

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

**IN THE MATTER OF NORBECK
ROCHAMBEAU, THE FRENCH
INTERNATIONAL SCHOOL**

**Helene Fabre
Dana Clark
Katherine Wagner
David Norden
Ron Welke
Erwin Andres
Joanna Schmickel**

**For the Petitioner
Jody S. Kline, Esq.
Attorney for the Petitioner**

**Allen Myers
David Seid
Becky Umhofer
Carl Wilkerson
Maureen Wilkerson
Jeffrey Komarow**

**Opposing the Petition
David Brown, Esq.
Attorney for the Maplewood
Citizens Association**

Before: Lynn Robeson Hannan, Hearing Examiner

Board of Appeals Case No. S-862-C

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Filed on April 30, 2018, Petitioner, Rochambeau, the French International School (Petitioner or FIS), seeks to modify an existing special exception for a private educational institution, at 9650 Rockville Pike, Bethesda, MD 20814, under Section 59-G-2.19(e) of the *2004 Zoning Ordinance*.¹ FIS proposes to consolidate operations from its three current school campuses to two, one at 9600 Forest Road, (Forest Road campus), also subject to an existing special exception (BOA Case No. S-477-D), and one at the subject property (Rockville Pike campus). FIS proposes a maximum enrollment of 700 students at the Rockville Pike campus, with before- and after-care programs during the academic year, Saturday classes, and summer camps. The subject site consists of approximately 11.2 acres in the R-60 (Residential Detached) Zone.²

Due to the complexity of traffic issues to be resolved and the need to coordinate with multiple State and County agencies, Planning Staff issued their Report on Petitioner's amended modification application on January 7, 2021.³ At the end of December, 2020, FIS made a motion to amend the application, which OZAH noticed on January 5, 2021. Exhibits 43-46. Ultimately, on January 12, 2021, Staff recommended approval of the application subject to the following conditions of approval (Exhibit 56, pp. 3-5):

1. The Private Educational Institution is limited to the following:
 - a. a maximum total gross floor area of 203,891 square feet, comprised of the Lee Building (121,147 square feet), the East Wing Office Building and Atrium Connector (66,448 square feet), the Beaumont House (15,264 square feet), Outbuilding #1 (768 square feet) and Outbuilding #2 (264 square feet). Excluded from the gross floor area is an existing 85,944 square foot parking garage;

¹ Unless otherwise noted, all citations are to the *2004 Zoning Ordinance*. Special exceptions approved before 2014 may be modified under the *2004 Zoning Ordinance* until 2029, when they become subject to the *2014 Zoning Ordinance*. *2014 Zoning Ordinance*, §59.7.7.1.B.

² When originally filed, the Federation of American Studies for Experimental Biology (FASEB) owned the property. Exhibit 1. At the public hearing, FIS' Executive Director, Ms. Helene Fabre, testified that FIS purchased the property from FASEB in March 2020. 1/22/21 T. 32.

³ These modifications are described in Part II.C of this Report.

- b. a maximum enrollment of 700 students, comprised of up to 200 pre-school and up to 500 elementary (kindergarten through fifth grade); and
 - c. a maximum of 126 faculty and staff on-site at any one time.
2. Hours of operation for the Subject Special Exception Amendment use will be limited as follows:
- a. Academic School Days, including before-school and after-school care, Monday through Friday from 7:00 AM to 7:30 PM with daily enrollment not to exceed 700 students and up to 126 staff;
 - b. Outdoor Play may not begin prior to 8:00 AM;
 - c. Trash pick-up, service, and deliveries will be limited to Monday through Friday between the hours of 8:30 AM and 3:30 PM;
 - d. Supplemental Language Classes ("Saturday School"), offered on Saturdays from 8:30 AM to 5:00 PM, with daily enrollment not to exceed a maximum of 700 students and up to 50 staff;
 - e. Summer Camp, with daily enrollment not to exceed 700 students and up to 126 staff, Monday through Friday from 7:00 AM to 7:00 PM, during the French International School's Academic summer break;
 - f. Special Events occurring outside Academic School Days (as described in Condition No. 2.a.) must be scheduled such that arrival and departure does not coincide with either the weekday morning peak travel period (6:30 AM – 9:30 AM) or weekday evening peak travel period (4:00 PM – 7:00 PM). Examples of such Special Events include, but are not limited to:
 - i. Language Conferences (limited to five occurrences per calendar year with a maximum enrollment of 100 participants);
 - ii. Back to School Night;
 - iii. Admissions Open House;
 - iv. Grandparent's Day;
 - v. Kindergarten and Fifth Grade Graduations;
 - vi. Parent-Teacher Meetings;
 - vii. Information Meetings for Major School Trips;
 - viii. International Meal Evenings;
 - ix. Year-End Chorale;
 - x. School Community Picnic; and
 - xi. Fundraising Events.
3. The playing field and outdoor play areas must not have outdoor lighting, must not be used for competitive or interscholastic events, and must be limited to weekday daytime activities for the School and associated Summer Camp program.

Transportation and Access

4. Prior to the issuance of any Use and Occupancy Certificate associated with the Private Educational Institution use, the Applicant must permanently close the following three vehicular access points:
 - a. the western Site driveway onto Alta Vista Terrace;
 - b. the adjacent parking lot to the north of the Site; and
 - c. the northern Rockville Pike driveway;
5. Prior to the issuance of any Use and Occupancy Certificate on the Site, the Applicant must complete construction of the Site access and frontage improvements, as required by the Maryland State Highway Administration. These improvements include, but are not limited to, consolidation of Rockville Pike driveways, construction of an acceleration and deceleration lane, and increasing the surface area of the bus stop to meet minimum ADA standards.
6. The Applicant must replace the existing Rockville Pike sidewalk with a new five-foot-wide sidewalk, separated from the roadway by a vegetated buffer measuring at least six-feet wide.
7. The Applicant must maintain, in conjunction with the French International School Forest Road campus (the "Secondary School"), a bus fleet of a least 15 buses to reduce Site-generated trips. Busing Operations and trip mitigation strategies will be set forth in the Transportation Management Plan and must achieve the following ridership goals with no more than 330 vehicle trips in the morning peak hour associated with the Special Exception use, 117 vehicle trips in the mid-day peak hour associated with the Special Exception use and 139 vehicle trips in the evening peak hour associated with the Special Exception use;
 - a. On an Academic School Day, the Applicant must bus a minimum of 30% of pre-school students (children aged 5 and older) and 82% of its student body (first grade and above);
 - b. On a Saturday School Day, the Applicant must bus a minimum of 25% of program participants once daily enrollment reaches 150 students; and
 - c. On a Summer Camp Day, the Applicant must bus a minimum of 25% of program participants once daily enrollment reaches 150 students.
8. No vehicles may queue on the adjacent public street(s) while accessing the Site.
9. Any vehicular access gates located on the internal Site driveway must be:
 - a. Located internal to the Site in a manner that does not impede the flow of traffic on the adjacent public street; and
 - b. Open to school-generated traffic for a minimum period of 30 minutes during both the morning and afternoon pick-up/ drop-off periods. The specific time period during which the gates must be open may be designated by the School

based on pickup/ drop-off procedures, but cannot be implemented in a manner that circumvents this condition of approval.

Parking

10. Up to 15 buses may be parked on-site overnight within the bus loop on the south side of the Lee Building and on the drive aisle west of the parking garage, as depicted on Sheet C-200.
11. The Applicant must provide 15 long-term bicycle parking spaces for use by faculty and staff in a secure and weather protected area within the East Wing building garage. Any bicycle parking provided for students will be above and beyond this requirement.

Future Preliminary Plan

12. The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code after the final decision of the Board of Appeals on the Subject Application.
13. At the time of Preliminary Plan, the Applicant must dedicate right-of-way necessary to provide 60 feet from the right-of-way centerline along the Site's Rockville Pike frontage.
14. Prior to Certification of the Preliminary Plan, the Applicant must:
 - a. Obtain a variance from the Board of Appeals for locating a parking facility drive aisle within the rear-yard setback. If approved, the drive aisle within this area must be adequately screened from the adjacent residential property;
 - b. Demonstrate conformance with Section 59-G-1.23(h) of the Zoning Ordinance, pertaining to lighting, which limits lighting along the side and rear property line to a maximum of 0.1 foot candles;
 - c. Obtain a sign variance from the Sign Review Board, for exceeding the maximum size, quantity and illumination of the proposed signage; and
 - d. Enter into a binding agreement with the Planning Board to perform in perpetuity a Transportation Management Plan. This Plan must:
 - i. set forth the Private Educational Institution's transportation operations, for the Academic School Day, Saturday School, and Summer Camp, and must include annual reporting to Planning Department Staff in the fall of each year to summarize current and projected enrollment for the year, transportation benefits offered to staff and students, on-site queuing trends, and any transportation issues observed on-site in the previous 12 months;
 - ii. discourage non-local traffic through the Maplewood neighborhood; and
 - iii. include a community liaison, appointed by the Maplewood Citizens Association, to advise the French School on transportation issues present in the surrounding community.

Should the Planning Board find, after a public hearing, that the Applicant is not in compliance with the TMP, the Planning Board may modify the conditions of approval, including the maximum permitted enrollment.

15. Prior to the issuance of the final use and occupancy certificate for the Private Educational Institution use, the Applicant must restore disturbed areas along the former Alta Vista Terrace driveway and Rockville Pike frontage to satisfy screening requirements, set forth in Section 59-E 2.72 of the Zoning Ordinance, and the Green Corridors Policy of the Bethesda Chevy Chase Master Plan, respectively.

Staff recommended approval of two waivers for the proposed plan: (1) a waiver of the required parking facility setback (Section 59-2.83(b)), (2) a waiver from the maximum sign area in residential zones (§59-F-5.42(a)). The mandatory setback for a parking drive is 30 feet; the Applicant desired to use an existing driveway located 16 feet from the nearest property line. 1/22/21 T. 228. The 2004 Zoning Ordinance limits the maximum area of signs to two feet. FIS proposes two signs along the Rockville Pike frontage and additional signs on buildings that exceed this amount.⁴ Exhibit 56, p. 39.

The Planning Board considered the application on January 7, 2021. Exhibit 75. It recommended approval of the application, commenting that (*Id.*):

As part of the Board's discussion with the Applicant, two of the Board members requested that the Applicant evaluate the potential future use of an existing or former easement across the adjacent Pooks Hill Towers (3 Pooks Hill Road) surface parking lot as a means of routing northbound site generated trips to the Pooks Hill Road intersection. Access across this parking lot could convey traffic to the intersection of Pooks Hill Road and Rockville Pike without relying completely on neighborhood streets in the Maplewood neighborhood. The Board did not mandate use of the adjacent surface parking lot as a condition of approval and endorsed the reviewed levels of traffic on public streets within the Maplewood neighborhood. The Applicant will provide additional information on this easement prior to the Hearing Examiner Public Hearing on January 22, 2021.

⁴ The Applicant has since withdrawn its request for a waiver of the parking facility setback and submitted a revised special exception plan depicting the driveway meeting the required setback. Exhibit 125. The request for a variance from the minimum allowed sign area still remains part of the application.

The Planning Board also recommended approval of the two variances requested at the time. Exhibit 75.

The public hearing proceeded as schedule on January 22 and January 25, 2021. FIS presented six expert witnesses and Ms. Helene Fabre, Executive Director of FIS, in support of the application. The Maplewood Citizens Association, appearing with counsel, opposed the application along with several residents of the community. Their testimony is summarized in Part II.D. of this Report.

After hearing the concerns of Maplewood Citizens Association and other residents, the Hearing Examiner remanded the case back to Planning Staff for further review. Exhibit 89. The remand order requested additional information and analysis of the following facts and issues (*Id.*):

Information

1. What are the physical attributes of streets in the Maplewood neighborhood, particularly those on the shuttle/parent vehicle routes proposed by the school? Include road width, current maintenance, proposed maintenance, and whether curb, gutter, and sidewalks exist on each route, and whether parking is permitted on one or both sides of the street.
2. What are the physical attributes of the buses that will be travelling through the neighborhood, including length and width from mirror to mirror?
3. Provide a queuing analysis for the eastbound approach on Alta Vista to the intersection of Rockville Pike as described by Ms. Umhofer. Will traffic be able to enter/exit the neighborhood?
4. Provide a queuing analysis during parent drop-off at the Forest Road campus at Montgomery Drive and Beech Drive as described by Mr. Myers.
5. What is the total daily (not just peak hour) number of vehicles trips (one trip is to the site and one is out of the site) related to the Forest Road and the Rockville Pike campuses, including buses and personal vehicles, that will travel on residential streets in the Maplewood neighborhood?
6. Will non-shuttle buses assigned to the northbound external bus routes have to travel through the neighborhood to proceed north? If so, how many?

7. Is there a possibility of using the HOC easement for egress for northbound traffic to Pooks Hill Road? How realistic is that possibility? Is there a time frame for determining this?
8. Provide detailed information on the proposed outdoor activities during the academic year, summer camps and Saturday classes. How long will students be outside and how many students will be outside at one time.
9. Provide objective, quantifiable analysis of the noise levels generated by FIS' use of the play areas at the Rockville Pike campus at all abutting property lines during (1) the academic year (including extra-curricular activities, after school activities and before and after care), summer camp, and Saturday classes. Base the noise analysis on the maximum children permitted outside at one time.
10. Provide objective, quantifiable analysis of the noise levels generated by buses, during the three departure periods: in the morning, at 3:00 p.m., and at 5:30 p.m. on abutting property lines.
11. Does the existing wooden fence at Mr. Seid's property line attenuate noise levels?
12. Provide objective, quantifiable analysis of the noise levels from cars stacking at the closest point to Mr. Seid's property line.
13. Provide a calendar of all school programs (academic, summer camp, and Saturday classes) during the calendar year.
14. List all special events, including times, frequency, dates (if known) and projected attendance. If any will be outside, provide objective, quantifiable analysis of noise levels generated by these events at abutting property lines.
15. Will overflow parking be required at any of the special events? If so, provide details of the proposed arrangement for overflow.
16. Revise the lighting plan to show that lighting at the perimeter will meet the special exception requirements.
17. Provide information on whether FIS will be able to retain the wooden fence abutting his property under the Forest Conservation Easement.
18. What is the maintenance of invasive species required by the Forest Conservation Easement? Would the Applicant agree to a condition of approval extending maintenance of the invasive species beyond what is required by the Forest Conservation Easement?
19. Provide information on how FIS will prevent existing storm drainage from flowing onto abutting properties.

20. Provide specifics on how the trip mitigation program will be enforced including whether and how actual traffic can be tracked to ensure the caps are exceeded.
21. Clarify the definition of “nearby” as used in the TMP (T. 178).

Analysis

1. Is there a means to avoid or minimize using residential streets in the Maplewood neighborhood for school related traffic, including traffic from the Forest Road and Rockville Pike campuses?
 - a. Can traffic for both schools, including shuttles, be routed south to Cedar Lane and north on Old Georgetown Road?
 - b. Does the HOC access remain a viable option? When would this be known?
 - c. Should a modification to the special exception for Forest Road be considered in conjunction with this modification to better coordinate and analyze the traffic impact of both operations?
 - d. What would be the impact of keeping the Alta Vista Terrace entrance?
2. Is the coordinated operation of two special exceptions on either side of a residential neighborhood that must utilize neighborhood streets to operate a non-inherent physical and operational characteristic?
3. Does the current traffic circulation plan focus westbound and northbound traffic and trips between campus on neighborhood streets, particularly Alta Vista?
4. Analyze the safety impact of school-related traffic (including academic year activities, extracurricular activities, before and after care, summer caps, and Saturday classes) on existing neighborhood streets, including pedestrian safety and vehicular safety. As traffic will occur on Saturdays, specifically address parking and pedestrian traffic at the Maplewood Park and community center and the Bethesda Trolley Trail during the week and on weekends while community activities are occurring there. Can two buses pass each other on the routes utilized by the school if vehicles are parked on both sides? What is the clearance? Is there room for pedestrians to walk? Are there measures to ensure safe pedestrian crossings?
5. Analyze the impact of school related traffic on the existing condition of neighborhood streets, which are currently patched. Will the traffic exacerbate or accelerate the current conditions?
6. With the input from the community, provide an analysis and recommendation of who should comprise the liaison committee.

7. Will buses be able to make a right turn from southbound Rockville Pike onto Alta Vista safely given the conditions described by Ms. Umhofer?
8. Is there an enforceable method to prevent school-related private vehicles from performing U-Turns on residential streets to return to Rockville Pike? Would Cedar Lane better accommodate these turns?
9. Is there an enforceable method to prevent school-related traffic from speeding on residential streets?
10. Review whether headlights from the circular drive will shine into Mr. Seid's property. Provide an analysis of whether anything can be done to minimize the impact on his property.
11. Is there more precise language limiting sports activities than using the term "competitive" to include in a condition of approval?
12. Is there more precise language to clarify that the school will be subject to trip caps imposed by LATR during the summer camps and Saturday classes?
13. Should the maximum enrollment be reduced to address issues raised at the public hearings?
14. If not, should the maximum enrollment be phased in based on compliance with conditions of approval to ensure that the trip caps and conditional on the special exception are enforced?
15. Can Staff clarify what is meant by the term "restore" in Condition No. 15 of the Staff Report? Does it mean release of the bonds?
16. Provide the justification required for the parking setback waiver.
17. Is it possible to add a condition providing that delivery and waste trucks should not use residential streets?
18. Should the Master Plan language on page 63 (relating to cut-through traffic) be interpreted to exclude the impact of traffic between the two schools, given that it was designed to limit the traffic using the residential streets?
19. Should the proposed TMP include traffic from the Forest Road campus?
20. Review and make a recommendation on whether elementary school students should be dropped off at the Rockville Pike campus rather than the Forest Road campus, as suggested by Mr. Myers (T. 184).

The parties agreed to a hearing date after remand on June 7, 2021, and OZAH noticed a public hearing for that date on May 4, 2021. Exhibits 103, 133. Notice of the requested parking waiver (from the drive aisle setback) was included in the notice of public hearing. Exhibit 133. FIS submitted an acoustical analysis, an amended Transportation Management Plan (TMP), and information/analysis for those issues requested in the Remand Order. Exhibits 95, 105. Parties gave input to Planning Staff during this time, and the Maplewood Citizens Association filed a memorandum of law asserting that buses could not be parked overnight on the subject property, to which FIS responded. *See, e.g.*, Exhibits 106-109. Planning Staff issued its Supplemental Staff Report on May 20, 2021, responding to the remand order and again recommended approval of the application. Exhibit 112. Staff also recommended the following revised conditions (*Id.*):

14.

d. The Applicant must enter a binding agreement with the Planning Board to implement in perpetuity a Transportation Management Plan (TMP). Should the Planning Board find, after a public hearing (scheduled in response to staff's concerns regarding the annual TMP reports, complaints from the public, etc.) that the Applicant is not in compliance with the TMP, the Planning Board may modify the conditions of approval, including the maximum permitted enrollment. The Transportation Management Plan must:

- i. set forth the Private Educational Institution's transportation operations, for the Academic School Day, Saturday School, and Summer Camp, and must include annual reporting to the Planning Department Staff in the fall of each year to summarize current and projected enrollment for the year, transportation benefits offered to staff and students, on-site queuing trends, and any transportation issues observed on-site and recorded on Alta Vista Road in the previous 12 months;
- ii. prohibit non-local traffic through the Maplewood neighborhood;
- iii. clearly outline a strategy for monitoring and enforcement; and
- iv. include a community liaison, appointed by the Maplewood Citizens Association, to advise the French School on transportation issues present in the surrounding community.

16. At the time of Preliminary Plan, the Applicant must revise the Transportation Impact Study to comply with the 2021- 2024 *Growth and Infrastructure Policy*. The revised study must analyze the potential outcomes on the study intersections of redistributing all school-generated traffic off the neighborhood residential streets.

17. At the time of Preliminary Plan, the Applicant must submit for review and approval by Montgomery County Department of Permitting Services – a Stormwater Management Concept Plan that meets the County's requirements as reviewed and approved by the Montgomery County Department of Permitting Services (MCDPS)—Water Resources Section.

18. Lighting

- a. All on-site exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
- b. All on-site down-lights must have full cut-off or BUG-equivalent fixtures.
- c. Deflectors will be installed on all fixtures to prevent excess illumination and glare.
- d. Illumination levels generated from on-site lighting must not exceed 0.1 footcandles (fc) at the lot line, excluding areas impacted by streetlights within the right-of-way.

The details of the revisions to the special exception plan made on remand are described in Part II.C of this Report. The public hearing on remand proceeded as scheduled on June 7, 2021 and focused primarily on the issues listed in the remand order. After the public hearing, the Hearing Examiner sought information from DPS on the possibility of installing a license plate monitoring reader in right-of-way on Alta Vista Road near the intersection with Rockville Pike. DPS referred the Hearing Examiner to MCDOT. Exhibit 124. MCDOT responded to the Hearing Examiner on June 16, 2021. *Id.* The Hearing Examiner left the record open for each side to submit proposed conditions of approval and comments and a revised site plan, which the parties timely submitted.⁵ Exhibits 125-137.

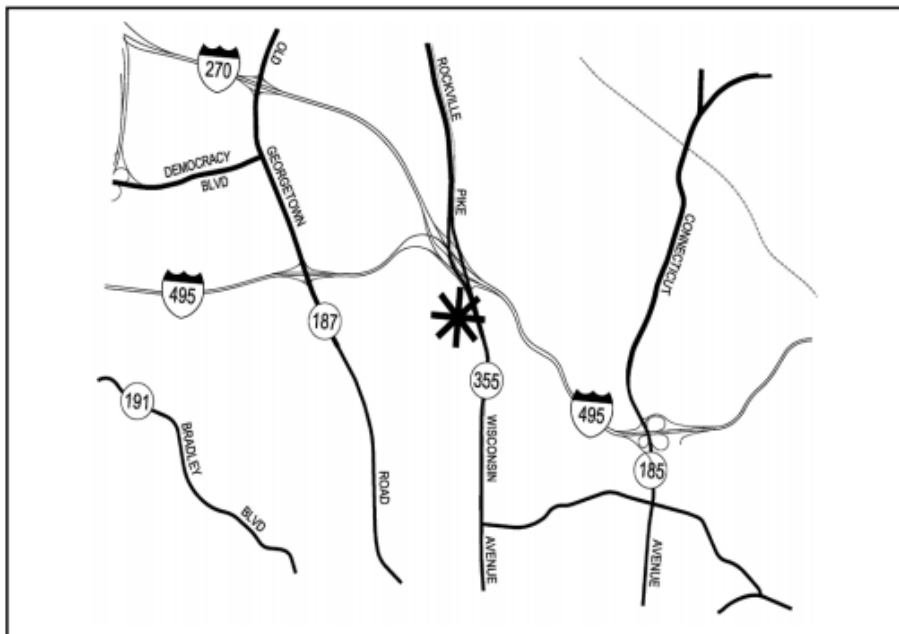
For the following reason, the Hearing Examiner finds that FIS proposed modification of its existing special exception meets the standards and requirements of the 2004 Zoning Ordinance, with the conditions recommended by the Hearing Examiner.

