

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Exhibit 37(a)
CBA-1174-E**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. CBA-1174-D

Case No. S-2503-A

Case No. S-2467-A

PETITIONS OF HOLTON ARMS SCHOOL

**RESOLUTION TO ADOPT HEARING EXAMINER'S REPORT AND
RECOMMENDATION AND TO REQUIRE AN ADDITIONAL TRAFFIC STUDY
ACCORDING TO REVISED CONDITION NO. 5**

(Resolution Adopted November 29, 2006)

(Effective Date of Resolution: January 5, 2007)

In an opinion dated March 23, 2004, the Board of Appeals approved modifications to the above captioned special exceptions, subject to conditions including the following:

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

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

Opinion; however, every effort will be made to avoid any reduction in enrollment from the approved level of 665.

On June 29, 2005, Petitioners consultant, Gorove/Slade submitted a traffic study, which is Exhibit 81 in the record of the case. Transportation Planning staff of the Maryland National Capital Park and Planning Commission (MNCPPC) had approved of the parameters of the traffic study. At its January 10, 2006 Worksession, the Board of Appeals considered the traffic study, as presented by Martin Klauber, Peoples' Counsel, together with the concerns expressed by the Bradley Boulevard Citizens Association and the Burning Tree Civic Association, that the parameters of the study were too narrow. In a Resolution effective March 15, 2006, the Board of Appeals referred the matter to the Hearing Examiner to hold a public hearing to review the adequacy of the traffic study in satisfaction of Condition No. 5, and to address the following specific questions:

1. Transportation Planning staff's opinion as to whether the Gorove/Slade Traffic Analysis submitted by Holton Arms [Exhibit No. 81, Attachment 6] satisfies Condition No. 5 of the Board's March 23, 2004 opinion or whether the parameters of the Gorove/Slade Traffic Analysis must be revised to satisfy Condition No. 5;
2. More detailed findings to support its analysis of the Gorove Slade Traffic Analysis [Exhibit No. 81, Attachment 11];
3. Whether the Beech Tree/River Road and Burdette/River Road intersections should be added to the traffic analysis; and
4. As a general issue, do trip generation rates above the LATR thresholds constitute a non-inherent adverse effect, and at what point would additional mitigation be necessary?

The Hearing Examiner held a hearing on September 25, 2006, closed the record in the case on 3, 2006, and on November 9, 2006 issued a Report and Recommendation, stating that Condition No. 5 has been too narrowly interpreted by the Petitioner and MNCPPC Transportation Planning Staff. The Hearing Examiner recommends that the Board direct the Petitioner to "conduct another traffic study to determine whether traffic generated by Holton Arms has changed as a result of the modifications to enrollment and programs (including after/hours programs) so as to adversely affect the community. He further recommends that the study "should not be limited to the Holton intersection, but should extend to the surrounding intersections and roadways, to determine if increases in Holton enrollment and activities have produce traffic that adversely impacts them. It should also not be limited to use of the CLV method approved for measuring road and intersectional capacity, but should include other methodologies, such as intersection delay analysis." He recommends a revised Condition No. 5, as follows:

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

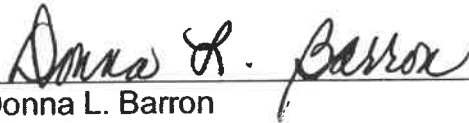
No later than February 28, 2007, the Petitioner will submit a traffic study to the Board of Appeals and the Transportation Planning staff of the Maryland-National Capital Park & Planning Commission, after consultation with the Bradley Boulevard Citizens Association (BBCA), the Burning Tree Civic Association (BTCA), the Office of the People's Counsel (OPC) and Transportation Planning staff as to the parameters of the traffic study. Copies of the study shall be provided to the BBCA, BTCA, and the OPC. In accordance with Section 59-G-2.19(b), the traffic study will evaluate the traffic generated by the increased enrollment and by the After-Hours/Non-School activities in combination with all other approved activities on the special exception site, including any adverse effects on pedestrian and vehicular traffic safety, capacity, queuing, delays and turning movements arising from Holton generated traffic at all affected intersections and roadways. Upon receipt of the analysis and comments of the Transportation Planning staff and other interested parties, the Board of Appeals may conduct a public hearing to discuss the study and the analysis and comments of the Transportation Planning staff. Should the Board of Appeals determine that there has been an adverse traffic impact due to the modified uses, then the Board may, after a public hearing, amend the conditions of approval for the modified uses approved in its March 23, 2004 Opinion and Resolution; however, every effort will be made to avoid any reduction in enrollment from the approved level of 665.

The subject property is Lot N-624, Parcel 2, and Part of Lots 6 and 7, Outlot A, Block B, Burning Tree Valley Subdivision, located at 7303 River Road, Bethesda, Maryland, in the R-90 and R-200 Zones.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on November 29, 2006. The Board also had before it a request from Elsie L. Reid, Esquire and Megan Wallace, Esquire, on behalf of Holton Arms, to present oral argument on the Hearing Examiner's Report and Recommendation. The Board finds the Report and Recommendation thorough and persuasive as to the need for an additional traffic study with revised parameters. However, the Board amends the recommended condition to require submission of the study by no later than **June 1, 2007**. Therefore, on a motion by Catherine G. Titus, seconded by Wendell M. Holloway, with Caryn L. Hines and Donna L. Barron, Vice-Chair in agreement, and Allison Ishihara Fultz, Chair necessarily absent:

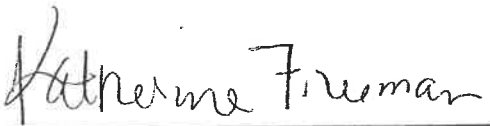
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that Holton Arms School's request for oral argument on the Hearing Examiner's Report and Recommendation of November 9, 2006 is denied; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Board adopts the Report and Recommendation and directs Holton Arms to conduct another traffic study as described therein, and adopts the Hearing Examiner's revised Condition No. 5 amended to reflect that the new traffic study shall be submitted no later than June 1, 2007.



