

**ZONING HEARING BOARD
OF CHELTENHAM TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

APPEAL NO. 2758

Applicant:	Ancillae-Assumpta Academy 2025 Church Road Wyncote, Pennsylvania
Owner of Premises:	Handmaids of the Sacred Heart of Jesus, a Pennsylvania Corporation
Subject Premises:	2025 Church Road Wyncote, Pennsylvania
Nature of Application:	Applicant appeals from the decision of the Zoning Officer finding that a proposed addition to a building at the premises and reconfiguration and additions to parking fields would violate the Cheltenham Zoning Ordinance of 1929, as amended, as well as a prior decision of the Zoning Hearing Board and, specifically, Article VI, Section 295-21(C) regulating uses, Article XXIX, Section 295-221(A), Section 295-221(B)(4), regulating parking, and Article XXII, Section 295-168 and Section 295-169, regulating development in areas designated as having steep slopes. Applicant seeks special exceptions and variances to the rules and regulations of the R-

3 Residence District, the General Provisions and the Steep Slope Conservation District as well as the modification of a previous decision of the Zoning Hearing Board as follows:

1. a special exception to the rules and regulations of the Class R-3 Residence District as outlined in Section 295-21(C) in order to add an addition to an educational use to be used for auditorium, music and art instruction rooms and administrative offices;

2. a modification of the decision of the Zoning Hearing Board dated August 13, 1979, under Appeal No. 1843. Applicant requests the removal of the condition limiting the maximum number of students enrolled to 435. In the alternative, applicant requests a modification to said condition to allow 625 students to be enrolled. Applicant also requests removal of the restriction prohibiting adult education classes to the extent that said condition would prohibit, for example, such uses as CPR classes, "55 Alive" classes, computer and music lessons and similar community oriented programs for adult learning;

3. a variance from Section 295-221(A) to permit 11 parking spaces to be 9' x 20' (180 square feet) and 9 spaces to be 8' x 20' (160 square feet) instead of the required 200 square feet (10' x 20');

4. a variance from Section 295-21(C) and Section 295-221(B)(4) for lesser off street parking than required. Applicant presently has 83 parking spaces and proposes to add 33 new spaces for a total of 116 spaces. Under Appeal No. 1843, the Decision dated August 13, 1979, required that there be 57 parking spaces. Under the proposed expansion to 625 students plus 15 resident nuns, 224 spaces are

required ($625 \div 3 = 209$ plus one indoor space for each resident nun ($15 = 224$ total). No indoor parking spaces are proposed (Section 295-21(C)). A finding by the Zoning Hearing Board is requested to determine the required number of spaces. Applicant requests a variance for the difference between the number of spaces required and the number provided, Section 295-21(C) and 295-221(B)(4);

5. a special exception to the rules and regulations as outlined in Section 295-221(B) in order to permit Ancillae-Assumpta Academy to use parking facilities at Bishop McDevitt High School for overflow parking;

6. a finding that the proposed 45 foot high clock tower falls within permitted accessory use and does not require zoning relief. In the alternate, to the extent that the clock tower or any other aspect of the proposed addition exceeds the allowable height of 40 feet (Section 295-25), applicant requests a variance;

7. the following findings, variances and/or special exceptions from the rules and regulations of the Steep Slope Conservation District:

- (A) a special exception to Section 295-168(B) to permit the construction of a new sanitary sewer lateral through an area designated as having steep slopes;
- (B) a special exception to Section 295-168(F) to permit certain areas designated as having steep slopes to be excavated and/or regraded for the following proposed new facilities;

- (1) a portion of the proposed new addition;
 - (2) a portion of the reconfigured parking lot;
 - (3) a new sanitary sewer lateral; and
 - (4) a "Drywell" Stormwater Management Facility; and
- (C) a variance from Section 295-169(A)(3) for the filling or removal and storage of topsoil (including ancillary regrading) required for the construction of the addition, the reconfiguration of the parking and the construction of the sanitary sewer lateral and drywell.

Time and Place of
Hearing:

Monday, March 22, 1999 - 7:30 p.m.
Curtis Hall
Church Road and Greenwood Avenue
Wyncote, Pennsylvania

FINDINGS OF FACT

2. The applicant, Ancillae-Assumpta Academy, is the operator of a private school at the premises. The Handmaids of the Sacred Heart of Jesus, a Pennsylvania Corporation, is the owner of the premises known as 2025 Church Road, Wyncote, Pennsylvania.

3. Prior to the public hearing on this appeal, an advertisement, noting the time and place of the hearing and the contents of the appeal, was placed in a newspaper of general circulation.

4. The premises occupies 9.55 acres, is located in an R-3 Residence District and is improved by three primary buildings, all of which are utilized as part, or in support, of the educational uses of the premises.

