



Department of Land Use

NOTICE OF DECISION

REFERENCE: Application 2012-0519-A DATE DECISION FILED: October 1, 2012

APPLICANT: **Apex Engineering/Wilmington Friends School**

PUBLIC HEARING DATE: September 13, 2012 DATE OF DECISION: September 13, 2012

REQUESTED: Area variances to construct three school additions: **1.** to maintain an existing school at 57 feet in height and to construct three additions at 57 feet in height (45-foot maximum building height); **2.** to maintain 124 existing parking spaces (399 parking spaces required); and **3.** to maintain paving 15 feet from the Alapocas Drive right-of-way for existing parking areas (20-foot street yard paving setback).

101 School Road Parcel Number 06-128.00-052 Zoned NC10 CD 2

The Board of Adjustment may grant a variance from the area or dimensional or other requirements of the New Castle County Unified Development Code [hereinafter "UDC"] where it finds the applicant or property owner is experiencing exceptional practical difficulty, rather than routine difficulty, in complying with the specific provisions of the UDC applicable to the subject property.

The Applicant requested a number of variances to repair fire damage to the gymnasium and theater, to construct 6 new classrooms, and to create an entrance atrium by enclosing an outdoor courtyard known as "Ryan's Walk." The subject property is a 272.20-acre parcel, which is zoned Suburban (S) and located in Council District 12.

The Wilmington Friends School was founded in 1748, and a school was constructed on the subject property in 1935. Over the years, the school has maintained a unique and beneficial relationship with the surrounding community, serving as a community amenity by providing public access to athletic fields and gym facilities, and offering courses such as defensive driving and allocating meeting spaces for community board meetings. As a result of the date of construction, the school is deficient with regard to a number of site requirements, the most important of which in this case is the number of required parking spaces. While the parking requirement has undoubtedly increased over the years, the date of original construction, which predated the adoption of the former zoning code by almost two decades, remains the major reason for the off-street parking nonconformity. The Applicant has also represented to the Department that approximately 40 cars are parked on the street on school days, which does not trouble the neighborhood according to overwhelming community support, in the form of a signed petition and attendance at the Board hearing.

The subject property is referred to as the Middle/Upper School Campus, which has a current enrollment of 452 students, and the property includes a middle and a high school with a shared a gymnasium, theater, and shared parking. In April of 2012, the gymnasium and theater were damaged by fire, and the Applicant is looking to reconstruct these spaces with a small increase in area to provide a new balcony in the theater and more space behind the stage at the original 57-foot height, which is nonconforming with respect to the current 45-foot maximum height. The original paving setback of the front parking area is also nonconforming at 15 feet with respect to the current 20-foot paving setback. An outdoor courtyard area, which is known as "Ryans Walk," is planned to be enclosed with a glass atrium to create a main entrance atrium. Lastly, 6 new classrooms are proposed to be constructed at the end of the building while 3 existing classrooms, which are internal to the school, will be eliminated through combination with other rooms to create more spacious and modern classrooms, resulting in a net increase of 3 new classrooms.

The Applicant is requesting a very significant reduction in the number of required parking spaces: from 399 required parking spaces to the existing 124 existing parking spaces, and has no plans to provide more parking despite creating 3 net new classrooms; however, only 22 additional parking spaces of the 399 parking spaces are due to the addition of the 3 new classrooms, and the Applicant has represented to the Department that the no new parking will be needed because the 3 additional classrooms will not be used to accommodate additional students, but to provide additional classrooms for additional course offerings for the existing student body. It should also be noted the parking variance will eliminate the need for depict a future Parking Demand Needs Analysis (PDNA) parking area on the recorded plan. The existing temporary 62-space parking area, which was only constructed to provide additional parking during the demolition and reconstruction of the fire-damaged theater and gymnasium, will be returned to turf once construction has been completed.

The Department of Land Use recommended that the Board approve the variance.

DECISION

The Board votes to **grant** the: "Area variances to construct three school additions: **1.** to maintain an existing school at 57 feet in height and to construct three additions at 57 feet in height (45-foot maximum building height); **2.** to maintain 124 existing parking spaces (399 parking spaces required); and **3.** to maintain paving 15 feet from the Alapocas Drive right-of-way for existing parking areas (20-foot street yard paving setback)."

The Board finds that the requested variances will unlikely adversely affect surrounding properties; there was overwhelming community support for the variances, and no one from the community spoke in opposition the requested variances. The Board agrees that the variances will allow for greater green space and less impervious coverage, which is a unique and beneficial aspect of this community. The land itself is burdened by restrictions of the UDC, rather than the landowner being burdened personally thereby, given that the structures were built prior to the enactment of the UDC. Additionally, certain structures would have to be partially demolished if the variances to maintain them were denied. Thus, "A literal interpretation of the zoning law results in exceptional practical difficulties of ownership." Kwik-Check Realty, Inc. v. Board of

Adjustment of New Castle Cty., 369 A.2d 694, 698 (Del. Super.1977), aff'd 389 A. 2d 1289 (Del. 1978).

By granting the variances, and removing the restrictions, the neighboring properties will not be seriously affected. If the variances were denied, and the restrictions not removed, "the restriction would create...exceptional practical difficulty for the owner in relation to his/her efforts to make normal improvements on the character of that use of the property which is a permitted use under the use provisions of the ordinance [involved]." Board of Adjustment of New Castle Cty. V. Kwik-Check Realty, Inc., 389 A.2d 1289, 1291 (Del. 1978). The granting of these variances will not cause substantial detriment to the public good, nor will it substantially impair the intent and purpose of the zoning code.

