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

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OPINION AND ORDER

I. Procedural History and Other Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Evidence Presented

A. Proposed Amendment

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

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

B. Review of Testimony

Petitioner’s Witnesses

1. Randy Race

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

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

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

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

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

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

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

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

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

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

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

3. Robert Green --- Storm Water Management

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

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

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

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

5. Mitch Kellman --- Zoning

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

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

6. Glenn Cook --- Traffic

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

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

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

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

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

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

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

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

Protestants’ Witnesses

1. Deidre Bosley

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

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

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

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

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

2. Marsha Gaspari

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

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

3. Connie Newton

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

4. Michael Fitz-Patrick

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

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

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

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

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

Daily Trips Based On Square Footage (ITE)

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

Daily Trips Based on # of Seats (ITE)

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

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

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

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

Per ITE: 235

Mr. Cook's actual counts: 327

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

Per ITE: 718

Mr. Cook's projection 826

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

Per ITE: 2,111

Mr. Cook's projection 1,930

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Michael Brassert --- Photography and Photographic Lenses

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

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

III. Interpretation and Application of the Zoning Regulations

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

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

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

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

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

(1) The amendment must be in accord with the provisions of the Comprehensive Manual of Development Policies and with the specific standards and requirements of this article, as determined by the Department of Planning. The Director, on behalf of the Planning Board, shall notify the Zoning Commissioner accordingly.⁶

(2) Only an owner of a lot abutting or lying directly across a street or other right-of-way from the property in question, an owner of a structure on such a lot, or a homes association (as may be defined under the subdivision regulations or under provisions adopted pursuant to the authority of Section 504) having members who own or reside on property lying wholly or partially within 300 feet of the lot in question are eligible to file a demand for hearing.

(3) It must be determined in the course of the hearing procedure that the amendment would be consistent with the spirit and intent of the original plan and of this article."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. DECISION

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

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

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

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

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

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

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

B. Petitioner Has Met Its Burden Under Section 502

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Interfere with adequate light and air

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

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

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

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

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

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

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

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

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

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

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

The final analysis the Board is required to undertake in evaluating the proposed amendment is found in §1B01.3(A)(7)(c): “It must be determined in the course of the hearing procedure that the amendment would be consistent with the spirit and intent of the original plan and of this article.” As noted above, there is no material difference between the First and Second Amended FDPs for purpose of this analysis.

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

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

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

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

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

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

D. Effect of Prior Conditions Imposed

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

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

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

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

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

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

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

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

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

E. Conditions To Be Imposed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the matter of: Hunt Valley Presbyterian Church, Inc.

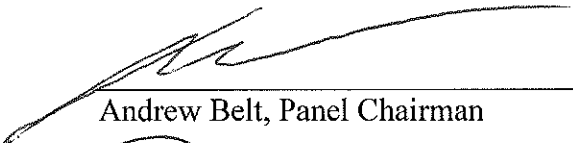
Case No: 16-099-SPH

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

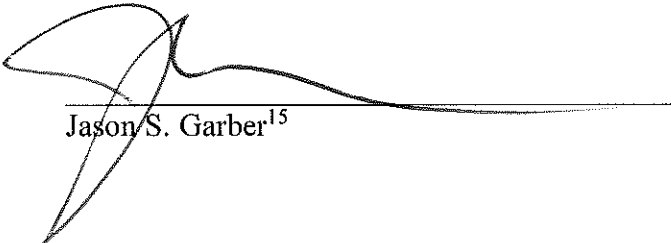
ORDERED that Protestants' Motion to Strike Exhibit C is **GRANTED**.

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

**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew Belt, Panel Chairman



Jason S. Garber¹⁵

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



Board of Appeals of Baltimore County

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December 7, 2017

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

Dear Counsel:

Enclosed please find a copy of the 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

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Hunt Valley Presbyterian Church, Inc.
Century Engineering
Office of People's Counsel
Andrea Van Arsdale, Director/Department of Planning
Lawrence Stahl, Managing Administrative Law Judge
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

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