5. The following documents were made part of the record.

- ZHB-1 a listing of exhibits;
- ZHB-2 a copy of the language of the legal notice relating to the holding of the hearing on March 22, 1999;
- ZHB-3 an application to Zoning Hearing Board, referenced as Appeal No. 2758;
- ZHB-4 a document marked as Real Estate Registry W 37, showing the location of the premises;
- ZHB-5 a document provided by the applicant entitled "149-Ancillae-Assumpta Academy Article XXII Steep Slope Conservation District;
- ZHB-6 a set of four site plans prepared for Ancillae-Assumpta Academy by Hibbeln Engineering Co., L.L.C.;
- ZHB-7 a copy of the Decision of the Zoning Hearing Board of Cheltenham Township at Appeal No. 1843;
- A-1 Ancillae-Assumpta Academy - Application for Cheltenham Township for Zoning Relief (Submitted December 4, 1998);
- A-3 Deed to the property;
- A-4 Curriculum Vitae of Sister Elizabeth McCoy, acj.;
- A-5 Average California Achievement Test Scores of Applicant's Students (chart);
- A-6 List of awards, achievements and scholarships;
- A-7 Applicant's 1998-1999 calendar of events;
- A-8 Applicant's proposed conditions to Zoning Relief;
- A-9 Enrollment figures for applicant since 1970. (Chart);
- A-10 Copy of timeline from Applicant's 1995-96 calendar indicating enrollment of 450 in 1971;

- A-12 Newspaper articles regarding applicant;
- A-13 Ancillae-Assumpta Academy listing in the Archdiocesan Directory;
- A-15 Listing of community educational programs at the Academy;
- A-16 Applicant's parking directives for events requiring offsite parking;
- A-17 Sample of Applicant's December 3, 1998 letter sent to parents regarding traffic and parking concerns expressed by neighbors at November 16, 1998 informational meeting;
- A-18 March 3, 1999 letter from Dr. Frederick J. Ciao, President of Bishop McDevitt High School acknowledging applicant's right to use parking facilities at Bishop McDevitt;
- A-19 Applicant's certificate of insurance for use of Bishop McDevitt's parking lot;
- A-20 Sample of applicant's November 3, 1998 letter sent to neighbors regarding November 16, 1998 informational meeting at the property with address list attached;
- A-21 Listing of changes made to plan as a result of neighbors' and township comments to date;
- A-21.1 A Petition from residents of the township in support of applicant's request for zoning relief;
- A-22 Petition in support of applicant signed by residents of Cheltenham Township;
- A-23 Curriculum Vitae of John Sabatino;
- A-24 Existing conditions of site plan;
- A-25 Concept plan of land development;
- A-26 Color renderings of proposed addition;
- A-27 Floor plans;

- A-28 Letter from G.W. Fink, AEI regarding location of HVAC unit;
- A-29 Curriculum Vitae of Anthony Hibbeln;
- A-30 Grading, drainage, erosion and sedimentation control site plan;
- A-31 Curriculum Vitae of Charles Hess;
- A-32 Landscaping site plan;
- A-33 Curriculum Vitae of David Straud;
- A-34 Traffic Study prepared by McMahon Associates;
- A-35 Memorandum of Law in support of application of zoning relief;
- P-1 A series of seven photographs of traffic on Royal Avenue on a Saturday, October 17, 1998;
- P-2 A series of four petitions.

6. The Handmaids of the Sacred Heart of Jesus is a religious order that operates an educational facility serving children from preschool ages through eighth grade at the premises known as 2025 Church Road, Wyncote, Pennsylvania. Ancillae-Assumpta Academy was established in 1946 and is a private educational institution accredited by the Board of Private Academic Schools of the Commonwealth of Pennsylvania.

7. Representatives of Ancillae-Assumpta Academy held a series of meetings with residents who own neighboring properties. One result of those meetings was an agreement between certain named residents and Ancillae-Assumpta Academy. In addition, the Academy requested modifications to its requests for relief as originally submitted. In particular, the Academy decreased its request for a modification of the decision of the Zoning Hearing Board at Appeal No. 1843 to allow 600 students to be enrolled at the Academy. In addition, the applicant amended its request for a variance for parking and eliminated its request for permission for a proposed clock tower.

8. Sister Elizabeth McCoy, Principal and President of Ancillae-Assumpta Academy was qualified as an expert witness in the field of education and her testimony was credible.

9. There are currently 570 students enrolled at the school.

10. Ancillae-Assumpta Academy employs 90 persons in various capacities with a teaching faculty of 68.

11. Sister McCoy testified to a number of criteria and tests from which she concluded that students at the Academy demonstrate exceptional and outstanding performance and achievement in academic and co-curricular activities.

12. The students, parents and faculty of Ancillae-Assumpta Academy participate in numerous community programs and organizations.

13. Sister McCoy described the proposed addition as an auditorium and additional structural spaces to provide areas for curricular activities. Specifically, areas are to be set aside for instruction and practice in the areas of music and art. Sister McCoy testified that following a needs assessment study, officials of Ancillae-Assumpta Academy determined that there was currently insufficient space within the buildings at the premises to provide adequately the educational activities for the children. Particularly, the Academy experienced a growth in its music program and the technology associated therewith leading to the conclusion that present facilities at the Academy were not sufficient in terms of quality of space for the kind of the program that was intended to be offered at the Academy. The Academy provides a comprehensive music program that has attracted the participation of a growing number of its students during the recent years. Included in the music program is traditional instruction of piano as well as private lessons in guitar, violin, cello and voice. In addition, instruction in other band instruments as well as vocal ensemble groups are provided and a complete program for preschool and kindergarten children is offered.

14. Sister McCoy testified that there was a noticeable correlation between academic achievement and participation in cultural activities such as music. Currently, and due to lack of space in the current physical configuration of the buildings, officials of the Academy have observed that an excessive amount of time is used setting up and taking down facilities in order to provide their music program. Sister McCoy testified that this time would be better used in actual curricular instruction.

15. Sister McCoy testified that it was the intent of the Academy to expand its facilities by the proposed addition in order to provide facilities concurrent with the quality of the programs and scope of the programs offered at the Academy. Sister McCoy further testified it was not the intent to expand activities or programs beyond the current curriculum.

16. Sister McCoy further testified that it was the intent of the Academy to use the expanded auditorium in the addition for events drawing large number of persons including graduation, first communion and the Academy's Christmas Bazaar. Further, Sister McCoy testified that the addition of an auditorium would allow the current gym to be used primarily for sports programs. In addition, portions of the proposed auditorium will permit events such as science fairs, history fairs and other academic activities to be housed in the auditorium rather than other spaces within existing buildings.

17. Enrollment at the Academy in grades 1 through 8 in the academic year 1970-1971 was 431 students. Thereafter, enrollment in these grades declined to a low of 317 students in 1977-78. Thereafter, the enrollment grew modestly and now stands at 429 students.

18. During the same period, 1970-1999, the Academy experienced growth in its preschool and kindergarten programs so that the total overall enrollment now stands at approximately 570 students, an increase from total enrollment of 473 in 1970-1971.

19. The Academy does not intend to increase current enrollment as a result of construction on the proposed addition.

20. Applications for enrollment far exceed the number of students that are actually enrolled at the Academy.

21. The Academy currently offers adult education. Specifically, the Academy offers a "Life and Learning Program", a CPR program, music programs, computer programs, "55 Alive" and similar programs. Further, the Academy does not intend to expand the number of adult activities currently provided at the premises.

22. In order to provide parking areas on those occasions for which the parking fields at the premises are inadequate to contain the number of vehicles brought to the premises, the Academy has entered into an agreement with Bishop McDevitt High School. The Academy is permitted to use the parking fields at Bishop McDevitt High School for overflow parking. On those occasions when the Academy anticipates more parking than can be housed at the premises, the Academy provides a bus to shuttle persons back and forth from the promised parking spaces at Bishop McDevitt High School.

23. In order to discourage and prevent parking by visitors to the Academy on adjacent streets and in adjacent neighborhoods, the Academy has agreed to make efforts and implement procedures in order to direct persons coming to the Academy to appropriate off-street parking facilities.

24. Sister McCoy testified that, as a result of meetings with neighbors, significant changes were made to the proposal for an addition to the premises some of which are included at applicant's exhibit A-21. The result of these changes included significant reduction in the number of seats to be provided in the auditorium and a significant increase in the distance from the addition to the property lines at Mulford Road.

25. Architect John Sabatino conducted a survey of the premises and existing buildings, reviewing the uses and spaces provided at the premises. In that review, architect Sabatino considered possible locations for the proposed addition and determined that the proposed location achieved most of the goals and that other locations were inappropriate. Mr. Sabatino further testified that the design of the proposed addition took into account neighbors' concerns and that the current proposal seeks to remove or alleviate any effects on neighboring properties. As a result, the Academy decreased the size of the building, eliminated windows and redesigned and relocated mechanicals. The exterior

design of the building is intended to simulate a residential structure. The building will be faced in masonry or stone and should be consistent with the exterior of existing buildings of the premises.

26. Applicant requests no dimensional variances as the proposed construction does not exceed maximum building height nor encroach upon any setback requirement contained in the ordinances.

27. Architect Sabatino testified that the project was redesigned to eliminate or to block sources of noise that might otherwise be heard at properties that face the exterior of the proposed addition.

28. Architect Sabatino testified that extensive changes were made in the plans in order to preserve the quiet enjoyment of neighboring properties.

29. Anthony Hibbeln, applicant's expert engineer, testified that portions of areas designated as having steep slopes at the premises were substantially the result of previous construction that occurred since 1946. In particular, at the eastern portion of the premises, there has been construction of an athletic playing field which caused steep slopes which have since stabilized. Other man-made slopes have also stabilized. Aside from those mentioned areas designated as having steep slopes, Mr. Hibbeln testified that 99.5 percent of the remaining steep slopes were naturally occurring. In addition, Mr. Hibbeln testified that the location of the addition necessarily will cause a disturbance in some steep slopes and that there exists no alternative to those disturbances in order to complete the proposed addition. Mr. Hibbeln testified that no other placement of the proposed addition could avoid disturbances in the steep slope.

30. Currently, 83 parking spaces are located at the premises. Following completion of the proposed addition, there will be a total of 124 parking spaces at the premises.

31. Engineer Hibbeln testified that in accordance with the Ordinances, 248 parking spaces were required for the project. Mr. Hibbeln calculated that requirement basing his calculation on 57 spaces as required by the decision of the Zoning Hearing Board in 1979. 15 additional spaces required for Sisters who will be in residence at the site, and an additional 176 parking spaces are required upon by computing of one parking space for every three seats provided in the proposed auditorium.

32. Engineer Hibbeln testified that the parking provided in the project when combined with the provision for overflow parking at Bishop McDevitt High School would be sufficient to meet the demands of the project.

33. Zoning Officer David Lynch testified that his determination of parking requirements for the premises was based on a calculation by dividing the number of students by three resulting in 209 parking spaces plus one additional space for each resident Sister for a total of 224 parking

spaces. Mr. Lynch testified that the parking requirement was a function of student and resident population.

