BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

ROCK CREEK INTERNATIONAL SCHOOL BZA APPLICATION NO. 16424

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D.C. OFFICE OF ZONING
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MOTION FOR MODIFICATION OF APPROVED PLANS

INTRODUCTION

On behalf of the Applicant in the above referenced matter, the Rock Creek International School ("the School")[1], we hereby move the Board of Zoning Adjustment ("BZA") pursuant to section 3129 to approve a modification to one specific condition in the Order previously approved by the BZA in Application No. 16424.[2] Because of the urgent nature of this request, we request that the Board consider this modification at its February 2002 pubic meeting.

BACKGROUND

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 old Hardy School) in an R-1-B District, at premises 4470 Q Street, 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. A copy of that Order is attached as Exhibit A. The Order contains seven conditions. The relevant condition is Condition No. 2. That condition requires that "the number of students shall not exceed 200, pre-kindergarten

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1 Rock Creek International was the contract purchaser of the property and subsequent to the BZA proceeding purchased the subject property.

2 While the BZA regulations specify modification of approved plans, we believe the intent is the same, so that an applicant can ask for a change in the conditions, particularly of a minor nature. In this case, there was an existing school building which the applicant occupied. Thus, there were no approved plans. Unless the conditions can be so modified, the Applicant will have to wait until September 30, 2009 when the current Order expires to request changes to the conditions. To the degree that a waiver of the Board's rules is necessary, we hereby request one for good cause under section 3101.6.

BZA
Case No. 16855
Exhibit No. 8
Board of Zoning Adjustment
District of Columbia
CASE NO.16855
EXHIBIT NO.8

through fifth grade." The Applicant proposed that the school be pre-kindergarten through fifth grade. The Applicant's intent at that time (in 1999), and that intent remains, was to develop a middle school for grades six through eight at a different location. As the Board is aware, however, many other private schools have also been seeking to expand or develop schools. It is difficult, despite hard efforts by Rock Creek International, to find a new suitable location and have it approved for private school use. Because Rock Creek International School was unable to anticipate the difficulty and time frame involved in identifying and establishing a middle school, it is now faced with a situation where a number of its students who will be sixth graders will be forced to make a decision to move, by March 2002, to a different school rather than stay at the existing Rock Creek International facility.

In many ways, modifying the Order to allow the students to stay from pre-kindergarten to sixth grade makes Rock Creek International School more standardized with other schools, particularly D.C. public schools, whose elementary schools go through the sixth grade. In this way, students who attend Rock Creek International School through the sixth grade can then be in a position to move on to other seventh grade schools, because there are more openings. Rock Creek International School's research has shown that it is much more difficult for children to get into a new school in the sixth grade than it is to enter another school in seventh grade, because that is the standard cutoff for D.C. public schools and many other private schools.

Our motion to waive the time limits to file this modification indicates that Rock Creek International School did not request the sixth grade level at the time of application, because it reasonably planned to add a middle school at another location, which would resolve this problem. The difficulty that the Applicant is facing, and on an emergency basis, is that a number of fifth grade students will be graduating and need to move to sixth grade next year. There is no

place available for them at Rock Creek International School without violating the conditions in the Order. Therefore, they are faced with deciding on their commitments to other schools by March 2002 unless this issue can be resolved immediately.

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. Finally, 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 remain until the sixth grade rather than the fifth grade.

BZA AUTHORITY TO APPROVE MODIFICATIONS

Section 3129 of the Zoning Regulations specifically allows the Board of Zoning Adjustment to approve modifications. Such requests are required to be in writing and state specifically why they are necessary. Under 3129.7, the requested modifications are limited to minor clarifications that do not change the material facts relied upon by the BZA in its grant of original approval. As noted above, the Applicant's intent at the time of the application was to operate a private school through the fifth grade and establish a middle school. The only change in the Order is to permit a sixth grade. None of the physical parameters of the school, staff or the students change at all. This request has no effect on the BZA's original interpretation.

We should point out, however, that under section 3129.6 of the Zoning Regulations, "no member shall vote on a request for modification of plans unless the member participated in and voted on the original decision or read the record." As indicated in BZA Application No. 16424, the only remaining member of the BZA involved in this case is John Parsons. Therefore, should

the Board to determine to proceed with this request, the other members would have to read the record, or grant a waiver of Section 3129.6. Because this case was not contested and resulted in a bench decision with a summary order, the record in this case is neither complex nor weighty. We would therefore request that should the Board members be amenable to this request that they read the record as required in the Zoning Regulations.

RATIONALE FOR REQUESTED MODIFICATION

Specifically, Rock Creek International School requests BZA approval to change Condition No. 2 of BZA Application No. 16424. That section currently reads, "The number of students shall not exceed 200 pre-kindergarten through fifth grade." The requested change is to change fifth grade to sixth grade. No other changes are requested.

As indicated below, the rationale for this change is that the Rock Creek International School, while it still desires and continues to work hard to establish a middle school, has been unable to do so. Because of this, a number of fifth grade students will have to find other school opportunities for the sixth grade unless this motion is approved on an expedited basis. No other changes to the order or other approval is requested. We believe since the nature of this change is minor, and could not be anticipated, that the Board should grant this request.

CONCLUSION

In granting the original application, the BZA concluded, as a matter of law, that the proposed application was in harmony with the general purpose, intent and integrity of the Zoning Regulations and could be granted without substantial detriment to the public. The one requested change to BZA Condition No. 2 does not alter or affect that conclusion in any way. The requested modification will enable the Rock Creek International School to continue to serve its

students through the sixth grade and to more standardize its grades levels with those of the District of Columbia Public Schools and other private schools.

For the foregoing reasons, the Applicant respectfully requests approval of the aforementioned modification. Due to the urgent nature of this request, we also respectfully request that this modification be granted at the Board's February 2002 meeting.

Respectfully submitted,

Phil T. Feola

John T. Epting

Document #: 1203928 v.1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16424 of the D.C. Public Schools (The Hardy School), pursuant to 3108.1, for a special exception under Sections 205 and 206 to establish and operate a private school for 200 pre-kindergarten to fifth grade students and staff of 35-40 persons in an existing structure in an R-1-B District at premises 4470 Q Street, N.W. (Square 1363, Lot 980).

HEARING DATE: February 3, 1999
DECISION DATE: February 3, 1999 (Bench Decision)

SUMMARY ORDER

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2E and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 2E. ANC 2E, which is automatically a party to this application, submitted a written statement, with conditions, in support of the application. Most of the ANC's conditions have been incorporated into this order. The Board gave the written report of the ANC the "great weight" to which it is entitled.

As directed by 11 DCMR 3324.2, the Board required the applicant to satisfy the burden of proving the elements, which are necessary to establish the case for a special exception pursuant to 11 DCMR Sections 205 and 206 of the Zoning Regulations. No party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3108, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore **ORDERED** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Approval shall be for a period of 10 years, expiring on September 30, 2009.

2. The number of students shall not exceed 200, pre-kindergarten through fifth grade.

3. The number of staff shall not exceed 40.

4. The hours and days of operation (for academic purposes) shall be 8:00 a.m. to 6:00 p.m., Monday through Friday.

5. Twenty-six (26) on-site parking spaces shall be provided.

6. The applicant shall maintain an on-going liaison committee with the Foxhall Community Citizen's Association, Advisory Neighborhood Commission 2E and other interested community members. The liaison committee shall meet at least four times a year to discuss and resolve community and school related issues.

7. Landscaping, to consist of evergreen trees, shall be provided and maintained on the north parking lot (Q Street side of site).

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that findings of fact and conclusions of law accompany the order of the Board. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 4 – 0 (John G. Parsons, Betty King, Sheila Cross Reid and Jerry H. Gilreath to grant.)

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

ATTESTED BY: Sheri M. Pruitt Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

FINAL DATE OF ORDER: MAR 5 1999

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16424

As Interim Director of the Office of Zoning, I hereby certify and attest that on MAR 5 1999 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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ATTESTED BY: Sheri M. Pruitt-Williams /fgw
SHERI M. PRUITT-WILLIAMS
Interim Director