



## Board of Appeals of Baltimore County

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October 20, 2016

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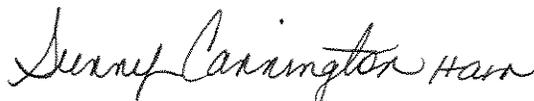
RE: *In the Matter of: 3407 Starlite, LLC*  
Case No.: CBA-16-041

Dear Mr. Alderman:

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

KC/tam  
Enclosure

c: 3407 Starlite, LLC  
John Motsco, P.E./Little & Associates, Inc.  
Office of People's Counsel  
Andrea Van Arsdale, Director/Department of Planning  
Arnold Jablon, Deputy Administrative Officer, and Director/PAI  
Nancy C. West, Assistant County Attorney/Office of Law  
Michael E. Field, County Attorney/Office of Law

William Cooper  
Scott Smith  
Mariann Showers  
Michael Hupp  
Jan Cook, Development Manager/PAI  
W. Carl Richards, Jr., Zoning Supervisor/PAI

<b>IN THE MATTER OF:</b>	*	BEFORE THE
3407 Starlite, LLC	*	BOARD OF APPEALS
1206 Trappe Lane	*	OF
Towson, MD 21204	*	BALTIMORE COUNTY
RE: Denial by PAI of Limited Exemption	*	Case No. CBA-16-041
under BCC, §32-4-106(a)(1)(viii)	*	

\* \* \* \* \*

**OPINION**

This case comes to the Board on appeal of the final decision from the Director of Permits, Approvals and Inspections (“PAI”) of a request by 3407 Starlite, LLC (the “Petitioner”) for limited exemption from all or part of the development process under Baltimore County Code §32-4-106(a)(1) *et seq.* (“BCC”).

A public *de novo* hearing was held on July 20, 2016. The Petitioner was represented by Howard L. Alderman, Jr., Esquire and the Law Offices of Levin and Gann. Protestants, William Cooper, Scott Smith, Mariann Showers and Michael Hupp (collectively, the “Protestants”) appeared, *pro se*, at the hearing. A public deliberation was held on August 31, 2016.

**Factual Background**

On or about January 12, 2016, the Petitioner, through John Motsco, P.E. of Little & Associates, Inc., filed an application along with a redlined Site Plan (Pet. Ex. 1) with PAI requesting a limited exemption under BCC, §32-4-106(a)(1)(viii) to allow for a lot line adjustment. The property consists of two parcels namely: Parcel 1 which is improved by a two-story house, measuring 41,661 sq. ft., and is zoned DR 3.5 and DR 2; and Parcel 2 which is unimproved, measuring 937 sq. ft., and is zoned DR 2 (collectively, the “Property”). (Pet. Ex. 2). The Property is located in the Towson area of Baltimore County.

On February 2, 2016, PAI denied the request in writing indicating that the request did not meet the requirements for limited exemption filed without a development plan. (Pet. Ex. 3). On February 22, 2016, the Petitioner filed a second application requesting that PAI reconsider the limited exemption request. (Pet. Ex. 4). On March 23, 2016, PAI denied the request indicating that again the requirements were not met. (Pet. Ex. 5).

John Motsco, P.E. of Little & Associates, Inc. was accepted as an expert in the areas of professional engineering; the development and zoning regulations of Baltimore County; and in regard to applications for limited exemption under BCC §32-4-106. Mr. Motsco testified that the instant request for a lot line adjustment is for an additional home to be built on Parcel 2. He explained how limited exemptions are processed through the Development Review Committee (“DRC”). Letters from the DRC approving or disapproving such a request are sent to the applicant in advance of the DRC meeting and these applications are not discussed at the DRC meetings. As a result, the applicant is not provided the rationale behind PAI’s approval or denial.

