

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16177 of the Sisters of the Good Shepherd, pursuant to 11 DCMR 3108.1, for a special exception under Section 206 to establish a new private school of pre-kindergarten through fifth grade in a three-story school building in an R-3 District at premises 1690 36th Street, N.W. (Square 1304, Lot 14).

Hearing Date: December 4, 1996
Decision Dates: January 8 and February 5, 1997

DISPOSITION: The Board granted the application by a vote of 4-0 (Susan Morgan Hinton, Laura M. Richards and Howard R. Croft to grant; Sheila Cross Reid to grant by absentee vote; Angel F. Clarens not voting, not having heard the case).

FINAL DATE OF ORDER: March 19, 1997

RECONSIDERATION ORDER

THE REQUEST FOR WAIVER OF THE BOARD'S RULES:

By Order dated March 19, 1997, the Board granted the application to allow a private elementary school to be established at the subject site. On March 29, 1997, the Order became effective. However, because March 29, 1997 fell on a Saturday, any motions for reconsideration or rehearing were due by Monday, March 31, 1997. On April 4, 1997, the Board received a motion for reconsideration and rehearing signed by Barbara Zartman, president of the Cloisters in Georgetown Homeowner's Association, dated April 1, 1997. Because the motion was received after the March 31st deadline, the Board's staff informed Ms. Zartman that she would need to request a waiver from the 10-day filing requirement for the motion to be considered by the Board. This waiver request was received on June 3, 1997.

In the waiver request, Ms. Zartman indicated that she was unclear about the actual due date for the motion. Her understanding was that she was to post the motion with the mail by April 1, 1997 and that the motion should be received in the Office of Zoning by April 4, 1997. At the public meeting of June 4, 1997, the Board asked the Secretary to the Board about the circumstances surrounding the filing of this motion. He indicated

that he spoke with Ms. Zartman and explained to her when the motion would be due. However, even after their discussion, she apparently remained unclear. Consequently, the motion was submitted late. No responses were submitted into the record in opposition to the late submission or in opposition to the waiver request.

Based on the circumstances described by the Secretary, the Board determined to waive the 10-day filing requirement to allow for the filing of the motion for reconsideration and rehearing.

THE MOTIONS FOR RECONSIDERATION AND REHEARING:

In the motion for reconsideration, Ms. Zartman stated that at the time of the December 4, 1996 hearing, the applicant made reference to a number of surveys and studies that were intended to carry the burden of proof on the issue of traffic volumes and mitigation. Ms. Zartman stated that the applicant also referred to conversations with the Department of Public Works about the traffic circulation and mitigation measures that would assure that the school would not likely have an adverse impact either in terms of overall traffic in the neighborhood, timing of traffic, or the amount of parking spillover.

Ms. Zartman stated that at the public hearing, she pointed out that the community had never been shown any of the studies, reports or the final traffic mitigation plan referenced by the applicant. She was of the view that the Board believed that those documents were "among the many materials submitted with the applicant" [sic]. She noted that there is no record of the DPW's position on this application and there are no community or parent studies to examine. Finally, she noted that there is a traffic mitigation plan which differs from that which had been seen by the community. It includes removing all on-street parking during the entire school day along both sides of 36th Street and along the south side of R Street from 35th to 37th Street. Because this is a case in which there is a serious parking shortage in the residential community, she argued that this plan flies in the face of the claim that there would be no parking spillover. She stated that the effect of this plan on the community is the removal of substantial parking, whether it is by parking Washington International School vehicles on city streets or by removing the capacity of citizens to park on the streets.

Ms. Zartman argued that the community needs a clear record on which to rely on the issues of traffic impact and planned mitigation. She stated that the current record is not clear. She stated that what is on the record underscores their concerns that this project will take away parking, adversely affect the health and safety of District residents and leave the community without a well written mitigation plan on which to oppose future increases in student levels, should the applicant be wrong about its operations.

Because of the flaws in the application and the record, she requested that the Board reconsider its order and rehear the case as to traffic, safety and environmental impact.