Donna L. Barron
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 5th day of January, 2007.



Katherine Freeman
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 (See Section 59-A-4.63 of the County Code). 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.

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Case No. CBA-1174-D

Case No. S-2503-A

PETITION OF HOLTON ARMS SCHOOL

CORRECTED RESOLUTION TO RE-OPEN THE RECORD

(Resolution adopted September 27, 2006 and October 11, 2006)

(Effective Date of Resolution: November 6, 2006)

The Board of Appeals has received correspondence, dated August 30, 2006, from Diana Coulton Beebe, Head of School at The Holton Arms School and dated October 12, 2006, from Megan M. Wallace, Esquire, on behalf of The Holton Arms School. Ms. Beebe and Ms. Wallace provide the Annual Report for Holton Arms, together with the dated and meetings of the Neighborhood Liaison Committee.

The subject property is Lot N-624, Parcel 2, and Part of Lots 6 and 7, Outlot A, Block B, Burning Tree Valley Subdivision, located at 7303 River Road, Bethesda, Maryland, in the R-90 and R-200 Zones.

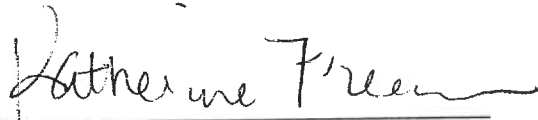
The Board of Appeals considered the correspondence from Ms. Beebe and Ms. Wallace at its Worksessions on September 27, 2006 and October 25, 2006. At the September 27, 2006 Worksession, on a motion by Wendell M. Holloway, seconded by Angelo M. Caputo, with Caryn L. Hines, Donna L. Barrona and Allison Ishihara Fultz, Chair in agreement, and at the October 25, 2006 Worksession on a motion by Donna L. Barron, seconded by Catherine G. Titus, with Caryn L. Hine, Wendell M. Holloway and Allison Ishihara Fultz, Chair in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the records in Case Nos. CBA-1174-D and S-2503-A are re-opened to receive Diana Coulton Beebe's correspondence dated August 30, 2006 and Megan M. Wallace's correspondence dated October 12, 2006, as Exhibit Nos. 98 and 99.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 6th day of November, 2006.

A handwritten signature in cursive script, reading "Katherine Freeman", written over a horizontal line.

Katherine Freeman
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 (See Section 59-A-4.63 of the County Code). 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.

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Case No. CBA-1174-D

Case No. S-2503-A

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD

(Resolution adopted September 27, 2006 and October 11, 2006)
(Effective Date of Resolution: November 3, 2006)

The Board of Appeals has received correspondence, dated August 30, 2006, from Diana Coulton Beebe, Head of School at The Holton Arms School and dated October 12, 2006, from Megan M. Wallace, Esquire, on behalf of The Holton Arms School. Ms. Beebe and Ms. Wallace provide the Annual Report for Holton Arms, together with the dated and meetings of the Neighborhood Liaison Committee.

The subject property is Lot N-624, Parcel 2, and Part of Lots 6 and 7, Outlot A, Block B, Burning Tree Valley Subdivision, located at 7303 River Road, Bethesda, Maryland, in the R-90 and R-200 Zones.

The Board of Appeals considered the correspondence from Ms. Beebe and Ms. Wallace at its Worksessions on September 27, 2006 and October 25, 2006. At the September 27, 2006 Worksession, on a motion by Wendell M. Holloway, seconded by Angelo M. Caputo, with Caryn L. Hines, Donna L. Barrona and Allison Ishihara Fultz, Chair in agreement, and at the October 25, 2006 Worksession on a motion by Donna L. Barron, seconded by Catherine G. Titus, with Caryn L. Hine, Wendell M. Holloway and Allison Ishihara Fultz, Chair in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the records in Case Nos. CBA-1174-D and S-2503-A are re-opened to receive Diana Coulton Beebe's correspondence dated August 30, 2006 and Megan M. Wallace's correspondence dated October 12, 2006, as Exhibit Nos. 98 and 99.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 3rd day of October, 2006.

A handwritten signature in cursive script, reading "Katherine Freeman", written in dark ink. The signature is fluid and extends across the width of the line below it.

Katherine Freeman
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 (See Section 59-A-4.63 of the County Code). 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.

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Case No. CBA-1174-C

Case No. S-2503

PETITION OF HOLTON-ARMS SCHOOL, INC.

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted: September 21, 2005)

(Effective Date of Resolution: November 3, 2005)

The Board of Appeals has received correspondence dated August 30, 2005, from Diana Colton Beebe, Head of School at Holton-Arms School. Ms. Beebe's letter encloses the quarterly report from the school, in accordance with the Board's Opinion of September 7, 2001, in Case No. CBA-1174, and the Board's Opinion of June 20, 2002, in Case No. S-2503.

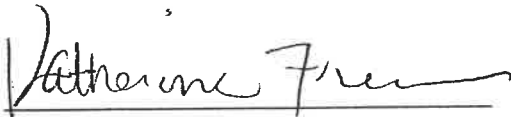
The subject property is Lot N-624, Parcel 2, and Part of Lots 6 and 7, Outlot A, Block B, Burning Tree Valley Subdivision, located at 7303 River Road, Bethesda, Maryland, in the R-90 and R-200 Zones.

