CORNISH F. HITCHCOCK
ATTORNEY AT LAW
1100 17TH STREET, N.W., 10TH FLOOR
WASHINGTON, D.C. 20036-4601
(202) 974-5111 • FAX: 331-9680
E-MAIL: CONH@TRANSACT.ORG

27 March 2000

OFFICE OF ZONING
DISTRICT OF COLUMBIA
00 MAR 27 P4:17

Hon. Sheila Cross Reid
Chairperson
District of Columbia Board of
Zoning Adjustment
441 Fourth Street, N.W., Suite 210
Washington, DC 20001

Re: Application No. 16554 (Studio House School for the Arts)

Dear Chairperson Reid:

I submit the Applicant's proposed findings of fact and conclusions of law in this case, which is set for decision at the Board's meeting on 5 April 2000.

In light of the hour at which the hearing adjourned, the Board had no opportunity to discuss the case, including any conditions that the Board may wish to impose if it is inclined to grant the application. There was discussion as to the applicant's willingness not to seek a liquor license, and we have drafted the proposed order with such a condition.

The applicant is willing to accept other conditions that the Board may deem prudent, consistent with the plan of operation outlined in the application materials and at the hearing. For the Board's convenience, the proposed Conclusions of Law enumerate the operating limitations and the mitigating steps that the applicant is willing to take, should the Board decide to incorporate those limits as conditions.

Thank you for your consideration of this matter.

Very truly yours,

Cornish F. Hitchcock

BZA
Case No. _____
Exhibit No. 49

cc: All Parties

Board of Zoning Adjustment
District of Columbia
CASE NO.16554
EXHIBIT NO.49

CORNISH F. HITCHCOCK
ATTORNEY AT LAW
1100 17TH STREET, N.W., 10TH FLOOR
WASHINGTON, D.C. 20036-4601
(202) 974-5111 • FAX: 331-9680
E-MAIL: CONH@TRANSACT.ORG

27 March 2000

DIST OF COL BD OF ZONING ADJ
00 MAR 27 P 4:18

Hon. Sheila Cross Reid
Chairperson
District of Columbia Board of
Zoning Adjustment
441 Fourth Street, N.W., Suite 210
Washington, DC 20001

Re: Application No. 16554 (Studio House School for the Arts)

Dear Chairperson Reid:

I submit the Applicant's proposed findings of fact and conclusions of law in this case, which is set for decision at the Board's meeting on 5 April 2000.

In light of the hour at which the hearing adjourned, the Board had no opportunity to discuss the case, including any conditions that the Board may wish to impose if it is inclined to grant the application. There was discussion as to the applicant's willingness not to seek a liquor license, and we have drafted the proposed order with such a condition.

The applicant is willing to accept other conditions that the Board may deem prudent, consistent with the plan of operation outlined in the application materials and at the hearing. For the Board's convenience, the proposed Conclusions of Law enumerate the operating limitations and the mitigating steps that the applicant is willing to take, should the Board decide to incorporate those limits as conditions.

Thank you for your consideration of this matter.

Very truly yours,

Cornish F. Hitchcock

cc: All Parties

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

**Application No. 16554** of James H. Edmonds and Julie P. Edmonds, pursuant to 11 DCMR section 3104.1, for a special exception under Section 206 to establish and operate a private school in a D/R-3 District at premises located at 2306 Massachusetts Avenue, N.W. (Square 2507, Lots 4 and 5).

**HEARING DATE: March 1, 2000**
**DECISION DATE: April 5, 2000**

## ORDER

## PRELIMINARY MATTERS:

1. This application was filed on December 30, 1999 by James H. Edmonds and Julie P. Edmonds (collectively the "Applicant"). The Board conducted a hearing on March 1, 2000, at which time it heard testimony from the Applicant and the Applicant's witnesses. Admitted as parties in opposition were Advisory Neighborhood Commission 1D, Richard and Elizabeth Turner, Simon and Rosalie Auster, Lois D. Rice, Irving R.M. Panzer and the Sheridan-Kalorama Neighborhood Council. In addition the Board heard testimony from one person in support and one person in opposition to the application. The Board also received written submissions from persons supporting and opposing the application. The record was closed at the conclusion of that hearing.

## SUMMARY OF EVIDENCE:

1. The property that is the subject of this application is identified as Lots 4 and 5 in Square 2507 (collectively "the property"). It is located on the southwest quadrant of Sheridan Circle and has an address of 2306 Massachusetts Avenue, N.W. The subject site is zoned D/R-3 and is located in the Sheridan-Kalorama neighborhood of Ward 1.

2. The property is generally trapezoidal in shape and has a land area of 8600 square feet, with a frontage of 62 feet along Sheridan Circle to the north and 101 feet along Rock Creek and Potomac Parkway to the south. The property abuts in part a private dwelling to the east and property of the Republic of Korea to the west.

3. The property is developed with two buildings. The first, known as the Alice Pike Barney Studio House ("Studio House"), is located on Lot 4 and part of Lot 5. Applicant's Exhibit ("Ap. Ex.") 1. It is a semi-detached, four-story residential dwelling with two basement levels and 8600 feet of gross floor area. Ap. Ex. 3 at 1. Studio House was listed in the National Register of Historic Places in 1995, and the first two floors are listed in the D.C. Inventory of Historic Sites. Ap. Ex. 6. The House had previously been listed as a contributing building in the Massachusetts Avenue Historic District (Ap. Ex. 12 at 5). The second building, located on Lot 5 to the west of Studio House, is a two-story accessory carriage house with 860 feet of gross floor area. Ap. Ex. 3 at 2.

4. Studio House and the accessory carriage house were built in 1903 by Alice Pike Barney, a leading patron of the arts in the first two decades of the 20th century. Mrs. Barney constructed and used the house as a residence, as a studio for the visual and performing arts, and as a salon. The first two floors, which are listed on the D.C. Inventory of Historic Sites, contain several studios that were designed and used for art exhibitions and musical performances. The top two floors above these studio and exhibition floors were used as Mrs. Barney's residence. After Mrs. Barney died in 1931, the property passed to her two daughters, who leased it to such tenants as the Columbian Legation, a British Officers Club during World War II, and Capital Film Laboratories (Ap. Ex. 12, App. 5 at 5). In 1960 Mrs. Barney's daughter Laura donated the property to the Smithsonian Institution. Over the next 39 years, the Smithsonian used Studio House for office use, tours and special programs (including performances and art exhibitions); the top two floors were occasionally used as apartments for visiting scholars and dignitaries. The Smithsonian closed Studio House in 1991 and sold it to the Applicant in 1999. Ap. Ex. 3 at 2-3; Ap. Ex. 12 at 2-5.

5. The property is located in a D/R-3 District. Under section 320, an R-3 District is designed for row dwellings which may be mingled with one-family detached and semi-detached dwellings and groups of three or more row dwellings. Property located in a Mixed Use Diplomatic ("D") overlay zone may be used for embassy and chancery use if a special exception is granted by the Foreign Missions Board of Zoning Adjustment under Chapter 10 of the Zoning Regulations. The property is surrounded by similar detached and semi-detached residential buildings; of the 14 neighboring properties within 200 feet, eight are owned by private individuals, while six are owned by foreign governments and operated as chanceries or embassies. Ex. 5.

