GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16559-C of The Morris and Gwendolyn Cafritz Foundation/The Field School[1] 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: January 28, 2003

MODIFICATION ORDER

FINDINGS OF FACT

Prior History

1. 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). The final date of the original order was December 19, 2000.

2. 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.

3. By Modification Order (16559-B) dated August 23, 2002, the Board granted an interim modification of Condition Nos. 13-24 of Order No. 16559. The Board approved an alternative transportation management plan that the applicant would follow while certain improvements to the Foxhall Road right-of-way, as required by BZA Order No. 16559, were completed. The approval of the alternative transportation management plan was to expire on January 31, 2003.

The Current Request

[1] At the time of the initial application The Field School was the contract purchaser of the Subject Property. The Field School is the current owner of the Subject Property.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 16559-C
EXHIBIT NO. 523

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CASE NO.16559
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The Current Request

[1] At the time of the initial application The Field School was the contract purchaser of the Subject Property. The Field School is the current owner of the Subject Property.

4. On December 30, 2002, The Field School ("School") filed a request for a minor modification of BZA Order No. 16559-B with the Board of Zoning Adjustment ("Board" or "BZA"). The minor modification requested approval of a one-month extension of the School's alternative transportation management plan that was approved in BZA Order No. 16559-B.

5. In its minor modification request, the School noted that the one-month extension was necessary to allow the District of Columbia Department of Transportation ("**DDOT**") and its contractors to complete the widening of the Foxhall Road right-of-way adjacent to the School property (Lots 856, 861, 878, and 879 in Square 1341) for the construction of a left turn lane and a traffic signal at the entrance to the School property.

Compliance with BZA Order No. 16559

6. By letter dated January 7, 2003, the Board requested the School provide information regarding its satisfaction of all conditions of BZA Order No. 16559 and 16559-B, as well as any additional information that the Board had previously requested. The Board afforded the parties to the case the opportunity to comment on the School's submission.

7. The School submitted the requested information on January 13, 2003. The School's reply addressed the 42 conditions that were set forth in BZA Order No. 16559 and the 11 conditions set forth in BZA Order No. 16559B.

8. According to the School, the status of compliance with conditions established by the BZA Order 16559 and BZA Order No. 16559B is as follows:

   a. The School has constructed or will construct all building and facilities in accordance with the plans prepared by Kress Cox and filed in the record also Exhibit 12, as modified by Exhibits 446 and 464.

   b. The number of students is within the 260-student limit and the number of vehicles during peak morning hours is below the 106 vehicle limit established by condition 18.

   c. The number of faculty and staff is 62, which is below the maximum number permitted, 74.

   d. The School has staggered its hours of operation between the Lower and Upper Schools, with the seventh and eighth graders starting at 8:00 a.m. and the ninth through twelfth graders starting no earlier than 8:20 a.m.

   e. The School states that it is in compliance with conditions 5 through 11 of BZA Order No.16559, which relate to the use of school property and the hours of operation for various activities.

f. Pursuant to BZA Order 16559 Condition 12, the School is required to permit the local residents to use the athletic field and tennis court and to walk on campus grounds when not being used for school purposes. However, until construction is complete, and as a safety precaution, the School has prohibited the public from being upon its grounds.

g. As of January 13, 2003, traffic management was being conducted in accordance with the alternative traffic management plan approved by BZA Order No. 16559B, except the installation of two flashing beacon at the school entrance and signs notifying drivers that there is a traffic control signal at the school entrance on Foxhall Road. These are the responsibility of the District of Columbia.

h. Pursuant to Conditions 25-29 of BZA Order No.16559B, the conditions relating to the parking lot size, set back, investigation of porous pavement technology with a groundwater recharge system, and a vegetative buffer have been fulfilled.

i. The lighting requirements and restrictions established in Conditions 30-33 of the BZA Order No. 16559, which provide for the minimum light candle power, no exterior event lighting on the athletic field or tennis court, lights off at the southernmost parking lot by 9:00 p.m. and no lights on that parking lot on Saturdays and Sundays, except for special events, and consultation with owner of property at 2207 Foxhall Road, N.W., to refine the lighting plan, have been satisfied.

j. Conditions No. 34-37 of BZA Order No 16559 relating to Construction Management, including implementation of the construction management plan filed in the record as Exhibit 469, meeting with adjoining property owners, ANC 3D and designated community organizations, and the establishment of a 24-hour hotline with a live or on-call operator to respond to objectionable and unsafe conditions, have been or are in the process of being met.

k. Conditions 38-40 of BZA Order No. 16559 relating to Storm Water Management, which require coordination with the National Park Service on developing and implementing controls, and the design and construction of a storm water management system that is consistent with the drawing entitled "Preliminary Site Utility Plan", dated September 1999, as amended by BZA Order No. 16559B.

l. The requirements for community outreach as established by Conditions 41-42 of BZA Order No.16559, requiring coordination with other schools in the area to address community issues and meeting with neighbors and community organizations, have been satisfied.

