BEFORE THE BOARD OF ZONING ADJUSTMENT, D. C.

Application No. 12143, of Georgia L. Webster, et al., on behalf of the International School of Law, pursuant to Sub-section 8207.2 of the Zoning Regulations for a special exception under Paragraph 3101.46 to approve a campus plan in the R-1-A Residence District at the premises 7775-17th Street, N. W., Lots 80 and 815, Square 2745-F.

HEARING DATES: May 17, 1976 and June 29, 1976
DECISION DATE: September 28, 1976

FINDINGS OF FACT:

1. The subject application requests approval of a campus plan for the International School of Law, as required by Sub-Paragraph 3101.46c of the Zoning Regulations. The campus site is 8.7 acres and includes all that property bounded on the north by Kalmia Road to the 16 foot wide alley, excluding the residences with addresses 1618 and 1622 Kalmia Road, on the south by 17th Street to Jonquil Street excluding residences with addresses 7717, 7711 - 17th Street and to the east by the rear yard lines and of side lot line of properties fronting on 17th Street and the west side of Jonquil Street north to the 16 foot wide alley which addresses are 1645,1635,1631,1627,1623,1619 and 1605 Jonquil Street and 7717 - 17th Street respectively. Also on the eastern boundary is an entrance into the campus from the 16 foot alley which entrance is bounded by the west alley right-of-way line, the rear lot lines of 1618 and 1622 Kalmia Road and 1605 Jonquil Street.

2. The site has irregular topography varying in elevation from approximately 180 feet to the south to 250 feet to the north. It is improved with seven (7) buildings, parking areas for 112 cars, two (2) tennis courts and a large open field for other outside recreation activities. The buildings vary in size and are from two to four stories in height. They are so sited and architecturally designed as to be sensitive to the irregular topography and wooded nature of the site. The mature trees and shrubbery enframe the buildings creating a picturesque setting which visual and sensual qualities are reflected throughout the immediate neighborhood.

3. The subject property has been considered by this Board on many previous occasions, the last one being in Case No. 11192 decided January 23, 1973 and heard October 18, 1972, which was a request for a more intense use of the site which was denied by the Board. At that time, the Board stated in pertinent part:

> To remove any uncertainty for the future, we wish to make it clear that the result of this and our prior decisions with respect to the College is that no use of the College property is presently permitted other than the form of operation which existed prior to approximately October of 1971, namely, a primarily residential junior college for not more than 550 students in any one year. In the past, as noted above, there have been only about 40 non-residential students at the College per year. We believe that preserving the residential character of the school requires that this limit on the number of non-residents be observed in the future as well. (Order No. 11192, p. 6)

The denial was based in part on a Finding of Fact that the National Capital Planning Commission had recommended to the Board that the essentially residential character of the College should not be changed.

4. The International School of Law (sometimes hereinafter "the Law School") was founded in 1972. Although the Law School has been granted provisional licensure by the District of Columbia Board of Higher Education until 1979 to confer the Juris Doctor Degree, it is not yet accredited by the American Bar Association and there is no guarantee that it will be accredited. Present enrollemnt is approximately 546 students, consisting of day and evening students. (Campus Plan, pp. 4-5; testimony of Dean Norvell).

5. The Campus Plan submitted by the Law School covers such matters as student enrollemnt, faculty and staff, campus development, campus activities and parking and traffic flow and impact projected through 1980-81. A summary of the key elements and projections of the plan are as follows:

A. STUDENT ENROLLMENT

	Part-time	Full-time	Total
1976	410	240	650 (of which 390(60%)will be non-resident)

1977	500	275	775(of which 495(64%)will be non-resident)
1978	635	275	910 (of which 610(67%)will be non-resident)
1979	740	250	990(of which 670(68%)will be non-resident)
1980	780	220	1,000(of which 660(66%) will be non-resident)

As is evident, the Law School student body is now and would continue to be an essentially non-resident, commuting one. At present there are only about 150 dormitory rooms on the campus, with another 40 planned in the future.

