



# FREDERICK COUNTY BOARD OF APPEALS

## FEBRUARY 22, 2024

**TITLE:** Brook Lane School (Temporary Use)

**CASE NUMBER:** B-24-04 B275947

**REQUEST:** Brook Lane Behavioral Services is requesting a Temporary Special Exception, in accordance with the Frederick County Code, Sections 1-19-3.210 Special Exceptions, 1-19-5.310 Use Table, 1-19-8.300, Temporary Structures and Uses Requiring Special Exception Approval, and 1-19-8.341. Private Schools in the R-1, R-3, R-5, R-8, R-12, R-16, VC and LI Districts, to continue a previously approved public charter elementary school in the LI zone.

### PROJECT INFORMATION:

ADDRESS/LOCATION: 4540 Mack Ave. Frederick MD 21703 (the "Property")  
TAX MAP/PARCEL: Tax Map 86, Parcel 0207, Size 3.76 Acres  
ZONE: (LI) Limited Industrial  
REGION: Adamstown  
WATER/SEWER: W-1/S-1  
COMP. PLAN/LAND USE: Limited Industrial

**APPLICANT** Brook Lane Behavioral Services

ENGINEER: N/A

ARCHITECT: N/A

ATTORNEY: N/A

**STAFF:** Michael Paone, Zoning Planner

**RECOMMENDATION:** Based on the findings and conclusions in the staff report, Staff finds that the proposed Special Exception, to allow a Temporary Use on the Property, complies with Sections 1-19-3.210 Special Exceptions, 1-19-5.310 Use Table, 1-19-8.300 Temporary Structures and Uses Requiring Special Exception Approval, and 1-19-8.341. Private Schools in the R-1, R-3, R-5, R-8, R-12, R-16, VC and LI Districts, to continue a previously approved public charter elementary school in the LI zone.

### ATTACHMENTS:

- Attachment 1: B-19-06 Finding and Decisions
- Attachment 2: Aerial
- Attachment 3: Comprehensive Plan
- Attachment 4: Environmental Features
- Attachment 5: Zoning

## **Background**

The Board of Appeals (the "Board") originally granted the Applicant a Temporary Special Exception for a private school on April 26, 2007, as part of B-07-13. During the initial 2007 application, the Board approved the Special Exception for a total area of 9,600 sf, accommodating 45 students and 18 staff. During the requested renewal of the temporary use in 2019, the Applicant requested, and the Board granted an increase in the maximum number of students allowed from 45 to 65 and staff from 18 to 65. The Applicant also requested an increase in the total size of the school from 9,600 sf. to 19,200 sf. The Applicant's requested expansion of the Temporary Special Exception and increase in students and staff were approved by the Board, in Case No. B-19-06, copy of the Finding and Decisions is provided in this staff report to show the most recent changes at the school. B-24-04 will be presented to the BOA on February 22, 2024, and contains no increases in student population or other relevant changes.

## **§ 1-19-3.210. SPECIAL EXCEPTIONS**

- (A) An application for a special exception may be made only by persons with a financial, contractual or proprietary interest in the property for which a special exception is requested.

**The Applicant states that the school is leasing, and has a contractual interest in, the Property and is joined in this application by Donald M. Bowman, the Owner and landlord of the Property.**

- (B) A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:
- (1) The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of Chapter 1-19 of the County Code.

**The Applicant states that the proposed use is consistent with the purpose and intent of the Chapter 1-19 of the Frederick County Code, including the Frederick County Comprehensive Plan. The proposed use is a private school in the Limited Industrial (LI) zoning district. A private school is a permitted temporary use as a special exception in the LI. According to Section 1-19-5.250(B) of the Frederick County Code, the LI "is intended to provide adequate area for development of industrial uses whose operations have a relatively minor nuisance value and provides a healthful operating environment secure from the encroachment of residential uses and protected from adverse effects of incompatible industries". The private school is compatible with the types of light industrial and warehouse uses typically found in the LI. Location of a private school in the LI also provides for an operating environment which is secure from the encroachment of residential uses or inappropriate heavy industrial uses. The private school does not interfere with and is in harmony with the purpose and intent of the Chapter 1-19 of the Code, and the County Comprehensive Plan.**

- (2) The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and

The Applicant states that the nature and intensity of the operations of the private school and the size of the site are in harmony with the appropriate and orderly development of the LI zoning district in which the private school is located. The Property is situated in Bowman's Plains, a well-established industrial park that is owned and has been operated by the Owner over the last fifteen (15) years. As a permitted special exception use in the LI zoning district, the private school is in harmony with the appropriate and orderly development of the neighborhood in this zoning district.

