IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

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D.C. OFFICE OF ZONING
2004 FEB 10 AM 9: 25

MICHAEL LOVENDUSKY, MELEVA LOVENDUSKY, & LAWRENCE SKRIVSETH

Petitioners, :

- Versus - : **No. 03-AA-419**

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, : **[BZA Order #16852]**

Respondent, and :

ST. PATRICK'S EPISCOPAL CHURCH AND DAY SCHOOL, :

Intervenor. :

PETITIONERS' RESPONSE TO RESPONDENT BOARD OF ZONING ADJUSTMENT MOTION TO SUPPLEMENT THE RECORD

Respondent District of Columbia Board of Zoning Adjustment (BZA), by Corporation Counsel for the District of Columbia, has moved to supplement the administrative record before the Court, presumably pursuant to District of Columbia Court of Appeals Rule 27(b)(1)(C) (Revised Rules Effective January 2, 2004)(hereafter, Rule). The subject matter of the proposed second supplementary record pertains to Board of Zoning Adjustment Order # 16852-A "correcting" the Order under review in this case. Petitioners consent to the BZA motion and the scope of the administrative record to be produced with the clarification herein. Petitioners' response includes the attached affidavit and exhibits pursuant to Rule 27(a)(4)(A).

BZA
Case No. 16852
Exhibit No. 392

Board of Zoning Adjustment
District of Columbia
CASE NO.16852
EXHIBIT NO.392

Petitioners disagree with the Respondent's characterization of the alterations made in BZA Order 16852-A as "technical corrections" to the Order before the Court. The extension of Petitioners' consent to the proposed supplementation of the record does not include or imply approval of the substance of the altered BZA order or the circumstances by which the BZA approved the altered order.

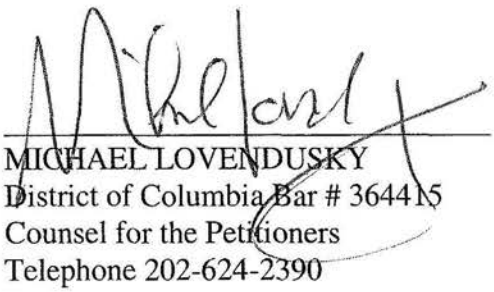
The Respondent in its motion indicates that the scope of the supplementary record will include "any other material in the BZA administrative record pertaining to the corrected decision." Petitioners agree and observe this should include all information sent to the BZA since issuance of the original Order pertaining to attempts by individuals to enforce it dependent upon provisions of the Order omitted from BZA Order 16852-A.[1]

Further, Petitioners observe that the omission of Page 15 from BZA Order 16852-A might represent a genuine clerical error by the BZA as distinct from the alterations otherwise alleged to be clerical error by the BZA and Intervenor private school relating to the expiration time of the Order. Assuming the omission of Page 15 from BZA Order 16852-A was not intended by the BZA to omit or alter in any way the relevant text in the original Order, Petitioners do not object to BZA genuinely correcting BZA Order 16852-A in this regard. Should this entail the publication of a new order, e.g., BZA Order

[1] This will include but not be limited to, *e.g.*, the "Complaint and Request for Immediate, Emergency Revocation of Building Permits and Stop Work Order at 4925 MacArthur Boulevard NW, Washington DC 20007" filed by twelve neighbors to the private school before the District of Columbia Department of Consumer and Regulatory Affairs on 18 November 2003 (DCRA decision pending) and served upon the BZA on that day as well as on or about 26 November 2003, when served as Affidavit Exhibit Two to *Petitioners' Motion to Stay Decision of Agency on Expedited Basis and Supplement the Record* in the instant case. (Petitioners' Motion was denied *per curiam* 15 December 2003.) The alteration of the Order by BZA Order 16852-A omits the provision upon which the "First Complaint and Basis of Immediate Revocation of Building Permits and Citation" is based and, hence, within the parameters of "other material in the BZA administrative record pertaining to the corrected decision" proposed by the BZA in its motion.

16852-B, Petitioners consent to the inclusion of the new order in the supplementary record.

Respectfully submitted 4 February 2004



MICHAEL LOVENDUSKY
District of Columbia Bar # 364415
Counsel for the Petitioners
Telephone 202-624-2390

Certificate of Service

I hereby certify and attest that on 4 February 2004, a copy of the foregoing was hand delivered or mailed first class, postage prepaid, to the following:

Allison C. Prince
Shaw Pittman LLP
2300 N Street NW
Washington DC 20037-1128

The Honorable Kathleen Patterson
City Council, Ward Three
1350 Pennsylvania Ave NW #107
Washington DC 20004

John Finney, Chairperson and Commissioner
Advisory Neighborhood Commission 3D04
P.O. Box 40846
Washington DC 20016

Alma Gates
4911 Ashby Street NW
Washington DC 20007

Lawrence Skrivseth and Cathy Wright
4913 MacArthur Blvd NW
Washington DC 20007

Nancy Feldman
4911 W Street NW
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Mary Connelly, Esq.
Deputy Corporation Counsel
441 Fourth Street NW Sixth Floor
Washington DC 20001

Katherine Van Sickle DeMallie
4923 Ashby Street NW
Washington DC 20007

Jerrily R. Kress, FAIA
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Board of Zoning Adjustment
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Ken Laden and Rachel MacCleery
DDOT
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Katherine Van Sickle DeMallie
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Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street NE Fourth Floor
Washington DC 20002

ATTESTED BY:

MICHAEL LOVENDUSKY
District of Columbia Bar # 364415

AFFIDAVIT

I, Michael Lovendusky, attest to the following:

1. I am the Petitioners' counsel of record for Case No. 03-AA-419 before the District of Columbia Court of Appeals. The case relates to District of Columbia Board of Adjustment Order Number 16852 (Order). This affidavit supports Petitioners' response to a motion to supplement the record filed by District of Columbia Corporation Counsel for the Board of Zoning Adjustment (BZA) relating to alterations made to the Order in BZA Order 16852-A issued on January 21, 2004.

2. Exhibit One is a letter dated January 29, 2004 received by affiant from Alma H. Gates, Chairwoman, ANC 3D, establishing the genesis of the BZA motion to supplement the record also dated January 29, 2004.

