



Pillsbury
Winthrop
Shaw
Pittman_{LLP}

2300 N Street NW
Washington, DC 20037-1128

Tel 202.663.8000
Fax 202.663.8007
www.pillsburylaw.com

April 25, 2006

Allison C. Prince
Phone: 202.663.8853
allison.prince@pillsburylaw.com

Via Hand Delivery

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

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

Dear Chairman Griffis and Members of the Board:

Attached please find two versions of the proposed findings of fact and conclusions of law of The Lab School of Washington, the applicant in the above-mentioned case. We have revised the proposed order submitted on February 21 to incorporate the evidence and testimony offered during the April 4 limited public hearing. This order is submitted to correspond with Plan A of the Applicant's TMP. We have also are submitting a second version of the proposed findings of fact and conclusions of law to correspond with Plan B of the Applicant's TMP.

We look forward to the Board's further consideration of this application on May 2.

Sincerely,


Allison C. Prince

Attachments

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17383

EXHIBIT NO. 80

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached were sent via hand delivery this 25th day of April, 2006 to:

Ms. Karen Thomas
Office of Planning
801 North Capitol Street, NE, 4th Floor
Washington, DC 20002

Mr. Kenneth Laden
Associate Director
District Department of Transportation
2000 14th Street, NW, 7th Floor
Washington, DC 20009

Mr. Jeff Jennings
District Department of Transportation
Transportation Policy and Planning
2000 14th St., NW; 7th Floor
Washington DC 20009

Ms. Ann Heuer
ANC 3D06
4705 Foxhall Crescent, N.W.
Washington, DC 20007

Ms. Alma Gates
4911 Ashby Street, N.W.
Washington, DC 20007

Rev. Milton E. Jordan
Our Lady of Victory Church
4835 MacArthur Blvd., N.W.
Washington, DC 20007

ANC 3D
P.O. Box 40846
Palisades Station, N.W.
Washington, DC 20016
(by first class mail only)


Ashleigh D. Horne

**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: May 2, 2006

DECISION AND ORDER

Following a public hearing, the Board voted _____ on May 2, 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 further 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 43 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 (_____).

The Board scheduled an additional limited public hearing on the application for April 4, 2006.

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. By letter dated February 20, 2006, Reverend Jordan withdrew his his opposition to the application, stating that the Applicant had addressed his concerns.

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. During the limited hearing on April 4, 2006, the Applicant provided additional testimony from Mr. Wells regarding the School's Transportation Management Program. The Applicant also provided testimony from Peter Braun, Director of Operations of The Lab School.

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.

OP submitted a supplemental report on February 21, 2006. In its supplemental report, OP recommended special exception approval until the end of the 2008 academic year to gradually reduce student enrollment to 310 by attrition. OP recommended special exception approval for a temporary faculty increase from 94 to 182 until 2009, but recommended that the Applicant submit a modification request to the Board in 2009 to reflect the number of faculty and staff necessary to complement the reduced enrollment of 310 students. OP also recommended full implementation of a traffic management plan with a quarterly reporting requirement and approval of the night school within its stated hours of operation from 5:30 to 9:30 p.m.

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.

DDOT submitted an additional report on March 6, 2006, in which the agency reiterated its concern with the proposed angled parking spaces on Whitehaven Parkway and asked that the School make stronger efforts to manage traffic through public transportation, van shuttle services, and carpools. Ken Laden, a representative of DDOT, also testified during the limited hearing on April 4, 2006. He stated that the School had made progress in transportation management, but that the School should meet its parking demand on site instead of using public space. He admitted that the demand for parking in that area is largely limited to employees and visitors to the Lab School and Our Lady of Victory School, that the sidewalk and other improvements would be a benefit to the city, and that the School would pay public space rent to the city for use of the spaces. He also expressed concern that increasing the parking supply would reduce employees' zeal for using mass transit. However, he disagreed with the policy of allowing a private use to meet its parking requirement in public space, even on a temporary basis.

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 cause dangerous conditions on Whitehaven Parkway, 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.

ANC 3D again addressed the application during its March 16, 2006 public meeting, during which the ANC evaluated the March 6 DDOT report and the Lab School's Transportation Management Plan ("TMP"). ANC 3D voted 5-0-0 to endorse the TMP and recommended the formation of a timely implementation schedule and a meaningful enforcement and reporting mechanism. The ANC reaffirmed its recommendation that the use of public space for angled parking be denied. The ANC also provided testimony during the hearing, which reaffirmed its November 8 and March 17 submissions.

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. He later submitted a letter dated February 20, 2006, withdrawing his objection to the application and his participation as a party.

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. Officer McElwee also submitted additional letters into the record.

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 November 22, 2005 hearing for information the Board requested from the Applicant. Following the April 4, 2006 hearing, the record was closed. The Applicant filed proposed findings of fact and conclusions of law.

Decision Meeting. On May 2, 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. According to the Traffic Impact Analysis performed by the transportation consulting firm of Wells & Associates, the School's current parking demand is for 175 parking spaces.

13. 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.

14. 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.

15. 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.

16. 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.

17. During the limited public hearing of April 4, the Applicant also proposed an alternative arrangement involving the leasing of parking spaces off-site. The Applicant suggested increasing the parking supply by leasing 30 additional spaces off-site and by providing 20 stacked spaces on site.

18. 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.

19. The Board finds the proposed angled parking spaces will be an improvement over existing conditions. The project will provide a sidewalk for the community at no cost to the District, will improve the area aesthetically, and will effectively widen a narrow street that is currently cluttered with legal, but haphazard, parallel parking. Although the School presented the alternative option of leasing off-site parking spaces, the Board finds this solution is less than ideal because it will not provide the same benefits as the proposed angled parking spaces and it will reduce the number of parking spaces available in the neighborhood at large.

20. 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.

21. 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. Moreover, these improvements will be permanent and will be entirely financed by the School.

22. The installation of the proposed back-in, angled parking spaces will remove approximately 17 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.

23. The Office of Planning does not recommend approval of the proposed parking spaces because DDOT does not support it. In its supplemental report, OP instead recommended variance relief in conjunction with traffic mitigation measures. In its report and during testimony at the April 4 hearing, 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.

24. 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, over and above the 20 stacked spaces that can be accommodated. 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.

25. 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.

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

27. 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 ANC also was concerned about the ability of fire trucks to traverse Whitehaven Parkway. 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. The angled parking spaces will effectively widen Whitehaven Parkway, facilitating the ability of fire trucks to traverse Whitehaven Parkway. 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.

28. 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.

29. 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.

30. 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.

31. 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

32. 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.

33. 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.

34. 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

35. 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.

36. The minor increase in student enrollment also will have little effect on noise. The School

proposes an increase of only 20 students, which reflects current enrollment. There has been no testimony in opposition to the application because of noise impacts.

Traffic and Adequate Parking

37. The School currently operates with a faculty and staff of 182 without significant adverse effects on traffic. The primary adverse effect is on parking. 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.

38. 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.

39. 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 and presented during the April 4 limited public hearing. In the TMP, the School proposes to provide 20 on-

site stacked parking spaces, 43 angled spaces on Whitehaven Parkway, and to lease at least 15 off-street, off-site parking spaces. This will result in a net increase of 61 spaces.

40. The School also has taken steps to reduce parking demand. During the April 4 limited hearing, Mr. Wells demonstrated that the School intends to reduce demand to 130, spaces through the use of carpooling and a free shuttle service. 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.

41. 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.

42. The School's proposed TMP features monitoring and reporting requirements that will help maintain compliance. The School has agreed to conduct a traffic study within 30 days of the

beginning of each of the fall and spring semesters. The traffic study would measure the effectiveness of the shuttle bus, the number of registered carpools and carpool passengers, the number of walkers and bikers, the number of authorized student drivers, peak period vehicle-trip generation, parking occupancy counts, use of off-site leased parking spaces, peak parking demands, and the number of on and off-site parking spaces provided. The School has agreed to report the results of the traffic study to DDOT and the ANC within 45 days of each monitoring survey. If the School does not demonstrate a balance between supply and demand within 30 days after the beginning of the fall 2007, the School will be required to lease additional off-site spaces to meet the excess demand.

43. 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.

44. 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.

45. 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.

46. As stated above, the Board finds the TMP 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

47. 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

48. 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.

