ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

0 +270

PHIL FEOLA
202-663-8789
Phil.feola@ShawPittman.com

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 Sidwell Friends School post hearing filings as follows:

(1) Legal memorandum discussing the applicability of Section 2516 of the Zoning Regulations to this application;

(2) Legal analysis of the building height and rear yard calculations for the proposed addition to the Middle School; and

(3) Reply to Ms. Nancy J. MacWood, Chair, ANC 3C's letter concerning phasing and roof structure relief.

Thank you for your consideration.

Sincerely,

Phil Feola

Jeffrey Utz

Enclosures

cc: Michael Saxenian

BZA
Case No. 17149
Exhibit No. 88

Board of Zoning Adjustment
District of Columbia
CASE NO. 17149
EXHIBIT NO. 88

1

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Sidwell Friends School
3825 Wisconsin Avenue, NW
Square 1825, Lot 816

BZA Application No. 17149
Public Hearing: June 29, 2004

INAPPLICABILITY OF §2516 OF THE ZONING REGULATIONS TO PRIVATE SCHOOLS

I. INTRODUCTION

Pursuant to the request of the Board of Zoning Adjustment ("**BZA**") at its June 29, 2004 public hearing in the above-captioned case, the Sidwell Friends School ("**Sidwell Friends**") respectfully submits its legal analysis on the inapplicability of §2516 of the Zoning Regulations to private schools which are governed by Section 206 of the Regulations.

Section 2516 of the Zoning Regulations, governing the creation of theoretical lots in residential zones, is not applicable here because:

(a) it was intended to provide a public review of multiple housing developments on large lots with minimal street frontage, not projects already subject so such public review;

(b) it has never been applied to private schools by the BZA or the Zoning Administrator's Office;

(c) even if it were applicable, it would not apply here because all the buildings on the campus are permitted accessory uses and buildings to the principal use of the Sidwell Friends property, a private school; and

(d) the application of §2516 of the Zoning Regulations to private schools would be redundant and impractical.

II.
SECTION 2516 WAS CREATED TO PROVIDE BZA REVIEW FOR CERTAIN DEVELOPMENTS WHERE NONE PREVIOUSLY EXISTED

The legislative history of §2516 makes clear that this section was never intended to apply to private schools. Prior to April 17, 1989, the Zoning Regulations permitted two or more principal buildings to be erected on a single subdivided lot as a matter-of-right, (See §§7615.1 and 7615.2 of the D.C. Zoning Regulations, 1979, EXCEPTIONS TO BUILDING LOT CONTROL). On April 17, 1989, the D.C. Zoning Commission adopted an emergency order, Z.C. Order No. 617, which required special exception approval from the BZA in order to erect two or more principal buildings or structures on a single subdivided lot. Thereafter, Z.C. Order No. 627 was adopted which enumerates the requirements for special exception approval as the current 11 DCMR §2516, EXCEPTIONS TO BUILDING LOT CONTROL (Residence Districts). A copy of Z.C. Orders No. 617 is attached as Exhibit A.

As evidence of its legislative intent, the Zoning Commission Order No. 617 noted that an emergency rulemaking to adopt an amendment to the text of the Zoning Regulations was necessary for the following pertinent reasons:

Whereas, 11 DCMR 2516 was originally promulgated to allow for the reasonable development of excessively large lots with a minimal amount of street frontage; . . . .

Whereas, The construction of more than one principal structure on a single subdivided lot will, under certain circumstances, cause irreparable injury to the stability of residential neighborhoods, contrary to the purpose and intent of the Zoning Regulations;

Whereas, Review by the Board of Zoning Adjustment, pursuant to the special exception process and standards, of the proposed construction of more than one principal structure on a single lot would provide reasonable protection to the stability of neighborhoods;

Whereas, Review by the Board of Zoning Adjustment would not altogether prohibit such construction, but would allow it to proceed, albeit to a hearing, rather than as a matter-of-right; . . . (Emphasis Added).

(See Exhibit A, Zoning Commission Order No. 617, pp 1-2)

In its final promulgation of Section 2516, the Zoning Commission again notes that the BZA review is the prime motivation for the zoning text amendment. In Zoning Commission Order No. 627, a copy of which is attached as Exhibit B, the Commission notes;

The Commission is persuaded that the development of two or more structures on one lot in or near a residential zone presents special issues and problems that require consideration at a public hearing.

The District of Columbia has developed at a pace and to an extent that increases the incentive of developers to maximize the use of land that is either vacant or not as fully developed as the zoning envelope would allow. To a substantial degree, it is in the overall interest of the District of Columbia to increase the opportunity for persons to live in the District.

However, the trend to maximize development potential produces as a corollary a greater potential for negative impact on adjacent dwellings. Thus, the response to an increase in the density of residential buildings cannot reasonably allow only for the increase, but must also allow for appropriate controls and review.

The Commission remains persuaded, after the hearing and upon consideration of the entire record, that the Board of Zoning Adjustment should review multiple building construction on a single lot, that is proposed in or near a residential zone. Thus, as the Commission said in Order No. 617, review by the Board of Zoning Adjustment, pursuant to the special exception process and standards, of the proposed construction of more than one principal structure on a single lot, would provide reasonable protection to the stability of residential neighborhoods; and would not altogether prohibit such construction, but would allow it to proceed, albeit subject to a hearing, rather than as a matter-of-right.

(See Exhibit B, Zoning Commission Order No. 627, pp. 1-2).

It is clear from this Zoning Commission Order that the primary purpose of Section 2516 was to provide BZA review of theoretical subdivisions. Private schools were already (and are still) subjected to a BZA review.

It is evident that the goals and policies that form the basis of §2516 were to require a BZA review of such potential developments. To require an additional special exception (theoretical lot) for a private school already subjected to BZA review under §206 would be redundant. Especially since schools, by their very nature, usually include numerous buildings or structures on a campus.

The legislative intent of §2516 of the Zoning Regulations was solely to provide a public review of those situations where developers intended to develop multiple unit housing on large interior lots with minimal street frontage. This certainly does not describe the facts of Sidwell Friends' history of the use of 3825 Wisconsin Avenue, N.W. as a private school. After the proposed project, the Sidwell Friends property will have a campus stretching over a lot that is approximately 15 acres in size with a lot occupancy of approximately 19%. This is certainly not the type of case that the drafters of the Zoning Regulations intended to be subject to the requirements of §2516.

III.
THE BZA HAS NOT APPLIED SECTION 2516 IN APPROVING SPECIAL EXCEPTIONS FOR PRIVATE SCHOOLS

Neither the Zoning Administrator or the BZA has required a private school to satisfy the requirements of §2516 as part of its approval process under §206. The following examples are just two of the numerous private school cases that the BZA has reviewed and approved since the adoption of the current Section 2516 in 1989.

The Washington International School ("**W.I.S.**") at 3100 Macomb Street, N.W., was originally granted approval to operate a private elementary, junior high and high school for 300 students in 1978 on a single lot (BZA Application No. 14523). Subsequent to April 17, 1989, the date on which the Zoning Commission adopted the current Section 2516, W.I.S. has returned to the BZA on four occasions for special exception approvals and has received approval in each application. In each instance, W.I.S. only requested, and was granted, relief from Section 206 of the Zoning Regulations.

For example, in 1997, W.I.S. sought and received approval to construct an athletic and arts/music center on its existing campus. The BZA, in Order No. 16189, noted that:

> 6. The original development plan approved by this Board in 1978 in BZA Order No. 12576 provided for the construction of a multipurpose building that would provide both a gymnasium and classroom space. However, the School, in BZA Order 14523 dated December 17, 1986, sought and was granted permission to (i) revise the concept of a single unified, multipurpose building and (ii) plan for the construction of two *separate* buildings. One building was to be a classroom building (which was approved pursuant to BZA Order No. 14523). *The construction of the second building*, a gymnasium, was to be pursued at a later date. This conceptual change resulted from a determination by the School *that one building large enough to accommodate both a gymnasium and a large number of classrooms was not as appropriate for the site as two structures*

in different locations and, furthermore, that two smaller buildings would be more compatible with the historic Tregaron Estate.

(BZA Order No. 16189 at p. 2.)

Neither the Zoning Administrator nor the BZA, despite the multiple buildings being approved, required W.I.S. to obtain special exception approval under §2516 of the Zoning Regulations.

Similarly, the Maret School, located at 3000 Cathedral Avenue, N.W., has a number of buildings and structures located on a single lot and has not been required to obtain special exception relief from § 2516 in its applications to the BZA since 1989. Attached as Exhibit C are copies of BZA Order No. 15527, dated August 2, 1991, and BZA Order No. 16313 (and a building plat indicating the numerous buildings and structures located on the Lot), dated April 3, 1998. In addition, in regards to BZA Application No. 16313, we have attached the zoning confirmation memo from the Chief of the Zoning Review Branch of the Building and Land Regulation Administration ("**BLRA**"), to the BZA that identified the appropriate areas of relief that were identified by the Zoning Review Branch. Once again, neither the BZA nor the Zoning Administrator's Office required a private school that clearly had multiple buildings and structures on a single subdivided lot to obtain special exception relief under § 2516 of the Zoning Regulations.

There have been a large number of private schools which have sought, and received, permission from the BZA, for additional buildings on their campuses without

applying, or receiving, approval for a special exception pursuant to Section 2516 since the promulgation of Section 2516 in 1989. In addition to the two schools noted above, these schools include: St. John's College High School (BZA Orders No. 15518 and 16324) ; Gonzaga High School (BZA No. Order 16403); The Field School (BZA Order No. 16559); Lab School (BZA Order No. 16273); St. Albans School for Boys (BZA Order No. 15987); and the National Cathedral School (BZA Order No. 16433).

More directly, the Sidwell Friends School has received two special exception approvals itself (BZA Applications No. 15679 and 16139) since the 1989 enactment of §2516 for additional buildings on its campus and neither approval required an additional special exception pursuant to §2516.

In each of these cases, the same conclusion is reached by the BZA. Private schools have not been required to obtain relief from §2516 in order to erect numerous buildings and structures that exist on a single subdivided lot. This conclusion is also consistent with the D.C. Court of Appeals decisions in the Georgetown University, The George Washington University and American University applications to the BZA and the Zoning Commission, all of which approved buildings on university campuses in residential districts as accessory buildings on the same lot as the principal use, without the additional requirement for special exception review under §2516. (*See, e.g., Citizens Coalition v. DC BZA,* 619 A.2d 940 (DC 1993), which approved construction of a power plant on the Georgetown University campus as an accessory use.)

The implications of requiring Sidwell Friends to obtain special exception relief pursuant to §2516 will have far reaching and precedential implications for every private

school, child development center, and college or university in the District of Columbia and, more importantly, is contrary to the decisions of the DC Court of Appeals noted above.

IV.
EVEN IF SECTION 2516 WAS APPLICABLE TO PRIVATE SCHOOLS, IT DOES NOT APPLY HERE BECAUSE ALL EXISTING AND PROPOSED BUILDINGS ARE PERMITTED ACCESSORY STRUCTURES TO THE PRINCIPAL USE OF THE PROPERTY

It goes unchallenged that Sidwell Friends principal use of its campus is for a private school. Sidwell Friends is not required to obtain relief from §2516 in BZA Application No. 17149 because the use of the existing, and proposed, buildings on the campus are clearly accessory to the principal use of the Sidwell Friends property, which is use of the campus as a private school. Thus, even if Section was applicable to private schools generally, it does not apply in this case.

Accessory buildings are permitted on a record lot without requiring a theoretical subdivision. The past decisions of the Board, relevant case law decided by the District of Columbia Court of Appeals and general land use theory support this position.

The issue of permitted accessory uses in a private school case was addressed by the BZA in Application No. 16433. This 1999 case approved the construction of a new athletic facility for the National Cathedral School ("**NCS**"). In that case, NCS proposed the construction of a new 83,160 square foot athletic facility, two associated grass fields, a 4,360 square foot entry pavilion and a 16,000 square foot parking garage on the same lot as an existing NCS building that included NCS classrooms for its upper school and

most of its administrative offices. NCS was not required to obtain special exception relief from §2516 of the Zoning Regulations.

In discussing what constitutes an accessory use, the Board stated:

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

The Board's decision in the NCS case was upheld by the D.C. Court of Appeals in National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment, 753 A.2d 984 (D.C. 2000). (See also, Neighbors on Upton Street v. D.C. Board of Zoning Adjustment, 697 A.2d 3 (D.C. 1997) in which the Court of Appeals upheld the Board's decision to approve construction of a 300 seat performance auditorium for the Levine School of Music based on the fact that the auditorium was an accessory use to the school, "the proposed addition to the existing building, including the auditorium, contributes to the educational mission of the Levine School." *Id.* at p. 9.) (See also Rathkopf, The Law of Zoning and Planning, §30.13 Educational Facilities and Accessory Uses, which states "By implication, permission to operate a school includes permission to locate upon the property those accessory uses which are customarily engaged in by students.")

Applying the rationale used by the BZA in the NCS case to the present case, it is readily apparent that Sidwell Friends' proposed use of the additions to its campus is clearly related to the educational mission of the school and the School's use of the

property. Sidwell Friends' proposed buildings are for uses that are customarily used in by teachers, students and parents of private schools. The parking garage/traffic management structure/athletic field, new gym, the middle school and Quaker meeting house further the educational mission of the Sidwell Friends School.

The BZA should follow the clearly established guidelines of its previous decisions that have been upheld by the D.C. Court of Appeals. Once the BZA has granted special exception approval for private school use, the construction of any new buildings or structures that further the educational mission of the school are deemed to be accessory uses to the school and §2516 of the Zoning Regulations is not applicable.

V.
APPLICATION OF §2516 OF THE ZONING REGULATIONS WOULD LEAD TO THE ABSURD

The application of §2516 to private schools would not be practical and lead to absurd situations. For example, Section 2516 requires each "building" approved under §2516 meet all Zoning Requirements for that building. Thus, if Section 2516 were applicable here, each building on the School's campus would have to meet its own parking requirement. Parking for private schools, as the BZA knows, is based on the number of faculty and staff. This means that each building on the Sidwell Friends campus would have to provide for it parking requirement on its "theoretical" lot. In addition, to creating a sea of parking lots and access roads, it would create enforcement nightmares for the Zoning Administrator and, most certainly would not result in sound, efficient land use planning. Would Sidwell be required to provide parking on the "Zartman House theoretical lot" for 11-15 faculty/staff members who work there? How

would the parking requirement be calculated for the Zartman House if 5 of these faculty taught in the Middle School, 2 taught in the Upper School and one was a gym teacher? Would there have to be a parking space for each of them on the "lot" of their classrooms, in addition to the Zartman lot? How would the District of Columbia Zoning Administrator enforce such a constraint? Does the faculty member "work" in he building where his/her office is? or where he or she teaches? Such a requirement clearly leads to the absurd – the Zoning Administrator following a teacher around campus to try to figure out where he or she "works".

Further §2516 requires a "means of vehicular ingress or egress to any principal building of twenty-five feet in width" and either "two (2) entrances and/or exists from the means of ingress or egress" or a "turning area shall be provided with a diameter of not less than sixty (60) feet.)" Thus, each building on Sidwell Friends' campus would have to be accessed by a 25 foot wide driveway and have a 60' diameter turnaround. This would create a maze of roadways and parking lots that are clearly unnecessary, contrary to sound planning principles and a less environmentally friendly campus.

The BZA's long standing practice and rationale to allow school facilities to be located in numerous structures and buildings on a single lot allows for the more efficient use of the property. For example, there is a significant benefit to allowing schools to have one centralized parking and loading facility. A single centralized location for such uses allows more area to be devoted to open space, green space and less impervious surfaces. If Section 2516 were applicable, therefore, on a large school property such as Sidwell Friends (or Maret School or W.I.S. or St. John's or Gonzaga), the school would

be required to have numerous parking lots and loading facilities which would most likely have a significant detrimental impact on the aesthetic and environmental quality of the school's property, as well as the surrounding properties, in addition to a dramatic reduction in green space and pedestrian safety.

The application of §2516 would also not be practical since that section would require redundant special exception review by the Board. Such §2516 special exception review would accomplish the exact goals that §206 special exception review will accomplish under Application No. 17149. Therefore, the protections offered by the special exception process are not enhanced or safe-guarded to any greater degree by an additional review under §2516 of the Zoning Regulations. Further, it is not an efficient use of the Board's resources and time to require such repetitive review.

VI.
CONCLUSION

For the foregoing reasons, Sidwell Friends requests that the BZA determine that §2516 of the Zoning Regulations is not applicable to BZA Application No. 17149.

Respectfully submitted,

SHAW PITTMAN, LLP

Phil T. Feola

Jeffrey C. Utz

Attachments

EXHIBIT A

Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 617
Case No. 89-12
(Text - Theoretical Building Site Provision)
EMERGENCY ORDER
April 17, 1989

On April 17, 1989, the Zoning Commission for the District of Columbia considered the petition of Brandywine Street Project, Friends of Springland, and Foxhall Community Citizens Association that the Zoning Commission initiate a rulemaking case and set an expedited hearing to consider amendment of 11 DCMR 2516, which allows the construction of two or more principal structures on one lot. The Commission also considered the recommendation of the Director of the Office of Planning ("OP"), dated April 13, 1989, that the Zoning Commission adopt an emergency rule to require special exception approval of theoretical building sites.

Having considered the April 11, 1989 letter from the petitioners, including attached correspondence from petitioners to the Zoning Administrator and the OP Director; the April 13, 1989 memorandum from the OP Director; correspondence dated April 17, 1989, from the firm of Wilkes, Artis, Hedrick, and Lane in opposition to emergency action; and a number of letters in support of the position of the petitioners, the Commission decided to effect emergency rulemaking, for the following reasons:

Whereas, 11 DCMR 2516 was originally promulgated to allow for the reasonable development of excessively large lots with a minimal amount of street frontage;

Whereas, 11 DCMR 2516 was promulgated to facilitate the development of multiple unit public housing, albeit the application of the regulation was not limited to such housing;

Whereas, 11 DCMR 2516 is being applied to an increasing degree in circumstances where its application is questionable or problematic, and not for the purpose of developing multiple unit housing;

Whereas, The construction of more than one principal structure on a single subdivided lot will, under certain circumstances, cause irreparable injury to the stability of residential neighborhoods, contrary to the purpose and intent of the Zoning Regulations;

Whereas, Review by the Board of Zoning Adjustment, pursuant to the special exception process and standards, of the proposed construction of more than one principal structure on a single lot would provide reasonable protection to the stability of neighborhoods;

Whereas, Review by the Board of Zoning Adjustment would not altogether prohibit such construction, but would allow it to proceed, albeit subject to a hearing, rather than as a matter of right;

Whereas, Section 1 of the Zoning Act (Act of June 20, 1938, 52 Stat. 797, also cited as Section 5-413 of the D.C. Code) authorizes the Zoning Commission to adopt regulations "to promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia"; and

Whereas, Section 1-1506 of the District of Columbia Code authorizes the Zoning Commission to take emergency action for a period not to exceed 120 days "for the immediate preservation of public peace, health, safety, welfare, or morals";

Therefore: The Zoning Commission resolves that there exists an emergency that requires the immediate amendment of the Zoning Regulations of the District of Columbia to protect the public welfare; and therefore, it is hereby and ordered that, effectively immediately on April 17, 1989, at 8:45 P.M., and for a period not to exceed 120 days beginning on April 17, 1989, 11 DCMR 2516 is amended to read as follows:

2516 EXCEPTIONS TO BUILDING LOT CONTROL

2516.1 If approved by the Board of Zoning Adjustment in accordance with the conditions set forth in section 3108 of this title, two (2) or more principal buildings or structures may be erected on a single subdivided lot, subject to the provisions of Subsections 2516.2 through 2516.7 of this section.

2516.2 The number of principal buildings

permitted by these regulations shall not be limited; Provided, that the applicant for a permit to build submits satisfactory evidence that all requirements of these regulations (such as use, height, bulk, and open spaces around each building) as provided by Subsections 3202.2 and 3202.3 shall be complied with.

2516.3 Where a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the front of the building shall be the side upon which the principal entrance is located. Open space in front of the entrance shall be provided equivalent to the required rear yard in the district in which the building is located; but a rear yard shall be required.

2516.4 Where not in conflict with the Act of June 1, 1910, (36 Stat. 452), as amended, the height of a building governed by the provisions of this section, in all districts, shall be measured from the finished grade at the middle of the front of the building.

2516.5 The provisions of this section shall also apply to buildings erected under the terms and conditions of Section 410.

2516.6 The substantive provisions of this title shall be complied with, and the proposed development shall not be likely to have an adverse effect on the present character and future development of the neighborhood.

2516.7 The Board may impose conditions with respect to the size and location of driveways; side and rear yards; net density; design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations.

This emergency rulemaking was adopted by the Commission at the special public meeting on April 17, 1989, by a vote of 5-0: (Lindsley Williams, Maybelle Taylor Bennett, Lloyd D. Smith, John G. Parsons, and Elliott L. Carroll to approve).

In accordance with D.C. Code Section 1-1506(c) (1981), this emergency rule became effective immediately upon adoption on April 17, 1989.

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director
Zoning Secretariat

zcorder617/BJW37

EXHIBIT B

Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 627
Case No. 89-12
(Text - Theoretical Building Site Provision)
July 31, 1989

The Zoning Commission for the District of Columbia initiated this case in response to the petition of Brandywine Community Project, Friends of Springland, and Foxhall Community Citizens Association that the Commission initiate a rulemaking case and set and expedited hearing to consider amendment of 11 DCMR 2516, which allows the construction of two or more principal structures on one lot.

At a meeting on April 17, 1989, having considered the petition, as well as the recommendation of the Director of the Office of Planning ("OP"), dated April 13, 1989, that the Zoning Commission adopt an emergency rule, the Commission decided to adopt emergency rulemaking to be effective immediately on that date and for a period not to exceed 120 days, that is through August 14, 1989.

On June 15, 1989, having furnished the required notice, the Commission held a public hearing to consider the adoption of amendments to become effective on or before the expiration of the emergency order. Based upon the testimony at the hearing, and written submissions received before the record closed at noon on June 19, 1989, the Commission met at 7:00 P.M. on June 19, 1989, to consider proposed action in this case.

The Commission determined to promulgate a revised notice of proposed rulemaking, and that notice appeared in the D.C. Register on June 30, 1989. The final action that is effected by this order is based upon consideration of the entire record, including all comments that were received before 12 noon on July 31, 1989.

The Commission is persuaded that the development of two or more structures on one lot in or near a residential zone presents special issues and problems that require consideration at a public hearing.

The District of Columbia has developed at a pace and to an extent that increases the incentive of developers to maximize the use of land that is either vacant or not as

fully developed as the zoning envelope would allow. To a substantial degree, it is in the overall interest of the District of Columbia to increase the opportunity for persons to live in the District.

However, the trend to maximize development potential produces as a corollary a greater potential for negative impact on adjacent dwellings. Thus, the response to an increase in the density of residential buildings cannot reasonably allow only for the increase, but must also allow for appropriate controls and review.

The Commission remains persuaded, after the hearing and upon consideration of the entire record, that the Board of Zoning Adjustment should review multiple building construction on a single lot, that is proposed in or near a residential zone. Thus, as the Commission said in Order No. 617, review by the Board of Zoning Adjustment, pursuant to the special exception process and standards, of the proposed construction of more than one principal structure on a single lot, would provide reasonable protection to the stability of residential neighborhoods; and would not altogether prohibit such construction, but would allow it to proceed, albeit subject to a hearing, rather than as a matter-of-right.

The notice of proposed rulemaking included as an alternative, a proposed rule that would apply the provisions of 11 DCMR 2517 to construction on a site that was subject to a Large Tract Review that was completed before June 15, 1989. The alternative rule would have exempted projects on such sites from the requirement for review by the Board of Zoning Adjustment. Although the Commission had reservations about any such exemption, it proposed the alternative to allow for the submission of comments. Having considered the comments in favor of and in opposition to such an exemption, the Commission has determined not to adopt an exemption for any project in a residential zone district. The Commission believes that the review process adopted by this Order is reasonable, and will have no adverse impact on any reasonable proposed project. The Commission notes that the Board of Zoning Adjustment has procedures that are available to allow for the expedited filing or hearing of applications when there is good cause.

In further response to the comments, the Commission states as follows:

1. The Commission has determined to require a twenty-five foot buffer from a residence zone as the basis for allowing matter of right construction pursuant to 11 DCMR 2517. The requirement of a specific distance provides a desirable level of certainty.

2. The Commission has determined not to provide a general exemption for additions to structures within previously-approved projects. Such an exemption would be too open-ended.

3. Where appropriate, the Commission has clarified and corrected several provisions.

4. The Commission has added an explicit reference to the height of structures as an element that the Board may address pursuant to subsection 2516.11.

5. The Commission has adhered to the decision not to delegate to the Board the obligation that is vested in the Commission to assure that the Zoning Regulations are not inconsistent with the Comprehensive Plan.

Finally, the Commission does not believe that there is a legal barrier to the application of the rule, as originally adopted on April 17, and as amended and finally adopted by this order, to construction for which no building permit had been issued before April 17, 1989.

The Commission transmitted the proposed rules to the National Capital Planning Commission ("NCPC") on April 26, 1989, and again, as revised, on June 23, 1989. By comments transmitted on June 2, 1989 and July 28, 1989, NCPC reported that the amendments would not have an adverse impact on the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, are not inconsistent with the Comprehensive Plan for the National Capital, and will appropriately implement and advance the objectives and policies established in the Comprehensive Plan.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of amendments to the Zoning Regulations to require review by the Board of Zoning Adjustment of construction of more than one building on a single lot in or near a residential zone district. The specific amendments to the Zoning Regulations are as follows:

1. Amend the text of the Zoning Regulations by adopting a revised version of 11 DCMR 2516, to read as follows:

2516 EXCEPTIONS TO BUILDING LOT CONTROL (Residence Districts)

2516.1 If approved by the Board of Zoning Adjustment in accordance with the conditions set forth in section 3108 of this title, two (2) or more principal buildings or structures may be erected on a single subdivided lot, subject to the provisions of this section.

2516.2 The provisions of this section shall apply to construction on a lot that is located in, or within twenty-five (25) feet of, a residence district as designated in section 105 of this title.

2516.3 In addition to other filing requirements, the applicant shall submit to the Board, with the application, four site plans and two sets of typical floor plans and elevations, grading plans (existing and final), landscaping plans, and plans for all new rights-of-way and easements.

2516.4 The number of principal buildings permitted by these regulations shall not be limited; Provided, that the applicant for a permit to build submits satisfactory evidence that all requirements of these regulations (such as use, height, bulk, open spaces around each building, and limitations on structures on alley lots pursuant to section 2507), as provided by sub-sections 3202.2 and 3202.3, shall be complied with.

2516.5 If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the following provisions shall apply:

(a) The front of the building shall be the side upon which the principal entrance is located;

(b) Open space in front of the entrance shall be required that is equivalent either to the required rear yard in the district in which the building is located or to the distance between the building restriction line recorded on the records of the Surveyor of the District of Columbia for the subdivided lot and the public space upon which the subdivided lot fronts, whichever is greater;

(c) A rear yard shall be required; and

(d) If any part of the boundary of a theoretical

lot is located in common with the rear lot line of the subdivided lot of which it is a part, the rear yard of the theoretical lot shall be along the boundary of the subdivided lot.

2516.6 In providing for net density pursuant to sub-section 2516.11 of this section, the Board shall require at least the following:

(a) The area of land that forms a covenanted means of ingress or egress shall not be included in the area of any theoretical lot, or in any yard that is required by this title;

(b) Notwithstanding any other provision of this title, each means of vehicular ingress or egress to any principal building shall be twenty-five (25) feet in width, but need not be paved for its entire width;

(c) If there are not at least two entrances and/or exits from the means of ingress or egress, a turning area shall be provided with a diameter of not less than sixty (60) feet; and

(d) The requirements of paragraphs (b) and (c) of this sub-section may be modified if the Board finds that a lesser width and/or diameter will be compatible with, and will not be likely to have an adverse effect on, the present character and future development of the neighborhood; Provided, the Board shall give specific consideration to the spacing of buildings and the availability of resident, guest, and service parking.

2516.7 Where not in conflict with the Act of June 1, 1910, (36 Stat. 452), as amended, the height of a building governed by the provisions of this section, in all districts, shall be measured from the finished grade at the middle of the front of the building.

2516.8 The provisions of this section shall also apply to buildings erected under the terms and conditions of section 410 of this title.

2516.9 The substantive provisions of this title shall be complied with, and the proposed development shall not be likely to have an adverse effect on the

present character and future development of the neighborhood.

2516.10 Before taking final action on an application under this section, the Board shall refer the application to the District of Columbia Office of Planning for coordination review, and report, which coordination, review, and report shall consider the following:

(a) The relationship of the proposed development to the overall purpose and intent of the Zoning Regulations, and other planning considerations for the area and the District of Columbia as a whole, including the plans, programs, and policies of other departments and agencies of the District government; Provided that the planning considerations that are addressed shall include, but not be limited to the following:

(1) Public safety relating to police and fire concerns;

(2) The environment, relating to water supply, water pollution, soil erosion, and solid waste management;

(3) Public education;

(4) Recreation;

(5) Parking, loading, and traffic;

(6) Urban design; and

(7) As appropriate, historic preservation, and visual impacts on adjacent parkland;

(b) Considerations of site planning; the size, location, and bearing capacity of driveways; deliveries to be made to the site; side and rear yards; density and open space; and the location, design and screening of structures;

(c) Considerations of traffic to be generated and parking spaces to be provided, and their impacts;

(d) The impact of the proposed development on neighboring properties; and

(e) The findings, considerations, and recommendations of other District government agencies.

2516.11 The Board may impose conditions with respect to the size and location of driveways; net density; height, design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations.

2. Provide for matter of right review of the construction of more than one building on a single lot that is not located in, or within twenty-five (25) feet of, a residence district, by adopting a new 11 DCMR 2517, to read as follows:

2517 EXCEPTIONS TO BUILDING LOT CONTROL (Other than Residence Districts)

2517.1 This section is designed to permit two (2) or more principal buildings or structures to be erected as a matter of right on a single subdivided lot that is not located in, or within twenty-five (25) feet of, a residence district.

2517.2 The number of principal buildings permitted by these regulations shall not be limited; Provided, that the applicant for a permit to build submits satisfactory evidence that all requirements of these regulations (such as use, height, bulk, and open spaces around each building), as provided by sections 3202.2 and 3202.3 of this title, shall be complied with.

2517.3 If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the front of the building shall be the side upon which the principal entrance is located. Open space in front of the entrance shall be provided equivalent to the required rear yard in the district in which the building is located; but a rear yard shall be required.

2517.4 Where not in conflict with the Act of June 1, 1910, (36 Stat. 452), as amended, the height of a building governed by the provisions of this section, in all districts, shall be measured from the finished grade at the middle of the front of the building.

3. Consistently renumber existing sections 2517 through 2519, and all references thereto in Title 11, as 2518 through 2520, respectively.

Vote of the Zoning Commission at the June 19, 1989 public meeting: 4-0 (Maybelle Taylor Bennett, William L. Ensign, Lloyd D. Smith and Lindsley Williams to approve; and John G. Parsons not present, not voting).

On a preliminary motion at the special meeting on July 31, 1989, the Commission determined not to adopt an exemption for any project in a residence zone, by a vote of 3-1 (Maybelle Taylor Bennett, Lloyd D. Smith, and Lindsley Williams, in favor of the motion not to adopt an exemption; William L. Ensign, opposed to the motion; and John G. Parsons, not voting not having participated in the case.)

This Order was approved by the Zoning Commission at the public meeting on July 31, 1989, by a vote of 4-0 (Maybelle Taylor Bennett, William L. Ensign, Lloyd D. Smith, and Lindsley Williams, to approve; John G. Parsons, not voting not having participated in the case.

In accordance with 11 DCMR 3028, this Order is final and effective upon publication in the D.C. Register, that is, on AUG 11 1989.

MAYBELLE TAYLOR BENNETT
Vice Chairperson
Zoning Commission

EDWARD L. CURRY
Executive Director
Zoning Secretariat

zcorder627/LJP51

EXHIBIT C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15527 of the Maret School, Inc., pursuant to 11 DCMR 3108.1, for a special exception under Section 207 to expand an existing private school by the construction of a school bus and lawn equipment storage garage in an R-3/R-1-B District at premises 3000 Cathedral Avenue, N.W., (Square 2113, Lot 843).

HEARING DATE: July 17, 1991
DECISION DATE: July 17, 1991 (Bench Decision)

SUMMARY ORDER

The Board duly provided timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3C and to owners of property within 200 feet of the site.

The site of the application is located in ANC 3C. ANC 3C, which is automatically a party to the application, submitted written issues and conerns in support of the application.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR 207. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party in opposition to this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3108, and that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and map and will not tend to affect adversely the use of neighboring property in accordance with said Zoning Regulations and maps. It is therefore ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. A screen of Leyland Cyprus evergreen trees shall be planted in accordance with Exhibit No. 17B and appropriately maintained. At initial installation, the trees shall be six (6) to eight (8) feet in height. The desirability and feasibility of planting additional trees for screening purposes shall be considered by the school-community liaison established pursuant to condition No. 7 below.

2. The HVAC unit serving the new storage building shall be located on the ground (i.e., not on the roof of the new storage building) in the area depicted on Exhibit No. 17B and shall be screened by fencing materials in order to reduce noise emissions. The HVAC unit shall comply with applicable noise regulations.

3. Outside storage of materials used in constructing or maintaining the school's buildings, grounds or vehicles shall be screened from adjacent properties.

4. Fencing shall be installed and maintained in accordance with Exhibit No. 17B. All new fencing in the area near the new storage building shall be commensurate in height with existing fencing.

5. No existing trees, as shown on Exhibit No. 17B, shall be removed in conjunction with construction of the new storage building and all such existing trees shall be maintained.

6. The applicant shall consult with the ANC and with affected neighbors prior to its making any exterior material and design changes in construction plans.

7. The applicant shall promptly establish a process for school-community liaison in order that matters of current and future concern to the immediate neighborhood can be addressed and resolved. Such liaison process shall consider inter alia additional tree screening, the location and use of the existing gate in the public alley behind Hawthorne Street or alternative locations for such gate and other pertinent matters.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver not prejudice the rights of any party, and is not prohibited by law.

VOTE: 4-0 (Sheri M. Pruitt, William L. Ensign, Paula L. Jewell and Carrie L. Thornhill to approve; Charles R. Norris, not present, not voting).

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

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: AUG 2 1991

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

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

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS 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.

15527Ord/SS/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15527

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 2 1991 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Jacques B. DePuy, Esquire
Stohlman, Beuchert, Egan & Smith
1775 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006

Craig Channell, Assistant Headmaster
Maret School, Inc.
3000 Cathedral Avenue, N.W.
Washington, D.C. 20008

Kathleen Kenety
3100 Hawthorne Street, N.W.
Washington, D.C. 20008

Kathryn Mann Harlick
3101 Hawthorne Street, N.W.
Washington, D.C. 20008

Rosalyn Doggett, Chairperson
Advisory Neighborhood Commission 3-C
2737 Devonshire Place, N.W.
Washington, D.C. 20008

EDWARD L. CURRY
Executive Director

DATE: AUG 2 1991

15527Att/bhs

Maret / Pleadings

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16313 of The Maret School, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Section 206 and a variance from the required size of a parking space (Section 2115) to allow alteration, repair and additions to an existing private school in an R-1-B District at premises 3000 Cathedral Avenue, N.W. (Square 2133, Lot 843).

HEARING DATE: March 4, 1998
DECISION DATE: March 4, 1998 (Bench Decision)

CORRECTED SUMMARY ORDER*

*This order corrects Condition No. 3 related to the total square footage of the addition. The corrected portion is asterisked on page 2.

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3-C and to owners of property within 200 feet of the site.

The site of this application is located within the jurisdiction of ANC 3C. ANC 3C, which is automatically a party to this application, submitted a written statement in support of the application, with conditions.

As directed by 11 DCMR Section 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR Section 206. The Board has also required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance from the strict application of the requirements of 11 DCMR 2115.2. No person or entity appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3108, 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 also concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Based upon the record before the Board, the Board further concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3107, that there exists an exceptional or

extraordinary situation or condition related to the property which creates an undue hardship for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Construction shall be in accordance with plans marked as Exhibit No. 11 of the record, except as modified by these conditions.

2. The applicant shall have up to two years to apply for a building permit for Phase I of the project. The applicant shall have up to ten years to apply for a building permit for Phase II of the project.

3. With regard to the Academic Center (Phase II): The building shall be a maximum of 40 feet in height; there shall be no roof structures; there shall be three stories of which the lowest is partially below grade (varying with the topography) plus a basement; the building shall completely replace the existing Lower School building and shall be located as shown on the school's site plan; and the addition shall be no larger than 42,000* square feet total (FAR and non-FAR space).

4. ANC 3-C shall have the right to comment on the architectural design of the addition to the Academic Center (Phase II) before the applicant proceeds with obtaining city approvals for the addition.

5. The design of the Implement Building shall be flexible. The design may be revised to be consistent with the determinations of the Historic Preservation Review Board.

6. The existing curb cut on Cathedral Avenue at the western end of the site shall be retained in its present general location to the extent permitted by the Department of Public Works.

7. For each construction phase, the applicant shall work with the residents of the neighboring streets to limit construction crossings or curb cuts, maintain cleanliness on public streets and limit construction traffic.

8. The applicant shall provide a total of 135 parking spaces. Up to 75 percent of the parking spaces may be compact-sized spaces, provided that there is a corresponding reduction in surface parking area.

9. Parking surfaces to be created along the driveway and under the drip line of existing trees shall be of pervious material for the benefit of the trees and/or to permit grass to grow.

10. In an effort to limit all-day student parking on neighborhood streets, the applicant shall support the efforts of th the ANC to restrict on-street parking through Residential Parking Permits, time limitations, or other adequate means.

11. The applicant shall work in good faith with neighbors to provide and maintain an adequate landscape buffer to adjacent properties and to resolve any drainage problem that may arise (now or in the future) from the Maret property.

12. The maximum number of students shall not exceed 600, and the number of faculty and staff shall not exceed 125. The applicant shall provide enrollment and staffing figures to the ANC upon request.

13. The cottage which is to be relocated, shall be maintained in good condition.

14. The applicant shall maintain its property fronting on Garfield Street in a clean and orderly manner.

15. The applicant shall use its best efforts to prevent its students from congregating in the neighborhood to "hang out" or smoke.

Pursuant to 11 DCMR Section 3301.1, the Board has determined to waive the requirement of 11 DCMR Section 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: **3-0** (Betty King, Sheila Cross Reid and Susan Morgan Hinton to grant; Laura M. Richards not present, not voting.)

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

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

FINAL DATE OF ORDER: APR 3 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 of D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE,

TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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

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

Ord16313/poh

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16313

As Director of the Board of Zoning Adjustment, I certify and attest that on APR 3 1998 a copy of the corrected order in this matter was mailed first class, postage prepaid to each party in this case, and who is listed below:

Phil T. Feola, Esquire
Wilkes, Artis, Hedrick and Lane
1666 K Street, N.W., #1100
Washington, D.C. 20006

Mr. & Mrs. Ausbrook
3100 Cathedral Avenue, N.W.
Washington, D.C. 20008

Phil Mendelson, Chairperson
Advisory Neighborhood Commission 3C
2737 Devonshire Place, N.W.
Washington, D.C. 20008

Kathleen Kenety
3100 Hawthorne Street, N.W.
Washington, D.C. 20008

Mr. & Mrs. Horlick
3101 Hawthorne Street, N.W.
Washington, D.C. 20008

Mr. & Mrs. Sherburne
3110 Hawthorne Street, N.W.
Washington, D.C. 20008

Attested By: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

Date: APR 3 1998

Attest/ljp

Surveyor's Office
DISTRICT OF COLUMBIA

Washington, D. C. 6-26-97

Plat, for Building Permit of SQ. 2113 LOT 843

Recorded in Book Survey page Paper

Scale: 1 inch = 50 feet

a.c. 8351

Furnished to W. A. H. & Lane

Surveyor, District of Columbia

By B/W

D.M.S.

I hereby certify that all existing improvements shown hereon are correctly delineated, and are correctly platted; that all proposed buildings or additions, or parts thereof, including covered porches, are correctly and completely shown and platted; and correct width, grade and relation of the existing alley to the proposed plan as shown hereon is shown; and that all encroachments on the space of any alley created by the proposed building or addition, or any part thereof, or any projection thereof, except as shown, are correctly shown on the plat; and that the measurements of the proposed improvements to be erected as shown hereon, the size of any adjoining lot or tract of land dimensioned on or near this plat is required by the Zoning Regulations to be given for light and ventilation; and it is further certified and agreed that accessible parking spaces required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that the same have correctly shown on the plat as shown hereon. It is further agreed that the elevation of the curb opposite the middle of the property as established by the Highway Department approved such or other grade will have to be made a part of grade plans, construction of driveways or any parking or loading facilities on the property in excess of 10% for single-family dwellings or less, or in excess of 15% of any parking for other buildings, if the parking of the Highway Department provides a maximum driveway grade of 15% across the public parking and the property mentioned property.

Date 7/16/97

NOTE: Data shown on Assessment and Taxation Lots or Parcels are for records of Assessor, D. C. but do not necessarily agree with deed description.

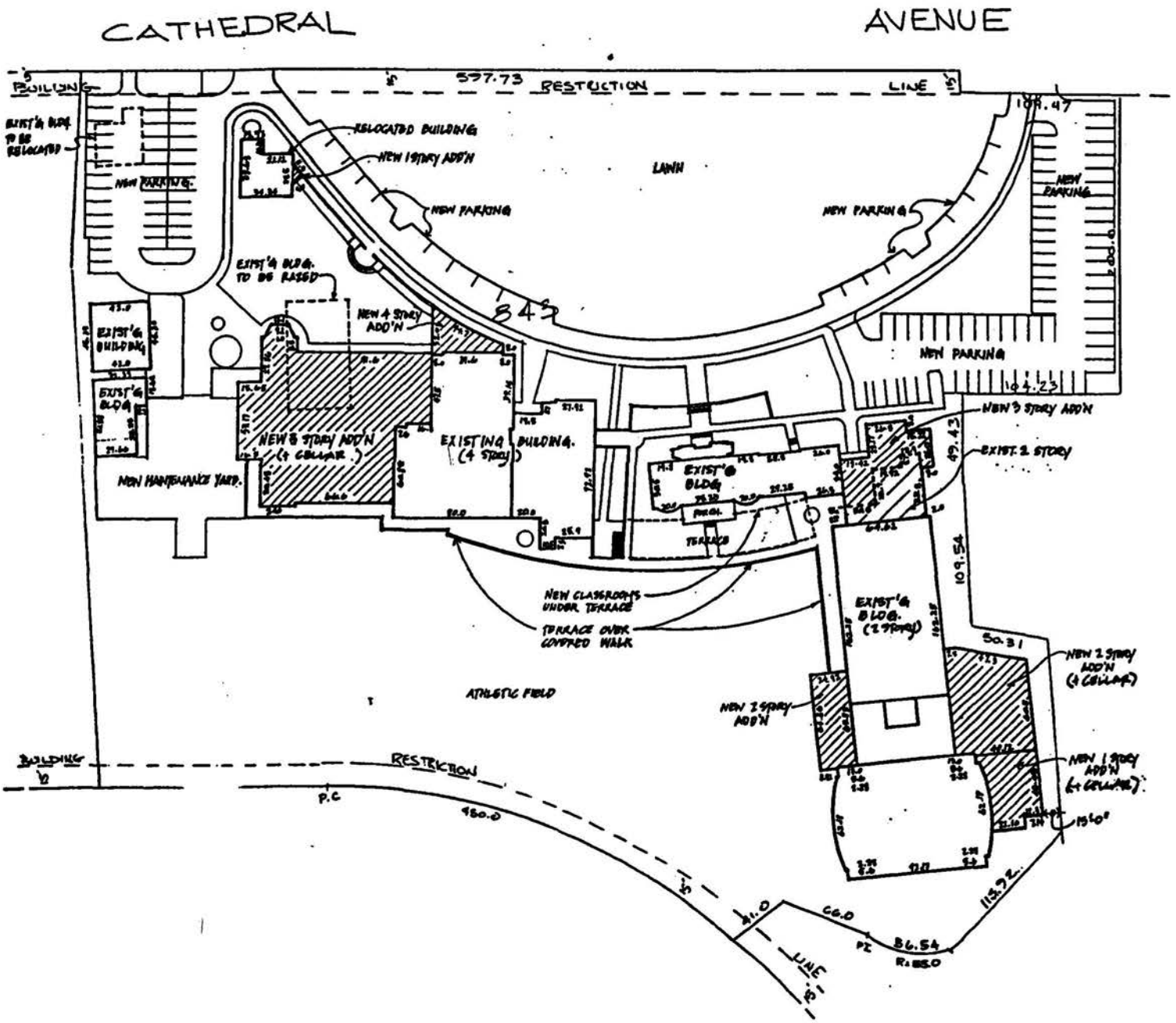


EXHIBIT E

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

November 25, 1997

MEMORANDUM

TO : Board of Zoning Adjustment

FROM : Edgar T. Nunley, Chief
Zoning Review Branch

SUBJECT : Proposed Alteration, Repair and Addition to an Existing Private School located at premises 3000 Cathedral Avenue, N.W., Lot(s) 843, in Square 2113, Zoned R-1-B

Review of plans for the proposed alterations, repairs and addition to an existing private school at the above subject premises indicates that the Board of Zoning Adjustment approval is required as follows:

1. Special exception pursuant to Section 206.1 to allow additions to several buildings within an existing private school campus in an R-1-B Zone. (Section 3108.1)

2. Variance from the required size of parking space provisions of Section 2115.1 in any Zone. (Section 3107.2)

EXHIBIT C

ZA-97-447

NOTES AND COMPUTATIONS

ADDRESS: 3000 Cathedral Avenue, N.W. **LOT(S):** 843 **SQUARE:** 2113

ZONED: R-1-B

	REQUIRED:	ALLOWED:	PROVIDED:	VARIANCE:
OT AREA	5,000 Sq.Ft.		344,399 Sq. Ft.	
OT WIDTH	50'		597.73	
OT OCCUPANCY 40%)		137,759.6 Sq.Ft.	59,207.44 Sq.Ft. (17.2%)	
LOOR AREA ATIO (		N/P	N/A	
ARKING SPACES	122		122	
OADING BERTHS	see compt.		see comp. sheet	
RONT YARD	N/P		15'	
EAR YARD	25'		25+	
IDE YARD	8' and 8'		15' and 8'+	
OURT, OPEN	N/A			
OURT, CLOSED	N/A			

2

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Sidwell Friends School
3825 Wisconsin Avenue, NW
Square 1825, Lot 816

BZA Application No. 17149
Public Hearing: June 29, 2004

ANALYSIS OF REAR YARD AND BUILDING HEIGHT MEASURING POINT FOR THE ZAVITZ MIDDLE SCHOOL

Pursuant to the request of the Board of Zoning Adjustment ("**BZA**") at its June 29, 2004 public hearing in the above-captioned case, the Sidwell Friends School ("**Sidwell Friends**") respectfully submits its legal analysis on the measuring point for the building height and the determination of the rear yard of the Zavitz Middle School addition.

A. Building Height

Under § 199.1 of the Zoning Regulations, the definition of the "height of [a] building" is "the vertical distance measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet." That definition continues:

> In those districts in which the height of building is limited to forty feet (40 ft.), the height of the building may be measured from the finished grade level at the middle of the front of the building to the ceiling of the top story. [...]
>
> If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

Title 11 DCMR § 199.1.

Under § 400.1, the maximum height in an R-1-B Zone District is 40 feet. Therefore, under the above definition, the height of the Zavitz Middle School addition can be measured

from the finished grade level at the middle of the front of the Middle School addition to the ceiling of the top story. Since the School's record lot (Lot 26) has frontage on both Wisconsin Avenue and 37th Street, the School can choose either street to be its "front". Thus, the School chose the Wisconsin Avenue side of the Middle School building as its front.[1] Thus, the Middle School addition utilizes, as its measuring point for its height, the Wisconsin Avenue, or courtyard, entrance as its front. As shown on Exhibit A (said plans are already in the record), the height of the Middle School addition is under 40 feet. Therefore, the Middle School addition satisfies the zoning requirements for building height. It should be noted that the Middle School Addition matches the building height of the existing Middle School building, which also utilized the same measuring point when constructed.

B. Rear Yard

The definition of a "rear yard" under § 199.1 of the Zoning Regulations is "a yard between the rear line of a building or other structure and the rear lot line.... The rear yard shall be for the full width of the lot and shall be unoccupied...." Under § 199.1, the "depth of rear yard" is "the mean horizontal distance between the rear line of a building and the rear lot line...." Under § 404.1, in the R-1-B Zone District, a 25 foot rear yard shall be provided for each structure. Under § 404.4, "[i]n the case of a through lot or a corner lot abutting three (3) or more streets, the depth of rear yard may be measured from the center line of the street abutting the lot at the rear of the structure." It is obvious that the Sidwell Friends campus (Lot 26) is a through lot and a corner lot abutting three streets. Thus, the rear yard may be measured from the 37th Street façade of the Middle School to the middle of 37th Street. The Middle School addition,

---

[1] This choice is not only practical, but logical. The School's address is 3825 Wisconsin Avenue and the School is universally thought of as being "on Wisconsin Avenue".

therefore will have a rear yard greater than 25 feet, since the building elevation facing 37th Street, NW, is treated as the rear of the building (see Exhibit B, such plans already in the record).

CONCLUSION

The measuring point for the building height of the Middle School addition is the finished grade level at the middle of the front of the Middle School addition, which is chosen to be the Wisconsin Avenue side, to the ceiling of the top story. Using this measuring point, the Middle School addition is under 40 feet and satisfies the Zoning Requirements for height under § 400.1. With a rear yard exceeding 25 feet, the Middle School addition satisfies the rear yard requirements under § 404.1 as discussed above.

Respectfully submitted,

SHAW PITTMAN, LLP

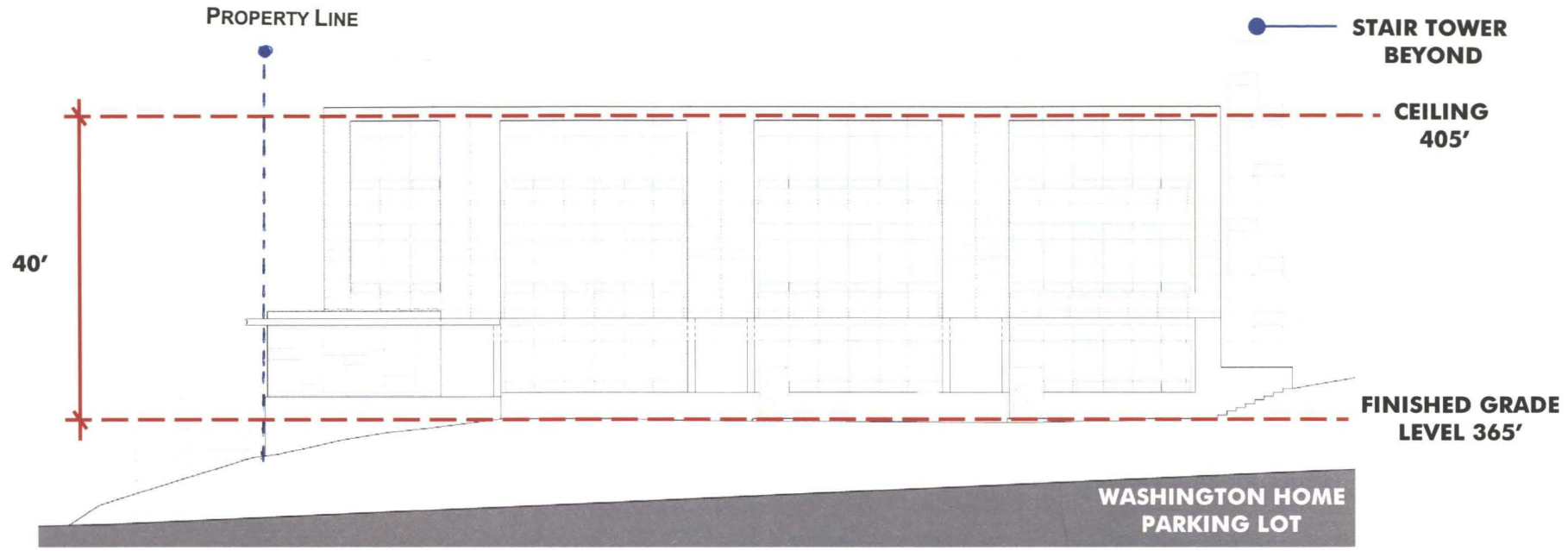
Phil T. Feola

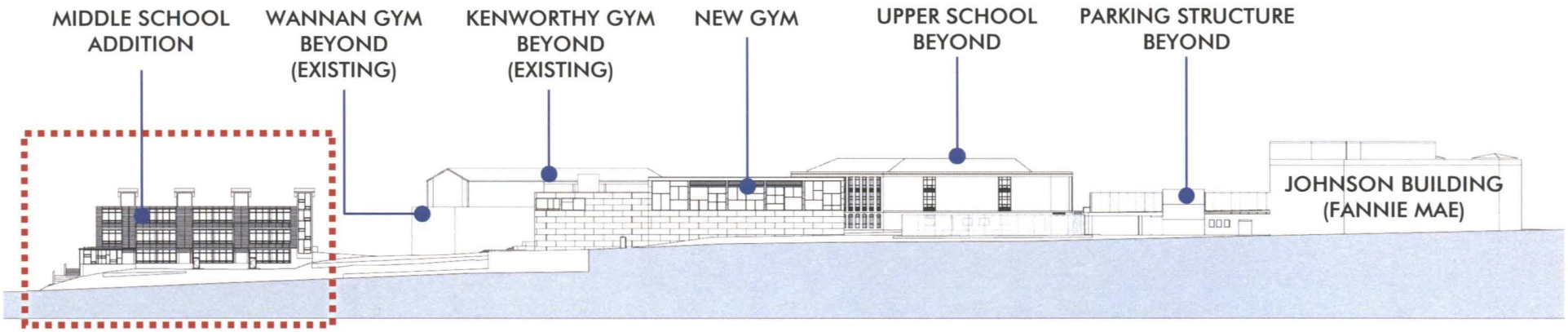
Jeffrey C. Utz

Attachments

Document #: 1426868 v.1

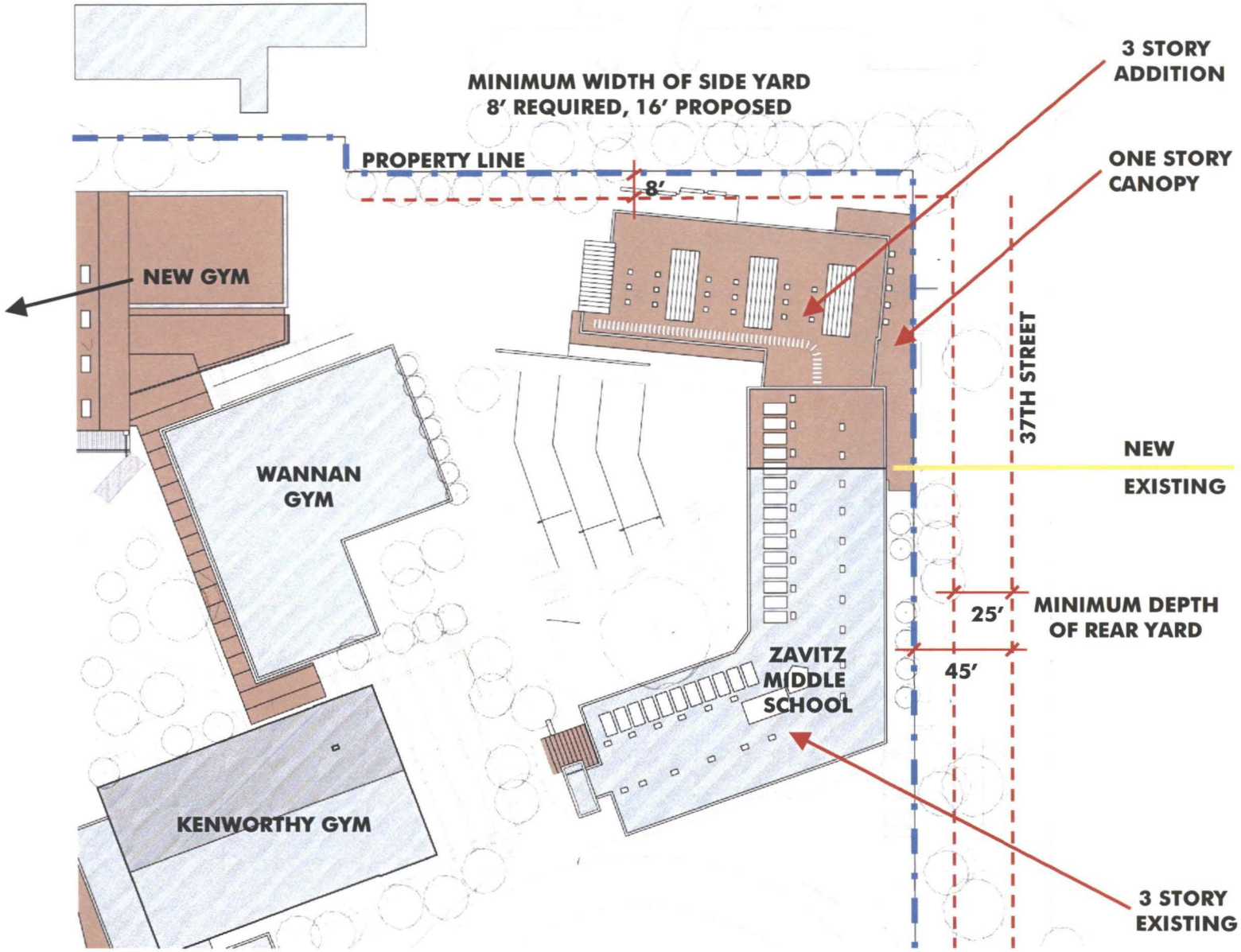
EXHIBIT A





BUILDING HEIGHTS - MIDDLE SCHOOL

EXHIBIT B



MIDDLE SCHOOL

3

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Sidwell Friends School
3825 Wisconsin Avenue, NW
Square 1825, Lot 816

BZA Application No. 17149
Public Hearing: June 29, 2004

SIDWELL FRIENDS SCHOOL
REPLY TO ANC 3C'S AUGUST 10, 2004 LETTER

I.
INTRODUCTION

The Board of Zoning Adjustment has the authority, and has utilized that authority, to permit the phasing of a multi-building, private school with a special exception pursuant to Section 206 of the Zoning Regulations and can grant the special exception relief requested for the roof structures proposed for the addition to the Middle School.

II.
PHASING OF MASTER PLAN PROJECTS

In her letter to the BZA dated August 10, 2004, Ms. Nancy MacWood alleges that the Board does not have the authority to allow construction to extend beyond the timeframes noted in 11 DCMR 3130.1. This allegation is incorrect. While it is true that §3130.1 requires certain actions be taken by an applicant to toll the expiration of a BZA Order, it does not constrain the BZA's ability to effectuate conditions to its orders. A careful review of the recent BZA orders (see Maret School Order No. 16313, a copy of which is attached as Exhibit A) granting phasing for private schools reveals that the phasing is made a "condition" of the approval. Conditions may be both restrictive and

permissive and, by definition, are perpetual. They continue past the date of the effectuation of a BZA Order.

Ms. MacWood is correct in stating that a building permit must be filed within two years of the effective date of the Order pursuant to §3130 and without such a filing, none of the conditions of a BZA Order, i.e. enrollment caps, traffic management plans or the like, are put into effect. However, upon the filing of a building permit, and if the Board permits it as a condition of approval, a phasing condition can extend beyond the time frames of §3130.

III.
ROOF STRUCTURES

Ms. MacWood's letter also mischaracterizes Sidwell Friends request for special exception for the roof structures on the proposed Middle School addition. She states that it is to "maximize the amount of classroom and academic space". However, a reading of the record shows that this is only one of the reasons. It is also stated that it will provide a more efficient layout of the space, aesthetically mirror the stairtower on the existing Middle School and permit an environmentally friendlier building by using natural ventilation penthouses and solar chimneys. Granting such relief will allow the School to reduce the bulk of the Middle School addition which would have a more immediate negative impact on the neighboring properties.

In addition, the three lightwells/natural ventilation penthouses, which are only seven (7) feet tall, are permitted because the Board is allowed to grant multiple roof

structures when it is practicable to do so. A careful reading of §411.11 specifically gives the Board the authority to waive the requirement of a single roof structure. "Where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment shall be empowered to approve the location, design, number, and all other aspects of roof structure regulated under §411.3 through 411.6 . . . provided, that the intent and purpose of this Chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." 11 DCMR §411.11. (Emphasis added). As the record shows, the lightwells will bring daylight into classrooms, thereby reducing the need for electricity and further the goal of an environmentally sustainable building.

Please note, that if such relief is not granted (and assuming BZA approval of the addition), Sidwell could put a wall around all roof structures which, if it were built to the permitted full height of 18' 6", would clearly be more intrusive and aesthetically unpleasing than the proposal before the Board.

Respectfully submitted,

Phil Feola

Jeffrey Utz

EXHIBIT A

MARET SCHOOL

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16313 of The Maret School, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Section 206 and a variance from the required size of a parking space (Section 2115) to allow alteration, repair and additions to an existing private school in an R-1-B District at premises 3000 Cathedral Avenue, N.W. (Square 2133, Lot 843).

HEARING DATE: March 4, 1998
DECISION DATE: March 4, 1998 (Bench Decision)

CORRECTED SUMMARY ORDER*

*This order corrects Condition No. 3 related to the total square footage of the addition. The corrected portion is asterisked on page 2.

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3-C and to owners of property within 200 feet of the site.

The site of this application is located within the jurisdiction of ANC 3C. ANC 3C, which is automatically a party to this application, submitted a written statement in support of the application, with conditions.

As directed by 11 DCMR Section 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR Section 206. The Board has also required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance from the strict application of the requirements of 11 DCMR 2115.2. No person or entity appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3108, 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 also concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Based upon the record before the Board, the Board further concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3107, that there exists an exceptional or

extraordinary situation or condition related to the property which creates an undue hardship for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Construction shall be in accordance with plans marked as Exhibit No. 11 of the record, except as modified by these conditions.

2. The applicant shall have up to two years to apply for a building permit for Phase I of the project. The applicant shall have up to ten years to apply for a building permit for Phase II of the project.

3. With regard to the Academic Center (Phase II): The building shall be a maximum of 40 feet in height; there shall be no roof structures; there shall be three stories of which the lowest is partially below grade (varying with the topography) plus a basement; the building shall completely replace the existing Lower School building and shall be located as shown on the school's site plan; and the addition shall be no larger than 42,000* square feet total (FAR and non-FAR space).

4. ANC 3-C shall have the right to comment on the architectural design of the addition to the Academic Center (Phase II) before the applicant proceeds with obtaining city approvals for the addition.

5. The design of the Implement Building shall be flexible. The design may be revised to be consistent with the determinations of the Historic Preservation Review Board.

6. The existing curb cut on Cathedral Avenue at the western end of the site shall be retained in its present general location to the extent permitted by the Department of Public Works.

7. For each construction phase, the applicant shall work with the residents of the neighboring streets to limit construction crossings or curb cuts, maintain cleanliness on public streets and limit construction traffic.

8. The applicant shall provide a total of 135 parking spaces. Up to 75 percent of the parking spaces may be compact-sized spaces, provided that there is a corresponding reduction in surface parking area.

9. Parking surfaces to be created along the driveway and under the drip line of existing trees shall be of pervious material for the benefit of the trees and/or to permit grass to grow.

10. In an effort to limit all-day student parking on neighborhood streets, the applicant shall support the efforts of th the ANC to restrict on-street parking through Residential Parking Permits, time limitations, or other adequate means.

11. The applicant shall work in good faith with neighbors to provide and maintain an adequate landscape buffer to adjacent properties and to resolve any drainage problem that may arise (now or in the future) from the Maret property.

12. The maximum number of students shall not exceed 600, and the number of faculty and staff shall not exceed 125. The applicant shall provide enrollment and staffing figures to the ANC upon request.

13. The cottage which is to be relocated, shall be maintained in good condition.

14. The applicant shall maintain its property fronting on Garfield Street in a clean and orderly manner.

15. The applicant shall use its best efforts to prevent its students from congregating in the neighborhood to "hang out" or smoke.

Pursuant to 11 DCMR Section 3301.1, the Board has determined to waive the requirement of 11 DCMR Section 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: **3-0** (Betty King, Sheila Cross Reid and Susan Morgan Hinton to grant; Laura M. Richards not present, not voting.)

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

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

FINAL DATE OF ORDER: APR 3 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 of D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE,

ShawPittman LLP

Certificate of Service

I hereby certify that on August 31, 2004, a copy of the foregoing letter and legal memoranda 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
Advisory Neighborhood Commission 3F
3003 Van Ness Street, N.W., #W-118
Washington, D.C. 20008

Karen Thomas
District of Columbia Office of Planning
801 North Capitol Street, N.E., Suite 400
Washington, D.C. 20002



Phil Feola

Document #: 1427906 v.1