

BEFORE THE
ZONING HEARING BOARD OF
LOWER MERION TOWNSHIP, MONTGOMERY COUNTY
PENNSYLVANIA

APPEAL NO. 3550

IN THE MATTER OF:	:	Applicant- Appellant
St. Katherine Day School	:	
	:	930 Bowman Avenue
	:	Wynnewood, PA 19096

MEMORANDUM, FINDINGS, OPINION & ORDER

St. Katherine Day School ("St. Katherine") is a Catholic school for students with mental retardation and other developmental disabilities. St. Katherine's is located on the 3-acre property at 930 Bowman Avenue in Wynnewood, where it has been since the 1960's. The property, which is owned by the Archdiocese of Philadelphia, is zoned R-3 Residential. It is improved with a 22,479 square foot classroom/administration building and a 4875 square foot convent. There is a parking lot for 38 cars on the property, as well as a circular driveway. The existing impervious coverage on the site is 36.7%. This exceeds the present 28% limitation in the Code,¹ but is nonconforming.

St. Katherine proposes to construct a 5130 square foot addition adjacent to the existing convent and to connect the addition to the main school building with an enclosed breezeway. To accomplish that, St Katherine requires a special exception to expand its educational use, and a variance to increase the impervious coverage on the property.

The Board held hearings on St. Katherine's application on June 15 and July 9, 1998. Lisa Cetroni, the school's principal, testified that St. Katherine presently serves 132 students, although the enrollment fluctuates between the low 130s and the low 140s. The school employs 12 full-

time teachers, 13 assistants, 2 administrative staff, and 4 or 5 part-time support staff. All of the educational activities take place in the main school building. The convent, which was used in the past as a residence for the nuns who taught at the school, has been vacant for the last year. St. Katherine proposes to use the addition for a "therapy center," providing a large, open space for the students' physical exercise and therapy, as well as space for storing the therapy equipment.² The addition will also have stair towers and an elevator shaft. Underneath this main floor of the building will be a lower level used exclusively for storage.

The addition will be set back twenty feet from the northeastern property line. St. Katherine's engineer's designed the height of the building to match the profile of the existing convent. Because the ground slopes dramatically in the area proposed for construction, the building as designed will appear almost three stories (twenty-seven feet) above "ground level" on the northeastern side facing the adjoining neighbors. Each of St. Katherine's witnesses acknowledged that there was no educational or therapeutic reason for designing the building to that height. It was planned that way merely to match the existing structure.

The school does not plan to increase student enrollment or faculty size. John Nawn, a traffic engineer from Valley Forge Laboratories, nevertheless conducted a traffic impact study for the site. With no planned increase in enrollment or faculty, the addition obviously presented no additional burdens on traffic on the site or in the surrounding neighborhood. Some of the neighbors did testify, however, to their concerns regarding the existing bus and van traffic that serves the school.

Several neighbors testified in addition to their concerns about the impact that the proposed addition might have on the residential character of the neighborhood. Most admitted

¹ Code §155-28E.

that the present use of the school does not cause problems for them in terms of noise, lighting or other aesthetics. They expressed unanimous fear that the existing stormwater drainage problems that have plagued the neighborhood for years would be worsened by the school's addition. On that issue, St. Katherine's engineer described the plan to recharge the stormwater from the new addition in two alternative ways: with a basin located in the middle of the driveway circle; or with roof drains that would channel water in ditches running along the existing building. The engineer was confident that the plan would recharge stormwater at least to the levels required under the Code.

For the reasons that follow, and based on the specific plan and testimony submitted at the hearings, the Board denies St. Katherine's application.

After St. Katherine's filed its application, the Lower Merion Board of Commissioners adopted Ordinance No. 3491, enacting substantial amendments to the zoning regulations governing educational institutions. In some respects, the regulations in existence when the application was filed were more beneficial to the school than the regulations in Ordinance No. 3491; in other respects, the existing regulations were less beneficial.³ Whether the "pending ordinance doctrine" made Ordinance No. 3491 applicable in any event,⁴ St. Katherine elected to proceed under the new regulations. [N.T. 6/15/98 at 19]

Code §155-11(S)(2), which allows for certain uses by special exception, now limits a "building addition" or a "building accessory" to a "Certified Educational Institution" to no more than 50% of the floor area of the existing structure dedicated to the educational use. St.

² Presently, the school's teachers and staff administer therapy in the small rooms of the existing building or in the hallways.

³ For example, as discussed more fully, *infra*, the new ordinance imposes limits on the size of additions to educational buildings, but requires no additional parking if there is no increase in students or other participants coming to the property.

⁴ See, 53 P.S. § 10603(c)(2.1); and *Tu-Way Tower Co. v. Zoning Hearing Board of the Township of Salisbury*, 688 A.2d 744 (Pa. Cmwlth. 1997).

