

**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 May 22, 2019)
(Effective Date of Resolution: June 4, 2019)

The Board of Appeals granted Case No. S-2385 to Olney Boys and Girls Club 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 administratively modified this special exception in Resolutions dated November 15, 2006, and July 14, 2011.

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 April 15, 2019, from Lucian Romano, Chairman of the Board of the Olney Boys and Girls Club (OBGC). Mr. Romano requests administrative modification of the special exception to "add structures to cover the queue lines for the fundraising events and additional structures for future attractions to support the fundraising event." He explains in his letter that:

... The queue line covers are to prevent muddy conditions after rain storms. The rains that occur during the week have created a mud situation that has adversely impacted the fundraiser and has had a huge negative impact on customer reviews and attendance. The future structures are for added attractions to give patrons something to do while waiting in the main compound, the current plan is for a DJ booth, games, and photo boxes.

See Exhibit 32. Specifically, Mr. Romano's letter requests approval of the following changes:

- a) Haunted House Queue Line Cover – Add a structure to cover the queue line to the haunted house. The proposed structure will be similar in appearance and construction to a wooden outdoor pavilion.

- b) Hay Ride Queue Line Cover – Add a structure to cover the queue line to the hay ride. The proposed structure will be similar in appear and construction to a wooden outdoor pavilion.
- c) Haunted Trail Queue Line Cover – Add a structure to cover the queue line to the haunted trails. The proposed structure will be similar in appearance and construction to a wooden outdoor pavilion.
- d) Three additional future structures,¹ similar to the queue line covers, for future attractions and/or arcade type games. The future attractions/games will be designed to give the existing fundraiser patrons something to do while waiting in the main compound.

He states in his letter that the proposed changes will not change the nature or character of the special exception use because "the event remains a seasonal fundraiser," and will not change the intensity of the use or traffic because "attendance is controlled by the existing parking at the sports facility. Once the parking is at capacity the event is closed to any additional fundraiser attendees." See Exhibit 32.

In addition, Mr. Romano states in his letter that "the proposed structures are not visible from the main road (Route 108, Olney-Laytonsville Road), and they are bordered by a wooded area on two sides, corn field on one side, and practice sports field on the remaining side. So there is no impact on any of the neighborhoods in the area." He encloses with his letter a copy of the Site Development Plan showing the location of the proposed buildings and an elevation drawing of two of the queue line cover structures. In addition, he encloses aerial photographs showing the location of the proposed structures on the property and in relation to surrounding uses. See Exhibits 32(a)-(d).

The Board of Appeals considered the modification request at its Worksession on April 24, 2019. OBGC Project Volunteer Kevin McLaren, who is shepherding this project, was present at the Worksession in support of the proposed modification. Mr. McLaren explained the purpose of and need for the proposed structures. He stated that two of the structures already exist and were constructed on the mistaken belief that they were already permitted. He stated that these structures have been inspected by the County's Department of Permitting Services, and are compliant and safe. He clarified that contrary to the statement in paragraph (d) of the April 15, 2019, letter, which states that the OGBC was seeking "[t]hree additional future structures, similar to the queue line covers," the Club is in fact only seeking two such structures, in addition to seeking a queue line cover for the Haunted Trail and permission to retain the two existing queue line covers. He stated that the proposed changes will not change the number of people on-site because that is limited by the existing available parking. He stated that the fundraiser area is surrounded by a corn field, woods, and sports fields that belong to the Club. He noted that the fundraiser area is about 15 feet lower in elevation than the surrounding terrain, and is not visible from Route 108 or elsewhere.

¹ Kevin McLaren, the OBGC Volunteer in charge of this project, clarified at the Worksession that the OBGC is in fact only seeking two such future structures.

The Board noted that its July 26, 1999, Opinion states that "[t]he entire 118-acre site has been designated as the environmental setting for Falling Green, thereby subjecting future development of the property to review by the Historic Preservation Commission." Upon ascertaining that such review had not yet taken place, the Board deferred consideration of this modification request by consensus. On May 21, 2019, the Board received a letter dated May 17, 2019, from Rebecca Ballo, Historic Preservation Supervisor, with the Historic Preservation Commission. See Exhibit 34. Ms. Ballo indicates that "[a]s the project is not located within the Environmental Setting for the Historic Site, [she] finds that no further review under the Montgomery County historic preservation ordinance (Chap 24A-6) is warranted" and that a HAWP is not necessary. The Board is also in receipt of a letter dated May 14, 2019, from the Maryland Historical Trust, indicating that the proposed project is not within the easement boundaries and therefore is outside of their purview. See Exhibit 33.

Having received the requested information from the Historic Preservation Commission, the Board of Appeals took up this modification request at its Worksession on May 22, 2019. OBGC Project Volunteer Kevin McLaren was once again present at the Worksession in support of the proposed modification. He stated that following the Board's April 24, 2019, Worksession, he had gone to the County's Historic Preservation Commission, which had in turn sent him to the Maryland Historical Trust, which indicated that the proposed modifications were outside of the viewshed easement and therefore not within their purview. Mr. McLaren stated that he then returned with that information to the County's Historic Preservation Commission, which issued the letter quoted in the preceding paragraph, indicating that no further review is warranted. See Exhibits 33 and 34. He asked that the Club's special exception be modified so that in lieu of requiring review of every modification by the Historic Preservation Commission, the special exception only require review of those modifications that are within the viewshed easement. Finally, he provided the Board with a packet of papers showing the extent of the viewshed easement as well as the extent of the historic setting of Falling Green. See Exhibit 35.

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 that the proposed structures are intended to support existing functions on the site, and thus will not generate new activity or traffic. The Board notes as further support for this finding Petitioner's representation that attendance is limited by the currently available parking, and that the site will be closed to additional patrons once parking reaches capacity. In addition, the Board finds, based on the aerial photographs at Exhibit 32(a)-(c) and the representations in Mr. Romano's letter, that the requested structures will be internal to this large special exception property and are well-buffered from surrounding uses, and thus will have little if any effect on the neighborhood. Accordingly, the Board finds that the proposed modification, as described herein, by Mr. McLaren, and in Mr. Romano's letter, and as shown on the attachments to that letter, will not substantially change the nature, character or intensity of the use or its effect on traffic or on the immediate neighborhood. In addition, the Board finds, based on the representations of Mr. McLaren and the documents at Exhibits 33 through 35, that it can grant Mr. McLaren's request that the scope of modifications that must be reviewed by the Historic Preservation Commission be narrowed. Therefore, on a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Stanley B. Boyd, Vice Chair, Bruce Goldensohn, and Jon W. Cook 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. Romano's correspondence dated April 15, 2019, with attachments (Exhibits 32 and 32(a)-(d)), the letters from the Historic Preservation Commission and Maryland Historical Trust (Exhibits 33 and 34), and the packet regarding the extent of the viewshed easement and historic setting of Falling Green (Exhibit 35); and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that notwithstanding the language found in the third paragraph under the heading "Petitioner's Case" in the Board's July 26, 1999, Opinion granting this special exception, only those modifications which affect the area of the subject property that is located within the viewshed easement shown on Exhibit 35 shall require review by the County's Historic Preservation Commission; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception as described in Mr. Romano's letter and shown on the attachments thereto, and to limit the universe of changes requiring review by the Historic Preservation Commission as set forth herein, is granted; 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 4th day of June, 2019.


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.

