

March 4, 2011

**TO:** Planning Commission Members  
**FROM:** Christopher Leswing, PP, AICP, Assistant Director, Planning  
**SUBJECT: PRELIMINARY LAND DEVELOPMENT PLAN & WAIVER OF LAND DEVELOPMENT, 401 City Avenue, 35 & 39 Berwick Road and 480 N. Latches Lane, Saint Joseph's University, Merion, SD# 3608, Ward 12.**

### Proposal

The applicant, Fred Fromhold, on behalf of Saint Joseph's University, is seeking *Preliminary Land Development Plan* approval for improvements to the Maguire Campus as authorized by Zoning Hearing Board (ZHB) Order 4191 dated November 18, 2010, a *Waiver of Land Development* to install the field hockey field along City Avenue prior to recording the Final Plan and approval to construct a stone wall in the front yard setback in excess of four feet as permitted by Zoning Code Section 150-130.

### Preliminary Land Development Plan improvements include:

- Consolidation of 35 Berwick Road (.6 acres), 39 Berwick Road (.7 acres) and 401 City Avenue (35.4 acres);
- Installation of an NCAA regulation baseball field, softball field and field hockey field;
- Demolition of a portion of the detached garage located behind Gabriel Hall at 460 N. Latches Lane;
- Demolition of the detached garage at 35 Berwick Road;
- Demolition of a maintenance building to the northeast of 35 Berwick Road;
- Demolition of the former squash court building;
- Reconfiguration of pedestrian pathways throughout the site including construction of a new pedestrian entrance on City Avenue across from Cardinal Avenue which will also serve as an emergency vehicle access;
- Installation of extensive landscaping above and beyond Township Code requirements;
- Installation of a series of three linear stone walls measuring a maximum of eight feet and seven inches (8'.7") along City Avenue across from Cardinal Avenue;
- Installation of signage along the proposed wall along City Avenue;
- Designating 78 parking spaces as future reserve parking on the Merion campus;
- Installation of a 17,500 square foot temporary stoned construction staging area on the intramural field.
- Construction of three (3) underground stormwater systems;
- Installation of pedestrian pathway and parking lot lighting throughout the campus;
- Installation of three (3) rain gardens and a variety of vegetative swales throughout the campus; and
- Minor reconfiguration of the existing parking area along N. Latches Lane.

The following new amenities will be installed for both the baseball and softball fields:

- Artificial turf
- Two dugouts
- Bleachers for 400 spectators at the baseball field and bleachers for 200 spectators at the softball field
- A press box and public address system
- Two bull pens
- A five foot tall black chain link fence in the outfields
- Scoreboards
- A batting cage to serve both fields

The baseball field will also have a 25 foot tall ball stop safety netting system along N. Latches Lane.

The field hockey field will have artificial turf, a 10 foot tall ball stop safety netting system behind each goal post, bleachers for 200 spectators, a public address system and a scoreboard.

**Waiver of Land Development Improvements Include:**

- Installation of the field hockey field prior to recording the Final Plan; and
- Installation of the associated ball stop safety netting, bleachers, scoreboard and public address system at the field hockey field.

The applicant indicated to staff that they would like to install the field hockey field so it will be ready for use by the end of August 2011. Given the time constraints, staff recommended the applicant seek a Waiver of Land Development for this aspect of the project to enable it to proceed subject to the issuance of a Runoff and Erosion Control Permit prior to the recording of a Final Plan, which is more time consuming. The applicant would still record a Final Plan showing all of the proposed improvements but processing a portion of the proposal as a Waiver of Land Development, which is a waiver of the formal land development process not of Code requirements, would enable the applicant to meet their deadline.

**Plan Submission**

The proposal is illustrated on the accompanying set of plans that includes forty-four (44) sheets, prepared by Momenee & Associates, Inc. dated June 20, 2008, last revised February 18, 2011. The plan set also includes landscape and lighting plans prepared by Glackin Thomas Panzak. A Historic Resource Impact Study prepared by Civic Visions dated June 24, 2008 and a Campus Traffic Impact Study prepared by Orth-Rodgers Associates, Inc. dated June 19, 2008 was also submitted with this application.

**Property Description**

The former Episcopal Campus, now the Maguire Campus, encompasses approximately 36.8 acres. The campus is bound by City Avenue to the southeast, Berwick Road, single-family residences and Raynham Road to the southwest, N. Latches Lane to the northwest and the Barnes Foundation and Lapsley Lane to the northeast. Across City Avenue are institutional properties in Philadelphia, across Berwick Road are single-family residences and the York Lynne Manor condominium building, across N. Latches Lane are single-family residences and a satellite property owned by Riverbend and across Lapsley Lane are properties owned by the University. Five (5) properties listed on the Historic Resource Inventory are located adjacent to the subject parcel.

A supplemental memo outlining the background of this application and changes made to the plan since 2008 is attached.

**Summary of Bulk, Area & Parking Requirements**

The property is located in the RAA/RA zoning district. The property conforms to building area requirements and is nonconforming to building height and side and rear yard setbacks. The application is non-conforming to impervious surface and this application does not increase that non-conformity (20% permitted, 32.1% existing, 32.1% proposed). A detailed description of parking requirements is provided in the supplemental information but staff notes that the ZHB approved the applicant's request to hold 78 parking spaces adjacent to McShain Hall in reserve. These spaces will be installed at such time as determined necessary by the Zoning Officer within a ten year period from August 2008.

Parking Calculations	
Code Required Parking	999
ZHB Waiver	-499
ZHB Variance	-153
Reserve Parking	-78
Parking Required by ZHB	347
Parking Provided	347

## **Montgomery County Planning Commission Review**

In their review the County noted that the Zoning Hearing Board decision legally resolved issues with the proposed development and neighbors' concerns with the activity level and placement of the athletic facilities. Additionally the County noted concerns with the proposed stormwater management system as it related to neighboring properties on Berwick Road since this was an issue in the past. The County recommended that the Township ensure that efforts are being made to reduce the overall runoff from the proposed improvements.

## **Issues**

### **1. Balancing Institutional Needs While Maintaining the Existing Residential Character of the Neighborhood**

Throughout the Land Development process for this application staff and the Ward Commissioner have been engaged in an on-going dialogue with neighbors and the University to identify and resolve potential issues associated with the proposed development and mitigate any negative externalities generated by the permitted expansion. Over the last month, staff organized three meetings with the applicant and neighbors to discuss issues and concerns expressed by adjacent property owners. Staff commends all parties for their thoughtful and constructive participation in these discussions. Many of the issues raised by neighbors have been addressed through conditions of approval. While many specific issues will be elaborated upon below, staff feels that it is important to remind all parties that the central planning challenge of this application is to find an appropriate balance between the qualitative changes to the use of the campus while maintaining the existing estate like character of the surrounding residential neighborhood. Toward that end, staff has concentrated our review on identifying and reducing potential negative externalities from the new development in addition to preserving the best features that define the institutional/residential boundary.

In moving forward, staff encourages the applicant to continue working with the neighboring community to develop solutions for ongoing issues affecting the neighborhood. Staff recommends a condition of approval that if the Merion Civic Association agrees to form a committee to meet regularly to address issues related to construction, operations and ongoing use of the Maguire Campus then the applicant shall agree to participate with this committee.

### **2. Noise**

#### **Public Address Systems**

The applicant received approval from the ZHB to install public address systems (PA systems) at the baseball field, softball field and the field hockey field. The ZHB decision established the applicant's right to use the systems and conditioned the approval upon the following limitations:

- Use is limited to player lineups at the beginning of games, substitutions during games, the national anthem, and emergency announcements;
- Use is limited to Saint Joseph's University baseball, softball and field hockey varsity games and varsity tournaments in which Saint Joseph's University teams are participants;
- Will not be used for any other sporting events or general events on campus
- Speakers will be located where shown on the plans and amended plans; and
- Speakers for the baseball field will be calibrated to a maximum of 74 dB in the bleachers or such other lower level as may prove in the future to be necessary to insure that the additive effect of the crowd noise and the use of the PA system does not result in a violation of the Noise Ordinance at the Maguire Campus property line.

Staff recommends the applicant perform a post-development sound study that includes noise from the proposed public address systems and noise associated with use of the athletic fields that is regulated by the

Township Code. The condition requires adjustments to be made as required to comply with the Township Code.

### **Batting Cage**

Staff is concerned with noise emanating from the proposed batting cage located between the baseball field and Berwick Road. Staff recommends the applicant either enclose the batting cage structure with walls and a roof or add sound attenuation to or near the structure to decrease noise levels.

### **3. Stormwater Management**

The former Episcopal campus contains minimal stormwater management. The applicant is not increasing the existing impervious coverage and indicated that the improvements to the campus will result in approximately a 7% reduction in runoff for the 100 year storm which is equivalent to the removal of one acre of paving from the campus. The Township Engineer has confirmed that the proposed improvements will significantly reduce the rate that runoff leaves the property.

The applicant is proposing the following stormwater improvements with this application:

- Stormwater management systems beneath each turf field
- Three new underground stormwater systems, two near the baseball field and one near the softball field
- Areas of porous paving
- Three rain gardens
- Several vegetative swales

Property owners downgrade from the University have expressed concerns regarding the adequacy of the proposed stormwater management systems. Specifically, York Lynne Manor, a 30 unit condominium building, located at the corner of Berwick Road and City Avenue adjacent to the Maguire Campus, has experienced ongoing stormwater related issues. The causes of these issues are not completely understood, although the location of their building and the grading surrounding the building are likely contributing factors. Staff was provided with a study that was prepared by a structural engineer on behalf of some of the neighbors which indicates that the proposed improvements will exacerbate the current situation. However, after reviewing the study the Township Engineer feels that the proposed improvements to the campus will sufficiently improve the downgrade situation. During meetings with neighbors it was suggested that the applicant consider providing additional stormwater management controls off-site to improve the situation but the Township has no authority to require off-site stormwater improvements.

### **Additional Controls**

In his review the Township Engineer indicated support for the Waiver of Land Development for the field hockey field if an additional stormwater system or some other means of added control, particularly at the low point of campus near Berwick Road is provided. Staff has included a condition of approval that requires the Berwick Field stormwater facility to be redesigned or an additional system be added that controls the post development five year rate of runoff to the predevelopment two year peak rate considering all disturbed areas for the baseball and softball field phases. Staff feels that providing this additional stormwater management would further improve off-site stormwater conditions.

### **Offsite Stormwater Infrastructure**

The plans show an existing underground stormwater pipe located on the applicant's property that travels beneath Berwick Road onto an adjoining privately owned property. However, the terminus and condition of the pipe is not known. Subdivision and Land Development Code Section §135-17.B2 requires utilities, including storm drains within 200' feet of the property to be shown on the plan. Staff notes that since the storm drain is underground and on private property it may not be feasible for the applicant to provide the

location of the portion of the pipe that is not on their property. Staff notes that if the applicant is not permitted access to the adjoining private property to investigate the location of the pipe then they will not be required to provide this information.

#### **4. Landscape Plan**

This plan presents a tremendous opportunity to enhance and renovate the landscaping around the perimeter of the entire Maguire campus to meet the immediate and long-term needs of both the University and the surrounding neighborhoods. Staff feels strongly that the landscape plan should balance the re-establishment of a majestic, institutional edge defined by a regular rhythm of hardwood shade trees, evergreen hedges and metal estate fencing with additional masses of large evergreens intended to screen views and buffer sounds from the campus.

Staff notes that the landscape plan has been significantly revised by the applicant to address the majority of neighbor concerns and that the landscape plan contains far more plant material than is required by Code. Staff also notes that the Zoning Hearing Board Order included a condition requiring that:

*‘All landscaping for the proposed improvements shall, subject to the approval of the BOC and Township staff, be as substantial and expeditiously –established as possible to provide an effective buffer’.*

To that end, staff has recommended several general conditions of approval that require the applicant to work with staff on the landscape plan to address specific concerns, such as species selection, that may be raised during the public review process in addition to recommended conditions to address staff’s concerns.

Staff notes that many of the existing trees on the property have reached the end of their mature life and are in need of dead wood pruning and devining. It may also be beneficial for the applicant to selectively remove existing trees that are clearly at the end of their life to create space to plant new healthy trees. Additionally, staff has included a condition requiring the applicant to submit a landscape maintenance plan to ensure that the landscaping provided is properly maintained.

#### **N. Latches Lane**

The landscaping challenge along N. Latches Lane is to appropriately screen the proposed baseball field and netting from adjacent properties while not creating a wall of planting that interrupts the streetscape and the existing rhythm of street trees. Staff feels that this can be achieved by moving the proposed shrubs further back from the street and away from the proposed and existing street trees, to create a more layered look. Additionally, the evergreens that are grouped around the proposed netting poles are shown to be 10’-12’ feet in height. Staff recommends that the center tree in front of each pole be upsized to 12’-14’ feet in height to ensure that a sufficient screen is immediately established.

The applicant has indicated plans to install an estate fence along N. Latches Lane in the location of the baseball field. Due to budgetary restrictions the applicant has not proposed the fence installation as part of this project but staff has included a condition that requires the applicant to remove the existing chain link fence along N. Latches Lane and install an estate fence with a minimum height of 4’ feet within three years of completion of the project.

Additionally, staff has recommended a condition that requires the applicant to work with staff to provide additional landscaping along the eastern portion of N. Latches Lane, including closing gaps of missing street trees and providing shrubs to screen the parking lot adjacent to Duperreault Hall (356 N. Latches Lane, formerly Ryan Hall).

#### **Berwick Road**

The applicant has proposed a significant amount of landscaping along the proposed softball field and Berwick Road. Currently the landscaping varies in width from 10' to 20' feet. Staff recommends that the applicant increase the width to a minimum of 15' feet and wider where feasible. Similar to the N. Latches Lane edge, staff feels that the proposed landscaping along Berwick Road should continue the cadence of street trees and should provide a more layered look by locating shrubs and evergreens to the rear of the street trees. Staff notes that there are swales proposed adjacent to the field but feels that plant material can be planted in the swales to increase the width of the landscaped area.

Additionally, during the on-site meeting with neighbors, staff noticed a fair amount of litter along Berwick Road. Staff has included a condition that requires the installation of trash cans adjacent to the bleachers and at the gate on Berwick Road to reduce the amount of litter.

