

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17944 of The Lab School of Washington, pursuant to 11 DCRM § 3104.1, for a special exception to allow the continued use of an existing private school (200 pre-kindergarten to fifth grade children and 40 staff) under § 206, in the R-1-B District at premises 4470 Q Street, N.W. (Square 1363, Lot 980).

HEARING DATE: July 21, 2009
DECISION DATE: July 28, 2009

SUMMARY ORDER

PRELIMINARY MATTERS:

The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register (56 DCR 3664) and by mail to Advisory Neighborhood Commission (“ANC”) 3D, and to the owners of property within 200 feet of the subject property.

The subject property of this application is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 3D, which was automatically a party in this proceeding in addition to the Applicant. ANC 3D submitted a written statement and attended the public hearing in support of the application, subject to certain conditions. There were no additional requests for party status.

The Office of Planning (“OP”) recommended approval of the requested special exception subject to nine conditions, including that the “number of students shall not exceed 200, pre-kindergarten through fifth grade.” OP noted that the Applicant was not proposing to increase the number of students or staff beyond the conditions previously adopted by the Board for another private school use at the same location, when 197 students were enrolled at the subject property, and that the site also formerly housed a public school with a peak enrollment of 230 students. OP did not anticipate any objectionable conditions as a result of the proposed private school use since the past use of the subject property had not resulted in any objectionable conditions.

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 17944
PAGE NO. 2

At a public meeting held July 1, 2009 with a quorum present, ANC 3D voted 6-2 “to approve the Lab School’s application for special exception approval” subject to eight conditions. The conditions proposed by ANC 3D were similar to those recommended by the Office of Planning, with the principal exception that the ANC proposed that the “number of students shall not exceed 100, pre-kindergarten through fifth grade.” ANC 3D stated that its assertion that the site’s “present cap of 200 students [should] be reduced to 100 students” was “not meant as a sanction or criticism of the Lab School,” which currently enrolls 72 students at the subject property, had indicated no intent to enroll 200 students, and “doubted they would grow to even 100 students, in light of their desired student to teacher ratio and other elements of their teaching approach.” Rather, ANC 3D argued that “the cap should be lowered to the more realistic level of 100 students to give the community some predictability and control over the matter.”

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements necessary to establish the case for a special exception pursuant to §§ 3104.1 and 206. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party in opposition to this application. Accordingly, a decision by the Board to grant this application will not be adverse to any party.

Pursuant to 11 DCMR § 3110.5, 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. The waiver will not prejudice the rights of any party and is appropriate in this case.

Based on the record before the Board, and having given great weight to the issues and concerns of ANC 3D and to the recommendation of the Office of Planning, the Board concludes that the Applicant has met the burden of proof and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief, as conditioned by the Board, will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board is required to give “great weight” to any issues and concerns raised by ANC 3D in this proceeding. ANC 3D was in support of the application subject to a number of conditions, which were accepted by the Applicant with the exception of the ANC’s proposal to limit student enrollment to 100 students. The Board credits the unique vantage point that ANC 3D holds with respect to the impact of the requested special exception on the ANC’s constituents. However, the Board concludes that the ANC did not offer persuasive evidence that would cause the Board to find that the special exception should be granted subject to a condition limiting enrollment to 100 students rather than the 200 students requested by the Applicant. The ANC did not claim that enrollment of 200 students would create objectionable impacts or adversely affect the use of neighboring property, but asserted that a cap of 100 students was “realistic” given the school’s current and projected enrollment and a means to “give the community some predictability and control over the matter.” The Board concurs with OP that a condition limiting enrollment to 200 students is appropriate under the circumstances, especially given that the Applicant did not

BZA APPLICATION NO. 17944
PAGE NO. 3

propose to increase the number of students or staff beyond the conditions previously adopted by the Board for another private school use at the same location, when 197 students were enrolled at the subject property without creating adverse impacts, and that OP did not anticipate any objectionable conditions as a result of the Applicant's proposed private school use. With regard to predictability, the Board notes that the Applicant may not increase its enrollment above 200 students, or its staff above 40, without obtaining prior approval of the Board. Absent a showing by the ANC that enrollment of 200 students would cause objectionable conditions, the Board concludes that approval of the requested special exception, subject to the conditions approved in this order, is consistent with the requirements of §§ 206 and 3104 of the Zoning Regulations.

It is therefore **ORDERED** that this application is **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Approval shall be for a period of 10 years, beginning on the expiration date of the prior approval and ending on September 30, 2019.
2. The number of students shall not exceed 200, pre-kindergarten through fifth grade.
3. The number of staff shall not exceed 40.
4. The hours and days of operation (for academic purposes) shall be 8:00 a.m. to 6:00 p.m., Monday through Friday.
5. Twenty-six on-site parking spaces shall be provided.
6. The Applicant shall maintain an ongoing liaison committee with the Foxhall Community Citizens Association, Advisory Neighborhood Commission 3D, and other interested community members. The liaison committee shall meet at least four times a year to discuss and resolve community and school related issues.
7. Landscaping, consisting of evergreen trees, shall be provided and maintained on the north parking lot (the Q Street side of the site).
8. The Applicant may make the facility available for gatherings such as those of community organizations including Palisades Village and for school-related activities such as back-to-school night.
9. The Applicant shall implement a traffic management plan ("TMP"), which shall regulate vehicle access and parking on the property. The TMP shall include the provision of shuttle service and other methods to reduce the use of private automobiles by staff and parents. The Applicant may modify the TMP over time, to respond to changing traffic conditions, subject to discussions with the community liaison committee.

10. Student tutors from local universities who visit the subject property each school day to participate in the Applicant's private school program shall use the Applicant's shuttle service when traveling to and from the subject property.

VOTE: 4-0-1 (Marc D. Loud, Shane L. Dettman, Meridith H. Moldenhauer, and Anthony G. Hood (by absentee vote) voting to Approve; one Mayoral appointee (vacant) not participating)

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

A majority of Board members approved the issuance of this Order.

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: NOV 25 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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.

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,

BZA APPLICATION NO. 17944
PAGE NO. 5

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.

MN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17944

As Director of the Office of Zoning, I hereby certify and attest that on **NOVEMBER 25, 2009**, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Allison C. Prince, Esq.
Christine A. Roddy, Esq.
Pillsbury Winthrop Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037

Sally Seawright
The Lab School of Washington
4759 Reservoir Road
Washington, D.C. 20007

Chairperson
Advisory Neighborhood Commission 3D
P.O. Box 40846
Palisades Station
Washington, D.C. 20016

Single Member District Commissioner 3D09
Advisory Neighborhood Commission 3D
P.O. Box 4084
Palisades Station
Washington, D.C. 20016

Mary H. Cheh, Councilmember
Ward Three
1350 Pennsylvania Avenue, N.W., Suite 108
Washington, D.C. 20004

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 17944
PAGE NO. 2

Bennett Rushkoff, Esquire
Acting General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY: *Jamison L. Weinbaum*
JAMISON L. WEINBAUM
Director, Office of Zoning