IN THE MATTER OF 10729 PARK HEIGHTS AVENUE, LLC, LEGAL OWNER AND BAIS MEDRASH OF OWINGS MILLS, INC., CONTRACT PURCHASER OF THE PROPERTY LOCATED AT 10725 AND 10729 PARK HEIGHTS AVENUE 3rd ELECTION DISTRICT 2nd COUNCIL DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO.: 24-029-SPHX

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OPINION

This case comes before the Baltimore County Board of Appeals (the "Board") on appeal from an Opinion and Order ("Opinion") by Administrative Law Judge ("ALJ") Andrew M. Belt, dated July 19, 2024, in which he granted a special exception and associated special hearing relief permitting the establishment and operation of a rabbinical college at 10729 Park Heights Avenue, Owings Mills, Maryland ("subject property"). The Petitioners are 10729 Park Heights Avenue LLC, legal owner, and contract purchaser, Bais Medrash of Owings Mills, Inc. Petitioners were represented by Christopher D. Mudd, Esquire of Venable LLP. The Protestants are the Valleys Planning Council and an adjoining neighbor, Mark Wilson. The Protestants were represented by Michael R. McCann, Esquire. The Board held six days of in-person *de novo* hearings.[1]

The Petitioners are seeking a special exception to permit the establishment of a rabbinical college with dormitories. They also are requesting special hearing relief to confirm that 45 parking spaces are sufficient to support the school, to amend the previously approved site plan in Case No. 2010-0280-SPH regarding the continued use of three single family homes as non-conforming uses, and to confirm that no new landscaping is required for conversion of the existing improvements into the school. Following the conclusion of the hearings, the parties

[1] The hearings were on May 5, May 28, May 29, July 14, July 15, and August 28, 2025.

submitted Memoranda. The Board held a public deliberation on October 8, 2025. For the reasons stated at the public deliberation, and as discussed below, the Board granted the special exception with limiting conditions and approved the special hearing relief.

FACTUAL PRESENTATION

A. Petitioners' Case-in-Chief

The Petitioners only called two witnesses in their case-in-chief, choosing to delay several of their most significant witnesses for rebuttal. The first witness was Rabbi Nosson Newman, an ordained rabbi with experience in Jewish education, having served for many years in New York and Israel before relocating to Baltimore to expand his work in religious instruction. He explained that the school, Bais Medrash of Owings Mills, is currently in operation, with 29 students enrolled, and plans to expand to a maximum of 100 students if the requested relief is granted.

The rabbinical school would be located in a historic 45,000-square-foot structure situated on a 20-acre parcel. The building formerly served as a Baptist convalescent home known as Rainbow Hall[2]. Rabbi Newman described the school's educational model as highly intensive, consisting of 10 to 15 hours per day of religious study and prayer, seven days a week. The students are mostly between the ages of 16 and 20, and do not engage in secular academic studies as part of the school's curriculum. He emphasized that the nature of the program is deeply devout and disciplined, resulting in a quiet and structured residential and educational environment.

The students would reside in dormitories located in a renovated portion of the existing building, which was previously used for residential purposes. The first floor of the dormitory

[2] The structure was apparently built in the early 1900s by General Douglas McArthur as a single-family home.

wing can accommodate approximately 60 students, with additional space potentially available on the second floor in the future. The school has no plans to utilize the two existing rental homes on the property for educational activities, although staff housing may be considered for one currently vacant home. Rabbi Newman confirmed that staff will not reside in the main building, except during the Sabbath, when driving is prohibited.

Rabbi Newman testified that students are not permitted to have personal vehicles, except in rare cases for special circumstances, and then only with tight controls. The school maintains two vehicles for limited use by students during free periods. Staff members travel to and from the property in staggered shifts, with no more than a handful on-site at any given time. Meals are currently prepared off-site and delivered twice daily, with plans to eventually utilize an existing commercial kitchen on the premises pending approval. A contracted landscaper will maintain the grounds.

In his opinion, the rabbinical school would ensure the upkeep and preservation of the historic structure, which is too large for viable single-family residential use. He stated that denial of the special exception would threaten the continued existence of the school and impair the students' and staff's ability to practice their religious faith. Rabbi Newman concluded by reiterating that the proposed use would have minimal traffic, no noise impacts, and no adverse effect on the surrounding community.

On cross examination, Rabbi Newman indicated that certain physical rehabilitation has been occurring inside the main structure. He indicated that there are already approximately 15 rooms on the first floor that are available to house students. He stated that there would be four students per room. In order to accommodate more students, it would be necessary to make more dormitory rooms on the second floor. He also indicated that his ultimate intention was to have

the facility function with 100 students, 8 rabbis, and 8 to 10 staff people to manage maintenance, cleaning, and food preparation. He said that presently there are a number of washing machines connected to the septic system. As to traffic, he indicated that there would only be a "handful" of commuting students, by which he meant 4 to 5. He also said that he had looked for alternative sites before settling on Rainbow Hall. He testified that his real estate agent had told him that there were no real alternative sites that could meet the necessities of Bais Medrash.

The second witness was John Motsco, a licensed professional engineer with D.S. Thaler & Associates. He was accepted as an expert in civil engineering and zoning and development matters in Baltimore County. Mr. Motsco testified that he had over two decades of experience working in the County and had participated in hundreds of zoning and development cases. He personally visited the subject property the morning of the hearing and had supervised the preparation of the site plan, photographic exhibits, and other materials submitted in the case.

He testified that the subject property is approximately 20 acres in size and is zoned predominantly RC-2, with a small portion in the RC-5 zone. The property includes several structures: the main building formerly known as Rainbow Hall with an attached dormitory wing, two single-family homes, and a cottage. He confirmed that the proposed school improvements are entirely within the RC-2 zone. The site has two vehicle access points along Park Heights Avenue. There is a separate easement used only by a neighboring property.

Mr. Motsco described the proposed use of the property as a rabbinical college with dormitories, noting that the students would be cloistered on-site and that the traffic impact would be significantly lower than other institutional uses, such as traditional day schools. In his view, the project would not generate congestion or create hazards for fire, panic, or other dangers. He emphasized that the building is already equipped with a sprinkler system from prior uses and

would be required to meet all modern safety and occupancy codes.

Regarding parking, Mr. Motsco testified that the site includes 45 parking spaces, which he deemed more than adequate given the lack of student vehicles and minimal number of commuting staff. He noted that granting the special hearing request to maintain that number of spaces would have no adverse impact on neighboring properties. He further testified that the continued residential use of the two single-family homes and the cottage on the property would not change and would not negatively affect the surrounding community.

With respect to landscaping, Mr. Motsco explained that the site was already heavily landscaped due to prior institutional uses. He testified that no new buildings or exterior additions were proposed, and therefore a new landscape plan was unnecessary. He requested that the Board waive the requirement for a new plan due to the property's existing mature vegetation.

Mr. Motsco also addressed septic and groundwater management issues. He confirmed that the existing septic system was designed for a capacity of 5,523 gallons per day ("gpd"), based on historical engineering documents. He identified the location of the two septic reserve areas on the property and noted the existence of multiple wells. He explained that future expansion of the septic system, if needed, would require additional percolation tests and regulatory approvals, but indicated that space was available for potential system upgrades or alternatives, such as pre-treatment systems or small-scale treatment plants, if necessary.

Mr. Motsco addressed the Zoning Advisory Committee ("ZAC") comments concerning well and septic issues. He confirmed that Groundwater Management had issued ZAC comments in this case and that those comments required full compliance with all regulations governing well and septic systems in Baltimore County. He explained that such compliance is not determined at the zoning stage but comes later because it is a requirement prior to occupancy of the building.

According to Mr. Motsco, if the Board were to grant the requested zoning relief, the Petitioners would still need to satisfy all applicable regulatory approvals related to water and septic systems before the facility could actually be occupied.

On cross examination, Mr. Motsco acknowledged that while he had testified that the water and septic systems appeared adequate, he was not a wastewater or sanitation engineer and could offer no opinion on the ultimate adequacy of the water and septic system except to reiterate that all such systems were required to be inspected and approved before an occupancy permit could be issued by the County.

B. The Protestants' Case-in Chief

The Protestants called a number of witnesses. They began with John Petro, a retired government mathematician and amateur photographer who has known Mark Wilson, the primary adjoining neighbor, since the early 1990's. Mr. Petro took approximately 40 photographs that were admitted into evidence. Among other features, the photos demonstrated the narrowness of Park Heights Avenue in the Rainbow Hall area and the fact that there was no sidewalk and virtually no shoulder.[3]

The next witness was Gary Schnitzer, a resident of the nearby Velvet Valley neighborhood. He testified regarding general traffic conditions on Park Heights Avenue. Though not an expert by training in traffic matters, he has substantial personal familiarity with the area, as he frequently walks his dog in the area and routinely drives up and down Park Heights Avenue. He testified that Park Heights Avenue is narrow and winding in places, with limited visibility due to curves and overgrown vegetation. He noted that traffic congestion occurs during

[3] There was no dispute about the nature of the roadway around the subject property.

school arrival and dismissal hours in the mornings and afternoons. While he acknowledged that the road eventually clears, he expressed concern about driver behavior and the potential for accidents.

The Protestants called Barbara Mosier, a senior traffic engineer with Kittelson & Associates. She was accepted as an expert in traffic engineering, including traffic counts, speed studies, and sight distance analysis. She holds dual degrees in Civil Engineering and Engineering and Public Policy from Carnegie Mellon University, and she is a licensed Professional Engineer in Maryland, Virginia, and D.C., as well as a certified Professional Traffic Operations Engineer ("PTOE"). She has 19 years of experience in traffic analysis and safety studies and supervises technical teams in Baltimore, where she works out of her firm's local office.

Ms. Mosier visited the site twice, including the morning of the hearing, and described the stretch of Park Heights Avenue fronting the property as a rural two-lane road with narrow lanes, drainage ditches, steep grades, and a notable vertical crest between the northern and southern driveways to the site. She emphasized that this crest limits visibility and affects both stopping sight distance ("SSD") and intersection sight distance ("ISD"), which she assessed using methods consistent with the AASHTO "Green Book," the national standard for geometric roadway design.

Her speed study was conducted using 24-hour automatic traffic recorders ("ATRs") in December, 2024, showed that the 85th percentile speed was 48 mph, exceeding the 40-mph posted limit. She explained that industry standard practice is to add 10 mph to the posted limit or use the 85th percentile when selecting a design speed for analysis, in this case, 50 mph. Based on AASHTO charts, the required SSD at 50 mph on a downgrade is 446 feet, accounting for driver reaction and braking on a sloped surface.

For the SSD measurements, Ms. Mosier personally conducted a field test. She stood at the driveways with a pole marked at two feet (representing the height of a taillight) while her colleague walked backwards along Park Heights Avenue with their eyes at 3.5 feet (driver eye height), noting when the pole became visible and then measuring from that point. This yielded approximately 380 feet of visibility for northbound vehicles and 440 feet for southbound vehicles, both short of the required 446 feet.

Regarding ISD, she measured from 14.5 feet back from the edge of the travel lane, the standard position for a driver attempting to exit the site. AASHTO standards require 555 feet for a left turn and 480 feet for a right turn at 50 mph. Ms. Mosier found only 375 feet of ISD from the northern driveway and 415 feet from the southern driveway, falling substantially below the thresholds. She noted that even these measurements were taken in December, when vegetation was minimal, and that sight distances would be even more limited during the growing season.

Ms. Mosier also testified that none of her analysis accounted for queued vehicles, meaning that actual sight distances could be further compromised if cars were stacked waiting to turn into the site. She estimated that each additional vehicle would obscure 25 feet of visibility. Additionally, during peak hours (8 a.m. and 3 p.m.), traffic speeds were lower due to congestion, but she stated that it was appropriate to use 50 mph for analysis because safety standards require planning for worst-case and off-peak conditions when vehicles may travel faster.

She concluded that the site driveways do not provide adequate sight distance for safe ingress and egress, regardless of whether one or 20 vehicles are using them. She emphasized that inadequate SSD and ISD create real safety risks, particularly on a high-speed, hilly road like Park Heights Avenue. On cross, she defended her methods and field techniques, explaining that all procedures followed industry standards and were conservative in their assumptions. She

stated unequivocally that her conclusions were made to a reasonable degree of engineering certainty.[4]

The next witness was Paul Brickman, a longtime area resident. He has lived on Velvet Valley Way, which is closely proximate to the Rainbow Hall property, for over 23 years. Mr. Brickman is also the president of the Velvet Valley Neighborhood Association ("VVNA") and has served on its board for over 14 years. He described Velvet Valley as a single-family residential neighborhood with large lots and limited through traffic. Mr. Brickman expressed concern about the potential for increased traffic, pedestrian safety, and disruption to neighborhood character if there was a functioning school at Rainbow Hall. He explained that Rainbow Hall sits in an area with poor visibility due to curves and hills, and that even slight increases in traffic exacerbate already risky conditions. Mr. Brickman was authorized to speak on behalf of VVNA. He testified that the organization voted to oppose the project. He also submitted photographs of the roads and testified that the campus has long been dormant and peaceful, but that an institutional use—regardless of scale—raises red flags due to road geometry and sightline issues. On cross-examination, Mr. Brickman did acknowledge that the main Rainbow Hall building is very large and would not be suitable for a single-family residence for a typical family.

The next witness was the adjoining neighbor Mark Wilson. He resides at 10705 Park Heights Avenue and also owns the adjacent lot at 10715 Park Heights Avenue. His property is

[4] The Protestants also called Bryan Dietz, an expert surveyor. He measured the distance between the south driveway and the north driveway not only as to distance but also as to contours. His measurements dovetailed with and supported Ms. Mosier's conclusions.

located southeast of the Rainbow Hall building. He has resided in that location since 2007. Mr. Wilson explained that his driveway serves both of his parcels and runs along the boundary with the subject property. He expressed concern that exiting his driveway onto Park Heights Avenue is already hazardous due to the curvature and alignment of the road, and he fears that any increase in traffic volume, especially during peak hours, would make access even more dangerous. He noted that the hill and curve create blind spots for drivers. Mr. Wilson testified that he had seen no plans for improvements to the access points and that even widening the entrance would not eliminate the sightline problems. He indicated that he was quite concerned about the impact that the school would have on his well and that any failure of the school's septic system could affect his property. He also stated that he is skeptical of the claims that there will not be noise all day and into the night, that the number of cars will be as minimal as the Petitioners say, and that there will be no expansion into other uses. He stated that in his opinion, the building should remain a private home or be adapted to a use more consistent with the neighborhood's quiet character.

Rene Hamidi, executive director of the Valleys Planning Council ("VPC"), testified to her organization's opposition to the special exception request. Ms. Hamidi, who has led the VPC for nearly four years and had previously worked with a local land trust, described the VPC's role in monitoring land use and zoning across 130 square miles of northwest Baltimore County. She explained that the Rainbow Hall site lies within the VPC's jurisdiction and is in an area designated for low-density, rural-residential development. She expressed concern about allowing a special exception institutional use in a scenic RC-2 zoned corridor, especially one with a history of encroachment pressure. Ms. Hamidi testified that she reviewed all 149 schools in Baltimore County in terms of their zoning, the presence of dormitories, and other special features like acreage, proximity to residences, and percentage of dormitory students. According to Ms.

Hamidi, only 10 schools are located in an RC-2 zone and none of these are colleges or universities. There is only one school with boarders in the RC-2 zone - Oldfields Academy, a girl's boarding school in the Sparks area of northern Baltimore County. Oldfields has only 22 boarders on a 100-acre campus and is more than 1,000 feet from the nearest residence. Moreover, Oldfields was founded in rural Maryland well before zoning was established and therefore is not an example of a boarding school having satisfied the zoning requisites of the RC-2 zone. The proposed Bais Medrash school will have 48 to 100 boarding students, and the closest residence is only 360 feet away. She also testified that some comparable institutions in the area - such as St. Paul's, McDonogh, and Garrison Forest - are located on large, flat parcels with much better access and infrastructure. She noted that unlike those campuses, Rainbow Hall is on a narrow, winding, high-speed road with little margin for traffic increases. She also raised concern that student enrollment at Bais Medrash could expand over time, intensifying impacts beyond what was currently proposed.

The third day of the hearing began with Protestants calling John Koontz, a veteran environmental health consultant with over 50 years of experience. He testified as an expert in septic systems, wastewater permitting, on-site sewage disposal, and the regulations and governmental requirements relating thereto. He previously served as Director of Environmental Health for Prince George's County and as a senior official with the Maryland Department of the Environment ("MDE"). The Protestants retained Mr. Koontz to assess the status of the existing on-site septic system at the Rainbow Hall property.

Mr. Koontz testified that he reviewed the original septic permit file and as-built documents for the property. He had previously done such a review in 2012 for hearings on Rainbow Hall at that time. He confirmed that the current system was installed in 1997 following

the failure of a prior septic system. The new system was approved by Baltimore County Environmental Health Services for a design capacity of 5,523 gallons per day. That figure was based on historical water meter readings from a prior institutional user and was approved after site evaluations, including soil testing and field layout reviews. The installed system used trench-style drain fields and included a designated reserve area required by regulation.

Mr. Koontz stated that there were two primary ways to assess what the necessary capacity was for a septic system. First, one could do on-site measurements of water use over time and then extrapolate from that water use as to what septic capacity was needed. As an alternative, there are standard tables that the industry uses based on the type and intensity of use. Those standard tables then provide a figure of outflow in gallons per day ("gpd") which are deemed acceptable. Using the tables, Mr. Koontz indicated that the gpd requirement for 100 students with 8 staff - that being Rabbi Newson's hoped-for size - was 15,180 gpd. He testified that with 48 students and 2 staff, the required gpd was 7,245. Thus, according to Koontz, the present septic system could not support the project as submitted by Petitioner.[5]

The cross examination of Mr. Koontz focused on a third way of measuring needed capacity. He acknowledged that it is acceptable to use actual readings from a similar use but at a different property. In that regard, counsel for Petitioners reviewed Protestants' Exhibit 30 with the witness, an exhibit which was to assume a prominent role with future witnesses. Protestants' Exhibit 30 was a letter on behalf of Bas Midrash [sic] dated November 27, 2024, from Patrick C. Richardson, Jr., P.E., to Kevin Koepenick, Chief of the Groundwater Management Section of the Baltimore County Department of Environmental Protection and Sustainability (hereinafter

[5] His figures assumed that there were no kitchen facilities which would increase the gpd.

"Richardson letter").[6] The Richardson letter represented to the County that the anticipated effluent from 48 students and 2 staff was actually 2,094 gpd, well within the 5,523 gpd for which the system had been designed. Mr. Richardson's conclusion was based on data received from a New Jersey rabbinical school that was asserted to be of approximately the same size. The data purported to cover 2022, 2023, and 2024.[7] Using that data, Mr. Richardson calculated the maximum average daily use per student was 22 gpd. Under the standard protocols, he then multiplied the gpd by 150% (to allow for extreme use and tolerance) for use in the ultimate calculation which would make it 31 gpd per student. Multiplying that figure by the 48 students that the Rabbi had indicated he would have at the outset and controlling for 2 staff people, Richardson then reached the 2,094 gpd which was anticipated for Bais Medrash and which was submitted to Kevin Koepenick, the County official with ultimate responsibility for determining to what extent the Bais Medrash septic system could support the school.

The Protestants then called Paul White, a licensed hydrogeologist with the ARM Group and a nationally certified groundwater professional. He was qualified as an expert in hydrogeology and groundwater impacts. The Protestants engaged him to assess whether the proposed use of the septic system posed any threat to groundwater quality, public health, or neighboring wells. Mr. White indicated that the area surrounding the Rainbow Hall site was prone to residential wells running dry, thus requiring residents to deepen existing wells or drill new wells. In general, the area in question is known as the Loch Raven schist, a large area in Maryland and Pennsylvania and which is a geological formation of metamorphic rock that does

[6] The portion of the Richardson letter that contained the New Jersey date had been introduced as Petitioner's Exhibit 21 at the May 8 hearing.
[7] As discussed below, there was no agreement between any of the engineers about how to interpret the raw date from the New Jersey School. *Infra.* at 28-30.

not promote high water yield.

Based on the New Jersey data from the Richardson letter, Mr. White concluded that the septic system lacked the capacity to serve not only the 100-student future objective but could not support even the 48 students that was the scope of the initial project. Mr. White took issue with how Mr. Richardson had used the data from the New Jersey school. Essentially, Mr. Richardson took all of the water usage for 2022 through 2024. He then divided each year by 12 to get an average monthly water usage. He then divided that figure by 30 (representing the number of days in a month) and reached a figure of 1,183 gallons per day. He then subtracted 300 gpd to account for the 20 faculty at the standard rate of 15 gpd. This then resulted in a figure of 883 gpd, which, when divided by the number of claimed 40 students, resulted in 22 gpd per student. It was then necessary for Richardson to multiply the 22 gpd by the required peaking factor of 150%, leading to his final conclusion of 31 gpd. Thus, assuming that Bais Medrash was comparable to the New Jersey school, Richardson calculated that the use for 48 students was 1,488 gpd (48 x 31). Even adding in water usage by faculty still only resulted in a daily use of 2,044 gallons, which was well within the capacity of the existing septic system.

Mr. White took issue with the Richardson methodology. For example, he showed that for 18 of the 47 months in the Richardson data, the actual daily flow exceeded the Richardson peak flow of 31gpd. According to Mr. White, it was misleading to take averages in the fashion that Richardson had. For example, taking the highest month from the Richardson data leads to a conclusion of 164 gpd, which is far higher than the standard tables which are at 100 gpd per student. Mr. White looked at the three highest consecutive months, and this yielded gpd of 116, again higher than the default standard from the tables, and vastly higher than the 31 gpd as found by Richardson. According to Mr. White the existing septic system at Rainbow Hall could not

support the 48 students and 2 faculty.

Mr. White also testified about a nitrate balance assessment. This is an evaluation to determine the ability of the groundwater system to recharge with rainwater and dilute the concentration of nitrogen and other contaminants generated by a septic system. Mr. White made calculations based on the 48 students and 2 faculty and the 100 students 8 faculty models. As to the first model, he concluded that there would be a total nitrate concentration of 19mg/l. As to the second model, the result was 30.4 mg/l. Though there is no absolute required nitrate balance, the current rate of 10 mg/l is considered safe and environmentally sound with little or no possibility of contaminating the aquifer on the project site as well as potentially impacting surrounding properties. Mr. White indicated that the primary adverse health problems associated with inflated nitrate balance are for small children.

With regard to the nitrate mass balance assessment and the daily water usage, it emerged that Mr. White had spoken with Mr. Koepenick. According to Mr. White, Mr. Koepenick seemed unconcerned about the possibility of nitrate discharge. Moreover, again according to Mr. White, Mr. Koepenick appeared to unquestionably accept the data in the Richardson letter and was uninterested in considering any contrary scientific data from Mr. White.

The next Protestants' witness was Michael Lane, a certified soil scientist with ARM and a senior project scientist. He has 30 years' experience in designing wastewater systems and evaluating the land in which existing septic systems are located as well as for expansion or change in use of an existing system. He was accepted as an expert in those fields. He examined the historic records and plats of the Rainbow Hall septic system. He walked the property and examined as best he could the disposal area and the septic reserve area. In particular he determined what type of replacement area would be necessary to add to the existing system to

accommodate 100 students. He stated that at 100 students, the septic system with the required underground trenches would have to be expanded well beyond the present replacement area. Moreover, in his opinion, some of the replacement areas outside the designated reserve area may not support absorption of the effluent from the septic system.

C. The Petitioners' Rebuttal Case

Petitioners began their rebuttal case with traffic expert Mickey Cornelius, senior vice-president of The Traffic Group. He was familiar with the property. He indicated that he did not do a traffic study because of the minimal traffic generated by the proposed use. He testified that as he understood the project, there would be initially 20 to 40 students with up to 100 ultimately, up to 8 staff, and catered food service. It was his understanding that there would be very few commuting students. He indicated that the traffic generated by the school would be quite modest.

His primary testimony concerned ingress and egress. In his opinion, the north drive could only be used to enter the subject property but could not be safely used to exit onto Park Heights Avenue. As to the south entrance, he indicated that vehicles could both enter the school from Park Heights and exit the school onto Park Heights. He based these opinions on a detailed sight and speed study conducted by The Traffic Group. He reiterated his opinion that the project would not generate significant traffic and would not cause or increase congestion on Park Heights Avenue.

On cross examination, Mr. Cornelius was confronted with a memorandum he had written in a previous case concerning this property in 2011. In that memorandum and consistent with his testimony, he had recommended that the north entrance be used only for entering the property from Park Heights Avenue. However, contrary to his present testimony, his memorandum stated that the south access could only be safely used for exiting onto Park Heights Avenue and not for

entering the subject property. As to entering the property from Park Heights Avenue, his memorandum indicated that if there were vehicles southbound on Park Heights and needing to turn left into the site, there was the danger of motorists coming from behind with only a limited time to stop. This led him to conclude in 2011 that it was not safe to enter the property from Park Heights Avenue at the south entrance. Mr. Cornelius did not disavow his 2011 conclusions.

Petitioners called James R. Powell. He had been employed by Baltimore County for 37 years and had retired from the County approximately 12 years ago. Since then, he has been self-employed as a consultant in septic design, repair, and replacement. He was accepted as an expert in those areas. He indicated that Mr. Koepenick had been his supervisor for 25 years while Mr. Powell was a County employee. He indicated that the use, as he understood it, was an initial population of 48 students with a goal of 100. He indicated that there may or may not be onsite food service, depending on how the County ultimately assesses the septic capacity.[8]

Mr. Powell, as a County employee, had been directly involved in the actual design and modernization of the Rainbow Hall septic system in 1997. Most significantly, Mr. Powell testified that the actual current septic capacity was 9,200 gallons per day, not the 5,500 gallons that every other witness had understood the daily capacity to be and which the historic records had indicated. The 5,500 gallon capacity was the figure used in the Richardson letter that Petitioners had themselves submitted to the County in November, 2024, in support of the project and which was part of the records from the County that Mr. Powell had reviewed.[9] Based on the 9,200 gpd figure, Mr. Powell testified that the Rainbow Hall site could well accommodate 100

[8] Mr. Powell indicated that long term catering was not operationally practical.
[9] Mr. Powell indicated that he had not spoken with Mr. Richardson. He did say that "the County" had accepted the Richardson letter as the proper analysis.

students plus an onsite kitchen.[10] He testified extensively regarding County policies even though he had retired from the County some 12 years earlier. He also testified that if the use were over 5,000 gpd, the County may require pretreatment, and if the use were over 10,000 gpd the County would require pre-treatment. Mr. Powell repeatedly testified as to the steps the County would take to ensure that the septic system had the capacity and integrity to support the school, no matter the student population.

On the final day of the hearing, Mr. Powell was recalled for cross-examination. Mr. Powell testified that he had reviewed County septic records dating to 1996–97 and confirmed that his handwritten notes from that period documented the design and installation of the existing septic system at the subject property. He explained that the system consists of four 3,000-gallon concrete septic tanks, for a total of 12,000 gallons of tankage, connected to a trench disposal field divided into two zones. A bull run diversion valve alternates flow between the zones. Mr. Powell asserted that the overall design capacity of the system is 9,022 gallons per day, with each zone able to accommodate 4,511 gallons per day. At the same time, Mr. Powell was confronted with multiple documents, including County permits, his own 2012 letter to an engineer, David Thaler, and the 2024 engineering submission by Richardson Engineering, all of which consistently identified the design capacity as 5,523 gallons per day.[11]

Upon further questioning, it emerged that his 9,000 gpd figure was based on adding together the two 4,500 zones. He acknowledged that should the flow exceed 4,500 gpd on any

[10] Why this testimony is rebuttal and not information that should have been presented in Petitioners' case-in-chief is an interesting question. Indeed, if one accepts his testimony that the septic capacity is 9,200 gpd, it is testimony that could be seen as is a curious rebuttal of Petitioners' own case.

[11] As to ultimate water usage, he analyzed the New Jersey School data differently than had Richardson or Mr. White and Mr. Koontz. He testified that his methodology involved excluding "uncharacteristically elevated" or abnormally low" monthly reading because absent an explanation for those readings, those data points could not be valid.

given day, it would be necessary for someone to actually manipulate values in order to make the excess effluent flow to the second section. In other words, if the flow exceeded 4,500 gpd, the effluent would not autom0atically go to the other section. It was not clear how one would know that the use on any given day had exceeded the 4,500-gallon figure (except, possibly, by noting that the septic system was backing up into the building). In the face of questioning by Protestants' counsel and the Board, Mr. Powell refused to back away from his testimony that the system operated at a 9,200 gpd level.[12]

The final witness Paul Scott, a hydrologist who was accepted as an expert in hydrologic discharge and well impact. Mr. Scott disputed much of Mr. White's testimony regarding nitrate balance assessment, though he did concede that 100 students with on-site food service would require pre-treatment to address nitrate balance. He testified that the re-charge area was much more effective because of the bowl-shaped topography. He also indicated that the Loch Raven schist, while not high yielding rock for well purposes, was nonetheless quite sufficient for residential and low impact institutional uses. Finally, he testified at length about well failures in Baltimore County in the area and throughout the County. He testified that the water use at Bais Medrash would have no impact on well failures in the area.[13] Moreover, he indicated that the two wells at Bais Medrash are more than sufficient to provide water for the 48 boarding students and could be sufficient even for 100 students.

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[12] All of the witnesses agreed that septic system capacity is measured in gallons per day. And everyone agreed that a system need to have a daily capacity that exceeded the expected usage by 50%. The 5,500 gpd was a figure that included that extra 50% tolerance. It is not clear whether Mr. Powell's testimony that the system could manage 4,500 gallons per day included the extra 50%. The Board is assuming that his 4,500 gpd testimony included the 50% tolerance figure.

[13] Petitioners' counsel was quite critical of Mr. White for using well failures within about one mile of the subject property, implying that that distance was too great to have any relevance to the possible impact of Bais Medrash. Mr. Scott, however, used distances much farther from Bais Medrash in reaching his opinion about the negligible water use impact that Bais Medrash would have on neighboring properties.

DISCUSSION

I. THE RELIGIOUS LAND USE AND INSTITUIONALIZED PERSONS ACT REQUIRES THAT THE BALITMORE COUNTY ZONING RESTRICTIONS BE RELAXED IN ORDER TO PERMIT THE BAIS MEDRASH SCHOOL

It is necessary to state at the outset that the Board's decision is influenced greatly by the provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 USC 2000cc, *et seq.* RLUIPA is central to our resolution of the dormitory issue discussed *infra* at p.23-26, and it influences the decision regarding the special exception *infra* at 26-34. RLUIPA overrides strict compliance with the zoning restrictions applicable in this matter. It is prohibited under RLUIPA for a local zoning authority to require strict adherence to zoning regulations by a religious institution unless adherence to that zoning requirement furthers a compelling state interest and is the least restrictive means of furthering that compelling interest. 42 U.S.C. 2000cc(a)(1). This is an exceedingly difficult standard for a local zoning authority to meet.

A religious school is an entity covered under RLUIPA. *Westchester Day School v. Village of Marmarneck, et al.*, 504 F.3d 338 (2nd Cir.2013) (Village violated RLUIPA in denying building permit for Orthodox Jewish school seeking to expand its facility). *See* also *Jesus Christ Is the Answer Ministries, Inc, et al. v. Baltimore County*, 915 F.3d 256, 261 (4th Cir. 2019); *Bethel World Outreach Ministries v. Montgomery City Council*, 706 F.3d 548, 556-58 (4th Cir. 2013).

The extent to which RLUIPA applies in this matter requires a highly fact-based assessment. There is no reason to question the conclusion that the school needs a home. Rabbi Newman testified that his present location is inadequate for any number of reasons, including the fact that it cannot accommodate boarding students. Many of the students are being housed off-site with volunteer families. This detracts both from the important educational experience of complete immersion in study and from the benefit of being part of a total community. In addition,

Rabbi Newman testified that he had consulted with a real estate agent, and the agent was unable to locate an alternative site that could meet the requirements of Bais Medrash. In addition, according to Rabbi Newman, the real estate agent indicated that no matter where Bais Medrash sought to locate, there would be community opposition. Thus, the fact of opposition cannot be considered in determining whether the Rainbow Hall site is appropriate. The caselaw has established that the absence of an adequate facility is a "burden" under RLUIPA. *See Petra Presbyterian Church v. Village of Northbrook*, 489 F.3d 846, 851 (7th Cir. 2007). The property was purchased with the expectation that it would be able to be used as a school for religious study which is a use permitted by special exception in this zone. Even though there are contingencies associated with special exceptions, the expectation that permission will be granted is reasonable. *See Hunt Valley Baptist Church v. Baltimore County*, 2017 WL 4801542 (D, Md.) at p. 27 (even where church is required to obtain a special exception, there is a reasonable basis to believe that the development will be allowed).

Under RLUIPA, strict adherence to the zoning laws requires a *compelling* governmental interest. "Compelling" must mean something well beyond simple adherence to the law, otherwise "compelling" has no meaning distinct from compliance with the law. There is always a salutary benefit in requiring adherence to rules of general applicability governing land use conduct; these are rules which provide notice, clarity, predictability, and consistency in development. *See e.g., Sylvia Development Corp. v. Calvert County*, 48 F.3d 810, 820n.3 (4th Cir. (Md.) 1995) (recognizing the positive role of zoning in land development). But we have been specifically directed by Congress and the federal judiciary that in the special of case of land use **for religious institutions**, zoning restrictions for a use even as a special exception must give way to other concerns, absent a special and significant reason for requiring strict adherence to

the zoning requirements. *Bethel World Outreach Ministries v. Montgomery City Council*, 706 F.3d at 55-59. As indicated below, there is at least one basis for finding a compelling interest in strict enforcement of the zoning regulations: the evidence in this case has established that the septic system is problematic, and the septic issue is a public health issue of great importance. However, because of the limitations that we have imposed, we have adequately addressed that concern. Thus, under all of these circumstances, we have constructed the least restrictive means available to satisfy the dictate of RLUIPA that zoning requirements be administered in the least restrictive fashion in order to accommodate religious institutions.

II. BECAUSE OF RLUIPA, THE PROHIBITION AGAINST A DORMITORY AS A PRIMARY USE IN AN RC-2 ZONE CANNOT BE ENFORCED.

Rabbi Newman testified that the main building has dormitory space to house the boarding students. He indicated that there are approximately fifteen rooms on the ground floor, and each room can accommodate four students. He indicated that if or when the school expanded, the school would make more rooms on the second floor. The Protestants argue first that such dormitory use is *per se* prohibited by the plain language of the BCZR, and then secondly, because the dormitory is part of the main classroom building, it cannot be permitted as an accessory use.

Special exceptions for schools are treated differently in an RC-2 zone than in other areas. Section 1A01.2.C.25 which applies to RC-2, explicitly defines "schools" as including colleges. The Petitioners have consistently referred to the Bais Medrash school as a college. Section 1A01.2.C.25 does not mention dormitories. In the DR zones, "schools" and "colleges" are treated as separate principal uses, so, for example, the DR zones allow schools by right, but "private colleges" are permitted only by special exception. There is no separate use for "colleges" in an RC-2 zone. Colleges are subsumed under the category of schools, and there are

no separately designated provisions which relate to colleges in the RC-2 zone. It is of note that there are no schools with dormitories in the RC-2 zone except for Oldfields which was founded before zoning. Thus, even Oldfields is not an example of a boarding school with dormitories that were granted permission to operate in an RC-2 zone. In the same vein, the Baptist Home that used to occupy Rainbow Hall was established before the property was zoned RC-2 and was not required to satisfy the strict constraints of RC-2 zoning.

The BCZR distinguishes a dormitory as a separate and distinct use from a college. Section 1B01.1.C.14 indicates that in the DR zone "[p]rivate colleges. . .or dormitories or fraternity or sorority houses" are permitted by special exception. The significance here is that this provision differentiates between private colleges and dormitories as separate uses. Section 230.1.A.7 makes this very same distinction for the BL zone. And sections 253.1.C.22 (permitting "schools and business or trade schools by right) and 253.1.C.8 (permitting dormitories for students attending an accredited institution of higher education) make the same distinction for the ML zone. Finally, "dormitory" has its own definition in 101.1. Thus, it is abundantly clear that the County Council has chosen, in the BCZR, to distinguish between a college with dormitories (like Towson University) and a college without dormitories (like the Community College of Baltimore County). Thus, dormitories are a separate use under the BCZR and are not subsumed or inherent under the category of colleges in the RC-2 zone. Because colleges and dormitories are separate uses and because Sec. 1A01.2.C.25 does not include a dormitory as a permitted use in an RC-2 zone, the dormitory for Bais Medrash is not allowed as a primary use pursuant to the BCZR.

Additionally, the proposed dormitories are not accessory to the primary use. The dormitory is not an "accessory building" as defined in the BCZR because it is a substantial

portion of the main building. Moreover, it is not an "accessory use or structure" as defined in the BCZR because it is not "subordinate" in "extent or purpose" to the principal use. As Protestants note, one of the core features of the school is to provide for the students to immerse themselves in study and in community. The fundamental reason why Bais Medrash wants a larger site is to accommodate large numbers of boarding students. Thus, boarding is a central feature of the Bais Medrash experience and is not "subordinate" within the meaning of the BCZR. Protestants also note that the boarding component is the single largest factor contributing to the septic use and capacity, a central component of the school's infrastructure. An accessory use cannot have such a dramatic impact on one of the core operational components.

So, if this were not a religious entity, the Board would deny the Petition because the school cannot have a dormitory. The situation is different, however, because we are commanded to suspend strict compliance with zoning rules unless the zoning requirement furthers a compelling state interest and compliance with the zoning regulation is the least restrictive means of furthering that compelling interest. 42 U.S.C. 2000cc(a)(1). Overall, the Board views the Bais Medrash project as "low impact" for an institutional use. There are a number of factors that support this conclusion: the limitation on the number of students, the fact that there are very few commuter students and the vast majority of students are largely confined to the campus, the fact that as a school there are significant periods during the year when the students are not in attendance, that there are no sporting events or many other special events that draw outside participants, that there is some history of institutional use at this site, albeit before the RC-2 classification was imposed, and that the limitations imposed by the Board will maintain the number of students at a reasonable level unless it can be shown that an increase in that number is warranted. It would be arguable that over-taxing the septic system is a non-zoning public

health concern and is a compelling reason to require strict adherence to the BCZR. The Board's decision, however, to limit the school size to 48 students with no ability to increase that number without receiving approval of an ALJ and/or this Board, is a significant check on that issue and constitutes the least restrictive application of the BCZR for RLUIPA purposes. For these reasons and while recognizing that there is demonstrable importance in abiding by rules of general applicability governing land use, the Board believes that adhering to what the Board views as the strict letter of the regulations does not further a compelling state interest in this unique set of circumstances, and the Board's decision, given its specific conditions, is the least restrictive alternative to ensure that the public health is safeguarded.

III. THE SPECIAL EXCEPTION CAN BE GRANTED WITH LIMITATIONS

Section 502.1 of the BCZR outlines the general criteria by which special exceptions are assessed.[14] That section provides that a special exception can only be granted if the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;
B. Tend to create congestion in roads, streets or alleys therein;
C. Create a potential hazard from fire, panic or other danger;
D. Tend to overcrowd land and cause undue concentration of population;
E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
F. Interfere with adequate light and air;
G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

[14] Because this project is in an RC-2 zone, § 1A01.1.C imposes an additional requirement to show that the project in question would not be ". . . detrimental to the primary agricultural uses in the vicinity. . .". There was no evidence in this case of any agricultural uses in the vicinity, and the Protestants have not suggested that this factor has not been met. Accordingly, the Board's opinion will focus solely on the §502.1 criteria.

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

In *Schultz v. Pritts*, 291 Md. 1, 22-23, 432 A.2d at 1331 (1981), the Supreme Court of Maryland held that "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and therefore should be denied, is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." In *People's Counsel for Baltimore County v. Loyola College*, Md. 406 Md. 54, 106, 956 A.2d 166 (2008), the Court upheld that longstanding *Shultz* analysis, explaining that a special exception use has "certain [inherent] adverse effects .... [which] are likely to occur". In its analysis, the *Loyola* Court observed that "[t]he special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a 'middle ground' between permitted use and prohibited uses in a particular zone." *Id.*, 406 Md. at 71, 956 A.2d at 176 (2008). The *Schultz* and *Loyola* Courts, and more recently in *Attar v. DMS Tollgate, LLC*, 451 Md. 272, at 285 (2017) have expressly recognized that "[a] special exception is presumed to be in the interest of the general welfare, and therefore a special exception enjoys a presumption of validity." *See also Loyola*, 406 Md. at 84, 88; 105 *Schultz*, 291 Md. at 11. This is in stark contrast to a variance request which seeks to do something within the zoning classification that is not otherwise permitted.

The Petitioners presented *pro forma* testimony from John Motsco as to the §502.1 criteria. The Protestants presented compelling evidence in at least two areas that served to rebut or undermine Petitioners' entitlement. The first area was evidence that the septic system did not have the capacity to meet the ultimate objective as to the size of the student body. The second

area was in traffic ingress and egress from the subject property and Park Heights Avenue. Both of these concerns raise concerns associated with §502.1(A), (B), (C), and (I).

A. The Septic Issue

Much of the testimony at the six-day hearing concerned the septic system, and to a lesser extent the nitrate balance. Petitioners relied extensively on Michael Powell in their rebuttal case, but as reflected above, Mr. Powell's initial assertion that the septic capacity was 9,200 gallons per day was debunked. Mr. Powell's testimony that the septic system was 9,200 gpd was greatly over every other person who testified, greatly over the recorded historical documents regarding that system, and greatly over the 5,300 gpd which was in the Richardson letter supplied to the County. The cross examination established that the septic capacity was closer to 4,700 gpd, a figure that was greatly under every other person who testified about the system, greatly under the historical records, and greatly under the 5,300 gpd which was in the Richardson letter. Accordingly, the Board rejected Mr. Powell's 9,200 gpd as non-credible.

The Richardson letter, and more precisely, the data from the New Jersey school merits special attention. The Richardson letter and all of its associated data is hearsay. The letter itself is hearsay, and Mr. Richardson was not called as a witness.[15] It is filled with assertions that cannot be tested. The witnesses for the Petitioners and the Protestants criticized its methodology. The biggest problem, though, is the New Jersey data. It is at best double hearsay in the context of the Richardson letter, but in reality, it is more. It is probably at least four levels of hearsay. No one knows who assembled the data, but data taken from meters is hearsay. No one knows what instructions were given to the person who assembled the data, but those instructions are

[15] Calling Mr. Richardson would not make the Richardson letter itself non-hearsay, but it would ameliorate the first hearsay level associated with the letter because the declarant, Mr. Richardson, could be questioned.

hearsay. No one knows what Bais Medrash actually requested and how it couched that request, and that is yet another level of hearsay. No one knows how the information was transmitted to Mr. Richardson – another level of hearsay – and what if any modifications were or could have been made to it. In terms of overall reliability, there is no indication of the relationship between Bias Medrash and its supporters and the New Jersey school. It is not irrational to believe that the New Jersey school administrators were supportive of the Bais Medrash project and were possibly less than objective. The Board's rules permit the introduction of hearsay, and the Board routinely does admit it. But to be admitted it must be reliable and probative. The New Jersey data is neither.

Beyond the hearsay aspect, no one -- Richardson, White, Koontz, or Powell -- could agree on how to best use the New Jersey data because it was so uncertain and so confusing. It was all rounded figures with huge gaps and many inexplicable highs and lows. Because the data was so ambiguous, each witness that addressed it was required to interpret the data, and they all did it differently. The Board did not hear from Mr. Richardson so the Board had immense difficulty understanding how his letter, based as it was on the New Jersey data, could be relied upon. Moreover, no one from the County, most particularly Mr. Koepenick, testified so again the Board had difficulty understanding how it could be that the County could have appeared to have accepted the Richardson letter and its underlying data so blithely.

One repeated mantra from Petitioners was that all of these issues – septic, water use, nitrate balance – could be left to the County authorities to sort out. While we do not normally question the County's interest and ability to make these sorts of determinations, we are not completely credulous, and we cannot be expected to relinquish our authority to examine these issues critically. As to septic capacity, the Board was left wondering how the County authorities

could appear to be so sanguine about the New Jersey data and the overall Richardson submission, when, as we have indicated, it raises so many questions. Mr. White spoke to Mr. Koepenick about the Richardson letter and about the issues associated with the New Jersey data. The unrebutted testimony from Mr. White was that the response from Mr. Koepenick was a shoulder shrug and the comment that the Baptist home (which had existed some twenty years earlier and possibly on a scale smaller than what the school wanted for now and the future) had functioned so why not the school? Whether this accurately reflects Mr. Koepenick's attitude or not, it is what is in our record unrebutted.

Having said all of that, most of the witnesses seemed to come close to the conclusion that as uncertain as most every witness was about the septic system, it could more likely than not support the 48 students with two faculty. Perhaps if the Board had heard from Richardson, or even more, from the County authorities themselves, the Board would be in a better position to trust future expansion to the County authorities. This is the position that the ALJ took and given the record before him, quite understandable. But given the record as presented to this Board, it is difficult to rely on the integrity of submissions to the County by those working for Bais Medrash, and it is difficult to rely on the County to properly oversee a project of this size as to any expansion. It is for this reason that the Board has ruled that if the school wants to expand beyond its 48 students, it will have to file a formal petition to expand its special exception. Perhaps then there will be actual and competent meter readings from the school itself upon which an ALJ, this Board, and the County authorities can rely. If the competent and contemporaneous data - particularly water usage meter reads - demonstrates that the septic as is or after expansion can support more students, then so be it. But until that day comes, the number of students is limited to 48, a figure which the Board views as justified by the record before it and which

adequately addresses concerns about public health.

The Board's limitation, however, is not absolute. The one area where Mr. Powell was quite credible was his point that catered food service is an unsustainable approach in the long run. The reason that he was believable on this point was that it was testimony fundamentally against the interests of the Petitioners who he was so clearly promoting. Common sense also supports his view of the ultimate unsustainability of catered meals. The addition of onsite food, and onsite laundry service, do increase the load on the septic system to some extent. At the same time, the Board is not unmindful of the significant expense in time and money associated with filing a petition to expand a special exception. For these reasons, therefore, the Board is willing to cede the responsibility for ensuring adequate septic capacity to the County for the limited purpose of determining whether to permit onsite food service and/or onsite laundry service for the 48 students. Accordingly, if, after performing rigorous testing and presumably based on actual meter readings from the school itself, the County authorities determine that the septic system can tolerate onsite food and laundry service, the Board is willing to accept that determination.

B. Ingress and Egress from Bais Medrash onto Park Heights Avenue

The Board considered extensive testimony on the potential traffic impacts of the proposed rabbinical college, focusing on whether the site has safe and adequate ingress and egress on Park Heights Avenue. The road in this location is a two-lane facility with rolling terrain, narrow shoulders, vegetation along the frontage, and a vertical crest situated between the north and south driveways. These physical conditions limit sight distance and raise legitimate safety concerns.[16]

[16] The Board also considered the testimony of Brian Dietz, a licensed surveyor, who confirmed the topography of Park Heights Avenue, including the presence of the crest between the driveways. His survey data provided the base measurements for the engineers' analyses.

The Protestants' expert, Barbara Mosier, P.E., testified that both driveways were deficient in sight distance when measured against AASHTO standards. She recorded approximately 375 feet of visibility from the northern driveway looking left, where 480 feet was required, and 415–450 feet at the southern driveway looking right, which also fell short. Mosier emphasized that her measurements were taken in winter, when foliage was at a minimum, meaning that conditions during much of the year would provide even less visibility. She concluded that neither access was adequate for safe full movement operations.

Petitioners' expert, Mickey Cornelius, P.E., conducted a 24-hour speed study at the site using pneumatic tubes situated 500 feet north and south of the southern entrance. That study recorded 85th-percentile speeds of 39 mph northbound and 47 mph southbound. Using those observed speeds, Cornelius concluded that the southern driveway satisfied AASHTO requirements for intersection sight distance, while the northern driveway did not. He recommended restricting the northern entrance to inbound movements only and directing both inward and outbound movements to the southern entrance. Cornelius explained that this conclusion was tied to the actual access location and prevailing speeds, an approach he said was different than that used by Ms. Mosier. However, on cross-examination, it was revealed that Mr. Cornelius had written a memorandum for an earlier 2011 hearing regarding Rainbow Hall. In that memorandum, he had concluded that the southbound drive was **only** safe for vehicles leaving the subject property onto Park Heights Avenue. He acknowledged that there is more traffic on Park Heights Avenue now than there was when he submitted that memorandum. He stood by the accuracy of his earlier memorandum and offered no explanation to harmonize his earlier position with this present testimony.

On the record before it, the Board finds that both experts credibly demonstrated the physical limitations of Park Heights Avenue at this location. The Board credits Mr. Mosier's testimony as highlighting the deficiencies that exist when measured strictly against AASHTO tables. The Board also finds Mr. Cornelius's analysis, based on a full-day speed study conducted at the actual access point and his 2011 memorandum to be the more persuasive evidence on whether the southern driveway can function safely as limited to outbound traffic. The Board therefore concludes that safe operation of the site requires restricting the north driveway to ingress only and the south driveway to egress only. With this circulation pattern in place, the southern entrance provides adequate sight distance for departing traffic, while the northern entrance avoids the hazards of outbound movements across the crest.

Pursuant to BCZR § 502.1(a), an applicant must demonstrate that the use will be served by adequate access roads and that traffic will not create hazards or be detrimental to public safety. The Board finds that these requirements are satisfied but only with conditions imposed by the Board. By limiting the north driveway to ingress only and the south driveway to egress only, and in light of the minimal trip generation associated with a boarding student population where the students will not have vehicles, the Board concludes that the proposed use will not create adverse traffic conditions and will meet the standards of § 502.1(a).

IV. THE SPECIAL HEARING

The Petitioners have also filed a Petition for a Special Hearing. In that Petition they request confirmation that 45 parking spaces is sufficient to support Bais Medrash. The Petition also seeks to amend the previously approved site plan and relief in Case No. 2010-0280-SPH, specifically regarding continued use of the three pre-existing homes approved as non-conforming use, and if necessary to confirm that no new landscaping will be required for the conversion of

the existing improvements into the proposed rabbinical college use. There was no opposition to the relief requested by the Petition for Special Hearing, and accordingly, the Board grants the various requests.

CONCLUSION

As indicated above, this was a highly contested hearing, and it presented many complex issues for the Board. The Board views the Petitioners' proposed use for this institutional property is extremely modest, both in terms of traffic generated, number of people utilizing the property, and overall activities associated with it. The Board can well imagine uses at Rainbow Hall that would be much more intrusive on the neighboring community. At the same time, the Protestants provided cogent and convincing testimony that the site was inadequate even for the limited use that was being proposed. These conflicting opinions all occurred in the context of RLUIPA which commands that a local zoning entity, which includes this Board, must make every effort to accommodate the use of land by a religious entity. The question of septic capacity and the question of ingress and egress onto Park Heights Avenue are matters of public health and safety which the Board cannot ignore. Given the showing made by the Protestants, the Board cannot simply defer to presumptions in favor of special exceptions even in light of RLUIPA. The Board has attempted to balance all of these considerations and permit the proposed use but with narrowly crafted limitations which account for all of the competing interests. Accordingly, the Board grants the special exception and the Petition for Special Hearing with the conditions outlined in the attached Order.

ORDER

THEREFORE, it is this 19th day of February, 2026, by the Board of Appeals for Baltimore County hereby

ORDERED, that the Petition for Special Exception to permit a rabbinical college, known as Bais Medrash, with dormitories is **GRANTED with the following conditions**:

1. The number of boarding students is limited to 48;

2. If Bais Medrash wants to enlarge its student population, it must file a petition with the Zoning Office requesting approval for that expansion and adhere to all procedures associated with administrative hearings, including *de novo* appeal to this Board and judicial review;

3. If Bais Medrash wants to provide onsite food service and/or onsite laundry facilities, it can do so only with the permission of the appropriate Baltimore County authorities upon a showing that the septic system, water supply system, nitrate balance, and any other relevant considerations can accommodate those modifications;

4. Except in exceptional circumstances, no student at Bais Medrash will be permitted to have his own vehicle for transportation, and Bais Medrash may maintain two vehicles onsite for the use of students as needed;

5. The property shall not be used for any events that are not school functions, and any such events or functions shall conclude any activity outside of the school buildings by 10:00 p.m.;

6. Any outdoor events that use enhanced audio equipment shall be kept to a minimum, and no enhanced audio equipment can be used after 8:00 p.m.;

7. Petitioners must comply with all requirements of the Department of Environmental Protection and Sustainability (DEPS) and specifically all of the requirements listed in the memorandum dated February 12, 2024, from the Zoning Advisory Committee (ZAC), a copy of which is attached hereto and made a part hereof.

8. Ingress to the property is restricted to the north driveway only and egress is restricted to the south driveway only.

IT IS FURTHER ORDERED that the Petition for Special Hearing be **GRANTED as follows**:

(1) 45 parking spaces are sufficient to support the propose rabbinical college;

(2) the previously approved site plan and relief in Case No. 2010-0280-SPH, is amended specifically to allow the continued use of the three pre-existing homes approved as non-conforming uses; and

(3) no new landscaping will be required for the conversion of the existing improvements into the proposed rabbinical college use.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules.

BOARD OF APPEALS FOR BALTIMORE COUNTY

Sharonne R. Bonardi, Panel Chair

Joseph L. Evans

Bryan T. Pennington

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED
FEB 12 2024
OFFICE OF
ADMINISTRATIVE HEARINGS

TO: Hon. Maureen E. Murphy; Chief Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (DEPS) - Development Coordination

DATE: February 12, 2024

SUBJECT: DEPS Comment for Zoning Item # 2024-0029-SPHX
Address: 10725 – 10729 PARK HEIGHTS AVE
Legal Owner: Bais Medrash of Owings Mills, Inc.

Zoning Advisory Committee Meeting of February 12, 2024.

X The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

1. If a zoning variance is granted, Ground Water Management (GWM) requests that it be conditioned to include the following:
   a. The proposed renovations/change in use of the property will require submission of a water usage letter as per the DEPS, GWM Policy Manual (pages 9-11) prior to issuance of a building permit.
   b. An On-Site Disposal System (OSDS) Inspection Report must be completed by a licensed OSDS Inspector (see Form A-8 on the DEPS GWM Well and Septic Forms webpage) and submitted to this office.
   c. The water usage letter and OSDS Inspection Report must demonstrate that the existing septic system is functioning properly and has sufficient capacity for the current and projected future sewage flows to the system.

Additional Comments:

Reviewer: Rochelle V. Underwood

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