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August 24, 2000

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OFFICE OF ZONING
DISTRICT OF COLUMBIA

BY HAND DELIVERY

Ms. Sheila Cross-Reid, Chairperson
Board of Zoning Adjustment
441 - 4th Street, N.W.
Room 210
Washington, DC 20001

Re: BZA Application No. 16559 (Field School)

Dear Chairperson Reid and Members of the Board:

Enclosed is a disk and 10 hard copies of NAFG's proposed findings of fact and conclusions of law in this case to disapprove the special exception request.

Sincerely,

Richard L. Aguglia

Richard L. Aguglia

Enclosures

cc: Phil Feola, Esq. (by hand)
Ken Woodcock (by fax)
Alan Swendiman, Esq. (by fax)
Jeff Bolotin, Esq. (by fax)
ANC 3D c/o Eleanor Lewis (by mail)
OP c/o John Fondersmith (by mail)

BZA
Case No. 16559
Exhibit No. 479

Board of Zoning Adjustment
District of Columbia
CASE NO.16559
EXHIBIT NO.479

GOVERNMENT OF THE
DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16559 of the Field School, pursuant to 11 DCMR § 3104.1 for a special exception under 11 DCMR § 206 to construct a private high school for a maximum of 320 students and 74 faculty and staff in an R-1-A District at premises known as 2301 Foxhall Road. (Sq. 1341, Lots 856, 861, 878 and 879).

OFFICE OF ZONING
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HEARING DATES: March 29, May 10 and July 25, 2000

DECISION DATE: September 5, 2000

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PROCEDURAL HISTORY

1. The application by the Field School to construct a private school on lots 856, 861, 878 and 879 in Square 1341, 2301 Foxhall Road, N.W. in Washington, D.C. was filed on January 10, 2000. The application contained as an exhibit the Gorove Slade December 13, 1999 traffic report which provided that south bound vehicles on Foxhall Road would turn left at the northern entrance to the proposed school, the only safe entrance to the school. Applicant subsequently submitted 4 different and conflicting traffic reports over the course of the hearings, as explained hereinafter.

2. Petitions in opposition to the application were submitted to the BZA by Neighbors Against Foxhall Gridlock (NAFG) (11 neighborhood residents) on or about March 1, 2000, represented by Hunton & Williams; by Mrs. Sylvia Shugrue, who is separately represented by Jackson & Campbell; and Foxhall Crescents South Gate Homeowners Association ("FCSGHA"), composed of 22 families, represented by Jeff Bolotin, Esq. NAFG, Mrs. Shugrue and FCSGHA were recognized as parties in opposition by the Board as a preliminary matter on March 29,

2000.[1]

3. The Board heard testimony on March 29, May 10 and July 25, 2000. The Board decided at its March 29, 2000 hearing to listen to testimony on all issues but the traffic issues because of "11th hour" changes in the Applicant's traffic design plans. Accordingly, testimony on traffic issues did not commence until the continuation of the hearing on May 10, 2000 and again on July 25, 2000. Mar. Tr. 60.

4. At the close of the hearing, the Board decided that the record would be left open until August 10, 2000 for the school's counsel's concluding remarks, a statement by the school as to any possible compromise with Mrs. Shugrue's over her environmental and traffic problems, and a report from Mr. Long regarding similar projects where AASHTO standards were allegedly not met for left turn lane projects for review and comment by NAFG. Counsel for NAFG, Mrs. Shugrue and FCSGHA were allowed to reply to these submissions by the school on or before August 17, 2000. Draft orders from all parties were due on August 24, 2000.

5. On September 5, 2000, the Board disapproved the application for the reasons stated herein.

SUMMARY OF HEARING

1. At the May 29, May 10 and July 25, 2000 hearings, the BZA heard testimony and took evidence from the Applicant (represented by the law firm of Wilkes Artis) and the opposition (represented by the law firms of Hunton & Williams and Jackson & Campbell, and Jeffrey Bolotin, Esq.), the Office of Planning (OP), Department of Public Works (DPW), ANC

[1] The March 29, 2000 transcript is referred to as Mar. Tr. The May 10, 2000 transcript is referred to as May Tr. and the July 25, 2000 transcript is referred to as July Tr.

3D, various community groups and numerous witnesses from the community both for and against the application.

2. The Applicant presented various expert and lay witnesses regarding the history of the current Field School operations in the District of Columbia and the need for more space, the architectural designs of the proposed additions to the current residential home, parking spaces, landscaping and buffering, five different traffic reports (4 from one expert and one from another) and a land use planner, all to demonstrate that a school was a good use for the site and was not objectionable due to noise, traffic, amount of parking, number of students or other conditions.

3. The Applicant's traffic expert (Gorove Slade & Associates - Lou Slade) presented, by report and by testimony, four different and conflicting reports on traffic issues and design:

(a) The First Report of December 13, 1999 allowed left turns into the school's northern entrance, considered the only safe entrance of the two (north and south) during AM peak hours by cars approaching from the north and travelling south. The number of vehicles entering and exiting the site during the AM rush hour was stated to be 320.

