

4. Preference for enrollment in the summer camp program shall be extended to Concord Hill families and families in the surrounding community.

On a motion by Donna L. Barron, seconded by Allison Ishihara Fultz, with Louise L. Mayer, 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 26th 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.

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I. STATEMENT OF THE CASE

Petition S-1456-B, filed August 5, 2003, seeks to modify an existing special exception for a private educational institution, the Concord Hill School ("Concord Hill"), located at 6050 Wisconsin Avenue in Bethesda, to permit (1) the continuation of a summer camp program that has been operating since 1993; (2) the continuation of a new drop-off and pick-up traffic circulation pattern that was implemented last Fall in response to a notice of violation; (3) proposed new parking area striping consistent with the new circulation pattern; (4) proposed new parking area lighting; (5) the retention of landscaping, fencing, outdoor playground renovations and a new outdoor play area, all of which were installed in connection with extensive renovations undertaken in 1999; (6) the retention of a dumpster and concrete pad that have been installed on site; and (7) proposed screening to hide the dumpster from view.

Technical Staff of the Maryland-National Capital Park & Planning Commission ("M-NCPPC") reviewed the present modification petition and, in a report dated November 24, 2003, recommended *approval* with conditions.¹ See Ex. 18. The Montgomery County Planning Board did not review this petition.

On August 28, 2003 the Board of Appeals ("Board") scheduled a public hearing in this matter for December 2, 2003. On October 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 December 2, 2003, at which testimony and other evidence were received in support of the proposed modification. The record was held open briefly to receive the hearing transcript and closed on December 8, 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,

¹ The Staff Report has been liberally paraphrased and cited in Part I of this report.

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. Accordingly, this report and recommendation address only the elements of the school's operation that are directly related to the proposed modification.

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 slightly less than an acre of land, measuring 37,489 square feet, and is located at 6050 Wisconsin Avenue, at the southwest corner of Wisconsin Avenue and Hunt Avenue. It is rectangular in shape, with 114 feet of frontage on Wisconsin Avenue and 325 feet of frontage on Hunt Avenue, and abuts single-family residential lots to the west and south. Confronting across Hunt Avenue are more single-family homes, and confronting across Wisconsin Avenue is the Chevy Chase Country Club. The subject property is classified under the R-60 Zone (one-family residential) and is developed with a two-to-three-story brick building, a paved parking lot and playgrounds. It also has substantial landscaping and screening. The property is generally level, with the exception of the rear yard, which has been terraced to accommodate the grade with the adjoining property to the south. Site access is provided from Hunt Avenue, with two curb cuts for separate ingress and egress. The subject property and surrounding land uses can be seen on the vicinity map on the following page, excerpted from the Staff Report, Exhibit 22.

The Hearing Examiner accepts Technical Staff's designation of the surrounding neighborhood for the subject property as bounded by Chevy Chase Boulevard to the north, Chevy Chase Country Club to the east, Dorset Avenue to the south, and Stratford Road to the west, representing a radius of 1,000 feet from the subject property. This area can be seen on the zoning vicinity map reproduced on page 6. The surrounding area is classified entirely under the R-60 Zone

and is predominantly single-family residential in character, with institutional and large land uses including the Chevy Chase Country Club and Somerset Elementary School. Special exception uses in the area include the country club (S-245) and a charitable institution located on Wisconsin Avenue (S-2169).

Vicinity Map, Excerpted from Ex. 22

Zoning Vicinity Map, Excerpted from Ex. 12

B. Land Use History

The subject property was formerly the location of the Bethesda Christian Church. Concord Hill was founded in 1965 and operated in various rented locations until purchasing the subject property in 1987, when it converted the church building for use as a school. Concord Hill received a special exception for a private educational institution on the subject property in 1987, with a maximum permitted enrollment of 90 students. The Board granted variances from the setback requirements for the existing building and the parking area, and from density requirements for private educational institutions. In 1990, the special exception was modified to increase the maximum enrollment to 100 students. The school renovated the interior of the building in 1998. Extensive renovations to the playground and grounds were carried out in 1999, without prior approval from the Board.

On February 27, 2003, the Montgomery County Department of Permitting Services (“DPS”) issued the school a notice of violation identifying a number of inconsistencies between the approved special exception plans and the actual condition of the site. The notice stated that circulation in the parking lot did not allow for two stacking lanes, the parking area was not marked for 30 parking spaces, plantings shown on the landscape plan approved in 1988 were missing, a trash dumpster had been installed without Board approval, and the student pick-up and drop-off plan adversely affected the safety and general welfare of area residents. DPS identified as corrective actions providing a minimum of two stacking lanes in the parking area, no more than seven vehicles on Hunt Avenue at one time, 30 marked parking spaces, installing all plantings shown on the approved landscape plan and removing the dumpster from the property. Approval of the proposed modification would resolve the issues identified in the notice of violation by authorizing a new circulation pattern that avoids any stacking on Hunt Avenue, providing for 30 marked parking spaces, and approving a revised landscape plan that reflects the current plantings and the dumpster. The modification would also provide legal approval for the summer camp program and additional exterior renovations described elsewhere in this report.

C. Master Plan

The subject property is in the area covered by the *1990 Bethesda-Chevy Chase Master Plan* (the "Master Plan"). The Master Plan supports the existing R-60 zoning for the subject property, which permits private educational institutions by special exception. The Master Plan does not name Concord Hill specifically, but it generally recommends the continuation of existing private schools and other institutional uses in the planning area. See Master Plan at 33. It states that new facilities or additions proposed by existing schools should be reviewed on a case-by-case basis to ensure compatibility with area residences and conformance with plan objectives. Technical Staff noted that the modification proposed here would not substantially change the nature, character or intensity of the use, which the Board has previously found to be consistent with the Master Plan.

D. School Schedule

Concord Hill has classes during the academic year in pre-primary through third grades, serving students from age three through age nine or ten. The school has one class per grade, with total enrollment capped at 100 students. The three-year-old class meets from 8:45 a.m. to 12:15 p.m. Monday through Friday. The four-year-old class meets at the same time, but on Tuesdays and Thursdays children have the option of staying until 3:00. The kindergarten class meets from 8:45 to 12:15 on Monday, Wednesday and Friday and from 8:45 to 3:00 p.m. on Tuesday and Thursday. Kindergarteners have the option of staying until 3:00 on Monday and Wednesday and most do. First through third grade classes meet from 8:45 a.m. to 3:15 p.m. Monday through Thursday, and from 8:45 to 12:15 on Fridays. The entire school is dismissed at 12:15 on Fridays.

In addition to the normal class schedule, the school has a morning program from 8:00 to 8:25, which generally has 10 to 15 children. Children may arrive for the regular school day any time between 8:25 and 8:45. Concord Hill also offers a clay workshop after school Monday through Thursday, from 3:30 to 5:00 p.m., with a second class one day per week from 5:00 to 6:00 p.m. The clay workshop is open to students from Concord Hill and from the neighborhood, with a maximum of 15

students per class. On Fridays there is a Tae Kwon Do class for up to 20 students from 12:15 to 2:00, open only to Concord Hill students. The summer camp program is described in the following section.

E. Proposed Modification

The present modification petition seeks to permit (1) the continuation of a summer camp program that has been operating since 1993; (2) the continuation of a new drop-off and pick-up traffic circulation pattern that was implemented last Fall in response to a notice of violation; (3) proposed new parking area striping consistent with the new circulation pattern; (4) proposed new parking area lighting; (5) the retention of landscaping, fencing, outdoor playground renovations and a new outdoor play area, all of which were installed in connection with extensive renovations undertaken in 1999; (6) the retention of a dumpster and concrete pad that have been installed on site; and (7) proposed screening to hide the dumpster from view. Each of these elements is discussed below.

1. Summer Camp Program

Concord Hill has been operating a weekday summer camp for children ages three through five, 9:00 a.m. to 1:00 p.m., for about ten years. Children can sign up for one, three or six weeks. The maximum number of children per week is 30, and enrollment is open to community residents as well as Concord Hill students. In addition, for about five years the Round House Theater has been renting space at the school for an acting program for middle school students, which meets from 9:00 a.m. to 3:00 p.m. for four weeks with 20 to 25 students. The Round House program offers after-care until 6:00 p.m., but very few people use it. When both summer programs are operating, total enrollment is about 55 students. The younger children spend a lot of time outdoors, but the children in the acting program do not use the outdoor space at all.

2. Traffic Circulation and Parking Lot Striping

Prior to the current school year, Concord Hill directed cars arriving for student drop-off or pick-up to approach the school entrance from eastbound Hunt Avenue. This obligated cars to use

residential neighborhood streets, and sometimes resulted in a long line of cars on Hunt Avenue waiting to enter the parking lot. Following the February 2003 notice of violation, the school retained the services of transportation planner Craig Hedberg to evaluate the pick-up and drop-off circulation pattern and recommend changes to reduce the impact on the surrounding neighborhood. Mr. Hedberg designed a new traffic management plan that requires cars to approach the school from the westbound lane of Hunt Avenue, entering Hunt Avenue from Wisconsin Avenue. Cars then proceed counterclockwise through the parking lot to exit at the eastern driveway. Cars are prohibited from queuing on Hunt or Wisconsin Avenues. If there is insufficient stacking space in the left turn lane of northbound Wisconsin Avenue, cars can proceed to the next intersection to the north on Wisconsin, make a U-turn and then turn right onto Hunt. All traffic exiting the school is directed to turn right, then turn right again into the southbound lanes of Wisconsin Avenue.

To ensure adequate stacking space on site during drop-off and pick-up, the new traffic management plan designates a two-lane inbound queue in the westernmost drive aisle of the parking lot. In addition, cars are not permitted to park in the westernmost row of parking spaces during the afternoon pick-up period, creating room for a third row of cars to wait if necessary. Drop-off and pick-up times have been expanded, so not everyone arrives at the same time. The entire faculty is actively involved in the drop-off and pick-up process, directing traffic, helping children in and out of cars, and bringing the appropriate children to the parking lot as each car pulls up for pick-up.

During the Summer of 2003 Concord Hill notified parents by letter of the new circulation pattern, and on the first day of school in the Fall of 2003 parents received a new school handbook that described the new traffic management plan. See Ex. 21(d). Mr. Hedberg testified at the hearing that he made observations of the current traffic patterns on two occasions in November 2003, and found that the new system is working very well. See also written reports at Exhibits 21(b) and (c). He stated that there is adequate room for on-site stacking, and the greatest accumulation of cars at one time was 15 vehicles during the afternoon pick-up period. The new traffic management plan has resulted in no vehicles waiting on Hunt Avenue, and no interruption of traffic flow on either Hunt or Wisconsin Avenue.

Proposed Site Plan, Ex. 27

Currently, the double-lane queue is described in the school handbook and traffic is guided by staff members. In connection with the present modification, Mr. Hedberg expects the school to stripe inbound arrows on the ground to direct the one-way flow of traffic, and perhaps to stripe a center line to better delineate the double queue. The modification would include striping the parking area for 30 spaces, with three parallel spaces along the curb in front of the school and the remainder perpendicular in three rows. This would replace the current angled parking spaces and increase the number of spaces to the 30 required under the terms of the special exception. The Special Exception Plan (site plan) pictured to the right shows the new circulation system and proposed striping. A photograph of the western portion of the parking lot is shown on the next page (Ex. 11(b), bottom photograph).

3. Parking Lot Lighting

The parking area is currently lit by two lights that are mounted on the west end of the building. The Petitioner's land planner, Phil Perrine, testified that these lights shine toward the parking lot and beyond it into residential areas. The school proposes to discontinue using those lights and instead to install a single double-headed pole light – one pole holding two lights – in the middle of the parking lot. The parking lot gets a fair amount of use from neighborhood residents and their guests during the evenings, so for security reasons the school proposes to continue its current practice of leaving the lights on until 11:00 p.m. This schedule also provides lighting for monthly meetings of the Concord Hill Board of Directors, which sometimes go until 11:00. In addition, having the lights on fairly late responds to community concerns about teenagers hanging out in the parking lot at night.

Photometrics show that proposed lighting would be at or very near zero footcandles at the property line. See Landscape and Lighting Plan reproduced below on page 15. Mr. Perrine explained during his testimony that the light fixture is proposed at a height of 18 feet so that the parking area can be lit with a single pole. The parking area could be lit with two lower fixtures, but given the

size of the space, that would result in lights too close to the residences to the south and/or the west. The proposed light fixture, pictured, is a full cut-off fixture to avoid glare, and even directly under the lights themselves the level of illumination would not exceed three footcandles.

Proposed Light Fixture, Excerpted from Ex. 25

Mr. Perrine testified if the light pole were lower, for example 15 feet high, some of the corner parking spaces that show hardly any light on the current plan would get no light at all. He noted that the proposed 18-foot pole would be below the building's roof line, and there are also trees in the area, so it would not be the only object 18 feet high. Moreover, 18 feet is the height of the very top of the fixture; the light bulbs themselves would be slightly more than 14 feet high. Technical Staff opined that, based

on the photometrics submitted, the proposed lighting would be safe and adequate and would not cause any objectionable glare or illumination on neighboring properties. See Ex. 22 at 4.

