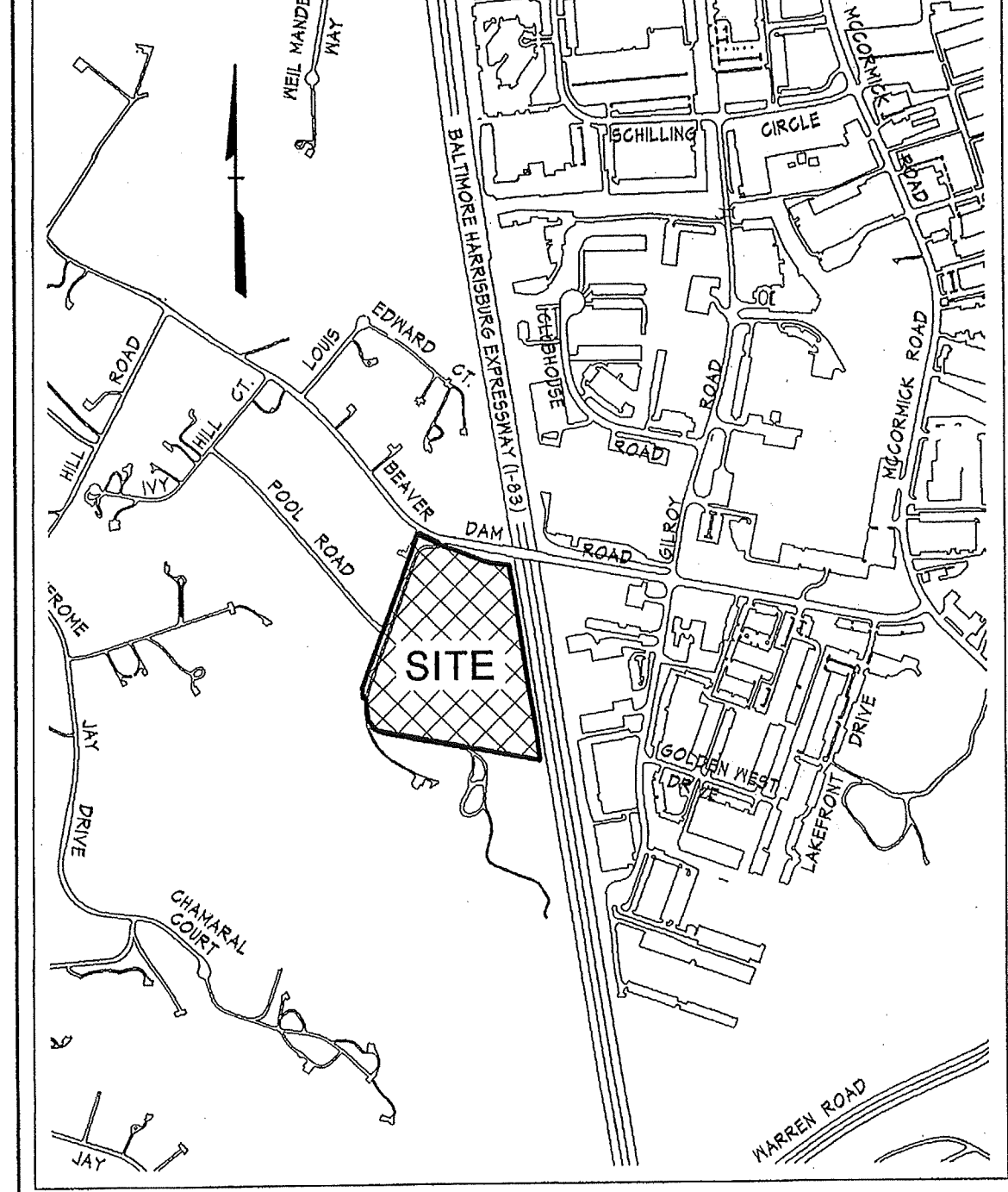
If a plat for a property is needed, contact the local Land Records office where the property is located. Plats are also available online through the Maryland State Archives at www.plats.net (<http://www.plats.net>).

Property maps provided courtesy of the Maryland Department of Planning.

For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/OurProducts/OurProducts.shtml (<http://www.mdp.state.md.us/OurProducts/OurProducts.shtml>).



21. **Landscaping Requirements:** (see also Section 490.0 of the Baltimore County Zoning Regulations)
 - Interior Roads - 1' PU/20' LF, 150-200 LF, 13.5 - 14.0 PU
 - Parking areas - 1' PU/12.5' LF, 150-200 LF, 13.5 - 14.0 PU
 - Class B Screen - 1' PU/15.0' LF, 140 - 150 LF, 9.6 - 9.9 PU
22. **Total Planting Units Required** = 157 PU
23. **Planting Units Required**
 - 15' landscaped area in parking lot = 1,146 SF x .07 = 80.22 PU
 - Provided = 4,769 SF x .71% = 3.39 PU
24. Proposed lighting shall be so arranged as to reflect the light away from adjacent residential sites and public streets with cut off fixtures, with a max height of 15'.
25. The proposed landscaping Petitioner will plant a vegetative buffer wall south of the expanded church building and parking lot, which buffer shall be a minimum of 90 feet wide and 500 feet long and shall consist of:
 - a) 10' wide evergreen trees
 - b) 10' wide deciduous trees
26. No principal buildings or parking lots shall be constructed on that portion of land south of the church as shown on this plan.
27. The proposed church shall be constructed of concrete, portland cement, pervious concrete and pavers.
28. All parking spaces to be striped in accordance with BCR Section 64.04, and shall be marked with the Baltimore County Police Department's office, a fellowship hall, classrooms, a nursery and a kitchen.
29. Fellowship hall and offices will not be used at the same time that the church is open and the church office will not be used at the same time that the fellowship hall, classrooms, a nursery and a kitchen.
30. No commercial kitchen or food preparation will occur on site.
31. There are no habitats, critical areas, archeological sites, endangered species habitats or hazardous materials sites known to exist on the site.
32. Average daily trips - 31.5 ADTP/1,000 SF - 29.15 SF x 1,000 x 31.5 = 119 ADTP from church use on the lot, 25 ADTP from residential lots on the lot.
33. There are no Maryland Historical Trust Inventory, Landmarks, Preservation Commission, National Register of Historic Places, Maryland State Historic Survey or National Historic Landmark Areas of critical state concern associated with this property.
34. The development as proposed will include protective measures adequate to protect the historic resources of the site as defined by Section 32-4.1 (c) of the Baltimore County Code and promote the preservation of the natural topographic features of the steep slopes. This will be achieved by the construction of a retaining wall and terracing in accordance with the requirements of the Baltimore County Soil Conservation District and the current State of Maryland Specifications for Soil Erosion and Sedimentation Control.
35. **Bureau of Traffic Engineering and Transportation Planning** has confirmed that the subject site is not within a traffic deficient area.
36. Areas between the sight line and curb line must be cleared, graded and paved.
37. **Department of Public Works** has confirmed that the proposed construction:
 - The site design shall meet the requirements of NFPA 1142, Standard for Water Supplies for Suburban and Rural Fire Fighting
 - Water supply shall be available to the site from 7am and sunset to 10pm, 7 days a week and 4am and sunset on weekends. Interior firework may be used outside of these hours. Construction site will be fenced.
 - There shall not be open burning, bonfires, or other open fire (except for principal use on the premises. The church will continue to provide religious instruction and youth programs to its members and will offer balthazarian services to the community. The church will continue to provide religious services to the principal use of the property as a church or building for religious purposes.
38. All other comply with Section 490.0 of the Baltimore County Zoning Regulations.

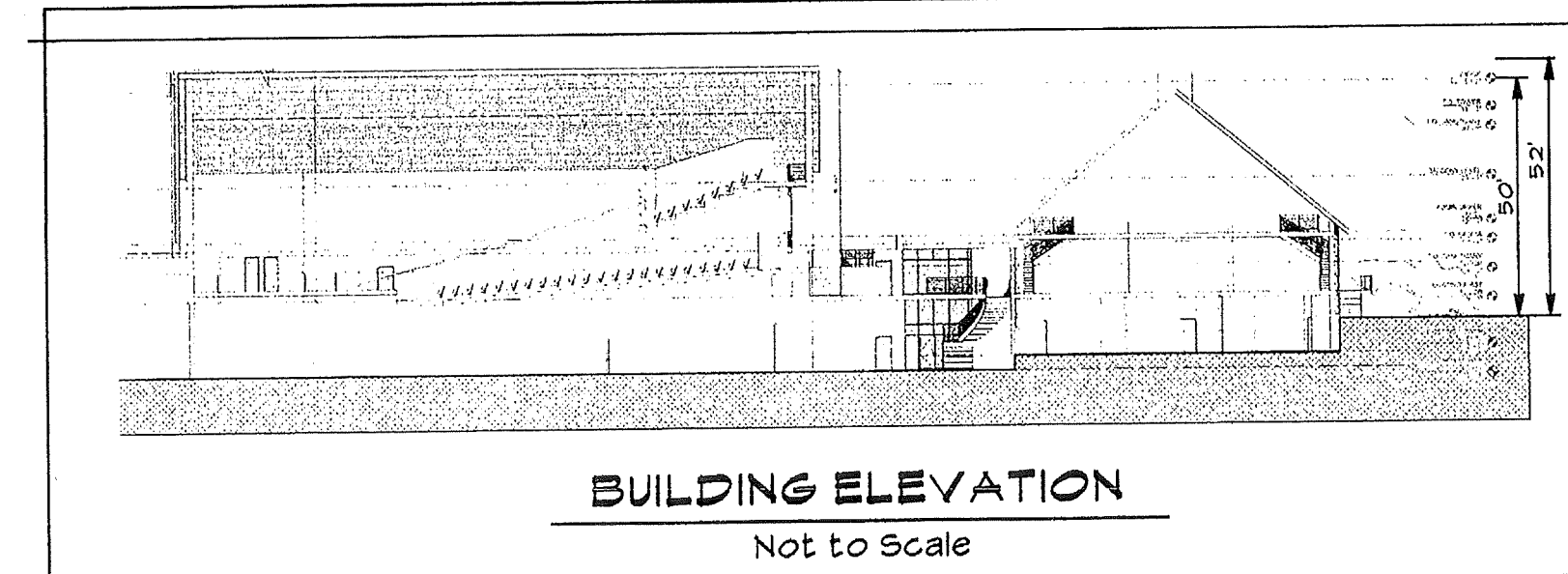


VICINITY MAP

SCALE: 1"=1000'

COUNTY ADOPTED PLANS			
EXISTING	NOT EXISTING	IN CONFORMANCE	
✓		✓	BALTO. CO. MASTER PLAN 2020
	✓		COMMUNITY OR REVITALIZATION PLANS
	✓		RECREATION AND PARKS PLAN
	✓		STREETSCAPE PLAN
	✓		GREENWAYS PLAN
			OTHER:

TYPE OF CONVEYANCE	NO.	TOTAL AREA*(AC)
Use In Common Easement	1	0.09
Drainage and Utility Easement	N/A	----
Forest Conservation Easement	1	4.6
Stormwater Management Easement	15	1.1
100 year Floodplain Easement	N/A	----



1. The property is subject to an approved CRS Plan (FAN No. VIB-254). The 1st Amended CRS Plan for Bishop's Pond was approved on July 11, 1941. The 2nd Amended CRS Plan was approved on July 2, 1944 (CRS No. 04-186F). A Development Plan has been filled and upon approval will supersede the CRS Plan for Lot 1.
2. Case No. CBA-91-178: In an Order dated January 24, 1992, the County Board of Appeals affirmed the approval of the 1st Amended CRS Plan for Bishop's Pond.
3. Case No. 11-446-X: A Petition for Special Exception for a church in the RC 4 zone and an amendment to the Development Plan was approved by the Planning Commission on December 26, 1941, as revised by an Amended Order issued on January 24, 1942. The decision was affirmed on appeal.
4. THE PROPERTY IS SUBJECT TO THE 2ND AMENDED FINAL DEVELOPMENT PLAN FOR BISHOP'S POND, APPROVED OCTOBER 22, 1941. A REQUEST HAS BEEN FILED TO REMOVE LOT 1 FROM THE FINAL DEVELOPMENT PLAN.
5. During the 2012 Comprehensive Zoning Map Process, the property was reclassified from RC 4 to RC 3 (Issue No. 3-05B). Churches and buildings for religious worship are permitted by right in the RC 3 zone.
6. With the re-zoning of the property to RC 3, the special exception granted in Case Number 11-446-X is no longer necessary or applicable and is hereby terminated or withdrawn by the owner.

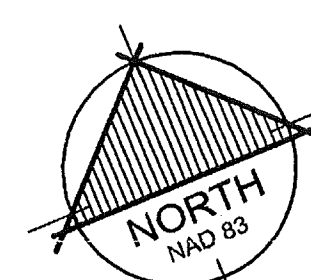
1. TOPOGRAPHY SHOWN HEREON TAKEN FROM FIELD SURVEY
PERFORMED BY CENTURY ENGINEERING, INC. DATED JULY 1, 2014.
2. ADDITIONAL TOPOGRAPHY SHOWN HEREON TAKEN FROM FIELD SURVEY
PERFORMED BY CENTURY ENGINEERING, INC. OWNER.
3. TOPOGRAPHIC INFORMATION OUTSIDE OF THE FIELD SURVEY AREAS,
SHOWN ON THIS PLAN IS FROM THE BALTIMORE COUNTY OFFICE OF
TECHNOLOGY - GIS LAB.
4. COORDINATES AND ELEVATIONS ARE REFERRED TO THE MARYLAND
COORDINATE SYSTEM (NAD 83/2011 NAD83) VIA GPS AND TIED TO
THE FOLLOWING CORRS STATIONS:
DP6905 UMBC OF MD BALT CORRS ARP
DKT151 ANP BALT CORRS ARP
DPR103 TORB TORB CORRS ARP

DATE	BY	REVISION



Hunt Valley Church

13015 Beaver Dam Road
Hunt Valley, Maryland 21030
Election District 8 Councilmanic District 3



ISSUE DATES
REVIEW: 10.15.15
BID: _____
PERMIT: _____
CONSTRUCTION: _____

BASE: M.S.S.
DRAWN: M.S.S.
DESIGNED: M.J.P.
CHECKED BY: ----
DATE CHECKED: ----

SCALE: 1"=50'

DRAWING:

1 of 1