GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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

DECISION DATE: August 6, 2002

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

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

MODIFICATION ORDER

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

BZA
Case No. 16559
Exhibit No. 506

Board of Zoning Adjustment
District of Columbia
CASE NO.16559
EXHIBIT NO.506

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

PRELIMINARY MATTERS:

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

during the interim period of DDOT construction activity would not cause any unsafe or objectionable traffic conditions in the surrounding area.

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

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

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

a. The north access to the school site would remain closed, except to emergency vehicles.

b. Installation of two flashing beacons, one on Foxhall Road at the modified southern entrance to the school, and one on Foxhall Road near W Street, approximately 300 feet south of the school entrance.

c. Placement of the warning signs as required in condition # 17 on page 21.

d. Placement of a stop sign at the modified southern exit from the Field School to Foxhall Road, to serve as an interim traffic control device until the traffic signal is installed.

e. Permit left or right turns from the modified southern exit Field School property onto Foxhall Road with the assistance of an off-duty uniformed Metropolitan Police Officer.

f. Prohibit left turns from southbound Foxhall Road into the Field School, and require all traffic to enter from northbound Foxhall Road, making a right turn only into the property.

g. Prohibit students from accessing the school by private car and prohibit parents from dropping off or picking up students at the school until the permanent roadway and traffic signal improvements are completed and approved by the Department of Transportation. Until the final roadway and traffic signal improvements are made, all students shall be dropped off and picked up at a staging area and driven to school by shuttle bus.

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

i. Teachers and school staff will be allowed to drive to the school using the northbound right turn only approach as outlined in item #5 above. Leaving the school, teachers and staff shall be allowed to turn left or right, with the assistance of the off-duty Metropolitan Police Officer.

j. The Field School shall identify a required traffic route to be used by teachers and staff to access the school, which shall be described in an interim transportation management plan. The interim transportation management plan shall be transmitted to the affected Advisory Neighborhood Commission for review and comment, and forwarded to the Department of Transportation for review and approval prior to the issuance of the Certificate of Occupancy.

k. The required access route for teachers and staff shall avoid turning movements and use of residential streets, and shall be restricted to major arterials, such as Reservoir Road, Canal Road or other major arterial roadways.

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

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

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

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

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

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

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

CONCLUSIONS OF LAW AND OPINION:

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

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

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

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

1. The north access to the school site would remain closed, except to emergency vehicles.

2. Installation of two flashing beacons, one on Foxhall Road at the modified southern entrance to the school, and one on Foxhall Road near W Street, approximately 300 feet south of the school entrance.

3. Placement of the warning signs as required in condition # 17 on page 21.

4. Placement of a stop sign at the modified southern exit from the Field School to Foxhall Road, to serve as an interim traffic control device until the traffic signal is installed.

5. Permit left or right turns from the modified southern exit Field School property onto Foxhall Road with the assistance of an off-duty uniform Metropolitan Police Officer.

6. Prohibit left turns from southbound Foxhall Road into the Field School, and require all traffic to enter from northbound Foxhall Road, making a right turn only into the property.

7. Prohibit students from accessing the school by private car and prohibit parents from dropping off or picking up students at the school until the permanent roadway and traffic signal improvements are completed and approved by the Department of Transportation. Until the final roadway and traffic signal improvements are made, all students shall be dropped off and picked up at a staging area and driven to school by shuttle bus.

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

9. Teachers and school staff will be allowed to drive to the school using the northbound right turn only approach as outlined in item #5 above. Leaving the school, teachers and staff shall only be allowed to make right turns, with the assistance of the off-duty uniformed Metropolitan Police Officer.

10. The Field School shall identify a required traffic route to be used by teachers and staff to access the school, which shall be described in an interim transportation management plan. The interim transportation management plan shall be transmitted to the affected Advisory Neighborhood Commission for review and comment, and forwarded to the Department of Transportation for review and approval prior to the issuance of the Certificate of Occupancy.

11. The required access route for teachers and staff shall avoid turning movements and use of residential streets, and shall be restricted to major arterials, such as Reservoir Road, Canal Road or other major arterial roadways.

12. The interim plan shall expire January 31, 2003.

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

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

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

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

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

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

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

1. Provide a construction management plan and detailed construction schedule for the construction of the work in the Foxhall Road right-of-way is to be submitted after the hiring of a contractor during the permit processing stage.

2. Provide an overall construction schedule for the construction of the work in the Foxhall Road right-of-way.

3. Provide status reports on the construction progress to the Office of Zoning and serve on all parties at the beginning of each month starting in October 2002. The report should document the progress of construction and identify any refinements to the plans for the Foxhall Road improvements.

4. Submit a pedestrian safety plan and description of how the plan will be implemented during the period of construction activity during the permit process such as a construction fence along the property line with leveled compacted earth for a walking surface.

5. Submit the source documents used by Ken Laden to develop the recommendations outlined in his July 5, 2002 memo to Jerrily Kress and presented at the August 6, 2002 Public Meeting.

6. Evidence of The School's satisfaction of Condition No. 35 of the Order, which required The School to meet with neighbors and community representatives on a monthly basis to discuss construction activities and resolve objectionable conditions.

7. Submit information regarding details of the School's interim traffic management plan including details of the proposed shuttle bus staging area and shuttle bus routes from Foxhall Road campus to the United Methodist Church (located at the intersection of New Mexico and Nebraska Avenues, N.W.)

8. Submit proposed shuttle bus routes from Foxhall Road campus to the Friendship Heights, Foggy Bottom, Woodley Park and Cleveland Park Metros, as well as routes to be used by teachers and staff to and from the School property by September 10, 2002.

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

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

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

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
DIRECTOR

FINAL DATE OF APPROVAL: AUG 2 3 2002

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

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANTS FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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

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

Smp/ CM 8/15/02

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO 16559-B

As Director of the Board of Zoning Adjustment, I hereby certify and attest that on AUG 2 3 2002, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearings concerning the matter, and who is listed below.

Jack Finney, Chairperson
Advisory Neighborhood Commission 3 D
Ernest Auditorium, Sibley Hospital
P.O. Box 40846
Washington, D.C. 20008

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

Neighbors Against Foxhall Gridlock
C/o Richard Aguglia, Esq.
Hutton & Williams
1900 K Street, N.W
Washington, D.C. 20006

Alan R. Swendiman, Esq.
Jackson & Campbell
1120 20th Street, N.W.
Washington, D.C. 20036

Denzel Nobel Acting Zoning Administrator
Department of Consumer &
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Office of Planning 4th floor
801 North Capitol Street, N.E.
Washington, D.C. 20002

Jeffery W. Bolotin, Esq.
4604 Foxhall Crescent, N.W.
Washington, D.C. 20007

ATTESTED BY: _____

Jerrily R. Kress, FAIA
Director, Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO 16559-B

As Director of the Board of Zoning Adjustment, I hereby certify and attest that on AUG 2 3 2002, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearings concerning the matter, and who is listed below.

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Washington, D.C. 20007

ATTESTED BY: _____

Jerrily R. Kress, FAIA
Director, Office of Zoning

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