

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<i>CORRECTED TO FIX ERROR IN COND. NO. 31 COMPLIANCE DATE (YEAR)</i>
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**Case No. S-862-C [S-862, -A, -B]**

**PETITION OF ROCHAMBEAU, THE FRENCH INTERNATIONAL SCHOOL OF  
WASHINGTON, DC**

OPINION OF THE BOARD

(Opinion Adopted August 4, 2021)  
(Effective Date of Opinion: August 30, 2021)

The Board of Appeals granted Case No. S-862 to the Federation of American Societies for Experimental Biology on March 30, 1983, to permit the extension of an existing private educational institution use. In addition to other lesser modifications, effective December 28, 2001, in Case Nos. S-862-A and A-5599, the Board granted a major modification of this private educational institution use and related variances, and effective May 20, 2005, in Case Nos. S-862-B and A-6008, the Board granted a second major modification of this special exception, with related variances. Effective April 20, 2018, the Board referred a transfer and major modification request from Jody S. Kline, Esquire, on behalf of his client, Rochambeau, the French International School of Washington, DC, to the Office of Zoning and Administrative Hearings as Board of Appeals' Case No. S-862-C, to hold a hearing and issue a report and recommendation. While the major modification was still pending, in a Resolution effective December 9, 2020, the Board granted an administrative modification transferring this special exception to Rochambeau, the French International School of Washington, DC, after that request was separated from the pending major modification request.

The Hearing Examiner for Montgomery County in the Office of Zoning and Administrative Hearings held public hearings on the major modification application on January 22, 2021, and January 25, 2021, and then remanded the matter back to Planning Staff for additional information and analysis. Following receipt of the requested information from Planning Staff, the Hearing Examiner held a third day of hearings on June 7, 2021, and on July 19, 2021, issued a Report and Recommendation recommending approval of the modification request with conditions. See Exhibits 142 (Notification) and 143 (Report and Recommendation).

The Board of Appeals received timely requests for oral argument from (1) George McKenna, David Seid, Carl Wilkerson, Maureen Wilkerson, and Becky Umhofer, (2) David Brown, Esquire, on behalf of the Maplewood Citizens Association, (3) Carl Wilkerson (in his individual capacity), and (4) Jody Kline, Esquire, on behalf of the Petitioner.<sup>1</sup> In addition, Mr. Kline submitted opposition to the request for oral argument made by Mr. McKenna, Mr. Seid, Mr. Wilkerson, Ms. Wilkerson, and Ms. Umhofer, and to the request made by Mr. Brown on behalf of the Maplewood Citizens Association. See Exhibits 144 to 150.

The subject property is located at 9650 Rockville Pike, Bethesda, Maryland, 20814, in the R-60 Zone.

Decision of the Board: Oral Argument **DENIED**.

Special Exception Modification **GRANTED** with conditions.

Due to COVID-19, the Board of Appeals considered the Hearing Examiner's Report and Recommendation, as well as the requests for oral argument and the opposition thereto, at a remote Worksession held on August 4, 2021, using Microsoft Teams. Mr. Kline, Mr. Brown, Mr. McKenna, Mr. Wilkerson, and Mr. Seid participated in the Worksession, as did Helene Fabre, Executive Director of Rochambeau, the French International School of Washington, DC, and Allen Myers, President of the Maplewood Citizens Association.

The Board first considered the requests for oral argument and the opposition thereto. After noting that the decision to grant or deny oral argument is discretionary on the part of the Board and is not an opportunity to present new evidence, the Chair invited the participants to briefly summarize why the Board should or should not hold oral argument.

Mr. McKenna stated that he and the other signatories to the first request for oral argument had three arguments for the Board to consider: (1) whether, in considering as a legal matter if overnight parking of school buses should be allowed on the School's Rockville Pike campus, compatibility with the neighborhood had been adequately considered; (2) the effect of emissions from school buses, including particulates, on the surrounding neighborhood, and the inapplicability of the study conducted at FIS's Forest Road campus to the new Rockville Pike campus; and (3) whether the noise emanating from buses, and the impact of that noise on the surrounding neighborhood, particularly during "nighttime" hours as defined in the County's Noise Ordinance (i.e. between 9:00 p.m. and 7:00 a.m.), had been adequately addressed. See Exhibits 144 and 148.

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<sup>1</sup> Mr. Kline's request seeks changes to three of the conditions proposed by the Hearing Examiner.

