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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

B.Z.A. Case No. 17149

Advisory Neighborhood Commission 3-F, party to the proceedings of Board of Zoning Adjustment Case No. 17149, by and through undersigned counsel, respectfully submits this brief memorandum regarding (A) the applicability of Section 2516 of the Zoning Regulations (entitled "Exception to Building Lot Control (Residence Districts)"), to private school campuses; and (B) the measuring point of the height of a building.

The Application of Sidwell Friends School (the "Applicant" or "School") involves a special exception pursuant to Sections 3104.1 and 206 of the Zoning Regulations to allow an existing private school to: (i) allow for the construction of additional structures and enhancements on the School's campus and (ii) to increase enrollment from 780 to 825 students.

The School is located at 3825 Wisconsin Avenue, N.W., which is a single Assessment and Taxation ("A&T") lot (Square 1825, Lot 816), consisting of fifteen acres of land. The School's property is zoned R-1-B. Currently, the School's campus includes the upper school building, the middle school building, two gymnasium buildings, an art center building, and the Zartman house. By way of its Application, Applicant proposes to construct a new Quaker meeting house, a new gymnasium building and an underground parking facility below existing fields, and to renovate and make additions to the middle school building.

A. Section 2516

According to Section 3202.3 of the Zoning Regulations, "a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided *so that each structure will be on a separate lot of record*, ..."

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(emphasis added). Thus, according to this Section, only one principal building may be located on a single lot, including a record lot or in this case, an A&T lot. However, a lot may also include additional "subordinate" or "accessory" buildings, in addition to a principal building. Such "accessory" buildings, as defined under Section 199.1 of the Zoning Regulations, are only "incidental to the use of the main building", such as garages, sheds or stables. Thus, when more than one principal building is constructed on a single lot, the buildings exist in contravention of Section 3202.3.

Section 206 of the Zoning Regulations provides the test for the use of property for a private school. According to that Section, "[u]se [of property] as a private school ... and residences for teachers and staff of a private school, shall be permitted as a special exception ... if approved by the Board of Zoning Adjustment under § 3104" subject to the requirements of Section 206. The plain reading of the regulation suggests authority for use of the property with a building dedicated to use as a school, and possibly accessory buildings that are used to house the school's teachers and staff. There is nothing in the regulation that permits or even suggests the use of more than one school building on a single lot. Accordingly, a school campus that has multiple buildings located on a single lot, such as classroom buildings, administration buildings and gymnasiums, exists in contravention of Section 3202.3.

However, pursuant to Section 2516.1 of the Zoning Regulations "[i]f approved by the Board of Zoning Adjustment as a special exception under § 3104, two (2) or more principal buildings or structures may be erected on a single subdivided lot," in a residential district when the proposed construction meets the provisions of Section 2516. Accordingly, with a grant of a special exception pursuant to Section 2516, a private school could be granted the ability to locate more than one principal building on a single lot.

Section 2516 does not in any way limit the applicability of its provisions and must be read to include all potential uses, including a private school. The regulations for theoretical lot development under Section 2516 were established to control the development of large sites with limited street frontages. Section 2516 provides a means for development on a lot where record lots cannot be created and recorded by the Office of the Surveyor for the construction of separate buildings on a single lot. Prior to 1989, theoretical lot development was as a matter-of-right. In 1989, the Zoning Commission undertook a rulemaking case pursuant to which the Commission considered and adopted amendments to Section 2516, to require review of the construction of more than one building on a single lot that is proposed in or near a residential zone by the Board of Zoning Adjustment.[1] The amendments were proposed by the Office of Planning due to "the potential for inappropriate development and mis-application of [the existing regulation]".[2]

During the comment period of the rulemaking, the notice of the proposed rulemaking for Section 2516 included an alternative which would have exempted construction of projects on a site that was subject to a Large Tract Review. In the Order for the 1989 rulemaking, the Commission noted that it had "considered the comments in favor of and in opposition to such an exemption, [and] the Commission ... determined *not to adopt an exemption for any project* in a residential zone district."[3] (emphasis added). The Commission went on to state in the Order that it "believes that the review process adopted by this Order is reasonable, and will have no adverse impacts on any reasonable proposed project."[4] Accordingly, the Commission not only rejected the proposed exemption for Large Tract Reviews, the Commission also *intentionally and*

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[1] Zoning Commission Case No. 89-12.
[2] Memorandum of Government of the District of Columbia Office of Planning, to D.C. Zoning Commission from Fred L. Greene, Director, dated June 8, 1989; page 2.
[3] See attached Zoning Commission Order 627; Case No. 89-12; dated August 11, 1989.
[4] Id.

specifically rejected limiting the applicability of Section 2516 to any particular use or construction project.

