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April 10, 2002

BY HAND
Mr. Geoffrey Griffis
Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W., Room 201
Washington, D.C. 20001

RECEIVED
D.C. OFFICE OF ZONING
2002 APR 12 AM 10:44

Re: BZA Application No. 16177
REQUEST FOR MODIFICATION OF ORDER

Dear Mr. Griffis and members of the Board of Zoning Adjustment:

On behalf of the Washington International School ("WIS") and for the reasons stated below, we hereby request that the Board approve a modification of its order in the above-referenced matter. A special exception application has been prepared and filed contemporaneous with this letter for such purpose. For your reference a copy of the Board's order is attached hereto. (Exhibit 1.)

In its order in BZA Application No. 16177 (Exhibit 1), the Board granted a special exception to allow the WIS to locate a private elementary school in an R-3 District at 1690 36th Street, N.W., Square 1304, Lot 14 (the "Property"). Based on representations of the WIS, the Board conditioned its approval on, *inter alia*, a total amount of staff members not to exceed 45. Other conditions included (1) a maximum of 475 students at the Property; and (2) hours of operation from 7:30 a.m. to 6:00 p.m., Monday through Friday.

FACTS

The Property was historically used as a residence for the Sisters of the Good Shepherd and has been used for school purposes for almost thirty (30) years. The District government began using the Property for school purposes in the 1970s. In 1985, the Levine School of Music became the prime tenant for the Property and used the Property for music instruction. In 1987,

BZA
Case No. 16890
Exhibit No. 1

Board of Zoning Adjustment
District of Columbia
CASE NO.16890
EXHIBIT NO.1

pursuant to BZA Application No. 14556, the Levine School was granted a special exception to use the premises as a music school. (Exhibit 2.)

The special exception granted to the Levine School under BZA Application No. 14556 was subject to several conditions, including the following:

(1) Approval was limited to operation by the Levine School of Music;
(2) Hours of operation of the facility not to exceed 9:00 a.m. to 9:30 p.m.;
(3) Limitation of twenty (20) evening recitals at the site per year. Recitals were to end no later than 11:00 p.m. and valet parking to be provided for these events on an as needed basis;
(4) The number of faculty and staff present at the facility at any one time not to exceed thirty-five (35); and
(5) The number of students at the site at any given time not to exceed seventy-five (75) during the hours of 9:00 a.m. to 5:00 p.m., the maximum to be increased to ninety, provided that no less than fifteen of those additional students came from the Duke Ellington School of Arts located at 3500 R Street, N.W.

(Exhibit 2.)

In addition to the Levine School's occupancy of the Property from 1985 through 1995, the Property was also used as a residence for a religious order.

The Washington International School contracted to purchase the Property in late 1995. The WIS was interested in the Property for use as a private elementary school. Subsequently, BZA Application No. 16177 was filed on behalf of WIS for a special exception to allow the location of a private elementary school at the Property.

As noted above, the Board conditioned its approval of the special exception sought under BZA Application No. 16177 on, *inter alia*, (1) a total amount of staff members not to exceed 45; (2) a maximum of 475 students at the Property; and (3) hours of operation from 7:30 a.m. to 6:00 p.m., Monday through Friday. With regard to the number of students, WIS agreed to a series of enrollment caps limiting the number of students to no more than 375 in 1997, 400 students in 1998 and 475 students by the year 2000. (Exhibit 1.) WIS has abided by these limitations. Additionally, WIS is the only user of the Property.

DISCUSSION

The limitation on the number of staff at the Property was based upon information provided by WIS which related to its previous location and which failed to take into account existing part-time personnel and non-teacher staff. In reviewing plans for completion of the third story of the school, WIS discovered that its personnel exceeded the number provided for in the BZA Order. WIS discovered that it inadvertently omitted from its staff calculations its librarian, part-time teacher assistants, after-School program personnel and custodial personnel. The

additional staff were required because of faculty union requirements, parent requests and the increase in enrollment over that permitted at WIS's prior location. In fact, since most of the issues raised at the time the application was considered by the BZA involved traffic issues related to the student population, little consideration had been given to the fact that the staff would have to slightly increase over time, despite the inaccurate counting then conducted, because of the fact that the BZA Order authorized increases in the student population. Consequently, WIS is seeking a modification of the Order in BZA Application No. 16177 so as to amend condition number 2 to allow a maximum staff of 64. As explained below, this modification can be granted without detriment to the neighborhood and without harming the purpose and intent of the zone plan.

Since its opening in 1997, WIS has provided fifty-four (54) parking spaces on the Property. This parking has proved to be more than ample, as many of the staff numbers either (1) live in the neighborhood, (2) ride share or (3) use public transportation. Indeed, notwithstanding the discovery that the current staff levels are in excess of the amount permitted by the BZA order, there are 11 parking spaces available for use on a daily basis because of the foregoing facts regarding the staff. Thus, the modification will have no adverse impact on the neighborhood.

The Board has, on at least two occasions, deemed use of the Property as a private school to be consistent with the zone plan. As the requested modification does not alter the use of the Property, there will be no harm to the zone plan by granting the requested relief.

Finally, the WIS has established a liaison committee with Advisory Neighborhood Commission 2E which is open to participation by any member of the community. The purpose of the committee is to address any potential problems resulting from the WIS's use of the Property. The liaison committee meets quarterly with reports of the meetings maintained. Contemporaneous with the discovery of the inaccurate staffing levels, WIS has met with the liaison committee, the Office of Planning and has communicated this issue to ANC 2E.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler
Jeannine Rustad Zigner

cc: Mr. Dick Hall
Mr. Tom Alexander
ANC 2E
Office of Planning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

3/28/97

Application No. 16177 of the Sisters of the Good Shepherd pursuant to 11 DCMR 3108.1, for a special exception under Section 206 for the location of a private elementary school in an R-3 District at premises 1690 36th Street, N.W. (Square 1304, Lot 14).

HEARING DATE: December 4, 1996

DECISION DATES: January 8, 1997 and February 5, 1997

ORDER

SUMMARY OF EVIDENCE:

1. The subject site occupies the entirety of square 1304 which is bounded by Reservoir Road on the south, 37th Street on the west, R Street on the north, and 36th Street N.W. on the east. It contains 112,105.5 square feet of land area and is currently improved with the Levine School of Music and Sisters of the Good Shepherd School and Convent.

2. The area surrounding the site is residential in character (i.e. row and semi-detached dwellings) and is densely populated. The Duke Ellington School is located directly east of the site across 36th Street N.W. The site is not located within the confines of the Georgetown Historic District.

3. The site is located in an R-3 zone district. The R-3 District permits matter of right development of single-family residential uses including detached, semi-detached, and row dwellings with a minimum lot area of 2,000 square feet, a minimum width of 20 feet, a maximum lot occupancy of 60 percent, and a maximum height of 3 stories/40 feet. A private school is permitted in an R-3 District if approved by the Board of Zoning Authority in accordance with the conditions specified in Section 3108 of 11 DCMR, subject to the provisions of Section 206.

4. The Washington International School (WIS) is the contract purchaser of the subject property. WIS proposes to relocate its Lower School campus from its current location (Oliver Street in Georgetown) to the subject site. As well, the WIS fourth and fifth grade classes would be moved from the Macomb Street campus to the site. The existing structures on the property would be demolished and replaced with a three-story building containing 44,406 gross square feet of floor space. The new building would contain 31 classrooms and 33 additional rooms. Parking for 54 vehicles would

Exhibit 1

be provided on the eastern portion of the site adjacent to the proposed school. The school would accommodate up to 475 students and 45 staff members, and would operate from 7:30 a.m. to 6:00 p.m., Monday through Friday.

5. WIS has voluntarily agreed to a series of enrollment caps. In 1997, WIS proposes no more than 375 students, increasing to 400 the next year, and 475 by the year 2000. This is to permit neighbors an opportunity to insure that the traffic mitigation measures and circulation plan are feasible, and allow WIS and the community the opportunity to resolve any other issues before the full number of students is accommodated. WIS further drew up a "Development Agreement" between itself, the Burleith Citizens Association and the Cloisters West Homeowners Association which establishes, inter alia, a Liaison Committee between the aforementioned organizations.

