

**COMMONWEALTH OF PENNSYLVANIA
STATE CHARTER SCHOOL APPEAL BOARD**

In the Matter of	:	
Bensalem Keystone Academy	:	
Charter School	:	
	:	Docket No. 2012-14
v.	:	
	:	
Bensalem Township School District	:	

DECISION MOTION TO DISMISS

Bensalem Keystone Academy Charter School (Bensalem) appealed the Bensalem Township School District's (District) decision denying its charter application on October 16, 2012. Bensalem subsequently lost the facility it proposed using in its application and the District filed a Motion to Dismiss the Appeal for Failure to Obtain a Suitable Facility. Bensalem opposed this Motion and ultimately found an alternative site, which was viewed by the District. Thereafter, on February 19, 2014, the District set forth its position regarding the property in a letter to the State Charter School Appeal Board (CAB) and again moved to have the appeal dismissed. Bensalem responded on March 24, 2014, and the parties argued the Motion before CAB on April 29, 2014.

The District argues that, despite Bensalem's identification of an alternative facility, the site is not viable because it is not zoned for charter school use. Moreover, the District points out that a previous zoning variance request to operate another charter school on the same site was rejected. Thus, because the District is convinced that a variance will not be granted, it takes the position that Bensalem still lacks a facility and that its appeal should be dismissed.

In contrast, Bensalem contends that any variance denial by the Zoning Hearing Board may be appealed, thus rendering the District's position moot. Bensalem's primary argument, however, is that the zoning status of the property is not a relevant consideration in the review of a charter school application. By identifying a property, its owner and potential lease arrangements, Bensalem asserts that it has met the requirements of the Charter School Law (CSL) regarding an applicant's proposed facility.

Section 1719-A of the CSL provides for the contents of the charter school application and states that the facility portion of the application must include: "a description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements. 24 P.S. §17-1719-A(11). In applying this provision, CAB has not previously required zoning approval; for example, in the case of Legacy Charter School it was sufficient that the charter applicant provided:

[A] street address for the proposed facility and a drawing of the proposed facility. At the public hearing, Legacy testified as to the steps it was taking to address zoning issues, the success of building similar facilities in other locations, and the lease agreement which would be entered into between Legacy and Mosaica. Legacy described its site in general terms and made it clear that it knew there were issues to be addressed related to the site and that it was taking steps to address those issues. This [CAB found] satisfies the Charter Law.

Legacy Charter School v. Council Rock School District, Docket No. CAB 2000-14 at 9.

In fact, CAB has consistently concluded that it cannot deny a charter application simply because the charter school had failed to secure all plans and approvals that might be needed before submission of its application to a chartering district. See, Environmental

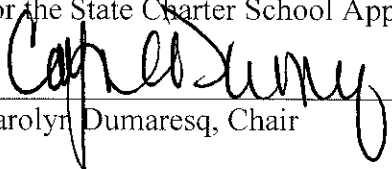
Charter School v. Palisades School District, Docket No. CAB 1999-14 at 16-17; Voyager Charter School v. Garnet Valley School District, Docket No. CAB 2005-9 at 9.

Based upon the above analysis, lack of zoning approval alone is insufficient basis for denying an application and, thus, also for dismissing an appeal. In this case, Bensalem has identified a facility at 3910 Tremont Street, Trevese, PA, its owner, and potential lease arrangements. It also has made arrangements for the District to inspect the facility. Thus, it has satisfied the requirements of the CSL and need do no more at this point.¹ CAB, therefore, in consideration of the pleadings filed herein and of the argument of counsel presented at the CAB meeting, voted to deny the Motion and makes the following:

ORDER

AND NOW, this 8th day of May, 2014, based upon the foregoing and the vote of this Board,² it is hereby ordered that the Motion to Dismiss filed by the Bensalem Township School District is DENIED; and the appeal of the Bensalem Keystone Academy Charter School shall be listed for argument at the next CAB meeting.

For the State Charter School Appeal Board



Carolyn Dumaresq, Chair

Date Mailed: 5/8/14

¹ If Bensalem fails to obtain the necessary zoning variance, then it must locate another site and bring that site before the District and CAB for approval before moving forward to open its charter school. Montour School District v. Propel Charter School, Montour, 889 A. 2d 682, 690 (Pa. Cmwlth. Ct 2006).

² At CAB's April 29, 2014 meeting Board Members Dumaresq, Barker, Munger and Yanyanin voted unanimously to deny the motion.