

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17383-A of The Lab School of Washington, pursuant to 11 DCMR § 3104.1 for a special exception under § 206 to allow an increase in student enrollment from 310 to 330, an increase in faculty and staff from 95 to 182, a special exception under § 206 to permit the use of nearby property at 4749 Whitehaven Parkway, NW (Square 1374, Lot 840) for administrative offices for the School, and a special exception under § 2116 to locate accessory parking spaces elsewhere than on the lot served, at an existing private school located at premises 4759 Reservoir Road, NW (Square 1372, Lot 25) in the R-1-B zone.

Note: On January 9, 2007, the Board at a regularly scheduled public meeting, voted to approve Applicant's timely filed motion for reconsideration requesting that the Board clarify the conditions set forth in its December 12, 2006 Decision and Order in the following respects: 1) that the five-year term set forth in the conditions of this order applies only to the relief granted with respect to the faculty and staff and student limits; 2) that in the event the Applicant does not return to the Board prior to the end of the five-year term, that the increase in faculty and staff and students will lapse and revert to the limits set forth in previous order # 16273; and 3) that the Board correct a technical inaccuracy in Condition 6, substituting a reference to Exhibit 56, the updated plans, for Exhibit 9, earlier plans. The ANC supported the motion and requested that the Board also delete footnote 3 that indicated that the conditions in this order supercede all other orders. The Board concurred with the parties that these were proper clarifications in accord with the Board's intent in the order. Finally, the Board denied the ANC's request that the Board add the word "only" after its grant of special exception relief for use of the building located at 4749 Whitehaven Parkway for administrative purposes; i.e. requesting that the language be changed to state "for administrative purposes **only**." The Board determined that no clarification was necessary. The conditions set forth in this order have been revised accordingly.

HEARING DATES: November 22, 2005, and April 4, 2006
DECISION DATES: March 7, 2006, May 2, 2006, May 16, 2006
and January 9, 2007

REVISED DECISION AND ORDER

On June 16, 2005, the Lab School of Washington (the School or the Applicant), filed an application with the Board of Zoning Adjustment (the Board) for special exceptions

under Section 206 of the Zoning Regulations asking the Board to authorize an increase in the student enrollment and faculty and staff above the limits established in BZA Order No. 16273. Although the prior order limited student enrollment to 310 students, the School has exceeded that limitation and allowed its student enrollment to grow to 330 students. Similarly, the School has exceeded the cap imposed on faculty and staff by 82 employees. The School has explained that these increases were due to a good faith misunderstanding of the Board's prior order with respect to calculating students and faculty who are at the campus on a part-time basis.

The Applicant also seeks approval to use the property located at 4749 Whitehaven Parkway (the "nearby property") for administrative offices for the School. The nearby property is located at Square 1374, Lot 840, on a record lot that is separate from the rest of the School. Finally, the School requested permission to satisfy a portion of its parking requirement through the use of 43 new angled parking spaces it would construct along Whitehaven Parkway in the public right-of-way.

Following a public hearing, the Board deliberated at its Decision Meetings held on May 2, 2006 and May 16, 2006. At the May 16 Decision Meeting, the Board voted to approve the special exception requests under § 206. The Board did not approve special exception relief for parking pursuant to § 2116. Instead, the Board found that special exception relief for parking would not be necessary provided that 43 angled public parking spaces along Whitehaven Parkway were created as presented to the Board, but not dedicated to the exclusive use of the school. Such spaces would need to be in place within 9 months of the effective date of this Decision and Order.

PRELIMINARY MATTERS

Self-Certification The zoning relief requested in this application is self-certified pursuant to 11 DCMR § 3113.2 (Exhibit 5).

Notice of Public Hearing Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the Applicant, all entities owning property within 200 feet of the Applicant's site, the Advisory Neighborhood Commission (ANC) 3D, and the Office of Planning (OP). The Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 24).

