

IN THE MATTER OF:

NEPALI AMERICAN CULTURAL
CENTER OF BALTIMORE
12231 Harford Road
11th Election District
5th Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: 18-122-X and
* CBA-19-004

* * * * *

OPINION AND ORDER

This matter comes before the Board of Appeals, on appeal from the Administrative Law Judge Opinion and Order, dated January 22, 2018, granting a Petition for Special Exception to allow a building for religious worship on the subject property (“Property”), which is within a Resource Conservation-2 (RC-2) zone, pursuant to Baltimore County Zoning Regulations §1A01.2(C)(6). Lawrence E. Schmidt, Esquire and Timothy M. Kotroco, Esquire represent Petitioner, Nepali American Cultural Center of Baltimore, Inc. J. Carroll Holzer, Esquire, represents Protestants, Dewitt and Mary Clark, David Hartman, David Poehler, Morgan Miner, Carol Shaw, Greater Kingsville Civic Association, Inc., and the Gunpowder Falls Watershed Preservation Association.

Case No. CBA-19-004 was joined with the special exception appeal. In that case, Protestants appeal the effect of a letter and response between Mr. Kotroco, on behalf of Petitioner, and Administrative Law Judge Beverungen, wherein Petitioner was seeking to clarify whether Petitioner could hold a fundraiser on the Property from July 29, 2018 to August 3, 2018. Judge Beverungen, in his response dated July 3, 2018, stated, *inter alia*, “the owners are free to gather on their Property so long as no religious activities within the subject building and all other permit requirements, if any, are satisfied....”

The hearing on this case occurred over the course of 11 days between July 2018 and February 2019. On November 1, 2018, Protestants identified four CDs of video and audio files, as well as related photographs, it sought to introduce into evidence. Given the volume of files, counsel for Petitioner was not in a position to review all audio and video files in court and therefore, the Board gave counsel for Petitioner the opportunity to review and file written objections, which counsel did. The Board then permitted counsel for Protestants to file a written response in advance of the next scheduled date, November 29, 2018. That hearing day was used as an evidentiary hearing to resolve the objections and determine the admissibility of photographs and video and audio files Protestants had compiled and wished to introduce into evidence.

Over the course of hearing dates, Petitioners presented testimony from: (1) Kris Ghimire, as a trustee for Petitioner; (2) Binod Upreti, a life member of Petitioner; (3) John Motsco, P.E., as an engineering expert and as the engineer of record for the proposed project; (4) Joseph Colaggero, a traffic engineer expert; and (5) James Powell, a Licensed Environmental Specialist. Individuals Ida Twining, Pastor Daniel Montague, and Marcia Barton, also testified in favor of the petition.

Protestants presented testimony from the following witnesses: (1) adjacent neighbors, Dr. Mary Clark and Dr. Dewitt Clark, who live across the street from the Property; (2) Dr. Dewitt Clark also appeared on behalf of the Gunpowder Falls Watershed Preservation Association; (3) Dave Poehler, who lives next door to the subject Property; (4) Joyce Mason, who lives just over a mile from the Property; (5) the aforementioned Mr. Ghimire (trustee for Petitioner) as an adverse witness; (6) Bruce Morgan, a Kingsville resident; and (7) Protestants' land planning and zoning expert, Christopher Jakubiak. The Greater Kingsville Civic Association, Inc. also joined the opposition to the proposal.

The Board conducted its public deliberation on March 13, 2019.

I. Summary of Testimony

A. Petitioner's Witnesses

As noted above, Petitioner had two witnesses from its organization testify on its behalf, Kris Ghimire and Binod Upreti.

* Kris Ghimire --- Mr. Ghimire testified that he was born in Nepal, came to this country in 1998, and became an American citizen. Mr. Ghimire is a real estate broker in the area. Mr. Ghimire is a founding member of Petitioner's organization and serves on its Board of Trustees, with all of his work for the organization being voluntary. Mr. Ghimire testified that the organization's "single mission" is to establish a Hindu Temple in Baltimore County. Mr. Ghimire estimated that there are 5,000-10,000 people of Nepali heritage in the Greater Baltimore Area.

Mr. Ghimire provided evidence regarding how the Property is to be used. Mr. Ghimire also provided the details regarding some of the religious practices to be observed at the Property, including holidays and special events. Much of Mr. Ghimire's testimony on these points is specifically identified and reviewed in Section IV, Petition and Use Evidence, *infra*, and need not be addressed here. Mr. Ghimire was also called as an adverse witness by Protestants. The issues brought up during that testimony merit separate discussion at the end.

* Binod Upreti --- Mr. Upreti is a life member of Petitioner. Like Mr. Ghimire, Mr. Upreti is originally from Nepal and came here in 1998. Mr. Upreti testified that to go to temple now he must travel to Westminster and Finksburg, Maryland, and on occasion to Queens, New York. Mr. Upreti agreed with Mr. Ghimire's description of the proposed operations of the temple at the Property. Mr. Upreti's motivation for testifying was to communicate to those who oppose the Petition that Petitioner is there for peace and harmony, and is willing to address concerns.

Neighbors from the general area also appeared to provide vocal support for the Petition:

* Ida Twining --- Ms. Twining lives one and a half miles from the Property at 11511 Harford Road, in Glen Arm. Ms. Twining has lived at her present address for 35 years and her husband's family had been there for over 200 years. When Ms. Twining learned of and attended the post-sale open house at the Property. She described the Property as having long been in disrepair, defaced by graffiti. She saw "mountains of plastic bags filled with beer cans and all sorts of trash." She does not believe the Property is appropriate for farming and does not believe it has ever been farmed in the time she lived in the area. She feels the Property is "uniquely suited" to serve as a worship center. Ms. Twining expressed her happiness to welcome Petitioner to the community. Ms. Twining also provided testimony about the growth of the area and traffic, as outlined in more detail in Section III, Residential/Commuter Growth and Area Traffic Conditions, below.

* Daniel Montague --- Mr. Montague is a pastor with the United Methodist Church, leading the Fork United Methodist Church and the Waugh United Methodist Church. The Property is in between the two churches, about two miles from each. Like Ms. Twining, Mr. Montague visited the site after the sale. Mr. Montague supports the Petition.

* Marcia Barton --- Ms. Barton grew up in Kingsville and presently lives approximately 8-10 miles from the Property at 11909 Woodberry Place in Kingsville. Ms. Barton decided to attend and testify as she felt some of the objections and concerns raised by others at one or more meetings were unfair to Petitioner. She felt some were misinformed and some failed to take into account existing uses already accepted by the community. In particular, she identified St. Stephen's Church on Bradshaw Road. The church hosts festivals and carnivals and has a school. She believes that the temple will cause less traffic and noise than St. Stephen's Church even if the proposed temple has larger events. In sum, Ms. Barton supports the Petition.

Petitioner also called three expert witnesses, Mr. John Motsco, an engineering expert, James Powell, a Licensed Environmental Specialist and Mr. Joseph Colaggero, a traffic engineering expert.

* John Motsco, P.E. --- Mr. Motsco, of Little & Associates, was accepted as an expert in civil engineering. Mr. Motsco worked on the plans for the Property and is the engineer that sealed them. Mr. Motsco visited the Property on two occasions and relied on Baltimore County GIS for other information. He provided the physical description of the Property, identifying it as 30.8 acres, zoned RC-2, and identified the structures and other site improvements.

Mr. Motsco described the plan, which, as he testified, had limited building improvements, all currently existing. Petitioner will use the existing driveway leading to the house (to be converted to a temple). A fire department turnaround will be installed, as will the required parking spaces. After acknowledging "cosmetic improvements", Mr. Motsco testified that there would be no new structures. Mr. Motsco understands that the pool and the structures that serve the pool are to be removed. He described the Property as being surrounded by woods, with the narrowest swath along Harford Road (close to the entranceway) 50-60 feet in width, and the area along the western edge being approximately 100 feet in width. There is a stream at the southeastern and southern property lines, weaving on and off the Property. No proposed construction is near the stream. The proposed parking area will be 500-700 feet away from the stream. Mr. Motsco testified that Petitioner does not anticipate any clearing of the wooded area.

Mr. Motsco also provided testimony about the general area, noting wooded vegetation and trees to the east and south, with some farmland and scattered houses beyond the wooded areas. Also to the east are Christian Redeemer church and school and the Beachmont Camp, by Beachmont Christian Ministries. Both include recreational and athletic facilities. On the northern

and western borders along Harford Road, there are single-family houses. There are no farms or agricultural uses near the Property, let alone adjacent. Mr. Motsco testified that the present-day house (proposed temple) can be visible at certain points while traveling on Harford Road, but otherwise is generally screened by the trees and "extreme topography" along Harford Road.

Mr. Motsco presented numerous photographs of the Property and the surrounding area. Mr. Motsco testified that the Maryland Historic Trust designates the Property grounds and the existing barn as historic. As is noted below, the Property ("Bella Vista") was originally developed by Charles Bonaparte, a nephew of Napoleon Bonaparte, who was also the former Attorney General of the United States and Secretary of the Navy in President Theodore Roosevelt's administration. The original house burned down in the 1930s. The Property is served by well and septic systems, though the existing systems are considered non-functional at this time. Mr. Motsco is aware of efforts to locate new well and septic facilities and believes the Property is large enough for those systems to accommodate the proposed use. Mr. Motsco's plan calls for 38 parking spaces in a lot, with some additional spaces closer to the proposed temple. If overflow parking is needed, vehicles could use the nearby grass areas.

Mr. Motsco was asked about certain special exception factors. First, he gave his opinion on the boundaries of the neighborhood, defining it as the Harford County border to the north, Bel Air Road to the East, Long Green Pike Road to the west, and "a river" to the south. He noted that the general area is rural and the best way to define the neighborhood are the physical boundaries. He testified that the proposed use would not be detrimental to the health, safety and general welfare of the locale, contending the minimal scope of work, the size of the Property, and low intensity of use support that opinion. Mr. Motsco did not believe the proposed use posed any potential hazard of fire, panic, or danger greater than at any other location in the zone. He also believed the

permitting process and conversion from residence to a temple would address issues arising from the building being in disrepair.

Mr. Motsco did not believe that the proposed use would cause any undue concentration of population given the size of the Property, the anticipated small congregation, and relatively small structure. Public water or sewer does not serve the Property. The distance of the building from other properties prevents it from interfering with adequate light and air. Mr. Motsco was not aware of any clearing necessary for any part of the proposal and for that reason, he believed the use would be consistent with the County's provisions regarding impermeable surfaces and vegetation. As for any environmental impacts, he testified that any concern could only arise from the parking, but again, no clearing was required. As such, Mr. Motsco's opined that there are no detrimental impacts beyond the inherent effects that will be caused by the proposed use. No variances are needed for this Petition.

On cross-examination, Mr. Motsco testified that runoff from the main building would drain to the south (toward the barn). Runoff from the proposed parking area would flow to the north (toward Harford Road). The number of parking spaces was generally determined by the County based on the representation of the number of expected regular attendees. The zoning regulations require one space per four seats, but this proposed temple does not have pews or seats. Mr. Motsco recalled telling the County that they would have a maximum normal attendance of 150 attendees. Mr. Motsco did not estimate or analyze the number of vehicles the adjacent grassy area could accommodate. Mr. Motsco acknowledged that his testimony on direct is based on the anticipated day-to-day use of the facility and not on special events. When asked, Mr. Motsco also estimated the distance from the tennis court to the Clark residence (12150 Harford Road) to the west of the Property as between 300-350 feet.

Protestants' counsel asked Mr. Motsco about plans to mitigate sheet flow from the Property, across Harford Road, toward the Foxworthy property at the northwest corner of the Harford Road/Bonaparte Avenue intersection (at the northern border of the Property). Mr. Motsco testified that no analysis had been done by the time of his testimony, but added that, at present, there is a roadside ditch and a storm drain inlet on the Property side of Harford Road. Looking at photographs, Mr. Motsco noted that Harford Road is sloped away from the Foxworthy property and toward the Property. On redirect examination, Mr. Motsco testified the County will require a grading plan and will determine if any additional measures are required. In addition, Mr. Motsco testified that the existing woods aid the current drainage and the expectation is they will aid the anticipated drainage from the parking area.

* James Powell --- Mr. Powell worked for the Baltimore County Department of the Environment, now the Department of Environmental Protection and Sustainability (DEPS), for 37 years and four months, rising to the level of Field Supervisor for the Soil Evaluation Section. During his time with the County, Mr. Powell conducted soil tests and supervised others doing the same for new construction or repair of failing septic systems. He also reviewed septic plans, estimating the number of plans as "thousands." Mr. Powell has been a Licensed Environmental Specialist for 33-35 years. Mr. Powell was offered, and received, as an expert to opine on the feasibility of a septic system for the proposed use.

