

August 21, 2007

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By Hand Delivery

Ruthanne Miller, Chairman
District of Columbia Board of Zoning
Adjustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

**Re: Lab School of Washington's Motion for the Modification of Condition
No. 6 in BZA Order No. 17383-A and Waiver of Six Month
Requirement for Filing Under 11 DCMR §3129**

Dear Chairman Miller and Members of the Board:

Enclosed please find an original and twenty copies of a Motion for the Modification of Condition No. 6 of BZA Order No. 17383-A and the waiver of the six month requirement to file such a motion, both under 11 DCMR 3129. This motion is filed on behalf of the Lab School of Washington. This modification will allow for a nine month extension to allow for angled parking spaces to be put in place.

Since the appropriate permitting process is underway and time is of great importance, we would like to stress the urgency of this request and ask that the BZA consider the modification at its September 4, 2007 meeting. Thank you for your attention to this motion.

Best Regards,

Allison C. Prince
Allison C. Prince

Kate Myers

Enclosure

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BOARD OF ZONING ADJUSTMENT
District of Columbia
Board of Zoning Adjustment
District of Columbia
CASE NO. 17383-A CASE NO. 17383
EXHIBIT NO. 89
EXHIBIT NO. 89

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2007 a copy of the Motion for Modification of Condition No. 6 in Order No. 17383-A and Waiver of the Six Month Requirement to File the Motion, both pursuant to 11 DCMR §3129, was served by hand on the following:

Rachel W. Thompson
Chairperson
Advisory Neighborhood Commission 3D
5835 Sherier Place, NW
Washington, DC 20016

Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation
Administration
941 North Capitol Street, NE, Suite 2000
Washington, DC 20002

Ms. Alma Gates
4911 Ashby Street, N.W.
Washington, DC 20016

Harriet Tregoning, Director
Office of Planning
801 North Capitol Street, NE, 4th Floor
Washington, DC 20002

Reverend Milton E. Jordan
Our Lady of Victory Church
4835 MacArthur Boulevard, NW
Washington, DC 20007

Alan Bergstein
Office of the Attorney General
441 4th Street, NW, 7th Floor
Washington, DC 20001

Councilmember Mary M. Cheh
Ward Three
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Washington, DC 20004

Jill Stern
General Counsel
941 North Capitol Street, NE, Suite 9400
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Kate Myers

PILLSBURY WINTHROP SHAW PITTMAN LLP

2300 N STREET, NW
WASHINGTON, DC 20037

2407

8/21 2007

15-122/540

PAY TO THE
ORDER OF

PC Treasures

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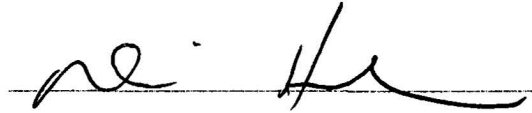
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FOR BZA MODIF,



MP

PILLSBURY WINTHROP SHAW PITTMAN LLP

2300 N STREET, NW
WASHINGTON, DC 20037

2407

8/21 2007

15-122/540

PAY TO THE
ORDER OF

PC Measures

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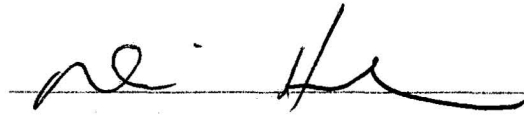
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DOLLARS

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FOR BZA Modification #17383A



MP

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

Application of The Lab School of Washington

BZA Application No. 17383-A

**MOTION FOR MODIFICATION OF CONDITION NO. 6
IN BZA ORDER NO. 17383-A
AND WAIVER OF SIX MONTH REQUIREMENT
FOR FILING UNDER 11 DCMR §3129**

The Lab School of Washington (the “**Lab School**” or “**Applicant**”) hereby requests that the Board of Zoning Adjustment (“**BZA**” or “**Board**”) grant a motion for modification (“**Motion**”) of a Condition in accordance with 11 DCMR §3129. The modification is required because the Lab School needs additional time to satisfy Condition No. 6 in BZA Order No. 17383-A (the “**Order**”), which mandates that certain approved parking spaces be in place by a specific date. This request for modification is a minor one, dealing only with the increase in time to install the parking spaces and does not involve any other change to Condition No. 6.¹ Pursuant to 11 DCMR §3129.7, the modification will not change the material facts the Board relied upon while approving the application.

In order for the Board to address this motion for modification, it is also necessary for the Board to grant a waiver of 11 DCMR §3129.3, which requires the filing of request for modification within six months after the final date of the order. The Order became final on February 2, 2007, and therefore six months from that date was August 2, 2007. The Lab School delayed in filing this requirement until it was certain that the deadline for the installation of the

¹ Condition No. 6, in its entirety, requires, “Forty-three (43) new angled parking spaces must be in place along Whitehaven Parkway within 9 months of the effective date of this order for the School to be in compliance with Section 206.3's requirement of ample parking. These spaces must be consistent with the plans prepared by VIK A Engineers (Exhibit 56), and with the provisions of Chapter 23 of the Zoning Regulations. There will be no structures or lighting relating to the parking spaces and the area will be paved in accordance with DDOT requirements.”

spaces could not be satisfied. The Applicant is filing now that it has determined that the deadline cannot be met. The instant motion is being filed almost seven months from the final date, and therefore one month later than required under Section 3129.3.

By way of background, the original Order No. 17383, approved by the Board on December 12, 2006, granted special exceptions to increase the student enrollment from 310 to 330 and faculty cap from 95 to 182, to use of nearby property for administrative offices and to locate accessory parking spaces elsewhere than on the lot served. In order to clarify some of the prior conditions, this order was later modified pursuant to the Lab School's Motion for Reconsideration of Order No. 17383-A.² The Lab School now requests an extension of time to install the approved parking spaces required under Condition No. 6.

Condition No. 6 of the Order states, in part, that the angled parking spaces must be in place within nine months of the effective date of the Order, resulting in a deadline of November 12, 2007. The Lab School plans to construct 43 angled parking spaces and the associated public space improvements at its own expense. Although the spaces will be available for use by the Lab School, they will not be reserved for exclusive use of the school. The spaces will be located in the public right-of-way along Whitehaven Parkway, N.W., abutting property currently owned by the Lab School and PEPCO. The project will feature wheel stops, two spaces will be handicap accessible, a new six-foot wide sidewalk, and a five-foot wide planting strip with attractive landscaping and street trees. There will also be a new curb and stormwater drainage system.

² This Order became effective on February 12, 2007. The Order clarifies that at the end of the five-year term, the School must return to the Board for approval of a permanent solution to its parking needs and that if it does not, the increase in students and faculty granted in the Order will lapse and the earlier limits set forth in Order No. 16273 dated February 24, 1998 (310 students and 95 faculty and staff) will become effective once again. In Addition, Condition No. 6 was modified to show the correct exhibit number governing the angled parking spaces.

Although the permitting process is well underway, this type of project is not common in D.C. Thus, the school has experienced delay in the permitting process and will be unable to complete the parking spaces in the allotted timeframe. The unforeseen difficulty in obtaining the necessary permits has prompted the Lab School to request a nine month extension of time in order to obtain these permits. This will establish a new deadline of August 12, 2008 for completion of the angled parking spaces.

The Lab School originally filed the public space permit application in January of 2007 and received cooperation and assistance from the staff at the Public Space Administration, both prior to that submission as well as throughout the process, including multiple meetings and discussions with Denise Wiktor, Juan Amaya, and Luevette Williams. After several months of meetings with regard to the process and plans, Permit No. PA 27167 (the “**Permit**”) was issued. The Permit, effective May 27, 2007 and expiring on November 27, 2007, allows for the paving and construction of 43 angled parking spaces and construction of sidewalk curb and gutter per DC standards and specifications. This permit was later modified on August 15, 2007 to include the required retaining wall and guard rail. However, several other permits are required before paving and construction can begin. The Lab School has continued its efforts to secure permits required for tree removal, D.C. Water and Sewer Authority’s underground utilities, and for the relocation of two electrical poles. Once the above permits are secured, the Lab School will have to wait until April 1, 2008 to begin paving. Asphalt cannot be installed when the sub-base is frozen, therefore asphalt plants close in the colder months. In addition, D.C. Department of

Transportation has a moratorium that prohibits paving in the District from the beginning of December through the end of March of each year.³

Pursuant to 11 DCMR §3129.7, the Board may only approve this modification if it is minor and does not change the material facts the Board relied upon in approving the application. The modification that the Lab School is seeking is only an extension of time to allow for the necessary permits to be secured, until August 12, 2008. The modification does not request any other change to Condition No. 6. Granting the extension will not change the material facts that the Board relied upon in approving the application. The extension of time for the construction of the parking spaces will not alter or affect this conclusion in any way. In addition, the Lab School will continue to comply with all of the other conditions in the Order. Exhibit A shows the current status of compliance with conditions established in the Order. The Applicant remains fully obligated to comply with all requirements of the Traffic Management Plan (“TMP”). The delay in the provision of the parking spaces may require the Applicant to use other means to meet the requirements of the TMP such as enhanced shuttle service and an increased number of off-site parking spaces.

Despite substantial good faith efforts, the Lab School is unable to meet the deadline imposed by Condition No. 6. The school will continue to work diligently to meet with city officials in an effort to secure the required permits. The Lab School believes it will be able to complete the parking spaces by an extended deadline of August 12, 2008.

³ DDOT’s Chief Engineer has the authority to issue a waiver to the contractor to allow for paving during this moratorium time period. These waivers are considered on a case by case basis, depending on mild winter temperatures.

The Lab School maintains that it meets the requirements of all provision of 11 DCMR §3129. We appreciate the Board's consideration of this matter. We believe that it is the interest of all parties to allow for the requested extension of time.

Respectfully submitted,



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EXHIBIT A

COMPLIANCE WITH CONDITIONS ESTABLISHED BY BZA ORDER NO. 17383-A

Condition	Status
1. The maximum enrollment shall be 330 students.	See Status of Condition 3.
2. The maximum number of faculty, staff, and administrative personnel, including part-time employees, shall be 182.	See Status of Condition 3.
3. Within 30 days of the beginning of each academic year, the School shall provide to ANC 3D a report indicating current student enrollment and the number of faculty/staff.	The academic year begins on August 28, 2007. The Lab School, within 30 days of this date, will provide the required information.
4. The School shall fully implement and comply with Plan A of the Traffic Management Plan (TMP) (Exhibit 66).	The TMP requires the Lab School to monitor, within 30 days of the beginning of the fall and spring semesters, the performance of the TMP.
5. Within 45 days of each traffic monitoring survey required by the TMP, the School shall provide to DDOT and ANC 3D a report indicating its compliance with the TMP. Compliance with the TMP will be measured by the School's progress in reducing its AM traffic generation rate from 196 to 165, as described in its Traffic Study (Exhibit 25, Tab H) and its letter of May 5, 2006 (Exhibit 82) and by its balancing of its parking supply with its parking demand.	Report, dated February 26, 2007 was sent to DDOT and ANC 3D within 45 days of the January 11, 2007 traffic monitoring survey. This survey was conducted in order to get baseline information.
6. Forty-three (43) new angled parking spaces must be in place along Whitehaven Parkway within 9 months of the effective date of this order for the School to be in compliance with Section 206.3's requirement of ample parking. These spaces must be consistent with the plans prepared by VIK A Engineers (Exhibit 56), and with the provisions of Chapter 23 of the Zoning Regulations. There will be no structures or lighting relating to the parking spaces and the area will be paved in accordance with DDOT requirements.	The only modification requested is for an extension of the amount of time to install the parking spaces along Whitehaven Parkway. The request for an additional nine months will allow for a new deadline of August 12, 2008. Everything else in this condition will remain the same.
7. The approval of the increase in enrollment and faculty and staff limits is limited to a FIVE YEAR TERM from the effective date of this Decision and Order. In the event that this approval lapses, the enrollment and faculty and staff limits will revert to those imposed in BZA Order No. 16273, specifically 310 students and 95 faculty and staff.	The five year term ends on December 12, 2012.