Katherine Day School is a Certified Educational Institution under the Code since it operated as a private educational institution when Ordinance No. 3491 was enacted.⁵ Given the existing school building's floor area of over 22,000 square feet, the school's application for a 5130 square foot addition for educational purposes is within the 50% expansion limitation of section 155-11(S)(1). Moreover, with no planned increase in student enrollment, faculty or staff, no additional parking is required. Code §155-95(AA)(6).

The more difficult issue is whether the proposed development would violate the impervious surface limitations on building expansion:

Impervious Surfaces. A use regulated by this section [Code §155-11] which utilizes an existing structure and which limits the size of the expansion to not more than 50% of the floor area of the existing structure measured on all floors at or above ground level may exceed the impervious surface provisions by up to 5%. The additional volume of stormwater runoff generated by a 100 year storm event for this increase shall be fully recharged in a system approved by the township engineer.

Code §155-11(Y)(7) (emphasis supplied).

St. Katherine's property already exceeds the 28% impervious surface provisions by 8.7%. [Exhibit A-1; Existing Impervious Coverage 36.7%] The proposed improvements would increase total impervious coverage to 40.8% - 12.8% more than the "provisions" for the R-3 district permit. St. Katherine argues that it is merely increasing existing impervious coverage on the site by 4.1% (36.7-40.8) and that this increase is within the 5% expansion permitted in §155-11(Y)(7). The Board does not interpret §155-11(Y)(7) to sanction an increase where the impervious coverage already exceeds the limitations of the applicable zoning district by more than 5%. Rather, §155-11(Y)(7) allows a 5% increase in impervious coverage above the impervious limitation provisions for the applicable zoning district, provided the other conditions

⁵ See, Code §155-4, Certified Educational Institution.

of the section are met. St. Katherine's interpretation would allow a property with an impervious coverage of 95% to expand to 100% impervious coverage. The Board does not believe that the Commissioners intended that result. To the contrary, the right of a property owner to expand nonconforming impervious coverage was already addressed by §155-141.5:

A lot legally in existence on October 17, 1990, which was then legally covered with an impervious surface within 1% of the maximum impervious cover permitted by this chapter, or which then became nonconforming to such impervious cover provisions, may expand the impervious cover on such lot by a maximum of 1% of the lot area, unless the expansion qualifies under Subsection C below. The benefits of this expansion shall not be available with respect to any lot created or modified after October 17, 1990.

Code §155-141.5(B).

Reading the zoning ordinance as a whole, it is clear that §155-11(Y)(7) allows a 5% expansion beyond ordinance limits, while §155-141.5(B) allows expansion beyond the level of an existing nonconformity. Had the Commissioners intended the result argued for by St. Katherine, they could have adopted the language used previously in §155-141.5(B).

St. Katherine was thus required to seek a variance from the impervious surface expansion limitation in §155-141.5(B). It offered no evidence to support such a variance. This is not surprising since St. Katherine's case was premised on its theory that it was entitled to expand impervious coverage by 5% over the existing level rather than the level set by the applicable provisions of the zoning ordinance.

A traditional variance generally requires proof of the five factors listed in The Municipalities Planning Code, 53 P.S. §910.2. In this case, St. Katherine's evidence was not directed towards most of the criteria. Indeed, it disclaimed any attempt to meet the "minimum variance" standard of 53 P.S. §10910.2(a)(5).

The school's witnesses testified that the size and location of the addition were never re-examined to determine if a smaller building might be acceptable for the proposed use:

Q [Mr. Morris] The user always wants a bigger and better building. The question is, this building is too big as far as impervious surface needs are. So did anybody look at it? Did you draw plans that met the impervious surface requirements of this Township?

A [Mr. Brodsky] No, we were not asked to do that.

Q Were you asked to investigate what the smallest size building could be that would still be acceptable to the use that is needed?

A No.

Q Do you know if anybody did?

A Not that I'm aware of. . . .

* * *

Q Did you propose any reduction, other than [sic] impervious surface, taking up any of the driveways?

A Just what I mentioned before about cantilevering the first floor.

[N.T. 6/15/98 at 61, 63]

The application must be rejected because applicant has failed to prove that the expansion as presented meets the standards for relief by variance from the impervious surface requirements, as set out in The Municipalities Planning Code, §910.2. However, it may be that the applicant can establish grounds for a traditional variance in a later application focusing on that issue and involving a smaller expansion, or that its project could be redesigned to provide grounds for a variance on a *de minimis* theory that is less intrusive on surrounding properties, steep slopes and as many mature trees. Since the Board does not wish to foreclose any such application, the

present denial shall be without prejudice to St. Katherine's right to seek approval of any design revision that it believes may qualify for relief.

ORDER

AND NOW, this 13th day of August, 1998, it is hereby ORDERED that the application of St. Katherine Day School for a special exception and variance is DENIED as to the plan presented at the hearings, without prejudice to applicant's right to submit revised plans.

Chairman Ryan and Members Aaron and Morris participating, all voting "aye."

Attest:



Robert E. Duncan
Secretary