Mr. Powell visited the Property two times. He did not conduct a soil evaluation test. Rather, he used the USDA Soil Survey Manual. Mr. Powell identified the soils in the cleared area as manor soils, which are derived from weathered schist. The soils are not alluvial or colluvial. Though the Property sits on a knoll and ridgeline (heading south/southwest), he did not consider the Property unique because of its height relative to other properties in the area.

Mr. Powell prepared a Water Usage Summary based on numerous factors, including anticipated number of visitors, whether food is served, whether food is prepared on or off site, and whether portable facilities are available for outside functions. He was provided information by the Petitioner for these factors. He understood that the temple would not have a commercial kitchen. To do so would require all-new appliances and a hood with a fire suppression system. Mr. Powell testified that he received County approval for his water usage report.

He testified that the next step to gain approval for the septic system is to file for a soil percolation test application. The tests to be conducted are done by personnel from the DEPS. Either the location would be approved or DEPS would require additional tests at an additional area. Mr. Powell testified that, given the size of the Property, he felt confident that there will be sufficient septic area to meet the intended usage and the septic system would not affect any adjacent properties.

On cross-examination, Mr. Powell was asked about whether vehicles could park on top of the septic field. Mr. Powell stated that it depended on the physical construction characteristics and system components. The County now uses deep trench systems, which he described. However, another system design is a shallow pressure dosing system. He testified if there was to be parking on top of the septic field, a system can be engineered to accommodate the parking, but it needs to be known ahead of time. Nevertheless, Mr. Powell opined, with "99% probability," a pre-engineered system will not be required here because he expects a deep trench system. Even still, when Petitioner files for a building permit, they will have to identify the overflow parking area and DEPS will issue its "standard...comments" to keep parking out of the septic area. If that cannot be avoided, the system will need to be engineered accordingly.

With respect to the anticipated well, Mr. Powell testified about that process, noting that DEPS requires a minimum yield and minimum storage capacity. For festivals, Mr. Powell did not see a concern as no food will be prepared on site, the kitchen would not be available for use, and there will be portable facilities outside. Mr. Powell understood that the well would serve the main building only. Mr. Powell anticipates that the new well location, which he marked, was between 355-400 feet from any well on an adjoining property.

Mr. Powell testified that first, the well site location is selected, and then a completion report is prepared. Once the County receives the completion report, the County assesses the well capacity to serve the intended use as identified. The determination of what storage capacity and what size storage tank is needed, and ultimately approval, occurs after the well is built. The County will require the older well and septic system to be disconnected and backfilled.

* Joseph Colaggero --- The testimony of Mr. Colaggero is discussed in substantial detail in the traffic discussions below and need not be addressed to the same level of detail as the other witnesses here. Nevertheless, Mr. Colaggero, Vice President of The Traffic Group, Inc., provided testimony regarding the proposed redesign of the Property entranceway, improving sight distances, the existing road conditions, traffic accident history, and the need for an access permit from State Highway Administration (SHA), as Harford Road is a state road (Md. Rt. 147). Mr. Colaggero also conducted several analyses of the particular stretch of Harford Road around the Property, and in particular, near Bonaparte Avenue. More specifically, Mr. Colaggero examined the road capacity and operations, performed a sight distance analysis (and a revised analysis), and a speed study between September 26, 2018-October 9, 2018.

Because of his analyses and examinations, Mr. Colaggero concluded that the stretch of Harford Road relevant to this case had sufficient capacity and the proposed use of the Property,

based on the representations made as to the use, will not cause traffic congestion beyond what exists today. Mr. Colaggero also opined that, with the requirements from SHA for the entranceway and exit from the Property, the proposed use will not detrimentally impact safety and may, in fact, improve it over existing conditions. Again, Mr. Colaggero's testimony is discussed in much greater detail below in Section III, Residential/Commuter Growth and Area Traffic Conditions and Section VI(C) Application of the BCZR §502.1 Special Exception Factors, (2) Congestion in Roads, Streets and Alleys.

B. Protestants' Witnesses

* Dr. Mary Clark --- Dr. Mary Clark lives with Dr. Dewitt ("Dewey") Clark, her husband, at 12150 Harford Road. She has lived there for 33 years. The Clark property sits across Harford Road from the Property, though it is behind trees and other vegetation and sits at a lower elevation than the Property. The combination of these features obscures the Clark property from Harford Road. She estimates her house is about 100 feet from Harford Road.

Dr. Mary Clark also identified her community as the "Long Green-Haystack Valley Community," further defining it as those living within a mile and half of the Property. However, she provided clarification on cross-examination as to her criteria as to what properties are within her neighborhood (discussed below). She contends that where she lives is "one of the last rural valleys in Baltimore County." Dr. Mary Clark raised concerns regarding her "right to solitude and quiet enjoyment of [her] property in a rural RC-2 zone," as well as "personal safety and the increased traffic on Harford Road."

Dr. Mary Clark identified several multi-day events that produced, what she considered to be, "very loud, amplified sound and music." She added that even with her windows closed, the noise was "highly disturbing." So much so that midway through a fundraising event held at the

subject Property from July 28th to August 3rd, the Clarks decided to go out of town for the tail-end of the event. Dr. Mary Clark also takes issue with the noise emanating from the multi-purpose court, identifying “constant percussive screaming and yelling,” which was “destroying [her] peace and solitude.” She has heard noise from the court starting as early as 8:15 am on Sunday mornings and going until dark. She likened the experience to living next door to a “recreation field, ball field, or a playground.”

With respect to traffic, she described Harford Road as a “narrow, two-lane road with blind curves and no shoulder.” She referred to the Property as being located “right in the middle of one of the most treacherous sections of road in Baltimore County.” She and her husband have heard, witnessed, and assisted with traffic accidents occurring along the curves. In fact, she and her daughter had an accident at a blind curve close to the Property when a vehicle crossed the centerline. She felt that large, multi-day events at the Property would endanger the area residents and imperil attendees of those events. Dr. Clark stated that a range of vehicles use Harford Road, including commuter traffic, tractor-trailers, bicycles, and farm equipment. She also noted the regular presence of deer, which poses an additional hazard.

Much of Dr. Mary Clark’s testimony concerned her experiences observing and witnessing the larger events already held at the Property. It is fair to say that Dr. Mary Clark does not trust the representations made by Petitioner with respect to operations at the Property, the number of regular attendees, the number of attendees for larger events, sound amplification, and other relevant issues. Dr. Mary Clark believes that the proposed use will cause detrimental impacts to the surrounding area. She provided her opinion as to whether the proposed use can satisfy the Baltimore County Zoning Regulations §502.1 criteria, identifying certain factors for which she contends there is sufficient evidence to show the detrimental impacts.

On cross-examination, Dr. Mary Clark found Mr. Colaggero's testimony as to the number of vehicle trips (over 2 million) on the relevant section of Harford Road per year not surprising. Dr. Mary Clark testified the existing traffic "very seldomly" has an impact on her tranquility and solitude, describing the noise as "a gentle swish," like "hear[ing] the ocean at night." Dr. Mary Clark clarified the noise from additional vehicles was not her concern; rather, it was that increased traffic may lead to more accidents. To that end, she alluded to witnessing "dangerous behavior" at the entrance and exit of the Property that nearly resulted in accidents. Dr. Mary Clark testified that she does not hear from her house the activities at the Christian Redeemer and Beachmont Camp properties.

When asked about the properties in her neighborhood, Dr. Mary Clark testified she does not consider the adjacent Christian Redeemer church and school or the Beachmont Camp to be part of the neighborhood because it has different zoning (though recognizing, she is not a land use expert). Dr. Mary Clark also stated that she was part of a group of local residents recently who opposed a request to support what she described as an expansion for either the Christian Redeemer property or the Beachmont Camp property.¹

* Dr. Dewitt ("Dewey") Clark --- Dr. Dewey Clark appeared individually and as the authorized representative for the Gunpowder Falls Watershed Preservation Association. Dr. Dewey Clark presented testimony over several days, including November 1, 2018, January 29, 2019 and January 30, 2019. What was made clear from Dr. Dewey Clark's testimony is that Dr. Dewey Clark has spent substantial amount of his time tracking the comings and goings at and from the Property, whether by audio and video recordings, drone footage, social media postings

¹ The testimony concerned the "corn maze" but the location referenced conflated Beachmont Camp with Christian Redeemer ("Beachmont Christian camp"). Printouts from the Beachmont Camp website appear to establish that it has the corn maze, not the Christian Redeemer property.

from the Petitioner's members, attendees, and/or supporters, and other similar research. In addition, Dr. Dewey Clark has undertaken substantial effort to contact County officials to alert them to potential Code violations and site difficulties for development of the proposed use. During the course of the hearing, Protestants' frustration generally, and Dr. Dewey Clark's frustration specifically, with the County's failure to address the matters brought to their attention by Dr. Dewey Clark in a manner satisfactory to Protestants was readily apparent.

Dr. Dewey Clark testified that he believed the locale to be confined to Gunpowder Park to the Mount Vista/Glen Arm and Harford Road circle. He testified that that there were a lot of farms in the area, which results in farm vehicle traffic on Harford Road. He noted pedestrians and people on bicycles also use the relevant stretch of Harford Road.

Dr. Dewey Clark presented a library of audio and video clips of sounds, events at the Property, as well as photographs of vehicles on Harford Road and other nearby roads. The photographs of the vehicles leaving the Property taken by Dr. Dewey Clark (or others) showed vehicles on the wrong side of the road, the darkness of the surrounding area, and other issues intended to underscore the testimony on the dangers presented by visitors presumably unfamiliar with the particular section of Harford Road. Dr. Dewey Clark also presented dash cam videos of traffic generally on Harford Road near the Property to show vehicles crossing lines and other issues, again, to speak to the existing dangerous nature of the roadway system even without the introduction of increased traffic from the proposed use. He also provided his critique of Mr. Colaggero's testimony, though Dr. Dewey Clark is not a traffic engineer.

Like his wife, Dr. Dewey Clark identified numerous concerns, including: excessive noise; the loss of solitude; traffic congestion; traffic dangers; environmental impacts on area forests and streams; invasion of non-native species; drainage from the site; unsafe use of fire; fire code issues;

inconsistency with the zoning classification; and others. Dr. Dewey Clark also proposed numerous conditions in the event the Board granted the Petition.

By way of example, Dr. Dewey Clark testified that the noise emanating from the Property, whether due to special events or to volleyball games, disrupts the solitude and tranquility he has enjoyed while the Property was used only as a single-family residence (or was vacant). He cited to the 1964 Wilderness Act to identify prior recognition of the value of solitude. The audio and video clips he provided were intended to serve as a snapshot in time of the disruption being caused at the Property to illustrate what may occur if the Petition was granted overlooking in his testimony that the same could occur if the Petition is not granted. Even recognizing the Clarks' sensitivity to a change, Dr. Dewey Clark played a clip intended to show excessive noise from the volleyball court, but instead the predominant noise heard by the Board was from birds chirping.

With respect to the fire code issues, Dr. Dewey Clark identified foreseeable problems with an occupancy permit unless the main building became Code-compliant. In particular, he identified the lack of panic bars on the doors. He also identified video clips taken from social media posts or otherwise uploaded to the internet where there was an open fire at a festival, noting the lack of fire extinguishers and no water source to draw water. Similarly, he expressed concerns over the use of extension cords from the main building to an accessory tent and the lack of emergency lighting inside the main building.

It is abundantly clear that Dr. Dewey Clark opposes a change from the Property's historic use as a residence. However, based on his testimony and evidence focusing on alleged Code issues and the County's failure to adequately respond to complaints regarding the same, as well as Petitioner's use of the site prior to the conclusion of the special exception case, Dr. Dewey Clark's staunch opposition largely arises from his belief that the Property will be used in a manner far

more intense than what has been represented, magnifying the impacts he, his wife, and his neighbors believe they will experience, compounded by his skepticism that the County will remedy any issues arising from the Property once the Petition is approved.

* Joyce Mason --- Ms. Mason lives at 11813 Harford Road and has done so for 30 years. Her property lies south of Hutschenreuter Road, approximately 1.3 miles from the Property. Ms. Mason also used to live closer to the Property, at 11939 Harford Road, three houses north of her present house.

Ms. Mason presented testimony regarding her concerns, identified as the increased traffic burden and her personal, as well as her neighbors, safety on Harford Road. Ms. Mason described Harford Road as a “rural two-lane road with no shoulder and many blind curves.” The Property is located within that section, which she considered a “hazardous area.” She too provided anecdotal evidence of traffic accidents on Harford Road, naming the intersection of Harford Road and Hartley Mill Road, as a location with multiple accidents, some of which were fatal. She also identified an accident she was involved in that occurred one month prior to her testimony.

