



**FREDERICK COUNTY BOARD OF APPEALS  
FREDERICK COUNTY, MARYLAND**

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**LIST OF ADJOINING AND CONFRONTING PROPERTY OWNERS**

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Case Number \_\_\_\_\_

Appellant Global Mission Church of Greater  
Washington, SBC

Proceedings under the Zoning Ordinance require that notice of public hearing be given.

It is the responsibility of applicants and petitioners to supply ACCURATE names and CORRECT addresses (must have house numbers or P.O. numbers, no route and box numbers, please) of all adjacent and confronting property owners on this form, as shown in current County Land Records.

Court decisions indicate that compliance with notice requirements is essential to jurisdictions of the approving body and therefore to validity of its decision.

NAME	ADDRESS
Clara R. & Robert Craft, Trustees	127 W. Church Street Frederick, MD 21701
Whang-Kyun & Grace H.S. Shin	1182 OLD TOLSON HILL ROAD McLean, VA 22102-1108
Albert E. Stecklein III, Trustee Joseph P. McMahon, Trustee	13001 River Road Potomac, MD 20854-1143
Pleasants Investments Ltd. Ptnshp. c/o Core Development Group, Inc.	24012 Frederick Road Suite 200 Clarksburg, MD 20871
Christopher Sappe	9363 Doctor Perry Road Ijamsville, MD 21754-8724
Paul & Joan Berkowitz	14 Park Avenue Gaithersburg, MD 20877-2916
Gary Noubarian	9355 Doctor Perry Road Ijamsville, MD 21754-8724
Carl & Diana Thacker	9349 Doctor Perry Road Ijamsville, MD 21754-8724
Sudad Zanganah	8011 Broken Reed Court Frederick, MD 21701

List of Adjoining and Confronting Property Owners – Page 2  
Appellant: Global Mission Church of Greater Washington, SBC

George M. & J.E. Andrews  
25671 Old Hundred Road  
Dickerson, MD 20842

George M. & C.N. Andrews  
25681 Old Hundred Road  
Dickerson, MD 20842

Dwight & S.B. Hardin  
9339 Slate Quarry Road  
Dickerson, MD 20842

Justin Brown  
25651 Old Hundred Road  
Dickerson, MD 20842-9626

Timothy Bossler  
25675 Old Hundred Road  
Dickerson, MD 20842

Joan Andrews, et al.  
25671 Old Hundred Road  
Dickerson, MD 20842-9626

Old Hundred Road Ltd. Partnership  
c/o Stephen Miller  
19828 Mayhill Terrace  
Gaithersburg, MD 20879-4558

Maryland State Highway Administration  
Attn: Mr. Neil J. Pedersen  
Office of the Administrator  
Mail Stop C-400  
State Highway Administration  
Baltimore, MD 21203-0400

Federal Highway Administration  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

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19828 Mayhill Terrace  
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Maryland State Highway Administration  
Attn: Mr. Neil J. Pedersen  
Office of the Administrator  
Mail Stop C-400  
State Highway Administration  
P.O. Box 717  
Baltimore, MD 21205-0717

Federal Highway Administration  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590



Board of Appeals Frederick County Maryland  
Appeal Charging Error in Administrative Ruling or Action

1. **Location of Property:**

The Property is located West of Dwight D. Eisenhower Highway (Interstate 270) and North of MD Route 109 (Old Hundred Road) and East of Dr. Perry Road (the "Property"). Tax Maps 105 and 111, Parcel 109.

2. **Official or agency from whose ruling or action this appeal is made:**

The Appellant is appealing the decision and action of the Frederick County Planning Commission (the "Planning Commission") to deny Appellant's Site Plan Application SP 92-37.

3. **Brief description of ruling or action from which this appeal is made (Attached copy of ruling or document indicating such action):**

The Global Mission Church of Greater Washington, SBC (the "Appellant") applied for approval of a Site Plan for a Place of Worship (the "Site Plan") on the Property. The Appellant's Site Plan proposed a building of 138,027 square feet (to be constructed in phases) consisting of a sanctuary with a seating capacity of 1,160 seats, a dining hall with 500 seats and associated church offices, meeting rooms, and multipurpose hall. The septic tank proposed on the Site Plan has a total loading capacity under 4,950 gallons per day.

The Planning Commission held a hearing on this matter on July 8, 2009. The July 8, 2009 Staff Report is attached as Exhibit A ("July 8 Staff Report") and makes a recommendation to the Planning Commission for conditional approval of the Site Plan. Due to time constraints, the July 8<sup>th</sup> hearing was continued by the Planning Commission until July 15, 2009. At the conclusion of the July 15, 2009 hearing, the Site Plan was again continued by the Planning Commission for up to 90 days. A subsequent hearing was scheduled for October 14, 2009. A copy of the October 14, 2009 Staff Report is attached as Exhibit B ("October 14 Staff Report") and recommends denial of the Site Plan based on revised recommendations of the Office of Life Safety and the Health Department. At their October 14, 2009 meeting, the Planning Commission voted to deny the Site Plan based on the "concerns stated in the staff report, specifically concerns related to septic capacity and lack of a second exit." (emphasis added) The Planning Commission denied the Appellant's written request for an additional continuance to further discuss, clarify and resolve with the Staff these new concerns due to their late receipt from Staff. Appellant's written request to the Planning Commission for a continuance is attached as Exhibit C.

The Appellant is appealing the decision and action by the Planning Commission denying the Site Plan. A copy of the decision received by the Appellant from the Planning Commission is attached as Exhibit D.

4. **Date of ruling or action:**

October 14, 2009

5. **Brief description of what, in appellant's view, the ruling or action should have been:**

Based on the evidence presented by the Appellant, the Planning Commission should have approved the Site Plan with the conditions set forth in the July 8 Staff Report or, in the alternative, should have approved the Site Plan based on the conditions proffered by the Appellant at the October 14, 2009 hearing, generally as follows:

- (i) Appellant will not have a school associated with the Place of Worship.
- (ii) Appellant will not have a commercial daycare associated with the Place of Worship.
- (iii) Appellant will limit users at any one time.
- (iv) Appellant will reduce the height of the facility.
- (v) Appellant will reduce the size of the structure by decreasing Phase 1C.
- (vi) Appellant agrees to monitor water usage and report such usage to the Health Department.
- (vii) Appellant will use efficient water saving fixtures.
- (viii) Appellant will provide a secondary emergency vehicle access to the Property.
- (vi) Appellant is open to any additional reasonable conditions

6. **Number of section and subsection of the Zoning Ordinance, which appellant contends was misrepresented:**

Frederick County Code, Article III, Section 1-19-3.300.4

*(Please note that this section was revised pursuant to Ordinance No. 09-22-526. The Appellant contends that the requirements of this new Ordinance do not apply to the Site Plan because it was submitted and filed prior to the July 24, 2009 effective date of the new Ordinance. A copy of the new Ordinance No. 09-22-526 is attached as Exhibit E).*

Appellant also avers that the Planning Commission violated Section 1.2 and Section 6.5 of its own Rules of Procedure as set forth below in paragraph 8 (C) below.

7. **Errors in fact, if any, involved in the ruling or action from which this appeal is made:**

The Planning Commission denied the Site Plan based on incorrect and/or improperly applied methodologies used by the Health Department when calculating the capacity of a septic system. The Planning Commission disregarded the criteria of 7.5 gallons per day per dining hall seat developed by the Health Department and provided to the Appellant by the Health Department in originally approving the septic system proposed for the Property as evidenced in the July 8 Staff Report. The Health Department resubmitted their analysis at the July 8, 2009 hearing and provided conditions in support of this same analysis as part of their comments to the Site Plan via the Frederick County Hansen system (see Health Department Misc. Comments on Page 16 of attached Exhibit F). Based on this analysis and these conditions, the Health Department gave Conditional Approval of the Site Plan as part of the July 8 Staff Report.

In reversing its recommendation in the October 14 Staff Report the Health Department applied new and different criteria to the septic system proposed on the Site Plan. The Health Department utilized an improper maximum building occupancy load analysis. The Health Department utilized an actual usage methodology based on Appellant's existing facility in Aspen Hill that was misleading and not reflective of actual use that will occur at the proposed facility. The Health Department failed to include the use of "water saving fixtures" in its actual usage analysis. Further the October 14 Staff Report failed to establish exact usage amounts that it now claimed to be in excess of the Appellant's septic system capacity.

The Planning Commission failed to consider the restrictions previously imposed by the Health Department on the Site Plan that were accepted by the Appellant. The Planning Commission denied the Site Plan based on the October 14 Staff Report.

The Planning Commission knowingly ignored, disregarded and violated Section 1.2 of their own published Rules of Procedure by allowing *unqualified* Recognized Organizations opposing the Site Plan to have additional time to present evidence while denying Appellant the right to reasonable cross-examination of witnesses (especially the Health Department) and sufficient time to present its case and rebut opposition testimony.

8. **Errors of law, if any, involved in the ruling or action from which this appeal is made:**

The July 8 Staff Report prepared by Senior Planner, Stephen O'Philips in conjunction with the Department of Permitting and Development Review (collectively, "Staff") for the July 8, 2009 hearing recommended Conditional Approval of the Site Plan. Prior to the July 8, 2009 hearing and Pursuant to Section 1-19-8.490 of the Frederick County Ordinance, a determination was made by Larry Smith, Zoning Administrator, that the accessory uses proposed by Appellant as part of the Site Plan were customarily incidental accessory uses to a Place of Worship. A copy of the July 5, 2009 Accessory Use

Determination is attached hereto as *Exhibit G*. The Appellant submitted a letter to the Planning Commission dated July 10, 2009 accepting and agreeing to comply with the conditions set forth in Mr. Smith's July 5<sup>th</sup> determination letter which is attached as *Exhibit H*.

