

Phil T. Feola
pfeola@goulstonstorrs.com
202-721-1114 (tel)

Cary R. Kadlecsek
ckadlecsek@goulstonstorrs.com
202-721-1113 (tel)

January 9, 2013

Lloyd Jordan, Chairperson
District of Columbia Board of Zoning Adjustment
441 4th Street, NW, Suite 200-S
Washington, DC 20001

Re: BZA Application No. 18472 – Excel Academy, Motion for
Reconsideration, Condition No. 1

Dear Chairperson Jordan and Member of the Board:

I. Introduction

The applicant, Excel Academy, a D.C. public charter school for girls located at 2501-2553 Martin Luther King, Jr. Avenue, S.E., requests the Board of Zoning Adjustment (“Board”) to reconsider Condition No. 1 of the Order in the above-captioned application. On December 18, 2012, the Board approved variance relief from the off-street parking requirements, which was memorialized in the Order issued on December 27, 2012. The Order is attached hereto as Exhibit A.

Pursuant to Section 3126.4 of the Zoning Regulations, a motion for reconsideration shall state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought. This motion satisfies this standard, as discussed below.

RECEIVED
D.C. OFFICE OF ZONING
2013 JAN -9 AM 11:12

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18472
EXHIBIT NO. 36

II. Background

Directly after the public hearing was concluded in this application, the Board began deliberation on it. The Board then approved the application with 15 conditions, including Condition No. 1 which places a three-year time limit on the variance approval. It was during the deliberation that the Board first raised the concept of a time limit on the variance relief. This concept was never raised prior to or during the public hearing. The applicant did not have an opportunity to address this condition in the record and explain to the Board the problems that such a condition raises in the operation of the School. The Board erred in its decision to impose a time limit without allowing the applicant the opportunity to address this condition with severely detrimental implications on the operations of this public charter school.

III. Implications of Imposing a Term Limit

Excel respectfully requests that the time limitation of Condition No. 1 be eliminated. The School will have to make significant physical improvements to the building and grounds to accommodate the increase in students, faculty and staff described in the application. Such a time limit severely impacts the cost of the capital needed to make such improvements. These costs include accelerated amortization of improvements, higher cost of capital and higher monthly payments, difficulty refinancing in years closer to term expiration, and adverse impact on enrollment in later years of term. Because the School is a publicly-funded charter school, its resources are very limited. Any strain on the School's resources, such as those described above, could significantly hinder the School's mission.

In addition, there are significant repercussions on the feasibility of the School's program if a term limit is imposed. The School sought the requested relief so that it could expand its faculty and staff to accommodate more students in additional grades. As the School described in pleadings and during the public hearing, the School will phase-in the additional grades over a term of years. The short time-limited approval of the variance constraints the School's ability to plan for the addition of more grades and interferes with its ability to phase-in all of the grades. Ultimately, this could deny the School the opportunity to accommodate many of the students who want to attend.

At the same time, the term limit could harm the School's ability to retain students. Parents place a child in a school anticipating that the child will be able to remain in that school through the entire elementary school/high school years. A three-year time limit creates a great deal of uncertainty about the long-term existence of the School. A parent is likely to be reluctant to enroll at Excel if the approval has an expiration date, especially one whose duration is so short.

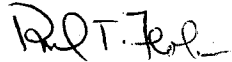
There are other methods for addressing the parking and traffic concerns that were raised at the hearing. Instead of imposing a term, the School, pursuant to the other conditions in the Order, is held accountable through a monitoring program. If the School does not meet the projections set forth in its transportation study, it will have to work with DDOT to develop additional techniques to mitigate its impact and reduce its parking demand and trip generation. The School will provide, as is required by the Order, its monitoring reports to DDOT. Monitoring programs have proven successful in holding schools accountable to the projections provided in transportation studies and this case would be no different.

January 9, 2013

Page 4

In the event the Board feels it must impose a term, Excel requests that the term be for a minimum of 10 years. This time frame will, at least, allow the School to phase-in additional grades and provide assurance to those students currently enrolled and those considering enrollment that the program will exist for a substantial duration of the student's tenure. Again, Excel would strongly urge the Board to consider holding Excel accountable through its monitoring program rather than by imposing a term on the approval.

