**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**Board of Zoning Adjustment**

**Application No. 17540 of Capitol Hill Day School**, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements of § 404, a variance from the rear yard requirements of § 403, and a variance from the floor area ratio requirements of § 1203.3 of the Capitol Interest Overlay District, and pursuant to 11 DCMR §3104.1, for a special exception pursuant to § 1202.1, to allow the construction of an addition to a private school, and pursuant to § 206, to reconfigure the layout of an existing parking lot, at premise 210 South Carolina Avenue, S.E., in the CAP/R-4 District (Square 765, Lot 803).

**Application No. 17541 of Capitol Hill Day School,** pursuant to 11 DCMR § 3104.1, for a special exception pursuant to §§ 206 and 1202.1 to allow the continued operation of a private school for thirty (30) students in pre-kindergarten through eighth grade and five (5) faculty and staff members in the basement through second floor at premise 214 South Carolina Avenue, S.E., in the CAP/R-4 District (Square 765, Lot 802).

**HEARING DATES FOR BOTH APPLICATIONS:** **November 28, 2006, January 16, 2007**
**DECISION DATE FOR BOTH APPLICATIONS:** **February 6, 2007**

## DECISION AND ORDER

Both Application No. 17540 and 17541 were submitted on July 24, 2006 by the Capitol Hill Day School (the "School" or the "Applicant"), the owner of both properties that are the subject(s) of the two applications (together referred to herein as “subject property”). A revised Application No. 17540 was filed on October 30, 2006. In that revised application, the Applicant sought variance and special exception relief from the Board of Zoning Adjustment ("Board" or "BZA") to allow construction of an addition to an existing private school building known as the “Dent Building” and to reconfigure the layout of an existing parking lot, both in an R-4 zone district within the Capitol Interest Overlay District (“CAP”). In Application No. 17541, the Applicant sought special exception relief from the Board to allow the continued operation of a private school for thirty (30) students in pre-kindergarten through eighth grade and five (5) faculty and staff members also in a CAP/R-4 District. The property that is the subject of Application No. 17541 (214 South Carolina Avenue, S.E.) is adjacent to the property that is the subject of Application No. 17540 (210 South Carolina Avenue, S.E.), and the two properties have been used by, and will continue to be used by, the Applicant for the operations and functions of a single private school, known as Capitol Hill Day School.

Two separate applications were filed because the Board had permitted the Applicant to use the two buildings at different times and under different special exceptions. The main school building, *i.e.*, the Dent Building at 210 South Carolina Avenue, has been used by the School as a private school since 1980, pursuant to a special exception granted by the Board in 1979. That special exception did not have a term and therefore does not expire. The use of 214 South Carolina Avenue as part of the School was permitted as a special exception beginning in 1991, but with a five-year term, and was renewed in 1996, for a ten-year term. The special exception granted in 1996 expired in 2006; therefore the Applicant filed Application No. 17541 to renew it.

The Board sees no reason to continue to treat the relief requests for these two buildings, clearly part of one use and more properly subject to the same special exception, as two separate applications. Therefore, this order addresses both Applications Nos. 17540 and 17541, and henceforward the property that is the subject of Application No. 17541 (214 South Carolina Avenue) will be treated as part of the private school use of the Applicant, Capitol Hill Day School. Accordingly, the separate special exception that existed for 214 South Carolina Avenue which expired in 2006 will not be renewed, but the relief that would have been granted if it had been renewed is hereby subsumed into the untermed special exception granted to the Applicant in 1979 by Board Order No. 12860 (March 27, 1979), for the property that is the subject of Application No. 17540 (210 South Carolina Avenue). The Board intends that, until such time in the future as a change is requested, or required, these two subject properties be viewed as a single private school use pursuant to the underlying special exception relief granted by Order No. 12860.

The Board held a combined public hearing addressing both applications on November 28, 2006 and January 16, 2007. At its public meeting on February 6, 2007, the Board voted 5-0-0 to approve both applications and decided to issue a single order with respect to the applications. Therefore, in this Order, the terms "subject property" and "School" are intended to include both 210 and 214 South Carolina Avenue, S.E., unless otherwise noted.

## PRELIMINARY MATTERS

**Notice of Application and Notice of Hearing**. By memoranda dated July 25, 2006, the Office of Zoning ("OZ") sent notice of both applications to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), the D.C. State Historic Preservation Officer, the Architect of the U.S. Capitol, Advisory Neighborhood Commission ("ANC") 6B, the ANC within which the subject property is located, the Single Member District member for ANC 6B01, and the Council Member for Ward 6. Notice of the filing of Application No. 17540 was also sent to the D.C. Department of Housing and Community Development ("DHCD"), pursuant to 11 DCMR § 1202.2. Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the Applicant, all entities owning property within 200 feet of the subject property, ANC 6B, and OP. The Applicant posted placards at the property informing the public of the filing of the applications and of the date of the public hearing, and submitted an affidavit to the Board to this effect.

