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January 20, 2022

**Via Electronic Mail**

Ms. Connie Valenti, Board Secretary  
Berkeley Heights Zoning Board of Adjustment  
29 Park Avenue  
Berkeley Heights, NJ 07922

Re: 40 Russo Place - Block 1901, Lot 40  
Application No. 14-21

Dear Ms. Valenti:

As you are aware, this office represents First Student, Inc. in connection with the Preliminary and Final Site Plan with Conditional Use Variance application that was before the Zoning Board of Adjustment for the Township of Berkeley Heights (the "Zoning Board") on August 26, 2021, and again on October 28, 2021. The matter is scheduled to be heard at the Board's next hearing on January 27, 2022.

The application was adjourned at the October 28<sup>th</sup> hearing to afford the applicant the opportunity to meet with the NJ Department of Environmental Protection ("NJDEP") to discuss and resolve issues surrounding the restoration and alignment of the tributary which lies in the northwest corner of the property in question. I am happy to advise you that coordination with the NJDEP is ongoing, and the applicant's proposed alignment of the restored tributary was found to be reasonable, we believe, by the NJDEP. While we do not have a definitive response in writing from the NJDEP, we are confident that the proposed alignment will be approved. To that end the project engineer, Ahmed Osman of MatrixNewWorld Engineering submitted revised plans to the Board, for which you have acknowledged receipt.

I am writing at this time to advise the Board of a dire situation which has arisen regarding the applicant's bus parking situation. As stated at a prior hearing the applicant agreed, due to, among other factors, a change in the zoning ordinance affecting the area within which the site was located, to cease its use of a property in Chatham for bus parking, which termination was to end on or before August 31, 2021. The Borough of Chatham has been gracious enough to permit the applicant to continue to park some buses at the site. However, this consent will end on January 31, 2022. I am writing, therefore, to request that the Board entertain the idea of granting a temporary consent to the applicant to park a limited number of buses at the property in question for a period not to exceed six months. I would suggest that the number of buses permitted to park at the site during this temporary period be limited to 25. This request is required, as, even if the Board were to grant the approval at the hearing on January 27, 2022, the Resolution of approval would not be memorialized until the

next hearing date, at best, and obtaining of building permits, etc. would take several months thereafter.

In support of this request, I cite the case of Bell Atlantic v. Riverdale Zoning (NJ Super. 407 [App Div. 2002]). In that case the applicant sought to park 40 employee cars on the property of a gas station also operating as a non-conforming use in a professional office zone. The court, in overturning the denial by the Board, noted that the limited duration proposed provided assurance that the use was not an ever-expanding, never ending one. It is important to note that in the Bell Atlantic case the applicant was seeking a D-1 use variance. In the case before the Board the use is permitted by conditional use, however, the applicant cannot meet all of the conditional use criteria, thereby requiring a D-3 variance. It is also important to note that in Scholastic Bus Co. v. Zoning Bd., (326 NJ Super. 49 [App. Div. 1999]) case, the court found that a facility for storing and maintaining school buses is inherently beneficial insofar as it is "necessarily accessory to the school buildings themselves". Finally, it is important to note that among the school districts to be serviced by the proposed parking facility will be the Township of Berkeley Heights itself. For all of these reasons, I respectfully request on behalf of my client that the Board consider the above request at its hearing on January 27, 2022.

If you require anything prior to the January 27<sup>th</sup> hearing date, please do not hesitate to contact me.

Very truly yours,  
*Michael Oliveira* /s/  
Michael J. Oliveira  
Counsel

MJO:pa

Enclosure

cc: Steven Warner, Esq., Zoning Board of Adjustment Attorney  
Keenan Hughes, AICP, PP, Zoning Board of Adjustment Planner  
Thomas R. Solfaro, PE, CME, CPWM, Zoning Board of Adjustment Engineer  
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