

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
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www.montgomerycountymd.gov/cont/council/boa/board.asp

Case No. CBA-1389-E

PETITION OF ST. ANDREWS EPISCOPAL SCHOOL

OPINION OF THE BOARD

(Public Hearing Date: November 10, 2003)
(Effective Date of Opinion: March 12, 2004)

Case No. CBA-1389-E is an application for a modification to the special exception pursuant to Section 59-G-2.19 of the Zoning Ordinance to permit: the continuation of the School's existing summer camp program, and review of the operation of the lacrosse activities on the Upper Playing Field. Pursuant to the authority in Section 59-A-4.125 of the Zoning Ordinance, the Board of Appeals referred the case to the Hearing Examiner for Montgomery County to conduct a public hearing and submit a Report and Recommendation to the Board. The Hearing Examiner convened a public hearing on November 10, 2003, closed the record on November 17, 2003 and on December 19, 2003, issued a Report and Recommendation for approval of the modification.

The subject property contains 19 acres; Lot C; Highland Stone Subdivision; located at 8804 Postoak Drive, Potomac, Maryland, 20854 in the R-90 Zone.

Decision of the Board: Special Exception Modification **Granted**,
Subject to Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on January 7, 2004. After careful consideration and review of the record, the Board adopts the Report and Recommendation and grants the modification, subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiner's Report and in the Opinion of the Board.
2. All terms and conditions of the approved special exception shall remain in full force and effect, except as modified by the Board of Appeals.
3. The outdoor tennis courts shall not be used after 5:00 p.m. during the summer camp program.

4. No outdoor activity associated with the summer camp program shall take place before 8:30 a.m. or after 6:00 p.m.
5. The use of Brumbaugh Field in connection with the summer program shall be limited to (1) occasional use of an incidental nature, and (2) use for a two-week soccer camp.
6. Any buses used in connection with the summer programs shall follow the same traffic rules that apply to the regular school program.
7. The Board of Appeals may, in its discretion, choose to hold an additional hearing concerning the use of Brumbaugh Field in the Fall of 2004 if a resident of the area immediately adjacent to the field submits a request for such a hearing, together with relevant evidence of adverse impacts.
8. St. Andrew's will form a Community Council which will meet to discuss issues of concern related to the school. The Peoples' Council for Montgomery County will be an *ex officio* member of the Community Council. Invitations for membership on the Community Council should also be extended to Parties of Record, adjoining and confronting property owners, and representatives from pertinent citizens' associations. The Community Council will meet twice a year.

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

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

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

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 12th day of March, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.

BEFORE THE MONTGOMERY COUNTY BOARD OF APPEALS

Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
PETITION OF ST. ANDREW'S EPISCOPAL SCHOOL

Petitioner

Elliott Brumbaugh
Virginia Johnston Walsh Cobb
C. Craig Hedberg
Robert Francis Kosasky
Amanda Macomber
Philip E. Perrine

For the Petitioner

Stuart R. Barr, Esquire
Robert G. Brewer, Esquire
Attorneys for the Petitioner

* * * * *

Callum Murray, Technical Staff of
Maryland-National Capital Park and
Planning Commission

Neither in Support of nor in
Opposition to the Petition

* * * * *

William Fitzsimmons
Bayda Manison
Warren Manison
Marjorie Turgel

In Opposition to the Petition

* * * * *

Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Petition CBA-1389-E, filed July 15, 2003, seeks to modify an existing special exception for a private educational institution, St. Andrew's Episcopal School ("St. Andrew's"), located at 8804 Postoak Road in Potomac, to permit (1) the continuation of a summer camp program that has been in operation since the school's inception in 1999; and (2) expanded use of the upper playing field (now known as Brumbaugh Field). When St. Andrew's applied for a modification in 2001 to allow the reconstruction of Brumbaugh Field, the Board of Appeals granted the modification, but restricted the use of the field for lacrosse to girls' teams only for one season. See Board Resolution dated February 7, 2001 and effective March 21, 2001. The Board established a requirement for an additional public hearing after a full season of play by the girls' lacrosse teams to establish whether neighbors' concerns about lacrosse balls hurtling into their yards and other adverse effects had been properly addressed. The present application represents the school's effort to demonstrate that the concerns raised in the 2001 proceeding have been addressed and that Brumbaugh Field should be open to both boys' and girls' lacrosse teams. St. Andrew's also seeks approval for its existing summer camp program, as required under Code § 59-G-2.19(c).

Technical Staff of the Maryland-National Capital Park & Planning Commission ("M-NCPPC") reviewed the present modification petition and, in a report dated October 30, 2003, recommended *approval* with conditions. See Ex. 18. The Montgomery County Planning Board did not review this petition.

On August 18, 2003 the Board of Appeals ("Board") scheduled a public hearing in this matter for November 5, 2003. On September 16, 2003 the Board, acting under the provisions of Code § 59-A-4.125, referred the matter to the Office of Zoning and Administrative Hearings to conduct a public hearing and submit a report and recommendation. A public hearing was convened after proper notice on November 10, 2003, at which testimony and other evidence were received both in opposition to and in favor of the proposed modification. The record was held open briefly to receive the hearing transcript and closed on November 17, 2003.

Petitions to modify the terms or conditions of a special exception are authorized by §59-G-1.3(c) of the Zoning Ordinance. Section 59-G-1.3(c)(4) states:

The public hearing must be limited to consideration of the proposed modifications noted in the Board's notice of public hearing and to (1) discussion of those aspects of the special exception use that are directly related to those proposals, and (2) as limited by paragraph (a) below, the underlying special exception, if the modification proposes an expansion of the total floor area of all structures or buildings by more than 25%, or 7,500 square feet, whichever is less.

In the present case, the proposed modification would not result in any increase in the floor area of structures or buildings; it would affect operational conditions only. Accordingly, this report and recommendation address only the elements of the school's operation that are directly related to the proposed modification. Some residents of neighboring Bunnell Drive attended the hearing to raise concerns about impacts on their properties from the use of St. Andrew's tennis courts, and one resident of neighboring Victory Lane complained that during September and October of this year soccer balls were landing in yards along Victory Lane and being retrieved by students. These issues were not discussed at length during the hearing and will not be discussed in this report because they do not relate to the proposed modification. Neighbors were advised to raise their concerns directly with school officials, and to request enforcement action by the Department of Permitting Services if their complaints are not resolved.

II. BACKGROUND

For the convenience of the reader, background information is grouped by subject matter.

A. The Subject Property and Neighborhood

The subject property consists of approximately 19 acres located at 8804 Postoak Road in Potomac, on the east side of Postoak Road approximately 800 feet north of its intersection with Tuckerman Lane. The property is developed with a main classroom building, a building called the Kiplinger High School Building, a gymnasium, a memorial hall, a two-story single-family dwelling, a maintenance shed, four unlit tennis courts, a combination lower playing field, an upper playing field in the northernmost corner of the site and approximately 150 parking spaces in several locations. The site

is bordered on the north/northwest by the backyards of homes that face Bunnell Drive; on the east/northeast by the backyards of homes that face Victory Lane; on the south/southeast by the backyards of homes that face Harker Drive and, for a short distance, Harker Drive itself; and on the west/southwest by Herbert Hoover Middle School. The topography of the subject property rises from the 380-foot contour at Buckhannon Drive to 426 feet at the center of the site, then drops to the 395-foot contour near Victory Lane. The site and perimeter are extensively landscaped with mature vegetation including both evergreens and hardwoods. The main site access is from Postoak Road, with an additional entrance from Harker Drive that is reserved for staff use. The subject property and surrounding land uses can be seen on the vicinity map on the following page, excerpted from the Staff Report, Exhibit 18.

The subject property and all of the adjacent and confronting properties are classified under the R-90 Zone, as shown on the zoning vicinity map on page 7. With the exception of the adjacent public middle school, all of the adjacent and confronting properties are developed with single-family detached homes. The adjacent middle school abuts Winston Churchill Senior High School to the south, forming a three-campus contiguous area measuring 68 acres.

B. Land Use History

The subject property has been used as a private educational institution since 1960. The Board approved the transfer of a special exception for a private educational institution from the original recipient, Harker Preparatory School, to St. Andrew's in 1998. St. Andrew's has a permitted and actual enrollment of approximately 450 students. A community member testified at the hearing on this matter that the Harker School was much smaller, with approximately 100 students at full operation and only about 40 by the time it closed. Thus, St. Andrew's represents a significant increase in student density and intensity of use compared to the historical use of the property. St. Andrew's is in its sixth year of operation, and in the summer of 2003 completed its fifth summer camp season.

Vicinity Map, excerpted from Ex. 18

Zoning Vicinity Map, Excerpted from Ex. 4(b)

C. Master Plan

The subject property is in the area covered by the *2002 Potomac Subregion Master Plan* (the “Master Plan”). The Master Plan does not specifically address the subject property, but it confirms the existing R-90 zoning and the land use map shows the property as a school/educational facility.

D. Proposed Modification

The present modification petition seeks permission (1) to continue the school’s existing summer camp program and (2) to use Brumbaugh Field for boys’ lacrosse as well as girls’ lacrosse. The two elements of the modification are described below.

1. Summer Camp Program

St. Andrews’ summer camp program has three divisions, with a total enrollment that varies at different points during the summer but never exceeds 450. The summer programs have about 90 staff members. St. Andrew’s runs only one of the three summer camp divisions itself; the other two are run by contractors that lease space from the school. The summer camp programs are described below.

Discovery Day Camp is a traditional day camp for ages three to twelve that operates for seven weeks. The program starts at 9:00 a.m. and most campers leave on a staggered schedule between 3:15 and 3:45. See Traffic Management Plan at Exhibit 9. A small number of three-year-olds leave at 1:00 p.m. Discovery Day Camp has 260 students at its peak, during the first three-week session. Children rotate among activities such as art, music and sports. They use one wing of the main school building and occasionally the gymnasium for indoor activities. For outdoor activities they use a small patch of grass behind the library as well as Hope Field, located in the southern part of the campus. Discovery Day Camp has an extensive Traffic Management Plan that uses the entire staff of more than 50 employees to direct cars to queuing locations and bring children out to the appropriate car as each car comes to the front of the line.

TenniStar is a tennis camp that runs for eight weeks, from 8:45 a.m. to 3:30 p.m. St. Andrews' contract with the TenniStar operator limits this program to 25 children per session, ages 6 to 16. Campers spend most of their day on the tennis courts playing games and doing drills. They sometimes use Hope Field to take a break, and they use one of the classrooms for lunch and rest.

St. Andrew's Specialty Camps are a series of specialty camps run by St. Andrew's for six weeks between 9:15 a.m. and 3:00 p.m. The camps cover a variety of subjects such as technology, arts, sports and academics, with small groups of 10 to 20 students ages 9 to 18. The specialty camps as a whole have roughly 100 to 150 students per week. They use the main classroom building, Hope Field, and, for a two-week soccer camp, Brumbaugh Field. The school also ran athletic programs from 5:00 to 8:00 p.m. during the Summer of 2003. These were indoor programs consisting of a basketball program with about 15 students and a summer conditioning program with about five students twice a week.

The summer programs also offer an extended day option that allows participants to arrive as early as 7:00 a.m. and stay as late as 6:00 p.m. They have never had more than 25 students in the extended day program, and on average there are 7 to 10 students. During the extended day periods, those students are mostly in the gym or the Discovery Day Camp area. Occasionally they go outside to play a game, but usually they stay indoors. During the hearing on this modification, St. Andrew's counsel represented that the school would consent to conditions prohibiting the use of the tennis courts after 5:00 p.m., and prohibiting any outdoor activity before 8:30 a.m. or after 6:00 p.m.

2. Boys' Lacrosse on Brumbaugh Field

Brumbaugh Field occupies the northernmost corner of the site and runs roughly north to south, almost parallel to Victory Lane on the east. Its location can be seen on the Site Plan reproduced on the next page, which was prepared in connection with St. Andrew's 2001 modification request. The site plan shows both the former location of Brumbaugh Field and the new location, at a slightly different angle.

Site Plan, Ex. 22

When Brumbaugh Field was first built, it was not fully fenced along the Victory Lane side, so it was very easy for balls to end up in neighbors' yards. In addition, drainage problems sometimes led coaches to set up goals along the east side of the field, facing Victory Lane, so many errant shots landed in neighbors' yards. This caused considerable consternation, particularly because lacrosse balls are small and hard and can travel with significant force. After obtaining approval in 2001 to relocate and reconstruct the field, the school moved the field so it sits at a slight angle to Victory Lane and is farther away from residences; erected a six-foot fence along the entire Victory Lane side that can expand to 12 feet in height with the use of a second fence that sits on top of the first; erected fences along the north and south ends of the field, so that three-quarters of the field is fenced in; and installed a berm and significant additional landscaping between the field and adjoining backyards. The height expansion fencing is installed during the spring lacrosse season on top of the existing six-foot fence to catch stray balls. To reduce noise impacts on the neighbors, the school moved the team and spectator benches to the far side of the field. The photographs on the next two pages show various views of the reconstructed field and its landscaping.

In addition the physical changes described above, St. Andrew's has posted a list of Field Rules, as required under the conditions imposed by the Board in 2001. The Field Rules were described at the hearing as follows:

- Field may be used only with school permission.
- Always be respectful of our neighbors and others around us.
- All trash must be put in proper containers and never left on the field and neighboring property.
- Do not trespass to retrieve a lost ball without asking the homeowner's permission.
- Spectators are not permitted to use bull horns, drums or electronic noise makers of any kind.
- Players and spectators must remain on the side of the field closest to the school at all times.
- Side fencing must not be used as a goal or target area.
- Please do not play in planted areas beyond the goal lines at both ends of the field, which are forest conservation areas.

School officials review the field rules with all players, and with coaches from other schools that come to the St. Andrew's campus for games.

Photographs, Exhibit 10(a)

Photographs, Exhibit 10(b)

The Board approved the use of Brumbaugh Field with the new design and these restrictions, but limited its use for lacrosse to girls' teams for one season, to assess the impacts. Previously the boys' teams had been the primary users of the field, and some of the problems, such as foul language, were related to the boys' teams. Testimony and correspondence from neighbors' suggested that some of the neighbors have found that the boys hit the balls much harder and farther than the girls and make a lot more noise. A hearing to review the first season of use was supposed to have been held in the Fall of 2002, but due to construction delays the first full season of use with the new design was in 2003.

Winter usage of the outdoor fields is limited to an occasional winter fitness program on a nice day, or a track team running around the field. During the Spring of 2003, Brumbaugh Field was used for gym classes and girls' lacrosse. Two middle school teams used the field for practices from 2:30 to 3:30, and from 1:30 to 4:30 on Thursdays. Varsity and JV teams practiced from 3:30 to 5:30 or sometimes 6:00, with games sometimes going as late as 7:00 p.m. Practices and games ran five days a week, with a few practices on weekends. Generally there were two games per week. The school's Dean of Students and girls' lacrosse coach, Virginia Johnston Walsh Cobb, testified that no safety concerns arose related to the use of the field, and there were no problems with errant shots disrupting the neighbors. Having the goals at the ends of the field and installing the extra fence kept the balls in. The testimony of several witnesses confirmed that there were no complaints about the use of the field for lacrosse during the Spring 2003 season. The residents of one of the homes closest to Brumbaugh Field complain that this year was not a good test season because of all the bad weather, which kept people inside. Ms. Cobb testified that lacrosse can be played in the rain and that they played a full season, with only one or two games cancelled.

St. Andrew's is requesting permission for the boys' lacrosse teams to use Brumbaugh Field. Currently they use the lower playing field, Hope Field, which is also used for baseball. During baseball games the boys' lacrosse teams have had to go off-campus for practice. If both boys and girls were permitted to use Brumbaugh Field, they would give priority to the Varsity teams. The JV teams

might be sent for a run while the boys' Varsity team practices on half the field and the girls' Varsity team practices on the other half. The number of games would probably double with boys' teams using the field, but the number of practices would decrease. They would use the field roughly the same number of hours, or maybe less because the boys have only one middle school team and the girls have two, which means that when there are games the girls' teams have two games, with the second one ending as late as 7:00. With only one boys' team they have only one game in a day, and it ends about the same time that a practice would end.

Ms. Cobb conceded that there may be a little more noise at a game than at a practice because of spectators, but she estimated that the noise level is about the same because the benches and spectators are all on the side of the field away from Victory Lane, and during practices she's out on the field giving instructions, which she doesn't do during games. They do not use a public address system. A neighbor who participated actively in the hearing, Mr. William Fitzsimmons, contended that games are much noisier than practices and argued that no use of the field should be permitted during the dinner hour, from 5:00 to 7:00 p.m..

Technical Staff states that the relocation and reconstruction of Brumbaugh Field, together with strict adherence to the field rules that were imposed as a condition of the special exception, have alleviated the safety concerns that led to the girls-only restriction in 2001. Staff notes that the boys' lacrosse teams currently play on Hope Field, which is adjacent to residential rear and side yards, and no complaints have been received about errant lacrosse balls stemming from the boys' use of this field.

E. Traffic and Parking

The boys' use of Brumbaugh field would not have a significant impact on traffic and parking conditions at the subject property because it would essentially move activities from Hope Field to Brumbaugh Field, drawing the same amount of traffic to the site.

The summer camp programs, at their peak, draw the same number of children to the site as the regular school program, but the testimony suggested that peak attendance occurs only during

the first three-week session, and after that it drops off. Testimony by a transportation planner and school representatives established that St. Andrew's has successfully implemented an extensive traffic management program that prevents cars coming to the site from queuing on Postoak Road. The three main camp programs start and end at staggered times to reduce the number of cars on campus at once. The largest program, Discovery Day Camp, further staggers pick-ups by assigning car numbers and pick-up times. Staff members for all of the camp programs direct traffic into designated queuing areas in the main parking lot, then into one of two lines heading toward the two pick-up/drop-off points. In addition, St. Andrew's has arranged to use the parking lot of the adjacent middle school as a waiting area for any overflow from its queuing area. The use of the parking lot next door during the first few days of the 2003 summer session allowed St. Andrew's to prevent any queuing on Postoak Road. After the first few days, that overflow area was not needed.

One Victory Lane resident testified that he had seen summer camp parents using the Harker Drive entrance, which could draw traffic onto Victory Lane. However, testimony from other witnesses established that the parking area accessed from Harker Drive is blocked off from the rest of the campus, so any use by summer camp parents would be mistaken and occasional.

F. Community Opposition to the Special Exception

Mr. Fitzsimmons, a resident of Victory Drive who played a pivotal role in the restrictions the Board placed on Brumbaugh Field in 2001, participated actively in the hearing on this modification and submitted a post-hearing letter, as well. He argues that the extremely bad weather of early 2003 reduced the amount of game playing on Brumbaugh Field, so that there has not been a true test of the field's impact, as the Board had provided for. Mr. Fitzsimmons maintains that the use of the field by boys' teams will cause problems because they will throw the balls much farther, and they make much more noise than the girls. He also complains that holding boys' and girls' games will double the number of games (according to the testimony of the Dean of Students), and that games are much noisier than practices, thereby increasing the adverse effects on neighbors. He notes in his letter (Ex. 23) that in St. Andrew's original special exception application, Hope Field was identified as the primary

playing field and Brumbaugh Field was designated for soccer practices only. Mr. Fitzsimmons states that Hope Field borders fewer homes than Brumbaugh Field and is farther away from the nearby homes (based on the site plan this appears to be at least partially true).

Mr. Fitzsimmons requests that the “test period” for Brumbaugh Field be extended for another year, with the number of boys’ lacrosse games phased-in on a restricted basis during that year, “so that issues of safety and noise can be more adequately and accurately assessed.” Ex. 23. He and his wife, Lorraine Fitzsimmons, also request that St. Andrew’s not be permitted to use Brumbaugh Field for its summer programs at all, to reduce noise and other problems during the period when residents of Victory Lane are most likely to use their backyards. The Fitzsimmons’ requests are discussed at the conclusion of this report, where the Hearing Examiner rejects the notion of an additional test period, but suggests creating a way for the Fitzsimmons to request an additional hearing after the 2004 lacrosse season if warranted.

III. SUMMARY OF TESTIMONY

A. Applicant’s Case in Chief

1 Robert Francis Kosasky, Headmaster

Mr. Kosasky has been the Headmaster at St. Andrew’s since July, 2002 and served in similar capacities at other private schools prior to that. He stated that the summer camp program is very important to the school. It provides both remedial academic opportunities and academic enrichment, largely for St. Andrew’s students, as well as a quality summer day camp program for younger students that allows them to get to know St. Andrew’s. He stated that the summer camp program has been essentially the same, with roughly the same enrollment, since the school opened five years ago. His knowledge about the program prior to July 2002 is based on paper records, computer statistics and conversations with current and past directors of the summer program and the school business manager.

Mr. Kosasky stated that the summer program has never exceeded the enrollment limitation for the academic-year program of 450 students, nor would it do so under the program now proposed. In addition to the camp program, they have had other occasional uses such as a drivers' education classroom program for 25 to 40 students or a study skills class for 20 to 25 students. These programs don't take place every summer, so they are not included in the program as described for the modification. Often these programs have taken place at times when summer camp is not in session. St. Andrew's is deluged with requests to use its space, both during the summer and during the school year, which they routinely turn down to live by their space constraints and their agreements. He noted that no new construction, structural changes, exterior lighting or parking areas are proposed in connection with the summer camp, and that the tennis courts are not illuminated.

Mr. Kosasky indicated a willingness to address issues and complaints as they arise, including concerns about the tennis courts that residents of Bunnell Drive raised at the hearing. He described his outreach efforts in connection with the present application, including individual telephone calls to neighbors who live near Brumbaugh Field. He did not receive any feedback from neighbors that suggested any significant concerns regarding the summer camp program or Brumbaugh Field.

Finally, Mr. Kosasky noted that use of the tennis courts is to be limited to participants in the tennis camp, who leave at 3:30 p.m. Later he revised that testimony to state that the courts might be used by students in the after-care program until as late as 5:00 p.m.

Under cross-examination by community members, Mr. Kosasky stated that during the summer program, the use of Brumbaugh Field would not be expanded, but it would continue to be used fairly consistently throughout the day until campers leave at 3:00 or 3:30.¹ He confirmed that air horns, which are not permitted to be used on the field during the school year, would not be permitted during the summer camp either. He stated that he was not aware of summer camp parents using the Harker Drive entrance instead of Postoak Road, but that the connection from the Harker Street parking lot to

¹ Mr. Kosasky's testimony conflicted with that of the Director of Summer Programs, Amanda Macomber, who testified that the only use of Brumbaugh Field during the summer is for a two-week soccer camp. Given her greater familiarity with the details of the summer programs, the Hearing Examiner has chosen to rely on Ms. Macomber on this point.

the rest of the campus is blocked, so anyone using that entrance cannot drive to the main center of the campus. He further testified that the average number of students on campus per week during the summer program is between 300 and 400, which has been pretty consistent over the years. No increase in those numbers is planned.

2. Virginia Johnston Walsh Cobb, Dean of Students.

Ms. Cobb has been with St. Andrew's for ten years and has in the past held positions as an English teach, Athletic Director and Summer Program Director. She has been the head varsity girls' lacrosse coach for ten years. She was the Athletic Director at the time of the 2002 hearing in which St. Andrew's sought approval for the relocation and reconstruction of Brumbaugh Field, participated in the hearing, and is familiar with the conditions the Board of Appeals set for use of the field.

Brumbaugh Field runs roughly parallel to Victory Lane, a residential street with backyards abutting the school property. When the field was first built, it was not fully fenced along the Victory Lane side, so it was very easy for balls to end up in neighbors' yards. Since then the school has erected a six-foot fence along the entire Victory Lane side, plus each of the ends of the field, so that three-quarters of the field is fenced. In addition, they moved the fields farther east, away from Victory lane, installed a berm, and added significant landscaping between the field and adjoining backyards. During the spring lacrosse season they have an additional six-foot fence that goes on top of the first one to catch stray balls. To reduce noise impacts on the neighbors they moved the team benches to the far side of the field. They posted a list of rules for use of the field, which they go over with all the players², as follows:

- Field may be used only with school permission.
- Always be respectful of our neighbors and others around us.
- All trash must be put in proper containers and never left on the field and neighboring property.
- Do not trespass to retrieve a lost ball without asking the homeowner's permission.
- Spectators are not permitted to use bull horns, drums or electronic noise makers of any kind.
- Players and spectators must remain on the side of the field closest to the school at all times.

² The athletic directors talk to other schools who play against St. Andrew's about the field rules.

- Side fencing must not be used as a goal or target area.
- Please do not play in planted areas beyond the goal lines at both ends of the field, which are forest conservation areas.

The Board of Appeals approved the use of the field with the new design and these restrictions, but limited its use to soccer and girls' lacrosse teams for one season, to assess the impacts. Previously the boys' teams had been the primary users of the field, and some of the problems, such as foul language, were related to the boys' teams. The review hearing was supposed to have been in the Fall of 2002, but due to construction delays the first full season of use with the new design was in 2003.

Winter usage of the outdoor fields is limited to an occasional winter fitness program on a nice day, or a track team running around the field. During the Spring of 2003, the field was used for gym classes and girls' lacrosse. Two middle school teams used the field for practices from 2:30 to 3:30, and from 1:30 to 4:30 on Thursdays. Varsity and JV teams practiced from 3:30 to 5:30 or sometimes 6:00, with games sometimes going as late as 7:00 p.m. Practices and games ran five days a week, with a few practices on weekends. Generally there were two games a week. Ms. Cobb testified that there were not safety concerns related to the use of the field, and no problems with errant shots disrupting the neighbors. Having the goals at the ends of the field and installing the extra fence kept the balls in. Before the field was redesigned there were a lot of drainage problems, so sometimes the coaches would put the goals up against the Victory Lane side of the field, which lead to a lot of balls going in the neighbors' yards. Now, all the shots are aimed at the north and south ends of the field instead of the Victory Lane (east) side. She has not heard of any complaints, and stated that normally either Mr. Brumbaugh or Mr. Kosasky would tell her about complaints.

St. Andrew's is requesting permission for the boys' lacrosse teams to use Brumbaugh Field. Currently they use the lower playing field, Hope Field, which is also used for baseball. During baseball games the boys' lacrosse teams have had to go off-campus for practice. If both boys and girls were permitted to use Brumbaugh Field, they would give priority to the Varsity teams. The JV teams

might be sent for a run while the boys' Varsity team practices on half the field and the girls' Varsity team practices on the other half.

In response to questioning by a neighbor, Ms. Cobb asserted that despite the bad weather last Fall, they did have a full season. They cancelled one or two games, but unlike baseball one can play lacrosse in the rain. They played about 19 home games on Brumbaugh Field. The number of games would probably double with boys' teams using the field, but the number of practices would decrease. They would use the field roughly the same number of hours, or maybe less because the boys have only one middle school team and the girls have two, which means that when there are games the girls' teams have two games, with the second one ending as late as 7:00. With only one boys' team they have only one game in a day, and it ends about the same time that a practice would end.

Ms. Cobb conceded that there may be a little more noise at a game than at a practice because of spectators, but she estimated that the noise level is about the same because the benches and spectators are all on the side of the field away from the residential neighborhood, and during practices she's out on the field giving instructions, which she doesn't do during games. They do not use a public address system during games. Ms. Cobb also acknowledged that she has seen soccer balls go over the fence since the Fall 2003 soccer season began. She said that she believes problem could be resolved by permitting the school to put up the second six-story fence during the Fall as well as the Spring.

3. Amanda Macomber, Director of Summer Programs

Ms. Macomber has been a teacher and coach at St. Andrew's for three years, as well as Director of Summer Programs. She is familiar with the summer program since its inception in the summer of 1999, and testified that during that period its operations and the amount of activity have been fairly consistent. The summer programs involve three main divisions: (1) Discovery Day Camp, run by a contractor, which is a traditional day camp for ages three to twelve that operates for seven weeks with up to 260 students; (2) TenniStar, also run by a contractor, which is a tennis camp that runs

for eight weeks with up to 25 students; and (3) a series of specialty camps including an arts camp, a musical theater camp, a soccer camp and academic programs that St. Andrew's runs for six weeks with up to 150 students per week. The three divisions have staggered starting and ending times to help with traffic management. There are no more than 450 campers on campus at one time, and approximately 90 staff members.

Discovery Day Camp starts at 9:00 a.m. and campers typically leave at 3:30. It has 260 students at its peak, during the first three-week session. Children rotate among activities such as art, music and sports. They use one wing of the building and occasionally the gymnasium for indoor activities. For outdoor activities they use a small patch of grass behind the library as well as Hope Field, located in the southern part of the campus. TenniStar starts at 8:45 a.m. and ends at 3:30, and has a limit of 25 children per session, ages 6 to 16. They spend most of their day on the tennis courts playing games and doing drills. They sometimes use Hope Field to take a break, and they use one of the classrooms for lunch. After tennis camp ends, the courts are supposed to be locked for the day. The specialty camps run by St. Andrew's start at 9:15 a.m. and end at 3:00 p.m., with small groups of 10 to 20 students ages 9 to 18. They use the main classroom building, Hope Field and, for the two-week soccer camp, Brumbaugh Field. The school also ran some athletic programs from 5:00 to 8:00 p.m. during the Summer of 2003. These were all indoor programs, a basketball program with about 15 students and a summer conditioning program with about five students twice a week.

The summer programs also offer an extended day option that allows participants to arrive as early as 7:00 a.m. and stay as late as 6:00 p.m. They have never had more than 20 students in the extended day program, and on average there are 7 to 10 students. During the extended day periods, those students are mostly in the gym or the Discovery Day Camp area. Occasionally they go outside to play a game, but usually they stay indoors because it's hot.

Ms. Macomber testified that for traffic management purposes, they tell all parents to use the Postoak Road entrance. The school places a barrier in the road to allow only staff members to use the Harker Road entrance. All of the programs have staggered starting times, and the two contractors

end at 3:30, while St. Andrew's programs end at 3:00. In addition, Discovery Day Camp has its own staggered times between 3:15 and 4:00 p.m. Traffic flow from Postoak Road is distributed by using the front traffic circle for some programs and the back circle for others. Discovery Day Camp encourages carpooling, and they have about 20 staff members involved in managing traffic along the driveway and out onto Postoak Road to prevent any overflow of cars onto Postoak. Ms. Macomber and other staff line up the cars in two lines in the front parking lot and have succeeded in avoiding having any cars stacked up on Postoak Road. They have an agreement with the Hoover Middle School next door to allow any overflow cars to wait in the middle school parking lot, which is immediately east of St. Andrew's Postoak Road entrance, instead of on Postoak Road. St. Andrew's had to make use of that option for about four or five days at the beginning of the summer until they got everything under control.

Ms. Macomber emphasized that she was told on her first day on the job that St. Andrew's is very concerned about effects on neighbors from noise, traffic etc., and that if there are any complaints from neighbors Mr. Brumbaugh tells her within 20 minutes. The only problem they had last summer was that someone used a bullhorn outside on picture day. When a neighbor called to complain the school immediately asked that the bullhorn not be used and it was not used any further.

Under questioning by a community member, Ms. Macomber stated that Brumbaugh Field was used for an all-day soccer camp for two weeks during the summer of 2003, with about 24 campers and two to three staff members. Summer students are given the same instructions as other students about not chasing down balls in neighbors' yards. Contracts with both of the organizations that rent space on campus for summer programs (Discovery Day Camp and TenniStar) require them to follow school rules and policies. Ms. Macomber speaks with the operators of those programs daily about any problems or concerns that arise.

5. Craig Hedberg, Transportation Planner.

Mr. Hedberg was designated an expert in transportation planning. He testified that the bulk of his work in this case consisted of observing the on-site circulation, particularly queuing and parking. He made observations both during the school year and during the summer. Mr. Hedberg

testified that the Harker Drive entrance leads to a parking lot that would connect to other circulation roads on campus, but is blocked off at the north end by a sawhorse. Staff can park there and walk to other locations on campus. Mr. Hedberg testified that during his observations of the summer program, staff were very much involved in managing traffic flow and loading and unloading children. He observed that the staggered program beginning and ending times tend to level out the flow of traffic. He did not observe any traffic or parking spilling over onto adjacent streets. When pick-ups are made in the afternoon, drivers enter from Postoak Road and are directed by staff members to make a double queue in the parking lot adjacent to the main drive, then to follow the appropriate queue for the upper and lower traffic circles. Mr. Hedberg testified that the double queue area provides a significant amount of vehicle storage, and during his two observation periods he did not see any occasion when that storage began to be filled.

Mr. Hedberg opined that the combination of academic year and summer activities at the subject property does not have an adverse effect on the surrounding neighborhood due to traffic or parking. He stated that traffic conditions probably are better during the summer because the largest traffic generator in the vicinity, Hoover Middle School next door, does not operate during the summer, and commuter traffic generally is lighting during the summer. He also observed that as he understands it, the use of Brumbaugh Field by boys' teams would shift the location of activities but would not generate any additional traffic or have any adverse impacts on the community. He opined that the nearby roads and intersections can adequately handle the traffic generated by summer activities, and that parking requirements would be more than satisfied (150 spaces to accommodate 90 staff plus visitors). He further opined that the traffic and parking associated with the summer activities would not adversely affect the safety of vehicular or pedestrian traffic, constitute a nuisance or adversely affect the residential community.

Under questioning by a community member, Mr. Hedberg explained that he conducted his observations at the subject property during the morning, from 7:45 to about 10:00 a.m., and during the afternoon from about 2:00 or 2:30 until just about everyone had left.

6. Elliott Brumbaugh, Business Manager

Mr. Brumbaugh testified that as the school Business Manager he is the person who most often receives complaints from neighbors. He confirmed that Brumbaugh Field³ has been used for a full Spring season and part of the Fall season in 2003, and stated that he did not receive any complaints from neighbors on Victory Drive about the field during the Spring lacrosse season. During the Summer or Fall there was a suggestion from Mr. Fitzsimmons, although it was not made directly to Mr. Brumbaugh, to put up the second six-foot net during soccer season as well as lacrosse season. Otherwise he has received only positive comments about the use of the field this year.

7. Phil Perrine, land planner

Mr. Perrine was designated an expert in land planning. He testified that he visited the subject property on two occasions during October 2003. He is familiar with the campus site plan submitted in the earlier case related to the reconstruction of Brumbaugh Field, which was also submitted in the present proceeding. He agreed with Technical Staff's suggested description of the general neighborhood as stretching from Postoak to Bunnell and Victory Lane, and opined that the proposed use of Brumbaugh Field by the boys' lacrosse teams would not have an adverse impact on the neighbors. Mr. Perrine noted that the purpose of a second hearing on the use of Brumbaugh Field was to have a test period and see what happened, and the testimony demonstrated that there were no complaints during the first season. The only comment was a suggestion that the school use the six-foot fence extension for more of the time, which can be worked out.

Mr. Perrine opined that the summer camp activities, in combination with the academic year activities, would not have an adverse effect on the neighborhood due to noise, lighting, or the intensity, frequency or duration of activities. He described the summer program as basically an extension, for eight weeks during the summer, of activities that are comparable to those that take place during the academic year. During the school year students sometimes go outside during the day and use the fields and tennis courts, and after 3:30 there are various teams that use those facilities until

³ The field was named for Mr. Brumbaugh at the request of an anonymous donor.

about 6:00. During the summer many of the campers are inside much of the time, and some are outside, so the use of the facilities is roughly comparable. There are only four tennis courts, which are used during the academic year during the day time and after school for the varsity teams. Brumbaugh Field is used for only two weeks during the summer, with a great deal more use during the academic year. Hope Field has a comparable utilization during the summer and during the school year.

Mr. Perrine testified that in February 2001, the Board of Appeals found that the location of Brumbaugh Field in relation to its neighbors on Victory Lane and the need for a variance for a fence with a total of 12 feet in height is a non-inherent adverse effect. The Board found at the same time that because of the coloration of the fence, the landscaping, the location, the berming and the field rules, the field was compatible and harmonious. Mr. Perrine opined that the use of that field by the boys' teams as well as the girls' teams would not change that conclusion.

Mr. Perrine stated that the summer program activities are typical for summer camps and have no non-inherent adverse effects, would not constitute a nuisance or have an adverse effect on the surrounding neighborhood because of traffic, number of students, noise, light, type of physical activities or other elements, and would not themselves or in combination with other uses adversely affect or change the character or future development of the surrounding residential community. He noted that the school has significant perimeter landscaping, and that some of the afforestation areas were used to screen school activities. He noted that with 450 enrollees the school has a density of about 23 students per acre, which is much lower than the maximum density of 87 students acre that is permitted for a private educational institution special exception. He opined that the area around the school is a stable single-family community that would not change because of St. Andrew's summer program. Finally, Mr. Perrine testified that the summer camp programs would not change St. Andrew's compliance with each of the general and specific conditions applicable to a private educational institution special exception. The school has well-managed programs and facilities and a good traffic management program.

Under cross-examination by a community member, Mr. Perrine conceded that if lacrosse balls or soccer balls were continuously going into a neighbor's yard that would be a nuisance. He

stated, however, that it is his understanding that the school has addressed that problem by changing the orientation of Brumbaugh Field and adding additional fencing, a berm and landscaping. Mr. Perrine stated that he has attended a soccer game at the subject property, but not a lacrosse game. When asked whether he thought the amount of noise during the soccer game would be a problem for neighbors, especially in the use of their backyards, Mr. Perrine stated that his task was to examine whether the summer camp programs would intensify the use of the property in a way that would cause adverse effects. The school, including its outdoor activities, is already an approved use. With regard to the boys' use of Brumbaugh Field, Mr. Perrine testified that he understood the use of the field would be different in terms of who uses the field, but the field would be used during the same basic time periods.

In reply to a question as to whether it would help the neighbors enjoy the use of their property to restrict the use of Brumbaugh Field during the dinner hour from, say, 5:00 to 7:00 p.m., Mr. Perrine stated that the testimony indicated that in general, activity on the field concludes at 6:00 p.m., which is comparable to other schools in Montgomery County and, in his opinion, appropriate. He acknowledged that some games go until 7:00 p.m., but described that as occasional rather than regular. He did not consider that to be a reason to prohibit boys' teams from using the field, particularly because the testimony was that games only go until 7:00 p.m. when the girls play, because they have two teams rather than one.

B. Technical Staff

Callum Murray testified as a landscape architect and the Potomac Team Leader for the Montgomery County Department of Park and Planning. He stated that when St. Andrew's applied for a modification and variance in 2000 to permit the use of Brumbaugh Field, the only witness who attended the Planning Board meeting on the matter was Mr. Fitzsimmons, who also participated in this hearing by asking questions of the Petitioner's witnesses. Mr. Fitzsimmons gave a very effective presentation before the Planning Board, including bringing with him errant lacrosse balls. The Planning Board was very impressed with his testimony and recommended denial.

Mr. Murray stated that he went to Georgetown University to watch a lacrosse game and tried to gauge how often the ball left the field at the sides and at the goal and what level of force was applied to the ball. He believes that St. Andrew's has been very reasonable in preventing errant balls from leaving the field, most significantly by moving the back stop from the east side to the south. When Mr. Murray received the present application he considered it very carefully. In his opinion the school has done everything within reason. The school states that no balls left the field in the 2003 lacrosse season and Mr. Fitzsimmons does not claim that they have. Thus, Technical Staff recommends approval of the present modification petition.

Mr. Murray also addressed the tennis courts briefly, suggesting that the school consider changing the orientation of the fields from north/south to east/west. The current north/south orientation is ideal for tennis because of the sun, but changing the orientation appears to be physically possible and would send most of the errant balls into the gate house or the pond or parking lot.

With regard to the summer program, Mr. Murray stated that staff's impression is that the late day and extended day programs are very minimal, and overall they don't see any adverse effects.

C. Opposition's Case in Chief

1. Warren Manison.

Mr. Manison resides on Bunnell Drive, adjacent to the subject property to the west/northwest. His backyard abuts the St. Andrew's tennis courts, which he estimates are 10 to 20 feet from his property line. He expressed concern about the possible expansion of the school's summer camp program, and particularly the possibility of more intensive use of the tennis courts, both during the day and into the evening. Mr. Manison testified that the use of the tennis courts is an invasion of his privacy. The school sometimes has eight or nine kids out on the court either playing tennis, taking tennis lessons or doing some kind of calisthenics. The business manager, Mr. Brumbaugh, has tried to control the noise but it doesn't work. There is a lot of noise from talking and yelling, including foul language once in a while, and sometimes they bring a radio out there for music. They have had to call the school on some occasions and ask for the instructor to lower the volume on

his instructions. The school always responds to such calls, but the potential for a continuing problem remains. There are trees to provide some visual privacy, but Mr. Manison would like the school to erect a noise barrier.

Mr. Manison also complained about tennis balls that come flying into his yard at high speed. He and his wife have collected about 150 tennis balls in the yard in the last year and a half. At this point they can't let their grandchildren play in the backyard for fear they will be hurt by a tennis ball.

Mr. Manison requested that the tennis courts not be used after a reasonable time such as 5:00 p.m., that the noise be kept to a minimum, that a noise barrier be erected, and that the trees on the property line be topped because they are growing too tall. [Note: Counsel for St. Andrew's represented later in the hearing that the school is willing to accept a condition prohibiting use of the tennis courts after 5:00 p.m.]

Mr. Manison further testified about traffic problems. He said that between 7:15 and 7:45 in the morning Postoak Road is backed up with people trying to get to Hoover Middle School, and his street is used as a bypass street. They suddenly get a tremendous number of SUVs going down their street early in the morning. Mr. Manison was under the mistaken impression that St. Andrew's was proposing a new summer camp or an expansion of the summer camp program, and was concerned that with an increase in summer traffic, the neighborhood wouldn't get a break from the traffic during the summer like they usually do. He noted that the school that used the subject property before St. Andrew's was much smaller, with about 100 students at the most and about 40 when it closed. As a result, the neighbors have seen a tremendous increase in activity on the campus with St. Andrew's, which makes it very uncomfortable.

2. Marjorie Turgel.

Ms. Turgel resides on Bunnell Drive and is a neighbor of Mr. Manison. She voiced general agreement with Mr. Manison's comments about privacy, general nuisance and noise. She testified that she and her husband renovated their home about four years before they knew the school was moving in, and added a patio, a landscaped garden and a pool. They have not been able to eat

any meals on the patio while the summer program is in session. They pick up countless tennis balls in the yard. They do hear radios, not from the tennis courts but from another field not far away. Her husband has actually crawled through the fence and walked over to ask them to lower their radios. They also hear foul language sometimes, which is not necessary. Also, the camp buses use a public address system to collect the kids, which they can hear with the windows closed. Ms. Turgel also was under the mistaken impression that St. Andrew's was requesting approval for an increase in the summer camp program.

3. Bayda Manison.

Ms. Manison, Mr. Manison's wife, spoke briefly to confirm that it took about two years to collect about 130 to 140 tennis balls in their yard, not counting many more that they gave away. She stated forcefully that in her opinion, one tennis ball flying into her yard is too much because it could hit a small child in the head.

IV. CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. The special exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (see Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed modification, with the conditions recommended at the end of this report, would satisfy all of the specific and general requirements for the use.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are "the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of

operations.” Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a private educational institution. Characteristics of the proposed modification that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed modification that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

The following may be considered inherent characteristics of a private educational institution: buildings with an institutional size and/or design; parking facilities; lighting; educational activities and events during standard operating hours; a limited number of special events; noise from outdoor activities; students, faculty and support staff; traffic associated with transporting students and staff; and environmental effects such as storm water run-off.

In this case, Technical Staff identified the summer camp program and the amended operation of lacrosse activities as non-inherent adverse effects of the proposed modification. Ex. 18 at 4. Staff noted that Code §59-G-2.19(b) identifies a summer camp as a potential element of a private educational institution, but not one that should be expected at every such institution. In its March 2001 Opinion, the Board identified the location of Brumbaugh Field as a non-inherent adverse effect, presumably because of its relationship to nearby residences. In light of this finding, the Hearing

Examiner concludes that the use of Brumbaugh Field contemplated by the modification proposed here would be a non-inherent adverse effect, because there was evidence that while the number of hours of use might not change, the noise level may be higher with use by the boys' teams and balls likely will be thrown farther and harder. However, the Hearing Examiner agrees with Technical Staff that the variable height fencing, berming and landscaping, and implementation of the Field Rules mitigate the adverse effects sufficiently to make the proposed modification compatible with the surrounding residential neighborhood.

The Hearing Examiner also agrees with Technical Staff and the Petitioner's land planner that the activities of the summer programs are consistent with the activities that take place on campus during the school year, and do not impose any adverse effects on the neighborhood.

Accordingly, the Hearing Examiner concludes that with the conditions recommended at the close of this report, the proposed modification would have no non-inherent adverse effects that warrant its denial.

B. Specific Standards

The specific standards for a private educational institution are found in Code § 59-G-2.19. The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the proposed modification would be consistent with these specific standards, as outlined below.

Section 59-G-2.196. Educational institutions, private.

- (a) **Generally.** A lot, tract or parcel of land may be allowed to be used for a private educational institution if the board finds that:
- (1) the private educational institutional use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element which is incompatible with the environment and character of the surrounding neighborhood;

Conclusion: The proposed modification would not materially change the amount of traffic, number of students, noise levels, or type of physical activity associated with St. Andrew's. The summer camp programs would extend for eight weeks during the summer the same types of activities

that take place during the school year. Students during the school year and during the summer programs spend parts of the day indoors and parts of the day outdoors. During the school year, athletic teams have practices and games that run as late as 6:00 and sometimes 7:00 p.m. During the summer program, St. Andrew's has agreed to stop all outdoor activity at 6:00 p.m. The summer program may result in more intensive use of the tennis courts between 9:00 a.m. and 3:30 p.m., but there may be less intensive use of the courts after 3:30 p.m. than during the school year, when students may use the courts after classes are over for the day. The use of Brumbaugh Field by the boys' teams would result in more games and fewer practices taking place on the field. There was some evidence to suggest that balls likely would be thrown farther and faster, and that noise levels may increase, but nothing to indicate that such changes would be incompatible with the character of the surrounding neighborhood, provided that St. Andrew's continues to raise the fence to 12 feet during lacrosse season and diligently enforces the Field Rules that are already a condition of this special exception. St. Andrew's prohibits the use of bullhorns, drums or electronic noisemakers of any kind in connection with all of its activities, including the summer camp and the use of Brumbaugh Field. Noise, therefore, is limited to incidental noise from outdoor activities. As noted by Technical Staff, such noise, on a 19-acre campus with significant setbacks and a contiguous three-school area of 68 acres, would not have an adverse effect on the surrounding neighborhood.

For all of the above reasons, the Hearing Examiner concludes that the proposed modification would not cause the special exception conducted on the subject property to constitute a nuisance.

- (2) except for buildings and additions thereto completed, or for which a building permit has been obtained before (date of adoption [April 2, 2002]), the private educational institution must be in a building architecturally compatible with other buildings in the surrounding neighborhood . . .

Conclusion: The proposed modifications would not result in any changes to any of buildings on the subject property. Moreover, the evidence suggests that all buildings on the property were built or building permits obtained prior to April 2, 2002.

- (3) the private educational institution will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community; and

Conclusion: For the reasons discussed under special condition number (1) above, the proposed modification would not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the established, stable residential community surrounding the subject property.

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

- a. **Density**—The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering the following factors:
 1. Traffic patterns, including:
 - a) Impact of increased traffic on residential streets;
 - b) Proximity to arterial roads and major highways;
 - c) Provision of measures for Transportation Demand Management as defined in Section 42A-21 of the Montgomery County Code;
 - d) Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and
 2. Noise or type of physical activity;
 3. Character, percentage, and density of existing development and zoning in the community;
 4. Topography of the land to be used for the special exception; and
 5. Density greater than 87 pupils per acre may be permitted only if the Board finds that (i) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; (ii) the additional density will not adversely affect adjacent properties; (iii) additional traffic generated by the additional density will not adversely affect the surrounding streets.

Conclusion: The current density for the school is approximately 23.7 students per acre, based on an enrollment of 450 students on a 19-acre campus. This level is well below the density of 87

students per acre that may be permitted without special justification. The current density would not be affected by the proposed modification. Moreover, the evidence supports a finding that the current density is appropriate, in light of steps the Petitioner has taken to decrease any potential adverse effects on the neighborhood. The school has in place a traffic management plan for the summer program that includes staff on site to manage the flow of cars and direct traffic to appropriate queuing areas, staggered beginning and ending times for programs, and an overflow queuing area off-site. This plan has prevent any queuing on Postoak Road, avoiding an adverse effect on the neighborhood. The school manages outdoor noise levels by prohibiting bullhorns, radios in areas near residences, and other types of noisemakers. For all of these reasons, the Hearing Examiner does not recommend any change in the approved density.

- b. **Buffer**—All outdoor sports and recreation facilities must be located, landscaped or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The facility must be designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fences and walls.

Conclusion: The proposed modification includes allowing boys' teams to use Brumbaugh Field for lacrosse. The evidence strongly supports a finding that Brumbaugh Field has been appropriately landscaped, buffered and fenced so that, despite its location, its use will not constitute an intrusion into adjacent residential properties, particularly with vigorous enforcement of the Field Rules that are a condition of the existing special exception. The Hearing Examiner agrees with Technical Staff that St. Andrew's has taken all reasonably possible steps to protect adjacent properties from noise, stray balls and other objectionable impacts from Brumbaugh Field, including those that may be caused by use of the field for boys' lacrosse.

- (b) If a Private Educational Institution operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, the Board must find, in addition to the other required findings for the grant of a Private Education Institution special exception, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity,

frequency, or duration of activities. In evaluating traffic impacts on the community, the Board must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Board.

