BOARD OF APPEALS CASE NO. 5211	*	**BEFORE THE**
APPLICANTS: Church of Christ and Awakening Child Montessori	*	**ZONING HEARING EXAMINER**
REQUEST: Amend Board of Appeals Case No. 5118 to increase student enrollment to 52 students per session; 2529 Conowingo Road, Bel Air	*	**OF HARFORD COUNTY**
	*	**Hearing Advertised**
	*	**Aegis: 6/12/02 & 6/19/02**
HEARING DATE: July 31, 2002		**Record: 6/14/02 & 6/21/02**
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ZONING HEARING EXAMINER'S DECISION

The Applicant, Church of Christ of Bel Air and Co-Applicant, Gaye Novak, are requesting an amendment of Condition No. 2 of Board of Appeals Case No. 5118, to increase the number of students at a school located on the parcel from the allowed twenty-six (26) to fifty-two (52). The Applicant and Co-Applicant were granted approval for a special exception pursuant to Code Section 267-53C(7)(c) to operate a kindergarten and school in an AG/Agricultural District.

The subject property is located at 2529 Conowingo Road, Bel Air, Maryland 21015 and is more particularly identified on Tax Map 34, Grid 2D, Parcel 331. The parcel consists of 3± acres, is zoned AG/Agricultural and is entirely within the Third Election District.

Case No. 5118 was originally before the Hearing Examiner on March 19, 2001. The Applicant was granted a Special Exception pursuant to Section 267-53C(7) of the Harford County Code, to allow a kindergarten and school in the AG/Agricultural District. The testimony of the Applicant during the March 19, 2001 hearing was that only 26 students would be enrolled in the school. As a condition of approval, the Hearing Examiner imposed Condition No. 2 that limited the number of students to 26 pursuant to the Applicant's testimony. That decision became final on May 16, 2001. Thereafter, the Applicant filed Case No. 5211 seeking to modify the Hearing Examiner's decision to allow 52 students instead of 26 students originally allowed. The case came before the Hearing Examiner on February 25, 2002.

Case No. 5211– Church of Christ/Awakening Child Montessori

In a written decision dated March 20, 2002, the Hearing Examiner denied the Applicant's request to modify the conditions of approval of the earlier special exception citing two reasons for the denial. First, the Department of Public Works could not support the request for modification that would allow twice as many students as originally allowed because percolation tests had not been conducted. Secondly, there was great concern voiced by opponents during the taking of testimony regarding well water depletion and water usage associated with an increased student enrollment. Subsequently, the decision of the Hearing Examiner was appealed to the County Council, sitting as the Board of Appeals. The Applicant's appeal was heard by the Board and, in a written decision dated June 4, 2002, the Board voted 7-0 to remand this case to the Hearing Examiner for additional testimony.

The hearing on remand came before the Hearing Examiner on July 31, 2002. Ms. Gaye Novak, operator of the Montessori School at the subject location testified that several things have occurred since the first hearing in this case which were not in evidence that she believed need to be considered as part of her request to expand the number of students from 26 to 52. The witness identified a letter (Applicant's Remand Ex. 1) dated April 30, 2002 from the Harford County Health Department that indicated the Health Department's conditional support for an expansion to 52 students at the school. The letter indicates that percolation tests were performed and that certain upgrades to the septic system need to be made in order to allow the expansion to 52 students. The letter requires, however, that these upgrades be completed before enrollment expands. The Applicant also produced a well water permit issued by the State Department of the Environment (Applicant's Remand Exhibit No. 2) which grants water usage to the church and school at a rate of 300 gallons per day on an annual basis and 500 gallons per day during peak usage months. The permit was supported by an affidavit signed by Mark T. Filar, Chief of the Water Appropriation Permits Section, Water Rights Division, Maryland Department of the Environment. That affidavit indicates that, based on current estimates, the church usage and school usage combined would not exceed the permitted levels of water usage specified in the permit. (Applicant's Remand Exhibit 2)

Mrs. Edna Goldberg appeared as an opponent in this case. Upon cross-examination of Ms. Novak, Mrs. Goldberg produced another letter from the Department of Health dated April 8, 2002. This letter is almost identical in wording to the Department's April 30 letter with the exception of the following paragraph:

> **"One other issue that needs to be addressed is the amendment of your Groundwater Appropriation Permit (GAP). Your current permit (HA79G011) needs to reflect both the church usage and the school usage, *which totals approximately 1,200 gallons a day*. You should submit the GAP application through Mr. Gary Browning of this office." (emphasis added by Hearing Examiner)**

There was no testimony produced by the Applicant that reconciled the significant differences between the State permit allowance of 300 gallons/day (500 gallon/day maximum) and the County's 1200 gallon per day estimated usage. Since one of the primary concerns of the opposition was and continues to be water usage that may deplete well water availability in the surrounding community, it is somewhat surprising that the Applicant made no attempt to reconcile this glaring and significant discrepancy. It is also of significance that the Applicant did not bring this letter to the attention of the Hearing Examiner and this important piece of evidence was produced by the opposition.

It is certainly possible that the current permit includes water usage parameters that are completely adequate for the proposed use. It is equally possible that the permit usage is wholly inadequate based on estimates of usage by the Harford County Department of Public Works. Without competent evidence to explain the discrepancy, however, the Hearing Examiner is left with little or no basis to form a conclusion in the matter. Based on the Rules of Procedure in zoning cases, the decision of the Hearing Examiner must be based on evidence produced at the hearing and made part of the record of the case. It is equally clear to the Examiner, however, that other agencies of the County and State are ultimately responsible for determining whether water usage is permitted or not by this particular use.

Therefore, in the interests of judicial economy and to avoid further delays in making a final determination in this case, the Hearing Examiner recommends approval of the modification of Condition No. 2 of Board of Appeals Case No. 5118, to allow the number of students to be increased from 26 to 52, subject to the following conditions:

1. **The Applicant shall obtain from the Department of Health, an explanation satisfactory to the Department of Planning and Zoning that well water usage of this facility, accounting for church and school usage will not, based on county estimates, exceed the levels of usage permitted pursuant to the State issued permit introduced in evidence in this case as Applicant's Remand Exhibit #2 – Permit #HA1979G011(03).**
2. **The Applicant shall make the necessary upgrades to the septic system as required by the Department of Health. Satisfactory evidence of the completion and approval of these upgrades shall be submitted to the Department of Planning and Zoning.**
3. **The Applicant shall not increase enrollment beyond 26 students until the Applicant has demonstrated compliance with Condition 1 and 2 above as determined by the Department of Planning and Zoning.**
4. **Increase in enrollment shall be limited to 52 students.**
5. **After enrollment exceeds 26 students, the Applicant shall provide for monitoring of actual well water usage for a period beginning on the date student enrollment exceeds 26 students and continuing until six months after student enrollment first reaches 50 students. The Applicant shall submit those results to the Department of Planning and Zoning on a quarterly basis once monitoring begins. If those results indicate well water usages exceeding the permitted levels, the Applicant shall promptly apply for and obtain any water usage permits necessary to continue operations.**

6. **This Special Exception use is for the Applicant named herein exclusively and may not be transferred to any other party.**
7. **That the Applicant obtain any and all necessary permits and inspections.**

Date AUGUST 13, 2002

William F. Casey
Zoning Hearing Examiner