

IN THE MATTER OF : BEFORE THE  
TRINITY SCHOOL, INC. : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA Case No. 12-010C

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**DECISION AND ORDER**

On June 11, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the Conditional Use petition of Trinity School, Inc. to enlarge an existing private academic school through the addition of a modular classroom and a paved and expanded parking lot in an R-20 (Residential: Single Family) zoning district, pursuant to Section 131.N.48.

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioner. William Law and Thomas Pilon testified in support of the petition. No one appeared in opposition to the petition. At the outset of the hearing, Petitioner's counsel Sang Oh testified to the Petitioner's agreement with the findings and conclusions in the Technical Staff Report (TSR).

**FINDINGS OF FACT**

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. Property Identification. The subject property is located in the 1<sup>st</sup> Election District on the east side of Ilchester Road about 500 feet east of Talbots Landing (the "Property"). The Property is referenced as Tax Map 31, Grid 17, Parcel 839, and is also known as 4985 Ilchester Road.

2. Property Description. The irregularly shaped 45.91-acre Property has a driveway entrance on Ilchester Road. The driveway is located slightly to the west of the Ilchester Elementary School site. It runs generally to the southeast, descending toward a stream and then ascending to a relatively narrow, wooded pipestem area. From here, it runs about 2,500 feet to the main improved area of the Property. As the Property widens into the more open improved area, the internal driveway forks, with one driveway running to the northeast and the other, to the southeast. The gated southeast driveway runs north of the parking areas and the two primary school buildings, ending in a cul-de-sac. The area "within" the fork is a sloping playground area, with multiple recreational structures and improvements.

To the cul-de-sac's east is a circular pedestrian plaza on which front a hall/gymnasium building, a chapel and a middle school building. To the chapel's north are the main parking lot and a circular driveway north of the middle school building. Behind the middle school building is a small parking lot and a multi-bay garage building.

Across the driveway to the east of the main parking lot is an athletic field. To its north is another driveway leading to Hatterby Court, a secondary entrance to the Property. A second athletic field is located in the Property's southwest area and to the south of the primary school

buildings. The topography is generally level in the main improved area and then slopes downward in all directions.

3. Vicinal Properties. Adjacent properties are also zoned R-20. To the north, the Owens Property subdivision homes are located to the north of a wide, open space lot adjoining the Property. To the east and south is the Grovement subdivision, whose single-family detached homes front on Grovement Drive. The properties to the southwest and west of the improved area are residential lots of the Ilchester and Talbot Woods II subdivisions, with single-family detached dwellings fronting on Ilchester Oaks Way and Serena Dylan Way.

4. Roads. Ilchester Road in this area has two travel lanes and a variable paving width within a variable right-of-way (ROW). The posted speed limit is 30 MPH. The technical staff report (TSR) concludes sight distance is not an issue because the existing driveway entrances were approved previously and are not being revised. According to the most recent data from the Department of Public Works, the traffic volume on Ilchester Road east of MD 103 was 7,589 average daily trips as of January 2009.

5. Water and Sewer Service. The Property is served by public water and sewer.

6. The General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as a "Residential" land use. Transportation Map 2000-2020 of the 2000 General Plan depicts Ilchester Road as a Minor Collector.

7. Zoning History. The TSR relates the substantial history of the school, which the Episcopal Church constructed in 1906. The Sisters of Notre Dame de Namur acquired the Property in the 1930s. In 1997, the school became an unconfirmed nonconforming use with

the adoption of the 1977 Comprehensive Zoning Plan. In 1998, the Board of Appeals in Case No. 98-02E granted a special exception to validate the school use for zoning purposes and to permit certain enlargements. DPZ granted Trinity School a Temporary Use for the use of a modular classroom in TU 97-02 on June 26, 1997 with extensions granted to June 6, 1998.

8. The Existing Conditional Use and Proposal. The Property is the site of a private school that predates the establishment of zoning in Howard County. The 1998 Special Exception approved a significant multi-phase site redevelopment, including a minor enlargement of the private school use. Petitioner is now proposing a modular classroom addition building, 24 feet by 36 feet, which would be located to the south of the easternmost primary school building. A small landing, deck, and walkways from the modular classroom would provide access between the classroom and the existing primary school buildings.

Petitioner is also proposing to pave an existing stone surfaced parking lot and driveway located about 150 feet west of the westernmost primary school building and to add 20 new parking spaces.

The petition states the private school hours are 8:20 a.m. to 3:15 p.m., with extended care services starting at 7:00 a.m. and ending at 6:00 p.m. There is also a nine-week summer camp running from 9:00 to 3:30 p.m.

9. Department of Fire and Rescue Comments. A May 2, 2012 memo from Battalion Chief Edgar g. Shilling, Jr., Office of the Fire Marshall, to Chuck Dammers, Planning and Zoning Division Chief, states that Fire and Rescue will not approve the location of the planned modular

classroom because access will not be gained easily. The Office of the Fire Marshall recommends the unit be moved to the east end of the building.

10. William Law, a Trinity School volunteer representative, testified in relation to Battalion Chief Shilling's memo. Mr. Law corresponded with the battalion chief, who agreed to permit the classroom in its proposed location subject to three conditions. First, that the classroom will be equipped with an approved fire protection system. Second, that the fire protection system is reviewed and approved by the Department of Inspections, Licenses and Permits. Lastly, that the fire alarm system for the classroom is tied to the main alarm system. Petitioner's Exhibit 1 includes a copy of an email from Edgar Shilling to Mr. Law setting forth these approval conditions.

11. Thomas Pilon testified to preparing several photographic views intended to respond to the TSR's desire for additional landscaping to the west of the parking lot, which is located in an open area. Petitioner's Exhibit 2 is an aerial view of the paved parking lot and the residences across the open area. It shows the location of the camera on the parking lot when making Petitioner's Exhibit 3. Exhibit 3, a panoramic photographic view, depicts the view from the parking lot across to the residences, which have a view of the existing parking lot. He explained that the parking lot paving would require stormwater management, which would be met through a bio-retention area with supplemental plantings.

12. Petitioner's Exhibit 4 is an aerial view showing the proposed location of the modular classroom building and the location of the camera used in making the panoramic photographic view in Petitioner's Exhibit 5. Exhibit 5 depicts the location of the proposed

modular classroom using orange traffic cones. Supplemental plantings added next to the existing evergreen trees seen in the panoramic view would buffer views from residential properties.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I conclude as follows:

#### **I. General Criteria for Conditional Uses (Section 131.B)**

**A. Harmony with the General Plan.** Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

- a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and**
- b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.**

General Plan Policies. The Howard County General Plan designates the area in which the Property is located as a "Residential" land use. The school is a long-standing use and presumptively compatible with this land use.

The Nature and Intensity of the Use. The new modular classroom and the paving/expansion of the existing stone surfaced parking lot are minor improvements that will only minimally increase the intensity of the use.

The Size of the Site in Relation to the Use. Both improvements are internal to the Property and the approximately 46-acre site can easily accommodate the uses.

The Location of the Site With Respect to Streets Giving Access to the Site. The Board of Appeals has previously determined the existing access drive provides safe access and it is likely this drive will continue to provide safe access.

The Appropriateness of the Conditional Use in Combination with a Permitted Use on the Site. The proposed expansion will be combined with an approved private academic school. The modest expansion of the use is appropriate.

**B. Adverse Impacts.** Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

The assessment of a proposed conditional use under these criteria recognizes the potential for adverse impact by virtually every human activity. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed uses would have adverse effects in an R-20 district. The proper question is whether there are facts and circumstances showing the particular uses proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, and as conditioned, the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish the proposed uses will not have adverse effects on vicinal properties beyond those ordinarily associated with a private academic school in the R-20 district.

**a. Physical Conditions.** The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The proposed classroom use will be conducted predominately indoors, and there is no evidence of inordinate noise, significant outdoor lighting, or other physical effects detectable within the neighborhood. Paving the existing stone surfaced parking lot will reduce noise and dust. The uses will not generate inordinate dust, fumes, odors, glare, vibrations, or hazards.

**b. Structures and Landscaping.** The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

With additional buffering, the proposed modular classroom structure and paved parking lot will be adequately separated from adjacent land and structures and there is no evidence the proposed structure would have any atypical adverse impact such that it would hinder or discourage the development and development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.



**c. Parking and Loading.** Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The existing parking, as expanded with 20 spaces, is adequate to serve the existing and proposed uses, as the small modular classroom will only minimally increase any additional parking needs, especially considering there are almost 100 fewer students than the 500 maximum student enrollment approved in BA 98-02E. The paved parking area will be properly located and screened, with additional landscaping, from residential uses, without atypical adverse impact.

**d. Access.** The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The Board of Appeals has previously determined the existing access drives provide safe access and it is likely these drives will continue to provide safe access.

**II. Specific Criteria for Structures Used Primarily for Schools, Colleges, Universities – Private Academic (Section 131.N.48)**

**a.** The maximum density permitted is 60 pupils per acre for lots less than three acres, and 100 pupils per acre for lots three acres or greater.

The number of students approved in BA 98-02E was 500 and the petition states that the current enrollment is about 400. As no increase in student numbers is proposed, this section is not applicable.

**b.** In addition to meeting the area requirements of Section 131.N.54.a, schools with residence accommodations shall provide an additional 500 square feet of lot area per site resident. Residents shall include students, staff members, caretakers and their families who reside on the site.

This section is inapplicable as no residential accommodations are proposed.

**c. A private school may be erected to a greater height than permitted in the respective district, provided that no structure is more than three stories in height and the front, side and rear setbacks shall be increased two feet for each foot by which such structure exceeds the height limitation.**

This section is inapplicable, as no building will be erected to a greater height than permitted.

**d. Sufficient off-street school bus loading areas shall be provided if bus service is provided for students.**

No bus service was proposed in BA 98-02E, and none is proposed in this case. This section is inapplicable.

**e. Outdoor uses will be located and designed to shield residential property from noise or nuisance. Play areas, athletic fields and similar uses shall be buffered from residential properties by fencing, landscaping, adequate distance or other appropriate means.**

The sole "new" outdoor use is the parking lot to be paved and expanded by 20 spaces. The TSR reasons it is about 100 feet from the closest adjoining property to the west, and well separated from the properties to the north, east, and south. With the additional landscaping proposed to the west, the petition accords with Section 31.n.48.e.

**f. Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially zoned properties other than a public road right-of-way. The Hearing Authority may reduce this setback to no less than 20 feet or the minimum setback required by the zoning district, whichever is greater if:**  
**(1) The adjoining land is committed to a long term institutional or open space use that provides an equivalent or better buffer for vicinal residential development; or**  
**(2) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent**

**combination, that presents an attractive and effective buffer for neighboring properties.**

The proposed modular classroom structures would be sited significantly more than 50 feet from the nearest residentially-zone property line, in accordance with Section 31.n.48.f.

**g. At least 20 percent of the area within the building envelope will be green space, not used for buildings, parking area or driveways. The building envelope is formed by the required structure setbacks from property lines and public street rights-of-way.**

This section did not apply when BA 98-02E was approved. However, given the Property's considerable acreage relative to improvements, the private school use greatly exceeds the 20 percent green space requirement. The petition accords with Section 131.n.48.g.

**h. The site has frontage on and direct access to a collector or arterial road designated in the General Plan, except that expansions of a conditional use that was approved prior to the effective date of Council Bill No. 11-2001 are permitted.**

The Property fronts on and has direct access to a Minor Collector and is an expansion of a conditional use approved prior to the effective date of Council Bill 11-2001.

**ORDER**

Based upon the foregoing, it is this **21<sup>st</sup> day of June 2012**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Conditional Use petition of Trinity School, Inc. to enlarge an existing private academic school for the addition of a modular classroom and a paved and expanded parking lot in an R-20 (Residential: Single Family) zoning district is hereby **GRANTED**;

**Provided, however, that:**

1. The conditional use shall be conducted in conformance with and shall apply only to the Conditional Use for an expansion of a private academic school and parking lot as described in the petition and as depicted on the Conditional Use Plan for the "Trinity School" submitted on May 26, 2012 and not to any new structures or uses on the Site or any additions thereto.

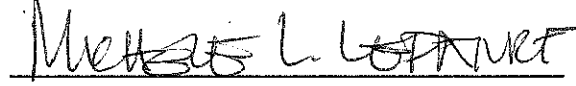
2. The modular classroom will be equipped with an approved fire protection system. The Department of Inspections, Licenses and Permits shall review and approve the fire protection system. The fire alarm system for the classroom shall be tied to the main alarm system.

2. The Petitioner shall install supplemental landscaping to buffer the view of the residences visible from the parking lot, as referenced in relation to the view depicted in Petitioner's Exhibit 3.

3. The Petitioner shall install supplemental landscaping next to the existing evergreen trees depicted in Petitioner's Exhibit 5.

4. The Petitioner shall comply with all applicable federal, state, and county laws and regulations.

HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER

A handwritten signature in black ink, appearing to read "Michele L. LeFaivre", is written over a horizontal line.

Michele L. LeFaivre

Date Mailed: \_\_\_\_\_

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.