**STATEMENT IN SUPPORT OF**
**AN APPLICATION BY E. L. HAYNES PUBLIC CHARTER SCHOOL**
**FOR A VARIANCE REGARDING THE LOCATION OF AN ACCESSORY USE**
**TO ALLOW A PLAY AREA FOR A CHARTER SCHOOL**
**AT 1366 IRVING STREET, N.W. (SQUARE 2849, LOT 98)**

**June 1, 2005**

## I. Nature of Relief Sought

This is the Statement of E. L. Haynes Public Charter School (the "School," or the "Applicant") in support of an application for variance relief from the requirement that an accessory use be located on the same lot as the principal use, as set forth in the definition of Accessory Use in 11 DCMR § 199, for the purpose of creating a Play Area on a vacant lot abutting the School for a three-year period. The requested relief is identified in the attached Self-Certification Form. The subject property is located at 1366 Irving Street, N.W. (Square 2849, Lot 98) and is zoned C-3-A.

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## II. Jurisdiction of the Board of Zoning Adjustment

The Board of Zoning Adjustment ("BZA") has jurisdiction to grant the relief requested pursuant to § 3103 of the Zoning Regulations.

## III. The Applicant and the Principal Use

The E. L. Haynes Public Charter School is located in the Columbia Heights neighborhood on the second floor of the new (2002) CVS building at the corner of 14th and Irving Streets, N.W., having the address 3029 14th Street, N.W. (Square 2849, Lot 108). The School opened in August 2004 with 138 Pre-K to 2nd Grade students and plans to expand within 10 years to 600 students in Pre-K to 12th Grade. In approximately three years the School will move to a new a larger property because of this expansion.

BZA
Case No. 17376
Exhibit No. 5

Board of Zoning Adjustment
District of Columbia
CASE NO. 17376
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Accordingly, the requested property use and zoning relief is limited to a three-year period.

The CVS building has a total of 24,190 square feet of gross floor area, of which the School occupies approximately 12,000 square feet. Additional information about the philosophy and methodology of the School is contained in the brochure, "The E. L. Haynes Approach," a copy of which is attached as *Exhibit A*.

## III. The Surrounding Neighborhood

The CVS building and the abutting vacant lot that is the subject property in this application are situated in the commercial heart of the rapidly redeveloping Columbia Heights neighborhood. Entrances to the Columbia Heights Metrorail station are located directly across Irving Street to the north and directly across 14th Street to the west. The C-3-A zone district is mapped in a nodal pattern around this station, including the subject property. C-3-A is a medium-density commercial and mixed-use zone, designed to allow and encourage development of "Major Business and Employment Centers." (11 DCMR § 740)[1]

The blocks surrounding the intersection of 14th and Irving Streets are developed with a mixture of intensive uses, including low-rise, mid-rise and high-rise apartment buildings, office buildings, a major neighborhood clinic, retail and service stores and townhouses. In recent years and continuing today, numerous new buildings have been constructed on parcels of various sizes, and existing buildings have been renovated. The highest intensity of development is generally oriented to 14th Street, the traditional

[1] See the "Zoning Map" in *Exhibit B* and the "Neighborhood Context Map" in *Exhibit C*.

commercial heart of the neighborhood. The former 14th Street Urban Renewal area is rapidly being built out and revitalized.

Immediately to the south of the CVS building and abutting it is a large, high-rise apartment building. The remainder of the southern half of Square 2849 is improved with three-story apartment buildings. Abutting the CVS building on the east is a vacant lot proposed to be the Play Area for the School in this Application, followed by townhouses extending along the remainder of the Irving Street frontage to 13th Street and beyond. The first of these townhouses, abutting the subject property, is zoned C-3-A; the remainder are in the R-4 District.

The facing (north) frontage of Irving Street has the Metrorail station entrance at the corner of 14th Street, then a large vacant redevelopment site controlled by the National Capital Revitalization Corporation ("NCRC"), a high-rise apartment building and townhouses extending to 13th Street.

## IV. The Proposed Accessory Use

This application requests approval for the E. L. Haynes Public Charter School to convert an abutting, vacant lot to a Play Area for the School for a three-year period. This lot, the subject property in this application, is identified as 1366 Irving Street, N.W. (Square 2849, Lot 98). It is rectangular in shape, with 20 feet of frontage on Irving Street and is 100 feet deep, therefore having a land area of 2,000 square feet.[2]

The School has a dire need for a convenient and safe Play Area, because at present the children must be escorted to a neighborhood park. In a high-traffic,

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[2] See the photographs of the subject property in *Exhibit D and* the Surveyor's Plat in *Exhibit E.*

commercial setting such as this, there are very real life safety issues involved in getting the children to the park.

The lot is currently vacant and covered with crushed stone. The Applicant has entered into a license agreement with the property owner, the Shenandoah Corporation, to create the play area and associated landscaping and playground equipment. The license agreement requires the School, at the termination of the license agreement, to remove the equipment and playground surfaces and to re-cover the lot with crushed stone.[3]

The Applicant's proposed design for the Play Area is shown on the plans in *Exhibit G*, including "Existing Conditions," "Site Plan" and "Landscape Plan." As depicted thereon, the front 15 feet of the lot will be a community garden with a timber border, outdoor bench and walkway.

The Play Area will then occupy the bulk of the lot. It will be enclosed by a seven-foot-high, semi-private vinyl fence for the safety of the students at recess. The new surface will be a rubber safety tile. At the front of the Play Area, along its eastern edge will be a hedge to provide landscape and screening from the immediate front yard of the group home townhouse neighbor to the east.

The rear portion of the subject lot will be improved with a second landscaped garden, for which the School has already received a "Grow Grant," and which will include a bench and retention of an existing mature tree surrounded by mulch and a new planting bed.

It should be noted that the 12-foot-wide paved driveway between the CVS building and the proposed Play Area is not a public alley. It is private property, being

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[3] A copy of the "License Agreement" is in *Exhibit F*.

part of Lot 108, where the CVS building is situated. This service driveway is primarily used for trash and recycling service to the dumpster at the end of the driveway. Accordingly, it is only used sporadically and will pose no safety problem for the students during recess or in passage to the Play Area. The driveway is also used for deliveries to CVS, but these deliveries only occur after 6:00 p.m., long after the time of use by the students.

The Play Area will be used for recess in the time period, 11:30 a.m. to 1:00 p.m. Recess is limited to one or two classes at a time (12-24 students), and sessions last 20-30 minutes. On approximately four days per week, "specials" classes, such as drama or dance, would use the Play Area from 12:30 to 2:30, in classes of 12 for 30 minutes per session.

As mentioned previously, the School plans to relocate to a larger facility in three years. The second floor space in the CVS building is 12,000 square feet of floor area. In the coming school year, Grade 3 will be added, and in August 2006, Grade 4 will be added, and so on. The addition of Grade 4 reaches the maximum capacity of the existing classroom space. Accordingly, the School will have to relocate at that time, and will convert the Play Area back to a vacant lot covered with crushed stone, as required by the license agreement with the property owner.

## V. The Requested Area Variance

The requested variance from the definitional requirement that an accessory use be located on the same lot as the principal use is an area variance, the granting of which requires a demonstration to the Board of Zoning Adjustment (the "Board" or "BZA") that some exceptional condition of the Property creates a practical difficulty for the owner in

using or developing it as regulated by zoning. The Board must also find that the requested variance can be granted without substantial detriment to the public good and without substantially impairing the purpose and integrity of the zone plan.

***A. An exceptional or unique condition creates a practical difficulty in using the property.***

The definition of Accessory Use in 11 DCMR § 199 is "a use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use." The proposed Play Area in this case is clearly "customarily incidental and subordinate to" the principal school use. However, it is not on the same lot as the principal use.

The CVS building, in which the school is located, occupies apparently all of its lot with the exception of a 12-foot-wide, concrete service driveway. Accordingly, the Play Area cannot be on the same lot as the E. L. Haynes Public Charter School, creating a practical difficulty in creating the Play Area.

The Applicant considered approaching the owner of the property with a proposal to consolidate the two abutting lots into a single lot of record and then creating two Assessment and Taxation Lots using the present boundary between the lots. However, because the School only needs the Play Area for a period of three years before relocating, the legal costs and complications of this approach ruled out this approach. Under the License agreement, a copy of which is in *Exhibit F*, the School must remove the surface covering, equipment and fence and again place crushed stone on the lot, so as to return it to its original condition. Thus, instead of being a variance for an indefinite period of time, in this case, the lot will likely be developed with a permitted C-3-A use, thereby eliminating the variance.

The above factors together are exceptional and result in a practical difficulty.

***B. The requested relief can be granted without substantial detriment to the public good, and the requested relief can be granted without substantial impairment of the zone plan.***

The proposed Play Lot is located in an intensively developed part of the city – surrounded by high-density apartments and commercial uses, Metrorail station entrances and moderate-density uses such as row dwellings. The proposed use will not have any noise or other potentially adverse effects that compare to the activity associated with building uses in the immediate vicinity. Moreover, the recess periods occur only during a very limited time period in the day, from 11:30 a.m. to 2:30 p.m., and then only for a maximum of 24 students at one time. In this midday period, many residents of nearby residential units will be at work.

The Play Area will be a major benefit to the School and its students in terms of safety and convenience. Instead of having to travel to a neighborhood park, the students will be able to exit the School's own exit door on the east wall of the building immediately adjacent to the proposed Play Area. Thus, the students will be able to reach the Play Area without crossing a street.

The E. L. Haynes Public Charter School is a matter-of-right use in the C-3-A District, and is fully consistent with the Zone Plan. The proposed use is temporary, needed only for a period of three years until the School's expansion requires it to relocate to a larger property.

Based on the foregoing facts and analysis, the Applicant believes that the application complies with the second and third tests for approval of a variance.

## VI. Conclusion

The proposed area variance from the definitional requirement that an accessory use be located on the same lot as the principal use is justified based upon the practical difficulties cited herein The requested relief can be granted without substantial detriment to the public good and can be granted without impairment of the zone plan. The Applicant requests that the Board approve the application to allow the School to create the Play Area according to the plans submitted to the record of the case.

Respectfully submitted,
ARNOLD & PORTER LLP

Nathan W. Gross, AICP

Cynthia A. Giordano

Attachments

Cc: Advisory Neighborhood Commission 1A

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