



## Board of Appeals of Baltimore County

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October 28, 2016

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

Dear Counsel:

Enclosed please find a copy of the Ruling on Motion to Dismiss issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Pursuant to the enclosed, this is not a final decision of the Board of Appeals for Baltimore County and does not constitute an appealable event at this time. This matter will be held open on the Board's docket until such time as a final opinion can be issued.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington Ham".

Krysundra "Sunny" Cannington  
**Administrator**

KLC/tam  
Enclosure  
Duplicate Original Cover Letter

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

Deidre Bosley  
Michael and Mary Kate Fitz-Patrick  
Tony and Marsha Gaspari  
Beaver Dam Community Association  
Vincent Gardina, Director/DEPS  
Darryl Putty, Project Manager/PAI  
Jan M. Cook, Development Manager/PAI

IN THE MATTER OF  
HUNT VALLEY PRESBYTERIAN CHURCH, INC.  
PETITIONER FOR SPECIAL HEARING ON THE  
PROPERTY LOCATED ON THE S/S OF  
BEAVER DAM ROAD APPROX 582 FT NW OF  
INTERSECTION WITH I-83  
(13015 BEAVER DAM ROAD)  
8<sup>TH</sup> ELECTION DISTRICT  
3<sup>RD</sup> COUNCILMANIC DISTRICT

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO. 16-099-SPH

\* \* \* \* \*

**RULING ON MOTION TO DISMISS**

This matter is before the Board on a Motion to Dismiss filed on behalf of Petitioner Hunt Valley Presbyterian Church, by and through its counsel, Patricia A. Malone and Adam Rosenblatt of Venable LLP.

By way of background, following other, related proceedings concerning the same property,<sup>1</sup> Petitioner filed a Development Plan<sup>2</sup> and also sought a Special Hearing, “if necessary,” to approve the removal of Lot 1 as an amendment to the most recently approved Final Development Plan (“FDP”) for Bishops Pond or to approve the proposed plan changes as an amendment to the FDP. Petitioner sought to have its own Special Hearing Petition regarding the amendment of the Final Development Plan dismissed. On September 13, 2016, the Board conducted a hearing on Petitioner’s Motion to Dismiss and on October 19, 2016, the Board held its deliberation.

For the reasons set forth below, we deny Petitioner’s Motion.

**The Final Development Plan Needs to Be Amended Pursuant to B.C.Z.R. §1B01.3(a)(7)**

Petitioner makes three arguments in support of its Motion: (1) FDPs apply only to residential plans and the use at issue here is institutional, to wit: a church; (2) the FDP was tied to the Bishops Pond CRG Plan, which no longer governs the property as Petitioner went through the

<sup>1</sup> The details from the earlier proceedings are not required for disposition of the subject Motion and therefore, are not set forth herein.  
<sup>2</sup> The on the record appeal of the approval of the Development Plan was heard by the Board of Appeals on July 18, 2016. The Board deliberated on August 9, 2016 and affirmed the decision below. Much like the earlier proceedings, the details of that proceedings are not required for disposition of the subject Motion.

development plan process; and (3) the new development plan provides all required notice to existing owners and prospective purchasers.

The Board disagrees with Petitioner's analytical approach. There is an existing FDP. In 1991, the then owner of the entire tract, Cignal Development Corporation, subdivided the property into three residential lots. As such, a Final Development Plan was created for the three residential lots. Shortly thereafter, Cignal sought to amend the FDP to permit a church on Lot 1, which was approved. Also close in time, the owner of Lot 3 sought to amend by further subdividing Lot 3 into Lots 3 and 4, which was also approved. In time, Hunt Valley Church purchased Lot 1. The subsequent change in use of Lot 1 from residential to institutional did not extinguish the FDP or remove Lot 1 from the FDP. The FDP is a zoning notice plan, and has been on file and served its purpose from its inception, through both prior amendments and the 24 years that followed.

