

**BEFORE THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

**IN THE MATTER OF THE APPLICATION :
OF HOLTON ARMS SCHOOL, INC. FOR A : Conditional Use Application
MAJOR MODIFICATION OF SPECIAL : Case No. CBA-1174-E
EXCEPTION FOR A PRIVATE :
EDUCATIONAL INSTITUTION :**

**SUPPLEMENTAL
PRE-HEARING SUBMISSION OF VIVIAN RIEFBERG
AND BRADLEY BOULEVARD CITIZENS ASSOCIATION**

EXHIBIT A

Special Purpose Plat of Holton Arms properties

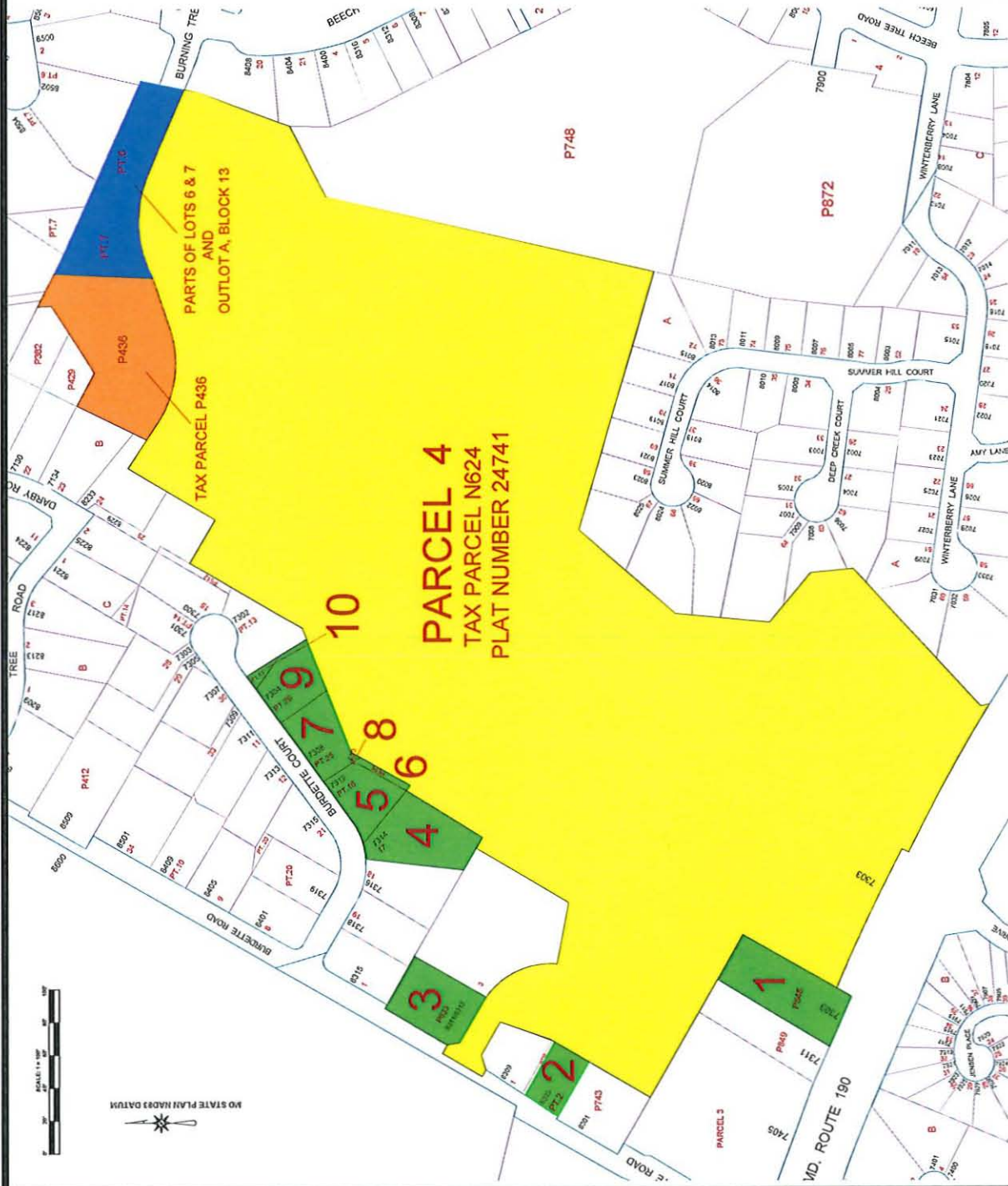
NOTES:

- The properties shown herein are located in Montgomery County, Maryland, Tax Map GN43.
- The matters contained herein are not intended to show any item which may affect the ownership, title and use of the subject Properties.
- All of the information shown herein has been derived solely from the records maintained by the Montgomery County Department of Public Works and Planning Commission, the Land Records for Montgomery County, Maryland and the said Tax Map GN43.
- The area colored in Yellow represents the main campus of the Holton-Arms School, Inc. as delineated on Parcel Four on the Subdivision Record Plat titled "Burning Tree Valley - Holton-Arms School", recorded as Plat No. 24741.
- The areas colored in Green, numbered 1 through 10, are the parcels delineated on Tax Map GN43 and as referred to in the Report of James J. Dennis, for Case Number 07-0041146-1, and are more particularly described therein.
- The area colored in Orange is the same property delineated on Tax Map GN43 as Tax Parcel 436, and the area colored in Yellow is the same property delineated on the Tax Map GN43 as Parts of Lots 6 and 7, and Outlot A, all as used as more specifically described therein.
- This is a Special Purpose Survey in accordance with Title 09, Department of Labor Licensing and Regulation, Subtitle 13, Chapter 06.10, and it is intended to show the standards of practice for the sale of property to the said properties owned by the said Tax Map GN43 and their relationship to each of the colored Properties in the coloring publicly delineated roadway.

(a) Parcel Identification Number: 07-501-02802753; Parcel N624, Tax Map GN43, 54.68 acres, also identified as Parcel Two per Plat 17150 (acquired by Holton-Arms from Christopher M. and Louise L. Grander, et al. circa 1961 and colored in yellow for convenient reference on a copy of the attached tax map);

(b) Parcel Identification Number: 07-501-01728481; Parcel 436, Tax Map GN43, 87,120 square feet, per Liber 15417 at folio 146 (acquired by Holton-Arms in 1997 from the Thomas D. Rixey Development Company, and colored in orange for convenient reference on a copy of the attached tax map); and

(c) Parcel Identification Number: 07-095-006655141; Parts of Lots 6 and 7, and Outlot A, Block 69, 696 square feet, per Liber 15417 at folio 146 (acquired by Holton-Arms from the Thomas D. Rixey Development Company in 1997, and colored in blue for convenient reference on a copy of the attached tax map).



- 07-0042500 - Deed 46981142
a. Address - 7092 River Rd., Bethesda, MD 20817
b. Lot size - 41,381 sq. ft.
c. Date of purchase - November 27, 2018
d. Purchase price - \$7,750,000.00
e. Seller - Estate of Nancy Howard Scott
- 07-0042263 - Deed 342625413
a. Address - 805 Burdette Rd., Bethesda, MD 20817
b. Lot size - 2,261 sq. ft.
c. Date of purchase - April 13, 2007
d. Purchase price - \$1,464,500.00
e. Seller - Neal Michael Mayer and Jan G. Mayer
- 07-0042928 - Deed 18561495
a. Address - 813 Burdette Rd., Bethesda, MD 20817
b. Lot size - 29,289 sq. ft.
c. Date of purchase - October 31, 2000
d. Purchase price - \$1,250,000.00
e. Seller - Thomas D. Rixey and John R. Rixey
- 07-0042500 - Deed 286015982
a. Address - 7118 Burdette Rd., Bethesda, MD 20817
b. Lot size - 20,487 sq. ft.
c. Date of purchase - August 2, 2004
d. Purchase price - \$1,350,000.00
e. Seller - Deyan S. Ilarwitz, 5% Int. and Joyce Ilarwitz, 95% Int. as TIC
- 07-0041146 - Deed 67952293
a. Address - 7112 Burdette Rd., Bethesda, MD 20817
b. Lot size - 20,487 sq. ft.
c. Date of purchase - April 17, 2004
d. Purchase price - \$2,000,000.00
e. Seller - Kelly G. Kikoyne and Lauren A. Kikoyne
- 07-0042151 - Deed 67942293
a. Address - 7112 Burdette Rd., Bethesda, MD 20817
b. Lot size - 2,261 sq. ft.
c. Date of purchase - April 17, 2004
d. Purchase price - \$2,000,000.00
e. Seller - Kelly G. Kikoyne and Lauren A. Kikoyne
- 07-00421754 - Deed 30295777
a. Address - 7108 Burdette Rd., Bethesda, MD 20817
b. Lot size - 2,261 sq. ft.
c. Date of purchase - June 21, 2005
d. Purchase price - \$1,700,000.00
e. Seller - Thomas J. Dougherty, surviving T/E of Anne D. Dougherty
- 07-01780557 - Deed 30295777
a. Address - Burdette Rd., Bethesda, MD 20817
b. Lot size - 235 sq. ft.
c. Date of purchase - June 21, 2005
d. Purchase price - \$1,700,000.00
e. Seller - Thomas J. Dougherty, surviving T/E of Anne D. Dougherty
- 07-0042504 - Deed 34260146
a. Address - Burdette Ct., Bethesda, MD 20817
b. Lot size - 1,818 sq. ft.
c. Date of purchase - May 9, 2007
d. Purchase price - \$2,000,000.00
e. Seller - John Pulverman, Jr. and Mary Lee Pulverman
- 07-0042504 - Deed 34260146
a. Address - Burdette Ct., Bethesda, MD 20817
b. Lot size - 1,818 sq. ft.
c. Date of purchase - May 9, 2007
d. Purchase price - \$2,000,000.00
e. Seller - John Pulverman, Jr. and Mary Lee Pulverman

SPECIAL PURPOSE PLAT
PROPERTIES OF
HOLTON-ARMS SCHOOL, INC.
7303 RIVER ROAD
POTOMAC MD 20817

MONTGOMERY COUNTY, MARYLAND
SCALE 1" = 100'
MARCH 2026
MMAPS LLC
PROFESSIONAL LAND SURVEYOR
8933 SHADY GROVE COURT
GAITHERSBURG, MARYLAND 20877
(301) 330-0812

**BEFORE THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
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EDUCATIONAL INSTITUTION :**

**SUPPLEMENTAL
PRE-HEARING SUBMISSION OF VIVIAN RIEFBERG
AND BRADLEY BOULEVARD CITIZENS ASSOCIATION**

EXHIBIT B

Hearing Examiner's Report and Recommendation in
Board of Appeals Case Nos. CBA-1174-D, S-2467-A, S-2503-A

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:

HOLTON-ARMS SCHOOL, INC

Petitioner

Diana Coulton Beebe

Susan Spingler

Patricia Margulies

Alfred Blumberg

C. Craig Hedberg

For the Petitioner

Elsie Reed, Esquire

Harry Lerch, Esquire

Attorneys for the Petitioner

Martin Klauber, Esquire, People's Counsel

Neither In Support Of, Nor In

Opposition To, The Petitions,

But Recommending Conditions

Linda Kauskay

Norman Knopf, Esquire,

For the Bradley Boulevard

Citizens Association

In Support Of The Petitions,

With Conditions

George Springston

For the Burning Tree Civic Assoc.

Generally Opposed To The Petitions

Board of Appeals No. CBA-1174-D
(OZAH Referral No. 04-14)
Board of Appeals No. S-2467-A
(OZAH Referral No. 04-15)
Board of Appeals No. S-2503-A
(OZAH Referral No. 04-16)

Before: Martin L. Grossman, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

On July 24, 2003, Petitioner, Holton-Arms School, Inc. filed three Petitions seeking modifications to three existing special exceptions which permit Petitioner to operate a private educational institution and a child day-care facility. The three Modification Petitions bear the Board of Appeals numbers CBA-1174-D, S-2467-A and S-2503-A. The modifications requested are:

- a. continuation of existing after-school programs, initiation of other after-school programs and an increase in the permitted general enrollment from 650 to 665, with the possible addition of another 5 students if circumstances warrant (CBA-1174-D);
- b. an increase in day care enrollment from 15 to 20, with permission to have children of other specified schools fill up to 12 slots, if they are not filled by children of Holton faculty and staff (S-2467-A); and
- c. an increase in enrollment of the summer camp from 650 to 665 (S-2503-A)

The Holton-Arms School is located at 7303 River Road (MD Route 190), Bethesda, Maryland and contains 58.5 acres. It is zoned R-90 and R-200, both of which are residential, one-family zones. The property is under Tax Account No. 07-02802753 and is described as Lot N-624, Tax Map GN 343, Parcel 2 and Part of Lots 6, 7 and OL A, in the Burning Tree Valley Subdivision. The Special Exceptions involved are found in Zoning Code Sections 59-G-2.19 (Educational Institutions, Private) and 59-G-2.13.1 (Child Day Care Facility). There are no proposed changes to structures, landscaping or lighting in these Modification Petitions.

The appropriate scope of the hearing on a petition for modification of a special exception is spelled out in Zoning Code § 59-G-1.3(c)(4). That subsection provides, in relevant part:

The public hearing must be limited to consideration of the proposed modifications noted in the Board's notice of public hearing and to (1) discussion of those aspects of the special exception use that are directly related to those proposals, and (2) as limited by paragraph (a) below, the underlying special exception, if the modification proposes an expansion of the total floor area of all structures or

buildings by more than 25%, or 7,500 square feet, whichever is less.

The public notices in this case specified all the modifications proposed by Petitioner, as set forth in Part II.D, below. Because Petitioner's plans do not include expansion of the total floor area at all, the scope of this inquiry is limited by statute to "discussion of those aspects of the special exception use that are directly related to [the modification] proposals" and does not include a review of the "underlying special exception[s]." Nevertheless, the changes proposed by Petitioner do require a review under numerous provisions of the special exceptions in question, as will be discussed at length below.¹

II. BACKGROUND

A. History of the Special Exceptions and the Modification Petitions

The history of the subject special exceptions is described in Exhibit 34. After some changes in the original exhibit were negotiated by the parties, they all agreed that the final Exhibit 34 accurately reflects the history of the special exceptions in this case (11/14/03 Tr. 92).² Given the agreement of the parties on this issue (a happy event for any hearing examiner), the historical recitation contained in the 18 numbered paragraphs of the final version of Exhibit 34 will be accepted as the background in this case up to the filing of the subject Modification Petitions. It is therefore quoted below:³

¹ Because there are three separate files involved with this case and thus three sets of exhibits, the Hearing Examiner decided it would clarify the record and simplify review if each exhibit introduced at and after the November 14, 2003 hearing bore the same number in all three files. The Exhibit list from the lead file, CBA-1174-D, was selected as the reference point, and thus, beginning with Exhibit 34 (Recent Zoning History of the Holton-Arms School) the numbering of the exhibits is consistent in all files. Some exhibit numbers had to be left unused in the other files to achieve this consistency.

² The hearing in this case took place over two days, November 14, 2003 and November 25, 2003. Transcript references will therefore identify the date of the hearing, as well as the page number referenced.

³ Paragraphs [numbered] 1-12 of this document are taken from the Recitals contained in the Neighborhood Reconciliation Agreement ("NRA") dated October 17, 2001, which agreement is a part of the Board of Appeal

1. Since 1963, Holton-Arms has continuously operated a not for profit Private Educational Institution for grades 3-12 at 7303 River Road, Bethesda, Maryland ("the Site") pursuant to the Special Exception (granted in November, 1961).
2. On February 14, 2000, Holton-Arms applied to the Board of Appeals for a modification (the "Original Petition") of the Special Exception under Case No. CBA- 1174-C. The Original Petition sought approval for the following improvements at the Site: (a) enlargement of the Science Building and Arts Building and construction of a Lower School all-purpose building; (b) construction of a track and athletic field, spectator seating and related buildings and improvements east of Booze Creek; and (c) construction of an access road to the Site from the intersection of Burning Tree and Beech Tree Roads.
3. On February 25, 2000, certain independent neighbors ("Complainants") filed a complaint (the "Complaint") with the Board of Appeals regarding certain aspects of the operations of Holton-Arms.
4. On May 19, 2000, the Montgomery County Department of Permitting Services inspected the site and on May 30, 2000, issued a Notice of Violation to Holton-Arms that certain aspects of its operations were in violation of the Special Exception.
5. On January 8, 2001, Holton-Arms applied to the Board of Appeals for further modification of the Special Exception under Case No. S-2467 (the "Second Petition"), seeking approval of a day care center which had also been a subject of the Complaint and Notice of Violation.
6. On January 11, 2001, the Board of Appeals issued a Notice of Show Cause Hearing to Holton-Arms.
7. On January 22, 2001, Holton-Arms filed with the Board of Appeals a Supplemental Statement of Operations which incorporated a description of certain aspects of its operations which were the subject of the Complaint and requested that the Board of Appeals approve these operations as part of its ruling on the Original Petition.
8. After extensive hearings, the Board of Appeals voted at a work session on March 28, 2001, to hold Holton-Arms in violation of the Special Exception. It issued a written opinion September 7, 2001, which imposed the following:
 - (a) the conditions of the Special Exception were modified to reduce the maximum permitted enrollment for the academic year from 650 to 645;
 - (b) the enrollment for the day care center was capped at a maximum of 15 and limited to children of Holton-Arms faculty and staff, and Holton-Arms may not apply for an increase for two years;
 - (c) the enrollment cap for the summer camp shall not exceed 645 and fifty percent (50%) of summer camp enrollees must be Holton-Arms students or from the families of Holton-Arms students;

- (d) seventy-five percent (75%) of Center for the Arts enrollees must be Holton-Arms students or from the families of Holton-Arms students;
 - (e) any leasing of facilities to others, including schools or outside organizations, must terminate at the end of the current lease or the current school year, whichever is sooner, except that the Reformed Presbyterian Church may continue its lease until September 7, 2002; and
 - (f) Holton-Arms must file written reports with the Board of Appeals every three (3) months regarding compliance with the terms and conditions of the Special Exception, including those imposed by the Board in its September 7, 2001 opinion, that document the termination of its leases and its compliance with the enrollment restrictions for the (a) academic, (b) day care, (c) camp and (d) arts center programs, and that make full disclosure of its schedule of activities for the preceding period.
9. At the time the Neighborhood Reconciliation Agreement ("NRA") was entered into by Holton-Arms, the Bradley Boulevard Citizens Association, the Burning Tree Civic Association and Complainants on October 17, 2001, public hearings on the Original Petition and Second Petition were scheduled to be held shortly before the Board of Appeals. The Neighbors had opposed both petitions and were prepared to participate in the hearings in opposition.
 10. Through the NRA, Holton-Arms and the Neighbors sought to avoid further contested proceedings before the Board of Appeals and/or the courts, and litigation, and desired to improve relations between Holton-Arms and the Neighbors then and in the future.
 11. To achieve the goals set forth in the preceding paragraph:
 - (a) Holton-Arms agreed: (1) to file with the Board of Appeals a Revised Petition that modified the pending Original Petition and Second Petition in accordance with the NRA; (2) to use its best efforts to have the Revised Petition approved by the Board of Appeals; and (3) to comply with the other terms and conditions set forth in the NRA.
 - (b) The Neighbors agreed to support or not oppose the Revised Petition as set forth in the NRA and to comply with the other terms and conditions of the NRA; and
 - (c) Holton-Arms and the Neighbors agreed to establish a Neighborhood Liaison Committee as set forth in the NRA.
 12. In consideration of Holton-Arms agreeing to file and use its best efforts to obtain approval for a Revised Petition and to comply with the other terms and conditions of the NRA, the Neighbors agreed to support or not oppose the Revised Petition as set forth in the NRA and to comply with the other terms and conditions of the NRA.
 13. A Zoning Text Amendment (ZTA 02-01) was adopted by the Montgomery County Council, effective April 22, 2002, authorizing continuation of certain programs without regard to whether they serve students or non-students. This Zoning Text Amendment is now codified as part of the Zoning Ordinance provisions pertaining to private educational institutions, Section 59-G-2.19. This Zoning Text Amendment authorized private schools to offer a variety of programs without regard to whether they serve student or non-students. Schools with existing programs permitted by ZTA 02-01 were allowed to

- continue them for two years, or until April 22, 2004, after which time formal Board of Appeals approval is necessary.
14. The Board of Appeals approved the Revised Petition for the private educational institution in an opinion dated May 29, 2002, approving, in relevant part, the following:
- (a) Construction or expansion of three buildings (new science wing, expansion of the performing arts center, and construction of an all purpose room for the Lower School).
 - (b) Construction of a new athletic field and track, including spectator seating for 200 and a building with bathrooms, training room, coaches room and storage areas.
 - (c) Installation of a Centennial Garden.
 - (d) Circulation Improvements, including:
 - 1. the widening and reconfiguration of the River Road entrance;
 - 2. the construction of a new interior circulation road;
 - 3. the upgrading of an existing emergency driveway connecting the school to Burdette Road;
 - a) Holton-Arms recorded a covenant limiting the use of this driveway to emergencies only
 - (e) Construction of a pathway to facilitate movement around the Library.
 - (f) Replacement of several outdated light poles.
 - (g) Establishment of a neighborhood liaison committee.
 - (h) Implementation of a Transportation Management Plan.
15. On June 20, 2002, the Board of Appeals approved a new petition for a child day care facility operating as a summer day camp for up to 645 children with 160 staff members and a maximum number of two camp sessions per summer. (Case No. S-2503)
16. On August 8, 2002, the Board of Appeals approved a new petition for a child day care facility special exception limited to Holton-Arms' faculty/staff child care. The Board approved the day care facility to operate with an enrollment of 15 children and 5 employees. The facility is approved to operate only during the months that school is in session. Hours of operation will be from 7:30 a.m. to 5:00 p.m. Monday-Thursday and from 7:30 a.m. to 4:00 p.m. on Friday. (Case No. S-2467)
17. On December 30, 2002, the Circuit Court for Montgomery County, Maryland reversed two aspects of the show cause decisions of the Board of Appeals. The Circuit Court reinstated enrollment at 650 students and restored, pursuant to ZTA 02-01, the supervised swimming programs at school. (Petition of The Holton-Arms School, Inc., for Judicial Review of the Decision of the Montgomery County Board of Appeals, Civil No. 232923, opinion entered December 30, 2002)
18. On July 24, 2003, Holton-Arms filed the three present special exception modification requests. (Case Nos. CBA-1174-D; S-2503-A; S-2467-A)

By resolution effective September 16, 2003, the Board of Appeals referred this matter to the Hearing Examiner for Montgomery County to conduct a public hearing and render a written report and recommendation to the Board. The Hearing Examiner thereafter noticed the hearing in this matter for November 14, 2003, at 9:30 a.m. (Exhibit 21).

Petitioner moved, by letters dated October 21 and October 23, 2003, to amend its Modification Petitions with additional materials (CBA-1174-D, Exhibit 23), and that motion to amend the petition was noticed on October 28, 2003 (CBA-1174-D, Exhibit 24). On November 3, 2003, Petitioner once again moved to amend its Modification Petitions by filing additional materials (CBA-1174-D, Exhibit 25). Public notice of this motion to amend was issued on November 4, 2003 (CBA-1174-D, Exhibit 26).

On November 7, 2003, the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) filed its Report (CBA-1174-D, Exhibit 30)⁴, which recommended approval of the Modification Petitions, with four conditions:

1. The applicant is bound by all submitted statements and plans.
2. The applicant will submit a traffic impact study in May 2006. This study will be designed to cover a sufficient period of time to evaluate the impact of all activities permitted under these special exception modifications. The Transportation Planning staff of M-NCPPC will establish the parameters of this study. The Board of Appeals will refer the results of this study to the Transportation Planning staff for their analysis and comment. The Board of Appeals will then consider whether the conditions of approval for the special exception modifications (not including any of the proposed increases in enrollment) should be continued or be amended.
3. The applicant will amend its Transportation Management Plan as follows:
 - a. Insert as item I(C)(3) in the Transportation Management Plan: It is expected that students with a parent on the faculty or staff will travel with their faculty or staff parent to and from school.
 - b. Insert the following as Section IV: Holton's Director of Special Events, or other designated staff member, will maintain a Master Calendar to ensure

⁴ The Technical Staff Report, CBA-1174-D, Exhibit 30, is frequently quoted and paraphrased herein.

that activities approved by the Board of Appeals as additional uses of the campus (for example, college preparatory classes, Center of the Arts activities, recreational programs, and uses of the theater) are scheduled in such a manner as to avoid traffic movements during the School's arrival and departure times to the extent reasonably possible. The Director of Special Events, or other designated staff member, will ensure there is sufficient parking for the scheduled activities. At no time will events or activities be scheduled that will overburden the School's ability to manage the anticipated traffic and to contain all parking on-site.

4. All other terms and conditions of the special exceptions, except as modified through these applications, remain in full force and effect.

The Hearing went forward as scheduled on November 14, 2003. After a full day of testimony, it was announced at the public hearing that the hearing would resume on November 25, at 9:30 a.m.(11/14/03 Tr. 321). The hearing did resume on that date and was completed, with the record held open until December 5, 2003. At the written request of George Springston, President of the Burning Tree Civic Association, the record was re-opened on December 9, 2003 (Exhibit 58) to receive Mr. Springston's letter of December 7, 2003 (Exhibit 57) and its attachment (Exhibit 57(a)). Since the new filings did not raise any new issues, the record closed again on December 9, 2003.

Although there is a plethora of paperwork in this case, there is only one central issue – whether any of the proposals will increase the volume of traffic in the area so as to unduly burden the neighborhood. That issue was addressed by expert testimony, and the parties agreed to make traffic the subject of a future study, as will appear more fully below.

B. The Subject Property and Surrounding Neighborhood

The Holton-Arms School is located on the north side of River Road (MD Route 190) east of the intersection with Burdette Road and west of the intersection with Beech Tree Road. The campus consists of an irregularly shaped property of approximately 58.5 acres, with about

770 feet of frontage along River Road and 110 feet of frontage along Burdette Road. At its northeastern extremity, the property also has frontage with Burning Tree Road at its intersection with Beech Tree Road. The topography includes forest, steep slopes, wetlands, and several rare plant species.

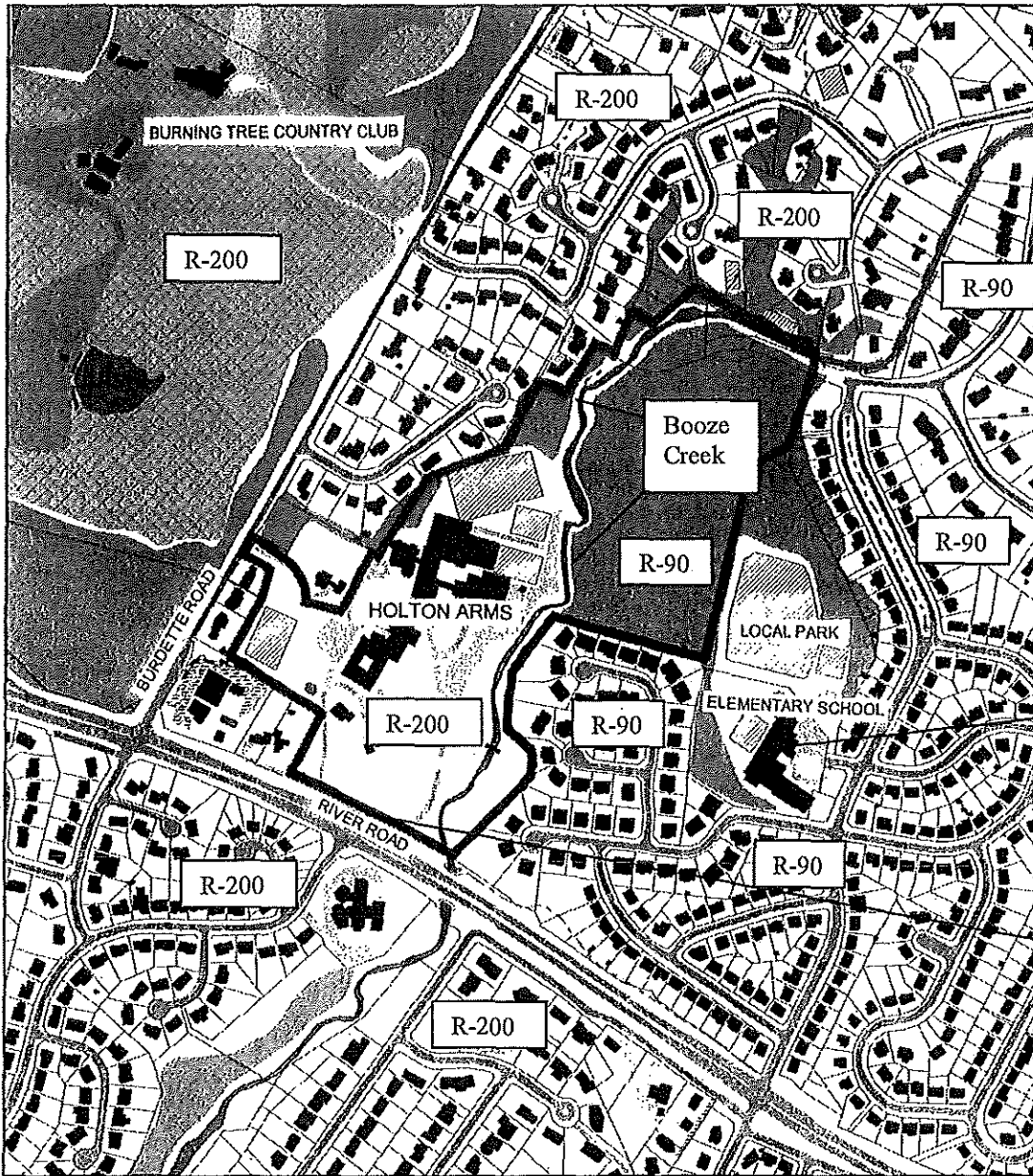
Bisecting the campus from north to south is Booze Creek. Most of the school's facilities are located west of this stream and include buildings housing the three divisions of the school, a library, a performing arts center, a gymnasium/pool, tennis courts, two athletic fields, and parking. East of the stream is a recently completed athletic field and a fieldhouse. Vehicular access is limited to a signalized entrance with River Road opposite Royal Dominion Drive.

The surrounding neighborhood, as well described by the Technical Staff Report, is bounded by Burning Tree Road to the north, Beech Tree Road to the east, River Road to the south, and Burdette Road to the west. The neighborhood is predominantly single-family residential in character. Adjoining the school to the north are single-family homes in the R-200 Zone. Adjoining the campus to the east are single-family homes in the R-90 Zone and Burning Tree Local Park owned by M-NCPPC. Located nearby to the southeast is Burning Tree Elementary School. Confronting the school to the south, across River Road, are single-family homes in the R-200 Zone and the Primary Day School. Adjoining the campus to the west are single-family homes in the R-200 Zone. Special exceptions in the area, both existing and approved, include Burning Tree Country Club (BA-2373), a parcel approved for elderly housing (S-2504), and a retail nursery (S-824).

The vicinity map attached to the Technical Staff Report (CBA-1174-D, Exhibit 30) depicts the subject property and its environs. It is reproduced below, with notations added to

show local zoning and other points of interest.

VICINITY MAP FOR HOLTON ARMS SCHOOL



Burning Tree Elementary

Entrance to Holton-Arms

Map compiled on: November 04, 2002 at 1:01 PM | 684 located on base sheet no.: 210HM17

NOTICE

The planimetric, property and topographic information shown on this map is based on copyrighted Map Products from the Montgomery County Department of Park and Planning of the Maryland-National Capital Park and Planning Commission, and may not be copied or reproduced without written permission from MNCPPC.

Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14,400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate to or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. Copyright 1998

Key Map

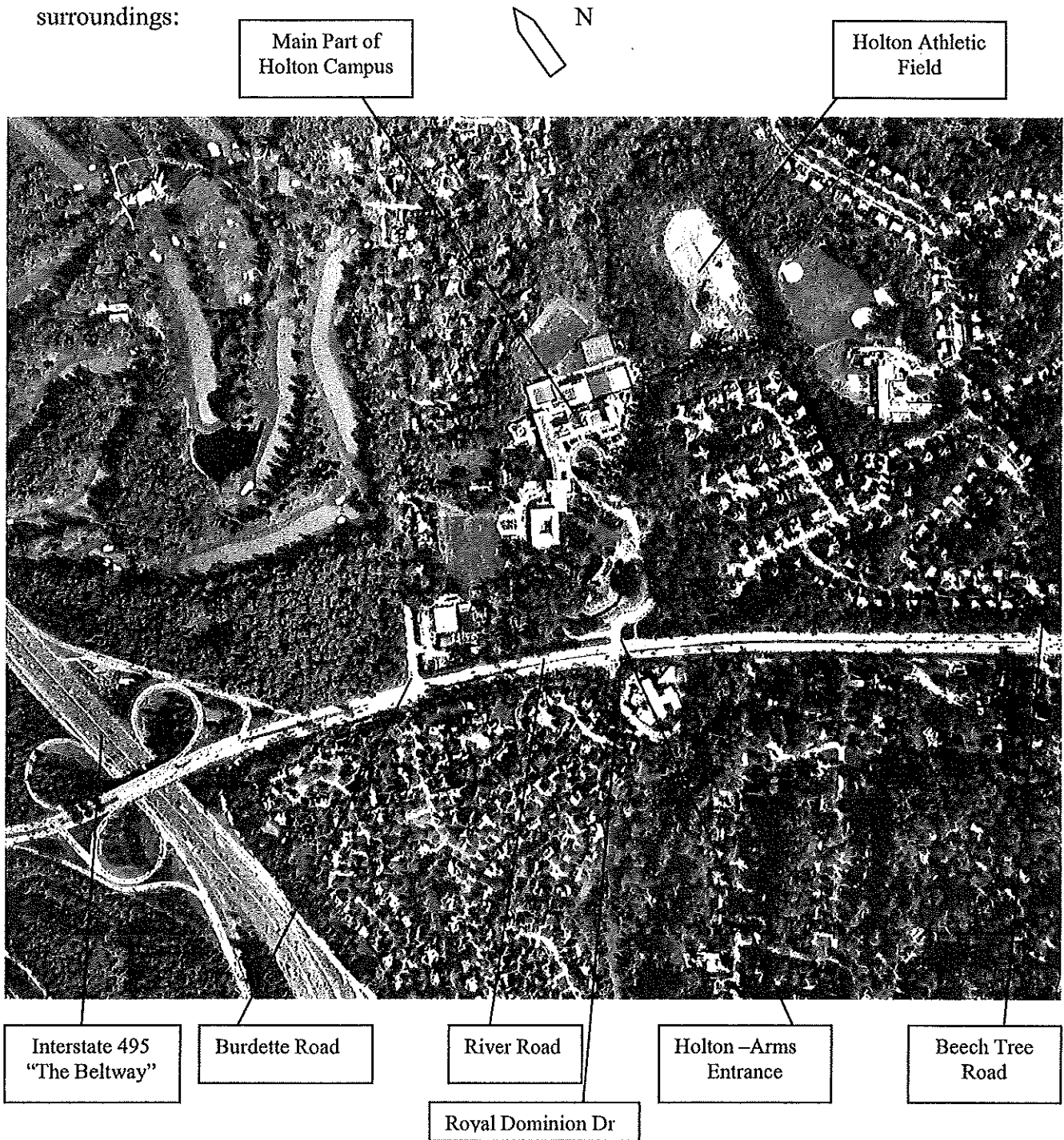


N



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
 8227 Greenleaf Avenue Silver Spring, Maryland 20910-2960

The following aerial photo (Exhibit 37) also helps to give a sense of the school and its surroundings:



C. The Master Plan

The Holton-Arms School is located within the planning area covered by the 1990 Bethesda-Chevy Chase Master Plan. The Master Plan supports the existing R-90 and R-200 Zones for the subject property. Private educational institutions and child day care facilities are allowed by special exception in those zones. The Master Plan specifically addresses zoning at the Holton-Arms School, as well as at other large land users within the planning area. As to Holton, the Master Plan recommends the same zoning to continue, and notes that it “[e]xpect[s] private school use to continue” (p. 36). The Master Plan acknowledges that occasionally a school will seek to construct new facilities or additions, which require special exception approval. The Plan notes that these “should be reviewed on a case-by-case basis to ensure compatibility with area residences and conformance with other Plan objectives.” (p. 33)

D. Proposed Modifications

The specific modifications Petitioner seeks are spelled out in Petitioner’s filings (CBA-1174-D-Exhibits 23(b), 25(a), 25(c1-c7) and 55(a); S-2467-A-Exhibits 16(b) and 40; and S-2503-A-Exhibit 3).

In CBA-1174-D, Petitioner seeks to amend its statement of operations in connection with the Board of Appeals Resolution dated May 29, 2002 in CBA-1174-C, so as to permit the following changes:

1. Enrollment:

- a) Increase Enrollment Cap from 650 to 665, to allow Petitioner the flexibility to ensure an optimal enrollment of about 660
- b) On rare occasions, the authority to admit up to five additional students on the following conditions:
 - Admission request received outside regular admissions process which is January- April of preceding school year.
 - Student must be academically eligible.

- Any student admitted pursuant to this provision will be included in the enrollment cap in future years.
- Holton-Arms must have available classroom space and faculty to accommodate students without adding any new personnel.
- Holton-Arms will report in its Annual Report (September) its enrollment figures for the academic year just ended, including the number of students admitted outside the regular admissions process in excess of 665 students.

2. After-School and Miscellaneous Programs:

The proposed changes to the after-school and miscellaneous programs sought by Petitioner are best understood by reference to seven tables submitted by Petitioner as Exhibits 25c-1 to 25c-7. The last table, 25c-7, was amended during the hearing and the amended version was submitted as Exhibit 55(a), which is the version which appears with the other tables, below.

Exhibit 25c-1

A. College Entrance Examination Preparatory Classes
Continuation of these classes authorized by ZTA 02-01
Section 59-G-2.19(c) of Zoning Ordinance

	Neighborhood Reconciliation Agreement	Current Operations	BOA Approval Requested in Case No. CBA-1174-D	Requested Conditions for Continuation
No specific Board of Appeals action.	Holton-Arms may seek approval for continuation. 1. 4 sessions/year for up to 80 students per session. 2. All students to arrive and depart outside school's Peak Hours. ¹ 3. Preference given to 20817 residents and Holton-Arms family. ² 4. Proposed schedule is Saturday 9 a.m. to 6 p.m. Sunday 9 a.m. to 4 p.m. 5:30 - 9:30 p.m. Monday through Friday 6:30 - 9:30 p.m.	1. 4 sessions per year. 2. 80 students per session. 3. Preference given to Holton-Arms Family and 20817 residents. 4. Hours are: Monday through Thursday 7 p.m. to 10 p.m. Saturday 9 a.m. to 1 p.m. Sunday 12 p.m. to 4 p.m. 5:30 p.m. to 9:30 p.m. [Note: The SAT exams are also given five times per year on Saturday mornings with a maximum of 135 students per session.]	<u>Under ZTA 02-01</u> Reaffirm existing program on same conditions as currently operating. <u>No change or expansion of existing program contemplated.</u>	1. 4 sessions per year. 2. 80 students per session. 3. Preference given to Holton-Arms Family and 20817 residents. 4. Hours: Monday through Thursday 7 p.m. to 10 p.m. Saturday 9 a.m. to 1 p.m. Sunday 12 p.m. to 4 p.m. 5:30 p.m. to 9:30 p.m. [Note: The SAT exams are also given periodically on Saturday mornings with a maximum of 135 students per session.]

