**MEMORANDUM:**

**DATE:** May 12, 2005

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief, Development Review Division *RKB*  
Carlton Gilbert, Zoning Supervisor, Development Review Division *CG*

**FROM:** Dan Janousek, AICP, Development Review Division  
(301-495-4564)

**SUBJECT:** **Special Exception No. S-2638:** Maryland Youth Ballet (MYB)  
Request by Bloom Investments, LLC for a private educational  
institution.

**REVIEW BASIS:** Chapter 59, Zoning Ordinance

**ZONE:** R-60

**LOCATION:** 4707 West Virginia Avenue

**SECTOR PLAN:** Bethesda CBD

**FILING DATE:** February 18, 2005

**PUBLIC HEARING:** May 27, 2005

**STAFF RECOMMENDATION**

**APPROVAL of proposed development plan and parking waiver request with conditions:**

1. All evidence, testimony and exhibits of record shall bind the petitioners.
2. Compliance with the following conditions:
  - a. Limit the development to a maximum of 10,762 square feet of gross floor area and enrollment of 434 students per day.
  - b. Limit all pick up and drop off of students to occur within public parking lots, such as Public Parking Lot No. 44 located directly across the street from the property and Public Parking Lot No. 25 which is one block to the north on Highland Avenue.

- c. Submit an annual report to the Board of Appeals regarding the implementation of the submitted Transportation Management Plan.
- d. Limit the range of class hours for all students between 10am to 9:00pm Monday through Friday and between 8:00 am to 5:00pm on Saturday and Sunday.
- e. Limit the number of employees working on site to ten employees.
- f. Limit the maximum number of MYB students per class to 22 students for children's classes (under 18 years of age) and 40 students for adult classes.
- g. Limit the maximum number of classes per week to 49 children classes and 36 adult classes as follows:

<u>Maximum Number of Classes per Day</u>	<u>Total Students per Day</u>
Monday: 6 adult; 7 children	(394)
Tuesday: 7 adult; 7 children	(434)
Wednesday: 5 adult; 10 children	(420)
Thursday: 5 adult; 9 children	(398)
Friday: 6 adult; 8 children	(416)
Saturday: 5 adult; 8 children	(376)
Sunday: 2 adult; 0 children	(100)

- h. Limit the use of the building by other performance arts users to the hours of operation on weekday evenings and/or to daytime hours on weekends when MYB does not need the space. Class attendance during such activities will be limited to a maximum 15 students on weekday evenings and 50 on weekends. Such other performance art users are as follows:
    - 1. Dance workshops
    - 2. Tai Chi and Karate (martial arts) instruction
    - 3. Arts meetings
    - 4. Auditions conducted by major dance companies
    - 5. Dance auditions and dance workshops
- 3. Any development proposal for the site will require Planning Board approval. Applicant to obtain Planning Board Approval for a preliminary site plan under Chapter 59-D-3 after first obtaining approval for the Special Exception Application by the Board of Appeals.
  - 4. Compliance with the following conditions for Environmental Review
    - a. Final storm water management (SWM) and Erosion and Sediment Control Plans must be submitted to the County Department of Permitting Services before issuance of permits.

## **PROJECT SUMMARY**

The applicant, Maryland Youth Ballet, has requested a special exception for a private educational institution located at 4707 West Virginia Avenue, Bethesda. The applicant describes the Maryland Youth Ballet as a non-profit dance instruction organization that has operated in Bethesda for over 30 years. The ballet company is currently operating on the second floor of a commercial structure in downtown Bethesda.

The subject property is in the R-60 Zone. The applicant seeks to develop a three story, 10,762 square foot residential-design building to house the Maryland Youth Ballet and other performance and arts related classes seven days a week. The proposal will require ten parking spaces for the employees, and the applicant will provide 4 on-site parking spaces. They have requested a waiver for six on-site parking spaces.

## **Site Description**

The subject property is described as Lot 26, Block 5, West Chevy Chase Heights. The property is within the boundary of both the Wisconsin North Corridor and the East Bethesda Transition planning sub-areas of the Bethesda CBD Sector Plan. The property is recommended for the R-60 (C-T) Zone (page 104). It is an 8,550 square foot rectangular in shaped lot, and it is located in a transition area between the CBD and the single-family homes of East Bethesda at 4705 West Virginia Avenue. The lot is accessed from West Virginia Avenue. There are few natural features on the site.

## **Current Approvals**

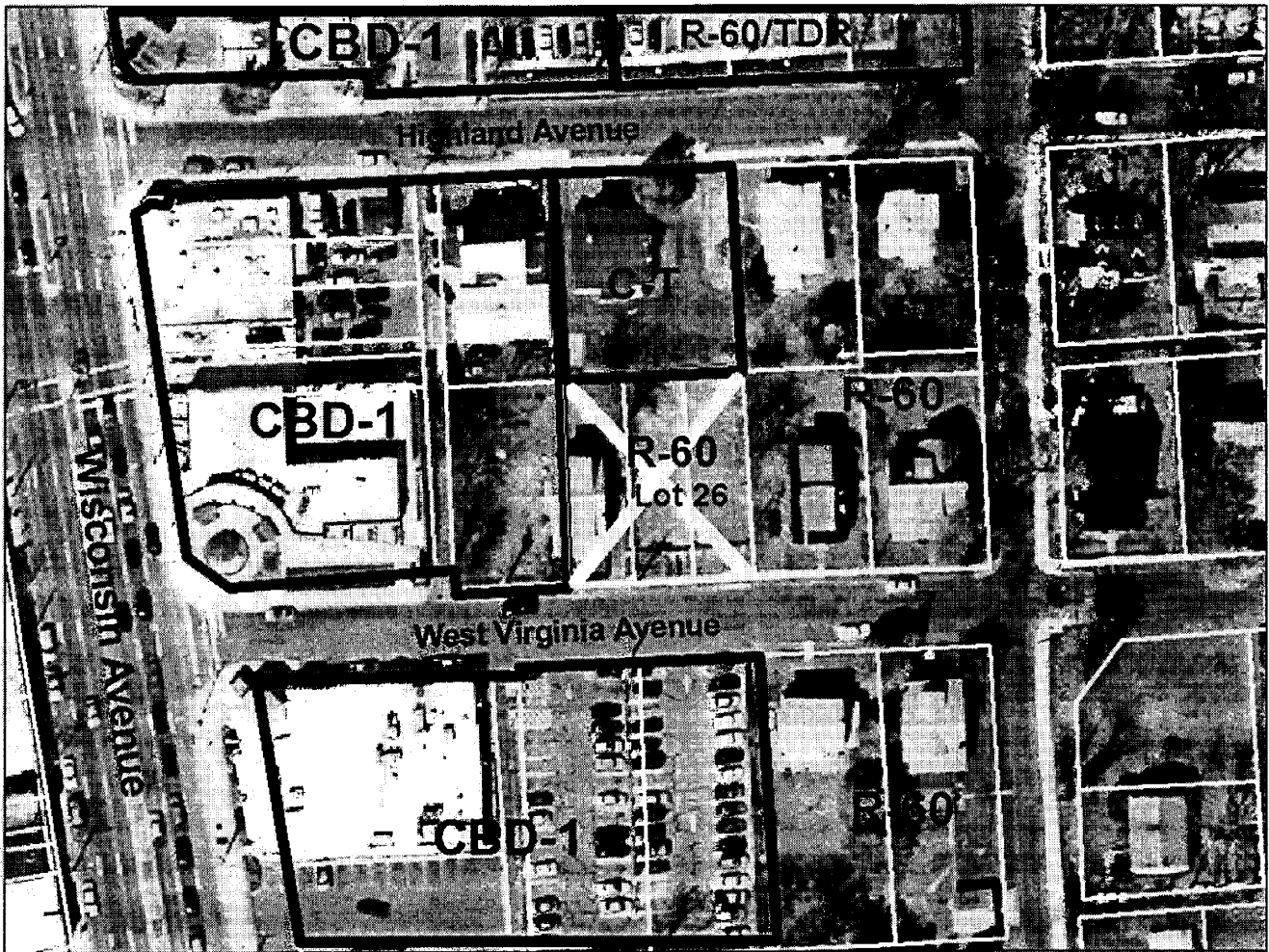
Currently, the property is used for parking 14 vehicles in accordance with Special Exception No. S-2305, approved on December 15, 2000. The property is improved with surface parking and a small residential building that straddles the border of Lot 17 and Lot 26.

Lot 26 is the subject of plat No. 22981, approved March 18, 2004 (MNCPPC record file 623-79). The minor subdivision combined three smaller lots into Lot 26. The plat limits the number of vehicular trips to that which would have been generated by the original, smaller subdivided lots. The approved recorded plat notes that any changes to the uses of the site will require "Planning Board approval".

## **Neighborhood Description**

A mix of uses surrounds the subject property. The neighborhood is residential in character to the east, and business district in character to the west. To the north are a C-T zoned property and a business use. To the east side are single-family homes in the R-60 Zone. To the south is public surface parking in the CBD-1 Zone. To the west are CBD-1 Zone mixed uses within the Bethesda Central Business District.

*Adjacent Zones and Uses*



*Neighborhood Area*



The general neighborhood can be described as the area bordered by Highland Street to the north, and properties fronting on West Virginia Avenue to the south between Wisconsin Avenue to the west and Tilbury Street to the east.

There are two other approved special exceptions in the general neighborhood.

## Elements of the Proposal

### Proposed Development Plan

The proposal includes a new three-story commercial building containing 10,762 square foot gross leasable area. The building has four floors of classroom space, three above grade, and one below grade for four to five studios. The building is residential in design and utilization of the building will be functionally the same as the existing ballet use located in Bethesda. The building's main front entrance is along West Virginia Avenue. A side entrance is located on the west side of the building. The building includes balconies on the front and west sides, and an open-air terra roof deck in the center of the building. Sidewalks and landscaping are proposed.

There are four parking spaces provided on site by the applicant for the employees of the school. The required parking for this use is ten parking spaces. The petitioner's statement includes a request for a waiver of 6 parking spaces. The Petitioner states that parking can be fully accommodated within the Public Parking Lot No. 44 located directly across the Street from the subject property and Public Parking Lot No. 25, which is one block to the north on Highland Avenue.

The parking facility and building are both set back at a distance of 16 feet from the side yard, and the proposal shows a landscape buffer and trees along the east side yard between the subject property and the adjacent residential property.

Table 2. Parking Facility Spaces and Setbacks:

Item	Required/Allowed	Proposed
Yard Requirements for Parking and Loading Facility	<p>Parking and Loading facilities for special exception uses in residential zones (59-E-2.83) requires each parking and loading facility, including each exit and entrance driveway, be setback at a distance not less than the applicable building front and rear yard and twice the building side yard required in the zone.</p> <p>Front: West Virginia Avenue 25 ft.</p> <p>Side: 16 ft.</p> <p>Rear: 20 ft.</p>	<p>40'</p> <p>16'</p> <p>20'</p>
Screening and Shading	6 ft.	Provided

The proposed parking does meet the parking facilities plan objectives of Section 59-E-4.2 as follows:

Sec. 59-E-4.2. Parking facilities plan objectives.

A parking facility plan shall accomplish the following objectives:

- (a) The protection of the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility. Such protection shall include, but shall not be limited to, the reasonable control of noise, glare or reflection from automobiles, automobile lights, parking lot lighting and automobile fumes by use of perimeter landscaping, planting, walls, fences or other natural features or improvements.

*Adjacent properties are reasonably protected from automobile noise, glare, lights, parking lot lighting and automobile fumes because of the proposed landscape screening and residential design of the parking facility. Parking is provided in the public parking facilities near the property.*

- (b) The safety of pedestrians and motorists within a parking facility.

*Pedestrians and motorists will be able to access the building safely from the parking facility or the outdoor public parking areas. There is sufficient drive aisle width on the property for the on site parking facility. Sidewalks exist and are planned. Pick up and drop off will occur within the parking lot across the street from the school. Traffic on West Virginia Avenue is generally minimal residential traffic.*

- (c) The optimum safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion.

*The on-site parking facility is small and can be safely accessed from the street. The off-site parking in the public parking facility across the street on West Virginia Avenue will provide adequate entrance for safe circulation to drop off students off-site and off the street, thereby limiting the impact on traffic.*

- (d) The provision of appropriate lighting, if the parking is to be used after dark.

*Lighting is proposed for the parking area, and it will be consistent with existing lighting on the property that is angled down to reduce glare while providing safety for pedestrians.*

## Proposed Use

The petitioner intends to provide a wide variety of private education classes, but mainly dance instruction. Other classes proposed include Tai Chi and karate instruction, arts meetings, and auditions conducted by major dance companies. These other classes will not overlap with Maryland Youth Ballet classes. The use is contained within the building; no outside recreational area is needed.

## Hours Of Operation

The range of class hours for all students is typically between 10am to 9:00pm Mondays through Fridays, and 8:00 am to 5:00pm on Saturdays and Sundays. The classes do not begin until after the typical morning peak traffic hours, and the classes are staggered throughout the day without a significant peak period of activity.

In addition to its own classes, the Maryland Youth Ballet makes its space available to other performance arts users for a reasonable fee. Such outside users are accommodated during the MYB hours of operation only on weekday evenings and/or in the daytime on weekends when MYB does not need the space. Class attendance during such activities will be limited to a maximum 15 students on weekdays evenings and 50 on weekends.

## Teachers and Students

### *Teachers*

The MYB employs approximately 25-30 employees, both full and part-time, with approximately 10 employees on site at one time and during any given day for classes and administrative matters.

### *Students*

A maximum of 434 students per day will attend the MYB and other classroom activities as described in the statement of operations. The classes are programmed throughout the day and range in size from 6-22 students. The applicant proposes that no more than four classes will overlap during the evening peak hour, with 18 students on average attending classes, thus limiting the impact of peak hour transportation to 144 trips for the purposes of the transportation analysis.

However, the petitioner has requested maximum class sizes in excess of the average class size of 18 students. The maximum number of students proposed is 22 students for children's classes and 40 students for adult classes. Adult classes are limited to 40 students; however many have less than 20 students. Staff notes this mismatch between the 'average' class size and the proposed maximum class size.

The maximum number of classes per week is 49 children classes and 36 adult classes as follows:

Maximum Number of Classes per Day      Total Students per Day

Monday:	6 adult; 7 children	(394)
Tuesday:	7 adult; 7 children	(434)
Wednesday:	5 adult; 10 children	(420)
Thursday:	5 adult; 9 children	(398)
Friday:	6 adult; 8 children	(416)
Saturday:	5 adult; 8 children	(376)
Sunday:	2 adult; 0 children	(100)

Student Drop off and Circulation

The petitioner describes that students typically arrive for classes at staggered times approximately 15 minutes before class begins and similarly leave the facility on a staggered basis. Parents of the MYB students that do not walk, take public transportation or carpool will utilize one of the nearby public parking lots (Parking Lot No. 44 across the street, Public Parking Lot No. 25 a block away, the public parking garage at Cheltenham Drive and Wisconsin Avenue or other public street parking spaces).

The use of public parking facilities for the MYB employees and students that drive to the school is consistent with the operations of its current location within the CBD. The petitioner states that a portion of students will continue to use Metro, bus, carpool or walking to get to the school. The petitioner will request that directional signage be placed at the exit to the public parking lot to direct traffic towards Wisconsin Avenue and away from the immediate neighborhood.

Additionally, the subject property is conveniently located proximate to the Bethesda Metro Station, the Wisconsin Avenue corridor, and the residential population of East Bethesda and the Bethesda CBD.

**ADDITIONAL REVIEW REQUIREMENTS**

A note on the current record plat limits the development on the property to the conditions of the original residential subdivision including the number of vehicular trips generated by the original three lots. Any changes to the uses of the site will require Planning Board approval. Staff finds that the proposed development plan will generate more traffic than the amount of traffic allowed by the currently approved minor subdivision, and that additional plans and studies may be needed in order to complete the re-subdivision process and to complete a thorough neighborhood analysis for the subject lot. Technical Staff recommends that the petitioner apply for a preliminary plan of re-subdivision to record changes to the previously approved record plat No. 22981 subsequent to approval of the special exception and before the issuance of building permits.



## **COMMUNITY ISSUES**

The East Bethesda Citizens Association (EBCA) has not formally taken a position on the subject special exception, but the group has expressed concerns about neighborhood cut-through traffic, class schedules, subleasing options and plans for pick up and drop off. Please see the attached memorandum from the EBCA.

## **ALTERNATIVES CONSIDERED**

Technical staff did discuss the possibility of providing a drop off area in front of the proposed use, but the idea would conflict with the provision of residential pedestrian facilities and the distance needed for such a drop off would require significant lot frontage and conflict with on-site parking. No additional alternatives have been discussed with the applicants.

## **ANALYSIS**

### **Bethesda CBD Sector Plan**

The property is within the Bethesda CBD Sector Plan, specifically located in the Wisconsin North Corridor area and the East Bethesda Transition area. The Bethesda CBD Sector Plan provides specific land objectives and urban design guidelines for these areas. The proposed use is consistent with the Bethesda CBD Sector Plan in terms of the nature and the appropriateness of the use, and it will be compatible with other adjacent uses including the residences in the West Chevy Chase Heights subdivision.

The Bethesda CBD Sector Plan, approved and adopted in 1994 (the "Sector Plan") recommends the Commercial Transition ("CT") zone for the Property and the use of structures that are residential in appearance. The proposed private educational institution use is permitted in the CT zone, and thus the proposed use for the Maryland Youth Ballet is consistent with the Sector Plan recommendations to provide a transitional use on the subject property between the single-family homes in the residential neighborhood and the commercial uses and structures in the adjacent Bethesda CBD.

Further, the proposed use for the MYB, a significant and long standing member of the Bethesda and Montgomery County performing arts community, is consistent with the recommendation to maintain Bethesda as a Cultural District (pages 34-36).

## Compatibility

The proposed development will be in harmony with the general character of the neighborhood considering population density, design, intensity, and character of activity, traffic and parking conditions, and number of similar uses, but not in terms of scale and bulk of any new structures (Note: part of the General Conditions).

The Sector Plan retains the 1976 Plan recommendations for R-60 (C-T) zoning for the subject lots. It is specifically stated in the Sector Plan that "any new construction should be residential in scale and character to achieve compatibility with the adjacent single-family houses" (page 109). The Sector Plan states that the plan should ensure "suitable transitions to adjacent residential communities". The proposed building design will be architecturally compatible with the adjacent single-family dwellings to the east in terms of style, but not in terms of size and height, even though the proposed building adheres to the development standards of the R-60 Zone in terms of size and height. The proposed building is much larger in size than the adjacent residential buildings in the neighborhood. The 33 foot height of the proposed building is taller than the existing single-family dwellings to the east. This difference in size is primarily due to the fact that three small lots were combined, thus the overall size of the proposed building is much larger when treated with the same development standards of the Zone as smaller lots. The proposal exceeds the recommended C-T zone's height and FAR limitations, although the building adheres to the development standards of the R-60 Zone.

It should be noted that the applicant also owns the adjacent Lot 27 in the CBD-1 Zone, which received Preliminary Plan approval for a commercial/residential use in 2004. The proposed building for the subject special exception on Lot 26 will ultimately be architecturally compatible in terms of bulk, size and appearance with the adjacent recently approved commercial/residential buildings to the west on Lot 27 (see Preliminary Plan 1-04071 attached).

In terms of traffic and parking conditions, the parking facility also uses elements that reduce its impact. The building and parking structure will be screened and buffered from the adjacent single-family detached residences with landscaping.

The proposed use is less intensive than a typical private educational institution because the classes do not begin until after the typical morning peak traffic hours, the classes are staggered throughout the day without a significant peak period of activity, and the use does not include outside recreational areas.

The proposed use will not result in an excessive concentration of special exception uses. There are two other special exceptions west of Tilbury Street. The block west of Tilbury Street, while it continues to have residential uses, also has non-residential uses such as public parking and uses approved in the C-T Zone.

## Development Standards

The application conforms to the R-60 Development Standards in the Zoning Ordinance in terms of minimum lot area, setbacks, building height and lot coverage. The subject lot was platted in 2004. The lot is approximately 0.1963 acres in size and it is rectangular shaped. The following table summarizes the property development standards for the proposed use and development.

**Table 2. Development Standards**

	<b>R-60 Zone Required/Allowed</b>	<b>Proposal S-2638</b>
Purpose:	Residential One-Family	Special Exception Private Education
Minimum Lot Area:	6,000 square feet	8,550 square feet
Minimum Lot Width:		
- at front building line	60 feet	88 feet
- at street line	25 feet	88 feet
Minimum Setback from Street:	25 feet	40 feet
Setback from adjoining lot:		
- one side	8 feet	8 feet west side 16 feet east side
- both sides combined	18 feet	24 feet
- rear setback	20 feet	20 feet
Maximum Building Height:	35 feet (Can go to 40 feet with Site Plan approval under 59-D-3)	33
Maximum Lot Coverage: (Main Building & Accessory Building)	35%	30%

## **Transportation**

A traffic study was submitted with this application. The proposed level of development will remain within the transportation system capacity constraints for the Bethesda CBD area and Transportation staff concludes that the proposal does not warrant improvements to the road system. The applicant will provide streetscape improvements in conformance with the Sector Plan recommendations.

Transportation Planning staff performed analysis of adequate public facilities review of the subject application. The application was reviewed under the FY 2004 Annual Growth Policy (AGP) since it was filed prior to July 1<sup>st</sup>, 2004. Transportation Technical Staff has provided a memorandum regarding LATR and APF review (see attached and summarized below).

### *Adequate Public Facilities*

Transportation Planning staff recommends the following conditions as part of the APF test for transportation requirements related to approval of this application.

1. Limit the development to a maximum of 10,762 square feet of gross floor area and enrollment of 434 students per day.
2. Limit all pick up and drop off of students to occur within public parking lots, such as Public Parking Lot No. 44 located directly across the street from the property and Public Parking Lot No. 25, which is one block to the north on Highland Avenue
3. Submit an annual report to the Board of Appeals regarding the implementation of the submitted Transportation Management Plan.

### *Local Area Transportation Review*

A traffic study was prepared to determine the impact of this development on the area transportation system. A total of six intersections were evaluated and all intersections are operating within their applicable congestion standards of 1,800 Critical Lane Volume (CLV) established for the Bethesda CBD policy area. The proposed development is not expected to generate any traffic during the morning weekday peak hour periods. The proposed development will add between 8 and 70 CLVs to each of the study intersections in the evening peak hour over the existing traffic scenario. However, all intersections will operate well within the congestion standard.

The following table shows the CLVs at the six intersections evaluated for this study.

Intersections	Existing		Total Future	
	AM	PM	AM	PM
1. MD 355/Highland Avenue	731	726	731	734
2. MD 355/Cordell Avenue	773	752	773	760
3. MD 355/West Virginia Avenue	674	727	674	797
4. MD 355/Cheltenham Drive	994	1049	994	1088
5. MD 410/Pearl Street	897	761	897	790
6. West Virginia/Tilbury Street	70	121	70	163

### *Roadway Classifications*

The proposal does not impact the roadway in terms of adequate rights of way or classification. The Bethesda CBD Sector Plan classifies the nearby roadways as follows:

- Wisconsin Avenue is a six-lane divided road classified as a Major Highway with recommended 104 feet of right-of-way
- West Virginia Avenue is a two-lane road classified as a Residential Street with recommended 60 feet of right-of-way.

All other streets in the Bethesda CBD Sector Plan located east of Wisconsin Avenue and north of East-West Highway are also two lane roads classified as Residential Streets.

### *Site Access and Circulation*

The site has driveway access from West Virginia Avenue to the four on-site parking spaces provided for employees. All other site traffic will use public parking, primarily Parking Lot No. 44 across the street from the site or Parking Lot No. 25 which is one block north of the site on Highland Avenue. The applicant will request that DPWT install signage at the exit of Public Parking Lot No. 44 directing traffic west toward MD 355, away from the residential neighborhood.

The applicant proposes to concentrate pick up and drop offs within Parking Lot No. 44 across the street from the site. Staff concurs that the use of public parking areas for drop off and pickup is appropriate in the Bethesda Parking Lot District and, as a condition of approval, satisfies the intent of Section 59-G-2.19 (a) (4) a-1-d of the Montgomery County Code regarding the deterrence of waiting queues on residential streets.

The neighborhood streets to the east of the site have extensive traffic movement restrictions that prevent cut through traffic. There has been concern raised that the traffic from East-West Highway destined for the site will use the neighborhood streets to reach the site. These concerns were raised when other large developments were planned for this area. Staff finds

that the traffic movement restrictions have proven to be effective in preventing cut through traffic in the East Bethesda neighborhood.

### *Pedestrian Facilities*

There will be wide sidewalks along the frontage of the property that connect to a network of safe and efficient sidewalk facilities throughout the Bethesda CBD. Adequate crosswalks are provided at signalized intersections along Wisconsin Avenue and other major roadways in the area.

### *Transportation Management Plan*

The applicant has submitted a Transportation Management Plan (TMP) to indicate how they will manage traffic circulation, parking management, and a community outreach program to keep an open dialog with the community to address transportation system concerns relating to their operations. They have pledged to submit an annual report to the Board of Appeals to address the implementation of the TMP.

### **Environmental Analysis**

The special exception request has been granted an exemption for Forest Conservation Requirements of Chapter 22A. There are no wetlands or other environmentally sensitive areas that exist on the property. This use is not expected to generate any noise disturbance to surrounding uses. No additional environmental analysis will be needed for this application.

Final storm water management (SWM) and Erosion and Sediment Control Plans must be submitted to the County Department of Permitting Services before issuance of permits.

### **Landscape and Lighting**

The proposal's lighting is appropriate and will not create objectionable light or glare to adjacent properties. The lighting plan clearly indicates that minimal lighting is proposed on the exterior of the building above the entries and above the parking facility. Lighting is proposed at 100 watts maximum.

The proposed landscaping is consistent with the landscaping recommendations proposed by the Sector Plan for street trees along West Virginia Avenue. Landscaping is also provided to screen the parking facility and prevent objectionable glare from automobiles entering the site.

## Inherent and Non-inherent Effects

Inherent and non-inherent adverse effects of a special exception on nearby properties and the general neighborhood must be considered pursuant to Section 59-G-1.2.1 of the zoning ordinance which states:

*“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 inherent adverse effects, are a sufficient basis to deny a special exception.”*

It is recommended that seven points, or physical operating effects, be considered when reviewing for inherent and non-inherent adverse effects. These relate to the size, scale, scope, light, noise, traffic and environment. Since all of these elements are in every special exception to some varying degree, it must be determined whether or not adverse impacts will be created by these elements. In the case of the subject private educational institution, the inherent adverse effects include the building that is proposed, the parking and traffic generated by the movement of students, faculty and support staff people to and from the property. In the case of most private educational institutions, playgrounds and athletic fields are present, but these elements are not present in this case.

The proposed use will minimize the inherent characteristics of the use while accommodating the applicant's need for a new location for an existing business. The building will incorporate architectural design features to enhance its compatibility with the existing buildings in the neighborhood and to reduce impacts on neighboring properties. The building is set back from the street sufficiently to be compatible with the other buildings in the neighborhood. The proposed lighting for the building and the parking facility are consistent with the lighting on other buildings in the neighborhood. Lighting and noise from the parking facility and the building will not impact adjoining properties.

The additional impact of traffic generated by the proposal will not create an adverse impact on the adjacent roadway network. Although the size of the building is larger than a residential building in the adjacent R-60 Zone, the proposed use is less intensive than a typical private educational institution because the classes do not begin until after the typical morning peak traffic hours, the classes are staggered throughout the day without a significant peak period of activity, and the use does not include outside recreational areas. A total of six intersections were evaluated and all intersections are operating within their applicable congestion standards of 1,800 Critical Lane Volume (CLV) established for the Bethesda CBD policy area. The proposed development is not expected to generate any traffic during the morning peak hours of weekday peak periods. The proposed development will add between 8 and 70 CLVs to each of the study intersections in the evening peak hour over the existing traffic scenario. However, all intersections will operate well within the congestion standard.

Vegetation screening will reduce traffic impacts on adjacent property from the parking facility that will accommodate four vehicles.

The proposed development of the subject lot will create an inherent adverse impact in terms of building size. The new building will not be consistent with the size, scale and scope of the existing development in the adjacent R-60 Zone. Although the manner in which the proposed building is situated on the lot is similar to the existing structures, the building size is the result of the applicant's desire to maximize the available standards of the Zoning Ordinance in the context of the three assembled lots.

Staff concludes that there are no non-inherent adverse effects associated with this application that warrant denial.

## **Compliance with the Specific and General Conditions of the Special Exception**

### **Sec. 59-G-1.2. Conditions for granting.**

#### **59-G-1.21 General conditions.**

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

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

*The proposed private educational institution is allowed by special exception in the R-60 Zone.*

(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 proposed use does comply with all of the specific standards and requirements for a private educational institution pursuant to Section 59-G-2.19 of the zoning ordinance.*

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a 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 granting 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 Plan recommends an R-60 Base Zone and transitional uses for the subject property. Private educational institutions are allowed by special exception in the zone. The proposed use is consistent with the land use and zoning objectives in the adopted 1994 Bethesda CBD Sector Plan. The Land Use Objectives on Page 108, B.2. state: ..."keep overflow parking and cut-through traffic from having an undesirable impact on the East Bethesda neighborhood." The proposed development plan will not have an adverse affect on the roadways in terms of cut-through traffic or overflow parking.*

- (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 general neighborhood includes properties in the area between Wisconsin Avenue and Tilbury Street and includes the West Chevy Chase Heights subdivision. The general and surrounding neighborhood is a mix of central business district and residential characters, zoned R-60 to the east of the subject property and zoned CBD-1 to the west.*

*The additional building and parking will be generally consistent with the design of the existing improvements and the manner in which they are situated. The proposal incorporates architectural design features to enhance its compatibility with the surrounding neighboring.*

*The additional building and parking will not be consistent with adjacent residential development in the R-60 Zone in terms of size and scale. The proposed building is much larger and taller than other residential style buildings in the neighborhood.*

*The proposed lighting will not impact adjoining properties.*

*The employees and students on the subject property at any given time will achieve a density of approximately 360 persons per acre, far above the "87 students per acre" referenced in the Zoning Ordinance (59-G-2.19). The proposed use is less intensive than a typical private educational institution because the classes do not begin until after the typical morning peak traffic hours, the classes are staggered throughout the day without a significant peak period of activity.*

*Vehicle circulation for pick up and drop off activity is provided via the public parking lot across the street from the proposed development.*

*Traffic impact on nearby residential streets generated by the additional building is limited by this circulation pattern.*

- (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 proposed use will not be detrimental to other property in the general neighborhood and will not adversely effect the peaceful enjoyment, character or future development of 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 proposed use will not have objectionable characteristics. The proposed primary use will be limited to the indoors.*

- (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.

*There are two other special exceptions west of Tilbury Street. The proposed use will not result in an excessive concentration of special exception uses sufficient to "affect the area adversely or alter its primarily residential nature." The block west of Tilbury Street, while it continues to have residential uses, also has non-residential uses such as public parking and uses approved in the C-T Zone.*

- (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 use will contribute to the cultural arts flavor of the Bethesda CBD area and will not adversely affect the area.*

- (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 property is served by public services.*

- (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. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

*Preliminary Plan is required for the subject application.*

- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.

*The applicants propose no changes to the site that would remove sidewalks or impede vehicular or pedestrian traffic.*

**Sec. 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 if the board finds that:

- (1) the private educational institutional 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;

*The proposed modification will not constitute a nuisance because of traffic, number of employees, noise, type of physical activity, or any other element. The building and parking facility will be consistent with the existing improvements. The building height will not be higher than that which is allowed by the zone. The buildings and parking facility will be screened from view from adjoining properties and the residential design of the building is in character with the neighborhood. No physical activity is associated with this use other than employees and students who will travel to the subject property. Traffic to the surrounding*

*neighborhood is limited based on pre-existing access management controls. The proposed circulation system respects those controls. There is no outside noise associated with the proposed use.*

- (2) except for buildings and additions completed, or for which a building permit has been obtained before (date of adoption [April 2, 2002]), the private educational institution must be in a building architecturally compatible with other buildings in the surrounding neighborhood, and, if the private educational institution will 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, the exterior architecture of the building must be similar to a single-family home design, and at least comparable to any existing homes in the immediate neighborhood;

*The proposed building will incorporate architectural single-family home design features to enhance its compatibility with the existing buildings in the surrounding neighborhood. While the size and scale of the new building is larger than the existing buildings in the surrounding neighborhood, the mass of the new building will be mitigated by elements and angles of the proposed structure.*

- (3) The private educational institution 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 modification will not affect adversely or change the present character or future development of the surrounding neighborhood. The proposed structures will be constructed with minimal disturbance to the land and they will be designed to be compatible with the character of the area and the design of the existing buildings in the neighborhood.*

- (4) the private educational institution must conform with the following standards in addition to the general development standards as specified in Section G-1.23:

- a. **Density**—The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering the following factors:

1. Traffic patterns, including:

- a) Impact of increased traffic on residential streets;
- b) Proximity to arterial roads and major highways;
- c) Provision of measures for Transportation Demand

Management as defined in Section 42A-21 of the Montgomery County Code;

- d) Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and
2. Noise or type of physical activity;
  3. Character, percentage, and density of existing development and zoning in the community;
  4. Topography of the land to be used for the special exception; and
  5. Density greater than 87 pupils per acre may be permitted only if the Board finds that (i) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; (ii) the additional density will not adversely affect adjacent properties; (iii) additional traffic generated by the additional density will not adversely affect the surrounding streets.
- b. **Buffer**—All outdoor sports and recreation facilities must be located, landscaped or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The facility must be designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fences and walls.

