

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850**

(240) 777-6600

**Case No. S-1565-A**

**PETITION OF HOWARD HUGHES MEDICAL INSTITUTE**

OPINION OF THE BOARD

(Hearing held on Wednesday, September 10, 2003)  
(Effective Date of Opinion: April 7, 2004)

Case No. S-1565A is a Petition for modification of a special exception to permit the expansion of a charitable and philanthropic institution pursuant to Section 59-G-2.21 of the Montgomery County Zoning Ordinance, Chapter 59, Montgomery County Code 1994, as amended (the "Zoning Ordinance").

The subject property is Parcel A, Chevy Chase Section 4A, Plat Book 159 at Plat No. 18068; unsubdivided-tax parcel 60; and unsubdivided-tax parcel P212, located at 4000 Jones Bridge Road, Chevy Chase, Maryland, in the R-90 Zone.

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

A public hearing on the Petition was held on September 10, 2003.

Roger W. Titus, Esq. and Kristin M. Koger, Esq. appeared on behalf of the Petitioner, Howard Hughes Medical Institute (the "Petitioner"). They called as witnesses Thomas Cech, Ph.D., President of the Petitioner; Calvert Bowie, architect; Perry Berman, land planner; Scott Wolford, engineer; Edward Papazian, transportation planner; and Louise Schiller, landscape architect.

Martin Klauber, Esq., the People's Counsel of Montgomery County, Maryland, participated in the public hearing in support of the Petition.

There was no opposition to the Petition.

## **EVIDENCE PRESENTED TO THE BOARD**

1. Thomas Cech, Ph.D., president of the Petitioner, testified that the Howard Hughes Medical Institute's headquarters and conference center are located on the subject property, under the terms of Special Exception S-1565 granted by the Board on November 3, 1988, as modified by Board resolution adopted February 21, 1990.

2. Dr. Cech testified that the Petitioner seeks to expand its headquarters to accommodate the immediate consolidation and anticipated expansion of its staff. First, the Petitioner's entire Human Resources and Purchasing Departments, consisting of about 40 employees, are located off-site at 8401 Connecticut Avenue due to the restriction in the 1988 special exception which limits the number of employees that may be located at the headquarters to 200. The off-site solution splits the Petitioner's work force and constrains management decision-making. Second, the Petitioner would like to expand its headquarters because currently there is no flexibility in terms of hiring additional people if programmatic needs call for additional hiring. In order to achieve consolidation of the Petitioner's administrative work force at a single location, thus improving efficiency and internal communication, as well as providing the Petitioner with critically needed space to accommodate reasonably anticipated growth in its administrative needs.

3. Dr. Cech added that the Petitioner is seeking permission to immediately increase the existing limit on the number of employees from 200 employees to 260 employees. Furthermore, the Petitioner is seeking permission to increase the limit on the number of employees to a maximum of 350 employees upon completion of the construction of the addition, which is the basis of this requested modification.

4. Mr. Calvert Bowie testified regarding the layout of the property (Exhibits 4A, 4E and 11). He also testified that in addition to office space, the facility also has conferencing and social gathering spaces where conference participants come and stay while attending meetings on Petitioner's campus. The administrative office space is centered around two courtyards and a third which is open to a well-landscaped storm water management pond. The middle portion of the facility contains the conference and gathering space and is connected to the office space by an intervening dining facility.

5. Mr. Bowie testified that, as part of the requested modification, the Petitioner seeks to increase the land area covered by the special exception to 36.44 acres by the addition of a 4.6-acre parcel of land (the Platt Property), which includes a 4,000 square foot structure, and a 9.44-acre parcel of land (the Hayes Manor property), which includes a number of structures. The Petitioner

purchased both parcels of land subsequent to the original grant of the special exception.

6. Mr. Bowie further testified that the Platt property and the 3,976 square foot residence located on that property are intended to remain unchanged and to be used for ancillary uses. These proposed ancillary uses include an exercise facility, guest quarters for visitors, occasional receptions and outdoor gatherings, food preparation, storage and administrative functions. No additional structures are proposed for the Platt property.