Ms. Mason testified that “[o]ver the years, the traffic on Harford Road has increased dramatically.” Like Dr. Mary Clark, Ms. Mason identified farm equipment, including tractors, combines, bailers, and hay wagons, as using Harford Road. Ms. Mason, again like Dr. Mary Clark, testified that, in the middle of the summer in 2017, she could hear “very loud talking over the amplification system” that spooked one of her horses. She stated she could hear the loud talking also in the summer of 2018, again, unsettling her horses. She also believes that the proposed use has a greater impact on the community due to the “unique terrain of the area,” with “many peaks and valleys, blind curves, and agricultural activities.”

* Dave Poehler --- Mr. Poehler lives with his family at 12241 Harford Road, situated to the north, east, and next door to the Property. Mr. Poehler testified he could see the main building and driveway from various points on his property. Mr. Poehler said after the sale of the Property, he reached out to his new neighbors, by going over to the Nepali property to introduce himself and offered to help take down a tree. He testified he did not hear anything from his neighbors since that visit.

Like Protestants' other witnesses before him, Mr. Poehler identified traffic and noise as his concerns. Mr. Poehler associates the traffic and noise issues with a likelihood that his property value will be reduced.

Mr. Poehler, echoing the others, believes Harford Road along the subject Property boundary through the circle at Mount Vista and Glen Arm Roads is "a dangerous stretch." Mr. Poehler estimated his driveway to be approximately 200 feet from the existing entrance to the Nepali property. He understands that Petitioner is proposing to move it closer by about 70 feet. Mr. Poehler shared that, even without the move, he has already had some of Petitioner's attendees accidentally enter his driveway and/or use it to turn around.

He identified an occasion in 2017 where amplified music emanating from the Property was being played as late as 1:00 a.m. He also identified large gatherings where he and his family were subjected to noise he considered extreme. On cross-examination, Mr. Poehler was questioned about a different property to the south of the Nepali property located on Hutschenreuter Road that hosts an outdoor rock concert. He did not have any familiarity with it, but agreed it was possible that the music was coming from that location, though noting the music he heard did not sound like a rock and roll band. Mr. Poehler also testified he lives about 1000 feet, as the crow flies, from

the Beachmont and Redeemer properties. On occasion, he hears soccer games, with the accompanying cheering and yelling.

Unlike the other witnesses presented by Protestants, Mr. Poehler also identified the potential impact to his well and septic systems as an issue. Mr. Poehler testified, at present, he considers his well as “not a very strong well at all,” and referenced a gathering of about 40 people at his house where he ran out of water. His well is about 200-250 feet from the Property. As such, he was concerned that the potential large gatherings of hundreds of people at the Property will exacerbate the limited volume of his well. Moreover, he has concerns over pollution that may result from runoff from the grassy areas used for overflow parking.

* Bruce Morgan --- Mr. Morgan lives at 3 Longknoll Way in Kingsville, about 3 miles away, as the crow flies, from the Property. Mr. Morgan expressed his concerns over traffic and noise. He stated his concern was that if “that type of activity” was permitted on rural, agricultural property, it could happen anywhere in Baltimore County. He testified that the relevant stretch of roadway is one of the most dangerous sections he has encountered.

* Christopher Jakubiak --- Mr. Jakubiak, of Jakubiak & Associates, was offered and received as an expert in land planning and zoning. Whereas Petitioner’s experts opined that special events like festivals evidence atypical use, and therefore, were not the focus of their opinions, Mr. Jakubiak testified festivals are “particularly relevant to his testimony.”

Mr. Jakubiak described the relevant section of Harford Road as “very rural,” also noting the hills and winding nature of the road on the way to the circle at Mount Vista and Glen Arm Roads. He expressed his opinion that the relevant neighborhood for the special exception analysis ran from Hartley Mill Road to Mount Vista Road.

Mr. Jakubiak opined that the cultural landscape of the area was unique. He relied on the Master Plan 2020 in concluding that the County seeks to preserve cultural landscapes, and in particular here, the agricultural history of the area. The Master Plan also expressed a preference of low-density development in rural areas, further contending the Master Plan serves as guidance and cannot be dismissed in the consideration of the special exception petition. He noted that Harford Road in the relevant area is a Baltimore County Scenic Route, which the Master Plan states is to be protected and that development by way of special exception petitions should be granted "sparingly."

In describing the Property, Mr. Jakubiak testified that the site is constrained by sloping terrain, particularly steep to the west. Outside of the multi-purpose court, the land drops significantly. The main building sits at the highest point, about 400 feet above sea level, which is about 200 feet above the valley floor. He believed the landscaping presently is an ineffective buffer for sound, though it was noted that Mr. Jakubiak is not an expert in sound. He also opined that the impact from noise would be worse than other locations in the zone.

Mr. Jakubiak believes 38 parking spaces are insufficient due to the need to use the grassy areas for overflow parking. While the limited number of spaces helps with permeability, the number does not match the needs. As such, when vehicles park on the grassy areas, they will cause ground compaction. The compaction and steep slopes may cause runoff to have a detrimental impact to the site and neighboring properties.

While Mr. Jakubiak is not an expert on traffic engineering and related issues, as a planner, he had concerns about the road system, identifying an increased risk in accidents caused by greater usage arising from the proposed use of the Property. He also believes that the proposed use detrimentally impacts the health and general welfare of neighboring properties, particularly the

loss of tranquility and increase in noise. He also opined that the proposed use is inconsistent with the zoning classification and spirit and intent of the zoning regulations in light of the preference expressed in the zoning regulations and Master Plan to preserve rural areas from intense development. Mr. Jakubiak also felt it important to note the site's proximity to the Long Green Rural Legacy Area, though the subject Property does not fall within its borders.

On cross-examination, Mr. Jakubiak admitted he does not know when the Property was last used in an agricultural manner. He also did not know the location of the closest property presently used for an agricultural purpose. Harkening back to his testimony regarding the Master Plan, Mr. Jakubiak acknowledged community plans are adopted as part of the Master Plan and, as relevant here, the Greater Kingsville Area Community Plan was adopted by the County Council in 1996 into the Master Plan.

Mr. Jakubiak testified that visual impact and noise are important considerations under BCZR §502.1. Mr. Jakubiak, however, did not know if the main building was visible from surrounding properties, including the Clark property. Similarly, he did not know if the grassy area that may be used for overflow parking was visible from other properties. With respect to noise, Mr. Jakubiak suggested that to reduce noise, a buffer be as close as possible to the source of the noise to limit the impact upon nearby properties.

II. Subject Property and Surrounding Area

The Property consists of 30.8 acres, with 12231 Harford Road, in Glen Arm, as its address. It is located, generally, in between Hutschenreuter Road (to the south) and Glen Arm/Mount Vista Road (to the north). The Property is outside the Urban-Rural Demarcation Line. The Property, called "Bella Vista," was originally developed by Charles J. Bonaparte (for this reason, the Property is also referred to as the "Bonaparte property"). The site and the barn are historic and

listed on the Maryland Inventory of Historic Properties. In addition, a historic mile marker visible from Harford Road is located on the Property. The Property is zoned RC-2 and is surrounded by other properties zoned RC-2, with the exception of the northeast corner of the Property, starting at Bonaparte Avenue, which is zoned RC-5.

The concrete house that exists today replaced the original house that was burned down in 1933. The house sits prominently up on a hill and is visible at certain points along Harford Road. In addition to the historic barn and main house, the Property has a caretaker's house, a barn, a swimming pool, a bathhouse, and a tennis/multi-purpose court. There is an existing, active driveway on Harford Road across, but offset, from Bonaparte Avenue, and an abandoned driveway to Harford Road further to the south.

More recently, the Property had been owned by an area attorney, but fell into disrepair. The house had been abandoned in excess of ten years and the Property was subject to foreclosure or a tax sale. Mr. Ghimire stated that he first visited the site when it was for sale. During that visit, he saw graffiti inside and outside the main house, as well as beer bottles and needles littered throughout the Property. He also noted the trees and grass were overgrown and considered the Property to be "in really, really bad shape." Various photographs show graffiti, overgrown bushes and weeds, broken or missing windows, and other damage or disrepair. (See, e.g., Pet.'s Ex. 12(a)-(e)). Mr. Ghimire testified that some of the structures and features are in poor condition and need to be removed or repaired.

Ms. Twining, when visiting the Property after its sale, described the Property at that time as "torn up" and "ramshackle looking." Mr. Poehler, who lives next door to the Property, echoed her testimony about the general state of disrepair referenced in the section above. He described the house as a "little distressed," with vandalism and graffiti. Mr. Ghimire identified the efforts to

clean up the Property and restore it, though by the last day of the hearing, there still was no running water or functioning sewer facilities or septic system.

The Property has historically been used as a residence. Ms. Twining testified that she and her extended family have lived on their collective adjacent properties for over two hundred years. She believes that the Property has never been used for farming. The presence of the barn and its historic designation of "Bella Vista Farm" suggests the Property had an agricultural use in the past, but the record is silent as to what agricultural activity may have occurred or when so used. Based on Ms. Twining's testimony, the Property has not been used as a farm or used for agricultural purposes for at least 35+ years.

The general area has a significant farming history and has been considered rural. For example, Dr. Mary Clark, who resides across the street from the Property, testified about her concerns, including the identification of the area as "one of the last rural valleys in Baltimore County." Dr. Mary Clark noted the presence of not only farm equipment on Harford Road, but also commuter traffic, tractor-trailers, and bicycles. Ms. Mason, who resides on Harford Road approximately 1.3 miles south of the Property, used the same language as Dr. Mary Clark when describing the general area ("one of the last rural valleys in Baltimore County"), adding "the residents have worked hard to maintain the RC-2 rural nature of [the] valley."

Petitioner's expert, Mr. Motsco, also considered the general surrounding area as a "rural area." Mr. Motsco described the surrounding area as consisting of "some farmland with some scattered houses." Though there are farm operations in the general area, Mr. Motsco testified that there are no farms immediately adjacent to the Property. He identified single-family houses on the western and northern sides of Harford Road, across from the Property. To the east of the

Property are a church and a school (Christian Redeemer). In addition, the Beachmont Camp is also located to the east and is adjacent to the Christian Redeemer property.

III. Residential/Commuter Growth and Area Traffic Conditions

Testimony on both sides revealed that the general area is growing in residential and commuter use. For example, Ms. Twining testified that there “are a lot more people living out [in the area] than just the farmers we have always had.” Dr. Mary Clark, in expressing her concerns about the possible impact upon traffic from the proposed use, noted an increase of commuter traffic on Harford Road independent of the proposed use, noting “the traffic situation is getting worse every day.” Ms. Mason observed that “[o]ver the years, the traffic on Harford Road has increased dramatically.” When asked on cross-examination about the volume of traffic, she testified, “all I know is a lot.”

Mr. Colaggero, in connection with his traffic count analysis (Pet. Ex. 29), determined that the highest volume of traffic on Harford Road between Glen Arm Road/Mount Vista Road and Hartley Mill Road (*i.e.* inclusive of the Property) occurred on weekdays between 7:00 am-8:00 am for the southbound traffic. He testified national statistics reveal that Harford Road can carry a capacity of 1,700 vehicles an hour. (*Id.* p. 1). According to Mr. Colaggero, the national statistics from which that number was derived take into account the size of the road, the terrain, the lack of shoulders, the number of lanes, a speed of 45 MPH, and other criteria. Mr. Colaggero testified and showed that the peak times on Saturday and Sunday resulted in a peak usage rate of 16% and 21% respectively.

Mr. Colaggero also studied the specific intersection of Bonaparte Avenue and the entranceway of the Property with Harford Road. Using the critical lane volume methodology utilized by the Maryland State Highway Administration (“SHA”) for its intersection studies, Mr.

Colaggero determined that there was “plenty of available capacity at this turning location during the evening peak hour to accommodate more turning maneuvers and more through volume.” The calculations that prompt his opinions were based on assumptions as to the number of vehicles that may turn into the Property. Mr. Colaggero took the peak hour on Saturday (12:00 pm-1:00 pm) to identify actual volume on the road and applied the number of turns (based on assumptions). He testified that even if 400 additional vehicles (that is beyond what he had assumed) were added at the peak hour, there would still be more than ample capacity to accommodate the influx of vehicles.²

Mr. Colaggero also applied the Unsignalized Intersection Methodology used by SHA to look at operations, that is, how long may it take a vehicle to enter the roadway from Bonaparte Avenue or the Property. He determined that during the weekday evening peak hour, it would take approximately 14 seconds for a vehicle to make its turn northbound and 8 seconds to turn southbound.³ As such, he considered the northbound site access approach to have a “B” level of service, but the southbound side to have an “A” level of service, concluding it to be a “very good intersection,” operationally as well as by capacity.

