

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



**Application No. 16559-A of The Morris and Gwendolyn Cafritz Foundation/The Field School**, pursuant to 11 DCMR § 3104.1 for a special exception to establish a private school under section 206 for a maximum of 320 students and 74 faculty and staff in an R-1-A District at premises 2301 Foxhall Road, N W (Square 1341, Lots 856, 861, 878, and 879).

**HEARING DATES:** July 3, 2001

**DECISION DATES:** July 3, 2001

**DISPOSITION:** The Board granted the above referenced Application to establish a private school under section 206 with an initial student enrollment of 260 students and 74 faculty and staff by a vote of 4-1-0 (John G Parsons, Sheila Cross Reid, Robert N Sockwell, and Rodney L Moulden, to grant; Anne M. Renshaw, to deny)

**FINAL DATE OF ORDER:** December 19, 2000.

**MODIFICATION ORDER**

This Decision and Order arises from a request from the law firm of ShawPittman, on behalf of the Applicant, for a Modification of the plans approved under Board of Zoning Adjustment (BZA) Order No. 16559

**PROCEDURAL MATTERS**

By BZA Order No 16559, which became final on December 19, 2000, the Board granted approval for the establishment of a private school for a maximum of 320 students, with an initial enrollment of 260 students, and 74 faculty and staff. The approval was subject to 42 conditions.

The parties in opposition to the approval of the case petitioned the District of Columbia Court of Appeals to review the BZA decision. The case is still pending in the court.

In a letter dated May 23, 2001, the Applicant requested two minor modifications to the approved BZA Order No 16559, pursuant to 11 DCMR section 3129. Specifically, the requested modifications sought the following:

- 1 To allow nine school staff to use the existing building on the property during construction of the project for regular daily school business and development use without the imposition of the conditions of BZA Order No 16559; and
- 2 Permission to hold its monthly board meetings on the subject property

**BOARD OF ZONING ADJUSTMENT**  
District of Columbia

CASE NO. 18431

EXHIBIT NO. 11

441 4th Street, N.W., Suite 210-S, Washington, DC 20001 (202) 727-6311

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The letter indicated that the modifications relate to interim use of the property and will not change the design, appearance or site plan of the approved project, nor would the modifications impact any of the conditions of approval

The Applicant stated in the letter that no student activity, classes, or the like would occur on the property as a result of these modifications. All employees will have parking spaces on the property. The uses requested will not generate any noticeable traffic and except for the internal modification to the existing mansion, no construction will be needed to accommodate the modifications.

The Applicant certified that copies of the modification request were served on all the parties, including Advisory Neighborhood Commission 3D.

### FINDINGS OF FACT

At its public meeting on July 3, 2001, the Board reviewed and discussed the record of the case and the modification request. The Board finds as follows:

- 1 The property that is the subject of this application consists of approximately 10.5 acres located in an R-1-A District at premises 2301 Foxhall Road, N.W. (Square 1341, Lots 856, 861, 878, and 879). It is in the Ward 3 neighborhood of Wesley Heights. It is adjacent to stable, well-maintained, residential neighborhoods to the south, north, northwest, and northeast. While the surrounding area is predominantly residential in character, a number of private schools and embassies are located within the area.
2. The property is currently improved with the Cafritz House, a three-story, 14000 square foot residence built in 1937 in the Art Deco style. The Applicant's design and construction plans incorporate this existing building into the school's campus scheme.
- 3 Advisory Neighborhood Commission (ANC) 3D, which testified at the initial public hearing in Case No. 16559 and other parties were notified of the modification request.
4. By a letter dated May 25, 2001, the law firm of Hunton and Williams representing Neighbors Against Foxhall Gridlock (NAFG), a party to the case and the party seeking appellate review in the court of appeals indicated that NAFG has no objection to the proposed interim use of the property.
- 5 The Board noted that the interim use of the facility will result only in the modification of the interior of the existing building and that the use would have no impact on the approved project or the community around it.

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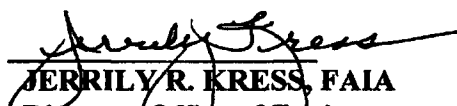
1. The Board concludes that the interim use of the property does not change the facts relied upon by the Board in approving the application
2. The Board also concludes that the interim use proposed by the modification for only nine school staff and monthly board meetings of approximately 20 persons, held in the evenings after the evening rush hours will not have any noticeable traffic impact on the area
3. The board concurred with the Applicant that the modifications do not ultimately change the approved project or any of its conditions. Rather, the modifications will enable the school to use its property while pursuant to BZA Order No 16559 conditions and the completion of the Court of Appeal's case
4. The R-1-A District permits matter-of-right development of single-family residential uses, churches or other places of worship, embassies, low density community-based residential facilities, and detached dwellings with a minimum lot area of 7,500 square feet, a minimum lot width of 75 feet, a maximum lot occupancy of forty percent, and a maximum height of three stories/forty feet. Uses permitted, with BZA approval, include child development centers, private schools, community centers, colleges and universities. The Board concludes that the modifications will not negatively impact the uses in this area.

Based on the above findings of fact and conclusions, the Board concludes that granting the modification is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. The Board also finds that the modification will not adversely affect the neighboring or adjacent properties in the vicinity or change the material facts the Board relied upon in approving the application with conditions. Accordingly, the Board **ORDERS** that the request to modify the plans approved by BZA Order No 16559 to allow nine (9) school staff to use the existing building on the property on an interim basis during construction of the project for regular school business and development use and to allow the school to hold its monthly board meetings with approximately 20 persons on the subject property be **GRANTED**. The Board also indicated that this order applies only to the use of the property as depicted on the modification plans, (Exhibit No 484-A), and does not constitute approval of the construction plans or construction road shown on the plans.

**VOTE: 3-0-2** (Anne M. Renshaw to approve, John G. Parsons and Sheila Cross Reid to approve by proxy; Susan M. Hinton and Geoffrey H. Griffis, not voting, not having read the record)

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

Each concurring member has approved the issuance of this Order.

Attested By:   
JERRILY R. KRESS, FAIA  
Director, Office of Zoning

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**FINAL DATE OF ORDER: AUG - 6 2001**

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES UNDER 11 DCMR § 3125 9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL

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

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE SEE D.C. CODE § 1-2531 (1999) THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16559-A

As the Director of the Office of Zoning, I hereby certify and attest that on AUG - 6 2001, 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 who appeared and participated in the public hearing concerning the matter, and who is listed below.

Eleanor Roberts Lewis, Chairperson  
Advisory Neighborhood Commission 3D  
Ernest Auditorium, Sibley Hosp.  
P O Box 40846  
Washington, D C 20008

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Office of Corporation Counsel  
441 4<sup>th</sup> Street, N W., 6<sup>th</sup> floor  
Washington, D C 20001

Ann F Heuer, Commissioner  
Single Member District 3D006  
4705 Foxhall Crescent, N.W  
Washington, D.C. 20007

Ellen McCarthy, Deputy Director  
Development Review Division  
Office of Planning (4<sup>th</sup> floor)  
801 North Capitol Street, N E.  
Washington, D C 20002

Neighbors Against Foxhall Gridlock  
C/o Richard Aguglia, Esq  
Hunton & Williams  
1900 K Street, N W Suite 1200  
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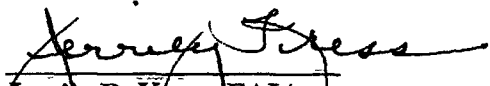
Jeffrey W Bolotin, Esq.  
4604 Foxhall Crescents, N W  
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Alan R. Swendiman, Esq.  
Jackson & Campbell  
1120 20<sup>th</sup> Street, N.W.  
Washington, D C 20036

Michael D Johnson, Zoning Administrator  
Department of Consumer & Regulatory Affairs  
941 North Capitol Street, N E., Suite 2000  
Washington, D. C 20002

Kathleen Patterson, Councilmember  
Ward Three  
441 4<sup>th</sup> Street, N.W., Room 709  
Washington, D C. 20001

ATTESTED BY:

  
Jerry R. Kress, FAIA  
Director, Office of Zoning

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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**Application No. 16559 B of The Morris and Gwendolyn Cafritz Foundation/The Field School** pursuant to 11 DCMR 3129, for the minor modification of the Board of Zoning Adjustment's prior approval to establish a private school under Section 206 for a maximum of 320 students and 74 faculty and staff in a R-1-A Zone District at premises 2301 Foxhall Road, N W. (Square 1341, Lots 856, 861, 878, and 879)

**DECISION DATE:** August 6, 2002

**DISPOSITION:** The Board granted the above referenced Application to establish a private school under Section 206 with an initial student enrollment of 260 students and 74 faculty and staff by a vote of 4-1-0 (John G Parsons, Sheila Cross Reid, Robert N. Sockwell, and Rodney L. Moulden to grant, Anne M. Renshaw, to deny) The final date of the original order was December 19, 2000

By Modification Order dated August 6, 2001, the Board granted two modifications of the original order which permitted nine (9) school staff to use the existing building on the school property on an interim basis during construction of the project for regular school business and development use, and to allow the school to hold its monthly board meetings with approximately 20 persons on the property. The modification order was approved by a vote of 3-0-2 (Anne M. Renshaw, approve, John G. Parsons and Sheila Cross Reid to approve by proxy, Susan M. Hinton and Geoffrey H. Griffis, not voting, not having read the case)

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**MODIFICATION ORDER**

On July 16, 2002, The Field School ("School") filed a letter with the Board of Zoning Adjustment ("Board" or "BZA") requesting a motion to waive the requirements of 11 DCMR §3129.3 regarding the time period in which to file a request for a minor modification of a BZA Order, and a motion requesting a minor modification of certain conditions of BZA Order No. 16559. The School proposed an interim modification to Conditions numbered 13-24 of BZA

Order No 16559 The School noted that the modification of these conditions would only be for a temporary period of time, 6 months, and would then be reinstated automatically

**PRELIMINARY MATTERS:**

1. The Zoning Regulations, pursuant to 11 DCMR §3129.6, state, “No member shall vote on a request for modification of plans unless the member participated in and voted on the original decision or read the record.” Two members of the current Board participated in and voted on the initial BZA application. In order for the Board to entertain the motion for a modification of the approved plans, it was necessary for the Board to grant a waiver of 11 DCMR §3129.6, absent the remaining members of the Board reading the voluminous record of the original application. The Board determined that the final order issued on December 19, 2000, was comprehensive and sufficiently detailed to allow the substance of the request to be fully understood and evaluated. Further, the Board determined that the motion for modification did not involve changing any part of the final order, but only involved an interim construction related modification to certain conditions. Therefore, the Board concluded that it was proper to entertain the motion without reading the original record in its entirety. By a vote of 4-1-0, the Board approved a motion to waive the requirements of 11 DCMR §3129.6
2. In order for the Board to address the motion for modification, it was also necessary for the Board to grant a waiver of 11 DCMR §3129.3, which requires that “A request for modification of plans shall be filed with the Board