### **Raynham Road**

Neighbors along Raynham have expressed concern regarding the security and privacy of their properties given their proximity to the proposed baseball field bleachers. The applicant has provided additional landscaping along the eastern property boundary in the vicinity of the proposed baseball field as well as around the proposed baseball bleachers. Additionally, the applicant has agreed to provide a 6' foot high board on board fence along the property boundary of 71 and 61 Raynham Road. Staff feels that the additional landscaping as well as the proposed fence will both provide additional screening and inhibit access to these properties.

### **Field Hockey Field**

The homes on Berwick Road are at a much lower grade than the proposed field hockey field. In an effort to provide additional screening, the applicant is proposing additional plantings at the western edge of the field. Staff has included a condition that if feasible, without harming the existing mature trees, a 1-3 foot high berm shall be installed at the western end of the field hockey field and that the proposed landscaping be located on top of the berm.

### **Rain Gardens**

At their February 22, 2011 meeting, the Environmental Advisory Council (EAC) reviewed the landscape plan and recommended that additional warm season grasses and shrubs be provided in the proposed the rain gardens. Staff has included a condition that requires the applicant to work with the EAC to finalize plant material for the proposed rain gardens.

### **Ball Netting**

The applicant proposes to install ball netting 280 feet long for the baseball field, mounted on five 25' foot high poles located outside of the N. Latches Lane front yard setback (left field of the baseball field). The netting is proposed to be in place from mid-February through mid June and from September 1<sup>st</sup> through November 1<sup>st</sup>. Staff notes that the use of ball netting is typical for athletic fields that are adjacent to public streets in order to keep balls from injuring pedestrians and/or damaging vehicles and property. Neighbors have communicated to staff that they feel the netting is unnecessary and that the need for netting should be documented. Staff notes that the ZHB decision established the applicant's right to install the proposed ball netting and staff feels that the netting is necessary for the reasons noted above. The landscaping of the nets is addressed above.

## **5. Traffic, Circulation and Parking**

### **Berwick Road**

Neighbors have expressed concern regarding increased traffic on Berwick Road. Because much of the Maguire campus consists of estate buildings, students and campus visitors have difficulty differentiating between University buildings and private residences. Berwick Road is a private street and staff recommends that the applicant install a "No Outlet" sign at the corner of Berwick Road and City Avenue. The applicant

should explain how they plan to utilize the Berwick Road access, which is gated, and how they will control parking and access through this gate.

### **Raynham Road**

Staff notes that the zoning decision established parking requirements for the campus but neighbors have communicated concerns to staff regarding students parking along Raynham Road in the evening. Currently there is a two hour parking restriction from 8 a.m. to 6 p.m. The Director of the Parking Services Department stated that neighbors located on Raynham Road can file a petition to extend the existing two hour parking restriction from 6 p.m. until 8 p.m. Staff notes that restrictions such as these require residents to purchase annual stickers to exceed the two hour limit and that only one sticker is available per household. Staff advises neighbors to consider these possible limitations prior to filing a petition. Staff notes that any petition would be acted upon by the Board of Commissioners separate from the current land development process. As mentioned above, staff encourages the applicant to continue working with the neighboring community to develop solutions for parking issues.

## **6. Construction**

Staff requests that the applicant provide the neighbors with details regarding the proposed construction process, including whether construction will occur on weekends, the anticipated hours that construction will occur, how construction vehicles will access the campus, and the duration of construction. Staff notes that under the Township Code, construction may occur at any time Monday through Sunday. Staff notes that the generation of noise as a result of the construction is limited to between the hours of 8 a.m. and 6 p.m., Monday through Sunday. Staff has included a condition that requires that the applicant repave Berwick Road if it will be used for construction access to the site.

## **7. Lighting**

Since the applicant occupied the campus prior to obtaining land development approval, some new lighting has already been installed for safety and security purposes. The overall lighting plan was reviewed and determined to be Code compliant by Township staff prior to any new lighting being installed. The remaining approved lighting will be installed as part of this application. Staff believes that the approved lighting plan combined with the proposed landscaping plan will sufficiently reduce any offsite light trespass from these additional improvements.

## **8. Fencing and Walls Along City Avenue**

The plan shows a stone wall measuring 148' feet in length in the front yard setback along City Avenue adjacent to the intersection at Cardinal Avenue. The proposed wall varies in height, with the majority of the wall measuring 5' feet in height and the stone pillars measuring 8'7" feet in height. Zoning Code Section §155-130 prohibits the erection of solid fences or walls higher than four feet in a front yard setback. However, the Zoning Code allows the Board of Commissioners to approve a fence or wall that is higher than four feet when requested in conjunction with the approval of a land development plan and said fence or wall meets a significant need. The Planning Commission should provide a recommendation to the Board of Commissioners on this wall.

There is currently a 12 foot high chain link safety fence located along City Avenue in the vicinity of the field hockey and intramural sports fields. Staff feels that the existing chain link fencing is not aesthetically pleasing and would prefer to see an estate fence along the frontage to present a unified frontage along City Avenue. Staff has recommended a condition that if the existing 12' foot high chain link fencing is removed then the applicant shall install an estate fence consistent with existing fencing along City Avenue and may also install safety netting up to 12 feet high.

## 9. Historical Commission Recommendation

On February 24, 2011 the applicant appeared before the Historical Commission. The Commission determined that the proposed improvements have little or no impact on the current listed historic resources on the campus and the proposed partial demolition of the carriage house associated with Gabriel Hall (formerly Wetherill House) and the demolition of the garage associated with 35 Berwick Road also have little or no impact on the existing listed historic resources on the campus. The Commission further recommended that the applicant consider adding the following buildings on the campus to the Inventory:

- Gabriel Hall (470 N. Latches Lane, formerly Wetherill House);
- Henry Quinn Hall (394 N. Latches Lane, formerly the Barnes House);
- Paris Dining Hall (440 N. Latches Lane, formerly the Old Gymnasium);
- Fine Arts West (424 N. Latches Lane, formerly The John Gilmore Steam Plant and Carriage House);
- Raynham Hall (480 N. Latches Lane, formerly Rorer House); and
- 35 & 39 Berwick Road.

Regarding the proposed entry wall along City Avenue, the Commission recommended that the applicant select landscaping that will not block the view of the Campus Commons building. Staff has included this as a condition of approval.

The applicant currently uses 35 & 39 Berwick Road and Raynham Hall (480 N. Latches Lane) to house Jesuits. Staff notes that the placement of these residential buildings on the edge of the property helps to buffer the surrounding neighborhood from the campus and creates an appropriate transition. The applicant has not expressed any interest in changing the use of these buildings however, should the University decide to demolish them in the future; staff has recommended the applicant install an appropriate landscaped buffer in their place.

## 10. Waivers

The Waiver of Land Development for the field hockey field requires a waiver from Subdivision & Land Development Code Section 135-22, to permit the field to be constructed prior to recording a Final Plan.

Staff supports the waiver provided that the Final Plan that is ultimately recorded includes the field.

## 11. Action

The Planning Commission shall make recommendations on the following items:

- ***Preliminary Land Development Plan*** approval for improvements to the Maguire Campus including the construction of a stone wall in the front yard setback of City Avenue that exceeds four feet.
- ***Waiver of Land Development*** to allow the field hockey field to be built prior to recording a Final Plan.



*March 4, 2011*

**TO:** Planning Commission Members  
**FROM:** Christopher Leswing, PP, AICP, Assistant Director, Planning  
**SUBJECT: SUPPLIMENTAL BACKGROUND FOR PRELIMINARY LAND DEVELOPMENT PLAN & WAIVER OF LAND DEVELOPMENT, 401 City Avenue, 35 & 39 Berwick Road and 480 N. Latches Lane, Saint Joseph's University, Merion, SD# 3608, Ward 12.**

### **Background**

On March 16, 2006, the Zoning Hearing Board (ZHB) granted a special exception to the University to use the campus for educational purposes. The ZHB also granted a special exception to allow the University to immediately use of one of the athletic fields and the music building. They also granted a waiver of 50% of the required parking spaces. The number of required spaces was calculated to be 999 spaces, resulting in a waiver of 499 spaces. Of the remaining 500 required spaces, 319 exist and the University re-striped the existing Dietrich lot resulting in 28 additional spaces for a total of 347 parking spaces. The Board granted a variance for the remaining 153 spaces conditioned upon the University paving a 78 space parking lot adjacent to McShain Hall on the University campus that had formerly been approved to be held in reserve by the ZHB, if it is determined that these spaces are needed within a ten year period after the University takes possession of the property.

The ZHB extended the expiration of the relief for six months through December 31, 2012. During their testimony, the University indicated that they will not construct any new buildings on the campus nor will it use any part of the property for student dormitories or residences. They also indicated that all existing residences will remain as residences for use by faculty and staff of the University.

On May 7, 2008, the Lower Merion Township Board of Commissioners approved a Tentative Sketch Plan for the project and in June 2008 the applicant submitted a Preliminary Land Development Plan for the project. In August 2008, the University officially purchased the site, which consists of four separate parcels totaling 36.8 acres, from Episcopal Academy. The University began using the property for the fall 2008 semester.

In early September 2008, the Preliminary Land Development Plan was discussed by the Planning Commission but no action was taken. It was during this time that concerns were raised by neighbors that the Preliminary Land Development Plan proposed to expand the use of the property over what was previously presented to and approved by the ZHB. Essentially in 2006, the University testified to the ZHB that they would use the property substantially the same as it was used by Episcopal Academy and that there would be no new buildings or other physical changes to the property. The neighbors were concerned with the fact that with the submission of the Preliminary Land Development Plan the University now proposed to install numerous amenities that were not present when Episcopal occupied the site. These amenities included but are not limited to larger capacity bleachers for the athletic fields, press boxes, dug outs, public address systems and artificial turf on three of the fields. The University claimed that although they testified that they would use the property substantially the same as Episcopal

Academy that it was implied that certain changes were necessary in order to convert the fields from fields used by high school students to fields used by college students.

In September 2008 the Zoning Officer issued a letter indicating that certain of the proposed improvements, such as the proposed press boxes, dugouts, bleachers and public address systems for the baseball and softball fields, constituted expanded uses, and required a special exception from the ZHB. Both the University and the neighbors filed appeals to the ZHB from the Zoning Officer's decision. The ZHB denied the applicant's appeal and granted the neighbors appeal in part essentially finding that a number of the improvements proposed shown on the Preliminary Land Development Plan constituted expanded uses of the initial special exception granted in 2006. The University was required by the ZHB to obtain an additional special exception for those expanded uses.

It was at this time that the Preliminary Land Development Plan was tabled indefinitely and in June 2009 the University filed a new special exception for the expanded uses noted above. Over the course of the remainder of 2009 and 2010 a series of additional ZHB meetings were held. On November 18, 2010 the ZHB granted the University a special exception for the additional expanded uses. This decision is attached.

In December 2010, the University filed a revised Preliminary Land Development Plan.

The following timeline outlines the events discussed above:

- March 2006            Zoning Hearing Board granted a special exception to the University to use the campus for educational purposes
- May 2008            Board of Commissioners approved a Tentative Sketch Plan
- June 2008            The applicant submitted a Preliminary Land Development Plan
- August 2008        The University officially purchased the site from Episcopal Academy
- Fall 2008            The University began using the property
- September 2008    Zoning Officer determined certain improvements required a special exception
- June 2009            The University filed a new special exception
- November 2010    The Zoning Hearing Board granted the special exception
- December 2010    A revised Preliminary Plan was submitted

**Changes from the previously submitted Preliminary Plan:**

The most significant change from the approved Tentative Sketch plan to the revised Preliminary Plan involves the relocation of the baseball field away from N. Latches Lane and increased landscaping and fencing. The revised plans reflect the following changes:

**Baseball Field:**

- Home plate of the baseball field is set back an additional 28 feet to the south, placing home plate 396 feet from the curb line of North Latches Lane;
- The outfield fence is removed from the front yard and set back 71 feet from the curb line of North Latches Lane;
- The ball netting is removed from the front yard and is set back 65 feet from the curb line of North Latches Lane;
- The length of the ball netting is reduced from 362 feet to 280 feet;
- The number of poles supporting the ball netting is reduced from seven to five;
- The height of the ball netting is reduced from 35 to 25 feet; and

- The retaining wall in center field is eliminated.

### **Landscaping:**

- The depth of the landscape buffer along North Latches Lane is increase from approximately 24 feet to 50 feet;
- Increased planting material is proposed;
- Vegetative swales are proposed; and
- Three (3) rain gardens are proposed.
- Berming is proposed adjacent to the Baseball field; and
- Privacy fencing along portions of the western property boundary is proposed

### **Buildings:**

- A portion of the carriage house to the west of the baseball field is preserved. (The garage portion of the structure is proposed to be demolished).

### **Historic Resources**

The property currently contains numerous buildings which are being used for educational and administrative purposes. Three of the site's existing structures are Class 2 resources on the Township's Historic Resource Inventory (Inventory) including the Campus Commons (formerly Christ Chapel), Everstone at 356 N. Latches Lane and the John Wilson House at 380 N. Latches Lane. The property also contains several parking lots and pathways throughout the site as well as play fields, a baseball diamond and athletic track.

Since the campus contains three Class 2 resources, the Code required the applicant to submit a Historic Resource Impact Study to determine whether the proposed development will have an impact on the regulated historic resources both on the campus and on adjacent properties. A condition of approval from the Tentative Sketch Plan required the applicant to consider adding the following to the Inventory as Class 2 resources:

- Gabriel Hall (470 N. Latches Lane, formerly Wetherill House);
- Henry Quinn Hall (394 N. Latches Lane, formerly the Barnes House);
- Paris Dining Hall (440 N. Latches Lane, formerly the Old Gymnasium);
- Fine Arts West (424 N. Latches Lane, formerly The John Gilmore Steam Plant and Carriage House);
- Raynham Hall (480 N. Latches Lane, formerly Rorer House); and
- 35 & 39 Berwick Road.

