

M E M O R A N D U M

DATE: May 21, 2019
TO: Zoning Review Office
FROM: Office of Administrative Hearings
RE: Case No. 2019-0235-SPH- Appeal Period Expired

The appeal period for the above-referenced case expired on May 20, 2019. There being no appeal filed, the subject file is ready for return to the Zoning Review Office and is placed in the 'pick up box.'

c: Case File
Office of Administrative Hearings

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1145 Concordia Dr.)		
9 th Election District	*	OFFICE OF
3 rd Council District		
Baltimore Lutheran High School	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
	*	FOR BALTIMORE COUNTY
Petitioner		
	*	Case No. 2019-0235-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petition for Special Hearing filed on behalf of Baltimore Lutheran High School (“School”), legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to amend the Order in Case No. 2007-0202-SPH by incorporating a 2010 Settlement Agreement reached in connection with a lawsuit filed in the Circuit Court for Baltimore County. The 2010 Settlement Agreement clarifies certain terms in a letter agreement dated May 10, 2007 which was attached and incorporated into the final order in Case No. 2007-0202-SPH.

Brent Johnson, Gloria Murphy and Andrew Croll, Esq., appeared in support of the petition. Jennifer R. Busse, Esquire represented Petitioner. Several neighbors attended the hearing to obtain additional information regarding the request. The Petition was advertised and posted as required by the BCZR.

SPECIAL HEARING

No testimony was presented in this case; Petitioner requests only that the undersigned issue an order incorporating therein a settlement agreement reached in a circuit court litigation brought by several neighbors against the School. That litigation, and several other zoning and

By Brent Johnson

Date 4-19-19

ORDER RECEIVED FOR FILING

code enforcement cases dating back to 2007, concerned the use of certain athletic fields at the School. Most recently, the Baltimore County Board of Appeals ("CBA") issued an Order in Case No. CBA-19-003 (which was an appeal of a code enforcement proceeding) and held it could not rely upon the terms of the 2010 Settlement Agreement since it was not incorporated into a final order issued by the Administrative Law Judge ("ALJ").

THEREFORE, IT IS ORDERED this 19th day of **April, 2019** by this Administrative Law Judge, that the Petition for Special Hearing to amend the Order and letter agreement dated May 10, 2007 in Case No. 2007-0202-SPH by expressly incorporating herein the 2010 Settlement Agreement, a copy of which is attached hereto, be and is hereby GRANTED.

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



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:slh

ORDER RECEIVED FOR FILING
Date 4-19-19
By sen



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 1145 Concordia Drive which is presently zoned DR2
Deed References: 03487/00343 10 Digit Tax Account # 0902004252
Property Owner(s) Printed Name(s) Baltimore Lutheran High School

(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

PLEASE SEE ATTACHED

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

3. ☐ a **Variance** from Section(s) _____ of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

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

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

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

Contract Purchaser/Lessee:

N/A

Name - Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

Jennifer R. Busse, Esquire

Name - Type or Print

Signature Whiteford, Taylor & Preston

1 W. Pennsylvania Ave., Ste. 300, Towson MD

Mailing Address City State

21204 410-832-2077 jbusse@wtplaw.com

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Brent Johnson, Concordia Preparatory School

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

1145 Concordia Drive, Towson, MD

Mailing Address City State

21286 410-825-2323 brentjohnson@concordiaprepschool.org

Zip Code Telephone # Email Address

Representative to be contacted:

Brent Johnson, Concordia Preparatory School

Name - Type or Print

Signature

1145 Concordia Drive, Towson, MD

Mailing Address City State

21286 410-825-2323 brentjohnson@concordiaprepschool.org

Zip Code Telephone # Email Address

CASE NUMBER 2019-0235-SPH Filing Date 2/13/19

Do Not Schedule Dates: _____ Reviewer AT

ORDER RECEIVED FOR FILING REV. 10/4/11

Date 2-19-19

By Sen

Attachment to Zoning Petition

1145 Concordia Drive

Case No.: 2019-0235-SPH

Petition for Special Hearing to amend the Decision and Order in Case 07-202-SPH by incorporating certain provisions from a 2010 Settlement Agreement so as to clarify terms and definitions relevant to potential violations.

H92-2820 - P102

H. MALMUD & ASSOCIATES, INC.
12018 RIDGE VALLEY DRIVE
OWINGS MILLS, MARYLAND 21117
TELEPHONE 410 308-0442

ZONING DESCRIPTION
1145 CONCORDIA DRIVE
BALTIMORE COUNTY, MARYLAND

BEGINNING FOR THE SAME AT THE INTERSECTION FORMED BY THE
SOUTH SIDE OF CONCORDIA DRIVE, 50 FEET WIDE AND THE CENTER OF
COWPENS AVENUE, THENCE BINDING ON OR NEAR THE CENTER OF SAID
COWPENS AVENUE THE THREE (3) FOLLOWING COURSES AND DISTANCES:

- (1) SOUTH 22 DEGREES 45' 00" EAST 60.20 FEET,
- (2) SOUTH 36 DEGREES 56' 00" EAST 362.80 FEET,
- (3) SOUTH 05 DEGREES 48' 30" EAST 55.27 FEET TO THE RIGHT OF

WAY LINE OF THE BALTIMORE BELTWAY, I-695,
THENCE BINDING THEREON THE SIXTEEN (16) FOLLOWING COURSES AND
DISTANCES:

- (4) SOUTH 85 DEGREES 37' 00" WEST 17.42 FEET
- (5) SOUTH 08 DEGREES 01' 27" WEST 102.39 FEET,
- (6) SOUTH 19 DEGREES 21' 58" WEST 54.63 FEET,
- (7) SOUTH 06 DEGREES 22' 24" WEST 101.79 FEET,
- (8) SOUTH 03 DEGREES 21' 42" EAST 75.55 FEET,
- (9) SOUTH 69 DEGREES 54' 56" WEST 213.34 FEET,
- (10) NORTH 72 DEGREES 40' 33" WEST 19.14 FEET,
- (11) NORTH 10 DEGREES 02' 20" EAST 131.13 FEET,
- (12) SOUTH 85 DEGREES 43' 27" WEST 149.65 FEET,
- (13) NORTH 79 DEGREES 19' 53" WEST 455.03 FEET,
- (14) NORTH 79 DEGREES 23' 17" WEST 100.00 FEET,
- (15) SOUTH 55 DEGREES 47' 10" WEST 131.38 FEET,
- (16) NORTH 55 DEGREES 54' 33" WEST 352.55 FEET,
- (17) NORTH 56 DEGREES 53' 05" WEST 101.27 FEET,
- (18) NORTH 58 DEGREES 48' 00" WEST 52.38 FEET,
- (19) NORTH 47 DEGREES 47' 00" WEST 361.55 FEET THENCE LEAVING

THE SAID BELTWAY AND BINDING ON THE EASTERLY SIDE OF 1127
CONCORDIA DRIVE:

(20) NORTH 17 DEGREES 13' 00" EAST 286.60 FEET TO INTERSECT THE
SOUTH SIDE OF CONCORDIA DRIVE THENCE BINDING THEREON THE TWO (2)
FOLLOWING COURSES AND DISTANCES:

(21) BY A LINE CURVING TO THE LEFT WITH A RADIUS OF 661.00 FEET,
AN ARC LENGTH OF 59.03 FEET, CHORD BEARING AND DISTANCE OF
SOUTH 82 DEGREES 08' 55" EAST 59.01 FEET AND

(22) SOUTH 84 DEGREES 14' 55" EAST 1361.87 FEET TO THE PLACE OF
BEGINNING.

CONTAINING 23.5 ACRES OF LAND, MORE OR LESS.

THIS DESCRIPTION IS FOR ZONING PURPOSES ONLY AND NOT FOR THE
CONVEYANCE OF TITLE.

THIS PROPERTY IS SUBJECT TO ANY AND ALL AGREEMENTS, EASEMENTS, RIGHTS
OF WAY, AND/OR COVENANTS OF RECORD AND LAW. A TITLE REPORT WAS NOT
FURNISHED FOR THIS DESCRIPTION.

HERBERT MALMUD
REGISTERED LAND SURVEYOR
MARYLAND # 7558
OCTOBER 29, 2006



2019-
0235-
SPH

202

The Daily Record

11 East Saratoga Street
Baltimore, MD 21202-2199
(443) 524-8100
<http://www.thedailyrecord.com>

PUBLISHER'S AFFIDAVIT

We hereby certify that the annexed advertisement was published in **The Daily Record**, a daily newspaper published in the State of Maryland 1 times on the following dates:

3/29/2019

Order #: 11718013
Case #: 2019-0235-SPH
Description:

NOTICE OF ZONING HEARING CASE NUMBER:
2019-0235-SPH



Darlene Miller, Public Notice Coordinator
(Representative Signature)

Baltimore County

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: 2019-0235-SPH

1145 Concordia Drive
SW/corner of the intersecting streets between Concordia Drive, east of Cowpens Avenue

9th Election District - 3rd Councilmanic District

Legal Owners: Concordia Preparatory School, Brent Johnson

Special Hearing to amend the Decision and Order 07-202-SPH by incorporating certain provisions from a 2010 Settlement Agreement so as to clarify terms and definitions relevant to potential violations.

Hearing: Thursday, April 18, 2019 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Mike Mohler

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.

mh29

815 4-18-19
10AM

Debra Wiley

From: Marty Ogle <mert1114@aol.com>
Sent: Tuesday, April 16, 2019 3:44 PM
To: Administrative Hearings
Subject: 2019-0235-sph

2nd set of certificates

CERTIFICATE OF POSTING

CASE NO. 2019-0235-SPH
PETITIONER/DEVELOPER
WHITEFORD, TAYLOR &
PRESTON LLP
DATE OF HEARING/CLOSING
4/18/19

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING ROOM 111
111 WEST CHESAPEAKE AVENUE
ATTENTION :
LADIES AND GENTLEMAN :

THIS LETTER IS TO CERTIFY UNDER PENALTIES OF PERJURY THAT THE
NECESSARY SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON
THE PROPERTY LOCATED AT
1145 CONCORDIA DRIVE

THIS SIGN(S) POSTED ON MARCH 28, 2019 April, 2019
(MONTH, DAY, YEAR)

SINCERELY,
Marty Ogle 3/28/19
SIGNATURE OF SIGN POSTER

MARTIN OGLE
9912 MAIDBROOK ROAD
PARKVILLE, MD. 21234
443-629-3411

Stop #2

4/18/19

ZONING
CASE # 2019-0235-SPH
A PUBLIC HEARING WILL BE HELD BY
THE ADMINISTRATIVE LAW BOARD
ON THE FOLLOWING MATTER:
APPLY FOR A ZONING VARIANCE, 1145 CONCORDIA DRIVE, BALTIMORE, MD. 21234
DATE: 4/18/19 10:00 AM
PLACE ALL COMMENTS AND REQUESTS FOR A HEARING AT THE OFFICE OF THE ADMINISTRATIVE LAW BOARD, 111 WEST CHESAPEAKE AVENUE, BALTIMORE, MD. 21201

RECEIVED
APR 17 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

CERTIFICATE OF POSTING

CASE NO. 2019-0235-SAH
PETITIONER/DEVELOPER
WHITEFORD, TAYLOR &
PRESTON LLP
DATE OF HEARING/CLOSING
4/18/19

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING ROOM 111
111 WEST CHESAPEAKE AVENUE

ATTENTION:
LADIES AND GENTLEMAN:

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NECESSARY SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON
THE PROPERTY LOCATED AT

1145 CONCORDIA DRIVE

SIGN #1

THIS SIGN(S) POSTED ON

MARCH 28, 2019

(MONTH, DAY, YEAR)

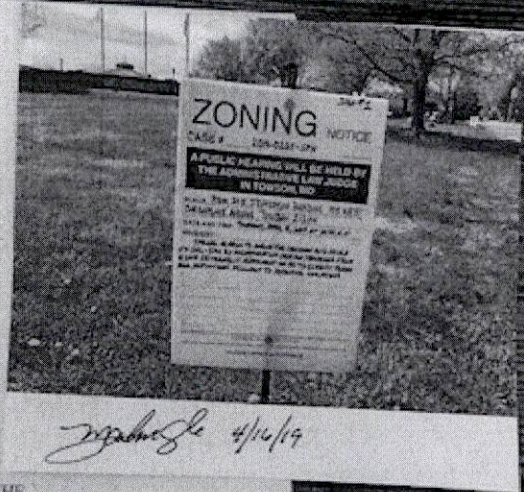
April 2, 2019

SINCERELY,

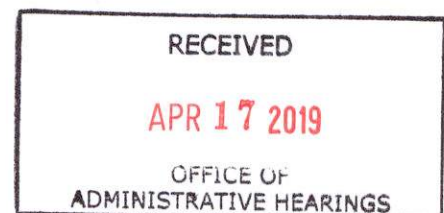
Martin Ogle 3/28/19

SIGNATURE OF SIGN POSTER

MARTIN OGLE
9912 MAIDBROOK ROAD
PARKVILLE, MD. 21234
443.879.3411



Sent from my iPhone



CERTIFICATE OF POSTING

CASE NO. 2019-0235-SPH

PETITIONER/DEVELOPER

WHITEFORD, TAYLOR &
PRESTON LLP

DATE OF HEARING/CLOSING

4/18/19

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING ROOM 111
111 WEST CHESAPEAKE AVENUE
ATTENTION :

LADIES AND GENTLEMAN :

THIS LETTER IS TO CERTIFY UNDER PENALTIES OF PERJURY THAT THE
NECESSARY SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON
THE PROPERTY LOCATED AT

1145 CONCORDIA DRIVE

SIGN #2

THIS SIGN(S) POSTED ON

MARCH 28, 2019

(MONTH, DAY, YEAR)

SINCERELY,

Martin Ogle 3/28/19

SIGNATURE OF SIGN POSTER

MARTIN OGLE
9912 MAIDBROOK ROAD
PARKVILLE, MD. 21234
443-629-3411

5160#2

ZONING NOTICE

CASE # 2019-0235-SPH

**A PUBLIC HEARING WILL BE HELD BY
THE ADMINISTRATIVE LAW JUDGE
IN TOWSON, MD**

PLACE: ROOM 205, JEFFERSON BUILDING, 105 WEST
CHESAPEAKE AVENUE, TOWSON 21204

DATE AND TIME: THURSDAY, APRIL 18, 2019 AT 10:00 A.M.

REQUEST:

SPECIAL HEARING TO AMEND THE DECISION AND ORDER
07-202-SPH BY INCORPORATING CERTAIN PROVISIONS
FROM A 2010 SETTLEMENT AGREEMENT SO AS TO CLARIFY
TERMS AND DEFINITIONS RELEVANT TO POTENTIAL
VIOLATIONS

RESPONDENTS DO NOT HAVE TO FILE ANY OTHER DOCUMENTS OR AFFIDAVITS WITH THE
TOWSON PLANNING BOARD. CALL 410-331-1234
IF YOU HAVE THE TOWSON PLANNING BOARD, YOU MAY HEAR UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

my call gl 3/28/19

CERTIFICATE OF POSTING

CASE NO. 2019-0235-SPH

PETITIONER/DEVELOPER

WHITEFORD, TAYLOR &
PRESTON LLP

DATE OF HEARING/CLOSING

4/18/19

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING ROOM 111
111 WEST CHESAPEAKE AVENUE
ATTENTION :

LADIES AND GENTLEMAN :

THIS LETTER IS TO CERTIFY UNDER PENALTIES OF PERJURY THAT THE
NECESSARY SIGN(S) REQUIRED BY LAW WERE POSTED CONSPICUOUSLY ON
THE PROPERTY LOCATED AT

1145 CONCORDIA DRIVE

SIGN #1

THIS SIGN(S) POSTED ON

MARCH 28, 2019

(MONTH, DAY, YEAR)

SINCERELY,

 3/28/19

SIGNATURE OF SIGN POSTER

MARTIN OGLE

9912 MAIDBROOK ROAD

PARKVILLE, MD. 21234

443-629-3411

4/28/19 3/28/19

INDIVIDUALLY ACCESSIBLE

DO NOT REMOVE THIS SIGN FROM THE PROPERTY OF THE TOWNSHIP OF TOWSON, MD. IF YOU DO, YOU WILL BE FINE \$100.00. IF YOU DO, YOU WILL BE FINE \$100.00. IF YOU DO, YOU WILL BE FINE \$100.00.

REQUEST:
SPECIAL HEARING TO APPEAL THE DECISION AND ORDER
07-302-5PM BY ALDERMAN/CLERK/PROSECUTOR FROM
A 2010 SETTLEMENT AGREEMENT SO AS TO CLARIFY TERMS
AND DETERMINE RELIANCE TO POTENTIAL VIOLATIONS

DATE AND TIME: THURSDAY, APRIL 18, 2019 AT 10:00 A.M.
PLACE: Room 205, JEFFERSON BUILDING, 105 WEST
CHESAPEAKE AVENUE, TOWSON, MD 21204

A PUBLIC HEARING WILL BE HELD BY
THE ADMINISTRATIVE LAW JUDGE
IN TOWSON, MD

CASE # 2019-0235-5PM

ZONING

NOTICE

5/16/19



JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL MOHLER, *Director*
Department of Permits,
Approvals & Inspections

March 11, 2019

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: 2019-0235-SPH

1145 Concordia Drive

SW/corner of the intersecting streets between Concordia Drive, east of Cowpens Avenue

9th Election District – 3rd Councilmanic District

Legal Owners: Concordia Preparatory School, Brent Johnson

Special Hearing to amend the Decision and Order 07-202-SPH by incorporating certain provisions from a 2010 Settlement Agreement so as to clarify terms and definitions relevant to potential violations.

