

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 17300-A of St. Patrick's Protestant Episcopal Church, Motion for Minor Modification of Condition No. 7 in Order No. 17300, pursuant to § 3129 of the Zoning Regulations.

The original application was pursuant to 11 DCMR § 3104.1, for a special exception under § 206, to allow an increase in the student enrollment at a private school, from 40 to 60 children, in the R-1-B District at premises 4925 MacArthur Boulevard, N.W. (Square 1393, Lot 17).

HEARING DATE (Application No. 17300):	April 12, 2005
DECISION DATE (Application No. 17300):	April 26, 2005
FINAL ORDER ISSUANCE DATE (No. 17300):	September 8, 2005
MINOR MODIFICATION DECISION DATE:	April 5, 2016

SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION

BACKGROUND

The Board of Zoning Adjustment (“Board” or “BZA”) previously considered the subject property in Applications No. 16852, 17164, and most recently, 17300. In Case No. 16852, published in December 2002, the Board approved an application to allow a private school for grades seven through nine to locate at 4925 MacArthur Boulevard. The approval included 20 conditions, one of which is the requirement to establish a shuttle bus system to transport students between the newly established campus on MacArthur Boulevard and the existing campus on Whitehaven Parkway. A Corrected Decision and Order (Order No. 16852-A) was issued on March 25, 2003. See Condition No. 7 of Order No. 16852-A. (Exhibit 4.) This condition was upheld in subsequent modifications of the order, most recently Order No. 17300 (“Order”), which was approved in April 2005. (See also, Order Nos. 17164 and 17300, attached as Exhibit 4.) It is that condition that is the subject of the request for modification herein.

On April 26, 2005, in Case No. 17300, the Board approved relief for a special exception to allow an increase in students from 40 and 60 in the R-1-B. The Office of Planning (“OP”) had recommended approval of that application with conditions. The affected Advisory Neighborhood Commission (“ANC”) 3D recommended denial of the increase in students. On September 8, 2005,

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the Board issued Order No. 17300, granting the requested relief with 20 conditions. The conditions deal with the operations of the school and some traffic demand management measures. Condition No. 7 governs the school's shuttle bus system.

Case No. 17300 was approved by the Board by a vote of 5-0-0 taken on April 26, 2005. The final date of Order No. 17300 is September 8, 2005. (See, Exhibit 3.)

MOTION FOR MINOR MODIFICATION OF CONDITION NO. 7

On March 14, 2016, the Applicant submitted a request for a minor modification to the Board's previous approval, specifically of Condition No. 7 in Application No. 17300 and also, pursuant to 11 DCMR § 3100.5, asked for a waiver of the requirement for a hearing under § 3129.7. (See, Exhibit 3 in Case No. 17300-A.)

Preliminary Matter: Waiver of § 3129.7 and Allowing Matter to be Decided Without Hearing as a Minor Modification.

Subsection 3129.7 of the Zoning Regulations indicates that a request for a modification of an aspect of an application other than plans approved by the Board may be made at any time but shall require a hearing. Here, the request for modification concerns a condition in Order No. 17300. The Applicant requested a waiver of the requirement for a hearing and asked for the motion for modification to be heard on the Board's meeting consent calendar, pursuant to 11 DCMR § 3100.5.

The Board granted the Applicant's request and waived the requirement to hold a hearing on the request for modification of conditions under § 3129.7. Although the request was not a minor modification of plans, such that it could be granted without a hearing, the Board found that the proposed change to the conditions was minor and, as ultimately revised, had the support of the Office of Planning ("OP"), the District of Columbia Department of Transportation ("DDOT"), and the affected Advisory Neighborhood Commission ("ANC"). Accordingly, the Board waived the requirement to hold a public hearing on the modification.

Motion for Minor Modification of Condition No. 7.

The Applicant noted that it has abided by this condition for almost 14 years, but because circumstances have changed since the initial imposition of Condition No. 7, the Applicant is now requesting modification of the condition to reflect current environmental considerations, as well as consideration of impacts on the neighborhood and the students' and educators' time. (Exhibit 3.)

In Order No. 17300, Condition No. 7, subsection (c), which is the subject of the requested minor modification request, reads as follows:

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The shuttle buses shall employ a round-trip route between the Whitehaven campus and the subject property utilizing Whitehaven Parkway, MacArthur Blvd., Arizona Avenue, Loughboro Road, and Foxhall Road back to Whitehaven Parkway.

In its initial request for a minor modification submitted on March 14, 2016, the Applicant proposed changing the language in Condition No. 7(c) to read as follows:

The shuttle buses shall employ a round-trip route between the Whitehaven campus and the subject property utilizing Whitehaven Parkway, MacArthur Blvd., Arizona Avenue, Loughboro Road, and Foxhall Road back to Whitehaven Parkway. **If traffic conditions allow, the shuttle shall be permitted to take a legal U-turn on MacArthur Blvd. at Chain Bridge Road, and return to the Whitehaven Campus via MacArthur Blvd.**
(modified language in bold.)

Subsections (a), (b), (d), and (e) in Condition No. 7 would remain unchanged.

According to the Applicant, the reason for the request for the modification is to create an alternate route for the shuttle bus from the current route to reduce the trip time. The shuttle bus is used to transport the seventh and eighth graders to the Whitehaven Campus two to three times a day for their science and math classes, in addition to any shuttle trips the students may take for drop-off and pick-up. The current designated shuttle bus route is 2.8 miles and can take up to 20 minutes per trip. The Applicant stated that the route is unduly circuitous. By allowing the shuttle bus to take a U-turn on MacArthur Boulevard, the Applicant indicated that the trip time would be considerably reduced and would take only a fraction of the time now required. Simplifying and shortening the shuttle trip, the Applicant maintained, would be important both from saving the students' time and the environment. (Exhibits 3 and 5.)

After working with DDOT, the Applicant proposed revised language for the modified condition. (Exhibit 8.) To minimize safety impacts, the Applicant has revised the request to allow U-turns at Cushing Place instead of Chain Bridge Road. (Exhibit 9.) Thus, revised and modified Condition No. 7(c) would read as follows:

The shuttle buses shall employ a round-trip route between the Whitehaven campus and the subject property utilizing Whitehaven Parkway, MacArthur Blvd., Arizona Avenue, Loughboro Road, and Foxhall Road back to Whitehaven Parkway. **Alternatively, if traffic conditions allow, the shuttle shall be permitted to take a legal U-turn on MacArthur Blvd. at Cushing Place, and return to the Whitehaven Campus via MacArthur Blvd.**
(modified language in bold.)

Pursuant to § 3129.4, all requests for minor modifications shall be served on all other parties to the original application and those parties are allowed to file comments within 10 days of the filed request for minor modification. The Applicant provided proper and timely notice of the request for minor modification to the other parties to the original application, including Advisory

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Neighborhood Commission (“ANC”) 3D and the Single Member District ANC 3D05 as well as OP and DDOT.

The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. An ANC report was submitted to the record, recommending approval of the request for minor modification to Order No. 17300 and citing no concerns with the proposed minor modification to Condition No. 7(c) designating a new return route from the MacArthur campus to the Whitehaven campus. The ANC’s report stated that at a regularly scheduled and properly noticed meeting on March 2, 2016, at which a quorum was present, the ANC voted 8-0-0 in support of the minor modification. (Exhibit 6.)

OP submitted a timely report dated March 29, 2016, recommending denial of the original modification request but also supported the Applicant’s proposed alternative language as contained in Exhibit 8 that was modified after conversations with DDOT and OP. (Exhibit 7.)

DDOT submitted a timely report stating that it had no objection to the granting of the modification. (Exhibit 9.)

The only parties to the case were the ANC and the Applicant. No parties appeared at the public meeting in opposition to the application. Accordingly, a decision by the Board to grant this application would not be averse to any party.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for minor modification of approval, specifically of Condition No. 7, in Case No. 17300. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a minor modification to the approval in Case No. 17300, the Applicant has met its burden of proof under 11 DCMR § 3129, that the minor modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification and amendment of the Board’s approval in Application No. 17300 is hereby **GRANTED SUBJECT TO THE FOLLOWING REVISED CONDITION 7(c)**:

7(c). The shuttle buses shall employ a round-trip route between the Whitehaven campus and the subject property utilizing Whitehaven Parkway, MacArthur Blvd., Arizona Avenue, Loughboro Road, and Foxhall Road back to Whitehaven Parkway. Alternatively,

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if traffic conditions allow, the shuttle shall be permitted to take a legal U-turn on MacArthur Blvd. at Cushing Place, and return to the Whitehaven Campus via MacArthur Blvd.

In all other respects, Order No. 17300 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON APRIL 26, 2005: 5-0-0

(Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L Etherly, Jr., and John A. Mann, II, to grant; Anthony J. Hood to grant by absentee ballot.)

VOTE ON MINOR MODIFICATION OF CONDITION NO. 7 ON APRIL 5, 2016: 4-0-1

(Marnique Y. Heath, Anita Butani D'Souza, Frederick L. Hill, and Jeffrey L. Hinkle to APPROVE; Peter G. May, not participating or voting.)

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

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

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 8, 2016

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THEREOF, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.