GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17143 of Marquette University, pursuant to 11 DCMR § 3104.1, for a special exception under Section 206 to continue the use of the premises as a private school for twenty (20) students and two (2) staff persons in the CAP/R-4 District at premises located at 502 East Capitol Street, N.E. (Square 840, Lot 23).

HEARING DATE: April 20, 2004
DECISION DATE: April 20, 2004

DECISION AND ORDER

The application was filed on February 9, 2004, by Marquette University, the owner of the property that is the subject of the application. Following a public hearing on April 20, 2004, the Board of Zoning Adjustment ("Board" or "BZA") voted 3-0-2, by bench decision, to grant the application subject to conditions.

PRELIMINARY MATTERS

Application. Marquette University filed the application pursuant to §206 of the Zoning Regulations to continue using the basement of the building located at 502 East Capitol Street, N.E, as a private school for 20 students and two staff persons. The Board had previously approved the use of the basement of the subject property for use as a private school for the student training seminars of the Les Aspin Center for Government (hereinafter "Center) in BZA Order No. 16459, issued on March 17, 2000.[1] That order expired on March 17, 2004. The Applicant filed the current application on February 9, 2004, prior to expiration of the previous Order. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

Notice of Application and the Public Hearing. The Office of Zoning provided proper and timely notice of the public hearing on this application. Notice of the public hearing was published in the D.C. Register. Additionally, notice of the hearing was sent to the District's Office of Planning, Department of Transportation, Department of Housing and Community Development, Advisory Neighborhood Commission 6C, the ANC where the subject property is located, the Single Member District Commissioner, ANC 6C07, the Councilmember for Ward 6, the Architect of the Capitol, and, to owners of property within 200 feet of the site. The Applicant posted the property 15 days prior to the public hearing, and filed an Affidavit of Posting with the Board to this effect. (Exhibit 29)

[1] This Order was a "Corrected Order" which slightly modified one of the conditions for approval in an original Order issued January 18, 2000.

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Government Reports

OP Report. The Office of Planning (OP) recommended approval of the application for a period of 10 years subject to the conditions of the previous order. (Exhibit 31)

DDOT Report. The District's Department of Transportation (DDOT) submitted a report concluding that the use, subject to the conditions of the previous order, would not create objectionable or dangerous traffic conditions or significantly impact the neighborhood's on-street parking supply. (Exhibit 25)

DHCD Report. The Department of Housing and Community Development (DHCD) submitted a report recommending continued approval of the special exception subject to conditions provided in the previous BZA Order. (Exhibit 26)..

ANC Report. The subject property of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. The ANC did not appear at the hearing, but submitted a letter in support of the application with suggested conditions. (Exhibit 32)

Requests for Party Status. There were no requests for party status.

Persons in support of the Application. The Board received letters of support from neighboring property owners and from the Capitol Hill Restoration Society. (Exhibit 27)

Persons in Opposition to the Application. There were no persons in opposition to the Application.

FINDINGS OF FACT

The Property and the Surrounding Area

1. The subject property is located in Square 840 on Lot 23, at premises 502 East Capitol Street, NE., in the CAP/R-4 zone.

2. The property is improved with a three-story, plus basement, row dwelling.

3. The Applicant modified the building in 1995, prior to opening the Center, to provide a separate entrance to the basement where the Center's activities are conducted.

Use of the Premises

4. The application is for the use of a basement of a row dwelling, primarily for student seminars. The seminars are typically conducted two (2) times per week for approximately 3 hours each, for a total of 6 hours per week.

5. The Center, housed in the basement, is also occasionally used for small university-related receptions. Approximately once per quarter the basement is used to host a meeting for approximately 20 persons who contribute to the activities of the Center.

6. The premises are used primarily as the personal residence of the Center's director. No Center activities are permitted on the upper three levels of the dwelling where the director resides.

7. The regulations require that the Center provide one off-street parking space. The Center provides the required parking space in a garage at the rear of the property. The space is used by the Center's director.

Educational Program.

8. Marquette University offers a semester program in Washington. D.C. that consists of an internship for college students combined with seminars at the Center with scholars, members of Congress, visiting dignitaries, and Marquette University alumni.

9. Marquette University's main campus is located in Milwaukee, Wisconsin. The University does not have a campus in Washington, D.C.

10. Eighteen to 20 students participate in the program each semester. There is one other full-time staff in addition to the Director.

11. The Center's days and hours of operation are Tuesday and Thursday afternoons, between 1 p.m. and 5 p.m. Infrequently, a lecture may be given to students, in the basement, after 5 p.m.

12. Students enrolled in the program do not reside on the premises. They live in supervised housing elsewhere in the City. The students spend the majority of their time in congressional internships on Capitol Hill.

13. Students who participate in the program are not permitted to have personal vehicles in the District of Columbia.

History

14. Initially in 1996, based on the Center's description of the property's proposed use, the Department of Consumer and Regulatory Affairs granted the Applicant a Certificate of Occupancy for use of the basement of the property as a private club, a matter of right use in the CAP/R-4 District. The remainder of the property was and continues to be used as the personal residence of the Center's director.

15. In 1998, the Applicant voluntarily agreed to file for a special exception under § 206 to accommodate neighborhood concerns. It self-certified the use as a private school use. The initial application was filed and approved prior to December 8, 2000, the date college

and university campus review was transferred from the Board to the Zoning Commission. (BZA Case No. 16549)

16. The Board that heard the initial application had the authority to consider the application pursuant to § 210 of the Regulations (colleges and universities) and elected to process the application under the private school standards (§ 206). There has been no change in use between the previous application and the current application.

17. On April 20, 2004, when the public hearing on the subject application was heard, the Center had operated from the site for eight years, commencing in 1996, without incident and in accordance with the terms of the special exception order.

18. The Applicant has the support of all interested parties – Advisory Neighborhood Commission 6C, the immediately adjoining neighbors, the Capitol Hill Restoration Society, the Office of Planning, the Department of Transportation, and the Department of Housing and Community Development. No person presented testimony in opposition to the application at the public hearing.

CONCLUSIONS OF LAW AND OPINION

The Board initially addressed whether it had jurisdiction over this matter in light of the regulatory scheme that provides the Zoning Commission with jurisdiction over special exceptions for use as a college or university and the Board with jurisdiction over special exceptions for use as private schools. This question arose because the Applicant is a university but is seeking continuation of a special exception for use of the premises as a private school.

Regulatory Framework

Section 210 of the Zoning Regulations allows for university uses in residential zones as part of a campus plan by special exception. Specifically, § 210 states in relevant part:

§ 210.1 Use as a college or university that is an academic institution of higher learning, including a college or university hospital, dormitory, fraternity, or sorority house proposed to be located on the campus of a college or university, shall be permitted as a special exception.

§ 210.4 As a prerequisite to requesting a special exception for each college or university use, the applicant shall have submitted to the Commission for its approval a plan for developing the campus as a whole, showing the location, height and bulk, where appropriate, of all present and proposed improvements, including, but not limited to the following:

(a) Buildings and parking and loading facilities;
(b) Screening, signs, streets, and public utility facilities
(c) Athletic and other recreational facilities;

(d) A description of all activities conducted or to be conducted on the campus, and of the capacity of all present and proposed campus development.

§ 210.5 Within a reasonable distance of a college or university campus....the Commission may also permit the interim use of land or improved property with any use that the Commission may determine is a proper college or university function.

Section 3035 provides that all § 210 applications filed after December 8, 2000, are to be heard and decided by the Zoning Commission. It states in relevant part:

§3035.1 Effective December 8, 2000, the Zoning Commission shall hear and decide all applications filed under § 3104 for special exception approval under §§ 210, 302.2, 322.2, 332.2, 352.2, 507, 615, and 916 of **a campus development plan;** the further processing of **a campus development plan** to permit the construction and use of a specific building or structure **within a campus,** whether the **plan** was approved by the Commission or the Board of Zoning Adjustment; and the interim use of land or improved property within a reasonable distance of a campus.

Section 206 of the Zoning Regulations allows private school use in residential zones by special exception. Private school use is not defined except for excluding trade school and residences for teachers and staff.

Based upon the facts in this case as set forth above, the Board found that it had jurisdiction over this application because the application does not fall within the description of use as a college or university as set forth in 11 DCMR § 210.1. 11 DCMR § 210.1 provides for jurisdiction by the Zoning Commission where the use is "**as a college or university...**" While the application is brought by a University, its actual **use** is more accurately characterized as a private club, as originally determined by DCRA, or as a private school. 11 DCMR § 210.1 addresses use **as** a college or university, not use **by** a college or university, and specifically lists other uses that are included in the definition; i.e., "university hospital, dormitory, fraternity, or sorority house ***proposed to be located on the campus of a college or university.***" Because the Board determined that Applicant's use of the basement of the premises for only six hours a week did not constitute use of the premises as a university under 11 DCMR § 210.1, and is more accurately characterized as a private club or private school use, the Board's jurisdiction over this application pursuant to 11 DCMR § 206 is not precluded by 11 DCMR § 210.1.

In addition, 11 DCMR §§ 210 and 3035.1 provide a regulatory scheme for special exception consideration of colleges and universities in the context of a campus and campus plan. The Board found compelling the basic fact that the application does not involve a campus. Marquette University's campus is located in Milwaukee, Wisconsin. The University offers a Washington program to a very small group of students (18-20) who work in different internships on Capitol Hill, live elsewhere in the city, and only attend the Center for lectures six hours a week. The basement of this residence is only used for these lectures and an occasional reception. Finally, the Board concludes that the regulatory scheme set forth in § 210 which requires submitting a

campus plan to the Zoning Commission showing location, height and bulk of all proposed improvements including ...parking and loading facilities, athletic and recreational facilities, etc. was not intended to apply to a small program such as the Applicant's which has no campus, but only minimal use of the basement of a residence.

For these reasons, the Board concludes that while the Applicant is a university in name, its use in this case shares none of the attributes addressed by the zoning regulations governing special exceptions for use as universities. Accordingly, jurisdiction over this application as a special exception for use as a private school pursuant to 11 DCMR §206 is properly before the Board.

Merits

The Board of Zoning Adjustment is authorized under the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §6-641.07 (g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. Based upon the record, including the history of operations at the premises, the Board finds that granting the special exception in this case will be in harmony with the general purpose and intent of the zoning regulations and will not tend to adversely affect the use of neighboring property. In particular, the applicant has operated at the premises for 8 years in the same manner as proposed in this application without incident or complaint by neighboring properties. No parties appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. The Office of Planning, the Department of Transportation, the Department of Housing and Community Development, Advisory Neighborhood Commission 6C and residents of the neighborhood recommended approval of the application.

The Board accorded the ANC the "great weight" to which it is entitled and adopted the majority of the ANC's proposed conditions. However, the Board did not adopt the following three recommended conditions: 1) that the Applicant shall not assist students to obtain neighborhood parking stickers; 2) that there shall be no garden parties associated with the Center; and 3) that the Applicant shall use its best efforts to supervise the conduct of its students. The Board finds that these proposed conditions are not warranted for the following reasons: 1) the record indicates that the Center's policy prohibits students from having personal vehicles in the District.; 2) the use approved by this order is for the basement and the garden is part of the personal residence of the director; and 3) the Center has an 8-year history of operating without any problem or adverse impact associated with the students or the premises in general. In addition, a condition to use "best efforts" is neither measurable nor enforceable.

For the reasons stated above, the Board concludes that the Applicant has met the burden of proof for a special exception under §§ 3104.1 and 206, and it is hereby **ORDERED** that this application be **GRANTED** subject to the following **CONDITIONS**:

1. Approval shall be for **FIFTEEN (15) YEARS**.

2. Enrollment at the School shall be limited to an average of twenty (20) students over the year and two (2) full-time staff persons.

3. The Les Aspin Center shall operate between the hours of 1 p.m. and 5 p.m., Tuesday and Thursday, but shall be permitted on an irregular basis, to have lectures for students in the evenings.

4. The Applicant shall not permit any part of the premises to be used for other than official receptions for the Les Aspin Center or for any functions that are not attended by students and their guests; nothing herein shall be construed to prohibit the resident of the premises from using the residential portions in a manner consistent with such residential use.

5. The Applicant shall establish a liaison with Advisory Neighborhood Commission 6C to maintain a working relationship regarding the school use. Toward this end, a representative of the Applicant shall either attend a meeting of the full ANC or meet with the single member district commissioner for the subject property on an annual basis.

VOTE: **3-0-2 (Geoffrey H. Griffis, Ruthanne G. Miller and John A. Mann II to grant; Anthony Hood abstaining; Curtis Etherly not present, not voting.)**

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

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

FINAL DATE OF ORDER: JUN 17 2005

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN (10) DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF

ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ, (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION, WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT.

DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

RM & BAB/5.26.05

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATON NO. 17143

As Director of the Office of Zoning, I certify and attest that on JUN 17 2005 a copy of the Order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY: Jerrily Kress
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