

Case No. DSP-12008
New Life Christian Academy of
Bowie

Applicant: New Life Community Church

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ORDER OF REMAND

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB Resolution No. 12-106, to approve with conditions a detailed site plan for approval of a day care center, to include before and after care, for a maximum of 32 children in the Commercial Shopping Center (C-S-C) Zone, located in the City of Bowie between Annapolis Road (MD 450) and Old Annapolis Road, approximately 300 feet east of their intersection is:

REMANDED, pursuant to §27-132 and §27-290 of the Zoning Ordinance, to the Planning Board to take further testimony, reconsider its decision, and to allow additional public comment.

Having reviewed the record, the District Council has determined that there has been, among other issues, a lack of appropriate consideration of a number of aspects of the prescriptions of § 27-464.02 of the Zoning Ordinance, Additional Requirements for Specific Uses, concerning day care centers for children in the Commercial Shopping Center (C-S-C) Zone, which require revision of the detailed site plan as follows:

1. On remand, the Planning Board shall take further testimony, and allow additional public comment, on a revised detailed site plan that requires the applicant to prepare an analysis conducted by an acoustical engineer or other qualified professional such as a Phase 2 noise study demonstrating that noise from the adjacent arterial roadways, to include Annapolis Road (MD 450) and Old Annapolis Road, will not result in a noise level above

65 dBA at the perimeter of the outdoor play area prescribed by § 27-464.02(a)(1)(A)(ii)(iii) of the Zoning Ordinance for the proposed development for the protection of the health and safety of the children expected to utilize the play area on the site. Ample evidence in the record reflects serious concerns with noise pollution at the proposed site, to include comments by members of the Planning Board, other comments offered by the technical staff within reports prepared by the Urban Design Section and the Transportation Planning and Environmental Planning Divisions of the Maryland-National Park and Planning Commission department staff, as well as the Prince George's County Health Department. *See* PGCPB No. 12-106 at 7 ¶d, 8-9 at ¶ h, 9-10 at ¶ l.; (11/08/12 Tr., at 5-8, 11-12, 14-16, 25, 31-34, 36-38, 39); September 13, 2012, Memorandum from Frank L. Wise, Environmental Engineering Program, Health Impact Assessment review at ¶1; *See also* Memorandum from Megan Reiser, Environmental Planning Section, and October 24, 2012 follow up evaluation with respect to noise (study by acoustical engineer required to evaluate measures necessary to reduce the outdoor transportation related noise to below 65 dBA Ldn within the proposed outdoor play area); Memorandum from Tom Masog and Glen Burton, Transportation Planning Section (opinion of staff that location of play area is in appropriate due to safety concerns).

2. On remand, if based on the recommended noise study above, the noise level from the roads exceeds 65 dBA Ldn Planning Board shall take further testimony and allow additional public comment to determine whether the play area needs a noise barrier. Additionally, if the noise level exceeds the State noise level inside the building, Planning Board shall take further testimony and allow additional public comment to determine whether the walls should be constructed to attenuate the excess noise.
3. On remand, the Planning Board shall take further testimony, and allow additional public comment, on a revised detailed site plan that imposes specific fence requirements based on the results of the study imposed in this Remand Order to ensure adequate noise attenuation emanating from arterial traffic on Annapolis Road (MD 450) and Old Annapolis Road. If current design of the proposed development cannot meet that standard, a noise mitigation plan shall be prepared to demonstrate compliance with Section 27-464.02(a)(1)(A)(ii)(iii) of the Zoning Ordinance, and the mitigation plan shall be made a part of the record for this site plan.
4. On remand, the Planning Board shall take further testimony, and allow additional public comment, on a revised detail site plan to determine whether the proposed operation of a day care center for up to 32 children at an existing site/building, formerly a 7-Eleven convenience store property, currently used as a 64-seat church, located between Annapolis Road (MD 450) and Old Annapolis Road, approximately 300 feet of their intersection, needs a barricade between the roadways and the play areas to avoid cars

and trucks from accidentally crashing into the play area to insure the protection of the health and safety of the children expected to utilize the play area on the site.

5. On remand, the Planning Board shall take further testimony and allow public comment to determine the hours of operation for the proposed day care center for up to 32 children, including the proposed after school program for children in kindergarten to eighth grade, and the hours of operation of the existing use as a 64-seat church at the site. *See* City of Bowie Letter to Planning Board.
6. On remand, after testimony on the hours of operation for the proposed day care center for up to 32 children, and the hours of operation of the existing use as a 64-seat church at the site, the Planning Board shall require a revised detail site plan with a floor plan which shall demonstrate the area devoted to each use, *i.e.*, the proposed day care for up to 32 children and the existing use of a 64-seat church, including but not limited to where the children will be housed and where the administrative staff will work, and whether the floor plan will provide adequate square footage for each use on the site. *See* Memorandum from Debbie Gallagher, Information and Permit Review (A floor plan must be provided to demonstrate the area devoted to each use).
7. On remand, after testimony on the hours of operation for the proposed day care center for up to 32 children, and the hours of operation of the existing use as a 64-seat church at the site, the Planning Board shall determine whether the site will provide for adequate parking and square footage, if the proposed day care for up to 32 children and the existing use of a 64-seat church operate at the same time on any day.
8. On remand, because the proposed day care for up to 32 children is permitted only as an accessory use to the existing 64-seat church, Planning Board shall take further testimony and allow public comment on an adequate lighting plan for the proposed accessory day care center use for children for all hours the day care center is in operation. The Planning Board finding 7.d.1.A.vi in PGCPB No. 12-106 that use of the outdoor play area is “hereby limited to hours prior to 6:30 p.m.” and that lighting of the play area is not necessary should be reconsidered. *See* PGCPB Resolution No. 12-106, at 4, ¶ (vi). Testimony supplied during the November 8, 2012, hearing before the Planning Board reveals Applicant’s intention to operate the day care center beyond hours of daylight throughout the year, and the observation by members of the Planning Board that the length of daylight hours is shorter at certain times of the year. (11/08/12 Tr. 20, lines 19-25); (11/08/12 Tr. 21, lines 1-18); Memorandum from Debbie Gallagher, Information and Permit Review (A day care center is permitted only as an accessory use to a church, and

Section 27-464.02 of the Zoning Ordinance requires sufficient light to be provided on play area if it is used before or after daylight hours to insure safe operation of the area) As such, a lighting plan for the required outdoor play area is needed to “insure safe operation of the outdoor play area.” See § 27-464.02(a)(1)(A)(iv); *See also* § 27-281(a)(1) for detailed site plan review criteria and required findings, § 27-281(a)(1) for health, safety, and welfare of the general public as fundamental regulatory interest for review of detailed site plan.

9. The Planning Board’s reliance on the statements supplied in the record to support finding 9.d that that the provisions of Section 4.7 of the Landscape Manual are inapplicable to the proposed development should be reconsidered. *See* 2010 *Prince George’s County Landscape Manual*. Undisputed evidence in the record demonstrates that the proposed development is located within 300 feet of a Potomac Electric Power Company (PEPCO) transmission line right-of-way. The record reflects evidence supplied by the Prince George’s County Health Department in its written comments conducted as part of its Health Impact Assessment, as well as testimony at the November 8, 2012, Planning Board hearing concerning a potential link between proximity of increasing exposure to electromagnetic fields (EMFs) and an increased risk of childhood leukemia. *See also* PGCPB No. 12-106 at 9-10, and September 13, 2012, Memorandum from Frank L. Wise, Health Impact Assessment review at ¶1.
10. On remand, the Planning Board shall take further testimony and allow public comment on the application of Section 4.7 of the Landscape Manual to the proposed development in order to determine whether the proposed Landscape Plan for the development provides adequate buffering for the outdoor play area of the incompatible use adjacent to the development site to filter air pollution emanating from the high-voltage PEPCO power lines, as well as the emissions from vehicular traffic upon the arterial roadways of Annapolis Road (MD 450) and Old Annapolis Road adjacent to the site. In evaluating this further this additional evidence, emphasis should be placed on whether the proposed development and landscape plan provide adequate buffering is consistent with § 3.3(b)(4) and § 3.3(d)(2) of the Landscape Manual, in order to make a finding that the development is otherwise consistent with § 27-464.02(a)(1)(ii)(iii), §27-464.02(a)(2)(B), and § 27-281(a)(1) of the Zoning Ordinance.
11. On remand, Planning Board shall take sworn testimony from the applicant to determine whether the applicant is an individual, LLC, or corporation. If the applicant is an LLC, or corporation, the legal name of the LLC or corporation shall be reflected on the revised detailed site plan. The applicant shall present, for inclusion into the record, written evidence of its registration and good standing with the Maryland Department of

Assessment and Taxation (SDAT). If necessary, pursuant to Section 8 of the Planning Board Rules of Procedure, until the final decision is made, the applicant shall be allowed to present written evidence of its registration and good standing with SDAT. Planning Board Resolution and Staff Report shall be revised accordingly to reflect the appropriate name of the applicant.

12. On remand, Planning Board shall, if the applicant is an LLC or corporation, inform the applicant of Rule 6.2 of the District Council Rules of Procedure, which states:

6.2. Representation.

An individual may represent himself or herself or be represented by an attorney authorized to practice law in Maryland. *All other entities shall be represented by an attorney authorized to practice law in Maryland*, except that a bona fide civic association or homeowner's association which is a party of record may be represented by any duly elected officer of the association regardless of whether that individual is an attorney. (Emphasis added.)

See Rules of Procedure for the Prince George's County District Council, at 5.

13. On remand, Planning Board shall also consider whether the applicant, if an LLC or corporation, should be represented by an attorney authorized to practice law in Maryland during its proceedings. *See e.g.*, Md. R. Civ. P., Cir. Ct. 2-131(a)(2) expressly requires that a corporation be represented by counsel unless otherwise provided by rule or statute; *Turkey Point Property Owners' Ass'n v. Anderson*, 106 Md. App. 710, 666 A.2d 904 (1995) (A corporation is considered a "person" for the purposes of Rule 2-131 (a), and thus must be represented by an attorney in the circuit court).
14. On remand, pursuant to §27-107.01(a) (179) of the Zoning Ordinance, all interested persons should be allowed to register as persons of record for this case.

Ordered this 6th day of May, 2013, by the following vote:

In Favor: Council Members Campos, Franklin, Harrison, Lehman, Olson, Patterson, Toles and Turner.

Opposed:

Abstained:

Absent: Council Member Davis.

Vote: 8-0

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON
REGIONAL DISTRICT IN PRINCE GEORGE'S
COUNTY, MARYLAND

By: _____
Andrea C. Harrison, Chair

ATTEST:

Redis C. Floyd
Clerk of the Council