VOTE: 6-0 (Grant: Burt, Ciabattoni, Hudson, McCann, Parker, Whalen)

BOARD OF ADJUSTMENT
OF NEW CASTLE COUNTY



David H. Burt
Chair

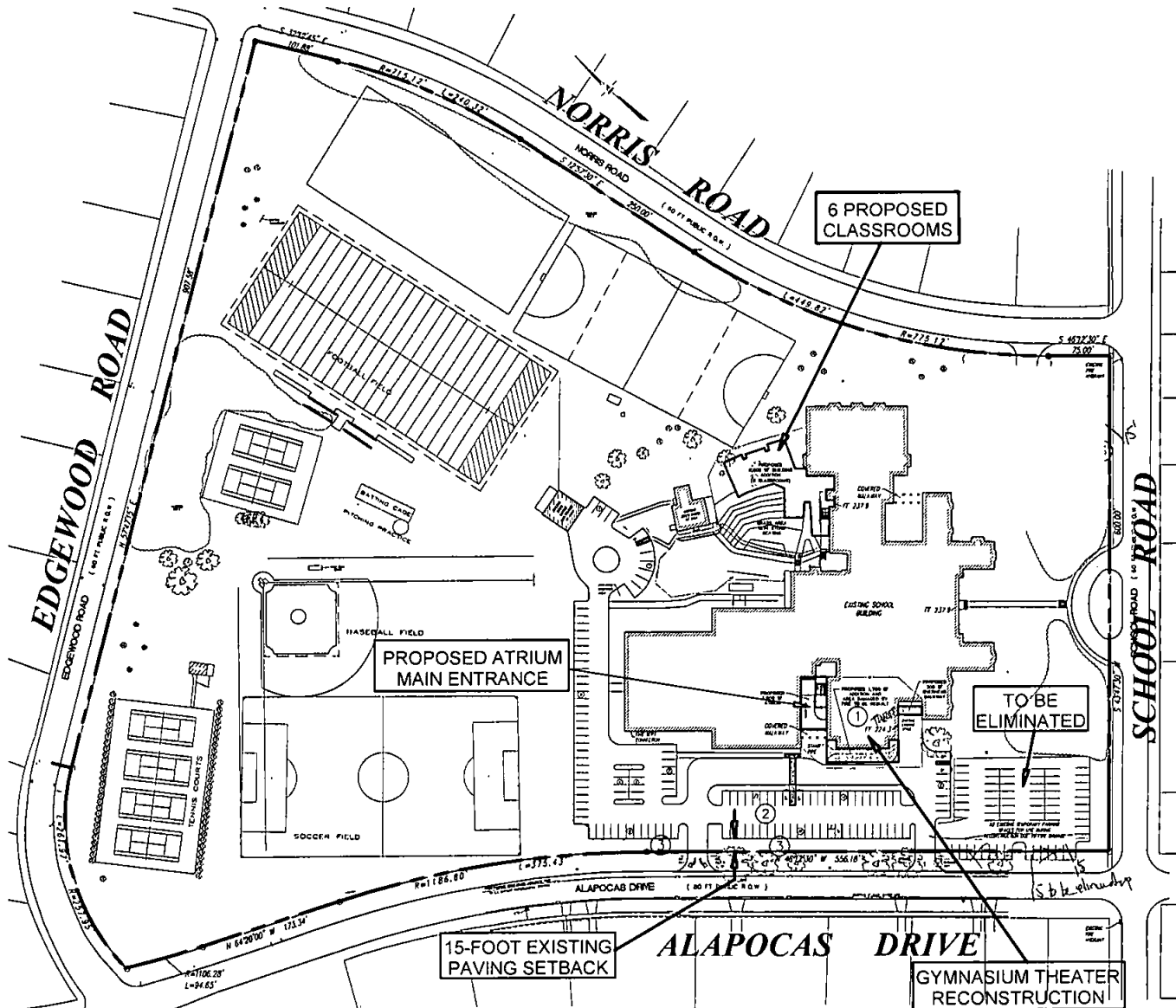
NOTE: Variances are neither building permits nor Certificates of Occupancy. Appropriate permits must be obtained from the Division of Development and Licensing prior to construction or establishment of the use. This decision should be kept in a safe place with the property deed. This decision may be appealed to the Superior Court by any person aggrieved by it within 30 days of its filing in the office of the Board of Adjustment.

NOTE: A variance becomes void if the variance is not put into effect within two (2) years of the filing date of this decision.

PUBLIC HEARING DATE: September 13, 2012
COUNCILMANIC DISTRICT: 10

ZONING: NC10

APP. NO. 12-0519-A
TAX PARCEL: 06-128.00-052



BOARD OF ADJUSTMENT NEW CASTLE COUNTY, DELAWARE

Applicant:
Address of Subject Property:

Apex Engineering/Wilmington Friends School
101 School Road
Wilmington, DE 19803

Applicant seeks: VARIANCE:

To construct three school additions: 1. to maintain an existing school at 57 feet in height and to construct three additions at 57 feet in height (45-foot maximum building height); 2. to maintain 124 existing parking spaces (399 parking spaces required); and 3. to maintain paving 15 feet from the Alapocas Drive right-of-way for existing parking areas (20-foot yard paving setback).

DECISION:
DATE OF DECISION:

SCALE: 1" = 200'