

**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**

<b>IN THE MATTER OF:</b>	*	
<b>BARRIE SCHOOL</b>	*	
Petitioner	*	
	*	
Charles Abelmann	*	BOA Case No.: CBA 1261-D
Michael Goodman	*	OZAH Case No. 12-24
Chester Bartels	*	
Julie Higgins	*	
William Landfair	*	
	*	
For the Petition	*	
	*	
*****		
	*	
Steven Morrison	*	
	*	
Opposing the Petition	*	
*****		
Before: Lynn A. Robeson, Hearing Examiner		

**HEARING EXAMINER’S REPORT AND RECOMMENDATION**

**TABLE OF CONTENTS**

<b>I. STATEMENT OF THE CASE .....</b>	<b>3</b>
<b>II. FACTUAL BACKGROUND .....</b>	<b>4</b>
<b>A. The Subject Property and the Surrounding Area .....</b>	<b>4</b>
<b>B. Proposed Use .....</b>	<b>10</b>
<b>C. Master Plan.....</b>	<b>19</b>
<b>D. Public Facilities .....</b>	<b>21</b>
<b>E. Environmental Issues .....</b>	<b>22</b>
<b>F. Neighborhood Response.....</b>	<b>25</b>
<b>III. FINDINGS AND CONCLUSIONS .....</b>	<b>25</b>
<b>A. Standard for Evaluation.....</b>	<b>26</b>
<b>B. General Standards .....</b>	<b>28</b>

<b>C. Specific Standards: Educational Institutions, Private .....</b>	<b>33</b>
<b>D. Other Applicable Standards .....</b>	<b>39</b>
<b>IV. RECOMMENDATION .....</b>	<b>43</b>

## I. STATEMENT OF THE CASE

Filed on December 20, 2011, the Barrie School seeks to modify an existing special exception for a private educational institution originally approved by the Board of Appeals in 1990.<sup>1</sup> OZAH issued notice of a public hearing, scheduled for June 1, 2012, on March 5, 2012. At the request of Petitioner, the hearing was rescheduled to July 23, 2012. Exhibits 16, 17. Petitioner filed revised materials between May 4, 2012, and May 22, 2012, and OZAH issued a Notice of Motion to Amend the Petition on May 29, 2012. Petitioner again requested a postponement of the hearing, which was rescheduled to December 3, 2012. Exhibits 24, 25. Petitioner filed a revised Preliminary Forest Conservation Plan on November 21, 2012, and OZAH issued a second Notice of Motion to Amend the Petitioner the same day. Exhibits 26, 27.

On November 21, 2012, OZAH received Technical Staff's Report recommending approval of the petition with conditions, a Technical Staff Report recommending approval of the Preliminary Forest Conservation Plan (PFCP) with a variance from certain requirements of the Montgomery County Forest Conservation Law, and the Planning Board's recommendation of approval for the petition and the PFCP. Exhibits 26-30.

The December 3, 2012, hearing proceeded as scheduled. The record was held open until December 13, 2012, to receive electronic copies of the most recent plans. These were submitted on time and the record closed on December 13, 2012.

One individual appeared at the hearing to oppose the petition, expressing concerns regarding (1) emergency access to the site, (2) possible environmental impacts of the

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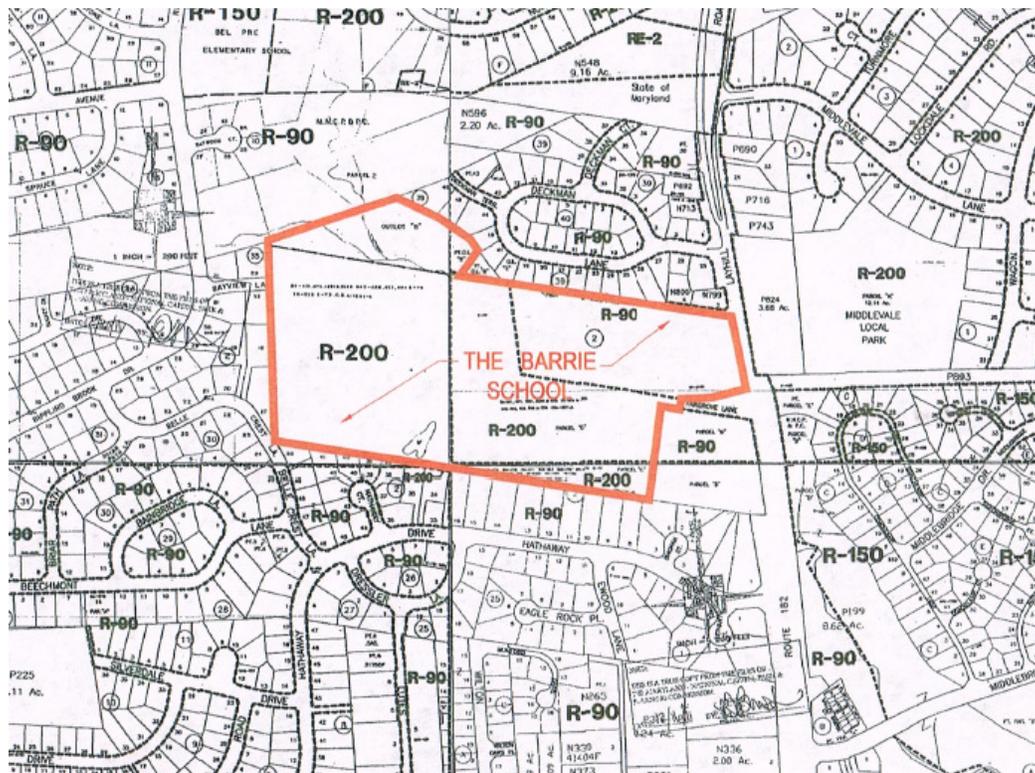
<sup>1</sup> The Board first approved a special exception for the school in 1956 that has been modified several times over the years. The Board approved the school at its current enrollment of 716 pupils in 1990 in CBA 1261-A. Exhibit 29, p. 3.

proposed athletic field, and (3) existing traffic conditions. The Hearing Examiner recommends approval of the special exception with the conditions imposed by the Planning Board.

## II. FACTUAL BACKGROUND

### A. The Subject Property and the Surrounding Area

The subject property consists of three parcels totaling approximately 44.86 acres, within the R-90 and R-200 Zones, located at 13500 Layhill Road, Silver Spring, Maryland. Exhibit 29, p. 1, 3. The property is located on the west side of Layhill Road, between the intersections of Hathaway Drive and Deckman Lane. An excerpt from the zoning map, showing the location and split-zoning of the property (Exhibit 29, Attachment 1) is shown below:



Only one of the parcels is subdivided and all improvements are located on the subdivided parcel. *Id.* The property is bisected by a tributary of the Northwest Branch that runs north-south approximately mid-way between the east and west property lines. There are 4.69 acres of wetlands and 13.43 acres of floodplain associated with the stream. Approximately 22 acres of the property are forested; 14.90 acres of forest are located within the stream buffer. Technical Staff advises that 63% of the site is encumbered with either stream buffer or forest. *Id.*, p. 9.

The school property is informally divided into two campuses. The “lower” campus, housing the buildings for the upper grades, is located on the eastern side of the site closest to Layhill Road. Buildings in the lower campus are more recent than those of the “upper” campus. The upper campus is on the western portion of the site and contains a series of small, older buildings used by the lower grades. T. 14-15. The buildings on the upper campus were constructed in the 1960’s and, according to the Petitioner, are at the end of their useful life. T. 36. A soccer field is located approximately in the middle of the site along with a pool. T. 25. The existing athletic field is not of regulation size. An aerial photograph of the subject property (Exhibit 5(b)) and a rendered site plan showing existing conditions (Exhibit 32), prepared by the Petitioner, are shown on the following pages.

Fargrove Lane provides access to the school from Layhill Road and traverses the campus from east to west. The road narrows to a small, single lane bridge where it crosses the stream. A picture of the bridge, included in the Technical Staff Report (Exhibit 29, Attachment 8) is reproduced on page 7.

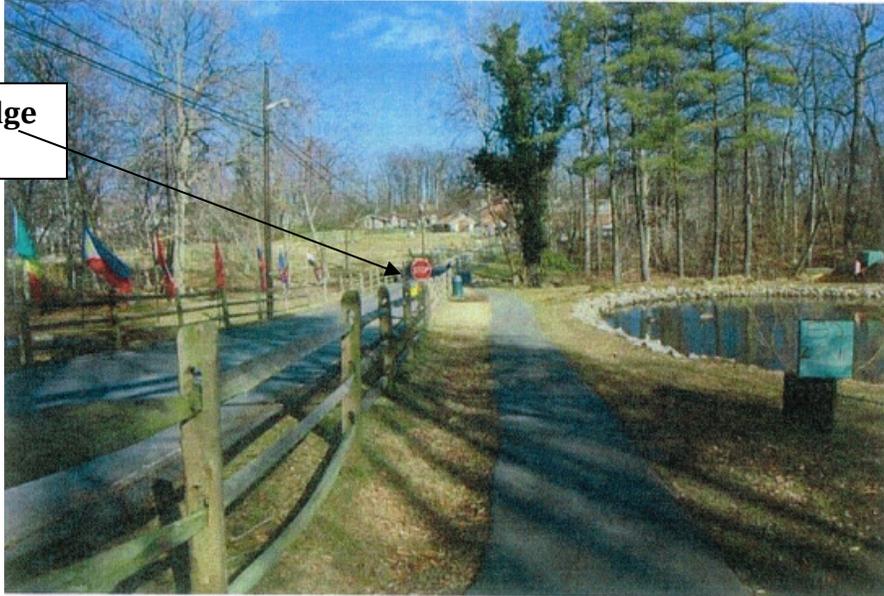


**Aerial Photograph of Existing Conditions  
Exhibit 5(b)**



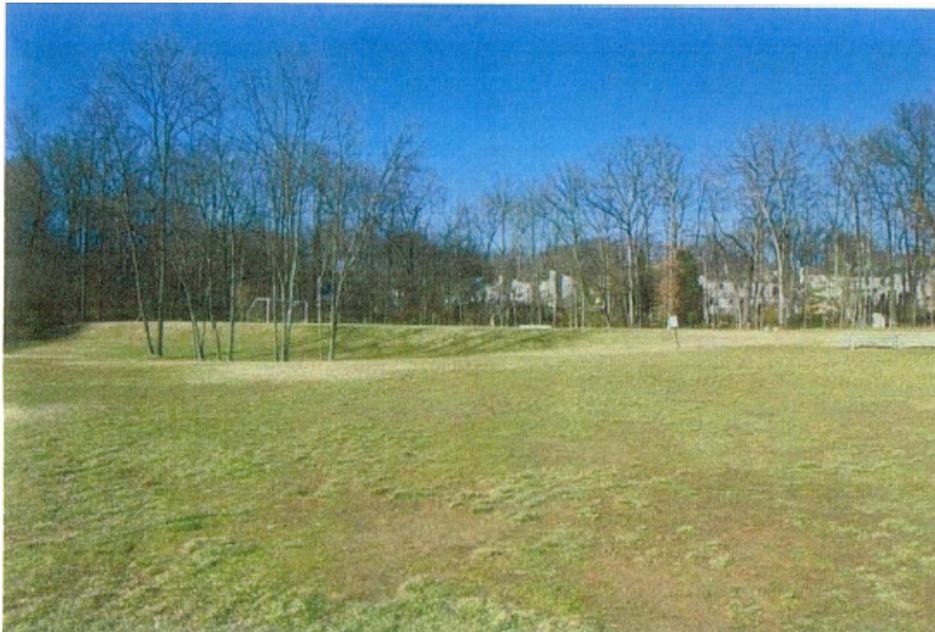
**Rendered Site Plan Showing  
Existing Conditions (Exhibit 32)**

**Single-Lane Bridge**



**Fargrove Lane  
Exhibit 29, Attachment 8**

Photographs from the Technical Staff Report (Exhibit 29, Attachment 8), show various portions of the school's campus:



**Existing Athletic Field  
Exhibit 29, Attachment 8**

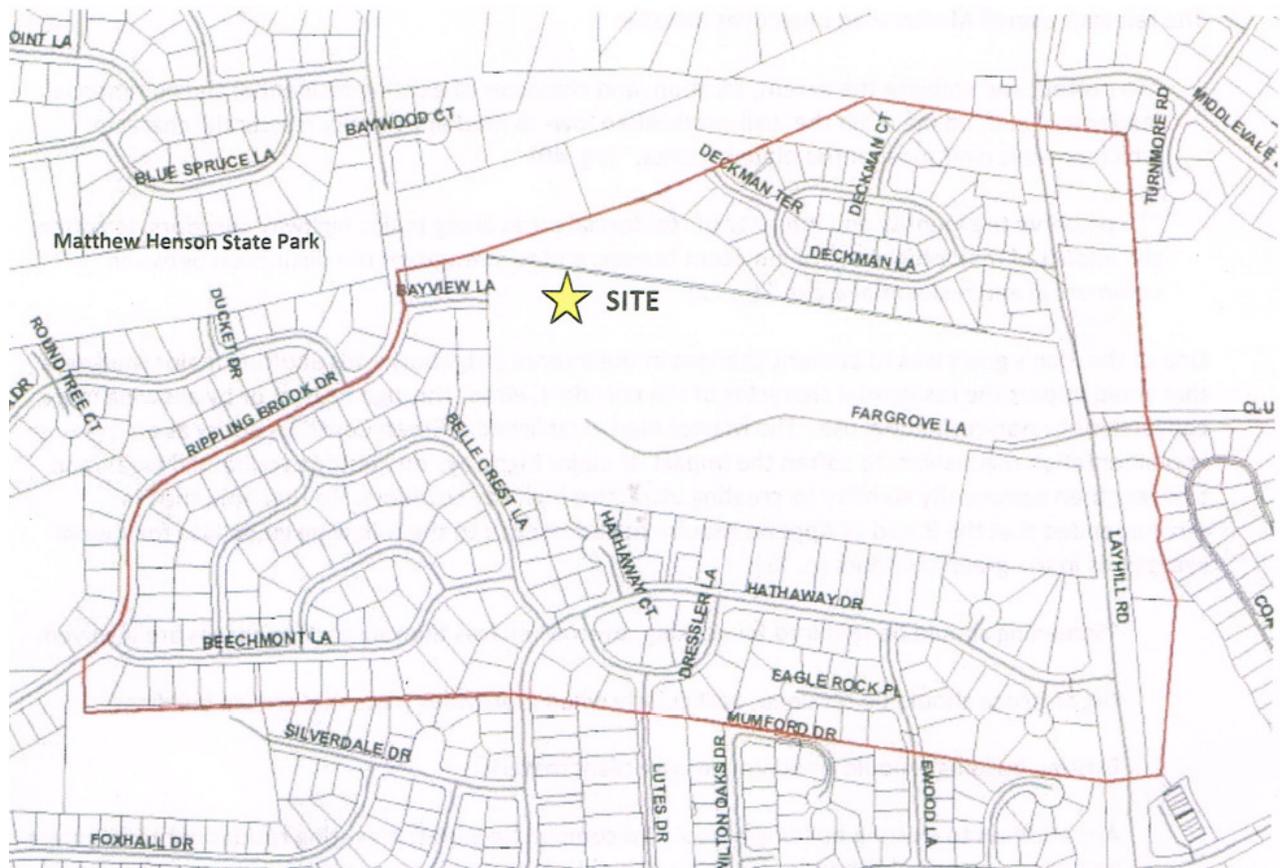


**Existing Athletic Field  
Exhibit 29, Attachment 8**



**Existing Gravel Parking Lot/Adjacent Residential  
Neighborhood  
Exhibit 29, Attachment 8**

Technical Staff delineated the surrounding area as bounded by homes fronting Layhill Road to the east, the Matthew Henson State Park to the north, Rippling Brook Drive and houses bordering Beechmont Lane to the west and southwest, and properties within approximately two blocks of the subject property to the south. Exhibit 29, p. 5. The Petitioner concurs with Staff's delineation and characterizes the neighborhood as primarily residential, single-family detached homes. T. 61. Having no evidence to the contrary, the Hearing Examiner agrees with this delineation and characterization and so finds. A map showing the boundaries of the neighborhood, as defined by Technical Staff, is reproduced on the following page (Exhibit 29, p. 5).

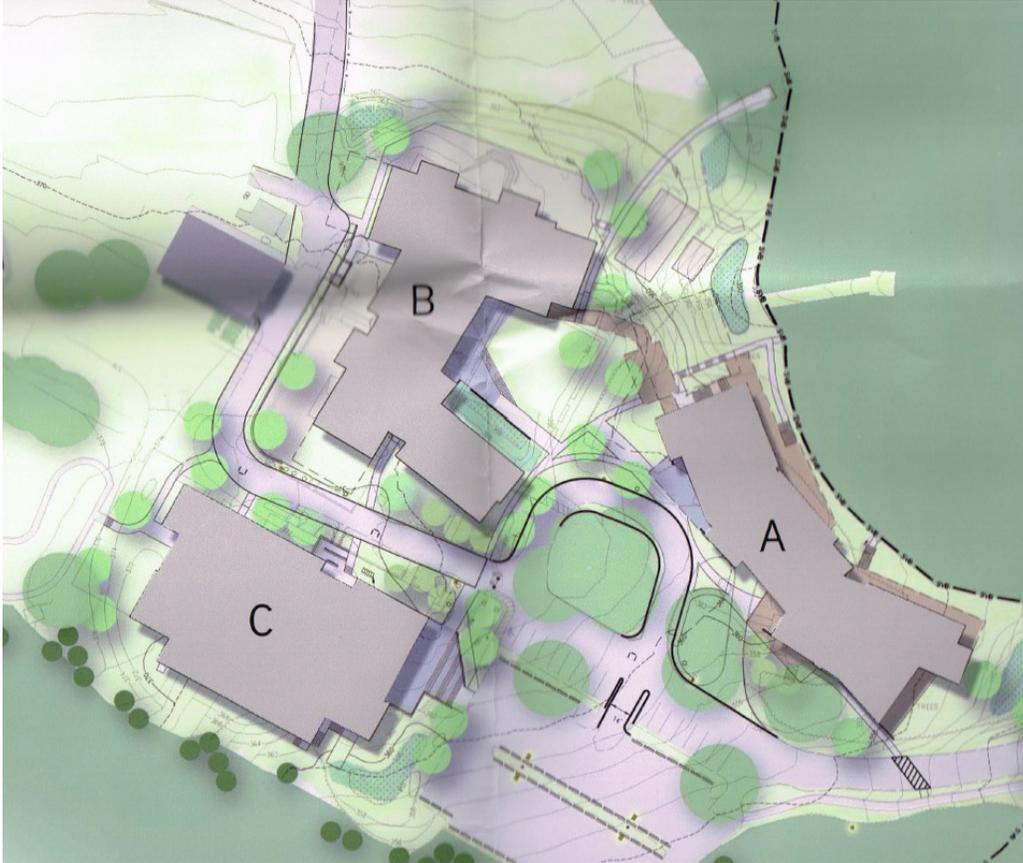


## **B. Proposed Use**

The Barrie School plans to remove the existing older buildings in the upper campus and replace them with three new buildings (Buildings A, B and C). In addition, the school proposes to re-orient and replace the soccer field with an artificial turf field of regulation size. These changes will increase impervious area on the site from 25,688 square feet to 49,000.

The head of the school, Mr. Charles Abelmann, explained the school's mission. According to Mr. Abelmann, the new buildings represent an opportunity to match their educational program and preserve the current campus environment. A core value of the school is respect for self, others, and the environment; the school uses the environment as a classroom. Children are regularly outside, and incorporate their studies into the environment. Examples of the types of projects that illustrate this goal include identifying specimen trees for this application, studying the water quality of streams on campus, or mapping the contours of a pond. T. 12-13. Mr. Abelmann testified that the modification does not propose any operational changes to the school program. The existing cap on enrollment, at 716 pupils, will be unchanged. The school will continue its existing summer camp program.

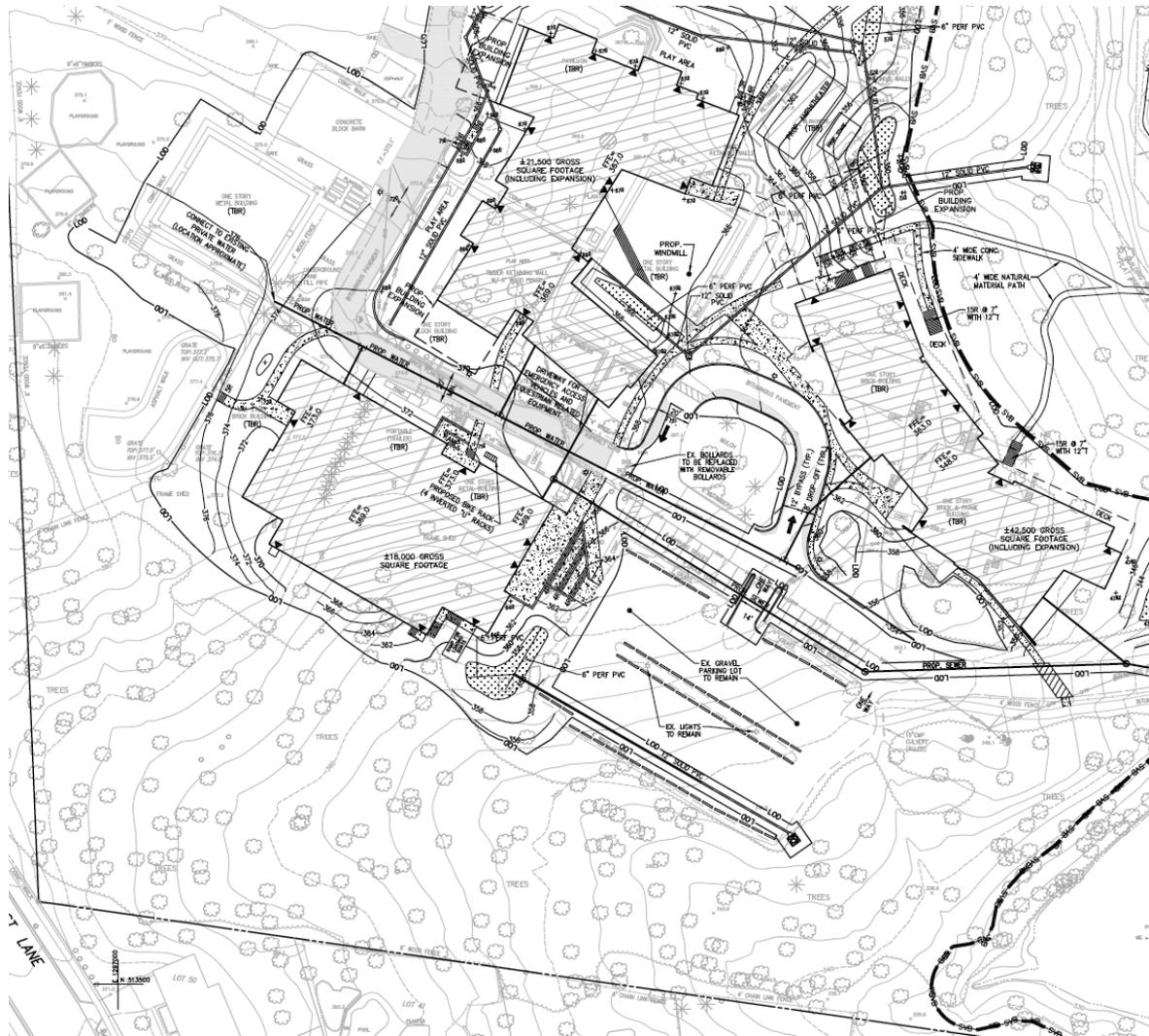
The Petitioner's expert in civil engineering described the proposed modification. The existing small classroom buildings in the upper campus will be replaced with three new buildings (Buildings A, B, and C). In addition, the soccer field re-oriented from an east-west configuration to run north-south. A portion of the rendered site plan showing the modifications to the upper campus is reproduced on the following page (Exhibit 32).



Enlarged excerpts of the actual site plan for both the upper campus and the athletic field (Exhibit 18(c)) are shown on pages 12 and 13.

The impervious area of the existing buildings equals 25,688 square feet; the modification proposes to increase the impervious area to 49,800 square feet. The larger athletic field is made of artificial turf and therefore is included in the impervious area. T. 37.

The Petitioner's expert in architectural design, Mr. Chester Bartels, explained the need for larger school buildings even though enrollment is not being increased. According to Mr. Bartels, the existing buildings are basically individual classrooms. The newer buildings provide more shared common area and flexible learning space. The classrooms will also have technology embedded, such as a wireless network. The new



**Portion of Special Exception Site Plan  
Showing Modifications to Upper  
Campus  
(Exhibit 18(c))**



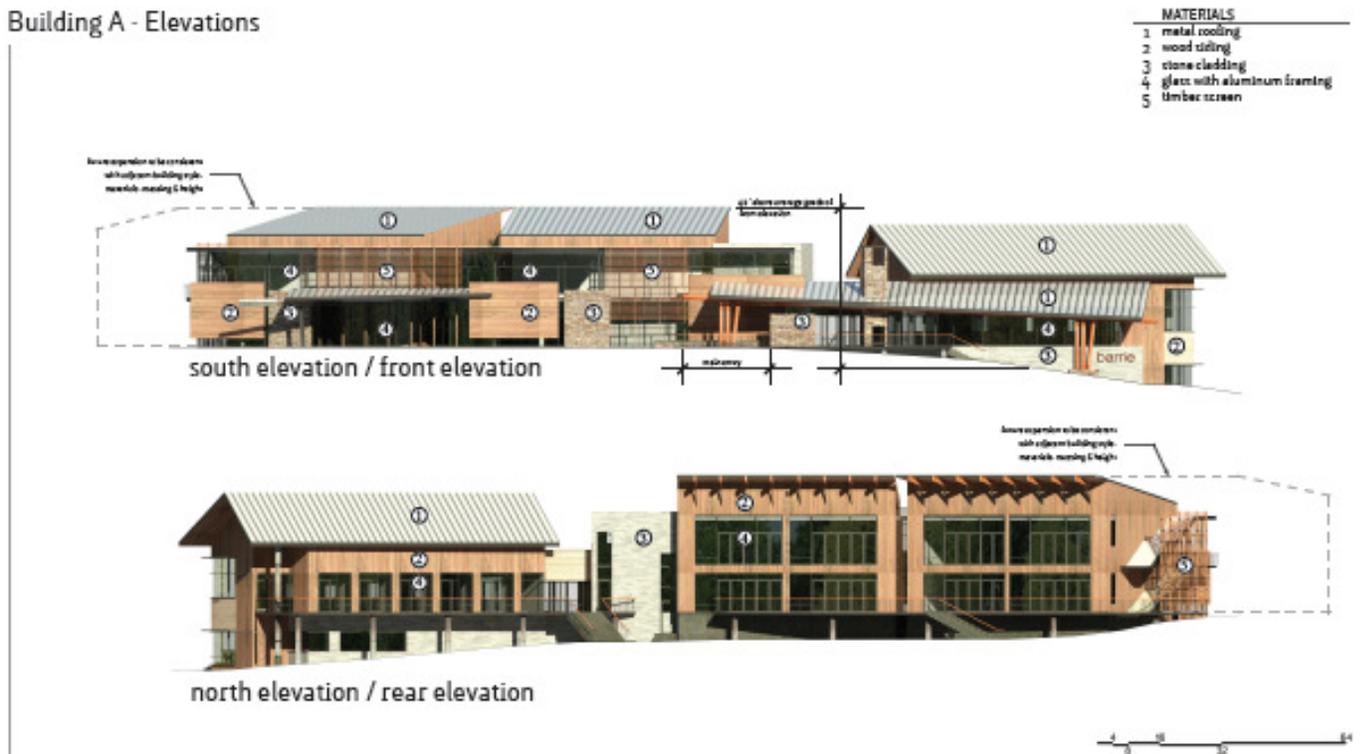
**Portion of Special Exception Site Plan Showing Athletic Field (Exhibit 18(c))**

buildings also offer increased day lighting, improving connections with the environment outside the classroom. As one moves through the property, the school has created some interpretive learning opportunities such as rain gardens designed to house particular species. T. 40-41.

Mr. Bartels described the architectural design of the buildings. Building A will be a two-story multi-function building; Buildings B and C will be primarily one story. T. 37-38.

He has tried to mirror a rustic rural architecture in the new buildings. The rooflines include gable shared ridge structure reminiscent of a barn. The building bases will be clad in regional stone and materials that look like wood cladding. They have received three different design awards for the upper campus buildings. T. 41-42. Rendered architectural elevations (Exhibit 18(1)) of the proposed buildings are shown below and on the following pages.

Building A - Elevations



According to Mr. Bartels, the design of the buildings is compatible with those of adjacent homes. Building C has been designed so that a lower roof faces homes outside of the property, which then slopes up as it approaches the internal property so that neighbors on the west are facing the lowest portion of the building. T. 42-43. The roof of Building B has also been designed to slope downward as it approaches the homes facing the western portion of the site. Building A has been designed to face the eastern portion of the campus with the highest roof point located on the

building's eastern side. T. 44. They have also worked with an individual neighbor to screen Building C from particular views through landscaping. T. 45.

Building B - Elevations

MATERIALS	
1	metal roofing
2	wood siding
3	stone cladding
4	glass with aluminum framing
5	timber screen



south elevation / side elevation



north elevation / side elevation



Building C - Elevations

MATERIALS	
1	metal roofing
2	wood siding
3	stone cladding
4	glass with aluminum framing
5	timber screen



south elevation / side elevation



north elevation / side elevation

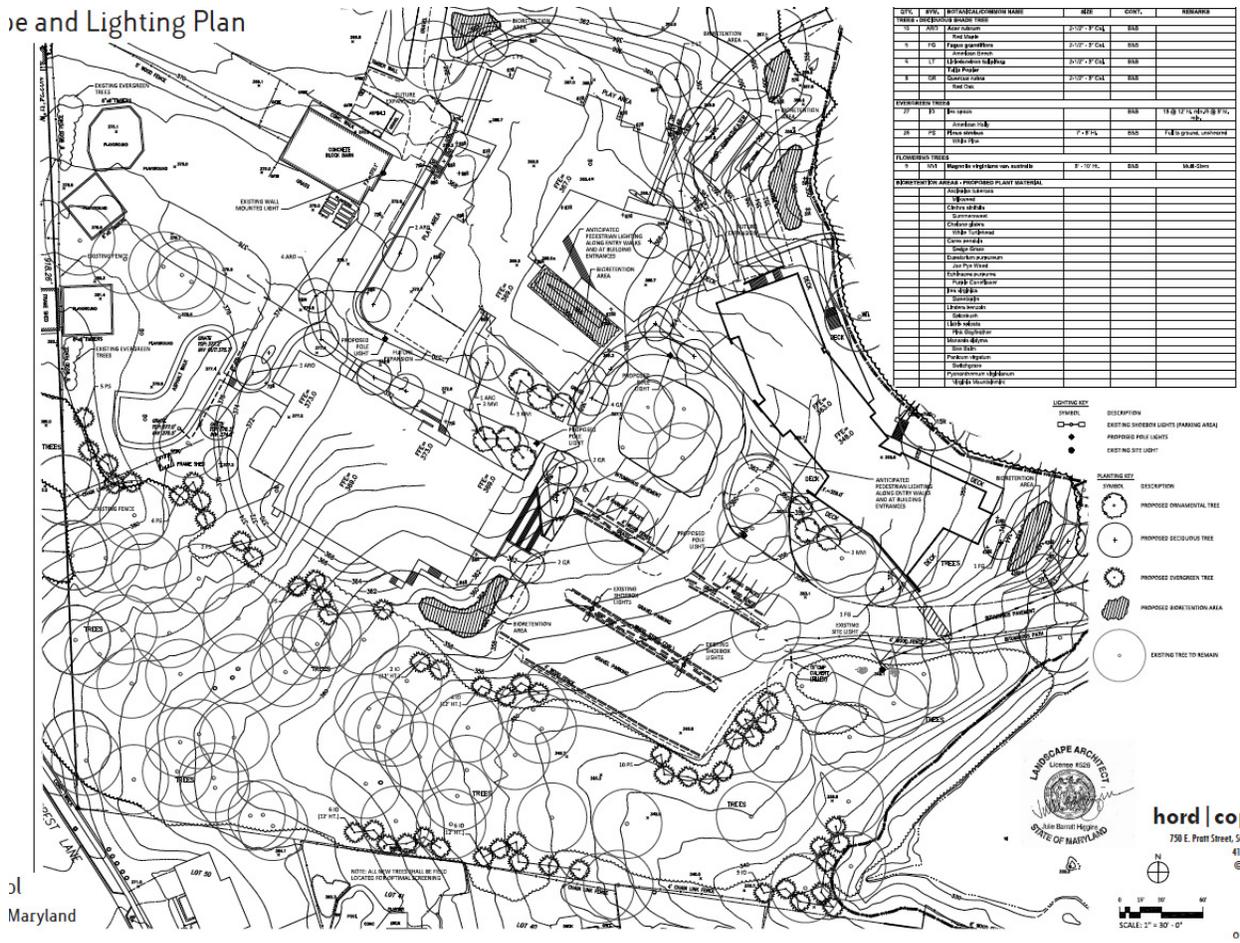


Ms. Julie Higgins qualified as an expert in landscape architecture and described the proposed landscape and lighting plan. She stated that she had three objectives when designing the landscape plan for the upper campus: (1) to create a character consistent with the existing campus, which is beautifully wooded, (2) to soften and screen the views of the upper campus, and (3) to meet stormwater management requirements while at the same time providing educational opportunities. T. 49.

She achieved the first goal by planting major shade trees around the new buildings and preserving the existing mature forest as much as possible. T. 50. While mature deciduous forest exists between the buildings and neighboring properties to the southwest, they propose to plant native evergreens both on the southern property line and the northern border of the forest. T. 51-52. These trees will be field-located to maximize the screening. T. 51-52. Because the topography of the property varies in this area, she also proposes to put trees on the northern edge of the tree line, closer to the elevation of the buildings. T. 52. Trees along the southern property line will screen the neighbors' back yards while trees closer to the building will screen the elevation of the building. T. 52. The bio-retention facilities will be planted with native species and designed to create a habitat for wildlife, birds and butterflies. T. 54.

The lighting plan calls for the three existing light poles to be retained. One of these lights is due south of Building A and illuminates the drive leading up to the upper campus. The other two are located in an existing parking lot south of Building C. These are 20-foot high poles with 250-watt metal halo lights. There will be four new poles of the same height and wattage, but will have a full cut-off feature. T. 55. The Petitioner's Landscape and Lighting Plan for the upper campus (Exhibit 20(a)) is shown on the following page.

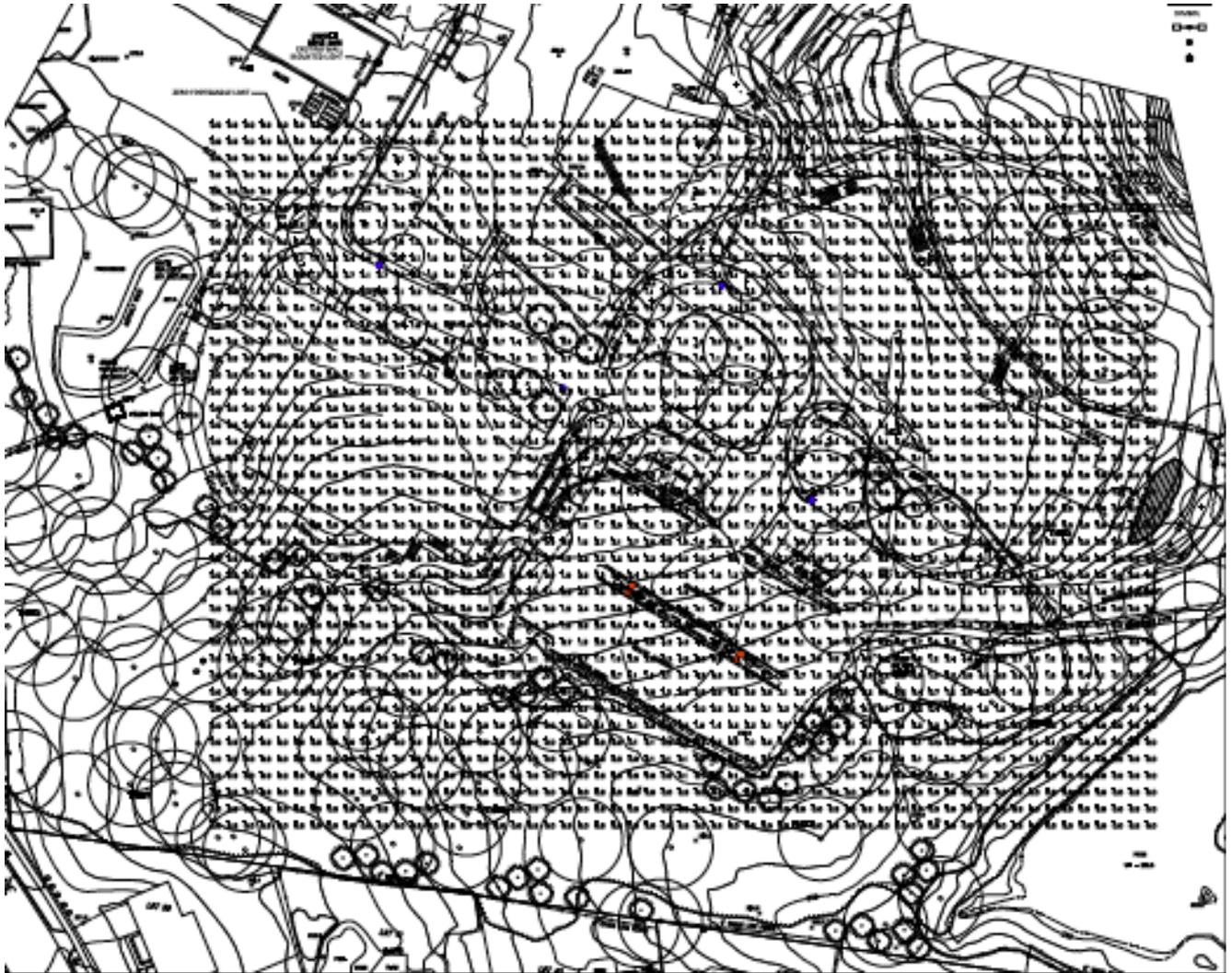
Site and Lighting Plan



The photometric study prepared for the project (Exhibit 18(i), shown on page 18) shows zero foot-candles at the property lines closest to the upper campus buildings. T. 55-56.