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not later than six (6) months after the final date of the final order approving the application” BZA Order No. 16559 was approved on December 19, 2000. BZA Order No. 16559A was approved on August 6, 2001. By a vote of 4-1-0, the Board approved a motion to waive the requirements of 11 DCMR §3129.3, so that it could address the merits of this modification application.

### **FINDINGS OF FACT**

1 BZA Order No. 16559 approved a special exception request of The Field School, under Section 206, to establish and operate a private school in an R-1-A Zone District at premises 2301 Foxhall Road, N.W. (Square 1341, Lots 856, 861, 878 and 879) (“Subject Property”) The Order, dated December 19, 2000, approved the School’s use of the Subject Property as a private school subject to numerous conditions. The BZA determined that the School’s proposed use fully satisfied all requirements of the Zoning Regulations. The D.C. Court of Appeals upheld the BZA’s decision to approve the Field School’s use by an opinion issued on February 28, 2002.

2. BZA Order No. 16559A, dated August 6, 2001, approved a minor modification of the approved plans. This minor modification permitted nine (9) school staff to use the existing building on the school property on an interim basis during construction of the project for regular school business and development use and allowed the School to hold its monthly board meetings with approximately 20 persons on the property

3. A building permit was issued to the School on July 24, 2001, which authorized construction of the approved School facilities on private property. Construction has progressed such that all of the School’s facilities on the Subject Property will be ready for occupancy by

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students, faculty and staff in August/September 2002, at the beginning of the 2002-2003 school year

4. BZA Order No. 16559 required certain improvements to the Foxhall Road right-of-way, in public space, including the widening of Foxhall Road for the left hand turn lane and the construction of a traffic signal at the entrance to the Subject Property. The School and the District Department of Transportation (“DDOT”) staff determined that the road would be constructed by the District of Columbia.

5. At the time of the School’s filing of the minor modification request, DDOT was following its procurement process, when using federal funds, to award a contract to construct road improvements and install the traffic signal. The actual construction process is expected to take approximately 6-8 weeks.

6. In further elaboration on this point, Ken Laden, Associate Director, Transportation Policy and Planning Administration, noted that the design of the roadway was nearly completed and that construction activity could begin by the selected contractor in October. Based on an October start date, construction is expected to be completed by January 2003.

7. When the School became aware that DDOT would not be able to complete the road improvements prior to the school’s opening in September 2002, the School’s consultants began to work with DDOT staff to create an alternative transportation management plan. The alternative transportation management plan would allow the School to use the Subject Property for school purposes prior to the completion of the widening of Foxhall Road and related work. The goal of this plan was to assure that the School’s use of the Subject Property

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during the interim period of DDOT construction activity would cause any unsafe or objectionable traffic conditions in the surrounding area.

8. In a memorandum dated July 5, 2002, addressed to Jerrily Kress, Director of the Office of Zoning, Ken Laden noted that

Representatives of the Field School have recently sent the Department of Transportation a proposed alternative transportation management plan that would be implemented while construction is completed. The Department has reviewed these plans and finds that the proposed elements would bring the School into effective compliance with the conditions [Condition Nos. 13-24] of the BZA Order 16559 issued on December 19, 2000. (Laden's Memo to Kress dated July 5, 2002).

9 The Alternative Transportation Management Plan proposal addressed in Ken Laden's memo includes the following elements:

- a. The north access to the school site would remain closed, except to emergency vehicles
- b. Installation of two flashing beacons, one on Foxhall Road at the modified southern entrance to the school, and one on Foxhall Road near W Street, approximately 300 feet south of the school entrance.
- c. Placement of the warning signs as required in condition # 17, on page 21.
- d. Placement of a stop sign at the modified southern exit from the Field School to Foxhall Road, to serve as an interim traffic control device until the traffic signal is installed
- e. Permit left or right turns from the modified southern exit Field School property onto Foxhall Road with the assistance of an off-duty uniformed Metropolitan Police Officer.
- f. Prohibit left turns from southbound Foxhall Road into the Field School, and require all traffic to enter from northbound Foxhall Road, making a right turn only into the property
- g. Prohibit students from accessing the school by private car and prohibit parents from dropping off or picking up students at the school until the permanent roadway and traffic signal improvements are completed and approved by the Department of Transportation. Until the final roadway and traffic signal improvements are made, all students shall be dropped off and picked up at a staging area and driven to school by shuttle bus.

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The proposed shuttle bus staging area and required shuttle bus route shall be described in an interim transportation management plan which shall be transmitted to the affected Advisory Neighborhood Commission for review and comment, and forwarded to the Department of Transportation for review and approval prior to the issuance of the Certificate of Occupancy.

