

**DISTRICT COUNCIL FOR PRINCE GEORGE’S COUNTY, MARYLAND
OFFICE OF ZONING HEARING EXAMINER**

**APPEAL OF DECISION OF THE HISTORIC PRESERVATION COMMISSION RE:
CLASSIFICATION OF BRIARLY ACADEMY (OLD HOTEL)(HISTORIC RESOURCE
62-10) AS A HISTORIC SITE**

Appellants:	Elpis and Jagdish B. ¹ Sakaria
Opposition:	None
Hearing Date:	April 24, 2018
Hearing Examiner:	Joyce B. Nichols
Recommendation:	Approval

NATURE OF PROCEEDINGS

(1) The instant action involves the appeal of the Decision of the Historic Preservation Commission (“HPC”) to amend the July 1981 Historic Sites and Districts Plan, which included the subject property, the Briarly Academy (Old Hotel)(62-10) in its Historic Resource Inventory, by designating the Briarly Academy (Old Hotel) as a Historic Site in the Plan’s Inventory of Historic Sites.

APPELLANT’S MOTION TO DISMISS

(1) The Appellant Ms. Sakaris argued in a February 21, 2018 letter to the Office of the Zoning Hearing Examiner (Exhibit 31) that Appellant’s appeal be dismissed. This argument was again presented during the evidentiary hearing.

(2) Appellant cites as the basis for the dismissal of her appeal §27-128(a) which provides that the Zoning Hearing Examiner shall dismiss any zoning case described in §27-127 which has not reached public hearing within (a) 3 years after the Application was filed, (b) May 7, 1985, (c) 2 years after final action on a Sectional Map Amendment or (d) 2 years after an Application was remanded by the District Council, which ever date is latest. Appellant fails to state which subsection of §27-128 she is relying upon for her dismissal.

(3) There are so many things wrong with Appellant’s request to dismiss her appeal that it is hard to decide which to address first.

(4) The case before the Zoning Hearing Examiner is an appeal of the determination of the Historic Preservation Commission. Black’s Law Dictionary defines “Determination” as the decision of a court of justice. §27-119(e) authorizes the appeal of a decision of the Historic Preservation Commission to the District Council. The Appellant noted an appeal from the Historic Preservation Commission’s action designating the subject property as a Historic Site in

¹ Jagdish B. Sakaria died during the pending of this appeal.

February, 1985 pursuant to §27-119(e). If Appellant's Motion to Dismiss her own appeal is granted, the 1985 Historic Preservation Commission's decision elevating the subject property to a Historic Site will be final, as repeatedly confirmed by the District Council's adoption of the 1992 and 2010 Historic Sites and Districts Plan.² Appellant also argues that the action of the Historic Preservation Commission was not a "decision" or a "determination". If this argument is accepted then there is no jurisdiction to hear Appellant's appeal and the Historic Preservation Commission's designation of the subject property as a Historic Site stands.

(5) §27-128 was not adopted until after the Historic Preservation Commission's decision and therefore would not be controlling. At the time of the Historic Preservation Commission's decision §27-565 governed the dismissal of zoning cases by the Zoning Hearing Examiner. Since the Zoning Hearing Examiner did not obtain the power to hear appeals from the Historic Preservation Commission until 1993 §27-565 is also inapplicable.

(6) §27-128 governs the dismissal of "Applications", the instant action is an appeal; there is no "Application" and therefore §27-128 is not dispositive even had it been the law in effect in 1985.

(7) This evidentiary hearing was conducted pursuant to a valid Order of the Circuit Court. Appellant could have sought relief from having an evidentiary hearing by asking the Court to Stay its Order but Appellant has repeatedly refused to request a Stay from the Circuit Court.

(8) Appellant has cited no legal authority for her request for the dismissal of her appeal. Should the Appellant wish to withdraw her appeal from the decision of the Historic Preservation Commission she is free to do so.

(9) Appellant's Motion to dismiss her own appeal is denied.