Hearing: Thursday, April 18, 2019 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in cursive script, appearing to read "Mike Mohler".

Mike Mohler
Director

MM:kl

C: Jennifer Busse, 1 W. Pennsylvania Avenue, Ste. 300, Towson 21204
Brent Johnson, 1145 Concordia Drive, Towson 21286

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, MARCH 29, 2019.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: THE DAILY RECORD
Friday, March 29, 2019 - Issue

Please forward billing to:

Jennifer Busse
Whiteford, Taylor & Preston
1 W. Chesapeake Avenue, Ste. 300
Towson, MD 21204

410-832-2077

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: 2019-0235-SPH

1145 Concordia Drive

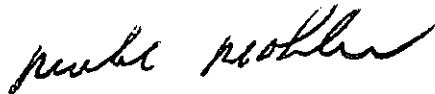
SW/corner of the intersecting streets between Concordia Drive, east of Cowpens Avenue

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Hearing: Thursday, April 18, 2019 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Mike Mohler

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.

RE: PETITION FOR SPECIAL HEARING *
 1145 Concordia Drive; SW corner of interacting
 streets between Concordia DR E Cowpens Ave*
 9th Election & 3rd Councilmanic Districts
 Legal Owners: Baltimore Lutheran High School*
 by Brent Johnson, Concordia Preparatory School
 Petitioner(s) *

BEFORE THE OFFICE
 OF ADMINSTRATIVE
 HEARINGS FOR
 BALTIMORE COUNTY
 2019-235-SPH

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

No. 180722
Date: 2/13/19

PAID RECEIPT
 BUSINESS ACTUAL TIME
 2/13/2019 2/13/2019 11:32:56
 WALKIN LJR OFLN
 >>RECEIPT # 833110 2/13/2019
 Dept 5 528 ZONING VERIFICATION
 Amount. 180722
 >>RECEIPT Tot \$ 500.00
 500.00 CK
 Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Obj	Source/	Rev	Sub	Obj	Dept	Obj	BS	Acct
001	806	0000			6130							
Total: \$ 500.00												

For: 1145 CONCORDIA DR
2019-0235-SPH

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

CASHIER'S VALIDATION
 GOLD - ACCOUNTING

ance of People's
 ed matter. Notice
 he passage of any
 correspondence sent

MAN
 Baltimore County

Room 204
 Avenue

, a copy of the foregoing
 preparatory School, 1145
 quire, 1 West Pennsylvania
 (s).

Zimmerman
 IMMERMAN
 el for Baltimore County

**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 twenty (20) 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: 2019-0235-SPH
Property Address: 1145 Concordia Drive
Property Description: _____

Legal Owners (Petitioners): Baltimore Lutheran High School
Contract Purchaser/Lessee: N/A

PLEASE FORWARD ADVERTISING BILL TO:

Name: Jennifer Busse, Esq.
Company/Firm (if applicable): Whitford Taylor Preston
Address: 1 W. Pennsylvania Ave.
Suite 300
Towson MD 21204
Telephone Number: 410 832 2077

Whether the Zoning Commission/Deputy Zoning Commissioner has the exclusive authority, pursuant to the Ballwin Home Owners County Ordinance to interpret the zoning regulations of Ballwin County for delinquent terms, are as well as delinquent terms in the zoning regulations?

2. Whether the owner of the above property of a retail structure as an accessory building in an accessory use or building, under RCZD 1001.B.1.d, as an access building, member Section 1001, an accessory use or building and whether the subject property is located on a lot zoned R-1A, which contains no prohibition against such accessory buildings for buildings up to 60 feet in height, per RCZD, Section 4007.

3. Whether the intent-like structure as the above property is exempt from the provisions of RCZD Section DCZD 1001.I, for exemptions to help, for copiers or others, where such structure has a horizontal exchanger side 25% of the roof area of the building?

4. Whether the above said structure constitutes a lawful reception area for a community building, including a tennis facility, pursuant to RCZD 1001.I.A, as Permitted by Special Exception (B) community building, swimming pool, commercial kitchen, pool courts, racquetball court, athletic field, pool, recreational or educational use, including tennis facilities provided that no tennis facility is a DR or DUE zone shall comply more than 4 courts?

5. Whether the facility is a drive-in service property recognized by law property owners in Ballwin County, and/or is subject to certain of transitional area regulations, under RCZD 1001.I.B.1, where the subject property lies adjacent to land zoned D12, which contains a single family detached, semi-detached, or duplex dwelling less than 150 feet of the site boundary?

6. Whether the intent-like structure use is a permitted use referred to in the RTA text, under RCZD 1001.I.B.1.d, to include the intent-like structure, as well as the parking area, under the referenced regulation?

7. Whether the first lot-like structure lying from the subject property meets the requirements, under the DCZR, as an exemption to residential inclusion, under RCZD 1001.D.3.g?

8. Whether the tented structure is considered, as naturally applied for, under the RCZD definitions, a building or tennis facility, or accessory building, or accessory use or structure, or community building, or other use, as defined by the RCZD, and as interpreted by the Zoning Commission/Deputy Zoning Commissioner?

9. Whether the owner of the subject property is subject to the DCZR requirements of Sections 1022, General Requirements, and no yard space or minimum rear required for a building or use must be considered as any part of the yard space or minimum rear for another building or use?

10. Whether the owner of the subject property is subject to the DCZR, Section 1001.I, that no land shall be used or occupied and no building or structure shall be erected, altered, located or used, except in conformity with these regulations and this shall include any extension of a lawn or non-residential use?

11. Whether the subject property enjoys a valid non-conforming status for the tented structure or for its use as a garage?

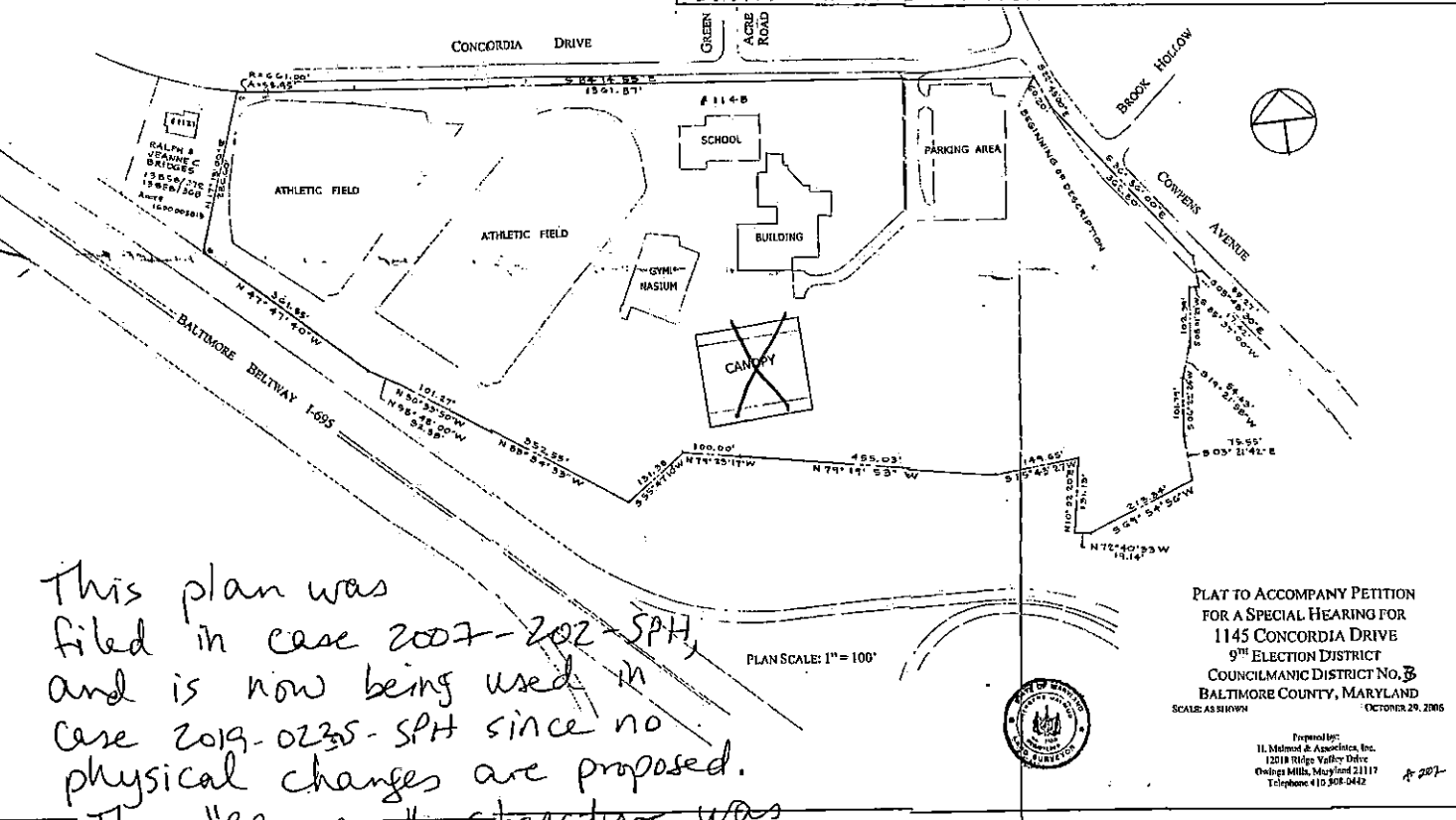
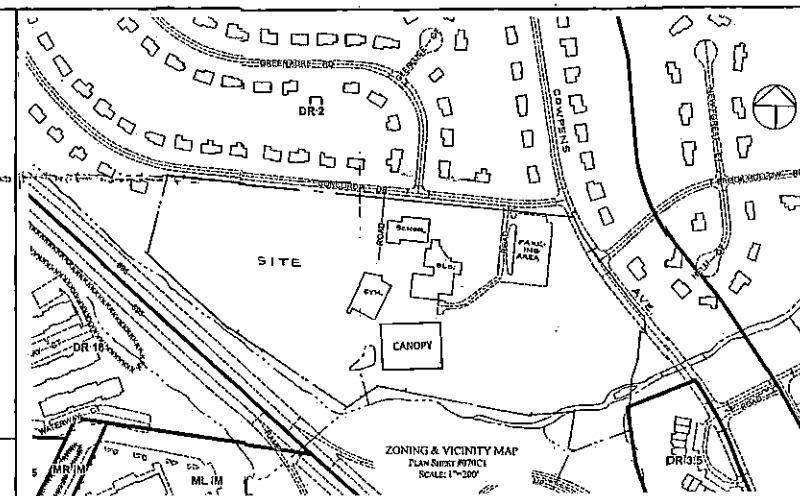
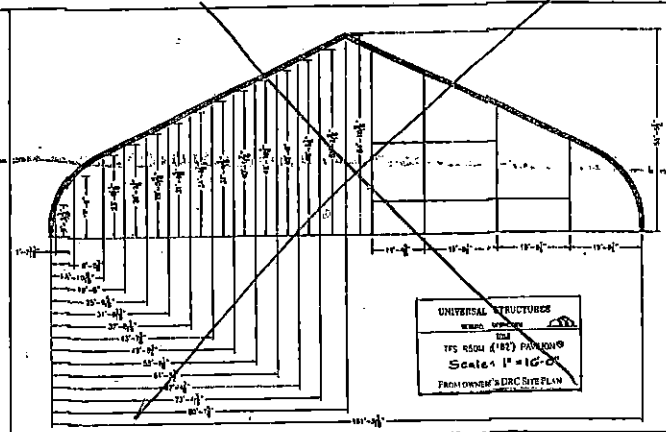
12. Whether the property owner's lease of the facility as a proprietary location for recreation makes the property subject, beginning with the time of the property, to not qualify as a school district property, but rather subject to the special exception requirements for community recreation facility?

13. Whether the policies cover, by application for this tented structure policy as governing for it trends covers all representations of applications, based on its change in use of land included in it non-compliance with the DCZR generally, under DCZD 1002.D, 1022.7, 103.17

14. Whether the Tentation's area of general structure in the subject property is greater than the provision of the DCZR generally per Section 1001, where the property owners have represented in Ballwin County that there have been no pole zoning violations related to the subject property?

15. Whether the Tentation's area of tented structure on the subject property complies with the provisions of the DCZR, and if not, what actions can be taken by the subject property owner? If the permit shall be submitted to the Zoning Commission/Deputy Zoning Commissioner to review, before any permits shall be issued. Before approving any such application, Zoning Commission/Deputy Zoning Commissioner shall consider all relevant facts and circumstances, including, but not limited to, the proposed building or use of land, building or structure compliance with the provisions of the regulations that in effect with respect to zoning, based on the approval of the subject property owner, and whether the subject property is subject to the provisions of Ballwin County, upon application for a building permit.

1. OWNER:
BALTIMORE LUTHERAN HIGH SCHOOL, ASSOCIATION, INC.
1145 CONCORDIA DRIVE
BALTIMORE, MD 21204
PARCEL 35, TAX MAP 1A, GRID H
ACCOUNT NUMBER 1252
2. EXISTING ZONING: DIB-2
3. ZONING HISTORY: NONE, ACCORDING TO THE DRC
SITE PLAN SUBMITTED BY THE OWNER.
4. AREA OF PROPERTY: 2.5 ACRES +/-
5. THIS PROPERTY OUTLINES A BASELINE OF THE INFORMATION OF THE
CONVEYANCE FROM THROCKMORTON BUILDING, INC. TO BALTIMORE LUTHERAN HIGH
SCHOOL, ASSOCIATION, INC. BY DEED DATED 7 JULY 1958
RECORDED IN BOOK 1379, PAGE 139.
6. THE EXISTING BUILDINGS AND PARKING ARE SHOWN AS
FROM THE BALTIMORE COUNTY Aerial PHOTOGRAPH TAKEN IN 2005.

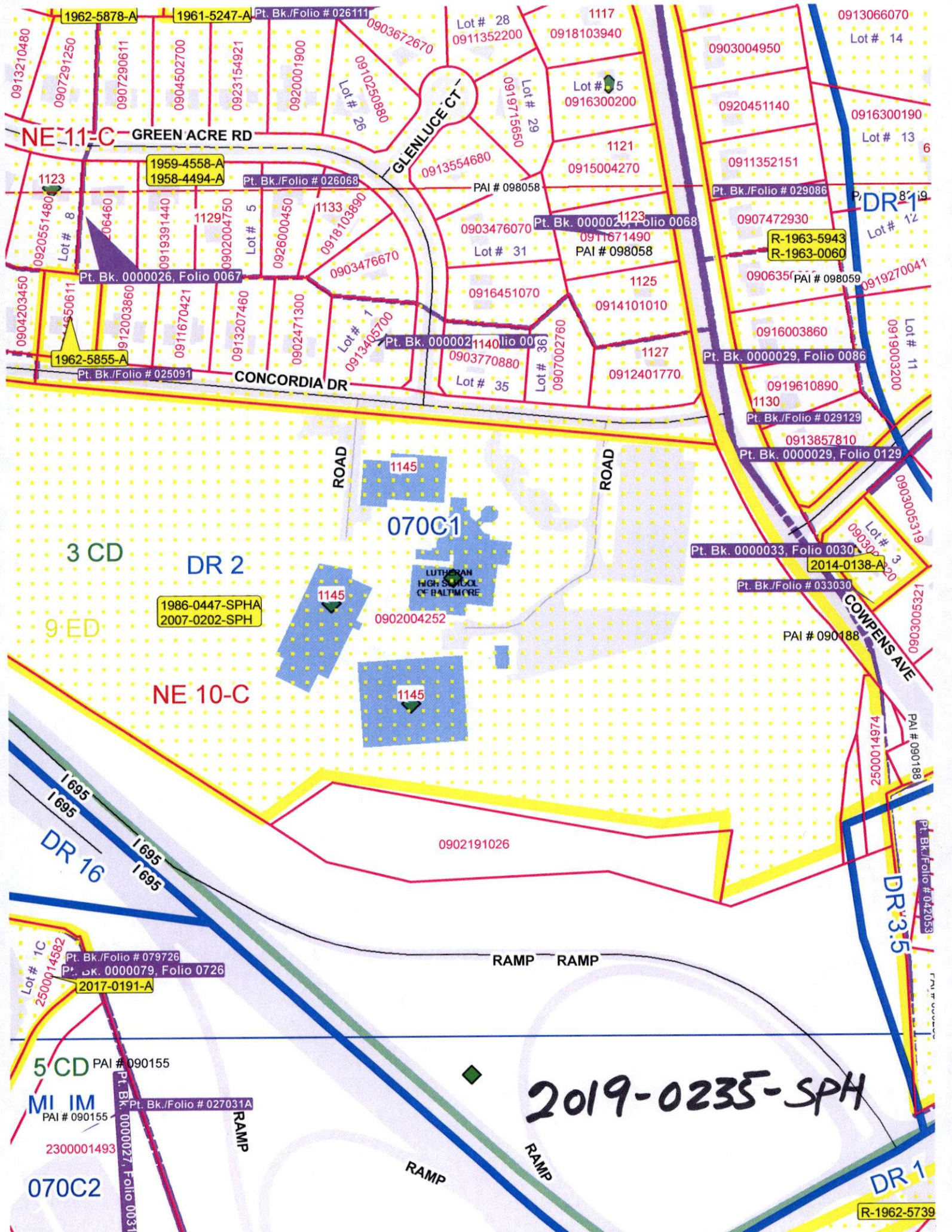


This plan was filed in case 2007-202-SPH, and is now being used in case 2019-0235-SPH since no physical changes are proposed. The "canopy" structure was previously removed.

