

IN THE MATTER OF
BOYS SCHOOL OF ST. PAUL'S –
Legal Owner/Petitioner
11152 Falls Road
Baltimore, MD 21022

RE: Petition for Special Hearing to Approve
And Amendment to Special Exception and
Request for Limited Exemption

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
*
* Case Nos. 14-024-SPH
CBA-14-022

* * * * *

OPINION

This case comes to the Board on appeal by Protestant, The Valleys Planning Council (“VPC”) of the final decision from the Office of Administrative Proceedings granting the Petitioner, The Boys School of St. Paul’s Parish, (the “Petitioner”) its request for Special Hearing pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for approval of an amendment to Special Exception and for a Limited Exemption.

A *de novo* public hearing was held on March 6, 2014. The Petitioner was represented by Christopher D. Mudd, Esquire and Venable, LLP. VPC was represented by Michael R. McCann, Esquire. A public deliberation was held on May 15, 2014.

Facts and Evidence

The Petitioner, otherwise known as the ‘St. Paul’s School’, is a 125 acre campus located at 11152 Falls Rd in Brooklandville (the “Property”), and provides private education for boys in the Greenspring Valley area. Located on the same campus is the St. Paul’s School for Girls. The Property is zoned RC2. There is an extensive zoning history which is detailed on the Petitioner’s site plan (Pet. Ex. 1).

In this case, the Petitioner filed for special hearing relief under BCZR §500.7 to approve an amendment to the Special Exception and accompanying site plan which were approved in

Case No. 04-533-X and as amended in Case No. 08-345-SPHA. The request is to allow construction of an 8,000 sq. ft. maintenance building to service both schools. Additionally, the Petitioner seeks a limited exemption under Baltimore County Code §32-4-106(A)(1)(6) from the development review and approval process for 'a minor commercial structure.'

Testifying on behalf of the Petitioner was Francis Smythe, CEO and President of Century Engineering, professional engineers and site planners. Mr. Smythe prepared the site plan. (Pet. Ex. 1). Mr. Smythe explained that the proposed maintenance building will be constructed on a separate parcel containing 7.0 acres known as 'Tract A.' Tract A is located south of Seminary Avenue, west of Falls Road and Tony Drive and abuts Greenspring Valley Drive. Tract A is also zoned RC2.

Tract A was previously part of the Emerson Farm property and was donated to the schools in about 2003. It has 3 historic buildings on the Property as well as a storage building. Presently, both schools park vehicles, equipment and storage material on Tract A without shelter. The current maintenance building is 6,000 square feet and is located on the main campus, west of the gym. (Pet. Ex. 1). Mr. Smythe testified that the location of the present maintenance building on the main campus causes safety issues for the students.

Zoning History

In light of the Petitioner's request to amend the Special Exception and accompanying site plan in Case Nos.: 04-553-x and 08-345-SPH-A, a review of the zoning history is important.

(1) Case No.: 89-101-SPHX. In 1989, the Petitioner filed a Petition for Special Exception to continue to use the Property (a nonconforming use) as a boy's school and to expand the building and facilities which were depicted on a site plan. The requested relief arose out of an agreement between the Petitioner, VPC and the Falls Road Community Association. In lieu of filing for a change in zoning which request would have met with opposition from those community associations, a modified agreement as to the site plan was reached.

The 1989 Opinion issued by the Zoning Commissioner described the site plan as showing “existing facilities” and “the Petitioners’ concept for modification and expansion of those facilities.” (Prot. Ex. 3). Further, the 1989 Opinion indicated that the site plan represented ‘the School’s best current thinking as to what they may want to accomplish in the near-to-intermediate-range future.’ *Id.* The plan also showed ‘proposed buildings and recreational facilities, as well as proposed changes in the traffic circulation system and in parking.’ *Id.* Witness testimony at the time of the hearing indicated that the Schools needed approval of ‘a concept plan that will give them flexibility with respect to the ultimate location and design of planned buildings and other features.’

In addition, a ‘maximum building envelope’ was outlined by slanted hash marks on the 1989 site plan in certain portions of the Property. (Prot. Ex. 2). The hash mark area envelope did not encompass the entire Property but only certain buildings and facilities. *Id.* The hash marks also correspond to the specific list of buildings and/or facilities numbered 1-17 under “The St. Paul’s School Program Legend” on the 1989 Plan. The buildings and facilities included the pool, gym, day care center, academic buildings and chapel.

(2) Case No.: 93-119-SPHA. In 1993, the Petitioner filed a Petition for Special Hearing to modify the maximum building envelope for construction of the chapel. The Zoning Commissioner granted the requested relief and stated that the Petitioner should be given the flexibility to make certain changes in design or locations of the facilities within the building envelope. (Prot. Ex. 6). The plan that accompanied the 1993 Petition for Special Exception delineated the same maximum building envelope.

(3) In 1999, Petitioner submitted a development plan for a limited exemption. (Prot. Ex. 23). The 1999 Plan outlined the maximum building envelope in dashed black lines. The maximum building envelope on this Plan mirrors the hash marks on the 1989 Plan.

(4) In 2000, the Petitioner filed a First Amended Development Plan for approval of a two-story addition to the girls' school. (Prot. Ex. 24). The maximum building envelope, as outlined on the 2000 Plan and reflects the same maximum building envelope on the previous plans.

(5) Case No.: 04-553-X. In 2004, the Petitioner filed for a new Special Exception for the school to use two (2) parcels - Tracts A and B. The Opinion of the Zoning Commissioner states that the school would continue to use the 3 historic structures located on Tract A as residential dwellings. A storage building was also located on Tract A. Tract B was proposed to be used for ball fields. A site plan was admitted into evidence and incorporated into the Zoning Commissioner's Order. On the 2004 site plan there was a list of nine (9) use restrictions. Use restriction No. 9 applied to Tract A:

* * * *

9. Any future use of the common area located north of the existing historic structures on Tract A and identified on the site plan shall require a Petition for Special Hearing.

An additional restriction on Tract A read:

With regard to "Tract A", there are no plans to utilize this property other than for the current residential and maintenance/storage use. Should any future use be considered for the area north of the existing buildings, a petition for special hearing must be filed. Any future use may also be subject to review by the Baltimore County Landmarks Commission.

VPC was a party in the 2004 case. The Opinion recites the testimony of the VPC representative, Jack Dillon, who indicated that the VPC "is in agreement with the use restrictions (Restrictions Nos. 1 through 9) listed on the Petitioner's Exhibit 1, and with those restrictions in place, the Valleys Planning Council has no objection to the requested special exception relief." The

Special Exception relief was granted for “a school in the R.C.2 zone for Tract ‘A’ and 7.753 acres of Tract ‘B’, in accordance with Petitioner’s Exhibit 1...”

(6) Case No.: 08-345-SPHA. In 2008, the Petitioner sought a variance from building setback lines to build a 2-story addition to the upper school building which building would lay 25 feet from the chapel. The Zoning Commissioner granted the relief. Because both of those buildings were included among the 17 buildings in 1989, the maximum building envelope applied to them.

Legal Standard

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

With respect to any zoning petition other than a petition for a special exception, variance or reclassification, the Zoning Commissioner shall schedule a public hearing for a date not less than 30 days after the petition is accepted for filing. If the petition relates to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. Whether or not a specific property is involved, notice shall be given for the same period of time in at least two newspapers of general circulation in the county. The notice shall describe the property, if any, and the action requested in the petition. Upon establishing a hearing date for the petition, the Zoning Commissioner shall promptly forward a copy thereof to the Director of Planning (or his deputy) for his consideration and for a written report containing his findings thereon with regard to planning factors.

In order to grant a request for Special Exception, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

A request for limited exemption can be found in BCC §32-4-106:

§ 32-4-106. LIMITED EXEMPTIONS.

(a) *Exemption from development review and approval process.*

(1) The following proposed development is exempt from compliance with Subtitle 2 of this title:

(i) The building or preparation of land for building a dwelling for one or two families on a single lot or tract that is not part of a recorded plat;

(ii) The building or preparation of land for building on a lot of record lawfully in effect at the time of the building or preparation of the land for building, provided the lot of record did not result from a subdivision of land exempt under § 32-4-105 of this subtitle;

(iii) The construction of one tenant house or the location of one trailer on a farm tract;

(iv) The subdivision of property in accordance with a court order, a will, or the laws of intestate succession;

(v) The resubdivision or lot line adjustment of industrially zoned or commercially zoned parcels of land that have been the subject of a previously approved Development Plan and recorded plat;

(vi) The construction of residential accessory structures or minor commercial structures;

* * * *

Decision

I. The Maximum Building Envelope and the Proposed Building.

The Protestant asserts is that the Petitioner cannot build an 8,000 square foot maintenance building on Tract A because it is outside of the 1989 maximum building envelope. We disagree for the reasons that follow.

(1) Our review begins with the 1989 Opinion, Order and site plan. In that case, a detailed agreement was reached between VPC and the Petitioner as to the extent of the maximum building envelope on 17 facilities and buildings shown and listed on the site plan. The Zoning Commissioner incorporated the site plan into his Order. (Prot. Ex. 1). The maximum building envelope is shown by hash marks on the 1989 Plan. It is confined to specific areas of the campus, but not the whole campus. (Prot. Ex. 2). It corresponds to both existing and proposed buildings.

Highlighting the 1989 Order, we find important the express language of the Zoning Commissioner which clarifies for this Board that the maximum building envelope applies only to the buildings shown on that 1989 Plan:

Therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 13th day of September, 1988, that the use of the property involved in this case for private boys' and girls' schools, and the modification and expansion of the Schools' facilities in conformity with the concept plan introduced as Petitioners' Exhibit 1, as modified to show more general building envelopes, are hereby approved for the buildings shown and, as such, the Petition for Special Hearing for an amendment of the site plan approved in case numbers 84-139-X and 87-347-SPH, as

more particularly described on Petitioners' Exhibit 1, is hereby granted; additionally, the Petition for Special Exception for a private preparatory school is hereby granted from and after the date of this order, subject however to the following restrictions which are conditions precedent to the relief herein granted:

1. In implementing the modified concept plan, the Schools shall have flexibility to make changes in the designs and/or locations of the facilities depicted on the site plan, Petitioners' Exhibit 1, without the need for further hearings before the Zoning Commissioner, as long as the development remains within the indicated building envelopes and complies with all applicable requirements of the Building Code, Development Regulations, and other portions of the Baltimore County Code.

(Emphasis Added).

This Board cannot ignore the plain language of the 1989 Opinion and Order. No part of Tract A, and no building or facility located on Tract A - including the historic structures - was included in the 1989 Order because that property had not yet been given to the school. Tract A was given to the Petitioner in or about 2003.

VPC and the Petitioner, in 1989, could have agreed to a term or condition that all property acquired by, or given to the school after 1989, be subject to the maximum building envelope. The fact that the parties made a detailed agreement as to not only buildings and facilities which existed in 1989 but to proposed buildings not yet in existence at that time (referenced as "St. Paul's School Program Legend" on the Plan) is indicative that parcels later acquired or donated to the school (but not specifically enumerated as one of the 17), were not intended to be restricted by the maximum building envelope.

Thus, in reviewing the language of the 1989 Opinion and Order and the 1989 site plan, we cannot reach the conclusion that the maximum building envelope applies to Tract A.

(2) The Petition here seeks to amend the Special Exception granted in the 2004 case and later amended in the 2008 case. VPC argues that the Petitioner here should have sought to amend the 1989 Special Exception. VPC reasons that if this Petition had properly sought to

amend the 1989 Order, then the maximum building envelope would automatically apply to the proposed building.

Interestingly, in the 2004 case, there was no argument by VPC that the Petition for Special Exception at that time should have sought to amend the 1989 special exception. Indeed, the Petitioner, in 2004, filed for a new special exception so that the tracts could be used by the school. The Petitioner did not, in that case, seek to amend the 1989 Special Exception. (Prot. Ex. 9). Following that case, in 2008, the Petitioner did not seek to amend the 1989 Order but rather the 2004 Order. No objection was made by VPC in 2008 in that regard.¹ Given that the 2004 Order was the first one to deal with Tracts A and B, this Board finds that it was appropriate to seek an amendment of that Order.

As to the issue of whether the 2004 Order imposed the maximum building envelope on the proposed building, we first find significant that the incorporated 2004 site plan delineated both Tract A and B but did not show the maximum building envelope.

Second, VPC, as a party in that case, agreed to a list of nine (9) restrictions which were referred to on the plan as “Use Restrictions” (the “2004 Use Restrictions”). (Pet. Ex. 1). The site plan specified that the use restrictions applied to the “new special exception area” as follows:

THE ST. PAUL'S SCHOOL PROPOSES THE FOLLOWING
USE RESTRICTIONS WITHIN A PORTION OF THE NEW
SPECIAL EXCEPTION AREA.....

(Pet. Ex. 1).

The 2004 Use Restrictions did not incorporate or make reference to the maximum building envelope nor did the restrictions incorporate or refer to the 1989 Order. If VPC wanted

¹ Given that the 2008 case involved expansion of the Upper School building which was one of the 17 buildings listed in the 1989 Order and a request was made to build the addition outside the maximum building envelope, Petitioner probably should have sought amendment of the 1989 Order

to restrict Tract A to the maximum building envelope in 2004, it should have made it one of the listed Use Restrictions.

Third, we find significant that the Parties agreed to express language regarding the *future use of Tract A* including the requirement that the Petitioner file for a special hearing if the common area of Tract A was used in the future. That was the only restriction imposed on Tract A. The Petitioner followed that restriction here by filing for a special hearing. Accordingly, based on our review here, the 2005 Order did not impose the maximum building envelope on the proposed building.

(3) VPC next asserts that the 1989 maximum building envelope applies because the 2005 Order added Tract A and B to the “Special Exception Area.” However, we find, based on our review of the 1989 Order and plan, that the “Special Exception Area” was the total acreage of the school’s property while the “maximum building envelope area” was a smaller area contained within the Special Exception Area. (Pet. Ex. 1). Thus, while the 2005 Order added the acreage for Tracts A and B (14.753 acres +/-) to the total acreage for use ‘as a school’ (106.735 total acres +/-), the maximum building envelope was a specific restriction which applied to the buildings and facilities on the 1989 site plan and which were located on the main campus, not to Tract A or B. Thus, we do not find this argument persuasive.

(4) VPC also relies on the phrase ‘any building’ in the 1993 Zoning Commissioner Opinion in support of their argument that ‘any building’ is subject to the maximum building envelope. That language reads: “.....so long as *any building* was confined within a clearly delineated building envelope area.” (Prot. Ex. 6) (Emphasis Added). However, those words - when read in context of the entire 1993 Opinion - refer to the 17 buildings and facilities listed on the 1989 Plan. In support of that conclusion, the Board notes the sentence following the phrase “any building” in the 1993 Order reserved on “[judging] future modifications.” Again, as of 1993, Tract A was not part of the school.

Further, the 1993 Opinion, reiterated that flexibility in design and location should be given to the Petitioner “of the facilities within the building envelope...” This language is consistent with our interpretation of the 1989 Order of a confined building envelope which is applicable to certain existing and proposed ‘facilities’ that existed in 1989.

In conclusion, weighing the totality of the evidence, the maximum building envelope does not apply to the proposed maintenance building.

II. Special Exception Factors in BCZR §502.1.

With regard to the request to amend the Special Exception granted in Case No.: 04-553-X and as amended in Case No.: 08-345-SPHA, the Board finds that the Petitioner met the burden of proof in regard to the factors set forth in BCZR §502.1. Testifying on behalf of the Petitioner was Michael Peranunzi, R.L.A. who was admitted by the Board as an expert in development plans; in plans involving limited exemptions; in the Baltimore County Zoning Regulations; and the Baltimore County Development Regulations. Mr. Peranunzi is a registered landscape architect and prepared the site plan in this case. (Pet. Ex. 1).

Mr. Peranunzi testified about each of the Special Exception factors and we find that each factor was met as follows:

(A) We find that the proposed maintenance building will not be detrimental to the health, safety or general welfare of the locality where the school is located. Mr. Peranunzi presented the Board with photographs from various vantage points along Greenspring Valley Road. (Pet. Ex. 7). The proposed building will be contained in a secluded area, surrounded by trees on all sides. The building will not be visible from Greenspring Valley Road in any season. The Board finds that this new location will reduce safety concerns for students.

(B) We find that the proposed building will not create congestion on Greenspring Valley Rd., Seminary Rd. and Falls Rd. Indeed, we note that the building can be accessed by an interior road connecting the main campus with Tract A and B. As such, no increase in traffic will occur

as vehicles stored at the maintenance building use the interior road to access other parts of the campus.

(C) We find that the maintenance building will not create a potential hazard from fire, panic or other danger. Given the location of the building away from the main campus, any fire would be isolated, reducing the risk of it spreading to other buildings. The current location of the maintenance building would increase the risk of fire spreading to other buildings.

(D) The 8,000 sq. ft. building will not tend to overcrowd the land or cause undue concentration of population. The building will be located on a 7.0 acre parcel where a storage building already exists. Presently, the school stores vehicles, equipment, supplies outside in the location where the building will be constructed. There is no concern with increase in the population as this is a commercial structure.

(E) We find that the proposed building will not interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements as there is no impact on these improvements by a commercial structure used exclusively by these private schools. We note that public sewer has already been extended to Tract A for the historic homes. Any request by the Petitioner for extension of the public water and sewer to the proposed building is not an issue before this Board.

(F) We find that the proposed building will not interfere with adequate light and air. The Petitioner provided the Board with elevation drawings of the proposed building. (Pet. Ex. 5). The drawings did not indicate that there would be any negative impact on neighboring buildings or properties with regard to adequate light or air. There was no evidence presented to the contrary.

(G) We find, based on the evidence that the proposed building will be consistent with the purposes of the property's zoning classification (RC2) and also consistent with the spirit and intent of the BCZR. The proposed building will serve both schools which was previously

granted a special exception in Case No.: 04-335-X. A school is an appropriate and compatible use in an RC 2 zone.

(H) We find that the request will not be inconsistent with the impermeable surface and vegetative retention provisions of the BCZR. The current use of the location to store vehicles, equipment and material outside will be improved. The interior access road already exists so there will not be an increase in imperious surface caused by a new road.

(I) We find that the proposed building would not be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone. There was no evidence of any impact on forests, streams, wetlands, aquifers or floodplains. The proposed building is not detrimental to existing vegetation. The site plan shows that trees will be planted.

Finally, the Board must make a finding under BCZR, 1A01.2.C. which reads:

C. Uses permitted by special exception. The following uses, only, may be permitted by special exception in any R.C.2 Zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity; * * * *

The evidence presented to the Board reveals that while the zoning is RC2, there are no real agricultural uses in the vicinity. As a result, we find that the proposed maintenance building will not be detrimental to the primary agricultural uses in the vicinity.

III. Request for Limited Exemption.

Finally, the Petitioner also requests a limited exemption from the development regulations under BCC 32-4-106A(1)(6) for a minor commercial structure. This is an exemption is from the development review and approval process. Petitioner points out that exemptions are allowed for minor commercial structures up to 25,000 sq. ft.

We note that in 2008, the Baltimore County Development Review Committee approved an exemption for a commercial structure on behalf of the Petitioner. We find that 8,000 square

foot building qualifies as a minor commercial structure and therefore, the exemption is warranted and should be granted.

ORDER

THEREFORE, IT IS THIS 16th day of July, 2014, by the Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to approve an amendment to the Special Exception and accompanying site plan approved in Case No.: 04-553-X and amended in 08-345-SPHA to allow for the construction of an 8,000 square foot maintenance building on Tract A, be and the same is hereby **GRANTED**; and it is further,

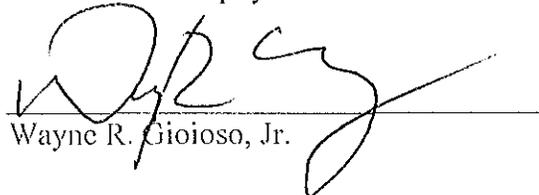
ORDERED that the Request for Limited Exemption from Development Regulations under BCC 32-4-106 be and the same is hereby **GRANTED**.

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


Andrew M. Belt, Panel Chairman


Maureen E. Murphy


Wayne R. Gioioso, Jr.