6. The Applicant seeks special exception approval to establish Studio House School of the Arts (the "School"), which would use the property for a private school offering instruction in music and art. The School has been established as a non-profit corporation and plans to seek recognition as a tax-exempt educational organization under section 501(c)(3) of the Internal Revenue Code. Ap. Ex. 13; Ap. Ex. 3 at 5. A private school is permitted in an R-3 District with Board of Zoning Adjustment approval pursuant to 11 DCMR section 206.

7. The Applicant provided testimony and evidence related to the requirements of section 206 from James H. Edmonds, the owner and chief executive officer of the School, as well as expert testimony and evidence from George H.F. Oberlander, AICP, who was recognized as an expert on urban planning issues, as well as Prof. Everett C. Carter, who was recognized as an expert on transportation and traffic issues.

8. Mr. Edmonds stated that he is the owner of Foxes Music in Falls Church, Virginia and operates a music school in Virginia. He testified that the proposed Studio House School of the Arts would operate independently of Foxes Music and that, if the application is approved, he and his family will live on the top two floors of Studio House, thus restoring a residential use to the site.

9. Lesson Hours and Number of Students. Mr. Edmonds testified about the School's proposed operations. As set out below, the number of faculty would vary, given that lessons would

be staggered throughout the day. Non-faculty personnel would include a director, a registrar (who would check students in and handle scheduling of lessons), a part-time custodian during the morning, and a part-time security guard/parking attendant during the afternoon hours of operation, whose job would include escorting children from the curb to the building and then back to the car when the lesson is over.

10. On weekday mornings, the School would use the second floor of the carriage house to offer one-hour lessons in musical concepts to a class of no more than eight young children between the ages of four and six. Lessons would take place between 10 A.M. and noon, and there would be no more than one one-hour lesson per weekday. Ap. Ex. 3 at 6-7 and 8, Table 1. Thus, during morning hours, there would be no more than eight students and one instructor on the property.

11. Mr. Edmonds testified that Studio House would be used for musical lessons during the hours of 3 to 8 P.M. on Monday through Thursday, 3 to 6 P.M. on Friday, and 9 A.M. to 2 P.M. on Saturday. Lessons would not occur in the historically designated studio areas on the first two floors, but on the basement level, which presently contains two studios and to which the School would add seven studios. Lessons would last from one-half hour to one hour. There would thus be no more than nine students and nine instructors in Studio House at any one time. Ap. Ex. 3 at 8, Table 1.

12. A group art class for up to eight adults with one instructor would be held in the carriage house on Monday through Thursday evenings from 7 to 9 P.M. Ap. Ex. 3 at 8, Table 1.

13. This staggering of operations means that there will generally be a maximum of nine music students and nine instructors on the property during most hours of operation. For a one-hour period from 7 to 8 P.M. on Mondays through Thursdays, there would be simultaneous music lessons in Studio House and a group art lesson in the carriage house, which would bring the maximum number of students on the property to 17 (nine for music and eight for art) and the maximum number of instructors to ten (nine for music and one for art) to the property.

14. Student and Guest Recitals. Mr. Edmonds testified, based on his experience operating music schools in Virginia, about the importance of recitals as an essential component in a child's musical education, both recitals offered by students for family and friends, as well as recitals offered by professional musicians, who could interact with and learn from these musicians and who would have an opportunity to hear music performed by professionals.

15. To that end, Mr. Edmonds testified, the School proposes to offer both student recitals and guest recitals from professional musicians on Fridays evenings from 7 to 9 P.M. and on Sunday afternoons from 2 to 4 P.M. These times were selected based on his experience that they are most convenient for parents, students, teachers and guest performers. No lessons would be scheduled during these time slots. Recitals would be held in the performance studios in the historically designated floors of Studio House. The largest studio can seat up to 90 guests, while the smaller studios can seat up to 45 guests. Because of the intimate size of these performance spaces, guest recitalists would be small groups, such as trios or quartets made up, for example, of members of the

Washington Guitar Society, or a string group from the National Symphony. No more than one recital would be held at any one time. Mr. Edmonds added that as a benefit to the community, the School is prepared to open guest recitals to members of the public at no cost and on a space-available basis, once demand for student tickets has been met.

16. Mr. Edmonds estimated that the School would need to hold 40 student recitals a year, based on the assumption that a total of 20 instructors would schedule one recital in the fall and one recital in the spring. Assuming 13 weeks in the fall and spring seasons and two recital "slots" per week, there is a maximum of 26 slots in the fall and 26 slots in the spring. Twenty of these slots would be taken by student recitals during the fall and another 20 in the spring. Mr. Edmonds also estimated, based on his experience operating other music schools, that on average, students are accompanied by two people at student recitals. As a result, if each instructor has a maximum of 15 students, student recitals would be attended by up to 45 people. Ap. Ex. 3 at 10, Table 2.

17. Twenty-four guest recitals would be offered during these Friday evening/Sunday afternoon slots. Given that 20 out of the 26 slots during the fall and spring seasons would be taken by student recitals, the Applicant proposes holding up to six guest recitals in the fall and up to six in the spring, with any guest recitals not offered during the fall or spring held during other times of the year, subject to an overall cap of 24. Ap. Ex. 3 at 10, Table 2.

18. Traffic Impact. Prof. Carter testified as the Applicant's transportation expert that the School will not have a significant impact on the street system. In his view, Sheridan Circle was one of the smoothest operating circles in Washington, with little queuing, and the small number of site trips being proposed would not change the very good level of service. Ex. 14 at 3, 14. He added that the site is well served by public transportation, with the Dupont Circle Metro station less than a ten-minute walk away (about 0.5 miles) and with four Metrobus routes serving Sheridan Circle, with a bus every seven minutes from 3 to 8 PM for a total of 44 buses. Ex. 14 at 3, 6.

19. Prof. Carter did not conduct an in-depth analysis of morning traffic patterns, since the School will not hold its first class until 10 A.M., after the morning peak. He did perform two studies of evening traffic patterns, one on a Thursday evening (Dec. 9, 1999), to assess the impact of the School's lesson schedule, and one of a Friday evening (Feb. 11, 2000), to assess traffic during the period when recitals will be scheduled.

20. Prof. Carter explained that with a maximum of nine music students on the premises at any one time, and assuming as a worst-case scenario that each student is taking a half-hour lesson, there would be a total of 36 trips added per hour: nine students being dropped off and nine being picked up during the first half-hour, and an additional nine students being dropped off and nine being picked up during the second part of the hour. Ap. Ex. 14 at 6.

21. Studio House is located on the south side of Sheridan Circle. Thus, traffic passing in front of Studio House would be headed in an easterly direction, towards Downtown, during the afternoon and evening hours of operation. Based on his analysis of traffic around Sheridan Circle,

Prof. Carter found that during the Thursday evening peak hour (5:15 to 6:15 P.M.), Sheridan Circle operated at a Level of Service of "B" or better. During the off-peak Friday period when recitals would occur (7 to 8:15 P.M.), traffic operated at a lower level than during the weekday levels, but the Level of Service around Sheridan Circle was "A." In Prof. Carter's view, the worst-case scenario of 36 additional trips per hour generated during lesson periods would have only a minimal effect on traffic. He added that this conclusion would not change even if the number of additional trips were to double, as some hypothesized might happen during the Friday evening recital periods. Ap. Ex. 14 at 6-7.

22. Prof. Carter testified that traffic safety at Sheridan Circle was quite high. According to figures obtained from the Metropolitan Police Department, there were no accidents involving injury to persons for the most recent three-year period for which data were available (1995-97), and there were an average of two accidents per year involving property damage (four in 1995, none in 1996 and two in 1997).

