

**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:
BULLIS SCHOOL, INC.**

**Christian Sullivan
Neil Murray
Patrick LaVay
Chris Kabatt
Anne M. (Nancy) Randall
Jason Sherman
Alexandra Walther
Gang Liu
Becky Helman**

For the Petitioner

**Soo Lee-Cho, Esquire
Attorney for the Petitioner**

**Amir Amirjazi
Mei Lu
Alan Friend
Lee Chiang
Jill Olson
Carla Rampy
Kiran Bhatia**

Opposing the Petition

Before: Lynn Robeson Hannan, Hearing Examiner

Board of Appeals Case No. S-687-H

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Filed on May 10, 2022, Petitioner, Bullis School, Inc. (Petitioner or Bullis), seeks to modify an existing special exception for a private educational institution at 10601 Falls Road, Potomac, Maryland 20854 under Section 59-G-2.19(e) of the *2004 Zoning Ordinance*.¹ Bullis proposes to construct a new lower school building, increase enrollment from 900 students to 1,096 students, and add faculty and staff to serve the additional students. The subject property consists of approximately 101.87 acres in the RE-2 (Residential Detached) Zone.

Bullis amended its application twice, once in November 2022 and again on March 15, 2023. Exhibits 34, 59. On March 20, 2023, OZAH issued notice of the amendments and notice of a public hearing scheduled for May 2, 2023. Exhibit 59. Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued its report recommending approval of the application on April 3, 2023. Exhibit 62. Staff recommended the following conditions of approval (*Id.*, p. 3):

1. The use is limited to an Educational Institution, Private under the provisions of Section 59-G-2.19.
2. Prior to release of the Use and Occupancy Permit, the Applicant must construct an 11-ft wide asphalt sidepath along the frontage of Falls Road. Final width, alignment and timing of this improvement is subject to review and approval by the Montgomery County Department of Transportation (MCDOT) through an MOU agreement between the school and MCDOT.
3. Other conditions as appropriate that will limit the use and related operations to make the findings necessary for approval.

On April 19, 2023, the Planning Board recommended approval with a “slight” revision to Condition No. 2 (Exhibit 63):

¹ Unless otherwise noted, all citations are to the *2004 Zoning Ordinance*. The 2014 comprehensive revision to the 2004 Zoning Ordinance (ZTA 13-04, adopted March 4, 2014) allows special exceptions approved before 2014 to be modified under the 2004 Ordinance until 2029, when they become subject to the 2014 Ordinance. *2014 Zoning Ordinance*, §59.7.7.1.B.

2. The Applicant must construct an 11-ft wide sidepath along the frontage of Falls Road. Prior to the Use and Occupancy of the Lower School Building, the Applicant must enter into a new MOU with MCDOT, which will determine the ultimate width, alignment and timing of construction of the sidepath.

The public hearing proceeded as scheduled on May 2, 2023. Bullis' witnesses included Mr. Christian Sullivan, Head of School, and four expert witnesses. Four individuals appeared to support the application. Four individuals whose rear yards abut the area proposed for the athletic field and loop road appeared in opposition. Their testimony is summarized in Part II.D of this Report.

In response to testimony from those opposed, Bullis' suggested several additional conditions and submitted a supplemental landscape plan. The Hearing Examiner left the record open until May 12, 2023, to receive the proposed conditions in writing, the supplemental landscape plan, Staff comments on the revised landscape plan, and comments from the individuals on the revised materials. These were received (Exhibits 68-74) and the record closed on May 12, 2023. On June 12, 2023, OZAH sent an email notifying the parties that it's recommendation and report had been issued on the same day. Because it received proposed corrections to the report immediately, and because OZAH became aware that some of the exhibits submitted by those in opposition had not been shared with the Petitioner or OZAH staff, OZAH delayed issuance of decision to allow Petitioner to review all materials in the record and to correct errors in the Report. For the following reasons, the Hearing Examiner finds that Bullis' proposed modification meets the standards and requirements of the 2004 Zoning Ordinance, with the conditions recommended by the Hearing Examiner.

II. FACTUAL BACKGROUND

A. The Subject Property

The property is located generally in the northeast quadrant of the intersection of Falls

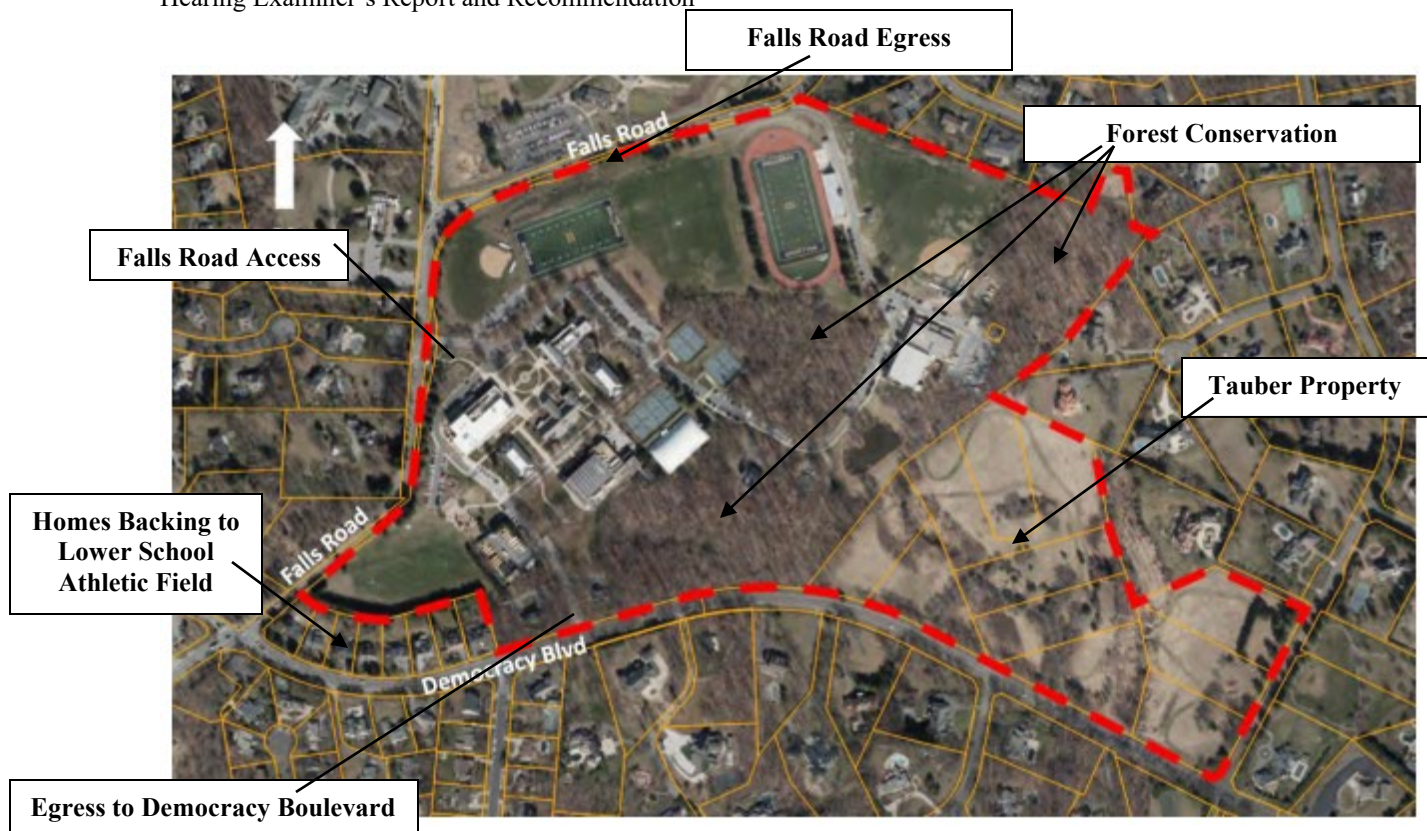
Road and Democracy Boulevard, across from the Falls Road Golf Course. Exhibit 62, p. 6. The Petitioner's expert in civil engineering and land planning, Mr. Patrick LaVay, testified that the total campus is just under 102 acres. What is referred to as the main campus is 77 acres west of the forest conservation areas. East of the forest conservation areas is the "Tauber Property," which is approximately 25 acres. Bullis purchased that property in 2011. It consists of eleven lots, only one of which is improved with a single-family dwelling. T. 68-69.

Bullis has occupied the subject property since 1963. Since then, the Board of Appeals has approved 22 modifications to Bullis' original special exception. Relevant to this case is the 2004 modification (S-687-F and S-687-G), that approved the 2004 Campus Master Plan. Exhibit 62, p. 6. Staff describes that modification as permitting: "1) an increase in the academic enrollment from 604 to 900, 2) an increase in the enrollment of summer programs from 600 to 900, 3) additional faculty and staff to accommodate the increased enrollments, 4) expansion and construction of various facilities to accommodate the increased enrollments, and 5) continuation of certain academic year special activities." Exhibit 62, pp. 6-7.

