GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

CORRECTED ORDER

***Application No. 16433** of the Protestant Episcopal Cathedral Foundation of the District of Columbia ("the National Cathedral") on behalf of The National Cathedral School ("NCS" or "Applicant") pursuant to 11 DCMR § 3108.1, for a special exception under 11 DCMR § 206 to allow the construction of a girls' athletic facility at a private school in an R-1-B District on the grounds of the National Cathedral, 3500 Woodley Road, N.W. (Square 1944, Lot 25).

HEARING DATE: April 14, 1999
DECISION DATE: June 2, 1999

FINDING OF FACT, CONCLUSIONS OF LAW AND ORDER

*This order replaces the Board's order dated August 11, 1999, and corrects the vote on page 10 from 3-0 to 4-0.

PROCEDURAL HISTORY

1. The application to construct an athletic facility at NCS was filed on December 31, 1998. The application was submitted as two alternatives, the only difference in the alternatives being the inclusion of an existing building, known as the gatehouse, at the southeast corner of Woodley Road and Beauvoir Drive.

2. Petitions in opposition to the application were submitted to the BZA by the National Cathedral Neighborhood Association ("NCNA") on February 19, 1999, by the Cleveland Park Citizen's Association ("CPCA") on March 1, 1999, and by citizens in the neighborhood, prior to the initial BZA hearing on the application.

3. The Board first heard testimony on the application at its regularly scheduled meeting on March 5, 1999.[1] A continuance was granted for April 14, 1999.

4. On May 5, 1999, at its regularly scheduled public meeting, the Board waived its rules pursuant to 11 DCMR § 3301.1 to accept late-filed documents. The Board then postponed its decision on the NCS application in order to further evaluate legal issues raised by the opposition and the Applicant.

5. On June 2, 1999, the Board approved the application, subject to all conditions agreed to by NCS, ANC 3C, and CPCA.

[1] Testimony primarily concerned the issue of party status.

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.118A3

SUMMARY OF HEARING

1. At the April 14, 1999 public hearing, the BZA heard from the Applicant (represented by the law firm of Wilkes, Artis, Hedrick & Lane) and the opposition (represented by the law firm of Hunton & Williams), and from the Office of Planning ("OP"), NCNA, ANC 3C, CPCA, and numerous witnesses from the community.

2. Office of Planning, by memorandum dated February 26, 1999 and by testimony at the public hearing, recommended approval of the application subject to the conditions included in the ANC 3C resolution and usage guidelines of February 22, 1999. The basis of OP's recommendation included: the facility will be built to minimize impacts on the surrounding community, ample parking will be provided, and the student enrollment will not increase. At the hearing, OP also submitted a report by the Historic Preservation Review Board ("HPRB").[2]

3. Both the Applicant and the opposition showed videotapes of the proposed facility. These tapes were submitted into the record.

4. Representatives from the CPCA stated that their organization supports the application, provided that the conditions contained in their April 11th, 1999 usage agreement with NCS would be included in the order.

5. The NCNA opposed the application at the hearing. The NCNA witnesses testified that the proposed athletic facility does not meet the requirements of § 206 of the Zoning Regulations and is therefore likely to become objectionable to adjoining and nearby property owners. Specifically, the NCNA claimed that the size of the proposed facility was excessive, especially when compared to other such facilities; that use of the facility by non-students would negatively impact neighbors; that the facility would cause traffic problems; and, that parking in the area would be adversely affected by the proposed athletic facility. The NCNA also asserted that the community had not been adequately consulted regarding the proposed facility and its suggestions for the facility had only been minimally incorporated in the plans for the athletic facility. The NCNA submitted a petition with the signatures of over 300 nearby residents opposing the proposed facility. The NCNA also submitted a letter from the National Trust for Historic Preservation opposing demolition of the gatehouse and urging that the facility be built in a scale respectful to the neighborhood.

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[2] The report, written by HPRB staff and adopted by HPRB at its January, 1999 meeting, approved the proposed athletic facility subject to certain conditions which included: sinking the athletic facility further into the ground, moving the facility further south, additional design development for the eastern elevation facing 34th Street, and consideration of a more acceptable alternative to the proposed chain link fence that would enclose the field on top of the athletic facility. Subsequently, at its February 25, 1999 public meeting, the HPRB determined that the gatehouse cannot be torn down and that other materials must be considered for the proposed fencing on top of the athletic facility. The applicant's motion to reconsider the determination was denied.

6. Ruthanne Miller, the Commissioner for ANC 3C09, requested at the hearing that any liaison committee to be established by the citizens and NCS be comprised of a greater number of individuals. In particular, she recommended that more of the committee members be representatives of ANC 3C.

7. Witnesses for the Applicant, most of which lived in the surrounding area, submitted letters and testified in support of proposed athletic facility. They focused primarily on: the need for quality schools within the District; the importance of giving young women access to athletics; the respect with which NCS has treated the desires of the surrounding community; and the lack of an existing negative impact on the surrounding community by NCS.

8. Witnesses from the surrounding area also submitted letters and testified in opposition to the application. Their assertions included: community outreach was not comprehensive enough; not enough parking would be provided; the proposed facility is too large; the proposed facility is in the wrong place; traffic will be negatively impacted; and ANC 3C had not adequately addressed their concerns.

9. A letter from the Stoddard Soccer League supporting the NCS application was read aloud at the hearing and submitted into the record.

10. The Applicant's traffic expert, by report and by testimony, asserted that the athletic facility would have no adverse impact on traffic in the area. The expert stated that the traffic operation along Woodley Road and in the intersections studied would remain within acceptable levels. The opposition's traffic expert, however, stated that the Applicant's traffic report is not comprehensive enough and that there was likely to be adverse impact from traffic if the facility is built as proposed.

11. At the close of the hearing, the Board decided that the record was to be left open until April 27th to admit the ANC resolution of April 26th and draft orders from the Applicant and the opposition. The Board stated that responses to these submissions submitted before the May 5th hearing would also be accepted into the record.[3]

FINDINGS OF FACT[4]

1. The National Cathedral grounds ("the Close") consists of approximately 57 acres of land in Northwest Washington, D.C., on which are located the National Cathedral, NCS, St. Alban's Church, St. Alban's School, the Beauvoir School, the College of Preachers, residences and accessory buildings. The Close is bounded by Massachusetts Avenue and Garfield Street to the south, Wisconsin Avenue to the west, Woodley Road to the north, and 34th Street to the east.

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[3] In total, the documents accepted into the record after close of the April 14th the hearing were: a draft order from the Applicant, received on April 27, 1999; a draft order from the opposition, received on April 29, 1999; the ANC 3C resolution of April 26, 1999, received on April 30, 1999; a letter from ANC 3C-09 Commissioner Ruthanne Miller, received on April 29, 1999; a response from the opposition, received on May 3, 1999; and a response from the Applicant, received on May 3, 1999.

[4] Findings based on testimonial evidence will be followed by a bracket indicating the source.

2. The portion of the Close that is the subject of this application is zoned R-1-B.

3. The school consists of three main buildings: Hearst Hall, Woodley North, and Whitby Hall. Hearst Hall is located in the northwest corner of the Close and on Lot 25, the same lot as the proposed athletic facility. Hearst Hall houses the Upper School and most of the NCS administrative offices, and served as the center of all operations of NCS until 1917. Woodley North and Whitby Hall, located in Lot 22, are separated from the Close by Woodley Road and are on a site bounded by Wisconsin Avenue to the west, 36th Street to the east, Lowell Street to the north, and Woodley Road to the south.

4. The BZA previously approved an addition to Whitby Hall (Order No. 15691) which included a condition that NCS school enrollment not exceeds 546 students, and the total number of full-time equivalent staff not exceeds 105.

5. NCS' current athletic facilities are located at the northeast corner of the Close, adjacent to 34th Street and Woodley Road, N.W., and include two non-regulation-size athletic fields, eight tennis courts, and related support facilities. The proposed athletic facilities will be located on and under these existing facilities.

6. The NCS application provides for construction of a new 83,160 sq. ft. athletic facility (including a field house, 4 multi-use courts, a 3,500 sq. ft. weight room, locker rooms, an elevated indoor track and a climbing wall), two associated grass athletic fields, a 4,360 sq. ft. entry pavilion, and a 16,000 sq. ft. parking garage.

7. Approximately 4,360 square feet of the athletic facility will be above grade. 17 feet of the proposed field house will rise above the grade of Woodley Road, and about 27 feet of the building will rise above the grade of the lower field along 34th Street. No other structures are to be built in conjunction with the athletic facility will be in excess of 40 feet. The subject structure will have a rear yard set back of 240 feet, the east side yard will be set back 228 feet, and the west side yard will be set back 72 feet.

8. The proposed project also calls for the construction of walls and fences around the athletic facility. The wall at Woodley Road, N.W., will have a height of four feet, two inches at its west end and ten feet, two inches at its east end. The wall at the lower east elevation will be between nineteen feet, four inches to twenty-two feet, two inches. The proposed height of the wall was reduced in order to address ANC 3C concerns. The athletic fence will be constructed to a height of eight feet.

9. The physical characteristics of the buildings included in the proposed facility will remain the same whether the existing gatehouse is included in the plans for the facility or is demolished.

10. The level of interscholastic competition at the school will not change significantly with construction of the new facilities. The increased use that will result from the facility will primarily come from the intramural and fitness activities of the student body.

11. The applicant's plans, and the CPCA and ANC 3C usage agreements with NCS, include measures and conditions to address the issues of noise, traffic, the visual impact of the facility, and construction.

a) With respect to noise, the plans and agreements provide that: there will be no field lighting for night use of the fields; some of the sports formerly played above grade will now be played below grade; use of the playing fields will be allowed from 9:00 a.m. to 8:30 p.m. on weekdays, from 9:00 a.m. to 6:00 p.m. on Saturdays, noon to 5:00 p.m. on Sundays, and in the summer from 8:00 a.m. to 6:00 p.m. on weekdays only; non-NCS/Foundation use of the athletic fields will be allowed from 10:00 a.m. to 6:00 p.m. on Saturday, noon to 5:00 p.m. on Sunday, and in the summer from 10:00 a.m. to 7:00 p.m. on weekdays, 10:00 a.m. to 6:00 p.m. on Saturday, noon to 5:00 on Sunday, and is limited to 40 people on the field at one time; the proposed building will be set back from the nearest residences along Woodley Road, N.W., and 34th Street, N.W.

b) In order to alleviate present and future traffic congestion, the Applicant plans to change the current Beauvoir Drive circulation pattern to provide a connection to South Drive with a one-way circulation on Beauvoir Drive. [Applicant, T. 80-85, 371-72]. Also, the Applicant's traffic expert concluded, and the Board finds, that the proposed facility will not have a noticeable impact on traffic on Woodley Road or nearby intersections.

c) The landscape treatments included in the project increase the amount of open space on the Close, provide landscape edge treatments that screen views of the proposed athletic center, and place the proposed athletic facilities in a setting that is compatible with the character of the neighborhood. [Applicant, T. 75].

d) NCS is providing 53 parking spaces, in addition to the 85 already on the site, for use in conjunction with the facility. [Applicant, T. 87]. [5]

e) A preliminary construction management plan was developed through discussions with surrounding neighbors, ANC 3C, and other citizens' groups, and includes the following elements:

1) The portion of the lower athletic field least visible to the neighbors will be the staging area for the construction site.
2) Flagmen will be used to direct traffic where the trucks come in and out of the Close.
3) The Applicant has agreed to a construction schedule from 7:00 a.m. to 7:00 p.m., Monday through Saturday.
4) The construction contractor will be required to provide an off site parking facility for its workers.

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[5] In addition, parking provided after 3:30 p.m. includes approximately 30 spaces in the Beauvoir School parking lot and up to 90 parking spaces on South Drive at the College of Preachers.

5) The Applicant will develop a liaison committee to monitor construction and address any construction-related problems.

12. ANC 3C filed a resolution with the Board dated February 22, 1999, after holding four public meetings to discuss the NCS application. The resolution supported the application for the proposed athletic facility subject to certain requests intended to address potential adverse impacts upon the neighborhood. The requests included:

a) Limit after school and non-school usage of the athletic and establish a liaison committee to oversee such usage.
b) Reduce parking and traffic problems.
c) Manage construction so as to minimize impact on the neighborhood.
d) Reduce size of proposed wall along Woodley Road.

13. The CPCA, on April 3, 1999, passed a resolution in opposition to the proposed athletic facility. However, the CPCA stated that it would withdraw its opposition if the terms of the April 11, 1999 usage agreement[6] arrived at through its negotiations with NCS were incorporated in the BZA order. The Usage Agreement contains:

a) Limitations on hours of use.
b) Limitations on sound amplification.
c) Requirement of availability of parking in the parking garage when facilities are in use.
d) Requirements regarding the placement of signs for traffic control in the neighborhood.
e) Requirements regarding traffic control during events.
f) Limitations on NCS/Foundation and community use.
g) A provision providing for the establishment of a liaison committee composed of NCS, NCS/Foundation, CPCA, Cleveland Park Historical Society, ANC 3C, NCNA, and adjacent property owners.

14. ANC 3C, in its second resolution of April 26, 1999, partially rescinded and revised its February 22, 1999 resolution, voting 5-1 to adopt the April 3, 1999 CPCA agreement in its entirety and a number of additional provisions.[7] The additional provisions contain:

a) Landscaping requirements.
b) A requirement of staff presence in parking garage.
c) Restrictions on use of facility for non-athletic events.

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[6] The usage agreement was signed by the Chair of the NCS Governing Board, the NCS Headmistress, the Chair of the CPCA Zoning Committee, and the CPCA President.

[7] The Commissioner for ANC 3C-09, a single member district, voted against the resolution, objecting to the provisions restricting the amount of people on an athletic field at any one time to 40, restricting the amount of people present at any one time inside the proposed building to 50, and limiting the use of the building by non-NCS members.

d) A prohibition on sale of memberships to the facility.
e) Liaison committee meeting obligations.
f) Parking requirements, including providing additional underground parking beyond that proposed in the application if feasible.
g) Measures to minimize the effect of construction of the facility, including establishment of a construction liaison committee. The resolution also attached a "Construction and operation Conditions".

15. The applicant has agreed to be bound by the ANC 3C resolution. [Applicant T. 121-24].

16. In the event of a contradiction or incompatibility with respect to any particular provision of the CPCA Usage Agreement and the ANC 3C April 26 resolution, the applicant agrees that the more restrictive of the two will govern. *Id.*

CONCLUSIONS OF LAW AND ORDER[8]

The Applicant is seeking to construct an athletic facility at a private school in an R-1-B District. The proposed facility could not be constructed as a matter of right under its current zoning category. Thus, the Applicant is seeking an expansion of an existing special exception use (private school).

The BZA is authorized to hear and decide requests for special exceptions pursuant to Section 8 of the Zoning Act of 1938. Private schools are identified among the uses permitted as special exceptions in an R-1 zone (11 DCMR § 206.1).

In order to obtain a special exception, Section 3108 of the Zoning Regulations requires applicants to demonstrate that the proposed use 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 Maps.

In addition, Section 206.2 of the Zoning Regulations requires that the private school be located so that is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions.

The Board finds that the applicant has met its burden in demonstrating that the new athletic facility is in harmony with the purpose and intent of the Zoning Regulations and Maps and is not likely to become objectionable to, or adversely affect, adjoining and nearby property owners because of noise, the number of students, or present otherwise objectionable conditions. The Board notes that the facility, to be built on top of and underneath existing athletic fields, [F.F. 5] will be located near a school campus and church compound in an area where it will not have a deleterious effect on the community. The design of the facility will minimize noise and visual exposure, [F.F. 7, 8, 11]. Specifically, the height of the wall and athletic facility will not have adverse impacts on properties to the north, across Woodley Road, while open space at the location of the facility will be in harmony with such properties. As to the number of students, the enrollment level will remain the same, in accordance with a previous BZA Order [F.F. 4],

[8] References to Findings of Fact will be designated as "F.F.__".

and the amount of athletic competition will not change significantly. [F.F. 5, 10]. As to the issue of traffic, the Board accepts the opinion of the Applicant's traffic expert that no significant traffic problems for the surrounding area will result from use of the proposed facility. [F.F. 11] Also, the traffic circulation changes to Beauvoir Drive are expected to prevent traffic congestion adjacent to the facility. *Id.*

In order to ensure that the proposed facility will not adversely affect the neighborhood, the Board's approval is made subject to the terms of the usage agreement between the Applicant and the CPCA and the conditions in ANC 3C's April 26, 1999 revision of its February 22, 1999 resolution (including the conditions of the attached "Construction and Operation Conditions"). The usage agreement and ANC resolution are incorporated in this order as Appendix A and B, respectively. These terms and conditions, developed through discussions with NCS, represent a substantial accommodation of the concerns of the neighborhood through the imposition of restrictions and limitations on NCS's construction and use of the proposed facility. Concerns addressed by the terms and conditions chiefly relate to after school and non-school use of the facility, parking and traffic, and impact on the community during construction of the facility. [F.F. 13, 14]. In addition, the liaison committee to be established under the agreements will serve as a vehicle through which future citizen requests and concerns may be addressed. The Board, in approving this application and in making its approval subject to the conditions agreed to by the ANC, has taken into account the ANC's unique vantage point and found its advice persuasive. In doing so, the Board gave the ANC the great weight to which it is entitled.

Section 206.3 of the Zoning Regulations requires ample parking space, no less than that required by Chapter 21 of the Zoning Regulations which governs parking. Pursuant to such Regulations, NCS will be required to provide a total of 110 parking spaces at the facility. NCS plans to construct at least 53 additional spaces bringing the total to 138 at the facility. [F.F. 11] Therefore, the parking provided will exceed regulatory requirements.

Section 400.1 of the Zoning Regulations allows structures in an R-1-B District to be built to a maximum height of 40 feet. An institutional building, such as the proposed field house, may be erected to a height not exceeding 90 feet, provided that it is removed from all lot lines a distance of not less than one foot for each foot in excess of that authorized in the district in which it is located. No structures to be built in conjunction with the athletic facility will be in excess of 40 feet (the proposed field house will reach a height of almost 27 feet). [F.F. 7] Thus, the proposed athletic facility is in conformance with the Zoning Regulations height limitations for an R-1-B District.

Additionally, to approve an expansion of a special exception, the use must also be either part of, or accessory to, the existing special exception principal use. Thus, the use must be characterized as either principal or accessory. The opposition argues that the proposed athletic facility is neither and that a use variance is required. The Board disagrees.

The Board concludes that the athletic facility is an extension of the principal use. Athletics is a form of education, and thus the athletic facilities are educational facilities. It, therefore, follows that the applicant need only meet the standard for a private school special exception. However, even if it the proposed athletic facility could not be fairly characterized as an extension of the

existing principal use, it would nevertheless meet the test for accessory uses as set forth in the Zoning Regulations.[9]

The Zoning Regulations define "accessory use" as: "a use customarily incidental and subordinate to the principal use, and located on the same lot as the principal use." 11 DCMR § 199.1.

1. Customarily Incidental and Subordinate Test

Under the first part of the "accessory use" definition, the Board must determine whether this facility can be characterized as customarily incidental and subordinate to a private school.

An athletic facility is nearly always provided to students of a private school and can be characterized as customarily incidental and subordinate to a private school. The Board has previously approved a number of athletic facilities in conjunction with private schools under a special exception, thus establishing that at least the first part of this test has been met in the past. *See BZA Order No.16273, Lab School* (Board granted a special exception to private school to construct a 18,800 square foot athletic facility which included a gym, a pool, athletic courts, and exercise equipment for up to 310 students). The Board finds that this application is for an athletic facility, and not a community center as alleged by those in opposition to the application and that the characteristics of this facility allow it to be categorized as accessory to a private school.

2. Same Lot Test

Next, the definition of "accessory use" requires that the proposed use be on the same lot as the principal use.

At NCS, Hearst Hall is on the same lot as the proposed athletic facility. This leaves the other two halls on a lot across the street from the lot on which proposed athletic facility will be built. The Board concludes that, under the circumstances presented here, the "same lot" part of the test is satisfied even though only part of the school is on the same lot as the athletic facility.[10] A different interpretation would produce the absurd result of the Board granting the special exception with respect to the Upper School, and requiring a variance for the Lower and Middle schools.

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[9] The definition of "public school" contained in 11 DCMR § 199 is not helpful to this analysis. The preamble to the 1968 rulemaking that established the definition stated that the definition was intended to "permit the District of Columbia Board of Education greater flexibility in the location and design of public school buildings in residential zones. . .". 15 DCR 29. This language it makes clear the definition was devised to favor the unimpeded development of public schools as matter of right uses. Thus, the definition was inteded to be narrowly applied and not expanded by analogy to other uses.

[10] The Board notes that the existing facilities on the same lot as the proposed use are substantial and include the school's main administrative offices, [F.F. 3] moreover, the use originated from this same lot. [F.F. 3].

For the reasons stated above, it is hereby **ORDERED** that the application be **GRANTED** with respect to either of the two plans submitted[11] in the application subject to the following **CONDITIONS:**

1. The Applicant shall comply with each and every term set forth in the CPCA - NCS Usage Agreement of April 11, 1999, attached hereto as Appendix A; and

2. The Applicant shall comply with each and every condition set forth in the ANC 3C resolution of February 22, 1999 as amended by the ANC resolution of April 26, 1999, attached hereto as Appendix B, including each and every condition contained in the "Construction and Operation Conditions".

In the event of a contradiction or incompatibility with respect to any particular provisions of the CPCA Usage Agreement and the ANC 3C's April 26, 1999, revision of its February 22, 1999, resolution, the more restrictive of the two will govern. Both agreements include establishment of a liaison committee. The membership of this committee will be the same under the terms of both agreements. Therefore, the Board finds that the establishment of one liaison committee will satisfy both agreements.

A violation of any of these conditions shall be considered a failure to comply with this Order. The violation shall be deemed recurring. Chapter 32 of the Zoning Regulations sets forth provisions with respect to enforcement and penalties for violations of the regulations. Section 3205 requires compliance with conditions in orders of the Board and provides that, if a building permit or certificate of occupancy has been issued pursuant to a decision of the Board to approve a special exception, then each condition to the approval of that special exception shall be treated as a condition to the issuance of the building permit or certificate of occupancy as well. 11 DCMR § 3205.4 (1995). Failure to abide by the conditions, in whole or in part, shall be grounds for the revocation of any building permits or certificate of occupancy issued pursuant to this order

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

THE DECISION TO GRANT THE APPLICATION WAS MADE BY THE BOARD OF ZONING ADJUSTMENT AT ITS PUBLIC MEETING OF JUNE 2, 1999.

EACH CONCURRING MEMBER OF THE BOARD HAS READ AND APPROVED THE ISSUANCE OF THIS ORDER AND AUTHORIZED THE UNDERSIGNED TO EXECUTE IT ON THEIR BEHALF.

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[11] In doing so, the Board in no way absolves that applicant from complying with the law pertaining to Historic Preservation or authorizes any action that is inconsisent with those laws or with any determination made pursuant to those laws.

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
JERRILY KRESS, FAIA
DIRECTOR

Final date of Order: AUG 17 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 PROVISION OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR § 310.1, "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 A 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. 16433

As Director of the Office of Zoning, I hereby certify and attest that on AUG 17 1999 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 the matter, and who is listed below:

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ATTESTED BY: Jerrily Kress
JERRILY R. KRESS, FAIA
DIRECTOR

APPENDIX A

Usage Agreement

for the National Cathedral School Athletic Facilities

The following agreement between the National Cathedral School (NCS) and the Cleveland Park Citizens Association (CPCA) has been concluded with the intent that the terms thereof shall be incorporated as a condition in any order issued by the Board of Zoning Adjustment granting the special exception requested by the Protestant Episcopal Cathedral Foundation of the District of Columbia (Foundation) on behalf of NCS in BZA Application 16433. This agreement addresses the usage of the athletic facility and related playing fields (collectively, "the facilities") of the NCS.

GENERAL LIMITATIONS:

1. Closing times indicated below refer to the time the doors are locked and the users are gone. "Dusk" means one hour after official sundown.

2. Opening times indicated below refer to the time the doors are unlocked, and users shall not be allowed to arrive before such times.

3. There shall be no lighting of the fields whatsoever, and no playing "under lights" at any time.

4. There shall be no sound systems installed outside. NCS may use a portable system for occasional NCS athletic events, but shall not use such system in a manner that is likely to become objectionable to adjacent or nearby property. There shall be no other outside sound amplification whatsoever.

5. The parking garage must be open and available whenever the facilities are in use.

6. NCS shall request that the D.C. Department of Public Works install appropriate signage to prohibit stopping, standing, and discharging or picking up of passengers by any vehicles, including vans and buses (except scheduled Metro buses), on the south side of the 3400 and 3500 block of Woodley Road, N.W.

7. The NCS/Foundation shall provide personnel to control traffic for major events or several concurrent events and shall use its best efforts to ensure that all vehicles park on the Close. NCS shall stress this commitment to all community groups and visiting teams using the facilities.

NCS / FOUNDATION USAGE:

1. NCS/Foundation usage refers to use by students and staff of NCS, Beauvoir School, St. Albans School for Boys, and visiting teams; and to limited incidental participation of families of students and individual employees of the Foundation who work on the Close. This use shall include summer camps capped at present levels of 180 children.

2. The facilities shall be available for NCS/Foundation usage only between the following hours:

School Year

	Building	Playing Fields
Mon. through Fri.	7:00 AM to 9:00 PM	9:00 AM to Dusk or 7:00 PM* (whichever is earlier) [*Except scheduled NCS practices or games: 9:00 AM to Dusk or 8:30 PM (whichever is earlier)]
Saturday	9:00 AM to 9:00 PM	9:00 AM to Dusk or 6:00 PM (whichever is earlier)
Sunday	Noon to 5:00 PM	Noon to 5:00 PM

Summer Camp

	Building	Playing Fields
Mon. through Fri.	8:00 AM to 6:00 PM	8:00 AM to 6:00 PM

3. All parents, staff, students, visiting teams, and guests shall be instructed in advance and required to park all cars, buses, or vans on the Close. NCS shall incorporate this requirement in its policy statements.

4. The NCS/Foundation shall coordinate usage to avoid conflict with parking needs or traffic-flow needs of other events on the Close.

5. NCS/Foundation usage shall be limited to no more than six nonathletic events per year between them (such as fund raisers, award dinners) involving more than 100 people but no more than 400 people. Such events shall end no later than 10:00 PM on Sunday through Thursday, or 11:00 PM on Friday or Saturday, and shall be conducted so as not to be objectionable to adjacent or nearby property. NCS may cede to the Protestant Episcopal Cathedral Foundation of the District of Columbia one of the above six nonathletic events per year, subject to all the same limitations and conditions as would apply to NCS.
These limitations shall not apply to NCS, Beauvoir, or St. Albans student assemblies held during the normal school day.

NON NCS / FOUNDATION USAGE:

Inasmuch as NCS has stated, "It has been and shall continue to be NCS' policy to make its recreational facilities available to members of the community for individual use and for small groups of adults and children," the following conditions shall apply:

1. Although the facilities do not constitute a community center, such community use shall conform to the provisions of §209, Community Centers (R-1), of Title 11 of the District of Columbia Municipal Regulations (attached).

2. There shall be no non-NCS/Foundation use (rental or free) of the facilities for either athletic or nonathletic use to more than 50 persons at any one time in the building, and to no more than 40 persons at any one time on the field.

3. Only one outside playing field shall be used at any one time, and there shall be a 45 minute interval between scheduled uses.

4. The facilities may be made available to community users only between the following hours:

School Year

	Building	**Playing Fields**
Mon. through Fri.	7:00 PM to 9:00 PM	None
Saturday	9:00 AM to 9:00 PM	10:00 AM to Dusk or 6:00 PM (whichever is earlier)
Sunday	Noon to 5:00 PM	Noon to 5:00 PM

Summer

	Building	**Playing Fields**
Mon. through Fri.	9:00 AM to 9:00 PM	10:00 AM to Dusk or 7:00 PM (whichever is earlier)
Saturday	9:00 AM to 9:00 PM	10:00 AM to Dusk or 6:00 PM (whichever is earlier)
Sunday	Noon to 5:00 PM	Noon to 5:00 PM

5. All community users shall be required to park on the Close as a precondition of use. NCS shall limit the number and size of groups to those that can and will be parked on the Close.

6. Inasmuch as parking is a precondition of use, NCS shall coordinate community usage to avoid conflicts with parking needs or traffic-flow needs of other events on the Close.

IMPLEMENTATION:

A Liaison Committee shall be established to oversee and coordinate implementation of this agreement. The Committee shall consist of two representatives from each of the following parties:

1. National Cathedral School
2. Protestant Episcopal Cathedral Foundation of D.C.
3. Cleveland Park Citizens Association
4. Cleveland Park Historical Society
5. Advisory Neighborhood Commission 3C
6. National Cathedral Neighborhood Association
7. Adjacent individual property owners (one selected by owners of the houses on the 3400 and 3500 block of Woodley Road, the 3100 block of 35th Street, and the west side of the 3100 block of 34th Street; and one selected by owners of the houses on from the 3000 block of 34th Street, the east side of the 3100 block of 34th Street, and the 3300 block of Woodley Road, plus the owner of 3333 Cleveland Avenue [all streets being in N.W. Washington])

For the National Cathedral School

Jane E. Genster Date 4/11/99

Jane Genster, Chair of the Governing Board

Date 4/11/99

Agnes G. Underwood, Headmistress

For Cleveland Park Citizens Association:

Isabel M. Furlong Date Apr. 11, 1999

Isabel M. Furlong, Chair of the Zoning Committee

Gregory R. New Date Apr. 11, 1999

Gregory R. New, President

specified in §3108 of chapter 31 of this title, subject to the provisions of this section.

207.2 The uses listed in §207.1 shall be subject to any requirements for setbacks, screening, or other safeguards that the Board deems necessary for the protection of the neighborhood.

SOURCE: §3101.43 of Regulations effective May 12, 1958; renumbered by Final Rulemaking published at 35 DCR 6916, 6918 (September 16, 1988).

208 PRIVATE STABLES (R-1)

208.1 Use as a private stable shall be permitted as accessory use in an R-1 district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in §3108 of chapter 31 of this title, subject to the provisions of this section.

208.2 A private stable shall be set back fifty feet (50 ft.) from all lot lines.

208.3 A private stable shall be located so as not to affect adversely the light and air of the building to which it is accessory or of adjacent land and buildings.

SOURCE: §3101.44 of Regulations effective May 12, 1958; renumbered by Final Rulemaking published at 35 DCR 6916, 6918 (September 16, 1988).

209 COMMUNITY CENTERS (R-1)

209.1 Use as a community center building, park, playground, swimming pool, or athletic field operated by a local community organization or association shall be permitted in an R-1 district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in §3108 of chapter 31 of this title, subject to the provisions of this section.

209.2 A community center shall not be organized for profit, but shall be organized exclusively for the promotion of the social welfare of the neighborhood in which it is proposed to be located.

209.3 A community center shall offer no articles of commerce for sale in the center.

209.4 A community center shall not likely become objectionable in a Residence district because of noise or traffic.

209.5 The use of a community center shall be reasonably necessary or convenient to the neighborhood in which it is proposed to be located.

SOURCE: §3101.45 of Regulations effective May 12, 1958; renumbered by Final Rulemaking published at 35 DCR 6916, 6918 (September 16, 1988)

ADVISORY NEIGHBORHOOD COMMISSION 3-C

APPENDIX B

GOVERNMENT OF THE DISTRICT OF COLUMBIA

CATHEDRAL HEIGHTS · CLEVELAND PARK · MASSACHUSETTS AVE. HEIGHTS · MCLEAN GARDENS · WOODLEY PARK

2737 DEVONSHIRE PLACE, N.W.
WASHINGTON, D.C. 20008
(202) 232-2232 FAX: 232-0667

Single Member District Commissioners:

01-Cheryl A. Opacinch
02-Alan Blevins
03-Michael V. Mohler
04-Vacant
05-Ann Hume Loikow
06-Jim Evans
07-Lyle Blanchard
08-Rosalyn P. Doggett
09-Ruthanne Miller

OFFICE OF ZONING
DISTRICT OF COLUMBIA

'99 APR 30 A11:31

April 27, 1999

Chairman Sheila Cross Reid
District of Columbia Board of
Zoning Adjustment
441 Fourth Street, N.W., Room 210
Washington, D.C. 20001

Re: ANC 3C's second resolution regarding BZA Application No. 16433

Dear Chairman Reid:

At its regular monthly meeting last night, Advisory Neighborhood Commission ("ANC") 3C reconsidered its position on BZA Application No. 16433, submitted by the Protestant Episcopal Cathedral Foundation of the District of Columbia for a special exception for the construction of an athletic facility with two surface athletic fields and related below grade parking. The meeting was properly noticed and a quorum was present, a quorum being 5 and 6 commissioners being present during the entire meeting.

The ANC approved a resolution partially rescinding and revising its February 22, 1999 resolution. The resolution was approved by a majority vote (5/1). A copy of the approved resolution and the February 22, 1999 resolution as revised by the April 26, 1999 resolution are attached.

The resolution approved last night strikes the provisions of the February 22, 1999 resolution dealing with usage and inserts in lieu thereof the provisions of the April 11, 1999 Usage Agreement between the National Cathedral School and the Cleveland Park Citizens Association with five amendments to the terms of that agreement. The ANC resolution also states that if the Board of Zoning Adjustment does not include the conditions in its February 22, 1999 resolution, as amended by its April 26, 1999 resolution, in its order, the ANC withdraws its conditional support of the application.

The ANC appreciates having the opportunity to submit this second resolution. Thank you for consideration of ANC 3C's views on this application.

Sincerely,

Ann Hume Loikow

Ann Hume Loikow
Chair, ANC 3C

BZA
CASE No. 16433
EXHIBIT No. 80

SECOND RESOLUTION OF ANC 3C ON B.Z.A. APPLICATION NO. 16433, BY THE PROTESTANT EPISCOPAL CATHEDRAL FOUNDATION OF THE DISTRICT OF COLUMBIA FOR A SPECIAL EXCEPTION AT 3500 WOODLEY ROAD, N.W.

WHEREAS the Protestant Episcopal Cathedral Foundation of the District of Columbia ("Foundation") has applied to the Board of Zoning Adjustment ("BZA") for a special exception for the construction of an athletic facility with two surface athletic fields and related below grade parking (BZA Application No. 16433) for one of its subsidiary institutions, the National Cathedral School for Girls ("NCS"); and

WHEREAS the BZA at its April 14, 1999 public hearing on this application requested that Advisory Neighborhood Commission ("ANC") 3C review the April 11, 1999 Usage Agreement for the National Cathedral School Athletic Facilities between the Cleveland Park Citizens Association ("CPCA") and the NCS ("April 11, 1999 Usage Agreement") and attempt to reconcile it with the recommendations on usage contained in the ANC's February 22, 1999 resolution; and

WHEREAS at its public meetings on February 16, February 22, March 22, and April 26, 1999, the ANC has heard oral comments on the issue of usage of the proposed athletic facility, as well as considered written materials previously submitted by, the Applicant, neighbors, NCS students and parents, and other community groups; and

WHEREAS the BZA has given the ANC until April 27, 1999 to submit additional comments on usage of the proposed athletic facility, the ANC reconsidered its comments on the usage guidelines at its properly noticed monthly public meeting on April 26, 1999, at which a quorum was present:

NOW THEREFORE BE IT RESOLVED that the ANC partially rescinds and revises its February 22, 1999 resolution by:

1. Deleting section 2, entitled "Usage of the Athletic Facility," in its entirety and inserting in its place the terms of the April 11, 1999 Usage Agreement and adding at the end thereof before "Implementation":

> "The Foundation and NCS shall not sell individual memberships for a price, fee or periodic dues allowing use of the facility by such individuals";

2. Amending the first sentence to section 4, entitled "Construction Management Conditions," by inserting "sections 1 and 2 of" before "the Construction and Operation Conditions: National Cathedral School Athletic Facility"; and

3. Adding a new subsection g. to section 4 to read as follows:

> "g. A construction liaison committee shall be established consisting of two representatives each from the Protestant Episcopal Cathedral Foundation of the District of Columbia, the NCS, the ANC, the CPCA, the National Cathedral Neighborhood

Association, the Cleveland Park Historical Society, and adjacent individual property owners (one selected by owners of the houses on the 3400 and 3500 block of Woodley Road, NW, the 3100 block of 35th Street, NW, and the west side of the 3100 block of 34th Street, NW; and one selected by owners of the houses on the 3000 block of 34th Street, NW, the east side of the 3100 block of 34th Street, NW, and the 3300 block of Woodley Road, NW, and the owner of 3333 Cleveland Avenue, NW)."

BE IT FURTHER RESOLVED that paragraph 5 of the subsection a ("General Limitations") of the new section 2 ("Usage of the Athletic Facility"), as amended by paragraph one of this resolution, is amended by inserting "to the users of the athletic facilities, with a staff person on hand to control parking," after "available";

BE IT FURTHER RESOLVED that the first sentence of paragraph 1 of the subsection b ("NCS/Foundation Usage") of the new section 2, as amended by paragraph one of this resolution, is amended by inserting "school" before "use by students of";

BE IT FURTHER RESOLVED that subsection d ("Implementation") of the new section 2, as amended by paragraph one of this resolution, is amended by designating the text of subsection 2d as paragraph 1 of section 2d and inserting the following three new paragraphs:

"2. The Liaison Committee should meet at least quarterly during the first year of the facility's operation, and semi-annually thereafter, to discuss usage and other issues related to the facility and its impact upon the neighborhood;
3. Any member of the Liaison Committee may convene a meeting at any time to respond to any immediate concerns; and
4. Notice of the meetings of the Liaison Committee will be posted on Woodley Road and 34th Street within three blocks of the Cathedral property.";

BE IT FURTHER RESOLVED that a new paragraph 6 is added to the subsection b ("NCS/Foundation Usage") of the new section 2, as amended by paragraph one of this resolution, to read as follows:

"6. NCS shall not hold more than ten nonathletic evening events for more than 25 and less than 100 persons per year in the athletic facility.";

BE IT FURTHER RESOLVED that if the BZA does not include the aforementioned conditions in the February 22, 1999 resolution, as amended by this resolution, in its order, ANC 3C withdraws its conditional support of the application; and

BE IT FURTHER RESOLVED that ANC 3C authorizes the Chair of the ANC to transmit this resolution to the BZA.

Approved at the properly noticed monthly public meeting of ANC 3C on April 26, 1999, at which a quorum (6 commissioners present; five commissioners constituting a quorum) was present, by a vote of 5 in favor and one opposed.

RESOLUTION OF ANC 3C ON B.Z.A. APPLICATION NO. 16433,
PROTESTANT EPISCOPAL CATHEDRAL FOUNDATION OF D.C. FOR THE
NATIONAL CATHEDRAL SCHOOL FOR GIRLS, 3500 WOODLEY ROAD, N.W.
[as amended by the Second Resolution of ANC 3C on B.Z.A. Application No. 16433,, dated April 26, 1999]

WHEREAS the Protestant Episcopal Cathedral Foundation of the District of Columbia ("Foundation") on behalf of the National Cathedral School for Girls ("NCS") has applied to the Board of Zoning Adjustment ("BZA") for a special exception for the construction of an athletic facility with two surface athletic fields and related below grade parking (BZA Application No. 16433); and

WHEREAS the application provides for the construction of a fieldhouse of 83,160 square feet, of which 4,350 square feet is above grade, two surface athletic fields, one on top of the facility and one adjacent to the facility, and a below grade parking facility with a capacity of 50 spaces and 3 above grade spaces near the entrance of the facility; and

WHEREAS the Applicant has represented that a new roadway will be constructed as part of the approved Beauvoir project that will connect Beauvoir Road and South Drive, thereby improving the internal circulation to the proposed Athletic Center and Beauvoir School; and

WHERAS the application involves the elimination of five tennis courts bordering Woodley Road and the possible demolition of the gatehouse at Beauvoir Drive and 35th Street, N.W. (The Foundation submitted an application with two alternatives – one with and one without the gatehouse, pending its appeal of a January 1999 HPRB ruling that the gatehouse is a contributing element to the historic landmark and must therefore be retained.); and

WHEREAS ANC 3C had a special public meeting on February 16, 1999, to specifically consider this application before the BZA; and

WHEREAS proper notice of that meeting was given through the posting of written notices in at least 2 conspicuous places in each single member district within the Commission area and through the announcement of this special meeting at ANC 3C's previous public meeting on this project on January 25, 1999 concerning the Foundation's application before the Historic Preservation Review Board ("HPRB"); and

WHEREAS 5 members of ANC 3C constitute a quorum and 7 members were at the February 16, 1999 public hearing; and

WHEREAS ANC 3C considered this application at its public meeting on February 22, 1999 at which 7 members were present; and

WHEREAS proper notice of the February 22nd meeting was given through the posting of written notices in at least 2 conspicuous places in each single member district within the Commission area, through publication in the local newspapers, The Northwest Current and

The Common Denominator, and through the announcement of this special meeting at ANC 3C's previous public meeting on this project on February 16, 1999; and

WHEREAS ANC 3C has also considered written materials submitted by NCS, the Foundation, neighbors, students, parents of students and other members of the community expressing the need for and projected benefits of the proposed athletic facility; and expressing concerns regarding the size, design, location and landscaping of the facility, and related traffic, parking, noise, lighting and construction management issues; and

WHEREAS ANC 3C has expressed its concerns regarding the design and landscaping issues in its Resolution of January 25, 1999, submitted to the HPRB on January 27, 1999, and which is attached hereto for the BZA's reference and consideration; and

WHEREAS the standards of the Zoning Regulations against which this application must be judged are set forth in 11 DCMR 206 and 3108.1- that the proposed facility be located so that it is not objectionable to adjoining and nearby property because of noise, traffic, number of students or otherwise objectionable conditions; that ample parking spaces be provided; and that granting of the application is in harmony with the intent of the zoning regulations and map and will not adversely affect the use of neighboring property.

THEREFORE BE IT RESOLVED with respect to the application pending before the BZA that ANC 3C supports the application with the following conditions:

1. Landscaping along Woodley Road and 34th Street
The landscaping plan along the perimeters of the site at Woodley Road with respect to the Woodley Road building wall is critical to preventing an adverse visual effect upon the neighborhood, particularly for those across the street. Accordingly,

   a. the Applicant should be required to maintain the landscaping along Woodley Road in a healthy growing condition, including evergreens, and to replace or substitute any landscaping elements that do not survive in a timely fashion;

   b. The Applicant should be required to notify ANC 3C and neighbors across the street of any changes to the landscaping design and consider their views before implementing any changes;

   c. The same principles should be extended to the landscaping along the 34th Street perimeter in order to ensure that the improved landscaping represented in the application continues;

   d. The wall along Woodley Road should be lowered or scaled back to the extent feasible to diminish the potential adverse impact on the neighbors' views and to be more in harmony with the homes across the street.

As Amended by Second Resolution from
ANC 3C on B.Z.A. App. No. 16433

2. Usage of the Athletic Facility

a. *General Limitations*:

1. Closing times indicated below refer to the time the doors are locked and the users are gone. "Dusk" means one hour after official sundown.

2. Opening times indicated below refer to the time the doors are unlocked, and users shall not be allowed to arrive before such times.

3. There shall be no lighting of the fields whatsoever, and no playing "under lights" at any time.

4. There shall be no sound systems installed outside. NCS may use a portable system for occasional NCS athletic events, but shall not use such system in a manner that is likely to become objectionable to adjacent or nearby property. There shall be no other outside sound amplification whatsoever.

5. The parking garage must be open and available to the users of the athletic facilities, with a staff person on hand to control parking, whenever the athletic facility and related playing fields (collectively, "the facilities") of NCS are in use.

6. NCS shall request that the D.C. Department of Public Works install appropriate signage to prohibit stopping, standing, and discharging or picking up of passengers by any vehicles, including vans and buses (except scheduled Metro buses), on the south side of the 3400 and 3500 block of Woodley Road, N.W.

7. The NCS/Foundation shall provide personnel to control traffic for major events or several concurrent events and shall use its best efforts to ensure that all vehicles park on the Close. NCS shall stress this commitment to all community groups and visiting teams using the facilities.

b. *NCS/Foundation Usage*:

1. NCS/Foundation usage refers to school use by students and staff of NCS, Beauvoir School, St. Albans School for Boys, and visiting teams; and to limited incidental participation of families of students and individual employees of the Foundation who work on the Close. This use shall include summer camps capped at present levels of 180 children.

As Amended by Second Resolution from
ANC 3C on B.Z.A. App. No. 16433

2. The facilities shall be available for NCS/Foundation usage only between the following hours:

School Year

	Building	*Playing Fields*
Mon. through Fri.	7:00 a.m. to 9:00 p.m.	9:00 a.m. to Dusk or 7:00 p.m.* (whichever is earlier) [**Except scheduled NCS practices or games: 9:00 a.m. to Dusk or 8:30 p.m. (whichever is earlier)*]
Saturday	9:00 a.m. to 9:00 p.m.	9:00 a.m. to Dusk or 6:00 p.m. (whichever is earlier)
Sunday	Noon to 5:00 p.m.	Noon to 5:00 p.m.

Summer Camp

	Building	*Playing Fields*
Mon. through Fri.	8:00 a.m. to 6:00 p.m.	8:00 a.m. to 6:00 p.m.

3. All parents, staff, students, visiting teams, and guests shall be instructed in advance and required to park all cars, buses, or vans on the Close. NCS shall incorporate this requirement in its policy statements.

4. The NCS/Foundation shall coordinate usage to avoid conflict with parking needs or traffic-flow needs of other events on the Close.

5. NCS/Foundation usage shall be limited to no more than six nonathletic events per year between them (such as fund raisers, award dinners) involving more than 100 people but no more than 400 people. Such events shall end no later than 10:00 p.m. on Sunday through Thursday, or 11:00 p.m. on Friday or Saturday, and shall be conducted so as not to be objectionable to adjacent or nearby property. NCS may cede to the Protestant Episcopal Cathedral Foundation of the District of Columbia one of the above six nonathletic events per year, subject to all the same limitations and conditions as would apply to NCS. These limitations shall not apply to NCS, Beauvoir, or St. Albans student assemblies held during the normal school day.

6. NCS shall not hold more than ten nonathletic evening events for more than 25 and less than 100 persons per year in the athletic facility.

As Amended by Second Resolution from
ANC 3C on B.Z.A. App. No. 16433

c. *Non NCS/Foundation Usage:*

Inasmuch as NCS has stated, "It has been and shall continue to be NCS' policy to make its recreational facilities available to members of the community for individual use and for small groups of adults and children," the following conditions shall apply:

1. Although the facilities do not constitute a community center, such community use shall conform to the provisions of §209, Community Centers (R-1), of Title 11 of the District of Columbia Municipal Regulations.

2. There shall be no non-NCS/Foundation use (rental or free) of the facilities for either athletic or nonathletic use to more than 50 persons at any one time in the building, and to no more than 40 persons at any one time on the field.

3. Only one outside playing field shall be used at any one time, and there shall be a 45 minute interval between scheduled uses.

4. The facilities may be made available to community users only between the following hours:

School Year

	Building	*Playing Fields*
Mon. through Fri.	7:00 p.m. to 9:00 p.m.	None
Saturday	9:00 a.m. to 9:00 p.m.	10:00 a.m. to Dusk or 6:00 p.m. (whichever is earlier)
Sunday	Noon to 5:00 p.m.	Noon to 5:00 p.m.

Summer

	Building	*Playing Fields*
Mon. through Fri.	9:00 a.m. to 9:00 p.m.	10:00 a.m. to Dusk or 7:00 p.m. (whichever is earlier)
Saturday	9:00 a.m. to 9:00 p.m.	10:00 a.m. to Dusk or 6:00 p.m. (whichever is earlier)
Sunday	Noon to 5:00 p.m.	Noon to 5:00 p.m.

5. All community users shall be required to park on the Close as a precondition of use. NCS shall limit the number and size of groups to those that can and will be parked on the Close.

6. Inasmuch as parking is a precondition of use, NCS shall coordinate community usage to avoid conflicts with parking needs or traffic-flow needs of other events on the Close.

7. The Foundation and NCS shall not sell individual memberships for a price, fee or periodic dues allowing use of the facility by such individuals.

d. *Implementation:*

1. A Liaison Committee shall be established to oversee and coordinate implementation of this agreement. The Committee shall consist of two representatives from each of the following parties:

1. National Cathedral School
2. Protestant Episcopal Cathedral Foundation of D.C.
3. Cleveland Park Citizens Association
4. Cleveland Park Historical Society
5. Advisory Neighborhood Commission 3C
6. National Cathedral Neighborhood Association
7. Adjacent individual property owners (one selected by owners of the houses on the 3400 and 3500 block of Woodley Road, the 3100 block of 35th Street, and the west side of the 3100 block of 34th Street; and one selected by owners of the houses on from the 3000 block of 34th Street, the east side of the 3100 block of 34th Street, and the 3300 block of Woodley Road, plus the owner of 3333 Cleveland Avenue [all streets being in N.W. Washington]).

2. The Liaison Committee should meet at least quarterly during the first year of the facility's operation, and semi-annually thereafter, to discuss usage and other issues related to the facility and its impact upon the neighborhood;

3. Any member of the Liaison Committee may convene a meeting at any time to respond to any immediate concerns; and

4. Notice of the meetings of the Liaison Committee will be posted on Woodley Road and 34th Street within three blocks of the Cathedral property.

3. Parking and Traffic Issues

a. The Applicant shall provide 15 - 25 additional underground parking spaces or a total of 65-75 underground spaces, to be limited only by the constraints of the

existing tree roots, the necessity of adding a retaining wall or other compelling environmental factors;

b. The Applicant shall provide a minimum of 15 parking spaces elsewhere on the Close if unable to provide them in the underground parking garage;

c. The Student/Staff Parking Permit Program shall be developed in consultation with ANC 3C and interested neighbors;

d. The Applicant shall provide a written commitment that this site will not be disturbed in the future by the Foundation to meet the parking needs for the Close as a whole;

e. The Applicant shall provide a written commitment that the Beauvoir parking lot will be available for users of the NCS athletic facility after Beauvoir's school hours;

f. The Applicant shall identify appropriate parking on the Close for school buses and vans and so notify visiting schools;

g. The Applicant shall inform ANC 3C and the BZA when construction of the new roadway connection between Beauvoir School and South Drive (part of the Beauvoir School approved plan) is completed, prior to the completion of the NCS Athletic Center.

4. Construction Management Conditions

ANC 3C supports the inclusion in the BZA order of sections 1 and 2 of the Construction and Operation Conditions: National Cathedral School Athletic Facility, as revised February 22, 1999, and attached hereto, with the following additional conditions:

a. Applicant shall obtain ANC 3C's approval for any after hour construction permits beyond the hours of 7 a.m. to 7 p.m. (Monday-Saturday);

b. Applicant shall require the construction contractor to designate a traffic flag safety employee to direct trucks on and off the site in coordination with the traffic signal on 34th Street and Woodley Road;

c. Applicant shall take necessary measures to reduce construction site noise and dust including watering trucks leaving the construction site;

d. Applicant shall require the construction contractor to clean dirt and debris from 34th Street before the end of construction each day;

e. Applicant shall minimize the start of heavy equipment operations on Saturday morning before 9 a.m.; and

f. Applicant shall coordinate the construction of this project with any other construction on the Close occurring simultaneously; and

g A construction liaison committee shall be established consisting of two representatives each from the Protestant Episcopal Cathedral Foundation of the District of Columbia, the NCS, the ANC, the CPCA, the National Cathedral Neighborhood Association, the Cleveland Park Historical Society, and adjacent individual property owners (one selected by owners of the houses on the 3400 and 3500 block of Woodley Road, NW, the 3100 block of 35th Street, NW, and the west side of the 3100 block of 34th Street, NW; and one selected by owners of the houses on from the 3000 block of 34th Street, NW, the east side of the 3100 block of 34th Street, NW, and the 3300 block of Woodley Road, NW, and the owner of 3333 Cleveland Avenue, NW).

CONSTRUCTION AND OPERATION CONDITIONS: NATIONAL CATHEDRAL SCHOOL ATHLETIC FACILITY

As part of the National Cathedral School's ("NCS") application for a special exception to the Board of Zoning Adjustment ("BZA") for an athletic facility in Application No. 16433, the following Construction and Operation Conditions ("Conditions") are offered to address issues related to the construction and use*[1] of the facility, including the athletic building (and its garage), the athletic field over that building, and the athletic field to its east. These Conditions will be provided to the Advisory Neighborhood Commission (ANC) 3C for review and to the BZA for incorporation in its order approving the application.

CONDITIONS

1. CONSTRUCTION

a. Communication. NCS shall designate a representative ("Representative") to be the key contact for interaction with members of the community regarding the construction. The Representative will have a local office, phone, fax and voice mail, and be accessible during all business hours.

b. Permits. NCS will secure or cause to be secured all permits that are required for the completion of the project.

c. Site Management. NCS will require the erection and maintenance of temporary fencing and barricades around the perimeter of the site. Construction trailers and portable toilets will be located toward the rear of the site away from the street to the extent possible. A minimum amount of lighting will be provided at night. These lights will be sufficient to provide necessary security and to comply with federal and local safety standards. To the extent practicable, the rays from these temporary lights will be directed away from the residences on Woodley Road and 34th Street.

d. Cleanliness. NCS will require the continuous removal of rubbish and construction debris during the normal construction workday and during any other periods of work. Removal and replacement of dumpsters will occur only between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday and 7:00 a.m. to 7:00 p.m. Saturday if a workday. Portable toilets will be placed away from the streets. NCS will require that Woodley Road and 34th Street are kept clean of any trash and debris resulting from the construction or employees of the contractors.

e. Work Hours. The normal construction work-week will be Monday through Friday 7:00 a.m. to 7:00 p.m. and if required by the schedule Saturday 7:00 a.m. to 7:00 p.m.

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[1] Sections 3 (Use of the Athletic Facility) and 4 (Establishment of a Liaison Committee) deleted pursuant to the "Second Resolution of ANC 3C on B.Z.A. Application 16433 by the Protestant Episcopal Cathedral Foundation of the District of Columbia for a Special Exception at 3500 Woodley Road, N.W.," adopted April 26, 1999.

All trucks for delivery of equipment, construction or other use will operate on the construction site only during the forgoing hours and days of the week.

f. **Contractors.** NCS will enforce contractor compliance with all rules and regulations described herein; such Condition will be included in any general and sub-contractor contracts.

g. **Traffic, Parking and Loading.** During the course of construction, particularly during excavation, most construction related vehicular traffic would access the site on 34th Street. It is expected that most truck queuing will occur on the project site. When queuing of the trucks on the streets is required, it will be kept to the minimum time possible. Flagmen will be provided when trucks enter and leave the site. Trucks leaving the site will move south on 34th Street to Massachusetts Avenue and then on to their destination; trucks will be required to arrive at the site by the same route. A minimum number of trucks may be required to arrive at and exit from Beauvoir Drive onto Woodley Road to remove small amounts of excavation materials or deliver new materials. The final routing of the trucks is subject to the approval of the Department of Public Works.

During excavation phase, NCS will establish means of easily identifying trucks that are involved in the NCS excavation.

NCS will require that the contractor ensure that operators of all construction vehicles are properly licensed and not operating with permission of any one local licensing jurisdiction following revocation of like license in any other local jurisdiction; ensure that the vehicle owners are properly insured for liabilities that may arise; and forbid construction worker parking in the neighborhood. Contractor shall make provisions for its workers to park onsite to the extent possible and other arrangements as maybe required to enforce this policy.

2. STUDENT/STAFF PARKING POLICY

NCS will institute a program of issuing parking stickers for staff and students who drive to school. NCS will establish a person responsible for enforcing the parking policy, with the telephone number of an appropriate NCS official to call if NCS students or staff are parked on or off the Close in a manner not permitted by either the NCS policies or municipal traffic and parking regulations.p

DISTRICT OF COLUMBIA COURT OF APPEALS

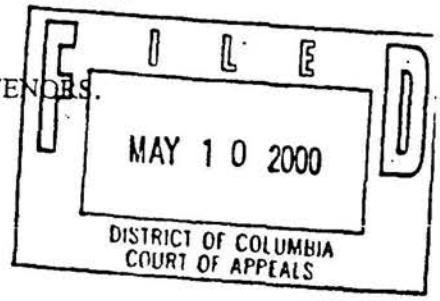
No. 99-AA-1230

NATIONAL CATHEDRAL NEIGHBORHOOD ASSOCIATION, *et al.*, PETITIONERS,

v.

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, RESPONDENT.

PROTESTANT EPISCOPAL CATHEDRAL FOUNDATION, INTERVENORS.



Petition for Review of a Decision of the
District of Columbia Board of Zoning Adjustment

(Argued May 2, 2000 Decided May 10, 2000)

Before FARRELL and REID, *Associate Judges*, and PRYOR, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT -

Petitioners seek reversal of a decision of the Board of Zoning Adjustment (BZA or the Board) granting intervenors' application for a special exception permitting construction of a new athletic facility for the use of the National Cathedral School (the School). Petitioners make an array of arguments, including that the BZA erroneously found the proposed facility to be either (a) an extension of the principal use or (b) an accessory use of the School, failed to consider the cumulative impact not just of the sports facility but of all the uses of intervenors' property — including the new facility — on the surrounding neighborhood, and failed to reconcile the proposed construction with the requirements of the Comprehensive Plan. Finding none of these arguments a sufficient basis for reversal of the BZA's decision, we affirm.

Petitioners acknowledge both the BZA's limited role with respect to the grant or denial of a special exception[1] and this court's limited role in reviewing the Board's

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[1] In evaluating requests for special exceptions, the Board "is limited to a determination whether the exception sought meets the requirements" of the particular regulation on which the application is based. The applicant has the burden of showing that the proposal complies with the regulation; but once that showing has been made, "the Board ordinarily must grant [the] application."

(continued...)

decision.[2] The BZA found that the proposed facility met the requirements of a special exception. *See Citizens Coalition v. District of Columbia Bd. of Zoning Adjustment*, 619 A.2d 940, 947-48 (D.C. 1993). Specifically, the BZA found that the facility constitutes either an extension of the principal use of the school or an "accessory use." Because the Board's finding that it is an accessory use is sustainable, we need not consider whether the facility is reasonably characterized as an extension of the principle use. Petitioners argue that because of the size and mass of the proposed structure it cannot reasonably be termed "incidental to and subordinate to the principle use," 11 DCMR § 199 (defining "accessory use"). We disagree. Functionally there is no question that athletic facilities, and the buildings housing them, are an adjunct to the educational mission of a school. *Cf.* 11 DCMR § 199 (defining "public school"). Nor does anything in the regulation imply that a facility loses that character when it reaches a certain size. In any case, the BZA made no finding that the proposed structure is too large for its intended purposes. The Board found that only 4,360 of the total 83,160 square feet comprising the structure would be built above ground, and that the height of the building is well within the regulatory limit. *See* 11 DCMR § 400.1. Nothing in the size or mass required the Board to conclude that use of the proposed structure could not be considered accessory.[3]

This court has also stated that "'the degree of impact upon the surrounding residential neighborhood is the most reasonable test of the appropriateness of an accessory use.'" *Citizens Coalition*, 619 A.2d at 952 (citation omitted). The BZA found that the proposed facility, to be built largely underground, has been designed to "minimize noise and visual exposure," and specifically that "the height of the wall and athletic facility will not have adverse impacts on properties to the north, across Woodley Road, while open space at the location . . . will be in harmony with such properties." Although petitioners dispute these findings, we are unable to say that they lack substantial support in the record.[4]

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[1](...continued)
French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1032-33 (D.C. 1995) (citations omitted).

[2] "We must uphold decisions made by the BZA if they rationally flow from findings of fact supported by substantial evidence in the record as a whole." *Draude v. District of Columbia Bd. of Zoning Adjustment*, 582 A.2d 949, 953 (D.C. 1990) (citations omitted). That is so "even though we might have reached another result." *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973).

[3] The BZA could also properly find that the building met the "same lot" test for an accessory use. *See* 11 DCMR § 199. In contrast to the separate locations involved in *Hilton Hotels Corp. v. District of Columbia Bd. of Zoning Adjustment*, 363 A.2d 670 (D.C. 1976), here the Upper School is located on the same lot as the proposed facility, and the Lower and Middle Schools are situated directly across the street.

[4] The Board found, for example, that the proposed height of the wall had been reduced to address concerns of ANC3C. The Board also found that there would be sizeable set backs on three sides of the structure. Evidence further allowed a finding that, while on the
(continued...)

The BZA expressly made its approval contingent on intervenors' compliance with written usage agreements between intervenors, the ANC, and the Cleveland Park Citizens Association (CPCA) designed "to address the issues of noise, traffic, the visual impact of the facility, and construction."

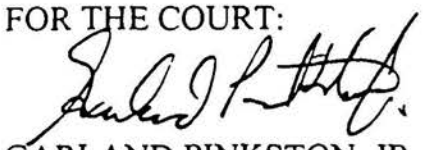
Nor are we persuaded by petitioners' argument that the BZA viewed the proposed construction in artificial isolation, without considering the cumulative impact of (for example) traffic generated by the National Cathedral site overall. Assuming that the Board was required to take into account existing deficiencies in parking availability on the site, it nevertheless could fairly conclude — as it did — that the proposed facility would not add to the effects of that shortage.[5] A project otherwise justified could not be held hostage, as it were, to existing traffic problems caused by the attraction of the Cathedral site generally.

Finally, although the BZA is required to "look to the District elements [of the Comprehensive Plan] for general policy guidance" in passing upon applications, 10 DCMR § 112, nothing in those elements is inconsistent with the Board's reasoned approval of the proposed facility. The National Cathedral is, indeed, to "be protected from nearby dense development that would despoil its setting." 10 DCMR § 1400.2 (c)(2). Testimony before the BZA permitted it fairly to conclude that the design of the predominantly underground facility will further the goal of maximizing the amount of open space on the Cathedral site.

We have considered petitioner's remaining arguments and reject them as well.

Affirmed.

FOR THE COURT:



GARLAND PINKSTON, JR.
Clerk

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[4](...continued)
fourth (or Woodley Road) side the set back would be much shorter, a berm and landscaping would serve as a visual buffer.

[5] The Board found that the proposed construction would add 53 parking spaces to the 85 already on the site, and that existing traffic patterns were to be altered "to alleviate present and future traffic congestion." The agreements with the ANC and the CPCA were likewise intended to achieve partial amelioration of traffic problems.

From our repeated references to the ANC agreement, it goes without saying, that we reject petitioners' argument that the Board failed to give "great weight" to the ANC's recommendations. Subject to compliance with the agreements, the ANC in fact approved construction of the facility, as had the Office of Planning.

No. 99-AA-1230

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II.

For the foregoing reasons, Allen's convictions must be and each is hereby

[6] *Affirmed.*[5]



NEIGHBORS ON UPTON STREET, et al., Petitioners,

v.

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, Respondent.

Selma M. Levine School of Music, Intervenor

No. 95-AA-1630.

District of Columbia Court of Appeals.

Argued March 6, 1997

Decided June 12, 1997.

Board of Zoning Adjustment (BZA) granted special exception for use of existing building in R-1-A zone and proposed addition for private music school. Advisory neighborhood commission (ANC) and other neighborhood groups petitioned for review. The Court of Appeals, Terry, J., held that: (1) music school met definition of school despite contention that it was business or art center; (2) school was private school, permitted in district, rather than a trade school; (3) proposed 300-seat performance auditorium was a conforming use; (4) ANC was properly served; and (5) BZA was not required to give ANC 30 days to respond to a supplemental submission.

Affirmed.

1. Zoning and Planning ⇐288

Music school was a "school" within the dictionary definition of the term, for purposes of zoning regulations, despite contention that it was more of an art center or a business, as it was "an organized source of education or training," as well as "a place where instruction is given." D.C.Code 1981, § 5-424(g)(2); D.C.Mun.Regs. title 11, §§ 199.2(g), 206, 3108.

See publication Words and Phrases for other judicial constructions and definitions.

2. Zoning and Planning ⇐288

Music school was a "private school" and not a "trade school" within zoning regulations allowing private school but not trade school in R-1 district; school was established, conducted, and primarily supported by a nongovernmental agency, and although some music school graduates become professional musicians, music schools generally do not exist just to teach students a trade, and classes were designed for all ages and all levels of skill. D.C.Code 1981, § 5-424(g)(2); D.C.Mun.Regs. title 11, §§ 199.2(g), 206, 3108.

See publication Words and Phrases for other judicial constructions and definitions.

3. Zoning and Planning ⇐288

In deciding whether music school was a private school within meaning of zoning regulations permitting private schools in R-1 districts, court was not bound by the school's description of itself as a "center for the community"; far more significant was what the record actually showed about what went on

5. Allen also contends that the trial judge erroneously denied his motion to suppress the complainant's identifications of him at a showup and, subsequently, in the courtroom. The judge found, however, that the showup procedure was not unduly suggestive and that the identification was reliable, and we discern no error. *See, e.g., United States v. Hunter*, 692 A.2d 1370, 1374-77 (D.C.1997); *Lyons v. United States*, 514 A.2d 423, 431 (D.C.1986). Although, at trial, the complainant incorrectly identified a photograph of someone other than Allen as the carjacker, this misidentification did not retroactively render the showup unduly suggestive, and the judge properly left it to the jury to determine the reliability of the identification in the light of all that had occurred. *Hunter, supra*, 692 A.2d at 1375 (citations omitted).

at the school on a daily basis. D.C.Mun. Regs. title 11, § 206.

4. Zoning and Planning ⇐508

Music school's proposed 300-seat performance auditorium was a conforming use in district allowing private schools, and thus its addition to nonconforming structure could be allowed by special exception and did not require use variance; there was evidence that natural progression for music students required them to start in small performance spaces and move up to larger spaces, and National Association of Schools of Music required its members to provide performance training spaces and performing auditoriums for music education. D.C.Mun.Regs. title 11, § 2001.3(b).

5. Zoning and Planning ⇐361

Requirement that Board of Zoning Adjustment (BZA) give "great weight" to views of advisory neighborhood commission (ANC) implies explicit reference to each ANC issue and concern as such, as well as specific findings and conclusions with respect to each. D.C.Code 1981, § 1-261(d); D.C.Mun.Regs. title 11, § 3307.2.

6. Zoning and Planning ⇐531

Advisory neighborhood commission (ANC) was a public agency, and thus was within zoning regulation definition of a "person," so that service on the "ANC" of special exception applicant's revised traffic plan was proper. D.C.Mun.Regs. title 11, §§ 3305.4, 3399.1.

See publication Words and Phrases for other judicial constructions and definitions.

7. Zoning and Planning ⇐358.1

Code section requiring the District of Columbia government, or any of its agencies, to give 30 days' notice to any affected advisory neighborhood commission (ANC) of any proposed action in a rulemaking proceeding could not reasonably be read as imposing a requirement on the Board of Zoning Adjustment (BZA)to allow an ANC, or anyone else, 30 days to respond to a supplemental submission in a zoning appeal; instead, situation was governed by zoning regulation providing that written responses shall be filed within seven days following the date by which exhibits, information, or briefs are due. D.C.Code 1981, § 1-261(b); D.C.Mun.Regs. title 11, § 3326.6.

Nicholas G. Karambelas, Washington, DC, for petitioner.

H. Jonathan Redway, with whom John W. Nields, Washington, DC, was on the brief, for intervenor.

Charles F.C. Ruff, Corporation Counsel, and Charles L. Reischel, Deputy Corporation Counsel, filed a statement in lieu of brief, for respondent.

Before TERRY and KING, Associate Judges, and GALLAGHER, Senior Judge.

TERRY, Associate Judge:

The owner of a building filed an application for a special exception under the zoning regulations to permit the Levine School of Music to use the existing building and a proposed new addition as a private music school. Advisory Neighborhood Commission (ANC) 3F opposed the application, arguing that the presence of the Levine School would result in increased traffic and parking problems in the neighborhood, which is classified as a low density residential district (R-1-A) under the District of Columbia zoning regulations. Other neighborhood groups, including Neighbors on Upton Street, the Van Ness East Condominium Association, and the Van Ness South Tenants Association, also opposed the application. These three organizations, the petitioners in this case, contended that the Levine School was not eligible for a special exception because it was not a "private school" within the meaning of the applicable regulation, 11 DCMR § 206 (1995).

The Board of Zoning Adjustment (BZA) held hearings on the application in January and February 1995. At the conclusion of those hearings, the BZA asked the Levine School to submit a revised traffic management plan incorporating various suggestions made at the hearings. The school filed the revised plan on March 15. On April 5 the BZA voted unanimously (with one member recused) to grant the requested special ex-

ception, subject to several conditions and restrictions, including limits on the number of persons allowed at the school at any given time and on the school's hours of operation. On November 1, 1995, the BZA issued a twenty-six-page final order stating, *inter alia*, that because the Levine School was a private school within the meaning of section 206, it was eligible for a special exception. The BZA also found that the ANC's concerns about traffic and parking were not supported by the evidence.

Petitioners seek reversal of the BZA's ruling that the Levine School is a private school. They claim it is a trade school, a use prohibited under the zoning regulations. Petitioners also maintain that the BZA effectively amended the regulations by granting a special exception for an addition to a non-conforming structure when the addition itself was a nonconforming use. They further argue that the BZA failed to give "great weight" to the ANC's concerns, as required by law, because the ANC was not given an adequate opportunity to comment on the revised traffic plan. We hold that all of these claims are without merit and accordingly affirm the decision of the BZA.

I

The Levine School is a non-profit private music school that has been in existence for about twenty years. It is now located in leased space, a former convent near Georgetown University Hospital, operating under a special exception as a private school previously granted by the BZA. The school offers individual and classroom music instruction in orchestral instruments, piano, and voice, for students of all ages and abilities. It also has an extensive educational outreach program. It sponsors recitals in conjunction with public and private schools in the District of Columbia, and its students and faculty present concerts in local hospitals and other community facilities. The Levine School is one of only seventeen schools in the nation accredited as "community music schools" by the National Association of Schools of Music. It is rapidly outgrowing its present building and is in need of a bigger one.

The proposed site for the school's new location is a single lot in Northwest Washington near Rock Creek Park, containing almost four and a half acres. The Geophysical Laboratory of the Carnegie Institution of Washington was built on that lot in 1906 and occupied it until 1989, when the laboratory was closed. The site has been vacant since then. Currently, there are three buildings on the lot: a main building, a boiler room, and a former x-ray laboratory. The site is bounded by the Howard University Law School on the west, the Embassy of the Netherlands on the north, and Upton Street, N.W., on the east and south.

The Levine School's plan for the site envisions a total student enrollment of 1500, with a faculty of 98 professionally trained musicians who will teach at the school on a part-time basis. Instruction will usually be given individually, although there will also be some classes for larger groups.[1] The school intends to renovate the existing main building and boiler room and convert them into classroom and teaching facilities, with a recital hall in the present boiler room as well as administrative support space. The plan also includes restoring the former x-ray laboratory for use as living quarters, either by a resident caretaker or by an artist-in-residence, or possibly as a parent/student lounge. A proposed addition to the main building will house teaching studios, some classrooms, rehearsal facilities, offices, and a 300-seat performance auditorium.[2] Finally, the school proposes to build a 114-space parking lot. The school recently purchased the property from the Carnegie Institution, and renovation work on the main building has begun.[3]

1. Given the nature of the classes and the staggered scheduling, the maximum number of people expected to be on the premises at any one time during normal school hours will be no more than 150.

2. The proposed addition conforms to the height, lot occupancy, and other restrictions of an R-1-A zoning district. It is set back approximately 200 feet from the nearest curb on Upton Street.

3. Over the course of several meetings with members of the community, the Levine School made concessions in its plans for the site. It reduced the size of the new auditorium from 450 to 300 seats and agreed to provide on-site parking for

At the hearings before the BZA, the Levine School presented a traffic consultant, an architect, and a landscape architect, all of whom said that the school would have a minimal impact on the surrounding neighborhood. All three experts testified about the extensive steps the school would take to ensure that it would not alter the character of the community.

The ANC nevertheless continued to oppose the granting of a special exception for the Levine School, focusing particular attention on the likelihood of increased traffic on Upton Street and the surrounding streets. The ANC asserted that off-street parking would be inadequate and inconvenient during performances in the new auditorium and that the shortage of off-street parking would affect the availability of on-street parking in the area. Some community groups, including the three petitioners, also opposed the application for the same reasons and urged continued negotiations to decrease the negative impact of the Levine School on the neighborhood. They offered testimony from their own traffic consultant, who said that the presence of the school would cause an unacceptable increase in traffic. Other groups from the community, however, as well as individual residents, supported the application.

In its final order, the BZA found that the proposed use for the site fits the definition of a private school as that term is used in section 206 of the zoning regulations. Although there will be some increase in automobile traffic, vehicular access to the school will be "located so as to improve safety and minimize intrusion into the residential neighborhood . . . so that the project will create no dangerous or otherwise objectionable traffic conditions." The BZA found that the school's landscaping plan would provide "an adequate buffer" for nearby properties and that the 114–space parking lot would be "ample . . . for the daily operation of the school." The ANC's concerns about traffic and parking, the BZA said, "are unsupported by the evidence"; any possible adverse effect on traffic would be "mitigated by the conditions of this Order."[4] The BZA said that the Levine School's architect and landscape architect presented "credible and irrefutable evidence that the project will not have a negative impact from an architectural or urban planning perspective." After noting that the site "has been used for institutional purposes for almost ninety years," the BZA granted the request for a special exception.

II

Our standard of review is well established. "This court's review of the decision of the Board of Zoning Adjustment is limited to a determination of whether the decision is arbitrary, capricious, or otherwise not in accordance with the law." *Davidson v. District of Columbia Board of Zoning Adjustment*, 617 A.2d 977, 981 (D.C.1992) (citation and footnote omitted). "The Board's interpretation of the [zoning] regulations must be accorded great weight, and must be upheld unless it is plainly erroneous or inconsistent with the regulations." *Glenbrook Road Ass'n v. District of Columbia Board of Zoning Adjustment*, 605 A.2d 22, 30 (D.C.1992) (citation omitted); *accord, e.g., Downtown Cluster of Congregations v. District of Columbia Board of Zoning Adjustment*, 675 A.2d 484, 491 (D.C.1996). With these principles in mind, we consider petitioners' claims of error.

A. *Private school or trade school?*

The site at issue is located in an R–1–A zoning district. Chapter 2 of Title 11 of the District of Columbia Municipal Regulations lists permissible uses in an R–1 district.[5] Section 206, which authorizes private schools, provides:

all of the school's activities. It also accepted a limitation on the number of performances that will be given in the new auditorium. Finally, the school agreed not to rent its facilities to the general public.

4. In granting the application, the BZA imposed twenty conditions affecting the number of students, operating hours, and number and frequency of performances in the auditorium and recital hall.

5. R–1 zoning districts are subdivided into two categories, R–1–A (for low density one-family detached dwellings) and R–1–B (for high density one-family detached dwellings). 11 DCMR § 105.1(a)(1).

206.1. Use as a private school, but not including a trade school, and residences for teachers and staff of a private school, shall be permitted in an R-1 district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in § 3108 of chapter 31 of this title,[6] subject to the provisions of this section.

206.2. The private school shall 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.

206.3. Ample parking space, but not less than that required in chapter 21 of this title, shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.

Neither "private school" nor "trade school" is defined in the zoning regulations. Words that are not defined in the regulations, however, "shall have the meanings given in *Webster's Unabridged Dictionary*." 11 DCMR § 199.2(g); *see Concerned Citizens of Brentwood v. District of Columbia Board of Zoning Adjustment*, 634 A.2d 1234, 1242 n. 18 (D.C.1993). We therefore turn to the dictionary to determine whether the Levine School is a private school or a trade school.

The dictionary defines "school" in relevant part as follows:

> *a:* an organized source of education or training: as (1): an institution for the teaching of children: an elementary or secondary school (2): an institution for specialized higher education usu[ally] within a university ... (3):[a] college [or] university ... (4): an establishment for teaching a particular skill or group of skills [such as] a [school] of design, a fencing [school], a beauticians' [school]; *b:* a place where instruction is given....

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2031 (1976). A "private school" is defined as "a school that is established, conducted, and primarily supported by a nongovernmental agency." *Id.* at 1805. "Trade school" is defined as "a school usu[ally] on the secondary level devoted esp[ecially] to teaching the practice and theory of skilled trades." *Id.* at 2422. "Trade" is defined in relevant part as follows:

> the business one practices or the work in which one engages regularly: one's calling: gainful employment: means of livelihood: occupation [for example] wherever a ... writer or any sort of artist is plying his [trade] ... as (1): an occupation requiring manual or mechanical skill and training: a craft in which only skilled workers are employed....

Id. at 2421.

[1] Petitioners contend, first of all, that the Levine School is not a "school" within the dictionary definition of the term. They argue that the Levine School does not meet any of the first three definitions because it is not an elementary or secondary school, an institution for higher education, or a college or university. Nor, they say, does it fit the fourth definition, "an establishment for teaching a particular skill," since it resembles an arts center or business more than a school. They cite the Levine School's description of itself as a "center for the community" offering Washington's musicians and arts organizations "a place to work and exchange ideas with colleagues, students, and audiences."

[2] It is true, as petitioners tell us, that some courts in other jurisdictions have declined to consider education as including instruction in the arts.[7] In deciding this case,

6. 11 DCMR § 3108 permits the BZA to grant special exceptions, subject to certain conditions set forth elsewhere in the regulations. *See also* D.C.Code § 5-424(g)(2) (1994) (authorizing BZA to grant special exceptions in accordance with zoning regulations).

7. In *Medinets v. Hansen*, 31 N.J.Super. 102, 106 A.2d 39 (Law Div.), *appeal dismissed on other grounds*, 33 N.J.Super. 237, 109 A.2d 675 (App. Div.1954), the court held that "the maintenance of a school for the sole purpose of teaching voice, dancing, and instructions in the playing of musical instruments is a business and not a private school, in accordance with the provisions of the zoning ordinance." *Id.* at 103, 106 A.2d at 40. The court explicitly adopted the view that a permitted "school" included only those with a curriculum equivalent to that in the public schools. *See also Kurz v. Board of Appeals of North Reading*, 341 Mass. 110, 113, 167 N.E.2d 627, 629 (1960) ("the teaching of the various types of

however, we must look not to those cases but to the dictionary definition, since that is what the District of Columbia zoning regulations expressly require. The Levine School plainly meets the dictionary definition of a "school," namely, "an organized source of education or training," as well as "a place where instruction is given." It also fits within the fourth definitional example because, as the record abundantly shows, it is "an establishment for teaching a particular skill or group of skills." [8] It is "private" in that it is "established, conducted, and primarily supported by a nongovernmental agency," namely, its Board of Trustees.

Petitioners also argue that the Levine School is a trade school and thus barred by 11 DCMR § 206. They point out that music can be a "business" or "calling" as well as a "livelihood" or "occupation." The dictionary even uses the example of "any sort of artist ... plying his [trade]" in defining the term. Petitioners claim that since the Levine School trains future concert professionals, for whom music is a livelihood, it meets the dictionary definition of a trade school. We disagree. Although some music school graduates become professional musicians, music schools generally do not exist just to teach students a trade. "In fact, the teaching of music has been described as an educational use entitled to locate wherever educational uses are permitted." 2 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING 675 (1996); *see People v. Kelly*, 255 N.Y. 396, 400, 175 N.E. 108, 109 (1931) ("'Trade'... has the meaning of mechanical employment or commercial or business enterprises ... [or] some business or money making occupation as distinguished from the professions, the arts, or agriculture"). A music school, some of whose alumni become professional musicians, is no more a trade school than any high school, for example, whose graduates include carpenters and automobile mechanics applying skills that they learned in shop class.

[3] In any event, we are not bound by the school's description of itself as a "center for the community." Far more significant is what the record actually shows about what goes on at the Levine School on a daily basis. Its classes are designed for all ages and all levels of skill. The Early Childhood Music classes teach rhythm, singing, and movement through play for children between the ages of eighteen months and eight years. The Preparatory Division, which serves more than 650 students between the ages of seven and eighteen, offers comprehensive training to develop enhanced music skills, understanding, and appreciation. The Adult Division, which serves approximately 300 students, meets the full spectrum of adult musical interests from the novice to the accomplished player. Although a small percentage of its students may go on to further training, and an even smaller percentage to performing careers, the great majority do not. Thus it is apparent that the Levine School, in its daily operations, provides music education in a broad sense rather than training for a business or profession. We hold, accordingly, that the Levine School is not a trade school and is thus eligible to be granted a special exception.

B. *The new auditorium*

[4] Petitioners claim that the Levine School's planned addition does not conform to the use and structure requirements of 11 DCMR § 2001.3(b), which provides:

> Enlargements or additions may be made to [nonconforming structures devoted to conforming uses]; Provided, that the following requirements shall be met:
>
> (a) The structure shall conform to percentage of lot occupancy requirements; and
>
> (b) The addition or enlargement itself shall conform to use and structure requirements; and

dances ... with the possible exception of the classical ballet, can hardly be considered educational use in the ordinary sense"); *Yanow v. Seven Oaks Park*, 11 N.J. 341, 358, 94 A.2d 482, 491 (1953) (schools for the teaching of special arts may be reasonably excluded from a residential district because they are for business uses).

8. We therefore need not consider whether it also fits any of the first three examples in the dictionary.

(c) The addition or enlargement itself shall not increase or extend any existing, nonconforming aspect of the structure, and shall not create any new nonconformity of structure and addition combined.

The existing structure on the premises (the former Geophysical Laboratory) is a non-conforming structure devoted to a conforming use. The addition that the Levine School proposes to build would include a 300–seat performance auditorium, additional teaching studios, classrooms, rehearsal facilities, and offices. Petitioners claim that, under 11 DCMR § 2001.3(b), the proposed auditorium does not conform to the use requirements of an R–1–A district. They argue that a 300–seat auditorium does not contribute to the educational mission of the Levine School, and that the school therefore should have been required to apply for a use variance under 11 DCMR § 3107 in order to construct the proposed addition. Petitioners contend that, by granting permission to construct the addition under a special exception, the BZA in effect impermissibly amended the zoning regulations.

The issue that we must decide is whether the 300–seat auditorium is a conforming use for a private music school. The record demonstrates that it is a conforming use. The Executive Director of the Levine School testified that the auditorium is an essential part of the school's educational mission. There is, he said, a natural progression for music students that requires them to start in small performance spaces and move up to larger spaces, and for that purpose a performance auditorium is essential.[9] In addition, the National Association of Schools of Music requires its members to provide performance training spaces and performing auditoriums for music education.

This testimony makes clear that the proposed addition to the existing building, including the auditorium, contributes to the educational mission of the Levine School. It is therefore an addition to a non-conforming structure devoted to a conforming use. Since it meets all other relevant zoning requirements (see note 2, *supra*), we hold that it complies with 11 DCMR § 2001.3.

C. *The ANC and the revised traffic plan*

[5] The BZA is obligated to give "great weight" to the views of the ANC. *See* D.C.Code § 1–261(d) (1992); 11 DCMR § 3307.2. As this court held almost twenty years ago, in construing the predecessor of section 1–261(d):

> [A]n agency must elaborate, with precision, its response to the ANC issues and concerns.... [T]he agency must articulate why the particular ANC itself, given its vantage point, does—or does not—offer persuasive advice under the circumstances....
>
> ... [W]e believe that "great weight" implies explicit reference to each ANC issue and concern *as such*, as well as specific findings and conclusions with respect to *each*.

Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372, 1384 (D.C.1977) (emphasis in original).

At the hearing on February 22, 1995, the BZA asked the Levine School to submit by March 15 a revised transportation management plan addressing some of the concerns that had been expressed by the BZA. Other parties, including the ANC, were allowed until March 29 to respond, and all proposed findings were to be submitted by March 29 as well. The BZA would then "consider a decision" by April 5. The record reflects that the BZA voted on April 5 to grant the appli-

9. Discussing the use of the proposed auditorium, the Executive Director testified:

> We start with the very first building block of a score that is given to a child for the first time, and they go one page at a time and learn that score with their teacher and with their friends. They build the costumes one stitch at a time. They build the set, if we have one ... in a very modest setting. But all of that is part of the educational learning experience, and it takes in most instances between six and sixteen weeks for a student to go through this educational journey....
>
> [A 300–seat auditorium] would be the kind of space that would serve both the educational musical needs and the family support needs of the children. It would also be a space that would still look like a real theater, and it would, for a young person, give them a sense that they had made it....

cation for a special exception, subject to twenty conditions that were later set forth in the final order.

[6] The Levine School's revised plan was filed with the BZA on March 15. Appended to the cover letter was a certificate of service, stating that a copy of the plan had been hand-delivered to several named persons and to "ANC 3F." Petitioners contend that this certificate was defective on its face because it alleges service on "ANC 3F" but not on a "person" as required by 11 DCMR § 3305.4.[10] For reasons not disclosed by the record, the ANC did not submit a response to the revised plan. Petitioners assert (without any record support) that the reason for the ANC's failure to respond was that it was never served with it. They argue that the BZA cannot be deemed to have given the required "great weight" to the concerns of the ANC, even though the BZA expressly said it did, because the ANC never had an opportunity to submit its views on the revised traffic plan.

In a footnote in its brief, the Levine School states:

> Apparently, the ANC moved its office shortly before the filing of the supplemental traffic plan. As a result, the supplemental traffic plan was initially served on the ANC's former address.... Thereafter, it was returned to counsel, who, after ascertaining the ANC's new address, served it on the new address.

Petitioners do not challenge this representation,[11] making only the technical argument that because the ANC is not a "person," any purported service on it is void. The certificate of service, they contend, shows on its face that the ANC was not validly served because service was not made on a person. This argument overlooks another regulation, 11 DCMR § 3399.1, which provides that "[w]hen used in this chapter"—*i.e.*, for purposes of service under section 3305.4—the word "person" is defined as "an individual, partnership, association, corporation, public agency, governmental unit or department, or other legal entity." 11 DCMR 3399.1. Since the ANC is a public agency, we hold that it was properly served with the revised traffic plan.

[7] Finally, petitioners contend that the BZA was required by D.C.Code § 1-261(b) to give the ANC at least thirty days within which to respond to the revised traffic plan, and that the BZA erred in failing to do so. Since the Levine School did not submit its revised plan until March 15, petitioners assert that the BZA granted the special exception (on April 5) before the thirty days had expired. We hold that section 1-261(b) is not applicable here. This section of the Code requires the District of Columbia government, or any of its agencies, to give thirty days' notice to any affected ANC of any proposed action in a rulemaking proceeding.[12] It cannot reasonably be read as imposing a requirement on the BZA to allow an ANC (or anyone else) thirty days to respond to a supplemental submission in a zoning appeal. By its terms, the statute simply

10. 11 DCMR § 3305.4 provides:
> Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown, and may be made by either of the following methods:
> (a) Written acknowledgment of the party served or his or her representative; or
> (b) The written statement of the person making the service.

11. The ANC itself has never asserted that it was not served. Under the circumstances, we think it reasonable to expect that if in fact it was never served, the ANC would have complained to the BZA long before the BZA entered its final order.

12. D.C.Code § 1-261 provides in pertinent part:
> (a) Each Advisory Neighborhood Commission ... may advise ... all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including decisions regarding planning [and] streets ... which affect that Commission area. For the purposes of this [section], proposed actions [*sic*] of District government policy *shall be the same as those for which prior notice of proposed rulemaking is required* pursuant to [another statute] or as pertains to the Council of the District of Columbia.
> (b) Thirty days written notice of such District government actions or proposed actions shall be given by mail to each Commission affected by said actions [with certain exceptions not applicable to this case].
> [Emphasis added.]

does not address the situation presented here.

What governs this case is not section 1-261(b) of the Code but 11 DCMR § 3326.6, which states:

> Written responses shall be filed within seven (7) days following the date by which the exhibits, information, or briefs were due, unless otherwise directed by the presiding officer.

Since the BZA gave the parties fourteen days, not just seven, within which to file responses to the revised traffic plan, petitioners' claim of inadequate notice is without merit.

III

For the foregoing reasons, the final order of the BZA is

Affirmed.



In re Leonard L. CASALINO, Respondent,

A Member of the Bar of the District of Columbia Court of Appeals.

Nos. 93-BG-368, 93-BG-1309.

District of Columbia Court of Appeals.

Argued Feb. 14, 1996.
Decided June 12, 1997.

In an attorney disciplinary proceeding, the Court of Appeals, Terry, J., held that tax evasion was crime of moral turpitude and required disbarment.

Disbarment ordered.

1. The information alleged, in part, that respondent "did willfully attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar years *1988, 1989,* and *1990,* by preparing and causing to be prepared, and by signing and causing to be signed, false and fraudulent U.S. Individual Income Tax Returns...." According to the information, "his taxable income for the said calendar years was substantially in excess" of what he had *reported on his* tax returns, so that "a substantial additional tax was due and owing to the United States of America."

1. Attorney and Client ⇐58

Court must impose disbarment and has *no* discretion to impose lesser sanction, such as suspension, for offense involving moral turpitude. D.C.Code 1981, § 11-2503(a).

2. Attorney and Client ⇐58

Tax evasion was "crime of moral turpitude" within meaning of statute mandating disbarment for conviction of offense involving moral turpitude; attorney and spouse secretly stashed away cash received as legal fees, concealed it from IRS, and engaged in systematic and deceptive scheme to deprive government of tax revenue, and attorney acted for personal gain by using money to purchase two cars and parcel of land. D.C.Code 1981, § 11-2503(a).

See publication Words and Phrases for other judicial constructions and definitions.

Melvin G. Bergman, Beltsville, MD, for respondent.

Michael S. Frisch, Senior Assistant Bar Counsel, with whom Leonard H. Becker, Bar Counsel, was on the brief, for petitioner, the Office of Bar Counsel.

Before TERRY and FARRELL, Associate Judges, and BELSON, Senior Judge.

TERRY, Associate Judge:

Respondent, an attorney admitted to practice in Maryland and the District of Columbia, pleaded guilty on February 12, 1993, to an information charging him with tax evasion, in violation of 26 U.S.C. § 7201 (1988).[1] On May 18, 1993, the United States District Court for the District of Maryland sentenced *him to* two years' probation, with 160 hours of community service. The court also or-

RATHKOPF'S

The Law of Zoning and Planning

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less educational in nature "than that of the most demanding university."[8]

§ 30:13 Educational facilities and accessory uses

By implication, permission to operate a school includes permission to locate upon the property those accessory uses which are customarily engaged in by students.[1] So, in *Alexander v. Philips*,[2] it was held that stadia for athletic games were included within the term "school-houses," and that the

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[8]School Lane Hills, Inc. v. East Hempfield Tp. Zoning Hearing Bd., 18 Pa. Commw. 519, 336 A.2d 901 (1975). And see United Civic Associations and Neighbors, Inc. v. Planning Bd. of Town of Clifton Park, 153 Misc. 2d 906, 583 N.Y.S.2d 901 (Sup 1992) (proposed facility for handicapped and developmentally disabled adults constituted school offering "general education courses" under zoning ordinance).

See also the following cases holding that the facilities in question were protected uses within the meaning of Mass. Gen. L. ch. 40A, § 3 prohibiting local officials from using zoning laws to prevent nonprofit educational organizations from using land for educational purposes: Watros v. Greater Lynn Mental Health & Retardation Ass'n, 421 Mass. 106, 653 N.E.2d 589 (1995) (residential facility for mentally retarded adults); Campbell v. City Council of Lynn, 415 Mass. 772, 616 N.E.2d 445, 84 Ed. Law Rep. 442 (1993) (group home of elderly mentally ill residents); Gardner-Athol Area Mental Health Ass'n, Inc. v. Zoning Bd. of Appeals of Gardner, 401 Mass. 12, 513 N.E.2d 1272, 42 Ed. Law Rep. 381 (1987) (residential facility for adults with mental disabilities).

See generally herein with respect to residential/educational facilities of a "group home" nature, §§ 23:24 to 23:29, supra.

[Section 30:13]

[1]See generally herein Ch 33, infra.

[2]Alexander v. Phillips, 31 Ariz. 503, 254 P. 1056, 52 A.L.R. 244 (1927). See also Board of Ed. of Louisville v. Klein, 303 Ky. 234, 197 S.W.2d 427 (1946) (gymnasium, athletic stadium, and library all permitted accessory uses to a high school).

In Property Owners Ass'n of Garden City Estates v. Board of Zoning Appeals of Incorporated Village of Garden City, 2 Misc. 2d 309, 123 N.Y. S.2d 716 (Sup 1953), the board of appeals limited the number of seats in the bleachers the school desired to erect in and about its stadium. The court said:

> Adelphi College was granted permission to establish an educational institution in Garden City in 1927. With the passage of years its student body and educational facilities have expanded in accordance with the general trend of more and more education for the youth of the country. It is customary, whenever space is available, for colleges and schools generally, to use a portion of their property for athletic contests, commencement exercises and other activities of like nature. The parties to these proceedings do not question the right of Adelphi to make such use of its property but the property owner-petitioners and the Board seek to deny to Adelphi that which public schools concededly may do without permission—provide seats as an accessory use. (§ 401, subdivi-