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February 21, 2006

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2006 FEB 21 PM 2:23

D.C. OFFICE OF ZONING

RECEIVED

Via Messenger

D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington, DC 20001

Re: Application of The Lab School - BZA Case No. 17383

Dear Members of the Board:

This letter addresses the items requested by the Board during the November 22, 2005, public hearing on this application.

I. TRAFFIC MANAGEMENT

Since the November 22 public hearing, Martin J. Wells of Wells & Associates, the School's traffic consultant, and The Lab School have developed a proposed Traffic Management Plan, and Lab has already implemented many aspects of the plan. A copy of the plan is attached. Marty has met with Ken Laden to present the plan, and he has had several follow-up conversations with DDOT. We have not received any formal comments on the plan, but it is our understanding that DDOT is in favor of the concept of the plan although it may not be in favor of the proposed angled spaces. The Lab School, however, remains committed to the angled spaces. They will increase the parking supply and provide a major community benefit – a sidewalk.

On February 10, 2005, the Applicant provided to the Office of Planning a chart showing the number of faculty and staff who are present at the Property during the morning, afternoon, and evening.

II. THE NIGHT SCHOOL

On February 10, 2005, the Applicant provided the following information about the Night School to the Office of Planning. The Night School use is accessory to the private school use. It is held only on Tuesdays and Thursdays, it educates only approximately 60 students, and it is directly related to the School's community outreach activities and its educational mission.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17383
EXHIBIT NO. 66

400316164v1

Board of Zoning Adjustment
District of Columbia
CASE NO. 17383
EXHIBIT NO. 66

The Night School was developed by The Lab School to provide much-needed services to underserved, learning-disabled adults in the District. Indeed, most of the enrolled students reside in Ward 8. It teaches them essential life skills such as reading, writing, spelling and basic math skills. Classes meet only on Tuesdays and Thursdays and are held between 5:30 and 9:30 p.m. The night school program supplies all course materials. The classes are provided for a low fee. An assessment fee of \$350 covers initial testing and evaluation of the student's skills. Tuition is \$672 per semester for 1 class, \$960 per semester for 2 classes, and \$1200 per semester for 3 classes. The Lab School also provides many scholarships for these students. Classes meet a total of only 24 evenings per semester. Class size is limited to 5 students.

The Lab School provides a shuttle to the Metro at the end of each class. The Lab School Night School currently enrolls only 59 students. Of those, 32 take public transportation and/or use the shuttle, 23 drive, and 4 are picked up.

III. SECTION 2500.1

During the November 22, 2005, public hearing on this application, the Board asked the Applicant to address whether an area variance from § 2500.1 is required. This application requests a special exception to permit the use, for school purposes, of Lot 840 in Square 1374 (the "New Property"). The New Property is located directly across Whitehaven Parkway from The Lab School, and it is improved with a residential building. The Lab School proposes to use the New Property as administrative offices for the school. No classrooms will be located on the New Property.

Given the framework of § 206 and past decisions by the Board of Zoning Adjustment and the D.C. Court of Appeals, private schools are considered as a campus, and the individual buildings are considered a part of the principal private school use.

Section 2500.1 provides: "Any accessory use or accessory building shall be located on the same lot with the use or building to which it is accessory" Section 2500 also places additional requirements on accessory buildings. Under § 2500.2, an accessory building shall be located only in a rear yard. Under § 2500.4, no accessory building in any zone district shall exceed one story or 15 feet in height. Section 199.1 defines "accessory use" as "a use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use."

A. The Proposed Use of the New Property is an Extension of the Principal Use

The issue of whether a private school should be analyzed as a campus or on a lot-by-lot basis generally arises in the application of §§ 2500.1, 2500.4, and 2516.1 (which addresses lots with two or more principal buildings). The Board of Zoning Adjustment addressed this issue in Order

No. 16433. In that case, The National Cathedral School ("NCS") sought special exception relief under § 206 to build an athletic facility on a lot located across the street from two of the three main school buildings. Another school building was already located on that lot. The Board determined that the athletic facility was an extension of the principal use:

[T]o approve an expansion of a special exception, the use must also be either part of, or accessory to, the existing special exception principal use. Thus, the use must be characterized as either principal or accessory The Board concludes that the athletic facility is an extension of the principal use. Athletics is a form of education, and thus the athletic facilities are educational facilities. It, therefore, follows that the applicant need only meet the standard for a private school special exception.

(Board of Zoning Adjustment Order No. 16433, p. 8).

The Board has approved applications for private schools that have one or more buildings located on a separate lot. For example, in BZA Order No. 16517, the Board approved a special exception for St. Patrick's Episcopal Day School to construct a gymnasium building across Whitehaven Parkway from the main school building. In Order No. 17022, the Board approved an application of the Edmund Burke School to construct an additional school building across a public alley from the main school building. In the context of universities, the Board and the Zoning Commission have consistently approved buildings that constitute a part of the University use, but which are not subject to § 2500.1. For example, BZA Order No. 15808 granted a special exception to The George Washington University to convert an inn to faculty/administrative offices. The University was not required to comply with § 2500, even though there was no classroom use proposed for the site.

Here, the proposed use of the New Property for administrative offices is an extension of the principal school use. A school's administrative functions are integral to the private school use and are more integrated into the functions of the school than a use that is "customarily incidental and subordinate" to a private school use. Indeed, every private and public school employs administrators, and these administrators are essential to the functioning of the school. Furthermore, The Lab School should be evaluated as a campus rather than on a lot-by-lot basis. The Lab School, like many other schools, comprises several buildings that are integral to the school use. The New Property is located just across Whitehaven from the existing campus and it will be a natural extension of the campus.

Moreover, applying the requirements of § 2500 to private schools would lead to absurd results. If private school buildings were considered “accessory buildings,” they would be subject to the rear yard requirement of § 2500.2 and the height limitation of § 2500.4. In addition, school buildings located on more than one lot may be required to provide parking for each individual lot. Moreover, although there is no provision exempting universities from the provisions of § 2500, that section has never been applied to universities.

B. Even if the Proposed Use of the New Property is Deemed an Accessory Use, Relief from § 2500.1 is not Required

Even if the Board determines the proposed use of the New Property is an accessory use, relief from § 2500.1 is not required. In *Georgetown Residents Alliance v. D.C. Board of Zoning Adjustment*, 802 A.2d 359 (D.C. 2002) the D.C. Court of Appeals held that the phrase “same lot” in § 2500.1 does not require that the use be located on the same “lot of record.” In that case, the Tudor Place museum sought to use a house located on an adjacent lot for meetings, small, receptions, and art programs. *Id.* at 361. The Court determined that the proposed use was accessory to the museum use. Furthermore, it upheld the BZA’s determination that the term “lot” does not mean “lot of record.” *Id.* at 366. Rather, the term “lot” is a “general term used to describe any plot of land” *Id.*

Accessory uses have been permitted on University campuses without necessitating relief from § 2500. In *Georgetown Residents Alliance v. D.C. Board of Zoning Adjustment*, 816 A.2d 41 (D.C. 2003), the D.C. Court of Appeals determined that a child development center was accessory to university use. The child development center at issue in that case was to be located in Poulton Hall on the Georgetown University campus. *Id.* at 43. Under the proposed use, Poulton Hall would not feature any university uses other than the child development center. The Georgetown Residents’ Alliance argued the use did not meet the “same lot” test of § 2500.1 because Poulton Hall stands on a lot that is not on Georgetown’s main campus and which bears a different lot number than the main campus. *Id.* at 48. The Court upheld the BZA’s interpretation that “the term ‘lot’ in this context ... mean[s] the entire University, not just the record lot, for the purpose of its consideration as an accessory use.” *Id.*

In a similar case involving The George Washington University, a group of neighbors argued that a proposed power plant located on a remote portion of the university’s campus did not meet the “same lot” test. *Citizens Coalition v. District of Columbia Board of Zoning Adjustment*, 619 A.2d 940 (D.C. 1993). The Court rejected the argument and found the power plant would be located on the “same lot.” *Id.* at 955.

Likewise, even if the Board determines the proposed administrative use of the New Property is an accessory use and subject to § 2500.1, the Board should find the proposed use is located on the "same lot." The New Property is extremely close in proximity to the existing Lab School buildings – it is located approximately 120 feet away and is separated only by Whitehaven Parkway. Many other schools in the District feature public streets through their campuses, including St. Patrick's Episcopal Day School, Edmund Burke School, NCS, and all universities. Accordingly, the New Property may appropriately be added to The Lab School's campus and may be considered as on the "same lot" as The Lab School.

IV. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

During the November 22, 2005, public hearing on this application, the Board did not request Proposed Findings of Fact and Conclusions of Law from the parties. Under § 3121.2 parties are encouraged to submit proposed findings of fact and conclusions of law. Accordingly, the Applicant requests that the Board open the record to admit the Applicant's Proposed Findings of Fact and Conclusions of Law. The Applicant has no opposition to the Board giving other parties the opportunity to respond to its Proposed Findings of Fact and Conclusions of Law.

V. LETTER FROM FATHER MILTON JORDAN

Father Milton Jordan, pastor of Our Lady of Victory Church and School, participated as a party in opposition to the application. As a result of discussions between Father Jordan and The Lab School, the Church wishes to withdraw its opposition to the application. The Applicant requests that the Board open the record to admit the attached letter from Father Jordan, requesting withdrawal of the Church's opposition.

Sincerely yours,.

A handwritten signature in cursive script, appearing to read "Allison C. Prince".

Allison C. Prince

cc: Alma Gates, ANC 3D
Anne Heuer, ANC 3D06
Karen Thomas, Office of Planning
Ken Laden, DDOT



**LAB SCHOOL OF WASHINGTON
TRANSPORTATION MANAGEMENT PLAN
January 24, 2006**

Introduction

The Lab School of Washington (LSW) seeks through this Transportation Management Plan (TMP) to promote safe and efficient arrival, dismissal, and parking procedures that minimize the school's impact on neighboring institutions and the community.

Goal

The LSW's peak weekday parking demand currently exceeds the LSW's on-site parking supply. The goal of this TMP is to bring peak weekday parking demand and supply into balance by: (1) increasing parking supply and (2) decreasing overall parking demand, as shown in Table I. This TMP also addresses typical weekday arrival and dismissal, evening, and event traffic management.

Table I
Lab School of Washington
Existing and Proposed Parking Supply and Demand

	<u>Existing</u>	<u>Proposed</u>	<u>Change</u>	<u>% Change</u>
Parking Supply	87 ¹	148 ²	61	70%
Parking Demand	<u>175³</u>	<u>130⁴</u>	(45)	(26%)
Supply vs. Demand	(88)	18		

¹ This includes only on-site, marked spaces; does not include stacked spaces.

² This includes 87 on-site marked spaces, 20 on-site stacked spaces, 26 net additional angled spaces on Whitehaven Parkway, and 15 spaces that will be leased by LSW from The George Washington University on the nearby Mt. Vernon campus.

³ Existing parking demand was measured by traffic counts, parking occupancy counts, and pedestrian interviews conducted by Wells & Associates on Wednesday, October 19, 2005.

⁴ Assumes that 35 additional faculty and staff will use shuttle buses and 10 additional faculty and staff will carpool.

Existing Parking Supply

The LSW presently has 87 on-site marked parking spaces, as shown on Figure 1.

Parking Requirements

The number of spaces required by regulation exceeds the LSW's on-site parking supply. Regulations require 130 parking spaces for the current 182 faculty and staff and 330 students. This is 43 more spaces than the current on-campus supply of 87 legal parking spaces.

Existing Parking and Traffic Demands

Current LSW traffic and parking demands were determined by traffic counts, parking occupancy counts, and pedestrian interviews conducted by Wells & Associates on Wednesday, October 19, 2005.

The LSW's 182 faculty and staff and 330 students currently generate 297 AM peak hour trips, 174 school PM peak hour trips, and 121 commuter PM peak hour trips. They generate a peak demand of 175 parking spaces.

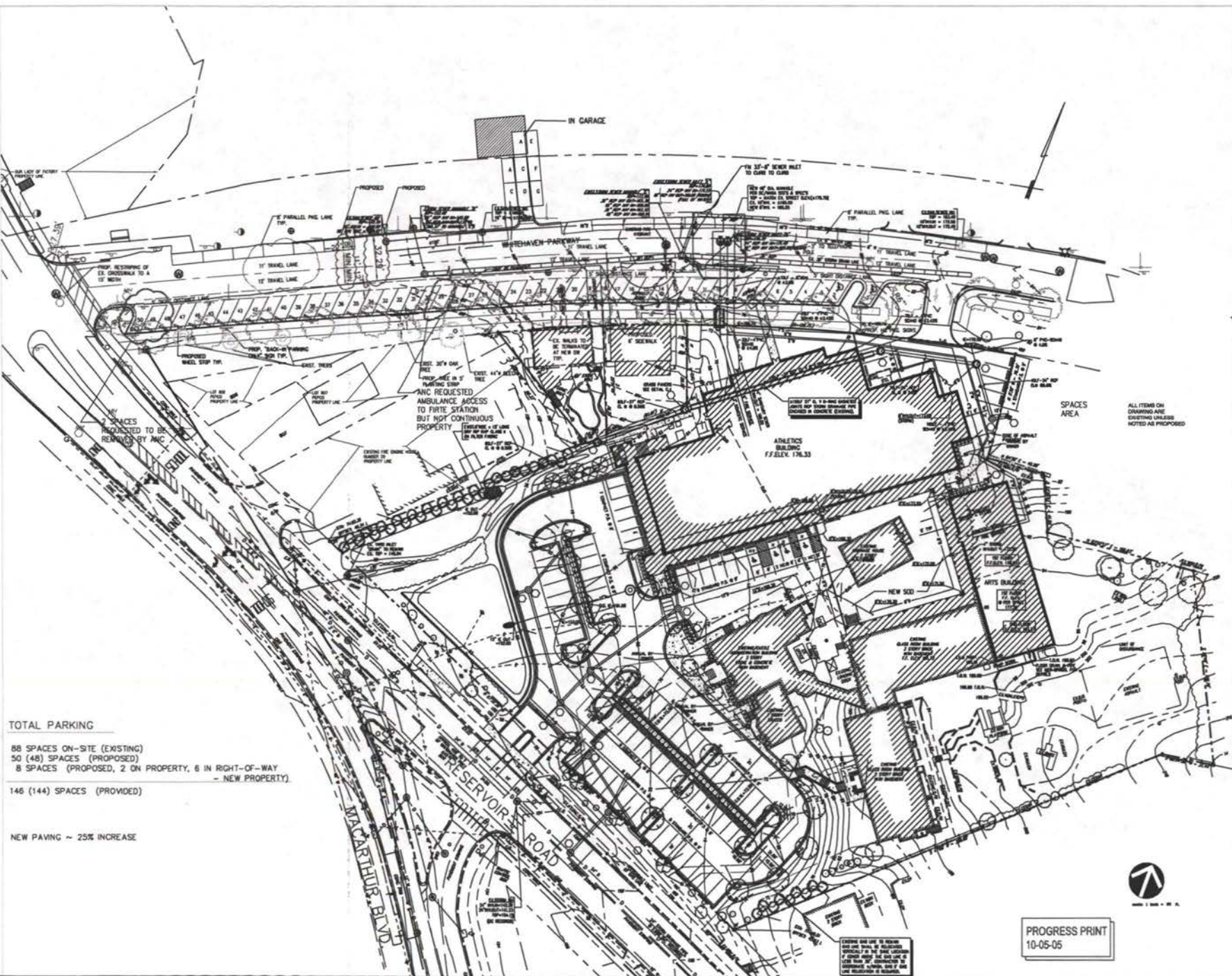
The LSW's peak parking demand for 175 spaces exceeds the on-site parking supply by 88 spaces (i.e., $175 - 87 = 88$).

Transportation Management Plan

Parking Supply. LSW proposes to increase the number of parking spaces available to Lab School faculty, staff, and others by:

1. Providing 20 on-site stacked parking spaces.
2. Constructing 43 angled parking spaces adjacent to the school on the north side of Whitehaven Parkway, as shown on Figure 2, similar to the spaces provided at the east end of Whitehaven Parkway. These angled spaces would displace 17 parallel parking spaces that presently are used by the Lab School, Our Lady of Victory, and others. Twenty-six (26) net additional spaces would be provided (i.e., $43 - 17 = 26$).
3. Leasing 15 off-site, off-street spaces.

C:\0000 - PROJECTS - CURRENTLY ACTIVE\LAB SCHOOL\EXIST DN-SITE W/ WHITEHAVEN REV.DWG, LAST MODIFIED 11/1/2005 00:50 PM, BY: CDR/BAJ



TOTAL PARKING

88 SPACES ON-SITE (EXISTING)
50 (48) SPACES (PROPOSED)
8 SPACES (PROPOSED, 2 ON PROPERTY, 6 IN RIGHT-OF-WAY - NEW PROPERTY)

146 (144) SPACES (PROVIDED)

NEW PAVING ~ 25% INCREASE

PROGRESS PRINT
10-05-05



Vika Associates, Inc.
ARCHITECTS & LANDSCAPE ARCHITECTS
10000 WILLOW LANE, SUITE 200
WASHINGTON, DC 20007
(202) 462-1000 • FAX (202) 462-1001
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THE LAB SCHOOL OF WASHINGTON
4759 RESERVOIR ROAD, N.W. WASHINGTON, D.C. 20007

EXIST. ON-SITE
W/ WHITEHAVEN

Vika REVISIONS

NO.	DATE	DESCRIPTION
1	APRIL 27, 2004	REVISED PER DC COMMENTS 8/31/04
2	DEC 1	BZA SUBMISSION
3	DEC 1	06/13/05

DATE: APRIL 27, 2004
DES: JFA DWN: JMS
SCALE: 1"=20'
PROJECT/FILE NO. 0003
SHEET NO. 1 OF 1

These actions will increase the number of spaces available to the Lab School by 61 spaces (i.e., $20 + 26 + 15 = 61$), or by 70 percent, from 87 to 148 spaces.

Parking Demand. LSW has implemented, or will implement, the following measures to reduce peak parking demands:

- I. **Public Transportation.** LSW encourages faculty, staff, therapists, volunteers, and others to use public transportation by the following measures:
 - A. At the initial employee orientation, provide information to all new faculty and staff on the public transportation facilities and services available to them.
 - B. Provide all existing faculty and staff published route maps and schedule information. Post this information in a convenient, centralized location.
 - C. Apprise all faculty and staff about web links to the various public transportation providers.
 - D. At faculty and school wide meetings, stress the advantages and importance of using public transportation whenever possible.
 - E. LSW recently enrolled in Metro's Smart Benefit / Metrochek program. The LSW Finance Committee authorized \$105 per person per month in transit benefits, which is the maximum allowed by law. Forty-five (45) employees have signed up. Their benefits will start on February 1, 2006. LSW will begin offering the tax deferred parking benefit in March. LSW will use meetings, memos, displays, and one-on-one sessions to educate LSW staff regarding the financial benefits and convenience of utilizing mass transit. LSW believes that satisfied riders will be its best advocates.
 - F. LSW currently offers free shuttle bus service between the school, the Tenley/AU Metro station in the District of Columbia, and the Rosslyn Metro station in Virginia, as shown on Figure 2. LSW also makes the shuttle available and encourages its use for such events as admission tours.

Fourteen (14) passengers were observed riding the LSW/Tenleytown shuttle bus on the survey day (Wednesday, October 19, 2005). LSW's goal is to increase shuttle bus ridership by another 35 passengers, which would decrease the peak parking demand by 35 spaces.

THE LAB SCHOOL OF WASHINGTON SHUTTLE ROUTES

JANUARY 24, 2006

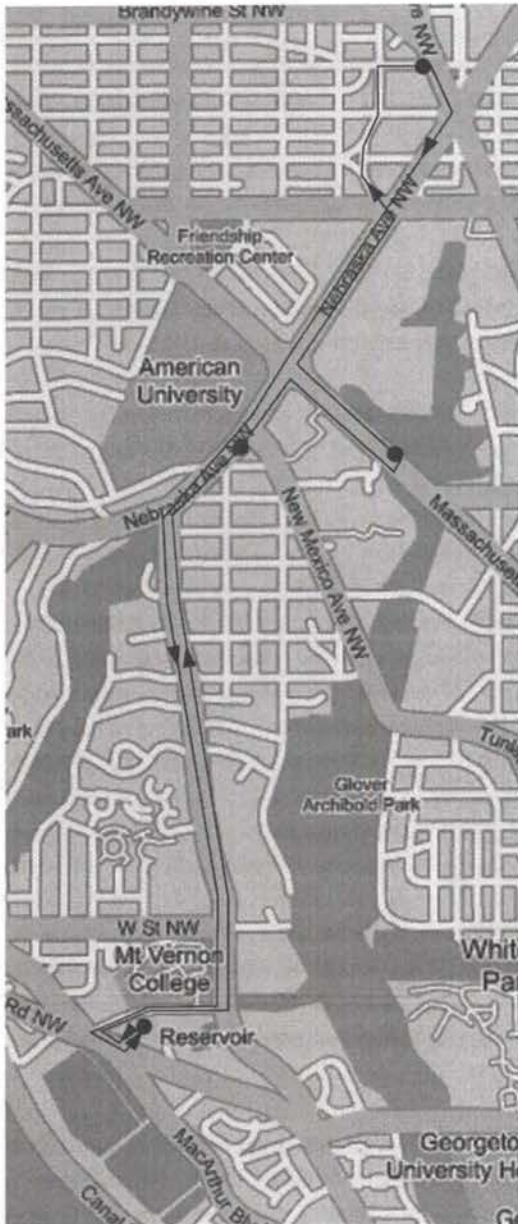
LAB SCHOOL | AU | MASS AVE | TENLEY METRO ROUTE

AM PICKUP @ TENLEY 7:30 & 8:00

PM DROP-OFF LEAVES LAB 12:30 2:00, 4:15, & 5:00

NOTE:

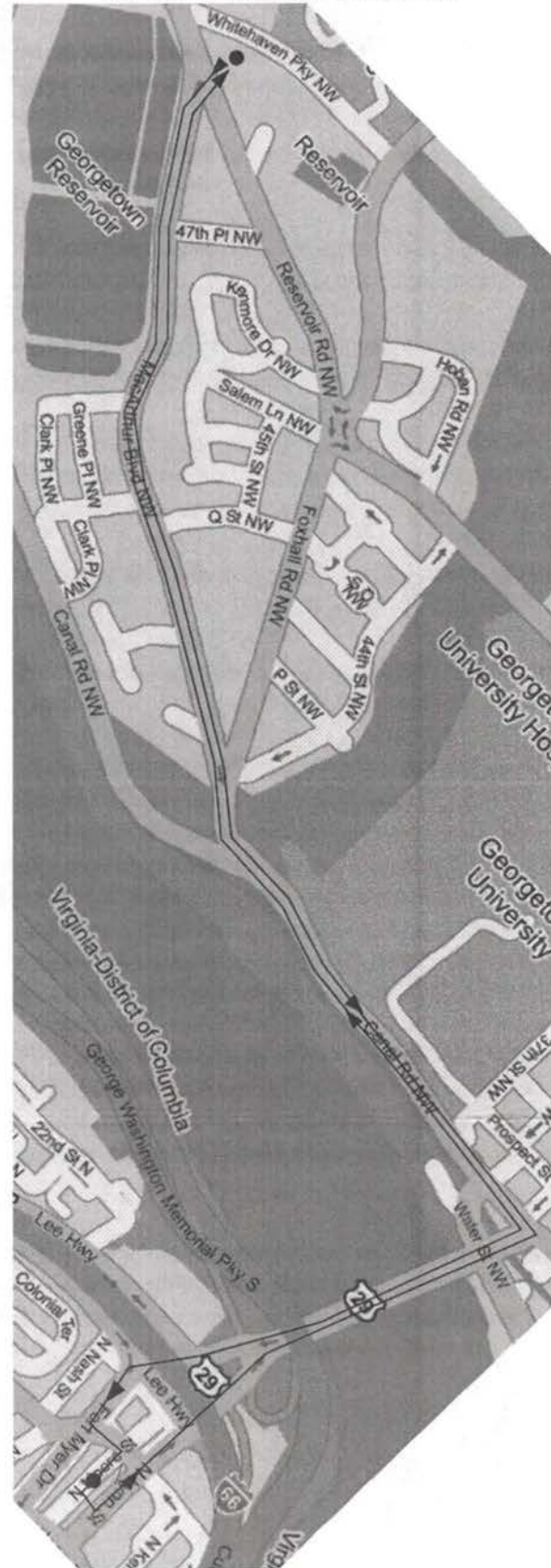
PASSENGERS NEEDING TO GO TO ROSSLYN AFTER 3:45 BUT BEFORE 5:30 USE THE TENLEY SHUTTLE TO THE RED LINE AND TRANSFER @ METRO CENTER



LAB SHOOOL | ROSSLYN METRO ROUTE

AM PICKUP @ ROSSLYN 7:30

PM DROP-OFF LEAVES LAB 3:45 & 5:30



- G. LSW will work with other neighboring schools and institutions to coordinate and expand existing shuttle bus services.
 - H. LSW will offer guaranteed rides home to anyone who takes transit or is a carpool passenger in emergencies. Shuttle buses, taxis, or other vehicles will be used for this purpose.
2. **Carpools.** LSW will reserve five (5) on-site parking spaces for carpool of three (3) or more occupants (i.e., HOV3). Ten new carpools with two passengers would reduce the peak parking demand by 10 spaces.

LSW encourages parents to voluntarily form more carpools by: (1) providing them with zip code lists, (2) encouraging them to form carpools through memos, and (3) encouraging them to form carpools at meetings.
 3. **School Bus Service.** Seventeen (17) buses operated by public school systems currently transport LSW students. LSW will continue to accommodate buses on the campus.
 4. **Bicycles.** LSW currently provides bike racks for faculty, staff, and students who commute by bicycle. LSW will monitor bike usage and provide additional racks as required.
 5. **High School Drivers.** LSW students are not permitted to drive to school. The only exceptions are students who have been approved as hardship cases by the High School Administration and the Director of Operations.

If a student does not follow this policy and is discovered driving a car to school and parking anywhere in the neighborhood, the following will occur:

First offense:	Student warned
Second offense:	Parent called and student warned
Third offense:	Student suspended

6. **Car Sharing.** LSW will reserve one parking space on campus for Zip Car and/or Flex Car.

These measures will reduce peak parking demands by 45 spaces (i.e., $35 + 10 = 45$), or by 26 percent, from 175 to 130 spaces.

The proposed parking supply of 148 spaces will exceed the proposed parking demand by 18 spaces (i.e., $148 - 130 = 18$).

Traffic Management. LSW has implemented the following traffic management measures:

1. LSW has hired off duty MPD officers to direct traffic during morning arrival and afternoon dismissal peak periods. These officers address any backups with authority, expedite traffic flow, and supervise the crosswalks for pedestrians.
2. LSW staff directs the flow of traffic on campus in order to expedite loading and unloading of students, prevent on-site congestion, and prevent back-ups onto the public street network. LSW staff is assigned in the parking lot to direct bus and automobile traffic flow, prevent backups, address backups if they occur, and expedite the loading and unloading of students. Students are supervised and arranged into groups such as by bus in order to streamline the above.
3. LSW staff directs traffic in a full loop so as to contain the maximum number of vehicles on campus and, hence, prevent street backups. Large vehicles such as busses are usually directed to the exit at the half loop. A staff member blends the traffic so as to expedite the flow.
4. In the morning the majority of traffic arrives between 8:00 and 8:30 AM. As the drop off is spread over this time traffic flow is enhanced.
5. The traffic signal phase controlling traffic exiting the campus is programmed for seven (7) seconds unless a vehicle is detected every three (3) seconds at which time the phase is extended to a maximum of 20 seconds. This greatly enhances flow and helps prevent backups on Reservoir Road.
6. During dismissal, when vehicles arrive and park a few minutes before the actual pick up time, LSW takes necessary actions to ensure that vehicles do not backup onto Reservoir Road. Parents/guardians are directed to circulate around the block and return when there is space. The officer is our most effective tool to enforce this.
7. LSW staggers events in the evenings and monitors them to prevent problems. LSW has a night guard on duty to prevent problems and to react to problems (such as an event being more popular than anticipated). Personnel and groups are instructed on the importance of safe traffic and positive community relations. LSW modifies schedules and procedures immediately in reaction to what worked well or didn't work.
8. LSW discusses special events in advance and plans how to keep the parking and traffic safe and efficient (for example, providing a metro shuttle for admission tours).

9. LSW receives requests from the community to use their facilities such as bathrooms for the Fourth of July Parade, a parking lot for the Georgetown Citizens Association rummage sale, or a water stop for a breast cancer run. LSW generally accommodates the groups in a safe and non disruptive manner to the community and provides the facility and staff at no cost to the community.

Monitoring

LSW will periodically monitor the performance of the TMP and compare actual parking supply and demand to determine whether or not LSW meets the goal of balanced parking supply and demand. This will include an annual traffic and parking survey that will document actual peak period and peak hour vehicle-trip generation, parking occupancy counts, peak parking demands, any spillover parking, average vehicle occupancy, and mode splits.

Report

LSW will prepare an annual TMP report that will describe the TMP goal, the various TMP measures, the effectiveness of those measures, and the results of the annual traffic and parking survey. The report will be distributed to the District Department of Transportation (DDOT) and Advisory Neighborhood Commission (ANC) 3D.

THE LAB SCHOOL FACULTY / STAFF HOURS CHART

	<u>Monday</u>	<u>Tuesday</u>	<u>Wednesday</u>	<u>Thursday</u>	<u>Friday</u>
<u>Morning</u> <u>(7:00 am – 12:00 pm)</u>	__ 33 __ __ 8 __ Aide __ 25 __ Support __ 72 __ Teacher __ 40 __ Therapist __ 178 __ Total	__ 33 __ Admin __ 8 __ Aide __ 26 __ Support __ 72 __ Teacher __ 38 __ Therapist __ 177 __ Total	__ 33 __ Admin __ 8 __ Aide __ 24 __ Support __ 72 __ Teacher __ 40 __ Therapist __ 177 __ Total	__ 33 __ Admin __ 8 __ Aide __ 26 __ Support __ 72 __ Teacher __ 40 __ Therapist __ 179 __ Total	__ 32 __ Admin __ 7 __ Aide __ 23 __ Support __ 72 __ Teacher __ 36 __ Therapist __ 170 __ Total
<u>Afternoon</u> <u>(12:00 pm – 4:00 pm)</u>	__ 32 __ Admin __ 8 __ Aide __ 25 __ Support __ 73 __ Teacher __ 40 __ Therapist __ 178 __ Total	__ 32 __ Admin __ 8 __ Aide __ 26 __ Support __ 73 __ Teacher __ 38 __ Therapist __ 177 __ Total	__ 32 __ Admin __ 8 __ Aide __ 24 __ Support __ 73 __ Teacher __ 40 __ Therapist __ 177 __ Total	__ 32 __ Admin __ 8 __ Aide __ 26 __ Support __ 73 __ Teacher __ 40 __ Therapist __ 179 __ Total	__ 32 __ Admin __ 8 __ Aide __ 23 __ Support __ 73 __ Teacher __ 36 __ Therapist __ 172 __ Total
<u>Evening</u> <u>(4:00 pm – 8:00 pm)</u>	__ 10 __ Admin __ 1 __ Aide __ 6 __ Support __ 0 __ Teacher __ 22 __ Therapist __ 39 __ Total	__ 10 __ Admin __ 1 __ Aide __ 6 __ Support __ 0 __ Teacher __ 20 __ Therapist __ 37 __ Total	__ 10 __ Admin __ 2 __ Aide __ 6 __ Support __ 0 __ Teacher __ 20 __ Therapist __ 38 __ Total	__ 10 __ Admin __ 1 __ Aide __ 6 __ Support __ 0 __ Teacher __ 19 __ Therapist __ 36 __ Total	__ 10 __ Admin __ 2 __ Aide __ 5 __ Support __ 0 __ Teacher __ 14 __ Therapist __ 31 __ Total

Our Lady of Victory Church

4835 MacArthur Blvd. N.W. • Washington, DC 20007-1564
(202) 337-4835 • Fax: (202) 338-4759 • e-mail: olvdc@starpower.net

February 20, 2006

D. C. Board of Zoning Adjustment
Suite 210
441 - 4th Street, NW
Washington, DC 20001

RE: BZA Application No. 17383 The Lab School of Washington

Dear Mr. Chairman and Members of the Board,

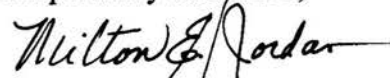
As I testified during the public hearing regarding the above case on November 22, 2005, the proposed angle parking on Whitehaven Parkway was a major concern for the Our Lady of Victory School Board and the Our Lady of Victory Parish. Specifically I offered opposition in view of the fact that parents of the Our Lady of Victory School drop-off and pickup their children in one part of the proposed addition of angle parking at the same time that the two other academic institutions on the parkway are involved in the same activities. Additionally, I expressed concern that the existing congestion on the parkway during most of the academic days' beginnings and endings are already make traveling on the parkway a problem and offer a genuine concern for the impedance such congestion could bring to the local fire apparatus were they required to use Whitehaven Parkway while responding to an emergency call.

Furthermore, as I stated in my testimony, by the day of the hearing, officials of the Lab School had indicated their intention to redesign the area for the angle parking on the street so that there would be no parking in the area directly opposite Our Lady of Victory School. Consequently, the primary cause for my objection no longer existed.

During the testimony, as you may recall, I further elaborated on the testimony of The Lab School Trustee and planned builder of the proposed parking where he indicated that officials of the two institutions were in dialog concerning greater collaboration and possible shared used of space to create additional parking. The dialog continues in a very positive spirit.

Therefore, I wish to state in a written form the withdrawal of my opposition to the original proposal. At the same time, however, I do maintain a concern that there will be major congestion if the parkway is not widened in the area under consideration in the proposal as is the case at the opposite end of Whitehaven Parkway in the vicinity of St. Patrick's Episcopal School and the George Washington University, Mount Vernon Campus. I am confident that The Lab School project will address the widening issue thus demonstrating their earnest concern for the community.

Respectfully submitted,



Reverend Milton E. Jordan
Pastor

c: Mrs. Sally Smith, Director, The Lab School
Mrs. Sheila Martinez, Principal, Our Lady of Victory School
Mr. Kevin Fischer, Chairman, OLV School Board

**APPLICANT'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17383 of The Lab School of Washington, pursuant to 11 DCMR § 3104.1 for a special exception to allow an increase in faculty and staff to 190 and an increase in student enrollment to 330 pursuant to § 206 for an existing private school located at premises 4759 Reservoir Road, NW (Square 1372, Lot 25). This application also requests a special exception pursuant to § 206 to permit the use of a neighboring property at 4749 Whitehaven Parkway, NW (Square 1374, Lot 840) for administrative offices for the school. Finally, this application requests a special exception under § 214 to locate accessory parking spaces elsewhere than on the same lot on which the principal use is located. The subject property is located in the R-1-B Zone District.

HEARING DATES: November 22, 2005

DECISION DATE: March 7, 2006

DECISION AND ORDER

Following a public hearing, the Board voted _____ on March 7, 2006 to approve the application subject to conditions.

PRELIMINARY MATTERS

Applicant. The application was filed on June 15, 2005, by The Lab School of Washington (the "Applicant" or "School"), the owner of the property that is the subject of the application.

Application. The application requests a special exception relief under 11 DCMR § 206 to allow

an increase in the faculty and staff cap from 95 to 182 at an established private school, located at 4759 Reservoir Road, N.W. (Square 1372, Lot 25) (the “**Property**”), in the R-1-B Zone District. The Applicant initially requested an increase in the faculty and staff cap to 190, but, following discussions with the community, the Applicant revised its request to reflect the number of faculty and staff it currently employs, which is 182. The School also is requesting a student enrollment increase from 310 to 330. The private school use of the Property most recently was approved in BZA Order No. 16273. The school also requests a special exception under § 214 to permit the location of accessory parking spaces for the School off-site for a term of five years. The Applicant proposes to locate 50 back-in, angled parking spaces in the public space along Whitehaven Parkway. Finally, the School requests special exception approval under 11 DCMR § 206 to use the property located at 4749 Whitehaven Parkway, N.W. (Square 1374, Lot 840) (the “**New Property**”) for administrative offices. The zoning relief requested in this application is self-certified pursuant to 11 DCMR § 3113.2.

Notice of Application and Notice of Hearing. By memoranda dated June 16, 2005, the Office of Zoning advised the D.C. Office of Planning, the City Council Member for Ward 3, the D. C. Department of Transportation, and Advisory Neighborhood Commission (“**ANC**”) 3D, the ANC for the area within which the Property is located, of the application.

The Board scheduled a public hearing on the application for November 22, 2005. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on August 25, 2005, mailed notice of the hearing to the Applicant, the owners of all properties within 200 feet of the Property, and ANC 3D. Notice also was published in the D.C. Register (_____).

Requests for Party Status. ANC 3D was automatically a party to this proceeding. The Board received a timely filed request for party status from Reverend Milton E. Jordan, Pastor of Our Lady of Victory church and school, which is located across Whitehaven Parkway from the Property and the proposed back-in angled parking spaces. The Board granted Reverend Jordan's request for party status.

Applicant's Case. The Applicant provided testimony and evidence from Sally Smith, Founder and Director of The Lab School of Washington, who testified on behalf of the Applicant. The Applicant also presented testimony and evidence from Allyn Kilsheimer of KCE Structural Engineers, recognized by the Board as an expert in civil engineering, regarding the design of the proposed angled parking spaces, the School's efforts at community outreach, and compliance with the special exception requirements. Finally, the Applicant presented testimony of Martin J. Wells, of Wells & Associates, recognized by the Board as an expert in traffic issues, who testified regarding the proposed angled parking spaces and the area traffic and parking conditions.

Government Reports. By Report dated November 22, 2005, and through testimony during the public hearing, the Office of Planning ("OP") recommended approval for special exception relief to allow use of the former residence owned by the School for use as administrative offices with the condition that any associated staff, faculty, volunteers, students, or other school personnel be counted toward the Schools total enrollment or employment cap. OP recommended disapproval of the Applicant's application to increase its student enrollment and faculty/staff cap because

DDOT determined the traffic and parking issues had not been sufficiently addressed. OP also noted that no explicit approval for The Lab School's night school had been granted.

The Department of Transportation ("DDOT"), by report dated November 8, 2005, noted that it had reviewed the design for the proposed angled parking spaces prior to the Applicant's filing the application and determined that they are acceptable from a technical and design standpoint. DDOT expressed concern about the effect of the proposed spaces on the intersection of Whitehaven Parkway, MacArthur Boulevard and Reservoir Road, NW, which currently operates at a Level of Service F during the AM and PM peak periods. DDOT recommended that the Applicant construct an on-site parking garage instead of the proposed back-in angled spaces in the public space on Whitehaven Parkway. DDOT concluded that, although the proposed angled parking spaces can be designed to DDOT standards, DDOT would prefer that accessory parking requirements be satisfied on the subject property or adjacent private parcel, rather than in public space. DDOT did not comment on the temporary nature of the request.

ANC Report. ANC 3D, at its regularly scheduled meeting held on November 2, 2005, with a quorum present, voted 5-1-0 to permit an increase in faculty and staff from 95 to 150, based on the number of parking spaces currently available on the Property. The Applicant requested an increase in faculty and staff to 182. The ANC voted 6-0-0 oppose the requested increase in student enrollment from 310 to 330. The ANC stated that the increase would encourage the School to hire additional staff. The ANC voted 6-0-0 to oppose the request for use of public space to meet the School's parking requirement. The ANC noted that the proposed back-in, angled parking spaces would encourage future staff growth, would have a negative impact on Our Lady of Victory school, and that there was concern about the conversion of public space for

private school use.

Party in Opposition to the Application. Reverend Milton Jordan of Our Lady of Victory School presented testimony in opposition to the application. He testified that he was originally opposed to the proposed back-in angled parking spaces because they could cause a safety issue for children crossing the street. Reverend Jordan stated that his concern about safety had been addressed by the School, which offered to remove seven of the proposed parking spaces located nearest Our Lady of Victory.

Persons in Opposition to the Application. The Board received several letters in opposition to the application. The letters in opposition asserted generally that the proposed enrollment and faculty/staff increase would create objectionable traffic and parking conditions in the neighborhood. Vicki Hicks, who submitted one of the letters, also testified in opposition to the application, stating that the traffic situation in the neighborhood is currently objectionable and that the proposed increase would increase traffic. She stated that she is opposed to the proposed back-in, angled parking spaces as well as a future on-site parking garage because they would encourage more traffic in the neighborhood. Officer Anthony McElwee, the traffic officer for the 2nd District of the Metropolitan Police Department, also testified in opposition. He testified that he performed a survey of traffic on Whitehaven Parkway at the request of the ANC. He found that Whitehaven Parkway is heavily traveled during peak hours and that parents stop and park their cars while picking up and dropping off students. He observed that children frequently cross Whitehaven Parkway. Officer McElwee also stated that the similar back-in parking spaces located on Whitehaven Parkway in front of St. Patrick's Episcopal Day School occasionally cause drivers to go into the opposing lane in order to bypass cars that are waiting to back into a

space.

Persons in Support of the Application. The Board received numerous letters in support of the application. The letters in support generally cited the excellent education the School provides and the many benefits the School provides to its neighbors. The letters also stated that the new sidewalk proposed in conjunction with the back-in, angled parking spaces would greatly increase pedestrian safety on Whitehaven Parkway. St. Patrick's Episcopal Day School submitted a letter in support of the application, and specifically mentioned its support for the proposed back-in angled parking spaces. Anne Davis, a nearby homeowner, testified in support of the application. She stated that her family and other neighbors regularly use the School's facilities such as the pool and basketball courts. She also testified that she views the proposed back-in angled spaces as a gift to the community because they will provide additional neighborhood parking during the evenings and weekends and because the new sidewalk will improve pedestrian safety. Other neighborhood residents and lab school parents testified in support.

Closing of the Record. The record was left open at the end of the hearing for information the Board requested from the Applicant. The Applicant filed proposed findings of fact and conclusions of law.

Decision Meeting. On March 7, 2006 the Board approved the application.

FINDINGS OF FACT

The Property and the Surrounding Area

1. The Property is located in the R-1-B Zone District near the intersection of Whitehaven

Parkway and Reservoir Road. It has frontage on both streets. The Property consists of approximately 163,567 square feet of land area located at premises 4759 Reservoir Road, N.W. (Square 1372, Lot 25).

2. The Property is improved with a prominent administration building known as the “castle”, a gymnasium, a carriage house, an arts building, two classroom buildings, and two houses. There currently are 87 legal parking spaces located on the Property, but the Property can accommodate 107 cars with stacked parking.

3. The New property is located across Whitehaven Parkway from the Property. It contains 5,003 square feet of land area and is improved with a single family home. The New Property will contain two parking spaces on site.

4. The surrounding area is characterized by a mixture of residential and institutional uses. The Property abuts St. Patrick’s Episcopal Day School to the east and Fire Engine House No. 29 to the west. Both sides of Reservoir Road, which is located south and east of the Property, are devoted primarily to use as single family homes. The Embassy of the Federal Republic of Germany and an underground reservoir are located further east of the Property. St. Patrick’s Episcopal Day School’s gymnasium, The George Washington University Mount Vernon Campus, and Our Lady of Victory Church and School are located across Whitehaven Parkway from the School. The New Property is adjacent to two single-family homes, both of which are owned by St. Patrick’s School.

The Private School Use

5. The Lab School of Washington is a private school for children with learning disabilities and special needs. The School was established at its present location in 1982. Prior to that time, the Property was the location of the Florence Crittendon Home and School. In 1992, the

BZA, by Order No. 15642, granted the School's application to add additional property to the School and to convert a single family home into administrative offices. In Order No. 16273, in 1997, the Board approved a maximum student enrollment of 310 students and a faculty/staff cap of 95.

6. The School currently enrolls 330 students in grades kindergarten through 12. It also offers educational programs for adults through the Night School, which enrolls approximately 60 students. The school now employs 182 faculty and staff.

7. Founded in 1967 by Sally L. Smith, the School is internationally recognized because of its innovative programs for children and adults with learning disabilities. The Lab School Day School offers individual instruction to students in kindergarten through the 12th grade.

8. The instructional approaches developed by Professor Smith emphasize hands-on, experimental learning and the use of the arts to teach academic skills. This includes state-of-the-art work with computers, storytelling, writing, and art in the elementary school as a continual emphasis on project learning in the junior and senior high school.

9. The Lab School has experienced a significant increase in faculty and staff since the use was last approved in 1997. This is partially the result of the School's method of calculating faculty and staff on a full-time equivalent basis. At this time, the School employs only 78 full time teachers. The additional staff are professional consultants and part-time teachers. In addition, the Lab School employs more faculty and staff than traditional schools because the School provides specialized services to address the students' special needs. These services are provided by consultants, therapists, and other professionals and include individualized tutoring, psychological assessment, psychotherapy, speech therapy, social work, occupational therapy, evaluation and treatment, and consultation services. Some of the professionals were hired in

response to federally-mandated Individualized Educational Plans that are required for each student. These plans set forth goals for addressing a learning-disabled child's needs. In addition, the student/teacher ratio at the Lab School is much lower than at traditional schools. In classes such as reading, the students require one-on-one instruction by teachers.

10. The Night School was founded in 1984 by The Lab School to provide much-needed services to underserved, learning-disabled adults in the District. Most of the enrolled students reside in Ward 8. The Night School teaches its adult students essential life skills such as reading, writing, spelling and basic math. Classes meet only on Tuesdays and Thursdays and are held between 5:30 and 9:30 p.m. The classes are provided for a low fee, and the night school program supplies all course materials. An assessment fee covers initial testing and evaluation of the student's skills. The Lab School also provides many scholarships for Night School students. Classes meet a total of only 24 evenings per semester. Class size is limited to five students.

The Proposed Back-in Angled Parking Spaces

11. The Property currently provides 87 on-site parking spaces that meet the DDOT requirements, but can accommodate up to 107 cars including unmarked spaces. Given the School's current employment and assembly space, the District of Columbia Municipal Regulations require 130 parking spaces. This is 43 more spaces than the legal supply of 87 spaces and 23 more spaces than the practical supply of 107 spaces.

12. Allyn Kilsheimer, who is a member of the Lab School's Board of Trustees, explained his efforts, which took place over a period of three years, to work with ANC 3D to provide additional parking for the School's faculty and staff. The School engaged in discussions with ANC 3D's then Commissioner John Finney, and Mr. Kilsheimer presented 12 different options

for resolving the parking issue. The School and the ANC agreed that the School should pursue a plan to provide additional parking spaces within the public right-of-way along Whitehaven Parkway.

13. Mr. Kilsheimer, who is also a civil engineer, explained that it would be extremely difficult to construct an underground parking garage on the existing Lab School campus because of geological conditions affecting the Property. He also explained that one option would be to demolish a carriage house building located on the Property and construct parking in that location. However, because of the age and architectural merit of the carriage house, the building likely would be the subject of a landmark application. The School also considered constructing a parking garage in the front of the campus. That option was not feasible because of the slope of the Property and because the required excavation would endanger the stability of the sandstone “castle” administration building. In addition, the neighbors nearest that location would be likely to oppose the construction of a parking garage at that location. The remainder of the Property features a wetlands area, which the teachers use to teach the children about science and the environment. In order to construct a building on a wetlands, the School would be required to purchase additional wetlands to replace the displaced wetlands.

14. Mr. Kilsheimer testified that the School plans to acquire additional property on which it can construct a parking garage, but that it would take approximately five years for the School to locate and acquire an appropriate site and to raise the funds for the garage.

15. As a temporary solution, the School proposes to construct, at its own expense, back-in angled parking spaces within the existing public right-of-way along Whitehaven Parkway. The applicant requests approval to use the spaces for a term of five years. The proposed parking spaces will feature wheel stops. The parking area will feature a new six-foot wide sidewalk

and a five-foot wide planting strip with attractive landscaping and street trees. Two of the parking spaces will be handicapped-accessible. The Applicant proposes to provide striping at the crosswalk to a width of 15 feet. The Applicant originally proposed to construct 50 spaces. However, following discussions with the ANC and the neighbors, the School agreed to reduce the proposed number of spaces to 43 in order to provide ample room for any fire trucks to turn onto Whitehaven Parkway and to ensure the safety of pedestrians accessing Our Lady of Victory School. The spaces would be reserved for use by the School between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday. The School's use of the public space also would be subject to approval by the Public Space Committee.

16. The existing condition of the public right-of-way is in need of improvement. As shown in photographs attached as Exhibit B to the Applicant's prehearing statement, the pavement is uneven and muddy. There is no sidewalk on either side of Whitehaven Parkway, and there is parallel parking along both sides of the street. As a result, pedestrians must walk in the travel lanes in order to traverse Whitehaven. In addition, there is no pedestrian crosswalk at the intersection of Whitehaven Parkway and MacArthur Boulevard. There is no stormwater management system. The landscaping is overgrown with brush, vines and weeds. The proposed back-in, angled parking spaces will drastically improve both pedestrian safety and the aesthetics of this area.

17. Just northeast of the Property, St. Patrick's Episcopal Day School has installed similar spaces along Whitehaven Avenue. As the photographs attached as Exhibit C to the Applicant's prehearing statement indicate, the area noticeably is safer and more attractive than lower Whitehaven. The parking spaces are amply sized and safely set back from the travel lanes, and the paving effectively widens the road at that location. The new curbs provide an attractive and

uniform appearance, and the landscaping is well-maintained. The new sidewalk enhances pedestrian safety by providing a curb and ample walking space set back from the travel lanes. These spaces did not require BZA approval because St. Patrick's meets its parking requirement on its campus. The spaces did, however, require the approval of the Public Space Committee, and the school pays annual rental to the city for the use of the public space.

18. The proposed spaces will benefit the community as well as the School. Although they will be reserved for use by The Lab School during weekdays, they will be available for use by community residents during the evenings and weekends. The sidewalk will greatly improve pedestrian safety by reducing the potential for conflicts between vehicles and pedestrians. The sidewalk will be available for use by the general public.

19. The installation of the proposed back-in, angled parking spaces will remove approximately 13 public parking spaces that were available to individuals with a Ward 3 parking sticker. The removal of these parking spaces will have little effect on residential neighbors because this area of Whitehaven is characterized predominately by institutional uses. The public parallel parking spaces on the opposite side of Whitehaven will remain available for use by Ward 3 residents.

20. The Office of Planning does not recommend approval of the proposed parking spaces because DDOT does not support it. In its report, DDOT stated that it does not support approval of the spaces because it prefers applicants to satisfy accessory parking requirements on the subject property or adjacent private parcels, retaining roadways for public use. DDOT raised no technical concerns about the spaces.

21. In testimony during the public hearing, Mr. Kilsheimer demonstrated that it would be an extreme hardship for the School to provide additional parking spaces on-site. Accordingly, the Board finds that DDOT's suggestion is not feasible for this Property. The proposed back-in,

angled parking spaces will provide a temporary solution to parking, and the sidewalk will be a permanent improvement for the neighborhood at no cost to the District. The District will retain ownership of the public space, and the Applicant will pay a rental fee for its use.

22. The Board credits the testimony of the Applicant's traffic consultant, Martin J. Wells of Wells & Associates, that the angled spaces would provide a safe condition for both the traveling public and the parkers along the roadway and that the proposed angled parking spaces meet DDOT's design criteria.

23. DDOT's report also states that the proposed angled parking spaces can be designed to DDOT standards.

24. ANC 3D also opposes the angled parking spaces, stating that they would encourage future staff growth, would convert public space for a private school use, and would replace the existing vegetation with impervious surface. The Board does not find the ANC's arguments persuasive. The Applicant would be required to obtain additional approval from this Board for any future staff increases. Although the use of the public space would be approved from a zoning standpoint, the subject property would remain owned by the District and its use by the Applicant would be governed by its agreement with the District. The parking spaces would remain available for use by residents during the evening and weekend hours, when they would be most needed in the neighborhood. Moreover, Whitehaven Parkway is a largely institutional street, and the School's use of the parking would not displace parking for neighborhood homeowners. The plans show a new stormwater management system that will manage any impacts from increased impervious surfacing. In addition, the Applicant has offered to use grass pavers instead of impervious surfacing, if possible. Finally, St. Patrick's Episcopal Day School has installed similar spaces on a portion of Whitehaven, and they have operated with no

demonstrated negative impact on the neighborhood.

25. The proposed angled parking spaces will be located in an open area in the public right-of-way along Whitehaven Parkway in front of the School. They are immediately adjacent to the Property.

26. The Proposed angled spaces will comply with the provision Chapter 23 of the Zoning regulations. The area will be paved in accordance with DDOT requirements. There will be no structures or lighting related to the parking spaces. There is no residential property contiguous to the proposed parking area.

27. It would be economically impracticable and unsafe to locate additional parking spaces on the Property because the unusual condition of a wetland area, because of the existing improvements on the Property, and because of geological conditions.

28. The installation of the proposed angled parking spaces will not cause objectionable noise, traffic, or other objectionable conditions. Indeed, as demonstrated above, they will be a significant improvement over existing conditions. The proposed sidewalk will provide improved pedestrian safety. The parking spaces will be more attractive, will increase the parking supply, and will not encroach upon the current roadway along Whitehaven Parkway.

The Proposed Enrollment and Faculty/Staff Increase

29. The Applicant requests an increase in its enrollment from 310 students to 330 students. The School currently enrolls 330 students. The School also requests an increase in its faculty and staff cap from 95 to 182. The School currently employs 182 faculty and staff.

30. The ANC recommended that the School maintain its present student cap of 310. It reasoned that this would not prove a hardship for the School as admissions season is just beginning for the 2006/07 school year and would create no need to cut current students. The

ANC argued that adding additional students will encourage the School to hire additional staff. The ANC failed to identify any specific objectionable impacts related to the additional 20 students.

31. The ANC recommended that the faculty and staff cap be increased to 150, based on the current number of on-site parking spaces available. The ANC stated that it had tried to identify a compromise that would meet the parking requirements of the Zoning Regulations and still enable the school to meet the special needs of its student population.

Noise Impacts

32. The additional faculty and staff reflect current employment at the School. They do not cause objectionable noise and have little effect on neighboring properties. The faculty and staff generally work inside the school buildings, and, as a result, cause no adverse noise impacts. Most of the School's immediate neighbors are institutional uses, and the School's buildings are well-buffered from nearby residential properties.

33. The minor increase in student enrollment also will have little effect on noise. The School proposes an increase of only 20 students.

Traffic and Adequate Parking

34. The School currently operates with a faculty and staff of 182 without significant adverse effects on traffic. The transportation consulting firm of Wells & Associates studied the traffic of the area in which the Property is located and has completed a Traffic Impact Analysis of the conditions of the School. The Traffic Study measured the effect of the existing enrollment of 330 and employment of 182 faculty and staff. The Traffic Study compared the effect to the approved enrollment of 310 and faculty and staff cap of 95.

35. The Traffic Study concluded that reducing the enrollment and number of faculty and staff

would decrease the average delays per vehicle at the intersection of MacArthur Boulevard and Whitehaven Parkway by only two seconds during the AM peak hour and would have virtually no effect during the PM peak hour. Although this intersection currently operates at a Level of Service "F" during the AM peak hour, this reduced level of service is attributable primarily to commuter traffic. The Traffic Study concludes that these small reduced delays would not change existing peak hour levels of service and that they are well within the range of delays currently experienced during weekday peak hours along MacArthur Boulevard and would not be perceptible to the average motorist.

36. The School has taken steps to mitigate traffic and parking impacts. The School has worked in conjunction with DDOT to create a Traffic Management Plan ("TMP") which was submitted into the record on February 21 with the Applicant's post-hearing submissions. In the TMP, the School proposes to provide 20 on-site, stacked parking spaces and to lease at least 15 off-street, off-site parking spaces.

37. The School also has taken steps to reduce parking demand. The School will provide information about public transportation to all new employees and will stress the advantages of using public transportation during faculty meetings. The School is now providing tax-deferred Metro fares to employees. The School recently purchased an additional shuttle bus that is offered at no charge to employees and Night School students. The shuttle bus operates between the School, the Tenley/AU Metro Station, the AU campus, and the Rosslyn Metro Station. The School also offers a guaranteed ride home to all of its employees who use public transportation. The School has reserved five parking spaces for carpools of three or more persons. The School will offer to reserve one space for a Zip Car/Flex Car. The School provides bicycle racks for students, faculty, and staff that may ride bicycles. High school

students are not permitted to drive to school unless they demonstrate a hardship and are approved by the School's administrators.

38. The School has also introduced traffic mitigation measures as part of the TMP. For example, the School has hired off-duty police officers to direct traffic during morning arrival and afternoon dismissal peak periods, and Lab School staff will continually monitor and direct the flow of traffic on campus. The School staggers evening events to prevent problems and has a night guard on duty.

39. The School's proposed TMP features monitoring and reporting requirements that will help maintain compliance.

40. The School has operated for many years without a Traffic Management Plan. With approval of this application, the School will be subject to the TMP, which will reduce any traffic and parking impacts on the community.

41. DDOT did not address the traffic and parking impacts of the proposed enrollment and faculty/staff increase in its report. The Office of Planning does not recommend approval of the enrollment increase. OP stated that the increase of 20 additional students is directly proportional to the increase of 91 additional faculty and staff due to the curriculum needs and requirements of the student population. OP stated that the School has current adverse effects on parking in the neighborhood due to the inadequate parking supply on the campus.

42. There is no evidence that the increase of 20 additional students is directly proportional to the increase of 91 additional faculty and staff. The Board credits the testimony of Sally Smith, the Founder and Director of The Lab School, that the increase in faculty and staff is the result of a increase in the severity of learning disabilities, improved knowledge about and teaching methods for learning disabled children, and requirements imposed by federal and state

governments.

43. As stated above, the Board finds the TMP will reduce the supply of parking spaces and will reduce the demand for parking. In addition, the proposed angled parking spaces will increase the parking supply and reduce parking impacts in the community.

Number of Students

44. The Applicant is requesting a minor increase in student enrollment of only 20 students. The Property is large and buffered from residential uses, and can easily accommodate an additional 20 students. These students will have little impact on noise, will not substantially affect traffic, and will not cause other objectionable conditions.

The Proposed use of the New Property for Administrative Offices

45. The School recently purchased the New Property, which is located at 4749 Whitehaven Parkway, directly across the street from the School. The School proposes to use the New Property for administrative offices. It is not proposing to use the New Property for classrooms. Approximately 15 existing employees will have offices at the New Property, and there will be two parking spaces.

46. OP and the ANC support the use of the New Property as administrative offices for the School.

47. The use of the New Property as an administrative building will have little effect on neighboring property. The New Property abuts other institutional uses such as the St. Patrick's Episcopal Day School gymnasium, The George Washington University's Mount Vernon Campus, and two single family homes owned by St. Patrick's. The New Property will not be used as classrooms for students, which will limit any noise emanating from the site. Most of the activity related to that use will take place indoors. The use of the New Property will have a

negligible effect on traffic. Only approximately 15 of the existing school employees will use the New Property on a regular basis.

CONCLUSIONS OF LAW AND OPINION

The Board of Zoning Adjustment is authorized under the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Code § 5-524(g)(2)), to grant special exceptions as provided in the Zoning Regulations. The Applicant applied under 11 DCMR § 3104.1 for a special exception pursuant to 11 DCMR § 206 to allow an increase in student enrollment to 330, an increase in faculty and staff to 182, and the use of 4749 Whitehaven Parkway for administrative offices. The Applicant applied for a special exception pursuant to 11 DCMR § 214 to allow accessory parking spaces for an existing private school. The notice requirements of 11 DCMR § 3113 for a public hearing on the application have been met.

The Applicant is a private school as that term is used in the Zoning Regulations. To meet its burden of proof under Subsection 3104.1, the Applicant must demonstrate that the proposed enrollment and faculty/staff increase would meet the special conditions listed in Section 206; that it would be in harmony with the general purpose and intent of the Zoning Regulations and Map; and that it would not be likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions. Under Section 206.3, ample parking space, but not less than that required in Chapter 21 of this title, shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.

The Board's discretion in reviewing an application for a special exception is limited to a determination of whether an applicant has complied with the requirements of §§ 206 and 3104.1

of the Zoning Regulations. If an applicant meets its burden, the Board ordinarily must grant the application. *See First Baptist Church of Washington v. D. C. Board of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981).

The Board has previously approved the use in BZA Orders 15642 and 16273, in which it determined the School had met its burden under § 206 for use of the Property as a private school. Based on the findings of fact, the Board concludes that the proposed enrollment and faculty/staff increase, as conditioned by the Board, can be located at the Property so that it is not likely to become objectionable to adjoining and nearby property. The Board has imposed conditions in this order in response to the Applicant's proposal and concerns raised by ANC 3D and the parties in opposition. Furthermore, the Board finds the proposed use of the New Property is not likely to become objectionable to adjoining and nearby property.

The School's Traffic Management Plan, together with the construction of the angled parking spaces, adequately addresses adverse impacts potentially arising for the private school use. The only impacts identified by opponents of the application relate to parking and traffic. The Traffic Management Plan, together with the regular reporting requirement, offers more mitigation of traffic and parking impacts than would occur if the School were to continue with its currently approved caps and no traffic management plan. The angled parking spaces will greatly increase the School's supply of parking and will be a benefit to the neighborhood. Indeed, the Board questions the ANC's opposition to the proposed angled spaces given the complete lack of complaint about almost identical spaces currently existing on the same street to the north.

The Board is required, under D.C. Code § 6-623.04, to give "great weight" to OP recommendations. The Board also is required, under D.C. Code § 1-309.10, to give "great weight" to the recommendations of the ANC for the area within which the Property is located.

Under Section 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135, 47 DCR 5519 (2000)), the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances, articulating specific findings and conclusions with respect to each of the ANC's issues and concerns.

The Board is concerned that the ANC voted on the application after a lengthy private discussion that was not recorded as required and that was not made public. The Board is also concerned that the ANC voted to approve an increase in faculty and staff to 150. The Applicant has requested an increase to 182, and the Applicant has the burden of proof to demonstrate that it is entitled to the relief requested. However, the Board does not have authority to revise the application without the input of the Applicant. For those reasons, the Board finds the ANC's resolution is not entitled to great weight. The Board gave the ANC the opportunity to opportunity to defend its report, but the ANC failed to make the requested filing.

Even so, the Board also finds that, even if afforded great weight, the ANC's arguments are not persuasive. St. Patrick's Episcopal Day School, which owns a large portion of the property fronting on Whitehaven Parkway, submitted a letter in support of the application. Although a representative of Our Lady of Victory Church and School testified in opposition to the application, he stated during the public hearing that his concerns had largely been addressed. In addition, Father Jordan submitted a letter for the record indicating that Our Lady of Victory Church and School has no opposition to the application. Due to the institutional nature of the street, approval of the application will have little effect on residential properties. The Applicant's traffic study has demonstrated that the reduced level of service at the intersection of Whitehaven Parkway and Reservoir Road is due to commuter traffic rather than The Lab School.

Finally, the Applicant has demonstrated that the angled parking spaces will not cause adverse traffic or safety issues. Indeed, they will go a long way towards reducing parking impacts in the area. The Applicant also has implemented a TMP, which will further mitigate any traffic or parking impacts.

In its report OP recommended that the use of the New Property be approved, but that the enrollment increase, faculty and staff increase, and angled parking spaces be denied. OP based its recommendation that the faculty/staff and enrollment increased be denied on DDOT's report. However, DDOT addressed only the angled parking spaces in its report and did not address the proposed enrollment and faculty/staff increase. The Applicant has demonstrated that the proposed angled parking spaces will be safe and attractive and will relieve parking demands on the neighborhood. Furthermore, the School has demonstrated that it would be practically impossible for it to provide additional parking on the Property. The combination of these two factors demonstrates that the proposed back-in angled parking spaces are an ideal solution. Finally, the TMP will mitigate any traffic and parking impacts.

For the reasons stated above, the Board concludes that the Applicant has met the burden, it is hereby ORDERED that the application be GRANTED, subject to the following CONDITIONS:

1. The angled parking spaces shall be constructed in accordance with the plans prepared by VIKA Engineers and marked in the record as Exhibit No. ____.
2. Staff of and visitors to The Lab School shall be permitted to park in the back-in, angled parking spaces on Whitehaven Parkway.
3. The maximum enrollment shall be 330 students.
4. The maximum number of faculty, staff, and administrative personnel shall be 182.

5. The Applicant shall fully implement and comply with the traffic management plan (Applicant's post-hearing submission, Exhibit No. ____).
6. By _____ each year, the Applicant shall provide to the Board and to ANC 3D:
(a) a report indicating current student enrollment and the number of faculty/staff;
and (b) a report indicating the Applicant's compliance with the traffic management plan.
7. The special exception pursuant to § 214 to locate accessory parking spaces elsewhere than on the same lot as the principal use shall be valid for a term of five (5) years. The special exceptions pursuant to § 206 shall have no term.

VOTE:

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

ATTESTED BY: _____

JERRILY R. KRESS, FAIA

Director, Office of Zoning

FINAL DATE OF ORDER: _____