

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13786-A of Washington Jesuit Academy, pursuant to 11 DCMR § 3129.7 for a minor modification of the Board of Zoning Adjustment's prior approval to establish a private school under § 206 for a maximum of 300 students in the R-5-A Zone District at premises 900 Varnum Street, N.E. (Square 3894, Lot 19).

DECISION DATE: June 8, 2004

SUMMARY ORDER

In BZA Order No. 13786 ("Order"), the Board approved a special exception permitting the Association for Retarded Citizens ("ARC") to establish a private school for 300 students at 900 Varnum Street, N.E. ("Property"). Condition No. 1 of the Order limited approval for operation of the facility to ARC. On May 14, 2004, Washington Jesuit Academy ("WJA"), the current owner of the Property, filed a letter with the Board of Zoning Adjustment ("Board" or BZA) requesting a minor modification of the Order to remove the condition as unlawful and unnecessary. WJA also requested that the Board waive the requirements of 11 DCMR § 3129.3, regarding the time period in which to file a request for a minor modification of a BZA Order, and 11 DCMR § 3129.6, regarding the requirement that only Board members who participated in the original decision or read the record be allowed to vote on the modification.

The site of this application is located within the jurisdiction of ANC 5A. ANC 5A filed a Resolution setting forth its unanimous vote not to oppose the requested modification.

In order for the Board to address the motion for modification, it was necessary for the Board to grant a waiver of 11 DCMR § 3129.3, which requires that "A request for modification of plans shall be filed with the Board not later than six (6) months after the final date of the final order approving the application." The final date of BZA Order No. 13786 was July 13, 1982. By a vote of 5-0-0, the Board approved a motion to waive the requirements of 11 DCMR § 3129.3, so that it could address the merits of this modification application.

Section 3129.6 provides that no member shall vote on a request for modification of plans unless the member participated in and voted on the original decision or has read the record. In this case, the final date of the Order was twenty-two years ago. As a result, no member of the Board participated in the original proceedings. The Board finds that the

requested modification does not turn upon the facts presented to the Board in the original application. Accordingly, the Board waives the requirements of § 3129.6.

As directed by 11 DCMR § 3129, the Board has required that the applicant satisfy the burden of proving that the requested modification is a minor request that does not change the material facts the Board relied upon in its approving the application. The proposed modification would not change the capacity, type of use, and area occupied by the school. The operation of the school would continue to comply with the remaining conditions of the Order.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. No person or entity appeared in opposition to the request for modification or otherwise objected to it. A decision by the Board to grant the motion for minor modification would not be adverse to or prejudice the rights of any party, and is appropriate in this case.

Accordingly, it is hereby **ORDERED** that the motion for modification of the Order is **GRANTED** and Condition No. 1 of the Board's Order dated July 13, 1982 is hereby deleted. In all other respects, the previous Order of the Board shall remain in full force and effect.

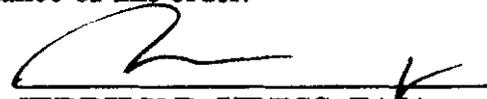
VOTE: 5-0-0 TO WAIVE SECTION 3129.3, WHICH REQUIRES ALL MODIFICATIONS TO BE FILED WITHIN SIX (6) MONTHS AFTER THE FINAL ORDER APPROVING THE APPLICATION (Geoffrey H. Griffis (By Proxy), Curtis L. Etherly, Jr., John A. Mann, II, Ruthanne G. Miller, John G. Parsons, to Grant).

VOTE: 4-0-1 TO APPROVE THE MODIFICATION OF BZA ORDER NO. 13786 TO DELETE CONDITION NO. 1 OF THE ORDER (Geoffrey H. Griffis (By Proxy), Curtis L. Etherly, Jr., John A. Mann, II, and John G. Parsons to Grant, Ruthanne G. Miller abstaining from the vote).

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

Each concurring Board Member has approved the issuance of this order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: JUL 02 2004

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT

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TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE
BOARD OF ZONING ADJUSTMENT." JS/rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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As Director of the Office of Zoning, I hereby certify and attest that on JUL 02 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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Single Member District Commissioner 5A05
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Department of Consumer and Regulatory Affairs
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Washington, D.C. 20002

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rsn

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning