



NRCA, P.O. Box 3242, Alexandria, VA 22302

December 7, 2020

Alexandria City School Board
Clerk of the School Board
1340 Braddock Place
Alexandria, VA 22314

Re: Use of ACPS Campuses for Housing Projects

Dear Chair Anderson and Board Members:

As you know, the North Ridge Citizens Association (NRCA) has been actively monitoring ACPS plans to modernize the George Mason Elementary School, located in our neighborhood. We are very appreciative of your efforts to involve our community in the planning process and have strongly conveyed our view that the limited space available on the George Mason site needs to be preserved for the core educational and recreational needs of our community. Public support is overwhelmingly galvanized in support of this approach, and City residents have vocalized opposition to colocation of housing on school grounds.¹

Based on meetings held with you and Mayor Wilson in the spring, we were hopeful that there would be a prompt, public decision that no space could be spared for an affordable housing project on the George Mason site. Unfortunately, eight months have now passed and no such assurance has been provided.

We are instead aware that Alexandria City officials are continuing to press ACPS to use school campuses for affordable housing. The Director of the Office of Housing recently informed the community that it is a challenge to find enough land to meet the city's affordable housing needs and that they are accordingly looking for space on school campuses where developers can build and manage housing for those who are income eligible.²

In light of these developments, it is imperative to inform you of the evidence showing that Virginia law prohibits the planning and construction of affordable housing on the George Mason campus, and likely other existing ACPS school campuses. We hope that a prompt review of this legal issue by the School Board's independent counsel will prevent the further loss of time and money spent on the study of City-driven housing projects that cannot be built on school grounds. Otherwise, we are prepared to pursue additional actions that will ensure the Virginia laws protecting school property are enforced, including a review from the Virginia Department of Education. We believe that VDOE – as well as the courts – would prohibit the City's quest to colocate affordable housing on the George Mason site and others because (1) the School Board has exclusive authority to determine what structures should be built on the property; (2) the School Board has no authority to erect affordable

¹ See results of Joint Facilities Master Plan Survey, October 2020.

² 11/19/20 High School Project Open House. The Director of Housing expressly confirmed that the City is not planning to limit occupancy to ACPS teachers. Emails from City staff obtained via FOIA also indicate the conclusion that the Fair Housing Act does not permit such limits.

housing on school grounds; and (3) the School Board has no authority to convey any portion of the site to the City for such a purpose.

As the City's October 2020 report on Affordable Housing and Colocation reveals, *the City failed to identify a single school board in the Commonwealth of Virginia that has ever authorized the construction of a housing project on a school campus*. This finding fully conforms to our understanding of the law, and was confirmed by ACPS staff during a presentation to the George Mason Task Force on December 1, 2020. Virginia School Boards have only been given authority to build and supervise schools, not housing. When City officials urged ACPS to allow housing developments on ACPS campuses at a meeting on January 27, 2020, you correctly told them: "[W]e're not the housing administration, we're the school system."³ We hope that we can help you persuade the city to respect legal boundaries and to stop any campaign to gain control of school campuses to use for affordable housing.

First, the School Board has exclusive authority to decide what structures should be built on the George Mason site. Article VIII, Section 7 of the Virginia Constitution *mandates* that the local school board -- not the City government -- must be responsible for the supervision of the public schools. The Virginia Supreme Court has interpreted this provision to mean that school boards have the *constitutional obligation* "to determine whether a particular property is needed for school purposes and the manner in which it shall be used."⁴ Based on the clarity of this constitutional mandate and the implementing statutes governing the power of Virginia school boards, the City Attorney has already acknowledged that ACPS has exclusive authority to determine what should be built on school sites.

