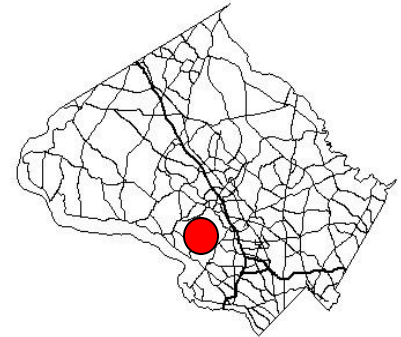




**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**  
**Item #**  
**2/10 /2011**

**MEMORANDUM**



**DATE:** January 31, 2011  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief  
Catherine Conlon, Subdivision Supervisor  
Development Review Division  
**FROM:** Richard A. Weaver, Coordinator (301-495-4544)  
Development Review Division  
**REVIEW TYPE:** Limited Amendment –Preliminary Plan of Subdivision  
**APPLYING FOR:** An amendment to the Adequate Public Facilities findings to accommodate the approved Norwood School expansion.  
**PROJECT NAME:** The Norwood School  
**CASE #:** 11988015A  
**REVIEW BASIS:** Chapter 50, Montgomery County Subdivision Regulations  
**ZONE:** RE-2  
**LOCATION:** 8821 River Road – Northeast corner of the intersection of River Road and Bradley Boulevard  
**MASTER PLAN:** Potomac Subregion  
**APPLICANT:** The Norwood School  
**ENGINEER:** Loiederman/Soltesz  
**ATTORNEY:** Linowes and Blocher  
**FILING DATE:** February 24, 2010  
**HEARING DATE:** February 10, 2011

Approval signatures

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**RECOMMENDATION:** Approval of the limited amendment, subject to the following conditions:

- 1) All terms and conditions of the previously approved special exception (S-285-E) shall remain in full force and effect, unless modified by subsequent amendments.
- 2) Approval under this Adequate Public Facilities (APF) review limits student enrollment to 600 for the School Year Program and 850 for the Summer Program and the number of faculty/staff to 200 for the School Year Program and 200 for the Summer Program. The number of faculty/staff for the Summer Program may be increased to 216 provided that the Board of Appeals issues an opinion authorizing that number.
- 3) The applicant must implement the submitted comprehensive Transportation Management Plan to address the PAMR requirements of the School's proposed expansion. Detail of the traffic management program as contained in the submitted TMP is listed under the PAMR discussion of this memorandum.
- 4) The APF review for the preliminary plan amendment will remain valid for one hundred and forty-five months (145) from the date of mailing of the Planning Board Resolution. The schedule of phasing must be in conformance with the Board of Appeals conditions of approval.
- 5) All previous conditions of preliminary plan 119980150 remain in full force and effect. This amendment supersedes the existing Adequate Public Facilities Agreement with the Planning Board dated August 20, 1998.

## **EXECUTIVE SUMMARY**

This limited amendment has been submitted to allow Planning Board consideration of the Adequate Public Facilities (APF) test for the transportation and other public facilities and services needed to accommodate the proposed expansion of the Norwood School under Special Exception modification S-285-E. On July 8, 2010 the Planning Board considered S-285-E to allow for an expansion of the school's facilities, student population, faculty and staff. The Board recommended approval of S-285-E with conditions. The Hearing examiner made his recommendation to approve the application with conditions on November 24, 2010. The Board of Appeals held a hearing on the application on December 8, 2010 and also recommended approval of the application. Condition #9 of the Board of Appeals Resolution (attachment 1) requires the following:

“The Petitioner must file an amended preliminary plan of subdivision, at which time the APF test will be done.”

This limited amendment seeks to satisfy this condition.

The Applicant has requested an extended APF validity period not to exceed twelve (12) years in which to secure building permits for all four phases of development. The Board of Appeals final action on this Special Exception amendment strictly controls when each phase of development may proceed. The Planning Board and Board of Appeals will closely monitor the traffic impacts of each phase as per the Board of Appeals conditions.

## **SITE DESCRIPTION**

The subject property “Subject Property” or “Property” is approximately 38.1 acres in size and zoned RE-2. The Property is identified as a platted parcel “Parcel B”, Bradley Ridge on record plat No. 20865. It is located in the northeast corner of the intersection of River Road and Bradley Boulevard in Potomac. The site is currently occupied by the Norwood School, a private educational institution with a maximum enrollment of 600 school year program students and 850 summer program attendees as most recently approved under Board of Appeals Special Exception Case No. S-285-E. Six main structures are located on the central portions of the site and include a lower school building, lower school library, middle school building as well as a gymnasium, and an arts and music building. Currently there are two access points along River Road and one on Bradley Boulevard; these access points will remain relatively unchanged as part of the improvement allowed by the special exception.

