

**TOWN OF ELKTON
BOARD OF ZONING APPEALS
APRIL 17, 2008
MINUTES**

Present: Sharon Foster, Chair; Ronald Rae; Robert Olewine; Cindy Fetterolf;
Donald Williams, Brenda Sexton, Esquire, Attorney; J. Craig Trostle, Jr.,
Zoning Administrator

Absent: Cheryl Gee

Steno: Carol Beresh

Ms. Foster called the meeting to order at 7:00 p.m.

ACTION: Motion was made by Ms. Fetterolf to approve the minutes of the April 17, 2008 meeting. Motion was seconded by Mr. Rae and unanimously approved.

CASE # 1345 – REQUEST OF KAREN HENIGAN, 1197 E. PULASKI HIGHWAY, SUITES F & G, ELKTON, MARYLAND FOR A VARIANCE TO PERMIT ONE (1) ADDITIONAL WALL SIGN. THIS ACTION CONCERNS PROPERTY LOCATED AT 1197 E. PULASKI HIGHWAY, SUITES F & G, ELKTON, MARYLAND, TAX MAP 316, PARCEL 2336, ZONED C-2

Ms. Karen Henigan, owner of Hollywood Tans was sworn in and introduced to the Board. Ms. Foster asked if the Hollywood Tan franchise requires the signage she has placed. Ms. Henigan stated that they have two types of signs which are required, either channel letters or a shadow box sign. They require that the wording be together in the sign and in order to have better visual appeal she placed the logo sign on one side of the column and the letter on the other side of the column.

Ms. Foster asked if she was aware that the logo sign was not permitted. She stated that the owner assumed that he had been given permission to place 12 signs and therefore he told her she could place both. Ms. Foster asked if both signs could be placed on one side or the other and whether other franchises have two store fronts. She stated that she has seen other stores with the logo so she believes they must. Ms. Foster asked if she has ever seen the logo sign in the window of the store as opposed to the roof. Ms. Henigan stated that she has never seen a logo in the window of a store.

Ms. Fetterolf asked if the store can be entered from both doors. Ms. Henigan stated that it can be entered from either door.

Mr. Williams stated that the signage for Delancy Plaza was approved in January of 2007 and the Board's intention was to grant one sign per business as opposed to one sign per store front. He gave the example of Mattress Warehouse which has three store fronts but only one sign.

Mr. Rae asked if there was a wall between the two store fronts. Ms. Henigan stated that there is a column between the store fronts but no wall within the store itself.

Mr. Williams asked Mr. Trostle, the Building Official, whether the signs exceed the limit of allowable square footage for the shopping center. Mr. Trostle stated that they do not.

Mr. Williams asked if the Sun Cellular was one sign or a combination sign. Mr. Trostle stated that he believed it was one sign.

Mr. Foster asked if one of the doors for the store is used more than the other. Ms. Henigan stated that it depends upon where the clients park which door they use.

Ms. Foster entertained comments or questions from the audience. There were none.

MOTION: Motion was made by Mr. Rae to approve the sign. There was no second to the motion. Motion failed.

MOTION: Motion was made by Mr. Olewine to deny the additional wall sign. Motion was seconded by Ms. Fetterolf and unanimously approved.

CASE # 1346 – REQUEST OF POLLITT SIGNS, P.O. BOX 368, HAVRE DE GRACE, MARYLAND FOR THE FOLLOWING VARIANCES: 1) THREE (3) FOOT HEIGHT VARIANCE FOR A POLE SIGN; 2) TWENTY (20) FOOT FRONT SETBACK VARIANCE FOR PLACEMENT OF A POLE SIGN; 3) VARIANCE TO ALLOW TWO (2) ADDITIONAL WALL SIGNS. THIS ACTION CONCERNS PROPERTY LOCATED AT 98 CHESAPEAKE BOULEVARD, ELKTON, MARYLAND, TAX MAP 316, PARCEL 2439, ZONED C-2

Mr. Mark Tuttle of APD Engineering and Mr. Troy Faulkner, Director of Real Estate for Aldi were sworn in and introduced to the Board. Mr. Tuttle referred to the proposed variances as shown in the case information above. He pointed out the location of the signs on the provided site plan.

Ms. Foster asked if all the stores have the same signage. Mr. Tuttle stated that they do and in fact the corporate logo they are proposing on the store is the smallest logo sign available. The corporate logo is approximately 31 square feet. The 'food market' channel letters are 18" h x 15' in length which is 22.5 sf with a total of 53.2 sf for the double sided sign.

