

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue, Suite 217
Rockville, Maryland 20850
<http://www.montgomerycountymd.gov/boa/>
(240) 777-6600

**Case No. S-687-H
PETITION OF BULLIS SCHOOL, INC.**

**OPINION OF THE BOARD
(Opinion Adopted June 28, 2023)
(Effective Date of Opinion: July 12, 2023)**

The Board of Appeals granted Case No. CBA-1344 to the Bullis School on January 2, 1963, pursuant to Section 104-29(m)(1)c5 of the Zoning Ordinance (Chap. 104, Mont. Co. Code 1960, as amended), to permit a private educational institution for more than 40 students. On May 9, 1979, pursuant to Section 59-G-2.19 of the Zoning Ordinance (Chap. 59, Mont. Co. Code, 1977, as amended), the Board granted Case No. S-687 to permit modifications to the existing private educational institution for a library, dining hall, auditorium, dormitory, indoor swimming pool, and faculty houses. Effective August 24, 1989, the Board granted Case No. S-687-A for approval of a revised site master plan and working drawings for a proposed gymnasium. Administrative modifications were granted on June 8, 1994, and December 1, 1994. In Case No. S-687-B, on August 20, 1996, the Board approved a modification to approve the installation of lights around the football field. In Case No. S-687-C, effective August 22, 1997, the Board approved the temporary installation of two modular classrooms. On October 19, 2000, the Board approved Case No. S-687-D, which included (1) the relocation of the arts center to a more central location directly south of the library; (2) the relocation of existing tennis courts to the eastern edge of the access road directly opposite the existing tennis courts and the tennis bubble; (3) the deletion of a proposed cross campus internal road below the tennis bubble; and (4) the completion of a loop road extending from the western access point at Falls Road to connect with the existing road south of the academic facilities and immediately north of the proposed arts center. Effective November 2, 2001, the Board approved Case No. S-687-E, to permit an extension of the implementation period for the site master plan and the continued use of two modular classrooms through September 1, 2002. On July 8, 2002, the Board granted an administrative modification to allow retention of seven accessory buildings. On August 1, 2002, the Board granted an administrative modification to allow the school's enrollment to 'float' up to 604 students during part of the school year. On August 25, 2003, the Board granted an administrative modification to permit changes to the school's motor pool facility.

On July 7, 2004, the Board approved Case Nos. S-687-F and S-687-G to permit 1) an increase in academic enrollment from 604 to 900; 2) an increase in 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. Case No. S-687-G was subsequently modified on January 5, 2007, to allow two additional storage sheds; on May 12, 2011, to reorient the baseball field; on October 24, 2011, to incorporate 24.86 acres of newly acquired land into the special exception property; on August 6, 2012, to allow two modular buildings; on July 19, 2013, to allow an additional scoreboard; on October 28, 2013, to allow construction of the "Discovery Center" in lieu of the previously approved Upper School and Lower School facilities, relocation of a playground, the installation of bleachers at the baseball field, and three additional sheds; and on May 19, 2014, to allow an additional modular unit and an amphitheater. Case Nos. S-687-F and S-687-G were both modified effective May 12, 2015, to allow parking changes; effective December 15, 2015, to allow field lighting for a practice field; effective August 2, 2018, to permit (1) construction of two new surface parking lots, (2) installation of field lighting around an existing practice field, and (3) construction of a new pavilion building behind the School's stadium; and effective January 15, 2022, to permit the expansion of the School's cafeteria facilities.

On April 12, 2022, the Board received a letter and other documentation from Soo Lee-Cho, Esquire, on behalf of the School, requesting a major modification of the School's special exception to (1) increase academic enrollment (grades K-12); (2) allow additional faculty and staff; (3) construct a new Lower School facility and associated internal access road, parking and site improvements, including the conversion of an existing field to artificial turf; and (4) permit the continuation of all existing operations and activities. In a Resolution dated May 6, 2022, the Board referred this major modification request to the Hearing Examiner for Montgomery County to hold a hearing and issue a Report and Recommendation. The Hearing Examiner held a public hearing on the application on May 2, 2023, closed the record in the case ten (10) days later, and on June 12, 2023, issued a Report and Recommendation recommending approval of the modification request with conditions.

