

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



Application No. 20593 of Archdiocese of Washington, on behalf of the Shrine of the Most Blessed Sacrament, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the R-Use group requirements of Subtitle U § 203.1(m) to allow the continued use of an existing recreational playing field as a private school use in the R-1-B Zone at premises 3637 Patterson Street, NW (Square 1863, Lots 824, 825, and 826).

HEARING DATE: January 12, 2022

DECISION DATE: January 12, 2022

DECISION AND ORDER

This self-certified application was filed on September 2, 2021, by the Archdiocese of Washington, the owner of the property that is the subject of the application on behalf of the Most Blessed Sacrament, the custodian of the site (the “Applicant”). Following a public hearing, the Board voted to approve the application subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated September 27, 2021, the Office of Zoning provided notice of the application and of the public hearing to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Office of the Attorney General, the Office of State Superintendent of Education, the Department of Parks and Recreation, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 3 as well as the Chairman and three at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 3G, the ANC in which the subject property is located, Single Member District ANC 3G05, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on October 15, 2021 (68 DCR 10752).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 3/4G were automatically parties in this proceeding. The Board granted requests for party status in support of the application from Thomas Orgren and in opposition to the application from Clay and Edna Wellborn. (Exhibits 23, 26, 30 and 41.)

Applicant’s Case. The Applicant proposed to continue the private school use of a recreational playing field. The Applicant was represented by Kyrus Freeman and Christopher Cohen of

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Holland & Knight, and provided evidence and testimony in support of the application from Brian Stephenson, an expert witness in landscape architecture, Chris Kelley, the principal of the school, Mary Seidel, who manages the Applicant's current use of the playing field, and Father William Foley from the Shrine of the Most Blessed Sacrament.

OP Report. By memorandum dated December 30, 2021, the Office of Planning recommended approval of the zoning relief requested by the Applicant, subject to conditions previously adopted by the Board to mitigate the impact of the proposal by reducing noise, circulation, number of students, and operating hours. (Exhibit 27.)

DDOT. By memorandum dated December 30, 2021, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 29.)

ANC. By letter dated October 27, 2021, ANC 3/4G stated that, at its regularly scheduled and noticed public meeting on October 27, 2021, with a quorum present, the ANC approved a motion to advise the Board that it did not oppose the application for a special exception. (Exhibit 21.) The ANC was represented by ANC 3/4G Commissioner Connie Chang at the public hearing.

Party in Support. Thomas Orgren, who lives near the subject property, testified as a party in support of the application. The party in support asked the Board to approve the Applicant's continued use of the playing field, including allowing nearby neighbors to access the field on days when it was not used by the Applicant, citing the lack of adverse impacts and the importance of the playing field to the neighbors. (Exhibit 26A.)

Party in Opposition. Clay and Edna Wellborn ("Opposing Party") expressed concerns about noise and opposed the application unless the Applicant agreed to certain conditions. (Exhibit 23A.)

Persons in support. The Board received letters and heard testimony in support of the application from persons who generally cited the quality of the Applicant's current operation, including the absence of adverse impacts from the Applicant's past use of the playing field, the need for the proposed use, and the convenient location of the subject property.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the north side of Patterson Street, NW between Chevy Chase Parkway and Nevada Avenue with a street address of 3637 Patterson Street, NW. (Square 1863, Lots 824, 825 and 826).
2. The subject property is a rectangular lot, approximately 180 feet wide and 144 feet deep. The lot area is approximately 25,920 square feet.
3. The subject property is bounded by Patterson Street to the south, a 15-foot-wide public alley to the north, and private property to the east and west.

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4. The subject property is unimproved except for its configuration as a recreational playing field.
5. The Applicant operates a private school, Blessed Sacrament School, at 5831 Chevy Chase Parkway, NW (Square 1863, Lots 821 and 822). The private school is located approximately 140 feet to the west of the subject property and has been in operation since the 1920s.
6. In 2000, the Board granted a special exception approving an addition to the private school, subject to a number of conditions that, *inter alia*, limited enrollment to 600 students in kindergarten through eighth grade, limited staffing to 35 employees, established hours of operation (7:00 a.m. through 4:00 p.m., Monday through Friday), and required 24 parking spaces on-site. (See Application No. 16561 of The Archdiocese of Washington/The Shrine of the Most Blessed Sacrament, order issued May 17, 2000.)
7. In 2008, the Board granted a special exception allowing the Applicant to construct a new recreational playing field at the subject property. The application was approved subject to 11 conditions, which included a term of approval of three years and limited the use of the field in terms of number of students and time of day, and imposed requirements for landscaping, among other things. (See Application No. 17718 of the Archdiocese of Washington, on behalf of the Shrine of the Most Blessed Sacrament, order issued March 6, 2008.)
8. In 2011, the Board granted another special exception allowing the Applicant to continue use of the subject property as a playing field, subject to 11 conditions that were substantially similar to the previously adopted conditions except for a one-hour extension in the hours of operation and a term of approval of 10 years. (See Application No. 18236 of the Archdiocese of Washington, on behalf of the Shrine of the Most Blessed Sacrament, order issued September 16, 2011.)
9. The Applicant now proposed to continue use of the playing field consistent with the conditions of approval previously adopted by the Board except for the elimination of a term of approval. The Applicant requested a special exception to allow use of the playing field between 9:00 a.m. and 6:30 p.m., but not after sunset, for a maximum of 90 students at any given time.
10. Consistent with prior approvals, the Applicant installed a five-foot-high fence around the perimeter of the playing field as well as security floodlights and a landscape buffer around the sides of the subject property. The Applicant now proposed to replace the existing five-foot fence with a seven-foot fence around the perimeter of the entire playing field site.
11. The playing field is accessible through two gates, one on Patterson Street and one in the public alley. The primary means of access to the field for students is through the alley.

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Access to the field from the Patterson Street entrance is provided only to students in kindergarten. The gates to the field are locked when the field is not in use.

12. The Applicant proposed to install either permanent or moveable noise abatement measures (e.g., netting, padding, or comparable material) to mitigate noise disturbances. The use of amplifiers, generators, compressors, or other loud devices will not be permissible on the playing field.
13. The Applicant will not host major athletic or sporting events or install any permanent recreational structures on the playing field.
14. The Applicant may allow use of the recreational field by households within a specified nearby area (Squares 1862, 1863 and 1864, and lots located in Square 1999 that front on Patterson Street, NW) on weekend days or other times when school is not in session, subject to rules and restrictions imposed by the Applicant.
15. The Applicant will be responsible for maintenance of the playing field, including maintenance of the landscaping, the watering of any newly installed trees, and the removal of trash and debris from the field and the adjacent sidewalk and alley.
16. The Applicant will provide neighbors and the affected ANC with the name and contact information of a person formally designated by the Applicant as the point of contact regarding use, operation, and maintenance of the playing field.
17. The lot abutting the subject property to the west is improved with a detached principal dwelling owned by the party in opposition to this application.
18. Lots fronting on Patterson Street to the east of the subject property are improved with detached principal dwellings.
19. Properties to the north of the subject property, across the public alley, contain detached principal dwellings. Several of the dwellings have accessory garage structures in their rear yards, accessible from the alley.
20. The surrounding neighborhood character is predominantly low-density residential use, consisting of detached dwellings.
21. The subject property is located in a Residential House (R) zone, R-1-B. The Residential House zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 100.1.) The provisions of the R zones are intended to: (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; (b) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of

housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; (c) allow for limited compatible accessory and non-residential uses; (d) allow for the matter-of-right development of existing lots of record; (e) establish minimum lot area and dimensions for the subdivision and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 100.2.)

22. The purposes of the R-1-B zone are to (a) protect quiet residential areas now developed with detached dwellings and adjoining vacant areas likely to be developed for those purposes and (b) stabilize the residential areas and promote a suitable environment for family life. (Subtitle D § 300.1.) The R-1-B zone is intended to provide for areas predominantly developed with detached houses on moderately sized lots. (Subtitle D § 300.3.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under the R-Use group requirements of Subtitle U § 203.1(m) to allow the use of a recreational playing field as a private school use in the R-1-B zone at 3637 Patterson Street, NW (Square 1863, Lots 824, 825, and 826). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR Subtitle X § 901.2.)

Pursuant to Subtitle U § 203.1(m), a private school use is permitted in the R-1-B zone only as a special exception, subject to requirements including that: (1) the private school must be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions; and (2) ample parking space, but not less than that required by the Zoning Regulations, must be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.

Based on the findings of fact, the Board concludes that the Applicant has satisfied the requirements for a special exception consistent with Subtitle U § 203.1(m), subject to the conditions adopted in this Order. The use of the Property as a recreational playing field will not create any unreasonable conditions that would be objectionable to neighboring properties or the surrounding community, and therefore satisfies the first prong of Subtitle U § 203.1(m). While the playing field is located in a low- to moderate-density residential area, the Applicant will utilize the site in accordance with conditions that will limit its impact on neighboring properties, including a cap on the number of students on the field at one time and limited hours of operation. The field will be used during daytime hours only and its use will be limited to 90 students at any given time. The field will not be used for any major athletic or sporting events or used by organized groups that are not part of the Applicant's private school program. The Applicant will continue to implement policies

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requiring oversight of any planned field activities. This includes requiring its staff to moderate any potential noise and any disturbance resulting from playground activities. The Applicant will maintain the field, including the landscaping, the watering of newly installed trees, and the removal of trash and debris from the field and the adjacent sidewalk and alley.

Consistent with conditions previously adopted by the Board, the Applicant made physical improvements to the subject property to mitigate any potential impacts on neighboring properties arising from the private school's use of the playing field. These included the planting of a landscape buffer, the installation of a five-foot-high fence around the perimeter of the subject property, and the installation of security floodlights. In this proceeding, the Opposing Party requested the installation of a 10-foot chain-link fence to discourage climbers. To address this concern, the Applicant proposed to replace the existing fence with a new fence seven feet high, permissible as a matter of right, with an automatic lock. The Board took into consideration the testimony and letters in support from nearby neighbors opposing the suggestion of increasing the height of the fence around the playing field as a taller fence would be an eyesore, especially since climbers have not been a frequent problem in the past. Accordingly, the Board concludes that a seven-foot-high fence will be sufficient to mitigate concerns about people climbing the fence.

The Opposing Party also expressed concerns associated with noise from balls hitting the fence. The Applicant proposed to mitigate the impact by installing noise abatement measures, such as netting or padding, especially along the west lot line abutting the residence of the Opposing Party, which the Board concludes will be sufficient to avoid the creation of noise impacts. The potential for adverse noise impacts is further reduced because the Applicant will not utilize amplifiers, generators, compressors, or other loud noise devices at the playing field. The Board notes the testimony of the party in support, whose residence is located across the alley from the playing field, that the "noise of children" on the playing field, whether the Applicant's students or neighborhood children, has been "easy to live with" and "minimal," "never ... disruptive." (Exhibit 26A.)

The Opposing Party argued that the recreational field should not be available for use by anyone other than the Applicant's private school use. To the contrary, nearby neighbor testimony showed that some neighbors view the playing field as a benefit to the neighborhood as it provides a nearby space for their children to have fun while creating a neighborhood community. Neighbors stated that they welcomed the life engagement of the children and did not find the noise to adversely impact their daily lives. The Board concludes that the Applicant's proposal – allowing use by close neighbors subject to limits – will not create objectionable conditions for neighboring properties. The Applicant will limit use of the playing field during non-school hours by keeping the gates to the playing fields locked when the field is not in use by the private school or other authorized party, and by limiting weekend usage to households living in a relatively small area.

The Opposing Party requested the presence of a security guard on the field to address any issues that arise as well as trespassers. The Applicant objected, stating that there have been no major issues with the use of the playing field, especially after 6:30 p.m. The Applicant reiterated the parameters the Board set out in the previous orders to address any safety concerns and proposed

to include a new gate and a point of contact for communication regarding the field. The Board does not find that a security guard is necessary, as the Opposing Party did not demonstrate a need based on past use or expected future activity at the recreational field. Instead, the Board concludes that any concern about objectionable use of the recreational field will be adequately addressed by adoption of the condition in this Order requiring the Applicant to designate a point of contact regarding use, operation, and maintenance of the field.

The Board concurs with the Applicant that a term of approval of the requested special exception is not needed based on the history of the private school use of the subject property as a recreational playing field, the conditions of approval adopted in this Order, and in light of the recommendation of the Office of Planning and the lack of objection from the ANC. The Board agrees that the Applicant has demonstrated a consistent ability to effectively manage the playing field since it was initially approved as a private school use in 2008. The Applicant will continue to use the playing field consistent with its past use and will implement additional measures to mitigate any adverse impacts, including the designation of an on-going point of contact for neighbors. OP supported the removal of the term on the grounds that the concerns of the neighbors have been sufficiently addressed. In OP's view, the Applicant has made a reasonable effort to work with the neighbors to resolve some of the outstanding issues, such as the fence height and balls bouncing off the fence, and made physical improvements to the subject property to further mitigate any impact on neighboring properties. The Board also notes that ANC 3/4G did not state any concern related to the elimination of a term of approval. For the reasons discussed above, the Board concludes that the continued private school use of the recreational playing field, subject to the conditions of approval adopted in this Order, will not tend to cause adverse impacts on the use of neighboring properties and therefore concludes that a term of years is not required in connection with the approval of the relief requested in this application.

Approval of the requested special exception also requires that ample parking space, but not less than that required by the Zoning Regulations, must be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile. (Subtitle U § 203.1(m)(2).) The Board concludes that the Applicant has met this requirement. The subject property does not provide any vehicle parking, but no students, teachers, or visitors are likely to come to the site by automobile. The students arrive on foot, and non-school use of the recreational playing fields is limited to households in the immediate vicinity. The subject property does not host major athletic or sporting events, and is not used by organized groups that are not part of the Applicant's program. For the same reasons, the Board concurs with OP that no additional parking is needed to accommodate the playing field.

The Board concludes that approval of the application, subject to the conditions adopted in this Order, will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as is required for approval of the application under Subtitle X § 901.2. The private school use of the playing field will be consistent with the purpose of an R-1-B zone to "stabilize the residential areas and promote a suitable environment for family life." (Subtitle D § 300.1.)

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For the reasons discussed above, the Board concludes that approval of the application, subject to the conditions adopted in this Order, will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, consistent with the requirements of Subtitle X § 901.2. The private school use of the subject property as a recreational playing field will not create any adverse conditions for any nearby residences because the recreational field will be subject to limits on its use both in terms of number of people and time of day, and will be adequately buffered with landscaping and secured with a fence and locked gates. Any potential noise impacts will be minimized through the implementation of noise mitigation measures and by limiting the use of the recreational field primarily to students, at most 90 at a time and subject to supervision by the Applicant's staff. The playing field will not create adverse impacts related to lighting because its use will be limited to daytime hours and will not extend to major athletic or sporting events.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) For the reasons discussed above, the Board agrees with OP's recommendation that, in this case, the application should be approved subject to conditions intended to mitigate any potential adverse impacts of the proposal by reducing noise, number of students, and operating hours.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)) In this case, ANC 3/4G approved a motion to advise the Board that it did not oppose the application for a special exception, without stating any issues or concerns about the application.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under the R-Use group requirements of Subtitle U § 203.1(m) to allow the private school use of an existing recreational playing field in the R-1-B zone at 3637 Patterson Street, NW (Square 1863, Lots 824, 825, and 826). Accordingly, it is **ORDERED** that the application is **GRANTED**, subject to the following **CONDITIONS**:

1. The recreational playing field may be used between 9:00 a.m. – 6:30 p.m., but in no event shall the field be used after sunset.
2. No more than 90 students shall be permitted to use the field at any given time.
3. The field shall be landscaped in accordance with the Site Plan included as Exhibit 39C in the record of this case. The Applicant shall have the flexibility to substitute comparable planting based on availability, planting season and specific requests from adjacent neighbors. Within twelve (12) months of the effective date of this Order, the Applicant shall replace the existing five (5)-foot fence with a seven (7)-foot fence around the perimeter of the entire playing field site.

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4. The primary means of access to the field for students shall be the alley entrance. Kindergarten students shall have flexibility to use either Patterson Street or the alley entrance.
5. Gates shall be kept locked whenever the field is not in use by the school or other authorized party.
6. No permanent recreational structures such as baseball backstops, soccer goals, or basketball hoops shall be constructed on the field. Within twelve (12) months of the effective date of this Order, the Applicant shall install either permanent or moveable noise abatement measures (e.g., netting, padding, or comparable material) to mitigate the sound of balls hitting the fence along the western property line.
7. The field shall not be used for major athletic or sporting events, nor shall it be used by organized groups that are not a part of the school's educational and religious program.
8. No amplifiers, generators, compressors, or other loud devices shall be used by the school on the field.
9. The school shall be permitted, but is not required, to use the field or make the field available to neighboring households located in Squares 1862, 1863 and 1864, and lots located in Square 1999 that front on Patterson Street, NW, during the hours of 10:00 a.m. and 6:30 p.m. on weekends, holidays or other times when school is not in session, subject to any rules and restrictions imposed by the school or parish.
10. The school shall be responsible for maintenance of the field, including maintenance of the landscaping, the watering of any newly installed trees, and the removal of trash and debris from the field and the adjacent sidewalk and alley.
11. The school shall provide to neighbors and the affected ANC the name and contact information of a person formally designated by the school as the point of contact regarding use, operation, and maintenance of the field.

VOTE: 4-0-1 (Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller to APPROVE; Frederick L. Hill not present, not participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: September 1, 2022

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.