The redlined Plan which accompanied both applications shows how the divisional property line is proposed to be altered. (Pet. Ex. 1). Presently, Parcel 2 is a long narrow strip which contains a 3-foot utility easement for the benefit of Parcel 1 (1206 Trappe Lane) and runs in a north to south direction, parallel to Trappe Lane. The altered divisional lines would reconfigure Parcel 2 into the shape resembling a rectangle to be located adjacent to Parcel 1. Parcel 1 would change from 41,661 sq. ft. to 18,651 sq. ft. and Parcel 2 would change from 937 sq. ft. to 23,947 sq. ft. Mr. Motsco stated that if the lot line adjustment is granted, no variance relief will be needed.

Mr. Motsco confirmed that the Petitioner meets all of the factors set forth in BCC, §32-4-106(a)(1)(viii) in that there are two or more lots both owned by the Petitioner, that the alteration will not result in an increase or decrease in the number of lots and there is no increase in total

residential density available to the lots considered as a whole. (Pet. Ex. 1). Specifically, he explained there are currently two lots/parcels and when reconfigured, there will still be two lots/parcels. He further opined that the reconfigured lot line would not result in any change in density to the lots considered as a whole (i.e. the existing and proposed density units are both three). (Pet. Ex. 1).

The Protestants, who are neighboring property owners cross-examined Mr. Motsco on whether he had researched the deeds for their properties. (Prot. Cooper Ex. 1). They questioned the legality of being able to take a long strip of land used for a utility easement and converting it into a different shape in order to build another home. The Protestants also questioned him in regard to the ownership of Trappe Lane. Mr. Motsco stated that Starlite LLC owns Trappe Lane and that a 25 ft. wide right-of-way easement exists overtop of Trappe Lane as recorded in Land Records at Liber WPC 510, folio 299. (Pet. Ex.1.). Contrary to the Protestants' assertions, he opined that this lot line adjustment does not propose to alter the existing utility easements in Trappe Lane although an additional utility easement would be created for Parcel 2.

### **Decision**

Generally, an approved plan is required for all development in Baltimore County as set out in BCC, §32-4-109. A developer prepares a "concept plan" which is informally reviewed through contact with various County agencies and departments, and the resulting plan is presented by the developer at a "community input meeting" for public discussion and comment. Subsequently, after a full review by relevant County agencies and departments, a full public evidentiary hearing is held before a Hearing Officer who grants or denies final approval of the Development Plan.

However, certain types of development are entitled to exemption from all or part of this development review and approval process. A development project qualified under BCC §32-4-

106(a) is exempted from all requirements of the development review and approval process. A project exempted under §32-1-106(b) is relieved from the requirements of a community input meeting as well as the Hearing Officer's hearing.

In order to streamline and facilitate the entire development process, the Director of PAI, under the authority granted in the BCC, created the Development Review Committee ("DRC"). This is an informal group consisting of representatives of PAI, the Department of Public Works, the Department of Recreation and Parks, the Department of Environmental Protection and Sustainability, and the Department of Planning. The DRC is chaired by a representative of PAI. The Committee reviews preliminary and final development plans, makes comments and suggestions during the development process and formulates recommendations to the Director of PAI as to requests for limited exemptions under §32-4-106(a) and (b). The DRC's recommendations are reviewed and either adopted or not by the Director of PAI.

By way of background, this Board, in the case of *In the Matter of Seven Kids- Legal Owner Cloverland Farms Dairy, Inc., Contract Purchaser*, Case No.: 99-199-X, No.: 99-127 and No.: 99-128, discussed the creation of the DRC by the Director of PAI. In that case, we said that the DRC was an informal group consisting of representatives from various County agencies who meet to review development plans, to make comments and suggestions during the development process and to formulate recommendations to the Director of PAI including requests for limited exemptions. The DRC has no specific authority or formal existence in the law. That fact notwithstanding, appeals from decisions of the Director of PAI are final decisions which are directly appealable to this Board under the holding in *UPS v. People's Counsel*, 336 Md. 569 (1994).