*The applicant has submitted statements, site plans, and architectural drawings, and elevations demonstrating that the building will conform to the above sited development standards. Because of the design of the building, site size, and natural vegetation screening, the subject property is designed to protect adjacent properties from noise and spill light. Given the property's location near a major highway (Wisconsin Avenue MD 355), access to the subject property is and will be adequately provided in the future.*

*The new employees and students on the subject property at any given time will achieve a density of approximately 360 persons per acre, far above the "87 students per acre" referenced in the Zoning Ordinance (59-G-2.19). The proposed use is less intensive than a typical private educational institution and it will not adversely affect adjacent properties*

*because the classes do not begin until after the typical morning peak traffic hours, the classes are staggered throughout the day without a significant peak period of activity. Additional traffic generated by the additional density will not adversely affect the surrounding streets. There is an adequate drop-off and pick-up area, and traffic cuing will be limited at subject property.*

- (b) If a Private Educational Institution operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, the Board must find, in addition to the other required findings for the grant of a Private Education Institution special exception, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Board must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Board.

The Board may limit the number of participants and frequency of events authorized in this section.

*The Maryland Youth Ballet makes its space available to other art education programs and performance arts users for a reasonable fee. The proposal will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. Such outside users are accommodated during the MYB hours of operation only on weekday evenings and/or in the daytime on weekends when MYB does not need the space. Class attendance during such activities will be limited to a maximum 15 students on weekdays evenings and 50 on weekends with two classes proposed for Sundays. The proposed Transportation Management Plan will provide for mitigation and minimization of the traffic impacts generated by the proposal.*

- (c) Programs Existing before April 22, 2002.

- (1) Where previously approved by the Board, a private educational institution may continue the operation of (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, whether such programs include students or non-students of the school, if the number of participants and frequency of

events for programs authorized in 59-G-2.19(b) are established in the Board's approval.

*No Applicable*

- (2) Where not previously approved by the Board, such programs may continue until April 22, 2004. Before April 22, 2004, the underlying special exception must be modified to operate such programs, whether such programs include students or non-students of the school. The Board may establish a limit on the number of participants and frequency of events for authorized programs.

*No Applicable*

(d) **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 applicant has submitted such a plan and staff finds it acceptable.*

- (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.

- (e) **Exemptions.** The requirements of Section G-2.19 do not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, 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. This exemption does not apply to any private educational institution which received approval by the Board of Appeals to operate a private educational institution special exception in a

building or on a lot, lots or tract of land that was not owned or leased by any church or religious organization at the time the Board of Appeal's decision was issued.

*Not Applicable*

- (f) **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 division 59-G-4 of this chapter.

*Not Applicable*

- (g) **Public Buildings.**

- (1) A special exception is not required for any private educational institution that is located in a building or on premises that have been used for a public school or that are owned or leased by Montgomery County.

*Not Applicable*

- (2) However, site plan review under Division 59-D-3 is required for:

- (i) construction of a private educational institution on vacant land owned or leased by Montgomery County; or
- (ii) any cumulative increase that is greater than 15% or 7,500 square feet, whichever is less, in the gross floor area, as it existed on February 1, 2000, of a private educational institution located in a building that has been used for a public school or that is owned or leased by Montgomery County. Site plan review is not required for: (i) an increase in floor area of a private educational institution located in a building that has been used for a public school or that is owned or leased by Montgomery County if a request for review under mandatory referral was submitted to the Planning Board on or before February 1, 2000, or (ii) any portable classroom used by a private educational institution that is located on property owned or leased by Montgomery County and that is in place for less than one year.

*Not Applicable*



- (h) **Applications filed before May 6, 2002.** Any application filed before May 6, 2002 for a private educational institution special exception or modification of a private educational institutional special exception must comply with the requirements of Article 59-G and Article 59-E in effect at the time the special exception was filed.

*Not Applicable*

## CONCLUSION

Upon review of the applicant's petition for special exception for a Private Educational Institution in the R-60 zone, staff recommends approval. The proposed development will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses (Note: part of the General Conditions).

### Attachments:

- A. Environmental Planning Memo
- B. Transportation Planning Memo

### C. Attachments

Location Map	Attachment 1
Zoning Map	Attachment 2
Subdivision Plat	Attachment 3
Aerial Photo	Attachment 4
Elevations	Attachment 5
Site Plan	Attachment 6
Electrical Site Plan	Attachment 7
Basement Plan	Attachment 8
Transportation Management Plan	Attachment 9
Statement of Petitioner	Attachment 10
Statement of Operations	Attachment 11
List of Adjoining and Confronting Property Owners	Attachment 12
Letters	Attachment 13