

November 16, 2012

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Lloyd Jordan, Chairperson
D.C. Board of Zoning Adjustment
Office of Zoning
441 4th Street, NW, Suite 200 South
Washington, DC 20001

Re: Case No 18400: Closing Statement by Carter Barron East Neighborhood Association (CBENA)

Dear Chairperson Jordan:

The following is the Carter Barron East Neighborhood Association closing statement:

A. JPDS has not met the standards that it faces peculiar or exceptional practical difficulties or exceptional undue hardship.

An applicant for a zoning variance needs to meet one of two standards: (a) The property owner faces peculiar or exceptional practical difficulties or (b) The property owner faces exceptional or undue hardship. These standards are tied to the *physical* condition of the property. JPDS has provided no argument to support that the physical condition of the property prevents it from meeting the on-site parking requirements other than the position that there is not enough land to meet these needs.

(1). Peculiar or exceptional practical difficulties standards accepted by the BZA
In the 2004 Parkmont School (16th & Emerson) Case (#17209) granting a 10-year variance and special exception from the off-street parking requirements, the BZA discussed the physical nature or topography of the property mentioning that Parkmont is on a slope. In the 1989 when the variance was given to the property under consideration, the BZA identified a "practical difficulty" the building size, accessory unit, covered walkway, need for driveway off of Decatur, not paving over additional green space and not removing large trees on the property. JPDS is now seeking an additional variance on top of the variance for parking that was granted in 1989 at that site but has made no argument as to the property because no such argument can be made.

(2). Exceptional or undue hardship standard accepted by the BZA
In the 2004 Parkmont case, the BZA discussed the fact that in previous variances, Parkmont was ordered by the BZA to not to resurface additional space partly due to the topography and the community not wishing to highlight a parking lot because of the slope; BZA accepted parking at the Carter Barron as a solution (standards/number) or guidance for visitor parking, such as what should be provided or be available. JPDS has made no such argument related to the property. Moreover the community questions whether an Applicant should be able to claim a hardship when it can

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pursue other approaches. Neighbors have asked whether JPDS could reduce the number of students and faculty/staff at the Decatur Street facility and therefore operate within the Lowell-obtained off-street parking variance at that site and whether the primary grade could continue to operate at the 16th & Military Rd facility. If JPDS is able to use the argument that there is something about its operations, which should result in a variance, all other applicants for zoning variance can make similar arguments. The CBENA community, which is faced with numerous special exception requests, is concerned that if this becomes the standard, then no one has to substantially meet the on-site parking requirements. In other words, the zoning regulations become meaningless.

B. JPDS is seeking to have parking provided in another location treated as the equivalent of the on-site parking required by BZA regulations.

To obtain a variance without a condition, JPDS is asking the BZA to modify its regulations to have a contractual agreement to park in another location be treated as the equivalent of the regulatory requirement that the parking be provided on the same site as the property for which the special exception is being sought. The CBENA community views the zoning regulations as providing little to no protections for conversions of residential properties into nonresidential uses. For example, as to private schools located in residential zones, there are no provisions in the regulations which protect the public streets from being shut down as a staging area for private schools, no requirements as to buffers between private schools and adjacent residential properties, etc. The only protection from these wholesale conversions is that there are on-site parking requirements. JPDS is asking the BZA to relieve it from meeting approx 70% of the on-site parking requirements and to grant it an unconditional variance, while providing no basis for such a request. Again, CBENA is concerned that ignoring this standard means that no other applicant will have to substantially provide on-site parking.

C. JPDS is seeking to have the Commission ignore its own case law.

JPDS is seeking to have the BZA ignore that it is not meeting the required on-site parking requirement to a larger extent than Parkmont. Yet, JPDS wants to be given an unconditional variance. In the Parkmont School case (Parkmont is located a block away from JPDS), the neighborhood supported a conditional variance and exception because the slope of the land would lead to the situation where the parking would be elevated and become more visible to the neighbors. Parkmont apparently could have met the parking requirements on the land. The BZA granted Parkmont and its predecessors a conditional variance and exception with Parkmont maintaining it could park at the Carter Barron.

D. JPDS finalizing a contract for off-site off-street parking is not a CBENA priority although CBENA attempted to assist JPDS with parking at the Church of Christ next door to the JPDS facility.

Emerson and Piney Branch street residents are not interested in encouraging additional uses of the LDS facility, which will add to the significant traffic impacts in the vicinity of

Emerson and Piney Branch. This recommendation was pursued by ANC Commissioner Janet Myers without discussions with the immediately impacted residents.

DC zoning regulations require on-site parking for private schools in residential zones and on-site parking refers to parking on the site of the building for which the special exception is being sought. If an off-site off-street parking agreement is viewed as a complete substitute for the on-site parking requirement, the integrity of the zoning regs is jeopardized. Under the position taken by JPDS, no private school in the city will have to substantially meet the on-site parking requirements. Any building in a residential community can then be converted to a private school basing the variance on the argument that the school requires a certain number of staff and the property is just not large enough to meet the on-site parking requirements.

E. Bus traffic traveling south to access JPDS facility - Use of Buchanan street and CBENA recommended alternative---Arkansas Street.

At a CBENA meeting this summer, JPDS proposed the use of Buchanan Street (south on 14th Street, right turn on Buchanan and right turn onto 16th Street). As a reasonable alternative, the community recommended Arkansas since the homes on Arkansas are more set back from the street traffic than on Buchanan, likely reducing bus traffic noise impacts on residents. *This recommendation assumed Arkansas, a well-travelled street, was also used by buses.* As Buchanan street residents are not a part of CBENA and were not represented in the meeting, the CBENA community was uncomfortable agreeing to route bus traffic through Buchanan, another "narrow" residential street with traffic in close proximity to homes. This is what happened in the CBENA community when the initial variance was granted to Lowell and the decision was made to route traffic onto Emerson, then Piney Branch and onto Decatur. Impacted residents were not aware of the decisions and were not represented in the discussion. At the CBENA meeting this summer, the Arkansas option was not acceptable to JPDS.

F. Noise buffer on JPDS southern boundary - Fence is currently 5 feet into the property line at some points and JPDS plans to add row of trees on the border where fence is less than 5 feet away from property line. Does this comply with the Zoning Order? This should be reviewed by the BZA.

JPDS has informed the community that in some places, the fence is 5 foot in on the southern border and JPDS plans to add a row of trees in other places on this border, where the fence is less than 5 feet in from the property line. JPDS indicates that it is in "full compliance" and is going "above and beyond" with the installation of the row of trees.

"To ensure against adverse noise impacts" the Lowell Order identifies three "noise-limiting" actions Lowell would undertake (1) installing a vegetable or flower garden (2) which would be further "fenced off or blocked by shrubbery", (3) coupled with limited use of the space for recess activities. Actions #1 and #2 could be interpreted as requiring shrubbery and then a vegetable or flower garden between the JPDS facility and the homes to the south.

The District's zoning regulations have not been updated for 55 years and are currently being rewritten (ZRR). Many jurisdictions spell out what constitutes an effective noise buffer for private schools located in residential zones. This removes compliance questions, such as what type or placement of shrubbery and garden will "ensure against adverse noise impacts?". Can the applicant substitute trees for a part of the shrubbery and garden and if so, what trees are comparable? Can the applicant substitute a fence five feet into the property line in some places without the shrubbery and the garden and will this substitution "ensure against adverse noise impacts? This issue should be reviewed by the BZA.

G. The ANC's decision should not be granted "great weight" as it fails to comply with the zoning regulation's requirement.

The ANC report fails to provide a basis for the vote as required in Section 3115 (c) and (e) below of the zoning regulations. Without such a basis, CBENA cannot respond to what standards in the zoning regulations were being considered. In addition, the ANC meeting did not provide adequate notice to the community as the JPDS Application was not on the written Agenda distributed at the meeting and the Agenda was not distributed before the meeting.

3115.1 The written report of the ANC prepared in response to a notice of application provided pursuant to § 3115.5 shall be submitted to the Board at least seven (7) days in advance of the hearing and shall contain the following information:

- (c) Whether proper notice of that meeting was given by the ANC
- (e) The issues and concerns of the ANC about the appeal or application as related to the standards of the Zoning Regulations against which the appeal or application must be judged.

In closing, the BZA looks to see whether the special exception is in "harmony with the general purpose of the ZR and Zoning maps and will not adversely affect the use of neighboring property." The special exception regulations (Sections 206, 3104) expressly state that the parking requirements must be met (formula in chapter 21), meaning that this is not discretionary. It also makes clear that *parking for visitors in automobiles* is also part of the consideration in granting the special exception—in other words, it is not just a faculty/staff parking, which needs to be considered.

Variances go with the land. Case precedent says that if a private school is to be substantially relieved of the on-site parking requirements, the variance if granted, at least has to be conditional such as in the Parkmont case (Parkmont parks at the Carter Barron under that Order therefore provides off-site off-street parking). This allows the BZA to monitor the impacts.

Having 4 private schools in close proximity to each other and a potential 5th on the horizon, the CBENA community is concerned as to future new private school applications (Ideal School and the marketing of 1500 Farragut as a potential school) or plans to expand operations (Parkmont). This CBENA community has worked hard to protect its residential character by having the Sixteenth Street Heights Overlay extended to cover this area. We believe that if a variance is to be granted it should be conditional.

Respectfully submitted

Doreen Thompson
President
Carter Barron East Neighborhood Association

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FROM: Doreen Thompson
President, Carter Barron East Neighborhood Association

SUBJ: BZA Case No. 18400, Jewish Primary Day School

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