

IN THE MATTER OF
THE APPLICATION OF
YMCA of Central Maryland
600 W. Chesapeake Avenue
Towson, MD 21204

Re: Appeal of Director Letter dated 5/9/12 regarding
The Spirit and Intent of Zoning Opinion in
Case No: 10-039-SPH

9TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
*
* CASE NO. CBA-12-063

* * * * *

ORDER OF DISMISSAL

This matter comes to the Board of Appeals by way of an appeal filed by J. Carroll Holzer, Esquire as counsel for the Protestant/Appellants, Richard Wilson, Carol Rozenwaig, John Gartner, Nancy Caplan, Bill Smith, Pam Griffin, and Becky Galloway, from a letter dated May 9, 2012, of the Director of the Department of Permits, Approvals and Inspections, regarding the Spirit and Intent of the zoning opinion in Case No: 10-039-SPH.

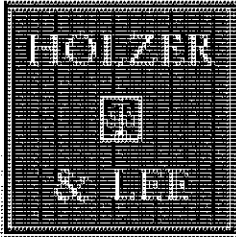
WHEREAS, the Board is in receipt of a hand delivered Settlement Agreement as executed by the parties and filed by J. Carroll Holzer, Esquire, as counsel for the Protestants/Appellants, (a copy of which is attached hereto and made a part hereof with the exception of Exhibit A Final Landscape Plan); and

WHEREAS, said Protestants/Appellants hereby request that the appeal taken in this matter be withdrawn and dismissed as of September 28, 2012, pursuant to paragraph 7 of the Settlement Agreement, therefore

IT IS ORDERED this 4th day of October, 2012 by the Board of Appeals of Baltimore County that the appeal taken in Case No. CBA-12-063 be and the same is hereby **DISMISSED WITH PREJUDICE**.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Wendell H. Grier, Chairman



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER

1907-1989

THOMAS J. LEE

OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

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FAX: (410) 825-4923

E-MAIL: JCHOLZER@CAVTEL.NET

September 28, 2012
#8023

RECEIVED
OCT 1 2012

BALTIMORE COUNTY
BOARD OF APPEALS

Mr. Wendell Grier
Chairman
Baltimore County Board of Appeals
Jefferson Building
105 West Chesapeake Avenue
Second Floor, Suite 203
Towson, Maryland 21204

RE: *In the Matter of: YMCA of Central Maryland*
Case No.: *CBA-12-063*

Dear Chairman Grier:

Please be advised that I have filed an appeal to the Board from the Director's letter dated May 9, 2012, regarding the spirit and intent of zoning in Case No.: 10-039-SPH.

The case is currently scheduled for Tuesday, October 2, 2012, before the Board.

Please be advised that over the ensuing days since the appeal was filed, the YMCA represented by John Gontrum, Esquire and my clients, adjacent property owners, have been in extensive discussion concerning an effort to resolve their concerns in regard to the YMCA expansion.

As a result of those negotiations, we have arrived at a Restrictive Covenant Agreement, which by its terms will be incorporated as part of the Landscape and Development Plan submitted to Baltimore County.

For your information, I am enclosing a copy of the Restrictive Covenant Agreements and Exhibits. As a result of the Settlement Agreement, pursuant to Paragraph 7, the Appellants represented by me, respectfully request that their appeal to the Board be dismissed.

Thank you for your consideration of this request.

Very truly yours,



J. Carroll Holzer

JCH:mlg

Enclosure

cc: John Gontrum, Esquire
Nancy Caplan, Esquire
Ms. Carol Rozencwaig

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (the "Agreement") is entered into this 25th day of Sept, 2012, by and between YMCA OF CENTRAL MARYLAND, INC. ("CENTRAL Y"), a Maryland not for profit corporation, and RICHARD WILSON, CAROL ROZENCWAIG, JOHN GARTNER, NANCY CAPLAN, BILL SMITH, PAM GRIFFIN, BECKY GALLOWAY (collectively the "Neighbors");

WHEREAS the Central Y desires to redevelop its site at 600 West Chesapeake Avenue (the "Property") and replace its existing facility with a new building; and

WHEREAS by Order dated September 24, 2009 in Baltimore County Zoning Case no. 2010-0039-SPH zoning approval was granted to modify an existing zoning special exception to redevelop the Central Y Property and to approve a site plan; and

WHEREAS subsequently the Central Y sought to amend the approved site plan by a spirit and intent letter which was granted May 9, 2012; and

WHEREAS the neighbors being concerned over the proximity of the new building to their properties filed a Notice of Appeal before the Baltimore County Board of Appeals; and

WHEREAS the parties hereto desire to settle and resolve their differences over the proposed redevelopment of the Central Y Property and to protect the property of the Neighbors from any deleterious impacts of the proposed development

NOW, THEREFORE, in consideration of the premises and the mutual agreements and understandings contained in this Agreement, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Landscaping. The Central Y agrees to submit to Baltimore County for approval a supplementary landscape plan showing additional landscaping as shown on **Exhibit A** attached hereto and made a part hereof ("Landscaping").
2. Landscaping Installation and Maintenance. The Central Y agrees to install the Landscaping within three (3) months prior to or after receiving a final occupancy permit for its new building from Baltimore County and agrees to maintain the Landscaping thereafter. In the event that a portion of the Property containing some or all of the Landscaping is subsequently transferred to Baltimore County, Maryland, the Central Y agrees to work with the Neighbors and with Baltimore County in upholding the intent of this provision for the installation and maintenance of the Landscaping.
3. Building and Facade. The Central Y agrees that the new building shall be placed no closer to the property lines of the Neighbors' properties than is shown on **Exhibit A**, nor shall its height be increased from the elevations shown on **Exhibit B**.

4. Building Coloration. The sloped roofs shall be comprised of sheet metal and be silver in color. The walls on the northern side with the exception of the fitness facility/gym shall be colored light tan or brown. The northern wall on the gym/fitness facility shall be colored to match the walls on the other sides of the building.

5. HVAC. The HVAC units on the new building shall be placed on the first story flat roof of the new building in the approximate location shown on **Exhibit A** and shall have integral casing providing noise control and shall comply with all state and county noise requirements for such units.

6. Lighting. All lighting on the Central Y Property shall be approved by Baltimore County and shall be directed on to the site and away from the Neighbors' properties.

7. Neighbors' Appeal. The Neighbors agree to dismiss their appeal pending before the Baltimore County Board of Appeals and agree not to appeal the development plans or other permits necessary to permit the new building on the Central Y Property, provided that the development plans and permits are consistent with the terms hereof.

8. Amendments to Plans. The parties hereto recognize that changes to development plans and building plans do occur as details emerge through engineering and contracting. In addition, the parties recognize that plans to convey all or part of the Central Y Property to Baltimore County, Maryland have been and will continue to evolve. Nevertheless, the Central Y agrees that it shall not without the permission of the Neighbors make any material changes to the Landscaping, façade or roof facing the properties of the Neighbors as shown on **Exhibits A and B** without the express written permission of the Neighbors.

9. Authority. The parties warrant and represent that they have taken all necessary action required to be taken by their respective charters, by-laws, or other organizational documents to authorize the execution of this Agreement.

10. Entire Agreement. This Agreement, which may be executed in counterparts, contains the entire understanding of the parties hereto.

11. Voluntary Act. Each of the parties warrants that it has carefully read and understands this Agreement, is cognizant of the terms hereof, and has had ample time to consult with counsel of its choice regarding its respective rights and obligations pursuant to this Agreement.

12. No Waiver. Failure, in any instance, to enforce any of the covenants, restrictions, and conditions contained in this Agreement, shall in no event constitute a waiver or estoppel of the right to enforce the same or any other covenant, restriction, or condition in the event of another violation occurring prior or subsequent thereto. In the event any one or more of the covenants, restrictions and conditions herein contained should for any reason be declared invalid, the remaining covenants, restrictions or conditions shall continue in full force and effect.

13. Definitions. All terms used herein and in the Exhibits attached hereto and made a part hereof are to be defined and construed pursuant to the definitions and provisions of the Baltimore County zoning and development laws and regulations in existence at the date of this Agreement.

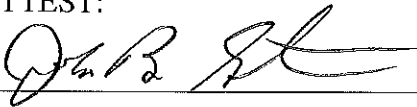
14. Enforcement. If any party to this Agreement is required to institute legal action to enforce the terms of this Agreement, and is successful thereafter (either by judgment or by settlement) in obtaining enforcement of the Agreement, that party shall be entitled to recover reasonable attorney fees and court costs of the action from the person or entity against whom enforcement is obtained. However, as a prerequisite to the recovery of fees under this paragraph, the person or entity seeking enforcement shall serve the alleged violator of the Agreement with written notice of the violation, and only if the alleged violator has failed to remedy or to make substantial progress toward remedying the violation within sixty (60) days after receipt of this notice may legal action be instituted.

15. Amendments. This Agreement may be amended by a written instrument in recorded form, executed by Central Y or its successors and by the Neighbors; provided, however, that should any of the individuals included in the Neighbors move from their current address then that individual's approval of any amendment shall no longer be required and that individual shall lose the standing to enforce this Agreement.

17. Development and Landscape Plans. The Central Y agrees to submit this Agreement and have it incorporated as part of its Landscape and Development Plan submittals to Baltimore County so that it is enforceable as part of the development approval for the Property.

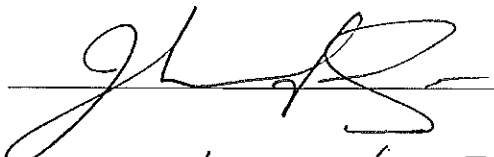
18. Termination. This Agreement and the provisions contained herein shall expire and be of no further effect on the twentieth (20) anniversary of the date first above written herein.

ATTEST:

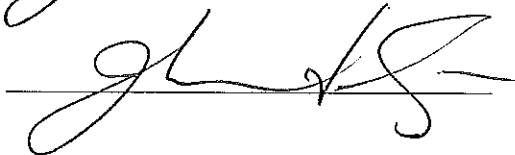



YMCA OF CENTRAL MARYLAND, INC.