In this case, the Petitioner filed for an exemption from the full development process under BCC, §32-4-106(a)(1)(viii). (Pet. Ex. 1, 2 and 4). The Director of PAI denied both the original application and the application on reconsideration. This Board was not presented with, and has no access to, the reasons why the Director of PAI denied the applications other than they “did not meet the requirements of a limited exemption under Section 32-4-106(a)(1).” (Pet. Exs. 3, 5). Given that this appeal is *de novo*, we must make our own determination about whether this proposal is entitled to any exemption.

Under BCC, §32-1-106(a)(1)(viii), the requirements for this exemption are:

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

\* \* \* \*

After hearing all of the testimony and reviewing all of the evidence presented, the Board has determined that the Petitioner should be granted an (a)(1)(viii) exemption. The Board finds the Petitioner presented credible testimony through Mr. Motsco that the all of the requirements of (a)(1)(viii) have been met. Applying those requirements to the evidence presented here proved that the Petitioner is proposing to adjust the divisional property lines between two lots (Parcels 1 and 2); that the lots were both owned by the Petitioner and there was no evidence to the contrary; that the proposed alteration of divisional lines between Parcels 1 and 2 will not result in an increase or decrease in the number of lots (the number of lots before and after being two); and that the proposed alteration of divisional lines between Parcels 1 and 2 will not result in an increase in total

residential density available or the lots considered as a whole (the total density units available before and after being three).

We further find that the cross-examination questions by the Protestants did not refute any of the above factors in (a)(1)(viii). The Protestants assertions about the existence of deeds and easements recorded in Land Records of Baltimore County are not applicable to our decision here in regard to the specific factors enumerated in (a)(1)(viii).

The Board relies on the holding in *Beth Tfiloh Congregation of Baltimore City, Inc. v. Glyndon Community Association, Inc.*, 152 Md. App. 97, 116 (2003) in which Judge Salmon writing for the Court stated that the development exemptions are spelled out in the BCC as to when an applicant is entitled to an exemption. Judge Salmon emphasized that: "...nothing in that Code section suggests that an exemption can be denied if the requirements of BCC section §26-171 have been met." <sup>1</sup> *Id.* The Court in *Beth Tfiloh* found that the DRC's denial of the exemption was in error because the Petitioners were statutorily entitled to the exemption. The level of "community interest" does not dictate whether or not an exemption should be granted. *Id.* at 117. Indeed, the level of community interest is not factor to be considered in (a)(1)(viii). *Id.*

Applying *Beth Tfiloh* to the facts here, the Board finds that the Petitioner is statutorily entitled to an (a)(1)(viii) exemption for a lot line adjustment having met the requirements thereof. As the *Beth Tfiloh* Court held, a denial of exemption here would be improper because it is contrary to the plain meaning of BCC, §32-4-106(a)(1)(viii).

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<sup>1</sup> BCC §26-171 can now be found in BCC 32-1-106.

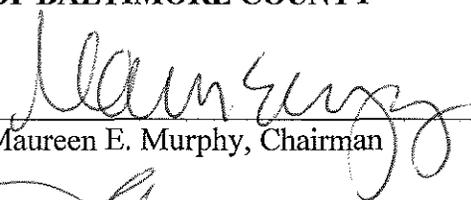
**ORDER**

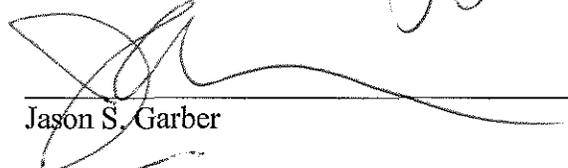
**THEREFORE, IT IS THIS** 20<sup>th</sup> day of October, 2016 by the Board of Appeals of Baltimore County,

**ORDERED** that the requested limited exemption pursuant to BCC §32-4-106(a)(1)(viii) be and the same is hereby **GRANTED**.

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

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
\_\_\_\_\_  
Maureen E. Murphy, Chairman

  
\_\_\_\_\_  
Jason S. Garber

  
\_\_\_\_\_  
Andrew M. Belt