

BOARD OF APPEALS
for
MONTGOMERY COUNTY
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240)-777-6700

Case No. S-686-C

PETITION OF THE LANDON SCHOOL

OPINION OF THE BOARD

(Hearing date: September 11, 2002)

(Opinion Adopted: October 2, 2002)

(Effective date of Opinion: November 18, 2002)

Case No. S-686-C is a petition by The Landon School ("Landon") for a modification to an existing special exception for a private educational institution pursuant to Section 59-G-2.19 of the Zoning Ordinance. This modification proposes: (1) construction of a new Lower School building; (2) addition of grades kindergarten through second; (3) renovation of main athletic field and seating; (4) renovations to the Amphitheatre; (5) continuation of the existing summer camp program as an accessory use; and (6) revisions to the existing campus roadway system, all on its campus located at 6101 Wilson Lane, Bethesda, Maryland (the "Campus").

Pursuant to Section 59-A-4.11(a) of the Montgomery County Zoning Ordinance, the Board of Appeals held a public hearing on this petition on September 11, 2002. Harry W. Lerch, Esquire, appeared on behalf of the Petitioner. Testifying on behalf of the Petitioner were Damon Bradley, Headmaster of Landon, David Wahl, Assistant Headmaster of Landon, Peter Winebrenner, an architect with the firm of Cochran, Stephenson & Donkervoet, Inc., David Weber, an engineer and land planner with the firm of Gutschick, Little and Weber PA, Leon Chatelain, an architect with the firm of Chatelain and Associates, and Craig Hedberg, a transportation planner with the firm of Integrated Transportation Solutions, Inc.

No one appeared in opposition to the requested modification. Two letters in support of the application were submitted by neighbors (Exhibit No. 25 and Exhibit No. 28). There were no letters of opposition. Martin Klauber, Esquire, the People's Counsel of Montgomery County, Maryland, participated in the hearing in support of the requested modification as conditioned below.

The subject property is comprised of Parcels P485, N432, P618, N406 and P521, located at 6101 Wilson Lane, Bethesda, Maryland, in the R-90 and R-90/TDR Zones.

Decision of the Board:

Special Exception Modification
GRANTED, subject to conditions
enumerated below.

EVIDENCE PRESENTED TO THE BOARD:

1. The Petitioner requests a modification to the existing special exception for a general modernization of the campus to address the need to redesign classrooms and academic support spaces, the need to renovate existing facilities, and the need to reconfigure roads to provide safer, smoother modes of pedestrian and vehicular movement.

2. Mr. Damon Bradley provided a brief history of the School, and testified that Landon enjoys a good relationship with its neighbors, who often utilize the School's fields, scenic trails, and playgrounds. Mr. Bradley further testified regarding the need for a new lower school, stating that the Wilson Building, which currently houses grades three through five, was never intended for elementary school use. The proposed new Lower School will consist of approximately 32,000 gross square feet. It will provide larger classrooms, better library resources, a computer lab, reading rooms, and an online resource center. A multi-purpose room and a small administrative space are also contemplated by the plans (Exhibits 31 F and 31 H).

3. Landon's current enrollment is 660 students in grades three through twelve. The requested modification provides enough classroom space for the school to consider adding kindergarten through second grade to its current enrollment, which would add seven faculty members and one administrator to its current staff of 150, and increase enrollment by approximately 76 students. The revised statement of operations states that if these changes are made, they would be phased in over a three-year period, no sooner than the 2003-2004 academic year. [Exhibit No. 31(c)].

4. Mr. Bradley further testified that the hours of the Lower School will be 8:00 am to 3:40 pm. After school daycare will also be provided for approximately 3-5% of the Lower School student population beginning at 3:40 pm and continuing as late as 6:00 pm. Mr. Bradley stated that the School hopes that the new Lower School will be ready for occupancy by the fall of 2004.

5. Mr. David Wahl testified regarding the renovation of the main athletic field as well as the construction of new seating on the field. Mr. Wahl stated that the renovations will include improved drainage from the field, but will

not affect the overall contours of the field or the surrounding area. Additionally, Mr. Wahl testified that the improved seating will provide easy access for the elderly and physically challenged. The proposed renovations provide for increased seating to the extent necessary to better accommodate Landon's usual number of guests. Mr. Wahl testified that the proposed renovations include seating capacity for 819 on the home side of the field and 280 on the visitor side. He stated that the School does not foresee an increase in overall attendance or in the size or number of events conducted at the field; and, no change is proposed with regard to lighting or the sound system.

6. Mr. Wahl also testified regarding the proposed change to the amphitheatre. Mr. Wahl stated that the amphitheatre is in need of restoration after more than 25 years of use. The amphitheatre is natural in appearance and blends in well with the surrounding area. The proposed renovations include new wood or vinyl seating surfaces, and repairs to, and a minor enlargement of, the low stage area. Mr. Wahl testified that the School does not intend to increase seating capacity.

7. Mr. Wahl also testified regarding the School's request for acknowledgement from the Board that the School's summer camp constitutes an accessory use. Mr. Wahl stated that Landon's summer camp has operated for approximately 40 years and runs for eight weeks over the course of the summer. Mr. Wahl further testified that the School offers a wide range of selections for the prospective camper, ranging from academic programs (algebra, writing, chemistry, computer skills, learning and study skills) to arts programs (band, ensemble, painting, photography, ceramics) and athletics (lacrosse, baseball, tennis, weight and strength training). The camp is designed for boys and girls ages 4 through 18. The total number of campers in all of the summer programs offered by Landon is equal to 520 full time equivalents. Mr. Wahl testified that the School seeks permission for a maximum number of 700 campers at any one time.

8. Mr. Wahl also testified regarding the changes to the campus road system. Mr. Wahl stated that the current road system impedes the natural flow of traffic and forces the students to cross roadways while traveling from class to class. Landon proposes a revised plan that would divert traffic from areas with high volumes of student pedestrian traffic and provide drop off/pick up inlets and greater stacking distances.

9. Peter Winebrenner provided the Board with an overview of the architectural details of the proposed Lower School as well as the proposed gate for Wilson Lane (Exhibit 31F). Mr. Winebrenner also showed the Board plans of the security kiosks and gates that were previously approved by the Board of Appeals at a minor modification hearing (Exhibit 31A).

10. Mr. Winebrenner testified that the requested modification was in compliance with the following sections of the Montgomery County Zoning Ordinance ("Zoning Ordinance"): 59(g)1.2.1, 59-G-1.23(g) and (h), 59-G-1.26, and 59-G-2.19(a)(1)-(4) (Exhibit 31F).

11. In response to questions raised by Board Member Allison Ishihara Fultz, Mr. David Weber testified that the primary stormwater management will occur around the proposed Lower School, and that the protections around the School included super silt fencing. Mr. Weber also stated that because the drains were slightly elevated, they acted as a sediment trap so that no grading would be required (Exhibit 31F).

12. When questioned by Mr. Klauber about the grading for the internal roadways, Mr. Weber testified that the only grading required generally was a stripping of the topsoil, but that minor grading would occur adjacent to the playing field.

13. Mr. Weber further testified that the requested modification is in compliance with Sections 59-G-1.21(a) and 59-G-1.23(a), (b), (d) and (f) of the Zoning Ordinance (Exhibit 31F).

14. Mr. Craig Hedberg stated that the requested modification, as it relates to transportation, is in compliance with Sections 59-G-1.21(a)(4) and (9), Section 59-G-2.19(a)1) and 59-G-2.19(2) of the Zoning Ordinance (Exhibits 4 and 7).