The Board of Appeals considered the Quarterly Report at its Worksession on September 21, 2005 and finds that it complies with the requirements of the Board's Opinions. Therefore, on a motion by Donna L. Barron, seconded by Wendell M. Holloway, with Louise L. Mayer and Angelo M. Caputo and Allison Ishihara Fultz, Chair in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the records in Case Nos. CBA-1174-C and S-2503 are re-opened to receive Diana Colton Beebe's letter of August 30, 2005, together with the Holton Arms School's Quarterly Report, and the Master Calendar for the preceding year.


Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 3rd day of November, 2005.

A handwritten signature in cursive script, appearing to read "Katherine Freeman", written over a horizontal line.

Katherine Freeman
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 (See Section 59-A-4.63 of the County Code). 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.

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Case No. CBA-1174-D, S-2467-A, S-2503

PETITION OF HOLTON-ARMS SCHOOL

OPINION OF THE BOARD

(Effective Date of Opinion: March 23, 2004)

Case No. CBA-1174-D is an application for a special exception modification to permit continuation of existing after-school programs, initiation of other after-school programs, and an increase in the permitted general enrollment of the school from 650 to 665, with the possible addition of another 5 students if circumstances warrant.

Case No. S-2467-A is an application for a special exception modification to permit increase in day care enrollment from 15 to 20, with permission to have children of other specified schools fill up to 12 slots if they are not filled by children of Holton faculty and staff.

Case No. S-2503-A is an application for a special exception modification to permit an increase in enrollment of the summer camp from 650 to 665.

The Board of Appeals consolidated the cases and, pursuant to the authority in Section 59-A-4.125 of the Zoning Ordinance, referred the cases to the Hearing Examiner for Montgomery County to conduct a public hearing and submit a Report and Recommendation. The Hearing Examiner convened a public hearing on November 14, 2003, which was continued on November 25, 2003, closed the record on December 5, 2003, and on January 9, 2004, issued a Report and Recommendation for approval of the requested modifications, subject to conditions.

Decision of the Board:

Special Exception Modifications Granted
Subject to Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on January 21, 2004. After careful consideration and a review of the record, the Board adopts the Report and Recommendation and **grants** the requested modifications subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiner's Report and Recommendation.
2. All terms and conditions of the approved special exceptions shall remain in full force and effect, except as modified by the Board of Appeals.
3. Petitioner will continue to use its best efforts to obtain State approval for extension of the left-turn storage lane on eastbound River Road at the intersection with the Holton-Arms entrance and Royal Dominion Drive.
4. Petitioner's Transportation Management Plan, Exhibit E to Exhibit 180 in Case No. CBA-1 174-C, should be amended, as follows:

Insert as item I(C)(3):

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

Insert the following as Section IV:

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

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

In May 2005, the Petitioner will submit a traffic study to the Board of Appeals and the Transportation Planning staff of the Maryland-National Capital Park & Planning Commission, after consultation with the Bradley

Boulevard Citizens Association (BBCA), the Burning Tree Civic Association (BTCA), and the Office of the People's Counsel (OPC) as to the parameters of the traffic study. Copies of the study shall be provided to the BBCA, BTCA, and the OPC. In accordance with Section 59-G-2.19(b), the traffic study will evaluate the traffic generated by the increased enrollment and by the After-Hours/Non-School activities in combination with all other approved activities on the special exception site, including any adverse effects on pedestrian and vehicular traffic safety, capacity, queuing and turning movements arising from the River Road, Holton-Arms and Royal Dominion intersection. Upon receipt of the analysis and comments of the Transportation Planning staff and other interested parties, the Board of Appeals may conduct a public hearing to discuss the study and the analysis and comments of the Transportation Planning staff. Should the Board of Appeals determine that there has been an adverse traffic impact due to the modified uses, then the Board may, after a public hearing, amend the conditions of approval for the modified uses approved by this Opinion; however, every effort will be made to avoid any reduction in enrollment from the approved level of 665.

6. Petitioner's enrollment cap is increased to 665, but on rare occasions Petitioner may admit up to five additional students on the following conditions:

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

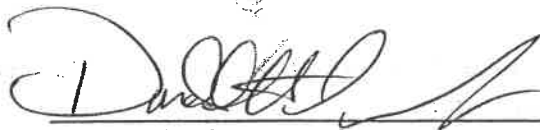
7. Petitioner may increase the number of children in its day care program to 20 under the following conditions:

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

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


On a motion by Donna L. Barron seconded by Louise L. Mayer, with Angelo M. Caputo, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman 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.



Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 23rd day of March, 2004.



Katherine Freeman
Executive Secretary to the Board

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 (See Section 59-A-4.63 of the County Code). 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.

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THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION
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CHICAGO, ILL., MAY 1, 1919
Vol. 27, No. 19

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(www.montgomerycountymd.gov/content/council/boa/board.asp)

RESOLUTION TO REFER CASES TO HEARING EXAMINER

(Resolution Adopted September 10, 2003)

(Effective Date of Resolution: September 16, 2003)

The Board of Appeals for Montgomery County has pending on its agenda the following cases:

Case No. CBA-1174-D, Petition of Holton-Arms School, Inc., scheduled for public hearing on November 19, 2003, at 1:30 p.m.;

Case No. CBA-1389-E, Petition of St. Andrews Episcopal School, scheduled for public hearing on November 5, 2003, at 1:30 p.m.;

Case No. CBA-2180-A, Petition of Johnson's Family Enterprises Limited Partnership, scheduled for public hearing on October 8, 2003, at 10:30 a.m.;

Case No. S-447-A, Petition of Darnestown Swim and Racquet Club, scheduled for public hearing on November 12, 2003, at 12:30 p.m.;

Case No. S-518-B, Petition of American Speech-Language-Hearing Association, scheduled for public hearing on October 8, 2003, at 1:30 p.m.;

Case No. S-2467-A, Petition of Holton-Arms School, Inc., scheduled for public hearing on November 19, 2003, at 1:30 p.m.;

Case No. S-2503-A, Petition of Holton-Arms School, Inc., scheduled for public hearing on November 19, 2003, at 1:30 p.m.;

Case No. S-2571 [A-5910], Petition of Brian R. Perry and Susie Perry-Tjan, scheduled for public hearing on October 15, 2003, at 1:30 p.m.;

Case No. S-2582, Petition of Sprint PCS/APC Realty and Equipment Company, and Potomac Conference Corporation of Seventh Day Adventists scheduled for public hearing on October 15, 2003, at 10:30 a.m.;

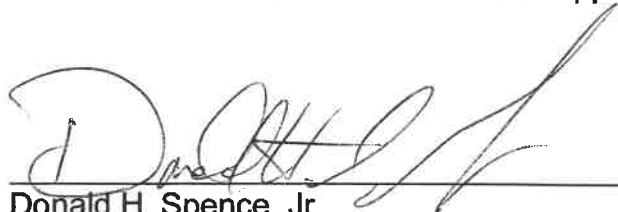
Case No. S-2585, Petition of Gertrud and Wolfgang J. Merger, scheduled for public hearing on October 8, 2003, at 10:30 a.m.;

Case No. S-2586, Petition of Dale Rubenstein, D.V.M. t/a 'A Cat Clinic' scheduled for public hearing on November 5, 2003 at 10:30 a.m.;

Case No. S-2587, Petition of Quarles Petroleum, Inc., scheduled for public hearing on November 11, 2003, at 10:30 a.m.;


The Board finds that its own agenda cannot reasonably accommodate all of the listed cases. Therefore,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that, pursuant to the authority granted in Section 59-A-4.125 of the Montgomery County Zoning Ordinance, the Board refers the above-listed cases to the Hearing Examiner for Montgomery County to conduct the public hearing and render a written report and recommendation to the Board of Appeals in each case.



Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 16th day of September, 2003.



Katherine Freeman
Executive Secretary to the Board

BOARD OF APPEALS
For
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
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(240) 777-6600

CASE NO. S-2503

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO DENY REQUEST FOR RECONSIDERATION

(Resolution Adopted July 10, 2002) —

(Effective Date of Resolution: August 30, 2002)

The Board of Appeals has received correspondence from Linda C. Kauskay, Vice-President, Bradley Boulevard Citizens Association. Ms. Kauskay's June 19, 2002 letter encloses another letter, dated June 6, 2002, from the citizens association, which recommends changes to the opinion of the Board in the above-referenced case.

The subject property is located at 7303 River Road, Bethesda, Maryland, in the R-90 and R-200 Zones. Rule 10.1.2 of the Board of Appeals Rules of Procedure [Resolution No. 12-865, October 27, 1992] provides, pertaining to grounds for reconsideration of a special exception opinion:


The Board may grant reconsideration only on evidence of changed circumstances, new evidence that could not reasonably have been presented at the original hearing, or if some mistake or misrepresentation was made at the original hearing that requires rehearing and reargument in order to be corrected.

The Board finds that the request presents none of the bases required by Rule 10.1.2 and must be denied. Therefore,

On a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Louise L. Mayer, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman in agreement:

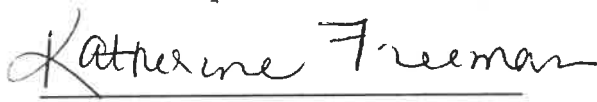
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2503 is re-opened to receive Linda C. Kauskay's letter of June 19, 2002 and the Bradley Boulevard Citizens Association's letter of June 6, 2002; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County Maryland that the request to reconsider the Board's opinion granting Case No. S-2503, Petition of the Holton Arms School, is **denied**.



Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 30th day of August, 2002.



Katherine Freeman
Executive Secretary to the Board

NOTE:

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.

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-2503

PETITION OF HOLTON-ARMS SCHOOL
(Hearing held January 16, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, June 20, 2002)

Case No. S-2503 is a petition pursuant to Section 59-G-2.13.1 (Child day care facility) of the Montgomery County Zoning Ordinance (Chapter 59, Montgomery County Code 1994, as amended) for a special exception to operate a co-educational summer day camp for up to 645 children and 160 staff members on the grounds of Holton-Arms School located at 7303 River Road, Bethesda, Maryland.

Decision of the Board: Special exception **GRANTED**, subject to conditions enumerated below.

A public hearing was held on Wednesday, January 16, 2002, pursuant to Section 59-A-4.11(a) of the Zoning Ordinance. Appearing on behalf of Holton-Arms ("Petitioner") were Jody S. Kline, Esquire; Diana Beebe, Head of School; Susan Spingler, Director of Special Programs; and Lee Cunningham, Land Use/Transportation Planner.

Also participating in the proceedings were Margaret Kall-Ziegler, Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), who testified neither in favor, nor in opposition to the proposed special exception; Linda Kauskay, representative of the Bradley Boulevard Citizens Association; and George Springston, representative of the Burning Tree Civic Association.

Martin Klauber, Esquire, the People's Counsel for Montgomery County, Maryland, also participated in the proceedings in support of the requested special exception, with conditions.