- i Teachers and school staff will be allowed to drive to the school using the northbound right turn only approach as outlined in item #5 above. Leaving the school, teachers and staff shall be allowed to turn left or right, with the assistance of the off-duty Metropolitan Police Officer.
- j. The Field School shall identify a required traffic route to be used by teachers and staff to access the school, which shall be described in an interim transportation management plan. The interim transportation management plan shall be transmitted to the affected Advisory Neighborhood Commission for review and comment, and forwarded to the Department of Transportation for review and approval prior to the issuance of the Certificate of Occupancy.
- k. The required access route for teachers and staff shall avoid turning movements and use of residential streets, and shall be restricted to major arterials, such as Reservoir Road, Canal Road or other major arterial roadways.

10. Additionally, DDOT clarified that during the permit process the selected contractor would submit a construction/traffic management plans for DDOT's review. According to DDOT, the construction/traffic management plan will help mitigate any conflicts between construction activity occurring in the Foxhall Road right-of-way, and the unimpeded flow of traffic along Foxhall Road.

11 In regards to the issue of pedestrian safety, Mr. Laden in his memo, noted that as a result of the construction of the School, a sidewalk would be created on the east side (school side) of Foxhall Road. In addition, the exclusive usage of the shuttle bus system by students during the period of construction on Foxhall Road will reduce significantly the need for walking to the property, reducing the possibility of vehicular and pedestrian conflicts.

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12. By letter dated July 20, 2002, ANC 3D submitted a letter in response to the requested modification. ANC 3D supported the interior traffic measures as outlined in the July 5, 2002, memo of Ken Laden, with an additional condition that only right turns be permitted for vehicles leaving the campus. The ANC noted that the incorporation of the additional condition of no left turns out of the School's campus obviates the need for the use of a uniformed officer.

13. By letter dated July 26, 2002, Jeffrey Bolotin, on behalf of the Foxhall Crescents Southgate Homeowners Association, submitted a response to the request asking that the BZA deny the modification.

14. By letter dated July 29, 2002, Neighbors Against Foxhall Gridlock ("NAFG") submitted a letter in opposition to the requested modification. The NAFG letter stated that it has the same traffic and safety concerns as the Foxhall Crescents Southgate Homeowners Association and that it supports the statement submitted by Jeffrey Bolotin on behalf of the Foxhall Crescents Southgate Homeowners Association.

15. By letter dated July 29, 2002, Alan Swendiman, on behalf of Sylvia Shugrue property owner of 2207 Foxhall Road, N.W., submitted a letter in opposition to the requested modification.

16. All parties to the original case were provided the opportunity to comment on the proposed modification request and did provide comments. At the August 6, 2002 Public Meeting, representatives of the Foxhall Crescents Southgate Homeowners Association and Mrs. Shugrue provided further elaboration and clarification of their opposition to the requested modification.

**CONCLUSIONS OF LAW AND OPINION:**

The Board concludes that the School's alternative transportation management plan (as modified by DDOT) fully satisfies the Zoning Regulations' standards of approval for private schools in the R-1-A Zone District. It is the Board's conclusion that the alternative transportation management plan will not create any additional objectionable traffic impacts and will not create any additional unsafe vehicular or pedestrian traffic conditions along Foxhall Road while construction activity is occurring. This conclusion is shared by DDOT, as evidenced in the July 5, 2002 memo from Ken Laden to Jerrily Kress and the information that was presented at the August 6, 2002, public meeting that clarified the submissions of DDOT and the School.

In granting the original application, the BZA concluded, as a matter of law, that the proposed application was in harmony with the general purpose, intent and integrity of the Zoning Regulations and could be granted without substantial detriment to the public. The Board concludes that the temporary replacement of Condition Nos 13-24 of BZA Order No 16559 with the modified alternative transportation management plan proposed by the School in conjunction with DDOT does not alter or affect that conclusion in any way. On February 1, 2003, the original conditions of approval outlined in BZA Order No 16559 will be automatically reinstated.

The Board is in agreement with the resolution of ANC 3D in support of the modification request. The Board has accorded ANC 3D's decision the "great weight" to which it is entitled. The Board read the submissions and heard the elaborations on those submissions of the Parties in Opposition to this case. The Board finds those arguments to be unpersuasive.

For the reasons stated above, the Board finds that the applicant has met the requisite burden, and it is hereby ORDERED that the minor modification request be GRANTED subject to the following CONDITIONS:

- 1 The north access to the school site would remain closed, except to emergency vehicles
- 2 Installation of two flashing beacons, one on Foxhall Road at the modified southern entrance to the school, and one on Foxhall Road near W Street, approximately 300 feet south of the school entrance
3. Placement of the warning signs as required in condition # 17 on page 21
- 4 Placement of a stop sign at the modified southern exit from the Field School to Foxhall Road, to serve as an interim traffic control device until the traffic signal is installed.
- 5 Permit left or right turns from the modified southern exit Field School property onto Foxhall Road with the assistance of an off-duty uniform Metropolitan Police Officer.
- 6 Prohibit left turns from southbound Foxhall Road into the Field School, and require all traffic to enter from northbound Foxhall Road, making a right turn only into the property
7. Prohibit students from accessing the school by private car and prohibit parents from dropping off or picking up students at the school until the permanent roadway and traffic signal improvements are completed and approved by the Department of Transportation. Until the final roadway and traffic signal improvements are made, all students shall be dropped off and picked up at a staging area and driven to school by shuttle bus
8. The proposed shuttle bus staging area and required shuttle bus route shall be described in an interim transportation management plan which shall be transmitted to the affected Advisory Neighborhood Commission for review and comment, and forwarded to the Department of Transportation for review and approval prior to the issuance of the Certificate of Occupancy.
9. Teachers and school staff will be allowed to drive to the school using the northbound right turn only approach as outlined in item #5 above. Leaving the school, teachers and staff shall only be allowed to make right turns, with the assistance of the off-duty uniformed Metropolitan Police Officer.