3. Exhibit Two is BZA Order 16852-A received by affiant on January 23, 2004. The certificate of service accompanying BZA Order 16852-A indicates eleven individuals received the altered Order. Petitioner Lawrence Skrivseth and ANC 3D Chairwoman Alma Gates confirmed to affiant that the copies of BZA Order 16852-A they received are identical to Exhibit Two.

4. The first page of the Order which is the subject matter of the case at bar was altered in the first paragraph of Page One of BZA Order 16852-A (Exhibit Two)

to indicate that it relates to "Application No. 16852-A". (italics added). A new second paragraph was added that provides as follows:

> ***Note**: The Applicant, by letter dated November 26, 2003, requested that Order No. 16852 be amended to correctly reflect its two (2) year validity period, instead of six (6) months. On January 6, 2004, at its regularly scheduled public meeting, voted [sic] 3-0-2 (Geoffrey H. Griffis, Curtis L. Etherly, Jr. and David A. Zaidain in support of the motion, Anthony J. Hood and Ruthanne G. Miller not hearing the case, not voting) to approve the issuance of this corrected order. Order No. 16852-A, corrects Order No. 16852, by stating that pursuant to 11 DCMR § 3130, the order shall not be valid for more than two years...unless the applicant files with DCRA for the purposes of securing a building permit.*

(Italics added). Also, the title of the Order was altered to read as "*CORRECTED* DECISION AND ORDER". (Italics added). This text is not found in the original Order. *Cf.* First Administrative Record at 2691.

5. Page 15 of BZA 16852-A (Exhibit Two) is missing in its entirety, indicating that the BZA on January 21, 2004 deleted more than two full paragraphs of Page 14 and almost two paragraphs of Page 15 of Order 16852. *Cf.* First Administrative Record at 2704-2705.

6. Page 18 of Exhibit Two in BZA Order 16852-A omits text found in BZA Order 16852 at Page 18 (*see* First Administrative Record at 2708) providing that:

> 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.

7. Page 18 of BZA Order 168542-A (Exhibit Two) includes a new paragraph providing:

> *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 APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.*

(Italics added). This text is not found in the original Order. *Cf.* Record at 2708.

So sworn this 4 February 2004.

Michael Lovendusky
DC Bar Number 364415
4927 MacArthur Boulevard NW
Washington DC 20007
W: 202-624-23990

Notary Public: Sandra L. Hudson

Sandra L. Hudson
Notary Public District of Columbia
My Commission Expires: 8-31-05

Petitioners' Affidavit
Exhibit One

4911 ASHBY STREET, NW
WASHINGTON, DC 20007

January 29, 2004

Mary Connelly, Esq.
Office of Corporation Counsel
441 Fourth Street NW, Sixth Floor
Washington, D.C. 20001

RE: BZA 16852 and BZA 16852-A

Dear Ms. Connelly,

Thank you for speaking with me today about the relationship of BZA 16852-A to BZA 16852. From my perspective as an elected government official, the government is and should be obliged to inform the District of Columbia Court of Appeals that the BZA order under review by the Court has been "corrected" by the BZA.

Beyond my request that you notify the Court of the correction, I am concerned that the BZA failed to follow proper procedure in considering the request of St. Patrick's School. The BZA perceived it to be necessary to mail a copy of BZA 16852-A to all of the interested parties and opponents in the proceedings that resulted in BZA 16852 but it did not give notice to anyone but the school of the hearing it conducted on January 6, 2004. Consequently, neither the Advisory Neighborhood Commission nor any of the neighbors or parties to the matter (except St. Patrick's) was aware of the BZA hearing. This seems basically unfair.

I cannot find any zoning regulation that justifies the BZA "correcting" a contested order without providing notice to all interested parties including the ANC. The school should have notified the ANC and the neighbors that it was going to the BZA for a "correction" and the BZA should have notified the ANC and neighbors a hearing would occur. Without a fair hearing with participation by all interested parties, I have no confidence that the "correction" was genuinely clerical in nature. Indeed, since the magic of the "correction" is to extend an order that had already expired by its plain language, it seems to me that the "correction" was quite substantive in nature.

Sincerely,

Alma H. Gates

Alma H. Gates
ANC 3D-05

Cc: ANC3D Commissioners
Allison Prince
Neighbors United Trust
Michael Lovendusky

Petitioners' Affidavit
Exhibit Two

RECEIVED
JAN 23 2004

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

☆ ☆ ☆

Application No. 16852-A of Washington Psychoanalytic Society/St. Patrick's Protestant Episcopal Church, pursuant to 11 DCMR § 3104.1 for a special exception to allow a private school under section 206 for a maximum of sixty students, grades seven through nine, and a maximum of 12 faculty and staff in the R-1-B District at premises 4925 MacArthur Blvd., N.W. (Square 1393, Lot 823).

Note: The Applicant, by letter dated November 26, 2003, requested that Order No. 16582 be amended to correctly reflect its two (2) year validity period, instead of six (6) months. On January 6, 2004, at its regularly scheduled public meeting, voted 3-0-2 (Geoffrey H. Griffis, Curtis L. Etherly, Jr. and David A. Zaidain in support of the motion, Anthony J. Hood and Ruthanne G. Miller not hearing the case, not voting) to approve the issuance of this corrected order. Order No. 16852-A, corrects Order No. 16852, by stating that pursuant to 11 DCMR § 3130, the order shall not be valid for more than two years... unless the applicant files with DCRA for the purposes of securing a building permit.

HEARING DATES: April 16, 2002; May 21, 2002; July 2, 2002; July 9, 2002; and October 8, 2002

DECISION DATE: December 3, 2002

CORRECTED DECISION AND ORDER

This application was submitted January 22, 2002 by the owners of the property that is the subject of the application. At the time of filing, the subject property was owned by Washington Psychoanalytic Society, which submitted the application on behalf of St. Patrick's Protestant Episcopal Church, then the contract purchaser of the subject property. St. Patrick's Protestant Episcopal Church ("Applicant") became the fee simple owner of the subject property as of March 22, 2002 and was represented in this proceeding by Shaw Pittman LLP.