BY:  (SEAL)
JOHN HOEY, PRESIDENT



 (SEAL)
RICHARD WILSON
527A Allegheny Avenue, Towson, Md.



 (SEAL)
CAROL ROZENCWAIG
527A Allegheny Avenue, Towson, Md.

[Handwritten signature]

William (Bill) Smith (SEAL)
BILL SMITH
529 1/2 Allegheny Avenue, Towson, Md.

[Handwritten signature]

Pam Griffin-Smith (SEAL)
PAM GRIFFIN-SMITH
529 1/2 Allegheny Avenue, Towson, Md.

[Handwritten signature]

John Gartner (SEAL)
JOHN GARTNER
521 Allegheny Avenue, Towson, Md.

[Handwritten signature]

Nancy Caplan (SEAL)
NANCY CAPLAN
521 Allegheny Avenue, Towson, Md.

[Handwritten signature]

Becky Galloway (SEAL)
BECKY GALLOWAY
527 Allegheny Avenue, Towson, Md.

TATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 28th day of Sept, 2012, before me, a Notary Public in and for the State aforesaid, personally appeared JOHN HOEY, who acknowledged that he is the President of the YMCA of Central Maryland, Inc., a Maryland not for profit corporation, and that he, on behalf of such corporation, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as its President.

AS WITNESS my hand and notarial seal.

My Commission Expires: 8/8/2015

Laura Ann Straw
Notary Public

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 25th day of September, 2012, before me, a Notary Public in and for the State aforesaid, personally appeared RICHARD WILSON,

known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that he executed the foregoing instrument for the purposes therein contained.

AS WITNESS my hand and notarial seal.

Carol S. Rozencwaig
Notary Public

My Commission Expires: 4-24-2015

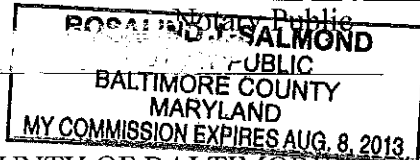
STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 28 day of September, 2012, before me, a Notary Public in and for the State aforesaid, personally appeared CAROL ROZENCWAIG, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that she executed the foregoing instrument for the purposes therein contained.

AS WITNESS my hand and notarial seal.

Rosalind J. Salmond
Notary Public

My Commission Expires: _____



STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 26th day of September, 2012, before me, a Notary Public in and for the State aforesaid, personally appeared PAM GRIFFIN, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that she executed the foregoing instrument for the purposes therein contained.

AS WITNESS my hand and notarial seal.

Carol S. Rozencwaig
Notary Public

My Commission Expires: 4-24-2015

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 26th day of September, 2012, before me, a Notary Public in and for the State aforesaid, personally appeared BILL SMITH, known to

me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that he executed the foregoing instrument for the purposes therein contained.

AS WITNESS my hand and notarial seal.

Carol S. Rozenwaig
Notary Public

My Commission Expires: 4-24-2015

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 26th day of September, 2012, before me, a Notary Public in and for the State aforesaid, personally appeared JOHN GARTNER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that he executed the foregoing instrument for the purposes therein contained.

AS WITNESS my hand and notarial seal.

Carol S. Rozenwaig
Notary Public

My Commission Expires: 4-24-2015

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 26th day of September, 2012, before me, a Notary Public in and for the State aforesaid, personally appeared NANCY CAPLAN, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that she executed the foregoing instrument for the purposes therein contained.

AS WITNESS my hand and notarial seal.

Carol S. Rozenwaig
Notary Public

My Commission Expires: 4-24-2015

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 26th day of September, 2012, before me, a Notary Public in and for the State aforesaid, personally appeared BECKY GALLOWAY,

known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that she executed the foregoing instrument for the purposes therein contained.

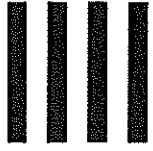
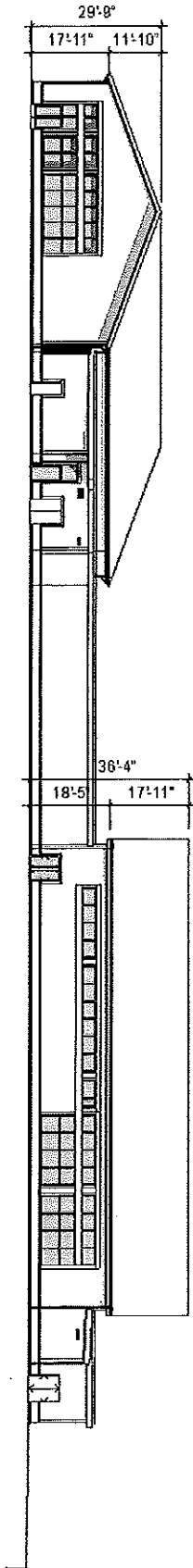
AS WITNESS my hand and notarial seal.

Carol S. Rozenwaig
Notary Public

My Commission Expires: 4-24-2015

EXHIBIT A
LANDSCAPE PLAN

EXHIBIT B
NORTH SIDE ELEVATION



MARKS, THOMAS ARCHITECTS

North Elevation
Proposed Towson Y