Mr. Colaggero next examined traffic accident data from 2015-2018 (2018 was partial), with Hutschenreuter Road and Vista View Court as, respectively, the southern and northern boundaries for the data analysis. That stretch comprises 1.1 miles of Harford Road and is inclusive

² The representation of the usage was first identified by Mr. Colaggero in his testimony on Sept. 6, 2018, as, on weekdays, “approximately 20 people coming to the temple on a weekday...20 trips in, 20 trips out...” and on weekends as “less than 100 people would visit during [...] the entire day.” SHA required a trip generation analysis based on the Institute of Transportation Engineer’s (ITE) Trip Generation Manual methodology, which yielded a lower volume of trips to and from the site if and once used as a temple. Mr. Colaggero used different methodology that resulted in a greater volume than the ITE methodology. Notably, Mr. Colaggero’s doing so also inures to the benefit of Protestants.

³ Mr. Colaggero incorrectly, but understandably so, identified the southbound turn as “Westbound” in Petitioner’s Exhibit 29 based on the map appearance of Harford Road at the Property, which appears east-west, though still designated north-south.

of the Property. Mr. Colaggero highlighted the number of crashes 500 feet in both directions of Bonaparte Avenue (and therefore, more or less, the Property's entranceway). So, for example, of the 12 accidents that occurred within that 1.1 miles, only two occurred within 500 feet of either direction of Bonaparte Avenue in 2015, with two more occurring in 2016, four in 2017, and two in the first quarter of 2018.

As such, he testified he did not consider the Bonaparte Avenue intersection to be "an accident-prone intersection." Rather, he noted that the accidents appeared to be ones where vehicles were traveling too fast for conditions. Police reports would likely reveal more details as to how and why the accidents occurred, but few were made part of the record.

On cross-examination, Mr. Colaggero admitted all his analyses rely upon conditions in the past and at present, but he factored in presumed growth from the proposed use. The information he relied upon for the presumed growth came from his understanding as to the operations based on representations made to him of the expected regular use --- less than 20 people during each weekday and less than 100 people on weekends. He admitted he did not account for conditions that may exist during festivals or other larger events, but testified that typically a traffic engineer would not focus on the aberrational usage.

Mr. Colaggero also contrasted the accident data identified in Protestant's Exhibit No. 10 with Petitioner's Exhibit No. 30. In short, the exhibits use different data sets and the data was obtained from different sources.

Protestants' Exhibit No. 10, identified reported traffic crashes on Harford Road between Hartley Mill and Glen Arm Roads occurring between January 1, 2016 and April 1, 2018. Protestants' Exhibit No. 10 reveals a significant number of motor vehicle accidents within that stretch, including ones with personal injury. Petitioner's Exhibit 30 reported the traffic crashes on

Harford Road between Hutschenreuter Road and Vista View Court (identified as a 1.1-mile stretch of road) between January 1, 2015 and April 1, 2015. Petitioner's Exhibit 30 also has a further breakdown of crashes "in Bonaparte Ave. area, 1000 feet," which Mr. Colaggero testified meant 500 feet north and south of Bonaparte Avenue. Looking at the data supporting that conclusion, it is apparent that the crashes highlighted as being within 500 feet in both directions of Bonaparte Avenue are actually crashes within 250 feet of each direction from Bonaparte Avenue.

Rather than use an expert to address the studies by Mr. Colaggero or otherwise present evidence regarding traffic congestion, Protestants relied upon the testimony of Mr. Poehler, Ms. Mason, the Clarks, and others to identify the potential hazards caused by the existing road conditions, which they believe will be exacerbated by the additional volume of traffic to and from the Property. Protestants' land use expert, Mr. Jakubiak, though not a traffic engineer, provided his opinions from a planning perspective about the hazards presented within the relevant stretch of Harford Road. He opined planners account for the road system and conditions (*e.g.* speed) as part of project consideration. As such, he took the road features and conditions (echoing the testimony of others, *e.g.* testifying "The road is winding, with sharp, hairpin turns...") into account and concluded that leaving and entering the Property presents a significant risk for accidents due to the greater "scale use" in comparison to the prior use as a single-family residence.

Indisputably, Harford Road around the Property presents additional challenges and requires greater attention and care in that area. Harford Road, designated as Maryland Route 147, in the general area of the Property runs north-south, leaning northeast-southwest. However, Harford Road, proceeding northbound along the Property, takes a sudden almost 90 degree turn east just before Bonaparte Avenue.

The witnesses who reside in the area expressed opinions that Harford Road in and around the Property is dangerous. By way of example, Ms. Twining has “always felt” that “Harford Road is not a very safe road.” Dr. Mary Clark described Harford Road around her and Petitioner’s properties as “a narrow, two-lane road, with blind curves and no shoulder...one of the most treacherous sections of road in Baltimore County.” Ms. Mason testified that the area of Harford Road along the Property has blind curves, which she believes makes it a “hazardous area.” Mr. Poehler, the next-door neighbor to the Property, believes that, irrespective of the location of the entranceway to the Property, the area at issue is “a dangerous stretch of Harford Road period.”

The neighboring residents also provided anecdotal testimony of familiarity of accidents on Harford Road that they have seen, were aware of, and/or even in which they were involved. Some of the accidents identified occurred several miles away from the Property. Some were closer. Though none of the ones identified occurred in the immediate vicinity of the entranceway of the Property, the anecdotal evidence provided by these residents suggests that there have been problems north and south of the Property. Mr. Poehler, in fact, summarized it as “just living at the property and living along Harford Road, you’re going to experience accidents and high traffic...it’s almost a way of life there.” The anecdotal evidence does not rise to the level of that from an expert or rebut the studies performed, but is illustrative and offers some measure of support of the witnesses’ beliefs that the road conditions in the area of the Property presents certain challenges that, generally, are not experienced elsewhere.

IV. Petition and Use Evidence

Petitioner requests special exception relief to allow a temple for religious worship on property zoned RC-2. To that end, Petitioner called Mr. Ghimire to identify how Petitioner intends to use the Property. Mr. Ghimire testified that the existing main house will be used as the temple.

The temple is intended to attract Nepalese Hindu practitioners, but can also serve those that observe Buddhism, as there are commonalities between the religions that make a temple accessible to both.

In addition to the main house, Mr. Ghimire identified other buildings and features, as well as conditions, on site, including a caretaker's house which requires renovations, a historic barn in "kind of bad shape," a swimming pool "that needs to be removed" as it is not in a usable condition, a former tennis court that can serve as a multi-purpose court for children, and a bathhouse that is "also in bad shape and that will be removed as well." There is an entranceway, depicted across from Bonaparte Avenue. Mr. Ghimire identified another driveway off Harford Road toward the south of the Property that has not been used in years and "is not in good condition."

The main building has a main hall with high ceilings and can hold 80-100 people for services. There are two big rooms on the ground floor that can serve as office space. The caretaker house may be used as the residence of a "guru," who will lead prayers. Petitioner intends to preserve and maintain the historic barn. Mr. Ghimire later clarified that the main level of the house would be used for actual religious ceremony and services, but "[t]he upstairs would be more like a back office."

The Hindu religion is a contemplative religion and is unlike western religions with a dedicated day for prayer. Hindus may come to engage in individual prayer at any time or on special days that are personal, for example, to commemorate death of loved ones, celebrate anniversaries and birthdays. Hindus may come to participate in religious rice-feeding ceremonies, which celebrates when babies first take a bite of rice, analogizing the ceremony (*Bratabanda*) to a baptism. Receptions for these rice-feeding ceremonies would follow at a restaurant or other off-site venue.

This temple will install statues of major deities. The temple will be open throughout the week to those that choose to worship particular deities. There are three-to-five major festivals, including *Dashain*, which runs for 15 days and has two major days within that festival.

As for expected daily use, Mr. Ghimire first testified that on a typical, non-festival day practitioners will visit the site at various times throughout the day, amounting to 10-20 people in total. Subsequent to that testimony, he said there could be up to 15-20 at one time, maybe less, on non-festival days. Petitioner's expert witnesses testified that Petitioner represented the typical use as 10-20 people at the site on any given day. To reconcile, the testimony reveals that, on average, the expectation as to usage is up to 10-20 visitors per day, and perhaps even up to 15-20 at one time. In contrast, the testimony about attendance on festival days was clear --- festivals could bring in 150-200 people at one time. For the two major days, Mr. Ghimire expects even more people may come to the site beyond the number that attends on other festival days. On festival days, prayer would take place inside the temple, but festivities can be outside.

Mr. Ghimire stated that attendees on festival days and attendees for routine visits or on a weekly basis would be present on average between 15 minutes and an hour per visit. Mr. Ghimire testified that while there is no set time for prayer or worship, people will not appear at "5:00 in the morning," just between "9:00 and 8:00 pm, or whatever time they prefer, so during the daytime they will, at their convenience, they come and go." He subsequently testified that the hours of worship would be from "8:00 am onward to like 8:00 or 9:00 pm," seven days a week. When asked whether the hours would run from 8:00 am until 10:00 pm, Mr. Ghimire stated "Practically, I think 8:00 am to 8:00 pm," noting he would look at the hours of operation.

As and when a *bhajan* [hymn] is requested as part of services or as part of a special ceremony, at those times, the music will be in indoors. In any event, no amplification equipment is required.

Mr. Ghimire testified that they will not be building any new buildings on the Property. They will not operate a day care or school. Mr. Ghimire testified that Petitioner will not have any camps. Petitioner does not plan to use the old road and driveway at the south of the Property.

Petitioner intends to keep the existing tennis court, and as noted above, make it a multi-sport court, but will not significantly enlarge it. Mr. Ghimire clarified that the court is “not really part of essential...temple operation.” There are no athletic fields being proposed. Mr. Ghimire testified “[t]he pool will not be there...the pool will be removed,” and the bathhouse as well. Mr. Ghimire stated that the religious activity would take place in the main building, and therefore, the religious activity “has nothing to do with the swimming pool and bathhouse.” As for the barn, they “have no use for it right now...[they] don’t have any plans for it.” They will restore, but not enlarge, the caretaker’s house.

Petitioner proposes to have 38 parking spaces, though this number is not based on seats, as there are no actual seats. There will be temporary chairs for special events. Mr. Motsco testified that the number of spaces was derived from the estimated maximum number of people expected to attend a regular event and County input regarding that estimate. When an event calls for more visitors, such as a festival, adjacent grassy areas can handle overflow parking.

The cultural activities and/or other activities with a non-religious purpose, such as those that may be found at a community center, will not take place on the Property. Rather, Mr. Ghimire testified Petitioner intends to have such non-religious, community center-type activities occur

offsite at another building on Taylor Avenue in Parkville, leaving the temple as a place of religious services.

Protestants, however, spent much of their time addressing the alleged Code violations arising from special events held, and to be held on the Property, as well speculating about the future possibility of the Property serving as a community center or a much larger facility for uses beyond religious services.

The judicial powers and functions bestowed upon this Board by the Express Powers Act via the County Charter, County Code and Zoning Regulations are not the same as the judicial powers and functions embodied in the courts created by the Maryland Constitution. Dep't of Natural Resources v. Linchester Sand & Gravel Corp., 274 Md. 211, 222; 334 A.2d 514, 522 (1975). This Board is not empowered to *sua sponte* find Petitioner in violation of a code provision in the absence of the issue arising through the regular code enforcement process and being properly appealed to and in front of the Board. No code enforcement case was part of this hearing. Nevertheless, Protestants did not alter the presentation of their evidence or testimony.

Some of Protestants' evidence identified certain conditions that presently exist without the proposed use (traffic issues, noise runoff issues, etc.), supplemented by a belief the proposed use could, or in more of a conclusory manner, will, make these existing conditions worse. Protestants elected to not present expert testimony to support their arguments that certain issues will be exacerbated by the proposed use or otherwise to directly rebut Petitioner's experts in their specific fields of expertise, relying instead upon Mr. Jakubiak and at times, Dr. Dewey Clark's critiques of Petitioner's experts.

The Board does not trivialize or minimize the importance of the issues to the Protestants. To the contrary, it was more than evident to this Board that Dr. Dewey Clark in particular

undertook exhaustive efforts, underscoring their importance to him and Dr. Mary Clark. Mr. Poehler shared his wife's struggle with dealing with the issues presented by this case, testifying that she could not attend the hearing due to the stress it causes her.