EVIDENCE PRESENTED TO THE BOARD:

1. The Petitioner has requested a special exception to operate a co-educational summer day camp on 58 acres of property located at 7303 River Road (MD 190), Bethesda, Maryland. The Petitioner previously operated a summer day camp on the subject property under the assumption that it was an ancillary use to its special exception as a private educational institution approved in Case No. CBA-1174. That assumption was determined to be incorrect as a result of a decision by the Board of Appeals dated September 7, 2001 as part of Case No. CBA-1174-C. The Petitioner

now requests this special exception in order to operate the camp without limitation on the proportion of students outside of the Holton-Arms' student body who may attend.

2. The subject property is zoned R-200 and R-90 and is located on the north side of River Road, east of that road's intersection with Burdette Road. The property has approximately 770 feet of frontage with River Road and 110 feet of frontage with Burdette Road. The school also has frontage on the unimproved right-of-way for Burning Tree Road approximately 150 feet west of the intersection of Burning Tree and Beech Tree Roads. Bisecting the campus from north to south is Booze Creek, a tributary of the Cabin John Creek main stem.

3. The surrounding neighborhood is predominantly residential in character. Adjoining the subject property to the north are single-family homes in the R-200 Zone. Adjoining the site to the east are single-family homes in the R-90 Zone and Burning Tree Local Park owned by the M-NCPPC. Located to the southeast is Burning Tree Elementary School. Across River Road to the south are single-family homes in the R-200 Zone and the Primary Day School. Adjoining the site to the west are single-family homes in the R-200 Zone and a retail nursery and commercial greenhouse operating by special exception. Further to the west across Burdette Road is Burning Tree Country Club and the site of the Marriott senior housing facility. The interchange at River Road and the Capital Beltway (I-495) begins approximately 1,100 feet west of the school's entrance on River Road.

4. The subject property is a recorded lot and will not require approval of a preliminary plan of subdivision.

5. The subject property is located within the area of the 1990 Bethesda-Chevy Chase Master Plan (Exhibit No. 8). The Master Plan affirms the existing R-90 and R-200 zoning of the subject property, with R-90 zoning found east of Booze Creek and all the land located west of the creek zoned R-200 (Exhibit No. 12). Child day care facilities are allowed by special exception in the R-90 and R-200 Zones.

6. The Petitioner proposes to operate a co-educational summer day camp program ("Camp") in which children can participate in such activities as dance, drama, music, visual arts, sports, swimming, outdoor exploration, and computers. The Camp will begin in late June and conclude in early August and will offer over 80 different classes to children ranging in age from three to thirteen years. The Camp will be operated Monday through Friday, no weekends, for a total of six weeks. The camp will have two sessions: Session I will run for three weeks from late June until mid-July, and Session II will run three weeks from mid-July through early August. The total number of campers enrolled in each of these camp sessions will not exceed 645 children (Exhibit No. 3 - Statement of Operations).

7. Campers will participate in indoor and outdoor classes; participation is geared predominantly towards indoor classes. Campers will have full access to school facilities, including the Petitioner's art, dance, and music studios; 400-seat theater; double gymnasium; indoor swimming pool; outdoor stage; photography lab; tennis

courts; nature trails; playground; and one of the school's two athletic fields (Exhibit No. 3 - Statement of Operations).

8. The Camp is comprised of half-day and full-day programs beginning each day at 9:00 a.m. Campers participating in the half-day program will arrive between 8:30 and 9:00 a.m. and will depart at 1:00 p.m. Campers participating in the full-day program will arrive between 8:30 and 9:00 a.m. and will depart at 3:00 p.m. Extended care arrangements will also be in place, commencing at 7:30 a.m. and concluding at 6:00 p.m. Under the extended care arrangements, approximately 25 campers will arrive between 7:30 and 8:30 a.m. and approximately 50 campers will depart the campus between the hours of 3:00 and 6:00 p.m. Campers participating in the full-day program will bring a bagged lunch, except on days when the school provides a pizza lunch (Exhibit No. 3 - Statement of Operations).

9. Diana Beebe explained the history of the Camp and its function in the community. She testified that the Camp is a source for employment for local teaching professionals and early work experience for students, and that the Camp serves a critical local need for summer camp educational and recreational activities. Ms. Beebe testified that the Petitioner would initiate construction of improvements to an emergency access at Burdette Road, as approved in Case No. CBA-1174-C, prior to the commencement of camp operations in Summer, 2002. Ms. Beebe stated that the driveway would be restricted to emergency use only.

10. Susan Spingler explained the daily operations of the Camp. Ms. Spingler emphasized that Creative Summer was not a sports camp but is rather an indoor camp that "catered to the arts." Ms. Spingler testified that for the limited outdoor activities under the camp program, the campers would utilize only one of the existing outdoor athletic fields on the campus. Ms. Spingler testified as to the very high level of competition for enrollment in a limited number of camp slots and that a priority in enrollment is given to Holton-Arms students, children of Holton-Arms employees, returning campers, and children residing in the 20817 zip code area surrounding the school campus.

11. Ms. Spingler testified about the total number of staff and campers associated with the Camp. She stated that there will be 160 staff members associated with the Camp comprised of professional teachers, coaches, counselors, graduate students, college students, and Holton-Arms' students used as "counselors-in-training;" a registered nurse will be on duty at the school's infirmary during regular camp hours.