15. When questioned by Chairman Spence regarding the State Highway Administration ("SHA") improvements that are being constructed, Mr. Lerch stated that the improvements are still under design, but are expected to begin this year. Mr. Lerch further stated that the SHA is currently planning to widen a portion of Wilson Lane. The frontage of Landon, along with the Wilson Lane entrance, will be affected by this construction, and Landon intends to cooperate with the SHA to promote safer, more efficient travel along this road. Mr. Hedberg testified that the improvements are being designed to include separate left turn lanes on Wilson Lane at the School's driveway and at Whittier Boulevard (eastbound and westbound).

16. Mr. Hedberg also testified regarding the Transportation Management Plan. Mr. Hedberg stated that the implementation of the Transportation Management Plan will manage traffic flow in and out of the School, particularly during peak traffic hours (Exhibit 39).

17. Mr. Leon Chatelain testified the home side of the enhanced seating would include 819 seats for visitors, and the visitor side would include 280 seats. Mr. Chatelain further testified regarding the use of existing and proposed hedging as well as proposed trees to create an appropriate landscaped environment and

shield for the enhanced seating as well as the field (Exhibit 11, Exhibit 31 D and Exhibit 31 F).

18. When questioned by Mr. Klauber about the method used for planning the enhanced seating, Mr. Chatelain testified that the seating was designed for 700 people, but by the calculations of the Technical Staff of Maryland-National Capital Park and Planning ("MNCPPC"), the enhanced seating would actually fit 819.

19. Mr. Chatelain stated that the requested modification relating to the football field and enhanced seating is compatible with Section 58-G-2.19(a)1 and (2) of the Zoning Ordinance.

20. Mr. Klauber expressed his support for the proposed modification, however, he did state his concern relating to the amount of seating at the football field.

21. Chairman Spence inquired about the requirements that campus signs receive the approval of the Sign Review Board. Mr. Lerch responded that signs not visible from outside the property were exempt from the permitting requirements of the Sign Review Board. Upon the request of Chairman Spence, Mr. Lerch later submitted a letter dated September 13, 2002 (Exhibit 37), citing Section 59-F-8.1(b) of the Montgomery County Code, which states that such signs are exempt.

22. Additionally, at the request of Chairman Spence, a revised landscaping plan for the new Lower School Building (Exhibit 38) was submitted, along with an approved stormwater management concept plan (Exhibit 40). Both plans were subsequently approved by the Board.

FINDINGS OF THE BOARD

The Board finds that the requested modifications comply with the specific standards and requirements set forth for the proposed modified use in Section 59-G-2.31, specifically:

Section 59-G-2.19. Educational Institutions, Private.

(a) Generally. A lot, tract or parcel of land may be allowed to be used for a private educational institution if the board finds that:

(1) the private educational institutional use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity,

or any other element which is incompatible with the environment and character of the surrounding neighborhood;

The requested modification is to an existing special exception use. The requested modification will not constitute a nuisance because of the location of the proposed changes and type of physical activity associated with it.

- (2) *except for buildings and additions completed, or for which a building permit has been obtained before April 2, 2002, the private educational institution must be in a building architecturally compatible with other buildings in the surrounding neighborhood, and, if the private educational institution will be located on a lot, tract, or parcel of land of 2 acres or less, in either an undeveloped area or an area substantially developed with single-family homes, the exterior architecture of the building must be similar to a single-family home design, and at least comparable to any existing homes in the immediate neighborhood;*

The requested modification will be housed in buildings architecturally compatible with buildings in the surrounding neighborhood.

- (3) *the private educational institution will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community;*

The requested modification will not adversely affect or change the present character or future development of the surrounding residential community.

- (4) *the private educational institution must conform with the following standards in addition to the general development standards as specified in Section G-1.23:*

- a. **Density**—*The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering the factors set forth in Section G-1.23(a)(1) through (a)(5) of the Zoning Ordinance.*

The requested density is appropriate considering those factors set forth in Section 59G-1.23(a)1-(5), including traffic patterns, noise and type of physical activity, and topography.