- 10 The Field School shall identify a required traffic route to be used by teachers and staff to access the school, which shall be described in an interim transportation management plan. The interim transportation management plan shall be transmitted to the affected Advisory Neighborhood Commission for review and comment, and forwarded to the Department of Transportation for review and approval prior to the issuance of the Certificate of Occupancy.
- 11 The required access route for teachers and staff shall avoid turning movements and use of residential streets, and shall be restricted to major arterials, such as Reservoir Road, Canal Road or other major arterial roadways
12. The interim plan shall expire January 31, 2003

**VOTE: TO WAIVE SECTION 3129.6, WHICH STATES NO MEMBER SHALL VOTE ON A REQUEST FOR MODIFICATION OF PLANS UNLESS THE MEMEBR PARTICIPATED IN AND VOTED ON THE ORGINAL DECISION OR READ RECORD 4-0-1 (GEOFFREY GRIFFIS, CURTIS ETHERLY, DAVID ZAIDAIN, JOHN PARSONS (BY PROXY), TO GRANT; ANNE RENSHAW TO DENY.)**

**VOTE: TO WAIVE SECTION 3129.3, WHICH REQUIRES ALL MODIFICATIONS TO BE FILED WITHIN 6 (SIX) MONTHS AFTER THE FINAL ORDER APPROVING THE APPLICATION 4-0-1 (GEOFFREY GRIFFIS, CURTIS ETHERLY, DAVID ZAIDAIN JOHN PARSONS (BY PROXY), TO GRANT, ANNE RENSHAW TO DENY.)**

**VOTE. TO APPROVE THE MODIFICATION OF THE BZA ORDER NO. 16559 TO PERMIT THE ELEVEN ELEMENTS OF THE INTERIM TRANSPORTATION MEASURES CONTAINED IN KEN LADEN'S MEMO DATED JULY 5, 2002 3-2-0 (CURTIS ETHERLY, GEOFFREY GRIFFIS, JOHN PARSONS (BY PROXY), TO GRANT; ANNE RENSHAW, DAVID ZAIDAIN TO DENY )**

**VOTE: TO OPEN THE RECORD TO ACCEPT THE FIELD SCHOOL'S INTERIM TRANSPORTATION PLAN DATED AUGUST 1, 2002, (PROVIDING ADDITIONAL DETAILS ON CONDITIONS 8 AND 10 OF KEN LADEN'S JULY 5<sup>TH</sup> MEMO) AND A MODIFICATION OF CONDITION NO.9 OF KEN LADEN'S JULY 5, 2002 MEMO TO JERRILY KRESS, TO INSTITUTE A RIGHT TURN ONLY FOR VEHICLES LEAVING THE SCHOOL 4-0-1 (GEOFFREY GRIFFIS, CURTIS ETHERLY, DAVID ZAIDAIN, ANNE RENSHAW TO GRANT; JOHN PARSONS NOT PRESENT NOT VOTING.)**

**VOTE: TO IDENTIFY IN CONDITIONS #8 AND #10 OF MR. LADEN'S MEMORANDUM, JULY 5, 2002, THE SHUTTLE BUS STAGING AREAS, BUS ROUTES, AND TO COMMUNICATE THE INFORMATION TO THE AFFECTED ANCS 4-0-1 (ANNE RENSHAW, CURTIS ETHERLY, GEOFFERY GRIFFIS, DAVID ZAIDAIN TO GRANT; JOHN PARSONS NOT PRESENT NOT VOTING )**

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VOTE: TO APPROVE THE REQUEST FOR ADDITIONAL INFORMATION AND DOCUMENTATION 4-0-1 (GEORGE MONROE, CURTIS ETHERLY, DAVID ZAIDAIN, ANNE RENSHAW TO GRANT, JOHN PARSONS NOT PRESENT NOT VOTING.)

Additional Information and Documentation required requests that the School in conjunction with DDOT submit the following additional information and documentation or copies thereof to the Office of Zoning:

1. Provide a construction management plan and detailed construction schedule for the construction of the work in the Foxhall Road right-of-way is to be submitted after the hiring of a contractor during the permit processing stage.
2. Provide an overall construction schedule for the construction of the work in the Foxhall Road right-of-way.
3. Provide status reports on the construction progress to the Office of Zoning and serve on all parties at the beginning of each month starting in October 2002. The report should document the progress of construction and identify any refinements to the plans for the Foxhall Road improvements.
4. Submit a pedestrian safety plan and description of how the plan will be implemented during the period of construction activity during the permit process such as a construction fence along the property line with leveled compacted earth for a walking surface.
5. Submit the source documents used by Ken Laden to develop the recommendations outlined in his July 5, 2002 memo to Jerrily Kress and presented at the August 6, 2002 Public Meeting.
6. Evidence of The School's satisfaction of Condition No. 35 of the Order, which required The School to meet with neighbors and community representatives on a monthly basis to discuss construction activities and resolve objectionable conditions.
7. Submit information regarding details of the School's interim traffic management plan including details of the proposed shuttle bus staging area and shuttle bus routes from Foxhall Road campus to the United Methodist Church (located at the intersection of New Mexico and Nebraska Avenues, N.W.)
8. Submit proposed shuttle bus routes from Foxhall Road campus to the Friendship Heights, Foggy Bottom, Woodley Park and Cleveland Park Metros, as well as routes to be used by teachers and staff to and from the School property by September 10, 2002.

9. The School will provide evidence of notification to the affected Advisory Neighborhood Commissions regarding the shuttle bus pick-up and drop off of students at the Foggy Bottom, Cleveland Park, Woodley Park and Friendship Heights Metro Stations

Submissions from the law firm of Shaw Pittman, on behalf of the School and submissions from DDOT provided information satisfying the information and documentation requests numbers 2, 5, 6, 7 and 9

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

EACH CONCURRING BOARD MEMBER HAS APPROVED THE ISSUANCE OF THE ORDER.

ATTESTED BY:

  
**JERRILY R. KRESS, FAIA**  
**DIRECTOR**

**FINAL DATE OF APPROVAL:** **AUG 23 2002**

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 14 IN TITLE 2 OF THE D.C. CODE. SEE D.C. CODE SECTION 2-1402.67 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER. NOTE IN SECTION 2-1401.01 OF THE D.C. HUMAN RIGHTS ACT THAT IT IS THE INTENT OF THE COUNCIL OF THE DISTRICT OF COLUMBIA, IN ENACTING THIS CHAPTER, TO SECURE AN END IN THE DISTRICT OF COLUMBIA TO DISCRIMINATION FOR ANY REASON OTHER THAN THAT OF INDIVIDUAL MERIT, INCLUDING, BUT NOT LIMITED TO,

DISCRIMINATION BY REASON OF RACE, COLOR, RELIGION, NATURAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, AND PLACE OF RESIDENCE OR BUSINESS.

**Smp/ CM 8/15/02**

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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO 16559-B

As Director of the Board of Zoning Adjustment, I hereby certify and attest that on AUG 23 2002, 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 who appeared and participated in the public hearings concerning the matter, and who is listed below.

Jack Finney, Chairperson  
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Washington, D.C 20008

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Ann F Heuer, Commissioner  
Single Member District  
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Washington, D C 20007

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Office of Corporation Counsel  
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Washington, D.C 20001

Neighbors Against Foxhall Gridlock  
C/o Richard Aguglia, Esq  
Hilton & Williams  
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Washington, D.C 20006

Ellen McCarthy, Deputy Director  
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Office of Planning 4th floor  
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Department of Consumer &  
Regulatory Affairs  
941 North Capitol Street, N.E  
Suite 2000  
Washington, D C. 2002

ATTESTED BY:

Jerrily R. Kress, FAIA  
Director, Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
D.C. OFFICE OF ZONING  
BOARD OF ZONING ADJUSTMENT

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**Application No. 16559-C of The Morris and Gwendolyn Cafritz Foundation/The Field School<sup>1</sup>** pursuant to 11 DCMR 3129, for the minor modification of the Board of Zoning Adjustment's prior approval to establish a private school under Section 206 for a maximum of 320 students and 74 faculty and staff in a R-1-A Zone District at premises 2301 Foxhall Road, N W (Square 1341, Lots 856, 861, 878, and 879)

**DECISION DATE:** January 28, 2003

**MODIFICATION ORDER**

**FINDINGS OF FACT**

**Prior History**

- 1 The Board granted the above referenced Application to establish a private school under Section 206 with an initial student enrollment of 260 students and 74 faculty and staff) The final date of the original order was December 19, 2000
- 2 By Modification Order dated August 6, 2001, the Board granted two modifications of the original order which permitted nine (9) school staff to use the existing building on the school property on an interim basis during construction of the project for regular school business and development use, and to allow the school to hold its monthly board meetings with approximately 20 persons on the property
- 3 By Modification Order (16559-B) dated August 23, 2002, the Board granted an interim modification of Condition Nos 13-24 of Order No 16559 The Board approved an alternative transportation management plan that the applicant would follow while certain improvements to the Foxhall Road right-of-way, as required by BZA Order No 16559, were completed The approval of the alternative transportation management plan was to expire on January 31, 2003

**The Current Request**

<sup>1</sup> At the time of the initial application The Field School was the contract purchaser of the Subject Property The Field School is the current owner of the Subject Property

U.S. OFFICE OF ZONING  
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**Application No. 16559-C of The Morris and Gwendolyn Cafritz Foundation/The Field School<sup>1</sup>** pursuant to 11 DCMR 3129, for the minor modification of the Board of Zoning Adjustment's prior approval to establish a private school under Section 206 for a maximum of 320 students and 74 faculty and staff in a R-1-A Zone District at premises 2301 Foxhall Road, N.W. (Square 1341, Lots 856, 861, 878, and 879)

**DECISION DATE:** January 28, 2003

### **MODIFICATION ORDER**

#### **FINDINGS OF FACT**

##### **Prior History**

1. The Board granted the above referenced Application to establish a private school under Section 206 with an initial student enrollment of 260 students and 74 faculty and staff). The final date of the original order was December 19, 2000.
2. By Modification Order dated August 6, 2001, the Board granted two modifications of the original order which permitted nine (9) school staff to use the existing building on the school property on an interim basis during construction of the project for regular school business and development use; and to allow the school to hold its monthly board meetings with approximately 20 persons on the property.
3. By Modification Order (16559-B) dated August 23, 2002, the Board granted an interim modification of Condition Nos. 13-24 of Order No. 16559. The Board approved an alternative transportation management plan that the applicant would follow while certain improvements to the Foxhall Road right-of-way, as required by BZA Order No. 16559, were completed. The approval of the alternative transportation management plan was to expire on January 31, 2003

##### **The Current Request**

---

<sup>1</sup> At the time of the initial application The Field School was the contract purchaser of the Subject Property. The Field School is the current owner of the Subject Property.

- 4 On December 30, 2002, The Field School ("School") filed a request for a minor modification of BZA Order No 16559-B with the Board of Zoning Adjustment ("Board" or "BZA") The minor modification requested approval of a one-month extension of the School's alternative transportation management plan that was approved in BZA Order No 16559-B
5. In its minor modification request, the School noted that the one-month extension was necessary to allow the District of Columbia Department of Transportation ("DDOT") and its contractors to complete the widening of the Foxhall Road right-of-way adjacent to the School property (Lots 856, 861, 878, and 879 in Square 1341) for the construction of a left turn lane and a traffic signal at the entrance to the School property

**Compliance with BZA Order No. 16559**

- 6 By letter dated January 7, 2003, the Board requested the School provide information regarding its satisfaction of all conditions of BZA Order No 16559 and 16559-B, as well as any additional information that the Board had previously requested The Board afforded the parties to the case the opportunity to comment on the School's submission.
- 7 The School submitted the requested information on January 13, 2003. The School's reply addressed the 42 conditions that were set forth in BZA Order No. 16559 and the 11 conditions set forth in BZA Order No 16559B.
- 8 According to the School, the status of compliance with conditions established by the BZA Order 16559 and BZA Order No 16559B is as follows:
  - a. The School has constructed or will construct all building and facilities in accordance with the plans prepared by Kress Cox and filed in the record also Exhibit 12, as modified by Exhibits 446 and 464.
  - b The number of students is within the 260-student limit and the number of vehicles during peak morning hours is below the 106 vehicle limit established by condition 18
  - c. The number of faculty and staff is 62, which is below the maximum number permitted, 74.
  - d The School has staggered its hours of operation between the Lower and Upper Schools, with the seventh and eighth graders starting at 8:00 a m and the ninth through twelfth graders starting no earlier than 8.20 a m
  - e The School states that it is in compliance with conditions 5 through 11 of BZA Order No.16559, which relate to the use of school property and the hours of operation for various activities.

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- f Pursuant to BZA Order 16559 Condition 12, the School is required to permit the local residents to use the athletic field and tennis court and to walk on campus grounds when not being used for school purposes. However, until construction is complete, and as a safety precaution, the School has prohibited the public from being upon its grounds.
- g. As of January 13, 2003, traffic management was being conducted in accordance with the alternative traffic management plan approved by BZA Order No. 16559B, except the installation of two flashing beacon at the school entrance and signs notifying drivers that there is a traffic control signal at the school entrance on Foxhall Road. These are the responsibility of the District of Columbia.
- h. Pursuant to Conditions 25-29 of BZA Order No 16559B, the conditions relating to the parking lot size, set back, investigation of porous pavement technology with a groundwater recharge system, and a vegetative buffer have been fulfilled.
- i. The lighting requirements and restrictions established in Conditions 30-33 of the BZA Order No 16559, which provide for the minimum light candle power, no exterior event lighting on the athletic field or tennis court, lights off at the southernmost parking lot by 9 00 p.m. and no lights on that parking lot on Saturdays and Sundays, except for special events, and consultation with owner of property at 2207 Foxhall Road, N.W., to refine the lighting plan, have been satisfied.
- j Conditions No. 34-37 of BZA Order No 16559 relating to Construction Management, including implementation of the construction management plan filed in the record as Exhibit 469, meeting with adjoining property owners, ANC 3D and designated community organizations, and the establishment of a 24-hour hotline with a live or on-call operator to respond to objectionable and unsafe conditions, have been or are in the process of being met.
- k Conditions 38-40 of BZA Order No. 16559 relating to Storm Water Management, which require coordination with the National Park Service on developing and implementing controls, and the design and construction of a storm water management system that is consistent with the drawing entitled "Preliminary Site Utility Plan", dated September 1999, as amended by BZA Order No. 16559B.
- l The requirements for community outreach as established by Conditions 41-42 of BZA Order No.16559, requiring coordination with other schools in the area to address community issues and meeting with neighbors and community organizations, have been satisfied.

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OF THE DISTRICT OF COLUMBIA

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- 9 The Board finds that the applicant is in compliance with all conditions of BZA Order No 16559

**Position of the Parties**

- 10 On January 15, 2003, the Board received a letter from residents of 44<sup>th</sup> Street near the School property that requested additional conditions, unrelated to the School's alternative transportation management plan, be adopted by the Board. These conditions included shutting down the air conditioning unit for the gymnasium until it can be operated with acceptable noise levels and the parking of school buses on the main parking lot or in front of the school instead of behind the gymnasium where they are parked above the fence level of neighboring properties.
- 11 On January 16, 2003, the Board received a response from the Neighbors Against Foxhall Gridlock that did not object to the requested one month extension of the alternative transportation management plan, but noted other issues related to the School's operations. The unrelated issues included objections to nighttime lighting, the failure of DDOT and PEPCO to remove and relocate all utilities along Foxhall Road, air conditioner noise, parking of buses, the amount of traffic, a desire to have make busing of students a permanent requirement, and the hours of construction work.
12. On January 22, the Board received a resolution from ANC 3D that noted the ANC's support for the minor modification request. The ANC also expressed concern that DDOT had not installed the two flashing beacons at the entrance of the school, and urged DDOT to do so.

**Request for Additional Information**

- 13 The Board, at its January 21, 2003 public meeting, requested that the School encourage DDOT to submit its construction management plan for the Foxhall Road improvements with the Board. The Board also asked that the School determine whether a one-month extension of the alternative transportation plan was sufficient to allow DDOT to complete its construction work in the Foxhall Road right-of-way, that the School hold an additional meeting with its neighbors and local community organizations (prior to the next regularly scheduled meeting in June 2003) to discuss the School's operations at the Foxhall Road campus, and that the School provide the Board with copies of the notice of the School's shuttle bus routes that was previously sent to affected ANC's.
14. The School provided the requested information on January 24, 2003 and noted that while DDOT's work was progressing, it would be prudent to have the period of approval of the School's alternative transportation management plan extended to March 31, 2003.

**Board Finding**

- 15 Based upon the record of this proceeding, the Board concludes that the extension of the period of approval for the School's alternative transportation management plan until March 31, 2003 fully satisfies the Zoning Regulations' standards of approval for private schools in the R-1-A Zone District
- 16 Extending the period of approval of the School's alternative transportation management plan will not create any objectionable traffic impacts and will not create any unsafe vehicular or pedestrian traffic conditions along Foxhall Road while construction activity is occurring

**CONCLUSIONS OF LAW AND OPINION:**

Pursuant to 11 DCMR § 3129.7, the Board may only approve a request for modification of approved plans if the modification is a minor modification that does not change the material facts the Board relied upon in approving the application. The modification that the School is seeking is an extension of time for the use of the School's alternative transportation management plan until March 31, 2003. Granting the extension will not change the material facts that the Board relied upon in approving the application. In granting the original application, the Board concluded that the proposed application was in harmony with the general purpose, intent and integrity of the Zoning Regulations and could be granted without substantial detriment to the public. The Board concludes that the continued approval of the temporary replacement of Condition Nos. 13-24 of Order No. 16559 with the modified alternative transportation management plan proposed by the School and supported by DDOT does not alter or affect that conclusion in any way. On April, 1, 2003, the original conditions of approval outlined in BZA Order No. 16559 was reinstated.

The Board is required under D.C. Official Code § 1-309.10(d)(3) to give great weight to the affected ANC's recommendation. The Board must "articulate why the particular ANC itself, given its vantage point, does – or does not – offer persuasive advice under the circumstances." *Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1384 (D.C. 1977). The Board notes ANC 3D's support of the minor modification request and its concern that DDOT had not installed the two flashing beacons at the entrance of the school. The Board cannot compel DDOT to make the installation and believes that approval is justified despite the DDOT decision.

The Board reviewed the submissions of the 44<sup>th</sup> Street residents and Neighbors Against Foxhall Gridlock submitted in this case and the Board finds those arguments to be not relevant to the School's request to extend the period of approval for the alternative transportation management plan.

For the reasons stated above, the Board concludes that the applicant has met the requisite burden, and it is hereby **ORDERED** that the minor modification request be **GRANTED** subject to the following **CONDITION**:

The period of approval for the School's alternative transportation management plan shall expire on March 31, 2003. After the original conditions of approval outlined in BZA Order No 16559 will govern the School's use of the property.

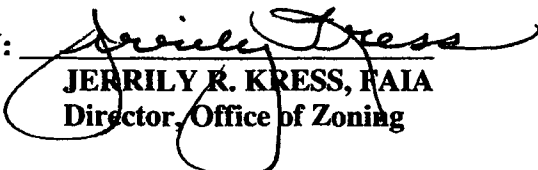
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**VOTE:** 5-0-0 (Geoffrey H Griffis, Curtis L Etherly, Jr , David A Zardain, Anne M. Renshaw to approve, John G. Parsons to approve by proxy)

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

Each concurring member approved the issuance of this order.

ATTESTED BY:

  
JERRILY R. KRESS, FAIA  
Director, Office of Zoning

**FINAL DATE OF ORDER: MAY 12 2004**

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 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.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. 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

BZA APPLICATION NO. 16559-C

PAGE NO. 7

ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. JNS/RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT

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**BZA APPLICATION NO. 16559-C (Modification Order)**

As Director of the Office of Zoning, I hereby certify and attest that on MAY 14 2004, a copy of the order in the above-cited 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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**BZA APPLICATION NO. 16559-C**

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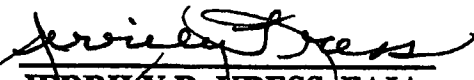
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Building and Land Regulation Administration  
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ATTESTED BY:   
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