



# Board of Appeals of Baltimore County

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September 15, 2016

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RE: In the Matter of: *Boone Kondylas, LLC*  
Case No.: 16-003-SPH

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Krysundra "Sunny" Cannington  
Administrator

KLC/tam  
Enclosure  
Multiple Original Cover Letters

c: Kenneth Boone/Boone Kondylas, LLC  
Lawrence M. Stahl, Managing Administrative Law Judge  
Andrea Van Arsdale, Director/Department of Planning  
Arnold Jablon, Deputy Administrative Officer, and Director/PAI  
Nancy C. West, Assistant County Attorney/Office of Law  
Michael E. Field, County Attorney/Office of Law

Charles Wolinski  
Brad and Bonnie Metheny  
Matt Ciarpella  
Tammy Waldmann

IN THE MATTER OF  
BOONE KONDYLAS, LLC - Petitioner  
9025 Cuckold Point Road  
Sparrow's Point, MD 21219

RE: Petition for Special Hearing to amend previous  
restrictions imposed in Cases 07-144-SPH,  
CBA 06-044 and CBA 07-134 so as to permit  
future use of the property as a restaurant with limited  
accessory music

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\*  
\* Case No. 16-003-SPH

\* \* \* \* \*

### OPINION

This case comes to the Board on appeal of the final decision of the Administrative Law Judge (the "ALJ") in which the ALJ denied a Petition for Special Hearing to amend previous restrictions imposed in Cases 07-144-SPH, CBA 06-044 and CBA 07-134 so as to permit future use of the property as a restaurant with limited accessory music.

A public hearing was held *de novo* on February 17, 2016 and April 28, 2016. The Petitioner, Boone Kondylas, LLC (the "Petitioner") was represented by Lawrence E. Schmidt, Esquire of Smith, Gildea and Schmidt, L.L.C. The Protestants, Charles Wolinski, Brad and Bonnie Metheny, Matt Ciarpella and Tammy Waldmann (collectively, the "Protestants") were represented by Francis X. Borgerding, Esquire. People's Counsel also participated in the hearing. A public deliberation was held on June 14, 2016.

### Factual Background

The subject property is water front property located in the Millers' Island community of eastern Baltimore County (the "Property"). The Property is 1.27 acres +/- and is zoned B.L. (business-local). That zoning designation allows for restaurants to operate by right. The business located on the Property is a restaurant with associated parking known as "The Dock of the Bay" (the "Restaurant"). The Restaurant is open seven (7) days a week and has a total seating capacity of approximately 225 persons (125 persons inside and 100 persons outside). The Property is also

improved with boat slips for patrons to dock their boats and access the Restaurant via the Chesapeake Bay. A restaurant has been operating on the Property since the 1950s and was originally known as the “Fisherman’s Inn.”

In or about 2004, the Restaurant came under the ownership of Fifth Street, LLC and its member, Lawrence Thanner (“Mr. Thanner”). During Mr. Thanner’s operation, music was played inside and outside the Restaurant as well as on a barge in the water. This caused some of the Protestants in this case to file code enforcement actions beginning in April of 2006. After numerous citations were issued, on August 23, 2006, Mr. Thanner’s Restaurant was found to be in violation for operating a “nightclub.”

Mr. Thanner filed a Petition for Special Hearing to request a determination that the Restaurant with its associated live music did not constitute a ‘nightclub.’ In our June 4, 2008 Opinion, this Board held that Mr. Thanner’s operation of the Restaurant along with music played met the definition of “nightclub” in §101 of the Baltimore County Zoning Regulations (“BCZR”). We also affirmed the code violations. Because a ‘nightclub’ was not permitted in a BL zone, this Board ruled that “the playing of music by way of speaker system, live or recorded entertainment must be discontinued.” (Board Opinion 6/4/08, p. 14). Both the Circuit Court for Baltimore County and the Court of Special Appeals affirmed our decision. On July 9, 2010, in an unreported opinion, the Court of Special Appeals held that the record supported a finding that Mr. Thanner’s operation was both a restaurant and a nightclub. Thereafter, the Restaurant closed.

In or about August of 2014, the Petitioner purchased the Property. In or about October of 2014, the Petitioner reopened the Restaurant under the previous name – Dock of the Bay. At the hearing, Kenneth Boone, owner of Boone Kondylas, LLC, the Petitioner, testified before this Board that his ownership and operation of the Restaurant is one of three businesses he owns. The Restaurant has both a business license and a liquor license. The food menu varies from seafood to sandwiches, hamburgers and pasta.

The Petitioner described the minimal improvements that have been made to the Restaurant since August of 2014. These have included pouring a concrete pad where the customers can eat steamed crabs, expanding the kitchen, and removing the outside stage installed by Mr. Thanner where the musicians formerly played.

In April of 2015, the Petitioner hired Mark Allen, a guitar player, to perform at the Restaurant. Mr. Allen was also a regular performer at the Restaurant during the period that Mr. Thanner owned it. When signs advertising Mr. Allen's performance were put up at the Restaurant, a Baltimore County inspector instructed the Petitioner that the Restaurant would be closed down if music was permitted to play.

Mr. Boone mentioned that 'Row Boat Willie's', a restaurant located next to the Property is permitted to have live music. Row Boat Willie's is located in a BM (Business-major) zone which permits 'nightclubs' to operate. The Petitioner is competing with 8 other restaurants, including the 'The New White Swan' located at 8821 Millers Island Blvd. and 'The Islander' located at 9008 Cuckold Point Rd., on or near the waterfront and all of them have some type of live music. Mr. Boone was certain that the Restaurant would not be able to survive financially without live music.

While not excluding any specific age of customers, the plan is to hire musical performers who cater to a 50 year-old audience, who want to hear music while enjoying lunch or dinner. The Petitioner does not want to cater to a younger crowd as he anticipated the potential problems that might arise with a younger audience. In the summer months, boaters from all over Baltimore County patronize the Restaurant. The types of musical acts envisioned by the Petitioner would range from solo acoustic or electric guitar players to Frank Sinatra and Oompa bands.

The proposed hours for the musical groups would be Friday and Saturday nights from 6:00 p.m. to 10:00 p.m., with the last call at midnight, in hopes that the customers might leave by 12:30

a.m. On Sundays, in the summer, music would be played outdoors from 5:00 p.m. to 8:30 p.m. Also, there would not be a dance floor or stage area.

The Petitioner is amenable to a decibel level restriction for the sound stemming from the music. However, Mr. Boone has not personally operated any type of device to monitor decibel levels at the Restaurant.

On cross examination, the Petitioner conceded that the Restaurant hours of operation are in fact stated on the website. The hours of operation stated in the website are Monday to Thursday 11:00 a.m. to 11:00 p.m.; Friday and Saturday 11:00 a.m. to 1:00 a.m.; and Sunday from 9:00 a.m. to 8:00 p.m. Mr. Boone then changed his testimony on the time period during which musical acts would perform and indicated that the music would end at Friday and Saturday nights at 11:00 p.m. on Sundays at 7:00 p.m.; and, at dusk for outdoor performances in the summer months which would end as late as 9:00 p.m.

The Petitioner acknowledged that it did not want to be restricted to certain types of music but would entertain other types of music such as jazz quartet bands or Reggae bands. The Petitioner was uncertain about normal sound levels or how the proposed music might be regulated.

In support of the Petitioner's proposed business, several Miller's Island residents testified. Cheryl Gowers of 2812 Bay Drive has lived at that address since 1993. At the previous hearing, Ms. Gowers testified against Mr. Thanner's operation. She was familiar with the problems that resulted from Mr. Thanner's operation of the business which, she said permitted very loud music including heavy metal music and played until midnight or 1:00 a.m. on most weekends. Presently, Ms. Gowers works as a waitress in the Restaurant for the Petitioner. Having worked at both The New White Swan and The Islander, she corroborated that live music is played at those establishments.

Russell McClelland, 9011 Miller's Island Blvd. testified that he lives 400 yds. from the Property. Mr. McClelland was familiar with the complaints from neighbors and the level of sound

coming from Mr. Thanner's restaurant. He described music at Mr. Thanner's restaurant as being played from speakers mounted to a stage outside the Restaurant. The music was amplified over the water and would occur all days of the week until midnight. He recalled that Reggae music was played.

Mr. McClelland is in support of the Petitioner's request here because he believes, like Ms Gowers, that Mr. Boone will not permit the type of problems associated with Mr. Thanner's operation. Mr. McClelland works for the Petitioner by cutting the grass and policing both the parking lots and boat slips. If this request is granted, he is willing to monitor the sound level.

Charles Boland and Jerri Boland, his wife, 2414 Eugene Avenue, Edgemere, MD live 1 ½ miles from the Restaurant. Mr. Boland is a retired Baltimore County police officer whose son is employed by the Petitioner. Mr. Boland frequents the Restaurant 4-5 times per week and testified that the Petitioner's operation is family-oriented. The Bolands have no objection to live music at the Restaurant.

Dorothy Reilly, 2809 3<sup>rd</sup> Street, Miller's Island, is located 2 blocks from the Restaurant. Ms. Reilly has observed loud music coming from The White Swann and The Islander. She reiterated that the Petitioner's restaurant is family oriented. She does not like loud music but would like to hear softer music while there.

In the Protestants' case in chief, Charles Wolinski, 9019 Cockhold Point Rd. testified that his home is adjacent to the Restaurant. Mr. Wolinski is a high school biology teacher at Sparrow's Point High School. He can see the Restaurant from his house. He has 4 children, ranging in age from 13 yrs. to 3 yrs. Mr. Wolinski described his family's life through the Thanner years as living through a "nightmare." He specifically described the problems with the loud music both indoor and outdoor which occurred every weekend. Disorderly patrons were loud while the music was playing and, after the music ended, the clapping and screaming was just as bad as the music itself.

These patrons would then spillover into the parking lot and would continue with loud, disruptive behavior.

Because of the loud noises made by patrons and the loud music, he can never open the windows in his home in the summer or winter. All the noise from the music and the patrons could still be heard inside the home; even in the shower with the fan running. This situation disrupted his family's sleep and the enjoyment of their home. Due to the configuration of the Restaurant's door leading to the outside, even the music played indoors by a live band can be heard in his home and it is disruptive. He explained that each time the outside door would open, the music and noise from inside the Restaurant would project outdoors. He further stated that the parking would overflow into the neighborhood streets. He described one incident where a Restaurant patron, who was blocked in by another car on the parking lot, drove across Mr. Wolinski's lawn in order to exit the parking lot. That incident forced Mr. Wolinski to incur the cost of erecting a fence. Mr. Wolinski was clear that Mr. Thanner never controlled the crowds that came with playing music at the Restaurant.

Mr. Wolinski is also familiar with Mr. Boone's operation of the Restaurant and explained that the physical layout of the Restaurant has not changed. He is very concerned that the same problems will reoccur whether the music is played inside or outdoors. Mark Allen is the same performer hired by Mr. Thanner. Mr. Allen's guitar is connected to an amplifier which Mr. Wolinski described as so loud that Mr. Allen was no longer permitted to play at Rowboat Willie's. Mr. Wolinski recalled that Mr. Thanner also hired steel drum bands. In his experience and from personal observation, the music from Rowboat Willie's does not impact him or his family. He indicated that The Islander only has karaoke music inside.

Mr. Wolinski stated that the litigation against Mr. Thanner's operation lasted seven (7) years through the various appeals in the Court system and that he and the other Protestants paid

substantial attorney's fees. Toward that end, he was surprised that the new owner could make the identical request for music when that request was previously denied in the various appeals.

Also testifying for the Protestants was Matthew Ciarpella, 2116 6<sup>th</sup> Street, Miller's Island where he has resided for 11 years. Mr. Ciarpella experienced first-hand Mr. Thanner's operation of the Restaurant and also endured seven (7) years of litigation. He opposes outdoor music at the Restaurant due the proximity of the Restaurant to his house. As such, even if the proposed music ends at 7:00 p.m., rather than 9:00 p.m., it would still be intrusive. His house, similar to others in the neighborhood is built on elevated foundations such that the sound travels upward. When wind blows from the north over the water, the sound travels. He could hear the music and loud patrons while inside his house with the windows closed. Each time the outside door opened, bursts of sound would travel. This problem occurred even with a 6' privacy fence and a wall of Leland Cypress trees.

Mr. Ciarella is convinced that the type of music will not be limited to acoustic or Reggae. He insists that the Petitioner will not repeatedly hire the same musical acts because, economically, the Restaurant will profit from hiring a variety of bands. Moreover, the more popular the band, the more revenue will be generated. Karaoke would not be a better option because a microphone will still be used. He is familiar with Mark Allen's guitar which is connected to an electric amplifier and/or microphone whether he is playing classic rock, 'oldies music' or Reggae.

Mr. Ciarpella added that when the popular rendition of a song was played, he would hear cheering, clapping and hooting for the music to continue. In contrast, this additional noise from cheering and clapping does not occur when a song is being played on a radio. At The Islander, he said that there is a DJ inside and that he cannot hear that from his house.

Mr. Ciarpella was familiar with the layout of Row Boat Willie's as he was involved with constructing the sound proofing of the pavilion where the live music plays. The pavilion consists

of a 32x30 square shape and is opened on north side. The pavilion also has table seating and an elevated deck.

In his view, the proposal presented here is the same one that was previously rejected by this Board and by the courts. He testified that there will be no regulation of decibel levels. During the Thanner years, the neighbors regulated the music levels by filing complaints with Code Enforcement. What he learned through the Thanner litigation is that there is no regulation of noise levels by Baltimore County; rather any nuisance is complaint driven. This puts a burden on the Protestants to seek enforcement against the Restaurant.

He further testified that along with bands comes the followers which he described as a 'different type of crowd' than would normally be expected with music that accompanies dinner. He also stated that the amount of traffic not only increased with the live music but the followers of those bands did not drive civilly.

Mr. Ciarpella anticipates that, if the Petitioner's request is granted, he and his neighbors will endure more litigation monitoring the Petitioner and again when the Restaurant is subsequently sold. Any live music played at this restaurant will negatively affect his property values.

Brad Metheny, 2704 6<sup>th</sup> Street, Miller's Island, testified that he too lived through the Thanner era. He recalled that the bands would play on Friday and Saturday nights until 1:30 a.m. He also heard all the music and noise while inside his house with the doors and windows closed, with the air conditioning running and the TV playing. He approximated that his home is located 180' from the Restaurant.

Mr. Metheny described the instant hearing as being the same that he heard when Mr. Thanner and his employees previously testified. Granting this request would open the door to the same problems he endured for the last 7 years. Since outside the Restaurant can accommodate 150 people, if outdoor music is combined with alcohol consumption by patrons and boaters who

dock outside the Restaurant, the situation becomes problematic. He does not want to suffer through the same ‘constant battle and disruption.’ Indeed, Mr. Metheny’s son and his family were living at 2712 6<sup>th</sup> Street which Mr. Metheny also owns. Due to the noise problems, his son was forced to move with his 4 year old granddaughter to Bel Air.

Mr. Metheny’s mother-in-law previously owned The Fisherman’s Inn in the 1940s and 1950s. Mr. Metheny recalled that when the Restaurant was The Fisherman’s Inn there were outdoor dining tables without any problems.

Following Mr. Metheny’s testimony was his wife, Bonnie Metheny as well as a neighbor Wayne Waldmann of 9014 Cuckhold Point Road. Both of those neighbors also opposed any type of music at the Restaurant.

### **Decision**

The Petitioner is before the Board requesting that the restriction against playing live or recorded entertainment be amended so as to permit live music at the Restaurant. In short, the Petitioner asks this Board to believe that the same problems will not result if live music is now permitted.

In our decision of June 4, 2008, which decision was affirmed by both the Circuit Court and the Court of Special Appeals, we made many findings of fact. We incorporate that Opinion in its entirety herein. We also refer to the facts and holding as set forth in the Court of Special Appeals Opinion dated July 9, 2010.

Specifically, we previously found that the Restaurant could seat 150-160 patrons inside. Outside of the Restaurant was a patio, two television sets, along with an outside bar, and tables for patrons to use. There were also outside speakers connected to a radio which played music both inside and outside. The Restaurant had 14 boat slips for “transient” boat customers.

The Restaurant opened every day from 11:00 a.m. and closed at 2:00 a.m. In the winter, the Restaurant closed early as customers left. The kitchen closed at 11:00 p.m. but the bar stayed

open until 2:00 a.m. as permitted by the liquor license. The food menu was seafood, steaks and sandwiches. We also found that 70% of sales were from food and 30% were in beverages.

On Friday and Saturday nights, we found that live bands played from 9:00 p.m. to 1:00 a.m. We also found that on Saturday and Sunday afternoons, live music played from 4:00 p.m. to 8:00 p.m. (with the caveat that the music stopped after 8:00 because of the code violation complaints).

The type of music were “mostly duos” or “steel bands.” There was no charge for live entertainment and the Restaurant stayed open until 2:00 a.m. when live music was played. We also heard testimony that the Restaurant would close without live music being available. In that case, we also heard the testimony against the live music from Matthew Ciarpella, Charles Wolinski, Brad and Bonnie Metheny and Patricia Waldmann.

In *Seminary Galleria v. Dulaney Valley Improvement Ass’n*, 192 Md. App. 719, 995 A.2d 1068 (2010), the Court of Special Appeals held that “a judgment on the merits in a previous suit between the same parties or their privies precludes a second suit predicated upon the same cause of action.” The Court in *Seminary Galleria* confirmed that this Board need not even hear the facts before determining whether the doctrine of *res judicata* applies. *Id* at 995 A.2d 1070. The Court also stated that *res judicata* is applicable to administrative proceedings. *Id.* at 995 A.2d 1078.

Citing *Batson v. Shiflett*, 325 Md. 684, 701 (1992), the Court in *Seminary* said that the test for determining whether an administrative agency’s ruling is entitled to preclusive effect is as follows:

Whether an administrative agency’s declaration should be given preclusive effect hinges on three factors: (1) whether the agency was acting in a judicial capacity; (2) whether the issue presented to the reviewing court was actually litigated before the agency; and (3) whether its resolution was necessary to the agency’s decision.

*Id.* at 995 A.2d 1078.

This Board's Opinion of June 4, 2008 meets this test. (1) The Board was acting in a judicial capacity by conducting a hearing on the Petition for Special Hearing, where evidence was presented, and rulings were made on disputed factual and legal issues; (2) The issue of whether music should be permitted at this location was actually litigated; and (3) the Board's Opinion of June 4, 2008 was necessary for a resolution of the issue.

Under *Deleon v. Slear*, 328 Md. 569 (1992), the Court of Appeals made clear that in determining whether claims are the same for the purposes of *res judicata*, the Court has in the past applied "same evidence test." However, the *Deleon* Court acknowledged that the concept of "claim" is broad and that "claim" is defined as a "group or aggregate of operative facts giving ground or occasion for judicial action, as distinguished from the narrow concept of a 'cause of action.'" *Id.* at 589. The *Deleon* Court, citing *Kent County Bd. of Educ. v. Bilbrough*, 309 Md. 487, 525 A.2d 232 (1987), emphasized that the most recent test for determining when two claims or causes of action are the same for purposes of *res judicata* is the "transaction" test as set forth in §24 of the Restatement (Second) of Judgments.

The Court of Appeals in *Bilbrough*, recited the transaction test as follows:

The present trend is to see [a] claim in factual terms and to make it coterminous with the transaction regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff; regardless of the number of primary rights that may have been invaded; and regardless of the variations in the evidence needed to support the theories or rights. The transaction is the basis of the litigative unit or entity which may not be split.

*Id.* at 497-498; *Deleon* at 589.

Specifically, with respect to whether the claims are the same, the *Deleon* Court reviewed the facts to see whether they "are related in time, space, origin or motivation." *Id.* at 591. As applied to the instant case, the same parties, or their privy, are involved here as were involved in the Thanner litigation which led to our June 4, 2008 Opinion. We further find that, the same piece

of property has been involved as well as the same zoning issue with respect to whether a music should be permitted on the Property.

With regard to amending previous restrictions or conditions where an earlier application has been denied by a zoning board, the Court of Appeals in *Whittle v. Board of Zoning Appeals of Baltimore County*, 211 Md. 36, 45 (1936) appropriately explained that:

The general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions..... This rule seems to rest not strictly on the doctrine of res judicata, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law.

\* \* \* \*

The changes in circumstances which the appellees rely upon may be summarized as follows: (1) increased commercialization of the area; (2) increased population of Baltimore County (3) decreased opposition of neighbors and some support by them; and (4) additional conditions attached to the granting of the permit.

Applying the reasoning of *Whittle* here, we find that there has been no substantial change in the facts as proposed than was previously litigated in the Code Enforcement hearings, before the Zoning Commissioner on the Petition for Special Hearing or before this Board after a *de novo* hearing. The same neighbors who incurred attorney fees and endured the Thanner era of ownership are still protesting both indoor and outdoor music.

The Restaurant operations are substantially the same. Other than the lack of a stage, the proposal for live music is the same, including not only the proposed performers but the hours for performances and the manner in which the music will be played. Both owners expressed the desire for live music to boost revenue and compete with the neighboring restaurants. Moreover, there has been no change to the physical layout of the Restaurant, or additions or improvements such as sound proofing or other physical change that might have lessened the impact of music on the neighboring properties. We find that, in order to be successful on this request, the changes needed

under *Whittle* must be more than a change in the Restaurant's ownership or management style of the new owner.

We are also mindful of the fact that even if the Petitioner has the best of intentions, operates a family-oriented restaurant and has indicated that it be sensitive to the neighbors' concerns, there is no regulation or policing of the Restaurant other than complaints filed by the Protestants. In addition, we need to be cognizant that the Restaurant could subsequently be sold and the same problems could result.

The County Council has determined that 'nightclubs' can exist in a BM zone but not in a BL zone. Thus, the comparison by the Petitioner to Row Boat Willie's is without merit because music is permitted in the BM zone. In contrast, this restaurant is located in a BL zone which is not permitted to have live music. We previously determined that this restaurant operated a 'night club' because it met the definition in BCZR, §101. The facts presented by the Petitioner here have not changed that determination.

We also cite our previous holding in *The Belvedere Baptist Church of Baltimore*, Case No. 15-004-SPH, wherein we declined to approve a request to amend a restriction in a previous ALJ Order. In that case, we applied the doctrine of *res judicata* and found that there was no substantial change in circumstances or facts between the first case and the second case to warrant the requested relief. Specifically, we found that: "there was no substantial change to the property, the neighborhood or the facts that would lead to a contrary result upon re-litigation, particularly in the relatively short time span between the decision." (Board Opinion, p.8).

In the Board's desire to be consistent in its holdings, we find that the facts of this case fit squarely within the relief requested in the *Belevedere Baptist* case. Here, there has been no change in the Property, the Restaurant, the neighborhood, the neighbors or the zoning that might lead to a different result.

For all of the foregoing reasons, the Petition for Special Hearing to amend previous restrictions imposed in Case Nos. 07-144-SPH, CBA 06-044 and CBA 07-134 so as to permit future use of the property as a restaurant with limited accessory music should be denied.

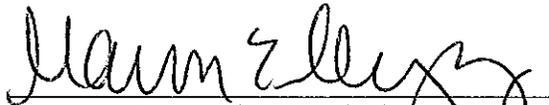
**ORDER**

**THEREFORE, IT IS THIS** 15<sup>th</sup> day of September, 2016, by the Board of Appeals of Baltimore County,

**ORDERED** that the Petition for Special Hearing to amend previous restrictions imposed in Case Nos. 07-144-SPH, CBA 06-044 and CBA 07-134 so as to permit future use of the property as a restaurant with limited accessory music be and the same is hereby **DENIED**.

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  
OF BALTIMORE COUNTY**

  
Maureen E. Murphy, Panel Chair

  
Benfred B. Alston

Jane M. Hanley was on the panel and agreed with the majority opinion. She was not reappointed to the Board and her last day with the Board of Appeals was June 30, 2016.