The general age of the student body is between 24 and 31, with the average being 25.7. Approximately 50% of the student body is married. (Campus Plan pp. 18-19; testimony of Dean Norvell).

B. FACULTY

The Law School at present has 10 full-time and 24 part-time faculty members. It is projected that the part-time faculty will remain at 24 through the academic year 1980-81, and that the full-time faculty will increase to 30 by the academic year 1980-81, thus projecting faculty totals of 34 persons in 1975-76, 39 in 1976-77, 42 in 1977-78, 47 in 1978-79, 52 in 1979-80 and 54 in 1980-81. (Campus Plan, p. 18).

C. STAFF

A total staff of approximately 43 persons is contemplated for the 1976 academic year, consisting of administrative officers, staff administrators, library staff, physical plant staff, clerical and secretarial staff, an accountant, a cashier, and food service people. This staff size will increase in yearly increments until a total of approximately 59 is reached in 1980-81. (Campus Plan p.19).

D. TRAFFIC

The Campus Plan estimates car ownership by residential students at 25% with a modal split in accordance with the following divisions:

	Auto Driver	Auto Passenger	Mass Transit	Bike, Walk Etc.
Day Students	25%	25%	40%	10%
Night Students	40%	25%	30%	5%
Day Faculty	70%	7%	18%	5%
Night Faculty	85%	6%	6%	3%
Staff	25%	25%	45%	5%

Based on this modal split, it is estimated that 304 trips will be generated throughout times of the day and evening in 1976, 362 in 1977, 430 in 1978, 458 in 1979 and 466 in 1980. It is also estimated that the peak hour for arrival of vehicles will occur at 9:00 a.m. and the peak hour for departure of vehicles will occur at 3:00 p.m. Reliance is placed on the availability of buses serving the area and the opening of the Silver Spring Metro Station in 1978 to provide adequate public mass transit to and from the campus. (Campus Plan, pp. 42-44).

E. PARKING

The Law School projects peak parking requirements ranging from 147 spaces in 1976 to 232 spaces in 1980. To handle this demand, the Law School proposes to provide 225 spaces available on-site for 1976, with additional spaces to be provided when a library-classroom building is built. (Campus Plan pp. 46-47).

6. The applicant seeks permission to operate on the site a law school with a total enrollment increasing from 650 students in 1976 to 1,000 students in 1980 and a total staff and faculty by 1980 of 120. (Campus Plan, pp. 18 and 19). Residential utilization by students is "projected" to be 260 in 1976, 300 in 1978, and assuming certain new construction which is not presently before the Board, 340 from 1980 on. (Campus Plan, p. 18). The remaining 660 students would be non-resident commuters from the District of Columbia, Maryland, and Virginia. (Campus Plan, p. 20). There would be two divisions -- a day division with classes from

9:00a.m. to 5:00p.m. and a night division with classes from 6:00p.m. to 9:00p.m. (Applicant's Statement, p. 7). Enrollment in the night division is "projected" to start at 240 students, rise to 275 students in 1977 and 1978, and subside to 220 from 1980 on. (Campus Plan, p. 18). The library would be open on weeknights until 11:00 p.m. (Testimony of Dean Ralph Norvell). Making certain assumptions (not proven to our satisfaction) about class scheduling, the percentage of residents remaining on campus while not in class, and the number of staff and faculty who may be on campus, and with no apparent allowance given for students who would be in the library or participating in extra-curricular activities (Campus plan, p. 10)the applicant "generates" peak totals of persons present on campus at day and night of 690 and 202, respectively (Campus Plan, p. 23).

7. The reports and recommendations of various District agencies who were consulted about the application expressed various conclusions.

a. The District of Columbia Department of Transportation has rendered a four-page report summarizing its investigation into the traffic and parking effects of the proposed use. The Department concludes, among other things:

1. Because the arrival of law students would come after the present weekday commuting traffic peak at 7:15 a.m. to 8:15 a.m., the proposed law school would extend but not exacerbate that peak hour traffic. (Report, pp. 2-3).

