

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

PUBLIC MEETING

TUESDAY
NOVEMBER 4, 2003

EXCERPT

APPLICATION NUMBER:

16977 (SHERIDAN SCHOOL)

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
CURTIS ETHERLY, JR.	Board Member
RUTHANNE MILLER	Board Member
DAVID ZAIDAIN	Board Member

ZONING COMMISSION MEMBERS PRESENT:

CAROL MITTEN	Commissioner
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BOARD STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Office of Zoning

OFFICE OF CORPORATION COUNSEL:

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LORI MONROE, ESQ.
MARY NAGELHOUT, ESQ.

OTHER AGENCY STAFF PRESENT:

JOHN NYARKU
SHERRY GLAZER

Office of Zoning
Office of Zoning

C O N T E N T S

AGENDA ITEM	PAGE
PRELIMINARY MATTERS	5
<u>APPLICATION OF SHERIDAN SCHOOL:</u>	
<u>16977 ANC-3F</u>	4

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

(11:23 a.m.)

1
2
3 MR. MOY: The next case is Application
4 No. 16977 of Sheridan School, pursuant to 11 DCMR
5 3104.1, for a special exception under Section 206,
6 to add 1,200 square feet of gross floor area to an
7 existing building; to reconfigure the parking area
8 in front of the school along 36th Street in order to
9 add four additional parking spaces; to increase the
10 number of students enrolled in the school from 215
11 to 226 and to authorize the number of students who
12 may be enrolled in the CASA summer program in excess
13 of 100 students; and pursuant to 11 DCMR 3103.2, a
14 variance from the requirement that parking spaces be
15 accessible at all times directly from an improved
16 street or alley under Subsection 2117.4; a variance
17 from Subsection 2115.1, from the minimum size
18 requirement for a parking space; and a variance from
19 the off-street parking requirements for an
20 elementary or junior high school under Subsection
21 2101.1, to allow a private school in the R-2
22 District at premises 4400 36th Street, N.W., in
23 Square 1968, Lot 10.

24 On September 30, 2003, the Board
25 completed testimony on the application and scheduled

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1 its decision for November 4th, 2003. The Board
2 requested the following additional information for
3 its decision, which was a revised, more detailed
4 transportation management plan and proposed
5 conditions.

6 The applicant submitted its post hearing
7 documentation, dated October 14, 2003, and that's in
8 your case folders as Exhibit 57.

9 Responses to the filing were submitted
10 by ANC-3F, and that's in your case folder as Exhibit
11 58.

12 Findings of fact and conclusions of law
13 were submitted by the applicant, and that's in your
14 folders as Exhibit 59.

15 Finally, as a preliminary matter, Mr.
16 Scott Schacter, who has party status, submitted
17 comments on the applicant's proposed findings of
18 fact and conclusions of law, which has been
19 identified as Exhibit No. 60, which this is a
20 document which was not requested by the Board.

21 And that completes my briefing, Mr.
22 Chairman.

23 CHAIRPERSON GRIFFIS: Thank you very
24 much, Mr. Moy.

25 I'm not sitting on this case. I leave

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1 you in the capable hands of Ms. Miller.

2 ACTING CHAIRPERSON MILLER: Thank you.

3 I think the first thing we need to
4 address as a preliminary matter is whether or not
5 the Board accepts for deliberation the filing of
6 Exhibit 60, which is Sheridan School BZA Application
7 No. 16977, Comments on Proposed Findings of Fact and
8 Conclusions of Law.

9 This was not requested by the Board at
10 the hearing, and our Rule 3121.5 says that the
11 record shall be closed following the public hearing,
12 except that the record may be kept open for a stated
13 period for the receipt of specific exhibits,
14 information, or legal briefs as may be directed by
15 the presiding officer.

16 This Board does not accept comments on
17 proposed findings of fact and conclusions of law.
18 So I would suggest that we not accept this into the
19 record.

20 MR. ZAIDAIN: I agree.

21 MS. MITTEN: I agree, and one of the
22 reasons why it's important is that each party has
23 the opportunity to file their own proposed findings
24 of fact and conclusions of law, and so this would be
25 a significant departure from that, and Mr. Schacter

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1 chose not to avail himself of that opportunity.

2 ACTING CHAIRPERSON MILLER: I would also
3 comment that the Board does its own independent
4 study of the facts in the record, and so I believe
5 this goes to -- Mr. Schacter's pleading may go to
6 how we look at that record, pointing out different
7 things that we should look at, but the Board does an
8 independent review and does not just rely on
9 findings that are filed by any other parties.

10 This case is unopposed, but I think it
11 is important to go through some of the highlights of
12 the hearing on September 30th and evidence in the
13 record.

14 The Board granted party status to Scott
15 Schacter, who resides across the street from the
16 site. Mr. Schacter originally filed for party
17 status in opposition to the application, but he
18 later indicated at the hearing that based on actions
19 on the part of the school, that he was not opposed
20 to the application.

21 We received at least two letters in
22 support.

23 With respect to its special exception
24 application, the applicant presented evidence
25 regarding its need to expand its facility, increase

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1 its enrollment cap by 11 students, from 215 to 226;
2 get authorization from the Board for students in its
3 summer education program to a maximum of 226
4 students and reconfigure its parking area.

5 There is evidence in the record that
6 granting the relief will no address the, in fact,
7 neighboring properties.

8 Mr. Plummer, the head of the school,
9 testified of the need to modernize a 40 year old
10 facility. There was extensive consultation with
11 neighbors and the ANC in developing a landscaping
12 plan, a parking plan, and operational plans.

13 The architect, Michael Hickock presented
14 landscaping and architectural plans showing the
15 addition of six bays that did not adversely affect
16 neighboring properties and increased soundproofing.

17 Applicant's traffic plan. Martin Wells
18 described the results of his traffic survey and
19 parking studies that found no substantial detriment
20 to the public from the parking relief sought in
21 connection with the application for special
22 exception and variances.

23 Sheridan School transportation study,
24 dated July 30th, 2003, found that the intersections
25 around the school all operate and level of service A

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1 and an increase in enrollment to 226 students will
2 be inconsequential, and the intersections will
3 continue to operate at level of service A at all
4 times.

5 Office of Planning supports the
6 application. They found that it meets both the
7 special exception and variance test. They didn't
8 submit any comments, in particular, on the proposed
9 conditions.

10 With respect to the special exception
11 relief, the use is presumed compatible, subject to a
12 finding of no adverse impact, and no adverse impact
13 has been found from the changes that are being
14 proffered here.

15 With respect to the variance relief,
16 this Board needs to find that the property is
17 unique, and that was in the record, that because of
18 its size, shape or topography the property is unique
19 because of the steep slope and dramatic change of
20 grade that exists along the south side of the
21 property. There's evidence that there was practical
22 difficulty due to the unique lot conditions.

23 No other additional areas, other than
24 current parking lots to create additional parking
25 are available.

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1 The other areas are occupied by the
2 school building and outdoor play equipment.

3 No adverse impact was found with respect
4 to the variances. They maximize parking on the
5 school property so that they reduced overflow to
6 neighboring streets.

7 OP concluded that the relief can be
8 granted without substantial detriment to the public
9 good and without substantially impairing the intent,
10 purpose, and integrity of the zone plan as embodied
11 in the zoning regulations and map.

12 OP recommended approval of the
13 application as submitted by the applicant.

14 D.C. Department of Transportation
15 recommended approval without any conditions.

16 ANC-3F supports the application with
17 conditions that have been submitted by the
18 applicant. ANC-3F submitted two resolutions and a
19 report that meet the requirements of 11 DCMR 3115.1,
20 and therefore, the Board is affording that report
21 and the resolutions great weight.

22 Of course, when we write the order there
23 will be a lot more extensive findings of fact and
24 conclusions of law, but for purposes of discussion
25 any Board members can add any other information they

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1 think is relevant to those tests, but I think what
2 is at issue primarily are the conditions that have
3 been proposed by the applicant, which are supported
4 by ANC-3F and which have not been opposed by any
5 person or party.

6 ANC-3F suggested in its report that the
7 conditions should be evaluated in the context of 11
8 DCMR 206.2 so that the school is not likely to
9 become objectionable to adjoining and nearby
10 property because of noise, traffic, number of
11 students or otherwise objectionable conditions.

12 I would concur that that's the
13 appropriate standard. Plus because there's a
14 variance being sought in this case, 3103.2, that
15 relief can be granted without substantially
16 impairing the intent, purpose, integrity of the zone
17 planned and creating other adverse impacts.

18 In general, I would applaud the
19 community and the applicant for working so hard to
20 come to agreement in this case, and this Board, I
21 think, when it turns to reviewing the conditions,
22 has to look at them independently and decide whether
23 or not to accept them, but the fact that the
24 applicant and the community has worked so hard on
25 them is very persuasive.

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1 So I think at this point I would turn to
2 my other Board members and for whatever comments you
3 have to make, and then we can look at the
4 conditions.

5 MR. ZAIDAIN: Well, I guess just to
6 piggyback the way you were going, I mean, I would
7 agree with everything you stated. I don't think it
8 has been voted on just yet, but in terms of this is
9 a 206 case, and I would echo your sense of
10 applauding the applicants because usually a 206 case
11 begins and then a year later we're having a
12 deliberation. It's very odd that we're having them
13 in a little over a month.

14 But there was a variance aspect to this,
15 and I found through the presentation and through
16 Office of Planning's report that the existence of or
17 the existing playground in terms of its relation to
18 Yuma Street and then the slope of the site did give
19 the site some uniqueness and would extend a
20 practical difficulty to them having to extend their
21 existing parking area.

22 So I think the case was made for the
23 variance as it related to the parking spaces, and
24 then also I'd like to support your statements
25 regarding the special exception test for 206.

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1 COMMISSIONER MITTEN: I don't have
2 anything to add. You both covered it very well.

3 Thanks.

4 ACTING CHAIRPERSON MILLER: Okay. Then
5 I guess we should take a look at the conditions one
6 by one.

7 I mean, my general comment is they are a
8 little bit voluminous, but I think we're trying as a
9 Board to get clear and concise conditions to be
10 enforced. On the other hand, they're all
11 encompassing and the parties have agreed to them.
12 So just with that as a background.

13 The first condition goes to a point that
14 the addition has to be built in conformance with the
15 plans that we have, and that is always the case in
16 our cases, and I don't think that has ever been put
17 in a condition and doesn't really belong in the
18 condition part of it.

19 MR. ZAIDAIN: That the part has to be
20 built as submitted to the Board?

21 ACTING CHAIRPERSON MILLER: Yes.

22 MR. ZAIDAIN: Okay, yes. I would agree
23 with that.

24 ACTING CHAIRPERSON MILLER: And that
25 will be reflected in the order, but it just should

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1 not be a condition.

2 COMMISSIONER MITTEN: I think probably
3 the reason it's included here is because the
4 applicant was circulating what was intended to be
5 the entire set of whatever conditions would bind
6 them. The fact that the condition regarding the
7 plan is normally folded into other language in the
8 order, I think they wanted to make sure that people
9 understood that it was their intent to comply with
10 that. So I don't have a problem with that.

11 ACTING CHAIRPERSON MILLER: Okay. So I
12 gather the consensus is that this is going to be in
13 the order, but it won't be in the conditions.

14 Okay. Well, I think we can either go
15 one by one or we can look through the conditions and
16 if anyone has a problem with one, bring it up.

17 MR. ZAIDAIN: Okay. Well, there was
18 some discussion in our earlier session regarding the
19 parking layout of landscaping plan. I was under the
20 impression that DCRA would normally require those
21 types of plans and so these conditions would be not
22 needed, but I've been corrected on that, I guess.
23 And so I think Condition 2 and 3 should remain in
24 the order.

25 And I think Condition 4 adequately

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1 captured the main issue regarding the summer program
2 and the school enrollment.

3 COMMISSIONER MITTEN: If you want us to
4 call out any condition that we have a problem with,
5 I will just go to 18.

6 ACTING CHAIRPERSON MILLER: Okay.

7 COMMISSIONER MITTEN: This condition was
8 written at my request because the transportation
9 management plan was really just a letter to the
10 parents, which is also attached. And I would just
11 ask that we give Corporation Counsel some direction
12 to tighten this particular paragraph up because the
13 restrictions, A and B, in particular, are still just
14 suggestions, and that needs to be tightened up.

15 And also, we need to clarify that it's
16 the applicant directing the parents. We can't
17 direct the parents. So it's their responsibility to
18 inform the parents that this is the policy and that
19 this will be enforced.

20 And I think that is the ultimate intent.

21 I think that's ultimately their intent. I don't
22 think that's inconsistent with what they have
23 proposed. I just think it needs to be clarified.

24 And I'd like to ask that we give
25 Corporation Counsel the direction to make those

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1 changes so that we can review that in the final
2 order.

3 ACTING CHAIRPERSON MILLER: I understand
4 what you're saying about it's the applicant's
5 responsibility to do the advising and not us. I'm
6 not sure what you're saying about suggestions.

7 COMMISSIONER MITTEN: Okay. Letter A,
8 "parents who are dropping off or picking up their
9 children along the west side of 36th Street between
10 Alton Place and Yuma Street should not park or leave
11 their vehicles unattended in this location."

12 That's a suggestion. That's not a
13 requirement.

14 MR. ZAIDAIN: Well, do you want to make
15 it --

16 ACTING CHAIRPERSON MILLER: Do you want
17 to just make it "shall"? Is that what you mean?

18 COMMISSIONER MITTEN: Well, yeah, and I
19 don't want to wordsmith it. I just want to say --

20 ACTING CHAIRPERSON MILLER: Okay.

21 COMMISSIONER MITTEN: -- that's the kind
22 of thing --

23 MR. ZAIDAIN: You want it to be more
24 definitive, not conditional.

25 COMMISSIONER MITTEN: Right, right.

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1 MR. ZAIDAIN: Okay.

2 COMMISSIONER MITTEN: That's all I have.

3 ACTING CHAIRPERSON MILLER: When I was
4 looking at these conditions, I think there were
5 things that I might not say and that I think are a
6 little bit too wordy, but I have trouble with
7 removing them for fear that there's a very good
8 reason in here that the parties agreed to them, you
9 know, such as in Paragraph 14 where it talks about
10 dog walking or skateboarding or whatever.

11 I mean, I think in general they go into
12 so much detail, but I hesitate to really tinker with
13 them because the parties were all in agreement with
14 them.

15 MR. ZAIDAIN: Right.

16 COMMISSIONER MITTEN: Well, and I think
17 they arise from, you know, there's been ongoing
18 dealings with the community, and they've reached
19 some accord, and you know, these conditions reflect
20 all of the nuances of that relationship, and so I
21 agree with you. I don't want to -- we don't have
22 any basis in the record for changing the condition.

23 MR. ZAIDAIN: Right, and we're accepting
24 them as a proffer. That's the note on negotiations
25 with the ANC, correct?

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1 ACTING CHAIRPERSON MILLER: Well, no,
2 the ANC submitted resolutions --

3 MR. ZAIDAIN: Right.

4 ACTING CHAIRPERSON MILLER: --
5 supporting them.

6 MR. ZAIDAIN: Right.

7 ACTING CHAIRPERSON MILLER: So I think
8 the only other issue then, if there aren't any other
9 comments about the conditions is the length of the
10 order, whether this would be for a ten-year period
11 or what period of time would this run for?

12 They have been operating on a previous
13 BZA order.

14 COMMISSIONER MITTEN: I don't recall.
15 Was that a term of ten years as well?

16 ACTING CHAIRPERSON MILLER: It was a
17 1992 order.

18 COMMISSIONER MITTEN: That sounds like
19 ten years.

20 ACTING CHAIRPERSON MILLER: Yeah.

21 COMMISSIONER MITTEN: I think ten years
22 is appropriate. I know that some of the schools
23 would just as soon not have any time limit, but I
24 think it's very important that they be aware that
25 they are going to have to come back before this

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1 Board and answer for what they've been doing, and I
2 think that's an important part of, you know, giving
3 the community an opportunity to weigh in and say,
4 "Hey, these conditions are not working." That's
5 important.

6 ACTING CHAIRPERSON MILLER: I would
7 concur with that. I think ten years is an
8 appropriate period of time.

9 MR. ZAIDAIN: That's fine.

10 ACTING CHAIRPERSON MILLER: Okay. That
11 being said, then I guess it appropriate to make a
12 motion. I would move that we approve the
13 application of Sheridan School, pursuant to 11 DCMR
14 Section 3104.1, for a special exception under
15 Section 206, to add 1,200 square feet of gross floor
16 area to an existing building; to reconfigure the
17 parking area in front of the school along 36th
18 Street in order to add four additional parking
19 spaces; to increase the number of students enrolled
20 in the school from 215 to 216 (sic) and to authorize
21 the number of students who may be enrolled in the
22 CASA summer program in excess of 100 students; and
23 pursuant to 11 DCMR 3103.2, a variance from the
24 requirement that parking spaces be accessible at all
25 times directly from an improved street or alley

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1 under Subsection 2117.4; a variance from Subsection
2 2115.1, from the minimum size requirement for a
3 parking space; and a variance from the off-street
4 parking requirements for an elementary or junior
5 high school under Subsection 2101.1, to allow a
6 private school in the R-2 District at premises 4400
7 36th Street, N.W., in Square 1968, Lot 10, with the
8 conditions as articulated by the Board today.

9 And do I have a second?

10 COMMISSIONER MITTEN: Second.

11 ACTING CHAIRPERSON MILLER: Any

12 discussion on the motion?

13 COMMISSIONER MITTEN: I think we've

14 talked it through.

15 ACTING CHAIRPERSON MILLER: I think so,

16 too.

17 Okay. All those in favor say aye.

18 (Chorus of ayes.)

19 ACTING CHAIRPERSON MILLER: The roll?

20 MR. MOY: The staff would record the

21 vote as three-zero-one on the motion to approve by

22 Ms. Miller, seconded by Ms. Carol Mitten, Mr.

23 Griffis, the Chair, not sitting on the case.

24 We do have a proxy vote from Mr. Etherly

25 to approve the application with conditions as

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1 approved by the majority of the Board members
2 present. So that would give the resulting vote as
3 four-zero-to one.

4 ACTING CHAIRPERSON MILLER: Thank you.

5 MR. MOY: I should also say, Ms. Miller,
6 that Mr. Parsons on the next case is in transit and
7 he's on the way. So we may want to wait.

8 ACTING CHAIRPERSON MILLER: So I think
9 this is an appropriate time for a break then by the
10 Board.

11 Thank you.

12 (Whereupon, at 11:43 a.m., the public
13 hearing in the above-entitled matter was concluded.)
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