

Chapelgate Presbyterian Church,

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BEFORE THE ZONING BOARD

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OF HOWARD COUNTY

Petitioner

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Zoning Board Case No. 1105M

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DECISION AND ORDER

On February 3, June 3, July 21, July 23 and September 10, 2015, and January 21, March 21, 2016, and June 26, 2017 the Zoning Board of Howard County, Maryland (“Board”) considered the petition of Chapelgate Presbyterian Church (the “Petitioner” or “Chapelgate”) to amend the Zoning Map of Howard County to reclassify from the R-20 (Residential: Single) Zoning District to the CEF-M (Community Enhancement Floating-Mixed Use) Zoning District, a 61.83 acre parcel of land located on the northwest quadrant of the intersection of US 40 and Marriottsville Road, described as Tax Map 16, Grids 9, 10, 15 and 16, Parcels 110 & 421; 2600 Marriottsville Road in the Third Election District of Howard County (the “subject property”).

The notice of the hearing was advertised, the subject property was posted with notice of the hearing, and the adjoining property owners were mailed notice of the hearing as evidenced by the certificates of posting, advertising, and mailing to adjoining property owners which were entered into the record. Pursuant to the Zoning Board’s Rules of Procedure, all reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning (“DPZ”) and the Planning Board’s Recommendation, were entered or incorporated into the record of the hearing. Both DPZ and the Planning Board recommended approval of the petition and the

Development Concept Plan submitted by the Petitioner based on specific conditions as specified in the Technical Staff Report and the Planning Board's Recommendation.

Petitioner was represented by Sang Oh, Esquire. There was opposition to the petition from the neighboring Albeth Heights community. There were several spokespersons for the opposition ("the opposition") throughout the multiple hearings on this case including Stephanie Nagle Emmens, Ron Louzon, Tim Schott and Tracey Michel, all Albeth Heights residents, and Stu Kohn. After careful evaluation of the evidence, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Petitioner proposes rezoning the subject property from the R-20 to the CEF-M District, which is a floating zone. As such, the Petitioner does not need to prove change or mistake but instead is required to establish that it has met the criteria for approval of the CEF-M District at a particular location as contained in Sections 121.0.A., I and J.8.b. of the Howard County Zoning Regulations. Those provisions provide:

SECTION 121.0: - CEF (Community Enhancement Floating) District

A. Purpose

The Community Enhancement Floating (CEF) District is established to encourage the creative development and redevelopment of commercial and residential properties through flexible zoning so that the proposed development complements and enhances the surrounding uses and creates a more coherent, connected development. While it is envisioned that the CEF District could place residential uses on land zoned for employment in some circumstances, it should not be viewed primarily as a way to convert land zoned for employment to residential.

The CEF District is intended to:

1. Allow greater design flexibility and a broader range of development alternatives than the existing zoning district;

2. Provide features and enhancements which are beneficial to the community in accordance with Section 121.0.G.;
3. Provide a higher quality of site design and amenities than is possible to achieve under the standard provisions of existing zoning district requirements;
4. Encourage creative architectural design with the most favorable arrangement of site features, based on physical site characteristics and contextual sensitivity to surrounding developments;
5. Serve as a transitional area by providing a mix of uses compatible with the surrounding community or developments; and
6. Encourage aggregation of underutilized properties. . .

A CEF-M District may be established when the uses proposed in the development Concept Plan contain a mix of residential and commercial uses...

I. Criteria for a CEF District

The CEF District may be established at a particular location if the following criteria are met:

1. The proposed CEF District is located within the planned service area for both public water and sewer service;
2. A proposed CEF-C District shall have frontage on and access to an arterial or major collector road. A proposed CEF-R or CEF-M District shall have frontage on and access to an arterial or collector roadway, or a local road if access to the local road is safe based on road conditions and accident history and the local road is not internal to a residential development;
3. For all properties, the minimum development size for any CEF District shall be five acres;
4. The proposed CEF District is not located in an existing M-2, TOD, NT, MXD, or PGCC District;
5. A Proposed CEF-R District is not located in an existing non-residential zoning district unless the proposed CEF-R District adjoins a residential zoning district;

6. The proposed CEF District is not permitted within the interior of a neighborhood comprising only single-family detached dwellings;
7. A CEF development at the proposed location shall be compatible with surrounding residential neighborhoods, existing land uses in the vicinity of the site in terms of providing a transitional use between different zoning districts and/or land uses and the scale, height, mass, and architectural detail of proposed structures;
8. The proposed CEF development shall include enhancements as provided in Section 121.0.G. enhancements shall be proportionate to the scale of the CEF development;
9. The proposed CEF District shall meet the criteria of the purpose statement; and
10. The proposed CEF Development does not comprise parcels which were added to the Planned Service Area to achieve Bay Restoration goals articulated in *Plan Howard 2030*.

J. Procedure for Creation of a CEF District

8. Decision by the Zoning Board:

- b. In its evaluation of the proposed CEF District, the Zoning Board shall make findings on the following:
 - (1) Whether the petition will accomplish the purposes of the CEF District;
 - (2) Whether the petition complies with the criteria for a CEF District in Section 121.0.I; and
 - (3) Whether the petition meets the Moderate Income Housing Unit requirements.

2. The petition and the accompanying DCP submitted for this proposed CEF rezoning request has been amended several times- from its original pre-petition submission, to the petition submitted to the Department of Planning and Zoning and the Planning Board and then again, several times during the Zoning Board hearings, culminating in the current proposal before the Board for decision. All of the Petitioner's proposed changes, many of which occurred as the result of comments and requests from the Zoning Board during the hearings on this matter

will be noted below in the findings of fact as to the Petitioner's proposed DCP and enhancements. The Petitioner's original DCP is that plan filed with the original petition. Petitioner's Exhibit 1 is the Supplemental DCP (Though marked as Applicant's Exhibits, Petitioner's exhibits will be referred to as Petitioner's Exhibits in this decision). The three main refinements to the DCP as shown on Petitioner's Exhibit 1 are the slight modification of the townhouse layout, the elimination of the tennis courts near Route 40 and the changes to the community commercial.

3. Rob Vogel, a licensed civil engineer, testified first on behalf of the Petitioner. Mr. Vogel described the vicinity of the subject property, which is a 61.83 acre, R-20-zoned property comprised of two parcels, parcels 110 and 421. He noted that the property is presently used as a church, a private middle school and private high school and a day care facility, all of which have been approved as special exception uses by the Board of Appeals over twenty years ago. Both Mr. Vogel in his testimony, and DPZ in its Technical Staff Report, noted that if rezoning were granted, the restrictions on the use of the property for these special exception uses would no longer apply since these existing uses and the proposed residential uses and additional religious uses, a church sanctuary, would be permitted uses as a matter of right according to the proposed CEF-M permitted uses and bulk regulations as provided on any approved DCP.

4. Mr. Vogel testified that in the petition it was proposed that the subject property's access be consolidated with existing Albeth Road by teeing into Albeth Road so that the proposed development's traffic would be directed into the existing signalized intersection with Marriottsville Road across from Turf Valley's Resort Road instead of using its present access to Marriottsville Road. Mr. Vogel indicated that this change was necessary due to the difficult ingress and egress of traffic to and from the Chapelgate property from Marriottsville Road when

there is stacking of traffic on northbound Marriottsville Road. Mr. Vogel indicated that the County's Traffic Department of DPW would not approve a signal at the subject property's existing access on Marriottsville Road to address this problem nor would they approve the subject property's access on Marriottsville Road closer to Route 40 based on County traffic standards and current conditions. Mr. Vogel testified that the developer became aware of the Albeth community's objection to the subject's property teeing into Albeth Road, and therefore gained the County's approval of allowing the Albeth community's traffic to have the right of way over Chapelgate's resulting traffic at the point where it would intersect with Albeth Road in any future development.

Mr. Vogel, after some ambivalence in his testimony, finally and definitively testified in re-direct that under existing zoning, whatever residential development was permitted under R-20 zoning in combination with the continued use of the church, school and day care uses, could continue to use its existing access to Marriottsville Road, despite its potential traffic problems.

5. Mr. Vogel summarized the Petitioner's proposed development as a new church sanctuary, since the congregation was currently using the school gym as its sanctuary, 134 townhouses, the various proposed amenities and the Albeth Road improvements, which would be used in combination with the existing uses previously mentioned. Mr. Vogel testified that Chapelgate had originally planned to have a much larger congregation when it applied for and gained approval for its church through the special exception process but that those plans had been scaled back recently. Mr. Vogel indicated that the congregation is presently using the gymnasium they built previously as its worship space but that the congregation desired to have a new sanctuary space, especially for weddings and funerals. He also testified that the congregation had limited financial resources and that the revenue derived from the proposed

residential development would be used to finance the construction of the sanctuary and the road improvements for the connection to Albeth Road. Mr. Vogel stated that these road improvements, including the necessary stream crossing and safety improvements would be an amenity for the community.

6. Mr. Vogel detailed the proposed enhancements to be provided by the Petitioner, which would not be provided under existing zoning, as part of the CEF-M decision-making criteria. These enhancements include:

a. The previously mentioned intersection with Albeth Road improvements to provide for a connection to a safe access at the Albeth Road/Resort Road- Marriottsville Road intersection, including a cross-walk across Marriottsville Road as detailed in Petitioner's Exhibit 12, Item 8; and

b. The pathway system with various amenities along the pathway and at other locations, as detailed in Petitioner's Exhibit 12, items 1-4, including the numerous amenities to be provided along the path, including the fitness stations, meditation areas, benches, dog stations, bike racks, picnic areas, pavilions, ballfields, playgrounds, all as part of the creation and preservation of recreation open space; and

c. The community entrance feature for Albeth Heights, based on input from the Albeth community as detailed in Petitioner's Exhibit 12, Item 9; and

d. The community commercial, as detailed in Petitioner's Exhibit 12, item 5 and below; and

e. The provision of 21 actual MIHU units, not a fee-in-lieu, as indicated on Petitioner's Exhibit 3, the replacement page for the proposed Bulk Regulations.

The complete list of Petitioner's proposed enhancements and agreed to conditions and limitations are detailed in a combination of Petitioner's Exhibit 1, the Chapelgate DCP, Petitioner's Exhibit 12 and Sang Oh's email of June 8, 2017. In addition to the enhancements, Petitioner has agreed to limit the school enrollment on the subject property to no more than 500 students and to limit the enrollment of the child day care/nursery school to no more than 50 students

7. As to the proposed pathway/trail system enhancement, Mr. Vogel testified that in the proposed pathway area adjacent to the Albeth community, the Petitioner proposed two alternative alignments, one a more scenic location to the north closer to the Albeth community, and the second further from it, closer to the existing Chapelgate parking lot. These options are shown as Option "A" Trail location (closer to the Chapelgate parking lot) and Option "B" Trail location (closer to the Albeth community) on sheet 4 of 9 of the DCP filed with the petition. Mr. Vogel testified that the Petitioner would provide one or the other of the pathway/trail locations as indicated by the Board but that in discussions with the community, it was indicated that the preferred location for the community was Option "A". Mr. Vogel further testified that the trail would be 7-8 feet wide, constructed with pervious asphalt material, and that the Petitioner would be responsible for maintenance of the trail as provided in Petitioner's Exhibit 12, Item 1. Mr. Vogel added that the pathway/trail and all the associated features would be open to the community. Mr. Vogel testified that the pathway would be an amenity to both the immediate community, the proposed residential community on the subject property and the Albeth community, and the wider community of Turf Valley and Waverly, as shown on Petitioner's Exhibit 5.

8. Mr. Vogel testified that the proposed development of 134 townhouse units on the subject property as shown on the DCP would allow much greater design flexibility than the development of single-family detached lots in the R-20 or R-ED option in R-20, and that the latter development would not allow the provision/retention of as much open space, allow the provision of the pathway system or the retention of the ballfields or the building of the desired sanctuary. Mr. Vogel also testified that the development of townhouses as opposed to single family detached houses also permitted the Petitioner to work with the existing topography by stepping the townhouses down the hill and thereby limiting disturbance and retaining the wooded areas near the proposed townhouses and Marriottsville Road.

Mr. Vogel testified that under the R-ED option of development under R-20 zoning, the Petitioner would be required to develop single-family detached housing. Under this development scenario, Mr. Vogel opined that approximately 100 dwelling units could be developed on the subject property while still retaining the existing school, church and day care uses but that because single-family detached uses could not be clustered like single-family attached dwelling units in the CEF rezoning scenario, it would be necessary to lose much of the green space, including at least one of the ballfields which presently exist on the subject property under the existing zoning scenario. The Petitioner, through Mr. Vogel, contended that the area occupied by the conditional uses could be, and always had been included in the net acreage calculations by DPZ.

The Board asked DPZ to provide its interpretation as to how much development could be achieved on the subject property under existing R-20 zoning, assuming the church, school and day care uses would remain, so that the “increase in development intensity associated with the CEF rezoning compared to the previously existing zoning” could be assessed to determine

whether the Petitioner's proposed enhancements were proportionate to this development increase, pursuant to Section 121.0.G. and I.8. of the Zoning Regulations.

In response to this request, DPZ provided a February 22, 2016 response to the Board, to which the Petitioner responded on March 4, 2016. DPZ, in turn, responded with a memo of March 18, 2016, to which Petitioner responded the same day. DPZ's memos to the Board were introduced as official documents. The Petitioner's responses were introduced as Petitioner's Exhibits 13 and 14.

DPZ indicated that the net acreage available to apply to the R-20/R-ED option, allowing two single family detached dwelling units per net acre density, to determine the development intensity under existing zoning could not be verified based on the information available to it. DPZ indicated that its research revealed that the area occupied by a conditional use had not been historically allowed by DPZ to be included in the net acreage calculations. DPZ also indicated that regardless of past interpretations, it would not prospectively allow the area to be occupied by a conditional use to be included in the net acreage calculations. DPZ indicated that Section 131.0.C of the Zoning Regulations was not applicable to this determination because it did not apply to the R-20 Zoning District, and it did not apply to the scenario in which a proposed residential development comes after an existing conditional use. DPZ also determined that under the existing development scenario, the Hearing Authority would have to approve any reduction in size of the area of the Chapelgate conditional uses, and that the area of the proposed residential development not part of the reduced conditional use of Chapelgate's church, school and day care was unknown and would have to be separated from the conditional use in order to be developed.

DPZ did indicate that the open space requirement for any development under the existing R-20 zoning could be determined by DPZ to be satisfied by allowing the Church's ballfields to count towards the development's recreational open space requirement upon execution of an agreement for shared use of the ballfields.

The Petitioner, through its responses, prepared by former DPZ Director Joseph Rutter, contended that although Section 131.0.C. did not specifically apply to this scenario, the "spirit" of that provision had always been applied by DPZ to allow the area occupied by a conditional use to be included in net acreage calculations, and that any change in DPZ's interpretation would be at variance with past interpretations and would be invalid.

9. Mr. Vogel testified that the Petitioner had originally proposed a building and a paved parking area on the Community Commercial portion of the DCP in the northeast corner of the subject property just north and east of Albeth Road as it intersects with Marriottsville Road but that it had acceded to the input from the community that they did not want that intensity of development there. The original plan had been to have a place for Chapelgate Church and the community to hold fund-raising sales and similar events. Mr. Vogel indicated that Petitioner had subsequently proposed eliminating the community building, replacing the paved parking with "grass-crete" parking, eliminating any use of the area by Chapelgate Church and had agreed to submit to the community proposed covenants ensuring that there would be no use of the Community Commercial area of the subject property unless 80 per cent of the Albeth Heights community lot owners agreed to such use, and that this required approval applied to even the proposed "grass-crete" parking area. Mr. Vogel also testified that Petitioner had agreed to construct two pillars within the Community Commercial area signifying the location of the Albeth community. Petitioner's Exhibit 2 constitutes these proposed covenants.

Mr. Vogel, in response to questions on cross-examination from the community indicated that the location of the Community Commercial area south of Albeth Road was not a feasible location due to the fact that the stream and culvert were located there. He also indicated that the 12 proposed parking spaces on the Community Commercial area were necessary to accommodate people using the proposed trail and for any possible future use approved by the community. Mr. Vogel also indicated that the area proposed for Community Commercial was not a good location for a dwelling unit because of its location adjacent to Marriottsville Road.

10. Mr. Mickey Cornelius, Senior V.P. of the Traffic Group, a traffic engineer, testified on traffic issues. Mr. Cornelius testified that the already difficult and potentially dangerous access to the Chapelgate property at its current access point on Marriottsville Road, would be even more dangerous after the widening of Marriottsville Road project is completed, especially for left turn lanes across additional lanes of traffic. Mr. Cornelius testified that the County had consequently indicated any development of the subject property under CEF, as proposed, would necessitate a combined access on Albeth Road to Marriottsville Road in order to have the proposed development's traffic use the existing signalized intersection. Mr. Cornelius also testified that the developer sought to have a signalized access at its current access to Marriottsville Road but that the County was not in favor of that plan, instead insisting on the combined access with Albeth Road to use the existing signalized intersection of Albeth Road with Marriottsville Road. Mr. Cornelius testified that the County did not think it was viable to have another signalized intersection between Route 40 and the existing signalized intersection at Albeth/Resort Road and Marriottsville Road. Mr. Cornelius also testified that a right-in, right out access at Chapelgate's current access was not feasible because traffic desiring to go north on Marriottsville Road could not make a U-turn on Marriottsville Road.

Mr. Cornelius also testified that the County wanted the Chapelgate development's traffic to be the predominant traffic, to have the right of way over the existing Albeth community's traffic but that the developer had eventually convinced the County to allow the Albeth community traffic to have the right of way in any intersection design to meet the concerns of the community.

Mr. Cornelius also testified that the property's existing auxiliary access to Marriottsville Road would be retained as an emergency access to Marriottsville Road. He also testified that the community entrance signage feature would be located on the proposed Community Commercial portion of the subject property, and would indicate that the Albeth community was straight ahead and that Chapelgate was to the left for those entering Albeth Road.

Mr. Cornelius also testified that, although the adequate public facilities test was not a criterion for approval as part of the CEF rezoning request, he had conducted a preliminary analysis which indicated that, with the planned Marriottsville Road improvements, including the planned widening of the I-70 bridge, the Albeth Road/Marriottsville Road intersection would still achieve Levels of Service (LOS) of "A" in the am peak hour and "B" in the pm peak hour with the proposed development, both of which are acceptable LOS according to County traffic standards. On rebuttal testimony, Mr. Cornelius provided updated traffic counts which led him to conclude that his earlier findings as to LOS were unchanged. Mr. Cornelius also testified that the intersection of Chapelgate and Albeth would be a LOS of "A", although he believed Albeth Road would still be classified as a local road by the County due to its function. Mr. Cornelius acknowledged that traffic could back up into the Chapelgate access during busy school or church functions. Mr. Cornelius testified that the LOS standards of the adequate public facilities road test was concerned with road capacity and congestion, not safety. As to

safety, Mr. Cornelius testified that during the 2010-2012 period, there were 1-2 accidents per year at the Albeth Road/Marriottsville Road intersection but that historical data would be rendered somewhat irrelevant given the substantial planned changes to Marriottsville Road and its intersection with Albeth Road.

Mr. Cornelius testified that he did not know of any sight distance issues for any of the intersections serving the proposed development but that the development would have to meet the County's sight distance requirements at the Chapelgate road intersection with Albeth Road to move forward. Mr. Cornelius testified that most drivers would honor the yield sign giving the right of way to Albeth Road traffic at the proposed Chapelgate road/Albeth Road intersection. He acknowledged that the best design would be to give the right of way to the Chapelgate road traffic but that the developer and the County were willing to compromise on behalf of the Albeth community. In response to the question on cross as to whether the County could change its mind on the right of way for this intersection, Mr. Cornelius indicated that the Zoning Board could condition its approval on requiring the proposed design giving the right of way to the Albeth community traffic.

Mr. Cornelius also acknowledged that the County officials were aware of the necessity of crossing a sensitive environmental area when it required Chapelgate to gain access to the signalized intersection at Albeth Rd and Marriottsville Road.

