

3:30 P.M. Item - SE-00-H-028 - CATHOLIC DIOCESE OF ARLINGTON
Hunter Mill District

On Wednesday, December 13, 2000, the Planning Commission voted 6-2-2 to recommend the following actions to the Board of Supervisors (*Commissioners Alcorn and Smyth opposed; Commissioners Byers and Wilson abstaining; Commissioner Downer not present for the votes; Commissioner Hall absent from the meeting*):

Approval of SE-00-H-028, subject to development conditions dated December 13, 2000, amended as follows:

Revise the first sentence of condition 13 to read, "There shall be no drop-off of students on Vale Road, Gherkin Avenue, Trott Avenue, Corsica Street, Woodrow Street, or Riviera Drive."

Amend condition 15 to delete the following phrase in the last sentence:
"...without the expressed consent of such neighbor(s)"

Add new condition 35 to read, "All paved areas of the application property shall be swept at least once per month."

Modification of the transitional screening requirements, on all but the southwest periphery, to permit the supplementation of the existing vegetation to achieve the required 25-foot minimum buffer;

Modification of the transitional screening requirements for the southwest periphery along Vale Road to permit the landscaping reflected on the special exception plat to satisfy the transitional screening requirement;

Waiver of the barrier requirements for the southwestern periphery along Vale Road, the southeastern periphery, and a portion of the northeastern periphery east of the existing parking area.

Planning Commission Meeting
December 13, 2000
Verbatim Excerpts

SE-00-H-028 - CATHOLIC DIOCESE OF ARLINGTON

Decision Only During Commission Matters
(Public Hearing was held on November 9, 2000)

Commissioner Palatiello: Mr. Chairman, on November 9th, the Planning Commission held a public hearing on an SE application. The applicant is the Catholic Diocese of Arlington. It is for approval of an SE for a church with a nursery school, child care center, and private school of general education at St. Mark's Church. The decision on that application was deferred, first to the 30th of November and then to this evening. I have circulated to the Commission a set of revised development conditions. Let me make a few comments on this application and briefly summarize the major revisions in the conditions. There were a couple of major issues raised by the citizens during the public hearing. I'll briefly comment on those. Let me preface my remarks about the quality of the presentation that the citizens put forward in articulating and documenting their concerns. I received probably the most thorough, well-presented and well-developed rationale, background concerns and suggested remedies that I've received from probably any citizen group in my eight years on the Commission. And I appreciate that very much; it was very helpful. The citizens gave a list of suggested conditions and we endeavored to either adopt those conditions or come up with some other way to resolve the issues addressed in those conditions. And I think we've come a long way towards doing that. One of the comments that was made in this presentation and the hearing was the presumption that a school cannot exist in a residential neighborhood without having an adverse impact. I don't share that presumption and do not believe that that is accurate. In fact, in my view, that is contrary to the spirit and intent of our Zoning Ordinance. Our Zoning Ordinance does provide for schools in residential neighborhoods by special exception. The question is whether that school can exist in the neighborhood without having an adverse impact on the residential uses. Now, if you call into question that presumption, you would be calling into question virtually every public and private school in Fairfax County. The character of our schools is to put them in neighborhoods and make it convenient to the parents and the students in those neighborhoods. The point was made, again, at the hearing and in the documentation, that this school would be of a size, scale and density comparable to office buildings in the Dulles Corridor or of a K-Mart. That is not accurate. This application has 69 percent open space and it has 64,000 square feet, roughly. That is significantly less than virtually every office building in the Dulles Corridor. And it's about -- the typical K-Mart is more than 30 percent larger than this. So I don't think that is an accurate comparison. I want to bring to the attention of the Commission something that I would hope we would have either a public session or an executive session with the County Attorney -- and I've raised this with Chairman Murphy because I know the Board has been briefed on this -- but on September 22nd, President Clinton signed into law, Public Law 106-274, known as the Religious Land Use and Institutionalized Persons Act of 2000. The latter part of it with regard to religious freedom of institutionalized or incarcerated persons is not relevant to our discussion today. But with regard to religious land use, let me read two provisions of the Federal law. One,

it says: "No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly or institution a) is in furtherance of a compelling governmental interest and b) is the least restrictive means of furthering that compelling governmental interest." That is a very broad and significant Federal provision. And I think we're going to have to take a long hard look at how we are treating religious institutions in the Commonwealth of Virginia and in the County of Fairfax, given the enactment of this law. And I had to keep that in mind when looking at this particular application. You have before you this evening a package of development conditions that seeks to address the majority of the citizen issues. And, in fact, addresses all of the citizen issues. I'll be candid and say it's not entirely to the satisfaction of all of the citizens. And the content of each of those conditions is not exactly what all of the citizens had asked for. But we did address each of the issues that are on the list of what the citizens presented to one degree or another. One is the size of the school and the enrollment. I think I have addressed the size of the school already. The enrollment we had to look at in the context of this particular application. And the bottom line decision for me and for the rest of the Commission is, could a school with this enrollment be harmonious with this neighborhood and meet the requirements of the Comprehensive Plan, the Zoning Ordinance and the standards for a special exception? One of the other issues raised was a request that the County mandate a busing program for the school. We discussed that long and hard. I've discussed it with the citizens. I've discussed with Father Calkin and his representatives. There is virtually no -- in fact, there is no precedent in the County for the County mandating a busing system for a private school, against the will of the school. In those rare instances where we do have development conditions on busing program, it has been with the concurrence of the private school. And I'm very uncomfortable imposing that kind of mandate when it just is not in the cards for the applicant. I have a letter from the Diocese that I will enter into the record in which the Diocese states that a busing system is cost prohibitive. It is contrary to the existing policy of the Diocese, that they are phasing out their busing programs, and that they cannot obtain the necessary liability insurance from their carrier to develop and operate a daily bus program for their students. What we have done to address the citizens concerns is add a development condition that has a strong car pooling condition that would reduce the trip generation and address the issue of the traffic on Vale Road and the number of cars entering and exiting the property to drop off students. Traffic safety was another issue that we heard. After the public hearing, the transportation consultant for the applicant went back out and did another analysis, did some field measurements and observations. That was reviewed by VDOT and by the County DOT. The conclusion confirmed is that the sight distances meet or exceed the VDOT requirements. However, given the nature of Vale Road, we have added a condition that requires the applicant to pursue a traffic officer and the installation of wink-o-matic lights to lower the speed limit, and if warranted by VDOT, those will be implemented by St. Mark's. Additionally, the citizens asked for sidewalks, not only along the Vale Road frontage, but along the driveway entrance, and that is included as well. We had some

environmental concerns. We had one issue that Mr. Alcorn raised. There is a very strong concern about ground water in this area. There are a number of neighbors on wells. Mr. Alcorn suggested that we add a condition regarding an environmentally sensitive fertilizer and pesticide application condition. And that has been added as well. I think that's a very good suggestion. I appreciate Mr. Alcorn's suggestion on that score. The citizens asked for a limitation on the hours of operation of the facility and of the ballfields, and that has been added. The citizens asked for limitations on construction time, on construction vehicles, not only access, but the time construction vehicles could enter and exit, so that it did not create a problem with rush hour traffic and with children being transported to other schools in the area. And we have added those conditions. Some of the adjoining property owners identified some drainage issues. And a condition has been added whereby the church will cooperate and actually provide, at no cost to the residents, any grading that may be necessary to improve the situation on those adjoining property owner's properties. Those are principally properties that are of a higher grade where they are draining down into St. Mark's, but this would help that situation. We had an issue raised about the potential of cadmium as an agent that could potentially affect the ground water. We struggled long and hard with that particular issue and what we have is Condition Number 34 wherein St. Mark's will test two wells of nearby residential properties; one to the west which is at a higher contour and one to the northeast which is at a lower contour. The testing will be conducted prior to St. Mark's filing their site plan for the purposes of establishing a base line of water quality. Based on the results of those tests, the applicant will make any adjustments to its proposed stormwater management system, above and beyond that which is proposed in the application, to that which is determined necessary by DPWES. And selection of the properties will be mutually agreed upon between the applicant and willing property owners. Temporary access easements will be provided by those willing property owners. But if there are no willing property owners, then this would be null and void. But we believe that folks would be willing to step forward to have those wells tested. The purpose of this is to establish a base line so we know going in what the quality of the ground water is. Quite honestly, we struggled long and hard to come up with a way to provide some other means of periodic or incremental testing in the future. The difficulty we had in doing more than what is in there is the fact that it is, in my mind, impossible to come up with a system where you can, through the development condition, create a relationship with any phenomena in the ground water with St. Mark's. And I don't think it is fair or proper to impose a condition on St. Mark's that would basically be holding them responsible and indemnifying everyone else in the Difficult Run watershed when something external to St. Mark's may be the factor that contributes to any change in the quality of the ground water. So what this does is provide some testing and it says that whatever DPWES requires, above and beyond what is being provided in the application, will be added by the applicant. Let me also say that we have not been able to ascertain from any of the County's experts that the concern about cadmium pollution is relevant or has potential in this particular application. The applicant's hydrogeologist has looked at this. They have made a further review. The cadmium levels that are evident are well below accepted Federal levels. There is not an expectation that there would be any significant change as a result of this particular