⁵ Some community comments were received after the time allotted by the Hearing Examiner, prompting a request from FIS to strike the comments from the record. The Hearing Examiner does so and does not include them in the record.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property is located on Rockville Pike (Md. Rte. 355) just south of the Capital Beltway (I-495), approximately 180 feet south of Pooks Hill Road, as shown on a vicinity map from the Staff Report (Exhibit 56, below):



Zoned R-60, the property consists of approximately 11.2 acres and has 460 feet of frontage along Rockville Pike and 150 feet of frontage on Alta Vista Road. Exhibit 56, p. 6. According to Staff, the property is higher than the surrounding residences, with rolling terrain and existing mature landscaping. Formerly the “Beaumont campus” of the Federation of American Societies for Experimental Biology (FASEB), the site is already improved with approximately 186,625 square feet of office a residence, a barn and a carriage house. Exhibit 56, p. 7. Access/egress is from two points on Rockville Pike, a driveway to an adjacent parking lot on the northern property line, and a limited use access from Alta Vista Terrace.

Staff advises that there are no environmentally sensitive areas on the site, such as

floodplains, wetlands, or stream valley buffers, nor are there any endangered or rare species. There are 36 specimen trees (specimen trees had a diameter at breast height (DBH) of 30" or more). The property hosts 35 significant trees (at least 24" DBH). Two of the specimen trees are County champion trees. *Id.* The Staff Report contains an aerial view of the property (Exhibit 56, p. 6, below):



Figure 2. Site Aerial

FASEB has used the property since 1954, when the Board of Appeals approved a special exception for a “scientific society” in BOA Case No. S-210. In 1977, FASEB received a second special exception approval for a private educational institution (BOA S-862) after the “scientific society” use was eliminated from the Zoning Ordinance. In 2004, FASEB expanded its office use to 700 employees and an additional 40,000 square feet (BOA S-862-C). Exhibit 56, p. 8. In December 2020, the Board of Appeals transferred the special exception to FIS, which purchased the property in March 2020. 1/22/21 T. 32.

B. Surrounding Area

In a special exception case, the area that will experience the direct impacts of the proposed use is delineated. The defined “surrounding area” is then characterized to determine whether the proposed use will adversely affect the existing character of the area.

Staff and the Applicant agreed that the surrounding area should be the same delineated for S-862-B, which established FASEB as a private educational institution. The area boundaries include Pooks Hill Road and Linden Avenue to the north and west, Elsmere Avenue to the south, and the single-family detached neighborhood directly across Rockville Pike, due east of the Subject property. The Staff Report includes a graphic of this area (Exhibit 56, p. 9, below):



Uses in the neighborhood include residential condominiums and high-rises zoned R-H (multi-family high-rise) to the north and single-family detached dwellings to the south, west,

southeast, and east (confronting across Rockville Pike) in the R-60 Zones. Staff characterized the surrounding area as developed “primarily with single family detached residential dwellings to the east, south, and west in the R-60 zone and with multi-family residential buildings, zoned R-H to the north.” Exhibit 56, p. 8.

Having no evidence to the contrary, the Hearing Examiner finds that the neighborhood boundaries and description provided by Staff delineate and characterize the surrounding area.⁶ The majority of the area is characterized by single-family detached zones in the R-60 Zone while the northern portion is dedicated to multi-family residential buildings in the R-H Zone.

C. Proposed Modification

The Petitioner seeks a special exception under Section 59-G-2.19 of the Zoning Ordinance to permit construction and operation of a Private Educational Institution for up to 700 children. Ms. Helene Fabre, Executive Director of FIS, testified that the school is a private 501(c)(3) not-for-profit organization founded in 1955. It was originally located in the District of Columbia. Currently, there are approximately 1,000 students of 80 different nationalities from pre-K to 12th grade enrolled at the school. 1/22/21 T. 20.

According to Ms. Fabre, the school is accredited by the French Ministry of Education but is independent of the French government and funded by tuition revenues. The accreditation allows them to teach the French curriculum and deliver French diplomas. They also deliver the American high school diploma as they are certified by the Maryland State Department of Education. The school's mission is to create a multicultural learning environment built on a rigorous French curriculum, which is also accredited by the French Ministry of Education. This school is part of a

⁶ Arguably, the rerouting of the buses along Cedar Lane could expand the surrounding area to include the area north of Cedar Lane and east of Old Georgetown Road. However, there is no evidence in this record that the direct impact of the bus and vehicular traffic will be distinguishable from the use of these roads by the public.

network of 450 French schools all over the world. 1/22/21 T. 20-21.

Over the years, the school expanded into three separate campuses. There is a campus on Bradley Boulevard in Bethesda (under a special exception) that has enrollment of 102 students between the ages of two and five years. 1/22/21 T. 22. The second campus is the Rollingwood campus. The school leases this property from the Montgomery County Public Schools and is in Chevy Chase. It has an enrollment of 314 students aged 6 to 9. The last campus they operate is the Forest Road campus in Bethesda. It has 581 students between the ages of 10 and 18. It also is subject to a special exception for the school and coordinates with a separate Neighborhood Liaison Committee (NLC) 1/22/21 T. 23.

Ms. Fabre testified that FIS relies heavily on its bus system to coordinate operation between the three campuses. It uses the Forest Road campus as the "hub". Approximately 50-55% of children are bused to the three schools. 1/22/21 T. 24. The goal of this modification application is to consolidate operations on two campuses, the Rockville Pike campus and the Forest Road campus. Ms. Fabre believes that the consolidation of the campuses will benefit the school by simplifying its organizational logistics and make it easier for parents to access some afterschool activities. The special exception for the Bradley Boulevard campus does not permit afterschool activities and students must travel to a different campus to participate. In addition, the new campus will have more attractive, fully renovated facilities with larger rooms for the children. There is also an economic benefit for the County because families move here to attend this school and pay taxes and spend locally. 1/22/21 T. 25-27.

1. Modifications

FIS proposed to utilize approximately 203,891 square feet of existing space on the property, included in the Lee Building, the East Wing Office Building, and Atrium Connector, and the Beaumont House. Exhibit 56, p. 3. In addition to this, it plans to develop the property with several

play areas designed for specific ages. A graphic submitted by FIS shows the location of the buildings and play areas (Exhibit 80(a), below):



FIS proposes few exterior changes to the existing buildings used by FASEB on the Rockville Pike campus. Ms. Joanna Schmickel, the Applicant's expert in architecture, described the existing buildings on the property. From east to west, the buildings include an office building and the "Lee Building", which is shaped like an "E" with several wings. West of that is a large multi-story parking garage. 1/25/21 T. 66. They propose to add a glassed in "breezeway" or vestibule between the garage and the Lee Building and another vestibule at the main entrance to the Lee Building. They also propose two new outbuildings, one of approximately 264 square feet and a larger one of approximately 768 square feet. Both will be 10 feet high. The larger outbuilding will be used for restrooms and storage of recreational equipment. 1/25/21 T. 71; Exhibit 56, p. 12. FIS plans to demolish approximately 8,400 square feet of existing structures that include a barn, residence, and carriage house. Exhibit 56, p. 11.

According to Ms. Schmickel, the existing buildings are reminiscent of the Georgian style of architecture although built in the 1960's and 1980's. The exterior alterations are designed to blend with this style. Elevations of the south and north facades are shown below and on the next page (Exhibit 56, p. 13):

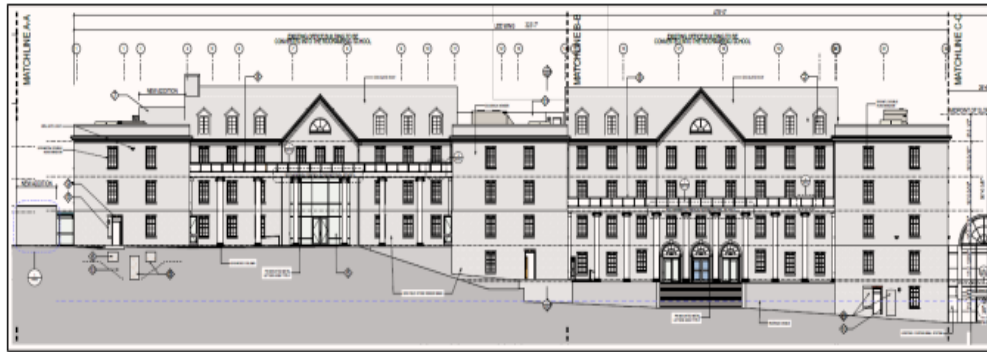


Figure 6 – Architectural Elevation
(Existing Lee Office Building – South Façade)



Figure 7 – Architectural Elevation
(Existing Lee Office Building – North Façade)

In addition to the small new outbuildings, the primary exterior changes proposed by FIS are the addition of five new play areas designed for different ages. These an area for toddlers north of the Lee Building, a field for the elementary school west of the parking garage, a hard surface court southeast of the elementary school field, and a preschool playground east of the hard surface court. The general locations of these are shown on a graphic from the Staff Report, although the

configurations of the western playgrounds are slightly smaller due to the withdrawal of the parking waiver initially requested (Exhibit 80(d), below):

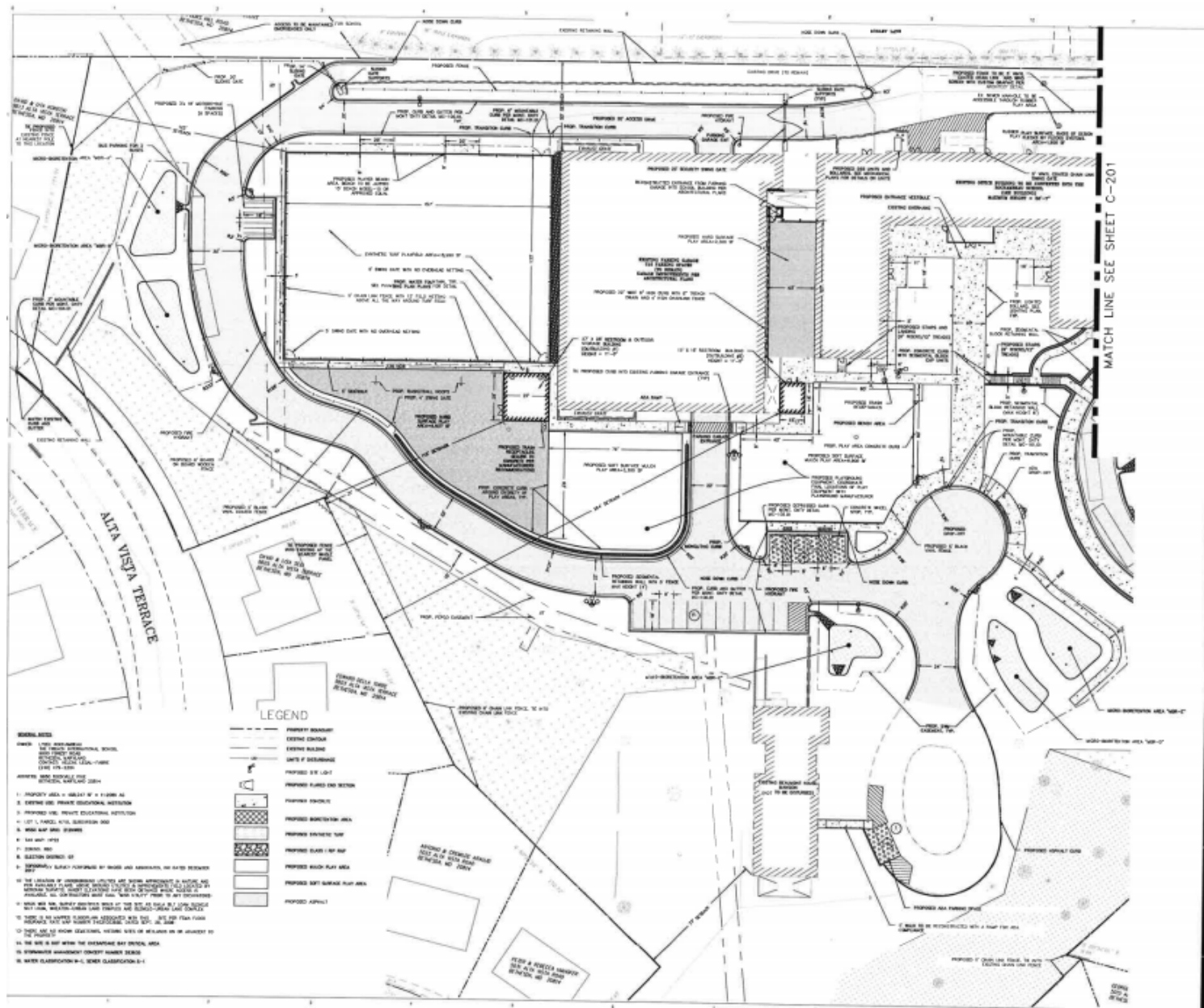


2. Special Exception Site Plan

The final version of the special exception site plan (Exhibit 132), without the setback waiver, is shown on the following page.

3. Internal Site Circulation

The special exception site plan will have one access/egress point along Rockville Pike, although bus and vehicle traffic will be separated once inside the Rockville Pike entrance. Vehicles will turn right immediately after the entrance and proceed along a drive aisle that borders the northern property line. That drive aisle then loops back along the southern side of the buildings to reach the parking garage and parent drop-off/pick-up area. Buses will proceed due west from the access point to a loop close to the entrance at the Lee building. The school proposes to have up to eight staff available during drop-off and pick-up to manage traffic. It states: “Up to two (2) staff members will be present at the pick-up/drop-off loop, one (1) staff member will be present at the



entrance to the parking garage, and four (4) staff members will be located on the ground floor of the parking garage to assist vehicles in moving forward and exiting the garage.” Exhibit 112, p. 9.

The proposed circulation is included in its Transportation Management Plan (Exhibit 105(a), p. 11):

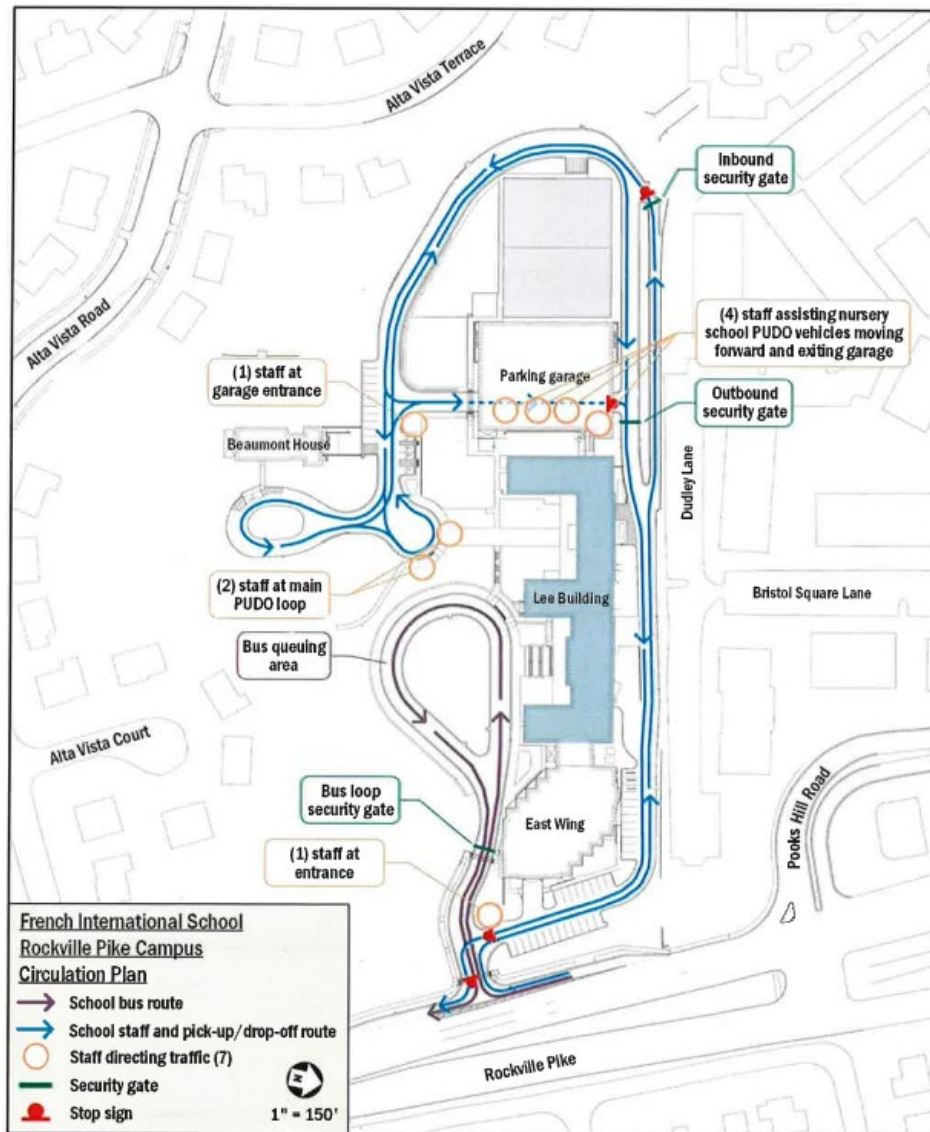


Figure 1: School Circulation Plan

4. Site Operations

Many of the site operations were clarified or amended after remand. This includes hours of operation, operation and enrollment in summer camps, Saturday classes, and attendance and days of special events, as well as academic hours and after-school activities.

a. *Hours of Operation (Exhibits 56, 112).*

FIS proposes the following hours of operation for the academic year, Saturday classes, and summer camps:

- a. Academic Year (typically the week before Labor Day through the end of June):
 - i. Before-care program: 7:00 a.m. to 8:30 a.m. (Staff arrive at 6:30 a.m.)
 - ii. Academic day: 8:30 a.m. to 3:30 p.m.
 - iii. After-school activities: 3:30 p.m. to 5:30 p.m.
 - iv. After-care program: 5:30 p.m. to 7:00 p.m.
- b. Saturday classes: The school will conduct immersive French classes on Saturdays beginning in September and ending in June, from 8:30 a.m. to 5:00 p.m.
- c. Summer camps: These will begin the week after the academic year ends and finish at the end of August. Daily hours will be between 7:00 a.m. and 7:00 p.m.

b. *Enrollment.*

FIS requests a maximum of 700 students for the private school—200 in its nursery school and 500 elementary school students. Ms. Fabre testified that the school could not agree to caps on enrollment during the academic year for financial reasons. She believes that when they move in, there will be around 150 nursery school students and about 420 elementary school students by September 2020. They believe it will take 5 to 8 years to reach the maximum enrollment. 1/22/21 T. 36.

It requests the same maximum number of students for summer camps and Saturday classes, but did agree to phase in the maximum enrollments for the latter programs to address concerns regarding monitoring of the TMP. On remand, FIS proposed the following conditions:

- c. *Supplemental Language classes ("Saturday School") with daily enrollment not to exceed a maximum of 500 students and up to 30 staff until three (3) years after the program commences after which the daily enrollment must not exceed 700 students and 50 staff; and*
- d. *Sumer Camp, with daily enrollment not to exceed 500 children and up to 75 staff until three years after the Summer Camp program has commenced, after which the daily maximum enrollment must not exceed 700 students and up to 126 staff.*

c. Special Events.

FIS provided a more detailed list of special events that would be held throughout the year (Exhibit 95, p. 12). According to FIS, parking for these events will be provided in the 281 on-site spaces or, if needed, the school will run a shuttle bus to the Grosvenor Metro Station.

SPECIAL EVENTS	Dates	Times	Frequency	Attendance including participants and staff	Parking
Back to school nights	September	After 7pm	1/year/grade X 5 grades	approx 100 per night	parking garage+ other onsite parking spaces
Grand Parents' Day	May	after 9 am fro NS and lunch time for ES	1/ year	about 50 persons in the morning and 100 at lunch time	parking garage+ other onsite parking spaces
K and 5th graders graduations	June	late morning for NS and early afternoon for ES	1/ year X 2 grades	Around 250 persons- with 2 people per car= about 150 cars	parking garage+ other onsite parking spaces
Parent teacher meetings	October and February	After 7 pm or virtually	2/ year X 5 grades	80 persons max -	parking garage+ other onsite parking spaces
Information meeting for major school trips	April and May		2/ year	a maximum of 200 persons with 2 persons per car - Approx 100 cars	parking garage+ other onsite parking spaces
International Meal evenings	September		1/ year X 5 grades	approx 100 persons	parking garage+ other onsite parking spaces
Year-end chorale	December	after 7pm	1/ year X 8 grades	Approx 200- 2 persons per car	parking garage+ other onsite parking spaces
Mon enfant entre en CP	May		1/ year	approx 150 persons- 100 cars	parking garage+ other onsite parking spaces
Open houses	From October to January	Friday mornings and Sat mornings	7/year	approx 50 persons for each	parking garage+ other onsite parking spaces
School community picnic / Barbecue	a Saturday Mid September	between 11am and 4pm	1/ year	approx 500 through the day	parking garage and parking spaces on site + Grosvenor metro station parking with school shuttles
Winter fair / Alumni lunch (?)	December	between 11 am and 4 pm	1/ year	approx 500	parking garage and parking spaces on site + Grosvenor metro station parking with school shuttles
Spring fair	June		1/ year	approx 800 coming and going between 11am and 5 pm	parking garage and parking spaces on site + Grosvenor metro station parking with school shuttles

d. Staffing.

During the academic year, FIS proposes to have up to 195 total employees, including “core staff” and “auxiliary” staff. Of this total, only 126 faculty and staff will be on-site at any one time. A table from the initial Staff Report (before remand) outlines the proposed staffing for the academic year (Exhibit 56, p. 19, on the next page).

FIS proposes that the same cap of 126 employees on-site at one time will apply to summer camps. There will be a maximum of 50 staff on-site for the Saturday classes.

Table 3: Staffing		
Core Staff		
	Faculty	83
	Administrators	20
	Nurses	2
	Custodians	5
	Bus Drivers	16
	Total Core Staff	126
Auxiliary Staff		
	Daycare Personnel	18
	Recess/ Bus Monitors	19
	Cleaning Crew	5
	School Club Advisors	27
	Total Auxiliary Staff	69
Total Staff		195

Proposed Total Enrollment
Exhibit 56 p. 19

e. Parking, Loading and Deliveries

Staff advises that the proposed site plan includes 281 on-site parking spaces. Most of these (216 spaces) are within the multi-story garage. There is a smaller parking garage under the East Building, which has 16 spaces, and an additional 48 spaces are located on surface lots throughout the site. Exhibit 56, p. 27; 1/22/21 T. 59. FIS will provide 15 bicycle parking spaces on the property.