FINDINGS OF FACT

(1) On December 15, 1980, the Chairman of the Planning Board sent an advisory letter to potentially affected property owners, including the Appellants Jagdish and Elpis Sakaria, that they may own one of the potential historic sites that may be affected by the Preliminary Historic Sites and Districts Plan. (Exhibit 15(a))

(2) Exhibit 43 of Historic Site and District Plan Hearing Record is a letter from E. Sakaria wherein he requests that (1) the "Old Hotel" at 11777 Old Baltimore Pike be made a "Site Under Consideration", (2) that the site be evaluated to determine that best use of surrounding land, and (3) transmitted the ownership information of the subject property from 1829 to the present (1981). (Exhibit 15(b) p. 7) The Sakarias letter and attachment is Exhibit 15(d).

² Appellant elected not to appeal either the 1992 or the 2010 Historic Sites and Districts Plan, both of which designated the subject property as a Historic Site, and these Plans are final.

- (3) The Summation of Transcript Testimony and Recommended Planning Board Findings at page 54 discusses the Appellant's request for upgrading to Historic Site status and the Citizens Advisory Committee's disagreement with the requested upgrade, finding that the subject property should remain on the Inventory as a Resource until the Appellant provides better information pertaining to its use as a hotel and any architectural importance or uniqueness of the property. (Exhibit 5(c))
- (4) Attachment I to the Summation provides the Historic Site Summaries, including 62-10 Old Hotel, which details, in part, the nature of the Old Hotel and the intention of the Appellants to consider the re-establishment of the building as a Country Inn. (Exhibit 15(c))
- (5) By letter dated, April 8, 1981, the Appellants were notified that the recommendation to retain the subject property on the Historic Resources Inventory would be presented to the Planning Board at the April 16, 1981 work session on the Preliminary Historic Sites and Districts Plan. (Exhibits 15(c) and (j))
- (6) During the April 16, 1981 Planning Board work session, the Planning Board voted to keep the subject property on the Historic Resource Inventory, adding that it is the property owners responsibility for providing the necessary information for upgrading to a Historic Site designation. (Exhibit 15(k))
- (7) Governor Parris Glendening, the then Chairman of the County Council, signed CB-142-1981, creating Subtitle 29-Preservation of Historic Resources, into law on November 24, 1981. (Exhibit 16)
- (8) The July 1981 Historic Sites and Districts Plan, a Functional Map Amendment to the General Plan for Prince George's County, as adopted by the Planning Board, included the subject property, the "Old Hotel" (62-10) on the Historic Resource Inventory. (Exhibit 18)
- (9) CB-54-1984, adopted July 24, 1984, amended Subtitle 29 to provide an administrative process for the establishment of Historic Resources in the Historic Sites and Districts Plan. (Exhibit 19)
- (10) By letter dated January 8, 1985 the Appellants were notified that the Historic Preservation Commission would review the historic and architectural significance of the Old Hotel on January 22, 1985 and, following the review, "the Historic Preservation Commission will make its decision whether to elevate your property to Historic Site status, or to delete it from the Historic Sites and Districts Plan. This decision by the Historic Preservation Commission is final, unless appealed to the County Council." (Exhibit 21)
- (11) On January 22, 1985 the Prince George's County Historic Preservation Commission held a public hearing on the designation of certain properties, including the subject property, as Historic Sites. As pertains to the subject property, Ms. Gail Rothrock (Planning Board Technical Staff)

“reported that the owners support elevation of the site and that they had called her to ask about the restrictions imposed by designation”. Staff concluded that the Old Hotel meets criteria 1d (the building is representative of the cultural and social heritage of the Country, having been, in turn, a house, a resort hotel and a military academy) and 2e (it is a prominent and unusual landmark in the area). The owner is considering using the building as a restaurant or a “health club”, but he is not moving ahead with his plans as yet. Mr. Dolan mentioned the County study of adapting buildings for bed-and-breakfast use and noted that this building could probably be adapted to such a use.

There was a discussion of the amount of acreage with the house, with the exact figure being uncertain, and whether it had retained its architectural integrity. Ms. Pearl commented that the 1840’s and 1911 sections are intact and that the owner has made a start on renovating the property, although he has no definite plans for it as yet.

Motion: Mr. Dolan moved that the property be classified as a Historic Site, based on criteria 1d and 2e, and Mr. Hines seconded the motion. The vote was 4 to 0 in favor, with Mr. Crawley abstaining. (Owners not present to comment). (Exhibit 20)

(12) By letter dated, January 25, 1985, the Appellants were notified of the Historic Preservation Commission’s decision and their appeal rights.

The decision of the Commission, was that the Humes House (also known as the Briarley Military Academy and the Old Hotel) should be designated as a historic site because it meets several of the historical and architectural criteria listed in the Historic Sites and Districts Plan;

(1d) The Humes House, which has served as a residence, a resort hotel and a military academy, is symbolic of the social and cultural changes which occurred in the county, as it developed; and

(2e) The building is a prominent landmark in Beltsville.

Under a recent change to the County’s historic preservation ordinance (adopted July 24, 1984), the decision of the Historic Preservation Commission is final, unless appealed by the owner.

If you disagree with the decision of the Historic Preservation Commission, you may file an appeal (by letter) within 30 days of the date of this letter. The Commission will then transmit the appeal to the County Council, which would hold a public hearing. If you have any questions or would like a copy of the new law, please contact me at 952-3520. (Exhibit 21)

(13) By letter dated February 10, 1985, the Appellants filed a timely appeal to the Historic Preservation Commission from its decision to elevate the status of the subject property to a Historic Site. The Appellants noted as the basis for their appeal (1) lack of consensus amongst

the property owners for the Historic Site designation, and (2) that the Appellants had not yet determined the actual acreage associated with the Old Hotel. (Exhibit 21)

(14) The Appellant did not allege in their appeal letter that the subject property was not culturally, socially or prominently significant in a historic context. (Exhibit 21)

(15) By letter dated February 19, 1985, receipt of the appeal was acknowledged. (Exhibit 21) There was no evidence in the record that this appeal was transmitted to the District Council. Despite continued contact between the Appellant and the Historic Preservation Commission staff there is no evidence that the Appellants ever inquired into the status of their appeal or questioned the apparent failure of the District Council to conduct a hearing on their appeal.

(16) Exhibit 22, prepared January, 1985, is the Historic Site Summary Sheet utilized, in part, by the Historic Preservation Commission in reaching its decision.

(17) The record is silent as to any further action taken on the Appellants appeal.

(18) The March, 1992 Historic Sites and District Plan, adopted by the District Council after work session and proper notice, continued the Historic Preservation Commission's elevation of the subject property in 1985 as Historic Site.

62-10 Briarley Academy (Old Hotel) – 11777 Old Baltimore Pike, Beltsville

- 1860's, 1911- Multi-part frame structure which includes the original nine-tenth-century dwelling, a two-story hip-roof building with a five-bay main façade, and numerous additions.
- A unique visual landmark in the Beltsville area; has served as a residence, resort hotel and military academy. (Exhibit 24)

(19) The District Council adopted the June, 2010 Historic Sites Districts Plan, continuing designation of the subject property as a Historic Site.

Properties designated as historic sites must meet specific criteria for historic, cultural, archeological and/or architectural significance found in Subtitle 29-104. To be determined historically or culturally significant, a property must be of:

- 1a. Significant character, interest, or value as part of the development, heritage, or cultural characteristics of the county, state, or nation;
- 1b. The site of a significant historic event;
- 1c. Identified with a person or a group of persons who influenced society; or
- 1d. Exemplify the cultural, economic, social, political, or historic heritage of the county and its communities.

To be determined architecturally significant, the property must:

- 2a. Embody the distinctive characteristics of a type, period, or method of construction;
- 2b. Represent the work of a master craftsman, architect or builder;
- 2c. Possess high artistic values;
- 2d. Represent a significant and distinguishable entity whose components may lack individual distinction; or
- 2e. Represent an established and familiar visual feature of the neighborhood, community, or county, due to its singular physical characteristics or landscape.

The final line of each entry identifies the criteria by which each historic site has been designated. In the 1981 plan, those properties that were already listed in or in the process of nomination to the National Register of Historic Places were considered to have met Subtitle 29 criteria and were designated as historic sites without criteria.

Briarley Academy (Old Hotel) 11777 Old Baltimore Pike, Beltsville

- c. 1860's, 1911, multipart frame structure which includes the original 19th-century dwelling, a two-story hip-roof building with a five-bay main façade, and numerous additions.
- Originally a farmhouse built by George Humes, converted into a resort by Benjamin B. Bradford in 1911; bought in 1929 by the Montague family & leased to Cpt. Sydney Lodge who established a military academy there.
- Criteria 1d, 2e

(Exhibit 25)

(20) In 2015 the Historic Preservation Commission began the process to initiate a Demolition by Neglect proceeding to enforce the Appellants obligations to provide basic maintenance and repairs on the subject property.

(21) The Appellant filed a Complaint for Declaratory Judgement in the Circuit Court for Prince George's County on May 26, 2016 complaining for the first time that she had never received a hearing on her 1985 appeal and asserting that the 1985 Historic Site designation had never become final and therefore the Historic Preservation Commission did not have jurisdiction over the subject property.

(22) The County Office of Law filed a Preliminary Motion to Dismiss or in the Alternative Motion for Summary Judgement on August 22, 2016 based on the Appellants failure to exhaust

administrative remedies (failing to complete the administrative appeal process for her appeal as set forth in the County Code).

(23) The Circuit Court granted the County's Motion and dismissed the Appellants Complaint on November 10, 2016 for failure to exhaust her administrative remedies, finding that the Appellant strategically remained silent regarding her appeal for 30 years until faced with a Demolition by Neglect action, and that the controlling statute is §29-119 of the County Code. (Exhibit 44)

(24) On November 10, 2016 the Court ordered that the Zoning Hearing Examiner hold a hearing on the Appellants appeal within 90 days. (Exhibit 32(b))

(25) On January 3, 2017 the Circuit Court denied the Appellants Motion to Alter/Amend the Judgement. (Exhibit 32(c))

(26) On January 5, 2017 the Appellant filed its Notice of Intent to Appeal the Circuit Court's Order to the Court of Special Appeals. As of the evidentiary hearing before the Zoning Hearing Examiner, the Appellant has never requested the Circuit Court to stay its Order pending the decision of the Court of Special Appeals. The Circuit Court Orders of November 10, 2016 and January 3, 2017 thus remain in full force and effect.

(27) After much difficulty in getting the Appellant to agree to a hearing date, the Office of the Zoning Hearing Examiner was finally able to schedule the evidentiary hearing on the Appellants appeal from the 1985 designation of the Old Hotel as a Historic Site in accordance with the Order of the Circuit Court for April 4, 2018.

(28) On March 20, 2018 the Appellant requested a continuance of the April 4, 2018 hearing date and, with the agreement of all parties, the evidentiary hearing was rescheduled for April 24, 2018. (Exhibit 34)

(29) On April 24, 2018, the Court Ordered evidentiary hearing was held and concluded. All parties were also heard on the Appellant's Motion to Dismiss.

APPLICABLE LAW

(1) The Circuit Court has held, and your Examiner agrees, that the statute controlling the instant appeal is §29-119 of the County Code. In 1985 §29-119 stated, in pertinent part, as follows:

- (a) The Historic Preservation Commission shall make a determination as to whether an unclassified historic resource should be classified or not classified as a Historic Site or property within a Historic District. The Commission's decision shall be in writing, shall include findings of fact and conclusions, and shall be sent to all persons of record.

* * * * *

- (e) Any person of record may appeal the decision of the Historic Preservation Commission, on the question of treating the property as classified or unclassified, to the District Council. Any appeal of the Commission's decision shall be filed with the Commission within thirty (30) days of service of the decision.
 - (1) Upon receipt of an appeal, the Commission shall transmit to the District Council the notice of appeal, and the names and addresses of all persons of record. In addition, the Commission shall transmit its findings of fact and conclusions along with all record evidence.
 - (2) Upon receipt of the foregoing, the District Council shall cause the matter to be set for public hearing. The hearing shall be advertised in the County's newspapers of record and notice of the date, time, and place of the hearing shall be sent to the Historic Preservation Commission, the Planning Board, and all persons of record in the case before the Historic Preservation Commission.
 - (3) The hearing before the District Council shall be a de novo hearing, and the decision of the District Council shall be based upon the record submitted by the Historic Preservation Commission and any additional evidence submitted before the District Council. Any party wishing to submit a transcript of the testimony taken before the Historic Preservation Commission shall be required to pay the costs thereof.
 - (4) The District Council's decision to approve or disapprove the decision of the Historic Preservation Commission shall be in writing, and shall expressly declare the unclassified historic resource to be a Historic Site or property within a Historic District, or declare that the site is no longer a historic resource. Copies of the decision shall be sent to the Commission, the Planning Board, and all persons of record.

(CB-54-1984)

(2) §29-119 was amended by the adoption of CB-57-1993 and today, in 2018, states, in pertinent part, as follows:

- (a) The Historic Preservation Commission shall make a determination as to whether an unclassified historic resource should be classified or not classified as a Historic Site or property within a Historic District. The Commission's decision shall be in writing, shall include findings of fact and conclusions, and shall be sent to all persons of record.

* * * * *

- (e) Any person of record may appeal the decision of the Historic Preservation Commission, on the question of treating the property as classified or unclassified,

to the District Council. Any appeal of the Commission's decision shall be filed with the Commission within thirty (30) days of service of the decision.

- (1) Upon receipt of an appeal, the Commission shall transmit to the Zoning Hearing Examiner the notice of appeal, and the names and addresses of all persons of record. In addition, the commission shall transmit its findings of fact and conclusions along with all record evidence.
 - (2) Upon receipt of the foregoing, the Zoning Hearing Examiner shall cause the matter to be set for public hearing. The hearing shall be advertised in the County's newspapers of record and notice of the date, time, and place of the hearing shall be sent to the Historic Preservation Commission, the Planning Board, and all persons of record in the case before the Historic Preservation Commission.
 - (3) The hearing before the Zoning Hearing Examiner shall be a de novo hearing and shall be held in accordance with Section 27-129. After the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council. All persons of record shall be given at least ten (10) days written notice by the Clerk of the Council of the date and time of the District Council's consideration of the matter. Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's recommendation with the District Council. If appealed, all persons of record may testify before the District Council. Persons arguing shall adhere to the District Council's Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing. The recommendation of the Zoning Hearing Examiner and the Districts criteria, as well as the record submitted by the Historic Preservation Commission and any additional evidence submitted before the Zoning Hearing Examiner. Any party wishing to submit a transcript of the testimony taken before the Historic Preservation Commission shall be required to pay the cost thereof.
 - (4) The District Council's decision to approve or disapprove the decision of the Historic Preservation Commission shall be in writing, and shall expressly declare the unclassified historic resource to be a Historic Site or property within a Historic District, or declare that the site is no longer a historic resource. Copies of the decision shall be sent to the Commission, the Planning Board, and all persons of record.
- (f) For the purposes of this Section, "Person of Record" means the owner(s) of the historic resource, and any municipality, person, firm, corporation, partnership, association, organization, or agency who, in writing or in testimony before the Historic Preservation Commission, requests to be made a person of record prior to the close of the hearing record.

CONCLUSIONS OF LAW

(1) Abundant evidence was provided during the evidentiary hearing on Briarly Academy (Old Hotel)(62-10) to support the decision of the Historic Preservation Commission that the subject property meets criteria 1d (the building is representative of the cultural and social heritage of the County, having been, in turn, a house, a resort hotel, and a military academy) and meets criteria 2e (the building is a prominent and unusual landmark in Beltsville). (Exhibits 15-30, 37 and 43)

(2) In addition to the 1985 decision finding that the subject property meet criteria 1d (§29-104(a)(1)(A)(i)) and 2e (§29-104(a)(2)(A)(v)) additional evidence was submitted to support the conclusion that the subject property also meets the criteria of §29-104(a)(1)(A)(iv) and §29-104(a)(2)(A)(ii).

(3) Appellant provided photographic evidence that Demolition by Neglect has occurred on her property but provided no evidence to refute the decision of the Historic Preservation Commission.

RECOMMENDATION

Based on the record submitted by the Historic Preservation Commission and evidence presented during the evidentiary hearing before the Zoning Hearing Examiner, and in consideration of the criteria established in §29-104(a), this Examiner recommends that the District Council approve the designation of the Briarly Academy (Old Hotel) as a Historic Site consistent with its previous adoption of the 1992 and 2010 Historic Sites and Districts Plans.