There are streams, floodplains and wetlands on the Property that are included within 4.68 acres of environmental buffers. The Property is in the Cabin John Creek watershed a Use I-P stream.

## **PROJECT DESCRIPTION (Figure 1)**

The Norwood School is currently limited through an Agreement with the Planning Board to a maximum enrollment of 560 students and 120 faculty. Special Exception No. S-285-E approved an expansion of the existing school facilities, enrollment, faculty and programs. The maximum number of adult staff, juvenile participants and total adults permitted on site at one time will be 200, 600 and 263, respectively for the School Year Program and 200<sup>1</sup>, 850, and 263, respectively for the Summer Program. The Board of Appeals action allowed for new lower school classrooms, a performing arts center and an indoor pool to be constructed along with new parking lots to be built as shown by the dark shaded features on figure 1. A traffic study was submitted and reviewed with the Special Exception application; however, the Board of Appeals required that the Planning Board review the necessary Adequate Public Facilities. Following is an analysis of the public facilities required for this expansion

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<sup>1</sup> The Traffic Study analyzed a maximum of 216 faculty/staff for the Summer Program, however, the Board of Appeals Opinion only allowed 200 faculty/staff for the Summer Program. This may be a typographical error that will be addressed by future Board of Appeals action.

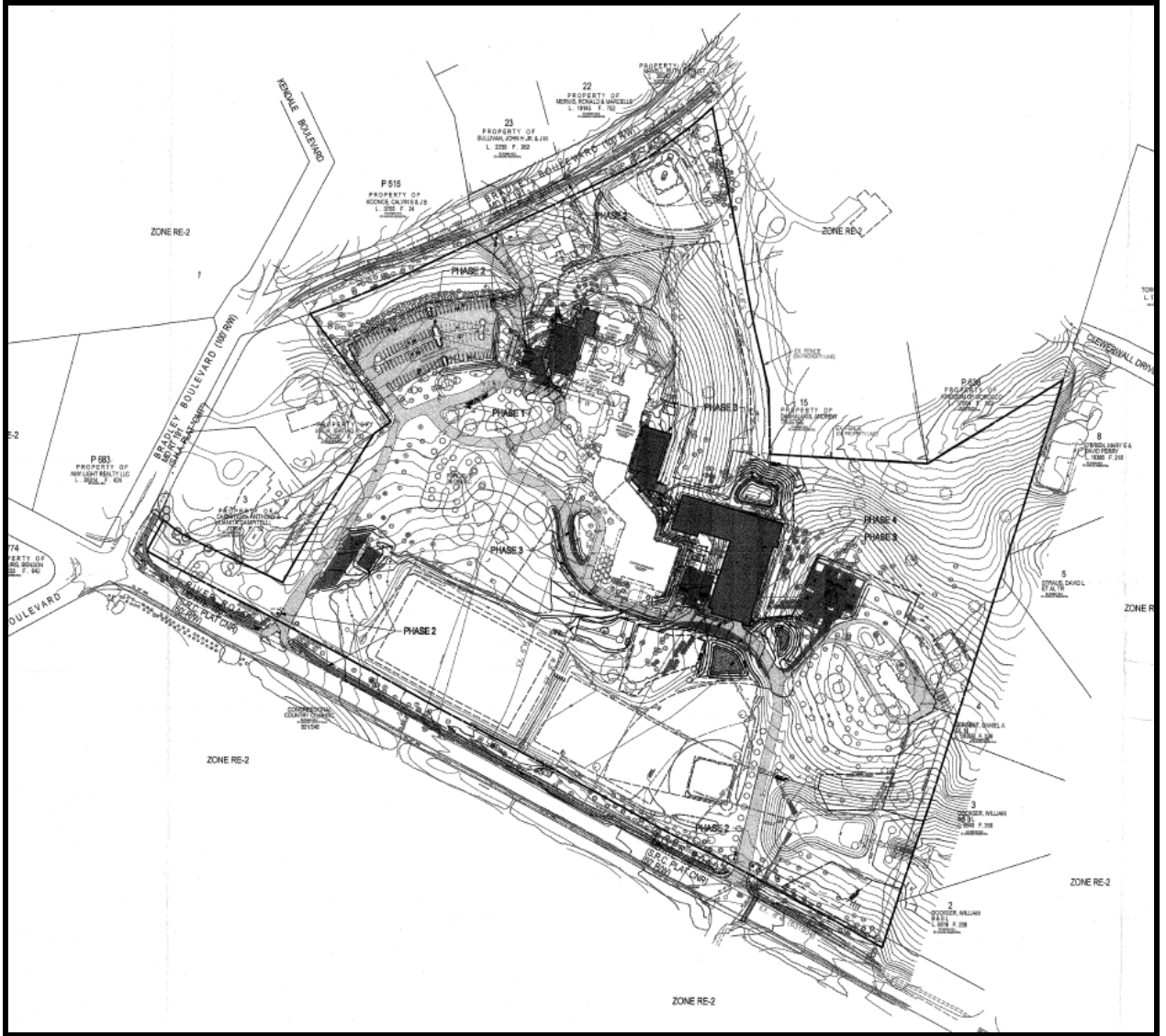


Figure 1

## ANALYSIS AND FINDINGS

### Conformance to the Master Plan

The Planning Board and Board of Appeals found that this project is in substantial conformance with the Potomac Master Plan at the time of the Special Exception. This finding remains valid for this preliminary plan amendment.

**Adequate Public Facilities**

**Local Area Transportation Review**

Three intersections were identified as critical intersections affected by the proposed development and were examined in a submitted traffic study to determine whether they met the applicable congestion standard. The congestion standard for the Potomac Policy Area is 1,450 Critical Lane Volume (CLV).

The Critical Lane Volume (CLV) impacts of the proposed expansion on effected intersections were analyzed and are summarized in Table 1.

**Table 1**

<b>Intersection Capacity Analysis with CLV During the Peak Hour</b>						
<b>Intersection</b>	<b>Existing</b>		<b>Background</b>		<b>Total</b>	
	<b>AM</b>	<b>PM</b>	<b>AM</b>	<b>PM</b>	<b>AM</b>	<b>PM</b>
River Rd. (MD 190)/ Seven Locks Rd.	1226	1175	1250	1196	1250	1229
MD 190/ Bradley Blvd. (MD 191)	1329	1174	1330	1177	1330	1214
MD 190/ East School Dr./Congressional CC Dr.	1242	1102	1243	1105	1243	1152
MD 190/West School Dr.	1254	1010	1255	1013	1255	1017

