

IN RE: CRG PLAN (3rd Material Amend.) & PETITION FOR SPECIAL HEARING (13015 Beaver Dam Road) 8 th Election District 3 rd Councilmanic District (Hunt Valley Church) Hunt Valley Presbyterian Church, Inc. <i>Owner/Applicant</i> SPH	* * * * * *	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY PAI Nos. 08-0524 & 2015-0131-
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ORDER

The Petitioner in this case, Hunt Valley Presbyterian Church, Inc., proposes to expand its church building located in northern Baltimore County. To do so, Petitioner sought approval of an amended CRG Plan, and also filed a Petition for Special Hearing to consider the proposed “material amendment” to the second amended CRG plan. A public hearing was conducted on March 19, 2015, at which time counsel for Protestants (a group of neighboring owners) moved to dismiss the proceeding, contending that the Office of Administrative Hearings (OAH) did not have jurisdiction in this matter. A brief recess was taken at this juncture, and counsel requested the opportunity to submit briefs on the issue. I have received and reviewed the written submissions from both sides, and will dismiss without prejudice the Petition for Special Hearing in this case. One thing is immediately clear at the outset: the process and procedure for amendment of non-residential plans in Baltimore County is cryptic and confusing.

For a period of ten years (1982 – 1992) there was a development process in Baltimore County known as the County Review Group (i.e., “CRG”). The CRG considered development proposals at a public “meeting,” and County staff conducted a technical review of the proposed project. The CRG process was not an adversarial or quasi-judicial proceeding, and a decision on the development proposal was rendered before the CRG meeting would adjourn.

In or about 1992, the Baltimore County Council enacted new development regulations, which required for the first time a Community Input Meeting (CIM) and Hearing Officer's Hearing (HOH) prior to development approval. Baltimore County Code (B.C.C.), § 26-201 et. seq. (1988 Edition). Under these regulations, the development proposal (known as a "Development Plan") is considered at a public hearing which is described as an adversarial or "quasi-judicial" proceeding. Leaving aside the various amendments and changes that have occurred in the ensuing 20+ years, this is the process in use today, and it is often referred to as the "Development Process." As noted by the Court of Special Appeals in Beth Tfiloh v. Glyndon, 152 Md. App. 97, 111 (2003), "it is generally accepted that the current Development Process is more onerous than the earlier CRG process or the JSPC process." So, the question became what to do with requests for amendments to a non-residential plan approved under one of the earlier processes.

Until 2006, the B.C.C. (§§ 26-169 and 26-211) provided an exemption for the Developer, whereby the current (i.e., post 1992) development regulations would not apply to "such development as has received a CRG approval." But in 2006 (Council Bill 24-06), the law was changed. In that legislation, the County Council noted in the preamble that the purpose of the bill was to require "previously approved developments to comply with the current law and the current development procedural review process."

The County Council expressly repealed the CRG "grandfather" provision (formerly codified at B.C.C. § 26-169, and recodified in the 2003 Edition of the Baltimore County Code at § 32-4-104). B.C.C. § 32-4-104 now provides that "this title shall apply to the process of review for approval of all development."

The Petitioner contends that pursuant to B.C.C. § 32-4-262(1), the plan in this case must

be “reviewed and approved in the same manner as the original plan.” The title of that section states it applies only to “Development Plans”. Petitioner cites Bill 58-09, in which the County Council struck “Development Plan” from B.C.C. § 32-4-262(1) and in its place inserted “Plan,” which was defined (in an amendment to the original Bill) to include a commercial, industrial or institutional use. B.C.C. § 32-4-101(ddd). The Petitioner contends that Bill 58-09 (by replacing “Development Plan” with “Plan”) in effect nullified Bill 24-06 and required that non-residential plan amendments be reviewed in accordance with procedures that were repealed 25+ years ago. This, without any mention in Bill 58-09 that this was the intention of the Council; a glaring omission given that just three years prior the same Council expressly jettisoned the CRG and JSPL as viable processes.

Of course, while Petitioner’s interpretation might answer one question, it raises a host of others. According to Petitioner, Baltimore County’s administrative practice has been to amend non-residential CRG plans through the CRG process. If Petitioner is correct, and the law was changed in 2009 to authorize that process, does that mean that all non-residential plans amended in this fashion between 2006 (when Bill 24-06 expressly eliminated the “CRG exemption”) and 2009 are null and void? The 1978 Baltimore County Code (unlike the current development regulations) required the CRG to “visit the site.” B.C.C. § 22-57(h). Now that the OAH has been designated as the CRG, must the Administrative Law Judge visit the site? Doing so would likely run afoul of the Open Meetings Act. WSG Holdings, LLC v. Bowie, 429 Md. 598 (2012); Wesley Chapel v. Baltimore County, 347 Md. 125, 149 (1997). Petitioner has filed a petition for special hearing to amend the CRG plan, although the Code only provides for combined zoning and Development Plan (not CRG) hearings (B.C.C. § 32-4-230). While these and other issues may need to be decided at some point, they do not require resolution in this case.

As Protestants note, the original plan in this case was for a three-lot residential subdivision known as “Bishops Pond.” Note 11 on that plan states that the plan proposes “3 lots for single family dwelling.” As such, it cannot be argued that the “dominant element of the Plan” is commercial, industrial, church, school or other institutional use. B.C.C. § 32-4-101(ddd). Thus, pursuant to Section 6(c) of Bill 58-09, the amendment in this case must be processed under Article 32, Title 4 of the County Code. The Order which follows concerns only the Petition for Special Hearing filed in Case No. 2015-0131-SPH; consistent with the preceding analysis, no action is taken with regard to the plan in PAI No. 08-0524.

THEREFORE, is this 8th day of **April, 2015** that the Petition for Special Hearing in the above case be and is hereby **DISMISSED WITHOUT PREJUDICE**.

Any appeal of this Order shall be taken in accordance with § 32-3-401.

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw