GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16855 of Rock Creek International School, pursuant to 11 DCMR § 3104.1, for a special exception to modify Condition No. 2 of BZA Order No. 16424, to include a 6th grade for a private school (section 206) and child development center (section 205) in the R-1-B District at premises 4470 Q Street, N.W. (Square 1363, Lot 980).

Hearing Date: March 26, 2002
Decision Date: April 2, 2002

DECISION AND ORDER

SELF CERTIFICATION

The Applicant filed a self-certification form for relief pursuant to Sections 205 and 206.

PRELIMINARY MATTERS

1. Friends of Hardy, Inc. ("FOH") filed a request dated March 11, 2002 (received on March 12, 2002) for party status in opposition (Exhibit No. 36) and was granted party status.

2. Linda Brackett, Chair of Hardy Garden Club, filed a request dated March 11, 2002 (received on March 12, 2002) for party status in opposition (Exhibit No. 33). Because her issues were similar to those of FOH, Mrs. Brackett's request was denied. She appeared as a person in opposition.

3. John Dixon filed on April 1, 2002 a post-hearing submission (Exhibit No. 57), which the Board voted to accept in the record.

APPLICATION

1. In BZA Application No. 16424, the Rock Creek International School received BZA approval to establish and operate a private school for 200 students and a staff of 35-40 people in an existing structure (the former Hardy School) in an R-1-B District, at premises 1550 Foxhall Road, NW (Square 1363, Lot 980) (the "Subject Property"). The Board granted this application on February 3, 1999 by a bench decision with issuance of a summary order. The Order contains seven conditions. The relevant condition for this special exception is Condition No. 2. The Subject Application requests to modify Condition No. 2 of BZA Application No. 16424. That condition currently reads, "The

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EXHIBIT NO.60

number of students shall not exceed 200 pre-kindergarten through fifth grade." The requested modification is to change fifth grade to sixth grade. No other changes are requested.

There are no other changes to the Order. It still continues until September 30, 2009. The number of students still does not exceed 200. The number of staff does not exceed 40. The hours of operation and parking spaces do not change. The Applicant is still required to have an ongoing liaison with the Foxhall Community Citizens Association, ANC 2E, and other interested community members. The landscaping is still required to be provided and maintained. Therefore, the whole essence of this request is to allow existing Rock Creek International School students, who want to, to continue their education at Rock Creek for one more year. Finally, none of the physical parameters of the school, staff or the students change at all.

At the conclusion of the hearing, the Board requested that the Applicant respond to issues raised at the hearing in a post-hearing submission. These issues included certification of current enrollment; adequacy of supervision of students' use of the Hardy Recreation Center; coordination with the Department of Public Recreation; RCIS' potential expansion plans; and the athletic needs of 6th graders versus 5th graders. The Applicant responded by submission dated March 28, 2002 (Exhibit No. 56). In its response, the Applicant also addressed three (3) conditions raised at the hearing by Judith Dollenmayer. The Applicant also included, as part of its response, an authorization letter from Office of Property Management dated March 26, 2002.

SUMMARY OF EVIDENCE

A. Testimony of Applicant

2. Daniel Hollinger, Founder and Head of Rock Creek International School (RCIS), testified in support of the modification (Tr. 70-94). RCIS offers a bilingual curriculum for students in pre-kindergarten through fifth grade. The School's mission is to educate young people to high academic performance, proficiency in two languages, in-depth knowledge and appreciation of diverse peoples and cultures, responsible participation in local, national and global communities, and pursuit of life-long commitment to personal development and service to others. RCIS is the only school in the Washington metropolitan area that offers two fully bilingual programs in English/Spanish and English/French at all grade levels, with equal academic expectations in both languages.

3. RCIS is requesting that the School's mission and educational program be extended to sixth graders at 1550 Foxhall Road, also known as 4470 Q Street. The reason for the request is to extend the School's mission and offer its educational program to the children and families of Washington at one higher grade level. As there are no truly bilingual middle schools in the Washington metropolitan area, the School's

graduates have no schools to attend in which they can build upon their bilingual education at Rock Creek to achieve equal levels of academic performance and proficiency in two languages in higher grades. The goal is to extend the unique bilingual educational services into higher grades so that the current and future students can achieve high academic performance and proficiency in two languages at higher levels. (Tr. 71-73.)

4. Mr. Hollinger testified that the School is in compliance, and will remain within compliance, with all BZA Order Conditions (Tr. 73-74).

5. The Foxhall Citizens Association, which represents the School's immediate community, supports the request. ANC 2E voted to support the application. The votes of support by the FCCA and ANC represent the support RCIS enjoys in the community. (Tr. 74.)

6. In terms of the opposition, Mr. Hollinger stated that the request is not an expansion. The School simply wants to fill some of its permitted 200 spaces with a few students in the sixth grade. With regard to concerns regarding use of the Hardy Recreation Center, RCIS has reduced, not increased usage. During its roughly 70 years of existence as a school, the former Hardy Elementary and Middle Schools used the Hardy Recreation Center exclusively for their recreational needs. In recent years, the Hardy Middle School enrolled up to 220 middle school students, many of whom were not from the neighborhood. By comparison, RCIS currently enrolls 175 students and cannot enroll more than 200 students. One-third of the students are in pre-kindergarten and kindergarten and only use our on-site playground. Therefore, in comparison to 220 middle schoolers formerly using the Hardy Recreation Center, roughly 120 primary schoolers currently use the Hardy Recreation Center. Therefore, RCIS's presence has reduced, rather than increased, the demands upon the Hardy Recreation Center through lower enrollment and provision of on-site play areas that did not previously exist. In addition, RCIS has contributed significantly to the installation of equipment and the maintenance of the Hardy Recreation Center. (Tr. 74-75.)

7. RCIS has a Right of Entry Agreement from the Department of Parks and Recreation to use the Hardy Recreation site daily between the hours of 8:00 a.m. and 6:00 p.m. prior to occupancy. Although the agreement with the Department of Parks and Recreation does not limit Rock Creek's usage of the Center, RCIS has limited its use to accommodate neighborhood requests and Hardy Recreation Center programs. RCIS does not interfere with Recreation Center programs or neighborhood use. RCIS has worked closely with Hardy Recreation Center staff to avoid conflicts of use. Although the hard surface area of the lower parking lot is available for use, RCIS prefers to use the Recreation Center's court. Rock Creek's use does not conflict with other users and Rock Creek staff members are responsive to Hardy Recreation staff and neighbors. (Tr. 75-76.)

8. At the time of the original application, RCIS took steps to provide for the recreational needs of its students. These provisions are in place today. RCIS installed a playground on its site, designated a portion of its lower parking lot for play, created a Multipurpose Room for indoor recreational use - for a total of three play areas on site - and entered into the agreement with the Department of Parks and Recreation. (Tr.76.)

9. RCIS believes that its presence in the Foxhall Community is not only not objectionable but desirable to the community. ANC 2E voted to support Rock Creek's modification request. RCIS took an abandoned building and grounds that were objectionable and turned them into a vibrant, beautiful school for young children, most of whom are from DC. The school's presence does not obstruct traffic, create noise, nor interfere with neighbors' use of the Hardy Recreation Center. Rock Creek staff members are responsive to neighborhood concerns and take action as responsible members of the Foxhall community. (Tr. 78-79.)

B. Testimony of the Office of Planning

By report dated March 7, 2002, the Office of Planning supported the Applicant's request (Exhibit No. 39) and testified in support at the hearing. (Tr. 97-99.)

C. Report and Testimony of Advisory Neighborhood Commission 2E ("ANC 2E")

ANC 2E submitted a resolution dated March 7, 2002, supporting the request and testified in support at the hearing (Exhibit No. 31; Tr. 100-107).

D. Report and Testimony of the Foxhall Community Citizens Association (FCCA)

By report dated February 25, 2002, the Foxhall Community Citizens Association ("FCCA") supported the request, and testified in support at the hearing (Exhibit No. 41; Tr. 107-112).

E. Testimony of Persons in Support

Several others spoke in support of the application, including the former president of FCCA (Tr. 112-124).

