

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. CBA-2684-C

PETITION OF THE GERMAN SCHOOL

OPINION OF THE BOARD

(Opinion Adopted July 22, 2009)

(Effective Date of Opinion: August 6, 2009)

Case No. CBA-2684-C seeks modifications to an existing special exception (CBA-2684 and 2684-B) which permits Petitioner to operate a private educational institution pursuant to Zoning Code Section 59-G-2.19. The modifications requested are to permit construction of new facilities and to add new activities, without increasing school-year enrollment.

The subject property contains 16.93 acres, located at 8617 Chateau Drive, Potomac, Maryland in the RE-2 Zone.

The Hearing Examiner for Montgomery County held hearings on the application on October 20, 2008 and April 7, 2009, closed the record in the case on April 30, 2009, and on May 19, 2009 issued a Report and Recommendation to deny the application in part, and to grant it in part.

On May 29, 2009, the Board of Appeals received a letter from Ronald Bolt, Esquire, on behalf of the German School. Mr. Bolt's letter requested Oral Argument before the Board of Appeals on proposed recommendation number 4 in the Hearing Examiner's Report and Recommendation. That recommendation proposes an enrollment cap of 250 students for the school's Saturday German classes.

The Board of Appeals heard Oral Argument on July 22, 2009. Ronald Bolt, Esquire and David Podolsky, Esquire appeared on behalf of the German School. Mr. Bolt informed the Board that the school had met with and arrived at an agreement with the school's neighbors on Chateau Drive. He offered a copy of a Memorandum of Understanding which was entered into the record as Exhibit No. 94. Mr. Bolt informed the Board that as part of the agreement, the school withdraws its request to operate a summer program and agrees not to request a modification to operate a summer program at the school. The neighbors who signed the Memorandum of Understanding agree, in turn, that the Saturday language classes may be operated at the school, provided they are capped at

an enrollment of 500 students and 40 staff, provided that traffic mitigation measures are implemented as detailed in the Memorandum of Understanding.

Decision of the Board: **Special Exception Modification **Granted****
 In Part and Denied In Part, Subject
 To Conditions Enumerated Below.

After careful consideration and review of the record, together with the Oral Argument, the Board adopts the Hearing Examiner's Report and Recommendation, as modified by the Memorandum of Understanding between the German School and neighbors on Chateau Drive [Exhibit No. 94], and grants the modification in part and denies it in part, subject to the following amended conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiner's Report and Recommendation and in the Opinion of the Board.
2. All terms and conditions of the approved special exceptions shall remain in full force and effect, except as modified by the Board as a result of this Modification Petition. The German School's Statement of Operations must be amended to include all of the changes required by these conditions.
3. Regular weekday School operations are limited to 650 students and 102 employees on site at any time, and at no time shall Petitioner admit a greater number of students than it is able to appropriately manage with the facilities, faculty and staff available at the time. Generally, staff on site will be approximately 60 employees, but for staff conferences (approximately eight times per year) and other special activities, up to 102 employees may be on site.
4. Saturday German language classes conducted on site are capped at 500 participants and 40 staff. No additional limits are recommended for German language classes held on Wednesdays during the regular school year.
5. The following activities listed in the Second Amended Statement of Operations (Exhibit 80(a)) must be discontinued:¹ Item #1. Four (4) of the twelve (12) student theater, music and art productions; Item #7.d. the Christmas party for German language classes; Item # 7.e. Summer celebration for German language classes; Item #10, the Easter Bazaar; and Item #12, the Flea market.
6. No meetings or activities may continue on campus after 10 p.m., nor beyond the times specified in the Statement of Operations.

¹ Item numbers are a reference to the Items as listed in the matrix on pp. 10 to 12 of the Statement of Operations and reproduced on pp. 42-44 of the Hearing Examiner's Report.

7. No Sunday activities are permitted, except for the Ecumenical Service specified as Item 14 on page 12 of the Second Amended Statement of Operations (Exhibit 80(a));
8. Paragraph #23 on page 10 of the amended statement of operations (Exhibit 80(a)) must be modified to prohibit use of the gymnasium on weekends by anyone other than German School students and staff (and their families), and to prohibit such use after 9:00 p.m.
9. Petitioner must implement the traffic management program described in the revised Transportation Management Plan (TMP), Exhibit 41(d), as modified to comply with the conditions set forth herein, and as revised to be in accordance with the terms of the Memorandum of Understanding dated July 20, 2009 [Exhibit 94], including the addition of the section entitled "4. Bus and Transportation Services" contained in paragraph 4 of the Memorandum of Understanding. Petitioner must provide a Saturday bus, and/or shuttle bus system for the German language classes.
10. Vehicles arriving at the school are not permitted to be stacked (*i.e.*, queued) on off-site streets during morning drop-off and afternoon pick-up periods.
11. No parking is permitted on Chateau Drive for school-related activities, and Petitioner must enforce this restriction through its TMP.
12. The condition in the original December 9, 1969 grant (Exhibit 17(a), p. 4, Condition #9), which specifies that students driving to school shall be limited to insured students in the 12th and 13th grade, is hereby modified to read: "Students driving themselves to school shall be limited to students in the top two grades of the school, and students who do so must be properly licensed and insured. In no event shall a student drive to school in violation of applicable motor vehicle regulations."
13. There must be no leaf blowing on site before 8 a.m. on weekdays and 10 a.m. on weekends.
14. The new entrance sign may not be posted until Petitioner has received a permit therefore from Montgomery County Department of Permitting Services (DPS) and has filed a copy thereof with the Board of Appeals.
15. Petitioner must comply with all terms of the final forest conservation plan approved by M-NCPPC Environmental Planning Staff.
16. Petitioner must comply with a stormwater management plan, as approved by the County Department of Permitting Services (DPS).
17. Petitioner must create a Community Liaison Council (CLC) to discuss and address operating impacts and other issues of concern to Petitioner and/or the community. The CLC shall consist of Petitioner's representative and representatives from any civic association or homeowners association within the

defined neighborhood wishing to participate. The adjacent and confronting neighbors must also be invited to participate, and the People's Counsel must be included as an *ex officio* member of the CLC. Meetings must be held at least twice a year, or more frequently as called for by any member, and minutes must be kept by Petitioner and filed with the Board of Appeals annually. The terms of the CLC proposed on pages 17-18 of the revised TMP (Exhibit 41(d)) are approved, except that residents of Kendale Road (to the west of the school) must also be invited to participate.

18. The Petitioner shall explore, at CLC meetings, the possibility of creating a new school access on Kendale Road, to share some of the traffic burden created by the school.
19. Petitioner must obtain and satisfy the requirements of all licenses 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 as granted herein. Petitioner 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.
20. The Board shall retain jurisdiction over this case until further notice to determine, based on an annual review, whether school activities are creating an excessive adverse impact on the neighborhood. To avoid disruption, this resolution shall not affect operations ongoing at the German School in the current 2008-2009 school year, which ends in late June, 2009.

On a motion by David K. Perdue, Vice-Chairman, seconded by Carolyn J. Shawaker, with Walter S. Booth, Stanley B. Boyd and Catherine G. Titus, Chair, 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.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 6th day of August, 2009.

Katherine Freeman
Executive Director

NOTE:

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

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