4. Landscaping, Fencing and Other Exterior Features

Following the 1987 approval of Concord Hill's special exception, in 1988 Technical Staff approved the Landscape Plan pictured on the next page, Exhibit 5(d). The 1988 Landscape Plan provided for evergreen plantings along the western property line, a stockade fence and evergreens along the southern boundary of the parking lot, parking lot entrance plantings, and additional shrubs and grass in other areas of the site. It depicted outdoor playgrounds on the south side of the building, between the parking lot and a grassy area adjacent to Wisconsin Avenue.

The 1988 plan appears to have been implemented, but substantial changes were made in 1999 during an extensive exterior playground and grounds renovation. The Landscape and Lighting Plan currently proposed (Exhibit 25), which reflects existing conditions, is reproduced on page 15. Existing conditions include several changes from the 1988 plan: a new playground with a swing set directly east of the building, adjacent to Wisconsin Avenue; a decorative iron fence along the Wisconsin Avenue property line; additional landscaping between an open play area in the southeast corner of the property and Wisconsin Avenue; removal of plantings in the middle of the parking area; reduced amount of plantings at the parking lot entrance and exit; and a trash dumpster on a concrete pad in the southeast corner of the parking lot (which involved a small expansion of the parking area). In addition, outdoor play equipment shown to the south of the building on the 1988 Landscape and Lighting Plan has been replaced with updated equipment, the sloping rear yard has been terraced with timber, and a small play house has been added near the parking area steps.

Concord Hill now proposes to install a decorative fence and gate around the dumpster to screen it from view. In addition, it proposes to relocate a sump pump that is currently installed in the open play area in the southeast corner of the site. In September, 2003 the Board approved a separate modification to allow Concord Hill to install synthetic turf on that play area, and the sump pump would be relocated as part of improving the area's utility and aesthetics.

1988 Landscape and Lighting Plan, Ex. 5(d)

Proposed Landscape and Lighting Plan, Ex. 25

As shown on the proposed landscape plan, the parking lot is screened from view on the west and south sides by solid fencing and evergreen plantings. In addition, the playground south of the building, which abuts residential property, is buffered by a six-foot fence. The site as a whole is extensively landscaped with grass, trees and shrubs. Technical Staff “finds the proposed landscaping to be adequate, given the nature of the school’s use, the characteristics of the site, and the character of the surrounding area.” Ex. 22 at 4. Staff noted that the existing landscaping is well maintained and is comparable in quality to that found on adjoining properties. Staff also stated that screening is adequate, particularly considering the privacy fencing and evergreen trees along the edges of the parking facility.

F. Transportation and Parking

The proposed modification would not result in any additional enrollment during the school year, and therefore is not expected to generate new vehicle trips. Enrollment in the existing summer camp programs is lower than enrollment during the school year and is not expected to increase as a result of the proposed modification. In addition, traffic conditions generally are less severe during the summer. Accordingly, no Local Area Transportation Review was required for this modification. Moreover, as discussed in Part II.E.2 above, the new transportation management plan has improved the safety and efficiency of on-site circulation and eliminated off-site stacking that had an adverse impact on the neighborhood. Technical Staff opined that the school’s traffic management procedures, which would be formalized and approved as part of the proposed modification, are safe and efficient.

The proposed modification would have no effect on the number of jobs generated by this use. Accordingly, the requirements of Policy Area Transportation Review do not apply.

The Zoning Ordinance requires a private educational institution to provide one parking space for each employee, plus sufficient off-street parking for the safe and convenient loading and unloading of students and additional facilities for student parking. The proposed modification would approve new parking lot striping to provide 30 marked parking spaces. Technical Staff opined that this

would be sufficient for the school's 23 full- and part-time employees, plus visitor parking. As Staff noted, the Board found 30 parking spaces to be sufficient with an enrollment of 100 students in an earlier proceeding. Obviously there is no need for parking facilities for students, as none are old enough to drive.

G. Environmental Issues and Utilities

The proposed modification is exempt from forest conservation requirements because it would modify a special exception that was approved before July 1, 1991 and would not result in any forest clearing. There are no forest stands, streams or stream valley buffers on site, and the Petitioner does not propose to remove any specimen or champion trees.

The proposed modification would have no effect on the intensity of the use of the subject property, and consequently no effect on its service by or impact on utilities.

H. Community Support

The record contains three letters from neighbors of Concord Hill in support of the proposed modification. See Exs. 20, 23 and 24. Each of the letters commends Concord Hill as a wonderful neighbor and an asset to the community. The writers state that the school has been generous in allowing community members and groups to use its playground and other facilities during evenings and weekends. Two letters praise the new traffic plan as a big improvement, and an example of the school's willingness to resolve problems. One letter states that the writer did not mind cars backed up on Hunt Avenue because the drivers were always considerate about letting residents get out of their driveways, and the writer is more worried about potential problems with the new traffic pattern because cars have to wait on Wisconsin Avenue to turn in.

III. SUMMARY OF TESTIMONY

A. *Applicant's Case in Chief*

1 Denise Gershowitz, Director of Concord Hill

Ms. Gershowitz is in her second year as director of Concord Hill. The school was begun in 1965 and operated in various rented locations until it purchased the subject property in 1987 and converted the former church building on the site into a school. Ms. Gershowitz described the school as pre-primary to third grade, serving students from age three through age nine or ten, and outlined the class schedules. The school has one class per grade, with total enrollment capped at 100 students. In addition to the normal class schedule, the school has after-school programs consisting of a clay workshop Monday through Thursday from 3:30 to 5:00 p.m., with a second class one day from 5:00 to 6:00 p.m. The clay workshop is open to first, second and third graders from Concord Hill and from the neighborhood and has a maximum of 15 students per class. On Fridays, when the entire school gets out at 12:15, there is a Tae Kwon Do class from 12:15 to 2:00, which is open to Concord Hill students only, from kindergarten through third grade, and has about 20 students. No more than two classes, with a total of approximately 30 students, use the outdoor play areas at one time.

Ms. Gershowitz confirmed that the present modification application does not seek any increase in the approved enrollment, nor does it involve any new construction.

Concord Hill has been operating a summer camp for children ages three through five, from 9:00 to 1:00 every day, for about ten years. It's a six-week program but children can sign up for one, three or six weeks. The maximum number of children per week is 30, and enrollment is open to community residents as well as Concord Hill students. In addition, the Round House Theater rents space at the school for an acting program for middle school students, which meets from 9:00 a.m. to 3:00 p.m. for four weeks with 20 to 25 students. The Round House program offers after-care until 6:00 p.m., but very few people use it. The Round House Theater has been running this program at Concord Hill for about five years. When both summer programs are operating, the total enrollment is about 55

students. The younger children spend a lot of time outdoors, but the older children in the acting program do not use the outdoor space at all.

The only evening program at Concord Hill that involves parents coming to the site is a Back to School Night in the Fall. They also have some special events that take place during the day, to which parents or grandparents are invited.

Ms. Gershowitz acknowledged that Concord Hill received a notice of violation from Montgomery County last year because of cars queuing on Hunt Avenue. She described the traffic circulation pattern in effect at that time, as well as the new traffic circulation pattern that was designed with the help of a transportation planner in response to the notice of violation. The biggest change was expanding the drop-off and pick-up times, so not everyone arrives at the same time. Parents can drop children off between 8:25 and 8:45, and pick them up between 3:00 and 3:25. They have the entire faculty involved in the drop-off and pick-up process. The school informed parents about the new traffic plan in a letter that was sent home during the summer and in a new handbook that was distributed on the first day of school. The faculty and board members monitored traffic management very closely for the first few weeks of school, and there were no problems. The school has received only positive feedback from the neighborhood about the new traffic management plan.

Under questioning by the People's Counsel, Ms. Gershowitz testified that during special events (Back to School Night, a Thanksgiving program, an annual talent show and graduation) they do not have enough on-site parking, so parents park on Wisconsin Avenue or neighborhood streets. She stated that the school has never received a complaint about such parking. With regard to parking lot lighting, she testified that one of the neighbors complained that kids were hanging out in the parking lot at night, and requested that the parking lot lights be left on later in hopes of preventing that. The school also has Board meetings once a month that sometimes run until 11:00, so they need light until that time. In addition, neighbors and their guests park in the lot in the evening and on weekends. They have discussed the possibility of a motion sensor, but felt that might be worse for the neighbors because the light could be going on and off all night.

Ms. Gershowitz also stated that only three or four families live close enough to walk to school during the school year, but they can reach the back door via a concrete walkway without walking through the parking area.

2. Phil Perrine, land planner

Mr. Perrine was designated an expert in land use planning. He reviewed the findings and conclusions in the written report he prepared on this matter. He stated his agreement with Technical Staff's definition of the surrounding neighborhood, which he described as primarily single-family residential. He noted that the Master Plan includes a blanket statement recommending the continuation of institutional special exception uses in the area. It does not list all such uses individually, but it designated the subject property as a school and states that existing institutional special exceptions should continue their service to the community.

Mr. Perrine described the subject property, which measures about 37,000 square feet, a little under an acre. The property includes a building that was originally built as a church, which gives the appearance of a two-story building from Hunt and Wisconsin Avenues (the north and east sides) but has a third, lower level that one can walk out of on the south side. The west end of the property has a parking lot with two points of access and space for 30 cars. There are two outdoor play areas, one on the south side of the school and one on the east side, along Wisconsin Avenue. A wrought iron fence extends along the Wisconsin Avenue frontage. The Hunt Avenue frontage has a landscaped lawn area, with hedges and trees that encircle the parking area. There are wooden fences all along the eastern and southern property lines, where the property abuts residential lots. The fence on the south side connects to a stone garage that was built on the property line by a neighbor. There are also some evergreens and bamboo along the southern property lines, and evergreens along the eastern property line. All of the plantings shown on the submitted Landscape and Lighting Plan, Exhibit 25, are existing, not proposed.

Mr. Perrine explained that the current landscaping and play area configuration is not consistent with the landscape plan last approved for the subject property in 1987. Since that time the

school has added more landscaping than was originally required, replaced some play equipment, and used timber to do some terracing and organize the space better. They also installed the wrought iron fencing on Wisconsin Avenue and converted the space near it into a swing set area with wood chips and some landscaping, all without obtaining approval from the Board.

Mr. Perrine testified that the parking area is currently striped for 30 angled spaces, but some of them appear to be smaller than required under the Zoning Ordinance. The school proposes, in connection with the present modification, to re-stripe the parking area for 30 spaces that would run parallel or perpendicular to the school and leave room for a double queue of cars entering the parking area. There is adequate space for a double queue in the western entry aisle when needed, and a third queue could be established by prohibiting parking in the westernmost row of parking spaces during peak traffic periods.

Concord School also requests approval in this modification for a dumpster and concrete pad that have been installed on the property, and for an ornamental fence that is proposed to enclose the dumpster and hide it from view.

The parking area is currently lit by two lights that are mounted on the west end of the building, which shine toward the parking lot and beyond it into residential areas. The school proposes to discontinue using those lights and instead to install a single double-headed pole light in the middle of the parking lot. The parking lot gets a fair amount of use from neighborhood residents and their guests during the evenings, so for security reasons the school proposes to continue its current practice of leaving the lights on until 11:00 p.m. Photometrics show that lighting would be at or very near zero footcandles at the property line. Mr. Perrine explained, in response to questions by the Hearing Examiner, that the light fixture is proposed at a height of 18 feet so that the parking area can be lit with a single pole. The parking area could be lit with two lower fixtures, but given the size of the space, that would result in lights too close to the residences to the south and/or the west. The light fixture proposed is attractive, and it is a full cut-off fixture to avoid glare. Moreover, even directly under the light fixture itself the level of illumination would not exceed three footcandles. There are additional

exterior lights on the building that have been in place since it was used as a church, and the school does not propose any changes to those.

Mr. Perrine opined that the proposed modification would not involve any non-inherent adverse effects. The proposed lights, play equipment and dumpster are all “part of a private school.” The way they are handled here, they would present no problems to the surrounding area. He also opined that the existing use and the modification would comply with applicable development standards under the R-60 Zone. He opined that the proposed modification would comply with the general and specific conditions applicable to the use. He stated that the proposed modification would enhance the compatibility of school with the surrounding area by providing more screening. He noted that the rear play area, in particular, is very well buffered because it has a six-foot fence and parts of it sit four to five feet lower than the bottom of the fence. He opined that the proposed modification would have no detrimental impact on the use, peaceful enjoyment, economic value or development of surrounding properties.

Mr. Perrine opined that the summer program for which approval is currently sought has less impacts than the school-year program because enrollment is lower. Moreover, a greater percentage of the children come from the neighborhood and can walk to camp. He acknowledged that all 30 of the children in the Concord Hills camp are outside most of the camp day from 9:00 a.m. to 1:00 p.m., but noted that this is consistent with the number of children who may be outside at any given time during the school year. He testified that the summer program would have no adverse effect on adjacent properties or the surrounding neighborhood.

Under questioning by the People's Counsel, Mr. Perrine stated that if the pole for the light fixture in the parking lot were lower, for example 15 feet high, some of the corner parking spaces that show hardly any light on the current plan would get no light at all. He noted that the proposed 18-foot pole would be below the roof line of the building, and there are also trees in the area, so it would not be the only object 18 feet high. Moreover, 18 feet is the height of the very top of the fixture; the light bulbs themselves would be slightly more than 14 feet high. He recommended against having the lights

on a motion sensor after 11:00 p.m. because they could be turning on and off all night, which would be worse for the neighbors than having a light that goes off every night at 11:00.

3. Craig Hedberg, transportation planner.

Mr. Hedberg was designated an expert in traffic engineering. He testified that Concord School retained his services at the end of the 2002-03 school year to evaluate the pick-up and drop-off circulation pattern and recommend changes to improve the impact on the surrounding residential neighborhood. Previously, cars were required to approach the school entrance from eastbound Hunt Avenue, which sometimes resulted in a long line of cars on Hunt Avenue waiting to enter the parking lot. The new traffic rules require cars to enter Hunt Avenue from Wisconsin Avenue and approach the school from the westbound end of Hunt Avenue. If there is insufficient stacking space in the left turn lane of northbound Wisconsin Avenue, cars tend to proceed to the next intersection to the north on Wisconsin, make a U-turn and then turn right onto Hunt. To ensure adequate stacking space on-site during drop-off and pick-up, the new traffic plan designates a two-lane inbound queue. In addition, cars are not permitted to park in the westernmost row of parking spaces during the afternoon pick-up period, creating room for a third row of cars to wait if necessary. He described the third queuing lane not as something to plan on as a regular event, but as extra space available if needed. Right now, the double-lane queue is described in the school handbook and traffic is guided by staff members. In connection with the present modification, Mr. Hedberg expects that the school would stripe inbound arrows on the ground and perhaps a center line to better delineate the double queue. During the summer of 2003 he worked with the school to revise its parents' handbook to eliminate the queues that were affecting the residential neighborhoods to the west.

During the Fall semester Mr. Hedberg visited the school to observe the implementation of the new traffic plan. He prepared two memorandum that have been submitted into evidence, which summarize his field observations following implementation of the new plan. He testified that all the cars he saw approached from Wisconsin Avenue following the designated circulation pattern. Staff directed incoming vehicles and during pick-up periods arranged to have the appropriate students ready as each

car got to the front of the line. Mr. Hedberg observed that there was adequate on-site vehicle storage space. He observed a maximum of 15 cars stacked on-site during the afternoon peak at 3:00, and seven to eight cars on-site at one time during the morning drop-off period. The late afternoon pick-up (5:00 p.m.) has very light traffic, given the small numbers of students, and Mr. Hedberg testified that it would not have any adverse effect on roadway conditions. Mr. Hedberg opined that all of the adverse traffic impacts previously observed have been addressed.

Finally, Mr. Hedberg noted that the summer programs would have fewer students, plus overall traffic levels are lower in the summer, so the summer programs would have no adverse effect on area traffic conditions.

B. People's Counsel

The People's Counsel for Montgomery County, Martin Klauber, participated in the hearing in this case and presented a closing statement in which he praised Concord Hill for providing an excellent community facility and recommended that the proposed modification be granted. He also admonished the school to remember that any future changes will require prior approval of the Board.

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 found that “the physical and operational characteristics of the use as modified are no different than what is typically encountered with private educational institutions,” implying that the proposed modification would have no non-inherent adverse effects Ex. 22 at 7. The Hearing Examiner, however, considers a summer camp to be a non-inherent

characteristic of a private school. Many private schools host summer camps, but many do not. Applying the statutory language, the undersigned finds it implausible to state that a summer camp is something “necessarily associated with” a private educational institution. See Code § 59-G-1.21. Moreover, Code §59-G-2.19(b) identifies a summer camp as a potential element of a private educational institution, but does not imply that it should be expected at every such institution. Nonetheless, the Hearing Examiner agrees with Technical Staff and the Petitioner’s land planner that the activities of the summer programs at Concord Hill are more limited than the activities that take place on campus during the school year, with a lower total enrollment, and do not impose any adverse effects on the neighborhood.

The Hearing Examiner also agrees with Technical Staff that all of the other elements of the proposed modification are consistent with characteristics necessarily associated with private educational institutions. The changes to the parking lot and circulation pattern are part of a transportation management plan that is typical of private educational institutions, and works to avoid adverse effects on the neighborhood. The proposed parking lot lighting would be in keeping with lighting that may be expected at a private educational institution, and would not cause any objectionable glare or illumination. The changes embodied in the proposed Special Exception Plan (Ex. 27) and Landscape and Lighting Plan (Ex. 25) provide for outdoor play areas, landscaping and trash disposal that are well within the normal expectations for a private educational institution serving young children. As noted by Technical Staff, the proposed modifications would not result in any increase in enrollment, any changes to the building, any increase in noise, or any environmental impacts.

For all of the above reasons, 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 change the amount of traffic, number of students, noise levels, or type of physical activity associated with Concord Hill. The summer camp programs would extend for six weeks during the summer the same types of activities that take place during the school year, with a smaller number of students. During the school year students spend parts of the day indoors and parts of the day outdoors. During Concord Hill's summer camp, approximately 30 children spend most of the morning outdoors. This is balanced by the students in the Round House Theater program, who spend no time outdoors. Traffic conditions would be improved by the proposed modification, which would formalize and approve a traffic management plan that has eliminated off-site queuing and thereby reduced adverse effects on the 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 modification would not result in any change to the building on the subject property, which has been part of the community for approximately 40 years.

- (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: Only two other special exceptions have been identified in the neighborhood, a charitable institution and the Chevy Chase Cuntry Club. The surrounding community

is a long-standing, high-quality residential area for which the Master Plan recommends the continuation of existing institutional uses, including private schools. For these reasons and those 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: No change to the current enrollment limit of 100 students is proposed. The Board of Appeals previously approved this enrollment level, which exceeds 87 students per acre.

- 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: One of Concord Hill's outdoor recreation areas is located along the center of the property's Wisconsin Avenue frontage and is not adjacent to any residential properties. The outdoor play areas south of the building, which area adjacent to residential properties, are buffered by a six-foot privacy fence and landscaping. Because that portion of the grounds is terraced, part of the play area sits four to five feet below the bottom of the fence. Accordingly, the evidence supports the conclusion that the facility has been designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts.

- (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 programs and their limited enrollment, as well as the new transportation management plan, 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. With the striping proposed as part of this modification, the subject property would have 30 parking spaces, which Technical Staff found to be adequate for 23 staff members plus visitors. The

evidence amply demonstrates that because of the new traffic circulation pattern, 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 the size and shape of the subject property, the location thereon of all buildings and structures, the area devoted to parking and recreation facilities, all access roads and drives, the topography and existing major vegetation features, the proposed grading, landscaping and screening plans and such other features necessary for the evaluation of the plan.
- (2) No special exception, building permit or certificate of occupancy shall be granted or issued except in accordance with a site plan of development approved by the board. In reviewing a proposed site plan of development the board may condition its approval thereof on such amendments to the plan as shall be determined necessary by the board to assure a compatible development which will have no adverse effect on the surrounding community, and which will meet all requirements of this chapter. Any departure from a site plan of development as finally approved by the board shall be cause for revocation of the special exception, building permit or certificate of occupancy, in the manner provided by law.

Conclusion: A site plan meeting the requirements of this section, entitled "Special Exception Plan", has been submitted and is identified as Exhibit 27.

- (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-60 Zone.

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

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 supports Technical Staff's conclusion that the proposed modification would be consistent with the *1990 Bethesda-Chevy Chase Master Plan*. The Master Plan supports the existing R-60 zoning and specifically states that existing private schools and other institutional uses should be maintained. The modification proposed here would not substantially change the nature, character or intensity of the use, which the Board has previously found to be consistent with the Master Plan.

- (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 during the school year, it would involve no new structures, and it would formalize for six weeks in the summer a lower population density, intensity and character of activity than that experienced during the school year. Traffic and parking conditions would be in harmony with the general character of the

neighborhood, provided that the transportation 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 preponderance of the evidence supports the conclusion that 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, and in fact would enhance the peaceful enjoyment of surrounding properties by formalizing a new transportation management plan that reduces neighborhood impacts.

- (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 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 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. The proposed modification would not generate any new trips to the site, nor would it result in any change in the number of jobs created by the use. Accordingly, the Petitioner was not required to comply with Local Area Transportation Review requirements, and Policy Area Transportation Review is not applicable.

- (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 preponderance of the evidence supports the finding that the proposed modification would improve the safety of vehicular or pedestrian traffic by formalizing and approving a new transportation management plan that improves on-site circulation and eliminates off-site vehicular queuing.

- (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. 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 6050 Wisconsin Avenue in Bethesda, to permit (1) the continuation of a summer camp program that has been operating since 1993, (2) the continuation of a new drop-off and pick-up traffic circulation pattern that was implemented last Fall in response to a notice of violation, (3) proposed new parking area striping consistent with the new circulation pattern, (4) proposed new parking area lighting, (5) the retention of landscaping, fencing, outdoor playground renovations and a new outdoor play area, all of which were installed in connection with extensive renovations undertaken in 1999, (6) the retention of a dumpster and concrete pad that have been installed on site, and (7) proposed screening to hide the dumpster from view, 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.

Dated: January 8, 2004

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner

