

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. S-2385
PETITION OF OLNEY BOYS AND GIRLS CLUB**

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted July 17, 2024)

(Effective Date of Resolution: July 26, 2024)

The Board of Appeals granted Case No. S-2385 to Olney Boys and Girls Club ("OBGC") on July 26, 1999, under Sections 59-G-2.24 and 59-G-2.42 of the Zoning Ordinance, to permit the establishment and operation of a service organization. The Board previously granted administrative modifications of this special exception in Resolutions dated November 15, 2006, July 14, 2011, and June 4, 2019. Effective June 21, 2023, the Board granted an administrative modification of the originally approved Lighting and Landscaping Plans. This modification was suspended on July 26, 2023, following receipt of a request for a public hearing, and reinstated on October 11, 2023, after that request was withdrawn.

The subject property is Lot 5, Brooke Farm Subdivision, located at 4501 Olney-Laytonsville Road, Olney, Maryland, 20832, in the AR Zone.

The Board of Appeals has received a letter with attachments, dated June 25, 2024, from Brad Scott, OBGC Director, requesting an administrative modification of this special exception. Mr. Scott states in his letter that the purpose of the requested modification is "to obtain Board approval for certain changes to existing structures, and to clarify the wording of the use approval," as follows:

- 1) Confirm the placement of existing fundraising structures as part of the Special Exception. These structures were approved by M-NCPPC and have been in use for the past 22 years in support of the fundraising events.
- 2) Clarify the SE conditions of approval to include reference to "fundraising" as an approved part of the Applicant's use. Fundraising activities are an integral part of the success of the OBGC, as a non-profit organization, and provides a major source of funding. Fundraising activities have occurred consistently since the original SE grant in 1999 because those activities are both customarily associated and necessarily incidental to the principal functions and purposes of OBGC's existing use as a service organization. This request does not change the scope of the use, it only clarifies the wording.

Mr. Scott's letter states that the OBGC would like to add the word "fundraising" to the conditions regarding the use of this special exception, explaining that "[f]undraising activities are inherent to the operation of the OBGC's special exception as a service organization," and are "both customarily associated and necessarily incidental to the principal functions and purposes of OBGC's existing use of the Property." Mr. Scott's letter further states that "[a] service organization cannot function without holding fundraisers," and that "[t]hese fundraisers are integral and have been conducted on the site for the past 22 years as part of the use," ostensibly referring to the OBGC's Field of Screams.

In addition, Mr. Scott states in his letter that the OBGC is "requesting to clarify the language of the SE conditions to make clear that the 10:30 PM cut-off for events at the site is intended to be the cut-off time for hosting the event and for allowing attendees to stay at property." His letter states that "[t]he original SE condition gives an exception for 'security lighting', which should also include reasonable allowances for the safe clean-up of the property, shutting down the event (locking doors, etc.) and departure from the site by volunteers and staff." Mr. Scott's letter expresses concern that the existing special exception language is not clear and may confuse County inspectors.

Mr. Scott includes an aerial photograph with his request showing that the structures the OBGC seeks to add to the special exception are located in a wooded area of the property. He also includes a Site Plan, marked "Sheet 2 of 8," on which the structures to be added to the special exception are designated with blue asterisks. This Site Plan also illustrates changes to the forest conservation area.

Mr. Scott includes an attachment to his letter proposing that the following language be added to the end of Condition No. 3 of the Board's July 26, 1999, Opinion granting this special exception:

Fundraising activities are customarily associated and necessarily incidental to the principal functions and purposes of the special exception use and shall be permitted at the site subject to the Hours of Operation. Security lighting past 10:30 PM includes lighting that is reasonably necessary for volunteers and staff to safely clean-up the property, shut down events, and for guests to depart from the site.

Mr. Scott's letter states that the requested modification can be granted because it "does not substantially change the nature, character, or intensity of the special exception, and does not substantially change the effect on traffic or on the immediate neighborhood." In support of this, his letter states that the intensity of the use and its impact on traffic "remain unchanged, since these modifications are not changing the scope of events or the structures, and since attendance is controlled by the existing parking at the sports facility, which is also not changing." His letter notes that when parking reaches capacity, the event is closed to additional attendees. Finally, Mr. Scott's letter states that the existing structures that OBGC seeks to have added to the special exception "are not visible from the main road (Route 108, Olney-Laytonsville Road)," and "are bordered by wooded areas on all sides." Accordingly, his letter concludes that "there is no substantial impact on any of the neighborhoods in the area."

The Board of Appeals considered the modification request at its Worksession on July 17, 2024. Peter Ciferri, Esquire, appeared on behalf of the OBGC, along with volunteer and OBGC "fixer" Kevin McLaren. Mr. McLaren explained that the structures for which the OBGC is seeking approval have been on the property for 22 years and are in a wooded area where they cannot be seen. He stated that M-NCPPC originally gave the OBGC permission to construct these structures, but that they later learned that M-NCPPC did not have the authority to do that. Mr. McLaren stated that to bring the structures into compliance with current requirements, they need to get permits for each structure from DPS, and that DPS is requiring that they obtain a modification of the special exception before they will issue these permits. Mr. McLaren stated that the structures at issue are marked with blue stars on the Site Plan that was submitted with the modification request.

In addition, Mr. McLaren stated that while the original special exception speaks about games and fields, it does not mention fundraisers. He stated that the OBGC was cited by the County last December for holding a fundraiser because it was "not a sporting event." Mr. McLaren stated that the OBGC would like to clarify the wording of the special exception to make clear that fundraisers are allowed, and that security lighting can be used in connection with fundraising events. He stated that the OBGC is a nonprofit.

In response to a Board question asking if there was a finite time by which the security lights would have to turn off, Mr. McLaren stated that a different condition of the special exception says that you can have security lighting past 10:30 p.m. so that people can safely leave the property, and that the OBGC is not seeking a change to that. He stated that you cannot see the lights on the trail from anywhere, and that you can only see the top of the tree at the Winter City Lights. Mr. McLaren stated that the OBGC works to aggressively move people off the property at the close of its events, and that they shut down lighting as parking lots are emptied. He stated that he works closely with the OBGC's neighbors to address any concerns they might have, and explained some steps the OBGC has taken to do that, such as building a berm to serve as a noise baffle and moving the "chain saw" feature of the Field of Screams further from the property line. In response to a question about noise, he stated that the decibels from the fundraisers have been tested and are not a problem.

Because Case No. S-2385 was approved prior to October 30, 2014, under Section 59.7.7.1.B of the current Zoning Ordinance, this modification request must be reviewed under the standards and procedures in effect on October 29, 2014 (Chap. 59, Mont. Co. Code, 2004, as amended), unless the applicant elects otherwise. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance (2004) provides, pertaining to modification of special exceptions:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds, based on Mr. Scott's letter and the attachments thereto, and on the representations made by Mr. McLaren at the Worksession, that the request to add the structures marked with a blue asterisk on the submitted Site Plan to the special exception will not substantially change the nature, character, or intensity of the use, or its effect on traffic, since the structures are located in the woods, cannot be seen from the main road, and have been in place for the past 22 years. In addition, the Board finds that the proposed modification to the language of special exception Condition No. 3, to make express that the OBGC can conduct fundraising activities on site, and can use security lights in connection with those activities, will similarly not result in a substantial change to the nature, character, or intensity of the use, or its impact on traffic or the neighborhood. In support of this, the Board notes, based on Mr. Scott's letter and the representations of Mr. McLaren, that the OBGC has been engaged in fundraising activities for at least the past 22 years (which would be shortly after the 1999 approval of its special exception), and that being able to engage in fundraising activities is implicit and essential to its mission as a nonprofit. Therefore, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Alan Sternstein, and Amit Sharma in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2385, Petition of Olney Boys and Girls Club, is re-opened to receive Mr. Scott's correspondence dated June 25, 2024, with attachments; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception to add the structures marked with a blue asterisk on the attached Site Plan (Sheet 2 of 8) to the special exception, is granted; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that Condition No. 3 of the Board's July 26, 1999, Opinion is modified to read as follows:

3. The annual Hours of operation are:

Monday through Friday 5:00 p.m. to 10:30 p.m. with all games ending at 10:00 p.m.

Saturdays and Sundays 8:30 a.m. to 10:30 p.m. with all games ending at 10:00 p.m.

Summer Camp will operate Monday through Friday 9:00 a.m. to 4:00 p.m. during the summer season.

Fundraising activities are customarily associated and necessarily incidental to the principal functions and purposes of the special exception use and shall be permitted at the site subject to the Hours of Operation. Security lighting past 10:30 PM includes lighting that is reasonably necessary for volunteers and staff to safely clean-up the property, shut down events, and for guests to depart from the site.

and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 26th day of July, 2024.



Barbara Jay
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.