6. WIS provided testimony to the effect that the proposed improvements would not adversely affect neighboring properties, and that they would be in harmony with the Zone Plan and Regulations. WIS also offered expert testimony and a traffic circulation plan projecting that the total amount of traffic generated by the school on a daily basis would be less than or equal to that which would be generated by the matter of right uses. Therefore, the school is not likely to produce an adverse impact on either the overall amount of traffic in the neighborhood, the timing of traffic, or on the need for parking in the neighborhood.

7. The D.C. Office of Planning (OP) offered evidence to support its written recommendation that the special exception be granted with certain conditions, as it found that the proposed school would neither adversely affect the neighboring properties, nor be detrimental to the neighborhood.

8. The ANC 2E voted to approve the application provided that certain conditions be met by the applicant. Additional letters of support were received stating, inter alia, that the proposed school would be an asset to the community.

9. The Board also received several letters in opposition to the application, and heard independent testimony from residents in the vicinity of the subject site. The letters and testimony identified a number of anticipated problems related to the proposal which included (but was not limited to) the following: gridlock, noise, environmental impact, parking, too many institutions, and adverse effect on the quality of life for residents.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The proposed lower school is, in height, design and use compatible with and sensitive to the surrounding neighborhood.

2. The proposed use by WIS is not likely to have an objectionable impact on neighboring property because of either noise, traffic, the intensity of the use or aesthetic considerations, so long as WIS complies with the conditions set out by the Board.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant, Sisters of the Good Shepherd, pursuant to 11 DCMR 3108.1, is seeking a special exception under Section 206 to establish a new private school of pre-kindergarten through fifth grade in a three-story school building in an R-3 District at premises 1690 36th Street, N.W. (Square 1304, Lot 14).

The granting of such special exception requires a showing through substantial evidence that the application can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that the application will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map. The applicant must also meet the requirements of Section 206 of the Zoning Regulations.

The Board concludes that the applicant has met the burden of proof.

The Board concludes that the applicant will provide adequate, and appropriately located parking.

The Board concludes that subject to compliance with conditions listed below, the facility will not have an adverse impact on the neighborhood because of traffic, or noise.

The Board concludes that the application has been referred to and approved of by the Office of Planning and other relevant District of Columbia departments and agencies.

The Board concludes that granting the application is in harmony with the general purpose and intent of the Zoning Regulations and Map, and that it will not tend to adversely affect

The Board concludes that it has accorded the views of the ANC 2E the "great weight" to which they are entitled.

Based on the foregoing, the Board ORDERS that the application is hereby GRANTED, SUBJECT to the following CONDITIONS:

1. The school shall operate from 7:30 a.m. to 6:00 p.m., Monday through Friday.

2. The maximum number of students shall not exceed 475, and the total amount of staff members shall not exceed 45. A series of enrollment caps shall be instituted: no more than 375 students in 1997, 400 students in 1998, and 475 students by the year 2000.

3. The grounds of the school shall be maintained in a neat and orderly appearance at all times.

4. Landscaping shall be provided as indicated on the applicant's site plan.

The site shall be kept free of refuse and debris and shall be landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.

5. The applicant shall establish a liaison committee with Advisory Neighborhood Commission (ANC) 2E which will be open to participation by any member of the community. The committee shall meet quarterly and reports of the meeting shall be maintained.

6. The school shall adhere to its traffic circulation plan and all traffic mitigation measures.

VOTE: 4-0 January 8, 1997 (Susan Morgan Hinton, Laura M. Richards, and Howard R. Croft to grant; Sheila Cross Reid to grant by absentee vote; Angel F. Clarens not voting, not having heard the case).

After further consideration of the record on February 5, 1997, the Board concluded the matter regarding the fencing of the property by adding the following condition to those listed above:

7. The school shall construct a wrought iron fence (or its visual equivalent) the same height and in the same location as proposed for the chain link fence.

Susan Morgan Hinton, Laura M. Richards and Sheila Cross Reid adopted Condition No.7 by consensus vote.

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

ATTESTED BY _____
MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER MAR 19 1997

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.

ord16177/AZ

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

As the Director of the Board of Zoning Adjustment, I certify and attest that on MAR 19 1997 a copy of the order entered on that date in this matter 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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Date: MAR 19 1997