Current improvements include seven school buildings, athletic fields, 486 car parking spaces, 18 bus parking spaces, and various paths used by students to transverse the campus. *Id.*, p. 9. The main academic campus is arranged as a quad located near the Falls Road access. Athletic facilities are to the north and east of the property. T. 68-70. The Staff Report contains an aerial view of the subject property outlined in red (Exhibit 62, p. 6, on the next page).

B. Surrounding Area

In a special exception case, the area that will experience the direct impacts of the proposed use is delineated. It is then characterized to determine whether the proposed use will adversely affect the existing character of the area. The Staff Report contains a graphic of the "surrounding area" (shown in yellow) defined by Staff (Exhibit 62, p. 6, on the next page).



Aerial Photograph of Subject Property (in red)
Exhibit 62, p. 6



Staff Delineation of Surrounding Area (in yellow)
Exhibit 62, p. 4

According to Staff, the area is primarily lower density single-family detached homes in the RE-2 and R-200 Zones. Non-residential uses include the Revenue Authority's Falls Road Public Golf Course, and special exceptions/conditional uses for the Normandie Farm Restaurant (CBA-749), a telecommunication tower on the golf course property (CBA-2234), and two residential care facilities: Brandywine Senior Living (CU 16-01) and Pro Medica Skilled Nursing (S-1289). The locations of the special exception/conditional uses are labeled by case number on the Staff delineation of the surrounding area (on the preceding page).

The Hearing Examiner finds that the Staff's boundaries reasonably delineate the surrounding area as they capture areas that may be affected by traffic, noise, and views of the project. It also captures the 8 lots that abut the property facing Democracy Boulevard (some of whose owners appeared in opposition). She finds the character of the area consists of lower-density single-family homes with some recreational uses and special exception/conditional uses immediately to the northwest of the subject property across Fall Road.

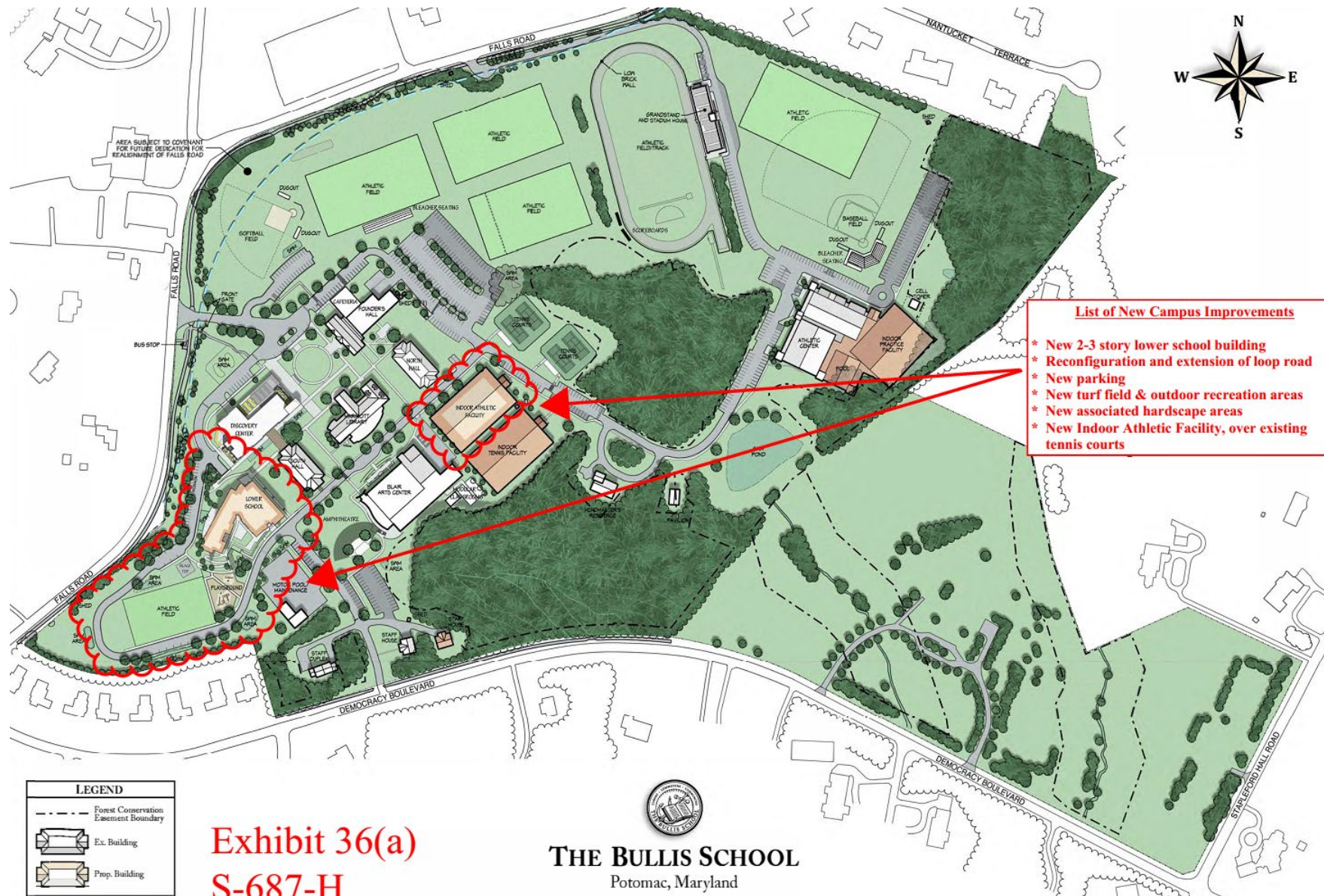
C. Proposed Modification

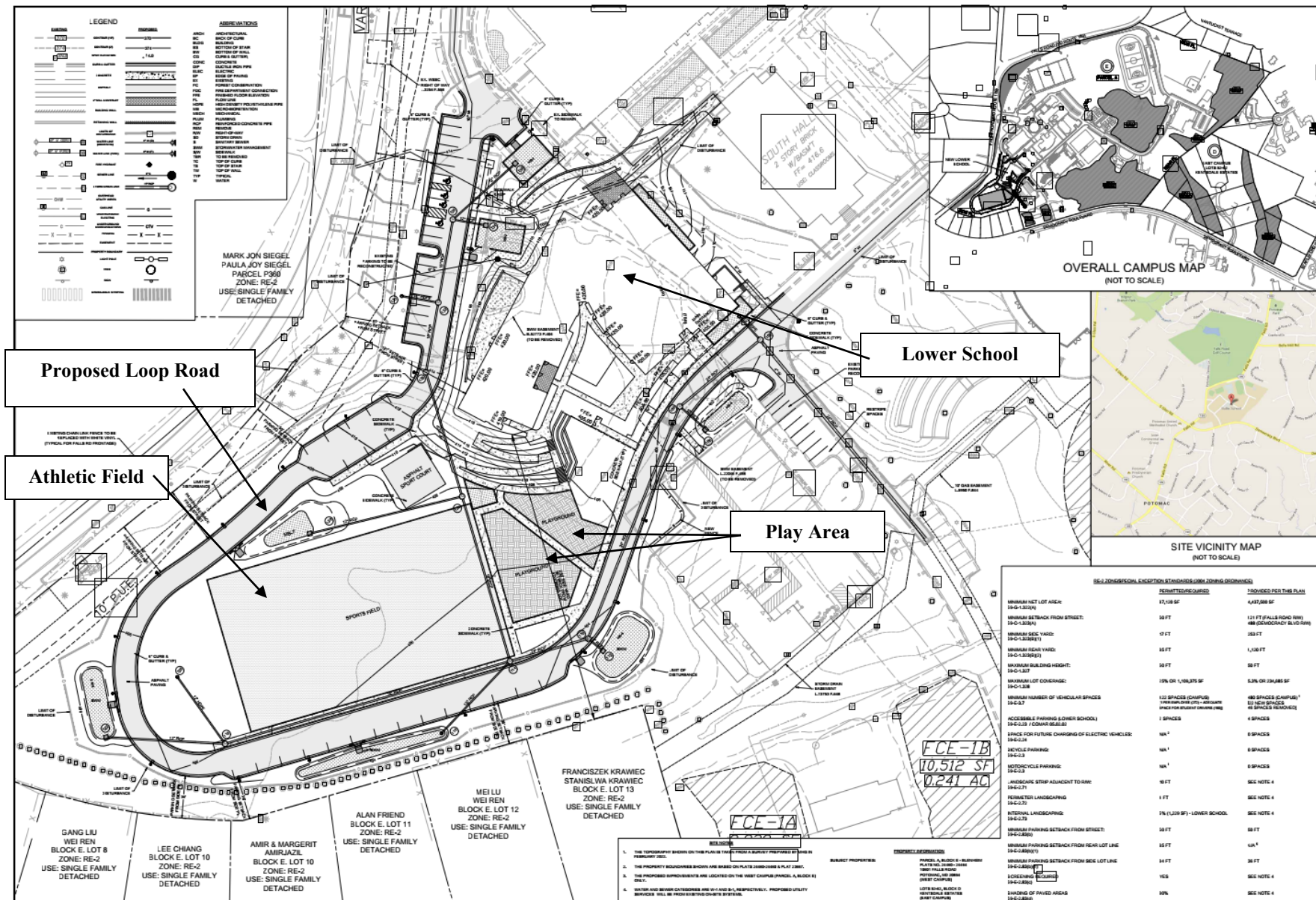
Bullis' Head of School, Mr. Christian Sullivan, testified that Bullis' mission is based on caring, challenge, and community. It is an independent school run by a voluntary Board of Trustees. This, and the fact that they are coed, make it unusual in Montgomery County. T. 16. Their curriculum is designed to be holistic, valuing arts, athletics, and other co-curricular activities. While the school prioritizes academic life, they seek to accomplish that without being a pressure cooker. They have a very developed health program with five counselors to support students and families. When Bullis decided to remain open during the COVID-19 pandemic, interest in the school increased. T. 16-20. In 2021, the Board of Trustees began a strategic planning process to harness the momentum, to review their mission, and design a roadmap for the future. The strategic planning resulted in several clarifications to their mission. T. 20-22.

The proposed campus master plan embodied in this modification emphasizes that Bullis will be a student-centered school by maintaining diversity, prioritizing wellness and intellectual life, and providing a campus to serve all their students. During review, the Board of Trustees realized that they would have to build a new building for the lower school students, who are currently housed in a building that was built in the 1960s as a dormitory for upper school students (South Hall). That building is not appropriate for lower school classrooms. Providing a new lower school will permit a "home base" for middle school students, who are now spread throughout the campus. This also frees up critical space for high school students. Bullis plans an interior renovation of the middle school without expanding the existing footprint. T. 21.

1. Enrollment

Mr. Sullivan testified that the strategic plan also identified the appropriate size of the school, which is 1,090 students. This is based on an analysis of the lower, middle, and high school populations. The lower school will have a total of 240 students, with two sections of 16 students in kindergarten, first, and second grade. The third, fourth and fifth grades will have three sections with a total of 48 students in each grade. The middle school will also have 240 students, and the upper school will have a total of 610 students. While the conditional use application seeks a total of 1,096 students, they have added a buffer because enrollment seasons are unpredictable. The traffic study submitted is based on 1,096 students. The number of faculty and staff will increase from 223 to 272 to accommodate the additional enrollment. T. 21-23; Exhibit 62, p. 9. The 2023 Campus Master Plan, with the proposed changes marked in red (Exhibit 36(b)), is on the next page.





2. Exterior Changes/Site Plan

The proposed site plan (Exhibit 38) is shown on page 10 of this Report. Staff reports that the new lower school will be 40,000 square feet, with a maximum height of 50 feet. The Petitioner's expert in architecture, Mr. Neil Murray, testified that they were able to reduce the scale and mass of the new building by taking advantage of the site's sloping topography. The northern elevation, fronting Falls Road, will appear as two stories and other elevations will appear as three stories. Bullis submitted a rendered view of the north elevation (Exhibit 53, shown below):



Bullis also proposes modifications to the existing playing field near the proposed lower school. The current field is much larger and has been used for competitions, historically in field hockey practice and some of the upper school practices. T. 89. To address concerns expressed by neighbors, Bullis proposes a condition prohibiting its use for inter-school athletic games or for use by outside groups. Exhibit 68. The primary use of the field will now be lower school activities or summer camps. T. 88. There will be no amplified noise, sound equipment, or lights. T. 88. The

lower school field was not identified in the 2004 master plan as artificial or real turf. Bullis is now proposing an artificial turf field. T. 91.

A new access drive or "loop road" to accommodate drop-off and pick-up, as well as fire access, will circumvent the field. Exhibit 62, p. 9. Mr. LaVay testified that the loop road was located around the field to prevent the lower school from being separated from the rest of the campus. Placing the loop road on the northern side of the school would require students to cross a road or parking facility to get to other buildings on campus such as the dining hall. T. 97. The width of the loop road is 20 feet, which is required for fire access. It also allows traffic to by-pass any cars that break down or stop for other reasons. The road contains sufficient storage for cars queuing during pick-up and drop-off times so queues don't back up into Falls Road. T. 97. The loop road is set back 36 feet from the abutting neighbors along Democracy Boulevard. Exhibit 62, p. 17. At the public hearing, Bullis proposed conditions limiting most use of the loop road after 6:30 p.m. and requiring speed bumps to control traffic. Exhibit 68.

The Petitioner's modification also includes a request to place an inflatable bubble over the existing tennis courts on the northern side of the property. Other improvements will include various sidewalks and paths throughout campus to enhance pedestrian internal circulation. Exhibit 62, p. 17.

3. Parking

The campus currently has 486 vehicle parking spaces and 18 parking spaces for buses. *Id.* The new lower school will displace some of these, slightly reducing number of parking spaces to 480. Bullis proposes parallel spaces along the loop road near the lower school for parking for visitors or others who need closer access to the school. Mr. LaVay testified that the parallel configuration was preferable to having a conglomerated parking field behind the homes adjacent to Democracy Boulevard. It also reduces impervious area and the impact of headlights pointed

toward the homes. T. 77. Mr. LaVay explained that an existing parking facility with 21 spaces, shown east of the lower school, is used mainly for buses, maintenance, and operational vehicles. The parallel parking on the loop road will not impede traffic on the loop road. T. 77.

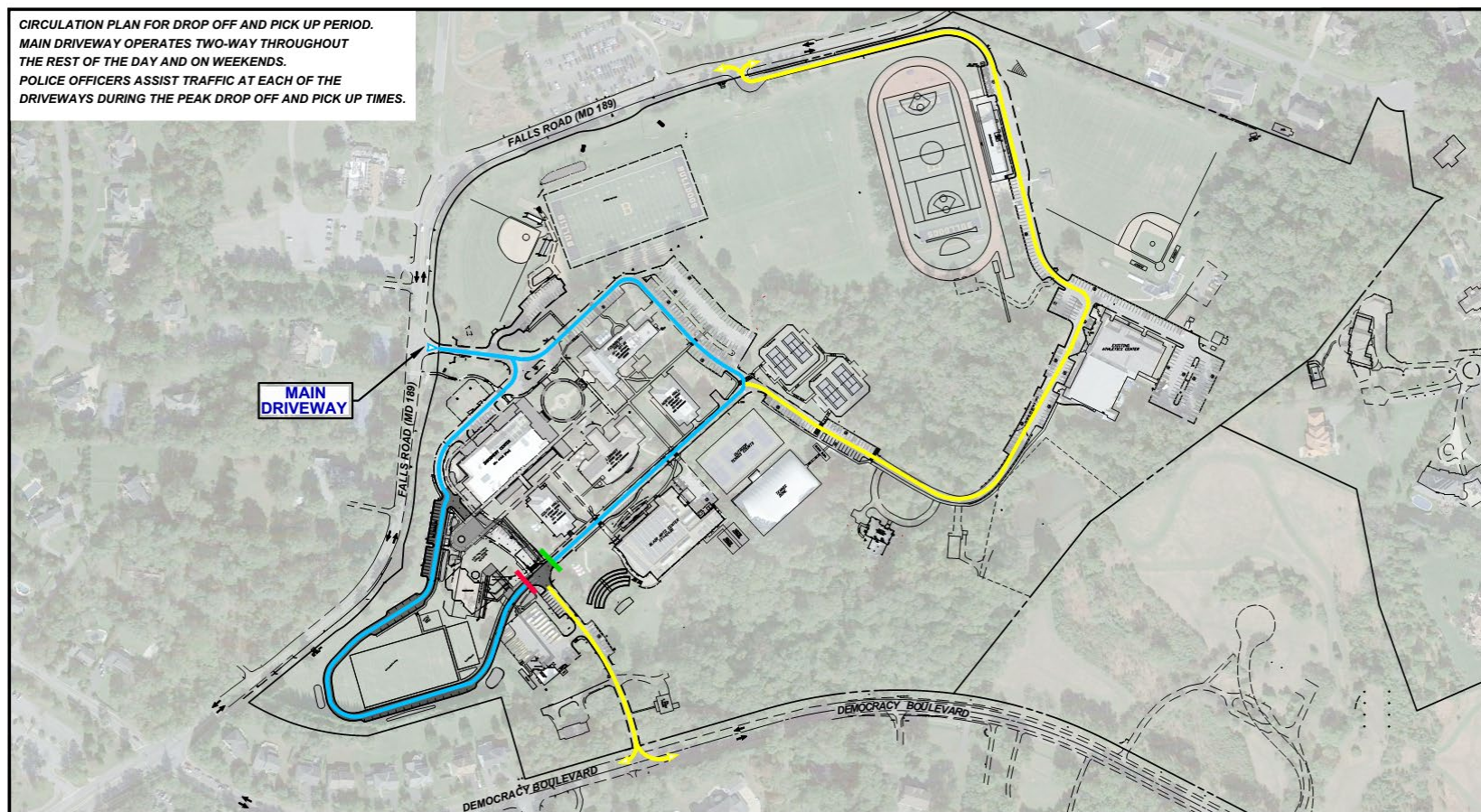
4. On-Site Circulation

Mr. LaVay testified that all ingress to the property is from Falls Road on the western side of the site. Egress is further north at Falls Road and to the south onto Democracy Boulevard. There is no vehicular access to the Tauber Property. T. 68-70.

The Petitioner's expert in transportation planning and transportation engineering, Mr. Chris Kabatt, described how Bullis will manage on-site circulation for parent drop-off and pick-up with the new lower school. To prepare the circulation plan, Mr. Kabatt testified that they spent time on campus observing the on-site circulation, particularly during drop-off and pick-up, on several days over the last several years. They determined that the most "critical" time was the p.m. pick-up period. T. 172. Bullis looked at the existing queuing and projected queues with the new lower school. They concluded that all queues would be contained on campus and would not spill out onto the public roads. The Planning Department agreed with that assessment. T. 172-173. Bullis submitted a color-coded circulation plan to illustrate this (Exhibit 39), shown on the next page.

Mr. Kabatt testified that all students will enter from the main access on Fall Road. Parents with lower school students will turn right after the entrance and use the loop road around the artificial turf field to the lower school entrance. It will be used by only lower school students who don't arrive by bus. T. 36. Mr. Sullivan testified that less than 200 students would use the loop road. Ms. Anne (Nancy) Randall, an expert in transportation planning, explained that Bullis has a Transportation Management Plan (TMP) designed to reduce individual vehicle trips. The school has bus routes that transport students from as far away as Virginia and Prince George's County.

CIRCULATION PLAN FOR DROP OFF AND PICK UP PERIOD.
MAIN DRIVEWAY OPERATES TWO-WAY THROUGHOUT
THE REST OF THE DAY AND ON WEEKENDS.
POLICE OFFICERS ASSIST TRAFFIC AT EACH OF THE
DRIVEWAYS DURING THE PEAK DROP OFF AND PICK UP TIMES.



- Inbound for Lower/Middle/Upper School
- Outbound for Lower/Middle/Upper School
- Vehicle Pick-Up/Drop-Off Area for Upper and Middle School
- Vehicle Pick-Up/Drop-Off Area for Lower School

At the time the Transportation Management Plan (TMP) was put together around 2004, the goal was to maintain a ridership of 1.65 student to vehicle ratio. Today, the ridership has gone as high as 1.72. T. 212-213. Mr. Kabatt testified that the upper and middle school traffic will turn left after entering from Falls Road. Some of the upper and middle school traffic may continue out to the northern exit on Falls Road or may turn right and pick-up students along the internal road and turn left to exit to Democracy Boulevard. T. 177.

To ensure smooth on-site and off-site circulation, the Petitioner currently uses police to manage access at the Falls Road access. The school plans to use a police officer to manage traffic at the Democracy Boulevard exit. The school employs its staff to direct traffic on-campus after entering from Falls Road to ensure parents follow designated routes. T. 201.

5. Hours of Operation

Mr. Sullivan testified that the modification will not change the length of the school day. The day begins at 8:00 a.m. and ends at 3:30 p.m. Student pick-up times for the lower school will be different than the upper/middle schools. The lower school will end at 3:00 p.m. The upper/middle schools end at 3:30 p.m. T. 180-181. Bullis runs extracurricular activities and afterschool programs in the afternoon. T. 24.

Bullis also conducts a “vibrant” summer program weekly throughout the summer. It caters to students from 3 years old to 17 years old and is run from 8:00 a.m. to 4:00 p.m. The enrollment for the summer program is typically lower than student enrollment during the academic year. *Id.*

6. Landscaping, Lighting, and Signage

Initially, Bullis proposed using existing site features with additional native shade trees to screen the loop road and play field. Staff described the screening (Exhibit 65, p. 17):

The turf field is separated from neighboring existing residential lots by 65 feet from the property line to edge of field. Between the property line and the sports field there is an existing 6-foot-high chain link fence at the property line, a dense buffer of mature evergreen trees adjacent to and running along the property line, a line of proposed planting of 8 Maryland native overstory trees adjacent to the evergreen trees and then a proposed linear parking facility of 14 parallel parking spaces.

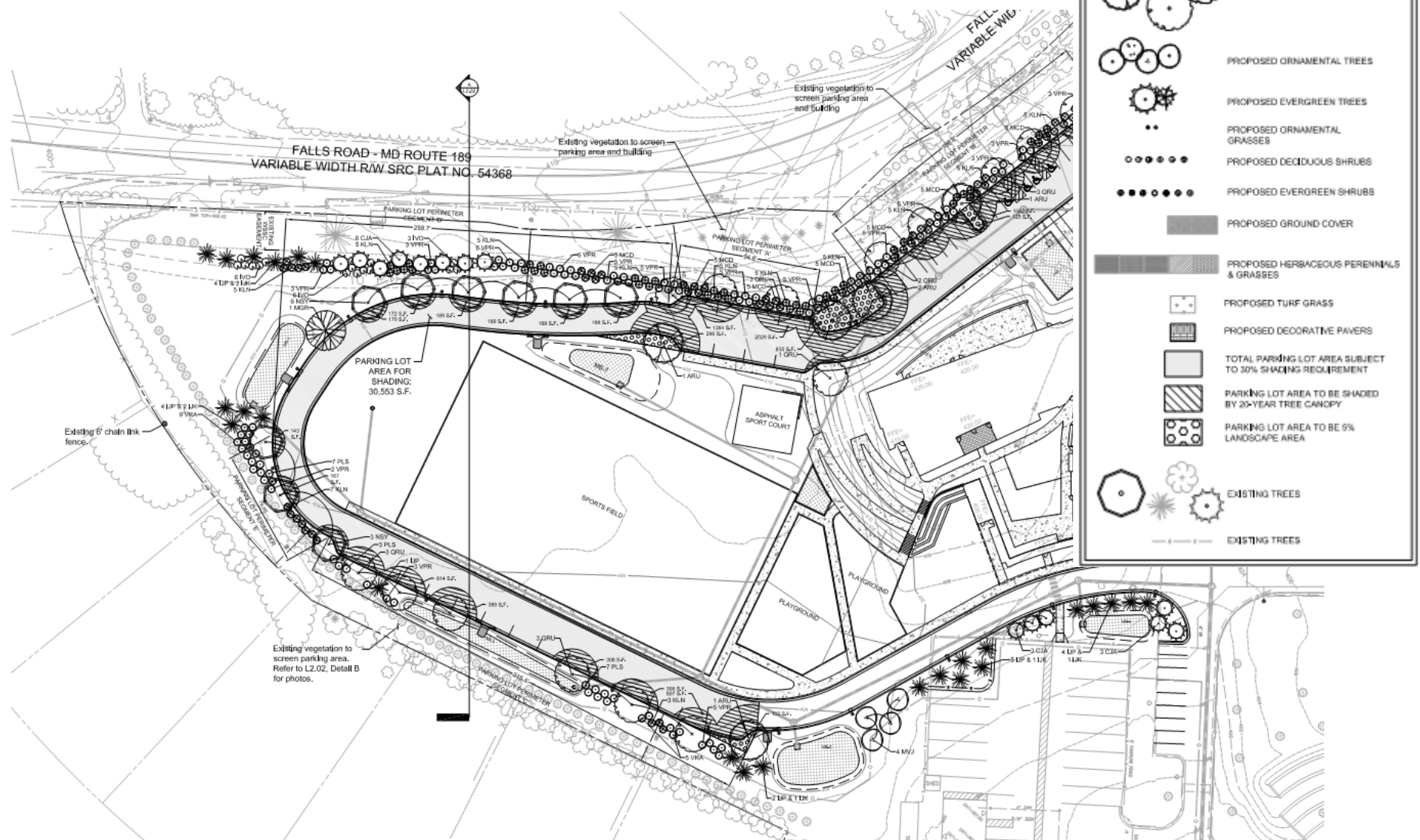
A photograph of the evergreen hedge, submitted by Bullis, is shown below (Exhibit 67):



At the public hearing, Bullis submitted a supplemental landscape plan with additional plantings between the shade trees inside the evergreen row to ensure headlights from vehicles on the loop road will not be seen. Excerpts of the final landscape plan are shown on the next page (Exhibit 70). Bullis proposes 17 pole-mounted lights with full cut-off fixtures along the loop road (Exhibit 43).

D. Community Response

Individuals in the community testified in both support and opposition to the modification. Most of those in opposition live in one of the eight lots whose rear yards abut the Bullis School property. These individuals expressed concerns relating to noise from the playing field,



Revised Landscape Plan
Exhibit 70(a)

playground and the loop road, pollution from vehicles on the loop road, and harm to property values.

Mr. Amir Amirjazi believes that Bullis is a good school, but it's only for very rich people, not "ordinary" people like those that live on Democracy Boulevard. With a tuition at \$55,000 for each student, he certainly cannot put his children in the school. Most people coming and going from Bullis come from further away, not close to the school. His house is connected to the playground and the lower school that will bring 245 more cars on top of 900 cars from Falls Road. Others have asked whether the school had done an environmental study. Mr. Sullivan responded that the school hadn't done one because the 900 cars come from outside of the area. Mr. Amirjazi thinks the school could do a study but doesn't care about him. T. 155-156. He hears trucks around 4:00 a.m. that supply Bullis and can hear the back-up beeps. He wakes up due to the noise. The children playing also cause noise, and now, during construction, there will be more noise and dust. He also sees lights at night. T. 157-158.

