

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Department of Park and Planning, Community Services, Park Permit Office

9500 Brunett Avenue, Silver Spring, MD 20901

Park Permit Office - Silver Spring: 301-495-2525 - Germantown: 301-495-2480 Emergency & Park Police: 301-949-3010

PERMIT NUMBER: 98460	Scheduled By: corvey
PARK FACILITY: Darnestown Local Park	Date: 28-Jun-04
ADDRESS: 14211 Darnestown RD Darnestown	Status: Firm

This Park Facility Permit represents a contractual agreement between Camp Calleva represented by Alex/Cynthia Markoff/Boska and the Maryland-National Capital Park and Planning Commission. Permission to use the Facilities outlined below is subject to the Terms and Conditions of this Agreement, contained herein and attached hereto, all of which form part of this Agreement.

I) Contact: Alex/Cynthia Markoff/Boska
Camp Calleva
15209 Seneca RD
Darnestown, MD 20814
Phone #: 301 216-1248 Fax #:
Home #: Work #: Ext:

II) Purpose of Use PK Bus Access
Field Trip

III) Conditions of Use

1. The permit must be displayed in the front window of the bus upon entering the Park.
2. Buses are allowed in the park only between 9 am and 4 pm, and only on Monday through Friday.
3. Buses must park in designated spaces only, one bus per space.
4. One adult chaperone is required for every 10 children.
5. All buses for Cabin John Regional Park must use the Westlake Drive entrance.

CANCELLATION POLICY: Fees are non-refundable.

6. Effective 01/01/04 Trash **MUST** be taken with permittee offsite for proper disposal/recycling.

Any violation to the above rules, or to the rules/regulations stated on the permit, will result in an automatic \$31 service charge, and might result in charges for any additional hours used or damages incurred.

IV) Date and Times of Use

PARK: Darnestown Local Park

14211 Darnestown RD, Darnestown, MD, 20874. Prior Approval/Permission Required by Park Manager - For smallpassenger vans/busses only, per Jamie C.) http://www.mc-mncppc.org/parks/park_of_the_day/sep/parkday_sept1.stm color="#79894b">More Park Information (photos, directions) & Maps

Date	Start Time	End Time	Facility	Fee	Extra Fee	Total
06-14-04 (Mon)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
06-15-04 (Tue)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
06-16-04 (Wed)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
06-17-04 (Thu)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
06-18-04 (Fri)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
06-21-04 (Mon)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
06-22-04 (Tue)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
06-23-04 (Wed)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
06-24-04 (Thu)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
06-25-04 (Fri)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
06-28-04 (Mon)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
06-29-04 (Tue)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00

PERMIT NUMBER: 96460

Date	Start Time	End Time	Activity	Rate	Total	Balance
06-30-04 (Wed)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-01-04 (Thu)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-02-04 (Fri)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-05-04 (Mon)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-06-04 (Tue)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-07-04 (Wed)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-08-04 (Thu)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-09-04 (Fri)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-12-04 (Mon)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-13-04 (Tue)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-14-04 (Wed)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-15-04 (Thu)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-16-04 (Fri)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-19-04 (Mon)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-20-04 (Tue)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-21-04 (Wed)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-22-04 (Thu)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-23-04 (Fri)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-26-04 (Mon)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-27-04 (Tue)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-28-04 (Wed)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-29-04 (Thu)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
07-30-04 (Fri)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-02-04 (Mon)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-03-04 (Tue)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-04-04 (Wed)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-05-04 (Thu)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-06-04 (Fri)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-09-04 (Mon)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-10-04 (Tue)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-11-04 (Wed)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-12-04 (Thu)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-13-04 (Fri)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-16-04 (Mon)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-17-04 (Tue)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-18-04 (Wed)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-19-04 (Thu)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00
08-20-04 (Fri)	09:00 AM	04:00 PM	Bus Access #8	\$0.00	\$0.00	\$0.00

of Bookings: 50 Starting: 14-Jun-04 Ending: 20-Aug-04 Attendance: 0

v) Additional Fees

Extra Fee - Rental	Quantity	Charge	Tax	Total
PK-BUS ACCESS FOR PG/MC GROUPS ONLY	1	\$30.00	\$0.00	\$30.00

vi) Payment Method

Rental Fees	Extra Fees	Tax	Rental Total	Damage Deposit	Total Applied	Balance	Current
\$0.00	\$30.00	\$0.00	\$30.00	\$0.00	\$30.00	\$0.00	\$0.00

vii) Special Instructions 8/28/04 \$30 RCPT#066279. YC

viii) Emergency

In case of an emergency or to report any major problems, please call Park Police at 301-949-3010.

ix) Cancellations/Refunds

The reservation fee is non-refundable if the reservation is canceled less than 30 calendar days prior to the reserved date. If the reservation is canceled at least 30 days in advance, a cancellation penalty of \$31 will be charged. (Exceptions include the administrative fee for "non-fee" permits which is non-refundable and where otherwise noted in the "Conditions of Use" listed on this permit.)

SEP-21-2004 02:39 FROM: CALLEVA

3019632509

TO: 3017626044

P.4

PERMIT NUMBER: 86460

x) Reservation Changes

A fee of \$31 will be charged for any reservation changes. Date changes must be made in writing at least one week in advance and require a \$31 administrative fee.

I, the undersigned, certify that I am authorized to sign this contract on behalf of the group using the facility listed above, have read and fully comprehend all fees, and rules/regulations listed on this contract and as contained in the M-NCPPC Park Rules and Regulations guide, and agree to indemnify, save harmless and defend the Maryland-National Capital Park and Planning Commission, the individual members thereof, and any park facility or Commission officials or employees, and accept full liability for any damages which may occur during my scheduled use or any additional charges which may result from my use.

Receipt#:

066279

Payment Date:

6/28/04

Received By:

YANNA

Deposit Amount:

Date Received:

Deposit Fee Returned To:

Date Returned:



Nutrient Applicator
Voucher
- Chuck Schuster
- 301-596-2557

12-19-02
G.D. [unclear]
11/18

Montgomery County Office

NUTRIENT MANAGEMENT PLAN
For
Mary Markoff

BRIEF DESCRIPTION OF OPERATION: This Montgomery County horse producer has two different properties. The home property (Seneca Rd.) has no land, but stables horses. The ~~Dunrobin~~ Road property has hay fields, but is in the process of being converted into pasture and hay ground for rotational grazing.

DATE OF PLAN: November 8, 2002

DURATION OF PLAN: November 2002 through June 2004

SOIL SAMPLING AND TESTING: The operator provided the soil samples.

MANURE SAMPLING AND TESTING: The operator provided the manure samples.

BASIS OF RECOMMENDATIONS: Recommendations for all fields are Nitrogen-based.

SOURCE OF YIELD GOAL INFORMATION: Yield goals were obtained from the farm operator's knowledge.

TIMING: Guidance on the timing of fertilizer applications is included on the recommendations sheets. Additional information of a general nature is included in the "TIMING" and "NUTRIENT MANAGEMENT GUIDELINES" sections of this plan.

BEST MANAGEMENT PRACTICES: Observed runoff and erosion control measures on this operation are adequate.

RECORD KEEPING REQUIREMENTS: The Water Quality Improvement Act requires that producers keep records on fertilizer usage. Consult the model form and directions included in the record keeping section of this plan for the type of information required.

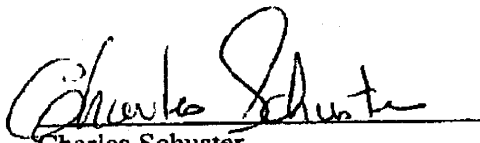
Farm Identification Summary

Farm Name	Account ID Numbers	Watershed #	Total Account ID Acres	Total Farmed Acres	Total Acres Managed Under Plan
Alex Markoff, et. al.	160303228893	0185	80.73	20.0	20.0
Nicholas & M.M. Markoff	160601848054	0185	5.00	0	0
Nicholas S. & M.M. Markoff	160300040277	0185	83.98	16.0	16.0

Manure Summary Table

Animal Type and Number	Manure Generation	Manure Storage Capacity/Conditions	Timing of Application
10 horses on average	96 Tons Total per year; 14 Tons per year Collected; 82 Tons Uncollected per year*	Manure is stored under tarps in the woods. There are no streams nearby.	Manure has not been spread in the past. She may start spreading in Spring 2003.

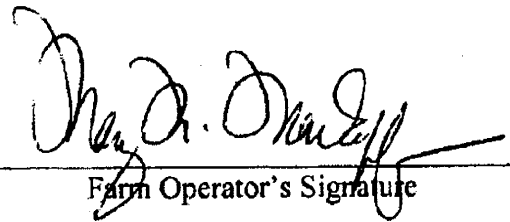
*See attached manure calculation sheets



Charles Schuster
Extension Educator, Commercial Horticulture
Certification #: 1790
License #: 2030



Krista Wilson
Nutrient Management Advisor
Certification #: 1707
License #: 2030



Farm Operator's Signature



DEPARTMENT OF PERMITTING SERVICES

Douglas M Duncan
County Executive

Robert C Hubbard
Director

BENEFIT PERFORMANCE
PERMIT

Permit No 204273

Expires 10/31/2004

Issue Date 9/7/2004

CAMP CALLEVA, INC
15204 SENECA RD
GERMANTOWN MD 20874

This is to certify that

HALLOWEEN ACTIVITIES

is hereby granted a license to hold a public
at 10126 MARTINSBURG RD
DICKERSON MD 20842-

in Montgomery County Maryland on Event Begin Date 10/9/2004 Event End Date 10/31/2004

For the benefit of FUNDRAISER

This license is issued under the authority of the Montgomery County Code ("the Code") and may be forfeited, revoked, or suspended for violation of the provisions of the Code. This license does not constitute an endorsement of this business by Montgomery County.

Director, Department of Permitting Services

THIS LICENSE MUST BE POSTED CONSPICUOUSLY ON THE PREMISES.

WILLIAM J. ROBERTS
ATTORNEY AT LAW
20000 FISHER AVENUE
POST OFFICE BOX 368
POOLESVILLE, MARYLAND 20837

CABLE ADDRESS: LAWPOOL

TELEPHONE: (301) 972-8673

FACSIMILE: (301) 349-2979

October 16, 2004

Ms. Judy Daniel
Community Planning Division
Maryland National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Special Exception Case No. 2608, Petition of Calleva, Inc. for a
"Child Day Care Facility"; MCPB Agenda 28 October 2004

Dear Ms. Daniel:

A few months ago, I entered my appearance on behalf of Sugarloaf Citizens Association, Inc. with the offices of the Board of Appeals and the Hearing Examiner regarding the above-referenced matter.

Recently, Mr. Kline was kind enough to share with me his letter and enclosures to you of September 20.

While Mr. Kline's analysis is interesting, to say the least, I must respectfully submit that it is wrong, and it is **very wrong** for a variety of reasons.

1. First, Mr. Kline has implied that Ordinance No. 11-41 of the District Council, by deleting any reference in the Zoning Ordinance to "day camps" and "summer camps", and simply creating a new category of "child day care facility" ipso facto necessarily implies that the District Council must have assumed that day camps and summer camps would be included in the new definition. On the contrary, I respectfully and in the strongest possible terms disagree. The fact that specific language was deleted by an action of the legislature leads me to believe that the intention was to delete such uses if they are not specifically set forth in the applicable zone. It defies traditional notions of statutory interpretation and common sense to assume that the legislature, by deleting prior language, actually intended to keep it by implication.

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In addition, there is a very explicit definition of a "child day care facility" set forth in Section 59-A-2.1 of the Code which states, inter alia, that it shall be "a **dwelling or building in which child day care services are provided in accordance with all applicable state and county laws and regulations**". In looking at that rather detailed definition, it is hard to assume that the District Council intended to include in that definition summer camps, or day camps, or overnight camps, as a part thereof, especially in light of the state regulations incorporated by reference.

2. Please consult the Code of Maryland Regulations, [COMAR] which provides substantially different BRIGHT LINE definitions and standards for a "youth camp", (which is primarily geared to outdoor activities and for which the Petitioner currently, according to its petition, is licensed and governed by the Maryland Department of Health & Mental Hygiene, even though it is presently operating illegally in violation of the Zoning Ordinance and has been for a number of years), and a "child day care facility", governed by the State Department of Human Resources (which involves a dwelling or building for the care of pre-school children or school aged children before or after school or when school is not in session). COMAR Section 10.16.06.02 expressly defines the former. COMAR Section 07.04.02.01 expressly defines the latter. With regard to the latter, it is important to note that the State Department of Human Resources, in defining a "child care facility", quite expressly excludes a "youth camp" licensed by the Department of Health & Mental Hygiene. The differences in the definitions and licensing standards are striking, and the definition of a child day care facility clearly is not applicable to the operations as described by the Petitioner in this case.

3. Of course, the Petitioner may certainly apply for a child day care facility as special exception in the RDT zone. That right is not subject to debate. However, it must be a child day care facility which meets State Regulations. The Petitioner may not operate a youth camp, inasmuch as a camp is not permitted by right or allowed by special exception. In addition, the Petitioner may not operate both as one and the same, since state law and regulation clearly and unequivocally states that a youth camp does not qualify as a child day care facility. In this respect, the State regulation of these respective functions is pervasive, and preempts any local jurisdiction's lessening or alteration of those very clear State standards.

Even in the absence of a pervasive preemption by the State, however, this is not a distinction which the undersigned has just pulled out of the air; indeed, if one examines the definition of a "child day care facility" set forth in Section 59-A-2.1 of the

Montgomery County Code, it states quite explicitly that any such facility must be "in accordance with all applicable state and county laws and regulations."

In addition, on this point I will note that the definition in the Montgomery County Code anticipates a "dwelling" or "building" for the "child day care", and the state regulations provide detailed minimum standards of square footage for each child at any given time, minimum bathroom requirements, minimum light and heat requirements, etc. In this case, there is nothing in the record to indicate that any buildings, other than open sheds and barns, will be used to house the children in connection with this purported "child day care facility".

I strongly suggest you carefully review Title 07, Subtitle 04, Chapter 02, of COMAR to confirm the fact for the Staff and the Planning Board that this Petition for Special Exception falls very far short of even the minimum standards for a "child day care facility" in accordance with state law and regulation, which are quite expressly incorporate by reference in the definition thereof adopted by the District Council.

4. While the petitioner's counsel's (Mr. Kline's) citation to two (2) recent decisions of the Board of Appeals are interesting, those decisions are hardly controlling and do not, and, for that matter cannot, constitute, under the circumstances, any "long standing administrative interpretation" of the Zoning Ordinance:

A. In the first case, S-2503, concerning Holton Arms School, Holton Arms held an existing special exception for a private educational institution and thereafter requested permission to operate what it characterized as a summer camp under the provisions of a "child day care facility" as it relates to the R-200 and R-90 Zone. The evidence of record in that case clearly indicates that practically all of the activities were to take place within the buildings on the existing campus of the existing school. The Staff report expressly stated that such use was an "accessory use" to the existing "private educational institution special exception". And the Board of Appeals found the same. Also significant was the following finding of the Board of Appeals:

"The Board finds that summer camps display many of the same features and the same activities, as private educational institutions. . . ."

The problem with citing the Holton Arms School case in connection with the pending request for a special exception in the instant case is that: (i) there is no existing private education institution on the subject property; (ii) a private educational institution is

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permitted neither by right or special exception in the RDT zone¹; and (iii) the Petitioner's application clearly is for an outdoor camp as opposed to mainly indoor activities as set forth in the Holton Arms School case.

B. The second case cited by Mr. Kline, Case No. S-2463, involved the expansion of the Bar-T, Inc. camp, which was originally granted a special exception use (Case No. CBA-1202A, granted February 9, 1962), prior to amendments to the zoning ordinance deleting any reference to camps in any zone. The Board of Appeals decided to allow an expansion thereof in its Case No. S-2463 under the "child day care facility" special exception provision as it relates to the RDT Zone, noting specifically it was "an extension of its existing day care/summer camp program".

Quite frankly, I will state that I respectfully disagree with the Board of Appeals' conclusion in that case. Neither the undersigned or my client were aware of those proceedings. Under the guise of a "child day care facility", the Board of Appeals allowed the expansion of an existing non-conforming use. For that reason, the decision in that case, which apparently had no opposition, was, in my professional opinion, in error.

Nevertheless, even that case can be distinguished from the instant case, inasmuch as it involved the expansion of an existing camp program previously lawfully established in 1962.

5. The Holton Arms case really is not applicable at all. And the Bar T Ranch case is distinguishable, since it involved the expansion of an existing camp, and that single case can hardly serve as evidence of any long-standing administrative interpretation that a camp qualifies as a child day care facility. Indeed, it is contrary to the law and regulation incorporated by reference in the definition of a child day care facility in the zoning ordinance as set forth above.

Neither of those cases hardly qualifies for any precedential value in connection with the instant case.

6. On the contrary, the undersigned respectfully submits that, if there is any precedent applicable at all to this requested special exception, the Petitioner, and the subject property, it is the prior proceedings relating to Board of Appeals Case No. S-2277.

¹ Other than private educational institutions granted a special exception in the RDT zone prior to the current law; such as, for example, The Barnesville School, located at the intersection of Peach Tree and Barnesville Roads.

This is not the first time that my client and the undersigned, at significant expense, have gone round with this property, the property owners, this proposed camp use, and the Petitioner (or at least the principals of the present corporate entity identified as "Calleva, Inc.", a tenant of the property owners), and Mr. Kline.²

Several years ago, in the Petitioner's quest to legitimize the continuing illegal use of the subject property, there was an application for a special exception for a "commercial riding stable" in connection with the Petitioner's camp activities on the subject property (Case No. S-2277). By decision at its meeting of May 1, 1997, the Planning Board recommended **denial** of the requested special exception, stating as follows:

"We have recommended denial of S-2277 on the basis that the proposed on-site horse-riding is ancillary to the overnight camping activities, rather than vice versa, therefore, the application for a commercial riding stable is inappropriate. Applicants applying for special exceptions must apply for use categories that describe the predominant rather than subordinate or ancillary use. In this case, we believe camping is the predominant use, and **camping is not allowed in the rural density transfer zone.**" (Report of the Planning Board to the Board of Appeals, May 6, 1997, Case No. S-2277, Exhibit 17(b), Emphasis Supplied).

That decision for recommendation of denial was **unanimous** by the Planning Board.

Notwithstanding the unanimous recommendation of denial by the Planning Board, the Board of Appeals nevertheless entered an opinion granting the special exception in a split decision. In somewhat twisted logic, the Board of Appeals stated as follows:

One of the matters raised which is a threshold issue is whether the proposed special exception satisfies the definition of a commercial riding stable. The Board recognizes that the program provides an activity during the summer for young people, and therefore that it can be called a camp.. .

Nonetheless, the petitioner is not asking for approval of a camp, which is not permitted in the RDT zone. . . . The Board finds that simply because the program is a camp it is not disqualified from also being a commercial riding stable.

² Don't get me wrong. I have the utmost respect for Mr. Kline. I consider him a friend as well as a colleague, and I realize that he is just trying to do the best for his clients.

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A prompt appeal to the Circuit Court for Montgomery County was taken, and, after briefing all of the issues and after hearing thereon, the Court quite expressly concluded:

Okay. Let me just tell you, I've read this. I've read the record. I'm going to reverse the Board. I'm going to reverse the Board, and the reason I'm going to do it is the writing in the Board's findings. What they're trying to do is they're trying to create something that doesn't really exist. **They are trying to put a square peg in a round hole. . . .**

. . . . It can be called a camp. It is a camp, and the participants are campers. It's one element of camp activity. Nevertheless, the petitioner is not asking for approval of a camp, which is not permitted in the RDT zone, . . . **a camp is not permitted.** (Transcript, p. 42, Emphasis Supplied)³

It is important to note that the Circuit Court did not remand the case to the Board of Appeals for further proceedings, but rather ordered outright that the Board of Appeals enter an order revoking the special exception previously granted.⁴

While decisions of courts of original jurisdiction, such as the Circuit Court, are not reported appellate decisions and generally carry only limited precedential effect, a Circuit Court decision regarding the same property, the same property owners, and similar attempts to by-pass the requirements of the zoning ordinance to legitimize that which is clearly not permitted by right or allowed by special exception is, the undersigned will submit, absolutely controlling in the instant case under the doctrines of res judicata or equitable estoppel.

³ A complete copy of the transcript of the proceedings of February 4, 1999 in Civil No. 189446, before the Honorable Vincent E. Ferritti, Judge of the Circuit Court, is enclosed for your ease of reference. I assume your files contain copies of the other documents referred to herein.

⁴ In 23 years of practicing land use law in Montgomery County, this was the first and only time that the undersigned ever had the Court ORDER the Board of Appeals to DENY a special exception, as opposed to simply remanding the same for further proceedings.

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The Petitioner cannot receive approval for a camp. That pretty much goes without saying. It's not allowed under the zoning ordinance. The Planning Board has said that. The Board of Appeals even said that. And the Circuit Court said that in no uncertain terms.

Now, the same Petitioner once again is trying to "pigeon hole" his or its operations into a defined use in the Zoning Ordinance which simply is not applicable under any circumstances. The Petitioner's previous attempt to characterize the camp operations as a "commercial riding stable" was a stretch, to say the least—a stretch which the Circuit Court could not and would not accept.

The Petitioner's current attempt to pigeon hole its continuing and illegal camp operations as a "child day care facility" is even a further stretch and, quite frankly, borders on the absolutely absurd. It's a different hole, but it's even a larger square peg.

The undersigned and the undersigned's client submits exactly what was submitted years ago to the Planning Board, the Board of Appeals, and ultimately to the Circuit Court; that is, if someone wants to establish and operate a day camp, or overnight camp, or summer camp, or a private educational institution in the RDT zone, then it is necessary for them to seek a zoning text amendment with the appropriate conditions and restrictions as decided by the District Council in its ultimate legislative wisdom for such a particular defined use, but it simply is not appropriate to create something by administrative fiat grounded upon tortured logic which has not passed the muster of the legislature. An administrative agency may not re-write the law, which exactly what is requested in this case.

It is not appropriate, under any circumstances, to attempt to re-categorize or pigeon hole a use which is not permitted by right or special exception as another use which clearly does not apply. [See, for example, United Parcel Service, Inc. v. Peoples Counsel for Baltimore County, 93 Md.App. 59 (1992), rev'd on other grounds, 336 Md. 569 (1994).]

As stated by Judge Ferretti more than five years ago in speaking to Mr. Kline, counsel for the Petitioner:

I think the way to do this is to go to the county, or to the Board, or actually the county council and say, look, you may not have realized what you were doing, but this is what the effect, this is what some judge said, and if you really wanted to do this, then fine, but if you didn't, it's time to change it. (Transcript, p. 45).

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That's really the bottom line. And it's the same bottom line my client has been saying to the Petitioner for years.

In addition, even if the Staff or the Planning Board, in passing upon this special exception request, should totally ignore the above analysis, there nevertheless are a substantial number of additional items which need to be addressed, and which must be addressed in the staff's report to the Board:

1. The submittals by the Petitioner for the special exception indicate the construction of new improvements on the subject property. Those improvements, under any stretch of the imagination, cannot be considered as for "agricultural purposes only"; therefore, a plan of subdivision must be required in connection with this property. (For example, the Statement of Operations filed on behalf of the petitioner states that there will be a residence constructed on the property for the "president of Calleva, Inc." That is a residential use, and without a doubt requires a plan of subdivision).

For either a child day care facility licensed by the Maryland Department of Human Resources, or a camp licensed by the Maryland State Department of Health and Mental Hygiene, there are, as set forth in the Code of Maryland Regulations, (COMAR), specific requirements for buildings, including square footage per child, number and type of bathrooms, HVAC, etc., and the Petitioner should be required to provide adequate evidence of the same prior to any recommendation of approval by the Planning Board and the granting of any special exception by the Board of Appeals. The Petitioner's filings to date are sorely lacking in any evidence of even an attempt to comply with those regulations.

2. In that same regard, while the Petitioner's site plan indicates an area for bathroom facilities, it does not indicate any approved septic area other than a proposed septic area for the residence to be constructed on the property.

3. There is no evidence in the record whatsoever to indicate that there is sufficient sewage disposal property, much less a potable water supply on the property, which would be required to service the building for a child day care facility in accordance with applicable state and county regulations. But then again, there also is the matter of the

total absence of any such child day care facility building as required by the definition of the same.

4. The proposed transportation of students from other schools to participate in recreational activities on the property is not, and cannot be, considered a "child day care facility" as defined by the Montgomery County Code, which references state law and regulations.

5. The provision of overnight camping on the property by any persons other than the owners thereof cannot be characterized as a "child day care facility" as defined by the Montgomery County Code, which references state law and regulations.

6. The petitioner's "Statement of Operations" as filed states that there is a fleet of fifteen (15) buses operating for the camp, and "during the summer season, Calleva employs a staff of approximately 40-50", and "during the school year. . . , there is a staff of 15-20 part-time adult professional employees", and "the Haunted Forest event is staffed by approximately 60-70 young people. . ." (Statement of Operations, Page 6).

Under even the most conservative estimates, these operations would generate far more than thirty vehicle trips per day. Accordingly, a traffic study should be required to satisfy Local Area Transportation Review requirements. To the best of the undersigned's knowledge, there has been no traffic study provided by the Petitioner (at least, it hadn't been filed with the Board of Appeals last week). Indeed, Martinsburg Road is a very narrow and, for that matter, dangerous road, and the entrance to the petitioner's operations is located at a ninety-degree blind turn. The undersigned's client and its members have already witnessed the substantial traffic generated on Martinsburg Road by any number of buses and commercial vehicles entering the property for the Petitioner's current operations, said operations being clearly and unequivocally presently in violation of applicable law.

In addition, the hundreds, if not thousands, of vehicles generated by the "Haunted Forest" present even a more significant problem. A traffic analysis should be required, and the undersigned would suggest that it should have started on October 9, 2004, inasmuch the date for the beginning of the "Haunted Forest" was October 9, 2004, to continue through October 31, 2004 on each weekend. If that traffic study has not been conducted, then it only makes sense to wait until the 2005 "Haunted Forest" to conduct that study.

The fact of the matter is that the Petitioner's Statement of Operations would make it the largest employer and generator of traffic in the entire area, with the possible exception of

the industrial uses of the Mirant generating Station and Montgomery County's Resource Recovery Facility.

Please pardon my incredulity, but I just have a hard time believing that, five years after the Circuit Court's decision in 1999, which was very direct in its terms, we are all back where we started before again, the undersigned, Mr. Kline, our respective clients, the Planning Board and the Board of Appeals; except for the fact that: (i) the Petitioner has continued and substantially expanded its illegal operations on the Subject Property, (ii) now a much larger square peg is trying to be jammed into a different, but smaller, round hole, and (iii) we now have the benefit of a Court decision.

While Mr. Kline's reference to two prior opinions of the Board of Appeals regarding expansions of existing uses are interesting, it does not constitute any "long standing" administrative interpretation, nor can it serve as any precedential effect for this particular special exception. On the contrary, the undersigned would submit that, while a Circuit Court decision normally has no precedential effect, it does have a binding effect upon the parties to such a decision. In this case, the Petitioner is essentially the same Petitioner that sought a "commercial riding stable" special exception back in 1997, the property owners are the same and, but for the fact that the Petitioner now requests a much larger operation, it's all the same in the grand scheme of things. So, here we go again.

In 1999, the Court said you can't operate a camp in the RDT Zone and, if you want to do that, then seek a zoning text amendment, and that should have been the end of the discussion. As quite forcefully stated to the Petitioner by the Circuit Court back in 1999, (and by this party for years prior thereto), perhaps day or overnight camps should be allowed by permission or right in one or more zones in Montgomery County. However, the appropriate avenue to pursue is that of a zoning text amendment, in which the District Council will impose appropriate limits and conditions as it sees fit. However, it is not appropriate to attempt to justify a use which clearly is not granted by right or allowed by special exception under the guise of some other use in an attempt to "pigeon hole" that use. And that is exactly what the instant case represents, just as the prior case years ago regarding the same property.

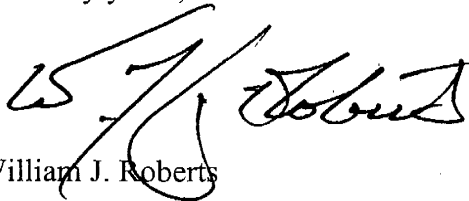
The only difference is the prior case was a stretch and required judicial intervention. This pending case is absurd and can be quickly addressed and dispatched by reference to the zoning ordinance and State law and regulation.

October 16, 2004

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Should you have any questions or require any additional information, please do not hesitate to contact me. With best regards, I remain,

Sincerely yours,

A handwritten signature in black ink, appearing to read "W. J. Roberts". The signature is fluid and cursive, with the first name "W. J." and the last name "Roberts" clearly distinguishable.

William J. Roberts

WJR:dhg
Enclosure

cc w/ enclosure:

The Hon. Derick Berlage, Chairman
Sugarloaf Citizens Association, Inc.
Jody S. Kline, Esquire

PROPOSED LANGUAGE FOR FOREST CONSERVATION EASEMENT AGREEMENT
FOR CALLEVA, INC.

INSERT THE FOLLOWING LANGUAGE IN THE
STANDARD FOREST CONSERVATION EASEMENT AGREEMENT:

“Attached as Exhibit _____ is a copy of the approved Forest Conservation Plan on which are shown the proposed sites for facilities associated with Grantor’s outdoor recreational activities, including camp sites and “ropes course” elements. These activities areas shall be installed, operated and maintained subject to the following conditions:

1. Each ~~Activity~~ area will be left in as natural condition as possible, but natural materials, such as wood chips, shall be used as necessary to cover and stabilize cleared areas and areas of activity.
2. ~~Activity areas and pathways between activity areas will be well delineated to eliminate incursions into natural areas.~~
2. Delineation of activity areas.
 - A. Activity areas, including staging areas for ropes course, camping and benefit performances, shall be well delineated to eliminate incursions into natural areas.
 - B. Pathways between activity areas shall be well delineated to eliminate incursions into natural areas.
 - C. Methods of delineation may include lining trails and staging areas with small logs, staking a line of low ropes or other methods that clearly indicate areas meant for foot traffic and discourage crossing into natural areas.
3. ~~Grantor may abandon existing activity sites and relocate them within the Easement Area or establish sites for new activities. Whenever an activity site is abandoned, the area will be restored to a natural condition and normal woodland growth will be allowed to regenerate.”~~
3. Existing activity sites (thirteen in number) may remain in place. The existing activity sites may be relocated within the Easement Area, or the Grantor may establish sites for new activities. However, ultimately there shall be no more than eight activity sites located within the stream buffer areas.

- A. Before any activity site is relocated, or before a new activity site is established, Grantor shall coordinate with M-NCPPC to ensure that the new site is created and operated in accordance with the purposes of this Agreement, to include a site visit by an M-NCPPC employee if deemed appropriate by the agency.

- B. For relocated sites, or sites for new activities, no significant trees will be removed to establish the activity area. In addition, ropes that are attached to individual specimen trees shall be tied or bolted in such a way that the tree is not permanently damaged.

- C. When an activity site is abandoned, the area will be restored to a natural condition. Methods for restoration will be developed in coordination with M-NCPPC staff. These may include but are not limited to the planting of shade tolerant trees and shrubs, and maintaining the areas free of exotic species while the normal woodland growth is allowed to regenerate. While the former activity sites is in the early stages of regeneration, the area will be protected from browsing by deer, preferably by installation of a deer protection fence.