

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-826-A

PETITION OF THE BUTLER SCHOOL

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted July 25, 2012)

(Effective Date of Resolution: August 6, 2012)

The Board of Appeals has received a letter, dated July 17, 2012, from Beckie Hardie, Head of School for The Butler School. Ms. Hardie requests administrative modification of the special exception for permission to "move some classroom space, a small athletic space, and storage space already contemplated by the 1994 Phasing Plan contained in the school's Special Exception approval from the approved site west and south of the main school building to a proposed site north of the main school building." The proposed location is the site of the existing tennis court and half court just north of the main school building. She submits plans and drawings to illustrate the changes.

The Board of Appeals granted Case No. S-826 to Margery A. Elsberg on August 18, 1982, to permit a private educational institution for up to 350 students and a summer day camp for up to 300 students. Effective May 23, 1984, the Board modified the special exception to extend the hours of operation to be from 7:00 a.m. to 6:00 p.m. Effective May 31, 1990, the Board modified the special exception to allow re-location of two tennis courts. In Case No. S-826-A the Board approved a modification including a revised site plan and eliminating Condition 3 of the Board's original opinion granting the special exception. Effective November 2, 1994, the Board approved a modification of the Phasing Plan for construction of the school, and effective May 16, 1997, the Board approved a modification of the special exception to allow the school to offer an Intermediate Program for students in the seventh and eighth grades. Effective January 15, 2004, the Board granted an administrative modification to allow transfer of the special exception to the current legal owner of the property, Montessori Country School of Maryland, Inc. and approved continuation of the school's existing summer camp program, together with approval of a change to the playground area, including the addition of a shade shelter.

The subject property contains 22.7 acres, consisting of Parcels 5-9, Pleasant Hills Subdivision, located at 15921 Germantown Road, Germantown, Maryland 20874 in the R-C Zone.

The Board of Appeals considered Ms. Hardie's request at its Worksession on July 25, 2012. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:

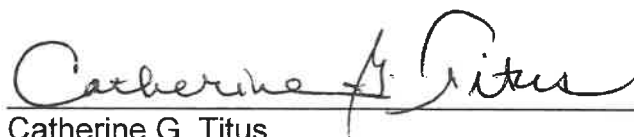
If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to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

The Board finds that the requested changes will be located well away from nearby residential properties and will have little if any visual impact. The Board further finds that there is no related request to increase the permitted enrollment of the school. Thus the Board finds that the requested changes will not substantially change the nature, character or intensity of the use or its effect on traffic or on the immediate neighborhood. Therefore, on a motion by Stanley B. Boyd, seconded by Carolyn J. Shawaker, with Walter S. Booth, David K. Perdue, Vice-Chair, and Catherine G. Titus, Chair, in agreement:

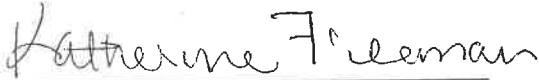
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-825-A is re-opened to receive Beckie Hardie's letter of July 17, 2012, with attachments; and

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, together with any modifications granted by the Board of Appeals, remain in effect.


Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 6th day of August, 2012.



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.

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Rockville, Maryland 20850
(240) 777-6600

Case No. S-826-A

**PETITION OF MARGERY A. ELSBERG t/a
R.M.K. ASSOCIATES LIMITED PARTNERSHIP
[NEW HOLDER: MONTESSORI COUNTRY SCHOOL OF
MARYLAND, INC. a/k/a BUTLER SCHOOL]**

RESOLUTION TO MODIFY SPECIAL EXCEPTION
(Resolution Adopted October 15, 2003)
(Effective Date of Resolution: January 15, 2004)

The Board of Appeals has received a letter, dated October 1, 2003, from Harry W. Lerch, Esquire, on behalf of the Butler School, which operates pursuant to the above-captioned special exception. Mr. Lerch requests transfer of the special exception to the current legal owner of the property, Montessori Country School of Maryland, Inc. Mr. Lerch also requests administrative modification of the special exception to approve continuation of the school's existing summer camp program, and to approve a change to the playground area, including the addition of a shade shelter. The Board of Appeals granted Case No. S-826 to Margery A. Elsberg on August 18, 1982, to permit a private educational institution for up to 350 students and a summer day camp for up to 300 students. Effective May 23, 1984, the Board modified the special exception to extend the hours of operation to be from 7:00 a.m. to 6:00 p.m. Effective May 31, 1990, the Board modified the special exception to allow re-location of two tennis courts. In Case No. S-826-A the Board approved a modification including a revised site plan and eliminating Condition 3 of the Board's original opinion granting the special exception. Effective November 2, 1994, the Board approved a modification of the Phasing Plan for construction of the school, and effective May 16, 1997, the Board approved a modification of the special exception to allow the school to offer an Intermediate Program for students in the seventh and eighth grades.

The subject property contains 22.7 acres, consisting of Parcels 5-9, Pleasant Hills Subdivision, located at 15921 Germantown Road, Germantown, Maryland in the R-C Zone.

The Board of Appeals considered Mr. Lerch's letter at its Worksession on October 15, 2003. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:

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 neither minor changes to the school's playground nor approval of the existing summer camp program will substantially change the special exception or its effect on traffic or the immediate neighborhood. Therefore, on a motion by Donna L. Barron, seconded by Allison Ishihara Fultz, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement and Louise L. Mayer necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-826 is re-opened to receive Harry W. Lerch's letter dated October 1, 2003, with attachments; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to transfer the special exception to Montessori Country School of Maryland, Inc. a/k/a Butler School, is **granted**; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception to approve minor changes to the playground, including a shade shelter 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 approved by the Board of Appeals, remain in effect.

A handwritten signature in dark ink, appearing to read "Donald H. Spence, Jr.", is written over a horizontal line.

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 15th day of January, 2004.

A handwritten signature in cursive script, reading "Katherine Freeman", is written over a horizontal line.

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 even that such request is received, the Board shall suspend its decision.

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

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Case Nos. S-826 and S-826-A

PETITION OF MARGERY A. ELSBERG
t/a R.M.K. ASSOCIATES

RESOLUTION TO MODIFY SPECIAL EXCEPTION
(Resolution adopted April 16, 1997)
(Effective date of Resolution, May 16, 1997)

On November 4, 1996, the Board received correspondence from Rilla M. Spellman, Academic Head, Butler School, which states, in part:

"I am writing on behalf of RMK Associates (Butler School) to ask for a change in the approval of our Special Exception.

"Our special Exception allows us to provide an educational program for children from age 2+ through Sixth Grade. We find that there is a need for us to continue our program through the Eighth grade. The change in Montgomery County elementary and middle school has led us to offer an Intermediate Program. We feel that this program is in keeping with the nature of our current special exception and do not feel that it represents any change in the educational style of Butler School ..."

On December 23, 1996, the Board received additional correspondence from Ms. Spellman, which states, in part:

"...Butler School currently has a Special Exception which provides for an Educational Program for children from Nursery through age twelve. We request that the Board of Appeals approve a modification ... to extend our program through age fourteen. The extension of our age range will not in any way effect the size of our school or the nature of our operations. We will use the existing buildings to serve the same number of students. There will be no increase in traffic. ..."

An additional letter was received from Ms. Spellman on January 31, 1997, which states, in part:

"...Butler School, established in 1971, is the oldest Montessori School in the Upper County. Butler has provided an educational program for children through age twelve since the early 1970's. At the time that Montgomery County Public Schools made the change in the Middle School Program to include sixth grade, we began to assess the configuration of our school program. This change led many

of our students to leave Butler School after fifth grade. We felt that these students would lose an important part of our program by not completing their Montessori education through sixth grade. We also found that many children were not being well served by entering large, traditional 'Middle School' programs. Some students need a small individual program to support their needs through adolescence. We decided to offer an Intermediate Program for students in seventh and eighth grade.

"In order to provide appropriate space for this new Intermediate Program, we chose to decrease the number of students enrolled at the younger age levels. Butler School has maintained an enrollment of approximately two hundred students for the past several years. Approximately seventy-five of these students are served from our location at the Darnestown Presbyterian Church.

"Specifically, we dropped a Pre-Primary class for two year old children which was held at the Darnestown Presbyterian Church, then moved a Primary Class from the main campus to the church location. This move provided an additional space on our campus to accommodate the new Intermediate Program without changing the total number of students served.

"The number of students at our campus location has been maintained at approximately one hundred twenty-five. Although our special exception allows us to provide an educational program for as many as three hundred students, we do not intend to expand the current number of students at our campus at present.

"The Maryland State Department of Education requires that our school be in compliance with all regulations, meeting curriculum and academic requirements as well as the requirements from the Fire Marshal and Zoning to assure accreditation for the Program. We have fulfilled all of the necessary measures from our curriculum and academic program. We have also received approval from the Fire Marshal. The last remaining requirement is the approval of the change in ages in our Special Exception. We feel that this change in ages of our students makes a very small difference in our whole school program and serves an important need in our community. ..."

A memo dated April 2, 1997, has been received from Frank DeLange, Zoning Supervisor, Land Use Compliance, Department of Permitting Services, which states, in part:

"... Investigator James Martin did an inspection of Butler School on March 25, 1997 and found the conditions and subsequent modifications ... in compliance ... with the Board's opinions.

"... the school is constructing their facilities in phases and has not completed the entire project to date. The approved landscaping and lighting plan by MNCP&PC is dated March 7, 1991, and the school has installed some additional landscaping to that shown on the ... plan. ..."

The Board, after careful consideration of the correspondence and a review of the record in the above-referenced cases, finds that the request to modify the above-referenced special exceptions can be granted without the necessity of a public hearing. The Board further finds that the request will have no effect on traffic and on the immediate neighborhood.

THEREFORE, in accordance with the provisions of Section 59-G-3.1(c)(1) of the Zoning Ordinance, BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that Case Nos. S-826 and S-826-A, shall be and hereby are reopened to receive the following exhibits: Ms. Spellman's letter received November 4, 1996; Ms. Spellman's letter dated December 5, 1996; Ms. Spellman's letter dated January 27, 1997, and Mr. DeLange's memo dated April 2, 1997; and

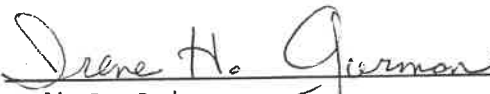
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that petitioner may offer an Intermediate Program for students in the seventh and eighth grade; and

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

The subject property contains 22.7 acres, consisting of Parcels 5-9, Pleasant Hills Subdivision, located at 15921 Germantown Road, Germantown, Maryland, in the Rural Cluster Zone.

On a motion by Allison Bryant, seconded by William S. Green, with Wendell Holloway, Donna Barron and Susan W. Turnbull, Chair, in agreement, the Board adopted the foregoing Resolution.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland,
this 16th day of May, 1997.


Tedi S. Osias
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.

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Case No. S-826-A

PETITION OF MARGERY A. ELSBERG
t/a R.M.K. ASSOCIATES (Butler School)
(Hearing held May 30, 1990)

OPINION OF THE BOARD

Case No. S-1777 is the petition of Margery A. Elsberg for a modification of a special exception for a private educational institution pursuant to Section 59-G-2.19 of the Zoning Ordinance to revise the original five-phase development schedule; to approve the revised site plan; and to eliminate Condition Number 3 as set forth in the Board's original Opinion.

The subject property is located at 15951 Germantown Road, Germantown, Maryland, in the RC Zone.

<u>Decision of the Board:</u>	Special exception modification
	GRANTED.

Kathleen Sheehy, Esquire represented RMK Associates, which operates the Butler School. She summarized the history of the special exception as follows: The original special exception, granted in 1982, permitted the construction and operation of a private educational institution for up to 300 students and a summer camp for 300 students to be developed over 20 years in 5 phases according to an approved site plan. In 1984 the special exception was modified to allow the school to be open from 7 a.m. to 6 p. m. for an extended day program.

On 17 February 1988 Mrs. Spellman, the principal, received a letter concerning the school's failure to implement three conditions of the special exception: a storm water management facility, a lighting plan, and a landscape plan. Mrs. Spellman requested the removal of those conditions. In a discussion with Mrs. Spellman, DEP indicated that no stormwater management plan would be required in the early phases of development of the school. Having heard nothing further about the compliance with the original conditions, Mrs. Spellman thought that no further action on her part was necessary.

In March 1990 the school requested the Board of Appeals to approve modifications to the special exception. The Board agreed to the relocation of the tennis courts but stated that a public hearing would be required for the other modifications. Those modifications included building two classrooms, a music room/all purpose facility, and administrative space; all these facilities had originally been part of Phase 5. A basketball court, originally in Phase 1, and a pavilion and outdoor confidence course,

originally in Phase II, would now be shifted to Phase III. In addition the school is asking for the removal of the pond and small pier that had been approved in Phase I. It feels that the pond could prove to be a threat to the safety of children at the school and those in the neighborhood. (Exhibit 11 compares what was approved for each phase and the changes now being requested in the phasing plan.) Other modifications being requested are a modification of the site plan to allow for a reorientation of the driveway and the removal of Condition 3 of the original special exception, which required an approved stormwater management facility.

David McKee, who was qualified as an expert landscape architect and site planner, stated he had prepared the landscaping and lighting plans, and the grading studies required for the new access driveway. He stated that the proposed addition on the west side of the existing building would contain the main entrance to the building and therefore it was necessary to relocate the driveway. Two lights will be placed at each of the two entrances to the addition and two lights will be in the driveway.

Mr. McKee testified that the new addition would have no impact on the surrounding properties because there will be no increase in the number of students and the amount of open space will remain the same.

Raymond Norris, who qualified as an expert in civil engineering, developed the site plan. He stated that some of the water from the property drains to the east into a grassy swale and some to the west into another swale. These swales meet the requirements for water quality control. The Department of Environmental Protection has granted a conditional waiver for water quantity control (Exhibit No. 16). The waivers granted by DEP require the payment of a stormwater management contribution. In addition, any future plans concerning stormwater management must be submitted for review. Mr. Norris stated that in these regards a modification of the special exception would cause no hardships to the neighboring property owners.

Rilla Spellman, a principal in RMK and the director of the school for the past 19 years, stated that the pond had not been constructed during Phase I, as had originally been planned because the school decided that the pond could not be protected from the students and the neighboring children. She testified that she had spoken with Vince Berg of DEP in February 1988 and that it was his opinion that no stormwater management plan was needed. This conversation led her to believe the matter was finished although she received nothing in writing from DEP on the matter. A letter from Edward D. Helton, a neighboring property owner, states that he prefers that the pond not be built (Ex.17).

FINDINGS OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

The technical staff of M-NCPPC recommended approval with conditions (Exhibit No. 6).

FINDINGS OF THE BOARD

The Board finds that the modifications requested by the school will in no way increase the use of the property over what had been allowed in the original grant of the special exception. What is requested is simply adjustments to the timing of when certain developments will occur.

The Board also finds that these modifications meet all the requirements of Section 59-G-1.21 and Section 59-G-2.19.

Therefore the Board grants the modification with the following conditions:

1. Petitioner will be bound by all oral and written testimony, exhibits and evidence in the record.
2. Petitioner will be bound by the statement of operations.
3. Petitioner must obtain approval of a stormwater management facility plan or obtain a waiver of a stormwater management facility from the Department of Environmental Protection after review of the most current development plans. Two copies of the approved plan or the waiver must be submitted to the Board for its records.
4. Petitioner must obtain approval of a landscape and lighting plan from the technical staff of M-NCPPC. Two copies of the approved plan must be submitted to the Board for its records. Plant material must be maintained.
5. All other terms and conditions of the original grant remain in effect unless modified previously or in this Opinion.

The Board adopted the following 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.

The foregoing Resolution was proposed by William Green and concurred in by Howard Jenkins, Jr., Judith B. Heimann, Chairman, Helen R. Strang, and K. Lindsay Raufaste.

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 18th day of June, 1990.

Irene H. Gurman
Irene H. Gurman
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.

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.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Case No. S-826

PETITION OF MARGERY A. ELLSBURG
t/a R.M.K. ASSOCIATES (Butler School)

RESOLUTION TO MODIFY SPECIAL EXCEPTION
(Resolution adopted September 20, 1994
(Effective date of Resolution, November 2, 1994)

The Board is in receipt of correspondence dated July 13, 1994, from Rilla Spellman, President, which states, in part:

"... Butler School operates a Private Educational Institution for children from nursery school through elementary ages. ... The original approved Special Exception, ... granted the development of an Educational Institution and Summer Camp in Phased Development.

"Phase I and II have been constructed and we are planning to move to the construction of Phase III. At this time we wish to ask for modification of the Phasing Plan in terms of location of structures and items to be included in the various phases.

"LOCATION:

"1. The Barn, Tack Room (Phase V) and Caretaker's Apartment (Phase III), are currently shown near the north side of the property. This location in a large open field is highly visible we feel would create an unnecessary impact on our site. We plan to relocate this building on a lower sight (sic) near the West boundary of the property and behind the school building.

"2. The Basketball Court and Large Pavilion (Phase III) will not be constructed on the South Hill, removing these facilities from the South Hill would increase the amount of visible open space. In place of these previously approved structures we propose to construct an Exercise Shelter for our Equestrian Program on the West side of the property. This location, adjacent to the Stable is in the lowest area on the property and screened from the adjoining properties.

"3. The Gymnasium (Phase V) will be removed from the South hill and joined to the east side of the existing building. The change in location of the Gym will leave the entire South Hill open and free from the construction of any buildings.

"4. ... we feel that clustering all of the buildings in one area will support the Open Space character of our location. Our entire East boundary joins the Seneca Creek State Park. Relocating the above described structures removes planned construction from the North Hill Field and from the South Hill Field. Our land planners ... have studied the land use, stormwater management plan and the septic system and concur that by clustering buildings we can make more efficient use of our property and lower the impact on the surrounding land as well. ...

"We are preparing to implement Phase III of our plan which would include Two Classrooms, a Small Athletic Space, Equestrian Exercise Shelter, Stable and an Unfinished Future Caretaker's Apartment. ... these changes do not constitute any material change in our approved plan ... The needs of our student body and the population that we serve require that we proceed with Phase III. We plan to complete the equestrian exercise shelter and stable for use during the winter of 1994-95 and the classroom and athletic space for use beginning September 1995. ..."

The Board, after careful consideration of the correspondence, determined that they would like to receive comment on the above-referenced phasing changes from the Design, Zoning and Preservation Division of the Maryland-National Capital Park and Planning Commission (M-NCPPC).

On September 14, 1994, the Board received their recommendation, which states, in part:

"The applicant, Butler School, has requested a modification to its existing special exception for a private educational institution ...

"The Butler School has operated on the 22.7 acre subject property since 1982 with development taking place in accordance with an approved five phase development plan. Phases I and II of this plan have been constructed ... The school is now planning to construct Phase III of the development plan and seeks a modification of the special exception to change the location of proposed school facilities and their phasing. The proposed changes are shown on the ... development plans.

"... The staff finds upon review of the modification request and a site visit that the changes to the location of the proposed school facilities and their phasing will not substantially change the nature, character or intensity of use of the original grant, nor will it intensify the impact on the immediate neighborhood.

"The staff is in agreement with the applicant that clustering of the proposed school facilities around the existing school building and a future extension of the access driveway is a more efficient design for the school campus. ... the proposed plan will provide more open space on the north and south side of the subject property which reduces the impact of the school on the immediate neighborhood. This neighborhood includes Seneca Creek State Park to the east and residential properties to the north and west. ... the architecture will be compatible with the existing school building. Staff finds that there will not be any tree loss resulting from the proposed relocation.

"The staff recommends approval of the modification request ..."

The Board, after careful consideration of the correspondence, M-NCPPC's recommendation, and a review of the record in the above-referenced case, finds that the request to change the location of proposed school facilities and their phasing can be granted without the necessity of a public hearing. The Board further finds that the request will have no effect on traffic and on the immediate neighborhood.

THEREFORE, in accordance with the provisions of Section 59-G-3.1(c)(1) of the Zoning Ordinance, BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that Case No. S-826, Petition of Margery A. Ellsburg, shall be and hereby is re-opened to receive Rilla Spellman's July 13, 1994, letter as Exhibit No. 34; current approved phasing site plan, Exhibit No. 34(a); phasing plan revised July 1994, as Exhibit No. 34(b); and the M-NCPPC Design, Zoning and Preservation Division's September 13, 1994, recommendation, Exhibit No. 35; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that petitioner may proceed with the phasing plan changes as stated in petitioner's July 13, 1994, letter (Exhibit No. 34) and as shown on the revised phasing plan dated July 1994 (Exhibit No. 34(b)). Petitioner is bound to comply with all submitted statements and plans; and

BE IT FURTHER RESOLVED that, except as modified herein, all terms and conditions of the original special exception and any modifications thereto, remain in full force and effect.

The subject property is a 22.7 acre site, consisting of Parcels 5-9, Pleasant Hills Subdivision, located at 15951 Germantown Road, Germantown, Maryland, in the Rural Cluster Zone.

The foregoing Resolution was proposed by Helen Strang and concurred in by William Green, Allison Bryant and Judith Heimann, Chairman. K. Lindsay Raufaste was necessarily absent and did not participate in the foregoing Resolution.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland,
this 2nd day of November, 1994.



Tedi S. Osias
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.

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Case No. S-826

PETITION OF MARGERY A. ELSBERG
t/a R.M.K. Partnership

RESOLUTION TO MODIFY SPECIAL EXCEPTION
(Resolution adopted April 4, 1990)

The Board is in receipt of correspondence March 30, 1990, from Rilla B. Spellman, on behalf of the Butler School, which states, in part:

"This letter is in reference to the Special Exception ... which was granted by the Board of Appeals in July of 1982. At that time the Board approved the development of a Private Educational Institution on a 22 acre piece of property ... The school is to be developed in five phases over a number of years.

"... we are planning to move forward to the next stages of development. ... We have a particularly urgent need with regard to the proposal for two tennis courts.

"The two tennis courts which we propose to build at this time are approved as a part of Phase II ... We have changed the location of the tennis courts to place them closer to our building and driveway. Over the years since we first occupied this property, we have found that we feel more secure about the well being of our children if we keep them close to the main building. This location will allow for closer supervision of the children as well as provide additional physical security for the tennis courts. The adjoining property is now part of Seneca Creek State Park, therefore locating the tennis courts in this area will not cause any imposition to neighbors.

"As the construction of tennis courts had been approved as a part of our original Special Exception we did not understand that there would be any delay in our ability to construct these courts. We did not feel that locating them closer to our building for safety, security and convenience would constitute a significant change. Consequently we have sent our Camp Enrollment Forms including tennis as one of our camp activities. A delay in construction would cause an extreme hardship for our Summer Camp.

"We ask that the Board approve the change in location of the tennis courts so that we may begin construction. ..."

Based on the foregoing, the Board finds that the requested modification can be granted without changing the nature, character or intensity of the use of the property, nor changing the effect on the immediate neighborhood. Therefore,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that Case No. S-824, Petition of Margery A. Elsberg, shall be and hereby is re-opened to receive Ms. Spellman's letter and a Site Plan showing the proposed relocation of the tennis courts; and

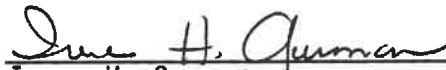
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that petitioner may relocate the two tennis courts to the location shown on the Site Plan dated March, 1990; and

BE IT FURTHER RESOLVED that all terms and conditions of the original special exception and any modifications thereto, shall remain in full force and effect.

The subject property contains approximately 22 acres, consisting of Parcels 5-9, Pleasant Hills Subdivision, located at 15951 Germantown Road, Germantown, Maryland, in the Rural Cluster Zone.

The foregoing Resolution was proposed by Helen R. Strang, and concurred in by Howard Jenkins, Jr., William Green, K. Lindsay Raufaste and Judith Heimann, Chairman.

Entered in the Minute Book of
the County Board of Appeals for
Montgomery County, Maryland,
this 31st day of May, 1990.



Irene H. Gurman
Clerk 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.

COUNTY BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

COUNTY OFFICE BUILDING
100 MARYLAND AVENUE
ROCKVILLE, MARYLAND 20850

Telephone
Area Code 301
279-1226

Case No. S-826

PETITION OF MARGERY A. ELSBERG
t/a R.M.K. ASSOCIATES

RESOLUTION TO AMEND SPECIAL EXCEPTION
(Resolution adopted May 17, 1984)

The Board has received a letter from Rilla Spellman Ledgard, Headmistress, said letter dated May 8, 1984, which states, in part:

"I am writing on behalf of the Montessori Country School, 15951 Germantown Road, Germantown, ... The school was granted a Special Exception (Case S-826) in August, 1982. This exception was granted for a Montessori school for children ages 2 through 12 and for a summer program to serve a similar population. The hours of operation are 8:30 a.m. to 4:30 p.m. on weekdays.

"We intend to continue operation as we had requested ... However, three years ago when we prepared our Special Exception, requests from parents did not indicate a need for a longer day. At the present time, we find that seventy-five percent of our parents need an extended day program for their children. ...

"The modification we are requesting is to extend the hours of operation to be from 7:00 a.m. to 6:00 p.m. The population we serve and the program we have will remain the same. I have already discussed approval of the program with the Maryland State Department of Education and have been assured that we will have no difficulty in meeting their requirements. Because children will be dismissed gradually from 3:00 p.m. to 6:00 p.m., the impact on traffic for Route 118 should not be appreciable. ..."

Based on the foregoing information, the Board finds the request to extend the hours of operation to be from 7:00 a.m. to 6:00 p.m., can be considered a "minor modification" and will not affect the operation of the special exception in a substantial way, or substantially change the nature, character or intensity of the use, or substantially change the effect on traffic or on the immediate neighborhood. Therefore, pursuant to Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance,

BE IT RESOLVED by the County Board of Appeals that the request to extend the hours of operation from 7:00 a.m to 6:00 p.m. shall be and hereby is granted. All other terms and conditions of the special exception, Case No. S-826, shall remain in full force and effect.

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

Entered in the Minute Book of the County
Board of Appeals this 23rd day of May, 1984.


Dollie H. Kyte
Clerk to the Board

Note: Any party may, within 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.

COUNTY BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

COUNTY OFFICE BUILDING
ROCKVILLE, MARYLAND 20850

Case No. S-826

Telephone
Area Code 301
279-1226

PETITION OF MARGERY A. ELSBERG
T/A R. M. K. ASSOCIATES

RESOLUTION BY THE BOARD
(Resolution adopted July 22, 1982)

The Board, upon its own motion, adopted the following
Resolution:

BE IT RESOLVED by the County Board of Appeals for Montgomery
County, Maryland, that the record of this case shall be re-opened
to receive the following exhibits:

Exhibit Nos. 23(a) - 23(e) - Letters in support of
petition

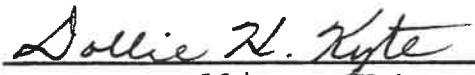
Exhibit No. 24 - Traffic Impact Study by Greenhorne &
O'Mara, Inc.

Exhibit No. 25 - Letter dated July 13, 1982, from
Wm. E. Baumgaertner, P.E., Green-
horne & O'Mara, Inc.

BE IT FURTHER RESOLVED that the record of this case shall
remain open until August 11, 1982, at which time the record shall
be closed.

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

Entered in the Minute Book of the
County Board of Appeals for Montgomery
County, Maryland, this 28th day of
July, 1982.


Dollie H. Kyte
Clerk to the Board

Copy of this Resolution mailed to all persons entitled
to notice of the original hearing.

COUNTY BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

COUNTY OFFICE BUILDING
ROCKVILLE, MARYLAND 20850

Telephone
Area Code 301
279-1226

Case No. S-826

PETITION OF MARGERY A. ELSBERG
t/a R.M.K. ASSOCIATES
(Hearing Held July 8, 1982)

OPINION OF THE BOARD

This proceeding arises on the petition filed for a special exception pursuant to Sections 59-G-2.19 and 59-G-2.13(b) of the Zoning Ordinance (Chap. 59, Mont. County Code 1977, as amended), to construct and operate a private educational institution for up to 350 students and a summer day camp for up to 300 students. Pursuant to Section 59-G-2.49, petitioner also proposes to use up to six (6) horses in connection with the private educational institution and summer day camp. The subject property contains approximately 19 acres,^{1/} consisting of Parcels 5, 6, 7, 8 and 9, Pleasant Hills Subdivision, Darnestown-Germantown Road (Md. Rte. 118), Gaithersburg, Maryland, in a Rural-Cluster Zone.^{2/}

Decision of the Board: Special Exception Granted to
petitioner only subject to
conditions enumerated herein.

Petitioner's Proposal

Petitioner, R.M.K. Associates (hereinafter called "RMK"), a Maryland General Partnership, proposes to operate a private educational institution on 22.7 $\frac{1}{2}$ acres, located east of Maryland Rte. 118 (Darnestown-Germantown Road) and approximately 1,000 feet south of Seneca State Park.

-
- ^{1/} At the time of the hearing, petitioner corrected an error in the original filing to the effect that the subject property is 22.7 acres, rather than 19 acres. At the time of the hearing before the Montgomery County Planning Board, petitioner reduced the number of students from 350 to 300 (Exhibit No. 10(a)).
- ^{2/} As a preliminary matter, the Board determined that it could hear and decide the instant case regardless of the outcome of a zoning text amendment which would allow petitioner to develop its total property under the optional method, since only the development of the remaining 5.8 acres would be affected.

The site is the eastern portion of a 28.5 acre property, presently the subject of a pre-preliminary subdivision plan for four (4) residential lots plus a school site. The area from Maryland Rte. 28, .6 mile to the south, to the Great Seneca Creek, .5 mile to the north, is characterized by the developed residential subdivisions of Pioneer Hills, Brookmede, and Brookmede North on the West side of Md. Rte. 118, and by scattered single-family residences along the east side of Md. Rte. 118. The nearest residences are located southeast and northeast of the subject property. Large undeveloped and wooded areas are further east from Rte. 118 and closer to the Great Seneca Creek. This general area is in the rural cluster zone.

As shown on the site plan (Exhibit No. 4(a)), the petitioner intends to access the 22.7-acre property from a private drive in the northwest corner at Md. Rte. 118. This drive would extend toward the east property line, providing secondary access to a neighboring residence (which already has an easement across the property from a different access point) before extending southward to the school itself. A spokesman for the petitioner testified that the selection of the site was done in consultation with the Montgomery County Department of Transportation and with the State Highway Administration, giving consideration to the need for an easement to the neighboring property, to a desire not to have more than one entrance to the school property, and to the question of sight distances. The sight distances are estimated at 300-500 feet in each direction, and the speed limit is 40 mph.

Rilla S. Ledgard, founder and headmistress of the Montessori Country School, testified as to its history, its operation, both present and proposed, and its need for expansion. The school, currently located at 15120 Turkey Foot Road, Gaithersburg (in buildings on the grounds of the Darnestown Presbyterian Church) has served the Gaithersburg-Darnestown area since 1971.

"RMK" plans a phased construction on the subject site, with the consequent gradual shifting of its classes to the new facility. The school now operates four primary classes for children 2 - 7 years of age and two junior classes for children 7 - 12 years of age. For several years it has also operated a summer program for children from 2½ - 11 years of age, which includes a wide variety of both indoor and outdoor enrichment activities, as well as academic Montessori class work.

A special intensive equestrian program is also available for children between the ages of 6 and 11. Ms. Ledgard stated that she has been involved with the Montessori method of education since it first came to the Washington area, and that she founded the present school, the first in its area, with 13 children. It presently has 150 students from nursery school through 6th grade. She and her entire staff are Montessori Internationale certified, having other academic degrees as well. The school is both accredited by the State of Maryland and by Montessori Internationale. She stated that essential to the program are an integration of academic courses with outdoor activities and physical education. For this reason, the site chosen for the new facility would, in her opinion, better serve the needs of the program than would the facilities which they are now occupying. Indeed, one of the school's classes this year had to be relocated to the original site of the school, Fairhaven Methodist Church, because the Presbyterian Church needed the space for another program.

Ms. Ledgard stated that there is a need for the kind of private educational alternative that her Montessori school offers in the Gaithersburg-Darnestown area. Her waiting list presently consists of only six (6) children, but this is because she does not hold out unrealistic hope to parents of getting their children accepted into the school when space is not likely to be available. Additionally, Montessori schools have a policy of admitting only a few new students into their classes at one time because the introduction and adjustment of a child into the program is very important for the program's smooth functioning.

Petitioner presented an amended statement at the time of the hearing and plans were reviewed by Edward S. Payne, the architect, Bruce Boltz, Jr., an expert in engineering, and by Ms. Ledgard.

Petitioner proposes to develop the property in five (5) stages, over a period of 10-20 years. During the first phase, 2 classrooms, a small swimming pool, a bathhouse to be located within the school building, an open-sided pavilion/shelter (primarily for the day-camp students), a pond with a small pier to be used to teach boating, and a hard-surfaced basketball court would be constructed.

The aim of Phase 2 would be to greatly expand the school's physical education program, and thus would include construction of such things as two lighted tennis courts, a second hard-surfaced basketball court, an all-purpose athletic field, a second open-sided pavilion/shelter, a barn and tack room, and other equestrian-related facilities.

Phase 3 envisions a major addition to the school building, consisting of five (5) classrooms. Phase 4 would include a gymnasium/all-purpose facility, a bathhouse and a large swimming pool. Phase 5, not expected to be completed for twenty (20) years, would round out the development, with the following additions to the school building: five (5) classrooms, art and science room, library, music room, and administrative facilities. Exhibit No. 16 gives details of each of these phases.

Mr. Payne stated that all five phases comprised 47-48,000 square feet, and that they will be concentrated in three areas: (1) behind the portion of the property to be used for residential purposes; (2) around the bottom of the hill where the school building itself would be located; and (3) on the other side of the swale, which would be the recreational area. Because the land drops off 45-50 feet from its peak, the school would be minimally visible from the surrounding neighborhood. Due to the topography and the orientation of the land, it is possible to "bury" the school somewhat into the hill and allow it to take advantage of the sun's rays for heat and light. Additionally, the topography makes it feasible to add on to the building in the various stages planned, starting with the two classrooms on the northeast side.

He stated that the ring road for access would be hidden in an existing knoll and would be extended as necessary during the phases of expansion. Buildings would be traditional in appearance, with white siding and brown roofs to blend with the rural atmosphere of the area (Exhibit No. 4(b)). Tennis court lighting would illuminate only the courts; lighting elsewhere would be a maximum of ten (10) feet high and would not cast glare on surrounding properties. The proposed sign would be entirely of wood, with engraved letters.

