

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17383-B of the Lab School of Washington, pursuant to 11 DCMR § 3129, for the minor modification of the Board of Zoning Adjustment's Condition No. 6 of Order No. 17383-A to allow for a two year extension to install the approved forty-three (43) angled parking spaces along Whitehaven Parkway, N.W. at an existing private school located at premises 4759 Reservoir Road, N.W. (Square 1372, Lot 25).

MEETING DATE: September 25, 2007

DECISION DATE: September 25, 2007

SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION

On August 21, 2007, the Lab School of Washington ("**Applicant**" or "**Lab School**") filed a Motion for Modification of Condition No. 6 in Order No. 17383-A and a waiver of the six (6) month requirement for filing under § 3129. The minor modification requested a nine (9) month extension of time to install the approved parking spaces required under Condition No. 6. This Condition states, in part, that the angled parking spaces must be in place within nine months of the effective date of Order No. 17383-A ("**Order**"), resulting in a deadline of November 12, 2007.

In order for the Board of Zoning Adjustment ("**Board**") to address this motion for modification, the Board granted a waiver of 11 DCMR § 3129.3, which requires the filing of request for modification within six months after the final date of an order. The Order became final on February 2, 2007, and therefore six months from that date was August 2, 2007. The Motion for Modification was filed one month later than required under Section 3129.3. The Board, in its discretion, granted a waiver of this filing requirement after determining that the Applicant refrained from filing until it was certain that the deadline for the installation of the spaces could not be met.

In its minor modification request, the Lab School noted that it was experiencing a delay in the permitting process and would be unable to complete the parking spaces in the allotted timeframe, by November 12, 2007. The unforeseen difficulty in obtaining the necessary permits prompted the Lab School to request this nine month extension of time in order to obtain these permits, making the new deadline August 12, 2008 for completion of the angled parking spaces.

Pursuant to 11 DCMR § 3129.7, the Board may only approve the modification if it is minor and does not change the material facts the Board relied upon in approving the application. The modification only seeks an extension of time for Condition No. 6 and nothing else. Granting the

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extension will not change the material facts that the Board relied upon in approving the application.

The Board is required under D.C. Official Code § 1-309.10(d)(3) to give great weight to the affected ANC's recommendation. On September 11, 2007, the Board received a resolution from ANC 3D that noted the ANC's full support (a vote of 6-0-0) for the minor modification request and the waiver of the six-month requirement for filing under 11 DCMR § 3129.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3 that findings of fact and conclusions of law accompany the Order of the Board. The waiver will not prejudice the rights of any party and is appropriate in this case.

For the reasons stated above, the Board concludes that the Applicant has met the requisite burden, and it is hereby **ORDERED** that the minor modification request be **GRANTED** subject to the revision of Condition No. 6 in Order No. 17383-A so that it now reads as follows:

6. Forty-three (43) new angled parking spaces must be in place along Whitehaven Parkway by August 12, 2008 for the School to be in compliance with § 206.3's requirement of ample parking. These spaces must be consistent with the plans prepared by VIKA 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.

VOTE: **3-0-2** (Ruthanne G. Miller, Curtis L. Etherly, Jr. to approve, Carol J. Mitten to approve by absentee ballot. The third Board member and the NCPC member not participating, not voting).

VOTE TAKEN ON SEPTEMBER 25, 2007

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

Each concurring member approved the issuance of this Order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: OCT 03 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."