**RECOMMENDED CONDITIONS OF APPROVAL**

**SD# 3608      401 City Avenue, 35 and 39 Berwick Road, 480 N. Latches Lane, Saint Joseph’s University, Maguire Campus, Merion, Ward 12.**

1E-96, 99,  
110, 111  
1F-146

**Expiration Date** – 4/10/2011 ..... **Zoning** – RAA/RA/HROD

Consider for approval a Preliminary Land Development Plan prepared by Momenee & Associates, Inc. dated June 20, 2008, last revised February 18, 2011 showing the demolition of the detached garage at 35 Berwick Road, demolition of a portion of the carriage house behind Gabriel Hall, demolition of a maintenance building and demolition of the squash court building. The plan shows the installation of an NCAA regulation baseball field, softball field and field hockey field, slight reconfiguration of existing parking areas and internal pedestrian pathways. The plan also shows 78 parking spaces to be held in reserve. The following conditions shall be complied with **prior** to recording the Final Plan by means of plan revision, completion or financial guarantee, unless specifically exempted. The plan is referred to the Planning Commission with attention called to the following conditions:

Zoning:

1. The applicant shall comply with the testimony and all conditions imposed by the Zoning Hearing Board in Appeal no. 4191, which incorporates Appeals 4011 and 4167. The order shall be listed on the Final Plan.
2. The Township and the applicant shall enter into an agreement to preserve the existing nonconforming impervious surface condition prior to the completion of construction. The nonconforming impervious surface condition shall be reserved for a period of five years. If the reserved impervious surface is not installed during the term of the 5 year agreement, the applicant shall have the right to install the stone lot shown on the plan to continue to preserve the current nonconforming impervious surface condition. The Township Solicitor shall approve the agreement.

Operational Issues:

3. Trash cans shall be provided at the gate at Berwick Road and near the dug outs.
4. If the Merion Civic Association agrees to form a committee to meet regularly to address issues related to construction, operations and ongoing use of the Maguire Campus then the applicant shall agree to participate with the committee.

Historic Resources:

5. The applicant shall consider adding the following buildings to the Historic Resource Inventory as Class II resources:
  - Gabriel Hall (470 N. Latches Lane, formerly Wetherill House);
  - Henry Quinn Hall (394 N. Latches Lane, formerly the Barnes House);
  - Paris Dining Hall (440 N. Latches Lane, formerly the Old Gymnasium);
  - Fine Arts West (424 N. Latches Lane, formerly The John Gilmore Steam Plant and Carriage House);

- Raynham Hall (480 N. Latches Lane, formerly Rorer House); and
- 35 & 39 Berwick Road.

Noise:

6. A post-development sound study shall be performed and shall include noise from the proposed public address systems and noise associated with use of the athletic fields that is regulated by the Township Code. Adjustments shall be made as required in order to comply with the Township Code.
7. The applicant shall either enclose the batting cage structure with walls and a roof resulting in a footprint not larger than 95 by 45 feet or shall add sound attenuation to or near the structure to decrease noise levels. Enclosing the batting cage within a building would not be interpreted as an expanded use.

Landscaping, Screening & Fencing:

8. Conditions 9-24 shall be subject to the approval of Township Staff.
9. The landscape material to be installed along City Avenue shall be selected so as to minimize obstructing the viewshed of the Campus Commons building.
10. If either of the homes at 35 or 39 Berwick Road are demolished then a 20 foot wide landscaped buffer shall be installed along the south and west property lines.
11. If the garage associated with 39 Berwick Road is demolished then a 20 foot wide landscaped buffer shall be installed in place of the garage.
12. The applicant shall work with staff to install new street trees planted 30 feet on center between the fence and the curb along the entire length of Berwick Road where appropriate.
13. The width of the landscaped area behind the existing estate fence along Berwick Road shall be increased where feasible.
14. The center tree of the three evergreen trees proposed to screen the poles of the ball stop system shall be increased in height to 12-14 feet.
15. The proposed shrubs along N. Latches Lane shall be shifted further back from the street beyond the proposed street trees where practical.
16. The applicant shall work with staff to provide additional landscaping along the eastern portion of N. Latches Lane to close the gaps of missing street trees and provide additional shrubs to screen the parking lot adjacent to Duperreault Hall.
17. Where feasible and to not impact existing trees, a three foot high berm shall be installed at the southern end of the field hockey field. Proposed landscaping shall be planted on this berm where feasible.
18. The applicant shall work with staff to finalize the actual plant species.
19. The planting mix in the proposed rain gardens shall be revised to include more warm season grasses and shrubs. At least 60-70% of the plant material should consist of shrubs and grasses. The applicant shall work with the EAC to finalize the plant material for the rain gardens.

20. A minimum of 50% of all proposed trees and shrubs shall consist of native species with the exception of evergreen trees and shrubs.
21. If the 50-inch oak along N. Latches Lane must be removed for any reason then the existing buffer shall be continued in the general vicinity of the dripline of the oak tree as directed by Township staff.
22. Vines shall either be removed from existing trees to remain or at a minimum shall be cut at ten feet above ground level and painted with an herbicide. The applicant shall also prune dead wood from existing trees.
23. The applicant shall work with the Township Arborist and Township Planning Staff to selectively remove dead trees along Berwick Road and Latches Lane.
24. The applicant shall submit a maintenance plan to ensure that the landscaping provided is properly maintained.
25. The existing chain link fence along N. Latches Lane shall be removed and replaced with a minimum 4 foot high estate fence within three years of completion of the project.
26. At such time as the existing twelve (12') foot high chain link fence along City Avenue is replaced, it shall be replaced with an estate fence consistent with the existing fencing on City Avenue. Safety netting may be installed adjacent to the City Avenue fields up to twelve (12') feet high.
27. A revised Landscape Plan complying with Natural Features Code Sections 101-9, 101-5B, Zoning Code Section 155-167.7 and conditions herein shall be prepared and sealed by a Registered Landscape Architect and submitted with the Final Plan. Township staff shall approve the plan.
28. Wooded lot calculations shall be approved by the Township Arborist. The total number of trees removed since the applicant purchased the property and including the proposed construction shall be clearly indicated.
29. Trees in the right-of-way shall be trimmed as directed by the Township Arborist.
30. The applicant shall obtain approval from the Shade Tree Commission to remove any existing street trees. If trees are permitted to be removed, the species of any replacement trees shall be as directed by the Shade Tree Commission.
31. The applicant shall not remove the two stone pillars along N. Latches Lane as part of this project.

Stormwater Management:

32. The stormwater facility under the softball field shall be redesigned/reconfigured or an additional system shall be added such that the post development five (5) year peak rate of runoff is controlled to the predevelopment two (2) year peak rate considering all disturbed areas for the baseball and softball field phases of the development. The recharge stone beneath the baseball field shall not be used to calculate rate control improvements. The final design shall be approved by the Township Engineer's office.
33. The proposed cross section of the artificial turf fields shall be revised to clearly note a level bottom of the recharge stone.

34. Seepage beds shall not receive runoff without the prior approval from the Township Engineer until the entire drainage area contributory to the infiltration BMP has achieved final stabilization.
35. All seepage beds and artificial turf field systems shall contain an observation port that reaches the bottom of the system that will be used during scheduled maintenance to ensure the seepage beds and fields are functioning properly.
36. A description of how the stormwater management facilities, including the rain gardens and vegetated swales, will be operated and maintained shall be submitted by the design engineer. The frequency of inspection and the contact information for the party responsible for the operation and maintenance of the facility shall be listed. The plan shall be presented in recordable form as a covenant running with the land and shall be approved by the Township Solicitor prior to recording.
37. An NPDES Permit shall be obtained from the Montgomery County Soil Conservation District prior to issuance of any permit.
38. Outlet structures that utilize flat orifice plates shall be modeled in the calculations as horizontal orifices and not as stand pipes.
39. Minimum spacing requirements as required by the manufacturer for all Corrugated Metal Pipe (CMP) seepage beds shall be documented and submitted to the Township Engineer for review.
40. Calculations and qualifications shall be provided for the temporary diversion berms.
41. All temporary diversion berms shall discharge to a rock filter or similar energy dissipater/sediment filter.
42. The emergency spillway for the Sediment Basin shall be designed using the 100-year flow that reaches the basin.
43. The drainage area to Rain Garden 1 shall be verified for accuracy and the design adjusted accordingly.
44. Clarification shall be submitted in the revised analysis as to whether the sediment basin size calculations account for the five one (1") inch orifices used for the Sediment Basin (as shown on the Erosion Control Detail Sheet) since these orifices are not included in the stormwater outlet structure sheet of the stormwater report.
45. Cover requirements for the 1" x 12" perforated drain shall be evaluated and information/documentation provided from the manufacturer.
46. Additional spot elevations and drainage arrows shall be shown surrounding the press box area in order to fully evaluate the drainage patterns contributing to the proposed stormwater management facilities.
47. Continuous profiles for each reach of pipe of fifteen (15") inch or greater shall be plotted along with the location of the hydraulic gradient and the hydraulic information pertinent to each reach within the system.
48. For the pipe sizing calculations of the pipe between structures SB-7 and SB-6, overflow from the seepage bed shall be included to determine the required capacity within the line. The pipe sizes shall be adjusted accordingly.
49. Some of the runoff from the loop drive near Gabriel Hall shall be conveyed in a minimum eight (8") inch diameter pipe to the proposed roof runoff collection system via new inlet(s) if determined to be feasible.

50. Cleanouts shall be placed at all changes in direction in the storm sewer. All pipes of fifteen (15") inch diameter and greater shall use a structure at the change in direction.
51. The elevation and orifice size shall agree between the plan and analysis for the Softball Storm System No. 1 outlet structure information on Plan Sheet No. 24.
52. Each outlet structure shall have its own unique identifier number in the stormwater report which shall correspond to the number shown on the plans.
53. The outlet structure details on the plans shall be verified to match the outlet structure information in the stormwater report.
54. An overflow pipe for Rain Garden No. 1 shall be provided.
55. The stabilization measures for all temporary swales shall be indicated on the plans.
56. All inlets in non-paved areas shall be shown to be graded in a twelve (12") inch sump condition in order to increase the efficiency of runoff collection. Spot elevations shall be added to the plan to clarify grading. If an inlet is close to any play area, the sump elevation shall be adjusted to prevent a tripping hazard. Spot elevations are required to be shown in the vicinity of several yard drains and 2' x 2' inlets in the NW quadrant of the project. The Township Engineer shall be consulted to discuss the grading around these inlets.
57. A front view of the orifice plates shall be provided for the proposed control structures.

Traffic and Circulation:

58. A "No Outlet" sign shall be placed at the corner of Berwick Road and City Avenue.
59. The applicant shall upgrade the controller equipment at the signalized intersections along City Avenue if needed to facilitate the installation of the hand/man countdown timers. These upgrades shall be approved by the City of Philadelphia and Penn Dot. The applicant shall contact the Township Engineer's office to discuss the intersections and the upgrades requested.
60. The applicant shall obtain approval from Penn Dot to install removable bollards in the right-of-way of City Avenue. The applicant shall indemnify the Township for the placement of the bollards if required by the Township Solicitor.
61. If required by the Fire Marshal, a reinforced emergency access drive shall be installed from the Merion Campus to the Maguire Campus as directed by the Fire Marshal.
62. All emergency access drives, including the width and construction materials, shall be approved by the Fire Marshal.
63. The Fire Marshal shall approve the location of any No Parking By Order of Fire Marshal signage.

Lighting:

64. An outdoor lighting plan for any new lighting not previously approved, sealed by a responsible design professional that includes illuminance patterns shall be submitted to and approved by the Director of the



Building and Planning Department prior to issuance of any permits. Lighting shall be designed to shield the source of illumination and to prevent glare on adjacent properties. The location, luminaire type, wattage, means of control and pole height shall be indicated.

Utilities:

65. The storm sewer downgrade of the development shall be shown within 200 feet of the property line. Accurate size/location information shall be obtained/verified to the extent practical and placed on the plan.
66. Additional information concerning size, material, and depth of cover is required for existing utility service locations. The Township Engineer's office shall be contacted to determine specific areas where information shall be added to the plans.
67. The location of the existing sanitary laterals shall be shown for all building/structures. Vent and trap locations shall be shown. Any interference with the proposed construction shall be fully evaluated.
68. The colors shown on the legend for utilities shall match those used on the plan.

Construction Details:

69. A during construction traffic plan shall be submitted and shall include proposed construction entrances and shall be subject to the approval of the Township Engineer.
70. All construction vehicles, including contractor's vehicles, shall park on-site during the construction phase of the project. No staging of materials or delivery vehicles shall be permitted on the street.
71. If Berwick Road is used for construction vehicle access to the campus, the applicant shall repave the road at the completion of construction as directed by the Township Engineer.
72. Water shall be used during the demolition process to minimize the migration of dust.
73. Additional detail is required in the sequence of construction activities. There is no clear indication of which area in the project will be worked simultaneously with other areas. Anticipated start and completion dates for each sub-phase of the construction shall be provided. A copy of any schedule provided by the contractor(s) shall be submitted to the Township Engineer to assist in coordinating permit plan review and inspections.
74. The driveway paving thicknesses shall conform to Lower Merion Township Standard details for asphalt paving thickness. The detail shall be revised accordingly.
75. Since a topsoil stockpile for the baseball field is located over a proposed rain garden, proper treatment of the area must be followed to ensure the permeability of the soil in the area is not impacted.
76. The porous asphalt pedestrian paving detail shall be revised to indicate AASHTO No. 3 stone to be considered porous.
77. A site specific detail of the retaining wall near the field hockey field shall be provided. Top and bottom of wall elevations shall be provided at various points. Calculations shall be provided for wall heights exceeding four (4') feet.

78. A certification by a civil engineer of the condition of existing retaining walls within the project area to remain shall be provided. The applicant shall implement any recommended improvements/repairs as part of this application.
79. A sidewalk closure permit and a plan for detouring pedestrians around the construction may be required. Construction fencing shall be provided as required to protect pedestrians.
80. A permit from the Public Works Department shall be obtained for any work in the Township right-of-way. A Penn Dot Highway Occupancy Permit shall be obtained for any work performed in the right-of-way City Avenue. The Township shall be copied on correspondence with Penn Dot or the City of Philadelphia.

Standard Plan Items:

81. An itemized tabulation of the existing and proposed impervious areas shall be shown on the plans. The tabulation shall be clarified to indicate porous materials that are installed and if or if not counted toward the impervious allowable. The final total shall be clearly represented.

Standard Conditions of Approval:

82. Revisions to the plan shall address the Township Engineer's February 25, 2011 review letter.
83. If required by the Fire Department, all buildings shall have approved radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communications systems at the exterior of the building.
84. A deed of consolidation shall be recorded concurrently with the Final Plan.
85. The applicant shall utilize the services of an architectural salvage or deconstruction company, to preserve or recycle building materials on the existing structures, including but not limited to stone, brick, and wood. Architectural details such as windows and interior and exterior details including but not limited to fixtures and any wood, glass and metalwork of quality and good condition shall be salvaged. The applicant shall provide documentation to Planning staff indicating how this condition will be met.
86. Any changes to the approved plans shall require the submission of an as-built plan prior to the issuance of a Certificate of Occupancy. Building and Planning staff can waive this requirement if the changes are determined to be insignificant.
87. New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting on the property. The address numbers shall be a minimum of four (4) inches (102mm) high with a minimum stroke width of 0.5 inch (12.7mm).
88. A copy of the revised plan shall be submitted with any changes highlighted. A letter shall also be provided with the revised plan indicating how each requested revision has been addressed in the re-submission.
89. The Final Plan, complying with all applicable conditions of approval, shall be filed with the Department of Building and Planning within twelve (12) months from the date of approval by the Board of Commissioners.
90. The owner shall make payment of fees and expenses of the Township's professional consultants who perform services on behalf of the Township with respect to these plans and the work contemplated thereunder and will establish and maintain with the Township those escrows for the payment of such fees

required by Township Code. Owner agrees that any statement from the Township for such fees which remain unpaid for a period of 30 days may be recorded against the property as a municipal lien.

91. The owner shall make payment of the Township Engineer's and/or Clerk of the Works' inspection fees within 30 days of presentation. A penalty of 1.5% per month will be due for late payments from the date of presentation. If any shares are not paid within 60 days of presentation, the Township may elect to suspend any outstanding permits until all pending charges are settled.
92. The property owner(s) shall comply with all applicable federal, state, county, local and Lower Merion Township ordinances and laws regardless of specific mention herein.

In addition, the application requires the following waiver:

1. A partial waiver of Subdivision and Land Development Code Section, 135-22, to construct the field hockey field prior to recording the Final Plan.

I, Fred B. Fromhold, applicant for LD# 3608, do hereby accept the recommended conditions of approval as listed for the properties at 401 City Avenue, 480 N. Latches Lane, 35 Berwick Road and 39 Berwick Road.

\_\_\_\_\_  
Fred B. Fromhold

\_\_\_\_\_  
Date



LOWM 237.16

February 25, 2011

Christopher Leswing, Assistant Director of Building and Planning  
Township of Lower Merion  
75 East Lancaster Avenue  
Ardmore, PA 19003

**Re: 401 City Avenue, 35 and 39 Berwick Road, 480 Latches Lane  
St. Joseph's University Expansion  
Preliminary Development Plans—Phase I**

Dear Mr. Leswing:

In accordance with your request for the above referenced submission, we have reviewed a set of forty-four (44) plans dated 06-20-08, latest revision dated 02-18-11, and associated stormwater management calculations dated 06-20-08, latest revision dated 12-17-10, prepared by Momenee and Associates, Inc. We have also reviewed a traffic impact study, dated 06-19-08, latest revision dated 12-22-10, prepared by Orth-Rodgers Associates, Inc. We offer the following comments for your consideration:

**A. MAJOR ENGINEERING ISSUES**

- ❖ **Signal Improvements**—Upgrades to the pedestrian crossing signals and crosswalks are requested to be made as a Condition of Approval. Improvements to the signal controllers on City Avenue have been requested to be performed as needed to facilitate the installation of the pedestrian signal upgrades.
- ❖ **Stormwater**—The proposed recharge systems beneath the fields together with the four (4) stormwater management basins will significantly reduce the rate of runoff from the development. However, in order to receive a recommendation for a waiver of Land Development for the hockey field, we have requested that additional peak rate of runoff control be provided via an increased stormwater system or some other means of added control.

With the resolution of the above major engineering issues and the remaining comments in this letter incorporated, we recommend that the Preliminary Plans be approved.

**B. ORDINANCE REQUIREMENTS**

1. Section 101-6A(1)—All woody vegetation to be retained within twenty-five (25') feet of a building site or disturbed area shall be protected from equipment damage by fencing placed at the driplines. Since the tree protection fence has not been shown at the driplines of all trees to remain, the Township Arborist must approve the location of the tree protection fence shown on the plan.
2. Section 101-6A(5)—No impervious cover shall be permitted within the driplines of trees to remain without approval from the Township Arborist. The Township Arborist must approve the location and extent of the paving if the trees are scheduled to remain.
3. Section 101-6A(6)—Grade changes around the driplines of trees to be retained shall be minimized. Treatment of the trees prior to construction to protect the root system shall be performed. The Township Arborist must approve the procedure.
4. Section 101-6A(8)—Should any trees not scheduled or permitted to be removed be irreparably damaged during construction and die within eighteen (18) months of the conclusion of construction activities, those trees will be required to be replaced in accordance with the provision of Section 101-9A(2). This shall be noted on the plan and escrow posted to guarantee the survival of the impacted trees until the allotted time has expired.
5. Section 121-4E(4)—The maintenance plan shall be presented in recordable form as a covenant running with the land and must be approved by the Township Solicitor prior to recording.
6. Section 121-12—An NPDES Permit must be obtained from the Montgomery County Soil Conservation District prior to issuance of any permit.
7. Section 121-15—Outlet structures that utilize flat orifice plates shall be modeled in the calculations as horizontal orifices and not as stand pipes.
8. Section 121-15—Minimum spacing requirements as required by the manufacture for all Corrugated Metal Pipe (CMP) seepage beds shall be documented and provided for review.
9. Section 121-15—Calculations and qualifications shall be provided for the temporary diversion berms.
10. Section 121-15—All temporary diversion berms shall be shown discharging to a rock filter or similar energy dissipater/sediment filter.
11. Section 121-15—The emergency spillway for the Sediment Basin shall be designed using the 100-year flow that reaches the basin. This is the flow that will need to be passed through the spillway during emergency conditions.

12. Section 121-15—The drainage area to Rain Garden 1 must be verified for accuracy. Spot elevations above the planted island indicate an additional area of runoff reaching the proposed inlet. The design shall be adjusted accordingly.
13. Section 121-15—The five one (1") -inch orifices used for the Sediment Basin (as shown on the Erosion Control Detail Sheet) are not included in the stormwater outlet structure sheet of the stormwater report. It is not clear if the sediment basin size calculations account for these orifices. Clarification shall be submitted in the revised analysis.
14. Section 121-15—Cover requirements for the 1" x 12" perforated drain shall be evaluated, and information/documentation provided from the manufacturer.
15. Section 121-15—Additional spot elevations and drainage arrows shall be shown surrounding the press box area in order to fully evaluate the drainage patterns contributing to the proposed stormwater management facilities.
16. Section 121-4F(3)—Continuous profiles for each reach of pipe of fifteen (15") inch or greater shall be plotted along with the location of the hydraulic gradient and the hydraulic information pertinent to each reach within the system.
17. Section 121-15 – For the pipe sizing calculations of the pipe between structures SB-7 and SB-6, overflow from the seepage bed shall be included in order to determine the required capacity within the line. The pipe sizes shall be adjusted accordingly.
18. Section 121-15—Some of the loop drive runoff near Gabriel Hall shall be conveyed to the proposed roof runoff collection system via new inlet(s) if determined to be feasible. A minimum eight (8") inch diameter pipe shall be used to convey the runoff.
19. Section 121-15 – Cleanouts shall be placed at all changes of direction in the storm sewer. There are several pipes along the baseball and softball field that require cleanouts. All pipes of fifteen (15") inch diameter and greater shall use a structure at the change in direction.
20. Section 135-17B(1)—The storm sewer downgrade of the development shall be shown within 200 feet of the property line. Accurate size/location information shall be obtained/verified to the extent feasible and placed on the plan.
21. Section 135-17B(1)—While existing utility service locations have been shown for all buildings. Additional information concerning size, material, and depth of cover is required. The Township Engineer's office shall be contacted to determine specific areas where this information shall be added to the plans.
22. Section 135-17B(2)—The location of the existing sanitary laterals shall be shown for all building/structures. Vent and trap locations shall be shown. Any interference with the proposed construction shall be fully evaluated.
23. Section 155-138C—The proposed cross section of the artificial turf fields shall be revised to clearly note a level bottom of the recharge stone.

24. Section 105-3, 105-4—A Condition of Approval shall be added stating that post-development tests of the proposed audio system shall be performed. Adjustments shall be made to the system as required in order to be compliant with the township code limits and the zoning order.
25. Section 135-19B(8)—In addition to the hand/man countdown timers presently proposed, upgrading the controller equipment at the signalized intersections along City Avenue must be performed as required to facilitate the installation. The applicant shall contact the Township Engineer's office to discuss the intersections and the upgrades requested.
26. Section 135-19B(8)—The removable bollards proposed at the driveway to the south of the Student Commons Building are recommended to be located out of the right-of-way. Indemnification for the township would be required to be provided if bollards are installed within the right-of-way. PaDOT approval would also be required to be obtained.
27. Section 121-4E(2I)—Seepage beds shall not receive runoff without the prior approval from the Township Engineer until the entire drainage area contributory to the infiltration BMP has achieved final stabilization.
28. Section 121-6J—Additional detail is required in the sequence of construction activities. There is no clear indication of which area in the project will be worked simultaneously with other areas. Anticipated start and completion dates for each sub-phase of the construction shall be provided. A copy of any schedule provided by the contractor(s) shall be submitted to the Township Engineer to assist in coordinating permit plan review and inspections.
29. Section 155-4—The detail for the porous walkway indicates an overall width greater than six (6') feet. The Zoning Officer must approve the width if it is not to count toward the impervious allowable.
30. Section 155-167.7(B)—Wooded lot calculations shall be approved by the Township Arborist. The total number of trees removed for the proposed construction shall be clearly indicated.

### **C. ENGINEERING COMMENTS**

1. A certification by a civil engineer of the condition of existing retaining walls within the project area to remain shall be provided. Any recommended improvements/repairs shall be made a condition of the permit issue.
2. The colors shown on the legend for utilities shall match those used on the plan.
3. A front view of the orifice plates shall be provided for the proposed control structures.
4. It is not clear if the Softball Storm System No. 1 outlet structure information on Plan Sheet No. 24 correspond with the information used in the stormwater management report. The elevation and orifice size shall agree between the plan and analysis.

5. Each outlet structure shall have its own unique identifier number in the stormwater report and correspond to the number shown on the plans. This will assist in the review and reduce confusion in the construction phase of the project.
6. The outlet structure details shown on the plans must be verified to match the outlet structure information provided in the stormwater report.
7. A sidewalk closure permit and a plan for detouring pedestrians around the construction may be required. Construction fencing shall be provided as required to protect pedestrians.
8. An overflow pipe for Rain Garden No. 1 is required to ensure proper function.
9. An itemized tabulation of the existing and proposed impervious areas shall be shown on the plans. The tabulation shall be clarified to indicate porous materials that are installed and if or if not counted toward the impervious allowable. The final total shall be clearly represented.
10. The driveway paving thicknesses shall conform to Lower Merion Township Standard Details for asphalt paving thickness. The detail shall be revised accordingly.
11. The porous asphalt pedestrian paving detail shall be revised to indicate AASHTO No. 3 stone in order to meet the definition of a porous surface. The areas not meeting the requirements for impervious surface shall be included in the zoning tabulation against the maximum allowable.
12. The stabilization measures for all temporary swales shall be indicated on the plans.
13. The Planting Plan must be approved by the Planning Department and the Township Arborist prior to recording the Final Plan.
14. All inlets in non-paved areas shall be shown to be graded in a twelve (12") inch sump condition in order to increase the efficiency of runoff collection. Spot elevations shall be added to the plan to clarify grading. If an inlet is close to any play area, the sump elevation shall be adjusted to prevent a tripping hazard. Spot elevations are required to be shown in the vicinity of several yard drains and 2' x 2' inlets in the NW quadrant of the project. The Township Engineer shall be consulted to discuss the grading around these inlets.
15. The Lighting Plan must be approved by the Director of Building and Planning prior to recording the Final Plan.
16. A site specific detail of the retaining wall near the field hockey field shall be provided. Top and bottom of wall elevations shall be provided at various points. Calculations must be provided for wall heights exceeding four (4') feet.
17. All seepage beds and artificial turf field systems shall contain an observation port that reaches the bottom of the system. This will be used during scheduled maintenance to ensure the seepage beds and fields are functioning properly.

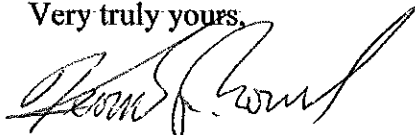


18. Any work completed within a township right-of-way shall require a permit from the Public Works Division. A PaDOT Highway Occupancy Permit will be required for any work performed in the City Avenue right-of-way. The township must be copied on correspondence with PaDOT or the City of Philadelphia.
19. A topsoil stockpile for the baseball field is located over a proposed rain garden. Proper treatment of the area must be followed to ensure the permeability of the soil in the area is not impacted.
20. In order to receive support for a Waiver of Land Development for construction of the hockey field, we request that the softball field stormwater facility be redesigned/reconfigured or an additional system added such that the post development five (5) year peak rate of runoff is controlled to the predevelopment two (2) year peak rate considering all disturbed areas for the baseball and softball field phases of this development. The recharge stone beneath the baseball field shall not be used to calculate rate control improvements. The final design must be approved by the Township Engineer's office.

Please note that a copy of the revised plan shall be submitted with any changes highlighted. A letter shall also be provided with the revised plan indicating how each requested revision has been addressed in the re-submission.

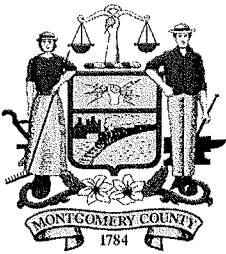
Please advise if we may be of further assistance in this matter.

Very truly yours,



Kevin J. Bowers, P.E.  
**PENNONI ASSOCIATES**  
Township Engineer

Cc: Robert E. Duncan, Director of Building and Planning  
Joseph H. Newby, Planning Technician  
St Josephs University



## MONTGOMERY COUNTY PLANNING COMMISSION

box 311 ♦ norristown ♦ pennsylvania ♦ 19404-0311 ♦ (610) 278-3722  
office location: suite 201 ♦ one montgomery plaza ♦ swede & airy streets ♦ norristown pa  
FAX (610) 278-3941 ♦ Website [www.montcopa.org/plancom](http://www.montcopa.org/plancom)

March 3, 2011

Mr. Christopher Leswing, Assistant Planning Director  
Lower Merion Township  
75 East Lancaster Avenue  
Ardmore, Pennsylvania 19003

Re: MCPC # 08-0060-003  
Plan Name: St. Joseph's University  
Preliminary Land Development Plan  
(3 lots comprising 36.79 acres)  
Situates: City Avenue (West)  
Lapsley Lane (South)  
Lower Merion Township

Applicant's Name and Address

St. Joseph's University  
5600 City Avenue  
Philadelphia, PA 19131

Contact: Kevin Robinson  
Phone: 610-660-1051

Dear Mr. Leswing:

We have reviewed the above-referenced preliminary land development plan in accordance with Section 502 of Act 247, "The Pennsylvania Municipalities Planning Code," as you requested by letter received on January 7, 2011. We forward this letter as a report of our review and recommendations.

### **Background**

This submission is a preliminary land development plan detailing Phase I of the conversion of the Episcopal Academy to St. Joseph's University. The proposal includes reconfiguration of walkways, athletic fields with artificial surface, new bleachers and dugouts, and a new gateway on the City Avenue frontage. The Zoning Hearing Board issued a decision on November 18, 2010, granting a special exception to the applicant as an expanded use of the university along with a set of conditions. The proposed development is in the R-A and R-AA Residence Districts.

### **Review Comments**

The hearings for the Zoning Hearing Board were extensive and legally resolved issues with the proposed development and neighbors concerned with the activity level and placement of the athletic facilities. We have no further comment on the proposed changes to the campus that have not already been covered by the conditions set forth by the ZHB decision. Our main concern is with the stormwater management system, especially as it relates to neighboring properties on Berwick Road since this has been an issue in the past. The township should ensure that the applicant is making every effort to reduce the overall runoff with the proposed improvements.

## **Recommendation**

We recommend approval of this land development plan provided that the above comments have been addressed to the satisfaction of the township, and all local regulations have been met.

Please note that the review comments and recommendations contained in this report are advisory to the municipality and final disposition for the approval of any proposal will be made by the municipality.

Should the governing body approve a final plat of this proposal, the applicant must present the plan to our office for seal and signature prior to recording with the Recorder of Deeds office. A paper copy bearing the municipal seal and signature of approval must be supplied for our files.

Sincerely,



Scott France  
Principal Planner  
610-278-3747  
sfrance@mail.montcopa.org

c: St. Joseph's University, Applicant  
Momence & Associates, Inc., Applicant's Engineer  
Doug Cleland, Township Manager  
Gilbert P. High, Jr., Esq., Twp. Solicitor  
Edward P. Pluciennik, P.E., Twp. Engineer

**BEFORE THE  
ZONING HEARING BOARD OF  
LOWER MERION TOWNSHIP, MONTGOMERY COUNTY  
PENNSYLVANIA**

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**APPEAL NO. 4191**

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**IN THE MATTER OF:** : **Applicant - Appellant**  
: **St. Joseph's University** : **356-476 and 480 N. Latches Lane**  
: **35 and 39 Berwick Road**  
: **Merion Station, PA 19066**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, OPINION & ORDER**

**FINDINGS OF FACT**

The Applicant, the Property, and the Board's Prior Decisions

1. The Applicant is St. Joseph's University, a private, co-educational institution of higher education, and is an "accredited educational institution" under Section 4 B of the Lower Merion Township Zoning Ordinance (the "Zoning Ordinance"). Code §155-4 B ("Accredited Educational Institution").

2. The Applicant owns the assemblage of contiguous properties known as 356-476 North Latches Lane, 480 North Latches Lane, 35 Berwick Road and 39 Berwick Road (together, the "Maguire Campus").

3. Part of the Maguire Campus is zoned RAA Residential and part is zoned RA Residential.<sup>1</sup>

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<sup>1</sup> The split-zoning of the Campus has no bearing on the Board's decision. Accredited educational institutions are permitted in all residential districts in Lower Merion Township. The extent to which the character of the neighborhood is relevant to the Board's decision will be discussed below.

4. In 2005, the Applicant applied to the Board for a special exception to expand its existing educational use to the Maguire Campus, then under agreement of sale with the Episcopal Academy. The Applicant proposed to use the Campus in the same manner as Episcopal Academy had, except for the age of the student-participants, which was proposed to change from predominantly K-12-age to college-age.<sup>2</sup>

5. The Board granted the 2005 application. *Appeal of St. Joseph's University*, No. 4011 (March 16, 2006) ("*St. Joseph's I*"). Several neighbors appealed that decision to the Court of Common Pleas of Montgomery County, where the appeal was settled by stipulation of the parties dated July 27, 2006. *Asher, et al. v. St. Joseph's University*, No. 2006-08888.

6. The Board's decision in *St. Joseph's I* approved the Applicant's uses of the existing buildings on the Maguire Campus for education, administration and maintenance, essentially the same uses that Episcopal Academy had made of those buildings. The 14.5 acres of playing fields were allowed to continue to be used for varsity and intramural grass sports such as baseball, softball and soccer. The tennis courts were allowed to remain and to be used for NCAA Division I tennis matches. [*St. Joseph's I* at pp. 3, 7-9]

7. Since the decision in *St. Joseph's I*, the existing baseball field has been used for games and practices, and the existing football field has been used for intramural athletics, including the University's intramural flag football program. Field hockey and softball also takes place on the athletic fields. [N.T. 11/30/2010 at 69-70; N.T. 07/08/2010 at 11; N.T. 07/19/2010 at 29, 103-110 and 132-133]

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<sup>2</sup> The increase in college-age student-participants increased the number of students-participants of driving age. That increase triggered the Zoning Ordinance's requirement for a special exception to expand the educational use. See Code §155-4 B ("Expanded Use").

8. The decision in *St. Joseph's I* also granted the Applicant relief from the parking requirements for the Maguire Campus. After finding that 999 spaces were required and that only 319 existed, the Board waived the requirement for 499 spaces, found that 28 spaces could be added by re-striping an existing lot, and then granted a variance from the remaining 158 required spaces. [*St. Joseph's I* at pp. 10-12]

9. Following the Board's approval in *St. Joseph's I*, the Applicant filed requests with the Township Board of Commissioners ("BOC") for land development plan approval. As part of that request, the Applicant proposed to construct and/or install a number of improvements to the playing fields on the Maguire Campus.

10. While the preliminary plan was pending before the BOC, a group of neighbors known as the Merion Community Coalition ("MCC") wrote to the Township Zoning Officer objecting to the preliminary plan, claiming that the proposed improvements to the playing fields amounted to an "expanded use" beyond that described in the plans and testimony at the hearings on *St. Joseph's I*. MCC further claimed that the Applicant had to return to this Board for a special exception for the expanded use.

11. After receiving additional correspondence from the Applicant and the MCC, the Zoning Officer issued a determination that certain of the proposed improvements were "expanded uses" that required a special exception from the Board.

12. The Applicant and the MCC filed appeals with the Board from the Zoning Officer's decision.

13. After a hearing on the matter, the Board denied the Applicant's appeal and granted MCC's appeal in part, essentially finding that a number of the improvements proposed during the land development process constituted "expanded uses" of the special

exception granted in *St. Joseph's I* and that the Applicant was required to obtain an additional special exception from this Board for those expanded uses. *Appeal of St. Joseph's University*, No. 4166 (March 26, 2009) ("*St. Joseph's II*"); *see also Appeal of Merion Community Coalition*, No. 4167 (March 26, 2009).

14. Both parties appealed the Board's decision to the Court of Common Pleas of Montgomery County, which affirmed the Board in an order dated October 19, 2009 and an opinion dated December 30, 2009. *Appeal of St. Joseph's University from the March 26, 2009 Decisions of the Lower Merion Township Zoning Hearing Board*, Nos. 2009-11927, 2009-11928. The Applicant's appeal to the Commonwealth Court from that decision is pending.

#### The 2009 Special Exception Application

15. On June 10, 2009, the Applicant filed an application with the Board for a special exception to install the site improvements on the Maguire Campus that the Board had identified in *St. Joseph's II* as expanded uses. [Exhibit A-2, Application; N.T. 07/23/2009 at 8] That application is the subject of the present decision.<sup>3</sup>

16. The proposed improvements include: (i) combining the existing baseball field and other playing field along North Latches Lane into a single intercollegiate baseball field; (ii) utilizing the existing football field and track area for a intercollegiate softball field and an intramural field; (iii) utilizing the two playing fields along City Avenue for an intercollegiate field hockey field and an intramural field; (iv) installing artificial turf on the baseball, softball and hockey fields; (v) erecting retaining walls; (vi) installing dugouts, new permanent bleacher seating, press boxes, backstops, fencing, ball

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<sup>3</sup> The Applicant had originally included a request for a special exception for an "expanded use" in its appeal of the Zoning Officer's decision in *St. Joseph's II*. The Applicant withdrew that request immediately before the hearing and proceeded on the appeal alone.

netting, new scoreboards, public address systems for the baseball, softball and hockey fields; and (vii) installing batting cages, bullpens and landscaping. [Exhibits A-2, Application; A-8, Site Plan; and A-27, Landscaping Plan; N.T. 07/23/2009 at 17-32; N.T. 09/03/2009 at 8-10]<sup>4</sup>

17. The Board held public hearings on the application on the following fifteen dates: July 23, 2009, September 3, 2009, October 26, 2009, November 5, 2009, November 30, 2009, January 7, 2010, February 2, 2010, March 18, 2010, April 22, 2010, May 13, 2010, June 10, 2010, July 8, 2010, July 19, 2010, July 20, 2010 and August 3, 2010.

18. The MCC and several other neighbors entered appearances in opposition to the application.

19. The following expert witnesses testified on behalf of the Applicant:

- (a) Dennis Glackin, AICP, land planner
- (b) Adrienne Eiss, PTP, traffic consultant
- (c) Kevin R. Momenee, P.E., professional engineer
- (d) Felicia Doggett, acoustic expert
- (e) Reaves Lukens, SRA, MAI, CRE, real estate expert

20. The following expert witnesses testified on behalf of MCC:

- (a) Andreas Heinrich, P.E., traffic engineer
- (b) Dr. E. Carr Everbach, acoustic expert
- (c) Norman R. Dotti, P.E., acoustic expert

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<sup>4</sup> Near the completion of the hearings on the application, the Applicant amended its plans for the baseball field to reconfigure some of the improvements in response to the concerns of the neighbors residing in that area. [Exhibits A-56, Conditions; A-57, Alternative Plan; and A-66, Conceptual Landscape Plan; N.T. 08/03/2010 at 7-14]



(d) Charles L. Guttenplan, AICP, land planner

(e) Maureen Mastroieni, MAI, CRE, real estate expert

21. A number of residential neighbors of the Maguire Campus, and several members of the MCC testified in opposition to the application.

22. The Applicant introduced 66 exhibits, MCC introduced 32 exhibits, and other objectors introduced 10 exhibits. The Board admitted all the Exhibits into evidence.

### The Proposed Improvements

23. The locations of the proposed improvements are depicted on the various site plans and landscape plans introduced by the Applicant. [Exhibits A-7, A-8, A-9, A-57, A-66] They are described individually below.

#### a. Artificial Turf

24. The Applicant proposes to install artificial turf on the baseball, softball and hockey fields. [Exhibit A-8, Site Plan; N.T. 9/03/2009 at 99]

25. The proposed turf complies with the Consumer Product Safety Improvement Act of 2008 standard for lead content. [N.T. 09/03/2009 at 27]

26. Use of artificial turf is less subject to inclement weather than is the present use of natural grass on the Maguire Campus athletic fields. [N.T. 9/03/2009 at 101-102; N.T. 07/20/2010 at 192-193]

27. Although the installation of turf will not change the Applicant's schedules for varsity baseball, softball and field hockey, it is undisputed that the use of artificial turf maximizes playing time and presents the opportunity for increased use of the athletic

fields beyond the normal schedule of varsity games. [*e.g.*, Exhibit O-3, Open Space Plan Excerpts; O-21, Momenee Letter; N.T. 5/13/2010 at 87]

28. The proposed artificial turf is permeable and its stormwater runoff coefficient is less than or equal to grass; and the proposed drainage system will be maintained to continue this runoff coefficient. [*generally*, N.T. 10/26/2009 at 133-139]

29. The artificial turf will not have a negative impact on the neighborhood aesthetics. [Exhibit A-21, Photo: Natural Grass/Turf Contrast]

b. Bleachers

30. The Applicant proposes a total of 800 permanent bleacher seats for the athletic fields: 400 for the baseball field, 200 for the softball field and 200 for the hockey field. [Exhibits A-8 and A-9, Site Plans; A-15, Bleacher Plan; N.T. 07/23/2009 at 19, 26 and 30]

31. The use of bleacher seats for these sports is typical for athletic facilities connected with educational uses in Lower Merion Township. The number of permanent bleacher seats proposed is less than the permanent seating at Lower Merion Township's two public high school stadiums. Harriton High School has over 1,500 bleacher seats and Lower Merion High School has over 3000 bleacher seats. [N.T. 10/26/2009 at 55-56; N.T. 07/20/2010 at 147-148; Exhibit A-21, Photographs of Lower Merion High School; Exhibit A-59, Photographs of Harriton High School]

32. The permanent seating at Harriton High School and Lower Merion High School are located as close or closer to neighboring residential properties as the Applicant's proposed bleachers are to Applicant's residential neighbors. [Exhibits A-21, Photographs of Lower Merion High School; A-38, Harriton High School Site Plan; A-39,

Lower Merion High School Aerial Photo; A-59, Photographs of Harriton High School; N.T. 10/26/2010 at 55-56 and 58; N.T. 05/13/2010 at 63]

33. Although there was no exact figure for the number of moveable bleacher seats on the athletic fields during Episcopal Academy's ownership of the property, MCC's land planner acknowledged that the Applicant's proposed 800 permanent bleacher seats are fewer than the movable bleacher seats Episcopal maintained on the athletic fields. [Exhibit A-62, Episcopal Bleacher Seating Plan; N.T. 05/13/2010 at 62]

34. Nothing prevents spectators at outdoor athletic events at educational facilities from bringing their own chairs or other portable seating.

c. Dugouts

35. The Applicant proposes dugouts for the baseball and softball fields. [Exhibits A-8 and A-9, Site Plans; A-11, Dugout Plan; N.T. 07/23/2009 at 20 and 26]

36. The use of dugouts for baseball and softball is typical for athletic facilities connected with higher educational uses in Lower Merion Township. [Exhibits A-10, Photograph of Haverford College; N.T. 07/19/2010 at 137]

d. Press Boxes

37. The University proposes a press box for both the baseball and softball fields. [Exhibits A-8, Site Plan; A-13, Press Box Plans]

38. The use of press boxes is typical for outdoor athletic facilities connected with educational uses in Lower Merion Township. [Exhibits A-21, Photograph: Lower Merion High School Turf, Stands, Press Box, Netting; A-58, Acoustical Analysis, Photograph of Harriton High School Bleachers and Press Box; N.T. 07/19/2010 at 137]

e. Ball Netting

39. The Applicant originally proposed ball netting 362-feet long for the baseball field, mounted on seven 35-foot high poles located within the North Latches Lane front yard setback (left field of the baseball field). [Exhibits A-8 Site Plan, A-37, Photographs of Baseball Field; Exhibit A-56, Conditions; N.T. 10/26/2009 at 46-47]

40. Although the Board has never granted zoning relief for ball netting in connection with a baseball field, netting similar to that proposed by the Applicant is located in the required front yard setback at the Haverford School, Harriton High School and the Baldwin School in Lower Merion Township. [Exhibits A-22, Photographs of Ball screens and ball netting; A-38, Harriton High School Site Plan; N.T. 9/03/2009 at 29-30; N.T. 5/13/2010 at 67, 74-76]<sup>5</sup>

41. The Applicant amended its original special exception plans to relocate and re-size the ball netting for the baseball field. The last submitted plan for the netting proposed that it will be: (i) out of the required front yard setback, (ii) reduced in height from 35 feet to 25 feet, (iii) reduced in length from 362 feet to 280 feet, (iv) mounted on five poles, not seven, and (v) in place only from mid-February through no later than mid-June, and from September 1 through November 1. [Exhibit A-56, Conditions]<sup>6</sup>

42. The actual height of the poles above the grade of North Latches Lane will be between 12 feet and 22 feet due to the difference between the grade of that roadway and the grade of the baseball field. [N.T. 8/03/2010 at 20-22]

43. The purpose of the ball netting is to keep batted baseballs within the Maguire Campus and off Latches Lane. [N.T. 09/03/2009 at 93]

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<sup>5</sup> Section 130 of the Zoning Ordinance arguably authorizes the BOC to approve ball netting as "fences" in the front yard exceeding six feet in height, as part of the land development process. Code §155-130 B.

