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COUNTY BOARD OF APPEALS  
For  
MONTGOMERY COUNTY

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

Case No. S-516

PETITION OF HOLTON ARMS SCHOOL  
(Hearing held November 11, 1976)

OPINION OF THE BOARD

These proceedings are on the petition of the Holton Arms School for a Special Exception filed pursuant to Section 59-142 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1972, as amended) to permit the construction of a playground area, a small vehicle parking area, and an access road leading into Burdette Road, on a 3.39 acre parcel, part of the Thomas D. Rixey property, Liber 3038, Folio 298, Burning Tree Estates Subdivision, fronting on Burdette Road, Bethesda, Maryland, in a R-200 Zone. The subject property adjoins Parcel 1, which contains 59.6 acres, Burning Tree Estates Subdivision, at 7303 River Road, Bethesda, Maryland, upon which is located the existing private educational institution originally granted by the Board in Case No. 1174.

Decision of the Board: Additional playground and parking areas granted, subject to conditions enumerated herein; access road from the school to Burdette Road denied.

DESCRIPTION OF THE PROJECT

Spokesmen for the petitioner appeared and agreed to be bound by testimony to the effect that: the school presently enrolls approximately 575 students, and has purchased an additional 3.39 acre parcel immediately west of the property upon which the school is located. The school's regular schedule runs from September through June, and a summer camp program is offered in July and August. No increase in enrollment is proposed in connection with the requested new facilities. The proposed playground facilities would be used exclusively as play fields for elementary grade students, during school days from 8:30 a.m. to 3:30 p.m., with no weekend or evening activity. Petitioner testified that the site is heavily wooded and that some vegetation would have to be removed in order to accommodate the proposed facilities. They stated that trees would be removed only as needed, and that existing landscaping would be preserved in such a manner that no additional landscape screening would be required to shield the view of the play fields and parking area from nearby existing single-family homes. No additional exterior lighting is proposed.

The petitioner testified that the new play fields are needed because there is no play field conveniently close to the elementary school. He stated that groups of children would be

supervised in their play activities, and that the use of the playing fields would not create noise or any other nuisance adversely affecting the use, enjoyment or economic value of nearby residential properties.

The petitioner further testified that additional on-site parking is required to accommodate faculty, parent, and visitor's cars. The petitioner's original site plan indicated an addition of 21 vehicle parking spaces; the revised site plan (Exhibit No. 16) shows parking for 29 cars, 8 of which spaces appear to be located on the original 59 acre parcel, with the balance to be developed on the parcel which is the subject of this petition. The petitioner testified that, in his opinion, the use of this parking area would have no adverse impact upon the use, enjoyment or economic value of nearby properties.

No additional water or sewer is required in connection with this petition; since no additional school enrollment is proposed, it is anticipated that there would be virtually no change in traffic conditions from those prevailing at present, and no adverse impact on public roads and other public facilities and services.

The petitioner's request for additional play fields and parking areas was supported by the technical staff of the Maryland-National Capital Park and Planning Commission (Exhibit No. 8(b)) and by the Montgomery County Planning Board (Exhibit No. 8(a)).

Representatives of the Bradley Boulevard Citizens Association appeared and testified in support of the request for additional playgrounds and parking areas, but they vigorously opposed the petitioner's proposal for a driveway leading from the new parking area to a new exit at Burdette Road.

The petitioner proposed the new access to Burdette Road to relieve alleged congested conditions which occasionally occur at the intersection of the school's driveway at River Road. This intersection is controlled by a traffic light. In addition, the petitioner testified that the proposed driveway to Burdette Road would relieve internal congestion on the school site, and would enable safer loading and unloading of school children on the school property.

The report of the technical staff of the Maryland-National Capital Park and Planning Commission (Exhibit No. 8(b)) described the narrow pavement width of Burdette Road, the severe vertical curbs along Burdette Road, and the problem of inadequate sight distance at the point at which the proposed driveway would intersect Burdette Road. The staff deferred a final recommendation on the proposed access road, however, pending further technical assistance from the Montgomery County Department of Transportation.

The Montgomery County Planning Board, however, voted unanimously to deny the requested access to Burdette Road, citing the serious traffic safety problems which they felt would be created on Burdette Road at the intersection of River and Burdette Roads.

Mr. and Mrs. Arthur Mason, residents of 8315 Burdette Road, appeared as individuals and as spokesmen for the Bradley Boulevard Citizens Association in opposition to the extension of the proposed driveway to Burdette Road. In light of the many serious questions raised by the opposition, the petitioner requested during the course of the hearing that it be permitted to withdraw its request for the controversial driveway (which permission was granted thereby eliminating the said controversial driveway from Board consideration), and to submit a revised site plan showing only the proposed new play fields and parking area, with the driveway deleted entirely. Spokesmen for the opposition agreed that this would be a desirable solution which they felt the Citizens Association would be pleased to support.

With the permission of the Board, the record was held open to receive the revised site plan, Exhibit No. 16.

#### FINDINGS OF THE BOARD

After reviewing all exhibits of record, the testimony of the petitioner which is binding upon the petitioner, the Board finds that the proposed play fields and the additional parking area, as shown in Exhibit No. 16, meet both the general standards of the special exception set forth in Section 59-123 (Appendix I), and the particular requirements of a private educational institution set forth in Section 59-142 (Appendix II).

The petitioner's amended petition is, therefore, and hereby shall be granted, subject to the following conditions:

1. Development shall be according to plans shown in Exhibit No. 16.
2. No vehicle access from the Holton Arms School property to Burdette Road shall be provided.
3. Petitioner shall submit a landscape screening plan for review and approval by the technical staff of the Maryland-National Capital Park and Planning Commission.
4. No exterior lighting shall be provided on either the playing fields or parking areas approved in this petition.
5. Petitioner shall take precautions so that surface

water run-off shall be adequately controlled during construction and after installation of the new facilities.

