

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND,
GREENBELT DIVISION
CLERK'S OFFICE
AT BALTIMORE

BY _____ DEPUTY

RIVERDALE BAPTIST CHURCH,
INC.
1177 Largo Rd.
Upper Marlboro, MD.20774
Prince George's County

RIVERDALE BAPTIST SCHOOL,
INC.
1133 Largo Rd.
Upper Marlboro, MD.20774
Prince George's County

and

INDIVIDUAL PLAINTIFF

GAVIN SHUART, by and through his
next friend JODY SHUART
4807 Lerch Creek Dr.
P.O. Box 347
Galesville, Md. 20765
Anne Arundel County

Plaintiffs,

v.

ANNE ARUNDEL COUNTY
44 Calvert St.
Annapolis, Md. 21401
Anne Arundel County,

ANNE ARUNDEL BOARD OF
APPEALS
44 Calvert St.
P.O. Box 2700
Annapolis, Md. 21401
Anne Arundel County,

Civil Action No. JFM-06-2796

CONSENT JUDGMENT

JANET S. OWENS, in her official
capacity as County Executive
2666 Riva Rd.
Annapolis, Md. 21403
Anne Arundel County,

SPURGEON EISMEIER, in his official
capacity as Director of Inspections and
Permits
2664 Riva Road
Annapolis, MD 21401
Anne Arundel County,

JOESEPH RUTTER, in his official
capacity as Planning and Zoning Officer
2664 Riva Road
Annapolis, Maryland 21401
Anne Arundel County, and

ROBERT MILLER, in his official
capacity as Land Use Officer
2664 Riva Road
Annapolis, Maryland 21401
Anne Arundel County,

Defendants.

CONSENT JUDGMENT

WHEREAS, Plaintiffs RIVERDALE BAPTIST CHURCH, INC., RIVERDALE BAPTIST SCHOOL, INC., and GAVIN SHUART, by and through his next friend JODY SHUART (the "Plaintiffs") have commenced the above-referenced eight count lawsuit against ANNE ARUNDEL COUNTY, and ANNE ARUNDEL BOARD OF APPEALS, JANET S. OWENS, SPURGEON EISMEIER, JOSEPH RUTTER, and ROBERT MILLER (in their official capacities) (the "Defendants"), for violations of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc *et seq.*, the Free Exercise Clause of the First Amendment and the Equal Protection Clause of the

Fourteenth Amendment to the United States Constitution, and comparable provisions in Articles 9 and 36 of the Maryland Declaration of Rights to enforce compliance with these provisions; and

WHEREAS, the Plaintiffs allege that the Defendants' implementation and imposition of land use regulations to prevent the Plaintiffs from constructing and operating a church school violates the Plaintiffs' rights under the federal and Maryland Constitutions and RLUIPA; and

WHEREAS, in August 2002, Riverdale Baptist Church, Inc. purchased approximately fifty seven acres at 1169 Wrighton Road in Lothian, Anne Arundel County, Maryland (the "Property") with frontage on Wrighton Road and Pindell Road, both roads categorized as "collector" functional classification roads, for the purpose of building and operating a church school; and

WHEREAS, when the Riverdale Baptist Church, Inc. applied for a grading permit on January 8, 2004 and building permit in March 2004 to construct a church school on its Property, its proposed use was a permitted conditional use on its Property within the Rural Agricultural zoning district in which it is located which met all the conditions in order to develop it as contemplated and;

WHEREAS, on April 4, 2005, the Anne Arundel County Council enacted Bill 04-05 which became effective as of May 12, 2005, which in part required "Schools, public charter and private academic, with less than 125 onsite parking spaces" to have access directly from a road that is categorized as "arterial" functional classification road within the County's Rural Agricultural zoning district; and

WHEREAS, on February 9, 2006, the Anne Arundel County Council enacted Bill 04-06 which became effective as of March 27, 2006, which in part required "Schools, public charter and private academic, with less than 125 onsite parking spaces" to be located on roads other than "Scenic and Historic Rural Roads," and also designated Wrighton Road and Pindell Road as "Scenic and Historic Rural Roads"; and

WHEREAS, on March 23, 2006, Anne Arundel County determined that the Plaintiffs' school use was no longer a permitted conditional use on the Property after it determined that these two laws applied to Plaintiff's property and uses; and

WHEREAS, the Plaintiffs alleged in their Complaint that Anne Arundel County's land use regulations and their implementation of such land use regulations violates RLUIPA and their constitutional rights; and

WHEREAS, the Defendant Anne Arundel County admits liability under Count II of the Plaintiffs' Second Amended Complaint (42 U.S.C. § 2000cc(a) "**Substantial Burden on Religious Exercise**") by substantially burdening the Plaintiffs' religious exercise through the particular application of its laws and policies to Plaintiff without a compelling governmental interest and/or without using the least restrictive means of furthering any such interest; and

WHEREAS, the Defendant Anne Arundel County admits liability under Count VII of the Plaintiffs' Second Amended Complaint (42 U.S.C. § 1983, **Equal Protection Clause- Unconstitutional Targeting**) by illegally and unconstitutionally targeting Riverdale Baptist Church, Inc. and Riverdale Baptist School, Inc.; and

WHEREAS, the Plaintiffs and the Defendants (together the "Parties") agree that the County is a "government," 42 U.S.C. § 2000cc-5(4), that the Plaintiffs' use of the

Property constitutes "religious exercise," *id.* § 2000cc-5(7), and that Bills 04-05, 04-06, and Articles 17 and 18 of the Anne Arundel County Code are "land use regulations," *id.* § 2000cc-5(5); and

WHEREAS, the Parties further agree that the County's determination that the Plaintiffs' proposed church school use on the Property constituted an "individualized assessment" undertaken in a system of "land use regulations," and that the substantial burden on Plaintiffs' religious exercise affects, and removal of that substantial burden would affect, commerce among the several States, 42 U.S.C. § 2000cc(a)(2)(B) & (C); and

WHEREAS, the Plaintiffs and Defendant Anne Arundel County (the Parties), having the mutual goal of permitting the Plaintiffs to operate a church school on Riverdale Baptist Church, Inc.'s property in Lothian, Maryland, and desiring to settle this action and to avoid further litigation, agree to the entry of this Consent Judgment to resolve all issues raised in the Plaintiffs' Second Amended Complaint,

NOW, THEREFORE, in resolution of this action, and with agreement of the parties, it is hereby ORDERED, ADJUDGED, and JUDGMENT ENTERED, as follows:

I. JURISDICTION

1. This Court has jurisdiction over the parties and the subject matter of this action, and the Court has authority to enforce and administer the terms of this Consent Judgment.

2. As indicted by the signatures below, all parties agree to the entry of this Consent Judgment and have the requisite authority to enter into this Consent Judgment on behalf of the party for whom each individual signs.

3. This Consent Judgment shall take effect immediately upon its entry by the Court.

II. INJUNCTION AND ISSUANCE OF ALL PERMITS

1. This court hereby **permanently enjoins** the application of the requirement to locate a private academic school with less than 125 onsite parking spaces on an arterial road in the RA zoning district in Bill 4-05 and the requirement to locate a private academic school with less than 125 onsite parking spaces on a road other than a scenic or historic rural road in the RA zoning district in Bill 4-06 (Anne Arundel County Code Sections 18-10-130(4) and (5)) as applied to the Plaintiffs Riverdale Baptist Church, Inc. and Riverdale Baptist School Inc. with regard to the Property that is the subject of this case.

2. The Court hereby orders Anne Arundel County to issue all permits necessary in order to legally grade, develop, build, operate, subdivide and occupy its church school and related uses for 450 students in multiple buildings in phases with an access from Wrighton road subject to the laws and policies as they existed in January 2004. As the County had previously done in 2004, it will again grant a waiver from any adequate road facility requirement under the County Code's Adequate Public Facilities Ordinance as that ordinance existed in 2004. The Court further orders that Anne Arundel County allow and approve a four lot subdivision of the property which is the subject of this case. Anne Arundel County shall process such permit applications and subdivision plats expeditiously. The Court hereby sets a status conference within 180 days of execution of the Consent Judgment with parties' attorneys to report if necessary to the Court as to the status of the processing of the permit applications. Since full enrollment of

phase one and adequate financing are necessary for additional building phases on subject property, Defendant Anne Arundel County will allow Plaintiffs up to five years to apply for any additional permits to complete building the church school and related uses for 450 students under the laws and policies existing as of January 2004 and permit the Court to retain jurisdiction until completed.

III. COMPENSATORY DAMAGES, LEGAL FEES AND COSTS

1. Defendant Anne Arundel County shall pay THREE MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$3,250,000.00) in monetary damages and attorneys' fees and costs to Riverdale Baptist Church, Inc. in care of Simms Showers L.L.P for damages suffered as a result of Defendant Anne Arundel County's statutory and constitutional violations. The Defendants shall send to counsel for the Plaintiffs a check for \$3,250,000, written out to Riverdale Baptist Church, Inc. and Simms Showers L.L.P, immediately upon the entry of this Consent Judgment by the Court.

IV. MUTUAL RELEASE

Plaintiffs and Defendant shall enter into a mutual release of all parties in a separate agreement.

V. ENFORCEMENT

1. The Court shall retain jurisdiction until Plaintiffs receive all the permits, including the grading, building, subdivision and occupancy permits, necessary to construct and operate a church school on the Property to enforce the terms of and resolve any disputes (including but not limited to third party claims) arising out of or related to this Property under this Consent Judgment.

2. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Consent Judgment prior to bringing such matters to the Court for resolution. However, in the event of a failure by Defendant Anne Arundel County to perform in a timely manner any act required by this Order or otherwise to act in conformance with any provision thereof, the Plaintiffs may move this Court to impose any remedy authorized at law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and costs and reasonable attorneys' fees which may have been occasioned by the violation or failure to perform.

VI. INTEGRATION AND MODIFICATION

1. The parties understand and agree that this Consent Judgment contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect. This Consent Judgment may be modified only in writing and with the written consent of the parties and approval of the Court.

VII. DISMISSAL OF OFFICIAL CAPACITY DEFENDANTS

The Anne Arundel County Board of Appeals, Janet S. Owens, Spurgeon Eismeier, Joseph Rutter, and Robert Miller are dismissed from this action.

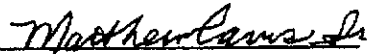
AGREED TO:

RIVERDALE BAPTIST CHURCH, INC.




RIVERDALE BAPTIST CHURCH, INC.

By: _____, Authorized Agent



RIVERDALE BAPTIST SCHOOL, INC.

By: _____, Authorized Agent


By: GAVIN SHUART, by and through his next
friend JODY SHUART



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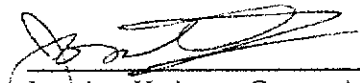
Attorneys for Plaintiff

AGREED TO:

ANNE ARUNDEL COUNTY


By: Dennis Callahan, Chief Administrative Officer


_____ JAH



Jonathan Hodgson, County Attorney
Anne Arundel County Office of Law
2660 Riva Road, Fourth Floor
Annapolis, Maryland 21401
Phone: (410) 222-7888
Phone: (410) 267-8400
Attorney for Defendants

SO ORDERED:


_____ HON. J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

November 27, 2010