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By Hand Delivery

Mr. Geoffrey Griffis
Chairperson
District of Columbia Board of Zoning Adjustment
441 4th Street, NW, Room 210
Washington, DC 20001

Re: Motion to Waive Rules to Accept Motion for Modification,
BZA Application No. 16424

Dear Mr. Griffis:

On behalf of the Applicant in the above-captioned matter, the Rock Creek International School,[1] we hereby request the Board of Zoning Adjustment ("BZA") to waive the provision of Section 3129.3 of the Zoning Regulations. Section 3129.3 requires that a request for modification approved by the BZA be filed within six months after the final date of the written BZA order.[2] Such a waiver is authorized by Section 3101.6 which provides that for "good cause" the Board may waive any of the provisions of this Chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law. Such waiver will allow the Applicant to file, and the BZA to consider, the Applicant's request for a very minor modification to an approved project.

Because of the urgent nature of this request, we request that the Board consider this motion at its February 2002 public meeting.

Reasons for Granting Waiver

Order No. 16424 approved special exceptions under Sections 205 and 206 for the Applicant to establish and operate a private school in an R-1-B district at premises 4470 Q Street, N.W. (Square 1363, Lot 980) (the "Subject Property"). The Property formerly housed a D.C. public school, the Hardy School. The application was approved by a bench decision on February 3, 1999, with a summary order, Order 16424. The Order

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1 The Rock Creek International School was the contract purchaser from the D.C. Public Schools (the Hardy School) in the above-referenced BZA application.

2 As noted herein, the Applicant actually is seeking to modify a condition of the order and not the plans. In the subject case, there were no approved plans to modify because the Applicant was occupying an existing school building. We do not believe that this affects the intent of the Zoning Regulations. If necessary, we request a waiver for "good cause" under Section 3101.6 to modify a condition of the Order, rather than the approved plans.

BZA
Case No. 16855
Exhibit No. 9

Board of Zoning Adjustment
District of Columbia
CASE NO. 16855
EXHIBIT NO. 9

approved the Applicant's use of the Subject Property as a private school for 200 pre-kindergarten to fifth grade students and a staff of 35-40 persons.

Under the Board's rules, a motion for modification must be filed within six months or by August 3, 1999. Because the nature of the requested change is operational or programmatic, rather than a change in plans, there was no way of knowing within six months that a modification would be required. With building plans, the need for modification is usually evident as soon as an applicant starts preparing building plans or begins construction. A programmatic issue related to the school's operation is much harder to "crystal ball" within a six-month period.

Without detailing the substantive merits of the request, the specific modification relates to Condition No. 2 of the Order. That Order limits the school to the fifth grade, which is what the Applicant requested at the time. The Applicant requested pre-kindergarten through fifth grade since during this time period in 1999 the Applicant was also seeking to find other appropriate properties where it could establish its grades six through eight as a middle school. Therefore, the grade levels proposed were acceptable. Despite their substantial efforts, however, the Applicant has been unable to locate a suitable middle school property. As the Board is most likely aware, a number of private schools in the District of Columbia are seeking to expand and suitable properties are in high demand and hard to find.

Although eventually the Applicant still intends to add a middle school, because of urgent timing concerns, a change is sought to modify Condition No. 2 to allow the school to offer the sixth grade for the next school year. Currently the D.C. public school elementary school program runs from kindergarten through 6th grade, as do many other private schools. At the same time, research has shown that there are more openings in other public and private schools in seventh grade rather than in the sixth grade. A simple modification to the Order would permit the kids to stay if they desire at the Rock Creek International School through the sixth grade and then transfer to the seventh grade at another location, while Rock Creek International continues to search for a site for a middle school.

Because of the difficulties in finding a new location for a middle school, this issue with Condition No. 2 of the Order was not anticipated in 1999, nor was it anticipated in the first couple of years subsequent to that.

In terms of additional support for the waiver, we note that changes to Board conditions may be requested when the Order expires, e.g., a change in enrollment or a change in grade levels offered (as is the subject case). Here, however, the Order does not

expire until September 30, 2009, or 7.5 years from now. The applicant cannot afford to wait that long for a modification. For all of the above reasons, the waiver of the time period is appropriate.

Finally, as the BZA will discover if this waiver is granted, the modification requested is minor. The Applicant is still seeking to establish a middle school (sixth through eighth grades) at another site. With that established, there would be a seamless transition from the Rock Creek International School from elementary school to the middle school. Because that could not be accomplished, there is a "gap" which the Rock Creek International School has been unable to fill requiring existing sixth grade students to apply to other schools during this current year. The Rock Creek International School was unable to anticipate this in 1999 or within six months after the Order and is only coming upon it now as students move up to the sixth grade in their school. It is clearly in the interest of all concerned to ensure that students of the Rock Creek International School have a school to attend for sixth grade.

For the foregoing reasons, Rock Creek International School respectfully requests that the BZA grant this request to waive its rules and address the attached motion for modification of the BZA's approved Order at its February 2002 public meeting.

Respectfully submitted,

Phil T. Feola

John T. Epting

cc: Danny Hollinger

ShawPittman LLP

Certificate of Service

I hereby certify that a copy of the foregoing letter and the Motion to Waive Rules to Accept Motion for Modification of Approved Plans was hand delivered this 17th day of January, 2002 to the following:

Advisory Neighborhood Commission (ANC) 2E
3265 S Street, N.W.
Washington, D.C. 20007

Pete Ross
Foxhall Community Citizens Association
1712 Surrey Lane
Washington, D.C. 20007

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