

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

**OFFICE OF
THE GENERAL COUNSEL**

**Agenda Date: 2/25/10
Item # 7
Reconsideration Request**


**(301) 495-4646
FAX (301) 495-2173**

February 17, 2010

REQUEST FOR RECONSIDERATION

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Christina Sorrento, Associate General Counsel
301.495.4646 

RE: Reconsideration Request for Strathmore at Bel Pre,
Site Plan No. 820050330

With this memorandum we forward for the Board's review a request for reconsideration of the Strathmore at Bel Pre Site Plan approval filed by Richard Kauffunger and Max Bronstein. This is the second reconsideration request submitted by Mr. Kauffunger and Mr. Bronstein regarding this plan. In this latest request, Mr. Kauffunger and Mr. Bronstein seek to have the Planning Board reconsider its decision to approve the Strathmore at Bel Pre site plan on grounds that were not (but could have been) raised at the original hearing. This reconsideration request repeats arguments that Mr. Kauffunger and Mr. Bronstein made in a prior reconsideration hearing, and that the Board rejected as beyond the scope of the reconsideration request that the Board had granted, and therefore beyond the scope of the hearing.

I. BACKGROUND

On April 24, 2009, the Planning Board approved the Strathmore at Bel Pre Site Plan for a private educational institutional use associated with a religious organization located on Layhill Road west of the intersection with Middlevale Lane in the R-90 zone.

On July 9, 2009, the Planning Board voted to grant the request for reconsideration of the Strathmore at Bel Pre Site Plan Resolution dated April 24, 2009 filed by Mr. Kauffunger and Mr. Bronstein. However, the Planning Board did not accept the request for reconsideration on all of the grounds that Mr. Kauffunger and Mr. Bronstein advanced. The scope of the Planning Board's reconsideration was limited to

the determination of whether special Site Plan considerations are required for the property and to make certain that the Site Plan ensured adequate protection of the adjacent park. At its July 30, 2009 meeting, the Planning Board reconsidered the Strathmore at Bel Pre Site Plan and voted to approve the Site Plan with a vote of 4-0, on motion of Commissioner Alfandre, seconded by Commissioner Cryor. In essence, after providing Mr. Kauffunger and Mr. Bronstein an opportunity to present further arguments, the Planning Board voted to approve substantially the same site plan as it had previously approved with minor modifications including conditions that protect the adjacent park and provides for the installation of signage by the Parks Department.

At the reconsideration hearing the Board also determined that the property underwent the proper Site Plan review procedures under Chapter 59 of the Montgomery County Code and was not subject to more stringent standards. The Board found that the issues raised for reconsideration were properly addressed and approved the Site Plan. The resolution memorializing the Board's approval was mailed on September 14, 2009 and is attached as Attachment 1.

On September 24, 2009, Mr. Kauffunger and Mr. Bronstein filed a second request for reconsideration of the Site Plan resolution, which is attached as Attachment 2. Mr. Kauffunger and Mr. Bronstein cite one main ground for their reconsideration request, which is discussed below.

II. APPLICABLE RULES

A reconsideration request must "specify any alleged errors of fact or law and state fully all grounds for reconsideration because of mistake, inadvertence, surprise, fraud, or other good cause." The Board is responsible for determining if the grounds stated in support of the reconsideration request are sufficient to merit reconsideration.

Only a Board member who voted in the majority of the decision that is the subject of the request for reconsideration can move to reconsider the decision. In this case, Commissioners Hanson, Alfandre, and Wells-Harley are eligible to move for reconsideration. If there is no motion for reconsideration, the request for reconsideration is denied. Any motion to reconsider must be supported by a majority of the Board members present who either participated in the previous decision or read the record on which it was based.

III. RECONSIDERATION REQUEST

In their latest request for reconsideration, Mr. Kauffunger and Mr. Bronstein argue that the Faith Community Baptist Church does not own or lease the property that is the subject of the Site Plan application; rather Faith Arts Academy Inc. owns the property. Therefore, Mr. Kauffunger and Mr. Bronstein argue, the application does not qualify for a Special Exception Exemption under Section 59-G-2.19(e).

The pertinent part of Section 59-G-2.19(e) reads as follows: "The requirements of Section G-2.19 do not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, which is located in a building or on premises owned or leased by any church or religious organization..." At the prior reconsideration hearing, the Board found that this argument was outside of the scope of reconsideration that was granted, but that the use of the property by Faith Community Baptist Church for a private educational institution satisfied the requirement for the Special Exception Exemption.

IV. RECOMMENDATION

We do not believe there is any legal deficiency in the Planning Board's action approving the Site Plan for Strathmore at Bel Pre that requires reconsideration. First, the issue that is currently being raised by Mr. Kauffunger and Mr. Bronstein is outside of the scope of the original reconsideration request before the Board and therefore not properly before the Board at this time. Second, even though the Board noted that this issue was outside of the scope of the original reconsideration hearing, the Board still provided a clear determination of why the Special Exception Exemption was properly applied to this property. However, if the Board determines that the reconsideration request demonstrates that there was a mistake, inadvertence, surprise, fraud in its earlier decision, or that Mr. Kauffunger and Mr. Bronstein have shown other good cause for reconsideration, the Board may grant the request.

