

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. S-2802

PETITION OF NORBECK MONTESSORI DAY SCHOOL, INC.

OPINION OF THE BOARD

(Opinion Adopted July 27, 2011)
(Effective Date of Opinion: July 29, 2011)

Case No. S-2802 is an application for a special exception, by Norbeck Montessori Day School, Inc., under Section 59-G-2.19 of the Zoning Ordinance, to permit a private school. The subject property is Parcel 147, located at 15920 Emory Lane, Rockville, Maryland, 20853, in the RE-1 Zone.

The Hearing Examiner for Montgomery County held a hearing on the application on June 3, 2011, closed the record in the case on June 13, 2011, and on July 12, 2011, issued a Report and Recommendation for approval of the special exception.

Decision of the Board: Special Exception **Granted** Subject to
The Conditions Enumerated Below.

The Board of Appeals considered the Report and Recommendation at its Worksession on July 27, 2011. After careful consideration and review of the record in the case, the Board revises proposed Condition No. 5 as below, adopts the Report and Recommendation, and grants the special exception, 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 to the extent that such testimony and evidence are identified in the Hearing Examiner's Report and Recommendation and in this Opinion.
2. The school is limited to a maximum of 180 students and 34 employees on site at one time.

3. Hours of operation are limited to 6:30 a.m. to 6:30 p.m. Monday through Friday, 12 months a year. Activities such as an open house, parent/instructor meetings and special events may occur only between the hours of 9:00 a.m. and 2:30 p.m. on weekends and no later than 9:00 p.m. weekdays. The permitted special events are specified in the Second Revised Statement of Operations (Exhibit 42(a)).
4. All student drop-offs and pick-ups shall occur on site in accordance with the Second Revised Statement of Operations (Exhibit 42(a)).
5. Petitioner is required to give notice to staff, parents and visitors to discourage on-street parking in the neighborhood. Such notice must be given in a manner reasonably calculated to give actual notice, including through the Petitioner's website and any newsletters, school handbooks, or announcements of events scheduled at the school.
6. Petitioner must comply with the terms of its Site Plan (Exhibits 22(l) and (m)), its Landscape and Lighting Plan (Exhibits 22(n) and (o)); its Lighting Photometric Plans (Exhibits 16(a) and (b)); and its Second Revised Statement of Operations (Exhibit 42(a)).
7. Petitioner must apply for Preliminary Plan review, per Chapter 50 of the Montgomery County Code. Since the proposed use will require subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9), approval of this special exception is conditioned upon approval of a preliminary plan of subdivision by the Planning Board. The adequacy of public facilities will be determined by the Planning Board at the time of the Preliminary Plan review. If significant changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must request modification of the special exception from the Board of Appeals. If a minor change in landscaping is required at subdivision to ensure adequate fire department access, and Technical Staff certifies that the change is de minimis and will not have any adverse impact on the abutting neighbors, Petitioner may submit a copy of the revised plans to the Board without formally requesting an administrative modification.¹
8. Petitioner must comply with the conditions of the Preliminary Forest Conservation Plan, Exhibits 22(p), until approval of the Final Forest Conservation Plan, until approval of the Final Forest Conservation Plan.

¹ This condition is recommended at Petitioner's request to avoid potential delays which might prevent them from moving the school from its current location to the subject site in time to open for the 2012 school year. Tr. 66-73. Petitioner proposed a form of this condition (Exhibit 41) which did not differentiate between minor and major changes. The version recommended by the Hearing Examiner would avoid further Board of Appeals review only if de minimis changes are made in the plans.

9. Petitioner must comply with the stormwater management plan ultimately approved by the Department of Permitting Services.
10. Petitioner may display one freestanding, non-illuminated sign, as depicted on the Site Plan Details (Exhibit 22(m)), and it must meet the requirements of Section 59-F-4.2(a)(3)(B) in terms of location and size. Petitioner must obtain a sign permit from the Department of Permitting Services prior to posting any sign and must file a copy with the Board of Appeals.
11. Petitioner must ensure that a sufficient number of its staff park at an off-site location to avoid overflow parking at the subject site during all special events which will result in parking demands exceeding the capacity of the site, in accordance with the terms of its Second Revised Statement of Operations (Exhibit 42(a)). Petitioner must make the necessary arrangements to facilitate transporting staff to and from the School when off-site parking is required.
12. Petitioner must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a private educational institution.
13. In no event may a child be dropped off before a staff member is present to supervise that child; nor may a child be left alone if a parent is late in making a pick-up.
14. All children must be under the direct supervision of a staff member at all times, both inside and outside the building. Outdoor play may not begin before 9:30 a.m. No amplified music may be played outside the building.
15. The Petitioner shall maintain the grounds in a clean condition, free from debris, on a daily basis.
16. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by David K. Perdue, Vice-Chair, seconded by Carolyn J. Shawaker, with Walter S. Booth, Stanley B. Boyd and Catherine G. Titus, Chair, in agreement:

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

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 29th day of July, 2011.

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.

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