**Requests for Party Status**. ANC 6B was automatically a party to this proceeding. The Board received a request for party status from neighboring property owners Mr. Robert Krughoff (220 South Carolina Avenue, S.E.) and Mr. Bradley Pine and Ms. Catherine Townsend Pine (216 South Carolina Avenue, S.E.). The Board considered Mr. Krughoff's request, but found it did not satisfy the requirements for party status under subsection 3106.2, and denied it. The Board granted the Pines' request for party status and Mr. and Mrs. Pine, represented by counsel, testified at the public hearing as to their concerns about the size of the proposed addition, the loss of light and air to their property, noise, and other adverse impacts due to foot traffic between the proposed addition and 214 South Carolina Avenue, S.E. They also claimed that the construction of the addition to the School would have a negative impact on the value of their property and would change the residential character of the neighborhood.

**Applicant's Case**. Catherine Peterson, head of the School, and Winfield Sealander, member and Facilities Chair of the School's Board of Trustees, testified on behalf of the Applicant. The Applicant also presented testimony and evidence from experts in architecture (David Cox, FAIA of Cox, Gray and Spack Architects) and traffic management (Martin Wells, P.E. of Wells & Associates).

**Government Reports**. The Office of Planning filed a report recognizing that the addition could aid in improving and advancing the programming of the School. OP recommended approval of construction of an addition to the Dent Building, including the lot occupancy and rear yard variance requests. OP was of the opinion that the Applicant had not adequately addressed the variance test for the FAR relief requested and was concerned that the size of the proposed addition was too intensive for the site in relation to the surrounding residential area. OP suggested that the Applicant consider a reduction in the size of the addition, which would reduce the FAR. OP expressed concern with regard to the special exception request to reconfigure the parking lot and its effect on safety in the alley. OP recommended that cars be required to back into the proposed parking spaces and requested resolution of traffic and parking issues during and after construction. OP also requested additional information including official documentation of square footage per student requirements based on industry standards and the most recent accreditation report with the accreditation board's official recommendation for the School. This information was supplied by the Applicant during the hearing, as appropriate.

OP also recommended that, if the Board approved the addition to the Dent Building, the Applicant's use of the building at 214 South Carolina Avenue be limited to administrative functions, with classroom use eliminated.

DDOT filed a report supporting the request for the construction of the addition stating that, because the proposed construction does not increase the number of students, faculty, or staff, and does not significantly change current traffic operations related to the School, transportation impacts would be negligible. DDOT also supported the recommendations of the Applicant's Traffic Impact Study Report and recommended the following additional conditions:

1. Provide several on-site preferred parking spaces to staff that participate in carpool or van

pool arrangements.

2. Provide one designated car share parking space for staff and neighborhood use.

3. Establish a real and/or virtual bulletin board to help staff and parents understand transportation options and facilitate cooperative arrangements for either commuting or student pick-up/drop-off.

4. Assign one staff member as the Transportation Management Coordinator to maintain the "bulletin board" and serve as a central source of information.

DHCD reviewed Application No 17540 and filed a report supporting the requested special exception and variances to allow construction of the addition and to reconfigure the School's parking area.

**ANC Report**. ANC 6B filed a letter dated November 15, 2006, indicating that at a regular and properly noticed meeting on November 14, 2006, with a quorum present, it met to consider the requested relief for the subject property. The ANC voted 9-0 to support continued operation of the Applicant's private school use at 214 South Carolina Avenue. It voted 7-2 to support the requests for a variance from lot occupancy, rear yard, FAR,[1] and parking requirements, and the special exception to allow construction of an addition to the Dent Building, subject to several conditions, some of which the Board has incorporated into this Order.

**Persons in Opposition to the Application**. The Board received many letters in opposition to the applications from neighboring property owners, as well as a petition in opposition signed by neighboring property owners. The letters generally cited potential adverse impacts attendant to the requested variance and special exception relief, including the large size of the addition, the loss of views caused by the placement of the addition, harm to the residential character of the neighborhood as a result of the addition, noise caused by the HVAC units on the roof of the addition, noise and disruption caused by the construction of the addition, creation of objectionable traffic and parking conditions due to the loss of the security fence surrounding the existing parking area and the changes in parking configuration and location of bus parking. Several individuals also testified in opposition at the public hearing citing similar concerns.

**Persons in Support to the Application**. The Board received many letters in support of the applications from neighboring property owners. The letters generally cited the vital service the School has provided to families in the Capitol Hill community by offering an excellent education within walking distance of their homes. The letters also cited the many benefits the School provides to its neighbors and the community, including its financial aid programs, community outreach, food donations, and financial support of Garfield Park. Several neighbors and teachers

[1]The ANC's November 15th letter had inadvertently left out any mention of the requested FAR relief. Therefore, it filed a second letter, dated November 16, 2006, confirming that it had considered, and it supported, the request for relief from the FAR requirements of § 1203.3, based upon the conditions outlined in its November 15th letter.

from the School also testified in support of the applications at the pubic hearing. The testimony of neighbors included information similar to that provided in the letters. Ms. Pearl Bailes and Mr. Luis Correa-Power, teachers at the School who testified at the public hearing, emphasized the considerable need of the School for additional instructional area and modern facilities which could address space, security, safety, and handicapped-accessibility needs.

**FINDINGS OF FACT**

**Background**.

1. The School is a private school for children in pre-kindergarten through eighth grade, which was established in 1969 in two churches on Capitol Hill.

2. In 1979, the use of the Dent Building, located at 210 South Carolina Avenue, S.E., as a private school by the Applicant was first approved by the Board in Order No. 12860, dated March 27, 1979. The School has been located in the Dent Building since 1980.

3. The School purchased the Dent Building in 1998.

4. The Applicant's use of the Dent Building as a private school was most recently sanctioned in Order No. 14780 (August 12, 1988), in which the Board approved the special exception use of the property as a private school for 225 students and 38 faculty and staff members, with twenty (20) car parking spaces and three (3) bus parking spaces. No term was put on the special exception approval. *See,* File No. 17540, Exhibit No. 11.

5. The Dent Building has a side yard of approximately 26 feet between it and the next adjacent row dwelling to its east, located at 214 South Carolina Avenue, S.E.

6. In 1987, the Applicant purchased the building at 214 South Carolina Avenue, S.E., (the "214 Building"), a brick two-story plus basement row dwelling which is attached to the row dwelling immediately to its east, but is, again, approximately 26 feet from the Dent Building to its west.

7. In 1990, in Order No. 15386, the Board approved use of the 214 Building by the School for a period of five years. The approval was further conditioned, most relevantly, in that no classroom use was permitted on the second floor, the maximum number of students in the building at any one time could not exceed 30, and evening use of the premise was limited. *See,* File No. 17541, Exhibit No. 10.

8. In 1996, in Order No. 16120, the Board renewed its special exception approval for the Applicant's use of the 214 Building, with the same conditions, except the term was increased to ten years, thereby ending in 2006. *See,* File No. 17541, Exhibit No. 11.

The Property and the Surrounding Area

9. The subject property[2] is located in the CAP/R-4 zone district on the northeast corner of 2nd and South Carolina Avenues, S.E., and contains approximately 15,222 square feet of land area in Square 765, Lots 802 and 803.

10. An alleyway approximately fourteen feet (14 ft.) wide abuts the rear of the subject property.

11. The property is improved with a large brick, three-story former public school building known as the Dent School (now the "Dent Building"), which was constructed in 1900. The property is also improved with the 214 Building, a two-story plus basement row dwelling constructed in 1913.

12. There are currently 20 car parking spaces and three bus parking spaces located behind and to the east of the Dent Building.

13. The immediate neighborhood consists primarily of single-family row dwellings, churches, parks, and other public and private schools. Two- and three-story row dwellings are located to the north of the subject property, across the alley, and to the west of the property, along 2nd Street, S.E. To the east of the property, fronting South Carolina Avenue like the subject property, are more two-and three-story row dwellings, and immediately south of the property, across South Carolina Avenue, S.E., is Garfield Park, a neighborhood green space used by the students of the School.

The Proposed Project

13. The Applicant proposes to construct an addition to the Dent Building, to be located in its eastern side yard, between the Dent Building and the 214 building (the "Addition").

14. The rear-most portion of the Addition will be attached to the Dent Building to its west on all 3 floors, but the front portion of the Addition's second and third floors will be set away from the Dent Building, thus maintaining the integrity of the Dent Building's design by keeping its eastern wall and windows intact.

15. The eastern wall of the Addition will be constructed on the property line between Lot 802 and Lot 803, but there will be no internal connection between the Addition and the 214 Building, situated on Lot 802.

16. The Addition will include three stories and a basement level. The basement level will be constructed seventeen feet (17 ft.) underground.

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[2]The Board reiterates that, in this Order, the term "subject property" refers to, and includes, both the Dent Building at 210 South Carolina Avenue, and the row dwelling owned by the Applicant at 214 South Carolina Avenue, the "214 Building."

17. The Addition will include a much-needed elevator which will provide access to all but the attic level of the Dent Building.

18. The rooftop penthouse structure to be located on top of the Addition will be constructed of concrete block walls filled with sound-absorbing insulation in order to attenuate sound and mitigate any noise impact on the surrounding properties.

19. The Addition will provide classroom, multi-purpose, and administrative space for the School. It will also provide a new entrance lobby for the School which will serve as the entry "control" point.

20. The multi-purpose room will be located on the lower level of the Addition, entirely below grade, and will include a small stage and space for approximately 250 removable seats. An entry way, lobby, administrative offices and 2 classrooms will be located on the first floor. One classroom, 2 administrative offices, and a faculty room will be located on the second floor and three (3) classrooms will be located on the third floor.