The site plan shows one loading dock on the north side of the Lee Building. Delivery and trash trucks will enter from Rockville Pike and proceed along the northern drive aisle to reach the loading area. Deliveries and trash pick-up will be scheduled to occur between 8:30 a.m. and 3:30 p.m. Exhibit 56, p. 27. FIS states that it will “endeavor” to include a clause in its contracts with service providers prohibiting them from using neighborhood streets, but warns that “the School does not have the capability to monitor and enforce compliance with such contractual understandings.” Exhibit 112(a), p. 25.

f. Use of Beaumont House.

Ms. Fabre testified that FIS proposes to use the Beaumont House for “a few” offices and internal meetings. This will be “mostly” interior use. The exterior space around the house is landscaped with bushes and trees that doesn’t have the area to handle a large event. They may do “small things” or have meetings outside, but they would be small because the space is not available and they have larger venues inside the main buildings. 6/7/21 T. 89. After the public hearing on remand, FIS proposes the following condition of approval (Exhibit 125, p. 4):

Beaumont House will be used for general office or administrative purposes, for internal meetings or professional presentations, and for small receptions involving limited use of the covered patio and the rear yard. There will be no amplified sound allowed outside of the Mansion. Any change in use from that described above must be approved by amendment to the special exception.

g. Play Areas.

Ms. Fabre testified that the school will have three recess periods per day, summarized in a graphic submitted by FIS (Exhibit 95, p. 9, below):

		2 rotations/ 3 times a day	
	maximum capacity	Nb of students Rotation 1	Nb of students Rotation 2
ES playgrounds	427	300	200
NS playgrounds	123	90	90
Total	550	390	290
Staggered Recess times		10:10	10:35
		12:00	12:30
		1:45	2:15

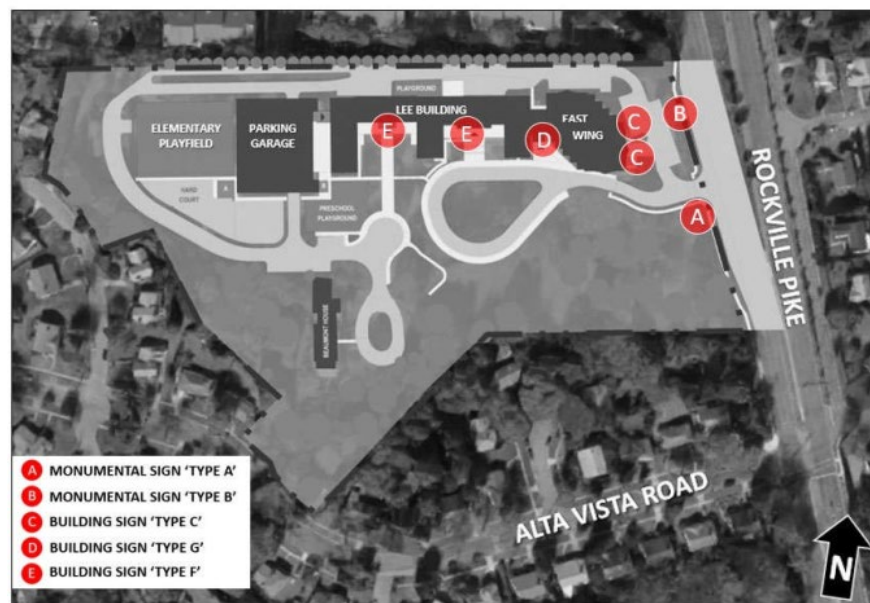
. Morning and afternoon recess periods are 20 minutes long; lunch recesses are 30 minutes long. FIS will stagger the recess periods to minimize the number of students present on the playground at the same time. While the play area proposed has a total capacity of 550 students, FIS

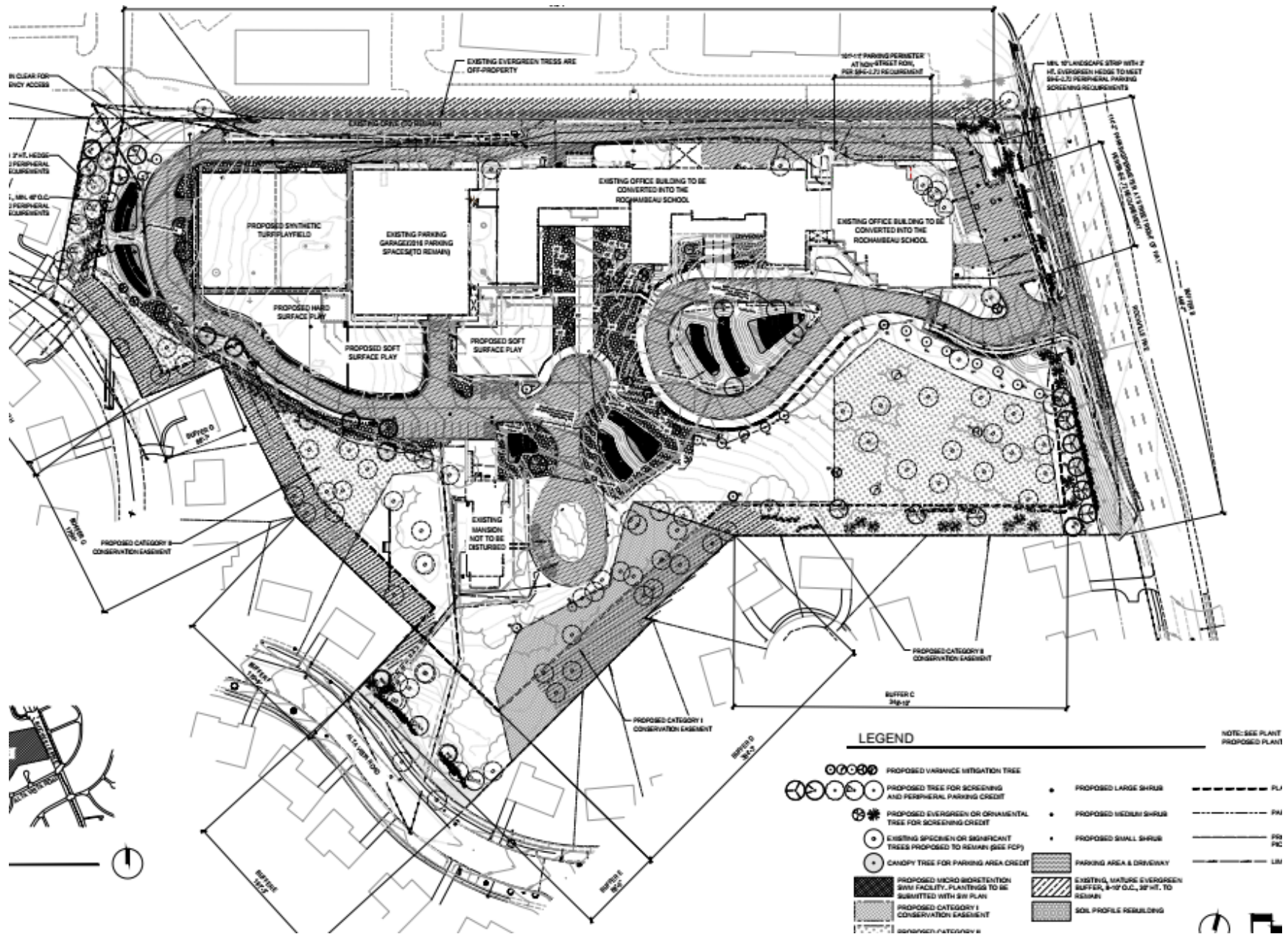
will limit use to 390 students during the first rotation and 290 during the second rotation. Only 24 students will use the playground on the north side, which is dedicated for toddlers. 6/7/21 T. 191.

5. Landscaping, Lighting, and Signage

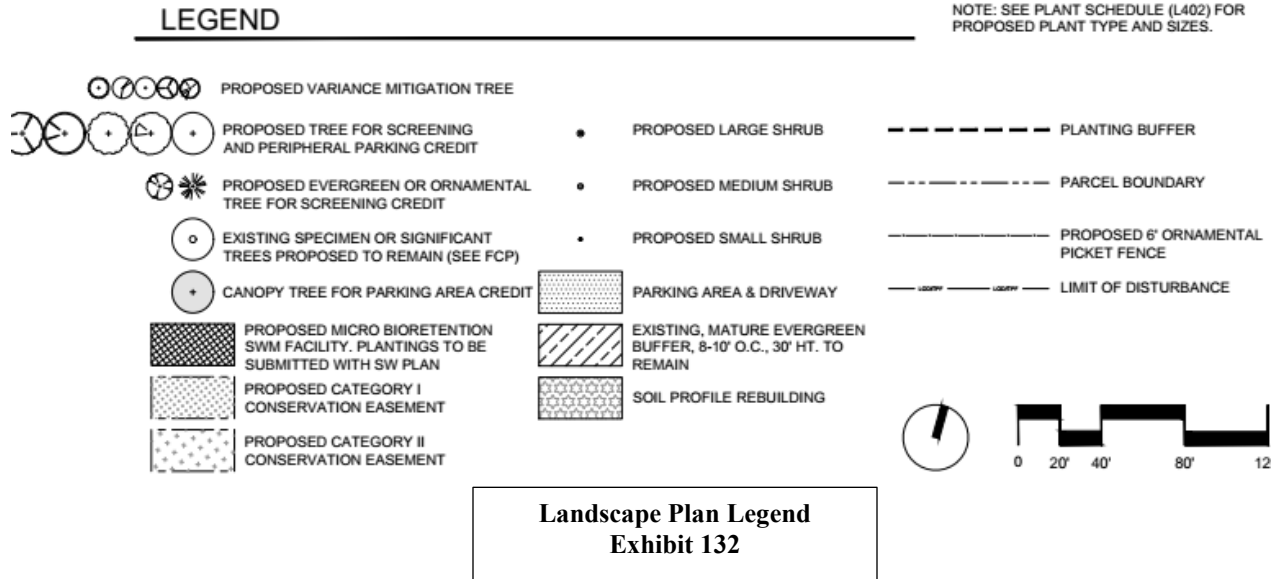
A copy of the final Landscaping Plan (Exhibit 132) is shown on the next two pages. Mr. David Norden, FIS' expert in landscape architecture, testified that the general intent of the landscape plan is to enhance the existing campus feel of the site with landscaping that has the least maintenance required. Shrubs and trees are proposed around the perimeter to meet the screening requirements. The existing tall evergreens along the southern boundary will be preserved. 1/25/21 T. 18. New landscaping is concentrated in areas that are more open. The existing buffering will remain and be supplemented by new plantings around the perimeter. Landscaping around the bus area will include oaks, elms and similar types of large shade trees. 1/25/21 T. 20. Some of the trees around the perimeter screen the surface parking. *Id.*

FIS proposes seven signs on the subject site. The proposed sign locations are shown on Exhibit 80(c):





Landscape Plan
Exhibit 132)



Details of the signs, based on the “sign type” listed above, are included in the Staff Report (Exhibit 56, pp. 16-17):

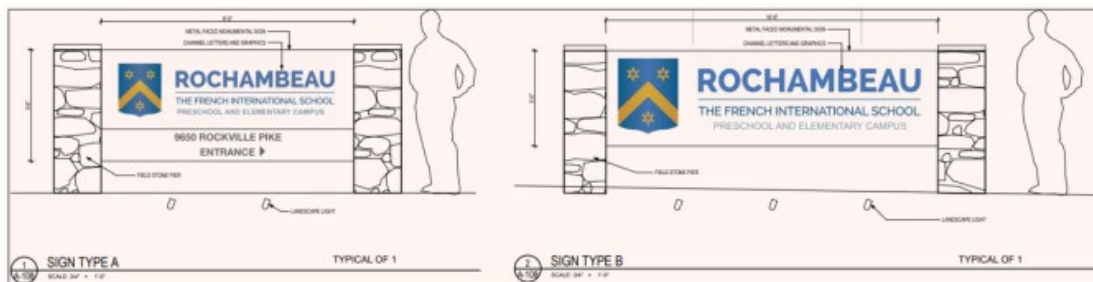


Figure 14 – Sign Details: Monumental Signs – Types A and B

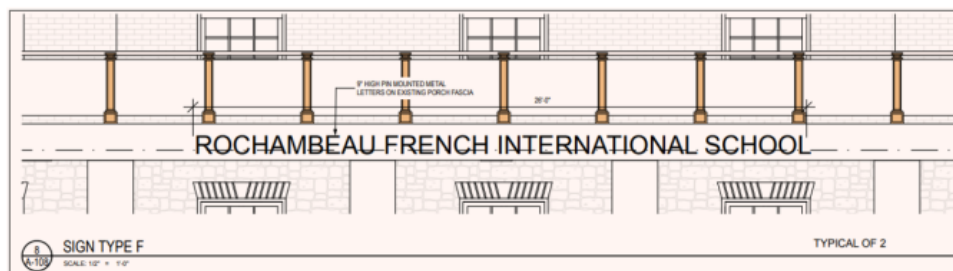


Figure 16 – Sign Details: Building Sign – Type F

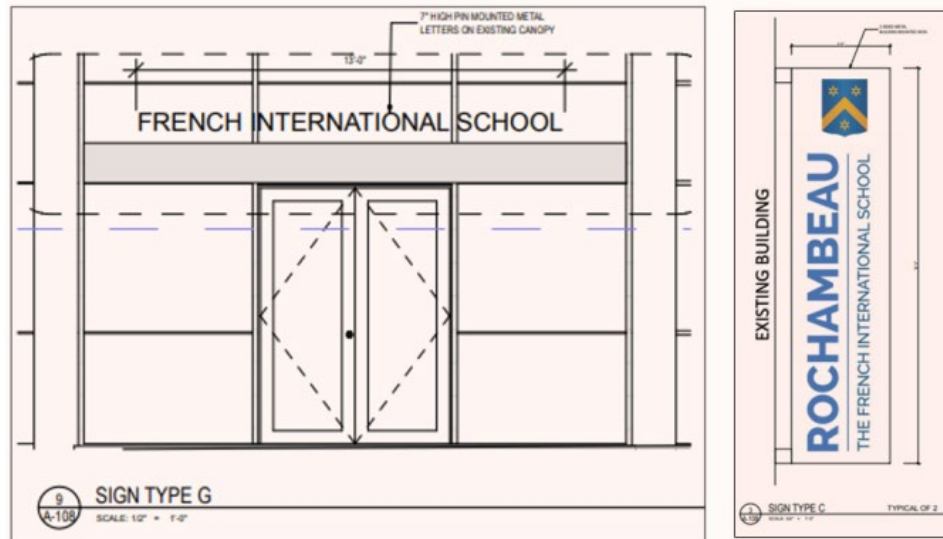


Figure 15 – Sign Details: Building Signs – Type G (Left) and C (Right)

6. Transportation

a. Transportation Management Plan Prior to Remand

The major issue in this modification request is the impact of school-generated traffic on neighborhood streets and surrounding roadways. Modifications to control both peak hour traffic and certain traffic movements have generated several amendments to this application. Because this history relates to the current iteration of this application, the Hearing Examiner includes it here.

Mr. Erwin Andres, an expert in transportation engineering and planning, testified at the first hearing (before remand) that trips from 170,000 square feet of office were generated by the site during FASEB's occupancy, with the potential to increase to 210,000 square feet of office. According to him, many of the traffic issues were generated by site access. Because one can only exit the school travelling south on Rockville Pike, the Maryland State Highway Administration (SHA) had concerns that school traffic would cross or weave through lanes to make the U-turn at Alta Vista Road to proceed north. The County's Department of Transportation expressed concern about the amount of school-generated traffic on neighborhood streets. FIS addressed these concerns by making operational changes to its busing program. The school proposed to bus approximately

82% of its elementary school students and 30% of its elementary school students, using shuttles between the Rockville Pike campus and the Forest Road campus. FIS' approach to reducing traffic is multi-tiered, according to Mr. Andres. The first tier is to reduce the trips under what was approved for FASEB; the second tier is make things better. FIS provided a table of the trips generated by the school compared to the trips generate FASEB showing that the school would generate less traffic than the existing FASEB special exception (Exhibit 63, p. 2, below):

French International School Trip Generation - Rockville Pike Campus									
Scenario	AM Peak Hour (7:30-8:30 AM)*			School PM Peak Hour (3:00-4:00 PM)			Commuter PM Peak Hour (5:00-6:00 PM)		
	In	Out	Total	In	Out	Total	In	Out	Total
170 SF Office	138	22	160	18	95	113	25	134	159
210 SF Office	170	28	198	22	117	139	31	165	196
<i>June 1, 2018 LATR</i>	382	238	620	73	197	270	157	255	412
<i>July 17, 2019 LATR</i>	317	173	490	56	180	236	116	166	282
<i>September 9, 2019 Plan</i>	141	78	219	30	124	154	73	123	196
February 20, 2020 LATR	100	75	175	24	93	117	59	80	139

* Represents aggressive bussing program, shifting of staff trips out of AM peak hour and School PM Peak hour, and no Proposed Office

*LATR analyzed 7:00-8:00 AM as requested by SHA, roadway network peak hour is 7:30-8:30 AM

FIS also submitted tables showing the number of passenger vehicle and bus trips expected to arrive and depart the school during the school's peak traffic generating hours. According to the table below (submitted by FIS), 82% of the elementary school children will arrive by bus and 30% of the nursery school children will arrive by bus (Exhibit 63, p. 3):

Time of Day	Time Period	Nursery Students					Elementary Students					Reduction		Total			
		%	Car	%	Bus*	Total	%	Car	%**	Bus	Total	% Siblings***	Sibling	Cars	Bus	Sibling	Total
Morning Arrival	6:30-7:00 AM	0.0%	0	0.0%	0	0	0.0%	0	0.0%	0	0	6.6%	0	0	0	0	0
	7:00-7:30 AM	31.5%	63	0.0%	0	63	12.8%	64	0.0%	0	64	6.6%	-21	106	0	21	127
	7:30-8:00 AM	3.5%	7	0.0%	0	7	0.4%	2	0.0%	0	2	6.6%	-2	7	0	2	9
	8:00-8:30 AM	31.8%	64	30.0%	60	124	4.2%	21	82.2%	411	432	6.6%	-21	64	471	21	556
	8:30-9:00 AM	3.2%	6	0.0%	0	6	0.4%	2	0.0%	0	2	6.6%	-2	6	0	2	8
	9:00-9:30 AM	0.0%	0	0.0%	0	0	0.0%	0	0.0%	0	0	6.6%	0	0	0	0	0
Total		70.0%	140	30.0%	60	200	17.8%	89	82.2%	411	500		-46	183	471	46	700
3:30 PM Dismissal	3:00-3:30 PM	4.8%	10	0.0%	0	10	0.6%	3	0.0%	0	3	6.6%	-3	10	0	3	13
	3:30-4:00 PM	4.8%	10	15.0%	30	40	0.6%	3	25.0%	125	128	6.6%	-3	10	155	3	168
	4:00-4:30 PM	8.4%	17	0.0%	0	17	1.2%	6	0.0%	0	6	6.6%	-6	17	0	6	23
	4:30-5:00 PM	8.4%	17	0.0%	0	17	1.2%	6	0.0%	0	6	6.6%	-6	17	0	6	23
Late Dismissal	5:00-5:30 PM	7.9%	16	0.0%	0	16	1.0%	5	0.0%	0	5	6.6%	-5	16	0	5	21
	5:30-6:00 PM	7.9%	16	15.0%	30	46	1.0%	5	46.4%	231	236	6.6%	-5	16	261	5	282
	6:00-6:30 PM	15.2%	30	0.0%	0	30	12.2%	61	0.0%	0	61	6.6%	-10	81	0	10	91
	6:30-7:00 PM	9.7%	19	0.0%	0	19	8.1%	41	0.0%	0	41	6.6%	-6	54	0	6	60
	7:00-7:30 PM	2.9%	5	0.0%	0	5	2.7%	14	0.0%	0	14	6.6%	-2	17	0	2	19
Total		70.0%	140	30.0%	60	200	28.6%	144	71.4%	356	500		-46	238	416	46	700

The second table shows the trips generated during peak periods by mode (*i.d.*, buses and passenger vehicles) (*Id.*):

Time of Day	Time Period	Parent Pickup/Drop-Off			Staff*			Buses			Total Vehicle Trips		
		In	Out	Total	In	Out	Total	In	Out	Total	In	Out	Total
Morning Arrival	Before 7:00 AM	0	0	0	16	0	16	0	10	10	16	10	26
	7:00-7:30 AM	106	106	212	88	0	88	0	3	3	194	109	303
	7:30-8:00 AM	7	7	14	5	0	5	4	4	8	16	11	27
	8:00-8:30 AM	64	64	128	7	0	7	13	0	13	84	64	148
	8:30-9:00 AM	6	6	12	2	0	2	0	0	0	8	6	14
	9:00-9:30 AM	0	0	0	8	0	8	0	0	0	8	0	8
Total		183	183	366	126	0	126	17	17	34	318	200	518
3:30 PM Dismissal	3:00-3:30 PM	10	10	20	0	3	3	0	4	4	10	17	27
	3:30-4:00 PM	10	10	20	0	53	53	4	13	17	14	76	90
	4:00-4:30 PM	17	17	34	0	38	38	0	0	0	17	55	72
	4:30-5:00 PM	17	17	34	0	2	2	13	0	13	30	19	49
Late Dismissal	5:00-5:30 PM	16	16	32	18	2	20	0	4	4	34	22	56
	5:30-6:00 PM	16	16	32	5	29	34	4	13	17	25	58	83
	6:00-6:30 PM	81	81	162	0	22	22	0	0	0	81	103	184
	6:30-7:00 PM	54	54	108	0	17	17	13	0	13	67	71	138
	7:00-7:30 PM	17	17	34	0	23	23	0	0	0	17	40	57
Total		238	238	476	23	189	212	34	34	68	295	461	756

*Part-time staff such as lunch monitors, bus drivers and part-time teachers arrive/depart throughout the school day during off peak time periods

Mr. Andres further testified that he believed that the mitigation component of their TMP was initially understated. They are providing a consolidated access plan where they are eliminating all access points except for Rockville Pike. They are providing an acceleration/deceleration lane on Rockville Pike that FASEB was not required to provide. They are also improving the eastbound Pooks Hill Road approach by increasing the amount of stacking that exists there today. They will accomplish this by modifying the median and providing additional pavement markings. T. 91.