34. Applicant's expert traffic engineer, David Stroud, testified that, based upon an added enrollment at 55 additional students (625 student enrollment), there would be generated a total of 51 additional trips comprised of 30 additional vehicles entering in the morning and 20 additional vehicles exiting in the morning. The afternoon would experience 15 additional vehicles entering and approximately 20 additional vehicles exiting during the school's peak traffic hours between 3:00 and 4:00 p.m. Applicant's engineer noted that this peak traffic time was an hour before the ordinary and traditional traffic peak on the township highway system. The traffic engineer concluded that there would be no change in the level of service and testified that there would be no effect brought about by an increase of student enrollment to 625 students on traffic in the immediate area. The traffic engineer further testified that any increase in traffic generated by increased enrollment would be unrecognizable in the daily variation of traffic.

35. Traffic engineer Stroud testified that, absent any of his suggested improvements that were not currently embodied in the proposed project of Ancillae-Assumpta Academy, there would be no degradation in the level of service provided at any intersection except those intersections of driveways from the Academy to Church Road and to Royal Avenue. Further, any decrease in level of service would be experienced only by those vehicles entering or exiting the Academy.

36. David Lynch, township engineer testified that there was no viable alternative to the proposed construction that would excavate areas designated as having steep slopes.

37. A grant of relief in these matters will result in premises consistent with the character of the community and will not alter the essential character of the neighborhood or of the zoning district.

DISCUSSION

Applicant, Ancillae-Assumpta Academy ("Academy"), seeks relief from the Zoning Hearing Board of Cheltenham Township in order to construct an addition to an existing building at the premises, which building will house an auditorium, music and art instruction rooms and accessory administrative offices. As part of its plan to build this addition, the Academy proposes to expand its parking fields but seeks relief from the requirements of the General Provisions as to the size and number of parking spaces that the Academy must provide. As part of this parking proposal, the

Academy seeks to use parking facilities at nearby Bishop McDevitt High School, which use requires relief from this Board. Finally, the Academy seeks relief pursuant to the ordinances applicable to areas designated as having steep slopes in order to construct the proposed addition and parking fields as that construction requires disturbances and regrading in areas of steep slopes.

During the course of the municipal review of the Academy's proposals, representatives of the Academy met with concerned neighbors. One result of those meetings is an agreement between certain named residents and the Academy which the signatories request to be made part of any relief granted by the Zoning Hearing Board.

The Academy initially requests a special exception to the rules and regulations of the R-3 Residence District to erect a structure to be used to provide the Academy's educational program. The Academy has met its burden in establishing that it is an educational facility, accredited by an agency of the Commonwealth of Pennsylvania and providing educational programs for children of pre-school through eight grade ages. The Academy has demonstrated that the proposed addition will be used as an auditorium and instructional space for music and art education. In addition, the Academy will provide additional administrative offices that are to be used in conjunction with the delivery of its educational program. Therefore, the Academy has met its burden in establishing that the use of the addition will be for educational uses as permitted under the ordinances and as defined in the ordinances. Having considered uncontroverted testimony from the Academy's educational specialist, architect, engineer, landscape architect and traffic engineer, the Board concludes that the planned addition will result in no adverse effect upon individual property rights or to the public health,

safety, morals or welfare. Therefore, having met the criteria of the ordinances, the Academy is entitled to a grant of special exception.

The Academy next seeks a modification to two conditions imposed by the Zoning Hearing Board in relief granted in 1979 at Appeal No. 1843. At that time, the Academy agreed to and the Board mandated restrictions upon the use at the premises that limited the number of enrolled students to 435 and prohibited any adult education classes at the premises. The decision of the Board does not record the Board's reasoning for the imposition of such conditions. However, the decision records that the Academy agreed to these conditions and there was apparently no appeal taken. Notwithstanding its previous agreement, the Academy now seeks to expand the limit on the number of enrolled students to 600 and to eliminate the prohibition against adult classes.

The Academy admits that it has not conformed to either condition. Student enrollment now stands at 570 and adult education courses have been offered in the evening for some time. The student enrollment has grown to the current number primarily as a result of the Academy's providing several forms of preschool education and kindergarten. Student enrollment in grades one through eight has historically not exceeded the current level which is the same as it was in the 1970-1971 academic year. By its proposed addition, the Academy does not intend to expand into new programs but rather intends to provide sufficient spaces for the proposed delivery of its current program. The adult classes have traditionally been those geared to parenting, community and health maintenance, and the Academy does not intend to expand the number its offerings in these areas.

Conditions imposed upon a use and included in a grant of relief must be related to the health, safety and welfare issues. Conditions must be designed to minimize any dangers to the public interests that may be concurrent with a use which is permitted by a grant of zoning relief by the Zoning Hearing Board. There is nothing in the record of these proceedings upon which this Board may conclude that the growth of student enrollment to 570 students has occasioned any negative effect upon the health and safety of the community. Nor does this Board find that a further expansion to 600 students, which expansion the Academy seeks in order to serve primarily siblings of current students and legacies of former students, will have any negative effect to the public interests due specifically to the number of students. Therefore, the history of the educational use at this premises since the grant of relief in 1979 demonstrates that the conditions imposed then have become unnecessary to protect the public interests.¹ Similarly, there is nothing in the record that demonstrates that the holding of the adult classes as described has any adverse effect, recognizable in terms of land use issues, upon which to continue the prohibition on adult classes.