- b. **Buffer**—*All outdoor sports and recreation facilities must be located, landscaped or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into*

adjacent residential properties. The facility must be designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fences and walls.

The proposed modification will not constitute an intrusion into adjacent residential properties because appropriate screening measures are contemplated in the proposed plans.

(b) If a private educational institution operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, the Board must find, in addition to the other required findings for the grant of a private educational institution special exception, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Board must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Board. The Board may limit the number of participants and frequency of events authorized in this section

The requested modification does not relate to any activities for which the School would lease out its facilities. The Landon Summer Camp will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, parking, or the intensity, frequency or duration of activities.

(c) Programs Existing before April 22, 2002

(1) Where previously approved by the Board, a private educational institution may continue the operation of (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, whether such programs include students or non-students of the school, if the number of participants and frequency of events for programs authorized in 59-G-2.19(b) are established in the Board's approval.

(2) Where not previously approved by the Board, such programs may continue until April 22, 2004. Before April 22, 2004, the underlying special exception must be modified to operate such programs, whether such programs include students or non-students

of the school. The Board may establish a limit on the number of participants and frequency of events for authorized programs

The Board approves the continuation of the existing summer day camp as an accessory use to the existing special exception.

STANDARD FOR EVALUATION (SECTION 59-G-1.2.1)

Section 59-G-1.2.1 sets forth the standard by which the Board must evaluate a special exception. That standard requires that a special exception be evaluated based on its inherent and non-inherent adverse effects at the particular location proposed, irrespective of adverse effects if elsewhere established in the zone (Zoning Text Amendment No. 99004, Opinion, page 4). Section 59-G-1.2.1 states:

A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

The Board interprets this section to require the following analysis. The Board must:

(1) Make a determination as to the general neighborhood affected by the proposed use.

(2) Establish those inherent, generic physical and operational characteristics associated with a given use, in this case a private educational institution, to create an evaluation standard. The evaluation standard does not include the actual physical size and scale of operations of the use proposed.

(3) Determine separately the physical and operational characteristics of the use proposed, in this case, the use as proposed by the Landon School.

(4) Compare the generic characteristics of the evaluation standard with the particular characteristics of the use proposed. Inherent adverse effects are those caused by characteristics of the use proposed consistent with the generic characteristics of the evaluation standard. Non-inherent adverse effects are those caused by characteristics of the use proposed that are not found in the evaluation standard.

Applying the above analysis to this case, the Board find as follows:

(1) The General Neighborhood

The Board adopts the MNCPPC technical staff's definition of the neighborhood: the properties located within or adjacent to Bradley Boulevard to the north and east, Aberdeen Road and Kirby Lane to the south, and Springer Road and Woodhaven Boulevard to the west. [Exhibit 30].

(2) Evaluation Standard - Physical and Operational Characteristics

The Board recognizes that Planning Board staff has, in previous cases, offered seven criteria to be used to establish the physical and operational characteristics of a use. Those are size, scale, scope, lighting, noise, traffic, and environment.

The Board finds that typical of a public or private school in Montgomery County is a substantially sized building in terms of square footage. These buildings are generally one to two stories in height. Operationally, the Board finds that a private or public elementary school can be expected to have anywhere between 100 to 500 students. The Boards finds that a certain degree of outdoor lighting for security purposes is inherent at such schools, that noise from outdoor recess or sports gatherings on outdoor fields is to be expected, and that special events such as Back-to-School nights or other post school hour activities will take place on occasion. The expected hours of operation would generally be between 8:00 A.M. and 3:00 P.M. Bus and automobile traffic are expected to be associated with a private or public elementary school. Finally, impacts on the environment, such as runoff from the school building and the parking facility, are to be expected.

(3) Proposed Use Physical and Operational Characteristics.