However, the Express Powers Act, County Charter, County Code, and County Zoning Regulations specify the powers and authority of this Board and, as relevant here, the evidence and factors for the Board to evaluate and decide in connection with a special exception petition. Much of the evidence presented did not aid the Board in its analysis of the special exception factors. Similarly, much of the relief Protestants sought was simply beyond the power of the Board for this hearing. The Board cannot order the County to undertake a code enforcement investigation or to issue citations; nor can the Board render advisory opinions on alleged or potential code enforcement issues. The Board similarly cannot deny a special exception petition on the basis of a future code violation that may or may not ever occur.

V. Applicable Baltimore County Zoning Regulations

As noted above, the subject Property is zoned RC-2. The County Council, in creating resource conservation zones, made several findings and identified several purposes for the designation:

§ 1A00.1. - Findings.

It is found:

- A. That development in the rural areas of Baltimore County has in recent years been taking place at an increasing rate;
- B. That this development has occurred without the framework of a land use plan or other planning components;
- C. That due to this and other factors, this development has formed very undesirable land use patterns;
- D. That in general, these patterns are, or can be described as, urban sprawl;

E. That a significant amount of urban sprawl development is occurring as linear development along the various highways of the rural areas of the county as tracts of land immediately fronting along highways are "lotted off"; the utility of the road system is being impaired and future improvements will be frustrated if this process continues;

F. That it has been established that this development carries with it an extremely high cost to the county in a number of respects including:

1. The cost of servicing this pattern of development;
2. The cost with respect to its consumption and use of prime agricultural land, critical watershed areas, mineral extractive sites, as well as of other important natural resource areas;
3. The cost of future development opportunities due to the fact that viable, rational alternatives will be lost totally or compromised significantly by the present form of development;

G. That the aspect of the comprehensive plan that is applicable and which is being considered for rural Baltimore County embodies solutions to the various problems;

H. That the effective implementation of this plan requires additional zoning classifications; and

I. That effective implementation of the resource conservation area requirements in the Chesapeake Bay Critical Area criteria requires additional resource conservation zoning classifications to accommodate strictly controlled growth while conserving habitat and water quality within the Critical Area.

§ 1A00.2. - Purposes.

Pursuant to the above findings, it is the purpose of the Resource Conservation Zones to:

- A. Discourage present land use patterns of development and to create a framework for planned or orderly development;
- B. Provide sufficient and adequate areas for rural-suburban and related development in selected and suitable areas;
- C. Protect both natural and man-made resources from compromising effects of specific forms and densities of development;
- D. Protect areas desirable for more intensive future development by regulating undesirable forms of development within these areas until such time as intensive development commences.
- E. Help achieve the goals of the Chesapeake Bay Critical Area Protection Law by enacting land use policies to control development within the Critical Area by

conserving the land and water resource base for agriculture, forestry and other natural resource uses; minimizing adverse effects on water quality; and conserving fish, wildlife and plant habitat.

The use sought by Petitioner is that of a religious institution and BCZR §1A01.2(C)(6) permits by special exception churches or other buildings for religious worship within a RC-2 zone.

Baltimore County Zoning Regulation §502.1 establishes that 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, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones

In addition to the special exception factors in §502.1, BCZR requires the Board to find, in RC-2 cases, that the use would not be detrimental to the primary agricultural uses in its vicinity. BCZR §1A01.2(C).

VI. Special Exception Law and Discussion

A. Burden of Proof and Presumptions

Maryland courts historically have considered special exception uses as ones conditionally compatible with uses permitted as of right in the same zone. See, *e.g.*, Creswell v. Baltimore Aviation Serv., Inc., 257 Md. 712, 719; 264 A.2d 838, 842 (1970). The Court of Appeals revisited the law on special exception in 1979 with the seminal case of Schultz v. Pritts, 291 Md. 1; 432

A.2d 1319 (1979). In Schultz, the Court of Appeals held that a special exception is presumed to be in the interest of the general welfare, and therefore a special exception enjoys a presumption of validity. 291 Md. at 11; 432 A.2d at 1325.

In 2016, the Court of Appeals in Attar v. DMS Tollgate provided additional guidance on the presumption that accompanies a proposed special exception use. 451 Md. 272; 152 A.3d 765 (2016). First, the Court reiterated that the special exception petitioner has both, the burden of production and the burden of persuasion. Attar, 451 Md. at 287; 152 A.3d at 773, *quoting* People's Counsel for Balt. Cty. V. Loyola Coll. In Md., 406 Md. 54, 109; 956 A.2d 166, 199 (2008); *see also*, Board of Appeals Rule 7(d), "the proponent of an action to be taken by the Board has the burden of proof." Second, the Court clarified that the concurrent presumption in favor of the special exception petitioner is not a mutually exclusive evidentiary burden. Attar, 451 Md. at 286; 152 A.3d at 773.

Referencing Maryland Rule 5-301(a),⁴ the presumption identified by Schultz v. Pritts satisfies the burden of going forward on a fact presumed (in this case, the special exception is in the interest of the general welfare, and therefore has a presumption of validity) and "may satisfy the burden of persuasion if no rebuttal evidence is introduced by the other side." Attar, 451 Md. at 286-287; 152 A.3d at 773; *quoting* Anderson v. Litzenberg, 115 Md. App. 549, 564; 694 A.2d 150, 157 (1997) (emphasis in original).

⁴ Md. Rule 5-301 sets forth:

(a) Effect. Unless otherwise provided by statute or by these rules, in all civil actions a presumption imposes on the party against whom it is directed the burden of producing evidence to rebut the presumption. If that party introduces evidence tending to disprove the presumed fact, the presumption will retain the effect of creating a question to be decided by the trier of fact unless the court concludes that such evidence is legally insufficient or is so conclusive that it rebuts the presumption as a matter of law.

(b) Inconsistent presumptions. If two presumptions arise which conflict with each other, the court shall apply the one that is founded upon weightier considerations of policy and logic. If the underlying considerations are of equal weight, the presumptions shall be disregarded.

The presumption is that a special exception use is valid, that is, one that *can* conform to the zoning plan depending on the location, zoning classification, and impacts on the surrounding area. The presumption that inures to a special exception petitioner's benefit requires a special exception protestant to present probative evidence of any harms or other detrimental impacts, as identified in BCZR §502.1, to the surrounding neighborhood that are above and beyond the impacts that may be experienced elsewhere in the zone from this proposed use (Schultz, 291 Md. at 22-23; 432 A.2d at 1331) and/or other noncompliance with applicable zoning regulations to warrant a denial. In other words, a special exception protestant must show "non-inherent adverse effects," or "unique adverse effects" to overcome the presumption that the proposed use is in the interest of the general welfare and compatibility. *See*, Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties, 453 Md. 516, 543; 162 A.3d 929 (2017); Attar, 451 Md. at 287; 152 A.3d at 774.

If a special exception protestant presents sufficient evidence to create a genuine dispute of material fact as to a particular special exception factor or other zoning requirement, the evidentiary record must be sufficient to persuade the Board of Appeals that the proposed use will conform to the applicable zoning plan and satisfy the specified factors. Attar, 451 Md. at 286-287; 152 A.3d at 773; *quoting* Anderson, 115 Md. App. at 564; 694 A.2d at 157. Even still, the Board can grant the special exception petition along with certain conditions or restrictions to better protect the surrounding and neighboring properties. BCZR §502.2. If the burden of persuasion is not met, the Board will deny the petition.

B. Defining the Neighborhood/Surrounding Properties

At the start, the Board must determine what the locality or neighborhood is in order to determine what if any impact the proposed use has above and beyond effects inherently associated

with a special exception use. Attar, 451 Md. at 278-284, 289; 152 A.3d at 769-772, 775. As stated by the Court of Appeals: “the Board’s task is to determine if there is or likely will be a detriment to the surrounding properties” (Id., 451 Md. at 280; 152 A.3d at 769-770); the Board must assess “whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” Schultz v. Pritts, 291 Md. 1, 22-23; 432 A.2d 1319, 1331 (1979). Therefore, the question is whether the expected effects from the proposed use are somehow exacerbated by the location at issue, to the detriment of those to experience such effects. For a special exception, the description of the neighborhood to be impacted by the proposed use “must be precise enough to enable a party or appellate court to comprehend the area that the Board considered.” Attar, 451 Md. at 282; 152 A.3d at 771.

For this case, the Board finds the neighborhood at issue includes that area bordered by Hutschenreuter Road to the south, Glen Arm Road/Mount Vista Road to the north, the properties along Harford Road, including the Poehler and Clark residences specifically, the other residences on the former Marc Lane at Harford Road, those properties on Bonaparte Avenue, and all other bordering properties. As will be discussed in more detail below, the relatively nearby agricultural uses are excluded from this definition. There is nothing in the record that suggests an expansion beyond the corridor and surrounding properties adjacent to the Property is warranted. As such, the neighborhood at issue is the residential corridor along Harford Road between Hutschenreuter Road and Glen Arm/Mount Vista Roads to the north and the other properties that share a border with the Property.

C. Application of the BCZR §502.1 Special Exception Factors

Protestants focused their opposition on certain factors under BCZR §502.1 and did not address, and therefore, did not attempt to rebut, other factors. The Board finds that Protestants have not presented any meaningful evidence on certain factors to sufficiently challenge the presumption in favor of Petitioner, namely, §§502.1(D), (E), (F), and (H).⁵ Moreover, Petitioner has presented sufficient evidence to satisfy those factors.

The factors contested by Protestants include: (A) the health, safety or general welfare of the locality; (B) congestion in roads, streets or alleys; (C) the potential hazard from fire, panic or danger; (G) inconsistency with zoning classification and spirit and intent of the zoning regulations; and (I) the detrimental effect to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an RC-2, RC-4, RC-5 or RC-7 Zone. As noted above, because this Property is within the RC-2 Zone, the Board must also find that the proposed use is not detrimental to the primary agricultural uses in its vicinity. BCZR §1A01.2(C).

1. §502.1(A) Health, Safety, or General Welfare of the Locality

Noise is not expressly identified in the BCZR §502.1 factors. However, given the purpose for the factors, namely addressing harms and detrimental impacts to be experienced by the surrounding community, the Board interprets noise as being included within the “health, safety or general welfare,” factor and, as such, ripe for consideration.

⁵ By way of explanation, Protestants’ closing memorandum does not address §§502.1(E), (F), or (H). As for §502.1(D), Protestants argue that, at present, there is not a functioning septic system that can handle large festivals. First, the use complained of by Protestants has been represented, and accepted, as atypical. Nevertheless, Mr. Powell, Petitioner’s Licensed Environmental Specialist who provided testimony concerning the septic needs based on the proposed use, testified he believed that the site was sufficient for the intended use. This testimony was unrebutted. He also identified that, for the special events, port-o-potties would be used, which, for this special exception hearing, is not a sufficient basis for the Board to conclude that there will be an undue concentration or overcrowding.

Protestants, primarily through the Clarks and Mr. Poehler, identified noise as a significant concern. Dr. Dewey Clark specified two aspects, a general noise concern, but also what he referred to (and others impliedly so) as preservation of "solitude." To that point, Dr. Dewey Clark provided audio and video recordings with audio of the ambient noise he experiences at his property. The Clarks analogized the cars passing on Harford Road to the sound of breaking waves. To be sure, the evidence establishes a more serene, peaceful environment than other parts of the County. That is easily observed in the audio and video clips, as well as photographs. The Clarks and Mr. Poehler identified specific events with amplified music and atypical noise, whether by time or volume, as well as volleyball games.

The noise associated with operation of the proposed temple is no different at the present location than it would be experienced in other parts of the zone. Moreover, without trivializing the importance of this to the Clarks and Poehlers, they can neither expect, nor can this Board order, a particularized, subjective limitation on the level of noise that is permitted to come from the Property in furtherance of their individualized interests, especially where that subjective level of noise has the potential to intrude upon Petitioner's ability to use the Property in a lawfully valid manner and such noise potential from the Property exists today without the granting of a Petition.

Aiding in reducing the Protestants' concern, the Property has a substantial tree and vegetative buffer between the Property and the Clark house, though somewhat less so for the Poehlers. The activities to take place on the Property are largely confined to the main building area, a significant, even if imperfect, distance from the Poehler and Clark residences. The evidentiary record does not establish any exacerbation or amplification caused by the Property's elevation compared to the surrounding properties. To the contrary, as noted above, Protestants played several clips of audio from the Clarks' property ostensibly to illustrate overly invasive noise

emanating from the Property, which sits higher than the Clarks' property. Those clips, however, failed to do so. The Board does recognize that larger events could generally be more intrusive in this manner. As such, the Board will order as a condition that additional landscaping be planted at the border with the Poehler house and its curtilage, as well as on the west side of the multi-purpose court to increase the buffer density in those areas. In addition, the Board will also order that there is to be no outdoor amplification of sound.

It has been argued that the Foxworthy house located on the corner of Bonaparte Avenue at Harford Road will suffer adverse impacts, particularly as to headlight intrusion and runoff, as a result of the proposed use. First, as to runoff, Protestants failed to present sufficient evidence to determine whether the existing conditions on the Property are causing runoff to drain onto the Foxworthy property, let alone evidence to establish the proposed use will exacerbate any existing drainage issue or cause additional runoff.

Mr. Motsco's testimony established that runoff from Harford Road generally falls toward the Property, which has a culvert and a storm drain inlet. As such, the evidence presented shows that whatever runoff from the Property that makes it out to Harford Road (which is assumed for this discussion) is more likely to drain to and run along the culvert on the south side of Harford Road (the Property side) rather than travel over Harford Road to the Foxworthy property. Even still, Petitioner will be required to submit for approval a storm water management plan and will be required to comply with the applicable regulations and requirements at all times like any other property located in the County. Therefore, if there is a subsequent determination that some improvement from the Property may cause or exacerbate the runoff issue, mitigating measures will be required by the County.

As to headlight intrusion, based on Petitioner's Exhibit No. 26, headlights from vehicles turning left while exiting the Property will sweep across Bonaparte Avenue. Mr. Colaggero testified he did not conduct a study to analyze this aspect, but also did not know where the exact exit location would be. SHA will be providing additional input at the time of the access permit.

The final locations of the entrance and exit obviously are significant factors, as there could be a detrimental impact upon residents on Bonaparte Avenue, and in particular, the Foxworthy property. Due to the uncertainty caused by not having an exact exit location at this time, the Board is ordering as a condition of this approval that all traffic exiting the Property must turn right. Imposing this condition addresses several issues: (1) avoiding headlight intrusion upon the Bonaparte Avenue properties; (2) prevent blinding or distracting drivers driving north on Harford Road when coming around the blind curve; and (3) as discussed in greater detail below, improving safety and helping to prevent traffic congestion on Harford Road at or near the Property. Doing so will not cause an undue hardship on the visitors to the Property as the Mount Vista/Glen Arm/Harford Road roundabout is close to the Property.

While traffic issues identified contemplate the health, safety and general welfare of the locality, all traffic issues will be addressed within the discussion of §502.1(B).

2. §502.1(B) Congestion in Roads, Streets, or Alleys

Protestants have raised concerns regarding additional volume, *i.e.* congestion, on Harford Road as well as safety along Harford Road due to the increased volume. With respect to the congestion argument, nearly every witness acknowledged that they have observed a noticeable increase in traffic volume throughout Harford Road, including in the vicinity of the Property, in recent years. Protestants' witnesses expressed a concern that the additional volume will detrimentally impact travel along Harford Road (in the vicinity of the Property) by increasing the

probability of accidents, which presents a danger to nearby residents who use that stretch of road more frequently. Clearly, use of the Property as proposed will cause more drivers to use Harford Road for access to the Property. The relevant questions are: (1) will the proposed use cause traffic congestion, and if so (2) how at this location is that congestion worse than other locations in the RC-2 Zone. Those questions will be addressed separately.

a) Congestion

As noted above, Mr. Colaggero, Petitioner's traffic engineer, conducted several examinations, particularly, traffic counts as to capacity and as to operations, sight distance analysis and a speed study between September 26, 2018-October 9, 2018. That evidence is summarized above. Protestants relied upon undermining Mr. Colaggero's testimony and supplementing the record via lay witness testimony rather than through the use of an expert to address the studies and opinions by Mr. Colaggero.⁶ The lay witness testimony relevant to traffic congestion was similarly summarized above.

Mr. Colaggero's testimony on the traffic congestion issue was credible, convincing, and un rebutted. Mr. Colaggero's opinions and supporting calculations rely upon the representations of typical operations made by Petitioner to Mr. Colaggero. While Protestants question those representations, the typical usage data provided is information required for his expert evaluation and information necessary for Mr. Colaggero's calculations and it was the only data provided to him.

It is undisputed that there will be an increase in traffic volume caused by the typical use. However, it is similarly undisputed that the capacity of Harford Road in and around the Property

⁶ Dr. Dewitt Clark testified he thought they were better off by relying on cross-examination of Mr. Colaggero instead of retaining a traffic expert with whom Protestants consulted for this hearing.

can easily handle the expected increase. Protestants did not offer evidence of possible specific effects upon traffic flow, congestion, and/or turning delays if the representations/assumptions as to typical usage are underestimated or otherwise incorrect. As Protestants did not have a traffic engineer to provide evidence to contradict Mr. Colaggero or Petitioner otherwise, Mr. Colaggero's calculations and opinions are the only evidence in the record on this issue.

In fact, Mr. Colaggero testified that if another, *e.g.*, 400 vehicles at the Saturday peak hour were added to his assumptions, the intersection would still be considered within the level of service for an "A" rating (*i.e.*, the highest rating) under the CLV methodology. There is more than sufficient capacity, whether based on the assumed/represented usage or a significantly greater volume, and it cannot be concluded that the projected increase in operational delay creates any significant congestion. Petitioner has met its burden on this aspect of this factor.

b) Safety Issues Presented By Increase Traffic Volume (§502.1(A),(B),(C))

As referenced above, it seems to be the one point in this case on which there appears to be consensus among the parties --- Harford Road along the Property's northwestern, northern, and northeastern edges presents certain challenges, and that stretch may be considered hazardous with existing conditions. To be more specific, the particular stretch of Harford Road at issue is that which, heading north, sweeps around a bend, described as a "blind curve" by several witnesses, proceeding in easterly, then southeastern direction, before entering another curve just prior to Bonaparte Avenue and the Property's entranceway, proceeding east, before sweeping out of the curve and headed northeast just past the Poehler house (approximately 1,000 feet in roadway length). (*See, e.g.*, Pet. Ex. 26).

From the start of that stretch until the house on the northwest corner of Bonaparte Avenue and at the Property entrance, Harford Road is surrounded by a substantial number of tall deciduous

trees and other vegetative growth that may obscure sight lines around the curves as well as light. (See, e.g., Pet. Ex. 19 (No. 2-4) and 26 (No. 4-5)). The embankment boxing in Harford Road sits at a significantly higher elevation on the eastern, and therefore, Property side, of Harford Road. From Bonaparte Avenue and the Property entrance heading north, there are, again, a significant number of tall deciduous trees and also vegetative growth that may obscure sight lines around the curves. There are no shoulders along Harford Road in this stretch. At various points, there are guardrails (See, e.g., Pet. Ex. 26, photo 4), road signage warning of sharp curves/turns (e.g. Pet. Ex. 26, photos No. 3 and 5; Pet. Ex. 19, photos No. 2-3), and a recommended reduced speed limit sign. (Id.)

Mr. Colaggero provided testimony about the signage, explaining their use by SHA and what the signs are communicating to drivers. He identified several traffic signs along Harford Road, and understood from the signs, SHA considers the course of the road as “reverse turn area,” which reflects “a more severe turn, not a curve.” He understood the speed sign of 30 mph as a “SHA recommend[ation]” that applies to that stretch of Harford Road at issue, for both the northbound and southbound traffic. The chevron signs act as “additional warning signs on the turns themselves.” Otherwise, Harford Road northbound has a speed limit of 50 mph, while southbound is 45 mph.

Based on the presence of the guardrails, road signage, and recommended reduced speed limit sign, it is reasonable to conclude that this stretch of Harford Road has had a higher volume of accidents and/or near-accidents and SHA determined remedial measures were required. Yet, it appears that the relevant stretch of Harford Road still may present a greater risk of accidents than other nearby stretches of Harford Road. Video clips presented by Dr. Dewey Clark and the

testimony of witnesses on both sides support such a finding. This finding, however, is not dispositive of this factor.

Mr. Colaggero's sight distance analysis helps with the safety aspect for this factor. To start, he superimposed the contour lines provided to him by Mr. Motsco on the roadway network. (*See*, Pet. Ex. 26). Petitioner, however, seeks to split the entranceway into an entrance lane and a separate exit lane, which requires shifting the location of the entrance and exit. Following SHA granting conditional approval of the concept plan depicting a split entrance and exit (as reflected in Pet. Ex. 27) during the pendency of this hearing, Mr. Colaggero conducted his sight distance analysis anew (*See*, Pet. Ex. 26).

As reflected in Petitioner's Exhibit 26, at the proposed new exit at the Property, SHA requested Mr. Colaggero provide a minimum of 390 feet looking south (*i.e.* left), based on northbound traffic proceeding at 35 mph coming out of the first curve/turn. Looking north (to the right) from the proposed exit lane, SHA requested an intersection sight distance of 500 feet based on a speed of 45 mph for those southbound vehicles on approach to the Property. SHA also wanted a minimum intersection sight distance for the southbound traffic left-hand turn into the Property of 285 feet, based again on a speed of 35 mph of northbound traffic coming out of the first curve/turn. Lastly, SHA requested a stopping sight distance of 360 feet based on southbound traffic at 45 mph.

For this 500 feet intersection sight distance and 360 feet of stopping distance to be achieved, vegetation growth on the north side of Harford Road, starting at Bonaparte Avenue and around the curve at the Poehler driveway, must be cleared and maintained. SHA acquired a right-of-way at this location to clear and maintain the vegetation growth on the north side (southbound traffic side) of Harford Road. As for the south side (the northbound side of traffic), SHA will

make a determination of what is required and if clearing and maintenance on the Property is necessary. SHA, as part of the access permit process, may either acquire a right-of-way from Petitioner or condition its approval and require Petitioner to clear and maintain this area.

As noted above, accident data was also presented by both sides. (Prot. Ex. 10, Pet. Ex. 30). Protestants' Exhibit 10 concerns accidents that occurred from 2016-first quarter of 2018, on Harford Road, between Hartley Mill Road (south of the Property) and Glen Arm Road (to the north), but there are no further details about the accidents, the specific locations, or causative or contributing factors. Petitioner's Exhibit 30, assembled by Mr. Colaggero and/or his office after cross-examination on Protestants' accident data, identifies accidents that occurred from 2015 through first quarter 2018, on Harford Road, in between Hutschenreuter Road (to the south of the Property) and Vista View Court (to the north). The data identifies a report number, date, surface conditions, time, mile marker location, road name, distance, direction, and a code briefly describing mechanism for the occurrence of an accident (*e.g.* "Making Left Turn"). Petitioner's exhibit has much more information than Protestants, but because the exhibits use different data by time as well as location, and also sourcing, there is little value in attempting to compare or reconcile the two.

The area of particular relevance for evaluation would be that section between Hutschenreuter Road, to the south, and Glen Arm/Mount Vista to the north. Even still, some of the information may not be applicable or otherwise be relevant to this case as, in 2016-2017, SHA reconstructed the previously non-aligned intersection at Glen Arm Road, Mount Vista Rd. and Harford Road as a roundabout. As identified by the lay witnesses, there had been numerous accidents at that intersection prior to reconstruction. Mr. Colaggero testified that he understood SHA began studying the Glen Arm/Mount Vista/ Harford Road intersection in 2009. Accident

data inclusive of pre-roundabout accidents at that location lessen the importance of the data unless those accidents (as well as other outside of area considered relevant) can be identified. Whatever intersection and road conditions caused or contributed to the occurrence of the accidents at the Glen Arm/Mount Vista location no longer exist and, obviously, will not exist going forward.

Excluding data of accidents that occurred at or near the intersection of Glen Arm, Mount Vista, and Harford Roads, Petitioner's Exhibit 30 provides some evidence that a higher number of accidents occurs within the relevant stretch of road at a higher rate than the remainder of the studied area (primarily, the area along the western edge of the Property to Hutschenreuter Road, and Harford Road north of the roundabout to Vista View Court). Out of the 20 accidents, 10 occurred within the surrounding neighborhood defined above. Notably, the accidents that occurred within 250 feet of the intersection of Bonaparte Avenue and Harford Road, and therefore the proposed entrance and exit to the Property, are also within the improved intersection sight distance and improved stopping distance required by SHA.

SHA has provided its preliminary input to Petitioner as to how to make the Property entranceway safer, which requires relocating and splitting it (as well as maintaining vegetation that may obscure sight lines). The only information in the record regarding an assessment as to the safety risk presented by the proposed use comes from Mr. Colaggero. Mr. Colaggero has opined that his understanding of the proposed use of the Property in combination with the SHA-requested sight distances makes the relevant stretch of Harford Road safe. SHA, as part of the access permit process, may have more input as to further improvements.

Given the inherent heightened level of danger this stretch of road presents, the representations identified by Mr. Colaggero and confirmed by Mr. Ghimire as to expected typical use take on greater importance. In other words, because the Board's decision is premised upon

the un rebutted representations as to the expected typical use, any use that leads to more vehicles than those used in Mr. Colaggero's studies may create a greater risk, especially considering that this stretch of roadway is particularly complicated and more dangerous than found elsewhere. Greater usage will foreseeably lead to more stacking and/or queuing outside of the Property's entranceway, potentially causing a greater risk for accidents given the visual obstructions and sight distance issues, particularly for traffic going northbound around the "blind curve."

SHA has proposed changes to help alleviate these concerns based on the representations. The Board notes that if vehicle usage well exceeds the models, SHA's remedies may not adequately abate or alleviate the dangers presented by this stretch of road. The Board, however, can only base its decision upon the evidence presented, which reveals that, as proposed, certain measures have been or will be required by SHA to address safety issues. The only evidence in the record is that the entranceway and exit can be made safer than existing conditions, even with the increased vehicle traffic accessing the Property.

Based on this evidentiary record, the Board finds that Petitioner has met its burden on this issue and factors. There is no competing evidence regarding sight distances or other evidence upon which the Board can rely to conclude otherwise. Nevertheless, as set forth above, the Board's imposition of a right-turn only for any vehicles exiting the Property will provide additional relief to minimize traffic from queuing on Harford Road outside of the Property's entrance, helping to address the safety concern. The Board will also impose as a condition on Petitioner that Petitioner complies with SHA's requirements and recommendations, and also that Petitioner maintain the vegetation on its Property in order to maintain sight lines along Harford Road at all times.

3. \$502.1(C) Potential Hazard from Fire, Panic, or Danger

Protestants presented evidence through video clips of events at the Property of certain fire code violations and the use of fire at an event. None of those clips or the testimony from Protestants poses any sufficient challenge to the presumption afforded to Petitioner, let alone causes the Board to conclude the proposed use creates a hazard of fire, panic, or danger. In any event, there is no evidence at all that suggests any risk of fire, panic, or danger is greater with the proposed use at this location. Moreover, Petitioner will not be exempt from compliance with the fire and building codes. Petitioner has satisfied this factor.

4. §502.1(G) Consistency with Zoning Classification/Spirit and Intent of Zoning Regulations

While this factor has been contested, the Board finds Petitioner has met its burden on this factor. The RC-2 Zone permits buildings for religious worship as special exception use. Other religious institutions exist in the RC-2 Zone. In fact, one religious institution is adjacent to the Property. Agricultural land is not being removed or changed as a result of this Petition. Ms. Twining testified she did not think the Property had ever been used as a farm while she has been in the area. Moreover, the evidentiary record established that, though there may have been a significant history of agricultural use in the general, broader area, the immediate subject area is now primarily residential, with other non-agricultural uses in the vicinity.

There is nothing in the record that establishes the residential and other non-agricultural uses within the immediate area affect the agricultural uses outside of it and therefore, there is no basis to conclude that the proposed use will have such an effect simply by its location. Similarly, there is nothing in the record to support a finding that the proposed use somehow detrimentally impacts the surrounding area to a greater extent than if located elsewhere to render the proposed use inconsistent with the spirit and intent of the zoning regulations. As such, the Board finds that

the proposed use is consistent with the RC-2 Zone general provisions under §1A01.1 or otherwise consistent with the spirit and intent of other applicable RC-2 regulations of the BCZR.

Protestants further argue that the propose use is inconsistent with the Baltimore County Master Plan 2020, particularly because the Property is zoned RC-2 and is located on a designated Scenic Corridor. The Board, having already found no inconsistency with the RC-2 aspect of this argument, also finds no inconsistency with the Property being located in a designated Scenic Corridor. The Master Plan 2020 states as a policy action for protecting scenic corridors: “(9) For properties along scenic routes or within scenic view sheds, variances, amendments, and special exceptions should be granted *sparingly*.” (emphasis added).

The only proposed change that will be observable along the scenic corridor will occur at the entrance and exit, which is a minimal disruption, and the appearance will be consistent with other driveways or private roads in the nearby area. Notably, there is already a driveway present, but with this approval and the conditions imposed, the entranceway will be split to address safety concerns, which, of course, is of paramount importance.

The Master Plan 2020 expressly contemplates granting of special exceptions for properties along scenic routes, just that granting such petitions should be done carefully. The Master Plan 2020 cannot be reasonably interpreted as precluding all special exception uses, and specifically, the proposed use, even if in a RC-2 zone and along a Scenic Corridor.

The Greater Kingsville Area Community Plan, adopted by the County Council in 1996 into the Master Plan, includes the Property within its borders. The Community Plan recognizes that for development of religious institutions in the area, the development “should be located in close proximity to major roadways such as Harford and Belair Roads, and provide a suitable buffer commensurate with size and usage from neighboring properties.” (Pet. Ex. 46, at p. 27).

As such, the Board finds that the proposed use is consistent with the zoning classification, zoning regulations, or the Master Plan 2020, including the Greater Kingsville Area Community Plan.

5. Detrimental Effect to the Environmental and Natural Resources of the Site and Vicinity

The Board finds that Petitioner has met its burden on this factor as well.⁷

It is noted Dr. Dewey Clark has some experience in environmental matters (training and volunteer work as a master naturalist) and his testimony on these points has been taken into consideration; however, Dr. Dewey Clark was not offered or received as an expert witness on environmental and natural resource matters.

While Dr. Dewey Clark expressed concerns about site drainage having impacts on the Gunpowder River and trout in nearby streams, no evidence was presented that identified the particular impacts, causation, proximity of sensitive areas to activities on the Property, or other such evidence required to find that Protestants successfully rebutted this factor.

Another issue raised by Dr. Dewey Clark concerned the possible use of non-native and invasive plantings. More accurately, he wishes for, if approved, a requirement that native plantings be used as part of any landscaping. The Board understands how requiring native plantings will help the site and vicinity and help prevent detrimental impacts from non-native species, and finds the suggested condition reasonable. Therefore, a condition requiring the same shall be imposed,

⁷ It is noted that Petitioner addressed the septic and well issues under this factor in its post-hearing memorandum, while Protestants discussed it under §502.1(D). Protestants identified the issues of soil compaction and permeability caused by overflow parking. As stated above, the overflow parking is associated with the special events, not typical use. If the overflow parking was required on a continuous basis with a greater volume of regular attendees, the Board may have reached a different conclusion on this factor (but Petitioner would also have presented different evidence). The Board confines its decision to the proposed use, which does not require regular use of overflow parking on to the surrounding grass. Moreover, the evidence presented by Protestants can only be considered speculative and as such, insufficient as evidence.

to the extent that such a condition does not infringe upon the free exercise of religion, as is expressed in more detail below.

6. Detrimental to the primary agricultural uses in its vicinity. BCZR §1A01.2(C)

The Board finds that the proposed use will not be detrimental to the primary agricultural uses in its vicinity. In fact, as the Board has described the surrounding area and defined the neighborhood, there are no, agricultural uses along the relevant stretch of Harford Road or that are immediately adjacent to the subject Property. More specifically, the general area has properties with agricultural uses, but there are no farms immediately adjacent to the Property. While there may be farm equipment using Harford Road at various points, those points are not within the vicinity of the Property. The immediate vicinity is primarily residential in nature, along with the presence of the adjacent Christian Redeemer property and Beachmont Camp. There are no primary agricultural uses near the Property, therefore, the proposed use cannot be a detriment.

VII. Case No. CBA-19-004

On July 2, 2018, Mr. Kotroco, on behalf of Petitioner, wrote a letter to Judge Beverungen seeking clarification of his January 22, 2018 Opinion and Order regarding whether Petitioner could hold a fundraiser on the Property. (Pet. Ex. 34). Judge Beverungen responded the following day by writing on the letter, that the January 22, 2018 decision related solely to the operations of a building for religious worship, and that the owners are free to gather on their property so long as no religious activities are occurring within the subject building and all other permit requirements, if any, are satisfied. (Id).

Protestants filed a “Motion to Strike Tim Kotroco Letter Dated July 2, 2018 As Ex Parte And Not In The ALJ Jurisdiction To Opine.” (Prot. Ex. 1, CBA-19-004). Protestants have argued that the letter was read into the record in an effort to “influence the judgment of this Board.” (Prot.

Response to Case No. CBA-19-004). Protestants also contend that the letter was never served upon them, whether before or after Judge Beverungen's response.

Protestants subsequently clarified their position to note that they do not request that the letter be stricken, "only that the effect of the letter be ruled inappropriate and unduly presented and relied upon." (Id). It should be noted that Protestants did not object at the time that the Petitioner sought to move it for admission into evidence, but did note they would have a motion regarding it for the next hearing date after it was moved into evidence. In fact, counsel for Protestants, at one point, consented to its admission.

Simply, the Board finds that Judge Beverungen had no jurisdiction over the matter, irrespective of whether it constituted impermissible *ex parte* contact and without the need to untangle the lack of an objection followed by a motion and the request to strike, but only the effect, not the letter itself. The July 3, 2018 response had no effect upon the January 22, 2018 Opinion and Order, or the proceedings in front of the Board. Case No. 18-122-X had been properly appealed, divesting the court below with jurisdiction. The clarification had no effect on the Opinion and Order issued by the ALJ in Case No. 18-122-X or these proceedings. While it should not have occurred in the manner it did, no one should interpret the July 3, 2018 response as having any legal effect. As such, the Board dismisses the appeal of Case No. CBA-19-004 as there is nothing to remand, grant, or deny.

VIII. Exhaustion of Administrative Remedies

As noted above, Protestants sought to introduce documents and testimony regarding alleged code enforcement violations and what they have represented as a lack of adequate response and/or inaction in enforcement on part of the County. As noted above, no code enforcement matter was pending in front of the Board. Therefore, the Board did not admit the evidence relating to the

alleged code enforcement matters or the attempts at contacting County officials about them. Rather, Protestants requested that the Board find that Protestants have exhausted all administrative remedies on this issue.

Typically, administrative remedies must be exhausted prior to seeking judicial remedies, depending on whether the administrative remedies, relative to judicial remedies, is categorized as exclusive, primary and concurrent. Falls Rd. Cmty Ass'n v. Balt. County, Md., 437 Md. 115, 136; 85 A.3d 185, 197 (2014). For an appeal to this Board by a party "aggrieved by a decision of a local zoning official," the remedy at issue is at least primary, and may be exclusive. *Id quoting, Maryland Reclamation Associates, Inc. v. Harford County*, 382 Md. 348, 364-65; 855 A.2d 351 & n.6 (2004).

The Board finds that the remedies sought by Protestants on the alleged code enforcement issues are beyond the jurisdiction of the Board and/or those issues are otherwise not properly in front of the Board, precluding Protestants from any administrative remedies on the alleged code violation and enforcement issues and/or the County's actions or inactions concerning the same. Simply, the relief sought by Protestants on this issue, as understood by the Board, is beyond the authority and jurisdiction of this Board and Protestants will have to seek those remedies in another court.

IX. Evidentiary Issues Concerning Protestants' Exhibits 22 and 23

As stated above, Protestants called Mr. Ghimire as an adverse witness in their case. During the course of that examination, Protestants attempted to question Mr. Ghimire about two fights (to be clear, neither fight involved or concerned Mr. Ghimire in any way) that occurred on January 28-29, 2018, one at an event held at St. Joseph's Catholic Church called "Nepal Idol" modeled after "American Idol" and one at a restaurant after the first incident. The police were called to

respond to both fights. Protestants intended to introduce police reports (Protestants Exhibits 22 and 23) in support.

When first raised, it was unclear what the evidence was, what its purpose was, and the connection to Mr. Ghimire. Early on in that testimony, Mr. Ghimire was asked whether he sponsored or hosted an event at St. Joseph's Catholic Church. As that question caused some confusion to Mr. Ghimire, counsel for Protestants was asked to clarify. Subsequent questioning revealed neither Mr. Ghimire individually, nor the Petitioner, was the host or sponsor for that event. As the questioning developed, it became clear that Protestants wanted to establish that Petitioner was a sponsor for the Nepal Idol event to illustrate that Petitioner was, somehow, responsible for the fights. Objections raised by Petitioner to the police reports and questions to Mr. Ghimire were sustained as there was no connection between the incidents and Petitioner.⁸

Following Mr. Ghimire's examination on October 23, 2018, Protestants' engaged in subsequent, multiple efforts to have the police reports be part of the evidentiary and/or case record. The purpose for the questions and intent to introduce the police report, as well as the complete disregard for the Board's rulings, prompts the Board's atypical discussion in this Opinion of its evidentiary rulings.

On November 27, 2018, Protestants filed its "Motion to Admit Protestants Exhibits 23 and 24" which included additional documents beyond the police reports identified on October 23, 2018.⁹ Within the Motion, Protestants stated that the additional documents evidence a link between the Nepal Idol event (and therefore, fights) to Petitioner. Protestants describe the two

⁸ It needs to be noted that when the Board sustains objections to documents and items offered into evidence, the evidence is classified as "identification only." The Board is required to keep the rejected evidence as part of the case file in the event a party appeals a decision by the Board, but the "identification-only" evidence is not considered as part of the evidentiary record for the Board's deliberations.

⁹ The Motion erroneously identified the exhibits as "Protestants Exhibits 23 and 24" instead of Exhibits 22 and 23.

fighters, noting the first one occurred in the parking lot of St. Joseph's Church, and the second occurred around 1:00 a.m. at the Mount Everest Restaurant, identified as the after-party location hosted by the restaurant. One of the sponsors was identified as Ghimire Homes and one of the event organizers was identified as an attendee of several hearing dates in this case. Protestants looked at the names on the hearing sign-in sheets and, in conclusory form, referred to them as being "directly involved" with the Nepal Idol event because these individuals were thanked by the event organizers on a Facebook post.

In arguing its relevance as to why it should be admitted, Protestants' Motion raised the following question:

If this type of behavior demonstrated in the police reports is indicative of the [Petitioner] behavior on a property they rented (St. Joseph's Catholic Church Hall), what can the local community expect regarding their behavior on a property they own (12231 Harford Road)? (emphasis in original).

The Motion goes on to state:

Given that between 10,000 and 20,000 individuals of Nepalese descent reside in the greater Baltimore area, neighbors of 12231 Harford Road located in a rural agricultural R.C. 2 Zone are entirely justified in their concerns regarding health, safety, and **danger from the behavior of those attending NAACB events**, as evidenced by the January 28 and 29 police reports. (emphasis added).

On January 29, 2019, the Board denied the Motion for multiple reasons, which will be identified and addressed below as, due to the multiple attempts, the reasons to reject the evidence are applicable throughout the multiple attempts to use it.

On February 4, 2019, Protestants next filed their "Motion to Reconsider the Board's Decision to Readmit Protestants Exhibits # 22 and # 23" on the basis that the police reports were not admitted because Protestants had not adequately linked Ghimire Homes to Kris Ghimire. The Board asked counsel for Protestants at one point directly, "Are you offering this evidence for any

other purpose?" to which counsel for Protestants indicated there was no other purpose. The Board, once again, denied the Motion and rejected the evidence.

Despite the three prior rulings, Protestants, in their closing Memorandum, once again included the thrice-rejected police reports. Protestants did so under the guise of needing to, preemptively, address an argument they assumed Petitioner would make. The Board finds the proffered excuse wanting. Nevertheless, for clarity's sake, because the disputed exhibits are not part of the evidentiary record, the Board did not consider them.

The multiple attempts at getting the disputed exhibits into evidence or for the Board's consideration compels the Board to explain the reasons why the Board denied Protestants' use of these documents.

First, the purported evidence had no relevance or materiality to the issues in front of the Board. In particular, the Board was far from persuaded that Petitioner could be considered the sponsor of the Nepal Idol event and the Board was certain that Petitioner was not responsible for the actions identified in the police reports. The most elemental concept of corporate law is that a corporation is regarded as a separate legal entity. In other words, acts taken by an individual on behalf of a corporation are corporate acts; whereas, acts taken in a personal capacity do not bind the corporation. Turner v. Turner, 147 Md. App. 350, 425; 809 A.2d 18, 61 (2002). Petitioner is a corporation. Mr. Ghimire is a trustee for Petitioner. Mr. Ghimire, as identified in Protestants' Motion, is President of Ghimire Homes, LLC. Ghimire Homes, LLC was a sponsor of the Nepal Idol event. Mr. Ghimire may be authorized to act on behalf of each, but an act by Mr. Ghimire for one is not tantamount to an act by the other. Even if it is assumed Mr. Ghimire, individually,

played some role in putting on the event, actions by Mr. Ghimire individually are not attributable to Petitioner, nor are individual acts at events sponsored by corporations.¹⁰

Second, if probative value is assumed, and to be clear, the Board found and continues to find a complete absence of probative value, that any minimal probative value is substantially outweighed by the danger of unfair prejudice. Clark v. State, 774 A.2d 1136; 364 Md. 611 (2001); Maryland Rule of Evidence 5-403. Even if any probative value is assumed, the manifest, substantial weight of the unfair prejudice wholly eclipses the (assumed) probative value.

Third, for this hearing, as noted above, the Board must assess “whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” Schultz v. Pritts, 291 Md. 1, 22-23; 432 A.2d 1319, 1331 (1979). Evidence is only “material” if it tends to establish a proposition that has legal significance to the litigation. Bryant v. State, 881 A.2d 669; 163 Md. App. 451 (2005). For this purported evidence to be material to these issues, Protestants would be required to show how the particular use at this particular location would have adverse impacts above and beyond impacts experienced elsewhere. However, Protestants do not attempt to do so.

The mere fact that evidence rules are relaxed in administrative proceedings provides no relief to Protestants. Under the Board’s Rules on evidence, any evidence which would be admissible under the general rules of evidence applicable in judicial proceedings in the State of

¹⁰ In Protestants’ Closing Memorandum, much like their Motion to Admit, Protestants argue Mr. Ghimire “misrepresented the facts regarding his involvement” in the Nepal Idol event. The Board did not and does not conclude Mr. Ghimire “misrepresented the facts regarding his involvement.” First, the questions presented to Mr. Ghimire appeared to cause confusion, failing to distinguish between Mr. Ghimire’s acts as an individual, on behalf of his corporation and/or Petitioner. The Board initially left room open for Protestants to show the evidence’s relevance to Mr. Ghimire individually, but after receipt of Protestants’ Motion, it became clear Protestants were conflating Mr. Ghimire’s roles, which, as noted above, contravenes Maryland law, in addition to its other evidentiary frailties.

Maryland shall be admissible in hearings before the county board of appeals. Rule 7(a). The questions concerning the January 28-29, 2018 incidents and the documents regarding them present numerous evidentiary problems that would render them inadmissible in any courtroom and it requires their rejection here. Moreover, the Board's Rules require the evidence to be needful and proper and this evidence was neither needed, nor proper.

By attempting to use these exhibits, Protestants urge this Board to find that the fight is representative of what is likely to occur once the Property starts operations as a temple. In the best light to Protestants, this evidence is untethered to the facts, the special exception factors, and common sense. As noted above, there was never any reasonable or legitimate basis to argue Petitioner sponsored the Nepal Idol event, or controlled the premises of either incident location, or otherwise had any responsibility for the incidents that one night in January 2018. The Board, in fact, rejects any such assertion out of hand. Assuming *arguendo* Petitioner had some role in the event or location(s), the logical leap still fails to reach the other side of the evidentiary gorge, as it does not and cannot make it more likely fights will occur at the temple and/or that surrounding area is endangered as a result.

The Board sustained the objections regarding these exhibits and the questions asked and denied the motions as the case progressed. Though the exhibits were not part of the evidentiary record, Protestants nevertheless attached them to their Closing Memorandum.

The use of this evidence and the manner in which it was communicated during the hearing and in Protestants' closing memoranda reasonably may be interpreted in a far more egregious and odious manner. There are several examples in the record individually, but the cumulative effect casts its own shadow as well. Any suggestion, whether intended or not, that common heritage or ancestry may serve as a material factor to tie the two incidents to the temple use and operations

requires this Board to make it abundantly clear that evidence for that purpose, or anything within the orbit of its event horizon, cannot and will not be accepted or considered.

The Board, in fact, excluded that evidence from consideration as part of this decision. Instead, the Board focused only upon the testimony and evidence admitted into the evidentiary record.

X. CONCLUSION

For the foregoing reasons, the Petition is granted by the Board. Baltimore County Zoning Regulations § 502.2 empowers the ALJ and the Board of Appeals, in connection with granting any special exception petition, to impose conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. As noted to varying degree above, the Board, pursuant to BCZR §502.2, will impose conditions as outlined in more detail below.

ORDER

THEREFORE, IT IS THIS 9th day of January, 2020, by the Board of Appeals of Baltimore County,

ORDERED that the Petition for Special Exception to allow a temple for religious worship on property zoned RC-2 is hereby **GRANTED**, subject to the following conditions under the Board's authority in §502.2:

1. Petitioner shall confine its hours of operation for non-religious events from 8:00 a.m. to 9:00 p.m.
2. The exit from the Property shall be right-turn only. Petitioner shall post and maintain proper signage indicating the exit is right-turn only at all times.

3. Prior to the issuance of any permits, Petitioner shall obtain from State Highway Administration (SHA) an access permit authorizing ingress and egress from the Property. Petitioner shall comply with SHA's access permit for the proposed entrance and exit. Petitioner also shall comply with the SHA requirements and recommendations. Petitioner shall also maintain the vegetation around the entrance and exit in strict conformity with required sight and stopping distances.
4. Petitioner shall submit all landscaping plans and all lighting plans to Baltimore County for approval.
5. Any tree(s) required to be removed for any improvement or construction of an improvement, Petitioner shall replace the removed tree with per-diameter equivalent replacement native species tree and each such replacement tree shall also provide similar or better shade and screening coverage. The replacement trees shall be planted in an area onsite that will increase the buffer density along the Property's border with the Poehler property in order to help screen the Property from the Poehler house and its curtilage.
6. Petitioner shall add landscaping to serve as an additional light and sound buffer between Petitioner's property and the Poehler property to increase the buffer density along the Property's border with the Poehler property in order to help screen the Property from the Poehler house and its curtilage. Petitioner shall add additional landscaping particularly at the Harford Road side (western side) of the multipurpose court to serve as an additional light and sound buffer between Petitioner's property and the Clark property and/or others in that area. All landscaping for these purposes is required to be approved by Baltimore County.
7. Any and all plantings, whether part of Condition No. 5, No. 6, or otherwise, shall consist of native species only, subject to approval by Baltimore County's landscape architect, with the sole exception for any plantings required for onsite for religious use.
8. Prior to the issuance of occupancy permits, Petitioner must demonstrate to DEPS that the well and septic systems will be sufficient to serve the proposed use. Prior to the issuance of permits, Petitioner shall also comply with any and all ZAC comments.
9. The outdoor amplification of sound shall not be permitted.
10. Petitioner shall obtain any and all necessary permits to have the pool and pool house demolished and removed prior to any demolition or removal. Any and all demolition or activity related to the removal of the pool and pool house shall only take place between 8:00 am and dusk.
11. Petitioner shall not organize, host, invite, conduct, or participate in any athletic program, league, or tournament on site. This condition does not preclude Petitioner from using the multipurpose court for athletic games or contests, only athletic programs, leagues, and/or tournaments.

In the matter of: Nepali American Cultural Center
Case No: 18-122-X and CBA-19-004

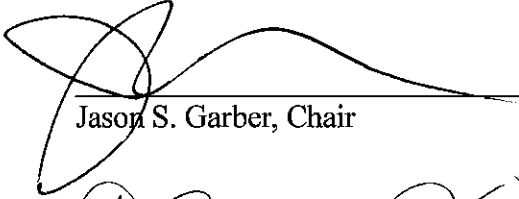
12. Petitioner shall not use the Property as a community center, unless such community center-type activity is in furtherance of the exercise of religion and/or operation of the temple. Cultural activities and/or other activities with a non-religious purpose shall take place offsite.
13. Petitioner otherwise shall comply with the Baltimore County Code and Zoning Regulations at all times.

It is further,

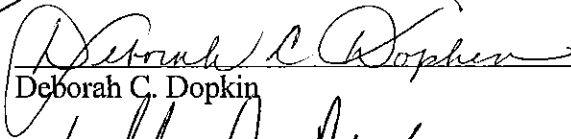
ORDERED that the appeal in Case No. CBA-19-004 is dismissed as moot, as the court below had no jurisdiction over the matter at the time the letter was signed and sent, and the Order in Case No. 18-122-X otherwise resolves the subject matter of Case No. CBA-19-004.

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

**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Jason S. Garber, Chair



Deborah C. Dopkin



William A. McComas



Board of Appeals of Baltimore County

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January 9, 2020

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RE: In the Matter of: *Nepali American Cultural Center of Baltimore*
Case Nos.: 18-122-X and CBA-19-004

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
Multiple Original Cover Letters

c: Kris Ghimire/Nepali American Cultural Center of Baltimore
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

DeWitt and Mary Clark
David and Bernadette Poehler
Joanne Foxworthy
Carol Shaw
Tom and Morgan Miner
David Hartman