(b) The Second Report of February 29, 2000 allowed left turns into the school's northern entrance, again stated to be the only safe entrance, during AM peak hours only for shuttle buses and emergency vehicles travelling south. The number of vehicles that was estimated to enter and exit the site under this new plan in the AM rush hour was reduced from 320 to 174. This estimate was made under a series of questionable assumptions that will be difficult to enforce, that is, that 45% of the student population will arrive by public transportation including school-provided shuttle buses that had no specific pickup points and started at 7:30 AM; that all faculty and staff will arrive before 7:30 AM rush hour; that all lower school children

(80) will arrive between 7:30 AM and 8:00 AM and all upper school children (240) will arrive between 8:00 AM and 8:20 AM; and that students will be able to car pool with other students to the school (2.5 students per car) despite the enactment of strict driving laws for teenagers by the District of Columbia Council effective September 1, 2000.

(c) The Third Report of May 19, 2000, indicated that a revised southern entrance with a left hand turn stacking lane for 10 cars and 250 feet in length was needed for incoming traffic with outgoing traffic exiting at the northern entrance by right turn only.

(d) The Fourth Report of June 2, 2000, in order to coincide with the revised May 22, 2000 DPW report, for which (the Fourth Report) no testimony was provided, closed the northern entrance as unsafe, excluding emergencies, and provided a light at the revised southern entrance for cars to both enter and exit the school. Further, the stacking lane/storage bay was reduced to 3 cars and 66 feet in length.

On rebuttal, the applicant presented yet another traffic analysis by a different expert, James Long of Delon Hampton & Associates, which provided for a 5 car stacking lane 104 feet in length and a longer deceleration lane than that provided by Gorove Slade.

4. The Office of Planning, by memoranda dated March 10, 2000, May 3, 2000 and June 7, 2000 and by testimony at the public hearing, recommended approval of the application subject to 24 conditions, including those set forth in an earlier ANC 3D resolution of approval (ANC 3D subsequently disapproved the application as described hereafter) including the traffic requirements contained in the May 22, 2000 DPW report that the northern entrance be closed, that a light be placed at the revised southern entrance, and that a combined deceleration, taper and storage bay of 474 feet be provided for safety reasons.

5. ANC 3D held multiple public meetings to discuss the School's application, voting to deny, then approve and then again to deny the School's application for failure to meet the burden of proving no objectionable traffic conditions. The ANC voted three times on this application because the Applicant's traffic report was constantly changing, as indicated above. The basis of the final vote of disapproval was the closing of the northern entrance and the reduction of the storage bay/stacking lane which the ANC felt would result in dangerous traffic conditions and gridlock. Accordingly, the ANC found that the Applicant had not met its burden of proof. ANC Resolution dated July 10, 2000.

6. NAFG, Mrs. Shugrue and FCSGHA opposed the application at the hearing. NAFG presented three witnesses qualified as experts (2 traffic and 1 land use planner), a videotape of Foxhall Road during rush hour, and other witnesses who testified that the proposed school (a) does not meet the requirements of Sec. 206 of the Zoning Regulations and is therefore likely to become objectionable to adjoining and nearby property owners and, (b) does not meet the requirements of Section 3104.1 of the Zoning Regulations because the placement of a school at this site is not in harmony with the residential character of the neighborhood and is inconsistent with the land use plans of the District of Columbia. Specifically, the parties in opposition pointed out that:

(a) The size of the proposed facility was too small to accommodate the number of students and consequently would result in excessive noise, light and emission pollution and water runoff problems for the immediate neighbors, and the playing fields were too small (non-regulation) to be of use to the school.

(b) The facility would add to traffic gridlock on Foxhall Road, already recognized by DPW as being a dangerous and winding road at full capacity during rush hours with average speeds of 40 mph in a 25 mph zone.

(c) The size of the left hand turn lane, taper and deceleration distances proposed at the southern entrance to the school under the Applicant's fourth traffic report did not meet AASHTO and MUTCD standards within the property's frontage, and would present potential traffic hazards leading to injury and civil liability for the District of Columbia and possibly the school.

(d) The use of the land for a school was contrary to the District's Comprehensive and Ward 3 plans to protect residential neighborhoods and, given the number of schools in the immediate vicinity, including increased enrollment at the GW/Mt. Vernon campus on nearby W Street, was transforming the area from one that was residential to one that was institutional.

(e) No more than 25% of the student body could be expected to take the two-step public transportation (subway or bus and shuttle) and that the number of vehicles turning into and out of the school at AM peak rush was estimated at 374, leading to unacceptable levels of traffic service in the immediate neighborhood.

(f) Mrs. Shugrue's property, in particular, would be subjected to traffic gridlock, light, noise, emission pollution and water runoff from the school's traffic circulation and nearby asphalt parking lot with insufficient and immature buffers, exacerbated by the closing of the northern entrance and the school's refusal to utilize an available entrance/exit on 44 Street, N.W., a dead end street.

7. Witnesses for the Applicant, most of whom attended the school, or were parents of children who attended the school, or desired that their children attend the school at its new location, testified that the school was a very good one that would be a good neighbor, which is not relevant to these proceedings, and that the school was needed to slow traffic on Foxhall Road.

8. The Palisades Citizen's Association ("PCA") and Wesley Heights Historical Society testified in support of the application. The proposed school site, however, is not within the PCA boundaries. Moreover, the PCA resolution in support of the school (passed in February or March of 2000) was based on a Gorove Slade traffic plan (2nd report) that was no longer viable. The President of the Wesley Heights Historical Society testified that he was personally concerned about gridlock and safety if the school was located at this site, given the shortened turn bay.

