

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 maximum student enrollment under the subject special exception shall be 495. The increase of 45 students permitted by this modification shall be phased in at a rate of no more than tens students per year.
4. No additional enrollment increase shall be sought under this special exception during the five-year period immediately following approval of this modification.
5. The maximum number of faculty and staff permitted under the subject special exception is the equivalent of 116 full-time positions.
6. Vehicles associated with the school shall not be permitted to stack (queue) on off-site streets during morning drop-off and afternoon pick-up periods.
7. The holder of the special exception shall implement the Transportation Management Plan, Exhibit 23(a), attached hereto as an appendix.
8. Accessory programs may be conducted in connection with the subject special exception under the following conditions:
 - a. accessory programs must have some educational component, which may include arts education, athletics, or life skills such as driver education;
 - b. all accessory programs shall be conducted indoors;
 - c. the total number of participants on campus at any one time shall be limited to 120;
 - d. the maximum number of participants must not be achieved by a single program, but rather shall be divided among a variety of programs;
 - e. hours of operation for accessory programs would be limited to 5:00 p.m. to 9:30 p.m. Monday through Friday, and 9:00 a.m. to 6:00 p.m. on weekends and holidays;
 - f. participants shall use only the front entrance to the campus, on Postoak Road, and shall park on campus; and
 - g. in the event that parking is unavailable on campus, participants shall park at Hoover Middle School.

9. Fencing along Brumbaugh Field where it abuts homes that front on Victory Lane may be extended to 12 feet in height during the Fall soccer season, from approximately mid-August to mid-November each year.

On a motion by Angelo M. Caputo, seconded by Louise L. Myaer, with Donna L. Barron, Angelo M. Caputo and Allison Ishihara Fultz, Chair 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.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 3rd day of March, 2005.

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 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) an increase in enrollment from 450 students to 495, to be phased in at a rate of ten students per year for a period of four to five years; (2) a corresponding increase in faculty and staff to the equivalent of 116 full-time positions; (3) accessory programs taking place during the academic year; and (4) raising the fence along Brumbaugh Field from six feet in height to 12 feet during the Fall soccer season.

Technical Staff of the Maryland-National Capital Park & Planning Commission ("M-NCPPC") reviewed the present modification petition and, in a report dated October 21, 2004, recommended *approval* with conditions. See Ex. 17. The Montgomery County Planning Board reviewed this petition at its regular meeting on October 28, 2004 and voted 5 to 0 to recommend *approval* with the same conditions recommended by Technical Staff.

On August 3 2004 the Board of Appeals ("Board") scheduled a public hearing in this matter for November 8, 2004, to be conducted by a hearing examiner in the Office of Zoning and Administrative Hearings. The hearing was convened as scheduled on November 8, 2004, at which time testimony and other evidence were received in favor of the proposed modification. Testimony was also received that raised concerns about specific elements of the proposal, but did not rise to the level of opposing the modification. The record was held open briefly to receive the hearing transcript and supplemental submissions, and closed on November 17, 2004. By Order dated December 14, 2003, the Hearing Examiner extended the time for submission of her report to January 14, 2005.

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

The Hearing Examiner notes, as a threshold matter, that the Petitioner was remiss in the timing of the present application as it relates to accessory programs. The Petitioner seeks approval, as part of this modification, for accessory programs that have been conducted at St. Andrew's for several years. The Zoning Ordinance specifies that where tutoring and college entrance exam preparatory courses, art education programs, artistic performances, indoor and outdoor recreation programs or summer day camps existed before April 22, 2002 without previous approval by the Board, the underlying special exception was required to be modified prior to April 22, 2004 to permit such programs. See Code § 59-G-2.19(c).

Most, if not all, of the accessory programs St. Andrew's proposes in this modification fall within the categories identified in Section 59-G-2.19(c). Accordingly, St. Andrew's was legally required to seek a modification to permit those programs *before* April 22, 2004. The school did obtain a modification that included approval of its summer camp program

before April 22, 2004. When questioned by the Hearing Examiner during this proceeding, St. Andrew's counsel stated that during the pendency of the last modification, which involved Brumbaugh Field and the summer camp, the possibility of an enrollment increase was raised. At that time, St. Andrew's and its counsel felt that the academic year accessory programs would be most logically addressed at the same time as the academic year enrollment increase. Mr. Brewer apologized for the inadvertent failure to follow the date requirement specified in the Zoning Ordinance.

The Hearing Examiner has some concern about piecemeal modification requests, which may increase the likelihood of favorable outcomes for the school by making each modification seem relatively minor. Taken together, a series of small modifications may have a larger impact on the neighborhood. However, the explanation provided in this case was not implausible, and the Hearing Examiner does not consider this a compelling reason to deny the present modification request.

II. BACKGROUND

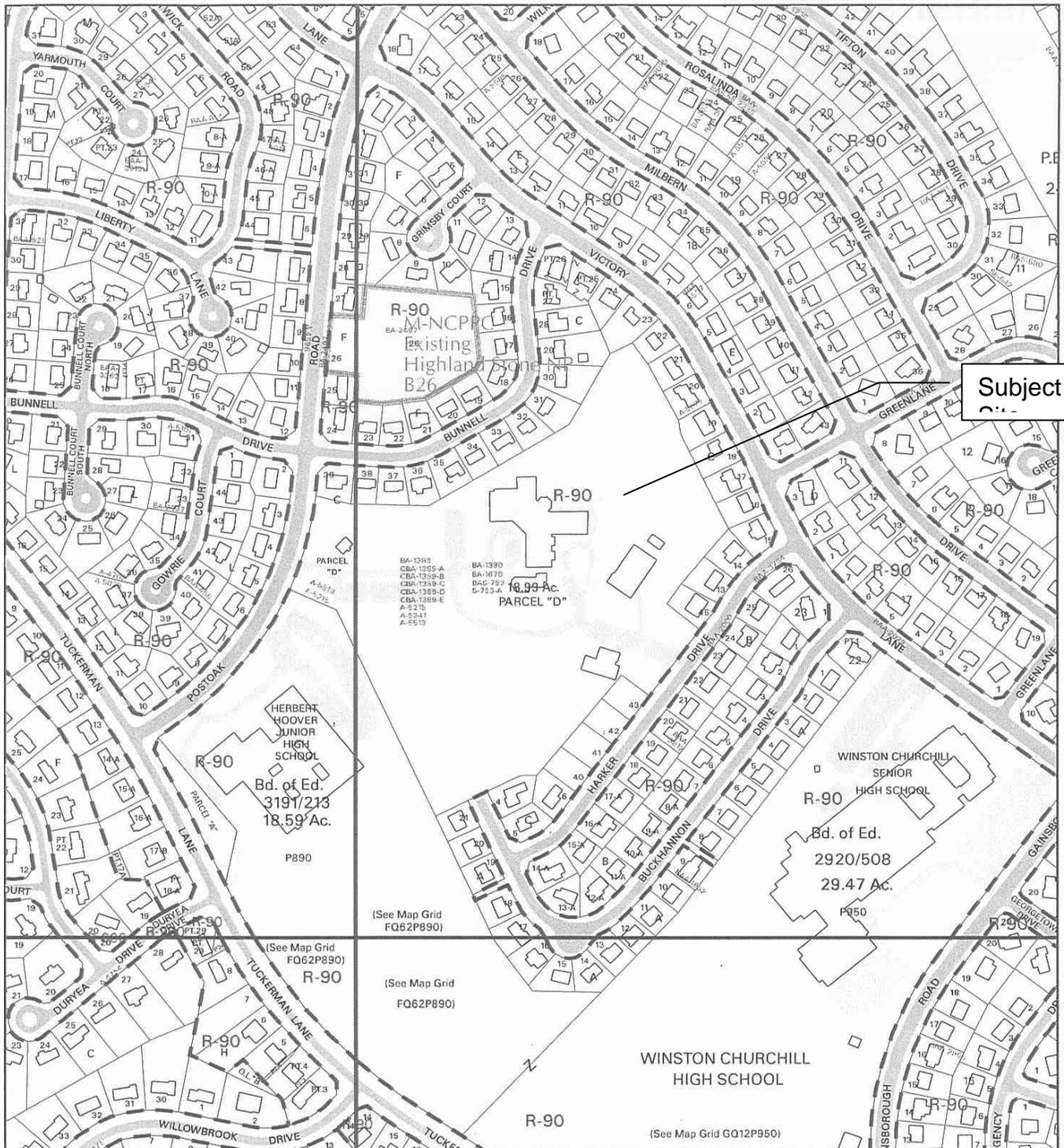
For the convenience of the reader, background information is grouped by subject matter.

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, by 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 17. An aerial photograph is provided on page 6 for additional context.

The vicinity map below also shows that the subject property and all adjacent and confronting properties are classified under the R-90 Zone. With the exception of the adjacent Hoover Middle School, a public school, all of the adjacent and confronting properties are developed with single-family detached homes. Hoover Middle School abuts Winston Churchill Senior High School, also a public school, to the south, forming a three-campus contiguous area measuring 68 acres.

Vicinity Map, Excerpted from Staff Report, Ex. 17



Map compiled on October 20, 2004 at 3:37 PM | Site located on base sheet no - 215NW08

Aerial Photograph, Excerpted from Staff Report, Ex. 17



Postoak Road

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 1994, and at the same time approved an increase in enrollment to 450 students and an increase in the number of faculty and staff to 89 employees. See CBA 1389-C. In February 2001, the Board of Appeals ("Board") approved a modification of the subject special exception to allow several improvements to the school's outdoor athletic fields. See CBA 1389-D. That approval required 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 undersigned Hearing Examiner held the required hearing in November 2004, at which time the school also requested approval for its existing summer camp program. The Board granted the requested modifications in March 2004, permitting St. Andrew's to continue its summer camp program and to open Brumbaugh Field to both boys' and girls' lacrosse teams. See CBA 1389-E.

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 to (1) increase enrollment from 450 students to 495, to be phased in over a period of four to five years; (2) increase the number of faculty and staff to the equivalent of 116 full-time positions; (3) provide accessory programs during the academic year; and (4) raise the fence along Brumbaugh Field from six feet in height to 12 feet during the Fall soccer season. The four elements of the modification are described below.

1. Increase in Enrollment

St. Andrew's seeks to increase its permitted enrollment from 450 students to 495 students, representing a ten percent increase. The additional 45 students would be phased in over four to five years, at a rate of no more than ten additional students per year. The headmaster, Robert Kosasky, testified that this enrollment increase would serve four purposes: (1) to make sure that the school will be able to provide the academic offerings and elective choices that should be part of a strong college preparatory education, and that will meet the students' range of interests and abilities; (2) to provide an adequate pool of students for fully staffed athletic teams; (3) to provide more opportunities for friendships among students (Mr. Kosasky noted that with 450 students divided over a seven-year span, roughly half girls and half boys, each grade is not large); and (4) to help fund the school's operating budget, which will allow the school to restrain tuition growth and to pay competitive faculty salaries.

St. Andrew's ultimate enrollment target is 490 students. Given the difficulty inherent in predicting annual enrollment precisely, the school believes that a target of 490 students will ensure that it does not exceed 495 in actual enrollment in any year. St. Andrew's anticipates increasing the middle school enrollment (grades 6 to 8) from approximately 135 to 155 students, and the upper school enrollment (grades 9 to 12) from about 315 to 335 students.

The testimony indicated that an enrollment of 495 students is the maximum that the school management believes can be served in the current facilities, without compromising

the quality of education provided. The school does not currently have plans to seek an additional enrollment increase or permission for new construction, but it does not wish to rule out those possibilities. St. Andrew's is willing to make a commitment not to seek a further increase in enrollment for a period of five years from the time the application is granted, if the present enrollment request is granted. Tr. at 11; Ex. 3 at 4.

The proposed enrollment increase would not lead to any change in the school's hours of operation.

2. Increase in Faculty and Staff

St. Andrew's written submissions and testimony indicate that the school seeks to increase its permitted number of employees by approximately ten positions, to accommodate the increased student enrollment, for a total faculty and staff complement of approximately 116 full-time equivalent positions. This suggests that the school currently has approximately 106 full-time equivalent positions for faculty and staff. The Hearing Examiner discovered after the hearing, however, that the chronology set forth in the Staff Report for this special exception indicates that the most recent approval that addressed faculty and staff approved a total of 89 employees, not 106. See Staff Report, Ex. 17 at 3; CBA 1389-C, 1994.

It may be that the Staff Report provided only a partial chronology, and the Board has approved the current staffing level in a previous decision. It is also possible that St. Andrew's has inadvertently exceeded the number of employees it was permitted, although this seems doubtful, given the careful attention that school management and its counsel have paid to special exception requirements. If this were the case, the modification requested would effectively be an increase from 89 faculty/staff positions to 116 full-time equivalent positions. The evidence presented regarding impacts on the neighborhood, including traffic and intensity of activity, was based on the enrollment and staffing levels proposed in this application – 495 students and 116 faculty/staff positions. The Hearing Examiner recommends that the Board base its decision in this matter on the enrollment and staffing levels proposed in this application, considering it of small consequence, at this point, whether the current number of permitted positions is 89 or 106.