The Board adopts technical staff's finding that the impact of the size, scale and institutional design of the new lower School Building and other facilities will be minimal. The new Lower School building, together with the design of the seating improvements for the main athletic field, the renovation of the amphitheatre, and the proposed security kiosks will be compatible with existing buildings on campus and well-buffered from the surrounding neighborhood. Lighting will only be added to the Lower School building, and will be limited to

what is needed for safety and security.

The Board adopts technical staff's finding that there will be minimal environmental, noise or traffic impacts associated with the modification. An increase in enrollment can potentially increase noise, but the campus is well buffered from surrounding properties. Traffic impacts will be mitigated by the proposed improvements to the on-campus roadway system, and the Transportation Management Plan. [Exhibits 30, 39]

(4) Comparison of Characteristics.

(1) Inherent Adverse Effects.

After considering the generic characteristics of the use and comparing them with the physical and operational characteristics of Landon School as modified by the instant request, the Board finds that, all of the physical and operational characteristics of the school associated with the requested modification will be inherent adverse effects.

(2) Non-Inherent Adverse Effects.

The Board finds that there are no non-inherent adverse effects associated with the requested modification.

59-G-1.21. General Conditions.

(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the zone.

The property is in the R-90 and R-90/TDR zones, which permit a private educational institution by special exception and thus the requested modifications are a permissible special exception in the applicable zones.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The requested modification complies with the specific standards for private educational institutions set forth in 59-G-2.19.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The requested modification is consistent with the General Plan for the physical development of Montgomery County. The existing special exception use is covered by the Bethesda Chevy Chase Master Plan which specifically recommends the continued use, within the existing zoning, of large land users like private schools.

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

The requested modification will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses. Most of the changes proposed in the modification request are an attempt to modernize the existing campus facilities.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere In the zone.

The requested modification would not result in the School being detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere In the zone.

The requested modification would not have a detrimental effect for any of these reasons given the size, scale, and scope of what is proposed, the size of the subject property, and the substantial buffering provided.

(7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.*

The requested modification is to a use that has existed on the subject property for over 60 years (more than 50 of those years by special exception).

(8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The existing special exception has operated for many years without causing these effects. The requested modification will not cause any of such effects to arise.

(9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.*

The Board finds that the requested modification will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities. There is existing telephone, electric, natural gas, water and sanitary sewer services adjacent to and available to serve the School and the proposed modifications. Other public services and utilities are also available to the site, including police and fire services. The Board notes that adequate public services have served this site for many years and the modifications will not require additional services.

Accordingly, the Board grants the requested modification of this special exception, subject to the following conditions:

1. The Petitioner shall be bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorney, to the extent that such evidence and representations are identified in the Board's opinion granting the special exception.

2. The Petitioner must implement the Transportation Management Plan. [Exhibit 39].

3. The Petitioner shall continue the operation of the existing summer day camp, as an accessory use. [EVIDENCE PRESENTED, paragraph 6].

4. For each phase relating to the construction of the new Lower School, the renovations to the amphitheatre, and the revisions to the existing campus roadway system, the Petitioner shall submit to MNCPPC a tree save plan, prepared by a certified arborist, before issuance of building and sedimentation and erosion control permits are issued.

5. Construction shall be according to Exhibit 31.

6. Landscaping shall be according to Exhibit 15, and lighting according to Exhibit 31(e).

7. The Petitioner must establish a neighborhood liaison committee, in which the People's Counsel shall serve ex-officio. The committee shall meet annually or more often if so requested by any of the existing neighborhood associations, or by the People's Counsel.

8. All prior terms and conditions of the special exception, together with any modifications granted by the Board of Appeals, remain in effect.

On a motion by Angelo M. Caputo, seconded by Allison Ishihara Fultz, with Donna L. Barron, Louise L. Mayer and Donald H. Spence, Jr., Chairman in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of

Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 18th day of November, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

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 (See Section 59-A-4.63 of the County Code). 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.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four month period within which the special exception granted by the Board must be exercised.