Sincerely,



Phil T. Feola



Cary R. Kadlec

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18472 of Excel Academy, D.C. Public Charter School, pursuant to 11 DCMR § 3103.2, for a variance to reduce the off-street parking requirements under § 2101.1, for a school in the R-5-A District at premises 2501 through 2553 Martin Luther King, Jr., Avenue, S.E. (Square 5862, Lot 960).

HEARING DATE: December 18, 2012

DECISION DATE: December 18, 2012

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission ("ANC") 8C, and to all owners of property within 200 feet of the property that is the subject to this application. The subject property is located within the jurisdiction of ANC 8C, which is automatically a party to this application. On December 10, 2012, the Chair of ANC 8C submitted an undated letter in support of the application. The letter indicated that while the Applicant presented its application at a duly noticed, regularly scheduled ANC meeting on December 5, 2012, no quorum was present and no vote taken.¹ (Exhibit 26.) The Chair of the ANC also was present and testified at the hearing in support of the application.

The Office of Planning ("OP") submitted a timely report dated December 11, 2012, recommending approval of the requested areas of relief, subject to adoption of Transportation Demand Management ("TDM") and parking strategies. (Exhibit 27.) The District Department of Transportation ("DDOT") submitted a letter of no objection, subject to conditions listed in the DDOT report. (Exhibit 28.)

¹ As no quorum was present nor a vote taken, the letter did not meet the requirements for the ANC to receive great weight.

BZA APPLICATION NO. 18472

PAGE NO. 2

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary under § 3103.2, to establish the case for a variance to reduce the off-street parking requirements under § 2101.1. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP report filed in this case, the Board concludes that the Applicant has met the burden of proving under 11 DCMR § 3103.2 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. Approval shall be for a period of three years from the beginning of the 2013-2014 school year.
2. The Applicant shall designate a TDM Coordinator to oversee and implement the TDM measures.
3. At the beginning of the school year, the Applicant shall distribute information to faculty, staff, and students explaining the benefits of sustainable transportation practices.
4. The Applicant shall provide incentives to encourage more employees to carpool. The incentives shall include those listed in the TDM plan.
5. The Applicant shall work with Metropolitan Washington Council of Governments ("MWCOC") to help parents to identify other parents to share vehicle trips to the site.
6. The Applicant shall allow employees to withhold funds from their paycheck for transit under the WMATA SmartBenefits program.
7. The Applicant shall monitor the trip generation and mode split for employees and students and report this information on an annual basis to DDOT in order to monitor the progress of the TDM program.

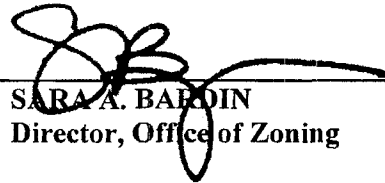
BZA APPLICATION NO. 18472
PAGE NO. 3

8. The Applicant shall restripe the existing parking areas to accommodate additional vehicle spaces.
9. The Applicant shall finalize the parking agreement between Excel Academy and Matthews Memorial Baptist Church across Martin Luther King, Jr., Avenue to lease 15 spaces with an option to increase the number of leased spaces, as necessary.
10. The Applicant shall complete a trip generation analysis of existing and future conditions associated with the population increase.
11. The Applicant shall maintain a comparable site trip generation rate for future conditions.
12. The Applicant shall develop and implement the student drop-off and pick-up plan presented as part of the TDM strategies in the December 18, 2012 Technical Memorandum in Exhibit 30.
13. The Applicant shall install at least five inverted bicycle U-racks at the main building entrance.
14. The Applicant shall install at least 10 inverted bicycle U-racks in an accessible and secured location within the building.
15. The Applicant shall implement the TDM strategies as outlined in Conditions 2 – 6 above.

VOTE: **4-0-1** (Lloyd J. Jordan, Nicole C. Sorg, Jeffrey L. Hinkle, and Peter G. May to approve; third Mayoral appointee vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: December 27, 2012

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

BZA APPLICATION NO. 18472
PAGE NO. 4

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

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.

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2013, copies of the attached letter and enclosure were delivered via email or first class mail to the following:

Arthur Jackson
D.C. Office of Planning
arthur.jackson@dc.gov

Anna Chamberlin
District Department of Transportation
anna.chamberlin@dc.gov

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


Cary Kadlecek