Mr. Kosasky explained two reasons behind the requested faculty and staff increase. First, the school has been on the subject site for only about six years, and has learned more during that time about the staffing needed to maintain a 19-acre campus. Second, the school has identified a need for additional faculty specialists, including learning specialists and specialists in areas such as community service and college counseling.

3. Academic Year Accessory Programs

St. Andrew's seeks approval for several accessory programs that it currently offers during the academic year, as well as for a dance program that it may wish to institute in the future. The existing and proposed programs fall into four categories: (a) academic and life skills programs, which include college entrance exam preparatory courses (SAT courses that are held on weekends from February through May); driver's education classroom training (offered during the Summer and late Winter); and a summer study skills program (held during the last week before school resumes in the Fall); (b) art education and performance programs (possible future dance or performing arts programs); and (c) indoor recreation programs (currently, basketball clinics in the Fall, Spring and Summer and yoga classes for adults

throughout the year)¹. The school also makes its facilities available, from time to time, to community organizations such as the local citizen's association.

Testimony from the school's business manager, Elliott Brumbaugh, indicated that at present, each of these programs has a small enrollment, in the neighborhood of 15 to 30 participants. Mr. Brumbaugh testified that all of the accessory programs are held during the evenings or on weekends, and they are scheduled specifically to avoid conflicts with programs that are part of the regular academic program or the summer camp. They generally start at about 6:00 p.m., when regular programs are over (with the exception of occasional athletic events that may not be over by 6:00). At the moment, the basketball clinic runs in the evenings, one or two days per week, with about 12 to 15 students from St. Andrew's and elsewhere. During one week in August, after the summer camp is over, there is a morning basketball clinic for girls and an afternoon basketball clinic for boys. The driver's education courses are open only to St. Andrew's students, and are held during the evening with about 15 to 30 students. The yoga classes are for adults and usually have 12 to 15 students. Those are scheduled twice a week, in six- to eight-week sessions, avoiding overlap with the school's activities.

St. Andrew's seeks permission for accessory programs generally, not for the specific programs listed above. The school would like the flexibility to change its accessory programs from time to time without returning to the Board for authorization. It is, however, amenable to accepting limitations on its accessory programs as deemed appropriate by the Board.

Technical Staff recommended a condition of approval that would limit accessory programs in several ways: (1) no more than 180 total participants on campus at any one time, including instructors, St. Andrew's students and non-St. Andrew's students; (2) activities to begin no earlier than 7:00 a.m. and end no later than 10:00 p.m.; (3) participants to park on campus and use only the Postoak Road entrance; (4) Hoover Middle School to be used for any overflow parking; and (5) St. Andrew's to avoid any overlapping between accessory programs and normal school operations.

St. Andrew's agreed to the condition suggested by Technical Staff. The Hearing Examiner suggested that the school consider whether a somewhat narrower set of restrictions might be acceptable, given that the language Staff used, taken literally, would permit the school to have as many as 180 people on campus for accessory programs from 7:00 a.m. to 10:00 p.m., seven days a week, for any kind of program the school considers appropriate. School representatives testified that such a level of intensity is not the school's intention. Together with counsel, they crafted an alternative proposal that would establish the following parameters: (1) accessory programs would have some educational component, such as arts education, athletics, or life skills (e.g., driver education); the maximum number of participants would not be achieved by a single program, but would be divided among a variety of smaller programs; the total number of participants on campus at any one time would be limited to 120; and accessory programs would be limited to 5:00 p.m. to 9:30 p.m. Monday through Friday, and 9:00 a.m. to 6:00 p.m. on weekends and holidays. Tr. at 82-83.

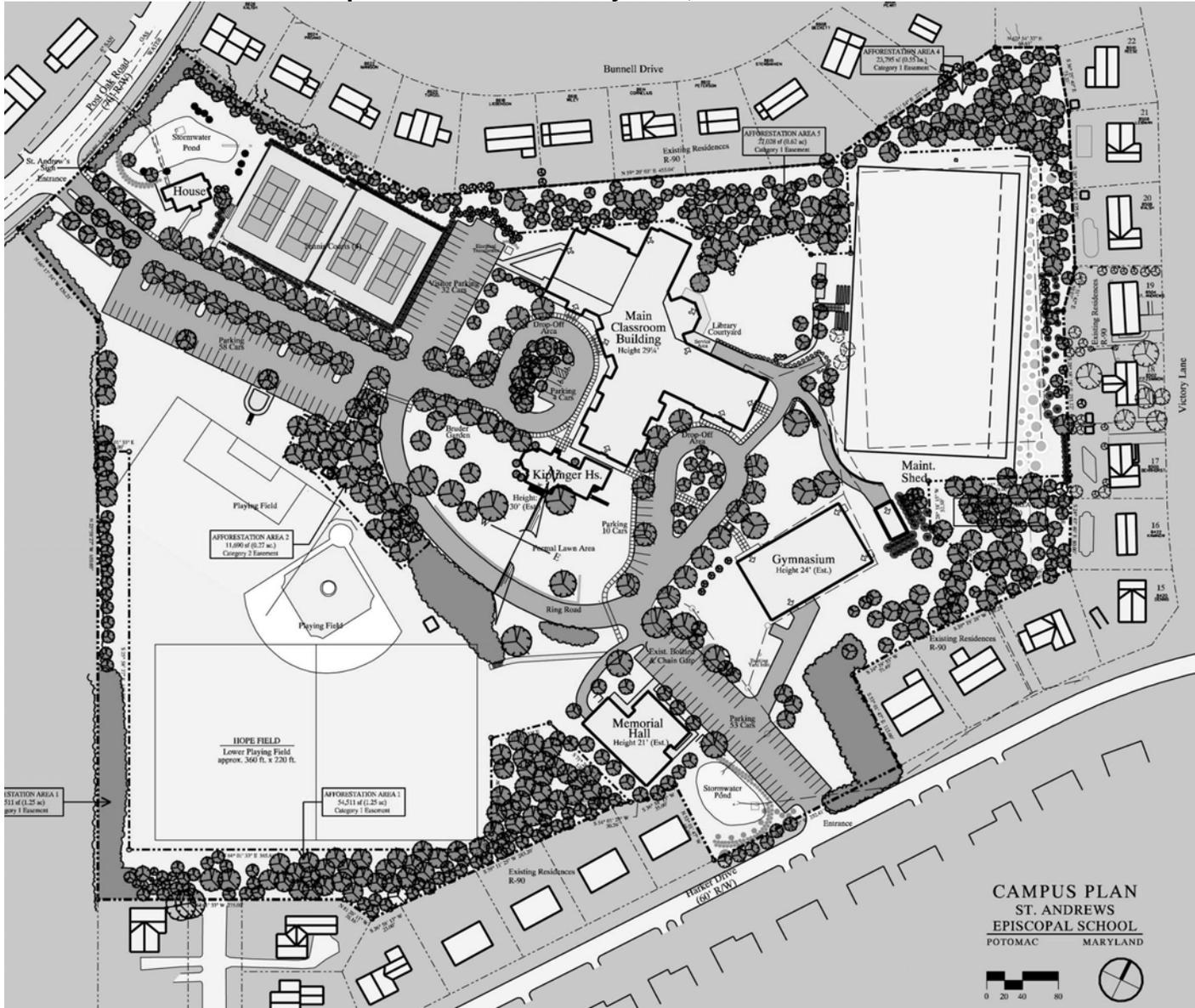
The Hearing Examiner considers these limitations appropriate, and the conditions of approval recommended at the close of this report include a condition designed to memorialize this proposal.

¹ The Petitioner's Statement in Support describes this category as "Indoor and Outdoor Recreation Programs." Ex. 3 at 6. However, the Staff Report and the evidence providing during the hearing (particularly the testimony of the Petitioner's land planner) described these as exclusively indoor activities, and that characterization was relied upon in assessing the impacts of the accessory programs. Accordingly, the Hearing Examiner considers these to be indoor activities. The recommended conditions of approval reflect this conclusion.

4. Increased Fence Height During Fall Soccer Season

Brumbaugh Field is an outdoor athletic field located near the school's eastern property line, in close proximity to residences along Victory Lane. Its location is shown on the campus plan reproduced below.

Campus Plan dated January 2001, Ex. 21



The eastern edge of Brumbaugh Field is fenced with a variable height fence that stands six feet tall for much of the year, but is extended to 12 feet in height during the Spring lacrosse season. The top six feet of the fence is essentially a net, which is designed to prevent lacrosse balls from flying into neighboring yards. During the hearing on St. Andrew's last modification petition in 2003, a Victory Lane resident reported that soccer balls had been coming into his yard during the Fall soccer season, and requested that the fence be extended to its full height during the Fall as well as the Spring. St. Andrew's believes this would be beneficial, and has included in its current application a request for approval to raise the fence to

12 feet in height from about mid-August to mid-November each year, during the soccer season, in addition to the Spring lacrosse season.

Mr. Brumbaugh testified that at this point the trees between the fence and the neighbors exceed 12 feet in height, obscuring the view of the fence, so he believes none of the neighbors would object. To the contrary, it would be beneficial.

E. Traffic and Parking

The evidence addresses potential impact on the local road network from either vehicle trips or vehicles stacking on neighborhood streets during the peak drop-off and pick-up periods.

The Petitioner's traffic expert, Craig Hedberg, conducted a Local Area Transportation Review study to assess the potential impact of the additional trips associated with the increase in enrollment and in the number of faculty/staff. At the instruction of Technical Staff, Mr. Hedberg considered the impact on three area intersections along Tuckerman Lane, Postoak Road, Gainesboro Road and Falls Road. His firm took peak period traffic counts at the school entrance to arrive at a trip generation rate for the current enrollment and faculty/staff complement, which they expanded to account for the additional 45 students and total of 116 faculty/staff positions. They added those trip numbers to the existing peak period trip counts for the three intersections identified, and found that with the additional trips, each of the three intersections would continue to operate at a CLV below the applicable congestion standard.

Transportation Planning Staff at the MNCPPC recommended that the enrollment be limited to 495, as requested; that vehicles associated with the school be prohibited from stacking (queuing) on off-site streets; that the school implement a comprehensive transportation management plan ("TMP"); and that the school arrange for overflow parking at Hoover Middle School during special events taking place outside the regular school day. See Staff Report, Ex. 17 at 8. Each of these recommendations would be implemented by the proposed modification, with the recommended conditions of approval.

Before the record closed in this case, St. Andrew's submitted a letter of understanding between the Headmaster at St. Andrew's and the Principal at Hoover Middle School, which formally acknowledges a reciprocal agreement between the two schools to allow for overflow parking during major events, "when schedules permit." See Ex. 23(b).

As shown on the campus plan reproduced on page 13, the St. Andrew's campus has an internal road structure that brings cars from the primary Postoak Road entrance onto a long entrance road, which parallels a large parking lot and then splits between a front entrance circle, serving the upper school, and a circular road leading to a rear entrance circle, serving the middle school. This internal road system provides ample space for vehicular stacking during drop-off and pick-up. As Mr. Hedberg explained, if the space available in the two circles and on the internal roads fills up, cars can queue in the parking lot along Postoak Road, which has room for a double row of cars. During Mr. Hedberg's observations of the peak traffic hours, the circles and internal roadways were more than adequate to contain all the traffic. No cars had to use the parking lot to wait, and there was no danger at all of cars stacking on the public streets.

The subject property has two entrances, one on Postoak Road and the other on Harker Drive. Accessing the Harker Drive entrance entails traveling through residential neighborhoods to reach the site, whereas the Postoak Road entrance is not far from busy Tuckerman Lane and is less disruptive to residential neighborhoods. To minimize traffic impacts, all users other than faculty are required to enter from Postoak Road.

St. Andrew's adopted a comprehensive TMP in May 2004, which is included in the record as Exhibit 23(a). The TMP states as its major goals the minimization and management of vehicular traffic. Its components include the following:

- Appointing a staff member to serve as Transportation Coordinator to facilitate implementation of the TMP provisions.
- Encouraging carpooling and the use of public and private bus service. St. Andrew's operates a system of shuttle buses that connect the school with residential areas along three separate routes. Each route offers a later bus in addition to the regular service, for those participating in after school activities. The TMP commits St. Andrew's to survey its families yearly about possible shuttle bus routes, and to adjust routes as necessary.
- Limiting on-campus driving privileges for students to seniors only.
- Encouraging faculty and administration to carpool.
- Setting beginning and ending times for the school day to avoid conflict with other schools nearby.
- Requiring all students, families, visitors and buses to use the primary Postoak Road entrance.
- Permitting only faculty and staff to use the Harker Drive entrance.
- Assigning maintenance personnel to direct traffic in the mornings on special event days.
- Setting up traffic barriers to prevent parents from exiting the site via Harker Drive, and to discourage traffic from cutting through the campus from Postoak Drive to Harker Drive.
- Requiring parking stickers for employees and seniors, and designating specific parking spaces for visitors.
- Limiting school vans and buses to parking areas that are shielded as much as possible from neighborhood visibility.
- Arranging for overflow parking at Hoover Middle School on special event days.

As originally submitted, the TMP included an offer to install a bus shelter at the intersection of Tuckerman Lane and Postoak Road, to encourage bus ridership. This possibility was greeted with opposition from local residents and the Regency Estates Civic Association. Local residents felt that a bus shelter was not needed at the proposed location, which is served only by limited commuter bus service to and from the Grosvenor Metro Station during the peak hours. In the face of this opposition, St. Andrew's noted that the bus shelter was something that had been included in other TMPs, but was not part of Technical Staff's approval requirements in this case. Accordingly, the school revised the TMP to delete the reference to a bus shelter.

Technical Staff found the TMP elements "reasonable to handle the projected school traffic associated with the proposed expansion in a safe and efficient manner." Ex. 17 at 9. Mr. Hedberg was involved in drafting the TMP. He opined that the total number of trips anticipated from the increased enrollment and accessory programs would not create an undue burden on traffic conditions in the neighborhood, nor would such trips adversely affect the safety of vehicular or pedestrian traffic. He also found that the school would be adequately served by public roads.

Both Technical Staff and Mr. Hedberg opined that with a condition limiting accessory programs to no more than 180 participants at one time, the accessory programs would not have an adverse effect on traffic in the surrounding neighborhood. Mr. Hedberg noted that this was particularly the case because the activities generally would not overlap with regular school activities. (These opinions were provided before the Petitioner offered to limit the maximum number of participants at any one time to 120.)

With regard to parking, Technical Staff notes that 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 for student parking. See Code § 59-E-3.7, cited in Ex. 17 at 6. St. Andrew's estimates the number of student drivers at about 60 to 65. Together with 116 faculty and staff drivers, the cumulative total would be about 181. The campus has 185 on-site parking spaces, including spaces along the circle road and the entrance road, and excluding a few spaces along the maintenance road that are not used. Technical Staff notes that several faculty and staff members do not drive to the campus, the headmaster lives nearby and walks, and about nine faculty and staff members arrive after the majority of faculty and staff have left. Staff found that "the one-way driveway and drop-off zone system operates so efficiently that the residual of four to nine spaces are [sic] sufficient for the safe and convenient loading and unloading of students." As a result, Staff considers the available parking to be in compliance with Section 59-E-3.7.

Mr. Hedberg opined that the proposed modification would satisfy the applicable parking requirements under the Zoning Ordinance and would be adequate based on his field observations.

The Hearing Examiner raised a question about how many parking spaces would be available for participants in accessory programs, given that the school parking lot off of Harker Drive is open only to staff, making 53 of the 185 parking spaces inaccessible to program participants. Mr. Brumbaugh testified that a sawhorse is used to block one end of the Harker Drive parking lot only during the day, to prevent students at Churchill High School from using the campus for cut-through traffic. The sawhorse is removed during the evenings and on weekends, because there is no problem with cut-through traffic at those times. As a result, both parking lots are available during the evenings and weekends. Mr. Garson of the local civic association confirmed that there is no problem with traffic impacts on Harker Drive on weekends or during the evenings.

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 resides adjacent to the school on Harker Drive. He described relations between the school and its neighbors as very good, overall. He reported that the community council that was created as a condition of the school's last modification has met twice. Both meetings were productive and amicable. Mr. Kosasky received no response to mailings he sent to the community about the present modification petition, and he is not aware of any substantial opposition by neighbors.

Mr. Kosasky described the school's motivation in seeking the enrollment and faculty/staff increases. He also testified that St. Andrew's does not currently have any plans for building expansions. Based on a space utilization study, the school is comfortable that the proposed enrollment can be housed, taught and served without any construction. The school contemplates phasing in the enrollment increase over about a five-year period, and is willing to

commit to limiting expansion to no more than ten additional students in any one year. St. Andrew's is also willing to make a commitment not to seek any additional increase in enrollment for a period of five years from the time the application is granted.

Mr. Kosasky testified that St. Andrew's would accept all of the conditions recommended by the Planning Board and Technical Staff. With regard to the condition requiring formalization of St. Andrew's overflow parking agreement with neighboring Hoover Middle School, Mr. Kosasky stated that the school would ask Hoover Middle School administrators to put the agreement in writing. The Hearing Examiner suggested that this would more appropriately be accomplished before the proposed modification takes effect, rather than as a condition to be satisfied after approval. The Applicant readily agreed to obtain the necessary letter before the closing of the record, and that letter has now been supplied as Exhibit 23(b).

Turning to traffic issues, Mr. Kosasky testified that the stacking of cars on the campus was analyzed as part of Technical Staff's review of this modification petition. He stated that results indicate that, on average, at any one time just a few cars are waiting within the site to pick up students, and there is no overflow onto surrounding streets. Tr. at 13. He explained that the circulation system is very well designed, the parents are well trained and the schedule is set up to avoid huge numbers of students all leaving or arriving at the same time.

Mr. Kosasky described the request to increase the height of the Brumbaugh Field fence during soccer season as part of being a good neighbor. The higher portion of the fence is now obscured from view by trees that were planted several years ago, and it helps to make sure balls stay on the school's property.

The Hearing Examiner questioned Mr. Kosasky about a long-range plan that was developed for the school in 1999, which anticipated the construction of two additional buildings. Mr. Kosasky described the 1999 drawing as a potential vision of what the school would look like if there were funding, if there were permission, and if there were a need in the future. That drawing was prepared during St. Andrew's first year on the campus, so it was not based on their experience in using the existing space. Mr. Kosasky suggested that at some time in the future the school will have to think seriously about campus planning, but he said "with certainty it would not end up with that vision," and the school would not want to be tied to that. The enrollment level sought in this modification is the maximum that the school believes can be accommodated with the current physical infrastructure without compromising educational quality.

Warran Manison, a neighbor whose home backs onto the school's tennis courts, asked whether the proposed enrollment increase would lead to increased use of the tennis courts. Mr. Kosasky stated that he does not anticipate any increased usage because the courts are already fully used now, and there would not be any additional time slots available. The school does not intend to add another tennis team or more practice time, nor does it intend to extend the hours during which the courts are open.

After conferring with counsel, Mr. Kosasky testified that the school would be willing to limit the proposed accessory programs in the following manner: (1) accessory programs should have some educational component, which might be arts, athletics, or life skills such as driving; (2) the school would continue to offer a variety of accessory programs, rather than reaching the maximum number of participants in a single program; (3) the number of participants would be limited to 120 on campus at any one time; and (4) accessory programs would be offered between 5:00 p.m. and 9:30 p.m. Monday through Friday, and between 9:00 a.m. and 6:00 p.m. on weekends and holidays.

Mr. Kosasky further testified that in light of the objections raised by neighborhood residents and the fact that Technical Staff did not consider the bus shelter a high priority, the school would like to revise the TMP to delete the offer to install a bus shelter.

2. Elliott F. Brumbaugh, Jr.

Mr. Brumbaugh is the business manager of St. Andrews and has been with the school for 20 years. He is responsible for the school's finances, maintenance, custodial services, transportation and food service. Mr. Brumbaugh testified that he is very familiar with the school's relationship with its neighbors, which he described as very good and improving with time.

Mr. Brumbaugh described the existing accessory programs for which St. Andrew's seeks approval in this application. These consist of SAT courses, classroom driver education, a summer study skills course, basketball clinics, and yoga classes for adults. The school also would like approval for a dance program that they may offer in the future. Mr. Brumbaugh described as a relatively small program. Their dance studio only accommodates comfortably about 12 to 15 people. The school might also like to offer a performing arts program. In addition, the school makes school facilities available to community organizations such as the local homeowner's association. Mr. Brumbaugh emphasized that the various accessory programs are timed so that they do not overlap with regular school activities in terms of starting and stopping times.

Mr. Brumbaugh testified that the school found acceptable the operating condition that Technical Staff recommended for accessory programs. The Hearing Examiner remarked that the condition Technical Staff recommended was overly broad; by its terms, it would permit the school to have as many as 180 people on campus at a time for accessory programs, with programs running from 7:00 a.m. to 10:00 p.m. seven days a week. Mr. Brumbaugh stated that that level of intensity is not the school's intention. At the same time, he questioned whether it would be unreasonable to have 180 people arriving for a yoga class at 9:00 a.m. on Sunday morning. He noted that all of the accessory programs are indoors, and the school does not rent out its athletic fields

In connection with the request to extend the Brumbaugh Field fence to 12 feet in height during the soccer season, Mr. Brumbaugh testified that the 12-foot fence extension has worked well during the Spring, and would be helpful during the Fall soccer season to prevent balls from straying into neighbors' yards. He noted that the fence is really a net, not a solid fence. At this point the trees and bushes have grown tall enough to hide the fence, and a neighbor requested the fence extension for the Fall as well as the Spring.

With regard to long-range plans, Mr. Brumbaugh testified that an enrollment of 495 students would not require any new construction. The school may desire to build a better gymnasium or a place for performing arts in the future, but has no current plans to do so.

Mr. Manison asked Mr. Brumbaugh whether St. Andrew's had investigated the possibility of additional measures to block noise from the tennis courts. Mr. Brumbaugh stated that the school obtained expert advice, which suggested that a wooden backboard would create more noise and would encourage kids to hit tennis balls against it. Mr. Manison stated that his request was for a barrier not at the edge of the courts, between the trees that line the court and the chain link fence on the property line. At that location, students would not be able to hit balls against the fence. Mr. Manison raised the same issue in the modification proceeding for this site a year ago, and he remains unconvinced that a wooden fence would not help the situation.

Mr. Brumbaugh stated that the school planted a large row of Leland cypress trees, which have grown full and high. At the Manisons' request, the school cuts them down every year to the level of the fence. Mr. Brumbaugh suggested that letting them grow would probably decrease the noise level, although it would also leave the Manisons' yard very shady. Mr. Manison stated that he is very satisfied with keeping the trees trimmed, because that encourages fuller growth at the lower levels. Mr. Brumbaugh noted that installing a fence close to one side of the Leland cypress trees would likely cause the trees to die on that side, reducing noise-buffering ability. Mr. Manison acknowledged that the school has made efforts to limit the

hours of use and keep the noise down in the last year, and conceded this point the noise is only disturbing once in a while.

3. Craig Hedberg, Transportation Planner.

Mr. Hedberg was designated an expert in traffic engineering and transportation planning. His role in connection with this application involved field visits to observe traffic, reviewing and commenting on the transportation management plan ("TMP"), conducting local area transportation review (LATR) analysis and examining the traffic impacts of the accessory programs.

Mr. Hedberg explained the methodology of his LATR study, which led to the conclusion that the requested enrollment increase would not have an adverse impact on traffic conditions at nearby intersections. He described the circulation patterns for the site, which provide extensive space for cars to stack while waiting to drop off or pick up students. Mr. Hedberg observed the heaviest traffic period, at the end of the school day, and found that cars were stacked along the loops leading to the drop-off/pick-up areas, but the extensive additional queuing areas in the parking lot near Postoak Road were not even needed. There was not even a remote potential for overflow onto Postoak Road or any other neighborhood street.

Mr. Hedberg noted that the three schools in the immediate vicinity have staggered opening and closing times, which has a positive impact on traffic conditions. In addition, St. Andrew's staff are involved in directing traffic and in the loading and unloading process to avoid queues.

With regard to the Tuckerman Lane bus shelter proposed in the TMP, Mr. Hedberg stated that while bus shelters can be used to generate trip credits for LATR purposes, no such credits were claimed in this case. The shelter was simply an offer by the school. He noted that the only bus line he is aware of that passes by that location is a commuter bus that runs to the Grosvenor Metro Station during the peak hours.

Mr. Hedberg also responded to concerns raised by Jerry Garson, treasurer of a local civic association about existing traffic congestion. Mr. Hedberg explained that CLV is a measure of how many cars, on average, go through an intersection in an hour. He acknowledged that if an intersection is in a stopped condition, as Mr. Garson contends is sometimes the case for the intersection of Tuckerman Lane and Falls Road, cars literally cannot go through the intersection, so they are not counted and the CLV numbers can be low despite the actual congestion. In other words, CLV is not a good measure of congestion where the congestion is so severe that traffic does not have a continuous flow. Mr. Hedberg noted that he did not observe that type of condition at Tuckerman Lane and Falls Road.

Mr. Hedberg opined that with a limit of no more than 180 participants at time (as recommended by Technical Staff), the accessory programs would not have an adverse effect on traffic in the surrounding neighborhood because the activities generally would not overlap with regular school activities. Mr. Hedberg also opined that the total number of trips anticipated from the increased enrollment and from the accessory programs would not create an undue burden on traffic conditions in the neighborhood, nor would they adversely affect the safety of vehicular or pedestrian traffic. He also found that the school would be adequately served by public roads.

Mr. Hedberg opined that the proposed modification would satisfy the applicable parking requirements under the Zoning Ordinance and would be adequate based on his field observations.

The Hearing Examiner raised a question about how many parking spaces would be available for participants in accessory programs, given that the school parking lot off of Harker Drive is open only to staff, making 53 of the 185 parking spaces inaccessible to program participants. Mr. Brumbaugh interjected that a sawhorse is used to block one end of the Harker Drive parking lot only during the day, to prevent students at Churchill High School from using the campus for cut-through traffic. The sawhorse is removed during the evenings and on

weekends, because there is no problem with cut-through traffic at those times. Mr. Garson of the local civic association confirmed that there is no problem with traffic impacts on Harker Drive on weekends or during the evenings. He observed that the only real problems occur when Churchill High School has a major event.

4. Phil Perrine, land planner

Mr. Perrine was designated an expert in land planning. He provided a general description of the subject property and its facilities, as well as the surrounding area. Mr. Perrine described the general neighborhood as bounded generally by Victory Lane, Harker Drive, Postoak Road and Tuckerman Lane.

Mr. Perrine noted that the proposed enrollment increase would not involve any new construction, new athletic fields or new parking areas. There would be no change in access or circulation. The only change would be additional students using the existing facilities. The accessory programs would take place indoors, so their impact from a land use perspective would consist of people coming to the campus, parking their cars (assuming that they drive), and walking to the classroom. These activities would take place outside the hours of normal school activities, with the exception of occasional overlap with athletic events that may end after some accessory programs have begun. Mr. Perrine opined that even combined with the normal academic year activities, the accessory programs would not have any adverse effect on the neighborhood.

Mr. Perrine reviewed briefly the history of the use of Brumbaugh Field and the successful use of the fence extension during the lacrosse season. He observed that far from having an adverse effect on the neighborhood, extending the fence to 12 feet during the soccer season would benefit the neighbors by keeping balls on the field.

Mr. Perrine observed that Technical Staff considers accessory programs to be a non-inherent operational characteristic of the existing school. He opined that if they are considered non-inherent, they still have no adverse impacts because the type of activity involved is the same as the normal school activities – people arriving at the site, getting out of cars and walking into a building. Mr. Perrine agreed with Technical Staff that the site's ample setbacks and mature landscaping mitigate any non-inherent characteristics of these programs.

Mr. Perrine reviewed the specific conditions for a private educational institution and opined that the proposed modifications would satisfy each of them. He noted, in particular, that activities are largely indoors and the school has a strong TMP in place. Mr. Perrine stated that with the proposed enrollment increase, the school would have a pupil density of about 26 students per acre, about one third of the guideline indicated in the Zoning Ordinance of 87 pupils per acre.

Mr. Perrine reviewed the general conditions for a private educational institution and opined that the proposed modifications would also satisfy each of these conditions. He observed that the enrollment increase, phased in over a few years, would be fairly minor, the accessory programs would be indoor activities, and the additional fencing would benefit the neighbors. Mr. Perrine stated that the proposed modifications would not increase the intensity or scope of the special exception because the enrollment increase would be gradual, and the accessory programs are spread over the evenings and weekends. Thus, the intensity of use in terms of the amount of activity at any one time would not increase. Finally, Mr. Perrine confirmed that his testimony was based on the changes Mr. Kosasky had offered to the parameters for the accessory programs, which Mr. Perrine felt were appropriate.

B. Community Participation

1. Andrew G. Kavounis

Mr. Kavounis lives in the neighborhood of the subject property and is on the board of Regency Estates Civic Association. He is also an engineer, and sits on the board of directors of Smith Midland Company, which erects site attenuation walls on highways. Mr. Kavounis testified that the best sound attenuation material is foliage. The thicker the landscaping, the better the noise is controlled. He also noted that the houses backing onto the tennis courts are substantially lower than the courts, so to catch any sound, a wall would have to be 16 to 20 feet high.

Mr. Kavounis asked engineers from Smith Midland to come look at the situation and make suggestions. They reported that there is really nothing better than what's there, which is foliage. They felt that cropping the tops of the trees was a mistake, because the goal is to stop the sound higher up. Mr. Kavounis concludes that even if money were no object, nothing more could be done to reduce the noise impacts.

2. Jerry Garson.

Mr. Garson is treasurer of the Regency Estates Civic Association, which is concerned about the bus shelter that was proposed in the TMP submitted before the hearing. The only bus that would serve the shelter is a commuter bus to Grosvenor Metro, which only stops if there is someone at the bus stop who waves the bus down. The bus runs only during the morning and evening rush hours, once every half hour. The civic association feels that a bus shelter is not needed at Tuckerman and Postoak and would not be useful to the neighborhood. Mr. Garson suggested that if a shelter were erected with advertising, it would benefit the advertiser more than the surrounding neighborhood.

Mr. Garson also spoke in some detail about general traffic concerns in the area of the subject property, and described his critique of the CLV standards that the County uses to evaluate traffic congestion. Mr. Garson contended that the CLV measurement works fine for traffic that flows at a steady pace, but is misleading at intersections where congestion forces cars to come to a dead stop. In addition, in considering development proposals, the County never evaluates traffic conditions on the interstate highways. Those highways are assumed to have capacity for more cars, when in fact they are increasingly in major gridlock.

Mr. Garson stated that the modifications proposed here would not have much effect on traffic, although a series of small projects can add up to real impact. His chief concern is with large traffic generators like the proposed expansion of Montgomery Mall.

2. 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. Mr. Manison aired his frustrations about noise from the tennis courts, while acknowledging that St. Andrew's has made a lot of progress in controlling the hours of usage and the amount of noise on the courts. Mr. Manison continues to request a solid fence between the trees that line the court and the chain link fence on the property line.

Mr. Manison testified that traffic has increased on his street in the mornings, although he does not know if it is associated with St. Andrew's. He queried whether the additional students proposed in this case would aggravate that problem.

Mr. Manison also mentioned that no bus runs along Postoak Road; the only bus in the area runs on Tuckerman Lane, and adding a new bus route would be a big problem for the neighborhood.

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 accessory programs as non-inherent adverse effects of the proposed modification. Ex. 17 at 11. Staff noted that Code §59-G-2.19(b) identifies accessory programs as potential elements of a private educational institution that are optional, and therefore non-inherent. The Hearing Examiner is inclined to agree with this interpretation, but that finding need not be reached in this case because the evidence supports the conclusion drawn by Technical Staff and the Petitioner’s land planner that because the accessory programs take place indoors, the visible activities connected with these programs are essentially limited to vehicles driving to the site and parking, and individuals walking from vehicles into the buildings, none of which impose any adverse effects on the neighborhood.

The evidence indicates that even with the increases proposed here, the student enrollment and the number of faculty and staff would be within levels considered inherent in the use.

The use of variable height fencing along Brumbaugh Field could properly be considered a non-inherent characteristic of the subject use, given that such fencing is not typical for a school field. However, expanding the fence to its full height during the soccer season as well as the lacrosse season would be beneficial to the community and would have no adverse effects.

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-2.19. Educational institutions, private.

(a) **Generally.** A lot, tract or parcel of land may be allowed to be used for a private educational institution if the board finds that:

- (1) the private educational institutional use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element which is incompatible with the environment and character of the surrounding neighborhood;

Conclusion: The proposed modification would result in a relatively modest increase in the amount of traffic, number of students and noise levels associated with St. Andrew's. The types of physical activity involved would not change. The school has adopted a detailed transportation management plan, which Technical Staff believes will result in efficient movement of cars onto and off campus and will prevent the queuing of cars on neighborhood streets. Moreover, the increased intensity of use would be buffered by the expansive 19-acre campus, ample setbacks and mature landscaping.

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 the 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 (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. As Technical Staff noted, St. Andrew's has operated at the site since 1998 without adversely affecting or changing the character or future development of the surrounding residential community, and there is no evidence to suggest that the proposed modification would have these effects.

(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. With the proposed modification, the pupil density would be approximately 26 students per acre, about a third of the density of 87 students per acre that may be permitted without special justification. The Hearing Examiner agrees with Technical Staff that with the detailed traffic management program in place, the highly efficient on-site circulation pattern, and adequate drop-off and pick-up space, the density proposed for this site is appropriate and compatible with the neighborhood.

- 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 only change to outdoor sports facilities that would be made by the proposed modification would be to increase the buffering provided for neighbors, by providing fencing to keep soccer balls on school property. Accordingly, the Hearing Examiner finds that this provision is satisfied for purposes of this application.

- (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: As limited by the recommended conditions of approval, the accessory programs would take place indoors and would be limited in their nature, their number of participants, and their hours. These limitations, as well as the size of the site, setbacks and landscaping, support a finding that these programs 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 limit of 120 participants on campus at any one time leaves a substantial margin of 60 parking spaces available to cover any occasional overlap between accessory programs and regular academic or athletic activities. The limitation on hours assures that these activities would not lead to uncontrolled intensification of the use. The evidence amply demonstrates that because of the campus circulation patterns, availability of off-site overflow parking, and detailed transportation management plan, the traffic generated by the accessory programs 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 present modification request should have been submitted in time to receive approval before April 22, 2004. The Petitioner's counsel proffers that this failure of compliance was inadvertent. In light of the favorable conclusions reached in the remainder of this report, and in light of the lack of complaints from the community about the accessory programs, the Hearing Examiner does not consider this timing failure to be sufficient reason to deny the modification.

(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 supports 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. The population density at full enrollment would be approximately 26 students per acre, well below the 87-students-per-acre density permitted in the Zoning Ordinance without special justification. The modification would involve no new structures, and would have only modest effects on the intensity and character of activities, traffic and parking. 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. The evidence supports Technical Staff's conclusion that St. Andrew's "has grown in a gradual, planned fashion in harmony with adjacent uses," and that the existing and proposed accessory programs have had and would have no adverse effects on abutting residential neighborhoods.

Two similar uses exist in the immediate vicinity, both public schools. The three schools have coordinated opening and closing times to avoid traffic conflicts, and one of the schools provides overflow parking for St. Andrew's during special events. Thus, their proximity does not make St. Andrew's or the proposed modification fail to be in harmony with the character of the neighborhood.

- (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 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 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 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. Local Area Transportation Review indicated that the proposed enrollment increase and increase in faculty/staff would not have an adverse effect on area roadway conditions, and that the local road network would be adequate to support the modification. Policy Area Transportation Review is no longer required under the Annual Growth Policy, as of July 1, 2004.

- (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 Technical Staff's conclusion 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. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. CBA-1389-F, 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) an increase in enrollment from 450 students to 495, to be phased in at a rate of no more than ten students per year for a period of four to five years; (2) a corresponding increase in faculty and staff to the equivalent of 116 full-time positions; (3) accessory programs taking place during the academic year; and (4) raising the fence along Brumbaugh Field from six feet in height to 12 feet during the Fall soccer season, be **granted** with the following conditions:

10. 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.
11. All terms and conditions of the approved special exception shall remain in full force and effect, except as specifically amended by this modification.
12. The maximum student enrollment under the subject special exception shall be 495. The increase of 45 students permitted by this modification shall be phased in at a rate of no more than tens students per year.
13. No additional enrollment increase shall be sought under this special exception during the five-year period immediately following approval of this modification.
14. The maximum number of faculty and staff permitted under the subject special exception is the equivalent of 116 full-time positions.
15. Vehicles associated with the school shall not be permitted to stack (queue) on off-site streets during morning drop-off and afternoon pick-up periods.
16. The holder of the special exception shall implement the Transportation Management Plan, Exhibit 23(a), attached hereto as an appendix.
17. Accessory programs may be conducted in connection with the subject special exception under the following conditions:
 - a. accessory programs must have some educational component, which may include arts education, athletics, or life skills such as driver education;
 - b. all accessory programs shall be conducted indoors;
 - c. the total number of participants on campus at any one time shall be limited to 120;
 - d. the maximum number of participants must not be achieved by a single program, but rather shall be divided among a variety of programs;
 - e. hours of operation for accessory programs would be limited to 5:00 p.m. to 9:30 p.m. Monday through Friday, and 9:00 a.m. to 6:00 p.m. on weekends and holidays;

- f. participants shall use only the front entrance to the campus, on Postoak Road, and shall park on campus; and
 - g. in the event that parking is unavailable on campus, participants shall park at Hoover Middle School.
18. Fencing along Brumbaugh Field where it abuts homes that front on Victory Lane may be extended to 12 feet in height during the Fall soccer season, from approximately mid-August to mid-November each year.

Dated: January 14, 2005

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner