

BEFORE THE HEARING EXAMINER FOR MONTGOMERY COUNTY, MARYLAND

Office of Zoning and Administrative Hearings
Stella Werner County Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850

IN THE MATTER OF:)	
PETITION OF HOLTON-ARMS)	
SCHOOL, INC. FOR A MAJOR)	Case No. CBA-1174-E
MODIFICATION OF AN EXISTING)	
PRIVATE EDUCATIONAL)	
INSTITUTION SPECIAL EXCEPTION)	
Petitioner,)	
)	
)	
Soo Lee-Cho, Esquire)	
Attorney for the Petitioner.)	

PETITIONER’S RESPONSE TO MOTION TO COMPEL IMMEDIATE FILING OF AMENDED APPLICATION AND RELATED RELIEF

Pursuant to OZAH Rule 3.9, Applicant Holton-Arms School, Inc. (“Holton-Arms”, “School” or “Applicant”) submits this Response to Motion to Compel Immediate Filing of Amended Application and Related Relief (“Motion to Compel”) filed by Mr. William Chen, counsel for opposition parties Vivian Riefberg and Bradley Boulevard Citizen’s Association. The Motion to Compel distorts the record in this case in an attempt to gain a prejudicial advantage over the Applicant.

I. The revised plans are not an amendment to the Application.

At the previous hearing held on November 17, 2025, the Hearing Examiner expressed concern that the site plan accepted with the School’s application may not contain enough information for the Hearing Examiner to make the necessary findings in this case. (Transcript of Hearing – Day 1, *in re* Holton-Arms, Inc. (the “Transcript”) at 49:8-14). In response to these

concerns, the Applicant's civil engineer, MHG, has endeavored to survey the property and provide a more detailed existing conditions site plan.

While the Applicant takes the Hearing Examiner's point that the site plan initially provided as Exhibit 11 was less clear than it could have been on some details, to argue that the updated site plan constitutes an amendment to the application in this case simply goes too far. This application is for operational changes only. No physical changes to the existing site are proposed. To the extent the forthcoming updated site plan presents the site's existing conditions in a more accessible format for the Hearing Examiner and opposing parties to review than Exhibit 11, the new information is supplemental to Exhibit 11 rather than an amendment of the application since nothing new is proposed or depicted on the plan.

II. The February 13, 2026, date offered by Applicant's counsel was predicated on a mid-March hearing date and is of no effect given the shift to April.

Mr. Chen's account of the Transcript relies on cherry-picked quotes to reach distorted conclusions about the significance of February 13, 2026. To begin with, Mr. Chen seems to have forgotten the off the record discussions between counsel following the Hearing Examiner's direction to the parties to choose dates for the continued hearing. Applicant's counsel approached these discussions in good faith, confirming with MHG whether a mid-February production date for the plan could be met after first conferring with Mr. Chen and his client as to their availability/agreement to rescheduled hearing dates during the week of March 16, 2026, which also worked for the School. To be clear, Ms. Riefberg participated in the discussions regarding the potential March 16, 2026, date during the off the record discussion. As 30 days before March 16, 2026, was Saturday, February 14, 2026, Applicant's counsel was of the understanding that the

updated site plan would need to be prepared and provided by February 13, 2026, **to comply with Applicant's 30-day pre-hearing submission requirement.**

Admittedly, all this discussion occurred off the record and as such, the Hearing Examiner cannot directly verify what conversations the parties had. But the discussion that transpires when the hearing goes back on the record makes a lot more sense in light of the context above than does Mr. Chen's assertions. In the Transcript excerpts below from pages 56 and 57, Applicant's counsel begins by explaining that MHG could provide the plans by mid-February, chooses February 13 to begin counting forward to a mid-March hearing date, and offers up the date of March 16, 2026 (which is as noted above, 31 days after February 13, 2026, to account for 30 days falling on a Saturday).

18 HEARING EXAMINER: It is 11:05 and
19 we're back on the record. Do we have dates?

20 MS. LEE-CHO: Yes. In consultation
21 with our engineer and understanding the request,
22 we think we can -- we will provide the plans by
23 mid-February. So February 13th is a Friday.
24 February 13th.

25 MR. LA VAY: Sure.

1 MS. LEE-CHO: And then so Mr. Chen has
2 requested 30 days for review, putting us after
3 mid-March or mid-March or thereafter for a
4 hearing date.

5 HEARING EXAMINER: Okay.

6 MS. LEE-CHO: We have -- the week of
7 the 16th is available for the school, but the
8 following week is spring break and a lot of the
9 folks who need to testify will not be in town.
10 And so then, alternatively, we would be looking
11 at the week of the 30th into April.

Notably, Mr. Chen did not raise an objection to the March 16, 2026, date.

Directly following the above a resident of the Al Marah community interjected, and from Transcript 57:12 through 58:21, Mr. Bowe and the Hearing Examiner discuss several options for dates, after which Mr. Bowe indicates the week of March 16, 2026, would be acceptable. During this back and forth, Mr. Chen still did not find it necessary to raise the point that a mid-March date would present an issue for his review of the Applicant's updated materials.

After the discussion with Mr. Bowe concluded, the Hearing Examiner turned back to Applicant's counsel and at Transcript Page 59:1-22, discusses dates during the week of March 16, 2026, and how many days should be blocked for the hearing. Still, no objection registered from Mr. Chen. Then the following exchange occurs at Transcript Pages 59-60:

23 MS. LEE-CHO: I would suggest that we
24 block off three days of hearings.
25 HEARING EXAMINER: Okay. We can do the

1 17th, 19th, and 20th.

2 MS. LEE-CHO: That would be fine with
3 the applicant.

4 HEARING EXAMINER: Does that work for
5 you, Mr. Chen, and your witnesses?

6 MR. CHEN: Yes.

Mr. Chen’s assertion in his Motion to Compel that “there never were any mid-March hearing dates” is not just a prevarication¹ but a clear misrepresentation of what transpired on November 17, 2025, both on and off the record. There was no intervening discussion between the time the February 13, 2026, date was offered for submission of the updated site plan at Transcript Page 56:23 and when Mr. Chen unequivocally agreed to the March 16, 2026, hearing date at Page 60:6. A March 16, 2026, hearing date was a central part of three separate discussions from Pages 56-60 of the transcript, and at no time did Mr. Chen dispute the appropriateness of Applicant providing the updated site plan 30 days prior to the first day of the mid-March hearing dates being discussed. It is highly implausible that Mr. Chen would have remained silent while everyone else

¹ See Motion at 7. Mr. Chen has thrown stones from the proverbial glass house. His insinuation that Applicant’s counsel has been anything other than fully transparent during this process is disappointing. Instead of picking up the phone and having a professional conversation about how to resolve this misunderstanding or request a Consent Motion to shorten the time required for opposition parties’ pre-hearing submissions (which appears to be his aim), Mr. Chen chose to file a Motion that questions this counsel’s integrity and makes assertions inconsistent with conversations at the prior hearing undertaken in good faith.

in the room discussed hearing dates that would have allowed for a review and response period of time for opposition parties that he considered insufficient, and then accepted said dates without comment or clarification.

Following Mr. Chen's assent to the March 16, 17, and 20, 2026, hearing dates, Ms. Vivian Riefberg unexpectedly indicated that while she could attend the mid-March dates, it was not her preference, and the hearing dates were subsequently shifted to the current April 7, 8, 9, and 10, 2026, schedule. This was contrary to what Applicant's counsel was led to believe during the off the record discussions in the presence of her counsel. But in an effort to reach consensus on hearing dates, the Applicant acquiesced to the replacement April dates offered by Ms. Riefberg with the understanding that the standard OZAH pre-hearing submission deadline would continue to apply. Mr. Chen now asks that he be afforded 15 more days than the standard pre-hearing submission requirements would allow for his review and response to the Applicant's pre-hearing submission, while incredulously suggesting that the Applicant be given only 5 days (instead of 20 days) to review oppositions' pre-hearing submission.

III. The Applicant's Proposal

Prior to Mr. Chen's Motion to Compel filing, the Applicant was in the midst of preparing a Motion to Amend in response to several issues raised at the November 17, 2025, hearing by the Hearing Examiner, including 1) summary of the numerous special exception case files/numbers associated with the School and clarification/correction of what Applicant believes should be the applicable case numbers pertinent to the present matter; 2) withdrawal of the request to continue administrative office use of the Granger House; and 3) clarification/restatement of the School's Statement of Operations. While we had hoped to file the Motion to Amend concurrently with this

Response, due to the need to respond to the Motion to Compel, the Applicant will instead file the Motion to Amend this coming Monday, February 23, 2026.

With regard to preparation of the updated site plan as well as the FCP covering the proposed off-site intersection improvement, MHG was unfortunately delayed in completing the necessary field survey work due to the snowstorms that occurred in January and prolonged snow-covered conditions. MHG is working diligently to finish its work, and has informed counsel that the updated site plan as well as the FCP can be provided no later than March 2, 2026, in accordance with Mr. Chen's request.

Mr. Chen's request to extend the time for opposition pre-hearing submissions to April 1, 2026 is unwarranted and unacceptable. This is an undisguised attempt to put the Applicant in a worse position than under the OZAH Rules. As was discussed at the previous hearing, the Applicant must make its pre-hearing submission 30 days prior to the hearing, and represented opposition must submit pre-hearing submissions 20 days prior to the hearing. So, under normal circumstances, the opposition would have ten 10 days to review the Applicant's pre-hearing submission and respond accordingly. Mr. Chen is asking for 25 days to prepare his pre-hearing submission, while leaving the Applicant only 5 days to prepare for the first day of hearings in response to the opposition's submission. This goes too far.

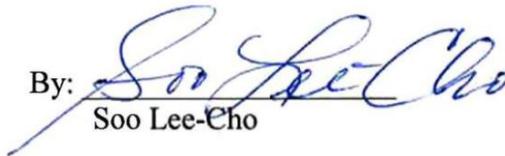
The Applicant is willing to compromise and afford some additional time for opposition parties' submissions to ensure the hearing proceeds on April 7-10. The Applicant proposes the following schedule of submissions:

- Applicant will submit the updated site plan and FCP by March 2, 2026 as requested by Mr. Chen.

- Applicant will submit the remainder of its pre-hearing submission by March 7, 2026 as requested by Mr. Chen.
- All parties in opposition to the application will file their pre-hearing submissions by March 23, 2026.

Under this schedule, the Applicant is held to the standard 30-day pre-hearing submission requirement while opposition parties are afforded 16 days for review/response prior to their pre-submission filing and the Applicant would have 14 days to review/prepare for the April 7-10 hearings (instead of the 20 days normally afforded under OZAH Rules of Procedure).

Respectfully submitted,
BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February, 2026, a copy of the foregoing Response to Motion to Compel Immediate Filing of Amended Application and Related Relief was transmitted by email and certified mail to:

Office of Zoning and Administrative Hearings
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