The purpose for development plans can be found in B.C.Z.R. § 1B01.3(A):

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

When the CRG process was eliminated, the County Council did not eliminate Final Development Plans or provide a different process by which they may be amended. Importantly, the FDP bestows certain rights upon neighbors that are subject to the FDP. Both parties agree that the amendment procedure is, in essence, a consumer protection measure. That procedure effectuates the purpose for development plans. See B.C.Z.R. §1B01.3(A)(1). Section 1B01.3(A)(7), entitled "Amendment of approved development plans," sets forth (as is relevant):

After partial or final development plans have been approved as provided under Paragraph 6, preceding,<sup>3</sup> they may be amended only as follows (emphasis added):

b. Amendment after sale of interest in nearby property or upon demand for hearing. In the case of an amendment not allowed under Subparagraph a, by reason of sale of property within this area, or in case of a demand for hearing by an eligible individual or group, the plans may be amended through special exception procedures, in the manner provided under Section 502 and subject to the following provisions: (omitted).<sup>4</sup>

In short, because the final development plan was approved, it can only be amended in accordance with B.C.Z.R. § 1B01.3(A)(7). The utility of doing the same in this instance has been questioned, but B.C.Z.R. § 1B01.3 is quite clear in identifying the limited circumstances and methods to amend an FDP. As recently reiterated by the Court of Appeals, in Maryland:

“The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature.” Rosemann v. Salsbury, Clements, Bekman, Marder & Adkins, LLC, 412 Md. 308, 314; 987 A.2d 48, 52 (2010) (citation omitted). “Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English language.” Id. at 314–15, 987 A.2d at 52 (citations omitted).

Spangler v. McQuitty, 449 Md. 33; 141 A.3d 156, 165 (2016).

Because the language in B.C.Z.R. §1B01.3(A)(7) is abundantly clear, and the County Council did not remove it from the Zoning Regulations following the elimination of the CRG process, the only conclusion to be drawn is that if a property is subject to a final development plan, any amendment to such plan must comport with the requirements under §1B01.3(A)(7). Doing so effectuates the purposes specifically outlined in §1B01.3 and protects the rights of other property owners subject to the same FDP and prospective purchasers. There is no authority for the Board to take action that is tantamount to radically altering the FDP by removing a lot subject to the FDP and in the process, substantially alter the rights afforded to others by being subject to the same.

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<sup>3</sup> There is no dispute that the Bishops Pond FDP satisfies this element.

<sup>4</sup> The provisions (1)-(3) are omitted as the Motion concerns whether the Bishops Pond FDP needs to be amended. Application of those provisions will be something left for another day.

As a result, the language of Section 1B01.3 compels this Board to deny Petitioner's Motion to Dismiss.

**ORDER**

**THEREFORE, ON THIS** 28<sup>th</sup> day of October, 2016, by the Board of Appeals of Baltimore County, it is hereby:

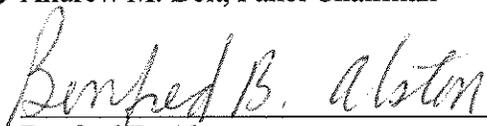
**ORDERED** that Petitioner's Motion to Dismiss is **DENIED**; and it is further,

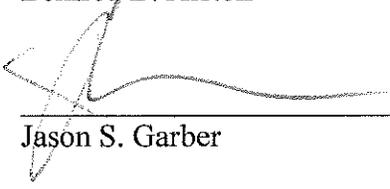
**ORDERED** that the appeal filed in Case No. 16-099-SPH be scheduled for an evidentiary hearing on a date mutually convenient for the parties and the Board's docket; and it is further,

**ORDERED**, that a final Opinion will be issued by this Board after a hearing on the merits and a public deliberation, with no further action to be taken on this Ruling until such time as the Board's final decision is issued.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
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Andrew M. Belt, Panel Chairman

  
\_\_\_\_\_  
Benfred B. Alston

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