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

50. 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 finds that the ANC's arguments are not persuasive. The need for additional parking is created primarily by employees of the School and not by students. Approval of this application will include a Traffic Management Plant that will dramatically increase the number of parking spaces available for faculty and staff and will decrease demand for those spaces through encouragement of mass transit and carpooling. 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. The angled parking spaces will effectively widen the street, improving the ability of fire trucks to traverse Whitehaven Parkway. 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. 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. The Board notes that the ANC voted to support the TMP, which was designed to address the traffic and parking impacts related to the current enrollment, which includes the proposed 20 student enrollment increase.

In its report OP recommended that the use of the New Property be approved. However, it recommended that the student enrollment be initially increased to 330 but that the increased be reduced to 310 by attrition. OP also recommended that the faculty and staff be temporarily increased to 182 but asked that the cap be re-evaluated to reflect the School's needs to complement an enrollment of 310 students. OP recommended a variance from the parking requirements to provide up to 112 spaces (including 15 off-site, leased spaces and 20 on-site stacked spaces) and that the 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. The ANC, DDOT, and OP have failed to indicate any concrete adverse impacts that would result from the angled parking spaces. This lack of evidence is especially noticeable given the existence of an almost identical condition on Whitehaven Parkway near St. Patrick's Episcopal Day School. 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. The use of the main school campus,

located at 4759 Reservoir Road, N.W. (Square 1372, Lot 25) shall be 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. The construction and use of the angled parking spaces shall be approved by public space.
3. Staff of and visitors to The Lab School shall be permitted to park in the back-in, angled parking spaces on Whitehaven Parkway.
4. The maximum enrollment shall be 330 students.
5. The maximum number of faculty, staff, and administrative personnel shall be 182.
6. The Applicant shall fully implement and comply with Plan A of the Traffic Management Plan (Exhibit No. ____).
7. Within 45 days of each traffic monitoring survey required by the traffic management plan, the Applicant shall provide to DDOT and ANC 3D a report indicating the Applicant's compliance with the traffic management plan.
8. Within 30 days of the beginning of each academic year, the Applicant shall provide to ANC 3D a report indicating current student enrollment and the number of faculty/staff.
9. 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.

The use of the administrative building located at 4749 Whitehaven Parkway, N.W. (Square 1374, Lot 840) shall be subject to the following **CONDITIONS:**

10. The maximum number of faculty, staff, and administrative personnel who may have offices at the administrative building shall be 15, and these personnel shall be counted toward the overall faculty, staff, and administrative personnel cap set forth in Condition 5 above.
11. The administrative building shall not be used for classroom purposes.

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: _____

**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: May 2, 2006

DECISION AND ORDER

Following a public hearing, the Board voted _____ on May 2, 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 further 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 originally proposed to locate 50 back-in, angled parking spaces in the public space along Whitehaven Parkway. The Applicant has since reduced the number of proposed spaces to 43. 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 (_____).

The Board scheduled an additional limited public hearing on the application for April 4, 2006.

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. By letter dated February 20, 2006, Reverend Jordan withdrew his opposition to the application, stating that the Applicant had addressed his concerns.

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. During the limited hearing on April 4, 2006, the Applicant provided additional testimony from Mr. Wells regarding the School's Transportation Management Program. The Applicant also provided testimony from Peter Braun, Director of Operations of The Lab School.

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.

OP submitted a supplemental report on February 21, 2006. In its supplemental report, OP recommended special exception approval until the end of the 2008 academic year to gradually reduce student enrollment to 310 by attrition. OP recommended special exception approval for a temporary faculty increase from 94 to 182 until 2009, but recommended that the Applicant submit a modification request to the Board in 2009 to reflect the number of faculty and staff necessary to complement the reduced enrollment of 310 students. OP also recommended full implementation of a traffic management plan with a quarterly reporting requirement and approval of the night school within its stated hours of operation from 5:30 to 9:30 p.m. In its supplemental report, OP also recommended variance relief to allow off-site leased spaces and the 20 stacked spaces available on the Property to count toward the Applicant's parking requirement.

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.

DDOT submitted an additional report on March 6, 2006, in which the agency reiterated its concern with the proposed angled parking spaces on Whitehaven Parkway and asked that the School make stronger efforts to manage traffic through public transportation, van shuttle services, and carpools. Ken Laden, a representative of DDOT, also testified during the limited hearing on April 4, 2006. He stated that the School had made progress in transportation management, but that the School should meet its parking demand on site instead of using public space. He acknowledged that the demand for parking in that area is largely limited to employees and visitors to the Lab School and Our Lady of Victory School, that the sidewalk and other improvements would be a benefit to the city, and that the School would pay public space rent to the city for use of the spaces. However, he expressed concern that increasing the parking supply would reduce employees' zeal for using mass transit, and he disagreed with the policy of allowing a private use to meet its parking requirement in public space, even on a temporary basis.

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 cause dangerous conditions on Whitehaven, 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.

ANC 3D again addressed the application during its March 16, 2006 public meeting, during which the ANC evaluated the March 6 DDOT report and the Lab School's Transportation Management Plan ("TMP"). ANC 3D voted 5-0-0 to endorse the TMP and recommended the formation of a timely implementation schedule and a meaningful enforcement and reporting mechanism. The ANC reaffirmed its recommendation that the use of public space for angled parking be denied. The ANC also provided testimony during the hearing, which reaffirmed its November 8 and March 17 submissions.

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. He later submitted a letter dated February 20, 2006, withdrawing

his objection to the application and his participation as a party.

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. Officer McElwee also submitted additional letters into the record.

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 November 22, 2005 hearing for information the Board requested from the Applicant. Following the April 4, 2006 hearing, the record was closed. The Applicant filed proposed findings of fact and conclusions of law.

Decision Meeting. On May 2, 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. According to the Traffic Impact Analysis performed by the transportation consulting firm of Wells & Associates, the School's current parking demand is for 175 parking spaces.

13. 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.

14. 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.

15. 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.

16. 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.

17. During the limited public hearing of April 4, the Applicant also proposed an alternative arrangement involving the leasing of parking spaces off-site. The Applicant suggested increasing the parking supply by leasing 30 additional spaces off-site and by providing 20 stacked spaces on site. Under this scenario, the TMP can effectively reduce traffic and parking impacts without the angled spaces.

18. The Board finds that construction of the proposed angled parking spaces is unnecessary given the Applicant's alternative plan to lease off-site parking spaces. The Board agrees with DDOT, OP, and the ANC that the use of public space to meet the School's parking requirement is not necessary. As the Applicant's traffic expert testified, the additional parking spaces will concentrate traffic on Whitehaven Parkway, which is currently congested. The solution of leasing off-site spaces will disperse the traffic throughout the neighborhood, thereby avoiding the concentration of traffic on Whitehaven. The installation of the proposed back-in, angled parking spaces would remove approximately 17 public parking spaces that were available to individuals with a Ward 3 parking sticker. Requiring the School to lease off-site parking spaces instead will allow these public parking spaces to remain available for general use by the community, including visitors to Our Lady of Victory church and school.

19. The Office of Planning does not recommend approval of the proposed parking spaces because DDOT does not support it. In its supplemental report, OP instead recommended variance relief in conjunction with traffic mitigation measures. In its report and during testimony at the April 4 hearing, 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.

20. 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 ANC also was concerned about the ability of fire trucks to traverse Whitehaven Parkway. The Board agrees that the angled parking spaces could cause objectionable impacts.

21. 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.

22. The alternative plan requires that the Lab School count 20 on-site, stacked spaces toward its parking requirement of 130 spaces. Because these spaces will not meet all of the requirements of Chapter 21 of the Zoning Regulations, approval of the alternative plan requires a variance from the requirements of Chapter 21 with regard to size, location, and access, maintenance and operation.

23. The Board finds the Applicant has demonstrated that it is entitled to an area variance. The Property is unique because of its topography, unique geological conditions, the historic structures on the site, and the location of a protected wetlands on the site. These conditions create a practical difficulty in that there is no room for additional surface parking, and underground parking is not feasible. Although 20 of the spaces provided on the Property will not technically meet the requirements of Chapter 21, under the alternative plan, the Applicant will be required to provide seven spaces in addition to the 130 required spaces. Accordingly, relief can be granted without substantial detriment to the public good and without substantially

impairing the intent, purpose, and integrity of the zone plan. . Moreover, OP expressed its support for a variance from the off-street parking requirements.

The Proposed Enrollment and Faculty/Staff Increase

24. 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.

25. 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.

26. 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

27. 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.

28. The minor increase in student enrollment also will have little effect on noise. The School

proposes an increase of only 20 students, which reflects current enrollment. There has been no testimony in opposition to the application because of noise impacts.

Traffic and Adequate Parking

29. 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.

30. 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.

31. 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 and presented during the April 4 limited public hearing. In the TMP, the School proposes to provide 20 on-site stacked parking spaces and to lease at least 30 off-street, off-site parking spaces. This will

result in a net increase of 50 spaces.

32. The School also has taken steps to reduce parking demand. During the April 4 limited hearing, Mr. Wells demonstrated that the School intends to reduce demand to 130, spaces through the use of carpooling and a free shuttle service. 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.

33. 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.

34. The School's proposed TMP features monitoring and reporting requirements that will help maintain compliance. The School has agreed to conduct a traffic study within 30 days of the beginning of each of the fall and spring semesters. The traffic study would measure the

effectiveness of the shuttle bus, the number of registered carpools and carpool passengers, the number of walkers and bikers, the number of authorized student drivers, peak period vehicle-trip generation, parking occupancy counts, use of off-site leased parking spaces, peak parking demands, and the number of on and off-site parking spaces provided. The School has agreed to report the results of the traffic study to DDOT and the ANC within 45 days of each monitoring survey. If the School does not demonstrate a balance between supply and demand within 30 days after the beginning of the fall 2007, the School will be required to lease additional off-site spaces to meet the excess demand.

35. 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.

36. 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.

37. 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.

38. As stated above, the Board finds the TMP will reduce the demand for parking. In addition, the proposed off-site leased parking spaces will increase the parking supply and reduce parking impacts in the community.

Number of Students

39. 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

40. 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. The requested enrollment reflects current conditions, and their impacts are readily measurable by evaluating the School's current operations.

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

42. 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 to be located elsewhere than on the same lot. 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 additional off-site leased 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 off-site, leased parking spaces will greatly increase the School's supply of parking.

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 finds that the ANC's arguments are not persuasive with regard to the enrollment increase. The need for additional parking is created primarily by employees of the School and not by students. The Board also notes that the ANC supported the TMP proposed by the School, and that the TMP was designed to address the impacts of the current enrollment, which includes the proposed enrollment increase. 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. The leased parking spaces will disperse traffic throughout the neighborhood. Due to the institutional nature of the street, approval of the application will have little effect on residential properties. 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. However, it recommended that the student enrollment be initially increased to 330 but that the increase be reduced to 310 by attrition. OP also recommended that the faculty and staff be temporarily increased to 182 but asked that the cap be re-evaluated to reflect the School's needs to complement an enrollment of 310 students. OP recommended a variance from the parking requirements to provide up to 112 spaces (including 15 off-site, leased spaces and 20 on-site stacked spaces) and that the angled parking spaces be denied. OP based its recommendation that the faculty/staff and enrollment increase 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 it can provide additional parking in off-site, leased spaces and in on-site, stacked spaces. The School also has implemented a Traffic Management Plan that will reduce demand, as well as implementing monitoring and reporting requirements. These measures 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.

For the reasons stated above, the Board concludes that the Applicant has met the burden, it is hereby ORDERED that the application be GRANTED. The use of the main school campus, located at 4759 Reservoir Road, N.W. (Square 1372, Lot 25) shall be subject to the following CONDITIONS:

1. The maximum enrollment shall be 330 students.
2. The maximum number of faculty, staff, and administrative personnel shall be 182.
3. The Applicant shall fully implement and comply with Plan B of the traffic management plan (Exhibit No. ____).
4. Within 45 days of each traffic monitoring survey required by the Traffic Management Plan, the Applicant shall provide to DDOT and ANC 3D a report indicating the Applicant's compliance with the traffic management plan.
5. Within 30 days of the beginning of each academic year, the Applicant shall provide to ANC 3D a report indicating current student enrollment and the number of faculty/staff.
6. 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 and the variance from the off-street parking requirements of Chapter 21 shall have no term.

The use of the administrative building located at 4749 Whitehaven Parkway, N.W. (Square 1374, Lot 840) shall be subject to the following CONDITIONS:

7. The maximum number of faculty, staff, and administrative personnel who may have offices at the administrative building shall be 15, and these personnel shall be counted toward the overall faculty, staff, and administrative personnel cap set forth in Condition 2 above.
8. The administrative building shall not be used for classroom purposes.

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: _____