

IN RE:	*	BEFORE THE
MARYLAND INTERNATIONAL	*	HOWARD COUNTY
SCHOOL INC.	*	BOARD OF APPEALS
	*	Case No: BA 22-023C&V

SUPPLEMENTAL DECISION & ORDER

The Howard County Board of Appeals (the “Board”) convened on November 13, 2025, to hear and deliberate the remand of the above-captioned case pursuant to the Circuit Court of Howard County’s Order and Memorandum Opinion, dated September 2, 2025, in Case No.: C-13-CV-24-001048.

Board members Gene Ryan, Felita Phillips, Lynn Foehrkolb, Robbyn Harris, and Marisa McCurdy participated in the hearings and deliberations. Board member McCurdy had not been present for the presentation and deliberations in the original case, but attested to watching the previous hearings and reviewing the Exhibits in preparation for deliberations on the remand. Board Chair Ryan presided over the hearing and deliberations of the case. Tsega Girma Kyere, Senior Assistant County Solicitor, served as legal advisor to the Board.

The Petitioner was represented by Counsel, Thomas G. Coale. Protestants, David Marc, Deborah Marc, Kimberly Marc, Michael Marc, Jan McVey, Larry Weatherholt, Cheryl Marc, Frederick Marc, Carol Kelehan, and Steve Kelehan were represented by Counsel, Alex Votaw.

The subject of the remand is limited to the articulation of findings of fact and conclusions of law regarding whether the proposed parking garage/auditorium building (Building 4) and the proposed athletic field retaining wall satisfy the setback requirements applicable to the Conditional Use requirements for Private Academic Schools in the R-12 zoning district. The Board did not accept additional evidence and relied upon the evidentiary record of the original case.

The Board made the following findings of fact and conclusions of law:

I. Building 4 complies with the applicable setback for Private Academic Schools in the R-12 zone.

Building 4 is a three-story structure containing an auditorium and a parking garage. It is identified on the Conditional Use Plan (Exhibit 2) as being 36.92 feet in height and setback from the western property line by 64.1 feet. Setback requirement for a Private Academic School is 50-feet as required under HCZR § 131.0.N.48.f.

Under HCZR § 131.0.N.48.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.” The Subject Property is in the R-12 District which imposes height limitations of 34 feet for principal structures and 15 feet for accessory structures.

The height of Building 4 exceeds the R-12 height limit for principal structures by 2.92 feet and, in accordance with the two feet of setback for every foot the structure exceeds the height limit under HCZR § 131.0.N.48.c., Building 4 must be setback by an additional

6 feet over the 50-foot setback for Private Academic School structures. Building 4 is setback 64.1 feet from the western property line, which is the closest lot line, and, therefore, complies with the setback.

Protestants argued that Building 4 was an “accessory structure,” which imposes a height limit of 15 feet, as opposed to the principal structure maximum height of 34 feet. If the Board were to apply the accessory structure height limit and the two-for-one setback extension, Building 4 would require a 93.8 foot setback (50 feet + 43.8 feet).

The Board rejects this argument. A school auditorium is utilized as a part of the principal uses of an academic school. Rebecca Ghosh testified at the November 7, 2024, hearing that auditoriums are an expected feature in “21st century schools.” Auditoriums are utilized for theater performances, school assemblies, and other school functions that are consistent with the principal use of a Private Academic School.

Protestants also argued that the setback for Building 4 should be measured from a 30-foot private right-of-way and not the western lot line. Protestants argue that the private right of way encroaches 15 feet into the Petitioner’s Property and that Building 4 must be setback an additional 15 feet. The Board finds Protestants’ argument is inconsistent with the Howard County Zoning Regulations (HCZR). Under HCZR § 130.0 – Definitions, Setback, Side is defined as extending “between the side lot line or side *public street* right-of-way and the nearest line of the structure or projection thereof, extending from the front setback to the rear setback, or, in the absence of either of such setbacks, to the front *public* street right-of-way and/or rear lot line” (emphasis added). As such, Petitioner’s Building 4

is appropriately setback from the western lot line and not the *private* right-of-way easement.

II. Petitioner's retaining wall complies with the applicable setback for an accessory structure in the R-12 zone.

The Board finds that the retaining wall complies with the standards of Section 131.0.N.48. As an accessory structure, it is subject to a 10-foot minimum setback and a maximum height of 15 feet, with increased setback requirements corresponding to increased height. At its tallest point, the retaining wall reaches 38 feet in height, requiring a 56-foot setback. Robert Vogel, Professional Engineer, testified at the November 7, 2023 hearing that the top of the retaining wall is setback 58 feet from the Property line.

The wall's setback increases as its height increases. The Department of Planning and Zoning's (DPZ) Technical Staff Report expressly notes that, while the base of the wall sits at 50.9 feet from the line, the setback increases toward the top and must be at least 56 feet, which the Petitioner has verified.

The parties have collectively stipulated that the retaining wall is an accessory structure. The Board concurs. The definition for an Accessory Structure under HCZR § 103.0 is “[a] use or structure which is customarily incidental to the principal use or structure, serving no other use or structure, and which is subordinate in area, intensity and purpose to the principal use or structure. An accessory use or accessory structure shall be located on the same lot or parcel as the principal use or structure, except where it is otherwise allowed in these Zoning Regulations.” A retaining wall utilized for the purposes

of providing additional level ground for Private Academic School uses is an accessory structure consistent with this definition.

Protestants present two arguments that the retaining wall does not comply with the applicable setbacks. First, Protestants argue that the 50-foot setback for all “buildings, parking areas and outdoor activity areas” applicable to Private Academic School use also applies to the retaining wall. The Board disagrees. The retaining wall is not a use ordinarily associated with a Private Academic School and is not subject to the conditional use setback. Moreover, the criterion under HCZR § 131.0.N.48.c. that allows structures to exceed the height limit with a 2-for-1 increase to the setback references “front, rear, and side setbacks,” would be superfluous if the only applicable setback was the 50-foot conditional use setback.¹ The Board finds as a matter of law that the retaining wall is only subject to the accessory use setback of 10 feet from a rear lot line.

Second, Protestants argue that the setback should be measured from the rear lot line to the nearest point of the retaining wall, which is setback 50.9 feet from the lot line, and not the highest point of the wall, which is over 58 feet from the lot line.

The retaining wall is over 320 feet in length from the southwestern corner to the northeastern corner. The retaining wall at issue presents a unique circumstance in which the wall increases in height as it extends away from the Property line. It was, therefore, appropriate to evaluate compliance with the Conditional Use criteria by measuring setback relative to the wall’s varying height. The Board finds, consistent with the interpretation of

¹ The athletic field supported by the retaining wall is setback 50 feet from all lot lines.

DPZ, that the setback should be measured from the lot line to the nearest point of the retaining wall facing that lot line. Per DPZ's Technical Staff Report, "[t]he base of the wall is 50.9'; however, the wall's distance from the property line increases as the height increases. The Petitioner should verify that the retaining wall is setback 56 feet at the top of the wall." TSR at 5. As the height increases, the required setback increases. Petitioner has designed the retaining wall to be located further from the lot line as the height increases. In every instance, the retaining wall complies with the setback required under HCZR § 131.0.N.48.c. The Protestants' claim that the entirety of the wall's length constitutes the relevant "structure" is unpersuasive, particularly given that the Petitioner could segment the wall into separate compliant sections under the Protestants' own theory. The record supports the Board's finding of full compliance with the Conditional Use setback requirements.

ORDER

Based on the foregoing, it is this 26th day of January, 2026, by the Howard County Board of Appeals **ORDERED**:

That Building 4 and the retaining wall both comply with the applicable setback requirements under the Howard County Zoning Regulations. Building 4, as a principal structure integral to the Private Academic School use, is appropriately setback 64.1 feet from the western property line, satisfying the 56-foot requirement. The retaining wall, as an accessory structure, complies with the graduated setback requirements of Section 131.0.N.48.c., with setback distances that increase proportionally with the wall's height. The Protestants' arguments to the contrary lack merit and are inconsistent with both the plain language of the Zoning Regulations and the credible evidence presented.

Accordingly, the Board hereby **APPROVES** the Conditional Use as it relates to the setback compliance of Building 4 and the retaining wall, subject to the conditions set forth in the Conditional Use Plan and any additional conditions imposed by the Department of Planning and Zoning.

ATTEST:

HOWARD COUNTY BOARD OF APPEALS

Kel Berg
Kel Berg, Secretary

Gene Ryan
Gene Ryan, Chairperson

Lynn Foehrkolb
Lynn Foehrkolb, Vice-Chairperson

Marisa McCurdy
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