

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - August 30, 1972

Application No. 10820 - Patrick A. O'Boyle, appellant

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and carried with Mr. Scrivener voting no by proxy, the following Order of the Board was entered at the meeting of September 25, 1972.

EFFECTIVE DATE OF ORDER - February 6, 1973

ORDERED:

That the application for permission to establish a private school (high school for 350 students) at 2200 California Street, N.W., lots 186 and 802, Square 2529, be GRANTED with no time limit.

FINDINGS OF FACT:

1. The subject property is located in an R-5-B District and comprises lots 186 and 802, Square 2539, known as 2200 California Street, N.W.

2. The premises 2200 California Street, N.W., was built in 1904, is in excellent condition, and has a history of institutional use. From 1961 to 1971, by special exception granted by the Board limiting the student body to 120, it was used as Cathedral Latin School for Boys, a preparatory seminary for boys. Prior to that it was used as St. Ann's Infant and Maternity Home. The applicant began the operation of Mackin High School on the subject property in September 1971 with attendance limited by an order of the United States District Court to 150 students pending a decision of the Board on the application herein for a special exception permitting the use of the property as a regular boys high school for 350 students.

3. On the subject property is located a 4-story brick building, institutional in nature, which contains the following facilities:

- a. 9 classrooms, totalling approximately 300 classroom seats.

b. One library with more than 12,000 volumes, containing a seating capacity in excess of 50.

c. Two large science laboratories.

d. One chapel

e. An auditorium which seats 245 and has a capacity of no more than 278.

f. A cafeteria seating 172.

g. Sundry administrative offices, locker room facilities, and storage space.

4. Adjoining the main building is a 1-story gymnasium which contains 7,008 square feet with a grandstand of 1,827 square feet which has roll-away seats to accommodate 360 people. The gymnasium was erected in 1967 pursuant to permission from this Board granted by an Order dated June 15, 1967, in Appeal No. 9036. Additionally, there is a boiler house adjoining the gymnasium.

5. The property contains a parking lot which contains room for at least 39 regulation size parking spaces. (See Section 7204.1 of the Zoning Regulations). The parking lot contains 45 lined parking spaces. The school parking lot is not filled to capacity during school hours.

6. Ingress and egress to the parking lot is via two public alleys which connect the parking lot to California Street and to 23rd Street.

7. The present enrollment in Mackin School is 300 with a faculty of 21 teachers. The application is for a student body of 350. During the last school year, the enrollment was 297.

8. Mackin is a college preparatory high school and has been accredited by the Middle States Association of Colleges and Secondary Schools. The premises at 2200 California Street is adequate for use as a high school for 350 boys.

9. There are several other schools in the vicinity of 2200 California Street, including Kingsbury School, Russian School, Berlitz Language School, and the Lab School. Formerly, Holton Arms School was located in the immediate area.

10. There are several foreign government chanceries in this area, together with several apartment and cooperative apartment buildings in the subject R-5-B District, which apartment houses are permitted as a matter of right.

11. Nearly all available parking space on streets surrounding 2200 California Street is used at all times of the day, at all times in the year.

12. Abutting the public alleys to the west of the premises are three apartment houses and seven residences which have parking spaces. Across the street from the school is a grocery store (the California Market), the Russian Agricultural Mission (Russian School), and an apartment house. Within a few blocks of the site there are several hotels.

13. Mitchell Park is a public park with no restrictions on use, and is located within two blocks of the school.

14. A representative of the District of Columbia Department of Recreation is on duty at Mitchell Park six days a week.

15. Some Mackin students have used Mitchell Park for many years as individuals.

16. Mackin has used Mitchell Park for organized sports only once during the last school year. This was by previous arrangement with the park director and did not prevent anyone else from using the park.

17. No Mackin student's use of Mitchell Park has displaced anyone else's use of the park.

18. No basketball games are or have been conducted at night in the school gymnasium and afternoon basketball games are over by 5:30 p.m.

19. When visiting teams come to Mackin to play afternoon basketball games, they are told parking is available on the school lot and are given instructions on how to reach the lot.

20. No spectators from the visiting team's school come to the premises when afternoon basketball games are played.

21. When the members of the Mackin basketball team have, on a few occasions, briefly assembled on the premises to go to an away night game, they have been supervised by school officials. When they return to the school they quickly disperse and go home. In the last year, there were approximately thirteen night away games.

22. The students have a twenty-five minute lunch period. They are not allowed to leave the school during this time. All food and beverages must be consumed in the cafeteria.

23. During the past academic year, Mackin officials received no complaints from anyone regarding traffic, noise, parking, littering or vandalism.

24. The manager of the building at 2219 California Street complained by telephone to the police on three or four occasions at about 3:00 p.m. that Mackin students standing on the front steps of the school were noisy. A policeman responded to the scene and the complaint was taken care of.

25. Mackin has a drill team which practices only in the gymnasium.

26. For sports other than basketball, the school uses, by arrangement with appropriate authorities, the 16th and Kennedy Streets athletic fields and West Potomac Park.

27. During the last academic year the police have received complaints concerning Mackin students' use of Mitchell Park, or relating to traffic congestion caused by Mackin students. There have been no reports to the police of student disturbances at Mackin. Insofar as the Metropolitan Police Department is concerned Mackin students have an excellent reputation for good behavior.

28. The Second District of the Metropolitan Police Department has, since February, and with the exception of June, held monthly Scout Car Meetings with the residents of the neighborhood. Minutes of those meetings are taken and maintained. The minutes of those meetings reflect no citizen complaints about Mackin or its students.

29. There is no evidence that Mackin students have been involved in illegal drug use or in acts of vandalism.

30. Mackin is operated by the Brothers of the Holy Cross who are professional educators.

31. Mackin students are selected on the basis of a competitive entrance examination and their desire to attend Mackin.

32. Mackin students are required to wear a tie and jacket to school.

33. Approximately 50 percent of the Mackin students hold part-time jobs.

34. The students are in school before 8:30 a.m. There is no loitering around the school building after school.

35. In 1971 the owner of the nearby grocery store, the California Market, expressed concern to Mackin officials about the opening of the school at 2200 California Street. Therefore to avoid the likelihood of an unpleasant incident, Mackin officials at the beginning of the school year in 1971 placed the store off limits to the students. Mackin officials check to ensure compliance with its regulations. For violations

students are disciplined which discipline includes such punishment as picking up litter in the area, detention and expulsion. No Mackin students have ever been charged with committing any criminal offenses in the neighborhood.

36. On one occasion, a resident of the neighborhood observed a Mackin student in the California Market stealing food. She informed the owner and, when he approached the student, he put the food back on the shelf and ran from the store. There is no indication that the incident was reported to the police or to school authorities either by the store owner or the person who witnessed it.

37. The vice principal of Mackin frequently checks the California Market to see that the off limits regulation is being obeyed. On one occasion, two students were observed there and they were disciplined.

38. At the beginning of the 1971 school year, the owner of the California Market reported a theft to Mackin's vice principal. The owner however did not state that he was sure that the theft was committed by a Mackin student. Since that one pilfering complaint, the school has received no further complaints of any kind from the store owner. The store owner's latest comment to the vice principal was that the Mackin students were no causing any problems.

39. Mackin has a disciplinary program which the parents desire.

40. No Mackin student is allowed to drive to school without the permission of his parents and the school officials. If a student wishes to drive, he must park his car on the school lot. To park his car on the lot, it must first be registered with the school and a school parking decal affixed to the car. Students driving to school are not permitted to park on the streets in the neighborhood.

41. A student who drives a car to school and who does not park it on the lot is subject to discipline. Mackin officials check for violations of all disciplinary rules, including parking rules.

42. A majority of Mackin students take public transportation to and from school.

43. Once during the preceding school year, Mr. Curtin, Mackin's vice principal, noticed that a Mackin student had parked in the neighborhood against school regulations. When confronted, the student responded that his own car, which he was authorized to park in the school lot, had broken down. He was using his father's car which was not registered with the school and didn't want to risk parking the unregistered car on the lot. Mr. Curtin directed the student to park the car on the school lot. This was the only incident of a parking violation that came to Mr. Curtin's attention during the 1971-72 academic year.