7. Mr. Bowie stated that the historically designated Hayes Manor property is located to the west of the existing facility and consists of the ca. 1762 Manor House (with a circa 1985 addition) (Exhibit 17), a garage with attached carport, a bungalow, and a swimming pool (Exhibit 4A). In response to the Petitioner's offer, the Historic Preservation Commission has approved the removal of the 1985 addition, the carport and the swimming pool (Exhibit 4A and 17). Mr. Bowie stated that the Hayes Manor property will be integrated with the existing campus walkway and garden system for use by the Petitioner's employees and guests (Exhibit 21). The Hayes Manor property is intended to be used for uses ancillary to the Petitioner's headquarters and conference center, and could include food preparation for occasional outdoor gatherings, an exercise facility, small conferences, offices to support functions at the facility, guest quarters for visitors, or storage.

8. Mr. Bowie further testified that the proposed office addition consists of 75,000 square feet of office space with a parking garage located beneath it. The design of the expansion breaks the scale of the building into a series of individually articulated components and incorporates geometries typical of residential buildings. The proposal involves extending the fabric of the existing building. The plan (Exhibit 31B) is organized around the creation of two new interior courtyards. The Hayes Manor house will be a major focus on the west side of the property. Mr. Bowie testified that the existing building and the expansion are set considerably lower than the Hayes Manor house (Exhibit 4D). The ring road that the Petitioner is proposing will be cut into the side of a hill so that it will have minimal visual impact from the Hayes Manor house (Exhibit 31B).

9. The proposed parking garage will be connected to the existing parking garage, which is located under the northern and western portions of the existing facility. The proposed parking garage is designed to accommodate 164 cars.

10. The proposed office addition will permit the Petitioner to relocate the existing loading dock and contiguous service areas below grade

11. Mr. Bowie also testified regarding the proposed lighting plan (Exhibits 31C, i, ii, iii). He stated that the proposed fixtures are directed

downward and have caps on them to prevent glare. Mr. Bowie also testified that there will be no illumination spilling off site.

12. With respect to the surrounding neighborhood, Mr. Bowie testified that the houses on Manor Road are set considerably below where the proposed buildings are located and cannot be seen throughout most of the year. He added that the plan takes into consideration the five houses on Platt Ridge Drive so that the proposed addition is set below these houses and the open space of the Platt property.

13. Mr. Bowie testified that the Petitioner's proposal 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. Finally, Mr. Bowie testified that the Petitioner's proposal will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects that use might have if established elsewhere in the zone.

14. Mr. Perry Berman testified that the requested modification will have no non-inherent adverse effects. Mr. Berman also testified that the requested modification will be consistent with the 1990 Bethesda-Chevy Chase Master Plan. His report (Exhibit 15) notes that the 1990 Bethesda-Chevy Chase Master Plan recognizes the importance of biomedical development in the County and in the planning area. The report further notes that the Petitioner's facility fulfills this goal of the Master Plan by implementing a well-designed, low intensity biomedical use. The Master Plan also specifically recognizes and supports the 1988 approval of the Petitioner's Special Exception and recommends Institutional Use for the Connecticut Avenue and Jones Bridge property.

15. Mr. Berman further testified that when evaluated in conjunction with the Columbia Country Club, the only other identified existing and approved special exception in the neighboring one-family residential area, the requested modification will not 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. The proposed expansion will be in keeping with the existing site treatment. The office expansion is low in scale, set back from the community, and constructed with similar residential-type building materials.

16. Mr. Berman also testified that the requested modification complies with all of the R-90 Zone development standards, as shown in the following table. Specifically, the Petitioner's proposed use meets the minimum side yard setback, minimum frontage, minimum green area, maximum FAR, and maximum building height requirements for the proposed special exception use (Exhibit 15). Mr. Berman noted that the lighting, screening, setback and placement of parking will

cause the building addition to have no adverse impact on the surrounding community.

**R-90 Development Standards Not Affected by Special Exception Requirements  
(59-C-1.32)**

	<u>Required</u>	<u>Provided</u>
Minimum Lot Area	9,000 s.f.	1,585,140s.f.
Minimum Lot Width At front building line	75'	823'
Minimum Setback From Street	30'	280'
Minimum Rear Yard Setback	25'	221'
Maximum Percentage of Lot Coverage	30%	9.8%

**R-90 Development Standards for Charitable  
or Philanthropic Institution Special Exception Uses  
(59-G-2.21)**

	<u>Required</u>	<u>Provided</u>
Minimum Side Yard Setback -- One Side		
To existing structure	16'	71'
To proposed expansion	16'	93'
Minimum Side Yard Setback -- Total of Both Sides		
To existing structure	50'	71'
To proposed expansion	50'	93'
Minimum Frontage	50'	823'
Minimum Green Area	50%	76.89%
Maximum FAR	0.25	0.18
Maximum Building Height	35'	35'
Site Access	Frontage on and direct access to arterial roadway	Not Applicable- No change in site access is proposed.
Outdoor Recreational Facilities, Etc., Setback	50'	Not Applicable- No change in outdoor recreational facilities is proposed.

