

**BEFORE THE
Board of Adjustment
City of Chesterfield, Missouri**

**THE FULTON SCHOOL)
1100 WHITE ROAD)
CHESTERFIELD, MO 63017)**

PETITIONER,)

v.)

No.: B.A. 03-2022

**JUSTIN WYSE IN HIS OFFICIAL)
CAPACITY AS THE DIRECTOR)
OF PLANNING OF THE CITY OF)
CHESTERFIELD, MISSOURI)**

RESPONDENT.)

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
REGARDING THE VARIANCE REQUEST APPLICATION (B.A. 03-2022)
FOR THE PROPERTY LOCATED AT 1100 WHITE ROAD (18R340892)**

COMES NOW, the Board of Adjustment (the “Board”) of the City of Chesterfield, Missouri, (the “City”), pursuant to Chapter 125, Article II of the City’s Code of Ordinances having heard evidence at a hearing on October 6, 2022, hereby makes the Findings of Fact, Conclusions of Law, and Order approving the Variance request (B.A. 03-2022) submitted on behalf of The Fulton School for an 8.9 acre tract of land located at 1100 White Road, Chesterfield, Missouri (18R340892) (the “Property”):

FINDINGS OF FACT

1. That on August 16, 2022, The Fulton School, submitted a request for variance approval (B.A. 03-2022) that would permit the Junior High and Senior High uses for the Property (the “Variance”). Specifically, said Variance request was an appeal of the City’s zoning regulations embodied in Article 03 of the City’s Unified Development Code related to the use of the Property for a Junior High and Senior High and application by the City’s Zoning Officer preventing said uses.
2. That on August 16th, 2022, the Petitioner submitted a check for the Variance application fee to the City of Chesterfield.

3. Pursuant to City Code Section 125.170 and RSMo 65.690, any enforcement action related to the use of the Property as a Junior High or Senior High was stayed during the pendency of Petitioner's Appeal.
4. That on September 21, 2022, a Public Hearing notice appeared in The Countian, a newspaper qualified to publish legal notices in St. Louis County, Missouri, stating that a Public Hearing would be held by the Board of Adjustment of the City of Chesterfield at 6:00 p.m., October 6th, 2022, at City Hall, 690 Chesterfield Parkway West, Chesterfield, Missouri, for the purpose of considering and making findings and recommendations in regards to a request by the Petitioner to permit the Junior High and Senior High uses within the 8.9 acre tract of land located within the R-2 Residence District and NU Non-Urban Zoning District located at 1100 White Road (18R340892), Chesterfield, MO.
5. That on September 21, 2022, a notification was mailed to property owners within two hundred twenty-five (225) feet of the subject site and all residential subdivision trustees within one (1) square mile of the subject site as the information is available to the City informing them that the Board of Adjustment of the City of Chesterfield would hold a Public Hearing at 6:00 p.m., on October 6th, 2022 to consider Petitioner 's request for a variance.
6. That on September 21, 2022, the Public Hearing Notice for the October 6th, 2022 Board of Adjustment meeting to be held at 6:00 p.m. at City Hall, 690 Chesterfield Parkway West, Chesterfield, Missouri was posted in the front lobby of City Hall.
7. On October 6th, 2022, a hearing was held by the Board of Adjustment to consider Petitioner's request for a variance to allow the Junior High and Senior High uses on the Property (the "Hearing").
8. At the Hearing, the Petitioner was represented by counsel, Michael Doster of Doster Ullom & Boyle, LLC; and Assistant City Planner Joseph Knight appeared on behalf of the City and the Director of Planning ("Knight").
9. At the Hearing, Knight presented testimony and made arguments that: (1) under the strict application of the City Code, the Property could not be used as a Junior High and Senior High; (2) the City had provided notice of the Hearing; and (3) provided a general history of the Property.
10. At the Hearing, the Petitioner presented testimony and made arguments that: (1) the Petitioner's operation of a lower school and upper school were similar to an Elementary, Junior High and Senior High but distinct in that the Petitioner maintains small class sizes, does not engage in large team sports such as football, and focuses on providing a Montessori and college

preparatory education for its students; (2) the 8.9 acres of the Property was sufficient for Petitioner to operate a lower and upper school; and (3) the 10 and 20 acre requirements for operation of a Junior High and Senior High respectively, resulted in an unnecessary hardship.

11. At the Hearing, the Board of Adjustment called for and provided an opportunity for any additional persons or parties to provide testimony following the presentation of evidence by Knight and by Petitioner.
12. The Board of Adjustment heard testimony from additional persons regarding: (1) Petitioner's activities on the Property including the location of an apiary, questions about outdoor sports and activities, and the levels of light that are generated on the Property; and (2) concerns regarding the number of students in the upper school and the impacts on traffic, parking, and public safety.
13. The Board of Adjustment allowed Petitioner an opportunity to respond to the questions and concerns raised by the additional person speaking at the Hearing to which Petitioner provided additional testimony and argument as well as suggested the Board of Adjustment consider a modified ruling that would impose certain restrictions on the number of upper school students in light of the concerns regarding traffic, parking, and public safety from the use of the Property as a Junior High and Senior High.
14. The Board of Adjustment accepted all exhibits offered to it including but not limited to a copy of the City Code, the public notice, the additional postcard notice, the Petitioner's slides, and Petitioner's application requesting the Variance.
15. At the Hearing, the Board of Adjustment found that all procedural and notice requirements had been met.
16. At the Hearing, the Board of Adjustment found relevant, credible, and competent the testimony offered by Petitioner regarding the alleged hardship.
17. At the Hearing, the Board of Adjustment found relevant, credible, and competent the testimony offered by additional persons regarding the potential for traffic, parking, light, and other concerns, regarding the Petitioner's use of the Property as a Junior High and Senior High.
18. Based on the totality of the evidence, the Board of Adjustment found a hardship in carrying out the strict letter of the Code on the Property but determined that a modification of the regulations would be required so

that the spirit of the Code shall be observed, public safety and welfare secured and substantial justice done.

CONCLUSIONS OF LAW

1. That Petitioner filed a request for a variance pursuant to Article II of the Municipal Code of the City and prescribed by RSMo 89.090 through 89.140.
2. That the Hearing was conducted in accordance with the policies, practices, and ordinances of the City and applicable Missouri law.
3. Based upon the testimony, evidence, and arguments, special conditions or circumstances exist which are peculiar to the land involved resulting in a hardship for Petitioner and which requires modification of the regulations applicable to the Property so that the spirit of the Code shall be observed, public safety and welfare secured and substantial justice done; and,
4. That the special conditions of the Petitioner are not a direct result of the actions of the Petitioner; and,
5. That granting the variance requested by the Petitioner would not confer on the Petitioner special privileges that are denied to owners of other lands, structures and buildings in the same district; and,
6. That Petitioner shall be allowed to operate a Junior High and Senior High on the Property on at least eight acres of land so long as enrollment in any upper school, defined as grades seven through twelve, shall be limited to one hundred students and Petitioner shall not allow lights to be installed on the athletic field; and,
7. That no non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures, or buildings in other districts were considered as the grounds for approving this variance.

ORDER

1. The Board of Adjustment, having considered the evidence and testimony presented by the Petitioner, Knight, and additional persons, hereby unanimously votes to approve Petitioner's Application for a Variance, with the modifications that enrollment in any upper school, defined as grades seven through twelve, shall be limited to one hundred students and Petitioner shall not allow lights to be installed on the athletic field.

2. These Findings of Fact, Conclusions of Law, and Order may be appealed by any affected party to the Circuit Court of Saint Louis County, as provided by law.

Approved by the Board of Adjustment of the City of Chesterfield, Missouri this ____ day of November, 2022 by a Board roll call vote of: _____ YEAS; and _____ NAYS.

So Ordered,

Chairman, Board of Adjustment

ATTEST:

Kathy Reiter
Executive Assistant to the Director of Planning