

**BEFORE THE BOARD OF APPEALS
FOR MONTGOMERY COUNTY, MARYLAND**

PETITION OF THE FEDERATION OF	*	
AMERICAN SOCIETIES FOR	*	
EXPERIMENTAL BIOLOGY FOR A	*	Board of Appeals Case Nos. _____
MODIFICATION TO A SPECIAL	*	(Previous Case Nos.: A-5599, S-862-A, CBA-
EXCEPTION FOR A PRIVATE	*	1998, BA 1029, BA 1998, BA 1547, BAS 562,
EDUCATIONAL INSTITUTION	*	No. 210, No. 136)
IN THE R-60 ZONE	*	

STATEMENT IN SUPPORT OF MODIFICATION AND VARIANCES

Introduction

The Federation of American Societies for Experimental Biology (“FASEB” or the “Petitioner”), by its attorneys, Linowes and Blocher LLP, hereby submits this Statement in Support of Modification to a Special Exception for a private educational institution in the R-60 zone. The FASEB campus consists of 11 acres located at 9650 Rockville Pike in Bethesda, Maryland (the “Property”). The Property is bordered by Rockville Pike on the east, the Pooks Hill townhouse community to the north side in the Multiple-Family, High Rise Planned Residential Zone (R-H Zone), and by the Maplewood Estates single family residential neighborhood to the south and west of the Property in the R-60 zone. In December, 2001, FASEB obtained approval for a modification to the existing special exception, and related variances, for a 50,000 square foot building expansion and a parking structure which is now referred to as Phase One of the Master Plan for the FASEB site improvements.

In this current modification request, the Petitioner proposes to build a new building to replace the existing Lee Building on the site (as Phase 2), in lieu of renovating the almost 50 year old structure, to improve the facilities on the Property, and further to provide for a potential 40,000 square foot building expansion and parking structure to accommodate future needs of the organization (as a future Phase 3), to be constructed within a 12-year time frame. Although the replacement building in Phase 2 and the building addition in Phase 3 will be lower than the existing Lee Building, a 22 foot building height variance is necessary to match the height of the Phase One addition based on the topography of the Property. Further, because the parking structure becomes an accessory structure once it is detached from the Lee Building, a 1.92 foot side yard setback

variance is required for Phase 2, and a 31.92 foot side yard setback will be necessary for the Phase 3 parking structure addition.

The Existing FASEB Campus

Founded in 1912 by three scientific societies, FASEB is an organization of independent Member Societies that serves the interests of biomedical and life scientists, particularly those related to public policy issues, by facilitating coalition activities among Member Societies and disseminating information on biological research through educational meetings and numerous publications. FASEB also offers Member Societies headquarter facilities and logistic support for their day-to-day operations. The mission of FASEB is to enhance the ability of biomedical and life scientists to improve, through their research, the health, well-being, and productivity of all people. FASEB currently consists of 21 Member Societies and represents over 60,000 life scientists.

The FASEB headquarters has operated on the Property since 1954 and has been granted special exceptions both as a scientific society and, when that category was eliminated from the Zoning Ordinance, as a private educational institution. The headquarters of the Society is for education and administration. No laboratory experimentation is conducted on-site and, although there is a small print shop, there is no major printing on-site. Although annual meetings and large conferences are planned at headquarters, none are held on the Property. There are occasional conferences of member societies, committees and boards which would attract a maximum of 100 participants, nearly all from out of town and do not use on-site parking. There are approximately 330 employees on the FASEB campus currently, and 580 employees are permitted pursuant to the existing special exception approvals.

Formerly a residential estate, the Property is now improved by a 4-1/2-story brick and stone "E"-shaped building (the Lee Building), the 50,000 new portion of the building extending east toward Rockville Pike; two smaller stone buildings, a one-story frame residence, a storage barn and a parking structure containing approximately 217 parking spaces. Access to the Property is provided by two driveways on Rockville Pike and one driveway to Alta Vista Terrace, which is located to the rear on the west side of the Property. The Property is served by

internal private roadways and has approximately 434 parking spaces. The FASEB grounds are extensively landscaped with numerous trees, shrubs and plantings providing a buffer to adjacent residential properties and an estate-like garden setting to enhance the work environment for the employees.

