

December 10, 2024

**BY ELECTRONIC DELIVERY**

Chair Caryn Hines

And Members of the Board of Appeals  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 217  
Rockville, Maryland 20850

Re: Petition of the Bullis School, Inc.,  
Administrative Modification of Special Exception Case No. S-687-H

Dear Chair Hines and Members of the Board of Appeals:

I am writing on behalf of the Bullis School (“School”), to request an administrative modification of the School’s special exception approval for a private educational institution. The present request seeks neither a physical nor operational change to the School’s special exception, but relates solely to a condition of approval regarding a future sidepath on Falls Road, Condition No. 5, that was included in the Decision of the Board to grant Case No. S-687-H, attached hereto as **Exhibit A**.

The School has operated a private educational institution special exception on its now 102.5 acre campus located at 10601 Falls Road in Potomac since 1963. On April 12, 2022, the Board received a letter from the undersigned requesting a major modification of the School’s special exception to (1) increase academic enrollment (grades K-12) to 1,096 students; (2) allow additional faculty and staff; (3) construct a new Lower School facility and associated internal access road, parking and site improvements; 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 Office of Zoning and Administrative Hearings (“OZAH”) to hold a public hearing and issue a Report and Recommendation. As required, prior to OZAH’s public hearing, the major modification application was first reviewed by the Technical Staff of the Montgomery County Planning Department. A report issued by the Technical Staff, recommending approval of the School’s modification with conditions, was then presented to/considered by the Planning Board at a public meeting held on April 13, 2023.

The undersigned and other School representatives attended the Planning Board meeting and addressed questions and issues of concern, of which there was really only one issue in contention. The School could not agree to accept the proposed text for Condition No. 5 being recommended by Technical Staff.

Technical Staff's recommended language for Condition No. 5 stated as follows:

Prior to the 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.

In response, the School explained to the Planning Board that to require construction of the Falls Road sidepath prior to the release of the Use and Occupancy Permit of the new Lower School (being the principal improvement proposed in the modification application) would be in direct conflict with the School's existing Memorandum of Understanding ("MOU") with the County relative to the Falls Road sidepath, which was first executed in 2010 (see **Exhibit B**) and further affirmed/modified in an Addendum in 2012 (see **Exhibit C**), together the "2010/2012 MOU/Addendum(s)".

The 2010/2012 MOU/Addendum(s) established the School's obligation to construct the sidepath in a manner closely coordinated and timed with the County's construction of the connecting segments of the sidepath to the north and south of the School's frontage. The purpose of the 2010/2012 MOU/Addendum(s) being directly tied to concerns about the safety (or lack thereof) of constructing a sidepath in isolation that simply stops at a dangerous curve on the north end of the School's Falls Road frontage. We further made the point to the Planning Board that the School's Lower School building would most certainly be constructed first (which it now has) and so if the condition language as proposed by Technical Staff is not changed, the School would essentially be prevented from moving forward with the Lower School project. The Planning Board listened and agreed to change the condition to read as follows, which is how it appears in the final Decision of the Board (**Exhibit A**):

**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.**

The revised condition's reference to a 'new MOU' was intended as an update of the 2010/2012 MOU/Addendum(s) to incorporate a wider 11-foot dimension for the sidepath, since it had previously been described as an 8-foot wide path. But, most importantly, the timing of construction was no longer tied to the Lower School's use and occupancy. Following the meeting, the Planning Board issued a recommendation of approval transmitting the above amended condition language to OZAH.

The Hearing Examiner held a public hearing on the School's application on May 2, 2023. While a number of community members participated in the public hearing, neither the issue of the Falls Road sidepath generally nor Condition No. 5 specifically was discussed as it was not an issue of concern for any of the hearing participants. On this issue, the Hearing Examiner simply adopted/incorporated the recommended condition language provided by the Planning Board with no further discussion. The record

in the case was closed ten (10) days later, and on June 12, 2023, issued a Report and Recommendation recommending approval of the modification request with conditions.

Following the final issuance of the Decision of the Board, effective July 12, 2023, the School proceeded to pursue site construction and building permits for its Lower School project. At the same time, we engaged with Montgomery County Department of Transportation (“MCDOT”) to update the 2010/2012 MOU/Addendum(s) as contemplated. The process of revising and exchanging redlines of the updated MOU with MCDOT stretched through May of 2024. The last redline version exchange is attached hereto as **Exhibit D** for the Board’s reference.

Through the Summer and Fall of this year, MCDOT became nonresponsive to repeated inquiries on the status of finalizing/executing the updated MOU that the School had been negotiating for months in good faith. MCDOT ultimately informed the School that they would like to discuss an alternative approach whereby the School would construct a smaller portion of its frontage but on a timeline that is not tied to the County’s construction of the remainder of the Falls Road sidepath project. Because such an approach is completely contrary to the fundamental premise and structure of not only the 2010/2012 MOU/Addendum(s), but also the updated MOU that we had been drafting with MCDOT in good faith for many months, the School informed MCDOT that before it could consider discussing any alternative approach, the requirements of Condition No. 5 would need to first be met or otherwise waived such that the use and occupancy of the Lower School building (which is currently under construction) could not be held in jeopardy in any way.

After conferring with MCDOT’s counsel, Senior County Attorney Cliff Royalty, who confirmed that MCDOT did not have the authority to waive Condition No. 5, I advised the School to execute the last version of the updated MOU on which we had reached agreement with MCDOT in principal, attached hereto as **Exhibit E**. The MOU executed by the School was then duly transmitted to MCDOT. As such, in compliance with Condition No. 5, the School has entered into a new updated MOU with MCDOT.

Through Mr. Royalty, we further communicated to MCDOT that the School’s execution of the updated MOU in no way precludes the possibility of engaging in discussions about an alternative arrangement if that is what MCDOT desires. But for purposes of the pending occupancy of the Lower School, the School needs to remove the unreasonable and unfair risk that Condition No. 5 presents if left unaddressed by the parties and the Board.

Based on the above, we respectfully request that the Board accept **Exhibit E** into the record as evidence of the School’s compliance with Condition No. 5. Enclosed is a current list of adjoining and confronting property owners, a check in the amount of \$756.25, along with the following supporting materials provided as attachments:

- 1) **Exhibit A** – Opinion of the Board in Case No. S-687-H, effective July 12, 2023
- 2) **Exhibit B** – 2010 Memorandum of Understanding (MOU)
- 3) **Exhibit C** – 2012 Addendum to MOU
- 4) **Exhibit D** – Last Version of the Redline Draft of the Update MOU, exchanged with MCDOT on May 15, 2024
- 5) **Exhibit E** – Updated MOU, executed by Bullis School, Inc. on November 20, 2024

December 10, 2024

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Thank you for your consideration. Representatives of the School will be present and available to further discuss and/or answer any questions that the Board might have at the December 18, 2024 Worksession at which this matter will be considered.

Sincerely yours,

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

By:



Soo Lee-Cho

Attachments

cc: Christian Sullivan, Head of School, Bullis School, Inc.



**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.

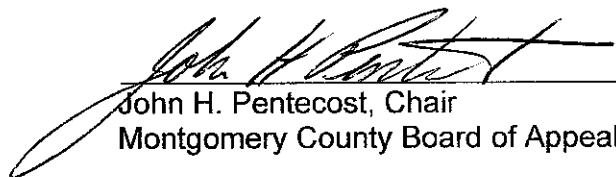
11. There will be no private outside use of the Lower School turf field.

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.

**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**Montgomery County, Maryland**  
**And**  
**The Bullis School**

This MEMORANDUM OF UNDERSTANDING (the “Agreement” or “MOU”) is between MONTGOMERY COUNTY, MARYLAND (the “County”), a body corporate and politic, and THE BULLIS SCHOOL (the “School” or “Applicant”). This MOU becomes effective once all designated representatives of both the School and the County (collectively, the “Parties”) have signed it.

Purpose

The purpose of this Agreement is to specify the terms and conditions relative to the construction of a portion of the Falls Road Hiker-Biker Path Project (CIP No. 500905) (the “Falls Road Hiker-Biker Path” or “Hiker-Biker Path”) to be located along the entire length of the Falls Road frontage of The Bullis School, in Potomac, Maryland.

Recitals

1. The Bullis School filed Preliminary Plan No. 1-20080030 (formerly No. 1-04107) with the Maryland-National Capital Park & Planning Commission (“M-NCPPC”) on June 23, 2004.
2. As a condition of approval of Preliminary Plan No. 1-20080030, the County’s Department of Transportation (hereinafter “MCDOT”) requested that the Applicant be required to either pay for or construct that portion of the Falls Road Hiker-Biker Path to be located along the School’s Falls Road frontage.
3. Applicant submitted to MCDOT an alternative design package for that portion of CIP Project No. 500905 that was to be constructed along Applicant’s Falls Road frontage, entitled “Falls Road Bike Path Alignment” dated February 18, 2008 (hereinafter referred to as the “Bullis Alternative”).
4. At a meeting with Applicant’s representatives on or about October 9, 2008, MCDOT discussed the Bullis Alternative with the Applicant and MCDOT’s desire to have the Applicant construct that portion of the Hiker-Biker Path along the School’s Falls Road frontage. Subsequently, on or about November 6, 2009, the Bullis Alternative was revised to match the County’s alignment of the Hiker-Biker Path at the northeast corner of the School property (hereinafter referred to as the “Revised Bullis Alternative” and attached hereto as Exhibit “A”). MCDOT agreed to recommend entering into this Memorandum of Understanding as a means of outlining the timing of construction and other requirements of the Parties. MCDOT and the School understand that the terms of this MOU are subject to the approval of the County and

do not become binding until executed by an Assistant Chief Administrative Officer for Montgomery County, Maryland.

5. In light of the fact that the specific terms of this MOU could not be finalized before the Planning Board's approval of Preliminary Plan No. 1-20080030, M-NCPPC staff recommended that Condition No. 7 of the preliminary plan approval be drafted in a way that would allow the Applicant to construct an alternative design (acceptable to MCDOT) for the School's portion of the Hiker-Biker Path, other than what was then indicated by CIP Project No. 500905.
6. M-NCPPC staff's recommended language for Condition No. 7 stated as follows: "Applicant must pay for or construct an 8 foot-wide shared use path along the Falls Road Property frontage per CIP Project No. 500905 **or according to MCDOT requirements**". (Emphasis added.)
7. The Applicant accepted Condition No. 7 as recommended by M-NCPPC staff at the Planning Board's March 12, 2009 hearing at which Preliminary Plan No. 1-20080030 was approved based on, among other things, the October 9, 2008 meeting between MCDOT and the Bullis School referenced in Paragraph 4 above.
8. The Board Opinion/Resolution of the approval was mailed on April 1, 2009 and is attached hereto as Exhibit "B".
9. In accordance with Chapter 50 of the Montgomery County Code, the Initiation Date for Preliminary Plan No. 1-20080030 is 30 days from the date of mailing of the Board Opinion/Resolution, i.e., May 1, 2009.

#### Mutual Agreements

NOW THEREFORE, in consideration of the above recitals, which are incorporated into this Agreement as if fully set forth, and for and in consideration of the good and valuable agreements and covenants as hereinafter contained, County and the School agree as follows:

1. The School shall obtain any and all applicable construction permits from the County and complete construction of that portion of the Falls Road Hiker-Biker Path to be located along the School's Falls Road frontage in substantial accordance with the Revised Bullis Alternative and related Cost Estimate (which constitutes the scope of work agreed upon by the Parties for the School's portion of the Path), attached hereto as Exhibit "C", within 5 years of the Initiation Date of Preliminary Plan No. 1-20080030, i.e., May 1, 2014, or as further extended in accordance with Paragraph 2 below.
2. It is the intent of the Parties to closely coordinate the start of construction of the Revised Bullis Alternative with the County's construction schedule for the adjoining portions of CIP No. 500905 to the north and south of the School's Falls Road frontage. In that regard, the Parties agree that to the extent that the County's

completion schedule for CIP No. 500905 (attached hereto as Exhibit "D") is modified or delayed, that a proportional extension of time for completion of the Revised Bullis Alternative will be applied.

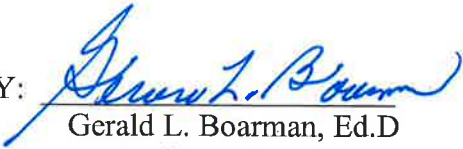
3. The County will notify the School in writing of any changes/delays in the County's construction schedule for CIP No. 500905 and this Memorandum of Understanding will be modified by mutual consent of the Parties accordingly.
4. The School shall submit a County approved performance bond or a County approved irrevocable letter of credit from a financial institution to MCDOT in the amount of \$700,000.00, prior to record plat approval. The bond/credit amount of \$700,000.00 is based upon a mutually agreed upon scope of work for the Revised Bullis Alternative (outlined in the attached Cost Estimate, referenced as Exhibit "C"), which does not include use of porous paving, any path lighting or replacement landscaping, among other things, but must be constructed to meet all specifications and permitting requirements as set forth by applicable laws and regulations. The bond/letter of credit shall terminate/be released after construction of the Revised Bullis Alternative is complete and accepted by the County as having met all specifications required by any and all permits issued for the Hiker-Biker Path. If the School does not complete its construction by May 1, 2014, or as further extended by mutual agreement of the Parties, and such construction is not accepted by the County, then the County shall have the right to call the bond or execute on the letter of credit to recover any costs the County may incur by the School's failure to perform.
5. The County shall be responsible for installation of path lighting, if any, or provide adequate funds to the School to cover the cost of installing any path lighting (inclusive of the costs of fixtures, poles and other infrastructure) that may be required along that portion of the Hiker-Biker Path. Notwithstanding the preceding sentence, the Parties agree that the School, as part of its construction of the Hiker-Biker Path, will install the necessary conduit for the path lighting at no cost to the County.
6. In the event that the State Highway Administration (SHA) realigns the Falls Road right-of-way in accordance with a modified realignment plan approved by the SHA in conjunction with its review of Preliminary Plan No. 1-20080030, the School agrees that it will be responsible for the costs of relocating that portion of the Hiker-Biker Path located along the School's Falls Road frontage that is impacted by said realignment.
7. The school will dedicate the Hiker-Biker Path located along the School's Falls Road frontage to public use and will execute such additional documents as may be required by the governmental entity responsible for maintenance of the Hiker-Biker Path located along the School's Falls Road frontage. Other than as required by law, the Parties agree that the School will not be required to maintain the Hiker-Biker Path.



8. Any obligation or liability of the County arising in any way from this Agreement is subject to, limited by, and contingent upon the appropriation and availability of funds.
9. This Agreement may be amended only by the mutual consent of the Parties in writing.
10. The persons executing this Agreement on behalf of the Parties have the full power and legal authority to bind the Parties to this Agreement.

THE BULLIS SCHOOL  
 10601 Falls Road  
 Potomac, MD 20854

MONTGOMERY COUNTY, MARYLAND  
 Executive Office Building  
 101 Monroe Street  
 Rockville, Maryland 20850-2540

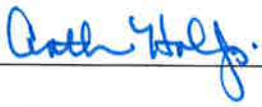
BY:   
 Gerald L. Boarman, Ed.D  
 Head of School

BY:   
 Diane Schwartz Jones  
 Assistant Chief Administrative Officer

Date: 8/11/10

Date: 10/5/10


Approval Recommended:

BY:   
 Director  
 Department of Transportation

Date: 21 SEPT 10

Approved as to form and legal sufficiency  
 by the Office of the County Attorney:

This 17<sup>th</sup> day of September 20 10

BY:   
 Assistant County Attorney

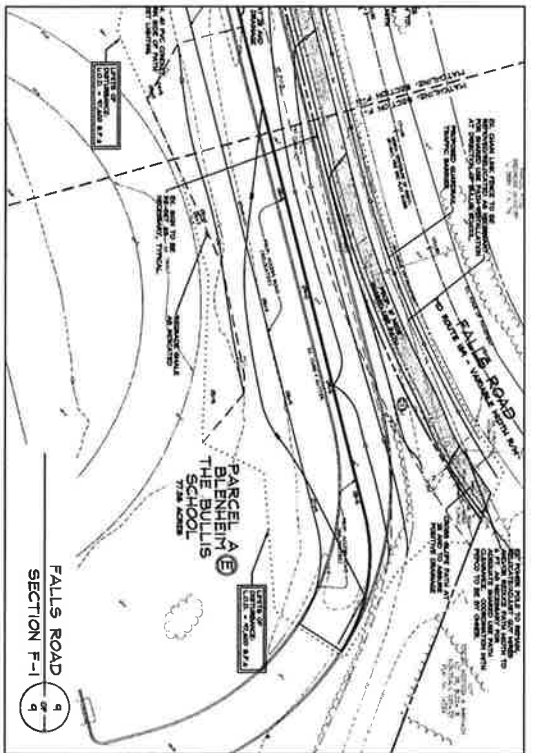
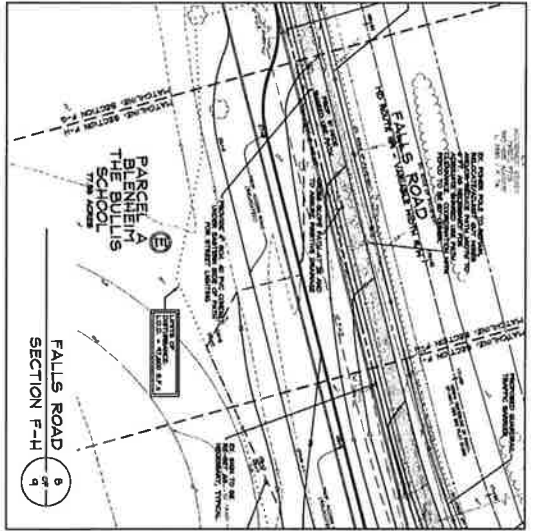












10611 FALLS ROAD  
 PARCEL A, BLOCK E, BLENHEIM  
 PLAT RECORDATION PENDING

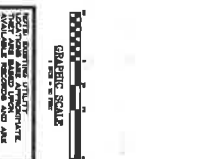
**THE BULLIS SCHOOL**  
 ROCKVILLE (4TH) ELECTION DISTRICT  
 MONTGOMERY COUNTY, MARYLAND  
**FALLS ROAD SHARED  
 USE PATH LAYOUT (4 OF 4)**

DATE	BY	REVISION	DATE
07-08-10	DCL	PROVISION SET TO CLIENT	04/2010
	DCL	METAL SUBMITTAL TO PERMA	DCL
	DCL	REVISION FOR PERMA AND PERMIT COMMENTS	CAB

**APPLICANT**  
 THE BULLIS SCHOOL  
 10611 FALLS ROAD  
 ROCKVILLE, MARYLAND 20851  
 CONTACT: [Name Redacted]

**TOPSOIL NOTE**  
 ALL EXISTING AND PROPOSED AREAS SHALL BE TOPSOILED PER THE REQUIREMENTS OF THE MARYLAND DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) AND THE MARYLAND DEPARTMENT OF TRANSPORTATION (MDOT) TO A DEPTH OF 6 INCHES. TOPSOIL SHALL BE STORED AT THE PROJECT SITE TO PREVENT EROSION AND POLLUTION.