21. There are no windows or doors on the part of the wall of the Addition visible from the row dwelling at 216 South Carolina Avenue, the nearest residential row dwelling to the east of the 214 Building.

22. Due to a steep grade change sloping up from west to east on the property, the first floor of the Addition is at a lower grade than the 214 Building lot and adjacent lots to the east.

23. The rear wall of the second and third floors of the Addition is set back from the alley approximately ten feet (10 ft.) further than the rear wall of the first floor, proportional to the rear of the back porch of the residential row dwelling at 216 South Carolina Avenue. A green roof is intended for the top of the first floor in the rear of the Addition.

24. A fire exit stairway will also be installed at the rear of the Addition at the basement level, leading up to the rear yard.

25. The Addition will increase the lot occupancy of the Dent Building from 42% to 67%, above the 40% maximum allowed in this CAP/R-4 zone district. *See,* 11 DCMR § 403.

26. The bulk of the Dent Building, with a rear yard of over 37 feet, will satisfy the required 20-foot rear yard requirement, but the rear yard behind the Addition will be reduced to ten feet, requiring a variance from 11 DCMR § 404.

27. The current floor area ratio ("FAR") of the Dent Building is 1.7. With the Addition, this will increase to 2.42, when 1.8 is the maximum permitted. *See,* 11 DCMR § 1203.3.

28. The Applicant proposes to reconfigure the parking area located in the rear yard of the Dent Building, in which it provides the 20 compact car parking spaces and the three bus parking spaces, as permitted by, and required by, Board Order No. 14780.

29. The elevation of the parking area will be dropped to the same grade as the abutting alley, allowing for the removal of a five-foot retaining wall currently separating the parking area from the alley.

30. The parking space layout will be reconfigured to retain the 20 car spaces, but with fewer "stacked" parking spaces than currently exist.

31. During the day, the School's three buses are generally in use and the 20 parking spaces will be available for students, faculty, staff, and visitor parking.

32. At night, and when the buses need to be parked on the subject property, 14 of the 20 parking spaces will be available for cars and the other six will be used to store the three buses.

33. The Applicant has obtained permission from a nearby establishment, "Results The Gym," to park its three buses in the gym parking lot during the day on an "as needed" basis.

34. The Applicant also requests renewal of the special exception to continue use of the 214 Building as part of its private school operations, but once the Addition is completed, student use of the 214 Building will cease and the Building will be devoted wholly to administrative and support functions.

35. Even with the Addition, the size of the classrooms and multipurpose room are still below the standards of the D.C. Public Schools.

<u>Special Exceptions to Construct Addition, Reconfigure Parking Lot, and Continue Use of 214 Building</u>

36. The School does not request an increase in the maximum levels of students or staff in conjunction with the construction of the Addition or in conjunction with the continued use of the 214 Building. These levels, 255 and 45, respectively, have been the same since 1990.

37. The hours of operation of the School will not change and will remain Monday through Friday, from 8:00 a.m. to 6:00 p.m.

38. The School's use of the subject property outside its hours of operation will also remain unchanged. This level of use amounts to no more than three evening events of a maximum of 25 people per month and occasional weekend activities, but no more than six per year.

39. The Addition is designed to harmoniously fill the gap between the Dent Building and the 214 Building. Its front façade, set flush with the Dent Building and the row dwellings to its east, rises behind an attractive landscaped play area.

40. The front portion of the Addition immediately adjacent to the Dent Building is set apart from the Dent Building, maintaining the Dent Building's integrity as a separate, grander structure.

41. The second and third floors of the Addition are set back form the rear lot line approximately ten feet more than the first floor, allowing more light and air to reach the rear alley.

42. The daytime parking provided by the School for cars will not change.

43. Buses will be off-site during the day, either in use, or in the "Results The Gym" parking lot. If parking is not possible at the Gym parking lot, the buses will remain on the parking area behind the school, possibly causing the moving of cars parked there. Overnight, the buses will be parked behind the Dent Building.

44. The Applicant has designed the Addition to ensure that no lights will shine on or toward neighboring properties.

45. The phasing-out and cessation of student use of the 214 Building will reduce foot traffic and other impacts related to such use.

46. The noise emanating from the School will not change as there is no increase in enrollment, and with the cessation of student use of the 214 Building, any noise impact on the row dwellings to the east will likely be reduced.

47. The Applicant's private school use on the subject property is compatible with this R-4 residential zone district and, with no increase in its student or staff levels, even with the Addition, its intensity of use will remain as it is today.

Variance Relief

***Exceptional Situation or Condition***

48. Unlike the majority of buildings in this Capitol Hill neighborhood, which are low-scale Victorian residential buildings, the Dent Building was constructed in 1900 in the Renaissance Revival style at a larger size, scale, and shape suitable for institutional uses.

49. The layout and configuration of the Dent Building, essentially unchanged since 1900, is inefficient and inadequate for a modern educational institution.

