

**IN THE MATTER OF:  
Mays Chapel Elementary School  
12550 Roundwood Road  
Timonium, MD**

**8<sup>th</sup> Election, 3<sup>rd</sup> Councilmanic District**

**DRC No. 052813-LLA-1**

**\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. CBA-13-035**

\* \* \* \* \*

**OPINION**

This matter comes before the Board of Appeals (the “Board”) as an appeal of the May 13, 2013 decision of the Department of Permits, Approval and Inspections (PAI) approving a limited exemption (lot line adjustment) for the above-captioned property under Section 32-4-106(a)(viii) of the Baltimore County Code (BCC). There are two issues before the Board: (1) whether Baltimore County and the Board of Education are subject to local land use and zoning regulations, and if so, (2) whether the lot line adjustment meets the requirements of § BCC 32-4-106(a)(viii).

**BACKGROUND**

In 1986, as part of the Mays Chapel North Planned Unit Development Project (PUD) project, Baltimore County and the Board of Education were deeded adjacent pieces of property each totaling approximately 10-acres in size. Such deeds are recorded in the Land Records of Baltimore County in Liber 7164, folio 391. Since 1986, the properties were listed and described as a “County School/Recreational Site”, on plat known as Mays Chapel North. The properties remained undeveloped until recently, when the County and Board of Education began construction of a new 700-seat elementary school and recreational fields on the property to address school overcrowding. The school construction has necessitated a slight adjustment to the

line dividing the properties owned by the County and the Board of Education.

On January 22, 2013 the County Council of Baltimore County with Resolution No. 5-13 authorized Baltimore County to convey, in fee simple, a parcel of land totaling 10.00 acres more or less to the Board of Education in exchange for the Board of Education conveying, in fee simple, a 10.06 acre, more or less, parcel of land to Baltimore County. This land swap was approved under Section 3-9-103 of the Baltimore County Code.

On May 2, 2013, Baltimore County, Maryland and the Board of Education for Baltimore County collectively requested that the DRC review and approve the slight adjustment to a property line dividing the two (2) pieces of property which they respectively own. Finding that the request meets the criteria in BCC 32-4-106(a)(viii), PAI approved the lot line adjustment by letter on May 13, 2013. On June 10, 2013 the Appellants filed a timely appeal to this Board, and the matter was presented to the Board in a public hearing on September 3, 2013. Closing memoranda were requested in lieu of closing arguments and a public deliberation was held on October 29, 2013.

### HEARING

At the public hearing, Baltimore County was represented by Adam Rosenblatt, Esquire, the Board of Education was represented by Margaret-Ann Howie, Esquire and the Appellants were represented by Michael McCann, Esquire. The County called one witness, Mr. Carl Richards, Zoning Supervisor for Baltimore County. The Appellants also called one witness, Mr. Brian Dietz, a registered surveyor.

The County raised a preliminary motion with respect to whether the county and the Board of Education are subject to local land use and zoning regulations. The County argued in support of their Motion that the County and the Board of Education are not subject to zoning and land

use regulations and cited Glascoek v. Baltimore County, Maryland, 321 Md. 118 (1990) in support of their position. The Appellants argued that the County was not the applicant; the Board of Education was the applicant. The Board of Education is a quasi-state agency and is not exempt from local land use and zoning laws. The Board of Education knew they were not exempt because they filed for the lot line adjustment. The County responded by stating that the Board of Education is a government agency and that they filed for the adjustment as a courtesy to the residents so there could be a public hearing. They are exempt from the zoning regulations (see Annapolis Urban Renewal Authority v. Interlink, Incorporated, 43 Md. App. 286 (1979)) and that exemption can only be waived by express statutory authority.

The Board held the motion *sub curia* and heard testimony from Mr. Richards and Mr. Dietz.

Mr. Carl Richards, a Zoning Supervisor for Baltimore County testified for the County. Mr. Richards indicated he has forty-seven (47) years of experience, including twenty two years as County Zoning Supervisor where his primary responsibility is to interpret zoning laws and make decisions concerning lot line adjustments. The Board accepted Mr. Richards as an expert in zoning matters and lot line adjustments.

In a letter dated May 13, 2013 the lot line adjustment was approved as it met the requirements for a limited exemption as set forth in the Baltimore County Code. Mr. Richards testified that the lot line adjustment was also appropriate under the County Regulations as lot line adjustments in residential zones can be by consent and agreement of the owners. In this case, there was an agreement between the County and the Board of Education. He further testified that the adjustment was clerically accurate. He stated that the current zoning on the property is DR 3.5 and that the slight adjustment to the lot line does not increase density, increase the

number of lots or create a gap in the lot lines. There was substantial justification for approving the lot line adjustment. No one told the Board of Education they were exempt from the development review process. The fee for the application, however, was waived as they are a government agency.

Mr. Brian testified on behalf of the Appellants. Mr. Dietz is a licensed surveyor and was admitted as an expert for surveying and lot line adjustments. He reviewed the 1986 deed and the lot line adjustment plats. Mr. Dietz prepared a Deed Mosaic that shows that the land descriptions overlap at one point and the proposed lot line adjustment would create a gap by creating a 0.162 acre parcel. The County Council's resolution plats are inconsistent with the County's exhibits. Mr. Dietz testified that this clerical error should result in a disapproval of the lot line adjustment.

In rebuttal, Mr. Richards testified that no more lots were created by the adjustment. If there is a deed gap, it would not create a new lot because it would not be buildable.

### ARGUMENT

#### **I. Are Baltimore County and the Board of Education of Baltimore County exempt from local land use and zoning regulations?**

The County relies on Glascoek v. Baltimore County, Maryland, 321 Md. 118 (1990), to support its position that Baltimore County and the Baltimore County Board of Education are not subject to local zoning laws. The County argues that unless there is a "clear and indisputable" statement of intention to bind the state or local governments by a legislative enactment, it is a "long standing principle" that the governments and their agencies are not subject to local land use laws. *Id.* at 121. The County further asserted that Glascoek was a Baltimore County case, and analyzed the framework as it applies to this case before the Board. In Glascoek, the Court of Appeals searched for any statement in either the Express Powers Act (Article 25A, §

5X of the Maryland Code), which grants Baltimore County its authority to enact land use and zoning controls, or the actual Baltimore County Code and Zoning Regulations, for any statement that the County or State were intended to be bound by Baltimore County's land use laws. The Court found that "nothing in Article 25A, § 5X or in the Baltimore County Zoning ordinance or regulations, even remotely suggests an intention that the County be subject to its own zoning laws". Accordingly, the Court of Appeals held the County was not required to obtain a special exception to construct a cell tower. The County asserts under the Glasscock holding that it is not now required to go through the development process to obtain a lot line adjustment.

The Appellant advances two arguments in support of their position that Baltimore County and the Board of Education should be required to comply with local zoning regulations in the instant case. First, the Board of Education is not a government entity and therefore is not exempt from the zoning regulations. Second, regardless, the lot line adjustment plainly violates County Council Resolution 5-13 and, therefore, is *ultra vires*.

The Appellants argue that the Board of Education is not a governmental entity and, as such, must comply with local zoning regulations. Appellants further argue that if the Board of Education is not a government entity, Glascok is not relevant because Board of Education is not entitled to this exclusion as it is a private party. We find this argument misguided. The Court of Appeals, in the Glascok holding, specifically cites to Board v. Harker, 316 Md. 683 (1989), for the proposition that the exemption from land use regulations "extends to the State's agencies and instrumentalities". Glascok, 321 Md. at 122, *citing* Board v Harker, 316 Md. at 693. Furthermore, the Board of Education for Baltimore County has "consistently and repeatedly" been held to be a State agency. *See* James v. Frederick County Pub. Schs., 441 F. Supp. 2d 755, 760 (D.Md.2006); Dunn v. Baltimore County Bd. of Educ., 83 F.Supp.2d 611 (D.Md.2000)

(holding that Maryland school boards are state agencies); Chesapeake Charter, Inc. v. Anne Arundel County Bd. of Educ., 358 Md. 129 (2000) (holding that the county school boards have consistently been regarded as state, rather than county agencies). Accordingly, this Board rules that the exemption from Baltimore County's land use and zoning regulations applies to both Baltimore County and the Board of Education.

However, although the Board finds that the law in this matter is clear and Baltimore County and Baltimore County Board of Education are exempt from local zoning ordinances, we also find that in this instance that the Board of Education has waived its exemption from local zoning regulations. The County argues that their application for a lot line adjustment was merely submitted to provide transparency to the project and done as a courtesy to the local community that has been involved in each and every step of the process leading to the construction of the new elementary school. The County argues that governmental immunity can only be waived by statute, so the application to the DRC has no effect on the overarching legal principle that the County and Board of Education are exempt from land use and zoning regulations, citing Annapolis Urban Renewal Authority v. Interlink, Inc., 43 Md. App. 286, 297 (1979).

We disagree. Had the Board of Education done nothing, they would have been exempt from the zoning regulations. However, once they submitted to the process they implicitly waived that claim by their action. See Beka Industries, Inc. v Worcester County Board of Education, 419 Md. 194 (2011), waiver by implication, and Board of Education of Baltimore County v Zimmer-Rubert, 409 Md. 200 (2009), specifying its intention to subject itself to suit.