44. Truck deliveries to Mackin are made from the school parking lot and not from the street.

45. During non-school hours the facilities of the school including the parking lot, are made available to the neighborhood for use. A Spanish Mass is conducted on Sundays in the chapel for the Spanish-speaking residents of the area. The Metropolitan Police Department uses the gym on Sunday afternoons. On one occasion, the Sheridan-Kalorama Citizens Association used the auditorium for a meeting in April 1972.

46. Since the school has operated at 2200 California Street, real estate tax assessments have continued to rise. In certain instances, a few property owners have had moderate success in having these assessment increases partially or wholly abated for a variety of reasons.

47. Sales prices of neighborhood property sold since Mackin has been operating at 2200 California Street have been higher than previous sales of the same properties before Mackin came to the site.

48. Several persons residing in the neighborhood testified at the hearing that since Mackin began operation at 2200 California Street, litter, street traffic, and parking congestion have gotten significantly worse, sidewalks are crowded with students, forcing

residents to step into the street to pass, students drive at unsafe speeds in the alleys leading to the school parking lot, and that disturbing noises are coming from the school and from the students outside the school. None of these persons ever complained to the Metropolitan Police Department or to Mackin officials about these problems. Only one witness stated he saw Mackin students parking in the neighborhood in violation of the school's regulations. And only one witness stated that he saw anyone littering. And this witness did not definitely identify the litterbugs as Mackin students.

49. Approximately 200 individuals or couples residing in the area signed petitions submitted to the Board on which they indicated their opposition to several applications for special exceptions in the area, including the instant application. These residents believe that the operation of Mackin at 2200 California Street constitutes a threat to the existence of their residential neighborhood.

50. Approximately 150 residents of the neighborhood, supporting the application, signed petitions which stated that, during the 1971-72 school year, the signers had observed the situation in the neighborhood with regard to Mackin's operation, and that they observed no increase in noise or traffic congestion attributable to Mackin, and that the Mackin students have been orderly and courteous.

51. Numerous letters have been received by the Board from residents of the neighborhood. The majority of those writing oppose the granting of the application on various grounds, including alleged student misbehavior, noise, traffic congestion, litter and an adverse effect on property values.

OPINION:

In order to grant the application herein, the Board must find that the operation of Mackin at 2200 California Street, N.W.:

1. "...is not likely to become objectionable to adjoining or nearby property because of noise, traffic, number of students, or otherwise objectionable conditions..." (Zoning Regulations, paragraph 3101.42.)

2. "...Will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with said Zoning Regulations and Maps..." (Zoning Regulations, subsection 8207.2), and,

3. That applicant has met the parking requirements of Article 72 and paragraph 3101.42(b) of the Zoning Regulations.

The Board has considered the evidence of the Concerned Kalorama Citizens in this case and concludes that it does not demonstrate that the operation of Mackin at 2200 California Street has caused a significant or objectionable increase in noise, traffic congestion, litter or other objectionable conditions or will likely do so in the future.

If the conditions as to noise, traffic congestion and litter have indeed been substantially exacerbated by the presence of Mackin students in the neighborhood it seems incredible to the Board that the residents in the neighborhood have not complained to Mackin officials and to the police. Moreover, most of the witnesses testifying on behalf of the Concerned Kalorama Citizens could not attribute the problems about which they complained directly to Mackin or to Mackin students. This failure is especially significant in view of the fact that there are several schools and chanceries in the immediate area. The few instances where students were observed violating the law or school regulations must, in the context of all the testimony, be regarded as isolated incidents and not as typical behavior. Moreover, whenever student misbehavior was brought to the attention of the police or school authorities, prompt corrective action was taken.

On the other hand, Mackin officials have taken meaningful positive steps which, in the Board's view, will effectively prevent the operation of the school from becoming objectionable to the residents of the neighborhood. Such steps include the student parking regulations, the scheduling of nighttime basketball games at other schools, the rule forbidding students to leave the school premises without permission during the school day, the requirement that food and beverages not be taken from the

cafeteria, the arrangement to use public recreation areas other than Mitchell Park for outdoor school sports, the placing off limits of a nearby grocery store to avoid the likelihood of unpleasant incidents, the requirement that trucks delivering to the school do so from the school parking lot and not the street, the willingness of school officials to discipline students for violations of school regulations, the maintenance of the property in good condition, and finally, but not least, the school's effort to make its facilities available for use by neighborhood groups, including the Police Department, the Spanish-speaking people of the area, and the Sheridan-Kalorama Citizens Association.

With regard to Mitchell Park, the Concerned Kalorama Citizens, in their proposed findings of fact, have not asked the Board to find that the granting of this application would adversely affect the neighborhood's use of Mitchell Park. In any event, the evidence offered by the applicant, unrebutted by Concerned Kalorama Citizens, make clear that the Citizen's earlier fear about a "take-over" of Mitchell Park by Mackin students is unfounded.

In support of their contention that the operation of Mackin at 2200 California Street will adversely affect real estate values in the neighborhood, the Concerned Kalorama Citizens rely primarily on the testimony of several neighborhood property owners that they were able to persuade the District of Columbia Board of Equalization and Review to reduce the amount of recent property tax assessment increases, in grounds, inter alia, that the operation of Mackin at 2200 California Street reduced the value of their property.

We reject this sort of evidence as probative on the issue of the effect of Mackin on real estate values for the following reasons:

First, self-serving statements of an opinion nature for the purpose of avoiding increased property taxes are entitled to very little weight with the Board. Second, the owners who protested their assessment increases cited to Board of Equalization and Review a number of factors, in addition to the presence of Mackin, which they believed lessened the value of their property. Third, these owners admitted that they had no knowledge of the basis

of the decision of the Board of Equalization and Review to reduce or in one case cancel assessment increases.

Likewise, we are not persuaded by the opinions of the experts offered by the Concerned Kalorama Citizens that property values will be adversely affected. Their opinions are not underpinned by sufficient concrete facts to make them acceptable.

The testimony of Mr. Mack was that real estate values in the area have continued to rise. He could cite no specific instance of the market value of any piece of real estate in the neighborhood being adversely affected between September 1971 and June 1972. Yet, during that period, real estate in the neighborhood did change hands and Mackin was in operation with approximately 300 students. The only two transactions occurring between September 1971 and June 1972 mentioned at the hearings indicated substantial increases in market value over the previous sales prices. Further, there was no evidence that the operation of Mackin during the 1971-72 school year had an adverse affect on occupancy rate of the apartments in the neighborhood. Indeed, Mr. Mack stated that the apartment occupancy rate is very high.

The structure at 2200 California Street has been there since 1904. It is undeniably an institutional building which has for many years been used for institutional purposes. All through the 1960's it was used as a school and property values in the neighborhood not only did not decline during that period, but increased substantially. In view of the reputation for good behavior of Mackin students, the disciplinary regulations of the school, the good condition in which the school property is maintained, and the other steps taken by school officials to make Mackin acceptable to its neighbors, the Board concludes that the operation of Mackin will not likely have an adverse affect on the market value of neighboring property.

With regard to whether applicant's premises meet the parking space requirements of the Zoning Regulations, it is first necessary to determine how many spaces are required.

The pertinent regulation is Section 7202.1 which provides that for high schools and accessory uses, the amount of parking space required is:

"Two for each three teachers, plus one for each 120 classroom seats OR one for each ten auditorium seats whichever is greater." (Emphasis added).

As the Board reads this regulation, there are two alternatives the first alternative being that which precedes the OR and the second alternative that which follows the OR. To read the regulation as the Concerned Kalorama Citizens would have us read it, would require us to ignore the fact that both letters of the word "or" have been capitalized. It doesn't appear that the capitalization of the word "or" was unintentional because the very next part of the regulation, dealing with parking space requirements for colleges, contains, in two places, the "OR". We can discern no purpose why the Zoning Commission capitalized this word other than to indicate that it is to serve as a dividing line between alternatives.

The number of spaces required by the first alternative would be 33. This is computed on the basis that Mackin provides 350 seats (one for each student) in its nine regular classrooms and two science labs, and that the teachers number 21. Two parking spaces for each three teachers, based on 21 teachers, yields 14 spaces; one parking space for each 20 seats, based on 350 seats, yields 18 spaces. Together they add up to a requirement of 32 spaces.*

The second alternative would require a maximum of 28 parking spaces. According to the undisputed testimony of Mackin's vice principal, the school auditorium contains 245 seats. It was later stated that the auditorium had a "seating of 278." Taking this latter figure as the basis for computation, the requirement would be 28 spaces.

Since the first alternative yields the higher number, it is that number (32) that constitutes the minimum requirement.

The premises contains room for at least 39 spaces of the dimensions prescribed in Section 7204.1 of the Zoning Regulations and the uncontradicted testimony was that there are 45 marked

* Section 7207.15 provides that fractions under 1/2 a space shall be disregarded, and that fractions of 1/2 a space or more shall require one space.

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spaces. The Board concludes that the applicant has sufficient parking spaces on the premises to meet the requirements of Article 72 of the Zoning Regulations.

Concerned Kalorama Citizens contend that the school gym is a "place of public assemblage" as that term is used in Section 7202 of the Zoning Regulations and that, therefore, there is an additional parking space requirement of one space for each 10 gym seats or 36 parking spaces for 360 gym seats.

We reject this contention for the following reasons. First, under the general heading "Places of Public Assemblage" are listed various specific types of places; a school gym is not among them. Second, the parking space requirement for high schools is for "High school and accessory uses" (emphasis added). The term "accessory use" is defined in the Zoning Regulations as "a use customarily incidental and subordinate to the principal use and located on the same lot therewith." (See Article 12 of the Zoning Regulations) The Mackin gym is clearly an "accessory use" as that term is defined. And the computation of 32 required spaces covers not only the high school building itself but also the gymnasium because it is an accessory use.

Alternatively, the Concerned Kalorama Citizens appear to contend that the gym should be considered as a second auditorium and that, therefore, the total number of auditorium seats should include the 360 roll-away seats in the gym. However, there was no testimony that the gym is used as an auditorium. The only testimony regarding the use of the gym is that it is used for athletic activities. Moreover, as has been noted above, the gym is an accessory use and Section 7202 of the Zoning Regulations does not have a separate requirement for parking spaces for accessory uses.

Concerned Kalorama Citizens further contend that Section 7206.7 of the Zoning Regulations requires that the two access ways to the Mackin parking lot must be at least 14 feet wide and that these access ways do not meet this requirement. Section 7206.7 provides in pertinent part:

"Driveways which provide accessibility to parking spaces

accessory to any structure other than one-family dwelling or a flat shall not be less than 14 feet in width..."

This Section of the Zoning Regulations is not applicable herein because the two access ways to Mackin's parking lot (one from California Street and the other from 23rd Street) are not driveways but public alleys over which the applicant has no control. Section 7206.7 applies to situations where the access ways to parking lot are built on private property over which the applicant has control and accordingly the ability to comply with the width requirement.

Finally, with regard to the parking lot question, the Concerned Kalorama Citizens contend that, even if there are sufficient parking spaces to meet the requirements of Section 7202 of the Zoning Regulations, the Mackin parking lot still does not provide "ample" parking for "students, teachers and visitors likely to come to the site by automobile." (See Section 3101.42(b) of the Zoning Regulations). In this regard, the unrebutted testimony was that the parking lot is never full during school hours. On the afternoons when there are home basketball games, and visiting teams and coaches arrive by car, they are accommodated on the school parking lot. These basketball games begin after school lets out, which indicates that some cars of students and school personnel would leave the lot and provide more room for cars used by visiting teams. On the basis of the testimony, the Board concludes that Mackin's parking lot provides "ample" parking space pursuant to the requirement set forth in Paragraph 3101.42(b) of the Zoning Regulations.

The Board is fully cognizant of the fact that a majority of the residents of the neighborhood who have expressed their views are opposed to the granting of this application. However, the Board's decision cannot be controlled by a headcount like a political election. Rather, it is controlled by the probity of the evidence presented as that evidence relates to the standards for special exceptions established by the Zoning Regulations. We are of the view that the evidence supports the applicant's entitlement to a special exception.

The purposes of the Zoning Regulations are manifold. One of the purposes is to "promote . . . uses of land as would tend to create conditions favorable to . . . educational . . . opportunities." See D. C. Code, 1967, Section 5-414. This, of course, does not mean that other purposes of the Zoning Regulations may be ignored. In the long history of the premises at 2200 California Street, N.W. there appear to have been no adverse effects from its use on the neighborhood. In view of the high caliber of students attending Mackin and the special measures taken by Mackin officials to prevent Mackin's presence from exacerbating existing problems in the Kalorama area, the Board is of the view that it can act to promote educational opportunities for District of Columbia youths without sacrificing other legitimate values sought to be preserved by the Zoning Regulations.

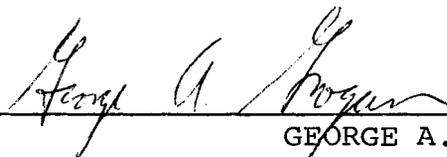
We conclude that the operations of Mackin High School with 350 students at 2200 California Street, N.W., is not likely "to become objectionable to adjoining and nearby property because of noise, traffic, number of students and otherwise objectionable conditions." (See Zoning Regulations, Paragraph 3101.42(a).)

We conclude that applicant has provided ample parking space on the premises in compliance with Paragraph 3101.42(b) and Article 72 of the Zoning Regulations.

We conclude that the operation of Mackin at 2200 California Street "will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with said zoning regulations and maps..." (See Zoning Regulations, Section 8207.2).

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

ATTESTED:

By: 

GEORGE A. GROGAN
Secretary of the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS AN APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING - June 16, 1971

Appeal No. 10820 Patrick A. O'Boyle, Archbishop of Washington, appellant.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and carried with Samuel Scrivener, Jr. absent, the following Order of the Board was entered at the meeting of June 22, 1971.

ORDERED:

That the appeal for permission to establish a private school (high school for 350 students) at 2200 California Street, N. W., lots 186 and 802, Square 2529, be GRANTED.

FINDINGS OF FACT:

1. The subject property is located in a R-5-B district.
2. The property is improved with a private seminary for education of young men for the priesthood located at 2200 California Street, N. W., lots 186 and 802, Square 2529.
3. The appellant proposes to establish a high school for 350 students.
4. There was no opposition registered at the public hearing as to the granting of this appeal.

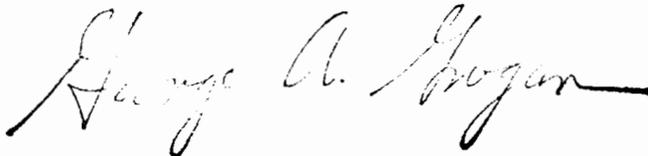
OPINION:

It is the opinion of the Board that the establishment of this school is so located and the activities therein will be such that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or other objectionable conditions. Further, we conclude that this school is reasonably necessary and convenient to the neighborhood which it is proposed to serve.

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

ATTESTED:



BY:

GEORGE A. GROGAN
Secretary of the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DIRECTOR OF INSPECTIONS WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - October 13, 1971

Appeal No. 10820 Patrick A. O'Boyle, Archbishop of Washington,
appellant.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and carried, with Samuel Scrivener, Jr. dissenting, the following Order of the Board was entered at the meeting of October 19, 1971.

EFFECTIVE DATE OF ORDER - Nov. 15, 1971

ORDERED:

That, on rehearing, the appeal for permission to establish a private school (high school for 350 students) at 2220 California Street, NW., Lots 186 and 802, Square 2529, be granted conditionally.

FINDING OF FACTS:

1. The subject property is located in an R-5-B District.
 2. The property is improved with a building, the last use of which was as a private seminar for education of young men for the priesthood, by order of this Board.
 3. On June 16, 1971 this case was heard at public hearing at which time appellant proposed to establish a high school for 350 students.
 4. No opposition was registered at the public hearing held on June 16, 1971.
 5. At its executive meeting on June 22, 1971 the Board granted permission to establish a private school for 350 students by a vote of 4-0 with Samuel Scrivener, Jr. absent.
 6. On August 1, 1971 a group of neighborhood residents petitioned the Board for rehearing. On August 16, 1971 the opposition requested that the Board hold a special meeting to consider the petition in order that a decision might be expeditiously made.
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7. The Board was specially polled on August 23, 1971 and voted to stay the effective date of its order pending rehearing on October 13, 1971, which rehearing was held.

8. Daniel F. Curtin, Vice Principal of Mackin High School stated that the criteria for admission to Mackin High School is a cooperative entrance examination given to students of the Catholic elementary schools in the area.

9. Mackin High School students come from the metropolitan area with about 98% from the District of Columbia and the majority from northwest Washington.

10. Most of the students arrive at Mackin High School by D.C. Transit and approximately 20 to 22 students are allowed to drive automobiles to school with special permission.

11. The Mackin High School has an atheletic program which is held in the gymnasium as no outdoor facilities are available.

12. The school is accredited by the Middle States Accreditation Association.

13. Deliveries are made at the school by pastry, bread and milk trucks every day. A meat truck comes once a week and the grocery truck comes once every three (3) weeks. Deliveries are made in the parking area of the school.

14. There are 22 faculty members with a student-faculty ratio of 15 to 1.

15. There are now 297 students in attendance, each of whom pays an annual tuition fee of \$350. The actual cost was stated to be \$750 with the Archdiocese making up the annual operating deficit.

16. No structural additions to accommodate the 350 students would be necessary.

17. The school has a drill team that is conducted on the property outside the building, at about 7:30 every school day morning.

18. Father Gordon Henderson, a Catholic priest and consulting psychologist, stated that a college preparatory school and a pre-seminar course are practically identical.

19. Owen W. Davis, Deputy Chief, Metropolitan Police Department, Commander of the Patrol Division, monitoring disturbance and destructive activities in all schools throughout the District of Columbia, stated that he has never received one adverse report from the Mackin High School.

20. Captain Norman L. Long, Second District of Metropolitan Police Department, whose district includes the Mackin High School property, stated that he had observed the activities of the school in that location since September 1 and had seen no unusual traffic and congestion. Captain Long further stated that a check of the records at the Second Police District showed that there have been no complaints filed relative to traffic conditions, parking in the area, or any disorder from the students or unusual noise coming from the school itself.

21. There was massive neighborhood opposition to the granting of the appeal, including a petition containing 500 names.

22. The opposition was based on [1] noise, [2] traffic, [3] number of students, and [4] other objectionable conditions such as tendency to adversely affect the neighborhood property.

23. There was far reaching and considerable support of the Mackin High School present at the hearing.

24. The buildings used for the seminary and proposed for use by Mackin was originally erected as an orphanage and is not suitable for normal R-5-B uses.

25. There are 39 parking places on the property. The Zoning Regulations require 23 parking places.

26. The Secretary of the Board of Zoning Adjustment received purported calls from Senators Kennedy and Tunney during the course of the hearing. The Board announced it at the public hearing as a matter of procedure. The decision rendered by the majority of the Board was based upon the factual data presented at the hearing and information received in the mail and its interpretation of those facts.

27. There were numerous persons who could not get into the hearing room, both for and against, due to the limitation of the number by the Building Guards and Fire Marshall.

OPINION:

We are of the opinion that the establishment of a private school (high school) is not likely to become objectionable to neighboring property because of noise, traffic, number of students or other objectionable conditions. Further, we conclude that the requested relief can be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Maps.

This Order shall be subject to the following conditions:

- [a] That there shall be no more than 300 students enrolled in the school at any given time.
- [b] That the school has the option for the drill team to practice inside the gymnasium at any time, or outside between the hours of 12 noon and 4:30 p.m.
- [c] The Board is granting temporary approval for a period of three (3) years. This approval is made temporary so that at the end of the allotted period, the Board may review its decision to determine if Mackin High School is objectionable under Section 3101.41 of the D.C. Zoning Regulations.

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MR. SCRIVENER DISSENTING:

I disagree with the action of the majority, and I wish to state my reasons for disagreement and also to express some views with respect to considerations which, in my opinion, should or should not be considered by the Board and its individual members in arriving at a decision.

The effect of the decision in this case is to transfer from one part of the city to another a high school for boys who are drawn from the metropolitan area but who are not drawn, even in part, from the neighborhood into which the school may be moved by the Board's order. The only reasons advanced by appellant for the move is that the present location on V Street, NW. is inadequate. However, the new location and facilities, while possibly superior to the old, are themselves inadequate and should not be used in these days and times as a boys' high school. At the new location there are no outside play facilities, and in this crowded area there is not the on-site parking required by the Regulations.

The neighborhood opposition to this appeal was probably as complete as in any case ever considered by this Board, and this raises the question of how much consideration the Board should give to neighborhood opposition. Certainly, no case should be decided by counting those in favor and those opposed, but massive neighborhood opposition has always been considered by this Board to be a very important factor in the decision of any case. It has been a determining factor in other cases, but in this case the majority ignored it. The residents of the neighborhood into which this school will be moved have as much right to protect what they consider the well-being of their neighborhood as residents of other areas, but in the present case their views were disregarded. Neighborhood opposition was given weight in the denial of the appeal in the Marjorie Webster School case, decided on the same day as the instant case, and in the St. Patrick's School case which was twice denied.

The Zoning Regulations set forth certain criteria which must be considered by the Board in deciding this case, among which are the specific regulations having to do with schools, the regulations having to do with automobile parking, and the general grant of authority to the Board in exception cases, which is set forth in Section 8207.2 of the Regulations. This latter section provides that the Board may grant an exception if it will be:

" . . . in harmony with the general purpose and intent of the zoning regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with said zoning regulations and maps. . . ."

This regulation is prospective in nature as there is no way in which the Board can determine, in deciding a case, whether a proposed use actually will affect adversely the use of neighboring property, as this can only be determined after the use **has been** established and its effect on the peaceful use and the value of neighboring property has been examined. As the Board cannot make this determination before establishment of a proposed use, it must rely in making the decision on its subjective views, but it should rely to a very great extent, and pay great heed to, the views of the residents of the neighborhood as to the effect of the use. In the present case the residents are almost unanimous in not wanting the school and are fearful that its establishment would affect adversely their enjoyment of their homes.

Appellant apparently is not forced to move the school to the new location. He merely owned the building and decided to move the school into it. There is nothing in the record to indicate that he tried to find a location in a less congested area, with exterior play space and adequate parking.

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The building involved in this case was originally a home for orphans, and when the necessity for that use ended, appellant began a series of appeals to the Board asking for progressively more intense uses, culminating now in the establishment of a boys' high school. The testimony shows that the school is not even self-supporting but is partially supported by a contribution from appellant and the Board may look forward to the day when an appeal will be made to it to permit the number of students to be increased.

In the discussions among Board members leading to the decision, the view was expressed by one of the majority members that establishment of the school might have good sociological consequences. I believe that the Board is a poor instrument indeed to consider such matters, but in any event they are certainly not included in the law or Regulations governing Board actions and, in my opinion, it is a sad day on which they are taken into account by this Board in making any decision.

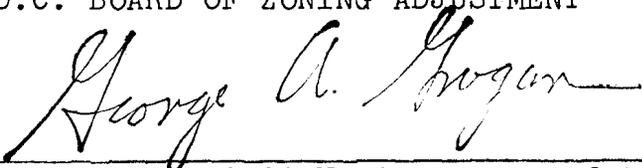
Until this decision, to my certain knowledge of over twenty years of Board membership, no member has ever expressly stated such sociological reasons for his vote, but it happened in this case, and it brought to a disheartening end the record of this Board in deciding cases on their merits and with reference only to the law and the Zoning Regulations. I cannot let this occurrence pass without commenting on it with regret.

In my opinion, the record does not support allowance of this appeal, and it should be denied.

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

ATTESTED:

By:



GEORGE A. GROGAN, Secretary of the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DIRECTOR OF INSPECTIONS WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.