

Clerical Correction
Condition No. 17

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. S-289-B [Case Nos. CBA-321 A-B, CBA-2545, CBA-2546]

PETITION OF LITTLE FALLS SWIM CLUB

CORRECTED OPINION OF THE BOARD

(Opinion Adopted May 18, 2005)

(Effective Date of Opinion June 8, 2005)

Case S-289-B is a petition by Little Falls Swim Club to modify its existing special exception for a community swimming pool. The Board of Appeals ordered a Show Cause Hearing, based on violations of the special exception alleged by the Montgomery County Department of Permitting Services (DPS), which was scheduled and advertised to be heard by the Hearing Examiner for Montgomery County on June 7, 2004, the same date as the modification hearing. The Hearing Examiner held hearings on the modification on June 7, 2004, July 12, 2004 and July 28, 2004, when the show cause hearing was also held. The record in the case closed on October 18, 2004. On April 22, 2005, the Hearing Examiner issued a Report and Recommendation to grant the modification in part, and deny it in part, together with a Report and Recommendation, in the Show Cause matter, to affirm and partially modify the special exception consistent with the modification report.

Decision of the Board: Request for Oral Argument **Denied**.

Special Exception Modification **Granted** in Part
And **Denied** in Part, Subject to the Conditions
And Recommendations Enumerated below.

The subject property is Lots 27-34, Block I, Green Acres Subdivision, located at 5001 Little Falls Drive, Bethesda, Maryland in the R-60 Zone.

The Board of Appeals considered the Hearing Examiner's Reports and Recommendations at its Worksessions on May 4, and May 18, 2005. The Board also had before it a request for Oral Argument on the modification Report and

Recommendation from Elizabeth A. Edmonds. After careful review of the reports and of the record in the case, the Board finds that the record compiled by the Hearing Examiner is thorough and complete, and fully addresses the violations noted by DPS as well as the modification application. The Board therefore denies the request for Oral Argument, adopts the Reports and Recommendations and grants the modification in part, and denies it in part, subject to the following conditions and recommendations:

1. Deny request to cut into the foot of the berm along Baltimore Avenue.
2. Grant request to enlarge pool area by moving existing chain link fence and sidewalk out towards Little Falls Creek as shown on September 8, 2004 draft Landscape Plan (Exhibit 166(a)) and on final Landscape Plan to be submitted and approved after initial Board decision on this application.
3. Require Petitioner to install stockade fencing along tennis courts and in shed area, as shown on Exhibit 166(a), within 40 days of Board's Opinion in this matter.
4. Require Petitioner to submit, within 20 days of the Board's Opinion in this matter, a revised Landscape Plan with the following changes:
 - a. Remove all references to cutting into the foot of the Baltimore Avenue berm.
 - b. Add to plantings along tennis courts the shrubs that were shown along the tennis courts on the June 25, 2004 Landscape Plan, Exhibit 133(b).
 - c. Change language on sheet one that refers to installing wooden fence and landscaping along tennis courts "per site plan" to read "as shown on sheet one and two of this Landscape Plan."
 - d. Remove existing pole lights.
 - e. Change *Prunus Laurocerasus* "Otto Luyken" to native evergreen shrub such as *Prunus Caroliniana* (cherry laurel). Increase size at planting to five feet in height, or as close to that height as practicable. Indicate existing Holly as saved and limb up to remove threat of injury to bathers.

f. Revise phasing plan to provide as follows:

- (1) Within 40 days of the Board's Opinion in this matter, install stockade fencing along tennis courts and in shed area.
- (2) Within four months of Board's approval of final Landscape Plan (before winter growing season), do clean-up work along tennis courts, Batlimore Avenue berm and Glen Cove Parkway and install all new plantings that may appropriately be planted during those seasons.
- (3) Within 12 months of Board's approval of final Landscape Plan and before swim club opens for the 2006 season, complete all plantings along alley and Glen Cove Parkway. These plantings must be completed before the swim club may open for the 2006 season.
- (4) Within 24 months of Board's approval of final Landscape Plan, install landscaping, new fencing and walkway in and around pool area closest to Little Falls Creek, including new sidewalk outside fence.

The Landscape Plan shall be submitted to the Hearing Examiner for review and preparation of a supplemental report to the Board that outlines whether the revised Landscape Plan reflects all of the required revisions and should be approved.

5. Require Petitioner to stop using the pool area pole light immediately and to submit, within 60 days of the Board's Opinion in this matter, a lighting plan that shows replacement lighting for the parking lot, using fixtures with a height no greater than 15 feet. A standard photometric plan shall be submitted with the lighting plan. These items shall be submitted to Technical Staff of the MNCPPC with a request that Staff provide a recommendation to the Hearing Examiner on the compatibility and appropriateness of the proposed lighting, and to the Hearing Examiner for review and preparation of a supplemental report to the Board that takes into consideration Technical Staff's recommendation and provides the Hearing Examiner's recommendation to approve or disapprove the lighting plan. Petitioner should be required to remove both pole lights within 30 days after a replacement plan is approved by the Board.

6. Require Petitioner to submit, within 20 days of the Board's Opinion in this matter, a revised Statement of Operations with the following changes and additions (language to be deleted shown with strikethrough line, language to be added shown in **bold**):

a. Pool Season. Language to be added: “**No organized group activities, including swim team activities or social events, shall take place between Labor Day and the date the pool closes for the season.**”

b. Swim and Dive Teams. Language to be added: “**No amplified music, other amplified sound, or noisemakers shall be permitted at pep rallies.**” “**No bleachers or other structures that provide for additional spectator seating may be installed at any time.**”

c. Amplification Devices. First sentence of second paragraph should be revised to read as follows:

LFSC uses a public address system consisting of (1) **a microphone with** two small speakers located on the exterior of the pool bath house, **which is used only** to announce **events at** swim meets, and (2) the Colorado Systems device, which **consists of a starting buzzer that is used to start events at swim meets, and a hand-held microphone that** is used in swim meets to communicate to the swimmers the start of a race, and in dive meets to announce the dive events.

d. Tennis Program. The following should be added to the second sentence of Part b., Tennis Backboard: “**or during children's classes.**” The second, third and fourth paragraphs of Part c. should be revised to read as follows:

Tennis classes for children must begin no earlier than 9:00 a.m. and end no later than 6:00 p.m., with no more than 15 children per class and no more than one children's class held at any one time.

Tennis classes for children may be held one day a week, for up to three hours per day, during a six-week period in May and June. Children's tennis classes may also be held for three hours per day, on weekdays, between the hours of 9:00 a.m. and 1:00 p.m., for a four-week period during the months of June and July.

Tennis classes for adults are to begin no earlier than 9:00 a.m. and end no later than 7:00 p.m., with a maximum of 12 people per class.

Adult classes may be held during the months of May through October. They must be limited to no more than three hours once a week, with three sessions: a session of up to six weeks during the months of May and June; a session of up to four weeks any time during the months of June, July and August; and a session of up to six weeks during the months of September and October.

- e. Parking Policy. Second paragraph should read as follows:

Parking on the other streets by Club members in order to use the Club's facilities is permitted only during the following events and only when the Club's parking lot and the Westbrook Elementary School parking lot are both is-full. Little Falls members must park in the Westbrook Elementary School parking lot during swim meets until that lot is full, leaving the swim club parking lot for visitors, with two exceptions: (i) swim club members whose vehicles display a handicapped tag or license plate may park in the Little Falls lot; and (ii) if vehicles are needed to transport equipment necessary for swim meets, up to five vehicles belonging to swim club members may be parked in the Little Falls lot for that purpose.

- f. Parking Enforcement Procedures. Second paragraph should be revised as follows:

The pool administrator shall compile a list of all license plate numbers of members, organized in alphabetical or numerical order and identifying those license plates that belong to members who live on Baltimore Avenue, Glen Cove Parkway or Allen Terrace within two blocks of the swim club. Staff will check the license plates of vehicles that are observed parked on the those three streets against the list and for each vehicle that matches a number on the list, staff shall write down the date, time, license plate number, and make and location of the car. The pool administrator shall take this list of suspected violators and check whether the member or anyone from the member's household checked into the pool or the tennis courts on that date. If so, that will be considered a parking violation.

License plates will be checked at least once each day during the pool season, at various times each day, (i) on Baltimore Avenue between Glen Cove Parkway and Montgomery Avenue; (ii) on both blocks of Glen Cove Parkway; and (iii) on the portion of Allen Terrace adjacent to and opposite the elementary school playground and playing fields. Checks shall be timed in accordance with staff work shifts and break times to ensure that safety is not compromised when a staffer leaves the pool area.

The pool administrator shall maintain a log of license plate checks providing the date, the time and the signature or initials of the person who conducted the check.

- g. Special Social Events. Last three sentences in first paragraph should be revised as follows:

Youth activities are chaperoned with at least one adult for every 10 youths under 18 and are held no more than three times per season. Adult parties are held no more than three times per season. No hard liquor is served at adult affairs and no alcoholic beverages are served at youth affairs.

- h. Communication with Neighbors. Last sentence should be replaced with the following:

LFSC shall establish a Community Liaison Committee (CLC) whose members shall consist of three to four representatives of the swim club, up to four representatives of the neighborhood, including one from each of the streets that is most heavily impacted, and the People's Counsel for Montgomery County as an *ex officio* member. The CLC shall, at a minimum, meet once during the first or second week of May each year, and one each month during the months of June, July, August and September if requested by any member.

Current members of the swim club board shall be permitted to serve on the committee only as swim club representatives, not as community representatives. Neighbors who are not members of the swim club have first priority for membership on the committee as community representatives.

7. Affirm that the swim club is permitted to have a tennis backboard mounted on the back fence of Court 2.
8. Grant a modification to approve the following existing site features, which were implemented at various points in the past without Board approval:
 - a. Two small loudspeakers on the bath house, for use with a public address system to be used exclusively during swim team meets and at no other time.
 - b. Storage shed adjacent to alley.
 - c. Jog in fence to accommodate shed.
 - d. Green dumpster measuring approximately five feet high, six feet wide and eight feet long that is installed in the parking lot during the pool season, at a location near the drive that connects to the alley behind the pool.
 - e. Two bulletin boards, one mounted on the wall of the bath house and one free-standing, near the tennis courts.
 - f. Bath house as constructed.
9. Make the modifications granted in this action contingent on (i) the Board's approval of a final Landscape Plan, Lighting Plan,

and Statement of Operations; and (ii) compliance with the following conditions:

- a. The Petitioner is bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiner's report or in the Board's Opinion in this matter.
- b. All terms and conditions of the approved special exception shall remain in full force and effect, except as specifically amended by this modification.
- c. The Petitioner must adhere strictly to all provisions of the final Statement of Operations to be submitted and approved after the Board's initial decision in this matter.
- d. The additional land added to the pool area by the modification permitting the fence to be moved out towards Little Falls Creek must not be used for any purpose other than general pool seating, and specifically must not be used for any organized recreational activity or for bleachers or other structured seating.
- e. The Petitioner shall obtain the advice of a professional noise consultant or the County's Noise Program manager as to the appropriate sound attenuation materials for the backboard, and as to whether the backboard should be mounted at the end of the fence closer to Little Falls Creek or the end closer to Baltimore Avenue. Such advice shall be provided to the swim club in writing, with a copy to the Board of Appeals, within 60 days of the Board's Opinion in this matter.
- f. Pool users and employees shall be strictly prohibited from smoking cigarettes in the alley abutting the swim club, or on private property abutting the alley.
- g. The swim club shall apply for a building permit for its storage shed within 60 days of the Board's Opinion in this matter, and shall move the shed if necessary to comply with setback requirements.
- h. The dumpster installed in the parking lot during the pool season must be emptied at least one per week, and more often if necessary to prevent adverse impacts on neighbors due to odors or vermin.

10. Retain jurisdiction to hold an immediate show cause hearing in the event of any reports that swim club members have made or carried out threats against any person due to opposition to the proposed modifications.
11. Affirm that the main vehicular entrance is not required to be locked at any time, but retain jurisdiction to require that it be locked when the pool is closed, if warranted by future evidence.
12. Retain jurisdiction to order removal of the public address system if future evidence indicates abuse or failure to comply with Noise Control Ordinance.
13. Require the Petitioner to request a surprise inspection by the County's Noise Program manager during the 2005 pool season, during a swim meet.
14. Direct the Hearing Examiner to schedule a follow-up hearing in mid-November, 2005 to check the swim club's progress on the following matters:
 - a. Volume reduction for starting system.
 - b. Building permit for shed.
 - c. Implementation of Landscape Plan per approved phasing.

- d. Implementation of Lighting Plan.
 - e. Results of surprise noise inspection.
 - f. Elimination of on-street parking by swim club members due to Implementation of parking policy and parking enforcement procedures.
 - g. Meetings of Community Liaison Council.
15. Direct the Petitioner to submit a pre-hearing statement to the Hearing Examiner no later than October 15, 2005, addressing the items listed in 14 above.
16. Request that the Department of Permitting Services conduct an unannounced inspection towards the end of the 2005 pool season, to provide input for the November follow-up hearing.
17. The swim club shall submit an annual report to the Board of Appeals which contains the minutes of the community liaison council meetings which are required by Condition 6(h) above, as well as a record of all concerns brought to the attention of the club **and ongoing status reports on how the special exception holder is implementing the conditions contained in this Opinion.**
18. The Board of Appeals retains jurisdiction to require additional parking or striping of the parking area if future conditions warrant it.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Wendell M. Holloway and Donna L. Barron, Vice Chair in agreement and Allison Ishihara Fultz, Chair necessarily not participating, 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 petition.

Donna L. Barron
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of June, 2005.

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.