In 2017, the City Attorney issued an opinion explaining that Virginia courts have held that the power to "determine the manner in which school property shall be used is vested exclusively with the local school board" and that City Council does not have "any general supervisory authority over the schools" (p. 1-2). The opinion also concludes (p. 3) that ACPS cannot "abrogate any of its independence with respect to its core responsibilities," which includes the design of the campus. City Attorney JoAnna Anderson also acknowledged at a meeting on January 27, 2020, that the City could not direct ACPS to build housing on school property.⁵ There is simply no dispute that the School Board must decide for itself what to build on the school sites in the exercise of its constitutional mandate to supervise the public schools.⁶

Second, state law prohibits the School Board from erecting affordable housing on the George Mason site. State law and zoning code dictate whether multifamily housing can be erected on existing ACPS school sites. Specific to George Mason, Section 3-302 restricts residential units to single family homes in an R-8 zone. Even if the zoning laws were amended over strong community opposition, however, the School Board does not have the authority to construct affordable housing on this site.

In Virginia, the powers of local school boards are limited by a rule of strict construction called the Dillon Rule. Under this rule, a school board can only take actions that are expressly authorized by state statutes, fairly implied from the text of those statutes, or that are essential and indispensable to the performance of the school board's functions. Actions taken outside the scope of this limited authority are illegal, *no matter how much the City might seek the School Board's help* (see 2004 Op. Va. Att'y Gen. 04-074, which concludes that school board funds may only be used for the "establishment, support and maintenance of schools" and not other public purposes).

³ Alxnow.com/2020/01/28

⁴ *Howard v. County School Board*, 203 VA 55, 58 (1961).

⁵ Alxnow.com/2020/01/28.

⁶ George Mason School is located on a single, undivided 9.4 acre parcel of land. Title is held in the name of the city but state law mandates that the School Board has the responsibility to "control the property of the school division," (VA Code 22.1-79.3), and the "official care and authority of a school board shall cover all territory" within the school boundaries even "when the title to such property is vested in the . . . city" (22.1-125(B)). The entire 9.4 acre parcel has the "legal description" of "George Mason School" in the city's property records and the ACPS 2015 Long Range Educational Facilities Plan describes the George Mason Elementary School "site" as 9.4 acres in size including the tennis courts and fields. (4.20-21).

The Virginia Code directly addresses the power of the School Board to construct buildings. Section 22.179(3) establishes that the School Board only has the power to “erect[] ... *necessary school buildings* and appurtenances.” An affordable housing development is obviously not a “school building” or a “necessary appurtenance.” This express limitation on the scope of the school board’s powers accordingly forecloses ACPS from erecting any affordable housing units.

This reading of the statutory language is further confirmed by Virginia Department of Education regulations. VDOE is required to establish minimum standards for all public school buildings and must approve every school board’s plans for construction (Section 22.1-138, 22.1-140). VDOE Guidelines for School Facilities in Virginia’s Public Schools provide “detailed guidance for the planning and design of local public school facilities” (p.vi) but nowhere make provision for housing in such facilities. The Guidelines emphasize that it is the school board’s responsibility to “develop a specific educational program” and then choose a school design necessary to “carry out the educational program.” The “educational program” for an elementary public school does not require affordable housing on the campus.

This conclusion is also borne out by the long history of public school projects in Virginia. It is telling that the City’s October 2020 report on Affordable Housing and Colocation does not cite a single example of a Virginia school board constructing housing on a public school site. School boards in Virginia do not build housing because their sole power and responsibility is to build and supervise schools. Cities and counties build and supervise affordable housing. The six examples cited as precedent for the City’s proposal to use ACPS property for housing have no bearing on the School Board’s authority to build affordable housing on school grounds under Virginia law. Not only were all of the projects built in other states, at least three of the projects were not built on public school property.⁷ The remaining projects involved teacher housing in two states that adopted legislation expressly authorizing school districts to build housing for teachers on school property. The City is clearly not proposing to colocate teacher housing. Moreover, there is no similar Virginia statute that expressly permits building any type of housing on school property.

The Commonwealth’s own Constitution imposes exclusive responsibility on school boards to supervise schools, not housing, and the implementing legislation expressly limits the school board’s power to the construction of “necessary school buildings.” The fact that some other state with different laws allowed the use of school property for housing has no legal relevance to the scope of a Virginia school board’s authority.⁸ As a Dillon rule jurisdiction, any co-location of affordable housing on school board property in Virginia is illegal under state law.

Third, the School Board has no authority to convey any portion of the George Mason site to the City or developers for the construction of affordable housing. ACPS has repeatedly recognized that it does not have enough land to meet the current needs of the school system, let alone the future needs created by an expanding population.⁹ It is inappropriate and short-sighted for the City to continue engaging in unfounded efforts to press the School Board to transfer control of school property to the City for affordable housing projects. It is not simply bad policy to prioritize new housing units over the future of our schools and our students. It is also foreclosed by Virginia law.

Under Virginia law, the School Board is obligated to “*control* the property of the school division” (Section 22.1-79(3)). This power must be exercised by the School Board and cannot be abrogated by transferring control of the school’s real estate to city officials except under very limited circumstances. Under the explicit language of

⁷ The website for the teacher housing referenced in New Jersey indicates that the housing was built on land owned by a private developer and that the schools in the development are “charter” schools, not public schools. The website for the East Harlem project cited in the report also involves a charter school and housing built on land owned by the city’s housing authority. The teacher housing referenced in North Carolina was built by a private charity on land owned by the county according to published news accounts.

⁸ Three of the six examples involve housing built on public school property in California and Florida. In both states, special legislation was enacted to authorize the construction of teacher housing, but does not extend to affordable housing generally. The third example concerns a yet-to-be-approved project in Florida, which also enacted legislation expressly authorizing teacher housing on school property. See FL Statutes Section 1001.43(12).

⁹ The September 14, 2020 community presentation of the Joint Facilities Master Plan emphasized that “population is projected to continue growing” and predicted the addition of more than 30,000 people by 2040.

Section 22.1-129, the School Board can only convey its real property to the City (or a developer) when the school system has “no use” for the property. That legal requirement forecloses the City’s efforts to colocate housing at George Mason -- and most likely other campuses as well.

The School Board could not possibly determine in good faith that it has “no use” for *any* portion of the George Mason site, or any other campus. George Mason is not large enough for the current modernization project, let alone future expansions. In 2015, ACPS and the City issued its Long Range Educational Facilities Plan and adopted the goal of “meeting the [VDOE] guidelines” governing the size of a campus needed for educational and recreational purposes (p. 3.12). The LREFP emphasizes that the campus must be large enough because it is “important for students to recreate, have access to explore nature, and learn in an outdoor classroom.” This goal cannot be achieved if any portion of the site is devoted to housing. In order to comply with the VDOE Guidelines, *the entire parcel* must be dedicated to educational and recreational space. Under Section 3.2 the School Board should have at least a 10-acre site for an elementary school designed for 600 students (ACPS is projecting 670 students for the 9.4 acre site). In addition, VDOE guidelines emphasize the need to “provide for future expansion” in the planning process and to obtain “additional acreage where possible” in order to “allow for future growth and flexibility” (p. 2, 8). It is accordingly not possible for the School Board to conclude that it has “no use” for any portion of this site.¹⁰ No portion of the property can be conveyed to the City, or to any developer(s) for construction of housing.¹¹

While some City officials are pressing the School Board to help the City meet its affordable housing goals, Virginia law is clear. The “school board may not abrogate its duties or compromise its independence with respect to its core responsibilities” (2011 Op. Va. Att’y Gen. 10-122). The School Board can only use its real estate for “school buildings” and *not* for the provision of affordable housing. It would be incomprehensible for the Board to declare existing property to be “surplus” when there is such overwhelming need for expanded school capacity and ACPS re-opening during the COVID-19 pandemic. Thank you for your consideration and we look forward to working with you.

Best regards,



Chuck Kent
President, North Ridge Citizens’ Association

cc: Mayor & City Council
Mr. Mark Jinks, City Manager
Mr. Gregory C. Hutchings, ACPS Superintendent of Schools

¹⁰ The LREFP was developed to “identify the types of facilities that can best meet education needs over the next 25 years” (Executive Summary at p. 1). There is *no reference* in the LREFP “master plan” to an educational need for public housing on school properties.

¹¹ ACPS acknowledged at a December 1, 2020 meeting with the George Mason Task Force that the Minnie Howard campus is too small to meet VDOE guidelines for the planned enrollment -- even without the allocation of any portion of the site to housing.