Ms. Mei Lu believes that the addition of the lower school and loop road will hurt the value of her property. When she first moved to her home in 2003, the school had only 500 students. She enjoyed the view of the campus, and the playground was "pretty far" away. Since then, the special exception has been modified several times, adding to enrollment. They moved the playground a little bit closer, although not too much. And they planted trees, so the view was lost. The noise level increased and there are more activities on school grounds. She felt that the school became more isolated from she and her neighbors. *Id.* She believes that the loop road will cause their houses to be "surrounded" by roads: Falls Road, Democracy Boulevard, and the loop road. She believes that being surrounded by traffic is going to reduce her property value.

She is also concerned about pollution. The school said that not many cars will drive on the loop road, but it's still going to be two-way and cars will drive by and park. Her husband did

a Google search and each car produces 2 lbs. of CO₂ a day. She is not sure there will be enough trees to handle the additional pollution, particularly if the playing field is converted to artificial turf. T. 161.

Ms. Lu believes that vehicles traveling the loop road will harm the health of she and her mother. Her mother, who is 84, lives with Ms. Lu and her husband. Her mother has been recovering from lung cancer for two years. Ms. Lu was diagnosed with breast cancer less than two years ago and just finished her active treatment. Part of her treatment requires her to walk outdoors a "lot of hours a day" or just to be in the fresh air. She has a routine that she recently tested to see whether she can walk on the field during the day because she thought it would be quiet. She went out at different times between 7:00 a.m. and 10:00 a.m. Usually, children would go outdoors and play on the field beginning between 9:00 a.m. and 10:00 a.m. The play lasts the whole day, except for lunch, and continues to about 5:00 pm to 6:00 pm. If you are outside, you can hear the noise all the time and it is "loud." She stated the only thing you can do to avoid the noise is stay indoors with the windows shut. T. 161-163.

She agrees that the police at the entrance manage traffic very well. This causes her to question why they need the loop road. It's sacrificing the neighbor's property values for a "little more" convenience for the school. T. 163.

Ms. Jill Olson stated that she lives in a neighborhood tucked behind the school that only has access through Stapleford Hall Court, which intersects Democracy Boulevard and Bells Mill Road. Ms. Olson is concerned about the safety for drivers, bikers, and pedestrians on that road due to speeding, as there are no sidewalks on Stapleford Hall Drive. She has witnessed many incidents where people fly through the stop signs and speed, especially to avoid Bullis School at peak times on Falls Road and Democracy. T. 189.

Ms. Olson believes that the scope of the intersections tested for safety studied should be increased. She is concerned that as the volume increases, the additional traffic will be forced to smaller streets. She believes that traffic goes to Bells Mill Road to return to I-270 or the Beltway. T. 192. Mr. Lee Chiang opposes the project because he believes that the sidepath behind his house will devalue his property. T. 243-244.

Several individuals, most of whom have children enrolled in the school, testified in support of the application. Mr. Jason Sherman has two children enrolled in the school. He believes that the school will not affect property values because he has seen million-dollar homes built with the school in place. T. 134-135. Ms. Alexandra Walther, who has children in the school, purposely bought her home close to the school. She believes it's an asset and the grounds are beautiful. It only takes minutes for her to drop-off and pick-up her children. T. 141-142.

Mr. Gang Liu lives in one of the homes backing to the school property. His children attend the school, and he does not believe it creates a traffic problem. In his opinion, Bullis does a very good job managing drop-off and pick-up. They have police at the front gate directing traffic. Inside each corner they have staff directing traffic as well. Vehicles circulate inside the campus at very slow speeds, so there are rarely any loud noises. If the loop road were not there, traffic from the school would back up onto Falls Road. He believes, though, that traffic is so well-managed that it only takes 15-20 minutes to drop-off from start to finish. To him, the noise from children playing on the field is not intrusive. He does not hear the noise when he's inside with his window closed. He does hear it when he is outside. He never hears whistles or horns because they do not conduct regulated games there. He believes the field is not big enough. He does not believe that the school will harm property values. T. 149-154.

III. FINDINGS AND CONCLUSIONS

A. Standards for Evaluation

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Each special exception petition is evaluated in a site-specific context because a special exception might be appropriate in some locations but not in others. The 2004 Zoning Ordinance establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Planning Staff concluded that Petitioner will have satisfied all the requirements to permit the major modification to the special exception if it complies with the recommended conditions (Exhibit 62).

The standard for evaluation prescribed in Zoning Ordinance §59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” § 59-G-1.2.1. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Mr. LaVay testified that the impacts inherent to a private educational institution include: larger visible structures, parking facilities, queuing facilities, lighting, traffic generation, new impervious surfaces, and noise. T. 92-93. He opined that there are no non-inherent impacts from the proposed modification. In his opinion, some features on this property mitigate the inherent impacts. Leyland Cypress trees have been planted relatively close to the property line that adjoins

the eight homes on Democracy Boulevard. These have grown to between 20 and 30 feet tall and are very densely spaced. They provide significant screening of school activities and were deemed sufficient to meet the standards of screening required for a special exception. T. 92-93.

In Mr. LaVay's opinion, other impacts are inherent to a school. The school will continue to operate at much lower enrollment levels than other public and private facilities in similar settings. T. 95. The maximum student density permitted is 87 students per acre. Enrollment here is much lower - only 10.75 students per acre. T. 113-114. The proposed lower school building, exterior spaces and loop road are all typical for an educational institution. Many of these items, particularly the building and playground, will be substantially similar in size and location to the approved 2004 master plan and conditions already approved by the Board of Appeals. T. 95. He opined that noise levels in private school are not high enough to generate a formal mitigation requirement. Noise mitigation is more typically required when a property is proximate to highways with higher volume and speeds. T. 96.

Nothing in this record identifies a non-inherent physical or operational characteristic of the proposed use. For this reason, the Hearing Examiner finds that the potential adverse impacts from the proposed use are inherent to those associated with a private educational institution.

B. General Standards

The 2004 Zoning Ordinance sets forth general standards for approval that apply to all conditional uses and special standards that apply to the particular use requested. The general standards for a special exception are found in Section 59-G-1.21(a). These are listed below along with the Hearing Examiner's findings on whether the standards are met.

Sec. 59-G-1.21. General conditions:

(a) A special exception may be granted when the Board, the Hearing Examiner,

or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

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

Conclusion: Private educational institutions are permitted by special exception in the RE-2 Zone under Zoning Ordinance §59-C-1.31.

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

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

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

Development on the subject property is guided by the 2002 Potomac Subregion Master Plan (Master Plan or Plan). Staff advises that the Master Plan contains no site-specific recommendations for this property. Exhibit 62, p. 23.

Staff concluded that the special modification proposed conforms to the Master Plan. Exhibit 62, p. 31. Mr. LaVay testified that Bullis' large campus allows all queues to occur on-site without impacting public roads. T. 103. He opined that the additional landscaping proposed will meet the Plan's goal for adequate screening of parking facilities, including the loop road. The

Petitioner has augmented the screening and buffering adjacent to the abutting residential properties and proposed supplemental landscaping at the public hearing. Exhibit 70. The loop road will also be lined with shade trees, as well as landscaped stormwater management facilities.

T. 105.

Conclusion: The Master Plan contains overall goals for special exceptions (*Plan*, p. 2):

- Protect the Chesapeake & Ohio Canal National Historical Park, major transportation corridors, and residential communities from incompatible design of special exception uses.
- Avoid an excessive concentration of special exceptions along major transportation corridors.

To achieve these goals, it includes guidelines for approval of these uses (*Id.*, pp. 35-36, emphasis in original):

- **Limit the impacts of existing special exceptions in established neighborhoods. Increase the scrutiny in reviewing special exception applications for highly visible sites and properties adjacent to the Chesapeake & Ohio Canal National Historic Park.**
- **Avoid an excessive concentration of special exceptions along major transportation corridors.**

Sites along these corridors are more vulnerable to over-concentration because they have high visibility. Uses that might diminish safety or reduce capacity of roadways with too many access points or conflicting turn movements should be discouraged.

The Plan recommends the following design guidelines for special exceptions (*Plan*, p. 36):

- a. Adhere to Zoning Ordinance requirements to examine compatibility with the architecture of the adjoining neighborhood.
- b. Parking should be located and landscaped to minimize commercial appearance. In situations where side or rear yard parking is not available, front yard parking should be allowed only if it can be adequately landscaped and screened.
- c. Efforts should be made to enhance or augment screening and buffering as viewed from abutting residential areas and major roadways.

There are several private educational institutions in the Planning area and concerns have been raised about parking and traffic problems caused by queuing for drop-off and pick-up.

The Hearing Examiner agrees with Staff's finding that the proposed modification meets the goals of the Master Plan. Because this is a modification to an existing special exception that has existed since 1963, the modification does not add to the existing number of special exceptions in the area. The recommendations calling for enhanced screening from residential properties and roadways do apply. The Hearing Examiner finds that the existing evergreen hedge and the supplemental planting proposed by Bullis meet the Plan's recommendations. The photograph of the existing row of evergreens supports Mr. LaVay's testimony that it is very dense and that little will be visible from the residential properties along Democracy Boulevard. The addition of shade trees and supplemental planting between these trees supports a finding that headlights will not be seen through the landscaped buffer.

The Petitioner is also supplementing existing landscaping along Falls Road to better screen the lower school and loop road. As described later, access to the school is consolidated at one location on Falls Road, and the Petitioner presented extensive testimony that all queuing at drop-off and pick-up will occur on site without impacting the area transportation network. Lighting on the loop road utilizes full cut-off fixtures to minimize glare onto adjoining properties. This is substantiated by the photometric study submitted, which demonstrates that illumination at the property line will be less than 0.1 footcandles. Exhibit 43. For these reasons, the Hearing Examiner finds that the modification will be consistent with the Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Those in opposition expressed concerns about the impact of air pollution on their health and noise from the playground, described in Part II.D of this Report.

Staff concluded that the proposed use met this standard because the density requested is well under that permitted by the Zoning Ordinance and the traffic study demonstrated that it will not affect the surrounding transportation network. Staff found that the impacts of the project in terms of lighting, parking, and landscaping were "minimal" and were effectively mitigated by the significant existing and new landscaping. Exhibit 62, p. 24.

Mr. LaVay also relied on the low student/acreage ratio to support his opinion that the use would be in harmony with the character of the surrounding area. He opined that the use is compatible because the loop road is setback from the residential homes more than the minimum required by the Zoning Ordinance. The minimum setback is 34 feet; the setback from the loop road will be 36 feet. T. 114. In his opinion, the private school has existed for many years and the changes proposed are substantially like the Campus Master Plan approved by the Board of Appeals in 2004. T. 115.

Mr. LaVay opined that noise from the playground is not typically quantified as an adverse impact. The population of the lower school is much lower than typical for a public school in Montgomery County. T. 100. He does not believe that noise will be required to be mitigated, and Bullis does not have all lower school children out on the playground and athletic field at once, except perhaps for special events. T. 100. Bullis staggers the number of children on the playground at one time. *Id.* Bullis proposed several conditions restricting the amount of noise generated from the athletic field: (1) The field may not be used by outside groups or by inter-class athletic events for middle and upper school students, and (2) amplified music and loudspeakers are prohibited. Exhibit 70.

Bullis presented expert testimony from two transportation planners that the queues form and dissipate over 8 minutes two times a day, and peak queues last only 2 minutes. Mr. Sullivan, Ms. Randall and Mr. Kabatt testified that traffic using the loop road will be less than 200 cars, and that some of the students will use the bus, have siblings or will carpool. This short time frame of the queues was supported both by parent's testimony relating to the amount of time needed for them to pick-up and drop-off their children and by the strong non-auto ridership achieved under the TMP. At the public hearing, Bullis also proposed several conditions restricting use of the loop road: (1) limiting traffic to one-way except for emergency vehicles and snow-plow activities, (2) closing the loop road after 6:30 pm daily from beyond the parallel parking spaces, except when special events are being held, and (3) installing speed bumps along the loop road.

Testimony also concerned noise from the playground and athletic field. Mr. Chiang testified that he cannot hear the noise inside his home; others said they could hear noise from the field inside their homes and that it continued all day long. In response, Mr. LaVay testified that the playground has been moved only 5 feet closer to Ms. Lu's house than the playground approved by the Board of Appeals in 2004, which was never constructed. T. 128. He also testified that average noise from a car idling is only 40 dBs, 30 dBs under the maximum noise levels in the County Code. T. 99.

To address the concerns of those in opposition, the Petitioner states that the athletic field is not large enough to be used for regulated games. It proposes conditions that: (1) restrict its use by outside groups, (2) prohibit inter-class competitions by middle and upper school students, and (3) prohibit loudspeakers and amplified music.

Conclusion: The testimony of those in opposition consists of adverse impacts that possibly may occur, but do not provide support that these impacts probably will occur. Maryland courts have

held that the weight of this testimony does not justify denial of a special exception. *Miller v. Kiwanis Club of Loch Raven, Inc.*, 29 Md. App. 285, 296 (1975) (possibility that that harms may occur, as opposed to probability that they will occur, does not justify denial of a special exception). The only evidence that vehicles entering the lower school queue will cause significant pollution is hearsay testimony from Ms. Lu about her husband's internet search concluding that vehicles emit 2 lbs. of carbon dioxide per day. T. 160. The search results were not submitted into the record, her husband was not available for cross-examination, she did not state the underlying source, and the testimony provided no context of safe CO₂ levels.

In contrast, Bullis provided expert testimony based on existing site observations and projected queuing that queues will begin and end over eight minutes twice a day and peak for only two minutes. Bullis also presented expert testimony that the loop road would only be used by parents dropping off at the lower school and the number of vehicles using the road at drop-off and pick-up would be under 200. Bullis proposed conditions restricting the time the loop road may be open for traffic and limiting its use primarily to one-way traffic to ensure that the road will not be used for campus wide activities.

Based on this record, the Hearing Examiner finds that the possibility of harmful pollution is too speculative to justify denial of the modification, although she understands Ms. Lu's concerns. The weight of the testimony and evidence supports a finding that the duration of the queues, limitations on the time it will be open, restrictions to one-way traffic, and use of speed bumps will mitigate any significant adverse impact on the health of those in neighboring properties.

Similarly, the weight of evidence presented supports a finding that noise from the playground and athletic field will be compatible with neighboring properties. The playground proposed is only five feet closer to Ms. Lu's property than the playground approved in 2004. While the existing playground is further from Ms. Lu's property, the Hearing Examiner finds that

the appropriate measuring point is the location approved in the 2004 modification. If this modification were denied, Bullis could build the playground at the location shown in the 2004 modification, only five feet further from Ms. Lu's property. There is no evidence to demonstrate that a five-foot difference significantly increases noise from the play area.

In addition, the testimony is contradictory about the level of noise experienced. Mr. Chiang stated he does not hear noise inside his home, while others testified that they hear noise inside their homes. Bullis testified that use of the athletic field and play area will be staggered; not all children will be outside at one time. As for the athletic field, current use of the field includes inter-school matches and outside use of the field for athletic competitions. There is nothing in this record to indicate that use of the field will be more intense than at present, particularly with the conditions proposed restricting amplified music and prohibiting competitive games. As Mr. LaVay testified, noise is an inherent impact of a private educational institution, and there is nothing in this record indicating that the noise will be above that normally associated with a school, particularly with the restrictions proposed by Bullis.

4. *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.*

Staff found that (Exhibit 62, p. 24):

The physical and operational modifications reflected on the school's proposed 2022 Campus Master Plan...will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site. The 2022 Plan continues to depict significant buffers of forest, mature landscaping, and open space between the school's facilities and its neighbors. The school's campus is adequately sized to allow for this modest expansion to occur without overcrowding the site or diminishing the value and enjoyment of surrounding residential properties.

Mr. LaVay testified that the expansion is modest due to the low student/acreage ratio, setbacks, and similarity to the approved 2004 Campus Plan. T. 115. He opined that the school

has existed at this location for many years and is part of the character of the area. Nor are there non-inherent physical or operational characteristics that create undue adverse impacts on neighboring properties.

As summarized in Part II.D. of this Report, some neighbors expressed their belief that the loop road and parking facility on it would reduce their property values while others disagreed.

Conclusion: The Hearing Examiner finds that this criterion for approval has been met. The expert testimony and evidence are strong and well-reasoned. It demonstrates that traffic from the expanded enrollment will not adversely affect the transportation system due to the TMP, traffic control by police at the entrance and Democracy Boulevard exit, and traffic control by staff within the campus. Queues from the additional enrollment will be managed on-site and expert testimony establishes that they will not back into Falls Road or egress points. The designated routes are discussed with parents at orientation. T. 204. The new landscaping, in addition to existing landscaping in place, produces a significant screen to buffer traffic on the loop road. The Hearing Examiner agrees with Staff that the campus is adequately sized to accommodate this expansion without overcrowding or operational difficulties.

Those in opposition did not provide any evidence beyond expressing the possibility to support their contention that the modification would devalue their property. Their testimony expressed concern about the possibility that it would do so, but no more. One supporter testified that he did not believe that proximity to the school would devalue property because he has seen million-dollar homes constructed while the school has been at this location. Another testified that she purposefully moved to be near the school. Mr. Chiang believes that the proposed sidepaths proposed will devalue their properties. However, the sidepaths will not be adjacent to their properties. They will be on Bullis' property frontage along Democracy Boulevard and Falls Road. Staff found that these paths would *improve* pedestrian and bicycle safety in the area.

Based on this record, the Hearing Examiner finds concerns related to property values too speculative to justify denial of the special exception modification.

The Hearing Examiner has already found that the evidence submitted on noise does not support denial of the conditional use and there is no evidence that the 5-foot difference between the approved location and the location proposed in this modification would be significantly different.

- (5) *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.*
- (6) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Staff addressed these two criteria together (Exhibit 62, pp. 24-25):

The Bullis School has been located at the subject property since 1963 and predates most of the neighboring homes in the area. The physical and operational modifications reflected in the proposed 2022 Campus Master Plan and discussed herein, will not 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.

The testimony of those in support and those in opposition relating to (5) above has already been summarized in preceding sections. Mr. LaVay testified that the modification does not result in an overconcentration of conditional uses because the school has been part of the neighborhood since 1963 and predates most of the homes in the area. T. 116.

Conclusion: The evidence demonstrates that illumination from the lights along the loop road will not result in glare on adjoining properties. The lighting plan submitted (Exhibit 43) shows that illumination at the property line will be under 0.1 footcandles. Mr. LaVay testified that the

existing evergreen hedge is dense, as evidenced by the photograph in the record. To this, Bullis will add native trees and shrubs to further screen any headlights from the loop road. The Hearing Examiner finds that the modification will mitigate glare on adjoining properties.

Nor does the evidence demonstrate that the physical activity from vehicles using the loop road will cause significant adverse impacts on neighboring properties. There is only unsupported evidence to support the neighbors' fear that pollution will impact their health, and the bulk of the evidence contravenes this. As already discussed, the weight of evidence does not support a finding that noise from the athletic field or the play area will detrimentally impact neighboring properties.

As for the criteria in paragraph (6), above, the Hearing Examiner agrees with Staff that the modification will not result in an overconcentration of special exceptions and conditional uses in the surrounding area. This special exception has existed since 1963 and forms part of the existing area. The expansion is relative moderate given the size of the campus.

(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.

Staff concluded that (Exhibit 62, p. 25):

The neighboring homes on Democracy Boulevard that are nearest to the area of the campus where the new Lower School building and associated improvements are proposed, benefit from the existence of a mature landscape buffer that will serve to effectively mitigate any perceived impacts. The purpose of the new parking facility drive aisle being proposed in conjunction with the Lower School project is to continue the school's vigilant efforts to avoid any queuing of school related traffic on adjacent public roads either during the school year or summer. In addition, the drive aisle is setback a minimum of 50' from the front lot line and a minimum of 34 feet from the school's southern property line shared with the neighboring homes, which is twice the building side yard of 17 feet in the RE-2 Zone as required by Section 59-E-2.83 of the 2004 Zoning Ordinance.

Mr. LaVay testified that the improvements have been designed to ensure the health and safety of the students as well as any visitors and employees, while minimizing impacts on the surrounding neighborhood through enhanced screening. T. 117.

Conclusion: In this case, this criterion of approval is repetitive of findings already made. The testimony and evidence support the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site with the conditions of approval recommended. The purpose of the loop road is to ensure that the area-wide transportation network is not impacted by school operation. The location was chosen so that children from the lower school will not have to cross roads to reach other destinations on campus. The purpose of the parallel parking on the loop road is to ensure that visitors to the lower school can park nearer the entrance without obstructing vehicles using the loop road.

While the Hearing Examiner understands the concerns of those in opposition, in some respects, the use proposed has benefits by: (1) providing additional screening of the use, (2) reducing the intensity of use of the athletic field, and (3) adding conditions restricting use of the loop road.

(9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

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

(B) *If the special exception:*
(i) *does not require approval of a new preliminary plan of subdivision; and*

(ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;

then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

Bullis submitted a full Traffic Study, conducted under the procedures required by the Planning Board's Local Area Transportation Review (LATR) Guidelines. Exhibit 11. Mr. Kabatt explained the process for developing a traffic study under the Guidelines. They begin by confirming the scope of the study with Planning Staff, the MCDOT, and State Highway Administration. Because the additional enrollment generates more than 50 peak hour person trips, a traffic study is required. The study includes analysis of vehicle, bicycle, pedestrian, and transit system capacity. It includes a Vision Zero statement and an evaluation of on-site circulation. T. 168.

They also come to an agreement with the agencies regarding the site trip distributions (the amount of traffic that will take certain routes to and from the site), the intersections to be tested, any approved but unbuilt developments in the area, and any other general assumptions on the transportation network. T. 168-169.

To conduct the test for motor vehicle adequacy, they do an intersection capacity analysis for the off-site intersections and school driveways. They collect existing traffic counts at those intersections during peak periods in the a.m. and p.m. Using these counts as a base, they add in trips generated by approved but unbuilt developments. Then they add the new trips added by the

proposed development. In this case, they factored in the traffic added by the increase in enrollment from 900 to 1,096 students. T. 169.

They then apply the capacity analysis for the study intersections. This property is located within the Potomac policy area. Capacity in this policy area is measured by critical lane volume (CLV). T. 169.

For the motor vehicle adequacy test, MCDOT, SHA, and the Planning Department agreed that they should study three intersections and the site driveway. The study found that all intersections operated under the CLV. All three agencies agreed with the study findings and concluded that no mitigation is required. T. 170.

The study also analyzed the tests for bicycle, pedestrian and transit adequacy. T. 170. They concluded that some mitigation would be required for all three. Part of the mitigation is the bond for the sidepath on the school's property along Democracy Boulevard required by the Memorandum of Understanding. Bullis will also pay a fee to the County for a proportionate share of needed off-site improvements. T. 171. With these two items, they meet the mitigation requirements for pedestrian, bicycle, and transit. T. 171.

The traffic study also includes a Vision Zero statement. This requires an applicant to collect data on vehicle crashes in the area, speeds travelled on roadways, on-site circulation, and access. Mr. Kabatt's firm found that this area of Falls Road and Democracy Boulevard are not considered "high injury network segments." T. 171. There had been some crashes in the area, but none at the entrance to the school. They also found that there is speeding on Falls Road. The study suggests that the County look at measures to deter speeding in the area. Their analysis of on-site circulation states that the loop road around the new lower school field will separate lower school traffic from that of the upper school, will aid with pick-up and drop-off activities on campus, and will minimize pedestrian and vehicle conflicts. T. 171-172.

Staff determined that public facilities were adequate to serve the use, finding all intersections studied were under the maximum limit of 1,450 CLV for the Potomac Policy (Exhibit 62, p. 26). A table showing the CLVs at intersections studied, from the Traffic Study and reproduced in the Staff Report, is on the next page (*Id.*; Exhibit 11).

Intersection	Traffic Conditions					
	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
<i>Potomac Policy Area (1,450)</i>						
Falls Road / Democracy Boulevard	842	1113	858	1125	914	1194
Falls Road / Bells Mill Road	667	879	670	883	700	905
Democracy Boulevard / Newbridge Drive	480	549	487	1008	509	579
Falls Road / Main Bullis School Driveway	868	915	871	919	1004	991
Falls Road / Bullis School Driveway	665	731	668	735	707	772
Democracy Boulevard / Bullis School Driveway	473	648	480	656	537	703

Exhibit 62, p. 26

Staff found that bicycle and pedestrian stress tests in the vicinity received the lowest acceptable ratings due to the absence of bike/pedestrian infrastructure and high speeds on Falls Road and Democracy Boulevard. Staff determined that walking and biking on along both roads is “uncomfortable and dangerous.” *Id.*

To address these issues, Planning Staff recommended a condition of approval requiring Bullis to construct a sidepath on its property along Falls Road and Democracy Boulevard. Staff noted that (*Id.*, p. 27):

The school is currently responsible to contribute to the eventual Falls Rd. sidepath CIP [Capital Improvements Program] project through an existing MOU linked to the existing Special Exception, paying for the full construction costs of implementing the path along the Applicant's frontage. However, the need to provide these safety improvements are immediate. Linking payment for the improvements to an indefinite timeline will delay the construction of these

important improvements; therefore, the applicant is conditioned to construct these sidepath as part of the current proposed expansion. This would provide immediate benefit to the school and community by providing valuable safety and connectivity improvements along these roads. This will improve access to the school, existing transit, the Falls Rd. Montgomery County Gold Course, and surrounding residents. The immediate construction would avoid the uncertainty of the provision of funds in the future and would allow MCDOT to potentially break up the Falls Rd. CIP projects into smaller, more affordable segments to construct. Additionally, this requirement is in line with typical requirements placed on all applicants to implement bike and pedestrian improvements as soon as possible.

Mr. Sullivan clarified that the sidepath will be entirely on the school's property. T. 40.

Staff also reports that other facilities are adequate to serve the use. Water, sewer and utilities already exist at the site. A fire station is located 1.2 miles away. *Id.*, p. 25.

Conclusion: Based on this uncontroverted evidence, the Hearing Examiner finds that public facilities are adequate to serve the use and will be improved with the modification. Ms. Olsen testified that she was concerned about biking and pedestrian safety along roads leading to her house. While not affecting her street, the sidepath will improve pedestrian and bicycle safety in the area.

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

Conclusion: This record is replete with evidence and expert testimony that the modification will have no adverse impact on public roads. There is also uncontroverted evidence that it will *improve* the safety of bicycle and pedestrian traffic in the area due to construction of the sidepath. This criterion for approval has been met.

C. Specific Standards: Educational Institutions, Private

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

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

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

(1) *the private educational institutional use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element which is incompatible with the environment and character of the surrounding neighborhood;*

Staff found that the proposed modification will not constitute a nuisance to neighboring properties because it is “essentially the same” as the 2004 Campus Master Plan already approved by the Board of Appeals. Exhibit 62, p. 14. Staff notes again that all queues will be handled on-site, and the new loop road is appropriately set back from Falls Road and from the abutting properties on Democracy Boulevard. *Id.*

Conclusion: For the reasons set forth in Parts III.A and B of this Report, the Hearing Examiner finds that the proposed modification will not constitute a nuisance because of traffic, number of students, noise, type of physical activity or any other element, and they will be compatible with the environment and character of the area, *with the conditions of approval imposed in Part IV of this Report.*

(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;*

Bullis' expert in architecture testified that the design of the lower school uses the site topography to reduce the mass of the building fronting Falls Road. They have designed the exterior to relate to the existing historic structures on Bullis' campus. The two main structures

they respond to are the existing South Hall and the Discovery Center. These buildings have different architecture but a similar color palette of materials that contribute to the campus architecture. T. 54.

Staff determined that the modification complies with this requirement because it integrates with existing campus buildings that form the character of the neighborhood. Staff felt that the need to integrate materials with homes in the surrounding community is not as significant because the much of the new lower school building will not be visible from Falls Road. Staff found, however, that the brick material and sloped roof was characteristic of homes in the area. Exhibit 62, pp. 14-15.

Conclusion: The Hearing Examiner agrees with Staff that the existing campus has been part of the character of the neighborhood since 1963 and compatibility with existing campus buildings is appropriate and desirable. The obscured view of the school, and the use of topography to reduce mass, and use of residential materials such as brick, render the building compatible with surrounding residences.

- (2) *the private educational institution will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community; and*

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

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

- a. *Density—The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering the following factors:*

1. *Traffic patterns, including:*
 - a) *Impact of increased traffic on residential streets;*
 - b) *Proximity to arterial roads and major highways;*
 - c) *Provision of measures for Transportation Demand Management as defined in Section 42A-21 of the Montgomery County Code;*
 - d) *Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and*
2. *Noise or type of physical activity;*
3. *Character, percentage, and density of existing development and zoning in the community;*
4. *Topography of the land to be used for the special exception; and*
5. *Density greater than 87 pupils per acre may be permitted only if the Board finds that (i) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; (ii) the additional density will not adversely affect adjacent properties; (iii) additional traffic generated by the additional density will not adversely affect the surrounding streets.*

Conclusion: Both Staff and the Petitioner's expert in civil engineering and land planning testified that, with the new lower school, the density of student enrollment at Bullis will be 10.75 students per acre and the additional review is not required. Applying the remaining factors, the Hearing Examiner finds that the increase in enrollment will not adversely impact the public road network or impede drop-off and pick-up for the reasons already described. The Hearing Examiner already found that noise from physical activities on the site are inherent to the school use and will be compatible with surrounding properties. The character of the community already includes large public uses (such as the Falls Road Golf course) to the north and the use is well-buffered by screening and landscaping.

- 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.*

Staff concluded that the application meets this standard because the field is setback 65 feet from the closest properties with a mature evergreen hedge and fence separating the two. Staff also relied on the photometric study, which demonstrates that illumination at the property line will be under 0.1 footcandles. Bullis plans additional landscaping, including native shade trees and shrubs, to further buffer this area.

Conclusion: Aside from noise generated by children playing outside, which has already been addressed, there is nothing in this record to indicate that activities in the play areas will intrude onto neighboring properties. The Hearing Examiner finds that the proposed use is compliant with this section for the reasons stated by Staff.

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

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

- (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.

Staff advises that "special activities" were previously approved by the Board of Appeals.

Exhibit 62, p. 17-18. Mr. Sullivan testified that the school plans to maintain its current enrollment in summer camps, which is under the 900 students. T. 24.

Conclusion: Nothing in this record indicates that Bullis plans to change the enrollment for the existing summer camps, or "special activities" already approved. Under this standard, Bullis may continue these activities.

(d) Site plan.

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

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

the special exception, building permit or certificate of occupancy, in the manner provided by law.

Conclusion: Staff confirms that the requisite plans have been submitted with this special exception modification request. Exhibit 62, p. 18. The remaining special standards for a private educational use are not applicable to this modification and repeated here.²

D. Other Applicable Standards

Section 59-G-1.23. General development standards.

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

A table from the Staff Report compares the development standards of the 2004 Zoning Ordinance to the proposed project (Exhibit 62, p. 17):

Table 1: Conditional Use Development and Parking Standards (RE-2)

Development Standard Section 59-C-1.32	Permitted/ Required	Existing/Proposed*
Minimum Lot Area	87,120 SF	4,437,500 SF
Minimum Lot Width at Front Building Line		
Minimum Lot Width at Front Lot Line		
Maximum Density		
Maximum Lot Coverage	25%	5.3%
Minimum Front Setback	50'	146'
Minimum Side Setback	17'	374'
Minimum Sum of Side Setbacks	35'	374'+
Minimum Rear Setback	35'	218'
Maximum Height	50'	50'
Students Per Acre	87/acre	10.75/acre
Vehicle Parking Requirement (Section 59.6.2.4.B & 2004 Code 59-E)		
Number of Spaces	422 Spaces	480 Spaces
Number of Accessible Spaces (Lower School)	2 Spaces	4 Spaces
Charging Spaces	N/A	0 spaces
Bicycle Parking Spaces	N/A	0 spaces
Motorcycle Parking Spaces	N/A	0 spaces
Landscape Strip Adjacent to R/W	10'	See Landscape Plan
Perimeter Landscaping	4'	See Landscape Plan
Internal Landscaping	5% (Lower School)	See Landscape Plan
Min Parking Setbacks, from Street	50'	50'
Min Parking Setback, Rear	35'	1400'
Min Parking Setback, Side	34'	35'
Screening Required	Yes	See Landscape Plan
Shading of Paved Areas	30%	See Landscape Plan

² The remaining standards: (1) create certain exemptions for private schools located on property owned by a religious organization and government entities, (2) operate in public buildings owned by Montgomery County, and (3) permit schools established before the 2004 Zoning Ordinance to continue to operate. See, §59-G-2.19(e) through (h).

Conclusion: Having no evidence to the contrary, the Hearing Examiner finds that the proposed use meets the requisite development standards listed in Section 59-G-1.23(a), which includes the development standards of the RE-2 Zone (Section 59-C-1.32) and the parking and landscaping standards contained in Article 59-E. These standards are not set out separately in this Report.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: Mr. Kabatt testified that the Planning Board has already approved a Final Forest Conservation Plan for this site, which will not be altered by this modification. T. 119; Exhibit 55. This standard has been met.

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

Conclusion: Water Quality Plans are used in special protection areas (SPAs), as specified in Zoning Ordinance §59-A-2.1. There is no evidence that the subject property lies within a special protection area and this provision is inapplicable to this case.

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

Conclusion: This modification application proposes no changes to existing signage and is therefore inapplicable.

(g) Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale,

bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

Conclusion: The issue of compatibility has already been discussed earlier. Based on this record, the Hearing Examiner finds that the proposed structures will be compatible with the neighborhood.

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

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

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

Conclusion: Staff advises that the modification meets these requirements, as demonstrated by the Lighting Plan (including a photometric study). The Lighting Plan shows that lighting levels at the side and rear property lines will not exceed 0.1 footcandles. Exhibit 43.

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

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

Conclusion: As discussed above, the proposed structures will be compatible with the neighborhood and will be suitably screened. Appropriate pedestrian circulation throughout the campus and a new bicycle/pedestrian sidepath will be provided. The Hearing Examiner finds that the provisions of this section will be met.

Based on the testimony and evidence of record, I conclude that, with the recommended conditions, the plans proposed by Petitioner meet the specific and general requirements for the proposed uses, and that the Petition should be granted, with the conditions recommended below.

IV. RECOMMENDATION

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition S-687-H, which seeks to modify an existing special exception for a private educational institution, on property located at 10601 Falls Road, Potomac, Maryland, be *granted* with the following conditions:

1. The Petitioner shall be bound by all its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. The Petitioner must comply with the terms of the approved special exception site plan (Exhibit 38), Landscape Plan (Exhibits 70 and 70(a)), and Lighting Plan (Exhibit (43)).
3. Maximum student enrollment is limited to 1,096 students.
4. The maximum number of staff is limited to 272.
5. The Petitioner must construct an 11-foot wide sidepath along the Frontage of Falls Road. Prior to the Use and Occupancy of the Lower School Building, the Petitioner must enter into a new MOU with MCDOT, which will determine the ultimate width, alignment, and timing of construction of the sidepath.
6. The loop drive is restricted to one-way use only, except for emergency vehicle and snowplow access.
7. The loop drive will be closed to non-emergency and non-school owned maintenance/security vehicles after 6:30 p.m. daily from beyond the head-in parking spaces located on the west side of the Discovery Center, except when special activity or events are being held.
8. Petitioner will install speed bumps along the loop drive at appropriate locations to be determined by the Petitioner's traffic consultants and engineers.
9. There will be no amplified music, loudspeaker, or other amplified sound used on the Lower School turf field.

10. There will be no Middle School or Upper school level athletic inter-school competitions on the Lower School turf field.
11. There will be no private outside use of the Lower School turf field.
12. All terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect unless superseded by this modification.
13. The Petitioner and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, and permits, including but not limited to, building permits and use and occupancy permits necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Petitioner and any successors in interest shall, at all times, ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 16th day of June 2023.

Respectfully submitted,



Lynn Robeson Hannan
Hearing Examiner

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