9. The Spring Valley/Wesley Heights Citizens Association testified in opposition to the application over concerns with traffic safety and gridlock.

FINDINGS OF FACT

1. The subject property consists of approximately 10.5 acres of land in Northwest Washington, D.C. improved by a residential house at 2301 Foxhall Road, N.W. also known as the Cafritz Estate. The subject property is bounded by Foxhall Road to the west, Dexter Street to the north, 44th Street and Glover Archibald Parkway to the east and W Street/Foxboro Place to the south and is residential in nature. The property slopes approximately 100 feet in elevation from its high point at the northwest corner, sloping downhill to the east and the south, and has a

substantial number of trees. Mar. Tr. 83. Hence, only about 8 acres are useable. Mar. Tr. 163, 178.

2. The subject property that is the subject of this application is zoned R-1-A.

3. The proposed school on the subject property will consist of three main buildings, the current residential house to serve as an administrative office and class rooms, and two other wings, one for academics and the gymnasium and one for academics and a meeting house, for a total of 62,000 sq. ft. Mar. Tr. 86, 166.

4. The application also calls for an athletic field and parking for 128 cars. The school buildings will encompass about 7% of the lot size; the parking about 18%-20% of the lot size; and the athletic field about 25% of the lot size for a total coverage of about 50%.

5. Elizabeth Ely, the founder of the Field School in 1972, testified that the school wished to expand from 212 students to 260 students and ultimately to an enrollment of 320. Mar. Tr. 73-75. However, on cross-examination, Mrs. Ely would not stipulate as part of the Board's order that the student population would never exceed 320. Mar. Tr. 159. As a result of the accreditation process, the need for larger facilities was identified. Mar. Tr. 76. However, Mrs. Ely, in response to a question posed by Commissioner Parsons, conceded that the subject property was inadequate for baseball, track, cross country, lacrosse and tennis. Mar. Tr. 106-107. Mrs. Ely believed that the proposed project would enhance the neighborhood and the city. She also testified that 90% of the students played in competitive sports after 2:30 PM. Mar. Tr. 104 and 161.

6. Louise Millikan, President of the Field School Parents Association and member of the Board of Trustees, reiterated that the accreditation process brought out the need for more space for academic and sports programs, and that the Cafritz Estate was the best location to serve

the needs of the school. Mar. Tr. 78. Ms. Millikan also testified that the school understood community concerns and, as a result, there would be no entrance to the school at 44th Street, a shuttle bus operation, no lights on the athletic fields, no athletic events would start after 6 PM, and no outside rentals of the school facilities to private groups.

7. David Cox, an architect who is a principal of Kress Cox Architects and qualified as an expert, described the boundaries of the site, the site itself of approximately 10.5 acres, its irregular shape and 100 foot slope from northwest to south and east. The design plan was to keep the site as open as possible and to add two academic wings along with a gymnasium and a 400 seat meeting house, together with playing fields and one tennis court. He stated that the lot occupancy permitted was 40% in an R-1-A District, but that the school buildings would cover only 7% and all improvements including paved parking would cover only 27% of the site. There would be considerable setbacks and 128 parking spaces. However, upon cross-examination, Mr. Cox indicated that 84 parking spaces including 2 spaces for buses would be located on the southern end of the site nearest Mrs. Shugrue's property and that the parking lot buffer could be as close as 80 feet to 50 feet from Mrs. Shugrue's home. Mar. Tr. 184, 188. Height would not exceed 37 feet, whereas 40 feet is permitted in this zone. Storm water management had been designed to protect Glover-Archbold Park from water run-off. Sound impact would be minimized. Mar. Tr. 81-93.

However, upon cross-examination, Mr. Cox admitted that as a practical matter, when the playing fields were included, lot occupancy exceeded 50%. Mar. Tr. 168. Also, he indicated that the parking spaces would require nine lighting standards in the southern parking lot nearest Mrs. Shugrue's property.

8. Elliot Rhodeside, qualified as an expert landscape architect, testified that efforts were made to preserve and protect the existing vegetation and trees throughout the site, while providing adequate buffers from the parking and athletic fields, including Mrs. Shugrue's property. Mar. Tr. 94-100. However, there was no attempt to hide the buildings. Mar. Tr. 101. Upon cross-examination, Mr. Rhodeside indicated that the buffering – trees and shrubs – that was illustrated show about a 5 year growth in the plants. In other words, it will take 5 years for the vegetation coverage to reach the size illustrated on the landscape plans.

9. Clay Kaufman, a teacher at the current Field School, testified that traffic control officers would monitor each entrance to the school for arriving students. Mar. Tr. 126.

10. R.L. Keller, of R.C. Fields & Associates, was qualified as an expert civil engineer on storm water management and testified that running the storm sewer up 44th Street was the preferred approach and would allow the District the ability to tie into the sewer for future run-off, since there was no collection system there at that time. Mar. Tr. 130-131.

11. Tom Gibson testified as a person in support of the project on behalf of the Wesley Heights Association for Preservation of Residential Streets, a committee of the Wesley Heights Historical Society, which is involved in community zoning and quality of life issues. Mar. Tr. 151. Mr. Gibson noted that the Society was prepared to oppose the School's application if it impacted on 44th Street, but since the school had provided "binding long term assurances that they will not use their rear access to 44th Street", the Society was supporting the project. Mr. Gibson noted that he was directly affected since he lived at the corner of Edmond and 44th Street. Mar. Tr. 152-154. (However, Mr. Cox conceded that if Foxhall Road is closed because of an accident, students and staff will have to wait until the accident is cleared, since there is no access for the school to 44th Street. Testimony of Mr. Cox, Mar. Tr. 174.)