ANC 3D The subject site is located within the area served by Advisory Neighborhood Commission 3D (the ANC), which is automatically a party to this application. The ANC filed a report indicating that at regular public meetings on September 7, October 5, and November 2, 2005, with a quorum present, it met to consider the requested relief. The ANC voted to "maintain the present student cap of 310", "increase the faculty and staff from 95 to 150 based on the current number of on-site parking spaces available", "oppose the request [to provide parking in the] public space", and support the use of nearby

property for administrative offices (See, Exhibit 26, and Exhibits 27 and 30 noting a correction in the ANC vote). At a subsequent meeting on March 16, 2005, the ANC discussed the Department of Transportation's report and the School's Traffic Management Plan (TMP). Although the ANC voted to endorse the TMP, it also recommended "the formation of a timely implementation schedule for the stated parking and transportation management goals, and a meaningful enforcement and reporting mechanism for the TMP." (Exhibit 74). The ANC representative, Alma Gates, testified at the April 4, 2006 hearing and also submitted her testimony in writing (Exhibit 78). In its final report, the ANC recommended that the Board set benchmarks and/or goals to measure the success of the School's TMP. In particular, the ANC recommended that the number of vehicle trips generated by the School be reduced over time (Exhibit 83).

Office of Planning (OP) Report OP filed a report supporting the request for the administrative offices, and night school operations, but opposing the request for an increase in enrollment and faculty/staff at the School (Exhibit 31). OP also requested additional information regarding the School's proposal to build angled parking spaces (Exhibit 31). In its supplemental report, OP reiterated its position that the School should reduce its student enrollment by attrition by the end of the 2008 academic year (from 330 to 310), and also recommended that a faculty increase from 94 to 182 should be only temporary, ending in 2009. (Exhibit 67) OP's representative testified that the enrollment and faculty increases had led to adverse impacts on neighborhood streets due to increased traffic and overflow parking on neighborhood streets.

Department of Transportation (DDOT) Report DDOT initially indicated that the proposed parking spaces were acceptable from a technical standpoint, but later wrote that it did not support the Applicant's proposal for spaces in the public right-of-way (Exhibits 28 and 63). DDOT also offered to assist the Applicant in developing a revised TMP (Exhibit 63). Prior to the Board's Decision Meeting in March, 2006, DDOT submitted a report noting that the School's parking demand far exceeded the available supply, and that the School needed to mitigate the use of parking in the neighborhood through the use of transit, van shuttle services, and carpools (Exhibit 71). Ken Laden, a representative of DDOT, testified before the Board and noted his objection to public space being dedicated to a private use. He supported the creation of the angled parking spaces, provided they were available to the public and not dedicated to the exclusive use of the school. He also acknowledged that the demand for parking in the area where the angled spaces are proposed to be located is largely limited to employees and visitors to the Lab School and Our Lady of Victory School.

Requests for Party Status. ANC 3D was automatically a party to this proceeding. The Board received a request for party status from the Reverend Milton Jordan, Pastor of Our Lady of Victory Church, located across Whitehaven Parkway from the property and across from the proposed angled parking spaces (Exhibit 29). The Board granted

Reverend Jordan's request for party status, and the Reverend testified at the public hearing regarding safety concerns at the Church school. However, by letter dated February 20, 2006, Reverend Jordan withdrew his opposition to the Application, and wrote that his concerns had been addressed by the Applicant (appended to Applicant's Exhibit 66).

Persons in Opposition to the Application The Board received letters in opposition to the application from neighboring property owners Vicki Hicks, Katie Harvey, and Brendan Reilly (Exhibits 32 and 21). The letters in opposition asserted generally that the proposed enrollment and faculty/staff increase would create objectionable traffic and parking conditions in the neighborhood. Ms. Hicks, who wrote one of the letters, testified at the public hearing, and stated that the traffic situation in the neighborhood is objectionable, and that the granting of the application would result in more traffic. She also stated that the proposed angled spaces would encourage more traffic in the neighborhood.

Persons in Support of the Application The Board also received several letters in support of the application (Exhibits 33-48, and 65). The letters generally cited the excellent education that the School offers and the many benefits the School provides to its neighbors. In addition, the letters stated that the new sidewalk proposed in conjunction with the angled spaces would greatly increase pedestrian safety on Whitehaven Parkway. A nearby homeowner, Anne Davis, testified in support of the application, asserting that the proposed angled spaces and sidewalk would be an amenity for the neighborhood.

Applicant's Case Sally Smith, the Founder and Director of the School, testified on behalf of the Applicant, as did Peter Braun, Director of Operations for the School. The Applicant also presented testimony and evidence from experts in civil engineering (Allyn Kilsheimer of KCE Structural Engineers) and traffic management (Martin Wells of Wells & Associates) (See, Exhibit 73, TMP appended to Exhibit 66, and revised TMP appended to Exhibit 76).

Closing of the Record. The Board conducted a public hearing on November 22, 2005, but kept the record open to receive several submissions, including supplemental reports by OP and DDOT, and an ANC response to the Applicant's oral motion to strike the ANC report. The Board set the matter for a Decision Meeting on March 7, 2006. Prior to that meeting, the Board received several submissions, including most significantly, a report from DDOT. Because that report raised additional questions regarding traffic and parking issues, the Board re-opened the record to accept all of the submissions and to conduct an additional hearing. The hearing was limited to the traffic and parking issues, in particular, those issues raised by the TMP and DDOT reports. The hearing was conducted on April 4, 2006, and the record was held open until April 25, 2006, to allow

proposed Findings of Fact and Conclusions of Law from all the parties. A Decision Meeting was held on May 2, 2006, and, again on May 16, 2006.

FINDINGS OF FACT

Background

1. The School is a private school for children with special needs in grades kindergarten through twelve.

2. It has been located at the property since the School acquired it in 1982, and currently enrolls 330 students.

3. The School also offers educational programs for adults, and currently enrolls about 60 learning-disabled adult students during the evenings. The "night school" teaches essential life skills such as reading, writing, spelling, and basic math. Classes meet only on Tuesdays and Thursdays, for a total of only 24 evenings per semester, and are held between 5:50 and 9:30 p.m. Class size is limited to five students.

4. The Applicant proposes to continue its night school use, which it asserts is a reasonable accessory use to the private school use.

5. In 1992, the Board approved the private school use in BZA Order No. 15642, granting the School's application to add additional property to the School and to convert a single-family home into administrative offices.

6. The private school use of the property was most recently approved in 1997 in BZA Order No. 16273, when the Board approved a maximum student enrollment of 310 students (Condition no. 1) and a faculty/staff cap of 95 (Condition no. 2).

7. Notwithstanding these limitations, the School currently enrolls 330 students and employs 182 faculty and staff, including teachers (of which 78 are full-time), administrative employees, speech therapists, occupational therapists, and physical therapists.

8. The number of employees at the school at the same time between the hours of 7:00 a.m. and 4:00 p.m. varies, but ranges between 170 and 179 employees.

The Property and Surrounding Area

9. The property is located in the R-1-B zone district near the intersection of Whitehaven Parkway and Reservoir Road. It has frontage on both streets and consists

of approximately 163,567 square feet of land area located at premises 4759 Reservoir Road, NW (Square 1372, Lot 25).

10. The property is improved with a prominent administration building known as the “castle”, a gymnasium, a carriage house, an arts building, two classroom buildings, and two houses. There is also a protected wetlands on site.

11. There are currently 87 parking spaces located at the property, but the property can accommodate 107 cars with stacked parking.

12. The School also owns the nearby property located at 4749 Whitehaven Parkway, NW (Square 1374, Lot 840) (the nearby property). The nearby property is located across Whitehaven Parkway from the subject property, contains 5,003 square feet of land area, and is improved with a single-family home.

13. The surrounding area is characterized by a mixture of residential and institutional uses. The property abuts St. Patrick’s Episcopal Day School to the east and Fire Engine House No. 29 to the west. Both sides of Reservoir Road, which is located south and east of the property, are devoted primarily to use as single-family homes. The Embassy of the Federal Republic of Germany and an underground reservoir are located further east of the property. St. Patrick’s Episcopal Day School’s gymnasium, The George Washington University Mount Vernon campus, and Our Lady of Victory Church and School are located across Whitehaven Parkway from the School.

Traffic

14. The transportation firm of Wells & Associates studied the traffic of the area in which the property is located and conducted a “Traffic Impact Analysis” (the traffic study) of the conditions of the School (Exhibit 25, Tab H).

15. Because the school has already increased its enrollment and staff to the level for which approval is sought, the traffic study attempted to extrapolate the extent to which the increases have already impacted neighborhood traffic.

16. According to the traffic study, traffic is heavy at the intersection of MacArthur Boulevard and Whitehaven Parkway, the location where the School is located. However, this is attributable primarily to commuter traffic.

17. The traffic study shows that the additional faculty and staff have not adversely affected traffic patterns in the vicinity of the site nor had an adverse impact on the road network. The traffic study measured the traffic with the School’s additional enrollment and faculty/staff (330 students and 182 faculty/staff) and compared traffic that would result from enrollment and faculty/staff cap actually authorized (310 students and 95

faculty/staff). According to the study, the additional students and faculty/staff have caused some delay at the intersection of MacArthur Boulevard and Whitehaven Parkway – but only a two second delay – during the AM peak hour. The additional students and faculty/staff have had virtually no effect on traffic during the PM traffic.

18. Anthony McElwee, of the Metropolitan Police Department, testified that he performed a survey of traffic on Whitehaven Parkway at the request of the ANC, and found that Whitehaven Parkway is heavily traveled during peak hours. He also found that parents stop and park their cars while picking up and dropping off students, and that children frequently cross Whitehaven Parkway.

Parking

19. As a private school use, the School is required to have “ample” parking, but not less than that required in Chapter 21 of the Regulations. 11 DCMR 206. Based on 182 employees and the School’s assembly space, the School is required to have 130 parking spaces pursuant to the parking schedule set forth at 11 DCMR 2101.¹

20. Pursuant to 11 DCMR 2108 the Board is authorized to reduce the number of parking spaces required under 11 DCMR 2101 by up to 25% upon consideration of the factors set forth therein, including the availability of parking in the neighborhood.

21. A 25 % reduction pursuant to 11 DCMR 2101 would thereby require the School to provide 98 spaces on site.

22. As stated in Finding of Fact No. 9, there are currently 87 parking spaces that meet the technical requirements under the Zoning Regulations, but the School can accommodate a total of 107 cars within its property, including unmarked spaces and stacked parking.

23. The School cannot locate additional parking spaces on site because of the existence of wetlands on its property as well as existing improvements.

¹ Because many of the employees are part-time and not all at the school at the same time, the parking requirement may actually be less than that amount. See, 11 DCMR 2118.3. The School stated at the hearing that the number of employees at the school at the same time between the hours of 7:00 a.m. and 4:00 p.m. varies, but ranges between 170 and 179 employees, less than the 182 figure used to calculate the required parking. The Board need not resolve whether fewer spaces are required because the difference in numbers is not significant enough to affect the Board’s analysis in this case.

24. According to the traffic study, the School's current parking demand is for 175 parking spaces. The school intends to reduce that demand to 130 parking spaces through the use of car pooling and a free shuttle service in accordance with its TMP.

25. The Applicant's long term parking solution is to either construct a garage or acquire off-site spaces, and the School plans to acquire additional property for this purpose. However, it will take approximately five years for the School to locate and acquire an appropriate site or to raise the funds for the garage.

26. In the interim, the School has developed a Traffic Management Plan ("TMP") that offers solutions to parking and traffic concerns. (Attachment to Exhibit 66).

27. The TMP posits that the School's weekday parking demand currently exceeds the School's on-site parking supply. The stated goal of the TMP is to "bring peak weekday parking demand and supply into balance by "(1) increasing parking supply and (2) decreasing overall parking demand".

28. The TMP proposes measures to increase parking supply through re-striping existing spaces to gain more spaces, and providing stacked parking spaces.

29. The TMP proposes measures to reduce peak parking demands through increased use of public transportation, carpools, school bus service, bicycles, car sharing, and limitations on high school drivers.

30. The TMP also addresses typical weekday arrival and dismissal, evening, and event traffic management.

31. If the TMP is successfully implemented, the AM peak hour vehicle trips will be reduced from 196 to 165 (Exhibit 82).

Angled Parking on Whitehaven Parkway

32. The School initially proposed as a solution to its parking needs the construction of 43 angled parking spaces along Whitehaven Parkway, a public right-of-way, that would be dedicated exclusively to the School. The School proposed to lease these spaces from the District of Columbia and sought special exception relief under § 2116.

33. The school designed a parking plan for the angled spaces that complies with the provisions of Chapter 23 of the Zoning Regulations, and will be paved in accordance with DDOT requirements. Two of the parking spaces will be handicapped-accessible. There will be no structures or lighting related to the parking spaces.

34. The parking design has met with DDOT's approval, but not the dedication of the spaces to exclusive use by the School. The plan is subject to final approval by the Public Space Committee.

35. Construction of the 43 spaces will replace 17 existing spaces, resulting in a net increase of 26 public parking spaces.

36. The demand for parking in the area where the angled spaces are proposed to be located is largely limited to employees and visitors to the Lab School and Our Lady of Victory School.

37. The 107 parking spaces on site, together with the 26 additional parking spaces that would be created by the construction of the angled parking, would provide ample parking to meet the parking demand for 130 spaces set forth in the TMP.

38. Pursuant to its TMP, if the School does not demonstrate a balance between supply and demand within 30 days after the beginning of the school year in the fall of 2007, the School will be required to lease additional off-site spaces to meet the excess demand.

Other Objectionable Conditions

39. The additional faculty and staff (reflecting current employment) do not cause objectionable noise and have little effect on neighboring properties. The faculty and staff generally work inside the School buildings and, as a result, cause no adverse noise impacts. Most of the School's immediate neighbors are institutional uses, and the School's buildings are well-buffered from nearby residential properties. Likewise, the increase in student enrollment (20 additional students) has had little impact on neighboring properties.

Impact of Administrative Office Building

40. The proposed building will house administrative functions that are integral to the private school use. These functions are an essential adjunct to the educational mission of the School.

41. The proposed building will be extremely close in proximity to the existing School buildings – it will be located only 120 feet away and will be separated only by Whitehaven Parkway. Approximately 15 of the existing school employees will use the building on a regular basis, and the building will have a negligible impact on traffic.

CONCLUSIONS OF LAW

The Board of Zoning Adjustment is authorized under the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code § 5-524(g)(2)), to grant special exceptions as provided in the Zoning Regulations. The Applicant applied under 11 DCMR § 3104.1 for a special exception pursuant to 11 DCMR § 206 to allow an increase in its student enrollment and faculty and staff, and for approval for administrative offices at a nearby property. It also sought permission to locate accessory parking elsewhere than on the lot of the buildings the spaces are intended to serve. 11 DCMR § 2116.5.

The Board may grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular exception are met. First, the requested special exception must “be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.” 11 DCMR § 3104.1. Second, it must “not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map.” 11 DCMR § 3104.1.

Under Section 206.1 of the Zoning Regulations, the Board may permit the use of private schools subject to the provisions set forth in 206.2 and 206.3:

206.2 - The private school shall be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions.

This application is similar to *Application No. 17081 of St. Patrick's Episcopal Day School*, 51 DCR. 10277 (2004) with respect to its request for an increase in faculty and staff. Like the Lab School, the Applicant in that case was requesting the Board to ratify an unauthorized increase in staff that had grown in large part with part-time employees. In both cases, there was confusion as to how to count these employees. In that case, as here the Board found that “the increase requested ...[would] not result in an actual increase, but rather [would] modify the Board's condition to comport with reality”, 51 DCR 10882. In granting that application, the Board noted that “the Applicant has admitted its error, is not seeking to add more faculty or staff, and has demonstrated that the increase, although unauthorized, did not result in adverse impacts.” *Id.* The Board makes the same findings with respect to this application. The School has been operating at the site since 1982. Since that time, the School has operated without significant objectionable impacts on neighboring properties from noise, traffic, or number of students. While the evidence in the record shows that there has been some increase in traffic in the neighborhood, that increase is minor and primarily attributable to commuter traffic (Findings of Fact 15 and 16). Furthermore, the TMP, upon which this Order is conditioned, will insure that any traffic impacts will be mitigated. The Board is persuaded that, even with the additional students and employees, the School will continue

to have only minimal impact on the noise and traffic conditions in the area. The primary objectionable impact has been on parking in the neighborhood. The Board finds that the objectionable parking impacts will be mitigated by the additional parking that will be provided as set forth below and by the decrease in the demand from parking resulting from the School's TMP.

206.3 – Ample parking space, but not less than that required in chapter 21 of this title, shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.

Based upon the School's figure of 182 employees, under the parking schedule set forth in 11 DCMR 2101, the School is required to provide 130 spaces on site. The Board finds that a reduction in this requirement is justified, reducing that number to 107 spaces on site, including unmarked spaces and stacked parking.² This reduction is less than the 25% authorized under Section 2108.3 which in this case would allow a reduction in the required number of spaces to 98. In making this determination the Board has considered the following factors set forth in Subsection 2108.3:

- (a) Nature and location of the structure;
- (b) Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;
- (c) Amount of traffic congestion existing or that the building or structure can reasonably be expected to use the proposed building or structure at one time;
- (d) Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the building or structure is in use; and
- (e) Proximity to public transportation, particularly Metrorail stations, and the availability of public transportation service in the area or a ride-sharing program approved by the D.C. Department of Transportation.

The Board finds that because of the topography of the site, including the presence of wetlands and existing improvements, the School cannot provide any more than the 107 on-site parking spaces. However, the Board finds that these 107 on-site spaces will provide ample parking for students, teachers and visitors provided that the 43 angled

² While the Applicant has only 87 parking spaces that meet the technical specifications of the regulations, the Board concludes that the words in Section 206, "but not less than that required in Chapter 21," modifying the phrase "ample parking," applies to the number of spaces required on site by the parking schedule. Accordingly, the Board applies the special exception standards in its evaluation of other parking space criteria.

parking spaces are constructed on Whitehaven Parkway as presented to the Board. The 107 on-site spaces together with the 26 additional public parking spaces that will be created in the neighborhood with the construction of the angled parking will net a total of 133 parking spaces for an estimated demand of 130 spaces. Although, the School will not have exclusive control over the angled parking, the record reflects that that parking is primarily accessible to the Lab School and Our Lady of Victory and would primarily serve the School's population. Use of these spaces by the School will diminish parking by the School on neighboring streets. Finally, the School's extensive TMP contains various mechanisms, including the use of shuttle buses and public transportation, and monitoring to bring into balance the parking supply and demand. Taken together, the increase in parking availability for both the School and the general public and the decrease in parking demand allow the Board to conclude that 107 on-site parking spaces are ample.

While the School initially sought a special exception for use of the angled parking as accessory parking pursuant to 2116 to count towards its required 130 spaces, DDOT as well as the ANC opposed the dedication of public space to private use. Accordingly, in granting the Application, the Board does not grant this special exception. Instead, the Board finds that with the construction of the 43 angled spaces that will be available to the general public there will be ample parking for the School.

Finally, the School has presented its parking solutions as temporary; that it is seeking to acquire additional property for a new garage. Accordingly, as set forth in the conditions, the Board is imposing a five-year term on this order in light of the changes expected to occur in that time period.

Night School Use

An "accessory use" is defined under the Zoning Regulations as "a use customarily incidental and subordinate to the principal use, and located on the same lot as the principal use". 11 DCMR 199. The Board concurs with the Applicant that the night school, as it is currently operated, is a reasonable accessory use to the School (Findings of Fact 3 and 14).

Administrative Office Building

As stated above, the proposed building will house administrative functions which can be reasonably characterized as an extension of the principal school use. As such, the administrative offices will not serve as an accessory "use", but the proposed building is an accessory "building". Thus, the Board considered whether approval of the structure would run afoul of § 2500.1 of the Zoning Regulations. Section 2500.1 allows an "accessory building", but only if it is "located on the same lot with the use or building to

which it is accessory". Here, the proposed office building will be located directly across the street from the School. As the School has purchased the property, the building is located on the School's property, but on a lot and square that is separate from the main campus of the School.

This fact notwithstanding, the Board has never read this section to require that accessory buildings for school uses be located on the same record lot. The District of Columbia Court of Appeals has affirmed the Board's broad reading of this requirement to apply to a School's property in general, not to a specific record lot and square.

The Court of Appeals' discussion, though with respect to accessory uses, in *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 816 A.2d 41 (D.C. 2003) is specifically on point to the question presented in this case. The Court stated as follows:

The GRA argues nevertheless that this particular child care center is not an accessory use because it fails the "same lot" test set forth in the zoning regulations. *See* 11 DCMR § 199 ("a use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use"); *Hilton Hotels, supra* note 13, 363 A.2d at 671 (facility not on same lot is not an accessory use). Specifically, because Poulton Hall stands on lot 835, in a residential neighborhood and not on Georgetown's main campus, which bears a different lot number in the District of Columbia land records (it is directly across the street), the GRA claims it cannot be deemed an accessory use to the University. This argument is unavailing. Both the Acting Zoning Administrator and the BZA interpreted "lot" in this context to mean the entire University, not just the record lot, for the purpose of its consideration as an accessory use. We uphold the BZA's ruling on this issue, since it is consistent with both the zoning regulations and our case law. *See* 11 DCMR § 199 ("A lot may or may not be the land so recorded on the records of the Surveyor of the District of Columbia"); *Citizens Coalition*, 619 A.2d at 955 (holding that, because the proposed power plant was on a remote part of the University campus, the "same lot" requirement for accessory uses was satisfied); *see also Georgetown Residents Alliance v. District of Columbia Board of Zoning Adjustment*, 802 A.2d 359, 366 (D.C. 2002) (distinguishing between "lot" and "lot of record.")

In accordance with the past BZA and Court of Appeals decisions referenced above, § 2500.1 does not preclude the location of the administrative building across the street from the main campus. Further, in light of the limited use of this building -15 employees performing administrative functions - and its location next to other institutional uses, the Board finds that there will be no likely adverse impact from the proposed location of the offices.

OP's Issues and Concerns

The Board is required, under D.C. Code § 6-623.04, to give “great weight” to OP recommendations. In its report, OP stated that neither student enrollment nor faculty/staff should be increased as was requested. However, the Board finds that neither OP’s report nor its testimony during the hearing, identified specific, quantifiable impacts that would justify limiting the enrollment or faculty and staff. The School has demonstrated that the additional 20 students have had little effect on noise and traffic and is likely to continue to have minimal impact. Thus, the Board does not find OP’s recommendations regarding an enrollment staff cap to be persuasive. The Board has given great weight to OP’s concerns about the impact on parking in the neighborhood from the additional staff and is persuaded that the additional parking and the implementation of the School’s TMP will redress the parking problems. The Board also has been persuaded by OP’s (and DDOT’s) policy concerns with respect to the dedication of public parking to private uses and has accordingly, declined to grant special exception relief for that purpose.

The ANC Issues and Concerns

The Board is also required, under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; now codified at D.C. Code § 1-309.10, to give “great weight” to the issues and concerns raised in the affected ANC’s recommendations. To give great weight the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances, articulating specific findings and conclusions with respect to each of the ANC’s issues and concerns.

In order for the ANC to be granted great weight, it must comply with the provisions set forth in 11 DCMR 3115.1 and the statute referenced above. Such provisions include proper notice, and the holding of a public meeting. During the hearing, the Applicant made an oral motion to strike the ANC Report on grounds that the ANC had conducted its deliberation in private. The Board interprets this motion as a motion to deny the ANC great weight in this case. In a written response, the ANC explained that it did not conduct any substantive deliberations regarding the issues in this case in private. The Board is persuaded that the ANC’s actions did not rise to the level of denying the ANC its great weight and accordingly addresses its issues and concerns as follows:

1. Student Enrollment and Faculty /Staff Increases

For the reasons already set forth, the Board finds that the student and faculty / staff increases are not likely to have an adverse impact on neighboring properties because of

the additional parking that will be provided and because of the extensive mechanisms in the School's TMP to redress parking and traffic concerns.

2. Angled Parking on Whitehaven Parkway

The Board was persuaded by the ANC's and DDOT's concerns regarding the exclusive dedication of public parking spaces for private use. However, the Board does not agree that the parking spaces on Whitehaven Parkway will encourage future staff growth, or that fire trucks will have difficulty traversing the right-of-way. The Board finds that the provision of the angled parking will benefit the public. The design as presented to the Board not only will add parking spaces to the neighborhood, but also will add sidewalks, and improve the safety and aesthetics of the area.

For the reasons stated herein, the Board concludes that the Applicant has met its burden of proof and **GRANTS** the special exception relief under § 206 to allow the School's use of the building located at 4749 Whitehaven Parkway for administrative purposes.

The Board further concludes that the Applicant has met its burden of proof and **GRANTS** the School Special Exception Relief under § 206 to increase the enrollment and the faculty and staff limits **SUBJECT** to the following **CONDITIONS**:

1. The maximum enrollment shall be 330 students.
2. The maximum number of faculty, staff, and administrative personnel, including part-time employees, shall be 182.
3. Within 30 days of the beginning of each academic year, the School shall provide to ANC 3D a report indicating current student enrollment and the number of faculty/staff.
4. The School shall fully implement and comply with Plan A of the Traffic Management Plan (TMP) (Exhibit 66).
5. Within 45 days of each traffic monitoring survey required by the TMP, the School shall provide to DDOT and ANC 3D a report indicating its compliance with the TMP. Compliance with the TMP will be measured by the School's progress in reducing its AM traffic generation rate from 196 to 165, as described in its Traffic Study (Exhibit 25, Tab H) and its letter of May 5, 2006 (Exhibit 82) and by its balancing of its parking supply with its parking demand.
6. Forty-three (43) new angled parking spaces must be in place along Whitehaven Parkway within 9 months of the effective date of this order for the School to be in

compliance with § 206.3's requirement of ample parking. These spaces must be consistent with the plans prepared by VIKA Engineers (Exhibit 56), and with the provisions of Chapter 23 of the Zoning Regulations. There will be no structures or lighting relating to the parking spaces and the area will be paved in accordance with DDOT requirements.

7. This approval of the increase in enrollment and faculty and staff limits is limited to a **FIVE YEAR TERM** from the effective date of this Decision and Order. In the event that this approval lapses, the enrollment and faculty and staff limits will revert to those imposed in BZA Order No. 16273, specifically 310 students and 95 faculty and staff.

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II, and Carol J. Mitten, all in favor of the motion)

VOTE TAKEN ON MAY 16, 2006

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

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning 

FEB 02 2007

FINAL DATE OF ORDER: _____

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, 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.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

SG

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17383-A

As Director of the Office of Zoning, I hereby certify and attest that on **FEBRUARY 2, 2007**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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PAGE NO. 2

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ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR