GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

RECEIVED
D.C. BOARD OF ZONING ADJUSTMENT
DEC 7 PM 2:

Application No. 16459 of Marquette University, pursuant to 11 DCMR 3108.1 **(new 3104.1)** for a special exception under Section 206.1 to use the premises as a private school for twenty (20) students and two (2) staff persons in an R-4 District at premises located at 502 East Capitol Street, N.E. (Square 840, Lot 23).

HEARING DATE: July 21, 1999
DECISION DATE: September 22, 1999

BZA
Case No. 17143
Exhibit No. 8

CORRECTED ORDER*

This order replaces the Board's original order for this application dated January 18, 2000. It adds another condition to the set of conditions at the end of the order on page 7. The addition is asterisked.

SUMMARY OF EVIDENCE:

1. The subject application was filed on December 2, 1998, by Steven J. Cottingham, Esquire, of the Office of the General Counsel, Marquette University (hereinafter referred to as Marquette or Marquette University), to use the basement level of 502 East Capitol Street, N.E. (the Premises), as a private school for its "Les Aspin Center for Government" (the School). The Premises are located in an area zoned CAP/R-4.

2. Marquette previously obtained a certificate of occupancy to use the Premises for a private club, a use permitted as a matter of right in the CAP/R-4 District. The Zoning Regulations define a private club as including circumstances where a "building and facilities or premises used or operated by an organization or association for some common avocational purpose such as, but not limited to, a fraternal, social, educational, or recreational purpose; Provided, that the organization or association shall be a non-profit corporation and registered with the U.S. Internal Revenue Service, that goods, services, food, and beverages shall be sold on the premises only to members and their guests, and that office space and activities shall be limited to that necessary and customarily incidental to maintaining the membership and financial records of the organization." However, pursuant to an agreement between it and the Capitol Hill Restoration Society, Marquette filed the instant application for a special exception.

3. Under § 206 of the Zoning Regulations, the Board may approve a special exception for use as a private school, provided that the applicant meets the conditions specified in §3108 **(new 3104)** of chapter 31 of this title, and provided that (1) the private school shall be located so that it is not likely to become objectionable to adjoining and nearby property because

Board of Zoning Adjustment
District of Columbia
CASE NO. 17143
EXHIBIT NO. 8

#8

of noise, traffic, number of students, or otherwise objectionable conditions and (2) ample parking space, but not less than that required in chapter 21 of the zoning regulations, shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.

4. The Premises, a four-story brick townhouse, occupies lot 23 in square 840 and is bounded by East Capitol Street on the south, 5th Street on the west, A Street on the north and 6th Street on the east. The School will occupy only the basement portion of the Premises, which comprises approximately one-quarter of the Premises, and will accommodate, on average, 20 students and, two full-time staff members. None of the School's students are permitted to have cars in the District of Columbia.

5. The two staff persons currently use off-street parking at a nearby garage and driveway. The Center does anticipate infrequent receptions for Marquette University persons once approximately every 3 months wherein street and/or off-street parking may be utilized.

6. As a preliminary matter, Advisory Neighborhood Commission 6B requested a continuance of the hearing scheduled for July 21, 1999, on the grounds that it did not have notice of the date of the hearing. After it had been determined that the Premises are not located in ANC 6B and that a representative of ANC 6B had not appeared at the last hearing date, of which it did have notice, at which time the matter was continued to July 21, 1999, the Board denied ANC 6B's request.

7. As an additional preliminary matter, ANC 6B complained that the application for the School should have been filed as a request for a special exception under Section 210 of the Zoning Regulations pertaining to college and universities rather than as a private school. The Board noted that this was a self-certification matter and denied the complaint.

8. Father Timothy O'Brien (Father O'Brien), Director of the Marquette University Les Aspin Center (Center) and sole resident of the subject premises, testified in support of the application by giving a historical account of the Center and the proposed use of the Center. With respect to the proposed use, Father O'Brien testified that the Center's use of the premises will be confined solely to the basement area. Father O'Brien testified that the Center would occasionally be used for student training seminars in the Marquette University congressional internship program. These scholars will be working on Capitol Hill and in other government agencies and the School will provide an opportunity for the scholars to share their experiences and ideas with each other and members of Congress, visiting dignitaries and Marquette alumni. Father O'Brien testified that the Center was a tangential experimental learning program for a semester or a summer.

9. Father O'Brien made it clear that the students enrolled in the Center would not be living at the residence occupied by him. Rather, the students would be living at a separate residence within walking distance of the School.

10. Father O'Brien testified that the students would be in the Center approximately 3.5 hours twice a week. According to Father O'Brien, the Center's hours of operation would be Tuesday and Thursday afternoons between 1:00 and 4:00 p.m., and all "classes" would be confined to the basement area. Occasionally, a lecture is given to students in the basement after 5:00 p.m., but on an irregular basis. Otherwise, Father O'Brien stated that the basement would be nearly vacant at all other times, except for occasional visits from the board of visitors (20 or so persons who helped contribute to the purchase of the building and the activities of Marquette University) who come for meetings once a quarter. Father O'Brien also testified that he was not proposing any change in the current operation of the School if the special exception was granted.

11. Father O'Brien expects that the School, or he personally, would have occasional receptions for someone at Marquette University, such as a recent reception he hosted which was sponsored by the Dean of the School of Nursing for 14 or 15 alumni in the Greater Washington area.

12. With regard to complaints made about cars with Michigan license plates being parked near the Premises, Father O'Brien testified that Marquette University was located in Milwaukee, Wisconsin, not Michigan, and reiterated that the School's students are not permitted to have cars. Therefore, Father O'Brien stated that the suggestion that these complaints were linked to the School's students was unsupported. With respect to parking, Father O'Brien testified that he parks in a garage, that his assistant parks behind him in the driveway, and that he does provide his required one parking space pursuant to 11 DCMR Subsection 206.3. Father O'Brien also discussed the agreement entered into by Marquette University and the Capitol Hill Restoration Society which was the catalyst for Marquette University's present special exception application.

13. Mr. Steve Cottingham, Assistant Vice President and Counsel for Marquette University, also testified in support of the application. Mr. Cottingham stated that he had been involved with the Center project from its inception in 1995. Mr. Cottingham testified that he was not notified of the June 15, 1999 ANC 6B meeting and that he was not invited to attend, nor was Father O'Brien or he notified of any continuance of ANC 6B's meeting.

14. The site of the application is located within the jurisdiction of Advisory Neighborhood Commission 6A (ANC 6A). ANC 6A, which is automatically a party to this application supports the application by a vote of 9-0, provided that the School complies with certain conditions. Ms. Janet Schmidt, representative of ANC 6A, testified that those conditions were as follows: that enrollment in the Center must be limited to 20 students; that the students cannot have cars in Washington, D.C.; that no Marquette official or individual can assist any student in obtaining a Zone 6 residential permit or temporary visitor parking permit; that no use other than official Marquette University functions (defined as activities from which Marquette does not obtain unrelated business taxable income or income) may take place at the Center; and, that no garden parties may be held on the premises by either students or attendees.

15. The Capitol Hill Restoration Society (CHRS) submitted a written statement in support of the application. The CHRS also testified in support of the application through Mr. Lyle Schauer, a resident of 1107 Independence Avenue, S.E., and Zoning Chair of CHRS. Mr.

Schauer testified about the circumstances leading up to the special exception application, i.e., the agreement between Marquette University and CHRS. Mr. Schauer testified about interlinked community issues and the need to do the right thing for the community.

16. ANC 6B and three individuals opposed the application. Mr. Simon, a representative ANC 6B, testified that ANC 6B voted to oppose the application. Mr. Simon testified that he believed that a school use located in the basement may not always stay in the basement, that there would be an irresistible attraction to using the rest of the facility and that there were other places the educational activity could take place. Mr. Simon also testified that there was nothing "special" about the application for the special exception and that it was made because it was convenient or comfortable. Mr. Simon testified that the application was corrosive to the residential neighborhood and corruptive to the zoning code.

17. Ms. Jean Marie Neal, a resident of 621 A Street, N.E., testified in opposition to the special exception application. Ms. Neal testified about lobbying firms, non-profits, etc. buying residential homes and converting them to businesses. Ms. Neal testified that there was no need for business intrusion on what was currently residential. Ms. Neal testified that Capitol Hill was comfortable, convenient, and an easy target for commercial ventures and that such commercial ventures would have an adverse effect on residential real estate. Ms. Neal acknowledged that she lived within the jurisdiction of ANC 6A but that she failed to attend meetings regarding the special exception application. Ms. Neal testified that she represented 12-14 members of her community but also testified that she lacked any petition signed by those 12-14 community members.

18. Ms. Loretta Garrison and Mr. Holmes Brown, residents of 8 Fourth Street and 403 E. Capitol Street, S.E., respectively, testified in opposition to the special exception application. They testified that they lived next door to the apartment building where the students live and that they had negative experiences with Marquette University students there.

19. Councilmember Sharon Ambrose wrote a letter to the Board of Zoning Adjustment regarding the special exception application. In her letter, Councilmember Ambrose thought that the School was seeking a use variance, in the guise of a special exception, for the entire Premises and stated that she was concerned that the application would seek to locate a school in a residential neighborhood whereas in the past the building had been used as a residence for University administrators who hosted rare large social gatherings. The Councilmember characterized the past activities as unobtrusive and compatible with the residential block. Councilmember Ambrose urged the Board to place conditions on the use if the application was granted and stated that she was "pleased to have Marquette University as a neighbor thus far."

20. The Board left the record open until September 8, 1999. Following the hearing but before the close of the record, the Board received numerous letters in support of the application including supporting letters from some of those who previously opposed the application.

21. Some of the individuals in opposition to the application submitted comments to the Board requesting that the Board impose conditions on the applicant which would require the applicant to insure the conduct of the adult students where they reside in the District of Columbia and which would limit the use to a period of three years.

FINDINGS OF FACT:

1. The Board finds that the proposed private school use is, in its height, design and use, compatible with and sensitive to the surrounding neighborhood.

2. The Board also finds that the use is not likely to have an objectionable impact on neighboring property because of either noise, parking, traffic, the intensity of the use or aesthetic considerations.

3. The Board further finds that conditions proposed by ANC 6A and the Capitol Hill Restoration Society are appropriate and will alleviate any purported objectionable impacts of the proposed private school.

4. As for the objections of ANC 6B, the Board finds that the objections are not relevant to the issue before the Board. In an application for special exception, the issue is whether the application meets the criteria established under the Zoning Regulations. There is no reason to believe that the School will not limit itself to the basement area. The School has been in operation in the past under a different certificate of occupancy and neither ANC 6B nor any other person in opposition to the application has shown that the School has not been operated as proposed.

5. The Board finds that it has no basis for imposing conditions on the applicant which concern the use of the residential property which is not the subject of this application. Similarly, the Board finds that the imposition of a time limit on the special exception would not be reasonable. The applicant had a certificate of occupancy for the use of the basement of the Premises as a social club. There was no time limitation on that certificate of occupancy. Further, the use of the basement for a public school is extremely limited in terms of time and use. The basement is used twice a week during the summer in the afternoon and once a week during the year for an average of twenty students who are in the District of Columbia participating in intern programs elsewhere. There does not seem to be justification for limiting the term of the negligible use.

CONCLUSIONS OF LAW AND OPINION:

The Les Aspin Center has the burden of demonstrating that its proposal addresses the issues reflected in 11 DCMR 3108.1 **(new 3104.1)**, Section 206, and that "the use, height, bulk, and design are in harmony with existing uses and structures on neighboring property," that ample parking space is provided and that "the use will not create dangerous or other objectionable traffic conditions." Based on the testimony and evidence presented at the public hearing, the Les Aspin Center has met its burden.

The proposal by the Les Aspin Center accommodates the reasonable concerns of the residents and otherwise meets the requirements for a special exception. Many or most of the those who own property neighboring the proposed school site agreed. Furthermore, the record does not appear to demonstrate that the location of the special exception use in the basement of the Premises has any unique impact on neighboring property owners than if located elsewhere in the same residential zone.

The three aspects of the proposed use of the basement of the residence having the greatest potential for adverse impact are noise, visual intrusion and traffic disruption. With regard to noise and visual intrusions, the Les Aspin Center has responded to such concerns by limiting the number of students and staff to 22 persons. The Les Aspin Center has also stated that it will not have more than one reception approximately every three months to help alleviate such potential intrusion. To further help alleviate visual intrusion, the Les Aspin Center has also stated that it will not place any additional signs on the residence indicating that a school is present on the site.

Regarding traffic disruption, students are not allowed to have cars in Washington, D.C. In addition, because the administrator and the additional full-time staff person will park in a nearby garage and driveway, street parking will rarely, if ever, be utilized by the Center.

As for the issue of whether the provisions of Section 210 of the Zoning Regulations should apply, the Board notes that in self-certifying, the applicant takes the risk of any misidentification of use. The Board's approval is limited to whether a special exception for the use certified should be granted.

Based upon the record before the Board, the Board finds that the applicant has met the burden of proof, pursuant to 11 DCMR 3108 **(new 3104),** that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further finds that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore **ORDERED** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS:**

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

2. The Les Aspin Center shall be operated between the hours of 1:00 and 4:00 p.m., but shall be permitted, on an irregular basis, to have lectures for students in the evening.

3. The applicant shall not assist any student in obtaining a zone six residential permit or temporary parking permit.

4. The applicant shall not permit any part of the Premises to be used for other than official receptions for the Les Aspen Center on a yearly basis or for any functions that are not attended by students and their guests; nothing herein shall be

be misconstrued to prohibit the resident of the Premises from using the residential portions in a manner consistent with such residential use. There shall be no garden parties associated with the Les Aspen Center.

5. The applicant shall establish a liaison with Advisory Neighborhood Commission 6A to maintain a working relationship regarding the school use and attend, through its representative, ANC 6A meetings at least once a year in furtherance of this liaison.

6. The applicant shall use its best efforts to supervise the conduct of its students.

7.* Approval shall be for **FOUR YEARS.**

VOTE: 3-0 (Sheila Cross Reid, Betty King and Anthony Hood to grant).

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA

FINAL DATE OF ORDER MAR 17 2000

PURSUANT TO D.C. CODE SEC 1-2351 (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 WTH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHAL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3125.9, "NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBSECTION 3125.6."

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 CERTIFICATION OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

45602349.1/ord16459/JKN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16459

As Director of the Office of Zoning, I certify and attest that on MAR 17 2000 a copy of the decision entered on that date in this matter was mailed first class, postage prepaid to each party in this case, and who is listed below:

Steven J. Cottingham, Esq.
Marquette University-Office of General Counsel
P. O. Box 1881
Milwaukee, WI 53201-1881

Richard B. Nettler, Esq.
Robins, Kaplan, Miller & Ciresi L.L.P.
181 K Street, N.W., Suite 1200
Washington, D.C. 20006-1301

The Chairperson
Advisory Neighborhood Commission 6A
St. James Parish
1132 4th Street, N.E.
Washington, D.C. 20002

The Chairperson
Advisory Neighborhood Commission 6B
921 Pennsylvania Ave., S.E.
Washington, D.C. 20003

Michael Johnson
Department of Consumer & Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20002

Attested By: _____
JERRILY R. KRESS, FAIA
Director

Attest16459/JKN