

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Rockville, Maryland 20850
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(240) 777-6600

Case No. S-257-A

**PETITION OF RENEWABLE NATURAL RESOURCES FOUNDATION
AND RNRF TITLE HOLDING CORPORATION**

RESOLUTION TO MODIFY SPECIAL EXCEPTION
(Resolution Adopted February 6, 2013)
(Effective Date of Resolution: March 22, 2013)

The Board of Appeals has received a letter, dated January 17, 2013, from Barbara A. Sears, Esquire, on behalf of 5400 Grosvenor, LLC ("EYA"), the contract purchaser of 5400 Grosvenor Lane (the Property). Ms. Sears requests administrative modification of the special exception for approval to:

- Reduce the area of the special exception subject property from 35.4 to 10.11 acres, to consist of one record lot created by subdivision of the larger property; the existing Phase I Land Condominium Unit and Glascock Condominium for 5410 Grosvenor Lane will remain on the subject property together with the historic mansion, garage and caretaker's cottage;
- Raze the 22,560 square-foot office building at 5430 Grosvenor Lane;
- Improve and extend the existing driveway from Grosvenor Lane;
- Remove one and relocate a second existing parking lot to a location adjacent to the remaining office building at 5410 Grosvenor Lane, reducing the number of parking spaces in that lot to 69, increasing parking on the driveway serving the mansion to 26 spaces; and
- Transfer the special exception to the Society of American Foresters (SAF).

Ms. Sears states that EYA intends to redevelop that portion of the property that will not be subject to the special exception with 153 dwelling units and associated amenities in accordance with the R-90 Zone. She notes that the Historic Preservation Commission has reviewed and favorably received the proposed changes in the preliminary consultation process and informs the Board that EYA proposes to dedicate 11.9 acres of the Property as part of Montgomery County's Legacy Open Space Program. Ms. Sears attaches a traffic study,

[Exhibit No. 25(k)] which shows that removing the 5430 Grosvenor Lane office building from the special exception property will reduce the existing AM peak trips associated with the office development from 23 to 14 and the PM peak trips from 18 to 10. The traffic study also shows that the reduction in (planned but not constructed) office build out associated with the modification will result in 111 fewer AM peak trips and 87 fewer PM peak trips associated with the special exception. Finally, because EYA's project involves processing a preliminary plan and a site plan through the Planning Board, which may result in some variation in the exact size of the special exception property, Ms. Sears requests that if the Special Exception Lot is not recorded during the duration of the validity period of the requested modification, pursuant to Section 59-A-4.53, the modification would have no further force and effect and S-257 and S-257-A would remain in effect. She submits plans, photographs and drawings to illustrate the requested changes, and a list of proposed conditions for the special exception, as follows:

1. Construction, including the demolition of the office structure located at 5430 Grosvenor Lane, the removal and reconfiguration of parking areas, improvement of the existing driveway and installation of the emergency access lane/pedestrian connection from Grosvenor Lane, must be completed according to the plans entered into the Record. Any modifications to these plans as a result of their review by the Montgomery County Planning Board of a preliminary plan and site plan for the Property shall be submitted by the Petitioner to the Board.
2. The area of the special exception shall be reduced to approximately 10.11 acres as shown on the Special Exception Proposed Condition Plan. This area may be adjusted based on the final record plat for the special exception area ("Special Exception Lot"). The final plat shall be submitted to the Board when recorded.
3. Entrance and exit to the property shall be by way of Grosvenor Lane only, including the emergency access lane/pedestrian connection, and there shall be no access onto Fleming Avenue.
4. If the Special Exception Lot is not recorded during the duration of the validity period of this Resolution pursuant to Section 59-A-4.53, as may be extended by the Board, this Resolution shall have no further force and effect and S-257 and S-257-A shall be in effect.
5. Parking spaces shall be computed as a community center, i.e., one parking space per 400 square feet of gross building area.
6. No more than 35 full time employees and up to 15 part time employees may use the office space contained in the mansion and garage, with no more than 50 office employees working in these facilities at any one time.

7. Non-RNRF member 501(c)(3) organizations may continue to occupy office space in the office building located at 5410 Grosvenor Lane.
8. All previous conditions of the previously approved special exception, except as modified by this special exception modification, are terminated.

The Board of Appeals granted Case No. S-257 on November 21, 1973 to permit the operation of a Scientific Society Headquarters. On March 8, 1974, the Board granted modifications to the construction plans and to permit use of an existing mansion for office space. Effective August 16, 1978, the Board again modified the special exception to change the special exception classification to Eleemosynary and Philanthropic Institution. On October 1, 1980, the Board again granted modifications to the special exception plans, and parking. On March 21, 1990, the Board granted Case No. S-257-A which modified the special exception site plan and deleted the requirement that the Foundation provide shuttle bus service to the Grosvenor metro station. On August 21, 1990, the Board modified Condition No. 4 of its March 21, 1990 opinion. On July 17, 1991, the Board issued a Resolution, following the review hearing required in Condition No. 2 of its original opinion, and found that the Petitioner could proceed with Phase II of the special exception. Effective October 23, 1998, and again February 3, 1999, the Board modified the special exception to add RNRF Title Holding Corporation as a joint special exception holder. By Resolution dated April 20, 2004, the Board granted an administrative modification to allow any 501(c)(3) organizations, including non-RNRF members, to occupy office space in the RNRF Center.

The subject property contains approximately 35.4 (requested to be reduced to 10.11) acres lying between Grosvenor Lane and Fleming Avenue, I-495 and I-270 S., identified as Part I on Grosvenor Tract, at 5500 Grosvenor Lane, Bethesda, Maryland in the R-90 Zone.

The Board of Appeals considered the modification request at its Worksession on February 6, 2012.

Section 59-G-1.3(c)(1) of the Ordinance provides:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

Rule 12.2 of the Board of Appeals Rules of Procedure [Resolution No. 12-865, October 27, 1992] provides that the transfer of a special exception is a modification under Section 59-G-1.3.

The Board finds that neither the transfer of the special exception from one holder to another, nor the reduction in size of the special exception property will intensify the use or substantially change its impact on the immediate neighborhood or on traffic. The Board notes that the record reflects a decrease in traffic impacts from the use as a result of the modification. Therefore, on a motion by Stanley B. Boyd, seconded by Carolyn J. Shawaker, with John H. Pentecost and David K. Perdue, Vice-Chair in agreement, and Catherine G. Titus, Chair, necessarily absent:

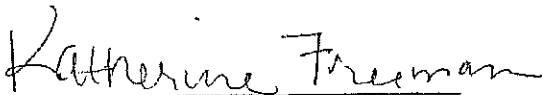
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-257-A is re-opened to receive Barbara A. Sears letter of January 17, 2013, with attachments; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to transfer and modify the special exception is granted, including the proposed conditions 1-8 listed above.



David K. Perdue
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 22nd day of March, 2013.



Katherine Freeman
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is

received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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.