
BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

**Case No. S-862-A
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 $\frac{1}{4}$ mile of the site, conforming to the requirements of the Montgomery County Department of Public Works and Transportation (DPWT).

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- 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:

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 $\frac{1}{4}$ 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.