Mr. Brown stated that the Maplewood Citizens Association is not opposed to the grant of this major modification, but is trying to “tweak” it to make it fit better with the neighborhood. He stated that his client is only concerned with the legality of parking buses overnight on the School’s Rockville Pike campus. Mr. Brown stated that whether a school bus should be considered a “heavy commercial vehicle” is a legal question, that he had presented a detailed analysis of this question to the Hearing Examiner (who he noted disagreed with him), and that he would like an opportunity to present this argument to the Board. See Exhibit 147.

Mr. Wilkerson stated that his request for oral argument added a few legal issues that the Hearing Examiner did not address, as follows: (1) the Transportation Management Plan allows an unlimited loophole for persons attending before-school or after-school care; (2) the routes for the shuttle buses running between the new Rockville Pike campus and the Forest Road campus would impact neighborhood roadways that are already heavily used; and (3) because the new Rockville Pike campus and the existing Forest Road campus are inextricably linked, the chronic gridlock at the Forest Road campus will be compounded by the new campus, and thus the Hearing Examiner should require that the current gridlock abatement mechanisms at the Forest Road campus be made permanent. See Exhibit 149.

Ms. Fabre thanked the Board members for their time, and stated that it was important to have the new campus operational by September to avoid a one-year deferral of its use.

Mr. Kline stated that the Board has adequate evidence to make a decision on the requested major modification. He stated that the Hearing Examiner had compiled a Report and Recommendation over 100 pages in length, and that he does not recall any of the matters raised for oral argument not being discussed. He noted, by way of illustrating the thorough job that the Hearing Examiner had done, that after two days of hearings, the Hearing Examiner had remanded the matter to Planning Staff to get answers to specific questions, including questions about noise and traffic. He stated that Planning Staff had addressed those questions, and had issued a second report with additional conditions. Mr. Kline stated that allowing overnight parking of school buses on the new Rockville Pike campus was a legal issue, that the Hearing Examiner had thoroughly analyzed this issue, that she had determined that the Zoning Ordinance definition of “heavy commercial vehicle” did not include school buses, and that re-argument was not needed for the Board to decide the issue. Finally, Mr. Kline highlighted the finding of the Hearing Examiner, on page 85 of her Report and Recommendation, that “[g]iven the expert testimony and evidence presented on remand, the Hearing Examiner finds that noise from cars on the drive aisle, children in the play areas, and buses starting and stopping will not adversely affect surrounding properties,” and noted her statement that there was no evidence in the record to contravene this expert analysis and opinion.

Mr. Myers stated that there was a document that he had introduced during the proceedings before the Hearing Examiner that dealt with compatibility in a similar situation

and that he believes addresses the residents' concerns. He stated that this document was not considered by the Hearing Examiner and should have been.

The Board finds that the record compiled by the Hearing Examiner is thorough and exhaustive, and that the Report and Recommendation contains clear and detailed conditions of approval. Accordingly, after considering the written requests for oral argument and the statements made in support thereof, the Board finds that oral argument is not necessary to render a decision on this matter, and on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, Vice Chair, with Mary Gonzales, Richard Melnick, and Caryn Hines in agreement, denies the requests for oral argument. Having found the Report and Recommendation comprehensive, the Board adopts the Report and Recommendation issued by the Hearing Examiner, with the changes to Conditions 10, 11, and 22 requested by Mr. Kline, which the Board finds are minor enough to accommodate, and with the addition of a new Condition 31.<sup>2</sup> Accordingly, the Board grants the major modification of this special exception with the following conditions:

1. The Petitioner shall be bound by all its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. The Petitioner must comply with the terms of the approved special exception site plan (Exhibit 125), Landscape Plan (Exhibit 132(a)), and Lighting Plan (Exhibit 94(c)).
3. The Private Educational Institution is limited to a maximum total gross floor area of 203,891 square feet, comprised of the Lee Building (121,147 square feet), the East Wing Office Building and Atrium Connector (66,448 square feet), the Beaumont House (15,264 square feet), Outbuilding #1 (768 square feet) and Outbuilding #2 (264 square feet), not including the parking garage.
4. Maximum enrollment in the nursery and elementary schools will not exceed 200 nursery school students and 500 elementary school students for a total of 700 students.
5. Maximum enrollment in Supplemental Language classes ("Saturday School") is limited to a maximum daily enrollment of 500 students until three years after the program commences; thereafter daily enrollment must not exceed 700 students.
6. Maximum enrollment in Summer Camp is limited to a maximum daily enrollment not to exceed 500 children until three years after the program commences after which daily enrollment must not exceed 700 students.
7. The maximum number of Staff that may be on-site at one time shall not exceed:

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<sup>2</sup> Following the Board's vote to deny oral argument and to adopt the Hearing Examiner's Report and Recommendation granting this major modification, with the changes requested by Mr. Kline to Conditions 10, 11, and 22, and with the addition of a new Condition 31, Mr. McKenna expressed appreciation for the Board requiring consideration of noise that occurs before 7:00 a.m., and indicated that such a study should also look at ambient background noise levels on Alta Vista Court. Mr. Seid requested that the study also include the two extra buses that will be parked separately from the other buses serving the campus.

- a. Academic classes: 126 staff.
- b. Supplemental language classes: 30 employees until three years after the program commences after which not more than 50 staff may be on-site at any one time.
- c. Summer Camp: 75 employees until three years after the program commences after which not more than 126 staff may be on-site at any one time.

8. Hours of operation shall be limited as follows:

- a. Nursery and Elementary School: 7:00 a.m. to 7:00 p.m. (Before-care staff may arrive at 6:30 a.m.)
- b. Summer camps: 7:00 a.m. to 7:00 p.m.
- c. Supplemental Language Classes: 8:30 a.m. to 5:00 p.m.

9. The Petitioner must comply at all times with the requirements of the Transportation Management Plan (Exhibit 105(a)), with the following revisions:

- a. Add a requirement that elementary students participating in the before-care program must arrive before 8:00 a.m.

- b. Delete the words "guidelines" and/or "policy" or "policies" wherever they appear in the TMP and substitute the word "requirement" or "requirements" if plural.

- c. At the top of page 4 of the TMP, delete the phrase "policies and guidelines as necessary" and substitute the phrase "TMP requirements" as follows:

The school's weekly newsletter will include transportation updates reminding parents and staff of TMP requirements.

- d. Under "Outreach and Education" (Exhibit 105, p. 3) add the following bullet (Exhibit 105(a), p. 3):

Avoid making a U-turn on Alta Vista Road.

- e. Make the first four bullets under "Outreach and Education" (Exhibit 105(a), p. 3) applicable to Summer camps and Saturday classes.

- f. Add the following to the list of violations of the TMP (Exhibit 105(a), p. 15):

Making a U-turn on Alta Vista Road.

- g. Under "Enforcement", make the following revisions (Exhibit 105(a), pp. 15-16):

- i. Amend the language to make a 3-day suspension mandatory for a fourth violation of a school day: "A fourth violation will result in a 3-day suspension from school."

ii. Add the following penalty for a fifth violation of the TMP for school days, summer camps and Saturday classes: "A fifth violation will result in expulsion from the program."

h. Add the following to the Neighborhood Liaison Committee for this special exception:

- i. A representative of the Bethesda Crest Homeowner's Association; and
- ii. A resident of Alta Vista Court.

10. The Petitioner shall post the data from its monitoring cameras on its website within 48 hours of the close of the daily activities recorded.

11. Within 30 days after issuance of a decision approving the modification application, Petitioner must apply for a permit from Montgomery County Department of Transportation and Montgomery County Department of Permitting Services to install a monitoring camera on Alta Vista Road as near as possible to its intersection with Rockville Pike; If permitted by MCDOT/MCDPS, the digital monitoring device must be installed prior to commencement of operations at the school, or within 30 days of permit approval if the permit is approved within 30 days of commencement of School operations or after beginning of School.

12. The Board of Appeals will retain jurisdiction over the special exception for a period of two years after commencement of operations to monitor compliance with the Transportation Management Plan (Exhibit 105(a), as conditioned) and review the impact on the Maplewood and Locust Hill neighborhoods of coordinated traffic operations between the Forest Road campus and the Rockville Pike campus from the school, the summer camps, and the Saturday classes; 60 days prior to the Board of Appeals review, FIS must submit a report to the Board of Appeals and the NLC informing of compliance with the trip caps, the number and type of TMP violations, all violations issued and penalties it has imposed, the most recent available accident data for the Maplewood and Locust Hill neighborhoods, and any recommendations of FIS and the NLC regarding the TMP. FIS shall notify the NLC of the date, time and place for the Board's consideration of its report at least 30 days before the consideration is scheduled.

13. Deliveries and trash pick-up will be scheduled to occur between 8:30 a.m. and 3:30 p.m.

14. FIS shall include a clause in its contract with trash and food delivery services that trucks will not use residential streets in the Maplewood and Locust Hill neighborhoods as defined in the TMP.

15. Buses taking children on off-site activities during the school day, summer camps, or Saturday classes, will adhere to the routes prescribed in the TMP.

16. Outdoor play may not begin prior to 8:00 a.m.
17. Outdoor lighting on play areas is prohibited.
18. Outdoor use of Beaumont House is prohibited.
19. Amplified music inside and outside Beaumont house is prohibited.
20. The Petitioner will not conduct any interscholastic or league competitive sporting activities on the playgrounds, except practice for such activities may take place on the field between 3:30 p.m. and 5:30 p.m.
21. Special Events must not be scheduled during weekday peak periods (6:30 a.m. to 9:30 a.m. and 4:00 p.m. to 7:00 p.m.)
22. Prior to the issuance of any Use and Occupancy Certificate associated with the Private Educational Institution use, the Petitioner must permanently close the following three vehicular access points:
  - a. the western Site driveway onto Alta Vista Terrace;
  - b. the adjacent parking lot to the north of the Site (emergency use is allowed); and
  - c. the northern Rockville Pike driveway.
23. Prior to the issuance of any Use and Occupancy Certificate on the Site, the Petitioner must complete construction of the Site access and frontage improvements, as required by the Maryland State Highway Administration. These improvements include, but are not limited to, consolidation of Rockville Pike driveways, construction of an acceleration and deceleration lane, and increasing the surface area of the bus stop to meet minimum ADA standards.
24. The Petitioner must replace the existing Rockville Pike sidewalk with new a five-foot-wide sidewalk, separated from the roadway by a vegetated buffer measuring at least six-feet wide.
25. The Petitioner must maintain, in conjunction with the French International School Forest Road campus (the "Secondary School"), a bus fleet of a least 15 buses in accordance with the Transportation Management Plan (Exhibit 105(a)).
26. No vehicles may queue on the adjacent public street(s) while accessing the Site.
27. The Petitioner must provide 15 long-term bicycle parking spaces for use by faculty and staff in a secure and weather protected area within the East Wing building garage. Any bicycle parking provided for students will be above and beyond this requirement.



28. The Petitioner must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code after the final decision of the Board of Appeals on the Subject Application.

29. Prior to issuance of a Use and Occupancy permit, the Petitioner must obtain a variance from the Sign Review Board, for exceeding the maximum size, quantity and illumination of the proposed signage; copies of the sign permits shall be submitted to OZAH for its records.

30. The Petitioner and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception use as granted herein. The Petitioner and any successors in interest shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of special exception administrative fees assessed by the Department of Permitting Services.

31. The Petitioner must engage the service of professionals: (1) to perform noise and air pollution testing at the Rockville Pike campus in order to measure noise and pollutants/particulates attributable to the storage and use of all FIS buses at that location; and (2) to issue reports setting forth their findings. The report issued with respect to noise must assess the testing results in terms of compliance with the daytime and nighttime residential noise limits established in the Montgomery County Noise Ordinance, Chapter 31B of the County Code. The report issued with respect to pollutants/particulates must assess whether the concentrations of particulate matter and volatile organic compounds (hydrocarbons, nitrogen oxide, nitrogen dioxide, carbon monoxide and sulfur dioxide) comport with the National Ambient Air Quality Standards and any other air pollution standards set by the U.S. Environmental Protection Agency or relevant State or County agency.

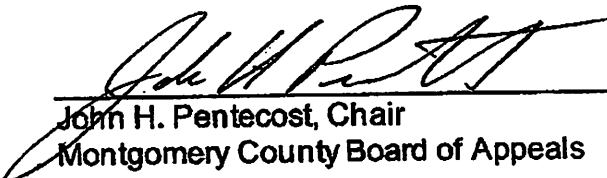
Measurements of noise and air pollution must be taken on a representative school day during morning bus start-up (i.e. before 7:00 a.m.), as well as during the morning arrival and afternoon dismissal times.

The Petitioner must submit the results of this testing to the Board of Appeals no later than February 28, **2023**. If the Board finds that the testing shows non-compliance with applicable standards, or otherwise finds the results of the testing to be of concern, the Board may, in its discretion, hold a hearing for the Petitioner to show why their bus operations should be allowed to continue, and may, with or without holding a hearing, add, modify, or delete conditions pertaining to the storage and use of buses in connection with this special exception use.

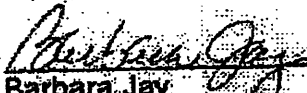


On a motion by John H. Pentecost, Chair, seconded by Richard Melnick, with Bruce Goldensohn, Vice Chair, with Mary Gonzales, and Caryn Hines in agreement, the Board adopted the following Resolution:

**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.

  
John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 27th day of August, 2021.

  
Barbara Jay  
Executive Director

**NOTE:**

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

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.