

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

MARCH 12, 2013

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The Public Meeting convened in the
Jerrily R. Kress Memorial Hearing Room, Room
220 South, 441 4th Street, N.W., Washington,
D.C., 20001, pursuant to notice at 9:41 a.m.,
Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
NICOLE SORG, Vice-Chairperson
S. KATHRYN ALLEN, Board Member
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Zoning Commission Chair

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON

The transcript constitutes the
minutes from the Public Hearing held on March
12, 2013.

T-A-B-L-E O-F C-O-N-T-E-N-T-S

WELCOME:

Lloyd Jordan.4

PRELIMINARY MATTER:

Motion to Continue Appeal of Application Nos.
14539 and 18540 to April 30, 20135
VOTE TO GRANT MOTION (4-0-0).9

EXCEL ACADEMY, D.C. PUBLIC CHARTER SCHOOL:

APPLICATION NO. 18472:

Motion for Reconsideration of Condition
No. 1 in Order Nno. 184729

P-R-O-C-E-E-D-I-N-G-S

9:41 a.m.

BZA CHAIR JORDAN: Good morning.

Welcome to the Board of Zoning Adjustment's meeting/hearing this morning. We're located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W. Today's date is March 12th. My name is Lloyd Jordan, Chairperson of the Board. To my left is Nicole Sorg, Vice-Chairperson. To her left is Anthony, Chairman of the Zoning Commission. To my right is S. Kathryn Allen, Board Member. And to her right is Jeffrey Hinkle, Board Member.

Please be advised that this proceeding is being recorded by a court reporter and also being Web cast live. Therefore, we're going to ask you to refrain from any disruptive noises or actions here in the hearing room.

The Board's hearing procedures and process is contained in a document that's by the door to my left. Please feel free to get

1 that and familiarize yourself with our
2 operations.

3 Anyone planning to give testimony
4 on any of the matters on our docket, would you
5 please rise and take the oath or affirmation
6 being given by the Board Secretary?

7 MR. MOY: Good morning.

8 (Whereupon, the witnesses were
9 sworn.)

10 MR. MOY: Ladies and gentlemen,
11 you may consider yourselves under oath.

12 BZA CHAIR JORDAN: And for those
13 who will give testimony, I need you to
14 complete two witness cards per person. And
15 prior to your testimony would you give those
16 two cards to the court reporter sitting to my
17 right? So that's two cards per person,
18 please.

19 Mr. Moy, would you call our first
20 case, please?

21 MR. MOY: Yes, sir. Good morning,
22 Mr. Chairman, Members of the Board. I do have

1 an addition to the docket. In your case
2 folders there was a -- well, this is attendant
3 to Appeal Nos. 18539 and 18540. Last Friday,
4 March 8th there was a filing from the
5 appellant which is their motion to continue
6 the hearing of the two appeals to April 30th
7 instead of the March 26th, 2013 hearing date
8 which was established by the Board at last
9 Tuesday's hearing.

10 Subsequent to the appellant's
11 filing, there was a response from the
12 intervener, the property owner in opposition
13 to the motion to continue in these two
14 appeals, so I'm adding this to the docket as
15 a preliminary matter for the Board's
16 consideration.

17 BZA CHAIR JORDAN: Okay. So this
18 is a motion to continue that which we did last
19 week which we moved the date from one date to
20 the other date and now we're back again asking
21 to move it back?

22 MR. MOY: That's correct, sir.

1 BZA CHAIR JORDAN: Has the Board
2 had an opportunity to look at this motion?

3 MEMBER ALLEN: Yes.

4 BZA CHAIR JORDAN: Okay. Does
5 anyone have a thought of how they want to
6 handle this? My initial notion is that we're
7 bouncing back and forth upon this and the
8 reason why we tried to move the hearing up was
9 to try to meet the needs and concerns of both
10 parties here by moving the date was our
11 inkling to do that. That's just my initial
12 thought on this. I'm kind of hesitant about
13 moving the date, however, we do have an ANC
14 notice issue, which we still can handle it
15 with the earlier date by just withholding this
16 decision and making sure that the ANC has had
17 its proper time for submission of its
18 recommendation. So those are two
19 considerations.

20 Does the Board have any other
21 thoughts about this?

22 (No audible response.)

1 BZA CHAIR JORDAN: Or we can move
2 it back to the original April 30th date and
3 just let it roll and in essence deny the
4 request for a motion that was for the stay.
5 It would also solve our problem with the ANC
6 notice.

7 Anybody have a feel one way or the
8 other?

9 (No audible response.)

10 BZA CHAIR JORDAN: Then I would
11 move that we continue this back to the
12 original date of April 30th and proceed on as
13 we had it.

14 VICE CHAIR SORG: Second.

15 BZA CHAIR JORDAN: Motion made and
16 seconded that we grant the Motion for a
17 Continuance. Put this back on its regular
18 date that it was originally and move on. Any
19 unreadiness?

20 (No audible response.)

21 BZA CHAIR JORDAN: All those in
22 favor, signify by saying aye?

1 (Chorus of ayes.)

2 BZA CHAIR JORDAN: Those opposed,
3 nay?

4 (No audible response.)

5 BZA CHAIR JORDAN: The motion
6 carries.

7 Will you call the next item on the
8 docket, please?

9 MR. MOY: Yes, sir. Thank you,
10 sir. So the next item is -- we're into the
11 public meeting of one case, and this is the
12 applicant's Motion for Reconsideration of
13 Condition No. 1 to Order NO. 18472 of Excel
14 Academy, D.C. Public Charter School, pursuant
15 to ^U 3126 of the Zoning Regulations.

16 As the Board will recall, the
17 original application was pursuant to 11 DCMR
18 ^U 3103.2, for a variance to reduce the off-
19 street parking requirements under ^U 2101.1,
20 for a school in the R-5-A District at premises
21 2501 through 2553 Martin Luther King, Jr.
22 Avenue, S.E. Property located in Square 5862,

1 Lot 960.

2 Again as the Board will recall, on
3 February 12th, 2013 the Board by consensus
4 granted the Request for Reconsideration,
5 scheduled its decision at a special public
6 meeting on March 12th, 2013. And the
7 reasoning, Mr. Chairman, was that this would
8 allow the applicant additional time to provide
9 supplemental information and documentation as
10 to the reason for their request to remove
11 Condition No. 1, which was a time limit
12 condition.

13 The applicants made their filing
14 and it is identified in your case folders
15 under Exhibit 39. That completes the staff's
16 briefing, Mr. Chairman.

17 BZA CHAIR JORDAN: Actually we
18 ruled on the motion and granted the
19 reconsideration, so we're reconsidering. This
20 is the hearing on whether we want to remove
21 Condition No. 1.

22 Can the parties please come to the

1 witness table?

2 MR. KADLECEK: Good morning,
3 Members of the Board. My name is Cary
4 Kadlecek, the attorney on behalf of the
5 applicant.

6 BZA CHAIR JORDAN: Okay. I
7 believe that -- I know I've reviewed -- I
8 don't know if the other Board Members -- I'm
9 sure they have reviewed your supplemental
10 documents that I think were contained in
11 Exhibit 39. And the basis of the reason why
12 you want to have this condition removed, and
13 that was a limitation of three years, was
14 based upon basically financing and the need
15 for the school to have, the parents to have
16 more reliability in the school and further
17 existence in what they're doing.

18 MR. KADLECEK: That's correct.
19 It's financing and an ability to fulfill the
20 mission of the school and having some
21 certainty to provide the parents about the
22 existence of the school beyond three years.

1 BZA CHAIR JORDAN: And one thing
2 that the filing did not address was the
3 concern that was raised during the original
4 hearing and probably what led to the Board
5 placing that three-year limitation. There
6 were a lot of things that were fluent during
7 that presentation. And OP had suggested three
8 years because they had a concern about more
9 certainty in your plans. And they had
10 requested information before, and it was never
11 provided, and it was not provided during the
12 hearing.

13 The biggest issue was about the
14 traffic pattern and the effect that it was
15 going to have on the community and etcetera.
16 The number of students was not set, and also
17 what was going to be the overall need for
18 parking? And I didn't see anything in your
19 filing that addressed any of those concerns.

20 MR. KADLECEK: Well, I think that
21 the TM measure that was adopted as part of
22 that original order got to those issues, and

1 that provides the certainty I think that maybe
2 OP was looking for. And I can't speak for OP,
3 but I'm not sure that I recall exactly that OP
4 was asking for a time limit. I think that it
5 sort of came up and they agreed to it.

6 BZA CHAIR JORDAN: It's clear
7 throughout the hearing, throughout the
8 testimony and had the answers have been
9 provided, then we would not have moved to that
10 point during the -- I mean for the condition.
11 So I mean it's been clear throughout the
12 transcript, and we've read the transcript
13 again and gone through the whole process. And
14 it's also in OP's report. And if you had a
15 chance to review what went on at the hearing,
16 these were the concerns. So I just wanted to
17 let you know because I did not see anything
18 that was addressing that in your filing.

19 Does the Board have any other
20 thoughts about this limitation? Ms. Sorg?

21 VICE CHAIR SORG: Yes, thank you,
22 Mr. Chairman. I thought that, you know, I did

1 read little bit with some of the thoughts on
2 the time limitation from OP and from some of
3 my colleagues during the hearing itself, and
4 so I'm glad that we got the chance to
5 reconsider this condition. I found that the
6 applicant's submission didn't make a lot of
7 sense with regard to the detriment that such
8 a short time period of approval would have on
9 the school.

10 I mean I can very much feel for --
11 you know, if a school has seven grades -- I
12 believe they end at fourth grade at this point
13 and are growing. Is that right, fourth grade?

14 MR. KADLECEK: Yes, they're fourth
15 grade now and growing.

16 VICE CHAIR SORG: Okay. So that's
17 seven grades including pre-kindergarten and
18 kindergarten, and they're growing by two or
19 more -- I think they said that they're growing
20 by two grades. And so I mean certainly I can
21 see myself, you know, potentially as a parent
22 entering -- you know, considering entering my

1 child in a school that would potentially not
2 be there when they would be graduating. So to
3 me actually that and the correspondence from
4 the lender did, you know, make a lot of sense
5 and to me was compelling on the issue of the
6 time limitation itself.

7 Regarding the other issues that
8 you brought up, certainly those were important
9 issues in the hearing that were brought up by
10 some of the concerned neighbors and parties,
11 as well as by OP, but I did think, and I
12 mentioned this in my comments in that hearing,
13 I did think that the other conditions such as
14 -- and I was just looking for them, but I'm
15 having a fight with my computer -- the other
16 conditions did go towards -- such as the TDM
17 measures and so forth did go towards arming
18 any potentially future concerned, you know,
19 citizens or neighbors with the ability to take
20 the organization to task on those individual
21 other potential adverse impacts. And so to
22 me, because those things were, you know,

1 encoded in the other conditions, there was
2 that leverage there should the not be met for
3 them to be brought to the sort of appropriate
4 authorities.

5 So I think that in, you know --
6 are we giving our thoughts or are we having a
7 hearing? I'm giving thoughts, I guess.

8 (Laughter.)

9 VICE CHAIR SORG: So that's sort
10 of the way that I viewed, you know, this
11 portion of the reconsideration. Those are my
12 thoughts.

13 BZA CHAIR JORDAN: Does anybody
14 else have anything? Are there any questions
15 I need to ask from the applicant's attorney?
16 Anything? Anyone?

17 (No audible response.)

18 BZA CHAIR JORDAN: Mr. Kadlecek,
19 is there anything else you want to present to
20 us on this matter?

21 MR. KADLECEK: No, I think
22 everything we submitted on the record

1 basically states our case, and I think Ms.
2 Sorg got really to the heart of it, which is
3 the financing difficulties and the
4 considerations that the bank really does take
5 in when they're thinking about financing a
6 school that only legally right now has a life
7 of three years. And I think that's the
8 biggest concern.

9 And I really do believe, and it
10 was our belief after the hearing that the TDM
11 measures that we agreed to got to the traffic
12 considerations. And the only traffic
13 considerations raised really were by DDoT. As
14 you might recall, there was no opposition in
15 the hearing, so we believe those TDM measures
16 were sufficient.

17 BZA CHAIR JORDAN: Do we have
18 Office of Planning weighing in on this matter?
19 Anyone? Mr. Jackson, have you looked at this
20 again?

21 MR. JACKSON: Well, we've had no
22 further conversations with the applicant. We

1 saw the information that was presented, but we
2 still consider that a time limit is merited
3 just because this is a quantum shift from the
4 applicant being in a portion of the building
5 to being in the entire building. And we see
6 long-range plans that the school, based on the
7 testimony, seem to be pretty expansive. And
8 so we think maybe a longer term is reasonable,
9 but we think a term is still merited because
10 a lot of the key issues that were raised have
11 not been addressed.

12 BZA CHAIR JORDAN: Thank you.
13 Does the Board have any questions for Mr.
14 Jackson?

15 (No audible response.)

16 BZA CHAIR JORDAN: Does the
17 applicant have any questions?

18 MR. KADLECEK: Mr. Jackson, is
19 there a time limit -- if you're going to
20 advocate for a particular term, is there
21 something longer that you would find
22 acceptable? Our thought was 10 years. Is

1 that something you guys would find acceptable
2 if we had to have one?

3 MR. JACKSON: Well actually, we
4 thought that was -- okay. The long-term
5 vision for the school was that they be a full
6 capacity in three years. So we thought that
7 would be more reasonable to have a short time
8 frame so that at three years you'd be at your
9 maximum number and you'll be functioning at
10 that maximum number. And then you can
11 immediately come back and get an extension.
12 So we thought the shorter time frame would be
13 better.

14 Now given the financial, what we
15 have done in other cases with other schools,
16 frankly, is we've done five years. But see,
17 we were thinking a three-year time frame
18 really allowed them to turn around quickly,
19 come in, show they could handle the number of
20 students and the vehicles that were coming,
21 coming with a firm number of the parking
22 spaces that were needed based on their full

1 capacity. So that's really why we were more
2 supportive with the three years, because it
3 allowed them to turn around more quickly. But
4 five years is not unreasonable, too. We've
5 done that in other school cases.

6 It's just it was unclear from the
7 memorandum that was submitted if there was any
8 time frame that was acceptable to the
9 financing agency. So we would see a longer
10 time frame, and maybe five years would be
11 reasonable. Then they'd be at full capacity.
12 They would reach full capacity in three years.
13 They have two years operating at that level
14 and then they could come back with firm
15 knowledge of how many spaces they needed off
16 site, how many spaces they had secured and
17 have a full plan for how to manage the
18 circulation on the site.

19 BZA CHAIR JORDAN: And I think it
20 gets back to your original questions and I
21 think what I addressed earlier, what is full
22 capacity? What's the projection for capacity

1 at the school and where will you be in three
2 years, five years and seven years with that?

3 MR. KADLECEK: Well, the plan is
4 to grow one grade a year. And the school's
5 actually supposed to go through high school
6 and they're at fourth grade now. So the plan
7 is actually a longer projection than three
8 years. I can't say what the actual number is.
9 I don't know.

10 BZA CHAIR JORDAN: Because I think
11 that helps us all around and I think that's
12 what you were getting at. So then the
13 analysis can be done to see what would be a
14 good term, if there's a term that would be
15 even be necessary based upon the number of
16 students and its impact upon the area. And
17 you don't have that information as you sit
18 here?

19 MR. KADLECEK: I don't have that
20 information. And I would just like to
21 reiterate, you know, this is a public school
22 and there aren't limits like there are for

1 private schools on students. And we came for
2 parking relief, so the number of students is
3 sort of incidental and what we were asking for
4 was parking relief. And we adopted a TDM
5 measure in order to address concerns about the
6 number of students, but in and of itself under
7 the regulations the number of students is not
8 regulated for a public charter school.

9 BZA CHAIR JORDAN: Okay. I was
10 just trying to help you get to where you
11 needed to be.

12 Any other questions for Office of
13 Planning?

14 VICE CHAIR SORG: Well, I would
15 just make a follow-up comment. I mean it is
16 the case that there are limits on number of
17 students for a lot of the school applications
18 that we do see. I understand the difference
19 between schools as public institutions than
20 some others. And I also take your point that
21 the reason for your being here being for off-
22 street parking requirements.

1 To me that actually points to
2 potentially a related question, which is
3 expected growth in the number of faculty,
4 because I think those are the people that are
5 using these spaces and that is perhaps a more
6 important number to put a fulcrum on in terms
7 of, you know, a way to manage what it is that
8 is really encompassed within the relief that's
9 requested. So I think, you know, maybe that's
10 something that we can get to.

11 BZA CHAIR JORDAN: And I agree. I
12 didn't mean to limit it to students. But
13 you're right. You're correct. With staff,
14 too. What about staff growth?

15 MR. KADLECEK: Yes, staff would
16 grow and I agree with that.

17 BZA CHAIR JORDAN: What's the
18 number?

19 MR. KADLECEK: I don't know off
20 the top of my head what they're expected
21 number of staff is, but I think Ms. Sorg was
22 getting to the right issue, which is maybe the

1 issue isn't putting a time limit on the
2 school, but it's, you know, checking in with
3 the number of staff every several years or
4 something like that. What we want to avoid is
5 having it be that we have to come back and
6 that our Certificate of Occupancy is basically
7 term limited every three years, or however
8 long it is. You know, I mean that's something
9 that we would be look at as far as the number
10 of staff over a certain amount of time or
11 something like that, if the concern is really
12 the number of staff.

13 But I think the biggest concern
14 for the school is a time limit on the ability
15 for the school to occupy by that building.
16 That's their biggest concern because of the
17 financing is guaranteed over a much longer
18 term and the rates that they get are over a
19 much longer term than that.

20 VICE CHAIR SORG: I mean as I said
21 in my earlier comments, I mean I am sensitive
22 to the idea of financing. Also we know that

1 they're in a former D.C. public school that
2 does need maintenance and renovation for them
3 to occupy it.

4 So that being said though, I mean
5 it is necessary for such growth to be -- for
6 there to be, you know, points at which we can
7 come back in. So I mean just -- yes, so I
8 mean for me personally I think what I might
9 suggest is I could be in favor of a 10-year
10 term if we also had growth numbers in terms of
11 faculty, which to me goes towards the use of
12 the parking. So if we perhaps can ask the
13 applicant to go back to the school
14 administrators, you know, and get their
15 reasonable expectations for growth, encode
16 that in the condition, which would go to the
17 parking and then, you know, make a proposal
18 for some additional conditions in that regard.

19 BZA CHAIR JORDAN: That makes a
20 lot of sense to me. Any other -- Mr. Hinkle?

21 MEMBER HINKLE: I was just going
22 to agree with Ms. Sorg here. I think that's

1 a reasonable approach to this. I mean we're
2 struggling with this. I think it's important
3 to have term limits on this and just does a
4 check in to what we are approving here.

5 BZA CHAIR JORDAN: So let's do
6 this; and it gets right back to the same
7 question. Everything that came out at the
8 original hearing, we need some projections and
9 some numbers from the institution, both
10 student and faculty. That's what OP's been
11 asking for from day one. And that will help
12 us be able to give you some aspect of relief.
13 So let's continue this to a new date.

14 MR. MOY: Would this be for --

15 BZA CHAIR JORDAN: Yes, go ahead
16 and file it and let's just put it on a
17 decision date, because I think we've gone
18 around the corner with this already.

19 MR. MOY: For a decision? All
20 right. The next decision date is March 26th.

21 BZA CHAIR JORDAN: You can get the
22 information to us by that -- what's the date?

1 MR. MOY: March 26th.

2 BZA CHAIR JORDAN: And the
3 information should be to you by?

4 MR. MOY: A week earlier.

5 MR. KADLECEK: We can get it to
6 you next week, yes.

7 MR. MOY: Okay. So we're looking
8 at --

9 BZA CHAIR JORDAN: But we were
10 planning to take a look at, so make sure they
11 have time. You can let us know your thoughts
12 even by supplement or etcetera, OP.

13 VICE CHAIR SORG: And just to
14 clarify, Mr. Chairman, you're indicating that
15 this should come in the form of proposed
16 conditions, correct, or in addition to
17 whatever else --

18 BZA CHAIR JORDAN: I just wanted
19 the information, because we're just dealing
20 with the term.

21 VICE CHAIR SORG: Right.

22 BZA CHAIR JORDAN: Then we will

1 put the conditions on it.

2 VICE CHAIR SORG: Okay.

3 BZA CHAIR JORDAN: Mr. Jackson?

4 MR. JACKSON: I'm sure if they get
5 us something we can get the response in --

6 BZA CHAIR JORDAN: And please have
7 some conversation in the interim. That would
8 be good, too.

9 MR. KADLECEK: Okay. So the 26th
10 and then the 19th is what you're shooting for,
11 Mr. Moy, for the document?

12 MR. MOY: Yes, the 19th is a
13 Tuesday. I mean I could extend it if
14 applicant needs a little bit more time.

15 MR. KADLECEK: I think that should
16 be okay.

17 MR. MOY: Would be okay? Fine.

18 BZA CHAIR JORDAN: Okay. Thanks.
19 Appreciate it. Thank you.

20 MR. KADLECEK: Thank you.

21 (Whereupon, the meeting was
22 concluded at 10:06 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCZC

Date: 03-12-13

Place: Washington, DC

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Court Reporter

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