

IN THE MATTER OF : BEFORE THE
GLENELG COUNTRY SCHOOL : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 16-034C

.....

DECISION AND ORDER

On January 24, March 6, April 3, April 10, May 1, May 16, May 31, July 12, July 24, August 10, August 21, October 11, November 7, and November 28, 2017, and January 31, February 9, March 16, April 17, and April 27, 2018, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the Conditional Use petition of Glenelg Country School (Petitioner or GCS) to enlarge and modify a Private Academic School in an RR-DEO (Rural Residential: Density Exchange Option) zoning district, filed pursuant to Howard County Zoning Regulations (HCZR) §§ 131.0.B.5 and 131.0.N.48.

Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure. William Erskine, Esq. represented the Petitioner. The Glenelg Manor Estates Community Association (GMECA) authorized Dorothy DeCesare as spokesperson for GMECA Protestants not represented by counsel. Thomas Meachum represented Protestants Mary Aurelia Horejs, Anita Woodley, and Bao Luong. Gregory Ventre, Tim Madden, Marty Rahaman, Mickey Cornelius, and Jhan Tangires testified in support of the petition. Albert Free, Peter DeCesare, Madeline Mirecki, Jan Hollis, Marc Ebersberger, Dorothy

DeCesare, Dr. Mary Zink, Greg Selbrede, Mary Aurelia Horejs, Anita Woodley, Bao Luong, and Doug Eacker testified as Protestants to the petition. Petitioner introduced into evidence these exhibits.¹

1. Proposed phasing rendering (second version/first amended plan) (1.23.17) – CUP2
2. 1.23.17 CU Plan (second version/first amended plan) - CUP2
3. 1st Phasing chart
4. 2.22.17 2 page summary of amendments - CUP3
5. 2.22.17 Amended CU Plan and all docs (redline) – CUP3
6. 2.22.17 Overall conditional use plan – 8 pages (second amended plan) – CUP3
7. 2.22.17 Color rendering of current/second amended plan - CUP3
8. 2.22.17 Full document (125 pages) (second amended plan) – PETITION2 & CUP3
Note: The Hearing Examiner had Petitioner mark each PE8 section separately - PE8.a-g.
 - a. February 22, 2017 cover letter for Exhibit 8
 - b. Redline of revised 2.22.17 CU plan (second amended plan)
 - c. 2.22.17 revised C.U. plan (second amended plan)
 - d. Revised (amended) chart, 2.22.17
 - e. 2 easements, L1343/F604, L1343/F634
 - f. Maisel plat, F-00-117
 - g. Preservation easement, F-00-117, L5253/F0080
9. Lighting Diagram - Petition3 & CUP3
10. Photographs
11. Drainage area map (old)
12. Revised drainage map
13. Photographs of lower site/operations area
14. Fence Plan
15. Photographs/drainage areas along public Folly Quarter Road and waterflow
16. Wells and monitoring map
17. Site Development Plan SDP-03-084
18. Timeline, BOA approvals and Site Development Plans in Exhibit 17
19. Building Height Diagram
20. Performing Arts Building Height Study Diagram
21. Performing Arts Building architectural rendering
22. 1-.14 Photographs, views toward Performing Arts Building
23. Letter to Michael Mitchell, Morris Ritchie Assoc. from Lori Byrne, MD. DNR, October 19, 2017
24. "Approved" conditional use features exhibit, 2.2.18 (large scale)
25. "Proposed Features" (large scale)
26. Conditional Use site limits - first map

¹ Petitioner and Protestants provided the Hearing Examiner with electronic copies of some documentary and testimonial exhibits to facilitate the drafting of this decision and order. In the event of a discrepancy, the hard copy exhibit controls.

27. Revised per Hearing Examiner - Conditional Use site boundaries , "Exhibit A" April 23, 2018
28. 1.12.18 Plan, 8 pages – CUP4
29. 80-item list of changes identified in Exhibit 30 – CUP4
30. Bubble version of 1.12.18 Plan, 3 pages – CUP4
31. List of 80 changes (same exhibit as PE 29) – CUP4

Protestants introduced into evidence these exhibits.

1. Email 9.5.16 From Bao to Jhan Tangires re: hole in tree-line fence
2. Email 9.16.16 from Jhan Tangires to Bao re: hole in tree-line fence
3. Email 9.16.16 5:33pm Bao to Jhan Tangires re: hole in tree-line fence
4. CGS 10.27.99 letter to Mr. & Mrs. Albert P. Free, CGS re: possible donation of easement land
5. CGS follow-up 12.10.99 letter to Mr. & Mrs. Albert P. Free re: possible donation
6. BA 99-051E&V Masterplan re: "easement owned by others"/"land owned by others"
7. A&B. Revised SDP-01-69 sheets showing existing uses not specified in Masterplan (Ex. 6)
8. Maps, photographs prepared by Mary Horejs, 33 pgs.
9. Email, January 30, 2017 re: excessive noise to GCS from Mary Aurelia Horejs
10. Testimony of Mary Aurelia Horejs
11. 70-page exhibit prepared by Bao Luong and Anita Woodley
12. Albert Free, environmental concerns
13. Peter DeCesare, Lighting, noise & traffic
14. Madeline Mirecki, Performing Arts Center
15. Jan Hollis, map of property
16. Jan Hollis, photograph of flooding
17. Jan Hollis, testimony
18. Marc Ebersberger, May 7, 2012 email, Marsha McLaughlin to DPZ staff re: conversion of informal track loop to formal synthetic track
19. Marc Ebersberger, Glenelg Manor Estates plan showing topography
20. Marc Ebersberger, grading study for property
21. Dorothy DeCesare, 29-page presentation, pages 4-16 not admitted
22. Dr. Zink, 36-page presentation
23. Marc Ebersberger video
24. Greg Selbrede testimony
25. Bao Luong, marked up plan re: privacy fence and evergreen trees
26. Bao Loung, vehicle lights shining toward house
27. SDP 03-084, May 2016
28. Email from Lisa Feinberg to Robb Champlin, Companies (Robb), 11.12. 12
29. Letter to Lisa Feinberg from Robb Champlin, Clark Companies, 12.12.12
30. Marc Ebersberger, photographs
31. Culvert video
32. Bao Luong & Anita Woodley - requested conditions of approval
33. Bao Luong, Anita Woodley, Mary Aurelia Horejs - categorization of proposed uses & structures
34. Bao Luong, Anita Woodley, Mary Aurelia Horejs - comments on proposed uses & structures
35. BA 95-046E decision and order

36. BA 99-51E&V decision and order
37. A. Mary Aurelia Horejs - summary requirement for GCS Maintenance Yard, pgs. 1-2
B. Mary Aurelia Horejs - summary requirement for GCS Maintenance Yard, pgs. 3-4
38. Mary Aurelia Horejs - results of 50-foot buffer set off GCS property lines
39. GMECA – mapped CUP4 with 80-amendments marked up errors
40. GMECA closing summary
41. GMECA requested conditions of approval
42. GMECA requested conditions of approval, short version, 8 pages

I. FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts.

A. General Information

1. Property Identification. Glenelg Country School is located in the 5th Election District and located on the south side of Folly Quarter Road, south of the intersection with Maryvale Court. The school address is 12793 Folly Quarter Road.

2. The School Site – General Description (from the January 13, 2017 Technical Staff Report.) The school currently comprises about 212,469sf of classroom/building space, six athletic fields, an outdoor amphitheater, and an observatory. The Primary, Lower, Middle, and Upper School buildings total 196,464sf. Ancillary buildings include the headmaster's residence, a maintenance office/cottage, six athletic fields, two portable classrooms, multiple maintenance buildings, an outdoor amphitheater, and an observatory. A portion of the Lower School building is an historic building known as Glenelg Manor (HO-15) constructed in the early 1850s and is considered a significant example of the Gothic Revival architectural style.

The main entrance to the School Site is off Folly Quarter Road, just to the east and offset from Maryvale Court. Further west on Folly Quarter Road is a secondary, right-in entrance from eastbound Folly Quarter Road. The School Site slopes in elevation from the front of the Manor House/Lower School, and even more to the southeast, where the elevation drops more than 100 feet to the lowest point near the southeast corner. Two large wooded areas are located between the main drive and Maisel Farm Lane on the northwest side and a Forest Conservation Easement area is located southeast of the Middle School Building/Performing Arts Center. Wooded perimeter buffer areas run along the rear lot lines and the private Folly Quarter Road.

3. Vicinal Properties. Adjacent properties are also zoned RR-DEO. Across Folly Quarter Road to the north are the Discovery subdivisions: 4 residential lots along Folly Quarter Road and 16 residential lots along Maryvale Court. The Glenelg Manor Estates 88-lot subdivision borders the eastern and southerly boundaries of the Board of Appeals-approved School Site. The private road running along this section of the School Site is also known as Folly Quarter Road and multiple residential lots in the Glenelg Manor Estates subdivision front this road and face the School Site. To the southwest is the Maisel Property subdivision, whose residential lots front on Maisel Farm Lane. To the west, beyond the private Maisel Farm Lane, is the Buckskin Woods subdivision.

4. Roads. The public section of Folly Quarter Road has 2 main travel lanes and about 21 paving feet within an existing variable-width right-of-way. The posted speed limit on the public Folly Quarter Road is 40MPH and 30MPH during school hours. The estimated sight distance from the main driveway entrance is approximately 545 feet to the west and more than 1,000 feet to the east. A secondary, right-turn only entrance lies about 328 feet west of the main entrance.

According to data from the State of Maryland, the traffic volume on Folly Quarter Road east of Triadelphia Road was 4,643 AADT (Annual Average Daily Traffic) in 2014.

5. Water and Sewer Service. The School Site is served by private well and septic.

6. The General Plan. PlanHoward 2030 designates the School Site as "Low Density Development" on the Designated Place Types Map. It is designated "Institutional" on the Land Use Map. The PlanHoward 2030 General Plan Transportation Map classifies Folly Quarter Road as a Major Collector.

B. Proposed Expansion of the Private Academic School

Typically, the General Findings section of a Hearing Examiner decision and order makes detailed findings of fact on the proposed use. However, because Glenelg Country School (GCS) modified the conditional use petition and plan over the course of the hearing, this description is a general summary of the major elements of the proposed school expansion provided in the initial October 25, 2016 petition without reference to the conditional use plan boundary or affected properties. The October 25, 2016 petition supplement describes the proposed expansion. This information also appears in some form on the October 26, 2016 conditional use plan (CUP) and as detailed in the CUP use chart.

Through this application, the Petitioner is seeking to update its Conditional Use Plan to reflect the minor modifications previously approved by the former Director of Planning and Zoning and to also seek Conditional Use approval to further modify and expand its private academic school operations to include additional property (Lot I and a portion of PAR A) and to include new and/or modified structures and uses. The Petitioner's current and proposed structures and uses are described in detail in the use chart attached hereto as Amended Exhibit A-5. As described in the use chart, these future modifications are proposed to be undertaken in a series of three phases. These phases are summarized below.

Phase 1. The proposed modifications and enhancements proposed under Phase I of the petition are

intended to be completed within a 2-year period and would consist of the following:

1. Operations Cottage - Convert the existing Cottage from residential use to office use for the Operations Department. No physical changes to the structure are proposed.
2. New Storage Buildings - Construct up to two (2) new accessory storage buildings (1,000sf and 2,200sf, respectively); one (1) addition to existing Maintenance Building (1,130sf).
3. Wastewater Treatment Buildings I & 2 - Construct two new accessory buildings and upgrade wastewater treatment facilities as depicted on Conditional Use Plan. Each new building will be approximately 400sf and will be approximately 25 feet in height. These upgraded wastewater treatment facilities will be contained within insulated buildings and will not produce any appreciable noise, odors, dust or vibrations that would be discernible at any adjoining residential property line.
4. Remove Storage Shed on Lot 24C – current 1600sf storage shed is located within 50-foot conditional use setback area. The storage space lost with the removal of this structure will be replaced by the new construction proposed as part of #2 above.
5. Install parking lot lighting near 22 unmarked parking spaces adjacent Primary School building.
6. Install 26-space parking lot with lighting for Upper School previously approved under SDP-03-84.

Phase 2. The proposed modifications and enhancements proposed under Phase 2 of the petition are intended to be completed within a 10-year period and would consist of the following:

1. Lower School Portable Classroom - This modular classroom would consist of approximately 840 sq. feet of space and would be approximately 20 feet in height.
2. Upper School Academic Addition - This three-story addition to the Upper School building would consist of approximately 11,000sf of space and would be approximately 40 feet in height.
3. Upper School Portable Classroom - This modular classroom would consist of approximately 2,300 sq. feet of space and would be approximately 20 feet in height.
4. Athletic Storage Facility - This newly constructed accessory building would consist of approximately 400sf of space. The building would be approximately 25 feet in height.

Phase 3. The proposed modifications and enhancements proposed under Phase 3 of the petition are intended to be completed within a 20-year period and would consist of the following:

1. Little Dragon Building - This newly constructed two-story building would consist of approximately 18,000sf of space and would have a height of approximately 34 feet. This facility would support the school's Early Learning Program for ages 2 to 3.
2. Performing Arts Center - This newly constructed two-story building would consist of approximately 42,500sf of space and would be approximately 75 feet in height. The center would have seating for up to 450 people as well as space for additional classrooms.
3. Parking Lots for Performing Arts Center - Two additional parking lots with appropriate outdoor lighting will be constructed to provide parking for the Performing Arts Center. One of these parking lots, consisting of 44 spaces, was previously approved under BA Case No. 99-51E& V but was never constructed. The other proposed parking lot will contain an additional 46 parking spaces. These parking areas for the future performing arts center are proposed to be constructed during phase 3 of the conditional use plan. However, depending on the availability of financial resources they may be constructed during an earlier phase.

All of the new structures and additions to existing structures proposed to be constructed during each phase of the Conditional Use Plan will be designed in a manner that is architecturally consistent with other already existing structures on the school campus. For further architectural details, please see the conceptual building renderings attached hereto as Exhibit A-6.

Hours of Operation. The Glenelg Country School operates in some capacity on a 24-hour per day basis. This is due to the fact that the Head of School resides on campus and because the school employs a full time security guard to provide campus security as needed - up to 24 hours per day. The remainder of the school related activities and functions have varying hours of operation which are described in detail in the attached use chart (Exhibit A-5). The school campus opens for staff and maintenance personnel at 6:30am. These employees are scheduled to leave campus on or before 6pm. Generally, the hours of operation for academic programs is 7:30am - 6:00pm. However, certain facilities including the existing theater (and proposed Performing Arts Center) gymnasiums, athletic fields, track, press box, and related parking areas generally operate or will operate from 7:30am - 8:00pm. The observatory operates until 11pm.

Number of Students, Faculty, and Staff. Currently, the Glenelg Country School employs 177 teachers and staff. This figure consists of both full time and part time employees, so the total number of employees on campus at one time will fluctuate and is less than 177. Upon the completion of Phase 2 of the proposed Conditional Use Plan, the total number of full time and part time employees is proposed to be 188. Upon the completion of Phase 3 of the Conditional Use Plan, the number of full time and part time employees is proposed to be 190. Regarding student enrollment, there are currently 770 students enrolled at the Glenelg Country School. Approximately 75% of these students are Howard County residents. No changes to the student enrollment are proposed during Phase 1 of the Conditional Use Plan. Upon the completion of Phase 2, however, student enrollment is proposed to increase modestly to 902 students. Upon the completion of Phase 3 of the Conditional Use Plan, student enrollment is proposed to increase to 958 students.

Outdoor Lighting. This petition does not propose outdoor lighting for the athletic fields. All existing outdoor lighting and proposed outdoor lighting complies fully with requirements of Section 134 of the Howard County Zoning Regulations.

Vehicles and Equipment. The Glenelg Country School currently operates a total of 6 motor vehicles licensed for use on the highway. A description of the current vehicle fleet is provided below. The school anticipates doubling the size of its Mini-Bus fleet (from 3 buses to 6 buses) during Phase 2 of the Conditional Use Plan. The school also anticipates increasing the number of passenger vehicles and/or trucks in its fleet in the future. This petition seeks approval for 12 motor vehicles.

Vehicle #	Year	Make	Model
1	2016	CHEV (Mini-Bus)	14 Passenger Bus
2	2001	CHEV (Mini-Bus)	14 Passenger Bus
3	2002	CHEV (Mini-Bus)	14 Passenger Bus
4	1999	FORD Mail Van	STEP VAN
5	2006	CHEV	Silverado C1500
6	2012	FORD	F250
7	2009	FORD	Crown Victoria

The Glenelg Country School maintains more than 86 acres of ground. To accomplish this maintenance activity, the school currently maintains 16 pieces of grounds maintenance equipment including mowers, tractors, golf carts, and a Bobcat. A detailed list of the school's ground maintenance equipment is provided immediately below.

Item #	Year	Description
1	2003	Toro 7210
2	2005	Toro 7363
3	2010	Toro 7279
4	2006	Club Car
5	2007	Club Car
6	2007	Club Car
7	1992	John Deere Tractor
8	2013	Toro 7273
9	2009	Toro 7273
10		John Deere Tractor
11		Gravelly 992239
12		Grasshopper 7210
13	2015	John Deere TS Gator
14	2011	Club Car Precedent Villager 4
15	2008	John Deere Gator XUV 620 I
16	2006	Bobcat 5185

C. Summary Findings on Major Issues: The Conditional Use Site Boundaries: BOA-approved GCS Boundaries, the Matter of Certain Fee-Simple Pipestem Strips, Certain "Revisions" to the BA 16-034C CUS/Land Use Area ; and Property Owner CU Application Authorization

Nomenclature: The evidentiary record for BOA 16-034C contains what the Hearing Examiner will identify for clarity as two successive conditional use petitions and four CUPs. "Petition1" and "CUP1" are part of the October 25, 2016 packet forwarded to the Hearing Examiner for scheduling and informing the January 13, 2017 technical staff report (TSR) (the Initial Submission). CUP2 was admitted as PE2 at the first, January 24, 2017 hearing session. Petition2 and CUP3 were admitted as PE5 & PE6 at the March 6, 2017 hearing session. CUP4 was admitted as PE28 at the January 31, 2018 hearing session.

Note: there are 22, 12'-wide pipestems strips in total, two of which not owned by residents of Glenelg Manor Estates.

a. BOA-Approved Boundaries: 1980-1999

BA 80-17N. Approved August 5, 1980. CUS: Tax Map 0022 & 0028, Parcel 146, Blocks 22 & 4. *Applied to Parcel 146 only, which at that time was 50 acres.*

BA 82-04N. Approved August 23, 1982. CUS: Tax Map 0022 & 0028, Parcel 146. *Applied to Parcel 146 only, which at that time was 50 acres.*

BA 84-23E&V. Approved September 24, 1984. The BOA granted a variance from the minimum setback requirements from the "internal" property line separating Parcels 146 and 356 to allow construction of a high school. CUS identification: Tax Map 0022 & 0028, Parcels 146 and 356, Blocks 22/23 & 4.

Applied to Parcel 146 and expansion of CUS onto the northern 30-acre Parcel 356, expanding the approved school site to 80.76 acres.

BA 93-10E. Approved May 20, 1993. CUS Identification: Tax Map 0022, Block 22, Parcel 146.

Applied to expansion on Parcel 146 only. Prior to 1993, Parcel 146 was merged with Parcel 356 to create the 80.76-acre Parcel 146.

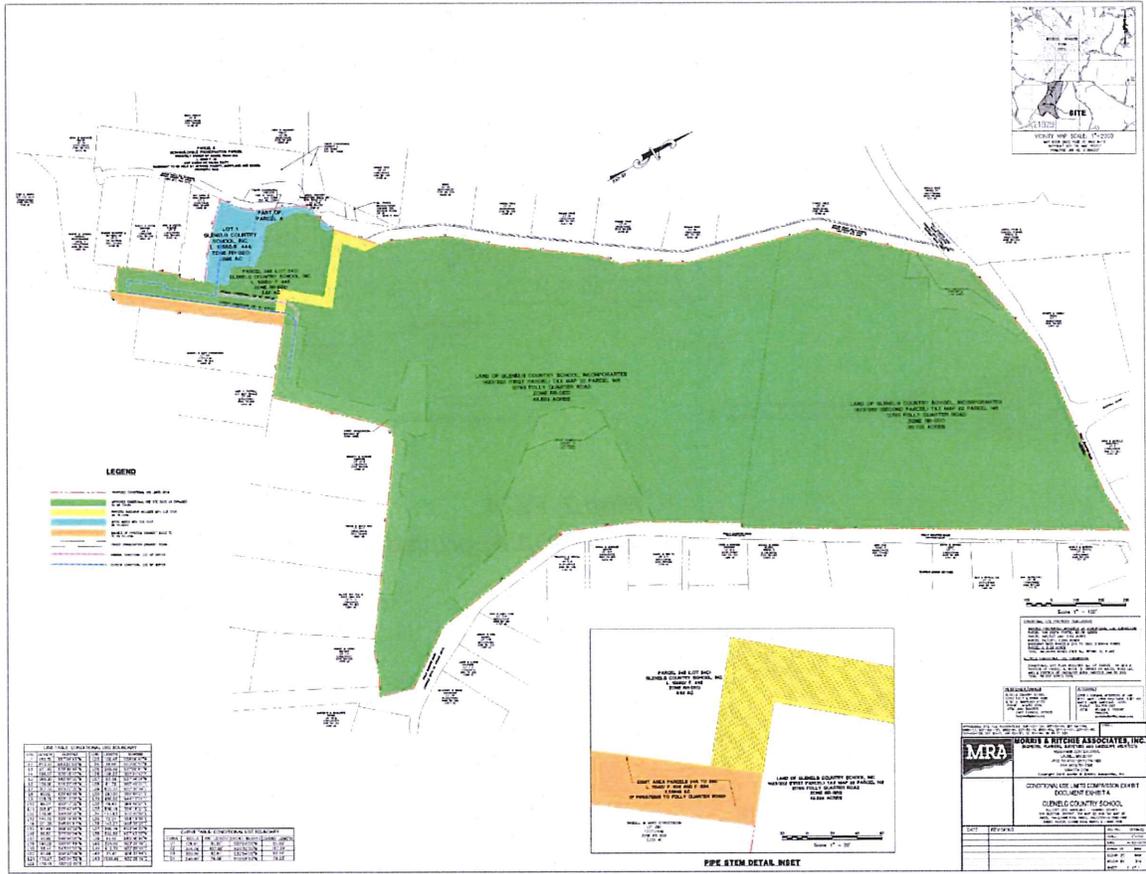
BA 95-46E. Approved February 6, 1996. CUS Identification: Tax Map 0022, Block 22, Parcel 146.

Applied only to expansion on Parcel 146.

Map 1 is a Hearing Examiner-ordered graphic showing what Petitioner identifies as the BOA-approved CU boundary and GCS's reconfiguration of the boundary during the BA 16-034C hearing sessions. The left portion of the large green area is the original 50-acre Parcel 146 school site. The right portion is the former 30-acre Parcel 356, which GCS merged with Parcel 146 into the now 80+acre Parcel 146. There is no disagreement about these boundaries.

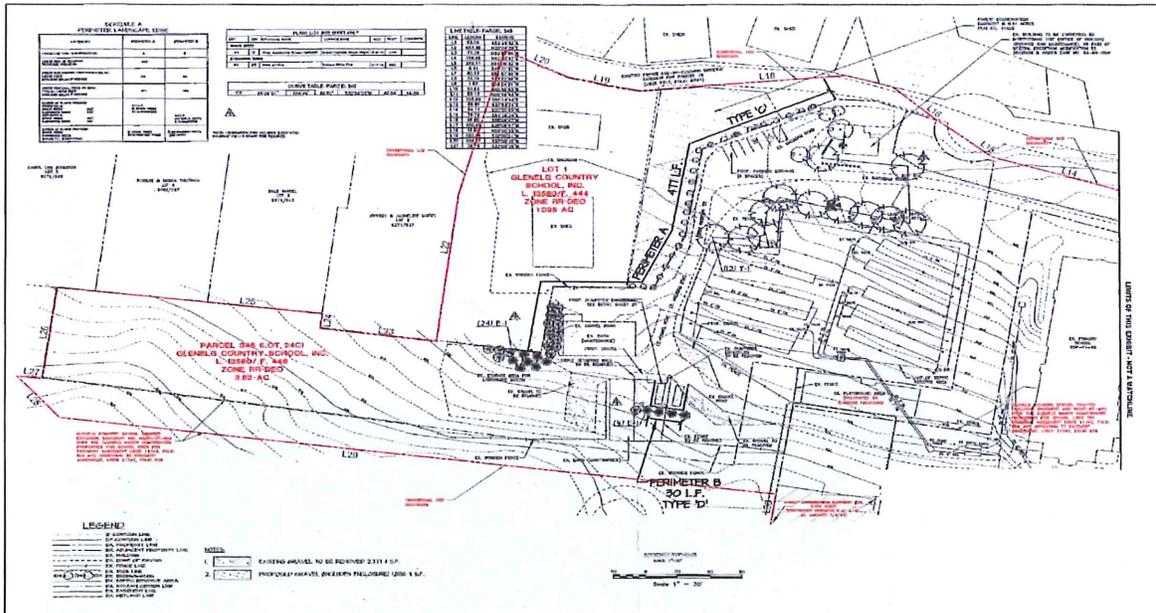
BA 99-51E&V. The smaller green area shown on Map 1, south of Parcel 146, Parcel 345, is what GCS identifies as the CU boundary expansion granted through BA 99-51E&V. It includes the entire 3.62-acre Parcel 345, Lot 24C. Map 2 is PE24, the Hearing Examiner-ordered large-scale CUP4 map identifying existing structures and uses in the maintenance area. It too identifies the approved conditional use boundary as the entire 3.62-acre Parcel 345.

Protestants in their cross-examination of Tim Madden and in direct testimony identify a smaller BA 99-55E&V CU boundary. Protestant Mary Horejs presented evidence that the 1999 expansion encompassed only a portion of portion of the 3.62-acre Parcel 345 as generally shown in the dashed Phase IV lines in the 1999 Masterplan, the BA 99-55E&V site plan before the BOA. PE24, PR6. Map 3 is an enlarged section of PR6, the 1999 Masterplan showing this area. As she reads the Masterplan, the BOA did not approve the area identified as "Easement Owned by Others" as part of the Phase IV CUS boundary expansion.

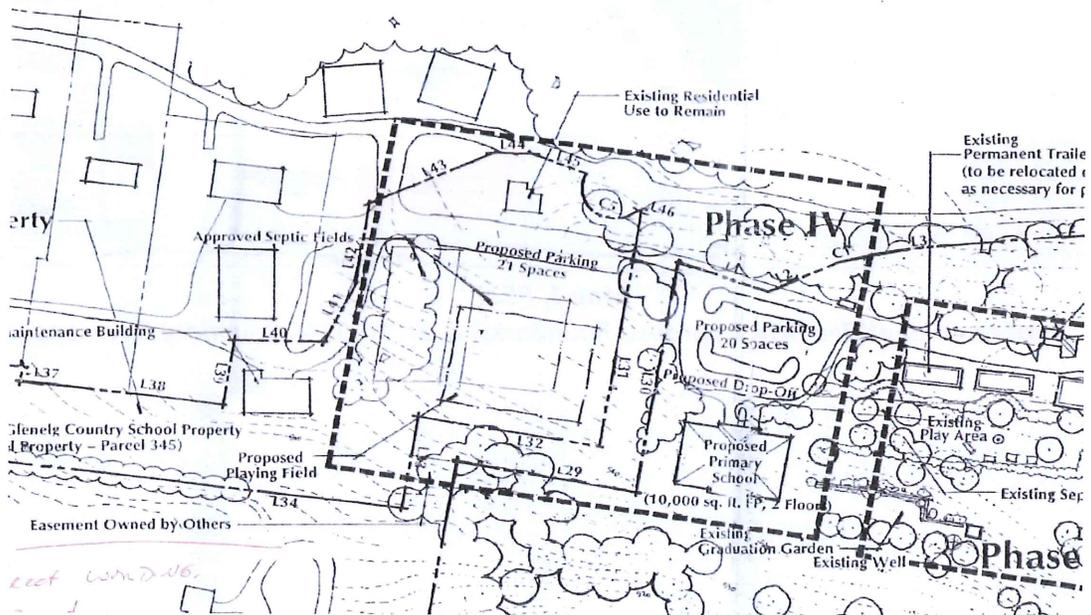


Map 1, PE27

Petitioner Identified BOA Approved Boundaries & BA 16-034C Boundary Revisions



Map 2, PE24
Petitioner Identified Existing (BOA Approved) CU Boundaries



Map 3, PR6
Protestant Identified CU Boundary as Shown on the BA 99-051E&V 1999 Masterplan

The BA 99-051C&V decision and order itself made these findings of fact on the CU Site.

1. The special exception site consists of two properties: Parcel 146 which is the existing school site and an adjoining 3.62-acre portion of adjacent Parcel 345. Pg. 2.

...

Parcel 345 is 3.62 acres and is improved with a 1.5 story frame, single-family detached dwelling that would continue to be used for residential purposes. A white frame barn is located in the southern portion of this property. *This parcel is separated from the main property by a 48-foot wide access easement.* Pg. 3. Emphasis added.

3. The existing dwelling on Parcel 345 would continue to be used as a residence and the white barn on this property would be used as a maintenance shop for the school. In order to implement this plan, the Petitioner requests a variance to reduce the required setbacks from the interior lines between the two subject parcels. Pg. 5.

BA 99-051E&V does not clarify the specific "portion" acreage expansion onto Parcel 345 or its location, but Map 3 shows a Phase IV "dashed" area. The residence to remain lies within this dashed area. The white barn lies outside this area. In granting the requested 0.0-foot variance setback, the BOA found the inclusion of an adjacent property as part of the expanded CUS [a portion of Parcel 345 not adjoining Parcel 146] was a unique condition. The 0.0-foot variance granted was relief from the then RR zoning district 30-foot structure and use setback from the pipestem lot lines shown in yellow on Map 1.

b. The BA 16-034C CUS Boundaries

Note: The CU standard application form requires petitioners to provide certain information, the relevance of which is reviewed in the below Preliminary Conclusions of Law. Because the form erringly contain two "Section 4" sections, they are referred to here as "Sec. 4a" and "Sec. 4b."

4a. Conditional Use Site Description

Address/Street for Property

Tax Map Grid Parcel Lot

Department of Assessments and Taxation Account No.

Total Land Area of Property* (____ Acres) (____ Square Feet) Check one.

Election District Zoning of Property

Subdivision Name and Plat No. (If Applicable)

Total Land Area of Use** (If different than above) (____ Acres) (____ Square Feet)

* referenced as "TLA/P"

** referenced as "TLA/U"

4b. Petitioner’s Interest in Subject Property

OWNER (Including joint ownership)

OTHER (Described and give name and address of owner)

Name of Owner

Mailing Address

If the Petitioner is not the owner, written authorization from the owner must be submitted.

The four BA 16-034C CUPs variously calculate the requisite Sec. 4a CU application data presented in Table 1, which shows the property/acreage data shown on each CUP. Beyond this data, the two petitions and four CUPS furnish clarifying evidence about the shifting delineation of the BA 16-034 CUP boundaries, particularly as this evidence reveals Petitioner's interest in the properties through Sec. 4b and 8a.

TABLE 1				
Conditional Use Plans - Property Tabulations Box				
<i>Various Properties Affected by CU Submission</i>	<i>Acres</i>			
	CUP1	CUP2	CUP3	CUP4
Parcel 146 (both parts)	80.76	80.76	80.76	80.76
Parcel 345/Lot24C	3.62	3.62	3.62	3.62
Parcel 74/Lot1	1.09	1.09	1.09	1.09
Parcel A	5.03	5.03	5.03	5.03
Easement Areas Parcels 24A - 29D			3.53	3.53
TLA/P	90.50	94.04	94.04	94.04
TLA/U	86.27	86.27	88.96	88.96
Narrative	*	**	***	****
* Parts of Parcel A, which is owned by Maisel Road, LLC, and a portion of easement areas parcels 24A to 29D are included in CUP				
** Parts of Parcel A, which is owned by Maisel Road, LLC, and a portion of easement areas parcels 24A to 29D are included in the conditional use plan				
*** A Portion of Parcel A, which is owned by Maisel Road, LLC, and a portion of easement areas parcels 24A to 29D are included in CUP				
**** A Portion of Parcel A, which is owned by Maisel Road, LLC, and a portion of easement areas parcels 24A to 29D are included in CUP				

➤ **Petition1, CUP1 & CUP2**

These are the Petition1, Sec. 4a, CU site state assessment and taxation account numbers.

1. Tax Map 22, Parcel 146 (Folly Quarter Road)
2. Tax Map 22, Parcel 74, Lot I (4309 Maisel Farm Lane)
3. Tax Map 22, Parcel 74, Lot PAR A (4310 Maisel Farm Lane) (PAR A)
4. Tax Map 28, Parcel 345, Lot 24 C (Folly Quarter Road)

Petition1, Sec. 4b, gives this information about Petitioner's Interest in Subject Property.

OWNER (Including joint ownership)

OTHER (Described and give name and address of owner) *

Name of Owner: Maisel Road, LLC,

Mailing Address: 12793 Folly Quarter Road

* Note: Maisel Road, LLC owns Par A and has authorized the filing of this petition

If the Petitioner is not the owner, written authorization must be submitted from the owner.

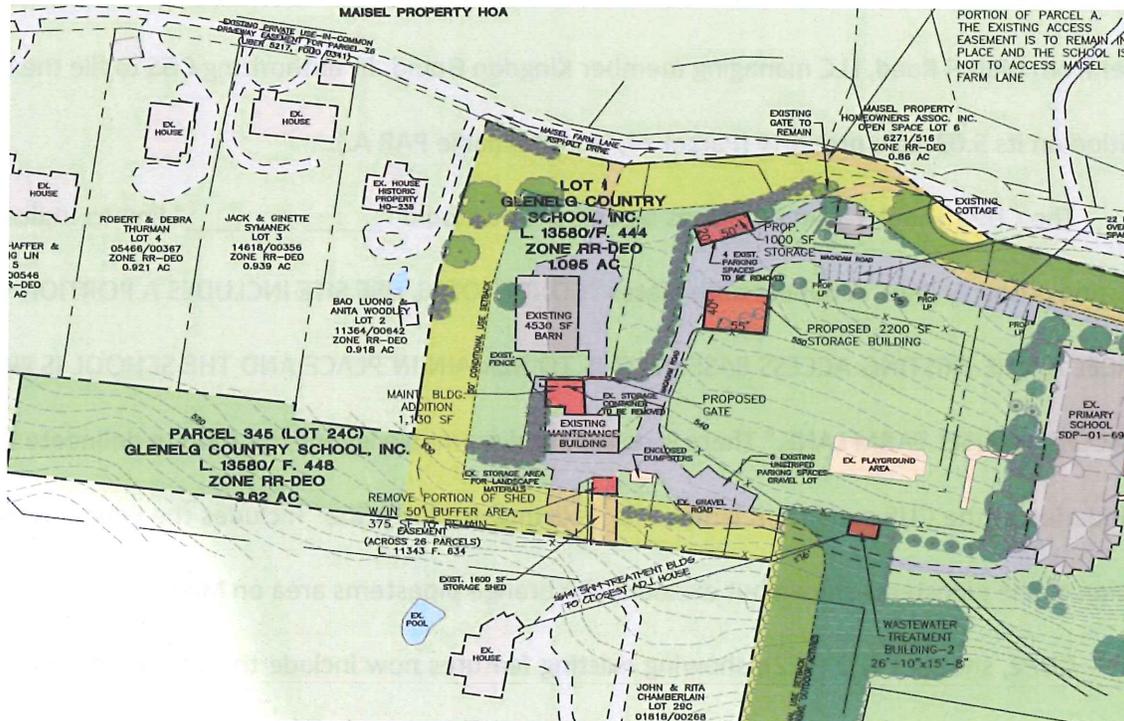
GCS not being the sole owner of the Petition1 TLA/U, Petition1 includes a September 28, 2016 letter from Maisel Road, LLC managing member Kingdon Gould, Jr. authorizing CGS to file the CU petition on its 5.03-acre property (Parcel 74, Non-Buildable PAR A.)

The CUP1 sheet 1 plan notations legend shows a bold " _____ - - _____ " line to indicate "existing property line." A bubble note states "CONDITIONAL USE SITE INCLUDES A PORTION OF PARCEL A. THE EXISTING ACCESS EASEMENT IS TO REMAIN IN PLACE AND THE SCHOOL IS NOT TO ACCESS MAISEL FARM LANE." There is no readily discernable legend notation to delineate the boundaries of the CUS expansion lands. The "existing property line" includes the yellow zigzag section of the pipestems shown but excludes the orange pipestems area on Map 1.

CUP2, sheets 1 & 2 (PE2), showing existing features now include the yellow and orange pipestems areas as part of the CUS. The CU property tabulations box does not call out land area changes in the TLA/P, which increases from 90.50 to 94.04 acres; instead, the end note is

amended to include "a portion of easement areas parcels 24A to 29D" in the CUP. The TLA/U (the CUS) remains the same, 86.278 acres. Emphasis added.

PE1 is a graphic rendering of CUP2 delineating alterations to the proposed CUS boundaries. Map 4 is an enlargement of the same area. The chartreuse yellow border is the CUP1/CUP2 CUS boundary setting off the HCZR § 131.0.N.48.f 50-foot school setback from adjoining residentially owned properties. The CUS boundary excludes a large portion of the southern section of Parcel 345 adjoining Protestants Loung and Woodley property (Lot 2) and Lots 3, 4, and 5. The zigzag portion acreage of the pipestems shown in yellow on Map 1 is identified as part of the CUS (TLA/U), not the TLA/P area.



MAP 4, PE1
Portion of BA 99-051E&V Conditional use Site Boundary & as Proposed in CUP2

➤ **Petition2 & CUP3**

At the March 6, 2017 hearing session, the Hearing Examiner admitted as PE8 the 125-page Petition2, which includes a cover letter, a red-line copy of the amended petition and narrative, a "clean" copy of the amended petition and narrative, an amended use chart, a 2007 easement and 2008 addendum pertaining to the pipestems, the Maisel Property Subdivision Plan, and the Maisel Property easement. For convenience, the Hearing Examiner had GCS admit each PE8 document as a "sub-exhibit" (PE8a-g).

CUP3 (PE4-7) references the following pertinent changes in the 2-page PE4 summary of "SUPPLEMENTAL CHANGES MADE BY APPLICANT ASSOCIATED WITH THE EASEMENT AND SHED."

19. Revised conditional use boundary to include a larger portion of the "Easement Area Parcels 24A to 29D" subject to agreements liber 11343 folio 604 and folio 634 and have updated the label on the site plan to include both folios and the acreage.

28. Revised Conditional Use Property tabulations chart.

This now "TLA/U" boundary expansion to include a larger portion of the pipestems refers to the orange pipestem area shown on Map 1. Petition2, Sec. 4a adds the 22 pipestems (pg. 1, 5), identified by tax number and address. Per changes #19 and #28, the CUP3 "redline" plan markup calling out all plan revisions notes these Petition2 revisions as "Change #28" - the "Conditional Use Property Tabulations" box list, as shown above in Table 1. In Sec. 4b, the Petitioner's Interest in Subject Property is identified so.

OWNER (Including joint ownership)

& EASEMENT HOLDER

OTHER (Described and give name and address of owner) *

Name of Owner: Maisel Road, LLC,

Mailing Address: 12793 Folly Quarter Road

* Note: Maisel Road, LLC owns Par A and has authorized the filing of this petition

If the Petitioner is not the owner, written authorization must be submitted from the owner.

➤ CUP4

CUP4, dated January 12, 2018 was admitted as the 8-page PE28. PE30 is a 3-page redline identifying 80 plan changes to the CUP. As shown in Table 1, the TLA/P and TLA/U calculus is unchanged from CUP3.

Glenelg Manor Estates Protestants in their cross-examination of Petitioner's witnesses and in their direct testimony took exception to GCS's characterization, identification, or inclusion of their fee simple pipestem strips in the petitions on the CUPs, and on previously approved site development plans (SDPs) without their consent. Protestant and pipestem owner Albert Free testified to the history of the schools' interest in expanding the school use site to include the 22 pipestems. Protestant Exhibit (PR) PR4 and PR5 are GCS letters of October 27, 1999, and December 10, 1999, respectively, to Mr. Free and his wife discussing a possible tax-deductible pipestem donation to GCS. He explained the same letters were sent to the other pipestem owners. The October 27, 1999 letter (PR4) identifies the proposed use of the pipestems for a possible new primary school building.

The origin of this curious strip dates from the creation of your lot and was designed to conform to the then Howard County Subdivision regulations which required all lots to have frontage, no matter how small, on a public road. We have been advised by the County that this requirement would no longer be necessary upon your conveyance of this strip to GCS.

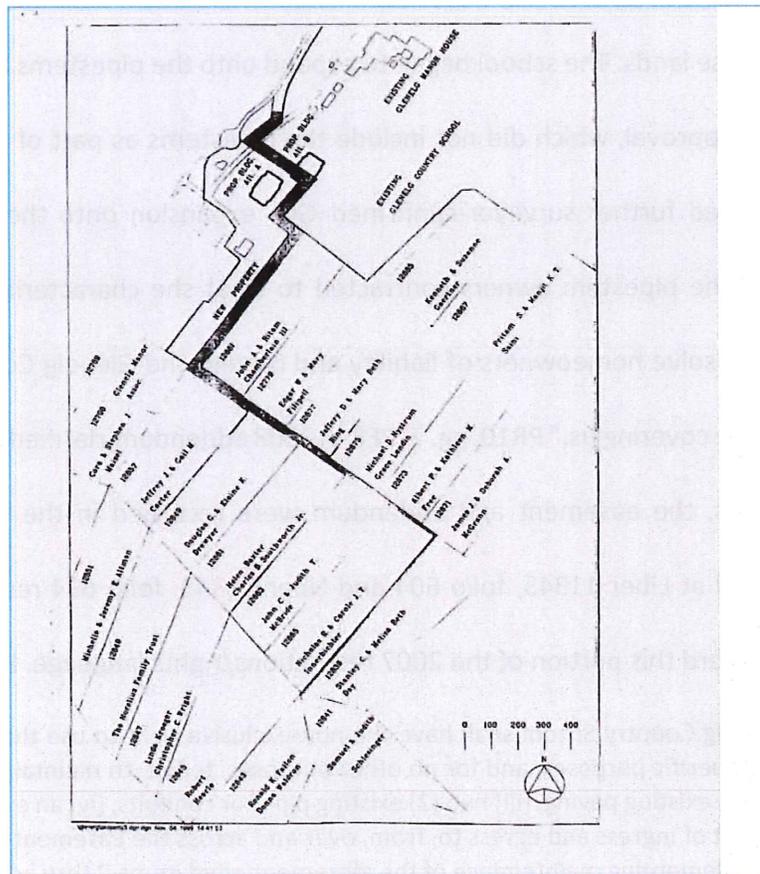
The reason Glenelg would like to acquire these strips is to consolidate with the School's existing property a small tract the School has recently acquired from the Maisel family. This tract is outlined in green. The School has plans to use a portion of this property for a new primary school building the footprint of which is outlined in turquoise.

However, from the School's point-of-view, this building would be better located closer to existing school structures and amenities, the ideal site shown as "alternative B" outlined in navy blue. As

you can see, this site would be partially on the former Maisel property, partially on your strip and those of your neighbors, and partially on existing School property.

Emphasis added. Map 5 (PR4, pg. 2) is a GCS graphic included with the letter and identifying these pipestems and the proposed and alternative primary school footprints.

Pipestem owner Greg Selbrede objected to proposed CUS expansion onto the pipestems. Neither he nor his wife were consulted and it would allow GCS to build structures closer to neighbors than would otherwise be allowed and which he believes to be "a legally suspect stretch of the easement agreement as it is written, and certainly as it was intended."



Map 5, PR4

Proposed/Alternative Primary School Footprint Discussed in 1999 Letters to Pipestem Owners

Pipestem owner Mary Horejs produced testimonial and documentary evidence about the longer history of these pipestems and the school's expansions. The 1999 BA 99-051C&V Masterplan does not identify the 22 pipestems as privately (fee simple title) owned by 22 neighbors, but as "Easement Owned by Others." PE18, pg. 69 and PR6. Ms. Horejs took exception to GCS' notations about the legal status of the pipestems noted on SDP-01-69's stormwater management sheet. PR7B. PE18, SDP-01-69, sheet 24. This sheet approving certain GCS uses on the pipestems does not call out their fee simple title ownership.

Ms. Horejs detailed GCS's negotiation with the 22-pipestem owners to obtain ownership or control of these lands. The school began to expand onto the pipestems areas shortly after the BA 99-051E&V approval, which did not include the pipestems as part of the CUS. In 2004, the owners discovered further surveyor-confirmed GCS expansion onto the pipestems. PR7B. In 2007, GCS and the pipestem owners contracted to what she characterized as the "Easement Agreement to absolve homeowners of liability and require the Glenelg Country School to carry liability insurance covering us." PR10, pg. 7. PE8. A 2008 addendum clarified the agreement. Being land instruments, the easement and addendum were recorded in the Howard County Land Record Maryland at Liber 11343, folio 604 and Liber 11343, folio 634 respectively. Ms. Horejs read into the record this portion of the 2007 restrictions/rights language. PR10, pg. 7.

That the Glenelg Country School shall have the non-exclusive right to use the Easement Area for the following specific purposes, and for no other purposes, to wit, to maintain: (i) an existing play area, (ii) certain existing paving, (iii) two (2) existing pipes or conduits, (iv) an existing split rail fence (v) and the right of ingress and egress to, from, over and across the Easement Area, strictly for the purpose of implementing maintenance of the aforementioned items i) thru iv).

In her view, the 2007 easement and 2008 addendum have a limited purpose: to legitimate the uses GCS had established on the pipestems without owner permission.

c. BOA-Approved Structures and Uses (PE18)

In the 1950s, private schools were permitted as a matter of right in the then R (Rural) zoning district. GCS became a lawful nonconforming use in the 1970s when the HCZR made private academic schools approvable through the then special exception process. Note: Until 2001, the then Private Academic School special exception category did not impose a-specific setback; rather the use was subject to the underlying zoning district bulk regulations, which for the BOA petitions imposed a 30-foot structure and use setback.

BA 80-17N. August 5, 1980. Confirmation and expansion of a nonconforming private school use to allow the construction of a gymnasium building on Parcel 146. No substantive enumerated conditions of approval.

BA 82-04N. August 23, 1982. Enlargement of a nonconforming private school to construct an outdoor in-ground swimming pool in an R District on Parcel 146. No substantive enumerated conditions of approval.

BA 84-23E&V. September 24, 1984. Special exception for a private academic school and a variance from the minimum setback requirements from the property line separating Parcels 146 and then Parcel 356 (to the north) to allow the construction of a high school facility. No substantive enumerated conditions of approval.

BA 93-10E. May 20, 1993. Special Exception to expand existing private academic school on Parcel 146, which had merged with Parcel 356. No substantive conditions of approval.

BA 95-46E. February 6, 1996. Special Exception to enlarge existing private school and a variance to reduce the required 30' structure and use setback to 0' for a school building on Parcel 146. PE18, pg. 42 shows the 1995 special exception 3-phase development plan.

Approvals:

- Construct a three-story "middle" building (approximately 32,000 square foot and 40' in height) between the upper school building and gymnasium. This new building would house classrooms, science labs, a library, art room, music room, multi-purpose auditorium, and administrative offices.
- Construct a two-story addition to the existing upper school building, to include additional classrooms, science labs, a library and administrative offices (approximately 6,000sf and standing 34' high).
- Widen portions of the access road, construct a bus loading area between the middle school and the entrance road, and add 42 parking spaces near the new middle school building.
- Construct a secondary school gymnasium north of the existing upper school building, which will contain a playing court, bleachers, training rooms, locker rooms, and classrooms (approximately 30,000sf and 40' in height).

- Add 45 parking spaces along the northern side of the gymnasium, and additional widening of the access road, another 95 parking spaces in a lot west of the upper school and 56 additional parking spaces along the entrance road near the lower school.
- Construct two 15' high maintenance buildings (3,600 sf, south of the 2 temporary modular classroom units).
- Installation of two additional playing fields along eastern boundary, and immediately east of lower school, add additional tennis courts immediately west of the existing tennis courts.
- Increase in student enrollment from 430 to 550 students and staffing from 85 to 105 employees.
- Total parking spaces will have increased from 132 to 238 spaces.
- Hours of operation will continue to be from 8:15am to 4:00pm.

Conditions of approval:

- 1) existing vegetation must be brought up to Type C landscape buffer along all property lines and all landscaping shall comply with the Howard County Landscaping Manual;
- 2) all lighting shall be directed downward and inward on the Subject Property and shall not illuminate vicinal properties;
- 3) the use of the modular classroom structures shall become permanent when their temporary use expires on May 20, 1998.

BA 99-51E&V. May 16, 2000. Special Exception to enlarge existing private school and a variance to reduce the required 30' structure and use setback to 0' for a school building on Parcels 146 and a portion of Parcel 345.

Approvals:

Add Parcel 345 to the special exception site and construct improvements that would increase the number of students to 782, and increase staff from 105 to 133. The previously approved improvements from BA 95-946E are included in this new petition, along with the following requested new improvements:

- 1) Phase I (2001 – 2002) addition to the Upper School building and relocations of all modular classrooms to the vicinity of the Upper School;
- 2) Phase II (2004) construction of Secondary School gymnasium building, 130 parking spaces, two tennis courts and two sports fields;
- 3) Phase III (2000) reuse and reconfigure space in existing Lower School building, install two temporary classrooms (to be later relocated to Upper School in Phase I);
- 4) Phase IV (2000-2001) construction of new 10,000sf primary school building (210 student capacity), 41 parking spaces, one sports field and environmental observation gazebo; and 5) the existing dwelling on Parcel 345 will continue to be used as a residence and the white barn will be used as maintenance shop for the school.

Proposed new structures will be clustered toward the center of the 84.38-acre parcel. Proposed athletic facilities will comply with required use setbacks and screened by existing vegetation, buffering, and/or distance. All proposed buildings will comply with structure height limitations permitted in the RR District. All proposed improvements would be constructed within the required setbacks and screened or landscaped according to the Howard County Landscape Manual.

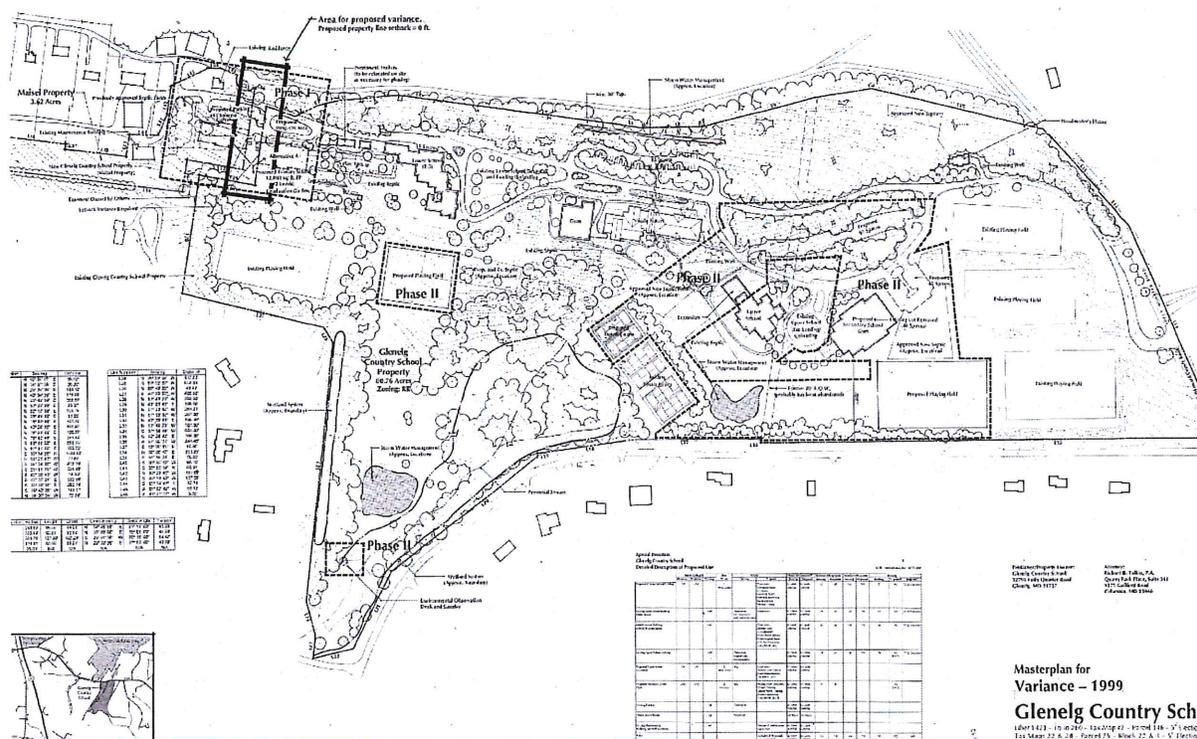
- Large areas of the property will remain wooded or open.
- Hours of operation will remain the same; number of students per acre increase from 6.87 to 9.27.
- Any outdoor lighting will be shielded and directed downward.
- Inclusion of the adjacent property as part of the special exception.
- Variance to 0 feet for the setbacks from the interior lot lines only (all exterior setback requirements will be met.)

Conditions of approval:

- 1) special exception shall apply to the inclusion of Parcel 345, and the construction of improvements depicted on the Special Exception Plan dated November 8, 1999, and no other structures and/or uses;

- 2) existing vegetation shall be augmented to create a Type C Landscape Buffer along the lot lines of Parcel 345 that are not adjoining Parcel 146;
- 3) All new lighting shall comply with Section 134 of the Howard County Zoning Regulations;
- 4) Petitioner shall comply with the requirements of the Bureau of Environmental Health regarding sewage disposal;
- 5) Petition shall comply with all applicable Federal, State and County laws and regulations.

Map 6 is the BA 99-51E&V approved special exception/variance Masterplan. PE18, pg. 70.



MAP 6, PE18
The BA 99-051C&V approved 1999 Masterplan

d. Post-BOA Approvals: "Minor Modifications," Site Development Plans, & Redlines

The initial GCS CU petition submitted on October 25, 2016 (Petition1) catalogs multiple DPZ-approved SDP revisions as "minor modifications" to the school expansion approved through BA 99-051C&V. PE8B, pg. 8.

With limited exceptions, the current uses and structures on the GCS property are in substantial accord with the aforementioned D&O and Masterplan for Special Exception. Notwithstanding, certain minor modifications to the approved Masterplan have been incorporated into the school campus with the prior approval of the former Director of Planning and Zoning. These minor modifications include the installation of additional stormwater management facilities, a press box, bleachers, public address system, scoreboards, artificial turf, a track on one of the approved athletic fields, and a bus loading/unloading area. Each of these minor plan modifications was constructed in accordance with an approved Site Development Plan and Building Permit.

Emphasis added. To GCS these "minor modifications" approvals signify DPZ's authority to grant broad changes to BOA approved CUPs under HCZR § 131.0.1.2. This section regulates the manner in which a successful conditional use petitioner must establish or commence the use.

I. Establishment of Conditional Use

1. Site Development Plan Requirement

If required by the Department of Planning and Zoning, a Site Development Plan must be approved subsequent to the approval of a Conditional Use. The Site Development Plan must conform substantially to the Conditional Use plan.

2. Conformance with Conditional Use Plan.

- a. The Site Development Plan is approved, if required;
- b. All required building permits are issued; and
- c. The development significantly conforms with the Conditional Use plan, including but not limited to structures, landscaping, parking areas, points of access, and lighting, unless an alternative schedule for completion of improvements is approved by the Hearing Authority. *The Department of Planning and Zoning may approve minor modifications to the configuration of buildings or other improvements as long as they do not move closer to abutting residential properties or other uses that might be adversely impacted, unless the Hearing Authority revokes this administrative authorization in the Decision and Order.*

Emphasis added. The technical staff report (TSR) does not reference these minor modifications.

After the first hearing session, Protestant Marc Ebersberger asked the Hearing Examiner in a January 31, 2017 email to her office if GCS should provide evidence on these approved minor modifications and include them in the petition for retroactive approval. He identified these minor modifications as including the observatory, stormwater management facilities, press box, 500-person bleachers, a public address system, scoreboard, artificial turf field, 6-lane running track

and parking, a bus loading area, and lighting. Mr. Ebersberger formally challenged the mode and scope of the minor modification running track authorizations in his later direct testimony.²

The school obtained the previous Planning and Zoning Director's approval for their minor modifications. It is not transparent how her approval was procured. There is no evidence to show how the Director determined that these were minor modifications or any written justification for not using the conditional use process. It appears that she simply accepted the school's own opinion, and she did not seek any input from the community prior to her approval. There is no evidence that she did. I have the approval e-mail that Ms. Marsha McLaughlin the previous Planning and Zoning Director sent to her staff on May 7, 2012 . . . The e-mail states: "Chuck, Bob, and I met with reps for Glenelg Country School and decided that the conversion of existing field and informal track loop to synthetic turf with a formal track was "close enough" under the current conditional use - so fine to approve the red-line they are processing. If they want to add bleachers in the future they will have to amend the conditional use."

. . .

Yes, there was a natural turf playing field in existence. In the 1996 case BA-95-46E and the 2000 Case BA99-51E&V which the school uses to justify these changes as minor, the cases simply state that the site contains three playing fields adjacent to Folly Quarter Road. There is no mention of plans for a running track or any conversion from natural turf fields.

Photographs of these SDP-approved track improvements are shown in PE10, pgs. 1-21, and PR30, pgs. 1-4. PE10, pgs. 4-5 show the press box, stands and public address system. Other photographs in PE10 depict a concession stand. The photograph on the next page shows the press box and stands.

At the outset of the March 6, 2017 hearing session, the Hearing Examiner reviewed Mr. Ebersberger's concerns and recounted the DPZ's historical practice of broadly interpreting its minor modification authority. The Hearing Examiner commented on the uneven application of this practice, reciting more than a dozen Hearing Authority decisions where the holder of a

² Mr. Ebersberger read verbatim from his written testimony, a copy of which he provided to the Hearing Examiner. This written testimony was not admitted as an exhibit.

special exception/conditional use permit later petitioned to modify or expand the CUS with modest new uses/structures.



PE10, Press Box and Stands Approved by DPZ as a Minor Modification

At this same hearing session, the Hearing Examiner read into the record a February 2, 2018 email thread between herself and the current DPZ Director about these minor modifications and GCS's November 2016 submission of a redline SDP to DPZ for two wastewater treatment buildings. Petitioner applied for this 2016 redline approval after it submitted the initial October 25, 2016 CU petition to DPZ. DPZ's Zoning Division Chief signed off on the zoning for the redline but the DPZ Director overruled him. It is now "pending" as of the date of this decision and order.³ The Director advised her, "DPZ has not issued a redline approval to add two wastewater

³ This information is obtained from the county's Acela building permit site.

treatment buildings. While past practices may have allowed such expansions outside the CU process that is not our current one."⁴

Following her open deliberation on the matter, the Hearing Examiner ordered GCS to submit documentary evidence detailing all DPZ SDP approvals to bring the "record of the case" up to date. Note: the October 25, 2016 petition supplement states "Petitioner is seeking to update its Conditional Use Plan to reflect the minor modifications previously approved by the former Director of Planning and Zoning." PE18 is the Hearing Examiner-ordered and Protestant-contested, 138-page timeline of all Board of Appeals approvals, the correlate SDPs, and all DPZ "minor modification" "administrative approvals." Table 2 is PE18 in modified form with summary text only and excluding the above findings on the BOA approvals.

<p>TABLE 2 Timeline: SDPs, Redlines, and DPZ Administrative Approvals</p>

Note: Italized text indicates Protestant disagreement about what is shown

March 18, 1980: SDP-80-144, (SDP-80-144: Gymnasium, entrance driveway extended to new gymnasium, additional parking, and walkway to gymnasium. Draining of existing pond to be converted to stormwater management facility.)

May 5, 1980: Revisions to SDP-80-144: Revised Building Location

August 11, 1980: Revisions to SDP-80-144: Revised Per County Comments

August 12, 1980: Revisions to SDP-80-144: Added SWM Analysis Information

October 13, 1980: Revisions to SDP-80-144: Revised Per County Comments

October 16, 1980: SDP-80-144 Approved by Howard County

March 9, 1982: SDP-82-101, (Swim Pool Addition to SDP-80-144): (SDP-82 101: Swimming Pool Addition to SDP-80-144, sediment control measures and construction pool equipment/filter room. Revised grading, added concrete wall, realigned entrance walkway, and revised location of circle drive and southwest entrance.)

April 28, 1982: Revisions to SDP-82-101: Revised Per County Comments

April 27, 1982: SDP-82-101 Approved by Howard County

August 31, 1984: SDP-85-76, Glenelg Country School, Inc. New High School Facility: (SDP-85-76: New High School building (14,700sf), grading, widening of driveway paving, additional parking, handicap access walk, removal of gravel drive and landscaping.)

⁴ All "minor modification" emails are copied to the file.

December 13, 1984: Revisions to SDP-85-76: Revised Per County Comments

January 18, 1985: Revisions to SDP-85-76: Revised Per County Comments

February 22, 1985: SDP-85-76 Approved by Howard County

June 27, 1985: Additional Revisions to SDP-85-76: Revised Grading

November 5, 1985: Additional Revisions to SDP-85-76: Revised Grading, Location of Circle Drive, S.W. Entrance

November 11, 1985: Additional Revisions to SDP-85-76: Added Concrete Wall and Realign Entrance Walk

February 6, 1996: BA-95-46E Granted.

August 12, 1996: Revision Noted on Landscape Plan and Forest Conservation Plan Sheets of SDP-97-07: Permit (another Revision is noted but not legible)

October 15, 1996: SDP-97-007, Glenelg Country School, New Middle School, and Performing Arts Center (SDP-97-007: New Middle School and Performing Arts Center Building (24,500sf), parking and walkways, well and septic, storm water management, sediment control, landscaping and forest conservation.)

March 27, 1997: SDP-97-007 Approved by Howard County

May 16, 2000: BA-99-51E&V Granted

May 16, 2001: SDP-01-69. (SDP-01-69: Primary School (27,775sf), walkways and parking, sediment control, water and septic, storm water management, forest conservation and landscaping.)

May 30, 2001: SDP-01-69 Approved by Howard County

July 2, 2002: SDP-02-126 Astronomy Observatory (528.4sf), Accessory Building (525.20sf), 2 handicap parking spaces, and walkway approved as minor structure

July 19, 2002: Revision to SDP-01-69: Septic System Modifications and Revised SWM Facility, Added Field and Revised Forest Conservation Areas

July 30, 2002: SDP-02-126 Approved by Howard County

July 14, 2003: SDP-03-84 Upper School Addition

August 12, 2003: SDP-03-84 Upper School Addition (Gould Building addition, Annex and Gymnasium = 71,461sf), new and revised parking use area and driveways located north/northwest of the existing Upper School, irrigation lines for field, track and synthetic field, bleacher and press box, entrance features, storm drain, bio-retention plantings, permeable pavement and check dam.)

October 2003: Revisions to SDP-03-84: Add Trellis to Building Footprint, Extended Stabilized Turf Fire Lane

April 2004: Revisions to SDP-03-84: Revised Building Footprint to show Annex Addition

July 2005: Additional Revisions to SDP-01-69: Add Dumpster Pad & Landscaping Screening Wall to Parcel 345

April 2006: Additional Revisions to SDP-03-84: Added As-Built Information

September 2006: Additional Revisions to SDP-03-84: Added Irrigation Lines for Field

September 2006: Additional Revisions to SDP-01-69: Add As-Built Information

February 2009: Additional Revisions to SDP-01-69: Revised Landscaping and Added 12 Shade Trees for Perimeter A Landscape Requirements, Added Note 24 re: landscaping and Revised Parking Calculations

March 2011: Additional Revisions to SDP-01-69: Revised Forest Conservation Areas

July 2012: Additional Revisions to SDP-03-84: Added Track and Synthetic Turf Field

March 2013: Additional Revisions to SDP-03-84: Added Bleacher, Press Box and Trailer

March 5, 2013: Additional Revisions to SDP-03-84: Removed Anti-Seep Collar, Revised Notes per SCD Comments

May 27, 2013: Additional Revisions to SDP-03-84: Revised per County Comments on Temporary Trailer

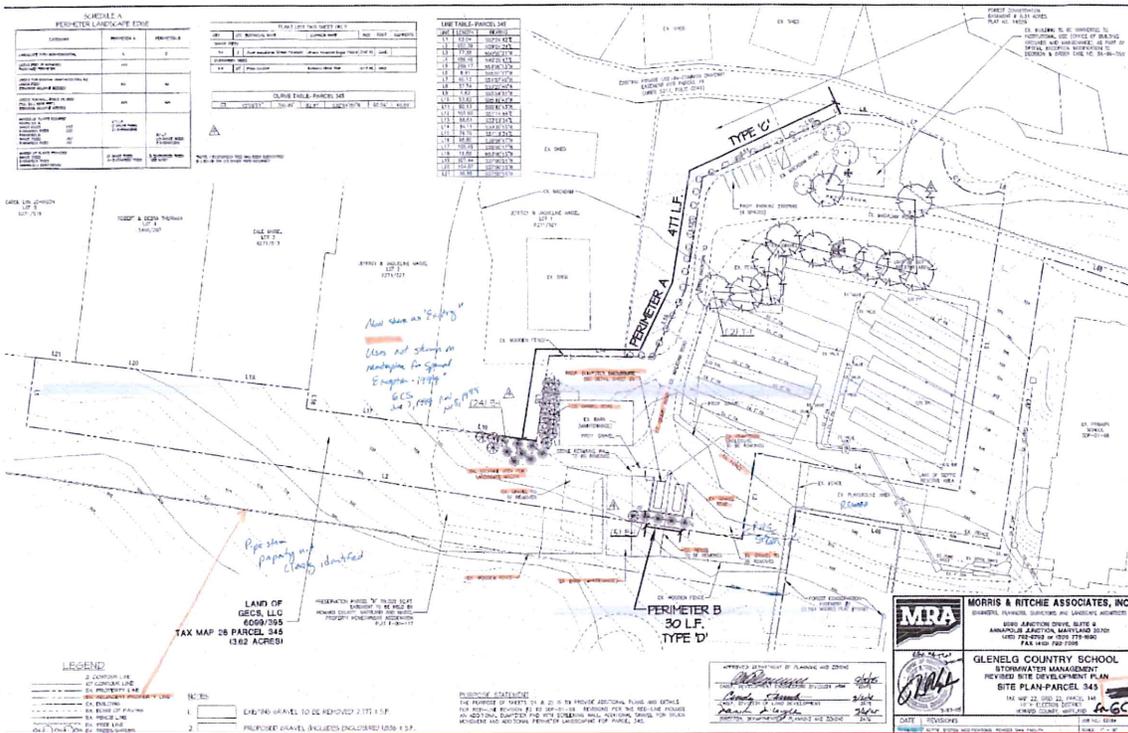
October 20, 2015: Additional Revisions to SDP-01-69: Replace Fire Escapes

December 2015: Additional Revisions to SDP-03-84: Added Permeable Pavement Area by Main Entrance and Storm Drain to Existing Grass Channel

January 2016: Additional Revisions to SDP-03-84: Added Permeable Pavement Area by Main Entrance and Storm Drain to Existing Grass Channel, Check Dams and Infiltration Trenches to Existing Grass Channel

September 14, 2016: Additional Revisions to SDP-03-84: Added Sheet 38

Protestants in their cross-examination of Petitioner witness Tim Madden and in direct testimony challenged the list's approval categorizations and its exclusion of additional structures and uses. GMECA disagrees with the Timeline's (Table 2) representation of structures and uses called out as the set of SDP-01-69 approvals tied to BA99-051C&V. Map 7 is Protestant Mary Horejs' mark-up of SDP-069 sheet 24. PR7B. She testified it shows many "existing" items now listed in what has now become a maintenance yard area showing "existing storage area for mulch," "existing dumpster enclosure," two "existing fences," "existing valve and pipe" lines running to the septic field, an "existing playground," and two "existing gravel roads."



Map 7, PR7B
SDP 01-069, Sheet 24, Some DPZ Approved Minor Modifications

e. What GCS Proposed Through the Four BA 16-034c Conditional Use Plans

➤ **CUP1**

CUP is part of the initial BA 16-034C petition submission, forwarded to the Hearing Examiner for scheduling. The proposed expansion is described in Part I above. There are no findings specific to CUP1, GCS having submitted a revised plan at the January 24, 2017 hearing session.

➤ **CUP2**

CUP2 (PE2) admitted at the first hearing session on January 24, 2017, proposed multiple revisions to CUP1 in response to TSR comments. The Hearing Examiner ordered GCS by letter of January 30, 2017 to produce documents identifying these revisions and other information germane to the petition at the next hearing session on March 6, 2017.

➤ **CUP3**

By Hearing Examiner's order, GCC at the March 6, 2017 hearing session introduced PE3, PE4, PE5, PE6, PE7, and PE8. PE4, the Petition2 narrative supplement differentiated four types of proposed revisions.

**PROPOSED CHANGES IN RESPONSE TO THE TECHNICAL REPORT
(CHANGES AFTER SUBMISSION AND BEFORE THE HEARING HELD ON JANUARY 24, 2017)**

1. Note 32 added to address the Fire Department comment about all new structures having a sprinkler system
2. Three cistern locations are shown on Plan per Fire Dept. comment (adjacent to primary school, middle school and the upper school)
3. Fire department connection shown offsite for Glenelg Manor Estates
4. Lower school portable classroom building moved closer to the parking lot and little dragon building and out of viewshed of historic Glenelg Manor per county comments from DPZ
5. Adjust fire lane around the upper school addition per fire department comments
6. An intersection stopping distance diagram was requested by DPZ. The sheet was created and was added as sheet 8 of the Conditional Use Plan set after the landscape sheets

**PROPOSED CHANGES IN RESPONSE TO LETTER FROM HEARING EXAMINER DATED JANUARY 30, 2017
(CHANGES AFTER THE HEARING HELD ON JANUARY 24, 2017)**

7. Perimeter Landscaping has been verified and any needed plant material to meet the Howard County Landscape Manual has been shown on separate, newly created landscape plan sheets 5, 6, and 7 of the Conditional Use set. Sheet 5 shows all tabulations for bufferyards along with details and plant counts, sheets 6 and 7 show proposed landscaping and labels at a larger scale

8. As part of landscape plan, the site perimeter was walked and existing newly planted landscaping was field checked verifying if buffer plantings meet code as part of landscape plan requirement. 73 existing newly planted shrubs along the bus loading area were added to the plan, landscaping along Glenelg Manor Estates bufferyard was updated based on field verification including 9 newly planted evergreens along the track area

9. The existing treeline was updated based on google earth images and site visit to accurately reflect the current conditions

10. Added handicap routes from handicap parking spaces to all major facilities on the school grounds

SUPPLEMENTAL CHANGES MADE BY APPLICANT

11. Two gates were added to the plan set, one existing behind the proposed operations cottage and one proposed between Parcel 345 and Lot 1

12. Added HC parking space for the use of the cottage. The space is located in the existing asphalt drive lane that connected to Maisel Farm lane but is no longer used due to the existing gate described in number 11 above that prohibits vehicular access. The newly proposed handicap space was also added to the Conditional Use Plan chart under the phased parking columns as well as adding a description under the county parking requirements column.

13. The 1000 SF storage shed was rotated to align with the existing parking being removed and to better corresponds to the existing evergreen screen

14. Corrected Dimension from proposed Wastewater Treatment Building 2 to the neighboring residential house on Lot 29C and from the proposed Wastewater Treatment Building 2 to the closest property line

15. Added existing mulch pathway to existing pond and showed existing dock. Added existing historic stone bridge that is not used by the school

16. We have revised the existing note describing that the school will not access Maisel Farm Lane for any school purposes

17. We have revised the "Glenelg School Exclusive Easement Note" to include the liber and folio of both appropriate easement descriptions

18. We have relocated one of the two "Land of Glenelg" property description notes with appropriate parcel acreage

SUPPLEMENTAL CHANGES MADE BY APPLICANT ASSOCIATED WITH THE EASEMENT AND SHED

19. Revised conditional use boundary to include a larger portion of the "Easement Area Parcels 24A to 29D" subject to agreements liber 11343 folio 604 and folio 634 and have updated the label on the site plan to include both folios and the acreage

20. A portion of the shed structure (1200 SF) is being retained that is located outside of the 50' conditional use setback; originally, it was all shown to respond to the 50' conditional use buffer requirement. The impervious calculation chart was updated to reflect the 1200 SF shed retention as was the proposed uses chart (added as existing square footage to be retained but with demo work shown as taking place under phase 1)

21. Added existing landscaping to new portion of enlarged conditional use plan boundary limits

22. Revised General Note 1 to reflect new conditional use boundary (+0.675 acres)
23. Revised Note 25 for allowed students per code
24. Revised note 33 to reflect impervious calculations
25. Revised Line Table Conditional Use Boundary
26. Revised Conditional Use Impervious Calculations chart
27. Revised "Conditional Use Plan Detailed Description of proposed uses chart"
28. Revised Conditional Use Property tabulations chart

The Hearing Examiner convened 13 evening hearing sessions on Petition2 and CUP3 between March 6 and November 28, 2017. During these sessions, Petitioner and Protestant witnesses produced lengthy, detailed testimonial and documentary evidence about stormwater and wastewater management, flooding and erosion, and other existing conditions. As discussed in the below Preliminary Order, with narrow exception, the HCZR and the county subdivision/development regulations bar the Hearing Examiner from considering these matters in her decision and order. Beyond these topics, the evidentiary record developed during the 2017 hearing sessions focuses on the typical elements of a conditional use petition: traffic, lighting, noise, and physical layout, including building heights.

➤ **Lighting**

GCS did not produce a lighting plan exhibit sheet or independent lighting analysis on lighting proposed through the requested expansion. GCS witness Tim Madden testified about existing and proposed lighting, which he opined comports with county law. He noted the BOA had approved some lighting. GCS installed what it identified as additional lighting not requiring conditional use approval through the county permit process or an SDP redline. Referring to PE10, pg. 4, he explained it depicts a typical lighting feature in compliance with county law. PE9 is a

2017 county-approved lighting diagram plan for the bus-loading areas. PE22, pgs. 12-14 shows addition entrance lighting close to Folly Quarter Road.

Protestant Marc Ebersberger and others challenged the "approved" and "proposed" status of various lighting fixtures and testified to light pollution generated by the lighting, particularly in the mid- and northern sections of the school site. They argued the existing lighting does not comply with BOA-imposed conditions of approval in BA 95-46E and BA 99-051C&V, which approved the school's expansions subject in part, respectively, to these lighting requirements: "2) all lighting shall be directed downward and inward on the Subject Property and shall not illuminate vicinal properties," and "3) all new lighting shall comply with Section 134 of the Howard County Zoning Regulations."

Protestants Loung and Woodley testified to vehicle light pollution due to gaps in landscaping. PR1-3 are email threads between him and the school about this. PR11, pgs. 28-31 are photographs documenting the light pollution. PR26 are Mr. Luong's photographs showing additional light pollution from vehicles. Protestant Peter DeCesare opined the existing campus lighting does not comply with BOA-required approval conditions or county lighting requirements, through PR13, pg. 4, which shows the lighting fixtures in the GCS front parking area.

➤ **Noise**

GCS witness Marty Rahaman testified to having performed a noise study relating to the loudspeakers located next to the six-lane track. In his opinion, the noise complies with the county noise ordinance. Protestant Peter DeCesare testified to disturbing noise levels at his residence and proposed an alternative loudspeaker amplification system to mitigate impact on residents.

PR10, pgs. 3-6. Protestant Mary Horejs testified about noise associated with the maintenance area, including hearing bus back up alerts early in the morning. PR9 is her January 30, 2017 email thread to GCS CFO Jhan Tangires about excessive waste removal noise, wherein Ms. Tangires replies the 6:00 start time (or the 6:30am pickup, as she would request) complies with the county noise ordinance. Protestant Bao Loung testified to the landscaping screening on Parcel 345 being inadequate or missing plantings, resulting in excessive noise from the maintenance area. PR26 includes many photographs and maps prepared by Mr. Loung to show noise pollution.

➤ **Traffic**

Traffic engineer Mickey Cornelius testified to existing sight distance being adequate for the traffic associated with proposed expansion. Based on a traffic study, he opined the traffic generated by the future increase in students and employees would not vastly effect traffic at the School Site access or one along Folly Quarter Road, considering the good sight distance and historical accident data at the main access. There no atypical delays at the primary access and the private Folly Quarter Road intersections.

Protestant Doug Eacker testified to the shift in school bus pick up times in the neighborhood, which he believes GCS should factor into their traffic analysis. Protestants Peter DeCesare, Marc Ebersberger, and others testified about existing traffic levels and backups as proof going to the inadequacy of the existing ingress and egress, which they contend would be exacerbated by the proposed expansion. PR13, pg. 12-15 is Mr. DeCesare's photographs showing existing traffic conditions and his traffic model summary; he argued these exhibits indicate

greater queuing/wait times than Mr. Cornelius presented. PR30, pgs. 5-6 are Mr. Ebersberger's photographs showing morning and afternoon vehicle queues backing up to Jumpers Hill Road.

During these and later hearing sessions, the Hearing Examiner signaled to GCS it needed a peak/high-attendance events traffic management plan. She asked GCS to review the one-lane entrance driveway off the right-in only western entrance.

➤ **The Performing Arts Center**

GCS witness Tim Madden testified to the height and design of the proposed Performing Arts Center. Petition1, CUP1, CUP2, and CUP3 note its height as 75 feet. Protestant Madeline Mirecki through PR14, which shows her understanding of its height, testified to its inappropriateness in the rural landscape and being out of character with existing school structures. Dorothy DeCesare testified to it being too commercial for a private school.

In rebuttal, GCS witness Tim Madden testified about PE19, a Performing Arts Center Diagram, PE20, a building height diagram (less than 75 feet), and PE21, an architectural rendering. PE 22.1-14 are photographs from private Folly Quarter Road looking toward the building. The Hearing Examiner opined the Performing Arts Center was a "placeholder" and signaled to GCS she may not approve it because its operational characteristics were unknown and the phasing plan did not include the HCZR § 131.0.1.3 deadlines to obtain building permits and begin substantial construction (the "vesting" section.)

Protestants additionally challenged specific details shown on CUP3, including proposed fencing, landscaping, and various aspects of the maintenance area, such as proposed mulch

heights, accessory maintenance building heights, hours of operation, and the actual use of the maintenance area. They objected to GCS renting out the new track for events and the school's proposal to rent out the Performing Arts Center, which they felt were commercial activities.

➤ **CUP4**

At the conclusion of the November 28, 2017 hearing session, the Hearing Examiner ordered GCS to produce a final CUP showing all existing uses (meaning BOA and SDP approved) at the next scheduled hearing session. Although the hearing was now in the rebuttal stage, the Hearing Examiner judged this CUP obligatory to clear up Protestants' arguable claims going to the 3 CUPs' failure to identify all existing structures and uses, with the caveat that Protestants would be permitted broad leeway to question witnesses and present counter-evidence.

The 8-page, 80-amendment CUP GCS introduced on January 31, 2018 – CUP4 – and admitted as PE28, is GCS's response to this Hearing Examiner Order. PE29, shown here as Table 3, is the 80-item list companion to PE30, the 3-page CUP4 "bubble" or "redline" version of CUP4. The italicized text indicates Protestant disagreement about several elements of the amendments, which includes new proposed structures and uses and "existing" structures and uses never approved by the BOA or DPZ. PR33, PR39. Due to the scope of these revisions, the Hearing Examiner ordered GCS to produce large-scale sections of CUP4 showing "approved" and "proposed" features in the maintenance area. PE24 is the "approved" plan. PE25 is the "proposed features" plan.

Table 3 CUP4 - 80 Amendments Shown on PE30 (amendments markup) <i>Italized text: Contested by Protestants PR33, PR39</i>	
1	Updated adjacent property ownership information per recent sales lot 4 and lot 29c
2	<i>Added additional easement information</i>
3	<i>Added proposed 6' noise barrier along property line with linear footage measurements and board on board gate label added to plans along with fence detail added to sheet 4</i>
4	<i>Added proposed gate to close off gap in existing fencing adjacent to storage area for landscape materials</i>
5	<i>Added more detailed existing information and features in landscape maintenance yard and buffer yard areas per field survey by Morris & Ritchie such as trees, dumpster area, pergolas, fencing and also per site observations</i>
6	<i>Added existing 6' board on board fence and label</i>
7	<i>Added dimensioned roll off dumpster area label</i>
8	<i>Added label for landscape material storage and 10' height</i>
9	<i>Added potential employee parking spaces label</i>
10	<i>Added proposed evergreens along proposed noise barrier/wall, see landscape plan for details, plant count</i>
11	<i>Added double row of proposed evergreens to landscape plan between existing drive aisle and existing forest conservation area. See landscape plan for details and plant count</i>
12	Removed previously proposed maintenance building addition
13	<i>Called out dumpster dimensions, 8' screen fence, and bollards</i>
14	<i>Revised note to partition existing shed internally to honor 50' buffer yard area rather than external changes to existing structure</i>
15	<i>Added proposed fencing to shield views from lot 29C (formerly chamberlain property)</i>
16	<i>Added "play area" to note or revised "playground" note to say "play area". Added any existing playground equipment to plan from field observation, and created a play area boundary as requested</i>
17	<i>Showed proposed lighting throughout site, locations estimated w/o benefit of a lighting study, typical</i>
18	<i>Added six (6) existing lighted flagpole locations, typical</i>
19	<i>Added future play area note</i>
20	<i>Added proposed scoreboard to field number 5 with dimensions and height listed</i>
21	Added number "5" to field note
22	Added matchlines to cover page to show how 60 scale sheets are split
23	Gazebo no longer existing on site and has been removed
24	Added existing chain link fence
25	<i>Added field number 4 to Athletic Field with dugouts</i>
26	<i>Added existing scoreboard</i>
27	<i>Added existing dugout labels</i>
28	<i>Added existing batting cage and bullpen with labels</i>
29	Relabeled building as "music cottage"
30	Added and labeled fire escape on manor house
31	<i>Added existing wall pack lighting on water tower and manor house and other structures. Have also added freestanding light poles</i>
32	Proposed sidewalk
33	Added SOP reference to existing SWM pond
34	<i>Added existing dumpster location note</i>

35	Added exiting tennis storage shed to plan
36	Conditional use chart
37	<i>Added lighting to note for building per building permit number</i>
38	Added existing evergreens along field # 1 & field #2 planted for compliance and additional screening
39	Revised existing lighting fixtures symbol and labels to match standard shown in legend for existing lighting elsewhere on site
40	<i>Added proposed lighting fixtures along entry drive, typical</i>
41	<i>Revised note to mention existing lighting fixtures per building permit</i>
42	<i>Revised note to include SDP number</i>
43	<i>Added existing address sign with lighting fixtures to plan</i>
44	Revised note to include mention of existing lighting fixtures
45	Added existing landscaping to top of embankment
46	Added existing landscaping to track area and pond embankment
47	<i>Enhanced existing landscape buffer to respond to existing plant survival rates & meet code with new plantings</i>
48	Added additional existing landscaping along folly quarter road private
49	Changed title to 'Sheet Index'
50	Revised Conditional Use tabulations to make tabulations easier to understand
51	Added numbers to all major structures on plan and corresponding line on Conditional Use chart.
52	Revised building description in CU plan chart since we are no longer removing portion of historic storage structure and will instead partition the useable area to limit use within buffer area
53	<i>Added minor structure list to cover page including flagpoles, existing structures, micronet weather monitoring tower and tripod sensors, and existing play equipment</i>
54	Revised labels to label all existing features as "ex." rather than having a mix of "ex.", "exist.", or "existing"
55	Added note to see landscape plan sheets 3 and 4 for more detailed 60 scale plans.
56	<i>Showed all proposed lighting fixtures and synchronized symbol and labels for them, Added to legend</i>
57	Removed solid fill hatching from Handicap paths throughout site, both on plans and on the legend
58	Removed maintenance building proposed addition from impervious tabulations and plan
59	<i>Revised note regarding existing lighting fixtures. Added permit number to note</i>
60	<i>Revised note regarding lighting along entry drive to reference plan SOP-03-084</i>
61	Revised note 30 after relocating athletic storage near bleacher area and observatory to reflect new location
62	Revised note 31 to address relocation of athletic storage structure to mention next closest structure, being the 1000 sf storage facility near the white cottage instead
63	<i>Revised note number 73 to mention storage facility rather than athletic storage facility</i>
64	Revised septic area from "existing" to "abandoned"
65	Added easement note and reference numbers
66	<i>Revised label to mention fuel storage as use of shed</i>
67	<i>Added proposed landscaping to meet code and screen drive lane from Maisel Farm Lane</i>
68	<i>Added pergola and deck behind primary school; revised sidewalk layout and sidewalk linetype in rear of school play area</i>
69	<i>Dimensions for landscape area added to 60 scale blow up page</i>
70	<i>Roll off area dimensions labeled on 60 scale blow up sheet</i>
71	<i>Added recycling bin storage areas at all classroom buildings</i>
72	Added the word "proposed" to wastewater treatment label which was left off
73	<i>Revised Existing light pole location adjacent to primary school, recycle bin storage area. Added an additional lightpole across the drive closer to external boundary based on site visit and field observations</i>
74	Added offsite culvert crossing per Mary Horejs comment and a follow up site visit

75	<i>Added future Playground equipment and a future play area boundary for Little Dragons Building</i>
76	Added note about more detailed 60 scale site plan sheets
77	Added Super Silt Fence to both legend and the plan along the low side of landscape maintenance yard for sediment control purposes and a stone outlet structure.
78	<i>Added tripod sensors (3 total) and 33' tall micronet weather monitoring tower to plan</i>
79	Added lighting note for water tower that it should be replaced and/or modified to comply with ordinance. Wall pack on Manor House references this note also
80	Relocated proposed athletic storage facility away from property line

II. BACKGROUND ISSUES & PRELIMINARY CONCLUSIONS OF LAW

A. Background Legal Issues

As a first preliminary matter, it is necessary to set the legal framework through which the findings of fact are to be assessed. This assessment informs Sec. B's Preliminary Conclusions of Law and the detailed enumerated conditions of approval in the Final Order section.

➤ **Stormwater & Waste Management, Well & Septic**

Much of the evidentiary record about the proposed school expansion goes to four topics: stormwater management, wastewater management, wells, and septic. GCS in its case-in-chief called witnesses Tim Madden and Jhan Tangires, who testified in detail and at length to the operation and adequacy of the campus storm water management system (SWMS). PE10 contains numerous photographs of the SWMS. PE11 and PE12 are detailed maps of the 17 drainage areas on school property. At no time during this witness' testimony did counsel for Protestants Loung, Woodley, and Horejs or GMECA object to this line of testimony.

Protestants contend the GCS SWMS as designed, built, and recently reconfigured, is responsible for the flooding and erosion on many adjoining/adjacent residential lots in the Glenelg Manor Estates subdivision, and which they fear would worsen if the improvements

sought in the BA 16-034C petition were granted. PR 12, 16, 17 and 30, for example, include the photographs of Protestants Jan Hollis, Albert Free, Mary Zink, and Marc Ebersberger showing flooding and erosion on their properties and which they believe is caused by the more recent school improvements.

A second area of contention is the school's proposal to "upgrade" its wastewater treatment facilities, including new Wastewater Treatment Buildings 1 & 2. According to the Petition narrative supplement, GCS proposes to "[c]onstruct two new accessory buildings and upgrade wastewater treatment facilities as depicted on Conditional Use Plan. Each new building will be approximately 400sf and will be approximately 25 feet in height. These upgraded wastewater treatment facilities will be contained within insulated buildings and will not produce any appreciable noise, odors, dust, or vibrations that would be discernible at any adjoining residential property line."

Protestants challenge the school's cataloging of these proposed wastewater upgrades as misleading. Protestant Albert Free, for example, testified through PR12 that the two buildings are mandated by the Maryland Department of the Environment (MDE) through a April 28, 2016 Consent Order directing GCS to install new waste water treatment facilities due to existing wastewater disposal issues and which imposes a July 1, 2017 deadline for installing the new system. The order also requires GCS to reduce stormwater runoff.

The third area of contention concerns the safety of the school's and Protestants' well water. Tim Madden testified to the school's monitoring of its wells through PE16, a wells and monitoring map. Protestant Albert Free and GMECA asserted any ineffective treatment of

wastewater could contaminate Glenelg Manor Estate wells and further, that the school's well withdrawal could draw down their well water. PR12, pgs. 11-13.

As Protestants began to cross-examine witnesses on these subjects, the Hearing Examiner took measure of Petitioner's focus on them, surmising it was a tactical decision to "get out in front of the issues" before Protestant direct testimony and perhaps to vindicate the school's position on these systems' adequacy through the imprimatur of a decision and order. It explains GCS's inclusion of impervious surface calculations on the CUPs and GMECA's detailed re-calculus of these numbers in PR39, and in its closing argument that additional impervious surface acreage will cause more storm water runoff on the school site, on GMECA properties, and damage to the private culverts running under the subdivision's private roads. The Hearing Examiner's perception about the tactical point of these lines of testimony was borne out during Protestants' case-in-chief, when they likewise focused on these subjects.

After Part I of Protestant Marc Ebersberger's direct testimony on these issues, the Hearing Examiner studied the interconnectedness of the evidence on these systems, notwithstanding the absence of a systems analytic overview integrating them. At the August 20, 2017 hearing session, the Hearing Examiner weighed in on the limited evidentiary weight of the parties' positions on these matters in the context of the HCZR standards for granting the CU petition to expand the school. The Hearing Examiner reviewed her bracketed zoning authority to consider the evidence about these systems and surveyed the controlling Maryland case law. Consequently, the Hearing Authority's jurisdiction in a CU hearing on these matters is generally limited to reviewing a CUP to ensure it identifies the applicable/regulated stormwater, well and septic locations and

setbacks. It precludes the Authority's consideration of drainage areas, private culverts, or impervious surfaces calculations; none of these apply to the general or specific conditional use approval standards. Still, the Hearing Examiner understood the hearings on BA 16-034C was the residents' first opportunity for the "airing of grievances" in a public forum.

➤ **The BOA-approved BA 99-051C&V Conditional Use Site Expansion Boundary**

The May 16, 2000 BOA BA 99-51E&V decision granting GCS a special exception to expand the school identifies the area of expansion as extending to a portion of Parcel 345, adjacent to Parcel 146. Finding of Fact # 3. The D&O states "[t]his property is separate from the main property by a 48-foot wide access easement." PR36, pgs. 3-4. The BOA also granted GCS a variance to reduce the then 30-foot structure/use zoning district setback to 0.0 feet for the setbacks from the interior lot lines only. These "interior lot lines" are the 22 fee-simple pipestem strips shown on Map 3. GCS's oddly worded "easement owned by others" language notwithstanding, there is no doubt the land area of these pipestems was not part of the 1999 Masterplan CUS land area before the BOA for its consideration. Had they been, no variance would have been needed.

➤ **The Conditional Use Application and Fee-Simple Owner Authorization**

GCS through Petition2 and CUP2, CUP3, and CUP4, enlarged the CUS limits boundary to include the "yellow" zigzag portion of the pipestems and later, the "orange" pipestems area running parallel to Lot 29C, as shown on Map 1. Throughout the proceeding, GCS maintained the 2007 pipestem easement and 2008 addendum confer upon it legal right to include these pipestems as part of the CUS in the BA 16-034C petition.

In colloquy, GCS counsel asserted the Hearing Examiner was barred from enforcing the terms of 2007 easement and addendum in a conditional use proceeding. Certainly, enforcement of the parties' rights and obligations granted through the easement/addendum contract is the sole province of the judiciary. In contradiction to this argument, GCS included the 2007 pipestem easement and the 2008 addendum in Petition2; referenced them in the Petition2 narrative supplement; and entered them into evidence. PE8b & 8e. GCS witness Tim Madden on cross-examination and redirect opined the easement/addendum did indeed authorize the school's inclusion of the fee simple pipestem lands in the proposed CUS expansion, thus opening up these contracts to review. What's more, this 2007 easement clause obliges GCS to comply with county zoning and subdivision regulations.

3. Compliance with All Laws. That the Glenelg Country School in connection with his [sic] use of the Easement Area shall comply with all applicable laws, ordinances, codes, regulations, rules, orders and directives promulgated or issued by any governmental entity with authority over the Easement Area; and the use of the Easement Area by the Glenelg Country School shall be subject to, and in accordance with, all applicable zoning, subdivision, and all other governmental regulations.

PE8E, pgs. 30-31, Line 1. Liber 11343 Folio 606.

Critically, GCS' focus on the forum for adjudicating the terms of the contracts is misplaced, false logic. The relevant "zoning" focus of the "matter of the pipestems" is the conditional use application administrative process and the question to be asked is this: why is signature authorization consent of all persons with fee-simple legal title required in the CU standard application form? Because property owners may not circumvent the legislated jurisdiction of the Hearing Authority to consider expansion of a conditional use site/boundary in an administrative public hearing. The Hearing Authority may not sanction actions – "minor modification" correlates

- to expand a CUS outside the Hearing Examiner public hearing – even in a Land Records legal instrument. Such actions effectively displace the discretion of the Hearing Authority in an evidentiary hearing to evaluate the impact of a change to an approved CUP, including any operational changes to the use, leaving it up to the conditional use holder. It also has the land use effect of giving a comparative advantage to the offending conditional use holder.

In every instance where a conditional use holder considers such changes, they must be brought before the Hearing Examiner prior to its implementation pursuant to HCZR §§ 131.0.H & .J, the regulatory procedures for modifying conditions of approval imposed in a decision and order, and enlarging or altering a Hearing Authority-approved conditional use. Conditional use holders who implement such changes through a land instrument record in the county land records are engaging in the HCZR equivalent of a subdivision by deed action, which the State of Maryland and the SDLDR have prohibited since the 1970s. Signature authorization by the fee simple titleholder is an affirmative step to protect the HCZR.

GCS' second argument that neither the CU petition application nor any county law commands a fee-simple owner's signature authorization is wrong. Sec. 4b of the conditional use application form unmistakably requires property owner signature authorization when the petitioner is not the fee-simple titleholder.

4b. Petitioner's Interest in Subject Property

OWNER (Including joint ownership)

OTHER (Described and give name and address of owner)

Name of Owner

Mailing Address

If the Petitioner is not the owner, written authorization from the owner must be submitted.

Emphasis added. This owner authorization is commanded by the Board of Appeals pursuant to Howard County Code § 2.202(a), which empowers it to prescribe the form and contents of petitions and instructs petitioners to ensure the accuracy and completeness of the information required in the petition.

HCZR § 131.0.1.1 is a parallel regulation reinforcing the property owner written authorization requisite in CU petition filings. It directs the petitioner of a Hearing-Authority-approved conditional use petition to "establish" the conditional use through the subsequent approval of a site development plan (SDP) if required by DPZ. The SDP must conform substantially to the Conditional Use plan. HCZR 103.0.A defines "Site Development Plan" as "[a] plan prepared in accordance with the Subdivision and Land Development Regulations indicating the location of existing and proposed structures, paved areas, trails, walkways, vegetative cover, existing and proposed grades, initial landscaping, screening and other required items within a site proposed for development." HCZR § 131.0.1.2.a, Conformance with Conditional Use Plan, referenced above, prohibits in pertinent part the commencement of an approved conditional use until "[t]he Site Development Plan is approved, if required."

Howard County Subdivision and Land Development Regulations (SDLDR) § 108(b)(34), in turn, defines "owner" as "the person or other legal entity holding current legal title. SDLDR § 16.157(3)(v) details the required information for site development plans and requires the SDP applicant to identify the legal titleholder; this is a county code requirement. Per SDLDR § 16.157, the DPZ electronic "ProjectDox" (Pdox) SDP application submission site expressly requires the

applicant to identify the "owner/fee simple only."⁵ So does DPZ's Land Development Division site development plan application checklist. (Currently, there is no checklist for SDP redlines. Rather, DPZ has instituted a redline revision process (updated April 2018) applicable only to "active development plans".)⁶ The Hearing Examiner therefore commented positively during the proceeding on Petition1's "Exhibit A-4," a September 28, 2016 letter from PAR A property owner Maisel Farm, LLC on managing member Kingdon Gould, Jr.'s signature. This letter authorizes GCS to file the CU petition to expand the CUS site/boundary on its 5.03-acre property, Parcel 74, Non-Buildable PAR A and make application for any SDP.

The Hearing Examiner similarly finds unavailing GCS's collateral argument that prior Hearing Authority CU applications did not include written fee simple titleholder signature authorizations if the CU involved an access easement. This argument disregards the substantive revisions to the HCZR through the 2013 comprehensive zoning process to clarify and regulate conditional use sites with shared driveways. In support of this objective, the 2013 Comprehensive Zoning Plan amended the definition of "direct access": "Vehicular access from a proposed development or use to a public road where the access is not by way of AN EASEMENT OR a common driveway WHERE THE ACCESS IS shared with other PROPERTIES OR uses. (The

⁵ <https://www.howardcountymd.gov/Departments/Planning-and-Zoning/Application-Forms-and-Fees>. Visited June 4, 2018.

⁶ <https://www.howardcountymd.gov/Departments/Planning-and-Zoning/Land-Development/Development-Process-and-Procedures>. Visited June 4, 2018. This 2018 revision narrowed the scope of permissible redlines. A previous 2007 DPZ guidance document, 2007 PROCEDURE: "RED-LINE REVISION PROCESS," outlined two types of SDP revisions permitted through a red-line revision: 1) a revision to active development plans (Road Construction Plans, Site Development Plans, and/or Water & Sewer Construction Plans) to reflect any engineering or field changes, and 2) revisions to an inactive or "built-out" site development plan when the use of this process has been pre-approved by the Subdivision Review Committee (SRC).

capitalized words are amending language.) Accordingly, the specific standards for many conditional use categories were amended, where appropriate to the land use, to require direct access. The 2013 amendments further modified the HCZR § 131.0.B.3.d general test for safe ingress and egress and sight distance to incorporate testing for conditional use category sites sharing access with other residential properties (the amendment is capitalized).

d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. FOR PROPOSED CONDITIONAL USE SITES, WHICH HAVE DRIVEWAY ACCESS THAT IS SHARED WITH OTHER RESIDENTIAL PROPERTIES, THE PROPOSED CONDITIONAL USE WILL NOT ADVERSELY IMPACT THE CONVENIENCE OR SAFETY OF SHARED USE OF THE DRIVEWAY.

In accord, the Hearing Examiner in BA 15-026C denied a proposed firewood operator conditional use in relevant part because the petitioner did not submit a letter of authorization enabling the CU driveway use on an adjoining property. In accord, the petitioner in BA 16-036C&V (a petition for a proposed home-based contractor conditional use), submitted as Exhibit 1 letters from 17 property owners authorizing him to include their portion of a shared access driveway proposed as part of the CUS. These proposed CUS properties are subject to a shared driveway access easement.

➤ **What's in a CUP?**

Undoubtedly, the impact of the minor modifications DPZ approved through the SDP/redline process since the BOA granted BA 99-051E&V and the parties' positions on the sufficiency of the storm, waste, well, and septic systems background their differing perspectives on what level of detail the HCZR and a CU application commands be shown on a CUP. Up to CUP4, the CUPs showed the primary and secondary structures and uses. The 80-amendment CUP4

intended to identify all approved, existing structures and uses, also proposed or new structures/uses on the school grounds. Protestants took exception to the taxonomy of the 80-amendment CUP4, arguing the "existing" and "proposed" categories should be refined as "proposed," "proposed new," "proposed existing," "not allowed," "new," new and not allowed," and that several unnumbered structures/uses should be appropriately cataloged.

As a first matter, the parties' focus on the proper cataloging of what is shown on CUP4 needs to be reframed in zoning terms: how does the HCZR handle principal and accessory uses and structures, which for most institutional or assembly conditional use categories, like private academic schools, often proves problematic when applied to a fact-dependent, specific conditional use petition. These are the applicable HCZR § 103.0 definitions.

Structure: Anything constructed or built. The following shall not be considered structures for bulk regulation purposes:

- a. Accessory electric vehicle charging stations, awnings, bus shelters, exterior lighting fixtures, fire hydrants, mail boxes, telephone, electrical or cable equipment boxes, heating and air conditioning units, newspaper boxes and survey monuments;
- b. Gardens, driveways, walks, patios, and parking surfaces;
- c. Ground level decks, limited to decks elevated 18 inches or less above average grade and having no railing, walls or roofing;
- d. Outdoor barbecues and firepits if 18 inches or less high above average grade.
- e. Noise barriers or noise walls;
- f. Signs are not considered to be a structure or part of a structure, and are regulated by the Howard County Code.
- g. Stormwater management facilities;
- h. All structures exempt from setback compliance in Section 128.0.A
- i. Outdoor riding rings, wet weather pads, and run-in sheds or similar farm structures with a maximum of three walls and a maximum footprint of 500 square feet.
- j. Similar minor structures as determined by the Department of Planning and Zoning on a case-by-case basis.

Basketball hoops, fences, swimming pools and their ancillary equipment, above ground fuel tanks, vending machines, generators, compressors and play equipment that is permanently attached to the ground are considered to be structures.

Principal Use or Structure: The *main use of a lot or the structure used for the main function of a lot*, as opposed to an accessory use or structure. Structures which are attached to the principal structure, either directly or by a breezeway not to exceed 15 feet in length, shall be considered part of the principal structure.

Accessory Use or Accessory Structure: A use or structure which is customarily incidental to the principal use or structure, *servicing no other use or structure, and which is subordinate in area, intensity and purpose to the principal use or structure*. An accessory use or accessory structure shall be located on the same lot or parcel as the principal use or structure, except where it is otherwise allowed in these Zoning Regulations.

Emphasis added. Since these definitions apply to both structures and uses, how a petitioner characterizes a CU structure has been one of the more contentious elements of a CU petition hearing when the conditional use category does not impose use-specific setbacks and is subject instead to the zoning district's bulk regulations (height, size, setback). In this petition, HCZR § 131.0.N.48 imposes a 50-foot CU setback from residentially zoned properties, so the "principal" and "accessory" definitional terms themselves control the height and scale or intensity of the proposed structures and uses. HCZR § 138.0.N.48.c, is the pivotal "structure" standard.

c. A private school may be erected to a greater height than permitted in the respective district, provided that no structure is more than three stories in height and the front, side and rear setbacks shall be increased two feet for each foot by which such structure exceeds the height limitation.

Emphasis added. What is a "private school structure?" Is it only the primary school buildings for formal education? Does it include a gymnasium, a supportive maintenance building, a performing arts center, or an athletic storage facility? Do the HCZR § 103.0 definitions of "principal structure" and "accessory structure" qualify the term? When the Hearing Examiner surveyed DPZ's historical minor modification practice at the March 6, 2017 hearing session, she referenced this underlying tension in the HCZR, and how it was applied previously in multiple CU petitions, noting

Hearing Authority decisions sometimes made limited findings on the status of a proposed structure – if an accessory structure or use was even shown on a CUP. In this petition, GMECA objected to several flagpoles and asked the Hearing Examiner to deny them. However, in my almost 12 years as Hearing Examiner, I cannot recall any CUP showing a flagpole. BA 02-019C is a an 11-page decision granting the private academic school and retreat center CU petition of Woodmont Academy, with a total lot coverage of 243,00sf on a 65-acre CUS. The 52-page SDP 03-090 includes uses not shown on the CUP, like a dumpster pad and finer detail about the athletic fields. This may explain to some extent DPZ's routine minor structure approvals for CU-granted institutional/assembly uses, the Hearing Authority having approved the CU principal structure/use through a "concept plan" with limited detail. DPZ TSRs still routinely make no comment on a structure's status, making the public hearing the interpretative battleground.

A variant of the parties' dispute is the degree of detail a CUP must show about accessory structures, with the petitioner producing testimonial evidence about the nature of the use comporting with the HCZR § 103.0 structure/use definitions. This is really the zoning principle underlying the parties' disagreement about the content of the 80-amendment CUP4. CUP4 shows placeholders for the 80 amendment structures and uses, which Mr. Madden twice described in his rebuttal testimony. We know their location, and perhaps their height, but comparatively little about their school operational characteristics.

For direction on the evidentiary course on these matters for the last hearing sessions, the Hearing Examiner at the March 16, 2018 hearing session apprised the parties of a recently issued, then-unreported Court of Special Appeals opinion, *Brandywine Senior Living at Potomac, LLC et*

al. v. Ronald A. Paul, et al., 2018 WL 2018046 (MD 4/30/2018), where in Part II, the court identified in pertinent part two conditional use petition approval requirements applicable to proposed plan/petition amendments offered "late" in a hearing: 1) the petitioner when introducing late plan/petition amendments must propound evidence and appropriately bears the burden of establishing these amendments satisfy all of the applicable standards for the approval of a conditional use, and 2) parties must be given fair opportunity for comment and cross-examination.⁷ In this petition, then, GCS's identification of a structure or use as principal or accessory implicates its burden of proof going to compliance with HCZR §§ 131.0.B.2 and 131.0.B.3, which test, respectively, the proposed CU expansion's overall intensity and scale of use, and atypical off-site adverse impacts tests.

At the final hearing session, GCS elected not to adduce evidence going to how the accessory structures support the affiliated accessory use, or about accessory uses with no affiliated structure; instead counsel informed the Hearing Examiner during the final hearing session that it would present no further evidence, including the Hearing Examiner's request for an updated narrative and a separate exhibit for the use chart on CUP4.

By definition, an accessory structure or use is customarily incidental to the principal use or structure, serving no other use or structure, and is subordinate in area, intensity, and purpose to the principal use or structure. This HCZR definition is standard language. In *County Comm'rs of*

⁷ The Court of Special Appeals issued the opinion as reported at the request of the Montgomery County Attorney.

Carroll County v. Zent, 86 Md. App. 745, 587 A.2d 1205 (1991), the Court reviewed the Carroll County's zoning ordinance definition of "accessory use" as "[a use] which is subordinate and customarily incidental to the main building and use on the same lot" to define in pertinent part an accessory use as one "which is dependent on or pertains to the principal or main use." *Id.* at 758 (quoting 82 Am.Jur.2d, Zoning and Planning § 169 (2d Ed. 1976)). Considering a number of cases from other jurisdictions, the Court opined the crucial phrase "customarily incidental" and "incidental" as employed in a definition of "accessory use" incorporates two concepts, incidental or subordinate, and customarily associated with the primary use.

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

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

Id. at 768. Emphasis added.

In line with the HCZR definition and *Zent*, the structures in the maintenance area in this petition are accessory structures subordinate to and reasonably supporting the school's private academic educational function. But what about dugouts, scoreboards, batting cages, weather equipment, and all the minor structures/uses identified in change #53 of the 80-amendment

PE29, including a pergola, deck, recycling bin areas, playground equipment, and a future play area? Although these structures/uses arguably fall within the gambit of an accessory use or structure, the Hearing Examiner finds the term "accessory structure/use to another accessory use" offers better guidance on the evidentiary burden vis-à-vis these minor structures.⁸ A classic zoning example of an "accessory use to another accessory use" is the secondary or complementary use of an institutional or assembly accessory structure, like a religious facility or private school multipurpose building, for evening scout and community meetings, and yoga classes. These secondary or complementary incidental uses have a reasonable relationship to the accessory assembly use, which is customarily associated with the primary use. Sometime a conditional use category itself is an accessory use to an accessory use, not a principal use, like a nursery in a child day care center in a religious facility structure.

Even so, the nature or scale of a permissible accessory structure/use or a complementary use and its accessory building, or the totality of all such uses/structures, is not unlimited. By concentrating on structure taxonomy (who approved what when) the parties miss the point that the school's burden of proof and persuasion is showing these minor structures and uses are ultimately and reasonably related to the school's primary function and do not substantially change the nature, character, or intensity of the use of the property by generating atypical adverse impacts. If a dugout or scoreboard, for example, is a complementary structure to the

⁸ The term is from *Dupont Circle Citizens Ass'n v. DC BZA*, 749 A.2d 1258, 1263 (D.C., 2000), upholding the D.C. Board of Zoning Appeals' finding that a limited number of guest-sponsored social events at the bed and breakfast accessory use to the principal residential use was an accessory use incidental to the accessory bed and breakfast use.

accessory playing field accessory use, GCS must adduce evidence any intensified use of the playing field to explain the need for a dugout and scoreboard such that it does not does not generate atypical adverse impacts.

This same information is missing for the proposed Performing Arts Center. The factual findings on the Center indicate seating for up to 450 people with space for additional classrooms. These findings also indicate athletic fields, track, a press box, and related parking areas generally operating or will operate from 7:30am - 8:00pm. The BOA approved hours of operation in BA 95-46E and BA 99-051E&V were 8:15am - 4:00pm. The observatory operates until 11pm. The Hearing Authority did not pass muster on the observatory, athletic track, or the press box accessory uses or their hours of operation, etc., because the redline approvals circumvented its jurisdiction. These accessory or complementary school uses therefore intensified with no evidentiary public hearing. After-school programs for students of a private educational institution are not unusual, but it is the school's obligation to evidence the scope and intensity of the accessory use. It is the Hearing Authority's function to examine all the evidence and to decide whether the Applicant has met its burden of establishing proposed uses (including those needing retroactive approval) satisfy all of the HCZR standards for approving the conditional use expansion or substantially change the permitted activity. If the changes are substantial and create atypical adverse impacts, the Hearing Authority must deny the petition/uses if the impacts cannot be mitigated.

➤ **The PAR A Easement**

PAR A is the blue striped area shown on Map 1. It is a non-buildable forest conservation preservation parcel encumbered with an easement recorded in the Howard County Land Records

and controlling what uses are permitted on the property. Because both CUP1 & CUP2 in pertinent part proposed use of PAR A (4310 Maisel Farm Lane), the Hearing Examiner by letter of January 30, 2017 ordered GCS to amend the petition to include a copy of the preservation easement held, apparently, by Howard County and the homeowners association, and a copy of the recorded Maisel property subdivision plat, which may also restrict the use of PAR A.

PE8g (Petition2) is the 2000 PAR A Deed of Preservation Easement encumbering Non-Buildable Lot PAR A. Easement Article III sets forth the use and activities permitted on PAR A. PE8g, pg. 3, Liber 5253 Folio 0082.

[A]ll principal uses permitted as a matter of right and all accessory uses identified in Exhibit A are compatible uses and further, that the compatibility of any special exception uses identified in Exhibit A with the aforesaid uses will be determined on a case-by-case basis by the Howard County Board of Appeal upon petition for approval of a particular special exception use.

"Exhibit A" is an excerpt from the then controlling 1993 HCZR for the RR zoning district. In reference to then HCZR § 105.F.d, which sets forth all the special exception uses in the zone, Exhibit A.d authorizes only these now conditional uses.

Special exception uses which do not require construction of new structures or uses or use of more than .25 acres of outdoor area may be allowed on preservation parcels, provided the land area use is not suitable for agriculture. In addition, the following special exception uses when may require additional structures or land area may be permitted on preservation parcels.

1. Country clubs and golf courses
2. Farm tenant houses on lots of at least 25 but less than 50 acres
3. Riding academies and stables
4. Wineries

Special expectation use shall not be allowed on preservation parcel unless they support the primary purpose of the preservation parcel and are approved by the Board of Appeals in accordance with the applicable provisions of Section 130 and 131 of these regulations.

GCS presented no evidence going to compliance with these easement requirements.

Additionally, fences are "structures" by definition; consequently, no portion of existing fencing

or nor any proposed fencing intended to mitigate atypical adverse impacts, or simply proposed in response to Protestants' concerns, may be constructed on Para A.

B. Preliminary Conclusions of Law

The Hearing Examiner convened 19 hearings sessions on BA 16-034C. During these sessions, the Hearing Examiner regularly ordered GCS to provide additional information and revised or large scale CUPS for clarity and comprehension. GCS obliged. At some sessions, the Hearing Examiner recessed early and encouraged the parties to meet outside the formal proceedings. In April 24, 2017, after GCS introduced CUP3, the Hearing Examiner with counsels' consent sent a letter to the residential property owners whom GCS notified about the pre-submission meeting. This letter apprised the recipients of the potential value of a restrictive covenant or memorandum of understanding (MOU) between the school, the Glenelg Manor Estates HOA, and/or specific parties/stakeholders, especially considering the 20-year phasing proposal. The letter explained the instrument could also potentially incorporate agreements between the school and specific property owners' interests re: stormwater management and approval conditions that might not otherwise be considered in the BA 16-034 C decision and order. If incorporated into the BA 16-034C decision and order, the terms of the agreement would be enforceable through the county code enforcement process. There was no MOU.

After GCS submitted CUP4, the Hearing Examiner scheduled four all-day hearings sessions on February 9, March 16, April 17, and April 27, 2018 for better focus. During these hearings, the Hearing Examiner had GCS witness Tim Madden twice testify to the details of the 80-plan amendments, subject to cross-examination and comment by Protestants, who disagreed with

many of the characterizations of "existing" and "proposed uses/structures" in the "list of 80."

At the March 16, 2018 hearing session, the Hearing Examiner apprised the parties of the import of the *Brandywine* opinion. After multiple breaks, the Hearing Examiner recessed the hearing and again urged the parties to meet outside the formal hearing process to resolve outstanding issues to avoid the almost certain and even lengthier appeal. The Hearing Examiner informed Protestants the county could not take enforcement action for any alleged HCZR violations or violations of the approval conditions in the BOA decisions and orders until there was a final decision, including any litigation in the courts from a final Board of Appeals decision on any appeal of this decision and order.

At the April 17, 2018 hearing session, Protestants continued their cross-examination of Mr. Madden on the 80-amendment CUP4 and attendant comments. On convening the final hearing session on April 27, 2018, GCS informed the Hearing Examiner it was "resting its case."

GCS twice revised the BA 16-034C petition and the CUP, four times. On the one hand, many revisions were to the benefit of the community to provide compatibility, including additional landscaping, reconfigured buildings and building heights, fencing, a noise barrier, and gates. GCS made other changes in response to Hearing Examiner orders without objection. On the other hand, GCS added additional structures and uses and reconfigured the CUS limits/boundaries. Over the years, the school expanded the scope and scale of accessory uses without Hearing Authority approval through the aegis of SDP/redlines approvals.

On the one hand, Protestants called attention to deficiencies in the plans and petitions.

On the other hand, Protestants regularly offered irrelevant objections to several aspects of the plans, like objecting to flagpoles because the lines made noise and the flags are illuminated at night.⁹ Protestants sought approval conditions with no nexus to the approval standards. Protestants insisted on a pedantic re-cataloging of the 80 CUP4 amendments.

After closing summaries, the Hearing Examiner orally approved "the petition" with the caveat that the scope of what would actually be granted in the written decision would lie somewhere between the requests of the parties and ultimately depend on her optimism that she could interrogate CUP4 to make the necessary rulings on Petitioner's demonstration of compliance with the general and specific approval standards. As the Hearing Examiner began to review the evidentiary record and draft the summary factual findings, her initial objective was to constrain the proposed phasing plan; approving in Phase I only the two wastewater treatment accessory buildings, instructing GCS to submit a later modification petition for the other components of Phase I as Phase II, and denying the Phase III Performing Arts Center as premature for want of evidence about its operational characteristics. This objective lost traction in light of the above background legal issues.

An evidentiary challenge in this petition is *how* Glenelg Country School presented the proposed expansion, not *what* it proposed. One persistent and problematic aspect of the successive revised plan exhibits is that this process produced gaps in the evidentiary record going to GCS's burden of adducing evidence that the elements of each plan or the latest revision met

⁹ A flag may be displayed 24 hours a day if a light is placed to illuminate the flag so it is recognizable as such by the casual observer. The United States Flag Code, 4 U.S.C. § 1 et seq.

the general and specific standards for approving the proposed school expansion, all of which are intended to test the operational characteristics of the expansion for atypical adverse impacts. The record GCS developed took on a "Xeno's Paradox-Tortoise and the Hare-like" quality. Put in zoning argot, Zeno's Paradox applied to BA 16-034C meant the operational elements and discrete uses of the zoning petition/plan proposal were never fixed.

There is, therefore, insufficient probative evidence about the uses associated with the proposed accessory structures, and about the accessory use of the approved minor modifications, GCS having focused to its detriment on these structures. It may be that the school's tactic to spotlight its position on stormwater, wastewater and well and septic adequacy to negate Protestants' claims about the school's impact on their properties distracted the petitioner, the MDE consent order in their minds.

Having thoroughly interrogated the record, and in light of the above factual findings and background issues, the Hearing Examiner does not accept Petition2, CUP2, CUP3, and CUP4. This means no school expansion on Parcel 74/Lot 1, Parcel A, and that portion of Lot 24C, Parcel 345 the Board of Appeals did not approve through BA 99-55E&V. No school use is permitted on the pipestems. The applicable petition and CUP are therefore the initial October 25, 2016 submissions (Petition1 and CUP1), which the Hearing Examiner accepts for the limited purpose of granting Wastewater Treatment Buildings 1 and 2. Wastewater Treatment Building 2 must also meet the 50-foot setback from the closest pipestem section lot line, as these properties are not part of the CUS. As a condition of approval, then, the Hearing Examiner is requiring Petitioner to

relocate Wastewater Building 2 outside the 50-foot conditional use setback from the closest pipestem lot line. Other conditions of approval are detailed in the Order section below.

III. COMPLIANCE WITH THE GENERAL CRITERIA FOR CONDITIONAL USES (HCZR § 131.0.B)

HCZR §§ 131.0.B.1-2 require the Hearing Authority to evaluate whether a proposed Conditional Use meets two on-site standards, harmony with the General Plan and overall intensity and scale of use.

- 1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan, which can be related to the proposed use.**
- 2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.**

With regard to the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site, the two accessory buildings, which together comprise about 800sf, if a minimal increase in n intensity of use based upon the Property's size. The Petition accords with §§ 131.0.B.1 & .2.

Offsite Impacts - § 131.0.B.3

Unlike §§ 131.0.B.1 and 2, which concern the proposed use's harmony or compatibility with the General Plan and the on-site characteristics of the proposed use, compatibility with the neighborhood is measured under § 131.0.B.3's six off-site "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading; (4) access; (5) impact on environmentally sensitive area; and (6) impact on the character and significance of historic sites.

Inherent in the assessment of a proposed conditional use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in an RR district. The proper question is whether there are facts and circumstances showing the particular uses proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception [conditional] use irrespective of its location within the zones. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, and as conditioned, the Petitioner has met its burden of presenting sufficient evidence under HCZR § 131.0.B.3 to establish the two proposed accessory structures, subject to all conditions of approval, will not have adverse effects on vicinal properties beyond those ordinarily associated with two accessory wastewater treatment buildings for an existing private academic school use in the RR zoning district.

a. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.

There is no evidence of record regarding atypical adverse effects on vicinal properties from dust, fumes, and odors, noise, intensity of lighting, or hazards from the insulated wastewater treatment buildings themselves. The Petition accords with § 131.0.B.3.a.

b. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

The two accessory buildings will each be about 25 feet in height. Subject to the condition of approval that Wastewater Building 2 be set back 50 feet from the nearest pipestem section lot line, which are not part of the CUS, the Petition accords with § 131.0.B.3.b.

c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

No new parking spaces, loading areas, driveways, or refuse areas are proposed for the Wastewater Treatment Buildings.

d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.

There is no evidence that the current operational characteristics of the existing ingress and egress drives will not provide safe access with adequate sight distance for the Wastewater Treatment Buildings uses. The petition accords with § 131.0.B.3.d.

e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

The TSR identifies a minor stream south of the property near the athletic field. The proposed Wastewater Treatment Buildings will be located several hundred feet from the stream and there is no evidence their location would cause any atypical adverse impacts. The petition accords with §131.0.B.3.e.

f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

The Woodley/Loung residence at 4317 Maisel Farm Lane is the site of Glenelg Manor Farm (HO-238) and located some distance from the closest Wastewater Treatment Building. There is no evidence that the structures will have a greater potential for an atypical diminishment on the character and significance of this historic site. The petition accords with §131.0.B.3.f.

**IV. COMPLIANCE WITH THE SPECIFIC CRITERIA FOR
SCHOOLS, COLLEGES, UNIVERSITIES—PRIVATE (ACADEMIC) (§ 131.0.N.48)**

A Conditional Use may be granted in the RC and RR Districts, on properties that are not ALPP purchased or dedicated easement properties and in the R-20, R-ED, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, R-APT, R-MH, or R-VH Districts for private academic schools, colleges and universities (not including nursery schools) provided that:

a. The maximum density permitted is 60 pupils per acre for lots less than three acres, and 100 pupils per acre for lots three acres or greater.

No increase in pupils and no increase in the size of the CU site boundary granted in BA 99-051E&V is granted in this decision and order. The BOA in BA 99-051C&V Finding #3 (pg. 4) states the number of students would increase to 782 and staff would increase from 105 to 133. Petition1 states the current student enrollment is 770.

b. In addition to meeting the minimum area requirements above, schools with residence accommodations shall provide an additional 500 square feet of lot area per site resident. Residents shall include students, staff members, caretakers and their families who reside on the site.

No new residence accommodation is proposed.

c. A private school may be erected to a greater height than permitted in the respective district, provided that no structure is more than three stories in height and the front, side and rear setbacks shall be increased two feet for each foot by which such structure exceeds the height limitation.

This decision and order approves only to the two 25-foot high Wastewater Treatment accessory structures subject to the 25-foot maximum height restriction in the RR-DEO district.

The petition accords with § 131.0.N.48.c.

d. Sufficient off-street school bus loading areas shall be provided if bus service is provided for students.

The decision and order approves no new bus service.

e. Outdoor uses will be located and designed to shield residential property from noise or nuisance. Play areas, athletic fields and similar uses shall be buffered from residential properties by fencing, landscaping, adequate distance or other appropriate means.

This decision and order approves no outdoor uses.

f. Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially-zoned properties other than a public road right-of-way.

Subject to the condition of approval that Wastewater Treatment Building 2 be located at least 50 feet from the closest pipestems lot line, the petition accords with § 131.0.N.48.f.

g. At least 20% of the area within the building envelope will be green space, not used for buildings, parking area or driveways. The building envelope is formed by the required structure setbacks from property lines and public street rights-of-way.

CUP1 identifies the green space area within the existing building envelope as 83.8%. With only the two accessory buildings approved, the green space is substantially higher. The petition accords with §131.0.N.48.g.

h. The site has frontage on and direct access to a collector or arterial road designated in the General Plan, except that expansions of a Conditional Use that was approved prior to July 12, 2001 are permitted.

The site has frontage on and direct access to Folly Quarter Road, a Major Collector, in accordance with §131.0.N.48.h.

i. The minimum lot size in the RC and RR Districts for a new private academic facility is three acres. The minimum lot size in the R-20, R-ED, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, R-APT, R-MH, or R-VH District.

The lot size previously approved by the Board of Appeals on the RR zoned existing school site is significantly greater than 3 acres, in compliance with § 131.0.N.48.i.

V. FINAL NOTES

Because the Hearing Examiner does not accept Petition2, CUP2, CUP3, AND CUP4 and accepts Petition1 and CUP1 for the limited purpose of approving the two accessory Wastewater Treatment Buildings, and does not deny the petition, I am of the opinion that Petitioner may make subsequent CU application for any proposed expansion immediately because the HCZR § 130.0.A.4 prohibition against making CU application less than 24 months applies only when the Hearing Authority disapproves a petition.

One outcome of this decision and order is insight about the unintended general consequences and community frustration when DPZ accepts and the Hearing Authority approves "concept plans" with insufficient detail and an administrative agency improperly sanctions revisions to or intensifications of Hearing Authority-approved conditional land uses, thereby circumventing the Authority's jurisdiction. There is consequently no public notice and no vetting of potential atypical adverse impact in a public forum. Accordingly, the Hearing Examiner over the last several years has demanded more details in CUPs to impose institutional reform on this aspect of the CU application process. The Hearing Examiner now reviews all petitions forwarded to her for "completeness" and returns incomplete petitions to DPZ for further processing. The

administrative history of the multiple GCS decisions and orders and SDPs/redlines also suggests limited county oversight – i.e., field inspection - upon a Hearing Authority grant of a CU petition, even when subject to SDP submission, to confirm compliance with what the Hearing Authority approved.

Finally, the Hearing Examiner notes that in several Maryland jurisdictions, the Hearing Authority has approval oversight on some variant of a combined conditional use and site development plan. This allows for an evidentiary public hearing on a more technical site plan with more technical staff review before the plan is accepted, and a complementary substantive technical staff report. The conditional use standards may include review for adequate stormwater management and compliance with an APFO road test. The Hearing Examiner encourages the county to explore this administrative petition review and approval process during the development regulations rewrite.

ORDER

Based upon the foregoing, it is this **12th day of July 2018**, by the Howard County Board of Appeals Hearing Examiner, hereby **ORDERED**:

1. That the Board of Appeals in granting BA 99-51E&V did not approve any portion of the 22 pipestem sections as part of the conditional use site expansion onto Parcel 345, Lot 24C.
2. That the Board of Appeals in BA 99-51E&V granted Glenelg Country School an increase in the student population to 782, and an increase in staff to 133. This is the current maximum student and staff population. Glenelg Country School shall not increase the student or staff population without Hearing Authority approval.
3. That Glenelg Country School shall comply with all conditions of approval imposed by the Board of Appeals in prior decisions.
4. That the Hearing Examiner does not accept Petition2, CUP2, CUP3, and CUP4. This petition and these plans were submitted as exhibits after the initial October 25, 2016 conditional use application forwarded to the Hearing Examiner for scheduling.
5. That the Hearing Examiner accepts Petition1 and CUP1, the initial October 25, 2016 conditional use application, for the limited purpose of granting Wastewater Treatment Buildings 1 and 2.
6. That this decision and order does not grant Glenelg Country School the right to expand onto Parcel 74/Lot 1, Parcel A, and that portion of Lot 24C, Parcel 345 not approved by the Board of Appeals in BA 99-55E&V. No school use is permitted on these properties.

It is hereby **FURTHER ORDERED**:

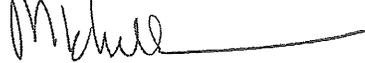
7. That the Hearing Examiner **GRANTS ONLY** Wastewater Treatment Buildings 1 and 2.
8. That Wastewater Treatment Building 2 shall be relocated to meet the 50-foot setback from the closest pipestem section lot line.
9. That Glenelg Country School may apply for the appropriate site development plan or redline site development approvals and building permits and they may be granted upon receipt of this Order; however, Glenelg Country School is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired.

10. That the site development plan or redline site development plan shall contain a note with all the enumerated conditions of approval in this decision and order.
11. That the site development plan or redline site development plan shall clearly denote the 22 pipestem section boundaries and identify the area as owned in fee simple title by others.
12. That any future application by Glenelg Country School to expand the conditional use site boundary to include the pipestems strips or to make use of these lands shall include the fee simple owners' signature authorization to proceed with the petition and make application for all site development plans or redline site development plans. Alternatively, the application shall include a court order to the effect that the 2007 easement/2008 addendum suffice as signature authorization to proceed with the CU application and make application for all necessary site development plans or redline site development plans.

It is hereby **FURTHER ORDERED**:

13. That pursuant to HCZR § 131.0.1.2, the Hearing Examiner revokes the Department of Planning and Zoning's authority to approve minor modifications to the configuration of buildings or other improvements as long as they do not move closer to abutting residential properties or other uses. This revocation does not apply to the location or configuration of the two wastewater treatment buildings approved through this decision and order. The Hearing Authority must approve all minor modifications other than these two buildings.
14. That this decision and order makes no factual findings or conclusions of law about the operation or adequacy of Glenelg Country School's stormwater and wastewater management systems or its well and septic systems.
15. That Glenelg Country School shall comply with all federal, state, and local stormwater management, wastewater management, well and septic laws and regulations.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard de novo by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.