50. The Dent Building was originally designed to house classrooms on two floors. The attic, with few windows and little natural light, and the basement level, originally designed for

boiler and storage rooms, were not intended to be used as classroom space, and even though they are so used by the Applicant, the School still does not have adequate space.

51. The Dent Building possesses the following exceptional characteristics and conditions:
    1. No single stairway connects all floors;
    2. There is no entrance lobby or other entry "control" point;
    3. It has no multi-purpose space or room;
    4. Office space is inadequate, having been converted from former cloakrooms or carved out of classroom space;
    5. Circulation on and between the floors is extremely inefficient due to multifarious hallways and stair landings;
    6. The building has an usually high percentage of "core" space;
    7. There is no elevator and no space for the installation of an elevator within the building; and
    8. A significant amount of space is unusable “volume” rather than usable floor space, due to very high ceilings.

52. The lot on which the Dent Building sits is exceptionally small for an institutional/educational use.

53. There is inadequate space on Lot 803 for the Dent Building, the parking required by the Board, and any adequate recreation/playing field area even without the building footprint added by the Addition.

***Practical Difficulty***

54. The Dent Building, as currently configured, lacks sufficient space for classroom instruction, particularly for computer usage and science labs.

55. The Dent Building, as currently configured, has no auditorium space and no emergency shelter space.

56. The Dent Building, as currently configured, has insufficient storage space and no handicapped accessibility.

57. The Dent Building, as currently configured, lacks any central access control point, leading to inadequate control over building access and poor security.

58. The Dent Building cannot be reasonably reconfigured to provide the necessary classroom, storage, auditorium, shelter, and access space within the parameters of the Zoning Regulations.

59. The School currently has 13,547 square feet of classroom instructional space, and with the Addition, it will have 17,231 square feet of such space. According to the D.C. Public Schools specifications, the minimum recommended amount of such space for the number

of classrooms the School will have after the addition is 25, 925.

60. The D.C. Public Schools' specifications for "multipurpose" room are for 4,500 square feet of area, plus an 800-square-foot stage and a 400-square-foot storage space. The School's proposed underground multipurpose room will be 2,475 square feet in area, including a stage, with a storage area of 136 square feet.

***No Substantial Detriment to Public Good or Impairment of Zone Plan***

61. The Dent Building has a long history of educational use, first as a public school, then as an equipment repair shop for the D.C. Public School system, and now, as a site for the Applicant's private school use.

62. The proposed Addition is compatible with the Capitol Hill Historic District and has been determined by the Historic Preservation Review Board ("HPRB") to be harmonious with the neighborhood in its massing, design, and style.

63. The first floor of the Addition, the largest of its three floors, is located below the grade of the rear yards of the adjacent lots to the east. Because of the steep grade change between the subject property and these lots, the first floor of the Addition is virtually invisible from the rear yards of these properties.

64. The lengthy street frontage of Garfield Park, directly across South Carolina Avenue from the School, provides available on-street parking.

65. The Board credits DDOT's assessment that "[b]ecause the proposed [A]ddition does not significantly change current parking or traffic operations related to the [S]chool, DDOT deems the transportation impacts negligible." *See*, File No. 17540, Exhibit No. 118.

## CONCLUSIONS OF LAW

**Special Exception.**

The Board is authorized to grant a special exception where, in its judgment, the special exception will be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular section(s) pertaining to them. In this case, the Applicant had to meet the requirements of § 3104.1 and the requirements of §§ 1202 and 206. Section 3104.1 sets forth the general standard stated above and § 1202 sets forth a similar general standard, though more particularly tailored to the Capitol Interest Overlay District. Section 206 sets forth more specific standards relating to potential adverse impacts of private schools in residential zone districts.

Under Section 206.1 of the Zoning Regulations, the Board may permit the use of private schools subject to the provisions set forth in 206.2 and 206.3. Section 206.2 states:

> The private school shall be so located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions.

The Board finds that neither the construction of the proposed Addition nor the continued use of the 214 Building by the School will cause objectionable conditions or adversely affect neighboring or nearby property. The School does not propose any increase in students, faculty, or staff in conjunction with the proposed Addition. With no such increases proposed, the vehicle trips generated by the School and the parking requirements of the School will remain the same as they are today, and essentially the same as they have been since 1990. Neither the hours of operation of the School nor the number or nature of evening or weekend activities held by the School will change. On the whole, the School's current level of operations and impact on the neighborhood will be unchanged, and will likely even be somewhat reduced with the cessation of student use of the 214 Building.