The private school is a low impact use that not only provides a support mechanism for Frederick County residents and special needs students, but also a much-needed community resource for residents.

- (3) Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration, or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district; and

The Applicant states that the operation of a private school is not more objectionable to nearby properties by reason of noise, fumes, vibration, or other characteristics than would be the operations of many permitted uses in the LI district. The private school does not generate any noise, fumes, vibration, or other nuisance characteristics, other than the normal characteristics which are associated with a private school for special education.

- (4) Parking areas will comply with the off-street parking regulations and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

The Applicant states that the parking areas and the entrance and exit drives for the Property and for the use of the private school are not in the vicinity of residential uses and were approved by the Planning Commission as part of the site plan approval for the Property. In addition, the parking spaces are utilized solely by the employees of the private school, as the students are transported to and from the private school by buses.

- (5) The road system providing access to the proposed use is adequate to serve the site for the intended use.

The Applicant states that the road system providing access to the private school is adequate to serve the Property. The Property has 302.26 feet of frontage on Mack Avenue, which is a public street with a 60-foot right-of-way and a pavement width of 24 feet. Mack Avenue provides access to MD Route 85 via English Muffin Way. This main intersection is controlled by a traffic signal.

### **SPECIFIC CONDITIONS FOR PRIVATE SCHOOLS**

**Section 1-19-8.341** of the County Code sets forth the specific provisions that apply to private schools in the LI zoning district.

- A. The minimum lot size and setbacks will be the same as normally required for institutional uses.

The Applicant states that the design requirements for the LI district are set forth in Section 1-19-6.100 of the Frederick County Code. However, there are no specific design requirements for private schools listed in this section. SP-87-03 established lots sizes, parking requirements and other design requirements for the subject property.

- B. The lot must have frontage and access on a public road with a minimum pavement width of 20 feet to the nearest paved road.

The Applicant states that the lot has road frontage and access onto Mack Avenue, a public road. The entrance pavement onto Mack Avenue is a minimum of 30 feet wide.

- C. The maximum attendance (number of students physically present at any 1 time) may not exceed 1 student per 970 square feet of lot area, except in the LI District where there shall be no maximum attendance limitation.

The Applicant states that since the private school is located in the LI district, there is no maximum attendance limitation.

### **RECOMMENDATION**

Based on the findings and conclusions in the staff report , Staff finds that the proposed Special Exception, to allow a Temporary Use on the subject property, complies with Sections 1-19-3.210 Special Exceptions, 1-19-5.310 Use Table, 1-19-8.300 Temporary Structures and Uses Requiring Special Exception Approval, and 1-19-8.341 Private Schools in the R-1, R-3, R-5, R-8, R-12, R-16, VC and LI District, to continue a previously approved public charter elementary school in the LI zone

**A decision of the Board of Appeals granting a special exception will be void 5 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1-time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.**



- (2) The nature and intensity of the operations involved in or conducted in conjunction with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and

The applicant states that the nature and intensity of the operations of the private school and the size of the site will be in harmony with the appropriate and orderly development of the LI or Limited Industrial zoning district in which the private school will be located. The Property is situated in Bowman's Plains, a well-established industrial park that is owned and has been operated by the Applicant over the last fifteen (15) years. As a permitted special exception use in the LI or Limited Industrial zoning district, a private school would be in harmony with the appropriate and orderly development of the neighborhood in this zoning district. The building in which the private school is located is approximately 19,200 square feet in size.

Also, as shown on aerial photographs, attached hereto as EXHIBIT A, the private school is in harmony with the orderly development of the depicted neighborhood, an area that is primarily developed for low intensity industrial uses far from any residential community or high traffic area. The private school provides a welcomed, low impact addition to the community and to this LI or Limited Industrial zoning district. The private school not only provides a support mechanism for Frederick County residents and special needs students, it provides a much needed community resource for residents.

- (3) Operations in conjunction with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration, or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district; and

The applicant's states that operation of a private school will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or other characteristics than would be the operations of many permitted uses in the LI or Limited Industrial zoning district, not requiring a special exception. The Applicant does not anticipate that the proposed private school will generate any noise, fumes, vibration, or other nuisance characteristics, which would be apparent to any neighbor, other than the normal characteristics which may be associated with a private school for special education.

- (4) Parking areas will comply with the off-street parking regulations of this chapter and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

The applicant states that the parking areas and the entrance and exit drives for the Property and for the use of the proposed private school are shown on EXHIBIT B, and on the aerial photographs, attached hereto as EXHIBIT A. As shown on EXHIBIT A, the Property is not in the vicinity of residential uses and was approved by the Planning Commission as part of the site plan approval for the Property. In addition, the parking spaces are utilized solely by the employees of the private school, as the students are transported to and from the private school by buses.

According to Section 1-19-6.220 of the Frederick County Zoning Ordinance, the following parking space requirements will apply for schools: for an elementary and junior high school, there should be two parking spaces for each classroom and one parking space for every eight seats in auditoriums or assembly halls; and for high schools, there should be one parking space for every ten students and one parking space for each teacher and employee. According to Section 1-19-6.220 of the Frederick County Zoning Ordinance, the calculations for the parking spaces would be as follows: 1) there will be approximately two (2) classrooms for the elementary and junior high school students, which would require four (4) parking spaces and there will be no auditorium or assembly hall; 2) by our calculation

the proposed amount of parking spaces which may be required for the high school students would be approximately three (3) parking spaces (based on 1 space per 10 high school students, plus 9 spaces for employees. According to the calculations set forth by the Frederick County Zoning Ordinance, the total amount of parking spaces which may be required for the proposed private school would be approximately sixteen (16) parking spaces.

Currently, there are forty-one (41) parking spaces and three (3) handicapped parking spaces for the entire Property. Under our calculations and given the fact that all of the special needs students will be transported by bus and will not be driving to the private school, adequate parking will be available for the teachers and staff members.

- (5) The road system providing access to the proposed use is adequate to serve the proposed building site for the intended use.

The applicant states that the road system providing access to the private school is adequate to serve the Property for its intended use. The Property has 302.26 feet of frontage on Mack Avenue, which is a local road that was previously dedicated for public use, with a 60foot right-of-way and a pavement width of 24 feet. See EXHIBIT B. Mack Avenue provides access to MD Route 85 via English Muffin Way. This main intersection is controlled by a traffic signal. The total anticipated increase in traffic from the private school is relatively minor in relation to the volume of traffic carried by Mack Avenue, and the road as currently designed is adequate to serve the negligible increase in traffic. The road system at Old Frederick Road that provides access to the proposed use is adequate to serve the proposed building site for the intended use.

- (C) In addition to the general requirements listed above, uses requiring a special exception shall be subject to the specific requirements for each use outlined in SS 119-8.320 through 1-19-8.355 of this Code.
- (D) A special exception approval may be granted in accordance with the general and specific requirements enumerated in this section. The Board of Appeals may, in addition to other requirements imposed under this chapter and is hereby authorized to add to the specific requirements any additional conditions that it may deem necessary to protect adjacent properties, the general neighborhood, and its residents or workers. Violation of such additional conditions, when made a part of the terms under which the special exception permit is granted, is a violation of this chapter and may be grounds for termination of the special exception.
- (E) The Board of Appeals shall not grant a special exception unless and until:
- (1) A written application for a special exception is submitted indicating the section of this chapter under which the special exception is sought and stating the grounds on which it is requested; and
  - (2) A public hearing has been held; and the Board had made a finding of fact that the special exception requested meets the general and specific requirements outlined in this section.
- (F) The grant of special exception may include approval of customary incidental accessory uses as reviewed and approved by the Zoning Administrator.
- (G) No use or activity permitted as a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception. All enlargements, extensions, and changes in use shall require grants of special exception, as in the case of an original petition.
- (H) If a grant of special exception is denied, no new petition for the denied use on the same property shall be accepted by the Board of Appeals for 1 year after the date of denial of the petition.

- (I) A decision of the Board of Appeals granting a special exception will be void 5 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1-time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

### III. Specific Conditions for Private Schools Section 1-19-8.341:

Section 1-19-8.341 of the Frederick County Zoning Ordinance sets forth the specific provisions that apply to private schools in the LI or Limited Industrial zoning district. This request satisfies all of these specific conditions, as follows:

- A. The minimum lot size and setbacks will be the same as normally required for institutional uses.

The design requirements for LI or Limited Industrial zoning district are set forth in Section 119-6.100 of the Frederick County Zoning Ordinance. However, there are no specific design requirements for private schools listed in this section. We respectfully request that as an existing building in the LI or Limited Industrial zoning district, the private school should meet the minimum lot size and setbacks as would normally be required for an Industrial use, as set forth in Section 1-19-6.100 of the Frederick County Zoning Ordinance. The 20,000 square foot minimum lot area, the 100-foot lot width, the 25-foot front yard width, the 20-foot rear yard width, and the 60-foot height requirements for Industrial in the LI or Limited Industrial zoning district are satisfied by this application. The total lot area is 1.5426 acres, the lot width is 326.86 square feet maximum rear dimension and 292.50 square feet minimum front dimension, the front yard is twenty-five (25) feet wide, the rear yard is twenty (20) feet wide, and the height of the building is twenty-six (26) feet.

- B. The lot must have frontage and access on a public road with a minimum pavement width of 20 feet to the nearest paved road.

As shown on EXHIBIT B, the lot has road frontage and access onto Mack Avenue, a local public road. The entrance pavement onto Mack Avenue is a minimum of 30 feet wide.

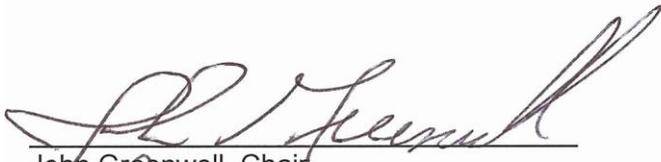
- C. The maximum attendance (number of students physically present at any 1 time) may not exceed 1 student per 970 square feet of lot area, except in the LI District where there shall be no maximum attendance limitation.

Since the private school is located in the LI or Limited Industrial zoning district. Finding and Decision B-07-13 established a maximum accommodation at the school of 45 students and 18 teachers.

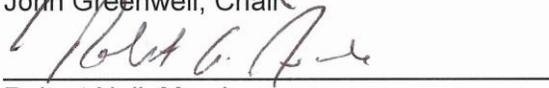
- The Applicant is bound by all exhibits and testimony.
- The Board conducted an onsite inspection of the Property on February 20, 2019.
- The Board held a public hearing on the requested special exception on February 28, 2019.
- There was no testimony that the existing use of the property has any adverse impact on surrounding properties.
- The applicant, through testimony, requested to increase the maximum number of students allowed from 45 to 65 and staff from 18 to 65 as well. They also requested that the total size of the school be increased from 9,600 Sq.Ft. to 19,200 Sq.Ft.

For all of the foregoing reasons, the Board of Appeals voted unanimously (5-0) to grant the Applicants request to renew the previously granted temporary special exception for a public charter school for a period of one (1) year, on a motion from Mr. Neil, and seconded by Mr. Morrow.

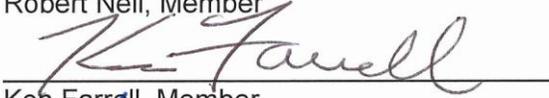
Adopted by the Board of Appeals on the 28 day of February 2019.



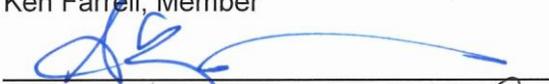
John Greenwell, Chair



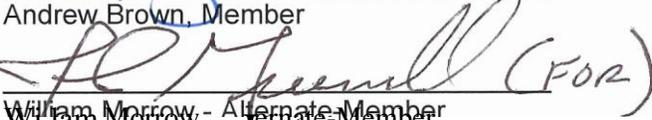
Robert Neil, Member



Keh Farrell, Member



Andrew Brown, Member

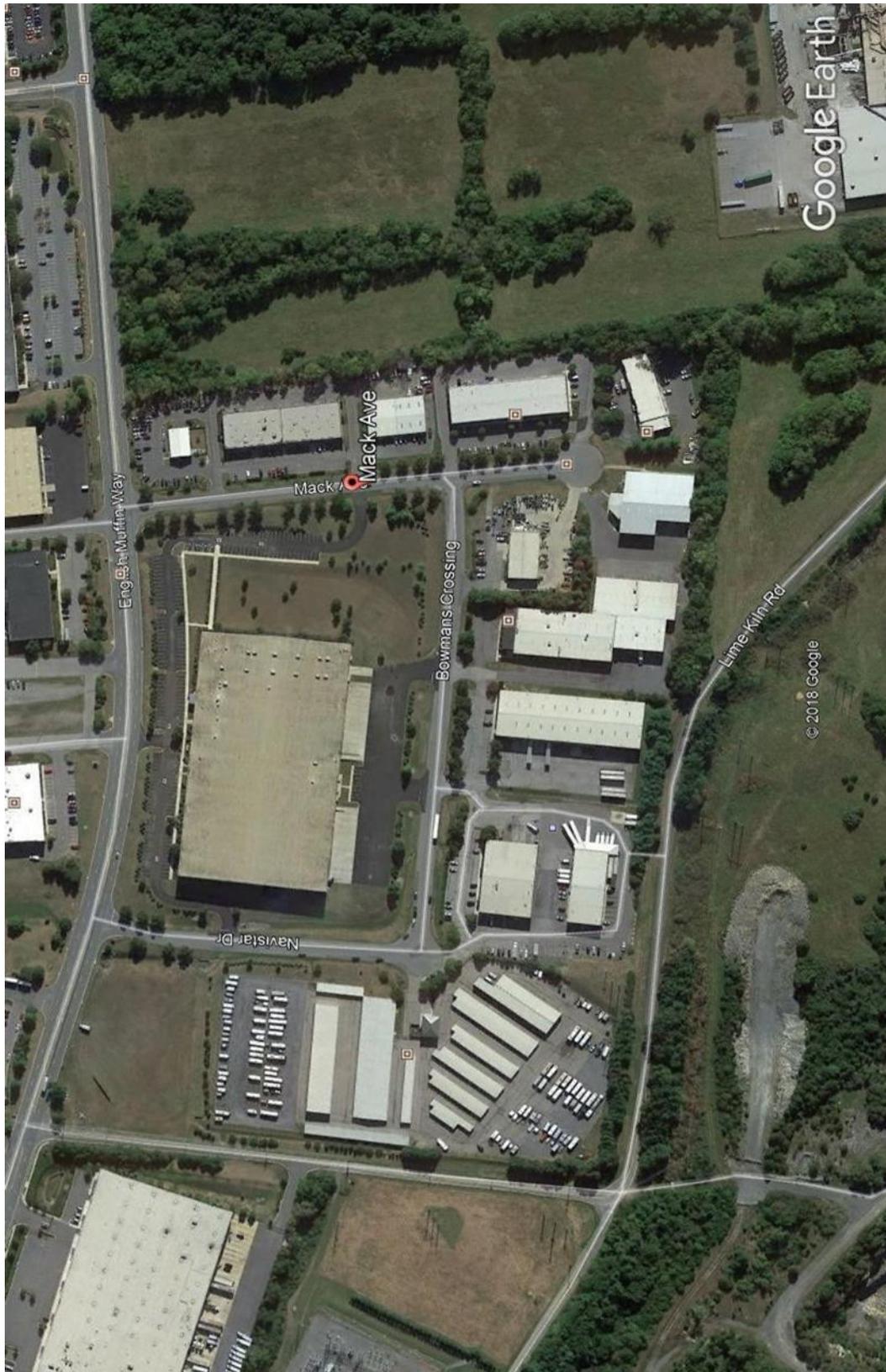


William Morrow - Alternate Member

**Ordinance Section 1-19-3.210 (I)**

A decision of the Board of Appeals granting a special exception will be void 5 years from date of approval by the Board of Appeals unless the use is established, a building permit issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1-time extension may be granted by the Zoning Administrator for a period not to exceed 6 months

**Attachment 2: Aerial**



B-24-04 Brook Lane School

# Attachment 3: Comprehensive Plan



# Attachment 4: Environmental Features



# Attachment 5: Zoning