¹ Peak Hours are 7:30 to 8:30 a.m. weekdays and Monday through Thursday 3:15 to 4:15 p.m. and Friday 2:30 to 3:30 p.m.

² Holton-Arms family is students, their parents and siblings, and staff, their children and siblings.

Exhibit 25c-2

B. Center of the Arts
Continuation of these classes authorized by ZTA 02-01
Section 59-G-2.19(c) of Zoning Ordinance

BOA Resolution dated 4/26/02 Case No. CBA-1174-C	Neighborhood Reconciliation Agreement	Current Operations	BOA Approval Requested in Case No. CBA-1174-	Requested Conditions for Continuation
<ol style="list-style-type: none"> 50% Holton-Family requirements. Non-Holton participation to arrive and depart outside peak hours. No more than 20 non-Holton participants at one time with equal number of Holton-Family participants. 	<p>Contemplates continuation on certain conditions:</p> <ol style="list-style-type: none"> Total enrollment at any one time to be 50% or less of approved enrollment. 50% to be Holton Family. No more than 20 non-Holton participants on campus at any one time. All non-Holton participants to arrive and depart outside School's Peak Hours. Enrollment preference to 20817 zip code and Holton family. 	<ol style="list-style-type: none"> Operating with 174 participants enrolled in 375 possible weekday slots and 75 possible weekend slots; 20 out of 28 possible classes now being held; 50% are Holton-Family. Enrollment preferences to Holton-Family and 20817 zip codes residents. Hours are: Monday through Friday: 2:15 p.m. - 8:30 p.m. (only 2 classes are offered 2:15 to 3:00 p.m.; most offered after school to early evening). Saturday 9 a.m. to Noon for groups classes; individual music lessons may be scheduled between 9 to 5 p.m.; currently no lessons extend beyond 12:45 p.m. No Sundays. 	<p><u>Under ZTA 02-01</u></p> <p>Seeking continuation on the same conditions as current with:</p> <p><u>Only change:</u> Replace condition of no more than 20 non-Holton participants at one time, with limitation of 60 or fewer participants at any time on campus in program (easier to monitor--because of multiple number of programs and overlapping time slots).</p>	<ol style="list-style-type: none"> Maximum weekday class openings = 375; Maximum weekend class openings = 75. No more than 60 participants on campus at any one time. Enrollment preference to Holton-Arms Family and 20817 zip code. 50% Holton participation. Non-Peak Hour arrivals and departures for non-Holton participants. Hours are: Monday through Friday: 2:15 p.m. - 8:30 p.m. Saturday 9 a.m. to Noon for groups classes; individual music lessons may be scheduled between 9 to 5 p.m. No Sundays.

Exhibit 25c-3

C. Artistic Performances
Continuation of these classes authorized by ZTA 02-01
Section 59-G-2.19(c) of Zoning Ordinance

BOA Resolution dated 9/7/01 Case No. CBA-1174	Neighborhood Reconciliation Agreement	Current Operations	BOA Approval Requested in Case No. CBA-1174-D	Requested Conditions for Continuation
Rentals to non-Holton groups not allowed as accessory uses to school.	No rentals unless specifically authorized by Zoning Ordinance.	None.	<p><u>Under ZTA 02-01:</u></p> <p>Seeking approval to allow use of Lewis & Black Box Theaters.</p>	<ol style="list-style-type: none"> Lewis - up to 12 events annually. Black Box - up to 6 events annually. Each performance counts as one event even if same show or performance. All to be scheduled outside Peak Hours of school and River Road. Performance will be a Friday evening and/or Saturday and/or Sunday matinee and/or evening performance. Maximum seating capacity of Lewis is 385. Black Box has no permanent seating but capable of accommodating approximately 150. Cost-sharing basis only.

Exhibit 25c-4

D. Indoor Recreational Facilities (Two gyms)
 Continuation of these classes authorized by ZTA 02-01
 Section 59-G-2.19(c) of Zoning Ordinance

BOA Resolution dated 9/7/01 Case No. CBA-1174	Neighborhood Reconciliation Agreement	Current Operations	BOA Approval Requested in Case No. CBA-1174-D	Requested Conditions for Continuation
No outside rentals.	School may seek approval where specifically authorized by Zoning Ordinance.	None.	<u>Under ZTA 02-01:</u> Seeking to allow use of two gyms by outside groups with maximum number of participants at one time of 60.	<ol style="list-style-type: none"> 1. Preference to persons with Holton-Arms affiliation and 20817 residents. 2. All arrivals and departures outside Peak Hours. 3. No more frequently than 8 weekday nights per month and 8 each weekend. 4. No more than 60 participants on campus at any one time. 5. Cost-sharing basis only.

Exhibit 25c-5

E. Indoor Recreational Facilities (Swimming Pool)
 Continuation of these classes authorized by ZTA 02-01
 Section 59-G-2.19(c) of Zoning Ordinance

BOA Resolution dated 4/26/02 Case No. CBA-1174-C	Neighborhood Reconciliation Agreement	Current Operations	BOA Approval Requested in Case No. CBA-1174-D	Requested Conditions for Continuation
<p>Placed limits on programs:</p> <ol style="list-style-type: none"> 1. Can continue with Curl Burke and Capital Sea Devils for Holton-Arms Families and students of schools without pools which compete against Holton. 2. 40 swimmers per session. 3. One morning and one evening session¹. 4. Outside Peak Hours of School and River Road Peak Hours so must end before 7:30 a.m. and start after 6 p.m. in evenings 5. Cost-sharing basis only. 	Contemplates continuation of existing programs in a.m. and p.m. limited to 40 swimmers per session.	<p>Supervised Swimming Training Programs</p> <ol style="list-style-type: none"> 1. 40 swimmers per session. 2. Weekdays: one morning and two evening sessions. 3. Hours: Outside Peak Hours Monday through Friday: 5:00 a.m. - 7:00 a.m.; 5:00 p.m. - 9:00 p.m.; 4:00 p.m. - 9:00 p.m. (Friday only) Saturday: 7:00 a.m. - 12:00 p.m. Sunday: 12:00 p.m. - 7:30 p.m. 4. Cost-sharing basis only. 	<p><u>Under ZTA 02-01:</u> Seeking to <u>continue</u> existing supervised swimming programs. <u>No change from current operation.</u></p>	<p>Supervised Swimming Training Programs</p> <ol style="list-style-type: none"> 1. 40 swimmers per session. 2. Weekdays: one morning and two evening sessions. 3. Hours: (Outside Peak Hours) Monday through Friday: 5:00 a.m. - 7:00 a.m.; 5:00 p.m. - 9:00 p.m.; 4:00 p.m. - 9:00 p.m. (Friday only). Saturday: 7:00 a.m. - 12:00 p.m. Sunday: 12:00 p.m. - 7:30 p.m. 4. Cost-sharing basis only.

Exhibit 25c-6

F. Charitable Events Using Pool or Gym Recreational Facilities
 Continuation authorized by ZTA 02-01
 Section 59-G-2.19(c) of Zoning Ordinance

	Neighborhood Reconciliation Agreement	Current Operations	BOA Approval Requested in Case No. CBA-1174-D	Requested Conditions for Continuation
No specific Board of Appeals action.	Does not address; neighbors have supported Special Olympics in past.	Indoor pool used once yearly for Special Olympics.	<u>Under ZTA 02-01:</u> Seeking to continue with up to three such <u>indoor</u> events per year. e.g., Burning Tree Elementary School has in past asked to use gym for a book/school fair.	<ol style="list-style-type: none"> 1. No more than three events per year. 2. No more than 60 participants in the gym. 3. No more than 40 in pool. 4. Cost-sharing basis only.

Exhibit 25c-7, as Revised in Exhibit 55(a)

G. Miscellaneous Uses
 Uses authorized under Section 59-G-2.19(b) of Zoning Ordinance

BOA Resolution dated 9/7/01 Case No. CBA-1174	Neighborhood Reconciliation Agreement	Current Operations	BOA Approval Requested in Case No. CBA-1174-D	Requested Conditions for Continuation
No outside rentals.	Rentals only if specifically authorized by zoning ordinance.	None.	See column on right.	<ol style="list-style-type: none"> 1. Limit to two groups at one time on campus. 2. Maximum number of total participants = 60. 3. All arrivals and departures outside Peak Hours of school. 4. No more than 48 such sessions per year. 5. Advance notice of such sessions will be given to the Neighborhood Liaison Committee.

It should be noted that the proposal contained in Exhibit 25c-5 to continue the operation of the swimming programs, which are available on a limited basis to non-Holton students, received a letter of support from Montgomery County resident, Gail Dufek (CBA-1174-D, Exhibit 33).

The changes to the day-care program proposed under Modification Petition S-2467-A are less complicated than those sought in CBA-1174-D. Essentially, Petitioner wishes to increase its current day-care enrollment cap from 15 children to 20 children and allow some of those children to be from other nearby schools, with certain limits. The particulars are spelled out in S-2467-A, Exhibits 16(b) and 40, the latter being a revision of S-2467-A Exhibit 18(a). The proposals for the day-care program are:

- Enrollment capped at 20 children, ages 6 weeks to 5 years, supervised by five full-time staff members and additional student volunteers.
- Enrollment priority given to Holton-Arms Faculty/Staff.
- Open to Faculty/Staff of Burning Tree Elementary, Primary Day, Landon and Norwood Schools in order to form suitable classes for children of Holton-Arms faculty and staff.
- Academic calendar only (September to June).
- Hours: 7:30 a.m. until 5 p.m. weekdays, and 4 p.m. on Fridays. No weekends.
- Holton-Arms will include, in its Annual Report to be filed in connection with the school's special exception case (Case No. CBA-1 174), enrollment data for the child day care facility, identifying the number of non-Holton children, if any, enrolled in the program for the year just ended as well as the total number of children afforded care during that same year.
- Non-Holton faculty/staff children will not exceed twelve.

The final term specified above, limiting non-Holton faculty/staff children to twelve, made the proposal agreeable to the Bradley Hills Citizens Association, which unconditionally supported the final proposal (11/25 Tr. 84). Each of the four schools mentioned in the fourth bullet-point, above, sent a letter in support of the proposed modification (S-2467-A, Exhibits 21, 23, 25 and 27).

The changes proposed under Modification Petition S-2503-A concern solely enrollment at Holton's ongoing summer camp. They are summarized in S-2503-A, Exhibit 3. In this case, Petitioner wants the cap on its summer camp enrollment (currently capped at 645) to be linked to its regular school enrollment cap, which it seeks to make 665.⁵ All parties to this matter support the proposed linkage (11/14 Tr. 296 and 11/25 Tr. 83), although the Burning Tree Civic Association opposes any increase in enrollment because of its concerns about traffic congestion (11/14 Tr. 308).

In addition to the changes proposed directly by the three Modification Petitions, Petitioner has agreed to certain conditions which would require amendment of its Transportation Management Plan, the imposition of a future traffic study and the requirement that Petitioner make its best efforts to obtain approval of the State Highway Administration to extend the "storage lane" on eastbound River Road, which holds traffic seeking to make a left turn into the Holton campus.

The proposed amendment to the Transportation Management Plan, as contained in Exhibit 35, is as follows:

The Holton-Arms School, Inc. hereby amends its Transportation Management Plan, Exhibit E to Exhibit 180 in Case No. CBA-1 174-C, as follows:

Insert as item I (C)(3):

It is expected that students under the age of 16 residing with a member of the faculty or staff will travel with that faculty or staff member to and from school.

Insert the following as Section IV:

Holton's Director of Special Events, or other designated staff member, will maintain a Master Calendar to ensure that activities approved by the Board of Appeals as additional uses of the campus (for example, college

⁵ It should be noted that Petitioner's use of the term "enrollment cap" in the context of the summer camp refers to the number of campers on campus at any given time, which Petitioner urges is consistent with the Board of Appeals interpretation in S-686-C, involving the Landon School.

preparatory classes, Center of the Arts activities, recreational programs, and uses of the theatre) are scheduled in such a manner as to avoid traffic movements during the School's arrival and departure times to the extent reasonably possible. The Director of Special Events, or other designated staff member, will ensure there is sufficient parking for the scheduled activities. At no time will events or activities be scheduled that will overburden the School's ability to manage the anticipated traffic and to contain all parking on-site.

Because this language differs slightly from language that was originally recommended by the Technical Staff in their proposed Condition 3 on the first page of the Staff Report (CBA-1174-D, Exhibit 30), the new language was sent to the Technical Staff for review, and it was approved by them on November 14, 2003 (Exhibit 45).

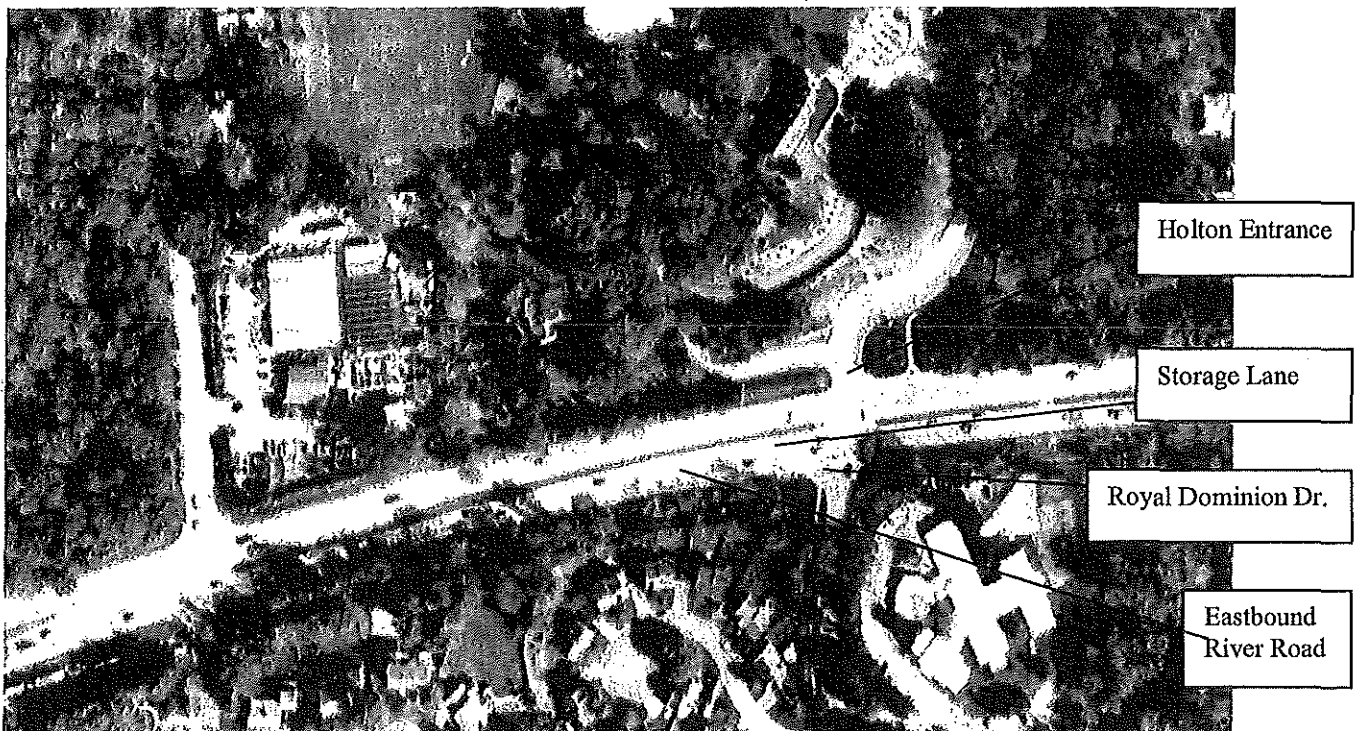
The future traffic study condition agreed to by the parties is contained in Exhibit 50. It provides:

In May 2005, the applicant will submit a traffic study to the Board of Appeals and the Transportation Planning staff of the Maryland-National Capital Park & Planning Commission, after consultation with the Bradley Boulevard Citizens Association (BBCA), the Burning Tree Civic Association (BTCA), and the Office of the People's Counsel (OPC) as to the parameters of the traffic study. Copies of the study shall be provided to the BBCA, BTCA, and the OPC. In accordance with Section 59-G-2.19(b), the traffic study will evaluate the traffic generated by the After-Hours/Non-School activities in combination with all other approved activities on the special exception site, including any adverse effects on pedestrian and vehicular traffic safety, capacity, queuing and turning movements arising from the River Road, Holton-Arms and Royal Dominion intersection. Upon receipt of the analysis and comments of the Transportation Planning staff and other interested parties, the Board of Appeals may conduct a public hearing to discuss the study and the analysis and comments of the Transportation Planning staff. Should the Board of Appeals determine that there has been an adverse traffic impact due to the After-House[sic]/Non-School uses, then the Board may, after a public hearing, amend the conditions of approval for the After-Hours/Non-School uses approved by this Opinion.

This agreement eliminated the objection of the community participants to the after-hours and miscellaneous programs run by Petitioner, as identified in CBA-1174-D, Exhibits 25c-1

through c-7, reproduced above, but it still left Burning Tree Citizens Association opposed to any increase in enrollment and Bradley Boulevard Civic Association desirous of a traffic study which would also review the effects of increased enrollment and a condition that would require at least 15 of the enrolled students to be children of Holton faculty or staff. Petitioner opposes any enrollment traffic study or other condition on the proposed enrollment increase.

Finally, all parties are in agreement with Petitioner's plan to extend the storage lane on eastbound River Road at its intersection with the Holton entrance and Royal Dominion Drive. The intersection is depicted below in progressively larger blow-ups from the aerial photo (Exhibit 37).





Before Petitioner can proceed with extension of the storage lane, it must obtain approval from the State Highway Administration. To that end, Petitioner's traffic consultant, Lee Cunningham, sent a letter to the State Highway Administration on January 24, 2003, seeking a meeting to discuss the proposal and the approval process. Mr. Greg Cooke of the State Highway Administration replied in a letter dated March 26, 2003, that he did not want to begin this process until the effect of the recent driveway improvements to Petitioner's entrance can be evaluated. This exchange of correspondence is attached to Exhibit 51. The Burning Tree Civic Association and the Bradley Boulevard Citizens Association jointly wrote to the State Highway Administration on May 7, 2003, strongly supporting Petitioner's efforts to lengthen the storage lane in question (Exhibit 57(a)), but the Hearing Examiner is not aware of any further reply from the State officials, and none has been submitted for the record.

As can be seen from the submissions reproduced above, Petitioner has done a very thorough job of depicting the existing use and all of the proposed changes, and the community participants have been equally diligent in reviewing them. None of the proposed changes modifies the physical structure or illumination of the school (11/25 Tr. 72) or fundamentally alters the nature of the use that has been existing on the subject site for many years.

Nevertheless, the proposed changes may have an impact on traffic, and that impact is the concern of its neighbors. With this background, we now turn to a summary of the hearing.

III. SUMMARY OF THE HEARING

Two preliminary matters at the hearing should be mentioned. The first concerned the possible appearance of a conflict of interest raised by the Hearing Examiner. After a full disclosure on the record,⁶ no objection to the Hearing Examiner serving in this matter was raised by any party. Therefore, the Hearing Examiner did not recuse himself, and the hearing proceeded.

The second preliminary matter was the pending motion to amend the Modification Petitions, which had been publicly noticed ten days earlier on November 4, 2003. There were no objections raised, so the motion to amend the Modification Petitions was granted. The hearing

⁶ At the beginning of the November 14, 2003 hearing, the Hearing Examiner announced that he had informed all parties by conference call on November 12, 2003, of a possible conflict of interest which had just come to his attention. This possible conflict arose from the fact that one of the proposals in the Petition to modify S-2467-A was to allow children of faculty and staff from nearby schools to attend day care if there were slots left over. The proposal specifically mentions Burning Tree Elementary, Primary Day, Landon School and Norwood School, and both Norwood School and Landon School sent in letters in support of the Modification Petition (S-2467-A Exhibits 21 and 27). The Hearing Examiner advised all parties to the conference call and at the hearing that his wife is a second-grade teacher at Norwood (as well as the Director of their Faculty Diversity Program and Assistant Teacher Program), and both of his children are graduates of Landon. The Hearing Examiner also noted that both of his children are now adults, so the pending Modification Petitions would not have any direct effect on him or his wife, but he thought it appropriate to disclose the connection in case any party found it objectionable. No objection to the Hearing Examiner serving in this matter was raised either during the conference call or at the hearing.

then proceeded on the amended Modification Petitions.