23. Prof. Carter testified regarding the dropoff and pickup system proposed by Mr. Edmonds during the 3 to 8 P.M. after-school lesson period. Vehicles would stop in the curb lane in front of the property to drop off and pick up students. The security guard/parking attendant would be responsible for escorting students to and from Studio House so that parents doing dropoff and pickup would not need to park or get out of their car, thus allowing the vehicle to remain at the building for the shortest possible period of time. Mr. Edmonds testified that on the basis of his experience operating a music school in Virginia, parents tend not to wait at the school during lessons, and he was prepared to adopt a policy advising parents that they should not wait at the School during lessons.

24. Prof. Carter testified that this system was feasible from a transportation standpoint. He explained that Sheridan Circle contains two movement lanes around the entire Circle, and there is a curb lane immediately in front of Studio House where dropoff and pick up would take place out of the movement lanes. (In addition, as was demonstrated in a videotape shown by Mr. Edmonds, there is a triangular area marked on the pavement as vehicles enter Sheridan Circle from the west that funnels through traffic towards the two movement lanes and away from the curb lane.) There is residential parking immediately in front of Studio House. Even if those spaces are filled, there is a no-parking zone in front of the Studio House driveway that extends to the west in front of the entrance to the Korean chancery, and this area is large enough for several cars to stop and do a dropoff or pickup.

25. Prof. Carter did not foresee a queuing problem in the curb lane. Assuming a worst case scenario – nine students arriving and nine students departing on the hour and half-hour – there was a theoretical potential for up to 18 cars arriving at Studio House at or close to the same time. In his view, however, this scenario was unlikely for several reasons:

(a) No all lessons will be half-hour lessons. Some may be 45 minutes, while others may be an hour, and this would stagger the number of arrivals and departures.

(b) The presence of an attendant to help students into and out of their cars will reduce the amount of time a vehicle is stopped in the curb lane.

(c) Experience suggests that not all vehicles arrive at precisely the same time for appointments.

(d) There are steps that can be taken to avoid queuing, such as instructing parents to drop off students five to ten minutes before a lesson's starting time and to pick them up five to ten minutes after the scheduled end.

(e) Lesson starting times could be staggered so that rather than starting at, say, nine lessons start at 4 PM., some could start at 4, some at 4:05, some at 4:10 and some at 4:15. Ap. Ex. 14 at 8.

26. Nor did Prof. Carter envision that traffic would be impeded by vehicles exiting the Studio House driveway, even if the vehicles leaving that driveway have to back out of the driveway into the street for the following reasons:

(a) Vehicles leaving the Studio House lot will be backing into the curb lane, where parking is not permitted either in front of the Studio House driveway or the Korean chancery next door.

(b) A signal on 24th Street controls the access of eastbound traffic into Sheridan Circle, thus providing an extra margin of time for vehicles exiting the Studio House lot to join the flow of traffic.

(c) The hours of operation are such that vehicles are likely to leave the Studio House lot during off-peak hours. As Mr. Edmonds testified, the principal users of Studio House parking are likely to be teachers, who will arrive before the start of lessons at 3 P.M. and leave when lessons are over at 8 P.M., which is an off-peak period traffic volume is lower. (Ex. 14 at 8-9).

27. Parking. The Applicant submitted an exhibit demonstrating that the open space between Studio House and the carriage house can be laid out with eight parking spaces which, along with the parking space inside the carriage house, means that there will be nine full-sized parking spaces on the premises. Ap. Ex. 3, Att. 1. Mr. Edmonds testified that the Smithsonian had laid out and marked this lot for that many parking spaces as well. The application noted that the Applicant is not obliged to provide any on-site parking for this School for the following reasons: The property was not subject to the Zoning Regulations during the 39 years it was owned by the Smithsonian, owing to the exemption in the Regulations for federal uses (11 DCMR sections 106.4, 106.5); because Studio House and its interiors floors are historically designated, section 2100.5 states that no additional parking spaces may be required when, as here, the use of a building is changed. Ap. Ex. 3 at 14-15 n.2.

28. Although the Applicant is not required to offer any on-site parking spaces, the nine spaces being offered is the number that would otherwise be required under the Schedule of Requirements

for Parking Spaces in section 2101.1 for a private school with a maximum of ten instructors and 17 students at any one time.

29. Mr. Edmonds testified that the parking will be stacked, with an attendant on the premises, and he did not anticipate any problem in that regard. He noted that music lessons will begin at 3 P.M. and end at 8 P.M.; as a result, teachers will arrive shortly as a group before 3 P.M. and then leave shortly after 8 P.M., thus making movements on and off the lot unlikely during lesson hours. Mr. Edmonds noted also that there are two triangular areas at the front of the lot that are currently landscaped, but that could be paved (in part or in whole) if a wider access lane is desired.

30. In response to concerns about demand for parking during the Friday evening and Sunday afternoon recitals, which up to 90 students and others may attend, Prof. Carter noted that these recitals would occur during off-peak hours, when parking restrictions are least strict. This is particularly true with respect to the parking restrictions that favor chanceries, which are not in force after 6:30 P.M. on weekdays, given the essential office nature of chancery operations.

31. In addition, Prof. Carter testified that on Friday, Feb. 11, 2000 he made four tours of neighboring streets from 7 to 8:30 P.M. and found more than 30 vacant spaces on each tour. Ap. Ex. 14 at 11 and App. C. He also testified that, based on his own experience, he did not anticipate any problem finding on-street parking on Sunday afternoons.

32. Mr. Edmonds noted that in addition to the nine spaces available on the Studio House lot, he had taken steps to respond to neighborhood concerns about parking during the recital period by obtaining a written commitment from the Westin Fairfax Hotel, located two blocks away, to provide an additional ten parking spaces during recital periods. Ap. Ex. 15. For recitals with as many as 90 people attending, there will thus be 19 spaces for off-street parking, apart from whatever spaces may be available on the street.

33. Noise. Mr. Edmonds provided evidence regarding the layout and soundproofing of the lesson studios in the basement (Ap. Ex. 2). No recitals or lessons will be held outdoors, and windows will be closed during recitals. He did not anticipate that any music would reach the street, given the thickness of the walls, including front walls that are 24 inches thick.

34. There are two small studios on the first and second floors on one side of a party wall with the dwelling at 2304 Massachusetts Avenue, N.W. Ap. Ex. 1. To avoid the possibility of any music being heard at the neighboring dwelling, Mr. Edmonds stated that he was willing to install an acoustical curtain in front of the party wall to absorb sound; if that should be ineffective, he is willing to hold small recitals in the main studio area, which is in the rear of the house, in the portion that does not share a party wall.

35. Consistency with the General Purpose and Intent of the Zoning Regulations. Mr. Oberlander testified as the Applicant's planning expert that the Applicant was proposing a mix of uses for the site, consistent with the original and historic uses made by Alice Pike Barney, who lived on

the top two floors and used the two main floors for exhibits, performances and a salon. Mr. Oberlander noted the property was located in a residential zone with a diplomatic overlay, reflecting the Zoning Commission's determination under the Foreign Missions Act that such a mixed-use district was appropriate for this portion of Massachusetts Avenue on the basis of existing uses in the area. Mr. Oberlander added that he had conducted a land use survey involving Square 2507 (covering the south side of Massachusetts Avenue) showed 15 buildings in residential use, 12 in chancery/diplomatic use and the subject historic property. In Squares 2506, 2517, 2516 and 2511, there are 13 chancery/diplomatic and three residential uses facing Massachusetts Avenue and Sheridan Circle on the north side, thus making the immediate vicinity of Studio House predominantly used for the mixed-use chancery/diplomatic use.