**MISS UTILITY**  
 THE LOCATION OF ALL EXISTING AND PROPOSED MISS UTILITIES SHALL BE DETERMINED BY THE ENGINEER PRIOR TO CONSTRUCTION. THE ENGINEER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND RECORDATIONS FOR ALL MISS UTILITIES.



**LEGEND**

SYMBOL	DESCRIPTION
(Solid line)	EXISTING ROAD RIGHT-OF-WAY
(Dashed line)	EXISTING ROAD CENTERLINE
(Dotted line)	EXISTING ROAD EASEMENT
(Thick solid line)	PROPOSED ROAD RIGHT-OF-WAY
(Thick dashed line)	PROPOSED ROAD CENTERLINE
(Thick dotted line)	PROPOSED ROAD EASEMENT
(Thin solid line)	EXISTING PROPERTY BOUNDARY
(Thin dashed line)	PROPOSED PROPERTY BOUNDARY
(Thin dotted line)	EXISTING UTILITY
(Thick solid line)	PROPOSED UTILITY
(Thin solid line)	EXISTING FENCE
(Thick solid line)	PROPOSED FENCE
(Thin solid line)	EXISTING CURB
(Thick solid line)	PROPOSED CURB
(Thin solid line)	EXISTING DRIVEWAY
(Thick solid line)	PROPOSED DRIVEWAY
(Thin solid line)	EXISTING SIDEWALK
(Thick solid line)	PROPOSED SIDEWALK
(Thin solid line)	EXISTING TRAIL
(Thick solid line)	PROPOSED TRAIL
(Thin solid line)	EXISTING PATH
(Thick solid line)	PROPOSED PATH

MDSHA NO.  
 10611 FALLS ROAD  
 PARCEL A, BLOCK E, BLENHEIM  
 THE BULLIS SCHOOL  
 FALLS ROAD SHARED  
 USE PATH LAYOUT (4 OF 4)

**CS ENGINEERING**  
 CIVIL - SURVEYING - LAND PLANNING  
 A DIVISION OF CAS ENTERPRISES, INC.  
 108 West Ridgeville Blvd., Suite 101, Mount Airy, Maryland 21771  
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**MONTGOMERY COUNTY PLANNING BOARD**  
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

APR - 1 2009

**MCPB No. 09-30**  
**Preliminary Plan No. 120080030**  
**The Bullis School**  
**Date of Hearing: March 12, 2009**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION<sup>1</sup>**

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on June 23, 2004, The Bullis School, Inc. ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 1 lot on 77.63 acres of land located in the northeast quadrant of the intersection of Falls Road and Democracy Boulevard ("Property" or "Subject Property"), in the Potomac master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120080030, The Bullis School ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated February 19, 2009 and revised on March 5, 2009 setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on March 12, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

<sup>1</sup> This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

Approved as to  
 Legal Sufficiency:

8787 Georgia Avenue, N.C. Special Services Department 9910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

[www.MCParkandPlanning.org](http://www.MCParkandPlanning.org) E-Mail: [mcp-chairman@mncppc.org](mailto:mcp-chairman@mncppc.org)

WHEREAS, on March 12, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Cryor; seconded by Commissioner Robinson; with a vote of 4-0, Commissioners Alfandre, Cryor, Hanson, and Robinson voting in favor, Commissioner Presley being absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120080030 to create 1 lot on 77.63 acres of land located in the Northeast quadrant of the intersection of Falls Road and Democracy Boulevard ("Property" or "Subject Property"), in the Potomac master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to one recorded parcel for a private educational institution with a maximum student enrollment of 900 students. The approval includes expansion/construction of various on-site improvements/facilities including a new Lower School Building and new Upper School Building as shown on the Preliminary Plan.
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
- 3) The record plat must reflect a Category I easement over areas of stream valley buffers and forest conservation.
- 4) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated August 29, 2007. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 5) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated July 1, 2008. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) The Applicant must construct an 8 foot-wide shared use path along the Democracy Boulevard Property frontage as shown on the Preliminary Plan and as required in the MCDOT letter dated July 1, 2008.
- 7) The Applicant must pay for or construct an 8 foot-wide shared use path along the Falls Road Property frontage per CIP Project No. 500905 or according to MCDOT requirements.
- 8) The Applicant must comply with the conditions of the Maryland State Highway Administration (MDSHA) letter dated September 11, 2008.
- 9) The Applicant must dedicate 5 feet of additional right-of-way along the Democracy Boulevard property frontage as shown on the Preliminary Plan.



- 10) The Applicant must dedicate right-of-way along the Falls Road property frontage as shown on the Preliminary Plan to provide for the 8 foot-wide shared use path.
- 11) The Applicant must create an easement for future dedication for the remainder of the Falls Road right-of-way as shown on the Preliminary Plan. The Applicant must record a covenant with MDSHA detailing the terms for future dedication of the easement and relocation of the constructed 8 foot-wide shared use path, and the record plat must reference this covenant.
- 12) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s) and MDSHA prior to issuance of access permits.
- 13) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for one hundred twenty-one (121) months from the date of mailing of the Planning Board Resolution by which time building permits must be issued for the new lower school and upper school buildings or an extension request must be filed.
- 14) Other necessary easements must be shown on the record plat.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

*1. The Preliminary Plan substantially conforms to the Master Plan.*

The 2002 Potomac Subregion Master Plan references public school capacity and identifies sites for new facilities but makes no specific recommendations for private institutional uses. The land use and zoning section of the Master Plan "supports the retention and reconfirmation of existing zoning for all developed, underdeveloped and undeveloped land in the Subregion, except for those sites recommended for change in the Plan" (p. 40). The land use and zoning section of the Master Plan also lists design principles established to preserve the Subregion's green and rural character while creating a pedestrian and bicycle-friendly environment. The Bullis School Preliminary Plan satisfies the land use intent of the Master Plan in that it retains significant open space and the required shared use path construction along the Property's Falls Road and Democracy Boulevard frontages will expand the pedestrian and bicycle network in the area. The Planning Board finds the Preliminary Plan substantially conforms to the Master Plan.

*2. Public facilities will be adequate to support and service the area of the proposed subdivision.*

Roads and Transportation Facilities

Access to the site is provided from Falls Road and Democracy Boulevard. Falls Road is classified as a major highway with a recommended right-of-way of 120 feet. The Master Plan recommends realignment of Falls Road along the Bullis School property frontage. The Applicant has proposed dedication boundaries for re-alignment of Falls Road which have been reviewed and approved by MDSA. The Preliminary Plan incorporates the Master Plan required rights-of-way for Falls Road and Democracy Boulevard. Currently, sidewalks do not exist along Falls Road or Democracy Boulevard. As a result, the Applicant is required to construct an 8-foot wide shared use path along Democracy Boulevard and either construct or pay for the construction of the Falls Road shared use path along the Property's respective frontage. There is a Ride-On bus stop along the school's Falls Road frontage near the main entrance to the school. As required by MCDOT, the Applicant must provide a concrete bus pad or other improvements deemed necessary by MCDOT. The Planning Board finds the proposed access to the site and the internal circulation and walkways as shown on the preliminary plan will be safe and adequate for vehicles and pedestrians.

Other Public Facilities and Services

The Planning Board finds that other public facilities and services are available and adequate to serve this private institution. The Subject Property is served by existing public water and sewer connections. Gas, electric and telecommunications services are available to serve the property. Police stations, firehouses and health services are currently operating within the standards set by the applicable Growth Policy Resolution currently in effect. The Application has been reviewed and approved by the Montgomery County Fire and Rescue Service (MCFRS) who have determined that the Property has adequate access for emergency vehicles.

- 3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections, including section 50-35(h)(2)(C) for adequate public validity period extensions. The proposed recorded parcel size, width, shape and orientation are appropriate for the location of the subdivision.

The proposed recorded parcel for the school facilities was reviewed for compliance with the dimensional requirements for the RE-2 zone as specified in the Zoning Ordinance. The recorded parcel as proposed far exceeds the dimensional requirements for area, frontage, width and setbacks in the RE-2 zone because it reflects the appropriate boundary of the existing institutional use.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

Environmental Guidelines

The Subject Property contains 11.35 acres of stream valley buffer (SVB) of which 8.75 acres are forested. The Applicant has proposed to plant another 1.01 acres of SVB for a total 9.85 acres of forested SVB. The areas of SVB that are not forested or planted are part of the pre-existing school. The forest conservation plan satisfies the applicable requirements for protection of environmentally sensitive areas.

Forest Conservation

The Applicant has a previously approved forest conservation plan (FCP) that was submitted as part of the special exception case for the site. Because the Preliminary Plan is considered a new application, a new preliminary FCP was required. The FCP submitted as part of the Preliminary Plan application addresses the expansion to the school's facilities and required site improvements such as sidewalks and bike paths.

The Subject Property contains 20.53 acres of forest; this number includes 19.43 acres of existing forest and 1.1 acres of forest cleared under the previously approved FCP. The Applicant proposes to clear 3.81 acres of forest and retain 16.72 acres of forest. The required calculations indicate that the FCP includes 0.12 acres on the positive side of the break-even point. As a result, additional planting is not required. The Applicant has, however, proposed 1.01 acres of forest planting within the stream valley buffer (SVB) to compensate for encroachments into the SVB that currently exist on the Property. The Planning Board finds the Application complies with all applicable requirements of Chapter 22A the Montgomery County Forest Conservation Law.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on August 29, 2007 which consists of on-site channel protection measures via two underground storage facilities and an existing on-site pond. On-site water quality control is to be provided for a total

area equivalent to or greater than the total new impervious area. Water quality for the shared use paths will be provided by adjacent grass swales.

6. *The Planning Board finds a ten year adequate public facilities period is appropriate for the proposed subdivision and an extended Adequate Public Facilities validity period of 121 months is granted.*

Chapter 50, the Subdivision Regulations, establishes a minimum of 5 years for the validity period of the adequate public facilities (APF) approval. However, this period can be extended if a phasing schedule is submitted and approved by the Planning Board. Per Section 50-20(c)(3)(C) of the Subdivision Regulations, the Applicant requested approval of an APF validity period for a maximum of ten (10) years. The Applicant submitted a phasing plan, as required, and requested that the APF validity period be imposed only on facility improvements which will directly result in an increase in enrollment, and therefore, vehicle trips. Such proposed improvements include a new Lower School with a maximum of 20,000 square feet of gross floor area and a new Upper School with a maximum of 70,000 square feet of gross floor area. Typically, the proposed phasing plan should stipulate the amount of construction an Applicant intends to complete within the initial 5 years of the validity period, but in this case, due to the significant fund raising period necessary for a private educational institution project of this size and scope the Applicant is uncertain about when construction will start. The Applicant plans to construct the Upper School first, and their intent is to begin construction as soon as possible after the plat is recorded.

The Planning Board finds a ten year validity period is justified even though the start date for construction may occur after 5 years because the APF approval does not require specific road improvements and the bike path construction along Falls Road and Democracy Boulevard will be required to at least be bonded at the time the plat is recorded. The Planning Board, therefore, finds that allowing additional time for school construction to begin is not adverse to the public interest and the extended APF period is granted.

**BE IT FURTHER RESOLVED**, that this Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the land records of Montgomery County, Maryland or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that the date of this Resolution is APR 17 2009 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Presley, seconded by Commissioner Robinson, with Commissioners Hanson, Robinson, Cryor, and Presley present and voting in favor of the motion, and Commissioner Alfandre absent, at its regular meeting held on Thursday, March 26, 2009, in Silver Spring, Maryland.

  
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Royce Hanson, Chairman  
Montgomery County Planning Board

PROJECT: Falls Road Bikeway - Bulls School Breakout Estimate  
 SUBMISSION: Feb-08  
 BY: DOM

ITEM #	CAT CODE	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT	ADTEK Estimate	Difference	
							Quantity	Unit Price	Amount
1001	110100	CLEARING & GRUBBING	LS	1	\$ 15,000.00	\$ 15,000	1	\$ 15,000.00	\$ 15,000
1002	110340	TYPE A ENGINEERS OFFICE	LS	1	\$ 20,000.00	\$ 20,000	0	\$ 20,000.00	\$ -
1003	120500	MAINTENANCE OF TRAFFIC	LS	1	\$ 30,000.00	\$ 30,000	1	\$ 10,000.00	\$ 10,000
1004	130840	CONSTRUCTION STAKEOUT	LS	1	\$ 10,000.00	\$ 10,000	1	\$ 8,000.00	\$ 8,000
1005	130850	MOBILIZATION	LS	1	\$ 100,000.00	\$ 100,000	1	\$ 7,000.00	\$ 7,000
<b>CATEGORY 1 SUBTOTAL</b>						<b>\$ 175,000</b>		<b>\$ 40,000</b>	<b>(\$135,000)</b>
2001	201030	CLASS 1 EXCAVATION	CY	1,200	\$ 50.00	\$ 60,000	1,200	\$ 50.00	\$ 60,000
2002	203030	TEST PIT EXCAVATION	CY	10	\$ 150.00	\$ 1,500	0	\$ 150.00	\$ -
<b>CATEGORY 2 SUBTOTAL</b>						<b>\$ 61,500</b>		<b>\$ 60,000</b>	<b>(\$1,500.00)</b>
3001	301006	STABILIZED CONSTRUCTION ENTRANCE	TON	160	\$ 35.00	\$ 5,600	160	\$ 35.00	\$ 5,600
3002	301007	REHABILITATE STABILIZED CONSTRUCTION ENTRANCE	TON	80	\$ 35.00	\$ 2,800	80	\$ 35.00	\$ 2,800
3003	301010	CLASS 3 EXCAVATION FOR INCIDENTAL CONSTRUCTION	CY	10	\$ 35.00	\$ 350	10	\$ 35.00	\$ 350
3004	301320	CLEAN EXISTING PIPE ANY SIZE	LF	40	\$ 15.00	\$ 600	1	\$ 19.00	\$ 15
3005	301322	CLEAN EXISTING INLETS	EA	1	\$ 500.00	\$ 500	1	\$ 500.00	\$ 500
3006	354424	STANDARD TYPE C ENDWALL FOR 24 INCH PIPE	EA	1	\$ 2,500.00	\$ 2,500	1	\$ 2,500.00	\$ 2,500
3007	388059	EROSION AND SEDIMENT CONTROL CLEANOUT EXCAVATION	CY	50	\$ 25.00	\$ 1,250	50	\$ 25.00	\$ 1,250
3008	388066	INLET PROTECTION	EA	3	\$ 200.00	\$ 600	3	\$ 200.00	\$ 600
3009	390535	SUPER SILT PIPE	LF	4,105	\$ 8.00	\$ 32,840	4,105	\$ 5.00	\$ 20,525
3010	300000	15 INCH HDPE PIPE	LF	210	\$ 70.00	\$ 14,700	210	\$ 70.00	\$ 14,700
3011	300000	24 INCH HDPE PIPE	LF	14	\$ 100.00	\$ 1,400	14	\$ 100.00	\$ 1,400
<b>CATEGORY 3 SUBTOTAL</b>						<b>\$ 63,140</b>		<b>\$ 60,240</b>	<b>(\$2,900)</b>
4001	400000	RETAINING WALL - RT STA 159+10 TO STA 162+28.25	LS	1	\$ 57,300.00	\$ 57,300	0	\$ 57,300.00	\$ -
<b>CATEGORY 4 SUBTOTAL</b>						<b>\$ 57,300</b>		<b>\$ -</b>	<b>(\$57,300.00)</b>
5001	520111	4 INCH GRADED AGGREGATE BASE COURSE	SY	3,000	\$ 8.00	\$ 24,000	5,000	\$ 8.00	\$ 40,000
5002	500000	HMA SURFACE FOR BIKEPATH	TON	600	\$ 80.00	\$ 48,000	1,000	\$ 80.00	\$ 80,000
<b>CATEGORY 5 SUBTOTAL</b>						<b>\$ 72,000</b>		<b>\$ 120,000</b>	<b>(\$48,000)</b>
6001	634310	STANDARD TYPE A COMBINATION CURB AND GUTTER 12 INCH GUTTER PAN 10 INCH DEPTH	LF	360	\$ 25.00	\$ 9,000	0	\$ 25.00	\$ -
6003	661510	TYPE C TRAFFIC BARRIER END TREATMENT	EA	2	\$ 3,000.00	\$ 6,000	0	\$ 3,000.00	\$ -
6004	685163	REMOVE AND RESET EXISTING FENCE	LF	2,400	\$ 20.00	\$ 48,000	0	\$ 20.00	\$ -
6005	600000	NEW FENCE (METAL, ORNAMENTAL)	LF	318	\$ 70.00	\$ 22,260	2,700	\$ 30.00	\$ 81,000
6006	600000	TRAFFIC BARRIER W-BEAM USING 6 FOOT POST WITH TIMBER BACKING	LF	320	\$ 35.00	\$ 11,200	0	\$ 35.00	\$ -
<b>CATEGORY 6 SUBTOTAL</b>						<b>\$ 96,460</b>		<b>\$ 81,000</b>	<b>(\$15,460)</b>

PROJECT: Falls Road Bkwy - Bulls School Breakout Estimate  
 SUBMISSION: Feb-08  
 BY: DOM