~~Due to time constraints, the Planning Commission continued the meeting until July 15, 2009.~~ Approximately one hour before the July 15, 2009 hearing, Appellant received an email from Staff adding an additional condition to the Site Plan. That email with the addendum condition is attached hereto as *Exhibit I*. The Appellant accepted that additional condition during its testimony at the July 15<sup>th</sup> meeting. At the conclusion of the July 15, 2009 meeting, the Planning Commission made a decision to continue the case for up to 90 days so that "concerns and issues" regarding the Site Plan application "could be further investigated and resolved." A letter from Staff, to this regard dated July 17, 2009, is attached as *Exhibit J*.

The Appellant's attorney contacted Staff to schedule a meeting in order to resolve the "concerns and issues" addressed in the July 17, 2009 and were advised via email by the Deputy County Attorney, Wendy Kearney that a meeting would be scheduled once additional information was received from the Appellant. A copy of that email dated July 29, 2009 is attached hereto as *Exhibit K*. The Appellant received a letter from Staff dated August 6, 2009 requesting that additional information be submitted in support of the Site Plan. The August 6, 2009 letter is attached as *Exhibit L*.

Appellant complied with the August 6, 2009 letter and submitted additional information to Staff on September 14, 2009 with the understanding that Staff, in accordance with its long standing and customary standards and practices and pursuant to statements made by Staff and Planning Commission members at the July 15<sup>th</sup> hearing, would meet with the Appellant to discuss and clarify the additional information. After submission of this supplemental information, and prior to the October 14, 2009 hearing, Appellant and its attorney again attempted to coordinate a meeting with Staff to discuss the application and were told that Staff "did not have a need to meet again with the applicant for additional discussion." An email from Deputy County Attorney Wendy Kearney dated September 30, 2009 to this regard is attached as *Exhibit M*.

After refusing to meeting with Appellant, the October 14 Staff Report revising Staff's July 8 Staff Report recommendation of Conditional Approval to Denial of the Site Plan was issued on October 7, 2009. Only after the October 14 Staff Report was issued was the Appellant provided the opportunity to meet with Bryon Mitchell from the Office of Life Safety and George Keller from the Health Department. Based on Staff's meeting with the Appellant, the occupancy determination of the building made by Life Safety (based on Appellant's additional submissions) was corrected and reduced by Life Safety. Appellant contends that if given additional time to work with Staff, additional

It should be noted that the Office of Life Safety as part of the July 8 Staff Report recommended approval of the Site Plan and acknowledged that no second point of access was necessary. In the October 14 Staff Report, without further communication with the Appellant, the Office of Life Safety reversed its prior position and took the position that a second point of access was necessary and recommended denial of the Site Plan because the Appellant did not propose a second point of access. Email correspondence showing the repeated requests made by Appellant to meet with Staff and the Staff response from July 22, 2009 through October 9, 2009 were made part of the record at the October 14, 2009 hearing and are attached hereto as Exhibit N.

The Appellant appeals the Planning Commission's denial of the Site Plan at their October 14, 2009 hearing based on the following actions:

- A. The Planning Commission based their denial of the Site Plan based on two new methodologies used by the Health Department to determine the adequacy of the septic system. The Health Department disregarded the accepted MDE formula for determination of adequacy which they applied in their initial review of the Site Plan and based on which it recommended Conditional Approval of the Site Plan as part of the July 8 Staff Report.
- B. The Planning Commission action denying the Site Plan was based on the language of the amended Zoning Ordinance (No. 09-22-526, adopted on July 14, 2009) (the "New Ordinance"), which legally did not apply to Appellant's application. The October 14 Staff Report cited Section 1-19-3.3004(c) stating that "Where proposed development will be served by facilities other than publicly owned community water and sewer, the facilities shall meet the requirements of and receive approval from the Maryland Department of the Environment/ The Frederick County Health Department" (see page 7 of Exhibit B). On cross-examination Stephen O'Philips confirmed he applied the standards of the New Ordinance to the Site Plan in the October 14 Staff Report, although the New Ordinance clearly states "this Ordinance shall take effect on and apply to site plan applications filed **after July 24, 2009**" (emphasis added). The Site Plan was filed on December 3, 2008.

The correct standard to be applied to the Site Plan is contained in former Section 1-19-3.300.1 (B) of the Zoning Ordinance, which states, "The Health Department shall certify that the proposed water and sewage facilities are adequate to service the proposed development." Based on several previous cases, the Health Department has so certified adequacy by Conditional Approval or Approval in the staff report.

- C. Appellant contends that the Planning Commission acted contrary to their adopted Rules of Procedure and in so doing, denied the Appellant their right to due process. A copy of the Rules of Procedure for the Frederick County Planning Commission, effective January 1, 2006 ("Rules of Procedure"), is attached as Exhibit O.

The Planning Commission violated the Appellant's right to due process by denying them reasonable cross-examination of witnesses during the October 14, 2009 portion of the hearing. A letter dated October 9, 2009 was hand-delivered to Deputy County Attorney Wendy Kearney advising her, *in advance*, of Appellant's anticipated need to cross-examine Staff from the Health Department and Office of Life Safety. A copy of this letter is attached as Exhibit P. The Planning Commission voted to amend their Rules of Procedure at the beginning of the hearing to deny the Appellant a right to cross-examination. A successful motion was passed. Upon advice from the Deputy County Attorney subsequent to their successful motion to deny Appellant's right to cross-examine witnesses, the Planning Commission made another motion to permit cross-examination. Despite this, Appellant was given less than five minutes of cross-examination of Health Department Staff.

If given the right to cross-examine this witness further, Appellant contends that sufficient evidence would have been entered into the record showing that the two methodologies used by the Health Department, and described in the October 14 Staff Report, to calculate the capacity of the Appellant's septic system were not properly applied and do not meet the requirements used by MDE or what was previously cited by the Health Department as their methodology. These methodologies and the calculations performed there under were not disclosed or fully explained by the Health Department nor are they supported by standard engineering practices.

- D. The Planning Commission denied Appellant's right to due process by denying them sufficient time for presentation of their case at the October 14, 2009 hearing. In accordance with the Rules of Procedure 6.5, the time limit for testimony is as follows:

Staff Report & Recommendation

The Applicant or the Applicant's Agent or Attorney (15 minutes)

Public Comment (3 minutes per individual or 10 minutes per recognized organization)

Applicant's Rebuttal (5 minutes)

Pursuant to Rule 6.5 of the Rules of Procedure, "additional time for Applicant presentation may be requested in writing 15 days in advance of the meeting." A written request was made by the Appellant by letter dated September 28, 2009 requesting 90 additional minutes for their presentation and rebuttal. A copy of the September 28, 2009 letter is attached as Exhibit O. At the beginning of the hearing, the Planning Commission voted on Appellant's request for additional time and a motion passed allowing Appellant 10 minutes for their presentation, which is less than the time allocated under Rules of Procedure 6.5. The Planning Commission also voted to permit 10 minutes for rebuttal, which is more than the time allocated under Rules of Procedure 6.5.

Upon granting the Appellant the right to cross-examination, the Planning Commission amended their previous motion granting 10 minutes of rebuttal, and permitted the Appellant only 5 minutes of rebuttal. Appellant contends that there were several inconsistencies in the Planning Commission's interpretation of their Rules of Procedure regarding the imposition of time limits and these were applied unfairly to the Appellant during the hearing.

- E. The Planning Commission denied Appellant's right to due process when it allowed representatives from allegedly "Recognized Organizations" to speak without providing the requisite documents under Planning Commission Rules of Procedure 1.2. Pursuant to Rule 1.2 a "Recognized Organization" shall mean any group that has provided to the Planning Commission all of the following: a copy of its bylaws which must be adopted 90 days prior to the commission meeting, and a formally executed resolution from their board of directors authorizing that person(s) speaking on behalf of the organization for that mater. Despite these requirements in the Rules and of Procedure, and against the advice of Assistant County Attorney Kathy Mitchell that the County had not received supporting documents from any Recognized Organization, Chairman Catherine Forrence acknowledged the Rules of Procedure but indicated that they [the Planning Commission] have never abided by the rule pertaining to Recognized Organizations during the time she has served and proceeded to allow anyone identifying himself or herself as representing a Recognized Organization up to 10 minutes of public comment.
  - F. The Planning Commission erred by not granting approval of the Site Plan based on the conditions provided in the July 8, 2009 Staff Report.
  - G. In the alternative, the Planning Commission erred by not granting approval of the Site Plan based on the conditions proffered by the Appellant at the October 14, 2009 hearing.
9. **Question(s) of fact, if any, presented to the Board by this appeal:**

(a) Did the Planning Commission act property in denying the Site Plan? Specifically, (i) Whether denial of the Site Plan based on the analysis and recommendations in the October 14 Staff Report were proper; (ii) Whether the Health Department utilized and properly applied established and appropriate methodologies in evaluating the septic capacity; (iii) in light of the Appellant's proffer to provide secondary access to the Property, was it proper for the Planning Commission to use the lack of secondary access

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