Mr. Tuttle stated that this site is difficult as far as signage due to the fact that the elevation will be below Route 40 like the adjacent Aberdeen Proving Ground Credit Union building. He stated that the building is approximately 9 feet below the Route 40 elevation. He noted that on Route 40 the travel is in both directions and the driver's focus is away from the building. He stated that signage is important for this site in order to maintain a viable site. It is also important for the motorists in order to identify Aldi in advance in order to maintain safety when making the turn onto Chesapeake Boulevard or from Route 40 when coming from Delaware. He stated that there is no access into Aldi from Route 40 except from Chesapeake Boulevard.

Ms. Foster asked if the parking lot will adjoin the Credit Union parking lot. Mr. Tuttle stated that the only access is through the private drive at the rear of the lot.

Mr. Tuttle stated that they are requesting a height of 25' for the pole sign. The parapet of the building is 22' 10" high so they are therefore requesting the height variance. This would place the sign approximately 7 feet higher than the building in order for it to be seen from the road.

Mr. Tuttle said the required 30' setback has issues due to the location of the underground storm water and a light pole. They are limited to where they can place the sign without blocking the existing sign for the Credit Union and still allowing its visibility from the road. They would prefer not to move the sign any further from the entrance. The proposed location of the edge of the sign is 10' from the right of way and therefore they are requesting a 20' setback variance.

Mr. Tuttle addressed the building signs, which are the smallest corporate logos available. He stated that the code allows 15 sf for each 10 linear feet of street frontage. The street frontage for their lot is 728.61 lf which allows 1,092 square feet of signage. They are requesting a total of 237 square feet of signage which they believe is reasonable.

Ms. Foster inquired about the bufferyards. Mr. Tuttle stated that there would be plantings within the bufferyards. He stated that the sign would be a few feet into the bufferyard due to the difficulty in placement.

Mr. Williams questioned the impact of their sign placement on the existing Credit Union signage. Mr. Tuttle stated that they have taken into consideration the location of the Credit Union sign and the placement of their sign will not obstruct the visibility of the existing sign at the Credit Union.

Mr. Williams asked where the sign might be located if they were to be denied by this Board. Mr. Tuttle stated that if the full 30' setback had to be met it would be very difficult to place the sign unless it was placed closer to the Credit Union sign and then it may interfere with the visibility of that sign.

Ms. Foster inquired about the stormwater pipe in relation to the proposed sign. Mr. Tuttle stated that the pipe was part of the site development plan.

Mr. Olewine inquired the minimum setback required to avoid this stormwater pipe. Mr. Tuttle stated that the stormwater pipe and underground electric line are in the same area but he was not sure the exact distance he would need to be from those lines but that they will be right up next to the electric line.

Mr. Rae inquired about sidewalk for the project. Mr. Tuttle pointed out where sidewalk will be placed all along the Route 40 property line which connects to the Credit Union site.

Mr. Trostle asked if the location of the pole sign is at the highest point on the lot. Mr. Tuttle stated that it is one of the highest points. Mr. Trostle asked how much height they would lose if they had to place the sign at the 30' setback. Mr. Tuttle stated that they would lose approximately 2.5 feet.

Mr. Trostle questioned how high taller will the sign be than the building. Mr. Tuttle stated that it would be approximately 7 feet above the building and they feel it would block the Credit Union Sign if it were moved lower.

Ms. Foster asked the height of the Credit Union sign. Mr. Trostle stated that he was unsure of the height but did not remember them coming in for a variance. Mr. Tuttle added that the Credit Union has a peaked roof and therefore this might be the reason since the building height is higher than the proposed Aldi building.

Ms. Foster entertained additional questions or comments regarding this project. There were none.

MOTION: Motion was made by Mr. Williams to approve the three foot height variance for the pole sign for Aldi. The motion was seconded by Mr. Rae and unanimously approved.

MOTION: Motion was made by Mr. Williams to approve the twenty (20) foot setback variance for placement of the pole sign at Aldi. The motion was seconded by Mr. Rae and unanimously approved.

MOTION: Motion was made by Mr. Olewine to approve two (2) additional wall signs for Aldi. The motion was seconded by Mr. Williams and unanimously approved.

CASE # 1347 – REQUEST OF GENE MACERATO, P.O. BOX 29, CHILDS, MARYLAND FOR A TEN (10) FOOT REAR SETBACK VARIANCE. OWNER PROPOSES TO INSTALL A DECK AT THE REAR OF THE DWELLING. THIS ACTION CONCERNS PROPERTY LOCATED AT 215 BLUE GRASS DRIVE, ELKTON, MARYLAND, TAX MAP 304, PARCEL 2422, ZONED R-3

Mr. Gene Macerato was sworn in and introduced to the Board. Mr. Macerato stated that they are requesting the 10' setback variance in order to place a deck 282 square feet with a 4' x 10' pergola at the rear of his home.

Mr. Williams asked whether they would be extending the landing closer to the townhouse next door. Mr. Macerato stated that the deck landing would not be attached to the neighboring property. Mr. Macerato stated that when you exit the house you will be on the lower level of the deck with the pergola to your right. Mr. Williams asked if it would be moved closer to the neighbor's house. Mr. Macerato stated that it would be moved over a few more feet. Mr. Macerato stated that it would look similar to the neighbor's.

Ms. Foster asked if there was only be two steps from the deck into the rear yard. Mr. Macerato stated that she was correct.

Ms. Fetterolf asked if the portion that extends beyond the house is within the side setback requirement. Mr. Macerato stated that it would.

Mr. Williams asked how tall the pergola would be. Mr. Macerato stated that it would be five feet tall.

Ms. Foster entertained any additional questions or comments for this project. There were none.

MOTION: Motion was made by Mr. Rae to approve the 10' rear setback variance provided the deck is constructed within one year of the date of the signed legal opinion. The motion was seconded by Mr. Williams and unanimously approved.

CASE # 1348 – REQUEST OF MEETING GROUND, P.O. BOX 1029, ELKTON, MARYLAND FOR A SPECIAL EXCEPTION TO PERMIT A PHILANTHROPIC USE IN THE C-1 ZONE. OWNER PROPOSES TO OPEN AN EMPOWERMENT CENTER. THIS ACTION CONCERNS PROPERTY LOCATED AT 401 NORTH STREET, ELKTON, MARYLAND, TAX MAP 310, PARCEL 981, ZONED C-1

CASE # 1349 – REQUEST OF MEETING GROUND, P.O. BOX 1029, ELKTON, MARYLAND FOR THE FOLLOWING VARIANCES: 1) REQUEST RELAXATION OF THE MINIMUM LOT SIZE BY 15,000 SQUARE FEET; 2) FRONT SETBACK VARIANCE OF 15' ON STOCKTON STREET; 3) FRONT SETBACK VARIANCE OF 1.7' AT NORTH STREET; 4) 12.5' SIDE YARD SETBACK VARIANCE AT NORTH BOUNDARY LINE. THIS ACTION CONCERNS PROPERTY LOCATED AT 410 NORTH STREET, ELKTON, MARYLAND, TAX MAP 310, PARCEL 981, ZONED C-1

Mr. Dennis Clower, Esquire and Rev. Carl Mazza of Meeting Ground were sworn in and introduced to the Board. Mr. Clower inquired concerning the information the Board had before them. Upon review of the items with the Board Mr. Clower seemed to be satisfied that the Board had the information he felt was necessary for the discussion of their case.

Mr. Clower asked if both cases should be reviewed at the same time or separately. It was determined that they would review both at the same time. Mr. Clower noted that the language in the variance section of the ordinance states that the written testimony should be provided as to why the request should be considered. Mr. Trostle stated that it was not a requirement and they were within the bounds of the ordinance the way they were presenting their case.

He stated that they did not expect or particularly wish to be before the Board at this time. He stated that they were required by the Court to exhaust all means necessary before the Town and therefore, albeit a strange position from their perspective, they are requesting a special exception under the philanthropic institution category of the ordinance.

Mr. Clower stated that the decision by the court has placed them in the position where they must request a special exception and the variances related to that special exception. He stated that he wished to review the criteria as to why they believe they meet the special exception criteria.