The Proposed Modification

The 50,000 square foot expansion (Phase One) has been completed and employees have been transferred into the new space. The Lee Building was to be internally retrofitted to accommodate modern wiring, communication systems, building infrastructure and workspace configuration and circulation. However, during the fall and winter of 2003, FASEB began reviewing and seeking cost estimates for the renovation of the existing Lee Building. The cost estimates were extremely high based on the age of the building. FASEB then sought cost estimates for replacing the building and found that those costs were comparable to the renovation estimates. In addition, the building could be replaced in a smaller footprint, leaving room for a future Phase 3 addition of 40,000 square feet for future expansion of FASEB, as well as an extension of the parking structure. FASEB reviewed the proposed replacement building and expansion with the adjacent residential community, the Maplewood Citizens Association, during a Community Council meeting (quarterly meetings established pursuant to a Transportation Management Plan established with the 2001 special exception Modification), and the community was supportive of the proposed plans. (Letter of support is attached hereto as Exhibit M).

In the instant proposal for Phase 2, FASEB seeks approval to replace the Lee Building with a new building similar to the design and architecture of the Phase One building (maintaining the same number of employees and floor area of the existing structure). The smaller footprint for the Phase 2 building replacing the existing Lee Building creates the opportunity to significantly improve the internal circulation on the Property with the construction of an internal circular driveway between the new replacement building and existing parking structure, which will be lined with convenient parking spaces. The same number of parking spaces, 434, will be maintained on the Property with Phase 2.

For Phase 3, FASEB seeks approval to add an extension to the new building of 40,000 square feet and an extension of the new parking structure to contain approximately 104 parking spaces. The new circular driveway will be maintained with Phase 3 although the parking structure expansion will replace some of the surface parking spaces. The number of parking spaces on the Property will be increased by 78 for a total of 512 spaces with the building expansion and the proposed number of employees on the Property increased by 120 employees to a maximum of 700 with the Phase 3 expansion.

Pursuant to Section 59-A-4.53(b) of the Montgomery County Code (the "Zoning Ordinance"), the Petitioner will implement the proposed modification within 24 months of the Board's approval, with the construction of the Phase 2 building, the replacement of the existing Lee Building. The Phase 3 portion of the modification is part of the FASEB master plan for site improvements on the Property and will be implemented within 12 years of the special exception modification approval. The period of 12 years is consistent with the time permitted pursuant to Section 50-20(c)(3)(iii) of the Montgomery County Code that the Planning Board may approve the validity of the preliminary plan amendment, which amendment the Petitioner will seek subsequent to the special exception modification approval for the 40,000 square foot addition proposed with Phase 3 of the request. The community, FASEB and the Montgomery County Department of Economic Development have recognized the importance of a master plan to define the future of FASEB's ability to remain on the Property and accommodate expected growth, to maintain the beneficial institutional use of the Property and preservation of campus setting, and to provide confirmation for both the community and FASEB as to the anticipated future structures and employment growth potential on the Property.

FASEB is in the process of working with the Housing Opportunities Commission ("HOC") to provide an additional access point to the rear of the Property through the Pooks Hill Apartments parking lot to Pooks Hill Road. Those negotiations are still continuing at the present time; however the proposed alignment of the access has been depicted (via a dashed line) on the Special Exception Site Plan for Phase 2 and Phase 3.

The Variances

As was the case in the previous Board of Appeals (the “Board”) approval for Phase One, a series of variances are necessary to accommodate the unique features of the Property so that the new structures can be located so as to be compatible with the surrounding neighborhoods. The overall height of the Phase 2 replacement building and Phase 3 expansion will be less than the existing structure and will be consistent with the height of the Phase One building; however, a 22 foot variance is necessary because of the change of the “average grade” used to measure the height now that the parking structure will be a separate structure. (The variance the Board approved for the Phase One building was 11 feet, 4 inches.) The sloping topography of the Property, which changes in elevation by 36 feet from the parking structure to the Phase One building, creates the necessity for the greater variance, but helps reduce the overall appearance of the structures. Further, similar with the Phase One expansion, the proposed structures and variances are supported by the community because FASEB will maintain the Phase 2 and Phase 3 structures on the existing building footprint and thus preserve the green campus setting of the front of the Property on Rockville Pike and the sloped, wooded areas on the southern portion of the Property.