¹ The primary complaint expressed by residents in opposition to the Academy's proposals centered upon perceived negative effects upon traffic conditions at the starting and ending times for the school. The uncontradicted expert testimony of the Academy's traffic engineer was that there would result from the increase of enrollment to 625 no degrading of traffic conditions at any public intersection. The only negative effect that was predicted was that there may result extended waiting times for exiting traffic at the Academy onto public thoroughfares at Church Road and Royal Avenue. Despite the expressed fears of some residents, there is no evidence in the record to sustain a position that public traffic along public roads would suffer any increase in negative traffic effects. Moreover, as a use permitted in this district, the Board of Commissioners when it drafted the ordinances permitting education uses, necessarily anticipated the normal traffic that accompanies this educational use. As the proposed educational use and the buildings devoted thereto do not violate any dimensional requirements and as the overall 9.5 acre site provides adequate room to conduct a school for 600 students, whatever increased traffic may result from approval of this project is well within the anticipation of the drafters of the zoning ordinances.

Nevertheless, the Academy has made agreements with its neighbors and now seeks a condition that restricts enrollment to 600 students. Although the Board might not otherwise so restrict student population, the Board must consider and is constrained by the parameters of the grant of relief as requested by the applicant. Therefore, the Board will hereafter condition its grant of relief with a cap on enrollment limiting the number of students to 600.

The Academy seeks, in addition, relief to permit eleven of its parking spaces to measure 9' x 20' instead of the two hundred square feet required by the ordinances. This Board notes expert testimony offered in prior hearings in other matters that parking spaces measuring 9' x 20' are sufficient and safe for parking fields and, in particular, parking fields where vehicles are left for extended periods of time. Therefore, in accordance with the practice of this Board that recognizes that the creation of unnecessary impervious surface is contrary to the best interests of the public, the applicant has established that a refusal to grant a variance from the requirement of 200 square feet for each parking space would result in an unnecessary hardship to the property.

Section 295-221 of the Ordinance provides that an addition to an existing building shall comply with requirements related to the provision of off-street parking and that such parking spaces shall be on the same lot as the main building or open area except when otherwise authorized as a special exception. Here, the Academy seeks to provide a portion of the required parking at the parking fields of Bishop McDevitt High School and has produced a letter from that facility confirming the long-standing agreement between the two schools that approximately one hundred spaces are made available. This Board determines that the Academy has met the criteria set forth in the

ordinances and that the use of parking spaces by the Academy will result in no adverse effect upon individual property rights or upon the public interests. Therefore, the Academy is entitled to a special exception to include these off-site parking spaces toward fulfillment of its parking obligations so long as the Academy maintains its agreement with Bishop McDevitt High School.

The Academy further seeks a decision from this Board to relieve the Academy of its obligations to provide parking spaces at the premises. The Academy seeks a determination from the Board as to the proper number of parking spaces required in view of its proposed construction. The Academy then requests a variance from any ordinance that requires the Academy to provide more spaces than the one hundred and sixteen spaces on-site plus the one hundred spaces made available at Bishop McDevitt and the number determined by the Board to be required. The Township's zoning officer testified that the project requires 224 parking spaces, and the applicants engineer calculated the required parking spaces to be 248. There is also a disparity in the number of spaces that will be provided by applicant. Although its application states that 116 spaces will be provided, the Academy's engineer testified that 124 parking spaces will be provided. The pertinent ordinance provides that, in the case of an addition to an existing building, the parking space requirements shall apply only with respect to the addition. Here, the addition provides an auditorium for 529 persons requiring 176 parking spaces. The applicant and the zoning officer agree that 15 parking spaces are required for the facility which is a dwelling for 15 of the Sisters. Therefore, the Academy is required to provide 191 parking spaces in excess of what had been previously required. It had been determined that 57 parking spaces was required of the Academy during prior zoning determinations. By its proposal, the Academy will increase that number on-site to 124; the board determines that the

Academy needs to account for 124 more spaces that it proposes to provide on-site. Considering the Academy's entitlement to a special exception to permit the Academy to include 100 spaces at the parking fields of Bishop McDevitt High School in its parking space calculations, the Academy remains 24 parking spaces "short." The Board notes that, except for extraordinary circumstances, the proposed on-site parking areas are sufficient to meet the ongoing and daily needs for parking at this site. Considering that the creation of unnecessary impervious surface is contrary to the public interests and that providing hard service areas for parking that will never or rarely be used creates unnecessary economic waste, the Board concludes that a grant to the Academy of relief from the requirement that it provide an additional 24 parking spaces is necessary in order to avoid an unnecessary hardship to this premises.

Lastly, the Academy seeks special exception and one variance from the rules and regulations of the Steep Slope Conservation District. The Board determines that disturbances in areas designated as having steep slopes will not be contrary to individual property rights or to the public interests and that the Township engineer concurs that there are no alternative available to construct the proposed addition. The board determines that the Academy is entitled to special exceptions in accordance with the ordinances. Further, a failure of the Board to grant a variance in order to permit the Academy to regrade, fill and remove topsoil and, therefore, to build the proposed addition would result in the failure of the project and an unnecessary hardship to the premises.

CONCLUSIONS OF LAW

1. The construction of the proposed addition with the provision of parking spaces as proposed and with disturbance to areas designated as having steep slopes is not permitted by the Cheltenham Zoning Ordinance and to permit such construction would violate Articles VI, XXII, and XXIX and a previous decision of the Zoning Hearing Board. However, in accordance with the Pennsylvania Municipalities Planning Code and the Cheltenham Zoning Ordinance, the Zoning Hearing Board of Cheltenham Township is empowered to hear and decide requests for variances where it is alleged that the provisions of the ordinances inflict unnecessary hardship upon a premises. Similarly, the Zoning Hearing Board may hear and decide requests for special exceptions where the application meets the criteria of the ordinance.

2. Under the circumstances of this matter and, particularly, since the applicant is the operator of a private school, the applicant has met its burden in establishing that its application meets the criteria of the ordinances and that the applicant is entitled, in the absence of adverse effect to the public interests, to a grant of a special exception to construct an addition to a building at the premises for educational purposes.

3. Under the circumstance of this matter and in light of the absence of measures necessary to protect the public interests, applicant has met its burden in establishing its entitlement to relief from conditions imposed at Appeal No. 1843 and, specifically, relief from the condition that student enrollment be limited to 435, but, instead, increased to 600, and relief from the prohibition against offering adult education classes.

4. Under the circumstances of this matter, the applicant has met its burden in establishing that a failure to grant relief to permit 11 parking spaces to measure 9 x 20 would result in an undue hardship to the premises.

5. Under the circumstances of this matter, the applicant has met its burden in establishing that, due to the unique physical characteristics of the property and those imposed by surrounding properties and, specifically, the availability of parking for 100 cars at Bishop McDevitt High School and the adverse effect upon the public interests caused by the creation of impervious surfaces not necessary for the safe and proper functioning of the educational uses at the premises, a failure to grant relief from the requirement to provide 24 additional parking spaces on-site at the premises would result in an unnecessary hardship upon the premises.

6. Under the circumstances of this matter, the applicant has met its burden in establishing that its application meets the criteria as set forth in the ordinances and that the applicant is entitled to a special exception to permit applicant's use of parking areas at Bishop McDevitt High School in the calculation of parking spaces applicant is obliged to provide under the ordinances.

7. Under the circumstances of this matter, the applicant has met its burden in establishing that its application meets the criteria of the ordinances so that it is entitled to a special exception to permit

construction of a new sanitary sewer lateral through an area designated as having steep slopes, to perform excavation and regrading in areas designated as having steep slopes for a portion of the proposed new addition, a portion of the reconfigured parking lot, a new sanitary sewer lateral and a "Drywell" stormwater management facility.

8. Under the circumstances of this matter, the applicant has met its burden in establishing that, due to the unique physical conditions of the premises, a failure to grant relief from the requirement of the steep Slope Conservation District to permit filling, removal or storage of topsoil and ancillary regrading in order to construct a new addition, reconfigure the parking areas and construction of a new sanitary sewer lateral is necessary to avoid an unnecessary hardship to the premises.

9. Variances and special exceptions are necessary as strict conformity with the ordinances is unfair and unnecessary. The requested variances and special exceptions represent the minimum grants of relief that will afford relief and the least modifications of the ordinances.

10. The grants of relief as requested, granted and conditioned are not contrary to the public interests.

DECISION

WHEREFORE, this 12th day of April, 1999, by a 3-0 vote, the Cheltenham Township Zoning Hearing Board applicant's request for relief as follows:

1. a special exception to the rules and regulations of the Class R-3 Residence District as outlined in Section 295-21(C) in order to add an addition to an educational use to be used for auditorium, music and art instruction rooms and administrative offices;
2. a modification of the decision of the Zoning Hearing Board dated August 13, 1979, under Appeal No. 1843, to the effect that applicant may maintain a student enrollment at the school at the premises in a number not to exceed 600 and to the effect that there shall be no restriction upon the providing of adult education classes except that there shall be no increase in the number of courses currently offered.
3. a variance from Section 295-221(A) to permit 11 parking spaces to be 9' x 20' (180 square feet);
4. a variance from Section 295-21(C) and Section 295-221(B)(4) for lesser off street parking than required. Applicant shall provide 124 parking spaces on-site at the premises.
5. a special exception to the rules and regulations as outlined in Section 295-221(B) in order to permit Ancillae-Assumpta Academy to use parking facilities at Bishop McDevitt High School for overflow parking;
6. the following findings, variances and/or special exceptions from the rules and regulations of the Steep Slope Conservation District:
 - (A) a special exception to Section 295-168(B) to permit the construction of a new sanitary sewer lateral through an area designated as having steep slopes;

- (B) a special exception to Section 295-168(F) to permit certain areas designated as having steep slopes to be excavated and/or regraded for the following proposed new facilities;
 - (1) a portion of the proposed new addition;
 - (2) a portion of the reconfigured parking lot;
 - (3) a new sanitary sewer lateral; and
 - (4) a "Drywell" Stormwater Management Facility; and
- (C) a variance from Section 295-169(A)(3) for the filling or removal and storage of topsoil (including ancillary regrading) required for the construction of the addition, the reconfiguration of the parking and the construction of the sanitary sewer lateral and drywell.

This grant of relief is subject, however, to the following conditions:

- (1) applicant shall obtain approval of a land development plan;
- (2) applicant shall construct the addition in substantial conformity with the plans submitted into evidence before the Zoning Hearing Board; and
- (3) the provision of the PROPOSED CONDITIONS TO THE ZONING BOARD'S GRANTING OF A SPECIAL EXCEPTION AND VARIANCE(S) FOR ANCILLAE-ASSUMPTA ACADEMY are hereby incorporated as conditions as if fully set forth at length hereat.

This decision is not a waiver of any provision of the Cheltenham Zoning Ordinance not specifically addressed in this decision.

CHELTEHAM TOWNSHIP ZONING HEARING BOARD


PETER LABIAK, Chairman
ALAN S. GOLD, Vice Chairman and Secretary
MICHAEL McCANN, Member

Signed
10.18.99
JW

**PROPOSED CONDITIONS TO THE ZONING BOARD'S
GRANTING OF A SPECIAL EXCEPTION AND VARIANCE(S)
FOR ANCILLAE-ASSUMPTA ACADEMY**

THIS IS
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1. The Applicant will agree to an enrollment cap of 600 students enrolled in preschool through grade eight. Each student, whether attending school, half days, two days a week or five days a week, counts as one student. By October 1st of each year, the Applicant will provide a designated Township official with the current enrollment figure and allow the Township the opportunity to verify, by reasonable means, that the Applicant is complying with the enrollment cap. The Applicant, upon request, will also provide a copy of the current enrollment notice to a designated representative of the neighbors at the same time that such notice is provided to the Township.
2. From and after the date of this Agreement, the Applicant agrees that the property shall be used for educational activities consistent with a private educational institution of this enrollment size and type as described below, and for such other purposes as are authorized below:
 - (a) There shall be no restriction on use of the property for activities or events related to the school and which directly and primarily involve enrolled students, the school faculty, alumni or staff, the Handmaids of the Sacred Heart of Jesus or any other religious order of the Roman Catholic Church, and/or parents of students enrolled at the school;
 - (b) There shall be no restriction for events substantially consistent in size, type and number with those events listed on Applicant's 1998-1999 School Calendar.
 - (c) There shall be no restriction on the use of the property for activities or events during normal school hours (7:30 AM - 6:00 PM) on weekdays during the academic year of the school;
 - (d) There shall be no restriction on meetings, activities and events held during the summer months related to Applicant's summer day camp which presently is operated at the property, provided that, at any given time, the enrollment of said summer camp shall not exceed more than 300 children (including Applicant's students who are also enrolled in the summer camp);
 - (e) For events which do not qualify under subparagraphs 2(a), 2(b), 2(c) or 2(d) above, there shall be no restriction as to use of the property by no more than a total of thirty (30) persons at any time who are not students, faculty, staff, Handmaids of the Sacred Heart of Jesus or any other religious order of the Roman Catholic Church, and/or parents of students enrolled at the school; and
 - (f) The property during any calendar year may be used for up to six (6) weekend events and twelve (12) additional weeknight events which do not qualify under any of subparagraphs 2(a), 2(b), 2(c), 2(d) and 2(e) above, provided that no more than three (3)

events qualifying solely under this subparagraph 2(f) shall be scheduled in any week, and no more than five (5) events qualifying solely under this 2(f) shall be scheduled in any calendar month. As used in this subparagraph 2(f) a "weekend event" shall mean any event conducted at the property on any Saturday or Sunday, which event does not qualify under any of subparagraphs 2(a), 2(b), 2(c) 2(d), or 2(e) above, and a "weeknight event" shall be any event or activity on the property (other than a weekend event) which does not qualify under clauses 2(a) through 2(e) above.

As a clarification, any activity or event which qualifies under any of subparagraph 2(a), 2(b), 2(c), 2(d) or 2(e) above shall not count against the limit for events set forth in subparagraph 2(f) above.

3. Applicant currently has an arrangement with Bishop McDevitt High School permitting the Academy to use the parking facilities at Bishop McDevitt for certain limited Academy events that requires overflow parking. If an event is scheduled at the Academy and the parking for the event is likely to exceed the property's capacity, the date of such event will be listed on an annual schedule of events that necessitate the use of Bishop McDevitt's parking lot. Such list will be provided to the Township by October 1st of each calendar year. Furthermore, events requiring overflow parking will be coordinated with Bishop McDevitt High School in advance, to insure that such overflow parking will be available for the Applicant's use. If an event that necessitates the use of Bishop McDevitt's parking facilities is not listed on the annual schedule of events provided to the Township, the Academy will notify Cheltenham Township not later than seven (7) days prior to the event if the date of the event is known seven (7) days in advance. In no case shall Applicant notify the Township of an event that is likely to require overflow parking at Bishop McDevitt High School, less than forty-eight hours (48) prior to such event.
4. Applicant agrees to notify Cheltenham Township if the parking arrangement with Bishop McDevitt is ever terminated. In such event, the Applicant agrees to make arrangements for the use of other parking facilities in the area during events at the Academy requiring overflow parking and to promptly notify Cheltenham Township of such arrangements.
5. The Applicant will make reasonable efforts to alleviate parking problems throughout the neighborhood relating to the Applicant's use of its property. Such measures will include expanding the Applicant's programs of educating parents and other visitors about parking issues, providing the Township with an annual schedule of events at the school which are likely to require overflow parking and providing the Township with notice of any events which require overflow parking which are not listed on the schedule in accordance with paragraph 3 above. The Applicant will support the Township's placement of temporary no parking signs throughout the neighborhood during those events. The Applicant will make reasonable efforts to have visitors to the school for events which require overflow parking make effective use of the Bishop McDevitt High School parking facilities and will make reasonable efforts to minimize parking on surrounding residential streets.
6. The Applicant also agrees to cooperate with Township officials in the enforcement of parking and traffic regulations and in seeking other possible solutions to traffic and parking difficulties throughout the neighborhood. Possible measures include the placement of do not

enter signs (applicable to non-residents) on immediately neighboring streets for certain hours of the day, placement of one way signs on surrounding streets, and modification of traffic light/signal timing for certain hours of the day. The Applicant will support the Township's placement of speed "humps" on Mulford and Gribbel Roads to attempt to reduce the speed of vehicles on those streets.

