

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850

**Case No. S-2533**

**PETITION OF PHYLLIS L. CHILDERS**

OPINION OF THE BOARD

(Decision adopted July 9, 2003)

(Effective Date of Opinion: October 14, 2003)

Case No. S-2533 is an application for a special exception pursuant to Section 59-G-2.29 (Home Occupation, Major) of the Zoning Ordinance to permit the operation of an art studio. The petitioner proposes to teach art classes weekdays and on occasional Saturdays to a maximum of forty students per week, between the hours of 8:00 a.m. and 9:00 p.m. A maximum of eight children or teens or five adults per class is proposed.

Pursuant to the authority in Section 59-A-4.125 of the Zoning Ordinance, the Board of Appeals referred the case to the Hearing Examiner for Montgomery County. On October 4, 2002, the Hearing Examiner conducted a public hearing, and on November 4, 2002, issued a Report and Recommendation. In the course of the proceedings it was revealed that the Petitioners need a waiver from the requirements of Sections 59-E-2.83. The Zoning Ordinance requires notice to the public of the waiver request, which was not included in the notice of public hearing.

By Resolution dated January 15, 2003, the Board voted to adopt the Hearing Examiner's Report and Recommendation and accept his recommendation that the case be remanded to the Hearing Examiner to consider the parking waiver request. On January 22, 2003, the Petitioners mailed a letter to the parties of record, notifying them of the parking waiver request. At a Worksession on February 5, 2003, the Board of Appeals considered the Applicants' request for a parking waiver. The Board found that it required analysis by technical staff at the Maryland National Capital Park and Planning Commission (MNCPPC). At its Worksession on July 9, 2003, the Board of Appeals again considered the parking waiver request, together with a Memorandum from MNCPPC technical staff, dated June 13, 2003, which recommends approval. The Board voted to adopt the recommendations of the Hearing Examiner and technical staff to grant the parking waiver and the special exception.

Decision of the Board: Special exception and parking waiver **granted**, subject to conditions enumerated below.

The Board adopts the finding of MNCPPC technical staff that no waiver of Sections 59-G-2.29(j)(1) and 59-E-2.83, pertaining to the number of required parking spaces, is required. The Board adopts the finding of the Hearing Examiner that "Under the circumstances of this case, requiring a 6-foot high wall, fence or plantings between the Petitioner's property and the Serailes' property to the west would serve no useful purpose. The Serailes do not want such screening and the installation of such screening would detract from, rather than add to, the character of the neighborhood," and finds that the waiver from 59-G-2.29(j)(3) and 59-E-2.83, pertaining to screening, should be granted. The Board adopts MNCPPC technical staff's finding that the driveway of the subject property meets the setbacks for the RE-2 Zone, and that therefore, no waiver from the requirements of Section 59-E-2.81 is required.

Therefore, based upon the foregoing, on a motion by on a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement, the Board adopts the Hearing Examiner's Report and Recommendation as amended, and grants the requested special exception, subject to the following conditions:

1. Petitioners shall be bound by their testimony and exhibits of record, including but not limited to Exhibit Nos. 3, 4 and 6, to the extent that such evidence and representations are identified in the Hearing Examiner's Report and Recommendation and in the opinion of the Board.

2. Classes will be scheduled at least one hour apart.

3. No off-site parking is permitted.

4. Parking for classes is limited to four on-site parking spaces in the existing driveway. A maximum of four on-site parking spaces must be provided, which will consist of two rows with two spaces each, leading from the garage. For adults classes, two of the five students must car-pool or one must be a resident of the Marmary Road neighborhood who walks to class. Persons dropping or picking up students may park only briefly in the driveway.

5. There shall be no more than five truck deliveries per week associated with this use and all deliveries must be by public or private services that also deliver to private homes.

6. Shade trees must be planted and maintained along the parking facility to assure that at least 30 percent of the paved area, including driveways,

are shaded. Shading must be calculated by using the area of the tree crown at 15 years after the parking facility is put into operation.

7. An asphalt or other hard surface apron must be installed on Marmary Road at its intersection with Longdraft Road so that cars exiting Marmary Road can obtain traction on the hard surface apron before entering Longdraft Road. The apron must be maintained in good condition. An apron in compliance with this condition may be installed by Montgomery County, a coalition of property owners of the Marmary Road neighborhood, or by the Petitioner. The apron must be installed on or before July 1, 2004.

The Board adopted the following Resolution:

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

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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 14<sup>th</sup> day of October, 2003.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

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

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