6. School enrollment shall be maintained at the current level of approximately 575 students during the regular school year.

The Board adopted the following Resolution:

"Be it Resolved by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mrs. Marjorie H. Sonnenfeldt, Chairman, and concurred in by Mrs. Doris Lipschitz, Mrs. Shirley S. Lynne, Mr. Joseph E. O'Brien, Jr., and Mr. Sheldon P. Schuman.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 23rd day of December, 1976.

Sallie H. Kyte  
Clerk to the Board

NOTE: See Section 59-6.(c) of the Zoning Ordinance regarding the 12-months' period within which the right granted by the Board must be exercised.

Section 59-122.(c) of the Montgomery County Zoning Ordinance 1972, as revised, requires that "On or before March 15 of each year, each applicant who has been granted a special exception shall file with the Department of Environmental Protection a sworn certificate specifying current hours of operation, number of employees and occupants, equipment utilized, and stating that such operation is in all respects in full compliance with the terms and conditions imposed by the Board; provided, however, that the first such certificate shall not be filed unless and until at least twelve months have elapsed since the date of the grant of the special exception."



Section 59-123. Prerequisites to granting.

(a) A special exception may be granted when the Board, or the director, as the case may be, finds from a preponderance of the evidence that the proposed use:

(1) Will be consistent with the general plan for the physical development of the district, including any master plan or portion thereof adopted by the commission;

(2) 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;

(3) Will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity;

(4) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;

(5) 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 improvements. In making this determination the Board, or the director, as the case may be, shall take into consideration existing development in the area, the proposed use, uses that have valid building permits and development reasonably probable of fruition in the foreseeable future. The Board, or director, as the case may be, shall also take into consideration planned improvements or additions to public services and facilities including those shown in public capital improvement programs and the Montgomery County Ten Year Water and Sewerage Plan. Documentation of the adequacy of water and sewerage facilities and services shall be provided by the applicant.

With regard to findings relating to facilities for the transmission and treatment of sewage generated by the use: the Board or the director as the case may be, shall further consider estimates of sewage flow anticipated to be generated by the proposed use; data regarding sewage generated by existing development using public sewer facilities in the sewer basin serving the

project; estimates of flow in the sewer basin serving the project to which WSSC has committed public sewer service; and local, state and regional plans, programs and policies. A project for which the WSSC has made a sewer commitment in accordance with the Montgomery County Ten Year Water and Sewerage Plan and other applicable regulations shall be deemed to have satisfied the requirement of this section regarding adequate sewerage facilities.

With regard to findings relating to public roads, the Board or the director as the case may be, shall further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Nothing herein shall be construed as relieving the applicant from the necessity of complying with all requirements for obtaining a building permit or any other authorization or approval required by law, nor shall the Board's finding of facts regarding sewerage facilities be binding on any other governmental agency or department responsible for making a determination relevant to the authorization, approval, or licensing of the project.

(6) Meets the definition and specific standards set forth elsewhere in this chapter for such use.

(b) The applicant for a special exception shall have the burden of proof which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board or the director.

(c) The provisions of this ordinance shall not apply to petitions for special exceptions for which public hearings by the Board of Appeals have begun as of August 12, 1975.

Ordinance No. 8-8; adopted 8-12-75  
Amended by Ordinance No. 8-19; adopted 12-9-75

Sec. 59-142. Educational institutions, private.

(a) Generally. In any residential zone, a lot, tract or parcel of land may be allowed to be used for a private educational institution upon a finding by the board:

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

(2) That, except for buildings and additions thereto completed, or for which building permits have been obtained prior to the time of adoption of this section, such use will be housed in buildings architecturally compatible with other buildings in the surrounding neighborhood, and, in the event such building is to be located on a lot, tract or parcel of land of two acres or less, in either an undeveloped area or an area substantially developed with single-family homes, that the exterior architecture of such building will be of a residential home design, and at least comparable to existing residential homes, if any, in the immediate neighborhood; and

(3) That such use will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community; and

(4) That such use can and will be developed in conformity with the following area, density, building coverage, frontage, setback, access and screening requirements, where specified:

a. AREA, FRONTAGE AND SETBACK---As shall be specified in a site plan of development approved by the board; provided, that in no event shall such standards be less than the area regulations for the zone in which the private educational institution is proposed to be located; and

b. ACCESS BUILDING COVERAGE AND SCREENING---As shall be specified in a site plan of development approved by the board; and

c. DENSITY---Such density, being the allowable number of pupils per acre permitted to occupy the premises at any one time as shall be specified by the board upon consideration of the following factors:

1. Traffic patterns, including:

i. Impact of increased traffic on residential streets;

ii. Existence of arterial highways; and

2. Noise or type of physical activity; and

3. Character, percentage and density of existing development and zoning within the community; and

4. Topography of the land to be used for the special exception;

Provided, that in no event shall a special exception be granted for a density in excess of eighty-seven pupils per acre.

(b) Site plan.

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

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

(c) Exemptions. The requirements of this section shall not apply to the use of any lot, lots or tract of land for any private educational institution which is a parochial school or which is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any agency thereof, Montgomery County or any incorporated village or town within Montgomery County.



(d) Nonconforming uses. Nothing in this chapter shall prevent any existing private educational institution which obtained a special exception prior to the effective date of this chapter, from continuing its use to the full extent authorized under the resolution granting the respective special exception, subject, however, to article VII of this chapter. (Mont. Co. Code 1965, § 111-37; Ord. No. 6-141, § 1.)