16. Mr. Scott Wolford testified that there is an approved natural resources inventory/forest stand delineation plan (Exhibits 8A – 8D) for all of the property that is subject to this application; and, there is also an approval of a

preliminary forest conservation plan by the Montgomery County Planning Board (Exhibits 31F, 33). Mr. Wolford testified that there is an existing storm water management pond (Exhibit 31G). Mr. Wolford stated that for the area of the proposed expansion, there will be a pipe that runs around the west side of the building with a series of inlets picking up surface water and roof drainage. A storm receptor system will be located entirely underground and will provide quality control for the drainage and a series of pipes will perform quantity control for the drainage.

17. Mr. Wolford also testified that the proposed expansion would be served by adequate water and sewer service. The property is located in water and sewer category service area 1. There is an eight inch water line in all three of the abutting roads and there is also a water loop that runs around the building and the expansion is intended to connect into the existing infrastructure inside the existing building.

18. Mr. Wolford further testified that there are no wetlands or flood plains on this property, nor is the property located in a special protection area. Finally, Mr. Wolford testified that the proposed expansion would be served by adequate public services and facilities, including schools, police and fire protection, water and sanitary sewer, public roads, storm drainage and other public facilities.

19. Mr. Edward Papazian testified that the proposed use will be in harmony with the general character of the neighborhood considering traffic and parking conditions. He testified that the vehicle access to the Petitioner's campus will remain the same. Mr. Papazian further stated his traffic analysis demonstrates that the small number of additional trips generated by the additional employees will be mitigated through various actions that will be taken including financing installation of bus shelters, real time transit information signs and sidewalks in the area. These mitigations are reflected in the Petitioner's Transportation Management Plan (Exhibit 24).

20. Mr. Papazian also testified that, based on traffic considerations, the proposed expansion of the Petitioner's existing use 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. He concluded that the proposed expansion will, in fact, help to improve vehicular and pedestrian safety in the area through the various strategies that the Petitioner is proposing such as financing the installation of sidewalks which will increase pedestrian safety and financing the installation of bus shelters and real time transit information signs which will encourage transit use.

21. Mr. Papazian noted that the critical lane volume for this area is 1650 and that although three intersections (Connecticut Avenue and Jones

Bridge Road/Kensington Parkway, Connecticut Avenue and East-West Highway, and Rockville Pike and Jones Bridge Road/Center Drive) exceed that standard (Exhibit 24), the Petitioner will take actions to mitigate the effects of the additional traffic. As a result of the Petitioner's mitigation efforts, there will be no adverse effect on traffic with the addition of the immediate increase of 60 employees as well as with the ultimate addition of the 150 employees.

22. Mr. Papazian also stated that the Petitioner requests a waiver from the parking requirements for office uses pursuant to Zoning Ordinance Sections 59-E-3.2, 59-E-3.7, 59-E-4.5 and 59-G-2.21(b)(2), which would require the Petitioner to provide 180 additional spaces, for a total of 446 spaces. Pursuant to a parking waiver granted at the time of the original approval of the Petitioner's special exception, parking for the existing facility consists of 176 underground spaces and 90 surface spaces resulting in a total of 266 spaces. With respect to the Petitioner's current request for a parking waiver, Mr. Papazian testified that observations of the existing parking demand at the facility have taken place and based on these observations, it was concluded that the maximum parking demand is a ratio of approximately 0.83 parking spaces for every employee. He added that on this basis, with the total 150 employee increase, the Petitioner is proposing to provide a net increase of 120 parking spaces. This will bring the total number of parking spaces to 386. Mr. Papazian testified that based upon the existing parking demand patterns, the additional 120 spaces for the increase of 150 employees will provide sufficient parking on the Petitioner's grounds (Exhibit 22).

23. Ms. Louise Schiller testified on behalf of the applicant as an expert in landscape architecture. Ms. Schiller testified that she has been involved with the implementation and maintenance of the landscaping at the Petitioner's headquarters since its original inception in 1988. Ms. Schiller testified that she designed the landscape plan (Exhibit 31I) for the requested modification. The road on the expansion site is designed and graded to come down gradually and gracefully into a lower area where vehicles will be parked underground and deliveries will be made. All new plantings will be selected from a landscape pallet comprised of native plants. The trees that will be planted will be native to the area and will work with the topography of the land. The existing pathways on the property will be continued.