Mr. Clower went on to explain why they feel they meet the criteria for the special exception. He addressed Article IV, Section 6, Item 1. He stated that they did not feel this use will be in violation of item 1 which states 'That the establishment, maintenance, and operation of the special exception will not be detrimental to or endanger the public health, safety, convenience, morals, order or general welfare.' He stated that he believed that this proposed facility would actually have a positive effect rather than a detrimental effect by helping the effected group to be able to work through the situation they are currently in. Mr. Clower referred to the line of cases which started with Schultz vs. Pritts, regarding special exceptions. He stated that under that line

of cases a special exception is presumed to be compatible with the zone and that if any adverse effect may occur that is not grounds to deny the special exception unless the adverse effects are shown to be much greater at this location than they would generally within that zone. He stated that his understanding of this case is that they do not have to show that this is the best place but prove that it is not the worst place. He read a quote from Eastern Outdoor Advertising vs. Baltimore County which states "It is not whether a special exception or conditional use is compatible with permitted uses that is relevant in the administrative proceeding. The legislative body, by designating the special exception, has deemed it to be generally compatible with other uses. Moreover, it is not whether a use permitted by way of special exception will have adverse effects, adverse effects are implied in the first instance by making such conditional uses as special exceptions rather than permitted uses. It is whether the adverse effects in a particular location would be greater than the adverse effects ordinarily associated with that particular use by the agencies."

Item #2 states 'That the special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.'

Mr. Clower stated that the same argument as given in Item # 1 would hold for this comment as well. They do not feel it will be injurious and therefore it would not be more injurious at this location than at any other location in this zone. He stated that in order to deny the special exception the Board would have to find that it is more injurious at this location than throughout the zone.

Item # 3 states 'That the exterior architectural appeal and functional plan of any proposed structure will be so at variance with either the exterior architectural appeal and functional plan of the structures already construction or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.'

He stated that the architecture for this building fits perfectly in the surrounding area.

Item # 4 states 'That adequate utilities, water, sewer or septic system, access roads, storm drainage and/or other necessary public facilities and improvements shall be or are being provided.'

The building utilities are supplied by Town of Elkton.

Item # 5 states 'That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.'

He stated that the clientele for the proposed use would not create significant vehicular activity.

Item # 6 states 'That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the Town of Elkton.'

He stated that he believes this use falls within the Comprehensive Plan for the Town of Elkton. He noted that all the proposed activities requested are allowed as permitted uses in the zone. He added that, according to the Town Ordinance, the purpose of the C-1 district is as follows,

“...provide appropriate locations for select commercial activities. Provision is made for accommodation of a wide range of business pursuits, retail sales and office and service activities which serve the needs of citizens of the area. It is designed to preserve, and to encourage the continued development, as well as redevelopment, of the Central business area consistent with the unique land use mix which currently exists. It is intended for the conduct of general business to which the public requires direct and frequent access, but which is not characterized either by constant heavy trucking other than stocking and delivery of light retail goods, or by any nuisance factors other than associated by incidental light and noise of congregation of people and passenger vehicles. This district also provides for some residential uses.” He stated that he believes that this proposed use, by virtue of the fact that it is listed as a special exception, clearly fits within the Comprehensive Plan and the purposes of the C-1 zone.

Item # 7 states ‘That the special exception shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements established for the specific use.’

Mr. Clower stated that his response to this item is basically the same as the previous item.

Ms. Foster requested that the proposed uses for the Mary Randall Center be listed again for the record. Mr. Clower stated that Rev. Mazza would address them. Rev. Mazza recognized Mr. Clower and his support of their work over the years. He stated that he hopes that the Board recognizes their efforts are sincere and their motivation is not so much the religious as they are deeply committed to God and Jesus Christ. Meeting Ground is a church, they are incorporated as a church solely for religious purposes. They are recognized not only by the New Castle Presbytery but nationally as well. He stated that for the past 25 years they have tried to make a contribution to Cecil County and trust that their sincerity is recognized. He stated that they feel that God has led them to this location.

Rev. Mazza stated that, although they are filing a special exception for philanthropy, they are doing so in protest. He stated that they still feel they have strong grounds by right to use this property for the uses requested. They are applying for the special exception because they have been advised to do so by the Courts.

He stated that the delay since last August has hurt them both financially and as well as denying them the use of volunteers who could help them get the home in shape for the proposed use. He stated that they in good faith went for the C-1 zone because the zoning ordinance allowed homeless shelters and felt that operating a church it would not be a problem. He stated that in their articles of incorporation they have to define a principal place of worship and their intention is for that place to be moved from Clairvaux Farms in Earleville to 401 North Street in Elkton. He stated that they wish to have worship services as well as prayer meetings, bible studies, and Christian counseling. He stated that he is a Christian minister not a philanthropist. He noted that many churches in the Elkton area participate in the rotating shelter and this use would be done in conjunction with that ministry. They will be providing food, daytime showers as necessary and Christian counseling. He stated that these provisions are currently being practiced by other churches. He stated that they are not requesting overnight shelter at this time but may possibly in the future.

Ms. Foster asked how many churches in the area offer showers and meals each day. Rev. Mazza stated that if the Board feels there are uses they are proposing that are not permitted in this zone then they are willing to negotiate those uses. He said that he was not aware of any churches in the Elkton area currently offering showers and meals every day but he does know of churches in Wilmington which do offer them.

Ms. Foster asked whether there is a regular congregation at Clairvaux Farms. Rev. Mazza stated that they have had a strong community at that location for many years and they have held services there for the past 25 years. Ms. Foster asked if they would be moving that congregation. He said that they were not intending to move Clairvaux Farms but added that their corporate articles require that they name a principal place of worship and they wish to change that place to 401 North Street. He stated that it would be more convenient for their community to have their principal place of worship in Elkton. Mr. Williams noted that 401 North Street is much smaller than the location in Earleville and wondered how they would accommodate the number of people considering the other criteria which need to be addressed, such as parking issues, among other things. Mr. Williams stated that he is somewhat confused as to what they are because of their description of themselves and that he would address this issue later in the discussion.

Mr. Rae stated that he did not see this use as a church because they are considered a mission of the New Castle Presbytery. Rev. Mazza stated that he understands that they disagree regarding this subject. Mr. Clower referred to the zoning ordinance 'Permissible Uses Table' Section 5.200 which identifies 'Churches, synagogues, and temples (including associated residential structures for religious personnel and associated buildings) and noted that it does not limit this section to churches only. He stated that he did not think that they have gone back and reiterated all the proposed uses that exist on the website and in the 'Loaves & Fishes' regarding the Mary Randall Center. He added that in addition to the morning services (which Rev. Mazza listed earlier) there would also be workshops in the afternoon designed to help people with financial matters, education, workshops on physical matters, spiritual is always there as a primary focus, development skills and ownership.

Ms. Foster inquired as to the number of people to be serviced at the center. She stated that 75 was the number previously quoted and she wondered if the building would be able to handle that number of people. Rev. Mazza stated that they do not anticipate having 75 people at one time in the building but that the number included the volunteers and others who would be helping. Ms. Foster asked how many people they anticipate might be in the building for the afternoon sessions. He stated that they do not anticipate having 75 people unless there was a service that attracted that many people. Ms. Foster suggested that different numbers of people may be at the center at the same time but involved in different activities. He stated that the ideal class would be approximately 10 people. He did say that it may not be possible to place a limit on the number. Ms. Foster was concerned that during the cold months more people might take advantage of the building. She wondered what the maximum occupancy would be for the building. Rev. Mazza stated that they have been unable to determine that since they have been unable to received building permits. He stated that it is not their intention to overburden the building or the volunteers but when it is cold outside they consider it an emergency situation.

Mr. Olewine stated that he did not believe there was anyone in the room that did not feel that this work was needed but that his concern is that the use will be detrimental to neighboring properties if there are people standing out on the street waiting to get into the center. He stated that the

neighboring property owners should be able to enjoy their property and the use should not be detrimental to their normal way of life. Rev. Mazza stated that he hears what Mr. Olewine is saying but people will be standing out in the cold anyway and wondered how the Town will respond to address the needs of these people. His organization is trying to balance addressing the problem without overburdening the situation or causing a nuisance in the community. They do not want people gathered outside and that it would not happen. He stated that they want to do 'something', he understands that they can't do everything but they want to do well at what they are proposing. He stated that they have a history of doing well with their programs at both Clairvaux Farms and the Wayfarer's House.

Ms. Fetterolf stated that in order for the Board to approve the special exception they need to look at the hardship and she wondered if options for relocation have been considered. Rev. Mazza stated that when they researched the code they felt that the C-1 zone was the only zone that conformed to the uses they are proposing. These uses are not able to be combined in any residential zone. They looked at properties on Main Street and felt they would be less appropriate and less offensive. They chose 401 North due to its proximity to the services that the homeless would use such as the Armory, Hospital, low income housing, Health Department, Domestic Violence Office, and Community College.

Mr. Williams asked if their organization was approached in 2000 or 2001 by the Social Services Board regarding a HUD grant and offering to help them build a homeless shelter. Rev. Mazza stated that Meeting Ground was never approach regarding that issue. Mr. Williams stated that he must have the wrong information. Mr. Williams noted that they did build the Child Advocacy Center. Rev. Mazza said that he knew what Mr. Williams was talking about but it was the Men's Shelter that was approached. That was a different organization and the Meeting Ground took over that program last year. Mr. Williams mentioned that in the last six months the Elkton Alliance has formed an organization committee, headed by the Director of Social Services Nick Ricculti, and he stated that Meeting Ground is a member of that group. He stated that the sole purpose of that organization is to address the homeless issue and hopefully get it off the front pages. Rev. Mazza stated that he was not aware of that statement but he knew they intended to establish a homeless shelter/day center. Mr. Williams stated that a public comment had been made, several months ago, to that effect and it was brought to his attention that Rev. Mazza's organization had been uncooperative to the point that they are frustrating the committee. Mr. Williams read a quote from the Loaves & Fishes which stated "I can't fault government too much, especially local government, for wanting to reduce the grandeur and redemptive power of the Christian community to a physical place. Their decisions are often driven by self defining interests of property and money. The delay is costly and this should trouble local government because it is a poor use of voluntary community good will." Mr. Williams stated that with these two examples given he feels the community has tried to reach out to Rev. Mazza's organization. He felt that what he has written in the newsletter is not a true picture of what is being sent out to his supporters. He said he believes, but hopes it is not true, that it could be a control issue or a power struggle and if that is true a lot of people are losing out. Rev. Mazza responded that everything Mr. Williams has said is not true. Mr. Williams stated that he got these facts at several meetings which he attended and said that one of these two sources must not be truthful. He said he is putting that information out there because he feels the Town and community have tried to help. He said that this is not an issue that one organization can handle. Rev. Mazza reiterated that the statements are not true. He stated that he supports this initiative but that it is an initiative that is

in the future and unrelated to the current discussion. He stated that he has spoken with Mr. Ricciuti about Meeting Ground's strong support and cooperation in this initiative.

Ms. Fetterolf noted that Mr. Clower stated earlier that the setbacks were required due to the philanthropic use. She stated that she understood the setbacks are required regardless of the use. Mr. Trostle explained that there are more restrictive requirements for the particular uses in this section. Mr. Clower reiterated that when they looked at purchasing this property they felt the C-1 zone was the best fit for their use and the building met their needs.

Ms. Foster asked if the contract contained any contingencies. Mr. Clower stated that it was a straight up purchase with no contingencies.

Mr. Clower addressed the criteria of the variances which would be required for the philanthropic use at this location. He stated that the square footage of the lot is something that would be very rare to find in the C-1 zone in his examination. Mr. Clower addressed the subject of hardship and stated that the strict enforcement of the provisions would be a hardship because they would have to build another structure on that location. It would require add additional stories in order to stay within the required setbacks. He noted other institutions in the area which do not have the square footage and possibly the setbacks required for uses within this same category. He pointed out that this property is not unique if you look at other businesses in this area (ex. AP/AM Union, Red Cross, IOOF Rebecca, Wellness & Recovery, Youth Services Agency & Cecil Partnership for Children, Youth & Families. He noted that these have been allowed to exist in this zone, whether they have variances or not. He feels it is virtually impossible in the C-1 use which is presumed to be compatible due to the special exception status in the zone on this lot as well as most every other lot in the C-1 zone. He stated that the uniqueness of this hardship is that the proposed use is consistent with the zoning classification while the surrounding properties, which might also have difficulty meeting the restrictions of the special exception, are not attempting to be consistent with the zone. He said that greater profitability is not their motive. He summarized that the variances need to be granted in order for the presumed compatible use of philanthropic institution to be realistically placed anywhere in the C-1 zone. There may be a few buildings or parcels of land which could meet these restrictions. He stated that the need is urgent and that they believe this building can accommodate the needs.

Mr. Olewine inquired whether there was any conversation, prior to purchase of this building, with the Building Official to be sure that problems would not be encountered. Rev. Mazza stated that they had a group looking at zoning and they were comfortable with their choice. They needed to put the bid in quickly or not be able to get the building as there was another bid. In hind site, he said that they should have met with the Building Official. He stated that they are still not sure why they are having such problems. He stated that they would be willing to limit their use of the building if there were told they could not have specific activities at the site. He stated that they would like to get the building up to par structurally if they could get the permits in order to make the upgrades suggested by their structural engineer.

Mr. Clower introduced Mr. Udo Sommerhoff to address the structural needs of the building to bring it into conformance with what they are proposing to do. Mr. Sommerhoff stated that he is the Director of Operations for Meeting Ground and is in charge of maintenance and construction and was therefore involved in the whole process of getting the building ready for the proposed use. They spoke with Mr. Trostle about the building permit and were told that a structural

engineer was required to determine the soundness of the building. It was determined that two things were needed: They need to place two beams in the basement to boost the structure of the first floor and they need to lighten the floor with respect to load bearing needs. They need to supply ADA accommodations for access and restrooms. They have agreed to do any counseling in the large room on the first floor. The electric in the building has already been upgraded but the plumbing needs to be redone.

Ms. Foster asked if the third floor would be used. Mr. Sommerhoff stated that the third floor is cannot be used due to structural issues. It can be used for storage only.

Ms. Foster entertained comments in favor or in opposition of this application.

Mr. Dan Borowicz stated that he is representing and speaking for Pastor Bosmeny and the First Assembly of God church on Whitehall Road in Elkton. He stated that their church has been involved with the plight of the homeless by way of the Rotating Shelter for the past two years. Meeting Ground helped develop and manage this endeavor. He pointed out how the community has come together to address the issue of homelessness and have been challenged to try to do more. There are many volunteers in this effort who feel that a faith based community is better able to fulfill the needs of the homeless than a non-faith based organization. He added that their church is currently providing some of the same things (counseling, feeding the poor, financial support and providing transportation and showers) not unlike those proposed at the Mary Randall Center. He stated that the church is not the building but the people in it. Their 'Vision Casting' committee joined with Meeting Ground to seek a suitable location for their work in order to meet the needs they had determined should be addressed. They decided the center would need to be zoned C-1, in an area of the community they serve, have easy access to public transportation, in close proximity to the social services and organizations they are augmenting. He said that they strongly encourage the Board to clear the way for this building to become and operate as the Mary Randall Center.

Mr. Donald Hicks of Hicks Home for Funerals and Ms. Meghan Alegi, Esquire of Brown, Brown & Young attorneys were sworn in and introduced to the Board. Ms. Alegi stated that she is representing Mr. Hicks who is in opposition to both the special exception and variances being requested for this proposed use. Ms. Alegi noted that Mr. Hicks owns the property addressed as 103 West Stockton Street that is adjacent to 401 North Street. The side yard of Mr. Hick's property is adjacent to the rear yard of 410 North Street. They are requesting that the Board deny the special exception request for this application for a variety of reasons. She stated that the applicant has the burden of proving that they meet the conditions of the code for a special exception. By virtue of the fact that they are seeking variances from those code provisions is the first argument that they do not meet those code provisions. Article XII, Section 41 of the Town Ordinance outlines the three specific requirements which need to be met for a philanthropic use to be permitted by special exception. Those requirements are lot area, frontage and setback requirements. The variances being requested flies in the face of a special exception requests because on its face the application cannot meet the code requirements. She stated that not only are these code requirements not met but the general code provisions, previously outlined by Mr. Clower, regarding whether the use is detrimental to the public health, general welfare, etc. and whether the use is injurious to the use and enjoyment of property in proximity to the subject property. She went on to say that they do not believe this use meets the criteria and they do believe it will be injurious to Mr. Hicks' property. Legally the Schultz vs. Pritts standard is that if

the applicant meets its burden satisfying the code requirements they don't have to prove it is the best use but they do have to prove that it is not the worst use. They would argue that it is the worst use here than at other similar zoned C-1 properties.

Mr. Donald Hicks provided his home and business addresses. He stated that his business address, which he owns at 103 W. Stockton Street is adjacent to the subject property. He stated that this property has been in his family since the 1940's and has been providing funeral services to families since 1955. He became involved in the family business in 1970. Ms. Alegi stated that this is a unique business with regard to the hours of operation and is not a typical commercial use. Mr. Hicks stated that his business is very sensitive in nature and requires a quiet, serene setting due to the needs of the grieving families whom he serves.

Mr. Hicks stated that he is in opposition to this use due to the number of clientele who will be around the building in the daytime, not only walking clientele but also the additional workers and the parking issues that could arise in conflict with his business. He is asking that the Board deny the special exception requested.

Ms. Alegi stated that she believes this is a simple legal issue in that the conditions of the code need to be met in order for this type of use to be granted. The ordinance determines that these three criteria need to be met in order to approve the special exception and since they are unable to be met and along with the testimony of Mr. Hicks and the fact that this special exception would cause a detriment to the use on his property. One of the concerns earlier in the meeting was that there is no real way to control the number of clientele using this facility. This is a concern and it impacts her client's use of his property.

In response to the variance requests, she commented that the provisions of Article 5 of the Town Ordinance set forth the provisions for the Board to review in order to approve variance requests. One of these provisions states that if the applicant and property owner is forced to comply with the variances they can make no reasonable use of the property. She stated that there are a plethora of uses that can be made in the C-1 zone other than this request. An additional criterion is that the hardship cannot be self imposed. She argued that the only reason the variances are being requested is because they chose to request the special exception.

Ms. Fetterolf asked Mr. Hicks if he had any problems with this property when it was being used as a cabinet maker's shop. Mr. Hicks stated that there was only one employee there during the day and one during the evening.

Ms. Foster asked if Mr. Hicks has seen any individuals around his building. He stated that on several occasions they have opened the door to find someone sleeping on the front porch. He stated that although they are not using that building at this time the word has gotten out and people are becoming aware of the possible use at this location and it is attracting people to the area. Ms. Foster asked if he has seen people around the building. Mr. Hicks stated that he has seen people around that building.

Mr. Robert Faul, Spring Hill Lane in Elkton, stated that for 25 years he was a State Trooper and 8 years as a Fair Hill Natural Resources officer. He stated that all he has heard this evening is fears of hypothetical situations and he feels that fear cannot be an issue in determining the outcome of this case. In the past 8 months he has been involved with Meeting Ground and the Rotating

Shelter. He has a great deal of respect for Mr. Hicks and his social spirit cannot be denied. He pointed out that Mr. Hicks deals with the dead and Rev. Mazza deals with the living. He wishes to state that he is in favor of the Board approving this request.

Ms. Foster read the Planning Commission recommendation which stated that they recommend denial of the request for the following reasons:

1. Article IV, Part II, Section 6.2 of the Elkton Zoning Ordinance states “That the special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.” The Elkton Planning Commission has determined that the property located at 401 North Street was constructed as a single-family dwelling, and is adjacent to a neighboring single-family dwelling and a funeral home.

The Planning Commission finds that the applicant did not provide evidence of their ability to control the number of persons that would congregate or assemble at any one time to receive or participate in the large variety of services offered, such as meals, bathroom facilities, showers, laundry, counseling, telephone and computers, transportation and religious services.

Therefore, the Elkton Planning Commission finds that the proposed use will be injurious to the use and enjoyment of other properties in the immediate vicinity for the purposes already permitted, and will substantially diminish and impair property values within the neighborhood.

2. Article IV, Part II, Section 6.7 of the Elkton Zoning Ordinance states, “That the special exception shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements established for the specific use.” The three (3) special requirements are found in Article XII, Section 41 of the Elkton Zoning Ordinance. They are:
 - a. Total area: 25,000 square feet minimum. The site is 10,498 square feet and the Planning Commission felt the size of the site was not sufficient to support the proposed use.
 - b. Frontage: 150 feet minimum. The site does not have the minimum frontage.
 - c. Setback: 25 feet from all property lines. The existing structure is not 25 feet from any property lines.

Ms. Foster entertained any additional comments regarding this submission. There were none.

MOTION: Motion was made by Mr. Williams to deny the special exception based upon the recommendations of the Planning Commission as read and Article IV, Part II Section 6. 1, which states “That the establishment, maintenance and operation of the special exception will not be detrimental to or endanger the public health, safety, convenience, morals, order or general welfare.” The motion was seconded by Mr. Rae and unanimously approved.

OLD BUSINESS. – It was noted that the U-Haul Business, approved for a special exception, has been violating the requirements of that special exception almost from the first day. Their vehicles are located in areas prohibited by the specifics of the special exception approved by the Board of Zoning Appeals. It was determined that they would be sent a letter to appear before the BZA at the June 2008 meeting.

There was discussion regarding the removal of steps at 703 Graymount Circle. It was determined that the steps have been removed and they are now in compliance with the Board's decision regarding that case.

NEW BUSINESS. – None

There being no further business to discuss Ms. Foster adjourned the meeting at 9:37 p.m.

Respectfully submitted,

Brenda Humphreys