

RECEIVED
D.C. OFFICE OF ZONING
2012 DEC -4 PM 2:26

Cary R. Kadlecek
ckadlecek@goulstonstorrs.com
202-721-1113 Tel

December 4, 2012

VIA HAND DELIVERY

D.C. Board of Zoning Adjustment
441 4th Street NW, Suite 210S
Washington, DC 20001

Re: BZA Case No. 18472 – Applicant's Pre-Hearing Submission

Dear Members of the Board:

Enclosed please find one original and 20 copies of the applicant's pre-hearing submission for the above-referenced case scheduled for a public hearing on December 18, 2012.

Should you or your staff have any questions, please do not hesitate to contact me.

Sincerely,



Cary R. Kadlecek

Enclosures
DCDOCS\7064803.1

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18472

EXHIBIT NO. 24

Board of Zoning Adjustment
District of Columbia
CASE NO.18472
EXHIBIT NO.24

Certificate of Service

I hereby certify that the foregoing document was hand delivered or sent by first class mail on December 4, 2012 to the following:

Arthur Jackson
D.C. Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024

District Department of Transportation
55 M Street, SE
Suite 400
Washington, DC 20003

ANC 8C
3125 Martin Luther King, Jr. Avenue, S.E.
Washington, DC 20032


Cary Kadlecek

PRE-HEARING STATEMENT OF THE APPLICANT

**I.
Introduction**

This is the pre-hearing statement of the Excel Academy, D.C. Public Charter School (“Applicant” or “Excel”) for variance relief from the parking requirements for the expansion of charter school’s enrollment. The school is located at 2501-2553 Martin Luther King Jr. Avenue SE (Square 5862, Lot 960) (“School” or “Property”). The School is included in the R-5-A Zone District.

**II.
Nature of Relief Sought**

The Applicant requests that the Board grant area variance relief from off-street parking requirements in Section 2101.1 (11 DCMR § 2101.1) of the Zoning Regulations. The required parking is 107 spaces, and the School will provide 48 spaces.

**III.
Jurisdiction of the Board**

The Board has jurisdiction to grant the relief requested pursuant to Section 3103 of the Zoning Regulations.

**IV.
The Applicant**

The Excel Academy is an all-girls, pre-K through 8th grade public charter school located at 2501 Martin Luther King, Jr. Avenue, S.E. Its mission is to provide pre-school through eighth grade girls a solid academic foundation and enrichment opportunities to prepare them to succeed in high school and college and to develop the skills and confidence they need to make healthy,

positive lifestyle choices.

Excel Academy's founders believe that with strong support and training, all students can learn and achieve at high levels. Excel Academy offers a unique single sex educational model in the elementary school years. Its selection of instructional materials, methods and school-wide structures has been informed by the best practices of successful schools across the nation. Based on an early educational intervention model that offers preschool for three-year-olds to promote school readiness, Excel Academy implements a curriculum proven to build student achievement in reading, writing, math, and teach ethics, personal responsibility and healthy choices. It uses early and frequent assessments to gauge students' progress and identify academic needs per cohort and per individual student, and respond to the data such assessments provide with immediacy. It hires highly qualified teachers and has ongoing professional development to create and maintain a community of respect and collaboration with staff and parents. The Academy embraces students' parents and guardians as essential partners in their student's education, and reaches out to families and the wider community to support Excel Academy's girls.

As the first all girls' public charter school in the District, Excel is committed to providing the best educational experience for girls in Washington. To meet the educational needs of our families, Excel Academy has a very strong set of core values governing all areas of school life. The Academy is committed to providing:

- A Rigorous Single Gender Model – Excel Academy's unique single-sex environment is rooted in high academic achievement and learning for every student that permits staff to focus teaching strategies directed on the learning

needs and styles of girls.

- An Early Educational Intervention Program – Starting with students who are three and four years old, Excel offers an instructional program that promotes school readiness in literacy, math, and social development.
- More Time on Task – Students at Excel are in academically rigorous learning environments for longer school days and for an extended year. A relentless focus on the details allows students and teachers to spend more time on task.
- A Standards Based Curriculum – The academic program is research-proven and has demonstrated significant student achievement in reading, writing, and math.
- Early and Frequent Assessments – Excel Academy teachers know the power of assessing student progress and using data to track student performance. They identify students' academic needs early and adjust teaching strategies accordingly. This system of assessment allows it to respond with targeted immediacy.
- A Team of Highly Skilled Teachers – The Excel Team receives ongoing professional development to build skills, and create and maintain a community of respect and collaboration with staff and parents.
- A Continued Community Partnership – The Academy embraces students' parents and guardians as essential partners in the education of their children. It reaches out to families and the wider community to support Excel Academy's girls.
- Rich Extracurricular Activities – It offers a female mentoring program and

Saturday Academy for additional enrichment and field trip opportunities.

- A School Wide Character Development Program – Excel Academy scholars live and work by a set of core values, represented by IDEALS: Integrity, Discipline, Enjoyment, Achievement, Leadership, and Sisterhood.

V.

Description of Subject Property and Surrounding Area

A. The Subject Property

Excel is located in Ward 8 on Martin Luther King, Jr. Avenue, S.E. at its intersection with Sumner Road, S.E. and occupies the former Birney Elementary Public School which was built in 1948. It is adjacent to a District of Columbia park, the Barry Farms Recreation Center, which the entire western boundary of the Property. The Property is improved with a two-story school building consisting of approximately 86,000 square feet and a parking lot. The parking lot is at the northeast corner of the site and contains 48 marked spaces. Directly to the west of the School building is a playground. South of the playground and behind the building is another paved area with access to loading and trash. Cars also park in this area, but none of the spaces used for parking are marked or conform to the requirements under the Zoning Regulations.

B. The Surrounding Area

The school building is located to the west of Martin Luther King, Jr. Avenue and north of Sumner Road. Immediately to the west is the Barry Farm Recreation Center. The remainder of the Square is comprised of a public park, a community building and residential uses. The surrounding area is comprised primarily of single-family houses, other residential and

institutional uses and churches. An aerial photograph of the campus and the surrounding area are attached as Exhibit A.

C. Existing Zoning

The Property is located in the R-5-A Zone District. The R-5-A Zone District is designed to permit flexibility of design by permitting in a single district a variety of urban residential uses. The site has been used as a school for over sixty years.

V. Description of Project

The Applicant is proposing to increase the number of its faculty/staff. It believes that in order to meet the demands of its mission and to accommodate more students who desire to enroll, Excel will need 162 faculty and staff to effectively educate its students. The Applicant will NOT expand the building.

Excel currently shares the School with another public charter school, the Septima Clark School. The Septima Clark School will relocate to a new location, which will allow Excel to expand into the entire building. With the addition of the new faculty/staff, Excel seeks variance approval from the parking requirements for elementary schools. With the increase in faculty/staff to 162, a total of 107 parking spaces must be provided pursuant to the Regulations (2 spaces for each 3 faculty/staff); the School provides, currently, a total of 48 spaces on site. Accordingly, Excel seeks a variance relief from the parking requirements.

VI.
Variance Relief Requested

This application seeks variance approval from Sections 2101.1, pursuant to Section 3103.2 of the Zoning Regulations.

The burden of proof for variance relief is well established. The Applicant must demonstrate that the Property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. *Palmer v. BZA*, 287 A.2d 535, 541 (D.C. 1972). As set forth below, the application meets the three-part test for area variance relief.

A. The Property is Affected by an Exceptional Situation or Condition

The exceptional situation or condition standard is satisfied where the land is uniquely situated and is impacted by an existing structure. The court articulated an expansive reading of "uniqueness" in *Monaco v. D. C. Board of Zoning Adjustment*, 407 A.2d 1091 (1979), when it held that the history of the site as well as an agreement pertaining to use of the site should be considered in making the determination as to whether the property can be considered "unique." Courts have interpreted this prong of the variance standard broadly and have affirmed that the uniqueness prong does not need to be satisfied by physical aspects of the land.

The Property meets the "exceptional conditions" element of the variance test because the building on the Property was constructed prior to the adoption of the Zoning Regulations in 1948, so an insufficient area was provided for parking. Further, how the school building is

situated on the lot makes it difficult to carve out additional space for parking. A parking area was established to the northeast of the building, which is the existing lot today. There is no additional, available space for additional parking on the site. The area to the southwest, where many cars park now, is not intended for parking and cannot accommodate legal parking spaces and drive aisles. This area was designed to provide access to the rear of the School building.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.*

In this case, a strict application of the parking regulations would limit the amount of faculty and staff Excel could hire which, in turn, would hinder the quality of the education it can deliver to students. An inability to expand would severely hinder the School's mission, and ultimately, many female students in the District of Columbia who can benefit from the School. Without the requested variance, the Applicant would be required to maintain its current faculty

and staff populations and to choose between increasing its student/faculty ratio to one that does not maximize the School's ability to achieve its mission or to look for a new location. Neither scenario is an acceptable solution.

Excel simply cannot provide more parking spaces on the site because there is no available space. As noted in the traffic report in Exhibit B, the number of conforming parking spaces that could go in the area to the southeast may be a few, but it would be a nominal expansion above what is proposed. To provide all of the required parking, Excel would have to eliminate the playground and knock down some of the building. Eliminating a playground and removing building fabric in order to provide more surface parking is most certainly an extreme burden for an elementary/middle school. Even if Excel had the monetary resources for this, such measures would severely jeopardize the mission of Excel. Therefore, the size of the Property and the layout of the school create a considerable burden in complying with the off-street parking requirements.

C. Relief can be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

Finally, the applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. The granting of a variance from the parking requirements can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zone Plan.

The building and the property have long been used for public school purposes and continuing that use does not impair the intent, purpose or integrity of the Zone Plan. The proposed expansion of the faculty and staff will not harm the public good and the zone plan,

provided that the School adopts the robust transportation demand management (“TDM”) measures proposed in the attached traffic report in Exhibit B. As the report explains, the demand for parking spaces will be greater than 48, but that assumes none of the TDM measures will be in place. The adoption of the TDM measures will help reduce demand (and may even provide some additional parking) such that the impact on the neighborhood is minimized. Since the TDM measures will be effective at limiting impact on the availability of parking in the neighborhood, the proposed variance relief will not impair the intent, purpose, and integrity of the Zone Plan.

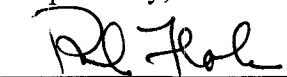
VII.
Exhibits

- | | | |
|----|-----------|-----------------------------|
| 1. | Exhibit A | Aerial View |
| 2. | Exhibit B | Traffic Study |
| 3. | Exhibit C | Traffic Consultant’s Resume |

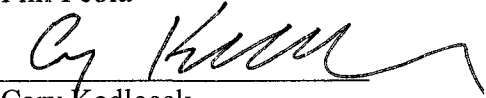
VIII.
Conclusion

For the aforementioned reasons, the Applicant requests that the Board approve this application for variance relief.

Respectfully,



Phil Feola



Cary Kadlecek