application. DPWES looked at this. It came to my attention, -- again, Mr. Alcorn, based on his experience working for then Providence Supervisor Hanley, that we have some in-house expertise in the Fire Department who were involved in the Mantua situation and are expert in analyzing ground water contamination and things of that nature. We've gotten verbal feedback from those professionals in that department and, again, the response was that this is not an area with that potential and that that is not a concern that would be evident or pervasive in this instance. Again, we have conditions to address it nonetheless so that we add an extra measure of protection for the citizens. The citizens also said they wanted no rental of the gymnasium or facilities, and we've put that in. I did add one caveat. I did not think it was a good neighbor policy for the County to say that the neighbors couldn't use the facility or the Boy Scouts. I think it's part of being a good neighbor and being a community church to allow the neighbors to use this facility, so there's one exception, but this is not going to be turned into some sort of commercial conference facility or gymnasium or the like. So there'll be no activity of that nature. There will be no other expansion. This is self-evident, but again we put it in the conditions. There will be no other expansion to this property unless St. Mark's comes back through this same process with an amendment to its special exception. We have limited vehicular access to Vale Road only. We have said there will be no trailers on the property, no bleachers on the ballfields, or any other equipment or appendages of that nature. There will be no parking on neighborhood streets. There will be the screening and fence barrier that not only meets what the citizens asked for, but exceeds it. And we put restrictions on construction activities to prevent and mitigate any damage that may inadvertently occur to any neighboring properties. With that, I first want to thank Cathy Belgin for her extraordinary work on this application. She did a lot of research; a lot of extra work that was above and beyond what would normally go into a staff evaluation. There was no question or request that I had that was too large or too small for her to chase down for me, and I very much appreciate all of that. She has gone through this application with great professionalism and great patience with all parties concerned. In my view, Mr. Chairman, this application, with these conditions, meets the standards for a special exception. It conforms with all the applicable Zoning Ordinance requirements and, with the conditions, is in harmony with the Comprehensive Plan. So I would **MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SE-00-H-028, SUBJECT TO THE PROPOSED DEVELOPMENT CONDITIONS DATED DECEMBER 13TH**. And I have a couple of modifications to further clarify some issues that we've just discussed with the citizens. And that is that the conditions be **AMENDED AS FOLLOWS:**

In Condition 13 it says: "There shall be no drop-off of students on Vale Road or Gherkin Avenue." The purpose is, we do not want to permit parents to avoid bringing their students, their children on property, on the driveway, to drop them off at the school. And we want to make sure they don't circumvent this condition by going to

one of the other neighborhood streets. So I would AMEND CONDITION 13 TO STATE, IN THE FIRST SENTENCE: "THERE SHALL BE NO DROP-OFF OF STUDENTS ON VALE ROAD, GHERKIN AVENUE, OR TROTT, CORSICA, WOODROW OR RIVIERA."

I would also AMEND NUMBER 15, IN THE LAST SENTENCE, TO PUT A PERIOD AFTER THE WORDS "ABUTTING NEIGHBORS" AND STRIKE ALL THAT APPEARS AFTER THAT. In other words, strike "without the expressed consent of such neighbor, neighbors."

And I would ADD A NEW CONDITION NUMBER 35 THAT SAYS: "ALL PAVED AREAS OF THE APPLICATION PROPERTY SHALL BE SWEEPED AT LEAST ONCE PER MONTH." I so move, Mr. Chairman.

Commissioner Koch: Second.

Chairman Murphy: Seconded by Mr. Koch. Discussion?

Commissioner Smyth: Mr. Chairman?

Chairman Murphy: Ms. Smyth.

Commissioner Smyth: Thank you. This is a very complicated application and I know that it has been very difficult for everyone involved in it. I certainly commend Commissioner Palatiello for his time and effort in working with the citizens and trying to work out the great number of issues that have presented here. For me this is also difficult. I have spent most of my life involved in education; spent an awfully lot of time in school, but I have to look at this also as a land use issue. And this year I too did a private school, Flint Hill Upper School. And in looking at that school compared to the present application, I find some comparisons that raise concerns in my mind. Both schools are private schools. Neither one is proffered to have busing. Both will use car pooling. However, there are some major differences here. First of all, there is the matter of infrastructure, the infrastructure that can absorb the impact of a school in a residential neighborhood. Flint Hill Upper School is located on Jermantown Road which has four lanes with a median separation. There is already an amply long left turn lane for entering the school and a right turn deceleration lane was proffered. There's a traffic signal at the corner of the site and sidewalks on both sides of Jermantown Road that extend all the way to 123. In contrast, St. Mark's is situated on Vale Road. It's a two lane road with no shoulders. The only sidewalk in right along the frontage of St. Mark's and it's really of very minimal use. There's a left turn lane into St. Mark's. The applicant's traffic consultant recommended lengthening the left turn lane to increase its stacking capacity, but because of the proximity to Oak Valley Road, this can't be done. Then there's the matter of the sight distances. I understand that VDOT has said they're fine. I was there and saw a very near miss of an accident of a car turning left from Trott onto Vale. I went over and looked into

it myself and discovered there really is a very bad blind spot there. Cars are totally out of sight. A school bus wouldn't be, but school buses don't seem to be in the question any more. Anyway, Vale Road is basically an old country road that's been paved. They were trying to improve it in 1862. It could still use some improvements. We have the situation that we are increasing the traffic on Vale Road. The application's traffic analysis shows that the increase would be over 25 percent coming from the west, past Trott Avenue. This really is a concern for me. And I'm not sure that I could agree that this application satisfies the general standards, particularly Numbers 3 and 4. There's also one question that wasn't answered on the well situation. At the public hearing, Mr. Alcorn specifically asked for information on the recharge. There wasn't anything in the report from the hydrologist that we've been sent. And I called the hydrologist and asked. He said that he did the work that he was asked to do. He was not asked to look into the recharge issue, so we don't really have anything on that basis. So, Mr. Chairman, I will say now that I'm going to have to oppose this application.

Chairman Murphy: Further discussion of the motion?

Commissioner Palatiello: Mr. Chairman, I think, for the record, we should probably ask that the applicant's representative come forward to indicate concurrence with the proposed development conditions.

Martin Walsh, Esquire: Mr. Chairman, Mr. Palatiello, members of the Planning Commission. We do concur with the changes that Mr. Palatiello has set forth in the conditions.

Commissioner Palatiello: And sir, you are?

Mr. Walsh: I'm sorry. My name is Art Walsh, representing the applicant.

Commissioner Palatiello: Thank you.

Mr. Walsh: Thanks.

Chairman Murphy: Let me just say that we might not have transit stations or suburban centers in the Springfield District, but, boy, do we have churches. And I've brought my share to the Planning Commission. And there are some contrasts and comparisons between churches with schools and churches without schools and private institutions with schools and so forth and so on. And although you can compare and contrast, there are some threads of commonality that link all these uses together, but I think you have to judge each one on its merits. And I think that's what Ms. Smyth was doing. But I just don't agree with the analysis of that Vale Road situation. I think when you look at this application -- because I've done churches in similar situations on similar road networks, unlike the one you mentioned before, I think when you have a development condition like Number 10 -- we imposed a very similar condition to a church with a school out in

Centreville, before it was redistricted, and it's working. One of the questions I asked our transportation experts, if you recall, is this church and school going to generate traffic on Vale Road or is it going to absorb a lot of traffic that's already on Vale Road since this is in a parish which is a defined area? Now I heard one person say that's in not in our area because it's not in our zip code. Well I'm not quite sure how that works there, but most of the students, as I understand it, that will be going to this school will be coming from that general area. And more than likely, a lot of the cars on Vale Road and the roads near that church are going to be on the road anyway. They're just going to be stopping at that school now and dropping children off. That's why I'm encouraged when I see something like a ride share program because that has worked in similar cases in the Springfield District where there has been a difficult road network and the school was not able to have buses. So they used this car pooling and thank God someone in Fairfax County still uses car pooling -- more than one person in a privately owned vehicle -- to get to their destination. So I'm going to support the motion. Further discussion?

Commissioner Moon: Mr. Chairman?

Chairman Murphy: Mr. Moon.

Commissioner Moon: Could I ask a question of either Mr. Palatiello or the applicant regarding Conditions 13 and 16? How do you enforce those conditions? If there are violations, what are the remedies?

Chairman Murphy: Well, I guess they'd be enforced like any other development condition. If they're not being met and the neighbors see that it's not being met, they would call the Zoning Administrator's Office and they would send out a zoning inspector and they'd cite the church. Is that right? Yes.

Commissioner Moon: But how would the applicant, in this case the church, be able to comply with these conditions where it is a parent or somebody using the church who is violating these conditions?

Commissioner Palatiello: Mr. Moon, if I may. First of all, there is a condition in this application. There is a condition regarding communication with the community and meetings with the community before each school year. Number 27. So there's going to be liaison with the neighborhood. I think we're benevolent enough in this County if there is an isolated incident and it's brought to the attention of the school or of the Zoning Enforcement Division, there will first be an attempt to remedy that by communicating with the parents of what these conditions are and that they are not supposed to be using the neighborhood streets. They are not supposed to be dropping their kids off in other places. There has to be a coordinator on the part of the school to put this car pool program together. Now if there are isolated incidents, this has to be brought to the attention of the school and the school has to make sure that all of its parishioners and all the parents are aware of these conditions and comply with them. Now, the death penalty here is that if

there is a flagrant violation of the conditions, then there is cause for the Zoning Enforcement Division to revoke their special exception permit. I would note that the condition also provides for liaison with the Supervisor's Office. So there's constant communication. And I know we've had a condition like this in other applications. The Barns of Wolfrap comes to my mind. The first time they came in for a special exception, we found out there was no communication whatsoever and now there is a tremendous communications program. Before issues become big issues, they get identified when they are little issues and they are resolved. That's the spirit of these conditions. So vigilance on the part of the applicant and the neighbors is the enforcement mechanism. The use of our Zoning Enforcement Division as a means of policing this is the way that the County exercises its interests and participates.

Chairman Murphy: Further discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE-00-H-028, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Alcorn and Smyth: No.

Commissioners Byers and Wilson: Abstain.

Chairman Murphy: Motion carries. Ms. Smyth votes no. Mr. Alcorn votes no.

Commissioner Wilson: I abstain. I was not here for the public hearing.

Chairman Murphy: Ms. Wilson abstains and Mr. Byers abstains.

Commissioner Palatiello: Mr. Chairman, I further MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A MODIFICATION OF THE TRANSITIONAL SCREENING REQUIREMENTS ON ALL PERIPHERIES EXCEPT THE SOUTHWEST TO PERMIT THE EXISTING VEGETATION TO BE SUPPLEMENTED TO ACHIEVE THE REQUIRED MINIMUM OF A 25-FOOT BUFFER.

Commissioner Koch: Second.

Chairman Murphy: Seconded by Mr. Koch. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Alcorn and Smyth: No.

Commissioners Byers and Wilson: Abstain.

Chairman Murphy: Motion carries. Same division.

Commissioner Palatiello: Mr. Chairman, I further MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A MODIFICATION OF THE TRANSITIONAL SCREENING REQUIREMENTS ON THE SOUTHWESTERN PERIPHERY ALONG VALE ROAD TO PERMIT THE LANDSCAPING SHOWN ON THE SPECIAL EXCEPTION PLAT TO SATISFY THE TRANSITIONAL SCREENING REQUIREMENT.

Commissioner Koch: Second.

Chairman Murphy: Seconded by Mr. Koch. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Alcorn and Smyth: No.

Commissioners Byers and Wilson: Abstain.

Chairman Murphy: Motion carries. Same division.

Commissioner Palatiello: Mr. Chairman, I further MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF A WAIVER OF THE BARRIER REQUIREMENT ON THE SOUTHWESTERN PERIPHERY ALONG VALE ROAD, ALONG THE SOUTHEASTERN PERIPHERY, AND ALONG A PORTION OF THE NORTHEASTERN PERIPHERY, EAST OF THE EXISTING PARKING AREA.

Commissioner Koch: Second.

Chairman Murphy: Seconded by Mr. Koch. Discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed?

Commissioners Alcorn and Smyth: No.

Commissioners Byers and Wilson: Abstain.

Chairman Murphy: Motion carries. Same division.

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(Each motion carried by a vote of 6-2-2 with Commissioners Alcorn and Smyth opposed; Commissioners Byers and Wilson abstaining; Commissioner Downer not present for the vote; Commissioner Hall absent from the meeting.)

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