IV. ATTACHMENTS

Attachment 1 – Planning Board Resolution dated September 14, 2009

Attachment 2 – Second Site Plan reconsideration request dated September 24, 2009



SEP 14 2009

MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

ATTACHMENT 1

MCPB No. 09-93
Site Plan No. 820050330
Project Name: Strathmore at Bel Pre, Lot 44
Date of Hearing: July 30, 2009

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is vested with the authority to review site plan applications; and

WHEREAS, on April 13, 2005, Faith Arts Academy Inc. ("Applicant"), filed an application for approval of a site plan for one lot for a private educational institutional use (modular unit classroom) associated with a religious organization, ("Site Plan" or "Plan") on 0.561 acres of R-90 zoned land, located on Layhill Road west of the intersection with Middlevale Lane within the Aspen Hill Master Plan ("Property" or "Subject Property"); and

WHEREAS, Applicant's Site Plan application was designated Site Plan No. 820050330, Strathmore at Bel Pre, Lot 44 (the "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated November 24, 2008, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on December 4, 2008, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, on December 4, 2008 the Planning Board voted to approve the Application subject to conditions on the motion of Commissioner Alfandre; seconded by Commissioner Cryor; with a vote of 5-0, Commissioners Alfandre, Cryor, Hanson, Presley and Robinson voting in favor; and

Approved as to
Legal Sufficiency

Christina Sorrento 9/3/09

8787 Georgia Avenue, Suite 200, Rockville, MD 20850
MNCPPC Legal Department Chairman's Office: 301.495.1605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, on July 9, 2009, the Planning Board granted a reconsideration of the adopted Site Plan Resolution dated April 24, 2009 to determine whether special Site Plan considerations are required for the Property and to make sure that the Site Plan ensures adequate protection of the adjacent park; and

WHEREAS, Planning Board staff ("Staff") issued a supplemental memorandum to the Planning Board, dated July 17, 2009, setting forth its analysis of, and recommendation for approval of the Application and issues associated with the reconsideration request, and incorporating the analysis from the November 24, 2008 staff report, subject to certain conditions ("Staff Report"); and

WHEREAS, following additional review and analysis of the Application by Staff on July 30, 2009, the Planning Board held a second public hearing on the Application to address the reasons for reconsideration (the " Reconsideration Hearing"); and

WHEREAS, at the Reconsideration Hearing, Staff confirmed that it properly reviewed the Site Plan in accordance with Chapter 59 of the Montgomery County Code, the Zoning Ordinance, as required by House Bill 399; and

WHEREAS, at the Reconsideration Hearing, the Planning Board heard testimony from Mr. Richard Kauffunger, who filed the application for reconsideration, as well as other individuals and received evidence regarding the use proposed for the lot, off-site parking in the adjacent surface parking lot for the Matthew Henson Trail, size of the classrooms proposed and clearing proposed through Park property for a sewer connection; and

WHEREAS, Staff confirmed that the Parks Department is constructing a sign, as discussed in the previous hearing, to notify park patrons that parking for the trail head is provided in the spaces allocated and notify patrons of the private educational use that parking in the trail head parking lot is intended for park patrons; and

WHEREAS, on July 30, 2009 the Planning Board approved the Application subject to conditions on the motion of Commissioner Alfandre; seconded by Commissioner Cryor; with a vote of [4-0], Commissioners Alfandre, Cryor, Hansen, and Wells-Harley voting in favor; and Commissioner Presley absent.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Site Plan No. 820050330 for one lot for a private educational institutional use (modular unit classroom) associated with a religious organization, on 0.561 gross acres in the R-90 zone, subject to the following conditions:

1. Preliminary Plan Conformance

The proposed development must comply with the conditions of the approved Resolution for Preliminary Plan No. 120050870 ("Preliminary Plan").

2. Site Plan

Approval under the Preliminary Plan is limited to one lot for a 10,854 square foot modular building for a private institutional use to accommodate a maximum of 30 children for the entire Faith Arts Academy School

3. Park Planning and Stewardship

The Applicant shall comply with the following conditions as outlined in the Staff memorandum dated September 15, 2008 from Park Planning and Stewardship:

- a. Any proposed church access through M-NCPPC owned or managed property off of Layhill Road must be approved by M-NCPPC Staff prior to its construction. Engineering details must be prepared by Applicant and submitted to M-NCPPC Staff for approval prior to proceeding with construction. A park permit is required for construction of any church related access or grading on the park property.
- b. Applicant to prepare an Access Easement Agreement that allows church users to access the church and related facilities through the entrance located on M-NCPPC land. This proposed Agreement is to be submitted to M-NCPPC Staff for approval and execution prior to any construction by Applicant of a connection to the park entrance.
- c. Applicant to submit detailed engineering documents regarding alignment and construction of any proposed sewer and water lines and stormwater outfall proposed on parkland for M-NCPPC approval prior to construction. A park permit is required for construction of these lines and outfall.
- d. Any necessary acceleration/deceleration lanes required on Layhill Road when the Applicant constructs its access to the park/church entrance will be the sole responsibility of the Applicant.