24. Ms. Schiller also testified that the gardens of the Hayes Manor will be developed consistent with the historic context report which is being prepared in accordance with the Petitioner's agreement with the Historic Preservation Commission. Most of the trees on the Hayes Manor property will remain. In fact, only 21 trees, six of which are dying now, will be removed from the Hayes Manor property. The plans (Exhibit 31I) have been recently revised to move ten parking spaces so that a red oak tree would not be impacted. With respect to forest mitigation, there will be a one-to-one basis for forest mitigation.

25. In its report (Exhibit 32), M-NCPPC Technical Staff concluded that there are no non-inherent adverse effects associated with the special exception modification that warrant denial of the application. The Technical Staff noted that the first step in analyzing the inherent and non-inherent adverse effects of a special exception or modification is to define the boundaries of the surrounding neighborhood. The Technical Staff concluded that the neighborhood is bounded on the north by the North Chevy Chase Recreation Center, Woodlawn Road and Kenilworth Driveway; on the east by Montgomery Avenue and North Chevy Chase Elementary School; on the southeast and south by the Georgetown Branch Trail; and on the west by Columbia Country Club and the campus of the Uniformed Services University of the Health Sciences. The predominant land use and zone is single-family residential development in the R-90 Zone.

26. In its report, the Technical Staff also concluded that the physical and operational characteristics of the Petitioner's use as modified by the special exception are no different than what is typically encountered with a charitable and philanthropic institution (Exhibit 32). In reaching this conclusion, the Technical Staff recognized that the inherent, generic, physical and operational characteristics of the use must be examined considering size, scale, scope, light, noise, traffic and environment. According to the Technical Staff, the primary physical characteristics of a charitable or philanthropic institution include a building housing administrative offices and an exterior parking area. The primary operational characteristics necessarily associated with the use are the presence of employees working in the building and the traffic generated by the employees and visitors.

27. In its analysis, the Technical Staff also noted that the architecture of the building addition will match the existing buildings in scale and massing (Exhibit 32). It has been designed in several sections to keep it consistent with the existing buildings and more residential in scale than typical office buildings. Site lighting will be consistent with what is found elsewhere on the campus. In its report, the Technical Staff recommended the repositioning of a light fixture to insure a maximum of 0.1 foot-candles at the property line and the submission of a point-by-point photometric plan that includes a numerical summary with illumination levels proposed for the service road, pathways and service area. Technical Staff concluded that with its recommended conditions, the site lighting will not adversely impact surrounding properties because of glare, light trespass or sky glow.

28. The People's Counsel stated that he supported the Petition. However, he opposed the condition recommended by the Planning Board (Exhibit 33) that the Petitioner be required to provide periodic access by the Historic Preservation Commission and other historic/preservation groups to the Hayes Manor house and the surrounding gardens. He stated that such a condition was not only unenforceable, but would impose a burden on the

Petitioner. Rather, he recommended that there be, at the most, only one meeting of the Historic Preservation Commission at the Hayes Manor house each year.

## **FINDINGS OF THE BOARD**

The Board finds that the requested modification complies with the specific standards set forth in Sections 59-G-1.2 and 59-G-2.21 of the Zoning Ordinance:

### ***Section 59-G-1.2. Conditions for granting a special exception.***

**59-G-1.21. Standard for evaluation.** *A special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, 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 the use might have if 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 inherent adverse effects, are a sufficient basis to deny a special exception.*

The Board finds that no non-inherent adverse effects would result from this modification. The Board finds that the relevant neighborhood is bounded on the north by the North Chevy Chase Recreation Center, Woodlawn Road and Kenilworth Driveway; on the east by Montgomery Avenue and North Chevy Chase Elementary School; on the southeast and south by the Georgetown Branch Trail; and on the west by Columbia Country Club and the campus of the Uniformed Services University of the Health Sciences. The predominant land use and zone is single-family residential development in the R-90 zone.

The inherent, generic physical and operational characteristics of the use must be established considering size, scale, scope, light, noise, traffic and environment. The primary physical characteristics of a charitable or philanthropic institution include a building housing administrative offices and an exterior parking area, with sufficient lighting to provide security in moving about the grounds. The primary operational characteristics necessarily associated with the use are the presence of employees working in the building and the traffic generated by the employees and visitors. The Board finds that the physical and

operational characteristics of the Petitioner's use as modified are no different that what is typically encountered with a charitable or philanthropic institution.