Mr. Payne stated that there would be one row of screening between the proposed residential development on the property and the stable, and another row between the properties on Route 118 and the proposed barn. He also stated that petitioner has decided to change the species of trees to be used in the buffer zone from white pines to cedar, because horses like to nibble on white pine trees. The ring road would connect with the 90-acre property owned by the Miller family, which is currently developed with one single-family house but is proposed for a State park. This property is heavily wooded. There are also heavy woods between subject site and the 55-acre Casey parcel, which is undeveloped land on which a small amount of agriculture is conducted.

Mr. Boltz stated that subject site, which is currently being farmed, is rolling, and consists mainly of manor-silt loam and Washington silt, neither of which presents sedimentation control or erosion problems and both of which lend themselves well to construction and drainage. Preliminary testing for the proposed septic system indicated that the entire sanitary system would be feasible and would be certified. Septic areas would be on knolls in front of and behind the school and would constitute a total of ten (10) acres. This size of field is required for both the initial system and two back-up systems. The site, he stated, has a good history because it was approved for subdivision once before and prior percolation tests were all satisfactory. Well testing, as of this time, also indicates that water tables are adequate to serve the entire proposal.

Even with all five stages of development completed, Mr. Boltz stated, there would still be 72% open space. An on-site storm-water management pond would be required to be located in the swale.

Ms. Ledgard stated that if the school can be operational at the new site this fall, she would move two classes, consisting of a total of 60 children, immediately. By next summer, there would possibly be 100 children.

The children arrive via three small vans and carpools at approximately 8:45 a.m. Sessions run from 9:00 a.m. - 12 noon for the younger children and from 9:00 a.m. to 2:45 p.m. for the older children. She hopes for the school to be accredited through eighth grade by the time space permits. In that case, a day might be as long as from 9:00 a.m. to 4:30 p.m. All of the children, she said, can be picked up and dropped off within a period of about ten minutes.

Mr. Boltz testified that the Department of Transportation and the State Highway Administration would require that the petitioner provide both a 75-foot acceleration lane and a 75-foot deceleration lane on Route 118 at the entrance to the site from the beginning of operations there. Additionally, a 300-foot passing lane on Route 118 would be required of petitioner at the time of the last (5th) phase of construction.

A traffic study prepared by William E. Baumgartner, head of Greenhorne and O'Mara's Traffic and Transportation Planning Department, was entered into the record as Exhibit No. 24. The study took into consideration existing and planned conditions of Route 118, Route 28, and their intersections, as well as the proposed Spring Meadow Development, the proposed Montessori School, and the possible four dwelling units to be built on the portion of this site directly fronting Route 118. For the study, all trips generated by the Montessori Country School were combined with all projected and existing peak-hour trips. This type of analysis gives conservative results, in the analyst's opinion, because the school's peak-hour does not coincide with the surrounding network peak hours. Traffic counts taken by Greenhorne & O'Mara personnel indicate the peak-hour for the surrounding road network is 7:30 a.m. - 8:30 a.m. and from 4:30 p.m. - 5:30 p.m. The peak-hour for the Montessori Country School is 8:45 a.m. - 9:45 a.m. and 2:30 p.m. - 3:30 p.m. A third of the school's enrollment is released at noon.

With all of these factors taken into consideration and doubling existing counts at the school's current location, thus projecting for a 100% increase in enrollment, the study estimated a possible total peak-hour trips of 279 generated by the school, its proposed related single-family dwellings and the proposed Spring Meadow development. This figure factors in carpooling and busing of students. The report concludes that the existing level of service "A" condition at the A.M. and P.M. peak-hour at the Route 28 and Route 118 intersection would be unaffected and that a level of service "A" condition would exist at the proposed entrance to the school from Route 118.

The Board reminded citizens that opposition to the proposed four residences on the western portion of the property was not properly directed to the Board of Appeals, which is solely concerned with the portion governed by the proposed special exception.

Rebuttal

The record was re-opened to receive a Traffic Impact Study (Exhibit No. 24) and a letter from William E. Baumgartner, Department Head, Traffic and Transportation Planning, Greenhorne & O'Mara. Summarized, the letter states:

Mr. Baumgartner, although in attendance at the July 8 hearing, did not have an opportunity to testify and, consequently, a number of traffic-related questions went largely unanswered. His letter is in answer to those questions.

As set forth in "Geometric Design Standards for Highways other than Freeways, 1969", by the American Association of State Highway and Transportation Officials, the minimum stopping sight distance for a 40 m.p.h. road is 275 feet, and the desirable stopping sight distance for the same road would be 300 feet. Mr. Baumgartner's professional opinion, based on his examination of the site, is that the current proposed location for the entrance to the site is the optimal location because it is placed in the middle of the outside of the existing curve along Md. Route 118, and optimizes sight distances both to the left and to the right, which are in excess of 600 feet to the left and in excess of 450 feet to the right. Moving the entrance either slightly to the north or to the south would slightly improve, or retain the same, sight distance in one direction, but would reduce it in the other.

The proposed location of the entrance to the school would not affect traffic operations at Citizens Lane because of the distance between the two areas. The estimated 195 a.m. and p.m. peak-hour trips that would be generated by the school would not affect current level of service "A" conditions at the intersection of Md. Route 28 and Md. Route 118.

Maryland National Capital Park
and Planning Commission
Technical Staff Report

Based on the topography, traffic conditions, compatibility with the Master Plan and level of activity of the proposed use, the Technical Staff in a memo dated June 28, 1982 (Exhibit No. 10(b)) recommended approval of the instant petition with conditions. In a letter dated July 2, 1982 (Exhibit No. 10(a)), the Montgomery County Planning Board concurred with its Technical Staff in recommending conditional approval of this petition. The Planning Board recommended that the condition regarding a subdivision plan be amended, giving the Planning Board determination of the access to the property. The Planning Board also indicated that the special exception should be conditioned to require petitioner to indicate the specific characteristics of trees to be planted during phase one.