4. Lighting

- a. On-site street and parking lot downlighting fixtures must be full cut-off fixtures;
- b. Deflectors must be installed on all up-lighting fixtures causing potential glare or excess illumination;
- c. Illumination levels, excluding streetscape light fixtures, shall not exceed 0.5 footcandles (fc) at any property line abutting county roads or adjacent residential properties.

5. Landscaping & Environment

- a. Provide a more common variety of street tree along Layhill Road.
- b. Provide additional foundation planting in the front of the proposed building.

6. Forest Conservation

The proposed development shall comply with the conditions of the preliminary forest conservation plan. The Applicant shall satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits:

- a. Approval of final forest conservation plan consistent with the approved preliminary forest conservation plan prior to any clearing, grading or demolition on the site.
- b. The final forest conservation plan must reflect all requirements found in Section 109.B of the Forest Conservation Regulations (COMCOR 18-01AM). This includes:
 - i. A method of meeting this plan's planting requirements
 - ii. If off-site reforestation/afforestation is chosen, a reforestation/afforestation plan with full planting plan, location and maintenance plan must be included as part of the submission.
- c. A certified arborist must be present at the pre-construction meeting, during construction, and after construction to implement specific tree protection measures as identified on the forest conservation plan.
- d. All financial security must be submitted to M-NCPPC prior to any demolition, clearing, or grading on the Subject Property.

7. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated June 4, 2007, unless amended and approved by MCDPS.

8. Development Program

The Applicant must construct the proposed development in accordance with the Development Program. A Development Program shall be reviewed and approved by M-NCPPC Staff prior to approval of the Certified Site Plan. The Development Program shall include a phasing schedule as follows:

- a. Offsite easements/agreements must be executed prior to clearing and grading;
- b. Final paving and striping must be completed within six months of the occupancy of the classroom;
- c. Landscaping, including the street trees and foundation planting, and the on-site lighting must be completed within six months of the occupancy of the proposed building;
- d. Specify phasing of pre-construction meetings, dedications, sediment/erosion control, or other features.

9. Clearing and Grading

Applicant must ensure that there is no clearing or grading of the Subject Property prior to M-NCPPC approval of the Certified Site Plan.

10. Certified Site Plan

Prior to Certified Site Plan approval the following revisions shall be included and/or information provided, subject to Staff review and approval:

- a. Minor corrections and clarifications to site details and labeling;
- b. Minor corrections to the data table for parking;
- c. Additional foundation planting and changes to the plant list;
- d. Development Program, Inspection Schedule, and Site Plan Resolution.

BE IT FURTHER RESOLVED that all site development elements as shown on Strathmore at Bel Pre, Lot 44 drawings stamped by the M-NCPPC on September 5, 2008 shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Planning Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development if required, unless the Planning Board expressly modifies any element of the project plan.*

The proposed development is not subject to a Development Plan, Diagrammatic Plan or Project Plan.

2. *The Site Plan meets all of the requirements of the R-90 zone and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Site Plan meets all of the requirements of the R-90 zone as demonstrated in the project Data Table shown below.

Requirements of the R-90 zone

The Staff Report contains a data table that lists the Zoning Ordinance required development standards and the development standards proposed for approval. The Board finds, based on the aforementioned data table, and other evidence and testimony of record, that the Application meets all of the applicable requirements of the R-90 Zone. The Board further finds that the proposed private educational use related to a religious organization is not subject to a special exception and is exempt from the special exception requirements under

Section 59-G-2.19(e) of the Montgomery County Zoning Ordinance. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

Data Table

Development Standard	Permitted/Required	Development Standards Approved by the Board and Binding on the Applicant
Lot Area (square feet)	9,000	26,136
Max. Density	N/A ¹	10,854 ²
Min. MPDUs (% of total du)	Not Applicable	Not Applicable

Min. Building Setbacks (ft.)		
<i>From Street</i>	25	48
<i>Rear</i>	25	63
<i>Side</i>	8/25	12/44
<i>Min. lot width at BRL</i>	75	168
<i>Min. lot width at Street</i>	25	138
Max. Building Height (ft.)	35	15
Max. Building Coverage (%)	30	22
Min. Lot Width (ft.)	Not Specified	16
Max. Parking Spaces	Not Specified	12

¹ Density is limited by lot coverage for this use.

² Approximate footprint of the building is 5,427 square feet.

3. *The locations of the buildings and structures, the open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

a. Locations of buildings and structures

The proposed modular classroom is sited an adequate distance from Layhill Road and proportionally on the site to accommodate the parking needs of the classroom and adjacent church activities. The height of the proposed building is 15 feet, which is relatively low in scale compared to the surrounding buildings, existing church and existing houses to the west of the church. The building is rectangular in shape and is sited approximately 48 feet from Layhill Road with a building envelope adequately suited for the building. Parking for patrons of the classroom is located in front of the building with the primary office entrance on the south side closest to the existing church and parking for the church. The location of the modular building is adequate, safe, and efficient.

b. Open Spaces

The Site Plan proposes approximately 22 percent building coverage, which is under the maximum allowed by 8 percent. The site has no green space requirement within the zone. The site has ample open space around the perimeter of the building, and the access to the adjacent park and church is adequate, safe, and efficient.

c. Landscaping and Lighting

The proposed landscaping on the site consists of a double row of trees along Layhill Road. The Applicant will need to provide additional foundation planting around the proposed classroom building and on the north side to provide for a buffer to the existing parking for the Matthew Henson trail head. As amended, landscaping will provide for adequate, safe, and efficient site buffering and planting.

The lighting plan consists of wall-mounted fixtures on the building façade to provide for illumination and safety for church patrons of the classroom and parking areas. All site lighting will provide adequate, safe, and efficient site illumination.

d. Recreation Facilities

The Application is not subject to the Recreation Guidelines as this is not considered a residential project.

e. Pedestrian and Vehicular Circulation Systems

Vehicular access to the school is limited to ingress only via the shared access driveway across the M-NCPPC property from Layhill Road for the school directly across from Middlevale Lane. The one-way access drive continues to the adjacent church property toward the south, which contains a right-in-right-out at Layhill Road. Pedestrian access is provided via a striped crosswalk driveway connecting the site to the existing church and driveways connecting the site to the sidewalk on Layhill Road. Local Area Transportation and Policy Area Mobility Reviews are not required for this exempt use.

The Parks Department is constructing a sign to notify park patrons that parking for the trail head is provided in the spaces allocated and to notify patrons of the private educational use that parking in the trail head parking lot is intended for park patrons only. The sign will be placed in the most appropriate location to provide for enhanced visibility of the parking area associated with the trail.

Therefore, the Planning Board finds that the vehicular and pedestrian circulation is adequate, safe and efficient.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The proposed classroom is buffered adequately from properties to the north and creates an appropriate front onto Layhill Road. The development provides an extension of the adjacent church facility and is compatible with the other existing and proposed residential and institutional uses surrounding the site. The proposed buildings adequately transition to the existing church on the adjacent lot to the south.

At the first hearing, the Planning Board heard testimony about the appearance of, and parking issues associated with, both the school and the adjacent church, which are located on separate lots. Specifically, representatives of local civic groups testified that the church parking lot houses a dumpster and a trailer, and expressed a desire to see those items removed. These representatives further testified that the dumpster and trailer render 16 parking spaces unusable, and expressed a concern that these conditions could result in inadequate church parking, which, in turn, might lead to overflow parking in the adjacent Matthew Henson Park parking area. Concerns about the appearance of items in the church parking lot and the adequacy of parking at the church are beyond the scope of this proceeding. However, the Board notes that it also heard testimony from Staff that even with 16 spaces eliminated the church currently exceeds the number of spaces

required. The issue of potential overflow parking at the adjacent trailhead will be addressed by signage restricting parking to park users.

Additionally, at the first hearing, there were two primary design concerns raised with respect to the proposed building. The civic group representatives argued that the proposed building should be screened from the Matthew Henson Park, and that the building wall facing Layhill Road should be broken up with design details that will prevent it from having a monotonous appearance. The Board finds that the design concerns raised with respect to the proposed building have been addressed. Specifically, the desire to have the building wall fronting on Layhill Road broken up with design features will be addressed by the location of the front door to the school and windows along that façade. Enhanced planting between the proposed building and the Matthew Henson Park will adequately screen the building from the park. The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The proposed storm water management concept approved on June 4, 2007, includes on-site channel protection measures via a dry pond and flow dispersion; on-site water quality control via sand filters, bio-filters, a proprietary filter with structural pretreatment, and non-structural methods; and on-site recharge via non-structural methods including dry wells and recharge trenches.

The Maryland Department of Natural Resources (DNR) granted an exemption from the forest conservation requirements to allow minor clearing in August of 2001 (FCA-File#CO2-04), and the Department of Permitting Services granted approval of a sediment control permit (SC permit 203877). After the Preliminary and Site Plans were filed in 2005, the Applicant was required to submit a forest conservation plan addressing the forest conservation requirements and account for the forest clearing with the applications.

The conditions of approval for the Site Plan and forest conservation plan require the Applicant to obtain these approvals prior to any clearing and grading on the Property. The Applicant is responsible for mitigating any clearing associated with the proposed development. The Planning Board

finds that the Site Plan meets all of the applicable requirements of the Forest Conservation Law.

6. *Community Concerns.*

At the Reconsideration Hearing, Mr. Kauffunger raised three main objections to the Site Plan. First, Mr. Kauffunger argued that the Application should have gone through a Special Exception process because the Property is not owned by Faith Community Baptist Church but by Faith Arts Academy, Inc. At the Reconsideration Hearing, Staff referred to the Special Exception exemptions under Section 59-G-2.19(e) and testified that the common practice is to grant an exemption for a private educational institution associated with a religious organization as long as the religious organization is using the school as their own. This argument was outside of the scope of reconsideration hearing, which is limited to the reasons for which reconsideration was granted. But even if it was properly before the Board, this development did not require a Special Exception for the reasons explained by Staff. Namely, Section 59-G-2.19(e) provides that "[t]he requirements of Section G-2.19," which creates a Special Exception requirements for private educational institutions generally, "do not apply to the use of any lot, lots or tract of land for any private educational institution or parochial school, which is located in a building or on premises owned or leased by any church or religious institution...."

The second objection Mr. Kauffunger raised is that the school is too big for the number of students it is limited to by the Application. The Preliminary Plan and Site Plan approvals both limit the number of students to 30. Any increase in enrollment above 30 students will require APF review and a traffic study, which may result in additional improvements and requirements. The Planning Board is not responsible for determining whether a school is too big for the number of students. As long as the appropriate requirements such as APF are met, the Planning Board does not have the authority to limit the classroom to student ratio. Therefore, the Planning Board finds that the appropriate requirements of the zone were met and the Site Plan was properly approved.

The third argument is that Mr. Kauffunger believes that the State Delegation wanted a more stringent Site Plan review for this Property and that is what is required by House Bill 399. This argument is the original reason the Board granted reconsideration. The Planning Board and its Staff re-examined House Bill 399, which governs this Property in preparation for the Reconsideration Hearing. House Bill 399 specifically states that the Application must undergo site plan review under Chapter 59 of the Montgomery County Code. The Bill did not create more stringent standards than those already applied to this Application by Chapter 59. The Planning Board finds that the

Application meets all of the applicable site plan criteria under Chapter 59 as required by House Bill 399.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Site Plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

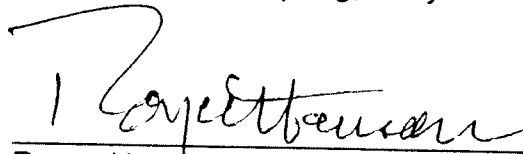
~~BE IT FURTHER RESOLVED,~~ that the date of this Resolution is SEP 14 2009 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Wells-Harley, seconded by Commissioner Presley, with Commissioners Hanson, Alfandre, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Cryor absent, at its regular meeting held on Thursday, September 10, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board



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OFFICE OF THE CHAIRMAN
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

September 24, 2009

Royce Hanson, Chairman
Montgomery County Planning Board
MNCPPC

Rollin Stanley, Director
Montgomery County Planning Department
MNCPPC
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RE: MCPB No. 09-93
Resolution on
Site Plan No. 820050330

Dear Mr. Hanson and Mr. Stanley:

As Parties of Record in the Site Plan case referenced above, we petition the Board to reconsider the Resolution dated September 14, 2009.

The testimony of staff and the testimony of representatives for the applicant have created errors in fact and law and led to the confusion about the need for the application to go through the Special Exception process, an issue discussed at great length at the July 30, 2009 hearing.

Specifically, Section 59-G-2.19 (e) of the County Code provides that "(t)he requirements of Section G-2.19" which creates a Special Exception requirement for private educational institutions generally "do not apply to the use of any lot, lots or tract of land for any private educational institution or parochial school, which is located in a building or on premises owned or leased by any church or religious institution..."

The straightforward meaning of this Section was clouded by testimony. In response to a question from Commissioner Alfandre about the confusion of the Church being the applicant and the ownership of the school, Rose Krasnow testified: "Commissioner Alfandre, I'm going to answer that question. I want to assure you that staff took that question very seriously. We spoke with the County Attorney at great length, and it was the feeling of the County Attorney that the different names really had very little to do with this and that they are one entity and that in effect it is owned by the church". After the hearing, we learned from Staff that they had talked with Cliff Royalty in the County Attorney's Office.

We then met with Mr. Royalty on August 12, 2009. He said he never heard of Faith Arts Academy and could only recall talking with Staff in the most general way about Section 59-G-2.19 (e) and the implications of the Renzi vs. Connelly School court case. He

emphasized that he would never provide a legal opinion without reviewing the entire record of a case. Further, since the Planning Department is legally not a client (nor are citizens) of the County Attorney, he would not render a legal opinion regarding the Faith Arts case.

Faith Arts Academy and its representatives consistently misrepresented the facts of the case, creating much of the confusion. They identified the applicant in the Site Plan Application as the Faith Community Baptist Church, implying that the premises are owned by the Church and would be exempt from the Special Exception requirement. (See Circle 1 attached) However, the Deed for the subject land and County land records clearly show that the Faith Arts Academy, Inc. is the sole owner of the premises. (See Circle 2 and 3 attached)

Further, in her testimony at the hearing on July 30, 2009, Dominique Harris (contact person for the applicant) stated that the Church "owns" Faith Arts Academy. However, the records of the Charter Division of the Maryland State Department of Assessments and Taxation show that the Faith Arts Academy, Inc. (Dept ID# D03901576) was incorporated as a non-stock corporation on June 2, 1994 (see attached documents at Circles 4, 5, 6, and 7). The Articles of Incorporation make no mention of Faith Community Baptist Church as having any relationship or association with the Academy. Please note on Circle 5 that the incorporator could have set up Faith Arts Academy as a stock corporation (allowing for ownership) or as a religious corporation, but did not choose to do so.

The language of Section 59-G-2.19 (e) is clear and self-evident, the exemption to the Special Exception requirement is based on the physical location of a school "in a building or on premises owned or leased by any church or religious institution." Faith Arts Academy, Inc. fails this simple test: the proposed school is not on premises owned or leased by any church or religious institution; it will be on its own premises. Further, by its own declaration at the time of its incorporation, Faith Arts Academy, Inc. is not a religious entity.

In addition, at the bottom of page 5 of the Resolution, under "Requirements of the R-90 zone", the Board "finds that the proposed private educational use related to a religious organization is not subject to a special exception and is exempt from the special exception requirements under Section 59-G-2.19(e)...." There is no such wording in that Section of the Zoning Ordinance, nor is there language which could be construed to have this new 'related' standard, so the finding has no legal basis.

As a result of these errors of fact and law, we respectfully request that the Board reconsider their decision on the Application for Site Plan. Under County Code, this Site Plan should only be reviewed after the Applicant has completed the required Special Exception process requirement.

Respectfully submitted,

Max Bronstein

Max Bronstein
2925 Birchtree Lane
Silver Spring, MD 20906
301-460-3117

Richard A. Kauffman

Richard A. Kauffman
2309 East Gate Drive
Silver Spring, MD 20906
301-871-1369

c.c. Henry Heller
Phil Andrews
Nancy Navarro
Clifford Royalty, Esq.

Development Review Division
 Montgomery County Department of Park and Planning
 Maryland-National Capital Park and Planning Commission

4/23/05
 1 of 6

Effective: October 15, 2004

8787 Georgia Avenue
 Silver Spring, Maryland 20910-3760

www.mc-mncppc.org/development

Phone 301.495.4595
 Fax 301.495.1306

SITE PLAN APPLICATION

New Application Major Amendment Minor Amendment

File Number	8- <u>05023</u>	Fee (attach worksheet)	<input checked="" type="checkbox"/>
Date Application Received	<u>4/23/05</u>	Fee Received by	<u>FB</u>
MCPB Hearing Date		DRC Meeting Date	<u>5/23/05</u>
Reviewer's Name	<u>MPB/W</u>		

An application will not be accepted for review unless all required information and fees are provided. If an item requires more space, attach a separate sheet. See Site Plan Submission Requirements for instructions.

Site Plan Name: ~~Site Plan for Faith Arts Academy~~ Strathmore at Bel Pre, Prop. Lot
 200 scale Base Map # 218NW02 Tax Map # JR122 Acres 0.600

Property Tax Account Number(s) associated with the plan (8 digits)
 A. 13-01652882 B. _____ C. _____ D. _____ E. _____
 F. _____ G. _____ H. _____ I. _____ J. _____

Location: (Complete either A or B)

A. On Layhill Road, _____ feet W of Middlevale LN intx.
Street Name (N,S,E,W etc.) Nearest Intersecting Street
 B. _____ quadrant, intersection of _____ and _____
(N,S,E,W etc.) Street Name Street Name

Subdivision Information: (Complete either A, if located within a recorded subdivision, or B)

A. Lot _____ Block _____ Subdivision _____
 B. Parcel N548 Liber _____ Folio _____; Parcel _____ Liber _____ Folio _____; Parcel _____ Liber _____ Folio _____

Applicant (Owner or Contract Purchaser)

Faith Community Baptist Church Dominique Harris
Name Contact Person
13618 Layhill Road
Street Address
Silver Spring MD 20906
City State Zip Code
301-460-8189
Telephone Number ext. Fax Number E-mail

Developer (If different from Applicant above)

Name Contact Person

Street Address

City State Zip Code

Telephone Number ext. Fax Number E-mail

Engineer

Oyster, Imus & Petzold, Inc. Walter J. Petzold, PE
Name Contact Person
11230-B Grandview Avenue
Street Address
Wheaton MD 20902
City State Zip Code
301-949-20111 301-949-2013
Telephone Number ext. Fax Number E-mail

TAX ID: 13-502-1652882

32176 3261

RETURN TO: 06-6914-HM
HOME TITLE COMPANY, INC.
2 Hopkins Plaza - Suite 1110
Baltimore, Maryland 21201
(410) 727-9878

2

TITLE INSURER: COMMONWEALTH

SHA 63.00-26D 3/1/90
Mailing Address:
Records and Research Section
707 North Calvert Street
Baltimore, Maryland 21202

STANDARD DEED

FROM THE STATE HIGHWAY
ADMINISTRATION OF THE MARYLAND
DEPARTMENT OF TRANSPORTATION AND THE
BOARD OF PUBLIC WORKS OF MARYLAND

Right of Way Item No.: 72105
Project M 581-002-371

(A)

consideration \$15,000 (JFK)

THIS DEED, made this 12th day of April in the year 2006, from the STATE HIGHWAY ADMINISTRATION OF THE MARYLAND DEPARTMENT OF TRANSPORTATION, acting for and on behalf of the STATE OF MARYLAND, party of the first part; and the BOARD OF PUBLIC WORKS OF MARYLAND, party of the second part, hereinafter sometimes collectively called the "GRANTORS" unto Faith Arts Academy, Inc., a Maryland corporation hereinafter sometimes called the "GRANTEE."

WHEREAS, the State Highway Administration of the Maryland Department of Transportation, acting for and on behalf of the State of Maryland, has heretofore acquired certain property and rights, situate, lying and being in Montgomery County, State of Maryland; and

WHEREAS, the State Highway Administration has constructed, or is about to construct a certain State highway known and designated as Maryland Route 182; and

WHEREAS, the State Highway Administration has prepared, or caused to be prepared a Right of Way Plat designated as State Highway Administration Plat numbered 55749 (Rev. 4/26/05); which Plat has been duly filed for record with the Maryland State Archives; and a reduced size copy of which is attached hereto and incorporated herein as Exhibit No. 1.

WHEREAS, said Plat shows the land, easements, rights and controls of access which have been determined by the State Highway Administration as necessary to be retained by the State for the construction, operation, maintenance, use and protection of the highway and/or bridge constructed, or to be constructed, as aforesaid; and

WHEREAS, the State Highway Administration has agreed, for good and valuable consideration to convey unto the GRANTEE herein certain land, hereinafter described, which the State Highway Administration has determined is no longer needed by it in connection with the construction, operation, maintenance, use and protection of the State Highway System; and

WHEREAS, under the provisions of Section 8-309 of the Transportation Article of the Annotated Code of Maryland, it is necessary for the Board of Public Works of Maryland to join in the conveyance of any land by the State Highway Administration of the Maryland Department of Transportation; and

WHEREAS, the total payment per Section 10-912(b) of the Tax-General Article of the Annotated Code of Maryland is Seventy Five Thousand and 00/100 Dollars (\$75,000.00); and

WHEREAS, the Grantor, State Highway Administration of the Department of Transportation, acting for and on behalf of the State of Maryland, is a resident entity as defined in Section 10-912(a)(4) of the Tax-General Article of the Annotated Code of Maryland;

TITLE INSURANCE 28.00
RECORDING FEE 28.00
TR TAX STATE 375.00
TOTAL 415.00
Assessed Rpt # 22198
MOR 00H Blk # 5756
Apr 20, 2006 12:06 PM

FILED
MOLLY O. RUHL
CLERK OF CIRCUIT COURT
MONTGOMERY COUNTY, MD

375.00
20 BT



Maryland Department of Assessments and Taxation
MONTGOMERY COUNTY
Real Property Data Search (2007 vmt.3)

Go Back
View Map
New Search

Account Identifier: District - 13 Account Number - 03520696

Owner Information

Owner Name: FAITH ARTS ACADEMY INC Use: RESIDENTIAL
Principal Residence: NO
Mailing Address: 13618 LAYHILL RD Deed Reference: 1) /32176/ 326
SILVER SPRING MD 20906-2103 2)

Location & Structure Information

Premises Address: LAYHILL RD Legal Description: PT PAR A LAYHILL RD
& ROCKVILLE FRWY

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
JR12		N604		502				2	Plat Ref:

Special Tax Areas: Town Ad Valorem Tax Class 38

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		24,457.00 SF	910

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value Phase-in Assessments		
		As Of 01/01/2008	As Of 07/01/2009	As Of 07/01/2010
Land	202,450	285,280		
Improvements:	0	0		
Total:	202,450	285,280	257,670	285,280
Preferential Land:	0	0	0	0

Transfer Information


Seller: STATE OF MARYLAND	Date: 04/20/2006	Price: \$75,000
Type: UNIMPROVED ARMS-LENGTH	Deed1: /32176/ 326	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2009	07/01/2010
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *

 **Maryland Department of Assessments and Taxation**
Taxpayer Services Division
 301 West Preston Street W Baltimore, MD 21201 (2007 vw4.3)

[Main Menu](#) | [Security Interest Filings \(UCC\)](#) | [Business Entity Information](#)
 ([Charter/Personal Property](#)) [New Search](#) | [Rate Stabilization Notices](#) | [Get Forms](#) | [Certificate of Status](#) | [SPAT Home](#)

Taxpayer Services Division

Entity Name: FAITH ARTS ACADEMY, INC.
Dept ID #: D03901576

General Information Amendments Personal Property Certificate of Status

Principal Office (Current): 13618 LAYHILL RD
SILVER SPRING, MD 20906

Resident Agent (Current): EDNA HARRIS
2818 AQUARIUS AVE
SILVER SPRING, MD 20906

Status: INCORPORATED

Good Standing: No

Business Code: Ordinary Business - Non-stock

Date of Formation or Registration: 06/02/1994

State of Formation: MD

Stock/Nonstock: Non-Stock

Close/Not Close: Not Close

Link Definition

- General Information** General information about this entity
- Amendments** Original and subsequent documents filed
- Personal Property** Personal Property Return Filing Information and Property Assessments
- Certificate of Status** Get a Certificate of Good Standing for this entity

STATE OF MARYLAND
 WILLIAM DONALD SCHAEFER
 Governor
 LLOYD W. JONES
 Director
 PAUL B. ANDERSON
 Administrator



Department of Assessments and Taxation
 CHARTER DIVISION
 Room 809
 301 West Preston Street
 Baltimore, Maryland 21201

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DOCUMENT CODE 020m BUSINESS CODE 04 COUNTY 65
 P.A. Religious Close Stock Nonstock

Merging (Transferor) _____ Surviving (Transferee) _____

CODE	AMOUNT	FEE REMITTED	(New Name)
10		Expedited Fee	
20	<u>20</u>	Organ. & Capitalization	
61	<u>20</u>	Rec. Fee (Arts. of Inc.)	
62		Rec. Fee (Amendment)	
63		Rec. Fee (Merger, Consol.)	
64		Rec. Fee (Transfer)	
65		Rec. Fee (Dissolution)	
66		Rec. Fee (Revival)	
52		Foreign Qualification	
50		Cert. of Qual. or Reg.	
51		Foreign Name Registration	
13		Certified Copy	
56		Penalty	
54		For. Supplemental Cert.	
53		Foreign Resolution	
73		Certificate of Conveyance	

- Change of Name
- Change of Principal Office
- Change of Resident Agent
- Change of Resident Agent Address
- Resignation of Resident Agent
- Designation of Resident Agent and Resident Agent's Address
- Other Change

75		Special Fee	
80		Limited Partnership	
83		Art. Limited Partnership	
84		Amendment to Limited Partnership	
85		Termination of Limited Partnership	
21		Recordation Tax	
22		State Transfer Tax	
23		Local Transfer Tax	
31		Corp. Good Standing	
NA		Foreign Corp. Registration	
87		Limited Part. Good Standing	
71		Financial	
600		Personal	

70		Property Reports and late filing penalties	
91		Change of P.O., R.A. or R.A.A.	
99		Amend/Cancellation, For. Limited Part.	
98		Art. of Organization (LLC)	
99		LLC Amend, Diss, Continuation	
97		LLC Cancellation	
96		Reg. Foreign LLC	
94		Foreign LLC Supplemental	
92		LLC Good Standing (short)	
		Other	

MAIL TO ADDRESS:
Fair Arts Academy
Dorothy Douglas
13618 Layhill Rd
Silver Spring Md
20906

TOTAL FEES 40 Check Cash
 Documents on _____ checks

APPROVED BY: Wm

NOTE:

6

ARTICLES OF INCORPORATION
OF
FAITH ARTS ACADEMY, INC.

APPROVED AND RECEIVED FOR RECORD BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION
OF MARYLAND JUNE 2, 1994 AT 8:55 O'CLOCK A. M. AS IN CONFORMITY
WITH LAW AND ORDERED RECORDED.

ORGANIZATION AND
CAPITALIZATION FEE PAID

RECORDING
FEE PAID

SPECIAL
FEE PAID

\$ 22.00

\$ 20.00

\$

D3901576

XX

IT IS HEREBY CERTIFIED THAT THE WITHIN INSTRUMENT, TOGETHER WITH ALL ENDORSEMENTS THEREON, HAS
BEEN RECEIVED, APPROVED AND RECORDED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF MARYLAND.

FAITH ARTS ACADEMY
13618 LAYHILL RD
SILVER SPRING MD 20906

235C3074555

A 455839



RECORDED IN THE RECORDS OF THE
STATE DEPARTMENT OF ASSESSMENTS
AND TAXATION OF MARYLAND IN LIBER FOUR

7

STATE OF

ARTICLES OF INCORPORATION FOR A NONSTOCK CORPORATION

(See instructions on reverse side.) 6/2/94 8:55

FIRST: The undersigned James A. Harris
whose address is 6905 Tennyson Terrace Rockville, MD 20855

James A. Harris, being at least eighteen years of age, do(es) hereby form a corporation
under the laws of the State of Maryland.

SECOND: The name of the corporation is Faith Arts Academy, Inc. WM

THIRD: The purposes for which the corporation is formed are as follows: Educational/Childcare services
for 4 & 5 year olds in a Christian setting. Also to include grades
K4, K5, & first

FOURTH: The post office address of the principal office of the corporation in Maryland is 13618 Layhill Road Silver Spring, MD 20906

FIFTH: The name and post office address of the resident agent of the corporation in Maryland are Edna Harris
2818 Aquarius Avenue, Silver Spring, MD 20906

SIXTH: The corporation has no authority to issue capital stock.

SEVENTH: The number of directors of the corporation shall be 2 which number may be increased or decreased pursuant
to the bylaws of the corporation. The name(s) of the director(s) who shall act until the first meeting or until their successors are
duly chosen and qualified is/are Cora Van Hook
Mary Piley

EIGHTH: _____

NINTH: IN WITNESS WHEREOF, I have signed these Articles and acknowledge the same to be my act.

RETURN TO:
Faith Arts Academy
Dorothy Douglas
13618 Layhill Road
Silver Spring, MD 20906

SIGNATURE(S)