Technical Staff recommended approval of the petition with eight conditions:

1. All terms and conditions of the previously approved special exception shall remain in full force and effect, except as modified by this petition. The Applicant's Statement of Operations and special exception exhibits must be amended to include all of the changes required by these conditions.



2. Physical improvements are limited to those shown on the special exception site plan submitted with the application and stamped "Received" by the M-NCPPC on May 8, 2012, and on the landscape plan submitted with the application and stamped "received" by the M-NCPPC on May 22, 2012 as provided in Attachment 2.
3. Any lighting along the property lines must not exceed 0.1 foot-candles.
4. No vehicles destined for the school are allowed to be queued off-site and onto adjacent streets during the morning drop-off and afternoon pick-up periods.
5. The applicant must provide four inverted-U bike racks located near Building "C" in a well-lit and weather-protected area, as shown on the site plan.
6. The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management concept

approval letter dated August 31, 2012. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Special Exception approval.

7. The Applicant must comply with all conditions of the Forest Conservation Plan.
8. Copies of the Final Forest Conservation Plan, recorded Category I Conservation Easement, and the Maintenance and Management Agreement must be kept at the Barrie School and given to the school maintenance staff to ensure compliance with conditions of the Forest Conservation Plan. Exhibit 29, p. 2.

The Planning Board recommended approval of the petition, subject to the conditions recommended by Technical Staff. Exhibit 28.

### **C. Master Plan**

The property is located within the geographic boundaries of the *1989 Approved and Adopted Master Plan for the Kensington-Wheaton Communities* (Master Plan or Plan). The property, designated as a one of the “Critical Parcels and Areas” of the Plan, is identified as site #3, Layhill Road and Fargrove Lane. Exhibit 9. The Plan’s recommendations for the property relate primarily to residential redevelopment under the cluster option and are not applicable to the special exception. Technical Staff identifies the following objectives articulated in the Plan as its overall goals:

To protect and stabilize the extent, location and character of existing residential and commercial land uses’ and ‘to maintain the well-established low- to medium- density residential character which prevails over most of the planning area.

To preserve the identity and integrity of residential areas along major highway corridors, to soften the impact of major highways on adjacent homes, and to strengthen the distinction between commercial and residential areas.

Exhibit 29, p. 6; *Plan*, p. 40. To achieve these objectives, the Plan aimed to protect residential neighborhoods along major highways by establishing a “Green Corridor” policy to mitigate the impact of highways on residential neighborhoods and encroachment of

commercial uses. This policy included “full adherence” to the following guidelines for special exception uses:

Screening should be required for parking, even when less than six parking spaces are involved.

Green space should be retained, particularly when it provides trees that screen buildings.

Existing buildings should be retained, particularly when it provides trees that screen buildings.

Buildings should be screened with plant material.

Any addition to existing buildings should be compatible with the existing residential architecture and adjoining neighborhoods. Visibility of buildings to residents of nearby communities should be taken into account. Any new construction or building that would indicate substantial expansion should be placed where it will add as little as possible to the visible size of the building, and should be landscaped to provide as much screening as possible.

At least some of the plantings used to screen parking and buildings should conform to the choices of characteristic plantings made for each highway under the green corridors policy as noted later in the chapter.

Exhibit 29, p. *Plan*, p. 75.

Technical Staff concluded that the petition met these guidelines because no changes are proposed to the lower campus, parking is located 224 feet from Layhill Road, and mature trees provide ample screening in the setback area to block views from Layhill Road into the property. A photograph of the view from Layhill Road, included in the Technical Staff Report (Exhibit 29, p. 7), is shown on the following page.

Staff also determined that the petition met other requirements of the Green Corridors policy because the Master Plan concept recommends a minimum 10 feet of planting with 25-foot setbacks from residential homes. Exhibit 29, p. 7. While the Master

Plan concept calling for shade trees cannot be achieved due to overhead power lines along Layhill Road, there are no changes from prior approvals along Layhill Road. *Id.*, pp. 7-8.



#### **D. Public Facilities**

As enrollment will remain at previously approved levels, Technical Staff advises that no Local Area Transportation Review is required. Nor is Policy Area Mobility Review triggered because the use does not generate new trips. *Id.*, p. 8; T. 27. Technical Staff reports that an approved preliminary plan for the existing use (Preliminary Plan No. 1-90100R) remains valid. Exhibit 29, p. 19.

The Petitioner's expert civil engineer testified that a stormwater management concept plan has been approved for the proposed modification. Stormwater will be managed by eight bio-retention facilities. Mr. Goodman stated that public water and sewer are available and adequate to serve the use; the WSSC bases its determinations as to availability on the number of pupils. Because the school is not increasing pupil size, there is not impact on existing service. T. 27.

In response to concerns raised by Mr. Steven Morrison regarding emergency access to the site, Mr. Goodman stated rescue vehicles and firefighting equipment can reach the upper campus from Layhill Road. The single-lane bridge is rated for 70 tons, which permits the engine to pass over the bridge, although the truck could not park on the bridge to fight the fire. Emergency vehicles may also access the upper campus from Bayview Lane. The fire service has already reviewed and approved the proposed plan. T. 28.

### **E. Environmental Issues**

As noted, over one-half the site is subject to environmental constraints and there are several environmental issues related to the proposed development. One environmental issue is that there are some existing and proposed encroachments into the stream valley buffer. Because the Barrie School was established well before current environmental regulations, there are some facilities that are intensively used as part of the curriculum within the stream buffer. Exhibit 29, p. 9. Staff advises that these include a basketball court between two channels of the stream, part of the existing playing fields, and a variety of installations such as archery ranges, art and hard and soft paths. *Id.*

Staff recommended that these uses be allowed to continue, although not expanded, because the school is an existing approved use. Staff also recommended new permanent

buffer encroachments to be mitigated by planting in the unforested stream buffer at a 2:1 ratio. Staff recommends this approach because there is nowhere else on the campus that may accommodate a regulation-sized athletic field. *Id.* Reconfiguration of the field to a north-south orientation does not increase the current encroachment and minimizes the amount of forest loss and encroachment. *Id.*

There are also two issues related to compliance with the County's Forest Conservation Law. The proposed Preliminary Forest Conservation Plan (PFCP) establishes a Category I Conservation Easement on 7.72 acres of forest located outside the stream valley buffer. The Petitioner requested a modification to the easement which would permit the easement to be removed without penalty if additional development is approved. *Id.*, p. 10. Staff recommends approval of the modified easement because it would protect the forest until development occurs and allows future development of an established use without penalty for retaining the forest. *Id.*

Finally, the Petitioner requests a variance from the requirements of the Forest Conservation Law to permit potential impact to 44 trees. Staff advises that 20 of the trees will be retained and 24 will be removed. Staff recommended approval (Exhibit 30, p. 3) of the variance request and the modification of the conservation easement, subject to the following conditions:

1. The Applicant must obtain approval of a Final Forest Conservation Plan from the Planning Department prior to issuance of a Sediment Control Permit from the Department of Permitting Services. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.
2. The Applicant must provide 1.54 acres of on-site forest planting in stream valley buffer to mitigate for new permanent encroachment of the stream valley buffer. Planting plans and details must be shown on the Final Forest Conservation Plan.

3. Applicant must plant 1.54 acres of forest on-site no later than the first planting season after issuance of the first Sediment Control Permit associated with this development.
4. The Applicant must provide mitigation for removal of all variance trees located outside the areas of forest clearing, as shown on the Final Forest Conservation Plan.
5. The Applicant must record a Category I Conservation Easement by deed over areas of stream valley buffers, forest retention, and forest planting, as shown on the Preliminary Forest Conservation Plan dated 10/24/2012, prior to any demolition, clearing or grading occurring onsite.
  - a. The applicant may record a modified Category I Conservation Easement for the purposes of accommodation of future institutional changes and growth. The modification will stipulate that the Planning Board will not seek a 2:1 penalty for easement removal for any areas of Category I Conservation Easement outside of the stream valley buffer proposed for removal in the future.
6. The Applicant may locate natural surface paths and features inside the Category I Conservation Easement as shown on the Final Forest Conservation Plan.
  - a. These features must not require the removal, or prevent the regeneration, of trees or understory, and must be in accordance with the requirements of the Category I Conservation Easement.
  - b. Features and paths to be field-located in coordination with Forest Conservation Inspection staff.
7. The Applicant must provide financial security for areas of forest planting prior to demolition, clearing, and grading.
8. The Applicant must enter into a Maintenance and Management Agreement approved by the Office of General Counsel to ensure compliance with conditions of the Final Forest Conservation Plan prior to demolition, clearing, and grading.
9. Copies of the Final Forest Conservation Plan, recorded Category I Conservation Easement, and Maintenance and Management Agreement must be kept at the Barrie School and given to the school maintenance staff to ensure compliance with conditions of the Forest Conservation Plan.

The Planning Board concurred, and approved the PFCP subject to the conditions recommended by Technical Staff. Exhibit 28.

### **F. Neighborhood Response**

Mr. Steve Morris appeared at the public hearing to oppose the petition. He stated that he had three primary concerns regarding the petition. First, he is concerned about the narrow bridge that crosses the stream. He is concerned that if there is an accident on the bridge during a fire, emergency vehicles will not be able to get equipment to the fire. T. 71.

He is also concerned that trees are being removed to install a soccer field. He objects to that from an environmental standpoint because there are several existing soccer fields approximately one mile from the lower campus at the Queensguard Recreational Center. In his opinion, it would be better to bus students to those soccer fields because they are never in use during school hours. T. 72.

His final concern is that traffic from parents dropping off or picking up their children has always been a problem causing congestion on Layhill Road. He suggests that the school should pay more attention to carpooling or other traffic mitigation to diminish the long term problem. T. 73-74.

### **III. FINDINGS AND CONCLUSIONS**

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 zoning statute 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. Technical Staff and the Planning Board concluded that Petitioner will have satisfied all the requirements to obtain the special exception, if it complies with the recommended conditions. Exhibits 17 and 19(a).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

#### **A. Standard for Evaluation**

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.

Technical 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, the Technical Staff suggested the following inherent characteristics associated with the use (Exhibit 29, p. 11):

- (1) buildings and structures, as well as outdoor areas for the children to play;
- (2) early and long hours of operation;
- (3) traffic to and from the site by the staff and parents;
- (4) deliveries of supplies and trash pick-up;
- (5) drop-off and pick-up areas for the students; and
- (6) noise from the children playing in the play areas.

To this list, the Hearing Examiner would add the following inherent characteristics:

- (7) students, faculty and support staff;
- (8) lighting;
- (9) parking facilities; and
- (10) occasional special events.

Most of the characteristics of the proposed special exception are inherent in the operation of a private educational institution. The proposed access driveway, internal vehicular circulation system, play areas, lighting and onsite parking areas shown on the site plan are physical characteristics typically associated with a private school. The number of staff and students, the hours and proposed manner of operation, and the intended special events are also typical operational characteristics of a private school.

Technical Staff concluded that there are no non-inherent adverse impacts that will negatively affect the community in the proposed modifications. As the operations are

remaining the same as those already approved, the Hearing Examiner agrees with this conclusion and so finds.

### **B. 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-90 and R-200 Zones pursuant to Zoning Ordinance §59-C-1.31(d).

*(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 private educational institutions in Zoning Ordinance §59-G-2.19, as detailed in Part III. C. 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.*

Conclusion: The subject site is located in the area covered by the *1989 Approved and Adopted Master Plan for the Communities of Kensington-Wheaton*. The Plan supports the R-200 and R-90 zoning for the property, which permits private educational institutions as a special exception use. Staff found that the use is consistent with the Plan because, while identified as a critical parcel, its recommendations for future development apply to residential redevelopment under the cluster option rather than the existing educational use. Staff found that the petition complies with the specific guidelines for special exceptions, as discussed above. Having no evidence to the contrary, the Hearing Examiner agrees with this analysis and so finds.

- (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: The Hearing Examiner finds that the proposed modifications will be in harmony with the general character of the neighborhood. She agrees with Mr. Bartels' assessment that the design of the buildings in the upper campus is sensitive to potential impact on surrounding neighborhood homes. The rooflines closest to surrounding homes are lower and slope upward; building materials reflect the natural environment surrounding the school. There are also extensive setbacks, natural mature forest, and additional landscaping to further screen the school. The photometric study of the new lighting shows that the foot-candles will be zero at the property

lines adjoining the residential homes. As no operational changes are being made, the Hearing Examiner finds that the petition has met this standard, as did Technical Staff.

- (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: Technical Staff found that the proposed modifications will be detrimental to the use and enjoyment of surrounding properties because the existing use is well established and no changes are being made to the operational aspects of the use. The Hearing Examiner agrees and so finds.

- (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.*

Conclusion: Technical Staff found that the proposed use will not cause any unacceptable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site because the use has been in existence for many years without any evidence of these occurring. The photometric study shows that the new lighting plan for the upper campus will not have any impact on neighboring properties and the evidence shows that the property is well screened from adjoining properties. The Hearing Examiner agrees with Technical Staff that this standard has been met and so finds.

- (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.*

Conclusion: Technical Staff reports that there is only one special exception, an accessory apartment, in operation within the defined neighborhood. While the square footage of the buildings will increase, the activity generated by the operations will not intensify. As the buildings are well-screened and buffered from neighboring uses, the Hearing Examiner finds that the proposed modification will not adversely affect the surrounding area or alter the primarily residential nature of the area.

- (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. Rather, it will continue to provide a valuable service to the community by offering quality education to the children of the area.

- (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.*

Conclusion: As determined by Technical Staff (Exhibit 29, p. 12), the special exception sought in this case would not require approval of a preliminary plan of subdivision and therefore, the Board of Appeals must determine the adequacy of public facilities for the proposal. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). Because the enrollment will not exceed that of the previously approved preliminary plan and special exception, no new trips are generated. For that reason, no traffic study is required nor is mitigation required under PAMR. The Hearing Examiner finds that the evidence supports the conclusion that the subject property would continue to be served by adequate public facilities. Both Staff and the Petitioner report that other public facilities, including water and sewer and stormwater management are adequate to serve the proposed use.

(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.*

Conclusion: No modifications are proposed to the site access and Staff has recommended a condition prohibiting queuing on the adjacent public roads during drop-off and pick-up periods. While Mr. Morrison raised concerns about general traffic congestion associated with the school,

he provided no specific evidence of this. The Hearing Examiner finds that the proposed modification does not reduce the safety of vehicular or pedestrian traffic, as did Technical Staff.

### **C. Specific Standards: Educational Institutions, Private**

The specific standards for a private educational institution are found in Code § 59-G-2.19. The Technical 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 the General Standards section above, as long as appropriate 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: The Hearing Examiner agrees with Technical Staff that the buildings to be modified in the upper campus will be compatible with nearby homes. Mr. Bartels testified that

the buildings have been designed to minimize heights nearest the neighboring homes. The Hearing Examiner agrees with his assessment that the exterior materials are architecturally compatible with the existing campus, which already provides significant screening due to setbacks and mature forest. According to Ms. Higgins, the landscape plan proposed will further enhance this screening by targeting plantings in key locations.

*(3) 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 General Standards section above, and in response to Sections 59-G-2.19(a) (1) and (2), immediately above, the Hearing Examiner finds that the use will not adversely affect or change the present character or future development of the surrounding neighborhood.

*(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.*

Conclusion: Compliance with the general development standards specified Code Section 59-G-1.23 will be discussed in Part IV. C. of this report, below. Technical Staff determined that the Petitioner has met these standards because no change in student enrollment or parking areas and driveways is proposed. It also found that the existing topography is appropriate for school activities and athletics. The Hearing Examiner agrees, as the modifications will provide an athletic field that meets current regulations. Thus, the record demonstrates that Petitioner would meet the standards set forth in this section, with the conditions recommended in Part V of this report.

- 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.*

Conclusion: As stated by Technical Staff (Exhibit 29, p. 19):

The new, regulation-sized soccer field and practice field will be located in the same approximate area as the existing playing fields. Although the fields will be reoriented in a new north/south orientation and have larger overall dimensions, they will not impact the adjacent residential properties. The setback from the adjacent residential properties increases with the reorientation of the field. Therefore, ample setback, existing forest/vegetation and proposed additional landscaping will ensure that the fields are effectively buffered from residences.

Based on this record, the Hearing Examiner finds that the proposed use is compliant with this section.

- (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.*

Conclusion: The proposed modifications affect only physical buildings and existing operations remain unchanged. Staff advises that the adequate public facilities approval for the governing preliminary plan (Preliminary Plan No. 1-90100R) remains valid because there is no increase in enrollment. Exhibit 29, p. 19. The Hearing Examiner agrees with this analysis and so finds.

- (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: Technical Staff found that this provision did not apply to the proposed modifications. Nevertheless, the Hearing Examiner did review the Board's original decision approving the current enrollment of 716 students (CBA 1261-A) decided in 1990 and takes official notice of the Board's Opinion, dated May 30, 1990, approving the existing operations. The summary of testimony included the parameters of the summer day camp program. Opinion, p. 2. The Board's Opinion also included a condition requiring the school to adhere to its Statement of Operations. *Id.*, p. 4. The school's Statement of Operations (CBA 1261-A, Exhibit 3, p. 7) sets forth the operations of the summer camp program. The Hearing Examiner finds that this requirement has been met.

*(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: Appropriate plans (NRI/FSD, Preliminary Forest Conservation Plan, Site Plan, including a plan showing existing conditions, and a Landscaping and Lighting Plan, have been submitted for the physical modification to the existing approved use.

(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 standard is not applicable to the existing approval or the proposed modifications.

(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.

### D. 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.*

Conclusion: The following chart from the Technical Staff Report (Exhibit 29, p. 15)

demonstrates that the modification complies with all applicable development standards:

Development Standards	Requirement	Provided
Zone	R-90/R-200	R-90/R-200
Minimum Lot Area	9,000 SF/20,000 SF	1,757,646 SF or 40.35 acres
Minimum Lot Width at Building Line	100 ft./75 ft.	411 ft.
Minimum Setback from Street	30 ft./40 ft.	167 ft. (from Layhill Road)
Minimum from Adjoining Lot	8 ft./12 ft.	95 ft.
Minimum Setback from Rear	25 ft./30 ft.	132 ft.
Maximum Building Height	35 ft./50 ft.	42 ft. (Buildings are located only in R-200)
Maximum Lot Coverage	30% / 25%	±8%

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

Conclusion: No change is being proposed to the parking areas; Technical Staff found that existing parking is adequate for the use (Exhibit 29, 15):

The project proposes to maintain the existing employee parking facilities and access. The main drive for the school provides access for all parking facilities and the single loop serving the Upper Campus is used for the drop-off and pick-up of students. Beyond this loop, the drive is closed except for service

vehicles, horse trailers, and fire and rescue vehicles as necessary. Existing parking has been found adequate to accommodate the needs of the employees, teachers and administrators. There are currently 181 parking spaces on site, no change in the existing parking is proposed. §59-E-3.7 of the Zoning Ordinance requires a parking space for each employee, including teachers and administrators, plus sufficient off-street parking areas for student parking. Based on this requirement, 101 parking spaces would be needed for staff. This leaves a balance of 80 spaces available for student needs. Based on the existing cap of 716 students, 80 spaces is sufficient for the safe and convenient loading and unloading of students, as well as individual student parking needs. The special exception modification does not change the School's operations, no increase in the number of students or staff and no change in the comings and goings of students and staff, therefore the existing parking is not affected. All parking facilities conform to the required setbacks and are well screened from neighboring properties by existing dense landscaping and natural features.

To the extent that any new analysis is required, the Hearing Examiner finds that the existing parking is adequate to serve the proposed use, based on the evidence from Technical Staff.

*(c) Minimum frontage \* \* \**

Conclusion: This requirement is not applicable, since none of the listed uses are involved and no waiver regarding frontage 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: As discussed in Part II. E. of this report, the Planning Board has approved a PFCP granting a waiver for the removal of certain trees and approval of a modified Category I Conservation Easement, subject to numerous conditions. The Petitioner has submitted the revised PFCP, consistent with the Board's approval, into the record of this case. With a recommended condition of approval requiring compliance with the approved PFCP and

conditions attached thereto, the Hearing Examiner finds that the Petitioner has met this requirement.

*(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: The Petitioner's civil engineer testified that the subject property is not within a special protections area and therefore no water quality plan is required.

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

Conclusion: The Petitioner is not proposing any new signs to accompany this modification request. To the extent required, Technical Staff advises that the existing monument sign at the site entrance from Layhill Road complies with the requirements of Article 59-F. Exhibit 29, p. 16.

*(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: As stated by Technical Staff (Exhibit 29, p. 16):

The proposed construction will be compatible with the surrounding area in terms of its siting, landscaping, appearance, size, scale and design of the new buildings and related athletic facilities. The buildings utilize natural building materials and will be well buffered from adjacent uses by existing vegetation and proposed landscaping.

For the reasons set forth earlier in the Special Standards, the Hearing Examiner finds that this standard 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: The Petitioner will illuminate the new buildings with a combination of existing and new light fixtures. All will be 250-watts mounted on 20-foot high poles. The existing lights have halo fixtures and the new lights will have a full cutoff. The photometric study submitted by the Petitioner shows that the foot-candles at the property line will be zero. Based on this evidence, the Hearing Examiner finds that no direct light will intrude into adjacent residential properties.

**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, the proposed modifications will be compatible with the neighborhood and will be suitably screened. There is no evidence that noise mitigation will be required and existing operations are not changing. For these reasons, the Hearing Examiner finds that the petition meets this standard.

Based on the testimony and evidence of record, I conclude that, with the recommended conditions and waivers, 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. RECOMMENDATION

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that the Petition of the Barrie School, CBA Case No. 1261-D, which seeks to modify a previously approved special exception for a private educational institution, on property located at located at 13500 Forest Glen Road, Silver Spring, Maryland, be ***granted*** with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. All terms and conditions of the previously approved special exception shall remain in full force and effect, except as modified by this petition.
3. Physical improvements are limited to those shown on the special exception site plan (Exhibit 18(c)), and on the landscape plan submitted with the application (Exhibit 20(a)).
4. Any lighting along the property lines must not exceed 0.1 foot-candles.
5. No vehicles destined for the school are allowed to be queued off-site and onto adjacent streets during the morning drop-off and afternoon pick-up periods.
6. The applicant must provide four inverted-U bike racks located near Building "C" in a well-lit and weather-protected area, as shown on the site plan.
7. The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management concept approval letter dated August 31, 2012. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Special Exception approval.

8. The Applicant must comply with all conditions of the Preliminary Forest Conservation Plan (Exhibit 26)).
9. Copies of the Final Forest Conservation Plan, recorded Category I Conservation Easement, and the Maintenance and Management Agreement must be kept at the Barrie School and given to the school maintenance staff to ensure compliance with conditions of the Forest Conservation Plan.

Dated: January 14, 2013

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'L' and 'R' followed by a long horizontal flourish.

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Lynn A. Robeson  
Hearing Examiner