A number of parents of children enrolled in the present Montessori school and one teacher appeared in support of the petition. They praised the school for its superior program and cited a need for its expansion. Additionally, letters of support (Exhibit Nos. 14 and 23(a-d)) were entered into the record. Favorable comments were made in these letters regarding the appropriateness of the land use for the site.

Opposition

Several citizens, two among the adjacent or confronting property owners, and the others from nearby areas, appeared. Some expressed concern about the proposed school, others opposition to it. The concerns centered around the location of the access road, with questions being raised as to why it could not simply be Citizens Lane on the side of the street occupied by subject property. Other concerns were in regard to traffic loads, particularly at the nearest intersection, to the adequacy of the septic field to serve the proposed use with its two swimming pools, to the lighting of the tennis courts, and regarding screening between the proposed access road and properties to the north. Those in opposition stated that they considered traffic to be generated by the proposed school excessive enough to cause hazards since people generally exceed speed limits on the adjacent roadway. Some considered a school in a residential neighborhood detrimental to property values and contrary to their expectations of the community when they purchased their homes.

Additionally, the firm sought the advice of the State Highway Administration regarding safety conditions within the vicinity of the proposed school and was advised that there are no high accident locations within said area.

Further letters of support for the proposed school were submitted for the record (Ex. Nos. 23(a)-(e)).

Findings of the Board

After careful consideration of all testimony and evidence of record, including testimony binding upon the petitioner and all other testimony and evidence of record, the Board finds that the proposal, as conditioned, meets all of the general criteria for the grant of a special exception found in Section 59-G-1.21 of the Zoning Ordinance as well as all of the specific criteria for a grant of this requested special exception found in Sections 59-G-2.19 and 59-G-2.13(b). Additionally, petitioner has met the criteria found in Section 59-G-2.49, which allows a private riding stable for more than four (4) horses.

As to the general conditions, the Board finds that the use will be consistent with the general plan for the physical development of the district, including the Master Plan for the Potomac Subregion. The construction and use will be in harmony with the general character of the neighborhood considering the low-density development and the low level, inconspicuous design of the proposed structures, which would still leave 70% of the site in open space. Additionally, the intensity and character of the activity, especially considering the large site, will be quite in keeping with the general character of the neighborhood. Parking can be adequately handled on site, and the use, even when fully developed, will not adversely affect traffic conditions on the adjacent roadway nor at the nearest intersection. There are no other Montessori schools in the vicinity. The Board further finds that the use, as conditioned, will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding property or the general neighborhood. Indeed, schools are generally sought-after assets in a community, and this particular school will be so adequately buffered from its neighbors by its large site, plus proposed landscaping, that such noise and activity as one generally associates with a

school will have minimal, if any, impact on surrounding neighborhood. The Board finds that the use will not adversely affect the general welfare of residents, visitors or workers in the area; that it will be served by adequate public services, that the percolation history on the site is propitious and that, in any case, no use and occupancy permit would be issued unless an adequate septic system, with the required back-up fields, were in place.

Public roads have been examined both by petitioner's expert witness and by Technical Staff of M-NCPPC and have been found adequate for the purpose requested. The recommendation that acceleration/deceleration lanes and a through lane be added to Md. Route 118, to enhance ease of ingress and egress at the site, as well as to facilitate through traffic, should guarantee that no inconvenience or hazardous traffic conditions will arise from this use.

As to the specific conditions for the grant of a special exception for a private educational institution, the Board finds that this use, as conditioned, will not constitute a nuisance for any reason, that the buildings proposed will be architecturally compatible with the other buildings in the surrounding neighborhood, that this 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 further finds that the use, as proposed, can and will be built in conformity with the required area, density, building coverage, frontage, setback, access and screening requirements where specified. The Board finds that the topography of the land to be used lends itself well to a private educational institution of the type proposed and that the density proposed is far less than that allowed by the Zoning Ordinance.

As to the specific conditions for a grant of a child or elderly day-care facility for more than 40 individuals, the Board finds that the use as proposed and conditioned herein will not constitute a nuisance for any reason, and that petitioner's documentation demonstrates that there will be ample indoor and outdoor play space, free from hazards, appropriately equipped for the age and number of children being cared for, and readily accessible.

Petitioner's statements and site plans further demonstrate to the Board that they have met the stabling and acreage requirements for the grant of a private riding stable under Section 59-G-2.49. Therefore, this special exception to permit the construction and operation of a private educational institution for up to 300 students and a summer day camp for up to 300 students shall be, and is hereby granted, subject to the following conditions:

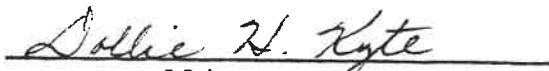
1. The applicants shall submit a subdivision plan for the subject 22.7 acre property, to be reviewed and approved by the Technical Staff and Planning Board, with access to the property to be determined by the Planning Board.
2. The applicant shall obtain an access permit from the State Highway Administration.
3. Two copies of an approved storm-water management facility shall be submitted for the record of the Board of Appeals.
4. The on-site water and septic facilities shall be reviewed and approved by the County Health Department.
5. Two copies of an approved lighting plan shall be submitted for the record of the Board of Appeals.
6. Tennis court lights shall be turned off by 9:00 p.m.
7. Two copies of an approved landscaping plan indicating height, location and species of trees to be planted in phase one of the development shall be submitted for the record 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 Rita A. Morgan and concurred in by Joseph E. O'Brien, Jr., Chairman, Doris Lipschitz, and Wallace I. Babcock. Mr. Harry M. Leet 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 18th day of August, 1982.


Dollie H. Kyte
Clerk to the Board

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

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.