Appellants' other argument is that even if the Board of Education is exempt, their request should still be denied as the proposed lot line adjustment violates Resolution 5-13 passed by the County Council and that the DRC's approval is therefore *ultra vires*. They further assert that the

County must comply with, and is not immune from, legislative enactments of the County Council. We disagree. Section 3-9-103(c) of the Baltimore County Code requires the approval of the County Council for any exchange of land, which did occur in the instant case. We find nothing in the code or common law which precludes the County from turning around and approving this lot line adjustment or that it is any way a violation of the County Council Resolution 5-13. There is nothing which would lead us to rule that the County acted improperly or beyond its statutory authority.

**II. Does the lot line adjustment meets the requirements of BCC § 32-4-106(a)(viii)?**

BCC § 32-4-106(a) (viii) provides a limited exemption for the following, “Lot line adjustments in residential zones for lots that are not part of an approved Development Plan under this title or an approved Development Plan under Article 1B of the Baltimore County Zoning Regulations”. For purposes of this subsection, “lot line adjustment” means one or more alterations of a divisional property line or lines between two or more lots in common ownership or by agreement of the owners, provided that the alteration does not result in an increase or decrease in the number of lots and there is no increase in total residential density available to the lots considered as a whole”.

The Board is satisfied, when considering the testimony of Mr. Richards and Mr. Dietz, that the lot line adjustment meets the specific requirements of the code:

- 1. This property is in a residential zone:** the properties owned by the County and Board of Education are zoned D.R. 3.5, which both Mr. Richards and Mr. Dietz confirmed is a residential zone.
- 2. The property is not part of an approved Development Plan under § 32-4-101 *et seq.* of the BCC or under Article 1B of the BCZR:** The properties were plotted and deeded

to the County and Board of Education as part of the Mays Chapel PUD, therefore , they are not part of an approved development plan under BCC Article 32 Title 4. This finding was confirmed by both witnesses at trial.

3. **The Board of Education and Baltimore County are in agreement in requesting the lot line adjustment:** As is clear from the Board of Education's application, testimony and County's legal representation at the hearing, the County and the Board of Education are working together to obtain the necessary lot line adjustment.
4. **The adjustment does not create any more lots:** Mr. Richards testified that there were two lots before the adjustment and two lots after the adjustment. Legal representation from both the County and Board of Education represented it is not the intent of the County or the Board of Education to create additional density.

The Appellant produced evidence at trial based on a schematic deed drawing that there is a clerical error within the legal descriptions and the lot line adjustment creates a deed gap and as such creates a new lot in violation of § 32-4-106(a)(1)(viii). We disagree. Baltimore County and the Board of Education previously, on September 28, 2012 obtained a prior lot line adjustment. This lot line adjustment was not appealed by the Appellant. Mr. Richards testified at trial that the survey supplied to the County to approve the lot lien adjustment was clerically accurate when one considers both the original boundaries of the land and both lot line adjustments.

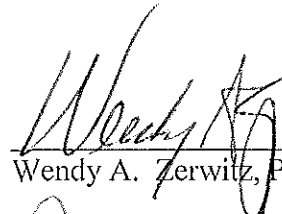


**ORDER**

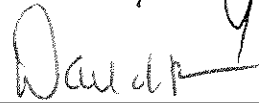
THEREFORE, IT IS ORDERED THIS 16<sup>th</sup> day of January, 2014, by the County Board of Appeals of Baltimore County, that Petitioner's request for a slight lot line adjustment under section 32-4-106 of the Baltimore County Code be and is hereby GRANTED.

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

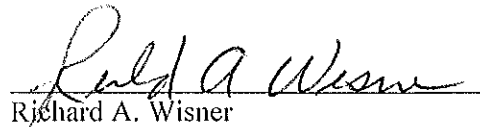
**BOARD OF APPEALS  
OF BALTIMORE COUNTY**



Wendy A. Zerwitz, Panel Chairman



David L. Thurston



Richard A. Wisner



# Board of Appeals of Baltimore County

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January 16, 2014

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RE: *In the Matter of: Mays Chapel Elementary School*  
Case No.: CBA-13-035

Dear Counsel:

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

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

Very truly yours,

Krysundra "Sunny" Cannington  
Administrator

Enclosure  
Multiple Original Cover Letter

c: Nicholas Wilson, Senior Associate/Project Manager/Land Development Practice/KCI Technologies, Inc.  
Merril Plait, Administrator/Board of Education for Baltimore County  
Whistler Burch  
David Noval  
Office of People's Counsel  
Andrea Van Arsdale, Director/Department of Planning  
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