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

Conclusion: Because of the nature of the activities included in the summer program, as well as the traffic management program, noise control measures and limits on number of participants, the evidence supports a finding that continuation of the summer program would not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. The subject property has approximately 150 parking spaces, which is more than enough for 90 staff members plus visitors. The evidence amply demonstrates, in particular, that because of the campus circulation patterns, availability of off-site overflow queuing, active staff involvement in traffic management, and lower levels of commuter traffic during the summer, the traffic generated by the summer program does not and would not have an adverse effect on the surrounding neighborhood.

(c) Programs Existing before April 22, 2002.

- (1) Where previously approved by the Board, a private educational institution may continue the operation of...

Conclusion: Not applicable.

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

Conclusion: The proposed modification, if approved, would constitute compliance with this provision.

(d) Site plan.

- (1) In addition to submitting such other information as may be required, an applicant shall submit with his application a site plan of proposed development. Such plan shall show. . .
- (2) No special exception, building permit or certificate of occupancy shall be granted or issued except in accordance with a site plan of development approved by the board. . .

Conclusion: The proposed modification would not result in any changes to the campus site plan and landscaping plan previously approved by the Board.

- (e) **Exemptions.** The requirements of Section G-2.19 do not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, which is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any agency thereof, Montgomery County or any incorporated village or town within Montgomery County. . .

Conclusion: Not applicable.

- (f) **Nonconforming uses.** Nothing in this chapter shall prevent any existing private educational institution which obtained a special exception prior to the effective date of this chapter, from continuing its use to the full extent authorized under the resolution granting the respective special exception, subject, however, to division 59-G-4 of this chapter.

Conclusion: Not applicable.

(g) Public Buildings.

- (1) A special exception is not required for any private educational institution that is located in a building or on premises that have been used for a public school or that are owned or leased by Montgomery County.
- (2) However, site plan review under Division 59-D-3 is required for:
 - (i) construction of a private educational institution on vacant land owned or leased by Montgomery County; or
 - (ii) any cumulative increase that is greater than . . .

Conclusion: Not applicable.

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

Conclusion: Not applicable.

C. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions:

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

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

Conclusion: A private educational institution is a permitted use in the R-90 Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed modification would comply with the standards and requirements set forth for the use in Code §59-G-2.19, as detailed in Part IV.B. above.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The evidence support the conclusion that the proposed modification would be consistent with the *2002 Potomac Subregion Master Plan*, which supports the existing R-90 zoning and identifies the subject property as a school site.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

Conclusion: The proposed modification would be in harmony with the general character of the neighborhood considering the cited factors. It would not change the population density from that experienced during the school year, it would involve no new structures, and it would continue for eight weeks in the summer a similar intensity and character of activity as that experienced during the school year. Traffic and parking conditions would be in harmony with the general character of the neighborhood, provided that the traffic management plan continues to be implemented effectively.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that with the recommended conditions, the existing Field Rules and the traffic management plan in place, the proposed modification would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that with the recommended conditions, the existing Field Rules and the traffic management plan in place, the proposed modification would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: The proposed modification would not increase the number of special exception uses in the area. The evidence supports the conclusion that the proposed modification

would not increase the intensity or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that with the recommended conditions, the Field Rules and the transportation management plan, the proposed modification would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Conclusion: The evidence supports the conclusion that the subject property would continue to be served by adequate public facilities with the proposed modification.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of granting the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: Subdivision approval would not be required. Neither the summer program nor the boys' lacrosse use of Brumbaugh Field would materially increase the number of trips generated by the site. Accordingly, the Petitioner was not required to comply with Local Area Transportation Review requirements. The property is located in the Potomac Policy Area, where Policy Area Transportation Review is not required.

- (2) With regard to findings relating to public roads, the Board . . . must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Conclusion: The evidence supports the finding that the proposed modification, with the recommended conditions and traffic management plan, would have no detrimental effect on the safety of vehicular or pedestrian traffic.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

Conclusion: No finding necessary.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Conclusion: The record substantiates a finding that the Petitioner has met the burden of proof and persuasion.

V. CONDITIONS REQUESTED BY VICTORY LANE NEIGHBOR

As noted earlier, the Fitzsimmons, who live adjacent to Brumbaugh Field on Victory Lane, requested several conditions in a post-hearing submission. The Hearing Examiner notes that Mr. Fitzsimmons attended the hearing in this matter but chose to limit his participation to questioning the Petitioner's witnesses. Accordingly, he did not suggest any conditions at the hearing, at a time when the Petitioner would have had the opportunity to respond. This makes it more difficult for the Hearing Examiner and the Board to fairly evaluate those suggested conditions.

The Fitzsimmons request the following conditions:

1. A one-year extension of the test period for Brumbaugh Field, during which the number of boys' lacrosse games would be "phased-in" and restricted "so that issues of safety and noise can be more adequately and accurately assessed."
2. A prohibition on use of Brumbaugh Field for the summer programs.
3. Requiring school buses for the summer programs to use the main Postoak Road entrance, following the same traffic rules that apply to the regular school program.

The Hearing Examiner does not recommend imposition of additional restrictions on the use of Brumbaugh Field at this time. No specifics were provided regarding how the boys' use of Brumbaugh Field could be "phased in," nor did the Petitioner have the opportunity to respond to this post-hearing suggestion, so it is impossible to fully evaluate. Moreover, the evidence indicated that despite the weather, the girls' lacrosse teams played essentially a full season, with no adverse effects on the neighbors. That is the test that the Board established, and the school clearly passed. It is possible that the neighbors spent less time outdoors during the Spring of 2003 than in a typical Spring, because of the weather, and therefore did not notice the use of the field. In recognition of this and the neighbors' sensitivity to the use of Brumbaugh Field, I recommend a condition that would allow – but not require -- the Board to hold an additional hearing in the Fall of 2004 upon presentation of evidence of adverse effects by a neighbor.

The evidence does not justify prohibiting St. Andrew's from making limited use of Brumbaugh Field during the summer for a two-week soccer camp. I recommend, instead of a complete ban, limiting the summer program's use to the two-week soccer camp and other occasional, incidental usage.

The question of school bus activity during the summer program was not addressed at all during the hearing. A written submission suggests that buses are used to shuttle children to swimming pools. It seems appropriate to apply the same rules to these buses as to those used during the school year, so a condition has been recommended to that effect.

VI. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. CBA-1389-E, which seeks to modify an existing special exception for a private educational institution, St. Andrew's Episcopal School, located at 8804 Postoak Road in Potomac, to permit (1) the continuation of a summer camp program that has been in operation since the school's inception in 1999; and (2) use of the upper playing field (now known as Brumbaugh Field) for boys' lacrosse, be **granted** with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. All terms and conditions of the approved special exception shall remain in full force and effect, except as specifically amended by this modification.
3. The outdoor tennis courts shall not be used after 5:00 p.m. during the summer camp program.
4. No outdoor activity associated with the summer camp program shall take place before 8:30 a.m. or after 6:00 p.m.
5. The use of Brumbaugh Field in connection with the summer program shall be limited to (1) occasional use of an incidental nature, and (2) use for a two-week soccer camp.
6. Any buses used in connection with the summer programs shall follow the same traffic rules that apply to the regular school program.
7. The Board of Appeals may, in its discretion, choose to hold an additional hearing concerning the use of Brumbaugh Field in the Fall of 2004 if a resident of the area immediately adjacent to the field submits a request for such a hearing, together with relevant evidence of adverse impacts.

Dated: December 19, 2003

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner