Advisory Neighborhood Commission 4A

DISTRICT OF COLUMBIA GOVERNMENT
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April 10, 2000

BY HAND

DISTRICT OF COLUMBIA
00 APR 10 P 4:23

Sheila Cross Reid, Chairman
District of Columbia
Board of Zoning Adjustment
441 Fourth Street, N.W., Room 220
Washington, D.C. 20001

Re: BZA Application No. 16556

Dear Chairman Reid:

Transmitted herewith, are proposed Order, Findings of Fact, and Conclusions of Law with respect to the above case, on behalf of ANC 4A et al.

Joseph H. Hairston
Chairman

BZA
Case No. 16556
Exhibit No. 346

Board of Zoning Adjustment
District of Columbia
CASE NO.16556
EXHIBIT NO.340

Government of the District of Columbia
Board of Zoning Adjustment

Application No. 16556 of Jewish Primary Day School of the Nation's Capital, pursuant to 11 DCMR 3104.1, for two special exceptions from the provisions of Section 206 to establish a private school for 215 students and 32 teachers and staff in the R-1-A District at 7712 16th Street, N.W. (Square 2745-D, Lot 802) and in the R-1-B District at 7701 16th Street, N.W. (Square 2739, Lot 804). The Applicant seeks approval for a three-year term.

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ORDER

HEARING DATES: March 15, 2000 and March 21, 2000
DECISION DATE: April 12, 2000

I. PRELIMINARY MATTERS:

1. This application for two special exceptions was filed on December 30, 1999 by the Jewish Primary Day School of the Nations Capital (JPDS), Chevorah Tifereth Israel Synagogue (Tifereth Israel) and Ohev Sholom Talmud Torah Synagogue (Ohev Sholom) (collectively the "Applicant"). An amendment to the application was filed on January 11, 2000.

2. Letters in opposition to the application were submitted to the Board of Zoning Adjustment ("the Board") by a majority of the property owners within 200 feet of the properties involved in the application prior to the initial Board hearing. Sixteen property owners also requested party status.

3. The Board conducted hearings on March 15, 2000, and March 21, 2000.

4. At the March 15 public hearing, the Board considered the requests for party status that had been timely submitted by the adjacent and nearby property owners who oppose this application. Ambassador Arthur and Dr. Frances Lewis, Dr. Adolph and Jean W. Johnson, and Mrs. Helene M. Harris, were the only persons granted permission to participate as parties in opposition.

5. The parties in opposition authorized Messrs. Harold Bardonille, Philip G. Hampton, II, and Derrick A. Humphries, all property owners within 200 feet of the properties involved in this application, to act as their agents at the hearings. In addition, at both hearings, Messrs. Bardonille, Hampton, and Humphries represented the Shepherd Park/Colonial Village Neighbors Alliance, an unincorporated association of adjacent and nearby property owners who oppose BZA Application No. 16556.

6. At the March 15 public hearing, the Board denied the Motion of the Parties in Opposition to Dismiss Application No. 16556 for failure to comply with the procedural requirements of Chapter 3100 of the Zoning regulations.

7. Opponents to the application included all of the adjoining neighbors; ANC 4A; Charlene Drew Jarvis, Councilmember for Ward 4; the Shepherd Elementary School PTA; Neighbors, Inc.; the Shepherd Park Citizens Association; William Rumsey, Jr., the father of a former student who was enrolled at the child development center operated by Tifereth Israel; Elizabeth Sadoff, a mother who, with her family, were members of Tifereth Israel for twenty years, whose three children had their bar mitzvahs at the synagogue and who still attend High Holiday services at Tifereth Israel every year; and others.

8. Dr. Franklyn Musgrave, who lives next door to Ohev Sholom, at 1624 Jonquil Street, NW, was unable to attend but has provided his comments in opposition on a videotape of the area done by Bruce Johnson, who is also a neighbor within 200 feet of the proposed sites.

9. At the hearings, the BZA heard from the Applicant (represented by the law firm of Arter & Hadden), ANC 4A, the Office of Planning, the Department of Public Works, Metropolitan Police Department, and numerous witnesses supporting and opposing the application.

II. SUMMARY OF EVIDENCE:

1. This application involves two separate properties. For clarification purposes, the Board will refer to the property located in the R-1-A district (Ohev Sholom) as Site 1 and the property located in the R-1-B district (Tifereth Israel) as Site 2.

2. The first property is located on the southwest corner of 16th and Jonquil Streets. This premise address is 7712 16th Street, N.W. This subject site is zoned R-1-A and is located in the Rock Creek Gardens (also known as Colonial Village) neighborhood of Ward 4. This property, identified in the application as Lot 802 in Square 2945-D, shall be referred to hereinafter as "Site 1."

3. Site 1 contains less than ½ acre of land area, with frontage of 186.17 feet along 16th Street to the east and 151.79 feet along Jonquil Street to the north. The total area of Site 1 is approximately 30,000 square feet. Site 1 abuts a public alley to the west, which is only 15 feet wide.

4. Site 1 is developed with a multi-story building that has a gross building area of approximately 36,000 square feet and is owned and occupied by the Ohev Sholom Talmud Torah Congregation. This use began in November 1961. Site 1 is bounded on the southwest and north by single family detached residential dwellings. In addition, the Washington Ethical Society and its high school are located a half block to the north, and the Lowell School is located just to the northwest.

5. At Site 1, there is an irregular-shaped, paved area directly to the rear of the building and parallel to the 15-foot public alley. This irregular-shaped paved area is the proposed area for a loading zone, the site of a large trash dumpster, and as a parking lot for 13 regular sized vehicles.

6. The other property which is the subject of this application is located at the northeast corner of 16th and Juniper Streets. This other premise address is 7701 16th Street, N.W. This property is zoned R-1-B and is located in the Shepherd Park neighborhood of Ward 4. This other property, identified in the application as Lot 804 in Square 2739, shall be referred to hereinafter as "Site 2."

7. Site 2 is rectangular in shape, with a frontage of 165 feet along 16th Street to the west and 148.89 feet along Juniper Street to the south. The total land area of Site 2 is 24,566,85 square feet. Site 2 abuts a public alley to the east which is only 15 feet wide.

8. Site 2 is developed with a multi-story "L"-shaped building that has a gross building area of approximately 36,000 square feet and is owned and occupied by the Chevorah Tifereth Israel Synagogue. This use began in June 1957. Site 2 is bounded on the south, east, and north by single family detached residential dwellings. Site 1 is located almost directly across 16th Street to the west. In addition, the Alexander Shepherd Public Elementary School is located less than 750 feet to the northeast.

9. At Site 2, there is a rectangular shaped, paved area directly to the rear of the building parallel to the 15-foot wide public alley. This area serves as a loading zone, the site of the trash dumpster, and a parking lot for three regular-sized vehicles. There is a very small fenced play area on the Juniper Street side of Site 2.

10. The Applicant is seeking a special exception to operate JPDS (Grades K through 3), a private school for 120 students and 18 teachers and staff, at Site 1. The Applicant also seeks a special exception to operate JPDS (Grades 4 through 6), a private school for 85 students and 14 teachers and staff, at Site 2.

11. In addition to the 18 teachers and staff located at Site 1 and the 14 teachers and staff located at Site 2, Applicant plans to employ 6 part time specialist teachers but does not specify at which site they will be located.

12. The proposed operating hours for JPDS are 8:35 a.m. to 3:30 p.m., Monday through Friday. JPDS also plans to operate an aftercare program from 3:35 p.m. to 6:30 p.m. Teachers and staff are expected to begin arriving at approximately 7:00 a.m. at both Site 1 and Site 2.

13. JPDS expects students to arrive at Site 1 by private vehicles and school operated vans by following a precise traffic route. JPDS estimates that approximately 40 private vehicles would arrive in the morning and 28 vehicles would arrive in the afternoon.

14. JPDS expects students to arrive at Site 2 by private vehicles and school operated vans by following a precise traffic route. The school estimates that approximately 28 private vehicles would arrive in the morning and 15 would arrive in the afternoon.

15. Applicant's proposed school's traffic management concept requires the vehicles arriving and departing Site 1 to make west bound right and left turns off 16th Street onto the 1600 block of Juniper Street, N.W., then turn right into the 15 feet wide alley parallel to the building. The proposed plan would have students exit vehicles at the intersection of the alley at Jonquil Street assisted by monitors who would escort students into the building.

16. Four neighboring properties use the alley adjacent to Site 1 to access their garages and parking pads. Two way traffic in the 15 feet wide alley is not a practical reality except at spots near driveways, private parking pads and the synagogue's parking lot where one vehicle can move off the alley to allow another vehicle to pass in either direction.

17. JPDS proposes that parents driving the youngest children to school at Site 1 will park their vehicles and escort their children to their classrooms. These parents would have to find on-site parking spaces in the 1600 blocks of Jonquil and Juniper Streets.

18. At twenty-three feet, six inches (23' 6") wide, the 1600 blocks of Jonquil and Juniper Streets are narrower than usual, therefore parking is permitted only on the north side of the streets. This limited available street parking is usually occupied by residents' vehicles.

19. At Site 1, Applicant proposes to use the passageway located at the south end of the building and adjacent to the Hanafi House, as play space. The passageway is 16 feet wide and 70 feet long. The passageway is separated from the Hanafi House to the south by a 4 feet high chain link fence. The passageway is opened at the east and west ends leading to the sidewalk along 16th Street and the public alley, respectively. There is no barrier to contain or muffle the noise that would be generated by children at play.

20. The proposed traffic management concept for JPDS requires vehicles arriving and departing Site 2 to make east bound right and left turns off 16th Street onto the 1400 block of Jonquil Street, N.W., drive past neighbors' homes which abut Site 2, turn right into the alley adjacent to the building, which is only 15 feet wide, drive southbound down the alley from Jonquil to Juniper, and then turn right again westbound onto Juniper Street. The proposed plan would have students exit vehicles at the curb on Juniper Street assisted by monitors. Juniper Street, at this point between the alley and 16th Street, has unrestricted parking. When vehicles are parked on the north curb lane of Juniper Street,

vehicles containing children must double-park and thereby obstruct the flow of traffic in both directions in order to discharge students.

21. Passenger vehicles cannot traverse the alley at either Site 1 or Site 2 while city trash trucks, private trash handler trucks, recycling collection trucks, service vehicles (i.e., appliances, furnace, plumbers, painters, installers, tree-trimmers, electricians, etc.), and large delivery trucks are in the alley.

22. Applicant proposes to have parents and visitors to Site 1 and Site 2 during non-rush hours use 16th Street for parking.

23. Beginning in early spring 2001, 16th Street between Alaska Avenue and Primrose Road will be undergoing complete reconstruction. During the reconstruction period of at least 18 to 20 months, north and south bound traffic on 16th Street will be restricted to two lanes only. All rush hour parking on both sides of 16th Street is currently prohibited. During the reconstruction period, non-rush hour parking on 16th Street also will be prohibited. Thus, any parking on 16th Street will be prohibited. [March 21, T. 242.]

24. JPDS proposes to use both the field adjacent to the Shepherd Elementary School and Rock Creek Park for major outdoor activities, but has not provided any concrete plans for this use or for transporting students to these locations.

25. By memorandum dated March 8, 2000, the Office of Planning (OP) recommended conditional approval of the application for one year with the Applicant returning prior to that time for an additional two-year approval. However, with minimal verification or independent analysis, the OP report merely adopted Applicant's representations as facts. While the OP met with Applicant's representatives, the OP did not interview or discuss the application or neighborhood traffic conditions with any of the neighbors, the ANC, Councilmember Jarvis, or the Metropolitan Police.

26. When told that the regulations do not authorize the conditional approval recommended in the OP report, and that approval would have to be for a definite time period, the witness from the OP could not give an opinion as to whether his office would still recommend approval. [March 21, T. 232.]

27. The OP's conditional approval is tempered by an indecisive conclusion "...that if all the mitigation measures work as designed, the 'burdens' on the community will probably be acceptable over the three year life of the school at that location. However, if the school and parents begin to relax in their efforts to be good neighbors, the impacts, both perceived and real, will rise in significance." The school will quickly become one more institutional use on 16th Street, adding to, in the OP's own words, the "over saturation of school, secular and non-secular activities by a number of unrelated groups." Moreover, at the hearing, the witness from the OP conceded that, in light of the changes made by

Applicant in its traffic management concept, OP should reconsider its review and conclusion and defer to the Department of Public Works. [March 21, T. 215.]

28. By memorandum dated March 14, 2000, which addressed only the transportation elements of the proposal, the Department of Public Works (DPW) found that the proposed operation of the school would have some local impact in the immediate vicinity of the school especially during the morning drop-off and evening pickup periods. The impacts will be highest during the morning peak traffic period. Traffic congestion will worsen in 2001 due to the aforementioned scheduled reconstruction of 16th Street. If the application is approved, DPW states, the proposed school will need to ensure that drop-off, pickup, and queuing operations do not block 16th Street. DPW does not recommend approval of the application.

29. The DPW review of the Applicant's alleged traffic impact analysis found that the surrounding neighborhood would be adversely impacted by the Applicant's proposed circulation and access routes which allow for one-way clockwise circulation around Sites 1 and 2 and through the adjacent residential streets and public alleys. DPW states that "to the extent that a left turn off of 16th Street is allowed onto Jonquil and Juniper Streets, there appears to be no compelling reason to believe that school-bound traffic will travel extra blocks to enter or leave the school following the proposed routes. Since left turn lanes are provided at Jonquil and Juniper Streets, DPW recommends that traffic use these lanes to access the schools."

30. DPW also notes that the 16th Street reconstruction project will most likely have a significant affect not only on the school's operation, but also on the area's local residential streets. Traffic congestion and turning maneuvers will become even more difficult during this reconstruction period.

31. The Advisory Neighborhood Commission 4A opposes the application on the grounds that existing traffic congestion, parking, litter, and noise problems will worsen with locating these schools in the neighborhood. In addition, the ANC indicated concerns regarding pedestrian safety; cited problems with blocked alleys and residential streets during student drop-off and pickup periods; and related the safety concerns of the Metropolitan Police about the cumulative effect of more traffic in the affected area.

32. By a written report dated March 4, 2000, a supplemental report filed March 10, 2000, and through the testimony of its Chairman, Joseph H. Hairston at the public hearing held on March 21, 2000, Advisory Neighborhood Commission (ANC) 4A opposed the application. In summary, the ANC report states:

    (a) Community Opposition. Objections were raised by the vast majority of residents attending the ANC meeting on February 1, 2000 when the application was

discussed. The process used by the Applicant was flawed in that, among other reasons, its plans for relocation of the school were made without community involvement.

(b) Traffic Concerns. Increased traffic congestion, parking problems, litter and noise would be caused by the influx of over 200 students, 30 or more staff personnel, as well as numerous parents and visitors into the community. Traffic is already congested in both directions on 16th Street, at 16th and Jonquil, and at 16th & Juniper Streets.

(c) Parking Concerns. On-street parking in both directions on 16th Street in the area of Sites 1 and 2 is already inadequate. On Saturdays during the day and in the evenings and during special events, vehicles routinely are double-parked on the streets, in the alleys and blocking fire hydrants.

(d) Pedestrians and Public Safety. Unlike other schools located in the general area, there is no buffer zone between the proposed school and the nearby homes. Some residents expressed concerns for pedestrian and public safety. They described the safety risks and dangers that the children would confront by crossing busy 16th Street in order to go from one proposed site to the other, and by traveling from the proposed Sites to the Shepherd Park recreation field.

(e) Current and On-Going Violations. Current use of Tifereth Israel for a child development center is in violation of the BZA decision of July 29, 1992. [Application No. 15670; Final Date of Order: March 7, 1994]. Neighbors have continuously expressed the concerns described below to the leadership of Tifereth Israel and the concerns have not been addressed:

(1) Despite a BZA requirement that "all dropping off and picking up of children [at Tifereth Israel] shall occur from Juniper Street," parents and other drivers routinely use the adjoining alley as a drop-off site. In addition, they stop and/or park (double-park) facing east on the south side of Juniper Street, requiring them and the children to cross Juniper Street in order to enter the synagogue door located on the north side of Juniper Street.

(2) The three parking spaces to be provided [in the rear of Site 2] for exclusive use of the Tifereth Israel Child Development Center are too short. Therefore, minivans, station wagons and luxury vehicles, which often park in those spaces, protrude into the alley and block its use. Neighbors have contacted the police about this illegal and unsafe parking situation.

(3) The aforementioned BZA order required Tifereth Israel to establish and to maintain a "community liaison/Advisory Council" to meet no less than quarterly to address issues and concerns of the day care facility and the community. [D]espite repeated complaints by the neighbors regarding problems with traffic and parking during the drop-off and pick-up of children, impact on the neighbors of activities at the site, fire safety issues, litter and trash, traffic crashes at the intersection of Juniper and 16th Streets, the synagogue [Tifereth Israel] has failed to hold quarterly meetings to address these recurring issues. [In fact, synagogue representatives have acknowledged their failure to comply with this requirement for quarterly meetings.] Space at the synagogue site and the property, according to an adjacent neighbor, is so limited that the Fire Inspector inquired if the neighbor's yard might be used as an evacuation area for the children, faculty and staff in the event of a fire or other emergency.

(4) Although approval of the expanded use in 1992 was "for a period of three years," the synagogue [Tifereth Israel] has never obtained BZA approval beyond the approval period of operation and, therefore, is currently operating its expanded Child Development Center in violation of the BZA order.

(f) Nearby Schools, Dwellings and Alleys. Lt. Anderson of the Metropolitan Police Department PSA 401, which includes the area impacted by this application, reported that there are already tremendous traffic problems in the area caused by commuter traffic and the traffic from the four existing schools: (1) Child Development Center in the synagogue at 7701 16th Street N.W. [Site 2]; (2) the Shepherd Park Elementary School at 7800 14th Street N.W., a kindergarten through sixth grade public school located ... less than 1000 feet of the site; (3) Lowell School at 1640 Kalmia Road, approximately one block west of 16th Street N.W., and within two blocks of the proposed Sites; and (4) the Washington Ethical Society located at 7750 16th Street N.W., one-half block from the proposed site and currently hosting its own student programs. In testifying at the March 21 public hearing, Lt. Anderson also stated that she already regularly requests assistance from the National Park Police to address the current traffic problems.

(g) Private dwellings face three sides of both of the Sites. Private dwellings immediately abut the Tifereth Israel site [Site 2] on its North side. The owners of the neighboring property state that there is no way to alleviate existing and potential problems through the design and site of the existing physical facility or through landscaping and screening.

33. Several persons, some of whom live in the Shepherd Park community, but the majority from elsewhere in the metropolitan area, testified in support of the application. Their support for the application is summarized as follows:

(a) JPDS is the only Jewish parochial school in the District of Columbia.

(b) The past and present parents, students and friends love the school and are passionate about the importance of having a school like JPDS.

(c) JPDS is a wonderfully unique school, recognized for the quality of its educational curriculum, talented faculty and students' performance.

(d) Half of the JPDS families are District of Columbia residents and they along with representatives of various Jewish community organizations want the temporary and permanent location of the school to be in the District of Columbia. They assert that the private school will be an asset to the community in which it resides.

None of this testimony, however, related to the increased traffic and noise, or the lack of adequate parking, barriers or screening in the vicinity of Site 1 and Site 2. Applicant failed to present any recommendations from a landscape architect. No parent of JPDS who would be subject to the traffic plan affirmatively stated that he/she would abide by it. The Applicant presented no testimony as to how the reconstruction of 16th Street would impact on the alleged traffic plan. Applicant made no rebuttal to opposing parties' testimony that parking spaces at Sites 1 and 2 are insufficient for the proposed purposes. No one living within 500 feet of the Sites testified in support of the special exception.

34. Most of the nearby property owners testified at the public hearing and testified in opposition to the application. The opposition is summarized as follows:

(a) Site 1 and Site 2, located on busy upper 16th Street across from each other, are not appropriate for the location of a private elementary school.

(b) The location of the proposed private elementary school will create objectionable traffic and safety conditions, including congestion in the alleys and on Jonquil and Juniper Streets, and exacerbate the existing adverse parking situation for neighbors. It will also increase the flow of rush-hour traffic through those streets and adjoining alleys.

(c) Neighbors, their guests, and parents and students attending Shepherd Elementary School already use the network of alleys to arrive at and depart from the neighborhood. Such use is an operational survival use developed in response to

the tremendously high volume of traffic on 16th Street and the increasing volume of traffic on 14th Street. DPW reports average daily traffic volumes of 39,800 vehicles in the vicinity of the Sites.

(d) The proposed use of the public alleys for student loading and unloading operations would deprive adjoining property owners of free access to their garages and parking pads and impede the access of other vehicles using the alleys, including emergency vehicles, city trash trucks, recycling collection trucks, plumbers, electricians, tree-trimmers, roofers, and other persons performing repairs or making deliveries to adjoining homeowners.

(e) The establishment of private elementary schools at Site 1 and Site 2 will result in an over-concentration and over-saturation of institutional use in the particular R-1-A and R-1-B districts.

(f) Sites 1 and 2 do not have sufficient on-site parking to satisfy the minimum requirements of the District of Columbia zoning regulations.

(g) The location of a private elementary school at Site 1 and Site 2 would create objectionable noise for adjoining homeowners, most of whom are retired and at home during the day.

35. Serving the Shepherd Park/Colonial Village neighborhoods are two civic associations known and respected citywide for responsible representation of the neighborhood with respect to city rules and regulations: Neighbors, Inc. and the Shepherd Park Citizens Association. Both of these organizations oppose the grant of a special exception for Applicant. According to a March 9, 2000 letter, the Shepherd Park Citizens Association opposed the application because it concluded, after considerable deliberation, that the quiet enjoyment of their property by those in the immediate vicinity of the proposed school Sites would be considerably impaired if the application were granted. According to a March 17, 2000 petition, Neighbors, Inc. opposes the application.

36. Shepherd Elementary School is less than 750 feet from the proposed school. Shepherd has an enrollment of approximately 365 students and 45 teachers and staff. Of this population, approximately 85% travel to and from Shepherd by car. Although the school day officially begins at 8:45 a.m. and ends at 3:15 p.m., due to "before-" and "after-school" activities and the operation of a "before-" and "after-school" program at Shepherd, children and staff begin arriving as early as 7:30 a.m. and leave as late as 6:30 p.m.

37. The Shepherd Elementary School PTA, in a March 21, 2000 letter to the Board by its president, Presley R. Reed, Jr., opposed the Applicant's request for a special exception. The letter from the Shepherd PTA states: "14th Street serves as a major conduit for

employees at the Walter Reed Army Medical Center (WRAMC). The combination of Shepherd School traffic, WRAMC traffic and local residential traffic during morning rush hour has already threatened public safety and welfare. The addition of JPDS traffic to the existing congestion problem will certainly erode public safety and welfare beyond reasonably tolerable levels.... [The Board should] find little credibility in the JPDS' assertions that its parents will not use Kalmia Road or 14th Street because these are the only thoroughfares that connect directly with Georgia or Alaska Avenues, respectively, from the proposed JPDS site. Moreover, it seems seriously doubtful that JPDS can ensure that its parents will not use the streets directly adjacent to Shepherd during the peak congestion periods ..." (emphasis in original).

III. FINDINGS OF FACT

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

1. Two different proposed sites are involved and because of that two different and distinct applications for special exceptions should have been filed. The proposed sites are unrelated in all respects: they have different addresses, are located in different squares, have different zoning designations (Site 1 is zoned R-1-A and Site 2 is zoned R-1-B), and are located in different neighborhoods, one being Rock Creek Gardens (also known as Colonial Village), and the other being located in Shepherd Park. Further, the Sites are owned and occupied by different owners, have different and distinctive boards of governance and leadership, have different sets of next door neighbors, are located on different sides of 16th Street -- a major arterial street – and, but for the proposed Applicant, are unrelated to each other for zoning purposes.

2. *Traffic Impact.* It is reasonable to conclude that the introduction of additional traffic on Jonquil and Juniper Streets, both east and west of 16th Street, will increase the "side" street volumes significantly for local traffic. This increased local traffic is a "substantial detriment" to local residents who already have significant difficulty in entering or crossing [by car and on foot] 16th Street during the morning peak hour. 80 vehicles turning right from 16th Street will have a significant impact on 16th Street traffic because they must slow down to a speed much lower than the through traffic normally operates (e.g. 15 or less mph instead of 30+ mph).

3. The traffic management concept proposed by Applicant as a way to alleviate traffic impact is unrealistic and unenforceable. Drivers are more likely to utilize left turn lanes at Juniper and Jonquil to access the schools than to follow the prescribed circuitous routes. If these movements do occur, then there will be more disruption to traffic flow on 16th Street and also on the local streets than accounted for in the Applicant's traffic consultant's report.

4. Locating an elementary school at two locations across 16th Street, a high volume, four lane arterial street, is likely to create objectionable traffic conditions and unsafe conditions for picking up and dropping off children at these locations.

5. The reconstruction of 16th Street from Alaska Avenue to Primrose Road is scheduled to begin late spring of 2001 and continue for at least one and one half years. It will have a significant affect on the school's proposed operation and on the local residential streets in the area as well. Traffic congestion and turning maneuvers onto and off of 16th Street will become even more difficult during this period.

6. The proposed routes of the traffic management concept are unrealistic. Applicant has not provided a reasonable basis to believe that school bound traffic will travel extra blocks in the opposite direction to enter and leave the school.

7. *Alley Operations*. There are numerous garages that are accessed via the alleys that Applicant proposes to use for loading and unloading operations at Site 2. Refuse collection trucks also require regular access to and use of the alleys. Potential disruption to alley operations is a foreseeable impact of the proposed school's traffic management concept.

8. In addition to the vehicular traffic impact, the proposed alley operations will adversely impact pedestrian safety, particularly for the school children attending Shepherd Park School. Many of these children utilize the alley to walk to school. The alley is 15 feet wide and is even more restricted in width where trash containers encroach on the alley pavement. The alley is an important pedestrian walkway because there is no sidewalk along most of the east side of 16th Street between Juniper and Kalmia.

9. The adjacent and nearby property owners have demonstrated a unique condition unparalleled in the District: the regular and frequent use of the network of alleyways to travel from their homes to intersections with traffic lights in order to exit their neighborhood and to get to the local public schools. The data collected by the neighbors demonstrates a unique and rare intimate knowledge of these public alleyways that is based on the uniqueness of the traffic flow from Maryland, only a few blocks away, onto 16th, 14th and 17th Streets, N.W. For instance Helene Harris, the neighbor next door to proposed Site 2, counted on two different occasions the number of current uses of the public alley immediately bounding her house and proposed Site 2. On March 10th, 2000, she counted 32 vehicles during the a.m. drop-off hour proposed by the Applicant. Sixteen of these vehicles were traveling in a direction (north) opposite the direction proposed for school parents by the Applicant (south). Her count of the current cut-through traffic on the 1400 block of Juniper Street during the same hour is riveting. There are only 14 houses in this block, yet on March 16th, 2000, 34 vehicles cut-through this block during the a.m. drop-off hour proposed by the Applicant. Adjacent and neighboring property

owners, Ambassador Arthur Lewis, Rosa Grillo, Richard A. Streaty and William F. Lawton, Jr., all compiled data which document the unusual level of traffic in the adjacent alleys and on Juniper and Jonquil Streets. Clearly, the addition of Applicant's vehicles would create an untenable condition.

10. The one-way clockwise circulation around Sites 1 and 2 and through the adjacent residential streets and public alleys will result in the school having exclusive use of the alleys and thereby frustrate, inconvenience, deprive and exclude neighboring property-owners from using the alleys.

11. The exclusive use of the alleys by the school to the exclusion of all others is a constructive taking or closing of the alley to private use and the Board lacks jurisdiction to consider or decide alley closing cases.

12. *Parking*. The Applicant's traffic consultant's report reflected the Applicant's inability to guarantee the number of parking spaces required for the grant of a special exception. While the report shows 33 spaces on the two lots adjacent to the alleys, the report also states that a "formal survey of the two sites will be necessary to insure that the existing space would be adequate to provide the planned number of space."

13. A review of the parking layouts in the consultant's report shows that at Site 2 the existing handicapped ramp leading from the alley would be blocked and the dumpster would have to be moved. At Site 1 the dumpster is also blocked and the telephone poles have not been accounted for. At both Sites, the entrances, wherever they may be located, would be difficult to reach through tightly packed, parked vehicles. When queued vehicle number one at Site 1 is at the unloading point, then the rear door near parked vehicle #18 is a very remote entrance and would be hazardous for a child to navigate. If the more accessible side door on Jonquil is the entrance, it nonetheless would not be convenient or desirable in inclement weather.

14. The parties in opposition have identified nine subsections of the zoning regulations with which Applicant's proposed parking plans does not conform. Nonconformity with applicable provisions of chapter 21 of the zoning regulations is disabling to an application for special exception under 11 DCMR §206.

15. On-site parking is not available for parents leaving their vehicles to escort kindergarten and first, second, and third grade students to their classrooms.

16. In order for Applicant to satisfy the requirement of section 206.3, it must provide a minimum of 26 on-site parking spaces to accommodate the 38 teachers and staff employed by the school. At Site 1, a minimum of 14 parking spaces must be provided to

comply with the regulations, and at Site 2, a minimum of 12 parking spaces must be provided in order to comply. However, the Applicant can only provide a total of 16 conforming on-site parking spaces at both Sites (13 spaces at Site 1 and 3 spaces at Site 2.) [March 21, T. 501-502.]

17. Individually and collectively the sites at Site 1 and Site 2 do not provide the requisite number of on-site parking spaces to be granted special exception under 11 DCMR §206.

18. *Noise*. The outdoor play area at Site 1 is not located and designed to prevent objectionable impacts due to noise or activity, or visual or otherwise objectionable conditions. The existing Certificate of Occupancy [ID #: B146454] authorizes Site 2 to operate a child development center for children ages 2-5 years old and the play area at Site 2 is structured to meet the needs of children ages 2-5 years old, but not for students in the 4th, 5th and 6th grades.

19. Applicant provided very little evidence in the record regarding the substantive elements required to satisfy 11 DCMR §206. Applicant offered no evidence on noise abatement nor did it present specific information on the parking conditions at both Sites.

20. *Traffic Management Plan (TPM)*. The proposed concepts contained within the Traffic Management Plan rely on a number of assumptions that are extremely unlikely to be realized. Strict, and unrealistic, adherence to the provisions of the TPM would be necessary to achieve even minimal reduction of traffic impact. Teachers, for example, would be asked to act as traffic officers in instances such as directing drivers in a hurry (and maybe even late) who are waiting to drop off children to drive around the block and go to the rear of the queue because a neighbor needs to get out of his/her garage. Drivers would be asked to drive north for 6 to 8 blocks in order to turn east and then follow an extraordinarily circuitous route to head south. Greater than 75% of the drivers will want to head south after the drop-off according to the Applicant's traffic consultant – reference page 3 of the DPW report. This exit route is after taking an equally circuitous route to arrive at the school. The DPW report stated that the proposed traffic routings "appear to be unenforceable." Anyone who has driven during a Washington Metropolitan Area rush hour, especially on or near 16th Street, would readily agree with this conclusion. The proposed operating plan developed for school access relies on many assumptions such as this that are unlikely to be fully realized.

21. The Applicant's traffic simulation conducted for Site 1 on March 7, 2000 was unrealistic and unreliable in the manner in which it was conducted. Yet, it did underscore many of the neighbors' concerns related to monitoring parked cars on the north side of the 1600 block of Juniper Street, N.W., and the westbound turning maneuvers made by northbound 16th Street vehicles onto the 1600 block of Juniper Street, N.W.

22. Reluctance of the adjacent and neighboring property owners to have any faith in the Applicant's enforcement promises regarding the Traffic Management Plan is rooted in their past and current experience with lack of compliance at Site 2 with previous BZA orders. The past and current uses of Site 2 have, according to testimony, consistently violated provisions in the 1992 BZA decision, which specified special traffic operating rules and other requirements for working with the neighborhood to resolve various types of complaints.

23. *Other*. The economic or spiritual value of the Jewish Primary Day School to the congregants of Applicant's synagogues, the survival or economic viability of Applicant synagogues, the school's political or cultural significance to the larger Jewish community, or the school's role in the preservation of Jewish religious and cultural identity and traditions are not proper subjects to be considered by this Board and therefore are not before the Board.

IV. CONLUSIONS OF LAW

1. The Applicant seeks a special exception to locate a private elementary school for 215 children and 38 staff in an R-1-A District at premises 7712 16th Street, N.W. (Square 2745-D, Lot 802) and an R-1-B District at premises 7701 16th Street, N.W. (Square 2739, Lot 804). To qualify for the exception, the Applicant must show that it meets the requirements of Section 206 and Section 3104.1 of the Zoning Regulations.

2. The Board may grant special exceptions, "where, * * * those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps * * * ." *Levy v. Board of Zoning Adjustment*, 570 A.2d 739, 742 (D.C. 1990) (quoting 11 D.C.M.R. § 3108.1). See *Rose Lees Hardy Home and School Association v. District of Columbia Board of Zoning Adjustment*, 324 A.2d 701, 706 (D.C. 1974).

3. The Board's discretion in reviewing an application for a special exception is limited to a determination of whether the Applicant has complied with requirements of those sections. If the Applicant meets this burden, the Board ordinarily must grant the application. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981).

4. The Applicant has the burden of demonstrating that its proposal complies with the requirements specified in § 206 for establishing a private school in an R-1 district. Thus, the Applicant must show that establishing private schools at the two Sites involved in this application is not likely to become objectionable to adjoining and nearby property

because of noise, traffic, or other objectionable conditions. In addition, Applicant must demonstrate that ample parking space, but not less than that required in chapter 21 of the Zoning Regulations, can be provided to accommodate the parents, students, teachers, staff, and visitors likely to come to the Sites by automobile.

5. A special exception, and any conditions imposed on the granting of a special exception, must run with the land. Where one school proposes to operate at two separate and distinct sites, both of which are located in R-1 districts, a special exception under Section 206 must be obtained for each site. Thus, the Applicant must demonstrate that it meets the requirements for a special exception to operate a private school at Site 1, and the requirements for a special exception to operate a private school at Site 2.

6. A zoning exception for locating a private school in an R-1 district cannot be granted unless the required number of parking spaces can be provided. The parking space requirement is jurisdictional; the Board has no power to grant a special exception that is not in compliance with the Zoning Regulations.

7. Section 2116.1 provides that "[e]xcept as provided in §§213, 510, 708, 730, 743.2(d), 753.1(c), 803.1, 2116.5 and 2117.9(c), all parking spaces shall be located on the same lot with the buildings or structures they are intended to serve."

8. Based on the foregoing Findings of Fact, and the evidence of record, the Board concludes that the Applicant has not met its burden to show that the application satisfied the requirements of Section 206. The Applicant has failed to show that the proposed school will meet all applicable zoning requirements; that it will create no unsafe or objectionable traffic condition; that it will provide sufficient off-street parking in accordance with chapter 21; and that it will have no objectionable impact on neighboring property.

9. The Board also concludes that the Applicant has not met the requirements of Section 3104.1. The Applicant has not shown that the school will be consistent with the general purpose and intent of the Zoning Regulations and that location of the school will not adversely affect the use of the neighboring property in accordance with the Zoning Regulations and Maps.

10. Based upon the record before the Board, the Board finds that the Applicant has not met its burden of proof, pursuant to 11 DCMR 3104, and the requested relief cannot be granted since it is not in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that it has accorded the Advisory Neighborhood Commission the "great weight" to which it is entitled. The Board further finds that granting the requested relief will tend to affect adversely the use of neighboring property.

It is therefore ORDERED that the application is DENIED.

11. If, notwithstanding the foregoing, the Board should vote to grant the relief requested, we recommend the following conditions:

1. *Enrollment at JPDS shall be limited to 60 students at Site 1 and 40 students at Site 2.*

2. *The number of JPDS evening activities during the regular school year and the summer shall be limited to three and shall be completed by 9:00 p.m.*

3. *The number of individuals permitted at each activity shall not exceed 30 persons.*

4. *Noise levels from instruction, monitoring activities, and play shall not exceed 60 dB.*

5. *The synagogues shall not be rented, leased, or otherwise made available to persons or organizations other than JPDS for any purpose; and JPDS shall not rent, lease, or otherwise make available any space or facilities of the synagogues to any persons or organizations for any purpose.*

6. *Prior to obtaining certificates of occupancy for Site1 and 2 for the requested uses, the Applicant shall file with the Office of Zoning a lease that unconditionally provides for no more than 30 persons for any evening activity at either site.*

7. *The terms of the special exceptions at Sites 1 and 2 shall not exceed one year.*

8. *Certificates of occupancy for the private school shall not be issued until they have been reviewed by the ANC 4A.*

9. *Site 1 and Site 2 shall hold/host only activities directly related to the religious purposes of Ohev Sholom and Tifereth Israel.*

10. *Site 1 and Site 2 shall not rent out its space for any non-Ohev Sholom and non-Tifereth Israel religious activities.*

11. *The JPDS, Tifereth Israel and Ohev Sholom shall retain Shepherd Park/Colonial Village residents as paid consultants and technical advisors to assist in monitoring and enforcing all aspects of the voluntary traffic management plan.*

12. *Four neighbors selected by the Shepherd Park/Colonial Village Neighbors Alliance who live within 200 feet of each site shall be appointed with full voting rights to each of the governing boards of JPDS, Tifereth Israel and Ohev Sholom.*

13. *The JPDS student enrollment contract shall include a provision, among others, that provides that parents, or driver(s) designated by parents, found to have violated the traffic management plan three times, withdraw his/her student from the school.*

14. *JPDS parents shall pay to Shepherd Park/Colonial Village Neighbors Alliance a daily Traffic Management Activity fee of $5 per student per school day during each of the school months and shall obtain an annual bond in the amount of $200,000 as a guarantee of payment, naming the Shepherd Park/Colonial Village Neighbors Alliance as the payee upon any default in payment of the daily Traffic Management Activity fee. This fee is assessed as compensation for the involvement of the adjacent and neighboring property owners in providing services to monitor implementation of any routing plan implemented by JPDS. The same fee shall apply to any summer programs provided by JPDS.*

15. *When regular courses are offered at JPDS during the summer months, those regular courses shall be offered under the same limitations that apply during the regular school year.*

16. *No outside organization or agencies other than JPDS shall be permitted to hold fund-raising activities on the Sites, nor shall any for-profit organizations be allowed to use Sites 1 and 2 during the tenure of JPDS.*

17. *JPDS' use of the Sites shall not result in the creation of any roadway capacity, safety or operational deficiencies, and shall not affect the health, safety or general welfare of roadway users or the adjacent neighborhoods.*

18. *JPDS' use of the Sites shall not result in the creation of an easement, constructive or otherwise, with regard to any use of the public alleys abutting Site 1 and Site 2.*

19. *In order to prevent any adverse effects on neighboring streets and public alleys, any buses arriving at the JPDS sites must load and unload passengers on-sites and not at 16th Street or Juniper or Jonquil Street, N.W., or in the public alleys.*

20. *To provide ample screening for the surrounding neighborhood, prior to commencing any interior or exterior renovation, JPDS shall provide a landscaping plan which includes, among other things, new tree plantings, half of which must be evergreens at a minimum of eight to ten feet in height. JPDS is required to replace any dead trees or trees cut down within three years of the effective date of the order with trees of like species, no less than six inches in caliper.*

21. *The landscaping plan shall include any proposed landscape treatment of the Sites, including parking areas, and addition of playgrounds and play areas.*

22. *JPDS shall screen the parking lots at both Sites from adjacent properties with a double staggered row of Canadian Hemlocks.*

23. *To further protect the adjacent properties from JPDS activities, JPDS shall install a seven-foot high wood fence between its Site 1 and the house along 16th Street, N.W., and install a seven-foot high wood fence between Site 2 and the houses along Jonquil Street, N.W., and shall maintain and replace these fences, as necessary.*

24. *JPDS shall, in coordination with the Department of Public Works and the Metropolitan Police Department, ensure and pay for the installation of all appropriate and required signage indicating the presence of elementary school age children in the vicinity of the school.*

25. *Prior to occupancy, JPDS shall improve the structures at Sites 1 and 2 to meet current life safety code requirements, including improvements to make the facilities handicap-accessible.*

26. *To further protect adjacent properties, JPDS shall use only lighting designed to prevent spillage into the neighborhood and to certain foot candle intensity.*

27. *Refuse collection for the JPDS sites shall be restricted to the hours of 7:30 a.m. to 3:30 p.m. Any trash compactors on the Sites must not be operated between the hours of 6:30 p.m. and 7:30 a.m.*

28. *No signage advertising school or other activities at Sites 1 and 2shall be visible from 16th Street.*

29. *Before taking final action on this application, the Board shall submit the application to the Department of Consumer and Regulatory Affairs (DCRA) and to the Department of Fire and Emergency for review and written reports. The referral to the DCRA shall request advice as to whether the proposed private school can meet all licensing requirements set forth in the applicable laws and regulations of the District of Columbia.*