12. Ms. Spingler described the operational aspects of the Camp carpool program, including the issuance of carpool numbers to campers participating in the carpool program. Ms. Spingler explained the Camp's morning and afternoon "extended day" programs, designed for working parents, in which approximately 25 students would arrive at staggered times between 7:30 a.m. and 8:30 a.m. and approximately 50 campers would depart the campus between 3:00 p.m. and 6:00 p.m. Utilizing a site plan for the subject property (Exhibit No. 21), Ms. Spingler demonstrated the operational aspects of the vehicular circulation system, testifying to the manner in which staff and

local police would direct the flow of traffic to and from the Holton-Arms campus in the morning and afternoon hours. In response to a question from George Springston, Ms. Spingler indicated that she was not aware of any traffic back-ups on River Road for either arrivals or departures from the campus and that she had never received any complaints from parents of campers to that effect.

13. In response to questioning from Martin Klauber, Esquire, Ms. Spingler discussed a component of the Camp program called "Evening Carnival" ("Carnival"). Ms. Spingler testified that the Carnival is held during the last two days of each of the camp sessions as a means of allowing the campers, through performances, to showcase to their families what they have learned and achieved at the Camp. Carnival generally involves approximately 35 campers and their parents and runs from 3:30 p.m. until 7:00 p.m. on the first evening, and culminates in one-hour performances beginning at 4:30 p.m. and 7:30 p.m. on the following evening. Ms. Spingler testified that approximately eight to ten staff members assist with traffic management during the evenings for Carnival.

14. Ms. Spingler testified that the Camp would be operated in harmony with the surrounding neighborhood and that the associated camp activities would not cause any adverse effects on the health, safety or welfare of the surrounding neighborhood.

15. Margaret Kaii-Ziegler testified that the Technical Staff had concluded that the Camp's traffic impact on the surrounding transportation network will be less than that generated during Holton-Arms' "regular school year." She testified that, based on the information provided by the Petitioner, fewer children would be arriving/departing the campus during the summer peak traffic hours than during peak traffic hours for Holton-Arms' regular school year. Ms. Kaii-Ziegler testified that for the Camp, the Technical Staff adopted its findings on traffic from the analysis previously conducted in connection with Case No. CBA-1174-C (Holton-Arms Special Exception Modification).

16. Lee Cunningham testified that in preparing his analyses, he utilized traffic data from Case No. CBA-1174-C because Petitioner had not previously been required to conduct a formal traffic analysis for the summer months, nor had the Petitioner had an opportunity to conduct such analysis. Mr. Cunningham testified that based on the traffic analysis conducted for Case No. CBA-1174-C, it was his opinion that the intersections of River Road with Beech Tree Road, Royal Dominion Drive and Burdette Road would continue to operate at acceptable levels during the Camp operations. Mr. Cunningham also testified that the traffic calculations that were performed for the subject application indicated hourly arrivals during the highest peak hour of 281 vehicles and buses, versus arrivals of 378 vehicles and buses during the same peak hour for the regular school year. In response to questioning from Mr. Springston, Mr. Cunningham testified that based on his years of experience with state traffic studies, peak hour traffic for the summer months is slightly lower than during the regular school year. Mr. Cunningham explained the Petitioner's Transportation Management Plan ("TMP") (Exhibit No. 22) and testified that the surrounding transportation network for the subject site is adequate to accommodate the Camp operations. Finally, Mr. Cunningham testified that the traffic circulation system for the campus site would be safe and

adequate and that the Camp's operations would not have any detrimental effect on traffic safety or traffic movement.

17. In response to a question from Board Member Allison Fultz, Jody Kline, Esquire, stated that Petitioner would agree, as reflected in its TMP (Exhibit No. 22), to performance standards governing busing operations, carpooling, and individual vehicle trips. Mr. Kline explained that Petitioner expects to transport approximately one-third of its campers by bus; approximately one-third of its campers by carpool; and approximately one-third of its campers by individual vehicle trips (Exhibit No. 22). In addition, in response to a question from Linda Kauskay, Esquire, Mr. Kline verified that the TMP includes a provision requiring Petitioner to work with the "Neighborhood Liaison Committee", established in Case No. CBA-1174-C, to develop specific incentives to encourage campers to carpool or to use bus service (Exhibit No. 22). Also, Mr. Kline confirmed that the Petitioner will include, as part of its quarterly report to be submitted for Case No. CBA-1174-C, an assessment of the Petitioner's progress in meeting the goals of the Camp TMP (Exhibit No. 22).

18. In its Memorandum submitted to the Board (Exhibit No. 15), the Technical Staff explained that the number of campers and staff arriving or departing during the morning and evening peak hours "is anticipated to be less than during the regular school year due to staggering of camp activities" and that the Petitioner's proposed TMP and its associated carpool and bus services "will reduce the number of trips to the campus." The Staff found that with the TMP the use would not have an adverse impact on the area transportation system.

19. An approved Natural Resources Inventory/Forest Stand Delineation Plan and a Preliminary Forest Conservation Plan for the subject site are on record as part of the Applicant's case in CBA-1174-C. The Technical Staff found that this application would not alter or pose additional impacts to the site (Exhibit No. 15). The Petitioner is bound by the conditions set forth in the Preliminary Forest Conversation Plan for Case No. No. 1174-C and is required to submit a Final Forest Conversation Plan to the Technical Staff.

20. Ms. Kauskay stated that the Bradley Boulevard Citizens Association had received a letter from Petitioner committing to begin construction of the Burdette Road emergency access improvements prior to commencement of the Camp and that the Association therefore generally supported the application.

21. The Technical Staff found that the proposed use satisfies the general and specific requirements of the Zoning Ordinance and recommended approval of the request for special exception, subject to conditions (Exhibit 15).

FINDINGS OF THE BOARD:

Based on the Petitioner's binding testimony, the evidence of record and the exhibits presented at the public hearing, the Board concludes that the requested special exception can be granted with the conditions set forth below:

Section 59-G-1.2 Conditions for granting.

59-G-1.21 Standard for evaluation. A special exception must not be granted absent the findings required by the Article. In making these findings, the Board of Appeals ... must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The Board interprets this section of the Zoning Ordinance to require the following analysis. The Board must:

- (1) Make a determination as to the general neighborhood affected by the proposed use.
- (2) Establish those inherent, generic physical and operational characteristics associated with a given use, in this case the operation of a summer camp, not including the physical size and scale of operations.
- (3) Determine separately the physical and operational characteristics of the summer camp special exception use proposed by the Petitioner.
- (4) Compare the generic physical and operational characteristics with the particular characteristics of the summer camp. Inherent adverse effects are those characteristics of the modification that are consistent with the generic characteristics. Non-inherent adverse effects are those characteristics of the modification that are unique given the facts of a particular case.

Applying the above analysis to this case, the Board finds as follows:

(1) The General Neighborhood

The Board finds that the surrounding neighborhood is predominantly residential in character. Adjoining the subject property to the north are single-family homes in the R-200 Zone. Adjoining the site to the east are single-family homes in the

R-90 Zone and Burning Tree Local Park owned by the M-NCPPC. Located to the southeast is Burning Tree Elementary School. Across River Road to the south are single-family homes in the R-200 Zone and the Primary Day School. Adjoining the site to the west are single-family homes in the R-200 Zone and a retail nursery and commercial greenhouse operating by special exception. Further to the west across Burdette Road is Burning Tree Country Club and the site of the Marriott senior housing facility. The interchange at River Road and the Capital Beltway (I-495) begins approximately 1,100 feet west of the school's entrance on River Road.

(2) Evaluation Standard – Physical and Operational Characteristics

The Board recognizes that Planning Board staff has, in previous cases, offered seven criteria to be used to establish the physical and operational characteristics of a requested special exception use. These are: size, scale, scope, lighting, noise, traffic, and environment.

The Board finds that summer camps display many of the same features and the same activities, as private educational institutions on whose campuses many summer camps are located. These features and activities include indoor and outdoor activities, traffic, parking, and special events. Additionally, a summer camp may often involve use of substantially sized structures in terms of building area and a height of one to two stories. Summer camps vary in terms of size but do not typically exceed the density permitted for private educational institutions located in residential zones (87 children per acre). Summer camps typically involve outdoor activities that can be expected to generate noise and bustle. Camps occur during the summer months, during weekdays, usually between the hours of 8:00 a.m. and 4:00 p.m., but occasional special evening events (e.g. banquets, award ceremonies, performances) may take place after regular camp hours of operation. Camps require little exterior lighting. Substantial traffic volumes, including buses, are associated with camp operations, for commuting to and from the camp as well as for off-site trips. Impacts on the environment are related to physical improvements, such as buildings, parking lots and athletic facilities.

(3) Physical and Operational Characteristics

The Petitioner proposes to operate a summer camp that utilizes the facilities of the private school on which it is to be located. These facilities have met the standards for a special exception use as a private educational institution and for the zone in which they are located.

The Board finds that the Camp's activities are predominantly located inside the buildings and when they are conducted outside there is sufficient separation from adjoining properties to satisfactorily mitigate noise or other possible adverse affects. The Camp will not have more than 645 campers per session, a number which can be readily handled on a campus of 58 acres. The hours of operation are generally within the range expected for camps with an extended day program for 25 to 50 campers arriving or departing outside of the normal hours, 7:30 a.m. to 6:00 p.m. Evening

activities are conducted on two nights of each Camp session. The Camp is located on an arterial road and has adopted a Transportation Management Plan with specific performance goals designed to minimize the impact of traffic generated by the Camp. The Petitioner's traffic management efforts will eliminate any adverse impact due to the volume of automobiles and buses entering and exiting the subject property. Substantial paved parking, over 300 striped parking spaces, exists on site to accommodate needs for daily and special event parking.

(4) Comparison of Characteristics

After considering the generic characteristics of the use and comparing them with the physical and operational characteristics of the Camp, based on the Technical Staff analysis and recommendation, the Planning Board recommendation, the evidence and testimony presented by the Petitioner and the other parties of record as set out above, the Board finds that all of the physical or operational characteristics associated with this requested modification will be inherent adverse effects.

Section 59-G-1.21 General Conditions.

(a) *A special exception may be granted when the Board ... finds from a preponderance of the evidence of record that the proposed use:*

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

The Board finds that the proposed use is allowed in the R-200 and R-90 Zones, in accordance with Section 59-G-1.21(a)(1) of the Zoning Ordinance.

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

The Board finds that the proposed application satisfies the standards and requirements for a child day care facility under Section 59-G-2.13.1, in accordance with Section 59-G-1.21(a)(2) of the Zoning Ordinance.

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

The Board finds that the proposed use is consistent with the Bethesda-Chevy Chase Master Plan. The Master Plan affirms the existing R-200 and R-90 Zones for the subject property; child day care facilities are allowed by special exception in those zones, in accordance with Section 59-G1.21(a)(3).

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

The Board finds that the proposed use will be in harmony with the general character of the neighborhood when considering population density, design, scale, and bulk of the proposed new structure, intensity and character of activity, traffic and parking conditions, and number of similar uses, in accordance with Section 59-G-1.21(a)(4) of the Zoning Ordinance.

The Board finds that proposed use will not require any new structures nor criteria.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, in accordance with Section 59-G-1.21(a)(5) of the Zoning Ordinance.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed use will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity in accordance with Section 59-G-1.21(a)(6) of the Zoning Ordinance. The Board finds that the camp is geared predominantly towards indoor activities and the use of outdoor facilities will be well-buffered.

