GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15691 of the Protestant Episcopal Cathedral Foundation, pursuant to 11 DMCR 3108.1 for a special exception under Section 206 to allow a two-story addition consisting of an assembly/performance room, library, music room, classrooms and a computer center for a private school in R-1-B and R-5-C Districts at premises 3600 Woodley Road, N.W. (Square 1922, Lot 17).

HEARING DATES: July 15 and September 23, 1992
DECISION DATE: November 4, 1992

DISPOSITION: The Board GRANTED the application by a vote of 4 – 0 (Angel F. Clarens, Maybelle Taylor Bennett, Paula L. Jewell and Carrie L. Thornhill to grant; Sheri M. Pruitt not voting, not having heard the case).

FINAL DATE OF ORDER: March 28, 1994

MODIFICATION ORDER

The Board granted the application by its order dated March 28, 1994. By letter dated February 20, 1998, the National Cathedral School (NCS), on behalf of the Protestant Episcopal Cathedral Foundation (applicant), requested that the Board waive the six-month filing requirement to allow for the filing of a motion for modification of approved plans.

The Waiver Request

This case involves a special exception application filed by NCS to permit the renovation of, and an addition to, its existing facility, known as Whibty Hall, which houses NCS' Lower School at the 3600 Woodley Road N.W. The movant stated that a hearing was held by the Board on July 15 and September 3, 1992. During this time the Board developed an extensive and complete record for the application. At the conclusion of the hearing on September 23, 1992, the Board directed NCS to meet with certain neighbors ("Neighbors"), who appeared in opposition, to determine whether a compromise could be reached.

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EXHIBIT NO. 162A2

The parties reported to the Board by letter dated October 28, 1992, that an agreement had been achieved. A copy of the plans evidencing this agreement was attached to the agreement as an exhibit and adopted by the Board upon issuing its final order in the application. In the normal course of business, the project went through the building permit process and construction began in June 1994. Toward the end of construction (late 1994), a dispute arose between the Neighbors and NCS with regard to the building's conformance with the agreement between the parties. The Neighbors and NCS initiated discussions to attempt to achieve a compromise between the parties. After three years of extensive negotiations, the parties finally agreed to a modified plan near the end of 1997. The movant stated that because the agreement was not reached until 1997, the motion falls outside of the six-month time frame required by the Board's rules. Therefore, a waiver is requested.

By letter dated February 23, 1998, two Neighbors expressed support for the motion to waive the rules. By letter dated February 25, 1998, Advisory Neighborhood Commission 3-C supported the motion to waive the rules.

The Board notes that Subsection 3335.3 of the Zoning Regulations states that "a request for modification of plans shall be filed with the Board not later that six (6) months after the final date of the written order approving the application." To be considered timely, this rule would require that a motion for modification be filed in this case by September 28, 1994. However, the Board notes that pursuant to 11 DCMR 3301.1, "the Board may, for good cause shown, waive any of the provisions of this chapter, if in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law."

Upon consideration of the request, the responses and applicable rules, the Board determined that the NCS has demonstrated good cause for a waiver of the six-month filing requirement, and a waiver in this case would not prejudice the rights of any party, nor would it be otherwise prohibited by law. Therefore the Board **GRANTED** the waiver request and considered the modification of plans.

The Motion for Modification of Plans

Pursuant 11 DCMR 3335.2, "The Board shall consider requests to approve modifications to plans approved by the Board,...." The standard for review appears in Subsection 3335.7 which states that "Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application."

In the motion filed with the Board, the movant stated that on September 9, 1992, NCS filed an application with the Board seeking permission to build an addition to an existing structure which had been utilized for private school purposes in the R-1-B and

R-5-C Districts at premises 3600 Woodley Road, N.W. (Square 1922, Lot 17). At the public hearing, a number of persons and parties testified in support, of and in opposition to, the application. After the hearing was complete, the applicant entered into negotiations with the Neighbors at the request of the Board and an agreement was reached. As a result of that agreement, three amendments were proposed to the application. These three amendments dealt with (1) on-site parking; (2) building height; and (3) future site development.

The movant stated that the Board approved the application with the changes shown in the amended plans, along with a number of conditions. In June 1994, NCS applied for and received building permits and the project was constructed in accordance with the building permits. During the course of construction, however, the Neighbors noted some differences in the actual construction from those approved in their agreement with NCS. In an effort to reach a compromise on the various issues, NCS and the Neighbors met consistently to resolve these concerns. The modifications requested here are the result of an amendment to the agreement with the neighbors to achieve the compromise noted. The movant submitted into the record a copy of the original agreement as well as the amended agreement.

The movant requested that the Board approve four modifications as follows:

(1) A revised site plan which redesigns the open space at the corner of 36th and Lowell Streets, N.W. to include more landscaping and reduce parking on the site by two spaces (Exhibit No. 99 C, sheet 1);

(2) A relocation of those two spaces to the Washington Cathedral Close (Exhibit No. 99C, sheet 2);

(3) Minor design modifications to the building itself. (Exhibit No. 99C, sheet 3); and

(4) An incorporation of the Agreement and Amendment into the record in this case (Exhibit No. 99B).

The movant stated that each of the above modifications relates to insuring that the character of the project fits into the residential character of the neighborhood. The movant argued that the changes are minor and do not alter the ultimate build-out of the site nor change the overall impact of the School's occupancy of the site on the neighborhood. On the contrary, the requested modifications significantly improve the green space and the architectural treatment of the building to accommodate the Neighbors' desires.

In their response dated February 23, 1998, the Neighbors stated that they are responding to the motions filed with regard to a recently constructed addition to the campus located on the block bordered by Wisconsin Avenue, Lowell Street, 36th Street

and Woodley Road, N.W. The neighbors stated that the Board's order authorized NCS to construct a building addition in accordance with its initial application as modified to reflect the substance of the 1992 Agreement. However, in the course of construction, certain elements of the 1992 Agreement were not fulfilled. The 1997 Agreement grew out of that failure. The modifications for which the NCS now seeks approval are intended to implement the 1997 Agreement. The Neighbors requested that the Board's Modification Order reflect the variations between the NCS plans, as originally approved, and the actual structure. This would help to eliminate any confusion on the matter. The Neighbors set forth the most significant elements of variation as follows:

(1) The height of the addition was not reduced by three feet.

(2) The north (Lowell Street) facade was substantially redesigned, in that:

a. One of the ground floor windows was replaced with a door which leads into the reserved green space;

b. The remaining ground floor windows were enlarged and were set lower on the building;

c. The first and second story fenestration was changed significantly.

(3) The height of the raised courtyard was increased, resulting in a higher wall, railing and steps from the parking area to the courtyard.

The Neighbors indicated that these changes are reflected generally in Exhibit No. 102A, and more specifically in Exhibit No. 102B of the record.

Finally, the Neighbors stated that the 1997 Agreement makes various modifications including, among other things:

a. The parking lot on Lowell Street will be reduced to two spaces, with the other two spaces relocated to the Cathedral Close across Woodley Road;

b. The ground story window treatment will be revised, and all vertical grilles and railings associated with the windows and new door will be removed;

c. The steps to the courtyard will be reconfigured;

d. NCS will restrict use of the new door to emergency use only;

e. NCS will re-grade and re-landscape the reserved green space as provided in the 1997 Agreement.

The Neighbors expressed the view that the modifications currently being sought are needed so that NCS may fully implement the 1997 Agreement. Therefore, the Neighbors requested approval of the motions.

In its letter dated February 25, 1998, Advisory Neighborhood Commission 3C submitted a resolution in support of the modification. The ANC briefly recounted the circumstances leading up to the filing of the motion and indicated that the modification is needed because of inconsistencies between what was originally approved by the Board and what was actually constructed. The modification embodies a settlement in lieu of litigation. The ANC stated that is regrettable and disturbing that the architectural firm responsible for design and construction of the project, Bowie-Gridley Architects, allowed construction inconsistent with the approved plans, whether by nonfeasance or otherwise. However, the building addition is now a reality and the School and resident neighbors have reached an agreement that reduces adverse impacts. Therefore, the ANC resolved to support the modification of plans. Finally, the ANC listed the inconsistencies and stated that it agreed with the statement in NCS' motion that "The changes make the project more compatible with the character of the neighborhood, including the provision of additional landscaping and screening" and that "The requested modifications...will insure continued good neighbor relationships with the surrounding community."

The Board notes that the current Board members voting on this matter read the record in the case. Upon consideration of the record, the motion for modification, the responses thereto, and the applicable law, the Board concludes that the movant has met the burden of proof. The Board concludes that the modifications are minor and do not materially alter the facts relied upon in deciding to grant the application. The Board further concludes that the parties to the application are in support of the request as the modification will effectuate the most recent agreement between them.

In light of the foregoing, the Board hereby **ORDERS** that the **MOTION TO WAIVE THE RULES** and the **MOTION FOR MODIFICATION OF PLANS** be **APPROVED, SUBJECT** to the **CONDITION** that construction shall be in accordance with the plans marked as Exhibit No. 91B as modified by Exhibits No. 94A and 95A, and as further modified by Exhibit No. 99 of the record.

DECISION DATE: March 4, 1998

VOTE: **3 – 0** (Betty King, Susan Morgan Hinton and Sheila Cross Reid to approve; Maybelle Taylor Bennett to approve by absentee vote).

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Madeliene H. Dobbins
MADELIENE H. DOBBINS
DIRECTOR

Final Date of Order: APR 1 1998

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

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

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

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15691

As Director of the Board of Zoning Adjustment, I certify and attest that on APR 1 1998 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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