A. Petitioner's Case

Petitioner called five witnesses at the hearing: Diana Colton Beebe, the Head of the Holton-Arms School; Susan Spingler, Director of Special Programs at the School; Patricia Margulies, Director of Special Events and Concierge at the School; Alfred Blumberg, an expert in land planning; and C. Craig Hedberg, an expert in traffic engineering.

1. Diana Colton Beebe:

Ms. Beebe testified that she is the head of the Holton-Arms School and that she lives on campus in a house which gives her a good view of the circulation and traffic on the Holton-Arms campus. (11/14/03 Tr. p. 50.) Ms. Beebe has served as the head of the Holton-Arms School since 1992, and her duties include carrying out the policies set by the Board of Trustees, hiring and supervising faculty and staff, overseeing curriculum and development of all the programs, enrollment management, fund-raising, oversight of finances, the physical plant at Holton-Arms, the education and virtually all operations that go on at the school.

She testified that the school has worked hard to improve its relationship with its neighbors through its Neighborhood Liaison Committee, and has worked for several months on the subject cases with neighborhood representatives.

The Holton-Arms School was founded in 1901 and moved to its present campus on River Road in 1963. It is a college preparatory school for girls in grades 3 through 12, and the mission of the school, according to Ms. Beebe, is to develop the unique potential of each girl, to educate the girls to think critically, develop self-confidence and a sense of competency, respond to the people around them, their classmates and the community, and to develop a sense of integrity and become leaders. (11/14/03 Tr. 53.) The school offers a variety of associated activities to enhance

its academic and athletic programs. These include the Center of the Arts and SAT prep courses. Holton also offers a child development center which provides on-site early education for the children of faculty and staff. In addition, Holton offers a creative summer camp program, which is a co-educational camp for children ages 3 through 12.

Ms. Beebe testified that Holton entered into the Neighborhood Reconciliation Agreement with neighbors on October 17, 2001 and that she meets at least quarterly with the Neighborhood Liaison Committee. (11/14/03 Tr. 55.) Holton joined with its neighbors in supporting Zoning Text Amendment No. 02-01, which is now incorporated into the current text of Montgomery County Code § 59-G-2.19. As required by the Board of Appeals, Holton-Arms files quarterly reports both with the Board and with the Neighborhood Liaison Committee.

Ms. Beebe testified as to the efforts that Holton-Arms has made to improve the traffic situation in and around the Holton-Arms School. (11/14/03 Tr. 55.) Among other things, Holton filed for and received approval for a modification of the circulation on campus and set limits on the frequency of events to be held at its new athletic field. Holton cancelled its lease with the World Presbyterian Church and has not allowed others use of its facilities, except for a supervised swim program and the SAT prep classes that were allowed under the Zoning Text Amendment. A staff member has been assigned as a Transportation Coordinator and Director of Special Events so that there will be coordination in traffic management regarding the scheduling of all activities.

Holton also implemented a Transportation Management Plan for both the camp and the school, establishing different arrival and departure times for the upper and lower schools, in an effort to reduce congestion. The school encourages car-pooling and bus transportation. Enrollment brochures have been revised for the Center of the Arts and the summer program to

promote transportation initiatives and also to ensure enrollment participation preferences as specified by the Neighborhood Reconciliation Agreement. Holton has also improved the emergency entrance to accommodate emergency vehicles and recorded a covenant restricting access to the school from Burning Tree and/or Beech Tree Roads at the request of the neighbors. The school similarly recorded a covenant regarding emergency access to Burdette Road at the request of the neighbors, and recorded conservation easements protecting forest, stream and watershed areas to create a buffer around the new athletic field near Boose Creek. Finally, Holton has asked the State Highway Administration for approval of a plan to extend the eastbound storage lane on River Road at the intersection of the Holton-Arms entrance. (*See, also, Exhibit 38.*)

Ms. Beebe then identified photographs that were taken during the construction of the circulation improvements on campus. (Exhibits 39(a) through 39(f).)

Ms. Beebe testified that Holton is seeking an increase in the enrollment cap from the existing cap of 650 students to a cap of 665 students to “allow us the flexibility which is really necessary to ensure what we believe is our optimal enrollment of 660 students.” (11/14/03 Tr. 64-65.) Although the cap has been set at 650, it has “been a great concern for the school” that it has not been able to maintain that enrollment number. Current enrollment for this academic year stands at 643 students. (11/14/03 Tr. 65.) Ms. Beebe testified that due to concern about exceeding the cap, Holton has not been able to offer enough acceptances to ensure full enrollment. In an effort to avoid exceeding the 650-student cap, Holton sends out only that number of acceptances and when some of the students decide not to come to Holton, the school is left with either unfilled vacancies or it must take in weaker students.

Ms. Beebe further testified that, for budgetary and program purposes, it is absolutely crucial that the school not fall below 650 students. Currently 15 of Holton students are children of faculty and staff at the school, but there is no way to be certain that that will be a consistent number from year to year. Ms. Beebe stated that Holton is also asking for permission to exceed the enrollment cap by an additional five students on rare occasions, such as when families associated with diplomatic work have to have children admitted in the middle of the year. Students admitted in that fashion would be included in the 665 count for the following year. (11/14/03 Tr. 70.)

Ms. Beebe also addressed the question of summer camp enrollment, indicating that Holton would like to have a summer camp enrollment matching the regular student enrollment of 665. Although the school could handle a larger number of campers, it agreed in the Neighborhood Reconciliation Agreement to keep the number of campers parallel with the number of students enrolled in the school.

Ms. Beebe testified that Holton is seeking permission to increase the enrollment at its day care center to 20 from the present cap of 15 and to allow students of faculty and staff from Burning Tree Elementary, Primary Day, Landon and Norwood schools to attend if there are vacancies after children of Holton-Arms' faculty and staff are accommodated. The other schools were specifically listed because the People's Counsel felt there should be a specific listing of schools. Ms. Beebe testified that is necessary to add additional students because the low number of children in the day care center sometimes prevented the school from forming a class of a practical size. Ms. Beebe stated that she is agreeable to limiting the number of non-Holton faculty/staff children to 12 (11/14/03 Tr. 81), and that agreement became part of Exhibit 40 in this case.

Finally, Ms. Beebe testified as to the proposed after-hours and miscellaneous activities that Holton was seeking permission to continue and expand. Unfortunately, there was a recording malfunction during the hearing, and Ms. Beebe's testimony regarding these proposals was not recorded by the official court reporter. Nevertheless, Ms. Beebe took the stand again and testified that her testimony concerning those matters was fully contained in Exhibits 25 (c-1) through 25 (c-7), in CBA 1174-D. On cross-examination, Ms. Beebe testified that there are 307 parking spaces on campus, that the activities described in Exhibits 25 (c-1) through 25 (c-7) are scheduled for non-peak school hours or after hours. In answer to Mr. Klauber's question regarding SAT testing, Ms. Beebe stated that she considered the SAT test to be a part of the educational process at the school, but it was open to the public as long as the number tested does not exceed a 135-student maximum at any one sitting.

2. Susan Spingler:

Susan Spingler testified that she is the Director of Special Programs at the Holton-Arms School, including the Creative Summer program and the Center of the Arts. She has served in this capacity since 1995. Ms. Spingler testified that "Creative Summer" is a co-educational summer camp that runs for six weeks for children 3 to 13 years of age. The Center of the Arts is Holton's after-school program that is for adults as well as children as young as four years old.

(11/14/03 Tr. 97.)

Ms. Spingler stated that an increase in campers from 645, which is the current approved number, to 665 would not require any additional staffing, and hours and sessions would be the same as they have been for the last 30 years. Ms. Spingler testified that the summer camp is very popular, and in 2002 Holton turned away approximately 500 campers. According to Ms. Spingler, there has been a Transportation Management Plan in place for the summer camp since

she took it over. (11/14/03 Tr. 98.) Ms. Spingler testified that Holton is effective in getting campers on and off campus very safely and in a timely manner. Holton strongly encourages carpooling, and two-thirds of the camp either arrives by bus or carpool. (11/14/03 Tr. 99.) Most of the school's summer camp programs are actually indoors. (11/14/03 Tr. 100.)

As to the Center of the Arts, Ms. Spingler testified that the program is designed to "enrich the educational offerings for all our students in the visual, performing and mind and body arts." (11/14/03 Tr. 100.) Holton is proposing to continue its operation of this program in the same manner it has been running in the past; however, it proposes to replace the condition of no more than 20 non-Holton participants at one time with a limitation of 60 or fewer participants (Holton or non-Holton) at any time on campus in the program. During any given week, there would be a maximum of 375 class openings, and on the weekends, there would be a maximum of 75 class openings; however, the maximum number of participants on campus at any time would be 60, half of whom would be Holton students. Finally, Ms. Spingler testified that flexibility in scheduling of classes was very important in allowing the program to function properly.

When recalled to the stand later in the hearing, Ms. Spingler clarified that the proposed maximum of 375 openings for weekday classes did not refer to 375 different people, but rather 375 registrations for class. Thus, if one person registered for three classes, they would count as three towards the 375 maximum. She also noted that currently there are 208 registrants enrolled, of which 135 of the registrants, or 65%, are Holton students.

3. Patricia Margulies:

The next witness called by Petitioner was Patricia Margulies, who testified that she is the Director of Special Events and Concierge at the Holton-Arms School. As such, she has the responsibility of scheduling all activities that go on at the school, controlling the master calendar,

putting together all actual special events, working on graduation complications, and sometimes answering parents' questions. She has been doing the job for five years.

The master calendar process begins early in the previous academic year for the next academic year, and programs are entered into the master calendar giving first priority to academics, and then enrichment programs, Board of Trustee meetings, parent requests for school or class activity, alumni events, and then finally, outside activities. (11/14/03 Tr. 123.) A big constraint on all programs at Holton is the limited number of parking spaces, 307, on campus. Ms. Margulies testified that traffic is taken into consideration in planning the events. Ms. Margulies stated that she takes both traffic on campus as well as traffic off campus into consideration in the planning of events. She also has responsibility for overlooking possible conflicts in the schedules between special events and other school activities. She doesn't schedule Center of the Arts programs, but she looks at their schedule in order to avoid conflicts. In doing her traffic planning, Ms. Margulies does not do a special evaluation of the River Road area, but rather addresses the general problem of people getting places during rush hour. (11/14/03 Tr. 129-130.)

4. Alfred Blumberg:

Alfred Blumberg, the Director of Site Solutions Inc., was called by Petitioner as an expert in land planning. Mr. Blumberg testified as to the nature of the 58-acre campus of the Holton-Arms School. He stated that the subject property is surrounded by woodlands which separates it from the surrounding neighborhood, and has only a single point of access, which is from River Road. (11/14/03 Tr. 139-140.) Because the Holton-Arms School is so isolated physically and topographically, it does not infringe on the community from a visibility standpoint.

Mr. Blumberg testified that the *Bethesda Chevy Chase Master Plan* supports the continuation of the Holton-Arms School and anticipated that there would be changes in special exception uses by the large land users such as the Holton-Arms School. (11/14/03 Tr. 142.) In Mr. Blumberg's opinion, the petitions are in compliance with the *Bethesda Chevy Chase Master Plan*. Mr. Blumberg further testified that the "after hours and non-school uses" (also labeled "miscellaneous uses" in this report) are the types of activities "very commonly found in other educational institutions." (11/14/03 Tr. 143.)

Mr. Blumberg also indicated his agreement with the Technical Staff report and its conclusions regarding conformance of the modification requests with the general and specific conditions for the relevant special exceptions. In Mr. Blumberg's opinion, the requested modifications are modest in scope. Thus, in his opinion, Holton meets or exceeds all of the standards and requirements for the special exceptions in the zone. (11/14/03 Tr. 145.) Mr. Blumberg further indicated that none of the modifications include any changes in the physical plant of the school. (11/14/03 Tr. 145-146.) Also, since there are no new lights being proposed, there will be no lighting impact, and the addition of 20 campers on top of 645 would have no discernible impact as far as physical activities in his opinion, especially since almost all of these activities are going to be indoors.

In Mr. Blumberg's opinion, the SAT examinations "are a part of the primary function of a private educational institution which is the testing of students, the education of students" (11/14/03 Tr. 147). Mr. Blumberg sees SAT testing as falling under the definition of private educational institution in §59-A-2.1 in that it is part of a "program of college, professional, preparatory, high school, junior high school instruction." (11/14/03 Tr. 149.) He also testified

that, in his experience as a land planner, SAT testing would be a “normal accessory use” to the primary use of the school. (11/14/03 Tr. 152.)

Mr. Blumberg further testified on cross-examination that not all private educational institutions have a summer day camp, but many of them do. He is not sure whether many of the private educational institutions have their own pools. He indicated that most private educational institutions have an auditorium, but only approximately one-half of the private schools give the SAT tests.

Mr. Blumberg also testified that the five items listed in the definition of private educational institution (tutoring and college entrance examination preparatory courses, art education programs, artistic performances, indoor and outdoor recreation programs, and summer day camps) are all inherent activities associated with private educational institutions, even though it says “may” in the definition, because “those have historically been part of the activity at Holton-Arms.” (11/14/03 Tr. 162-163.)

Finally, Mr. Blumberg testified that whether or not the additional uses discussed were considered to be inherent or non-inherent, in his opinion they are appropriate and compatible uses for the school that would not adversely affect the surrounding area and the neighborhood. Moreover, under the statute as amended in ZTA 02-01, the effects of traffic would be considered whether or not the uses were inherent. (11/14/03 Tr. 168.)

C. Craig Hedberg:

The last witness called by the Petitioner was C. Craig Hedberg, an expert in traffic engineering. Mr. Hedberg testified that he was contacted by Petitioner’s counsel recently because Petitioner’s traffic expert, Mr. Cunningham, was hospitalized, and Mr. Hedberg was asked to fill in. Mr. Hedberg was asked to look at the on-site operations, the circulation and the

stacking of vehicles coming off of River Road, as well as to review the information that had been provided by Mr. Cunningham.

Mr. Hedberg described the roads in the area of the school. He noted that the school is served by a single driveway which has recently been upgraded. The upgrade widened the entrance and added lanes specifying directions. (11/14/03 Tr. 179.) Circulation of traffic at the school has been enhanced by widening of the driveway and the construction of a new connecting road that goes from the main driveway back to the lower school. Prior to the new construction, traffic would back up onto River Road as a result of the circulation problem within the school.

Mr. Hedberg further testified that his own observations were consistent with those done by Mr. Cunningham. In Mr. Hedberg's opinion, there is no longer a problem with the circulation traffic on the Holton campus in that "there is plenty of stacking space and traffic flows quite well." (11/14/03 Tr. 184.) He made his observations during the morning hours from 7:30 a.m. to 8:30 or 9:00 a.m., while school was in session. He also made afternoon observations.

Mr. Hedberg testified that he personally observed up to 21 cars queuing up on eastbound River Road in the storage lane waiting to make a left-hand turn into Holton. Mr. Cunningham had observed 20 cars in that position, and a contract worker for Mr. Hedberg had observed 24. According to Mr. Hedberg, approximately 13 to 15 automobiles will fit in the storage lane (also known as the queuing lane), and after that they back up into the main roadway, thereby interfering with traffic. Up to about 24 vehicles can make the left turn into the Holton campus on one light cycle. There were only four times in Mr. Hedberg's observations when all of the queued vehicles could not get through to make a left turn during the light cycle, at least during the morning hours from 6:30 a.m. to 9:30 a.m. Mr. Hedberg did not measure the queue during the afternoon hours because he never saw a problem with queues during that period of time.

Mr. Hedberg did not produce a report, but did his data collection to confirm what Mr. Cunningham had indicated in his report, which is in the record as Exhibit 23 (a). Based on Mr. Hedberg's own observations and those of Mr. Cunningham, he concluded that the number of critical lane movements at the entrance of Holton-Arms School was within the acceptable standard of 1650 set by the Annual Growth Policy. (11/14/03 Tr. 187-188.) Mr. Hedberg's own observations indicated critical lane movements of 1440 in the morning and 1330 in the afternoon. Mr. Cunningham's observations, as recorded on page 2 of his report (Exhibit 23 (a)), showed morning peak hour critical lane movements of 1535 on October 1, 2003, and 1453 on April 9, 2003. In the evening peak hour, the critical lane movements on October 1, 2003 were 1413 and on April 9, 2003 were 1338. Mr. Hedberg indicated that his observations were a worst case scenario because, while he was watching, there were also numerous dump trucks and construction workers still on site, which affected the efficiency of the intersection.

Mr. Hedberg offered some additional testimony, transcribed in page 190, line 7 through page 202, line 2, which all parties agreed to strike because it could not be readily understood and cross-examined in the absence of a report from Mr. Hedberg. The Hearing Examiner did in fact strike that testimony in accordance with the agreement of the parties. (11/25/03 Tr. 58.)⁷

Mr. Hedberg testified that the increased enrollment for the school and the day care center, if approved, would result in a maximum of approximately 15 critical lane movements and so it would still be well below the County standard of 1650. (11/14/03 Tr. 202.) This addition of 15 critical movements would make the total end up well under 1500 critical movements. In Mr. Hedberg's opinion, the anticipated trip generations from the requested modifications would have

⁷ The testimony to be stricken is identified in Exhibit 53. That exhibit was included in the record solely to identify the precise material to be stricken since the pagination in the final transcript would likely be different than that which we were able to obtain at that point. In fact, the pagination did turn out to be different, and the correct pages and line numbers are noted above.

no adverse effect on the level of service at the intersection, nor would the intersection operate unsafely if the requests were approved. (11/14/03 Tr. 207.)

According to Mr. Hedberg there would be virtually no change in the traffic levels. In Mr. Hedberg's opinion the construction on the Holton campus, widening the entranceway and adding another driveway, was a definite improvement, shortening the queues and helping circulation. Mr. Hedberg further opined that the proposed modifications would not have an adverse impact on adjoining properties or the surrounding neighborhood. (11/14/03 Tr. 207.) He also testified that there would be no detrimental impact on the health, safety or welfare of the residents, motorists and pedestrians along the surrounding road network. (11/14/03 Tr. 208.) Finally, Mr. Hedberg noted that his analysis included weekend trips in which the SAT exams were given.

On cross-examination, Mr. Hedberg indicated that if the intersection hit a critical lane volume of 1650, there certainly would be queuing up at the intersection and it could be in several directions. By Mr. Hedberg's calculations, he anticipated that the increased enrollment and all the other modifications together would generate a total of approximately 20 trips, 12 in and 8 out, based on a trip rate Mr. Hedberg derived from the actual driveway volumes. Mr. Hedberg did not evaluate delay at the intersection because the County does not use delay as a standard in evaluating intersections. (11/14/03 Tr. 225-226.)

B. Community Participants

1. Linda Kauskay:

Linda Kauskay testified on behalf of the Bradley Boulevard Citizens Association. In that capacity, Ms. Kauskay thanked the Holton-Arms School for its efforts "in recent time to take into consideration the concerns of the neighborhood and to create a constructive dialogue." (11/14/03 Tr. 231.) Ms. Kauskay indicated that the parties have been able to narrow the issues,

and she supported many of the school's requests, although "tempered by a request for some conditions to ensure that the impact of the modifications the school seeks does not exceed everyone's expectations." (11/14/03 Tr. 232.)

The concerns of the Bradley Boulevard Citizens Association are based for the most part on traffic. Ms. Kauskay testified that everybody agrees that the improved front entrance is much safer and more efficient, but the fact remains that the school does generate traffic. Nevertheless, the Association is sympathetic to the difficulties the school has explained and, therefore, supports the request to go to an enrollment cap of 665, but with a condition that 15 of those children be limited to children of Holton faculty and staff. The Citizens Association supports the school's request for flexibility to add an additional five students matriculating outside of the regular enrollment process in unusual circumstances, as long as it would be a temporary exception and those children would have to be within the enrollment cap the following year.

Ms. Kauskay testified that the Association also supported the school's request to increase the day care center capacity to 20 children, with the understanding that the school will have a minimum of 40% of the day care enrollment (i.e., 8 of the 20 children) as children of faculty or staff of Holton.

As to the summer camp, the Citizens Association supports having the summer camp enrollment match whatever the enrollment is during the academic year.

The Bradley Boulevard Citizens Association also supports many of the "non school uses," with conditions. The uses to which Ms. Kauskay made reference were ones spelled out in Exhibit 25 (c-1) through 25 (c-7), which are set forth above. The one area about which Ms. Kauskay had particular concern was the language in the original version of 25 (c-7); however, 25 (c-7) was revised in a new Exhibit No. 55 (a), which the parties agreed to in the later proceeding.

(11/25/03 Tr. 69-70.) Exhibit 25 (c-7), set forth in Part II.D., above, is the revised version which was submitted in Exhibit 55 (a). That exhibit removed the references to community and accessory uses, and rather characterized the uses as miscellaneous, a category the parties felt was permitted under the Zoning Code.

Ms. Kauskay added that her Citizens Association had concerns about the way the Planning Board Technical Staff had suggested analyzing traffic in a post-modification traffic condition. The parties subsequently reached an agreement as to the language of such a traffic study, and it is contained in Exhibit 50. Ms. Kauskay further testified that she had concerns as to whether the Board of Appeals could go back and change an authorized use in a special exception once it had given its approval, and she therefore wanted to make sure that even the increased enrollment proposal was subject to a subsequent traffic review by the Board.

The Hearing Examiner asked Ms. Kauskay why the Citizens Association needed the extra condition of making 15 of the proposed increased enrollment cap of 665, children of the faculty or staff of Holton, given that she proposed a traffic study which would include the impact of increased enrollment and would enable the Board to make changes based on the findings from that study. Ms. Kauskay indicated that she was constrained by signing the Neighborhood Reconciliation Agreement not to drop the condition that 15 of the enrollees be children of Holton faculty and staff; however, she recognized that approval of the enrollment cap could be conditioned solely on the subsequent traffic study. (11/14/03 Tr. 265-267.)

2. Joseph Cutro:

Mr. Cutro was called by the Bradley Boulevard Citizens Association as an expert in traffic engineering. Mr. Cutro testified that, in his opinion, the difference noted in Mr. Cunningham's study between the level of inbound traffic on River Road and the level of

outbound traffic was significant enough to indicate that the counter unit used by Mr. Cunningham was faulty. Nevertheless, Mr. Cutro testified that, in his opinion, the critical lane volumes "are just fine." (11/14/03 Tr. 277.)

Mr. Cutro felt that studying the queue length on eastbound River Road at the Holton entrance intersection was important. Mr. Cutro speculated that the reason the traffic signal continued to provide 40 seconds of green time for the left turn into the Holton entrance is that the detectors for indicating other traffic were likely broken. Finally, Mr. Cutro suggested that the standard of critical lane volume was not a sufficient measure in itself of the capacity of an intersection's performance (11/14/03 Tr. 282). He suggested that the standards set out by Rockville would be more complete, but that proposed standard (Exhibit 47) was not admitted to the record because Rockville standards are of questionable relevancy and the document was not submitted 10 days before the hearing to give Petitioner an opportunity to look at it and properly respond. The sense of Mr. Cutro's testimony, however, was that because the intersection is so close to its maximum capacity, traffic is slowed down sufficiently that one never reaches the County's maximum critical lane volume level. An excessive number of cars are just not able to pass the clogged intersection within the measurement period.

3. George Springston:

George Springston testified on behalf of the Burning Tree Civic Association (BTCA). Mr. Springston testified that BTCA's position was that there should not be any change to the Holton operation which will increase peak hour traffic on River Road. Consequently, BTCA opposed an increase in school enrollment above 650, opposed an increase in day care center enrollment from 15 to 20, and opposed allowing children from other schools to attend the day care center. As to the other, non-peak hour activities, the BTCA doesn't take a position;

however, it concurred in the position of the Bradley Boulevard Citizens Association with regard to some of the uses. (11/14/03 Tr. 308.) The one thing that the BTCA did support was the proposal that the enrollment of the summer camp be linked directly to, and not exceed, the enrollment cap of the school's regular academic year. (11/14/03 Tr. 296.)

Mr. Springston also testified that he had personally taken measurements of the storage lane eastbound at the intersection with the Holton entrance. The storage lane is, according to Mr. Springston's measurements, 11 feet wide for approximately 200 feet, but then it begins to taper down to nothing at approximately 250 feet. According to Mr. Springston's measurements, only about 12 to 13 automobiles could fit comfortably in the storage lane before they would back up into the main lines of traffic. (11/14/03 Tr. 299-301.) Mr. Springston and the BTCA strongly support Holton's efforts to extend the storage lane, and they joined with the President of the Bradley Boulevard Citizens Association in writing to the State Highway Administration so stating. (Exhibit 57 (a).) Mr. Springston is also concerned about the impact of Holton-generated traffic on Burdette Road, which Mr. Springston stated exceeded the 1650 critical lane volume maximum in studies done by Mr. Cutro in April 2000.

C. People's Counsel

Martin Klauber, the People's Counsel, did not present any witnesses at the hearing, but he did participate and was especially helpful in assisting the parties to reach some compromises in this case. It was Mr. Klauber who initially suggested a post-approval traffic study as a condition in this case. Ultimately, the People's Counsel declined to take a position for or against the Modification Petitions (11/25 Tr. 87-88).

D. Closing Statements

No witnesses were called at the November 25, 2003, resumption of the hearing. However, in the course of the parties closing statements, there were significant stipulations mentioned, such as Mr. Knopf, on behalf of the BBCA, stipulating that “the critical lane volume evidence submitted in this case satisfies the County’s CLV standards for the Holton-Arms intersection.” (11/25 Tr. 59) and that BBCA had no objection to the increase in the day-care cap to 20, with at least 8 of that number being children of Holton faculty or staff, but with no other conditions. (11/25 Tr. 84-85) The parties also agreed⁸ to the revised form of Exhibit 25-C-7, submitted in Exhibit 55(a), (11/25 Tr. 67-70); to a revised version of the future traffic study (Exhibit 50) (11/25 Tr. 8-11); to the portion of Mr. Hedberg’s testimony to be stricken (11/25 Tr. 58); and to an increase in summer camp enrollment paralleling any increase in school-year enrollment. (11/25 Tr. 83).

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. The special exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. A special exception use is deemed presumptively compatible within the zoning district in which it is authorized, unless specific adverse conditions at the proposed location are shown to overcome the presumption. Pre-set legislative standards are both specific and general.

Petitions to modify the terms or conditions of a special exception are authorized by §59-G-1.3(c)(4) of the Zoning Ordinance. As mentioned in Part I of this report, because

⁸ Mr. Springston was not present at the November 25 hearing.

Petitioner's plans do not include expansion of the total floor area at all, nor any changes to the physical plant of the Holton-Arms School, the scope of this inquiry is limited by statute to "discussion of those aspects of the special exception use that are directly related to [the modification] proposals" and does not include a review of the "underlying special exception[s]." Thus, Development Standards will not be reviewed in this report, as they are not related to any of the proposed modifications. Nevertheless, the changes proposed by Petitioner do require a review under numerous provisions of the special exceptions in question. As demonstrated below, the record in this case establishes that the proposed modifications would neither change the nature or character of the special exceptions nor, given the recommended conditions, adversely affect the surrounding neighborhood.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.21 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." Code § 59-G-1.21. 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 combined private educational institution and child day care use. Characteristics of the proposed modifications that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed modification 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 that the inherent adverse effects associated with private educational institutions include buildings and facilities designed to accommodate the academic and athletic programs associated with school-aged children, impervious surfaces for parking of vehicles, traffic generated by vehicles, noise from activities, lighting, and signage. The Staff also opined that the inherent adverse effects associated with child day care facilities are similar to that of private educational institutions and include facilities designed to accommodate the needs of children, play areas, parking, traffic, noise, lighting, and signage.

The more controversial opinion of the Staff in terms of this case is its conclusion that “the physical and operational characteristics of the use as modified are no different than what is typically encountered with private educational institutions and child day care facilities.” In so concluding, the Technical Staff in effect determined that there would be no non-inherent adverse effects from the proposed modifications. Community participant Bradley Boulevard Citizens Association, through its attorney, Norman Knopf, strongly disagrees.

B. The “Inherent” v. “Non-Inherent” Argument

Mr. Knopf makes the argument (11/25 Tr. 85-86) that giving SAT courses and art programs is not an inherent activity of this use (a private school) because “[i]t isn’t necessary that you give SAT courses, and you have arts programs and so, you could, lots of schools exist very well without those uses, so our position would be all of those uses are non-inherent.” Therefore, he urges that “[a]ll of the adverse effects flowing from those are non-inherent, because it’s not a necessary essential part of the school.” Mr. Knopf even extends his argument to the requested enrollment increase. He argues that since the school has existed for years with an enrollment of 650, “there is nothing inherent that they have to go up from 650 to 665.”

While Mr. Knopf’s argument may have facial appeal based on some of the statutory language, his interpretation would impose restrictions that are so rigid they could not have been intended by the Council; nor have they been so interpreted by the Board of Appeals, which has repeatedly looked to whether the proposed use or modification is “consistent with” the generic characteristics of the use,⁹ not whether the proposed use or modification is essential to the special exception or found in all such special exception uses.

Under Mr. Knopf’s view, the only inherent adverse effects would be those caused by physical or operational characteristics present in all instances of the special exception use in question. He, in effect, argues that because not all private schools give SAT preparation courses or have art programs, the possible adverse effects generated by those activities are non-inherent, even though the definition of private educational institution in Code §59-A-2.1 expressly permits them. Moreover, both the Technical Staff and land use expert Alfred

⁹ Board of Appeals Opinion in S-2510, *Hall and Post*, August 5, 2002, p 8; Board of Appeals Opinion in S-2457, *Harbor School*, April 25, 2002, p 13; and Board of Appeals Opinion in S-2494, *Omnipoint Communications*, May 30, 2002, p 4.

Blumberg concluded that these activities were typical of a private educational institution.

The zoning statute in fact does not use the word “all.” Rather, it uses the more flexible term “necessarily associated with.” Teaching classes is necessarily associated with (*i.e.*, “consistent with,” in the Board’s parlance) a private educational institution in the common understanding of the words, whether or not every school teaches all grades. Similarly, offering courses and examinations related to studies at the school or to its goal of getting its students into college is necessarily associated with a private educational institution’s use (and one might even argue is a private high school’s *raison d’être*) whether or not every school offers every course and every examination.

This interpretation problem has arisen because Mr. Knopf is attempting to slice the salami too finely, as is demonstrated by his attempt to characterize a possible enrollment of 665 as a non-inherent characteristic, while in his estimation the current enrollment of 650 is an inherent characteristic. Using Mr. Knopf’s yardstick, the same size enrollment would have to be found at all private schools to find that the operational characteristic of school enrollment is an inherent characteristic. This example illustrates the problematic results yielded by adhering to Mr. Knopf’s suggested approach. Obviously, the characteristic of having some school enrollment is inherent in all private schools, and adding 15 students does not *ipso facto* make it a non-inherent characteristic. In fact, the Board has repeatedly stated that, in determining the inherent, generic physical and operational characteristics associated with a given use, the evaluation standard “does not include the actual physical size and scale of operations of the use proposed.”¹⁰

This interpretation is supported by the language of the special exception provision in

¹⁰ Opinions cited in the preceding footnote.

question. Section 59-G-2.19(a)(4)(a) expressly recognizes the inherent likelihood of different size enrollments for different schools by requiring the Board to specify “[t]he allowable number of pupils per acre” after considering specific enumerated criteria. If differing enrollment sizes were not an inherent operational characteristic of private schools, there would be no need for such a requirement.

If you break down any activity or characteristic usually associated with a use into enough sub-parts and sub-characteristics, you will necessarily find some sub-parts and sub-characteristics that are not necessarily done in all applications of that use. In the present case, the broader educational activity is necessarily associated with all private schools and thus is not an operational characteristic that, in and of itself, generates non-inherent adverse effects.

This method of interpreting the statute gives effect to its underlying rationale – special exception uses will not be barred based on potential adverse effects on neighbors, if those adverse effects are intrinsic to the permitted special use by its very nature. The nature of schools is to give courses and exams even though not all courses and exams are given by all schools.

That does not mean that the Board of Appeals is precluded from establishing conditions which will protect the neighborhood from adverse effects, whether they be inherent or non-inherent. While the special exception may not be denied when there are only inherent adverse effects (because it is presumed that the Council knew of the inherent effects when it conditionally permitted the use), it may be conditioned as necessary. Codes Section 59-G-1.22(a) provides that:

The Board, the Hearing Examiner, or the District Council, as the case may be, may supplement the specific requirements of this Article with any other requirements necessary to protect nearby properties and the general neighborhood.

Thus, we need not dance on the head of the inherent/non-inherent pin in order to protect the neighborhood. The Board cannot prohibit a private school from existing because it will have an enrollment, but it can set reasonable conditions on the size of that enrollment so as to reduce the traffic impact on the surrounding area. Similarly, the Board cannot prohibit a private school from existing because it teaches courses and gives exams, but it can prohibit the giving of SAT exams to non-students if it feels that that activity would generate too much impact on the neighborhood.

In sum, Mr. Knopf's argument emphasized the wrong part of the statute. In this case, it is not the inherent/non-inherent analysis which should control the outcome, but rather the analysis of what conditions are reasonably necessary to protect the neighborhood.

It should also be noted that the Petition pending before the Hearing Examiner is not for the grant of a special exception, but for the modification of three existing special exceptions. As mentioned above, the standard for review of a modification petition is different from, and more narrowly focused than, the standard for review of a special exception application.

C. Findings on the Requested Modifications

After carefully reviewing the entire record, the Hearing Examiner is convinced, as was the Technical Staff, that the requested modifications, if properly conditioned, will have no significant adverse effects, inherent or non-inherent, on the surrounding area. It should be emphasized that this conclusion is not a finding that all the activities performed at Holton-Arms are necessarily inherent activities. For example, giving the SAT exam to those who are not students at the school could well be considered non-inherent, as could hosting the Special Olympics; however, regardless of whether these activities are considered inherent or non-inherent, they can and should be conditioned as necessary to protect the neighbors against

adverse traffic effects. That is what the statute requires. We need not decide in this case whether the effects from these activities are inherent or non-inherent since the parties have reached an agreement for a condition that will protect the neighborhood against undue traffic – a detailed traffic study which will be made in May of 1995, with the Board of Appeals retaining jurisdiction to amend the conditions for approval of these uses after a hearing.

As to Petitioner's requested increase in their enrollment caps for the school, the day care and the summer camp, the Hearing Examiner finds that as a matter of statutory interpretation, as well as common sense, enrollment itself cannot be considered a non-inherent adverse effect because every school, day-care facility and camp must have an enrollment to exist. Nevertheless, the size of that enrollment can be conditioned as necessary to protect the neighborhood.

With regard to the requested general enrollment cap increase from 650 to 665, the Hearing Examiner agrees with Mr. Knopf's argument that it should be permitted but conditioned upon the same traffic study the parties agreed to for the after-hours/miscellaneous activities. Even though enrollment is an inherent characteristic of a school, and the Board could not deny a Special Exception because a school has an enrollment, it can condition an increase in enrollment both under general special exception law (Codes Section 59-G-1.22(a), quoted above) and under the specific terms of this particular special exception (Code Section 59-G-2.19(a)(4)a).

The Hearing Examiner recommends, however, that should the traffic study reveal an undue adverse effect on the community from this modest increase in enrollment, the Board should consider an enrollment reduction only as a last resort, given the importance to the school of the increased enrollment. Perhaps other measures can be employed to reduce the possible adverse effects. Moreover, if a traffic study is done regarding the impact of the added

enrollment, there is no need to have the additional condition proposed by Mr. Knopf in Exhibit 56(a) that 15 of the enrolled students must be children of Holton faculty or staff. Nor is there any reason to deny Petitioner's request for permission to admit an additional 5 students in the unusual circumstances Petitioner outlined, as long as those additional students fall under the 665 cap during the following year.

The Hearing Examiner further finds that there is no evidence in the record that increasing the number of children in day care from 15 to 20 will have adverse impacts on the neighborhood, especially since that increase will be conditioned on 8 of the 20 enrollees being children of Holton faculty and staff.

As to the summer camp, all parties involved in this case agreed that the summer camp enrollment should be kept parallel with the regular enrollment, and there was no evidence in this case militating against such a decision. Therefore, the Hearing Examiner so recommends.

Finally, the "after-hours and miscellaneous" activities proposed to be continued and, in some cases, expanded in Exhibits 25c-1 through 25c-7, were agreed to by the Bradley Boulevard Citizens Association, subject to the conditions specified in the referenced exhibits (reproduced above on pages 14 through 17 of this report) and the traffic study condition set forth in Exhibit 50 (reproduced on page 20 of this report). The Burning Tree Civic Association took no specific position with regard to these activities, but rather associated itself with the Bradley Boulevard Citizens Association position. Given a condition that there will be a follow-up traffic study agreed to by the parties and the Board will have the power to review the results and, after a hearing, modify the conditions, the Hearing examiner finds that permitting the requested uses would have no significant adverse effects on the community.

In sum, the Hearing Examiner finds and concludes that all of the proposed modification petitions should be granted, but with specific conditions.

D. 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 written 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 and child day care facilities are permitted by special exception in the R-90 and R-200 zones involved in the subject case.

(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 modifications would comply with the standards and requirements set forth for the two uses in Code §§59-G-2.19 and 2.13.1, as detailed below.

(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 Bethesda-Chevy Chase Master Plan, approved and adopted in 1990, supports the existing R-90 and R-200 Zones for the subject property. Private educational institutions and child day care facilities are allowed by special exception in those zones. The Master Plan specifically addresses zoning at the Holton-Arms School, as well as at other large land users within the planning area. As to Holton, the Master Plan recommends the same zoning to continue, and notes that it “[e]xpect[s] private school use to continue” (p. 36).

- (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 proposed modifications would be in harmony with the general character of the neighborhood. The surrounding properties are shielded by the heavily wooded areas around the school, and the proposed small additions to enrollment and programs, with conditions, will not have any significant effect on the neighborhood, given the absence of any physical change to the facility. The Technical Staff determined that parking was adequate. Any potential traffic impact will be studied, and the Board will have the option to change conditions after a further hearing.

- (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 evidence supports the conclusion that with the specified operational limitations and other conditions, the requested modifications would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (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: There is no evidence in the record that Holton's operations cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site. Nothing in the proposed modifications would change that circumstance.

- (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: As noted by the Technical Staff, in previous opinions concerning the school and the child day care facility, the Board of Appeals has found that they did not increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its residential nature. The evidence indicates that nothing in the proposed modifications would justify changing that conclusion.

- (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 supports the conclusion that the proposed modification would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

(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.*

(i) *If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review[LATR] and the Policy Area Transportation Review[PATR], as required in the applicable Annual Growth Policy.*

(ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: The evidence supports the conclusion that the subject property would continue to be served by adequate public facilities. The evidence includes testimony from two traffic experts, Craig Hedberg and Joseph Cutro, and a report from a third, Lee Cunningham (Exhibit 23(a)). All three concluded that the traffic at the most significant intersection in this case (River Road at the Holton entrance) was within County critical lane volume standards. This fact was also conceded by Bradley Boulevard Citizens Association on the record. (11/25 Tr. 59)

Mr. Hedberg calculated that the increased enrollment and all the other modifications together would generate a total of approximately 20 trips, 12 in and 8 out, based on a trip rate Mr. Hedberg derived from the actual driveway volumes.

(11/14 Tr. 225-226) Mr. Hedberg also testified that even with the increased enrollment for the school and the day care center, if approved, critical lane volume would still be well below the County standard of 1650. (11/14/03 Tr. 202) In Mr. Hedberg's opinion, the anticipated trip generations from the requested modifications would have no adverse effect on the adjoining properties or level of service at the intersection, nor would there be a detrimental impact on the health, safety or welfare of the residents, motorists and pedestrians along the surrounding road network. (11/14/03 Tr. 207-208) Finally, Mr. Hedberg noted that, following the recent widening of the entrance and other construction, there is no longer a problem with the circulation traffic on the Holton campus in that "there is plenty of stacking space and traffic flows quite well." (11/14/03 Tr. 184)

Based on the evidence in this record, the Hearing Examiner concludes that the proposed modifications, as conditioned, would not create a significant adverse traffic impact, nor reduce the safety of pedestrian or vehicular traffic.

E. 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 modification 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, it is clear that the use, as modified, will not constitute a nuisance because of traffic, number of students, noise, type of physical activity or any other element. As noted by the Technical Staff, the school has been in operation at this location for many years, and these proposals will result in only a modest increase in enrollment and in the number of after-school/miscellaneous programs.¹¹

(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: This section is inapplicable to these modification petitions because no structural changes are being proposed.

(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

¹¹ It should be noted that, in the opinion of the Hearing Examiner, relabelling the "non-school" programs as "miscellaneous programs" does not convert them into statutorily acceptable uses if they are not otherwise so, despite the agreement of the parties on the point; however, there is nothing in the record from which the Hearing Examiner can conclude that the unspecified miscellaneous uses will be offensive to the zoning statute. Code § 59-G-9.19(b) expressly permits a private educational institution to allow its facilities to be used and even leased for certain non-school activities, if they do not result in an adverse impact on the community. In this case, the proposed "miscellaneous" uses will be conditioned, *inter alia*, upon advance notice to the Neighborhood Liaison Committee, thus enabling the neighbors to monitor the situation so as to avoid the scheduling of activities they consider unduly intrusive. Moreover, a traffic study will be done in May of 2005, which would determine whether there are any adverse traffic impacts. Thus, the purposes of the statute will be protected.

Conclusion: The use, as modified, 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: As the Technical Staff notes, the current pupil density of the school is 11.21 students per acre based on an enrollment of 650 students and a campus size of approximately 58 acres. The pupil density proposed in the special exception modification petitions will be 11.47 students per acre, based on an enrollment of

665 students. That is well below the 87 per acre pupil density figure used as a standard in subsection a.5, above.

The traffic situation has been discussed at length in the discussion of the general standards, as have the other topics in this section. The record demonstrates that Petitioner has met the standards set forth in this section.

- 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: No outdoor sports and recreation facilities are proposed as part of the special exception modification.

- (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: Petitioner has submitted charts detailing their proposed after-school and non-school activities covered by this section, including proposed conditions on them (Exhibits 25c-1 through 25c-7, as amended). The Technical Staff concluded, and the Hearing Examiner agrees, that the Petitioner has provided sufficient information to determine that these uses in combination with other school activities will not have a significant adverse impact on the surrounding neighborhood due to traffic, noise, lighting or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impact, the Technical Staff took into consideration the cumulative number of expected vehicle trips generated by all of the uses on the campus and found that the traffic would not exceed the capacity of nearby roadways. The evidence produced at the hearing, as summarized in the discussion of the general standards, above, also supports the Technical Staff's conclusions. The Technical Staff and the Hearing Examiner also support the amendments proposed by the Petitioner to its transportation management plan and have recommended them as conditions of approval.

The Technical Staff also recommended a condition providing for a traffic impact study in May 2006 to review traffic conditions following implementation of the special exception modifications. After negotiations, the parties agreed to a condition calling for a more detailed traffic study that would take place a year earlier, in May of 2005 (Exhibit 50). The Hearing Examiner recommends the traffic study agreed to by the parties, but in a modified form.

The study agreed to by the parties did not include an analysis of the traffic impact of the increased enrollment because Petitioner would not agree to it;

however, that analysis is still sought by Bradley Boulevard Citizens Association, and the Hearing Examiner recommends that it be included in the conditions for granting the proposed modifications. This approach is consistent with the language in §59-G-2.19(b) admonishing the Board to “take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs.”

In this connection, the Traffic Study recommended by the Technical Staff did not exclude analysis of the impact of the increased enrollment, but rather suggested that when the Board considers whether to amend the conditions of approval following the traffic study, it should not change the authorization for the increased enrollment. The Hearing Examiner suggests that, if the traffic study reveals a significant adverse impact from the increased enrollment, the Board consider every other alternative before imposing any reduction in enrollment to current levels.

(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: Petitioner's proposals include both continuation of existing programs and addition of some previously unapproved activities. All proposals include conditions which the Hearing Examiner recommends.

(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: As noted by the Technical Staff, a site plan for the campus was submitted with the special exception modification petitions, for reference. However, these plans are meant to represent existing conditions, and no new development is proposed in the subject petitions.

(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.*

(1) *A special exception is not required for any private educational institution that is located in a building or on premises that have been used for a public school or that are owned or leased by Montgomery County.*

(2) *However, site plan review under Division 59-D-3 is required for:*

- (i) *construction of a private educational institution on vacant land owned or leased by Montgomery County; or*
- (ii) *any cumulative increase that is greater than 15% or 7,500 square feet, whichever is less, in the gross floor area, as it existed on February 1, 2000, of a private educational institution located in a building that has been used for a public school or that is owned or leased by Montgomery County. Site plan review is not required for: (i) an increase in floor area of a private educational institution located in a building that has been used for a public school or that is owned or leased by Montgomery County if a request for review under mandatory referral was submitted to the Planning Board on or before February 1, 2000, or (ii) any portable classroom used by a private educational institution that is located on property owned or leased by Montgomery County and that is in place for less than one year.*

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.

F. Specific Standards: Child Day Care Facility

The specific standards for a child day care facility are found in Code § 59-G-2.13.1. The Technical Staff report and the evidence of record in this case provide sufficient evidence that the proposed modifications to the child day care facility use would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.13.1. Child day care facility.

- (a) *The Hearing Examiner may approve a child day care facility for a maximum of 30 children if:*
- (1) *a plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the site;*

Conclusion: A site plan for the campus showing buildings and other facilities was submitted for reference, but there are no changes to structures being proposed at this time.

- (2) *parking is provided in accordance with the Parking Regulations of Article 59-E.*

The number of parking spaces may be reduced by the Hearing Examiner if the applicant demonstrates that the full number of spaces required in Section 59-E-3.7 is not necessary because:

(A) existing parking spaces are available on adjacent property or on the street abutting the site that will satisfy the number of spaces required;
or

(B) a reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems;

Conclusion: The Technical Staff notes that, in previous opinions, the Board of Appeals has adopted the Technical Staff's findings regarding the parking requirements for the existing child day care facility. The present day care facility has a maximum of 15 children and five staff, requiring a total of eight parking spaces, according to the Technical Staff. Increasing the enrollment to 20 children would increase the requirement to nine spaces. A total of 20 spaces are available in the immediate vicinity of the day care facility.

The Board has also held that the parking requirement for the summer camp should be based on the child day care standards. The Technical Staff concluded that, with the proposed increase in enrollment to 665 sought by the Petitioner, the requirement will be 271 spaces. Since a total of 307 spaces are provided on the campus, the Hearing Examiner concludes that Petitioner has met this requirement.

(3) an adequate area for the discharge and pick up of children is provided;

Conclusion: In previous opinions, the Board of Appeals has found that there are adequate areas for the discharge and pick up of children. Based on Mr. Hedberg's testimony about the improved circulation on campus and the Technical Staff's analysis, the Hearing Examiner concludes that, if the special exception modifications are approved, there will still be adequate areas for discharge and pick up of children.

- (4) *the petitioner submits an affidavit that the petitioner will:*
- (A) *comply with all applicable State and County requirements;*
 - (B) *correct any deficiencies found in any government inspection; and*
 - (C) *be bound by the affidavit as a condition of approval for this special exception; and*

Conclusion: Technical Staff reports that Petitioner has submitted the required affidavits.

(5) *the use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity. The hearing examiner may require landscaping and screening and the submission of a plan showing the location, height, caliper, species, and other characteristics, in order to provide a physical and aesthetic barrier to protect surrounding properties from any adverse impacts resulting from the use.*

Conclusion: As stated above in the discussion regarding the general standards and the specific standards for a private educational institution, the uses, as modified, will continue to be compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity.

- (b) *A child day care facility for 31 or more children may be approved by the Board of Appeals subject to the regulations in subsection (a), and the following additional requirements:*

Conclusion: The maximum number of children proposed for the child day care facility is 20. The summer camp will have a maximum enrollment of 665 children, consistent with the proposed maximum enrollment cap for the school.

- (1) *a landscaping plan must be submitted showing the location, height or caliper, and species of all plant materials; and*

Conclusion: No new construction is proposed as part of the special exception modifications. A landscaping plan for the campus was previously approved and remains applicable.

(2) *in the one-family residential zones, facilities providing care for more than 30 children must be located on a lot containing at least 500 square feet per child. The Board may reduce the area requirement to less than 500 square feet, but not less than 250 square feet, per child if it finds that:*

(A) *the facility will predominantly serve children of an age range that require limited outdoor activity space;*

(B) *the additional density will not adversely affect adjacent properties;*

(C) *additional traffic generated by the additional density will not adversely affect the surrounding streets; and*

(D) *adequate provisions for drop-off and pick-up of students will be provided.*

The Board may limit the number of students outside at any one time.

Conclusion: Petitioner proposes a summer camp enrollment of 665 children. Multiplying that figure times 500 square feet per child yields a total required lot size of 332,500 square feet, which translates into 7.6 acres. Since the subject property is comprised of 58.5 acres, there is more than adequate space to accommodate the proposed enrollment.

(c) *The requirements of Section 59-G-2.13.1 do not apply to a child day care facility operated by a nonprofit organization and located in:*

(1) *a structure owned or leased by a religious organization and used for worship;*

Conclusion: This subsection is not applicable.

(2) *a structure located on premises owned or leased by a religious organization that is adjacent to premises regularly used as a place of worship;*

Conclusion: This subsection is not applicable.

(3) *a structure used for private parochial educational purposes which is exempted from the special exception standards under Section 59-G-2.19(c); or*

Conclusion: This subsection is not applicable.

(4) *a publicly owned building.*

Conclusion: This subsection is not applicable.

Based on the testimony and evidence of record, I conclude that, with the recommended conditions, the changes proposed by Petitioner meet the specific and general requirements for the proposed uses, and that the Modification Petitions should be granted, with the conditions recommended in the final section of this report.

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petitions numbered CBA-1174-D, S-2467-A and S-2503-A, which seek to modify three existing special exceptions for a private educational institution and a child day care facility operated by the Holton-Arms School on property located at 7303 River Road (MD Route 108), Bethesda, 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 approved special exceptions shall remain in full force and effect, except as modified by the Board as a result of these Modification Petitions.

3. Petitioner will continue to use its best efforts to obtain State approval for extension of the left-turn storage lane on eastbound River Road at the intersection with the Holton-Arms entrance and Royal Dominion Drive.
4. Petitioner's Transportation Management Plan, Exhibit E to Exhibit 180 in Case No. CBA-1 174-C, should be amended, as follows:

Insert as item I (C)(3):

It is expected that students under the age of 16 residing with a member of the faculty or staff will travel with that faculty or staff member to and from school.

Insert the following as Section IV:

Holton's Director of Special Events, or other designated staff member, will maintain a Master Calendar to ensure that activities approved by the Board of Appeals as additional uses of the campus (for example, college preparatory classes, Center of the Arts activities, recreational programs, and uses of the theatre) are scheduled in such a manner as to avoid traffic movements during the School's arrival and departure times to the extent reasonably possible. The Director of Special Events, or other designated staff member, will ensure there is sufficient parking for the scheduled activities. At no time will events or activities be scheduled that will overburden the School's ability to manage the anticipated traffic and to contain all parking on-site.

5. Petitioner shall conduct a traffic study, as follows:

In May 2005, the Petitioner will submit a traffic study to the Board of Appeals and the Transportation Planning staff of the Maryland-National Capital Park & Planning Commission, after consultation with the Bradley Boulevard Citizens Association (BBCA), the Burning Tree Civic Association (BTCA), and the Office of the People's Counsel (OPC) as to the parameters of the traffic study. Copies of the study shall be provided to the BBBCA, BTCA, and the OPC. In accordance with Section 59-G-2.19(b), the traffic study will evaluate the traffic generated by the increased enrollment and by the After-Hours/Non-School activities in combination with all other approved activities on the special exception site, including any adverse effects on pedestrian and vehicular traffic safety, capacity, queuing and turning

movements arising from the River Road, Holton-Arms and Royal Dominion intersection. Upon receipt of the analysis and comments of the Transportation Planning staff and other interested parties, the Board of Appeals may conduct a public hearing to discuss the study and the analysis and comments of the Transportation Planning staff. Should the Board of Appeals determine that there has been an adverse traffic impact due to the modified uses, then the Board may, after a public hearing, amend the conditions of approval for the modified uses approved by this Opinion; however, every effort will be made to avoid any reduction in enrollment from the approved level of 665.

6. Petitioner's enrollment cap is increased to 665, but on rare occasions,

Petitioner may admit up to five additional students on the following

conditions:

- Admission request received outside regular admissions process which is January- April of preceding school year.
- Student must be academically eligible.
- Any student admitted pursuant to this provision will be included in the enrollment cap in future years.
- Holton-Arms must have available classroom space and faculty to accommodate student without adding any new personnel.
- Holton-Arms will report in its Annual Report (September) its enrollment figures for the academic year just ended, including the number of students admitted outside the regular admissions process in excess of 665 students.

7. Petitioner may increase the number of children in its day care program to 20

under the following conditions:

- Enrollment capped at 20 children, ages 6 weeks to 5 years, supervised by five full-time staff members and additional student volunteers.
- Enrollment priority given to Holton-Arms Faculty/Staff.
- Open to Faculty/Staff of Burning Tree Elementary, Primary Day, Landon and Norwood Schools in order to form suitable classes for children of Holton-Arms faculty and staff.¹²

¹² The Hearing Examiner sees no particular reason why Holton should be restricted to taking children from the faculty/staff of the four named schools to fill its day care vacancies, other than that the named four are some of the schools in the general area of Holton; however, the parties had agreed to that restriction and the Hearing Examiner is therefore reluctant to recommend a change to an agreed-upon condition that is not *per se* unreasonable.

- Academic calendar only (September to June).
 - Hours: 7:30 a.m. until 5 p.m. weekdays, and 4 p.m. on Fridays. No weekends.
 - Holton-Arms will include, in its Annual Report to be filed in connection with the school's special exception case (Case No. CBA-1 174), enrollment data for the child day care facility, identifying the number of non-Holton children, if any, enrolled in the program for the year just ended as well as the total number of children afforded care during that same year.
 - Non-Holton faculty/staff children will not exceed twelve.
8. Petitioner may increase the number of children in its summer camp to match the number of children in its approved regular enrollment, capped at 665 children under these approved modifications.
9. Petitioner may conduct the after-school and miscellaneous activities specified in the attached Exhibits 25c-1 through 25c-7, as amended, in accordance with the conditions specified in the last column of each of those exhibits.

Dated: January 9, 2004

Respectfully submitted,



Martin L. Grossman
Hearing Examiner

THE HOLTON-ARMS SCHOOL, INC.
Case No. CBA-1174-D

A. College Entrance Examination Preparatory Classes
 Continuation of these classes authorized by ZTA 02-01
 Section 59-G-2.19(c) of Zoning Ordinance

	Neighborhood Reconciliation Agreement	Current Operations	BOA Approval Requested in Case No. CBA-1174-D	Requested Conditions for Continuation
No specific Board of Appeals action.	<p>Holton-Arms may seek approval for continuation.</p> <ol style="list-style-type: none"> 4 sessions/year for up to 80 students per session. All students to arrive and depart outside school's Peak Hours.¹ Preference given to 20817 residents and Holton-Arms family.² Proposed schedule is Saturday 9 a.m. to 6 p.m. Sunday 9 a.m. to 4 p.m. 5:30 - 9:30 p.m. Monday through Friday 6:30 - 9:30 p.m. 	<ol style="list-style-type: none"> 4 sessions per year. 80 students per session. Preference given to Holton-Arms Family and 20817 residents. Hours are: Monday through Thursday 7 p.m. to 10 p.m. Saturday 9 a.m. to 1 p.m. Sunday 12 p.m. to 4 p.m. 5:30 p.m. to 9:30 p.m. [Note: The SAT exams are also given five times per year on Saturday mornings with a maximum of 135 students per session.] 	<p><u>Under ZTA 02-01</u></p> <p>Reaffirm existing program on same conditions as currently operating.</p> <p><u>No change or expansion of existing program contemplated.</u></p>	<ol style="list-style-type: none"> 4 sessions per year. 80 students per session. Preference given to Holton-Arms Family and 20817 residents. Hours: Monday through Thursday 7 p.m. to 10 p.m. Saturday 9 a.m. to 1 p.m. Sunday 12 p.m. to 4 p.m. 5:30 p.m. to 9:30 p.m. [Note: The SAT exams are also given periodically on Saturday mornings with a maximum of 135 students per session.]

¹ Peak Hours are 7:30 to 8:30 a.m. weekdays and Monday through Thursday 3:15 to 4:15 p.m. and Friday 2:30 to 3:30 p.m.

² Holton-Arms family is students, their parents and siblings, and staff, their children and siblings.

THE HOLTON-ARMS SCHOOL, INC.
Case No. CBA-1174-D

B. Center of the Arts
 Continuation of these classes authorized by ZTA 02-01
 Section 59-G-2.19(c) of Zoning Ordinance

BOA Resolution dated 4/26/02 Case No. CBA-1174-C	Neighborhood Reconciliation Agreement	Current Operations	BOA Approval Requested in Case No. CBA-1174-	Requested Conditions for Continuation
<ol style="list-style-type: none"> 1. 50% Holton-Family requirements. 2. Non-Holton participation to arrive and depart outside peak hours. 3. No more than 20 non-Holton participants at one time with equal number of Holton-Family participants. 	<p>Contemplates continuation on certain conditions:</p> <ol style="list-style-type: none"> 1. Total enrollment at any one time to be 50% or less of approved enrollment. 2. 50% to be Holton Family. 3. No more than 20 non-Holton participants on campus at any one time. 4. All non-Holton participants to arrive and depart outside School's Peak Hours. 5. Enrollment preference to 20817 zip code and Holton family. 	<ol style="list-style-type: none"> 1. Operating with 174 participants enrolled in 375 possible weekday slots and 75 possible weekend slots; 20 out of 28 possible classes now being held; ≈ 50% are Holton-Family. 2. Enrollment preferences to Holton-Family and 20817 zip codes residents. 3. Hours are: Monday through Friday: 2:15 p.m. - 8:30 p.m. (only 2 classes are offered 2:15 to 3:00 p.m.; most offered after school to early evening). Saturday 9 a.m. to Noon for groups classes; individual music lessons may be scheduled between 9 to 5 p.m.; currently no lessons extend beyond 12:45 p.m. No Sundays. 	<p><u>Under ZTA 02-01</u></p> <p>Seeking continuation on the same conditions as current with:</p> <p><u>Only change:</u> Replace condition of no more than 20 non-Holton participants at one time, with limitation of 60 or fewer participants at any time on campus in program [easier to monitor--because of multiple number of programs and overlapping time slots].</p>	<ol style="list-style-type: none"> 1. Maximum weekday class openings = 375; Maximum weekend class openings = 75. No more than 60 participants on campus at any one time. 2. Enrollment preference to Holton-Arms Family and 20817 zip code. 3. 50% Holton participation. 4. Non-Peak Hour arrivals and departures for non-Holton participants. 5. Hours are: Monday through Friday: 2:15 p.m. - 8:30 p.m. Saturday 9 a.m. to Noon for groups classes; individual music lessons may be scheduled between 9 to 5 p.m. No Sundays.

THE HOLTON-ARMS SCHOOL, INC.
Case No. CBA-1174-D

C. Artistic Performances
 Continuation of these classes authorized by ZTA 02-01
 Section 59-G-2.19(c) of Zoning Ordinance

BOA Resolution dated 9/7/01 Case No. CBA-1174	Neighborhood Reconciliation Agreement	Current Operations	BOA Approval Requested in Case No. CBA-1174-D	Requested Conditions for Continuation
Rentals to non-Holton groups not allowed as accessory uses to school.	No rentals unless specifically authorized by Zoning Ordinance.	None.	<u>Under ZTA 02-01:</u> Seeking approval to allow use of Lewis & Black Box Theaters.	<ol style="list-style-type: none"> 1. Lewis - up to 12 events annually. 2. Black Box - up to 6 events annually. 3. Each performance counts as one event even if same show or performance. 4. All to be scheduled outside Peak Hours of school and River Road. 5. Performance will be a Friday evening and/or Saturday and/or Sunday matinee and/or evening performance. 6. Maximum seating capacity of Lewis is 385. 7. Black Box has no permanent seating but capable of accommodating approximately 150. 8. Cost-sharing basis only.

THE HOLTON-ARMS SCHOOL, INC.
Case No. CBA-1174-D

D. Indoor Recreational Facilities (Two gyms)
 Continuation of these classes authorized by ZTA 02-01
 Section 59-G-2.19(c) of Zoning Ordinance

BOA Resolution dated 9/7/01 Case No. CBA-1174	Neighborhood Reconciliation Agreement	Current Operations	BOA Approval Requested in Case No. CBA-1174-D	Requested Conditions for Continuation
No outside rentals.	School may seek approval where specifically authorized by Zoning Ordinance.	None.	<u>Under ZTA 02-01:</u> Seeking to allow use of two gyms by outside groups with maximum number of participants at one time of 60.	<ol style="list-style-type: none"> 1. Preference to persons with Holton-Arms affiliation and 20817 residents. 2. All arrivals and departures outside Peak Hours. 3. No more frequently than 8 weekday nights per month and 8 each weekend. 4. No more than 60 participants on campus at any one time. 5. Cost-sharing basis only.

**THE HOLTON-ARMS SCHOOL, INC.
Case No. CBA-1174-D**

E. Indoor Recreational Facilities (Swimming Pool)
Continuation of these classes authorized by ZTA 02-01
Section 59-G-2.19(c) of Zoning Ordinance

BOA Resolution dated 4/26/02 Case No. CBA-1174-C	Neighborhood Reconciliation Agreement	Current Operations	BOA Approval Requested in Case No. CBA-1174-D	Requested Conditions for Continuation
<p>Placed limits on programs:</p> <ol style="list-style-type: none"> Can continue with Curl Burke and Capital Sea Devils for Holton-Arms Families and students of schools without pools which compete against Holton. 40 swimmers per session. One morning and one evening session¹. Outside Peak Hours of School and River Road Peak Hours so must end before 7:30 a.m. and start after 6 p.m. in evenings Cost-sharing basis only. 	<p>Contemplates continuation of existing programs in a.m. and p.m. limited to 40 swimmers per session.</p>	<p>Supervised Swimming Training Programs</p> <ol style="list-style-type: none"> 40 swimmers per session. Weekdays: one morning and two evening sessions. Hours: Outside Peak Hours Monday through Friday: 5:00 a.m. - 7:00 a.m.; 5:00 p.m. - 9:00 p.m.; 4:00 p.m. - 9:00 p.m. (Friday only) Saturday: 7:00 a.m. - 12:00 p.m. Sunday: 12:00 p.m. - 7:30 p.m. Cost-sharing basis only. 	<p><u>Under ZTA 02-01:</u></p> <p>Seeking to <u>continue</u> existing supervised swimming programs.</p> <p><u>No change from current operation.</u></p>	<p>Supervised Swimming Training Programs</p> <ol style="list-style-type: none"> 40 swimmers per session. Weekdays: one morning and two evening sessions. Hours: (Outside Peak Hours) Monday through Friday: 5:00 a.m. - 7:00 a.m.; 5:00 p.m. - 9:00 p.m.; 4:00 p.m. - 9:00 p.m. (Friday only). Saturday: 7:00 a.m. - 12:00 p.m. Sunday: 12:00 p.m. - 7:30 p.m. Cost-sharing basis only.

¹ Circuit Court for Montgomery County, in December 2002, reinstated a second evening weekday program.

THE HOLTON-ARMS SCHOOL, INC.
Case No. CBA-1174-D

F. Charitable Events Using Pool or Gym Recreational Facilities
 Continuation authorized by ZTA 02-01
 Section 59-G-2.19(c) of Zoning Ordinance

	Neighborhood Reconciliation Agreement	Current Operations	BOA Approval Requested in Case No. CBA-1174-D	Requested Conditions for Continuation
No specific Board of Appeals action.	Does not address; neighbors have supported Special Olympics in past.	Indoor pool used once yearly for Special Olympics.	<u>Under ZTA 02-01:</u> Seeking to continue with up to three such <u>indoor</u> events per year. e.g., Burning Tree Elementary School has in past asked to use gym for a book/school fair.	1. No more than three events per year. 2. No more than 60 participants in the gym. 3. No more than 40 in pool. 4. Cost-sharing basis only.

THE HOLTON-ARMS SCHOOL, INC.
Case No. CBA-1174-D

G. Miscellaneous Uses
 Uses authorized under Section 59-G-2.19(b) of Zoning Ordinance

BOA Resolution dated 9/7/01 Case No. CBA-1174	Neighborhood Reconciliation Agreement	Current Operations	BOA Approval Requested in Case No. CBA-1174-D	Requested Conditions for Continuation
No outside rentals.	Rentals only if specifically authorized by zoning ordinance.	None.	See column on right.	1. Limit to two groups at one time on campus. 2. Maximum number of total participants = 60. 3. All arrivals and departures outside Peak Hours of school. 4. No more than 48 such sessions per year. 5. Advance notice of such sessions will be given to the Neighborhood Liaison Committee.

EXHIBIT NO. 55 (a)
 REFERRAL NO. CBA 1174-D

Replacement
 Exhibit No: 25(c-1).

**BEFORE THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

**IN THE MATTER OF THE APPLICATION :
OF HOLTON ARMS SCHOOL, INC. FOR A : Conditional Use Application
MAJOR MODIFICATION OF SPECIAL : Case No. CBA-1174-E
EXCEPTION FOR A PRIVATE :
EDUCATIONAL INSTITUTION :**

**SUPPLEMENTAL
PRE-HEARING SUBMISSION OF VIVIAN RIEFBERG
AND BRADLEY BOULEVARD CITIZENS ASSOCIATION**

EXHIBIT C

Preliminary Plan 1-87171, Opinion of
Montgomery County Planning Board of December 15, 1987

Date of Mailing: December 15, 1987

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

Action: Approved Staff Recommendation with modifications
(Motion of Comm. Floreen, seconded by Comm. Hewitt, with
a vote of 5-0; Commissioners Floreen, Hewitt, Keeney,
Henry and Christeller voting in favor).

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-87171.

NAME OF PLAN: BURNING TREE VALLEY-HOLTON ARM

On 06-30-87, HOLTON ARMS SCHOOL, INC. , submitted an application for the approval of a preliminary plan of subdivision of property in the R 200 zone. The application proposed to create 1 lots on 48478.00 SQ FEET of land. The application was designated Preliminary Plan 1-87171. On 12-03-87, Preliminary Plan 1-87171 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing , the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-87171 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-87171, subject to the following conditions:

1. Agreement with Planning Board limiting development to private educational institution with 630 pupils and providing for reforestation plan and cleanup policy to be reviewed by staff prior to release of building permit
2. Dedication along River Road (200' right-of-way)
3. SHA requirements for deceleration and acceleration lanes
4. Conditions of DEP stormwater management waiver
5. Provision of 50' conservation easement along both sides of Booze Creek except for storm drain outfalls and existing facilities
6. Other necessary easements
7. Provide emergency access to Burdette Road (strictly limited to emergency vehicles)
8. Lot to include all of Booze Creek within applicable property

9. Landscaping plan to be approved by Planning Board prior to construction
10. Board of Appeals clarification that special exception approval is for 48.47 acres

**BEFORE THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

**IN THE MATTER OF THE APPLICATION :
OF HOLTON ARMS SCHOOL, INC. FOR A : Conditional Use Application
MAJOR MODIFICATION OF SPECIAL : Case No. CBA-1174-E
EXCEPTION FOR A PRIVATE :
EDUCATIONAL INSTITUTION :**

**SUPPLEMENTAL
PRE-HEARING SUBMISSION OF VIVIAN RIEFBERG
AND BRADLEY BOULEVARD CITIZENS ASSOCIATION**

EXHIBIT D

Adequate Public Facilities Ordinance Agreement of
April 13, 1988, between Holton Arms School and
Montgomery County Planning Board of the Maryland-National
Capital Park and Planning Commission

ADEQUATE PUBLIC FACILITIES ORDINANCE AGREEMENT

THIS ADEQUATE PUBLIC FACILITIES ORDINANCE AGREEMENT ("APFO Agreement") is made this 13th day of APRIL, 1988, by and between HOLTON ARMS SCHOOL, INCORPORATED, a Maryland corporation ("Holton Arms"), and the MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (the "Planning Board").

RECITALS:

A. Holton Arms is the owner of a tract of land containing 48.47 acres of land and located at 7303 River Road, Bethesda, Maryland (the "Holton Arms Property").

B. Holton Arms filed an application for subdivision approval of the Holton Arms Property with the Planning Board, which application was designated as Preliminary Plan No. 1-87171.

C. The Maryland-National Capital Park and Planning Commission is a body corporate created by the General Assembly of Maryland, and which, pursuant to Article 28, Section 7-111, Annotated Code of Maryland, administers the Montgomery County Subdivision Regulations, Chapter 50, Montgomery County Code, 1984, as amended, through the Planning Board.

D. Pursuant to Section 50-35(k) of the Montgomery County Subdivision Regulations ("Section 50-35(k)"), as of the date of this APFO Agreement, Preliminary Plan No. 1-87171 requires review by the Planning Board of the adequacy of public facilities available to serve the Holton Arms Property.

E. In order to find that Preliminary Plan No. 1-87171 complies with Section 50-35(k), the Planning Board has determined that the use of the Holton Arms Property by Holton Arms for a private educational institution must be restricted.

F. Pursuant to Section 50-35(k), Holton Arms and the Planning Board have agreed that the Holton Arms Property is to be subdivided, provided the necessary restrictions are contained in an agreement which shall bind Holton Arms, its successors and assigns, and which shall be noted on the Record Plat for the Holton Arms Property.

G. By execution of this APFO Agreement, Holton Arms intends to create a restriction on the Holton Arms Property necessary to meet a condition of subdivision approval as that condition pertains to the adequacy of public facilities pursuant to Section 50-35(k). The purpose of this restriction is to limit development of the Holton Arms Property to a private educational institution with 630 pupils, so that persons and properties will not be harmed by overburdened public facilities. Holton Arms intends that the restriction created by this APFO Agreement shall be binding upon Holton Arms, its successors and assigns, until released with the consent of the Planning Board.

NOW, THEREFORE, in consideration of the mutual promises and stipulations set forth, and in accordance with the approval of the subdivision of the Holton Arms Property, the parties agree as follows:

1. The Recitals set forth above are incorporated by referenced and made a part of this APFO Agreement.

2. Development of the Holton Arms Property shall be limited to a private educational institution with 630 pupils.

3. Holton Arms shall not increase the student enrollment of its private educational institution on the Holton Arms Property above 630 pupils as described in Paragraph 2, without the successful completion of an adequate public facilities review by the Planning Board pursuant to Section 50-35(k).

4. Holton Arms shall notify the Planning Board of an application for a building or use and occupancy permit for the Holton Arms Property. Holton Arms shall not seek a building permit for a structure or a use and occupancy permit for a use on the Holton Arms Property that violates the restrictions contained in this APFO Agreement. In the event that a building permit or a use and occupancy permit is sought which violates the restrictions contained in this APFO Agreement, the Planning Board need not recommend issuance of any such permit, and such permit need not be issued.

5. Representatives or designees of the Planning Board may enter upon the Holton Arms Property from time to time for the purpose of inspection and enforcement of the terms, conditions and restrictions contained in this APFO Agreement. Whenever possible, a representative of Holton Arms shall be present at inspection. In the event that the representative or designee determines on the basis of the inspection that the restrictions contained in this APFO Agreement are being violated, the representative or designee shall promptly advise Holton Arms concerning the problem. Holton Arms shall have a reasonable time to address the problem.

6. The Planning Board shall have the right to bring an action for any legal or equitable relief necessary to enforce the restrictions contained in this APFO Agreement. Upon the request of Holton Arms, the Planning Board shall release the Holton Arms Property from the restrictions contained in this APFO Agreement if it finds the public facilities are adequate pursuant to Section 50-35(k) for additional development of the Holton Arms Property.

7. This APFO Agreement shall bind and inure to Holton Arms, its successors and assigns. Whenever this APFO Agreement refers to the Planning Board, it shall also refer to any successor agency, if any, which will administer Section 50-35(k).

8. A notation concerning this APFO Agreement shall be made on the Record Plat for the Holton Arms Property.

9. This APFO Agreement may only be modified in a writing signed by the parties, their successors or assigns.

IN WITNESS WHEREOF, this APFO Agreement has been executed by Holton Arms and the Planning Board on the day and year indicated above.

ATTEST:

HOLTON ARMS SCHOOL, INCORPORATED,
a Maryland corporation

Kathryn H. Williams
(Asst.) Secretary

By: *[Signature]* (Vice) President

[CORPORATE SEAL]

WITNESS:

THE MONTGOMERY COUNTY PLANNING
BOARD OF THE MARYLAND-NATIONAL
CAPITAL PARK AND PLANNING
COMMISSION

Barbara A. Bieller

By: *Richard E. Tustinn*
Richard E. Tustinn,
Planning Director

APPROVED AS TO LEGAL SUFFICIENCY

[Signature]
M-NCPPC Legal Department
Date: *1/12/68*

**BEFORE THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

**IN THE MATTER OF THE APPLICATION :
OF HOLTON ARMS SCHOOL, INC. FOR A : Conditional Use Application
MAJOR MODIFICATION OF SPECIAL : Case No. CBA-1174-E
EXCEPTION FOR A PRIVATE :
EDUCATIONAL INSTITUTION :**

**SUPPLEMENTAL
PRE-HEARING SUBMISSION OF VIVIAN RIEFBERG
AND BRADLEY BOULEVARD CITIZENS ASSOCIATION**

EXHIBIT E

Email of October 27, 2025, 2:17 p.m.,
from Larry Green to State Highway Administration

From: Lawrence Green <larryhgreen@gmail.com>

Date: Mon, Oct 27, 2025 at 2:17 PM

Subject: SHA Comment Letter dated October 24, 2025 - Holton Arms School Montgomery County

To: <kwoodroffe@mdot.maryland.gov>

Hi Kwesi,

I hope you are doing well. I received a copy of SHA's response dated October 24, 2025 to the Gorove/Slade materials submitted dated October 17, 2025. I have also reviewed many of the previous SHA responses to the previous traffic reports prepared for this proposed school expansion. It appears that many of SHA's previous comments did not appear to be fully resolved in the subsequent traffic impact study submissions. Therefore, I wanted to get your response specifically on a few of the previous issues.

1. Gorove/Slade has proposed numerous traffic signal timing changes along the MD 190 corridor including a double-call for the eastbound MD 190 left turn phase at the school entrance at Royal Dominion Drive. Does SHA fully support all of the traffic signal timing changes that were proposed in the Synchro model for both the AM and PM peak periods with the school expansion? If not, could you please elaborate or what SHA approves or does not approve of the proposed traffic signal changes on the MD 190 corridor? It appeared that the proposed traffic signal timing changes at the MD 190 at Royal Dominion Drive intersection primarily focused on best serving the Holton Arms School and not necessarily the MD 190 corridor.
2. SHA previously expressed concerns that following turn lanes would exceed the available storage lane area with the proposed school expansion (even with the proposed traffic signal timing changes and proposed left turn lane addition along northbound Royal Dominion Drive). Is SHA no longer concerned with the traffic queuing extending beyond the storage lane areas? I have listed the 20 lanes at the study intersections below that are exceeding the storage lane area.

MD 190 at Burdette Road

- Eastbound MD 190 Left Turn Lane
- Eastbound MD 190 Right Turn Lane
- Westbound MD 190 Left Turn Lane
- Westbound MD 190 Through Lanes
- Westbound MD 190 Right Turn Lane

MD 190 at Royal Dominion Drive

- Eastbound MD 190 Left Turn Lane
- Eastbound MD 190 Through Lanes
- Westbound MD 190 Left Turn Lane
- Westbound MD 190 Through Lanes
- Westbound MD 190 Right Turn Lane
- Southbound Royal Dominion Drive Left/Through Lane
- Southbound Royal Dominion Drive Right Turn Lane

MD 190 at Beech Tree Road/Nevis Road

- Westbound MD 190 Left Turn Lane
- Westbound MD 190 Through Lanes
- Northbound Nevis Road Left/Through Lane
- Northbound Nevis Road Right Turn Lane

MD 190 at Wilson Lane

- Eastbound MD 190 Left Turn Lane
- Westbound MD 190 Left Turn Lane
- Westbound MD 190 Through Lanes
- Westbound MD 190 Right Turn Lane

Thanks very much for your attention to this matter. I would appreciate SHA's response to the above questions prior to the hearing date of November 17, 2025.

Larry Green

**BEFORE THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

**IN THE MATTER OF THE APPLICATION :
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EDUCATIONAL INSTITUTION :**

**SUPPLEMENTAL
PRE-HEARING SUBMISSION OF VIVIAN RIEFBERG
AND BRADLEY BOULEVARD CITIZENS ASSOCIATION**

EXHIBIT F

Email of October 27, 2025, 2:41 p.m.,
from Larry Green to State Highway Administration

From: **Lawrence Green** <larryhgreen@gmail.com>
Date: Mon, Oct 27, 2025 at 2:41 PM
Subject: Holton Arms School - Submitted Synchro Model
To: <kwoodroffe@mdot.maryland.gov>

Hi Kwesi,

In addition to my previous email regarding SHA comments on the several traffic reports submitted, there is one other important matter that I wanted to get SHA's input. I know that SHA has reviewed the Synchro model and proposed traffic signal timing changes for this project. However, there is one issue that Gorove/Slade has not identified in their report or their Synchro analyses.

This issue is the fact that the Montgomery County Police Department overrides the programmed traffic signal timings at the MD 190 at Royal Dominion Drive intersection on a nearly daily basis during the AM peak period. Specifically, the police, via radio, communicate with the Montgomery County Transportation Center to extend the eastbound MD 190 left turn protected traffic signal phase nearly every cycle for approximately 30-45 minutes of the AM peak hour. Based upon my observations, the police give at least 30 extra seconds of green time to clear the eastbound left turn queue and also to allow the traffic queue that builds up on campus back to MD 190 a chance to clear as well during every cycle.

My questions are as follows:

1. Is SHA aware that police intervention is occurring on a nearly daily basis?
2. Did the Synchro model that SHA reviewed include a variance that accounts for the police department overriding the programmed traffic signal timings?
3. Is SHA aware that Holton Arms is committed to continuing the usage of the Montgomery County Police department to continue to override the programmed traffic signal timings to best meet the school needs irregardless of the impact to non-school traffic?

In my professional opinion, the continued use of the Montgomery County Police Department to override the traffic signal timings at the MD 190 at Royal Dominion Drive intersection invalidates the Synchro analyses. However, please let me know SHA's opinions. Thanks again for your attention to this matter. Again, I would appreciate your comments prior to the November 17, 2025 hearing.

Larry Green

**BEFORE THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

**IN THE MATTER OF THE APPLICATION :
OF HOLTON ARMS SCHOOL, INC. FOR A : Conditional Use Application
MAJOR MODIFICATION OF SPECIAL : Case No. CBA-1174-E
EXCEPTION FOR A PRIVATE :
EDUCATIONAL INSTITUTION :**

**SUPPLEMENTAL
PRE-HEARING SUBMISSION OF VIVIAN RIEFBERG
AND BRADLEY BOULEVARD CITIZENS ASSOCIATION**

EXHIBIT G

Email of November 14, 2025, from
Egua Igbinosun (Consultant Reviewer) for
State of Highway Administration to Larry Green with letter
of November 14, 2025, from State Highway Administration

From: **Egua Igbinosun (Consultant)** <Elgbinosun.consultant@mdot.maryland.gov>
Date: Fri, Nov 14, 2025 at 12:19 PM
Subject: 24APMO041XX (Holton Arms School) TIS Review Response To Mr. Lawrence Green
To: larryhgreen@gmail.com <larryhgreen@gmail.com>
Cc: Yeshitla Argaw <YArgaw@mdot.maryland.gov>, Scott Holcomb (Consultant) <SHolcomb.consultant@mdot.maryland.gov>, Alvin Powell <apowell@primeeng.com>, Jonathan Brown <JBrown14@mdot.maryland.gov>, Jonathan Dwyer <JDwyer1@mdot.maryland.gov>, Rana Shams <RShams@mdot.maryland.gov>

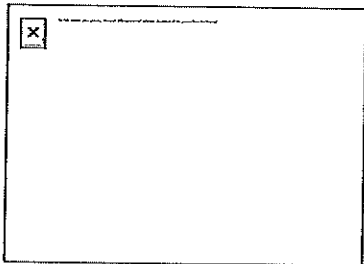
Good afternoon, Mr. Green:

Please find attached SHA's response to your e-mail of October 27, 2025, regarding our response, dated October 24, 2025, to Gorove/Slade materials submitted on October 17, 2025 to SHA for review, and your request for response to specific questions/comments enumerated in your e-mail.

Please let us know if you have any further question/comments.

Thank you.

Egua.



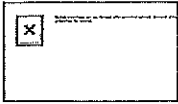
roads.maryland.gov

Egua Igbinosun
Consultant Reviewer
Access Management Division (AMD)

(301) 513-7364 office
eigbinosun.consultant@mdot.maryland.gov

**Maryland State Highway Administration - District
3**

9300 Kenilworth Avenue, Greenbelt, MD 20770



Maryland now features 511 traveler information!

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November 14, 2025

Mr. Lawrence Green,
Al Marah Neighborhood
Bethesda, Maryland.

Dear Mr. Green:

Re: Holton Arms School Project (SHA Tracking No. 24APMO041XX) TIS

Thank you for your e-mail of October 27, 2025, regarding SHA's response, dated October 24, 2025, to Gorove/Slade materials submitted on October 17, 2025 to SHA for review, and your request for response to specific questions/comments enumerated in your e-mail. Below are your questions/comments and SHA's response to them:

Questions/Comments:

1. Gorove/Slade has proposed numerous traffic signal timing changes along the MD 190 corridor including a double-call for the eastbound MD 190 left turn phase at the school entrance at Royal Dominion Drive. Does SHA fully support all of the traffic signal timing changes that were proposed in the Synchro model for both the AM and PM peak periods with the school expansion? If not, could you please elaborate or what SHA approves or does not approve of the proposed traffic signal changes on the MD 190 corridor? It appeared that the proposed traffic signal timing changes at the MD 190 at Royal Dominion Drive intersection primarily focused on best serving the Holton Arms School and not necessarily the MD 190 corridor.

SHA's Response: SHA supports the proposed traffic signal timing and phasing changes contained in the developer's final submittal to SHA dated October 17, 2025. The submittal proposes signal timing and phasing changes at the intersection of MD 190 (River Road) and Royal Dominion Drive. Other proposed signal timing and phasing changes at adjacent intersections did not adequately address the operations and safety concerns of SHA and were declined.

2. SHA previously expressed concerns that following turn lanes would exceed the available storage lane area with the proposed school expansion (even with the proposed traffic signal timing changes and proposed left turn lane addition along northbound Royal Dominion

Mr. Lawrence Green.
Al Marah Neighborhood
SHA Tracking No.: 24APMO041XX
Page 2 of 4
October 24, 2025

Drive). Is SHA no longer concerned with the traffic queuing extending beyond the storage lane areas? I have listed the 20 lanes at the study intersections below that are exceeding the storage lane area.

- MD 190 at Burdette Road
 - Eastbound MD 190 Left Turn Lane
 - Eastbound MD 190 Right Turn Lane
 - Westbound MD 190 Left Turn Lane
 - Westbound MD 190 Through Lanes
 - Westbound MD 190 Right Turn Lane

- MD 190 at Royal Dominion Drive
 - Eastbound MD 190 Left Turn Lane
 - Eastbound MD 190 Through Lanes
 - Westbound MD 190 Left Turn Lane
 - Westbound MD 190 Through Lanes
 - Westbound MD 190 Right Turn Lane
 - Southbound Royal Dominion Drive Left/Through Lane
 - Southbound Royal Dominion Drive Right Turn Lane

- MD 190 at Beech Tree Road/Nevis Road
 - Westbound MD 190 Left Turn Lane
 - Westbound MD 190 Through Lanes
 - Northbound Nevis Road Left/Through Lane
 - Northbound Nevis Road Right Turn Lane

- MD 190 at Wilson La
 - Eastbound MD 190 Left Turn Lane
 - Westbound MD 190 Left Turn Lane
 - Westbound MD 190 Through Lanes
 - Westbound MD 190 Right Turn Lane

SHA's Response: The original study presented to SHA showed significant queuing at the MD 190 (River Road) at Royal Dominion intersection and the adjacent intersections. Some of this queuing may have been attributable to the proposed development. Through an iterative review process, SHA was able to significantly reduce the projected development impacts. As a result, the associated queues are much better managed.

Mr. Lawrence Green.
Al Marah Neighborhood
SHA Tracking No.: 24APMO041XX
Page 3 of 4
October 24, 2025

3. The Montgomery County Police Department overrides the programmed traffic signal timings at the MD 190 at Royal Dominion Drive intersection on a nearly daily basis during the AM peak period. Specifically, the police, via radio, communicate with the Montgomery County Transportation Center to extend the eastbound MD 190 left turn protected traffic signal phase nearly every cycle for approximately 30-45 minutes of the AM peak hour. Based upon my observations, the police give at least 30 extra seconds of green time to clear the eastbound left turn queue and also to allow the traffic queue that builds up on campus back to MD 190 a chance to clear as well during every cycle.

My questions are as follows:

- a. Is SHA aware that police intervention is occurring on a nearly daily basis?

→ **SHA's Response:** SHA conducted field visits to this site on May 20th, 2025, during the AM and PM peaks to observe traffic conditions firsthand. At that time there was no police presence noted. SHA is currently reviewing that issue in consultation with the Montgomery County Department of Transportation and will provide an update as necessary.

- b. Did the Synchro model that SHA reviewed include a variance that accounts for the police department overriding the programmed traffic signal timings?

→ **SHA's Response:** The models reviewed do not account for police intervention. Police intervention would likely improve, in this case reduce the queueing observed in the field, by being proactive in addressing daily variations in minute-by-minute changes in travel flows on the adjacent streets. In keeping with its existing policies, SHA has had the developer address the unmitigated and projected 95th percentile queues as shown in the models. This provides the best solution for this location with the assumption that the signal equipment will need to operate independently.

- c. Is SHA aware that Holton Arms is committed to continuing the usage of the Montgomery County Police department to continue to override the programmed traffic signal timings to best meet the school needs irregardless of the impact to non-school traffic?

Mr. Lawrence Green.
Al Marah Neighborhood
SHA Tracking No.: 24APMO041XX
Page 4 of 4
October 24, 2025

- **SHA's Response:** The issue of law enforcement support was discussed as part of the review process. SHA is not aware of this commitment. SHA is neither in favor or against it and considers it a local issue.

In my professional opinion, the continued use of the Montgomery County Police Department to override the traffic signal timings at the MD 190 at Royal Dominion Drive intersection invalidates the Synchro analyses. However, please let me know SHA's opinions.

- **SHA's Response:** As noted above, SHA has had the developer address the unmitigated and projected 95th percentile queues as shown in the models. This provides the best solution for this location with the assumption that the signal equipment will need to operate independently. Use of local law enforcement to monitor and assist traffic is a local decision that we defer to the County.

Please do not hesitate to contact me at kwoodroffe@mdot.maryland.gov or by phone at 301.513.7347 if you have any questions or further comments.

Sincerely:

Kwesi Woodroffe

Kwesi Woodroffe
Access Management Regional Engineer
SHA – District 3

**BEFORE THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

**IN THE MATTER OF THE APPLICATION :
OF HOLTON ARMS SCHOOL, INC. FOR A : Conditional Use Application
MAJOR MODIFICATION OF SPECIAL : Case No. CBA-1174-E
EXCEPTION FOR A PRIVATE :
EDUCATIONAL INSTITUTION :**

**SUPPLEMENTAL
PRE-HEARING SUBMISSION OF VIVIAN RIEFBERG
AND BRADLEY BOULEVARD CITIZENS ASSOCIATION**

EXHIBIT H

Chart of Lanes Exceeding Storage Capacity
if Holton Arms School Exception is Approved

**LANES EXCEEDING STORAGE CAPACITY IF HOLTON
ARMS SPECIAL EXCEPTION IS APPROVED**

MD 190 at Burdette Road

- Eastbound MD 190 Left Turn Lane
- Eastbound MD 190 Right Turn Lane
- Westbound MD 190 Left Turn Lane
- Westbound MD 190 Through Lanes
- Westbound MD 190 Right Turn Lane

MD 190 at Royal Dominion Drive

- Eastbound MD 190 Left Turn Lane
- Eastbound MD 190 Through Lanes
- Westbound MD 190 Left Turn Lane
- Westbound MD 190 Through Lanes
- Westbound MD 190 Right Turn Lane
- Southbound Royal Dominion Drive Left/Through Lane
- Southbound Royal Dominion Drive Right Turn Lane

MD 190 at Beech Tree Road/Nevis Road

- Westbound MD 190 Left Turn Lane
- Westbound MD 190 Through Lanes
- Northbound Nevis Road Left/Through Lane
- Northbound Nevis Road Right Turn Lane

MD 190 at Wilson Lane

- Eastbound MD 190 Left Turn Lane
- Westbound MD 190 Left Turn Lane
- Westbound MD 190 Through Lanes
- Westbound MD 190 Right Turn Lane

**BEFORE THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

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EXHIBIT I

Supplemental Summary Statement of Lawrence H. Green Testimony

SUPPLEMENTAL

SUMMARY STATEMENT OF LAWRENCE H. GREEN TESTIMONY

Mr. Green will provide testimony, as an expert in traffic engineering, concerning the Special Exception Application Modification for the Holton-Arms School. Mr. Green is a registered Professional Engineer (PE) in the State of Maryland, and a nationally certified Professional Traffic Operations Engineer (PTOE). Mr. Green will opine that the subject application fails to meet the requirements of an acceptable LATR study and fails to meet the compatibility standard requirement regarding traffic operations.

Specifically, Mr. Green will opine that unacceptable mitigation measures are being proposed at the main entrance to the school that are critical to meeting the LATR requirements. The unacceptable traffic operations will be further exacerbated with the proposed school expansion. The unacceptable operations at the main site entrance on River Road (the MD 190 at Royal Dominion Drive intersection) have a ripple effect to impact adjacent intersections that cause significant traffic congestion along the MD 190 corridor and will adversely impact the surrounding community.

The 2025 Transportation Management Plan proposed by Holton Arms presents virtually the same programs as reported by the school as the 2002 Transportation Management Plan. The 2002 programs did not work as reflected by the fact that the most critical AM peak hour site trip generation has remained unchanged in 23 years, and therefore, there is no basis to reasonably find that the 2025 programs will work. Although the latest October 17, 2025, TMP finally after 23 years, commits to doing annual trip generation calculations, there are no measures within the TMP that would stop the school expansion if the trip generation goals were not achieved.

No traffic analysis has been undertaken for the proposed increase in summer camp enrollment during the weekend time periods or lifting the restrictions on the school rental of school facilities to outside organizations for both weekday and weekend activities.

Although the applicant has had discussions with the Maryland Department of Transportation State Highway Administration (SHA) regarding changing the traffic signal timing sequences along River Road, SHA has not agreed to these signal timing changes.

Gorove/Slade has already documented that cut-through traffic activity is already occurring in the Al Marah neighborhood. With the proposed expansion of the school that will lead to increased congestion on River Road, cut-through traffic will inevitably increase even if educational measures are implemented by the school.

Mr. Green will opine on the compatibility of the potential school expansion on the surrounding roadway network as it pertains to the current Master Plan.

Mr. Green will also opine on the proposed usage of satellite parking areas by Holton Arms and the appropriateness of a detailed traffic assessment to evaluate the events that will use satellite parking.

**BEFORE THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

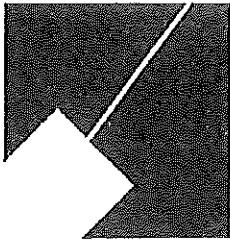
**IN THE MATTER OF THE APPLICATION :
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EXCEPTION FOR A PRIVATE :
EDUCATIONAL INSTITUTION :**

**SUPPLEMENTAL
PRE-HEARING SUBMISSION OF VIVIAN RIEFBERG
AND BRADLEY BOULEVARD CITIZENS ASSOCIATION**

EXHIBIT J

M-NCPPC staff report dated
February 23, 2001, for CBA-1174-C (excerpt)

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

MCPB
3/1/01
Item #14 & 15

MEMORANDUM

DATE: February 23, 2001
TO: Montgomery County Planning Board
VIA: John Carter, Chief, Community-Based Planning Division *JAC*
FROM: Bill Landfair, AICP, for the Department of Park and Planning *WRL*

APPLICANT: Holton Arms School, Inc.
LOCATION: 7303 River Road, Bethesda
ZONE: R-90 and R-200
MASTER PLAN: Bethesda – Chevy Chase

REVIEW TYPE: Special Exception Modification
CASE NUMBER: CBA-1174-C
APPLYING FOR: Incorporation of additional land area; increase in enrollment; construction of science wing and additions to Performing Arts Center and Lower School Building; construction of athletic field and track; construction of second entrance; approval of existing "Centennial Garden"; approval of existing summer day camp program; approval of existing Center for the Arts Program; and use of school facilities by outside parties.

REVIEW TYPE: Special Exception
CASE NUMBER: S-2467
APPLYING FOR: Expansion and relocation of existing child day care center

PLANNING BOARD: March 1, 2001
PUBLIC HEARING: March 13, 14, 20, 21, 27 and 28

STAFF RECOMMENDATION: APPROVAL with the following conditions:

1. The applicant is bound by all submitted statements and plans.
2. Denial of the proposed second entrance from Beech Tree and Burning Tree Roads.

Inherent/Non-inherent Adverse Effects – The inherent and non-inherent adverse effects of the existing school are presumed by staff to have been addressed at the time of the original special exception approval. The inherent adverse effects associated with private educational institutions include buildings and facilities designed to accommodate the demands of academic, athletic, and arts programs for school aged children. Parking facilities must be provided in support of these programs and traffic will be generated.

As described in this staff report, the school has proposed a number of new modifications to improve the physical environment of the school and accommodate the needs of the academic, athletic, and arts programs. These include the construction of a science wing, expansion of the Performing Arts Center and an addition to the Lower School Building. They also include a new athletic field and the construction of a second entrance. With the exception of the second entrance, staff is in support of the proposed facilities. Staff finds that they will be compatible with the surrounding neighborhood. The new buildings will enhance the school's academic and arts programs while respecting the established setbacks and design of the existing buildings.

The proposed construction of a new athletic field and track will make a major contribution to the school's athletic program. The proposed minimum setback of 380 feet and the retention of much of the existing forest within the setback will provide compatibility with surrounding residences. The proposed setback exceeds the minimum separation of 100 feet from adjacent residences established in the Montgomery County Recreation Guidelines. The absence of lights and confining the use of the field to daytime hours will also mitigate potential impact particularly from noise.

Staff from the Montgomery County Department of Permitting Services (DPS) has analyzed the potential noise impact from the athletic field. They find that given the distances involved and the surrounding topography, spectator noise from athletic events will not approach the daytime standard of 65 dBA at the nearest residential receiving property line. This is based upon standard spreading loss calculations and staff's experience with much larger public high school stadiums in the county. For reference, the Noise Ordinance exempts any unamplified sound from sanctioned sporting events from the receiving property line standard up to 11 p.m.

Any amplified sound must, however, conform to the Ordinance standard. In most cases, this involves a public address system and can be controlled without difficulty. Staff notes that, at levels well below Ordinance levels and even at ambient background levels, sound from events on the athletic field and the spectator seating may be perceptible to the surrounding community, such as are many other sounds, even from greater distances. That perception is simply the nature of the human ear and would not be necessarily perceived by a "reasonable person with normal sensibilities" as being annoying. Anticipated noise levels from the proposed athletic facility can be predicted with reasonable certainty to not cause any significant deterioration of the existing "soundscape".

In addition to the modifications describe above, the applicant has requested a number of remedial modifications in an effort to address violations resulting from a complaint filed by residents in the surrounding neighborhood. These violations will be the subject of a show cause hearing by the Board of Appeals scheduled for February 28 and continuing, if necessary, on March 6 and 7. The remedial modifications include the requested increase in the enrollment to 665 students; approval of the existing "Centennial Garden"; approval of the existing summer day camp program; approval of the existing Center for the Arts Program; use of school facilities by outside groups; and expansion and relocation of the existing child day care center (requested as a new special exception). Many of these modifications are non-inherent and must be analyzed based on compatibility and impact. No additional construction is required to accommodate these modifications, aside from the renovation of an existing building for the child day care center. The potential impact relates to additional traffic that is generated. The Transportation Planning staff has analyzed this impact and finds that it will not adversely affect the surrounding road system.

Concerns have been raised with respect to the nature of some of the remedial modifications and whether they are in keeping with the inherent characteristics of the private educational institution use or even allowed under the specific special exception standards found in the Zoning Ordinance. The Board of Appeals will resolve this issue as a result of the show cause hearing. Staff finds, however, that a case can be made for considering private schools as community resources, in the same way that we consider public schools to be community hubs. The Bethesda – Chevy Chase Master Plan specifically recommends that closed public school sites be used to serve the community in a variety of ways, such as providing space for child day care, as long as compatibility with the neighborhood is maintained.

The staff finds that the proposed second entrance is a non-inherent adverse effect that cannot be adequately mitigated. In support of the entrance, the school has stated that it will actually reduce the volume of traffic traveling on Beech Tree Road south of the entrance. To some extent, this is borne out in the Transportation staff's findings. Another stated justification for the entrance is to improve emergency access for the campus. The existing emergency access from Burdette Road is inadequate since it is not suitably paved. As noted in the attached letter from the Montgomery County Fire and Rescue Service, having multiple emergency access points ensures that Fire and Rescue services may respond to incidents on the campus in a timely manner. Currently, the existing access complies with minimum requirements for emergency access. Given the environmental constraints associated with the proposed second entrance from Beech Tree Road, staff encourages the applicant to reconsider improving the emergency access from Burdette Road. This will require additional paving and some realignment of the nearby athletic field.

Community Concerns – The proposed modifications have received extraordinary interest from the surrounding community as evidenced by the large number of letters that have been received to date. Both opposition and support have been communicated through the letters and in several meetings held with staff. Actively