The proposed Addition is sited on the Property so as to minimize any potentially adverse impacts and is designed in such a manner so as to assure compatibility of bulk, height and scale with the Dent Building, the 214 Building, and the residential buildings along the rest of the block. The largest and potentially most intrusive element of the Addition, the multipurpose room, has been located entirely underground. Core spaces (*e.g.,* stairways, circulation corridors, bathrooms) have been reduced to the smallest sizes practicable. Classrooms have also been reduced to the smallest size possible without disrupting the usability of the instruction space. The steep grade change between the property and the adjacent properties to the east substantially reduces the impact of the first floor of the proposed Addition. The second and third floors of the Addition are set back from the rear lot line approximately ten feet (10 ft.) further than the first floor, proportional to the rear of the back porch of the nearest residential row house located to the east of the 214 Building. Moreover, the Addition does not abut a neighbor, but abuts the 214 Building, part of the School use and the wall of the Addition visible by the neighbor at 216 South Carolina Avenue will be windowless to reduce any impact on privacy.

The design of the proposed Addition has been reviewed and approved by the Historic Preservation Review Board. The Addition will be compatible with the historic Dent Building and the fabric of the residential neighborhood. The façade is brick and the windows mimic the size and style of neighboring residential buildings. The front portion of the Addition nearest to the historic Dent Building is set away from the Dent Building so that views of its front and eastern side are not obstructed.

The Board also concludes that the proposed reconfiguration of the parking area is not likely to cause objectionable conditions or adversely affect neighboring property. Under BZA Order No. 14780, the Board required the Applicant to "provide on-site parking spaces to accommodate twenty (20) automobiles and three (3) school buses." With the construction of the proposed Addition, the Applicant will continue to accommodate twenty (20) car parking spaces and three (3) bus parking spaces under a new arrangement that provides twenty (20) car parking spaces during the day and fourteen (14) car parking spaces and three (3) bus parking spaces after normal

business hours. With the reconfiguration of the parking spaces, fewer vehicles will be "stacked" behind each other. Instead of the vehicles being "stacked" 5-deep, they will be "stacked" only 2-deep, and will be backed into the parking spaces, leading to less commotion and greater safety and efficiency.

Section 206.3 sets forth the parking standard for private schools, and states:

> Ample parking spaces, but not less than that required in chapter 21 of this title [of the Zoning Regulations], shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.

As discussed above, the School will continue to provide the number of parking spaces required by the Board pursuant to Order No. 14780. No increase in student enrollment or faculty and staff level is being requested, and the Board agrees with the Applicant's traffic expert that the Addition will have little or no impact on the overall vehicle trip generation patterns to and from the School. The traffic expert's study found that traffic on South Carolina Avenue and other neighborhood streets generally operated well during peak periods and that sufficient on-street parking was available to accommodate any additional parking needs of the School. *See*, File No. 17540, Exhibit No. 96, and File No. 17541, Exhibit No. 52.

DDOT had no objection to the construction of the proposed Addition. DDOT also concurred with the findings of the Applicant's traffic expert, stating that because the proposed Addition would result in no additional students, faculty or staff, the proposed Addition will have a "negligible" impact on transportation in the area.

The Board agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed Addition will have no adverse impacts on traffic and parking operations or levels of service in the area. The Board concludes that, pursuant to §§ 206 and 3104.1, the special exception relief requested for the private school can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map, and that it will not tend to affect adversely the use of neighboring properties in accordance with the Zoning Regulations and Map. Similarly, the Board concludes that, pursuant to subsection 1202(a), the special exception relief requested, as conditioned herein, will be compatible with the present and proposed development of the neighborhood.

Subsections 1202(b) and (c) stipulate that a special exception within the CAP Overlay District must be consistent with the mandates of Title V of the Legislative Branch Appropriation Act, 1976, approved July 25, 1975 (Pub. L. No. 94-59, 89 Stat. 288), (the "Act"), and the master plan promulgated under the Act. Title V of the Act authorized funds to enable the Architect of the Capitol to develop a master plan for the future development of the grounds of the U.S. Capitol. The Board sent notice of the Applications No's. 17540 and 17541 to the Architect of the Capitol and received no opposition nor comments to the effect that the granting of the applications would be inconsistent with the Act or the master plan promulgated pursuant to it.

**Variances**.

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property … or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. The "exceptional situation or condition" of a property can arise out of structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). Relief can only be granted "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2.

An applicant for area variances must make the lesser showing of "practical difficulties," as opposed to the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). Because area variances are being sought in this case, the Applicant had to make three showings: exceptional condition of the property, that such exceptional condition results in "practical difficulties" to the Applicant, and that the granting of the variance will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The Board reiterates and restates the conclusion it made in BZA Order No. 14780 that the subject property is exceptional because of its small size, particularly when compared to the lot sizes of other public and private schools located within the Capitol Hill neighborhood. The Board also finds in the instant proceeding that the Dent Building is unusual for the neighborhood and constitutes an exceptional condition. The Dent Building's attributes, specifically, its scale, massing, floor plan layout and other interior conditions, and its historic characteristics, are also exceptional conditions with which the Applicant must grapple. The building floor plan layout, dating back to the original building design of 1900, is inefficient and inadequate for modern educational standards and accreditation requirements.

