

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation with modifications
(Motion of Comm. Floreen, seconded by Comm. Hewitt, with
a vote of 5-0; Commissioners Floreen, Hewitt, Keeney,
Henry and Christeller voting in favor).

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-87171
NAME OF PLAN: BURNING TREE VALLEY-HOLTON ARM

On 06-30-87, HOLTON ARMS SCHOOL, INC., submitted an application for the approval of a preliminary plan of subdivision of property in the R 200 zone. The application proposed to create 1 lots on 48478.00 SQ FEET of land. The application was designated Preliminary Plan 1-87171. On 12-03-87, Preliminary Plan 1-87171 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-87171 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-87171, subject to the following conditions:

1. Agreement with Planning Board limiting development to private educational institution with 630 pupils and providing for reforestation plan and cleanup policy to be reviewed by staff prior to release of building permit.
2. Dedication along River Road (200' right-of-way)
3. SHA requirements for deceleration and acceleration lanes
4. Conditions of DEP stormwater management waiver
5. Provision of 50' conservation easement along both sides of Booze Creek except for storm drain outfalls and existing facilities
6. Other necessary easements
7. Provide emergency access to Burdette Road (strictly limited to emergency vehicles)
8. Lot to include all of Booze Creek within applicable property

1
Landscaping plan to be approved by Planning Board
prior to construction

10. Board of Appeals clarification that special exception
approval is for 48.47 acres ✓

Check w/ Dennis

**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

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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

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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

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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.*

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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 exceptions¹ in the neighboring one-family residential

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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;*

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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.

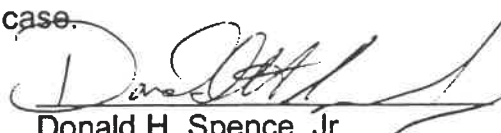
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2. The Petitioner shall comply with conditions of approval of the Preliminary Forest Conservation plan for CBA-1174-C. A Final Forest Conservation Plan must be approved by M-NCPPC Technical Staff.
3. The Petitioner must implement the Transportation 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.

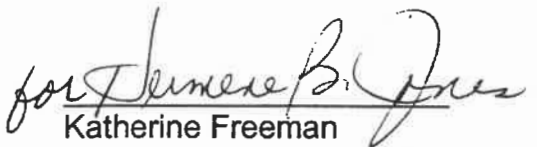


Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Case No. S-2503

Page 14.

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.

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2467

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted March 12, 2014)

(Effective Date of Resolution: April 11, 2014)

Case No. S-2467 is a special exception granted August 8, 20002, pursuant to Section 59-G-2.13.1 (Child Day Care Facility) of the Montgomery County Zoning Ordinance, to permit a child care facility for the benefit of Holton Arms School faculty and staff. Effective March 23, 2004, the Board granted Case No. S-2467-A, a major modification of the special exception. Subsequently, the Board has granted several administrative modifications to allow changes to the hours and staffing of the special exception.

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, 20817, in the R-90 and R-200 Zones.

The Board of Appeals has received a letter, dated March 6, 2014, from Elsie L. Reid, Esquire, on behalf of the Holton Arms School. Ms. Reid requests administrative modification of the special exception to allow an increase in enrollment at the child care center to 31 children, and to allow an increase in staffing to 10 full time staff positions. In addition, Ms. Reid requests an extension of the regular hours of operation for the center until 6:30 p.m., and permission to offer childcare to Holton faculty on evenings during the school year when there are major school events. Ms. Reid anticipates that such evening care would occur no more than seven to eight times per year.

In support of the request Ms. Reid states that the number of trips generated by the requested increases would fall within the approved overall enrollment for the Holton Arms School which has an approved enrollment of 665 students, but which is currently enrolled at 641, with next year's enrollment anticipated to be lower. Ms. Reid clarifies that the requested increase in enrollees will not increase the number of children allowed to be enrolled from schools outside Holton. Ms. Reid states that the arrival of center

staff "will largely be outside school peak traffic hours," and that "There is adequate parking on site for the additional staff." Ms. Reid reports that Holton discussed the requested modification with representatives of the Bradley Boulevard Citizens' Association and the Burning Tree Civic Association and that both groups have said they do not object to the modification.

The Board of Appeals considered the modification request at its Worksession on March 12, 2014. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.


The Board finds that the requested modification will not cause significant additional activity or traffic impact, and therefore will not substantially change the nature, character or intensity of the use or its effect on traffic or on the immediate neighborhood.

On a motion by Stanley B. Boyd, seconded by Carolyn J. Shawaker, with John H. Pentecost and David K. Perdue, Vice-Chair, in agreement and Catherine G. Titus, Chair, necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2467-A is re-opened to receive Elsie Reid's letter dated March 6, 2014; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception is **granted**; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



David K. Perdue
Vice-Chair, Montgomery County Board of Appeals

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for
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Rockville, Maryland 20850
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Case No. CBA-1174-D

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD
(Resolution Adopted September 11, 2024)
(Effective Date September 26, 2024)

The Board of Appeals has received a letter, dated August 30, 2024, from Patrick L. O'Neil, Esquire, enclosing Head of School Penny Evins' letter dated August 30, 2024, submitting the summary of the School's Annual Report, which includes the student enrollment and the Transportation Management Plan. In her letter, Ms. Evins provides the online link to the School's master calendar, which is maintained on the School website.

In his letter, Mr. O'Neil further informs the Board that:

In addition, the School would like to alert you to an unexpected enrollment surge above the current cap of 665 students for the 2024-25 academic year. This year's student body will be comprised of 681 girls due to historically high yield rates for incoming students. The School's administrators make admissions decisions based on yield and attrition information from the previous three years. The yield rate for the 2024-25 school year is 67%, which is the highest yield rate experienced by the School in the last ten years and includes yield rates of over 90% in grades 4, 7, and 8 - with the average yield over the last three years being 61 %. Attrition rates remained level at around 4%. The School has reached out to representatives of the Bradley Boulevard Citizens Association to advise them of the anticipated enrollment for this school year. We are pleased to report that the response has been supportive and understanding.

In the past, an enrollment overage was addressed via a mitigation plan to bring enrollment back down to the cap within two years by implementing adjustments to admissions criteria. Rather than propose a mitigation strategy, the School intends to seek enrollment cap and

Case No. CBA-1174-D

page 2


other modifications in order to modernize campus use. Increasing enrollment is crucial to meet the growing market demand, stay competitive with schools who can adapt to market demands more effectively, and ensure the continued excellence of the Holton-Arms program.

Over the next few months, the School intends to evaluate growth options and impacts and return to the Board with a Special Exception amendment that will both accommodate School needs and respect its residential neighbors. We have already begun discussing potential modifications with our neighbors and look forward to presenting them to the Board well in advance of next year's admissions decisions.

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 Mr. O'Neil and Ms. Evins at a Worksession held on September 11, 2024. The Board notes that the submission of the Annual Report is in order. Thus, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines, Alan Sternstein and Amit Sharma in agreement.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Mr. O'Neil's letter dated August 30, 2024, and Ms. Evins' letter dated August 30, 2024, with attachments.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 26th day of September, 2024.



Barbara Jay
Executive Director

*Case No. CBA-1174-D**page 3***NOTE:**

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

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

**BOARD OF APPEALS
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Case No. CBA-1174-D

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted October 4, 2023)

(Effective Date October 13, 2023)

The Board of Appeals has received a letter, dated September 5, 2023, from Soo Lee-Cho, Esquire, enclosing Head of School Penny Evins' letter dated August 30, 2023, submitting the summary of the School's Annual Report, which includes the student enrollment and the Transportation Management Plan. In her letter, Ms. Evins provides the online link to the School's master calendar which is maintained on the School website.

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 Ms. Lee-Cho's and Ms. Evins' correspondence at a Worksession held on October 4, 2023. The Board notes that the submission of the annual report is in order, and on a motion by Richard Melnick, Vice Chair, seconded by Caryn Hines, with Laura Seminario-Thornton and Alan Sternstein in agreement, and John H. Pentecost, Chair, necessarily absent.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Soo Lee-Cho's letter dated September 5, 2023, and Penny Evins' letter dated August 30, 2023, with attachments.



Richard Melnick, Vice Chair
Montgomery County Board of Appeals

Case No. CBA-1174-D

page 2

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 13th day of October 2023.


Barbara Jay
Executive Director**NOTE:**

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

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

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Case No. CBA-1174-D

PETITION OF THE HOLT ON ARMS SCHOOL

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted May 25, 2022)

(Effective Date of Resolution: June 8, 2022)

The Board of Appeals has received a letter, dated May 17, 2022, from Soo Lee-Cho, Esquire, on behalf of The Holton Arms School. Ms. Lee-Cho requests an administrative modification of the School's special exception to allow the School to add indoor and outdoor space in connection with the School's renovation of its existing Marriott Library building. Ms. Lee-Cho's letter explains that the "corridor" that currently connects the library and classroom building will be removed, and the space between those two buildings will be "reconfigured to create a larger enclosed area that will serve as a casual gathering space for the girls to congregate and interact, build social relationships and engage in group study." Ms. Lee-Cho states in her letter that the new area, which she refers to as the "Learning Commons," has been "designed to work with the existing grade of the site, utilizing the space between the library and classroom building seamlessly." Her letter states that the new Learning Commons will have no more than 2,500 square feet of floor area, and will be no taller than 21 feet in height. She includes proposed floor plans and elevations of the proposed new space with her letter. In addition to the proposed enclosed space, Ms. Lee-Cho indicates in her letter that the School is also seeking to add new hardscape/outdoor space around the library, stating that "the outdoor areas surrounding the Marriott Library will be enhanced with hardscape, connecting stairs and landscaping to create outdoor areas where teachers/students can engage." Again, Ms. Lee-Cho includes proposed floor plans showing those areas with her submission. Ms. Lee-Cho's letter states that the proposed changes "will not substantially change the nature, character or intensity of the School's special exception use, will not negatively impact traffic in any way, [and] will not otherwise adversely affect the surrounding neighborhood." She includes an aerial photograph, marked to show the area of the proposed changes, with her request, as well as floor plans and elevations showing the proposed changes.

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 in Bethesda, Maryland, in the R-90 and R-200 Zones.

Due to COVID-19, the Board of Appeals considered the modification request at a remote Worksession held on May 25, 2022, using Microsoft Teams. Ms. Lee-Cho participated on behalf of the School, in support of the proposed modification. She explained that the requested modification is referred to by the School as the "Learning Commons" project, and that the School would like to undertake this project in connection with the renovation of the interior of the existing Marriott Library. Referring to the aerial photograph she submitted, Ms. Lee-Cho oriented the Board to the campus and the area of proposed construction. She stated that the proposed Learning Commons would be in the area between the School's main academic building and the existing Marriott Library, which are currently connected by a corridor that would be demolished. Ms. Lee-Cho stated that the Learning Commons addition would be approximately 2,500 square feet in size, and would be used for group study, gathering, and social interaction.

Referring to the elevations, Ms. Lee-Cho stated that the addition would not be visible to the closest neighbors because it would be "tucked" between the existing library and academic building. She stated that the School held a "virtual" neighborhood meeting on March 17, 2022, to discuss the proposed project, and that the primary concern raised regarding the modification was whether trucks associated with the proposed construction would use neighborhood streets to access the site.¹ In response to a Board question, Ms. Lee-Cho stated that there had been no changes to the concept for the proposed project since that meeting. In response to additional Board questions, she stated that the proposed Learning Commons was intended for use by the School's existing students, and that the School was not requesting an enrollment increase. In addition, she stated that there would be no significant noise impact from the proposed modification once the construction is finished.

Because Case No. CBA-1174-D was approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, this modification request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant elects otherwise. Section 59-G-1.3(c)(1) of the 2004 Zoning Ordinance provides:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

Based on the record before it, the Board finds that the proposed addition between the existing classroom building and library, and the proposed outdoor spaces between those buildings and around the library, as described herein and in Ms. Lee-Cho's letter,

¹ Ms. Lee-Cho stated at this juncture that trucks would enter the property from River Road.

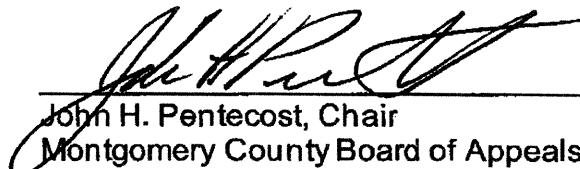
and as shown on the attachments to that letter, will not substantially change the nature, character or intensity of the use or its effect on traffic or on the immediate neighborhood, and thus can be granted. The Board notes that the proposed construction is in an area of the School's campus that is already occupied by School buildings, and per Ms. Lee-Cho's letter and statements at the Worksession, will not impact adjoining properties. In addition, the Board notes that the requested modification will not increase the number of students on the campus, or the hours of the School's operation, and thus will not change the nature, character, or intensity of the use, or the effect of the use on traffic.

On a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, and Roberto Pinero in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Soo Lee-Cho's May 17, 2022, letter, with attachments; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception is **granted**; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of June, 2022.



Barbara Jay
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections

and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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

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

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Rockville, Maryland 20850
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Case No. CBA-1174-D

PETITION OF HOLTON ARMS SCHOOL

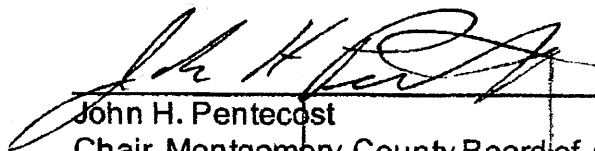
RESOLUTION TO RE-OPEN THE RECORD
(Resolution Adopted September 21, 2022)
(Effective Date October 7, 2022)

The Board of Appeals has received a letter, dated September 9, 2022, from Soo Lee-Cho, Esquire, enclosing Head of School Susanna Jones' letter dated August 30, 2022, submitting the summary of the School's Annual Report, which includes the student enrollment and the Transportation Management Plan. Ms. Jones notes in her letter that the School's master calendar is maintained on the School website.

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.

Due to COVID-19, the Board of Appeals considered Ms. Lee-Cho and Ms. Jones' correspondence using Microsoft Teams at a remote Worksession held on September 21, 2022. On a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, and Roberto Pinero in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Soo Lee-Cho's letter dated September 9, 2022, and Susanna Jones' letter dated August 30, 2022, with attachments.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Case No.CBA-1174-D

page 2

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 7th day of October 2022.


Barbara Jay
Executive Director

NOTE:

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

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

**BOARD OF APPEALS
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Case No. CBA-1174-D

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted October 20, 2021)

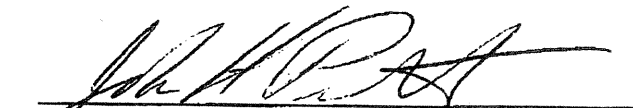
(Effective Date November 4, 2021)

The Board of Appeals has received a letter, dated October 12, 2021, from Soo Lee-Cho, Esquire, on behalf of the Holton Arms School. Ms. Lee-Cho encloses a letter dated September 30, 2021, from Susanna Jones, Head of School, submitting a summary of the School's Annual Report, including student enrollment and the School's Transportation Management Plan.

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 considered the correspondence from Ms. Lee-Cho and Ms. Jones at its October 20, 2021, Worksession. Due to COVID-19, the Worksession was held remotely using Microsoft Teams. On a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, Vice Chair, with Mary Gonzales, Richard Melnick, and Caryn Hines in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Soo Lee-Cho's letter dated October 12, 2021, and Susanna Jones' letter dated September 30, 2021, with attachments.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Case No. CBA-1174-D

page 2

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 4th day of November 2021.


Barbara Jay
Executive Director

NOTE:

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

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

**BOARD OF APPEALS
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Case No. CBA-1174-D

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted September 16, 2020)

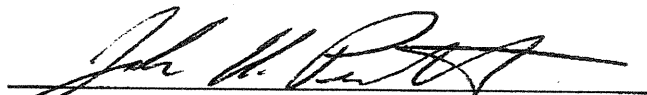
(Effective Date September 30, 2020)

The Board of Appeals has received a letter, dated September 4, 2020, from Soo Lee-Cho, Esquire, enclosing Head of School Susanna Jones' letter dated August 30, 2020, submitting the summary of the school's annual report which includes the student enrollment and the Transportation Management Plan.

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.

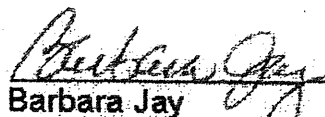
Due to COVID-19, the Board of Appeals considered Ms. Lee-Cho and Ms. Jones' correspondence at a remote Worksession held on September 16, 2020, using Microsoft Teams. On a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Bruce Goldensohn Vice Chair, Mary Gonzales and Richard H. Melnick in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Soo Lee-Cho's letter dated September 4, 2020, and Susanna Jones' letter dated August 30, 2020 with attachments.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 30th day of September, 2020.


Barbara Jay
Executive Director

NOTE:

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

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

**BOARD OF APPEALS
for
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Case No. CBA-1174-D

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted September 25, 2019)

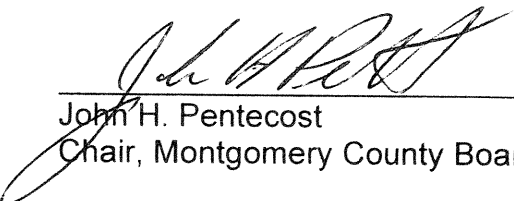
(Effective Date October 3, 2019)

The Board of Appeals has received a letter, dated August 30, 2019, from Susanna A. Jones, Head of School at The Holton Arms School. Ms. Jones encloses the summary of the school's annual report which includes the student enrollment and the Transportation Management Plan.

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 Ms. Jones' correspondence at its Worksession on September 25, 2019. On a motion by Stanley B. Boyd, Vice Chair, seconded by Katherine Freeman, with John H. Pentecost, Chair, Bruce Goldensohn and Jon W. Cook in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Susanna Jones' letter dated August 30, 2019, with attachments.



John H. Pentecost
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, 2019.



Barbara Jay
Executive Director

NOTE:

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

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

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. CBA-1174-D

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted September 26, 2018)

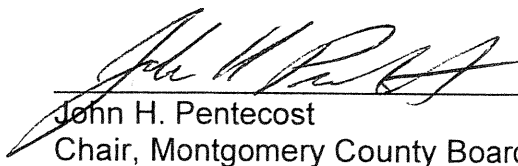
(Effective Date October 12, 2018)

The Board of Appeals has received a letter, dated August 30, 2018, from Susanna A. Jones, Head of School at The Holton Arms School. Ms. Jones encloses the summary of the school's annual report which includes the student enrollment and the Transportation Management Plan.

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.

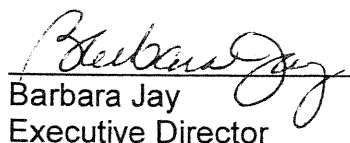
The Board of Appeals considered Ms. Jones' correspondence at its Worksession on September 26, 2018. On a motion by Stanley B. Boyd, seconded by Katherine Freeman, with John H. Pentecost, Chair, and Bruce Goldensohn in agreement, and with Edwin S. Rosado, Vice Chair, necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Susanna Jones' letter dated August 30, 2018, with attachments.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 12th day of October, 2018.



Barbara Jay
Executive Director

NOTE:

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

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

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**Case No. CBA-1174-D
PETITION OF HOLTON ARMS SCHOOL**

RESOLUTION TO RE-OPEN THE RECORD
(Resolution Adopted May 23, 2018)
(Effective Date June 7, 2018)

The Board of Appeals has received a letter with attachments, dated May 15, 2018, from Soo Lee-Cho, Esquire, on behalf of The Holton Arms School. Ms. Lee-Cho notes in her letter that in 2004, the Board of Appeals approved an increase to the School's permitted general enrollment from 650 to 665. She states that since that time, "Holton Arms has been at or below the 665 regular admissions cap," but that "based on an unexpectedly high yield (percentage of admitted families who accepted an offer of admission) and unusually low attrition (current students who have indicated they are not returning next year), the enrollment figure for the 2018-2019 academic year is expected to exceed the School's cap by at most 13 students, i.e., potentially reaching a total of 678."

Ms. Lee-Cho proceeds to explain in her letter that the School projects yield and attrition rates are based on information from the preceding five years, noting that:

The anticipated yield for 2018-2019 is expected to be 64%, which is the highest yield experienced by the School in the last five years – the average yield over that period having been 56%. The combined effect of this higher than average yield and an all-time low attrition rate of 2.8% experienced by the School this past year is what is believed to have caused the anticipated over-enrollment for the upcoming school year. (The average attrition rate over the past five years has been 5.2%.)

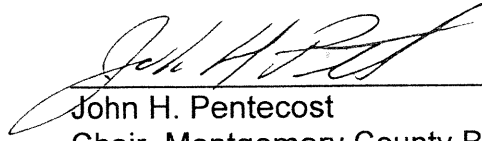
Ms. Lee-Cho indicates in her letter that the School wanted to apprise the Board of this enrollment anomaly as soon as possible, and states that "[t]he School is not planning to seek a modification of its enrollment cap, but plans to implement adjustments to its admissions criteria to bring the enrollment back down to the cap of 665 with the next two years."

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 Ms. Lee-Cho's correspondence at its Worksession on May 23, 2018. Ms. Lee-Cho appeared at the Worksession with Susanna A. Jones, Head of School. Ms. Lee-Cho and Ms. Jones reiterated that the School wanted to be upfront about this unexpected violation of its enrollment cap, and wanted the Board to understand how it happened. They emphasized that the School is not seeking to increase its allowed enrollment, but rather is working to bring its enrollment back under the 665 cap through adjustments to its admissions' criteria.

On a motion by Bruce Goldensohn, seconded by Edwin S. Rosado, Vice Chair, with John H. Pentecost, Chair, Stanley B. Boyd, and Katherine Freeman in agreement, the Board recognizes the School's temporary enrollment issue and that the School is taking actions to normalize its enrollment, and adopts the following resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Soo Lee-Cho's letter dated May 15, 2018, with attachments.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 7th day of June, 2018.



Barbara Jay
Executive Director

NOTE:

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

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

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Case No. CBA-1174-D

PETITION OF HOLTON ARMS SCHOOL

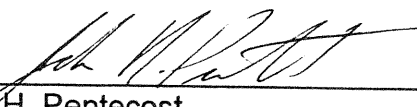
RESOLUTION TO RE-OPEN THE RECORD
(Resolution Adopted September 20, 2017)
(Effective Date October 5, 2017)

The Board of Appeals has received a letter, dated August 31, 2017, from Susanna A. Jones, Head of School at The Holton Arms School. Ms. Jones encloses the summary of the school's annual report.

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.

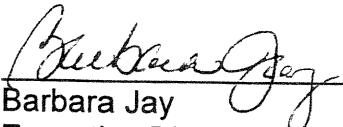
The Board of Appeals considered Ms. Jones' correspondence at its Worksession on September 20, 2017. On a motion by John H. Pentecost, then-Vice Chair, seconded by Bruce Goldensohn, with Edwin S. Rosado, Stanley B. Boyd and Carolyn J. Shawaker, then-Chair, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Susanna Jones' letter dated August 31, 2017, with attachments.



John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 5th day of October, 2017.



Barbara Jay
Executive Director

NOTE:

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

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

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Case No. CBA-1174-D

PETITION OF HOLTON ARMS SCHOOL

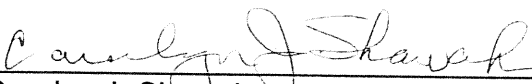
RESOLUTION TO RE-OPEN THE RECORD
(Resolution Adopted September 21, 2016)
(Effective Date October 12, 2016)

The Board of Appeals has received a letter, dated September 17, 2016, from Susanna A. Jones, Head of School at The Holton Arms School. Ms. Jones encloses the summary of the school's annual report.

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 Ms. Jones's correspondence at its Worksession on September 21, 2016. On a motion by John H. Pentecost, Vice-Chair, seconded by Edwin S. Rosado, with Stanley B. Boyd, Bruce Goldensohn and Carolyn J. Shawaker, Chair, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Susanna Jones's letter dated September 17, 2016, with attachments.


Carolyn J. Shawaker
Chair, Montgomery County Board of Appeals

Case No. CBA-1174-D

Page 2

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 12th day of October, 2016.



Barbara Jay
Executive Director

NOTE:

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

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Case No. CBA-1174-D

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted September 30, 2015)

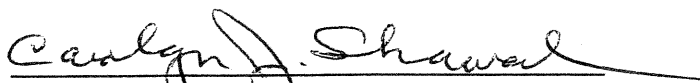
(Effective Date October 29, 2015)

The Board of Appeals has received a letter, dated September 17, 2015, from Susanna A. Jones, Head of School at The Holton Arms School. Ms. Jones encloses the summary of the school's annual report and the Transportation Management Plan report for the preceding year.

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 Ms. Jones's correspondence at its Worksession on September 30, 2015. On a motion by Carolyn J. Shawaker, Vice-Chair, seconded by Edwin S. Rosado, with Stanley B. Boyd, John H. Pentecost, and David K. Perdue, Chair, in agreement:

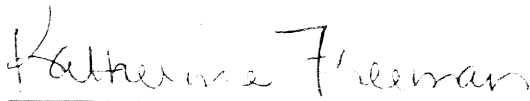
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Susanna Jones's letter dated September 17, 2015, with attachments.


Carolyn J. Shawaker
Chair, Montgomery County Board of Appeals

Case No. CBA-1174-D

Page 2

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 29th day of October, 2015.

A handwritten signature in cursive script that reads "Katherine Freeman". The signature is written in dark ink and is positioned above 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

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD
(Resolution Adopted September 24, 2014)
(Effective Date October 9, 2014)

The Board of Appeals has received a letter, dated September 2, 2014, from Susanna A. Jones, Head of School at The Holton Arms School. Ms. Jones encloses the summary of the school's annual report and the Transportation Management Plan report for the preceding year.

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 Ms. Jones's correspondence at its Worksession on September 24, 2014. On a motion by Stanley B. Boyd, seconded by Carolyn J. Shawaker, with John H. Pentecost, David K. Perdue, Vice-Chair and Catherine G. Titus, Chair, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Susanna Jones's letter dated September 2, 2014, with attachments.



Catherine G. Titus
Chair, Montgomery County Board of Appeals

Case No. CBA-1174-D

Page 2

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 9th day of October, 2014.

A handwritten signature in cursive script that reads "Katherine Freeman". The signature is written in dark ink and is positioned above 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

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD

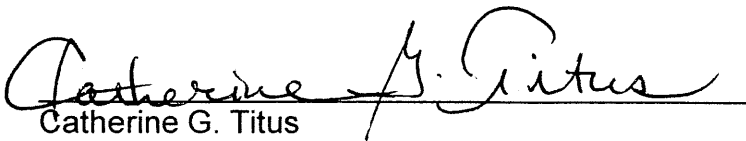
(Resolution Adopted September 25, 2013)
(Effective Date November 8, 2013)

The Board of Appeals has received a letter, dated August 28, 2013, from Susanna A. Jones, Head of School at The Holton Arms School. Ms. Jones encloses the school's annual report, a copy of the Master Calendar for the preceding year and the Transportation Management Plan reports.

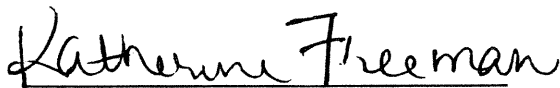
The subject property is Lot N-624, Parcel 2, and Part of Lots 6 and 7, Outlot A, Block B, Burning Tree Valley Subdivision, located at 7303 River Road, Bethesda, Maryland, in the R-90 and R-200 Zones.

The Board of Appeals considered Ms. Jones's correspondence at its Worksession on September 25, 2013, and requests that Ms. Jones submit future reports in summary form. On a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd with John H. Pentecost, David K. Perdue, Vice-Chair and Catherine G. Titus, Chair, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Susanna Jones's letter dated August 28, 2013, with attachments.


Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of November, 2013.

A handwritten signature in cursive script that reads "Katherine Freeman". The signature is written in dark ink and is positioned above the printed name and title.

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.

**BOARD OF APPEALS
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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. CBA-1174-C

PETITION OF HOLTON-ARMS SCHOOL, INC.

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted: September 11, 2013)

(Effective Date of Resolution: September 20, 2013)

The Board of Appeals has received correspondence dated July 26, 2013, from Elsie Reid, Esquire. Ms. Reid's letter encloses the Forest Conservation Plans (FCP) from the Montgomery County Planning Board, in accordance with the Board's Opinion of May 29, 2002.

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 Ms. Reid's letter at its Worksession on September 11, 2013 and finds that it complies with the requirements of the Board's Opinions. Therefore, on a motion by John H. Pentecost, seconded by David Perdue, Vice-Chair, with Carolyn J. Shawaker and Stanley B. Boyd in agreement and with Board Member Catherine G. Titus, Chair, necessarily absent:

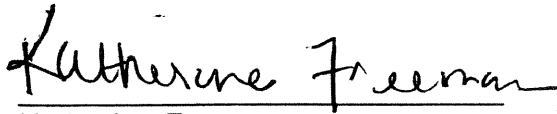
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case Nos. CBA-1174-C is re-opened to receive Elsie Reid's letter of July 26, 2013, with attachments.



David K. Perdue

Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 20th day of September, 2013.

A handwritten signature in black ink that reads "Katherine Freeman". The signature is written in a cursive style with a horizontal line underneath the name.

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.

**BOARD OF APPEALS
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Case No. CBA-1174-D

PETITION OF THE HOLTON ARMS SCHOOL

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted April 18, 2012)

(Effective Date of Resolution: May 21, 2012)

The Board of Appeals has received a letter, dated March 27, 2012, from Elsie L. Reid, Esquire, on behalf of The Holton Arms School. Ms. Reid requests administrative modification of the special exception to allow "enclosure of the existing entry portico at the school's front entrance to include the extension of a cantilevered roof from the enlarged reception area out onto the front sidewalk." Ms. Reid encloses Architectural Drawings and a General View of the Campus to illustrate the request. Ms. Reid advises that the front entrance is not visible from nearby residences, and that the school will undertake interior remodeling of the lobby as well as repair and interior work to the dining room area at the same time as the enlargement of the portico. Ms. Reid informs the Board that all members of the Neighborhood Liaison Council received copies of the Architectural Drawings, and that school representatives have spoken with representatives of the Bradley Boulevard Citizens' Association and the Burning Tree Civic Association, which have no objection to the requested change.

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 modification request at its Worksession on April 18, 2012. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board,

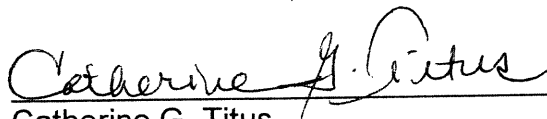
without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that enclosure of the school's entrance, not visible to nearby residences, will not substantially change the nature, character or intensity of the use or its effect on traffic or on the immediate neighborhood. Therefore, on a motion by Carolyn J. Shawaker, seconded by David K. Perdue, Vice-Chair, with Walter S. Booth, Stanley B. Boyd and Catherine G. Titus, Chair, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Elsie L. Reid's March 27, 2012 letter, with attachments; and

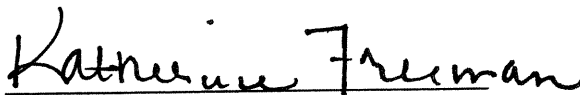
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception is **granted**; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of May 2012.



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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

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Case No. CBA-1174-D

PEITITION OF THE HOLTON ARMS SCHOOL

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted March 23, 2011)

(Effective Date of Resolution: May 24, 2011)

The Board of Appeals has received a letter, dated March 3, 2011, from Elsie L. Reid, Esquire, on behalf of The Holton Arms School. Ms. Reid requests administrative modification of the special exception to permit a short-term use of the parking facilities on the school's campus by the U.S. Golf Association (USGA) during the U.S. Open Tournament being held at Congressional Country Club in Potomac, which is close to Holton Arms. Ms. Reid states that USGA has requested to use about 175 spaces from June 13th to June 19th 2011, after the close of the academic year, but before the start of camp programs at the school. She states that during this period, faculty and staff will park either at Primary Day or St. Marks Church and be bused to and from school. Ms. Reid informs the Board that Mrs. Susanna Jones, Head of School, spoke individually with representatives from Bradley Boulevard Citizens' Association and Burning Tree Civic Association about this event and reports that the associations do not object to this use of the school's parking.

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 Ms. Reid's request at its Worksession on March 23, 2011. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the temporary use of the school's parking facility, at a time when neither the school's academic nor summer programs are in session, and with faculty and staff parking off-site, will not substantially change the impact of the special exception or its effect on traffic or the immediate neighborhood. Therefore, on a motion by Stanley B. Boyd, seconded by David K. Perdue, Vice-Chair, with Carolyn J. Shawaker, Walter S. Booth and Catherine G. Titus, Chair, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D, Petition of The Holton Arms School, is re-opened to receive Elise Reid's letter dated March 3, 2011; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception is granted; and

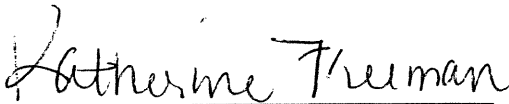
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



Catherine G. Titus

Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 24th day of May, 2011.

Katherine Freeman
Executive Director**NOTE:**

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is

received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. CBA-1174-D

PETITION OF THE HOLTON ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD

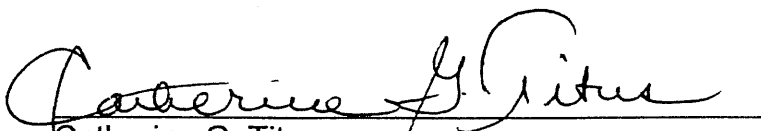
(Resolution Adopted September 23, 2009 and October 28, 2009)
(Effective Date of Resolution: April 27, 2010)

The Board of Appeals received a letter, dated September 1, 2009, from Susanna A. Jones, Head of School for The Holton Arms School. Ms. Jones encloses the school's Annual Report, Transportation Management Report, Traffic Task Force Report and Master Calendar. The Board also received a letter dated October 2, 2009, from Elsie L. Reid, Esquire, on behalf of The Holton Arms School. Ms. Reid's letter responds to questions from the Board about the Annual Report and Transportation Management Report.

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.

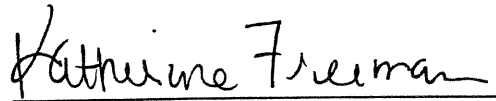
The Board of Appeals considered the correspondence at its Worksessions on September 23, 2009 and October 28, 2009. On motions by Walter S. Booth seconded by Carolyn J. Shawaker, with Stanley B. Boyd, David K. Perdue, Vice-Chair and Catherine G. Titus, Chair, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D, Petition of The Holton Arms School, is re-opened to receive Susanna A. Jones's September 1, 2009 and Elsie L. Reid's October 2, 2009 correspondence, with attachments.


Catherine G. Titus
Chair, Montgomery County Board of Appeals

Case No. CBA-1174-D

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 27th day of April, 2010.

A handwritten signature in black ink, reading "Katherine Freeman". The signature is written in a cursive style with a horizontal line underneath the name.

Katherine Freeman
Executive Director

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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WORKSESSION MINUTES

Second Floor Davidson Memorial Hearing Room

Wednesday, September 8, 2010, 9:30 a.m.

ACTION ITEMS:

1. **Minutes**, July 28, 2010 Worksession.

Action: Approved, (CJS/DKP, 4-0).

2. **Order Extending Time for the Board's Written Opinion** for 30 days is required in the following case:

(a) **A-6321, Petition of Anne Stukes** (one-story addition). Hearing held 6/23/2010.

Action: Granted the extension of time, (DKP/SBB, 4-0).

3. **A-6315, Petition of Frank Haney** (accessory structure/swimming pool). Letter to the Board from B. Franklin Cooling requesting the need for further study and consideration of the subject property as historic ground.

Action: Re-opened the record to accept Mr. Cooling's letter, (SBB/CJS, 4-0).

4. **A-6323, Appeal of Lloyd S. Etheredge** (Department of Permitting Services (DPS) – Issuance of Building Permit No. 528622). Letter from the appellant requesting reconsideration. Also included are additional letter from Mr. Etheredge.

Action: Opened the record to include Mr. Etheredge's request, (CJS/SBB, 4-0).

- ✓ 5. **Returning Item. CBA-1174-C, Petition of Holton-Arms School, Inc.** (private educational institution). Letter from Elsie Reid, Esquire, in response to questions raised by the Board at its July 28, 2010 Worksession.

Action: Re-opened the record to include Ms. Reid's letter, (DKP/CJS, 4-0)

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(240) 777-6600

Case No. CBA-1174-D

PETITION OF THE HOLTON-ARMS SCHOOL

RESOLUTION TO ALLOW EVENT ON A TRIAL BASIS

(Resolution Adopted December 17, 2008)
(Effective Date of Resolution: May 14, 2009)

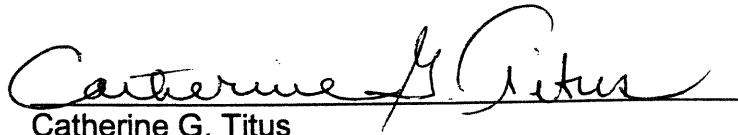
The Board of Appeals has received a letter, dated December 9, 2008, from Elsie L. Reid, Esquire, on behalf of The Holton Arms School. Ms. Reid requests the Board's approval for the school to host a track and field championship event at the request of the Independent School League (ISL) athletic conference. Ms. Reid informs the Board that through the neighborhood Liaison Council process, Holton asked the Bradley Boulevard Citizens Association (BBCA) and the Burning Tree Civic Association (BTCA) to consider ISL's request for Holton to host this event, and that the associations expressed their willingness for Holton to host the event in 2009 "on a trial basis".

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.

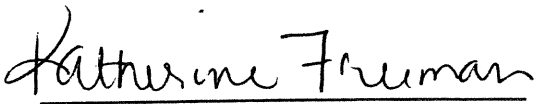
The Board of Appeals considered Holton Arms' request at its Worksession on December 17, 2008. The Board finds, with the concurrence of the members of the Neighborhood Liaison Council, that it can grant the school's request to host the championship track and field event on a one-time, trial basis.

On a motion by David K. Perdue, seconded by Allison Ishihara Fultz, Chair, with Catherine G. Titus, Vice-Chair and Walter S. Booth in agreement, and Carolyn J. Shawaker necessarily absent 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.


Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 14th day of May, 2009.


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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

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(240) 777-6600

Case No. CBA-1174-D

PETITION OF THE HOLTON-ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted September 24, 2008)


(Effective Date of Resolution: March 12, 2009)

The Board of Appeals has received a letter, dated September 2, 2008, from Susanna A. Jones, Head of School at The Holton-Arms School. Ms. Jones submits the school's annual report, together with the Master Calendar for the previous year, and information about the measures it has taken or intends to take within the coming year to study and address mitigation strategies for the school's trip generation rate.

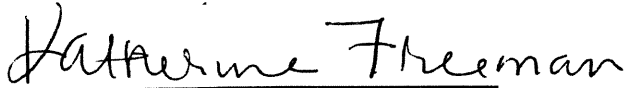
The subject property is Lot N-624, Parcel 2, and Part of Lots 6 and 7, Outlot A, Block B, Burning Tree Valley Subdivision, located at 7303 River Road, Bethesda, Maryland, in the R-90 and R-200 Zones.

The Board of Appeals considered Ms. Jones's letter at its Worksession on September 24, 2008. On a motion by Wendell M. Holloway, seconded by Catherine G. Titus, Vice-Chair, with Allison Ishihara Fultz, Chair, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Susanna Jones's letter of September 2, 2008, with attachments as Exhibit Nos. 127-127(b).


Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 12th day of March, 2009.

A handwritten signature in cursive script that reads "Katherine Freeman". The signature is written in dark ink and is positioned above a horizontal line.

Katherine Freeman
Executive Director

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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

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(240) 777-6600

Case Nos. CBA-1174-D, S-2467-A and S-2503-A

PETITION OF THE HOLTON ARMS SCHOOL, INC.

CORRECTED RESOLUTION UPON REVIEW OF TRAFFIC IMPACT STUDY

(Resolution Adopted May 7, 2008)

(Effective Date of Resolution: July 29, 2008)

BACKGROUND

On March 23, 2004 the Board of Appeals granted modification Case Nos. **CBA-1174-D, S-2467-A, and S-2503-A**, 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; **an 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**; and an increase in enrollment of the summer camp from 650 to 665. The March 23, 2004 Opinion contained, at Condition No. 5, a requirement for Holton Arms to conduct a traffic impact study to evaluate the traffic impacts of the modifications with provisions for prior consultation as to the parameters of the study with the Bradley Boulevard Citizens Association (BBCA), the Burning Tree Civic Association (BTCA), and the Office of the People's Counsel (OPC), and for comments by those same parties and with the Transportation Planning staff of the Maryland-National Capital Park & Planning Commission on the completed study.

On June 29, 2005 Holton Arms submitted the required traffic study [Exhibit 81]. The Board also received comments from BBCA and BTCA that the study was too narrow. In a Resolution dated March 16, 2006, the Board of Appeals referred the matter to the Hearing Examiner to review the adequacy of the traffic study. On November 9, 2006 the Hearing Examiner issued a Report and Recommendation that the submitted traffic study had too narrowly interpreted Condition No. 5 of the Board's March 23, 2004 Opinion. The Hearing Examiner

recommended that the school conduct another traffic study, pursuant to a revised Condition No. 5.

Effective January 5, 2007 the Board of Appeals issued a Resolution which revised Condition No. 5 of its March 23, 2004 Opinion to state:

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

No later than June 1, 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 Board subsequently extended the time for submission of the traffic study to allow until September 15, 2007.

The Holton Arms School Community Liaison Council (CLC) considered how to process such issues as the parameters of the traffic study, the traffic analysis study and findings, the analyses and comments on the study by the Transportation Planning Division of the Maryland National Capital Park and Planning Commission and the analyses and comments by the Holton Arms School, the Bradley Boulevard Citizens Association, the Burning Tree Civic Association and the Office of the Peoples' Counsel. The CLC decided that all

analyses and comments should be submitted to the Peoples Counsel, who would, in turn, forward all the documents to the Board of Appeals in one submission.

In a letter dated December 13, 2007, Martin Klauber, Peoples' Counsel, forwarded 19 documents to the Board of Appeals. These documents included the CLC's agreed timeline for Traffic Study, comments from the parties on the scope of the traffic study, the Gorove Slade Traffic Impact Study of July 2, 2007, the Gorove Slade Traffic Impact Study Appendix, the Gorove Slade Supplement to Traffic Impact Study, Comments from Burning Tree Civic Association and Bradley Boulevard Citizens Association on the Traffic Impact Study, Comments of Shariar Etemadi, Transportation Planning Division, MNCPPC, on the Traffic Impact Study, comments from the parties on Shariar Etemadi's comments on the Traffic Impact Study.

The Board of Appeals considered Mr. Klauber's December 13, 2007 letter and the 19 attached documents at its Worksession on January 23, 2008. On February 13, 2008, the Board of Appeals issued a Notice of Public Hearing, for a hearing on May 7, 2008, pursuant to Condition No. 5, as revised in its Resolution of January 5, 2007 on the subject of AM and PM queuing and trip generation rates.

The Board of Appeals convened the hearing, as scheduled, on May 7, 2008. Elsie L. Reid, Esquire appeared on behalf of the Holton Arms School. She called Louis Slade, of Gorove Slade Traffic Associates, as a witness. George Springston appeared on behalf of the Burning Tree Civic Association. Norman Knopf, Esquire appeared on behalf of Bradley Boulevard Citizens Association. Linda Kauskay and Joseph Cutro, Professional Traffic Engineer, testified on behalf of Bradley Boulevard Citizens Association.

SUMMARY OF TESTIMONY

Ms. Reid stated the school's position that the Gorove Slade Traffic Impact Study is a comprehensive response to the requirements of Condition No.5, and that the study found no evidence that the modifications had any undue traffic impact, and that therefore there is no basis to justify modification of the conditions of approval for the modifications granted March 23, 2004. Ms. Reid further stated that the school is willing to look at its trip generation rate, and to revisit its Transportation Management Plan and to see if it can devise more effective ways to reduce vehicular trips on campus. Ms. Reid stated that the Traffic Impact Study was challenging to perform because the school did not have the comparative data for two of the three intersections that the school was asked to analyze retrospectively, and did not have some of the data for the full 16-hour day they were asked to analyze. She stated that the study utilized a simulation

approach in response to the lack of that data, but that such simulation has not been applied retrospectively before, which may have led to limitations and certain inconsistencies in the queue data. Ms. Reid stated that between October 2003, the time of the first traffic counts, and March 2007, when the second counts were made, school enrollment increased by 14, "a meaningful increase which allowed the study to answer the question about the impact of the modification." [Transcript, May 7, 2008, p. 11].

Mr. Slade stated that two traffic studies were considered: one in 2005 and one in 2007. He stated that Mr. Slade's conclusion that the change in enrollment (from the modifications) did not have an impact on traffic in the neighborhood and on River Road. Mr. Slade submitted a chart into the record as Exhibit No. 124, containing three lines, which he said depict total traffic on River Road on the survey day in March, 2007, Holton Arms traffic over a 16-hour period, and traffic not related to Holton Arms, passing by. Mr. Slade pointed out the peaks in Holton Arms traffic and stated that Holton Arms generates the most trips, 807, during the morning peak hour. He stated that the increase in enrollment from 2003 to 2007, of 14 students, generated a differential of 8 trips in the morning peak hour. Mr. Slade noted an increase from 2003 to 2007 of 62 trips making a left turn into Holton Arms, coming from the west, resulting in longer queues for westbound traffic. He stated that these longer queues were not as a result of the increase in eight trips related to the modifications, but to the increase in left turns at Holton Arms. Mr. Slade also pointed out 57 additional trips during the afternoon peak hour due to a change in the middle school curriculum, which resulted in additional left turns into and out of the school, which in turn increased queuing. He attributed a small part of that impact to the increase of eight in enrollment. Mr. Slade also mentioned three events that occurred at the school on the day of the traffic survey in March, 2007, which may have contributed to increased queuing. Mr. Slade submitted information about the trip generation rates of six independent schools. In response to a Board question, Mr. Slade stated that use of the Local Area Transportation Rate (LATR) standard for trip generation by schools of .92, in comparison to Holton Arms' trip generation rate of 1.3, may not be useful because he does not know the source of the LATR rate. He stated that the LATR standard of .92 (trips per student) happens to coincide with the Institute of Transportation Engineers average trip rate.

George Springston testified on behalf of the Burning Tree Civic Association (BTCA), and referred to his letter of December 7, 2007. Mr. Springston stated BTCA's position that the traffic study should evaluate the traffic generated by the increased enrollment, by the after hours non-school activities in combination with all other approved activities of the special exception site. Mr. Springston stated that the current traffic study data just doesn't fit with the previous data. He stated that, using critical lane volume analysis, Holton Arms' traffic has reduced the level of service on River Road by 1 to 2 grades, which

BTCA sees as an adverse effect. Mr. Springston also stated BTCA's position that the school's trip generation rate of 1.3, as compared to the LATR standard of .92 is an adverse effect.

Linda Kauskay testified on behalf of Bradley Boulevard Citizens Association (BBCA). She expressed BBBCA's "serious concerns about the reliability and usefulness" of the most recent Traffic Impact Study, and about "the kind of precedent it would set if it is accepted at face value." Ms. Kauskay stated that the association consistently receives complaints and evidence about queues of cars approaching the entrance to Holton Arms, the difficulty of exiting Burning Tree Road to turn onto River Road, and concerns regarding the adequacy of the left turn lane on the eastbound approach to the school on River Road. She expressed BBBCA's surprise and disagreement about the study's conclusion that there were no queues in the right turn lane approaching the school. She stated that in viewing a portion of the video tape of the traffic counts, BBBCA observed numerous queues, and numerous cars that activated right turn signals in the through lane that were trapped there, and that were unable to get into the right turn lane because they had not yet entered the through lane and moved out to the point where the right turn lane was available to them and that turn lane is relatively short. She reiterated BBBCA's request that Holton Arms produce the video tape of the traffic counts. Ms. Kauskay stated that there is no question that the Holton Arms traffic, at 18% of the according to the Traffic Impact Study, is a significant component of the traffic in the through lanes on River Road, nearly one in five cars. Ms. Kauskay also said that the through lane queuing was not accurately reported in the traffic study. The video camera faced east, that is looking at the cars approaching the school entrance, from the entrance itself. Referring to BBBCA's letter of August 20, 2007, Ms. Kauskay disputed the study's reported maximum queue of 56 cars and said BBBCA calculated that both through lanes would contain a total of 186 cars. Ms. Kauskay stated that the queue lengths give rise to undue delays which have an adverse impact on the neighborhood. Ms. Kauskay said that it is not unreasonable to assume that queues will occasionally exceed the stacking capacity of the left turn lane on the eastbound approach to the school, which was recently expanded and is not capable of further expansion. Ms. Kauskay expressed BBBCA's view that Holton Arms' current trip generation rate warrants looking at mitigation measures now. As examples she cited extension of the right turn lane and review by the school of its transportation management plan, particularly with an eye to increase carpooling.

Joseph Cutro, a transportation engineer, testified on behalf of BBBCA. Mr. Cutro stated that critical lane volume (CLV) analysis of the performance of intersections begins to break down when the current capacity ratio of an intersection approaches 100 percent. Mr. Cutro stated that the intersection of River Road and the Holton Arms driveway is key to any examination of Holton

Arms' traffic. He stated that CLV analysis of this intersection has not been effective because the typical morning peak hour volume there approaches capacity. Mr. Cutro stated that computing delay, the lost time vehicles take getting through an intersection, is an alternative way to evaluate intersection performance. Delay is typically computed on the basis of the preserved light duration of queues waiting at the intersection. Mr. Cutro stated BBCA's disagreement with the Gorove Slade study that there were no queues at the intersection of the westbound right turn lane at the river Road/ Holton Arms intersection. He said that observation of the video tape from the study supports this disagreement. He stated that the video tape also shows exceedingly long queues in the adjacent through lanes that sometimes stretch back beyond the intersection of Beech Tree Road. Mr. Cutro stated that the a.m. peak hour delay of 58.3 seconds per vehicle in the study appears to be understated, and may exceed 80 seconds. Mr. Cutro stated that the current 1640 CLV rating of the Holton and River Road intersection, together with the understated delay assessment, indicate an F level of service. He further stated that that condition and any intrusion of further traffic demand into the intersection will have to be regarded as an impact, and that the modification should be mitigated at the level of allowing no net traffic increase at the intersection in the a.m. peak hour. Mr. Cutro stated that conditions at the intersection can't be expected to improve. Mr. Cutro stated that mitigation measures can either expand existing capacity such as adding turn lanes and providing longer turn bays, or reduce traffic demand, by for example, increased carpooling.

Mr. Knopf pointed out the provisions of Section 59-G-2.19(b) and 59-A.21 of the Zoning Ordinance, which he said give the Board "more than enough" authority to require some mitigation here. Mr. Knopf said the trip generation rate and the size of the school are non-inherent adverse effects.

Ms. Reid stated that the Hearing Examiner's November 2006 Report and Recommendation, which the Board of Appeals adopted, rejected the argument that Holton Arms' trip generation rate is a non-inherent adverse effect.

Mr. Slade stated that he thought Gorove Slade's definition of queue is different from BBCA's. He said the industry standard for defining queue lengths are caused by an interruption in the flow of traffic by the traffic signal by spotting the last car that is stopped just before the light turns green, and counting the cars as they cross the stop bar and enter the intersection. Mr. Slade stated that on River Road, traffic approaches the standing queue at the intersection at Holton Arms. He stated that cars which approach a standing queue and are delayed as that queue begins to move through the intersection are in a "penalty queue", and that Gorove Slade did not count that as the queue. He stated Gorove Slade cut off cars counted in the queue at the last car in the line when the light turns green, and did not count the penalty queue. In the right turn lane into Holton Arms, Mr.

Slade said Gorove Slade found that there was no queue because there were much fewer cars making the turn in '07 than in '03, and that there is a great deal of time: The signal is 180 seconds long, with 45 seconds for left turns from the opposite direction, leaving 135 seconds for right turns into the school. Mr. Slade said that the fact that Holton traffic might be delayed in the adjacent through lane, waiting to enter the turn lane and turn right into the school, is not a sin, it's just a matter of fact.

Ms. Reid stated that the school is not asserting this traffic impact study as a baseline for future expansion, but rather that it responds to the requirement to evaluate the specific traffic impact of the modifications approved in March, 2004. She reiterated that the school does not believe that an adverse traffic impact flows from the modifications, that the trip generation rate has not changed and that the number of trips has increased by only 8 between 2003 and 2007, and that the school is willing to form a transportation committee to review its transportation management plan.

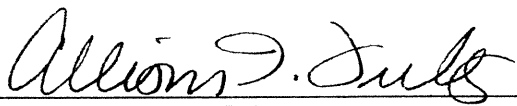
Mr. Knopf stated that based on the traffic impact study, any future expansion of the school should be traffic neutral, and that even a very small expansion could cause major problems.

FINDINGS OF THE BOARD

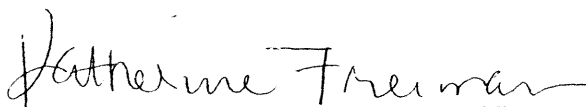
Based upon the Traffic Impact Study, together with the evidence and testimony of all of the parties, the Board finds that the Traffic Impact Study submitted July 2, 2007 satisfies the requirements of Revised Condition No. 5 of its March 23, 2004 opinion granting the special exception modifications. The Board further finds that the traffic associated with the special exceptions as modified is not a non-inherent adverse effect. **Furthermore, the Board notes that since 2003 enrollment has increased by 14, including both school and daycare, but remains below the allowed combined maximum enrollment of 680, so that the traffic conditions described in the Traffic Impact Study submitted on July 2, 2007 will provide a baseline against which to measure future traffic analysis.** However, the Board finds that the Traffic Impact Study indicates other conditions of concern related to traffic generated by the school, particularly in connection with trip generation rates. Therefore, the Board directs the school to include information in its September 2008 annual report to the Board about the measures it has taken or intends to take within the coming year to study and address mitigation strategies for the school's trip generation rate.

On a motion by David K. Perdue, seconded by Catherine G. Titus, Vice Chair, with Wendell M. Holloway and Allison Ishihara Fultz, Chair, 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.


Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 29th day of July, 2008.


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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case Nos. CBA-1174-D, S-2467-A and S-2503-A

PETITION OF THE HOLTON ARMS SCHOOL, INC.

RESOLUTION UPON REVIEW OF TRAFFIC IMPACT STUDY

(Resolution Adopted May 7, 2008)

(Effective Date of Resolution: June 26, 2008)

BACKGROUND

On March 23, 2004 the Board of Appeals granted modification Case Nos. **CBA-1174-D, S-2467-A, and S-2503-A**, 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; an 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; and an increase in enrollment of the summer camp from 650 to 665. The March 23, 2004 Opinion contained, at Condition No. 5, a requirement for Holton Arms to conduct a traffic impact study to evaluate the traffic impacts of the modifications with provisions for prior consultation as to the parameters of the study with the Bradley Boulevard Citizens Association (BBCA), the Burning Tree Civic Association (BTCA), and the Office of the People's Counsel (OPC), and for comments by those same parties and with the Transportation Planning staff of the Maryland-National Capital Park & Planning Commission on the completed study.

On June 29, 2005 Holton Arms submitted the required traffic study [Exhibit 81]. The Board also received comments from BBCA and BTCA that the study was too narrow. In a Resolution dated March 16, 2006, the Board of Appeals referred the matter to the Hearing Examiner to review the adequacy of the traffic study. On November 9, 2006 the Hearing Examiner issued a Report and Recommendation that the submitted traffic study had too narrowly interpreted Condition No. 5 of the Board's March 23, 2004 Opinion. The Hearing Examiner

recommended that the school conduct another traffic study, pursuant to a revised Condition No. 5.

Effective January 5, 2007 the Board of Appeals issued a Resolution which revised Condition No. 5 of its March 23, 2004 Opinion to state:

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

No later than June 1, 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 BBBCA, 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 Board subsequently extended the time for submission of the traffic study to allow until September 15, 2007.

The Holton Arms School Community Liaison Council (CLC) considered how to process such issues as the parameters of the traffic study, the traffic analysis study and findings, the analyses and comments on the study by the Transportation Planning Division of the Maryland National Capital Park and Planning Commission and the analyses and comments by the Holton Arms School, the Bradley Boulevard Citizens Association, the Burning Tree Civic Association and the Office of the Peoples' Counsel. The CLC decided that all

analyses and comments should be submitted to the Peoples Counsel, who would, in turn, forward all the documents to the Board of Appeals in one submission.

In a letter dated December 13, 2007, Martin Klauber, Peoples' Counsel, forwarded 19 documents to the Board of Appeals. These documents included the CLC's agreed timeline for Traffic Study, comments from the parties on the scope of the traffic study, the Gorove Slade Traffic Impact Study of July 2, 2007, the Gorove Slade Traffic Impact Study Appendix, the Gorove Slade Supplement to Traffic Impact Study, Comments from Burning Tree Civic Association and Bradley Boulevard Citizens Association on the Traffic Impact Study, Comments of Shariar Etemadi, Transportation Planning Division, MNCPPC, on the Traffic Impact Study, comments from the parties on Shariar Etemadi's comments on the Traffic Impact Study.

The Board of Appeals considered Mr. Klauber's December 13, 2007 letter and the 19 attached documents at its Worksession on January 23, 2008. On February 13, 2008, the Board of Appeals issued a Notice of Public Hearing, for a hearing on May 7, 2008, pursuant to Condition No. 5, as revised in its Resolution of January 5, 2007 on the subject of AM and PM queuing and trip generation rates.

The Board of Appeals convened the hearing, as scheduled, on May 7, 2008. Elsie L. Reid, Esquire appeared on behalf of the Holton Arms School. She called Louis Slade, of Gorove Slade Traffic Associates, as a witness. George Springston appeared on behalf of the Burning Tree Civic Association. Norman Knopf, Esquire appeared on behalf of Bradley Boulevard Citizens Association. Linda Kauskay and Joseph Cutro, Professional Traffic Engineer, testified on behalf of Bradley Boulevard Citizens Association.

SUMMARY OF TESTIMONY

Ms. Reid stated the school's position that the Gorove Slade Traffic Impact Study is a comprehensive response to the requirements of Condition No.5, and that the study found no evidence that the modifications had any undue traffic impact, and that therefore there is no basis to justify modification of the conditions of approval for the modifications granted March 23, 2004. Ms. Reid further stated that the school is willing to look at its trip generation rate, and to revisit its Transportation Management Plan and to see if it can devise more effective ways to reduce vehicular trips on campus. Ms. Reid stated that the Traffic Impact Study was challenging to perform because the school did not have the comparative data for two of the three intersections that the school was asked to analyze retrospectively, and did not have some of the data for the full 16-hour day they were asked to analyze. She stated that the study utilized a simulation

approach in response to the lack of that data, but that such simulation has not be applied retrospectively before, which may have led to limitations and certain inconsistencies in the queue data. Ms. Reid stated that between October 2003, the time of the first traffic counts, and March 2007, when the second counts were made, school enrollment increased by 14, "a meaningful increase which allowed the study to answer the question about the impact of the modification." [Transcript, May 7, 2008, p. 11].

Mr. Slade stated that two traffic studies were considered: one in 2005 and one in 2007. He stated Gorove Slade's conclusion that the change in enrollment (from the modifications) did not have an impact on traffic in the neighborhood and on River Road. Mr. Slade submitted a chart into the record as Exhibit No. 124, containing three lines, which he said depict total traffic on River Road on the survey day in March, 2007, Holton Arms traffic over a 16-hour period, and traffic not related to Holton Arms, passing by. Mr. Slade pointed out the peaks in Holton Arms traffic and stated that Holton Arms generates the most trips, 807, during the morning peak hour. He stated that the increase in enrollment from 2003 to 2007, of 14 students, generated a differential of 8 trips in the morning peak hour. Mr. Slade noted an increase from 2003 to 2007 of 62 trips making a left turn into Holton Arms, coming from the west, resulting in longer queues for westbound traffic. He stated that these longer queues were not as a result of the increase in eight trips related to the modifications, but to the increase in left turns at Holton Arms. Mr. Slade also pointed out 57 additional trips during the afternoon peak hour due to a change in the middle school curriculum, which resulted in additional left turns into and out of the school, which in turn increased queuing. He attributed a small part of that impact to the increase of eight in enrollment. Mr. Slade also mentioned three events that occurred at the school on the day of the traffic survey in March, 2007, which may have contributed to increased queuing. Mr. Slade submitted information about the trip generation rates of six independent schools. In response to a Board question, Mr. Slade stated that use of the Local Area Transportation Rate (LATR) standard for trip generation by schools of .92, in comparison to Holton Arms' trip generation rate of 1.3, may not be useful because he does not know the source of the LATR rate. He stated that the LATR standard of .92 (trips per student) happens to coincide with the Institute of Transportation Engineers average trip rate.

George Springston testified on behalf of the Burning Tree Civic Association (BTCA), and referred to his letter of December 7, 2007. Mr. Springston stated BTCA's position that the traffic study should evaluate the traffic generated by the increased enrollment, by the after hours non-school activities in combination with all other approved activities of the special exception site. Mr. Springston stated that the current traffic study data just doesn't fit with the previous data. He stated that, using critical lane volume analysis, Holton Arms' traffic has reduced the level of service on River Road by 1 to 2 grades, which

BTCA sees as an adverse effect. Mr. Springston also stated BTCA's position that the school's trip generation rate of 1.3, as compared to the LATR standard of .92 is an adverse effect.

Linda Kauskay testified on behalf of Bradley Boulevard Citizens Association (BBCA). She expressed BBBCA's "serious concerns about the reliability and usefulness" of the most recent Traffic Impact Study, and about "the kind of precedent it would set if it is accepted at face value." Ms. Kauskay stated that the association consistently receives complaints and evidence about queues of cars approaching the entrance to Holton Arms, the difficulty of exiting Burning Tree Road to turn onto River Road, and concerns regarding the adequacy of the left turn lane on the eastbound approach to the school on River Road. She expressed BBBCA's surprise and disagreement about the study's conclusion that there were no queues in the right turn lane approaching the school. She stated that in viewing a portion of the video tape of the traffic counts, BBBCA observed numerous queues, and numerous cars that activated right turn signals in the through lane that were trapped there, and that were unable to get into the right turn lane because they had not yet entered the through lane and moved out to the point where the right turn lane was available to them and that turn lane is relatively short. She reiterated BBBCA's request that Holton Arms produce the video tape of the traffic counts. Ms. Kauskay stated that there is no question that the Holton Arms traffic, at 18% of the according to the Traffic Impact Study, is a significant component of the traffic in the through lanes on River Road, nearly one in five cars. Ms. Kauskay also said that the through lane queuing was not accurately reported in the traffic study. The video camera faced east, that is looking at the cars approaching the school entrance, from the entrance itself. Referring to BBBCA's letter of August 20, 2007, Ms. Kauskay disputed the study's reported maximum queue of 56 cars and said BBBCA calculated that both through lanes would contain a total of 186 cars. Ms. Kauskay stated that the queue lengths give rise to undue delays which have an adverse impact on the neighborhood. Ms. Kauskay said that it is not unreasonable to assume that queues will occasionally exceed the stacking capacity of the left turn lane on the eastbound approach to the school, which was recently expanded and is not capable of further expansion. Ms. Kauskay expressed BBBCA's view that Holton Arms' current trip generation rate warrants looking at mitigation measures now. As examples she cited extension of the right turn lane and review by the school of its transportation management plan, particularly with an eye to increase carpooling.

Joseph Cutro, a transportation engineer, testified on behalf of BBBCA. Mr. Cutro stated that critical lane volume (CLV) analysis of the performance of intersections begins to break down when the current capacity ratio of an intersection approaches 100 percent. Mr. Cutro stated that the intersection of River Road and the Holton Arms driveway is key to any examination of Holton

Arms' traffic. He stated that CLV analysis of this intersection has not been effective because the typical morning peak hour volume there approaches capacity. Mr. Cutro stated that computing delay, the lost time vehicles take getting through an intersection, is an alternative way to evaluate intersection performance. Delay is typically computed on the basis of the preserved light duration of queues waiting at the intersection. Mr. Cutro stated BBKA's disagreement with the Gorove Slade study that there were no queues at the intersection of the westbound right turn lane at the river Road/ Holton Arms intersection. He said that observation of the video tape from the study supports this disagreement. He stated that the video tape also shows exceedingly long queues in the adjacent through lanes that sometimes stretch back beyond the intersection of Beech Tree Road. Mr. Cutro stated that the a.m. peak hour delay of 58.3 seconds per vehicle in the study appears to be understated, and may exceed 80 seconds. Mr. Cutro stated that the current 1640 CLV rating of the Holton and River Road intersection, together with the understated delay assessment, indicate an F level of service. He further stated that that condition and any intrusion of further traffic demand into the intersection will have to be regarded as an impact, and that the modification should be mitigated at the level of allowing no net traffic increase at the intersection in the a.m. peak hour. Mr. Cutro stated that conditions at the intersection can't be expected to improve. Mr. Cutro stated that mitigation measures can either expand existing capacity such as adding turn lanes and providing longer turn bays, or reduce traffic demand, by for example, increased carpooling.

Mr. Knopf pointed out the provisions of Section 59-G-2.19(b) and 59-A.21 of the Zoning Ordinance, which he said give the Board "more than enough" authority to require some mitigation here. Mr. Knopf said the trip generation rate and the size of the school are non-inherent adverse effects.

Ms. Reid stated that the Hearing Examiner's November 2006 Report and Recommendation, which the Board of Appeals adopted, rejected the argument that Holton Arms' trip generation rate is a non-inherent adverse effect.

Mr. Slade stated that he thought Gorove Slade's definition of queue is different from BBKA's. He said the industry standard for defining queue lengths are caused by an interruption in the flow of traffic by the traffic signal by spotting the last car that is stopped just before the light turns green, and counting the cars as they cross the stop bar and enter the intersection. Mr. Slade stated that on River Road, traffic approaches the standing queue at the intersection at Holton Arms. He stated that cars which approach a standing queue and are delayed as that queue begins to move through the intersection are in a "penalty queue", and that Gorove Slade did not count that as the queue. He stated Gorove Slade cut off cars counted in the queue at the last car in the line when the light turns green, and did not count the penalty queue. In the right turn lane into Holton Arms, Mr.

Slade said Gorove Slade found that there was no queue because there were much fewer cars making the turn in '07 than in '03, and that there is a great deal of time: The signal is 180 seconds long, with 45 seconds for left turns from the opposite direction, leaving 135 seconds for right turns into the school. Mr. Slade said that the fact that Holton traffic might be delayed in the adjacent through lane, waiting to enter the turn lane and turn right into the school, is not a sin, it's just a matter of fact.

Ms. Reid stated that the school is not asserting this traffic impact study as a baseline for future expansion, but rather that it responds to the requirement to evaluate the specific traffic impact of the modifications approved in March, 2004. She reiterated that the school does not believe that an adverse traffic impact flows from the modifications, that the trip generation rate has not changed and that the number of trips has increased by only 8 between 2003 and 2007, and that the school is willing to form a transportation committee to review its transportation management plan.

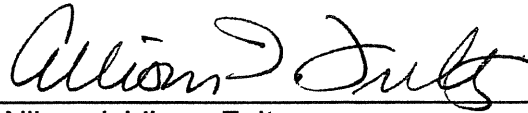
Mr. Knopf stated that based on the traffic impact study, any future expansion of the school should be traffic neutral, and that even a very small expansion could cause major problems.

FINDINGS OF THE BOARD

Based upon the Traffic Impact Study, together with the evidence and testimony of all of the parties, the Board finds that the Traffic Impact Study submitted July 2, 2007 satisfies the requirements of Revised Condition No. 5 of its March 23, 2004 opinion granting the special exception modifications. The Board further finds that the traffic associated with the special exceptions as modified is not a non-inherent adverse effect. Furthermore, the Board notes that actual enrollment has not increased since 2003, so that the traffic conditions described in the Traffic Impact Study submitted on July 2, 2007 will provide a baseline against which to measure future traffic analysis. However, the Board finds that the Traffic Impact Study indicates other conditions of concern related to traffic generated by the school, particularly in connection with trip generation rates. Therefore, the Board directs the school to include information in its September 2008 annual report to the Board about the measures it has taken or intends to take within the coming year to study and address mitigation strategies for the school's trip generation rate.

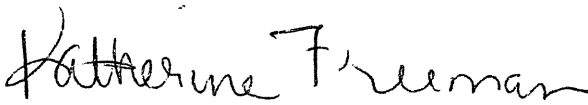
On a motion by David K. Perdue, seconded by Catherine G. Titus, Vice Chair, with Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement the Board adopted the following Resolution:

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.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 26TH day of June, 2008.



Katherine Freeman
Executive Director

NOTE:

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Case No. CBA-1174-D

PETITION OF THE HOLTON ARMS SCHOOL, INC.

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted May 7, 2008)

(Effective Date of Resolution: May 15, 2008)

The Board of Appeals has received a letter, dated April 18, 2008, from Elsie L. Reid, Esquire, on behalf of The Holton Arms School. Ms. Reid requests administrative modification of the special exception to allow the school to host up to four enrichment programs per year, such as lectures or discussions, to be held outside the school's normal operating hours. Holton proposes to invite residents within the Bradley Boulevard Citizens Association (BBCA) and Burning Tree Civic Association (BTCA), as well as residents of the neighboring Fox Hills Sunrise community to these events. Ms. Reid informs the Board that members of the school's Neighborhood Liaison Council discussed the proposed modification at the Council's April 8, 2008 meeting, and that representatives of BBCA and BTCA support the requested modification.

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 Ms. Reid's letter at its Worksession on May 7, 2008. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:


If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that for the school to hold up to four enrichment programs per year, such as lectures or discussions, outside normal operating hours, and to invite residents within the Bradley Boulevard Citizens Association (BBCA) and Burning Tree Civic Association (BTCA), as well as residents of the neighboring Fox Hills Sunrise community, to these events will not substantially change the nature, character or intensity of the use and will not substantially change its effect on traffic or on the immediate neighborhood. Therefore, on a motion by Catherine G. Titus, Vice-Chair, seconded by Wendell M. Holloway, David K. Perdue and Allison Ishihara Fultz, Chair, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D, Petition of The Holton Arms School, is reopened to receive Elsie L. Reid's letter dated April 18, 2008 [Exhibit No. 119]; and

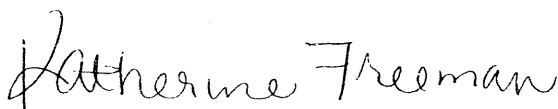
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception is granted; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 15th day of May, 2008.



Katherine Freeman
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

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Case No. CBA-1174-D

PETITION OF THE HOLTON ARMS SCHOOL, INC.

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted April 16, 2008)

(Effective Date of Resolution: May 15, 2008)

The Board of Appeals has received a letter, dated April 10, 2008, from Elsie L. Reid, Esquire, on behalf of The Holton Arms School. Ms. Reid requests administrative modification of the special exception to permit two activities at the school: 1) extension of the school's education program through summer participation in an international exchange program with 24 tennis players from other countries, during the week of August 9-17 2008, and in future summers; 2) use of meeting space at Holton Arms by the neighboring Fox Hill Sunrise community, on Saturday April 26, from 9 a.m. to Noon. Ms. Reid informs the Board that members of the school's Neighborhood Liaison Committee discussed the proposals and viewed them favorably at an April 8, 2008 meeting.

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 Ms. Reid's letter at its Worksession on April 16, 2008. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:

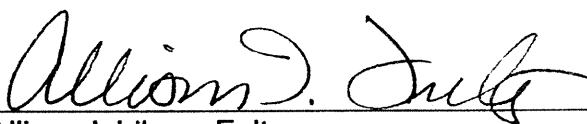
If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that neither of the two requested activities will substantially change the nature, character or intensity of the special exception use or its effect on traffic or on the immediate neighborhood. The Board does note that it received somewhat short notice of the requests. Therefore, on a motion by Catherine G. Titus, Vice-Chair, seconded by David K. Perdue, with Caryn L. Hines, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement:

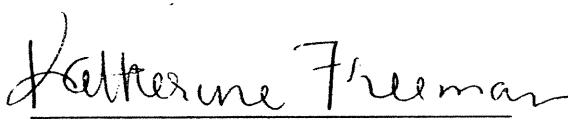
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D, Petition of The Holton Arms School, is re-opened to receive Elsie L. Reid's letter dated April 10, 2008 [Exhibit No. 118]; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception is **granted**; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.


Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 15th day of May, 2008.


Katherine Freeman
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such

request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

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Case No. CBA-1174-D

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted December 19, 2007)

(Effective Date of Resolution: January 18, 2008)

The Board of Appeals has received a letter, dated December 6, 2007, from Elsie L. Reid, Esquire, on behalf of The Holton Arms School. Ms. Reid requests administrative modification of the special exception to permit replacement of its lower school athletic field with a synthetic turf field, to slightly relocated an emergency access path, to enlarge an existing outdoor blacktop court to approximately fifty feet by seventy five feet, and to install five additional, ground-mounted lights at its main entrance. Ms. Reid encloses drawings and lighting specification information in support of the request [Exhibit Nos. 111-111(c)(iii)].

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 Ms. Reid's letter at its Worksession on December 19, 2007. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the requested modifications will have little outward impact and will not substantially change the nature, character or intensity of the use or its effect on traffic or on the immediate neighborhood. Therefore, on a motion by

Case No. CBA-1174-D

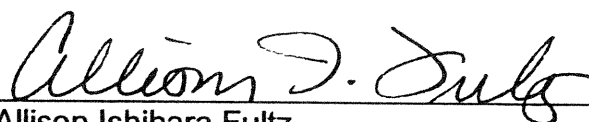
Page 2

Catherine G. Titus, Vice-Chair, seconded by David K. Perdue, with Wendell M. Holloway, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement:


BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D, Petition of The Holton Arms School, is re-opened to receive Elise L. Reid's letter dated December 6, 2007, with attachments [Exhibit Nos. 111-111(c)(iii); and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception is **granted**; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.


Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 18th day of January, 2008.


Katherine Freeman
Executive Director

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is

received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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.

**BOARD OF APPEALS
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Case No. CBA-1174-D

S-2503-A

PETITION OF HOLTON ARMS SCHOOL

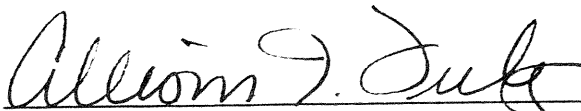
RESOLUTION TO RE-OPEN THE RECORD
(Resolution Adopted October 3, 2007)
(Effective Date February 8, 2008)

The Board of Appeals has received a letter, dated August 24, 2007, from Susanna A. Jones, Head of School at The Holton Arms School. Ms. Jones encloses the school's annual report and a copy of the Master Calendar.

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 Ms. Jones's correspondence at its Worksession on October 3, 2007. On a motion by Catherine G. Titus, seconded by Wendell M. Holloway, with Caryn L. Hines, Donna L. Barron, Vice-Chair and Allison Ishihara Fultz, Chair, in agreement:

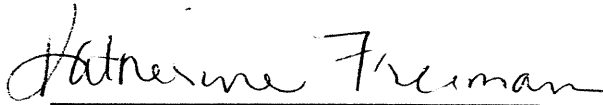
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Susanna Jones's letter dated August 24, 2007, with attachments [Exhibit No. 112].


Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Case No. CBA-1174-D

Page 2

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of February, 2008.

A handwritten signature in cursive script that reads "Katherine Freeman". The signature is written in dark ink and is positioned above 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

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted May 16, 2007)

(Effective Date of Resolution: June 14, 2007)

The Board of Appeals has received a letter, dated May 1, 2007, from Elsie L. Reid, Esquire, on behalf of the Holton Arms School. Ms. Reid requests an extension of time to submit the new traffic report pertaining to modifications approved in the Board's March, 2004 opinion, which the Board required in a Resolution effective January 5, 2007. Ms. Reid requests that the deadline for delivery of the report be extended from June 1, 2007 to September 15, 2007. Ms. Reid informs the Board that the study is well underway, but that additional time is needed to complete the report. She advises that she has contacted representatives of Bradley Boulevard Citizens Association, Burning Tree Civic Association, and the Neighborhood Liaison Council, and had received a telephone message from the Bradley Boulevard Citizens Association representative that that association does not object to an extension of time. Megan Wallace, Esquire appeared at the Worksession on behalf of Holton Arms, and further informed the Board that the traffic study was concluded in March, and that what remains to be accomplished, including coordination with the Community Liaison Council and the Peoples' Counsel, is finalization of the report.

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 Ms. Reid's letter at its Worksession on May 16, 2007. The Board finds that the request for additional time to complete the traffic report is reasonable. Therefore, on a motion by Catherine G. Titus, seconded by Caryn L. Hines, with Wendell M. Holloway and Donna L. Barron, Vice-Chair in agreement and Allison Ishihara Fultz, Chair, necessarily absent:

Case No. CBA-1174-D

Page 2.

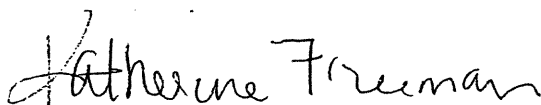
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D, Petition of The Holton Arms School, is re-opened to receive Elsie L. Reid's letter dated May 1, 2007 [Exhibit No. 110]; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request for an extension of time until September 15, 2007 to submit the traffic report is **granted**.



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 14th day of June, 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

PETITIONS OF HOLTON ARMS SCHOOL

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolutions Adopted February 28, 2007 and April 4, 2007)

(Effective Date of Resolution: May 8, 2007)

The Board of Appeals has received letters dated January 29, 2007 and March 21, 2007, from Elsie L. Reid, Esquire, on behalf of the Holton Arms School. Ms. Reid writes to inform the Board that the school is replacing its lower school field with a synthetic turf field. Ms. Reid recounts that the school has regularly advised the Neighborhood Liaison Committee about this proposed change. By cover of her April 4, 2007 letter, Ms. Reid forwards to the Board a revised site plan which depicts the proposed improvements, including a minor adjustment of the emergency access drive across the school's property to Burdette Road.

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 Ms. Reid's letters at its Worksessions on February 28, 2007 and April 4, 2007. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that neither replacement of the lower school athletic field, nor the slight adjustment to the emergency access drive will substantially change the nature, character or intensity of the use and will not substantially change its effect on traffic or on the immediate neighborhood. Therefore, on a motion by Donna L. Barron, Vice-Chair, seconded by Catherine G. Titus, with Wendell M. Holloway, Caryn L. Hines and Allison Ishihara Fultz, Chair in agreement, and on a motion by Donna L. Barron, Vice-Chair, seconded by Caryn L. Hines, with Wendell M.

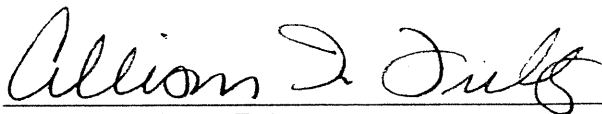
Case Nos. CBA-1174-D, S-2467-A, S-2503-A

Page 2.

Holloway and Allison Ishihara Fultz, Chair in agreement and Catherine G. Titus necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D is re-opened to receive Elsie Reid's letters dated January 29, 2007 and March 21, 2007, with attachments, as Exhibit Nos. 107-108(b); and

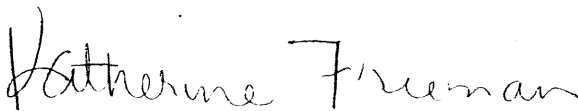
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception is **granted**.



Allison Ishihara Fultz

Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of May, 2007.

Katherine Freeman
Executive Director**NOTE:**

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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

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 BBBCA, 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:

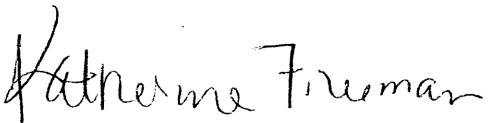
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that Holton Arms School's request for oral argument on the Hearing Examiner's Report and Recommendation of November 9, 2006 is denied; and

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.

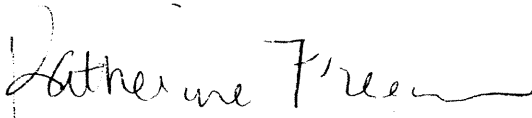


Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Case Nos. CBA-1174-D, S-2467-A, S-2503-A

Page 2.

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

PETITION OF HOLTON ARMS SCHOOL

RESOLUTION TO MODIFY SPECIAL EXCEPTION

(Resolution Adopted September 13, 2006
(Effective Date of Resolution: October 27, 2006)

The Board of Appeals has received a letter, dated August 18, 2006, from Elsie L. Reid, Esquire, on behalf of The Holton Arms School. Ms. Reid writes to make the Board aware that the school has modified its school day slightly, changing to a six-day cycle, and closing at the same time each day. Previously, the school had closed a half-hour early on Fridays.

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 Ms. Reid's letter at its Worksession on September 13, 2006. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the change in school hours on Fridays will not substantially change the nature, character or intensity of the use or its effect on traffic or on the immediate neighborhood. Therefore, on a motion by Angelo M. Caputo, seconded by Donna L. Barron, with Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement and Caryn L. Hines necessarily absent:

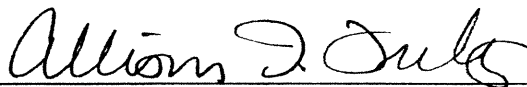
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-D, Petition of The Holton Arms School, is re-opened to receive Elsie L. Reid's letter dated August 18, 2006; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception is **granted**; and

Case Nos. CBA-1174-D, S-2467-A, S-2503-A

Page 2.

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 27th day of October, 2006.



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.

**BOARD OF APPEALS
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Case No. CBA-1174-C

PETITION OF HOLTON-ARMS SCHOOL, INC.

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted May 31, 2006)


(Effective Date of Resolution: July 13, 2006)

The Board of Appeals has received letters, dated May 16, 2006 and May 18, 2006, from Elise L. Reid, Esquire, on behalf of the Holton-Arms School. Ms. Reid informs the Board about the school's progress in implementing facility improvements, and submits a conceptual landscape plan for the front circular entrance to the school building.

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 Ms. Reid's letters at its Worksession on May 31, 2006. On a motion by Donna L. Barron, seconded by Wendell M. Holloway, with Angelo M. Caputo, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record of Case No. CBA-1174-C is re-opened to receive the letters from Elsie L. Reid, Esquire, dated May 16, 2006 and May 18, 2006, with attachments, as Exhibit Nos. 241(a) – 242(b).



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Case No. CBA-1174-C

Page 2.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 13th day of July, 2006.

A handwritten signature in cursive script, reading "Katherine Freeman". The signature is written in dark ink and is positioned above 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-C

Case No. S-2503

PETITION OF HOLTON-ARMS SCHOOL, INC.

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted: September 21, 2005)

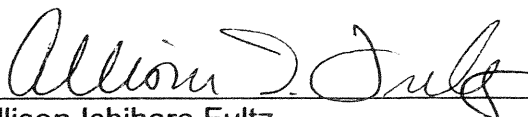
(Effective Date of Resolution: November 3, 2005)

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.



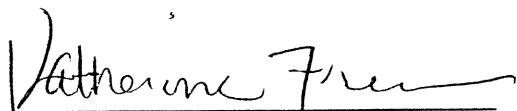
Allison Ishihara Fultz

Chair, Montgomery County Board of Appeals

Case No. CBA-1174-C

Page 2.

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.

**BOARD OF APPEALS
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CBA-1174-C

PETITION OF THE HOLTON-ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted April 6, 2005)

(Effective Date of Resolution: June 30, 2005)

The Board of Appeals has received correspondence from Megan M. Wallace, Esquire, on behalf of the Holton Arms School. Ms. Wallace's March 23, 2005 letter informs the Board that the school will be hosting a reception for prospective students, in its theater.

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 considered Ms. Wallace's letter at its Worksession on April 6, 2005 and finds that the activity falls well within the terms and conditions of the special exception. Therefore, on a motion by Wendell M. Holloway, seconded by Angelo M. Caputo, with Louise L. Mayer and Allison Ishihara Fultz, Chair, in agreement and Donna L. Barron necessarily not participating:

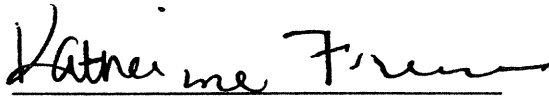
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that record in Case No. CBA-1174-C, Petition of the Holton Arms School, is re-opened to Megan M. Wallace's letter dated March 23, 2005.


Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Case No. CBA-1174-C

Page 2.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 30th day of June, 2005.

A handwritten signature in cursive script, reading "Katherine Freeman", written in black ink.

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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CBA-1174-C

PETITION OF THE HOLTON-ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted April 21, 2004)

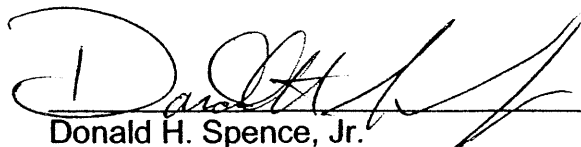
(Effective Date of Resolution: May 5, 2004)

The Board of Appeals has received a letter, dated April 5, 2004, from Elsie L. Reed, Esquire, on behalf of the Holton Arms School. Ms. Reid responds to the Board's letter of March 22, 2004, which enquired about information contained in the school's last Quarterly Report.

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 Ms. Reed's letter at its Worksession on April 21, 2004. The Board finds the letter responsive to its request. Therefore, on a motion by Allison Ishihara Fultz, seconded by Louise L. Mayer, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement:

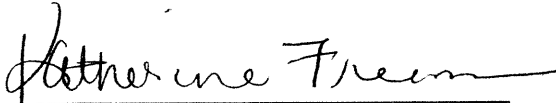
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the records in Case Nos. CBA-1174-C and CBA-1174-D are re-opened to receive Elsie L. Reed's letter of April 5, 2004.


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

Case No. CBA-1174-C

Page 2.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 5th day of May, 2004.

A handwritten signature in dark ink, appearing to read "Katherine Freeman", is written over a horizontal line.

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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Case No. CBA-1174-C

PETITION OF HOLTON-ARMS SCHOOL, INC.

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted: December 10, 2003)

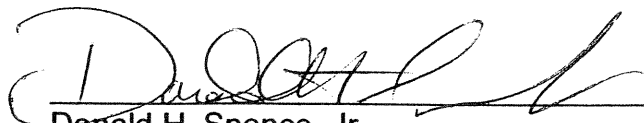
(Effective Date of Resolution: March 23, 2004)

The Board of Appeals has received correspondence dated, November 21, 2003, 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.

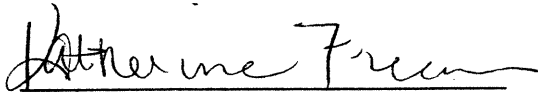
The subject property is Lot N-624, Parcel 2, and Part of Lots 6 and 7, Outlot A, Block B, Burning Tree Valley Subdivision, located at 7303 River Road, Bethesda, Maryland, in the R-90 and R-200 Zones.

The Board of Appeals considered the Quarterly Report at its Worksession on December 10, 2003, and finds that it complies with the requirements of the Board's Opinion. Therefore, on a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, and Louise L. Mayer necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-C is re-opened to receive Diana Colton Beebe's letter of November 21, 2003, together with the Holton Arms School's Quarterly Report.


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.

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

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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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 BBBCA, 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.

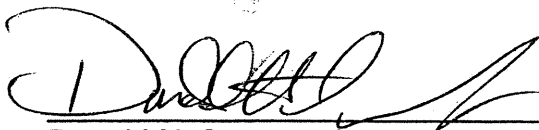
- Academic calendar only (September to June).
- Hours: 7:30 a.m. until 5 p.m. weekdays, and 4 p.m. on Fridays. No weekends.
- Holton-Arms will include, in its Annual Report to be filed in connection with the school's special exception case (Case No. CBA-I 174), enrollment data for the child day care 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.

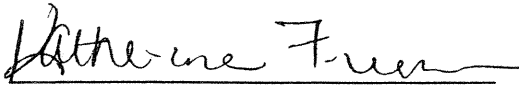


Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Case Nos. CBA-1174-D, S-2467-A, S-2503-A

Page 5.

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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(240) 777-6600

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Case No. CBA-1174-D

PETITION OF HOLTON-ARMS SCHOOL

RESOLUTION TO CONSOLIDATE CASES
(Resolution Adopted September 10, 2003)
(Effective Date of Resolution: March 23, 2004)

The Board of Appeals has received a letter, dated July 24, 2003, from Elsie Reid, Esquire, on behalf of The Holton Arms School. Ms. Reid requests that consideration of modification Case Nos. CBA-1174-D, S-2467-A and S-2503-A, three special exceptions held by Holton Arms, be consolidated, and that the special exception holder be allowed to pay the highest applicable fee.

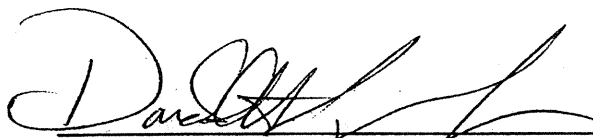
The subject property is located at 7303 River Road, Bethesda, Maryland, in the R-90 and R-200 Zones.

The Board of Appeals considered Ms. Reid's request at its Worksession on September 10, 2003. Rule 1.7 of the Board of Appeals Rules of Procedure gives the Board authority to grant consolidation of multiple cases pertaining to one property, as well as payment of the highest applicable fee. Therefore, on a motion by Allison Ishihara Fultz, seconded by Angelo M. Caputo, with Louise L. Mayer and Donald H. Spence, Jr., Chairman in agreement and Donna L. Barron necessarily absent:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to consolidate the pending modifications in Case Nos. CBA-1174-D, S-2467-A and S-2503-A is **granted**; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the special exception holder will pay the highest applicable filing fee of \$1250.00; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the other two filing fees of \$625. and \$225. shall be refunded.


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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Case No. CBA-1174-C

PETITION OF HOLTON-ARMS SCHOOL, INC.

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted June 25, 2003)

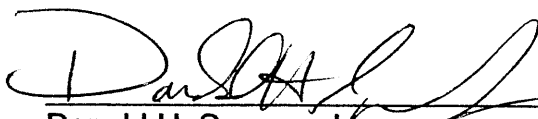
(Effective Date of Resolution: November 18, 2003)

The Board of Appeals has received correspondence dated May 29, 2003, from Mary Jane Puckett, Acting Head of School at Holton-Arms School. Ms. Puckett's May 29, 2003 letter encloses the quarterly report from the school, in accordance with the Board's Opinion of September 7, 2001.

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 June 25, 2003, and finds that it complies with the requirements of the Board's Opinion. Board member Louise L. Mayer was necessarily absent and did not participate in this Resolution. Therefore, on a motion by Donna L. Barron, seconded by Angelo M. Caputo, with 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. CBA-1174-C is re-opened to receive Mary Jane Puckett's letter dated May 29, 2003, together with the Quarterly Report for the quarter ending June 1, 2003.



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 18th day of November, 2003.



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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CBA-1174-C

PETITION OF THE HOLTON-ARMS SCHOOL

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted March 19, 2003)

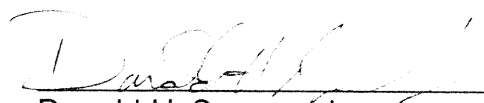
(Effective Date of Resolution: May 1, 2003)

The Board of Appeals has received correspondence from Mary Jane Puckett, Acting Head of School at the Holton Arms School. Ms. Puckett's February 23, 2003 letter encloses the quarterly report from the school, in accordance with the Board's Opinion of September 7, 2001.

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.

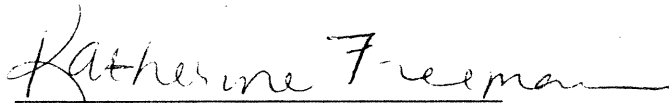
The Board considered the Quarterly Report at its Worksession on March 19, 2003, and finds that it complies with the requirements of the Board's Opinion. Therefore, on a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman in agreement,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that record in Case No. CBA-1174-C, Petition of the Holton Arms School, is re-opened to receive Mary Jane Pubkett's letter dated February 26, 2003, together with the Quarterly Report for the quarter ending March 1, 2003.



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 1st day of May, 2003.

A handwritten signature in cursive script that reads "Katherine Freeman". The signature is written in dark ink and is positioned above the printed name and title.

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.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Case No. CBA-1174-C

PETITION OF HOLTON-ARMS SCHOOL, INC.

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted September 11, 2002
(Effective Date of Resolution: October 18, 2002))

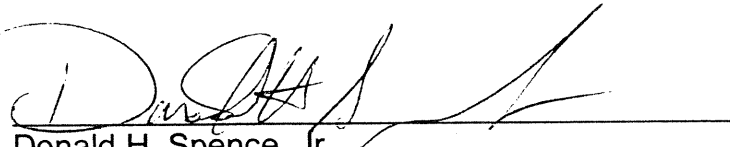
The Board of Appeals has received a letter from Harry W. Lerch, Esquire, on behalf of Holton-Arms School. Mr. Lerch's August 13, 2002 letter requests that the Board re-open the special exception record to receive a copy of an Amendment to the Neighborhood Reconciliation Agreement which was filed with the Board on October 30, 2001.

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.

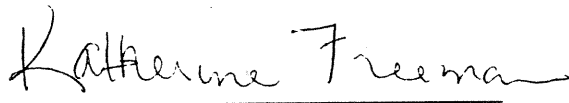
The Board of Appeals considered Mr. Lerch's letter and request at its Worksession on September 11, 2002. The Board expressed concern about the special exception file being a repository for private agreements. Nevertheless, based upon Mr. Lerch's statement to the effect that filing the Reconciliation Agreement amendment was being done for the convenience of the public, and since the original agreement is already part of the record, the Board agreed to include the amendment. At the Board's request, the Applicant agreed to supplement the amendment with a copy of the final Conservation Easement as soon as it is available. Therefore,

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,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-C is re-opened to receive Harry W. Lerch's letter, dated August 13, 2002, enclosing the Amendment, executed May 20, 2002, to the Neighborhood Reconciliation Agreement, with attachments.


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 18th day of October, 2002.


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.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. CBA-1174-C

PETITION OF HOLTON-ARMS SCHOOL, INC.

RESOLUTION TO RE-OPEN THE RECORD

(Resolution Adopted July 10, 2002)

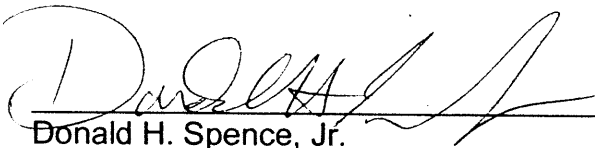
(Effective Date of Resolution: September 3, 2002)

The Board of Appeals has received correspondence from Diana Coulton Beebe, Head of School at the Holton Arms School. Ms. Beebe's June 13, 2002 letter encloses the Quarterly Report required by required by the Board's Resolution of September 7, 2001, to Modify and Re-affirm the Special Exception.

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 Ms. Beebe's letter and the Quarterly Report at its Worksession on July 10, 2002. By consensus the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-C is re-opened to receive Diana Coulton Beebe's letter of June 13, 2002, and the Holton-Arms School's Quarterly Report.



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

Case No. CBA-1174-C

Page 2.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 3rd day of September, 2002.

A handwritten signature in cursive script that reads "Katherine Freeman". The signature is written in dark ink and is positioned above a horizontal line.

Katherine Freeman
Executive Secretary to the Board

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.

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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100 Maryland Avenue
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Case No. CBA-1174-C

PETITION OF HOLTON-ARMS SCHOOL, INC.

RESOLUTION TO GRANT ADMINISTRATIVE MODIFICATION

(Resolution Adopted July 31, 2002)

(Effective Date of Resolution: August 19, 2002)

Petitioner, Holton-Arms School, Inc., has requested that the Board of Appeals modify Special Exception No. CBA-1174-C administratively, pursuant to the provisions of Section 59-B-1.3(c)(1) without the necessity of a public hearing, to allow for the temporary use of portable modular classrooms on site.

The Board of Appeals is in receipt of a letter from Jody S. Kline, Esquire dated July 15, 2002. Mr. Kline's letter states in part:

"Recently, Holton-Arms identified that it may need some type of temporary classroom facilities during the construction phase of the new science wing which was approved by the Board on May 29, 2002. In particular, Holton's contractor, Hitt Contracting, has pointed out some efficiencies that can be achieved if Holton could transfer certain classrooms to temporary space while it sequentially renovates interior space in the existing structure during the simultaneous construction of the new science wing. Using this technique, the construction schedule can be "tightened up" and the School can be more confident that all construction will be completed by the opening of school in September, 2003."

"Since space in the existing buildings is at a premium..., there is no place within the School today to which classes can be reassigned. Accordingly, Holton would like the Board's permission to install two modular classrooms in the rear of its main academic and administration buildings. As shown on the attached site plan, the two structures will be located near the Marriott Library. One will be accessed by a ramp and stairs leading from the corridor that connects the Library to the Academic Building. The second modular will be accessed by a walkway leading from the traffic circle in front of the Library. Students using the second portable classroom building will proceed through the Library, will exit through the entrance facing the traffic circle and will then

walk on the paved surface of the driveway to the walkway leading to the temporary structure."

"The Board may recall the geography of the Holton campus well enough to recognize that, due to the proposed locations and existing vegetation, the modular classrooms will be visible from only one adjacent property (the Yano property) and will only be visible during certain times of the year in a "filtered" manner because of the trees and shrubs along the common property line."

"Information about the modular classrooms (manufactured by a General Electric affiliate) is contained in materials attached to this letter request. The dimensions of each building are 28' wide by 66' long by approximately 13' high (at the peak of the roof line). The buildings are constructed of wooden panels sheathing a wood and metal frame, and will be colored in a subtle pewter hue ("Driftwood") with darker accent pieces ("Ironwood") to complement the existing Holton buildings. The buildings will have electricity, heating and air conditioning but no toilet facilities. Each modular will sit on temporary concrete footings but there will be a "skirt" on the building extending the side walls to the ground giving the portable classrooms a sense of permanence and stability. Each building will hold up to 40 students and teachers in two classrooms but, depending on which classes are utilizing the space at any given time, actual occupancy is expected to be less. Because of the location of the structures, no landscaping need be installed to supplement the trailers nor will any existing vegetation be lost by the installation and use of the modulares."

"Holton-Arms anticipates that the modular classrooms will be in place and in use from September, 2002 through September, 2003 when they will be disassembled and removed by the owner."

"This request for use of temporary modular classrooms is modest in nature and of a limited duration. The portable classrooms will not change the nature, character or intensity of the use of the property as a private educational institution. Furthermore, this proposal will not change the effect of the School on traffic, neither volume nor patterns, and will have no adverse affect on the surrounding neighborhood. Therefore, Holton-Arms requests that the Board of Appeals grant this modification administratively, pursuant to the provisions of Section 59-G-1.3.c without the necessity of a public hearing."

The subject property is zoned R-200 and R-90 and is located at 7303 River Road, Bethesda, Maryland, 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.

Case No. CBA-1174-C

Page 3.

The Board of Appeals considered the request at its worksession on July 31, 2002. After careful consideration and a review of the record, the Board finds that the requested modification can be granted without the necessity of a public hearing.

With respect to modification of special exceptions, Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides in pertinent part:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition ...;

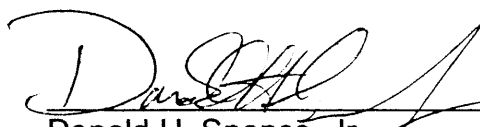
The Board finds that the portable modular classrooms described in this request for administrative modification serve a valuable and necessary purpose and are compatible with the uses in the area in which they are located. The Board further finds that the requested portable modular classrooms will neither substantially change the nature, character or intensity of this private educational institution nor change the effect on traffic or otherwise adversely effect the surrounding neighborhood. Therefore,

On a motion by Louise L. Mayer, seconded by Donna L. Barron, 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 record in Case No. CBA-1174-C, Petition of Holton-Arms School, is hereby re-opened to receive Jody S. Kline's July 15, 2002 letter; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception to allow the use of portable modular classrooms as described herein is granted; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception granted in Case No. CBA-1174-C, together with any modifications thereto granted by the Board of Appeals, remain in full force and effect.

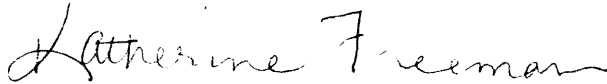


Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Case No. CBA-1174-C

Page 4.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
This 19th day of August, 2002.



Katherine Freeman
Executive Secretary to the Board

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision.

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.

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. CBA-1174-C

PETITION OF HOLTON-ARMS SCHOOL, INC.
(Hearing held October 30, 2001)

OPINION OF THE BOARD
(Effective date of Opinion, May 29, 2002)

Case No. CBA-1174-C is a petition pursuant to Section 59-G-2.19 of the Zoning Ordinance (Chapter 59, Montgomery County Code 1994, as amended) for a modification of a special exception for a private educational institution to make various improvements to the Holton-Arms School, located at 7303 River Road, Bethesda, Maryland.

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

A public hearing was held on Tuesday, October 30, 2001, pursuant to Section 59-A-4.11(a) of the Zoning Ordinance. Appearing on behalf of the Petitioner were Jody S. Kline, Esquire, and Harry W. Lerch, Esquire; Diana Beebe, Head of School; William Gridley, Architect; Alfred Blumberg, Land Planner; Brian Stephenson, Landscape Architect; and Lee Cunningham, Traffic Engineer.

Norman Knopf, Esquire, participated in the hearing representing the Bradley Boulevard Citizens Association and Complainants George Esenwein, Jane Kinzie, Richard Fong, Peter Masters, and Wendy Meer ("Complainants"); George Esenwein participated on behalf of the Complainants; George Springston participated on behalf of the Burning Tree Civic Association; and Linda Kauskay participated on behalf of the Bradley Boulevard Citizens Association. Bradley Boulevard Citizens Association, Burning Tree Civic Association, Complainants and Holton-Arms School are collectively referred to herein as "Parties."

William Chen, Esquire and Carol Lynn Green, Esquire, participated on behalf of Vivian Riefberg and John Ashford, adjoining property owners.

Martin Klauber, Esquire, the People's Counsel of Montgomery County, Maryland, participated in the proceedings neither in support of, nor in opposition to, the requested special exception.

Also participating in the proceedings were William Landfair and Seekey Cacciatore of the Technical Staff, Maryland-National Capital Park and Planning Commission (M-NCPPC), who testified neither in favor of, nor in opposition to, the proposed special exception.

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.

EVIDENCE PRESENTED TO THE BOARD:

1. The Holton-Arms School is a private preparatory day school for girls in grades 3 through 12. It is located on the north side of River Road (MD 190), east of the intersection with Burdette Road. The school has been at this location since 1963. The subject property, comprised of 58 acres, has approximately 770 feet of frontage with River Road and 110 feet of frontage with Burdette Road. The site 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. The existing school facilities located west of the creek include a library, a performing arts center, classroom buildings, a gymnasium/pool, tennis courts, two athletic fields, a former residence used as a child day care facility, and 307 striped parking spaces. Access to the school is provided by a signalized entrance at River Road opposite Royal Dominion Drive. Emergency access to the school was approved in 1987 from Burdette Road. The site contains approximately 21 acres of forest, most of which is located east of Booze Creek. The land area east of Booze Creek is undeveloped and includes some steep slopes, wetlands, and several identified sensitive plant colonies including "melic grass," "showy skullcap" and "shining bedstraw." The area east of Booze Creek contains a Washington Suburban Sanitary Commission easement for a buried sanitary sewer line.

2. The subject property is within the area of the 1990 Bethesda-Chevy Chase Master Plan ("Master Plan"). The Master Plan affirms the existing R-90 and R-200 zoning of the subject property, with R-90 zoning located east of Booze Creek and all the school land to the west of the creek zoned R-200 (Exhibit No. 12). Private educational institutions are allowed by special exception in the R-90 and R-200 Zones.

3. On February 14, 2000, Petitioner filed an application requesting a modification of its special exception to: (a) incorporate into the existing special exception additional land area donated to the Petitioner in 1998; (b) increase school enrollment limits to 665 students; (c) construct a new science wing; (d) expand its performing arts center, lower school facilities, and athletic facilities; and (e) add a second entrance to the campus (Exhibit Nos. 1 and 3).

4. On February 26, 2000, the Board of Appeals received a written complaint from various neighbors of the Petitioner regarding certain aspects of the operations of

(a) deletion of the proposed "second entrance," a gated driveway that would have connected the main campus to the intersection of Burning Tree and Beech Tree Roads.

(1) Petitioner advised the Board that it will record a covenant barring access to the school from Burning Tree and Beech Tree Roads under certain circumstances. (Exhibit F to Exhibit No. 180)

(b) relocation of the proposed athletic field and track approximately 120 feet further south than originally requested to reduce ground disturbance and tree loss. The re-siting would expand the separation between the athletic fields and colonies of sensitive plants, and the reorientation of the field and track would increase the distance from the critical root zones of trees located on the adjacent park property. The athletic facility will be connected to the main campus by a two-lane driveway traversing a bridge over Booze Creek, as originally proposed. The remaining improvements associated with the track/field have been reduced in scale. Seating for spectators has been reduced from 750 to 200. The covered press box has been replaced with a concrete "Scorers" pedestal, located at the top of the seating. Parking for vehicles and buses in the immediate vicinity of the athletic field has been reduced to four handicapped spaces and driveway parking for four buses, and all other parking for athletic events would be restricted to the school's main parking lot. Parking on neighborhood streets for athletic events and any activity related to the school will be prohibited. In lieu of two support buildings, the Petitioner now proposes a single structure containing bathrooms, a first aid/training room, coach's rooms, and storage areas (Exhibit No. 190(b) and Exhibits I(1) and I(2) to Exhibit No. 180).

(c) a request for a "Centennial Garden," located in front of the southern face of the campus's main building (Exhibit No. 196)

9. Petitioner's amended special exception modification request includes six new features:

(a) the widening and reconfiguration of the River Road entrance to improve the movement of cars entering and exiting the school. A fourth lane will be added, resulting in one inbound lane and three outbound lanes (Exhibit No. 192(b), Exhibit D to Exhibit No. 180). The redesign of the entrance will require the relocation of the Petitioner's existing sign, stone pillars, and entrance gate;

(b) the construction of a new interior circulation road running roughly parallel to River Road (Exhibit No. 192(b), Exhibit D to Exhibit No. 180) to provide a connection between the Lower School and the Upper School;

(c) the upgrading of an existing emergency driveway connecting the school to Burdette Road, for its entire length and extending to the Lower School parking lot. A gate will be installed to restrict access, except in emergency situations.

the school. On January 23, 2001, Petitioner amended the Statement of Operations submitted with its petition to address issues raised in the written complaint. While that complaint was being reviewed and acted upon by the Board of Appeals, further processing of this Petition was deferred. The Board's Resolution to Modify and Reaffirm Special Exception (Exhibit No. 164), dated September 7, 2001, completed the review and action on the complaint.

5. In an effort to avoid further contested proceedings, the parties negotiated a Neighborhood Reconciliation Agreement ("Agreement") which was executed on October 17, 2001 (Exhibit No. 180). The Agreement resolved the parties' differences and concerns.

6. In accordance with the terms of the Agreement, the Petitioner amended its Special Exception Modification to restate certain original requests (described in paragraph 10 below), eliminate or modify other elements of the original petition (described in paragraph 11 below), and request approval of new features not included in the original petition (described in paragraph 12 below) (Exhibit No. 185).

7. The Petitioner's original requests, which were not modified by the Petitioner's amended proposal, include the following:

(a) incorporation into the existing special exception of approximately 3.6 acres of land donated to the school in 1998. This land area is bisected by Booze Creek and has frontage on the unimproved right-of-way for Burning Tree Road;

(b) construction of a new science wing containing approximately 16,720 square feet, which includes a three-story addition proposed for each side of an existing breezeway corridor that connects the main academic building with the existing Performing Arts Center ("PAC").

(c) expansion of the existing PAC to include (1) a small theater for presentations, rehearsals, and experimental productions; (2) a larger "Music Room" for both instruction and small group rehearsals/ presentations; and (3) an expanded "Orchestra Room" for teaching and presentation sessions for larger groups. The improvements will be located on the interior of a courtyard created by the PAC and the Gymnasium/Pool building and will not be visible from any adjoining properties; and

(d) construction of an approximately 6,056 square foot addition to the Lower School, which will include an "All Purpose Room" to provide space for gatherings, physical education, and lunches that is to be connected to the southern end of the existing Lower School building by a short passageway.

8. The Petitioner's amended proposal modified certain elements of the original special exception request as follows:

- (1) Petitioner has advised the Board that it will record a covenant limiting use of the access driveway to emergencies (Exhibit No. 177(l), Exhibits G and H to Exhibit No. 180).
- (2) These improvements, together with the proposed intra-campus roadway, will provide emergency access to the entire campus.

(d) the siting of the new science wing, referenced in No. 8 above, will bring the face of the buildings closer to the existing traffic circle at the school's main entrance. To maintain an adequately sized lawn in front of the science wing, the Petitioner will reconfigure the traffic circle to create more space and separation from the curb line to the face of the building. The redesign will result in less paved area and will permit construction of a ramp to provide improved handicapped access to the adjacent theater (Exhibit 195(b));

(e) the construction of a pathway at the northwest corner of the site to facilitate movement around the Library (Exhibit No. 177(l)); and

(f) the replacement of several outdated light poles around the campus with more efficient, better designed models.

10. Diana Beebe, Head of School, described the history of Holton-Arms and the state of existing facilities. Ms. Beebe testified about the proposed improvements, including the new science wing, Lower School All-Purpose Room, addition to the PAC, the new athletic facilities and the importance of those facilities to each of the programs that they will serve. Ms. Beebe also testified about the value of the Centennial Garden. Ms. Beebe described the importance of the revised access/circulation system, including the improved entrance to the school, the new intra-campus access road, and the enhanced Burdette Road emergency route. Finally, Ms. Beebe stated that the Petitioner's proposal would be in harmony with the surrounding neighborhood, that it would not be a nuisance, and that it would create no objectionable noise or activity.

11. William Gridley, testifying on behalf of the Petitioner as an expert in architecture, explained the architectural aspects of the proposal including the intended improvements to the science wing, PAC, and activities room (Exhibit Nos. 184 and 186). Mr. Gridley testified that construction of the associated facilities would be in substantial conformance with the plans submitted to the Board and referenced as SE-9, SE-10, and SE-11 (Exhibits 177(i), 177(j) and 177(k)); also Exhibit Nos. 187, 188 and 189). Mr. Gridley also stated that the proposed improvements would meet the general and specific conditions associated with special exceptions, including Section 59-G-1.2 and Section 59-G-2.19, and that the proposed uses would be compatible with the surrounding neighborhood. Mr. Gridley described the proposed single athletic field building, proposed by Petitioner, including motion-activated security lights under the canopy on the building and the low wattage, timed roadway lighting (Exhibit No. 177(k)).

Finally, Mr. Gridley described the improvements to be made to the traffic circle as designated on Drawing SE-15 (Exhibit Nos. 195(a) and 195(b)).

12. Al Blumberg, testifying on behalf of the Petitioner as an expert in land use planning, described the features of the Petitioner's proposal and testified about the additional land area that would be added to the special exception (Exhibit No. 184). Mr. Blumberg stated that the proposal would comply with the general and specific standards associated with the special exception, would conform to the Master Plan recommendations, and that the intended uses would be in harmony with the surrounding neighborhood.

13. Mr. Blumberg also testified about the proposed athletic field and track, as well as the related landscaping features, and described the current proposal for these facilities and the modifications to the original design (Exhibit Nos. 190(a) and 190(b)). Mr. Blumberg explained how the athletic field landscaping relates to the adjacent parkland, including the protection of critical root zones of trees within the park. Mr. Blumberg stated that the relocation of the athletic field and track would increase the separation from the sensitive plant colonies and described the protection and preservation efforts that will be undertaken by the Petitioner.

14. Mr. Blumberg described the Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) (Exhibit No. 193) and the Conservation Easement that Petitioner will have recorded in the Montgomery County Land Records to protect environmental features and undeveloped portions of the subject property. Under the terms of the Conservation Easement Agreement, all wetlands on the Petitioner's property east of Booze Creek, including "Potential Wetlands" as that term is defined in the Conservation Easement Agreement, will be protected and left in an undisturbed state. The area covered by the Conservation Easement, including Wetlands and Potential Wetlands, is shown on the Conservation Easement Areas Plan (Exhibit No. 191, Exhibit J to Exhibit No. 180).

15. Mr. Blumberg further testified as to the details of the Burdette Road emergency driveway improvements (Exhibit G to Exhibit No. 180), and explained the details of the front entrance improvements (Exhibit Nos. 192(a) and 192(b)). Mr. Blumberg testified about the proposed improvements to the path around the Library (Exhibit No. 177(I) and Exhibit K to Exhibit No. 180) and represented that proposed landscaping for the path will be finalized in consultation with the adjoining property owners. Mr. Blumberg also testified that the Petitioner's proposed facilities would be served by adequate sewer and water service and that adequate stormwater management facilities were proposed to accommodate the new development. Finally, Mr. Blumberg described the design and functioning of the new traffic lanes and related transportation improvements at the River Road entrance including a bus stop and sidewalk installed by Montgomery County, Maryland.

16. Brian Stephenson, testifying on behalf of the Petitioner as an expert in landscape architecture, described the overall landscape and lighting aspects of the

proposed special exception (Exhibit Nos. 190(a), 190(b) and 194). Mr. Stephenson testified about the landscaping and lighting details associated with the traffic circle (Exhibits Nos. 195(a) and 195(b)), the athletic field and track (Exhibit Nos. 190(a) and 190(b)), and the front entrance (Exhibit Nos. 192(a) and 192(b)). Mr. Stephenson also testified about how the hillside in front of Granger House, the residence of the Head of School, would be tiered and landscaped in order to complement the new intra-campus road running parallel to River Road (Exhibit Nos. 195(a) and 195(b)). Mr. Stephenson explained the lighting and landscaping details proposed for the Centennial Garden (Exhibit Nos. 96 and 196). Mr. Stephenson additionally testified that all the proposed improvements would be in compliance with the general and specific standards for the special exception and, particularly, that the proposed landscaping and lighting would be compatible with the surrounding neighborhoods.

17. Lee Cunningham, testifying on behalf of the Petitioner as an expert in traffic engineering, described the effects that the proposed physical improvements to the Holton-Arms School campus would have on traffic, turning movements to/from the school, queuing on River Road, and traffic circulation. Mr. Cunningham testified that the intersection improvements at the school's entrance on River Road would ease the entering of cars onto the school and would improve the operating capacity of the intersection. He explained how the new interior roadway parallel to River Road would provide intra-campus relief in the event that an accident at the intersection of River Road/Holton entrance/Old Dominion Drive closed the School's entrance on River Road. Mr. Cunningham also explained the effects that the proposed Transportation Management Program ("TMP") (Exhibit E to Exhibit No. 180) would have on traffic volume and timing, as well as on traffic management. Mr. Cunningham testified that the critical intersections would work at acceptable levels of service and that the traffic from the school would not cause a nuisance or any objectionable conditions. Finally, Mr. Cunningham testified that both on-site and off-site traffic generated by the Petitioner's proposal would operate in a safe and efficient manner.

18. Mr. Kline stated that the Petitioner had amended this petition to be consistent with the provisions of the Neighborhood Reconciliation Agreement (Exhibit No. 180). He acknowledged Exhibit 181(a) (Memorandum relating to the Agreement) and Exhibit No. 181(b) (Statement relating to binding exhibits) on behalf of the Petitioner. Ms. Beebe stated that the Petitioner would implement and operate this special exception, as modified, in accordance with the exhibits of record and the testimony presented to the Board.

19. On behalf of the Bradley Boulevard Citizens Association, Linda Kauskay testified in unqualified support of the Petition of Holton-Arms School, as amended, provided that the revised proposal was constructed and operated in accordance with the terms and conditions of the Petitioner's submissions and the Agreement.

20. William Chen, Esquire described the concerns of Vivian Riefberg and John Ashford about Petitioner's proposed special exception, in particular, the proper identification and protection of wetlands on the Petitioner's property. Mr. Chen

introduced the Stipulated Statement of Testimony of Joseph A. Berg, Ecologist and Senior Environmental Scientist (Exhibit No. 182), the wetlands expert of Ms. Riefberg and Mr. Ashford. Mr. Berg's Statement of Testimony based upon his inspection of Petitioner's property and his review of technical information, site plans, and maps in the files of the United States Army Corps of Engineers, the Maryland Department of the Environment, the Montgomery County Department of Permitting Services, and the M-NCPPC, found that there are five additional wetlands and Waters of the United States (called "potential wetlands") located on the Petitioner's property. Mr. Berg found that these potential wetlands had not been properly delineated or labeled as wetlands requiring protection. Mr. Chen explained that Ms. Riefberg and Mr. Ashford had reached an agreement with Petitioner to treat the potential wetlands that Mr. Berg identified (Exhibit No. 182) in the same manner as the wetlands already delineated by the Corps of Engineers and to record a conservation easement (Exhibit J to Exhibit No. 180 and Exhibit No. 191) subjecting the potential wetlands to the same protections and same restrictions as other wetlands on the Holton-Arms property. Legal counsel for Petitioner acknowledged its agreement with Ms. Riefberg and Mr. Ashford.

21. George Springston testified that the Burning Tree Civic Association generally supported Holton's proposal with the exception of the athletic field and track. He stated that the Association would not address issues of inconsistency between the athletic improvements, the Master Plan and the Environmental Guidelines published by M-NCPPC.

22. George Esenwein, on behalf of the Complainants, testified that they were not opposed to the new athletic facilities and that they supported all of the other proposed modifications.

23. M-NCPPC Technical Staff reviewed the Petitioner's amended proposal, and recommended approval with conditions in a written report (Exhibit No. 173). At the hearing, William Landfair orally modified recommended condition number 3 to allow not more than 35 events per year, including track and field events, on the requested athletic field.

24. Mr. Blumberg testified that this requested special exception modification is subject to the Montgomery County Forest Conservation Law. Accordingly, a Natural Resources Inventory - Forest Stand Delineation plan (No. 4-99132) has been approved (Exhibit No. 193), showing that there are approximately 21 acres of high-quality, upland forest cover in the northeast portion of the property. The dominant tree species within that forest are tulip, maple, sycamore, beech, oak, and hickory. A Preliminary Forest Conservation Plan (Exhibit No. 177(u)) has also been approved for the project, detailing that approximately 7 acres of forest will be cleared to accommodate the athletic field and track. Technical Staff found that reforestation requirements for the site total 2.6 acres and can be met with a mixture of landscaping and on-site reforestation (Exhibit No. 173, page 6).

25. The Technical Staff reported that the Countywide Stream Protection Strategy assesses the Lower Booze Creek subwatershed as having poor stream conditions and fair to good habitat conditions, labeling it as a Watershed Restoration Area (Exhibit No. 173, page 6). Mr. Blumberg testified that the Petitioner proposes to provide water quality control via surface sand filters and water quantity control via an underground storage tank.

26. A stream restoration plan was submitted by the Petitioner to the M-NCPPC to mitigate the effects on Booze Creek of the athletic field and track, stream crossing and related construction.

27. Mr. Blumberg testified that the subject property contains wetlands as described in Exhibit No. 191. The site further contains a 100-year floodplain bisecting the property from north to south. In addition, five sensitive plant colonies have been identified within the proposed forest retention areas and will not be disturbed (Exhibit No. 191). Seekey Cacciatore, of the M-NCPPC Technical Staff, testified that it would be better if the identified sensitive plant colonies were not fenced or otherwise identified after construction is completed to preserve their anonymity.

28. A preliminary subsurface exploration report was undertaken by the Petitioner to determine whether blasting would be required (Exhibit No. 62(b)). All blasting to be conducted by the Petitioner will be regulated by the State Fire Marshall's office. Based on Section 22-71 of the Fire Safety Code of Montgomery County Code and State blasting regulations, blasting will be limited to the hours of 7 a.m. to 7 p.m. weekdays and from 9 a.m. to 7 p.m. Saturdays.

29. The Staff found that the proposed improvements to the School's transportation network would manage the flow of traffic at the River Road entrance in a safe and efficient manner without impeding the flow of traffic on the State Highway. Staff also found the Petitioner's proposed TMP to be consistent with the contents of the previous TMP that Staff found to be acceptable (Exhibit No. 173, page 5).

30. Staff found that the proposed modification satisfies the general and specific requirements for the uses found in Sections 59-G-1.21, 59-G-2.19, and 59-G-2.13.1 of the Zoning Ordinance and recommended approval, subject to conditions (Exhibit Nos. 173 and 202).

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 modification to the special exception can be granted with the conditions set forth below.

Section 59-G-1.2.1 Standard for Evaluation

Section 59-G-1.2.1 sets forth the standard by which the Board must evaluate a special exception or its modification. That standard requires that a special exception be evaluated based on its inherent and non-inherent adverse effects at the particular location proposed, irrespective of adverse effects if elsewhere established in the zone (Zoning Text Amendment No. 99004, Opinion, page 4). Section 59-G-1.2.1 States:

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 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 modification of an existing private educational institution special exception, to create an evaluation standard. The evaluation standard does not include the physical size and scale of operations.
- (3) Determine separately the physical and operational characteristics of the requested modification proposed by the Petitioner.
- (4) Compare the generic physical and operational characteristics with the particular characteristics of the proposed modification. Inherent adverse effects are those characteristics of the modification that are consistent with the generic characteristics of the evaluation standard. Non-inherent adverse effects are those characteristics caused by the modification that are not found in the evaluation standard.

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 school to the north are single-family homes in the R-200 Zone. Adjoining the school to the east are single-family homes in the R-90 Zone and Burning Tree Local Park owned by the M-NCPPC. Located nearby 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 campus to the west are single-family homes in the R-200 Zone and further to the west is Burning Tree Country Club. The interchange between River Road and the Capital Beltway (I-495) begins approximately 1,100 feet west of the school

(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 typical of a public or private elementary school in Montgomery County is a substantially sized building in terms of square footage. These buildings are generally one to two stories in height. Operationally, the Board finds that a private or public elementary school can be expected to have anywhere between 100 to 500 students. The Board finds that a certain degree of outdoor lighting for security purposes is inherent at such schools, that noise from outdoor recess or sports gatherings on outdoor fields is to be expected, and that special events such as Back-to-School nights or other post school hour activities will take place on occasion. The expected hours of operation would generally be between 8:00 A.M. and 3:00 P.M. Bus and automobile traffic are expected to be associated with a private or public elementary school. Finally, impacts on the environment, such as runoff from the school building and the parking facility, are to be expected.

(3) Proposed Modification: Physical and Operational Characteristics

The Petitioner has requested modifications to accommodate the needs of the academic, athletic, and extra-curricular activities. These improvements include the construction of a new science wing, expansion of the PAC, an addition to the Lower School Building, and a new athletic field and track. The Board finds that the new facilities will conform to the setbacks, design, and materials of the existing buildings and are located on the part of the campus which provides sufficient distance from adjoining properties to mitigate satisfactorily noise or possible adverse impacts. The Board finds with regard to the requested athletic field and track that the location, size, setbacks, scope of activities, forest conservation easements, and extensive new plantings will provide a satisfactory buffer for neighboring properties. The Board finds that the proposed TMP is designed to reduce traffic to and from the campus; and that the new facilities, as well as existing ones, will be served by an expanded and improved road

system which will accommodate the traffic generated by the school without adverse impact on neighboring properties. The Board further finds the Petitioner's proposed lighting is more efficient than the existing lighting that it replaces and that the new lighting fixtures will reduce the potential impact on neighbors. The Board also finds that the proposed landscaping in the vicinity of the new entrance on River Road will mitigate the impact of the grading necessary to accommodate that road improvement.

