

BEFORE THE HEARING EXAMINER FOR MONTGOMERY COUNTY, MARYLAND

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

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

PETITIONER’S RESPONSE TO SUR-REPLY

Petitioner Holton-Arms School, Inc. (“Holton-Arms”, “School”, “Applicant” or “Petitioner”) submits this Response to Sur-Reply to address the Sur-Reply to Reply to Response to Motion to Amend (“Opposition Sur-Reply”) filed by Mr. Bil Chen, Esq. on behalf of his clients, Vivian Riefberg and Bradley Boulevard Citizens Association. Petitioner is aware that this number of reply briefs is unorthodox, but to the extent Mr. Chen is insistent on introducing inaccurate and misleading information into the record in this case, Petitioner is compelled to answer with the truth.

I. The Opposition Sur-Reply continues to push a ‘form over substance’ argument that was unanimously rejected by the Board of Appeals at its March 11, 2026 Worksession.

The Opposition Sur-Reply reiterates a ‘form over substance’ argument that may have worked to give the Hearing Examiner some pause at the November 17, 2025, hearing, contributing to the postponement of these proceedings, but which has since been unanimously rejected by the

Board of Appeals as being without merit. The Opposition Sur-Reply's heavy reliance on what transpired at the November hearing, despite the Board of Appeal's subsequent rejection of opposition counsel's case designation arguments, can only be read as advocating for OZAH's disregard of the Board's pending Resolution addressing this issue.

As a member of the Board of Appeals reminded opposition counsel at the March 11 Worksession, on matters referred by the Board to the Hearing Examiner for the conduct of hearings, as here, it is the Board that has "the sole authority to render a decision upon the merits of any petition for special exception..." (Section 59-A-4.125 of 2004 Zoning Ordinance). The Board's jurisdiction over special exceptions is vested under Section 2-112 of the County Code.

The Board unequivocally disagreed with Mr. Chen's opinion that a major modification of the School's summer camp special exception was never publicly noticed. The Board found that the Applicant's inclusion of the summer camp enrollment increase in *Petitioner's Statement in Support of Special Exception Modification Application* (Exhibit 10), was part of the application and provided actual public notice of the full scope of the application. In rejecting opposition counsel's case designation concerns, the Board found that there was never any doubt that the School's modification application included a summer camp enrollment increase and that the case designation should and could be corrected by the Board to explicitly reference S-2503 in a revised transmittal Resolution to OZAH.

Separate and apart from the Board's anticipated corrective action on the transmittal Resolution, Petitioner's Motion to Amend is and has always been necessary to ensure that any and all of the School's previous submissions in support of its application be acknowledged by OZAH as properly amended to reflect the Board's corrective action. Mr. Chen's baseless assertion that "Holton apparently disagrees with the need for the referral from the Board" when it was the

undersigned who requested the Board's correction of its referral to OZAH in the first place, defies logic and reason.

At the top of page 3, of the Opposition Sur-Reply, Mr. Chen vaguely states that a modification "must comply with all of the normal and usual requirements of the Zoning Ordinance" and that "[f]ailure to comply with the Zoning Ordinance vitiates any OZAH proceeding and Board decision." This is obviously a not-so-veiled threat of further appeal his case designation issue and the Board's correction thereof. This does not come as a surprise considering Mr. Chen's obvious reluctance to accept the determination of the Board on this issue.

The School and the substantial number of community members in support of its application have a right to have this case assessed on its merits. To continue to cater to these frivolous delay tactics would be unfair and prejudicial to the Applicant. Furthermore, it is unnecessary, because even if the Board believes that its correction constitutes a new referral of S-2503 to OZAH, the Board has express authority under the Zoning Ordinance to convene a hearing on a special exception modification with *less than 30 days following public notice* if "delay would impose unusual individual or community hardship." See Section 59-G-1.3(c)(3). By the time of the April hearing dates, it will be over 11 months since the original hearing date in this case was set. Additionally, the Board received evidence prior to the March 11 Worksession in the form of community support letters from which the Board could determine any further delay in consideration of this case would present an unusual hardship on the School and its community of supporters pursuant to Section 59-G-1.3(c)(3). Moreover, the Board was presented with ample evidence as to the actual notice and public awareness of the School's summer camp request in reaching its decision to correct the transmittal Resolution as requested by the undersigned. The Planning Staff Report not only fully analyzed the requested summer camp increase but attached

36 pages of community letters from those in opposition raising concerns and objections to the summer camp increase requested by the School. Contrary to Mr. Chen’s opinion, the Board’s action taken relative to the School’s modification application at the March 11 Worksession was in full compliance with the Zoning Ordinance requirements and pursuant to its vested authority.

II. Nothing bars the Applicant from withdrawing its request for permanent office use of the Granger House.

The Opposition Sur-Reply intentionally misquotes the transcript to obfuscate Mr. Chen’s explicit statement at the November 17, 2025, hearing that the Granger House request constitutes an application *amendment*. Below is the relevant excerpt from the Opposition Sur-Reply:

Opposition Sur-Reply’ Restatement of Transcript (pg. 5)

HEARING EXAMINER: That’s right.

MR. CHEN: Now they want to make it a permanent non-residential use. That’s part of the last statement of justification that I’ve seen that they’ve added it. So I don’t think it’s a housekeeping matter. I think it’s an actual **statement**.

Actual Hearing Transcript (pg. 13)

15 HEARING EXAMINER: That's right.
16 MR. CHEN: Now they want to make it a
17 permanent non-residential use. That's part of
18 the last statement of justification that I've
19 seen that they've added it. So I don't think
20 it's a housekeeping matter. I think it's an
21 actual **amendment**.

Relative to the Granger House aspect of Applicant’s Motion to Amend, Mr. Chen argues that a request for modification first made in Petitioner’s *Revised Statement of Justification and Summary of Proof* (Exhibit 30) **is part of the application**, and that only the Board can act to accept a ‘withdrawal’. Meanwhile, Mr. Chen contends that a request for a summer camp enrollment increase that was part of the initial *Statement in Support of Special Exception Modification Application* (Exhibit 10) **is not part of the application**. Mr. Chen’s proclivity to argue for the sake of argument actually makes the Applicant’s point with respect to modification of summer camp enrollment. Applicant agrees with Mr. Chen that a request contained within the Applicant’s

statement of justification is *a part of the application*, and by Mr. Chen's own admission, not just in the initial statement of justification supporting the application but even in revised statements.

To the extent that the Opposition Sur-Reply seeks to mislead the Hearing Examiner into treating the Applicant's request to withdraw consideration of permanent office use of the Granger House as equivalent to a withdrawal of an entire application, it is obviously not.

III. The Opposition Sur-Reply's Conclusion containing new attacks against the School are irrelevant, misleading, and should be ignored in favor of resolving the actual substantive issues in this case.

Apparently, Mr. Chen is proud of the fact that he continuously and baselessly accuses Holton-Arms, a well-respected educator of young women since 1961, of willfully breaking the law. In the Opposition Sur-Reply, he adds a new objection to the School's operations based on an alleged "violation" of the School's 1987 Preliminary Plan. This argument is a complete red herring offered only to introduce confusion into these proceedings and harass the School without legal basis.

As Mr. Chen surely knows, in accordance with Section 59-G-1.21(9)(B) of the 2004 Zoning Ordinance, if a special exception does not require approval of a *new* preliminary plan of subdivision, which is the case here, and the determination of adequate public facilities (APF) for the site is not currently valid for an impact, also the case here due to the School's requested enrollment increases, etc., then it is the Board of Appeals or Hearing Examiner that must determine APF compliance when it considers the special exception application, and *not* the Planning Board via a preliminary plan of subdivision.

The only reason the School is concurrently processing an amendment of its 1987 preliminary plan of subdivision with this Major Modification Application, is to reconcile the Planning Board's record of the 1987 preliminary plan with subsequent Board approvals that

subsequently increased the School's enrollment cap pursuant to Section 59-G-1.21(9)(B), in full compliance with all required APF findings.

The Opposition Sur-Reply questions this counsel's candor in stating that the preliminary plan amendment concurrently being processed with the Planning Department is "not directly related to the current Special Exception case." That statement is not just candid – it is a correct statement of the law. Under Section 59-G-1.21(9)(B), the requisite APF findings will be made by the Board of Appeals on recommendations provided by the Hearing Examiner. As such, the preliminary plan amendment, which is *limited* to deleting text from a now outdated student cap figure that appears in Condition #1 of the 1987 Planning Board Resolution and will not address any other issues let alone APF issues, need not be approved in advance of the present Application, which was the context of the undersigned's discussion with the Hearing Examiner.

By calling this a "violation of the student cap imposed by its 1987 Preliminary Plan," Mr. Chen is elevating this issue far above its actual significance. There is no violation because there is no actual violation of the School's APF. Subsequent enrollment increases authorized by the Board determined the adequacy of public facilities in each instance pursuant to Section 59-G-1.21(9)(B). Mr. Chen has informed the Board and Hearing Examiner on numerous occasions how well he knows the law, so the only conclusion to be drawn from his mischaracterization of the significance of the corrective preliminary plan amendment is that it is done intentionally to make spurious accusations against the School.

It is likewise disingenuous for Mr. Chen to accuse the School for periodic enrollment exceedances over the years while conveniently omitting that the School has duly reported any such occurrences in its Annual Reports through which the Board has had full knowledge and has allowed the School flexibility to take measures to bring its enrollment below the cap over a period

of time. For Mr. Chen to raise this issue in the manner that he has, without the full facts, reflects a lack of candor on his part aimed at unjustifiably tarnishing the School's reputation.

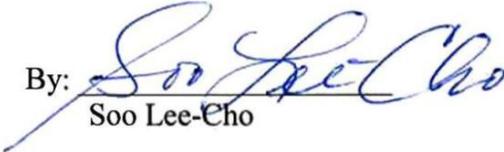
Mr. Chen's reference to the September 7, 2001, Board Resolution following a show cause hearing has even less relevance in the current proceedings than the preliminary plan issue. Those proceedings happened twenty-five years ago, under a different Board of Appeals.

It is curious that Mr. Chen fails to mention that key aspects of the 2001 Board Resolution were ultimately overruled by the Montgomery County Circuit Court¹, and in fact that the then-Board's accessory use analysis relative to private schools completely overturned by Zoning Text Amendment 02-01. ZTA 02-01, making it now possible for private schools to engage in a whole host of ancillary programming to students and non-students alike.

In closing, on behalf of the School and its community of supporters and based on all the foregoing, the Applicant requests that the Hearing Examiner grant the aforesaid Motion to Amend in all respects.

Respectfully submitted,

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¹ Petition of the Holton-Arms School, Inc., for judicial Review of the Decision of the Montgomery County Board of Appeals, Civil No. 232923, opinion entered December 30, 2002).

CERTIFICATE OF SERVICE

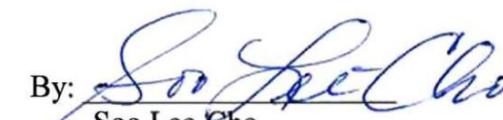
I HEREBY CERTIFY that on this 20th day of March, 2026, a copy of the foregoing Petitioner's Response to Sur-Reply was transmitted by first-class mail and email to:

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