

**CITY OF CINCINNATI ZONING BOARD OF APPEALS  
CINCINNATI, OHIO**

**In the matter of:** : **ZBA Case No. Z-3964-2010**  
:  
**The New School, Inc.** :  
**Appeals from the decision of** :  
**the Zoning Hearing Examiner** :  
**denying conditional use** :  
**approval for the property at** : **DECISION**  
**29 Burton Woods Lane** :  
**Cincinnati, Ohio 452** :  
  
**Applicant: The New School, Inc.** :  
**Applicant's Counsel: Timothy Burke** :  
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**I. FINDINGS OF FACT**

1. The New School, Incorporated ("the school"), is a non-profit, 501(c)(3) Montessori school located in the North Avondale neighborhood of the City of Cincinnati. The school provides curriculum for students from pre-school through sixth grade.
2. The school has been operating in its current location at 3 Burton Woods Lane ("main campus") for forty years. The main school building is located in the historic Mitchell Mansion.
3. The school acquired the adjacent property at 29 Burton Wood Lane ("the property") in August, 2009, in order to extend the main campus to include the property. The school intends to renovate the existing residential structure on the property to accommodate its auxiliary curricular program, including art, music, foreign language and tutoring ("proposed use").
4. The programs within the proposed use will be conducted intermittently throughout the week, such that the structure will not be occupied with students consistently throughout the school day.

5. The property is located in the SF-10 zone. Pursuant to Cincinnati Zoning Code ("CZC") Section 1403-05, a public or private school is a use conditionally permitted in the single-family districts.
6. On January 27, 2010, the school submitted an application to the Zoning Hearing Examiner for conditional use approval of the proposed use.
7. On March 17, 2010, the Zoning Hearing Examiner ("ZHE") conducted a conditional use hearing on the school's application.
8. The ZHE denied the school's application, finding that approval of the conditional use application was not in accordance with the applicable provisions of CZC Section 1445-07, was contrary to the public interest, contrary to the intent and purpose of the CZC, and would be injurious to the properties in the vicinity of the property.
9. The school timely appealed the decision of the ZHE to the Zoning Board of Appeals ("ZBA").
10. The ZBA conducted a hearing on this matter on June 21, 2010.
11. Several individuals appeared at the hearing to express support for approval of the conditional use application. Two individuals expressed concern regarding the conversion of the residential property into a non-residential use.
12. All individuals who spoke at the ZHE hearing, including those opposed to approval of the conditional use application, acknowledged that the school has been an asset to the neighborhood.
13. The school has continuously engaged the neighborhood regarding the plans for expansion of the main campus to include the property at issue in this appeal. Further, the school has made a practice of opening up its facilities for use by the neighborhood for such things as community council meetings.
14. The school's facilities and landscaping are attractive and well-maintained. The main campus contains a large wooded area that serves as a buffer to the residential uses around the main campus.
15. The school has indicated that the wooded area would remain intact with the extension of the main campus to include the property and proposed use. In addition, the school has indicated that the existing landscaping and mature vegetation that serves as a buffer between the property and residential uses would remain intact.
16. Many families in the area have children that are either current students or alumni of the school.

17. Because of the school's success and desirability, it has attracted new residents into the area.
18. The school has had a positive and stabilizing effect on the neighborhood.
19. The school's main campus currently consists of two buildings. The main academic building is located in the renovated historic Mitchell Mansion, the exterior of which has been maintained in excellent condition and consistent with the appearance of the Mansion at the time it was built. An auxiliary building is also located on the main campus.
20. The school indicates that it will maintain the residential structure on the property in excellent condition, consistent with the manner in which it has maintained the structures on the main campus.
21. The structure that is currently on the property will not be materially altered on the exterior. Accordingly, it will retain compatibility with the surrounding neighborhood.
22. The proposed use will utilize conventional residential exterior lighting and install low-intensity walkway lighting for the path between the main campus and the property.
23. The school does not intend to increase enrollment or alter the hours of operation as a result of the expansion of the main campus. Accordingly, traffic patterns will not be altered in anyway.
24. Students will enter and exit the property through the rear door in order to minimize any increase in noise. No outdoor activities are planned for the front or side yards of the property.
25. Because the exterior of the existing structure and the existing vegetation on the property will not be materially altered, the proposed use will not impact access to the property by fire, police, or public services, nor will it affect access to light or air from adjoining properties.
26. The improved facilities will ensure that the school enjoys continued success and will maintain its competitive edge among the private schools in the City of Cincinnati.

## II. CONCLUSIONS OF LAW

1. Pursuant to the requirements of 1445-21 of the CZC, in order to grant a conditional use, the use must be specifically listed in the zoning district regulations and the proposed development must be in the public interest, as set forth in 1445-13 of the CZC.

2. A public or private school is specifically listed as a conditional use in the SF-10 district in CZC 1403-05.
3. Pursuant to the requirements of 1445-13 of the CZC, in order to grant a request for a conditional use, the proposal must be analyzed with respect to the general standards delineated therein and the factors must be balanced to determine whether the proposal is in the public interest. The resulting decision should maximize both the public interest and private benefit.
  - a. The proposed use conforms to the underlying zoning requirements and is in harmony with the intent and purposes of the CZC.
  - b. There are no applicable guidelines for this district or property.
  - c. There is no applicable plan for this district or property.
  - d. Traffic will not be affected. The streets are adequate to carry the traffic currently generated through operation of the school.
  - e. Buffering is more than adequate to protect adjacent properties. There will be little visual impact and the school has taken steps to minimize any impact related to noise and lighting.
  - f. Landscaping is more than adequate. The existing landscaping and mature vegetation, which complies with the requirements of CZC 1423, will not be materially altered.
  - g. Operating hours remain compatible with adjacent residential properties.
  - h. The proposed use is compatible with the single family district in which the main campus is currently located and will not have a material net cumulative adverse impact.
  - i. There are no proposed zoning amendments.
  - j. There are no adverse effects relating to access by fire, police or public services and no effect on access to light or air. The proposed use will increase the development of, usefulness and value of neighboring properties.
  - k. The current structure is not blighted and the proposed use will ensure that the property does not become blighted.
  - l. The proposed use provides an economic benefit to the City in that it draws families into this neighborhood of the City, which stimulates economic growth in the area.
  - m. The impact on job creation will be low.
  - n. The proposed use will be tax-exempt.
  - o. The proposed use will ensure that the school continues to be attractive to prospective students.
  - p. The continued success of the school and the stabilizing effect it has had on the neighborhood inures to the public benefit.
4. The proposed use meets the public interest standards and is consistent with the intent and purpose of the zoning code. The school has worked in good faith to engage neighboring property owners and to address their concerns.

### III. CONCLUSION

For the foregoing reasons the Board of Zoning Appeals finds the decision by the Zoning Hearing Examiner to have been illegal, arbitrary, capricious, unreasonable and unsupported by the preponderance of substantial reliable and probative evidence with respect to all findings. The decision of the Zoning Hearing Examiner is hereby reversed. Appellant's request for conditional use is granted with the following conditions:

1. That the property is maintained such that it is suitable to return the property to residential use.
2. That there is no increase in parking on the parcel upon which the conditional use is granted.
3. That the proposed use is incidental to the instruction of children from pre-school through the sixth grade.

### IV. MOTION

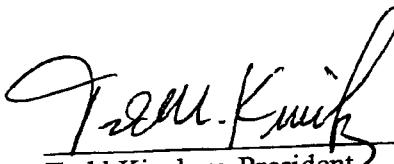
Mr. Schneider

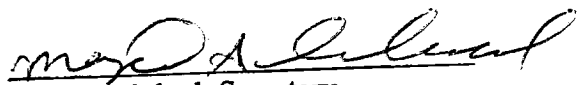
I move to reverse the decision of the ZHE with conditions.

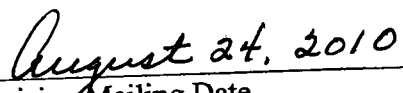
Seconded: Mr. Alexander

### V. VOTE

Affirmative:	Messrs. Kinskey, Schneider, and Alexander
Negative:	None
Absent:	Mr. Little, Mr. Back

  
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Todd Kinskey, President  
Zoning Board of Appeals

  
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Majed Dabdoub Secretary  
Zoning Board of Appeals

  
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Decision Mailing Date