(4) Comparison of Characteristics

After considering the generic characteristics of the use and comparing them with the physical and operational characteristics of the proposed modification, based on the Technical Staff analysis and recommendation, the Planning Board recommendation, the Petitioner's Transportation Management Plan, the evidence and testimony presented by the Petitioner and the other parties of record as set out above; and the amended modification, as described and 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.

The Board find that the petitioner has, by a preponderance of the evidence of record, established that the proposed modification meets the requirements in Section 59-G-1.21 as follows:

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

The Board finds that the modification of the Petitioner's special exception as proposed is permissible in the R-90 and R-200 zones.

(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.*

As noted below, the Board finds that the proposed modification satisfies the standards and requirements for private educational institutions, in 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 subject property is covered by the 1990 Bethesda-Chevy Chase Master Plan. The Plan affirms the existing R-90 and R-200 Zones for the property and recognizes that private school use may continue on the property.

(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 structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The modification, because of the siting, design, landscaping, buffering and limitations on use, will be in harmony with the surrounding neighborhood. The Board further finds that there is adequate parking on site and the proposed transportation network changes will improve intersection operation, circulation and safety.

(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 proposed modification will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

(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 modification will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical. Restrictions on the times and frequency of use, public address system and permitted number of spectator seats, together with the increased setbacks and buffered areas, will result in no objectionable noise on nearby properties from the use of the athletic field and track. The anticipated noise from the athletic field and track will be within the standards imposed by the Montgomery County Noise Ordinance and should not have any effect on existing noise levels in the surrounding neighborhood. The track and field will not be lit. The Board finds that other lighting proposed will be limited and will not cause glare or other adverse impacts on the adjacent residential neighborhood; and that emphasis will be placed on shielding the source point of the lights to control their spread of light.

(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.

(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. The existing special exception has operated for many years without causing such adverse effects and that the proposed road system modification will enhance traffic safety and emergency access for the school.

(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 subject property will continue to be served by adequate public facilities.

(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 modification 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.*

The Board finds that the reconstructed River Road entrance, intra-campus road improvements and the Burdette Road emergency driveway will improve the Petitioner's transportation operations and facilities in a manner that is consistent with the goals of the School and its neighbors, and will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Section 59-G-2.19 Educational institutions, private.

(a) Generally. 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"*

The Board finds that the proposed modification will not constitute a nuisance because of traffic, number of students, noise, type of physical activity or any other element. The school has been in operation at this location since 1963. The requested buildings, proposed athletic field and track, and other activity areas are well set back from adjoining uses, and the topography and forest buffer will provide additional buffering. The Board finds that the minimum setback for the field and track will be substantially greater than the minimum 100 feet recommended in the Montgomery County Recreational Facility guidelines referenced in the Staff Report (Exhibit No. 173). Bleacher seating for the track and field will be limited to 200. Use of the new field and track is limited to daylight hours and in the number, frequency and type of event that can occur.

(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 2 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*

The proposed science wing, performing arts center expansion, and lower school building will be designed and constructed of materials that are similar to those of existing buildings and will be architecturally compatible with the surrounding neighborhood. The support building for the athletic field, while of institutional design, will be inset into the proposed grade to mitigate its impact and shielded by forest buffer from the view of neighboring residences. The Board finds that the proposed school buildings are architecturally compatible with the surrounding neighborhood.

(2) *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*

The proposed setbacks and buffering will be sufficient to prevent any adverse effect.

(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:

- (a) Impact of increased traffic on residential streets;*
- (b) 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;

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

5. Provided that a density in excess of 87 pupils per acre may only be permitted upon a finding that:

- (a) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements,*
- (b) the additional density will not adversely affect adjacent properties,*

(c) additional traffic generated by the additional density will not adversely affect the surrounding streets; and

(d) adequate provisions for drop-off and pick-up of students will be provided.

The Board finds that the Petitioner has, by testimony, written statements, site plans, architectural drawings and other exhibits, demonstrated that the modification will conform to the development standards for the R-200 and R-90 Zones. The campus is comprised of 58.5 acres. The minimum lot sizes for the R-200 and R-90 Zones is 20,000 and 9,000 square feet respectively. The school buildings are set back well in excess of the required 40 foot minimum front yard, 15 foot side yard, and 30 foot rear yard setbacks. The location of the proposed athletic field exceeds the minimum setback of 100 feet recommended in the County Recreational Guidelines. Traffic patterns will not change. The enrollment of 645 full time students results in a ratio of students per acre well below the maximum allowed density of 87 students 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.

The Board finds that the applicant has submitted such a plan (Exhibit Nos. 177(l) and 184).

Therefore, based on the foregoing, the Board **GRANTS** the requested special exception modification, subject to the following conditions:

1. The Petitioner is bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorneys to the extent that such evidence and representations are identified in this Opinion, including the following exhibits:

- a. Amended Statement of Operations (Exhibit 185)
- b. Special Exception Site Plan (Exhibit Nos. 177(l) and 184)
- c. Elevations (Exhibit Nos. 177(i) and 187, 177(j) and 188, and 177(k) and 189)

- d. Track and Field Plan (Exhibit Nos. 190(a) and 190(b))
 - e. Conservation Easement Areas Plan (Exhibit No. 191)
 - f. Front Entrance Improvements Plan (Exhibits Nos. 192(a) and 192(b))
 - g. Lighting Plan (Exhibit No. 194)
 - h. Front Circle Improvement Plans (Exhibits Nos. 195(a) and 195(b))
 - i. Centennial Garden Plan (Exhibits Nos. 96 and 196)
2. Petitioner shall establish a neighborhood liaison committee for the purpose of facilitating communication between the school and its neighbors and to provide a mechanism to resolve potential disputes between the school and its neighbors. The People's Counsel of Montgomery County shall be an ex officio member of the committee. The committee shall meet at least quarterly.
3. The Petitioner shall implement the Transportation Management Plan (Exhibit E to Exhibit No. 180) to minimize and manage the vehicular traffic to and from its campus.
4. Holton-Arms shall not permit access to its campus from Burning Tree or Beech Tree Roads.
5. Access to Holton-Arms' campus from the improved Burdette Road emergency access shall be limited to emergency vehicles and/or emergency evacuation of the campus.
6. Petitioner's use of the new athletic field and track ("athletic improvements") shall be limited to (a) Holton-Arms' regular physical education classes; (b) school functions attended solely by Holton-Arms family (defined as students enrolled in Holton-Arms during the academic year, their siblings and parents, Holton-Arms faculty and staff, and their children); (c) sports practices for Holton-Arms' teams; (d) solo track or sport practice by a member of the Holton-Arms family; (e) interscholastic athletic competitions (not to exceed a total of 35 per academic year, including track and field events) between Holton-Arms and other schools consisting of the Holton-Arms team and one opposing team from another school; provided, however, that track and field events may include up to four (4) opposing teams; and (f) interscholastic athletic conference championships in which Holton-Arms is a host school for conference elimination and/or championship events (regardless of whether Holton-Arms is a participant in the finals) for a conference or league in which Holton-Arms has participated that year; provided, however, that (i) any individual sport's conference elimination and/or championship events shall not be held on the athletic improvements more

frequently than once every five (5) years and (ii) conference elimination and/or championship events shall not be held on the athletic improvements more frequently than once per year. During such championships, the number of events shall not exceed one match or game per weekday and two on weekend days. Except for such conference elimination and/or championship events, the total number of events held on the athletic improvements on weekend days shall not exceed five (5) per year. The proposed athletic improvements shall not be used during the time period June 15 through August 31, except for try-outs and sports practices for Holton-Arms teams or when one or both of the other fields are closed for periodic maintenance. Holton-Arms may request a change in the frequency of field use.

7. No non-portable public address system shall be installed in the vicinity of the new athletic field and track. Any portable public address system shall be used only by coaches or officials and only for track and field events.

8. Spectator seating for the proposed athletic field and track shall be limited to a maximum of 200 seats.

9. Parking on streets in the surrounding neighborhood is prohibited for athletic or other school related activities.

10. Petitioner must receive approval of a Final Forest Conservation Plan (which identifies wetlands on the Plan in a manner and with notations identical to Exhibit No. 191) from Maryland-National Capital Park and Planning Commission Technical Staff prior to release of sediment and erosion control or building permit, as appropriate. No grading, tree cutting, brush clearing or other work shall commence on that portion of the Petitioner's property which is the subject of the Conservation Easement (Exhibit 191 and Exhibit 180(j)) before the Conservation Easement is recorded in the land records of Montgomery County.

11. Petitioner must comply with the Montgomery County Department of Permitting Services requirements for stormwater management and sediment erosion control.

12. The Petitioner must comply with a stream restoration plan to be approved by the Montgomery County Department of Environmental Protection and the Maryland-National Capital Park and Planning Commission Technical Staff and with permits issued by the United States Army Corps of Engineers, Baltimore District, and/or the Maryland Department of the Environment, Wetlands and Waterways Program, that may be required by law, prior to implementation and prior to release of building permit or sediment and erosion control permit, as appropriate for any improvements on the east side of Booze Creek. Prior to release of building permit or sediment and erosion control permit for improvements on the east side of Booze Creek, the Environmental Planning

Division of the Maryland-National Capital Park and Planning Commission shall verify that the Petitioner has received all necessary permits.

13. Any blasting shall be limited to 7 a.m. to 7 p.m. weekdays and 9 a.m. to 7 p.m. Saturdays, consistent with the requirements of the State Fire Marshall and the Montgomery County Fire Safety Code. The Petitioner shall provide notice 24 hours in advance to property owners located within 500 feet of the blasting site, and to the neighborhood liaison committee, of a blasting event.

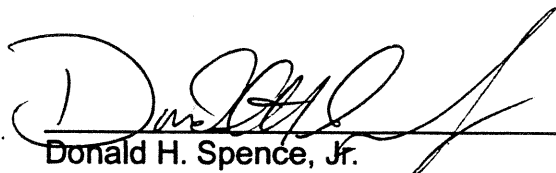
14. All construction equipment and material must enter and exit the subject property via the River Road entrance.

15. No new building authorized by this modification shall be occupied, nor any new athletic facilities constructed, until completion of the roadway improvements set forth in Exhibit Nos. 192(a) and 192(b) and the completion of the emergency access improvement set forth in Exhibit Nos. 177(l) and Exhibit G to Exhibit 180.

16. Prior to commencement of construction, east of Booze Creek, Petitioner shall fence the identified sensitive plant colonies and protect them during the construction phase. Upon completion of construction and stabilization, the fencing shall be removed and the sensitive plant colonies shall not be otherwise identified to preserve their anonymity.

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

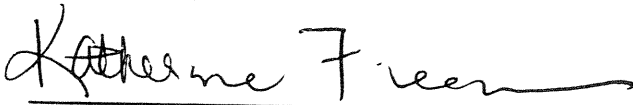


Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Case No. CBA-1174-C

Page 21.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 29th day of May, 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.

BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

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

Case No. CBA-1174-C

PETITION OF THE HOLTON-ARMS SCHOOL, INC.

HEARING ON RECONSIDERATION
(Hearing held December 12, 2001)

OPINION OF THE BOARD
(Effective date of Opinion, April 26, 2002)

This proceeding was a hearing on the Petitioner's Motion for Reconsideration of the Board's Resolution to Modify and Reaffirm Special Exception, dated September 7, 2001, as part of Case No. CBA-1174-C.

BACKGROUND

Case No. CBA-1174 is a special exception granted to the Holton-Arms School ("Petitioner") on November 29, 1961, for the construction and operation of a private educational institution for girls. The original special exception has been modified numerous times over the past forty years.

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.

Pursuant to Section 59-G-1.3(e) of the Montgomery County Zoning Ordinance, the Board conducted a Show Cause Hearing on February 28th, March 6th, March 7th, March 13th, March 27th, and March 28th, 2001, on this Special Exception. The Board found the Petitioner in violation of the terms and conditions of the special exception and issued a Resolution to Modify and Reaffirm Special Exception, dated September 7, 2001.

In a letter from Harry W. Lerch, Esquire, dated September 24, 2001, the Petitioner moved for reconsideration of the Board's opinion with respect to four issues: participation in the summer camp program, participation in the Center for the Arts program, a supervised student swimming program, and School enrollment. Accordingly, this hearing was limited to these issues.

Harry W. Lerch, Esquire, and Jody S. Kline, Esquire, appeared on behalf of Holton-Arms School. They called as witnesses Diana Beebe, Head of School, and Lee Cunningham, an expert in transportation planning and traffic engineering.

The Board also heard testimony and argument from George Springston, President, Burning Tree Civic Association; Linda Kauskay, Vice President, Bradley Boulevard Citizens Association; George Esenwein, representing the Complainants in the Show Cause Hearing; and Jack Sando, President, Bradley Boulevard Citizens Association.

Martin Klauber, Esquire, the People's Counsel of Montgomery County, Maryland, participated in the hearing and presented various arguments.

Decision of the Board: Motion **granted** in part and **denied** in part.

EVIDENCE PRESENTED TO THE BOARD

1. Ms. Beebe testified that since April, the Petitioner and representatives of the community have worked together to address many of the concerns that were raised during the show cause hearing. A detailed agreement called the "Neighborhood Reconciliation Agreement" was reached between the School and its neighbors on October 17, 2001. The Board accepted that Agreement into evidence as Exhibit No. 180 at the October 30, 2001 hearing on the Petitioner's request to modify the special exception to permit improvements to the School's facilities.

2. Ms. Beebe further testified that Holton-Arms has worked hard to bring the Petitioner into compliance with the Board's September 7, 2001 Resolution. She testified that the Petitioner has: (1) submitted a revised site plan and revised landscape and lighting plan for the construction of the centennial garden; (2) brought the childcare facility into compliance by reducing the number of children to a maximum of fifteen and limiting it to children of Holton-Arms faculty and staff; and (3) stopped renting its facilities.

3. "Peak Hours" as used in this Opinion, means "the hours during which the highest concentration of traffic occurs at the School's entrance. The petitioner established that those hours are 7:30 to 8:30 a.m. and 3:15 to 4:15 p.m., Monday through Thursday, and 7:30 to 8:30 a.m. and 2:30 to 3:30 p.m. Friday, during the academic year on days when academic classes are in session." "Holton-Arms Family" as used in this Opinion, means "the students enrolled in Holton-Arms during the academic year, their siblings and parents, Holton-Arms' faculty and staff, and their children."

I. Summer Camp ("Creative Summer") Program

4. In the September 7, 2001 Resolution, the Board found "that while the summer camp is accessory to the school, the intensity of the summer camp use exceeds what would customarily be subordinate and incidental. ...In order to bring the summer program into compliance with the zoning ordinance, the program must be structured in such a way that it is accessory. Therefore, the Board finds that, beginning with the summer 2001 season, enrollment in the Creative Summer Program must consist of at least 50% children who are Holton-Arms students or from families of Holton-Arms students. ...Enrollment of the camp shall not exceed 645 children."

5. Ms. Beebe testified that compliance with the legal standard required by the Zoning Ordinance would have a significant negative impact on the camp's enrollment. She added that the Petitioner requests as an interim provision that the Board allow it to include campers from the prior summer in making up the 50% Holton-Arms requirement.

6. Mr. Cunningham testified that the reduction in the camp's enrollment will reduce the transportation impact on the surrounding road network and that the impact caused by summer traffic will be less than the impact caused by traffic during the school year.

7. Ms. Kauskay stated that the Bradley Boulevard Citizens Association did not object to the Petitioner's proposal so long as the returning campers used to reach the 50% requirement are limited to children that attended the camp in the summer of 2001, so that their inclusion will phase out as they outgrow the camp, and so long as the Petitioner has commenced construction of the roadway improvements approved by the Board at the October hearing.

8. Mr. Klauber argued that the Petitioner should request a separate special exception in order for the Board to review the impact of the summer camp and to ensure that the requirements of the Zoning Ordinance are met.

II. Center for the Arts Program

9. In the September 7, 2001 Resolution, the Board found that "[i]n order to be an accessory use, the Center of the Arts Program must be incidental to the primary use, i.e., serving the students at the school, as well as subordinate. In this case the Board finds that the larger percentage of children enrolled in the Center of the Arts Program who are not Holton-Arms students renders the program neither incidental nor subordinate. The Board finds that the program can continue, provided however, that 75% of the enrollment must be Holton-Arms students or children from the families of Holton-Arms students."

10. Ms. Beebe testified that compliance with the legal standard required by the Zoning Ordinance would significantly and negatively impact the program. She stated that the Petitioner requests instead: first, that no more than 20 non-Holton-Arms Family participants shall be on campus for the purposes of Center for the Arts programs

at any one time, and there shall be at least an equal number of Holton-Arms student participants; second, that at least 50% of the Center for the Arts enrollment must be Holton-Arms Family; and third, that all non-Holton-Arms Family participants shall arrive and depart during non-Peak Hours. Ms. Beebe testified that these standards, although more restrictive than the Board's remedy, would allow the program to continue.

11. Ms. Kauskay, Mr. Springston, and Mr. Esenwein did not object to this proposal, and Mr. Klauber supported it.

III. Supervised Student Swimming Programs

12. In the September 7, 2001 Resolution, the Board found "that none of the rentals of Holton-Arms facilities to non-Holton-Arms students or families is permitted in the opinions granting or modifying the special exception. Further, the Board finds that such rentals cannot be considered accessory to the school use, and therefore must cease. Rental of the pool, theater, and space for affinity groups must cease at the conclusion of the current school year or the governing contract, whichever occurs sooner."

13. Ms. Beebe testified that, after the Board's resolution, the Petitioner notified all unaffiliated organizations that at the end of their current contract periods they would be unable to continue to lease Holton-Arms' facilities. All of those organizations acknowledged that they would make alternative arrangements except for the Curl Burke and Capital Sea Devils aquatic coaching programs, each of which advised the School that most of the participants in their programs are Holton-Arms Family or students of schools that compete against Holton-Arms in swimming, and that their schools do not have pools. Few, if any, nearby facilities are available to them. The Petitioner has permitted these coaching programs to continue their use of the School's pool this fall on a "cost-sharing" basis.

14. Ms. Beebe further testified that in order to accommodate these special coaching programs for students in schools that compete against Holton-Arms and do not have their own aquatic facilities, Petitioner proposes the following modified language:

15. Petitioner may not lease its facilities. It may allow its indoor swimming pool facilities to be used for supervised swim programs which include non-Holton-Arms students, subject to the following conditions:

- (1) The programs shall be open only to Holton-Arms Family, students of Schools that compete against Holton-Arms in swimming, and feeder schools to those schools;
- (2) The programs shall have a maximum of forty such swimmers in attendance at any time, each of whom shall arrive and depart outside of Peak Hours;

- (3) A parent driver who has a child enrolled in the early morning session may swim during the early morning session;
- (4) Petitioner may accept compensation for the use stated herein in an amount no greater than the proportion of the maintenance and operating costs for the pool and related aquatic facilities directly related to such use.

16. Mr. Springston did not object to this proposal. Ms. Kauskay said that the Bradley Boulevard Citizens Association objected to the inclusion of feeder schools because such inclusion would open the program to the greater Washington, D.C. metropolitan area. She stated that if the Petitioner withdrew the reference to feeder schools, the Association would not object to the proposal. Mr. Klauber requested more detailed information about the number of sessions and swimmers involved. Mr. Esenwein agreed with Ms. Kauskay and Mr. Klauber.

IV. School Enrollment

17. In the September 7, 2001 Resolution, the Board reduced the enrollment of the School from 650 students to 645 students.

18. Ms. Beebe testified that for the 2001-2002 academic year, the School mailed its acceptance letters on March 15, 2001, prior to the Board's March 28, 2001 work session, and classes began on September 5, 2001, before the issuance of the Board's written opinion. Ms. Beebe also testified that during the show cause hearing, the Petitioner did not present evidence as to the number of children of faculty members who attended the School.

19. According to Ms. Beebe, in 1993, a total of three Holton-Arms students were daughters of faculty members. In the current 2001-2002 school year, 18 students are daughters of faculty members, and all of these students ride to and from school with their parent, causing no additional traffic. Four faculty members have two daughters each that are students at the School. The Petitioner was unaware of these numbers during the show cause hearings.

20. Ms. Beebe on behalf of the Petitioner requested that four of the children of faculty not count toward the enrollment cap during the 2001-2002 academic year because they cause no additional traffic impact, and that up to 15 children of faculty be exempted from the cap for subsequent academic years provided that they arrive and depart in the same automobile as the faculty parent. The Petitioner further requests that its enrollment cap be returned to 650 students for the academic year beginning 2003-2004 and thereafter.

21. Mr. Springston objected to the Petitioner's requests on a number of grounds as set forth in the written version of his testimony accepted as Exhibit No. 210. Among Mr. Springston's arguments were that such an exemption would cause additional traffic impact and set a bad precedent. Ms. Kauskay, Mr. Esenwein, and Mr. Klauber also opposed any increase in enrollment before August, 2003 and before the

completion of the roadway improvements that were approved by the Board in October, 2001. Mr. Klauber also stated that the enrollment issues could be revisited after the completion and evaluation of the circulation improvements approved by the Board in October, 2001. Ms. Kauskay stated that the Bradley Boulevard Citizens Association supported the Petitioner's request to return the enrollment cap to 650 students in August, 2003 after completion of the roadway improvements. Ms. Kauskay further stated that in August, 2003, after completion of these improvements, the Association would support the Petitioner's request to exempt from the enrollment cap up to fifteen faculty children who travel to and from the School with their parents.

FINDINGS OF THE BOARD

Based upon the testimony presented and the evidence of record, the Board concludes that the Motion for Reconsideration shall be granted in part and denied in part.

I. Summer Camp ("Creative Summer") Program

1. The Board denies the Motion for Reconsideration with respect to the summer camp.

The Board finds that the summer camp is not accessory to the School for the reasons stated in the Board's September 7, 2001 Resolution. Holton-Arms students comprise only a very small percentage of the children enrolled in the summer camp. Ms. Beebe testified that only 36 Holton-Arms students attended the camp in the summer of 2000, and of 180 faculty members, only 20 were Holton-Arms faculty. Therefore, the camp is not incidental and subordinate to the School.

The Board acknowledges the Petitioner's request for a transitional period, but finds that the Petitioner was given the summer of 2001 to make arrangements for such a transition. The Board specifically agrees with the argument of the People's Counsel and finds that in order to have its summer camp program, the Petitioner must file and obtain a Special Exception for such an activity.

II. Center for the Arts Program

2. The Motion for Reconsideration is granted as to the Center for the Arts program. The Petitioner proposes an alternative remedy that is more restrictive as to physical activity than the remedy described in the Board's Resolution. There is no opposition to the Petitioner's proposal.

3. Accordingly, the Board amends the September 7, 2001 Resolution and finds that the Center for the Arts program can continue, subject to the following conditions:

- a. No more than 20 non-Holton-Arms Family participants shall be on campus for the purposes of Center for the Arts programs at any one time, and there shall be at least an equal number of Holton-Arms student participants;
- b. At least 50% of the Center for the Arts enrollment must be Holton-Arms Family, as defined above; and
- c. All non-Holton-Arms Family participants shall arrive and depart during non-Peak Hours.

III. Supervised Student Swimming Programs

4. Notwithstanding the prohibition on leasing the Petitioner's facilities, the Board finds that the supervised swim programs proposed by the Petitioner are an accessory use because they are limited to the instruction of Holton-Arms Family and students of schools with which Holton-Arms competes in swimming, as described by Ms. Beebe in her testimony. Therefore, Petitioner may permit its swimming pool facilities to be used for supervised swim programs operated by Curl Burke and The Capital Sea Devils for Holton-Arms Family and students of schools without pools that compete against Holton-Arms in swimming, provided that such programs are conducted on a cost sharing basis during non-peak hours, subject to the following conditions:

- a. Each session shall have no more than 40 swimmers in attendance at any time;
- b. The weekday programs shall be limited to a maximum of one morning session and one evening session; the morning session shall end before Holton-Arms' Peak Hour as well as the morning peak hour on River Road (7:30 a.m. to 8:30 a.m.), and the evening session shall not begin until after the evening peak hour on River Road (5 p.m. to 6 p.m.);
- c. Participation shall be limited to Holton-Arms Family and students of schools without pools that compete against Holton-Arms in swimming, except that a parent driver who has a student enrolled in the early morning supervised swim session may swim during that session provided that he or she is included within the forty-swimmer limit;
- d. Petitioner shall include in its quarterly reports to the Board the names of the schools attended by all the swimmers in the programs as well as a list of the schools against which Holton-Arms will compete in swimming in that academic year; and
- e. Petitioner may accept compensation from Curl-Burke and the Capital Sea Devils in an amount no greater than the proportion of the

maintenance and operating costs for the pool and related aquatic facilities directly related to such use.

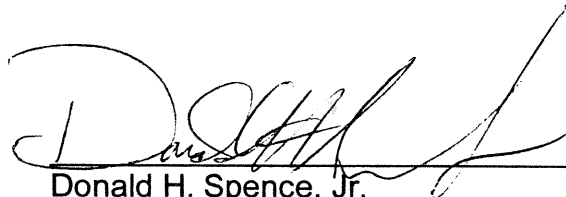
IV. School Enrollment

5. As to school enrollment, the Motion for Reconsideration is denied. The Petitioner has not yet met the enrollment cap set by the Board's September 7, 2001 Resolution. Any student who departs during the current academic year may not be replaced unless the total enrollment will not exceed 645 full-time students. The Petitioner must reduce its enrollment to no more than 645 students for the academic year 2002-2003. The Petitioner may reapply for adjustment of this number for academic years beginning 2003-2004 based upon then existing circumstances.

Therefore, the Board amends the Resolution to Modify and Reaffirm Special Exception, dated September 7, 2001, as set forth above.

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

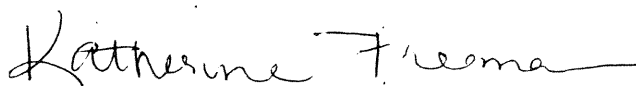
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above is adopted as the resolution required by law as its decision on the above-entitled case.



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 26th day of April, 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.

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.

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.

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.

BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

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

Case No. CBA-1174-C

PETITION OF THE HOLTON-ARMS SCHOOL, INC.

RESOLUTION TO RE-OPEN THE RECORD

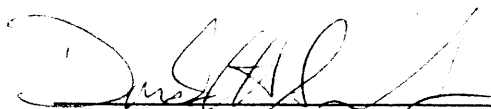
(Resolution Adopted March 20, 2002)
(Effective Date of Resolution: April 15, 2002)

The Board of Appeals has received correspondence from Diana Coulton Beebe, Head of School as The Holton-Arms School. Ms. Beebe's March 4, 2002 letter encloses the Holton-Arms School's Quarterly Report, required by the Board's Resolution of September 7, 2001, to Modify and Re-affirm the Special Exception.

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 Ms. Beebe's letter and the Quarterly Report at its Worksession on March 20, 2002. By consensus the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. CBA-1174-C is re-opened to receive Diana Coulton Beebe's letter of March 4, 2002, and the Holton-Arms School's Quarterly Report for the quarter ending November 30, 2001.

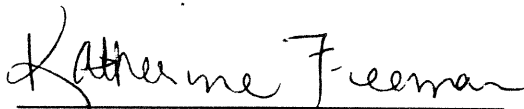


Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Case No. CBA-1174-C

Page 2.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 15th day of April, 2002.

A handwritten signature in cursive script that reads "Katherine Freeman". The signature is written in dark ink and is positioned above a horizontal line.

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.

BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

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

Case No. CBA-1174

PETITION OF THE HOLTON ARMS SCHOOL

RESOLUTION TO MODIFY AND REAFFIRM SPECIAL EXCEPTION

(Show Cause Hearing Held: February 28, March 6,
March 7, March 13, March 27 and March 28, 2001)

(Effective Date of Resolution: September 7, 2001)

BACKGROUND

Case No. CBA-1174 is a special exception granted to the Holton Arms School on November 29, 1961 for the construction and operation of a private educational institution for girls.

Pursuant to Section 59-G-1.3(e) of the Montgomery County Zoning Ordinance, the Board of Appeals for Montgomery County conducted a Show Cause Hearing on the above captioned special exception use. Jody S. Kline, Esquire appeared on behalf of the special exception holder, The Holton Arms School. He called as witnesses: Diana Beebe, Head of the Holton Arms School, Geraldine Wilson, Chair of the Music Department at Holton Arms, Christopher Townsend, Theater Director, Theater Manager and Technical Director at Holton Arms, Susan Spingler, Director of Special Programs at Holton Arms, Pamela Yerg, Area Director for Montgomery County Special Olympics, Michael DelGrande, Athletic Director at the Bullis School, Peter Karl, coach for the Capital Sea Devils Swim Team, Ron Goldblatt, Executive Director of the Association of Independent Maryland Schools, Sherman Isbel, Pastor of the Presbyterian Reform Church, and Lee Cunningham, an expert in transportation planning and traffic engineering. Mr. Kline himself testified as the former Chairman of the Building and Grounds Committee for Holton Arms.

Norman Knopf, Esquire, appeared on behalf of the complainants. He called as witnesses Linda Kauskay, George Esenwein, and Ralph Shofer, an expert in engineering.

Stanley N. Garber, Zoning Investigator with the Department of Permitting Services also testified.

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.

Modifications to the special exception have included :

S-516 - to permit the construction of a playground area and a small vehicle parking area - December 23, 1976.

CBA-1174 - to permit construction of a maintenance building - March 15, 1985.

CBA-1174 - to permit the operation of a Day Care Center for 8-10 children of Holton Arms faculty and staff - April 10, 1985.

CBA-1174 - to permit regrading and enlargement of a soccer field May 27, 1987.

CBA-1174-A - to permit construction of a performing arts center, gymnasium, tennis courts, and track and soccer field – October 23, 1987.

CBA-1174-B - to permit an increase in enrollment to 650 students, a decrease in the amount of property subject to the special exception; the construction of an addition for a semi-detached elevator tower; the construction of an addition to contain bathrooms accessible to handicapped persons, and to contain some kitchen facilities; re-grading and realignment of several athletic fields; construction of seven tennis courts; realignment of the lower school driveway system and relocation of the lower school recreation areas - April 15, 1994.

CBA-1174-B - to permit the construction and use of a new maintenance building - August 11, 1995.

CBA-1174-B - to approve changes to the school's signage – October 24, 1996.

CBA-1174-B – to permit construction of an entry feature including a wall, piers and a gate - August 27, 1998.

FINDINGS OF FACT

1. On February 14, 2000, The Holton Arms School filed an application for a modification of Case No. CBA-1174. The Application proposes an increase in land area of 3.60 acres; an increase in enrollment of 15 students for a total of 665 students; construction of a new science wing; construction of additions to the existing Performing Arts Center; construction of an addition to the Lower School Building; construction of a third athletic field with a building, seating for 750 spectators, and space for team buses;

and construction of a driveway onto Beech Tree Road. A separate application, Case No. S-2467, requests approval of a child daycare facility on the campus of the school.

2. On February 25, 2000, the Board of Appeals received a written complaint from Peter Masters, Jane Kinzie, George Esenwein, Carrie Fitch, Richard Fong and Wendy Meer, residents of the neighborhood, citing a number of alleged violations of the school's special exception [Exhibit No. 117.9].

3. On March 16, 2000, the Board requested that the Department of Permitting Services conduct an investigation of the special exception.

4. By memorandum dated May 29, 2000, Stanley N. Garber, Zoning Investigator reported the findings of his investigation to the Board [Ex. No. 27]. In a Notice of Violation issued to Holton Arms School and dated May 19, 2000, Mr. Garber listed the following six violations of the special exception:

- i. Enrollment at the school exceeded the permitted enrollment of 650 students by 10 students;
- ii. The school obtained a building permit to build a patio and external stairs in its Centennial Garden without modifying the special exception;
- iii. Enrollment at the on-campus childcare facility exceeds the 10 children allowed in the special exception by nine children;
- iv. Enrollment at the on-campus childcare facility includes children of staff from schools other than Holton Arms in violation of the special exception;
- v. Holton Arms's summer camp begins in June; and
- vi. Several co-educational programs are being offered to the general public seven days a week without the Board's approval.

5. The Board of Appeals' April 14, 1994 Opinion allowed enrollment at Holton Arms to increase to 650 students. Diana Beebe testified that in 1994 enrollment at the school increased to 663 students, and between 1994 and the present, ranged from 660 to 662. Ms. Beebe also testified that the enrollment attrition rate in the last school year was a little over two percent. [Transcript, March 6, 2001, pp. 76-79].

6. The Board of Appeals' April 4, 1985 Opinion allows enrollment at the on-campus child care facility for up to ten children. Diana Beebe testified that enrollment at the child care facility has typically been 18-20 [Transcript, March 6, 2001, p. 102]. In 1994, Holton Arms applied to increase enrollment at the child care facility, but later withdrew the application in anticipation of filing a separate special exception for the child care facility [Transcript, March 13, 2001, pp. 76-77].

7. In May of 1999, Holton Arms obtained a building permit for the construction of an outdoor patio and stairs as part of its Centennial Garden. The school did not modify the special exception to add this amenity. [Exhibit No.117, Transcript, February 28, 2001, pp. 111-120.]. Ms. Beebe testified that she was told by the school's construction manager for the project that "except for a permit for lighting, which we needed to get,

that there was no further permission that was necessary as a part of the special exception". [Transcript, February 28, 2001, p. 118].

8. By letter dated February 9, 2001, the Board received a subsequent complaint that the school is renting space to the World Presbyterian Church for Sunday services [Exhibit No. 76]. The Board requested that Mr. Garber conduct an additional investigation of the use, pertaining to this complaint. Mr. Garber found that Holton Arms rents space to the Church for two meetings on Sundays for 25 - 40 people per meeting. At the public hearing on February 28, 2001, Holton Arms agreed to have this additional complaint added to the subject matter of the Show Cause Hearing. [Transcript, February 28, 2001, pp. 27-28].

9. By letter dated March 7, 2001, the Board also received a complaint that Holton Arms was conducting repairs and renovations to its entrance at River Road without permission from the Board of Appeals. Following a request from the Board, Mr. Garber also investigated this complaint and reported to the Board at the public hearing on March 13, 2001 [Exhibit No. 126]. In addition, Mr. Kline, as former Chairman of the school Building and Grounds Committee, testified that in order to provide a sheltered, safer place for students and others to wait at the bus stop outside the school property on River Road, in 1998 the school submitted an application to Montgomery County's Adopt a Bench program. Mr. Kline testified that the renovations at the entrance arose out of discussions with Montgomery County officials about what would be necessary to fulfill requirements of the Americans With Disabilities Act and to improve pedestrian circulation at the intersection where the bus stop is located [Exhibit Nos. 127(d), (e), (f) and 128; Transcript, March 13, 2001, pp. 36-37]. Holton Arms agreed to have this matter added to the subject matter of the Show Cause Hearing. [Transcript, March 7, 2001, p.6].

10. Holton Arms conducts an extracurricular creative arts program on its campus called Center of the Arts. Total enrollment of the program for Spring 2001 was 365 [Exhibit No. 130]. Of those enrolled at Center of the Arts, 112 are Holton Arms students. None of the faculty for Center of the Arts are also Holton Arms faculty [Transcript, March 7, 2001, pp.40]. The actual number of enrollees is 311, some enrollees in the program are enrolled in more than one class, and may therefore count for multiple 'slots'.

11. Holton Arms conducts a summer camp program on its campus, called Creative Summer. During the summer of 2000, enrollment at the camp was 800 children. In its modification request, Holton Arms proposes to reduce enrollment in the camp to 750 children. [Transcript March 6, 2001, p.156]. Thirty-six Holton Arms students attended the camp during Summer, 2000. Some of the camp attendees were siblings of Holton Arms students. Of 180 faculty anticipated for Summer, 2001, 20 will be Holton Arms faculty. [Transcript, March 6, 2001, p. 181-182].

12. Holton Arms rents its swimming pool to the Capital Sea Devils Swim Team for competitive swim training. During the current academic year, 80 students are training at

the Holton Arms pool, 15-20 of them are Holton Arms students. [Transcript, March 7, 2001, p. 61].

13. Holton Arms has a performing arts theater on its campus. The theater hosts twelve events per year. In the last school year, Holton Arms made the theater available to 6 non-Holton Arms groups for such events. [Transcript, March 6, 2001, pp. 137-138, 144].

14. Holton Arms rents space to affinity groups such as the Yale Club or the Dartmouth Club for meetings which may or may not involve Holton Arms students. [Transcript, March 6, 2001, p. 45].

15. The Applicant's Traffic Analysis states that during the 1999-2000 school year, with an enrollment of 661 students, the total traffic trips generated by Holton Arms were 504 incoming and 302 outgoing during the morning peak travel hour of 7:15 to 8:15. Afternoon peak trips were 247 incoming and 291 outgoing [Exhibit No. 48(b)].

16. A subsequent, hand traffic count conducted March 20, 2001 through March 22, 2001 [Exhibit Nos. 138, 139 and 139A], shows a total of 864 a.m. trips to Holton Arms on Tuesday, March 20, 2001 during the morning peak travel hour of 7:15 to 8:15. [Exhibit No. 138 and Transcript, March 28, 2001, pp. 51-52].

17. Lee Cunningham testified that a table from the Institute of Transportation Engineers, Trip Generation Report, Sixth Edition, [Exhibit No. 149] indicates that private schools with an average enrollment of 413 students generate an average of .92 trips per student. Mr. Cunningham stated that he believes that these calculations can be accurately applied, in a linear fashion. [Transcript March 28, 2001, pp. 84-88]. Therefore, for example, with an approved enrollment of 650 students, Holton Arms would be expected to generate 598 traffic trips.

18. Under cross-examination by Mr. Knopf, Mr. Cunningham confirmed that the Applicant's Traffic Report shows that there is a total of 5,027 east and west bound trips on River Road, at its intersection with Royal Dominion Drive, between 7:15 and 8:15 a.m. Therefore, the a.m. peak trips for Holton Arms on Tuesday, March 20, 2001, would comprise seventeen (17) percent of the trips moving through the intersection [Exhibit No. 48(b), Transcript, March 28, 2001, 9:30 a.m., pp. 61-63].

19. In addition, Maryland State Highway Administration statistics for the same intersection submitted by the Applicant show a total of 8,243 trips during the hours of 5 p.m to 7 p.m. The Applicant's driveway count, conducted on Tuesday, March 20, 2001, shows a total of 680 trips for Holton Arms during this time period. [Exhibit Nos. 146, 139, Transcript, March 28, 2001, 9:30 a.m., pp. 63-64]. Therefore, these evening trips at Holton Arms on Tuesday, March 20, 2001, would comprise eight (8) percent of all trips using the intersection of River Road and Royal Dominion Drive.

CONCLUSIONS OF LAW

THE PROCEEDINGS

1. Although Holton Arms has filed a petition for a modification of its existing special exception, and a separate petition for a special exception for a child day care facility, Section 59-G-1.3(e)(4) requires that the Board give a show cause hearing "priority on its docket" and that such hearings be held "as promptly as possible." Therefore, this hearing has been held and the issues decided in advance of the other pending petitions related to this property.

2. Section 59-G-1.3(b) of the Montgomery County Zoning Ordinance sets out the applicable procedures for the Department of Permitting Services relating to the Department's inspection of a special exception upon receipt of a complaint. Section 59-G-1.3(b)(3) provides:

... the Department shall forward to the Board written findings which shall state the nature of the complaint and the results of the inspection conducted pursuant thereto and shall provide a description of the corrective action ordered; the department may recommend modification of the terms and/or conditions of the special exception and/or propose remedial action as deemed appropriate under the circumstances.

Section 59-G-1.3(b)(4) then provides:

Upon receipt of the Department's findings and recommendations, the Board may dismiss the complaint if the Department report indicates that such complaint is without merit, or the Board may initiate action as provided for in this section....

3. This proceeding was conducted pursuant to Section 59-G-1.3(e) of the Montgomery County Zoning Ordinance. That Section provides:

If, under this Article, the Board receives a written notice from the Department that the terms or conditions of a special exception grant . . . are not being complied with, the Board, by an affirmative vote of at least 3 members, may order the special exception holder and the property owner to appear before the Board at a date, time, and place specified to show cause why the special exception should not be revoked.

4. At its Pre-hearing Scheduling Conference on January 9, 2001, the Board unanimously voted to order a show cause hearing based on the May 29, 2000 memorandum from Stanley N. Garber, Zoning Investigator. [Evidence Presented, para. 4]. The scope of the proceeding was expanded to include two additional issues with the consent of Holton Arms. [Evidence Presented, para. 8 and 9].

5. Section 59-G-1.3(e)(6) sets forth the actions that the Board may take in the event of the finding of a violation. It provides in part:

The Board, by the affirmative vote of at least 4 members, may reaffirm or revoke the special exception, or amend, add to, delete or modify the existing terms or conditions of the special exception.

The Board believes that implicit in this authority is the authority to make necessary changes in the terms and conditions of the special exception to remedy the detrimental circumstances arising out of any violation found to exist.

THE DOCTRINE OF ACCESSORY USES

Several of the complaints at issue involve programs offered at the school, claimed by the school to be accessory to the primary, private educational institution use. These programs include the Center of the Arts program [Evidence Presented para.10], the Creative Summer program [Evidence Presented para 11], and the theater for the Performing Arts [Evidence Presented para. 13].

So long as a program or use is "accessory", such a use is permissible under the original special exception. The question presented to the Board is: have these programs/uses exceeded what should be considered accessory? It is argued by the complainants that the current intensity of these programs, and their lack of a "nexus" to the school's primary, educational use, exceeds the permissible level of "accessory use" and instead requires separate special exception approval. In fact, the school implicitly admits that its child care program requires a special exception in this manner, and has made a separate application to the Board for a child care facility [Case No. S-2467].

Section 59-A-2.1 of the Zoning Ordinance defines an accessory use as follows:

A use which is (1) customarily incidental and subordinate to the principal use of a lot or the main building thereon, and (2) located on the same lot the principal use or building.

In *County Commissioners of Carroll County v. Zent*, 86 Md. App. 745, 587 A. 2d 1205 (1991) the Court of Special Appeals, after finding "a paucity of Maryland cases defining accessory uses" surveyed a number of accessory use cases from other jurisdictions. It concluded its survey with the following quotation from the case of *Lawrence v. Zoning Bd. of Appeals of the North Branford*, 158 Conn. 509, 264 A.2d 552 (1969):

The ordinance in question defines an accessory use as one which is subordinate and customarily incidental to the main building and use on the same lot. The crucial phrase "customarily incidental" is typically present in this type of legislation....

The word "incidental" as employed in a definition of "accessory use" incorporates two concepts. It means that the use must not be the primary use of the property but rather one which is subordinate and minor in significance. Indeed, we find the word "subordinate" included in the definition in the ordinance under consideration. But "incidental," when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant....

The word "customarily" is even more difficult to apply. Although it is used in this and many other ordinances as a modifier of "incidental," it should be applied as a separate and distinct test. Courts have often held that use of the word "customarily" places a duty on the board or court to determine whether it is usual to maintain the use in question in connection with the primary use of the land. In examining the use in question, it is not enough to determine that it is incidental in the two meanings of that word as discussed above. The use must be further scrutinized to determine whether it has commonly, habitually and by long practice been established as reasonably associated with the primary use.

Id. 264 A.2d at 554 (citations omitted).

Zent, 86 Md. App. at 767-768.

The Court in *Zent* then applied *Lawrence* and other cases surveyed to the case before it. For purposes of this matter, the Board observes that the ordinance described in *Lawrence* is strikingly similar to 59-A-2.1. Application of the doctrine of accessory uses will be discussed below.

THE VIOLATIONS

The Board finds that each of the violations as identified by the Department, both in the Department's May 29, 2000 memorandum [Evidence Presented, para. 4], and the two violations subsequently added [Evidence Presented paras. 8 and 9] are, in fact, violations of the terms and conditions of the special exception. Each violation is discussed individually below:

1. School Enrollment. The Board finds that the school allowed its enrollment to exceed the limits previously established by the Board, and that this constitutes a violation of the special exception terms and conditions. The Board's opinion of April 15, 1994 authorized enrollment of 650 students. Ms. Beebe's testimony from that hearing is described in the opinion as follows:

Based on the representations in the 1994 opinion of the temporary need for the increase in enrollment, and the overall impact on traffic in the area of this violation in combination with those discussed below, the Board shall amend the condition permitting enrollment of 650 to reduce enrollment to 645. The Board notes that this reduction is within the ability of the school based on its attrition rate in the 2000-2001 school year of 2%, [Beebe testimony, Transcript, March 6, 2001, p. 79]. The cumulative traffic impact will be discussed below.

2. Centennial Garden. The Board finds that renovation of the Centennial Garden, without a request to the Board for modification of the approved special exception site plan, is a violation. According to Mr. Garber, the changes required the issuance of a permit by DPS. [Transcript, February 28, 2001, p. 29]. The construction of the Centennial Garden required both the issuance of a building permit and an electrical permit. Both of these permits should have been an indication to the school of the need to modify both the approved site plan as well as the approved landscape and lighting plan.

Again, the school took the position that these changes would have no impact. However, the addition of lighting is always of interest to the Board because of its potential impact on neighboring properties. The construction should have been brought to the attention of the Board in order for the Board to make this determination. At a minimum, such notice and approval is necessary so that when DPS inspectors go onsite, they are aware of what is permitted under the special exception approval. As a general rule, **any** change to plans previously approved by the Board must be submitted, in advance, for approval under Section 59-G-1.3(c). This requirement is also contained in the specific standards for private educational institutions in Section 59-G-2.19(b)(2) which states:

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 effects 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.** (Emphasis added.)

In order to remedy this particular violation, the school must submit to the Board a revised site plan and a revised landscape and lighting plan showing the construction of the Centennial Garden, as well as a photometric plan showing that no illumination from the Centennial Gardens will leave the site.

Diana Beebe, Head of School, explained that the requested increase in enrollment [from 630 to 650] was designed to address two problems. The rate of acceptances fluctuates, and it is difficult for the school to determine exactly how many students will be enrolling. In addition, a "demographic bubble" is moving through the school from the lower grades, and is expected to reach the upper school in the next few years. While the upper school is normally limited to 300, a larger enrollment will be needed to accommodate the additional students currently enrolled in the lower school. If the maximum enrollment is increased to 650, as requested, the school will have the flexibility to remain within the requirements of the special exception. The additional enrollment will not result in changes to the program or an increase in the intensity of the use.

Opinion, April 15, 1994, page 2.

The 1994 Opinion provides the Board relevant information in two areas. First, the need for the 650 enrollment maximum was a temporary condition to deal with a "demographic bubble". Second, the increase would allow the school to deal with fluctuating acceptance rates.

The school was aware that it had to return to the Board when it exceeded the maximum enrollment. [Beebe testimony, March 6, 2001 Transcript pp. 76-79]. In fact, the school exceeded its maximum enrollment in the 1994-1995 school year with 663 students. Yet the school waited seven years before returning to the Board to request an increase.

The Board notes that the school has recently been able to control its enrollment, which has been maintained between 660 and 663 over the last five years. The Board believes that the school can control fluctuations in enrollment by limiting acceptances

The Board is extremely concerned about an act first and request permission later approach among special exception holders. Ms. Beebe repeatedly stated that the actions of the school both in this instance, as well as for the following violations, had a "minor impact" [Transcript, March 6, 2001, p. 85] and that they did not rise to the level of import for the Board to consider. This has the effect of replacing the discretion of the Board with determinations made by special exception holders. Clearly this was not the intent of the County Council in the adoption of the special exception program.

The decision of whether a change in the conditions of a special exception is minor or material should always be a matter for the Board. Such a decision is a basic component in the evaluation of compatibility. See, *Crowther, Inc. v. Johnson*, 225 Md. 379, 383 (1961). It should never be left to the special exception holder to evaluate the impact of a change to a special exception operational activity, or approved site plan. In every instance that such a change is being considered, the issue must be brought to the attention of the Board prior to its implementation under the modification provisions of Section 59-G-1.3(c).

3. Child Care Facility Enrollment. The school received approval for a day care center in the Board's opinion of April 4, 1985. That opinion authorized:

... that petitioner may operate a Day Care Center to be used by the faculty and staff of Holton-Arms school only, and which may accommodate up to ten (10) children.

The investigation by DPS established 19 children at the day care center instead of 10 [Garber testimony, Transcript, February 28, 2001, pp. 29-29]. The complainants obtained information from the State Department of Health and Mental Hygiene [Ex. No. 117.9] that in 1996 the school was licensed for 21 children in day care, and for 26 in 1998. Mrs. Beebe testified that typically, the number of children was between 18 and 20 over the last several years. [Transcript, March 6, 2001, p. 102].

DPS also provided evidence of a second violation of this condition. Mr. Garber testified that the day care center was used by teachers employed at the Norwood School and Landon School. [Transcript, February 28, 2001, p. 30]. The complainants submitted evidence from the Holton Arms School Handbook that the day care operation was open to the community [Exhibit 9-1(d)]. Finally, Ms. Beebe testified that four to five children per year out of the 20 children in day care were from teachers teaching at Norwood School, Primary Day School and Landon School, [Transcript, March 6, 2001, p. 101].

The April 4, 1985 opinion made a finding that the modification allowing the child day care center would not substantially change "the nature, character or intensity of the use of the property." Presumably this finding was made as no additional traffic would come onto the school property since the Holton-Arms staff would already be at the school. By adding children brought by parents outside the school, this would not be true, and up to twenty additional trips would be added daily.

In 1994, the school made a modification request to increase the limit of the number of children in the day care program. The school was informed by Board staff at that time that they would need a separate special exception if they wished to expand the day care center enrollment beyond the 1985 limits. [Beebe testimony, Transcript, March 13, 2001, pp. 76-77]. It was not until 2001 that such a request was made, seven (7) years later. Despite this knowledge, in the interim, the school took it upon itself to double the approved enrollment, without the Board's permission.

It was the determination of the Board in 1985 that, with the limitations provided, the child day care use would be accessory to the primary private educational use. The school was advised that the change proposed in 1994 would require a second special exception, by implication, being no longer accessory. Mr. Goldblatt, the Executive Director of the Association of Independent Maryland Schools was asked if, in his experience, the private schools that were members of his organization had child day care. He stated that he was not aware of any [Transcript, March 7, 2001, p. 91].

The Board finds that the child day care center as presently operated by the school is in violation of the April 4, 1985 authorization and is no longer accessory to the use. The school must limit enrollment in the child care center to Holton-Arms faculty and staff only. This should be done as quickly as possible, by attrition, as the Board does not wish to harm the children presently enrolled in the program. There shall be no non-Holton children in the day care program by September 2001.

In addition, the enrollment at the child care facility shall be capped at a maximum of 15 Holton-Arms faculty and staff children only, for the next two (2) years. Thereafter, the school may request a new special exception for a child care facility which will be evaluated by the Board at that time.

4. Creative Summer. The Board's opinion in Case No. S-516 dated November 11, 1976, observed that the school conducted "a summer camp program" and that it was "offered in July and August." The DPS Notice of Violation [Ex. No. 27] noted that the summer camp program began in June, instead of July.

The Board notes that the summer camp was never formally approved, but was merely observed as existing in the 1976 opinion. The 1976 opinion itself only authorized additional playground and parking areas.

The Board finds that ordinarily, a summer camp program is an accessory use to a private educational institution. Mrs. Spingler testified that there are numerous examples of such programs throughout the county, including programs at Landon, Norwood, Bullis and Stone Ridge. [Transcript, March 6, 2001 p.158]. Mr. Goldblatt, Executive Director of the Association of Independent Maryland Schools testified that summer programs are not unusual at private schools. [Transcript, March 7, 2001, p.80]. However, the evidence provided the Board also shows that these camp enrollments are usually less than the enrollment of the school. [See, Ex. No. 136 (h) and (I).] In 2000, the enrollment at the Holton-Arms summer program was 800 campers and 200 counselors. The complainants testified that they had observed the enrollment creeping up and the amount of traffic caused by the summer camp increasing over time. [Kauskay, Transcript February 28, 2001, p. 73].

Mr. Garber testified that he obtained the information for the June opening of the camp from the information made publicly available by the school. [Garber testimony, February 28, 2001, p. 30]. Mrs. Beebe testified that the summer camp had been in existence since 1973. She also testified that more than half of the students in the camp were not registered at the school. [Transcript, February 28, 2001, p. 144].

The Board finds, that while the summer camp is accessory to the school, the intensity of the summer camp use exceeds what would customarily be subordinate and incidental. While the school proposes to reduce enrollment at the camp to 750, there was evidence presented to the Board that only thirty-six Holton Arms students attended the camp in the summer of 2000, and of the 180 faculty members anticipated for the 2001 camp, only 20 will be Holton-Arms faculty. [Evidence presented, para. 11].

In order to bring the summer program into compliance with the zoning ordinance, the program must be structured in such a way that it is accessory. Therefore, the Board finds that, beginning with the summer 2001 season, enrollment in the Creative Summer Program must consist of at least 50% children who are Holton-Arms students or from families of Holton-Arms students. Any child accepted into the camp as of March 28, 2001 is permitted to remain enrolled. Enrollment of the camp shall not exceed 645 children.

5. Center of the Arts. Authorization for the Center of the Arts program is not found in any of the Board's opinions. Although after school programs for students of a private educational institution are not unusual, again it is the scope and intensity of the accessory use that creates difficulty for the Board.

The school advertises the Center of the Arts as open to the public. [Exhibit 9-4(a)i-vi]. According to Ms. Beebe, the program started in 1984. Currently, approximately 150 of those participating in the program are Holton-Arms students and 200 are non-Holton-Arms students. [Transcript, March 6, 2001, p.4]. Ms. Spingler testified that only 46% of the participants are Holton-Arms students.

In order to be an accessory use, the Center of the Arts Program must be incidental to the primary use, i.e., serving the students at the school, as well as subordinate. In this case the Board finds that the larger percentage of children enrolled in the Center of the Arts Program who are not Holton-Arms students renders the program neither incidental nor subordinate. The Board finds that the program can continue, provided however, that 75% of the enrollment must be Holton-Arms students or children from the families of Holton-Arms students.

6. Rentals. The Board finds that none of the rentals of Holton-Arms facilities to non-Holton-Arms students or families is permitted in the opinions granting or modifying the special exception. Further, the Board finds that such rentals cannot be considered accessory to the school use, and therefore must cease. Rental of the pool, theater, and space for affinity groups must cease at the conclusion of the current school year or the governing contract, whichever occurs sooner. With respect to use of Holton-Arms facilities by the World Presbyterian Church, that contract must also be terminated in not more than one year from the date of this opinion.

7. Entrance Renovations. The Board finds that the renovations to the River Road entrance constitute a change in the school's approved site plan that requires prior approval by the Board in accordance with Section 59-G-2.19(b)(2). The school must include all changes to the entrance on the revised site plan required in connection with the Centennial Garden.

8. Excessive Traffic Generation. The evidence presented to the Board by the school's traffic engineer [Ev. Pr. para 17] established the expected traffic impact of a private education institution. Based on the Institute of Transportation Engineers Trip Generation Manual, the expected number of trips is .92 trips per student. With an approved enrollment of 650 students, Holton Arms would be expected to generate 598

trips during the am peak. This calculation is consistent with the Local Area Transportation Review Guidelines (April 1998) adopted by the Montgomery County Planning Board, Table B-5, page 35. The evidence establishes, however, that with 864 am peak hour trips and 680 trips during the evening hours, the traffic impact of the school is greater than should be expected for this type of use, and not inherent to a private educational institution. Based on this evidence, the Board finds that the several accessory uses identified above, along with the overenrollment at the school and at the day care facility, are a substantial cause of the excessive traffic impact. This excessive traffic impact, in conjunction with the application of the accessory use doctrine, necessitates the remedial amendments to the special exception conditions as imposed above.

9. Reporting Requirements. Beginning at the conclusion of the current school year, for a period of two years, the school shall submit quarterly reports to the Board regarding compliance with the terms and conditions of the special exception, including those imposed in this opinion. The report shall include student enrollment numbers, number of children in day care and shall confirm that all are children of Holton-Arms faculty or staff, number of participants in Center of the Arts program and percentage of Holton-Arms students and family members, details regarding the Creative Summer program, including dates and number of participants and staff, and updates on the termination of existing non-accessory contracts.

SUMMARY

Section 59-A-4.127 of the Zoning Ordinance provides:

Special exceptions or variances granted by the board shall be implemented in accordance with the terms and conditions set forth in the opinion of the board which shall include the requirement that the petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and representations of his attorneys, to the extent that such evidence and representations are identified in the board's opinion granting the special exception or variance.

The Board believes that to preserve the integrity of the special exception process there must be public confidence in the imposition and enforcement of the conditions originally imposed. The conditions of a special exception act as a covenant between the community, the special exception holder, and the County. The conditions ensure that the special exception operation will be harmonious with the character of the neighborhood. The refusal to abide by the conditions is a violation of the representations made in public before the Board, and relied on by the Board in granting its approval.

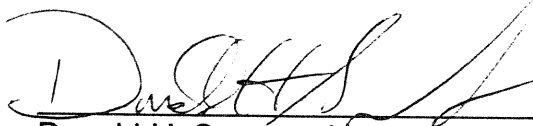
In this case the Board imposes remedies for the violations that were found, and amends the conditions of the special exception appropriately. The Board imposes these remedies based on (1) the impact of the violation on the community, i.e.,

excessive traffic, (2) compliance with applicable law, e.g., the law of accessory uses, and (3) compliance with the site plan approval requirements of the zoning ordinance. It was suggested during the proceeding by counsel for the complainants that the mere fact of a violation, in and of itself, permitted the imposition of a remedy. In this case, the Board did not need to reach this issue, as compelling as this notion was for the Board. The Board does not believe that it is precluded from exploring this issue at a later date in another case.

Therefore, the Board amends the existing special exception as identified above, and otherwise reaffirms the special exception for a private educational institution.

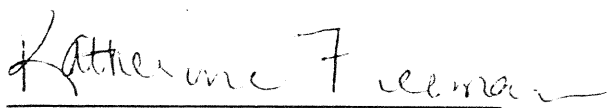
On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, Mindy Pittell Hurwitz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

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 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 7th day of September, 2001.



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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COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

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.

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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

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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."

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-Appendix I-

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

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-Appendix II-
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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.

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(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.)

COUNTY BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

COUNTY OFFICE BUILDING
ROCKVILLE, MARYLAND 20850

Case No. S-729

Telephone
Area Code 301
279-1226

PETITION OF HOLTON-ARMS SCHOOL, INC.

ORDER TO CANCEL AND DISMISS SHOW CAUSE HEARING
(Resolution adopted September 18, 1980)

The Board has received information by letter dated September 10, 1980, from George E. Hamilton, III, Esq., that "...the Holton-Arms School has terminated the tennis program on School tennis courts. ... I will assume, until further notice, that the Show Cause Order issued by your Board will be withdrawn in view of the School's action in terminating the tennis program."

Based on the foregoing information, the Board finds that the cause for the hearing has been eliminated and the need for the hearing (scheduled for October 16, 1980) has become moot; therefore,

BE IT RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that the Show Cause Hearing has become unnecessary due to the termination of the tennis program (private club activity), and it shall be, and hereby is dismissed.

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

Entered in the Minute Book of
the County Board of Appeals
this 25th day of September, 1980.

Lollie H. Kyte
Clerk to the Board

COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. S-729

PETITION OF THE HOLTON-ARMS SCHOOL, INC.
(Hearing held April 3, 1980)

OPINION OF THE BOARD

This proceeding arises on the petition for a special exception pursuant to Section 59-G-2.19 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1977, as amended) to permit addition of a library to the existing private educational institution. The subject property consists of approximately 80 acres, at 7303 River Road, Bethesda, Maryland, in an R-200 Zone.

Decision of the Board: Special exception granted,
as conditioned herein.

Petitioner's Proposal

Spokesmen for the petitioner appeared and agreed to be bound by testimony, exhibits and evidence in the record as follows: James W. Lewis, headmaster of Holton-Arms, testified that the school moved to Montgomery County in 1963 and presently serves approximately 600 students, girls attending grades 3 through 12. Most students live in Montgomery County, although the school draws also from the District of Columbia and Northern Virginia. The school is known for its strong academic program, and has determined that a new library is needed to support that program, since the library built in 1961 has become inadequate to accommodate the number of students and the new uses now required in a library program. Mr. Lewis indicated that a planning committee has carefully considered the long range future needs of the school. They conclude that the proposed location for the new library is the most suitable both in terms of its relationship to the existing classroom building, and the need to preserve space for additional classrooms (to be added at the north end of the present classroom building) and an auditorium (to be constructed adjacent to the existing building, see site plan, Exhibit No. 21). Although these facilities would not be built in the immediate future, the school wishes to reserve the sites for eventual future construction. In the headmaster's opinion, the proposed location is the only workable site in which to construct a library meeting the criteria established by the school: that it be built on a single floor affording easy access for handicapped persons and

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others coming to and from the academic building, and that it require no increase in staff. He noted that the wooded area across Booze Creek is covered by covenants barring construction until after 1986.

The headmaster testified that there would be no measurable increase in vehicle traffic on the school site as a result of the library extension, since there would be no increase in the student body. The driveway shown at the rear of the site would be used for access by construction vehicles during the construction period. After completion of the library, this driveway would be used solely for necessary delivery of materials to the library. In his opinion, such use would not constitute a nuisance to residents of the surrounding neighborhood.

Mr. Lewis further testified that he believes the proposed addition is compatible with the architecture of the school: it has been designed to achieve the lowest possible silhouette, and would use building materials blending with those used in the existing classroom buildings, and compatible with those of neighborhood homes. In response to questions, he indicated that he felt that the addition would not adversely affect the use and enjoyment of the home, rear yard and swimming pool area of the Hurwitz' property (immediately adjacent to the north), since the library would be 20 feet from the common property line, and the pool area appeared to be an additional forty to fifty feet inside the Hurwitz property.

Arther Keyes, the project architect, testified that his firm had conducted extensive studies considering the future needs of the school as outlined by the school's planning committee. After considering various possible locations, they concluded that the only practical site for the library was on the west side of the upper school building, since other potential sites were better suited for future classroom or auditorium additions, or "difficult" for building. In his judgment, the area at the north end of the existing classroom building (which opponents cited as a possible site for the library) is not large enough to accommodate a one-story building, since that would impinge upon present play fields and would require taking additional trees. He stressed that a plan for a one-story library (rather than a multi-story building) was an essential criterion established by the school.

The proposed library would be constructed according to plans entered into the record as Exhibits Nos. 4(c) through (e), 17 and 18. The structure would be an irregularly-shaped building comprised of an octagonal core area (the central library room, 18 feet high), with "wings" extending from four corners.

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Only one of these (the southwest corner closest to the driveway) would be two stories high. This structure would be linked to the existing school building by a 30-foot-long "bridge," which would extend from a point midway between the first and second levels of the classroom building. The architect emphasized that the connection at this elevation is essential; due to the design of the stairwell and elevator in the existing building, the passageway to the library must take off from a landing area of the stairway to allow for unimpeded passage. This plan allows easy access to all floors of the school building for both persons and equipment, since the elevator is available to assist in moving handicapped persons or heavy loads of books or equipment.

The architect testified that the library building "digs itself into the hill" so that the bookstacks would be underground, but library, faculty and meeting rooms could get natural light. The highest point of the library structure would reach approximately to the level of the rain gutter at the base of the roof of the existing school. Air-handling equipment would be installed on the roof above the 18-foot-high central library room, and would be concealed from view by masonry walls. He stated that fans can function most efficiently at roof top level, and enclosure behind masonry is the best way to restrict sound transmission. The architect does not anticipate that the noise of the fans would cause disturbance to nearby property owners, since the fans would be installed in the corner of the library building nearest the school and shielded by the masonry wall. In his opinion, any noise would be more disturbing to persons on the school site than to residents of nearby properties.

The building would be approximately 12 feet above grade at the corner of the structure nearest the property line; from this point the roof would angle upward to a point approximately 18 to 20 feet above grade. Exterior walls would be constructed of a rose-colored brick similar to those in the existing school building; the roof would be painted a light neutral gray. These colors were selected to achieve greatest possible harmony with existing surroundings.

In response to questions, the architect indicated that the 30-foot-long bridge between the existing school and the library structure was necessary in order to retain the natural drainage swale between the existing building and the addition, to allow enough light and air to reach windows in the existing classroom building, and to avoid the necessity for significantly more expensive materials and construction techniques which would be required by the building code if the addition were less than 30 feet from the existing building. He testified that it would not be feasible to build the bridge directly from

the first level of the classroom building, because design of the existing stairwell would foreclose access to the bridge. In reply to a question concerning the feasibility of installing the bridge on a slight slope, so that the library addition could be depressed five or six feet further into the ground, the architect replied that this could be done, but it would make it "somewhat harder to push carts of books" through the passageway between the library and classrooms.

Mr. Keyes testified that the location of the service road had been redesigned (see Exhibit No. 19) in order to save trees. He acknowledged that construction of the library would require removal of trees on the library site itself, but stated that some trees now on-site include a mixture of old evergreens (some of which appear to be dying) and small new growth. In his opinion, it would be possible to preserve many trees in the area between the building and property line. He noted that it is only the northwest corner of the structure which would extend to within 20 feet of the property line; from this point the building would drop back from surrounding property lines. The architect testified that additional screening would be installed along the property line at the point closest to the library, to screen the view of the structure from the Hurwitz home and yard. He proposed installation of twelve white pine trees, 10 feet high at time of planting, in a staggered pattern on 10-foot centers; he felt this complied with recommendations of the Maryland-National Capital Park and Planning Commission (MNCPPC) technical staff. In his opinion, additional landscaping is not needed to screen view of the school site from the home adjacent to the Hurwitz'. He introduced photographs taken from the point on the school site which would be the closest point from the library extension to the property line. These pictures show numerous trees, both old and new growth, on both the school property and the Hurwitz property. In the architect's opinion, the view of the building from the Hurwitz property would be adequately shielded by existing and proposed trees; he noted that white pines grow rapidly and in a few years would be as tall as the building itself. He indicated that the highest point in the new building (parapet wall surrounding the central core) would be some 70 feet from the property line. In response to Dr. Hurwitz' concern that the proposed screening would be inadequate because his home is built at a higher elevation than the library site, Mr. Keyes testified that he believes the first floor level of the Hurwitz home is approximately the same elevation as the proposed school driveway.

In the opinion of the architect, the structure as designed is in harmony with the existing school and the surrounding neighborhood, in scale, size, and use of materials. Use of the

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building would cause no unusual noise, vibrations, dust or glare, nor any disturbing on-site activity. No additional parking would be required since there would be no enlargement of the student body. The only exterior lighting would be recessed soffit fixtures in the building, and small low-level fixtures along the driveway; no light or glare would be cast on adjacent properties. In his opinion, the building is "very residential in character," thanks to its low profile and choice of materials; admittedly it would not possibly "match" the nearby homes. The extension closest to the Hurwitz property is not essential to the structural soundness of the building, but was planned to accommodate programmed needs indicated by the school and (in the opinion of the school librarian) essential features of the new addition.

In response to questions by the attorney for the opposition, the architect agreed it would be possible to build a library at other locations on the site, but stressed that alternate locations were not as suitable for a library of the type dictated by the school needs. Moreover, construction at these other sites would foreclose use of those sites for future classrooms or auditorium. He pointed out that the proposed auditorium location was chosen on account of the sloping topography, and the relationship to existing locker room areas and parking areas on that side of the building. Construction of the library at the north end of the existing classroom building would foreclose future classroom expansion in this area. He emphasized that the school had always intended to build in the area selected for the library addition, as indicated by existing water and sewer connections already installed within 50 to 60 feet of the proposed building site. With respect to the suggestion of the Montgomery County Planning Board that the library structure might be moved somewhat further north (Exhibit No. 9(a)), Mr. Keyes stated that he was not sure exactly what the Planning Board had in mind, but observed that moving the building north would bring the structure even closer to the Hurwitz property and would disturb more of the existing screening.

Mrs. Anna Smink, head librarian at Holton-Arms, testified that she had participated in an extensive planning project to determine needs for a new library which would meet current educational standards. The existing school library does not meet standards required by the Maryland State Department of Education for a school of the size of Holton-Arms. Since it was not constructed as a media center, it lacks necessary electrical outlets, conference space, and other facilities needed for a library program. She stressed the necessity to have all facilities on one level, for easy access and transfer of heavy equipment between library and classrooms, as well as for security purposes.

In her opinion, the meeting room and faculty area proposed in the corner of the library closest to the Hurwitz property are essential to the school program, and could not function successfully in any other part of the library.

Opposition

Residents of three nearby properties appeared to testify in opposition. Dr. and Mrs. Byron Hurwitz, owner of the homesite at 7314 Burdette Court, the property closest to the proposed addition, expressed concern that construction of the addition and removal of much of the existing screening during construction would adversely affect their use and enjoyment of their home, whose family room and bedroom windows overlook the Holton-Arms site, as well as their yard and swimming pool area. Since their home is oriented to the rear, and includes some floor-to-ceiling windows, they believe the new building would be readily visible from both the exterior and interior of their home. Dr. Hurwitz introduced pictures showing the view of the school property from his home; he acknowledged that even in winter, trees partially shield the view of the existing school building, while in summer that building is now invisible. The witness stated that only 10 to 15 feet of the trees in these photographs are on his own property, however; the remainder are on the Holton-Arms site and many of these would be removed to make way for construction. Dr. Hurwitz noted his home is built at a higher elevation than the site of the proposed addition; in his opinion this would make it even more difficult to screen out the view of that addition. He believes his pool area is some 40 feet from the property line, and feels the new building would be "visually in our rear yard." He expressed concern that persons on the school property would be able to look into his yard and even into windows of his home.

Dr. Hurwitz' attorney introduced a letter from an architect, Edward Payne, which expressed concern that the construction of the library as proposed would adversely affect the use and enjoyment of the Hurwitz property, particularly considering the large areas of glazing at the rear of the Hurwitz home. The letter stated that the use of the existing swimming pool area would be particularly affected (Exhibit No. 13(b)).

William Davis of 7312 Burdette Court (adjacent to the Hurwitz' and also adjacent to the Holton-Arms property) stated that he believes that the library could be constructed between the classroom building and River Road, or elsewhere on the school site where construction would not adversely affect nearby residential properties. In his opinion, school activity is not

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compatible with a residential area, and the view of the existing facilities from Burdette Road is "institutional." His home is also built at a higher elevation than the school property, and he felt that the view of the new addition would adversely affect the use and enjoyment of his property.

Thomas Dougherty, of 7308 Burdette Court, appeared to testify and subsequently wrote a letter in opposition (Exhibit No. 23). He expressed concerns similar to those noted above.

Maryland-National Capital Park and Planning Commission Recommendation

The technical staff of the MNCPPC recommends approval of the petition, subject to installation of additional screen plantings at the northwest corner of the proposed library building, such planting to be subject to review and approval by the technical staff (see Exhibit No. 9(b)).

The report notes, "The Community Planning West staff have reviewed the subject application for a library at the Holton-Arms School. Since it would appear that the new facility will not significantly increase the student population, staff feel the proposal will not have any adverse effect on the master plan for that area. A library, by its nature, is a relatively unobtrusive activity, particularly in this instance, where there will be little or no outside traffic coming in. Staff therefore believe the proposed use will not have a detrimental effect on the neighborhood."

The Urban Design staff notes that "... the library building will come to within 20 feet of the property line of the adjacent homes on Burdette Court and will necessitate removal of all of the existing tree cover up to the property line at this point. Therefore, the staff recommendation is to require screen plantings at the northwest corner of the library building between it and the property line."

The Planning Board questioned the compatibility of the structure with the adjacent property, and raised questions whether the library building might be moved slightly to the north, or the structure built farther into the ground (Exhibit No. 9(a)).

Findings of the Board

The Board has carefully considered all testimony, evidence and exhibits in the record. Members of the Board visited the

property and viewed the site from various angles, including in particular the view from the adjacent residential properties. After considering all evidence in the record, including plans, exhibits and testimony binding upon the petitioner, as well as observations at the site, the Board finds that the use as conditioned herein meets both the general standards for the grant of the special exception and the particular requirements for a private educational institution set forth in Section 59-G-2.19, in the following manner: the proposed building is appropriately scaled to the existing school and is harmonious in design, scale and materials with other buildings in the surrounding neighborhood. Construction and use as proposed is consistent with the adopted area master plan, and will cause no increase in vehicle traffic, parking, or noise on the site which would adversely affect the use, enjoyment or value of nearby properties, since no increase in enrollment or faculty is contemplated in connection with the construction of the library. The facility would be served by adequate public services and facilities, including water and sanitary sewer which are already available, and would not adversely affect traffic on the school site or on streets in the surrounding area. The building meets all setback and height requirements in the R-200 Zone, and the school population is well within the limitation of 87 pupils per acre (in this case, approximately 600 students on a 98-acre site).

The primary concern expressed by nearby residents (and uppermost in the minds of the members of the Board) is the matter of the proximity of the proposed structure to nearby residential properties, in particular, to the Hurwitz property. The Board is persuaded by a preponderance of the evidence in the record, and particularly by the testimony of the project architect, that the location selected is the most appropriate site for a library to serve the needs of the school. While the Board is sympathetic to concerns of nearby property owners regarding construction to within 20 feet of the property line, and consequent loss of much of the existing tree screening on the site, the Board finds that such construction is clearly permitted by the Zoning Ordinance (the required setback is only 12 feet). Moreover, as conditioned herein, the Board finds that the school building will be adequately shielded from view from the nearby residences, and requisite privacy to the residential properties will be provided by the construction and landscaping requirements imposed by this Board.

Therefore, the special exception petition is granted, subject to the following conditions:

1. Construction shall be according to plans entered in the record as Exhibits Nos. 4(c) through (e), 17 and 18.

2. Special exception holder shall prepare a detailed landscape screening plan for review and approval by the technical staff of the MNCPPC. The plan shall make special provision for screening the library building from view from nearby residential properties, and shall include shrubs and/or trees not only along the property line, but near the building foundations and in the area between the library and the property line.
3. Special exception holder shall obtain a use and occupancy permit from the Department of Environmental Protection prior to inaugurating use of the library.
4. All windows in the proposed structure from which the Hurwitz property may be viewed by persons within the proposed building shall be baffled in such manner as to totally obscure the view of the Hurwitz property by persons within the building.

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. Shirley S. Lynne, Mrs. Doris Lipschitz, Mr. Joseph E. O'Brien, Jr., and Mr. Wallace I. Babcock.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 30th day of April, 1980.

Sollie H. Kyte
Clerk to the Board

NOTE: See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-months' period within which the right granted by the Board must be exercised.

Any decision by the County Board of Appeals may, within thirty 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.

