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August 31, 2004

VIA HAND DELIVERY

Mr. Geoffrey Griffis, Chairman
District of Columbia Board of Zoning Adjustment
441 4th Street, N.W., Suite 210
Washington, D.C. 20001

Re: BZA Application No. 17149, Sidwell Friends School

Dear Chairman Griffis and Members of the Board:

Enclosed please find the Applicant's Proposed Findings of Fact and Conclusions of Law in the above-captioned matter.

Thank you for your consideration.

Sincerely,

Phil Feola

Jeffrey Utz

Enclosures

cc: Michael Saxenian

BZA
Case No. 17149
Exhibit No. 87

Board of Zoning Adjustment
District of Columbia
CASE NO. 17149
EXHIBIT NO. 87

APPLICANT'S PROPOSED FINDINGS OF FACT

AND CONCLUSIONS OF LAW

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

Application No. 17149 of Sidwell Friends School, pursuant to 11 DCMR § 3104.1, for a special exception allowing additions and enhancements to an existing private school and to increase enrollment from 780 to 850 students under section 206, and a special exception under 11 DCMR § 411.11 allowing the construction of a roof structure that does not meet all the requirements of 11 DCMR § 400.7, in the R-1-B and C-2-A Zone Districts at premises 3825 Wisconsin Avenue, N.W. (Square 1825, Lot 816).

HEARING DATES: June 15, 2004; June 22, 2004; June 29, 2004

DECISION DATE: September 14, 2004

DECISION AND ORDER

The applicant in this case is the Sidwell Friends School ("**Sidwell Friends**" or the "**School**"). The School filed an application with the Board of Zoning Adjustment on February 13, 2004, for a special exception allowing additions and enhancements to an existing private school and to increase enrollment from 780 to 825 students under 11 DCMR § 206. The School filed an amended application with the Board on May 14, 2004 requesting an increase in enrollment to 850 students and a special exception under 11 DCMR § 411.11 to allow the construction of a roof structure that does not meet all the

requirements of 11 DCMR § 400.7, in the R-1-B and C-2-A Zone Districts at premises 3825 Wisconsin Avenue, N.W. (Square 1825, Lot 816) (the "**Property**"). The zoning relief requested in this application is self-certified pursuant to 11 DCMR § 3113.2. Following a public hearing, the Board voted _____ on September 14, 2004 to approve the application subject to conditions.

PRELIMINARY MATTERS:

Application. The application requests a special exception under 11 DCMR § 3104.1, to allow the expansion and renovation of an existing private school under 11 DCMR § 206 and a special exception under 11 DCMR § 411.11 allowing the construction of a roof structure without meeting all the requirements of 11 DCMR § 400.7 and §411, in the R-1-B and C-2-A Zone Districts at 3825 Wisconsin Avenue, N.W. (Square 1825, Lot 816). The zoning relief requested in this application is self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Hearing. By memoranda dated February 18, 2004, the Office of Zoning advised the D.C. Office of Planning, the Zoning Administrator, the Department of Public Works, the Department of Health, the Councilmember for Ward 3, Advisory Neighborhood Commission (ANC) 3C, the ANC for the area within which the subject property is located, and ANC 3F, the ANC for the area immediately adjacent to the Property, of the application.

The Board scheduled a public hearing on the application for June 15, 2004. Due to time limitations, the Board only heard preliminary matters on that day and postponed the remainder of the hearing to June 22, 2004 and June 29, 2004. The Board heard the

presentation of the Applicant and limited public testimony on June 22, 2004 and the remainder of the hearing on June 29, 2004. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on February 26, 2004, mailed the applicant, the owners of all property within 200 feet of the subject property, and ANC 3C and 3F notice of the June 15th hearing.

Notice was also published in the D.C. Register. The School's affidavits of posting and maintenance indicate that six (6) zoning posters were posted beginning on April 23, 2004, in plain view of the public.

Self-recusal of Board Member. Board Member Ruth-Anne Miller recused herself from the case on her own accord. No motion was filed.

Requests for Party Status. ANC 3C is automatically a party in this proceeding. The Board granted party status to ANC 3F, the boundary of which abuts the School along 37th Street, NW. Mr. Thomas Hertz requested party status to represent the Hearst Elementary School and was denied since the Board did not see an interest separate from that of the ANCs. Mr. Milos Bajcetic requested party status and was denied since he was not at the hearing on June 15, 2004 and his interests were represented by his ANC, ANC 3C.

Applicant's Case. The applicant requested a special exception for an expansion of an existing private school in the R-1-B and C-2-A Zone District. The applicant presented testimony and evidence from Lane Heard, Clerk of the School's Board of Trustees; Bruce Stewart, Head of School; Michael Saxenian, Assistant Head of School and Chief Financial Officer; Steve Kieran, a partner in Kieran Timberlake Associates LLP Architects, recognized by the Board as an expert in architecture; and Martin Wells

of Wells & Associates, recognized by the Board as an expert in transportation and traffic engineering. The applicant was represented by Phil Feola and Jeffrey Utz of Shaw Pittman LLP.

Mr. Feola stated that in the application the School presents a master plan for the School's next 15 to 20 years that will benefit both the community and the School. Mr. Feola stated that the applicant amended its application to request the increase in the enrollment cap to 850 students due to the addition of the second level to the parking structure resulting from community input. Mr. Feola stated that the applicant requests that the master plan be approved in phases with the permission to begin the second phase within five years after completion of the first phase. Mr. Feola requested to have the application amended to include the roof plan approval under 11 DCMR § 411.11 since the Middle School roof does not have one single enclosed structure on the roof, but rather three solar chimneys and one stairwell. Mr. Feola stated that such a single enclosure would be impractical and not aesthetically pleasing. Mr. Kieran added that such a single enclosure would result on the elimination of all of the roof top skylights for daylighting of the classrooms.

On the issue of the applicability of 11 DCMR § 2516, Mr. Feola stated that theoretical lots and applications for accessory buildings are not applicable. Most private schools in residential zones in the District has multiple buildings on their campuses and none have received a theoretical lot special exception. To require the application of 11 DCMR § 2516 would be impractical, particularly since that section was promulgated to provide a BZA review of single family residential development of large estates, not private schools which were already subject to a BZA review.

Mr. Feola stated that the Historic Preservation Review Board ("**HPRB**") has jurisdiction over the lot of a historic landmark and the entire School lot is one lot, Lot 816 in Square 1825. Therefore, the School's application to the HPRB is for the entire campus. The HPRB adopted the master plan unanimously with the exception of the original location of the meeting house and stated that "the proposed changes have little if any physical or visual impact on the landmark." Since that HPRB review, the applicant has adjusted the configuration and location of the meeting house.

Lane Heard testified that the School's Board of Trustees had four points that were very important to it for the Project: 1) earning neighborhood support; 2) the Project's necessity to the School's future; 3) subjecting the planning process to rigorous outside scrutiny; and 4) sustainable environmental design. The School exceeds its current student cap by 20 students. To offset this, the School has moved some of its staff off of the campus so that it is under the faculty and staff cap by approximately 21.

Steve Kieran presented the architectural and design elements of the Project. Mr. Kieran presented testimony regarding the location of the institutional, commercial and residential uses in the area. He stated that the enhancements to the School would be as follows: the parking/athletic field/traffic structure would contain 307 parking spaces and 6,300 square feet of building and grounds facilities and create a main signalized traffic entrance for the School at Rodman Street; the Middle School addition is three stories, under 40 feet in height, approximates 35,000 square feet, satisfies all required setbacks and includes the addition of a one story porch to address neighbors' massing concerns; the Quaker meetinghouse is one and a half stories, 10,000 square feet and was pulled away from the Zartman House, a historic landmark, lower down into the landscape and

given a green roof based on input from the HPRB; the new gym is three stories, approximately 40 feet in height and satisfies all required setbacks; renovations to the lower level of Kenworthy Gym involve 16,500 square feet; and sustainable design elements as described below. The School analyzed dozens of locations on the campus for the Quaker meeting house and, with input from outside architectural consultants, decided that the presently proposed location was the best. Mr. Kieran also stated that the Project will improve the views of the Zartman House by opening up the areas in front of it, including removing existing tennis courts and associated fences. Due to energy efficiency issues of the Middle School building, the School has planned four structures on the roof of the Middle School set back beyond the required setbacks and several feet high. The structures are natural ventilation shafts or solar chimneys to let daylight into the building and create a heat effect and a stairtower. They are not connected to each other. Solar thermal units and photo-voltaics will be installed on the roof. The multiple plants for the campus will be replaced by one efficient central plant for the entire campus under the Middle School. In addressing some members of the community's concern that the plans for the building kept changing, Mr. Kieran stated that all changes to the plans were made to address and accommodate community concerns.

Martin Wells of Wells and Associates, LLC, submitted a written analysis and testified about parking, traffic and transportation issues. Regarding parking, there are presently 192 parking spaces that adequately accommodate all the faculty, staff and visitors who drive to the School. In Mr. Wells' study, the peak parking occupancy occurred at 3:30PM when about 84% of the spaces were occupied. At midmorning, 59% of the spaces were occupied. Since students are not allowed to park on campus, 124

students park on neighborhood streets. The campus parking supply will be increased to 328 spaces which will be more than adequate to accommodate all faculty, staff, visitors and student drivers. There will be 307 spaces in the garage, 16 spaces in the Zartman circle and five minibus spaces.

Regarding traffic issues, if the enrollment increased to 850 students, there would be a 64 trip increase in the morning and a 27 trip increase in the afternoon or a 6% increase. If the Project is approved, traffic will increase on Wisconsin Avenue and decrease on 37th Street. In addition, the School would double the stacking capacity in the traffic structure for cars dropping off and picking up students. School traffic on 37th Street would be restricted to cars carrying either a 5th or 6th grader. The difference between the total drop-off activity on 37th Street currently and under the proposed 5th and 6th grade drop-off restriction is 104 vehicles. Presently, there are 240 vehicles that drop-off and pick-up students on 37th Street in both the morning and afternoon peak hours. The projected morning and evening peak hour total of 37th Street student drop-offs and pick-ups is 136 vehicles after the proposed restrictions are implemented. Mr. Wells testified that the School recently shifted their classes to end 15 minutes after Heart Elementary School to reduce traffic congestion on 37th Street. In addition, since high school students will be moved on campus, into the traffic structure and off the streets, they will not be likely to traverse 37th Street, as they do now, and hence not contribute to the traffic volume on 37th Street.

Mr. Wells discussed the School's Traffic Management Plan ("**TMP**") including: instituting an educational program for its community regarding mass transit and carpooling; a shuttle bus system that will include a stop at the Tenleytown-AU Metro;

and extending the Metrorail benefit to Virginia and Maryland students. The physical plan and the TMP would mitigate the incremental traffic impacts of the requested additional students but would also improve existing traffic and parking issues.

Mr. Saxenian testified testified that the School had made an enormous effort to involve as many people as possible in the Project's process, including sending out thousands of letters and postcards, advertisements in the Northwest Current and maintaining a listserv of interested parties. The Project is proposed in two phases: (i) the first phase includes the parking/athletic/traffic management structure and Middle School addition; and (ii) the second phase includes the remainder of the additions and renovations. The benefits to this phasing approach would include a 61% reduction in 37th Street traffic generated by Sidwell during School peak hours and moving student parking on campus as soon as possible. By requesting the enrollment cap increase, the School is attempting to mitigate the financial and operational risk that accompanies the decision to first build the parking and traffic structure as requested by the community.

Mr. Saxenian testified that the School has had substantial ongoing conversations with the Washington Home that culminated in an agreement that embodies the Home's support of the School's plans and the School's promise to provide landscaping and light mitigation in the area between the institutions. Mr. Saxenian also explained that under the TMP, all students that drive will be required to register and display an identification sticker which will include a telephone number to call for enforcement. Student parking would be accommodated on campus in the new parking structure and students will only be allowed to park in unrestricted spaces on nonresidential streets. Also, the School is eliminating any drop off except for the two designated areas, encouraging people to use

mass transit, extending subsidies to out-of-state students for Metrorail use, providing Metro check for employees, and engaging in a major education program about the benefits of mass transit and carpooling. Mr. Saxenian stated that a bus service for students would not be practicable because the School has a highly dispersed student body.

Mr. Kieran, Mr. Heard and Mr. Saxenian all discussed the sustainable design of the Project. Mr. Kieran stressed that the intention was to unify all the boundaries of the campus through plantings, retain mature trees, enhance the storm water management program, reducing the impervious area of the School from 45 percent to 40.5 percent. The School intends to seek LEED "Platinum" certification for the Middle School and the School is planning to design the other buildings to high environmental standards. Mr. Saxenian stressed that the Project invokes the Quaker ideal of land stewardship by making sustainable design such a central element to the Project. Mr. Saxenian stated that the School committed to sustainable landscape design in its choice of Interpogen Associates as its landscape architect. The School is planning on using locally-available and recycled materials wherever possible.

The School also submitted a brief memo on the impact of the parking garage on lot occupancy. In it, the applicant stated that accessory structures such as the parking garage do not count against lot occupancy if they are below the main level of the main building by definition in the Zoning Regulations.

Office of Planning. The District of Columbia Office of Planning ("**OP**") reviewed the application with respect to number of students, noise, traffic and other

objectionable conditions. Karen Thomas and Jennifer Steingasser testified for OP at the hearings. During the June 29, 2004 hearing, OP stated that it believes the Middle School's design would create a courtyard play area which would contain noise well. OP relied on the expertise of District Department of Transportation ("**DDOT**") for analysis of the traffic studies and according to DDOT's report it does not oppose a limited drop-off and pickup of 5th and 6th graders on 37th Street. According to DDOT, the Project will reduce the current drop-off activity on this street by about 90 vehicles even when increasing the student count to 850. OP and DDOT support the applicant's construction of additional parking. With the Project, the applicant will increase its on-site parking supply by 111 spaces. OP supports efforts to increase mass transit by students and employees to 10% and the environmental design features of the Project since they add value to the community by increasing the amount of green space and capturing and treating storm water in an environmentally responsible manner. The applicant's request for relief for the roof structure on the Middle School is an effort to enhance the space efficiency for classroom space and provides better environmental design and OP has no objection because light and air to any other building would not be adversely affected. OP supports the community's concerns regarding the student enrollment and its potential impact on traffic an parking in nearby streets. OP recommends the increase in the student cap be tied to the applicant's adoption, implementation and operation of its TMP. OP supports the construction management plan.

