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August 31, 2004

By fax and mail

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

Re: Application of Sidwell Friends School, BZA No. 17149

Dear Mr. Griffis and Members of the Board:

As requested by the Board of Zoning Adjustment at the close of the July 29, 2004, public hearing, Advisory Neighborhood Commission 3C (ANC 3C) and Advisory Neighborhood Commission 3F (ANC 3F) have submitted to the BZA a legal brief from the law firm of Greenstein, DeLorme and Luchs covering the issue of theoretical lots and the measuring point for building heights. The hiring of an attorney to prepare this brief was authorized by ANC 3F at a duly noticed public meeting on July 19, 2004, by a vote of 6-0-1. This brief, based on the administrative history of Section 2516, clearly supports the fact that Sidwell Friends School must apply for special exception relief from the provisions of Section 2516 to *locate more than one principal building on a lot of record*ation. It supports the statement by the BZA's Attorney General at the beginning of the Sidwell School's BZA hearing and the position of ANC 3C and 3F that Sidwell needs special exception relief from Section 2516. This brief also supports the fact that Sidwell needs to apply for variance relief for the height of the middle school building which fronts on 37th Street.

While the BZA has the power to grant special exception relief from Section 2516 and variance relief from Section 400.1, ANC 3C and ANC 3F strongly believe that the BZA should either deny the application as a violation of Section 3104.1 or request that the applicant file for the appropriate additional zoning relief, present the new submissions to ANC 3C and ANC 3F, and participate in additional BZA hearings scheduled to consider the new filings.

ANC 3C and 3F believe that notice to the community and the ANC, based on the self-certification form, was deficient in that it only requested pursuant to Section 206 and a special exception from the stairway structure rooftop setback requirement pursuant to Section 411.11. As we now know, this is an incomplete description of Sidwell's proposal because no notice was given of Sidwell's need for relief under 411.3 (roof structures,

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Sections 3130.1 through 3130.3 (time limits on Board action[1], and relief pursuant to Section 2516 (exceptions to building lot control. Additionally, based on the memorandum submitted, we believe the applicant must file for variance relief pursuant to Section 400.1. In essence, this project presents more zoning issues than those originally presented by the applicant to the community and the ANC. Thus, the affected residents and the public, through posting of the property, and the two ANCs have not received adequate notice of the true nature and extent of the construction proposed which we believe is necessary for a full and fair hearing.

Fairness would also dictate an additional hearing or denial of the application because it does not, on its face, comply with Section 2516. That section requires that each "principal" building on an R-1-B lot comply with applicable R-1-B zoning requirements, as well as with special requirements established by Section 2516. Sidwell's proposal does not show where the theoretical lot lines would be drawn, thus it is impossible to determine how each principal building and lot would meet applicable zoning requirements; i.e., height, including the 1910 Building Height Act, open space, side, front and rear yards, driveways, etc. It is also impossible to determine whether the subsidiary buildings comply with zoning as auxiliary buildings.

The applicant has not applied for variance relief for the middle school, nor has the applicant met the test for variance relief with regard to building heights from the residential neighborhood.

This is a project that will have long-term implications for this residential neighborhood and, a project, by the Applicant's own admission, does not have the funds to complete at the present time. There are numerous, important zoning issues arising in this case that need to be resolved in open forum. We do not believe this project is ready for a BZA decision and we believe zoning law dictates further review. Such review would not prejudice or cause harm to the applicant. Lack of further review could harm the neighborhood.

Sincerely,

Karen Perry

Karen Perry
Chair, Advisory Neighborhood Commission 3F

CC: Phil Feola
Office of Planning
Nancy McWood

[1] It should also be noted that in the Levine case transcript, the applicant requested five years after project approval in which to raise funds to complete the project. The Board's presiding officer explained that the Board does not have authority to grant such a delay in construction and that applicable regulations require the application for a building permit to be filed within a prescribed period from the effective date of the Board's Order. The Board's authority to waive its rules applies only to the Board's procedural rules in chapter 33 and not to the time limits.