<sup>6</sup> The supporting poles will remain in place throughout the year.

44. The use of ball netting is typical for outdoor athletic facilities connected with higher educational facilities and located near residential uses or roadways in Lower Merion Township. [Exhibits A-22, Photographs of ball screens and ball netting; A-38, Harriton High School Site Plan; N.T. 9/03/2009 at 29-30]

f. Public Address Systems

45. The University proposes to install permanent public address ("PA") systems for the baseball field, softball field and field hockey field in the locations depicted on the plans submitted by Applicant's acoustic expert. [Exhibit A-34, Metropolitan Acoustics Drawings]

46. The PA systems will be "distributive" systems as opposed to "point source" systems. Distributive systems manage the propagation of sound better than point source systems. [Exhibit A-48, Metropolitan Acoustics Report dated 11/03/2009 at 1-2; N.T. 09/03/2009 at 41-42]

47. The use of PA systems for outdoor athletic events in connection with educational facilities is typical in Lower Merion Township. [Exhibits A-25, Photographs of PA Systems; and A-58, Metropolitan Acoustics Report dated 7/15/2010 at 3; N.T. 09/03/2009 at 35-36; N.T. 07/20/2010 at 146-147]

48. PA systems were located on the Maguire Campus during Episcopal Academy's occupancy and were used during baseball games, at pep rallies, at the annual Haverford Game and Episcopal's summer camp. [Exhibit A-25, Photographs of PA Systems; N.T. 02/10/2010 at 100-101; N.T. 07/08/2010 at 10, 13; N.T. 07/19/2010 at 27]

49. The Lower Merion Noise Ordinance defines maximum permissible indoor and outdoor sound pressure levels in frequency bands for daytime usage and nighttime

(11:00 p.m.-7:00 a.m.) usage. Code §105-3. The use of frequency bands is an outdated convention so the Applicant's acoustic expert, Felicia Doggett, converted the tables in the Noise Ordinance to the "new octave band" using generally accepted ANSI standards. [Exhibit A-48, Metropolitan Acoustics Report dated 11/3/09, pp. 2-3]

50. Ms. Doggett originally reported and testified that the PA systems will be designed and calibrated to reach a maximum level of 77 dB in the baseball bleachers (and 84 dB at the two other fields because they are farther from the property line) in order to adhere to the maximum noise levels at the property line stated in the Noise Ordinance (63 dB). [*Id.*, pp. 4-5; N.T. 11/05/2009 at 85-88, 102-103]

51. Ms. Doggett based her opinion that the PA systems would meet the limitations in the Noise Ordinance on 3D modeling she conducted using the EASE program, which records data regarding the open and closed spaces in an area, assigns acoustic properties to the various surfaces within the model and then allows the user to calculate acoustical parameters at various listening positions (in this case at the Applicant's property lines). [N.T. 7/20/2010 at 94]

52. EASE is an accepted and reliable model to predict sound levels at the relatively short distances (several hundred feet) between noise source and listener at issue in this matter. [N.T. 7/20/2010 at 94-97]

53. MCC's acoustic experts raised the issue of the additive effect of the crowd noise at sporting events and the amplified sound from the PA system. Ms. Doggett then returned to testify (with a second report) after taking measurements of crowd noise at other sporting events. She acknowledged that there can be an additive effect from peak crowd noise events (measured by her in the bleachers of sporting events at 85 dB) and

simultaneous usage of the PA system (which she initially proposed to calibrate to reach 77 dB in the bleachers). [N.T. 7/20/2010 at 108-109, 114-115; Exhibit A-58, Metropolitan Acoustics Report dated 7/15/10]

54. Although the unamplified human voices would not exceed the Noise Ordinance and the PA system would be calibrated so as not to exceed the Ordinance, the additive effect would produce a violation of the Noise Ordinance. [N.T. 7/20/2010 at 110-111] Ms. Doggett believed, however, that during those peak crowd noise events, the PA announcer would wait until the crowd noise died down since otherwise, with the PA system limited to 77 dB in the bleachers, the announcer could not be heard over the crowd. [N.T. 7/20/2010 at 109-110]

55. It is likely, unless otherwise prohibited, that during baseball games, the PA system would be used to announce batters coming to the plate at the same time that the crowd is noisily reacting to a previous play, creating an additive effect that would violate the Noise Ordinance. [N.T. 7/20/2010 at 111-112]

56. If the PA system were calibrated so as not to exceed 74 dB in the bleachers, it could still be heard above normal crowd talking, but would not cause a violation of the Noise Ordinance during peak crowd noise events. [N.T. 7/20/2010 at 112-114]

57. The Applicant agreed to the following limitations on the use of the PA systems:

(a) use will be limited to announcements, the National Anthem, player line-ups and substitutions;

(b) the PA systems will be used only for baseball, softball and field hockey varsity games, and tournaments in which St. Joseph's University baseball, softball and field hockey are participants;

(c) the PA systems will not be used for other sporting events or general events on campus;

(d) the speakers will be located where shown on Exhibit A-34; and

(e) the speakers will not be used for play-by-play announcements.

[Exhibit A-56, Conditions; 07/20/2010 at 50-53]

g. Other Proposed Improvements

58. The proposed improvements also include backstops for the baseball and softball fields, bullpens, batting cages, scoreboards for all three varsity fields, and outfield fences, all of which the Board finds to be typical for outdoor athletic facilities connected with educational facilities in Lower Merion Township. [See Photographic exhibits A-16, A-17, A-19, A-23, A-26, A-37; generally, N.T. 07/23/2009 at 20-30; N.T. 09/03/2009 at 19-23, 31-34 and 55-56]

h. The Amended Plan for the Baseball Field

59. At the August 3, 2010 hearing, the Applicant presented an amended plan of the baseball field and accessory improvements (including the ball netting discussed above). [Exhibits A-56, Conditions; and A-57, Alternative Plan; N.T. 08/03/2010 at 7-8]<sup>7</sup>

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<sup>7</sup> The Applicant originally presented the amended plan at the July 20, 2010 hearing as an "alternative" that the Applicant suggested the Board could consider if the original layout of the field was unacceptable in some way. The Board deemed the amended plan to be a substantial modification and, therefore, a new plan. The Board requested that the Applicant decide whether it would proceed on the original plan or on the amended plan. It chose to proceed on the amended plan. All parties were provided notice and an opportunity to present evidence and testimony on the amended plan. [See generally, N.T. 7/20/2010 at 78-87; N.T. 8/03/2010 at 7-8]



60. Changes on the amended plan from the Applicant's original plan for the baseball field include:

(a) home plate is set back an additional 28 feet to the south, placing home plate 396 feet from the curb line of North Latches Lane;

(b) the outfield fence is removed from the front yard and set back 71 feet from the curb line of North Latches Lane;

(c) the ball netting is removed from the front yard and is set back 65 feet from the curb line of North Latches Lane;

(d) the length of the ball netting is reduced from 362 feet to 280 feet;

(e) the number of poles supporting the ball netting is reduced from seven to five;

(f) the height of the ball netting is reduced from 35 to 25 feet;

(g) the retaining wall in center field is eliminated;

(h) the carriage house to the west of the baseball field is preserved (except for the attached garage); and

(i) the depth of the landscaped buffer along North Latches Lane is increased from approximately 24 feet to 50 feet. [N.T. 08/03/2010 at 8-11]

61. The amended plan generally located the baseball field improvements further away from residential properties than the original plan. [Exhibits A-63, Preliminary Plan Distance Study; A-64, Modified Layout Distance Study; and A-65, Proposed Condition: Modified Layout of Baseball Field; N.T. 08/03/2010 at 11-14]

62. In some instances, the amended plan reduced the distance between the baseball field and nearby residences. In those instances, St. Joseph's University-owned buildings are situated between the field and the affected neighbors. [*Id.*]

63. The amended plan for the baseball field includes an amended landscaping plan that generally enhances the amount and features of landscaping previously presented. [Exhibit A-66, Conceptual Landscaping Plan; *generally described at* N.T. 08/03/2010 at 16-22]

64. The MCC agreed with the Applicant that the amended plan for the baseball field would in no way impact the surrounding properties any differently in terms of noise than the original plans, obviating the need for additional testimony from the acoustics experts. [N.T. 08/03/2010 at 14-15]

#### Specific Special Exception Criteria

65. The proposed improvements are part of an accredited educational institution use permitted by special exception in the RAA Residence District and RA Residence District.

66. The Maguire Campus is non-conforming with respect to the Zoning Ordinance requirements for (i) providing ingress and egress from a primary, secondary or tertiary arterial road, (ii) observing location and spacing limitations with regard to other regulated uses, (iii) maintaining certain required lighting, and (iv) establishing minimum buffer areas. [*St. Joseph's I*, p. 12]

67. No buses will be on the Maguire Campus. The drop-off areas for events on the Maguire Campus will be on the adjacent property. [Exhibit A-42, Plan Detail; N.T. 10/26/2009 at 65-66]

68. The Board in *St. Joseph's I* granted the Applicant some measure of relief from the required number of parking spaces under the Zoning Ordinance. However, the Board will enter certain conditions requiring the use of University parking lots to reduce the potential adverse impact on surrounding residential neighborhoods from traffic and parking during events on the Maguire Campus.

69. There will be no change in level of service at the intersections near the Maguire Campus as a result of the Applicant's use of the proposed improvements. [Exhibits A-35, Traffic Report dated 9/01/09 and A-44, Traffic Report dated 10/16/09; *generally*, N.T. 10/26/2009 at 89-99]

70. The Applicant provided a statement of use of the Maguire Campus and a statement of use of the playing fields that detail the proposed times and locations of the uses of the fields. [*See*, Exhibits A-3 and A-33]

71. The Applicant satisfied its burden of proving compliance with the applicable specific criteria for a special exception to expand an accredited educational institution.

#### The Adverse Impacts on the Neighboring Community

72. Section 114 C(1) of the Zoning Ordinance provides that, in determining whether the allowance of a special exception will be contrary to the public interest, the Board shall consider whether the allowance would adversely affect the public health, safety and welfare due to changes in traffic conditions, drainage, air quality, noise levels, natural features of the land, neighborhood property values and neighborhood aesthetic characteristics. Code §155-114 C(1)

73. The Board finds that the proposed improvements, and the proposed use of those improvements by the Applicant (as conditioned herein), will not generate adverse impacts on the health, safety and welfare of the community that are not normally generated by this type of expanded use.

a. Traffic

74. MCC presented the testimony and report of expert traffic engineer Andreas Heinrich in opposition to the application.

75. Mr. Heinrich agreed with the Applicant's expert traffic engineer that the proposed use of the Maguire Campus would not adversely affect levels of service at the nearby intersections. [N.T. 10/26/2009 at 167]

76. Mr. Heinrich opined, however, that for certain periods of time before and after baseball games on the weekend, the traffic on Latches Lane would increase as spectators arriving by vehicle searched for parking spaces. [*See generally*, N.T. 10/26/2009 at 159-168; N.T. 11/05/2009 at 12-13]

77. The Applicant's expert traffic engineer, Adrienne Eiss, performed a quantitative analysis to determine the impact of traffic from sporting events on the neighborhood. [Exhibit A-44, Traffic Report dated 10/16/09]

78. Assuming a capacity varsity baseball game, Ms. Eiss estimated that the game would generate approximately 50 cars for a weekday game and 60 cars for a weekend game. [N.T. 10/26/2009 at 94-95] She concluded that there would be no traffic congestion as a result of even the most heavily attended sporting events and that ample off-street parking would be available, including in the Latches Hall parking lot, which

ordinarily requires a University permit. [Exhibit A-44, Traffic Report dated 10/16/09; N.T. 10/26/2009 at 94-97, 110-113]

79. The Board credits the report and testimony of the Applicant's expert traffic engineer and finds that, provided the Latches Hall parking lot is available for all varsity games and games in which the PA system is in use, the use of the Maguire Campus and the proposed improvements will not have an adverse impact on the public health, safety and welfare, in terms of traffic and parking conditions, not normally associated with athletic events at accredited educational institutions.

b. Noise Levels

80. Dr. E. Carr Everbach testified as an acoustic expert on behalf of MCC. [Exhibit O-10, Everbach Report 11/2/09; N.T. 11/05/2009 at 106 *et seq.*]

81. He opined that the even the non-amplified noise from an intramural sporting event at the Maguire Campus could exceed the Noise Ordinance's broader limits for sporadic noise. [N.T. 11/05/2009 at 175]

82. However, Dr. Everbach acknowledged that, as written, the Lower Merion Noise Ordinance classifies non-amplified sporting event noises (e.g., crowd, crack of the bat, etc.) not as sporadic noise, but as continuous noise because such noises can be measured by the operator of a sound level meter with associated equipment. [N.T. 11/05/2009 at 175-179]

83. Dr. Everbach testified that he knew of no other educational institution in as close proximity to a residential neighborhood with a low background noise level as the Maguire Campus is to its neighbors. He did not, however, measure any of the background noise levels in the residential neighborhoods near Lower Merion High

School, Harriton High School or the Haverford School, all located in Lower Merion Township, and all with residences as close to athletic fields as the Maguire Campus athletic fields are to its residential neighbors. [*Id.* at 181-182]

84. The MCC also presented the testimony and report of a second acoustics expert, Norman Dotti. [Exhibit O-15, Russell Acoustics Report dated 1/5/10; N.T. 02/10/2010 at 10, *et seq.*]

85. Mr. Dotti testified that the limits in the Noise Ordinance for continuous noise apply only to mechanical equipment and not to crowd noise. [N.T. 02/10/2010 at 64-65] As a consequence, crowd noise – deemed continuous noise under the Noise Ordinance definitions – is not subject to the limits in the Ordinance.

86. He also stated that average crowds at athletic events at the Maguire Campus would not have an adverse impact on the neighbors in terms of changes in noise levels. [*Id.* at 67]

87. Mr. Dotti acknowledged that athletic facilities are often associated with educational institutions. [*Id.* at 65-66]

88. When asked whether or not the predicted sound pressure levels from athletic events at the Maguire Campus would be comparable to the levels that would normally be generated at athletic events at educational institutions in Lower Merion Township, Mr. Dotti responded that he "really [didn't] care what the sound levels are like at other institutions." [*Id.* at 63-64]

89. As found above by the Board, the Applicant's acoustic expert, Felicia Doggett, testified that the PA system for the baseball field will be calibrated so that the noise level at the Maguire Campus property line from the additive effect of the use of the

PA and the crowd will not exceed the limits in the Noise Ordinance. She opined that the noise levels for athletic events at the Maguire Campus after the installation of the proposed improvements would be no greater than the noise levels at comparable events at educational institutions. [Exhibit A-58, Metropolitan Acoustics Report dated 7/15/10; *generally*, N.T. 07/20/2010 at 97-107]

90. Ms. Doggett also testified that (i) the background sound levels at the residential areas around the Maguire Campus are similar or higher than measured background sound levels at the residential areas around Harriton High School, (ii) the predicted sound levels from athletic events at residential property lines surrounding the Maguire Campus are lower than peak sound levels for athletic events adjacent to Harriton High School; and (iii) the layout of the athletic fields would not increase peak sound levels beyond what would be expected with the existing terrain. [Exhibit A-58, Metropolitan Acoustics Report dated 7/15/10; N.T. 07/20/2009 at 93, *et seq.*]

91. The Board credits the reports and testimony of the Applicant's acoustic expert and finds that the use of the Maguire Campus and the proposed improvements, as conditioned herein, will not have an adverse impact on the public health, safety and welfare, in terms of noise levels, not normally associated with athletic events at educational institutions.

c. Neighborhood Property Values

92. The MCC presented the report and testimony of expert real estate appraiser Maureen Mastroieni. [Exhibit O-8, Mastroieni Report; N.T. 11/30/2009 at 110 *et seq.*]

93. Ms. Mastroieni opined that the Applicant's proposed improvements would have a "devastating" effect on the property values in the neighborhood, which she characterized as being comprised of homes with values of \$1 million to \$3 million. [N.T. 11/30/2009 at 114-115 and 135; N.T. 01/07/2010 at 146-147]

94. Ms. Mastroieni's opinion was based on the belief that homes selling for \$1 million to \$3 million "are simply not built" next to athletic complexes (a use she described as an "undesirable influence.") [Exhibits O-8, Mastroieni Report at 22; N.T. 11/30/2009 at 117 and 142; N.T. 01/07/2010 at 23-24 and 43]

95. In fact, it is not extraordinary to find homes in Lower Merion that sold for (and are valued at) \$1 million to \$3 million next to the athletic fields of educational institutions. Examples include homes near the athletic facilities at Harriton High School, Lower Merion High School, the Haverford School and the Shipley School. [N.T. 07/19/2010 at 166-167; Exhibit A-49, Aerial photograph of Harriton High School and neighborhood]

96. There are three methods to determinate whether a particular amenity or disamenity will have a positive or negative effect on proximate property values: (i) a paired sales analysis, (ii) a group data analysis, and (iii) a multi-variate regression analysis. [N.T. 07/20/2010 at 44-45]

97. Ms. Mastroieni prepared a group data analysis, which the Board finds is entitled to little weight because the sales she used were not "nearly identical" (as required by the governing appraisal literature) and she did not control for numerous variables. [A-52, Article: *The Appraisal of Real Estate*; N.T. 01/07/2009 at 80, 136-138; N.T. 07/19/2010 at 172-173; N.T. 07/20/2010 at 44-45]



98. Ms. Mastroieni relied on certain passages from the writings of John Crompton to support her claim that the proposed improvements would have a negative impact on property values. [N.T. 01/07/2010 at 43-47; Exhibits A-50, Article from *Journal of Park and Recreation Administration*; A-51, Crompton Article; and O-8, Mastroieni Report at 23]

99. Ms. Mastroieni acknowledged that the Crompton passage quoted on page 7 of her report actually supports the conclusion that active recreation areas have a small positive incremental effect on neighboring property values. [N.T. 01/07/2010 at 49-51]

100. The Board gave little weight to Ms. Mastroieni's testimony and report because of the foregoing and in light of the testimony of Reaves C. Lukens, Jr., discussed below.

101. Reaves C. Lukens, Jr. testified for the Applicant as an expert real estate appraiser. [N.T. 07/19/2009 at 159 *et seq.*]

102. The Board credits Mr. Lukens' testimony in support of the following findings:

(a) some of the most expensive homes in Lower Merion Township have been built adjacent to athletic complexes of educational institutions; [N.T. 07/19/2010 at 165-168]

(b) sales around Harriton High School provided ample data to perform a paired sales analysis of homes worth between \$1 million and \$3 million; [*Id.* at 166-167] and

(c) the installation and use of the proposed improvements will not have an adverse impact on the public health, safety and welfare, in terms of property

values, not normally associated with athletic events at accredited educational institutions.  
[N.T. 07/19/2010 at 178-183]

d. Natural Features and Neighborhood Aesthetics

103. The neighborhood surrounding the Maguire Campus is characterized by institutional uses and residential uses. [*generally*, N.T. 11/30/2009 at 34-35, 90-92, 166-168; N.T. 07/20/2010 at 159-163]

104. Institutional uses in the neighborhood include the Barnes Foundation, the University's Merion Campus, Adath Israel, Lower Merion Synagogue, Stern Hebrew Academy, a public library and the French International School and are all within walking distance of the Maguire Campus. [*Id.*; Exhibit O-29, Map; Exhibit A-44, Orth-Rogers Report, Figure 1]

105. University students reside in several residence halls located on the Merion Campus, some of which have direct vehicular access to Latches Lane. [*Id.*]

106. The character and density of the residential uses varies in the neighborhood, ranging from large mansions along North Latches Lane to row homes lining the streets intersecting Old Lancaster Road to multi-family buildings including Yorklynne Manor and the Latches Lane Condominiums. [*Id.*]

107. The neighborhood is characterized by relatively lightly trafficked streets (e.g., North Latches Lane), and private streets (e.g., Berwick Road), as well as more heavily trafficked streets and thoroughfares such as Old Lancaster Road and Montgomery Avenue, as well as City Avenue on its perimeter. [*Id.*]

108. Several witnesses in opposition to the application testified that the proposed improvements would adversely impact the neighborhood because the

neighborhood has a significant Orthodox Jewish community, whose lifestyle would be threatened by the Applicant's use of the proposed improvements. [*e.g.*, N.T. 11/30/2009 at 13-23; N.T. 05/13/2010 at 16-17]

109. The credible evidence proved that there would not be a substantial increase in traffic on account of the use of the proposed improvements (as conditioned herein), that the character of the neighborhood has for years included the use of the Maguire Campus for athletic practices and competitions, that the character of the neighborhood includes heavily trafficked streets, and that the Applicant plans to install stormwater management facilities and landscaping features that will mitigate the impacts of the use of the Campus for athletic practices and competitions. [N.T. 09/03/2009 at 75-76; N.T. 11/30/2009 at 27-29; N.T. 05/13/2010 at 37-43; N.T. 07/20/2010 at 160-165; Exhibit A-61, Aerial photograph of synagogues near Maguire Campus]

110. The Board further credits the testimony of the Applicant's expert land planner, Dennis Glackin, in support of the following findings:

(a) the proposed improvements will not have an adverse impact on the public health, safety and welfare in terms of natural features of the land; the trees being removed will be replaced by substantial new landscaping; no wetlands, floodplains or steep slopes are proposed to be disturbed;

(b) the new landscaping will mitigate any adverse impact of the proposed improvements on the neighborhood aesthetics; the landscape plans provide more protection of the neighborhood aesthetics (consistent with Lower Merion Township's Natural Features Ordinance) than would ordinarily be expected in such facilities in residential neighborhoods; and

(c) installation and use of the proposed improvements will not have an adverse impact on the public health, safety and welfare, in terms of the character of the neighborhood, not normally associated with athletic events at accredited educational institutions. [N.T. 09/03/2009 at 75-76; Exhibits A-27, Phase I Landscaping Plan, A-28, Plan close-ups, A-66, Concept Landscaping Plan for baseball field]

e. Drainage

111. The Applicant's expert civil engineer, Kevin Momenee, P.E., testified that the Maguire Campus currently has no storm water management system to control the rate of runoff. [N.T. 10/26/2009 at 132]

112. In connection with the proposed improvements, the Applicant will install a comprehensive storm water management program, including the installation of porous paving, rain gardens, vegetative swales, a subsurface system of large diameter perforated pipes and crushed stone, and artificial turf. [N.T. 10/26/2009 at 133-140]

113. The installation and use of the proposed improvements will not have an adverse impact on the public health, safety and welfare, in terms of drainage, not normally associated with such improvements at educational institutions; rather, there will be significant improvement in off-site impacts as a result of the installation of the planned storm water management facilities. [N.T. 10/26/2009 at 146-150]

The Use of the Proposed Improvements

114. The Applicant's intended uses of the proposed improvements are set forth on Exhibits A-3 and A-33.

115. Included in those intended uses is the "continue[d]" hosting of "community athletic events." [e.g., Exhibit A-3, Statement of Use, ¶D.3]

116. Though such events may have taken place on occasion, there was no evidence that the Board ever permitted the use of the athletic fields on the Maguire Campus by any groups not a part of the Episcopal Academy.

117. The Applicant did not request a special exception to expand the use of the Maguire Campus to non-St. Joseph's University groups.

### **CONCLUSIONS OF LAW**

1. The proposed improvements to the Maguire Campus are permitted by special exception as an expansion of the Applicant's existing accredited educational institution. Code §§155-11 S(2), 155-11 X.

2. Except for the "community athletic events" described on Exhibits A-3 and A-33, the uses of the proposed improvements are permitted by special exception as part of the accredited educational institution use.

3. Use of the Maguire Campus for "community athletic events" and use of the Maguire Campus by groups and individuals not affiliated with St. Joseph's University or its opponents during athletic competitions are not permitted without the Applicant obtaining an additional special exception for an "expanded use."

4. The Applicant's proposed improvements comply with all the specific criteria applicable to the expansion of an accredited educational institution.

5. As specifically conditioned herein, the expansion will not have adverse impacts on the public health, safety and welfare not normally associated with that kind of use.

## **OPINION**

The Lower Merion Zoning Ordinance defines an "expanded use" to include the enlargement of the use of property evidenced by, among other things, construction of new buildings or additions to buildings, and construction of new athletic fields. Code §155-4 B ("Expanded Use"). Having determined in *St. Joseph's II* that the proposed improvements constituted an expanded use of the property beyond that approved in *St. Joseph's I*, the Board must now decide whether to approve those improvements under the standards for special exceptions.

### **The Special Exception Standard**

A special exception is not an exception to a zoning ordinance, but rather is a use to which an applicant is entitled unless the Board determines, according to standards set forth in the Lower Merion Zoning Ordinance, that the proposed use would adversely affect the community. *East Manchester Township Zoning Hearing Board v. Dallmeyer*, 609 A.2d 604 (1992); 53 P.S. §10912.1. Once an applicant for a special exception satisfies its burden of proving that the proposed use meets the specific and objective criteria in the Zoning Ordinance, a presumption arises that the use is consistent with the public health, safety and welfare. *Id.* The burden then shifts to any objectors to present evidence of a high degree of probability that the use will substantially, adversely affect the health, safety and welfare of the community. *Id.*

The objectors' burden is more than merely showing an adverse impact. When the BOC permits a use by special exception, it is exercising its legislative judgment that such uses, in the ordinary case, will not negatively impact the public welfare. The objectors' evidence, therefore, "must show a high probability that the use will generate adverse

impacts not normally generated by this type of use and that these impacts will pose a substantial threat to the health and safety of the community." *Appeal of Michael Dippolito*, 833 A.2d 336 (Pa. Cmwlth. 2003); *Greaton Properties, Inc. v. Lower Merion Township*, 796 A.2d 1038, 1045 (Pa. Cmwlth. 2002).

**The Proposed Improvements and Their Use are Permitted by Special Exception**

Section 11 S(2) of the Zoning Ordinance permits "accredited educational institutions" by special exception in residential districts. Section 11 X allows those institutions to expand by special exception. Code §§155-11 S(2), 155-11 X.

St. Joseph's University is an accredited educational institution. The proposed improvements are all to be used in connection with St. Joseph's varsity, intramural and student athletic programs and activities, they are typical for educational institutions, and are therefore permitted by special exception as expansions to St. Joseph's accredited educational institution use. [N.T. 09/03/2009 at 64-65]

However, the Applicant's proposal to "continue" to host "community athletic events" on the Maguire Campus is not approved. There was no evidence submitted to prove that such events were ever lawfully conducted by the Episcopal Academy on the property and the Applicant did not specifically request that its approved use be expanded to permit those events. The use of the Maguire Campus is, therefore, prohibited for any "outside" groups and individuals, i.e., groups and individuals not affiliated with the Applicant or its opponents during athletic competitions. This finding does not preclude the Applicant from seeking an additional special exception in the future to open the Maguire Campus to other groups and individuals.

The Applicant demonstrated that its proposed expansion complies with all the specific criteria applicable to its accredited educational institution. As the Board found in *St. Joseph's I*, the Maguire Campus is non-conforming with respect to these criteria: (i) providing ingress and egress from a primary, secondary or tertiary arterial road, Code §155-11 W, (ii) observing location and spacing limitations with regard to other regulated uses, Code §155-11 Y(3), (iii) maintaining certain required lighting, Code §155-11Y(5), and (iv) establishing minimum buffer areas. Code §155-11 Y(6). [*St. Joseph's I*, p. 12] Because no buses would be on the Maguire Campus, and the drop-off areas for events on the Campus would be on the adjacent property, the loading/queuing criteria does not apply. Code §155-11 Y(4)(d). [Exhibit A-42, Plan Detail; N.T. 10/26/2009 at 66]

The Board in *St. Joseph's I* already granted the Applicant relief from the criteria regarding the number of parking spaces for its expansion of the use of the Maguire Campus to include students of driving age. Code §§155-95 AA(1)(a), 155-114 C(3).

The Applicant also satisfied the requirement for a traffic impact study demonstrating that there will not be level of service lower than "C" at the intersections near the Maguire Campus (or if LOS is already "C" or below, it will not change for the worse) as a result of the Applicant's use of the proposed improvements. Code §155-11 Y(1). [Exhibits A-35, Traffic Report dated 9/01/09 and A-44, Traffic Report dated 10/16/09; N.T. 10/26/2009 at 89-99] However, as indicated in its findings of fact, the Board will impose certain conditions on the use of the University parking lots to reduce the potential adverse impact on the surrounding residential neighborhood of added traffic and parking during Maguire Campus athletic events.



Finally, the Applicant's statements regarding the use of the Maguire Campus and the athletic fields satisfied the criteria for "general information" regarding the participants, hours of operation and attendance at those athletic events. Code §155-11 Y(2). [See, Exhibits A-3 and A-33]

**The Proposed Expansion, as Conditioned Herein, Will Not Generate Impacts Not Normally Associated With This Type of Use That Pose a Substantial Threat to the Health, Safety and Welfare of the Community**

The Applicant having satisfied its burden of proving compliance with the specific criteria applicable to its proposed expansion, the Board must consider whether granting the special exception will have an adverse impact on the public health, safety and welfare. In determining whether that is the case, the Section 114 C(1) of the Zoning Ordinance compels the Board to consider whether granting the relief will adversely affect the public welfare due to "changes in traffic conditions, drainage, [etc.]." Code §155-114 C(1). Seizing on this language, much of the testimony and evidence in this protracted matter tended to prove that there would indeed be some measure of "change" resulting from the proposed improvements (some allegedly for the better (stormwater management), some allegedly for the worse (traffic and noise)).

However, the mere proof that there will be a change (even for the worse) in the way the public is impacted by a proposed use is not sufficient to deny a special exception. As noted above, when the BOC legislated that accredited educational institutions are permitted in all residential districts by special exception, they made the determination that such uses will not ordinarily negatively impact the public health, safety and welfare. Consequently, the objectors had the burden in this case to prove "a high probability that the use will generate adverse impacts not normally generated by this type of use and that

these impacts will pose a substantial threat to the health and safety of the community." *Appeal of Michael Dippolito*, 833 A.2d 336 (Pa. Cmwlth. 2003) (emphasis supplied); *Greaton Properties, Inc. v. Lower Merion Township*, 796 A.2d 1038 (Pa. Cmwlth. 2002). We emphasize the quoted language because much of the testimony in this matter did not focus on this determinative aspect of the law of special exceptions.

Lower Merion Township is home to numerous public and private educational institutions, including colleges and universities (Applicant's being one), high schools, academies and religious-affiliated schools. In 1998, the BOC adopted comprehensive amendments to the Zoning Ordinance to impose new requirements and limitations on educational institutions. The BOC continued, however, to permit educational institutions in all residential districts by special exception. It made no distinction among colleges, high schools, middle schools, grade schools and preschools. Consequently, when this Board considers whether a proposed educational institution (or its expansion) poses a substantial threat to the public health, safety and welfare, we presume that the BOC was familiar with the potential impacts from all aspects of educational uses and facilities when it amended the Zoning Ordinance in 1998 and continued to permit them (without distinction as to level of education) in all residential districts.<sup>8</sup>

The Board makes two additional observations pertinent to this application and the assessment of its impacts. First, we do not decide the public welfare aspect of this case based on shifting burdens of proof or on the failure of one party or another to submit competent evidence. The Lower Merion Zoning Ordinance does shift the burden of

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<sup>8</sup> This is not to suggest that the impacts of a college are no different from the impacts of a preschool, but only that the BOC has not seen fit to impose any specific criteria on colleges that are any different from those on other educational institutions (except the increased parking required for students of driving age).

presenting evidence under certain circumstances,<sup>9</sup> but in this matter, all parties had ample opportunity to submit testimony and evidence on all aspects of potential adverse impacts. Instead, the Board's decision is based on its determinations of the credibility of witnesses and the weight to be accorded their testimony. As detailed in the findings of fact, in most circumstances, the Board gave more weight to the testimony and evidence of the Applicant's expert witnesses regarding the impacts of the proposed improvements on the public welfare.

The second observation has more of an impact on future expansions of the use of the property than on the expansion approved today. It is the Board's judgment that where a special exception is sought for an expanded use under the Lower Merion Zoning Ordinance, the impact of the expansion on the public health, safety and welfare must be determined from a "baseline" of the conditions when the original special exception was granted. [See, N.T. 07/20/2010 at 62-64] For example, if the Applicant returns at some point for an approval of lighting for the athletic fields, the Board will be obliged to assess the impact of the accumulation of: (1) the improvements approved in this application, and (2) the new lighting. Otherwise the cumulative impacts of a special exception use might escape review by the filing of one application after another for incremental improvements and expansions. So although the Board has made findings of fact regarding the impacts of the individual components of the proposed improvements (PA system, turf, ball netting, bleachers), we specifically hold that the impacts of expanded special exception uses should be evaluated based on a consideration not only of the individual components (any one of which might warrant denial of relief), but also of the combined impact of those components and previous expansions of the use. The Board's judgment in this

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<sup>9</sup> See Code §155-114 E.

regard is consistent with the Commonwealth Court's observation that the objectors' burden to prove adverse impacts in a special exception case actually becomes less difficult where the use is already operating on the property than it is where the use is new to the property. *See, Pennsy Supply, Inc. v. Zoning Hearing Board of Dorrance Township*, 987 A.2d 1243, 1250 (Pa. Cmwlth. 2009).

Bearing all that in mind, and having carefully reviewed the testimony and exhibits, the Board concludes that the expansion of the Maguire Campus by the installation and use of the proposed improvements, as amended by the Applicant and as conditioned herein, will not have an adverse impact on the public health, safety and welfare not normally generated by this type of use. Findings of Fact 72-115 detail the evidence that the Board considered in reaching this conclusion.

With specific regard to the potential impacts on the character of the neighborhood, a number of objectors would have the Board measure those impacts based on the neighborhood as primarily an Orthodox Jewish community. In assessing the impact of a special exception on the character of a neighborhood, though, the Board must consider the overall character of the neighborhood as a whole. *Union Township v. Ethan Michael, Inc.*, 979 A.2d 431 (Pa. Cmwlth. 2009). While the Board is sympathetic to the potential disturbance that the use of the athletic fields might have to those observing the Sabbath, we are obliged to focus on the entire neighborhood when assessing the impacts of the proposed improvements. And given the nature of this neighborhood as one of mixed residential uses and institutional uses bounded by some of the area's most heavily-trafficked roadways, the Board has concluded that the installation and use of the improvements to these existing athletic fields would not result in adverse impacts to the

character of the neighborhood not normally associated with this type of use, provided that the conditions imposed by the Board are adhered to by the Applicant.

With regard to the impacts that the addition of three permanent PA systems to the Maguire Campus would have on the public welfare, the Board was persuaded by Ms. Doggett's testimony that the PA system for the baseball field (the impacts of the others closer to City Avenue were not challenged) will be calibrated so that the additive effect of the PA and the crowd noise will not exceed the Noise Ordinance limitations at the Maguire Campus property line. To insure that is the case, and to reduce the potential impact on the neighborhood, the Board will impose the following conditions on the use of the PA systems:

1. use is limited to player lineups at the beginning of games, substitutions during games, the national anthem, and emergency announcements;
2. use is limited to St. Joseph's University baseball, softball and field hockey varsity games and varsity tournaments in which St. Joseph's University teams are participants;
3. speakers will not be used for any other sporting events or general events on campus;
4. speakers will be located where shown on the plans and amended plans; and
5. speakers for the baseball field will be calibrated to a maximum of 74 dB in the bleachers or such other lower level as may prove in the future to be necessary to insure that the additive effect of the crowd noise and the use of the PA system does not result in a violation of the Noise Ordinance at the Maguire Campus property line.

Whether or not the limitations on the noise levels of the PA system will render it ineffective in the bleachers during crowd noise is not a concern of the Board.

### **Limitations of the Use of the Athletic Fields**

It is clear that with the addition of synthetic turf to three of the athletic fields, the opportunity for vastly increased amounts of play is presented. [Exhibit O-3, Open Space Plan Excerpts; O-21, Momenee Letter and exhibit pp. 79-80; N.T. 05/13/2010 at 87] The Board believes it is important to clearly set forth what intensity of use is permitted on the athletic fields in this decision, as it also became clear during the hearings that these fields will be used more often than they had been used in the past by the Episcopal Academy. Any increase in the use of the fields beyond the parameters below will require a special exception for an expanded use and a re-evaluation of the potential adverse impacts on the public health, safety and welfare as outlined above. Use of the athletic fields will be limited:

1. to St. Joseph's University intercollegiate games and practices;
2. to St. Joseph's University intramurals and tournaments, subject additionally to the following:
  - (a) intramurals are limited to twenty-four (24) hours total per week; and
  - (b) intramurals and tournaments are limited to six (6) hours total on weekend (Saturday and Sunday) days; and
  - (c) intramurals and tournaments are limited to the hours of 9 a.m. to 6 p.m. (or dusk, whichever is earlier);
3. to St. Joseph's University students, opponents, and event spectators; and

4. in all events, to daylight hours.

Although the BOC will ultimately decide the nature and extent of the landscaping required for the improvements, the Applicant's testimony indicated, and the Board found as a fact, that much of the mitigation of the impacts of the baseball field expansion on the neighborhood is related to the effectiveness of the screening and landscaping of those improvements. Subject then to the ultimate approval of the BOC and Township staff, the Board will condition the special exception on the landscaping being as substantial and as expeditiously-established as possible to provide an effective buffer.

In sum, the Board finds that, as thus conditioned, allowing the special exception will not be contrary to the public interest within the meaning of Section 114 A(2), nor will it adversely affect the public health, safety and welfare within the meaning of Section 114 C.

## ORDER

AND NOW, this 18<sup>th</sup> day of November, 2010, it is hereby ORDERED that the application of St. Joseph's University for a special exception under Code §§155-11 S(2) and 155-11 X to install certain improvements on the Maguire Campus, known as 356-476 North Latches Lane, 480 North Latches Lane, 35 Berwick Road and 39 Berwick Road is GRANTED for the reasons set forth in the foregoing findings, conclusions and opinion. Use of the Maguire Campus is prohibited for outside groups and individuals not affiliated with the Applicant or its opponents during athletic events without obtaining a special exception for an expanded use.

The relief is granted based on, and conditioned on adherence to (except to the extent otherwise set forth in the foregoing decision) the plans (including specifically Exhibit A-57, Alternative Phase I Baseball Field Alignment) and testimony presented at the hearings in this matter. Relief is further conditioned on:

1. PA Systems

- a. use is limited to player lineups at the beginning of games, substitutions during games, the national anthem, and emergency announcements;
- b. use is limited to St. Joseph's University baseball, softball and field hockey varsity games and varsity tournaments in which St. Joseph's University teams are participants;
- c. will not be used for any other sporting events or general events on campus
- d. speakers will be located where shown on the plans and amended plans; and
- e. speakers for the baseball field will be calibrated to a maximum of 74 dB in the bleachers or such other lower level as may prove in the future to be necessary to insure that the additive effect of the crowd noise and the use of the PA system does not result in a violation of the Noise Ordinance at the Maguire Campus property line.

2. Ball netting

- a. for the Spring season, the netting may be put up no earlier than: (1)



the beginning of the Spring sports season or (2) February 15, whichever is later; and must be taken down no later than (1) the end of the Spring sports season or (2) June 15, whichever is earlier;

b. for the Fall season, the netting may be put up no earlier than: (1) the beginning of the Fall sports season or (2) September 1, whichever is later; and must be taken down no later than (1) the end of the Fall sports season or (2) November 1, whichever is earlier;

c. landscaping for the netting and the supporting poles to be approved by the BOC and the Township staff.

3. Use of the Athletic Fields is limited:

- a. to St. Joseph's University intercollegiate games and practices; and
- b. to St. Joseph's University intramurals and tournaments, subject additionally to the following:
  - 1) intramurals are limited to twenty-four (24) hours per week; and
  - 2) intramurals and tournaments are limited to six (6) hours total on weekend (Saturday and Sunday) days; and
  - 3) intramurals and tournaments are limited to the hours of 9 a.m. to 6 p.m. (or dusk, whichever is earlier); and
- c. to St. Joseph's University students, opponents and event spectators; and
- d. in all events, to daylight hours.

4. Landscaping. All landscaping for the proposed improvements shall, subject to the approval of the BOC and Township staff, be as substantial and as expeditiously-established as possible to provide an effective buffer.

5. Parking. The Latches Hall parking lot will be made available for spectator parking for all varsity games on the Maguire Campus and for all other events on the Maguire Campus for which the PA system is used; the Applicant will provide signs and/or traffic personnel to direct spectators and attendees at these events to the appropriate off-street parking areas.

Chairman Aaron, Member Fox, and Alternate Member Baron-Baer participating, all voting "aye." Member Brier did not participate in the hearings or the decision in this matter.

Attest: \_\_\_\_\_

Michael Wylie  
Secretary