In a supplemental memorandum dated June 29, 2004, OP recommended approval of the application, subject to conditions derived from community concerns, the

applicant's proposed mitigation measures and recommendations of DDOT. OP stated that:

1. Enrollment may be increased to no more than 800 students beginning September 2004 in conjunction with a TMP.
2. Enrollment may be increased to no more than 825 students one year after the Certificate of Occupancy is issued for the parking garage, subject to the applicant submitting evidence of compliance with the BZA Order (including TMP), to
   a. The Zoning Administrator's office and
   b. DDOT submitting a report to the Zoning Administrator that the garage is operating successfully.
3. Approval of an increase in enrollment to no more than 850 six years after the Certificate of Occupancy is issued for the parking garage subject to:
   a. The applicant submitting evidence of compliance with the BZA Order (including the TMP) to the Zoning Administrator's office and DDOT and
   b. DDOT submitting a report to the Zoning Administrator that the TMP is operating successfully.
4. At the beginning of each school year, but in no event later than October 5, the School shall provide the Board, the Zoning Administrator and DDOT documentary evidence to demonstrate its enrollment figures and compliance with the terms and conditions of the BZA Order, including the TMP.

5. Sidwell shall provide an annual report to ANC 3C and ANC 3F due no later than December to include: enrollment, staff and certification that they comply with the BZA Order.

DDOT. A staff member from DDOT was not available to testify at the hearings. Instead, in a memorandum dated June 1, 2004, DDOT submitted its testimony to the Board for the instant case. On July 12, 2004, DDOT submitted a memorandum to respond to questions submitted by the community. The memo stated that:

1. The removal of 7th and 8th graders on 37th Street would result in a total reduction of 104 vehicles. The AM peak would be reduced from 189 to 96 vehicles; the PM peak from 51 to 40 vehicles.
2. DDOT conducted its on survey of 37th Street traffic in May 2004 but it showed no major discrepancies between their data and the Sidwell Study.
3. With the addition of the parking garage and the increase of mass transit usage, overflow parking will be insignificant.

HPRB Recommendation. The HPRB unanimously adopted its Staff Report and Recommendation ("**Report**") on April 22, 2004 and it was submitted into the record. The Report stated that "[w]ith the exception of the meeting house, the proposed changes will have little, if any, physical or visual impact on the landmark." The Report stressed that much of the Project focused on the northern edge of the campus, away from the landmark and that Project's work on the perimeter of the Property had the "potential to positively impact the perception of the landmark." The HPRB acknowledged the applicant's adjustments to the design of the meeting house and voiced concern with the proximity of the meeting house to the landmark. That Report concluded: "The staff

recommends that the Review Board support the overall Master Plan, but encourage the applicant to explore alternative, more compatible locations for the proposed meeting house, and return to the Board for further review."

As stated, the School has responded to the HPRB comments by redesigning the proposed meeting house to reduce its impact on the views of the Zartman House. The redesign resulted in a Meeting House that is better separated from the Zartman House, has a lower building height and a smaller footprint to mitigate any adverse relationship to Zartman House.

ANC 3C Involvement. At the hearing on June 29, 2004, Nancy MacWood presented for ANC 3C. Ms. MacWood stated that ANC 3C unanimously approved a resolution conceptually supporting the application with conditions to be incorporated into a BZA order. ANC 3C expressed concern over the large number of students who drive to school and park in the neighborhood and requested than a strictly-enforced student driving policy be implemented. The ANC supports the construction of the parking garage and only supports parking on the neighborhood streets on a limited and "planned for" basis. The ANC assisted in drafting the construction management plan and highlighted the existence of a liaison committee. Further written testimony was submitted by Trudy Reeves. ANC 3C voted 8-0 on May 17, 2004 to "conceptually support the Sidwell application with a number of recommendations to the Board" via ANC 3C Resolution No. 2004-017. The Resolution acknowledges that Sidwell worked diligently developing a Construction Management Agreement with its neighbors, which was supported by ANC 3C Resolution No. 2004-018. Resolution No. 2004-017 states that approximately 30% of Sidwell's high school students drive to school and 180 student

cars park in neighborhood streets, while only 5% of students use public transportation and the traffic study does not address the number of teachers who drive to work or the number of visitors to campus. Resolution No. 2004-017 stated that the current condition of 37th Street during drop-off and pick-up periods is congested and hazardous even though a phased pickup time with Hearst exists. Resolution No. 2004-017 conceptually supports the application subject to the following conditions:

1. That student and staff parking be restricted entirely to the Sidwell Friends campus.
2. That any significant changes to the site plan as presented to ANC 3C and HPRB will be subject to ANC 3C review prior to consideration by the BZA.
3. That the Middle School addition be indented to the west to give a visual break in the length of the building and to provide the mature trees in public space a greater chance of survival.
4. That the landscaping plan on 37th Street and along the north border of the property include numerous tall evergreens to shield views of the proposed building from the street and immediate neighborhood.
5. That the below-grade garage provide a minimum of 300 code-compliant parking spaces.
6. That all buses be required to be parked on campus.
7. That once the two-level, below-grade garage is built, the drop-off and pick-up of students on 37th Street be restricted to 5th and 6th graders only.

8. That Sidwell provide an annual report to ANC 3C and 3F due in December to include: enrollment, staff and certification that they are in compliance with the BZA Order.

9. That Sidwell Friends hold quarterly meetings open to the neighborhood and a copy of minutes of said meetings be sent to both ANC 3C and 3F.

10. That there be no increase in enrollment over 800 students until the garage is built, all student and staff parking is contained on campus, and the traffic management plan is implemented. If parking and traffic conditions improve with the implementation of the above conditions, ANC 3C would recommend a new special exception application for 825 students.

11. That once the traffic management plan has been implemented successfully for a period of one year, ANC 3C would recommend that Sidwell be required to return to the BZA for any further increase in student and/or staff cap if needed.

12. That this ANC resolution be incorporated into the BZA order.

13. That the construction management plan continue to be a part of the application.

Parties and Persons in Support of Application. Several people testified as "persons" in support of the application. These persons indicated that the School had been working well with the community and lauded the School for its commitment to responding to community concerns. They also stated that the School was a benefit to the area and made it a more desirable place to live.

Parties and Persons in Opposition to the Application. ANC 3F was granted party status. Karen Perry and Cathy Wiss testified at the hearings for ANC 3F. ANC 3F expressed concern regarding the rear yard requirement and 11 DCMR § 2516's provisions for theoretical lots. Cathy Wiss testified about ANC 3F's conditions and focused on the traffic and parking conditions presently created by the School. They stated that 124 students are parking on the streets and there are 88 unrestricted parking places in the area of the School. ANC 3F requested that the following conditions be made part of the BZA order:

1. The first phase of construction should include a two-level garage with 307 zoning compliant parking spaces.
2. All students, faculty, and staff should be required to park on campus.
3. All students, faculty, and staff cars should be registered with the school, and provided identification tickets.
4. No students should be allowed to park in the parking spaces on the streets and the School should develop a TMP which includes monitoring the neighborhood for violators of the requirement for on-campus parking and sanctions for such violations.
5. The School must adopt a TMP including carpooling, and shuttle buses from the Bethesda campus and local metro strop and demonstrate that it can reduce vehicular traffic to the campus by 15%.
6. Enrollment should be capped at 800 students, until completion of the garage and there should be no enrollment increase until Sidwell has

demonstrated that all students, teachers, faculty and visitors are parking on the campus for one year.

7. All student drop-off and pickup including 5th and 6th grade students should be on the grounds of the School and not on 37th Street or any other street.

8. Sidwell must change the main entrance to the expanded Middle School from 37th Street to the courtyard facing the Wisconsin Avenue side of the campus to discourage parent pickup and drop-off on 37th Street.

9. The lighted tennis courts should be located away from the Washington Home and placed on the Wisconsin Avenue side of the campus.

10. Sidwell must adopt a construction management plan in consultation with impacted institutions, residential neighbors, ANC 3C and ANC 3F. The construction management plan submitted by the School is only a draft and not final.

11. Sidwell should adopt a detailed landscaping plan showing type, size and location of trees to be planted in order to screen the Middle School, new gym and new tennis courts from the homes on Tilden, 37th and Upton Streets and from the Washington Home and this plan must be accepted in writing by ANC 3C, ANC 3F and the Washington Home.

12. Sidwell should adopt a strong tree protection plan for existing trees on the Washington Home property including the tall hedge by the proposed tennis courts with a commitment to replace in kind any of these trees damaged in construction.

13. Sidwell must hold quarterly meetings open to all residents.

14. Sidwell must provide on a monthly basis a calendar of school events with anticipated number of attendees in writing to residents and also on its website and to ANC 3F by email.

15. Sidwell must provide to ANC 3F on a yearly basis a report certifying that it is in compliance with its BZA order.

In addition, several individuals testified in opposition to the application. They generally testified that approval of the application would cause adverse parking and traffic impacts. They also expressed complaints that some of the buildings of the Project are too tall, the phasing will allow for major inconvenience for the neighborhood and that the plans are conceptual only. Thomas Hertz, a representative of the Hearst Elementary School, testified about the restrictions he would like to see on the construction, including noise abatement procedures, a prohibition on blasting while Hearst is in session, accommodation of Hearst's longer school year and the use of the Sidwell Friends' nurse by Hearst students three days a week.

FINDINGS OF FACT:

The Subject Property and the Surrounding Area

1. Sidwell Friends is an independent, pre-kindergarten through twelfth grade, co-educational Quaker day school. It is a non-profit, tax-exempt institution incorporated in the District of Columbia and located in the Tenleytown area of Ward 3. It was established in 1883 and moved to its present location at 3825 Wisconsin Avenue, N.W. in 1937. A second campus for Sidwell Friends' Lower School in Bethesda, Maryland.

2. The Property is primarily located in the R-1-B Zone District although a small portion of the Property is in the C-2-A Zone District. All proposed additions and enhancements other than the two-level, underground parking garage and expanded athletic field in the northwest corner of the Property will be in the R-1-B Zone District. The Property is bounded by Wisconsin Avenue to the west, by Quebec Street to the south, by 37th Street to the east and by institutional properties to the north. It is irregular in shape and consists of approximately 670,783 square feet of land area or 15 acres.

3. The area surrounding the Property is characterized by a high degree of mixed-use and institutional development. The properties to the north of Sidwell Friends include commercial buildings occupied by the Federal National Mortgage Association ("**FNMA**"), the Friendship Station Post Office Building and the Washington Home. To the east, across 37th Street are the Phoebe Hearst Elementary School, the Hearst Recreation Center and playing fields. Across Quebec Street to the south, there are three private residences and a commercial building occupied by the American Academy of Child and Adolescent Psychiatry. There are many commercial and high density residential uses to the west along the adjacent portion of Wisconsin Avenue such as the McLean Gardens condominium and apartments and an office building used as FNMA national headquarters.

4. In the last 30 years, Sidwell Friends has filed four applications with the BZA. In 1970, Sidwell Friends was granted permission to erect a second and third story addition to the existing Middle School building (BZA Appeal No. 10460.). On August 7, 1979, in BZA Application No. 12945, Sidwell Friends was allowed to construct a gymnasium, an art center and a maintenance building as additions to its campus and

increase parking spaces from 110 to 145 (but did not increase the school enrollment). On April 2, 1993, under Application No. 15769, the School added a classroom to a part of the Middle School building and increased its employee cap from 100 to 130. On August 16, 1996, under Application No. 16139, Sidwell Friends received permission to replace its Upper School library with an addition to the existing Upper School building, fully renovate that building and increase the student cap from 700 to 780 and the employee cap from 130 to 190.

5. During the 2003-2004 school year, 800 students were enrolled at the Property and 294 were enrolled at the Bethesda campus.

The Proposed Expansion of the Private School Use

6. The School completed a Facilities Needs Assessment in early 2002 that indicated a need for updated and expanded facilities to support the School's educational programs and demonstrated that the School has 63% less space per student than comparable schools. The application seeks the approval of a project created as a result of the Facilities Needs Assessment.

7. The proposed Sidwell project (the "**Project**") includes:

a. the renovation and expansion of the Zavitz Middle School;

b. the construction of the parking/traffic-management/playing field structure;

c. the expansion of athletic facilities;

d. the addition of arts teaching spaces in the lower level of Kenworthy Gym;

e. the construction of a Quaker Meeting House;

f. the partial renovation of the Kogod Arts Center;

g. the development of landscaping; and

h. the application of cutting edge "green" design.

8. The proposed new buildings and structures will be in complete conformance with the requirements for the R-1-B Zone District. No building addition will have a height greater than 40 feet. A height of 40 feet is permitted in the R-1-B Zone District. The lot occupancy will be nineteen percent (19%), well below the maximum lot occupancy of forty percent (40%) in the R-1-B Zone District.

9. Through both testimony and documents submitted to the Board, ANC 3C and 3F contend that the plans for the proposed new buildings fail to comply with the Zoning Regulations. They argue that the Middle School will require a variance because it does not have sufficient rear yard in violation of 11 DCMR § 404.1, the proposed Middle School is too tall pursuant to 11 DCMR § 400.1 and that the Project violates 11 DCMR § 2516 because each building of the School must have its own theoretical lot.

10. The Board finds that the ANCs' arguments regarding the rear yard and height of the Middle School not persuasive. The Board reviewed the briefs submitted by Sidwell Friends and the ANCs regarding the rear yard and height issues for the Middle School. Under the definitions of "rear yard" of 11 DCMR § 199.1, the rear yard of the Middle School is greater than the required twenty-five feet required in an R-1-B Zone

District. When the definition of "height of building" from 11 DCMR § 199.1 is applied to the Middle School, the Board finds that the Middle School is less than the forty foot height restriction in an R-1-B Zone District. Accordingly, the Board finds the Project, and the Middle School in particular, to satisfy all Zoning Regulations other than the roof structure regulations at issue in the instant application. The Board credits the brief submitted by the Applicant to determine that the rear yard and height of the Middle School satisfy R-1-B Zoning Regulations.

11. The Board likewise finds the ANCs' arguments that the Project requires 11 DCMR § 2516 relief must fail. The Board reviewed the briefs submitted by Sidwell Friends and the ANCs regarding the 11 DCMR § 2516 theoretical lot issue. In cases involving private schools such as the case at hand, it is not necessary for each building on school grounds to be constructed on its own theoretical lot. Such a requirement would be an impractical and inefficient regulation and has not been pursued in previous BZA proceedings pursuant to §206. The Board finds that in the legislative history of Section 2516, the Zoning Commission was concerned with providing a BZA review of new developments on theoretical lots and, since private schools are already subject to BZA review, applications of this section to private schools in residential zones is redundant. The Board has so held in multiple orders such as Order No. 16189 and Order No. 16313. Further, 11 DCMR § 2516 was intended to provide a public review of multiple housing developments on large lots with minimal street frontage. That type of development is not a concern here. Therefore, no relief from 11 DCMR § 2516 is required for the instant application. The Board credits the brief submitted by the Applicant to determine that there is no need to apply 11 DCMR § 2516 to the present case.

12. The parking and traffic structure does not count against lot occupancy since it is below the main level of the Upper School. The Board relies on the definitions of the Zoning Regulations as stated in the brief of Sidwell Friends. Accessory structures such as the parking garage do not count against lot occupancy if they are below the main level of the main building

13. Sidwell Friends seeks approval of this application in two phases. Phase I would include the parking and traffic structure and the Middle School addition/renovation and would be staged as soon as practicable after BZA and building permit approval. All other projects including the proposed Quaker Meeting House and the new gymnasium would be constructed in Phase II which the School contemplates will begin within five years of the completion of Phase I.

14. By a letter dated August 10, 2004, ANC 3C stated that there are no Title 11 DCMR citations supporting or authorizing the phasing requested by the School. In that letter, ANC 3C stated that the time limit on BZA orders authorizing the erection or alteration of a structure limits the validity of orders to two years and that the validity of a building permit is one year from issuance. Therefore, ANC 3C claimed, the maximum allowance for such a phase would be three years. The Board does not accept the ANC's position. While the Board's orders are valid for two years pursuant to 11 DCMR 3130.1, conditions under those orders, however, live past that two year limit. The Board, therefore, can, and has in other cases, craft conditions which permit a phasing of development. This phasing not only allows the School to proceed in a measured manner (continuing its educational mission) but lessens the impact on neighboring properties by

limiting the scope of construction to some individual projects. The School submitted a brief that such phasing has been allowed by the Board in previous actions.

15. The Project will enhance the traffic conditions around the School. The Board relies on the testimony, reports and studies of Mr. Wells and DDOT to reach this conclusion. The traffic management structure and new transportation policies will shift traffic from 37th Street to Wisconsin Avenue where use of signalized intersections and on-campus queuing will reduce Wisconsin Avenue congestion. The addition of new parking spaces and the prohibition on student parking in restricted street spaces will significantly reduce use of on-street parking. The Project will increase on-campus vehicular queuing space for student drop-off and pick-up, almost doubling the current level and greatly add to the parking supply of the School. In addition, it will create a safer environment for students to exit and enter cars.

16. The green strategies of the Project include: the treatment, management and reuse of storm water; the minimization of pavement and use of reflective roof surfaces to reduce the surface heat gain; the use of trees for shading and local plant species to minimize maintenance, water use and chemical inputs; the optimization of building orientation to control heating and cooling loads; the efficient use of water; the use of natural and mechanically-assisted ventilation, an efficient building envelope and a central utility plant; the reuse (rather than demolition and rebuilding) of the existing Middle School and Wannan Gym to reduce landfill use, construction materials, transportation and disruption to the neighborhood from construction; and the use of recycled, rapidly renewable and locally-manufactured materials. The vegetation strategy will unify the campus through plantings and better define the edge of the campus with a green

boundary. Teaching gardens will connect the campus to local ecology. Steep slopes and transitional spaces will be planted with native species. Mature trees will be retained where possible and plantings will be integrated with stormwater strategies. By placing almost all campus parking under a playing field, the School will address runoff from impermeable parking areas, typically a major source of groundwater pollution.

Community Involvement

17. Sidwell Friends has pursued an extensive path of community involvement. Sidwell Friends began its process of outreach in mid-2002 and has held or participated in a number of meetings, including multiple meetings with ANC 3C and ANC 3F and related subcommissions and commissioners, D.C. Councilmembers, neighboring institutions, relevant D.C. government bodies and, of course, neighbors and the general public. A few of the major changes that respond to input from such meetings include:

a. Creation of the parking/traffic-management/playing field structure on Wisconsin Avenue to improve traffic management on 37th Street and increase on-site parking, maximize groundwater management and improve safety and aesthetics.

b. An addition of a second-level of parking in the parking/traffic-management/playing field structure to address community concerns regarding student parking in the neighborhood.

c. Elimination of a proposed curb-cut on 37th Street, and associated through-lane to Wisconsin Avenue.

d. Reduction of massing of the Middle School addition in the northeast corner and the creation of a green buffer between the building, 37th Street and the Washington Home.

e. Development of a TMP which includes new policies governing student parking and drop-off and pick-up, including a policy allowing only cars with 5th and 6th graders to use 37th Street during drop-off and pick-up times.

f. Aesthetic upgrades to the campus edges.

g. Development of a construction management plan for the construction period to ensure minimum impact on the surrounding neighbors.

Noise Impacts

18. Noise emanating from the School as a result of this application will not adversely impact neighboring property. The School expects a reduction in noise levels emanating from the School due to this Project. The existing School buildings and the proposed additions are large enough to satisfy indoors most academic and extra-curricular program needs of the School. With the addition of new indoor physical education ("**P.E.**") space, some P.E. activities that would otherwise take place outdoors will move inside. The Middle School addition will buffer its closest residential neighboring properties on Tilden Street from outdoor play activities that currently take place between the Middle School and Wannan Gym. The Project will not bring

institutional use further into the residential neighborhood and will not adversely affect the character of Tilden, 37th or Quebec Streets.

19. Sidwell Friends and the community have developed a construction management plan to mitigate construction noise and congestion from the Project. As part of this plan, Sidwell Friends will use Wisconsin Avenue for construction access and not permit construction traffic, parking or dumpsters on 37th Street. Staging areas for all construction-related activities will be located on the interior of the campus. In addition, the hours of construction activity will be limited and guidelines ensuring safety and security will be observed. As a failsafe, regular meetings will be scheduled with neighbors to monitor the construction process.

20. The OP report indicates that it believes that noise emanating from the School will not create objectionable conditions. The Board finds that with the proposed improvements and implementation of the construction management plan there is not likely to be objectionable conditions due to the noise emanating from the Property during construction.

Traffic Impacts

21. One of the ANCs' primary concerns was the student drop-off and pick-up traffic on 37th Street.

22. The transportation consulting firm of Wells and Associates performed a traffic study of the area in which the subject property is located and generated a Traffic Impact Analysis of the existing and future conditions and a TMP for the School. The

Traffic Impact Analysis and TMP were submitted as part of the School's application. The full Traffic Impact Analysis, which was filed with Board in the Application on February 13, 2004, demonstrates that the Project will not adversely affect traffic patterns in the vicinity of the site or have an adverse impact on the road network with the proper management of the School's traffic. The proposed expansion of the student population will not result in a reduction in the level of service of the nearby intersections. Wells and Associates prepared an Addendum to this traffic analysis, submitted to the Board on May 14, 2004, which evaluates the transportation related changes of the project such as the additional level of parking and the proposed increase in the student enrollment cap. This Addendum confirms that the proposed changes will not have a negative impact on traffic conditions in the vicinity of the School.

23. The Traffic Impact Analysis and the TMP demonstrate that the proposed changes to the School will not adversely affect traffic patterns in the vicinity of the site or have an adverse impact on the road network and will actually improve traffic conditions in the vicinity of the site. Mr. Wells testified that the additional students requested by the application and the shifting of traffic from 37th Street will improve the traffic situation on 37th Street. Mr. Wells also observed that DDOT supported his conclusions. Both Mr. Wells and DDOT agreed that the traffic situation on 37th Street will be improved by the approval of this application.

24. Under the TMP: (1) all students that drive will be required to register and display an identification sticker which will include a telephone number to call for enforcement; (2) usual student parking would be accommodated on campus in the new parking structure; (3) students will only be able to park in unrestricted spaces on

nonresidential streets, mostly as an overflow measure; (4) drop-off/pick-up areas will be limited to the new traffic structure, Zartman circle and 37th Street in front of the Middle School, for cars with 5th and 6th graders only; (5) the School will encouraging people to use mass transit by extending subsidies to out-of-state students for Metrorail use, providing Metro check for employees and engaging in a major education program on the benefits of mass transit and carpooling.

25. The proposed traffic plan would, for the first time, provide both full access to, and egress from, Wisconsin Avenue at signalized intersections. The Plan provides for 30 on-site drop-off/pick-up queuing spaces in one lane (not counting the spaces in a bypass lane) on the ground level of the parking structure beneath the athletic field. Currently, approximately 17 spaces are available for such pick-up/drop-off in the Wisconsin Avenue parking lot. Thus, the queuing will be almost doubled from the current level. Access to the below-grade parking and drop-off/pick-up lane will be provided from Wisconsin Avenue via a new entrance aligned opposite Rodman Street.

26. The levels of service that were studied at each approach in the Traffic Analysis will remain unchanged. After the Project, each approach to this intersection would operate at an acceptable level of service of "C" or better at all times.

27. The Project will address 37th Street traffic in a number of ways. It will improve traffic flow on Wisconsin Avenue due to the new parking/traffic-management/playing field structure and will draw traffic from 37th Street. Ingress and egress to the underground parking garage will be only at signalized intersections on Wisconsin Avenue. Most vehicles dropping-off students will enter the driveway off

Wisconsin Avenue and bear left to enter an on-site traffic course, drop off students and then continue on the course to the north of the Property where they will exit onto Wisconsin Avenue. Further, only automobiles with 5th and 6th grade students will be allowed to use 37th Street during pick-up and drop-off activities. In addition, on-campus parking will increase and will be well in excess of minimum mandated by 11 DCMR § 206.3. The School has already taken steps to mitigate its traffic impact by instituting Metrocheck and School Transit Subsidy programs to encourage transit use, enhancing shuttle service from the Bethesda Campus (where the Lower School is located), enforcing 37th Street traffic policies, phasing release times with the neighboring Hearst Elementary School and moving visitor buses on-campus.

28. The proposed athletic field, with the parking structure below, improves vehicular and pedestrian safety and traffic flow. In addition, it creates a more pedestrian-oriented campus and improves the campus aesthetics. As part of the parking and traffic enhancements, an added benefit is that stormwater and petroleum run-off are managed in a way that benefits the environment and surrounding neighborhoods. The OP believes that this is a significant benefit in the public interest.

29. Through a written report dated June 1, 2004 and supplemented by a report dated July 12, 2004, DDOT stated that the Project would ultimately improve the parking situation in the neighborhood. DDOT stated that the removal of 7th and 8th graders on 37th Street would result in a total reduction of 104 vehicles. The morning peak would be reduced from 189 to 96 vehicles; the evening peak from 51 to 40 vehicles. With the addition of the parking garage and the increase of mass transit usage, overflow parking will be insignificant. The Board credits the testimony of Mr. Wells and DDOT that the

Project and the TMP that will reduce negative traffic conditions in the vicinity of the School and the site, particularly on 37th Street..

30. ANC 3F and ANC 3C disputed the findings of the School's traffic expert and DDOT. ANC 3F and ANC 3C testified that the Mr. Wells' data was incorrectly gathered and that existing conditions on 37th Street are unsafe and congested. ANC 3C and ANC 3F testified that currently, cars dropping off and picking up students from the School queue up on 37th Street, NW, making ingress and egress difficult for residents in the nearby area. ANC 3C requested that the 37th Street drop-offs and pick-ups be restricted to 5th and 6th graders. ANC 3F requested that the 37th Street drop-offs be disallowed altogether.

31. Mr. Wells personally performed the traffic analysis submitted by the applicant. ANC 3C and 3F offered none of their own data and conducted no original research or analysis. The vast majority of the ANCs' comments regarding the Wells analysis and the questions of the DDOT report involved questioning the methods of the study and offered little additional information for traffic analysis.

32. The Board credits testimony of Mr. Wells and the submissions of DDOT to find that the expansion, with the proposed TMP will not create adverse traffic impacts for the neighborhood.

Number of Students and Faculty/Staff

33. Pursuant to BZA Order No. 16139, the School is permitted to enroll 780 students and employ 190 faculty and staff on campus. Currently the School has 800

students, thus exceeding the BZA imposed limit. The School has 169 faculty/staff on campus, below the BZA mandate of 190. Through this application, the School seeks to increase student enrollment cap to 850 and keep the cap of 190 faculty and staff. The School has no plans to grow its student population in excess of 800. However, this cap increase will help the School, if it is needed, to off-set the great expense created by the construction of a second level of parking and still allow the flexibility to accommodate its increasingly complex curriculum.

34. The School is requesting a maximum increase of 70 students and no additional faculty and staff. The Board finds the proposed new facilities will increase the occupiable space of the School to a significantly greater degree than the application would increase student, faculty, and staff population. Thus, the new facilities will distribute the student body among the School buildings, thereby reducing the impact on the neighboring properties. The numbers of students added to the Property will not lead to an objectionable condition by themselves. The OP report supports the enrollment increase and believes that it will not result in objectionable conditions.

Ample Parking

35. This application will permit the increase of on-site parking to 328 parking spaces, 307 of which will be provided by the new underground parking garage, 16 of which will be in the Zartman circle and 5 of which are minibus spaces. Currently, there are 192 spaces on the Property, although the requirement as set by the BZA (Order No. 12945) is only 145.

36. 11 DCMR § 2101.1 of the Zoning Regulations requires that parking be provided at a ratio of 2 parking spaces for every 3 faculty and staff and, for high schools, 1 parking space for every 20 seats of classroom space or 10 seats in the largest assembly space. The faculty and staff cap will not change as a result of this application. However, since the largest assembly space will be the new athletic facility after the Project is completed, the amount of parking spaces required by the Zoning Regulations will change. The parking requirements as dictated by 11 DCMR § 2101.1, with a 190 person faculty and staff cap and a 616 person athletic facility would lead to a requirement of 189 spaces. As shown on the architectural plans, the School plans to provide 328 parking spaces total when the proposed Project is complete, more than satisfying 11 DCMR § 2101.1 of the Zoning Regulations.

37. The current parking accommodations are sufficient for the present demand on the Property. Presently, the peak morning occupancy utilizes a total of 133 spaces (or 69 per cent of all spaces) in the main parking lots, the Zartman lot and circle. The peak afternoon occupancy utilizes 161 spaces (or 84 per cent of all spaces).

38. The BZA found that the School's provision of 145 parking spaces met the "ample parking" requirement of 11 DCMR § 206.3 when the School student population was set at 780 students. Since Sidwell Friends is adding 136 parking spaces and the cap is proposed to rise by 70 students (of which only approximately 14 will be juniors and seniors thus eligible to drive), there is a far greater than one-to-one ratio of additional parking spaces to additional students who will be able drive. Therefore, the planned parking provisions are clearly ample under 11 DCMR § 206.3, under statute and in practice.

39. The Board finds that DDOT and the OP support the position that the School's proposed parking is sufficient.

40. The Board finds that the size of the parking spaces provided by the School is satisfactory to meet the requirements of 11 DCMR § 2115.

41. Students will be discouraged from driving to school. Currently, approximately 27 percent of the high school students drive to school. If the population increase requested in the application is approved, the junior and senior class will be increased by approximately 14 students. If the same percentage of students drive to school, this increase will result in approximately 4 more students driving to School. To the extent that students drive, the TMP will enable them to park on campus. Student vehicles will be registered and required to have an identification sticker, so that any violations can be easily reported to the School.

42. The Board finds that the School will provide more than the required number of on-site parking spaces and that its planned parking monitoring will be effective to ensure that resident parking will not be impacted by Sidwell Friends students.

Harmony with the Zoning Regulations and Map and the Comprehensive Plan

43. The proposed School buildings are well within the height, lot occupancy and bulk requirements for the R-1-B Zone District.

44. The Comprehensive Plan Generalized Land Use Map designates the majority of the site as institutional, with the section that is C-2-A designated as low-density commercial. The School is surrounded by institutional uses and low and

moderate density residential areas. Schools are considered to be part of the fabric of a residential community. As the Comprehensive Plan notes, many residential neighborhoods also include commercial and institutional uses, such as schools, which contribute to the character and enhance the livability of the communities. 10 DCMR § 102.3. The Comprehensive Plan notes that these uses must be protected, stabilized and improved.

45. Private schools are considered to be uses that are compatible with the institutional designation and residential neighborhoods, provided conditions are met with respect to minimizing possible negative impacts.

46. Given the Property's location on one of the District's principal arterial streets and proximity to Metrorail, the Board finds the proposed site is in harmony with the Zoning Regulations and Map and is not inconsistent with the Comprehensive Plan.

Impacts on Use of Neighboring Property

47. The TMP and the construction management plan, proffered by the School, and the conditions contained herein will significantly improve the impact of the School on neighboring property.

48. The School's proposed new gym is located parallel to its common property line with the Washington Home. However, it is adjacent, primarily to the Home's "back-of-house" facilities and replaces an unattractive surface parking lot. The setback between the Washington Home and the new gym is approximately 44 feet and

will be extensively landscaped. A shadow study of the gym's effect on the Washington Home's light and air demonstrates that the Project will not have a negative influence on the Washington Home. Further, the School and the Washington Home have signed an agreement, which was made part of the record in this case, relating to landscaping, light/air and other similar items that will ensure impacts of construction are mitigated. The impact of the Project on the Washington Home, along the property line containing the vast majority of the construction, will be minimal.

49. The School intends to follow a rigorous lighting regime in order to minimize light pollution emanating from the campus, as presented in the Applicant's May 14, 2004 submission to the BZA.

50. The Middle School will be built with minimal visual impacts on the residential properties neighboring the School. The Middle School will only visually impact a small number of residences on Tilden Street. According to letters and testimony of the School, Mr. Graham and Mr. and Mrs. Braven, some of the few residents of the impacted area of Tilden Street, either support or are comfortable with the Middle School addition.

51. The above findings largely pertain to impacts on the use of neighboring property and will not be repeated in this section of the Decision and Order.

52. The Board finds that the School's request to build the master plan in phases is reasonable given the scope of the plan. The Board also finds that it has the authority to condition a special exception approval to permit a phasing of development

and that construction of this entire master plan at one time will have a greater adverse impact, during construction, than a reasonably paced development.

Special Exception Under 11 DCMR § 411.11

53. 11 DCMR § 411.11 provides that a roof structure can be constructed without the normal requirements of 11 DCMR §411 et seq if the BZA finds that such requirements are impracticable due to operating difficulties, size of building lot, or other conditions relating to the building that would tend to make full compliance unduly restrictive, prohibitively costly or unreasonable. In the case of the Middle School addition, the new stairway will be placed on the edge of the new addition to more efficiently utilize the building for classroom and academic space. By placing the stairway on the exterior of the Middle School addition, the School is able to more efficiently arrange classrooms, reduce the building mass needed for the program and enhance the utility and impact of the Middle School addition. Further, the special exception relief from the requirements for roof structures is necessary to achieve a better environmental design and achieve the School's goal of sustainable design.

54. The location of the stairway structure of the Middle School addition will not substantially affect the condition of the surrounding neighborhood nor materially impair the intent and purpose of the Zoning Regulations. Further, the light and air of adjacent buildings will not be affected adversely.

55. The multiple "mini" penthouses proposed in the plan are intended to provide an environmentally friendly building by allowing natural light and solar ventilation serve the classrooms. Additionally, these elements are only 7' in height and

are visually more aesthetically appealing than a single 18' 6" wall which could be built on the roof as a matter-of-right.

56. The School meets all necessary requirements for the approval of the special exception for the location of the stairway and multiple roof structures on the Middle School addition.

CONCLUSIONS OF LAW AND OPINION

The Board of Zoning Adjustment is authorized under the Zoning Act of 1938, approved June 20, 1938 (52 Stat.797, as amended; D.C. Code § 5-424(g)(2)), to grant special exceptions as provided in the Zoning Regulations. Sidwell Friends applied under 11 DCMR § 3104.1 for a special exception pursuant to 11 DCMR § 206 and for a special exception pursuant to 11 DCMR § 411.11 to renovate and expand an existing private school. The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met.

Sidwell Friends is a private school as that term is used in the Zoning Regulations. To meet its burden of proof under 11 DCMR § 3104.1, the applicant must demonstrate that the proposed private school use would meet the special conditions listed in 11 DCMR § 206; that it would be in harmony with the general purpose and intent of the Zoning Regulations and Maps; and that it would not adversely affect the lawful use of the neighboring property. Under 11 DCMR § 206.2, "[t]he 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." Under 11 DCMR § 206.3, "[a]mple 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."

The Board may grant a special exception pursuant to §411.11 if it determines that meeting the conditions of §400.7 and §411 are impracticable due to operating difficulties, size of building or other conditions if full compliance is deemed to be unduly restrictive, prohibitively costly or unreasonable provided that the intent of the Regulations is not materially impaired or that light and air of adjacent buildings are not affected adversely. Here, the applicant has met these tests in that the number and location of roof structures are so located to accommodate sound environmental design and do not adversely affect the light and air of adjacent buildings.

The Board's discretion in reviewing an application for a special exception for a private school is limited to a determination of whether an applicant has complied with the requirements of 11 DCMR §§ 206 and 3104.1. If the applicant meets its burden, the Board must ordinarily grant the application. See The Washington Ethical Society v. District of Columbia Board of Zoning Adjustment, 421 A.2d 14, 18 (D.C. 1980). As stated in French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023 (D.C. 1995), "The Board's limited function [in a special exception case] is to assure that the regulations adopted by the Zoning Commission are followed...." Id. at 1034, quoting Tenley & Cleveland Park Emergency Committee v. District of Columbia Board of Zoning Adjustment, 550 A.2d 331, 341 (D.C. 1988), cert. denied, 489 U.S. 1082 (1989).

Further, the Board is required under D.C. Code § 6-623.04 to give "great weight" to OP recommendations. The Board is also required under § 3 of the Advisory

Neighborhood Commission Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135, 47 DCR 5519 (2000) (codified at D.C. Official Code § 1-309.10(d)(3)(A)(2001)) to give "great weight" to the resolution of the ANC for the area within which the subject property is located. 11 DCMR § 3115.2.

ANC 3C approved a resolution conceptually supporting the application but voiced a number of concerns including: the large number of students who drive to school and park in the neighborhood, enforcement mechanisms of the TMP, mandating student parking on campus, only allowing parking in the neighborhood on a "planned for" basis, only allowing cars dropping off or picking up 5th and 6th graders on 37th Street, the full implementation of the construction management plan, the limited increase in student enrollment including: (i) no increase over 800 until the garage is built, the TMP is implemented and all students are parking on campus, (ii) supporting a new special exception application for 825 students if parking and traffic conditions improve. The ANC requested that conditions they approved by listed as conditions of any BZA order.

ANC 3F, admitted as a party to the proceeding, voiced a number of concerns including: requiring all students, faculty and staff to park on campus and register with the school, the implementation of an effective TMP with sanctions for violations, capping enrollment at 800 students until the completion of the garage and a year after demonstrating full on-campus parking, requiring all student drop-off and pickup to occur on the grounds of the School and not on 37th Street, the alteration of the Middle School entrance, the implementation of a construction management plan and landscaping plan, meetings, calendars and reports supplied to neighbors for constant communication, the

insufficient rear yard for the Middle School, and a requirement to request relief from 11 DCMR § 2516's provisions for theoretical lots.

The Board has carefully considered the recommendations and reports of the ANCs regarding the above issues and has given "great weight" to the positions of both ANC 3C and ANC 3F. The Board incorporates many of the ANCs recommendations into the conditions of this Order.

The Board credits the opinion of the School's traffic expert that the School can be expanded according to the Project in a manner that would not create objectionable traffic conditions. The Board, agreeing with DDOT and OP, believes that the Project will improve the existing traffic and parking conditions at the School and surrounding area. As stated in the Findings of Fact, the Board credits the testimony of Mr. Wells and OP that the parking structure will mitigate much of the concern with regard to student parking in the area, if not eliminate it altogether.

As stated in the Findings of Fact, the Board determines that other than the relief requested in the application, the Project does not require any variance or any other special exception. The Board determines that the ANCs' arguments for further relief from the rear yard and height of the Middle School are moot because the Project, specifically the Middle School, satisfies all requirements of the R-1-B Zone District. Further, the Board rules that Section 2516 is not applicable to private schools subject to the Board's review under Section 206 of the Zoning Regulations.

Based upon the Findings of Fact and having given great weight to the OP and ANC recommendations, the Board concludes that the proposed Project, as conditioned by

the Board, can be located at the subject property so that it is not be likely to become objectionable to adjoining nearby property. The Board has imposed numerous, stringent conditions in this order in response to the OP, ANC, DDOT and neighborhood concerns, which particular emphasis on traffic, parking and management of construction impacts.

The Board also concludes that the proposed Project would provide ample parking. Under 11 DCMR § 2101.1, the School is required by the Zoning Regulations to provide at least 189 parking spaces. The Board concludes the School's provision of 328 parking spaces will meet the needs of its faculty and staff, students and visitors.

The R-1-B Zone District is a low-density residential district that allows for limited institutional and semi-public buildings that would be compatible with adjoining residential uses if permitted as a special exception. Under 11 DCMR § 200.2 "[t]he provisions of this chapter are intended to stabilize the residential areas and to promote a suitable environment for family life." The Property is primarily designated for institutional use on the Comprehensive Plan Map. The Board concludes that the use of the Property for the expansion of a private school, as conditioned by the Board, is in harmony with the Zoning Regulations and Map and the use is not inconsistent with the Comprehensive Plan of the District of Columbia.

As discussed above with respect to the requirements of Subsection 206.2 and 206.3, the Board concludes that the proposed private school use, as conditioned by the Board, will not adversely affect the use of neighboring property.

With respect to the requirements of Subsection 411.11, the Board concludes that the proposed roof structures for the Middle School addition, as conditioned by the Board,

will not adversely affect the light and air of neighboring property or impair the intent and purpose of the Zoning Regulations.

For the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby ORDERED that the application is GRANTED, subject to the following CONDITIONS:

1. The project shall be constructed in accordance with the plans prepared by Kieran Timberlake Associates LLP Architects and marked in the record as Exhibits No. __ and __.
2. Enrollment may be increased to no more than 800 students beginning September 2004 in conjunction with the implementation of the TMP.
3. Enrollment may be increased to no more than 850 students one year after the Certificate of Occupancy is issued for the parking garage, subject to the applicant submitting evidence of compliance with the BZA Order (including TMP), to
    a. The Zoning Administrator's office and
    b. DDOT submitting a report to the Zoning Administrator that the garage is operating successfully.
4. The maximum number of faculty and staff shall be 190.
5. Once the two-level, below-grade garage is built, the drop-off and pick-up of students on 37th Street be restricted to vehicles containing 5th and 6th grade students only.

6. The School shall fully implement and comply with the TMP, Exhibit H to the Applicant's pre-hearing submission of May 14, 2004, marked in the record as Exhibit __.

7. At the beginning of each school year, but in no event later than October 5, the School shall provide the Board, the Zoning Administrator and DDOT documentary evidence to demonstrate its enrollment figures and compliance with the terms and conditions of the BZA Order, including the TMP.

8. The School shall provide an annual report to ANC 3C and ANC 3F due no later than December to include: enrollment, staff and certification that they comply with the BZA Order.

9. The School shall fully implement and comply with the construction management plan, Exhibit F to the Applicant's pre-hearing submission of May 14, 2004, marked in the record as Exhibit __.

10. The construction management plan will be followed by the School and all of School's agents. The construction liaison committee will consist of nine members: 2 representatives from the School, one each from the Washington Home and Hearst, one each from ANC 3C and ANC 3F, one representative each from: (i) the owners of 3600-3700 of Quebec Street, (ii) the owners of 3500-3600 Tilden Street, 3900 Idaho Avenue and 4000 and 4100 block of 37th Street and (iii) the owners of houses on the 3600 and 3700 blocks of Upton Street.

11. The School may construct the Project in two phases. The first phase (Phase I) shall include the parking/traffic/athletic structure and the Middle School addition/renovation. The second phase (Phase II) will encompass the remainder of the buildings and shall be started within five years of the completion of Phase I.

VOTE:

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

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____

JERRILY R. KRESS, FAIA

Director, Office of Zoning

FINAL DATE OF ORDER:_____

UNDER 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER IT BECOMES FINAL PURSUANT TO 11 DCMR § 3125.6 OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE AND UPON ITS FILING IN THE RECORD AND SERVICE ON THE PARTIES.

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.

PURSUANT TO D.C. CODE § 1-2531 (1999), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANTS ARE REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. TITLE 1, CHAPTER 25 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF THE APPLICANTS TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

Document #: 1427111 v.1

ShawPittman LLP

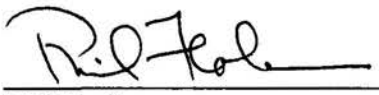
Certificate of Service

I hereby certify that on August 31, 2004, a copy of the foregoing Findings of Fact and Conclusions of Law were sent via first class mail to the following:

Nancy MacWood
Chairperson
Advisory Neighborhood Commission 3C
3417 Woodley Road, NW
Washington, D.C. 20016

Karen Perry
Chairperson
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