11. Mr. Robert Weaver, a principal with KGRW and Associates, an architect and land planner, testified next on behalf of the Petitioner. Mr. Weaver echoed some of Mr. Vogel's testimony as to the changing goals of Chapelgate Presbyterian Church – that the Church's original plans for a larger sanctuary with an emphasis on an educational component requiring more parking had evolved into plans for a somewhat smaller sanctuary which could replace the

less aesthetically pleasing gymnasium, which has been used for the worship space. Mr. Weaver indicated that with more space to spare, the congregation had decided to pursue using that space for residential development integral to the uses of the church and school, and to use the revenue from that development to finance the construction of the new sanctuary and road access.

Mr. Weaver testified as to the project's goals and design philosophy, which are found on page 11 of Petitioner's Exhibit 1, the Chapelgate DCP. These goals include better integration of Chapelgate's church and school with the community, the provision of a new sanctuary of more permanence, providing walkability and interconnection within the neighborhood and broader community, the sharing of amenities with the community, increased traffic safety for the church, the neighborhood and the greater community, working with the natural features and context of the site, the use of materials and architecture which are complementary to the site, and sustainability through planning.

Mr. Weaver reiterated Mr. Vogel's testimony that the Petitioner had made several changes to the petition in response to the community's concerns, including the elimination of the pavilion on the Community-Commercial portion of the property and the use of grass-crete parking rather than impervious surface parking, agreeing to and advocating for the right-of-way for Albeth Road, the accentuation of the park-like setting of the proposed development by the elimination of townhouse units on the west side of the loop road near the entrance, the orientation of the fronts of the townhouses on Marriottsville Road, the addition of various connections throughout the development, and the elimination of the tennis courts near Route 40. These changes are summarized on pages 14 and 15 of Petitioner's Exhibit 1.

Mr. Weaver described the various site amenities proposed in the petition, including the central green, the pocket parks, the picnic pavilion, the gazebo, the meditation garden, the

wooded picnic area, the trail, the dog stations, grills, trees and shrubs, signage, the benches and other features, all of which are illustrated on pages 16-21 of Petitioner's Exhibit 1. Mr. Weaver also summarized the existing amenities of the church and school, which would be shared with the community by agreement, including existing ballfields, playgrounds and tot lots, as illustrated on page 22 of petitioner's Exhibit 1. Mr. Weaver outlined the many ministries and services that Chapelgate provides already on Petitioner's Exhibit 4. Mr. Weaver indicated that these ministries and services could be shared more widely with the residents of the proposed development and with the wider community through the approval of this proposal.

Mr. Weaver described the architectural details of the proposed sanctuary as shown on page 23 of Petitioner's Exhibit 1. He described the materials to be used in the construction of the sanctuary as predominantly stone and glass, natural materials which could be found in the nearby quarries on Marriottsville Road. Mr. Weaver emphasized that the design of the church was to allow the viewing of the green space surrounding the church.

Mr. Weaver the described the architectural details of the proposed townhouses. He indicated that the materials for the townhouses would match the materials used for the sanctuary. He also testified that they would de-emphasize limiting the architectural details to just the front, and would concentrate on extending the detailing to all four sides, including the use of porches and side entrances. These contrasting characteristics are illustrated on pages 24-34 of Petitioner's Exhibit 1. Mr. Weaver stated that Chapelgate would remain in the community and that it therefore is very concerned with the aesthetics of the proposed townhouses. Mr. Weaver testified that the architectural guidelines would give the Church some control over the way the proposed development would look. Mr. Weaver also testified that the Petitioner had followed the Design Advisory Panel (DAP's)'s recommendations with respect to the use of the

architectural guidelines themselves, the requirement to return to the DAP with specific designs for DAP input and the changes to the Community Commercial Area. Mr. Weaver testified that the only recommendation of DAP which it was not following was the suggestion as to the loop road- Mr. Weaver indicated that the Petitioner did not feel this design worked with the natural features of the site.

On cross-examination, Mr. Weaver testified that the “community” which was required to be benefitted by the proposed enhancements, consisted of the immediate community, which included the Albeth community, and the larger Marriottsville corridor community which extended to parts of Turf Valley and Waverly. Mr. Weaver summarized the proposed amenities as had Mr. Vogel, to include the 1-1 and ½ mile loop pathway, the exercise stations, the meditation garden, the Community Commercial area, the picnic areas, the existing ballfields and playgrounds, and the enhanced safety of the tie-in to the signalized intersection. Mr. Weaver indicated that these amenities could be beneficial to the members of the Albeth community if they choose to use them.

Mr. Weaver testified that he believed the proposed townhouse community was compatible with the Albeth community because of the design of the community to maximize preservation of and working within the environmental characteristics of the subject property, the buffering of the townhouses from the Albeth community through extensive green space and forest and the separation of Albeth from the subject property by a stream valley.

In answer to the question as to why the subject property couldn’t be developed under R-20 zoning, Mr. Weaver indicated that it could be so developed but that the clustering of townhouses allowed under CEF, not permitted in the R-20 District even with the R-ED option, allowed the preservation of many natural features, including at least one of the ballfields which

would not be possible under existing zoning, and that the development under CEF would be much greener than permitted under existing zoning.

Mr. Weaver also testified that Albeth residents could access the pathway by walking along the road and access the pathway by the nearest connection. He also described, much as Mr. Vogel had done, how someone could walk from Waverly to reach the pathway by walking along the west side of Marriottsville Road, and how the proposed crosswalk would enhance the walkability of the area.

12. Six residents of the Albeth community testified in opposition to the proposed CEF rezoning- Stephanie Nagle Emmens, Charles Hill, Tim Schott, Tracey Michel, Ron Louzon and Nicholas Schuyler. Alan Schneider also testified in opposition to the proposed rezoning. The opposition had both procedural objections as to why the petition was defective and should be dismissed and substantive objections to the petition based on purported failure to meet the criteria for permitting a CEF rezoning. The procedural objections, already denied by the Board during the proceedings in this case will be summarized along with the Board's rulings in subsection a. through c. below. The summary of the opposition's testimony and evidence as to why the Petitioner did not meet its burden as to the criteria for decision-making on a CEF plan will be addressed in Finding of Fact 13.

a. The opposition contended that the petition should be dismissed on the original hearing date for this case- February 3, 2015 because the DAP Report was not attached to DPZ's Technical Staff Report. Because of this omission it was not clear whether the Planning Board had considered the DAP recommendations before it made its recommendation. The Board refused to dismiss the petition but instead sent a memo to DPZ asking that the DAP recommendations be given to the Planning Board and for the Planning Board to update, if

necessary, its recommendation. The Planning Board indicated it had been aware of the DAP recommendations and did not alter its recommendation to the Zoning Board. The Board's action cured the defect in procedure and the case could move forward. The Board did not see any basis for dismissing the petition based on a technical irregularity in the processing of the agency advice given to the Board on this case, and therefore denied the opposition's request for dismissal of the case. The opposition also claimed that they did not participate in the Planning Board's second meeting on this matter but that the Petitioner did participate, that they were not aware of the second meeting and that Petitioner's attorney failed to inform them of the date of the meeting as he promised. Assuming this is true, which the Petitioner disputed, the Board determined that the Planning Board's recommendation did not change, the DAP Report was supplied in accordance with the requirements of the Zoning Regulations, and there was no harm to the opposition, since the Planning Board only advises the Zoning Board in this matter, and the opposition was free to make its presentation to the Zoning Board.

b. The opposition contended that the incorrect description of the most southerly portion of the subject property, on the Tax Maps and DPZ's TSR as Parcel 421, made the petition defective. In fact, as Petitioner acknowledged, the Community-Commercial portion of the proposed CEF District, the portion of the subject property north of Albeth Road is in fact parcel 421. The Petitioner acknowledged that the Tax Map was in error. The Board determined that the case could proceed despite the Tax Map error. There was no dispute as to the size and boundaries of the property proposed for rezoning, and the error could not have reasonably caused a notice problem in terms of what was being proposed in the petition.

c. After the Board received the Petitioner's responses to DPZ's memos on the issue of the residential development potential of the subject property under existing zoning,

Petitioner's Exhibits 13 and 14, the opposition asked that the Board "throw out" these responses authored by former DPZ Director Rutter based on Section 22.204(c)(1) of the Howard County Code (Howard County Public Ethics Law). This provision provides that "a former official or employee may not assist or represent any party other than the County for compensation in a case, contract, or other specific matter involving the County if that matter is one in which the former official or employee significantly participated as an official or employee." The opposition alleged that Mr. Rutter, as DPZ Director, was Executive Secretary to the Planning Board when they made recommendations as to the special exception expansion application for the church and school on the subject property in 1993.

The Board declined to remove these exhibits from the record for several reasons. First, the Board determined that it had asked for the responses, so it could not refuse to consider them. Second, any enforcement of this provision is under the jurisdiction of the Howard County Ethics Commission under Section 22.208 of the Howard County Code rather than the Zoning Board. Although the Board did not rule on the substance of the opposition's motion on this issue, it must be noted that being the head staff person for an advisory body involving a different application as to the same subject property does not seem to be the kind of "significant participation" in "a specific matter" that was contemplated for prohibition by the Howard County Public Ethics Law.

13. The opposition provided testimony and documentary evidence in support of its several contentions that the Petitioner's application could not be granted because the subject property could not objectively meet several of the criteria applicable to the CEF-M District. The opposition's contentions, Petitioner's responses, and the Board's findings are provided below:

a. Several opposition witnesses testified that this petition, for a CEF-M District, could not be granted because “A CEF-M District may be established when the uses proposed in the Development Concept Plan contain a mix of residential and commercial uses”. Sec. 121.0.A. It was the opposition’s contention that none of the uses proposed in the DCP were commercial uses but instead were institutional uses as defined in Sec. 103.0. as including “a religious facility. . . or private school.” In support of this contention, evidence was presented that Mr. Oh, Petitioner’s attorney, and Mr. Vogel, one of Petitioner’s witnesses, had referred to a church in another case as an institutional use.

The Petitioner countered by contending that the church, school, daycare and Community Commercial area were all uses which would be permitted in the POR, B-1 and B-2 Districts and were therefore permitted uses in those commercial districts pursuant to Section 121.0.B. of the Zoning Regulations, and therefore were clearly commercial uses. Petitioner also noted that all these uses meet the definition of commercial uses in Sec. 103 of the Zoning Regulations as well since they were “any use involving in part or whole the sale . . . of . . . services.” The Board also notes that the term “institutional use” is not used in the CEF District.

The Board finds that Petitioner’s evidence and arguments are more persuasive on this issue. The Board is persuaded that the intent of the CEF District Regulations was to allow several uses to qualify as commercial uses within the concept of a mix of residential and commercial uses. The Zoning Regulations clearly provide that day care, private schools and religious facilities, while permitted as conditional uses in residential districts, are also permitted uses as a matter of right in the POR, B-1 and B-2 Districts, and are therefore intended to be commercial uses as well. Uses, such as the uses currently existing on the subject property, can be categorized as both institutional uses and commercial uses.

b. Opposition witnesses provided testimony and evidence to support their contention that Petitioner could not meet the criterion contained in Section 121.0.I.2. of the Zoning Regulations that “a proposed. . . CEF-M District shall have frontage on and access to . . . a local road if access to the local road is safe based on road conditions and accident history and the local road is not internal to a residential development.” The opposition contended that Albeth Road is a dead-end road constructed to serve the Albeth subdivision, and as such cannot meet the criteria of being a local road not internal to a residential development based on the definition of “street right of way, internal” in Section 103 of the Zoning Regulations. That provision provides that “internal street right of way” is a “public street which is contained entirely or predominantly within a subdivision and is constructed primarily to serve a subdivision.”

Petitioner countered that while portions of Albeth Road are situated in the Albeth subdivision, much of it is not, including the proposed access point for Chapelgate, which adjoins and has frontage on Albeth Road. It was further contended that neither the Chapelgate property nor the access point is situated inside of a residential development.

The Board finds that Petitioner’s evidence and arguments are more persuasive on this issue. The Board is persuaded that the intent of the Zoning Regulations was to not permit a local road accessing a CEF District to be entirely within a residential development. The Board finds that that is not the case in this instance in that the subject property adjoins Albeth Road for a considerable distance and is proposed to access Albeth Road, something which would not be possible if Albeth Road was completely internal to the Albeth community.

c. Opposition witnesses provided testimony and evidence to support their contention that Petitioner could not meet the criterion contained in Section 121.0.I.6. of the Zoning

Regulations that “the proposed CEF is not permitted within the interior of a neighborhood comprising only single-family detached dwellings.” The opposition’s contention is that parcel 421, the area of the proposed Community Commercial area on the subject property, is part of the Albeth neighborhood because it is adjacent to a lot which is part of the Albeth neighborhood, is an R-20 zoned lot like all the lots in the Albeth neighborhood, and is considered by the Albeth neighborhood to be part of it. The opposition’s (though marked as Protestant’s Exhibits in the record, these exhibits will be referred to as Opposition’s Exhibits in this decision) Exhibits 11 and 12, two deeds to properties in the Albeth neighborhood, were presented to show that these lots are within the Albeth neighborhood even though no reference to “the Albeth” neighborhood is contained in the deeds. Petitioner countered with the contention that no portion of the development, including the access and enhancements are within the interior of the neighborhood.

The Board finds the Petitioner’s evidence and arguments are more persuasive on this issue. The Board finds that lot 421, while it adjoins the Albeth neighborhood, is simply not geographically within the interior of the Albeth neighborhood. The fact that residents of the Albeth neighborhood may have always believed lot 421 to be a part of the Albeth neighborhood does not make it interior to that neighborhood.

14. There are several matters which were not disputed by opposition testimony or documentary evidence that relate to the criteria for decision-making in this case:

a. That the proposed CEF District, pursuant to Section 121.0.I.1, is located within the planned service area for both public water and sewer service. This fact was established in DPZ’s TSR and went unchallenged.

b. That three of the criteria of the purpose statement, Section 121.0.A. 1., 3., 4. and 6. of the Zoning Regulations were sufficiently addressed by the testimony and documentary evidence presented by Mr. Vogel and Mr. Weaver on these issues as outlined in Findings of Fact 6, 7, 8 and 11 above, evidence which the Board finds persuasive and substantial. It was undisputed based on the evidence in the record that the development under the proposed CEF-M would: 1) allow greater design flexibility and a broader range of development alternatives than the existing district, the R-20 District, including the clustering of townhouses to enable more open space, the provision of a pathway with numerous amenities along its 1- 1 and 1/2 mile length, a crosswalk, a potential community commercial area, the retention of ballfields and other recreational space, and other amenities; 2) provide a higher quality of site design and amenities than is possible to achieve under the standard provisions of existing zoning district requirements, for the same reasons as listed in section 1) above; 3) encourage creative architectural design with the most favorable arrangement of site features, based on physical site characteristics and contextual sensitivity to surrounding developments as outlined in Petitioner's architectural guidelines; and 4) Encourage aggregation of underutilized properties, with the combination of a currently vacant lot, parcel 421, and parcel 110 into the CEF-M District.

In its closing argument, the opposition claimed that Petitioner had not presented "what the development would look like under the existing zoning to prove why the quality is better" under CEF zoning than R-20 zoning. The opposition presented no evidence in support of this contention. In fact, the opposition did not dispute the fact that R-20 zoning, even with the R-ED option, would not require the clustering of the townhouses, which allows the greater provision of open space, the retention of the ballfields, the provision of the trail and its

amenities, the design of the townhouses to work within the subject property's topography, and the road improvements, the architectural guidelines, all of which would be provided as enhancements under CEF zoning. The Board notes that nothing in the R-20 Regulations, even with the R-ED option, requires any of these enhancements, including the compliance with the architectural guidelines, which Petitioner is binding itself to as part of this application.

c. That, pursuant to Section 121.0.I.3, the subject property's CEF minimum development size is greater than 5 acres, since it is 61.83 acres in area,

d. That Section 121.0.I.5, which relates to only proposed CEF-R Districts [providing that a proposed CEF-R District is not located in an existing non-residential zoning district unless the proposed CEF-R District adjoins a residential zoning district] is inapplicable.

e. That Section 121.0.I.10, which disallows a proposed CEF development for parcels which were added to the PSA to achieve Bay Restoration goals in Plan Howard 2030, is inapplicable.

The Board finds that Petitioner's undisputed evidence and its arguments on these issues to be persuasive and finds that there is undisputed evidence that shows the above criteria have been met.

15. As to the CEF-M decision-making criteria relating to the CEF's purpose statement for which there was disputed testimony and documentary evidence presented by the opposition, the opposition's contentions and/or evidence, Petitioner's evidence and responses, and the Board's findings are as follows:

a. With respect to Petitioner's proposed features and enhancements as outlined in Findings of Fact 6-11, the opposition testified that these features and enhancements, including the proposed pathway, even with the use of Option "A" for the alignment which is further away

from the Albeth community than Option “B”, the community commercial area, and the road improvements/change in access to Albeth Road were not desired and in fact were opposed by the Albeth community, and therefore were not “beneficial to the community” pursuant to Section 121.0.A.2. of the Zoning Regulations. In connection with this contention, the opposition presented evidence, through Opposition’s Exhibit 13, that the Albeth community was the only community for this proposal, and that Petitioner’s proposed broader community of Turf Valley and Waverly, as shown on Petitioner’s Exhibit 5 was too distant to be considered in this CEF’s community for which the enhancements should be considered beneficial or not.

The Petitioner presented evidence and contended that the Albeth community was the immediate community for the proposed CEF District but that a broader community, including Waverly and Turf Valley, was also applicable and valid, and that the broader community would be benefitted by all of its proposed enhancements. In addition, the Petitioner presented evidence and contended that the pathway and its various related amenities and the community commercial were proposed enhancements which could be beneficial to the Albeth community if it chose to avail themselves of them. It was also presented testimony that the combining of Chapelgate’s access into Albeth Road would eliminate a potentially worsening dangerous traffic situation on Marriottsville Road and would therefore be beneficial to all motorists traveling on Marriottsville Road, including the residents of the Albeth community.

The Board finds that Petitioner’s evidence and arguments on this issue are more persuasive than those of the opposition. The Petitioner’s proposed enhancements, as summarized in Petitioner’s Exhibit 12 and Mr. Oh’s email of June 8, 2017 are beneficial to the broader community as proposed by the Petitioner and to the more immediate Albeth community if they would choose to avail themselves of those enhancements. The Board finds that the

provision of 21 Moderate Income Housing Units, 50% more than is required in the CEF District, while definitely a public good, is not considered to be an enhancement for purposes of this decision.

b. With respect to whether the proposed CEF-M District serves “as a transitional area by providing a mix of uses compatible with the surrounding community or developments”, pursuant to Section 121.0. A.5., the opposition’s testimony was that it opposed the addition of the 134 townhouses near its single-family detached community, that it did not want parcel 421 to be a Community Commercial area, that the development of the CEF would bring additional, potentially dangerous traffic to Albeth Road, and that the proposed pathway would bring crime and trespassers to the Albeth community, and that future pathway users would likely park in their neighborhood. The opposition presented Opposition’s Exhibits 21-25 to show that increased density leads to higher crime rates, and that the Albeth community had much less reported crime than the surrounding areas of the Chapelgate property, Turf Valley and Waverly. Other than these crime statistics, the opposition did not present any credible evidence to support its claim as to the purported incompatibility of the proposed residential community and its community.

The Petitioner countered that the opposition acknowledged that the existing uses of the church, school and day care on the subject property, as permitted by the conditional use approval by the Board of Appeals, were compatible with the Albeth neighborhood. The Petitioner also presented evidence through Mr. Vogel and Mr. Weaver that the proposed residential community, including the architectural details of the proposed development and the proposed buffering from the Albeth community and Marriottsville Road, to show that the proposed townhouses were compatible with the Albeth neighborhood and the broader

community, and would serve as a transition between the Albeth Community and the broader community of Turf Valley and Waverly. The Petitioner proffered, through Petitioner's Exhibit 2, the proposed covenants with the Albeth community as to the use of the Community Commercial area on parcel 421, that it would make no use of that area other than a community sign, without the approval of 80% of the Albeth community.

The Board finds that the Petitioner's evidence and arguments on this issue are more persuasive than those of the opposition. The Board finds that the opposition's general statements as to higher density causing more crime and the Howard County Police crime statistics prove only that more crime exists in higher density residential areas, and in more in non-residential areas than residential areas. The Board notes that the proposed plan proposes additional residential, not non-residential development except for the proposed sanctuary, and further notes that the proposed townhouse community is not a high density development. The opposition's fears about additional crime, trespassing and unauthorized parking being caused by the townhouse development, the Community Commercial area and the path are unsubstantiated by credible evidence. It was admitted that the last time cars parked along Albeth Road for a Chapelgate church event was eight years prior to the hearing. The Board notes that Petitioner's proposed covenant with the Albeth community lot owners is an agreement that the lot owners would have to agree to, which seems unlikely. However, the Board may condition any use of the Community Commercial area other than signage upon the community consensus standard as provided in the proposed covenant. With this condition, the Board notes that no use of the community commercial area will occur without the consensus approval of the Albeth community, so that the compatibility of the use of the community commercial area with the Albeth community is reasonably addressed. The Board also notes that the issue of the safety of

Albeth Road based on the proposed development will be addressed in the Board's findings as to the criteria contained in Section 121.0. I.2.

16. As to the CEF-M decision-making criteria in Section 121.0.I for which there was disputed testimony and documentary evidence presented by the opposition, the opposition's contentions and/or evidence, Petitioner's evidence and responses, and the Board's findings are as follows:

a. The opposition's position on the issue of whether Albeth Road would be safe based on road conditions and accident history, pursuant to Section 121.0.I.2. was two-fold. First, the opposition presented evidence, Opposition's Exhibits 14-20, to show that there is precedent in other similar situations in Howard County for the Department of Public Works' traffic division to approve a signalized intersection at Chapelgate's existing intersection with Marriottsville Road or another location on Marriottsville Road which would obviate the need to use Albeth Road to gain access to the existing signalized intersection with Marriottsville Road. However, the Board notes that the opposition did not present any credible evidence to counter the testimony presented by Mr. Cornelius, as indicated in Finding of Fact 10, that in this instance Howard County was requiring the connection with Albeth Road and had not approved a separate signalized intersection for Chapelgate onto Marriottsville Road.

Given the fact that Chapelgate's future access with Albeth Road does not yet exist, neither party could produce an accident history for the proposed intersection. The opposition contended that Albeth Road as a local road was unsuitable for the proposed volume of traffic but they did not present any evidence to counter Mr. Cornelius' evidence that the congestion for the Chapelgate/Albeth Road intersection would be the least congested LOS of "A". The opposition indicated that the traffic back-ups which Mr. Cornelius indicated could occur during

church events would increase the risk of accidents on Albeth Road. However, the Board notes that Chapelgate had convinced the County to give the right-of-way at the Chapelgate/Albeth Road intersection to the Albeth community traffic, which can be a condition of approval in this decision, so that the Chapelgate traffic, during heavy traffic periods, would have to wait for any Albeth community motorists exiting Albeth Road before gaining access to Albeth Road. The Board notes that, as Mr. Cornelius testified, the use of Chapelgate/Albeth Road access would have to meet the County's sight distance requirements in order to be approved as an access.

The Board finds that the Petitioner's evidence and arguments on this issue are more persuasive than those of the opposition. The Board finds that based on the fact that Howard County has required Chapelgate to use the existing signalized intersection at Albeth Road/Marriottsville Road, and that the Chapelgate/Albeth Road future intersection will not be very congested during normal traffic periods, and that during heavy traffic periods the Albeth community traffic will have the protection of the right-of way over Chapelgate traffic, the Board finds that Petitioner has produced credible evidence that Albeth Road is a safe access for the proposed CEF District based on likely road conditions.

b. As to the criteria in Section 121.0.I.7., whether "a CEF development at the proposed location shall be compatible with surrounding residential neighborhoods, existing land uses in the vicinity of the site in terms of providing a transitional use between different zoning districts and/or land uses and the scale, height, mass, and architectural detail of proposed structures", the Board notes that it has already addressed this criterion in the Board's Findings of Fact 14.b. and 15.b. above.

c. The combination of Sections 121.0.G. and 121.0.I.8. require that the CEF Development provide that the "design features or enhancements which are beneficial to the

community” both “exceed minimum standards required by County regulations” and are “proportionate to the scale of the CEF development” and “proportionate to the increase in development intensity and impacts associated with the CEF rezoning compared to the previously existing zoning.”

The proposed enhancements’ benefit to the “community” were addressed in Finding of Fact 15.a above, and the fact that they exceed the minimum standards required by the County regulations were addressed in Finding of Fact 11.b. above.

The remaining interrelated and overlapping elements as to the Petitioner’s proposed enhancements are whether the enhancements are proportionate to the scale of the CEF development, and whether the enhancements are proportionate to the increase in development intensity and impacts associated with the CEF rezoning. In other words, the Board must take into account what could be developed under the existing R-20 zoning in comparison to what is proposed under the proposed CEF rezoning and to determine if the increase in size, extent and intensity is proportionate, that is commensurate, with the enhancements being provided with the proposed CEF development.

The Petitioner presented evidence, as outlined in Finding of Fact 8, that it could, under R-20 zoning, develop approximately 100 single family detached lots on the subject property while continuing to use the existing uses on the subject property but that this form of development would require use of more area of the subject property and would use up more of the existing open space on the subject property for development, including at least one of the ballfields. This scenario was dependent on what Mr. Rutter testified was a long and consistent interpretation by DPZ over many years that allowed net acreage for development to include the area occupied by a conditional use. DPZ indicated that it did not interpret this to be the case in

terms of past interpretation but that moving forward, it would not allow net acreage for residential development to include the area occupied by a conditional use. The uncertainty of the resolution of this issue is compounded by the fact that it is uncertain how much of a reduction in the area of the conditional use would be approved by the Board of Appeals in any requested modification of the existing conditional uses of the church, school and day care in anticipation of the designation of a portion of the subject property for a residential development under existing zoning.

The Board finds Petitioner's contentions as to DPZ's past interpretation of the net acreage issue to be more convincing than DPZ's but at the same time is required to recognize that it is DPZ, not the Zoning Board, which would make this interpretation if the Zoning Board denied this proposed rezoning and Petitioner pursued development of the subject property under existing zoning. The Board agrees with Petitioner's contention that any projections as to the possible intensity and scale of development under existing zoning are hypothetical and somewhat speculative.

The Board finds that while Petitioner has indicated that it desires to continue its current uses of the school, church and day care on the subject property, it would be permitted, at the very least, to pursue the development the entire property under the R-ED option in the R-20 District producing at least 100 dwelling units without continuation of the existing uses. Under this scenario, many if not all of the impacts on the Albeth community, of which they complain, would be comparable, and the community would have lost the valuable assets of a church, school and day care uses. In addition, under this scenario, none of the enhancements outlined in this decision would have to be provided and probably would not be provided.

The Board finds that under existing zoning, there could either be approximately 100 single family detached dwelling units developed over the entire subject property, with less open space, a loss of the existing uses on the subject property and no enhancements or there could be somewhere between 34 and 60-90 less units developed on the subject property than under CEF zoning with the existing uses continuing, also with less open space and a loss of at least one ballfield, also with no enhancements provided. When compared to these existing zoning scenarios, the evidence presented substantiates that the clustering of the compatible townhouse community on the subject property, which allows the retention of the existing ballfields on the subject property and the provision of the proposed enhancements, makes the increase in the development's intensity and impacts with CEF zoning proportionate to the enhancements to be provided.

17. The opposition raised additional issues, including concerns as to flooding and other development-related issues which are addressed at the site development plan stage, rather than under the zoning criteria involved in this case. However, the Board notes that one of the Petitioner's proffers will address storm water management issues.

CONCLUSIONS OF LAW

1. In order to approve Petitioner's petition for rezoning from the R-20 to the CEF-M Zoning District, the Board is required to find that the Petitioner has met its burden of satisfying all the criteria contained in Sections 121.0. A., I, and J.8.b. of the Howard County Zoning Regulations. Based on the petition, the Technical Staff Report of DPZ and testimony and evidence presented at the hearing, and the amendments to the petition, proffers and conditions of the Board accepted by Petitioner as noted above, and based on the conditions of the Board as noted below, the Board finds that Petitioner has satisfied the above-

referenced criteria, and specifically concludes as follows with respect to each of the regulatory criteria:

a. Whether the petition will accomplish the purposes of the CEF District.

The first criterion to be addressed is pursuant to Section 121.0.J.8.b (1) - whether the petition will accomplish the purposes of the CEF District. In addressing this, the Board shall evaluate the following purpose as stated in Section 121.0.A. 1. through 6.:

A. Purpose

The Community Enhancement Floating (CEF) District is established to encourage the creative development and redevelopment of commercial and residential properties through flexible zoning so that the proposed development complements and enhances the surrounding uses and creates a more coherent, connected development. While it is envisioned that the CEF District could place residential uses on land zoned for employment in some circumstances, it should not be viewed primarily as a way to convert land zoned for employment to residential.

The CEF District is intended to:

1. Allow greater design flexibility and a broader range of development alternatives than the existing zoning district;
2. Provide features and enhancements which are beneficial to the community in accordance with Section 121.0.G.;
3. Provide a higher quality of site design and amenities than is possible to achieve under the standard provisions of existing zoning district requirements;
4. Encourage creative architectural design with the most favorable arrangement of site features, based on physical site characteristics and contextual sensitivity to surrounding developments;
5. Serve as a transitional area by providing a mix of uses compatible with the surrounding community or developments; and
6. Encourage aggregation of underutilized properties.

Purpose 1

Allowing greater design flexibility and a broader range of development alternatives than the existing zoning district.

There was undisputed testimony, as outlined in Finding of Facts 6,7, 8, 11 and 14.b., that the proposed CEF-M District would allow much greater design flexibility than a development under the existing R-20 Zoning District based on Finding of Fact 14.b. The CEF-M District development at this location, in addition to allowing a townhouse development with good and enforceable architectural guidelines, will allow the retention and provision of a substantial amount of open space, the provision of a 1 – 1 and ½ mile trail, in addition to other amenities outlined in this decision, all of which would not be required to be provided as part of an R-20 development.

Purpose 2

Providing features and enhancements which are beneficial to the community in accordance with Section 121.0.G.

The design features/enhancements proposed by the Petitioner, as outlined in Findings of Fact 6 -11, are all beneficial to the surrounding community, both the Albeth Community and the wider, surrounding community and far exceed the minimum standards required by County regulations based on Finding of Fact 15.a.

Purpose 3

Providing a higher quality of site design and amenities than is possible to achieve under the standard provisions of existing zoning district requirements

There was undisputed testimony, as outlined in Findings of Fact 5, 6, 7, 8, 11 and 14.b., that the proposed CEF-M District would provide a higher quality of site design and

amenities than is possible to achieve under the standard provisions of existing zoning district requirements under the existing R-20 Zoning District based on Finding of Fact 14.b.

Purpose 4

Encouraging creative architectural design with the most favorable arrangement of site features, based on physical site characteristics and contextual sensitivity to surrounding developments

There was undisputed testimony, as outlined in Findings of Fact 5, 6, 7, 8, 11 and 14.b.,

that the proposed CEF-M District would encourage creative architectural design with the most favorable arrangement of site features, based on physical characteristics and contextual sensitivity to surrounding developments. based on Finding of Fact 14.b.

Purpose 5

Serving as a transitional area by providing a mix of uses compatible with the surrounding community or developments.

The proposed development of the subject property, with 134 townhouse units as proposed on the DCP, together with the existing uses of the church, including the proposed sanctuary, the school and the day care, serve as transitional area between the existing residential community of Albeth and the broader community uses, with the proposed and existing uses being compatible with the surrounding existing uses on adjoining properties based on Findings of Fact 11, 14.b. and 15.b.

Purpose 6

Encouraging aggregation of underutilized properties.

The subject property encourages the aggregation of underutilized properties with the combination of a currently vacant lot, parcel 421, and parcel 110 into the proposed CEF-M District based on Finding of Fact 14.b.

A CEF-M District may be established when the uses proposed in the Development Concept Plan contain a mix of residential and commercial uses.

The Development Concept Plan proposes a mix of residential and commercial uses based on Finding of Fact 13.a.

b. Whether the petition complies with the criteria for a CEF District in Section 121.0.I

The second criterion to be addressed is pursuant to Section 121.0.J.8.b(2) - whether the petition complies with the criteria for a CEF District in Section 121.0.I. In addressing this, the Board shall evaluate the criteria in Section 121.0.I as follows:

I. Criteria for a CEF District

The CEF District may be established at a particular location if the following criteria are met:

1. The proposed CEF District is located within the planned service area for both public water and sewer service;
2. A proposed CEF-C District shall have frontage on and access to an arterial or major collector road. A proposed CEF-R or CEF-M District shall have frontage on and access to an arterial or collector roadway, or a local road if access to the local road is safe based on road conditions and accident history and the local road is not internal to a residential development;
3. For all properties, the minimum development size for any CEF District shall be five acres;
4. The proposed CEF District is not located in an existing M-2, TOD, NT, MXD, or PGCC District;
5. A Proposed CEF-R District is not located in an existing non-residential zoning district unless the proposed CEF-R District adjoins a residential zoning district;
6. The proposed CEF District is not permitted within the interior of a neighborhood comprising only single-family detached dwellings;
7. A CEF development at the proposed location shall be compatible with surrounding residential neighborhoods, existing land uses in the vicinity of the site in terms of providing a transitional use between different zoning

districts and/or land uses and the scale, height, mass, and architectural detail of proposed structures;

8. The proposed CEF development shall include enhancements as provided in Section 121.0.G. enhancements shall be proportionate to the scale of the CEF development;
9. The proposed CEF District shall meet the criteria of the purpose statement; and
10. The proposed CEF Development does not comprise parcels which were added to the Planned Service Area to achieve Bay Restoration goals articulated in *Plan Howard 2030*.

1. The proposed CEF District is located within the planned service area for both public water and sewer service.

The subject property is within the Planned Service Area and would be served by public water and sewer facilities based on Finding of Fact 14.a.

2. A proposed . . . CEF-M District shall have frontage on and access to an arterial or collector roadway or a local road if access to the local road is safe based on road conditions and accident history and the local road is not internal to a residential development.

The proposed CEF-M District has frontage on and is proposed to have access on Albeth Road, a local road.

Albeth Road is a safe access for the proposed CEF based on road conditions and accident history based on Findings of Fact 10 and 16.a. Albeth Road is not internal to a residential development based on Finding of Fact 13.b.

3. The minimum development size for any CEF District shall be five acres.

The subject property's area is 61.83 acres based on Finding of Fact 14.c.

4. The proposed CEF District is not located in an existing M-2, TOD, NT, MXD, or PGCC District.

The existing zoning of the subject property is R-20, so this criterion is inapplicable.

5. *A Proposed CEF-R District is not located in an existing non-residential zoning district unless the proposed CEF-R District adjoins a residential zoning district.*

The proposed CEF-M District is currently zoned R-20 so this criterion is inapplicable based on Finding of fact 14.d.

6. *The proposed CEF District is not permitted within the interior of a neighborhood comprising only single-family detached dwellings.*

The proposed CEF-M District is not within the interior of single-family detached neighborhood based on Finding of Fact 13.c.

7. *A CEF development at the proposed location shall be compatible with surrounding residential neighborhoods, existing land uses in the vicinity of the site in terms of providing a transitional use between different zoning districts and/or land uses and the scale, height, mass, and architectural detail of proposed structures.*

The proposed development of the subject property, with 134 townhouse units as proposed on the DCP, together with the existing uses of the church, including the proposed sanctuary, the school and the day care, serve as transitional area between the existing residential community of Albeth and the broader community uses, with the proposed and existing uses being compatible with surrounding residential neighborhoods and existing land uses in the vicinity of the site based on Findings of Fact 11, 14.b. and 15.b.

8. *The proposed CEF development shall include enhancements as provided in Section 121.0.G. enhancements shall be proportionate to the scale of the CEF development.*

Section 121.0.G provides:

G. Enhancements

The CEF development must contain one or more design features or enhancements which are beneficial to the community as delineated in accordance with Section

121.0.J.2.A and that exceed minimum standards required by County Regulations, excluding bulk regulations. Such features or enhancements must be proportionate to the increase in development intensity and impacts associated with the CEF rezoning compared to the previously existing zoning. Enhancements shall be free and open to the general public, as opposed to a commercial use. Features or enhancements may be provided on a vicinal site within the delineated community pursuant to evaluation on a case by case basis. Enhancements may include:

1. Community parks or gathering spaces, playgrounds, dog parks, or recreation facilities that are open to the general public;
2. Enhanced environmental open space which incorporates environmental restoration of streams, wetlands or forests, or enhanced landscaping;
3. Bicycle, pedestrian or transit improvements which provide connections to off-site destinations or bicycle, pedestrian or transit facilities; or
4. Other community enhancements identified on the Development Concept Plan.

The Petitioner's proposed enhancements are proportionate to the scale of the CEF development, exceed minimum standards required by County Regulations, excluding bulk regulations, and are proportionate to the increase in development intensity and impacts associated with the CEF rezoning compared to the previously existing zoning based on Findings of Fact 15.a. and 16.c.

9. *The proposed CEF-M District shall meet the criteria of the purpose statement.*

The conclusions of law for this criterion are addressed above in Conclusion of Law 1.a.

10. *The proposed CEF Development does not comprise parcels which were added to the Planned Service Area to achieve Bay Restoration goals articulated in Plan Howard 2030.*

This criterion is inapplicable.

- c. **Whether the petition meets the Moderate Income Housing Unit requirements.**

The Petitioner proposes the provision of 21 actual Moderate Income Housing Units as part of the development, 50 % more than would be required in the CEF zone, which will not be subject to the payment of a fee-in-lieu as would be permitted in the existing R-20 Zoning District.

2. The Board, having concluded that the Petitioner's amended petition, including the amendments noted to the proposed Concept Plan on Petitioner's Exhibit 1, the proposed Bulk Regulations as amended on Petitioner's Exhibit 3, with the Petitioner's various proffers as outlined in this decision, with the additional conditions and modifications as specified below, has satisfied all of the criteria for approval as noted above, therefore concludes that a CEF-M District covering the land in the petition should be approved, that the Concept Plan should be approved, that the bulk regulations, accessory uses and any related restrictions or modifications should be approved, and that the proposed community enhancements should be approved, subject to the following conditions:

a. The alignment of the pathway/trail alignment to be provided as part of the approved DCP, as shown on sheet 4 of 9 of the DCP filed with the petition, shall be Option "A", the alignment which is the furthest away from the Albeth community;

b. In addition to all other required parking, the DCP shall provide sufficient additional parking in Chapelgate's church/school/day care use parking lot(s) for pathway/trail users;

c. Trash pick-up areas for any permitted private alleys providing access to townhouse lots shall be provided with appropriate screening;

d. Paragraph B.6. of the Bulk Regulations (Petitioner's Exhibit 3) shall be deleted;

e. The enhancements to be provided by the Petitioner as part of this case shall be those described in this decision's findings of fact and conclusions of law, Petitioner's Exhibit 12, the nine "Approval of Community Enhancements and Specific Conditions of Approval", with the additional amendment thereto noted on page 15 of Petitioner's April 4, 2016 Memorandum, requiring Petitioner to submit an approved storm water management plan to the Zoning Board prior to the approval of a record plat for the residential portion of the application, and the first 18 of 19 enhancements listed in the June 8, 2017 email from Sang Oh. Petitioner's Exhibit 12, the June 8, 2017 email, and pages 15-16 of the April 4, 2016 Memorandum are attached to this decision as Attachments 1, 2 and 3, respectively.

In connection with this condition, the Board specifies:

1.) To the extent that there is any conflict between Item 4 of Petitioner's Exhibit 12 and items 10 and 11 of the June 8, 2017 email, the former shall prevail.

2.) The actual provision of 21 MIHUs on the subject property as part of this approved development, as proffered by Petitioner, is a public good but not a CEF enhancement; and

3.) All enhancements required to be provided shall be of similar or better quality than shown on the DCP.

f. That Section II of Petitioner's proposed Agreement of Covenants and Restrictions, Petitioner's Exhibit 2, which the lot owners of the Albeth community are not obligated to execute, entitled "Limitations on Use of Property", shall limit the use of the area designated as Community Commercial on the DCP regardless of whether the

Agreement is ever executed and recorded. Petitioner's Exhibit 2 is attached to this decision as Attachment 4; and

g. The Albeth community traffic on Albeth Road shall be given the right-of way over the traffic from the Chapelgate road accessing and intersecting with Albeth Road.

For the foregoing reasons, the Zoning Board of Howard County, Maryland, on this 6th day of NOVEMBER, 2017, hereby GRANTS Petitioner's request for rezoning of the subject property from the R-20 to the CEF-M Zoning District, specifically creating a CEF District covering the land in the petition, approving the Development Concept Plan, establishing the bulk regulations and accessory use provisions and approving the community enhancements, with the specific conditions of approval for those enhancements and other conditions, as contained in Petitioner's exhibits and proffers as conditioned by the Board herein, all as conditioned and provided herein and in the Conclusions of Law above.

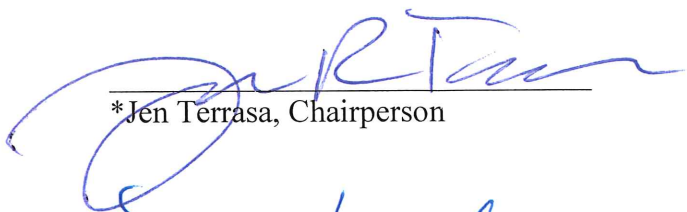
ATTEST:

ZONING BOARD OF HOWARD COUNTY



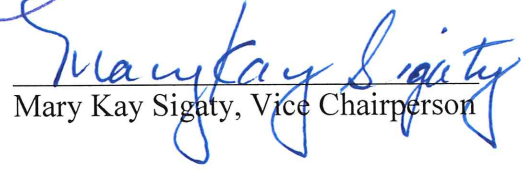
Robin Regner

Administrative Assistant



*Jen Terrasa, Chairperson

PREPARED BY HOWARD COUNTY
OFFICE OF LAW
GARY W. KUC
COUNTY SOLICITOR



Mary Kay Sigaty, Vice Chairperson



*Greg Fox



Paul T. Johnson
Deputy County Solicitor



Calvin Ball



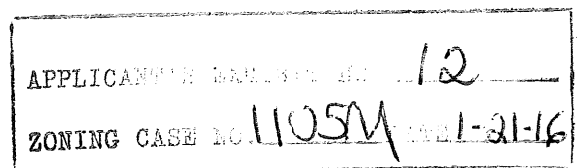
Jon Weinstein

*THE ABOVE SIGNED BOARD MEMBER HEREBY CERTIFIES THAT HE/SHE LISTENED TO A RECORDING OF THE PORTIONS OF THE HEARING FROM WHICH HE/SHE WAS ABSENT AND HAS REVIEWED THE EVIDENCE OF RECORD PRIOR TO PARTICIPATING IN THE VOTE TO DECIDE THIS CASE.

Chapelgate Presbyterian Church, Inc. ("Petitioner")
Howard County Zoning Board Case No. ZB 1105M

Approval of Community Enhancements and Specific Conditions of Approval:

1. Petitioner shall ensure completion of construction of pedestrian and bicycle Looped Trail in the manner as substantially shown on the Development Concept Plan, including the various Site Amenities on such Trail as shown on the Development Concept Plan prior to the issuance of a building permit for the 101st residential unit of the Development Concept Plan. Petitioner shall perpetually maintain the Looped Trail and ensure that access to the Looped Trail is made available free of charge to the general public subject to Petitioner's reasonable terms, restrictions and conditions, including restrictions on times. Petitioner may reserve the right to assign/delegate the responsibility perpetual maintenance of the portion of the Looped Trail situated within the 20 acre residential area as specified in the Development Concept Plan to another entity provided that the ultimate responsibility to ensure perpetual maintenance shall remain with Petitioner.
2. Petitioner shall ensure that its existing sports fields are made available free of charge to the general public subject to Petitioner's reasonable terms, restrictions and conditions. For the purposes of this condition #2, the general public shall only include Howard County residents and community groups. Nothing within the condition #2 shall require Petitioner to give priority to its sports fields to the general public over the use of the sports fields by Petitioner's congregation members, its schools or pre-existing agreements with organizations and renewals thereof. In the event that certain sports leagues desire to use the sports fields, such use may be limited by Petitioner's discretion and be subject to terms, restrictions and conditions substantially similar to the rental of Howard County, Maryland's sports fields.
3. Petitioner shall ensure that its playgrounds are made available free of charge to the general public subject to Petitioner's reasonable terms, restrictions and conditions.
4. Petitioner shall ensure that all picnic areas, pavilions, pocket parks, parkland and green space areas as shown on the Development Concept Plan are made available free of charge to the general public subject to Petitioner or Petitioner's assignee/designee's reasonable terms, restrictions and conditions.
5. Subject to the Agreement of Covenants and Restrictions (Petitioner's Exhibit #2), as may be amended from time to time, Petitioner shall ensure that the community commercial as set forth on the Development Concept Plan is made available free of charge to the general public subject to Petitioner's reasonable terms, restrictions and conditions.
6. The Petitioner's private school use shall meet all requirements of applicable law and not exceed the enrollment of 500 students.



7. The Petitioner's child daycare/nursery school use shall meet all requirements of applicable law and not exceed the enrollment of 50 students.
8. Petitioner shall coordinate with Howard County Office of Transportation and the Department of Public Works, their staff and consultant(s) to design, develop, construct and dedicate to Howard County a crosswalk across Marriottsville Road to and from Resort Road to Albeth Road ("Crosswalk"). Petitioner shall ensure that one or more of the following shall be completed prior to the issuance of a building permit for any residential unit(s) of the Development Concept Plan: (i) completion of construction and dedication of the Crosswalk to Howard County; (ii) execution of a facilities construction agreement between Howard County and the Petitioner to construct the Crosswalk or (iii) posting of a bond/surety by Petitioner for an amount acceptable to Howard County to ensure construction and dedication of the Crosswalk.
9. Petitioner shall coordinate with Howard County Department of Public Works, their staff and consultant(s) and the residents of Albeth Heights to install the Proposed Albeth Heights Entry Pillars on Albeth Road in the manner as substantially shown on the Development Concept Plan ("Pillars"). Petitioner shall ensure that one or more of the following shall be completed prior to the issuance of any building permit for any residential unit(s) of the Development Concept Plan: (i) completion of construction and dedication of the Pillars to Howard County; (ii) execution of a facilities construction agreement between Howard County and the Petitioner to construct the Pillars or (iii) posting of a bond/surety by Petitioner for an amount acceptable to Howard County to ensure construction and dedication of the Pillars.

Regner, Robin

From: Sang Oh <soh@talkin-oh.com>
Sent: Thursday, June 08, 2017 3:13 PM
To: Regner, Robin
Subject: RE: ZB 1105M, Chapelgate Presbyterian Church

"One or more enhancements which are beneficial to the community that exceed minimum standards required by the County regulations."

The proffered enhancements are numerous:

- (1) there is overall less disturbance of land for the housing plan and the creation of more credited open space, greatly exceeding the minimum required in R-20 or the R-ED option
- (2) there is a system of connected green spaces in the proposed housing development plan that, in and of itself, provides a very green development, including non-credited open space, that will exceed development standards in the R-20 and R-ED option
- (3) the loop, walking trail – and, while we don't agree this to be the case, we will have the security features to ensure that this trail will not bring crime to the neighborhood

The loop trail will contain:

- (4) fitness stations – would be terrific amenities for the users of the loop trail
- (5) meditation area – we think this area well-sited
- (6) benches – for the weary
- (7) dog stations – for pet owners
- (8) bike racks – for the cyclists in our community
- (9) the picnic areas that are going to be created
- (10) the housing development will have pavilions that people can use
- (11) there are numerous pocket parks designed throughout the development for cohesiveness and functionality and exceed the ordinarily required design standards for R-20 or R-ED option
- (12) the community commercial – and, yes, the Church remains committed to not doing anything on the community commercial without the consent of our neighbors and will still execute the Covenants to ease our neighbors' concerns.
- (13) ball fields and the public's access to these ballfields
- (14) playgrounds and the public's access to these playgrounds
- (15) a cross-walk across Marriottsville Road which creates connectivity between the east and west sides of Marriottsville Road at Resort Road – something that will not occur or be required if the current ingress/egress for Chapelgate remains
- (16) creating the connection to a signalized intersection for safer ingress/egress for the Chapelgate community and every other motorist that travels Marriottsville Road
- (17) creation and preservation of recreation open space -- substantially higher than that required for the R-20 zone or R-ED option
- (18) community entrance feature for Albeth Heights – we will construct that with the input of our neighbors
- (19) 21 MIHU units – not a fee-in-lieu – 21 actual door knobs. 50% more than what is required in the CEF zone.

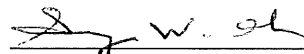
Sang W. Oh
 Talkin & Oh, LLP
 5100 Dorsey Hall Drive
 Ellicott City, MD 21042-7870
 410-964-0300 x14
 410-964-2008 fax

From: Regner, Robin [mailto:rregner@howardcountymd.gov]
Sent: Tuesday, June 06, 2017 4:26 PM

development will benefit the community, including the neighbors who are opposed to the proposed change.

To that end, Petitioner proposes to amend Petitioner's Exhibit 12 so as to require submittal of an approved stormwater management plan to the Zoning Board prior to the approval of a record plat for the residential portion of the Application. The stormwater management plan for this CEF development shall exceed the minimum requirements for the Property and be collaborated with the input of the Albeth Heights residents to result in reduction in flooding for the area of Albeth Road for major storm events. Chapelgate is exploring preliminary design concepts for additional stormwater facilities so as to slow the flow of water into the stream from the Chapelgate Property. With the approval of this stormwater management plan, Petitioner believes it can enhance the environmental status of the stream system and establish yet another enhancement that will benefit the community.

WHEREFORE, and for the reasons as set forth above, Petitioner submits that the criteria for a CEF-M have been been satisfied and respectfully requests your favorable consideration of this Application.



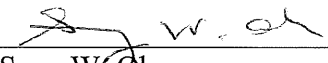
Sang W. Oh
5100 Dorsey Hall Drive
Ellicott City, Maryland 21042
Counsel to Chapelgate Presbyterian Church

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 2016, a copy of the foregoing Petitioner's Memorandum was sent via first class mail postage pre-paid to:

Stu Kohn
8709 Yellow Bird Court
Laurel, MD 20723

Ron Louzon
11223 Albeth Road
Woodstock, MD 21104



Sang W. Oh

| |
|---|
| APPLICANT'S EXHIBIT NO. <u>2</u> |
| ZONING CASE NO. <u>1105M</u> DATE <u>6-3-15</u> |

AGREEMENT OF COVENANTS AND RESTRICTIONS

THIS AGREEMENT is made this _____ day of _____, 2015 (the "Effective Date"), by and among CHAPELGATE PRESBYTERIAN CHURCH, INC, a Maryland Religious Corporation ("Chapelgate"), and certain owners of property in the ALBETH HEIGHTS COMMUNITY (the "Affected Individuals")(collectively, the "Parties").

Recitals

- A. Chapelgate is the owner of 32,740 sq. ft. of certain real estate in Marriottsville, Howard County, Maryland, which land is identified as Parcel No. 421 of Maryland Tax Map No. 16 by virtue of that certain Deed dated January 16, 1998, and recorded among the Land Records of Howard County, Maryland in Liber 4163, folio 424 (the "Property"). The Property is adjacent to Albeth Road.
- B. The Affected Individuals consist of those owners of real estate on Albeth Road in Marriottsville as set forth on EXHIBIT A who have executed this Agreement on or before the Effective Date ("Owner").
- C. The Property is currently zoned as R-20, a residential district, as shown on the Zoning Map for Howard County.
- D. Chapelgate has petitioned the Zoning Authority of Howard County to rezone the Property to the CEF-M zoning district so as to permit a range of uses under a "Community Commercial" as specified in the Development Concept Plan for ZB Case No. 1105M.
- E. Because of the concerns of the Affected Individuals as to how Chapelgate will use the Property for the Community Commercial and Chapelgate's concern for the well-being of the Affected Individuals, Chapelgate is willing to coordinate with the Affected Individuals as to the use of the Property.

Witnesseth

NOW THEREFORE, in consideration of one dollar (\$1.00) and the mutual promises contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Incorporation of Recitals

The Recitals as set forth above are incorporated into this Agreement and are made a part hereof.

II. Limitations on Use of Property

1. So long as the Property is zoned CEF-M, the Property shall be subject to the limitations on uses for the Community Commercial as set forth in the

Development Concept Plan for Zoning Board Case No. 1105M ("Community Commercial Uses"). Furthermore, such Community Commercial use on the Property shall be limited in the following manner:

- a. Prior to the development or construction of any improvements on the Property to enable the Community Commercial, Chapelgate shall provide the Affected Individuals with a plan of proposed improvements and shall obtain the verifiable consent of greater than eighty percent (80%) of the Affected Individuals.
 - b. Prior to any Community Commercial uses on the Property, Chapelgate shall have the obligation to obtain the verifiable consent of greater than eighty percent (80%) of the Affected Individuals.
 - c. Notwithstanding anything in this Agreement which may be construed to the contrary, the Parties agree that nothing in this Agreement shall be interpreted to limit Chapelgate's ability to plan, develop and construct signage or other advertisement on the Property or any other property belonging to Chapelgate for the benefit of: (i) Chapelgate Presbyterian Church; (ii) Chapelgate Christian Academy; (iii) any child daycare of Chapelgate; (iv) any future residential development; and/or (v) any other use(s) as permitted by law other than the Community Commercial.
 - d. Furthermore, nothing in this Agreement shall be interpreted to prevent Chapelgate from: (i) constructing any improvements on the Property not in furtherance of the Community Commercial; or (ii) otherwise maintaining the Property in Chapelgate's sole, reasoned determination in compliance with applicable laws, including the removal of vegetation.
2. The consent of any Affected Individual(s) shall be subject to the Affected Individual's sole discretion and may be withheld for any reason or no reason. Nothing in this Agreement shall be construed to require any Affected Individual to act in accordance with any standard of consent to any proposal.
 3. In the event that Chapelgate fails to obtain the verifiable consent of eighty (80%) of the Affected Individuals prior to any development, construction or use of the Community Commercial on the Property, Chapelgate shall be precluded from such development, construction or use until such time as Chapelgate obtains such consent.

III. Conditions Precedent

1. Chapelgate agrees to record this Agreement among the land records of Howard County, Maryland within thirty (30) days of the Effective Date. Owner shall furnish evidence of such recordation to the Affected Individuals within thirty (30) days of the date of recordation of this Agreement.

IV. Miscellaneous

- A. This Agreement may not be modified except by the written agreement of the Parties hereto, and/or their successors or assigns.
- B. This Agreement shall run with the land and shall be binding upon the Parties hereto, their heirs, personal representatives, successors and/or assigns as if they were original signatories hereto.
- C. This Agreement contains the full and complete agreement of the Parties hereto and no oral agreements, past, present or future shall be effective or binding against the Parties unless the same shall be reduced to writing and executed in the same manner as this Agreement.
- D. In the event that Chapelgate violates the terms of this Agreement, any Affected Individual shall have the power to enforce the terms hereunder and require Chapelgate to cease such violation, including the removal of any Community Commercial improvements on the Property.
- E. In the event that Chapelgate shall use the Property for a Community Commercial use without the verifiable consent of the Community as provided hereunder, the Parties agree that the damage from such violation would be difficult to measure. Consequently, for each and every instance of such violation the Parties agree that the sum of one thousand dollars (\$1000.00) as liquidated damages and not as a penalty shall be a reasonable estimate of the damages that would be occasioned by such breach.
- F. If any Affected Individual(s) is required to institute legal action to enforce the terms of this Agreement against Chapelgate or their successors or assigns, and the Affected Individual(s) is ultimately successful, the Affected Individual(s) in obtaining enforcement of the Agreement shall be entitled to recover reasonable attorneys' fees, expenses and court costs of the action from the person or entity against whom enforcement is obtained. However, as a prerequisite to the recovery of reasonable attorneys' fees, expenses and costs under this paragraph, the Affected Individual(s) shall serve Chapelgate with written notice of the violation and only if Chapelgate has failed to remedy or to make substantial progress toward remedying the violation may legal action be instituted.
- G. All notices shall be in writing and delivered to the other parties, by either personal delivery or certified, registered mail, postage prepaid, return receipt requested.

If to Chapelgate:

Chapelgate Presbyterian Church, Inc.
2600 Marriottsville Road
Marriottsville, MD 21104

With a copy to:

Sang W. Oh
Talkin & Oh, LLP
5100 Dorsey Hall Drive
Ellicott City, Maryland 21042

If to the Affected Individuals:

As set forth on EXHIBIT A or as amended from time to time and
described in the Land Records of Howard County, Maryland

- H. This Agreement shall be construed, interpreted and enforced according to the laws of the State of Maryland. Should any provision of this Agreement require judicial interpretation, it is agreed that the court in interpreting or construing the same shall not apply a presumption that the terms of any provision of the Agreement shall be more strictly construed against one party or the other by reason of the rule of construction that a document is to be construed most strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all Parties hereto have participated in the preparation of this Agreement.
- I. The headings of the sections, subsections, paragraphs, and subparagraphs hereof are provided herein only for convenience of reference and shall not be considered in construing their contents.
- J. This Agreement may be executed in counterparts provided the originals are circulated in the ordinary course of business.
- K. This Agreement shall not be construed as granting and/or creating any easements, licenses or any other rights to the Property.
- L. If any term or provision in this Agreement is determined to be invalid by a court, only such term or provision shall be deemed unenforceable and the remaining terms and provisions of this Agreement shall remain in full force and effect and shall be enforceable to the fullest extent of the law.
- M. In the event the property of any Affected Individual listed on Exhibit A is hereafter subdivided, any obligations and benefits as set forth hereunder shall remain and be applicable only as to the same number of owner(s) who executed this Agreement on or before the Effective Date.

WHEREFORE, the Parties execute this Agreement as of the day and year first above written.

WITNESS:

CHAPELGATE PRESBYTERIAN CHURCH, INC.

By:

STATE OF MARYLAND, COUNTY OF _____, to wit:

I HEREBY CERTIFY that on this ____ day of _____, 2015, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____ known to me (or satisfactorily proven) to be the authorized person for CHAPELGATE PRESBYTERIAN CHURCH, INC., a Maryland Religious Corporation, and that such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

EXHIBIT A

LIST OF AFFECTED INDIVIDUALS

David J. Schimian
11203 Albeth Road
Marriottsville, MD 21104

Nicholas Karim Schuyler
11207 Albeth Road
Marriottsville, MD 21104

Charles F. Hill, Jr.
1121 Albeth Road
Marriottsville, MD 21104

Henry F. Michel, II
Tracy Gregory Michel
11215 Albeth Road
Marriottsville, MD 21104

Gary A. Thompson
Deborah K. Thompson
11219 Albeth Road
Marriottsville, MD 21104

Ronald G. Louzon
Trudi E. Louzon
11223 Albeth Road
Marriottsville, MD 21104

Gerald Frank Canfield
Dorothy Anne Canfield
11230 Albeth Road
Marriottsville, MD 21104

Grant M. English
Sandra K. English
11246 Albeth Road
Marriottsville, MD 21104

Christopher Emmens
Stephanie Emmens
11204 Albeth Road
Marriottsville, MD 21104

Philip Carl Phipps
Claire F. Phipps
11208 Albeth Road
Marriottsville, MD 21104

Jimmie H. Dillon
H. DeLois Dillon
11212 Albeth Road
Marriottsville, MD 21104

James J. McGinn
11216 Albeth Road
Marriottsville, MD 21104

James P. Conaway
Elena M. Conaway
11220 Albeth Road
Marriottsville, MD 21104

Gerald R. Montgomery
11227 Albeth Road
Marriottsville, MD 21104

Thomas G. Wegemer, Jr.
Donna Lee Wegemer
11238 Albeth Road
Marriottsville, MD 21104