By letter dated April 3, 1997, the applicant, through counsel, expressed opposition to the motion. The applicant stated that the request for reconsideration is based on the grounds that the record does not contain the position of the Department of Public Works. Further, it is argued that the traffic mitigation plan in the record differs from the one that the community viewed in the past and calls for the removal of substantial parking in the area. The applicant stated that neither argument has merit. Rather, Ms. Zartman has staked out a position in opposition to the application prior to giving full consideration to the merits of the proposal and she relies on misrepresentations and a lack of expertise to seek another hearing on the same claims made previously before the Board. The applicant stated that the Board does not reconsider matters on such a basis.

The applicant pointed out that the application was supported by each of the community associations directly affected by it, the Office of Planning, the affected Advisory Neighborhood Commission and numerous other residents in the community. Furthermore, the community's own traffic expert confirmed that the applicant's traffic mitigation plan and studies were accurate.

The applicant stated that Ms. Zartman has not presented any new evidence which would warrant a rehearing in the case. Nor has it been shown that the Board improperly applied the special exception provisions of the Zoning Regulations in this case. Therefore, the applicant requested that the motion be denied.

CONCLUSIONS OF LAW AND OPINION:

Upon consideration of the record in the application, the motion and response thereto, the Board concludes that Ms. Zartman has failed to meet the burden of proof. Motions for reconsideration are governed by the Board's Rules at 11 DCMR 3332.4. Subsection 3332.4 provides that "[a] motion for reconsideration shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion and the relief sought". Subsection 3332.6 allows the Board to consider motions for rehearing where new evidence is submitted which could not reasonably have been presented at the original hearing.

With regard to the information presented in the motion, the Board noted that the traffic plan ultimately decided on by the applicant may not have been received by all interested persons in a timely fashion prior to the hearing. This often happens in cases where there is a great deal of community involvement. However, by the end of the hearing, all parties were aware of what the evidence was and all parties had an

opportunity to raise any concerns in their proposed findings of fact submitted after the hearing. The Board is of the opinion that this opportunity to raise any further concerns cured the potential lack of notice of new traffic reports prior to the hearing. Based on this analysis, the Board believes that Ms. Zartman has failed to demonstrate how the Board erred in deciding to grant the application.

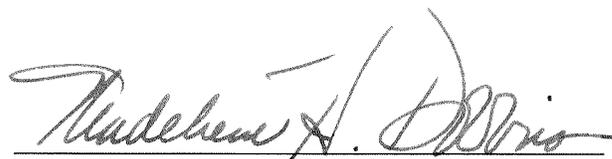
Finally, the Board concludes that Ms. Zartman has failed to introduce new evidence that could not reasonably have been presented at the original hearing. Accordingly, the Board hereby **ORDERS** that the **MOTION for RECONSIDERATION and REHEARING** be **DENIED**.

VOTE: 3 – 0 (Susan Morgan Hinton and Laura M. Richards to waive the rules and deny the motion for reconsideration and rehearing; Sheila Cross Reid to waive and deny by absentee vote; Angel F. Clarens not voting, not having heard the case).

DECISION DATE: June 4, 1997

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



MADELIENE H. DOBBINS

Director

FINAL DATE OF ORDER: MAR 13 1998

UNDER 11 DCMR § 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

ORD16177/twr

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16177

As Director of the Board of Zoning Adjustment, I certify and attest that on
MAR 13 1998 a copy of the order entered on that date in this matter was
mailed first class, postage prepaid to each party who appeared and participated in the public
hearing concerning this matter, and who is listed below:

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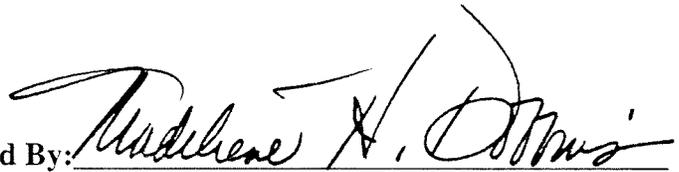
ATTESTATION NO. 16177

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Attested By:



MADELIENE H. DOBBINS

Director

Date: MAR 13 1998

attest/ljp