PLAT TO ACCOMPANY PETITION
FOR A SPECIAL HEARING FOR
1145 CONCORDIA DRIVE
9TH ELECTION DISTRICT
COUNCILMANIC DISTRICT NO. 3
BALTIMORE COUNTY, MARYLAND

Prepared by:
H. Mahmud & Associates, Inc.
12018 Ridge Valley Drive
Owings Mills, Maryland 21117
Telephone 410.908-0442

2019-0235-SPH



2019-0235-SPH

H92-3230-P10C



JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL MOHLER, *Director*
Department of Permits,
Approvals & Inspections

April 11, 2019

Jennifer R. Busse, Esquire
1 W. Pennsylvania Ave Ste 300
Towson MD 21204

RE: Case Number: 2019-0235-SPH, 1145 Concordia Drive

To Whom It May Concern:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on February 13, 2019. This letter is not an approval, but only a **NOTIFICATION**.

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

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

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR/kl

Enclosures

c: People's Counsel
Brent Johnson Concordia Preparatory School, 1145 Concordia Drive Towson MD 21286

4-18-19
10 AM

BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

TO: Mike Mohler
Acting Director, Permits, Approvals and Inspections

DATE: 3/26/2019

FROM: Jeff Mayhew
Acting Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 19-235



INFORMATION:

Property Address: 1145 Concordia Drive
Petitioner: Brent Johnson, Concordia Preparatory School
Zoning: DR 2
Requested Action: Special Hearing

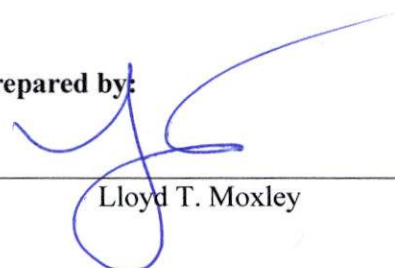
The Department of Planning has reviewed the petition for a special hearing to determine whether or not the Administrative Law Judge should approve the amendment to the Decision and Order in Case 07-202-SPH by incorporating certain provisions from a 2010 settlement agreement so as to clarify the terms and definitions relevant to potential violations.

The petitioner's attorney has shared that there are no outstanding violations on the property.

The Department will concur with the decision of the Administrative Law Judge subsequent to the public hearing.

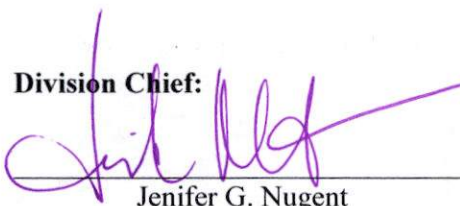
For further information concerning the matters stated herein, please contact Kaylee Justice at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Jenifer G. Nugent

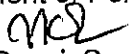
JM/JGN/LTM/

c: Kaylee Justice
Brent Johnson, Concordia Preparatory School
Office of the Administrative Hearings
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Michael Mohler, Acting Director
Department of Permits, Approvals

FROM:  Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For February 25, 2019
Item No. 2019-0227-A, 0229-A, 0230-A, 0232-A, 0233-A,
0234-A, 0235-SPH & 0236-SPH

DATE: March 13, 2019

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

*

*

*

*

*

VKD: cen
cc: file

4/18

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: March 11, 2019

SUBJECT: DEPS Comment for Zoning Item # 2019-0235-SPH
Address 1145 Concordia Drive
(Johnson Property)

Zoning Advisory Committee Meeting of **February 25, 2019.**

X The Department of Environmental Protection and Sustainability has no
comment on the above-referenced zoning item.

Reviewer: Steve Ford

Date: 2/25/19

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

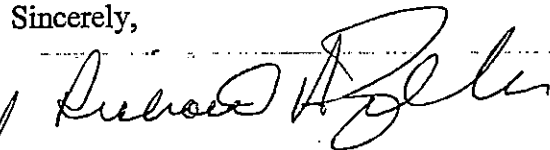
Dear Ms. Lewis:

Thank you for the opportunity to review your referral request on the subject of the Case number referenced below. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Case No. 2019-0235-SPH

*Special Hearing
Brent Johnson, Concordia Preparatory School
1145 Concordia Drive*

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,



Wendy Wolcott, P.L.A.
Metropolitan District Engineer
Maryland Department of Transportation
State Highway Administration
District 4 - Baltimore and Harford Counties

WW/RAZ

CASE NAME Concordia
CASE NUMBER 2019-0235-SPit
DATE 4/18/19

[illegible]

CASE NAME Cinco de Mayo Prep
CASE NUMBER 2019-235-SPH
DATE 4/18/19

NAME

CITY, STATE, ZIP

E - MAIL

[illegible]

4-18-19

CASE NO. 2019-

0235-SPH

C H E C K L I S TComment
ReceivedDepartmentSupport/Oppose/
Conditions/
Comments/
No Comment3/13DEVELOPMENT PLANS REVIEW
(if not received, date e-mail sent _____)N/C3/11DEPS
(if not received, date e-mail sent _____)No Comment

FIRE DEPARTMENT

3/26PLANNING
(if not received, date e-mail sent _____)Comment2/25

STATE HIGHWAY ADMINISTRATION

No Objection

TRAFFIC ENGINEERING

COMMUNITY ASSOCIATION

ADJACENT PROPERTY OWNERS

ZONING VIOLATION

(Case No. _____)

PRIOR ZONING

(Case No. 07-202-SPH)

NEWSPAPER ADVERTISEMENT

Date:

3/29/19SIGN POSTING (1st)

Date:

3/28/19

by

OgleSIGN POSTING (2nd)

Date:

4/16/19

by

Ogle

PEOPLE'S COUNSEL APPEARANCE

Yes



No



PEOPLE'S COUNSEL COMMENT LETTER

Yes



No



Comments, if any: _____

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map		View GroundRent Redemption		View GroundRent Registration	
Tax Exempt:		Special Tax Recapture:			
Exempt Class:		NONE			
Account Identifier:		District - 09 Account Number - 0902004252			
Owner Information					
Owner Name:	BALTIMORE LUTHERAN HIGH SCHOOL ASN INC			Use: Principal Residence:	EXEMPT COMMERCIAL NO
Mailing Address:	1145 CONCORDIA DR BALTIMORE MD 21204			Deed Reference:	/03487/ 00343
Location & Structure Information					
Premises Address:	1145 CONCORDIA DR BALTIMORE MD 21286-1714			Legal Description:	23.241 AC SS CONCORDIA DR SW COR COWPENS RD
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:
0070	0011	0035		0000	
					Assessment Year:
					2017
					Plat No:
					Plat Ref:
Special Tax Areas:			Town:		
			NONE		
			Ad Valorem:		
			Tax Class:		
Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use	
				01	
Stories	Basement	Type	Exterior	Full/Half Bath	Garage
					Last Major Renovation
Value Information					
	Base Value	Value	Phase-in Assessments		
		As of	As of	As of	
		01/01/2017	07/01/2018	07/01/2019	
Land:	1,270,800	1,270,800			
Improvements	2,180,500	2,180,500			
Total:	3,451,300	3,451,300	3,451,300	3,451,300	
Preferential Land:	0			0	
Transfer Information					
Seller:	Date:	Price:		\$0	
Type: NON-ARMS LENGTH OTHER	Deed1: /03487/ 00343	Deed2:			
Seller:	Date:	Price:			
Type:	Deed1:	Deed2:			
Seller:	Date:	Price:			
Type:	Deed1:	Deed2:			
Exemption Information					
Partial Exempt Assessments:	Class	07/01/2018	07/01/2019		
County:	710	3,451,300.00	3,451,300.00		
State:	710	3,451,300.00	3,451,300.00		
Municipal:	710	0.00 0.00	0.00 0.00		
Tax Exempt:		Special Tax Recapture:			
Exempt Class:		NONE			
Homestead Application Information					

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application**Date:**

IN RE: PETITION FOR SPECIAL HEARING *
SW corner of Concordia Drive and Cowpens
Avenue. *
9th Election District
3rd Councilmanic District *
(1145 Concordia Drive)

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY

Michael and Honey Constantine, George M., Jr.
and Ann Sagi Ward, Carl and Edna Rau, *
Christopher Donald and Ashley Bailey Semesky,
Ross E. and Rhonda M. Memphis, and *
Donald Eugene and Mary R. Sloat, for
Baltimore Lutheran High School
Association, Inc.

Legal Owners

CASE NO. 07-202-SPH

* * * * *

CONSENT ORDER AND DISMISSAL

This matter comes before this Deputy Zoning Commissioner on a Petition for Special Hearing for the property located at 1145 Concordia Drive. The Petition was filed by Michael and Honey Constantine, George M., Jr. and Ann Sagi Ward, Carl and Edna Rau, Christopher Donald and Ashley Bailey Semesky, Ross E. and Rhonda M. Memphis and Donald Eugene and Mary R. Sloat, adjacent and nearby property owners. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to 15 questions regarding a tent structure on school property.

1. Whether the Zoning Commissioner/Deputy Zoning Commissioner have the exclusive authority, pursuant to the Baltimore County Charter to interpret the zoning regulations of Baltimore County for defined terms, as well as undefined terms in the zoning regulations?
2. Whether the use at the above property of a tent structure as an accessory building is an accessory use or building, under 1B01.1A (14), as a school facility, or under Section 18, an accessory use or building and whether same, as originally petitioned as a cover for a tennis court, is subject to the height and area regulations provided for buildings, as set forth in BCZR, Section 400?

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6-11-07
Pj

3. Whether the tent-like covering at the above property is exempt, under the provisions of Section BCZR 300.1, for exceptions to height, for cupolas or domes, where such structure has a horizontal area greater than 25% of the roof area of the building?
4. Whether the above tent-like structure constitutes a special exception use for a community building, including a tennis facility, pursuant to BCZR 1B01.1.C, Uses Permitted by Special Exception (for) community buildings, swimming pool, commercial beaches, golf course, country clubs or other similar civic, social, recreational or educational uses, including tennis facilities provided that no tennis facility in a DR1 or DR2 zone shall comprise more than 4 courts?
5. Whether the tent-like structure was properly represented by the property owner to Baltimore County, and/or is subject to residential transition area regulations, under 1B01.1.B.1.b, where the subject property lies adjacent to land zoned DR2, which contains a single family detached, semi-detached, or duplex drawing within 150 feet of the tract boundary?
6. Whether the tent-like structure use is a permitted use referred to in the RTA uses, under BCZR 1B01.1.B.1.d, to include the tent-like structure, as well as the parking area, under the referenced regulation?
7. Whether the tent-like structure in use from the subject property meets the requirements, under the BCZR, as an exception to residential transition, under 1B01.1.B.1.g?
8. Whether the tented structure constitutes, as originally applied for, under the BCZR definitions, a building or tennis facility, or accessory building, or accessory use or structure, or commercial recreational facility, as defined under the BCZR, and as interpreted by the Zoning Commissioner/Deputy Zoning Commissioner?
9. Whether the owner of the subject property is subject to the BCZR requirements of Section 102.2, General Requirements, that no yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use?
10. Whether the owner of the subject property is subject to the BCZR, Section 102.1, that no land shall be used or occupied and no building or structure shall be erected, altered, located or used, except in conformity with these regulations and this shall include any extension of a lawful non-conforming use?
11. Whether the subject property enjoys a valid non-conforming use status for the tented structure or for its parking area?
12. Whether the property owners' lease of its facilities as a proprietary function for remuneration makes the property subject, beginning with the lease of the property, to not qualify as a school related recreational facility, but rather subject to the special exception requirements for a community recreational facility?

13. Whether the subject owner, by applying for this tented structure solely as a covering for its tennis courts misrepresented the application, based on its change in use of the tented structure in its non-compliance with the BCZR generally, under BCZR 102.6, 102.7, 103.1?
14. Whether the Petitioner's use of a tented structure at the subject property is grandfathered under the provisions of the BCZR generally or Section 103.1, where the property owners have represented of Baltimore County that there have been no prior zoning hearings with regard to the subject property?
15. Whether the Petitioner's use of the tented structure on the subject property complies with the requirements of Section 500.1 of the BCZR, all applications to the building engineer for building permits shall be submitted to the Zoning Commissioner for approval by the Commissioner as to zoning, before any permits shall be issued. Before approving any such application, Zoning Commissioner shall be satisfied that the application is in proper form and contains all necessary information, and that the proposed building or use of land, building or structure complies in all respects with the regulations then in effect with respect to zoning, based on the apparent misrepresentation of the proposed use of the tented structure by the subject property owner to Baltimore County, upon application for a building permit?

This case was originally scheduled to be heard on February 14, 2007 but was postponed because of inclement weather. The property had been posted with Notice of Hearing on January 19, 2007, for 15 days prior to the February 14 hearing, in order to notify all interested citizens of the requested zoning relief. This required 15 signs to be posted on the property. In addition, a Notice of Zoning hearing for the February 14 hearing was published in "The Jeffersonian" newspaper on January 30, 2007, to notify any interested persons of the scheduled hearing date. These notices contained all 15 questions asked in the Petition.

The case was rescheduled for hearing on April 18, 2007. By agreement of counsel, the notice provisions were reduced to "numerous questions regarding a tent structure on school property" and the property was reposted on April 7, 2007. In addition notice of the April 18, 2007 hearing was published in the Jeffersonian Newspaper on April 3, 2007.

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6-11-07
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Applicable Law

Section 500.7 of the B.C.Z.R. *Special Hearings*

The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) Comments are made part of the record of this case and contain the following highlights: None.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing were Herbert Maimud, civil engineer who prepared the site plan, as well as Michael and Honey Constantine, George M., Jr. and Ann Sagi Ward, Carl and Edna Rau, Christopher Donald and Ashley Bailey Semesky, Ross E. and Rhonda M. Memphis and Donald Eugene and Mary R. Sloat, Petitioners. Michael P. Tanczyn, Esquire, represented the Petitioners. Also appearing in support of the Petitioners' request were residents of the surrounding community and also representatives of the surrounding community associations. These individuals are too numerous to mention and specifically identify herein. However, all have signed in on the Petitioner's Sign-In Sheets. Reference is made to the sign-in sheets which are contained within the Hearing Officer's file.

Appearing in opposition to the Petitioners' request were persons affiliated with the school and residents of the surrounding communities and also representatives of the surrounding community associations. These individuals are too numerous to mention to specifically identify herein. However, all have signed in on the Citizen and Protestant Sign-In Sheets. Reference is made to the sign-in sheets which are

contained within the Hearing Officer's file. Arnold Jablon Esquire, represented the respondents. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

The subject property contains 23.5 acres +/- and is zoned DR 2 and contains the Baltimore Lutheran High School and associated buildings. The file reflects community adjacent to the school concerns regarding use of a large canopy which the school erected over its tennis courts. Apparently the canopy was a symbol of other disputes between the school and the community.

At the initial hearing, Mr. Jablon presented an oral Motion to Dismiss the Petition on several grounds including his assertion that a valid permit had been issued by the County to allow the canopy to be erected. He indicated that this Commission had no legal authority to overrule the Director of Permits and Development Management issuance of a building permit for same. In response Mr. Tanczyn reviewed this Commission's history of accepting such Petitions, and applicable appellate cases relating to this procedure. However thereafter the Parties entered into settlement discussions and jointly requested that the case be continued to allow more time for the Parties to resolve their disputes.

On May 11, 2007 the Parties by counsel jointly presented a letter of agreement dated May 10, 2007 which provides for certain understandings between the Parties including installation of screening on School property, limitations on lighting and use of athletic fields, etc., which was accepted a Joint Exhibit 1. In addition the Parties jointly requested that the terms of the agreement be enforceable by the County Code Enforcement Office and sent a copy to the Office of Law for review. Finally the Petitioners agreed to dismiss the Petition and the Respondents agreed there would be no need for this Commission to rule upon the Motion to Dismiss.

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6-11-07
PZ

Case No.:

2019-0235-SPH

Exhibit Sheet

4-19-19

Sen

Petitioner/Developer

Protestant

5-21-19

Sen

No. 1	Order # 07-202-SPH	
No. 2	Settlement Agt. + release	
No. 3	CBA Order 19-003	
No. 4	Summary of Consent Order	
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

IN RE: PETITION FOR SPECIAL HEARING *
SW corner of Concordia Drive and Cowpens
Avenue. *
9th Election District
3rd Councilmanic District *
(1145 Concordia Drive)

BEFORE THE
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OF BALTIMORE COUNTY

Michael and Honey Constantine, George M., Jr.
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Christopher Donald and Ashley Bailey Semesky,
Ross E. and Rhonda M. Memphis, and *
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Legal Owners

* CASE NO. 07-202-SPH

* * * * *

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PETITIONER' S

EXHIBIT NO. 1

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PZ

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NOT RECORDED FOR FILED
6-11-07
[Signature]

Applicable Law

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The Zoning Advisory Committee (ZAC) Comments are made part of the record of this case and contain the following highlights: None.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing were Herbert Malmud, civil engineer who prepared the site plan, as well as Michael and Honey Constantine, George M., Jr. and Ann Sagi Ward, Carl and Edna Rau, Christopher Donald and Ashley Bailey Semesky, Ross E. and Rhonda M. Memphis and Donald Eugene and Mary R. Sloat, Petitioners. Michael P. Tanczyn, Esquire, represented the Petitioners. Also appearing in support of the Petitioners' request were residents of the surrounding community and also representatives of the surrounding community associations. These individuals are too numerous to mention and specifically identify herein. However, all have signed in on the Petitioner's Sign-In Sheets. Reference is made to the sign-in sheets which are contained within the Hearing Officer's file.

Appearing in opposition to the Petitioners' request were persons affiliated with the school and residents of the surrounding communities and also representatives of the surrounding community associations. These individuals are too numerous to mention to specifically identify herein. However, all have signed in on the Citizen and Protestant Sign-In Sheets. Reference is made to the sign-in sheets which are

contained within the Hearing Officer's file. Arnold Jablon Esquire, represented the respondents. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

The subject property contains 23.5 acres +/- and is zoned DR 2 and contains the Baltimore Lutheran High School and associated buildings. The file reflects community adjacent to the school concerns regarding use of a large canopy which the school erected over its tennis courts. Apparently the canopy was a symbol of other disputes between the school and the community.

At the initial hearing, Mr. Jablon presented an oral Motion to Dismiss the Petition on several grounds including his assertion that a valid permit had been issued by the County to allow the canopy to be erected. He indicated that this Commission had no legal authority to overrule the Director of Permits and Development Management issuance of a building permit for same. In response Mr. Tanczyn reviewed this Commission's history of accepting such Petitions, and applicable appellate cases relating to this procedure. However thereafter the Parties entered into settlement discussions and jointly requested that the case be continued to allow more time for the Parties to resolve their disputes.

On May 11, 2007 the Parties by counsel jointly presented a letter of agreement dated May 10, 2007 which provides for certain understandings between the Parties including installation of screening on School property, limitations on lighting and use of athletic fields, etc., which was accepted a Joint Exhibit 1. In addition the Parties jointly requested that the terms of the agreement be enforceable by the County Code Enforcement Office and sent a copy to the Office of Law for review. Finally the Petitioners agreed to dismiss the Petition and the Respondents agreed there would be no need for this Commission to rule upon the Motion to Dismiss.

Findings of Fact and Conclusions of Law

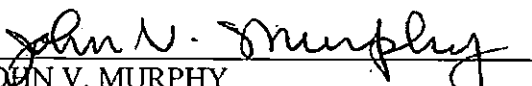
I find the agreement between the Parties most reasonable as it will enhance the health, safety and welfare of the community including the School. Therefore I will incorporate the agreement of May 10, 2007 into the Order in this case and dismiss the Petition without prejudice having been withdrawn by the Petitioners.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioner, I find that the Petitioners' request for special hearing should be dismissed with conditions.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 06th day of June 2007, that the Petitioners' request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) involving 15 questions regarding a tent structure on school property is hereby DISMISSED without prejudice subject to the following conditions:

1. The Parties agreement dated May 10, 2007 and accepted as Joint exhibit 1 is hereby incorporated into the Order of this case; and
2. The terms and conditions of the May 10, 2007 Agreement shall be enforceable by Baltimore County.

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


JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

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6-11-07
VM:pz

SCARLETT & CROLL, P.A.

ATTORNEYS AT LAW
SUITE 600
201 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201-4110
(410) 468-3100
TELEFAX (410) 392-4026

May 10, 2007

VIRGINIA OFFICE:
315 KING STREET
SUITE 400
ALEXANDRIA, VIRGINIA 22314

**VIA ELECTRONIC MAIL (mptlaw@verizon.net)
AND HAND DELIVERY**

Michael P. Tanczyn, Esquire
606 Baltimore Ave., Ste. 106
Towson, MD 21204

Re: Baltimore Lutheran School
1145 Concordia Dr.
Towson, MD 21286

Dear Mike:

This letter constitutes a "letter of intent" with regard to the resolution by and between Baltimore Lutheran High School Association, Inc. ("BLS"), and Michael Constantine, Honey Constantine, George Ward, Ann Ward, Carl Rau, Edna Rau, Christopher Semesky, Ashley Semesky, Ross Memphis, Rhonda Memphis, Donald Sloat and Mary Sloat (collectively, the "Zoning Litigants") concerning certain disputes. By signing this letter in the spaces provided below¹, the parties acknowledge the following terms and conditions of their settlement agreement, which terms and conditions shall be incorporated into Deputy Zoning Commissioner Murphy's closing memorandum regarding the pending Petition for Special Hearing proceeding:

Zoning Litigants will agree to:

- A. request that www.baltimorelutheraninfo.org website be taken offline (or at least send letter denouncing it and/or indicating that matters are being resolved, there is no further need for website, and website is not endorsed)
- B. dismiss pending zoning litigation with consent agreement incorporated into Deputy Zoning Commissioner's order of dismissal
- C. forbear from filing threatened nuisance and diminished value lawsuits
- D. acknowledge that BLS has plans to build chapel/fine arts building

BLS will agree to:

- E. install metal (green vinyl-covered chain link) 6 ft. high fence running along Bridges' property (approx. 150 ft.) and parallel to Concordia Dr. from Bridges' property to main entrance driveway (approx. 1,100 ft.) prior to 2007/2008 academic year, present service driveway to be blocked by either said fence line or, if any required approval of alternate access cannot be obtained or if alternate access is not economically feasible, a locked gate

¹ Facsimile signatures shall be considered as if they were original signatures and, if executed simultaneously in counterparts, each counterpart shall be deemed an original, but all, together, shall constitute one and the same instrument.

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6-11-07

Joint #1

Michael P. Tanczyn, Esquire
Douglas W. Desmarais, Esquire
May 10, 2007
Page 2

- F. plant staggered row of 7 ft. high Leyland Cypress trees running parallel to Concordia Dr. from Bridges' property to main entrance driveway, between fence and Concordia Dr. by end of Spring 2008 planting season
- G. plant row of 7 ft. high Leyland Cypress trees atop berm between upper and lower playing fields (approx. 400 ft.) by end of Spring 2008 planting season
- H. sign written agreement that BLS will not illuminate outdoor playing fields for 15 years
- I. install shields on, or redirect, exterior lights (approx. 3)
- J. no use of outdoor playing fields on Sundays during Summer
- K. no non-BLS use of outdoor playing fields on Sundays during academic year
- L. no BLS use of outdoor playing fields on Sundays except between 1:00 p.m. and 5:00 p.m.
- M. no use of outdoor playing fields before 10:00 a.m. on Saturdays
- N. no use of outdoor playing fields before 8:00 a.m. on weekdays during Summer
- O. end use of outdoor playing fields at dusk
- P. provide personnel to monitor indoor and outdoor athletic facility use
- Q. end non-BLS use of indoor athletic facilities by 9:00 p.m. (with facility vacated, and non-security lights turned off, by 9:15 p.m.) on weekdays and Saturdays
- R. permit non-BLS use of indoor athletic facilities no earlier than 9:00 a.m. on Saturdays
- S. permit use of indoor athletic facilities no earlier than 1:00 p.m. on Sundays
- T. end use of indoor athletic facilities by 7:00 p.m. (with facility vacated, and non-security lights turned off, by 7:15 p.m.) on Sundays

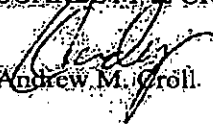
The parties jointly will agree to:

- U. Negotiate in good faith with each other in the event any of them seeks to modify any of the foregoing terms

Your continued courtesy and cooperation in this matter are greatly appreciated.

Very truly yours,

SCARLETT & CROLL, P.A.


Andrew M. Croll

cc: Arnold E. Jablon, Esquire

FORM RECEIVED FOR FILING
6-11-07
PB

Michael P. Tanczyn, Esquire
Douglas W. Desmarais, Esquire
May 10, 2007
Page 3

UNDERSTOOD AND AGREED:

Michael Constantine
MICHAEL CONSTANTINE

Honey Constantine
HONEY CONSTANTINE

George M. Ward
GEORGE WARD

Ann Ward
ANN WARD

Carl W. Rau
CARL RAU

Edna Rau
EDNA RAU

Christopher Semesky
CHRISTOPHER SEMESKY

Ashley Semesky
ASHLEY SEMESKY

Ross Memphis
ROSS MEMPHIS

Rhonda Memphis
RHONDA MEMPHIS

Donald Sloat
DONALD SLOAT

Mary Sloat
MARY SLOAT

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6-11-07
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Michael P. Tanczyn, Esquire
Douglas W. Desmarais, Esquire
May 10, 2007
Page 4

BALTIMORE LUTHERAN HIGH
SCHOOL ASSOCIATION, INC.

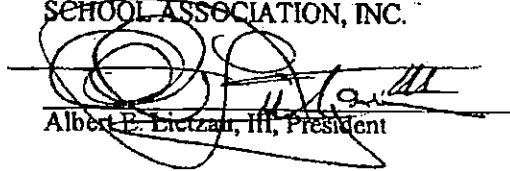
By: Albert E. Lietzau, III, President

FROM RECEIVED FOR FILE
6-11-07
PB

Michael P. Tanczyn, Esquire
Douglas W. Desmarais, Esquire
May 10, 2007
Page 4

BALTIMORE LUTHERAN HIGH
SCHOOL ASSOCIATION, INC.

By:


Albert E. Lietzan, III, President

ORDER RECEIVED FOR FILING



6-11-07

pb

SETTLEMENT AGREEMENT AND RELEASE

RECITALS

THIS SETTLEMENT AGREEMENT AND RELEASE (hereafter referred to as "RELEASE") is herein entered into by and between MICHAEL CONSTANTINE, DOLORES CONSTANTINE, DONALD SLOAT, MARY SLOAT, ROSS MEMPHIS, and RHONDA MEMPHIS, and all of their heirs, agents, and representatives (hereinafter collectively referred to as "the CHATTERLEIGH RESIDENTS" or "the RELEASORS"), on the one part, and BALTIMORE LUTHERAN HIGH SCHOOL ASSOCIATION, INC., and all of its predecessors and successors (hereinafter referred to as "BLS"), on the other part. The CHATTERLEIGH RESIDENTS and BLS are collectively referred to as "the PARTIES."

WHEREAS, the PARTIES have been engaged in a dispute or controversy in connection with the use and/or rental of BLS property and facilities ("the CLAIM"), which led to the execution of a Letter Agreement between the PARTIES dated May 10, 2007 ("the May 10, 2007 Agreement"); and

WHEREAS, the CHATTERLEIGH RESIDENTS filed a civil lawsuit in the Circuit Court for Baltimore County, Maryland, styled *Michael Constantine, et al. v. Baltimore Lutheran High School Association, Inc.*, Case No. 03-C-09-001367, regarding the CLAIM and the May 10, 2007 Agreement (hereinafter referred to as the "LITIGATION"); and

WHEREAS, the RELEASORS desire to settle, discharge and terminate all claims, controversies and potential claims and controversies which may now exist in their favor, whether known or unknown, against BLS without the resort to further litigation, and in particular, but not by way of limitation, any and all claims, suits, injuries or damages of any nature whatsoever, in

PETITIONER'S

EXHIBIT NO.

2

any way arising out of, or in any way related to the CLAIM, the May 10, 2007 Agreement, and/or the LITIGATION, upon the terms and conditions set forth herein.

1. **Incorporation of Recitals.** The Recitals to this instrument are incorporated by reference herein.

2. **Effective Date of This Instrument.** This Instrument will be effective on the date when it is executed by the PARTIES.

3. **Settlement of All Claims.** By executing this document, the RELEASORS expressly agree, declare and acknowledge that it is their intention to resolve all disputes and potential disputes which may now exist in their favor or on their behalf, whether known or unknown, against BLS, including but not limited to those disputes and claims set forth in the LITIGATION.

4. **General Release.** In consideration of [REDACTED]
[REDACTED]
[REDACTED] the mutual promises and agreements of the parties contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the RELEASORS do remise, release and forever discharge, and do for their predecessors and successors, agents, insureds, servants, employees, heirs, executors, administrators, trustees, and assigns, remise, release and forever discharge all persons or entities known or unknown who are or could be liable to the RELEASORS in connection with BLS' use and/or rental of its property or facilities or any claimed damages arising from the use or rental of BLS property or facilities, including, but not limited to, BLS, Baltimore Lutheran School Holdings, LLC, and all of their respective agents, servants, employees, shareholders, attorneys, stockholders, officers, directors, members, partners, associates, insurers, past and present, and all of their predecessors and

successors, and all of their executors, administrators and/or assigns (hereafter collectively referred to as the "RELEASED PARTIES"), of and from all and every manner of acts and actions, cause and causes of actions, suits, arbitrations, mediations, conciliations, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever in law or in equity, whether said dispute could be brought in a civil court of law or equity or before an administrative or governmental department or agency, which against the RELEASED PARTIES the RELEASORS ever had, now have, or their predecessors and successors, heirs, executors, administrators, assigns, related entities, persons and/or entities hereafter can, shall or may have, from the beginning of the world to the date of this RELEASE, whether known or unknown, suspected or unsuspected, fixed or contingent, including, but not limited to, all allegations that were or could have been asserted in connection with the CLAIM, the May 10, 2007 Agreement, and/or the LITIGATION.

5. May 10, 2007 Agreement Modified. In consideration of the terms, conditions and covenants set forth herein, the PARTIES agree that the May 10, 2007 Agreement shall be modified as follows:

a. Installation of Permanent Fence and Gates

BLS agrees that it will replace that portion of the fence which is temporary in nature at the Upper Field, depicted in Photograph 17 of Deposition Exhibit 11 which was first introduced during the deposition of Ross Memphis in the Litigation, with fencing consistent with the currently existing fencing.

BLS further agrees that it will install a gate in the fence along Concordia Drive to be located near its softball field, which is part of the Upper Field. This gate will be a 6' high by 16'

wide double swing gate that will include either a key-lock or padlock. BLS shall use this gate only for the ingress and egress of maintenance, construction, and/or emergency equipment and personnel. This gate shall remain locked when not in use.

BLS agrees that it will install a gate in the fence along the shared property line with 1127 Concordia Drive, Towson, MD 21286 (hereinafter, "the Bridges Property"). The gate will be a 6' high by 5' wide single swing gate that will include either a key-lock or padlock. BLS shall use this gate only for the ingress and egress of maintenance, construction and/or emergency equipment and personnel. BLS will, in the normal course of business, ensure that the gate will be locked at all other times with the exception of the ingress or egress of the Bridges family. The Bridges will have a key to this gate and access to use said gate and BLS property via said gate.

BLS agrees to keep its service gate locked when not being used by BLS or its rentees or visitors consistent with this and the May 10, 2007 Agreement.

Upon completion of the terms contained in Paragraph (5)(a) as set forth above, the PARTIES agree that BLS will be in full compliance with Paragraph E of the May 10, 2007 Agreement.

b. Planting of Ten (10) "Green Giant" Trees

BLS agrees that ten (10) 7 foot tall "Green Giant" trees will be planted on its property along Concordia Drive. The Chatterleigh Residents will pay one half of the cost for said plantings, including the cost of the trees, installation, and labor. BLS will pay the other half of the cost for said plantings, including the cost of the trees, installation and labor. Payment shall be made directly to the landscaper and/or other person(s) hired to plant the trees upon presentation. BLS has received an estimate, including a one-year warranty, totaling \$6,384.00, which all parties have approved. These trees shall be planted by April 1, 2010, unless planting of the trees becomes impractical as a

result of delays in the installation of the permanent fence and/or gates required by Paragraph (5)(a) of this RELEASE.

The location of said plantings are generally located in the areas along Concordia Drive near the temporary portion of the fence referenced in Paragraph (5)(a) above and, in addition, across the street from the Memphis home (1136 Concordia Drive, Towson, Maryland 21286). BLS' landscaper has marked proposed locations for the ten "Green Giant" trees in the two aforementioned areas. The PARTIES have had the opportunity to review these markings and have approved the location of the "Green Giant" trees.

The monetary contribution by the Chatterleigh Residents does not create or otherwise impart upon them any rights or interest in the trees or landscaping at BLS, nor does it create any right in the Chatterleigh Residents to demand or request further landscaping or plantings at BLS in the future.