2. Commuters now utilize the neighborhood residential streets as "short-cutting arterials". (Report, pp. 2-3).

3. With any increase of traffic on neighborhood streets, "the effect is not one of improvement". The adverse impact is not of a measurable quantity if students approach the campus from the west, as the applicant's traffic consultant predicts. (Report p. 2). The adverse impact is much greater if students enter the campus from the east using Jonquil, Juniper, or Holly Streets, which behavior approach is quite plausible. (Testimony of Senior Supervisory Engineer Frank Leikowitz.).

4. The traffic projections of the applicant's expert are based on partly erroneous assumptions and thus understate the amount of traffic which the use would probable generate. (Report, p. 3).

5. Parking spaces on campus would be adequate to handle only those enrollments projected for 1976. (Report, p. 3). Student enrollment should belimited to that level. (Report p. 4).

6. The driveways are marginal for existing on-campus parking. Any plan to increase the on-campus parking should be submitted to the Department for appraisal. (Report p. 4).

b. The National Capital Planning Commission (NCPC) rendered a one-sentence report on the application stating that "such college or university use" is not inconsistent with the General Land Use Objectives of the Comprehensive Plan for the National Capital and would not adversely affect Federal interests or Federal lands.

c. The report of the Municipal Planning Office recommended that the application not be approved. That office, which based its recommendation upon an extensive review of the application and the prior zoning history of the site, including citizens' concerns expressed in previous Board actions, stressed that the total possible enrollment of 1,000 students and 59 faculty by 1980, given peak hour auto traffic loads, the requirement for off-street parking generated because of the proposed enrollment, and the existing availability of public transportation servicing the campus, could make location of the Law School at the site objectionable to the surrounding neighborhood. The office also was hopeful that development controls could be determined by the Board after public hearing, that would set an acceptable level of operations as envisioned by the applicant.

d. The D. C. Department of Environmental Services submitted a report recommending that the parking be held to 172 spaces which, in effect, would limit the growth of parking spaces to 85. They recommend that the parking growth be tied in with the student growth and travel by mass transit be encouraged. The Department does not consider solid waste generation a problem.

8. In opposition to the application there were filed several letters from residents of the area and petitions signed by approximately 400 residents. There were also filed several letters in support.

9. On May 17, 1976 and June 29, 1976, the Board held nearly 18 hours of hearings on this application. Applicant's case was presented by its attorney and the principal opposition was presented by an attorney retained by three citizens associations from the affected area, namely the Shepherd Park Citizens Association, Neighbors, Inc., and the Civic League of North Portal Estates. An attorney retained by an individual resident opponent also participated in the hearings. There was substantial testimony and evidence presented on various issues. The issues discussed included traffic, air quality, street capacity, the natural environment, children's safety, etc.

10. A representative of the District of Columbia Federation of Citizen Associations testified that the Board of this federation, comprised of thirty citizen associations from throughout the city, had voted unanimously to oppose the application on grounds among others, that the intensified, non-residential use of the proposed commuting-type school would bring increasing numbers of non-resident persons into the neighborhood, resulting in additional traffic and other disruptions to the neighborhood, thus making it a less desirable place to live.

11. The Advisory Neighborhood Commissioner for Single Member District 7, ANC 4A, which includes part of the subject neighborhood, testified that on April 15, 1976, that Commission had voted 8-0 to oppose the application on grounds that it would place a major automobile traffic generator in a residential neighborhood within the ANC 4A area.

12. The principal objections raised by opponents are that this predominantly commuter law school would be objectionable to neighboring property because it would substantially increase traffic and parking congestion on neighborhood streets. The lack of available eating facilities and their remote location, safety of children, traffic problems because of inclement weather, intrusion upon a quiet, stable neighborhood, lack of public tansportation serving the proposed enrollment were also cited as issues for concern.

13. A list of many other neighborhood persons who had attended the first hearing session and who were prepared to testify in opposition to the application had they had the opportunity, was given to the Board. The Board was also made aware of other witnesses in opposition who wanted to testify at the second hearing session but who were not presented because their testimony would be cumulative of facts already testified to and the Board had requested that the parties avoid cumulative testimony.

14. There was testimony by the citizens representatives that they would not object if this site was utilized as presently authorized as a residential junior college or any of the several other uses permitted as a matter-of-right in an R-1-A District including single family row dwellings.

CONCLUSIONS OF LAW AND OPINION:

The R-1 District is designed to protect quiet residential areas now developed with one-family detached dwellings and ajoining vacant areas likely to be developed for such purposes. The regulations are designed to stabilize such areas and to promote a suitable environment for family life. For that reason, only a few additional and compatible uses are permitted. The District is divided by different area requirements into R-1-A and R-1-B Districts providing for districts of low and high density, respectively.

Taking into account all of the evidence on the subject, we find that the use as proposed by the applicant would be likely to have an adverse environmental impact on the neighboring property.

Under Zoning Regulations 8207.2 we are authorized to approve this application only if "in the judgement of the Board (it) will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property". Under regulation 3101.46, we may permit a college or university use in an R-1-A District only if certain conditions are met, particularly that "such use is so located that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditons". The applicant has the burden of proving the required conditions are met. Upon review of the testimony and record in this case, we conclude that the applicant has not discharged that burden

and, indeed, that the proposed use is likely to become objectionable to neighboring property because of noise, traffice, number of students, air pollution, risk of danger to neighborhood children, and parking congestion.

In keeping with the recommendation of the MPO and in response to the Board's request, the applicant offered a reduced level of operation for consideration by the Board. This reduced level of operation is described, in a one and a half page memorandum filed by the applicant's attorney. By this memorandum, the school seeks permission to operate with a maximum enrollment of 800 (rather than 1,000) and with a "phased reduction" of the night division down to 200 in 1978. (Presumably, the "phased reduction" means that the school still wants authority to have 240 night students in 1976 and 275 in 1977, as described at page 18 of the original campus plan). There is no indication in the memorandum if the previously projected staff and faculty of 120 would change, and there is no indication of whether the 200 dropped students are being taken out of the residential or commuter portion of the student population described in the original application. There is brief reference to certain measures designed to limit traffic and parking.

We do not find, in the exercise of our judgement under regulation 8207.2, that applicant has proved that operation of the school at this reduced, "minimum acceptable" level would not be objectionable to neighboring property. To the contrary, we believe it still would have an adverse effect on neighboring property, though the effect would be less severe than at the level described in the application. However, the Board recognizes that both the owners of this property, the District planning office, and the area residents would like to end the uncertainty which for the last several years has attended the future of this property and to have firmly established a use which is non-objectionable and compatible with the neighboring property. Accordingly the Board orders that the application be GRANTED CONDITIONALLY. It is the opinion of the Board that by imposing the following conditions, the use of the property would be comparable to the activity level approved previously for this site and any additional impact to the neighborhood because of the new activities will be in harmony with the general purposes of the Zoning Regulations and Map:

1. Total enrollment of the International School of Law shall not exceed 550 full-time or part-time students.

2. Of the total number of students, at least 340 students shall reside on campus. However, this condition shall become effective only after the academic year 1976-77.

3. Parking is limited to 186 spaces and as presently located.

4. The Library and all classrooms shall close by 12:00 midnight.

The Board reserves the right to direct revocation of the occupancy permit upon a proper showing that any terms or conditions of this Order have been violated.

VOTE:

3-2 (William S. Harps, Leonard L. McCants, William F. McIntosh to grant, Lilla Burt Cummings, Esq. dissenting and Theodore Mariani dissenting by proxy)

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

ATTESTED By: Arthur B. Hatton
ARTHUR B. HATTON
Executive Secretary

FINAL DATE OF ORDER: September 30, 1976

THAT THIS 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 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.