36. Mr. Oberlander also stated that the Applicant's proposal to reside on the top two floors would restore a residential component to the building that would otherwise be difficult to achieve, given the difficulties that an owner would encounter trying to use the 9000 square foot Studio House as a single-family residence. Mr. Oberlander noted too the unique characteristics of the building that make a residential-only use difficult, including the layout of the two main floors for exhibition and performance space, as well as the historic designation of that interior space, which is relatively unique (only six building interiors are designated out of the 29,5000 historic properties in the District of Columbia) and which bars any structural changes in those floors.

37 This mixed use was compared favorably with the proposed use that the Smithsonian considered but rejected in the mid-1990s. Three years after the Smithsonian closed Studio House because of its deteriorating condition, a group called the Friends of the Alice Pike Barney House (the "Friends") proposed a private-public partnership to raise the funds necessary to reopen Studio House to the public. The Friends' proposal contemplated no residential component, but proposed that the top two floors and basement be used as office space, with the two main floors used for public programs, tours and related uses. The Friends stated that Studio House no longer lent itself to full-scale residential occupancy because of the limited square footage and unique room arrangements on the two main floors. Ap. Ex. 12 at 7.

38. Public Benefits. Mr. Edmonds testified that as benefits to the community, the School will offer scholarships to disadvantaged District of Columbia school children, noting his prior work donating musical instruments to District of Columbia schools. Ap. Ex. 17. He noted as well the proposal to make recitals available to the community at no cost on a space available basis, as well as an offer to the Friends to open Studio House to the public for events such as the annual museum tour in the neighborhood and to have an advisory committee including individuals interested in fostering the educational and related mission of the School. Prehearing Statement at 13-14.

39. There were no reports from any District of Columbia agencies, although the Board submitted copies of the Application to the Office of Planning and the Zoning Administrator, and the Applicant provided its traffic impact studies to the Department of Public Works. The Board did, however, receive a letter in support from the Fillmore Arts Center, citing Mr. Edmonds' support of students at Ellington and School and Fillmore Arts Center over a period of years.

40. ANC Testimony. Linda K. Bumbalo, Chairperson of Advisory Neighborhood Commission 1D, submitted the ANC's report, to which were attached letters from residents opposing the application. BZA Ex. 26. The ANC report made the following points:

(a) The number of students is objectionable because even with staggering of classes, a total of 117 persons would come to the School on Mondays through Thursdays; if every one of them is dropped off and picked up by car, there would be 234 vehicle trips on these days. There would be an equivalent usage on Fridays, with a recital in the evening. On Saturdays, 99 persons would arrive and depart during the day, for up to 198 vehicle trips, and there would be Sunday recitals as well.

(b) The on-site parking is unrealistic and unsafe given the stacked nature of the parking, the need to move cars to let cars out, and the walls on the side of the yard that narrow the driveway. Area residents believe that the parking would be so inconvenient that teachers would park on the street. Although the Applicant is providing all the on-site parking that the Zoning Regulations require, there is no mention of parking for non-faculty personnel or the Applicant's vehicle.

(c) Dropping off students in the curb lane is unrealistic, unsafe and objectionable. There is only curb space for one vehicle to drop off and pick up students, and up to 18 vehicles may arrive at the same time, thus causing a queuing problem. Some residents criticized the Applicant's traffic report because it was conducted when the Q Street bridge is closed for construction, and thus traffic that would normally access the bridge via Sheridan Circle had been diverted when the traffic report was prepared. The bridge is scheduled to reopen in August 2000, shortly before the School would begin operations. Nor can the parking attendant help by directing traffic.

(d) Residents assert that nearby parking is inadequate. One neighbor described the difficulty in getting workmen to come to the house because there is no place to park, and it was stated that nearby streets are congested, with some cars attending the Church of the Pilgrims to the east and south of Sheridan Circle parking illegally. In addition, nearby foreign missions use a great deal of on-street parking at all hours of the day and night.

(e) Despite the non-profit character of the School, some neighbors believe that the Applicant will use it for commercial and business purposes.

(f) The proposed mixed use is not consistent with the original use of Studio House, in that Mrs. Barney had a salon for celebrity performances, was herself an artist and did not have money-making ventures occurring on a seven-day-a-week basis. Also questioned was whether the Applicant would in fact reside in Studio House, as well as the Applicant's neighborliness, given a failure to remove all snow in front of Studio House after a recent snowstorm.

41. Parties in Opposition. Richard Turner testified for himself and Mrs. Turner as the owners of 2304 Massachusetts Avenue, N.W., the adjoining property on the east. He stated that the two buildings share a party wall at the front of both dwellings. On the Studio House side are the two small studios on the first two floors, while the Turners use the rooms on their side for their bedroom

and as a children's bedroom. Mr. Turner's testimony indicated that occasional noise from normal residential scale entertaining would not be a problem, but the proposed use as a School was so intense as to be a concern, and he cited in particular the fact that the piano on the second floor front studio could be heard through the party wall. Also of concern was the possibility of groups of people assembling for what he characterized as the proposed "corporate" functions, smoking and talking outdoors at the entrance of Studio House. Mr. Turner stated on cross-examination, however, that the piano sound he heard from the second floor front studio was only "muffled," and he indicated that his concern might be addressed if the piano were moved to the rear second floor studio, which is more than 50 feet away in the detached part of the house.

42. Mr. Turner also testified that traffic was a problem and that parking was inadequate. He did not want to lose scarce curbside parking spaces in front of their house and raised safety concerns about to the Applicant's dropoff and pickup plan to the extent that it would block the Korean Embassy's driveway, where he said that cars can come and go quickly. Parking is inadequate on the street, even when restrictions are removed after 6:30 P.M. He questioned in particular whether there would be enough parking for recitals attended by up to 90 patrons, as well as the adequacy of the side yard for nine parking spaces.

43. Rosalie Auster testified for herself and Mr. Auster, Mr. Panzer and Ms. Rice as property owners of houses west of Studio House. She testified that the proposed use would erode the residential character of the area and cause traffic congestion and safety concerns. She stated that the School would increase demand for on-street parking, which she said is a problem in that residents must park as far as three blocks away, and they have difficulty getting contractors to come to their homes. She added that the Applicant had failed to shovel snow from in front of Studio House after a February storm.

44. The Sheridan-Kalorama Neighborhood Council opposed the application and provided testimony from Alan S. Hays II and expert testimony from Stephen Peterson, the Neighborhood Council's traffic expert. Mr. Hays' testimony raised the following objections:

(a) The Applicant's traffic study is flawed because it was conducted after the Q Street bridge had been closed for repairs. The study thus undercounted vehicles that normally head from downtown offices to homes in Georgetown by going west on Massachusetts around Sheridan Circle past Studio House and then south on 23rd Street. Mr. Hays stated a belief that this traffic is using alternative routes, but would return to this routing once the Q Street bridge reopens.

(b) There is a risk of queuing when lessons begin and end, given the limits on curb parking spaces, and the Applicant's traffic study did not address safety issues, which are a concern since traffic can move quickly in the Circle, and vehicles already in the Circle may not yield to vehicles rejoining traffic from in front of Studio House.