BLS will not seek any financial contributions from the Chatterleigh Residents for any costs associated with maintenance of the trees.

Upon completion of the terms contained in Paragraph (5)(b) as set forth above, the PARTIES agree that BLS will be in full compliance with Paragraphs F and G of the May 10, 2007 Agreement.

c. "Summer" defined

The PARTIES agree that the word "summer" as used in Paragraph J of the May 10, 2007 Agreement is defined as the time of the year in which BLS is not in its regular academic school year, excluding any school breaks in the regular academic school year.

d. "Academic Year" defined

The PARTIES further agree that the phrase "academic year" as used in Paragraph K of the May 10, 2007 Agreement is defined as the time of the year in which BLS is in its regular academic school year, excluding any school breaks in the regular academic school year.

e. "Use" defined

The PARTIES agree that the phrase "use" as used in Paragraphs J - T of the May 10, 2007 Agreement does not include field preparation or clean-up, or gatherings of persons in anticipation or conclusion of games or other scheduled activities. The PARTIES further agree that the word "use" does not include unauthorized use of BLS property by third-parties. Subject to Paragraph 6 below, the Chatterleigh Residents further acknowledge and agree that BLS is not liable or responsible for the conduct or behavior of renters of its facilities or their participants, guests and visitors, which is in violation of its Rental Agreement or applicable laws or regulations; however, BLS shall take reasonable measures to enforce the terms of its Rental Agreement.

f. "Dusk" defined

The PARTIES agree that the word "dusk" as used in Paragraph O of the May 10, 2007 Agreement shall be defined as the later of the time that the BLS property security lighting comes on or "sunset" as denoted by weather.com. In the event that weather.com shall cease to exist, the Parties agree that weather.com in the preceding sentence will be replaced by a reputable meteorological website.

g. Field Lights

As set forth in paragraph H of the May 10, 2007 Agreement, BLS will not illuminate its outdoor playing fields for fifteen (15) years from May 10, 2007.

6. Conduct Not Giving Rise to a Claim

The PARTIES agree that any complaints or grievances resulting or arising from BLS, its use of its facilities (indoor or outdoor), or the use of BLS facilities or property by renters, guests, or visitors, which is otherwise in accordance with the time and/or day restrictions of Paragraphs J - T of the May 10, 2007 Agreement, including as modified herein, do not violate the May 10, 2007 Agreement, do not violate this RELEASE, and do not constitute a nuisance or otherwise support claims for relief or damages (equitable, legal, monetary, or otherwise) in a civil lawsuit, or before an administrative or governmental authority.

The PARTIES agree that any and all claims, complaints, grievances, disputes, and/or demands raised in any fashion in the LITIGATION, including, but not limited to, Plaintiffs' Complaint, the "BLS Historical File," Plaintiffs' written discovery and/or deposition testimony, or claims, complaints, grievances, disputes or demands of a substantively similar nature to those raised, that are not otherwise violations of the May 10, 2007 Agreement and/or this Agreement, shall not form the basis or otherwise contribute to any future complaints, claims, grievances, disputes or demands for relief or damages in a civil lawsuit or before an administrative or governmental authority.

7. Costs and Attorney's Fees. With the sole exception of the equally shared cost of the ten (10) "Green Giant" trees referenced in Paragraph (5)(b), each party hereto shall bear all attorney's fees, costs and disbursements arising from the actions of its own counsel in connection with the LITIGATION, this Settlement Agreement and the matters and documents referred to herein, the filing of a Stipulation of Dismissal with Prejudice, and all related matters.

8. Dismissal With Prejudice. Concurrently with the execution of this RELEASE, counsel for all PARTIES to this action will execute a Stipulation of Dismissal with Prejudice which

will be filed in the Circuit Court for Baltimore County in Case Number 03-C-09-001367 (the LITIGATION).

9. **Representation of Comprehension of Document.** In entering into this Settlement Agreement, the RELEASORS acknowledge that they have relied upon the advice of their attorneys, who are the attorneys of their own choice, concerning the legal and income tax consequences of this RELEASE; that the terms of this RELEASE have been completely read and explained to the Plaintiffs by their attorneys; that they are not relying on any representations of the RELEASED PARTIES or their attorneys not contained herein in writing; and that the terms of this RELEASE are fully understood and voluntarily accepted by the RELEASORS.

10. **Warranty of Capacity to Execute Agreement.** The RELEASORS represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this RELEASE, except as otherwise set forth herein; that the RELEASORS have the sole right and exclusive authority to execute the RELEASE; and that the RELEASORS have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this RELEASE.

11. **Confidentiality.** The RELEASORS agree that neither they nor their attorneys, agents, or representatives, including family members, shall reveal to anyone, other than as may be mutually agreed to in writing, any of the terms of this RELEASE or any of the terms and conditions hereunder, including the fact that there has been a settlement. The PARTIES agree that if asked the RELEASORS may state "the LITIGATION has been resolved" without breaching this agreement. Any disclosure beyond and/or other than that specifically agreed to

herein shall be deemed a material breach of this RELEASE and the RELEASED PARTIES shall have available to them all of the remedies of law or equity to satisfy their loss.

12. **Applicable Law.** Regardless of where this instrument is executed, it shall be construed and interpreted in accordance with the laws of the State of Maryland. In no event, however, will resort be had to any presumption or other rule of law requiring construction against the party who drafted or caused this instrument to be drafted.

13. **Modification.** This instrument may not be modified or changed orally, but only by an agreement in writing signed by the party against whom enforcement of any such modification or change is or may be sought.

14. **Cooperation.** The PARTIES agree to cooperate fully and execute any and all supplementary documents and to take any and all additional action that may be necessary or appropriate to give full force and effect to the basic terms and intent of this RELEASE, and which are not inconsistent with the terms set forth herein.

15. **Entire Agreement and Successors-In-Interest.** This RELEASE, including the May 10, 2007 Agreement, contains the entire agreement between the RELEASORS and the RELEASED PARTIES with regard to the matters set forth herein regardless of the adequacy of the compensation and the parties have no obligation to do any act other than as set forth herein.

16. **No Admission/Denial of Liability.** BLS, by reason of agreeing to this compromise and agreement, denies liability of any and every sort and states it has made no agreement to do or omit to do any act or thing not set forth herein or the May 10, 2007 Agreement. BLS further states that this Agreement is entered as a compromise in order to avoid expense and to terminate all controversy and/or claims for injuries or damages of whatsoever

nature known or unknown, including further developments thereof in any way growing out of or connected with the dispute.

17. **Counterparts.** This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed one and the same agreement.

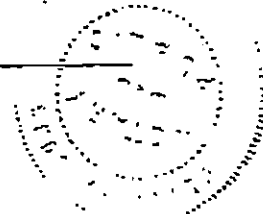
IN WITNESS WHEREOF, the hands and seals of the parties hereto.

WITNESS:

[Signature]

[Signature] (SEAL)
MICHAEL CONSTANTINE

DATE: 3/11/10



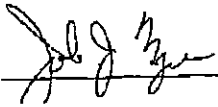
STATE OF MARYLAND, CITY/COUNTY OF Baltimore To Wit:

I HEREBY CERTIFY that on this 11th day of March, 2010, before me, the subscriber, a Notary Public of the City/County and State aforesaid, personally appeared, MICHAEL CONSTANTINE, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires: 4-1-2010



Dolores Constantine (SEAL)
DOLORES CONSTANTINE

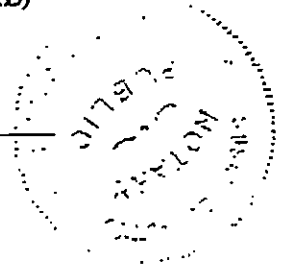
DATE: 3-11-10STATE OF MARYLAND, CITY/COUNTY OF Baltimore To Wit:

I HEREBY CERTIFY that on this 11th day of March, 2010, before me, the subscriber, a Notary Public of the City/County and State aforesaid, personally appeared, DOLORES CONSTANTINE, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Diane Parsas
Notary Public

My Commission Expires: 4-1-2010

Susan E. SuttonDonald Sloat (SEAL)
DONALD SLOATDATE: 3/12/10STATE OF MARYLAND, CITY/COUNTY OF Baltimore To Wit:

I HEREBY CERTIFY that on this 12th day of March, 2010, before me, the subscriber, a Notary Public of the City/County and State aforesaid, personally appeared, DONALD SLOAT, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

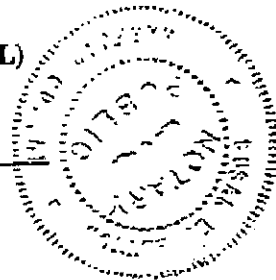
Susan E. Sutton
Notary PublicMy Commission Expires: 10/23/2011

Susan E. SuttonMary Sloat

(SEAL)

MARY SLOAT

DATE:

3/12/10STATE OF MARYLAND, CITY/COUNTY OF Baltimore To Wit:

I HEREBY CERTIFY that on this 12th day of March, 2010, before me, the subscriber, a Notary Public of the City/County and State aforesaid, personally appeared, MARY SLOAT, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed same for the purposes therein contained.

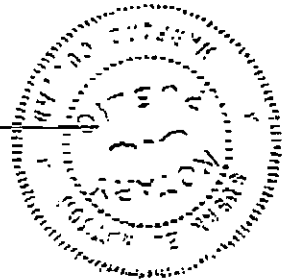
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Susan E. Sutton
Notary PublicMy Commission Expires: 10/23/2011

Susan E. Tuttle

Ross Memphis (SEAL)
ROSS MEMPHIS

DATE: 03/12/10



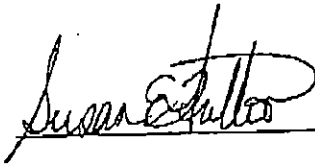
STATE OF MARYLAND, CITY/COUNTY OF Baltimore To Wit:

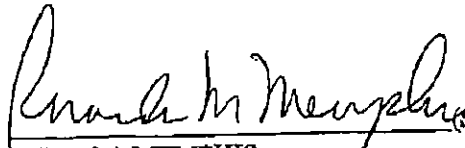
I HEREBY CERTIFY that on this 12th day of March, 2010, before me, the subscriber, a Notary Public of the City/County and State aforesaid, personally appeared, ROSS MEMPHIS, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Susan E. Tuttle
Notary Public

My Commission Expires: 10/23/2011

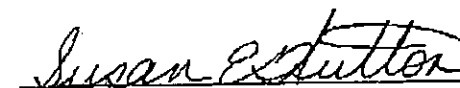


SUSAN ESTUTTEN

RHONDA MEMPHIS (SEAL)DATE: 3-12-10STATE OF MARYLAND, CITY/COUNTY OF Baltimore To Wit:

I HEREBY CERTIFY that on this 12th day of March, 2010, before me, the subscriber, a Notary Public of the City/County and State aforesaid, personally appeared, RHONDA MEMPHIS, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary PublicMy Commission Expires: 10/23/2011

[Signature]

[Signature] (SEAL)
BALTIMORE LUTHERAN HIGH SCHOOL
ASSOCIATION, INC.
By: *John Barth*
Title: *President, BLHSA*

DATE: *3/10/10*

STATE OF MARYLAND, CITY/COUNTY OF *Baltimore* To Wit:

I HEREBY CERTIFY that on this *10th* day of *March*, 2010, before me, the subscriber, a Notary Public of the City/County and State aforesaid, personally appeared, *John Barth*, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that (s)he executed same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

ALEXANDER KEAY
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires March 23, 2011

[Signature]
Notary Public

My Commission Expires: *23 March 2011*



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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October 16, 2018

Marissa L. Merrick, Assistant County Attorney
Department of Permits, Approvals & Inspections
111 W. Chesapeake Avenue, Suite 105
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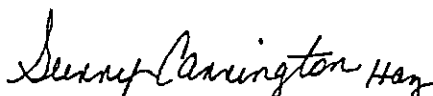
RE: *In the Matter of: Baltimore Lutheran High School Association, Inc.*
Case No.: CBA-19-003

Dear Counsel:

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

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

Very truly yours,


Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Brent Johnson, Headmaster/Baltimore Lutheran High School Association, Inc.
Lawrence M. Stahl, Managing Administrative Law Judge
Lionel van Dommelen, Chief/Code Enforcement
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

PETITIONER'S

EXHIBIT NO.

3

IN THE MATTER OF:

BALTIMORE LUTHERAN HIGH
SCHOOL ASSOCIATION, INC.
1145 Concordia Drive
Towson, MD 21286

Civil Citation No.: CC1804606

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA 19-003

* * * * *

OPINION

This matter comes before the Board of Appeals following appeal by Appellant Baltimore Lutheran High School Association, Inc. of the Final Order, dated July 23, 2018, in which the Administrative Law Judge ("ALJ"), following a hearing on a Code Inspections and Enforcement Citation (No. CC1804606), found against Appellant and in favor of Baltimore County. More particularly, the ALJ found Appellant in violation of the June 2007 Zoning Order, imposing a penalty of \$1,500.00, which was suspended, and imposed additional conditions upon Appellant. For the reasons set forth below:

- (1) The full Board concludes that the underlying citation was not defective on its face;
- (2) The Board majority affirms the finding of two of the violations, namely as to regular ongoing use of outdoor playing fields after dusk, February-April 2018 (Paragraph (O) of the 2007 Zoning Order); and (3) failure to provide personnel to monitor outdoors athletic facilities use and enforce time restrictions (Paragraph (P) of the 2007 Zoning Order);
- (3) The Board majority remands this matter to the ALJ for supplementation of the Final Order as to:

(a) the violation of non-BLS periodic use of outdoor playing fields on Sundays during academic year, March-April 2018 (Paragraph (K) of the 2007 Zoning Order); and

(b) the civil penalty; and

(4) The full Board reverses the ALJ's Final Order as to the conditions imposed therein.

Factual Background

Appellant owns property at the above-captioned address and operates a middle school and high school at that location under the name "Concordia Preparatory School" (formerly known as "Baltimore Lutheran School" ("BLS")). Petitioner's property sits adjacent to a residential area. In 2007, Appellant sought a building permit for an athletic facility. Various neighbors filed a petition for a special hearing in opposition to the proposed athletic facility. On May 10, 2007, the neighbors at issue and Appellant entered into a written agreement ("2007 Agreement"), embodied in a letter, to resolve the zoning petition and opposition to the proposed athletic facility.

The 2007 Agreement resolved numerous issues, including but not limited to: Appellant's use of outdoor playing fields on Sundays except during the hours of 1:00 pm-5:00 pm; the use of outdoor playing fields at dusk; and the presence of personnel to monitor indoor and outdoor athletic facility use. The 2007 Agreement was subsequently presented to Baltimore County Deputy Zoning Commissioner John V. Murphy, who incorporated the 2007 Agreement into his June 12, 2007 Order disposing of the matter, thereby converting the 2007 Agreement into a Zoning Order, rendering it enforceable by Baltimore County.

However, as originally noted in 1786, the best laid plans of mice and men often go awry.¹ Though comprehensive and detailed about various actions and omissions relating to the athletic facility, the peace and harmony brought by the 2007 Agreement (now Zoning Order) was short lived.

In February 2009, some of the neighbors who filed the earlier petition for special hearing and who signed the 2007 Agreement, but not all, filed a lawsuit in the Circuit Court for Baltimore County, asserting claims against Appellant for nuisance, injunctive relief, trespass, and breach of contract (namely the 2007 Agreement).² On March 2010, the parties again found accord, this time reflected in the March 12, 2010 "Settlement Agreement and Release," ("2010 Agreement") in which the parties settled the Circuit Court case claims. Included as part of the 2010 Agreement, the parties modified the 2007 Agreement with respect, as is relevant herein, to provide expanded definitions of various words, including "use" and "dusk," and identified certain conduct as that which would not give rise to a claim. The Circuit Court case was dismissed with prejudice. BLS did not seek zoning relief to effectuate the 2010 Agreement, such as amending the 2007 Zoning Order.

In 2018, Donald Sloat, a signatory to both the 2007 Agreement and 2010 Agreement, witnessed certain conduct at Appellant's property he believed to be, at least, one or more violations of the 2007 Zoning Order. Mr. Sloat created a log of activity at Appellant's property, identifying what he believed may violate the Zoning Order.³ In mid-April 2018, Mr. Sloat began calling County Code Enforcement.

¹ From Robert Burns' poem *To A Mouse* (1786), original language modernized.

² Michael Constantine, et al. v. Baltimore Lutheran High School Association, Inc., Case No. 03-C-09-001367

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Case No.: CBA-19-003

On May 7, 2018, the County Inspector issued Citation No. CC1804606 to Appellant for violating the 2007 Zoning Order, by: (1) non-BLS periodic use of outdoor playing fields on Sundays during academic year, March-April 2018; (2) regular ongoing use of outdoor playing fields after dusk, February-April 2018; and (3) failure to provide personnel to monitor outdoor athletic facilities use and enforce time restrictions. The civil penalty for these violations amounted to \$8,800.00.

On June 20, 2018, the ALJ held a code enforcement hearing on the citation. Attorney Andrew Croll, who had represented Appellant in the 2007 zoning matter, signed the letter that was the 2007 Agreement, and represented Appellant in 2010, appeared on behalf of Appellant again. The County was represented by Assistant County Attorney Marissa L. Merrick. The County called Mr. Sloat as a witness to identify and address his activity log.

At the conclusion of the hearing, the ALJ found in favor of the County. In the July 23, 2018 Order, the ALJ noted the modified definitions of "use" and "dusk" as identified in the 2010 Agreement, as well as the provision identifying certain conduct that was not a violation of the 2010 Agreement. The July 23, 2018 Order states "...Baltimore County has proven by a preponderance of the evidence that [Appellant] is in violation of the ordinances or regulations set forth in the civil Citation, on one or more days." The ALJ imposed and suspended a \$1,500.00 civil penalty. The ALJ also ordered the imposition of new conditions upon Appellant: (1) to immediately cease all non-permitted authorized use of the outdoor playing fields and shall lock the soccer goal posts after each authorized use of the playing fields; (2) to provide a schedule of

³ Mr. Sloat's log notes a "Code Enforcement Hearing" occurring on November 15, 2017 and has an entry on November 22, 2017, identifying a potential violation. The remainder of the entries occur in 2018, with increasing frequency beginning in mid-March and running through the end of April.

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outdoor playing fields to the designated point of contact, to be periodically updated as required; and (3) to maintain a log to denote that time at which each authorized use of the playing field is ceased and the goal posts are locked and shall provide a copy for inspection by the County upon request.

Appellant appealed to the Board of Appeals, enumerating several issues in its Petition:

- (a) the citation is facially defective;
- (b) there was no evidence of actionable non-BLS periodic use of outdoor playing fields on Sundays during the academic year, March-April 2018;
- (c) there was no evidence of actionable regular ongoing use of the outdoor playing fields after dusk, February-April 2018;
- (d) there is no evidence of actionable failure to provide personnel to monitor outdoor athletic facilities use and enforce time restrictions;
- (e) the civil penalty imposed bears no obvious relation to the purported violations; and
- (f) the directives issued constitute equitable relief, as opposed to reasonable conditions as to the time and manner of correction.

On September 27, 2018, the Board held an on the record appeal hearing. Appellant was again represented by Mr. Croll. Likewise, Ms. Merrick again represented the County.

Decision

At the outset, it is abundantly clear the Board needs to delineate the differences between enforcement matters arising under Article 3, Title 6 of the Baltimore County Code ("BCC") and those arising under Article 32, Title 3, Subtitle 6 of the BCC. It is apparent from Appellant's Petition and argument, as well as the County's citation and argument, that the parties conflate the two enforcement methods.

The Baltimore County Code establishes the duties of each County department with respect to land use regulation, zoning, and related matters, and as is relevant herein, the Department of Permits, Approvals, and Inspections ("Department" or "PAI") administers and enforces laws, maps, and regulations associated with zoning. Falls Rd. Cmty. Ass'n v. Balt.

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County Md., 437 Md. 115, 141; 85 A.3d 185, 200-20 (2014), citing, BCC §3-2-1103. The zoning map, regulations and zoning orders regulate and restrict matters that include, but are not limited to, the height, size, location and use of buildings and structures in order to promote the health, safety, morals, and general welfare of the community. BCC §32-3-101; §32-3-301; see also, Baltimore County Zoning Regulations, generally.

The Director of the Department is charged with interpreting and enforcing the BCZR. BCC §3-2-1103; §32-3-102. As set forth by the Court of Appeals in the Falls Road decision:

To carry out those duties, the County — and the Department of Permits, Approvals and Inspections in particular — also has a variety of tools at its disposal to resolve zoning violations. The Director of that Department “may enforce and seek correction of a violation as provided in [the Code enforcement title of the County Code].” BCC §3-6-201. For example, if there appears to be a violation of the zoning laws, the Department may issue a “correction notice” or a citation. BCC §§3-6-203, 3-6-205. Under the zoning title of the County Code, the Department may file for an injunction or equitable relief requesting a court [***42] to (1) enjoin a violation, (2) require the restoration of a property, to the extent possible, to its condition before the violation, including removal of the source of the violation, and (3) order other relief as may be appropriate to remedy a violation. BCC §32-3-607; BCC §3-6-202.

...There are a myriad of discretionary decisions made in determining how to employ limited resources. It is well within the discretion of County officials to pick and choose among the categories of violations, or to prioritize certain types or areas of enforcement.

Id., 437 Md. at 142; 85 A.3d at 201.

As noted by the Court of Appeals, the Baltimore County Code gives wide latitude and options to the County (and the Code Official, defined as the Director of the Department or the Director’s designee) to pursue code enforcement matters for violations and each option carries different procedures and penalty exposures.

The County may pursue administrative enforcement, which carries its distinct procedures and penalties. See, e.g. BCC §§1-2-217, 3-6-201, 3-6-203, 3-6-205, 3-6-206 and §3-6-301, et seq. In administrative enforcement, the civil penalty maxes out at \$500 per violation. BCC §1-2-217 The County may not seek injunctive or equitable relief in an administrative proceeding, but may seek the imposition of limited, reasonable conditions to correct an existing violation. See, BCC §§3-6-202, 3-6-203, 3-6-205, 3-6-207 (a final order may include, *inter alia*, "reasonable conditions as to the time and manner of correction.").

If the County seeks injunctive relief in connection with code enforcement of a zoning matter, the County may pursue enforcement in a court with competent jurisdiction to entertain that relief. BCC §3-6-202; BCC §32-3-607. If the County seeks equitable relief as part of a zoning enforcement matter, the County may initiate proceedings in the District Court. See, Cts. & Jud. Proc. §4-401(8) (District Court has exclusive original jurisdiction over zoning enforcement matters seeking equitable relief); see also, BCC §§3-6-202; 32-3-603, 32-3-604. In those Circuit and District Court enforcement matters, the County may also pursue more substantial civil penalties than that in administrative enforcement matters (such penalties imposed not only per violation, but also for each day each violation exists), and, in the District Court, may even pursue criminal penalties. BCC §§32-3-601, et seq. In light of the significant penalties associated with matters brought in Circuit or District Court (as appropriate), Article 32, Title 3, Subtitle 6 prescribes more exacting and detailed procedures and greater rights in those matters.

Far more often, and is relevant here, the County and/or Department pursue administrative enforcement for code violations. Under BCC Article 3, Title 6, a "violation" means the failure to comply with the County Code, which includes all zoning regulations, or a "code," which is

defined as including all zoning regulations, codes and standards⁴ administered by the Department. BCC §3-6-101(viii)-(ix). In the event the Department elects to issue a citation under BCC §3-6-205(c)(1), the citation must be in writing and describe with particularity the nature of the violation, the civil penalty, and must advise the violator of the right to contest the violation by submitting a written request for a hearing. If following the hearing, the violator wishes to appeal, the violator must file the appeal within fifteen days of the final order. BCC §3-6-301. The party appealing must specify in a petition the errors below, relief sought, and reasons why the relief should be granted. BCC §3-6-302. Once the matter is in front of the Board of Appeals, the appeal record is limited to the record below, including all exhibits and filings, and the written findings and order from the ALJ. BCC §3-6-303(a).

Therefore, with the above in mind, the Board of Appeals, as authorized by BCC §3-6-304, have the following options to dispose of this appeal:

(a) Disposition options. In a proceeding under this subtitle, the Board of Appeals may:

- (1) Remand the case to the Hearing Officer;
- (2) Affirm the final order of the Hearing Officer; or
- (3) Reverse or modify the final order if a finding, conclusion, or decision

of the Code Official, the Director, or the Hearing Officer:

- (i) Exceeds the statutory authority or jurisdiction of the Code Official, the Director, or the Hearing Officer;
- (ii) Results from an unlawful procedure;
- (iii) Is affected by any other error of law;

⁴ As defined by *Webster's Third New International Dictionary of the English Language, unabridged*, "standard" includes "something established by authority, custom or general consent as a model or example to be followed," and therefore includes such things as zoning orders, agency decisions, etc.

- (iv) Subject to subsection (b) of this section⁵, is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
- (v) Is arbitrary or capricious.

A. The Citation is Not Defective on Its Face

Appellant initially argues that the citation is defective for failing to identify with particularity the nature and dates of the violation and the failure to have a proper affirmation upon personal knowledge. Appellant identifies BCC §3-6-205(c)(1)(i) and §32-3-603(b)(4) as requiring detail greater than that set forth on the citation at issue. More specifically, Appellant claims that the citation did not have the required "descri[ption] with particularity" of "the nature of the violation", as per BCC §3-6-205(c)(1)(i), and the citation did not include "the nature of the violation and the location and dates of the violation and whether the violation is continuing in nature," as per BCC §32-3-603(b)(4). Appellant also complains the affirmation is defective. For the reasons set forth below, the Board finds that the citation satisfies the relevant Code section, BCC §3-6-205(c)(1)(i), and therefore, the citation provides sufficient information regarding the violations and further finds no issue with the affirmation.

The references to alleged statutory defects under Article 32, Title 3, Subtitle 6 are inapposite and can be easily dismissed. Based on the language in the citation, the section cited for penalty authority and initiation of this matter by citation and hearing in front of the Administrative Law Judge, it is clear that the County elected to proceed with administrative enforcement under Article 3, Title 6, which does not require the same level of detail within the citation. Compare, BCC §3-6-205(c) with §32-3-603(b). Similarly, the alleged affirmation defect, identified as arising under BCC §32-3-603(a), fails to identify an unlawful procedure or

⁵ Subsection (b) is not relevant to this Opinion.

error law. Therefore, the references to BCC Article 32, Title 3, Subtitle 6, by both Appellant and the County⁶, are misplaced in this instant case.

Analyzing this case under Article 3, Title 6, as appropriate, BCC §3-6-205 requires the identification, with particularity, of the nature of the violation. On its face, the citation clearly identifies the 2007 Zoning Order, the specific provisions of the Zoning Order alleged to have been violated, and identifies a timeframe with the implication that the violations occurred and continued with some regularity over the course of a couple of expressly identified months. For example, the citation identifies "Sundays during the Academic Year, March-April 2018" for one class of violations and use of outdoor playing fields after dusk "February-April 2018" for another class of violations. Though the third class of violations (monitoring) does not expressly identify a time frame, as complained, it clearly arises from the first two sets of violations which do contain identified time frames.

Moreover, Appellant has not alleged that any alleged deficiency resulted in due process issue or even prejudice to its ability to investigate, prepare for the hearing, identify defenses, and present evidence in furtherance of those defenses. Pursuant to BCC §3-6-206, the parties had the ability to engage in discovery to obtain information about the other side's case in advance of the ALJ hearing. Appellant acknowledged that Mr. Sloat's log, which specified the acts, dates, and

⁶ The Citation identifies "BCC §32-3-602" under Inspector's Comments, which does not apply. Appellant does not claim any due process concern or issue of prejudice arises from its extraneous and erroneous identification, nor could Appellant credibly do so, as Appellant clearly understood that the source for the specific alleged violations was the 2007 Zoning Order, as specified in the Citation; thus, Appellant had reasonable notice of the allegations, sufficient to identify evidence and prepare a defense. See, e.g., Regan v. Bd. of Chiropractic Examiners, 120 Md. App. 494, 519; 707 A.2d 891 (1998), *aff'd*, 355 Md. 397; 735 A.2d 991 (1999); Reed v. Mayor of Baltimore, 323 Md. 175, 184; 592 A.2d 173 (1991). Even still, BCC §32-3-602 is a specific reference to zoning orders that are within the scope of matters for which the County may seek enforcement via the District Court. Appellant does not contend any error in this regard, but the inclusion of the reference by the County may explain Appellant's identification of code sections under both enforcement methods.

times that form the basis for the Citation violations, was provided to Appellant in advance of the ALJ hearing. Appellant, to defend, identified and offered the 2010 Agreement in defense of each violation. In light of the above, the Board finds that the citation was not defective.

B. There Is Sufficient Evidence in the Record to Support the Violations Cited

Appellant next argues that "there is no evidence of actionable" conduct with respect to each of the three violations.

The Board's role, upon review, is not to substitute its judgment for that of the ALJ, but rather to assess whether the decision is, *inter alia*, supported by competent, material, and substantial evidence in light of the entire record as submitted. BCC §3-6-304.

The 2007 Zoning Order restricts the use of Appellant's playing fields and imposes related conditions, as is relevant, in the following manner:

- (K) no non-BLS use of outdoor playing fields on Sundays during academic year;
- (O) end use of outdoor playing fields at dusk; and
- (P) provide personnel to monitor indoor and outdoor athletic facilities use.

The evidence of the violations came via Mr. Sloat and his log of activities he observed and recorded. For example, with respect to use on Sundays, Mr. Sloat's log identified four Sundays where various sized-groups used the field to play soccer (entries, April 1, April 8, April 22, and April 29, 2018) and football (April 22, 2018). As for use of the fields at or after dusk, Ms. Sloat observed what he believed to be violations on: March 15, March 29, April 9, April 10, April 12, April 13, April 16, April 19, and April 24.⁷ Finally, as to the alleged failure to provide

⁷ Mr. Sloat's April 26 log entry states "Lower field in use until dusk or shortly thereafter." As the activity was either in compliance or not, with no other evidence, that allegation stands in equipoise. Leaving all other issues aside, the County cannot sustain its burden as to that entry as evidence of a violation.

personnel to monitor the athletic facilities use, Mr. Sloat's log expressly notes that he did not observe a monitor on March 29, 2018.

In defense, Appellant proffered the 2010 Agreement, which, from Appellant's point of view, modified the definitions of what constitutes "use" and when dusk occurs, particularly, the later of when the security lights turned on or sunset as identified by weather.com.⁸

Appellant did not produce any witnesses to address the violations or any other documentary evidence beyond the 2010 Agreement. Even assuming the applicability of the 2010 Agreement, Appellant did not introduce the weather.com sunset information to show dusk occurred at a later time than what Mr. Sloat's log recorded, or introduce any other evidence from which Appellant's derive a benefit from the modified definitions in the 2010 Agreement. Appellant did not object during the course of the proceedings, nor does Appellant now complain that it was denied an opportunity to present a defense, call witnesses or introduce evidence. Rather, Appellant simply complains the evidentiary record is insufficient for each violation.

⁸ The Board panel is divided as to the effect the 2010 Agreement would have on the 2007 Zoning Order. More particularly, can the 2010 Settlement Agreement, which resolved the Circuit Court litigation but is not an order of Court, amend the 2007 Zoning Order?

Each Board member has a different opinion as to what effect, if any, the 2010 Agreement should have on this matter. The dissenting opinion in this matter reflects the belief that the 2010 Agreement amends the 2007 Zoning Order. One of the Board majority members expressed concerns over the fact that the complainant was a signatory to the 2010 Agreement. The other majority member contends that, *inter alia*, the 2010 Agreement could not amend or supersede the 2007 Zoning Order, irrespective of the identity of the complainant as a signatory, and that amending the 2007 Zoning Order would require zoning relief (which did not occur). Instead, the only possible bearing the 2010 Agreement could have on the code enforcement case is on cross-examination to impeach the complainant and his log (which also did not occur).

While the Board members in the majority are split as to if, when, and/or how the 2010 Agreement could amend the 2007 Zoning Order, the Board members in the majority agree on one fundamental and dispositive issue --- the absence of any order that actually amends the 2007 Zoning Order leaves the 2007 Zoning Order in place. Therefore, the 2010 Agreement has no effect in this proceeding. The Board, as part of an appeal of a code enforcement citation, cannot amend the 2007 Zoning Order. The Board's authority is limited to reviewing the code enforcement hearing record and the ALJ's Final Order.

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Because Judge Stahl found in favor of the County on all three violations, by necessity, Judge Stahl found Mr. Sloat and his log credible. In the absence of evidence to rebut Mr. Sloat and his log, Mr. Sloat and his log constitute the evidence for consideration in front of this Board.

In light of the detailed entries within the log, the evidentiary record sufficiently supports the ALJ's conclusion that the County sustained its burden of proof as to the use of the playing fields at dusk violation.

Not as immediately clear, however, are the other two violations. The log does not clearly identify who was using the field on the four Sundays identified. For example, the April 1, April 8, and April 29 entries yield no information. The April 22 entry states that the person with whom Mr. Sloat spoke said he was with the school, but it is unclear whether that person was part of the football group or soccer group, and which one was associated with the school. Nor were the entries' vague descriptions amplified by Mr. Sloat's testimony. As such, because the ALJ did not identify the evidence that specifically supports this violation and it is not readily apparent to the Board from its review of the record, this violation must be remanded for the ALJ to supplement his Final Order by identifying the evidence that supports this finding. In the absence of any identifiable evidence in support, the County cannot meet its burden.

As to the failure to provide a monitor violation, there is only one express entry that affirmatively states that no monitor was present. Its omission from the other entries, however, is not fatal to the conclusion reached by ALJ. The inclusion of this provision was clearly intended to assist with the prevention of use restricted by the 2007 Agreement, including non-BLS use of the fields on Sunday and use of the fields after dusk. By implication, the presence of the groups on Sunday and activities after dusk suggests that either Appellant's personnel failed to adequately monitor, though present on those occasions, or Appellant failed to have personnel on site in order

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Case No.: CBA-19-003

to monitor. Therefore, both direct and circumstantial evidence reveal that Appellant failed to have personnel monitor the fields as required. The failure to present any evidence regarding the presence and/or observations of a monitor on any of the days identified in Mr. Sloat's log, which, again, Appellant had in advance of the hearing, leaves this Board with only one conclusion for this violation --- this Board must affirm the ALJ Final Order as to the monitoring violation.⁹

Lastly, the dissent writes that "[t]he recording reflects that the ALJ made no findings," that the ALJ "was not looking to make findings," and "made utterly no effort [to make findings]." Baltimore County Code §3-6-206(g) requires only a "final order with written findings." While the recording reveals the ALJ was not particularly clear as to his reasoning on the day of the hearing, the written finding that the County had proven its case by a preponderance of the evidence is clearly supported by competent, material, and substantial evidence as to two of the violations.

As to the remaining violation, non-BLS use on Sundays, the Board majority is as unclear as the dissent as to the evidentiary support for that violation, but rather than reverse, the Board majority remands for the ALJ to identify the evidence in the existing record that the ALJ relied upon for his decision. To be clear, as implied by the dissent, it is better practice for the ALJ to set forth more detailed findings of fact. However, because the evidentiary record is confined to, essentially, Mr. Sloat and his log, this is a case where detailed findings of fact were not required

⁹ The dissent asserts that the monitoring violation should be reversed, contending the school was only required to have a monitor during an "authorized use." To the contrary, Para. P of the 2007 Zoning Order states Appellant agrees to "provide personnel to monitor indoor and outdoor athletic facility use" and does not distinguish authorized from unauthorized uses. Rather, it appears the dissent engrafts the modified definition of "use" set forth in the 2010 Agreement upon the 2007 Zoning Order. For the reasons set forth above, the 2010 Agreement does not modify the 2007 Zoning Order in this case and therefore, for our evaluation, use is not contingent on whether or not authorized by Appellant.

for the Board to affirm the ALJ's Final Order as to two of the violations, but remand is required as to the third.

C. The ALJ Decision Does Not Explain The Civil Penalty Imposed

Appellant argues that the civil penalty imposed, \$1,500.00 for "violation[s]...on one or more days," is not adequately tethered to the evidentiary record or explained by the ALJ. On this point, the Board agrees. Under BCC §1-2-217(b)(2), a "civil penalty imposed as part of a citation issued under Title 3, Subtitle 6 of the Code may not exceed \$500 per violation." The \$1,500.00 penalty appears to be \$500.00 per violation, but that is not stated. Moreover, neither the record, nor the Final Order, identify the reasons and specific conduct justifying the imposition of the penalty, whether per violation or otherwise, from which the Board could otherwise conclude, not assume, that the civil penalty is imposed in accordance with BCC §1-2-217(b)(2). Without tethering each violation to a particular civil penalty, this Board is unable to review the civil penalty, requiring remand on this issue. Moreover, depending on the outcome of the remanded violation, the total amount imposed may change.

D. The Conditions Imposed Exceed the ALJ's Authority and Jurisdiction

Appellant challenges the conditions imposed by the ALJ, namely:

- (1) [Appellant] shall immediately cease all non-permitted authorized use of the outdoor playing fields; and shall lock the soccer goal posts after each authorized use of the playing fields;
- (2) [Appellant] shall provide a schedule of the outdoor playing fields to the designated point of contact, to be periodically updated as required; and
- (3) [Appellant] shall maintain a log to denote that time at which each authorized use of the playing field is ceased and the goal posts are locked; and shall, provide a copy for inspection by the County upon request.

The Board unanimously agrees with Appellant. Each of these conditions compel Appellant to take specific, affirmative measures, constituting injunctive relief. As noted above, if the County elects to pursue equitable relief in conjunction with a civil penalty, the District Court has original jurisdiction. Cts. & Jud. Proc. §4-401(8); see also, BCC §3-6-202 (authorizing the County, Director or "Code Official" to pursue the same). The County, however, did not elect to pursue equitable relief and instead, sought administrative relief.

The relief imposed by the ALJ exceed that permitted by BCC §3-6-207, which permits the imposition of reasonable conditions as to time and manner of correction. Typically, BCC §3-6-207 is used to, e.g., order restoration of the property and removal of an existing violation, as well as set a deadline by which the violating condition is to be corrected, abated or cured and/or to restore property to the condition prior to the violation. See, e.g. Daniel and Vienna Dietrich, CBA-13-017 (Respondents ordered to: (1) restore the property to the extent possible before the violation and remove source of violation; and (2) comply with prior zoning variance, restore the property to extent possible to condition before violation; and removal of source of violation; and that (3) the Orders pertaining to subject garage structure and structure addition shall be stayed upon filing of variance or other zoning relief request to cure the same), *aff'd*, Baltimore County v. Dietrich, 2015 Md. App. LEXIS 419 (Md.Ct.Spec.App., Oct. 20, 2015).

There is no indication that the violations were ongoing at the time of the ALJ hearing. In fact, each morning, the parties hit the reset button on these violations. In other words, there is no existing violative condition that needs to be corrected. Therefore, as the conditions imposed by the ALJ do not address restoration of the property or correct a violative condition, they cannot be "reasonable conditions as to time and manner of correction." To be clear, the conditions

imposed by the ALJ are common sense measures that will aid Appellant and the adjacent neighbors and prevent future discord, miscommunications, and/or misunderstandings. This Board fully understands the ALJ's laudable intent in imposing such conditions. The ALJ, unfortunately, does not have the authority or jurisdiction to impose that relief in this case.

Conclusion

In light of the above, Appellant has met its burden on appeal as to the civil penalty, conditions imposed, and as to the violation of Paragraph (K) of the 2007 Zoning Order, but not as to the violations of Paragraphs (O) and (P) of the 2007 Zoning Order. As such, this Board:

- (1) Affirms the Final Order as to violations of Paragraphs (O) and (P) of the 2007 Zoning Order;
- (2) Remands this case for the ALJ to supplement the Final Order by identifying the evidence to support the conclusion that Appellant is in violation of Paragraph (K) of the 2007 Zoning Order and to supplement the Final Order by identifying the civil penalty per violation found; and
- (3) Reverses the ALJ with respect to the imposition of the three conditions in the ALJ's Final Order.

ORDER

THEREFORE, IT IS THIS 16th day of October, 2018, by the Board of Appeals for Baltimore County,

ORDERED, that the Final Order of the Administrative Law Judge dated July 23, 2018 is hereby **AFFIRMED**, as follows:

(1) The finding of violation to the 2007 Zoning Order, Paragraph (O) concerning the use of outdoor playing fields at dusk; and

(2) The finding of violation to the 2007 Zoning Order, Paragraph (P) concerning personnel to monitor indoor and outdoor athletic facilities use; and it is further

ORDERED that the Board **REVERSES** the imposition of the three conditions imposed in the Final Order; and it is further

ORDERED that the case is **REMANDED** to the ALJ for supplementation of its July 23, 2018 Final Order as follows:

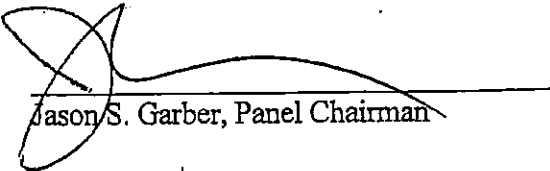
(1) To identify the evidence in support of the finding that the Appellant is in violation of the 2007 Zoning Order, Paragraph (K) which restricts non-BLS use of outdoor playing fields on Sundays during academic year; and

(2) To identify the civil penalty per violation, and, if and to the extent required, the facts in support of the same.

In the matter of: Baltimore Lutheran High School Association, Inc.
Case No.: CBA-19-003

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**



Jason S. Garber, Panel Chairman



Kendra Randall Jolivet

IN THE MATTER OF:

BALTIMORE LUTHERAN HIGH
SCHOOL ASSOCIATION, INC.
1145 Concordia Drive
Towson, MD 21286

Civil Citation No.: CC1804606

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA 19-003

* * * * *

CONCURRING AND DISSENTING OPINION

I concur in part and dissent in part.

I concur in the Majority opinion finding that the citation, in this case, was not defective. It does suffer from a problem akin to that we identified in *In the Matter of John C. Rosero*, CBA-18-027 and 029, but the issue was not raised below. Moreover, the Sloat log referred to in the Majority opinion had been supplied well before the hearing. Thus, any defect was harmless.

I concur that there is no impropriety in having an inspector from Code Enforcement be the sponsor for a citation where the information comes from a reasonably reliable citizen as it did in this case. It is crucial to the operation of the enforcement system that this be permitted.

I concur that the civil penalty was not factually linked to the purported violations and as a result, must be stricken. More on this later.

I concur that the ALJ lacked the authority to issue the prospective relief because it was not related to abating or curing an ongoing problem. The conditions ordered by the ALJ were an understandable effort to broker peace in a warring neighborhood. This he cannot do.

Finally, I dissent on the issue of whether the record justifies a finding that the citation was violated even in the limited way found by the Majority. I base this on the documents submitted to the ALJ, the proffers of counsel which the ALJ accepted, the unbelievably scanty testimony

by Mr. Sloat, and the recording of the proceedings. In my view, these items of "evidence", collectively, do not establish a violation. Related to this is that the ALJ never made any single solitary factual finding as to the allegations in the citation even though his written Order sustaining the citation purports to be based on his "... reasons stated at the conclusion of the hearing. . .". As indicated, the actual record reflects no reasons stated at the conclusion of the hearing (or at any time) upon which his Order could be based.

DISCUSSION

The Majority opinion lays out the underlying circumstances. In a nutshell, the neighbors and Appellant (hereinafter "Baltimore Lutheran" or "the school") have been fighting over the use of outdoor playing fields since at least 2007. In 2007, one agreement was reached as a result of a Request for Special Hearing filed in the administrative zoning context. In 2010, the neighbors filed an action in Circuit Court alleging violations of the zoning order. That matter was also settled. For the purposes of this case, the 2010 case defined "use" as only "authorized use" which meant use by Baltimore Lutheran or any permitted user. Dusk was defined as the later of the time at which the school's security light went on or as determined by Weather.com.¹ The 2010 agreement specifically adverts to the 2007 zoning decision and purports to be a clarification of that earlier settlement.²

Beginning in approximately November, 2017, the neighbors apparently believed that Baltimore Lutheran was not abiding by the zoning order as modified. One neighbor, Donald

¹ Per Wikipedia, "[d]usk occurs at the darkest stage of twilight, or at the very end of astronomical twilight after sunset and just before night."

² The Circuit Court settlement also involved a \$30,000 payment to the neighbors.

Sloat, a party to both of the earlier settlements, began keeping a log of activity on the school's playing grounds. He did this until approximately April, 2018.

The hearing before the ALJ began with the County making a proffer regarding the 2007 agreement. It then called Mr. Sloat as a witness. Mr. Sloat's entire testimony was no more than three minutes. He described where he lived in relation to the school, and he indicated that he had kept the log. **He was specifically asked whether he based the activities in the log on the 2007 agreement to which he answered in the affirmative.** There were no other statements from Mr. Sloat that were germane to the citation. The only other piece of evidence was the proffer presentation of the 2010 settlement agreement by the school's counsel. The ALJ accepted this proffer and can be heard on the recording discussing various parts of it.

The problem that arose was this: very soon into the hearing, the ALJ stated that he "knew what was going on here.". And what he knew was that this dispute between neighbors was not going away, and it needed to be resolved. His view of the situation is not merely understandable, it is absolutely correct. There is no one who hears five minutes about this dispute who does not want it resolved peaceably and rationally. There is no reason to have four separate administrative and judicial actions spanning eleven years about when kids can play soccer. The ALJ's lawyerly instincts could not be stifled. Almost immediately he jumped in and imposed a resolution. He was polite, respectful, and just firm enough. His settlement conditions were excellent. The parties should go home and do what he said. Sadly, of course, this was not the ALJ's job.

The recording reflects that the ALJ made no findings. It also reflects that Mr. Sloat's testimony was based entirely on the 2007 resolution without accounting for the more defined terms of the 2010 agreement. Though the ALJ talked about authorized uses in his arbitration efforts with counsel and Mr. Sloat, he did not make any findings about past conduct using the

refined definitions, and Mr. Sloat's testimony, by its terms, limited itself to the 2007 agreement. There is simply no way to know whether the users identified by Mr. Sloat were authorized or not. There is no way to tell whether the "dusk" he describes satisfies the standard of the later of the activation of the lights or the determination by Weather.com. At most, the ALJ quickly scanned the log and then jumped into mediation. He was not looking to make findings, and he didn't. To now parse through this record to justify the finding that the school violated the citation is just too much of a legal fiction where the factfinder himself made utterly no effort to do so. It carries the notion of appellate deference too far.³

As to the fine, the ALJ explicitly stated that the suspended fine was intended to be an amount just enough to incentivize the school to abide by his settlement terms.⁴ It was not remedial or linked to the past conduct in any fashion. As such it must be stricken.

Because the ALJ and counsel for the parties abandoned all pretense of an actual factfinding hearing, I believe that this Board should reverse the entire case. In my view, the record discloses that each provision of the Baltimore County Code, Section 3-6-304(a)(3)(i)-(v) was violated.⁵

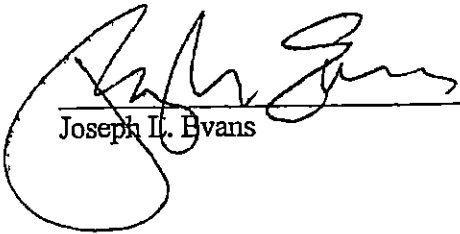
³ There was one log entry that indicated that there was no monitor on one particular day. Arguably, the violation could be affirmed to that extent because the monitor issue was not refined in 2010. However, there is no way that one can tell whether the absence of a monitor was during an "authorized" use which, under the 2007 agreement, is the only time the school is required to have a monitor.

⁴ At oral argument, counsel for the County indicated that the Inspector can revive the fine if he or she decides that the settlement terms had been violated without any administrative or judicial review.

⁵ Just so there is no misunderstanding, this Dissent is not intended to be critical of the ALJ nor to be viewed as facetious in any way. Quite the opposite is true. There are undoubtedly many instances where some active or creative judging, in this the most of informal hearings where people of little means often appear without counsel, can lead to excellent and equitable results for ordinary citizens. It is just that his efforts, as laudable as they were, were misplaced in this particular case.

In the matter of: Baltimore Lutheran High School Association, Inc.
Case No.: CBA-19-003

Date: October 17, 2018



Joseph L. Evans

SUMMARY OF CONSENT ORDER AND DISMISSAL MODIFICATIONS

The May 10, 2007, letter agreement incorporated into the Consent Order and Dismissal dated June 12, 2007, is hereby modified as follows:

1. "Summer" defined

The word "summer" as used in Paragraph J of the May 10, 2007, letter agreement is defined as the time of the year in which BLS is not in its regular academic school year, excluding any school breaks in the regular academic school year.

2. "Academic Year" defined

The phrase "academic year" as used in Paragraph K of the May 10, 2007, letter agreement is defined as the time of the year in which BLS is in its regular academic school year, excluding any school breaks in the regular academic school year.

3. "Use" defined

The phrase "use" as used in Paragraphs J - T of the May 10, 2007, letter agreement does not include field preparation or clean-up, or gatherings of persons in anticipation or conclusion of games or other scheduled activities. The word "use" does not include unauthorized use of BLS property by third-parties. Subject to Paragraph 5 below, BLS is not liable or responsible for the conduct or behavior of renters of its facilities or their participants, guests and visitors, which is in violation of its Rental Agreement or applicable laws or regulations; however, BLS shall take reasonable measures to enforce the terms of its Rental Agreement.

4. "Dusk" defined

The word "dusk" as used in Paragraph O of the May 10, 2007, letter agreement shall be defined as the later of the time that the BLS property security lighting comes on or "sunset" as denoted by weather.com. In the event that weather.com shall cease to exist, the Parties agree that weather.com in the preceding sentence will be replaced by a reputable meteorological website.

5. Conduct Not Giving Rise to a Claim

Any complaints or grievances resulting or arising from BLS, its use of its facilities (indoor or outdoor), or the use of BLS facilities or property by renters, guests, or visitors, which is otherwise in accordance with the time and/or day restrictions of Paragraphs J - T of the May 10, 2007, letter agreement, including as modified herein, do not violate the May 10, 2007, letter agreement.

SETTLEMENT AGREEMENT AND RELEASE

RECITALS

THIS SETTLEMENT AGREEMENT AND RELEASE (hereafter referred to as "RELEASE") is herein entered into by and between MICHAEL CONSTANTINE, DOLORES CONSTANTINE, DONALD SLOAT, MARY SLOAT, ROSS MEMPHIS, and RHONDA MEMPHIS, and all of their heirs, agents, and representatives (hereinafter collectively referred to as "the CHATTERLEIGH RESIDENTS" or "the RELEASORS"), on the one part, and BALTIMORE LUTHERAN HIGH SCHOOL ASSOCIATION, INC., and all of its predecessors and successors (hereinafter referred to as "BLS"), on the other part. The CHATTERLEIGH RESIDENTS and BLS are collectively referred to as "the PARTIES."

WHEREAS, the PARTIES have been engaged in a dispute or controversy in connection with the use and/or rental of BLS property and facilities ("the CLAIM"), which led to the execution of a Letter Agreement between the PARTIES dated May 10, 2007 ("the May 10, 2007 Agreement"); and

WHEREAS, the CHATTERLEIGH RESIDENTS filed a civil lawsuit in the Circuit Court for Baltimore County, Maryland, styled *Michael Constantine, et al. v. Baltimore Lutheran High School Association, Inc.*, Case No. 03-C-09-001367, regarding the CLAIM and the May 10, 2007 Agreement (hereinafter referred to as the "LITIGATION"); and

WHEREAS, the RELEASORS desire to settle, discharge and terminate all claims, controversies and potential claims and controversies which may now exist in their favor, whether known or unknown, against BLS without the resort to further litigation, and in particular, but not by way of limitation, any and all claims, suits, injuries or damages of any nature whatsoever, in

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Date 4-19-19

By Sen

PETITIONER'S

EXHIBIT NO. 2

any way arising out of, or in any way related to the CLAIM, the May 10, 2007 Agreement, and/or the LITIGATION, upon the terms and conditions set forth herein.

1. **Incorporation of Recitals.** The Recitals to this instrument are incorporated by reference herein.

2. **Effective Date of This Instrument.** This Instrument will be effective on the date when it is executed by the PARTIES.

3. **Settlement of All Claims.** By executing this document, the RELEASORS expressly agree, declare and acknowledge that it is their intention to resolve all disputes and potential disputes which may now exist in their favor or on their behalf, whether known or unknown, against BLS, including but not limited to those disputes and claims set forth in the LITIGATION.

4. **General Release.** In consideration of [REDACTED]
[REDACTED]
[REDACTED] the mutual promises and agreements of the parties contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the RELEASORS do remise, release and forever discharge, and do for their predecessors and successors, agents, insureds, servants, employees, heirs, executors, administrators, trustees, and assigns, remise, release and forever discharge all persons or entities known or unknown who are or could be liable to the RELEASORS in connection with BLS' use and/or rental of its property or facilities or any claimed damages arising from the use or rental of BLS property or facilities, including, but not limited to, BLS, Baltimore Lutheran School Holdings, LLC, and all of their respective agents, servants, employees, shareholders, attorneys, stockholders, officers, directors, members, partners, associates, insurers, past and present, and all of their predecessors and

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successors, and all of their executors, administrators and/or assigns (hereafter collectively referred to as the "RELEASED PARTIES"), of and from all and every manner of acts and actions, cause and causes of actions, suits, arbitrations, mediations, conciliations, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever in law or in equity, whether said dispute could be brought in a civil court of law or equity or before an administrative or governmental department or agency, which against the RELEASED PARTIES the RELEASORS ever had, now have, or their predecessors and successors, heirs, executors, administrators, assigns, related entities, persons and/or entities hereafter can, shall or may have, from the beginning of the world to the date of this RELEASE, whether known or unknown, suspected or unsuspected, fixed or contingent, including, but not limited to, all allegations that were or could have been asserted in connection with the CLAIM, the May 10, 2007 Agreement, and/or the LITIGATION.

5. May 10, 2007 Agreement Modified. In consideration of the terms, conditions and covenants set forth herein, the PARTIES agree that the May 10, 2007 Agreement shall be modified as follows:

a. Installation of Permanent Fence and Gates

BLS agrees that it will replace that portion of the fence which is temporary in nature at the Upper Field, depicted in Photograph 17 of Deposition Exhibit 11 which was first introduced during the deposition of Ross Memphis in the Litigation, with fencing consistent with the currently existing fencing.

BLS further agrees that it will install a gate in the fence along Concordia Drive to be located near its softball field, which is part of the Upper Field. This gate will be a 6' high by 16'

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wide double swing gate that will include either a key-lock or padlock. BLS shall use this gate only for the ingress and egress of maintenance, construction, and/or emergency equipment and personnel. This gate shall remain locked when not in use.

BLS agrees that it will install a gate in the fence along the shared property line with 1127 Concordia Drive, Towson, MD 21286 (hereinafter, "the Bridges Property"). The gate will be a 6' high by 5' wide single swing gate that will include either a key-lock or padlock. BLS shall use this gate only for the ingress and egress of maintenance, construction and/or emergency equipment and personnel. BLS will, in the normal course of business, ensure that the gate will be locked at all other times with the exception of the ingress or egress of the Bridges family. The Bridges will have a key to this gate and access to use said gate and BLS property via said gate.

BLS agrees to keep its service gate locked when not being used by BLS or its rentees or visitors consistent with this and the May 10, 2007 Agreement.

Upon completion of the terms contained in Paragraph (5)(a) as set forth above, the PARTIES agree that BLS will be in full compliance with Paragraph E of the May 10, 2007 Agreement.

b. Planting of Ten (10) "Green Giant" Trees

BLS agrees that ten (10) 7 foot tall "Green Giant" trees will be planted on its property along Concordia Drive. The Chatterleigh Residents will pay one half of the cost for said plantings, including the cost of the trees, installation, and labor. BLS will pay the other half of the cost for said plantings, including the cost of the trees, installation and labor. Payment shall be made directly to the landscaper and/or other person(s) hired to plant the trees upon presentation. BLS has received an estimate, including a one-year warranty, totaling \$6,384.00, which all parties have approved. These trees shall be planted by April 1, 2010, unless planting of the trees becomes impractical as a

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result of delays in the installation of the permanent fence and/or gates required by Paragraph (5)(a) of this RELEASE.

The location of said plantings are generally located in the areas along Concordia Drive near the temporary portion of the fence referenced in Paragraph (5)(a) above and, in addition, across the street from the Memphis home (1136 Concordia Drive, Towson, Maryland 21286). BLS' landscaper has marked proposed locations for the ten "Green Giant" trees in the two aforementioned areas. The PARTIES have had the opportunity to review these markings and have approved the location of the "Green Giant" trees.

The monetary contribution by the Chatterleigh Residents does not create or otherwise impart upon them any rights or interest in the trees or landscaping at BLS, nor does it create any right in the Chatterleigh Residents to demand or request further landscaping or plantings at BLS in the future.

BLS will not seek any financial contributions from the Chatterleigh Residents for any costs associated with maintenance of the trees.

Upon completion of the terms contained in Paragraph (5)(b) as set forth above, the PARTIES agree that BLS will be in full compliance with Paragraphs F and G of the May 10, 2007 Agreement.

c. "Summer" defined

The PARTIES agree that the word "summer" as used in Paragraph J of the May 10, 2007 Agreement is defined as the time of the year in which BLS is not in its regular academic school year, excluding any school breaks in the regular academic school year.

d. "Academic Year" defined

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The PARTIES further agree that the phrase "academic year" as used in Paragraph K of the May 10, 2007 Agreement is defined as the time of the year in which BLS is in its regular academic school year, excluding any school breaks in the regular academic school year.

e. "Use" defined

The PARTIES agree that the phrase "use" as used in Paragraphs J - T of the May 10, 2007 Agreement does not include field preparation or clean-up, or gatherings of persons in anticipation or conclusion of games or other scheduled activities. The PARTIES further agree that the word "use" does not include unauthorized use of BLS property by third-parties. Subject to Paragraph 6 below, the Chatterleigh Residents further acknowledge and agree that BLS is not liable or responsible for the conduct or behavior of renters of its facilities or their participants, guests and visitors, which is in violation of its Rental Agreement or applicable laws or regulations; however, BLS shall take reasonable measures to enforce the terms of its Rental Agreement.

f. "Dusk" defined

The PARTIES agree that the word "dusk" as used in Paragraph O of the May 10, 2007 Agreement shall be defined as the later of the time that the BLS property security lighting comes on or "sunset" as denoted by weather.com. In the event that weather.com shall cease to exist, the Parties agree that weather.com in the preceding sentence will be replaced by a reputable meteorological website.

g. Field Lights

As set forth in paragraph H of the May 10, 2007 Agreement, BLS will not illuminate its outdoor playing fields for fifteen (15) years from May 10, 2007.

6. Conduct Not Giving Rise to a Claim

The PARTIES agree that any complaints or grievances resulting or arising from BLS, its use of its facilities (indoor or outdoor), or the use of BLS facilities or property by renters, guests, or visitors, which is otherwise in accordance with the time and/or day restrictions of Paragraphs J - T of the May 10, 2007 Agreement, including as modified herein, do not violate the May 10, 2007 Agreement, do not violate this RELEASE, and do not constitute a nuisance or otherwise support claims for relief or damages (equitable, legal, monetary, or otherwise) in a civil lawsuit, or before an administrative or governmental authority.

The PARTIES agree that any and all claims, complaints, grievances, disputes, and/or demands raised in any fashion in the LITIGATION, including, but not limited to, Plaintiffs' Complaint, the "BLS Historical File," Plaintiffs' written discovery and/or deposition testimony, or claims, complaints, grievances, disputes or demands of a substantively similar nature to those raised, that are not otherwise violations of the May 10, 2007 Agreement and/or this Agreement, shall not form the basis or otherwise contribute to any future complaints, claims, grievances, disputes or demands for relief or damages in a civil lawsuit or before an administrative or governmental authority.

7. Costs and Attorney's Fees. With the sole exception of the equally shared cost of the ten (10) "Green Giant" trees referenced in Paragraph (5)(b), each party hereto shall bear all attorney's fees, costs and disbursements arising from the actions of its own counsel in connection with the LITIGATION, this Settlement Agreement and the matters and documents referred to herein, the filing of a Stipulation of Dismissal with Prejudice, and all related matters.

8. Dismissal With Prejudice. Concurrently with the execution of this RELEASE, counsel for all PARTIES to this action will execute a Stipulation of Dismissal with Prejudice which

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Date

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By

Sen

will be filed in the Circuit Court for Baltimore County in Case Number 03-C-09-001367 (the LITIGATION).

9. Representation of Comprehension of Document. In entering into this Settlement Agreement, the RELEASORS acknowledge that they have relied upon the advice of their attorneys, who are the attorneys of their own choice, concerning the legal and income tax consequences of this RELEASE; that the terms of this RELEASE have been completely read and explained to the Plaintiffs by their attorneys; that they are not relying on any representations of the RELEASED PARTIES or their attorneys not contained herein in writing; and that the terms of this RELEASE are fully understood and voluntarily accepted by the RELEASORS.

10. Warranty of Capacity to Execute Agreement. The RELEASORS represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this RELEASE, except as otherwise set forth herein; that the RELEASORS have the sole right and exclusive authority to execute the RELEASE; and that the RELEASORS have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this RELEASE.

11. Confidentiality. The RELEASORS agree that neither they nor their attorneys, agents, or representatives, including family members, shall reveal to anyone, other than as may be mutually agreed to in writing, any of the terms of this RELEASE or any of the terms and conditions hereunder, including the fact that there has been a settlement. The PARTIES agree that if asked the RELEASORS may state "the LITIGATION has been resolved" without breaching this agreement. Any disclosure beyond and/or other than that specifically agreed to

herein shall be deemed a material breach of this RELEASE and the RELEASED PARTIES shall have available to them all of the remedies of law or equity to satisfy their loss.

12. **Applicable Law.** Regardless of where this instrument is executed, it shall be construed and interpreted in accordance with the laws of the State of Maryland. In no event, however, will resort be had to any presumption or other rule of law requiring construction against the party who drafted or caused this instrument to be drafted.

13. **Modification.** This instrument may not be modified or changed orally, but only by an agreement in writing signed by the party against whom enforcement of any such modification or change is or may be sought.

14. **Cooperation.** The PARTIES agree to cooperate fully and execute any and all supplementary documents and to take any and all additional action that may be necessary or appropriate to give full force and effect to the basic terms and intent of this RELEASE, and which are not inconsistent with the terms set forth herein.

15. **Entire Agreement and Successors-In-Interest.** This RELEASE, including the May 10, 2007 Agreement, contains the entire agreement between the RELEASORS and the RELEASED PARTIES with regard to the matters set forth herein regardless of the adequacy of the compensation and the parties have no obligation to do any act other than as set forth herein.

16. **No Admission/Denial of Liability.** BLS, by reason of agreeing to this compromise and agreement, denies liability of any and every sort and states it has made no agreement to do or omit to do any act or thing not set forth herein or the May 10, 2007 Agreement. BLS further states that this Agreement is entered as a compromise in order to avoid expense and to terminate all controversy and/or claims for injuries or damages of whatsoever

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By Sen

nature known or unknown, including further developments thereof in any way growing out of or connected with the dispute.

17. **Counterparts.** This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed one and the same agreement.

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Date 4-19-19

By sen

IN WITNESS WHEREOF, the hands and seals of the parties hereto.

WITNESS:

Jeff Mue

Michael Constantine (SEAL)
MICHAEL CONSTANTINE

DATE: 3/11/10



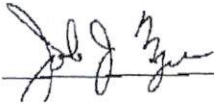
STATE OF MARYLAND, CITY/COUNTY OF Baltimore To Wit:

I HEREBY CERTIFY that on this 11th day of March, 2010, before me, the subscriber, a Notary Public of the City/County and State aforesaid, personally appeared, MICHAEL CONSTANTINE, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Diana Pearson
Notary Public

My Commission Expires: 4-1-2010



Dolores Constantine (SEAL)
DOLORES CONSTANTINE

DATE: 3-11-10STATE OF MARYLAND, CITY/COUNTY OF Baltimore To Wit:

I HEREBY CERTIFY that on this 11th day of March, 2010, before me, the subscriber, a Notary Public of the City/County and State aforesaid, personally appeared, DOLORES CONSTANTINE, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Diane Parsons
Notary Public

My Commission Expires: 4-1-2010

Susan E. SuttonDonald Sloat (SEAL)
DONALD SLOATDATE: 3/12/10STATE OF MARYLAND, CITY/COUNTY OF Baltimore To Wit:

I HEREBY CERTIFY that on this 12th day of March, 2010, before me, the subscriber, a Notary Public of the City/County and State aforesaid, personally appeared, DONALD SLOAT, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

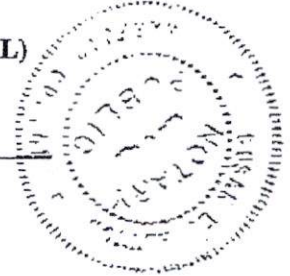
Susan E. Sutton
Notary PublicMy Commission Expires: 10/23/2011

Susan E. DuttonMary Sloat

(SEAL)

MARY SLOAT

DATE:

3/12/10STATE OF MARYLAND, CITY/COUNTY OF Baltimore To Wit:

I HEREBY CERTIFY that on this 12th day of March, 2010, before me, the subscriber, a Notary Public of the City/County and State aforesaid, personally appeared, MARY SLOAT, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Susan E. Dutton
Notary PublicMy Commission Expires: 10/23/2011

ORDER RECEIVED FOR FILING

Date 2-19-19By Sen

Susan E. SuttonRoss Memphis (SEAL)
ROSS MEMPHISDATE: 03/12/10STATE OF MARYLAND, CITY/COUNTY OF Baltimore To Wit:

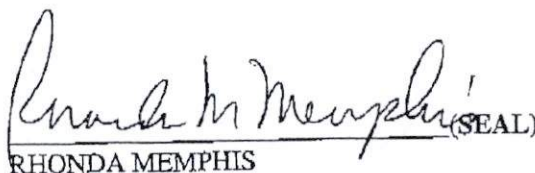
I HEREBY CERTIFY that on this 12th day of March, 2010, before me, the subscriber, a Notary Public of the City/County and State aforesaid, personally appeared, ROSS MEMPHIS, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Susan E. Sutton
Notary PublicMy Commission Expires: 10/23/2011

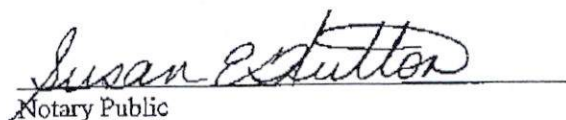
ORDER RECEIVED FOR FILING

Date 4-19-10By Sen


RHONDA MEMPHISDATE: 3-12-10STATE OF MARYLAND, CITY/COUNTY OF Baltimore To Wit:

I HEREBY CERTIFY that on this 12th day of March, 2010, before me, the subscriber, a Notary Public of the City/County and State aforesaid, personally appeared, RHONDA MEMPHIS, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary PublicMy Commission Expires: 10/23/2011

[Signature]

[Signature] (SEAL)
BALTIMORE LUTHERAN HIGH SCHOOL
ASSOCIATION, INC.
By: John Barth
Title: President, BLHSA

DATE: 3/10/10

STATE OF MARYLAND, CITY/COUNTY OF Baltimore To Wit:

I HEREBY CERTIFY that on this 10th day of March, 2010, before me, the subscriber, a Notary Public of the City/County and State aforesaid, personally appeared, John Barth, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that (s)he executed same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

ALEXANDER KEAY
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires March 23, 2011

[Signature]
Notary Public

My Commission Expires: 23 March 2011

ORDER RECEIVED FOR FILING

Date 4-19-19

By Sen