The subject property consists of 102.5 acres, identified as Parcel A, Block E, Blenheim Subdivision, recorded as Plat Numbers 24460-24464, and Lots 52 through 62, Block B, Kentsdale Estates Subdivision, Plat Number 23667, in the RE-2 Zone, located at 10601 Falls Road, Potomac, Maryland.

Decision of the Board: Special Exception Modification **GRANTED** with conditions.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at a Worksession held on June 28, 2023. Soo Lee-Cho, Esquire, participated in support of the requested modification. Ms. Lee-Cho noted at the Worksession that the Report and Recommendation focuses on the changes requested

by this modification, but does not mention those aspects of the special exception that are not changing. Ms. Lee-Cho stated that the School has an approved long-term Master Plan, and that the School had provided a list of existing approvals that were not changing as part of their Revised Statement of Justification. See Exhibit 35, pages 12 to 16. She requested that the Board's Opinion contain a general reference to this Statement and the list of existing approvals, and on a motion by Richard Melnick, Vice Chair, seconded by Caryn Hines, the Board unanimously agreed to do so.

The Board finds that the record compiled by the Hearing Examiner is thorough and exhaustive, and that the Report and Recommendation contains clear and detailed conditions of approval. Accordingly, with a technical correction to add "faculty and" to Condition No. 4, and with the addition of language to Condition No. 12 that references the existing approvals listed in the Revised Statement of Justification, the Board adopts the Hearing Examiner's Report and Recommendation for the reasons set forth therein, and grants the requested major modification 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 faculty and 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. The 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.

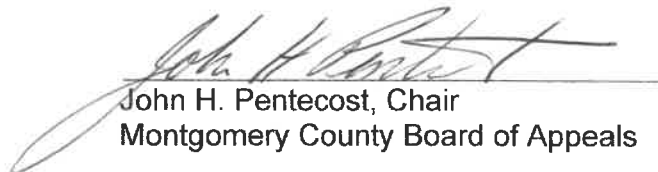
11. There will be no private outside use of the Lower School turf field.

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. The previously granted special exception approvals that are to remain include, but are not limited to, those listed on pages 12-16 of the Petitioner's revised Statement of Justification (i.e. those listed under the heading "Previously Approved Hours of Operations, Special Activity Programs and Approved But Unbuilt Facility Improvements Under 2004 Campus Master Plan to Remain"). See Exhibit 35, pages 12 to 16.

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.

On a motion by John H. Pentecost, Chair, seconded by Alan Sternstein, with Richard Melnick, Vice Chair, Caryn Hines, and Laura Seminario-Thornton in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.


John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 12th day of July, 2023.


Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

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Case No. S-687-H

PETITION OF THE BULLIS SCHOOL

**RESOLUTION TO REFER MAJOR MODIFICATION
TO THE HEARING EXAMINER TO CONDUCT A PUBLIC HEARING AND
ISSUE A REPORT AND RECOMMENDATION**

(Resolution Adopted April 20, 2022)

(Effective Date of Resolution: May 6, 2022)

The Board of Appeals granted Case No. CBA-1344 to the Bullis School on January 2, 1963, to permit the use of a private educational institution for more than 40 students. On May 9, 1979, the Board granted Case No. S-687 to permit modifications to the existing private educational institution for a library, dining hall, auditorium, dormitory, indoor swimming pool, and faculty houses. Effective August 24, 1989, the Board granted Case No. S-687-A for approval of a revised site master plan and working drawings for a proposed gymnasium. Administrative modifications were granted on June 8, 1994, and December 1, 1994. In Case No. S-687-B, on August 20, 1996, the Board approved a modification to approve the installation of lights around the football field. In Case No. S-687-C, effective August 22, 1997, the Board approved the temporary installation of two modular classrooms. On October 19, 2000, the Board approved Case No. S-687-D, which included (1) the relocation of the arts center to a more central location directly south of the library; (2) the relocation of existing tennis courts to the eastern edge of the access road directly opposite the existing tennis courts and the tennis bubble; (3) the deletion of a proposed cross campus internal road below the tennis bubble; and (4) the completion of a loop road extending from the western access point at Falls Road to connect with the existing road south of the academic facilities and immediately north of the proposed arts center. Effective November 2, 2001, the Board approved Case No. S-687-E, to permit an extension of the implementation period for the site master plan and the continued use of two modular classrooms through September 1, 2002. On July 8, 2002, the Board granted an administrative modification to allow retention of seven accessory buildings. On August 1, 2002, the Board granted an administrative modification to allow the school's enrollment to 'float' up to 604 students during part of the school year. On August 25, 2003, the Board granted an administrative modification to permit changes to the school's motor pool facility.

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The Board of Appeals has received an Application and supporting documentation from Soo Lee-Cho, Esquire, on behalf of The Bullis School, seeking a major modification of this special exception. Under the Board's standard procedures for designating cases, this modification would be Board of Appeals' Case No. S-687-H.

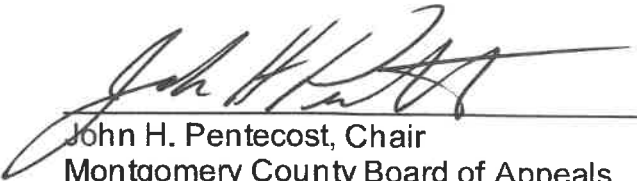
Because Case No. S-687 and associated Case Nos. CBA-1344, S-687-A, -B, -C, -D, -E, -F, and -G were approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, this modification request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant elects otherwise. Section 59-G-1.3(c)(2) of the Montgomery County Zoning Ordinance (2004) provides that the Board "must convene a public hearing" to consider a proposed major modification, and that the request is subject to the requirements of Sections 59-A-4.2 and 59-A-4.4 of that Ordinance, which pertain to filing and scheduling requirements. Section 59-A-4.125(a) of that Ordinance states that:

(a) The Hearing Examiner's Office has the functions and duties of scheduling and conducting public hearings and rendering written reports and recommendations to the County Board of Appeals on the following matters:

- (1) any petition for a special exception; and
- (2) upon request of the Board and with approval of 3 of its members, any other matter pending before the Board.

The Board of Appeals considered Ms. Lee-Cho's submission received at a Worksession held on April 20, 2022. Ms. Lee-Cho participated on behalf of the Bullis School. She stated that the School's previously approved Master Plan has served it well for the past 20 years, and that it was time to look forward to the next 20 years. After considering the nature of the request, the Board voted to refer this major modification application to the Office of Zoning and Administrative Hearings for a public hearing and the issuance of a report and recommendation, in accordance with Section 59-A-4.125(a) of the Zoning Ordinance (2004).¹ Accordingly, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, and Roberto Pinero in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that, pursuant to the authority granted in Section 59-A-4.125 of the Montgomery County Zoning Ordinance (2004), the Board refers the above-described major modification to the Hearing Examiner for Montgomery County to schedule and conduct a public hearing, and for the issuance of a written report and recommendation to the Board of Appeals.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 6th day of May, 2022.



Barbara Jay
Executive Director

NOTE: Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

¹ The Board notes that similar authority exists under Section 59-7.6.2.B.2 of the current Zoning Ordinance, which states in relevant part that "The Hearing Examiner may schedule and conduct a hearing or write a report and recommendation for any other matter pending before the Board of Appeals upon request of the Board of Appeals and with approval of 3 of its members."