(c) On-street parking is limited, particularly as a result of programs affiliated with the Church of the Pilgrims one block to the east and south of Studio House, which cause problems of illegal

parking. The parking problem would be exacerbated by the proposed recitals on Friday evenings and Sunday afternoons. Moreover, there is inadequate parking on the lot.

(d) Approving the Application would establish a dangerous precedent by allowing a commercial business to operate in a commercial neighborhood, much the same way that H.H. Leonard's Mansion at 2020 O Street, N.W. took over that block and created objectionable conditions. There is nothing to prevent the Applicant from renting out the public spaces for a party of up to 90 people with music, wine and hors d'oeuvres under the guise of a guest recital.

45. Mr. Peterson, the Council's traffic expert, testified that he had been retained to evaluate the Applicant's traffic study, and he found it deficient on several grounds. In particular, he criticized the traffic counts in computations of the Level of Service as being too low in light of traffic counts conducted around Sheridan Circle in the 1980s and expressed the view that the level of traffic is more intense. In particular, Mr. Peterson added that the view that the closure of the Q Street bridge had the effect of diverting traffic that would otherwise head from downtown to Georgetown in the evening by going west around Sheridan Circle and then south on 23rd Street in front of Studio House and that this traffic will resume once the Q Street bridge reopens.

46. Mr. Peterson was also critical of the Applicant's dropoff and pickup proposal in light of what he viewed as the possibility of vehicles queuing in front of Studio House during lesson changes. He stated that the queuing issue was the heart of the transportation concerns associated with this application. On cross-examination he did characterize the Applicant's willingness to hold 45-minute lessons that begin on the quarter-hour as a first step to deal with the issue. He also acknowledged that the Applicant was willing to go beyond that step and the steps suggested in Prof. Carter's testimony, such as staggering lessons that begin at, for example, 4, 4:05, 4:10 and 4:15 PM. He did not suggest any other steps that the Applicant could take to mitigate his queuing concerns.

47. Other Testimony. The Board received testimony from Frank M. Graves, a Sheridan-Kalorama resident who testified as a person in support of the application. He testified that:

(a) The mixed use being proposed by the Applicant is superior to any other possible use, all of which result in a loss of public access to this landmark property. The proposal by the Friends of the Alice Pike Barney house for a joint venture with Smithsonian failed; a chancery use would be undesirable and unacceptable to the neighborhood, as would sale of Studio House to an institution such as a museum, university or art gallery; purely private residential use is unlikely, given the size of the building and the presence of two floors of historically designated performance and exhibition space. In his view, maintaining such a landmark property is expensive, and the Applicant's proposal is the only realistic way to preserve this landmark for public benefit.

(b) The activity being proposed by Studio House is reasonable in its intensity, particularly when compared to that which the BZA approved with respect to the Levine School of Music on Upton Street, N.W. several years ago in an R-1-A neighborhood.

(c) As a professional traffic engineer, the Carter studies accurately reflect traffic levels around Sheridan Circle, and reopening the Q Street bridge will have no measurable effect on traffic. Georgetown-bound traffic that would normally go around the Circle and use 23rd Street to access Q Street can get there now by going one block south to the P Street bridge, which remains open.

(d) The traffic signal on 24th Street that controls access to Sheridan Circle from the west provides 28- to 30-second gaps in traffic entering the Circle, and these are open gaps because very few vehicles enter Massachusetts Avenue from R and S Streets, side streets that also enter the Circle from the north. Moreover, Sheridan Circle is 40 feet wide, the two movement lanes are 12 feet wide (two feet wider than the norm) and steeply banked inwards from the roadway crown. By contrast, the curb lane is 16 feet wide and is steeply banked outwards from the roadway crown.

(e) Queuing should not be a problem, given the length of the curb lane, where parking is not permitted, the fact that lessons are dispersed, and the fact that some trips may be by methods other than individual car trips. In any event, even if all students arrived by automobile at the same time, the Carter study shows that these vehicles would be a mere 1.5 percent of peak hour traffic.

(f) Parking should not be an issue because of the nine off-street spaces, the Applicant's reservation of ten additional spaces during recital periods, and the availability of 10 to 40 spaces at Church of the Pilgrims. Nor should backing out of the driveway be an issue, since there are 33 feet of clear space alongside the curb because of curb cuts.

48. The Board also received letters in support from the Levine School of Music, the Friends of the Alice Pike Barney House and others.

49. Testifying as a person in opposition was Richard B. Bowser, Jr., who objected to what he viewed as a commercial enterprise operating in a residential zone, as well as the intensity of use. He emphasized his concern about security, given the presence of many foreign missions in the area, the potential for terrorist actions, the presence of U.S. Secret Service personnel guarding the Turkish Embassy two buildings to the east, and the occurrence of a car bombing on Sheridan Circle in 1976. On cross-examination, Mr. Bowser was provided a copy of a letter from the Secret Service to the Applicant's counsel dated Feb. 14, 2000, in which C. Danny Spriggs, who is responsible for the Uniformed Division of the Secret Service that provides security for all foreign embassies in the District of Columbia and who stated that the Secret Service has no objection to the operation of the proposed School at Studio House. Mr. Bowser indicated that this did not affect his position.

50. The Board received a petition and letters from area residents objecting to the application on the basis of traffic, parking and the presence of a commercial use in a residential zone.

51. The Board did not permit rebuttal testimony from Prof. Carter, but did question Mr. Edmonds on two points:

(a) In response to questions about whether Studio House would be owner-occupied, Mr.

Edmonds explained that he had listed his current house and was prepared to move his family into Studio House if and when the application is granted. He explained that his family had begun to move in the week after Christmas, as indicated in the original application, but then decided to await the resolution of this case, as noted in the Feb. 16th pre-hearing statement (at 1 n.1).

(b) As for questions about whether Studio House would be used as a commercial enterprise for receptions, entertainment and similar uses of the sort operated by H.H. Leonard on O Street, Mr. Edmonds stated that there was no such intention and he would not be seeking a liquor license.

**FINDINGS OF FACT:**

Based on the evidence of record, the Board finds as follows:

1. The Applicant has satisfied all procedural requirements for seeking special exception relief, including the posting of notice and the timely filing of an affidavit in the prescribed form.

2. The School will schedule lessons in the manner set forth in paragraphs 10-13 of the Summary of Evidence, with the classes staggered so that there will generally be no more than nine students and nine faculty on the property at any one time, except for a one hour period from 7 to 8 P.M. on Monday through Thursday evenings when there will be up to 17 students and ten instructors on the property.

3. The School will also offer an annual total of 40 student recitals and 24 guest recitals on Friday evenings and Sunday afternoons in the manner set forth in paragraphs 15-17 of the Summary of Evidence. It is anticipated that up to 45 people will attend student recitals. No more than 90 students and other persons will attend the guest recitals, owing to the limited seating in the studio areas. No more than one recital will be held at any one time, and the Applicant will make access to guest recitals available to non-students at no cost and on a space-available basis once student demand has been met.

4. The School has been established as a non-profit corporation and will operate in that manner. Testimony from the ANC and neighborhood witnesses expressed the concern that the School, through the guest recitals in particular, could operate as a "corporate" or "commercial" enterprise such as the Mansion on O Street in the Dupont Circle area, which rents space for receptions, parties and other entertainments. The Board finds no basis for this concern. The Applicant has testified that the recitals will operate in the manner summarized above, and the Board credits that testimony. In addition, the Applicant testified that it would not seek a license or permit from the District of Columbia Alcoholic Beverage Control Board. The Board is willing to make this a condition of approving the application, which should help allay any concerns.

5. The Applicant will take steps to assure that lessons and recitals are not objectionable on the basis of noise, including soundproofing the basement studios, keeping all lessons and recitals indoors, and keeping windows closed during lessons and recitals. The Board notes too that Studio

House is for the most part a detached building with thick walls.

6. The Applicant is willing to mitigate the "muffled" piano sound that can be heard at the Turners' property by installing an acoustical curtain in front of the party wall; if that does not work, the Applicant will refrain from holding recitals in the front studio space and will limit recitals to the large studio on the rear of the second floor, which is in the detached portion of Studio House.

7. The concern expressed about noise associated with people attending recitals on Friday evenings and Sunday afternoons, *e.g.*, talking and smoking outside during intermissions, appears to rest, at least in part, on a concern that Studio House would be used for "corporate" functions such as the Mansion on O Street, discussed above. The Board believes that its imposition of a condition against obtaining a liquor license should address that concern. To the extent there is a concern with noise from student or guest recitals on Friday evenings or Sunday afternoons, any concern can be mitigated through such steps as requiring guests to remain in the building during any intermissions and to leave quietly when they depart.

8. The Board notes as well Mr. Edmonds' testimony that he and his family will reside in Studio House if this application is approved. The presence of residents on the same site as the School will provide an incentive to maintain noise levels at an acceptable level.

9. The Applicant is not required to make any parking available on the property, which was acquired from the Smithsonian Institution, which was not subject to the Zoning Regulations under the exemption for federal uses in 11 DCMR sections 106.4 and 106.5. Because the property has been placed on the National Register of Historic Places and its interiors appear on the District of Columbia Inventory of Historic Sites, the property is subject to section 2100.5, which states that when the use of a building is changed, "[n]o additional parking spaces shall be required."

10. The Applicant is nonetheless making nine full-sized parking spaces available on the property and will retain a parking attendant/security guard. Nine is the number of spaces that would be needed if the Schedule of Requirements for Parking Spaces were in effect here.

11. The use of stacked parking on the site should not pose any difficulties. It is likely that the on-site spaces will be primarily used by the music faculty, given the limitations associated with trying to park one's car on the street for a five hour period during afternoon and evening lesson periods. The scheduling of lessons is such that faculty will arrive shortly before classes begin at 3 P.M. and leave shortly after classes end at 8 P.M. The Board credits Mr. Edmonds' testimony, based on his experience operating a music school, that parents do not remain during lessons. The School will recommend that parents not remain on the site.

12. It is thus unlikely that there will be a significant number of movements onto or off of the property when lessons are being offered. In addition, and in light of the fact that lessons will begin before and end after the afternoon rush hour, most vehicles will be entering or leaving the property during off-peak hours. As an additional means to facilitate egress from the property, the Applicant

expressed a willingness to widen the area by paving portions of the two planted triangular areas on both sides of the side yard.

13. With respect to recitals, particularly the 24 annual guest recitals that may be attended by up to 90 students and others, there was generalized testimony from the ANC and neighborhood witnesses that parking is inadequate. The Board does not find this testimony persuasive. Apart from the nine on-site parking spaces, the Applicant has secured a written commitment from the Westin Fairfax hotel to provide ten additional spaces during recital times, which will occur during off-peak times of the day and week when a number of on-street parking restrictions, including those related to chanceries, are lifted (11 DCMR section 2406.4). The Board credits Prof. Carter's survey as to the availability of on-street parking during the times when recitals will be held, as evidenced by this survey conducted on a Friday evening from 7 to 8:15 P.M. that consistently found over 30 parking spaces available on nearby blocks. The Board therefore finds that with a total of 19 guaranteed off-street spaces, plus such curb spaces as may be available during off-peak times of the day and week, the recitals will not be objectionable on the basis of parking.

14. With respect to traffic and the proposed dropoff and pickup of students, the focus is on traffic movements around Sheridan Circle, where Studio House is located. Prof. Carter, the Applicant's witness concluded that traffic moved very smoothly around Sheridan Circle, with its two movement lanes and curb lane, where dropoff and pickup will take place. Prof. Carter testified that traffic moves at a Level of Service "B" or better during peak evening rush hour and at an "A" Level of Service during the off-peak Friday evening period when recitals would be offered. These are the two highest Levels of Service that can be recorded and indicate a very acceptable movement of traffic. In addition, the Dupont Circle Metro station is 0.5 miles away and that 44 Metrobuses serve Sheridan Circle during the 3 to 8 P.M. afternoon lesson periods.

15. In a worst-case scenario – one that assumes no use of public transportation, carpooling, bicycling or other form of transit – the School would generate a maximum of 36 automobile movements an hour, assuming 18 students each taking a half-hour lesson and arriving and departing by automobile. Prof. Carter testified that 36 additional movements an hour would have no impact on the Level of Service. Even if the School were to generate double the number of movements in that worst-case scenario, the Level of Service would remain "A" or "B." Ex. 14 at 6-7.

16. Prof. Carter's testimony was criticized during cross-examination and during the Sheridan-Kalorama Neighborhood Council's case on the ground that the statistics indicating the number of movements do not add up correctly and may undercount the actual number of movements, which were much higher in a 1984 survey. The Neighborhood Council noted too that the analysis was conducted after the Q Street bridge linking 23rd Street with Georgetown had closed for repairs. According to the Neighborhood Council, this closure diverted traffic that leaves downtown in the evening and heads for Georgetown by going in a westerly direction around Sheridan Circle and then south on 23rd Street (directly in front of Studio House); when the Q Street bridge reopens, the Council believes, there will be an additional number of cars will resume their route to Georgetown by going around Sheridan Circle in front of Studio House.

17. The Board concludes that while there may have been a computer or computational error in the December 1999 weekday computations, there is no reason to believe that the worst-case scenario – the addition of 36 hourly movements around Sheridan Circle during the afternoon peak hour – would render traffic movements unacceptable. The Board credits Prof. Carter's observation that traffic moved smoothly throughout the 4:30 to 6:15 P.M. weekday survey period, as well as his testimony that service levels would not be diminished even if Studio House were to operate ate levels generating twice as many cars dropping off or picking up students for lessons. Although the Neighborhood Council's expert critiqued his report, the Neighborhood Council did not conduct its own survey or submit evidence to suggest that the School would generate an unacceptable level of service. Even if that were the case, that would not be fatal to the application, since the Board has previously granted special exception relief even in cases where service levels at key intersections did, in fact, fall below acceptable levels. BZA Order No. 16421 (Howard University/Metropolitan Day School, Inc.) at 9, Finding 2 (May 24, 1999)(reproduced as Ap. Ex. 10); BZA Order No. 16389 (George Washington University) at 3, ¶ 3 (August 6, 1999).

18. Studio House is located on the south side of Massachusetts Avenue. Thus, the bulk of traffic passing in front of the House during the peak afternoon period is headed in an easterly direction, *i.e.*, towards downtown, which is the opposite of the predominant traffic flow, which is westerly on Massachusetts Avenue away from downtown. The Board deems it unlikely that 36 additional easterly movements around Sheridan Circle during evening rush hour would make service levels unacceptable.

19. The Board rejects as speculative and unproven the Neighborhood Council's assertion that the Carter survey undercounted a significant number of westbound vehicles that would normally go around Studio House and then south on 23rd Street on their way home to Georgetown. To the extent that traffic that normally uses Q Street to access Georgetown must now find another route, the two major alternatives are P Street, which is one block away, or M Street, which is five blocks away. It is thus likely, as Mr. Graves, an independent traffic engineer also testified, that traffic that normally goes around Sheridan Circle and uses Q Street to access Georgetown continues to do so, only instead of turning right on Q Street, it proceeds one block south and goes right on P Street. Moreover, the westbound traffic on M and P Streets includes not only Georgetown-bound traffic, but also traffic headed for Key Bridge and Rock Creek Parkway, respectively, and the Neighborhood Council has offered no reason why Georgetown-bound traffic would normally prefer these routes to Q Street. Accordingly, the Board finds that the reopening of the Q Street bridge should have little or no impact on the level of traffic that presently uses Sheridan Circle during the afternoon peak period.

20. The Board also finds that the proposed dropoff and pickup proposal is feasible and will not affect traffic or safety. The Neighborhood Council's traffic expert acknowledged that dropoff and pickup was the major transportation issue, and the Board credits the Applicant's testimony and expert testimony, as well as Mr. Graves' testimony as a traffic engineer, on these points:

(a) The two movement lanes around Sheridan Circle are wider than usual, as is the curb lane. The movement lanes are banked towards the Circle, while the curb lane is banked towards the curb,

and there is a triangular area marked at the entrance of Sheridan Circle that funnels traffic towards the movement lanes.

(b) Access to the Circle is limited by a traffic signal at 24th Street that provides gaps of 28 to 30 seconds before traffic enters the Circle.

(c) Dropoff and pickup will take place exclusively in the curb lane. There will be no dropoff in the movement lanes.

(d) Even if the two "residents only" spaces in front of Studio House are regularly filled, there is space for dropoff and pickup in the no-parking area in front of the Studio House driveway, which continues in a westerly direction towards the Korean Chancery. It is thus possible for several vehicles to drop off or pick up students at the same time.

(e) There will be no need for vehicles to park, and cars will remain in the curb lane for a short period of time, given that the Applicant will use a security guard/parking attendant to escort students to and from their vehicles.

(f) A worst-case scenario – 18 vehicles arriving at the same time to pick up nine students and drop off another nine students – is unlikely, as is the possibility of queuing. Even if lessons were scheduled in this fashion, it is unlikely that 18 cars would arrive at exactly the same time. Also, the Board notes that lessons will not begin on the lesson and half-hour. The Applicant indicated that some lessons will be 45 minutes in length. In addition, lessons can be staggered so that lessons begin not at 4 P.M., but 4, 4:05, 4:10 and 4:15 P.M., thus limiting the possibility of queuing.

(g) The Metropolitan Police Department data for the last three years for which data are available revealed no accidents involving injury to persons on Sheridan Circle, and an average of only two accidents a year involving property damage. The Board concludes that adding a maximum of 36 vehicles per hour to this area is unlikely to pose a safety issue.

21. The Board finds no safety or traffic concerns associated with the fact that vehicles parked on the site may back out onto Sheridan Circle and credits Prof. Carter's testimony on these issues.

(a) The principal vehicles using the site will be those of the music faculty, who will be leaving when classes are over at 8 P.M., well after the afternoon peak period.

(b) Vehicles would be backing into the curb lane in a no-parking area that extends up past the Korean Chancery driveway, which will be closed at 8 P.M.

(c) The signal at 24th Street limits the flow of traffic into the Circle, thus adding time for vehicles to back out and rejoin the flow of traffic.

22. The Board credits the testimony of Mr. Oberlander, the Applicant's planning expert, as

well as exhibits such as the report of the Friends of the Alice Pike Barney House (Ap. Ex. 12), which indicate that Studio House was designed and built for a mixture of residential, performance and exhibition uses and that a purely residential use would be difficult in light of the size of the building and the unique configuration of the two historically designated floors, which cannot be altered. In addition, the Zoning Commission mapped this part of Massachusetts Avenue as a Diplomatic Overlay zone on the basis of then-existing mixed uses, and there exist today a number of diplomatic missions in Square 2507 and nearby squares near Sheridan Circle. The Board finds that the Applicant's mixed use proposal – a school for the arts on the two main floors and basement plus residential use on the top two floors – is consistent with the original intent of the building and existing land uses in the area. The Board notes too that the Applicant would restore to Studio House a residential use that has been absent for decades.

## CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the Applicant is seeking special exception relief to establish a private school in a D/R-3 District. The granting of the requested relief requires a showing that the school is not likely to be objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions. Ample parking at a level no less than that required in Chapter 21 of the Zoning Regulations is also required. Finally, it must be shown that the requested relief will be in harmony with the general purpose and intent of the Zoning Regulations and will not adversely affect the use of neighboring property. The Applicant must meet the burden of proof for relief to be granted.

The Board concludes that the Applicant has met the burden of proof. In particular, the Applicant has demonstrated by its own and expert testimony that the proposed School is not likely to be objectionable for any of the reasons set forth in section 206.

Noise. The Board concludes that the School is not likely to be objectionable because of noise. Among other factors, the Board notes that the Applicant plans to occupy the top two floors of Studio House, thus providing an incentive to control noise. The Board notes too that the Applicant can take the following mitigating steps:

(a) hold all lessons and recitals indoors with the windows closed;

(b) install an acoustical curtain in front of the party wall to address concerns from the neighboring property, and, if that does not work

(c) not hold recitals in the front studio space, but restrict recitals to the large studio on the rear of the second floor, which is in the detached portion of Studio House;

(d) ask recital patrons to remain in the building during recitals and not congregate outside during recitals, as well as to leave quietly when rehearsals are over.

Number of Students. The Board concludes that the School is not likely to be objectionable because of the number of students. Lessons will be staggered throughout the day, with one group lesson for eight students on weekday mornings; nine individual music lessons during the afternoon and early evening on Mondays through Thursdays and on Saturday, and a group lesson for eight art students on four weekday evenings. The only overlap occurs during a single hour segment on Monday through Thursday evenings (7 to 8 P.M.), when there could be up to nine music students at Studio House and up to eight art students in the carriage house simultaneously.

This maximum of 17 students on the premises at any one time falls below enrollment levels approved by the Board in other private school cases in lower density, purely residential zones, *e.g.*, Ap. Ex. 10 (Metropolitan Day School) at 3, ¶ 10 (maximum enrollment of 240 students in R-2 zone); BZA Application No. 15984 (Levine School of Music) at 25, Conditions 3-4 (Nov. 1, 1995)(total enrollment of 1500, with no more than 150 students on site at one time, in R-1-A zone).

The Board notes too that the number of music students is consistent with the limitation on studio space in Studio House, as are the number of students and individuals that can attend recitals. The Applicant can and will take the following steps to limit the number of persons on the premises:

(a) limit the number of students and instructors to the levels specified in the application (see Ap. Ex. 3 at 8, Table 1);

(b) maintain the hours of operations as set forth in the application (with reasonable time to set up and close down before and after lessons or recitals);

(c) limit the number of recitals and hours to those specified in the application (Ap. Ex. 3 at 10, Table 2).

(d) limit the number of persons attending recitals to 90, and make space available to the public at guest recitals on a no-cost, space-available basis after student demand has been met.

Traffic and Parking. The Board concludes that the School is not likely to be objectionable because of traffic for the reasons stated in Findings 13-21. Ample parking will also be provided. The Board notes that the Applicant will take the following steps to mitigate traffic and parking concerns:

(a) Classes are staggered throughout the day and will operate according to the schedule set forth in paragraph 10-13 of the Summary of Evidence. Thus, unlike most private school applications, this case does not present a situation of extreme peaking early in the morning and then when classes are dismissed in the afternoon. There will be no operations during morning rush hour; faculty vehicles will arrive shortly before 3 P.M. and depart shortly after 8 P.M., both off-peak times of the afternoon.

(b) Students will be dropped off and picked up exclusively in the curb lane. There will be no dropoff in the movement lanes to interfere with the movement of traffic.

(c) A parking attendant/security guard will escort students to and from their vehicles, thus eliminating for parents to park and perform that function themselves. This service will also minimize the amount of time that each vehicle will have to wait at Studio House.

(d) The School will hold lessons that are 30, 45 and 60 minutes in length and will stagger the starting time of lessons so that, for example, so that lessons would begin not at 4 P.M., but 4, 4:05, 4:10 and 4:15 P.M., thus limiting the possibility of queuing.

(e) The Applicant will provide full-size parking spaces on the property, although none is required.

(f) The Applicant has made arrangements for ten additional spaces at the Westin Fairfax during recital times.

(g) Parents and others dropping off students will be requested not to remain on the premises, but to return when the lesson is over.

(h) The Applicant is willing to widen the driveway by reducing the triangular plots of land on either side of the side yard.

Other Issues. The Board concludes that the School is not likely to be objectionable for any other reason, including the concern that the School was an impermissible "commercial" use in a residential zone and that Studio House would be used for receptions and entertainment of the sort exemplified by H.H. Leonard's Mansion on O Street. The Board finds no basis for these concerns for the reasons stated in Finding 4. The Board notes in particular that the Applicant's testimony that no liquor license or permit will be from the District of Columbia Alcoholic Beverage Control Board. In light of that concession, which the Board has decided to add as a condition, it is unlikely that the neighbors will have concerns of the sort voiced about the Mansion on O Street.

The Board concludes that the application will be in harmony with the general purpose and intent of the Zoning Regulations and that the use will not tend adversely to affect the use of the neighboring property. In reaching this conclusion, the Board relies on the testimony of the Applicant's planning expert, as summarized in Finding 22, as well as the Findings previously discussed regarding noise, traffic, parking and the number of students on the premises.

The Board concludes that the application should not be denied on security grounds and notes the letter from the Secret Service voicing no objection to granting this application.

The Board notes as well the suggestion by the Sheridan-Kalorama Neighborhood Council that the Applicant needs additional relief for accessory parking under section 214 of the Zoning Regulations. The argument is based on the fact that Studio House is located on Lot 4 on Square 2507, whereas the side yard and carriage house where parking will be provided is on Lot 5. The Board rejects this suggestion for several reasons.

The proper starting point is section 2500.1 of the Zoning Regulations, which addresses accessory uses and generally provides that an accessory use shall be located on the same lot with the use or building to which it is accessory, although "*required* accessory parking space may be permitted on another lot where specifically permitted under other provisions of this title" (emphasis added). Section 214 is such a provision that allows required accessory parking on other lots. Neither provision has any application here, given the landmark status of Studio House and the prior ownership by the Smithsonian Institution, which was exempt from the Zoning Regulations, including the parking requirements in section 2101. Since a historic structure such as Studio House cannot be required to maintain more parking spaces than were required prior to the change in use, the "required accessory parking" for the proposed School is therefore zero. See Finding 9.

The fact that the Applicant is offering to provide an additional ten spaces at the Westin Fairfax hotel during recitals does not affect the analysis. These additional spaces are not "required" under the Zoning Regulations, and the Board has not penalized applicants who try to respond to neighborhood concerns by providing supplemental off-street parking. Thus, in BZA Order No. 16421 (Ap. Ex. 10), the Board granted Metropolitan Day School a special exception for a private school under section 206. The applicant there offered the required number of parking spaces on site, *id.* at 5, ¶ 11, and, in an effort to address community concern about parking during special events, secured additional parking spaces several blocks away and agreed to provide shuttle service. *id.* at 10, ¶ 6. The Board granted relief under section 206, consistent with the position of Zoning Administrator, who by letter dated March 12, 1999 advised that relief under section 206 was required and did not mention section 214 (Ex. C to Applicant's Supp. Submission in BZA No. 16421 (March 17, 1999)).

Nor, as the Neighborhood Council suggested, can it be said that the nine on-site parking spaces are located "elsewhere than on the same lot or part of the lot on which the main use is permitted" within the meaning of section 214. The factual premise of the Council's argument is that Studio House is on Lot 4 while parking is provided on Lot 5. This misreads the facts and the Zoning Regulations. Applicant's Exhibit 1 demonstrates that Studio House is located on Lot 4 and a part of Lot 5; thus any parking on Lot 5 would support a use on that Lot. In any event, Zoning Regulations define "lot" broadly, and a "lot" "may or may not be the land so recorded on the records of the Surveyor of the District of Columbia." 11 DCMR section 199.

The Neighborhood Council's attorney also suggested at the hearing that the guest recitals were a form of accessory use that could threaten to overtake school operations and cause the School's operations to resemble a place of public assembly. The Board finds any such argument unsupported by the facts. Mr. Edmonds testified on the basis of his experience operating a music school in Virginia that the opportunity for students to hear and learn from experienced musicians is an important part of a student's musical education. There was no competent testimony to the contrary. To the extent the Neighborhood Council is simply reiterating its concern that guest recitals would be some sort of "Trojan horse" for entertainments and receptions of the sort offered at the Mansion on O Street, the concern had been addressed by the Board's willingness to impose a condition preventing application for a liquor license. That and other steps, such as making guest recital tickets available on a no-cost, space-available basis after student demand has been met, as well

as the Applicant's willingness to limit guest recitals to 24 annually, should address the concern about another H.H. Leonard's emerging on Sheridan Circle. There is thus little chance that the 24 guest recitals, accounting for a total of 48 hours out of the entire year, would somehow overtake the other educational components of the School.

The Board concludes that it has accorded ANC 1D the "great weight" to which its report is entitled. These findings and conclusions respond to the points summarized at paragraph 40 of the Summary of Evidence.

In light of the foregoing, the Board ORDERS that the application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The Applicant and the School shall not apply for a license or permit from the District of Columbia Alcoholic Beverage Control Board.

**VOTE:**

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

**ATTESTED BY:**_____
**SHERI M. PRUITT-WILLIAMS**
**Director**

**Final Date of Order:**_____

**PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THE ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.**

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

**THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICANT FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.**

CERTIFICATE OF SERVICE

I hereby certify that copies of these proposed findings of fact and conclusions of law were served by first class mail, postage prepaid, this 27th day of March, 2000 upon:

Richard and Elizabeth Turner
2304 Massachusetts Avenue, NW
Washington, DC 20008

Lois D. Rice
2332 Massachusetts Avenue, NW
Washington, DC 20008

Simon L. and Rosalie M. Auster
2334 Massachusetts Avenue, NW
Washington, DC 20008

Irving R.M. Panzer
2336 Massachusetts Avenue, NW
Washington, DC 20008

Linda K. Bumbalo
Chairperson, Advisory Neighborhood
Commission 1-D
PO Box 53342
Washington, DC 20009

Sheridan-Kalorama Neighborhood Council
c/o Richard B. Nettler
Robins Kaplan Miller & Ceresi
1801 K Street, NW, Suite 1200
Washington, DC 20036

Cornish F. Hitchcock