

<sup>1</sup> Ms. Korson and Ms. Owens engaged in cross-examination of the Petitioner's witnesses and spoke on behalf of those neighbors in opposition to the Petition. The following individuals in opposition to the Petition were present either via Zoom or in person during the hearing: TJ Atkinson, Wendy Atkinson, Taylor Smith, Lenny Smith, Lynn Fields and Tony Korson.

<b>III. FINDINGS AND CONCLUSIONS .....</b>	<b>21</b>
<b>A. Standards for Evaluation .....</b>	<b>21</b>
<b>B. Does the modification substantially alter the nature, character, intensity or use of the conditions of the original grant or its effect on traffic or the immediate neighborhood? .....</b>	<b>23</b>
<b>IV. RECOMMENDATION .....</b>	<b>27</b>

## I. STATEMENT OF THE CASE

On June 25, 2024, Petitioner, Olney Boys and Girls Club (Applicant or OBGC), filed an administrative modification to the Special Exception Case No. S-2385 seeking to modify an existing special exception for the establishment and operation of a service organization at Lot 5, Brooke Farm Subdivision, located at 4501 Olney-Laytonsville Road, Olney, Maryland 20832 in the AR Zone under Section 59-G-1.3(c)(1) of the *2004 Zoning Ordinance*.<sup>2</sup> OBGC requests confirmation of the “placement of existing fundraising structures” and clarification of the special exception “conditions of approval to include reference to ‘fundraising’ as an approved part of OBGC’s use.” Exhibit 48.

On July 17, 2024, the Board of Appeals (BOA or Board) considered the administrative modification request during its Worksession. Exhibit 49. Based on the documents received and the representations of Mr. Kevin McLaren during the Worksession, the Board granted the administrative modification sought by adding to the special exception the structures identified on the Applicant’s site plan and modifying the original special exception paragraph 3 adding language permitting fundraising activities on site.<sup>3</sup> Exhibit 49. On August 12, 2024, the BOA received seven email letters regarding the administrative modification granted by it to OBGC on July 17, 2024. Exhibit 52. The letters expressed opposition and requested the BOA take a variety of actions on the modification including reconsideration, request for a public hearing, and nullification of the special exception. *Id.* During its Worksession on September 11, 2024, the BOA heard from Peter Ciferri, Esq. representing OBGC and several neighbors who either opposed or expressed concerns with the modification. *Id.* By Resolution effective September 18, 2024, the

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<sup>2</sup> Unless otherwise noted, all citations are to the *2004 Zoning Ordinance*. The 2014 comprehensive revision to the 2004 Zoning Ordinance (ZTA 13-04, adopted March 4, 2014) allows special exceptions approved before 2014 to be modified under the 2004 Ordinance until 2029, when they become subject to the 2014 Ordinance. *2014 Zoning Ordinance*, §59.7.7.1.B.

<sup>3</sup> The effective date of the BOA’s resolution was July 26, 2024.

BOA referred the matter to the Office of Zoning and Administrative Hearings (OZAH) for a public hearing and to issue a report and recommendation in accordance with §59-A-4.125(a) *Id.* The BOA further suspended its July 26, 2024 Resolution modifying the special exception and requested the following of OZAH,

(1) hold a public hearing to determine whether the administrative modification that the Board granted in Case No. S-2385, effective July 26, 2024, substantially changes the nature, character of intensity of the special exception use, or its effect on traffic or on the immediate neighborhood, and (2) issue a written Report and Recommendation to the Board.

Exhibit 52.

The public hearing proceeded as scheduled on February 11, 2025. OBGC's witnesses included Brad Scott, Executive Director of OBGC, and Kevin McLaren, as a representative for Steelhead the organization that operates the fundraising events at OBGC. Caroline Taylor, Nikki Korson and Caragh Fay Owens testified in opposition. Additionally, twelve individuals did not testify during the hearing, but appeared in opposition. The testimony of those opposed is summarized in Part II.E of this Report.

The Hearing Examiner left the record open for 10 business days for receipt of the written transcript. Upon receiving the transcript, the Hearing Examiner closed the record on February 21, 2025. Prior to the close of the record, Mr. Barr requested the opportunity to submit a document that essentially summarized the OBGC's testimony and request. Those in opposition objected to the submittal of the document for a number of reasons. The Hearing Examiner responded by email on March 4, 2024 denying the OBGC's request. Exhibit 121. The Hearing Examiner extended the time for the issuance of her report and recommendation to April 8, 2025. For the following reason, the Hearing Examiner finds that the administrative modification requested by OBGC does substantially change the nature, character of intensity of the special exception use, and the request impacts traffic and the immediate neighborhood.

## **II. FACTUAL BACKGROUND**

### **A. The Subject Property**

The property consists of 118.18 acres with an address of 4501 Olney Laytonsville Road (Route 108), Olney, Maryland 20832 and is zoned AR. Exhibit 48. The main entrance to the complex is from Route 108 and with access through the property via Volunteer Drive. *Id.* Six parcels immediately abut the subject property. The County owns land across Route 108 and directly abutting the property to the southeast. The Atkinsons own two parcels abutting the property to the northeast. Brian and P.R. Lane own the parcel abutting the property at the northern most point. Our House, Inc. owns a parcel that abuts the property to northwest. Thomas Dickerson, et al. own the parcel immediately abutting the property running along most of the western side. See aerial photo on the following page.

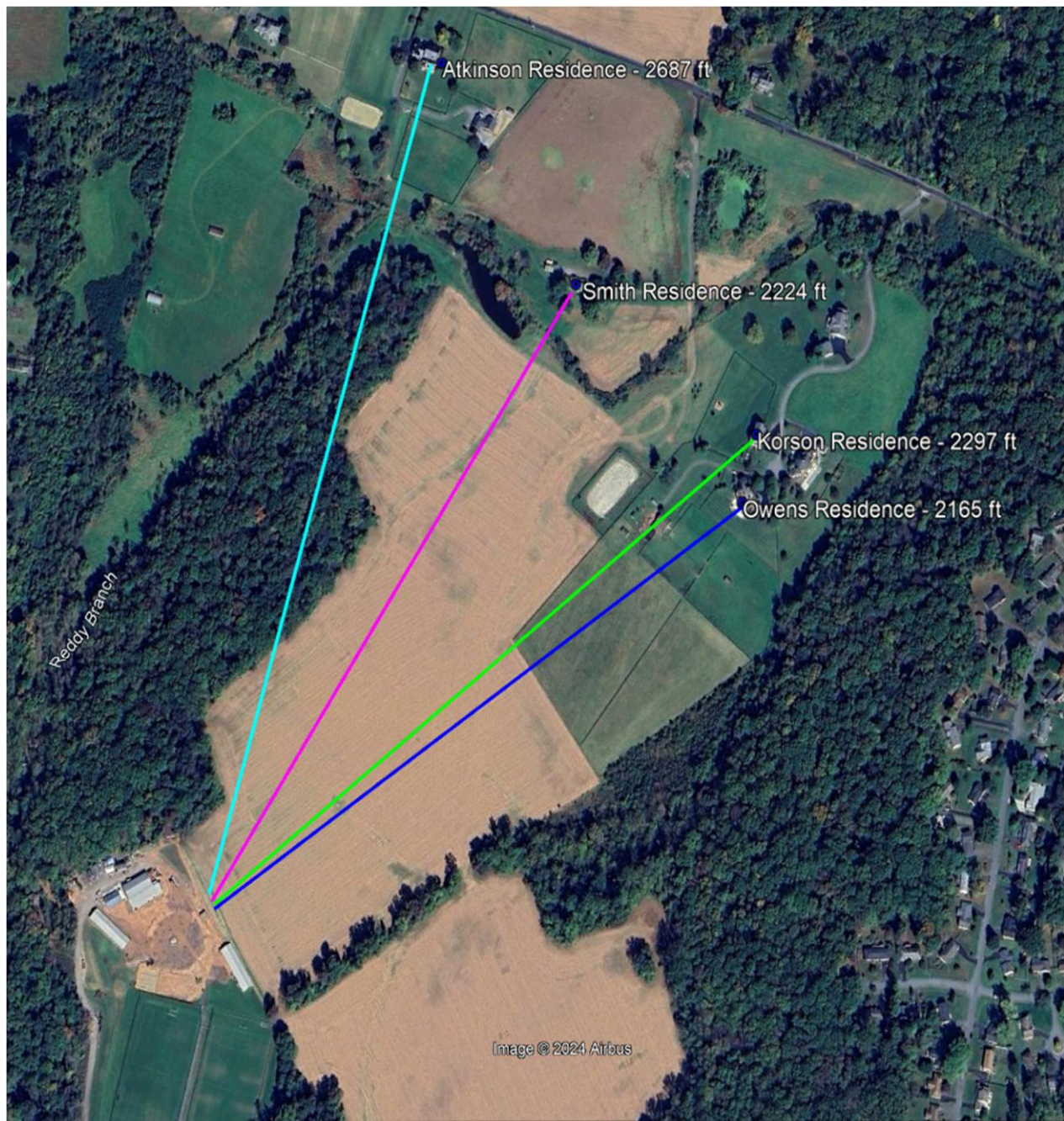


Exhibit 59, Pre-Hearing Statement pg. 5 – Aerial Photo

OBGC became owner of the property in 1999 and received special exception approval from the Board of Appeals for a service organization that same year. Exhibit 59, pp. 1. OBGC's mission is to provide children with safe after-school sports programs that emphasis physical and



emotional development, build self-esteem and cultivate a lifelong interest in sports, health and teamwork. *Id.* OBGC has conducted fundraising activities to support its mission for over 20 years by hosting seasonal events including “Field of Screams” and “Winter City Lights”. *Id.*



Aerial view showing Olney-Laytonville Rd (Route 108) and the woods, sport fields, and corn field that border the fundraiser area. Yellow outlined rectangles show the approved structures.

Exhibit 48 – pp. 5 – Aerial Photo 6/2024 Request

Mr. Scott testified that 29 specific structures exist in the wood. T. 59. Counsel for OBGC confirmed that the June 2024 administrative modification request was submitted to confirm the footprints of the trail structures that were installed over the years, some of which have existed for 20 years. T. 69-70. Mr. McLaren, a representative of Steelhead Events and an OBGC volunteer for over 26 years testified to the history and location of the structures. T. 137. Mr. McLaren stated the trail has 29 locations and 22 of those locations contain structures, while 7 locations

have a “prop”. T. 137-139. Mr. McLaren explained that OBGC operated under the belief that it had permission place to structures in the woods until 2019. T. 139.

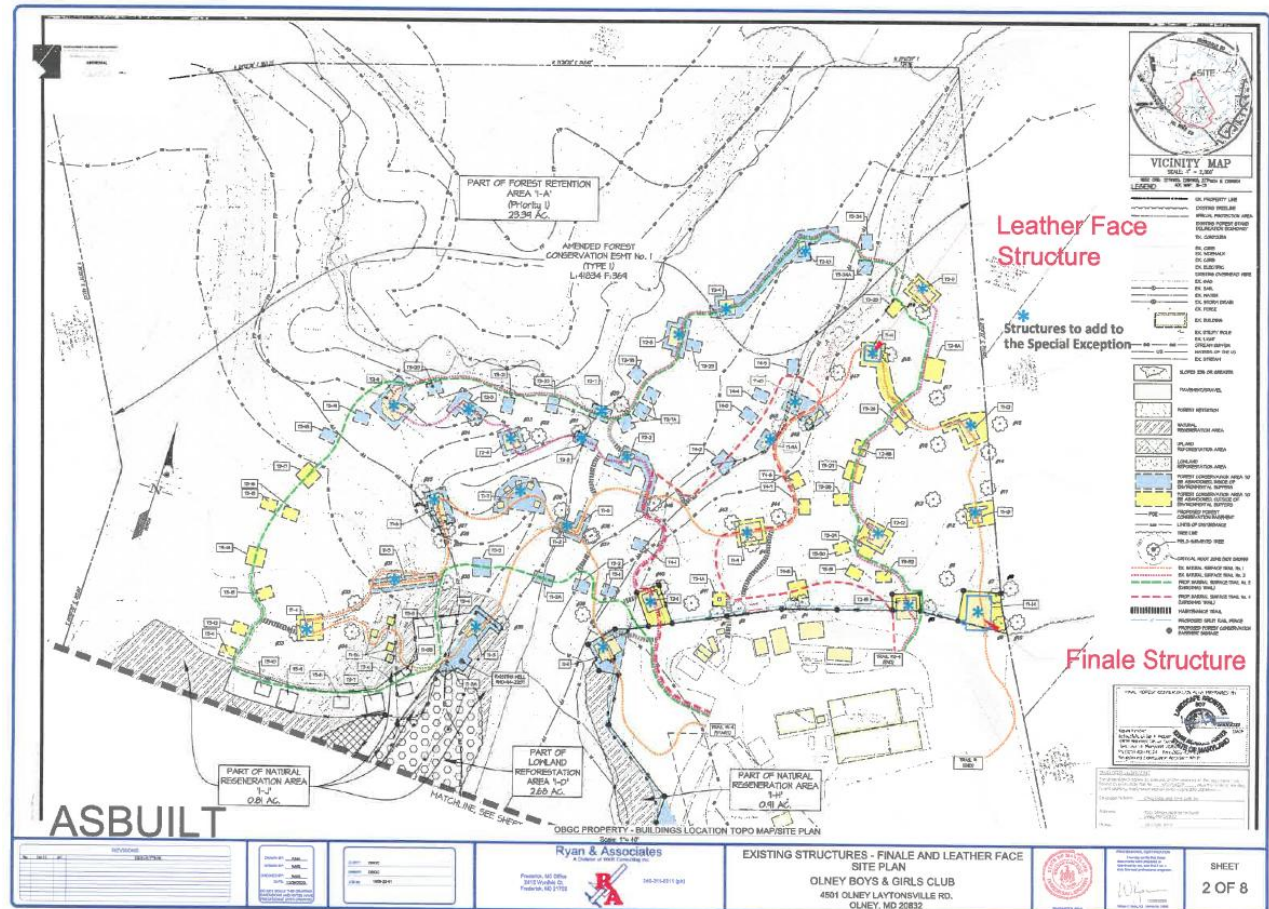


Exhibit 48, pp. 6 – Existing Structures Site Plan

In 2019, after a complaint from a neighbor to Parks and Planning regarding structures in the easement, OBGC became aware that the structures could not be in the easement. T. 217. Mr. McLaren explained that when OBGC became aware of the problem with the structures in the woods, it started working with Planning on a revised Forest Conservation Easement to legalize the structures and that process took three and a half years to come up with a “swiss cheese”



approach to cut out the existing structures and come up with an abatement plan.<sup>4</sup> T. 214-215. The abatement plan required “a reforestation area” to be planted to compensate for the of carving out the 29 locations in the original forest conservation easement area. T. 213. Mr. McLaren testified to attending abatement hearings every six months to resolve the problems before permits could be pulled. T. 215. No construction permits could be pulled for DPS to review and approve for the structures located in the woods until the forest conservation easement was finalized. T. 216. Once Planning approved the new forest conservation plan, then the use must be approved before DPS will review or approve any permit for a structure. T. 139-140. When the Hearing Examiner asked what structures received approval, Mr. McLaren explained using the aerial photo below, that the structures as shown in the “open area” were all permitted and approved including the concession building, haunted house, and queue covers for hayrides. T.142 -143.

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<sup>4</sup> Mr. McLaren denied there was a violation arguing OBGC received approval from a person at Parks and Planning “who gave approval who didn't have the authority to give approval that it operated upon.” T. 220. However, Mr. McLaren also stated that in 2019 a Planning Inspector “showed up and said you’ve been charged, let’s talk about the stuff you got in the woods.” T. 160-161



Exhibit 59, pp. 6 – Existing Conditions Aerial Photo

When asked about the current status of the permits for the structures that are the subject of this application, Mr. McLaren explained that one permit was pulled for two existing structures to be “as-builts”. T. 222. He further explained that not all of the structures require U&Os and that those other structures that do not need U&Os still require building permits because if it is a temporary structure you have to provide the manufacturer drawings to DPS, but that cannot happen until the zoning is approved first. T. 223. When asked for details about all 29 structures listed he replied:

The 29 locations. Not all of those locations currently have a structure. Some of them have props, some have a decoration. Not all of them are structures. There's 29 approved locations to put something there. Of those 29 locations, there are 11 structures that require an U&O. Two of them are gonna remain, and the other nine are gonna be removed and constructed, and if we decide to build, replaced with a structure that is compliant with all the County codes. The other stuff, we're still working with DPS to understand what's required for a decorated wall as far as a permit. It does not require a U&O. It requires a permit. So we're still working with that. But we can't submit anything because the permit has been suspended because of no activity because we can't have any activity because we don't have zoning. So we're at a standstill because of this process.

T. 226-227.

### **B. Operation of Field of Screams and Winter City Lights**

Mr. Scott, Executive and Athletic Director for OBGC, testified that OBGC's need based scholarship program is 100% reliant upon events and that the organization typically gives \$45,000 to \$75,000 a year in different scholarships to kids that otherwise wouldn't be able to play. T. 52. Mr. Scott estimated approximately 200 children receive scholarships. T. 96. Based on Mr. Scott's understanding of the origins of the fundraising process, OBGC created an event back in 2002 that involved using the adjoining property owner's property for hayrides for a number of years and that event has evolved. T. 56. Scott testified that to his knowledge in 2011 OBGC began to outsource the operation of Field of Screams, its fundraising activity, to Steelhead Events. T. 54.

Mr. McLaren testified to the operational characteristics of the fundraising events. T. 164. He stated that for Field of Screams operates no more than 20 nights a year and Winter City Lights operates no more than 25 nights a year, noting this past year was 23 nights. T. 164. Typically for Field of Screams it will start out on a Friday and Saturday, then to a Friday, Saturday, Sunday and for a couple of weekends will run Thursday, Friday, Saturday and Sunday, and depending on when Halloween falls it may run into early November. T. 164. For Winter City Lights the event

will run Friday and Saturday, then Friday Saturday, Sunday and after schools close it will open six or seven days straight and end a few days after the Christmas Holiday. T. 165.

Mr. McLaren explained for Field of Screams tickets are sold for specific timeslots that are scheduled every half hour starting at 6:00 pm with the last timeslot at 8:30 pm and that the maximum number of tickets sold for each timeslot is 500. T. 166. Mr. McLaren stated that last year, three nights sold out for Field of Screams. T. 167. He further stated that the trail closes at 9:00 pm to close the event by 10:00 pm and turn the lights off by 10:30 pm. T. 168. Mr. McLaren testified that in years past they did not use the timeslot ticking system and it was difficult to get people off the property prior to 10:30 pm and that this year he noted maybe two nights they had difficulty getting people off the trail by 10:00 pm. T. 167-169. Mr. McLaren explained Winter City Lights uses the same timeslot ticketing, but since the crowd is younger they do not sell may 8:00 pm or 8:30 pm timeslot tickets. T. 171. He further explained they have the same 500 max ticket sales per timeslot, but have never sold out and noted that in 2024 the average ticket sales across the 23 nights was 1,936 people in attendance. T. 172.

In discussing past operations, Mr. McLaren stated that Field of Screams used to be a much bigger event with day of ticket sales, 2 trails, hayrides, games and a haunted house and he estimates 30 to 40 percent less people now attend the event. T. 173-174. Mr. McLaren credits the dynamic ticketing sales put in place 2 years ago with lessening the traffic impact and balancing attendance. T. 175. Regarding the cost of tickets Mr. McLaren stated the pricing for both events is based on an algorithm that could be as low as \$20 and as high as \$80, but that the average ticket price is \$50. T. 175-178.

Mr. McLaren explained the traffic and parking flow for these events by stated cars first turn into the facility and fill up the northeast parking lot, then to east parking lot, then to the lower portion of the east parking lot and then utilize an overflow parking on the grassy area. T. 177-

178. After those fill up, then people are directed to the west parking lot with some grass parking in that area and now there is an asphalt area between the two parking lots. T. 178-179. Mr. McLaren explained that by using 15 to 20 parking attendants with the timeslot ticking that cars will arrive and leave in staggered times utilizing all 655 spaces plus the grass areas keeps everything flowing. T. 178-179. Mr. McLaren testified that prior to 2019 there were more than 655 cars on site. T. 179. The Hearing Examiner asked Mr. McLaren if a traffic study had ever been done in connection with the event and Mr. McLaren stated to his knowledge the last one was completed in 1999 for the original application. T. 183-184.

Regarding staffing, Mr. McLaren explained that approximately 120 people work on any given night for Field of Screams and 75 for Winter City Lights with a total of 350 people on the payroll overall. T. 181. Regarding the sale of alcohol, Mr. McLaren explained that they never sold alcohol with Field of Screams, but did sell alcohol at Winter City Lights in 2023, did not sell alcohol in 2024, and intend to sell alcohol at future Winter City Lights. T. 153-154, 185. Regarding the fire pit operation, Mr. McLaren testified that historically there was one big central fire pit with smaller fires around it. T. 146. He further testified that the fire pits have been in operation for 15 plus years permitted with fire code operational permits with a capacity of 30 fire pits, but currently there are only 27 fire pits operating. T. 186. Because of the outstanding issues related the notice of violation and the question whether or not the event was permitted by the special exception the fire permit was revoked for Winter City Lights. T. 190.

### **C. OBGC Special Exception History**

On July 26, 1999, the Board of Appeals granted the Special Exception application submitted by OBGC to operate a service organization to enable OBGC to operate a park including indoor and outdoor athletic facilities along with ancillary storage and administrative facilities.



Exhibit 25. The Board identified that the location of all structures depicted on the submitted plans conformed to the applicable special exception standards. *Id.* at 6. This original approval was subject to several conditions including limiting the use to specific “recreational athletic uses”. *Id.* The Board identified the hours of operation as M-F, 5:00pm to 10:30 pm with all games ending at 10:00 pm; Saturdays and Sundays 8:30 am to 10:30 pm with all games ending at 10:00 pm and Summer Camp operating M-F 9:00 am to 4:00 pm during the summer season. *Id.* The Board limited summer camp for a maximum 450 children. *Id.* Nothing in the Board's 1999 decision specifically referenced fundraising activities.

In 2011, Mr. Dan Dionisio requested an administrative modification from the Board seeking to install two replacement structures to be used for “seasonal fundraising program.” Exhibit 28. On July 14, 2011, the Board granted the request finding “the proposed structures are intended to support existing functions on the site and thus will not generate new activity or traffic.” Exhibit 31, pg. 2. The Board on that date modified the prior grant of the special exception to permit the construction of the two structures as identified by Mr. Dionisio's letter to create a concession pavilion and one shed type structure. *Id.*

In April of 2019, Mr. Lucian Romano requested an administrative modification from the Board seeking to construct cover for queue lines for fundraising events and “future structures for added attractions to give patrons something to do while waiting in the main compound”. Exhibit 32. Specially requesting queue line covers for the Haunted House, Hay Ride and Haunted Trail along with future structures” similar to the queue line covers for future attractions and/or arcade type games.” *Id.* On June 4, 2019, the Board granted the request after receiving information from the Historic Preservation Commission and hearing from Mr. McLaren during a Worksession that 2 of the structures existed, built on the mistaken belief they were permitted, and noted OBGC was seeking retroactive permission for those 2 structures plus permission to construct 2 more

“additional structures” similar to those existing queue covers. Exhibit 36. Mr. McLaren testified that it was his recollection that in 2019 that two Board members had attended Field of Screams and that “we talked the event” and that the Board knew about the trail in the woods. T. 158-160. Mr. McLaren stated that he did not believe he talked about what was on the trail but did refer to it in 2019. T. 160-161. Just as in the prior resolution, the Board found the proposed structures are intended to “support existing functions on the site” and made an additional finding that attendance will be limited by the current availability of parking. *Id.* The Board accepted Mr. Romano’s letter with the two attachments identifying the location of the structures and modified the special exception to permit the 4 additional structures. *Id.*

On January 3, 2023, DPS sent a memo to the Board of Appeals identifying violations of the issued Special Exception and noted that the Field of Screams event received citations from DPS and a Court Order not to operate the Field of Screams event “without permits, inspection approvals, and issued Certificates of Occupancy.” Exhibit 37. The Board re-opened the record and accepted the DPS memo on January 27, 2023.

On May 26, 2023, OBGC submitted a request for an administrative modification to “modify the originally approved Lighting and Landscaping plan” to permit OBGC to install lighting in the same locations as originally approved using modern equipment with minor modifications to height. Exhibit 40. On June 21, 2023 After reviewing the plans and hearing testimony during its Worksession the Board determined that the proposed changes “to the originally approved lighting are minor” and approved the plans as submitted referencing Exhibits 39, 39(a)-(d)(1). *Id.* at 4. On July 26, 2023, the Board responded to a letter requesting a public hearing on its June 21, 2023 decision and granted the request via resolution and suspended the modification request. Exhibit 42. On September 28, 2023, counsel for the neighbors’ requesting the public hearing sent an email withdrawing their request for a public hearing to the Board and in

response the Board reopened the public record, dismissed the hearing as withdrawn and reinstated previously issued modification of June 21, 2023. Exhibit 47.

#### **D. Administrative Modification Request Regarding Fundraising**

On June 27, 2025, the Board received a request for an administrative modification of its special exception to permit the following changes:

- 1) Confirm the placement of existing fundraising structures as part of the Special Exception. These structures were approved by M-NCPPC and have been in use for the past 22 years in support of the fundraising events.
- 2) Clarify the SE conditions of approval to include reference to “fundraising” as an approved part of the Applicant’s use...

Exhibit 48, pp. 1

The request details the efforts by OBGC to work with Planning to revise the Forest Conservation Easement to document the existing structures in and around the wooded area and to upgrade the temporary structures to approved DPS structures per relevant building codes. *Id.* Additionally, the request notes DPS requires that the structures be added to the existing special exception to approve the zoning portion of the DPS permit approval. *Id.* at 2. OBGC also requests that the term “fundraising” be specifically added to the wording of the use conditions as described in the special exception. *Id.* OBGC argues that funding activities are inherent to OBGC’s operation as a service organization and it is “something that is both customarily associated and necessarily incidental to the principal functions and purposes of OBGC’s existing use of the Property.” *Id.* OBGC notes that the structures have been in existence and used on the property as part of fundraising events for over 22 years and that the intensity and traffic remain unchanged. *Id.* Specifically, OBGC requested the Board approve each of the following changes:

- a) Existing Structures in Conservation Easement – Approve the submitted plan, attached to confirm that all existing structures are made part of the SE approvals. There are a total of

28 existing structures. The structures are already constructed and need no further approval to be permitted in the CE, per MNCPPC modification approval.<sup>5</sup>

- b) Modify Condition 3 of the original SE ... to clarify that Fundraising activities are customarily associated and necessarily incidental to the principal functions and purposes of the special exception use, and shall be permitted at the site subject to the Hours of Operation and to clarify that for safety and security, reasonable allocation for lighting is allowed beyond 10:30 pm if needed for event staff and volunteers to clean up the property, shut-down the event and to allow everyone to safely depart from the site.

*Id.*

On July 26, 2025, the Board reopened the record to receive Exhibit 48, Mr. Scott's letter and attachment, and after hearing representations made by Mr. McLaren during the Worksession modified the special exception to add the structures marked with "blue asterisk on the attached Site Plan (sheet 2 of 8)" and further modified Condition No. 3 of the 1999 Opinion to read as follows:

3. The annual Hours of Operation are:

Monday through Friday, 5:00 p.m. to 10:30 p.m. with all games ending at 10:00 p.m.  
Saturdays and Sundays 8:30 a.m. to 10:30 p.m. with all games ending at 10:00 p.m.  
Summer Camp will operate Monday through Friday 9:00 a.m. to 4:00 p.m. during the summer season.

Fundraising activities are customarily associated and necessarily incidental to the principal functions and purposes of the special exception use and shall be permitted at the site subject to the Hours of Operation. Security lighting past 10:30 PM includes lighting that is reasonably necessary for volunteers and staff to safely clean-up the property, shut down events, and for guests to depart from the site.

Exhibit 49, pp. 4

After receiving correspondence from DPS regarding the approval status of the structures that were the subject of the administrative modification and receiving several letters in opposition from neighbors requesting a public hearing the Board via Resolution dated September 18, 2024 referred the matter to OZAH "to (1) hold a public hearing to determine whether the administrative modification that the Board granted ... effective July 26, 2024, substantially changes the nature,

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<sup>5</sup> See pages 7 and 8 above with specific site plan/aerial photo from Exhibit 48.

character or intensity of the special exception use, or its effect on traffic or on the immediate neighborhood, and (2) issue a written Report and Recommendation to the Board.” Exhibit 52.

### **E. Community Response**

The Board transmitted to OZAH the 9 letters of opposition along with the rest of the record.<sup>6</sup> After receiving the referral from the Board, OZAH received three more letters in opposition.<sup>7</sup> OZAH received three letters in support of OBGC, but unfortunately two of the letters arrived via email unsigned and could not be accepted into evidence before OZAH, but Exhibit 120 was signed as a letter in support and received by OZAH.<sup>8</sup>

Mr. Matt Quin testified in support of the application on behalf of the Greater Olney Civic Association and he identified himself also as President of the Olney Chamber. T. 116-117. Mr. Quinn stated that OBGC is a great partner in support of local businesses and notes that the Field of Screams and Witner City Lights and weekend tournaments at OBGC bring people to Olney and those people spend their money in Olney. T. 119. Further he stated from his perspective OGBC has been a great community member. T. 120.

Caroline Taylor, Executive Director for Montgomery Countryside Alliance, testified that the use operated for a number of years “in relative balance with the agricultural community” but with the popularity of the Field of Screams that “balance was upended.” T. 127. Ms. Taylor points out that the request being made today essentially seeks to approve practices that have been ongoing for a number of years without determining the inherent or non-inherent effects of these practices. T. 128. Further Ms. Taylor testified that it is MCA’s contention that approval of this modification “sweeping in a series of violations whether there are abatement orders or other

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<sup>6</sup> See Exhibits 50(a)-(i).

<sup>7</sup> See Exhibits 54, 61 and 62.

<sup>8</sup> The two additional emails received in support of OBGC will be forwarded to the Board for its record.



citations is not consistent with the Master Plan” and argues OBGC needs to come back with a fully developed plan to determine the use’s effects. T. 129.

Ms. Korson testified on behalf of the community members in opposition to the administrative modification and Ms. Owens conducted cross-examination of OBGC’s witnesses on behalf of the community members in opposition. Ms. Korson stated support for OBGC in that it should continue to operate within the intended scope of youth sports and that she believes in the mission and that fundraising is necessary. T. 292, 299. Ms. Korson referred to OBGC’s fundraising events as an “amusement park.” T. 290. She notes when you search google for field of screams comes up as an ”amusement park”. T. 307 exhibit 87. Ms. Korson referred to the testimony of the Applicant and various exhibits submitted as proof that Steelhead operates inconsistent with local and State agencies disregarding the permitting process. T. 291. She reiterated the fact that OBGC knew they were not allowed to operate the Field of Screams per the current abatement order and ignored DPS and Zoning and opened the Winter City Lights on the same trail when it was specifically told not to open. T. 294. Ms. Korson pointed to Exhibit 54a, the Abatement Order from the District Court of Montgomery County, Maryland dated April 20, 2021 ordering OBGC to do not operate the Field of Screams without the permits, inspection approvals and issued Certificates of Use and Occupancy. Further she alleged that OBGC does whatever it wants to until it gets caught. T. 294

She noted the Applicant’s testimony affirmed the increase in intensity and scope over the years and argued that the Applicant’s efforts to mitigate the expansion does not solve the problem. T. 290. Ms. Korson stated even if the event has shrunk in size over the last 2 or 3 years there are still thousands of people on the property. T. 294. She found the traffic pattern and infrastructure meant to support the restrictions in the original special exception limiting of 60 people in the building and less than 450 children without parent in a summer camp to be

inconsistent with these events. T. 294. Specifically referring to selling 500 tickets every 30 minutes to be in conflict with a 450-maximum number of children on site for summer camp. T. 313. She further argues this number of people calls into question whether the emergency personnel, infrastructure, electricity, water, etc. were properly evaluated at the beginning. T. 314.

Ms. Korson questioned whether those in charge of OGBC understand what they are doing or how to operate within the complex ecosystem that is the agricultural reserve and provided several examples to support her statement. T 297-298. She points to the fact that OBGC says these structures have been there for 20 years, but when the buildings were built is irrelevant because DPS is requiring building permits. T. 301. Ms. Korson questioned why when DPS refused to issue the special event permit which resulted in other agencies refusing to participate or grant certain permissions for the event, didn't OBGC just take the time to figure out how to get it right instead of ignoring the abatement order and continuing to operate without the proper permits. T. 303. She stated that DPS issues two licenses for events like the ones that are held by OBGC for fundraising and neither were issued for years not because licenses didn't exist, but because OBGC never reached the proper stage in the permitting process to triggered either of these applications to be filed, and therefore they have been operating illegally. T. 303-304. Further, Ms. Korson points to the forest conservation violation that OBGC took trees down illegally in the easement to make room for sheds structures, etc. and had to retroactively clean up the violation and create a new reforestation plan. T. 304. She argues that the new plan is not the same thing as following the original plan, its operating without permission and asking for forgiveness. T. 304

Historically the neighbors worked with OBGC and carried out the hayride, but discontinued it because there were soil compaction issues, littering and "the place was trashed after a few years" so they became unwilling to move forward with the arrangement. T. 309.

Regarding the height restrictions, she notes the Christmas Tree structure is well over 50 feet. T. 309. She argues that if OBGC had gone through the permit process the correct way it would have triggered all sorts of different regulatory reviews that would have rectified some of the issues in place today. T. 309. Ms. Korson notes that in the AG Zone benefit performances max out at 15 per year. T. 309-310. Ms. Korson referred to the numerous exhibits submitted into evidence that show operations on site well after 10:30 p.m. T. 311. Additionally, Ms. Korson pointed to the exhibits submitted that shows a bus parking on the street in violation of the "no offsite parking" allowed and the parking of vehicles into the front fields visible from 108. T. 313. See Exhibits 110, 108, 111, and 101.

Ms. Korson referred to several other exhibits during her testimony. Specifically, she pointed to Exhibit 50C letter that that traffic builds up for events causing a line of traffic to extend approximately 3.5 miles away in the Fall of 2024. T. 314. She points to Exhibit 111 and notes that the gates are not closed when the parking lots are full, but cars are parked in the soccer field. T. 314. Ms. Korson noted several exhibits regarding the smoke that wafts from the fire pits to the adjoining properties. See Exhibits 112-113. The Opposition also submitted several videos showing cars and people leaving well after operating hours. See Exhibits 114-119. Ms. Korson argued that it is impossible to consider the request for a modification without first understanding the impact of all parts of the issues raised in her testimony on the neighboring community. T. 336.

### **III. FINDINGS AND CONCLUSIONS**

#### **A. Standards for Evaluation**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Each special exception petition is evaluated in a site-specific context because a special exception might be appropriate in some locations but not in others. The

issue before the Hearing Examiner is very narrow. The Board charged the Hearing Examiner with determining whether the administrative modification granted on July 26, 2024 “substantially changes the nature, character or intensity of the special exception use or its effect on traffic or on the immediate neighborhood.” Exhibit 52.

Because Case No. S-2385 was approved prior to October 30, 2024, under Section 59.7.7.1.B of the current Zoning Ordinance, this modification request must be reviewed under the standards and procedures in effect on October 29, 2014. The 2004 Zoning Ordinance provides two possible paths for modifications of a special exception. Section 59-G-1.3(c)(1) of the 2004 Zoning Ordinance provides:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition ... A copy of the Board's resolution must be transmitted to the petitioner, the Planning Commission, the Department, the Department of Finance, all parties entitled to notice at the time of the original filing, and current adjoining and confronting property owners. The resolution must state that any party may, within 15 days after the Board's resolution is mailed, request a public hearing on the Board's action. The request must be in writing, and must specify the reasons for the request and the nature of the objections or relief desired. If a request for a hearing is received, the Board must suspend its decision and conduct a public hearing to consider the action taken.

Section 59-G-1.3(c)(2) provides:

If the proposed modification substantially alters the nature, character, intensity of use or the conditions of the original grant, the Board must convene a public hearing to consider the proposed modification. The Board must notify the special exception holder that, except as otherwise provided in this section, such request for modification is subject to the requirements set forth in Sections 59-A-4.2 and 59-A-4.4. The Board must receive and process petitions for modification of a special exception in accordance with the provisions of those sections.

**B. Does the modification substantially alter the nature, character, intensity or use of the conditions of the original grant or its effect on traffic or on the immediate neighborhood?**

The Board's original grant of the special exception use did not specifically authorize OBGC with the ability to "fundraise" nor did any of the other resolutions granted by the Board modifying the special exception include language granting OBGC the authority to "fundraise" or "fundraising". Exhibits 25, 31, 36, 38, and 42. The Applicant argues that it has conducted fundraising activities and events on the property for over 20 years and that fundraising is a "logical and natural extension of its operations." Exhibit 59, pp. 1. Additionally stating that these fundraising events further the Applicant's "mission of providing children with safe after-school sports programs." *Id.* The Applicant argues that the Board in its resolutions dated July 14, 2011 and June 4, 2019 approved structures related to the fundraising events and recognized "that fundraising events – at least generally – have occurred and continue to occur on the property, and thus, approved those events." *Id.* at 2. The Applicant concedes that prior presentations to the Board focused on structures rather than specific operational characteristics of the fundraising events. *Id.* The Applicant correctly states that the 2011 and 2019 resolutions granted by the Board approved structures related to fundraising events, but the record before the Board is devoid of any specific detail regarding, attendance, parking, traffic, hours, days or any other operational characteristics of these fundraising events.

What does it mean to fundraise? Black's law dictionary defines fundraising as "[t]he activity of collecting pledges or donations for a specific cause, esp. one that involves not-for-profit endeavors." Fundraising, Black's Law Dictionary, (12<sup>th</sup> ed. 2024). Merriam-Webster's dictionary defines fundraising as "[t]he organized activity of raising funds (as for an institution or political cause)." Fundraising, Merriam-Webster Online Dictionary, 2025 <https://www.merriam->



[webster.com/dictionary/fundraising](https://www.webster.com/dictionary/fundraising) The Hearing Examiner speculates that if she asked what fundraising means to a variety of people, she would get a variety of answers. Because the act of fundraising can take so many different forms, the operational characteristics associated with the fundraising activity are important.

The Hearing Examiner finds that evolution of the fundraising events viewed with the timeline of when modification requests were made to the Board significant. Testimony from OBGC witnesses stated that fundraising began in 2002 with hayrides. T. 56. The first time the word fundraising appeared in a modification request to the Board was in 2011, the same year the Field of Screams was turned over to a professional organization to operate the event. T. 54, Exhibit 28. No specific details regarding the operation of the event were included in the 2011 modification request only that they structures will be used for "our seasonal fundraising program." Exhibit 28. Because the record contains no discussion of operational details and only the structures were requested and granted, it is impossible to know what if anything the Board knew at the time how the fundraising events operated. OBGC submitted no modification requests for the 8-year period between 2011 and 2019.

In 2019, OBGC submitted a similar modification request to that of 2011 asking for approval of additional structures related to the fundraising event. Exhibit 32. Mr. McLaren testified that to his recollection of the 2019 Worksession the Board knew about the event, structures in the woods and that two Board members had attended the event, but also noted he did not get into specifics about the trail. T. 158-160. However, none of that discussion described by Mr. McLaren was captured for the record. The Board's 2019 decision just like the 2011 decision focused on the structures themselves, the placement, environmental setting/viewshed, and historic preservation impact. Exhibit 36. The Board once again found the structures "support existing functions" on the

site, and thus will not generate new activity or traffic, but also noted that attendance would be limited by parking constraints. Exhibit 36.

Because the record before the Board in 2011 and 2019 was devoid of operational characteristics, it is impossible to know what the Board knew about the true impact of the Field of Screams event. Both the 2011 and 2019 decisions reference "existing functions on the site". However, from the testimony provided by the Applicant's witnesses and those in opposition, referenced in Section II above, that the operation of fundraising events changed from the agricultural fall focused events in 2002 to the management of the Field of Screams by professional organization 2011, during 2017, 2018 and 2019 Field of Screams consisted of 2 trails, a haunted house and a cornfield, to now operating two distinct separate events running for 43 nights a year attracting on average 1,936 attendees for Field of Screams. T.172. Further the Applicant testified that in 2019 the event attracted 70 percent more attendance than today. T. 165. Assuming the Applicant's estimations are correct, in 2019 the average attendance for the Field of Screams event was 3,291 a night.

Section 59-G-1.3(c)(2) requires the Board convene a public hearing to consider the proposed modification if it substantially alters the "nature, character, intensity of the use or the conditions of the original grant." The Applicant argues they are not proposing a brand new idea or a new set of circumstances, but from the record before the Board, the 2011 and 2019 modifications focused on additional structures, not on the operation of the event itself. Without the operational details before the Board, the Board could not possibly know the true extent of how the fundraising event could alter the "nature, character, intensity of the use".

Focusing only on the traffic impact of the fundraising events, the Applicant stated that traffic is much better now than it was in 2017, 2018 and 2019, but compared to what? How did prior to 2019 where an average of 3,291 visitors came to the sight over a period of 20 nights impact

traffic? How does the average 1,936 visitors that came in 2024 impact traffic? The opposition referenced a 3.5 mile back up for a Fall 2024 event. Exhibit 50(c). We don't know the impact because this traffic information was never shared with the Board. The Applicant affirmed the last traffic study done was in 1999 with the original special exception. The terms and conditions of the 1999 special exception focused on the park operation, games, summer camp and maximum number of children associated with summer camp.

The Applicant disputes whether or not they were in violation of the County law regarding the trail structures located Forest Conservation Easement. The Applicant disputes whether or not they are in violation of the Court Order dated April 21, 2021. The Applicant affirmed that it held the Winter City Lights event even when the County denied their Special Event Permit days before the event was scheduled to take place. T. 360-362. The Applicant cannot receive its building permits until the specifics surrounding zoning approval of fundraising is resolved to DPS's satisfaction. Exhibit 67. The Applicant cannot resolve its Court Abatement Order until it can be issued permits from DPS. Exhibit 51(b).

Conclusion: The Hearing Examiner finds that the June 27, 2024 application before the Board represents the first time the Board has been given specific information regarding the 29 sites in the wooded area. Based on the evidence submitted specifically, the operational characteristic information provided by the Applicant along with the observations and testimony by the neighbors during the public hearing held by OZAH, the Hearing Examiner finds that the impact of the two fundraising events substantially changes the intensity of the use and changes the effect on traffic and the immediate neighborhood. Adding events that take place 43 nights a year with the possibility of 1,936 visitors on any given night changes the intensity of the use granted by the Board.

Additionally, the Hearing Examiner finds, the Board did not have all the information required before it to determine whether or not in 2011 or 2019 the fundraising operation substantially altered the “nature, character, or intensity of the use.” The Board responded to the request before it regarding “fundraising structures.” The structures, as structures themselves, granted by the Board did not substantially change the use or impact traffic. The June 27, 2024 modification request represents the first time the Board received information and a request to modify to add the trail structures.<sup>9</sup> This modification as submitted represents the same type of submittal that OBGC put forth in 2011 and 2019. The June 27, 2024 application also lacks the operational characteristics associated with the installation of those structures. The Board cannot make a finding on the true impact of the trail structures without knowing more about the operational use associated with the fundraising event.

#### **IV. RECOMMENDATION**

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend the following:

1. That the Board revoke the administrative modification granted on July 26, 2024 and find that the application submitted substantially alters the intensity of the special exception use and conditions granted by this Board;
2. That the Board request the Applicant resubmit the modification request to include specific details regarding the operation of Field of Screams and Winter City Lights including but not limited to a complete site plan identifying the location of each structure used for each event, days and hours of operation, number of employees, parking plan and traffic statement; and

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<sup>9</sup> The Applicant notes in its application that some of the trail structures have been in place for over 20 years. The Hearing Examiner notes that placement and approval represent two different standards.

3. That a public hearing be held to consider the proposed modification taking into consideration not only the trail structures, but the full extent and operation of the fundraising activity at the property, 4501 Olney-Laytonsville Road, Olney, Maryland.

Issued this 8<sup>th</sup> day of April 2025.

Respectfully submitted,



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Katheen E Byrne  
Hearing Examiner

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