Because the parking structure will become an accessory structure when it is detached from the Lee Building, a 1.92 foot side yard set back variance is necessary for Phase 2 even though the parking structure will not be altered or expanded. The side yard variance for an accessory structure is based on the length of the structure, thus with Phase 3 and the 60 foot wide expansion of the existing parking structure, a 31.92 foot side yard variance will be necessary.

Justification for Modification

The Montgomery County Zoning Ordinance (the “Zoning Ordinance”) Section 59-G-1.2 contains certain conditions for approval of any Special Exception. These are findings required in addition to the specific findings for the particular Special Exception use. The section of the Zoning Ordinance pertaining to the proposed private educational institution use is Section 59-G-2.19. The following analysis indicates how FASEB’s application meets the conditions and requirements of these sections.

Section 59-G-1.2

A special exception must not be granted absent 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 the 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 the 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.

Regardless of the physical size or scale of operations, the inherent physical and operational characteristics associated with an educational institution include, but are not limited to: large and numerous buildings, traffic and buses associated with transporting students and staff, playgrounds and athletic fields, parking facilities, certain school related activities and events, faculty and employee staff, and particular hours of operation. The Petitioner's use and proposed modification is unique from most educational institutions because it is an administration facility and lacks many of the inherent operational characteristics, such as buses and traffic transporting young students, playgrounds and athletic fields, and particular hours of operation, noise and activity. As explained in detail in the analysis for this use, FASEB's continued use and proposed addition will minimize the effects of any of the inherent characteristics its use as a private educational institution might have on the nearby properties and general neighborhood.

The proposed Phase 2 replacement building will be lower and on a smaller footprint than the existing lee Building, and the Phase 3 structures will be consistent with the size, scale and scope of the existing improvements that have been part of the special exception use for over 50 years and FASEB has become integral with the community. Although the new structures will require a height variance and setback variance, the structures are lower or consistent with the existing structures, will remain within the same distance from the side yard, and will provide an improved internal circulation pattern on the Property. Further, the proposed structures minimize land disturbance and provide the opportunity to maintain the green space on the Property and maintain this valuable institutional use in this area of the County. There are no non-inherent

adverse effects of the application nor any adverse effects created by unusual characteristics of the Property.

Section 59-G-1.21 -General Conditions for a Special Exception

1. *The proposed use is a permissible special exception in the zone.*

The subject Property is zoned R-60. The list of allowable uses in the R-60 Zone is contained at Section 59-C- 1.31(d) wherein “Educational Institutions, Private” are listed as a permissible Special Exception. The use currently exists, as it has for over 50 years, pursuant to a grant of a special exception.

2. *The proposed use complies with the standards and requirements for the use in Division 59-G-2.*

The proposed new buildings in Phase 2 and in Phase 3 comply with the standards and requirements for a private educational institution set forth in Section 59-G-2.19 of the Code, and a more detailed discussion is set forth below.

3. *The proposed use will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission.*

The Property lies within the area of the Bethesda- Chevy Chase Master Plan, Approved and Adopted April 1990 (the “Master Plan”). The Master Plan specifically recommends FASEB’s continued use of the Property because it is considered a long-term, stable use that is viewed as a community resource. The Master Plan recognizes that new development or expansion may occur, requiring an amendment to the special exception and its conditions to ensure compatibility with nearby structures. The proposed new Phase 2 and Phase 3 buildings and parking structure expansion are compatible with the adjacent buildings and situated on the Property to be compatible with the adjoining residential properties and obscured, if not entirely hidden, from view by the adjacent single-family residences. Additionally, the proposed buildings and parking structure expansion incorporate design features to enhance its compatibility with the existing structures on the Property and in the neighborhood.

4. *The proposed use 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 Petitioner's use of the proposed new buildings will be identical to the existing special exception use and the replacement Phase 2 building, the 40,000 square foot Phase 3 expansion and parking structure (with 78 additional parking spaces overall on site) and potential 120 additional employees will not create an intensity of the use or the activities on the Property that will alter the character of the neighborhood. The new building and parking structure expansion will be situated on areas of the Property that are currently occupied by the existing Lee Building, and will therefore maintain the landscaped views and the existing garden, wooded and grassy areas that are enjoyed by the employees and neighbors of the property. The scale of the new buildings are similar to the existing new building facing Rockville Pike and the mass of the buildings will be broken down by the diagonal elements and angles of the structures. The height of the Phase 2 replacement for the Lee Building will be lower than the existing Lee Building and similar in architecture as the new building facing Rockville Pike. The Phase 3 building will continue the same architecture design features and again its height will be lower than the existing structure. The proposed parking structure expansion will continue the same height as the existing parking structure. The internal vehicular circulation on the Property will be enhanced with the ability to provide the circular driveway area between the building and parking structure.