To address SHA's concerns about traffic weaving between lanes on Rockville Pike to make the U-turn at Alta Vista Road, FIS is installing a physical barrier that may include bollards to discourage this movement by people exiting the subject property. Finally, SHA requested that they introduce a HIB, or hazardous intersection beacon. This is a beacon that will notify southbound motorists on Rockville Pike that they are approaching a school entrance where people will be trying to move into the deceleration lane. It was important to FIS to not only reduce current traffic levels but also physically improve existing circulation. 1/25/21 T. 92.

Several requirements of the initial TMP proposed, such as trip caps, bus routes, and other items, remain in the current version of the TMP and are summarized in the next subsections. Major items from the original that have since been revised are summarized here.

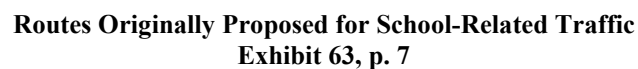
At the public hearing before remand, Mr. Andres testified the only traffic control proposed was a requirement to enter into a Transportation Mitigation Plan, which was to be an agreement with the Planning Board to enable FIS to meet the requirements of Local Area Transportation Review. As a result, much of the enforcement and monitoring were still to be worked out. 1/25/21 T. 94.

The routes proposed by FIS to be used by school-related buses and passenger vehicles were a major source of contention before remand. FIS proposed to route buses and school-related passenger vehicles along Alta Vista Road to proceed north (to avoid U-turns on Rockville Pike). The routes originally proposed are shown in the graphic submitted by FIS (Exhibit 63, p. 7, on the next page.

As part of its original plan for a TMD, FIS proposed a condition requiring a Neighborhood Liaison Committee (NLC) for the school made up of one representative from the Maplewood Citizens Association, and one representative each from residents of Alta Vista Terrace, Alta Road, and Pooks Hill Road, three representatives from FIS, and one representative from Montgomery County. Exhibit 63.

b. Transportation Management Plan After Remand

After remand, and in response to concerns raised by the community, the Petitioner now proposes to incorporate a detailed "Transportation Management Plan" (TMP) with three components—(1) education and outreach, (2) monitoring of compliance, and (3) enforcement and penalties for failure to comply. FIS now proposes that this TMP be incorporated as a condition of



The revised TMP retains the trip caps originally proposed. With these caps, Ms. Wagner testified, the number of trips generated by the school's use will still be lower than the number of trips generated by the previous user (FASEB). 6/7/21 T. The trip caps imposed are (Exhibit 105(a), p. 16.):

- 330 trips in the morning arrival hour of 7:00 to 8:00 AM,
- 117 trips in the school dismissal hour of 3:00 to 4:00 PM, and
- 139 trips in the commuter afternoon hour of 5:00 to 6:00 PM.

To meet these trip caps, the revised TMP retains the requirement that all elementary school children be bused with the following exceptions (Exhibit 105(a)):

- Students under the age of 5 in the nursery program;
- Students walking and biking to school;
- Elementary students with a sibling enrolled in the nursery program;
- Elementary students enrolled in the before and after school program;
- Students who demonstrate a hardship based on special transportation needs.

Nursery school students under 5 and any siblings will be dropped off at the Rockville Pike campus, but siblings attending the Forest Road campus must take the shuttle from Rockville Pike campus. Exhibit 105. FIS describes the daily busing schedule described in the TMP as follows:

Morning (Exhibit 105(a), pp. 6-7):

- The 13 school-owned buses will depart the Rockville Pike campus between 6:30 and 7:15 AM to their destinations. The 13 routes will service areas in Maryland.
- The four (4) contract buses will arrive at the Forest Road campus between 7:50 and 8:15 AM, and drop off all students from Washington, D.C. and Virginia and return to their home base. Students dropped off at the Forest Road campus headed to the Rockville Pike campus will transfer to the intercampus shuttles described below.
- The 13 school-owned buses will arrive at the Rockville Pike campus between 7:45 and 8:30 AM and drop off all students. Nine (9) of the 13 buses will park and remain on campus.
- The first four (4) school-owned buses to arrive at the Rockville Pike Campus generally serve the shortest routes. These buses will operate the intercampus shuttle routes between the Rockville Pike and Forest Road campuses.
- Between 7:45-8:15 AM, the four (4) school-owned shuttles will depart for the Forest Road campus every five (5) minutes with students on board, including Forest Road students dropped off at Rockville Pike who have a sibling at the nursery or elementary school.

- Between 7:55-8:10 AM, the four (4) school-owned shuttles will drop off secondary school students at the Forest Road campus and pick-up Rockville Pike campus students who were on one of the contracted bus routes, walk or bike to campus, or were dropped off by parents with siblings in the secondary school. These buses depart every five (5) minutes and drop off the Rockville Pike campus students by 8:30 AM.

According to the school, the 13 school-owned buses will remain in the bus queuing loop until afternoon operations commence (Exhibit 105, p. 7):

- At 2:50 pm, four (4) buses operated by FIS depart for the Forest Road campus to commence shuttle operations and four (contracted buses arrive at the Forest Road campus and wait.
- Following the 3:30 pm dismissal, students at the Rockville Pike campus are grouped by bus route. At the Forest Road campus, the secondary students either begin to board the four (4) contracted buses for Washington, D.C. and Virginia or board the four (4) school-owned shuttle buses to the Rockville Pike campus.
- At 3:40 PM, the 13 school-owned buses depart the Rockville Pike campus for their assigned routes.
- Between 3:45-3:50 PM, four (4) routes that departed the Rockville Pike campus stop at the Forest Road campus to drop off elementary school students that live in the area or need to get on the contracted routes to Washington, D.C./Virginia.
- By 3:50pm, all buses have departed the Forest Road campus.
- For after-school activities ending at 5:30 PM, the bus itinerary mirrors the afternoon dismissal plan.
- No bus service is provided for the before- or after-school care.

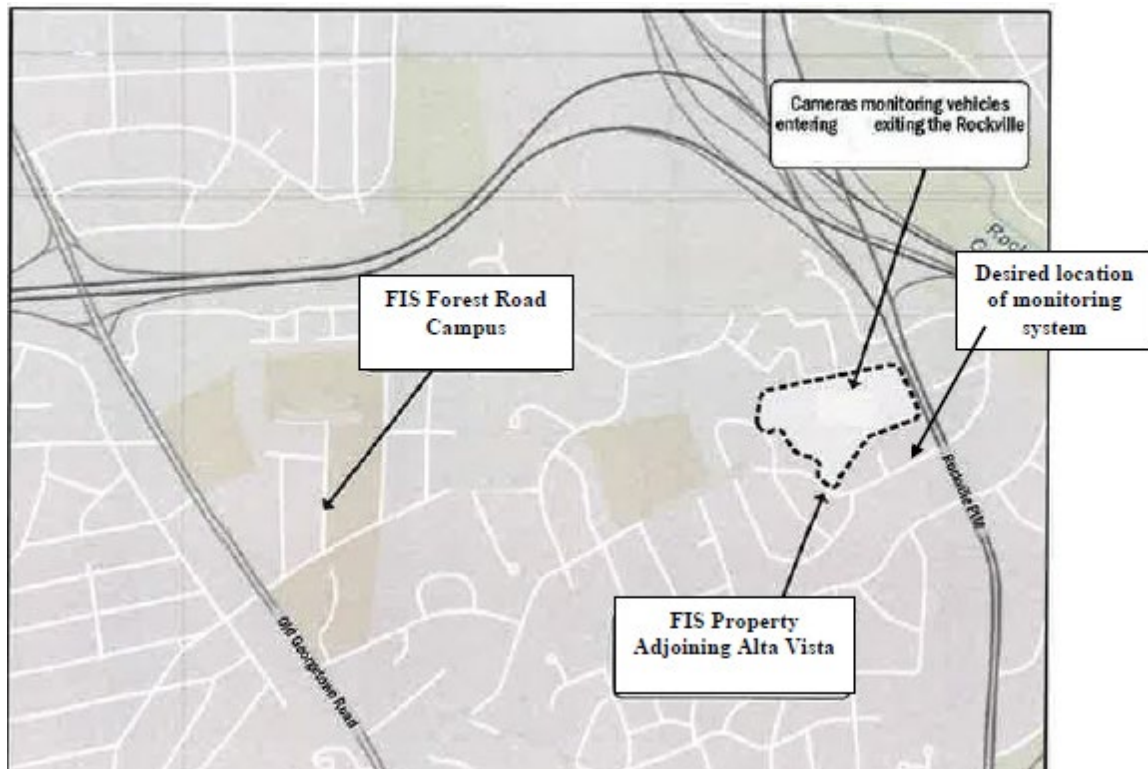
Unlike the original TMP, buses and school-related personal vehicles travelling from the Rockville Pike campus to the Forest Road campus, or who wish to proceed north after exiting the school, are routed *outside* the Maplewood and Locust Hill neighborhoods, the boundaries of which are defined in the TMP. Shuttle buses and personal vehicles will be instructed to proceed south to Cedar Lane, designated an arterial roadway in the *1990 Bethesda-Chevy Chase Master Plan*

(Master Plan or Plan), and proceed north on Old Georgetown Road. Exhibit 105(a); *Master Plan*, p. 127. Shuttles heading from the Forest Road campus to the Rockville Pike campus will proceed east on Beech Drive, turn left on Linden Avenue, turn right on Pooks Hill Road, and proceed southbound on Rockville Pike to the main school entrance. Exhibit 105, p. 6. Buses picking up and dropping off students that live within the Maplewood and Locust Hill neighborhoods will use neighborhood streets. FIS states that there are currently 55 families within the defined neighborhoods that have children enrolled at the school. Exhibit 95, p. 6.

To ensure that the parent vehicles are following the prescribed routes, FIS will be using a system called "School Pass" or other digital monitoring system, to enforce the TMP. Ms. Wagner testified that School Pass consists of license plate monitoring cameras at the access points for the school to monitor vehicles coming in and out of campus. 6/7.21 T. 24. FIS will install this system at the Forest Road campus as well. This will be able to monitor whether students at the Rockville Pike campus are being dropped off at the Forest Road campus rather than riding their assigned bus route. School Pass system allows them to monitor vehicle activity in real time. 6/7/21 T. 25.

Ms. Wagner testified that every parent and staff member will have to register their vehicle and will be issued a violation of the TMP if they are found dropping students off at the Forest Road campus when they have an assigned bus route they are supposed to be using. The school must allow families with siblings to carpool to and from the schools. They will drop-off at one location and go to the other by shuttle. 6/7/21 T. 170. Families are not able to drop off students at the Rockville Pike campus unless this is the bus route assigned to them. There are strict policies within the TMP prohibiting parents from dropping off a student at the Rockville Pike campus or the Forest Road campus in violation of the TMP and will be issued a violation if they do so. 6/7/21 T. 170.

FIS also proposes to place a monitoring camera along its frontage on Alta Vista Road, at the approximate shown on the next page (Exhibit 124).



FIS testified that it has attempted to obtain permission from both SHA and MCDOT to place a monitoring camera on Alta Vista Road closer to the intersection with Rockville pike to respond to concerns raised by residents about vehicles turning right on Alta Vista Road and making U-turns to proceed back to northbound Rockville Pike. FIS had not received a response from either agency. *See, e.g.,* Exhibit 123. The Hearing Examiner requested information from Mr. Michael Paylor, Division Chief of MCDOT Transportation Engineering and Operations, whether a School Pass camera could be placed closer to Rockville Pike. Mr. Paylor replied (Exhibit 141):

On this matter, French International School (FIS) must provide a plan that describes where the traffic monitoring system will be placed, if on Montgomery County rights of way. Please note that the device(s) may not be installed on traffic signal equipment, sign posts, streetlight structures or any similar traffic accoutrements owned or maintained by Montgomery County department of Transportation (MCDOT). The plan must also indicate the duration of the activity.

This information must be submitted to MCDOT, who will coordinate the request with Montgomery County Department of Permitting Services (DPS). If at the completion of the review, MCDOT and DPS find the plan acceptable, an approval and an accompanying permit will be issued by DPS.

Because the school can locate the camera on its Alta Vista Road frontage, Ms. Wagner testified that the school will be able to monitor whether school-related vehicles are using Alta Vista Road in violation of the TMP. If the monitoring does reveal violations, the parent will be issued a TMP violation. 6/7/21 T. 25.

To address privacy issues, the school will have a database where all the camera information is uploaded. FIS is the only entity that will have access to the system. If vehicles are seen exiting the campus and traveling on Alta Vista Road, the information will be stored in the system, but all other information will be deleted. School Pass recommends keeping the data for 24 hours just to make sure there is nothing wrong with the system. 6/7/21 T. 29-31.

FIS' TMP states that compliance with the TMP will be a mandatory provision into the student contract. Exhibit 105, p. 14. Violations of the TMP include (1) dropping-off or picking up students outside of the designated areas within the campus, (2) dropping off/picking up students at the Forest Road campus when they are required to ride a bus, (3) arriving or departing school outside of designated times, (4) Parking on-site without a tag or staff pass, and (4) traveling on Alta Vista Road unless registered as living within the Maplewood or Locust Hill neighborhoods. *Id.*, p. 15. The TMP as proposed by FIS contains tiered penalties depending on the number of violations accrued (Exhibit 105, p. 15). First violations for both the academic year and Saturday classes result in a warning (with documentation of the violation) and a reminder of the TMP Guidelines. First violations for summer camp will result in a meeting with the School Transportation Coordinator. First violations by staff requires staff to meet with the School Transportation Coordinator and a verbal warning. *Id.*

FIS proposes that second violations of the TMP for academic days will require a mandatory meeting with the School Transportation Coordinator and a violation letter; second violations during Saturday classes will require a meeting with the Director of Saturday classes and a violation letter;

second violations during summer camps will result in a meeting with the Director of Summer Camps and a violation letter; second violations by school staff will require a meeting with the School Transportation Coordinator and a written record of the violation in their personnel file. *Id.*

According to FIS, third violations will require a meeting with the Head of School (for academic days), the Director of Saturday classes, or the Director of Summer Camps, as applicable. In addition, school students will be suspended for 3 days from extracurricular activities and before-and after-care programs. Saturday class students and summer camp students will be suspended for one day. Staff receiving a third violation will be required to meeting with the Head of School or the Director of Saturday classes or summer camps as applicable. Staff will also receive a written warning in their personnel file. *Id.*, p. 16.

According to the TMP, fourth violations will “be grounds for” a 3-day suspension from school, and “will result in” a 3-Saturday suspension from Saturday class or a 3-day suspension from summer camps. Staff will receive a 3-day suspension without pay and will be required to meet with the head of their program. *Id.*

The revised TMP also made changes to the composition of the Neighborhood Liaison Committee. FIS proposes that the NLC consist of one representative from the Maplewood Citizens Association, one from the Alta Vista Terrace residents, one from the Alta Vista Road residents, one from the Bristol Square Condominium Association, three from FIS, one from the Montgomery County Department of Transportation, and one from the State Highway Administration. Exhibit 105, p. 13. The NLC will hold quarterly meetings to discuss issues of mutual concern; one of the meetings will be a joint meeting between the NLCs of the Forest Road campus and the Rockville Pike campus. FIS will use these meetings to present any “necessary amendments to the TMP prior to implementation”; discuss and decide on mutually upon days for quarterly trip counts to be collected; provide quarterly trip counts, a quarterly violation log, and an annual monitoring report;

and discuss planned evening events with the community. At the June 7, 2021 public hearing, the Petitioner agreed to add a representative of the Bethesda Crest Homeowners Association. 6/7/21 T. 244.

7. Stormwater Management

Ms. Dana Clark, FIS' expert in civil engineering, initially testified that FIS proposes to install eight micro bioretention areas and an infiltration trench underneath the turf field. 1/22/21 T. 215. Two are on the far west side of the driveway and one just south and southeast of the drop off location for individual vehicles. The remaining three are located inside the bus loop. The stormwater management concept has been approved by Montgomery County, and the final stormwater permit package is currently under review. *Id.*

Ms. Clark, in response to neighbors' complaints including those of Ms. Becky Umhofer (see Part II.D (Community Response), below) testified that stormwater from the subject property drained onto abutting properties. She testified that FIS was not required to mitigate this drainage it is outside of FIS' limits of disturbance; as a result, they are not exacerbating the problem. 1/22/21 T. 218-219. The area is covered by existing vegetation and relatively steep. Paved area on the property doesn't contribute to the neighbors' problem; the problem is being caused by pervious areas on the site that drain directly to their properties. FIS is not disturbing those areas, and therefore it is not exacerbating the problem or required to mitigate the drainage. The area between that LOD line and impacted properties will be covered by a forest conservation easement, which would preclude the school from installing stormwater management in that area once the easements are recorded. FIS advised one of the neighbors that while they would not exacerbate the problem, they could not correct it. *Id.*, T. 219-220.

On remand in response, FIS examined the areas where stormwater drainage was occurring (Exhibit 94(d)) and made suggested improvements to reduce the existing drainage (Exhibit 112(a), on the next page).

Situation	Existing Condition	Proposed Condition
Beaumont House South Roof Drains (portion of Drainage Area "B" on the attached map)	Discharge to grade and sheet flows to the adjacent properties along Alta Vista Court	Manifolded together and taken below grade and rerouted to biofilter "C". Water does not flow to adjacent properties
Beaumont House Loop Area (portion of Drainage Area "B" on the attached map)	South curb is in disrepair and water flows from the impervious loop to the adjacent properties along Alta Vista Court	Curb is proposed to be replaced so that water will be direct to biofilter "D" and no longer flow to adjacent properties
Drainage to area "A" on the Alta Vista Terrace portion of the property	Existing parking area drains to the adjacent property	Proposed drive will be curbed, redirecting drainage to proposed biofilter "B". Water will no longer flow to adjacent properties

Exhibit 112(a)

FIS submitted drainage maps of existing and proposed drainage areas to support its calculations of the reduced stormwater flows. Exhibit 94. At the June 7th hearing, Ms. Clark testified that drainage to the Umhofer property will be reduced by 14 to 30 percent, depending on storm intensity. T. 206. This is because the amount of impervious area in the area that drains to her will be reduced. The area post-development will have woods and grass, which causes a reduction in flow. 6/7/21 T. 208. FIS further notes, that some drainage onto neighbors' properties does not originate from the FIS property (Exhibit 94):

It should be noted that there is an area of offsite drainage (Area "C" in the drainage area map) which flows from one offsite property owner to another's, contributing to the drainage issues on the adjacent properties. The FIS cannot do anything to remedy this additional issue contributing to any drainage issues the offsite properties may be experiencing.

D. Community Response

Much of the testimony both before and after remand focused on the impact of traffic from the school on the residential streets within the surrounding neighborhood. To better understand the background of this case, the Hearing Examiner separates the pre-remand concerns raised by those in opposition and the post-remand remaining concerns.

1. Pre-Remand Opposition

Mr. Allen Myers, President of the Maplewood Citizens Association (MCA or Maplewood), gave some background of the community and the school at the January 25, 2021 public hearing. He testified that Maplewood consists of 1,000 mostly single family detached homes. The northern boundary is the Capital Beltway and the southern is West Cedar Lane; the eastern is Rockville Pike, and the western boundary is Old Georgetown Road. 1/25/21 T. 166-167.

According to Mr. Myers, the neighborhood is situated between two major state roads, each with north and southbound traffic. South of the Capital Beltway east and westbound traffic must use West Cedar Lane to connect directly between Rockville Pike and Old Georgetown Road. Pooks Hill Road is in the northern portion of the neighborhood. At one time, this road was intended to connect to Rockville Pike with Old Georgetown Road. This was later discovered to be infeasible due to the alignment of the on-ramp from northbound Old Georgetown Road to the Beltway. 1/25/21 T. 167.

As a result, cut through traffic attempting to get from either of the two state roads to the other must enter their neighborhood via either Linden or Beech Avenues. To prevent a high volume of cut through traffic during peak hours, the County implemented restrictions that prevent left turns from Pooks Hill Road onto Linden Avenue between 7 and 9 a.m. and 3 to 6 p.m. Left turn restrictions from Beech Avenue onto Linden Avenue are in effect for the same time periods. T.

167-168. The turn restrictions are memorialized in the *1990 Bethesda-Chevy Chase Master Plan* and may be modified at the request of Maplewood under MCDOT regulations. T. 168.

Mr. Myers testified that the MCA is not opposed to the idea of turning the FASEB property into a new campus for FIS, but there are issues that should be addressed in the form of conditions of approval. First, FIS has no direct route for traffic to proceed north, generating significant amount of traffic on neighborhood streets. He opposed the initial TMP because it did not limit traffic on neighborhood streets, which he believes should be limited as part of the special exception. Second, MCA wanted to see improvements to the site plan to protect abutting and nearby residents from noise and pollution generated by site operations. 1/25/21 T. 168.

According to Mr. Myers, MCA did not oppose the current proposal outright, but FIS' operations on Forest Road campus have had, and continue to have, impacts on the Maplewood neighborhood, which have continually been brought to his attention. *Id.* T. 169.

Mr. Myers described the historic use of the site. He believes that it is important to understand that FASEB was not an educational institution. It began operations when it purchased the Holloway Estate in 1953. It was 38 acres at the time; all but the current 11 acres were sold for development of the residences that exist today. *Id.*, T. 170.

When the 1977 Bethesda Chevy Chase Master Plan was adopted there was a need to find a way to keep FASEB on the site and it was given a special exception for a private educational institution. In fact, however, FASEB never had students, never had buses arriving and departing, never had teaching staff or children engaged in play on the campus. T. 170. Instead, FASEB used the site for administrative offices and occasional conferences in a small auditorium. The traffic generated to and from the site was by private vehicle with employees arriving in the morning and departing in the afternoon. All entrances to the site were made from Rockville Pike as well as most exits. *Id.*, T. 170-171.

Mr. Myers testified that, as part of its special exception, FASEB was granted the use of an alleyway onto Alta Vista Terrace for up to 80 vehicles a day. That was for egress only and its use was regulated by passes. Records were kept of the passes, which had to be used for employees to exit there. The current proposal eliminates these protections for their community. *Id.*, T. 171.

In May 2006, FASEB entered into a license agreement with the Montgomery County Housing Opportunities Commission. The operator of the Pooks Hill Apartments at 3 Pooks Hill Road wanted to create an exit for FASEB employees through the apartment parking lot to Pooks Hill Road. This change immediately decreased the number of vehicles using the Alta Vista gate as the Pooks Hill connection obviated the need to utilize Maplewood streets to proceed north on Rockville Pike. *Id.*, T. 171. Mr. Myers testified that the current FASEB director informed him that the license or lease to use the access had not been terminated. 6/7/21 T. 171.⁷

Mr. Myers believed that FIS' operation would constitute a significant increase in traffic over what Maplewood has experience over the years with FASEB. T. 172. In his opinion, just eliminating the exit onto Pooks Hill Road would increase traffic on Maplewood streets, even if the overall traffic is not increased. The intersection of Rockville Pike and West Cedar Lane is listed as one of the most congested intersections in Montgomery County. During the AM peak southbound traffic on Rockville pike routinely backs up past the FIS campus to the Capital Beltway. There is no northbound ramp from the Capital Beltway to Rockville Pike, so traffic coming from the Bestway must proceed south and make a U-turn at the first intersection, which is Alta Vista Road.

⁷ At the January 25th public hearing, Mr. Myers testified that FASEB's executive director informed him that FASEB employees were still using this exit. 6/25/21 T. 171. The Petitioner later contacted the Housing Opportunities Commission (HOC) about the possibility of continuing this exit. The HOC informed FIS that the access could only be used for emergency vehicles. 6/7/21 T. 166.

Maplewood also expressed concern about the pollution and noise from the buses to be stored on the property and does not believe that storage of buses is permitted in the R-60 Zone. *See*, Exhibit 108.

Mr. David Seid testified that the rear and side of his property abut the subject property near the western edge of the drive aisle for passenger vehicles. He expressed concerns related to traffic through residential streets that others in the community expressed. He is also concerned about the noise impact of cars on the drive aisle and children in the play areas because of the proximity of those areas to his property. He questioned whether an existing fence would remain in the forest conservation area that would be adjacent to his property to block headlights of vehicles using the driveway. He also expressed concerns that invasive species and vines could grow in the forest conservation area and spread onto his property and wanted to know whether the forest conservation area had to be maintained. 1/25/21 T. 53, 237, 238.

Ms. Becky Umhofer, who's property abuts the subject property to the south, testified that the school should have anticipated traffic issues when it chose to locate along one of the most congested corridors in the County. Her husband regularly walks to the NIH Metro station and observes traffic often backed up past the school entrance. 1/25/21 T. 194. She testified that congestion begins as early as 6:30 to 7:30 a.m. as evidenced by turn restrictions along Rockville Pike. If she attempts to visit downtown Bethesda to go to her gym early in the morning, she cannot return via Rockville Pike because SHA has restricted left turns across traffic heading south at Alta Vista Road, West Cedar Lane, and Elsmere Avenue. *Id.*

One of Ms. Umhofer's key concerns is that people will turn right on Alta Vista Road and do a quick U-turn to backtrack and proceed north on Rockville Pike. Residents on Alta Vista Road see vehicles making U-turns on Rockville Pike at the intersection with Alta Vista Road frequently. They "sometimes" observe vehicles making U-turns on Alta Vista Road to return to Rockville Pike

to proceed north. She submitted a photograph taken in 2019 of a vehicle making this maneuver (Exhibit 81(a), shown on the next page).

Ms. Umhofer had many concerns about the school's initial plan to route traffic through the Maplewood neighborhood. She did not believe that buses would have sufficient room on Alta Vista Road to turn right, as proposed originally. This is because cars stack up at the intersection, leaving little room for the bus to make that maneuver. She explained that the intersection has two lanes



Exhibit 81(a)

eastbound (heading toward Rockville Pike) and one lane westbound. There is a queue in the eastbound lanes, making it difficult for buses to maneuver to make the right turn from Rockville Pike to proceed westbound on Alta Vista Road.

She testified that the eastbound Alta Vista intersection does not function well because southbound traffic on Rockville Pike frequently blocks the intersection. The left turn light from



Alta Vista Road to northbound Rockville Pike is very short—this causes queuing on Alta Vista Road. She submitted a photograph (Exhibits 81(d)) to demonstrate that the intersection frequently is blocked by southbound traffic on Rockville Pike:

According to Ms. Umhofer, the congestion at the intersection also creates a nuisance for those who live along Alta Vista Road because people honk their horns. If more U-turns are added to this, it will become worse. 1/25/21 T. 197-200.

Ms. Umhofer also expressed concerns about pedestrian safety if buses and school-related traffic use neighborhood streets. She has observed vehicles pass school buses on Alta Vista Road and vehicles that speed through the neighborhood. They have children crossing Alta Vista Road to get to Alta Vista Park—she believes that more traffic on Alta Vista Road will endanger pedestrians and thwart the County's efforts to increase pedestrian safety. T1/25/21 T. 200.

Ms. Umhofer also felt that the original TMP did not make it clear that trip caps applied to the summer camp and did not contain a sufficient mechanism to count traffic for summer camps and Saturday classes. This is a major concern for residents because even though these occur during off-peak commuter traffic, it is the time when children are crossing to Maplewood Park and using the streets to learn to ride bikes, etc. 1/25/21 T. 203.

Ms. Umhofer does not believe that the condition of the residential streets through Maplewood can sustain the additional bus and vehicle traffic from the school. Her husband was informed by MCDOT that repairs would not be made in 2021 or 2022. She submitted photographs of potholes and patching on Alta Vista Road (*see, e.g.*, Exhibit 81 (e) below):



She believes that, in addition to the noise and pollution, the buses will exacerbate the deterioration of the residential streets. 1/25/21 T.

Ms. Umhofer testified that she experiences the effects of stormwater runoff from the subject property, as do others in the neighborhood. Her property abuts the subject property where it fronts on Alta Vista Road. When there is a heavy rain, there is a “flow of mud” from the subject property to Alta Vista Road. She has noticed that there is a sinkhole near a gazebo located on the school’s property. 1/25/21 T. 206.

Mr. Carl Wilkerson lives on Acacia Avenue. He testified that he has lived in the community for over 56 years. He has seen the volume of traffic in the neighborhood “mushroom” due to residential and commercial development in the area. He believes that the original Staff Report (Exhibit 56) failed to consider the impact of school traffic on the neighborhood outside of the

requirements of the LATR Guidelines. He believes that traffic volume in the neighborhood along Beech Avenue, Linden Avenue, Alta Vista Road and Pooks Hill Road is like a “fully saturated sponge” that has passed its tipping point. 1/25/21 T. 209. In his opinion, the TMP (originally proposed) is impotent and will impair residents’ safety and enjoyment of the neighborhood. *Id.* He explained that over half the streets in the neighborhood do not have sidewalks, curbs or gutters and pedestrians use to the streets to walk. Many people use the Maplewood park and recreation center for baseball, football, and other activities, such as ballet classes. Many children cross the road to reach the park and recreation center, parents walk in the street, and park on the street during sports games. 1/25/21 T. 209-210.

Mr. Wilkerson testified that the neighborhood is circumscribed by heavily congested traffic corridors. Walter Reed hospital on the former Navy medical center property has doubled in size. There is rush hour traffic to and from the NIH, traffic from the Beltway and 270 spur going south on Rockville Pike because there is no exit to northbound Rockville Pike. Anyone that needs to proceed northbound must make, in his opinion, a “dangerous” U-Turn at Alta Vista Road very near the entrance to the school or turn right onto Alta Vista Road and make a U-turn there. *Id.*, T. 210. Traffic has also increased from redevelopment of Bethesda and will increase due to the relocation of the Marriott headquarters there. Many commuters already use Maplewood streets to avoid the delays on Rockville Pike and other corridors. *Id.*

For these reasons, he believes that any TMP must not be “aspirational” but capable of being enforced. 1 /25/21 1T. 211. While consolidation into two campuses will benefit FIS, it will concentrate traffic currently diverted to other neighborhoods within the Maplewood neighborhood. He believes the traffic concerns may be resolved by an enforceable TMP that prevents school-related traffic from using Maplewood streets. He also feels that the TMP should require electronic monitoring using cameras or some other means to unequivocally measure and verify compliance

with the traffic caps that the school has committee to. Traffic counts should be reported at a minimum of every month, because once a year is too long a gap if there are problems. 1/25/21 T. 212.

He also believes that there should be financial penalties on the school for violations of the TMP. He cited as an example the TMP for Our Lady of Good Counsel High School. 1/25/21 T. 213. In his opinion, stricter penalties are required because of FIS' "historic" noncompliance with its special exception for the Forest Road campus. The special exception there prohibited summer camps. While Ms. Fabre denies that they have received any violations, people within the neighborhood receive mailings from the school inviting their children to join the summer camps. Mr. Wilkerson testified that the superintendent of the Forest Road bus operations made a presentation to their community in 2018 that buses would not use neighborhood streets. According to him, they subsequently had FIS buses "bolting" down their streets at much faster speeds than public school buses. 1/25/21 T. 213-214. He described an "unfortunate" instance where a school bus driver got out of his bus and confronted a driver that had been going in the opposite direction. While no one was hurt, he believes it representative of fact that FIS did not honor its commitments relating to bus traffic. 1/5/21 T. 214.

Mr. Wilkerson has also observed dangerous maneuvers by FIS parents dropping off at the Forest Road campus. There is typically a small back-up on Beech Avenue caused by drop-off and pick-up at the Bethesda County Day School. FIS parents attending the Forest Road campus don't want to wait and cross over to eastbound traffic to pass the queue for the Day School. For these reasons, Mr. Wilkerson strongly feels that the TMP should be enforceable and transparent. 1/25/21 T. 215.

Mr. Jeffrey Komarow testified that he lives on between Beech Drive to the north and Alta Vista Road to the south. He supported other testimony regarding the increase in traffic volumes in

the neighborhood over the years. He has witnessed the traffic conditions described by Ms. Umhofer and believes it would be very difficult for buses to make a right turn from southbound Rockville Pike to Old Georgetown Road because of the configuration of the intersection. He doesn't believe there is any reason why the buses must use Alta Vista Road—buses can proceed south to Cedar Lane, make a right turn onto Cedar Lane, and proceed north on Old Georgetown Road.

2. Post-Remand Opposition

Post-remand concerns from the opposition focus almost exclusively on the effectiveness and enforceability of the revised TMP. Ms. Umhofer remains skeptical that school-related traffic will not use residential streets, despite the efforts from the school to route traffic along Cedar Lane rather than Alta Vista Road. In her opinion, whether a circuitous route through the neighborhood will become more realistic depends on how backed up Rockville Pike becomes. The fact that the school doesn't authorize cars travelling through the neighborhood is irrelevant. People already ignore some of the turn restrictions in place in the neighborhood. One can stand at Linden and Beech in the morning where cars are not permitted to turn left and proceed to Pooks Hill and view a "regular flow" of cars turning left anyway. 6/7/21 T. 40, 80.

She also believes that the "hardship exception" to riding the bus could be used to avoid the mandatory busing requirements. 6/7/21 T. 36-40. Mr. Wilkerson points out that not all traffic will be removed from the neighborhood, as shuttle buses will use Beech Avenue, Linden, and Pooks Hill Road. *Id.*, T. 41.

Those in opposition also believe it important to have a monitoring camera on Alta Vista Road close to the intersection of Rockville Pike, rather than on the school's Alta Vista Road frontage, which is further from the intersection. This is because the closer location will capture any school-related traffic performing U-turns on Alta Vista Road to proceed north on Rockville Pike. *Id.*, T. 53. Some were concerned that Viking Road, which loops away from Alta Vista Road at the

school's frontage and then returns, could be used to avoid the monitoring camera at that location. *Id.*, T. 53-57.

Mr. Myers believes that the TMP should clarify that buses for summer camps that take day trips (for instance to the YMCA) should be required to use the same routes applicable to drop-off and pick-up. *Id.*, T. 65.

In its final comments, the Maplewood Citizens Association urges the Board to take a "go slow" approach to maximum enrollment at the school, arguing that FIS has "failed to justify" the impact traffic on residential streets for the maximum enrollment. Exhibit 135. Maplewood argues that the financial goals of the school and the "go slow" approach suggested by Maplewood can be "easily" reconciled based on Ms. Fabre's testimony that FIS does not expect to meet its maximum enrollment for several years. *Id.* While Maplewood believes that FIS will act in good faith, it believes that there are too many unresolved questions relating to enforcement of the TMP that enrollment should be phased with a cap of 500 students in the first year of operation, and additional phasing as specified by the Board of Appeals during annual monitoring over three years. *Id.* It also argues that summer camps and Saturday classes should not begin until one year after commencement of the nursery and elementary school program. *Id.*

Maplewood also argues that the TMP in this case (Exhibit 105(a)) should be administered by the Board of Appeals rather than the Planning Board. The Planning Board's Trip Mitigation Agreements primarily regulate peak hour traffic congestion—it does govern the compatibility issues addressed in a special exception. *Id.* MCA further believes that installation of the monitoring camera closer to the intersection with Alta Vista Road should be a condition of approval of the modification. *Id.*

MCA urges that bus parking be prohibited on the Rockville campus, stating that "it has shown that the noise associated with starting up school buses in the morning is incompatible with

the residential community.” *Id.* It argues that storage of school buses is not permitted in the R-60 Zone. *Id.*

Ms. Umhofer disagrees with the trip cap hours in the revised TMP. Ms. Umhofer's concern is that this has been evolving. She believes that FIS is arbitrarily “picking” the peak hour. The October 2020 TMP said that the single-highest hourly inbound plus outbound traffic would be between 6:30 a.m. and 9:00 a.m., then it became 7:30 a.m. to 8:30 a.m., which at least includes the time right before school starts. Then the cap applied to 7:00 a.m. and 8:00 a.m. The constant shifting does not give her confidence that the trip caps will be a robust picture of the total amount of traffic coming in and out of the school. For this reason, she feels that only a cap on the total number of vehicles entering and exiting the property will be effective in mitigating traffic from the school. This will enforce the original commitment to make sure that students are arriving by bus and will contain the possible traffic impact on the neighborhood as well as the possible pollution impact of vehicles coming in and out. 6/7/21 T. 259. Her major concern is that the morning trip cap doesn't include the half hour right before school starts because they've shifted the hour capped to 7:00 a.m. to 8:00 a.m. and school starts at 8:30 a.m. *Id.*, T. 259-260. She also believes that FIS has eliminated a previous commitment to number of students that will ride the bus. *Id.*, T. 269. Ms. Umhofer raises concern that when Forest Road acts as the hub, parents may arrive there and must wait for their student to arrive by shuttle from other campuses, which causes the back-up. T. 188.

Ms. Nancy Abeles, who did not appear at the public hearing before remand, is president of the HOA for Bethesda Crest Homeowner's Association. Theirs is a townhouse community in the northwest quadrant of the intersection of Cedar Lane and Rockville Pike. She requested that a representative of Bethesda Crest be made a member of the NLC because she's concerned that people will use the townhouse community to cut through to reach Maplewood streets. She is

concerned that traffic generated by the school will increase air pollution in the area. 6/7/21 T. 46-48.

Mr. Wilkerson does not find the penalties for violation of the TMP stringent enough to ensure compliance. He suggests using penalties, which he argues have a financial impact on the school, like the penalties in the TMP for Good Counsel High School. This was recommended by MCDOT as well. 6/7/21 T. 255. These and other neighborhood concerns, and the Petitioner's responses, are described in detail in Parts IV.A and B of this Report.

III. FINDINGS AND CONCLUSIONS

A. Storage of Buses in the R-60 Zone

As a preliminary matter, Maplewood contends that on-site parking of school buses on the Rockville Pike campus is not permitted in the R-60 Zone. It argues that the buses fall within the definition of "heavy commercial vehicles", which the 2004 Zoning Ordinance does not permit in the Zone. Exhibit 86. MCA cites to the legislative history of ZTA 09-03, adopted on April 24, 2011, that deleted the definition of "Commercial vehicles" from the Zoning Ordinance and added definitions of "light commercial vehicles" and "heavy commercial vehicles". The ZTA defined the latter as (Exhibit 86):

Any motor vehicle, tandem axle trailer, or semi-trailer used for carrying freight or merchandise, or use in the further of any commercial enterprise that is:

(a) greater than 10,000 pounds of gross vehicle weight;

* * *

(c) 21 feet long or longer, measured from the extremes of the vehicle, including any object on the vehicle; or

(d) more than 8 feet high, with properly inflated tires, measured from the ground to the highest part of the vehicle, including any racks but excluding any antennas.

As further support, Maplewood adds that the changes made by ZTA 09-03 should be read in conjunction with the pre-ZTA definition of “commercial vehicle”, which explicitly included “passengers” in the items conveyed (*Id.*):

Commercial vehicle: A duly licensed and registered vehicle used to transport passengers or property to further a commercial enterprise. A commercial vehicle must not be used as an office or have a customer entry for a retail transaction... (emphasis in original).

Maplewood argues ZTA 09-03's legislative history is “devoid” of any evidence that the Council intended to change the definition of commercial vehicle by excluding those that carried passengers. Exhibit 108.

FIS acknowledges that its buses meet the physical characteristics of “heavy commercial vehicles” adopted under ZTA 09-03. It argues instead that (1) school buses do not come within the “plain language” of the definition of “heavy commercial vehicle” in the ZTA, and (2) that definition amended in ZTA 09-03 explicitly does not include “passengers”. Exhibit 109. Citing to the rules of statutory construction, FIS believes that the plain language of the amendment excludes passenger buses. *Id.*

The Hearing Examiner finds that ZTA 09-03 did *not* intend to prohibit the parking of school buses on-site under a special exception for a private educational institution. The main thrust of the problem addressed by ZTA 09-03 was clearly heavy vehicles associated with commercial enterprises, such as tow trucks. The failure of the legislative history to address school buses doesn't support Maplewood's argument that the law was intended to *include* school buses—failure to even mention school buses better supports the Petitioner's argument that the Council did not intend to target this situation in the ZTA.

The rules governing statutory construction are well-known and set forth in the Petitioner's Reply Memorandum. Exhibit 109. The Hearing Examiner must construe all provisions of a statute

together. The 2004 Zoning Ordinance, as amended by ZTA 09-03, prohibits parking of heavy commercial vehicles as an *independent* use in the R-60 Zone. It says nothing about the parking of school buses accessory to a special exception permitted in the R-60 Zone.

Further, the Hearing Examiner agrees that deletion of the word “passenger” from the definition of “heavy commercial vehicle” supports Petitioner’s interpretation. When considering the legislative history, the Hearing Examiner may not presume that deletions are meaningless as to the Council’s intent. Nor has Maplewood demonstrated why the private educational institution should be considered a “commercial enterprise” as that term is used in the Zoning Ordinance. Even if the school were for-profit, which is not, there is nothing in the legislative history that would relate it to a land use categorization of “commercial enterprise”.⁸

B. Standards for Evaluation

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The 2004 Zoning Ordinance establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Planning Staff concluded that Petitioner will have

⁸ The 2014 Zoning Ordinance classifies a private schools as a “civic and institutional” use. *See, 2014 Zoning Ordinance*, Section 59.3.1.6.

satisfied all the requirements to obtain the special exception, if it complies with the recommended conditions (Exhibits 56, 112).

The standard for evaluation prescribed in Zoning Ordinance §59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” § 59-G-1.2.1. 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 unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Planning Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a private educational institution use. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

In this case, Staff suggested the following inherent characteristics associated with the use (Exhibit 56, p. 33): (1) buildings with an institutional design dictated by licensing and building code requirements, (2) playgrounds and athletic fields, and (3) parking facilities. *Id.*

The Hearing Examiner finds that traffic to and from school is an additional inherent characteristic, rather than simply “parking facilities”. While Staff does not identify any non-inherent characteristics of the proposed use, members of the community pointed out that this special exception operates essentially in tandem with FIS’ Forest Road campus within the same neighborhood, but not a part of this special exception, at least in terms of traffic operations. Thus, both campuses have two separate special exceptions that impact the same roads of the community and have been coordinated for transportation purposes. The Hearing Examiner agrees that, vehicle and bus trips are inherent to a private school, tandem operation is a non-inherent physical and operational characteristic of the proposed use.⁹ The question remains, then, whether these non-inherent characteristic warrants denial of the conditional use. Staff did not address this issue on remand.

The presence of a non-inherent characteristic does not require denial of the proposed use if the Petitioner can demonstrate that adverse impacts from the characteristic can be mitigated to ensure the use is compatible with the surrounding area. In this case, the major question is whether the TMP will accomplish its goal to remove much of the bus and vehicular traffic from neighborhood streets and to cap traffic during peak hours.

The Hearing Examiner finds that the Petitioner has met its burden to demonstrate that school-related traffic between the Forest Road campus and the Rockville Pike campus, and traffic generated solely by the Rockville Pike campus, will not adversely impact the Maplewood and Locust Hill neighborhoods, *with the conditions recommended in this Report*.

⁹ If the Board of Appeals disagrees with the Hearing Examiner’s conclusion that tandem operation of two special exceptions is a non-inherent characteristic, then the Board should consider her recommendations as part of the compatibility of traffic from the use, as required by Section 59-G-1.23(a)(4), (5), (8) and (9)C.

The revised TMP removes most traffic heading west and north from the Maplewood and Locust Hill neighborhoods, requiring it to proceed west on Cedar Lane and then north on Old Georgetown Road, thus mitigating the impact of school traffic on many of the roads that were of concern during the initial public hearing. It does not eliminate all traffic within the neighborhoods, as shuttles from the Forest Road Campus to the Rockville Pike campus will use Beech Avenue, turn left onto Linden Avenue, turn right onto Pooks Hill Road and then turn right to proceed south on Rockville Pike and into the school's entrance. Because of concerns about the safety of buses traveling on residential streets, the Hearing Examiner requested the Petitioner to provide information on both the size of the buses and the details of the neighborhood streets it intended to use. Petitioner provided this information on all routes originally proposed (Exhibit 95, p. 2, below):

	Beech Ave	Alta Vista Rd	Linden Ave	Linden Ave	Locust Ave	Alta Vista Rd	Pooks Hill Rd
Classification	Major Collector	Local	Major Collector	Local	Local	Local	Major Collector
Width	25'	25'	34'	25'	25'	34'	35'
Parking	No except in short 34' wide section east of Wildoak Dr	Yes, permit parking and no parking during school hours	Yes	Yes, permit parking only	Yes, permit parking only	Yes	Some, no parking during school hours on north side
Sidewalks	Yes, north side only in some locations	Yes, one side only	Yes	No, except on east side north of Alta Vista Dr	No	Yes	Yes
Curb and gutter	Sporadic	Sporadic	Yes	Only north of Elsmere Ave	No	Yes	Yes

FIS also provided cross-sections for the shuttle routes currently proposed—Beech Avenue, Linden Lane, and Pooks Hill Road. Cross-sections of this proposed route (Beech, Linden, and Pooks Hill (Exhibit 95, p. 3) are shown on the following page.

Ms. Wagner testified that all three of the shuttle route streets currently have Ride-On bus service and can accommodate the shuttle buses. She testified that the shuttle buses are 32.5 feet long and 8 feet wide without mirrors. They are 10 feet wide with mirrors and 12 feet wide with the

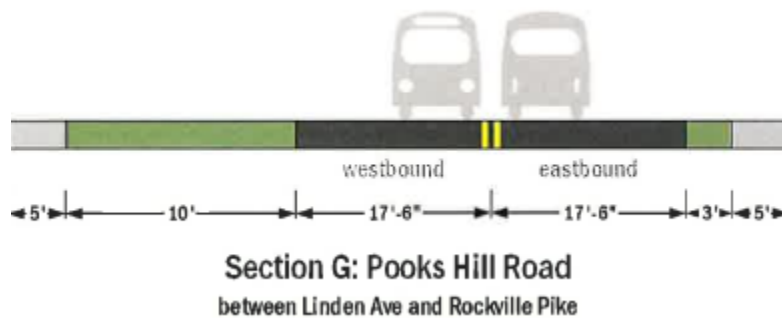
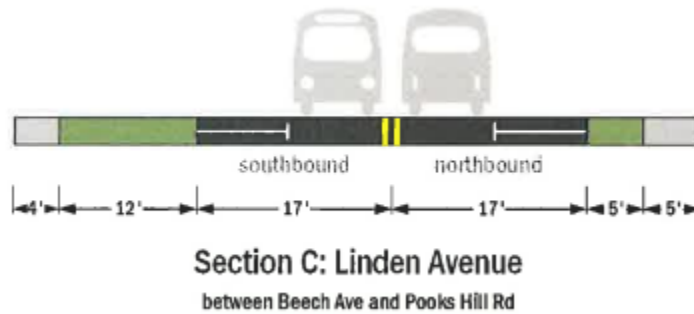
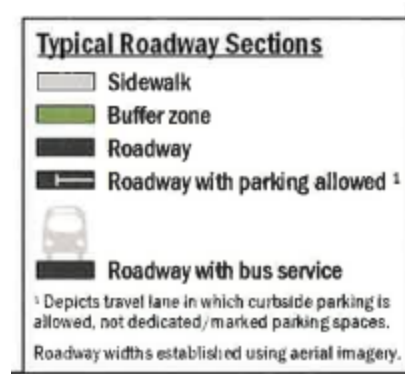


Exhibit 95, p. 3

stop sign. 6/7/21 T. 148. Based on this, the evidence supports a finding that the roads proposed for the revised shuttle routes can support the buses to be used for shuttle service, avoid Maplewood Park, and have sidewalks for pedestrians.

The major questions posed by those in opposition are whether the TMP will effectively cap trips and whether traffic will adhere to the restricted routes, minimizing impact on the neighborhood.

As to the first, Ms. Umhofer believes that the revised TMP does not effectively mitigate the number of trips impacting the neighborhood because it does not impose total caps on the daily number of school-related trips. FIS responds that it cannot quantify the number of trips that will impact the neighborhood because neighborhood families enrolled in the school vary from year to year.¹⁰ FIS does state that there will be a total of 12 shuttle bus trips using the Beech/Linden/Pooks Hill route during the academic day.

The evidence of record doesn't support a finding that a total daily trip cap is necessary to accomplish the primary goals of the special exception TMP, which are to reduce traffic during peak hours and minimize school-related traffic on neighborhood streets. FIS produced estimates of the number of trips and students arriving and departing during the school's *peak periods* by mode. The peak periods studied cover 7.5 hours of the schools operating day—3 hours in the morning, 2 hours from 3:00 p.m. to 5:00 p.m., and 2.5 hours from 5:00 p.m. to 7:30 p.m. These demonstrate that the almost all students are at school by 8:30 a.m. While the most students arrive between 8:00 and 8:30 a.m., 82.2% of these arrive by bus, significantly reducing the number of trips during this time frame.¹¹ Given the projected percentages of students that are estimated to arrive by bus and the projected times of arrival, it is unlikely, as Ms. Umhofer argues, that the number of individual vehicles arriving between 8:00 a.m. and 8:30 a.m. will create a loophole that will swallow up the trip caps. This is supported by the operational structure of a private school. The Hearing Examiner does not find it probable that a significant number of trips will occur outside the peak hours, given that they mirror the school's inherent structure of the start of school, early afternoon dismissal, and dismissal after after-school activities. The Hearing Examiner can see no reason why a total daily

¹⁰ Families within the neighborhood are not required to take the bus. FIS reports that 55 families in the neighborhood (a total of 91 children) have children enrolled in the school. Exhibit 95, p. 6.

¹¹ FIS estimates that 330 trips will be generated between 7:00 a.m. and 8:00 a.m., while 148 trips will be generated between 8:00 a.m. and 8:30 a.m. Exhibit 63.

trip count is necessary to ensure caps during peak hours. FIS proposes that a condition adding to the TMP a requirement that "Elementary students participating in the before-school care program are required to arrive before 8:00 a.m." As this does address Ms. Umhofer's and can be easily verified by the school, the Hearing Examiner recommends that this be added to the TMP.

Nor does the evidence here support a finding that a cap on the total number of daily trips from the school would impact the neighborhood any differently than TMP as proposed. The TMP restricts the routes buses and passenger vehicles may take at all times of day. Thus, the imposition of daily trip cap does not change this requirement. It may be that Ms. Umhofer infers that an unlimited number of daily trips would increase violations of the TMP, but there is no support for this in the record and is that concern is speculative.

Ms. Umhofer also questions the credibility of the FIS' representations regarding traffic. She argues that FIS' original TMP mandated that 82% of elementary school students arrive by bus and 30% of nursery school students arrive by bus. In her opinion, these mandates have been removed from the revised TMP. She also argues that the hours the trip caps apply have been arbitrarily altered from 7:30 a.m. to 8:30 a.m. (the peak hour of commuting traffic in the area) to 7:00 a.m. to 8:00 a.m. by FIS. The record doesn't support these arguments. While Planning Staff did recommend a condition imposing that minimum percentages of students would be bused, the original TMP did not. As Mr. Andres' testimony indicates, the percentages of those being bused were estimates based on the TMP requirement that all elementary school students and children above 5 years old take the bus unless they fall within one of the 5 exceptions to the mandate. *Compare*, Exhibits 64(1), pp. 2-3; Exhibit 105(a), pp. 2-3. The TMP trip caps, which have not changed, will necessarily force a high percentage of bus ridership, although the exact percentages may be slightly different from year to year.

Nor does the Hearing Examiner find that FIS arbitrarily selected the hours to which the trip caps apply. The table submitted by FIS comparing peak hour trip generation by FASEB notes that the 7:00 a.m. to 8:00 a.m. peak hour was determined by SHA. Exhibit 63, p. 2. Given that the peak hour required by SHA conforms to the school's peak hour traffic generation, the record does not support a finding that the morning peak hour subject to trip caps is arbitrary.¹²

There is nothing in the record to support an argument that the five exceptions to taking the bus might also swallow up or negate the trip cap. Ms. Fabre testified that the "hardship" exception is not financial but typically based on health reasons and certified by a doctor's note. According to her, the school offers scholarships and financial aid to help with those riding the bus. The concern about the "hardship" exception is speculative and without basis in this record.

The second major issue is whether the TMP commitments can be effectively monitored and enforced. The Hearing Examiner recognizes the increased traffic pressure on the neighborhood that has resulted from external developments over the years, attested to by Mr. Myers and Mr. Wilkerson and memorialized by the turn restrictions in the Master Plan. For that reason, she also recognizes the importance that the TMP work as proposed.

The Hearing Examiner finds from the weight of the evidence that TMP will significantly mitigate traffic on neighborhood residential streets, and in fact, may reduce the overall traffic levels from those generated by FASEB.¹³ The TMP made a condition of this special exception incorporates a three-pronged approach: Parent and staff education, monitoring and enforcement. Education will include packets sent to all students at the beginning of each semester, designation of a Student Transportation Coordinator to monitor, market and educate parents on the restrictions,

¹² Ms. Umhofer also contends that a cap on the total number of daily trips is necessary to prevent excessive pollution. This is discussed in Part IV. B. of this Report.

¹³ The Hearing Examiner recognizes that some, but not all, of FASEB's traffic had a direct egress to Pooks Hill Road, which did not affect the Maplewood neighborhood. However, it had another access/egress for 80 vehicles directly onto Alta Vista Terrace.

publication on FIS' website, and inclusion of the TMP requirements in student enrollment contracts. Thus, unlike the traffic generated by the general public, school-related vehicles will be aware of the restrictions and direct penalties for failure to comply with the TMP. To ensure that parents are clear from the educational materials that the TMP is mandatory, and that it is constantly available in updated format, the Hearing Examiner recommends the following modifications to the educational requirements of the TMP (Exhibit 105(a)):

- Delete the word "guidelines" and/or "policy" or "policies" wherever they appear in the TMP and substitute the word "requirement" or "requirements" if plural.
- In the first bullet at the top of page 4 of the TMP, delete the phrase "policies and guidelines as necessary", and substitute the phrase "TMP requirements" as follows:
 - The school's weekly newsletter will include transportation updates reminding parents and staff of ~~policies and guidelines as necessary~~ **TMP requirements**.

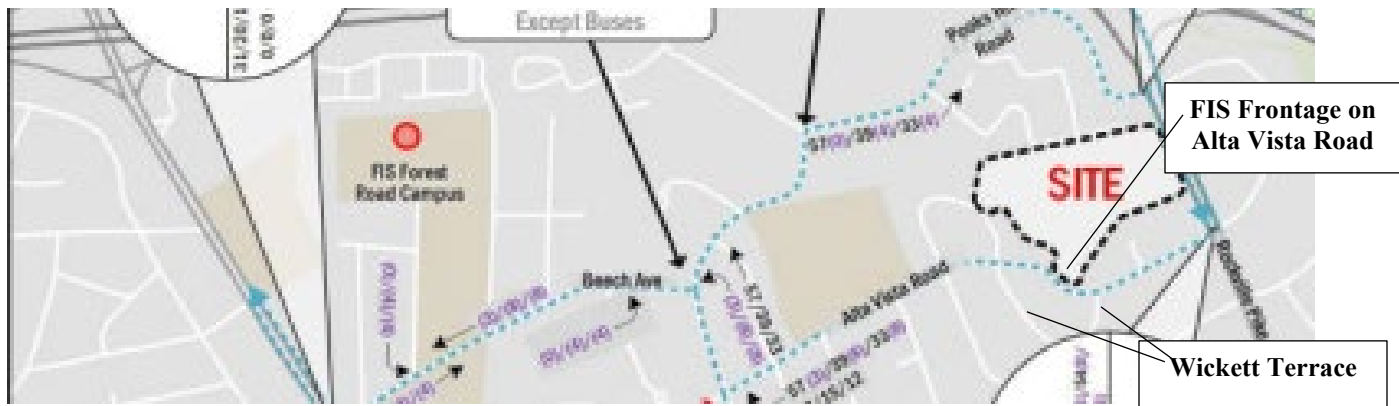
The Hearing Examiner could find no educational requirements specifically targeted for summer camps or the proposed Saturday classes. She recommends a condition of approval requiring that the first four bullets under the heading "Outreach and Education" on page 3 from the TMP Exhibit 105(a) also be applicable to Saturday classes and all sessions of summer camps.

Finally, the Hearing Examiner recommends that the Outreach and Education portion of the TMP explicitly require the school to add to a bullet under that section as follows (Exhibit 105(a), p. 3):

- Avoid making any U-turns on Alta Vista Road.

FIS asserts that these U-turns are already prohibited by the language disallowing travel on Alta Vista Road. The Hearing Examiner agrees but finds that education on this turning movement should be explicit. Drivers of passenger vehicles may assume that the prohibition applies to using Alta Vista Road to "cut-through" to Old Georgetown Road, rather than making a brief movement to turn around. Requiring outreach on this as specific restriction of the TMP will clarify this.

The Hearing Examiner also finds that the “real time” monitoring of violations via the “School Pass” or similar digital system demonstrates that most violations of the TMP will be captured. The school’s ability to place a camera along its frontage on Alta Vista Road allows it to monitor in real time whether students are (1) not riding the bus route assigned or (2) using routes through the community that are prohibited by the TMP. Those in opposition challenge the effectiveness of this by arguing that vehicles could possibly avoid the camera on FIS’ Alta Vista Road frontage by bearing left on Wicket Terrace and turning to turn right on Viking Road, which loops back to Alta Vista Road west of FIS’ frontage. The Hearing Examiner could not find an exhibit in the record showing Viking Road,¹⁴ but the following exhibit (Exhibit 63, p. 8) shows Wicket Terrace, from which Viking Road connects to Alta Vista Road:



To deny a special exception, those in opposition must show that there is a probability rather than simply a possibility that the adverse consequence will occur. *Miller v. Kiwanis Club of Loch Raven, Inc.*, 29 Md. App. 285, 296 (1974). Balancing the weight of evidence before her, the Hearing Examiner finds that the possibility of this maneuver is somewhat speculative. Even though possible, Ms. Wagner provided an expert opinion that use of Viking Road is not likely to occur because it requires several additional turning movements which would cause delay. 6/7/21 T. 57.

¹⁴ Wicket Terrace is a horseshoe that connects to Alta Vista Road in two places. Viking Road branches off Wicket Terrace on the southern side of the loop and connects with Alta Vista Road east of the second intersection of Wicket Terrace and Alta Vista Road.

Thus, the evidence does not demonstrate that avoidance of the TMP by avoiding FIS' frontage on Alta Vista Road is probable.

While FIS asserts that the opposition's distrust of the TMP is mere "skepticism" (Exhibit 125), there is one movement prohibited by the TMP that both parties agree cannot be monitored by a camera along FIS' frontage on Alta Vista Road--vehicles making U-turns mid-block on Alta Vista Road closer to its intersection with Rockville Pike in order to proceed north on Rockville Pike. Mr. Myers testified that MCDOT has informed him that mid-block U-turns are not illegal; Ms. Wagner explained MCDOT will not install signage to restrict U-turns because that would be confusing for other drivers that would be anticipating U-turns at that location or U-turns being performed mid-block. 6/7/21 T. 225. Thus, a prohibition on U-turns on Alta Vista Road would prohibit what is otherwise a legal maneuver.

The Hearing Examiner believes Ms. Umhofer that these movements occur, as evidenced by the photographs she submitted. The record here, however, has no quantification of how often these U-turns occur or the severity of the safety issue imposed. While Ms. Umhofer testified that U-turns on Rockville Pike at the intersection of Alta Vista Road (to head north on Rockville Pike) are "frequent", she testified that mid-block U-turns on Alta Vista Road "sometimes" occur. On remand, FIS submitted accident data for roads within the neighborhood. This data reveals that there was one motorist involved crash per year between 2015 and 2017, and none in 2018 to date. Exhibit 95, p. 20. No accidents were reported at Elsmere Road.

Based on this evidence, the Hearing Examiner does not deny this application because the present inability to digitally monitor U-turns on Alta Vista Road. Because she understands, however, that (1) increases of this turning movement could be disruptive and possibly dangerous to traffic on Alta Vista Road, (2) a camera near the intersection would eliminate the possibility that school-related traffic attempting to use Alta Vista Road will escape the monitoring system, and (3)

the Petitioner has already been pursuing this option, the Hearing Examiner recommends the following conditions of approval:

- Within 30 days after issuance of a decision approving the modification application, Petitioner must apply for a permit from DPS to install a monitoring camera on Alta Vista Road as near as permitted to its intersection with Rockville Pike;
- If permitted by DPS, the digital monitoring device must be installed within 30 days of the earlier of permit approval unless a greater time is required by DPS or by issuance of the Board of Appeals decision in this case.

MCA urges a “go slow” approach by phasing in enrollment over several years, citing “unresolved issues” in the TMP. Exhibit 135. It also argues that a condition of approval should require installation of a traffic camera at the intersection of Alta Vista Road and Rockville Pike.

The Hearing Examiner finds that the evidence presented does not warrant either condition (although she does recommend making compliance with the TMP a condition of this special exception along with extended monitoring by the Board of Appeals). A close review of the record indicates that there are only two issues that are possibly “unresolved” by the TMP—both caused by the lack of a monitoring camera on Alta Vista Road at its intersection with Rockville Pike. Compliance with the trip caps can be measured from the camera along Rockville Pike. A camera on Alta Vista Road closer to the intersection with Rockville Pike would capture vehicles making U-turns on Alta Vista Road and eliminate the possibility that traffic could avoid the camera placed on FIS’ frontage further west of the intersection.

Because not every violation can be presently monitored, the Hearing Examiner agrees with MCA that the Board of Appeals, rather than the Planning Board, should have jurisdiction over FIS’ compliance with the TMP. MCA correctly states that trip mitigation agreements administered by the Planning Board focus on the impact of a use on roadway congestion during peak hours, while the special exception process addresses the compatibility of the use. Exhibit 135. It also correctly points out that the Board already has jurisdiction over the special exception for the Forest Road

campus. *Id.* As it is clear from the record that transportation between the two campuses are inextricably intertwined, that Hearing Examiner agrees that the Board is better able to provide coordinated oversight of both special exceptions. For that reason, she recommends that compliance with the TMP be made a condition of approval on the special exception, and that the Board of Appeals should retain jurisdiction of the special exception for a period of two years. This condition requires FIS to submit a report to the Board of Appeals and the NLC informing of compliance with the trip caps, number and type of violations, all enforcement and penalties it has imposed, the most recent available accident data for the Maplewood and Locust Hill neighborhoods, and any recommendations of FIS and the NLC regarding the TMP. The report should be submitted 60 days prior to the Board of Appeals annual review. As a condition of the special exception, non-compliance with the TMP will be a violation of the special exception approval beyond the two-year monitoring period, enforced pursuant to the procedures in the 2004 Zoning Ordinance. *See, 2004 Zoning Ordinance*, §59-G-1.3. Should FIS be successful in installing a camera on Alta Vista Road close to the intersection with Rockville Pike, the Hearing Examiner recommends reducing the time the Board retains jurisdiction to one year.

The final major issue involving the TMP is whether penalties are sufficiently strict to ensure compliance. Much of the opposition to the penalties proposed in the TMP stems from skepticism that FIS will comply with its terms, based on allegations that FIS has not complied with the Forest Road special exception in the past. Mr. Wilkerson testified that summer camps were specifically prohibited at Forest Road, but FIS conducted them anyway. Ms. Fabre counters that the school has never received a violation of the special exception. 6/7/21 T. 80-84. The Hearing Examiner will not speculate as to these events. Because this background isn't clear from this record, the Hearing Examiner does not presume FIS will violate this modification, if approved. Compliance with the

TMP incorporated by condition means that non-compliance with the TMP will be a violation of the special exception, regardless of whether FIS informs the community or not.

Some individuals in opposition argue that the Hearing Examiner should require the TMP to have the same enforcement penalties as the special exception in Our Lady of Good Counsel. MCDOT does as well. Exhibit 105. Mr. Wilkerson believes that these penalties should impose a financial hardship on the school. The Petitioner argues that these penalties are already included in the TMP or do not apply to the situation here. Mr. Wilkerson's summary of Good Counsel's conditions is in black and the Petitioner's responses in red, underscore in original (Exhibit 137):

- A financial penalty for exceeding the daily personal vehicle trip caps, through a requirement to provide free bus transportation to the school for all students; Daily vehicle trip caps were implemented at Good Counsel to address the Good Counsel Traffic impacts on Old Vic Road, which is a local roadway that carried 100% of all of the traffic to the school, because the school did not have any access available from any other roadway. Therefore, 100% of the traffic was required to use the neighborhood roadway. Additionally, since Good Counsel is a high school, the school generates significant traffic volumes outside of the typical elementary school arrival and dismissal periods because of the numerous high school and extra-curricular activities and interscholastic sports competitions that draw outside visitors.
- In contrast, the primary access for FIS is on Rockville Pike, with no access from any residential streets. FIS has committed to restricting FIS Rockville Pike vehicles from using Maplewood neighborhood streets unless the FIS family lives in the neighborhood. Additionally, the FIS Rockville Pike campus serves lower school students that will not have interscholastic sports events that would draw outside visitors to the school.
- A financial penalty for exceeding the daily personal vehicle trip caps, through a requirement to provide additional stops on the bus route to secure more bus riders; See response above related to why daily trips caps are not relevant for FIS given its access location on Rockville Pike and its activity level associated with being a lower school, not a high school.
- A requirement "to send out a weekly web blast with information on how to sign up for the bus." In the same way, FIS could be required to send out a weekly web blast reminding parents, staff and students that driving on Maplewood streets is fully prohibited; Page 8 of the TMP details how the

school's weekly newsletter will include transportation updates reminding parents and staff of the TMP policies and guidelines, as necessary.

- Good Counsel was encourage[d] [sic] to develop incentives to expand participation in the bus ridership, including free pick up at local Park and Ride lots, and having existing bus routes with available seats make a last stop in the school's vicinity to provide free rides prior to arriving at the school; The Good Counsel TMP identified incentives for parents to choose busing as an option to get to Good Counsel. The FIS TMP requires mandatory busing for parents for a significant majority of the students at the Rockville campus. The only limited exceptions are children under 5 years old, siblings of those who are under 5 years old, before and after school care, and limited special hardship exceptions. As for faculty and staff, FIS will provide a shuttle to the Grosvenor Metro Station for faculty and staff if the trip caps are not met. Multiple measures to encourage alternative non-personal vehicle commuting by staff and faculty are detailed on page 19 of the TMP.
- Good Counsel agreed to require construction contractors not to access Bachellors Forest Road. In a parallel fashion, the FIS special exception should require the school to contractually require contractors and delivery companies not to use any streets in the Maplewood neighborhood; FIS cannot control independent companies and contractors who are conducting other deliveries and performing professional services in the neighborhood and general vicinity.
- Good Counsel was required to conduct counts of the number of students, faculty and staff exiting from each vehicle in excess of the driver at the parking lots; FIS will know how students are getting to school based on their initial registration at the beginning of the school year. FIS will also know how faculty and staff arrive at the school at the beginning of the school year.
- Good Counsel was required to count the number of students, faculty and staff exiting the public busses; FIS will provide the number of students, faculty and staff arriving by public transportation.
- All trip counts were required to continue in perpetuity in the Good Counsel special exception; Trip counts are agreed to in perpetuity on page 16 of the FIS TMP.
- Good Counsel was required to pay the cost of a consultant hired by the Planning Board to conduct quarterly audits to monitor trip counts provided by Good Counsel to ensure achievement of the trip mitigation goal. As part of the TMP, FIS will need to hire a consultant to prepare the annual monitoring reports in order to meet the requirements of the TMP, especially

since the information being gathered is technical in nature. FIS will also pay an annual subscription fee for the technology platform (SchoolPass) at both the Rockville Pike Campus, as well as at the Forest Road Campus, to have cameras collecting real time vehicle counts and issuing TMP violations. FIS investing approximately \$50,000 to initiate and implement this program next year.

The goal for enforcement and penalties in the TMP is to ensure compliance. The Hearing Examiner agrees with the Petitioner that many of the Good Counsel conditions address specific problems at Good Counsel that are not necessarily applicable to the school. Nor is there presently evidence now whether or how the goals in this TMP, which are not identical to Good Counsel's, will or will not be met. For instance, there is no evidence that providing additional bus stops will or will not encourage individuals to ride the bus. Some of the penalties listed above are already contained in the TMP; the Hearing Examiner has already recommended strengthening the weekly news "blasts" by removing the phrase "as necessary" to make them mandatory every week. Similarly, the TMP already requires the school to use education and incentives for students and faculty to use the buses. Without more information on whether or by what means violations may occur, the Hearing Examiner is reluctant to impose penalties that may or may not effectively resolve the violations.

The Hearing Examiner does find the penalties for non-compliance with the TMP could use some bolstering to ensure (1) that parents, faculty and students understand the importance of complying with the TMP, and (2) that they understand that penalties will actually be imposed. To this end, the Hearing Examiner recommends a condition modifying the language for 4th violations during the academic year (page 16 of the TMP) as follows:

4. Fourth Violation

- a. School Day: A fourth violation ~~will be grounds for~~ will result in a 3-day suspension from school.

At the public hearing, Ms. Fabre agreed to a condition making the penalty for a fifth violation expulsion from school. 6/7/21 T. 82. The Hearing Examiner recommends adding this penalty to the academic year, summer camps, and Saturday classes because there is no reason to assume that a parent or student that has breached the agreement four times already will not continue to do so. It also allows the same set of escalating violations to educate and warn parents and students before requiring expulsion. The Hearing Examiner recommends adding a 5th penalty requiring expulsion from the relevant program to both Saturday classes and summer camps:

5. Fifth Violation: A fifth violation will result in expulsion from the program.

For the reasons previous stated, the Hearing Examiner also recommend adding a sixth violation of the TMP (Exhibit 105(a), p. 15) explicitly prohibiting U-turns on Alta Vista Road. The purpose is to remove any questions that these movements are prohibited, even though they may not be digitally monitored at this time.

There is nothing in the record to support FIS' assertion that it can do nothing to control the routes contractor vehicles. While it may be difficult to control services like Fedex or UPS, the school should at least include that clause in their contracts for trash and food services. A condition requiring a Petitioner to include these types of services in their contracts with service providers has been done several times, as evidenced by the Good Counsel agreement.

With these added conditions related to the Board of Appeals jurisdiction, monitoring, penalties, and outreach, the Hearing Examiner finds that the TMP proposed will not have an adverse impact on the surrounding area.

C. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's documentary evidence and testimony provide sufficient

evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions:

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: Private educational institutions are permitted by special exception in the R-60 Zone under Zoning Ordinance §59-C-1.31.

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use would comply with the standards and requirements set forth for in Zoning Ordinance §59-G-2.19, as detailed in Part III.D. of this report.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Staff advises that the governing master plan is the *1990 Bethesda-Chevy Chase Master Plan* (Master Plan or Plan). Staff concluded that the proposed application is consistent with the Master Plan for the following reasons (Exhibit 56, p. 26M):

The proposed use is consistent with the Master Plan, in terms of the nature and appropriateness of the use, and it will be compatible with other adjacent uses including the residences in the Maplewood Estates subdivision. The Master Plan provides area-wide land use guidelines in order to address land use issues along

major highways, including special exceptions (p. 30). The area land use guidelines state that each parcel should be evaluated in the overall context of the Master Plan objectives, and compatibility with the surrounding community in terms of the height and bulk of the structures, buffering by vegetation, topography, and visibility of the use, highway access and buffering, proximity to public or quasi-public uses, proximity to community services or transit, and the comparative density of nearby properties. These issues are stated as the rationale for each recommendation in the Master Plan, as they relate to the "Planning Area" and compatibility with nearby properties.

The Master Plan supports the continued existing of the R-60 zone for the Subject Property and surrounding neighborhood. The use is intended to serve the community and meets the Master Plan objectives. Private Educational Institutions are allowed by special exception in the R-60 zone, and the Master Plan specifically recommends that the FASEB should continue the existing use because it is considered a long-term stable use that is viewed as a community resource. Aside from supporting the continued use of the Site as a Private Education Institution, the Master Plan does not have any site-specific recommendations for the Subject Property.

The Subject Application, although different from FASEB's historic use of the Site, continues to meet the overall vision of the Master Plan by bringing a long-term stable use to the Site and retains the existing vegetation located along Rockville Pike and the Site periphery. This vegetation helps screen the Special Exception use from the adjacent residential neighborhood and reinforces the "green boulevard" character of Rockville Pike. Additionally, the current proposal calls for this vegetation, and any supplemental/replacement landscape or variance mitigation plantings to be protected in Category I and Category II Conservation Easement. The incorporation of plantings within easements along the Site boundaries, allows for the removal of any non-native, invasive plantings and will help the vegetation continue to grow healthily and remain in place despite the proposed change in the use of the site.

Mr. Myers testified that the Plan recommended turn restrictions at Beech and Linden Avenues and Pooks Hill Road at Linden Avenue designed to prevent traffic from cutting through the neighborhood between Rockville Pike and Old Georgetown Road. 1/25/21 T. 242. Staff reports the same but goes further to state that the Master Plan wasn't concerned about cut-through traffic on Alta Vista Road because it doesn't connect to Old Georgetown Road. Exhibit 56, p. 26.¹⁵

¹⁵ Mr. Myers testified that the neighborhood could change these restrictions if they wished. Mr. Ron Welke, an expert transportation engineer and planner, testified that the community could not use the Executive Regulations permitting this to restrict school traffic because it is not technically "cut-through" traffic, as both campuses are within the same neighborhood. 1/25/21 T. 151. As the TMP prohibits school-related traffic from using Alta Vista Road, the Hearing Examiner does not decide the issue.

Conclusion: The Hearing Examiner generally agrees with Staff's finding that the proposed modification meets the goals of the Master Plan, although she takes no position on whether the Plan was not concerned about cut-through traffic on Alta Vista Road. The Master Plan's guidelines for special exceptions (*Plan*, pp. 31-32) were intended to strengthen surrounding residential communities. These guidelines discourage (2) special exceptions for office uses, (2) over-concentrations of commercial service or office uses, (3) incompatible exterior alterations to existing buildings, and (4) front yard parking areas. The Hearing Examiner finds that the Petitioner has demonstrated that it meets these guidelines. The exterior alterations to the existing buildings proposed by FIS are minor and Ms. Schmickel provided expert testimony that they are compatible with the existing Georgian-style architecture. The proposed facility will retain a significant amount of green area and existing landscaping, will supplement that landscaping in open spaces, and will preserve forested area through conservation easements. Finally, the TMP routes traffic away from Alta Vista Road and reduces the existing overall trip generation from the property. For these reasons, the Hearing Examiner finds that the proposed use is consistent with the recommendations of the Master Plan.

- (4) *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.*

Conclusion: Planning Staff concluded that the special exception application will be in harmony with the general character of the neighborhood for many of the same reasons it is consistent with the Master Plan. Exhibit 56, pp. 35. The bulk of the public hearing testimony focused on the compatibility of school-related traffic, which has already been addressed. The campus has been part of the community since 1955 and the existing buildings were built in the 1960's and 1980's. The proposed new structures and exterior alterations are minor. Mr. Norden testified that the landscaping

will preserve the “campus-like” feel of the property. FIS has provided the full parking setback for the drive aisle from Mr. Seid’s property and has addressed glare from headlights and noise from traffic by providing a solid, 6-foot tall fence.

- (5) *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.*

Conclusion: The Hearing Examiner has already addressed the impacts of school-related traffic on the neighborhood and addresses noise from the proposed use in the next paragraph. After the additional review on remand, the Hearing Examiner finds that the proposed use will not be detrimental to the surrounding area. Initially, some in the community complained of stormwater drainage from the property adversely affected their properties. The revised stormwater manage plan significantly reduces the existing runoff, improving the drainage over FASEB’s use. Of concern to the Hearing Examiner initially was the proximity of the drive aisle to Mr. Seid’s property, due to the potential for noise and the impact of vehicle headlights. FIS has withdrawn its requested waiver of the parking setback from Mr. Seid’s property and amended its landscape plan to include a solid fence and additional landscaping to prevent glare.

- (6) *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.*

On remand, FIS submitted a report and expert testimony that noise from the play areas and buses will be within the limits permitted by the County Code. Mr. Douglas Koehn, an expert in acoustics, testified that the County Code limits noise to 65 dBAs during the day and 55 dBAs at

night. As a reference, active conversation is in the 60-64 dBA range.¹⁶, ¹⁷. He testified that conditions at the Rollingwood campus permitted his firm to measure the noise levels of children playing on which to base their analysis. His firm took measurements of approximately 20 students playing from about 150 feet. They eliminated the peaks and “tips” in the noise level to determine the average level for the children playing. 6/7/21 T. 99.

Mr. Koehn testified that you may use information gathered at one site to extrapolate to various scenarios. The decibel scale is logarithmic. If you have 40 students, sound will be 3dB louder because you have doubled the acoustical energy. A 10dB increase in energy is perceived to be twice as loud. T. 99-100. From their base measurement at Rollingwood, they assumed a maximum of 500 students playing in the play areas closest to the adjacent properties. When all these play areas were combined, the average decibel level at the nearest property line was about 64 dB, just below the maximum permitted by the Code. That, however, assumes that each play area is at maximum capacity. If you take a “more realistic” estimate that the play areas will be at 25% capacity, the average noise level falls to about 57 dB at the closest property line. The further you move from there, the noise will diminish more—the closer the play area is to the center of the subject property, dBs fall into the low 50’s. T. 100-101.

He opined that 57 dBA is a “tolerable” noise level, which people will experience as being half as loud as 65 dBA, the maximum permitted. *Id.*, T. 102. Many things other than decibel levels influence disruption from noise, including the character of the sound, whether it occurs at night,

¹⁶ The Montgomery County Noise Control Ordinance (Chapter 31B) defines dBA as “decibels of sound, as determined by the A-weighting network of a sound level meter or by calculation from octave band or one-third octave band data.” *Montgomery County Code*, 31B-2.

¹⁷ Mr. Koehn mentioned repeatedly that the Montgomery County Noise Ordinance does not regulate the human voice. 6/7/21 T. 98, 101. The special exception standards require, however, clearly require the Petitioner to address noise from the use, without specification as to its source. Noise from children playing has regularly been a component of analysis of both child day care and private school special exceptions, using the Code as a relevant barometer of acceptable levels. As the purpose of the special exception is to assess the compatibility of the use, *explicitly* including noise, the Hearing Examiner sees no basis to find that noise from human physical activity (also a specific criteria) cannot be assessed.

and background sound levels. Here, there is a “good deal” of existing traffic noise from Rockville Pike. *Id.*

To address noise from the play areas, Planning Staff also recommended a condition of approval limiting “competitive” sports to reduce the possibility of noise from parents, whistles, etc. associated with inter-school events. At the request of the Hearing Examiner, the Petitioner proposed a revised condition more clearly defining the term “competitive” (Exhibit 95):

The Applicant will not conduct any interscholastic or league competitive sporting activities on the playgrounds but that practice for such activities as a soccer “club” may take place on the field between 3:30 p.m. and 5:30 p.m.

Mr. Koehn also opined that the noise from vehicles using the drive aisle nearest Mr. Seid's home would be within acceptable levels. 6/7/21 T. 106. They expect these vehicles to be slow-moving, which does not generate a lot of dBs based on measurements at other locations. He expects that noise from vehicles along this drive aisle will be about 55 dB. Adherence to the full setback will help diminish the noise from these vehicles. Some topographical difference at this location also provide some noise attenuation, along with the fence that will be there as well. That will provide at least another 5dB of sound attenuation, getting the dB levels down to probably less than 50. *Id.*, T. 107.

Mr. Koehn explained that noise attenuation from fences depends on the location of the fence. He believes that the proposed location of a solid fence will effectively reduce noise levels by at least 5 dBs. Generally, solid barriers that block the line of sight reduce noise levels by at least 4-5 dBs. He is satisfied that the six-foot height of the fence proposed here will attenuate noise from vehicles. 6/7/21 T. 105-108.

Mr. Koehn's firm examined the impact of noise from buses starting and stopping on the looped driveway in front of the school. They took sound measurements of buses at the Forest Road

campus. 6/7/21 T. 102. In his opinion, noise from bus storage and circulation and noise from parent vehicles will be compatible with the surrounding area. *Id.*, T. 103.

Some of the buses on the subject property will be well shielded—adjacent properties will not be able to see them. There will be some noise reduction from topography and the retaining wall for those that are further to the west. He opined that all 13 buses just idling would produce noise levels of about 52 dB at the closest property lines to the south of the bus loop. This is approximately the existing background noise level he measured on midafternoon when you would expect evening bus activity to occur. For this reason, he opined, idling buses will produce about the same noise levels as the existing background noise. *Id.*

Buses make a little more noise when they accelerate rather than just idle. Here, the buses are not all going to be accelerating at the same time, and so will be more like individual events. Where 13 buses might be at 52 dB while idling, buses pulling away moves up to 55 dB, which is a little louder than the existing background noise. *Id.*, T. 103-104.

The shortest noise event they observed when buses arrive and stop is a hiss when their air brakes disengage. These short-term events are about 62 dB, again, less than the noise code maximum levels. These events last only about one second and are not that frequent. T. 104.

The final concern about bus noise is beeping that occurs when the bus backs up. The buses entering the bus loop will not need to back up, so they do not expect that noise to occur. The only time there may be noise from backup beeping would be from the two reserve buses that will be located on the west side of the site. When the school uses one of these reserve buses, it will turn around in front of the Beaumont building. Backup beeps from these buses will be about 55 dB in the neighborhood. That is a little higher than the background noise level and will probably be audible. Still, the noise level from this will be only slightly louder than background noise levels and will not occur every day. When it does occur, it will last only for a few seconds. T. 104-106.

Noise levels from these buses idling will be approximately 48dB, again near the background noise levels. Background noise levels on the eastern side of the property were above 50. Background levels on the western side of the property are a little under 50. T. 106.

Sound levels depend on air currents, wind direction, and humidity over long distances, but that is not the case here. Air wasn't considered a factor because the nearest distances measured are at most 200-300 feet. These factors don't come into play at those distances. T. 107.

Another concern related to physical activity on the proposed site is the proposed use of the Beaumont House. At the initial public hearing, Ms. Fabre testified that FIS would like to use the house for offices that are in contact with families new to the school, such as admissions and transportation, or for Board or committee meetings. They would like to keep the house because it's part of the identity of the site. 1/22/21 T. 73. After remand, Ms. Fabre testified that FIS proposes to use the Beaumont House for "a few" offices and internal meetings. This will be "mostly" interior use. The exterior space around the house is landscaped with bushes and trees that doesn't have the area to handle a large event. They may do "small things" or have meetings outside, but they would be small because the space is not available and they have larger venues inside the main buildings. 6/7/21 T. 89. FIS proposes the following condition of approval (Exhibit 125):

Beaumont House will be used for general office or administrative purposes, for internal meetings or professional presentations, and for small receptions involving limited use of the covered patio and the rear yard. There will be no amplified sound allowed outside of the Mansion. Any change in use from that described above must be approved by an amendment of the special exception.

Ms. Umhofer believes that this condition is too open-ended and suggests that outdoor events should be limited to 15 people or fewer. She notes that the Applicant has not limited the frequency with which the gatherings may occur, and in her opinion, the limitation is needed to "ensure outdoor gatherings at the Beaumont House are compatible with a residential neighborhood." Exhibit 134. She also recalled testimony from Ms. Fabre that the school would not place tents in the parking

area for the Beaumont House and believes that this should explicitly be prohibited by condition.

Id.

Because this general standard for approval references impacts on external properties from “noise, odor, and dust”, the Hearing Examiner summarizes the testimony on potential pollution from the buses on neighboring properties. FIS presented expert testimony from Mr. Daniel Wolf, an expert in industrial hygiene. 6/7/21 T. 119. Mr. Wolf's firm performed a diesel exhaust assessment at the Forest Road campus on April 7, 2021. Air monitoring was conducted throughout the day, which included the school bus drop off between 7:25 a.m. and 8:35 a.m. and pick-up in the afternoon between approximately 2:50 p.m. to 3:30 p.m. *Id.*, T. 120.

Mr. Wolf testified that there are six primary airborne diesel engine emission components that are of concern from a health perspective. These include particulate matter, volatile organic compounds (hydrocarbons, nitrogen oxide, nitrogen dioxide, carbon monoxide and sulfur dioxide.) These were monitored during bus activity at Forest Road and compared to periods without bus activity. Tests were then conducted using fixed monitoring stations upwind and downwind of the bus loop and with handheld meters in the pickup and drop off area in the bus loop itself. They also set up a weather station to monitor wind speed and direction throughout the day. Their study concluded that none of the harmful diesel constituents tested were above hazardous levels in the bus area or downwind of the bus area. *Id.*

According to Mr. Wolf, total volatile organic compounds ranged from 10 to 20 ppb throughout the day with no noticeable change when the buses were present. For reference, there is no regulatory outdoor air standard for VOCs or volatile organic compounds. The indoor air standard is 300 ppb (parts per billion). Their results were within a factor of 10 lower than that. They did not detect carbon monoxide, sulfur dioxide, or nitrogen oxide upwind, downwind, or in the bus drop off and pick up area. *Id.*, T. 121.

His firm's study showed that particulates averaged anywhere from 13 to 28 mcg/m³ of air. Those concentrations stayed generally constant throughout the day with little change while the buses were there. The EPA air pollution limits particulates to 150 mcg/m³ over a 24-hour period. Thus, pollution from the diesel buses is well below the regulatory limits. *Id.*

Based on his study, Mr. Wolf opined that the operation of buses on the property will not result in concentrations of any component that would have a deleterious effect on the surrounding residential neighborhood. Mr. Wolf opined that there would be no significant difference if buses simply entered the site and idled or if they started and stopped the engine. *Id.*, T. 121-122.

In response to questions on-examination, Mr. Wolf testified that only one diesel constituent varied based on temperature. The EPA performed a study on diesel emissions over a large range of temperatures in 2020 based in Bethesda. Bethesda has average temperatures of 40 degrees in the winter and about 75 degrees in the summer. The report found that hydrocarbons increase by about 30% in the colder temperatures. As the concentrations detected here are between 10 and 20 ppb, a 30% increase is still going to be well below the 300 ppb EPA limit. *Id.*, T. 124.

The Petitioner has submitted a revised lighting plan that shows that illumination at the property lines will not exceed 0.1 footcandles. Exhibit 94(c).

Conclusion: The Hearing Examiner remanded this case, in part, for additional analysis of the impacts of noise, physical activity and pollution because FIS had not addressed these issues in its original application and, as the standard for approval demonstrates, assessment of these is required to approve a special exception. Given the expert testimony and evidence presented on remand, the Hearing Examiner finds that noise from cars on the drive aisle, children in the play areas, and buses starting and stopping will not adversely affect surrounding properties. There is no evidence in this record that contravenes the expert analysis and opinions presented relating to noise from children in the play area and buses on the property will adversely impact surrounding property. Ms. Clark's

testimony that glare from headlights on the drive aisle will not impact Mr. Seid's property is both reasonable and unrefuted.

The Hearing Examiner agrees with Ms. Umhofer that the condition proposed by FIS limiting outside use in the Beaumont House is too open-ended. Initially, Ms. Fabre testified that the facility would be used only for internal meetings and administrative offices. As a result, the parameters of the outdoor use have never been completely defined by the Petitioner, presented for review by Staff or other parties and its effect on nearby properties was not included in the remand order requesting additional analysis. Ms. Fabre testified that there is ample room within the main buildings to accommodate fundraisers or other meetings. Without more evidence supporting the outdoor use of the Beaumont House, the Hearing Examiner recommends that outdoor events and meetings be prohibited and that amplified music within and outside the Beaumont House be prohibited unless the special exception is modified to clarify the outdoor use in the future.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of 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 a master or sector plan do not alter the nature of an area.*

Staff advises that that there are eight special exceptions in the surrounding area. Exhibit 56, p. 36. Because this special exception replaces an existing special exception, Staff concluded that it will not result in an overconcentration of special exceptions uses that will alter the primarily residential nature of the area. Exhibit 56, p. 36. Staff concluded that, as "a Private Educational Institution (Primary School) use, the use and location adjacent to an established residential community is consistent with many comparable public elementary schools in the County." *Id.*

Conclusion: The Hearing Examiner agrees with Staff that the proposed facility will not result in an overconcentration of uses in the area because it replaces an existing special exception that has

existing for 30 years. In some respects, such as traffic generation, the use is less impactful on the neighborhood because the total trips generated are lower than those permitted by FASEB, the Alta Vista Terrace access will be closed, and traffic will be prohibited on Alta Vista Road and other streets without sufficient infrastructure to support bus traffic.

(8) 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.

Conclusion: The evidence summarized above supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site with the conditions of approval recommended. While the Hearing Examiner understands the concerns of those in opposition, in some respects, the use proposed has benefits by (1) reducing stormwater drainage on adjacent properties, (2) reducing the total number of trips generated by the former use, and (3) limiting traffic on neighborhood streets.

(9) 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.

(A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.

(B) If the special exception:
(i) does not require approval of a new preliminary plan of subdivision; and
(ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;
then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider

whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

Staff advises that the proposed use will require approval of a preliminary plan of subdivision by the Planning Board. Exhibit 56, p. 37. The Petitioner did, however, submit projected trip generation estimates to demonstrate that the use would comply with the LATR Guidelines. In its supplemental report (Exhibit 112), Staff recommends a condition requiring FIS to update its traffic study in conformance with County's *2021-2024 Growth and Infrastructure Policy*.

Conclusion: While a finding is not required on this criterion, the Hearing Examiner finds that the Petitioner has demonstrated that it can comply with the County's current LATR Guidelines and has no evidence to the contrary. The TMP imposes mandatory trip caps that comply with the Guidelines. The primary issue here has not been compliance with the LATR Guidelines, but the impact of the facility on the neighborhood. Having no evidence to the contrary, and as conditioned, the Hearing Examiner concludes that the school has demonstrated that it will be able to comply the relevant County growth policies. She does not impose conditions related to approval of the preliminary plan because she has no authority to do so and the Planning Department may impose these requirements during their review.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

On remand, Planning Staff found that the proposed TMP, rerouting traffic away from neighborhood streets except Beech Avenue, Linden Avenue, and Pooks Hill Road, addressed this criterion (Exhibit 112, p. 4):

As revised, buses traveling towards the Rockville Pike campus along Beech Avenue eastbound would instead turn left on Linden Avenue, right on Pooks Hill Road and right onto southbound Rockville Pike to access the Site from the Forest Road Campus (Page 17 of the revised TMP). While this route is restricted during Monday-

Friday 7:00 AM to 9:00 AM and 4:00 PM-6:00PM for private passenger vehicles, buses are permitted to make this turn, as confirmed by the Montgomery County Department of Transportation (footnote omitted). The turning movement today is only used by RideOn Route 30, and therefore the additional 12 buses per day that will make use of this route will not significantly increase traffic along the roadways and is in compliance with the Neighborhood Traffic Control Plan currently in place with MCDOT and in conformance with the *1990 Bethesda-Chevy Chase Master Plan*. As demonstrated in Figure 2 of the Applicant's point-by-point response to the Remand order, buses can fit within the travel lanes along this route.

This route is necessary because a concrete median along Rockville Pike makes it impossible to access the Site from northbound Rockville without making a U-turn at Pooks Hill Road. In order to access the campus from the west, the shuttle buses have to access Rockville Pike in the southbound direction from a point north of the Site (*i.e.*, a right turn southbound). The school has explored the potential of using the Capital Beltway, but determined the route created a potentially unsafe travel condition for students and would significantly hinder the efficiency of the shuttle bus route. The route proposed is a compromise that meets the safety needs of the students while addressing traffic volume and safety concerns of the Maplewood neighborhood.

Staff goes on to note that the only buses using residential streets are those picking up students within the Maplewood and Locust Hill neighborhood. According to Staff and FIS, this is currently 55 families, although that number may change. Exhibit 112.

Staff also apparently relied on a position taken by the Planning Board that neighborhood streets are dedicated to the public and therefore, the school should be able to use them. Exhibit 112, p. 5.

Those in opposition disagree with Staff because they remain concerned that FIS will not be able to enforce the traffic restrictions imposed by the TMP. Mr. Wilkerson believes that buses traveling from the Forest Road campus should use the Capital Beltway to proceed southbound on Rockville Pike, although Mr. Myers disagreed, expressing safety concerns with this route. 6/7/21 T. 254-256.

Conclusion: As already discussed in Part III.B of this Report, the Hearing Examiner finds from the evidence submitted by FIS on remand that traffic from the proposed use will not adversely affect the

safety of vehicles or pedestrians in the surrounding area with the conditions of approval recommended.

While she is unaware of the full context of the Planning Board's discussion, the Hearing Examiner disagrees that FIS should be able to use public streets simply because they are public without regard to the safety of traffic generated by the school. Compliance with the LATR addresses only roadway capacity; it does not determine the compatibility of the proposed use. Traffic safety, even on public roads, is an integral part of the compatibility of a special exception, as indicated both by this criterion and as recognized by Maryland courts. *See, e.g., Eger v. Stone*, 253 Md. 533 (1969) (Impact of site-generated traffic on River Road was sufficient to justify denial of special exception.)

D. Specific Standards: Educational Institutions, Private

The specific standards for a private educational institution are found in Code § 59-G-2.19. The Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the proposed use would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.19. Educational institutions, private.

(a) *Generally. A lot, tract or parcel of land may be allowed to be used for a private educational institution if the board finds that:*

(1) *the private educational institutional 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;*

Conclusion: For the reasons set forth in Parts III.B of this Report, as long as the recommended conditions are imposed, the uses will not constitute a nuisance because of traffic, number of students, noise, type of physical activity or any other element, and they will be compatible with the environment and character of the area.

(2) *except for buildings and additions completed, or for which a building permit has been obtained before (date of adoption [April 2,*

2002]), the private educational institution must be in a building architecturally compatible with other buildings in the surrounding neighborhood, and, if the private educational institution will be located on a lot, tract, or parcel of land of 2 acres or less, in either an undeveloped area or an area substantially developed with single-family homes, the exterior architecture of the building must be similar to a single-family home design, and at least comparable to any existing homes in the immediate neighborhood;

Conclusion: As discussed in Part II.C. of this report, Petitioner's architect, Joanne Schmickel testified that FIS will make only minor changes to the existing buildings, which have been part of the community for a significant period. She opined that the exterior alterations proposed will blend with the existing Georgian style. The new buildings will be quite small and well buffered on the site. Having no evidence to the contrary, the Hearing Examiner finds that this standard has been met.

(2) the private educational institution 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; and

Conclusion: For the reasons set forth in the Part III.B. and C. of this Report, above, the Hearing Examiner finds that the use will not adversely affect or change the present character or future development of the surrounding neighborhood, with the recommended conditions.

(4) the private educational institution must conform with the following standards in addition to the general development standards as specified in Section G-1.23:

- a. Density—The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering 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 as defined in Section 42A-21 of the Montgomery County Code;*

- d) Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and*
- 2. Noise or type of physical activity;*
- 3. Character, percentage, and density of existing development and zoning in the community;*
- 4. Topography of the land to be used for the special exception; and*
- 5. Density greater than 87 pupils per acre may be permitted only if the Board finds that (i) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; (ii) the additional density will not adversely affect adjacent properties; (iii) additional traffic generated by the additional density will not adversely affect the surrounding streets.*

Staff advises that density of the student population equates to 62.5 pupils per acre, less than the maximum of 87 pupils in this criterion. Ms. Clark testified that on-site circulation separates passenger vehicles from buses. In her opinion, the driveway for parent drop-off/pick up provides a “significant” amount of stacking—approximately 1,500 feet. 1/22/21 T. 125. The revised TMP calls for up to 8 employees to assist with circulation during drop-off and pick-up of children. Exhibit 105(a), p. 15. Expert evidence supports a finding that noise from the play area and buses will not adversely impact adjoining uses. For these reasons, the Hearing Examiner finds that the density of the school population of 700 students will not adversely impact the community.

FIS’ program proposes two additional programs outside of academic classes—“Saturday classes” and summer camps, both of which are capped at a total enrollment of 700 children.

Conclusion: Staff calculates correctly that the density at full enrollment is 62.5 pupils per acre ($700/11.2=62.5$), and thus is not subject to the additional review criteria provided in this section.

The Hearing Examiner finds that application of the other factors supports a 700-student enrollment

on the academic year and a phased in maximum for summer camps and Saturday classes. The Hearing Examiner agrees with Ms. Clark that the amount of stacking and parking available on-site is sufficient to support parent drop-off and pick-up without back-ups and the assistance from on-site employees will bolster any chance that back-ups will not occur. The focus of site activity is concentrated in the northern portion of the property; there is a significant buffer between much of the activity and houses to the south.

For the same reasons, the Hearing Examiner finds that the same enrollment for summer camps and Saturday classes is appropriate, although she recommends a condition phasing in enrollment in these programs to monitor compliance with the TMP.

- 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 facility must be designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fences and walls.*

In its original report, Planning Staff determined that the play areas proposed were adequately buffered from surrounding properties (Exhibit 56, p. 43):

The new outdoor play areas and athletic field will be situated in areas that are centered on the Site adjacent to the existing building and screened from adjacent properties by vegetation which will be protected by proposed Category I and Category II Conservation Easements. The outdoor play areas will not be illuminated or used for competitive or interscholastic events. Additionally, outdoor play will not begin prior to 8:00 a.m. The majority of the Site's existing green space will be retained to maintain its existing condition. The new playing field will be installed with a five-foot high chain link fence and 15-foot high ball netting to ensure stray balls from the outdoor play areas are not directed onto adjacent properties.

Conclusion: Aside from noise generated by children playing outside, which has already been addressed, there is nothing in this record to indicate that activities in the play areas will intrude onto

neighboring properties. The Hearing Examiner finds that the proposed use is compliant with this section for the reasons stated by Staff.

- (b) *If a Private Educational Institution operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, the Board must find, in addition to the other required findings for the grant of a Private Education Institution special exception, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Board must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Board.*

The Board may limit the number of participants and frequency of events authorized in this section.

Planning Staff concluded that the summer camps and Saturday classes would not have an adverse impact on the surrounding community because they were subject to the same key parameters as the private school use. Exhibit 56, p. 44.

Conclusion: The Hearing Examiner agrees with Staff's analysis, particularly after FIS provided more details on both supplemental programs on remand. Both programs have the same potential maximum enrollment and the same trip caps required by the TMP. Exhibit 105(a), p. 14. Both operate within the school's hours during the academic year (the Saturday classes end at 5:00 p.m., while the summer camp program conforms to FIS' operating hours during the academic year.)

FIS does not propose to mandate busing for the summer camp or Saturday classes until the daily enrollment reaches 150 participants, after which 25% of campers must ride the bus. Ms. Wagner explained that the school will still be subject to the trip caps, and monitoring and enforcement requirements as the nursery and elementary school. Exhibit 105, p. 14. The restrictions

of the TMP to avoid using Maplewood streets apply equally to trips related to summer camps and Saturday classes and compliance will be digitally monitored. Exhibit 105(a), pp. 14-15.

(c) *Programs Existing before April 22, 2002.*

(1) *Where previously approved by the Board, a private educational institution may continue the operation of (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, whether such programs include students or non-students of the school, if the number of participants and frequency of events for programs authorized in 59-G-2.19(b) are established in the Board's approval.*

(2) *Where not previously approved by the Board, such programs may continue until April 22, 2004. Before April 22, 2004, the underlying special exception must be modified to operate such programs, whether such programs include students or non-students of the school. The Board may establish a limit on the number of participants and frequency of events for authorized programs.*

Conclusion: Inapplicable, as the summer camp program and the Saturday classes will be new.

(d) *Site plan.*

(1) *In addition to submitting such other information as may be required, an applicant shall submit with his application a site plan of proposed development. Such plan shall show the size and shape of the subject property, the location thereon of all buildings and structures, the area devoted to parking and recreation facilities, all access roads and drives, the topography and existing major vegetation features, the proposed grading, landscaping and screening plans and such other features necessary for the evaluation of the plan.*

(2) *No special exception, building permit or certificate of occupancy shall be granted or issued except in accordance with a site plan of development approved by the board. In reviewing a proposed site plan of development the board may condition its approval thereof on such amendments to the plan as shall be determined necessary by the board to assure a compatible development which will have no adverse effect on the surrounding community, and which will meet all requirements of this chapter. Any departure from a site plan of development as finally approved by the board shall be cause for revocation of the special exception, building permit or certificate of occupancy, in the manner provided by law.*

Conclusion: Staff advises that the requisite plans have been submitted with this special exception modification request. Exhibit 56, p. 45. Appropriate plans (NRI/FSD, Site Plan, Landscaping Plan, Lighting Plan, PFCP, and Statement of Operations) have been submitted by Petitioner and are binding, as made a condition of approval of this special exception.

- (e) *Exemptions. The requirements of Section G-2.19 do not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, which is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any agency thereof, Montgomery County or any incorporated village or town within Montgomery County. This exemption does not apply to any private educational institution which received approval by the Board of Appeals to operate a private educational institution special exception in a building or on a lot, lots or tract of land that was not owned or leased by any church or religious organization at the time the Board of Appeal's decision was issued.*

Conclusion: This subsection is not applicable.

- (f) *Nonconforming uses. Nothing in this chapter shall prevent any existing private educational institution which obtained a special exception prior to the effective date of this chapter, from continuing its use to the full extent authorized under the resolution granting the respective special exception, subject, however, to division 59-G-4 of this chapter.*

Conclusion: This subsection is not applicable.

- (g) *Public Buildings. * * **

Conclusion: This subsection is not applicable.

- (h) *Applications filed before May 6, 2002. Any application filed before May 6, 2002 for a private educational institution special exception or modification of a private educational institutional special exception must comply with the requirements of Article 59-G and Article 59-E in effect at the time the special exception was filed.*

Conclusion: This subsection is not applicable.

E. Other Applicable Standards

Section 59-G-1.23. General development standards.

- (a) *Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2*

Staff advises that the proposed application meets all the development standards of the R-60 Zone, as evidenced by a table from the Staff Report (Exhibit 56, p. 38):

Table 7: R-60 Zone Data Table		
	Required/ Approved	Proposed
Lot Area (SF/ Acres)	6,000 SF (0.14)	488,247 SF (11.20)
Yard Requirements		
Main Building		
Front (Rockville Pike)	25 feet (min.)	107 feet
Side	One side: 8 feet (min.)	122 feet (min.); 52 feet (min.)
Rear	20 feet (min.)	77 feet (min.)
Building Height		
Main Building(s)	35 feet (max.)	56' 7" (existing) ¹
Accessory Building(s)⁴	20 feet (max.)	12 feet
Building Coverage	35% (max.)	13.3% (65,172 square feet)
Parking		
Vehicle	126 spaces (min) ²	281 spaces
Bicycle	7 spaces	15 spaces
Loading	1	1

¹ As approved by Variance A-5599.

² 1 space for each staff member on the largest shift.

Conclusion: The Hearing Examiner notes that the revised conditional use site plan meets the parking waiver setback for a drive aisle in addition to the development standards above. Having no evidence to the contrary, the Hearing Examiner finds that the proposed use meets the requisite development standards of the R-60 Zone.

(b) *Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: As discussed above, Petitioner will comply with all applicable parking standards, including the parking setback for drive aisles.

(c) *Minimum frontage * * **

Conclusion: Not applicable since none of the listed uses are involved and no waiver is being sought.

(d) *Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must*

not approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: The Planning Board has approved a Preliminary Forest Conservation Plan in this case. Exhibit 60. Since this case must go through subdivision, the Planning Board will review the final forest conservation plan at that time.

(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: Water Quality Plans are used in special protection areas (SPAs), as specified in Zoning Ordinance §59-A-2.1. Since the subject site is not in an SPA (Exhibit 56, p. 41), this provision is inapplicable to this case.

(f) Signs. The display of a sign must comply with Article 59-F.

Conclusion: As discussed in Part II.C.5. of this report, Petitioner seeks to erect seven signs on the property. Planning Staff found the signs proposed compatible with the surrounding area. Staff determined that the larger area for the monument sign was appropriate given the location of the entrance along Rockville Pike. A condition has been recommended in Part IV of this report to assure compliance with Article 59-F.

(g) Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

Conclusion: Petitioner plans to use the existing buildings on the subject property, except for two new small buildings to support the play areas. Ms. Schmickel provided expert testimony that the exterior alterations were compatible with the existing buildings and the surrounding area. The Hearing Examiner finds that this criteria has been met.

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Conclusion: As discussed in Part II.D.5 of this report, the lighting will be residential in character, and will not cause glare on adjoining properties, nor exceed the 0.1 foot-candle standard at the side and rear property lines.

Section 59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: As discussed above, the existing structures are already part of the neighborhood character and exterior alterations will be minor. Ms. Schmickel provided expert testimony that changes will be compatible with the neighborhood and Mr. Norden described the screening, which will include forest conservation areas and existing landscaping. Appropriate pedestrian circulation will also be provided. The Hearing Examiner finds that the provisions of this section will be met.

Based on the testimony and evidence of record, the Hearing Examiner concludes that, with the recommended conditions, the plans proposed by Petitioner meet the specific and general requirements for the proposed uses, and that the Petition should be granted, with the conditions recommended in the final section of this report.

IV. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition S-862-C, which seeks to obtain a private educational institution special exception, on property located at 9650 Rockville Pike, Rockville, Maryland, be *granted* with the following conditions:

1. The Petitioner shall be bound by all its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. The Petitioner must comply with the terms of the approved special exception site plan (Exhibit 125), Landscape Plan (Exhibit 132(a)), and Lighting Plan (Exhibit 94(c)).
3. The Private Educational Institution is limited to a maximum total gross floor area of 203,891 square feet, comprised of the Lee Building (121,147 square feet), the East Wing Office Building and Atrium Connector (66,448 square feet), the Beaumont House (15,264 square feet), Outbuilding #1 (768 square feet) and Outbuilding #2 (264 square feet), not including the parking garage.
4. Maximum enrollment in the nursery and elementary schools will not exceed 200 nursery school students and 500 elementary school students for a total of 700 students;
5. Maximum enrollment in Supplemental Language classes ("Saturday School") is limited to a maximum daily enrollment of 500 students until three years after the program commences; thereafter daily enrollment must not exceed 700 students;
6. Maximum enrollment in Summer Camp is limited to a maximum daily enrollment not to exceed 500 children until three years after the program commences after which daily enrollment must not exceed 700 students;
7. The maximum number of Staff that may be on-site at one time shall not exceed:
 - a. Academic classes: 126 staff
 - b. Supplemental language classes: 30 employees until three years after the program commences after which not more than 50 staff may be on-site at any one time;

- c. Summer Camp: 75 employees until three years after the program commences after which not more than 126 staff may be on-site at any one time.
8. Hours of operation shall be limited as follows:
 - a. Nursery and Elementary School: 7:00 a.m. to 7:00 p.m. (Before-care staff may arrive at 6:30am.)
 - b. Summer camps: 7:00 a.m. to 7:00 p.m.
 - c. Supplemental Language Classes: 8:30 a.m. to 5:00 p.m.
9. The Petitioner must comply at all times with the requirements of the Transportation Management Plan (Exhibit 105(a)), with the following revisions:
 - a. Add a requirement that elementary students participating in the before-care program must arrive before 8:00 a.m.
 - b. Delete the words "guidelines" and/or "policy" or "policies" wherever they appear in the TMP and substitute the word "requirement" or "requirements" if plural.
 - c. At the top of page 4 of the TMP, delete the phrase "policies and guidelines as necessary" and substitute the phrase "TMP requirements" as follows:

The school's weekly newsletter will include transportation updates reminding parents and staff of TMP requirements.
 - d. Under "Outreach and Education" (Exhibit 105, p. 3) add the following bullet (Exhibit 105(a), p. 3):

Avoid making a U-turn on Alta Vista Road.
 - e. Make the first four bullets under "Outreach and Education" (Exhibit 105(a), p. 3) applicable to Summer camps and Saturday classes.
 - f. Add the following to the list of violations of the TMP (Exhibit 105(a), p. 15):

Making a U-turn on Alta Vista Road.
 - g. Under "Enforcement", make the following revisions (Exhibit 105(a), pp. 15-16):
 - i. Amend the language to make a 3-day suspension mandatory for a fourth violation of a school day: "A fourth violations will result in a 3-day suspension from school.
 - ii. Add the following penalty for a fifth violation of the TMP for school days, summer camps and Saturday classes: "A fifth violation will result in expulsion from the program."

- h. Add the following to the Neighborhood Liaison Committee for this special exception:
 - i. A representative of the Bethesda Crest Homeowner's Association; and
 - ii. A resident of Alta Vista Court.
10. The Petitioner shall post the data from its monitoring cameras on its website daily.
11. Within 30 days after issuance of a decision approving the modification application, Petitioner must apply for a permit from Montgomery County Department of Transportation and Montgomery County Department of Permitting Services to install a monitoring camera on Alta Vista Road as near as possible to its intersection with Rockville Pike; If permitted by MCDOT/MCDPS, the digital monitoring device must be installed within 30 days of DPS' permit approval unless a greater time is required by MCDPS, MCDOT or the Board of Appeals.
12. The Board of Appeals will retain jurisdiction over the special exception for a period of two years after commencement of operations to monitor compliance with the Transportation Management Plan (Exhibit 105(a), as conditioned) and review the impact on the Maplewood and Locust Hill neighborhoods of coordinated traffic operations between the Forest Road campus and the Rockville Pike campus from the school, the summer camps, and the Saturday classes; 60 days prior to the Board of Appeals review, FIS must submit a report to the Board of Appeals and the NLC informing of compliance with the trip caps, the number and type of TMP violations, all violations issued and penalties it has imposed, the most recent available accident data for the Maplewood and Locust Hill neighborhoods, and any recommendations of FIS and the NLC regarding the TMP. FIS shall notify the NLC of the date, time and place for the Board's consideration of its report at least 30 days before the consideration is scheduled.
13. Deliveries and trash pick-up will be scheduled to occur between 8:30 a.m. and 3:30 p.m.;
14. FIS shall include a clause in its contract with trash and food delivery services that trucks will not use residential streets in the Maplewood and Locust Hill neighborhoods as defined in the TMP;
15. Buses taking children on off-site activities during the school day, summer camps, or Saturday classes, will adhere to the routes prescribed in the TMP.
16. Outdoor play may not begin prior to 8:00 AM;
17. Outdoor lighting on play areas is prohibited.
18. Outdoor use of Beaumont House is prohibited.
19. Amplified music inside and outside Beaumont house is prohibited.

20. The Applicant will not conduct any interscholastic or league competitive sporting activities on the playgrounds, except practice for such activities may take place on the field between 3:30 p.m. and 5:30 p.m.
21. Special Events must not be scheduled during weekday peak periods (6:30 a.m. to 9:30 a.m. and 4:00 p.m. to 7:00 p.m.)
22. Prior to the issuance of any Use and Occupancy Certificate associated with the Private Educational Institution use, the Applicant must permanently close the following three vehicular access points:
 - a. the western Site driveway onto Alta Vista Terrace;
 - b. the adjacent parking lot to the north of the Site; and
 - c. the northern Rockville Pike driveway;
23. Prior to the issuance of any Use and Occupancy Certificate on the Site, the Applicant must complete construction of the Site access and frontage improvements, as required by the Maryland State Highway Administration. These improvements include, but are not limited to, consolidation of Rockville Pike driveways, construction of an acceleration and deceleration lane, and increasing the surface area of the bus stop to meet minimum ADA standards.
24. The Applicant must replace the existing Rockville Pike sidewalk with new a five-foot-wide sidewalk, separated from the roadway by a vegetated buffer measuring at least six-feet wide.
25. The Applicant must maintain, in conjunction with the French International School Forest Road campus (the "Secondary School"), a bus fleet of a least 15 buses in accordance with the Transportation Management Plan (Exhibit 105(a)).
26. No vehicles may queue on the adjacent public street(s) while accessing the Site.
27. The Applicant must provide 15 long-term bicycle parking spaces for use by faculty and staff in a secure and weather protected area within the East Wing building garage. Any bicycle parking provided for students will be above and beyond this requirement.
28. The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code after the final decision of the Board of Appeals on the Subject Application;
29. Prior to issuance of a Use and Occupancy permit, the Applicant must obtain a variance from the Sign Review Board, for exceeding the maximum size, quantity and illumination of the proposed signage; copies of the sign permits shall be submitted to OZAH for its records; and
30. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use

premises and operate the conditional use as granted herein. The Applicant and any successors in interest shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 19th day of July 2021.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Hannan', with a long horizontal line extending to the right.

Lynn Robeson Hannan
Hearing Examiner