As shown in the above table, the three intersections analyzed are currently operating at acceptable CLVs (below 1,450) and this level will continue for both the background development condition (existing traffic plus approved but not-built subdivisions in the area), and the total development condition (background traffic plus traffic from the site). Therefore, this preliminary plan application meets the LATR requirements of the APF review.

**Policy Area Mobility Review (PAMR)**

The site is located within the Potomac Policy Area where 45% PAMR trip mitigation is required according to the current Growth Policy. In order to address this PAMR trip mitigation requirement, the applicant proposed a number of trip mitigation measures and management actions to ensure that the School does not exceed the trip caps associated with its currently

authorized School year enrollment. The proposed trip mitigation measures and management actions contained in the submitted Transportation Management Plan (TMP) are listed below:

1. The School will increase the number of buses to six from the current operation of two buses to transport more students without the need for private automobile use. No fewer than six applicant-owned buses shall be included in the busing program by Phase IV. These buses will also be used during the Summer Camp operations.
2. The School will maintain a flexible schedule for staff arrivals and School start times in order to stay within the approved peak hour trip cap.
3. The School will appoint a staff member to be the School Transportation Coordinator (STC), to promote bus riding and carpooling by educating and communicating with parents and Staff.
4. The STC will identify clusters of families (i.e., based on zip codes) who potentially could form carpools or justify additional bus routes.
5. The STC will encourage carpooling among staff using similar measures.
6. The STC will monitor parking requirements for auxiliary programs so that the 90% capacity utilization target is met.
7. The School's Director of Auxiliary Programs will be charged with scheduling classes, facilities rentals, etc. so that caps are not exceeded.
8. The School will establish a Community Liaison Committee (CLC), which will be attended by the STC and/or the Head of School to maintain communication with the community regarding implementation of the TMP and operational issues. The meeting dates/times will be posted on the School web site. A designated County representative will be an ex officio member of the CLC.
9. The School will conduct peak period driveway counts in accordance with M-NCPPC monitoring requirements to periodically ascertain the peak hour trip levels and ensure compliance with the approved trip caps.
10. If additional actions are required to meet the trip caps, the School will implement management and operational measures as appropriate to assure prompt compliance with the caps. Examples of representative measures are enhanced carpool incentives, adjusting of staff schedules outside of peak hours, expansion of off-site bus pick-up locations, etc.
11. The School will seek suggestions from the CLC to arrive at additional measures as necessary to attain and ensure compliance with the peak hour trip caps.

Based on the currently authorized new number of students and staff, the School is allowed to generate 753 and 269 vehicular trips during the AM peak hour and PM peak hour, respectively. The applicant proposed a number of trip mitigation measures and management actions listed above to ensure that the School does not exceed the trip caps associated with its currently authorized School year enrollment. With implementation of the proposed trip mitigation measures, the proposed expansion will have no additional traffic impact. Therefore, the subject preliminary plan application meets the PAMR requirements of the APF review.

### **Site Access and Vehicular/Pedestrian Circulation**

Three existing access points serve the School: two driveways on River Road (MD 190), including one which is right-in/right-out only and one with full movement and a full movement driveway from the school (T-intersection) onto Bradley Boulevard (MD 191).

There is an existing substandard shared use path along MD 190 and deteriorated sidewalk along MD 191. The Special Exception approval requires that the applicant provide a five-foot-wide concrete sidewalk along the School's MD 191 frontage and an eight-foot-wide shared use path along the School's MD 190 frontage. The School has a long internal driveway that should provide sufficient queuing storage area for the student drop-off and pick-ups.

With the applicant's upgrading the existing bike path and sidewalk along its frontage on MD 190 and MD 191, staff finds the proposed traffic/pedestrian circulation system as shown on the preliminary plan adequate to accommodate the generated vehicular and pedestrian activities.

### **Other Public Facilities and Services**

All public facilities and services are available and will be adequate to serve the proposed expansion of the facility. The Washington Suburban Sanitary Commission notes that sewage transmission and treatment capacity is adequate and advises that with regards to water supply, there is "adequate domestic and fire flow from its existing connection to the existing 8" water main in River Road. However, in the event the existing 66" water main is taken out of service for inspection or maintenance reasons, fire flow conditions cannot adequately be handled from the existing 8" water main to the existing on-site 10" water connection. WSSC and the Applicant will work together to explore options to address potential issues relating to providing adequate water service to the Norwood School in case of a planned (which may last as long as 6 months) or unplanned interruption of service of the existing 66" main."

Staff advises that other properties, both residential and non-residential, would be affected by an interruption in service of this 66 inch water main. WSSC will need to work with other property owners, as well as the school, to maintain adequate service.

The application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses and health services are operating within the standards set by the Growth Policy Resolution currently in

effect. Natural gas, PEPCO and Verizon have also approved the amendment. The application is not subject to payment of School Facilities Payment.

### **Environment**

#### Environmental Resource Protection

The application was found to comply with the Planning Board Adopted Environmental Guidelines at the time of Special Exception review. The preliminary plan makes no modifications to the limits of disturbance; therefore, the findings made at the time of the Special Exception review remain valid.

#### Forest Conservation

The plan was found to comply with Chapter 22A, the Montgomery County Forest Conservation Law at the time of the Special Exception review. A preliminary forest conservation plan was approved by the Planning Board at that time. The preliminary plan amendment makes no changes to the limits of disturbance or other elements of the approved forest conservation plan. Therefore, the findings for conformance with Chapter 22A remain valid for this plan amendment.

#### Stormwater Management

A stormwater management concept was approved at the time of Special Exception review. That concept remains valid for the plan amendment under review.

### **Compliance with the Subdivision Regulations and Zoning Ordinance**

No new record plat will be initiated by this plan amendment which is only seeking review and approval of the adequacy of public facilities. With respect to the review of adequate public facilities as prescribed under Section 50-35(k) of the Montgomery County Subdivision Regulations, this plan amendment complies with all pertinent requirements of this section.

### **Citizen Correspondence and Issues**

This application was submitted in accordance with the procedures outlined in the *Manual of Development Review Procedures*. A copy of the plan and notice of submission was sent to adjacent and confronting property owners and to local civic associations in accordance with the Manual. No inquires regarding this plan amendment have been received by staff.

### **CONCLUSION**

The improvements sought by this plan amendment can be adequately served by all public facilities including roads, sidewalks, water, sewer, other public utilities, schools, fire and rescue and police. Staff recommends approval of the plan amendment subject to the conditions cited above.



Attachments

- A) Special Exception Opinion S-285-E
- B) Planning Board Resolution 1-89015
- C) Planning Board Agreement

**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](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

(240) 777-6600

**Case No. S-285-E**

**PETITION OF THE NORWOOD SCHOOL, INC.**

**OPINION OF THE BOARD**

(Opinion Adopted December 8, 2010)  
(Effective Date of Opinion: December 16, 2010)

Case No. S-285-E is an application by The Norwood School modify its special exception to build four new buildings, increase student enrollment by 7%, increase summer camp enrollment by 52%, increase staff, extend hours, and hold four large-scale, non-school related community events, and smaller after-hours auxiliary community enrichment programs. The school proposes to implement the modification in four phases over the next ten years and tied to the speed at which it can raise funding for the project.

The Hearing Examiner for Montgomery County held hearings on the application on July 20, 2010, July 21, 2010 and on September 13, 2010. The record in the case closed on September 22, 2010. On November 24, 2010, the Hearing Examiner issued a Notice of Order Extending Time for Submission of Hearing Examiner's Report together with his Report and Recommendation for approval of the modification, with conditions.

Decision of the Board:

Special Exception Modification **Granted**  
Subject to Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report at its Worksession on December 8, 2010. After careful consideration and review of the record in the case, the Board makes changes, (as indicated in **boldface type** below), to Condition No. 10, to increase the frequency of traffic monitoring, and to Condition 13, to increase the number of submissions of the Community Liaison

Council's minutes, and with those changes, adopts the Report and Recommendation and grants the modification subject to the following Conditions:

1. All terms and conditions of the previously approved special exception shall remain in full force and effect, except as modified in this proceeding. Norwood's statement of operations and its special exception exhibits must be amended to include all changes required by these conditions.

2. Physical improvements are limited to those shown on the landscape and site plans including ex. 25(oo), ex. 42(a)-(j), ex. 44(a)-(g). New structures shall conform generally to those depicted on ex. 4(j)-(p), 4(r)-(s), 25(uu), 25 (ww).

3. All building-mounted lights should cast light downward only and all other lights should be shielded.

4. Lights illuminating signposts at entrances to the Norwood campus shall be extinguished between 11 p.m. and 7 a.m. Petitioner is encouraged to reduce lighting on buildings and lots authorized to be constructed in this proceeding to a minimum consistent with safety and security between 11:00 p.m. and 7:00 a.m. (5 a.m. for the pool building). Security lighting should, so far as possible, be activated by motion sensors.

5. Petitioner shall provide an eight-foot-wide shared use path along the Md. 190 frontage and a five-foot-wide asphalt pedestrian path along its Md. 191 frontage in accordance with ex. 43(a)-(c), subject to Maryland State Highway Administration review and approval. The shared use path and pedestrian path shall be constructed during Phase II.

6. Petitioner may establish a school resident manager's residence, office, and storage space in the existing single-family structure near the Bradley Boulevard entrance.

7. Petitioner shall provide additional native evergreen screening (e.g., American Holly) around the central parking area and the parking area adjacent to the Head Master's residence. Screening provided in the forest conservation easements must be approved by the Planning Department's environmental inspector to verify location and species used.

8. Petitioner shall comply with the final County-approved forest conservation and final County-approved stormwater management plans.

9. Petitioner must file an amended preliminary plan of subdivision, at which time the APF test will be done.

10. No peak-hour trips generated by petitioner's operations may exceed 753 and 269 during morning and afternoon peak-hours, respectively. A

monitoring system of traffic counts at the site must be submitted to the Planning Department who will forward a finding to the Board of Appeals stating whether the traffic cap has been maintained. Monitoring must include at least one traffic count on a representative day in **Fall, Winter and Spring** during the school year, and one traffic count on a representative day during the summer camp season. In the two years following completion of phase IV of petitioner's development plan, there shall be two traffic counts during the summer camp season.<sup>1</sup>

11. Petitioner must implement its transportation management plan (TMP), ex 25(yy). It must make a busing program available to children in both its school-year and summer program. No fewer than six petitioner-owned buses shall be included in the busing program by phase IV. All leased buses, if any, shall be stored off-campus.

12. No phase of development – either physical or operational – shall proceed until the Planning Department forwards a finding to the Board of Appeals stating that the morning and afternoon trip caps have been maintained and that petitioner has fully complied with the TMP.

13. Petitioner shall establish a community liaison council (CLC) to address operating impacts and other issues of concern to the community and/or petitioner. The CLC shall consist of petitioner's representative and representatives from any civic association or homeowners association within the neighborhood (as defined in this report) wishing to participate. Adjacent and confronting neighbors must also be invited to participate. A representative from the County shall be invited to participate as *ex officio*. Meetings must be held at least four times per year unless a majority of the CLC (not including petitioner's representative) votes to conduct fewer meetings. Minutes describing all issues raised by community representatives or neighbors, and how they were resolved, must be kept by petitioner and filed with the Board of Appeals **twice per year**. Petitioner shall provide the CLC with all traffic counts conducted in accordance with conditions nos. 9 and 13.

14. Whenever a traffic count shows that a peak-hour cap has been exceeded, petitioner will convene the CLC within 7 days and take measures to reduce traffic volume. Petitioner shall take a second traffic count within 15 days of the first count. If the second count shows that traffic still exceeds the cap, petitioner shall immediately initiate compulsory car-pooling, compulsory busing, population reductions, or scheduling changes until petitioner can demonstrate to the Board of Appeals and the Planning Department that peak-hour traffic has fallen to or below the cap.

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<sup>1</sup> This conditions was modified on a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with Walter S. Booth and Catherine G. Titus, Chair, in agreement and David K. Perdue not in agreement.

15. Hours of operation for any on-site activity are permitted from 7:00 a.m. until 11:00 p.m., seven days per week, with the exception of the natatorium (indoor pool), which may open at 5:00 a.m.

16. Access to the natatorium between 5:00 a.m. and 7a.m. shall be limited to regularly-enrolled Norwood students and campers, members of the school staff, and to no more than 20 others.

17. The following activities are permitted during the school year (generally August 31 – June 16): before care and pre-K - 8th grade school programs for Norwood students including the Mid-Atlantic Teacher's Institute (MATI). Also permitted are events and activities that are related to the operation of a private educational institution for the use of students enrolled during the school year, including school dances, secondary school placement fair, spring picnics, student/parent breakfasts and dinners, athletic banquet, silent auction, parents and grandparents visiting days, musical and theatrical performances, athletics, multicultural fair and other social activities for students, campers, or their parents.

18. Regular school year operations shall be limited to an enrollment of no more than 600 students. Staff, including part-time employees, Mid-Atlantic Teacher Institute personnel, contractors, and others (but excluding volunteers, visiting coaches and parents) shall not exceed 160 in phase I, 180 in phases II and III, and 200 in phase IV and beyond.

19. A summer program is permitted under the following conditions. The summer program must be conducted for no more than 10 weeks. Summer operations may include summer day and twilight camps, including before- and after-care and recreational activities, and Horizons at Norwood. Enrollment in the summer programs is limited to 650 children in phase 1, 775 in phases II and III, and 850 in phase IV and beyond, including juvenile camp counselors and Horizon students. Staff, including part-time employees, Mid-Atlantic Teacher Institute personnel, contractors, and others (but excluding volunteers, visiting coaches and parents) shall not exceed 160 in phase I, 180 in phases II and III, and 200 in phase IV and beyond.

20. The Board of Appeals shall retain jurisdiction over the case until further notice to determine, based on an annual review, whether summer activities or auxiliary programs described in the following paragraphs are having an excessive adverse impact on the neighborhood. The CLC may report to the Board that additional conditions are necessary to curb adverse effects from the summer activities or from one or more of the activities described in conditions nos. 21, 22, 24, and 25.

21. Petitioner may conduct up to 4 large-scale events per year, including a Cancer Walk-A-Thon, parking for PGA tour events held at Congressional and Avenel Country Clubs, or similar activities. For purposes of the numerical

limitation in the foregoing sentence, each day an activity occurs constitutes a separate "event". Parking at the 4 events may be provided on petitioner's parking lots or in areas designated on petitioner's overflow parking plan, ex. 25(rr). No queuing on public roads is permitted. If queuing occurs for any such event, all future events must be scaled back accordingly.

22. Petitioner is authorized to conduct community accessible education, indoor/outdoor recreation, tutoring, college entrance exam prep courses, art education classes, and facility rentals for educational, community indoor/outdoor recreation, tutoring, college entrance exam prep courses, and art education uses, and other accessory uses encompassed under the Zoning Ordinance's definition of a private education institution. The Performing Arts Center may be used for no more than 7 artistic performances, education presentations, and commencement exercises for users other than Norwood per calendar year. No activity listed in this paragraph may begin before 7 p.m. on any day when the regular school or summer camp programs (as described in conditions nos. 17 and 19) are in session. The parking provisions of the TMP shall apply. No parking is permitted on driveways or non-impervious surfaces.

23. Semi-annually, petitioner shall provide the Board of Appeals, CLC, and Planning Department with the following information about each activity conducted under authority of condition no. 22: average number of attendees (including staff), days and hours of operation, and length of each activity in terms of days, weeks, or months. The Board, CLC, or Department may require additional information.

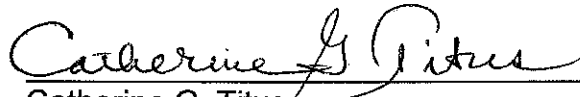
24. Petitioner may conduct daytime winter and spring break programs when school is not in session during the school year. The population limits set forth in condition no. 18 shall apply. All activities shall start and end between the hours that regular school activities would start and end were school in regular session.

25. Petitioner may provide parking on its property to local schools and other institutions on a reciprocal basis no more than three times annually. For purposes of the numerical limitation in the foregoing sentence, each day an activity occurs constitutes a separate "time." The parking provisions of the TMP applicable to normal school and camp activities shall apply. No parking is permitted on driveways or non-impervious surfaces.

27. Petitioner must obtain and satisfy the requirements of all licenses and permits including, but not limited to, building, use, and occupancy permits, necessary to occupy the new structures authorized to be constructed as a result of this proceeding.

On a motion by Catherine G. Titus, Chair, seconded by Carolyn J. Shawaker, with David K. Perdue, Vice-Chair, Walter S. Booth and Stanley B. Boyd 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.



Catherine G. Titus  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 16<sup>th</sup> day of December, 2010.



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.

**AGREEMENT**

THIS AGREEMENT ("Agreement"), made this 20<sup>th</sup> day of August, 1998, by and between THE NORWOOD SCHOOL, INC. (the "Applicant"), and the MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION (the "Planning Board").

**RECITALS:**

A. The Applicant filed an application for subdivision approval with the Planning Board for 1 lot on approximately 17 acres of land located near the northeast quadrant of the intersection of Bradley Boulevard and River Road, Montgomery County, Maryland, which application was designated as Preliminary Plan 1-98015. The Applicant intends to utilize the minor subdivision procedures at Section 50-35A, et seq. of the Montgomery County Subdivision Regulations to consolidate the 17 acres into a single subdivided lot also comprised of a previously subdivided lot and a previously subdivided parcel known respectively as Lot 6 and Parcel A, Bradley Ridge Subdivision. The consolidated lot will consist of approximately 38 acres and is hereinafter referred to as the "Property".

B. 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.

C. Pursuant to Section 50-35(k) of the Montgomery County Subdivision Regulations, as of the date of this Agreement, Preliminary Plan 1-98015 required review by the Planning Board of the adequacy of public facilities available to serve the Property.

D. In order to find that Preliminary Plan 1-98015 complied with Section 50-35(k), the Planning Board determined that the size and use of improvements on the Property must be restricted.

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

F. By the execution of this Agreement, the Applicant intends to create a restriction on the 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 Property to a private educational institution with a maximum enrollment of 560 students and a faculty of 120 as approved by the Board of Appeals in Case No. S-285-C; and to require the Applicant to provide the necessary road improvements outlined in the January 28, 1998 (as revised February 3, 1998) Transportation Division Staff Memorandum so that persons and properties will not be harmed by overburdened public facilities. The final scope of improvements and designs shall be determined by the Maryland State Highway Administration ("MDSHA"). A copy of the Planning Board's opinion approving Preliminary Plan No. 1-98015 is attached hereto as Exhibit "A" (incorporated herein by reference). A copy of the Transportation Planning Division Staff memorandum dated January 28, 1998 (as revised February 3, 1998) is attached hereto as Exhibit "B" (incorporated herein in full by reference). A copy of the Board of Appeals opinion approving Case No. S-285-C is attached hereto as Exhibit "C" (incorporated herein in full by reference).

G. The parties intend that the restrictions created by this Agreement shall supersede all previous Adequate Public Facilities Ordinance agreement(s) between the parties and shall be binding upon the Applicant, its successors and assigns, until released, in whole or in part, with the consent of the Planning Board or as may be otherwise approved by 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 Property, the parties covenant and agree as follows:

1. The Recitals set forth above are incorporated by reference and made part of this Agreement.
2. Development of the Property shall be limited to a private educational institution with a maximum enrollment of 560 students and a faculty of 120, as approved by the Planning Board in Preliminary Plan No. 1-98015 and the Board of Appeals in Case No. S-285-C, and as specifically set forth in Exhibit "A" and Exhibit "C".
3. The Applicant shall provide the necessary road improvements outlined in the January 28, 1998 (as revised February 3, 1998) Transportation Planning Division Memorandum attached hereto as Exhibit "A" and incorporated herein in full by reference. The final scope of improvements and designs shall be determined and approved by MDSHA.
4. The Applicant, through its agents, shall notify the Planning Board of an application for a building permit or a use and occupancy permit for the Property. The Applicant shall not seek or accept a building permit for a structure or a use or occupancy permit for a use on the Property that violates the restrictions contained in this Agreement. In addition to all other remedies provided herein, in the event that a building permit for a structure or use and occupancy permit for a use is sought which violates the restrictions contained in this Agreement, the Planning Board need not recommend issuance of any such permit, and Montgomery County, Maryland may withhold issuance of any such permit.
5. Representatives or designees of the Planning Board may enter upon the Property from time to time for the purpose of inspection and enforcement of the terms, conditions and restrictions contained in this Agreement. Whenever possible, the Applicant or its representatives shall be present at the inspection. In the event that the representative or designee determines on the basis of the inspection that the restrictions contained in this Agreement are being violated, the representative or designee shall promptly advise the Applicant concerning the problem. The Applicant shall have 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 Agreement. Upon the request of the Applicant, the Planning Board shall release the Property from the restrictions contained in this Agreement if it finds that public facilities are adequate pursuant to Section 50-35(k) for additional development of the Property. Such a review shall include the public facilities impact of any existing building or use to remain on the Property, as well as that of the proposed additional development.
7. This Agreement supersedes all previous Adequate Public Facilities Ordinance agreement(s) between the parties which are hereby declared void and of no further force or effect.
8. This Agreement shall bind and inure to the Applicant, its successors and assigns. Whenever this Agreement refers to the Planning Board, it shall also refer to any successor agency, if any, which shall administer Section 50-35(k).
9. This Agreement may only be modified in writing, signed by the parties, their successors or assigns.
10. A notation of this Agreement shall be made on the Record Plat for the Property.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the day and year indicated above.

WITNESS/ATTEST:

Edward P. Carr  
Edward P. Carr

THE NORWOOD SCHOOL, INC.,  
a Maryland corporation

By: Richard T. Ewing, Jr. [SEAL]  
Richard T. Ewing, Jr.  
President

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

Burley Brown

By: Charles Loehr  
Charles Loehr  
Designee

APPROVED AS TO LEGAL SUFFICIENCY

[Signature]  
M-NCP&C Legal Department

Date 8/18/98

Date Mailed: February 12, 1998

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

Action: Approved Staff Recommendation  
Motion of Comm. Holmes, seconded by  
Comm. Bryant with a vote of 4-0;  
Comms. Bryant, Holmes, Hussmann and  
Baptiste voting in favor. Comm.  
Richardson temporarily absent.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-98015

NAME OF PLAN: THE NORWOOD SCHOOL

On 09-10-97, THE NORWOOD SCHOOL submitted an application for the approval of a preliminary plan of subdivision of property in the RE-2 zone. The application proposed to create 1 lot on 16.60 ACRES of land. The application was designated Preliminary Plan 1-98015. On 02-05-98, Preliminary Plan 1-98015 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 1-98015 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-98015, subject to the following conditions:

- (1) Compliance with the conditions of approval of the preliminary forest conservation plan. The applicant must meet all conditions prior to recording of plat or MCDPS issuance of sediment and erosion control permit, or issuance of building permit, as appropriate
- (2) Prior to recording of plat, submit revised Adequate Public Facilities agreement with Planning Board limiting development to a Private Educational Institution with a maximum enrollment of 560 students and faculty of 120, as approved by the Board of Appeals under Case No. S-285-C. The applicant shall provide for the necessary roadway improvements outlined in the January 28, 1998 (as revised February 3, 1998) Transportation Division staff memo. Final scope of improvements and designs to be determined and approved by MDSHA
- (3) Conditions of MCDPS stormwater management approval dated 1-15-98
- (4) Prior to recording of plat, submit a landscape, lighting and parking facilities plan for technical staff review and approval