

**BEFORE THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY, MARYLAND**

**IN THE MATTER OF THE APPLICATION :  
OF HOLTON ARMS SCHOOL, INC. FOR A : Conditional Use Application  
MAJOR MODIFICATION OF SPECIAL : Case No. CBA-1174-E  
EXCEPTION FOR A PRIVATE :  
EDUCATIONAL INSTITUTION :**

**SUR-REPLY TO REPLY TO  
RESPONSE TO MOTION TO AMEND**

Opposition parties Vivian Riefberg and Bradley Boulevard Citizens Association file this sur-reply to "Petitioner's Reply in Further Support of Motion to Amend" (hereafter "Reply") that the Applicant Holton Arms School, Inc. ("Holton Arms" or "Holton"), has filed with the Office of Zoning and Administrative Hearings ("OZAH").

**The Summer Camp Special Exception**

As previously noted, Holton Arms holds a special exception for a summer camp. This free-standing, separate special exception is reflected in two (2) decisions of the Board of Appeals in Case Nos. S-2503 and S-2503-A.

While under the banner of Case No. CBA-1174-E which is for a private school special exception, Holton has also sought a major modification of its summer camp special exception which has *never* been publicly noticed.

This defect was raised during the preliminary part of the OZAH hearing of November 17, 2025. Maybe counsel for Holton did not understand, *but* the hearing record is plainly clear. For instance:

MR. CHEN: So, and your notice even - - I apologize for repeating this, but we're no longer before you on 1174-E. We're before you on five, five, board decisions, and there's been no amendment at all that has been filed. And I'm sorry, I respectfully disagree. A statement of justification

ain't the application.

OZAH Transcript, p. 13, lines 22-26; p. 14, lines 1-25.

\* \* \*

HEARING EXAMINER: .....And as Mr. Chen said, there is so - - you know, I'm confused about what cases we're modifying and what cases we aren't modifying.

OZAH Transcript, p. 29, lines 12-15.

\* \* \*

HEARING EXAMINER: .....I would like to see a summary of the old opinions and exactly which ones you're modifying.

MS. LEE-CHO: We are only modifying CBA 1174-E to the extent that these old numbers were different numbers tracking use by the Board of Appeals.

OZAH Transcript, p. 36, lines 11-17.

\* \* \*

HEARING EXAMINER:

\* \* \*

But I agree that we should postpone and let - - and I'm going to take a break, and I'm not discounting the importance of this to the school and I'm not saying that I'm denying it. *I'm just saying we have to know what we're dealing with and right now I can't say that I really know.*

And as Mr. Chen said, there is so - - you know, *I'm confused about what cases we're modifying and what cases we aren't modifying.*

OZAH Transcript, p. 29, lines 6-15 (emphasis added).

The above excerpts merely highlight the extended discussion on the problem resulting from the failure of Holton to file a proper application to modify the special

exceptions that it holds..

Notwithstanding the passage of three (3) months (November 17, 2025 — February 26, 2026) since those hearing discussions, Holton Arms has filed its last minute Motion to Amend. To repeat, a motion to amend should have, and could have, been filed shortly after the November 17, 2025, OZAH hearing.

And, as noted, *Case No. S-2503-B did not exist at the time that the Motion to Amend was filed in February.* That erroneous representation may be remedied when the Board of Appeals issues whatever it will issue as a result of its March 11, 2026, work session.<sup>1</sup>

Based on the oral comments of the members of the Board of Appeals uttered during its March 11 work session, the undersigned counsel understands that the Board of Appeals will issue a resolution referring Holton's major modification application for its summer camp special exception to OZAH, probably with the designation "Case No. S-2503-B". The Board's referral to OZAH is the correct vehicle by which the modification application for the summer camp may be considered in this proceeding, if consolidated for hearing, report, and recommendation with CBA-1174-E. *See*, §59-A-4.125(a), Zoning Ordinance (2004).

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<sup>1</sup> *See*, §59-A-4.125(a), Zoning Ordinance (2004). OZAH does not have the legal authority to authorize or assume authority to conduct a public hearing, prepare a written report, and issue a recommendation on a major modification application in special exception Case No. S-2503 unless the Board of Appeals refers such an application to OZAH. *Id.* And, the only authority that OZAH has is to conduct a public hearing, prepare a written report, and issue recommendation to the Board of Appeals. *Id.* OZAH, itself, cannot issue an order decision, or other declamation to consider an application to modify a special exception. Such a matter must be referred to it by the Board of Appeals. *Id.*

Holton apparently disagrees with the need for referral from the Board. It argues that “inclusion of the summer camp increase in *Petitioner’s Statement in Support of Special Exception Modification Application* (Exhibit 10)” (Reply, p. 3 (italics not added)) suffices for OZAH’s consideration of a major modification application for the summer camp special exception. The *Petitioner’s Statement* is not legally sufficient to give OZAH the authority to consideration modification of special exception S-2503. Holton’s counsel further asserts, “Applicant’s counsel intentionally filed the letter to the Board of Appeals requesting a technical correction of the January 15, 2025, resolution concurrently with the Motion to Amend such that OZAH’s consideration of the Motion to correct the record would be aided by direction from the Board.” Reply, p. 3. Counsel’s intention is not enough, under the law, to effectuate OZAH consideration of a major modification of the summer camp special exception without referral from the Board. As explained, under §59-A-4.125(a) there must be a formal referral of the matter to OZAH by the Board of Appeals.

Again, there is no “technical correction of the January 15, 2025, resolution”. The January 15, 2025, resolution is CBA-1174-E and is for a private school, not a summer camp. The summer camp is a completely separate, free-standing special exception denominated as S-2503. At this point OZAH cannot conduct a hearing, prepare a written report, and issue a recommendation for a modification of the summer camp in special exception in its proceeding on CBA-1174-E, and the Board cannot grant a major modification of a special exception for a summer camp in CBA-1174-E without a

referral to OZAH. As explained, under the law there must be a referral of the application to modify the summer camp special exception from the Board to OZAH.

Furthermore, a major modification application for the summer camp special exception — Case S-2503 — must comply with all of the normal and usual requirements of the Zoning Ordinance for applications to modify a special exception. Failure to comply with the Zoning Ordinance vitiates any OZAH proceeding and Board decision on an application to modify Holton's summer camp special exception.

### **Granger House**

Counsel for Holton Arms states that the undersigned "took the position that the Granger House was not properly before the Hearing Examiner because it was not part of the initial application and was never the subject of a motion to amend. *See*, Transcript at 13:16-21." Reply, p. 3. That statement is a misrepresentation. The referenced statement of the undersigned at page 13, lines 16-21, of the OZAH Transcript of the November 17, 2025, OZAH hearing is:

HEARING EXAMINER: Mr. Chen?

MR. CHEN: Respectfully, the resolution that Ms. Cho is referring to was I think in 2023, which was for temporary use of the Granger House.

HEARING EXAMINER: That's right.

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

Not only that, Madam Examiner, when you look at these other - - and I don't know - - you know better than me, I think. I don't know how

this matter is now a modification proceeding

[OZAH Transcript, p. 13, lines 11-25]

involving four applications, and that is what it is all about. It is not now, pursuant to this notice, 1174-E. And when you look at these other applications, they are dovetailing to what is before you on the application that was filed in December. They go to daycare. They go to pupils. They go to those types of matters so that any decision that is made by the Board of Appeals after you issued your report and recommendation, assuming you were to grant a modification, it's going to modify those additional applications. So I don't know how - -

HEARING EXAMINER: I understand what you're saying.

OZAH Transcript, p. 14, lines 1-14.

The point being: Holton Arms was seeking to amend multiple special exceptions under the banner of one special exception for a private school and such a course of action was legally impermissible because the *only* referral to OZAH by the Board of Appeals was for CBA-1174-E, the private school special exception by its resolution of January 15, 2025. There was no referral for the summer camp special exception, S-2503.

And, Holton wants to withdraw the special exception modification application that requests permanent use of Granger House for administrative offices. An application may be withdrawn, *but* the Hearing Examiner can only make a recommendation to the Board of Appeals on such a request. *See*, §59-A-4.25, Zoning Ordinance (2004) (“...the Board may allow the application to be withdrawn without prejudice...”).

The Reply reports that pursuant to a resolution adopted April 9, 2025, effective April 25, 2025, in CBA-1174-D that the Board has authorized continued use of Granger House as administrative offices. That information was not reported in the Motion to

Amend, and reflects the Board's likewise concern held by the opposition parties as to Holton's use of Granger House in its operations.

### **Conclusion**

The Conclusion of the Reply criticizes counsel for a "clear pattern" of "insisting on painting the School as a bad actor." Reply, p. 4. That assertion is justified.

The failure of Holton's counsel to be candid with OZAH about its decades long violation of the student cap imposed by its 1987 Preliminary Plan approval and Adequate Public Facilities Agreement is a recent example. Even though the Board of Appeals had authorized a student cap increase in 2004 to 665 (CBA-1174-D), the December 15, 1987, Preliminary Plan approval explicitly set the cap at 630 (attached hereto as **Exhibit C**) as did the April 13, 1988, Adequate Public Facilities Agreement (**Exhibit D**). In her email to the Examiner of February 20, 2026, 11:36 a.m., attorney Lee-Cho stated:

Ms. Robeson Hannan:

The Preliminary Plan Amendment is not directly related to the current Special Exception case. IT is a correction to one of the conditions of approval to properly reflect/ acknowledge the Board of Appeals' modification procedures for special exceptions that planning staff noticed during their research/review of the Special Exception case and suggested could be filed/processed at the same time as the FCP. It does not entail preparation of a new/revised plan.

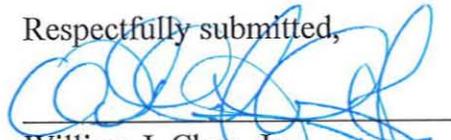
How can counsel candidly state that "[t]he Preliminary Plan Amendment is not directly related to the current Special Exception case"? The Holton student cap is a major part of this proceeding. But, attorney Lee-Cho did not disclose to the Examiner that the Planning Board staff has required an amendment to the Preliminary Plan *because* the

student enrollment has been exceeded since the school's preliminary plan was approved in 1987. Holton Arms has been in violation of its subdivision approval and APFO agreement for decades.

And, its annual reports reveal that Holton Arms has been operating in violation of the 2004 authorized 665 student cap for years. Its December 13, 2024, *Petitioner's Statement in Support of Special Exception Modification Application* at p. 2 reports "Total Enrollment" of 677. OZAH Exhibit 10.

In fact, the School has had a long history of its failures to comply with Board opinions and law in its special exception operations. For *one* example, please read the resolution of the Board of Appeals in CBA-1174, effective September 7, 2001, which was the result of a 6 day Show Cause hearing. That resolution has been submitted in this case as OZAH Exhibit 41.a.

Respectfully submitted,



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William J. Chen, Jr.  
200A Monroe Street, Suite 300  
Rockville, Maryland 20850  
(301) 279-9500  
[wjc@cwtm.net](mailto:wjc@cwtm.net)

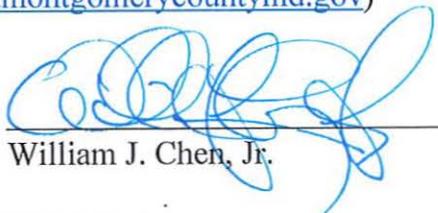
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18<sup>th</sup> day of March, 2026, a copy of the foregoing "Sur-Reply to Reply to Response to Motion to Amend" was transmitted by email and mailed first class, postage prepaid, to:

Office of Zoning and Administrative Hearings  
[ozah@montgomerycountymd.gov](mailto:ozah@montgomerycountymd.gov)  
Stella B. Warner Council Office Building  
100 Maryland Avenue, Room 200  
Rockville, Maryland 20850

and transmitted by email, to:

Lynn Robeson Hannan ([lynn.robesonhannan@montgomerycountymd.gov](mailto:lynn.robesonhannan@montgomerycountymd.gov))  
Soo-Lee Cho, Esq. ([sleecho@bregmanlaw.com](mailto:sleecho@bregmanlaw.com))  
Vivian Riefberg ([vivianriefberg@gmail.com](mailto:vivianriefberg@gmail.com))  
Meg VanDeWeghe ([meg.vandeweghe@gmail.com](mailto:meg.vandeweghe@gmail.com))  
Kim Brinkman ([ksbrinkman@gmail.com](mailto:ksbrinkman@gmail.com))  
Wendy Kaufman ([wwkauf@aol.com](mailto:wwkauf@aol.com))  
Steven M. Kaufman ([swkauf@aol.com](mailto:swkauf@aol.com))  
Eleanor Yano ([john-harris1@verizon.net](mailto:john-harris1@verizon.net))  
John Harris ([john-harris1@verizon.net](mailto:john-harris1@verizon.net))  
Richard W. Bowe ([rwbowe21@gmail.com](mailto:rwbowe21@gmail.com))  
Penny Evins ([penny.evins@holton-arms.edu](mailto:penny.evins@holton-arms.edu))  
Dariush Khadj ([dariushkh@gmail.com](mailto:dariushkh@gmail.com))  
Steven Koliass ([stevenkoliass@yahoo.com](mailto:stevenkoliass@yahoo.com))  
Jennifer Solomon ([bailabailajazz@gmail.com](mailto:bailabailajazz@gmail.com))  
Tracy Washington ([tracykwashington@gmail.com](mailto:tracykwashington@gmail.com))  
Rima Tannous ([rimatannous@yahoo.com](mailto:rimatannous@yahoo.com))  
Murat Tarimcilar ([muratt@gwu.edu](mailto:muratt@gwu.edu))  
Julie Garcia ([juliearthurgarcia@gmail.com](mailto:juliearthurgarcia@gmail.com))  
Nana Johnson ([nana.johnson@montgomerycountymd.gov](mailto:nana.johnson@montgomerycountymd.gov))  
Jony Guisao-Ospina ([jony.guisao@montgomerycountymd.gov](mailto:jony.guisao@montgomerycountymd.gov))

  
William J. Chen, Jr.

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

9. 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

2020388SPF  
H-35

ADEQUATE PUBLIC FACILITIES ORDINANCE AGREEMENT

THIS ADEQUATE PUBLIC FACILITIES ORDINANCE AGREEMENT ("APFO Agreement") is made this 13<sup>th</sup> day of APRIL, 1988, by and between HOLTON ARMS SCHOOL, INCORPORATED, a Maryland corporation ("Holton Arms"), and the MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (the "Planning Board").

RECITALS:

A. Holton Arms is the owner of a tract of land containing 48.47 acres of land and located at 7303 River Road, Bethesda, Maryland (the "Holton Arms Property").

B. Holton Arms filed an application for subdivision approval of the Holton Arms Property with the Planning Board, which application was designated as Preliminary Plan No. 1-87171.

C. The Maryland-National Capital Park and Planning Commission is a body corporate created by the General Assembly of Maryland, and which, pursuant to Article 28, Section 7-111, Annotated Code of Maryland, administers the Montgomery County Subdivision Regulations, Chapter 50, Montgomery County Code, 1984, as amended, through the Planning Board.

D. Pursuant to Section 50-35(k) of the Montgomery County Subdivision Regulations ("Section 50-35(k)"), as of the date of this APFO Agreement, Preliminary Plan No. 1-87171 requires review by the Planning Board of the adequacy of public facilities available to serve the Holton Arms Property.

E. In order to find that Preliminary Plan No. 1-87171 complies with Section 50-35(k), the Planning Board has determined that the use of the Holton Arms Property by Holton Arms for a private educational institution must be restricted.

F. Pursuant to Section 50-35(k), Holton Arms and the Planning Board have agreed that the Holton Arms Property is to be subdivided, provided the necessary restrictions are contained in an agreement which shall bind Holton Arms, its successors and assigns, and which shall be noted on the Record Plat for the Holton Arms Property.

G. By execution of this APFO Agreement, Holton Arms intends to create a restriction on the Holton Arms Property necessary to meet a condition of subdivision approval as that condition pertains to the adequacy of public facilities pursuant to Section 50-35(k). The purpose of this restriction is to limit development of the Holton Arms Property to a private educational institution with 630 pupils, so that persons and properties will not be harmed by overburdened public facilities. Holton Arms intends that the restriction created by this APFO Agreement shall be binding upon Holton Arms, its successors and assigns, until released with the consent of the Planning Board.

NOW, THEREFORE, in consideration of the mutual promises and stipulations set forth, and in accordance with the approval of the subdivision of the Holton Arms Property, the parties agree as follows:

1. The Recitals set forth above are incorporated by referenced and made a part of this APFO Agreement.

2. Development of the Holton Arms Property shall be limited to a private educational institution with 630 pupils.

3. Holton Arms shall not increase the student enrollment of its private educational institution on the Holton Arms Property above 630 pupils as described in Paragraph 2, without the successful completion of an adequate public facilities review by the Planning Board pursuant to Section 50-35(k).

4. Holton Arms shall notify the Planning Board of an application for a building or use and occupancy permit for the Holton Arms Property. Holton Arms shall not seek a building permit for a structure or a use and occupancy permit for a use on the Holton Arms Property that violates the restrictions contained in this APFO Agreement. In the event that a building permit or a use and occupancy permit is sought which violates the restrictions contained in this APFO Agreement, the Planning Board need not recommend issuance of any such permit, and such permit need not be issued.

5. Representatives or designees of the Planning Board may enter upon the Holton Arms Property from time to time for the purpose of inspection and enforcement of the terms, conditions and restrictions contained in this APFO Agreement. Whenever possible, a representative of Holton Arms shall be present at inspection. In the event that the representative or designee determines on the basis of the inspection that the restrictions contained in this APFO Agreement are being violated, the representative or designee shall promptly advise Holton Arms concerning the problem. Holton Arms shall have a reasonable time to address the problem.

6. The Planning Board shall have the right to bring an action for any legal or equitable relief necessary to enforce the restrictions contained in this APFO Agreement. Upon the request of Holton Arms, the Planning Board shall release the Holton Arms Property from the restrictions contained in this APFO Agreement if it finds the public facilities are adequate pursuant to Section 50-35(k) for additional development of the Holton Arms Property.

7. This APFO Agreement shall bind and inure to Holton Arms, its successors and assigns. Whenever this APFO Agreement refers to the Planning Board, it shall also refer to any successor agency, if any, which will administer Section 50-35(k).

8. A notation concerning this APFO Agreement shall be made on the Record Plat for the Holton Arms Property.

9. This APFO Agreement may only be modified in a writing signed by the parties, their successors or assigns.

IN WITNESS WHEREOF, this APFO Agreement has been executed by Holton Arms and the Planning Board on the day and year indicated above.

ATTEST: HOLTON ARMS SCHOOL, INCORPORATED, a Maryland corporation  
By: [Signature] (Vice) President  
[Signature] (Asst.) Secretary

[CORPORATE SEAL]

WITNESS: THE MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

By: [Signature] Richard E. Tustian, Planning Director  
[Signature] Barbara A. Pieller

APPROVED AS TO LEGAL SUFFICIENCY  
M-NCPPC Legal Department  
Date: 1/12/68