

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland Avenue
<http://www.montgomerycountymd.gov/boa/>
(240) 777-6600

**Case No. S-862 [S-862-A, -B]
PETITION OF FEDERATION OF AMERICAN SOCIETIES
FOR EXPERIMENTAL BIOLOGY
[NEW HOLDER: ROCHAMBEAU, THE FRENCH INTERNATIONAL SCHOOL OF
WASHINGTON, DC]**

**RESOLUTION TO TRANSFER SPECIAL EXCEPTION
(Resolution Adopted December 2, 2020)
(Effective Date of Resolution: December 9, 2020)**

The Board of Appeals granted Case No. S-862 to the Federation of American Societies for Experimental Biology on March 30, 1983, to permit the extension of an existing private educational institution use. In addition to other lesser modifications, effective December 28, 2001, in Case Nos. S-862-A and A-5599, the Board granted a major modification of this private educational institution use and related variances, and effective May 20, 2005, in Case Nos. S-862-B and A-6008, the Board granted a second major modification of this special exception, with related variances. Effective April 20, 2018, the Board referred a transfer and major modification request from Jody S. Kline, Esquire, on behalf of his client, Rochambeau, the French International School of Washington, DC, to the Office of Zoning and Administrative Hearings as Board of Appeals' Case No. S-862-C, to hold a hearing and issue a report and recommendation. That request is still pending.

The subject property is located at 9650 Rockville Pike, Bethesda, Maryland, 20814, in the R-60 Zone.

The Board of Appeals has received a letter, dated November 13, 2020, from Jody S. Kline, Esquire, on behalf of his client, Rochambeau, the French International School of Washington, DC. Mr. Kline states in his letter that his client has purchased the special exception property from the Federation of American Societies for Experimental Biology (FASEB), and he requests that the special exception be transferred to his client's name. Mr. Kline indicates that the transfer request is being separated from the pending major modification request due to the extended nature of the modification proceedings, and the resultant decision by FASEB to start winding down its operations on the special exception

property. His letter states that his client agrees to be bound by the terms and conditions of the existing special exception until such time as the special exception is modified. Mr. Kline includes written consent to the transfer from FASEB, which also confirms sale of the property to Rochambeau, the French International School of Washington, DC.

Due to COVID-19, the Board of Appeals considered this transfer request at a remote Worksession held on December 2, 2020. All participation was done using Microsoft Teams. Mr. Kline participated on behalf of his client. He stated that his client and FASEB had originally sought a transfer and modification of this special exception two and a half years ago, and that that modification is still pending. Mr. Kline testified that his client had purchased the special exception property from FASEB a couple of months ago, and that the Planning Department, in connection with their preparation of a staff report on the requested modification, had requested that the transfer be taken care of apart from the modification, so as to simplify matters. Mr. Kline stated that until such time as the special exception is modified by the Board, his client and FASEB will abide by the current terms and conditions of the special exception. He agreed to provide the Board with a copy of a Deed evidencing the sale.

Because Case No. S-862 [S-862-A, -B] was approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, this request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant elects otherwise. Rule 12.2 of the Board of Appeals' Rules of Procedure [Resolution Numbers 12-865 (Adopted October 27, 1992), 14-742 (Adopted January 30, 2001) and 15-554 (Adopted March 23, 2004)] provides that the transfer of a special exception is a modification under Section 59-G-1.3 of the Zoning Ordinance (2004). Section 59-G-1.3(c)(1) of that Zoning Ordinance provides:

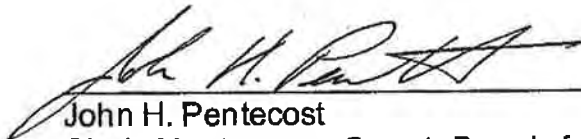
If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the transfer of the special exception from one holder to another, to be operated in accordance with the terms and conditions under which it was originally granted or modified by the Board of Appeals, will not intensify the use or substantially change its impact on the immediate neighborhood or on traffic. Accordingly, the Board finds that the transfer of this special exception use to Rochambeau, the French International School of Washington, DC, can be granted. Therefore, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, with Bruce Goldensohn, Vice Chair, Katherine Freeman, and Mary Gonzales in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-862 [S-862-A, -B] is re-opened to receive Mr. Kline's letter of November 13, 2020, with attachments; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to transfer this special exception to Rochambeau, the French International School of Washington, DC, is **granted**; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.


John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 9th day of December, 2020.


Barbara Jay
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.



Date Mailed: July 9, 2002

Action: Approved Staff Recommendation

Motion of Comm. Wellington, seconded
by Comm. Perdue with a vote of 5-0;

Comms. Bryant, Holmes, Perdue,
Robinson and Wellington voting
in favor

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-02079

NAME OF PLAN: FEDERATION OF AMERICAN SOCIETIES FOR EXPERIMENTAL
BIOLOGY (FASEB)

On 02/01/02, FASEB submitted an application for the approval of a preliminary plan of subdivision of property in the R-60 zone. The application proposed to create 1 lot on 11.4 acres of land. The application was designated Preliminary Plan 1-02079. On 06/06/02, Preliminary Plan 1-02079 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-02079 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-02079.

Approval, Subject to the Following Conditions

- 1) Approval of this preliminary plan is limited to 170,000 square feet of office space, (120,000 sq.ft. existing and 50,000 sq.ft. proposed) as outlined in Board of Appeal Case S-862-A and A-5599 approved December 28, 2001
- 2) Record plat to reflect dedication of 60 feet from the centerline of Wisconsin Avenue (MD 355) to reflect the total of 120 feet right-of-way as recommended in the Bethesda-Chevy Chase Master Plan
- 3) Install a bus shelter at one of the bus stops on Rockville Pike somewhere between the Capital Beltway and Cedar Lane conforming to the requirements of the Montgomery County Department of Public Works and Transportation (DPWT).
- 4) As per Board of Appeals approvals for Case Nos. S-862-A and A-5599, erect a gate at the rear entrance to the site and provide a magnetic card to a maximum of 80 employees to enter and exit the site from this location in order to limit vehicular traffic on Alta Vista Terrace. Prohibit commercial vehicles from using this entrance
- 5) All road rights-of-way shown on the approved preliminary plan shall be dedicated, by the applicant, to the full width mandated by the Bethesda-Chevy Chase Master Plan unless otherwise designated on the preliminary plan
- 6) No clearing of any tree shown as preserved on the tree save plan, dated 4/25/02, except for health or safety reasons without prior written approval of M-NCPPC Inspector or as part of an amendment to the tree save plan as a future special exception amendment
- 7) Compliance with the conditions of MCDPS stormwater management approval

Page 2 of 2
1-02079

- 8) Access and improvements as required to be approved by MDSHA prior to issuance of access permits and MCDPWT prior to recordation of plat
- 9) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to this date, a final record plat must be recorded for all property delineated on the approved preliminary plan, or a request for an extension must be file
- 10) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion
- 12) Necessary easements



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

SEP 15 2009

Original Board Approval Date: June 23, 2005
Board Approval Date (Correction) : September 10, 2009
Date Mailed:

Action: Approved Staff Recommendation

Motion of Commissioner Bryant, seconded by Commissioner Robinson, with a vote of 4-0; Chairman Berlage and Commissioners Bryant, Robinson, and Perdue voting in favor. Commissioner Wellington was necessarily absent.

MONTGOMERY COUNTY PLANNING BOARD

CORRECTED OPINION

Preliminary Plan 1-02079A
NAME OF PLAN: **FASEB (Locus Vitae)**

The date of this written opinion is SEP 15 2009 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court - State).

I. INTRODUCTION

On February 10, 2005, Federation of American Societies for Experimental Biology (FASEB) submitted an application for the approval of a preliminary plan of subdivision of property in the R-60 zone. The application proposed to create 1 lot on 11.20 acres of land located on Wisconsin Avenue north of Alta Vista Road, in the Bethesda Chevy Chase master plan area. The application was designated Preliminary Plan 1-02079A. On June 23, 2005, Preliminary Plan 1-02079A was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

[Signature] 9/14/09
Approved for legal sufficiency
M-NCPPC Office of General Counsel

FASEB (Locus Vitae)
Preliminary Plan 1-02079A
Page 2

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

II. SITE and PROJECT DESCRIPTION

The Subject Property contains 11.44 acres of land and is located on the west side of Wisconsin Avenue between Pooks Hill Road and Alta Vista Road. The subject property is zoned R-60. Currently the property houses a number of smaller residential type structures used as administration buildings, two, 4-story office buildings and one 4 story parking structure. The site is extensively landscaped and has many mature trees.

Access to the site is via Wisconsin Avenue (MD 355), with a secondary, restricted access to Alta Vista Terrace devised in previous Special Exception approvals.

This amendment to the previous conditions of approval is to revise the APF conditions that will allow the addition of a 40,000 square foot office building and an addition to the existing 4-story parking structure to accommodate 104 new parking spaces. These amendments to the land use were reviewed and approved as Board of Appeals Case No. S-862-B.

III. PUBLIC HEARING TESTIMONY

Development Review Staff ("Staff") recommended approval of the revised conditions 1, 3 and 10 of the July 9, 2002 Board opinion in its memorandum dated June 16, 2005 ("Staff Report"). During the hearing, Staff presented its findings consistent with the Staff Report.

Staff informed the Board that the Applicant was requesting a revision of the original conditions for approval to the July 9, 2002 Planning Board Opinion, including a request for additional square footage under Phase II of the development installation of three additional bus shelters for a total of four shelters and an extension for the length of time for Adequate Public Facilities ("APF") review. Staff recommended approval of the revised conditions and also explained that two added conditions were also part of their recommendation. The first added condition states that all applicable conditions of the Board of Appeals will remain in full force and effect. The second added condition states

FASEB (Locus Vitae)
Preliminary Plan 1-02079A
Page 3

that there must be compliance with conditions of MCDPS stormwater management approval dated November 1, 2004, and that all prior MDCPS approvals remain in effect. In considering the extension for the length of time for the ADF review; Staff explained that although the Applicant had requested 12-year review period, given the funding of the project, Staff felt that a 9-year review period was appropriate. Under this 9- year phasing Phase II would have an expiration date of 5 years from the date of the mailing of the Planning Board Opinion and Phase III would have an expiration date of 9 years from the date of the mailing of the Planning Board Opinion.

The Applicant appeared at the hearing represented by legal counsel, and requested that the length of time be extended from 9 years to 12 years. The Board subsequently approved this request. No other party testified in support or in opposition to the proposed revised conditions. Additionally, the record includes no correspondence either in support of, or in opposition to, the proposed revised conditions.

IV. FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies¹; the applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, based upon the uncontested evidence of record the Montgomery County Planning Board finds that:

- a) The Preliminary Plan No. 1-02079A substantially conforms to the Bethesda-Chevy Chase master plan.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision.
- c) The size, width, shape, and orientation of the proposed lot are appropriate for the location of the subdivision.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.
- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department

¹ The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

FASEB (Locus Vitae)
Preliminary Plan 1-02079A
Page 4

of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.

- f) The Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

V. CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-02079A in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-02079A, subject to the following conditions:

Revise Conditions 1, 3 and 10 of the July 9, 2002 Planning Board opinion to read as enumerated below, and add new condition numbers 11 and 12 as written below:

1. Limit development to an expansion of the existing office building to add an additional 40,000 square feet of office use for a total of 210,000 square feet that includes the previously approved 50,000-square-foot office building currently under construction, and renovation/reconstruction of the 120,000 square foot Lee Building.
3. Install three additional bus shelters along northbound Rockville Pike (MD 355) in the vicinity of the campus or other locations in the Bethesda-Chevy Chase area for a total of four shelters. One of the shelters was conditioned for the 50,000-square-foot new office building proposed in petition S-862-A. Three new bus shelters are required to mitigate the additional one and two CLVs in the morning and evening peak hours, respectively, at the intersection of MD 355 and Cedar Lane resulting from the proposed 40,000 square foot new office building on campus. The bus shelters on Rockville Pike and other nearby locations should conform to the requirements of the Montgomery County Department of Public Works and Transportation (DPWT).
10. The Adequate Public Facilities review for this project shall be extended to ~~nine~~ **twelve** years pursuant to the following schedule:

Phase I - 50,000 square feet, construction complete

Phase II - 120,000 square foot renovation/reconstruction of the existing Lee Building, expiration 61 months (5 years) from the date of mailing of the Planning Board Opinion.

Phase III - 40,000 square feet of additional office space, expiration ~~109~~ **145** months (~~9~~ **12** years) from the date of mailing of the Planning Board Opinion

FASEB (Locus Vitae)
Preliminary Plan 1-02079A
Page 5

11. All applicable conditions of approval for Special Exception Cases S-862-A, A-5599, S-862-B and A-6008 remain in full force and effect.
12. Compliance with conditions of MCDPS stormwater management approval dated November 1, 2004. All prior MCDPS approvals remain in effect.
13. All previous applicable conditions of approval of Preliminary Plan 1-02079A, FASEB (Locus Vitae) remain in full force and effect.

This Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended). Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a corrected opinion adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Wells-Harley, seconded by Commissioner Presley, with Commissioners Hanson, Alfandre, Presley, and Wells-Harley voting in favor of the motion, and with Commissioner Cryor absent, at its regular meeting held on Thursday, September 10, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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(240) 777-6600

Case No. S-862-B

PETITION OF FEDERATION OF AMERICAN SOCIETIES FOR EXPERIMENTAL BIOLOGY

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted May 19, 2010)

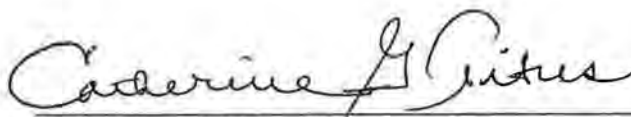
(Effective Date of Resolution: June 3, 2010)

The Board of Appeals has received a letter, dated May 5, 2010, from Richard A. Dunn, Jr., Director of Campus Services for the Federation of American Societies for Experimental Biology (FASEB). Mr. Dunn submits the Annual Report addressing implementation of the Transportation Management Plan for the special exception as required by Condition No. 3(e) of the Board of Appeals' December 28, 2001 opinion in Case No. S-862-A.

The subject property contains 11.44 acres of land on the west side of Rockville Pike between Pooks Hill Road and Alta Vista Road, in Locus Vitae Subdivision; located at 9650 Rockville Pike, Bethesda, Maryland, 20814, in the R-60 Zone.

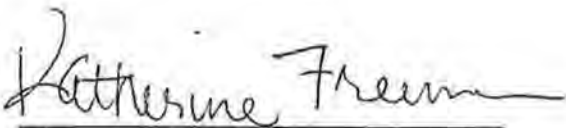
The Board of Appeals considered Mr. Dunn's letter at its Worksession on May 19, 2010. On a motion by Stanley B. Boyd, seconded by Walter S. Booth, with David K. Perdue, Vice Chair, and Catherine G. Titus, Chair, in agreement, and Carolyn J. Shawaker necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-862-B, Petition of the Federation of American Societies for Experimental Biology, is re-opened to receive Richard A. Dunn's letter of May 5, 2010, with attachments.



Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 3rd day of June, 2010.

A handwritten signature in cursive script that reads "Katherine Freeman". The signature is written in dark ink and is positioned above a horizontal line.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

**BOARD OF APPEALS
for
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(240) 777-6600

Case No. S-862-B

**PETITION OF FEDERATION OF AMERICAN
SOCIETIES FOR EXPERIMENTAL BIOLOGY**

RESOLUTION TO RE-OPEN THE RECORD
(Resolution Adopted April 16, 2008)
(Effective Date of Resolution: May 27, 2008)

The Board of Appeals has received a letter, dated March 19, 2008, from Richard A. Dunn, Jr., Director of FASEB Campus Services. Mr. Dunn submits FASEB's Annual Report on the implementation of its Transportation Management Plan, as required by Condition No. 3(e) of the Board of Appeals' December 28, 2001 opinion in Case No. S-862-A.

The subject property contains 11.44 acres of land on the west side of Rockville Pike between Pooks Hill Road and Alta Vista Road, in Locus Vitae Subdivision; located at 9650 Rockville Pike, Bethesda, Maryland, 20814, in the R-60 Zone.

The Board of Appeals considered Mr. Dunn's letter at its Worksession on April 16, 2008. On a motion by Caryn L. Hines, seconded by Catherine G. Titus, Vice Chair, with Wendell M. Holloway, David K. Perdue and Allison Ishihara Fultz, Chair, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-862-B, Petition of Federation of American Societies of Experimental Biology, is re-opened to receive Richard Dunn's letter dated March 19, 2008.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Case No. S-862-B

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Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 27th day of May, 2008.



Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

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**BOARD OF APPEALS
For**

**Corrected Resolution
date of letter**

MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/content/council/boa/board.asp

Case No Nos. S-862-B and A-6008

**PETITION OF FEDERATION OF AMERICAN SOCIETIES
FOR EXPERIMENTAL BIOLOGY**

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted January 10, 2007)

(Effective Date of Resolution: March 15, 2007)

The Board of Appeals has received a letter, dated December 3, 2006, from Allen L. Myers, President of the Maplewood Citizens Association. Mr. Myers expresses the association's agreement to the Federation of American Societies for Experimental Biology's (FASEB) proposal to postpone the razing and replacement of the existing Lee Building. Mr. Myers requests that his letter be included in the record of the special exception.

The subject property is in Locus Vitae Subdivision; located at 9650 Rockville Pike, Bethesda, Maryland, 20814, in the R-60 Zone.

The Board of Appeals considered Mr. Myers' letter at its Worksession on January 10, 2006. On a motion by Catherine G. Titus, seconded by Caryn L. Hines, with Wendell M. Holloway and Allison Ishihara Fultz in agreement and Donna L. Barron necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-862-B Petition of the Federation of American Societies for Experimental Biology, is re-opened to receive Allen Myers letter of **December 3, 2006** as Exhibit No. 46.




Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Case No. S-862-B and A-6008

page 2.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 15th day of March, 2007.

A handwritten signature in dark ink, reading "Katherine Freeman". The signature is written in a cursive style with a horizontal line underneath the name.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

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Case Nos. S-862-B and A-6008

**PETITION OF FEDERATION OF AMERICAN SOCIETIES
FOR EXPERIMENTAL BIOLOGY**

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted March 15, 2006)

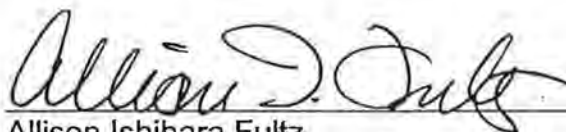
(Effective Date of Resolution: June 16, 2006)

The Board of Appeals has received a letter, dated February 27, 2006, from Jeff Yocum, Federation of American Societies for Experimental Biology (FASEB) Facilities Manager. Mr. Yocum submits the Annual Report for implementation of the Transportation Management Plan (TMP) required by Condition No. 3(e) of the Board of Appeals' December 28, 2001 opinion in Case No. S-862-A.

The subject property contains 11.44 acres of land on the west side of Rockville Pike between Pooks Hill Road and Alta Vista Road, in Locus Vitae Subdivision; located at 9650 Rockville Pike, Bethesda, Maryland, 20814, in the R-60 Zone.

The Board of Appeals considered the Annual Report at a Worksession on March 15, 2006. Board finds the report helpful and informative and that it satisfies the requirement of the Board's opinion and of the TMP. Therefore, on a motion by Caryn L. Hines, seconded by Wendell M. Holloway, with Donna L. Barron and Allison Ishihara Fultz, Chair in agreement, and Angelo M. Caputo necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-862-B is re-opened to receive Jeff Yocum's letter dated February 27, 2006, with attachments.

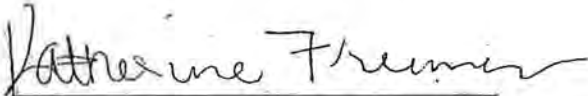


Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Case No. S-862-B and A-6008

page 2.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 16th day of May, 2006.



Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

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Rockville, Maryland 20850
(240) 777-6600

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Case Nos. S-862-B and A-6008

**PETITION OF FEDERATION OF AMERICAN SOCIETIES
FOR EXPERIMENTAL BIOLOGY**

OPINION OF THE BOARD

(Opinion Adopted May 11, 2005)

(Effective Date of Opinion: May 20, 2005)

Case No. S-862-B is an application for a modification to the special exception for an existing Private Educational Institution to permit: 1) Replacement of the Lee Building with a new building (as Phase Two); 2) Construction of an internal circular driveway between the new replacement building and existing parking structure; 3) A Phase Three 40,000 square-foot addition to the new building and an extension of the new parking structure to contain approximately 104 parking spaces; 4) An increase of 78 parking spaces on the Property as part of Phase Three, for a total of 512 spaces; 5) Also as part of Phase Three, an increase in the number of employees on the Property by 120 employees, to a maximum of 700; 6) Leasing of a portion of the special exception space to the Montgomery County Department of Economic Development for a non-profit incubator.

Case No. A-6008 is an application for the following height and setback variances:

The proposed renovation and expansion of the existing garage requires a 1.91 foot variance as it is within 52.25 feet of the side lot line. The required setback is 54.16 feet, in accordance with Section 59-C-1.323(b) (1).

The proposed construction of an accessory structure (4 – level parking garage) requires a 31.92 foot variance as it is within 52.25 feet of the side lot line. The required setback is 84.17 feet, in accordance with Section 59-C-1.326 (a)(2)(C).

The proposed construction of a new building, fifty-seven (57) feet in height requires a twenty-two (22) foot variance from thirty-five (35) feet height limit, in accordance with Section 59-C-1.327(a)

Case No. S-862-B and A-6008

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The two cases were consolidated and heard together.

Pursuant to Section 59-A-4.125 of the Zoning Ordinance, the Hearing Examiner for Montgomery County convened a public hearing on the application on November 19, 2004, and on January 25, 2005, issued a Report and Recommendation for approval of the modification and variance requests.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation together with the annual report from FASEB, dated January 24, 2005, at its Worksession on February 16, 2005. By Resolution of March 17, 2005, the Board remanded the case to the Hearing Examiner for clarification on two issues. First, with respect to the lease of space for a non-profit incubator: How much space will be leased? How many employees are anticipated for the incubator? What is the anticipated traffic impact of the non-profit incubator? Second, the Board notes that the modification application was filed prior to July 1, 2004, when the County Council abolished Policy Area Transportation Review (PATR) in the 2003-2005 Policy Element of the Annual Growth Policy. The Hearing Examiner did not apply PATR standards to the application, and the Board requests that the Hearing Examiner enunciate the relevant case law or legal standard to explain why PATR should not apply.

On April 27, 2005, the Hearing Examiner issued a Supplemental Report addressing the Board's questions, and reiterated his recommendation for approval of the modification, with amendments to the conditions of approval.

The subject property is in Locus Vitae Subdivision; located at 9650 Rockville Pike, Bethesda, Maryland, 20814, in the R-60 Zone.

Decision of the Board:

Special Exception Modification and Variances
Granted, Subject to Conditions Enumerated Below.

Requested Variances **Granted** Subject
To the Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Reports and Recommendations at its Worksession on May 11, 2005. The Board appreciates the thoroughness of each report. After careful consideration and review of the record, the Board adopts the two reports, and the Hearing Examiner's recommendation to grant the requested modification and variances.

THE VARIANCES

Section 59-G-3.1 of the Zoning Ordinance provides that the Board may grant petitions for variances as authorized in Section 59-A-4.11(b) upon proof by a preponderance of the evidence that:

1. *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the shape, size and topography of the FASEB Property combined with the history of the use and the existing structures on the Property create an extraordinary situation and condition peculiar to this piece of property that result in practical difficulty for the Applicant in seeking to modify its existing special exception use. In consideration of the shape and topography of the Subject Property and location of the existing structures and natural resources, the Board finds that the desirable solution for the expansion is to position the proposed structures adjacent to the existing administration building on the Property on the improved areas of the site, not to expand on the lawn, wooded areas or slopes on the southern portion of the Property. For the planned buildings to architecturally correspond to the existing building and provide the functionality necessary for FASEB, their heights, measured from the average ground level in front of both buildings, must be 57 feet, exceeding the R-60 zone height limit by 22 feet. [Exhibit No. 3, p. 13.]. The height variance is necessitated by the unusually steep slope of the land where the subject buildings are located. The steep slope changes the average grade so significantly that the height variance is needed even though the new building will be lower than the Lee Building it is replacing [See Exhibit No. 4(c)].

2. *Such a variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the proposed structures are the minimum necessary to satisfy the functional needs of FASEB for the expansion with respect to office, meeting and administrative space and parking areas. The proposed structures were intentionally positioned on existing impervious areas and adjacent to the existing structures to create the least disturbance to the landscaping, natural resources and slopes on the Property. The structures were designed to be architecturally compatible with the existing structures and will maintain harmony with the general character of the area. Further, the proposed structures will stand lower than the existing building on the Property.

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3. *Such a variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the Master Plan specifically recommends the continuance of the FASEB special exception on the Property because it is a long-term, stable use that is a community resource. Further, the Master plan recognizes that FASEB is one of the special exceptions that might experience needs for expansion.

4. *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that granting the requested variances will not be detrimental to the use and enjoyment of adjoining and neighboring properties primarily because the position and design of the proposed structures creates minimal interruption of the views from adjacent properties. The proposed new building and parking structure are situated on areas of the Property that are currently parking areas, and will therefore maintain the landscaped views and the existing garden, wooded and lawn areas that are enjoyed by the employees and neighbors of the property.

The Board finds that the height of the proposed building and parking structure will be lower than the existing building and screened from the view of the adjacent single-family residential properties due to the natural screen created by the topography and wooded areas of the Property. The existing landscaped border along the edges of the Property will be maintained. The residential elements of the building facade will create an aesthetically pleasing view for visitors to the Property and for travelers along Rockville Pike, although the existing screening along Rockville Pike is extensive.

Therefore, based upon the foregoing, on a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Wendell M. Holloway and Allison Ishihara Fultz, Chair in agreement, and Donna L. Barron necessarily absent, the Board adopts the Reports and Recommendations of the Hearing Examiner and **grants** the requested modification and variances subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiner's reports and in the opinion of the Board.
2. All terms and conditions of the approved special exceptions shall remain in full force and effect, except as modified by the Board as a result of these Modification Petitions.
3. Petitioner shall conform with Chapter 50 (Subdivision Regulations) of the County Code.

4. Petitioner shall comply with Local Area Transportation Review requirements, as follows:

a. Limit the development to an expansion of existing office building to an additional 40,000 square feet of office use for a total of 207,312 square feet, that includes a previously approved 50,000 square feet of office.

b. Install three additional bus shelters along northbound Rockville Pike (MD 355) in the vicinity of the campus or other locations in the Bethesda-Chevy Chase area, for a total of four shelters. The three new bus shelters are required to mitigate the additional one and two CLVs in the morning and evening peak hours, respectively, at the intersection of MD 355 and Cedar Lane, which will likely result from the proposed new office space and additional employees during Phase 3. The bus stops on Rockville Pike and other nearby locations should conform to the requirements of the Montgomery County Department of Public Works and Transportation (DPWT).

c. Continue use of the Transportation Management Plan (Exhibit 9(a)).

5. Petitioner shall comply with Chapter 22A (Forest Conservation), as follows:

a. A final Tree Save Plan (FCP) shall be submitted to M-NCPPC prior to DPS approval of the sediment and erosion control plan or any clearing, grading or land disturbance on site.

b. The final Stormwater Management (SWM) and Sediment and Erosion Control plans shall be approved by the Department of Permitting Services, and be consistent with the final Tree Save Plan. Full water quality and quantity control shall be expected to protect the integrity of the Lower Rock Creek watershed.

c. The Tree Save Plan shall address all of the following issues before approval will be granted:

1) A detailed Tree Save Plan shall be prepared by an ISA certified arborist and shall include the delineation and determination of significant impacts (>30%) to the critical root zones of all trees over 24" dbh that will be impacted by construction activities.

2) Mitigation may be required for any specimen trees, if encroachment on the critical root zone of 30% or more is avoidable. Mitigation may be required for the removal of specimen trees up to a rate of 2:1 on an inch-per-inch basis. Potential planting areas shall be shown on the FCP.

6. Petitioner shall not exceed the 580 employees approved in S-862-A unless and until it has completed construction of the garage extension planned for Phase 3 and

Case No. S-862-B and A-6008

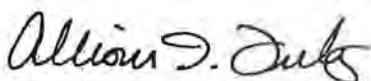
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opened it for use, in accordance with the waiver of parking standards, hereby approved pursuant to Zoning Ordinance §59-E-4.5, which permits it to have fewer than the number of parking spaces required in §59-E-3.7. After the garage extension becomes operational, Petitioner shall not exceed 700 employees. All caps on the numbers of employees include employees and other staff of the proposed non-profit incubator, as well as Petitioner's own employees and staff.

7. In light of the anticipated increase in the number of FASEB employees, the Transportation Coordinator under the Transportation Management Plan shall report any instances of queuing on public streets awaiting entry to the FASEB campus or reports of parking on public streets by FASEB employees in his/her annual report to the Board of Appeals. If the Board determines that the increase in FASEB employees is creating an adverse condition on the nearby public streets, it may revoke the waiver of parking standards, in whole or in part, or require FASEB to otherwise remedy the problem.

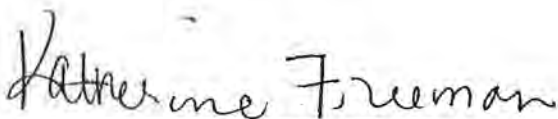
8. All special exception modifications are approved for the normal 24 month statutory period specified in Zoning Ordinance §59-A-4.53(b), with Petitioner retaining the right under Zoning Code §59-A-4.53(c) to seek one year extensions of such approvals, if implementation is not commenced within 24 months after approval.

9. Petitioner must obtain subdivision approval as a condition of the Board's approval of this special exception amendment.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 20th day of May, 2005.



Katherine Freeman
Executive Secretary to the Board

Case No. S-862-B and A-6008

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NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

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Case No. S-862-B and Case No. A-6008

**PETITION OF FEDERATION OF AMERICAN SOCIETIES
FOR EXPERIMENTAL BIOLOGY**

RESOLUTION TO REMAND CASE TO HEARING EXAMINER

(Resolution Adopted February 16, 2005)

(Effective Date of Resolution: March 17, 2005)

Case No. S-862-B is an application for a modification to the special exception for an existing Private Educational Institution to permit: 1) Replacement of the Lee Building with a new building (as Phase Two); 2) Construction of an internal circular driveway between the new replacement building and existing parking structure; 3) A Phase Three 40,000 square-foot addition to the new building and an extension of the new parking structure to contain approximately 104 parking spaces; 4) An increase of 78 parking spaces on the Property as part of Phase Three, for a total of 512 spaces; 5) Also as part of Phase Three, an increase in the number of employees on the Property by 120 employees, to a maximum of 700; 6) Leasing of a portion of the special exception space to the Montgomery County Department of Economic Development for a non-profit incubator. Case No. A-6008 is an application for height and setback variances. The two cases were consolidated and heard together.

Pursuant to Section 59-A-4.125 of the Zoning Ordinance, the Hearing Examiner for Montgomery County convened a public hearing on the application on November 19, 2004, and on January 25, 2005, issued a Report and Recommendation for approval of the modification request.

The subject property is in Locus Vitae Subdivision; located at 9650 Rockville Pike, Bethesda, Maryland, 20814, in the R-60 Zone.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation together with the annual report from FASEB, dated January 24, 2005, at its Worksession on February 16, 2005. After careful consideration and a review of the record in the case, the Board finds that it requires additional information before it can reach a final decision on the modification. The Board remands the case to the Hearing Examiner for clarification on two issues. First, with respect to the lease of space for a non-profit incubator: How much space will be leased? How many employees are anticipated for the incubator? What is the anticipated traffic impact of the non-profit incubator? Second, the Board notes that the modification application was

Case No. S-862-B and A-6008

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filed prior to July 1, 2004, when the County Council abolished Policy Area Transportation Review (PATR) in the 2003-2005 Policy Element of the Annual Growth Policy. The Hearing Examiner does not apply PATR standards to the application, and the Board requests that the Hearing Examiner enunciate the relevant case law or legal standard to explain why PATR should not apply.

On a motion by Angelo M. Caputo, seconded by Donna L. Barron, with Louise L. Mayer and Allison Ishihara Fultz, Chair in agreement and Wendell M. Holloway necessarily absent:

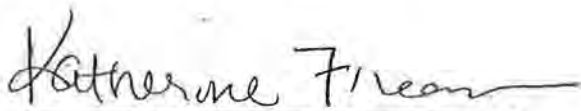
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No S-862-B and A-6008, Petition of Federation of American Societies for Experimental Biology is re-opened to receive the Annual Report, dated January 24, 2005, from FASEB; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that Case No S-862-B and A-6008, Petition of Federation of American Societies for Experimental Biology, is remanded to the Hearing Examiner for clarification of the issues raised in this Resolution..



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 17th day of March, 2005.



Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Case No. S-862-B and A-6008

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Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

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**Case No. S-862-A
and
Case No. A-5599**

**PETITION OF THE FEDERATION OF AMERICAN
SOCIETIES FOR EXPERIMENTAL BIOLOGY**

RESOLUTION TO CONSOLIDATE CASES
(Resolution Adopted July 14, 2004)
(Effective Date of Resolution: August 12, 2004)

The Board of Appeals has received a letter, dated June 18, 2004, from Robert H. Metz, Esquire and Anne C. Martin, Esquire, on behalf of the Federation of American Societies for Experimental Biology (FASEB). Mr. Metz and Ms. Martin request consolidation of a special exception modification application and a related variance application

The subject property is Parcels 710, 802, 817, Outlot A and parts of Lot 8, Block A and Lot 10, Block E, Maplewood Estates Subdivision, located at 9650 Rockville Pike, Bethesda, Maryland, in the R-60 Zone.

The Board of Appeals considered Mr. Metz and Ms. Martin's request at its Worksession on July 14, 2004. Rule 1.7, Consolidation of cases, of the Board of Appeals Rules of Procedure [Resolution 12-865, October 27, 1992] provides:

If an applicant files more than one special exception, variance or administrative appeal involving the same property, the Board may, on written request, grant:

- a. consolidation of cases; and
- b. payment of only the highest applicable fee.

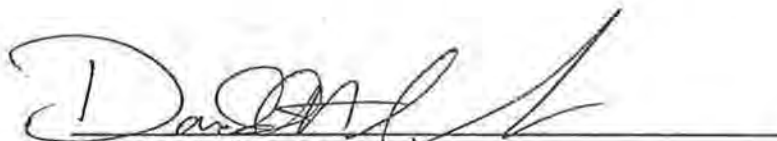
The Board finds that both applications pertain to the same property, and that the request to consolidate can be granted in accordance with the Rule 1.7 of the Board's Rules of Procedure. Therefore, on a motion by Angelo M. Caputo, seconded by Louise

Case No. S-862-A & Case No. A-5599

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L. Mayer, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr.,
Chairman in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland
that the request to consolidate Case No. S-862-B, Petition of the Federation of
American Societies for Experimental Biology and Case No. A-6008, Petition of the
Federation of American Societies for Experimental Biology is **granted**.



Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 12th day of August, 2004.



Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

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**Case No. S-862-A
and
Case No. A-5599**

**PETITION OF THE FEDERATION OF AMERICAN
SOCIETIES FOR EXPERIMENTAL BIOLOGY**

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted November 26, 2003)
(Effective Date of Resolution: March 8, 2004)

The Board of Appeals has received a letter, dated November 6, 2003, from Robert H. Metz, Esquire and Anne C. Martin, Esquire, on behalf of the Federation of American Societies for Experimental Biology. Mr. Metz and Ms. Martin request modification of the special exception. Specifically the request seeks approval to remove a previously proposed roof screen on the new administrative building, and to re-locate additional parking spaces approved in the prior, major modification of the special exception, further away from neighboring properties on Alta Vista Terrace to areas internal to the property and in areas behind the building. They submit a Revised Elevation Plan and Revised Site Plan which depict the requested changes. FASEB has existed on the Subject Property since 1954 and has been granted special exceptions both as a scientific society, and when that category was eliminated from the Zoning Ordinance, as a private educational institution. In an Opinion dated December 28, 2001, the Board granted Case No. S-862-A, a major modification to the special exception.

The subject property is Parcels 710, 802, 817, Outlot A and parts of Lot 8, Block A and Lot 10, Block E, Maplewood Estates Subdivision, located at 9650 Rockville Pike, Bethesda, Maryland, in the R-60 Zone.

The Board of Appeals considered the modification request at its Worksession on November 26, 2003. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the effects of removing the roof screen and re-locating parking spaces will be mostly internal to the site, and will, if anything reduce the impact of the use on surrounding properties, and will not change its effect on traffic. Therefore, on a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-862-A is re-opened to receive Robert H. Metz and Anne C. Martin's letter dated November 6, 2003, with attachments; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception is granted; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, except as modified by the Board of Appeals, remain in effect.



Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of March, 2004.



Katherine Freeman
Executive Secretary to the Board

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
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777-6600

**Case No. S-862-A
and
Case No. A-5599**

**PETITION OF THE FEDERATION OF AMERICAN
SOCIETIES FOR EXPERIMENTAL BIOLOGY**

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted March 5, 2003)

(Effective Date of Resolution: April 24, 2003)

The Board of Appeals has received correspondence, dated February 6, 2003, from Jeff Yocum, Facilities Manager for the Federation of American Societies for Experimental Biology (FASEB). Pursuant to the Board of Appeals' Resolution dated February 14, 2003, Mr. Yocum requests that his letter be considered "a revised version of the Annual Report that FASEB originally forwarded on December 31, 2002." The Transportation Management Plan adopted in the Board's December 28, 2001 decision modifying the special exception requires an annual report to the Board concerning implementation of that plan.

The Subject Property contains 11.44 acres of land located on the west side of Rockville Pike between Pooks Hill Road and Alta Vista Road in the R-60 zone.

The Board of Appeals considered Mr. Yocum's letter at its Worksession on March 5, 2003. The Board finds that the Revised Annual Report more than adequately satisfies the requirements of the Transportation Management Plan. Therefore,

On a motion by Donna L. Barron, seconded by Allison Ishihara Fultz, with Louise L. Mayer, Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-862-A is re-opened to receive Jeff Yocum's letter of February 6, 2003.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
This 24th day of April, 2003.



Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

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for
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**Case No. S-862-A
and
Case No. A-5599**

**PETITION OF THE FEDERATION OF AMERICAN
SOCIETIES FOR EXPERIMENTAL BIOLOGY**

**RESOLUTION TO RE-OPEN THE RECORD
AND REQUIRE SUPPLEMENTAL INFORMATION**

(Resolution Adopted January 22, 2003)

(Effective Date of Resolution: February 14, 2003)

The Board of Appeals has received correspondence, dated December 31, 2002, from Jeff Yocum, Facilities Manager for the Federation of American Societies for Experimental Biology (FASEB). Mr. Yocum's letter is a report on FASEB's efforts to mitigate traffic impacts on the surrounding community and is in response to Condition No. 3(e) of the Board's December 28, 2001 Opinion, which granted a modification to the special exception. Condition No. 3(e) requires implementation of the goals and policies of the Transportation Management Plan (TMP) submitted with the modification application [Exhibit No. 60]. The Transportation Management Plan requires formation of a Community Council, with the Peoples' Counsel for Montgomery County as an *ex officio* member.

The Subject Property contains 11.44 acres of land located on the west side of Rockville Pike between Pooks Hill Road and Alta Vista Road in the R-60 zone.

The Board of Appeals considered Mr. Yocum's letter at its Worksession on January 22, 2003. Martin Klauber, Esquire, Peoples' Counsel for Montgomery County, appeared at the Worksession. Mr. Klauber informed the Board of Appeals that contrary to the requirements of the TMP and the Board's Opinion granting the special exception modification, the Community Council held two meetings prior to issuance of the report without informing Mr. Klauber. The Board finds that exclusion of the Peoples' Counsel from meetings of the Community Council is contrary to Condition No. 3(e) of the December 28, 2001 Opinion. The Board is extremely concerned that FASEB would ignore an express condition of the modification opinion, and finds that the report is deficient. Therefore, by consensus:

Case No. S-862-A & Case No. A-5599

Page 2.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-862-A is re-opened to receive Mr. Yocum's letter of December 31, 2002; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Board requires that FASEB submit the minutes of the meetings of the Community Council to the Board; and

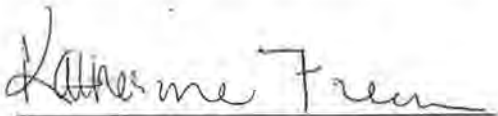
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Board requires a written explanation from FASEB for why the Peoples' Council was not informed of the first two meetings of the Community Council; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that upon receipt of the required information the Board will return this matter to its Worksession agenda, and may, at that time consider additional conditions to the modification approval.



Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 14th day of February, 2003.



Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Case No. S-862-A & Case No. A-5599

Page 3.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

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and
Case No. A-5599**

**PETITION OF THE FEDERATION OF AMERICAN
SOCIETIES FOR EXPERIMENTAL BIOLOGY**

OPINION OF THE BOARD

(Hearings held June 20, July 31, and October 10, 2001)

Effective Date of Opinion: December 28, 2001

Case No. S-862-A is a petition filed by the Federation of American Societies for Experimental Biology ("FASEB" or the "Applicant") for a major modification to an existing private educational institution use, pursuant to Section 59-G-2.19 of the Montgomery County Zoning Ordinance (being Chapter 59, Montgomery County Code, 1994, as amended) hereinafter the "Zoning Ordinance".

Case No. A-5599 is a petition filed by FASEB pursuant to Section 59-G-3.1 of the Zoning Ordinance to permit a variance from Section 59-C-1.327 of the Zoning Ordinance of 11'4" for the construction of a new building and a 13' for a new parking structure. Section 59-C-1.327 allows a maximum building height of 35 feet in the R-60 zone.

Decision of the Board: Special Exception S-862A GRANTED, subject to conditions enumerated below.

Variance A-5599 GRANTED, subject to conditions enumerated below.

Hearings were held on June 20, 2001, July 31, 2001, and October 10, 2001, pursuant to Section 59-A-4.11(a) of the Zoning Ordinance. Robert H. Metz and Anne C. Martin represented the Applicant. Appearing on behalf of the Applicant were Dr. Sidney Golub, Executive Director of FASEB; Barry Dunn, Architect; Steve Crum, civil engineer; Jeffrey Yocum, facilities manager for FASEB; and Kevin Sitzman, a traffic and transportation engineer.

Sharon Constantine, representing the Maplewood Citizens Association, testified in support of the application, subject to the implementation of the Transportation Management Plan (Exhibit No. 60) and the recommendations of the Maryland-National Capital Park & Planning Commission ("M-NCPPC"), except for the sidewalk along Alta Vista Terrace. Eleanor Rice, representing the Locust Hill Citizens Association, originally testified in opposition to the application at the June 20 and July 31, 2001 hearings and presented testimony regarding the volume and difficulties making U-turns on Rockville Pike near the site, but testified in support of the application at the October 10th hearing. The Board received five (5) letters in support of the application. (Exhibit Nos. 30, 34, 53(b), 56, 57).

Cynthia Cicalese appeared representing herself and the Maplewood Citizens Association, and testified in support of the application, subject to the recommendations of the M-NCPPC and the implementation of the Transportation Management Plan. (Exhibit No. 60).

Eric Friedman, representing himself, and Judith Radcliff, representing herself, testified expressing concern about the additional traffic on Rockville Pike and requested that the Board not approve the application unless conditioned upon installation of a traffic light at Bellvue Drive. Waltraut Dube, representing herself, read a petition signed by Locust Hills residents requesting a delay in the Board's action on FASEB's application. (Exhibit Nos. 18.10 through 18.20). In addition the Board received eighteen letters in opposition and/or expressing concern about traffic generation. (Exhibit Nos. 17 (a)-(c), 18.1 through 18.9, 32, 33, 36, 47, 49, and 51).

Representatives from the M-NCPPC Technical Staff also participated in the hearings, including: William R. Landfair, zoning analyst in the Community-Based Planning Division, and Shariar Etemadi, transportation planner in the Transportation Planning Division.

Martin Klauber, the People's Counsel of Montgomery County, Maryland, also participated in the public hearing. Mr. Klauber recommended that the Board approve the requested special exception and variances, subject to the conditions enumerated below.

EVIDENCE PRESENTED

Both Application No. S-862-A and Application No. A-5599 were filed on March 8, 2001. The evidence in support of both applications was presented at the consolidated hearings. The evidence therefore relates to both applications and is integrated below.

1. The Subject Property contains 11.44 acres of land located on the west side of Rockville Pike between Pooks Hill Road and Alta Vista Road. The Subject Property is in the R-60 zone. The property is currently improved with a 4 ½ story brick and stone

administration building, two smaller stone buildings, a one-story frame residence and a storage barn. Access to the property is provided by two driveways on Rockville Pike and one driveway on Alta Vista Terrace, located at the rear of the property. The property is served by internal private driveways and has approximately 281 parking spaces. (Exhibit Nos. 5, 6(a), and 22).

2. Adjoining the property to the north are the Bethesda Hill Apartments and the Pooks Hill Towers, both in the R-H zone (Multiple-Family, High-Rise Planned Residential). Further to the north are the Pooks Hill Marriott and the Promenade Apartments located in the H-M and R-H zones, respectively. Across Rockville Pike to the east is the Locust Hills Estates residential subdivision in the R-60 zone. The Maplewood Estates residential subdivision is located to the south and west of the property and is also in the R-60 zone. (Exhibit Nos. 11 and 21).

3. The Subject Property is irregularly shaped and contains extensive landscaping on a sloping terrain. (Exhibit Nos. 6(a), 15 (c), 21, 22, and 31).

4. FASEB is an organization of independent member societies serving biomedical and life sciences. FASEB facilitates activities among member societies and coordinates the exchange of information on biological research through educational meetings and publications. FASEB represents 21 professional organizations consisting of over 60,000 medical researchers. (Exhibit Nos. 5 and 29).

5. FASEB has existed on the Subject Property since 1954 and has been granted special exceptions both as a scientific society, and when that category was eliminated from the Zoning Ordinance, as a private educational institution.

6. No laboratory experimentation is conducted on the Subject Property, nor is there any major printing on-site. There are occasional conferences of member societies that attract a maximum of 100 participants, most of whom are from out of town and do not use on-site parking. The Subject Property is not a meeting site for large conferences. There are currently 330 employees, including FASEB employees and employees of the member societies, working on the Subject Property.

7. The Subject Property is in the Bethesda-Chevy Chase Master Plan planning area, Approved and Adopted in April 1990. The Master Plan supports the existing R-60 zone for the property and special educational institutions are allowed by special exception in this zone. The Master Plan specifically recommends FASEB's continued use of the Subject Property because it is considered to be a stable, long-term community resource. The Master Plan further recognizes that new development on the site may occur and that this will require a special exception modification to protect the setting of the use and maintain compatibility with nearby properties. (Exhibit Nos. 10 (a)-(c)).

8. In Special Exception Modification S-862-A, the Applicant proposes the construction of a 50,000 square foot building expansion on the east side of the existing administration building adjacent to Rockville Pike, a four-story 220-space parking structure along the west (rear) side of the existing administration building and additional parking spaces in the rear of the Subject Property, and the addition of 250 employees (Exhibit Nos. 5, 6 (b)-(c), 23, 25, and 26). An atrium area will connect the two buildings and provide an entranceway for the entire facility and connect the buildings visually. (Exhibit Nos. 7(b), 7(d), 24 and 25). The parking structure will also be connected to the existing administration building via an accessway.

9. Mr. Barry Dunn, testifying on behalf of the Applicant as an expert in architecture, stated that although the new building and parking structure will be at the same level or lower than the varying height of the existing building (Exhibit Nos. 7(b)-(d), and 24), a 11'4" height variance is required for the construction of a new building and a 13' variance is required for the new parking structure because they exceed the building height maximum of 35 feet in the R-60 zone. Mr. Dunn further testified that the average grade calculation and consequently the variance requests were revised after the initial filing of the Application due to instruction from the M-NCCPC Technical Staff and the Department of Permitting Services Zoning Staff. (Exhibit No. 19 at page 18).

10. Mr. Dunn further stated that the shape of the proposed building, the surface materials and residential detailing of the building and the parking structure were designed to reduce the mass of the structures and make them compatible with the existing buildings and neighborhood. (Exhibit Nos. 7 (a)-(d), 23, 24, 25 and 26).

11. Dr. Sidney Golub, the Executive Director of FASEB, testified that the utilization of the new building will be functionally the same as the existing building. The existing facility is at 100 percent occupancy and FASEB would like to renovate the existing building to adequately accommodate the existing employees and make room for 250 more employees.

12. The site of the new building is presently a surface parking lot. The proposed building will be four stories in height with a lower fifth level created by the descending slope of the property to accommodate a parking area. The parking spaces on the first level of the new building and the proposed parking structure, also on a site that is an existing parking lot, will provide spaces to accommodate the loss of some of these parking spaces as well as provide for the parking needs of 250 additional employees. (Exhibit No. 6(b)-(c), 23, 25, 59). There will be 18 new parking spaces created in the rear of the Subject Property.

13. Jeffrey Yocum, the Facilities Manager for FASEB, testified that he conducted a parking space study to evaluate the parking needs of FASEB and the projected needs and that a total of 417 parking spaces would be sufficient with the addition of the proposed building and 250 employees. At the request of the Board, the Applicant

revised the parking space plan to provide an additional 15 spaces, for a total of 432 parking spaces. (Exhibit No. 59).

14. Dr. Golub, Mr. Yocum and Mr. Dunn all testified that a goal of designing the location of the proposed expansion was to preserve the existing green space on the Subject Property consisting of lawn, gardens and wooded areas (Exhibit No. 6(a), 22, 23, and 31); and that the new building and parking structure were located on current paved parking areas and designed to utilize the existing sloping topography to achieve the maximum height without exceeding the height of the existing structure. (Exhibit Nos. 6(b)-(c), 7 (b)-(d), 23, 24 and 25).

15. Mr. Dunn described the Lighting Plans (Exhibit Nos. 15(b), 15(d), and 58) for the fixtures and illumination for the parking garage lighting and the lighting proposed on the new building. The parking garage lighting will consist of metal halite lighting on 12 foot poles and the exterior building lighting will consist of a shaded light source approximately 10 feet above the finished grade. The photometric plans for the parking lot lighting and the exterior building lighting indicated that the proposed lighting would not reach the property line, and not cause any illumination off the Property.

16. Mr. Steve Crum, testifying on behalf of the Applicant as an expert in civil engineering, described the unique shape of the property and the sloping topography throughout the Subject Property, particularly in relation to the adjacent single-family residential properties. (Exhibit Nos. 6(a)-(b), 21, 22, and 31). Mr. Crum additionally stated that the proposed Landscaping Plan was designed to compliment the existing landscaping on the Subject Property. (Exhibit No 15(c)).

17. Mr. Kevin Sitzman, testifying on behalf of the Applicant as an expert in traffic engineering, analyzed the traffic impact of the proposed expansion on the area transportation system. In his original analysis, Mr. Sitzman added the trips that would be generated by the proposed 50,000 square foot expansion to the existing and background traffic and evaluated a total of eight intersections that were selected by M-NCPPC Technical Staff. All of the intersections except the intersection of Rockville Pike and Cedar Lane operate within the congestion standard of 1,650 Critical Lane Volume ("CLV"). The trips generated by the proposed expansion would add one CLV to this intersection. In order to mitigate the impact of the site trips at the intersection of Rockville Pike and Cedar Lane, the Applicant, at the request of the Technical Staff, proposed to install a bus shelter at one of the bus stops along Rockville Pike within ¼ mile of the site. (Exhibit No. 8).

18. Pursuant to the request of the M-NCPPC Technical Staff for the response to the questions raised by the Board at the July 31st hearing (Exhibit No. 50), Mr. Sitzman conducted additional transportation studies including analyses of the existing and projected employee travel patterns, the effects of the limitation or elimination of vehicular access to Alta Vista Terrace, the effects of the Transportation Management

Plan and researching the Rockville Pike accident history. (Exhibit No. 54, Attachment A). Part of Mr. Sitzman's analysis included a comparison reflecting the trip generation rates of a typical office building the same size as the existing FASEB facility and the FASEB building, which concluded that FASEB's current trip generation is 35 to 38 percent lower than what is expected of an office building of a similar size in the Bethesda CBD.

19. In response to the concerns of the nearby residents about existing and potential traffic impact on the neighborhood, particularly the residents along Alta Vista Terrace adjacent to the rear access to the Subject Property, the M-NCPPC Technical Staff, the Montgomery County Planning Board and the Board of Appeals directed the Applicant to implement additional measures to mitigate the transportation impact of the requested modification, in addition to the bus shelter. The Applicant agreed to install a gate at the rear access that will limit vehicular ingress and egress to no more than 80 FASEB employee cardholders and implement a Transportation Management Plan to provide guidelines and policies for managing the following elements of its transportation system: access and circulation, parking policies, community relations (including the formation of a Community Council), overall safety considerations and traffic mitigation. (Exhibit Nos. 40, 60, and 61).

20. Mr. Yocum testified that FASEB drafted the Transportation Management Plan in coordination with M-NCPPC Technical Staff, Martin Klauber, and representatives from the Maplewood Citizens Association. (Exhibit No. 40). In response to the concerns raised by the Board at the July 31st hearing, the Applicant further revised the Transportation Management Plan to include trip generation goals, to increase the meetings of the Community Council, to monitor parking and to require an annual report to the Board of Appeals. (Exhibit Nos. 60 and 61). At the October 10th hearing, the Applicant agreed to include a representative from Locust Hill Citizens Association on the Community Council, to provide a transportation survey upon a request of three Community Council members, to make the People's Counsel an ex officio member of the Community Council and to conduct the first Community Council meeting prior to construction.

21. Sharon Constantine, representing the Maplewood Citizens Association, submitted testimony that the community considered the Applicant a "good neighbor" and that in addition to agreeing to the additional measures in the Transportation Management Plan, the Applicant had installed requested signage prohibiting commercial vehicles from using the rear access on Alta Vista Terrace during the interim period of the hearings on this Application. (Exhibit No. 53(b)).

22. In response to the Montgomery County Planning Board's recommendation that FASEB consider providing a paved connector on the east side of Alta Vista Terrace, all of the affected residents on Alta Vista Terrace stated that they did not want FASEB to provide a paved connector.

THE PLANNING BOARD AND TECHNICAL STAFF RECOMMENDATIONS

1. The Montgomery County Planning Board (the "Planning Board") in its letter dated June 18, 2001, and the Technical Staff in its Reports dated June 8, 2001 and October 5, 2001, (Exhibit Nos. 27, 19 and 54 respectively), recommended approval of the special exception modification application and the variances, subject to conditions. The M-NCPPC Technical Staff evaluated the application for compliance with the general and specific standards required by the Zoning Ordinance for approval. The Technical Staff analysis was conducted under the standards for evaluation pertaining to inherent and non-inherent adverse impacts as required by Section 59-G-1.21 of the Zoning Ordinance.
2. The Planning Board recommended approval of Variance Petition No. A-5599 and agreed with the Technical Staff that there is adequate hardship which requires keeping the footprint of the buildings to a minimum, and preserving as much green buffer and existing slopes as possible.
3. The Planning Board recommended approval of Special Exception Modification No. S-862A and Variance Application A-5599 subject to the following conditions:
 1. The Applicant is bound to comply with all submitted statements and plans.
 2. Approval of Variance Petition No. A-5599 by the Board of Appeals.
 3. Conformance with Chapter 50 (Subdivision Regulations) of the County Code.
 4. Compliance with the following conditions as part of the Adequate Public Facilities test for transportation requirements:
 - a. Limit the proposed expansion to the construction of a 50,000 square foot building, a parking structure and a maximum of 250 new employees.
 - b. Dedicate 60 feet from the centerline of Wisconsin Avenue to provide a total of 120 feet right-of-way as recommended in the Bethesda-Chevy Chase Master Plan.
 - c. Install a bus shelter at one of the existing bus stops on Rockville Pike within ¼ mile of the site, conforming to the requirements of the Montgomery County Department of Public Works and Transportation (DPWT).

- d. Consider a paved connector along the east side of Alta Vista Terrace, with the permission of the three affected residents living on that street.
 - e. Erect immediately a gate at the rear entrance activated by access cards distributed to a maximum of 80 employees to limit vehicular traffic on Alta Vista Terrace during the am and pm traffic periods. An electronic record of those with access to the gate will be provided annually to the community. Commercial and construction traffic are strictly prohibited from using the rear entrance.
 - f. Provide a transportation system management plan that enhances the safe and efficient traffic circulation on-site (including the possibility of providing more direct access to Pooks Hill Road) as well as increasing use of transit, carpooling and vanpooling and public transportation opportunities.
5. Approval by M-NCPPC Technical Staff of a tree save plan for any specimen or significant trees.
 6. Compliance with County Department of Permitting Services requirements for stormwater management.
4. On October 5, 2001, the Technical Staff submitted a Additional Staff Analysis of Traffic Impact (Exhibit No. 54) in response to the Board's August 7, 2001 request for further evaluation of the transportation effects of the proposed special exception modification. To address all of the concerns that the Board expressed at the July 31st hearing, the Technical Staff requested additional analysis of traffic patterns and historical safety data from the Applicant. In the Additional Staff Analysis of Traffic Impact and at the October 10th hearing, the Technical Staff addressed the Board's questions and community concerns addressing the suitability of trip generation rates, the review of traffic distribution and assignments for site-generated trips in light of the testimony, the impact of site-generated traffic on residential streets, the effects of rear-access gate limitation or closure on staff recommendations, the effectiveness of the Transportation Management Plan and the interpretation of the area roadway network as a non-inherent effect. (Exhibit No. 54). The Technical Staff concluded that the additional analysis did not change the recommendations and conditions of approval stated in the previous Technical Staff report. (Exhibit No. 19).

FINDINGS OF THE BOARD

Section 59-G-1.2.1 Standard for Evaluation

A special exception must not be granted absent the findings required by the Article. In making these findings, the Board of Appeals...must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood

at the proposed location, irrespective of adverse effects that use might have is established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The Board finds that the Applicant's existing use and proposed modification is unique from most educational institutions because it is primarily an administration facility and lacks inherent operational characteristics, such as buses and traffic transporting children, playgrounds and athletic fields, and particular hours of operation, noise and activity. Large, institutional buildings are inherent characteristics of a private educational institution use. The proposed additional building and parking structure will be consistent with the size, scale and scope of the existing improvements that have been part of the special exception use for 47 years and FASEB has become an integral part of the neighborhood and the community. Although the new structures will exceed the height standard for the zone, they will be lower than the existing administration building and will minimize land disturbance. Consequently, they are not a non-inherent adverse effect that warrants denial.

The Board agrees with the Technical Staff finding that although the characteristics of the adjacent roadway network affect travel patterns, these do not constitute a non-inherent adverse effect because the additional traffic generated will not create an adverse impact.

General Conditions

The General Conditions contained in Section 59-G-1.21 of the Zoning Ordinance provide that a special exception may be granted only after the Board makes specific findings.

A special exception may be granted when the Board, the Hearing Examiner, or the *District Council*, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

1. *Is a permissible special exception in the zone.*

The Board finds that the use is a permitted Special Exception use in the R-60 Zone. The use currently exists, as it has for 47 years, pursuant to the grant of a special exception.

2. *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

The Board finds that the private educational institution use complies with the standards and requirements for a set forth in Section 59-G-2.19 of the Code.

3. *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Board finds that the use and proposed modification are consistent with the recommendations in the adopted and approved Bethesda- Chevy Chase Master Plan. Both the Planning Board and the Technical Staff found that the proposed modification to the Special Exception use to be consistent with the Master Plan and noted that the Master Plan considers FASEB a long-term, stable use that is viewed as a community resource. The Master Plan recognizes that new development or expansion may occur, requiring an amendment to the special exception and its conditions to ensure compatibility with nearby structures.

4. *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

The Board finds that the proposed modification to the special exception use to construct a 50,000 square foot new building and 220-space parking garage and add 250 more employees will not create an intensity of use or activities on the Subject Property that will alter the character of the neighborhood. The Applicant's use of the proposed new building will be identical to the existing special exception use. The Board finds that the new building and parking structure are situated on areas of the Property that are currently parking areas, and will therefore maintain the existing landscaped views, the existing garden, wooded and lawn areas, and fit within the unusual topographic conditions on the Subject Property. The scale of the new building is similar to the existing building and the mass of the building will be broken down by the diagonal elements and angles of the structure. The height of the proposed new building and

parking structure will be lower than the existing building and screened from the view of the adjacent single-family residential properties due to the topography of the Property and the existing and proposed landscaping. The Board finds that the proposed limit of vehicles using the rear access to Alta Vista Terrace to 80 employees and the guidelines and policies in the proposed Transportation Management Plan will ensure that the parking conditions and traffic created by the proposed modification and increase of employees will remain in harmony with the adjacent residential neighborhood.

5. Will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed new building, proposed parking structure and 250 additional employees will not be detrimental to the use, peaceful enjoyment, economic value or development of the surrounding property or general neighborhood because the structures are in harmony with the general character of the neighborhood, sufficient screening is maintained and provided and FASEB's operations are not in conflict with enjoyment of the surrounding properties.

6. Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the modification to the special exception use will not cause any objectionable noise, vibrations, fumes, odors, dust or physical activity at the Subject Property. The FASEB headquarters will continue to be used for education and administration. No laboratory experimentation is conducted on-site and no major printing is conducted on the Property. The Lighting Plans demonstrate that the lighting levels on the new building and parking structure will be shielded and at levels necessary for safety and security that will not create glare onto adjacent properties.

7. Will not, when evaluated with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The Board finds that the Master Plan specifically recommends the continuance of the special exception use on the Subject Property because it is a long-term, stable use that is a community resource.

8. *Will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The Board finds that the addition of the proposed building, additional employees parking facility and parking spaces to this existing long-term use will not adversely affect the health, safety, security, morals or general welfare of the residents, visitors, and workers in the area of the Subject Property. FASEB serves the public interest. The design of the new structures to preserve the green space on the Subject Property was intended to protect the general welfare of the employees, visitors and neighbors of the Applicant.

9. *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.*

The Board finds that the Subject Property will continue to be adequately served by public facilities. The Technical Staff concluded that pursuant to a Local Area Transportation Review analysis, the trips created by the proposed expansion will be accommodated by the existing public street system with the provision of a bus shelter within ¼ mile to the site. There is sufficient staging ceiling capacity available in the Bethesda/Chevy Chase policy area to accommodate the FASEB headquarters expansion. Further, the Board finds that although there are no existing guidelines for the capacity of the secondary residential roadways, the additional trips created will be adequately served by the existing neighborhood road network, especially in consideration of the transportation goals and policies set forth in the proposed Transportation Management Plan.

(i) *If the special exception requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

The Subject Property is not recorded by plat of subdivision, therefore the modification is subject to preliminary plan approval in accordance with Chapter 50 (Subdivision Regulations) of the County Code.

(ii) *With regard to the findings relating to public roads, the Board, the Hearing Examiner or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The Board finds that with the condition of approval for a card-activated gate to be installed at the rear entrance on Alta Vista Terrace and the

implementation of the proposed Transportation Management Plan, the special exception modification will have no detrimental effect on the safety of vehicular or pedestrian traffic. The installation of the gate will enforce the prohibition of commercial vehicles from using the Alta Vista Terrace access, which is already indicated through signage installed by the Applicant.

Section 59-G-2.19- Specific Conditions for a Private Educational Institution use

(a) A lot, tract or parcel of land may be allowed to be used for a private educational institution upon a finding by the Board:

1. *That such use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity or any other element which is incompatible with the environment and character of the surrounding neighborhood.*

The Board finds that the proposed structures and increase in employees on the Subject property will not constitute a nuisance because of traffic, noise or physical activity. The additional building and parking structure will be consistent with the size, scale and scope of the existing improvements. The Board finds that while the new building and parking structure height exceed the standard for the zone, they will be lower than that of the existing building and will minimize land disturbance. The Board finds that the existing street network can accommodate trips created by the proposed expansion with the mitigation provided by the construction of a bus shelter within ¼ mile of the site to enhance and encourage public transportation usage for the FASEB employees and nearby residents, by the implementation of the limitation on the rear access to no more than 80 employees, and by the implementation of the Transportation Management Plan.

2. *That, except for buildings and additions thereto completed, such use will be housed in buildings architecturally compatible with the other buildings in the surrounding neighborhood.*

The Board finds that the proposed new building and parking structure, while large structures, are designed to be compatible in scale and design with the existing buildings on the Subject Property and with the neighborhood. The size and scale of the new building will be mitigated by the diagonal elements and angles of the structure and the parking structure, which will not be visible from the residential properties adjacent to the Property, will also utilize architectural elements to reduce its impact.

3. *That such use will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community.*

The Board finds that the proposed building has been designed to complement the style, size, and appearance of the surrounding structures and will not change the present character or future development of the community.

4. *That such use can and will be developed in conformity with the following requirements:*

- a) ***Area, frontage and setback*** - *As shall be specified in a site plan of development approved by the board; provided that in no event shall such standards be less than the area regulations for the zone in which the private educational institution is proposed to be located; and*

The Board finds that the plans submitted by the Applicant demonstrate that proposed building and parking structure meet or exceed the applicable area, frontage and setback development standards of the R-60 zone. The building meets the 25-foot minimum setback requirement from the street. The building is similarly well over the 8-foot side yard and 20-foot rear yard setback requirements at 43 feet from the closest side property line and 375 feet from the rear property line.

The Board finds that the new parking facilities in the front of the Property located 44 feet from the front property line satisfy the 25 foot front yard setback. Additionally, the new parking facilities are within the 20 foot rear yard setback requirement. The new parking spaces located on the north side of the proposed building addition are well over the 10 foot side yard setback.

- b) ***Access, building coverage and screening*** - *as shall be specified in a site plan of development approved by the board; and*

The Board finds that the Subject Property will continue to provide safe efficient access and will continue to be attractively landscaped. The existing screening within and along the Property lines will be maintained and enhanced. The proposed new building, when combined with the existing structures that shall remain, will create a 13.8% building coverage on the Property, below the 35% maximum.

- c) ***Density*** - *Such density, being the allowable number of pupils per acre permitted to occupy the premises at any one time as shall be specified by the board upon consideration of the following factors:*

- 1) *Traffic patterns, including: a) Impact of increased traffic on residential streets; and b) existence of arterial highways; and*

- 2) *Noise or type of physical activity; and*

- 3) *Character, percentage and density of existing development and zoning within the community; and*
- 4) *Topography of the land to be used for the special exception;*
- 5) *Provided that a density in excess of 87 pupils per acre may only be permitted upon a finding....*

The Board finds that the Subject Property consists of 11 acres, and that the addition of the requested 250 employees to the current 330 employees will create a maximum population of 580 employees on the Property. This will achieve a density of 53 persons per acre, below the "87 students per acre" referenced in the Zoning Ordinance. As described in detail above, the Board finds that character of the use, the vehicular trips generated, noise created and activities conducted with the proposed modification will remain in harmony with the neighborhood character, subject to the conditions of approval.

(b) Site Plan

(1) In addition to submitting such other information as may be required, an applicant shall submit with his application a site plan of proposed development. Such plan shall show the size and shape of the subject property, the location thereon of all buildings and structures, the area devoted to parking and recreation facilities, all access roads and drives, the topography and existing major vegetation features, the proposed grading, landscaping and screening plans and such other features necessary for the evaluation of the plan.

The Applicant has submitted such a plan and the Board finds it acceptable. (Exhibit Nos. 6(b), 15(c), 23, 24, 25 and 59).

(2) No special exception, building permit or certificate of occupancy shall be granted or issued except in accordance with a site plan of development approved by the Board. In reviewing a proposed site plan of development the Board may condition its approval thereof on such amendments to the plan as shall be determined necessary by the Board to assure the compatible development which will have no adverse effect on the surrounding community, and which will meet all requirements of this chapter. Any departure from a site plan of development as finally approved by the Board shall be cause for revocation of the special exception, building permit or certificate of occupancy, in the manner provided by law.

- (c) Exemptions.** *The requirements of this section shall not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, which is located in a building or on premises owned or leased by any church or*

religious organization, the government of the United States, the State of Maryland or any agency thereof, Montgomery County or any incorporated village or town within Montgomery County.

Not applicable.

- (d) ***Nonconforming uses.*** *Nothing in this chapter shall prevent any existing private educational institution which obtained a special exception prior to the effective date of this chapter, from continuing its use to the full extent authorized under the resolution granting the respective special exception, subject, however, to division 59-G-4 of this chapter.*

Not applicable.

- (e) ***Public Buildings.*** *A special exception is not required for any private educational institution that is located in a building or on premises that have been used for a public school or that are owned or leased by Montgomery County. Any material expansion or change in use of a private educational institution located in a building or on premises that have been used for a public school or that are owned or leased by Montgomery County must be referred by the Executive to the Planning Board for review and comment before the expansion or change takes place.*

Not applicable.

Section 59-G-1.25 - County Need

The Board must find that for public convenience and service, a need exists for the proposed use due to an insufficient number of similar uses presently available to serve existing population concentrations in the County, and that the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood of the proposed use.

The Board finds that the Applicant's organization is unique to the County . The proximity of the Property to the public policy venues and opportunities of the Washington, D.C. area and the scientific research and member resources of the National Institutes of Health facility are both significant advantages to the FASEB community. The communication, research and administrative services the FASEB organization provides to its members are valuable community and national resources with a growing demand that has created the need for the requested expansion.

Variances

Section 59-G-3.1 of the Zoning Ordinance provides that the Board may grant petitions for variances as authorized in Section 59-A-4.11(b) upon proof by a preponderance of the evidence that:

1. *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the shape, size and topography of the FASEB Property combined with the history of the use and the existing structures on the Property create an extraordinary situation and condition peculiar to this piece of property that result in practical difficulty for the Applicant in seeking to modify its existing special exception use. In consideration of the shape and topography of the Subject Property and location of the existing structures and natural resources, the Board finds that the desirable solution for the expansion is to position the proposed structures adjacent to the existing administration building on the Property on the improved areas of the site, not to expand on the lawn, wooded areas or slopes on the southern portion of the Property. The Board recognizes that the existing administration building obtained special exception approvals in the past and that the building addition and parking structure were designed at a height slightly lower than the existing building. As indicated on the Architectural Site Plan and Site Section Plan, the topographical conditions of the Property create a downward slope toward the front of the Property on Rockville Pike. (Exhibit Nos. 22, 23 and 31). The grade at Rockville Pike and the grade at the western edge of the proposed parking structure differ by over 43 feet. Therefore, to create a building addition and parking structure that architecturally corresponds to the existing building and provides the functionality necessary for FASEB, the height of the building and structure will need to exceed the R-60 zone height limit by approximately 11'4" and 13' respectively.

2. *Such a variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the proposed structures are the minimum necessary to satisfy the functional needs of FASEB for the expansion with respect to office, meeting and administrative space and parking areas. The proposed structures were intentionally positioned on existing impervious areas and adjacent to the existing structures to create the least disturbance to the landscaping, natural resources and slopes on the Property. The structures were designed to be architecturally compatible with the existing structures and will maintain harmony with the general character of the

area. Further, the proposed structures will stand lower than the existing building on the Property.

3. *Such a variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the Master Plan specifically recommends the continuance of the FASEB special exception on the Property because it is a long-term, stable use that is a community resource. Further, the Master plan recognizes that FASEB is one of the special exceptions that might experience needs for expansion.

4. *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that granting the requested variances will not be detrimental to the use and enjoyment of adjoining and neighboring properties primarily because the position and design of the proposed structures creates minimal interruption of the views from adjacent properties. The proposed new building and parking structure are situated on areas of the Property that are currently parking areas, and will therefore maintain the landscaped views and the existing garden, wooded and lawn areas that are enjoyed by the employees and neighbors of the property.

The Board finds that the height of the proposed building and parking structure will be lower than the existing building and screened from the view of the adjacent single-family residential properties due to the natural screen created by the topography and wooded areas of the Property. The existing landscaped border along the edges of the Property will be maintained. The residential elements of the building facade will create an aesthetically pleasing view for visitors to the Property and for travelers along Rockville Pike, although the existing screening along Rockville Pike is extensive.

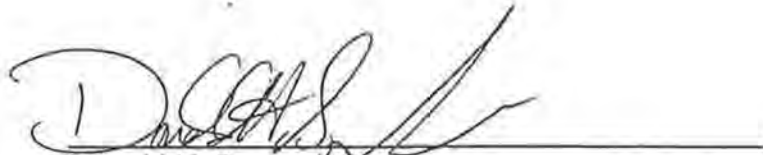
Therefore, based on the foregoing, the Board **GRANTS** the Special Exception in Case NO. S-862-A and the Variances in Case No. A-5599, subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record and the testimony of its witnesses and representations of its attorneys to the extent that such evidence and representations are identified in the Board's Opinion.
2. Conformance with Chapter 50 (Subdivision Regulations) of the County Code.
3. Compliance with the following conditions as part of the Adequate Public Facilities test for transportation requirements:

- b. Dedicate 60 feet from the centerline of Wisconsin Avenue to provide a total of 120 feet right-of-way as recommended in the Bethesda-Chevy Chase Master Plan.
 - c. Install a bus shelter at one of the existing bus stops on Rockville Pike within ¼ mile of the site, conforming to the requirements of the Montgomery County Department of Public Works and Transportation (DPWT).
 - d. Erect immediately a gate at the rear entrance activated by access cards distributed to a maximum of 80 employees to limit vehicular traffic on Alta Vista Terrace during the am and pm traffic periods. An electronic record of those with access to the gate will be provided annually to the community. Commercial and construction traffic are strictly prohibited from using the rear entrance.
 - e. Implement the goals and policies in the Transportation Management Plan (Exhibit No. 60) with the additional changes noted at the October 10th hearing, including: the addition of a representative of Locust Hill Citizens Association on the Community Council, the requirement to perform a traffic survey upon the request of 3 Community Council members, the People's Counsel position on the Community Council will be ex officio and the first meeting of the Community Council will be held prior to construction.
4. Approval by M-NCPPC Technical Staff of a tree save plan for any specimen or significant trees.
5. Compliance with County Department of Permitting Services requirements for stormwater management.


On a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Louise L. Mayer and Allison Ishihara Fultz, in agreement, the Board adopted the following Resolution. - Donald H. Spence, Jr., Chairman, was necessary absent and did not participate in this Resolution.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.



Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 28TH day of December, 2001.



Katherine Freeman
Executive Secretary to the Board

Note:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedures.

Any request for rehearing or reconsideration must be filed within fifteen (15) days of after the date the Opinion is mailed and entered into the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's rules of Procedure for specific instructions requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the 24 months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-862-A
(S-862, S-562, CBA-136, CBA-210,
CBA-1029, CBA-1547, CBA-1998, A-5599)

**PETITION OF FEDERATION OF AMERICAN SOCIETIES
FOR EXPERIMENTAL BIOLOGY**

RESOLUTION TO GRANT CONSOLIDATION OF CASES AND
DENY WAIVER OF REQUIREMENT FOR BUILDING PERMIT DENIAL

(Resolution Adopted March 20, 2001)
(Effective Date of Resolution: October 11, 2001)

The Board of Appeals received correspondence from Robert H. Metz, Esquire and Anne C. Martin, Esquire. Mr. Metz and Ms. Martin's March 8, 2001 letter requests consolidation of Case No. S-862-A, a modification of the above-captioned special exception, and Case No. A-5599, a related variance case. Their letter also requests that the Board of Appeals waive the filing requirement for a Building Permit Denial from the Department of Permitting Services.

The subject property is Parcels 710, 802, 817, Outlot A and parts of Lot 8, Block A and Lot 10, Block E, Maplewood Estates Subdivision, located at 9650 Rockville Pike, Bethesda, Maryland, in the R-60 Zone.

The Board of Appeals considered the request at its Worksession on March 20, 2001, and finds that the request to consolidate can be granted in accordance with the Rule 1.7 of the Board's Rules of Procedure. The Board further finds, that as a matter of administrative practice, and to ensure clarity in the variance application process, the requirement for a Building Permit Denial, issued by the Department of Permitting Services, cannot be waived. Therefore,

BE IT REOLVED by the Board of Appeals for Montgomery County, Maryland, that the record in Case No. S-862-A is re-opened to receive Robert H. Metz and Anne C. Martin's March 8, 2001 letter, with attachments; and

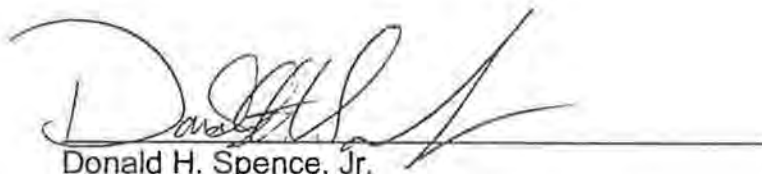
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that Case No. S-862-A and Case No. A-5590 are **consolidated**, and the Petitioner shall pay only the higher of the two filing fees; and

Case No. S-862-A

Page 2.


BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to waive the requirement for a Building Permit Denial is **denied**.

On a motion by Mindy Pittell Hurwitz, seconded by Louise L. Mayer, with Donna L. Barron and Donald H. Spence, Jr., Chairman in agreement, the Board adopted the foregoing Resolution. Board member Angelo M. Caputo was necessarily absent and did not participate in the Resolution.



Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 11th day of October, 2001.



Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board

COUNTY BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

STELLA B. WERNER COUNCIL OFFICE BUILDING
100 MARYLAND AVENUE
ROCKVILLE, MARYLAND 20850

Telephone
Area Code 301
279-1226

Case No. S-862

PETITION OF FEDERATION OF AMERICAN SOCIETIES FOR EXPERIMENTAL BIOLOGY
By: Dr. Robert W. Krauss, Executive Director

RESOLUTION TO MODIFY SPECIAL EXCEPTION
(Resolution adopted January 29, 1987)

The Board has received a letter from Robert W. Krauss, Executive Director, of the Federation of American Societies for Experimental Biology dated December 23, 1986, which states, in part:

"The undersigned ('FASEB'), applicant in the above case, reports to the Board that it has substantially completed Phases 1 and 2 as described on page 3 of the Opinion of the Board, dated as of March 30, 1983. We enclose herewith a set of drawings showing:

- "1. The present 'as built' construction by FASEB of both phases, and
- "2. Construction which FASEB intends to perform in the next year.

"...Level 6, Wing 4 area, ... is currently intended for loft space. This area cannot be occupied until further construction providing connecting access to Wing 2, Level 5. Wing 5 likewise is intended for loft space and will be unoccupied until further tenant improvements, similar to those shown are constructed. Level 1, Wing 5 identified as Conference Room/Office Space will require some additional work for functional occupancy. Finally, to the slight modification of the parking area which we have done to save cutting down some trees and to provide ten additional parking spaces which would apply against any additional spaces required in the future under Condition 2 on page 7 of the said Opinion. ...

"We are making this report and submitting these drawings in partial compliance with the conditions of said Opinion. ..."

Based on the foregoing information, the Board is of the opinion that "FASEB's" modifications are minor in nature and can be granted without changing the nature, character or intensity of the use of the property nor changing the effect on traffic or on the immediate neighborhood. Therefore, in accordance with the provisions of Section 59-G-1.3(c) (1) of the Zoning Ordinance,

BE IT RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that Case No. S-862, Petition of Federation of American Societies for Experimental Biology, shall be and hereby is re-opened to receive the letter from Mr. Krauss as Exhibit No. No. 27; plans showing "as-built" construction by FASEB of both phases, Exhibit No. 27(a);

Case No. S-862

Page 2

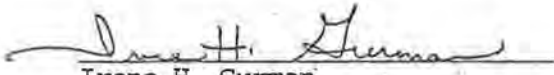
plans showing construction which FASEB intends to perform in the next year, Exhibit No. 27(b); and

BE IT FURTHER RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that the modifications referred to in Mr. Krass' letter of December 23, 1986, and as shown on Exhibit Nos. 27(a) and (b) are acceptable to the Board and granted. All other terms and conditions of the special exception granted March 30, 1986, except as modified herein, shall remain in full force and effect.

The subject property consists of Parcel P 710, 802 and 817; Block A, Part of Lot 8, Block A, Parcel A; and Block E, Part of Lot 10, located at 9650 Rockville Pike, Bethesda, Maryland, in an R-60 Zone.

The foregoing Resolution was proposed by Joseph E. O'Brien, Jr., Vice Chairman, and concurred in by Thomas S. Israel, Howard Jenkins, Jr. and Max H. Novinsky. The Board members aforementioned constitute the current members of the Board.

Entered in the Minute Book of
the County Board of Appeals for
Montgomery County, Maryland,
this 2nd day of February, 1987.


Irene H. Gurman
Clerk to the Board

COUNTY BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

COUNTY OFFICE BUILDING
ROCKVILLE, MARYLAND 20850

Case No. S-862

Telephone
Area Code 301
279-1226

PETITION OF FEDERATION OF AMERICAN SOCIETIES
FOR EXPERIMENTAL BIOLOGY

By: Dr. Robert W. Krauss, Executive Director
(Hearing Held March 17, 1983)

OPINION OF THE BOARD

This proceeding arises on a petition filed for a special exception pursuant to Section 59-G-2.19 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1977, as amended) to permit extension of existing use, as a private educational institution, into a new wing to be constructed as an addition to the existing building (five-story addition). (Previous special exception cases: CBA 136, CBA 210, CBA 1029, CBA 1547, CBA 1998 and S-562.)

The subject property consists of Parcels P 710, 802 and 817; Block A, Part of Lot 8, Block A - Parcel A; and Block E, Part of Lot 10, located at 9650 Rockville Pike, Bethesda, Maryland, in an R-60 Zone.

Decision of the Board: Special exception granted, subject to conditions enumerated herein.

Petitioner's Proposal

Witnesses on behalf of petitioner appeared and presented binding testimony and evidence as follows:

The Federation of American Societies for Experimental Biology is one of the major learned societies in the United States. Formed in 1913, and serving six constituent societies as well as a number of additional professional societies concerned with biology, the Federation has operated on the subject site since 1954 and has been granted special exceptions, both as a scientific society and, when that category was eliminated from the Zoning Ordinance, as a private educational institution. The expansion sought in the instant proposal would allow 125 additional employees to utilize the site--an increase dictated by the growing demands made on the society by the government, the medical profession and other scientific entities. In addition to office space, more space is needed for computers, conference rooms and library expansion.

Case No. S-862

2.

The 11-acre property is bounded generally by Rockville Pike on the east, Pooks Hill Townhouses on the north and Maplewood Estates Subdivision on the south and west. Formerly a residential estate, it is now improved by a 4½ story, brick and stone building, two smaller stone buildings, a one-story frame residence and a storage barn. Access is provided from Rockville Pike (two driveways) and Alta Vista Terrace (one driveway). It is served by private roadways with all parking on-site.

Dr. Robert W. Krauss, Executive Director of the Society, stated that utilization of the requested two new wings would be functionally the same as utilization of the existing building: the distillation of the results of scientific inquiries and experimentation, and the dissemination of those results. The headquarters is a center for education as well as for the administration of the Society. No laboratory experimentation is conducted on site and, although there is a small print shop, no major printing is done on site (this function being limited to internal communication). Although annual meetings and large conferences are planned at headquarters, none are held there. Occasional conferences of member societies, committees and boards have attracted a maximum of 100 participants, who are nearly all from out-of-town and do not use on-site parking.

There are currently 201 employees, and this number will increase to 326 with the completion of both proposed wings, which is expected to be accomplished over a period of time, as fund raising permits. Petitioner requested that the Board grant a total of three years for implementation of the entire project. Employees generally observe office hours of 8:30 a.m. to 5:00 p.m., but the Society is flexible due to the nature of the work done there, and some employees arrive as early as 7:00 a.m., while others leave as late as 7:00 p.m. Because many employees travel to meetings and conferences in other parts of the country, about 15% of them are away from the site at any given time.

Dr. Krauss spoke of the uniqueness of the Society, which draws membership from senior professionals in medicine and biology, who hold either M.D. or Ph.D. degrees. The pace and schedule of the proposed expansion would depend on the time period in which adequate funds could be raised. It is possible that both wings and their attendant parking would be constructed at one time, but it is more likely that they would be built in two phases.

Dr. Krauss stated that the Federation is being increasingly requested to provide objective balanced decisions to Federal Government agencies which have responsibilities in areas of the

Case No. S-862

3.

Society's competence, e.g., N.I.H., Naval Medical Center, E.P.A., and others, many of which are located in the County. It is experiencing an increase in membership of 5% per year, and is currently occupying every square foot of available space. Many of its employees reside in Montgomery County. Because of its unique nature and its close ties with entities in this area which utilize its services, Dr. Krauss stated that there is a need for the proposed expansion.

George C. A. Brunatti, A.I.A., an expert in architecture, who designed the project, explained the manner in which the proposed L-shaped wing will attach to and complement the existing building, turning the hall into an E-shape building of colonial design, with German influences.

Phase 1 will consist of a 23,104 square foot wing attached to the existing 3-story, brick-and-stone main building, and situated perpendicular to Rockville Pike. Due to the descending slope toward the Pike, the building will have six levels above ground in some areas. An increase of 52 parking spaces on the east is planned for this phase, allowing the intermediate space to the west to be used as a staging area.

Phase 2 will consist of a 20,000 square foot wing parallel to Rockville Pike, and completing the E-shape building. An additional 40 parking spaces are planned for this phase. This parking, in the main, would be immediately to the west of that proposed for Phase 1. Three wild cherry trees will be saved in the parking areas and there will be shrubs and lighting between them. Although the proposed new wings would have more levels than the existing one, the roof level will be the same, and architectural details such as a portico and a parapet will tie the whole building together. There will be no mechanical devices on the roof. Mr. Brunatti stated that the existing building as well as the proposed addition are designed to have a residential appearance and are in harmony with the surrounding neighborhood. (See Exhibit No. 7, booklet showing both phases, elevations, topographic survey, floor plans and parking.)

To conform to conditions suggested by Technical Staff of the Maryland-National Capital Park and Planning Commission, Mr. Brunatti stated that petitioner has agreed to provide a five-foot strip of landscaping along the northern property line, as well as to relocate a driveway in that area, entirely on its own property (Exhibit Nos. 16 and 17). The strip, consisting of Norway spruces planted at 25-foot intervals as well as shrubbery between the trees would, when combined with a similar 5-foot strip on the adjacent property to the north, constitute a 10-foot buffer

Case No. S-862

4.

strip between petitioner's driveway and parking and the residential (townhouse) development to the north. The relocated driveway would be 20 feet wide and would be adjacent to an 11'6" roadway behind an existing cottage occupied by the caretaker. Additionally, a deteriorating stone wall behind the cottage would be relocated farther south and reconstructed.

The building would be equipped with an elevator, a fire-suppression (sprinkler) system, ramps and restroom facilities for the handicapped.

Kenneth E. denOuter, an expert civil engineer and land planner, testified as to the proposal's conformity with the Master Plan, the adequacy of public facilities to serve the site, and the conformity to setback and height requirements of the R-60 Zone (Site Plan, Exhibit Nos. 7 and 17). Referring to the Land Use and Transportation Plan for the Bethesda-Chevy Chase area, adopted by the County in October, 1970, Mr. denOuter stated that much higher and more dense development was recommended for this site, as well as for adjacent sites on both sides of Pooks Hill Road. He pointed out that the high rise Marriott Hotel complex north of Pooks Hill Road is the only parcel in that recommendation that was developed to its fullest intensity. The Federation headquarters, as it exists and with the proposed expansion, is lower than even mid-rise apartment buildings would be and the development is much less dense than would be allowed under rezoning (Exhibit Nos. 9 and 23). The roof height is the same as that of the existing building and the setback, as shown on Exhibit No. 17, conforms to the requirements of the R-60 Zone. The site is .9 miles to the Grosvenor Metro station, and Rockville Pike is a major corridor of access.

The site would be served by a fire station at Grosvenor, 1½ miles away, and Rockville Pike is patrolled by State Police from the Route 28 Barracks; the Montgomery County Police, who serve the area, are stationed in Bethesda and at Seven Locks.

Both County water and sewer systems serve the property adequately for the expansion (Exhibit Nos. 24 and 24(a)), though some enlargement of sewer and water systems within the property may be required, principally to service the sprinkler system.

In accordance with Section 59-E-4.4, the asphalt and concrete surface proposed for the new parking will be resistant to erosion and will not cause damage to the site or to neighboring property. Storm drainage facilities will be provided as necessary.

Case No. S-862

5.

Robert L. Morris, an expert traffic engineer and transportation planner, analyzed the existing traffic and that which would probably be generated by the proposed expansion and concluded that there would be no adverse impact on the level of traffic at the nearest critical intersection, that of Rockville Pike and Pooks Hill Road [Exhibit No. 25]. That intersection operated at level of service 'B' in the A.M. peak hour and at level of service 'D' in the P.M. peak hour. An increase of 17 critical lane movements in the morning and 12 critical lane movements in the evening, which would result from the proposed expansion, would not change these levels of service, in the opinion of Mr. Morris [Exhibit No. 10, pg. 11].

Dr. Krauss had requested deferral of forty-eight (48) of the 326 required parking spaces (primarily those along the driveway near Rockville Pike) because of the general under-utilization of the present parking due to the 15% absenteeism of the employees at any given time. Mr. Morris stated that he had made parking counts at the site and found that the maximum number of vehicles now parking there at any one time is 145. He therefore concluded that deferral of the 48 spaces was a reasonable request, since there is no reason to pave over more green space than necessary. Petitioner has stated they will put in the deferred parking if and when it becomes necessary and would allow this matter to be determined by a Board of Appeals review when the Phase 2 building is completed and occupied.

Technical Staff, M-NCPPC, had requested as a condition that petitioner restrict the number of vehicles exiting via the Alta Vista road access to 80, lest the traffic burden through the Alta Vista community be too great. Mr. Morris stated that according to his figures, no more than 80 employees would exit at that point in any case, that there is no feasible way to restrict anyone who wishes to leave through this exit, and that directing employees to leave via Rockville Pike who would want to go to or through the Alta Vista community anyway would not limit traffic on Alta Vista, since they would simply make a right turn off the Pike and go that route. Mr. Morris stated that even 100 vehicles an hour going through the neighborhood is a low volume. He added that the Society employees are mature drivers who do not speed or slam doors and thus would not cause any adverse traffic impact on the residential community.

No one appeared in opposition to this proposal nor were any letters in opposition entered into the record of the Board of Appeals.

Case No. S-862

6.

Maryland National Capital Park and
Planning Commission Technical Staff
Report and Planning Board Action

In a memo dated March 1, 1983 [Exhibit No. 11(a)], the Technical Staff of the Maryland-National Capital Park and Planning Commission recommended approval of the proposed special exception, with conditions. Staff agreed with petitioner that it is not now necessary to build the 48 parking spaces requested for deferral and suggested annual review by the Board of Appeals to determine if and when these spaces are required. Staff further stated that the northern driveway should be relocated entirely onto petitioner's own property, and that the entire northern boundary be landscaped. Staff additionally made the suggestion regarding restriction of traffic exiting via Alta Vista Road, as noted above.

The Montgomery County Planning Board, at its regular meeting on March 10, 1983, concurred with the recommendation of the Technical Staff [Exhibit No. 11(b)].

(Petitioner's attorney stated that petitioner agrees to relocate the northern driveway and to have a landscape plan approved by Technical Staff, believes that the controlled exit onto Alta Vista is unnecessary, and would prefer a simple review of the parking by the Board of Appeals a reasonable time after both phases are completed and occupied, rather than an annual review.)

Findings of the Board

After careful consideration of all testimony and evidence of record, including testimony binding upon petitioner, the Board found that the use, as conditioned herein, will meet both the general conditions for the grant of a special exception found in Section 59-G-1.21, as well as the specific conditions for the grant of this special exception found in Section 59-G-2.19.

As to the general conditions, the Board finds that the use will be consistent with the general plan for the physical development of the area and with the Master Plan for the Bethesda-Chevy Chase area; that it will be in harmony with the general character of the neighborhood, that it will not be detrimental to the use, peaceful enjoyment, economic value or development of the surrounding properties or the general neighborhood, nor will it cause any objectionable conditions; that it will not adversely affect the ... general welfare of residents, visitors or workers in the area; that it will be served by adequate public services and facilities; and that it will have no detrimental effect on the safety of pedestrian or vehicular traffic.

Case No. S-862

7.

As to the specific conditions, the Board finds that the proposed expansion will not constitute a nuisance because of traffic, noise or type of physical activity, and notes that the students are all senior members of learned professions. Therefore, the use is compatible with the environment and character of the surrounding neighborhood.

The Board finds that the buildings are to be designed to blend harmoniously with the existing building, which is colonial in style and of a residential appearance.

The use will not affect adversely or change the present character or future development of the surrounding residential community and will be developed in conformity with the requirements of this section of the R-60 Zone, as to area, density, building coverage, frontage, setback, access and screening requirements, where specified. The site has ample density for the proposed number of employees and largest possible number of members who gather there at any one time.

The Board further finds that the site plan meets the requirements of sub-section (d)(1).

Therefore, this special exception to permit extension of existing use as a private educational institution, into a new wing to be constructed as an addition to an existing building, is granted, subject to the following conditions:

1. The applicant shall submit its revised landscape plan, which addresses the northern property line, the location of the on-site service drive, parking along the service drive, and the landscaping of the subject property between the service drive and the property to the north, to the Technical Staff of M-NCPPC for review and approval, with two copies to be provided to the Board of Appeals.
2. The special exception shall be reviewed by the Board of Appeals approximately six months after completion of both phases and occupancy of the new building, so that the Board can verify whether there is a need for the additional 48 parking spaces, which are hereby deferred until deemed necessary.
3. Petitioner shall notify the Board immediately upon final completion of both phases and occupancy of same.
4. Petitioner shall have three (3) years to implement this proposal.

Case No. S-862

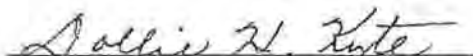
8.

The Board adopted the following Resolution:

"BE IT RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Rita A. Morgan and concurred in by Joseph E. O'Brien, Jr., Chairman, Doris Lipschitz, Harry M. Leet and Richard E. Frederick.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 30th day of March, 1983.


Dollie H. Kyte
Clerk to the Board

NOTE: See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-months' period within which the right granted by the Board must be exercised.

Please see Section 59-A-3.2 of the Zoning Ordinance regarding use and occupancy permit.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. S-562

PETITION OF FEDERATION OF AMERICAN
SOCIETIES FOR EXPERIMENTAL BIOLOGY
(Hearing held June 23, 1977)

OPINION OF THE BOARD

These proceedings are on the petition of the Federation of American Societies for Experimental Biology for an amendment to the special exception granted in 1965, to permit construction of additional parking area and modification of the northern service driveway. The subject property contains approximately 11 acres, consisting of five parcels bounded generally by Rockville Pike on the east, Pooks Hill on the north, and Maplewood Estates Subdivision on the south and west, at 9650 Rockville Pike, Bethesda, Maryland, in an R-60 Zone. (Previous special exceptions were Cases Nos. 136, 210, 1029, 1547, and 1998.)

Decision of the Board: Petition granted, subject to condition enumerated herein.

The petitioner is a non-profit organization devoted to the support of scientific research and dissemination of scientific information, and has been operating at the subject site since the initial grant of the special exception for a Scientific Society Headquarters in 1965. Since the category of "Scientific Society Headquarters" has been eliminated as a special exception use in the R-60 Zone, however, the petitioner has filed for this amendment under Section 59-142 as an Educational Institution. The petitioner submitted documentation (Exhibits No. 5(a) through 5(c)) to establish its standing as a non-profit educational institution.

Petitioner proposes to build a new parking area adjacent to the eastern boundary of the property, adjacent to but not visible from Rockville Pike. The property is bounded on the south and west by single-family residences, and on the north by a large tract of undeveloped land zoned R-H. For the past twelve years, the petitioner has had agreements with the owners of that R-H property which permit joint use of the driveway along the northern boundary of the petitioner's property, and parking of Federation employees' cars on the adjacent R-H tract. The proposed 33-space parking lot and driveway modifications are intended to eliminate the necessity for reliance of parking on the adjacent property, and would not result in a net increase in traffic to or from the petitioner's property. No increase in employment is anticipated; petitioner presently has approximately 230 staff members working on the site, and the 189 parking spaces currently available have proved to be adequate to meet Federation needs. Spokesmen for the petitioner testified that if the

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- 2 -

parking area is developed according to Exhibit No. 14(b) as proposed by the petitioner, the total of 179 parking spaces on the site would be adequate and would not cause overflow parking in neighborhood streets.

The petitioner noted that there are presently two driveways from Rockville Pike to the property; no change would be made in the main entrance, but the service drive along the petitioner's northern boundary would be relocated according to plans entered in the record by the petitioner.

The improvements proposed for the northern service driveway require no change in the existing driveway entrance to Rockville Pike, and questions initially raised by the State Highway Administration (SHA) have been satisfactorily resolved.

The petitioner's initial plans (Exhibit No. 6(a)) have been superseded by alternate plans entered in the record as Exhibits No. 14(a) and (b). These plans were prepared in order to meet questions raised by the technical staff of the Maryland-National Capital Park and Planning Commission (MNCPPC) in its report (Exhibit No. 9(b)). Petitioner indicated that either plan 14(a) or (b) would meet the qualifications set forth in the Planning Staff report, but stated that 14(b) would be preferable, since it would be more simply and economically accomplished.

Spokesmen for the petitioner testified that the proposed new parking area would have no adverse effect on any adjacent or nearby property, since it would be adequately screened from view and would not create any additional increase in traffic or activity. The petitioner stated that the plans would conform in all respects to the requirements of Sections 59-123 and 59-142 of the Zoning Ordinance.

The MNCPPC technical staff recommends approval of the construction proposed in Exhibit No. 6(a), subject to certain conditions concerning screening of the proposed parking area (see Exhibit No. 9(b)). Petitioner testified that, in its opinion, both Exhibit 14(a) and (b) satisfy these recommendations. The Montgomery County Planning Board endorsed its technical staff's recommendation for approval of the petition.

There was no opposition to the proposed construction.

Findings of the Board

The Board finds that the proposed construction, as conditioned herein, meets all pertinent requirements of Section 59-123 and Section 59-142.

Therefore, the proposed amendment to the special exception shall be, and is hereby granted, subject to the following

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condition:

1. Development shall be completed according to plans entered in the record as Exhibit No. 14(b), subject, however, to the review and approval of a detailed landscape screening and lighting plan by the technical staff of the MNCPPC. Such approved plans shall be filed in the records of the Board of Appeals.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mrs. Marjorie H. Sonnenfeldt, Chairman, and concurred in by Mrs. Shirley S. Lynne, Mr. Sheldon P. Schuman, and Mr. Joseph E. O'Brien, Jr. Mrs. Doris Lipschitz was necessarily absent and did not participate in the foregoing Resolution.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 6th day of July, 1977.


Clerk to the Board

NOTE: See Section 59-6.(c) of the Zoning Ordinance regarding the 12-months' period within which the right granted by the Board must be exercised.

Section 59-122.(c) of the Montgomery County Zoning Ordinance 1972, as revised, requires that "On or before March 15 of each year, each applicant who has been granted a special exception shall file with the Department of Environmental Protection a sworn certificate specifying current hours of operation, number of employees and occupants, equipment utilized, and stating that such operation is in all respects in full compliance with the terms and conditions imposed by the Board; provided, however, that the first such certificate shall not be filed unless and until at least twelve months have elapsed since the date of the grant of the special exception."



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All attorneys admitted in Maryland and where indicated.

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DONNA E. MCBRIDE (DC)
GLENN M. ANDERSON (FL)
SEAN P. HUGHES (DC)
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MICHAEL G. CAMPBELL (DC, VA)

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DIANE E. FEUERHERD
CHRISTOPHER L. YOUNG (VA)
CALLIE CARNEMARK (VA)
JAMES T. ROTH

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MEMORANDUM

**TO: KATHY REILLY
ELZA HISEL-MCCOY**

**CC: HELENE FABRE
BOB WAECHTER
DANA CLARK
JASON AZAR
ERWIN ANDRES
KATIE WAGNER
DAVE NORDEN
JOANNA SCHMICKEL**

FROM: JODY S. KLINE

DATE: 28 JUNE 2018

**RE: SPECIAL EXCEPTION AMENDMENT APPLICATION NO. S-862-C,
APPLICATION OF ROCHAMBEAU,
THE FRENCH INTERNATIONAL SCHOOL;
DRIVEWAY SETBACKS**

Kathy,

My installment number 2 on peripheral issues deals with a subject that has intrigued me more than it has probably interested you. That is, how did the driveway along the northern edge of the FASEB property get constructed so close to the abutting property with minimal separation

between the two. Well, it took some time poring over the FASEB files at the County Board of Appeals but we finally got the answer.

As we have discussed, the Applicant is proceeding to amend its current special exception under the provisions of the pre-October 31, 2014 Zoning Ordinance in which there are provisions dealing with setbacks (59-E-2.8), screening (5a-E-2.7) and special provisions for special exception uses in residential zones (59-E-2.83). Although it is clear that the driveway on the subject property located parallel to the northern property line has been in existence for an extended period of time, there was no evident zoning approval that we could find that allowed that driveway, which is part of the “parking facilities,” to be located so close to the common property line. Here is what we found when we dug deeper into the subject.

1. As a certain point in time (1960-1961 according to available BOA records) (Exhibit A attached), FASEB proposed to build a driveway from Rockville Pike on to the subject property as a “private road [that would] straddle the line between the property of the applicant and that of Pooks Hill.”

2. In a permit application filed with the Montgomery County Department of Public Works in May, 1962, FASEB sought a permit to “. . . construct a private 20-foot macadam road as shown on the attached drawing. This road will be the joint venture of the Federation of American Societies for Experimental Biology and Brodie Properties, Inc. Therefore each of the above-named property owners will provide 10 feet of land along the common property line

separating their properties. Thus, the boundary line will become the centerline of the road.”

(Exhibit B)

3. In 1965, after a hearing before the Board of Appeals about whether FASEB had constructed improvements, including “. . . a private road along northern boundary. . .”, not in accordance with the approved special exception plans, the Board did find that, based on evidence presented by FASEB, that the private road straddling the common property line with the Brodie property was in accordance with the applicable standards of the Zoning Ordinance and was acceptable to the Board upon certain curative steps being taken by FASEB. (Exhibit C)

4. A letter / application submitted to the Board of Appeals in 1976 summarized the history of the shared driveway with the Brodie property to the north and explained why FASEB wanted to create a driveway to be located wholly on its own property (Exhibit D). This letter / application requested that the Board of Appeals “. . . approve our request to construct the service drive and additional parking facilities on Federation owned property.”

5. The letter of August 13, 1976 referred to above (Exhibit D) was accepted by the Board of Appeals and culminated in a favorable decision of the Board dated July 6, 1977 (Exhibit E) involving:

- a. “. . . the service drive along the petitioner’s northern boundary would be relocated according to plans entered in the record by the petitioner.”

- b. “The MNCPPC technical staff recommends approval of the construction subject to certain conditions concerning screening of the proposed parking area.”
- c. “The Montgomery County Planning Board endorsed its technical staff’s recommendations for approval of the petition.”
- d. “The Board finds that the proposed construction, as conditioned herein, meets all pertinent requirements of Section 59-123 [“Prerequisites to granting special exception”] and 59-142 [“Educational Institutes, Private”].

In summary, the treatment of access to the subject property has an interesting history but in 1977 the Board of Appeals, with favorable technical staff and Planning Board recommendations, approved the existing driveway conditions. Any changes in County Code requirements since that date which changed or made more stringent the setback or screening requirements would make the existing conditions legal nonconforming uses that are allowed to be continued.

JSK:sda
Attachments

EXHIBIT A

MEMORANDUM

August 31, 1961

To: Mr. C. C. Courtney, Chief Building Inspector

Re: Office Building for Federation of American Society for Experimental Biology
(Your Application No. 8-166)

Construction of this proposed facility was reviewed by the County Board of Appeals at a hearing on January 19, 1961 (Case No. 1029); the special exception was granted, "in the manner set forth in the exhibits and testimony".

The site and grading plan forwarded to us, with subject building permit application, does not correspond to the site plan submitted to the Board of Appeals as part of Exhibit #3 in the above-mentioned case.

This site plan (Sheet #4 of Exhibit #3) indicates:

1. A much larger parking area.
2. No access to "private road".
3. "Private road" straddled the line between the property of the applicant and that of Books Hill.

It is suggested that:

1. The Board of Appeals be requested for advice concerning the rear access proposed on the Building Application Site Plan.
2. The applicant furnish proper evidence that he has the right to use such access, if it is authorized by the Board of Appeals.
3. The parking area be enlarged to conform to that indicated on Sheet #4 of Exhibit #3.

It would be helpful if applications for building permits be cleared through Mr. Soward's office for compliance with the conditions involved in Special Exception Cases before forwarding them to the Department of Public Works.

Returned herewith is the site plan which was forwarded from your Department. We will hold the Street Check Sheet and Driveway Permit Application pending clarification of the above-mentioned matters.

C. E. Weinstein
C. E. Weinstein, Senior Engineer
Department of Public Works

CRO: jw

Encl.

cc: E. W. Bucklin
M. S. Soward —
J. H. Light
H. L. Mathews

EXHIBIT B

MONTGOMERY COUNTY, MARYLAND
Department of Public Works

Application for a Permit
For Construction on Property Dedicated to Public Use

TO THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS OF MONTGOMERY
COUNTY, MARYLAND:

Application is hereby made for a permit to undertake construction on property dedi-
cated to the public use at locations and according to the detailed descriptions as follows:

(a) Federation of American Societies for Experimental Biology

APPLICANT Brodie Properties, Inc.

(Owner, person, firm or corporation proposing to execute or have work executed)
(1) 9650 Wisconsin Avenue, Bethesda 14, Maryland

ADDRESS (2) 4 Pooks Hill Road, Bethesda 14, Maryland

CONTRACTOR'S NAME Bowling and Gardiner

ADDRESS 4901 Auburn Avenue, Bethesda 14, Maryland

LOCATION:

Nearest Town Bethesda, Maryland Subdivision Leek Forest

Street(s) _____

DESCRIPTION OF PROPOSED WORK:

We propose to construct a private 20-foot macadam road as shown on the attached Drawing. This road will be the joint venture of the Federation of American Societies for Experimental Biology and Brodie Properties, Inc. Therefore, each of the above named property owners will provide 10 feet of land along the common boundary line separating their properties. Thus, the boundary line will become the center line of the road. This road will remain the private property of the parties concerned and will be used as the delivery entrance to the new office building presently under construction by the Federation and as the northern entrance to the Federation's parking lot. Of course, Brodie Properties, Inc. will have the right to use this road to serve their property when the need arises in the future.

Sketches, construction stakes and
grade sheets to be furnished by: Irwin S. Porter and Sons (see attached)

It is agreed by the undersigned that the proposed construction described hereinabove shall be carried out in accordance with the provision of the Montgomery County Road Construction Code, the applicable Montgomery County Design Standards and Montgomery County Standard Specifications and any further conditions specified herein subject to the inspection and approval of the Director of the Department of Public Works. All plans submitted by the applicant and approved by the Department of Public Works in connection with this application are hereby made a part of this application.

Date May 18, 1962

By *John R. Rice* **FEDERATION OF AMERICAN SOCIETIES
FOR EXPERIMENTAL BIOLOGY**
Applicant *John R. Rice*
046-6100-EXT 20

The foregoing application is approved subject to the terms and conditions on the reverse side of this sheet.

Estimated cost of work \$ _____ Permit Fee \$ _____

Date _____, 19____ Approved by _____

Application No. _____

For the Director of the
Department of Public Works
of Montgomery County, Md.

EXHIBIT C

COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. 1547

PETITION OF FEDERATION OF AMERICAN SOCIETIES FOR EXPERIMENTAL BIOLOGY
(Hearing held July 22, 1965)

OPINION OF THE BOARD

This proceeding is on a Petition for Revocation of a Special Exception filed by Montgomery County, Maryland, Mr. E. W. Bucklin, Director, Department of Inspection and Licenses, pursuant to the provisions of Section 104-28 d. of the Zoning Ordinance for Montgomery County for the purpose of hearing testimony regarding violation of terms, conditions, and/or restrictions upon which the Special Exception in this case was granted.

The alleged violations are as follows:

1. "Relocation of parking lot and construction of private road along northern boundary, westward from Wisconsin Avenue, both without approval of the Board and both contrary to the grant of the Special Exception."

The subject property is located on Wisconsin Avenue adjacent to Pooks Hill, at 9650 Wisconsin Avenue, Bethesda, Maryland, in an R-60 Zone.

Testimony and evidence was introduced indicating the following:

- A. An inspector from the Division of Zoning, Permits and Licenses, upon making an inspection in connection with the completion and occupancy of the new addition to the Federation of American Societies for Experimental Biology Building, found that the Society had relocated the parking lot and constructed a private road along the north boundary, westward from Wisconsin Avenue, without the approval of the Board and contrary to the grant of the Special Exception. Testimony by the Department of Inspection and Licenses indicates that their reasons for requesting revocation of the Special Exception are on technical grounds, in that the Board of Appeals had not granted parking for this particular area; that location and construction of the private road had not been approved. The Department, however, did testify that the relocated parking area and private road did not violate any of the parking lot regulations as set forth in Section 104-20 of the Montgomery County Zoning Ordinance, provided the relocation was accepted and approved by the Board.

The Department testified that the private road was partially on the Societies' property and partly on the adjacent Pooks Hill property.

The Board, after weighing all evidence and exhibits, finds the following:

1. The owners and tenants using the property, in Case No. 1547, did relocate, through error, the required parking area and did construct a private roadway. The relocation of the parking and the building

Case No. 1547

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of the private road were shown in exhibits produced at this hearing by the Societies as being adequate to meet the requirements of Section 104-20 of the Montgomery County Zoning Ordinance and the requirements of the Board.

Upon resubmission to the Department of Inspection and Licenses a revised parking layout, a copy of the agreement with the adjacent property owner for the construction of the private road, and a copy of the application for a permit for a curb cut on Wisconsin Avenue, and with the subsequent approval by the Department of Inspection and Licenses, the Board finds that all of the requirements in Case No. 1547 have been met.

The Board thereby rules that the alleged violations do not now exist and that this Petition for Revocation of the Special Exception is dismissed.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mr. Walter Bucher and concurred in by Mrs. Elaine Lady, Vice Chairman, Messrs. Henry J. Noyes, Chairman, Bernard D. Gladhill and Calvin R. Sanders, constituting all the members of the Board.

I do hereby certify that the foregoing Minutes were officially entered upon the Minute Book of the County Board of Appeals this 10th day of August, 1965.

Sollie H. Lyte
Clerk to the Board

This opinion sent to all persons who received notice of the hearing.

EXHIBIT D**FASEB**

FEDERATION OF AMERICAN SOCIETIES FOR EXPERIMENTAL BIOLOGY

9650 ROCKVILLE PIKE • BETHESDA, MARYLAND 20014

TELEPHONE: 301 — 530-7000 • CABLE ADDRESS: FASEB, WASHINGTON, D. C.

Member Societies

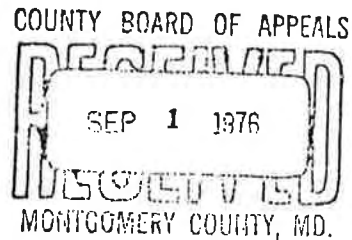
AMERICAN PHYSIOLOGICAL SOCIETY
 AMERICAN SOCIETY OF BIOLOGICAL CHEMISTS
 AMERICAN SOCIETY FOR PHARMACOLOGY AND
 EXPERIMENTAL THERAPEUTICS
 AMERICAN SOCIETY FOR EXPERIMENTAL PATHOLOGY
 AMERICAN INSTITUTE OF NUTRITION
 AMERICAN ASSOCIATION OF IMMUNOLOGISTS

EUGENE L. HESS
Executive Director

August 13, 1976

JOHN R. RICE, C.P.A.
Comptroller

Mrs. Dollie H. Kyte
 Board of Zoning Adjustments
 Montgomery County Maryland
 County Building
 Rockville, Maryland



Dear Mrs. Kyte:

In order to clarify what I believe may be a misunderstanding on the part of the Zoning Board about our request for a permit to construct a service driveway and a parking lot, I send you the information which follows.

At the time the Federation constructed the building which we now call the Milton O. Lee Building, Dr. Milton O. Lee, then Executive Director of the Federation, arranged with the owner of the property contiguous to the Federation property on the north, Mr. Zebulon Brodie, to construct a jointly-owned service driveway. The driveway extends west from Rockville Pike along the north edge of our property approximately 1000 feet. It is 20 feet wide with 10 feet on our property and 10 feet on the property of the contiguous owner. Mr. Brodie also permitted the Federation to use without charge land to the north of the service drive for automobile parking and for storage of top soil, sand, gravel, and other maintenance materials. It is not clear why Dr. Lee made such arrangements at that time.

The agreement reached back in 1965 remained in effect until the property was sold to American Trading Real Estate Company, Inc. in 1974. For the past eleven years, therefore, Federation employees have been parking on the land to the north of the Federation property which we do not own. The parking area, which we have gradually improved with crushed rock, accommodates 35 motor vehicles.

The new owners (ATREC) informed us when they purchased the property from Brodie in 1974 that in order to continue the use the service drive which was jointly owned and the parking areas on their land, we must pay rent of \$400 per month. During the year 1975 the Federation paid \$4800 in rent and has continued to pay rent at a level of \$400 per month during 1976. When ATREC builds an apartment building on its land, this parking area and roadway may no longer be available to us.

The Board of Directors of the Federation considers it unwise to continue to depend upon a vitally important service drive which is not entirely on Federation property. The Board also feels that with inadequate public transportation it is important to have adequate parking facilities for our personnel. At the present time we have surface parking on our property

Mrs. Dollie H. Kyte

-2-

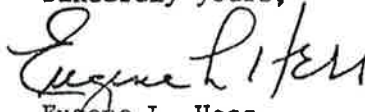
August 13, 1976

for 154 vehicles plus the additional 35 spaces on the ATREC property, a total of 189, which provides parking for the 250 people employed on our campus. The Board directed me to request permission to construct a driveway and parking area entirely on our own property and authorized the expenditure of approximately \$25,000 for this purpose. The Board noted also that in approximately five years the Federation would amortize the new construction using the monies which would otherwise have been spent for rent, a significant factor for a not-for-profit organization.

We propose to construct a parking lot to accommodate 33 cars, and arrange to park an additional 13 cars on what is now our portion of the service drive, resulting in a total of 46 new spaces. Because of the relocation of the service road, however, we will lose 17 parking spaces now on FASEB property, as well as the 35 on ATREC property. In other words, we now occupy a total of 189 parking spaces; and when we construct the area now proposed, we will have only 183 spaces: $189 - 35 - 17 + 46 = 183$.

I trust that this information will help the Zoning Board understand our predicament and approve our request to construct the service drive and additional parking facilities on Federation owned property.

Sincerely yours,


Eugene L. Hess
Executive Director

ELH/dej

EXHIBIT E

COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. S-562

PETITION OF FEDERATION OF AMERICAN
SOCIETIES FOR EXPERIMENTAL BIOLOGY
(Hearing held June 23, 1977)

OPINION OF THE BOARD

These proceedings are on the petition of the Federation of American Societies for Experimental Biology for an amendment to the special exception granted in 1965, to permit construction of additional parking area and modification of the northern service driveway. The subject property contains approximately 11 acres, consisting of five parcels bounded generally by Rockville Pike on the east, Pooks Hill on the north, and Maplewood Estates Subdivision on the south and west, at 9650 Rockville Pike, Bethesda, Maryland, in an R-60 Zone. (Previous special exceptions were Cases Nos. 136, 210, 1029, 1547, and 1998.)

Decision of the Board: Petition granted, subject to condition enumerated herein.

The petitioner is a non-profit organization devoted to the support of scientific research and dissemination of scientific information, and has been operating at the subject site since the initial grant of the special exception for a Scientific Society Headquarters in 1965. Since the category of "Scientific Society Headquarters" has been eliminated as a special exception use in the R-60 Zone, however, the petitioner has filed for this amendment under Section 59-142 as an Educational Institution. The petitioner submitted documentation (Exhibits No. 5(a) through 5(c)) to establish its standing as a non-profit educational institution.

Petitioner proposes to build a new parking area adjacent to the eastern boundary of the property, adjacent to but not visible from Rockville Pike. The property is bounded on the south and west by single-family residences, and on the north by a large tract of undeveloped land zoned R-H. For the past twelve years, the petitioner has had agreements with the owners of that R-H property which permit joint use of the driveway along the northern boundary of the petitioner's property, and parking of Federation employees' cars on the adjacent R-H tract. The proposed 33-space parking lot and driveway modifications are intended to eliminate the necessity for reliance of parking on the adjacent property, and would not result in a net increase in traffic to or from the petitioner's property. No increase in employment is anticipated; petitioner presently has approximately 230 staff members working on the site, and the 189 parking spaces currently available have proved to be adequate to meet Federation needs. Spokesmen for the petitioner testified that if the

Case No. S-562

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parking area is developed according to Exhibit No. 14(b) as proposed by the petitioner, the total of 179 parking spaces on the site would be adequate and would not cause overflow parking in neighborhood streets.

The petitioner noted that there are presently two drive-ways from Rockville Pike to the property; no change would be made in the main entrance, but the service drive along the petitioner's northern boundary would be relocated according to plans entered in the record by the petitioner.

The improvements proposed for the northern service driveway require no change in the existing driveway entrance to Rockville Pike, and questions initially raised by the State Highway Administration (SHA) have been satisfactorily resolved.

The petitioner's initial plans (Exhibit No. 6(a)) have been superseded by alternate plans entered in the record as Exhibits No. 14(a) and (b). These plans were prepared in order to meet questions raised by the technical staff of the Maryland-National Capital Park and Planning Commission (MNCPPC) in its report (Exhibit No. 9(b)). Petitioner indicated that either plan 14(a) or (b) would meet the qualifications set forth in the Planning Staff report, but stated that 14(b) would be preferable, since it would be more simply and economically accomplished.

Spokesmen for the petitioner testified that the proposed new parking area would have no adverse effect on any adjacent or nearby property, since it would be adequately screened from view and would not create any additional increase in traffic or activity. The petitioner stated that the plans would conform in all respects to the requirements of Sections 59-123 and 59-142 of the Zoning Ordinance.

The MNCPPC technical staff recommends approval of the construction proposed in Exhibit No. 6(a), subject to certain conditions concerning screening of the proposed parking area (see Exhibit No. 9(b)). Petitioner testified that, in its opinion, both Exhibit 14(a) and (b) satisfy these recommendations. The Montgomery County Planning Board endorsed its technical staff's recommendation for approval of the petition.

There was no opposition to the proposed construction.

Findings of the Board

The Board finds that the proposed construction, as conditioned herein, meets all pertinent requirements of Section 59-123 and Section 59-142.

Therefore, the proposed amendment to the special exception shall be, and is hereby granted, subject to the following

Case No. S-562

- 3 -

condition:

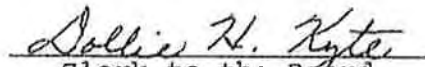
1. Development shall be completed according to plans entered in the record as Exhibit No. 14(b), subject, however, to the review and approval of a detailed landscape screening and lighting plan by the technical staff of the MNCPPC. Such approved plans shall be filed in the records of the Board of Appeals.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mrs. Marjorie H. Sonnenfeldt, Chairman, and concurred in by Mrs. Shirley S. Lynne, Mr. Sheldon P. Schuman, and Mr. Joseph E. O'Brien, Jr. Mrs. Doris Lipschitz was necessarily absent and did not participate in the foregoing Resolution.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 6th day of July, 1977.


Clerk to the Board

NOTE: See Section 59-6.(c) of the Zoning Ordinance regarding the 12-months' period within which the right granted by the Board must be exercised.

Section 59-122.(c) of the Montgomery County Zoning Ordinance 1972, as revised, requires that "On or before March 15 of each year, each applicant who has been granted a special exception shall file with the Department of Environmental Protection a sworn certificate specifying current hours of operation, number of employees and occupants, equipment utilized, and stating that such operation is in all respects in full compliance with the terms and conditions imposed by the Board; provided, however, that the first such certificate shall not be filed unless and until at least twelve months have elapsed since the date of the grant of the special exception."