Furthermore, in a 1994 Board of Zoning Adjustment Application for the Carnegie Institution of Washington (the Levine School), where the applicant private school proposed to construct "an additional detached structure" at the premises, the Zoning Administrator concluded that a special exception pursuant to Section 2516 was necessary in order to "locate more than one structure on a single subdivided lot."[5] Thus, according to the Zoning Administrator, Section 2516 does apply to the development of private schools.

Hence, upon review of the foregoing pertinent sections of the Zoning Regulations and determinations of the Zoning Administrator, Section 2516 is applicable to the construction of multiple principal buildings on a private school campus located on a single record lot (or in this case, A&T lot). Nothing in Section 206 of the Zoning Regulations regarding the use of property for a private school exempts a private school from the requirements of Section 3202.3, which requires that each principal structure be located a separate lot of record. Furthermore, Section 2516 is applicable to all proposed developments resulting in two or more principal buildings on a single record lot. Accordingly, a private school must seek a special exception under the provisions of Section 2516, in order to locate two or more principal buildings on a campus which is located on a single record lot.

B. <u>Measuring Point for Height Building</u>.

According to Section 199.1 of the Zoning Regulations, the meaning of "height of building" is that "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" (emphasis added). The definition

[5] See attached letter to Mr. Phil Feola from Mr. Joseph F. Bottner, Jr., Zoning Administrator, dated October 12, 1994; and attached notice of the District of Columbia Board of Zoning Adjustment for Application Number 15984, dated September 29, 1994.

of "height of building" further provides that "[i]n 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." (emphasis added).

Section 199.1 further provides under the definition of "street frontage", which is "the property line where a lot abuts upon a street", that "[w]hen a lot abuts upon more than one (1) street, the owner shall have the option of selecting which is to be the *front* for purpose of determining street frontage." Accordingly, under the definition of "street frontage", because an owner is given ability to select which side will be the *front* when a lot abuts more than one street, the *front* is that portion of a lot which "abuts upon a street." Thus, the height of a building is to be measured on that side of a building which abuts upon a street.

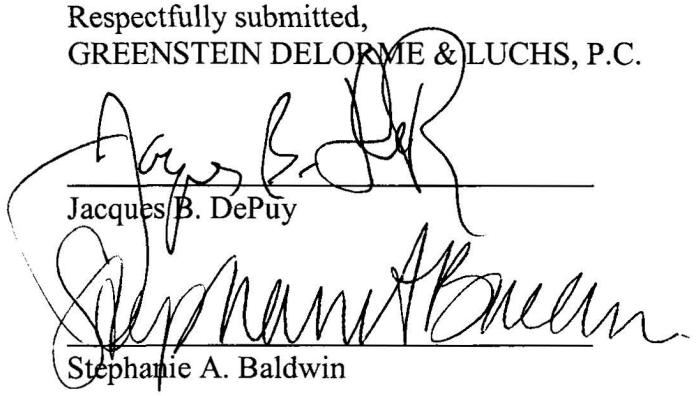
Accordingly, the height of the middle school building, which faces 37th Street on one side and a courtyard on the other, should be measured on that side of the building which faces 37th Street. The maximum height of a building in a R-1-B zone district is forty feet (40 ft.).[6] According to the testimony of Stephen Kieran, architect for the School, the height of the middle school building was calculated on its courtyard elevation where the height of the building is forty feet (40 ft.).[7] Mr. Kieran further testified that the height of the building on the 37th Street elevation is fifty to fifty-two feet (50 to 52 ft.).[8] Based on the foregoing, with the height of the middle school building properly measured, the School is required to seek a variance to meet the requirements of Section 400.1 of the Zoning Regulations.

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[6] 11 DCMR § 400.1 (2003).
[7] Transcript, District of Columbia Board of Zoning Adjustment, June 22, 2004; page 287-288, 329.
[8] Transcript, District of Columbia Board of Zoning Adjustment, June 29, 2004; pages 355-356.

Dated: August 31, 2004

Respectfully submitted,
GREENSTEIN DELORME & LUCHS, P.C.



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Counsel for Advisory Neighborhood Commission 3-F

cc: Ms. Karen Perry, Chair, Advisory Neighborhood Commission 3-F
241152v1

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.

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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 appear elsewhere in this edition of the D.C. Register.

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.)

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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 _____.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

September 29, 1994

APPLICATION NUMBER 15984

TO WHOM IT MAY CONCERN:

Notice is hereby given that the Board of Zoning Adjustment will hold a public hearing in Suite 220, 441 4th Street, N.W., Washington, D.C., 20001 on Wednesday, November 9, 1994. Your attention is invited to the following application:

> Application of the Carnegie Institution of Washington, pursuant to 11 DCMR 3108.1, for special exceptions under Section 206 for a private school and Section 2516.1 to locate more than one structure on a single subdivided lot for an additional detached structure to establish a music school in an R-1-A District at premises 2801 Upton Street, N.W. (Square 2049, Lot 809).

At the public hearing, all interested persons will be given an opportunity to express their views. However, you may submit written views about this case. All written views should be sent to the address below, and must be received by the Board before the hearing on the case is concluded.

This case is in Advisory Neighborhood Commission 3F. Cases in this area will be heard from 2:00 p.m to 6:00 p.m. Cases will be heard in the order listed on the Board's hearing agenda.

If you have any question about this application, you may call the Office of Zoning on (202) 727-6311, or come to 441 4th Street, N.W., Suite 210, Washington, D.C. 20001.

PLEASE USE APPLICATION NUMBER WHEN YOU WRITE OR CALL ABOUT THIS CASE.

Sincerely,

MADELIENE H. ROBINSON
Director

(202) 408-3220
TELECOPIER (202) 408-1719

WRITER'S DIRECT DIAL NUMBER

(202) 408-3229

October 18, 1994

HAND DELIVERY

Mr. Joseph F. Bottner, Jr.
District of Columbia Zoning
Administrator
Building and Land Regulation Administration
Department of Consumer Regulatory Affairs
614 H Street, N.W., Room 333
Washington, D.C. 20001

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

October 12, 1994

Mr. Phil Feola
Linowes and Blocher
800 K Street, N.W. - Suite 840
Washington, D.C. 20001

Re: 2801 Upton Street, N.W., Lot 809 in Square 2049

Dear Mr. Feola:

I have reviewed the records relating to the Board of Zoning Adjustment memorandum Mr. Nunley prepared, dated May 3, 1994, for the Levine School at premises 2801 Upton Street, N.W.

The special exception under provisions of Section 2516.1 must be further detailed for us to be able to advise the Board if the proposed structure will conform with all provisions of 2516.

It will be necessary for you to provide the Zoning Division with appropriate building plats and plans to enable a complete review. This should have been done prior to the May 3, 1994 memorandum being written.

If additional information or assistance is needed, you may reach me on 727-7350.

Sincerely,

Joseph F. Bottner, Jr.
Zoning Administrator

cc: Madeliene H. Robinson
Director
Office of Zoning

Tersh Boasberg
1233 20th Street, N.W.
Washington, D.C. 20006

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief Memorandum OF ADVISORY NEIGHBORHOOD COMMISSION 3-F was served by first class mail, on this 31st day of August, 2004, to:

Mr. Phil Feola
Shaw, Pittman, Potts &Trowbridge
2300 N Street, NW
Washington, D.C. 20037

Mr. Andrew Altman, Director
Mr. Travis Parker
Office of Planning
Government of the District of Columbia
801 North Capitol Street, N.E.
Suite 4000
Washington, D.C. 20002

ANC 3C
2737 Devonshire Place, NW
Washington, DC 20008

Stephanie A. Baldwin