The proposed addition will match the existing buildings in scale and massing. The addition has been designed in several sections to maintain consistency with the existing buildings and to achieve a more residential scale than is typical of office buildings. The proposed building materials will complement the existing buildings and the proposed roof lines will align with existing roof ridgelines. Site lighting will be consistent with existing lighting and will not have an adverse impact on surrounding properties because of glare, light trespass or sky glow.

**Section 59-G-1.21. General conditions.**

(a) *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 requested special exception modification is permissible in the R-90 Zone.

(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 requested modification complies with the standards and requirements for a charitable and philanthropic institution in Section 59-G-2.21. The Board finds that the requested modification is compatible with nearby properties, because of the density of proposed development, massing of proposed office addition, and nature and extent of proposed exterior lighting, on-site landscaping and perimeter screening.

(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 a special exception must be consistent with any recommendation in a 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 proposed use is consistent with the adopted and approved Bethesda-Chevy Chase Master Plan (April 1990). Based on the record in this case, the Board finds that the requested modification will enable the Petitioner to continue to meet and satisfy the recommendations of the Master Plan.

- (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 use will be in harmony with the general character of the neighborhood considering the factors identified in Section 59-G-1.21(a)(4). The proposed two-story building will match the existing building in scale and massing. The addition is designed in several sections to keep the building consistent in size with the existing structures, and in keeping with a more residential scale than typical office buildings. The addition's overall height will match the existing structures, and as a result, will be at a lower elevation than that of immediate neighbors. Landscaping and setbacks will successfully mitigate the effects on surrounding properties.

The manner of vehicle access protects the neighborhood because of its orientation along Manor Road, Jones Bridge Road and Platt Ridge Drive.

- (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 modification and the fact that the Petitioner has been operating on the site since 1993 and is recognized in the 1990 Master Plan, the substantial screening of the Petitioner's site and the Transportation Management Plan, will limit any detrimental effect to the use, peaceful enjoyment and economic value of the surrounding properties and general neighborhood.

- (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 there will be no objectionable noise, vibrations, fumes, odors, dust or physical activity at the site. Most of the parking and the loading docks will be located underground. The Petitioner, through its Photometric Analysis, showed that there would be no off-site illumination (Exhibits 31C, i, ii, iii). The light fixtures will be directed downward and will have caps to prevent public glare. Substantial screening in the Landscaping Plan (Exhibit 31I) will further mitigate any glare.

- (7) *Will not, when evaluated in conjunction 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 plan do not alter the nature of an area.*

Based on the record in this case, the Board finds that the only other active special exception in the area is Columbia Country Club. Modification of the Petitioner's special exception will not add any new special exceptions to the area and will not alter the existing one-family residential character of the neighborhood.

- (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 requested modification will have no adverse effects on the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. The operation of the Howard Hughes Medical Institute since 1993 has had no adverse effects.

- (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.*

- (i) *If the special exception use 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 granting the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals, when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.*

The Petitioner has submitted an application for preliminary plan of subdivision to combine the Platt and Hayes Manor properties with the existing campus. Approval of the preliminary plan is a condition of approval of this special exception modification; therefore, the adequacy of public services and facilities will be determined at that time.

- (ii) *With regard to 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 not reduce the safety of vehicular or pedestrian traffic.*

The Board finds that the requested modification will not have a detrimental effect on the safety of vehicular or pedestrian traffic. The small number of trips generated by the additional employees will be mitigated through the Transportation Management Plan, which includes financing the installation of bus shelters, real time transit information signs and providing additional sidewalks.

**Section 59-G-1.23. General development standards.**

- (a) **Development Standards.** *Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

The development standards for this special exception are set forth in Section G-2.21, which are addressed in detail on page 4 of this Opinion.

- (b) **Parking requirements.** *Special exceptions are subject to all relevant requirements of Article 59-E.*

The Board finds that the parking requirement for general office use in the southern area of the county when a site is more than 1,600 feet from a metro station is 2.4 spaces per 1,000 gross square feet. The building addition will comprise 75,000 square feet of office space resulting in a requirement of 180 additional parking spaces. A total of 120 additional parking spaces are proposed, for which a waiver is requested.

- (c) **Minimum frontage.** *In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*

- (1) *Rifle, pistol and skeet-shooting range, outdoor.*
- (2) *Sand, gravel or clay pits, rock or stone quarries.*
- (3) *Sawmill.*
- (4) *Cemetery, animal.*
- (5) *Public utility buildings and public utility structures, including radio and T.V., broadcasting stations and telecommunications facilities.*

Not applicable.

- (d) **Forest conservation.** *If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

The Board finds that the Planning Board has approved a preliminary forest conservation plan and that the requested modification is not in conflict with that plan.

- (e) **Water quality plan.** *If a special exception, approved by the Board, is inconsistent with an approved preliminary water*

*quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Not applicable.

(f) **Signs.** *The display of a sign must comply with Article 59-G.*

The Board finds that the requested modification does not propose any changes to the existing signage.

(g) **Building compatibility in residential zones.** *Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

The Board finds that the proposed expansion will match the existing buildings in scale and massing. The building has been designed to keep it consistent in size with the existing buildings and more residential in scale than typical office buildings. The Petitioner's property will continue to be heavily landscaped with substantial buffers to minimize impact on the surrounding neighborhood.

(h) **Lighting in residential zones.** *All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

(1) *Luminaries must incorporate a glare and spill light control device to minimize glare and light trespass.*

- (2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

The Board finds that the subject property will continue to be heavily landscaped with substantial buffers to minimize impact on the surrounding neighborhood. The light fixtures that are proposed are directed downward and have caps on them to prevent glare and there will be no illumination from the lights going off site (Exhibits 31C, 31Ci, 31Cii, 31Ciii).

**Section 59-G-1.26. Exterior appearance in residential zones.**

*A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping pedestrian circulation and screening consisting of planting or fencing wherever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures shall be provided as necessary.*

The Board finds that the modification will be in harmony with the existing buildings in scale and massing. The building has been designed to keep it consistent in size with the existing buildings.

**Section 59-G-2.21. Charitable or philanthropic institution.**

(a) **Development standard.** *A special exception may be granted for a charitable or philanthropic institution, subject to the following requirement:*

- (1) *In the Agricultural Zones regulated by the development standards of Section C-9.4, a charitable or philanthropic institution may be granted only if it is for re-use of an existing building. The development standards are those of the applicable zones except:*

Not applicable.

(2) *In the One-Family Residential Zones regulated by Section C-1.32, the development standards are those of the applicable zones except:*

- (i) *Minimum side yard setback: twice the minimum required by Section C-1.32.*

- (ii) *Minimum frontage: twice the minimum required by Section C-1.32.*
- (iii) *Minimum green area: 50 percent in R-60, R-90, and RMH zones; 60 percent in R-150 and R-200 zones; 70 percent in RE-1, RE-2, and RE-2C zones.*
- (iv) *Maximum FAR: 0.25 for residential, recreational, and environmental uses; 0.25 or 100,000 square feet, whichever is less, for office uses. Any charitable or philanthropic institution established by special exception before May 6, 2002 may expand to a 0.25 total floor area ratio.*
- (v) *Maximum building height: 35 feet in R-60 and R-90 zones; 50 feet in R-150, R-200, RE-1, RE-2, RE-2C, and RMH zones.*
- (vi) *The property must front on and have direct access to a public street or roadway having more than one through travel lane in each direction of travel. Access to a corner lot may be from an adjoining primary street, constructed to primary standards, if the Board finds this access to be appropriate and not detrimental to existing residential uses on that primary street. This requirement does not apply to any charitable or philanthropic institution facility that lawfully exists on May 6, 2002.*
- (vii) *Outdoor recreational facilities must be located, landscaped, or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The facilities must be designed and sited to protect adjacent properties from noise, spill light, stray balls, odors, and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fencing, and walls. The setback must not be less than twice the rear yard setback of the zone. This requirement does not apply to*

*outdoor recreational facilities which lawfully exist on May 6, 2002.*

- (viii) For residential and office uses, standards (2)(i) and (iv) do not apply to the use of an existing building that exists lawfully at least 3 years before the special exception petition is filed. Any expansion or addition to the existing building must comply with the standards in effect at the time a modification is filed.*

The Board finds that the development standards set forth in Section C-1.32 for properties located in the R-90 zone, as well as the additional development standards for charitable or philanthropic uses set forth in Section G-2.21, are met by the Petitioner's requested modification:

- (3) In the C-1 and C-3 Zones, the development standards are those of the applicable zones.*

Not applicable.

***(b) Parking Standard.***

- (1) Off-street parking space must be provided as follows:*

- (i) Residential: one parking space for every 2 residents, and one space for every 2 employees on the largest work shift.*

Not applicable.

- (ii) Recreational and Environmental: the total number of required parking spaces for each component of the proposed development under Section E-3.7 for auditorium, health club, commercial swimming pool, commercial recreational establishment, and other similar uses.*

Not applicable.

- (iii) Office: same as general office under Section E-3.7.*

The Board finds that the parking requirement for general office use in the southern area of the county when a site is more than 1,600 feet from a metro

station is 2.4 spaces per 1,000 gross square feet. The modification will comprise 75,000 square feet of office space resulting in a requirement of 180 additional parking spaces. A total of 120 additional parking spaces are proposed, for which a waiver is approved as set forth below.

- (2) *The Board may modify the off-street parking space requirements if warranted because of the program, method of operation, or clientele.*

The Board finds that the requested parking waiver may be granted. Pursuant to a parking waiver granted at the time of the original approval of the Petitioner's special exception, existing parking consists of a total of 266 spaces. The Board finds that the actual maximum existing parking demand for this site is 0.83 parking spaces per employee. Based on this ratio, the anticipated 150 employee increase will result in a net increase of 120 parking spaces. This will bring the total number of parking spaces to 386. The generally applicable parking requirement for the Petitioner's proposal is that for general office use, which in the southern area of the County is 2.4 spaces per 1,000 gross square feet when a site is more than 1,600 feet from a metro station. Under this standard, the proposed addition, which consists of 75,000 square feet of office space, would require 180 additional parking spaces. The Board finds that based upon the existing parking patterns, the additional 120 spaces for the increase of 150 employees will be sufficient to accommodate anticipated parking on the Petitioner's grounds.

- (3) *All other parking design standards must comply with Section E-2.83 and other applicable sections of Article 59-E.*

The Board finds that the parking facilities proposed by the Petitioner satisfy all other applicable sections of Article 59-E.

(c) **Waiver.**

- (1) *If the property is designated as a historic resource by the master plan for historic preservation, the Board may waive development standards (a)(1)(i) through (ix) and (a)(2)(i) through (viii).*

Not applicable.

- (2) *If the special exception is for a new building to be located on the property of an existing religious institution, the Board may waive the standards (a)(1)(ix) and (a)(2)(vi).*

Not applicable.

- (3) *The Board must not grant any waiver as stated in Sections (c)(1) and (2) unless it finds that:*
  - (i) *Road access will be safe and adequate for the anticipated traffic to be generated;*
  - (ii) *Road access will not have a significantly adverse impact on the surrounding neighborhood; and*
  - (iii) *The grant of the waiver will not cause other significant adverse impacts on the surrounding neighborhood.*

Not applicable.

- (4) *In the agricultural zones, a special exception for a charitable or philanthropic institution may be granted only if it is for re-use of an existing building. The Board may waive this restriction to approve a residential camp for seriously ill children and their immediate family members, operated or sponsored by a non-profit organization under the following conditions. Immediate family members may attend sessions jointly with or separate from the sessions attended by the children. Separate sessions for immediate family members are only permitted as a secondary camp activity. The camp may include facilities for overnight accommodations and for support services related to camp activities. The camp must be compatible with adjacent land uses*

Not applicable.

- (5) *A charitable or philanthropic institution for which a petition was approved before May 6, 2002, is a conforming use. Any such special exception may be modified under Section 59-G-1.3(c), subject to the following conditions:*
  - (i) *Any expansion or enlargement must comply with the standards specified in Sections (a) and (b) above, except that, if the land area has not been enlarged, the board may waive the*

*maximum lot size in agricultural zones or the FAR standard or the road frontage requirement stated in Sections (a)(1)(ii), (vi), (ix) and (a)(2)(iv), (vi) above in accordance with anticipated future expansion that has not been commenced or completed as of August 15, 1988, but that was expressly recognized in the conditions or record of the approved special exception.*

- (ii) *In any zone where the special exception is no longer allowed, any amendment to the special exception must comply with the standards in the R-60 zone, as stated in Sections (a) and (b) above.*

Not applicable.

The Montgomery County Planning Board recommended that the Board approve the Petitioner's proposal with a number of conditions, including one which would require the Petitioner to provide access, no less frequently than once annually, to the Hayes Manor house and surrounding gardens to the Historic Preservation Commission and other historic/preservation groups for meetings and small gatherings. The Board finds that any condition requiring the Petitioner to provide access to its property is not an appropriate or legal condition and therefore expressly rejects such a condition.

Therefore, based on the foregoing, the Board grants the petition for modification of the existing special exception for a charitable and philanthropic institution, subject to the following conditions:

1. The Petitioner is bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its counsel, to the extent that such evidence and representations are identified in this Opinion.

2. The Petitioner will comply with all the requirements of all submitted plans and statements, as revised and/or modified, including, but not limited to:

- (i) Special Exception Plan (Revised August 2003) (Exhibit 31D)
- (ii) Special Exception Plan-Enlargement (revised August 2003) (Exhibit 31E)
- (iii) Landscape Plan (Revised August 2003) (Exhibit 31I)
- (iv) Site Lighting Plans and Photometrics (Revised August 2003), (Exhibits 31C, 31Ci, 31Cii, 31Ciii)
- (v) Preliminary Forest Conservation Plan (Revised August 2003), (Exhibit 31F)

- (vi) Natural Resources Inventory/Forest Stand Delineation Plan (Exhibits 8A-8D)
- (vii) Stormwater Management Concept Plan/Drainage Area Map (Revised August 2003), (Exhibit 31G)
- (viii) Stormwater Management Concept Plan-Enlargement (Revised August 2003), (Exhibit 31H )
- (ix) Exterior Elevations (Exhibit 5)
- (x) Site Section Key Plan (Revised August 2003), (Exhibit 31B)
- (xi) Site Sections C and D (Exhibit 4B)
- (xii) Enlarged Site Section (Exhibit 4D)
- (xiii) Landscape Site Sections A-A and B-B (Exhibit 7B)
- (xiv) Transportation Management Plan (Exhibit 24)

3. The Petitioner shall obtain approval of a preliminary plan of subdivision by the Montgomery County Planning Board in accordance with the Subdivision Regulations, Chapter 50 of the County Code.

4. The Petitioner may demolish the small bungalow located on the Hayes Manor property subject to the approval of the Historic Preservation Commission.

5. If the Petitioner desires to move the small bungalow located on the Hayes Manor property, as opposed to demolishing it, the Petitioner must return to the Board of Appeals for a modification of the special exception.

6. The Petitioner must apply for a further modification of this special exception if the actions of the Historic Preservation Commission require any changes with respect to this modification or the existing special exception.

7. The Petitioner will continue to coordinate with the Historic Preservation Commission with regard to its plans for construction.

8. The Petitioner will obtain approval of final Storm Water Management and Sediment and Erosion Control plans by the Department of Permitting Services, consistent with the final Forest Conservation Plan/Tree Save Plan.

9. The Petitioner will obtain approval of a final Forest Conservation Plan by M-NCPPC staff prior to Department of Permitting Services approval of the sediment and erosion control plan or any clearing, grading or land disturbance of the site.

10. The Petitioner may use the existing building on the Platt property for ancillary purposes, such as an exercise facility, receptions and outdoor gatherings, food preparation, storage and administrative functions. Should the

Petitioner desire to use this building for lodging, it must return to the Board of Appeals for modification.

11. The Petitioner may use the manor house located on the Hayes Manor property for uses ancillary to the Petitioner's headquarters and conference center, such as for food preparation, receptions and outdoor gatherings, an exercise facility, small conferences, offices to support functions at the facility, storage and administrative functions. Should the Petitioner desire to use the manor house for lodging, it must return to the Board of Appeals for a modification.

12. Pursuant to Section 59-E-4.5 and Section 59-G-2.21(b)(2), the parking standard for office uses shall be waived. The Petitioner will provide a net increase of 120 parking spaces, for a total of 386 spaces, as part of the proposed modification. Parking spaces are to be located and configured and shown on submitted plans.

13. The Board grants the immediate increase in the number of employees on the site from 200 to 260. When the new structure reflected in this modification is completed, the maximum number of employees shall be increased to 350 following the issuance of a certificate of occupancy.

14. All other terms and conditions of the existing special exception use remain in full force and effect, except as modified through this petition.

On Motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Allison I. Fultz and Donald H. Spence, Jr., Chair, participating and in agreement, Vice Chair Donna L. Barron, necessarily absent and not participating, 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 in the above-entitled case.

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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 7<sup>th</sup> day of April, 2004.

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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 of 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