12. Students, parents, alumni and teachers at the Field School testified (as persons in support of the school) that it was a quality school and that the school would keep its commitments to be a good neighbor. Mar. Tr. 206-253. With the exception of a few neighbors living near the existing Field School, all persons in support had a direct tie to the school.

13. At the resumption of the hearing on May 10, 2000, Lou Slade of Gorove Slade & Associates testified as an expert witness for the school on traffic operations. Mr. Slade relied upon his third traffic report of May 19, 2000, in making his presentation. That report switched the school's proposed entrance on Foxhall Road as contained in the first and second reports from the north entrance, the only safe entrance, to a revised southern entrance with a 10-car 250 foot stacking lane. This report was to be the school's final traffic report (Mar. Tr. 197-202). Nevertheless, on June 2, 2000, in response to DPW concerns contained in a memo to the Board/OP dated May 22, 2000, Gorove Slade submitted a fourth traffic report which superseded all prior reports. The Board never heard testimony regarding this new report from the Applicant, as the Applicant's testimony time had expired.

Some of the data from the first two reports were included in the third report of Gorove Slade. Upon cross-examination, Mr. Slade admitted that:

(a) The study he relied upon in his appendix that flashing signals or beacons would reduce traffic speeds on Foxhall Road related to children in crosswalks. There were no crosswalks planned for the Field School, thus the study provided no foundation for his report conclusion. The study provided in the appendix was not the full study, and the portion left off due to "xeroxing" errors indicated that there was a conflicting study that flashing signals or beacons in a school zone did not slow down vehicles exceeding the speed limit.

(b) The number of students estimated to be taking public transportation to the new school site was 45% and not 36% as listed in his report, due to a mathematical error.

(c) The shuttle bus departure points from 2 subway stops had not been coordinated with WMATA.

(d) The decrease in the AM peak rush hour vehicles entering and exiting the school from 320 to 174 was based upon a parent-student survey and the school's requirements (1) that all faculty and staff would arrive every school day before rush hour (7:30 AM), and (2) that each student who drove would carry 2.5 students on the average. Mr. Slade stated that, in doing so, he was not familiar with new Council legislation placing strict driving restrictions on the number of passengers riding with teenage drivers under the age of 17.

(e) The PM rush hour for the school was estimated to be 2:00 - 3:00 PM for determining levels of service, despite the fact that Mrs. Ely testified that 90% of the students would participate after school in athletic events and Mr. Kaufman testified that they would not start such events after 6:00 PM.

14. At the May 10, 2000, hearing ANC 3D Commissioner Steve Griswold testified that the ANC 3D supported the application so long as the traffic lane (left turn bay) would safely stack 10 cars. May Tr. 16. Mr. Griswold testified that there was concern that only a 3 car stacking lane would be provided and that:

> . . . there's great concern that if people are not able to safely get into that left lane and turn left that they are simply going to go down Foxhall, turn around through W or Whitehaven, route around the neighborhood, come out and come back from the south.

May Tr. 19. The ANC also believed it would be dangerous to have a control officer on Foxhall Road. May Tr. 20.

15. Anne Heuer, ANC 3D-06 Commissioner where the proposed school is to be located, filed a minority report (which was read into the record) to deny the application based upon concerns over traffic safety and congestion on Foxhall Road. May Tr. 27. Ms. Heuer did not personally testify at this hearing.

16. Mary Vogel, OP, gave testimony on both the March 10 and May 3, 2000 reports of that office to the Board. OP agreed with the traffic report mitigation plans submitted by the Applicant, including the installation of a new left turn lane at the school's southern entrance as suggested by DPW. May Tr. 28-34.

Consistent with the estimates submitted in the Gorove Slade third report, a condition of approval recommended by OP was that no more than 106 vehicles be allowed into the school property during the AM peak hour of 7:30 - 8:30 AM. Conformance with this limit would be required before expansion for the school from 260 to 320 students would be allowed. (The Board noted that it would be difficult to enforce these measures and that the Board was receiving complaints regarding lack of enforcement in other cases. May Tr. 47.) In addition, the number of parking spaces should be reduced to 110. May Tr. 38.

However, under cross-examination, Ms. Vogel conceded that she had not read NAFG's May 3rd traffic report in preparing her report to the Board. (May Tr. 59-61) Ms. Ellen McCarthy, also in OP, testified that they would not have looked at NAFG's traffic report because it was too technical and would rely on DPW for a response. May Tr. 61. Ms. McCarthy stated that OP would change its report to the Board if DPW found the situation to be unsafe (DPW did then later require a traffic light and closure of the northern entrance causing OP to file a June 7, 2000 amended report). Ms. McCarthy further stated that a school was consistent with a residential neighborhood according to a court case she could not name (May Tr. 65), but that she

did not take into consideration a very recent appellate decision requiring consistency of new projects with Ward Plans. May Tr. 66. Ms. McCarthy also stated that OP only looked to the buffering proposed for the subject property from the neighbors and did not make comparisons to other schools in determining whether the lot size was adequate. May Tr. 68, 69.

17. Ken Laden, Administrator for Transportation Planning in the DPW, testified at the May 10 hearing that DPW needed more time to resolve the conflict between the Applicant's and opponents' experts over sight lines/stopping distances for the proposed left-turn stacking lane. May Tr. 97. Accordingly, the Board established May 19 as the date DPW's report and the revised Gorove Slade report were due to the Board, June 2 for responses from all parties to that report, June 9 for OP's report and July 25 for the next hearing date.

18. On May 22, 2000, DPW submitted its report to the Board which is summarized below. Gorove Slade submitted its revised/third and supposedly final report to the Board on May 19, 2000, relying on both a north and south entrance for the flow of traffic in and out of school.

19. On June 2, 2000, Gorove Slade submitted its fourth report to the Board, which adopted DPW's recommendations in its May 22, 2000 report, despite the fact that the third report was to be its final report. No testimony was heard on this report as Applicant's time to testify had expired.

20. OP submitted its third report of June 7, 2000 to the Board, also adopting DPW's May 22 recommendations.

21. On July 25, 2000, the Board reconvened the hearing. Mr. Laden continued his testimony and summarized DPW's position as follows. As a condition of approval:

(a) all utilities and other visual obstructions along Foxhall Road would have to be removed and relocated at the school's expense;

(b) Foxhall Road must be widened for a southbound left turn lane with 364 feet for southbound sight distance with a minimum of 474 feet for taper, deceleration, and stacking distance at the school's expense;

(c) the northern exit must be closed;

(d) a traffic light must be placed at the southern entrance;

(e) school zone warning signs must be placed on Foxhall Road;

(f) no traffic control officer will be permitted for safety reasons. July Tr. 103-109, 147, 148.

Upon cross examination, Mr. Laden admitted that a stacking lane longer than that for 3 cars proposed by Gorove Slade's 4th report was advantageous, (July Tr. 112 and 140), and that two shuttle buses would take up the entire 66 feet of the 3 car stacking lane (July Tr. 115). Mr. Laden also conceded that only under a best case scenario would only 106 vehicles be entering the school during AM rush hours. July TR. 114. Mr. Laden also stated that no comprehensive traffic analysis had been performed on the impact of traffic from the Mt. Vernon/GW campus, St. Patrick's and the proposed Field School on Foxhall Road in reaching his recommendations. July Tr. 116-117.

Mr. Laden also testified that it may be better to extend the 3 car stacking lane and "pinch" the taper and "pinch" the deceleration lanes to accommodate the 474 foot left turn package. July Tr. 129. This was needed because the school had to stay within the length of the right of way that is bounded by the Cafritz property. July Tr. 130.

22. The next witness for the government, Officer Knight from the Second District, MPD, testified that:

(a) there were quite a few speeders along Foxhall Road and the average speed was 45 to 55 m.p.h.

(b) That accidents usually occur near Foxhall and W Street, because of the curved slope of the road for people coming southbound.

(c) He was concerned about the sole southern entrance to the school because "it's right there at the curve." July Tr. 152-156.

23. David Murphy, a representative of the National Park Service, testified that the school had amended its storm water plan to provide sufficient drainage so that Glover Archibald Park would not be adversely affected. July Tr. 156.

Upon cross examination, Mr. Murphy agreed that it would be ideal if the school's parking lot was highly porous. July Tr. 161. However, he had no idea of the effect of storm water runoff on Mrs. Shugrue's property as a result of the school's construction at this site. July Tr. 162.

24. The Board read into the record the revised report of ANC 3D, in a letter dated July 18, 2000 to the Board reflecting its 6 to 0 vote, taken on July 10, 2000, to reject the school's application, due to the changes in the traffic plan and stacking arrangement. July Tr. 164-165.

The Board noted that the Commission reversed its conditional approval for the school of May 8, 2000, because of safety concerns over closing one of the entrances and dropping the stacking lane from 10 to 3 cars. July Tr. 165-166.

25. Six more persons testified in support of the application, on traffic issues, July Tr. 169, on the assumption that the school was needed to slow down dangerous traffic on Foxhall Road. For example, Mr. Gibson (who previously testified in support of the school so long as

there was no access to 44th Street, N.W. where he lived); Ms. Johnson-Calari, who wanted her daughter to attend the new school, but who noted numerous accidents at Foxhall and W and Dexter and Foxhall July Tr. 171; Ms. Carrie Ritter, Past President of PCA, who admitted that PCA's support was based on an outdated Gorove Slade (the second) report. July Tr. 173; Ms. Lescaze, who lives on W Street and whose house abuts the Cafritz Estate, whose son was unfortunately killed in an accident on Foxhall Road, noting that Foxhall has always seemed a dangerous road. July Tr. 174; Ms. Natanson, who stated that a friend's car was recently totaled at Foxhall and Garfield. July Tr. 176.

26. George Watson, President of the Wesley Heights Historical Society, testified that the school had signed a letter of agreement not to open access to 44th Street for commuting by faculty, staff and students. July Tr. 185. He noted that support for the school by the Society was contingent upon a viable traffic plan that did not impede the southbound flow of commuting traffic on Foxhall Road or spill vehicles onto side streets. July Tr. 185. He went on to state:

> . . . . I must admit that the objections raised by the opposition parties give me personal pause, especially the potential for traffic hold-up with a short three car stacking lane and stop light in the central portion of the school property. July Tr. 185-186.

27. Ms. McDermott then testified (out of turn) as a person in opposition to the application. She was concerned that the light would increase the traffic congestion and create traffic hazards because of the winding road with poor visibility at this location. She also noted difficulty driving her car now with increasing gridlock as the result of Foxhall Road becoming the main artery for AU, G.W./Mt. Vernon, and Georgetown universities and Maryland commuters. July Tr. 189.

28. In his opening remarks, counsel for NAFG noted that Gorove Slade, in writing, had rejected a southern entrance to the school because of insufficient sight lanes to allow safe turning into the property. July Tr. 194; Exhibit P to OP report to BZA, dated May 3, 2000. This was the very point NAFG's expert would make, that is, there was insufficient stopping distance within the frontage of the Cafritz property under MUTCD and AASHTO guidelines to prevent injury and/or property damage.

Mr. Aguglia indicated that a school was not needed to slow traffic on Foxhall Road, but more traffic measures initiated by DPW such as radar traps, speed bumps and flashing beacons, noting that a traffic light has already been scheduled for installation at Foxhall and Whitehaven. July Tr. 196.

29. Based upon a study which he submitted to the Board, including back up data, Ken Woodcock, a member of NAFG, spoke to the fact the size of the lot was four times too small for the school in terms of number of students. He indicated that this would lead to environmental, visual, noise and light intrusions on the immediate neighbors. He specifically noted that the proposed school had:

- no cafeteria
- only 1 tennis court where 2 mid-size buses were to be parked under the Applicant's circulation plan
- no room for a regulation track or baseball field.

Mr. Woodcock also demonstrated with pictures that surrounding schools such as the Lab School had expanded with a massive visual impact on the immediate neighborhood, including asphalt parking spaces only 1/8 the size of the proposed Field School parking spaces. Inevitably, he stated, the Field School will seek to expand. July Tr. 197-205.

30. Ken Doggett, qualified as an expert land use planner, testified on behalf of NAFG that the addition of the school would add to negative traffic impact and further diminish the residential character of the neighborhood, already impacted with private schools and colleges. July Tr. 206.

Mr. Doggett produced several maps indicating 11 schools and 3 major universities within a mile to mile and a half radius of the proposed site for the Field School. July Tr. 207, 208. Mr. Doggett distinguished the Field School as a regional school with about 50% of the students from Maryland and Virginia far different from a neighborhood school like Stodard or Mann which were within walking distance for its students. July Tr. 207, 709. He found that 16% of the District's private and parochial schools were within a short radius of the Cafritz Estate and that no other low density residential area in the Washington Metropolitan area had such academic intensity which leads to visual, traffic and disruptive effects on the surrounding neighborhood. July Tr. 209.

He further found that the physical constraints of the property in terms of size, irregular configuration, steep slopes, and tree coverage negatively impacted the site for school use. July Tr. 209. Referring to the Comp and Ward plans and visual exhibits, Mr. Doggett noted that the school would not be in character with and would destabilize the immediate neighborhood. July Tr. 212.

31. Fred Hanscom, qualified as an expert traffic engineer with over 30 years experience including membership on a panel that writes national standards for uniform traffic devices, testified for NAFG in opposition to the application, with visual exhibits. July Tr. 215. Mr. Hanscom has also been qualified as an expert witness in 20 states. July Tr. 216. Referring to two sets of national standards, MUTCD (pavement markings, signs and signals) and AASHTO

(highway design), Mr. Hanscom found that the Gorove Slade 4th report did not meet those standards. Specifically, assuming a 3 car stacking lane was sufficient (which he later testified was not), the correct length of the deceleration, taper and stacking lanes was 518 feet and not 474 feet as found by Gorove Slade and DPW. July Tr. 220. Mr. Hanscom disagreed that DPW could "pinch the standard" as that compromised the public's safety. July Tr. 220.

Mr. Hanscom concluded by stating that there were two distinct problems with the Gorove Slade/DPW design. One, potential for overflow from the turn lane will create a traffic hazard by vehicles encroaching onto the southbound through lane. Two, because of limited sight distance for southbound drivers coming over the crest at the Kreiger Museum, they will not be able to see the overflow vehicles in time to prevent an accident. July Tr. 222. Moreover, when the drivers see the proposed green light at the school, it will give an incorrect message to them that there is a clear through lane when in fact it may be blocked because of the shortened turn bay overflow, creating another traffic hazard. The Applicant did not ask Mr. Hanscom a single question on cross examination.

32. Joe Mehra, also qualified as an expert engineer for NAFG, and co-author of the first handbook on site impact traffic evaluation for US DOT, described the deficiencies in the Gorove Slade fourth traffic report:

- The traffic data was collected over 1 year ago and was not adjusted to be current
- That 20% of the vehicles studied for the PM rush hour of 2:00 to 3:00 PM disappeared without explanation

- The selection of the 2:00 to 3:00 PM rush hour violated the Institute of Transportation Engineers' recommended practice and results in 30% less traffic than the correct later peak hour of 5:00 PM to 6:00 PM
- The levels of service are incorrect and do not match up with the data contained in their appendix, making the levels appear better than they are
- The estimation of the stacking needs at the school entrance was based upon a 7:45 - 8:45 AM period in the appendix, whereas the school has stated that all the students will have to arrive between 7:30 AM - 8:20 AM
- Further, the study contains no evidence that trucks or buses are using the stacking lane. Thus, the queues will be longer than that computed by Gorove Slade and will overflow into the through lane. July Tr. 224-227.

Mr. Mehra then summarized his own analysis as follows:

- Data was collected in February 2000
- The rush hours used were 7 - 9 AM and 4 - 6 PM
- The results showed unacceptable levels of service at Foxhall and Whitehaven, Foxhall and W Streets, and Foxhall and Garfield.
- He conducted a survey of the trip generation at the existing Field School which indicated that only 30% of the students used public transportation with queues of 6 to 7 vehicles for students who drove or were driven in the AM peak hours. He estimated that given the proposed 2-step public transportation process, no more than 25% of the student population would use it. Under the District's new strict teenage driving laws, no more than 1.5 students could be expected to drive to the new school. July Tr. 224-229.

Mr. Mehra's report indicated 374 AM rush hour vehicles going in and out of the school, compared to 320 in the first Gorove Slade report.

33. Dottie Woodcock, a member of NAFG, then showed a videotape of Foxhall Road and surrounding schools with a narrative during the peak AM rush hour. July Tr. 230. The videotape indicated the steep slope and winding nature of Foxhall Road and the proposed entrance of the school at the curve in the road, as testified to by Officer Knight, above. The tape also showed significant northbound traffic, lack of "shoulders" in the road, and the narrowness of the road. The tape also indicated long traffic queues at St. Patrick's School, as well as the difficulty Mrs. Shugrue has in exiting her home. July Tr. 230-234.

34. Alan Swendiman, counsel to Mrs. Shugrue, testified on her behalf against the application for the following reasons:

- It is likely the school will expand into the neighborhood, and a representative of the school had already asked Mrs. Shugrue whether she would be interested in selling her house. Many of the houses near the Lab School and St. Patrick's had been purchased for school expansion.
- Traffic will increase and Mrs. Shugrue already has trouble getting out of her driveway under current conditions, as evidenced by the videotape.
- The placement of a light in front of the school will back traffic up past her house, making it difficult to enter or exit.
- The proposed school sidewalk does not extend to W Street because of Mrs. Shugrue's property.

- Mrs. Shugrue has been witness to many accidents on Foxhall Road during her 40 years of residency there, including cars crashing into the fence along the Cafritz property.
- There were no safe shuttle bus pick up points in the general locations indicated by the school, because of heavy traffic and that the shuttle bus plan was predicated upon unrealistic assumptions.
- The school's circulation plan will route all cars past Mrs. Shugrue's house, not to mention those idling in front of her house because of the new traffic light and in the adjacent parking lot.
- The impermeable asphalt parking lot will create emission, light, noise and other pollution, as well as water runoff, for Mrs. Shugrue because of its proximity to her property.
- The alleged buffers proposed by the school would take 5 years to grow. July Tr. 235-248.
- Location of the school at the Cafritz Estate is unsafe for its students.

35. Mr. Bolotin, testifying on behalf of FCSGHA, stated that the school had failed to meet its burden of proof in terms of lack of negative impact on the community, traffic hazards, stopping/sight line problems for vehicles, and traffic gridlock. Further, he pointed out the conflicting testimony and reports of Gorove Slade, who initially told ANC 3D that all that was needed was a crossing guard at the only safe entrance, which was the northern entrance. Subsequently, Gorove Slade dropped the number of cars entering the school during the AM peak hour by half. He noted that the school had traded away a safer entrance on 44th Street and had insufficient frontage on Foxhall to insure safe driving to or past the school's left hand turn lane

proposal. He also noted that DPW had not conducted a PM rush hour survey and that there would be significant stoppage on Foxhall Road as students and faculty leave the school after 4:00 PM. July Tr. 249-255.

36. Ed Bruce, a member of NAFG and party in opposition, reiterated that the school had not met its burden of proof. The neighborhood had absorbed the burden of many schools in the vicinity far disproportionate to its size and area. Further, the Board should not accept DPW's compromise of safety standards for a design that was continually changing and inconsistent. July Tr. 255-258.

37. Mrs. Shugrue was asked various questions by the Board and she reiterated that the school's representative had asked her if her house was for sale, that traffic had become more congested, and the difficulty of getting into and out of her driveway. July Tr. 272-276.

38. Marion Guggenheim, past Chair of ANC 3D, testified as a person in opposition that Foxhall road was a very dangerous road. July Tr. 295.

39. William Harrod, President of the Spring Valley/Wesley Heights Citizen's Association, composed of some 1,250 households, testified on its behalf in opposition to the application, noting that Foxhall Road was an extremely difficult road to drive now, subject to frequent gridlock in the morning. July Tr. 296. He indicated that he personally experienced a nine car stacking lane waiting for a car to turn left into the Krieger Museum and urged the Board not to further aggravate an already extremely difficult traffic situation. July Tr. 297.

40. On rebuttal, the school presented two new witnesses. Steve Sher, a land use planner employed by Wilkes Artis, who testified, with exhibits, that the predominant use in the immediate neighborhood, relying on street frontage, was residential and not institutional. July Tr. 306. Then he explained that the intensity of the use of the site as a school was well below the

zone requirements. July Tr. 308. He also submitted a school report to indicate that the size of the subject property was sufficient for the number of proposed students (320), compared to other schools in the District of Columbia. July Tr. 309. Upon cross examination, Mr. Sher was unable to say which of the schools in his study had only 1 entrance, that most did have access to Metrobus, and that he did not know how many relied on a shuttle bus to transport students. July Tr. 317-318. James Long, qualified as an expert traffic engineer, testified that his office did its own layout of the taper and deceleration lanes and found that they fit "nicely" across the frontage of the property. July Tr. 314. He stated that he was familiar with other projects with shorter taper lengths. Under cross examination, Mr. Long admitted that the layout/design was "not my own." July Tr. 316; that the turn bay was designed for 5 and not 3 cars, and the total deceleration, taper and storage lanes were 518 feet and not 474 feet as proposed by DPW and Gorove Slade; and that Foxhall Road had a lot of "additional problems." July Tr. 323-324.

41. After the conclusion of the July 25, 2000, hearing, the board's staff established the following filing guidelines:

- August 10 for Applicant's concluding remarks, submission of projects by Mr. Long with turn lanes similar to that proposed in this case, and whether it was able to reach a compromise with Mrs. Shugrue.
- August 17 for responses.

42. On August 10, 2000, the Applicant's counsel submitted his concluding remarks, sample turn lane projects from Mr. Long, and a statement that Mrs. Shugrue would not compromise with the school. NAFG also submitted a letter to the Board to strike the testimony of Messrs. Sher and Long since they were not true rebuttal witnesses or, in the alternative, for

permission to file a sur-rebuttal indicating significant errors in the Sher school report and evidence that Mr. Long's design did not meet AASHTO standards.

43. On August 17, 2000, Mrs. Shugrue responded in writing that she could not compromise because the school had eliminated all other options – closure of the northern entrance and no access to 44th Street – meaning that traffic and parking problems remained and would still negatively impact on her property. Mrs. Shugrue pointed out that none of the suggestions submitted by Applicant's counsel had been approved by the school. NAFG separately responded that Mr. Long had not given sufficient information for it to conduct a study of its alleged comparable turn lane projects – in terms of slope and sight line problems. Accordingly it conducted a random sample of two of the projects, finding that one did not exist and the other met AASHTO standards. Counsel for the Applicant requested that the Board disregard NAFG's sur-rebuttal, to which NAFG replied on August 21, 2000.

CONCLUSIONS OF LAW AND ORDER

The Applicant is seeking to construct a private school with parking and an athletic field in an R-1-A District. The proposed facility could not be constructed as a matter of right under its current zoning category. Thus, the Applicant is seeking a special exception use (private school).

The BZA is authorized to hear and decide requests for special exceptions pursuant to Section 3104 of the Zoning Regulations (11 DCMR). Private schools are identified among the uses permitted as special exceptions in an R-1 zone (11 DCMR § 206.1).

In order to obtain a special exception, Section 3104 of the Zoning Regulations requires applicants to demonstrate that the proposed use will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps.

In addition, Section 206.2 of the Zoning Regulations requires that the private school be located so that is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions.

The Board finds that the applicant has not met its burden in demonstrating that the proposed school with athletic field is in harmony with the purpose and intent of the Zoning Regulations and Maps and is not likely to become objectionable to, or adversely affect, adjoining and nearby property owners because of noise, traffic, the number of students, or present otherwise objectionable conditions.

Specifically, the Board concludes, based on its findings of fact recited above, that the 5 traffic reports submitted by the school are conflicting, lack credible foundations, contain multiple errors, rely on questionable assumptions, and do not meet recognized industry guidelines to prevent traffic hazards, congestion and possibly injuries. The Board especially notes that the original Gorove Slade reports indicated that the southern entrance to the school was not safe because of sight line problems, the very point made by NAFG's traffic expert in these proceedings, which we adopt. Further, the site is too small for the school, in terms of number of students the school desires to place there and regulation playing fields. Location of the Field School at the Cafritz Estate will lead to noise, emission, light, water runoff and traffic congestion problems for the immediate neighborhood, especially Mrs. Shugrue. Finally, there is no community need for a school at this site, which is surrounded by many institutions of learning at all levels. The installation of yet another school at this location is not in keeping with the Comp and Ward plans to preserve the integrity of the District's residential neighborhoods, especially this neighborhood which is saturated with many other educational institutions, as set forth by

NAFG's expert land use planner, which we adopt. See Cathedral Park Condominium v. The Klingle Corporation, D.C. App. No. 98-AA-59, (decided Jan. 20, 2000).

Finally, the government has made no analysis of the traffic impact of other schools currently surrounding the site, especially the G.W./Mt. Vernon campus on nearby W Street, which will have significant increased enrollment, to assist this Board in determining that unacceptable levels of traffic service and gridlock will not occur if the Field School is located on Foxhall Road. The Board concurs with NAFG's expert traffic engineer that placement of the school at this site will lead to unacceptable levels of traffic service.

VOTE:

THE DECISION TO DENY THE APPLICATION WAS MADE BY THE BOARD OF ZONING ADJUSTMENT AT ITS PUBLIC MEETING OF SEPTEMBER 5, 2000.

EACH CONCURRING MEMBER OF THE BOARD HAS READ AND APPROVED THE ISSUANCE OF THIS ORDER AND AUTHORIZED THE UNDERSIGNED TO EXECUTE IT ON THEIR BEHALF.

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

Final Date of Order: _____

UNDER 11 DCMR § 310.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENT RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

EXHIBIT 479

FROM

CASE 16559

HAS A DISK

PLEASE SEE AT OFFICE