F. Report and Testimony of Party in Opposition

FOH filed a request for party status in opposition (Exhibit No. 36). FOH also testified in opposition to the requested modification. FOH's opposition centered on RCIS' use of the Hardy Recreation Center, and concerns about RCIS' expansion plans. Many of the issues raised were ruled by the Board to be beyond the scope of the Applicant's request. (Tr. 125-137.)

G. Testimony of Persons in Opposition.

10. Several individuals testified in opposition and a number of letters were filed in opposition to the request. The general issues included increase in traffic, harmful use of Hardy Recreation School and fear of RCIS expansion plans. (Tr. 138-195.)

11. A petition in opposition was filed (included in Exhibit No. 35). The petition stated that ". . . expansion to include sixth grade is unacceptable because the site cannot accommodate any associated increase in parking spaces, traffic, or congestion in what is still a residential neighborhood." The Board Chair indicated that the petition was misleading since the addition of a sixth grade would not change parking, traffic or congestion. (Tr. 175-178.)

FINDINGS OF FACT

1. The Property is located in an R-1-B Zone District at 1550 Foxhall Road, N.W. (Square 1363, Lot 980). The R-1-B Zone District permits private schools as a special exception.

2. In BZA Application no. 16424, RCIS received BZA special exception approval to establish and operate a private school for 200 students and a staff of 35-40 people in the old Hardy School.

3. Condition No. 2 of Order No. 16424 provides that "The number of students shall not exceed 200 pre-kindergarten through fifth grade." Applicant requests that Condition No. 2 of Order 16424 be modified to allow a sixth grade. No other changes are requested. The Board finds that the application is limited to this specific request and the impacts of that specific request.

4. The Board finds that the Applicant can continue to operate the school with up to 200 students until September 30, 2009, with or without this request. Further, the Board finds that there is no difference in impacts on parking, traffic, congestion or use of Hardy Recreation School by allowing a sixth grade.

5. The Board agrees with the findings and determinations of the Office of Planning that the school has operated in harmony with the general intent of the Zoning Regulations and Map, and that the modification will not change the material facts upon which the Board made its earlier decision allowing the school to operate.

6. The Board finds that the Office of Property Management, by report dated March 26, 2002, has authorized the Applicant to proceed with the Subject Application.

7. The Board is required by statute to give "great weight" to the resolution of ANC 2E that was filed in the case. The Board has done so in this case.

CONCLUSIONS OF LAW AND OPINION

The Applicant is seeking a special exception under Section 206 of the Zoning Regulations to modify Order No. 16424 for an approved private school. The Board is authorized to grant a special exception where, in the judgment of the Board based on a showing of substantial evidence, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject to certain conditions specified in 11 DCMR §§ 205 and 206.

Based on the foregoing Findings of Fact and the evidence or record, the Board concludes that the applicant has met its burden of proof for the granting of the special exception because the proposed private school is in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

The Board has given the ANC 2E recommendations in this matter, the "great weight" to which it is entitled.

Uses that are permitted by special exception are presumed to be appropriate for the applicable zoning district as long as certain conditions are satisfied. The Board concurs with the Office of Planning's conclusion that the proposed project fully meets the conditions enumerated in Section 206 of the Zoning Regulations.

The Board finds that the modification for the private school is not likely to become objectionable to neighboring properties due to noise, traffic, number of students or other objectionable conditions and that the application provides ample parking, not less than the amount required by Chapter 21 of the Zoning Regulations.

Accordingly, it is **ORDERED** that the application is **GRANTED** subject to the following **CONDITIONS**:

1. All of the Conditions of Order No. 16424 remain in effect except Condition No. 2.

2. Condition No. 2 of Order No. 16424 is modified to allow a sixth grade (pre-kindergarten through sixth grade) for a two-year period beginning September 30, 2002.

VOTE: **4-0-1** (Geoffrey H. Griffis, David W. Levy, Anne M. Renshaw, and John G. Parsons by proxy to approve; the third mayoral appointee 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 Kress
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF THE ORDER: MAY 17 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 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.

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 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999). 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.
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16855

As Director of the Office of Zoning, I hereby certify and attest that on MAY 17 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 and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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