5. *The proposed use 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 proposed new buildings and parking structure expansion will not be detrimental to the use, peaceful enjoyment, economic value or development of the surrounding property or general neighborhood because the structures are in harmony with the general character of the neighborhood and existing buildings, sufficient screening is maintained and provided and FASEB's operations are not in conflict with enjoyment of the surrounding properties.

- 6. The proposed use 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 FASEB headquarters is used for education and administration. No laboratory experimentation is conducted on-site and no major printing is conducted on the Property.

The use by employees is primarily a daytime use, so all lighting levels on buildings and parking areas will include downward light fixtures with foot candle levels only necessary for safety and security and will thus not create glare onto adjacent properties.

- 7. The proposed use will not, when evaluated with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of the 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 the master or sector plan do not alter the nature of an area.*

The Master Plan specifically recommends the continuance of the FASEB special exception on the Property because it is a long-term, stable use that is a community resource.

- 8. The proposed 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.*

The proposed buildings and parking structure expansion will be aesthetically pleasing structures to support the FASEB commitment to improve, through the research of its biomedical and life scientists, the health, well-being and productivity of all people. The FASEB goal to achieve "quality life through research" will not adversely affect the health, safety, security, morals or general welfare of the residents, visitors, and workers in the area of the Property.

- 9. The proposed use 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, etc.*

The subject Property will continue to be adequately served by public facilities. As stated in the Local Area Transportation Review Report submitted with this Application, the trips created by the proposed Phase 2 and Phase 3 expansions will be accommodated by the

existing public street system. There is sufficient staging ceiling capacity available in the Bethesda/Chevy Chase policy area to accommodate the FASEB headquarters expansion. Furthermore, the location of new buildings in both Phase 2 and 3 will enable FASEB to improve its internal vehicle circulation by providing an additional driveway between the Phase 3 building and the parking structure expansion. The Phase 2 and Phase 3 buildings as well as the new driveway are all located on the footprint of the existing Lee Building so as to prevent any additional imperviousness areas.

Section 59-G-2.19- Specific Conditions for a Private Educational Institution use

A lot, tract or parcel of land may be allowed to be used for a private educational institution upon a finding by the Board:

- 1. That such use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity or any other element which is incompatible with the environment and character of the surrounding neighborhood.*

The proposed increase in employees on the FASEB property will not increase the noise or physical activity to create a nuisance. In fact, FASEB strives to create a quiet, relaxed atmosphere and estate-like setting to create a pleasant work environment for its Members and guests as it has these last 50 years. As set forth above, the internal vehicle circulation will be improved with the new driveway.

The existing street network can accommodate trips created by the proposed expansion. The Petitioner is happy to report that the Maplewood Citizens Association has supported this request. The Petitioner is confident that any impact of the increased vehicle trips are mitigated by the staggered hours of the employees, telecommuting programs and the frequency of employee travel to off-site meetings and conferences. The back gate that has been installed is operating well and in accordance with the Board's condition to the satisfaction of our adjoining neighbors.

- 2. That, except for buildings and additions thereto completed, such use will be housed in buildings architecturally compatible with the other buildings in the surrounding neighborhood.*

The proposed buildings in both Phases will be designed to be compatible in scale and design with the existing buildings on the Property and with the multi-family residential

community located adjacent the Property to the north. The parking structure expansion, which will not be visible from the residential properties to the east, south, and west of the Property, will be designed to be similar to the existing parking structure.

3. *That such use will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community.*

The addition of the proposed buildings that have been designed to complement the style, size, and appearance of the surrounding structures will not change the present character or future development of the community. FASEB has existed on the Property for over 50 years as a community resource, a quiet neighbor and is a part of the character of the residential community.

4. *That such use conforms with the following standards in addition to the general development standards specified in Section G-1.23:*

- a) *Density - Such density, being the allowable number of pupils per acre permitted to occupy the premises at any one time as shall be specified by the board upon consideration of the following factors:*

- 1) *Traffic patterns, including: a) Impact of increased traffic on residential streets; b) proximity to arterial roads and major highways; c) provision of measures for Transportation Demand Management; d) adequacy of drop off and pick up areas;*
- 2) *Noise or type of physical activity; and*
- 3) *Character, percentage and density of existing development and zoning within the community; and*
- 4) *Topography of the land to be used for the special exception;*
- 5) *Provided that a density in excess of 87 pupils per acre may only be permitted upon a finding....*

The subject Property consists of 11 acres, therefore the addition of an additional 120 employees to the current 580 employees will create a maximum population of 700 employees on the Property. This will achieve a density of 64 persons per acre, below the "87 students per acre"

referenced in the Zoning Ordinance. As described in detail above and in the enclosed Local Area Transportation Review Report, the character of the use, the vehicular trips generated, noise created and activities conducted remain in harmony with the neighborhood character. Further, the special exception is subject to a Transportation Management Plan, which has been updated and included with this modification request.

b) *Buffer* – All outdoor sports and recreation 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 Petitioner is not proposing any additional structures or facilities other than the replacement building, expansion building, expanded parking structure and associated driveway and landscaping, all of which are located within the existing Lee Building footprint and already heavily screened or hidden from the adjacent residential properties.

Variance

From the documents presented herewith and any additional information requested and submitted to the Board, along with any testimony received at the hearing, the evidence will show that Petitioner's proposed construction on the Property will meet the conditions for granting a Variance pursuant to Section 59-G-3.1 of the Zoning Ordinance, as follows:

1. *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

As presented in detail in the special exception modification petition, FASEB has existed on the Property for over 50 years and has become an integral part of the neighborhood and the community. The campus is not only utilized and enjoyed by FASEB members and employees, but also by members of the neighboring community. As predicted in the Master Plan, expansion is necessary for FASEB. In consideration of the shape of the Property and location of the existing structures and natural resources, the logical solution is to position the additions in both Phase 2 and Phase 3 adjacent to the existing building on the Property and within the

footprint of the existing Lee Building and develop on the improved areas of the site, not to expand on the meadow and wooded areas on the southern portion of the Property. The history of FASEB's use on the Property creates an extraordinary situation not only because of the recognition of FASEB as a stable use, community resource and good neighbor, but because the past special exception approvals of the existing buildings created a precedent for designing the proposed addition in both Phases.

In an effort to be in harmony with the general character of the neighborhood and compatible with the existing structures both on and adjacent to the Property, the addition of buildings in Phase 2 and Phase 3 as well as the parking structure expansion were designed at a height slightly lower than the existing Lee building. As indicated on the Architectural Site Plan and Site Section plan submitted with this petition, the topographical conditions of the Property create a significant downward slope toward the front of the Property on Rockville Pike. The grade at Rockville Pike and the grade at the western edge of the proposed parking structure differ by over 43 feet. Therefore, to create an addition of buildings in Phase 2 and Phase 3 that architecturally corresponds to the existing building and provides the functionality necessary for FASEB, the height of the replacement of the Lee Building (Phase 2) and the proposed building in Phase 3 measured from the average ground at the front of both buildings, is 57 feet, a height that exceeds the R-60 zone height limitations by 22 feet.

The existing and proposed parking structure expansion are within the height permitted by the Board's previous approval for the parking structure; however, once the parking structure becomes separated from the existing Lee Building with the replacement building in Phase 2, the accessory structure setback standards apply. Because of the length of the existing parking structure, a 1.92 foot side yard setback variance is necessary to validate the existing structure for Phase 2, even though no new construction is proposed. The parking structure expansion for Phase 3 will necessitate a 31.92 foot side yard setback variance. Again, the existing natural features of the Property, the extraordinarily large size of the Property in comparison with the adjacent R-60 zone properties, the history of the structures on the site, and the desire to maintain the parking facilities within the existing impervious area of the building footprint all create unique circumstances that result in unusual circumstances and generate practical

difficulties to maintain the R-60 zone accessory building setback standards for structures exceeding 24 feet in length.

As described in detail above, the Phase 2 and Phase 3 expansions are necessary for FASEB. The requested expansions will not only allow FASEB to fulfill its need to provide quality services and space for its members, but the space provided will enable FASEB to modernize its existing facilities with the building infrastructure necessary for modern technological operations.

In the zoning context, the extraordinary or “unique” aspect of a variance provision requires that the subject property have inherent characteristics not shared by other properties, i.e. shape, topography, subsurface condition, environmental factors, historical significance, practical restrictions imposed by abutting properties, and in respect to structures, such characteristics as unusual architectural aspects and bearing or party walls. The shape, size and topography of the FASEB Property combined with the history of the use and the existing structures on the Property create extraordinary situations and conditions peculiar to this piece of property that would result in practical difficulty for FASEB.

2. *Such a variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The proposed structures in both Phase 2 and Phase 3 are the minimum necessary to satisfy the functional needs of FASEB for the expansion with respect to office, meeting and administrative space and parking areas. The proposed structures were intentionally positioned on existing impervious areas (existing Lee Building) and adjacent to the existing structures to create the least disturbance to the landscaping and natural resources on the Property. The structures were designed to be architecturally compatible with the existing structures and will maintain harmony with the general character of the area. Further, the proposed structures will stand lower than the existing Lee Building on the Property.

3. *Such a variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Master Plan specifically recommends the continuance of the FASEB special exception on the Property because it is a long-term, stable use that is a community resource. Further, the Master plan recognizes that FASEB is one of the special exceptions that might experience needs for expansion.

4. *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

Granting the requested variances will not be detrimental to the use and enjoyment of adjoining and neighboring properties primarily because the position and design of the proposed structures in both Phase 2 and Phase 3 create minimal interruption of the views from adjacent properties. The proposed new buildings in Phase 2 and Phase 3 as well as the proposed parking structure expansion are situated on areas of the Property that are currently within the footprint of the existing Lee Building, and will therefore maintain the landscaped views and the existing garden, wooded and grassy areas that are enjoyed by the employees and neighbors of the property.

The height of the proposed parking structure extension will be lower than the existing Lee Building and equal in height of the existing parking structure and screened from the view of the adjacent single-family residential properties to the south (side) and west (rear) due to the natural screen created by the topography and wooded areas of the Property. Further, the parking structure extension is designed the same as the existing parking structure and will resemble the exterior of a residential structure, not a standard parking structure, to maintain an appearance that enhances the existing campus atmosphere of the FASEB Property.

The height of the proposed building addition will be slightly less than the existing building and will be screened or hidden from the views of the single family homes to the south and west of the Property. The heights of all of the proposed structures are similar to the heights of the existing mid-level to high-rise residential buildings located to the north of the Property. The existing landscaped border along the northern edge of the Property abutting these new structures will be maintained. The residential elements of the building facade will create an aesthetically pleasing and welcoming view for visitors to the Property and for travelers along

Rockville Pike, although the existing screening along Rockville Pike is extensive and thus the new buildings will be difficult to be seen from a car traveling on Rockville Pike.

Submissions

In accordance with the requirements set forth in Section 59-A-4.2 of the Montgomery County Zoning Ordinance and the Instructions for Filing, the Petitioner submits the following:

1. Exhibit "A": A certified copy of the official Zoning Vicinity Map.
2. Exhibit "B": Special Exception Site Plan- Phase 2.
3. Exhibit "C": Special Exception Site Plan- Phase 3.
4. Exhibit "D": Building Layout and Elevations Plan.
5. Exhibit "E": Landscape Plan.
6. Exhibit "F": The list of adjoining and confronting property owners as reflected by the County tax records.
7. Exhibit "G": The relevant pages of the Bethesda-Chevy Chase Master Plan.
8. Exhibit "H": Master Plan Land Use Plan Map.
9. Exhibit "I": Master Plan Zoning and Highway Plan Map.
10. Exhibit "J": Forest Conservation Exemption Letter.
11. Exhibit "K": Traffic Analysis prepared by Wells & Associates, LLC.
12. Exhibit "L": Lighting (Photometric) Plans and Lighting Details.
13. Exhibit "M": Letter of Support from the Maplewood Citizens Association.
14. Exhibit "N": Building Permit Denials for variances.
15. Exhibit "O": Updated Transportation Management Plan.

Witnesses

1. Mr. Jeffrey Yocum, representatives for the Petitioner, will testify regarding the circumstances of FASEB and its design, operation, and need for new facilities.

2. Barry Dunn, an architect with Barry Dunn and Associates, will testify regarding the design of the proposed facility and its compatibility with the neighborhood.

3. Martin Wells or Kevin Sitzman, traffic experts with Wells & Associates, will testify regarding the traffic to be generated by the use.

4. Stephen Crum, a civil engineer with Macris, Hendricks & Glascock, P.A., will testify regarding the engineering aspects of the proposed addition.

The Petitioner reserves the right to call other expert witnesses if deemed necessary. The Petitioner estimates that it will take approximately 2 1/2 hours to present its case to the Board.

Conclusion

The present Petition for Modification to an Existing Special Exception for a Private Educational Institution in the R-60 Zone and Request for Variances meets all requirements and is in accordance with all existing zoning regulations of the Montgomery County Zoning Ordinance.

We therefore respectfully request that the Board grant this Petition.

Respectfully submitted,

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TRANSPORTATION MANAGEMENT PLAN

The Transportation Management Plan ("TMP"), revised as of _____, 2004 for the Federation of American Societies for Experimental Biology ("FASEB") provides strict guidelines and policies for managing the following elements of its transportation system:

- Access and Circulation
- Parking Policies
- Community Relations
- Overall Safety Considerations
- Traffic Mitigation

The following sections present the specific guidelines for each component of the TMP:

Access and Circulation

- Primary access to the Site will be provided via Wisconsin Avenue which has two right-in and right-out access points.
- A third access point will be at Alta Vista Terrace. A fourth possible access point will be through the Montgomery County Housing Opportunities Commission ("HOC") apartment building property located to the northwest of the site to Pooks Hill Road. This fourth access point is being discussed with HOC at the present time.
- Two-way circulation is provided for all of the parking areas and driveways on site.
- The Alta Vista Terrace exit and entrance will be controlled by an electronic gate which will be activated by cards which will number no more than 80 and will be issued by FASEB to no more than 80 employees.
- The gate will be of the type that permits only a single car to pass through at each use of the access card.
- The gate will be of the type that will be opened only by electronic access card and cannot be forced open by cars.
- No commercial vehicles will enter or exist the Alta Vista Terrace access point and no electronic access cards will be distributed to owners and/or drivers of commercial vehicles of any type.
- The electronic gate at the Alta Vista Terrace access point will be consistently maintained in good working order and in the event that the gate malfunctions, that it will be closed until it is repaired.
- No construction vehicles of any type involved in the expansion of FASEB will be permitted to use Maplewood Community residential streets.

- The electronic gate at the Alta Vista Terrace access point will be installed as soon as possible.
- The electronic gate at the Alta Vista Terrace access point will be designed so as to store information on a daily basis of the use by the FASEB employee access cards; and that information will be provided annually to the Maplewood Citizens Association.
- The fourth access point between FASEB and HOC will also be controlled by an electronic gate which will be activated by access cards. The residents of HOC may be issued access cards to activate that gate but will not activate the Alta Vista Terrace access electronic gate so as to prevent any resident of the HOC development from entering or exiting the Alta Vista Terrace access point.

Parking Policies

- Adequate parking is provided to meet the projected daily parking demands of the FASEB employees and visitors.
- The replacement building, future office building and parking garage will be located on existing impervious areas. The Phase 3 parking garage expansion will have approximately 104 spaces. Creation of the additional parking spaces will provide a total of 78 net additional parking spaces, 512 spaces in total to accommodate the FASEB employees and visitors.
- Due to the FASEB employees utilizing staggered hours, teleworking, telecommuting, carpooling and public transportation opportunities and frequently attending conferences held off-site, this parking will be sufficient for FASEB's needs with the eventual increase of 120 employees in Phase 3.
- FASEB employees will not park on the neighborhood residential streets. The Transportation Coordinator (defined herein) will be responsible for communicating this restriction to FASEB employees and guests and responding to any complaint of FASEB employees violating this restriction.

Community Relations

- FASEB has been an excellent, quiet and compatible neighbor of the Maplewood community since 1954 and continues to be so at the present time and will continue to be in the future.
- The beautiful grounds of FASEB are well-maintained and continue to be maintained and will be in the future maintained as an adequate buffer for the neighborhood and those neighbors who have enjoyed it in the past and will continue to enjoy it in the future.
- FASEB established a Community Council which meets at least four times a year in order to keep the lines of communication open with its neighbors. The Council will

meet more or less depending on the agreement of the Council. The agenda will include discussions of the electronic gate to Alta Vista Terrace. The Community Council will include three members of the Maplewood Citizens' Association, one of whom will be an adjoining neighbor who lives on Alta Vista Terrace, The People's Counsel (Ex-officio), a representative from the Locust Hills Citizens Association and three representatives from FASEB.

Overall Safety Considerations

- FASEB employees have a record of over 50 years of safety with respect to the internal vehicular circulation patterns and also entering and existing the FASEB property.
- FASEB has a record of over 50 years of avoiding pedestrian and vehicular conflicts on its property.
- There are adequate sidewalks to and from the parking areas to the buildings.
- The new parking structure will have a direct access to the existing office building.

Traffic Mitigation

- At the time of the enactment of the original Transportation Management Plan, FASEB has trip generation rates of approximately .95 per 1000 gsf, which are 35 percent lower than the standard trip generation rate for a typical office building in the Bethesda-Chevy Chase area. FASEB will implement the measures described below to achieve a goal of maintaining this low trip generation rate with the addition of the future office building an employees.
- FASEB appointed a Transportation Coordinator whose job is to increase the use of transit, carpooling and vanpooling and public transportation opportunities. The Transportation Coordinator will invite the Department of Public Works and Transportation ("DPW&T") personnel to make presentations to the employees of FASEB or periodic occasions to explain County programs and to educate employees and to answer questions so as to encourage mass/transit, public transportation and carpooling/vanpooling programs. The Transportation Coordinator will identify persons eligible for the Emergency Ride Home Program as part of his coordination with DPW&T Staff.
- FASEB will continue the preferred parking locations for carpooling/vanpooling participants.
- FASEB has installed a bus shelter at one of the existing bus stops on Maryland Route 355 in front of the site, conforming to the recommendations and requirements of the Montgomery County Department of Public Works and Transportation.

- FASEB has upgraded food service on-site in order to encourage employees to stay on-site at lunch time and will continue the service with the Phase 2 and Phase 3 components of the FASEB renovation and expansion.
- FASEB has upgraded and expanded its telephone system so as to facilitate teleworking and telecommuting by its employees.
- The Transportation Coordinator will submit an Annual Report to the Board of Appeals addressing the implementation of this Transportation Management Plan.
- At the request of three community council members, FASEB will perform a traffic survey.

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October 19, 2004

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HAND DELIVER

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County Board of Appeals
100 Maryland Avenue
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Rockville, Maryland 20850

OCT 19 2004

Re: Federation of American Societies for Experimental Biology ("FASEB") - Amendment to Petition for Modification/Variance, Case No. S-862B

Dear Ms. Fultz:

By letter dated June 18, 2004, we had filed an application for the FASEB Special Exception Modification and Variances ("Modification") in order to permit FASEB to modify Phase II and to create a Phase III to its expansion plans. The Montgomery County Planning Board has scheduled the review of this request for its meeting of November 8, 2004, and Hearing Examiner's office has scheduled its public hearing for November 19, 2004.

The purpose of this letter is to submit an amendment to the Modification request to permit FASEB to lease a portion of its space to the Montgomery County Department of Economic Development for a non-profit incubator to be located on site. There would be no change to the overall density previously approved; there would be no change to the special exception site plan previously approved; and there would be no change to the number of employees permitted on site previously approved. Further, this request does not change the Modification request submitted June 18th pertaining to Phase III of the FASEB plans.

We respectfully request that the Board of Appeals ("Board") consider this amendment with the Modification in order to maintain the previously approved public hearing dates and to conserve

Ms. Allison Ishihara Fultz, Esq.

October 19, 2004

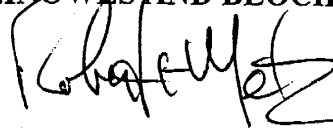
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the time and resources of the Board and the Hearing Examiner. Thank you for your consideration of this matter.

Our best regards.

Very truly yours,

LINOWES AND BLOCHER LLP



Robert H. Metz



Anne C. Martin

cc: Françoise Carrier, Esquire
Martin Klauber, Esq.
Mr. Jeffrey L. Yocum
Mr. Daniel Janousek