

MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

MCPB
Item #6
5/29/03

DATE: May 23, 2003
TO: Montgomery County Planning Board
VIA: Joseph R. Davis, Chief, Development Review
FROM: Greg Russ, Zoning Coordinator
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To allow a private educational institution for persons with disabilities by special exception in the RDT zone under certain circumstances.

TEXT AMENDMENT: No. 03-07
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: Councilmember Subin
INTRODUCED DATE: May 6, 2003

PLANNING BOARD REVIEW: May 29, 2003
PUBLIC HEARING: June 10, 2003; 7:30 PM

STAFF RECOMMENDATION: APPROVAL

PURPOSE OF THE TEXT AMENDMENT

To allow a private educational institution for persons with disabilities by special exception in the RDT zone under certain circumstances.

BACKGROUND

- Community Services for Autistic Adults and Children (CSAAC) currently operates a private school for autistic persons on property located in the RDT zone that is owned by the state. The school now legally operates due to the public ownership of the site. CSAAC would like to purchase the property and continue operating the school. However, under current zoning regulations only individual or small class instruction provided by a resident of the dwelling is allowed in the RDT Zone (see footnote 13 of Attachment 1).

- Zoning Text Amendment No. 95023 was heard by the Planning Board on January 4, 1996 and by the County Council on January 16, 1996. The purpose of the text amendment was to amend the RDT Zone to allow the location of private educational institutions for up to 50 students by special exception (including boarding). The immediate impetus for the text amendment was to allow the creation of a school in a rural setting of the county for seriously emotionally disturbed youth. The County Council tabled the text amendment indefinitely. The Planning Board recommended denial of the text amendment based on maintaining the agricultural intent of this zone. While they accepted the need for the school, the Board believed that the use could already be placed in existing agricultural zones. Several Commissioners (in dissent) believed that the proposed text amendment would provide a very important public purpose worthy of inclusion in the zone.

ANALYSIS

Current and Proposed Regulations

The current language within footnote 13 of Section 59-C-9.3 limits private educational institutions (PEI) in the RDT to “individual or small class instruction provided within a dwelling or an accessory use, such as a swimming pool, by a resident of the dwelling” or to “private educational institution existing prior to the enactment of the RDT Zone”. In any case, a PEI is only permitted through the special exception process. The proposed text amendment modifies the footnote language as follows:

- ¹³ *Limited to individual or small class instruction provided within a dwelling or an accessory use, such as a swimming pool, by a resident of the dwelling. However, a private educational institution for persons with disabilities may be established subject to the special exception requirements of section 59-G-2.19, and provided (1) the site is at least 2 acres in size, (2) no more than 75 students are enrolled at any one time, (3) enrolled students are not boarded, and (4) improvements exist on the property (as of ZTA Effective Date) to accommodate the school’s education programs. A residence may be provided on site for use by a caretaker. Educational services to persons without disabilities are limited to enrichment activities related to providing educational services to persons with disabilities. A private educational institution lawfully existing prior to January 6, 1981, when the Rural Density Transfer Zone sectional map amendment was enacted is [not] a [non]conforming use, and may be extended, enlarged or modified by special exception subject to the provisions [set forth in] of section 59-G-2.19, “Educational Institutions, Private.”*

RDT Zone

The intent of the Rural Density Transfer (RDT) zone is to promote agriculture as the primary land use in sections of the County designated for agricultural preservation in the General Plan and the Functional Master Plan for Preservation of Agriculture and Rural Open Space. This is to be accomplished by providing large areas of generally contiguous properties suitable for agricultural and related uses and permitting the transfer of development rights from properties in this zone to properties in designated receiving areas.

Agriculture is the preferred use in the Rural Density Transfer zone. All agricultural operations are permitted at any time, including the operation of farm machinery. No agricultural use can be subject to restriction on the grounds that it interferes with other uses permitted in the zone, but uses that are not exclusively agricultural in nature are subject to the regulations prescribed in this Division 59-C-9 and in Division 59-G-2, "Special Exceptions-Standards and Requirements."

Staff recognizes that the school operates due to the public ownership of the site. If the school property had been deemed a public use, the text amendment would not be necessary. Since this is not the case, a text amendment has been proposed with the intent of limiting its applicability to a site where an existing private school for persons with disabilities currently exists on public (State) property. Staff has no objection with allowing an existing PEI located on public property to become conforming should the property be purchased from the state. It should be further noted that staff is not be in favor of allowing newly established private educational institutions in the RDT Zone since PEIs are currently permitted by special exception in all the other agricultural zones without the limitation imposed in the RDT Zone and without compromising their purpose.

RECOMMENDATION

The staff has no objection to the proposed text amendment to allow a private educational institution for persons with disabilities by special exception in the RDT zone based on the narrow applicability of the use.

Attachment 1 depicts the proposed text amendment as proposed.

GR

Attachments

1. Proposed Text Amendment 03-07
2. Planning Board Recommendation and Technical Staff Report for ZTA No. 95023

ATTACHMENT 1

Zoning Text Amendment No: 03-07
Concerning: Private educational institution
for persons with disabilities in RDT zone
Draft No. & Date: 1 – 5/6/03
Introduced: May 6, 2003
Public Hearing: June 10, 2003; 7:30 PM
Adopted:
Effective:
Ordinance No:

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND

By: Councilmember Subin

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- allowing a private educational institution for persons with disabilities by special exception in the RDT zone.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-9 “AGRICULTURAL ZONES”
Section 59-C-9.3 “Land uses”

*EXPLANATION: **Boldface** indicates a heading or a defined term.*

Underlining indicates text that is added to existing laws by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

**** indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. Division 59-C-9 is amended as follows:

DIVISION 59-C-9. AGRICULTURAL ZONES.

* * *

59-C-9.3 Land uses.

* * *

	Rural	RC	LDRC	RDT	RS	RNC
(h) Services:²						
* * *						
Educational institution, private.	SE	SE	SE	SE ¹³	SE	SE
* * *						

¹³ Limited to individual or small class instruction provided within a dwelling or an accessory use, such as a swimming pool, by a resident of the dwelling. However, a private educational institution for persons with disabilities may be established subject to the special exception requirements of section 59-G-2.19, and provided (1) the site is at least 2 acres in size, (2) no more than 75 students are enrolled at any one time, (3) enrolled students are not boarded, and (4) improvements exist on the property (as of ZTA Effective Date) to accommodate the school’s education programs. A residence may be provided on site for use by a caretaker. Educational services to persons without disabilities are limited to enrichment activities related to providing educational services to persons with disabilities. A private educational institution lawfully existing prior to January 6, 1981, when the Rural Density Transfer Zone sectional map amendment was enacted is [not] a [non]conforming use, and may be extended, enlarged or modified by special exception subject to the provisions [set forth in] of section 59-G-2.19, “Educational Institutions, Private.”

* * *

24 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
25 date of Council adoption.

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27 This is a correct copy of Council action.

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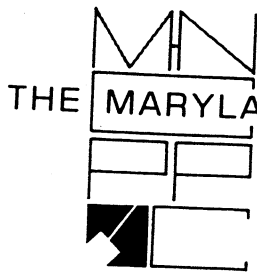
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32 Mary A. Edgar, CMC

33 Clerk of the Council



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD

January 5, 1996

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Planning Board Opinion on Zoning Ordinance Text Amendment No. 95023

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission reviewed Zoning Ordinance Text Amendment No.95023 at its regular meeting on January 4, 1996. By a vote of 3-2, the Board recommends that this text amendment be DENIED for the reasons set forth in the technical staff report, which is hereby approved and incorporated by reference in this recommendation.

The purpose of the proposed text amendment is to amend the RDT Zone to allow the location of private educational institutions for up to 50 students by special exception. The immediate impetus for the text amendment is to allow the creation of a school in a rural setting of the county for seriously emotionally disturbed youth.

In discussion, Commissioners Davis, Holmes and Baptiste expressed similar concern for maintaining the agricultural intent of this zone. While they accept the need for the school, and concur that it has a worthy purpose, they believe that the use can already be placed in existing zones. The existing low density rural, and the other agricultural zones provide many alternate sites for such a facility that still meet its rural locational criteria. Further, since it is a use with a regional attraction; perhaps other locations outside the county should be considered. The commissioners also believe that since such a school would have statewide impact, perhaps the state should be involved in assistance in selecting a better site.

In dissent, Commissioner Aron and Chairman Hussman recognized the very important public purpose of this text amendment, and for that reason consider it worthy of inclusion in the zone. They did not support the motion to recommend denial because they either believed the proposed use would create no greater impact to the zone than other existing special exception uses or, if limited to a site of no less than 100 acres (allowing the on-site buildings to maintain a residential scale and appearance), it would be compatible and preserve the character of the zone.

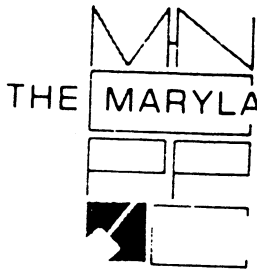
CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on motion of Commissioner Davis, seconded by Commissioner Baptiste, with Commissioners Davis, Baptiste, and Holmes voting in favor of the motion, and Chairman Hussmann and Commissioner Aron voting against the motion at its regular meeting held in Silver Spring, Maryland, on Thursday, January 4, 1996.



William H. Hussmann
Chairman
Montgomery County Planning Board

JD



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring Maryland 20910-3760

MCPB

Item #

1/4/96

MEMORANDUM

DATE: December 18, 1995
TO: Montgomery County Planning Board
FROM: Judy Daniel, AICP, for the Planning Department
(301/495-4570)

REVIEW TYPE: Zoning Text Amendment
CASE NUMBER: 95023
PURPOSE: To amend the RDT Zone provisions to allow the location of private educational institutions for up to 50 students by special exception.

REVIEW BASIS: Advisory to the County Council, Chapter 59, Zoning Ordinance

INTRODUCED BY: Councilmembers Subin, Leggett, Berlage
INTRODUCED DATE: November 7, 1995
PLANNING BOARD REVIEW: January 4, 1996
PUBLIC HEARING: January 16, 1996 at County Council

STAFF RECOMMENDATION: DENIAL due to conflict with the purpose clause of the RDT Zone, and insufficient public purpose to override that conflict.

SUMMARY OF ISSUES:

ISSUE: Compatibility with basic intent of RDT Zone.

APPLICANT POSITION: RDT Zone has allowed non-agricultural uses for other special needs groups.

STAFF POSITION: Such an intended use can meet its agricultural purposes in the other agricultural or low density rural zones, and there is insufficient public purpose to break the intent of the RDT Zone.

DESCRIPTION: The intent of this text amendment is to change the very restrictive policy governing private educational institutions in the Rural Density Transfer Zone to allow small (50 students or less) private boarding schools (with no more than 20% commuting students) that have agricultural study as a part of their curriculum.

The text amendment first changes the footnote to private educational institutions (PEI) which are special exceptions in the RDT Zone. This footnote currently limits such PEI's to "individual or small class instruction provided within a dwelling or an accessory use, such as a swimming pool, by a resident of a dwelling" or to "private educational institutions existing prior to the enactment of the RDT Zone". The text amendment proposes to allow "*other educational institutions with up to 50 total students and an agricultural study component as part of the school's curriculum*".

The text amendment also adds a provision to the specific special exception standards for PEI's. The change adds paragraph 5 to Section 59-G-2.19(a) stating:

"5. That in the RDT zone, private educational institutions for up to 50 total students have: a) an educational study component requiring students to participate in or study agriculture, agronomy, and animal husbandry (both crops and livestock) and b) a student body, with not more than 20 percent of the students commuting."

This text amendment is being proposed for the benefit of Compass Educational Foundation which seeks to locate a boarding school for special needs students who are diagnosed as seriously emotionally disturbed and suffering from neurobiological related conditions including manic depression, schizophrenia, attention deficit hyperactivity disorder, obsessive-compulsive disorder, and panic anxiety. The proposal for the school notes that:

"...it is anticipated that the extensive property will afford the opportunity to integrate animal-facilitated therapy and organic farming into the therapeutic milieu. Providing care and concern for all living things has been shown to help many children go through a healing process...Through such therapy the students can begin to develop the ability to relate to other living things, and can then begin to learn how to relate to other people."

A representative of Compass Educational Foundation noted that too often youth with such internalized disorders are grouped with those who have aggressive, outward expressed disorders, which further isolates and internalizes them. These youth generally have high IQs, and with therapy can recover and progress to higher education and a normal life. Therefore the curriculum would include a full academic program as well as the therapeutic program. The school would be a coeducational and college preparatory. They want to locate this school on a large parcel in a rural setting to accommodate the residential and agricultural component, but still be close enough that family can visit on weekends. No similar facility exists in the state and the closest equivalent school is in Connecticut. (See Appendix I for full Compass comments.)

STAFF ANALYSIS: The Rural Density Transfer Zone was created in 1980 specifically for agricultural purposes. The stated purpose of the zone is to "promote agriculture as the primary land use in sections of the county designated for agricultural preservation... Agriculture is the preferred use in the Rural Density Transfer zone.." While a range of non-agricultural uses are allowed by special exception, most are agriculturally related or of limited intensity, not causing the level of activity and traffic generation of a private school. (See Appendix II for uses allowed in the Agricultural Zones.)

The essential question with this text amendment is whether the public purpose of allowing a private school in the RDT Zone (even with the proposed limiting standards) is important enough to undermine the essential intent of the zone to be a preserve for agriculture, agriculturally related activities, and some non-intensive non-agriculture related uses. The current limitations in the Zoning Ordinance for private educational institutions in the RDT Zone reflect the subsidiary status of non-agricultural uses in the zone. The text change would allow a school that would serve afflicted Montgomery County youth (as well as those from other parts of the state and region) in a setting that is not available to them in the state at this time.

However, such schools would also generate daily traffic and intensity of use beyond the intent of the RDT Zone. This is the very reason why PEI's were not allowed by special exception when the RDT Zone was created, and only those previously existing institutions were grandfathered, by a footnote, to allow for some expansions.

If the intent of the zone is to encourage agriculture as the primary and preferred use in these designated areas, we believe an essentially non-agricultural use, such as a private school, will conflict with that intent unless the agricultural operations constitute the primary emphasis of the school curriculum, not just one component of a diversified curriculum. A working farm with an educational component would perhaps be more in keeping with the intent of the zone, but even that use could already be placed in another of the agricultural zones.

Further, while the text amendment does tie agricultural studies to the school functions (in recognition of the agricultural basis of the zone), we find insufficient documentation to justify the need for this program in the RDT Zone rather than other rural or low density residential zones. Private educational institutions are currently permitted by special exception in the Rural and Rural Cluster zones, without the limitation imposed in the Rural Density Transfer Zone and without compromising their purpose of permitting agriculture to coexist with low-density residential uses. Additionally, private educational institutions are permitted by special exception in the large-lot RE-1 and RE-2 Zones, where an agricultural component would not cause a conflict on a sufficiently large parcel.

Text Amendment 90005 was approved to allow expanded use of the zone for a residential summer camp for "seriously ill" children. However, the text amendment merely allowed an existing use to become conforming and it only operates seasonally.

TA 95023

CONCLUSIONS: We find that the proposed text amendment does not meet the intent of the Rural Density Transfer Zone because agriculture or agricultural education is not the primary use. Further, because the needs of prospective applicants for such a private school can be met in several other zones, we cannot recommend approval of the text amendment.

However, if this text amendment is adopted, we recommend that the limitation in footnote 13 (Section 59-C-9.3(h)), be further limited to educational institutions serving students with physical or mental handicaps. We fear that opening the RDT to any educational institution for 50 students with an agricultural study component will lead to the creation of a number of such small schools scattered in the RDT Zone areas. By limiting such schools to students with special needs that will benefit from an agricultural curricula, fewer will be proposed. However, we would emphasize that we believe such schools can already be located in the other rural and low density residential zones. We also note that no environmental problems would be anticipated for such a use as long as imperviousness is kept to the low levels expected in an area of primarily agricultural uses.

We further note a technical glitch in the paragraph 5, added to 59-G-2.19(a); as "participate" is misspelled as "paticipate".

Attachments

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Attachment I Justification for School from Compass Country School

The passage of the Individuals with Disabilities Educational Act (IDEA), which was formerly the Education for All Handicapped Children Act, in 1975, guaranteed to the children in all States a "free and appropriate education."

Maryland chose to implement this legislation in a manner which created limited resources for special needs children and adolescents within the state, relying most heavily on sending such youth to facilities out of State. This pattern reached a turning point during the 1992 General Assembly, when legislation was passed stating that Maryland was tired of in effect hemorrhaging \$45 million dollars a year to educate 809 children in other States. This legislation (SB 588 and HB 1055) now known as the Systems Reform Initiative, was intended to "...make available within the State of Maryland a continuum of quality community-based services for children with special needs" by encouraging collaboration between public and private agencies and interagency collaboration.

Special needs youth have many different disabilities. The majority being sent out of State in 1992 (75%) were "coded" Seriously Emotionally Disturbed (SED). Even within this disability category however there is a wide range of psychiatric diagnoses. Such students may act violently and aggressively, or they may internalize and become quite isolated. Maryland currently lumps all SED students into approximately 7-10 schools located throughout the State. However, none discriminate between patterns of behavior or academic potential. Teacher effort, therefore, is usually directed toward controlling the most aggressive youth, and teaching is done to the lowest common denominator.

The subset of youth that are the target for Compass School fit the profile of students who internalize their illness and have IQ's above 90. They have diagnoses such as major depression, obsessive-compulsive behavior, and panic and anxiety disorders, among others. They are socially isolated, have poor interpersonal skills, and may be failing all academic subjects; but have the ability to succeed academically in an appropriate academic/social/therapeutic environment.

Montgomery County currently has 8 adolescents who fit this profile at the Grove School in Connecticut, a co-educational college preparatory residential school with a psychotherapeutic environment. Several other students from Washington, DC and Fairfax County are also placed there. There are also four similar students who are currently in the Montgomery County CARD process and may well end up at Grove unless an in-State option is developed. Each student costs the State approximately \$55,000 per year in tuition.

Compass Country School is requesting a maximum student enrollment of 50 students. Seventy-five percent (75%) of the 809 students out-of-State in 1992 had the disability code of Seriously Emotionally Disturbed, representing 606 students. Even if only 10% of those SED youth fit the profile to benefit from the Compass program, that is approximately 60 students across the State. In 1995, 603 remain in out-of-State settings. Again, if the proportion of SED students continues to be approximately 75% of that number, then 45 youth are SED. We anticipate that 45 of them, or 10%, continue to meet this profile and would be eligible for funding under IDEA to provide them with a "free and appropriate public education". Montgomery County's dozen or so students could be joined by other students from neighboring counties, Washington, DC, and Northern Virginia who have the same educational requirements. A student population of this size will also enable Compass to field teams in certain sports and compete intramurally, an exceptionally normalizing component, and it will provide a large enough population to enable these students to develop interpersonal skills with 8-10 peers in their own grade.

Rural land, not too "suburbanized," is the preferred setting for several reasons. It will remove the overwhelming distractions and enticements of more urban settings. It will also allow the full use of such animals as cows, sheep, goats, and possible llamas in animal facilitated therapy, giving abused and deprived children the opportunity to interact with creatures whose affection may be the first unconditional love and respect they have ever experienced, and giving other disturbed youth companionship, intimacy, enhancement of self-worth, a sense of inclusion, and the ability to eventually transfer these attributes to their relationships with human peers.

Compass Country School will preserve the rural feel and appearance of the land it occupies. Students will live in alternative living units of 6-8 each, with staff, scattered across the 30 acres we wish to utilize. The ALU's, school buildings and other extracurricular and recreational buildings will all be designed to fit into the rural landscape and to be consistent with the appearance of neighboring properties.

Attachment II
DIVISION 59-C-9. AGRICULTURAL ZONES.

Sec. 59-C-9.3. Land uses.

No use is allowed except as indicated in the following table.

- **Permitted uses.** Uses designated by the letter "P" are permitted on any lot in the zone indicated, subject to all applicable regulations.

- **Special exception uses.** Uses designated by the letters "SE" may be authorized as special exceptions, in accordance with the provisions of article 59-G.

	<u>Rural</u>	<u>RC</u>	<u>RDT</u>	<u>RS</u>
(a) Agricultural:				
Agricultural processing, primary Farm. ¹	P	P	P	P
Fish hatchery.	P	P	P	P
Other agricultural use.	P	P	P	P
(b) Agricultural-Industrial:				
Abattoir.	SE	SE ²	SE	
Agricultural processing, secondary, not otherwise specified.	SE	SE ²	SE	SE
Contractor's storage yard ²⁶ (existing)				P
Grain elevator.	SE	SE ²	SE	SE
Manufacture of light sheet metal products ²⁶ (existing)				P
Manufacture of mulch. ³	SE	SE ²	SE	SE
Milk plant.	SE	SE ²	SE	
Sawmill.	SE	SE ²	SE	
Storage for recycling of building or construction materials ²⁶ (existing)				P
Winery.	SE	SE	SE	SE
Wood product and furniture manufacturing ²⁶ (existing)				P
(c) Agricultural-Commercial:				
Blacksmith. ⁴	SE	SE ²	SE	P
Christmas-tree sales between December 5 and 25.	P	P	P	P
Country market.	SE	SE	SE	P
Farm market. ⁵	P	P	P	P
Landscape contractor. ³	SE	SE	SE	P
Retail nursery or garden center. ^{1,3}	SE	SE	SE	P
Wholesale nursery or greenhouse. ^{1,3}	SE	SE	SE	P

	<u>Rural</u>	<u>RC</u>	<u>RDT</u>	<u>RS</u>
(d) Resource Production and Extraction:²				
Rock or stone quarry, as a temporary use.	SE	SE	SE	
Sand, gravel or clay pit, or extraction of other natural materials, as a temporary use.	SE	SE	SE	
(e) Residential:²				
Accessory apartment. ^{6,7}	SE	SE	SE	
Accessory dwelling. ⁷	SE	SE	SE	SE
Bed-and-breakfast lodging with one or 2 guest rooms. ³¹	P	P	P	P
Bed-and-breakfast lodging with 3, 4, or 5 guest rooms. ¹⁸	SE	SE	SE	P
Dwelling, one-family detached.	P	P	P	P
Farm tenant dwelling. ⁸	P	P	P	
Farm tenant mobile home, one only. ⁸	P	P	P	
Farm tenant mobile home, more than one but less than 4. ⁸	SE	SE	SE	
Guest house, as accessory use. ⁸	P	P	P	P
Guest rooms, for not more than 2 roomers in any dwelling unit.	P	P	P	P
Housing and related facilities for elderly or handicapped persons.	SE	SE		SE
Life care facility.	SE	SE		
Mobile home, double-wide. ⁹	P	P	P	P
Registered living unit. ^{6,20}	P	P	P	P
(f) Transportation, Communication and Utilities:				
Airstrip, associated with farm.		SE ²	SE	
Cable communications system. ¹⁰	SE	SE	SE	SE
Electric power transmission and distribution line, overhead, more than 69,000 volts.	SE	SE	SE	SE
Electric power transmission and distribution line, overhead, carrying 69,000 volts or less.	P	P	P	P
Electric power transmission and distribution line, underground.	P	P	P	P
Helistop.	SE	SE ^{2,11}	SE ¹¹	
Parking of motor vehicles, off-street, in connection with any use permitted.	P	P	P	P
Pipeline, aboveground.	SE	SE	SE	SE
Pipeline, underground.	P	P	P	P
Public utility building or structure.	SE	SE	SE	SE
Radio or television broadcasting station or tower.	SE	SE ²	SE	SE
Railroad track.	P	P	P	P
Rooftop mounted antennas and related unmanned equipment building, equipment cabinets, or equipment room. ²⁹	P	P	P	
Telephone or telegraph line.	P	P	P	P

	<u>Rural</u>	<u>RC</u>	<u>RDT</u>	<u>RS</u>
(g) Commercial: ²				
Antique shop.	SE	SE	SE	P
Auction facility. ¹²			SE	P
Farm machinery: sales, storage, or service.		SE	SE	P
Farm supply: sales, storage, or service.		SE	SE	P
Transitory use. ²⁸	P/SE	P/SE	P/SE	
(h) Services. ²				
Adult foster care home.	P	P	P	P
Ambulance or rescue squad, publicly supported.	P	P	P	P
Animal boarding place.	SE	SE	SE	SE
Cemetery.	SE	SE	SE	SE
Charitable or philanthropic institution. ¹⁹	SE	SE	SE	SE
Child care residence for not more than 8 children.	P	P	P	P
Child day care facility:				
Up to 12 children.	P	P	P	P
13 or more children.	SE	SE	SE	P
Church, memorial garden, convent, monastery, and/or other place of worship.	P	P	P	P
Educational institution, private.	SE	SE	SE ¹³	SE
Elderly day care facilities for more than 4 individuals.	SE	SE	SE	SE
Elderly day care facilities for not more than 4 individuals. ¹⁴	P	P	P	P
Family burial sites. ²⁴	SE	SE	SE	
Fire station, publicly supported.	P	P	P	P
Group residence for 9 through 14 elderly persons. ¹⁵	SE	SE	SE	SE
Group residence for not more than 8 elderly persons.	P	P	P	P
Group residential facility for not more than 8 developmentally disabled persons.	P	P	P	P
Group residential facility for housing exceptional persons.	SE	SE	SE	SE
Home health practitioner's office.	p ²²	p ²²	p ²²	p ²²
Home occupation, major. ²¹	SE ²¹	SE ²¹	SE ²¹	SE ²¹
Home occupation, registered. ²²	SE	SE	SE	SE
Home occupation, no impact. ²³	P	P	P	P
Hospice care facility.	P	P	P	P
Hospital, veterinary.	SE	SE	SE	SE
Hospital, veterinary.	SE	SE	SE	SE
Nursing and care home.	SE	SE		SE
Offices, General. ²⁷				SE
Publicly owned or publicly operated use.	P	P	P	P
Respite care home.	P	P	P	P
Sanitarium.	SE	SE	SE	SE

	<u>Rural.</u>	<u>RC</u>	<u>RDT</u>	<u>RS</u>
(i) Cultural, Entertainment and Recreational:				
Boathouse, private.	P	P	P	P
Campground.	SE			
Country club.	SE	SE		
Golf courses.	SE	SE	SE ²⁵	
Hunting or fishing cabin, private. ¹⁶	P	P	P	
Kennel, noncommercial.	P	P	P	P
Libraries and museums. ³⁰		P		
Private club or service organization.	SE	SE	SE	SE
Recreational or entertainment establishment, commercial.	SE			SE
Riding stable, commercial.	SE	SE	SE	SE
Riding stable, private. ¹⁷	P	P	P	P
Rifle, pistol, or skeet shooting range, outdoor.	SE	SE ²	SE	SE
Swimming pool, community.	SE	SE		
Swimming pool, private. ¹⁶	P	P	P	P
Theater, legitimate.	SE			SE
(j) Miscellaneous:				
Accessory buildings and uses.	P	P	P	P
Signs, including farm signs and temporary farm produce signs, in accordance with the provisions of article 59-F.	P	P	P	P
Wildlife or game preserve, regulated shooting ground licensed by the Maryland Wildlife Administration, and other conservation areas.	P	P	P	P

¹ Products of agriculture and agricultural processing may be sold at retail from a farm only if they are produced on site. A farm selling only those horticultural products that are grown on site or, if grown off-site, in the ground or in pots or beds, are planted for a period of time on not more than 2 acres or 20 percent of the site, whichever is less, is not a horticultural nursery.

² This use or class of uses is not permitted in the portion of a rural cluster development regulated by section 59-C-9.52, except as noted in that section.

³ As provided in the relevant subsection of section 59-G-2.30, "Horticultural nursery or related use." Landscape contractor or wholesale nursery established in the Rural Cluster or RDT zone after July 8, 1980, and in operation on October 22, 1985, is not required to apply for a special exception and is not a nonconforming use (that is, it may be continued and reconstructed in case of fire or other disaster), unless:

- (a) The on-site operation is expanded or enlarged;
- (b) The on-site operation is diversified to include retail facilities or a related use not in operation prior to October 22, 1985; or
- (c) The operation is discontinued for a period of 6 months or more. A period of seasonal inactivity of up to 4 months does not constitute discontinuance.

⁴ A farrier whose operation is limited to shoeing horses or other equines is not a commercial blacksmith.

- ⁵ Farm products for sale must be produced on site or on another farm under the control of the owner or operator of the farm on which the market is located, except that up to 25 percent of the display and sales area may be used for the display and sales of agricultural products not produced on the farm. In the event of crop failure due to drought, insect damage, disease, or other cause beyond the control of the producer, the producer may ask the Montgomery County Agricultural Advisory Committee to request that the Director of the Office of Economic Development allow up to 50 percent of the display and sales area be used for agricultural produce from off the farm for a limited period of time. The market must be located at least 20 feet from the street right-of-way on a lot or parcel with a minimum street frontage of 200 feet. There must be at least 3 off-street parking spaces.
- ⁶ Not permitted in a mobile home.
- ⁷ As a special exception regulated by divisions 59-G-1 and 59-G-2, such a dwelling unit is excluded from the density calculations set forth in section 59-C-9.41, title "Density in RDT Zone," and 59-C-9.6, title "Transfer of Density-Option in RDT Zone." Once the property is subdivided, such a dwelling would no longer comply with the special exception regulations or with this exclusion. A special exception is not required for a dwelling that was a farm tenant dwelling in existence prior to June 1, 1958, provided, that the dwelling meets all applicable health and safety regulations.
- ⁸ A farm tenant dwelling, farm tenant mobile home, or guest house, as defined in section 59-A-2.1, title "Definitions," is excluded from the density calculations set forth in sections 59-C-9.41, title "Density in RDT Zone," and 59-C-9.6, title "Transfer of Density-Option in RDT Zone," provided that these uses remain accessory to a farm. Once the property is subdivided, such dwellings would no longer comply with these definitions or with this exclusion. A farm tenant dwelling in existence prior to June 1, 1958, may be rented to a non-farm family without obtaining a special exception as an accessory dwelling, provided that the dwelling meets all applicable health and safety regulations.
- ⁹ Provided that such a dwelling has minimum dimensions of 24' by 40', a gable roof, and is permanently affixed to a foundation supporting the load-bearing framework of the mobile home and a foundation wall enclosing its entire perimeter, in compliance with the provisions of chapter 8 of this Code. Such a mobile home must have its wheels, axles, transportation light and removable towing apparatus removed.
- ¹⁰ Except as provided in sections 59-A-6.9 and 59-G-2.10.1.
- ¹¹ Provided it is a private helistop associated with a farm.
- ¹² Merchandise restricted as stated in section 59-G-2.05.1.
- ¹³ Limited to individual or small class instruction provided within a dwelling or an accessory use, such as a swimming pool, by a resident of the dwelling. A private educational institution lawfully existing prior to January 6, 1981, when the Rural Density Transfer Zone sectional map amendment was enacted is not a nonconforming use, and may be extended, enlarged or modified by special exception subject to the provisions set forth in section 59-G-2.19, "Educational Institutions, Private."
- ¹⁴ As defined under "Child or Elderly Day Care Facility."
- ¹⁵ Subject to the special exception standards for group residential facilities for housing exceptional persons, section 59-G-2.26.
- ¹⁶ For use of the property owner and nonpaying guests only.
- ¹⁷ Minimum lot area for one or 2 horses must be 2 acres. For 3 to 10 horses, the minimum lot area must be 5 acres. If more than 10 horses are kept, the minimum lot area of 5 acres must be increased by 1/2 acre per horse. A maximum of 2 horses may be rented out for recreational riding or instruction. A maximum of 2 horses not belonging to the property owner may be boarded. No horse shows may be held.
- ¹⁸ Not permitted in an accessory dwelling, farm tenant dwelling or mobile home. The owner must maintain a record of transient visitors and register the lodging with the Department of Environmental Protection. Minimum lot size for a lodging with more than 3 guests is 2 acres.
- ¹⁹ Provided the special exception is for re-use of an existing building with a minimum lot size of 2 acres.
- ²⁰ In accordance with Executive Regulations and subject to the requirements enumerated in section 59-A-6.10.

- ²¹ In accordance with section 59-G-2.29, title "Home Occupation, Major." A professional office for a resident of a dwelling for which a use-and-occupancy permit was issued prior to February 5, 1990, may be continued as a nonconforming use, as provided in division 59-G-4. Alternatively, an existing resident professional may register a home occupation or home health practitioner's office, in accordance with sections 59-A-3.4 and 59-A-6.1, or apply for a special exception, in accordance with section 59-G- 2.29.
- ²² In accordance with sections 59-A-3.4 and 59-A-6.1.
- ²³ There must be no more than 5 visits per week, no nonresident employees and no discernible adverse impact on the neighborhood.
- ²⁴ If in existence as of July 22, 1991.
- ²⁵ If an application was filed with the Board of Appeals prior to June 16, 1992. Any golf course approved by the Board of Appeals is not non-conforming and may be modified in accordance with Sec. 59-G-2.241.
- ²⁶ Valid only for uses existing as of the date of placement in the zone or on a parcel adjoining I-1 zoned property devoted to a similar use at the time of placement in the zone. Expansion on such a parcel adjoining I-1 zoned property shall require that the entire site is covered by site plan review for both properties.
- ²⁷ For existing residential structures as of the date of placement in the zone and in accordance with the special exception requirements of Section 59-G-2.38.1.
- ²⁸ In accordance with Section 59-G-6.13.
- ²⁹ Refer to Sec. 59-A-6.14.
- ³⁰ Whenever main and accessory structures exceed an aggregate floor area of 5,000 square feet, development will be subject to site plan review under Division 59-D-3. All properties designated as resources in the Master Plan for Historic Preservation are excluded from the site plan review requirement.
- ³¹ May be permitted in an accessory building designated as historic on the Master Plan for Historic Preservation.

Zoning Text Amendment No.: 95023
Concerning: Private Educational
Institution in the RDT Zone by
S.E. under certain circumstances
Draft No. & Date: 1 - 10/13/95
Introduced: November 7, 1995
Public Hearing: January 16, 1996
1:30 p.m.

Adopted:
Effective:
Ordinance No.:

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
WITHIN MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Subin, Leggett, Berlage

NOV 1 1995

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of

- allowing a private educational institution with up to 50 students in the RDT zone by special exception under certain circumstances.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Section 59-C-9.3. "Land uses"

Section 59-G-2.19 "Educational institutions, private"

EXPLANATION: **Boldface** indicates a heading or a defined term.
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
* * * indicates existing law unaffected by the text amendment.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 Sec. 1. Section 59-C-9 is amended as follows:

2 59-C-9. AGRICULTURAL ZONES.

3 * * *

4 59-C-9.3. Land uses.

5 Rural RC RDT RS

6 * * *

7 (h) Services:²

8 * * *

9 Educational institution, private. SE SE SE¹³ SE

10 * * *

11 _____
12 * * *

13 13 Limited to individual or small class instruction provided within
14 a dwelling or an accessory use, such as a swimming pool, by a
15 resident of a dwelling[.], and to other educational institutions
16 with up to 50 total students and an agricultural study component
17 as part of the school's curriculum. A private educational
18 institution lawfully existing prior to January 6, 1981, when the
19 Rural Density Transfer Zone sectional map amendment was enacted
20 is not a nonconforming use, and may be extended, enlarged or
21 modified by special exception subject to the provisions set
22 forth in section 59-G-2.19, "Educational Institutions, Private."

23 * * *

24
25
26
27

1 **Sec. 2. Division 59-G-1 is amended as follows:**

2 **DIVISION 59-G-1. SPECIAL EXCEPTIONS-AUTHORITY AND PROCEDURE.**

3 * * *

4 **59-G-2.19. Educational institutions, private.**

5 (a) Generally. A lot, tract or parcel of land may be allowed
6 to be used for a private educational institution upon a
7 finding by the board:

8 * * *

9 (5) That in the RDT zone, private educational institutions
10 for up to 50 total students have: a) an educational
11 study component requiring students to participate in or
12 study agriculture, agronomy, and animal husbandry
13 (both crops and livestock) and b) a student body, with
14 not more than 20 percent of the students commuting.

15 * * *

16
17 **Sec. 3. Effective date.** This ordinance becomes effective 20
18 days after the date of Council adoption.

19
20 This is a correct copy of Council action.

21
22
23
24 _____
Kathleen A. Freedman, CMC

25 Secretary of the Council
26
27

LAW FIRM

SHULMAN, ROGERS, GANDAL, PORDY & ECKER, P.A.

11921 ROCKVILLE PIKE, THIRD FLOOR
ROCKVILLE, MARYLAND 20852-2743

(301) 230-5200

TELECOPIER (301) 230-2891

TDD (301) 230-6570

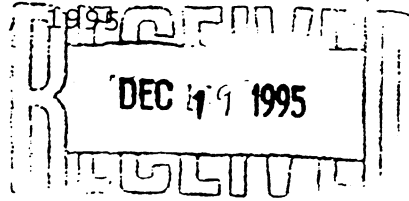
WASHINGTON OFFICE
(202) 872-0400
TELECOPIER (301) 230-2891

VIRGINIA OFFICE

(703) 684-5200

TELECOPIER (703) 684-5254
THE MARYLAND PLANNING COMMISSION

December 18, 1995



MICHAEL J. FROELICH
WILLIAM C. DAVIS, III
JAMES A. POWERS*
ELIZABETH N. SHOMAKER
MICHAEL V. NAKAMURA
PAUL A. BELLEGARDE*
GREGORY J. RUPERT*
SANDRA E. BRUSCA
JONATHAN M. FORSTER*
DOUGLAS K. HIRSCH
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KIM VITI
JOAN A. PISARCHIK*
STEVEN M. CURWIN*
HOLLOWAY B. LEFKOWITZ
JOHN J. MCKENNA, JR.
KARL J. PROTL, JR.*
MANISHA S. DESHMUKH
YOLANDA S. FAERBER

OF COUNSEL

LAWRENCE JAY EISENBERG
SOLOMON L. MARGOLIS
FRED S. SOMMER
WILLIAM R. KING
HARRY K. SCHWARTZ*

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*VIRGINIA ALSO
*MARYLAND ONLY
*MARYLAND AND VIRGINIA
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L. L. ECKER
ID A. PORDY*
ID D. FRESHFAT
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STOPHER C. ROBERTS
JEY A. SHANE
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TER A. OLENIEWSKI
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R. T. B. CANTER
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B. STERNSTEIN
Y. P. REGELIN
E. M. SPIRITOS*
R. D. J. MELNICK
Y. JOEL GARDNER
M. HOFFMAN
RS DIRECT DIAL

1-230-5206

Ms. Judy Daniels
Design, Zoning and Preservation Division
MNCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Text Amendment 95023; Private Educational Institutions
Our File No. 11-415-002

Dear Ms. Daniels:

The purpose of this letter is to supplement the filing of the captioned matter and the background information supplied by my client, Mrs. Carolyn Sanger for the Compass Educational Foundation.

The basis for requesting this text amendment is that the public purpose for the use justifies the relatively small reduction in agricultural land, and is within prior precedent for this type of text change.

As you may note from the narrative supplied by Mrs. Sanger, the proposed private school is for children with special needs. These children are enrolled in the public schools, but must be placed in a special kind of school, which is funded by the various public schools who have students needing this specialized type of education.

The County Council has established precedent for this very worthy type of land use when they approved a text change to allow the Carol Jean Cancer Foundation to operate Camp Friendship in the RDT zone, a residential summer camp. That was approved by text amendment 92005. It was recommended for approval by the Planning Board and staff.