The Applicant has designed the Addition to be as small as it can be while achieving the School's goals of providing more much-needed classroom and assembly space. Even with the Addition, the square footage of space provided per student will be below the D.C. Public Schools' standard for square footage per student. The unusual nature of the Dent Building and its exceptional conditions create "practical difficulties" for the School in that strict adherence to the Zoning Regulations would prohibit the Applicant from adding sufficient additional classroom or other space, or facilities, to the Building. No such addition of space is reasonably possible without

exceeding the allowable lot occupancy, rear yard and floor area ratio requirements of the Zoning Regulations.[3]

*Clerics of St. Viator, supra,* holds that the obsolescence of a building on a property may constitute the basis for the "hardship" necessary to the granting of a use variance. *See, Clerics,* at 294. In the context of the use variance case presented in *Clerics*, the applicant had to show that he had no other reasonable use of the land. The Applicant here has a lesser burden to carry. It does not have to show that it cannot use the Dent Building as is, but merely that, due to the Building's exceptional characteristics, its desired changes to the Building cannot be achieved within the parameters of the Zoning Regulations without encountering exceptional practical difficulties. *Clerics* also makes clear that unless the practical difficulties complained of are the "direct result" of the Applicant's actions, there is no reason to apply a doctrine of self-imposed hardship, or here, perhaps, self-imposed practical difficulty, *320 A.2d* at 294. The District of Columbia Court of Appeals has directly stated that knowledge of limitations of a property prior to its purchase is not a factor to be considered in an area variance analysis. *See, Association for Preservation of 1700 Block of N Street, N.W. and Vicinity v. D.C. Board of Zoning Adjustment,* 384 A.2d 674, 678 (D.C. 1978). ("The YMCA's self-created hardship [*i.e., 'full knowledge'* of problems with land '*prior'* to purchase] is not a factor to be considered in an application for an area variance, however, as that factor applies only to a use variance.") Therefore, the fact that the School purchased the Dent Building in 1998, knowing its limitations and exceptional characteristics, does not prevent the Board from granting the requested variance relief.

No substantial detriment to the public good or substantial impairment of the Zone Plan will result if the variances to allow the requested lot occupancy, rear yard and floor area ratio are granted. The Applicant's private school use is compatible with its residential neighborhood, and the variances requested will enable the use to continue on the subject property. The Addition has been designed to minimize any potentially negative impacts. The largest element of the Addition – the multi-purpose room – is located entirely below grade. The first floor of the Addition, the largest of the three floors of the Addition, is located below the grade of the rear yards of the adjacent lots along South Carolina Avenue, S.E. to the east and is virtually invisible from the rear yards of the residential properties to the east. Further, the properties to the east are separated from the Addition by the 214 Building and its rear yard and the properties to the north are located across a fourteen-foot (14 ft.) wide alley from the Addition.

The construction of the Addition is not leading to an increase in the maximum number of students enrolled at the School nor an increase in the maximum number of faculty and staff,

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[3]The Applicant points out that, whereas its private school use is limited to a 40% lot occupancy, a row dwelling, flat, or church in the CAP/R-4 zone district is permitted a lot occupancy of 60%. The Zoning Commission also recently amended the Zoning Regulations to permit public schools and public charter schools a maximum lot occupancy of 70% in R-4 zone districts, including within the CAP Overlay, as the Overlay does not specify any lot occupancy maximum applicable exclusively within it. Of course, the Applicant's private school use is similar to, and in many ways identical to, such school uses, and if it were permitted a lot occupancy of 70%, it would not need a lot occupancy variance.

therefore there will be no increase in the number of cars picking up and dropping off students. Nor will there be any increase in traffic or change in the parking provided.

**Great Weight**

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

ANC 6B voted unanimously to support the Applicant's continued use of the 214 Building and did not recommend that any conditions be put on the use. The ANC also voted to support the requests for the variances from lot occupancy, rear yard, and FAR requirements and for a special exception to allow construction of the Addition to the School and the reconfiguration of the parking lot. This affirmative vote was subject to certain conditions. The Board agrees with the ANC's decision to approve the special exception and variance requests. In addition, the Board has considered and given "great weight" to the ANC's proposed conditions. Those conditions recommended by the ANC that have been agreed to by the Board as appropriate to respond to issues raised during the public hearing and to mitigate potential adverse impacts are reflected in the conditions to this Order set forth below.

The Board has also given great weight to the recommendations of OP. Specifically, the Board recognizes OP's support for the rear yard and lot occupancy variances and agrees with OP's recommendations of approval of these variances.

The Board, however, disagrees with OP's statements that the Applicant did not adequately address the variance test for the FAR relief requested and that the size of the Addition would impair the intent of the CAP Overlay. At the hearing, one of the OP representatives stated that OP was "not opposed or in favor of" the FAR variance, but felt that the Applicant had not yet made a sufficient case to support it. The Board, however, after reviewing all the evidence presented, concludes that the Applicant sufficiently addressed the variance test for FAR relief. The Board finds that neither OP's report nor its testimony during the hearing identified specific, quantifiable negative impacts that would be ameliorated by reducing the size of the Addition. The Board notes that OP supported the height of the Addition and the rear yard and lot occupancy variances, which collectively establish the footprint and massing of the Addition, thus undermining OP's concerns with respect to FAR. In addition, the Board concludes that the size of the Addition will cause no substantial negative impacts on the surrounding area and will not impair the purpose and intent of the CAP Overlay.

The Board has also given great weight to OP's concern regarding the parking reconfiguration and alley safety and is persuaded by OP's suggestion that safety will be improved if cars are required to back into the proposed parking spaces. This Order is so conditioned. The Board also finds that the School has sufficiently addressed traffic and parking concerns and does not find it necessary or appropriate to condition this Order with regard to the provision of any specific off-site parking arrangement.

For the reasons stated above, the Board concludes that the Applicant has met its burden of proof with respect to special exceptions pursuant to §§ 3104.1, 206, and 1202.1, and with respect to variances from §§ 404, 403, and 1203.3. It is therefore **ORDERED** that Applications Numbers 17540 and 17541 be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The Addition to the Dent Building shall be constructed in accordance with the plans at Exhibit No. 31, in File No. 17540. The Applicant shall have the flexibility to modify the design of exterior elements of the Addition which are initiated by the Historic Preservation Review Board and do not require zoning relief.
2. At the beginning of the next academic year (*i.e.*, September) after the issuance of a valid Certificate of Occupancy for the Addition, use of the 214 Building shall be limited to administrative offices and support functions in conjunction with the School's use of the Dent Building.

3. The total number of students enrolled in the School shall not exceed 255.

4. The educational program offered by the Applicant shall not extend beyond a day program and an after-school program for pre-kindergarten through eighth grade students (except for a summer camp that serves the same grade levels and is also subject to all other conditions set forth in this Order).

5. No more than forty-three (43) faculty and staff members shall be employed at the School

6. The Applicant shall provide parking spaces on the subject property to accommodate twenty (20) automobiles during normal (i.e., daytime) hours of operation and three (3) school buses after hours as shown on the site plan at Exhibit 31, in File No. 17540. During the day, if the school buses are not in use, they shall be parked behind the Dent Building or in an alternative off-site, off-street location.

7. The normal hours of operation of the School shall be from 8:00 a.m. to 6:00 p.m., Monday through Friday.

8. Evening and weekend functions and activities for gatherings of twenty-five (25) or more persons shall be limited to those functions and activities that are customary to an elementary school, such as theatrical or musical productions, back-to-school nights, science, math and art fairs, and similar activities, and shall not exceed on average more than two (2) per month. No facilities within the Dent or 214 Buildings shall be made available for commercial purposes.

9. The Applicant shall ensure that any lights on the exterior of the Dent Building, its Addition, or the 214 Building, do not shine onto any neighboring properties (other than the 214 Building, but only for so long as the Applicant uses the 214 Building for School uses in conjunction with the use of the Dent Building).

10. Subject (if necessary) to review by HPRB and the issuance of public space permits therefore, the Applicant shall screen the air conditioning units that are located on grade in the public space along 2nd Street, S.E. with an acoustic screen wall in order to mitigate their noise impacts on nearby properties.

11. Subject (if necessary) to review by HPRB, the Applicant shall erect or install a fence between the reconfigured parking lot and the abutting public alley. The fence may be movable.

12. The Applicant shall post signs that instruct faculty, staff, and visitors who use the on-site parking spaces in the rear of the Dent Building to back into such parking spaces.

13. The Applicant shall provide faculty and staff with incentives, such as the MetroCheck program, to encourage the use of public transportation or to carpool to and from the subject property.

14. All previous orders and conditions therein pertaining to the subject property shall remain in effect until issuance of a valid Certificate of Occupancy for the Addition, at which time this Order and the conditions herein shall supersede all such previous orders and their conditions.

15. The Applicant shall maintain a community liaison and shall meet with concerned neighbors and other interested parties, including the local ANC representative, a minimum of four times per year. All property owners within 200 feet of the subject property shall be notified in advance of such meetings and shall be invited to attend.

**VOTE ON BOTH APPLICATIONS**
**NUMBERS 17540 AND 17541:** **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II and Carol J. Mitten to approve.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
Each voting Board member has approved the issuance of this Order granting the applications.

**ATTESTED BY:** _____
**JERRILY R. KRESS, FAIA**
**Director, Office of Zoning**

JUN 11 2007

**FINAL DATE OF ORDER** _____

PURSUANT TO 11 DCMR § 3125.9, "NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6"

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURES WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATIONS, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS, SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT, DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

LM

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**Board of Zoning Adjustment**

**BZA APPLICATION NOS. 17540 & 17541**

As Director of the Office of Zoning, I hereby certify and attest that on **JUNE 11, 2007**, 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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**ATTESTED BY:** _____
**JERRILY R. KRESS, FAIA**
**Director, Office of Zoning**

TWR