ITEM #	CAT. CODE	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT	ADTEK Estimate	Difference	
7001	706346	PLACING FURNISHED TOPSOIL 4 INCH DEPTH	SY	4,500	6.00	\$ 27,000	4,500	\$ 27,000	\$0.00
7002	706400	TEMPORARY SEEDING	LB	170	25.00	\$ 4,250	0	\$ 0	(\$4,250.00)
7003	706412	TEMPORARY MULCHING	SY	4,500	0.85	\$ 3,825	0	\$ 0	(\$3,825.00)
7004	707355	PERMANENT SEEDING	SY	4,500	0.60	\$ 2,700	4,500	\$ 2,700	\$0.00
7005	707475	REFERTILIZING TOPSOILED AREAS	LB	620	1.20	\$ 744	620	\$ 744	\$0.00
7006	714001	ADDITIONAL WATERING OF PLANTS	MG	51	80.00	\$ 4,080	51	\$ 4,080	\$0.00
7007	700000	CANOPY TREES (2" CALIPER, BAB)	EA	88	350.00	\$ 30,800	0	\$ 0	(\$30,800.00)
7008	700000	FLOWERING TREES (6' HEIGHT, BAB)	EA	70	300.00	\$ 21,000	0	\$ 0	(\$21,000.00)
7009	700000	SMALL SHRUBS (24" HEIGHT, CONT)	EA	253	55.00	\$ 13,916.50	0	\$ 0	(\$13,916.50)
7010	700000	MEDIUM SHRUBS (30" HEIGHT, BAB)	EA	61	87.00	\$ 5,307.00	0	\$ 0	(\$5,307.00)
7011	700000	PERENNIALS / ORNAMENTAL GRASSES (2 GAL CONT)	EA	560	15.00	\$ 8,400.00	0	\$ 0	(\$8,400.00)
7012	700000	GROUNDCOVERS (1 QT. CONT)	EA	560	3.00	\$ 1,680.00	0	\$ 0	(\$1,680.00)
CATEGORY 7 SUBTOTAL						\$ 115,061		\$ 34,524	(\$80,527)
8001	813023	RELOCATE EXISTING GROUND MOUNTED SIGNS	SF	170	30.00	\$ 5,100	170	\$ 5,100	\$0.00
8002	800000	RELOCATE UTILITY POLES	EA	10	50,000.00	\$ 500,000	0	\$ 0	(\$500,000.00)
8003	800000	RELOCATE FIRE HYDRANT	EA	3	5,000.00	\$ 15,000	0	\$ 0	(\$15,000.00)
8004	800000	ADJUST MANHOLE TO FINISHED GRADE	EA	2	750.00	\$ 1,500	2	\$ 1,500	\$0.00
8005	800000	RELOCATE GUY WIRE	EA	1	500.00	\$ 500	1	\$ 500	\$0.00
8006	800000	PATH SIGNING	LS	1	1,400.00	\$ 1,400	1	\$ 1,400	\$0.00
8007	800000	PATH LIGHTING	LS	1	\$ 250,000.00	\$ 250,000	0	\$ 0	(\$250,000.00)
CATEGORY 8 SUBTOTAL						\$ 773,500		\$ 8,500	(\$765,000)
CATEGORY 9 SUBTOTAL						\$ 6,000		\$ -	(\$6,000.00)
CATEGORIES 1 - 9 SUBTOTAL						\$ 1,419,951		\$ 394,264	(\$1,025,687)
+15% CONTINGENCIES						\$ 212,993		\$ 59,140	(\$153,853)
TOTAL						\$ 1,632,944		\$ 453,404	(\$1,179,540)
SAY						\$ 1,633,000		\$ 453,500	(\$1,179,500)

## Falls Road East Side Hiker/ Biker Path -- No. 500905

Category  
Subcategory  
Administering Agency  
Planning Area

Transportation  
Pedestrian Facilities/Bikeways  
Transportation  
Potomac-Travilah

Date Last Modified  
Required Adequate Public Facility  
Relocation Impact  
Status

January 08, 2010  
No  
None.  
Final Design Stage

### EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY09	Est. FY10	Total 6 Years	FY11	FY12	FY13	FY14	FY15	FY16	Beyond 6 Years
Planning, Design, and Supervision	1,095	0	0	720	0	0	0	195	90	435	375
Land	3,900	0	0	3,900	0	0	0	1,166	1,525	1,209	0
Site Improvements and Utilities	3,000	0	0	3,000	0	0	0	0	1,500	1,500	0
Construction	12,870	0	0	6,675	0	0	0	0	0	6,675	6,195
Other	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>20,865</b>	<b>0</b>	<b>0</b>	<b>14,295</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,361</b>	<b>3,115</b>	<b>9,819</b>	<b>6,570</b>

### FUNDING SCHEDULE (\$000)

G.O. Bonds	14,546	0	0	10,185	0	0	0	1,361	1,985	6,839	4,361
Impact Tax	6,244	0	0	4,110	0	0	0	0	1,130	2,980	2,134
Intergovernmental	75	0	0	0	0	0	0	0	0	0	75
<b>Total</b>	<b>20,865</b>	<b>0</b>	<b>0</b>	<b>14,295</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,361</b>	<b>3,115</b>	<b>9,819</b>	<b>6,570</b>

#### DESCRIPTION

This project provides funds to develop final design plans and to acquire right-of-way, and to construct approximately 4 miles of an 8-foot bituminous hiker/biker path along the east side of Falls Road from River Road to Dunster Road. Falls Road is classified as a major highway and has a number of side street connections along the project corridor. The path will provide pedestrians and cyclists safe access to communities along this project corridor, and will provide connection to existing pedestrian facilities to the north (Rockville) and to the south (Potomac).

#### ESTIMATED SCHEDULE

Design to be completed in the fall of 2013. Right-of-way acquisition is expected to start in the winter of 2014 and will take approximately 18 months to complete. Construction is expected to start in the summer of 2015 and take approximately 24 months to complete.

#### COST CHANGE

Cost increase due to more accurate design and construction cost escalation.

#### JUSTIFICATION

The path provides much needed access to public transportation along Falls Road. The path will provide pedestrian access to the following destinations: bus stops along Falls Road, Bullis School, Ritchie Park Elementary School, Potomac Community Center, Potomac Library, Potomac Village Shopping Center, Potomac Promenade Shopping Center, Heritage Farm Park, Falls Road Golf Club, Falls Road Park, and a number of religious facilities along Falls Road.

The 2002 Potomac Subregion Master Plan calls for a Class I (off-road) bike path along Falls Road from the Rockville City limit to MacArthur Boulevard. The path is a missing link between existing bicycle facilities within the City of Rockville and existing path along Falls Road south of River Road.

#### OTHER

Montgomery County Department of Transportation has completed Phase 2 Facility Planning, preliminary design, with funds from the Annual Bikeway Program.

Special Capital Projects Legislation will be proposed by the County Executive.

#### FISCAL NOTE

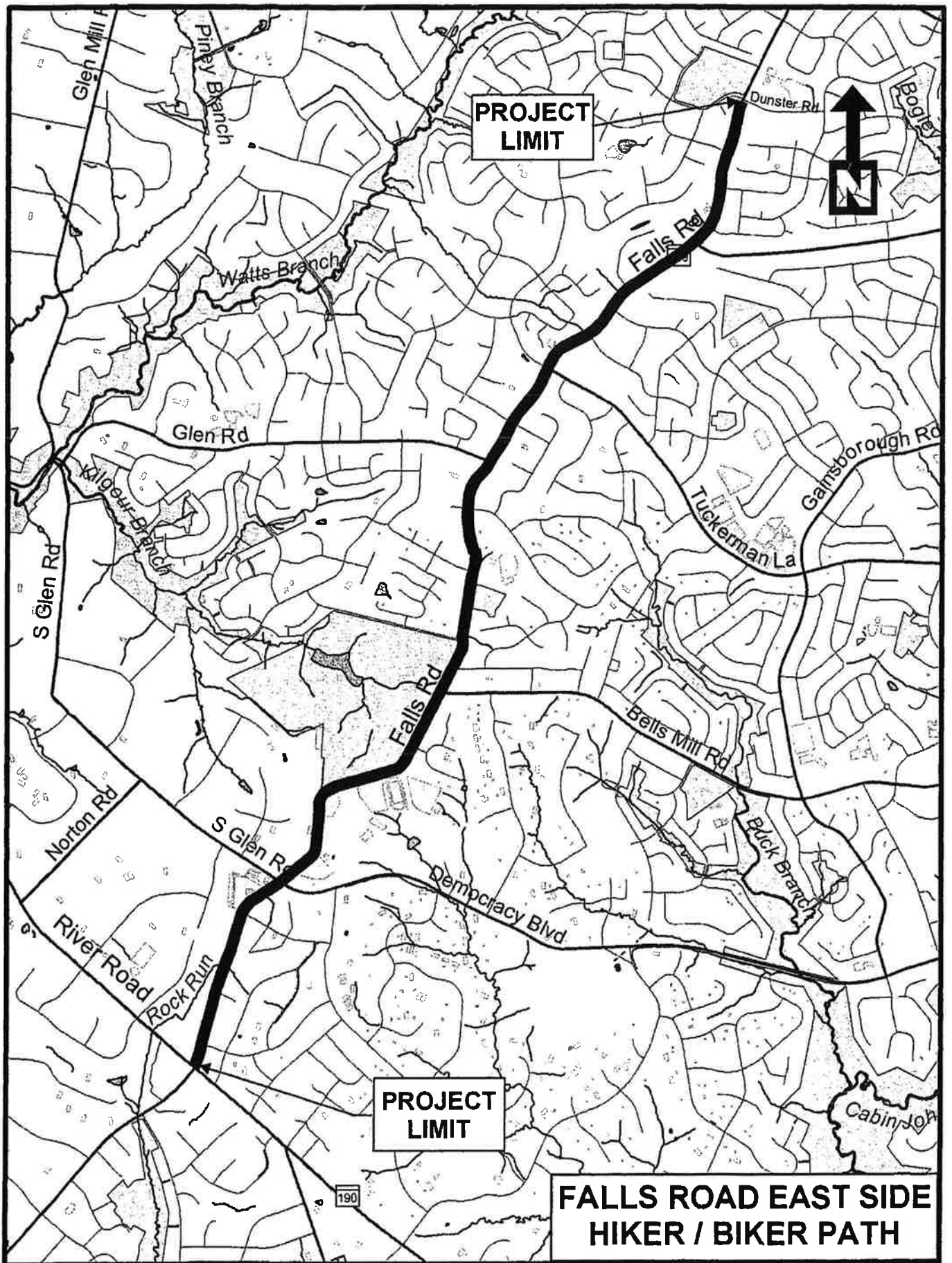
Expenditure schedule reflects fiscal capacity. Intergovernmental revenue represents the Washington Suburban Sanitary Commission's (WSSC) portion of the water and sewer relocation costs. Federal Transportation Enhancement Funds will be pursued after property acquisition has been completed.

#### OTHER DISCLOSURES

- A pedestrian impact analysis has been completed for this project.

APPROPRIATION AND EXPENDITURE DATA			COORDINATION	MAP
Date First Appropriation		(\$000)	Maryland-National Capital Park and Planning Commission State Highway Administration Utility Companies Department of Environmental Protection Department of Permitting Services Washington Gas PEPCO Verizon Maryland Department of Natural Resources Annual Bikeway Program	See Map on Next Page
First Cost Estimate	FY09	16,760		
Current Scope				
Last FY's Cost Estimate		16,760		
Appropriation Request	FY11	0		
Appropriation Request Est.	FY12	0		
Supplemental Appropriation Request		0		
Transfer		0		
Cumulative Appropriation		0		
Expenditures / Encumbrances		0		
Unencumbered Balance		0		
Partial Closeout Thru	FY08	0		
New Partial Closeout	FY09	0		
Total Partial Closeout		0		





**ADDENDUM TO  
MEMORANDUM OF UNDERSTANDING  
Between  
Montgomery County, Maryland  
And  
The Bullis School**

This ADDENDUM TO MEMORANDUM OF UNDERSTANDING (the "Addendum") is between MONTGOMERY COUNTY, MARYLAND (the "County"), a body corporate and politic, and THE BULLIS SCHOOL (the "School" or "Applicant"). This Addendum becomes effective once all designated representatives of both the School and the County (collectively, the "Parties") have signed it.

Purpose

The purpose of this Addendum is to amend certain terms and conditions contained in a Memorandum of Understanding executed between the Parties, made effective on October 5, 2010 ("2010 MOU"), relative to the construction of a portion of the Falls Road Hiker-Biker Path Project (CIP No. 500905) (the "Falls Road Hiker-Biker Path" or "Hiker-Biker Path") to be located along the entire length of the Falls Road frontage of The Bullis School, in Potomac, Maryland.

Recitals

1. The Bullis School filed Preliminary Plan No. 1-20080030 (formerly No. 1-04107) with the Maryland-National Capital Park & Planning Commission ("M-NCPPC") on June 23, 2004.
2. As a condition of approval of Preliminary Plan No. 1-20080030, the County's Department of Transportation (hereinafter "MCDOT") requested that the Applicant be required to either pay for or construct that portion of the Falls Road Hiker-Biker Path to be located along the School's Falls Road frontage.
3. Applicant submitted to MCDOT an alternative design package for that portion of the Hiker-Biker Path that was to be constructed along Applicant's Falls Road frontage, entitled "Falls Road Bike Path Alignment" dated February 18, 2008 (hereinafter referred to as the "Bullis Alternative").
4. At a meeting with Applicant's representatives on or about October 9, 2008, MCDOT discussed the Bullis Alternative with the Applicant and MCDOT's desire to have the Applicant construct that portion of the Hiker-Biker Path along the School's Falls Road frontage. Subsequently, on or about November 6, 2009, the Bullis Alternative was revised to match the County's alignment of the Hiker-Biker Path at the northeast corner of the School property (hereinafter referred to as the "Revised Bullis Alternative" and attached hereto as Exhibit "A").

5. A Memorandum of Understanding outlining the terms and conditions relative to construction of the Revised Bullis Alternative and other agreements was executed by the Parties and made effective as of October 5, 2010 ("2010 MOU").
6. The timing of construction of the Revised Bullis Alternative was established in the MOU to be within 5 years of the Initiation Date of the School's Preliminary Plan No. 1-20080030, i.e., May 1, 2014, or as further extended in accordance with Paragraph 2 of the MOU.
7. Paragraph 2 of the 2010 MOU states that the Parties intend to closely coordinate the start of construction of the Revised Bullis Alternative with the County's construction schedule for the adjoining portions of CIP No. 500905 to the north and south of the School's Falls Road frontage.
8. In addition, Paragraph 4 of the 2010 MOU requires the School to submit a County approved performance bond or a County approved irrevocable letter of credit from a financial institution to MCDOT in the amount of \$700,000.00, prior to record plat approval.
9. In the course of the School's efforts to complete the final engineering and permitting process for the Revised Bullis Alternative, the State Highway Administration (SHA) informed the School that a separate performance bond in the amount of \$443,271.50 would be required in conjunction with the grant of a SHA access permit necessary for construction of the Revised Bullis Alternative within the State's right-of-way.

#### Mutual Agreements

NOW THEREFORE, in consideration of the above recitals, which are incorporated into this Addendum as if fully set forth, and for and in consideration of the good and valuable agreements and covenants as hereinafter contained, County and the School agree as follows:

- A. In accordance with the terms of Paragraph 2 of the 2010 MOU, the time for completing construction of the Revised Bullis Alternative by the School is further extended to a date yet to be determined in accordance with the County's Expenditure Schedule for CIP No. 500905, attached hereto as Exhibit "B".
- B. The County hereby agrees that it will notify the School as soon as funding for CIP No. 500905 is restored and an anticipated construction schedule can be provided to the School. The construction schedule for CIP No. 500905 will determine the anticipated start date for construction of the Revised Bullis Alternative by the School.
- C. In order to avoid duplicative surety obligations for the same improvement, the County, on behalf of MCDOT, hereby agrees to waive the requirement, included in Paragraph 4 of the 2010 MOU as well as in the MCDOT letter dated July 1, 2008 referenced in Condition No. 5 of the Montgomery County Planning Board Resolution in Preliminary Plan No. 1-20080030, attached hereto as "Exhibit C", that a


performance bond or irrevocable letter of credit be provided by the School to MCDOT prior to approval of the School's record plat, subject to the conditions set forth in paragraph D below.

- D. The School hereby agrees to provide a performance bond or irrevocable letter of credit to SHA in conjunction with the SHA access permit that will be required for construction of the Revised Bullis Alternative by the School, in an amount to be determined as follows:
  - 1. Within one year of the anticipated start of construction of the Revised Bullis Alternative, the School will provide the County with an updated cost estimate for the mutually agreed upon scope of work outlined in Paragraph 4 of the 2010 MOU for the Revised Bullis Alternative.
  - 2. The amount of the surety to SHA will be the greater of \$700,000.00 or the amount of the updated cost estimate provided by the School and approved by the County.
- E. Nothing in this Addendum or the 2010 MOU is intended to preclude the School from seeking the required SHA access permit and moving forward with construction of the Revised Bullis Alternative ahead of the County's anticipated construction schedule for CIP No. 500905 at the School's sole option.
- F. All other terms and conditions contained in the 2010 MOU that are not inconsistent with the above Paragraphs A and B shall remain in full force and affect.
- G. The persons executing this Agreement on behalf of the Parties have the full power and legal authority to bind the Parties to this Agreement.

[SIGNATURES PAGE FOLLOWS]

THE BULLIS SCHOOL  
10601 Falls Road  
Potomac, MD 20854

MONTGOMERY COUNTY, MARYLAND  
Executive Office Building  
101 Monroe Street  
Rockville, Maryland 20850-2540

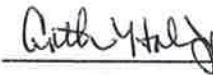
BY:   
Gerald L. Boarman, Ed.D  
Head of School

Date: 7/19/12

BY:   
Ramona Bell-Pearson  
Assistant Chief Administrative Officer

Date: September 17, 2012

Approval Recommended:

BY: 

Director  
Department of Transportation

Date: 17 AUG 12

Approved as to form and legal sufficiency  
by the Office of the County Attorney:

This 13<sup>th</sup> day of August 2012

BY: 

Assistant County Attorney

STATE OF MARYLAND

COUNTY OF MONTGOMERY to wit:

I HEREBY CERTIFY that on this 19th day of July, 2012, before me, a Notary Public in and for the State and County aforesaid, personally appeared Gerald L. Boarman, Head of School of The Bullis School, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]  
Notary Public

My Commission Expires: 02-16-2016

STATE OF MARYLAND

COUNTY OF MONTGOMERY to wit:

I HEREBY CERTIFY that on this 17th day of September, 2012, before me, a Notary Public in and for the State and County aforesaid, personally appeared Ramona Bell-Pearson, Assistant Chief Administrative Officer of Montgomery County, Maryland, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument and acknowledged that said individual executed the same for the purposes therein contained.

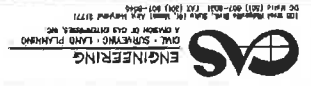
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]  
Notary Public

My Commission Expires: 4/30/2013



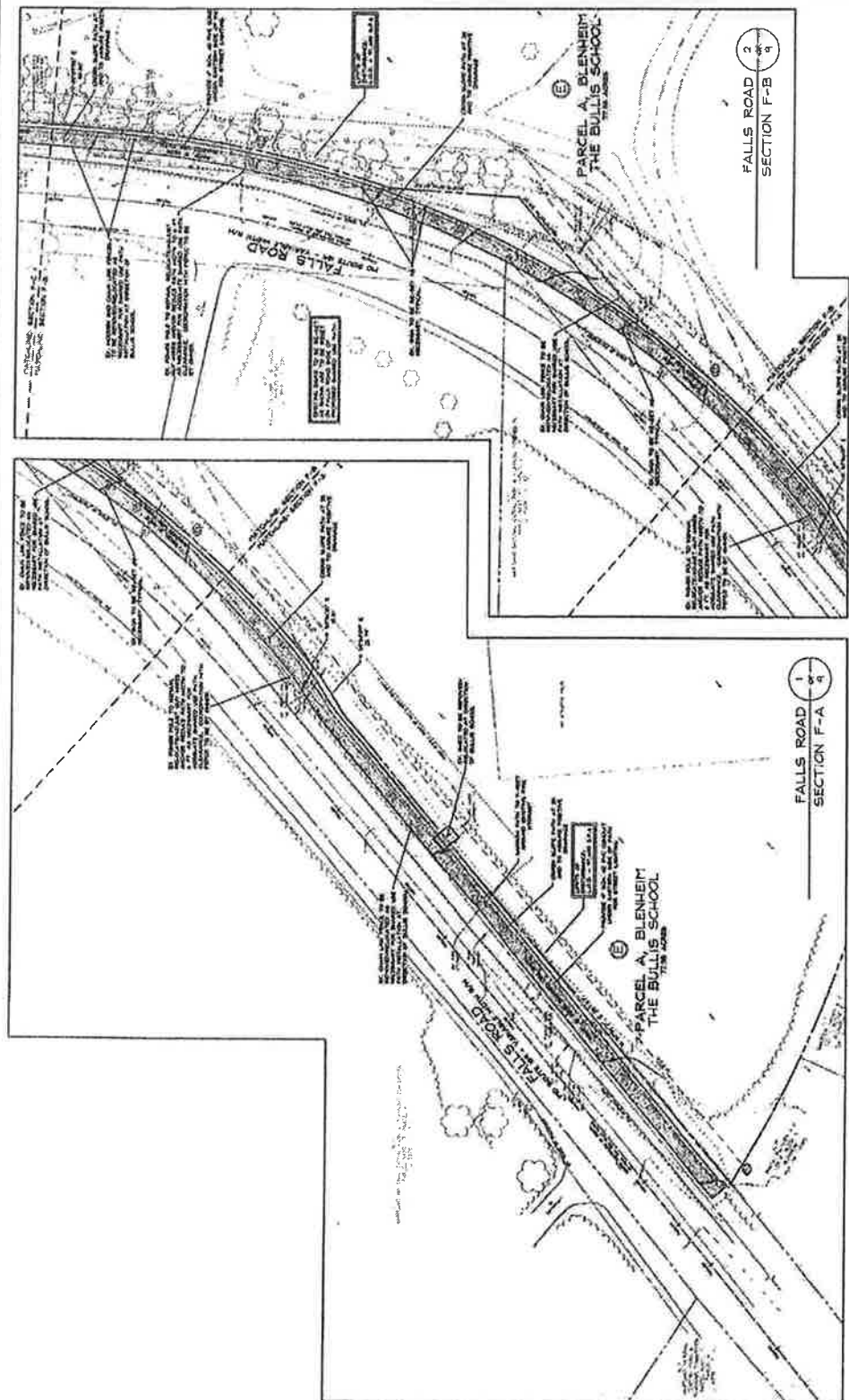




MDSHA NO.  
10611 FALLS ROAD  
PARCEL A, BLOCK E, BLENNHEIM  
THE BULLIS SCHOOL  
FALLS ROAD SHARED  
USE PATH LAYOUT (1 OF 4)

10611 FALLS ROAD  
PLAT RECOGNITION PROJECT  
THE BULLIS SCHOOL  
PARCEL A, BLOCK E, BLENNHEIM  
MONTGOMERY COUNTY, MARYLAND  
FALLS ROAD SHARED  
USE PATH LAYOUT (1 OF 4)

DATE	DESCRIPTION
07-05-10	ISSUED FOR PERMIT
04/2010	REVISED
DCL	DESIGNED BY
DCL	DRAWN BY
1"=20'	SCALE
CAS	CLIENT



**LEGEND**

EXISTING FEATURES	PROPOSED FEATURES
<ul style="list-style-type: none"> <li>1. Existing Right-of-Way</li> <li>2. Existing Easements</li> <li>3. Existing Utility Lines</li> <li>4. Existing Structures</li> <li>5. Existing Trees</li> <li>6. Existing Topography</li> <li>7. Existing Survey Points</li> <li>8. Existing Right-of-Way</li> </ul>	<ul style="list-style-type: none"> <li>1. Proposed Right-of-Way</li> <li>2. Proposed Easements</li> <li>3. Proposed Utility Lines</li> <li>4. Proposed Structures</li> <li>5. Proposed Trees</li> <li>6. Proposed Topography</li> <li>7. Proposed Survey Points</li> <li>8. Proposed Right-of-Way</li> </ul>

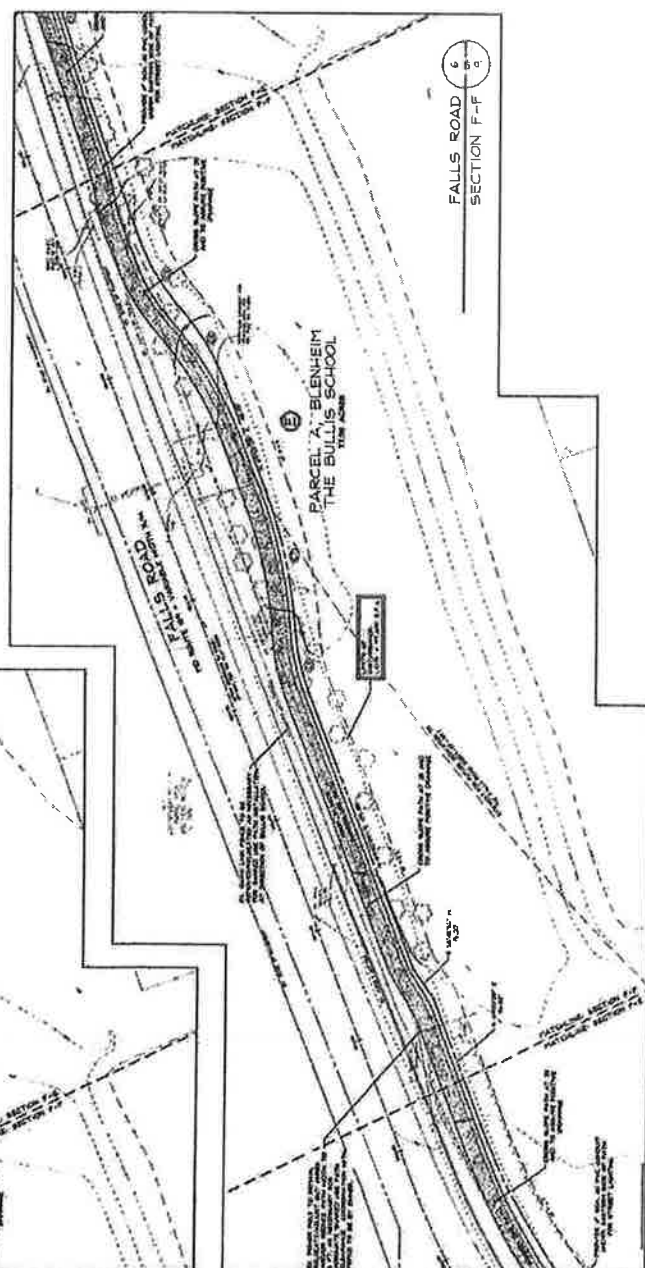
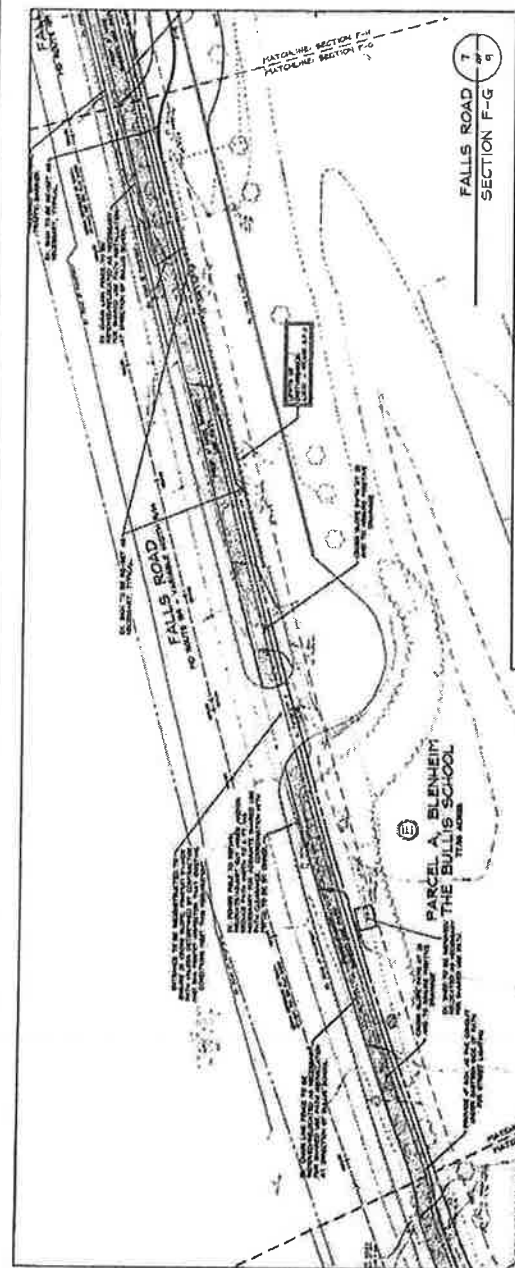
**APPLICANT**  
THE BULLIS SCHOOL  
10611 FALLS ROAD  
FALLS CHURCH, VA 22044  
703-801-8844

**TOPSOIL NOTE**  
TOPSOIL SHALL BE MAINTAINED AND PROTECTED THROUGHOUT THE CONSTRUCTION PERIOD. TOPSOIL SHALL BE REAPPLIED TO ALL EXPOSED AREAS IMMEDIATELY UPON COMPLETION OF CONSTRUCTION.

**MISSING UTILITY**  
THE LOCATION OF ALL UTILITIES SHALL BE DETERMINED BY THE APPLICANT PRIOR TO CONSTRUCTION. THE APPLICANT SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES.







**TOPSOIL NOTE**  
 TO BE REMOVED AND STOCKPILED OR REUSED ON SITE AS PER THE SPECIFICATIONS AND THE CONTRACT DOCUMENTS.

**MISS UTILITY**  
 ALL UTILITIES SHOWN ON THIS PLAN ARE BASED ON THE RECORD DRAWINGS AND FIELD SURVEY. ANY UTILITIES NOT SHOWN ON THIS PLAN ARE TO BE IDENTIFIED BY THE CONTRACTOR PRIOR TO CONSTRUCTION.

**LEGEND**

SYMBOL	DESCRIPTION
(Symbol)	PROPOSED ROAD
(Symbol)	EXISTING ROAD
(Symbol)	PROPOSED SIDEWALK
(Symbol)	EXISTING SIDEWALK
(Symbol)	PROPOSED DRIVEWAY
(Symbol)	EXISTING DRIVEWAY
(Symbol)	PROPOSED EASEMENT
(Symbol)	EXISTING EASEMENT
(Symbol)	PROPOSED UTILITY
(Symbol)	EXISTING UTILITY
(Symbol)	PROPOSED FENCE
(Symbol)	EXISTING FENCE
(Symbol)	PROPOSED CURB
(Symbol)	EXISTING CURB
(Symbol)	PROPOSED GROUND COVER
(Symbol)	EXISTING GROUND COVER
(Symbol)	PROPOSED TREE
(Symbol)	EXISTING TREE
(Symbol)	PROPOSED BENCH
(Symbol)	EXISTING BENCH
(Symbol)	PROPOSED SIGN
(Symbol)	EXISTING SIGN
(Symbol)	PROPOSED LIGHT
(Symbol)	EXISTING LIGHT
(Symbol)	PROPOSED FURNITURE
(Symbol)	EXISTING FURNITURE
(Symbol)	PROPOSED LANDSCAPE
(Symbol)	EXISTING LANDSCAPE

**THE BULLIS SCHOOL**  
 PARCEL A, BLOCK E, BLENHEIM  
 10611 FALLS ROAD  
 PLAT RECONCILIATION PENDING

**USE PATH LAYOUT (3 OF 4)**

**USE PATH LAYOUT (3 OF 4)**

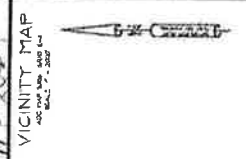
**MDSHA NO.**  
 10611 FALLS ROAD  
 PARCEL A, BLOCK E, BLENHEIM  
 THE BULLIS SCHOOL  
 FALLS ROAD SHARED  
 USE PATH LAYOUT (3 OF 4)

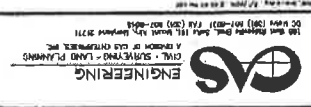
**APPLICANT**  
 THE BULLIS SCHOOL  
 10611 FALLS ROAD  
 PARCEL A, BLOCK E, BLENHEIM  
 MONTGOMERY COUNTY, MARYLAND

**ENGINEERING**  
 CIVIL - SURVEYING - LAND PLANNING  
 10000 WOODBURN ROAD, SUITE 100, WOODBURN, MD 21791  
 (301) 261-8800

**DATE:** 04/20/10  
**PROJECT NO.:** 07-051E  
**SCALE:** 1"=20'

**CAS**  
**DCL**  
**DCL**  
**DCL**

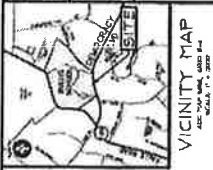
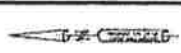




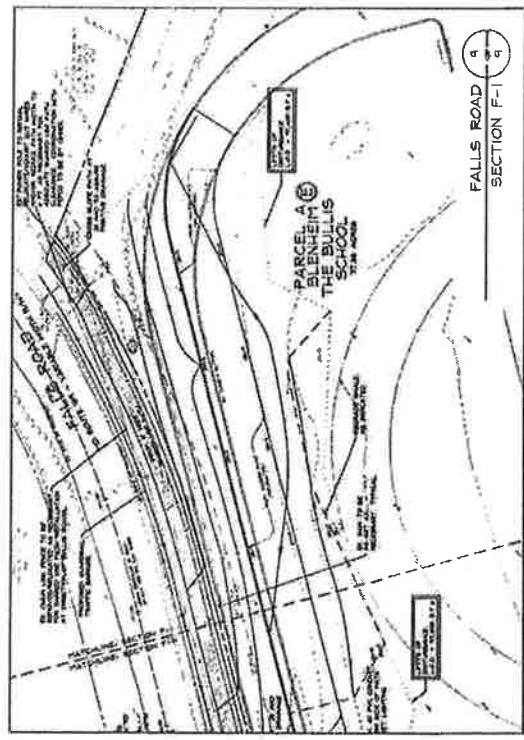
**THE BULLIS SCHOOL**  
ROCKVILLE (4TH) ELECTION DISTRICT  
PONTIAC COUNTY, MARYLAND  
FALLS ROAD SHARED  
USE PATH LAYOUT (4 OF 4)

DATE	DESCRIPTION
04/2010	PROPOSED USE PLAN
07-091E	PROPOSED USE PLAN
DCL	DCL
18'20'	SCALE
CAS	DATE

10611 FALLS ROAD  
PARCEL A, BLOCK E, BLENHEIM  
PLAT RECORDATION NUMBER



MDSHA NO.  
10611 FALLS ROAD  
PARCEL A, BLOCK E, BLENHEIM  
THE BULLIS SCHOOL  
FALLS ROAD SHARED  
USE PATH LAYOUT (4 OF 4)



**LEGEND**

	EASEMENT		UTILITY
	RIGHT OF WAY		PROPOSED
	BOUNDARY		SURVEY
	OTHER		NOTE

**APPLICANT**  
THE BULLIS SCHOOL  
10611 FALLS ROAD  
ROCKVILLE, MD 20850

**TOPSOIL NOTE**  
TOPSOIL SHALL BE MAINTAINED THROUGHOUT CONSTRUCTION AND RESTORED TO ORIGINAL CONDITION OR BETTER.

**MISS UTILITY**  
ALL UTILITIES SHOWN ON THIS PLAN ARE BASED ON RECORD DRAWINGS AND FIELD SURVEY. ANY UNDETECTED UTILITIES ARE THE RESPONSIBILITY OF THE INSTALLER.

**GRAPHIC SCALE**  
1" = 100'

### Falls Road East Side Hiker/ Biker Path -- No. 500905

Category	Transportation	Date Last Modified	April 25, 2012
Subcategory	Pedestrian Facilities/Bikeways	Required Adequate Public Facility	No
Administering Agency	Transportation	Relocation Impact	None.
Planning Area	Potomac-Travilah	Status	Final Design Stage

#### EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY11	Est. FY12	Total 6 Years	FY13	FY14	FY15	FY16	FY17	FY18	Beyond 6 Years	
Planning, Design, and Supervision	1,292	0	0	119	0	0	0	0	0	0	119	1,173
Land	2,700	0	0	0	0	0	0	0	0	0	0	2,700
Site Improvements and Utilities	3,000	0	0	0	0	0	0	0	0	0	0	3,000
Construction	15,348	0	0	0	0	0	0	0	0	0	0	15,348
Other	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>22,340</b>	<b>0</b>	<b>0</b>	<b>119</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>119</b>	<b>22,221</b>

#### FUNDING SCHEDULE (\$000)

G.O. Bonds	16,021	0	0	119	0	0	0	0	0	0	119	15,002
Impact Tax	6,244	0	0	0	0	0	0	0	0	0	0	6,244
Intergovernmental	75	0	0	0	0	0	0	0	0	0	0	75
<b>Total</b>	<b>22,340</b>	<b>0</b>	<b>0</b>	<b>119</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>119</b>	<b>22,221</b>

**DESCRIPTION**

This project provides funds to develop final design plans, acquire right-of-way, and construct approximately 4 miles of an 8-foot bituminous hiker/biker path along the east side of Falls Road from River Road to Dunster Road. Falls Road is classified as a major highway and has a number of side street connections along the project corridor. The path will provide pedestrians and cyclists safe access to communities along this project corridor, and will provide a connection to existing pedestrian facilities to the north (Rockville) and to the south (Potomac).

**COST CHANGE**

Increase due to inflation and overhead charges.

**JUSTIFICATION**

This path provides much needed access to public transportation along Falls Road. The path will provide pedestrian access to the following destinations: bus stops along Falls Road, Bullis School, Ritchie Park Elementary School, Potomac Community Center, Potomac Library, Potomac Village Shopping Center, Potomac Promenade Shopping Center, Heritage Farm Park, Falls Road Golf Club, Falls Road Park, and a number of religious facilities along Falls Road.

The 2002 Potomac Subregion Master Plan calls for a Class I (off-road) bike path along Falls Road from the Rockville City limit to MacArthur Boulevard. The path is a missing link between existing bicycle facilities within the City of Rockville and existing path along Falls Road south of River Road.

**FISCAL NOTE**

Project deferred due to fiscal capacity. Intergovernmental revenue represents the Washington Suburban Sanitary Commission's (WSSC) portion of the water and sewer relocation costs. Federal Transportation Enhancement Funds will be pursued after property acquisition has been completed.

**OTHER DISCLOSURES**

- A pedestrian impact analysis has been completed for this project.

APPROPRIATION AND EXPENDITURE DATA	COORDINATION	MAP	
Date First Appropriation	Maryland-National Capital Park and Planning Commission State Highway Administration Utility Companies Department of Environmental Protection Department of Permitting Services Washington Gas PEPSCO Verizon Maryland Department of Natural Resources Annual Bikeway Program	See Map on Next Page	
First Cost Estimate			FY (000)
Current Scope			FY13 22,340
Last FY's Cost Estimate			20,965
Appropriation Request			FY13 0
Appropriation Request Est			FY14 0
Supplemental Appropriation Request			0
Transfer			0
Cumulative Appropriation			0
Expenditures / Encumbrances			0
Unencumbered Balance	0		
Partial Closeout Thru	FY10 0		
New Partial Closeout	FY11 0		
Total Partial Closeout	0		



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

APR 21 2009

**MCPB No. 09-30**  
**Preliminary Plan No. 120080030**  
**The Bullis School**  
**Date of Hearing: March 12, 2009**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION<sup>1</sup>**

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on June 23, 2004, The Bullis School, Inc. ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 1 lot on 77.63 acres of land located in the northeast quadrant of the intersection of Falls Road and Democracy Boulevard ("Property" or "Subject Property"), in the Potomac master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120080030, The Bullis School ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated February 19, 2009 and revised on March 5, 2009 setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on March 12, 2009, the Planning Board held a public hearing on the Application (the "Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

<sup>1</sup> This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

Approved as to  
 Legal Sufficiency:

8787 Georgia Avenue, NCFPC Legal Department 10 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, on March 12, 2009, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Cryor; seconded by Commissioner Robinson; with a vote of 4-0, Commissioners Alfandre, Cryor, Hanson, and Robinson voting in favor, Commissioner Presley being absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120080030 to create 1 lot on 77.63 acres of land located in the Northeast quadrant of the intersection of Falls Road and Democracy Boulevard ("Property" or "Subject Property"), in the Potomac master plan area ("Master Plan"), subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to one recorded parcel for a private educational institution with a maximum student enrollment of 900 students. The approval includes expansion/construction of various on-site improvements/facilities including a new Lower School Building and new Upper School Building as shown on the Preliminary Plan.
- 2) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must satisfy all conditions prior to recording of plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
- 3) The record plat must reflect a Category I easement over areas of stream valley buffers and forest conservation.
- 4) The Applicant must comply with the conditions of the MCDPS stormwater management approval dated August 29, 2007. These conditions may be amended by MCDPS, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 5) The Applicant must comply with the conditions of the Montgomery County Department of Transportation (MCDOT) letter dated July 1, 2008. These conditions may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 6) The Applicant must construct an 8 foot-wide shared use path along the Democracy Boulevard Property frontage as shown on the Preliminary Plan and as required in the MCDOT letter dated July 1, 2008.
- 7) The Applicant must pay for or construct an 8 foot-wide shared use path along the Falls Road Property frontage per CIP Project No. 500905 or according to MCDOT requirements.
- 8) The Applicant must comply with the conditions of the Maryland State Highway Administration (MDSHA) letter dated September 11, 2008.
- 9) The Applicant must dedicate 5 feet of additional right-of-way along the Democracy Boulevard property frontage as shown on the Preliminary Plan.

- 10) The Applicant must dedicate right-of-way along the Falls Road property frontage as shown on the Preliminary Plan to provide for the 8 foot-wide shared use path.
- 11) The Applicant must create an easement for future dedication for the remainder of the Falls Road right-of-way as shown on the Preliminary Plan. The Applicant must record a covenant with MDSHA detailing the terms for future dedication of the easement and relocation of the constructed 8 foot-wide shared use path, and the record plat must reference this covenant.
- 12) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s) and MDSHA prior to issuance of access permits.
- 13) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for one hundred twenty-one (121) months from the date of mailing of the Planning Board Resolution by which time building permits must be issued for the new lower school and upper school buildings or an extension request must be filed.
- 14) Other necessary easements must be shown on the record plat.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

*1. The Preliminary Plan substantially conforms to the Master Plan.*

The 2002 Potomac Subregion Master Plan references public school capacity and identifies sites for new facilities but makes no specific recommendations for private institutional uses. The land use and zoning section of the Master Plan "supports the retention and reconfirmation of existing zoning for all developed, underdeveloped and undeveloped land in the Subregion, except for those sites recommended for change in the Plan" (p. 40). The land use and zoning section of the Master Plan also lists design principles established to preserve the Subregion's green and rural character while creating a pedestrian and bicycle-friendly environment. The Bullis School Preliminary Plan satisfies the land use intent of the Master Plan in that it retains significant open space and the required shared use path construction along the Property's Falls Road and Democracy Boulevard frontages will expand the pedestrian and bicycle network in the area. The Planning Board finds the Preliminary Plan substantially conforms to the Master Plan.

*2. Public facilities will be adequate to support and service the area of the proposed subdivision.*



Roads and Transportation Facilities

Access to the site is provided from Falls Road and Democracy Boulevard. Falls Road is classified as a major highway with a recommended right-of-way of 120 feet. The Master Plan recommends realignment of Falls Road along the Bullis School property frontage. The Applicant has proposed dedication boundaries for re-alignment of Falls Road which have been reviewed and approved by MDSA. The Preliminary Plan incorporates the Master Plan required rights-of-way for Falls Road and Democracy Boulevard. Currently, sidewalks do not exist along Falls Road or Democracy Boulevard. As a result, the Applicant is required to construct an 8-foot wide shared use path along Democracy Boulevard and either construct or pay for the construction of the Falls Road shared use path along the Property's respective frontage. There is a Ride-On bus stop along the school's Falls Road frontage near the main entrance to the school. As required by MCDOT, the Applicant must provide a concrete bus pad or other improvements deemed necessary by MCDOT. The Planning Board finds the proposed access to the site and the internal circulation and walkways as shown on the preliminary plan will be safe and adequate for vehicles and pedestrians.

Other Public Facilities and Services

The Planning Board finds that other public facilities and services are available and adequate to serve this private institution. The Subject Property is served by existing public water and sewer connections. Gas, electric and telecommunications services are available to serve the property. Police stations, firehouses and health services are currently operating within the standards set by the applicable Growth Policy Resolution currently in effect. The Application has been reviewed and approved by the Montgomery County Fire and Rescue Service (MCFRS) who have determined that the Property has adequate access for emergency vehicles.

- 3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections, including section 50-35(h)(2)(C) for adequate public validity period extensions. The proposed recorded parcel size, width, shape and orientation are appropriate for the location of the subdivision.

The proposed recorded parcel for the school facilities was reviewed for compliance with the dimensional requirements for the RE-2 zone as specified in the Zoning Ordinance. The recorded parcel as proposed far exceeds the dimensional requirements for area, frontage, width and setbacks in the RE-2 zone because it reflects the appropriate boundary of the existing institutional use.



4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

Environmental Guidelines

The Subject Property contains 11.35 acres of stream valley buffer (SVB) of which 8.75 acres are forested. The Applicant has proposed to plant another 1.01 acres of SVB for a total 9.85 acres of forested SVB. The areas of SVB that are not forested or planted are part of the pre-existing school. The forest conservation plan satisfies the applicable requirements for protection of environmentally sensitive areas.

Forest Conservation

The Applicant has a previously approved forest conservation plan (FCP) that was submitted as part of the special exception case for the site. Because the Preliminary Plan is considered a new application, a new preliminary FCP was required. The FCP submitted as part of the Preliminary Plan application addresses the expansion to the school's facilities and required site improvements such as sidewalks and bike paths.

The Subject Property contains 20.53 acres of forest; this number includes 19.43 acres of existing forest and 1.1 acres of forest cleared under the previously approved FCP. The Applicant proposes to clear 3.81 acres of forest and retain 16.72 acres of forest. The required calculations indicate that the FCP includes 0.12 acres on the positive side of the break-even point. As a result, additional planting is not required. The Applicant has, however, proposed 1.01 acres of forest planting within the stream valley buffer (SVB) to compensate for encroachments into the SVB that currently exist on the Property. The Planning Board finds the Application complies with all applicable requirements of Chapter 22A the Montgomery County Forest Conservation Law.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the project on August 29, 2007 which consists of on-site channel protection measures via two underground storage facilities and an existing on-site pond. On-site water quality control is to be provided for a total

area equivalent to or greater than the total new impervious area. Water quality for the shared use paths will be provided by adjacent grass swales.

6. *The Planning Board finds a ten year adequate public facilities period is appropriate for the proposed subdivision and an extended Adequate Public Facilities validity period of 121 months is granted.*

Chapter 50, the Subdivision Regulations, establishes a minimum of 5 years for the validity period of the adequate public facilities (APF) approval. However, this period can be extended if a phasing schedule is submitted and approved by the Planning Board. Per Section 50-20(c)(3)(C) of the Subdivision Regulations, the Applicant requested approval of an APF validity period for a maximum of ten (10) years. The Applicant submitted a phasing plan, as required, and requested that the APF validity period be imposed only on facility improvements which will directly result in an increase in enrollment, and therefore, vehicle trips. Such proposed improvements include a new Lower School with a maximum of 20,000 square feet of gross floor area and a new Upper School with a maximum of 70,000 square feet of gross floor area. Typically, the proposed phasing plan should stipulate the amount of construction an Applicant intends to complete within the initial 5 years of the validity period, but in this case, due to the significant fund raising period necessary for a private educational institution project of this size and scope the Applicant is uncertain about when construction will start. The Applicant plans to construct the Upper School first, and their intent is to begin construction as soon as possible after the plat is recorded.

The Planning Board finds a ten year validity period is justified even though the start date for construction may occur after 5 years because the APF approval does not require specific road improvements and the bike path construction along Falls Road and Democracy Boulevard will be required to at least be bonded at the time the plat is recorded. The Planning Board, therefore, finds that allowing additional time for school construction to begin is not adverse to the public interest and the extended APF period is granted.

**BE IT FURTHER RESOLVED**, that this Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the land records of Montgomery County, Maryland or a request for an extension must be filed; and

MCPB No. 09-30  
Preliminary Plan No. 120080030  
**The Bullis School**  
Page 7 of 7

BE IT FURTHER RESOLVED, that the date of this Resolution is APR 21 2010 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Presley, seconded by Commissioner Robinson, with Commissioners Hanson, Robinson, Cryor, and Presley present and voting in favor of the motion, and Commissioner Alfandre absent, at its regular meeting held on Thursday, March 26, 2009, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Royce Hanson, Chairman  
Montgomery County Planning Board

**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**Montgomery County, Maryland**  
**And**  
**Bullis School, Inc.**

This MEMORANDUM OF UNDERSTANDING (the “2024 MOU” or “Updated Agreement”) is between MONTGOMERY COUNTY, MARYLAND (the “County”), a body corporate and politic, and BULLIS SCHOOL, INC. (the “School” or “Applicant”) and becomes effective once all designated representatives of both the School and the County (collectively, the “Parties”) have signed it.

Recitals

1. The purpose of this 2024 MOU is to affirm the Parties’ intent to cooperate in the construction of the portion of the Falls Road Hiker-Biker Path Project (CIP No. 500905) that is to be located along the School’s Falls Road frontage in Potomac, Maryland (“Bullis Path”), originally memorialized by the Parties in a Memorandum of Understanding executed on October 5, 2010 (“2010 MOU”) and Addendum executed on September 17, 2012 (“1<sup>st</sup> Addendum”) (together the “Previous Agreement”).
2. On June 23, 2004, the School filed Preliminary Plan No. 1-20080030 (“Preliminary Plan”) with the Maryland-National Capital Park & Planning Commission which was ultimately approved by the Planning Board on March 19, 2009.
3. As a condition of approval of the Preliminary Plan, the School was required to either pay for or construct that portion of a shared use path project to be located along the School’s Falls Road frontage. Specifically, Condition No. 7 states as follows: “The Applicant must pay for or construct an 8-foot-wide shared use path along the Falls Road Property frontage per CIP Project No. 500905 or according to MCDOT requirements.”
4. In compliance with Condition No. 7 above, the Parties subsequently executed the 2010 MOU detailing their agreement on an alternative design package for the portion of the shared use path that was to be constructed along the School’s Falls Road frontage, referred to as the “Revised Bullis Alternative,” which was attached to the 2010 MOU as Exhibit A.
5. Paragraph 2 of the 2010 MOU provided that the Parties intend to coordinate the start of construction of the Revised Bullis Alternative with the County’s construction schedule for the adjoining portions of CIP No. 500905 to the north and south of the School’s Falls Road frontage.
6. On August 2, 2012, Subdivision Record Plat No. 24460, “Parcel A, Block E, Blenheim” was recorded in the Land Records of Montgomery County, whereby the School dedicated for public use, 0.935 acres of land adjacent to Falls Road to accommodate the Revised Bullis Alternative.

7. On September 17, 2012, the Parties executed an Addendum to the 2010 MOU, referred to as the 1<sup>st</sup> Addendum, that extended the timing for completing construction of the Revised Bullis Alternative by the School to a date to be determined in accordance with the County's Expenditure Schedule for CIP No. 500905. The County agreed that it would notify the School as soon as funding for CIP No. 500905 is restored and an anticipated construction schedule can be provided to the School, and that the construction schedule for CIP No. 500905 will determine the anticipated start date for construction of the Revised Bullis Alternative by the School.
8. Upon the receipt of Federal Aid in FY22 in the form of a Transportation Alternative Program grant, the County's Department of Transportation (MCDOT) initiated a redesign of the shared use path, now referred to as "Falls Road Bikeway and Pedestrian Facility" (P500905) ("Falls Road Bikeway"), consisting of "approximately 4 miles of an 8-10 foot bituminous hiker/biker path along the east side of Falls Road from River Road to Dunster Road."
9. On April 12, 2022, the School filed a Petition to Modify Special Exception (Case No. S-687-H) that was approved in an Opinion issued by the Board of Appeals, effective July 12, 2023, which included the following as Condition No. 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."

10. In light of MCDOT's current efforts to update the overall design of the Falls Road Bikeway project and to accommodate a wider sidepath along the School's portion of the project in compliance with Condition No. 5 above, the Parties seek to enter into this 2024 MOU to continue to coordinate in the final alignment and timing of construction of the Bullis Path as envisioned in the Previous Agreement but seek to update the required width of the Bullis Path and certain other relevant terms as detailed herein, which the Parties intend will supersede the Previous Agreement pursuant to Paragraph ~~H-F~~ below.

#### Mutual Agreements

NOW THEREFORE, in consideration of the above recitals, which are incorporated into this 2024 MOU as if fully set forth, and for and in consideration of the good and valuable agreements and covenants as hereinafter contained, the County and the School agree as follows:

- A. The School shall coordinate with MCDOT's civil engineering contractor (RKK) tasked with updating the design of the entire Falls Road Bikeway project inclusive of that portion of the Falls Road Bikeway project to be located within existing right-of-way adjacent to the School's Falls Road frontage ("Bullis Path").

- B. It is the intent of the Parties to continue to coordinate the start of construction of the School's construction of the Bullis Path with the County's ~~start of construction schedule~~ for the adjoining portions of the CIP No. P500905 to the north and south of the School's Falls Road frontage. The County agrees that it will notify the School upon ~~right-of-way clearance~~ Right-of-Way Clearance (defined as when all necessary property interests have been acquired for CIP No. P500905 and construction activities can begin) and an anticipated construction schedule can be provided to the School. The construction schedule for CIP No. P500905 will determine the anticipated start date for construction of the Bullis Path by the School.
- C. Upon the County's ~~Right-of-Way Clearance initiation of the land acquisition process~~ for the Falls Road Bikeway project, the School shall undertake efforts to obtain any and all applicable construction permits from the County and the State Highway Administration utilizing RKK's final design plans for the Bullis Path.
- D. The School shall provide a performance bond or irrevocable letter of credit to SHA in conjunction with the SHA access permit that will be required for construction of the Bullis Path by the School.
- E. Nothing in this Agreement is intended to preclude the School from seeking the required SHA access permit and moving forward with construction of the Bullis Path ahead of the County's anticipated construction schedule for CIP No. P500905 at the School's sole option.
- F. Upon full execution by the Parties, the provisions of this Updated Agreement shall supersede the Parties' Previous Agreement, specifically the 2010 MOU and 1<sup>st</sup> Addendum.
- G. The persons executing this 2024 MOU on behalf of the Parties have the full power and legal authority to bind the Parties to this Updated Agreement.
- H. Any obligation or liability of the County arising out of this MOU is subject to, limited by, and contingent upon the appropriation and availability of funds and the damage caps and notice requirements in State law, including the Local Government Tort Claims Act. This MOU does not limit the discretionary decisions of the County Executive and the Montgomery County Council.

[SIGNATURES ON FOLLOWING PAGE]

Formatted: Centered

BULLIS SCHOOL, INC.  
10601 Falls Road  
Potomac, MD 20854

MONTGOMERY COUNTY, MARYLAND  
Executive Office Building  
101 Monroe Street  
Rockville, Maryland 20850-2540

By: \_\_\_\_\_  
Christian G. Sullivan, Head of School  
and President of the Board of Trustees

By: \_\_\_\_\_  
Assistant Chief Administrative Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approval Recommended:

By: \_\_\_\_\_  
Director  
Department of Transportation

Date: \_\_\_\_\_

Approved as to form and legal sufficiency  
by the Office of the County Attorney:

This \_\_\_ day of \_\_\_\_\_ 20\_\_

By: \_\_\_\_\_

**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**Montgomery County, Maryland**  
**And**  
**Bullis School, Inc.**

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10. In light of MCDOT's current efforts to update the overall design of the Falls Road Bikeway project and to accommodate a wider sidepath along the School's portion of the project in compliance with Condition No. 5 above, the Parties seek to enter into this 2024 MOU to continue to coordinate in the final alignment and timing of construction of the Bullis Path as envisioned in the Previous Agreement but seek to update the required width of the Bullis Path and certain other relevant terms as detailed herein, which the Parties intend will supersede the Previous Agreement pursuant to Paragraph F below.

#### Mutual Agreements


NOW THEREFORE, in consideration of the above recitals, which are incorporated into this 2024 MOU as if fully set forth, and for and in consideration of the good and valuable agreements and covenants as hereinafter contained, the County and the School agree as follows:

- A. The School shall coordinate with MCDOT's civil engineering contractor (RKK) tasked with updating the design of the entire Falls Road Bikeway project inclusive of that portion of the Falls Road Bikeway project to be located within existing right-of-way adjacent to the School's Falls Road frontage ("Bullis Path").

- B. It is the intent of the Parties to continue to coordinate the start of construction of the School's construction of the Bullis Path with the County's start of construction for the adjoining portions of the CIP No. P500905 to the north and south of the School's Falls Road frontage. The County agrees that it will notify the School upon Right-of-Way Clearance (defined as when all necessary property interests have been acquired for CIP No. P500905 and construction activities can begin) and an anticipated construction schedule can be provided to the School. The construction schedule for CIP No. P500905 will determine the anticipated start date for construction of the Bullis Path by the School.
- C. Upon the County's Right-of-Way Clearance for the Falls Road Bikeway project, the School shall undertake efforts to obtain any and all applicable construction permits from the County and the State Highway Administration utilizing RKK's final design plans for the Bullis Path.
- D. The School shall provide a performance bond or irrevocable letter of credit to SHA in conjunction with the SHA access permit that will be required for construction of the Bullis Path by the School.
- E. Nothing in this Agreement is intended to preclude the School from seeking the required SHA access permit and moving forward with construction of the Bullis Path ahead of the County's anticipated construction schedule for CIP No. P500905 at the School's sole option.
- F. Upon full execution by the Parties, the provisions of this Updated Agreement shall supersede the Parties' Previous Agreement, specifically the 2010 MOU and 1<sup>st</sup> Addendum.
- G. The persons executing this 2024 MOU on behalf of the Parties have the full power and legal authority to bind the Parties to this Updated Agreement.
- H. Any obligation or liability of the County arising out of this MOU is subject to, limited by, and contingent upon the appropriation and availability of funds and the damage caps and notice requirements in State law, including the Local Government Tort Claims Act. This MOU does not limit the discretionary decisions of the County Executive and the Montgomery County Council.

[SIGNATURES ON FOLLOWING PAGE]

BULLIS SCHOOL, INC.  
10601 Falls Road  
Potomac, MD 20854

By:   
Christian G. Sullivan, Head of School  
and President of the Board of Trustees

Date: 11/20/24

MONTGOMERY COUNTY, MARYLAND  
Executive Office Building  
101 Monroe Street  
Rockville, Maryland 20850-2540

By: \_\_\_\_\_  
Assistant Chief Administrative Officer

Date: \_\_\_\_\_

Approval Recommended:

By: \_\_\_\_\_  
Director  
Department of Transportation

Date: \_\_\_\_\_

Approved as to form and legal sufficiency  
by the Office of the County Attorney:

This \_\_\_ day of \_\_\_\_\_ 20\_\_

By: \_\_\_\_\_

**BEFORE THE BOARD OF APPEALS  
FOR MONTGOMERY COUNTY, MARYLAND**

IN RE:

Petition of Bullis School, Inc.

\*  
\*  
\*

Case No.: S-687-H

Hearing Date: December 18, 2024

**MOTION TO STRIKE UNTIMELY APPEAL  
OR, IN THE ALTERNATIVE, FOR APPROPRIATE RELIEF**

Montgomery County, Maryland (the “County”), by and through its undersigned attorneys, moves to dismiss the untimely appeal filed by the Bullis School (the “School”) that is captioned in a letter to the Board of Appeals dated December 10, 2024 as “Petition of the Bullis School, Inc., Administrative Modification of Special Exception Case No. S-687-H”, or, in the alternative, for appropriate relief, and for reasons therefore, states:

**I. STATEMENT OF CASE**

This case concerns the approval of a major modification to a special exception granted by the Board of Appeals in an opinion made effective on July 12, 2023 (the “Opinion”). *See* Opinion attached hereto as Exhibit A. The Opinion makes clear that the special exception modification granted by the Board of Appeals is subject to certain conditions. Among the conditions required to be satisfied is Condition No. 5, which states:

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.

*See* Exhibit A. The School has not entered into a *new* MOU with the County as required by Condition No. 5 and, contrary to the School’s representation to this Board, there is no “agreement in principle” with respect to the terms of that MOU.

The County has prepared and provided a new MOU to the School. *See* MOU, attached hereto as Exhibit B. The County contends that the MOU attached as Exhibit B properly implements Condition No. 5 and the intent served by the inclusion of Condition No.5 in the Opinion. Condition No. 5 was included in the Opinion because of the immediate safety and logistical concerns expressed by the Planning Board in adopting the recommendations of Planning Board Staff, which were incorporated into the Hearing Examiner's Report and Recommendation, which was relied upon by the Board of Appeals for its Opinion. Notwithstanding, the School refuses to negotiate the proposed MOU. The proposed MOU attached as Exhibit B meets with the approval of the Director of the Department of Transportation. The School's unilaterally signed MOU does not meet with the County's approval and does nothing to address the safety and logistical concerns recommended by the Planning Board and the Hearing Examiner which were adopted by the Board of Appeals and require that the County and the School enter into a *new* MOU.

The School did not appeal the inclusion of the aforementioned Condition No. 5 within thirty (30) days of the effective date of the Opinion as required by Chapter 59, § 7.3.1.G of the County Zoning Ordinance. Instead, on December 10, 2024, the School sought an improper Administrative Modification to the School's special exception.

A worksession to consider the School's request for an administrative modification to the special exception will be held on Wednesday, December 18, 2024.

## **II. THE NECESSITY FOR A NEW MOU**

The necessity for the inclusion of Condition No. 5 is borne out of findings and recommendations by Planning Board Staff, which were relied upon by the Hearing Examiner in

her Report and Recommendation to the Board of Appeals. *See* relevant portion of Hearing Examiner Report and Recommendation, attached hereto as Exhibit C. The Planning Board Staff findings were included in the Report and Recommendation, which provided 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 that walking and biking along Falls Road is “uncomfortable and dangerous.” Importantly, Planning Board Staff noted the following, which was included in the Hearing Examiner’s Report and Recommendation:

**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 [sic] 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.**

*See* Exhibit C (emphasis added).

As the School and the Planning Board Staff note, there is currently in place a 2010 MOU, as amended by a 2012 Addendum requiring the School to build a sidepath along the School’s Falls Road Frontage in concert with County plans to build a 4.5 mile path on either side of the School. However, the County plans for the 4.5 mile path have been placed indefinitely on hold.

See Planning Board Staff Recommendations attached hereto as Exhibit D. Accordingly, the School presently has no contractual obligation to build any portion of the sidepath, which has been determined to be of immediate need. Thus, a new MOU is required to ensure that something gets built which is not dependent upon funding for the entirety of the 4.5 mile Falls Road sidepath.

The proposed MOU attached as Exhibit B provides for what Planning Staff, the Planning Board and the Hearing Examiner contemplated in recommending Condition No. 5 as adopted by the Board of Appeals in its Opinion. The MOU signed by the School – which has been rejected by the County – simply continues an unacceptable status quo and requires that the Right of Way for the entire 4.5 miles be cleared prior to the School having any obligations to construct the sidepath on its property. Planning Board Staff recognized the issue, recommending a new MOU to address the lack of funding for the originally contemplated 4.5 mile Fall Road sidepath, which would allow the County to build the Falls Road sidepath in smaller and more affordable segments. The MOU proposed by the School does not further the intent of the Planning Board in recommending a new MOU.

The County's proposed MOU provides a reasonable timeline (3 years from the release of the Use and Occupancy Permit for the Lower School Building) for the School to build a small portion of the sidepath on its property from its Southwestern corner on Falls Road up until the main entrance to the School (the "First Segment"). The County has determined that this segment is the most critical and easiest portion for the School to construct. The remainder of the sidepath to be built on the School property by the School (the "Second Segment") would not be required until the County acquired additional right of way from adjacent properties further north on Falls Road. Thus, the County contends that the purposes of Condition No. 5 are satisfied by its

proposed MOU, that those conditions are reasonable, and that what the School has signed does not reflect the intent and recommendations of Planning Staff, the Planning Board, or the Hearing Examiner.

**III. THE SCHOOL'S ADMINISTRATIVE MODIFICATION REQUEST IS AN UNTIMELY APPEAL**

The School did not appeal the inclusion of Condition No. 5 within thirty (30) days of the effective date of the Opinion as required by Chapter 59, § 7.3.1.G of the County Zoning Ordinance. That condition is one condition among many that needs to be satisfied as part of the Major Modification to Special Exception approval. In order to satisfy the condition, which has been found to be directly tied to findings concerning immediate needs for the health and safety of the community, both the County and the School need to enter into a new MOU. Obviously, the MOU should reflect the underlying intent of the Planning Board and Hearing Examiner recommending a new MOU – that the School's obligation to build the sidepath not be left to some uncertain date predicated on funding (and the clearance of right of way) for the larger 4.5 mile trail.

The School's proposed MOU does not come close to implementing the intent of the Planning Board and Hearing Examiner as adopted by the Board of Appeals in its Opinion. The School had an opportunity to appeal Condition No. 5, but it chose not to. The condition clearly requires the approval and agreement of the County, and it has not been attained because there is an immediate need to take firm steps toward the School's obligations for the construction of the sidepath on its property that are not being met by the existing MOU and its addendum from 2010 and 2012, respectively. The attempt to parse Condition No. 5 from the rest of the requirements to satisfy the requirements for the approval of the major modification of the special exception



changes the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood can reasonably be expected. Accordingly, the School's December 10, 2024 Administrative Modification Request is improper, and ought to be treated as an untimely appeal for which the Board of Appeals no longer has jurisdiction.

**IV. CONCLUSION**

For the foregoing reasons, the Board of Appeals does not have subject matter jurisdiction over this appeal because it is untimely and must be dismissed. In the alternative, the County requests that the Board find that the School has not complied with the requirements for the approval of the major modification to the special exception and deny the School's request.

JOHN P. MARKOVS  
COUNTY ATTORNEY



Robert J. Birenbaum  
Assistant County Attorney  
[robert.birenbaum@montgomerycountymd.gov](mailto:robert.birenbaum@montgomerycountymd.gov)

Attorneys for Montgomery County, Maryland  
101 Monroe Street, Third Floor  
Rockville, Maryland 20850  
(240) 777-6700  
(240) 777-6705 - Facsimile

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on this 16th day of December 2024, a copy of the foregoing  
was sent by electronic mail to:

Soo Lee-Cho  
Bregman, Berbert, Schwartz & Gilday, LLC  
7315 Wisconsin Ave., Suite 800 West  
Bethesda, Maryland 20814  
[sleecho@bregmanlaw.com](mailto:sleecho@bregmanlaw.com)  
*Counsel to the Bullis School*



Robert J. Birenbaum  
Assistant County Attorney

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue, Suite 217  
Rockville, Maryland 20850  
<http://www.montgomerycountymd.gov/boal/>  
(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.

Exhibit A

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.

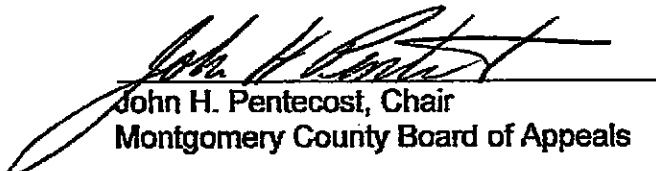
11. There will be no private outside use of the Lower School turf field.

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.



**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**Montgomery County, Maryland**  
**And**  
**Bullis School, Inc.**

This MEMORANDUM OF UNDERSTANDING (the “2024 MOU” or “Updated Agreement”) is between MONTGOMERY COUNTY, MARYLAND (the “County”), a body corporate and politic, and BULLIS SCHOOL, INC. (the “School” or “Applicant”) and becomes effective once all designated representatives of both the School and the County (collectively, the “Parties”) have signed it.

Recitals

1. The purpose of this 2024 MOU is to affirm the Parties’ intent to cooperate in the construction of a sidepath along Falls Road that is to be located along the School’s Falls Road frontage in Potomac, Maryland (“Bullis Path”), originally memorialized by the Parties in a Memorandum of Understanding executed on October 5, 2010 (“2010 MOU”) and Addendum executed on September 17, 2012 (“1<sup>st</sup> Addendum”) (together the “Previous Agreement”).
2. On April 12, 2022, the School filed a Petition to Modify Special Exception (Case No. S-687-H) that was approved in an Opinion issued by the Board of Appeals, effective July 12, 2023, which included the following as Condition No. 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.”

3. The Parties enter into this 2024 MOU to continue to coordinate the final alignment and timing of construction of the Bullis Path as envisioned in the Previous Agreement (as modified herein) and to update the required width of the Bullis Path and certain other relevant terms as detailed herein, which the Parties intend will supersede the Previous Agreement pursuant to Paragraph H below.

Mutual Agreements

NOW THEREFORE, in consideration of the above recitals, which are incorporated into this 2024 MOU as if fully set forth, and for and in consideration of the good and valuable agreements and covenants as hereinafter contained, the County and the School agree as follows:

- A. The School shall complete the design of the Bullis Path subject to approval by the County and the Maryland Department of Transportation-State Highway Administration (“SHA”) to be located within existing right-of-way adjacent to the School’s Falls Road frontage.

B. The Parties agree to establish the timing of construction and certain other terms required for the first segment of the Bullis Path that will run from the School's southwestern property line up to the existing driveway access from Falls Road (the "First Segment") as depicted on the RK&K final design plans attached hereto and incorporated herein as Exhibit A.

1. The School has been provided with a copy of RK&K's 35% final design plans for the Bullis Path. The School must pay for and cause a licensed civil engineer to complete a 100% final design plan for the Bullis Path that meets with the approval of the County and the SHA.
2. The School must dedicate to public use all land required for the Bullis Path as shown by the final design.
3. The School must obtain any applicable construction permits from the County and the SHA utilizing the final design plans for the First Segment of the Bullis Path.
4. The School must fully construct the First Segment of the Bullis Path within three (3) years of the release of the Use and Occupancy Permit for the Lower School Building utilizing the approved and permitted final design plans for the Bullis Path and in substantial conformance therewith.
5. The School must within thirty (30) days of the full execution of the 2024 MOU post a performance bond or other surety as required by the County for the completion of the design and construction of the First Segment of the Bullis Path pursuant to the final design plans.
6. The School must provide a performance bond, other surety, or irrevocable letter of credit to SHA as required by SHA in conjunction with the SHA access permit that will be required for construction of the First Segment of the Bullis Path by the School.

C. In addition to the First Segment of the Bullis Path described above, it is the intent of the Parties to continue to coordinate the start of the School's construction of the remainder of the Bullis Path (the "Second Segment") with future County plans to construct additional sidepath segments which will connect to and align with the Bullis Path (the "Additional Falls Road Sidepath Segments"). The County will provide an anticipated construction schedule to the School for the Additional Falls Road Sidepath Segments. The construction schedule for the Additional Falls Road Sidepath Segments connecting to and aligning with the Bullis Path will determine the anticipated start date for the School's construction of the Second Segment of the Bullis Path.

D. When the County has obtained the right of way necessary to construct the Additional Falls Road Sidepath Segments lying immediately adjacent to the School property (the "Right of Way Clearance"), the County must notify the School of same and the School must then promptly undertake efforts to obtain any applicable construction permits from the County and the SHA utilizing the final design plans for the Bullis Path for the Second Segment of the Bullis Path.

- E. Upon notification by the County of the Right of Way Clearance, the School shall provide a performance bond, other surety, or irrevocable letter of credit to SHA as required by SHA in conjunction with the SHA access permit that will be required for construction of the Second Segment of the Bullis Path by the School.
- F. The School must initiate construction of the Second Segment of the Bullis Path within 730 days of the County's notice of Right of Way Clearance utilizing the final design plans for the Bullis Path and in substantial conformance therewith.
- G. Nothing in this Agreement is intended to preclude the School from seeking the required SHA access permit and moving forward with construction of the Second Segment of the Bullis Path ahead of the County's anticipated construction schedule at the School's sole option.
- H. Upon full execution by the Parties, the provisions of this Updated Agreement shall supersede the Parties' Previous Agreement, specifically the 2010 MOU and 1<sup>st</sup> Addendum.
- I. The persons executing this 2024 MOU on behalf of the Parties have the full power and legal authority to bind the Parties to this Updated Agreement.
- J. Any obligation or liability of the County arising out of this 2024 MOU is subject to, limited by, and contingent upon the appropriation and availability of funds and the damage caps and notice requirements in State law, including the Local Government Tort Claims Act. This MOU does not limit the discretionary decisions of the County Executive and the Montgomery County Council.
- K. If any of the covenants, conditions, restrictions or other provisions of this 2024 MOU are unlawfully void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last descendant of the members of the 118th United States Congress.

[SIGNATURES ON FOLLOWING PAGE]

BULLIS SCHOOL, INC.  
10601 Falls Road  
Potomac, MD 20854

MONTGOMERY COUNTY, MARYLAND  
Executive Office Building  
101 Monroe Street  
Rockville, Maryland 20850-2540

By: \_\_\_\_\_  
Christian G. Sullivan, Head of School  
and President of the Board of Trustees

By: \_\_\_\_\_  
Assistant Chief Administrative Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approval Recommended:

By: \_\_\_\_\_  
Director  
Department of Transportation

Date: \_\_\_\_\_

Approved as to form and legality  
Office of the County Attorney:

By: \_\_\_\_\_





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.



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 16<sup>th</sup> day of June 2023.

Respectfully submitted,



---

Lynn Robeson Hannan  
Hearing Examiner

Notifications to:

Soo Lee-Cho, Esq.  
Attorney for the Petitioner  
Amir Amirjazi  
Mei Lu  
Alan Friend  
Kiran Bhatia  
Lee Chiang  
Jason Sherman  
Alexandra Walther  
Gang Liu  
Carla Rumpy  
Becky Helman  
Jill Olson  
Mark Beall, Planning Department  
Patrick Butler, Planning Department



**THE BULLIS SCHOOL SPECIAL EXCEPTION MODIFICATION  
NO. S-687-H & FOREST CONSERVATION PLAN AMENDMENT  
NO. 12008003D**



**Description**

The Bullis School seeks a Special Exception Major Modification to add a new Lower School building, increase in enrollment and staffing, and installation of an inflatable bubble over top of the existing tennis courts along with associated changes to parking, lighting and landscaping to the existing school campus for a Private Educational Institution pursuant to the 2004 Montgomery County Zoning Ordinance Sections 59-G-1.3(C)(2)(4) (Specific Conditions), 59-A-4.2 (General Conditions) and 59-A-4.4 (General Conditions) and Forest Conservation Plan Amendment.

No. S-687-H & 12008008D

Completed: 4-3-2023

MCPB  
Item No. 8  
April 13, 2023

2425 Reedie Drive  
Floor 14  
Wheaton, MD 20902

[Montgomeryplanning.org](http://Montgomeryplanning.org)

The Bullis School S-687-H & 12008008D

Exhibit D



scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

***(8) Will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.***

The physical and operational modifications reflected on the school's proposed 2022 Campus Master Plan and discussed herein, will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site.

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.

***(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.***

The Bullis School is on public sewer and water service. Rockville Fire Station 33 is located 1.2 miles from the school on Falls Road. There is an approved Fire Department Access Plan for the latest plans submitted to Staff.

#### *Master-Planned Roadways*

The Property is located along Falls Rd., identified by the Complete Streets Design Guidelines as an Area Connector with a 120 ft. wide right-of-way (ROW) as determined by the Master Plan of Highways and Transitways, and Democracy Boulevard, identified by the Complete Streets Design Guidelines as an Area Connector with an 80 ft. wide right-of-way (ROW) as determined by the Master Plan of Highways and Transitways.

#### *Bike and Pedestrian Facilities*

There are no bike or pedestrian facilities in the project vicinity. The Bicycle Master Plan recommends a sidepath along the eastern side of Falls Rd. Following the prior revision to the Bullis School's special exception, the school entered into an MOU agreement (Attachment D) with the Montgomery County Department of Transportation (MCDOT) to provide payment for the school's portion of sidepath along the frontages of Falls Rd. and Democracy Boulevard. The payment is contingent on MCDOT's request at a time closer to the eventual construction of the overall Falls Rd. sidepath CIP project, which would construct a continuous sidepath to the north and south of the school along some 4.5 miles of Falls Road. However, this CIP project has been placed on indefinite hold. As discussed below, Planning Staff are instead requesting the Applicant construct the already approved path as part of this amendment.



in order to address known deficiencies immediately as opposed to being linked to an indefinite timeline.

*Local Area Transportation Review*

The proposed 196 student expansion of the school will produce 199 AM net-new AM peak hour person trips, 106 net-new person trips during the school’s afternoon PM peak hour (ed, following school dismissal, but prior to the area wide peak-hour), and 44 net-new person trips during the area-wide PM peak hour. The numbers are based on the 2022 Local Area Transportation Review.

Table 2: Trip Generation – Person Trips

Development	Measure	AM Peak Hour 7:30 – 8:30	PM School Peak Hour 3:00-4:00	PM Area Peak Hour 4:30-5:30
Existing Private School	900	931	603	202
Expanded Private School	1,096 Students	1130	710	246
<b>Net New Person Trips</b>	--	<b>199</b>	<b>106</b>	<b>44</b>

The proposed use exceeds 50 peak hour person trips, requiring a full multimodal LATR study. Six local intersections were studied using the CLV methodology. No intersection exceeded the 1,450 CLV limit.

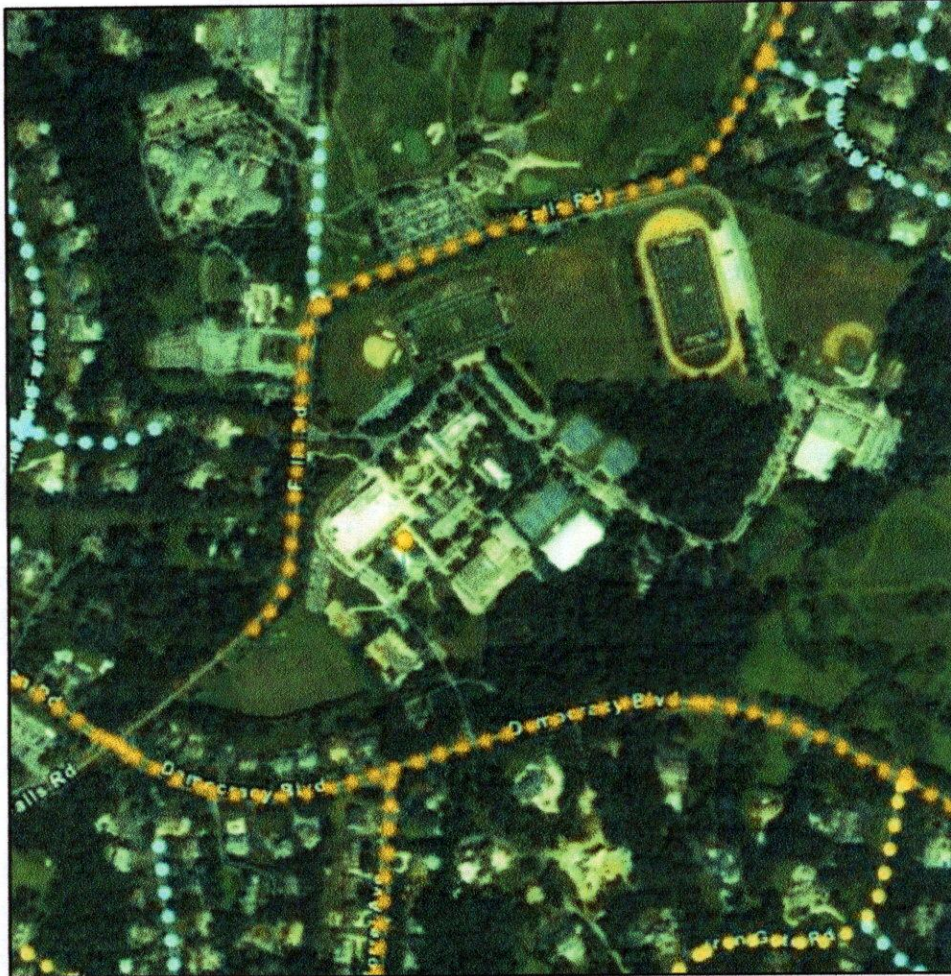
Table 3: CLV Methodology

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

The absence of bike and pedestrian infrastructure in the project vicinity combined with high speeds on both Falls Rd. and Democracy results in the lowest acceptability rating for the bike and pedestrian networks. For bicyclists, these roads receive a Level of Traffic Stress rating of 4, “high stress”. For pedestrians, the Pedestrian Level of Comfort (PLOC) is likewise found to be level 4, “undesirable”. In both cases, walking and biking along these major roads is uncomfortable and dangerous.



Image 1: Local Pedestrian Level of Comfort Analysis



There were two serious crashes reported in the County's crash database from 2015-2022, one of which resulted in a fatality, both occurring on Falls Rd. There is one recorded bicyclist related crash that did not result in serious injury.

To remedy these ongoing safety concerns, Planning Staff requests that the Applicant construct the already conditioned sidepath along the school's frontages on Falls Rd. and Democracy Boulevard. The school is currently responsible to contribute to the eventual Falls Rd. sidepath CIP project through an existing MOU linked to the existing Special Exception, paying for the full construction costs of implementing the path along the Application's frontage. However, the need to provide these safety improvements are immediate. Linking payment for the improvement 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 school 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 Golf 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 project 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.

**(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 granting the special exception.**

The subject property and use are already served by adequate services and facilities. The Traffic Study submitted in support of this Application concludes that the proposed modification will not have a detrimental impact on the surrounding transportation network, adequate water category W-1 and sewer category S-1 facilities currently serve the use, and Rockville Fire Station 33 is located 1.2 miles to the north on Falls Road, only 2 minutes away from the school site. The Applicant has obtained an approved Fire Department Access Plan from DPS.

**(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.**

**(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.**

The school has incorporated transportation and circulation improvements to support future growth, in particular by providing adequate on-site parking and queuing space on internal driveway to accommodate all planned vehicular queuing for daily drop-off and pick-up operations as illustrated in the applicant's Transportation Study. There will be no queuing or offsite impact to public roads.



**April 19, 2023**

**Ms. Lynn Robeson Hannan, Director**

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

**Subject:** Request for a Special Exception Major Modification, S-687-H

**Dear Ms. Robeson Hannan:**

At its regular meeting on April 13, 2023, the Montgomery County Planning Board reviewed Special Exception Major Modification S-687-H, for an Educational Institution, Private on approximately 101 acres, located at 10601 Falls Road, on platted Parcel A, Block E, (Tax Account No. 10-03708108), RE-2 Zone, in the 2002 *Potomac Subregion Master Plan*.

The Applicant, The Bullis School, proposes to construct a new Lower School Building, install an inflatable bubble over an existing tennis court, increase student capacity to 1,096 students, increase staff capacity to 272 staff members, and the associated changes to parking, lighting, and landscaping for the Educational Institution, private use on the approximately 101-acres property. The Special Exception Major Modification Plan shows the proposed changes to the site.

In its staff report dated April 4, 2023, technical staff recommended approval of the Conditional Use with conditions. The Planning Board made a slight revision to recommended Condition No. 2 as follows:

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.

With this slight revision, the Planning Board concurred with the findings and recommendations of the staff report. The Planning Board agreed with staff's conclusion that the use is consistent with the recommendations of the 2002 *Potomac Subregion Master Plan*. The application satisfies all the applicable requirements and regulations of the approval of a Special Exception Major Modification for an Educational Institution, Private. The Applicant has also met the burden of proof by showing that operating the use at this location will not be a detriment to the neighborhood and will not adversely affect the public interest.



Ms. Robeson Hannan  
April 19, 2023  
Page Two

On a motion by Commissioner Bartley, seconded by Commissioner Hedrick, with Vice Chair Piñero and Commissioner Pedoeem voting in favor of the motion, the Planning Board, by a vote of 4 to 0 (Chair Zyontz absent), recommended transmittal of a letter recommending that the Hearing Examiner approve Special Exception Major Modification with the conditions listed in the staff report.

The Planning Board appreciates the opportunity to review this project and looks forward to working with your staff on subsequent reviews. If you have any questions, please contact Mark Beall at 301-495-1330 or [mark.beall@montgomeryplanning.org](mailto:mark.beall@montgomeryplanning.org).

Sincerely,



**Roberto R. Piñero**  
Vice Chair

Enclosure



December 17, 2024

**BY ELECTRONIC DELIVERY**

Chair Caryn Hines

And Members of the Board of Appeals  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 217  
Rockville, Maryland 20850

Re: Petition of the Bullis School, Inc.,  
Administrative Modification of Special Exception Case No. S-687-H

Dear Chair Hines and Members of the Board of Appeals:

The following is a supplemental submission to the administrative modification request filed on behalf of the Bullis School (“School”), dated December 10, 2024, in response to the Motion to Strike Untimely Appeal, or in the Alternative, for Appropriate Relief (“Motion to Strike”), filed yesterday by Montgomery County Department of Transportation (“MCDOT”).

As a preliminary matter, the Motion to Strike is erroneous in its assertion that the School’s administrative modification request constitutes an untimely appeal. All aspects of special exception approvals remain within the purview of the Board of Appeals, inclusive of any proposed modification or redress sought by a petitioner relative to previously adopted conditions of approval. This matter is entirely within the subject matter jurisdiction of the Board, properly before the Board, and as such, MCDOT’s Motion to Strike must be denied.

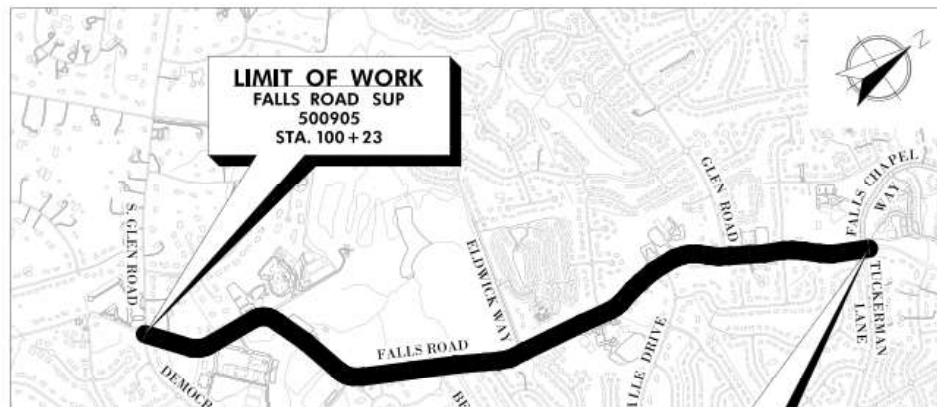
Nonetheless, to the extent that the Motion to Strike constitutes MCDOT’s objection to the School’s request for relief relative to Condition No. 5, it warrants a response. The Motion to Strike itself, which contains various misstatements of facts, serves to evidence the reasons why the School finds itself in the unfortunate position of seeking relief from the Board as follows:

requirement was tied to the School's Preliminary Plan approval (#120080030) that had given the School the option of either paying for the path or constructing the path. See below:

- 7) **The Applicant must pay for or construct an 8 foot-wide shared use path along the Falls Road Property frontage per CIP Project No. 500905 or according to MCDOT requirements.**

Because the above option to 'pay or construct' had been incorporated into the 2010/2012 MOU/Addendum, Planning Board Staff felt the need to make clear their preference for construction as opposed to allowing payment. The School did not object to eliminating the payment option at the Planning Board hearing held on April 13, 2023 and was in agreement with entering into a 'new MOU' to incorporate this change as well as to increase the required width for the path. But the understanding that had been reached with MCDOT staff, and that was affirmed by Patrick Butler, Chief of Upcounty, at the Planning Board hearing, was that the 'new MOU' would be similar to the previous in its timing and close coordination with construction of connecting portions of the path to the north and south of the School property by the County.

This was the understanding of the parties at the time of the Planning Board hearing. To say otherwise, simply misrepresents what occurred. MCDOT was in agreement because they were actively engaged in re-designing a smaller stretch of the Falls Road CIP project, extending from Democracy Blvd immediately to the south of the School property to Tuckerman Lane to the north (see below). In fact, the School's civil engineer (MHG) directly interacted with MCDOT engineers to determine the scope of the new sidepath design before and after the Planning Board hearing, inclusive of facilitating site visits to walk the frontage together.



MCDOT's current position and proposed MOU, attached to the Motion to Strike, is in stark contrast to what the School was led to believe would be the framework for the 'new MOU' and is only a result of the fact that MCDOT failed in its efforts to maintain funding for the Falls Road project in the County's CIP Budget adopted in June/July of this year. In a meeting held with MCDOT's Deputy Director Haley Peckett on September 3, 2024 (attended by the undersigned and the School's civil engineer, Patrick La Vay), Ms. Peckett stated that their hope is to try and use the School's partial construction as a means of regaining the lost funding for the overall project.

The School's response was that if MCDOT needed that kind of assistance from the School, then the School would need to have the occupancy of the Lower School untethered from the MOU, which is what the present administrative modification is seeking to achieve.

Rather than engage with the School as a partner in good faith, MCDOT's Motion to Strike twists the intent of Condition No. 5 and presents a revisionist's version of the facts.

2. The Motion to Strike's assertion that there was no agreement in principle as to the nature and scope of the new MOU is contradicted by correspondence with MCDOT.

Attached hereto are email transmittals/exchanges with MCDOT which clearly confirm that the School's understanding of the scope of the new MOU was in fact affirmed by MCDOT in their initial redline draft provided on/about February 22, 2024 and in subsequent communications that only dealt with clarification of terminology.

Thank you for your consideration of these additional comments.

Sincerely yours,

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

By:   
Soo Lee-Cho

## Soo Lee-Cho

---

**From:** Torma, Rebecca <Rebecca.Torma-Kim@montgomerycountymd.gov>  
**Sent:** Thursday, February 22, 2024 9:54 AM  
**To:** Soo Lee-Cho  
**Subject:** RE: Bullis MOU Redline  
**Attachments:** DOTRevised Bullis School MOU in re Falls Road Bikeway.COUNTY REDLINE.2.6.24 CR.docx

Sorry for the delay. Please see the attached.

**\*\*\*\*\*Please see the link below for new application process\*\*\*\*\***

<https://www.montgomerycountymd.gov/dot-dir/Resources/Files/DevRevApplication.pdf>

Rebecca Torma | Manager, Development Review  
Director's Office | Department of Transportation  
101 Monroe Street  
10<sup>th</sup> Floor  
Rockville MD 20850  
(240) 777-2118 (work)  
(240) 383-5252 (cell)  
[Rebecca.torma@montgomerycountymd.gov](mailto:Rebecca.torma@montgomerycountymd.gov)

---

**From:** Soo Lee-Cho <sleecho@bregmanlaw.com>  
**Sent:** Wednesday, February 21, 2024 9:55 PM  
**To:** Torma, Rebecca <Rebecca.Torma-Kim@montgomerycountymd.gov>  
**Subject:** Bullis MOU Redline

**[EXTERNAL EMAIL]**

Hi Rebecca,  
I don't recall getting the redline after our meeting last week... at least I can't find it in my inbox, can you please resend? Thanks.

Soo

**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**Montgomery County, Maryland**  
**And**  
**Bullis School, Inc.**

This MEMORANDUM OF UNDERSTANDING (the “~~2023~~ 2024 MOU” or “Updated Agreement”) is between MONTGOMERY COUNTY, MARYLAND (the “County”), a body corporate and politic, and BULLIS SCHOOL, INC. (the “School” or “Applicant”) and becomes effective once all designated representatives of both the School and the County (collectively, the “Parties”) have signed it.

Recitals

1. The purpose of this ~~2023~~ 2024 MOU is to affirm the Parties’ intent to cooperate in the construction of the portion of the Falls Road Hiker-Biker Path Project (CIP No. 500905) that is to be located along the School’s Falls Road frontage in Potomac, Maryland (“Bullis Path”), originally ~~codified~~ memorialized by the Parties in a Memorandum of Understanding executed on October 5, 2010 (“2010 MOU”) and Addendum executed on September 17, 2012 (“1<sup>st</sup> Addendum”) (together the “Previous Agreement”).
2. On June 23, 2004, the School filed Preliminary Plan No. 1-20080030 (“Preliminary Plan”) with the Maryland-National Capital Park & Planning Commission which was ultimately approved by the Planning Board on March 19, 2009.
3. As a condition of approval of the Preliminary Plan, the School was required to either pay for or construct that portion of a shared use path project to be located along the School’s Falls Road frontage. Specifically, Condition No. 7 states as follows: “The Applicant must pay for or construct an ~~8-foot-wide~~8-foot-wide shared use path along the Falls Road Property frontage per CIP Project No. 500905 or according to MCDOT requirements.”
4. In compliance with Condition No. 7 above, the Parties subsequently executed the 2010 MOU detailing their agreement on an alternative design package for the portion of the shared use path that was to be constructed along the School’s Falls Road frontage, referred to as the “Revised Bullis Alternative,” which was attached to the 2010 MOU as Exhibit A.
5. Paragraph 2 of the 2010 MOU provided that the Parties intend to closely coordinate the start of construction of the Revised Bullis Alternative with the County’s construction schedule for the adjoining portions of CIP No. 500905 to the north and south of the School’s Falls Road frontage.
6. On August 2, 2012, Subdivision Record Plat No. 24460, “Parcel A, Block E, Blenheim” was recorded in the Land Records of Montgomery County, whereby the School dedicated for public use, 0.935 acres of land adjacent to Falls Road to accommodate the Revised Bullis Alternative.



7. On September 17, 2012, the Parties executed an Addendum to the 2010 MOU, referred to as the 1<sup>st</sup> Addendum, that extended the timing for completing construction of the Revised Bullis Alternative by the School to a date to be determined in accordance with the County's Expenditure Schedule for CIP No. 500905. The County agreed that it would notify the School as soon as funding for CIP No. 500905 is restored and an anticipated construction schedule can be provided to the School, and that the construction schedule for CIP No. 500905 will determine the anticipated start date for construction of the Revised Bullis Alternative by the School.
8. Upon the receipt of Federal Aid in FY22 in the form of a Transportation Alternative Program grant, the County's Department of Transportation (MCDOT) initiated a redesign of the shared use path, now referred to as "Falls Road Bikeway and Pedestrian Facility" (P500905) ("Falls Road Bikeway"), consisting of "approximately 4 miles of an 8-10 foot bituminous hiker/biker path along the east side of Falls Road from River Road to Dunster Road."
9. On April 12, 2022, the School filed a Petition to Modify Special Exception (Case No. S-687-H) that was approved in an Opinion issued by the Board of Appeals, effective July 12, 2023, which included the following as Condition No. 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."

10. In light of MCDOT's current efforts to update the overall design of the Falls Road Bikeway project and to accommodate a wider sidepath along the School's portion of the project in compliance with Condition No. 5 above, the Parties seek to enter into this ~~2023~~ 2024 MOU to continue to coordinate in the final alignment and timing of construction of the Bullis Path as envisioned in the Previous Agreement but seek to update the required width of the Bullis Path and certain other relevant terms as detailed herein, which the Parties intend will supersede the Previous Agreement pursuant to Paragraph H below.

#### Mutual Agreements

NOW THEREFORE, in consideration of the above recitals, which are incorporated into this ~~2023~~ 2024 MOU as if fully set forth, and for and in consideration of the good and valuable agreements and covenants as hereinafter contained, the County and the School agree as follows:

- A. The School shall coordinate with MCDOT's civil engineering contractor (RKK) tasked with updating the design of the entire Falls Road Bikeway project inclusive of that portion of the Falls Road Bikeway project to be located within existing right-of-way adjacent to the School's Falls Road frontage ("Bullis Path").

B. It is the intent of the Parties to continue to ~~el~~esely coordinate the start of construction of the School's construction of the Bullis Path with the County's construction schedule for the adjoining portions of the CIP No. P500905 to the north and south of the School's Falls Road frontage. The County agrees that it will notify the School as soon as upon land acquisition efforts ~~right-of-way clearance are initiated~~ and an anticipated construction schedule can be provided to the School. The construction schedule for CIP No. P500905 will determine the anticipated start date for construction of the Bullis Path by the School.

C. Upon the County's initiation of the land acquisition process for the Falls Road Bikeway project, the School shall undertake efforts to obtain any and all applicable construction permits from the County and the State Highway Administration utilizing RKK's final design plans for the Bullis Path.

D. ~~The Parties agree that the Scope of Work of the Bullis Path for which the School will be responsible to construct, will not involve use of porous pavement, any path lighting or replacement landscaping. The County shall be responsible for installation of path lighting, if any, or provide adequate funds to the School to cover the cost of installing any path lighting (inclusive of the costs of fixtures, poles and other infrastructure) that may be desired by the County along the Bullis Path. Notwithstanding the preceding sentence, the Parties agree that the School, as part of its construction of the Bullis Path, may be required to install conduit to facilitate installation of path lighting by the County or by others, if determined to be needed, at no cost to the County.~~

~~E.~~ The School shall provide a performance bond or irrevocable letter of credit to SHA in conjunction with the SHA access permit that will be required for construction of the Bullis Path by the School, ~~in an amount to be determined as follows:~~

~~1. Upon initiation of the land acquisition process, the County will provide the School with a final Cost Estimate for the Bullis Path that is consistent with the mutually agreed upon Scope of Work described in Paragraph D herein and that will be more specifically depicted on the County's final design plans.~~

~~F. Other than as required by law, the Parties agree that the School will not be required to maintain the Bullis Path.~~

~~G-E.~~ Nothing in this Agreement is intended to preclude the School from seeking the required SHA access permit and moving forward with construction of the Bullis Path ahead of the County's anticipated construction schedule for CIP No. P500905 at the School's sole option.

~~H-F.~~ Upon full execution by the Parties, the provisions of this Updated Agreement shall supersede the Parties' Previous Agreement, specifically the 2010 MOU and 1<sup>st</sup> Addendum.

~~G.~~ The persons executing this ~~2023-2024~~ MOU on behalf of the Parties have the full power and legal authority to bind the Parties to this Updated Agreement.



**Torma, Rebecca** February 22, 2024  
**Formatted:** Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

**Royalty, Clifford**  
**Formatted:** List Paragraph, Left, No bullets or numbering

**Royalty, Clifford** ...  
What does "land acquisition efforts mean?"  
Reply

**Torma, Rebecca** ...  
Scope of work is list in paragraph 9 above.  
Reply

**Royalty, Clifford** ...  
D. and E. address matters that are governed by law or land use approvals.  
Reply

I.H. Any obligation or liability of the County arising out of this MOU is subject to, limited by, and contingent upon the appropriation and availability of funds and the damage caps and notice requirements in State law, including the Local Government Tort Claims Act. This MOU does not limit the discretionary decisions of the County Executive and the Montgomery County Council.

BULLIS SCHOOL, INC.  
10601 Falls Road  
Potomac, MD 20854

MONTGOMERY COUNTY, MARYLAND  
Executive Office Building  
101 Monroe Street  
Rockville, Maryland 20850-2540

By: \_\_\_\_\_  
Christian G. Sullivan, Head of School  
and President of the Board of Trustees

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Assistant Chief Administrative Officer

Date: \_\_\_\_\_

Approval Recommended:

By: \_\_\_\_\_  
Director  
Department of Transportation

Date: \_\_\_\_\_

Approved as to form and legal sufficiency  
by the Office of the County Attorney:

This \_\_\_ day of \_\_\_\_\_ 20\_\_

By: \_\_\_\_\_

*Assistant County Attorney*



## Soo Lee-Cho

---

**From:** Torma, Rebecca <Rebecca.Torma-Kim@montgomerycountymd.gov>  
**Sent:** Thursday, April 25, 2024 8:50 AM  
**To:** Soo Lee-Cho  
**Subject:** RE: Bullis MOU Redline

I think it looks fine. I'll run it by Cliff and get back to you. Check with me next week if you haven't heard from me.

**\*\*\*\*\*Please see the link below for new application process\*\*\*\*\***

<https://www.montgomerycountymd.gov/dot-dir/Resources/Files/DevRevApplication.pdf>

Rebecca Torma | Manager, Development Review  
Director's Office | Department of Transportation  
101 Monroe Street  
10<sup>th</sup> Floor  
Rockville MD 20850  
(240) 777-2118 (work)  
(240) 383-5252 (cell)  
[Rebecca.torma@montgomerycountymd.gov](mailto:Rebecca.torma@montgomerycountymd.gov)

---

**From:** Soo Lee-Cho <sleecho@bregmanlaw.com>  
**Sent:** Wednesday, April 24, 2024 11:58 PM  
**To:** Torma, Rebecca <Rebecca.Torma-Kim@montgomerycountymd.gov>  
**Subject:** FW: Bullis MOU Redline

### [EXTERNAL EMAIL]

Hi Rebecca,  
Hope you're having a good week... just writing to follow-up on the attached... please let me know if we need to further discuss. Thanks.

Soo



Soo Lee-Cho  
BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC  
7215 Wisconsin Avenue, Suite 800 West

Hi Rebecca,

The changes reflected on the attached County Redline dated 2/6/24 are acceptable to the School. I accepted all changes, removed the comments and created a clean version to which I made a couple edits. Please let me know if acceptable to finalize... if so, I'll go ahead and have the School execute and deliver two originals to you for execution on your end.

Thanks!

Soo



Soo Lee-Cho

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

7315 Wisconsin Avenue, Suite 800 West

Bethesda, Maryland 20814

301-656-2707 x5902 **PHONE** | 301-961-6525 **FAX** | 301-318-3884 **MOBILE**

Email: [sleecho@bregmanlaw.com](mailto:sleecho@bregmanlaw.com)

[www.bregmanlaw.com](http://www.bregmanlaw.com) (-> [urldefense.proofpoint.com](http://urldefense.proofpoint.com))

---

**From:** Torma, Rebecca <[Rebecca.Torma-Kim@montgomerycountymd.gov](mailto:Rebecca.Torma-Kim@montgomerycountymd.gov)>

**Sent:** Thursday, February 22, 2024 9:54 AM

**To:** Soo Lee-Cho <[sleecho@bregmanlaw.com](mailto:sleecho@bregmanlaw.com)>

**Subject:** RE: Bullis MOU Redline

Sorry for the delay. Please see the attached.

**\*\*\*\*\*Please see the link below for new application process\*\*\*\*\***

**<https://www.montgomerycountymd.gov/dot-dir/Resources/Files/DevRevApplication.pdf>**

Rebecca Torma | Manager, Development Review

Director's Office | Department of Transportation

101 Monroe Street

10<sup>th</sup> Floor

Rockville MD 20850

(240) 777-2118 (work)

(240) 383-5252 (cell)

[Rebecca.torma@montgomerycountymd.gov](mailto:Rebecca.torma@montgomerycountymd.gov)

---

**From:** Soo Lee-Cho <[sleecho@bregmanlaw.com](mailto:sleecho@bregmanlaw.com)>

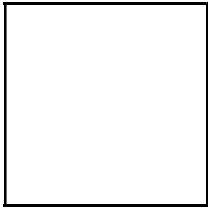
Sent: Wednesday, February 21, 2024 9:55 PM

I don't recall getting the redline after our meeting last week... at least I can't find it in my inbox, can you please resend? Thanks.

Soo



Soo Lee-Cho  
BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC  
7315 Wisconsin Avenue, Suite 800 West  
Bethesda, Maryland 20814  
301-656-2707 x5902 **PHONE** | 301-961-6525 **FAX** | 301-318-3884 **MOBILE**  
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[www.bregmanlaw.com](http://www.bregmanlaw.com) (-> [urldefense.proofpoint.com](http://urldefense.proofpoint.com))



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<https://www.montgomerycountymd.gov/cybersecurity>

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<https://www.montgomerycountymd.gov/cybersecurity>

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

## Soo Lee-Cho

---

**From:** Soo Lee-Cho  
**Sent:** Tuesday, March 19, 2024 8:40 AM  
**To:** Torma, Rebecca; McCray, Tiara  
**Subject:** RE: Bullis MOU Redline

Yes, thank you. This is very helpful.

Soo



Soo Lee-Cho  
BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC  
7315 Wisconsin Avenue, Suite 800 West  
Bethesda, Maryland 20814  
301-656-2707 x5902 **PHONE** | 301-961-6525 **FAX** | 301-318-3884 **MOBILE**  
Email: [sleecho@bregmanlaw.com](mailto:sleecho@bregmanlaw.com)  
[www.bregmanlaw.com](http://www.bregmanlaw.com)

---

**From:** Torma, Rebecca <Rebecca.Torma-Kim@montgomerycountymd.gov>  
**Sent:** Tuesday, March 19, 2024 8:39 AM  
**To:** McCray, Tiara <Tiara.McCray@montgomerycountymd.gov>; Soo Lee-Cho <sleecho@bregmanlaw.com>  
**Subject:** RE: Bullis MOU Redline

Thank you for the clarification.

**\*\*\*\*\*Please see the link below for new application process\*\*\*\*\***  
<https://www.montgomerycountymd.gov/dot-dir/Resources/Files/DevRevApplication.pdf>

Rebecca Torma | Manager, Development Review  
Director's Office | Department of Transportation  
101 Monroe Street  
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Rockville MD 20850  
(240) 777-2118 (work)  
(240) 383-5252 (cell)  
[Rebecca.torma@montgomerycountymd.gov](mailto:Rebecca.torma@montgomerycountymd.gov)

Pat is correct; R/W Clearance references when all necessary property interests have been acquired for a CIP and construction activities can begin. It is likely tied to a date close to when a Notice to Proceed is issued to a construction contractor.

Thanks,

Tiara McCray  
*Property Acquisition Chief*

**Department of Transportation**  
*Division of Transportation Engineering*  
Property Acquisition Section  
100 Edison Park Drive, 4<sup>th</sup> Floor  
Gaithersburg, Maryland 20878  
240-777-7257 (o)  
240-720-7862 (m)

---

**From:** Torma, Rebecca <[Rebecca.Torma-Kim@montgomerycountymd.gov](mailto:Rebecca.Torma-Kim@montgomerycountymd.gov)>  
**Sent:** Monday, March 18, 2024 4:18 PM  
**To:** Soo Lee-Cho <[sleecho@bregmanlaw.com](mailto:sleecho@bregmanlaw.com)>  
**Cc:** McCray, Tiara <[Tiara.McCray@montgomerycountymd.gov](mailto:Tiara.McCray@montgomerycountymd.gov)>  
**Subject:** RE: Bullis MOU Redline  
**Importance:** High

I think Pat is correct, but I have added Tiara to let me know if I'm correct.

**\*\*\*\*\*Please see the link below for new application process\*\*\*\*\***  
<https://www.montgomerycountymd.gov/dot-dir/Resources/Files/DevRevApplication.pdf>

Rebecca Torma | Manager, Development Review  
Director's Office | Department of Transportation  
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(240) 777-2118 (work)  
(240) 383-5252 (cell)  
[Rebecca.torma@montgomerycountymd.gov](mailto:Rebecca.torma@montgomerycountymd.gov)

---

**From:** Soo Lee-Cho <[sleecho@bregmanlaw.com](mailto:sleecho@bregmanlaw.com)>

Thanks for sending this... one quick question... in Paragraph B it now states that “[t]he County agrees that it will notify the School upon **right-of-way clearance** and an anticipated construction schedule can be provided to the School”... what does “right-of-way clearance” mean?

I’m reading it to mean when DOT has CIP funding/authorization to proceed with the land acquisition process for the project, but Pat La Vay thinks it might mean the point at which all the right-of-way needed for the sidepath has in fact been acquired by the County.

Soo



Soo Lee-Cho  
BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC  
7315 Wisconsin Avenue, Suite 800 West  
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301-656-2707 x5902 **PHONE** | 301-961-6525 **FAX** | 301-318-3884 **MOBILE**  
Email: [sleecho@bregmanlaw.com](mailto:sleecho@bregmanlaw.com)  
[www.bregmanlaw.com](http://www.bregmanlaw.com) (-> [urldefense.proofpoint.com](http://urldefense.proofpoint.com))

---

**From:** Torma, Rebecca <[Rebecca.Torma-Kim@montgomerycountymd.gov](mailto:Rebecca.Torma-Kim@montgomerycountymd.gov)>  
**Sent:** Thursday, February 22, 2024 9:54 AM  
**To:** Soo Lee-Cho <[sleecho@bregmanlaw.com](mailto:sleecho@bregmanlaw.com)>  
**Subject:** RE: Bullis MOU Redline

Sorry for the delay. Please see the attached.

**\*\*\*\*\*Please see the link below for new application process\*\*\*\*\***

**<https://www.montgomerycountymd.gov/dot-dir/Resources/Files/DevRevApplication.pdf>**

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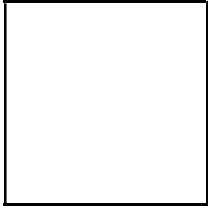
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**From:** Soo Lee-Cho <[sleecho@bregmanlaw.com](mailto:sleecho@bregmanlaw.com)>  
**Sent:** Wednesday, February 21, 2024 9:55 PM  
**To:** Torma, Rebecca <[Rebecca.Torma-Kim@montgomerycountymd.gov](mailto:Rebecca.Torma-Kim@montgomerycountymd.gov)>

Soo



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<https://www.montgomerycountymd.gov/cybersecurity>

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.



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