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

The Board finds that the proposed use will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential

area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature, in accordance with Section 59-G-1.21(a)(7) of the Zoning Ordinance.

(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 Board finds that the proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area, in accordance with Section 59-G-1.21(a)(8) of the 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 Board finds that the proposed use is adequately served by public services and facilities, in accordance with Section 59-G-1.21(a)(9).

(i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

The Board finds that the subject property is a recorded lot and will not require approval of a preliminary plan of subdivision.

(ii) With regard to findings related to public roads, the Board ... must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Based on the testimony of M-NCPPC staff and Mr. Cunningham, and the Transportation Management Plan (Exhibit No. 22), the Board finds that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Section 59-G-2.13.1 Child day care facility.

(a) The Hearing Examiner (or Board of Appeals) may approve a child day care facility for a maximum of 30 children if:

1) a plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the site;

In accordance with Section 59-G-2.13.1(a)(1), the Board finds that the Petitioner has submitted a plan in compliance with this subsection.

2) *parking is provided in accordance with the Parking Regulations of Article 59-E. The number of parking spaces may be reduced by the Hearing Examiner if the Applicant demonstrates that the full number of spaces required in Section 59-E-3.7 is not necessary because:*

- (A) *existing parking spaces are available on adjacent property or on the street abutting the site that will satisfy the number of spaces required; or*
- (B) *a reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems;*

In accordance with Section 59-G-2.13.1(a)(2), the Board finds that the parking space requirements for the proposed use, as set forth in Section 59-E-3.7, will be met by the Petitioner. The proposed use will require 268 parking spaces, 160 spaces for faculty, plus 108 drop-off and pick-up spaces. The subject site provides at least 300 striped spaces on-site and has additional area that is not marked for parking but could be used for parking. Parking will not be permitted on the adjacent public streets.

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

In accordance with Section 59-G-2.13.1(a)(3), the Board finds that there will be adequate area for the discharge and pick-up of children. The site has a long entrance road with a large drop-off and pick-up circle at the entrance of the school. The road and loop are wide enough for parked cars and through movement to continue.

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

In accordance with Section 59-G-2.13(a)(4), the Board finds that the Petitioner has submitted an affidavit stating compliance with the conditions cited above.

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

In accordance with Section 59-G-2.13.1(5), the Board finds that the proposed use will be compatible with the surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity.

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

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

In accordance with Section 59-G-1.13.1(b)(1), the Board finds that the Petitioner has submitted a landscaping plan that includes the existing and proposed landscaping for the site (Exhibit No. 7(a-d)).

(2) In the one-family residential zones, facilities providing care for more than 30 children must be located on a lot containing at least 500 square feet per child.

In accordance with Section 59-G-2.13.1(b)(2), the Board finds that the subject site is in excess of the required 7.4 acres for 645 children. The subject site contains 58 acres.

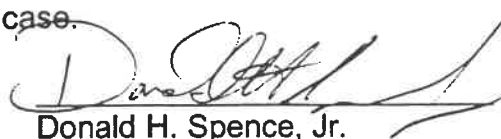
Therefore, based on the foregoing, the Board **GRANTS** the requested special exception for a child day care facility (summer day camp), subject to the following conditions:

1. The Petitioner shall be bound by its testimony and exhibits of record, the testimony of its witnesses and the representations of its attorney in these proceedings.

2. The Petitioner shall comply with conditions of approval of the Preliminary Forest Conservation plan for CBA-1174-C. A Final Forest Conservation Plan must be approved by M-NCPPC Technical Staff.
3. The Petitioner must implement the Transportation Management Plan (Exhibit 22), to minimize and manage vehicular traffic to and from the camp.
4. The Petitioner's Transportation Management Plan shall be made available to parents of campers via the Creative Summer camp handbook.
5. Camp enrollment shall be limited to a maximum of 645 campers per session, with a maximum number of two camp sessions per summer.
6. The Petitioner shall advise camp parents as to the potential difficulty of left turn movement onto the campus from River Road and shall suggest alternative means of access.
7. The Petitioner shall record in its September Quarterly Report required by Case No. CBA-1174-C an evaluation of its performance in meeting the goals of the Transportation Management Plan and its effectiveness. The Petitioner shall report such observations in its September report annually thereafter.
8. The Liaison Committee established in conjunction with Case No. CBA-1174-C shall be incorporated into and be applicable to Case No. S-2503.
9. The Petitioner shall prepare and submit studies and a request to the State Highway Administration seeking approval to extend the storage area for left turns into the subject property from River Road and to extend the time during which such a protected movement can be made. The Petitioner shall use its best efforts to secure such approval.
10. The Petitioner's proposed construction as shown on Exhibit 7 (a) - (d) shall be completed prior to commencement of Camp in 2004.

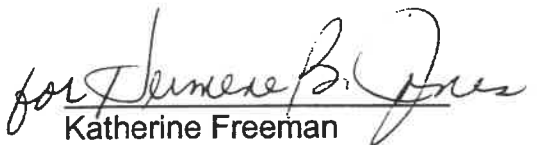
On a motion by Angelo M. Caputo, seconded by Donna L. Baron, with Donald H. Spence, Jr., Chairman, Louise M. Mayer and Alison Ishihara. Fultz in agreement, the Board adopted the following Resolution:

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 case.



Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 20th day of June, 2002.


Katherine Freeman
Executive Secretary to the Board

NOTE:

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 any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

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 (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.