

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18472-A of Application No. 18472 of Excel Academy, D.C. Public Charter School, Motion for Reconsideration of Condition Number One to Order No. 18472, pursuant to § 3126 of the Zoning Regulations.

The original application was 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 (original application):	December 18, 2012
DECISION DATE (original application):	December 18, 2012
FINAL ORDER ISSUANCE DATE (original application):	December 27, 2012
MOTION ON RECONSIDERATION DECISION:	February 12, 2013 (granted)
HEARING DATE:	March 12, 2013
DECISION DATE:	March 26, 2013

**SUMMARY ORDER ON MOTION FOR RECONSIDERATION OF CONDITION
NUMBER 1 TO ORDER NO. 18472**

Background.

On December 18, 2012, the Board of Zoning Adjustment (the “Board” or “BZA”) approved the application of Excel Academy, D.C. Public Charter School (the “Applicant”). The Applicant’s original request was 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).

BZA Order No. 18472, approving the original request, was issued December 27, 2012. (Exhibit 34.) As approved in BZA Order No. 18472, the application was granted subject to 15 conditions, including Condition No. 1 which placed a term of three years from the beginning of the 2013-2014 school year on the variance approval.

Request for Reconsideration

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BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18472-A
EXHIBIT NO. 45

Board of Zoning Adjustment
District of Columbia
CASE NO.18472
EXHIBIT NO.45

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On January 9, 2013, the Applicant filed a request for reconsideration of Condition No. 1 in Order No. 18472 pursuant to § 3126.4 of the Zoning Regulations. The Applicant requested that the Board reconsider placing any term limit on the school and asked it to remove the condition altogether, or in the alternative, if it chose to keep a term limit in place, to place a term limit of at least 10 years on the school's approval in Order No. 18472 in place of the current term of three years.

Pursuant to § 3126.3, any motion for reconsideration must be served upon all other parties to the case. The record indicates that the request for reconsideration was served on all of the parties to the case: the Office of Planning ("OP") and Advisory Neighborhood Commission ("ANC") 8C, the affected ANC. (Exhibit 36.)

Pursuant to § 3126.5, within seven days after the motion for reconsideration has been filed and served, any other party may file an answer in opposition or in support of the motion. No answers to the motion were filed by any of the parties.

The motion makes several arguments against imposing a term of three years on the variance approval. The Applicant stated that imposing such a short time limit would severely negatively impact the cost of the capital needed to make the necessary physical improvements to the school. Also, the Applicant indicated that it would adversely impact future school enrollment if parents were unsure how long the school would be in existence when choosing where to enroll their children because they would not want to have to change schools as their child went from the elementary grades through high school. The motion noted that as a publicly funded charter school, the Applicant's resources are limited and any strain on its resources, such as those described, could significantly hinder its mission. The motion argued that imposing a term will impose a significant financial burden on the Applicant, and, because the imposition of a term was not addressed during the hearing, the Applicant did not have the opportunity to demonstrate to the Board the existence and effect of this financial burden. The Applicant requested that before the Board imposes a time limit, it allow the Applicant an opportunity to address why it would have severe detrimental implications for the operations of the Applicant's public charter school. (Exhibit 36.)

Deliberations at Public Meeting on February 12, 2013

The Board put the motion for reconsideration on its agenda for its February 12, 2013 public meeting. At the February 12, 2013 public meeting, the Board deliberated on the Applicant's request to reconsider Condition No. 1 to Order No. 18472 (the "Order"). The Board disagreed with the Applicant's request to remove a term limit altogether. The Board found no error when it deliberated on and set a term limit in the original Order. The Board expressly found that the matter of a term limit had been discussed on the record by OP during the first hearing and that a term limit was appropriate in this case.

Nonetheless, the Board, by consensus, granted the Applicant's request for reconsideration to reconsider the term limit condition. The Board scheduled a limited hearing on the matter for March 12, 2013, and requested that the Applicant provide additional information to substantiate its request to eliminate or expand the term limit in the Order. In particular, the Board asked that the Applicant provide projections for the number of students and staff growth over time.

Supplemental Information and Hearing on March 12, 2013

The Applicant supplemented the record on February 26, 2013, with a group of letters which clarified the difficulties the Applicant would face should the term limit remain set at three years. The Applicant's submission included three letters: one from the school's administrator citing the difficulties the school would encounter in achieving its mission with a three-year time limit, a letter from an interested parent stating the importance of stability in choosing a school and the detrimental effect a time limit would have on that stability, and the third letter from a bank executive concerning the difficulties in providing financing to the Applicant's school if the three-year time limit remained intact.

The school administrator's letter stated that the school had grown to 515 students (preschool through 4th Grade) over the school's first five years, adding about 125 students each year of its existence. The school administrator explained that the school had been in ongoing negotiations with the Applicant's current landlord to assume the lease directly with the District of Columbia Public Schools and that an essential component of the lease assumption would be for the Applicant to pay for the renovations made thus far to the building by the landlord. The school administrator further noted that parents wanted stability and reassurance that the school will continue to exist long enough for their children to complete the curriculum so they will not have to change schools. She stated that the school's mission and existence would be jeopardized if it became unable to enroll a sufficient number of children, potentially leading some parents not to send their children if the school's future existence was only guaranteed for three years. Consequently, the Applicant requested that the term limit be either eliminated or lengthened. (Exhibit 39.)

At the March 12th public hearing, the Board reviewed the Applicant's supplemental submissions and heard testimony from the Applicant and OP about the Applicant's request to eliminate or expand the three-year term limit. At the end of the hearing, the Board scheduled the matter for decision at a public meeting on March 16, 2013, to allow the Applicant time in which to provide additional information requested by the Board. The Board asked the Applicant to provide projections regarding student and staff growth over time, including more specificity about the number of provided parking spaces. The Board also requested that OP provide a final analysis of the Applicant's supplemental information, including those projections.

Additional Supplemental Information

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The Applicant submitted the additional requested information on March 19, 2013. The Applicant provided a projection of the number of students and staff, by year, for the next 10 years and described the planned growth of the school. The Applicant's March 19th filing indicated that the school is not expected to reach its maximum staff capacity of 162 until the 2021-2022 school year. The Applicant stated that the school will provide 48 zoning-compliant marked parking spaces on-site and 27 attendant-assisted spaces on-site and 15 spaces leased from the church across the street, for a total of 90 spaces, which was what was approved in Order No. 18472. The Applicant also stated that it expects to be able to expand the number of spaces on-site once it completes renovations to the building and that the renovations will result in a minimum of 75 on-site parking spaces. In response to OP's inquiries about the number of additional spaces that the school has the option to lease from the church, the Applicant indicated that the school has an option to lease additional spaces, but has not as yet discussed the number of additional spaces it might need with the church since the school does not need more at present. The Applicant added that should additional spaces become needed, it believes that any such number would be small and the Applicant has the option to lease additional spaces from the church, as necessary, in the future. Given its plan for growth, the Applicant noted that the TDM program under the approved variance will not be able to be effectively assessed until after 2020 because the required parking ratio will not have been satisfied until then. Consequently, the Applicant urged the Board, if it was to keep a term limit, to extend the term for a time when the school has reached full staff capacity. (Exhibit 41.)

At the Board's request, OP also submitted a supplemental report, dated March 22, 2013, with additional analysis of the Applicant's supplemental information. OP noted that the original traffic analysis prepared for the Applicant by its traffic engineers in 2012 indicated that the Applicant's school would increase its staff employment to 162 in three years, not the nine years described in the supplemental report. Even so, based on the new projections, OP said it now believes that the total of 90 available parking spaces would leave no significant deficits until a seven-space deficit in the 2019-2020 school year. Therefore, OP recommended changing the approved term of three years to seven years, to end in the 2019-2020 school year and to add a condition setting the maximum number of school teachers and staff to 162. (Exhibit 43.)

The OP supplemental report included a supplemental report, dated March 22, 2013, from the District Department of Transportation ("DDOT"). DDOT requested the addition of other conditions to the previous Order whereby the Applicant would be required to complete a full trip generation and mode split analysis of the existing conditions under both schools co-located on site before the end of the 2012-2013 school year, to maintain the same site trip generation presently existing for the site when the school reaches its maximum staff capacity of 162, and to provide reporting to DDOT every two years on the school's trip generation and mode split rates for a period up to two years after the school reaches its maximum staff capacity of 162. DDOT's position continued to remain that the school should generate no more vehicle trips than it currently does at present on the site. (Exhibit 43.)

Deliberations at Public Meeting on March 26, 2013

The Board deliberated the merits of the Applicant's Motion for Reconsideration at its public meeting on March 26, 2013. The Board determined that it would keep a term limit on the approval. As in *Motion for Reconsideration of St. Paul's Episcopal Church*, BZA Order 18138-A, the Board found that "a term limit allows the Board to 'hedge its bets' that its prediction of no adverse impacts, or that predictable adverse impacts can be mitigated, will prove correct."

At the March 26th meeting, the Board decided that the term limit should be eight¹ years instead of the three years that it set in the original Order based on the Applicant's and OP's supplemental material provided for the record. The Board found that it will take at least eight academic years before the Applicant will reach its maximum staff capacity. Also, the Board found that if the maximum number of teachers and staff remained 162, that number would not be expected to be reached until at least the 2020-2021 school year.

After reviewing DDOT's supplemental information, the Board further clarified that it would specify that the Applicant would be required to complete trip generation and mode split analysis of existing conditions at both of the Applicant's co-locations and site for the 2012-2013 school year and each year thereafter, and maintain the same trip generation that exists at present for the site when the school reaches its maximum staff capacity. The Board decided to add these additional requirements to the existing condition regarding the monitoring of trip generation and mode splits and annual reporting requirements to DDOT. The Board also added a condition requiring the Applicant to continue to provide to DDOT a trip generation and mode rate for at least two years after the Applicant reaches its maximum staff capacity. Another condition was added by the Board that if at any time the trip generation and mode split differs from what the Applicant's filings in the record have shown or from what DDOT has approved, the Applicant would be required to report that information to DDOT and institute whatever reasonable remedial measures DDOT imposes.

Great Weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by OP. (D.C. Official Code §§ 1-309.10(f) and 6-623.04 (2001).) Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

OP was in favor of the original application and recommended approval of the requested areas of relief, subject to adoption of Transportation Demand Management ("TDM") and parking strategies. (Exhibit 27.) In its original report, OP described that it thought it would take three years for the Applicant to reach its maximum staff capacity of 162. At the hearing on the original

¹ There were some discrepancies in the record between calling for either a seven-year term or an eight-year term, but ultimately, during deliberations at the public meeting on March 26th, the Board clarified that it wanted a term that would end at the completion of the 2021-2022 academic year, which meant that it asked for a eight-year term beginning in the 2013-2014 school year.

application, OP raised the issue of a recommended term limit, and, having giving OP's recommendations great weight, the Board adopted as Condition No. 1 for a term of three years. Based on its analysis of the Applicant's supplemental filings in its motion for reconsideration, particularly those regarding the Applicant's projections of its staff growth over a 10-year period, OP revised its recommendation of approval from that for a three-year term to one for a seven-year term. (Exhibit 43.) The Board gave that recommendation great weight and ultimately adopted an eight-year term so that the term would end at the 2021-2022 academic year when the maximum staff capacity would have been reached and the TDM measures could be properly evaluated.

ANC 8C is the ANC within which the subject property is located. ANC 8C was properly notified of the filing of this application (Exhibit 16) and also properly notified of the date of the hearing on the application (Exhibit 21). The Chair of the ANC 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.² (Exhibit 26.) The Chair of the ANC also was present and testified at the hearing in support of the original application. The Applicant served ANC 8C with its Motion for Reconsideration (Exhibit 36), but the ANC did not participate on the proceedings on reconsideration; therefore, there is nothing to which the Board can accord great weight.

Conclusion

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3126, for a reconsideration of Condition No. 1 previously approved by the Board in BZA Case No. 18472. 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.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement 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 this application for reconsideration of Condition No. 1 in Order No. 18472 is hereby **GRANTED, AND CONDITIONS NO. 1, 7, and 11 ARE REVISED AND A NEW CONDITION NO. 16 IS ADDED TO READ AS FOLLOWS:**

1. Approval shall be for a period of **EIGHT YEARS** from August 20, 2013.
7. The Applicant shall monitor the progress of the TDM program and report to the District Department of Transportation (DDOT), on an annual basis, the results of trip generations and modal splits of the employees and students, including a:

² As no quorum was present nor a vote taken, the letter did not meet the requirements for the ANC to receive great weight.

- A. Trip generation and modal split analysis of existing conditions for both schools co-located on the site for the 2012-2013 school year; and
- B. Trip generation and modal split analysis for a period up to two years after Excel reaches their maximum staff capacity.

The Applicant shall implement reasonable remedial measures imposed by DDOT if there is a discrepancy in the trip generation and modal split numbers contained in the Applicant's modal split analysis of existing conditions, or from what DDOT has approved.

11. The Applicant shall maintain the same site trip generation existing today for when Excel reaches maximum staff capacity of 162.

16. The maximum number of teachers and staff shall be 162.

In all other respects Order No. 18472 remains unchanged.

VOTE: **4-0-1** (Lloyd J. Jordan, Nicole C. Sorg, Jeffrey L. Hinkle, and Peter G. May to APPROVE; S. Kathryn Allen, not present, not voting.)

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

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

ATTESTED BY: _____


SARA A. HARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 29, 2013

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.