

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF THE ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION
4644**

DECISION

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| Application: | Private School and Alternative Compliance (AC-92002/01) |
| Applicant: | Ardmore Enterprises, LLC. |
| Opposition: | Ms. Julisa Robinson |
| Hearing Date: | March 18, 2009 |
| Hearing Examiner: | Maurene Epps Webb |
| Disposition: | Approval with Condition |

NATURE OF PROCEEDINGS

- (1) Special Exception 4644 is a request for permission to use approximately five (5) acres of O-S (Open Space) zoned land located in the northwest quadrant of Lottsford Vista Road and Yellowwood Lane, identified as 3010 Lottsford Vista Road, Mitchellville, Maryland, as a Private School for 202 developmentally disabled students.
- (2) The Technical Staff recommended approval with conditions. (Exhibit 11) The Planning Board chose not to review the Application and adopted the Technical Staff's recommendation as its own. (Exhibit 15)

FINDINGS OF FACT

Subject Property

- (1) The subject property is a roughly square shaped five (5) acre parcel of land which is improved and developed with a 19,950 square foot school for developmentally challenged adults. There is a separate 2,484 square-foot trailer on site that is currently used for administrative offices. The school is accessed from two (2) points along Lottsford Vista Road.)
- (2) The Application is exempt from the requirements of the Woodland Conservation and Tree Preservation Ordinance because no clearing of woodland is proposed. (Exhibit 6)

Surrounding Property

(3) The subject property is surrounded by property owned by the M-NCPPC and in the R-O-S Zone:

- North – The “Cottage at Warrington”, an un-restored historic property
- South – Across Yellowwood lane, undeveloped parkland
- East – Across Lottsford Vista Road, the Enterprise Golf Course
- West – The Art Farm Cultural Arts Center

(4) Applicant agrees with the neighborhood proffered by Staff. (T. 8)

Neighborhood

(5) The neighborhood is defined as follows:

- North – Realigned Ardwick-Ardmore Road and the northern boundary of the Enterprise Farm owned by M-NCPPC
- South – Lottsford Road
- East – Lottsford Vista Road
- West – Bald Hill Branch Stream

(6) The neighborhood reflects the insulated nature of this use. The M-NCPPC Enterprise Farm Park completely surrounds the subject property and insulates it from the nearby residential neighborhoods.

Master Plan/Sectional Map Amendment

(7) The 1990 Master Plan for Largo-Lottsford recommends public/quasi-public use for the subject property.

(8) The subject property was retained in the O-S Zone upon the District Council's adoption of the 1990 Sectional Map Amendment for Largo-Lottsford, Planning Area 73.

Applicant's Request

(9) Applicant has operated a Private School for 202 developmentally disabled adult students at the site since 1978 pursuant to approval of Special Permit SP-78001. Most of the students are over 21 years of age. An addition was approved in 1992, and Alternative Compliance (AC-92002) for some of the required landscaping. (Exhibits 2 and 11) The school provides “personal adjustment training, activities of daily living, work adjustment, job development, and supportive employment and nursing services.” (T. 15) Applicant

believes there is a need for the school since it has operated successfully at the location for over thirty years. The actual school is located towards the middle of the five (5) acre site. Applicant proposes to demolish the existing approximately 2,400 square foot administrative building (actually a trailer) and construct a 6,900 square foot addition to the school that will house the administrative operation. (T. 10, 15)

(10) Applicant will also create a stormwater retention structure that will function as a rain garden for the stormwater on site, and will provide additional landscaping along the northern property line. (Exhibit 24(a)-(b)) The Planning Director recommended approval of alternative compliance for the northern property line since Applicant “is proposing to greatly enhance the existing bufferyard by supplementing the previously approved and installed plant material with 50 additional shade trees, 25 additional evergreen trees, and 23 additional ornamental trees.” (Exhibit 17(b))

(11) There are 80 parking spaces on the site, the majority of which are located along the Lottsford-Vista Road frontage. (Exhibit 24 (b); T. 7) The parking will not change since it is based on the number of students enrolled (and only 67 spaces are required).