Following a public hearing, the Board voted 4-0-1 on December 3, 2002 to approve the application subject to conditions.

PRELIMINARY MATTERS

Application. The application requests a special exception under 11 DCMR § 3104.4 to establish a private school use under section 206 in an R-1-B zone at 4925 MacArthur Blvd., N.W. (Square 1393, Lot 823). The zoning relief requested in this application was self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Hearing. By memoranda dated January 29, 2002, the Office of Zoning sent notice of the application to the Office of Planning, the Zoning Administrator, the Department of Public Works, the Department of Health, the Councilmember for Ward 3,

Advisory Neighborhood Commission ("ANC") 3D, and the commissioner for single member district ANC3D05.

The Board scheduled a public hearing on the application for April 16, 2002. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on February 28, 2002, mailed notice of the hearing to the Applicant, ANC 3D, and the owners of all property within 200 feet of the subject property. Subsequent hearing sessions were held on May 21, 2002, July 2, 2002, July 9, 2002, and October 8, 2002. The Applicant's affidavits of posting and maintenance indicate that two zoning posters were placed at the subject property's two street frontages, MacArthur Blvd. and Ashby Street, N.W., beginning on March 29, 2002, in plain view of the public.

Requests for Party Status. ANC 3D was automatically a party in this proceeding. The Board granted party status to (a) Lawrence Skrivseth and Cathy Wright, residents of a dwelling on MacArthur Boulevard adjacent to and immediately south of the subject property; (b) Michael and Meleva Lovendusky, residents of a dwelling on MacArthur Boulevard directly across the street from the subject property; and (c) the Neighbors United Trust, a group of nearby property owners, including some who originally requested party status individually, in opposition to the application. Michael Italiano and Reva Hamilton, residents of the 4900 block of Ashby Street, N.W., requested party status on March 29, 2002, but on April 15, 2002 withdrew their request for party status and their opposition to the application.

Applicant's Case. The Applicant requested a special exception to allow a private school for a maximum of 60 students and 12 faculty and staff in an R-1-B zone at 4925 MacArthur Blvd., N.W. The Applicant presented testimony and evidence from Peter Barrett, Head of School at St. Patrick's Episcopal Day School; Katherine Bradley, Board Chair of St. Patrick's Episcopal Day School; Marty Wells, principal of Wells & Associates, Traffic Consultants, an expert traffic operations engineer; David Konapelsky, an architect with GTM Architects, an expert in architecture, particularly regarding accessibility for the disabled and life-safety systems; and Scott Harvey, an engineer with Polysonics, Inc., Sound Consultants, an expert in sound evaluation and mitigation.

Government Reports. The Office of Planning ("OP") reviewed the application with respect to traffic, parking, noise, number of students, and other potentially objectionable conditions. In reports dated April 9, 2002, April 15, 2002, and November 8, 2002, OP recommended approval of the application subject to several conditions derived from community concerns, the Applicant's proposed operational plans, and recommendations of the District Division of Transportation ("DDOT").

DDOT provided testimony based on its review of the application, meetings and telephone conversations with representatives of the Applicant and ANC 3D, and visits to the Applicant's Whitehaven Parkway campus to observe the morning pick-up routine and traffic conditions. DDOT submitted reports dated April 9, 2002 and May 10, 2002, and provided the testimony of Ken Laden, Administrator for Intermodal Planning, and Rachel MacCleery, Bureau of Traffic Services. DDOT determined that the application would not have adverse traffic or parking impact, provided certain conditions were met by the Applicant.

ANC Report. ANC 3D, at its regularly scheduled meeting held April 3, 2002 with a quorum present, voted 5-0-0 to recommend denial of the requested special exception. The ANC raised concerns with respect to noise, traffic, number of students, and parking, and concluded that the proposed private school use would be inconsistent with the character of the neighborhood and would not be in harmony with the general purpose and intent of the neighborhood's residential zoning. John Finney, Chair of ANC 3D, testified at the public hearing that noise created by middle school students would erode the calm and tranquility of the neighborhood; that the proposed 60-student limit was objectionable, given that in 1962 the Board refused to permit a school on the same site to expand to 75 students; and that the proposed private school use of the subject property would lower the value of surrounding houses.

Parties in Opposition to the Application. The Neighbors United Trust ("NUT") testified through its representatives Nancy Feldman, Alma Gates, and Catherine Van Sickle DeMallie. NUT also submitted testimony prepared by Jawahar Mehra, P.E., an expert in traffic operations. Michael Lovendusky, Lawrence Skrivseth, and Cathy Wright testified in opposition to the application. Mr. Skrivseth also submitted traffic data that he had compiled. The parties in opposition testified generally that the proposed location was not appropriate for private school use because of adverse traffic, noise, and environmental impacts.

Persons in Support of the Application. The Palisades Citizens Association ("PCA"), the neighborhood association covering the area where the subject property is located, has approximately 1,000 members and has been in existence since 1916. At its general membership meeting on April 2, 2002, the PCA passed a resolution supporting approval of the application by a vote of 124 to 41.

The Board received approximately 175 letters in support of the application, primarily from residents of the Palisades neighborhood and from parents of students at the Applicant's elementary school. In addition, 17 persons testified in support of the application at the public hearing. The persons in support stated generally cited a need for additional middle-school opportunities and asserted that the Applicant's proposal would not adversely affect neighboring properties, because the Applicant had carefully addressed any potential objectionable impacts, but would benefit the neighborhood by preserving the existing building, trees, and green space on the subject property with fewer impacts than some uses permitted as a matter of right at that location, such as the development of three single-family houses.

Persons in Opposition to the Application. The Board received approximately 25 letters in opposition to the application. The letters in opposition asserted generally that the proposed private school use would adversely affect the surrounding residential neighborhood because of traffic, parking, intensity of use, noise, loss of privacy, trash, safety, the possibility that the Applicant might seek to expand the building or the intensity of its use of the site in the future, and a diminishing effect on property values. Ann Gibbons, a resident of the 4900 block of W Street, N.W., testified in opposition at the hearing, stating that the subject property provided inadequate land for the proposed use and that a school in some other residential area would be safer for students and faculty.

FINDINGS OF FACT

The Subject Property

1. The subject property is located at 4925 MacArthur Blvd., N.W. (Square 1393, Lot 823), in the Palisades neighborhood of Ward 3. The site is located at the corner of MacArthur Blvd. and Ashby Street, N.W., with approximately 150 feet of street frontage on MacArthur Blvd.

2. The site contains approximately 21,000 square feet of land area (0.48 acres) and is improved with a two-and-a-half-story building in the northern half of the lot. The building, built in 1905 as a single-family residence, contains approximately 4,325 square feet of usable space. The remainder of the site is occupied by a parking lot and a large lawn.

3. The Applicant plans a complete rehabilitation of the existing building, including removal of the fire escapes on its eastern and southern sides, renovation of the building interior and conversion to seminar-style classrooms, construction of a second-story addition to an existing porch, and upgrades to the building's handicapped accessibility and life-safety systems. The proposed modifications would preserve the building's residential appearance, with the only change in the footprint of the building made to accommodate the life-safety and handicapped accessibility upgrades, including the provision of code-compliant handicapped restrooms.

4. The Applicant proposes to preserve the existing open green space on the subject property, including existing trees, and to maintain the lawn and plantings as a park-like setting.

5. The subject property contains a parking lot entered from Ashby Street. The Applicant proposes to reconfigure and reconstruct the lot, with a slight increase in the paved area, to maximize the number of spaces in the available area, to provide handicapped parking, and to provide a buffer between the parking lot and the adjacent neighbors.

6. The Applicant has coordinated with the National Park Service in designing a stormwater management system to be installed beneath the parking lot. The stormwater management system is designed to protect the integrity of the existing retaining wall and is expected to significantly reduce or eliminate stormwater run-off from the parking lot onto neighboring properties.

7. The subject property is located in a predominantly residential neighborhood of single-family detached houses. The average lot size in the immediate vicinity of the site is between 7,000 to 8,000 square feet.

8. The subject property is zoned R-1-B. The purposes of the R-1 district include to stabilize and protect quiet residential areas developed with one-family detached dwellings, and to promote a suitable environment for family life. 11 DCMR §§ 200.1-200.2. The R-1-B zone provides for districts of higher density than the R-1-A zone. 11 DCMR § 200.3.

9. The building on the subject property, after modifications planned by the Applicant, would continue to comply with height, lot occupancy, and other area requirements of the R-1-B

district.

10. Under the Applicant's proposal, total lot occupancy would be 14.4 percent, where a maximum lot occupancy of 40 percent is permitted. *See* 11 DCMR § 403.2.

11. The minimum lot size in the R-1-B district is 5,000 square feet. 11 DCMR § 401.3. The subject property could potentially be redeveloped with several single-family residences.

12. The building on the subject property has side and rear yards in excess of those required under the Zoning Regulations. The building is 95 feet, 9 inches from the southern property line, where the required minimum is eight feet. *See* 11 DCMR § 405.9. The rear yard is 37 feet deep, where the required minimum is 25 feet. *See* 11 DCMR § 404.1.

13. The side yards of the houses adjacent to the subject property to the south (abutting the side yard of the subject property) and to the east (abutting the rear yard of the subject property) are less than the eight-foot setbacks required under the Zoning Regulations.

14. The subject property has a six-foot board-on-board fence along the property line in the rear yard, between the parking lot and the abutting property to the east.

15. The subject property is higher than the abutting property to the south, with the difference in elevation becoming more pronounced with increasing distance from MacArthur Blvd. toward the back of the lot. A retaining wall separates the subject property from the abutting lot.

16. The abutting property to the south of the subject property has a nonconforming side yard such that the residence on the abutting lot is three feet from the property line. The Applicant pledged to install a wooden fence several feet inside the Applicant's property line, if requested by the owner of the abutting lot, to provide a buffer between the proposed school and the residence on the abutting lot. Due to the large side yard on the subject property, the residence is almost 100 feet from the existing building.

17. The trash dumpster presently at the subject property would be removed and replaced with "supercans" kept in a wood-fenced enclosure to be constructed on the west side of the parking lot, away from the property line and close to the building. Trash pick-up would be handled on a daily basis by the Applicant's cleaning crew in a passenger-type vehicle or van.

18. The Applicant proposes to construct steps in the retaining wall at the front of the building on the MacArthur Blvd. side of the subject property. Students would enter and leave the building by way of these front steps.

The Proposed Private School Use

19. The Applicant began its school operation with a nursery school founded in 1956 at the old St. Patrick's church at Foxhall and Reservoir Roads, N.W. The addition of elementary grades began in 1967, and in 1977, the school moved to its present location at

4700 Whitehaven Parkway, where it currently operates a co-educational school with approximately 440 students, preschool through sixth grade. The Applicant also operates a middle school for 16 seventh graders in property leased through 2003 at 4880A MacArthur Blvd., N.W., in the C-2-A zone district.

20. The Applicant initially proposed to operate a middle school for a maximum of 60 students, in grades 7 through 9, on the subject property. The proposal was subsequently revised to provide for an initial maximum enrollment of 40 students, automatically increased to a maximum enrollment of 60 students after the first year, provided the Applicant was in compliance with the conditions of approval of its special exception request.

21. The proposed middle school program would operate in seminar-style classes of no more than 12 students. The Applicant stated that the subject property is well-suited for use as a middle school due to its light-filled interior spaces, the intimate size of the classrooms, the green space surrounding the building, and the proximity to the Whitehaven campus.

22. The subject property was previously used, beginning in 1961, as a private school for 25 students, kindergarten through fourth grade, who were children of the diplomatic staff of the German embassy. In 1964 the subject property began use by the Washington Psychoanalytic Society as a post-graduate school for psychiatrists studying psychoanalysis.

23. The maximum number of faculty and staff under the Applicant's proposal would be eight full-time and four part-time.

24. The Applicant proposed several limitations on the use of the subject property intended to minimize the potential for adverse impacts associated with the proposed private school. These measures would limit the hours of school operation, including faculty and staff activities before and after the school day; frequency of evening events at the school; night, weekend, and summer use of the subject property; use of the green space for organized sports or recreational activities; and the scheduling of deliveries to the school. The Applicant also proposed to establish a community liaison program to address community concerns and to monitor enforcement of conditions of approval of the requested special exception.

25. The Office of Planning recommended a maximum enrollment of 40 students, with a 10-year term of approval of the requested special exception.

26. ANC 3D objected to the Applicant's proposed enrollment cap of 60 students as "excessive and likely to create conditions objectionable to nearby neighbors." The ANC's conclusion was based on a 1962 decision by the Board that denied a requested special exception to expand the elementary school for children of German Embassy employees at the subject property from 25 to 75 students. ANC 3D also expressed concern that the Applicant would eventually seek to expand the size of its middle school student body at the subject property.

27. The parties in opposition testified that the subject property, at less than half an acre, is inherently too small for a junior high school function, and that its size rendered the site incapable of adequately protecting the surrounding purely residential neighborhood from its activities. The parties in opposition also testified that traffic, parking and congestion, noise, privacy intrusions, overuse of off-site athletic and other local public resources, and the generally intensive level of adolescent activity that would be generated by the school use would irreparably disrupt the tranquility of the quiet residential area.

Traffic

28. The subject property fronts onto MacArthur Blvd. at its intersection with Ashby Street. At that location, MacArthur Blvd. is a four-lane, divided road with curbed parking on both sides. The nearest traffic signals are located at the intersections of MacArthur Blvd. with V Street to the south and with Dana Place to the north. The posted speed limit is 25 miles per hour.

29. Ashby Street is a 25-foot-wide local street bordered on both sides by single-family detached houses. Ashby Street is controlled by a stop sign at MacArthur Blvd.

30. Traffic at the intersection of MacArthur Blvd. and Ashby Street operates at an acceptable level of service "A" during both the school morning and afternoon peak hours.

31. A Metrobus stop is located on MacArthur Blvd. in front of the subject property.

32. The Applicant proposed a transportation management plan designed to minimize the traffic impacts created by a private school with an enrollment of 60 students on the subject property. Principal elements of the plan included that students who did not walk to school would arrive and depart using a shuttle bus system between the subject property and the Whitehaven campus, or by parent pick-up and drop-off in carpools with at least three students.

33. Under the shuttle bus system, students would arrive from home in the morning at the Whitehaven campus and ride in shuttle buses to the subject property; in the afternoon the shuttle buses would return the students to the Whitehaven campus to be picked up. The lobby of the gymnasium at the Whitehaven campus would serve as a waiting area in inclement weather. The Applicant projected that two or three shuttle trips would be necessary to transport 60 students.

34. DDOT supported the Applicant's proposal to use the Whitehaven campus as the pickup and dropoff location for shuttle buses to the subject property. According to DDOT, changes proposed by the Applicant at the Whitehaven campus, especially reversing the direction of traffic on the Whitehaven driveway, would both improve current conditions at the Whitehaven campus and absorb the additional traffic generated by the proposed private school use on the subject property.

35. The Applicant's traffic expert testified that the Applicant's proposed drop-off and pick-

up arrangement for students would not significantly affect traffic on Whitehaven Parkway or on MacArthur Blvd., and that any delays resulting from traffic stopping for the school's shuttle buses on MacArthur Blvd. would be similar to those delays currently experienced on MacArthur Blvd. at the existing signalized intersections.

36. DDOT testified that the shuttle buses, in both the morning and afternoon, would have only a minor impact on MacArthur Blvd. traffic. DDOT testified that the relatively short periods that a bus would be stopped on MacArthur Blvd. to drop off or pick up children would likely be no longer than an average stop light cycle.

37. The Applicant proposed a round-trip route for the shuttle bus between the Whitehaven campus and the subject property utilizing Whitehaven Parkway, MacArthur Blvd., Arizona Avenue, Loughboro Road, and Foxhall Road back to Whitehaven Parkway. DDOT supported the proposed route because it would (a) utilize only right-hand turns, which are safer than left-hand turns in buses, (b) utilize larger streets, keeping the buses off smaller neighborhood streets, and (c) avoid the need for a dangerous U-turn on MacArthur Blvd.

38. ANC 3D contended that the shuttle bus system would add to congestion at the Whitehaven campus and was not likely to be endurable or enforceable, so that eventually the proposed private school would increase traffic on Ashby Street and other residential streets such as 49th Street and W Street. ANC 3D also objected that the shuttle buses would cause traffic on MacArthur Blvd. to stop for a considerable period while the buses were stopped to unload or pick up students.

39. A carpool program has been implemented by the Applicant at its Whitehaven campus, under the monitoring of DDOT. According to the Applicant, the person-per-vehicle occupancy average achieved by the carpool program at the Whitehaven campus – approximately 1.8 for the morning drop-off and 1.7 for the evening pick-up – was sufficient to offset any additional traffic resulting from the pick-up and drop-off of middle school students.

40. The Applicant's enrollment contract includes a clause that requires parents of students to comply with all traffic and parking guidelines both at the Whitehaven campus and the subject property.

41. DDOT concluded that full implementation of the Applicant's traffic management plan would mitigate nearly all of the negative traffic impacts that the proposed private school use might otherwise generate. DDOT noted the importance of full implementation of the traffic management plan, and that "some of the most crucial conditions are behavioral ones that will be difficult to monitor and enforce." To help ensure long-term compliance with the conditions, DDOT recommended establishment of a community liaison group that could "head off potential problems before they become problems." DDOT also submitted a "suggested compliance reporting format" for use by the Applicant in monitoring compliance with the proposed conditions of approval and reporting the information to DDOT or other District agency.

42. OP supported the recommendations made by DDOT with respect to traffic impacts.

43. NUT's traffic expert testified that the Applicant's proposed shuttle bus system would be difficult to implement, because the students' parents and guardians "will find it easier and more convenient" to drop off the students at the subject property rather than drive to the Whitehaven campus. The traffic expert also concluded that it would be difficult to monitor and enforce the policy against student drop-off at the subject property every day.

Parking

44. The Applicant testified that parking associated with the proposed private school use would be wholly contained in the parking lot on the subject property, which will provide 15-17 parking spaces after its reconfiguration. Use of the parking lot would be limited almost entirely to the eight full-time and four part-time faculty and staff, with students occasionally picked up or dropped off for a doctor's or other appointment. Under the Applicant's proposal, the parking lot would be emptied before 6:00 p.m. on weekdays and unused on weekends.

45. DDOT and OP both concluded that the proposed private school's employees and occasional visitors would be adequately served by 15 spaces at the subject property.

46. ANC 3D was "skeptical" of the Applicant's claim that 15 parking spaces would be ample for faculty and visitors. The ANC stated that when space was taken to provide landscaping buffers for adjoining houses, play area, and turn-around room for delivery and trash trucks, the parking lot would likely be inadequate to handle visitors as well as staff. ANC 3D concluded that some staff and visitors would park on Ashby Street, thereby depriving residents of parking spaces by their homes.

Noise

47. The Applicant's proposal includes several measures intended to minimize noise impacts of the proposed school. These measures include that: the school would not use bells or loudspeakers; students would enter the school using the planned new steps constructed on the MacArthur Blvd. side of the site and immediately enter the school building, remaining outside only for a limited time in preparation for the shuttle bus or carpool at the end of the school day; faculty and staff would park in the parking lot and enter the rear entrance of the building; students would have limited outside play time, in small groups, during the school day; hours of operation of the school would be limited; the building would not be used after 6:00 p.m. on weekdays or at all on weekends or during the summer.

48. The subject property and the immediately surrounding area are currently subject to a certain level of noise disturbance from car, bus, and truck traffic on MacArthur Blvd. as well as from airplanes heading to or departing from National Airport.

49. The Applicant's sound expert testified that noise created by middle-school students on the subject property would not increase the noise presently generated in the vicinity by

traffic on MacArthur Blvd. and by airplanes regularly flying overhead. Based on an outdoor sound test at the subject property involving the Applicant's current seventh-graders, the sound expert concluded that only the residents of properties immediately adjacent to the subject property would be able to hear the children from inside their houses, and only for the limited time that the children would be outside. The sound expert testified that the noise levels from the proposed school would be compatible with the surrounding residential neighborhood and were not likely to cause objectionable impacts.

50. OP supported the Applicant's proposals to reduce potential noise impacts of the proposed private school use. OP concluded that its "only area of concern regarding noise" – that is, the impact on the neighbor to the south of the subject site – could "be solved by some type of buffer that will not block light and air to that property."

51. In its report, ANC 3D stated that "[i]t is likely that in playtime or recess, a cacophony of noises will arise that will be audible and disturbing to nearby neighbors, thus disturbing the tranquility of their neighborhood. . . ." The ANC was also concerned that "noise could become a year-round problem for the nearby neighbors," given the potential use of the subject property for summer school.

Harmony with Zoning Regulations and Map

52. OP testified that the proposed private school use fulfilled the intent of the Zoning Regulations and Map, which allow nonresidential uses compatible with single-family residential areas to create a suitable environment for family life. OP's conclusion was based on factors including that the subject property has been used for educational purposes for more than 40 years and would "continue in that vein," and that the existing building would retain its residential character and façade, with a small, compatible addition to make the building handicapped-accessible.

53. The Generalized Land Use Map identifies the subject property as being in the "low density residential" land use category, where single-family attached and detached houses are the predominant use.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. *See* 11 DCMR § 3104.1. The Applicant seeks a special exception pursuant to 11 DCMR § 3104.1 to allow a private school, under the conditions specified in section 206, for a maximum of 60 students, grades 7 through 9, and a maximum of 12 faculty and staff in the R-1-B district at 4925 MacArthur Blvd., N.W. (Square 1393, Lot 823).

In accordance with section 206, a private school must be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or

otherwise objectionable conditions. 11 DCMR § 206.2. The Applicant must also demonstrate that the proposed private school use will be in harmony with the general purpose and intent of the Zoning Regulations and Map. 11 DCMR § 3104.1.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the issues and concerns of ANC 3D, the Board concludes that the proposed private school, as conditioned by the Board, can be located at the subject property so that it is not likely to become objectionable to adjoining and nearby property. As discussed below, the Board has imposed numerous conditions in this order in response to the Applicant's proposal, recommendations of OP and DDOT, and concerns raised by the ANC and the parties in opposition.

Noise. The Applicant proposed several measures intended to minimize potential adverse noise impacts of the proposed private school use on the subject property. The Office of Planning concluded that the proposed private school use would not generate objectionable noise impacts in light of the steps taken by the Applicant to minimize noise at the subject property. The Board concurs that the Applicant's efforts to limit objectionable noise should be implemented to avoid possible adverse impacts on neighboring property. In addition, the Board concludes that requiring the Applicant to provide adult supervision during any outdoor activity for students at the subject property – including, for example, during the morning dropoff and afternoon pickup periods and during outdoor break times – will also reduce the potential for adverse noise impacts associated with the proposed private school use. Accordingly, the Board adopts the requirements set forth in Conditions No. 1-6.

The Board is not persuaded by ANC 3D or the parties in opposition that the proposed private school use would generate objectionable noise impacts even after implementation of the required measures to limit noise. The school is for students in grades 7 through 9, who will spend the majority of their time at the subject property inside in classrooms, rather than outside playing. The Board is not persuaded that noise made by middle-school students, while sometimes audible to nearby residents, should be considered inherently objectionable. Nor is the Board persuaded that location of a private school at the subject property would destroy the "tranquility" of the surrounding neighborhood, given the current prevalence of car, truck, and bus traffic on MacArthur Blvd. as well as the frequency of substantial airplane noise at the subject property. The Board credits the testimony of the Applicant's sound expert, who concluded that the noise created by the students would not exceed the ambient noise in the vicinity of the subject property generated by traffic on MacArthur Blvd. and by airplanes approaching or leaving National Airport.

Traffic. The Board credits the testimony of DDOT in concluding that the proposed private school use is not likely to become objectionable to adjoining and nearby property because of traffic, provided that the Applicant fully implements and adheres to the requirements adopted in this order. The subject property is located on MacArthur Blvd., a four-lane commuter route served by Metrobus. The private school use, as conditioned

in this order, is not likely to create objectionable impacts on Ashby Street or other local streets in the vicinity. Students will arrive via shuttle bus or public transportation or on foot and enter the school through a new pedestrian entrance to the subject property to be constructed on MacArthur Blvd., while the dozen employees and occasional visitors will use the parking lot entered from Ashby Street.

The Board concludes that the shuttle bus system is an appropriate means to deliver students to the proposed private school with minimal traffic impacts for the areas surrounding the subject property and the Whitehaven campus. Recent improvements to the traffic patterns at the Whitehaven campus will accommodate the additional traffic associated with the private school at the subject property. The Board credits the testimony of the Applicant's traffic expert and DDOT in concluding that the number of shuttle bus trips necessary to ferry the students between campuses will not unduly disrupt traffic on MacArthur Blvd. during the brief periods the buses are stopped to drop off or pick up students. Therefore the Board adopts shuttle bus requirements set forth in Condition No. 7.

The Applicant has implemented a carpool program at its Whitehaven campus, and proposes to allow carpools of students to be dropped off and picked up at the subject property. The Board encourages the Applicant to continue its efforts to improve the person-per-vehicle occupancy average achieved under the carpool program. However, to further mitigate traffic impacts generated by a private school at the subject property, the Board concludes that the expanded carpool program serving the middle school students should also be directed to the Whitehaven campus, so as to maximize use of the shuttle bus system and minimize the number of vehicles involved in student drop-offs and pick-ups at the subject property. This requirement is adopted in Condition No. 8.

Parking. The proposed private school must provide ample parking space, but not less than that required in chapter 21 of the Zoning Regulations, to accommodate the students, teachers, and visitors likely to come to the site by automobile. 11 DCMR § 206.3. Pursuant to chapter 21, the proposed private school use, with 12 employees, must provide eight parking spaces. 11 DCMR §§ 2101.1.

The Applicant plans to reconfigure the parking lot on the subject property to provide at least 15 spaces, exceeding the minimum required by chapter 21 of the Zoning Regulations. The Board finds persuasive the Applicant's assertion that parking associated with the proposed private school use will be contained in the parking lot on the subject property during the normal school day, given the relatively few employees and the age of the students. The Board also credits the Applicant's testimony that 15 parking spaces can be provided on the reconfigured lot without encroaching significantly on existing green space or requiring the removal of any existing trees on the property.

Both DDOT and OP concluded that employees of the proposed private school and occasional visitors would be adequately served by 15 spaces at the subject property, while ANC 3D was "skeptical" that 15 parking spaces would provide the required ample parking space. The Board is persuaded by site-plan drawings submitted into evidence by the Applicant that the planned reconfiguration of the existing lot will provide at least 15 spaces while also providing adequate space on the subject property for landscaping buffers, play area, and turn-around room for delivery and trash trucks.

To minimize potential adverse impacts associated with the private school use of the subject property, the Applicant proposed, among other things, to limit the frequency of special events conducted during evening hours during the school year. The Board concurs that the number of special events – whether held during or after the school day – should be limited. The Board concludes further that the Applicant should be required to arrange adequate off-street parking at an appropriate location separate from the subject property to minimize the likelihood that parents or other persons attending the special event will park on residential streets in the vicinity of the subject property. For example, the Applicant might accommodate vehicles at its Whitehaven campus and arrange shuttle buses to and from the subject property.

In light of the number of employees, limits on use of the subject property, and requirements for off-site parking for special events, the Board is not persuaded by the ANC's assertion that the reconfigured parking lot would be inadequate and that school employees and visitors will park on Ashby Street. The Board concludes that a minimum of 15 parking spaces constitutes "ample parking space" for the Applicant's private school use in accordance with the requirements of subsection 206.3, subject to conditions relating to the provision of off-street parking for limited daytime and evening special events associated with the school. These requirements are established in Conditions No. 9-15.

Number of students. The Applicant proposed a maximum enrollment of 60 students at the subject property, or an initial maximum of 40 students with an automatic increase to a maximum of 60 students after the first year provided the Applicant remained in compliance with conditions of approval of its special exception request. The Office of Planning recommended a maximum of 40.

The Board does not agree with the contention of the parties in opposition that the subject property is "inherently too small" for private school use, and adopts OP's recommendation of 40 students as a reasonable enrollment cap that will avoid potential adverse impacts on adjoining and nearby property. The Board declines to adopt the Applicant's proposal for an "automatic increase" in the enrollment cap to 60 after the first year of operation, because the Board cannot find, based on the testimony and evidence in the record in this proceeding, that a maximum enrollment of 60 students is not likely to

become objectionable to adjoining and nearby property because of noise, traffic, or otherwise objectionable conditions that might arise with the higher enrollment. Accordingly, the Board adopts Condition No. 16.

The ANC's objection to an enrollment cap of 60 students was based in part on a Board decision reached 40 years ago not to allow expansion of an elementary school on the subject property to 75 students. The Board is not persuaded that the 1962 decision is apposite to the instant application however, given the likelihood of substantially changed conditions and in light of the differences between two proposed private school uses, including different plans for alteration of the existing building and the fact that the instant application involves students in grades 7 through 9 rather than as many as 75 young children in nursery and the lower elementary school grades.

The ANC also expressed concern about the likelihood that the Applicant would eventually seek to expand the size of its middle school student body at the subject property. The Board notes, however, that the Applicant is not permitted to exceed the cap established in this order, and that any proposal to increase enrollment at the subject property in the future would require approval by the Board as a special exception consistent with the requirements of section 206.

Otherwise objectionable conditions. The Board is not persuaded by the parties in opposition that the proposed private school use would create any otherwise objectionable conditions, including potential adverse impacts relating to stormwater runoff, privacy, diminished property values, or obligations for enforcing conditions of approval of the proposed private school. The Applicant, in coordination with the National Park Service, has designed a stormwater management system to be installed beneath the reconfigured parking lot to reduce or eliminate stormwater run-off from the subject property onto neighboring properties.

With regard to privacy, the Board notes that the Applicant's proposal will preserve the existing green space on the subject property, including several mature trees and side and rear yards that greatly exceed the minimum yards required under the Zoning Regulations in a location where both abutting properties are nonconforming lots with substandard side yards. The subject property has a fence along the eastern property line at the rear of the lot, which provides a buffer between the parking lot and the residence on the abutting property. To minimize potential intrusions on privacy, the Board adopts the Applicant's pledge to install a fence on the subject property if requested by the owner of the abutting property to the south (4913 MacArthur Blvd.). This requirement is set forth in Condition No. 17.

The Board heard testimony from the Applicant, ANC 3D, and the parties in opposition about the purported effect – positive or negative – that the proposed private school use on the subject property would have on the value of surrounding properties. However, no party offered compelling evidence demonstrating the proposed school's impact on property values. The Board is unable to make any finding or conclusion, as asserted by

appearance of the existing building while enhancing its safety and accessibility features. This requirement is adopted in Condition No. 19.

For the reasons stated above, the Board concludes that the Applicant has met the burden, it is hereby **ORDERED** that the application be **GRANTED**, subject to the following **CONDITIONS**:

1. No organized sports shall be conducted on the subject property. All outdoor activity involving students shall be conducted on-site and shall be recreational in nature. The Applicant shall provide adult supervision for all outdoor activity involving students at the subject property.

2. The Applicant shall not employ loudspeakers, amplified music, or bells at the subject property.

3. The Applicant shall schedule all deliveries to the subject property to occur between 9:30 a.m. and 4:00 p.m., Monday through Friday.

4. The school building shall be open for occupancy by students from 7:30 a.m. until 4:00 p.m., Monday through Friday.

5. The subject property shall not be occupied by students for a minimum of two months during the summer season.

6. The Applicant shall not use large commercial dumpsters on the subject property.

7. The Applicant shall provide a shuttle bus system to minimize the number of vehicles coming to the subject property to drop off or pick up students.
   (a) Students who do not walk to school or arrive at the subject property by public transportation will be required to arrive at the gymnasium at the Applicant's Whitehaven campus between 7:30 a.m. and 7:55 a.m. on school days for transportation to the subject property by shuttle bus. In the afternoon, the students will be required to return to the Whitehaven campus via shuttle bus for pick-up.

   (b) The shuttle buses shall employ a round-trip route between the Whitehaven campus and the subject property utilizing Whitehaven Parkway, MacArthur Blvd., Arizona Avenue, Loughboro Road, and Foxhall Road back to Whitehaven Parkway.

   (c) The shuttle buses shall stop to on- and off-load students on MacArthur Blvd. in front of the school building. The Applicant shall ensure that the shuttle buses do not idle at the subject property but are released from the Whitehaven campus as necessary to make scheduled morning drop-offs and afternoon pick-ups.

   (d) The Applicant shall monitor compliance with the shuttle bus system daily and

shall make such compliance a condition of student enrollment. The Applicant shall not permit students to be dropped off or picked up at the subject property at arrival and dismissal times except in prearranged special circumstances, such as when a child will arrive late due to a doctor's appointment. Student drop-offs in special circumstances shall be at the Ashby parking lot.

8. The Applicant shall establish a carpool program to and from the Whitehaven campus serving students at the subject property.
   (a) The Applicant shall require carpools to drop off and pick up students at the Whitehaven campus in coordination with the shuttle bus system for transportation to and from the subject property.

   (b) Before seeking a certificate of occupancy for the subject property, the Applicant shall submit the carpool program for review and approval by the District Department of Transportation (DDOT). The Applicant shall submit a progress report evaluating the carpool program to DDOT once per year; copies of the annual progress report and DDOT's response shall be given to the community liaison committee established by the Applicant pursuant to this order.

9. The total number of faculty and staff at the subject property shall not exceed 8 full-time and 4 part-time.

10. The Applicant shall provide at least 15 parking spaces on the subject property, as shown on the Applicant's site plan SP1 (Exhibit No. 340).

11. The Applicant shall use the subject property for special evening events after 4:00 p.m. no more than two times during the school year. Evening events shall finish no later than 10:00 p.m.

12. The Applicant shall hold no more than two daytime special events, when the school is open to parents and other non-students, at the subject property during the school year. Daytime special events shall be scheduled to occur between 10:00 a.m. and 4:00 p.m.

13. The Applicant shall arrange adequate off-street parking for daytime and evening special events at a location off-site so that persons attending the events are not likely to park on the streets in the vicinity of the subject property.

14. The Applicant shall not permit use of the subject property at any time by any persons or groups for purposes not related to the school use.

15. The Applicant shall arrange any lighting used to illuminate the parking lot on the subject property so that all direct rays of the lighting are confined to the surface of the parking lot.

16. The Applicant shall limit enrollment at the subject property to a maximum of 40 students in grades 7 through 9.

17. The Applicant shall install fencing, as shown on the site plan (Exhibit No. 340) along the southern property line, at the Applicant's expense, if requested by the abutting property owner.

18. The Applicant shall establish and maintain a community liaison committee to address community concerns related to the private school use of the subject property. It is recommended that the community liaison committee include representatives of ANC 3D, the Palisades Citizens Association, owners of property abutting the subject property, and other interested persons. The Applicant shall conduct meetings of the committee at least quarterly, giving notice of the meetings to committee members and to the owners of all property within 200 feet of the subject property. Detailed minutes of all meetings shall be taken, maintained, and circulated among the members.

19. Expansion of the building on the subject property shall be limited to the area necessary for access as shown on the Applicant's site plan (Exhibit No. 340).

20. The special exception shall be valid except that this Order shall terminate and require modification upon a finding by the Board that the Applicant has either admitted violating, paid a fine for violating, or has been found by the Department of Consumer and Regulatory Affairs, after hearing, to have violated the same condition on three or more occasions within five years.

VOTE: **4-0-1** (Geoffrey H. Griffis, Anne M. Renshaw, Carol J. Mitten, and David A. Zaidain to approve with conditions; Curtis L. Etherly, Jr. not present, not voting)

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

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

FINAL DATE OF ORDER: March 25, 2003

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 TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND

REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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.

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.

MN/RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16852-A

As Director of the Office of Zoning, I hereby certify and attest that on JAN 2 1 2004 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 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:

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