9. The Board finds that the applicant is in compliance with all conditions of BZA Order No. 16559

Position of the Parties

10. On January 15, 2003, the Board received a letter from residents of 44th Street near the School property that requested additional conditions, unrelated to the School's alternative transportation management plan, be adopted by the Board. These conditions included shutting down the air conditioning unit for the gymnasium until it can be operated with acceptable noise levels and the parking of school buses on the main parking lot or in front of the school instead of behind the gymnasium where they are parked above the fence level of neighboring properties.

11. On January 16, 2003, the Board received a response from the Neighbors Against Foxhall Gridlock that did not object to the requested one month extension of the alternative transportation management plan, but noted other issues related to the School's operations. The unrelated issues included objections to nighttime lighting, the failure of DDOT and PEPCO to remove and relocate all utilities along Foxhall Road, air conditioner noise, parking of buses, the amount of traffic, a desire to have make busing of students a permanent requirement, and the hours of construction work.

12. On January 22, the Board received a resolution from ANC 3D that noted the ANC's support for the minor modification request. The ANC also expressed concern that DDOT had not installed the two flashing beacons at the entrance of the school, and urged DDOT to do so.

Request for Additional Information

13. The Board, at its January 21, 2003 public meeting, requested that the School encourage DDOT to submit its construction management plan for the Foxhall Road improvements with the Board. The Board also asked that the School determine whether a one-month extension of the alternative transportation plan was sufficient to allow DDOT to complete its construction work in the Foxhall Road right-of-way, that the School hold an additional meeting with its neighbors and local community organizations (prior to the next regularly scheduled meeting in June 2003) to discuss the School's operations at the Foxhall Road campus, and that the School provide the Board with copies of the notice of the School's shuttle bus routes that was previously sent to affected ANC's.

14. The School provided the requested information on January 24, 2003 and noted that while DDOT's work was progressing, it would be prudent to have the period of approval of the School's alternative transportation management plan extended to March 31, 2003.

Board Finding

15. Based upon the record of this proceeding, the Board concludes that the extension of the period of approval for the School's alternative transportation management plan until March 31, 2003 fully satisfies the Zoning Regulations' standards of approval for private schools in the R-1-A Zone District.

16. Extending the period of approval of the School's alternative transportation management plan will not create any objectionable traffic impacts and will not create any unsafe vehicular or pedestrian traffic conditions along Foxhall Road while construction activity is occurring.

CONCLUSIONS OF LAW AND OPINION:

Pursuant to 11 DCMR § 3129.7, the Board may only approve a request for modification of approved plans if the modification is a minor modification that does not change the material facts the Board relied upon in approving the application. The modification that the School is seeking is an extension of time for the use of the School's alternative transportation management plan until March 31, 2003. Granting the extension will not change the material facts that the Board relied upon in approving the application. In granting the original application, the Board concluded 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 continued approval of the temporary replacement of Condition Nos. 13-24 of Order No. 16559 with the modified alternative transportation management plan proposed by the School and supported by DDOT does not alter or affect that conclusion in any way. On April, 1, 2003, the original conditions of approval outlined in BZA Order No. 16559 was reinstated.

The Board is required under D.C. Official Code § 1-309.10(d)(3) to give great weight to the affected ANC's recommendation. The Board must "articulate why the particular ANC itself, given its vantage point, does – or does not – offer persuasive advice under the circumstances." *Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1384 (D.C. 1977) The Board notes ANC 3D's support of the minor modification request and its concern that DDOT had not installed the two flashing beacons at the entrance of the school. The Board cannot compel DDOT to make the installation and believes that approval is justified despite the DDOT decision.

The Board reviewed the submissions of the 44th Street residents and Neighbors Against Foxhall Gridlock submitted in this case and the Board finds those arguments to be not relevant to the School's request to extend the period of approval for the alternative transportation management plan.

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 **CONDITION:**

The period of approval for the School's alternative transportation management plan shall expire on March 31, 2003. Thereafter, the original conditions of approval outlined in BZA Order No. 16559 will govern the School's use of the property.

VOTE: **5-0-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., David A. Zaidain, Anne M. Renshaw to approve, John G. Parsons to approve by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

ATTESTED BY: Jerrily Kress
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAY 12 2004

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 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, 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 § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF

ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. JNS/RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16559-C (Modification Order)

As Director of the Office of Zoning, I hereby certify and attest that on MAY 17 2004, a copy of the order in the above-cited matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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rsn

ATTESTED BY: Jerrily R. Kress

JERRILY R. KRESS, FAIA
Director, Office of Zoning