(12) The expanded building will be set back 70 feet from the northern property line. (T. 10) The existing setback for the trailer in which the administration is housed is 23 feet from said property line. The building and proposed addition, parking surfaces and landscaping cover approximately 25% of the site, significantly below the 50% coverage permitted in the Zoning Ordinance.

(13) Applicant revised its Site Plan to address the three (3) conditions suggested by the Technical Staff. (Exhibit 24 (c); T. 13)

Additional comment

(14) Ms. Julisa Robinson has resided in the vicinity of the school for the past 11 years. She testified that she doesn’t “have issues with the school” but wanted assurance that the request would not adversely impact traffic in the area since she believes existing traffic is “horrendous”. (T. 17) Once she was assured that the amount of traffic generated by the school will not change (since the enrollment will remain the same), and that the amount generated to construct the addition will be minimal (no more than a 15-member crew), her concerns appeared to have been assuaged. (T. 18-20)

(15) The Technical Staff recommended approval of the request. (Exhibit 11) In doing so it noted that the use is in compliance with the Master Plan’s recommendation of a public/quasi-public use and that any traffic counts in the area would already include traffic generated by this school that has been in existence for over 30 years. It also expressly opined that the use has no impact upon the adjoining historic site, the “Cottage at Warrington”, or the surrounding parkland.

LAW APPLICABLE

(1) A Private School is permitted in the R-R Zone by Special Exception in accordance with the requirements of Sections 27-396 and 27-317 of the Zoning Ordinance.

(2) Section 27-396 states, in pertinent part, as follows:

Sec. 27-396. Private school.

(a) A private school which offers instruction at levels above the sixth grade may be permitted, subject to the following:

- (1) There is a demonstrated need for the proposed use in the area;
- (2) The proposed site is of sufficient size to properly accommodate a school of the type proposed without adversely affecting abutting land uses;
- (3) No private school shall be located in a multifamily dwelling or in any building of a multifamily project;
- (4) The Council may specify the maximum number of students to be enrolled, which may not be increased by State or local health, education, or fire regulations; and
- (5) If the school offers general academic instruction below college level, an outdoor play area (or other outdoor activity area) shall be provided, which shall have a usable space of at least one hundred (100) square feet per student. This area shall be located at least twenty-five (25) feet from any dwelling on an adjoining lot, and shall be enclosed by a substantial wall or fence at least five (5) feet high.

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(c) In addition to the requirements of Section 27-296(c), the site plan shall show:

- (1) The character of the proposed use;
- (2) The proposed enrollment;
- (3) The location of all dwellings located on adjoining lots; and
- (4) The location and size of outdoor play (or activity) areas.

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(3) Section 27-317 provides as follows:

- (a) A Special Exception may be approved if:
- (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
 - (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
 - (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
 - (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;

(5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and

(6) The proposed site plan is in conformance with an approved Tree Conservation Plan.

(4) The request must also comport with the purposes of the O-S Zone set forth in Section 27-425 of the Zoning Ordinance. This Section provides as follows:

(a) **Purposes.**

(1) The purposes of the O-S Zone are:

(A) To provide for low density and development intensity as indicated on the General or Area Master Plans; and

(B) To provide for areas which are to be devoted to uses which preserve the County's ecological balance and heritage, while providing for the appropriate use and enjoyment of natural resources.

(5) The Court of Appeals provided the standard to be applied in the review of a special exception application in Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981):

Whereas the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. . . . But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

CONCLUSIONS OF LAW

(1) The instant Application is in harmony with the general purposes of the Zoning Ordinance, as follows:

(1) *To protect and promote the health, safety, morals, comfort, convenience and welfare of the present and future inhabitants of the County;*

The Private School has been operational for more than 30 years and has been a benefit to the surrounding neighborhood. Traffic should not be a concern because the Private School is not accepting additional students; thus, traffic will remain the same.

(2) *To implement the General Plan, Area Master Plans, and Functional Master Plans;*

This proposal will implement the 1990 Master Plan for Largo-Lottsford which recognized the current use of the property by recommending "Public and Quasi-public" land use for

the subject property.

- (3) To promote the conservation, creation and expansion of communities that will be developed with adequate public facilities and services;*

The Site is currently served by public water, sewer and electricity. No change in use is anticipated if the request is approved.

- (5) To provide for adequate light, air, and privacy;*

Adequate light and air will be provided as no variances from bulk regulations or departures will be required for the operation of the School.

- (6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from the adverse impacts of adjoining development;*

The expansion of the current institutional use at the site will prevent the need to construct additional offices elsewhere in the neighborhood and will remove an outdated trailer. Thus, this purpose is met.

- (7) To protect the County from fire, flood, panic and other dangers*

Operation of the Private School will not create a dangerous situation, and the construction will meet current standards for fire protection, stormwater management, and other applicable provisions of the Building Code.

- (9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;*

This site will generate tax revenue through the addition of administrative staff for the Private School. These employees will generate taxable revenue as well as an additional multiplier effect to the local economy.

- (10) To prevent the overcrowding of the land;*

This Application will not overcrowd the land as it requires no variances to the bulk regulations, departures or alternative compliance.

- (11) To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;*

There will be no change to the number of students thus there will be minimal if any additional impact on traffic in the area.

- (12) *To insure the social and economic stability of all parts of the County;*

The use will increase the independence of developmentally challenged residents of the County, thereby insuring social and economic stability.

- (13) *To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas and other similar features;*

This proposal is in conformance with all environmental regulations of the County. Further, the property contains no natural features that require preservation, such as streams or, steep slopes.

- (14) *To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and*

There will be additional landscaping and the addition of a stormwater management rain garden. The green area and mature trees will be preserved. Accordingly, this purpose is satisfied.

(Section 27-317(a)(1))

(2) The instant Application is also in harmony with the specific purposes of the O-S Zone, set forth in Section 27-425(a) since the addition equates to a mere 2% increase in overall site coverage and will result in 74.62% green area. Additionally the property is located in the midst of a 580-acre parcel of land owned by M-NCPPC. The removal of the trailer and the limited expansion of the school will not detract from the ecological balance or the natural resources in the area. (Section 27-425(a))

(3) The Revised Site Plan, Exhibit 24(c), is in conformance with all of the applicable requirements and regulations of the Zoning Ordinance. No variances or departures are required. (Section 27-317(a)(2))

(4) The proposed Private School is consistent with the public/quasi public use proposed for the subject property by the 1990 Master Plan for Largo-Lottsford. (Section 27-317(a)(3))

(5) The proposed use will not adversely affect the health, safety or welfare of residents or workers in the area since the enrollment will remain as it has been for the past 30 years, additional landscaping will be provided, and the unattractive trailer that is the most visible aspect of the use will be removed. (Section 27-317 (a) (4))

(6) The proposed use will not be detrimental to the use or development of adjacent

properties or the general neighborhood. A school is currently in operation on the property. No information has been submitted that suggests the use will have a detrimental impact on the neighborhood. (Section 27-317(a)(5))

(7) The proposed use is exempt from the requirements of the Woodland Conservation and Tree Preservation Ordinance since no trees are to be removed. (Section 27-317(a)(6))

(8) Applicant has shown a need for the facility by virtue of its continued use (and slight expansion) since 1978. (Section 27-396(a)(1)). The site is approximately five (5) acres and the undeveloped portion is approximately 75%. The use does not negatively impact the adjoining parkland and historic site. (Section 27-396(a)(2)) The School is not located within a multifamily building. (Section 27-396(a)(3)) The total number of enrolled students shall remain at 202. (Section 27-396(a)(4)) Finally, no play area is proposed since it would not address the special needs of the clientele. (Section 27-396(a)(5))

(9) The Revised Site Plan, Exhibit 24(c), provides the parking and loading spaces as required by the Parking Regulations. The proposed use and the requested alternative compliance, satisfy the landscaping, buffering, and screening requirements of the Landscape Manual.

(10) The record in this case reveals "no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan". It would, therefore, be proper to grant the request, once the conditions addressed below are satisfied.

DISPOSITION

Approval of Special Exception 4644 and AC-92002/01 subject to the following condition:

1. The Special Exception Site Plan shall be revised to include a Note that indicates that the existing trailer will be removed prior to the final building permit approvals. The revised Site Plan shall be submitted to the Zoning Hearing Examiner for review and inclusion in the record.

The Revised Special Exception Site Plan and Landscape Plan are Exhibit 24(a)-(d).