7. Applicant agrees that the proposed auditorium shall be reconfigured so as to substantially conform in size, height, configuration and layout (including, without limitation setback from the edges of Applicant's Property) as shown on those certain plans (the "Revised Plans") dated December 4, 1998 and last revised February, 26, 1999, and prepared by Hibbeln Engineering Company, L.L.C. (drawing File no. 141SHT1). The exterior facade of the proposed auditorium shall conform substantially to that shown on the color renderings attached as Exhibit "A" hereto and made part hereof. Such facade shall be installed and constructed by Applicant using quality materials and finishes and shall be predominately of a dark color or colors so as to blend with existing stone facade architecture at the Sacred Heart Center on the property.
8. The auditorium and all other aspects of the project associated therewith shall be engineered and designed (a) to reasonably minimize any noise emanating therefrom, and (b) such that noise emanating from the new HVAC equipment and compressors for the auditorium shall not be audible from any residential property adjoining the property above the sound levels at which noise from the property is audible from such adjoining properties on the date hereof. Without limiting the generality of the foregoing, the Applicant shall make all reasonable efforts to minimize any noise from activities conducted within the proposed additional auditorium or from mechanical or other systems located within and/or servicing the auditorium, including, without limitation, HVAC equipment and compressors.
9. All stormwater management systems to be installed upon the property shall be engineered, designed, constructed and maintained to avoid stormwater or other drainage onto adjoining residential properties and shall fully comply with all other requirements which may be imposed by the Township, including, without limitation, those required by the Township Engineer.
10. Existing landscaping and shrubbery on the property shall remain intact and be maintained and replaced during and after the building project to the extent reasonably possible. The Applicant will plant and maintain additional landscaping in the area immediately behind the proposed addition to augment the natural buffer in a manner which conforms substantially with the landscaping plan submitted to the Township, provided, however, that if the Township shall require changes to said plan, the Applicant shall comply with such changes. The plantings will be interspersed with existing vegetation, across the width of the addition in substantial conformance with the landscaping plan submitted to the Township. The landscaping shall be designed, installed and maintained and replaced (if necessary), to the extent reasonably possible, in a manner such that the new auditorium and other aspects of the project (including parking areas) are visually screened from residential properties on Mulford Road. The Applicant shall make reasonable efforts to preserve the existing vegetation on the

site, including the three large Cypress trees adjacent to the location of the proposed addition, throughout the construction process. Such efforts shall include the erection of a semi-permanent concrete post chain link fence for the duration of the construction project to protect the vegetation from the movement and operation of construction vehicles.

11. The Applicant will make reasonable efforts to have trash removal from the property and deliveries to the property take place after 7:00 a.m. and before 7:00 p.m. (and shall comply with any Cheltenham Township regulations regarding trash removal and deliveries) and for trash removal and deliveries to be done in a manner that does not cause excessive noise to emanate from the property.
12. The Applicant will illuminate the rear of the new addition and other aspects of the project by shielded directional light fixtures that emit light towards the addition and other aspects of the project and shielded away from adjacent residential properties. This will be completed in a manner which will significantly minimize the light that is visible off the property and avoid illumination of any adjoining properties to the extent reasonably possible. All other lighting fixtures to be added as part of the construction project shall also fully comply with Cheltenham Township requirements.
13. The Applicant's construction activities and the proposed addition and related work shall be conducted and completed in a manner which substantially complies with the plans submitted to and approved by the Zoning Hearing Board and shall otherwise comply with the Cheltenham Ordinance. Furthermore, the Applicant's plans shall be fully approved by the Cheltenham Township Engineer with respect to stormwater management and landscaping requirements.
14. Applicant agrees that these conditions shall be enforceable by Cheltenham Township and any other enforcement mechanisms provided at law or equity.
15. Any of the present record owners (and not any successor owner) of at least two of the following residential properties, 344 Gribbel Road (Paul R. and Sandra G. Greenwald), 647 Mulford Road (Raymond Torres), 643 Mulford Road (Jeremy R. Jaffe and Nancy L. Wolfson), 635 Mulford Road (Mary L. Burns) and 615 Mulford Road (Marc A. and Laura S. Feller), shall have the right to proceed for specific enforcement of only Condition 1 above provided that all of the following conditions are met:
 - (a) the owners, listed above, of at least two of the properties, listed above, that are still record owners at the time the enforcement is being sought shall join in any action described in Condition 15 herein;
 - (b) such owners shall have first requested in writing that Cheltenham Township enforce Condition 1 above;
 - (c) a copy of such request is served upon Applicant at the property and Applicant's counsel, if on record with the Township, at the same time as submitted to Cheltenham Township;

(d) Cheltenham Township within ninety (90) days following such request shall have failed to commence enforcement proceedings in its own right; and

(e) such owners shall have offered Applicant a reasonable written agreement that the prevailing party in such private enforcement may recover reasonable court costs and attorney's fees from the non-prevailing party. Applicant agrees to respond in writing within forty-five days of receipt of such agreement.

16. The right of private enforcement granted by Applicant in Condition 15 herein shall remain in effect only while the Handmaids of the Sacred Heart of Jesus are owners and/or operators of Ancillae-Assumpta Academy, a private Catholic school.

17. Applicant agrees to acknowledge that it agrees to and has accepted these conditions by signing a separate certification to that effect.

18. Applicant agrees to modify its zoning application to the extent necessary for the application to conform to these conditions.

Note: The above conditions are not intended to replace any requirements of the Cheltenham Township Codes and the Applicant understands that it is still subject to all of the provisions of the subdivision and land development code and any other applicable provisions of Cheltenham Township.